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October 16, 2013
File No.: 240148.00625/15275

BY ELECTRONIC FILING

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

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

Dear Sirs/Mesdames:

Re: Application for Reconsideration and Variance of Order G-26-13, dated February 25, 2013 on the FortisBC Energy Utilities' Common Rates, Amalgamation, and Rate Design Application

In accordance with the Amended Regulatory Timetable set for this proceeding by Letter L-58-13, we enclose for filing the electronic version of the Final Argument of the FortisBC Energy Utilities.

Twelve hard copies of the enclosed will follow by courier.

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP

[Original signed by Christopher Bystrom]

Christopher Bystrom

CRB/ccm
Encl.

Application for Reconsideration and Variance of Commission Order G-26-13 on the FortisBC Energy Utilities' Common Rates, Amalgamation, and Rate Design Application

FINAL ARGUMENT SUBMISSION

OF THE FORTISBC ENERGY UTILITIES

October 16, 2013

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I. INTRODUCTION

1. Pursuant to section 99 of the *Utilities Commission Act* (the "UCA"), on April 26, 2013, the FortisBC Energy Utilities (the "FEU"), consisting of FortisBC Energy Inc. ("FEI"), FortisBC Energy (Vancouver Island) Inc. ("FEVI") and FortisBC Energy (Whistler) Inc. ("FEW"), filed an *Application for Reconsideration and Variance of Commission Order No. G-26-13 on the FortisBC Energy Utilities' Common Rates, Amalgamation, and Rate Design Application* (the "Reconsideration Application"). Commission Order No. G-26-13 and the accompanying Decision, dated February 25, 2013 (the "Decision") denied the FEU's *Common Rates, Amalgamation and Rate Design Application* which sought approvals to amalgamate the FEU and implement postage stamp rates across the amalgamated entity (the "original Application"). As set out in the Reconsideration Application, the FEU are requesting that Order No. G-26-13 be varied to order as follows:

   (a) the amalgamation of FEI, FEVI, FEW and Terasen Gas Holdings Inc. is beneficial in the public interest; and

   (b) the FEU's proposal to adopt common rates for natural gas delivery amongst the service areas of FEI, FEVI and FEW, but excluding the service area of Fort Nelson, is approved effective on or before January 1, 2015.[1]

   As explained in the Reconsideration Application, the FEU are not seeking reconsideration of the determination not to implement postage stamp rates with the Fort Nelson service area.

2. The Commercial Energy Consumers of British Columbia (the "CEC") have also filed for reconsideration of the Decision. Following comments on the two reconsideration

[1] The FEU are not seeking reconsideration and variance of Order G-26-13 at this time to the extent that the Commission denied postage stamp rates for the Fort Nelson service area. The basis for this Reconsideration Application relies in part on the section 53 amalgamation request; however, the Fort Nelson service area is already part of FEI. As the FEU submitted during the original proceeding, the exclusion of the Fort Nelson service area is not a barrier to the amalgamation and implementation of postage stamp rates among FEI, FEVI and FEW.

applications, the Commission established Phase 2 of the reconsideration process in Order G-100-13. Seven intervenors have registered in the Phase 2 process:

(a) CEC;

(b) Fort Nelson & District Chamber of Commerce;

(c) Ministry of Energy and Mines (the "Ministry");

(d) Mr. Randy Robinson;

(e) British Columbia Pensioners and Seniors Organization et al ("BCPSO");

(f) Greater Victoria Chamber of Commerce; and

(g) Association of Vancouver Island and Coastal Communities ("AVICC")

3. The Resort Municipality of Whistler and BC Hydro and Power Authority ("BC Hydro") have registered as interested parties. Four letters of comment have been filed in support of reconsideration.[2]

4. The FEU submit that the Commission's denial of the FEU's original Application was based on legal and factual errors, which ultimately led to an incorrect conclusion on the merits of the FEU's proposal to amalgamate and implement postage stamp rates. In particular, the FEU have sought reconsideration on three grounds:

(a) First, the Commission made three material legal errors in its analysis which resulted in the Commission not applying the appropriate public interest test under section 53 of the UCA and not weighing the relevant public interest factors as it should have. The FEU submit that the Commission should have considered whether amalgamation for the purpose of implementing postage stamp rates is beneficial in the public interest pursuant to section 53 and should have weighed all factors relevant to the public interest.

(b) Second, there is just cause for the Commission to reconsider and vary its Order based on the Ministry's letter articulating the government policy in favour of postage stamp rates.[3] The FEU submit that the Commission should now take into account the policy set out by the government in reconsidering whether

[2] Exhibits E-1 to E-4.

[3] Exhibit C3-1.

amalgamation and postage stamp rates are in the public interest pursuant to section 53 of the UCA.

(c) Third, the Commission made material errors of fact and drew conclusions that have no basis in the evidence. The FEU submit that within the proper factual matrix, all the relevant factors weigh in favour of amalgamation and postage stamp rates, except for rate impacts to FEI. The FEU submit that with mitigation of the annual rate impacts to FEI, the evidence supports the conclusion that amalgamation for the purpose of implementing postage stamp rates is in the public interest.

5. Taken together, the FEU submit that the Commission failed to apply the correct legal test in the correct factual matrix. The FEU respectfully submit that the Commission should have considered whether amalgamation for the purpose of implementing postage stamp rates was in the public interest pursuant to section 53 of the UCA, taking into account the various public interest factors presented in the evidence before it. If all of the factors relevant to the public interest are weighed together in the correct factual matrix, then the FEU submit that the Commission should find that amalgamation and postage stamp rates are in the public interest.

6. This submission is limited to discussing the errors that the FEU submits were made by the Commission and the appropriate legal test that the Commission should have applied. If the Commission determines that amalgamation and postage stamp rates are in the public interest, the FEU rely on their submissions in the original proceeding with respect to the implementation of postage stamp rates, including on rate design. The draft order included as Appendix K-2 to the original Application shows the list of the approvals required in order to implement amalgamation and postage stamp rates, which would need to be updated to reflect the exclusion of the Fort Nelson service area and the new timeline for implementation.

7. The FEU rely on their rebuttal evidence in the original proceeding[4] and this proceeding,[5] as well their Final and Reply Submissions[6] in the original proceeding in response to the positions taken by Mr. Robinson.

8. The remainder of this submission is organized as follows:

(a) Part II sets out the appropriate public interest test applicable to amalgamation and postage stamp rates that the Commission ought to have conducted and describes the legal errors that the FEU submit were made by the Commission in its Decision.

(b) Part III discusses the factors that the FEU submit ought to have been considered by the Commission in its public interest analysis, but were not.

(c) Part IV discusses the factors considered by the Commission that the FEU submit were affected by material errors of fact or law.

(d) Part V discusses the weighing of the factors discussed in Parts III and IV.

(e) Part VI discusses the appropriate phase-in of postage stamp rates.

(f) Part VII concludes the submission.

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[4] Exhibit B-18 in the original proceeding.

[5] Exhibit B-7.

[6] Section 9.3 of the FEU's Final Submission and Section 8 of the FEU's Reply Submission in the original proceeding responded to the positions taken by Mr. Robinson.

II. LEGAL ERRORS AND THE CORRECT PUBLIC INTEREST TEST

9. This part of the submission first articulates the public interest test which the Commission should have applied and then discusses the legal errors that the FEU submit were made in the Commission's Decision.

A. *The Appropriate Legal Test*

10. The FEU submit that the Commission must consider whether the FEU's proposed amalgamation is beneficial in the public interest pursuant to section 53 of the UCA. As explained below with reference to the case law, the public interest test under section 53 of the UCA is broad and requires consideration of all relevant categories of the public interest. As the FEU have made clear, the purpose of the proposal to amalgamate is to implement postage stamp rates. The vast majority of the benefits by which the amalgamation is justified are due to postage stamp rates.[7] The FEU explained that they would not pursue amalgamation without postage stamp rates as there were no material benefits in doing so, and the impact to FEI's credit rating under a regional rate scenario was uncertain and could impact the ability of FEI to amalgamate due to the terms of FEI's trust indentures.[8]

11. The legal result is that the consideration of whether it is beneficial in the public interest to amalgamate requires consideration of the benefits of postage stamp rates across the amalgamated entity. This approach is consistent with the principle set out by the Commission in its 2005 KMI Decision, at p. 22, that "the public interest must be viewed in the context of the scope of the approval that is being requested".[9] [Emphasis added.] In other words, it would be a legal error to consider whether amalgamation alone is in the public interest without considering the benefits of postage stamp rates. This would improperly exclude from consideration the key benefit of amalgamation for the FEU, which is to make postage stamp rates possible.

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7 In the original proceeding: Exhibit B-9, BCUC IR 1.2.1 and 1.5.12; Exhibit B-15, BCUC 2.3.2, 2.3.3, 2.30.1 and 2.30.1.2.

8 In the original proceeding: Exhibit B-9, BCUC IR 1.2.1 and 2.3.3.

9 The 2005 KMI Decision is available on the Commission's website at the following URL: http://www.bcuc.com/Documents/Proceedings/2005/DOC_9223_KMI-Terasen%20Decision_FINAL2.pdf

12. As the adoption of postage stamp rates by an amalgamated entity is a rate decision, the FEU have sought approval of postage stamp rates pursuant to sections 59 to 61 of the UCA. The Commission must consider rate design principles as part of determining whether any rates will be just and reasonable and not unduly discriminatory. However, a critical point is that those principles must be applied in the context of an amalgamated entity. As discussed in the section below, it would be a legal error to either (a) limit the section 53 analysis to rate design principles, without considering factors unrelated to rate design, or (b) to consider postage stamp rates prior to or independent of amalgamation. Amalgamation under section 53 of the UCA is a legal and factual precondition for implementing postage stamp rates and requires consideration of the public interest more generally.

13. The FEU submitted in their Final Submission in the original proceeding that amalgamation and postage stamp rates must be considered "together" in recognition of the fact that the primary reason for seeking to amalgamate, and an important public interest consideration, is the adoption of postage stamp rates. Considering amalgamation and postage stamp rates "together" means recognizing that postage stamp rates are the primary rationale for amalgamation. It does not mean substituting the legal standard under sections 59 to 61 for the broader public interest standard under section 53, which is effectively what the Commission has done.

14. The test under section 53 requires the Commission to arrive at its opinion of the public interest by weighing all relevant factors. These include, for instance, positive and negative bill impacts, overall financial savings, consistency with government policy, and the benefits of rate stability and ease of administration and simplicity. In the FEU's submission, all factors favour amalgamation and postage stamp rates, except for the impact to FEI customers. While the impact to FEI customers is an important factor, the FEU submit that all the other factors outweigh it, especially when taking into account the current low gas-costs and mitigation options available to phase-in the impacts. In the FEU's submission, a full consideration of the relevant factors results in the conclusion that amalgamation and postage stamp rates are in the public interest.

15. If the Commission reaches the conclusion that amalgamation for the purpose of adopting postage stamp rates is in the public interest, the next step would be to approve a postage stamp rate design for the amalgamated entity pursuant to sections 59 to 61 of the UCA. This involves questions of implementation and rate design, which were canvassed in the original proceeding. The FEU continue to rely on their evidence and submissions in the original proceeding in respect to the rate design for the amalgamated entity.[10]

16. In the next section, the FEU discuss the legal errors of the Commission in failing to apply the appropriate legal test.

B. ***Legal Errors***

17. The FEU submit that the fundamental legal error of the Commission was to apply a framework which precluded the full consideration of the issue before it. The Commission's Decision elected to analyze postage stamp rates alone, and in advance of amalgamation, and only through the perspective of Bonbright principles. This framework for the analysis resulted in legal errors, each of which is discussed below.

i. *Erred by failing to consider postage stamp rates within the context of an amalgamated entity*

18. The FEU submit that the Commission erred in failing to consider common rates within the context of an amalgamated entity. The Commission's approach to considering the FEU's Application was to consider the proposed common rates first:[11]

> 'Given that the FEU's rationale for amalgamation "is entirely dependent on the adoption of postage stamp rates" and its view that "the primary benefit of amalgamation is that it facilitates implementation of postage stamp rates," the Commission Panel will first consider whether it supports the use of postage stamp rates across all (or some) of the regions served by the FEU. (Exhibit B-3, p. 10; FEU Final Submission p. 10)'

Since amalgamation of the FEU is a legal precondition to the implementation of common rates, the Commission could only properly assess the proposed postage stamp rates from the perspective that amalgamation had occurred. The Commission erred by instead

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[10] Original Application, Exhibit B-3, Sections 7 to 9 and accompanying appendices; FEU Final Submission in the original proceeding, sections 8 to 11.

[11] Decision, p. 6.

assessing the FEU's proposal to adopt postage stamp rates from the standpoint of the separate utilities continuing to exist.

19. The FEU provide two examples of this error.

20. The first example of the error is in the context of the Commission's reliance on the principle that: '[d]iscrimination, when applied to rates for utility service, can only be of an "intra-utility" nature and not "inter-utility."'[12] The Commission concluded that the existence of rate disparities amongst the different utilities does not present a problem as they are of an "*inter*-utility" nature.[13] The Commission's approach failed to recognize that once amalgamation occurs, then the assessment becomes *intra*-utility. The rate disparities take on a fundamentally different complexion if they are viewed through the lens of a single amalgamated utility than if they are viewed in the context of three distinct utilities. Whereas rates charged by different utilities are routinely different from one another, regional rates within a single utility are the exception, not the norm, in British Columbia and for public utilities generally.[14]

21. The second example of the Commission implicitly assessing the FEU's rate proposal from the perspective of three distinct utilities remaining in place is the Commission's repeated references to the fact that existing rates for each of the FEU have been approved and the Commission's comparison "to the *status quo*". For instance, in the context of discussing the rate design principle of fairness, which was a key aspect of the Commission's Decision on common rates, the Commission indicated that cross-subsidization moves away from cost causation and then stated (at p. 22):

> "The Panel notes that the existing rates in each region, as approved by the Commission, are, by necessary implication, fair, just and reasonable, and non-discriminatory."

22. In its conclusion on the fairness principle, the Commission found (at p. 24) that the FEU's proposal to implement postage stamp rates is not fair "as compared to the status

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[12] Decision, In the Matter of British Columbia Hydro and Power Authority 2007 Rate Design Application Phases II and III, dated December 21, 2007, p. 33.

[13] Decision, p. 11.

[14] Original Application, Exhibit B-3-1, Appendix D-1, EES Consulting Report, p. 5; FEU Final Submission, section 3.1.

quo." Similarly, under the heading "Commission Panel Determination," the Commission noted the resulting cross-subsidization from postage stamp rates and stated (pp. 33-34):

> "Such cross subsidization results in a movement away from the current rates underlying the status quo, which rates have been previously determined to be just and reasonable and not unduly discriminatory, and are based on cost causality."

23. The Commission's reliance on existing approvals in this fashion ignored the fact that the existing rates were approved in the context of three separate utilities, rather than an amalgamated utility. Put another way, the Commission's analysis under sections 59-61 ought to have proceeded on the basis that the alternative to common rates was regional rates <u>within an amalgamated entity</u>, not "the *status quo*" of different utilities. The *status quo* was only relevant in the context of considering whether it is in the public interest to proceed with amalgamation at all. The Commission, however, expressly declined to consider the FEU's request to amalgamate.

24. The FEU have identified three effects of this error.[15]

(a) The first effect of this error was that it led the Commission to avoid the consideration of whether amalgamation for the purpose of implementation of postage stamp rates was beneficial in the public interest. The Commission therefore failed to consider the various public interest and other factors in favour of amalgamation and postage stamp rates. This is discussed further below.

(b) The second effect was that the Commission focused on rate impacts as an inter-utility matter, whereas within an amalgamated entity the adoption of postage stamp rates is an intra-utility issue. The FEU submit that this contributed to the Commission's incorrect approach of using the existing rates as the measure by which the rates for the amalgamated entity should be judged, as discussed below, and contributed to the Commission's incorrect conclusion that postage stamp rates caused a cross subsidy.

[15] Exhibit B-2, BCUC-FEU IR 1.11.1.

(c) A third effect is that the Commission did not consider the extent to which amalgamation itself contributed to the rationale for adopting postage stamp rates. Amalgamation would reflect the high degree of physical and operational integration of the FEU. In the FEU's submission, postage stamp rates are more appropriate within an amalgamated entity. Within this context, the Commission should have considered the Bonbright principles as they related to postage stamp rates for an amalgamated utility that was fully integrated. The concept of regional rates for an amalgamated utility in that case would need to be considered in terms of both regulatory precedent and Bonbright principles on a general basis first, followed by an examination of the most appropriate regions. Assuming the existing regions are appropriate simply on the basis of past ownership does not adequately reflect the principles of cost causation.

25. In summary, the FEU's Application was not capable of being assessed on the basis that separate utilities continued to exist, and the Commission's approach was in error.

ii. *Erred by relying on the fact that the existing rates of the FEU are approved*

26. The FEU submit that the Commission erred in relying on the fact that the FEU's existing rates had previously been approved as a rationale for dismissing the Application without considering the full scope of public interest considerations.

27. The *UCA* is explicit that the Commission must consider applications on their merits. Section 75 provides:

> "The commission must make its decision on the merits and justice of the case, and is not bound to follow its own decisions."

28. Section 75 reflects the common law rule against administrative tribunals fettering their discretion.

29. As described in the FEU's Reconsideration Application, in *Bell Canada v. Canada (AG)*, 2011 FC 1120,[16] the Court found that the Canadian Radio-television and Telecommunications Commission ("CRTC") was not bound by precedent and had a legal

[16] Available online at: http://www.canlii.org/en/ca/fct/doc/2011/2011fc1120/2011fc1120.html.

obligation not to fetter its discretion. On the topic of the CRTC's ability to rely on its previous decisions, the Court stated at paras 90-92:

> 'The principle that an administrative tribunal cannot use its previous decisions to fetter its discretion was established in *Hopedale Developments Ltd. v. Oakville (Town)* (1964), 47 D.L.R. (2d) 482 (Ont. C.A.), at 486. The Ontario Court of Appeal held in that case that it <u>would have been an error of law for the Ontario Municipal Board to use precedent to limit the number of issues that it needed to address. Administrative tribunals are permitted to rely on principles articulated in previous decisions as long as the tribunal gives "the fullest hearing and consideration to the whole problem before it</u>."
>
> The prohibition on exclusive reliance by an administrative tribunal on previous decisions includes not only factual and policy decisions but also legal determinations and is essential to ensure that administrative tribunals have the flexibility to respond to new circumstances on a case-by-case basis. The need for flexibility is particularly acute in the case of policy and factual determinations, such as those at issue in Decision 2010-805 and the Petition.
>
> The CRTC also did not have before it in its previous decisions Bell's new wireless HSPA+ technology proposal, which Bell characterized as establishing new facts, resulting in a new application. In my view, the CRTC could not have considered [i.e. would not have been able to consider] competitive bidding in light of these new facts in its previous decisions any more than the CRTC could have considered [i.e. would have been able to consider] Bell's new wireless HSPA+ technology in its previous decisions. The relevant facts, quite simply, were not previously before the CRTC.' [Emphasis and parenthetical clarification added.]

30. While the Commission can refer to past decisions to assist in a full consideration of the evidence and issues before it, it is an error of law for the Commission to rely on existing decisions to limit the issues that the Commission should have considered. Following this principle, the FEU submit that the Commission erred in law when it relied on the fact that the existing rates of the FEU had been previously approved in a manner that precluded a full consideration of the issues based on the evidence filed.

31. Any utility's approved rates are, by definition, "just and reasonable and not unduly discriminatory". Each and every rate application filed by a utility requires a re-assessment of existing approved rates in light of the evidence before the Commission. Rates are routinely changed. The FEU's Application presented new facts and evidence to

the Commission. In fact, the proposed postage stamp rates were premised on there being an amalgamated entity, which was a fundamentally different set of circumstances than the circumstances before the Commission when it had approved the existing rates for FEI, FEVI and FEW.

32. The Commission relied on the approval of existing rates to demonstrate that these existing rates were "not a problem".[17] However, the fact that existing rates were approved did not in any way address the challenges associated with the approved rates that the FEU had identified. Put another way, while the rates were "not a problem" in the sense that they were "just and reasonable and not unduly discriminatory", they <u>were</u> a problem for public interest reasons. The Commission's assessment that the rates were "not a problem" because they had been approved foreclosed a consideration of whether based on the current circumstances it is in the public interest to amalgamate and adopt common rates.

33. Moreover, the proposed rates could result in movement away from existing approved rates and still be "just and reasonable and not unduly discriminatory". For example, the fact that the existing rates of the FEU are based on cost causation does not preclude the conclusion that the proposed postage stamp rates are also based on cost causation. The FEU proposed to use FEI's existing rate design and each customer class would recover the costs attributable to that class, just as is done under FEI's existing approved postage stamp rates. It was incorrect to rely on the fact that the existing rates were approved to conclude that the proposed rates were not based on cost causation to an acceptable degree. Doing so precluded a full consideration of whether the proposed rates were sufficiently based on cost causation to be just and reasonable.

34. Returning to the *Bell* case discussed above, the Court determined that "[a]dministrative tribunals are permitted to rely on principles articulated in previous decisions as long as the tribunal gives 'the fullest hearing and consideration to the whole problem before it.'" The Commission was not relying on "principles articulated in previous decisions"; rather, it was relying on the mere fact that the Commission had previously approved the existing

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[17] Decision, p. 11.

rates, despite that decision having been made under different circumstances. The Court's conclusion that an error had been made because "[t]he relevant facts, quite simply, were not previously before the CRTC," could be equally said of the FEU's Application.

35. The FEU have identified two results of the Commission's incorrect approach:[18]

(a) One result of the Commission's approach is that it did not acknowledge that the existing rates were a problem. This resulted in the Commission failing to fully consider the challenges facing FEVI and FEW and the benefits of postage stamp rates for resolving those challenges.

(b) A second result is that it precluded a full consideration of whether postage stamp rates could be just and reasonable and not unduly discriminatory for an amalgamated entity. The Commission incorrectly treated existing rates as the measure of cost-causation and movements away from approved rates as being movement away from cost causation. This is a fundamentally incorrect approach. Amalgamation opened up the possibility of allocating costs across the service areas of the FEU on a postage stamp basis. The rate changes resulting from the move to postage stamp rates reflect the removal of rate differences based on location and the reallocation of costs based on rate class. Movement away from the existing approved rates is not reason in itself to conclude that rates are not based on cost causation. The proposed rates themselves have to be considered on their own terms to consider whether they are based on cost causation. In fact, the revenue-to cost ratios calculated for the proposed postage stamp rates demonstrate that each class would be recovering its cost of service.[19] As the FEU have submitted, postage stamp rates have been repeatedly found to be consistent with Bonbright principles.[20]

36. In summary, the Commission's reliance on the existing rate approvals precluded a full consideration of whether existing rates were "a problem" from a public interest

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[18] Exhibit B-2, BCUC-FEU IR 1.11.1.

[19] Original Application, Exhibit B-3, Section 9.7.2, Table 9-10.

[20] Original Application Exhibit B-3-1, Appendix D-1, EES Consulting Expert Report, p. 5. FEU Final Submission in the original proceeding, section 3.1.

perspective, and whether the postage stamp rate option could be "just and reasonable and not unduly discriminatory" in the context of an amalgamated entity. This improper fettering of discretion was a legal error justifying reconsideration and variance of Order G-26-13.

iii. *Erred by dismissing the entire Application based solely on its assessment of postage stamp rates under sections 59-61*

37. The FEU submit that the Commission also erred by declining to consider the FEU's request to amalgamate. Section 53(1) of the *UCA* specifies a public interest test for amalgamation. It provides:

> "53 (1) A public utility must not consolidate, amalgamate or merge with another person
>
> (a) unless the Lieutenant Governor in Council
>
> (i) has first received from the commission a report under this section <u>including an opinion that the consolidation, amalgamation or merger would be beneficial in the public interest</u>, and
>
> (ii) has, by order, consented to the consolidation, amalgamation or merger, and
>
> (b) except in accordance with an order made under paragraph (a)."
>
> [Emphasis added.]

38. The scope of a public interest assessment is broad. The Federal Court of Appeal in *Nakina (Township) v. Canadian National Railway Co.* (1986), 69 N.R. 124 (F.C.A.)("Nakina")[21], which dealt with the jurisdiction of the Railway Transport Committee, observed (at para. 5): 'by definition, the term "public interest" includes the interests of all the affected members of the public.' Similarly, in the context of an application for a certificate of public convenience and necessity, which is also a public interest determination, the Commission's 2006 decision in relation to the Vancouver Island Transmission Reinforcement Project stated: "The Commission Panel accepts the

[21] *Nakina (Township) v. Canadian National Railway Co.* (1986), 69 N.R. 124 (F.C.A.) is attached as **Appendix "B"** to the FEU's Reconsideration Application.

submissions of BCTC that there is a broad range of interests that should be considered in determining whether an applied-for project is in the public convenience and necessity."[22]

39. Where a tribunal is required to have regard to the public interest, it is an error of law for the tribunal to fail to consider interests relevant to the public interest. In ***Nakina***, the Court held that the Railway Transport Committee erred in law in failing to consider, where it was required to have regard to the public interest, evidence of the effect of the closing of a railway station on the economy of the local community. The Court said (at para. 5):

> "…I would have thought that, by definition, the term "public interest" includes the interests of all the affected members of the public. The determination of what is in the public interest involves the weighing and balancing of competing considerations. Some may be given little or no weight; others much. But surely a body charged with deciding in the public interest is "entitled" to consider the effects of what is proposed on all members of the public. To exclude from consideration any class or category of interests which form part of the totality of the general public interest is according, in my view, an error of law justifying the intervention of this court." [Emphasis added.]

40. The Court in *Nakina* went on to say (at para. 10):

> "For clarity, however, I would emphasise that the error lies simply in the failure to consider. Clearly the weight to be given to such consideration is a matter for the discretion of the Commission, which may, in the exercise of that discretion, quite properly decide that other considerations are of greater importance. What it could not do was preclude any examination of evidence and submissions as to the adverse economic impact of the proposed changes on the affected community." [Emphasis added.]

41. In this regard, the B.C. Court of Appeal in *Tsawwassen Residents Against Higher Voltage Overhead Lines Society v. British Columbia*, 2006 BCCA 537,[23] (an appeal from this Commission), having referenced *Nakina*, states (at para. 29):

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[22] Decision, In the Matter of British Columbia Transmission Corporation, Application for a Certificate of Public Convenience and Necessity for the Vancouver Island Transmission Reinforcement Project, dated July 7, 2006, p. 15. Online at: http://www.bcuc.com/Documents/Decisions/2006/DOC_12041_1-VITR%20Decision-July%207%202006%20-%20Web.pdf.

[23] Online at: http://www.courts.gov.bc.ca/jdb-txt/ca/06/05/2006bcca0537.htm.

> "Had the Commission limited its consideration of the factors put before it by the participants in the proceedings to matters of cost only, that would have been an error of law, as demonstrated by ***Nakina***, and a question of general importance as to the jurisdiction of the Commission."

42. In summary, the consideration of the public interest is broad and it is an error of law to fail to consider all relevant categories of interests.

43. As set out in the FEU's Reconsideration Application, the present case is a circumstance where the Commission has precluded examination of evidence and submissions relevant to the public interest under section 53 by virtue of disposing of the entire Application by reference to rate design principles.

44. The Commission concluded that the proposed postage stamp rates were not "just and reasonable" based on its interpretation and weighting of rate design principles as articulated in the Decision.[24] The Commission recognized that the amalgamation and rate approvals sought were distinct,[25] but considered that the finding regarding the proposed rate structure was dispositive of the entire Application because the FEU would not proceed with amalgamation in the absence of postage stamping. The Commission stated:

> "Given its determination on the issue of postage stamp rates, it was unnecessary for the Panel to consider whether amalgamation would be "beneficial in the public interest" in accordance with section 53 of the Utilities Commission Act.[26]
>
> …
>
> Given the FEU's position that they will not amalgamate without postage stamp rates, it is not necessary for the Panel to consider this issue."[27]

45. The two components of the Application - amalgamation and adoption of common rates - were interrelated because the FEU's primary rationale for amalgamation was the ability to implement postage stamp rates. However, it was an error for the Commission to

[24] Decision, p. 19.
[25] Decision, p. 3.
[26] Decision, p. i.
[27] Decision, p. 35.

conclude that "it is not necessary for the Panel to consider [amalgamation]" based on a determination on postage stamp rates.

46. The issue of whether or not to amalgamate and adopt postage stamp rates across all three utilities is a policy issue. The public interest inquiry under section 53 of the *UCA* requires the Commission to determine whether, in light of the benefits articulated by the FEU of amalgamating and adopting postage stamp rates, there is any public interest justification for maintaining three separate entities any longer. It is evident from the Decision that this question was not addressed.

47. The discussion in the Decision of "Issues Proposed to be Addressed Through Postage Stamp Rates" was very brief. The Commission's discussion of the existing rate disparities was limited to an observation that rates in different utilities typically differ:[28]

> 'By necessary implication, postage stamp rates would eliminate rate disparities among the various utilities. <u>However, in the Panel's view, assuming utilities are all operating as going concerns, and other things being equal, the existence of rate disparities among different utilities is common and to be expected.</u> As noted by the Commission at page 33 of its Decision In the Matter of British Columbia Hydro and Power Authority 2007 Rate Design Application Phases II and III dated December 21, 2007, "[d]iscrimination, when applied to rates for utility service, can only be of an "intra-utility" nature and not "inter-utility." <u>The status quo in this case, therefore, does not present a problem in terms of the existence of disparate rates</u>.' [Emphasis added.]

The assumption that "utilities are all operating as going concerns" begs the very question that is at the heart of the section 53 analysis: should the utilities continue operating separately "as going concerns" in light of the evidence presented, or should they be amalgamated to eliminate the rate discrepancies amongst the FEU to resolve the challenges faced by FEVI and FEW, ensure more equitable treatment of the customers of all three utilities, and capture other efficiencies and benefits? Similarly, the relevant question was not whether the existing disparate rates were unjust and unreasonable, but rather whether there was an approach that better served the public interest.

[28] Decision, p. 11.

48. The Commission's second and final point regarding the issues to be addressed by postage stamping suffered from the same circularity:[29]

> "The Commission Panel notes that FEU's proposed solution to higher rates on Vancouver Island due to the loss of government subsidies has the effect of replacing the government subsidy with a subsidy from the ratepayers of FEI."

The fact that the ratepayers of FEI would be covering a portion of the cost of service currently attributable to serving the ratepayers of FEVI and FEW after amalgamation was self-evident from the existing rate disparity. The relevant question, which the Commission never asked, was whether it was appropriate, for broad public interest reasons, to allow this result through the adoption of common rates following the amalgamation of the entities.

49. As the FEU have submitted, the approach taken in the Decision foreclosed consideration of factors relevant to the public interest. In other words, the FEU submit that the Commission's Bonbright analysis was legally insufficient to dispose of the FEU's application. The Commission cannot confine itself to a list of rate design factors which has the effect of excluding from consideration key public interest factors that are relevant to a public interest determination regarding amalgamation.

50. In the following parts of this submission, the FEU discuss the relevant factors to the public interest test. The FEU first discuss factors that were excluded from the Commission's analysis or that have been raised by the Ministry's public policy letter in support of postage stamp rates. The FEU then discuss the factors discussed by the Commission in its Bonbright analysis in which the FEU submit the Commission made material errors of fact or law.

51. In the FEU's submission, when viewed in the correct factual matrix, all factors favour amalgamation and postage stamp rates, except for the impact to FEI customers. While the impact to FEI customers is an important factor, the FEU submit that all the other factors outweigh it, especially when taking into account the current low gas-costs and phase-in options available to mitigate the impacts. In the FEU's submission, a full

[29] Decision, p. 12.

consideration of the relevant factors results in the conclusion that amalgamation and postage stamp rates are in the public interest.

III. FACTORS THAT WERE EXCLUDED THAT OUGHT TO BE CONSIDERED

52. In this part of the submission, the FEU discuss the various factors that were omitted in whole or in part by the Commission in its analysis that the FEU submit must be considered in determining whether amalgamation and postage stamp rates are in the public interest.

A. *Public Policy*

53. A significant factor that weighs in favour of amalgamation and postage stamp rates is public policy. While the FEU have consistently maintained that government policy is in favour of postage stamp rates,[30] government has now explicitly stated its support for the implementation of postage stamp rates for the FEU. In its letter of April 15, 2013, the Ministry writes:[31]

> "From a public policy perspective, the Ministry is of the opinion that a common rate resulting from the proposed amalgamation of FortisBC Energy Utilities will have benefits for all FortisBC Energy customers in British Columbia.
>
> Government policy has been to promote access to energy services on a postage stamp rate basis so that all British Columbians benefit from access to services at the lowest average costs."

54. The Ministry's letter (Exhibit C3-1) identifies three policy rationales favouring reconsideration of the Decision: (i) equality of investment and job creation opportunities; (ii) regulatory efficiency; and (iii) customer rate impacts. Each of these is discussed below.

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[30] See, e.g., Section 3 of the FEU's Final Submission in the original proceeding.

[31] The Ministry's letter of support dated April 15, 2013 (the "Ministry Letter") is attached as Appendix "A" to the FEU's Reconsideration Application and also attached to the Ministry's registration for intervenor status (Exhibit C3-1).

i. *Equality of Investment and Job Creation Opportunities:*

55. Equality of investment and job creation opportunities is the first broad policy rationale for the Ministry's support for postage stamp rates. The Ministry explains the significance of equality of investment and job creation opportunities as follows:[32]

> "The Ministry is concerned about the impacts to business mobility in the absence of postage stamp rates. For example, under the current structure, investment in the regions served by FortisBC Energy's Vancouver Island System (Sunshine Coast and Vancouver Island) and Whistler system are disadvantaged by higher rate in the order of 50% or more than the corresponding commercial rates in the mainland service areas of FortisBC Energy Inc. That means that investors looking to add value to provincial natural gas resources, as supported by the Province's Natural Gas Strategy, by developing opportunities such as liquefied natural gas or chemical production would look elsewhere in the Province to locate. This results in a competitive advantage for the areas served by FortisBC Energy Inc. that has implications for customer fairness from a broader public policy perspective. While many factors may affect the competitive position of commercial enterprises in a particular locale, a disadvantage in the area of energy input costs may be significant and lead to diminished economic development and job creation opportunities as a result."

56. The letter from the Ministry goes on to describe the support for postage stamp rates in the Industrial Electricity Policy Review. The Ministry then discusses the particular importance of postage stamp rates for natural gas in the transportation sector. The Ministry states that the *Greenhouse Gas Reduction (Clean Energy) Regulation* "evidences the province's desire for increased use of natural gas in the heavy duty transportation sector throughout British Columbia."[33] The Ministry concludes that from "a provincial, price fairness perspective postage stamp rates would provide consistent pricing for the program resulting in a greater economic incentive throughout British Columbia to use natural gas in the heavy duty transportation sector."[34]

57. In response to BCUC IR 1.1.2, the Ministry explained further as follows:[35]

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[32] Exhibit C3-1, Ministry Letter, p. 2.

[33] Exhibit C3-1, Ministry Letter, p. 3.

[34] Exhibit C3-1, Ministry Letter, p. 3.

[35] Exhibit C3-2.

> "• The BC Jobs Plan and Natural Gas Strategy remains a key government priority. A component of the strategy involves province-wide deployment of natural gas in evolving end-use applications such as Natural Gas Transportation (NGT). Multiple regional rate structures and dealing with 3 separate gas utility companies across the province will make it more difficult to achieve wide adoption of NGT and other innovative technologies supported by FEU companies.
>
> • More broadly, government seeks to foster economic development and responsible energy use across the province. In a competitive economy, differential rates will adversely impact investment and job creation in regions with relatively higher rates, adding complexity to implement the BC Jobs Plan which is a cornerstone of provincial economic policy."

58. As can be seen from the above, government policy is to promote investment and job opportunities throughout the province through postage stamp energy rates. The government has highlighted in particular the potential for the existing rates of the FEU to have an adverse impact on LNG and natural gas for transportation (NGT) opportunities.

59. The evidence of the FEU has been that the existing rates are disadvantageous to the development of CNG and LNG opportunities within the FEVI and FEW service areas.[36] In short, the higher delivery rates of FEVI and FEW make it harder to develop the NGT market in these service territories and the separate utility structures make it less efficient to roll out service offerings. The reduced rates in the FEVI and FEW service areas that would result from amalgamation and postage stamp rates would improve the economics of adopting natural gas as a transportation fuel in these service territories. This would be expected to help customers in these service areas make a decision to move to NGT by reducing one of the barriers that could be impeding their decision.

60. In this proceeding, new evidence has been filed regarding the Woodfibre LNG project and the possibility of serving BC Ferries with LNG.[37] While FEVI believes that it is too early to consider these projects as a fundamental change in circumstances since the original proceeding, the FEU do submit that these projects illustrate the benefits of

[36] In the original proceeding: Exhibit B-3, pp. 120-121; Exhibit B-9, BCUC IR 1.40.1 and 1.40.5 and Exhibit B-15, 2.47.3, 2.54.2 and 2.55.1.

[37] See, e.g., Exhibit C1-2, Evidence of a Fundamental Change in Circumstances and Facts with Respect to FortisBC Energy Vancouver Island (FEVI).

amalgamation and postage stamp rates in terms of the opportunities that postage stamp rates can promote.[38]

61. The Woodfibre LNG project is a site-specific project.[39] This is therefore not a case where the project may choose to develop within the FEI service territory instead of the FEVI service territory. Rather, it is a case of whether the project will proceed *at all*. Amalgamation and postage stamp rates could potentially lower the transportation toll for the Woodfibre LNG Project as the costs associated with this project will then be allocated to a larger customer base. The anticipated volumes for the LNG plan are estimated at approximately 57 to 83 PJ per year.[40] With amalgamation and postage stamp rates, the net financial benefits will flow to all FEU customers.[41]

62. The potential for BC Ferries to use LNG from FEVI's service territory has also been discussed by the CEC in its evidence, which indicates a potential demand of 4.6 PJs per year.[42] Despite the Commission's decision on the FEU's application to amend Rate Schedule 16, BC Ferries has announced that it will order three new ferry vessels that will be dual fuel (capable of running on diesel and LNG) to replace vessels set to retire in 2016.[43] Amalgamation and postage stamp rates offer the possibility of rolling out more consistent service offerings across the combined service areas of the FEU with consistent delivery rates. This should in turn assist in promoting opportunities such as the use of LNG by BC Ferries.

63. The Commission IRs have queried whether it would make sense to wait until after these opportunities have developed before applying for amalgamation and postage stamp rates.[44] This suggestion misses the fundamental point raised by the CEC and the Ministry, which is that maintaining existing rates disadvantages these opportunities. If

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[38] Exhibit B-2, BCUC-FEU IR 1.7.3.1 and 1.7.4.

[39] Exhibit B-2, BCUC-FEU 1.7.3.

[40] Exhibit C1-2, Evidence of a Fundamental Change in the Circumstances and Facts with Respect to FortisBC Energy Vancouver Island (FEVI), p. 1.

[41] Exhibit B-2, BCUC-FEU IR 1.7.3.2.

[42] Exhibit C1-2, Evidence of a Fundamental Change in the Circumstances and Facts with Respect to FortisBC Energy Vancouver Island (FEVI), pp. 2-4.

[43] Exhibit B-2, BCUC-FEU IR 1.7.4.

[44] Exhibit C1-3, BCUC-CEC IR 1.3.2.

the energy input costs tip the balance away from such projects proceeding, then these opportunities would never develop. Thus, the CEC lists the various risks of waiting for the opportunities to develop, including the risk of lost opportunities for development and the loss of the benefits flowing from such opportunities.[45]

64. In the FEU's submission, a critical point is the Ministry's statement that "a disadvantage in the area of energy input costs may be significant and lead to diminished economic development and job creation opportunities as a result."[46] Amalgamation and postage stamp rates will provide lower and uniform rates for FEVI and FEW, which will help foster opportunities in these regions and lead to greater value for all customers as an end result. The FEU agree with the CEC's submission in this regard that: "This may be a classic case where the combined entity may be able to create joint value in excess of what the individual utility could develop if it were strictly on its own."[47] The government has therefore identified a strong policy rationale which supports amalgamation and postage stamp rates for the FEU.

ii. *Regulatory Efficiency:*

65. The second policy rational identified by the Ministry is that of regulatory efficiency. The Ministry states:[48]

> "Government policy is to achieve reductions in regulatory requirements and red tape. Having only one revenue requirement, long-term resource plan, return on equity finding, service offering applications, and common programs, instead of three separate processes for the three utilities creates a savings that can be passed on to customers. Having the two smaller utilities merged with the large one also effectively spreads risk across a larger organization more able to mitigate/accept those risks, and provides more stable rates to customers over the long term."

66. In response to BCUC IR 1.1.2, the Ministry explained further as follows:[49]

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[45] Exhibit C1-3, BCUC-CEC IR 1.3.2.1.

[46] Exhibit C3-1, Ministry Letter, p. 2.

[47] Exhibit C1-3, BCUC-CEC IR 1.1.3.

[48] Exhibit C3-1, Ministry Letter, p. 3.

[49] Exhibit C3-2.

> “• It is self-evident that moving from three separate companies to one amalgamated company will streamline regulatory processes and reduce administrative costs to utilities, which are having a material impact on rate increases at FortisBC and other utilities.
>
> • A single amalgamated company can more appropriately allocate costs to various ratepayer classes and regions, and can provide stable funding for core services and programs with less exposure to temporary fluctuations in regional economic conditions.”

67. There is therefore a strong policy rationale in favour of amalgamation and postage stamp rates in terms of increasing regulatory efficiency in the province.

68. The government’s rationale of regulatory efficiency captures several benefits of amalgamation and postage stamp rates that were identified by the FEU in the original proceeding. These include: (1) regulatory cost savings, (2) efficient expansion of service offerings, and (3) rate stability. As the FEU have submitted in their Reconsideration Application, the Commission did not properly consider the extent of regulatory cost savings and appeared not to take into account the expansion of service offerings. The Commission’s analysis of rate stability also incorrectly assumed that region-specific rate-designs could address the rate stability issues facing FEVI and FEW, which is incorrect. The FEU address each of these topics more fully below in Part III section E and Part IV, section A.

iii. *Customer Rate Impact*

69. The third public policy rationale identified by the Ministry is customer rate impacts. The Ministry states in its letter that now is an opportune time to transition to postage stamp rates from a rate impact perspective, and that impacts to FEI customers can be ameliorated through appropriate rate riders. It states:[50]

> “The Ministry is of the opinion that the next several years will be an opportune time for transitioning to postage rates given forecasts for continued low natural gas commodity prices. This will help minimize rate spikes for customers. The increases of 5% for the majority of customers (which are located in the Lower Mainland, Interior and Columbia regions) are small compared to fluctuations in customer bills that have been driven by changes in the commodity cost of natural gas over the past decade.

[50] Exhibit C3-1, Ministry Letter, p. 3-4

> The current low commodity cost environment is an opportune time to implement postage stamp rates. While there was discussion in the hearing process about the phasing-in of postage stamp rates, the Ministry notes that no consideration was given to what an appropriate level of cost sharing should be by Vancouver Island and Whistler customers from a regulatory fairness perspective. Establishing a postage stamp rate along with appropriate rate riders could ameliorate the impact."

70. The Ministry has also indicated that it believes the Commission gave undue emphasis to and an inappropriate interpretation of customer rate impacts.[51] The Ministry states:[52]

> "• The Ministry believes the Commission's decision was flawed, in only considering the customer rate impact without also taking into account regulatory efficiency and equality of job creation and investment opportunities.
>
> • The rate impact to FEI customers is minimal in the context of fluctuating commodity prices for natural gas.
>
> • Any transitional issues in moving to postage stamp rates can be addressed via time limited rate riders."

71. The FEU agree with the Ministry that the Commission placed an inappropriate and unbalanced emphasis on customer impacts.

72. The FEU also agree that now is an opportune time to transition to postage stamp rates. The following table shows the annual changes in the residential burner tip bill for FEI Rate Schedule 1 customers since 1999. As shown in the table below which is based on Commission-approved rate increases, the annual percentage changes to the residential burner tip bill have decreased and increased by well over 5% in several years, and have been decreasing in recent years due to lower commodity costs.[53]

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[51] Exhibit C3-2, BCUC-MEM IR 1.1.2.
[52] Exhibit C3-2, BCUC-MEM IR 1.1.2.
[53] FEU Reconsideration Application, p. 28.

FEI-Mainland Rate Schedule	1998	1999	2000	2001	2002	2003	2004	2005
RS1 - Residential								
Annual Prorated Burner Tip Bill	$ 550	$ 616	$ 816	$ 1,140	$ 996	$ 1,131	$ 1,107	$ 1,194
Annual Percentage Change		11.9%	32.4%	39.8%	-12.7%	13.6%	-2.1%	7.9%

FEI-Mainland Rate Schedule	2006	2007	2008	2009	2010	2011	2012	2013
RS1 - Residential								
Annual Prorated Burner Tip Bill	$ 1,221	$ 1,187	$ 1,292	$ 1,062	$ 1,092	$ 995	$ 906	$ 889
Annual Percentage Change	2.3%	-2.8%	8.8%	-17.8%	2.9%	-8.8%	-9.0%	-1.9%

73. The impact to FEI's customers is also considered below under the category of fairness/undue discrimination.

iv. *Conclusion on Public Policy*

74. In summary, the FEU submit that the Commission should reconsider the Decision in light of the government policy set out by the Ministry in its letter. This letter underscores that there are benefits to amalgamation and postage stamp rates from a broad public policy perspective, and that the Decision and Order G-26-13 are inconsistent with that policy.

B. ***Regulatory Practice***

75. Another factor that the FEU submit should be considered is the regulatory practice that demonstrates that postage stamp rates are an accepted and predominant form of cost-based ratemaking. Postage stamp rates are already extensively used in the Province, and are the norm across Canada.[54] To the Companies' knowledge, all gas utilities and all electric utilities in B.C. have postage stamp rates within their respective service territories, other than FEI, which has a regional rate for the approximately 2,500 customers in Fort Nelson, and Pacific Northern Gas.[55]

76. Previous Commission decisions have explicitly supported postage stamp rates, as discussed by the FEU in section 3.2.1.1 of their Final Argument in the original proceeding. In particular, Order No. G-87-07 relating to the community of Big White shows that the Commission has affirmed the application of postage stamp rates in similar

[54] FEU Final Submission in the original proceeding, section 3.1.
[55] Exhibit B-2, BCUC-FEU IR 1.11.12.

circumstances.[56] The discussion on page 15 of the Big White Decision (Appendix A to Order No. G-87-07) states that the Big White area has differences in costs that are no different than what is seen between other sub-regions within the service area. This is consistent with the FEU's position in the original proceeding, i.e. that there is as much variation in the costs to serve customers within each of the FEU as there is across the FEU. This is also consistent with the decisions of many other regulatory tribunals across Canada when considering similar issues.[57]

77. For example, in the Decision of the Newfoundland and Labrador Board of Commissioners of Public Utilities on the 2003 General Rate Application of Newfoundland and Labrador Hydro ("NLH"), the Board stated in consideration of whether to adopt postage stamp rates for Labrador East and Labrador West:[58]

> "The Board agrees with the opinion of Mr. Greneman however that the fact that there are cost differences does not in and of itself justify separation of the system for rate setting purposes. A sub-dividing of any other geographic area or region on the Island Interconnected System for example would in all likelihood result in cost differences between the two.
> …
>
> Each customer or group of customers of NLH could argue that they cause less costs than another customer or group of customers or that the history of the system providing the service is different. The basic goal of cost of service is to determine the relative cost differences between customer classes. The Board is satisfied that the customers on the Labrador Interconnected System are provided service of the same description under substantially similar circumstances and conditions. The Board concludes a single COS study for customers on the Labrador Interconnected System is appropriate as the basis for determining the rates for all customers on that system."

78. Other examples are provided in FEU's discussion of the regulatory authorities in its Final Submission in the original proceeding.

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[56] Online at: http://www.bcuc.com/Documents/Decisions/2007/DOC_16323_Decision_FBC_Big-White-RD-Reasons.pdf. Also included at Tab 2 of the FEU's Book of Authorities for its Final Submissions.

[57] FEU Final Submission in the original proceeding, section 3.2.

[58] Newfoundland and Labrador Board of Commissioners of Public Utilities, Order No. P.U. 14 (2004), at pp. 112-113, at Tab 4 of the FEU's Book of Authorities in the original proceeding.

79. It is beyond doubt that postage stamp rates are a legal and acceptable form of cost-based ratemaking.[59] In fact, given the predominance of postage stamp rates for utilities, it is more accurate to conclude as the Board did in the 2003 case referred to above that postage stamp rates are "standard practice" for an interconnected system.[60] In the FEU's submission, the Commission's conclusion in its Decision that the FEU's postage stamp rates represent a "significant deviation from the cost-causation principle" is not consistent with accepted regulatory practice, *which has repeatedly endorsed the removal of locational difference as an accepted form of cost-based ratemaking*.

80. The FEU note that the CEC has submitted that the Commission has effectively put forward a new principle which "appears to be a determination that cost causation makes postage stamp rates unfair when a difference in a regional cost or cross subsidization is significant but with no determination as to the relevant threshold" (Exhibit C1-2, p.2). The FEU's view is that the Commission has not put forward a new principle *per se*, but has applied the principle of cost causation in a way that is inconsistent with the Commission's application of the Bonbright framework in its previous decisions and inconsistent with the standard practice of ratemaking.

81. In substance, however, the FEU agree with the CEC that postage stamp rates are consistent with the cost causation principle. While there are rate impacts, they are relatively small and can be addressed by the phase-in mechanism proposed by the FEU. The topic of the appropriate phase-in is addressed in part V below.

C. *Energy Choices*

82. Another factor that the FEU submit should be considered is how the decision of whether or not to amalgamate and adopt postage stamp rates affects consumers' choice between natural gas and electricity within the service areas of FEVI and FEW, given the postage

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[59] Exhibit B-2, BCUC-FEU IR 1.5.3.

[60] Newfoundland and Labrador Board of Commissioners of Public Utilities, Order No. P.U. 14 (2004), at p. 113, at Tab 4 of the FEU's Book of Authorities in the original proceeding.

stamp rates in place for BC Hydro. The CEC have also submitted that this principle was not given adequate consideration by the Commission in its Decision.[61]

83. The FEU submit that the Commission's formulation and consideration of the Bonbright principles did not adequately canvass the issue of energy choices between natural gas and electricity. The Commission did not, for instance, consider the topic under the principle of efficiency (pp. 24-25). The Commission came close to considering it under the principle of competiveness, when it accepted that competiveness can be a rate design principle (pp. 32-33). However, the Commission dismissed competitiveness as being outweighed by the principle of cost causation and fairness. The immediate conclusion that competitiveness is outweighed by other factors undermines recognition of the principle in the first place and precluded a full consideration of the issue because the Commission did not consider the whether the principle weighed in favour of postage stamp rates or not.

84. The Commission instead should have considered the issue of energy choices and drawn a conclusion about whether it favoured amalgamation and postage stamp rates and to what degree. Only then would the Commission be in a position to determine what weight to attribute to that factor. Further, even if this factor alone does not outweigh the impact to FEI customers, it should be weighed together with other factors in favour of amalgamation and postage stamp rates.

85. In Exhibit B-9 of the original proceeding, the FEU's response to BCUC IR 1.81.1.1 demonstrates the competitive challenges of FEVI and FEW as compared to electricity, based on existing rates. The current situation is inefficient in the sense that FEVI's and FEW's rates are set on a stand-alone basis, whereas BC Hydro's rates in the FEVI and FEW service areas are postage stamped. This means that the existing rates upon which customers make energy choices do not reflect an apples-to-apples comparison within the FEVI and FEW service territories. The long term consequence of the situation ("regional" or stand-alone versus postage stamped rates) is that the price comparison favours electricity more than it otherwise would, which over time could add cost

[61] Exhibit C1-2, Letter of April 17, 2013 requesting reconsideration of the Decision and Order No. G-26-13, pp. 3-4.

pressures on the electric system to serve load that might have been served more efficiently or cost-effectively by the natural gas system.

86. In Exhibit B-12, BCRUCA IR 2.1.1 of the original proceeding, the FEU explained:

> "…postage stamp rates would provide a better market signal for decisions about which energy source (electricity or natural gas) for residential consumers to use in end-use applications that can be served by natural gas. All residential consumers will use electricity in their homes for purposes such as lights and appliances, so the question of gas versus electricity (or other energy sources such as geo-exchange systems) comes into play mainly for thermal end-uses such as space heating and water heating. Since electricity rates in BC Hydro's service territory are postage stamped across the province, efficient decision making with regard to energy choices would be facilitated by having the same natural gas rates in place in the various parts of the FEU's service territories. Having postage stamp rates for both electricity and natural gas would mean that the analysis and value proposition on the choice of energy systems would be similar throughout the province, rather than having some areas such as FEI and FEFN with a stronger business case and other areas (FEVI and FEW) with a weaker one."

87. Maintaining existing rates for FEVI will mean that FEVI's rates will increase due to the loss of government subsidies once the RSDA is depleted.[62] This will increase the potential for inefficient energy choices described above, given that the higher FEVI gas price will be compared to the postage stamped electric price when making fuel choices.

88. An apparent issue raised in the information requests was whether considerations related to GHG emissions should perhaps outweigh considerations of economic efficiency.[63] The carbon tax, representing a price on carbon emissions, has the effect of placing natural gas on an equivalent footing with electricity with respect to greenhouse gas considerations. As such, comparison of the two energy sources from the standpoint of economic efficiency should become a primary consideration. From an economic efficiency perspective, using natural gas to serve thermal energy needs will provide throughput benefits on the natural gas system while at the same time reduce the need for electric utilities to acquire high cost marginal electricity supply and avoid costly

[62] Exhibit B-3, BCUC-FEU IR 1.4.1.1.
[63] Exhibit B-3, BCUC-FEU IR 1.2.2.

electricity system upgrades that would be required to serve peak winter demand, when thermal energy demand is highest.[64]

89. It should also not be presumed that use of natural gas is less favourable from a GHG emissions perspective. As the FEU have consistently maintained, the efficient use of natural gas (and alternative energy solutions, where feasible), rather than electricity, to serve thermal energy needs in BC is both economically efficient and beneficial from an environmental and GHG emissions standpoint. This has been characterized as the "right fuel for the right use". From an environmental and GHG emissions perspective using natural gas for thermal energy needs can free up more electricity supply resources to displace higher emitting energy demands such as for electric vehicles in the passenger vehicle markets, where electricity will displace gasoline or diesel fuel.[65]

90. In the FEU's submission, these clear benefits of amalgamation and postage stamp rates should be considered as an important factor weighing in favour of amalgamation and postage stamp rates.

D. ***Government Energy Policy***

91. Government energy policy is another significant factor that in the FEU's submission was improperly excluded from the Commission's analysis. The FEU's evidence was that its proposed amalgamation and adoption of postage stamp rates are consistent with government energy policy.[66] The FEU summarized the evidence in paragraphs 148-149 of their Final Submission:

> "One of the proposals in the Province's "Natural Gas Strategy: Fueling B.C.'s Economy for the Next Decade and Beyond,"[67] is to work "to promote natural gas as a transportation fuel". Since the release of the strategy document in February 2012, the *Greenhouse Gas Reduction (Clean Energy) Regulation*[68] has come into force making incentives for

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[64] Exhibit B-3, BCUC-FEU IR 1.2.2.

[65] Exhibit B-3, BCUC-FEU IR 1.2.2.

[66] The FEU provided an overview of provincial energy policy in section 4.1.4 (pp. 63 to 65) and Appendix G-0 of the original Application, while Appendices G-1 through G-9 contained supporting documents.

[67] Original Application, Exhibit B-3-1, Appendix G-8, "Natural Gas Strategy: Fueling B.C.'s Economy for the Next Decade and Beyond", 3 February, 2012.

[68] O.I.C. No. 295, dated May 14, 2012.

> natural gas vehicles and expenditures on CNG and LNG fueling stations prescribed undertakings under section 18 of the *Clean Energy Act.*
>
> …The reduced rates in the FEVI and FEW service areas that would result from amalgamation and postage stamp rates would improve the economics of adopting natural gas as a transportation fuel in these service territories. This would be expected to help customers in these service areas make a decision to move to NGT by reducing one of the barriers that could be impeding their decision."[69]

92. The FEU also submitted at paragraph 151 of their Final Submission:

> "As discussed above, to the extent that lower rates in the FEVI and FEW service areas fosters natural gas as a transportation fuel, this should lead to reduced GHG emissions all else equal.[70] More affordable natural gas prices also have the potential to encourage customers to switch from higher GHG emitting energy resources, such as furnace oil and propane, in the FEVI service area where there still exists reliance on other fossil fuels for space heating and hot water. Using natural gas in place of other fossil fuels, all else equal, will reduce the amount of GHG in BC.[71] Switching from heating oil to natural gas may occur since a home using heating oil will generally be appropriately configured to accommodate natural gas heating equipment."[72]

93. As the Commission never undertook a public interest analysis under section 53 of the UCA, it never considered the fact that amalgamation and postage stamp rates are aligned with government energy policy, would promote natural gas as a transportation fuel, and would encourage switching away from higher carbon fuels, amongst other factors.

94. In addition, in this reconsideration proceeding, further details on the scope of potential fuel switching away from higher carbon fuels has been presented, particularly in response to information requests from the AVICC. The FEU's response to AVICC 1.8.2 states:[73]

> "Under the status quo, homeowners who use oil for heating consume between 60 and 70 GJs of oil per year. Customers converting to natural gas from oil would replace this load with approximately 45 to 50 GJs annually. This is a result of new natural gas equipment being on average 20%-25% more efficient than older oil equipment. The increase in

[69] In the original proceeding: Exhibit B-9, BCUC IR 1.40.1 and 1.40.5 and Exhibit B-15, 2.47.3, 2.54.2 and 2.55.1.

[70] Original Application. Exhibit B-3, p. 128.

[71] Original Application, Exhibit B-3, p. 129.

[72] Exhibit B-15 in the original proceeding, BCUC IR 2.52.1.

[73] Exhibit B-3.

> efficiency along with the smaller carbon footprint of natural gas results in a net benefit to the environment of approximately 1.8 to 2.4 metric tonnes of carbon emissions per customer saved annually, or 1,440 to 1,800 metric tonnes annually. Over the life span of the equipment at approximately 25 years, this represents as much as 45,000 metric tonnes of CO_2 emissions saved. With postage stamp rates, there is potential to significantly increase these CO_2 emission savings."

95. Higher penetration rates and increased throughput are beneficial to all customers as increased utilization of the FEU distribution system results in fixed costs being spread out over a larger volume of consumption.[74]

96. It is also significant to recognize that an important rationale for bringing natural gas to Vancouver Island was for the environmental benefits. The original construction of the distribution system included the conversion of heating oil equipment to natural gas and seven pulp mills on the Sunshine Coast and Vancouver Island switched to natural gas from oil and wood waste as a fuel source.[75] Notably, one of the recitals to the *Vancouver Island Natural Gas Pipeline Act*, states that "the Province wishes to encourage the efficient development of natural gas markets on Vancouver Island and the Sunshine Coast, recognizing the environmental and economic benefits to the areas served".[76] In the FEU's submission, these objectives are still valid today. Amalgamation and postage stamp rates is the next logical step in the development of natural gas service on Vancouver Island, since it will further the objective of reducing the impacts of the use of heating oil on Vancouver Island and will ensure that the efforts of stakeholders to bring natural gas to Vancouver Island are not ultimately undermined by significant rate increases.

E. *Cost Savings and Regulatory Efficiencies (including Facilitation of Consistent Access to Service Offerings)*

97. A final factor that the Commission did not fully consider in its analysis is the full cost savings and regulatory efficiencies of amalgamation and postage stamp rates.

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[74] Exhibit B-3, AVICC IR 1.6.2.

[75] Exhibit B-3, AVICC IR 1.8.1.

[76] Original Application, Exhibit B-3-1, Appendix D-11, in the original proceeding.

98. The FEU have estimated the benefits of amalgamation and postage stamp rates to be in the range of $901,000 to $3,128,000 per year, depending on the average short-term debt that would be applicable to the FEVI service area.[77] *In addition*, the FEU identified other regulatory savings due to streamlined filings and applications under an amalgamated entity with one unified regulatory structure and a harmonized tariff.[78] As the FEU noted, these savings would extend to intervenor and Commission cost savings due to fewer regulatory applications and proceedings. Although it is difficult to quantify these savings, given that a major regulatory proceeding usually costs customers between $300,000 and $1.5 million,[79] this is potentially a significant cost saving.

99. In its Decision, the Commission did not properly consider all of the cost saving benefits. The Decision states (at p. 27):

> "Potential cost savings, which are modest at best, would appear to flow more from the amalgamation proposal than from postage stamping (i.e. debt financing, reporting costs). (Exhibit B-3, p. 154) The fact that the FEU will not amalgamate in the absence of postage stamping does not transform any potential savings from amalgamation into savings from postage stamping."

100. The Commission's approach precluded from consideration the cost savings attributable to amalgamation and postage stamping. In effect, the Commission declined to consider cost savings in its analysis because it concluded that the savings were associated primarily with amalgamation, not postage stamping. All of the cost savings are relevant in the context of a section 53 public interest analysis and should be fully considered.

101. The Commission also made a factual error in concluding that the potential cost savings flowed more from the amalgamation proposal. While some of the identified savings could flow from amalgamation alone, the FEU's evidence was that there are no material benefits to pursuing amalgamation without postage stamp rates. In particular, the FEU explained that most of the efficiencies on which the FEU justified the amalgamation

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77 In the original proceeding: Exhibit B-9, BCUC IR 1.5.11; Exhibit B-15, BCUC IR 2.1.2; a working excel spreadsheet supporting the NPV analysis was provided in Attachment 2.1 to Exhibit B-15 (as referred to in response to BCUC IR 2.2.1).

78 Exhibit B-3, p. 123, section 6.6.1.

79 Exhibit B-3, p. 123.

could not be achieved without postage stamp rates: the regulatory efficiencies would not be achieved, financial efficiencies would be limited and the debt financing savings (i.e. short-term interest savings) were uncertain as they depended on FEI maintaining its credit rating.[80]

102. The FEU *also* identified other regulatory efficiencies of amalgamation and postage stamp rates that were not considered.[81] Specifically, the FEU described the efficiencies realized by facilitating consistent access to service offerings as a result of amalgamation and postage stamp rates.[82] Although all natural gas services could in theory be extended to areas outside of FEI Mainland through other regulatory approvals, the approval of amalgamation and postage stamp rates will facilitate an efficient extension of all services to all service areas, meaning that the services can be extended at less cost and in a timelier fashion.[83] The Commission did not address whether the public interest is served by the facilitation of consistent access to service offerings.

103. In summary, the FEU submit that there were significant regulatory efficiencies that were improperly excluded from the Commission's analysis that weigh in favour of amalgamation and postage stamp rates.

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80 In the original proceeding: Exhibit B-9, BCUC IR 1.2.1 and 1.5.12; Exhibit B-15, BCUC 2.3.2, 2.3.3, 2.30.1 and 2.30.1.2.

81 FEU Final Submission in the original proceeding, Section 5.

82 FEU Final Submission in the original proceeding, Section 5.2.

83 Exhibit B-15 in the original proceeding, BCUC IR 2.54.1.

IV. FACTORS AFFECTED BY MATERIAL ERRORS OF FACT OR LAW

104. This part of the submission sets out the considerations of the Commission that were affected by material errors of fact or law.

A. *Rate Stability*

105. The FEU submit that a key benefit of amalgamation and postage stamp rates is that they will result in more stable rates over time for all customers, especially for the smaller service areas of FEVI and FEW.[84] The FEU discussed the benefits of rate stability in section 4.2 of its Final Submission in the original proceeding and the FEU continue to rely on those submissions and evidence referenced therein. Rate stability is also referred to by the Ministry under the broad policy objective of regulatory efficiency.[85]

106. In its Decision the Commission accepted that rate stability is beneficial, stating: "It is beyond doubt that stable and predictable rates are to be preferred over unstable, unpredictable, rates, particularly those that fluctuate upwards."[86] The Commission also seemed to accept that amalgamation and postage stamp rates would increase rate stability: "the Panel accepts that, other things being equal, a larger customer base would tend to reduce rate instability."[87]

107. However, the Commission went on to discount any benefits of rate stability on a number of grounds, including on the basis that existing rates were the more appropriate mechanism to address rate stability issues, which the FEU submit was in error. In the FEU's submission, there is no evidence on which to reasonably conclude that the existing region-specific rate mechanisms will resolve the rate stability challenges of FEVI and FEW. Based on the evidence, the Commission should have concluded that postage stamp rates were clearly preferable from a rate stability perspective. The FEU explain below why, in their submission, the Commission's reasoning on rate stability was in error.

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[84] Original Application, Exhibit B-3, section 6.3.2.
[85] Exhibit C3-1.
[86] Decision, p. 29.
[87] Decision, p. 30.

108. First, the Commission notes that, according to Bonbright, rate stability is a "secondary criteria".[88] While the Bonbright principles identify a framework for considering rate design issues, pronouncements by Bonbright should not be used to discount what in the context of a given rate case should clearly be given more weight. In other words, rate stability should be given more weight when the facts at hand indicate that rate stability is more important than other factors. In the context of the FEU, where there are smaller utilities that are more susceptible to rate instability because of their smaller and less diverse customer base, the fact that postage stamp rates can bring stability should be given material weight. The fact that Bonbright labels rate stability a "secondary criteria" should not be dispositive of the issue at hand.

109. Second, the Commission indicates in its Decision that the issue is the "cost" of rate stability and concludes that postage stamp rates are a less "cost-effective" way to increase rate stability. The FEU submit that this is incorrect. As discussed above, the FEU's proposal to amalgamate and implement postage stamp rates will *decrease* the overall costs. Further, as discussed below, maintaining the existing separate corporate entities with existing rates does not offer a solution to the rate instability faced by FEVI and FEW. In the FEU's submission, amalgamation and postage stamp rates is therefore the only option that addresses the issue of rate stability and is more cost effective than maintaining existing rates.

110. Third, the Decision appears to dismiss the rate stability issues facing FEVI and FEW in part in the belief that deferral of costs or changes to rate design based on existing rates would be able to fix the problem. The Decision states for example at p. 30:

> "The Panel notes at the outset that natural gas is a commodity and the commodity price fluctuates on the open market. A large portion of the customer's bill is also determined based on the level of consumption, which also varies. FEU customers' bills are not without fluctuation at the best of times and postage stamp rates will not affect this pattern. …
>
> Rate stability and predictability can be achieved through any number of means. For example, the use of deferral accounts is a common method used to smooth potential rate fluctuations. Capitalization of the cost of an asset involves expensing the asset over its useful life as opposed to

[88] Decision, p. 29.

> recognizing the entire expenditure when made. Fixed charges, as well, are, by definition, not subject to variation and are a simple matter of rate design."

111. The FEU submit that this analysis misapprehends the rate stability issues at play and what is necessary to address them.

112. Contrary to the Commission's Decision, the rate stability issues at stake are not short-term fluctuations in rates or related to seasonal variations in consumption, which have in the past been addressed through deferral accounts or rate design variations. In addition to the higher rates of FEVI and FEW and the unique challenges of FEVI involving the loss of the Royalty Revenues, section 4 of the original Application describes the systematic trends that are negatively affecting the FEU, such as declining use rates. FEVI and FEW are more susceptible to the effects of these trends as they have a lower customer base over which to spread their costs.[89] The materially higher rates in FEVI and FEW also pose a higher business risk for connecting new customers to the system and keeping existing customers on the system, as alternative forms of energy may have a competitive cost advantage.[90] These are material concerns that the FEU submit were not fully taken into account by the Commission in its Decision.

113. As submitted by the FEU in its Reconsideration Application, the use of deferral accounts, capitalization of assets or fixed charges may be able to help smooth out short-term rate stability issues.[91] However, these mechanisms cannot lower FEVI's or FEW's existing rates without accumulating a revenue deficiency, nor can they address the systematic trends negatively affecting the FEU. Furthermore, they provide only a short-term solution to the loss of government subsidies, which is a unique rate stability issue faced by FEVI.[92] While FEVI is amortizing capital costs and using the Rate Stabilization Deferral Account to defer rate increases, these mechanisms do not avoid the rate increases caused by the loss of the government subsidies.[93]

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89 Original Application, Section 4, pp. 70-79.

90 Exhibit B-9 in the original proceeding, BCUC IR 1.61.1.

91 However, see the FEU's submissions above regarding the adverse effects of increasing the basic charge in the absence of postage stamp rates.

92 Original Application, Exhibit B-3, Section 4, p. 112.

93 For the FEU's latest estimate of these rate impacts, see Exhibit B-2, BCUC-FEU IR 1.4.1.1.

114. As stated by the FEU in response to BCUC-FEU IR 1.7.3 in the reconsideration proceeding:

> "There are only two methods to resolve the challenges faced by FEVI. The first is to reduce costs, and the second is to increase revenues by adding additional throughput to reduce the unit costs.
>
> FEI has taken steps to decrease costs through initiatives such as the Utilities Strategy Project (USP). The USP was a major restructuring initiative that combined the management and operating structures of the entities, resulting in substantial cost savings. This integration initiative essentially allowed FEU to realize the majority of the savings available.
>
> FEVI has also attempted to increase revenues by increasing throughput on the system. Two of the most recent initiatives associated with increasing throughput include the Woodfibre LNG Project, although very preliminary, and the addition of LNG transportation customers via the Greenhouse Gas Reduction Regulation (GGRR).
>
> To provide some context to the materiality of change that would be required, FEVI's residential rates would need to decrease by 38% to equal those of a Lower Mainland residential customer. To achieve a 38% reduction in FEVI's cost of service would require a reduction of over $77 million in the annual cost of service or a corresponding increase in revenues with no associated costs."

115. The existing region-specific rates simply do not offer a mechanism to resolve the rate stability issues facing FEVI and FEW. Without a significant forecast increase in throughput on their systems, the existing higher rates on Vancouver Island and Whistler[94] are expected to continue. FEVI and FEW will continue to have a difficult time attracting new customers and may in fact lose customers and/or face reduced consumption levels per customer. Without significant growth on the system, the rates will not decrease and the competitive position of FEVI and FEW will not improve. It is likely that without common rates there will be a decline in consumption.[95] In the event of a loss of load, the rates would need to be raised even more.[96]

116. In contrast, amalgamation and common rates will allow the amalgamated entity to retain existing customers and their associated demand, and allow for any cost of service

[94] Original Application, Exhibit B-3, p. 73.
[95] Exhibit B-2, BCUC IR 1.7.2.
[96] Exhibit B-2, BCUC IR 1.7.2.

increases that result from significant sustainment projects or loss of customers to be spread across a larger customer base.[97]

117. In summary, in the FEU's submission, the factor of rate stability should be given material weight in the Commission's consideration given the facts of the FEU, including the higher rates of the smaller utilities and the trends currently impacting the FEU, such as lowering use per customer. The Commission should give significant consideration to the challenges facing FEVI and FEW and the fact that amalgamation and postage stamp rates offer a long-term resolution to these challenges. There is no evidentiary basis to conclude that customized region-specific rate mechanisms will resolve the rate stability challenges for FEVI and FEW identified by the FEU. The FEU therefore submit that rate stability is an important benefit of amalgamation and postage stamp rates that should be given material weight by the Commission in its analysis.

B. ***Customer Understanding and Acceptance***

118. The Commission cited the rate design principle of promoting customer acceptance and understanding, and determined that the implementation of postage stamp rates would decrease customer acceptance and understanding. The Commission referred to opposition from FEI customers (incorrectly, as discussed below), and went on to state the following (at p. 26):

> "The Commission Panel notes that the vast majority of FEU customers will be facing rate and bill increases under the postage stamp rate proposal, which may indicate reduced, rather than improved, customer acceptance.
>
> Further, given the regional differences that have been identified, the Commission Panel is not convinced that postage stamp rates will enable better customer understanding. The Commission Panel notes the assurances given by Fortis Inc. (Fortis) at the time of its acquisition of the shares of Terasen Inc. – of which Terasen Gas Inc., Terasen Gas (Vancouver Island) Inc., and Terasen Gas (Whistler) Inc. were wholly owned subsidiaries - relating to the maintenance of local functions. …
>
> This assurance reinforces the significance of the regional differences among the FEU utilities. In the Panel's view, customer understanding will

[97] Exhibit B-2, BCUC IR 1.7.2.

> not be improved, but might actually be reduced, as the effects of regional differences are minimized or lost."

119. As set out in the FEU's Reconsideration Application, the FEU submit that this finding was explicitly based on two errors of fact and also overlooked other important evidence. These two errors and the overlooked evidence are discussed in the following subsections.

i. *The FEU are Operationally Integrated*

120. The first error of fact is the Commission's apparent misunderstanding of the level of integration of the FEU. The FEU's original Application described how operational integration among the FEU started in 2003 as part of the Utilities Strategy Project.[98] As a result, the FEU are fully integrated and effectively operate as a single utility, with costs allocated for accounting and regulatory purposes.[99] As stated in Exhibit B-15, BCUC IR 2.11.2 in the original proceeding:

> "The FEU manage and operate on a fully integrated basis as a single system and have common management control and decision making systems, common distribution, transmission, and business support operations, and optimize the supply of natural gas based on managing the needs of a portfolio of resources that minimizes costs for all customers."

121. The FEU have now also provided further evidence establishing the integrated nature of the FEU.[100] This evidence shows, for instance, that 60% of FEVI's O&M is made up of shared and corporate services, as well as allocations and direct charges from FEI. FEW only has two direct employees.[101]

122. The Decision, however, was premised on an assumption that there is a much lower degree of integration among the FEU than currently exists. This is evident in the Commission's reference to Fortis Inc.'s undertaking at the time of its acquisition of the FEU, which the Commission characterized as being related to maintaining "local functions" for each of the FEU (at p. 26):

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[98] Original Application, Exhibit B-3, p. 51.

[99] Original Application, Exhibit B-3, p. 51; Exhibit B-15 in the original proceeding, BCUC IR 2.11.2.

[100] Exhibit B-1, *New Evidence of the FEU*, section II and Appendix A.

[101] Exhibit B-1, New Evidence of the FEU, p. 3.

> 'The Commission Panel notes the assurances given by Fortis Inc. (Fortis) at the time of its acquisition of the shares of Terasen Inc. – of which Terasen Gas Inc., Terasen Gas (Vancouver Island) Inc., and Terasen Gas (Whistler) Inc. were wholly owned subsidiaries - relating to the maintenance of local functions. The Commission specifically noted, in the Reasons for Decision attached as Appendix A to Order G-49-07 approving the purchase, Fortis' assurance that:
>
>> "(h)as with all the utilities which Fortis owns, Fortis intends to operate the Terasen Utilities [defined as Terasen Gas Inc., Terasen Gas (Vancouver Island) Inc., Terasen Gas (Whistler) Inc., and Terasen Energy Services Inc. at p.1] on a stand-alone basis. In keeping with its policy and normal practice, Fortis plans to maintain existing head offices and to implement, as soon as is reasonably practical, significant independent, local representation on the boards of the Terasen Utilities..."
>
> This assurance reinforces the significance of the regional differences among the FEU utilities.'

123. The meaning of these assurances was not addressed during the proceeding, and the Commission has fundamentally misinterpreted them. Fortis Inc.'s assurances did not relate to maintaining local functions of each of the Terasen Utilities (as the FEU were then called). At the time of the Fortis Inc. acquisition in 2007[102] when the referenced assurances were made, the full operational integration among the three Terasen Utilities had already been completed.[103] The assurance to operate the Terasen Utilities on a stand-alone basis indicated that Fortis Inc. was not going to begin operating the utilities from one of its other areas of operation, such as from Alberta. The assurance to maintain existing head offices referred to the fact that Fortis Inc. would not be operating the Terasen Utilities out of its head office in St. John's, Newfoundland and Labrador, for instance. There were no head offices in the FEVI and FEW service areas in 2006, and there are none today. Finally, implementing local representation on each of the boards of the Terasen Utilities referred to local B.C. representation as opposed to representation from other Fortis Inc.[104] areas of operation. The FEU reject any suggestion that these assurances in any way support a determination that the different regions served by the

[102] The FEU's Reconsideration Application, p. 32 incorrectly indicated 2006 as the date of the Fortis Inc. acquisition. The correct year is 2007, as indicated in Exhibit B-3 in the original proceeding, p. 24.

[103] Exhibit B-3, p. 51.

[104] The FEU's Reconsideration Application incorrectly indicated "FortisBC" in this regard, when the reference was to areas of operation outside of BC.

FEU are significant. To the contrary, the continued operational integration of the FEU since 2003 has made such distinctions less significant.

124. Further, the Decision approving the Fortis Inc. acquisition imposed (at p. 15) the conditions that had been imposed on Kinder Morgan Inc. ("KMI"), which had explicitly addressed restrictions on the geographical location of existing functions. One of the referenced conditions set out in Commission Decision and Order No. G-116-05 in respect to the KMI acquisition addressed "Location of Functions and Data" as follows (at p. 50):[105]

> "In order to address privacy concerns and other concerns, the Commission Panel determines that it would be appropriate to attach a condition to approval of the Transaction that requires KMI not to change the geographic location of any existing functions or data currently in Terasen Gas' service area without prior approval of the Commission." [Emphasis added.]

125. Commission Letter No. L-30-06 clarified what "existing functions" the Commission was referring to:[106]

> '[b]y "functions," the Commission intended to include not only those functions performed by TGI on behalf of the Terasen Utilities but also those functions performed by Terasen Inc. for the Terasen Utilities.'

Letter No. L-30-06 explicitly recognizes the extent to which Terasen Gas Inc. and Terasen Inc. already performed functions for all of the Terasen Utilities on an integrated basis. The Letter also makes clear that the conditions did not relate to maintaining functions within the FEVI and FEW service areas. This made sense because, even at the time of the KMI acquisition, the operational integration among the FEU had already taken place.

126. The FEU submit that the Commission fundamentally erred in using the assurances of Fortis Inc. out of context as a basis to conclude that regional differences among the FEU

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[105] Decision, In the Matter of an Application by Kinder Morgan, Inc. and 0731297 B.C. Ltd. for the Acquisition of Common Shares of Terasen Inc., dated November 10, 2005. Online at: http://www.bcuc.com/Documents/Proceedings/2005/DOC_9223_KMI-Terasen%20Decision_FINAL2.pdf

[106] BCUC Letter No. L-30-06, dated June 26, 2006. Online at: http://www.bcuc.com/Documents/Orders/2006/DOC_12024_L-30-06_Clarification-Rsp-KMI-Decision.pdf

are significant. Instead, the FEU submit that the high degree of integration should have been considered as a factor that weighed *against* maintaining regional distinctions. Further, the level of integration should have weighed in favour of concluding that amalgamation and postage stamp rates would lead to increased understanding and acceptance.

ii. *FEI Customers are Not Generally Opposed*

127. The second error of fact relied upon by the Commission under the principle of customer understanding and acceptance was the level of opposition to amalgamation and postage stamp rates. The Commission stated (at p. 25) that "In general…customers of FEI…are understandably opposed". This statement, which appears to be based on the letters of comment filed, does not align with the positions of intervenors in the proceeding or the evidence on the results of the FEU's stakeholder engagement program.

128. The following intervenors representing large cross-sections of FEI customers were supportive of the Application:

- British Columbia Pensioners' and Seniors' Organization, et al. (collectively, "BCPSO");
- BC Residential Utility Customers Association ("BCRUCA");
- Commercial Energy Consumers Association of British Columbia ("CEC"); and
- Rental Owners and Managers Society of BC ("ROMSBC").

129. Support from these groups is indicative of widespread support from customers in general.

130. Consistent with this conclusion, leaving aside the Fort Nelson service area, the only FEI customer to actively intervene and oppose the Application was Mr. Robinson, representing only himself.

131. The letters of comment filed in the original proceeding also do not support the Commission's conclusions. As shown in Appendix "A" to this submission, by the FEU's count, there were 145 letters of support and 29 letters of opposition, with 24 of the letters

of opposition being from FEI.[107] These 24 letters represent a tiny percentage of FEI's approximately 850,000 customers and cannot reasonably be treated as representative of customers as a whole. This is especially so given the other evidence on the record. In addition to the supportive positions taken by FEI's customer groups in the proceeding, the results of customer polls undertaken by Vision Critical[108] and other stakeholder engagement was that FEI customers were split between support for, and opposition to, the Application.[109]

132. The Commission noted in its Decision the understandable reaction of many customers to assess fairness based on whether the rate design favours them.[110] The extent of FEI customer *support* for the Application, despite recognition that FEI rates would increase as a result, was a notable fact that should have been considered and given weight. Again, this evidence should have weighed in favour of concluding that customer acceptance and understanding would have been improved.

iii. *Other Evidence*

133. All of the evidence suggested that amalgamation would improve the level of customer understanding and acceptance. For instance:[111]

(a) There is currently significant complexity in the different rates applicable amongst the FEU, which generates customer confusion. Implementing common rates will result in a single set of rate schedules and rate categories with the same rates available to all customers. This will provide a simpler rate structure, which will reduce the potential for customer confusion.

(b) Customers are familiar with postage stamp rates because they are in place for the electric utilities in the Province.

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[107] The FEU have included C, D, and E exhibits filed in the original proceeding. Attached as Appendix "A" is a spreadsheet showing each exhibit counted and whether it is supportive or opposed to amalgamation and postage stamp rates.

[108] Vision Critical is a leading third party research firm. Original Application, Exhibit B-3, p. 232.

[109] Exhibit B-9 in the original proceeding, BCUC IR 1.101.1.

[110] Decision, pp. 25-26.

[111] Original Application, Exhibit B-3, pp. 115-116; FEU Final Submission in the original proceeding, pp. 40-41.

(c) During the Common Rates Public Information Sessions, when asked whether they agree with the statement "Common natural gas pricing structures will be simpler and easier to understand", 57% of the customers agreed or strongly agreed that common rates would be simpler and easier to understand, while 13% of the customers neither agreed nor disagreed with the statement.

(d) Postage stamp rates facilitate simplified administration, information requirements and billing procedures, due to a reduced number of billing determinants, rate categories and classes.

None of this evidence was referenced by the Commission in the Decision. More to the point, the FEU cannot reconcile this evidence with the Commission's conclusions.

iv. *Conclusion on Customer Acceptance and Understanding*

134. The FEU therefore submit that there was no reasonable basis for the Commission to conclude that postage rates would reduce customer understanding or acceptance. First, the level of support for postage stamp rates would suggest an overall acceptance of the impacts of postage stamp rates. Second, given the level of integration of the FEU, the removal of the existing rate differences would be more consistent with the customer experience in dealing with an operationally integrated utility. Third, the other evidence on the record supports the conclusions that amalgamation and postage stamp rates would increase customer acceptance and understanding.

135. The FEU submit that the evidence demonstrates that amalgamation and postage stamp rates would increase customer acceptance and understanding and that this weighs in favour of concluding that amalgamation and postage stamp rates would be in the public interest.

C. ***Practical and Cost Effective to Implement***

136. The Commission also considered the rate design principle of practical and cost-effective to implement. From the perspective of this principle, the Commission appears to have concluded at page 27 of the Decision that postage stamp rates had no benefits weighing in favour of them when compared to existing rates. The Decision states:

> "The Commission Panel is of the view that postage stamp rates are sufficiently practical and cost-effective to implement so as not to weigh against the proposal. However, maintaining the status quo in terms of regional postage stamp rates is also practical. Potential cost savings, which are modest at best, would appear to flow more from the amalgamation proposal than from postage stamping (i.e. debt financing, reporting costs). (Exhibit B-3, p. 154) The fact that the FEU will not amalgamate in the absence of postage stamping does not transform any potential savings from amalgamation into savings from postage stamping."

137. As discussed above, the Commission's conclusions on the cost savings flowing from amalgamation and postage stamp rates were in error. Material cost-savings and regulatory efficiencies flow specifically from postage stamp rates, amalgamation alone would not result in material benefits.[112] Moreover, it was legally incorrect to exclude from consideration the cost savings attributable to amalgamation.

138. In the FEU's submission, the savings flowing from amalgamation and postage stamp rates should have been an overriding factor that showed that postage stamp rates are more practical and cost effective than regional rates. In addition to the fact that it costs millions of dollars less to administer and maintain postage stamp rates,[113] postage stamp rates are more simple than the current array of rate structures.[114]

139. Furthermore, the high degree of integration of the FEU,[115] which the Commission underestimated, should have also led to the conclusion that postage stamp rates were more practical and cost-effective to implement than existing rates. Because of the existing level of integration, the existing rates require allocation of many costs. Postage stamp rates would remove the need for such allocations and are simpler. In the FEU's submission, there is no evidence on which the Commission could reasonably conclude that the existing rates are either more practical or more cost effective than postage stamp rates.

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[112] In the original proceeding: Exhibit B-9, BCUC IR 1.2.1 and 1.5.12; Exhibit B-15, BCUC 2.3.2, 2.3.3, 2.30.1 and 2.30.1.2.

[113] In the original proceeding: Exhibit B-3, p. 123, section 6.6.1; Exhibit B-9, BCUC IR 1.5.11; Exhibit B-15, BCUC IR 2.1.2; a working excel spreadsheet supporting the NPV analysis was provided in Attachment 2.1 to Exhibit B-15 (as referred to in response to BCUC IR 2.2.1).

[114] Original Application, Exhibit B-3, section 6.4, pp. 115-116.

[115] Exhibit B-1, New Evidence of the FEU, part II.

D. ***Efficiency***

140. The principle of efficiency was also considered by the Commission. In addition to the submissions above regarding efficiency, the FEU submit there was no evidentiary basis for the Commission's factual determinations regarding efficiency. In the context of efficiency, the Decision states (at p. 24):

> 'Rather, the Panel finds that efficiency can be better improved through customized rate designs, in those regions where efficiency issues exist, than through the "one size fits all" postage stamping proposal.'

141. There is no evidence that efficiency can be better improved through customized rate designs within existing service areas. The Commission has mischaracterized postage-stamp rates as a "one-size fits all" approach. Postage stamp rates include the ability to have different rates for different classes of customers (as do the existing postage stamp rates for each of the FEU). In fact, the FEU have submitted that the ability of postage stamp rates to accommodate different classes of customers is superior to that of the existing rates, as explained in the FEU's response to Panel IR 1.1.[116]

142. In support of its conclusion that customized rate designs within existing service areas can better improve efficiency, the Decision relies on two pieces of evidence from the FEU regarding non-traditional rate designs and a combined gas portfolio, stating (at p. 25):

> "In fact, the FEU advise that if postage stamp rates are not approved, they may consider non-traditional rate designs for FEVI and FEW. They also note FEVI's view that the benefits which may be realized from a combined gas portfolio would not outweigh the impacts of reduced flexibility for it to manage its own gas portfolios and related price risk management strategies that take into account its unique circumstances. (Exhibit B-9, BCUC IR 1.87.1; 1.46.1.1)"

143. The FEU submit that this is not a fair characterization of the FEU's evidence. First, the FEU did not say in response to BCUC IR 1.87.1[117] that they believed that such non-traditional rate designs had any particular benefits or would be successful. To the contrary, the FEU pointed out the problems with a non-traditional rate design for FEVI, namely:

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[116] Exhibit B-8.

[117] Exhibit B-9 in the original proceeding.

(a) Setting rates higher than the cost of service would increase FEVI's already high rates and further compound FEVI's challenges; and

(b) Setting rates lower than the cost of service would accumulate a large revenue deficiency for recovery from future customers which would exacerbate the future rate challenges that FEVI already faces due to the loss of government subsidies.

The fact that FEVI may have to adopt a non-traditional rate design if postage stamp rates are not approved is evidence of the challenges faced by FEVI, not the benefits of a customized rate design for its region.

144. Second, in Exhibit B-9 in the original proceeding, in response to BCUC IR 1.46.1, the FEU explained why they would not proceed with amalgamation of the gas portfolios if amalgamation and postage stamp rates are not approved. The decision was largely driven by the Commission's previous decisions to limit the number of strategies available to manage natural gas price volatility. In short, the FEU determined that if amalgamation and postage stamp rates were not approved, then FEVI would need to have different strategies than FEI to help mitigate FEVI's cost and competitiveness challenges with the expiry of the royalty revenues. These strategies would not be needed if amalgamation and postage stamp rates were approved. Again, this is not evidence of any superiority of existing rate designs, but evidence of the challenges faced by FEVI.

145. Furthermore, as addressed above, the relationship between natural gas and electricity rates in the province is such that having regional natural gas rates for Vancouver Island and postage stamp electricity rates for Vancouver Island sends the wrong price signals and leads to inefficient energy choices.[118]

146. The FEU therefore submit that there is no evidence that rate designs specific to existing service areas are superior to a postage stamp rate design at improving efficiency. To the contrary, the FEU submit that the principle of efficiency also supports amalgamation and postage stamp rates.

[118] E.g., Exhibit B-12 in the original proceeding, BCRUCA IR 2.1.1.

E. ***Fairness and Avoidance of Undue Discrimination***

147. In its Decision, the key consideration for the Commission was the principle of fairness, including avoidance of undue discrimination. The FEU submit that the Commission's conclusions on fairness were impacted by both legal and factual errors, each of which is discussed below.

i. *Reliance on Fact that Existing Rates are Approveds*

148. As the FEU have submitted above, the way in which the Commission relied on the fact that existing rates were approved was in error. One result of the Commission's approach is that it precluded a full consideration of whether postage stamp rates could be fair and consistent with the cost causation principle. Specifically, the Commission incorrectly treated existing rates as the measure of cost-causation and movement away from approved rates as being movement away from cost causation. For example, its conclusion on the fairness principle was that implementing **"postage stamp rates across all regions results in a significant deviation from the cost causation principle and is not fair, <u>as compared to the status quo</u>.**" [Underline added.] This is a fundamentally incorrect approach, as the status quo does not represent the only way in which the cost causation principle can be satisfied. Movement away from the existing approved rates is not reason in itself to conclude that rates are not based on cost causation. The proposed rates themselves have to be considered on their own terms to consider whether they are based on cost causation.

149. When considered on their own terms, the FEU submit that the proposed postage stamp rates do not create a cross-subsidy and are consistent with the cost causation principle. The FEU's proposed postage stamp rates remove rate difference due to the location of the customer, but fairly allocate costs by rate class. As stated by the Board in its Decision on the 2003 General Rate Application of NLH: "The basic goal of cost of service is to determine the relative cost differences between customer classes."[119] While postage stamp rates would result in rate changes amongst existing regions, the resulting rates are cost-based with each class of customers recovering the cost to serve that class. As the

[119] Newfoundland and Labrador Board of Commissioners of Public Utilities, Order No. P.U. 14 (2004), at pp. 112-113, at Tab 4 of the FEU's Book of Authorities in the original proceeding.

FEU have emphasized, this is in fact the way FEI's costs are allocated now (with the exception of the costs to serve the small number of customers in Fort Nelson).

150. The way in which costs are allocated through postage stamp rates (i.e. without regard to the customer's location) has been determined to be just and reasonable and not unduly discriminatory by the Commission and other regulators across Canada, and is in fact the predominant approach for electric and gas utilities in North America.[120] As stated by EES Consulting in its expert report: "postage stamp pricing is the more widely accepted practice in the utility industry and has been adopted as the standard methodology by the Commission across the electric utilities in the Province. …The FEU currently maintains postage stamp pricing within each of it separate utilities, with Fort Nelson being the one exception of a regional rate within FEI. Postage stamp rates also apply for AltaGas, Centra Gas Manitoba, Heritage Gas, Gaz Metro and SaskEnergy, as well as the majority of gas utilities in the U.S."[121] It is therefore well established that postage stamp rates, or setting rates without regard to location, is just, reasonable and not unduly discriminatory and within the jurisdiction of the Commission.

151. The FEU's submission has been that it is beneficial in the public interest to amalgamate the utilities so that this way of allocating costs amongst the FEU (that is otherwise impossible) can be achieved and the benefits of the approach realized. There is no doubt that shifting from the existing rates to postage stamp rates will result in a customer rate impact. This, however, is an issue that can be mitigated through the appropriate rate rider or phase-in approach, as discussed below.

ii. *Incorrect Assumptions about the Benefits of Region-Specific Rates*

152. As submitted above, the Commission erred in its assessment of the ability of region-specific rates to address rate stability and efficiency. Similarly, the FEU submit that the Commission's analysis of fairness also included incorrect assumptions about the benefits of region-specific rate designs. Namely, the FEU submit that the Commission erred

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[120] Exhibit B-3, BCUC-FEU IR 1.2.4 and 1.11.12. In the original proceeding: Exhibit B-3-1, Appendix D-1, EES Consulting Expert Report, p. 5; Exhibit B-9, BCUC IR 1.8.2 and 1.15.1; Exhibit B-15, BCUC IR 2.9.2. See the FEU's Final Submission in the original proceeding, section 3.1 and 3.2.

[121] Original Application Exhibit B-3-1, Appendix D-1, EES Consulting Expert Report, p. 5.

when it stated that a "region-specific customized rate design" can more readily address specific customer characteristics, such as low consumption and the use of high carbon heating fuels. The Decision stated (at pp. 23-24):

> "The Commission Panel further does not agree that regional rate differences are simply anachronistic, due to the FEU's growth through acquisition of existing utilities. The Commission Panel views the creation of separate, regional utilities as a consequence of the natural monopoly characteristics which underlie the very existence of different public utilities. In this regard, the Panel finds certain characteristics which tend to be somewhat unique to Vancouver Island, such as the low consumption rate as well as the ongoing use of alternative high carbon heating fuels (allowing the promotion of natural gas furnaces in that jurisdiction) are more readily addressed through a region-specific customized rate design and use of incentives which are arguably not appropriate for the other regions."

153. The FEU submit that the Commission made three errors in this analysis.

154. First, the FEU submit that the Commission was in error to conclude that the creation of separate, regional utilities is "a consequence of the natural monopoly characteristics which underlie the very existence of different public utilities." The natural monopoly characteristics of each utility are the result of the nature of natural gas distribution, namely, that it is generally not economical to have two competing natural gas delivery services for a region. The FEU do not see any connection between natural monopoly characteristics and the creation of separate regional entities.

155. The FEU maintain that the existing rate differences are merely a reflection of corporate history rather than any consideration of the appropriate rate structures for the FEU's service areas as a whole. This is demonstrable from the fact that there has never been a proceeding until the present one that has considered whether postage stamp rates over these areas are appropriate. In other words, the existing rate differences do not reflect a considered decision that separate rates are the most appropriate for each of the FEU or what the most appropriate regions would be; instead, they reflect the different corporate histories of the utilities.

156. The FEU have outlined the major steps in this history as it relates to natural gas distribution in section 3 of their original Application. The FEU continue to believe that

amalgamation and postage stamp rates for the FEU are the next logical step in this history.

157. Second, the FEU submit that there is no evidence that a "region-specific customized rate design" offers better options for addressing customer characteristics than the proposed postage stamp rates. To be clear, the FEU have *not* concluded that there is an "issue" with respect to low consumption customers in FEVI or that there is a need to develop a low-consumption rate class.[122] However, if there were such an issue, then postage stamp rates would be better able to deal with it.

158. The FEU do not agree that low consumption is a regional characteristic. While it is true that FEVI in total has a lower average use per customer than FEI, low consumption is not unique to FEVI. In fact, FEI has almost three times as many "low consumption" customers as does FEVI.[123] Furthermore, in response to Panel IR 1.1 the FEU have shown that the average consumption of *new* FEI customers is similar to the average consumption of existing FEVI customers.[124] This fact demonstrates clearly that low consumption is not specific to a region.

159. If it were concluded that there was a need to develop a rate design to address low consumption customers, then postage stamp rates offer more flexibility in a number of ways.[125] Under postage stamp rates, there are more customers that have common characteristics, and rates may be designed to accommodate those unique characteristics on a larger scale. Postage stamping allows the utility the scope of size to treat like customers the same regardless of location. For example, it may not be cost-effective to design and administer a new customer class for a small number of customers in FEVI or FEW, but may be cost-effective for all similar customers across the amalgamated entity.

160. In addition, the proposed postage stamp rates would lower delivery rates in the FEVI and FEW service territories, and therefore could allow for a higher basic charge or other more suitable rate restructuring alternatives without discouraging new customers or

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[122] Exhibit B-8, Panel IR 1.1.1.
[123] In the original proceeding: FEU Final Submission, pp. 35-36; Exhibit B-15, BCUC IR 2.39.2.
[124] Exhibit B-8, Panel IR 1.1.
[125] Exhibit B-8, Panel IR 1.1, 1.1.1 and 1.1.2.

encouraging existing customer to switch fuels.[126] In the absence of postage stamp rates over all the FEU regions, the higher basic charge would have the impact of raising the already high rates for low-consumption FEVI customers, encouraging them to switch to other energy sources such as electricity for which rates are postage stamped.[127] This could lead to inefficient energy choices and could further exacerbate the challenges facing FEVI[128] as load would be reduced, which would increase rates further.

161. The FEU also note the circularity in denying postage stamp rates due to low consumption characteristics of customers on FEVI. It may be that the higher rates of FEVI are a contributing factor to the higher percentage of low consumption customers in the FEVI service area. Denying postage stamp rates would therefore simply exacerbate the issue. Approving postage stamp rates on the other hand offers the potential to reduce the percentage of low consumption customers in the long term.

162. Despite the foregoing, the FEU stress that they have not identified low consumption customers as an issue.[129] There is insufficient evidence and analysis in this proceeding to conclude that there is any issue with low consumption customers, much less what any rate design solution might look like. As the FEU indicated in the BCUC IR 2.39 series in the original proceeding,[130] the necessary study and analysis has not been done to date. Such analysis would instead need to be done and considered in a future rate design proceeding, at which time the Commission would have the necessary evidence before it to make a determination on such matters.[131]

163. Third, region-specific rate designs are not better able to address "the ongoing use of alternative high carbon heating fuels (allowing the promotion of natural gas furnaces in that jurisdiction)".[132] While the reference is unclear, the FEU assume that the Commission was referring to demand-side measures aimed at incentives to switch to

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[126] Exhibit B-8, Panel IR 1.1. Exhibit B-15 in the original proceeding, BCUC IR 2.39.7.2 and 2.39.7.4.
[127] Exhibit B-15 in the original proceeding, BCUC IR 2.39.7.2.
[128] Original Application, Exhibit B-3, Section 4.
[129] Exhibit B-8, Panel IR 1.1.2.
[130] Exhibit B-15 in the original proceeding, BCUC IR 2.39.5, 2.39.5.1.
[131] Exhibit B-8, Panel IR 1.1.
[132] Decision, p. 23-24.

natural gas from higher carbon heating fuels. The Commission appears to have made the error that region-specific rate designs can better address the use of high carbon heating fuels within FEVI's service territory because incentives to encourage the switch to natural gas are "arguably not appropriate for the other regions."[133] It would be a mistake of law to conclude that the use of incentives to promote the use of natural gas away from alternative high carbon heating fuels may not be "appropriate" for other areas of the province. Section 4(1.3) of the *Demand Side Measure Regulation*, B.C. Reg. 326/2008, refers to "a demand-side measure that encourages a switch from the use of oil or propane to the use of natural gas or electricity such that the switch would decrease greenhouse gas emissions in British Columbia." As this type of demand-side measure is explicitly contemplated in the *Demand Side Measure Regulation*, it would be appropriate for *any* area to implement provided it passes the appropriate cost-benefit analysis and other requirements.

164. The FEU therefore submit that the evidence does not reasonably support the Commission's conclusion that region-specific rate design is better able to address low consumption customers or the ongoing use of alternative high carbon heating fuels. The FEU submit to the contrary that the different service areas of the FEU are far more similar than they are different and that there is no particular regional quality that can be better addressed by maintaining existing rates. From a fairness perspective, this shows that the potential existence of differences in customer characteristics do not weigh against amalgamation and postage stamp rates.

iii. *Operational Integration*

165. As discussed above, the FEU submit that the Commission erred in its assessment of the degree of operational integration of the FEU. As the FEU submitted in the original proceeding, the high degree of integration of the FEU should have contributed to the Commission's consideration of the fairness principle and been a factor weighing in favour of postage stamp rates.[134] Because of the high level of integration of the utilities both in terms of infrastructure and operations, it is difficult to definitively assign shared

[133] Decision, p. 23-24.

[134] FEU Final Submission in the original proceeding, pp. 31 to 34.

costs to the respective utilities. The Shared Services Agreement allocates those shared costs in a similar manner as common costs are allocated among customer classes within a cost of service study. Because of the integration, certain facilities and costs are incurred by all customers on the system, regardless of which utility they are served by.

166. The FEU's expert EES Consulting explained why the high level of operational and physical integration among the FEU is a factor that supports amalgamation and the adoption of postage stamp rates:[135]

> "Postage stamp pricing better reflects the fact that utility systems have a high level of interconnection, and facilities are most often shared among large groups of customers. Facilities closer to the customer, like distribution facilities, are more closely tied to local groups of customers, while facilities upstream from the customer, like transmission, are generally used by all customers on the system. When the FEU service areas had separate ownership they were operated as stand-alone entities and needed to rely on their own facilities to deliver gas to customers. Each separate utility had postage stamp rates within their service areas. The acquisition of the different utilities led to operational efficiencies and resulting cost savings. This includes greater integration of existing facilities and installation of new facilities that benefit the entire utility. As the systems become more and more integrated, the application of postage stamp pricing across all regions becomes more appropriate.
>
> With a continuation of regional rates, any facilities that are used for multiple regions would need to have a special allocation arrangement to share the costs equitably. These allocations are already in place for existing facilities, such as the Mt. Hayes storage facility. While it is possible to continue with this approach, the planning and sharing of costs for facilities that benefit customers in multiple regions is simplified under a postage stamp pricing approach, and is not open to contention in the allocation among the regional customers."

167. As explained above, there is an inherent amount of judgement associated with the allocation of costs under the Shared Services Agreement, just as there is between customer classes within a cost of service study. To ignore this shared use by treating the costs assigned to each utility as an exact amount to be balanced with revenues does not accurately reflect the true nature and apportionment of the costs. As indicated in EES Consulting's evidence, postage stamp rates would simplify the sharing of costs and

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[135] Original Application, Exhibit B-3-1, Appendix D-1, EES Consulting, "Natural Gas Cost of Service Review," pp. 6-7.

removes the potential for contention in allocating those costs. The high degree of integration also means that all customers, wherever they are located, are receiving the same service from the same system from (in effect) the same utility and therefore should pay the same rate on a class-by-class basis.

168. The FEU submit that the level of integration is a significant factor in favour of concluding that postage stamp rates are fair and avoid undue discrimination.

iv. *Customer Support*

169. As also submitted above, the FEU believe that the Commission erred in its assessment of the level of customer support for postage stamp rates. The FEU are concerned that the Commission's apparent belief that customers were opposed to postage stamp rates inappropriately coloured the Commission's conclusions on the principles of fairness and avoidance of undue discrimination. The extent of customer support for postage stamp is evidence that customers in fact believe that postage stamp rates are fair.

170. As the FEU have consistently maintained, customers are familiar with common rates across all locations as they are generally the norm. In the FEU's submission, it is difficult to conclude that postage stamp rates are unfair given their ubiquity and general acceptance in the industry by regulators, utilities and customers.

171. In the FEU's submission, the level of support from customers, despite rate impacts, is a factor that should have been weighed in favour of concluding that postage stamp rates are fair.

v. *Conclusion on Fairness Principle*

172. The FEU submit that the proposed amalgamation and postage stamp rates remains consistent with the principle of cost causation and is fair to customers. The principle of postage stamp rates, by which rates are set without regard to locational differences, has been approved many times in this province and in the industry generally as an acceptable basis of cost-based ratemaking. Postage stamp rates offer ways to address customer-specific characteristics that are common across the FEU service territories, such as low consumption, and are most suitable for the FEU given their high degree of operational

and physical integration. The level of customer support also weighs in favour of concluding that postage stamp rates are fair.

173. The FEU therefore submit that the Commission should reconsider its conclusions on fairness in light of the considerations above. Weighing all the issues at play, the FEU submit that the Commission should conclude that amalgamation and postage stamp rates are fair. While the FEU recognize the rate impact to FEI customers, the FEU submit that this rate impact can be addressed through the mitigation proposed by the FEU. This is addressed in the following section.

V. WEIGHING THE FACTORS

174. Based on the factors discussed above, the FEU submit that, with the exception of the customer impacts to FEI,[136] all the factors weigh in favour of concluding that amalgamation and postage stamp rates are in the public interest when assessed in the correct legal and factual matrix.

175. In the FEU's view, the Commission's task is to determine if the benefits of amalgamation and postage stamp rates outweigh the approximately 5% rate impact to FEI's customers. In determining whether the benefits outweigh the rate impacts it is important to consider the following:

(a) As the Ministry has noted, the current low gas cost environment is an opportune time to implement postage stamp rates.

(b) As also noted by the Ministry, "the increases of 5% for the majority of customers (which are located in the Lower Mainland, Interior and Columbia regions) are small compared to fluctuations in customer bills that have been driven by changes in the commodity cost of natural gas over the past decade."

(c) The annual rate impacts to FEI can be mitigated through the phase-in proposed by the FEU.

176. Given these mitigating factors, the FEU submit that there is clear and convincing evidence before the Commission to demonstrate that amalgamation and postage stamp rates are beneficial in the public interest despite the rate impacts to FEI customers.

177. In drawing this conclusion, the FEU have taken a qualitative approach given that the various factors at play cannot be quantified on a comparable basis. The FEU believe it is helpful to enumerate and consider each factor at play and weigh the pros and cons of each and then combine these considerations to come to an overall conclusion on what is in the public interest. A quantitative evaluation approach as suggested by the CEC,[137] is too

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[136] Exhibit B-1, New Evidence of the FEU.
[137] Exhibit B-6, BCUC-CEC IR 2.1.1.

contrived to provide any more aid to the Commission than the qualitative approach taken by the FEU. The conclusion to be drawn from CEC's quantitative approach is nonetheless consistent with the FEU's, namely, that there is more than sufficient evidence to conclude that amalgamation and postage stamp rates are in the public interest.

VI. PHASE-IN OF POSTAGE STAMP RATES

178. The FEU submit that in considering the appropriate phase-in to mitigate the rate impacts to FEI, the Commission's consideration should be guided by the following principles or criteria:

(1) Are the annual rate impacts to FEI mitigated?

(2) If necessary, have FEVI and FEW made an appropriate contribution?

(3) Will the transition be accomplished with minimal delay to realizing the benefits of amalgamation and postage stamp rates?

(4) Will the transition be accomplished with minimal complexity and regulatory impact?

179. The FEU submit that these principles capture the relevant factors that should be considered by the Commission in determining the appropriate phase in of common rates. The FEU's and CEC's proposed phase-in and alternatives are discussed below with reference to these principles.

180. As stated in the FEU's response to BCUC-FEU IR 2 in this proceeding,[138] the actual rate rider amounts and details of how they would be calculated cannot be determined until closer to January 1, 2015, once 2014 rates and the projected RSDA balance are known. The FEU therefore recommend that in this proceeding the Commission should only determine the phase-in period and overall methodology of the phase in. Any details should be left for the FEU to develop and propose in a future proceeding in accordance with the Commission's direction. As a practical matter, the FEU recommend that the rate rider would be determined as part of FEI's 2014 Annual Review for the setting of 2015 delivery rates (assuming PBR is implemented for FEI).

A. *The FEU's Proposal*

181. The FEU's proposal is to phase-in the rate impacts to FEI, by returning the balance in the RSDA to FEI customers over three years. The FEU have updated their proposal in section V of their New Evidence, filed in Exhibit B-1. As shown in Table 1 of that

[138] Exhibit B-6.

Exhibit, the annual incremental change would be 1.3%. The FEU have proposed that FEVI and FEW would move immediately to postage stamp rates to realize the benefits of amalgamation and postage stamp rates, and to facilitate the migration of customers to the appropriate rate classes so that a future rate design can be conducted on the proper customer information.

182. With reference to the FEU's principles set above, the FEU's proposal is appropriate as it:

(1) results in a reasonable mitigation of the impacts to FEI at an annual impact of 1.3%;

(2) provides a significant contribution from FEVI in the form of the RSDA balance;

(3) allows for the immediate benefits of amalgamation and postage stamp rates for FEVI and FEW;

(4) reduces complexity and regulatory impact: (i) fosters FEVI and FEW customer migration to FEI rate schedules so that FEI Amalco can prepare its next rate design application based on the correct customer information; (ii) the last year of a 3 year phase-in would coincide with the end of FEI's proposed PBR period (2018).

183. The FEU submit that the proposal reasonably balances the factors at play and is appropriate in the circumstances.

B. ***Phase-in of FEVI and FEW if Necessary***

184. While the FEU believe that postage stamp rate should be implemented for FEVI and FEW immediately,[139] in response to information requests, the FEU have set out possible options in which the rate decreases to FEVI and FEW would be phased in. The revenue surplus that would be captured through such a phase-in would be used in addition to the balance in the RSDA to further mitigate the annual rate impacts to FEI.[140] These options have been discussed in this proceeding in response to BCUC IR 2.1.1.[141] The phase-in would be accomplished by transitioning FEVI and FEW immediately to postage stamp rates, but using a debit rider to collect a charge from FEVI and FEW customers and a credit rider to distribute the revenue on the bills of FEI customers.

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[139] Exhibit B-6, BCUC-FEU IR 2.1.1 and 2.2.4. Also see the FEU's Final Submission in the original proceeding, para. 116.

[140] Exhibit B-6, BCUC-FEU IR 2.2.2.

[141] Exhibit B-6.

185. With reference to the relevant principles, the FEVI and FEW phase-in options offer the following pros and cons:

(1) The phase-in rider collected from FEVI and FEW provides a revenue surplus which can be distributed to FEI customers to further mitigate the annual rate impacts. In the FEU's submission, however, there is no compelling need to mitigate annual impacts below the 1.3% accomplished by the FEU's proposal.

(2) The phase-in rider collected from FEVI and FEW provides a contribution from FEVI and FEW. In the FEU's submission, however, there is no compelling reason to collect such a contribution.

(3) The benefits of postage stamp rates are postponed. However, as long as the phase-in is accomplished within three to five years, the transition can be accomplished without unreasonably compromising the benefits of amalgamation and postage stamp rates.

(4) There is more complexity and regulatory impact, but it is not unreasonable if accomplished within three to five years.

186. The FEU therefore believe that, if the Commission determines that a phase-in of the FEVI and FEW rate decreases is required, this can be accomplished without unduly compromising the principles at stake.

C. *Contribution from FEW if Necessary*

187. As discussed in the response to BCUC IR 1.89.2 in the original proceeding, it is not necessary to require FEW to make a contribution to the transition to common rates. The FEU similarly reject the notion that FEW's conversion costs should not be "rolled in" to postage stamp rates.[142] While the FEU continue to believe that a contribution from FEW is not necessary, the FEU present a framework below to provide a way in which the Commission could reflect a contribution from FEW to the amalgamated entity if it concludes that one is necessary in the public interest.

188. The FEU state in response to BCUC-FEU IR 2.2.4 in this proceeding:[143]

> "If the Commission were to determine that a different treatment for FEVI and FEW customers was warranted, and since it is not practical to allocate

[142] Exhibit B-9 in the original proceeding, BCUC IR 1.77.1.1; FEU's Final Submission in the original proceeding, pp. 60-61.

[143] Exhibit B-6.

the RSDA balance only to FEVI customers due to the resulting rate impacts, the Commission could consider alternatives that reflect a different approach for FEW, such as:

1. Move immediately to amalgamated rates for FEVI customers but phase in the amalgamated rates for FEW customers only; or

2. Require an "RSDA comparable" contribution from FEW customers (for example, the RSDA balance is forecast at approximately 50% of FEVI's annual revenue requirement; an equivalent contribution from FEW would be approximately $6 million) to be collected from FEW customers through a debit rider and allocated to FEI customers via a credit rate rider."

189. If the Commission orders that a contribution from FEW is required, then there are two fundamental questions: first, how much should the contribution be? And second, how should it be collected and over how long a period? The FEU address these questions below.

190. If the Commission orders that a contribution is required from FEW, the FEU submit that, based on the evidence in this and the original proceeding, there is a lower and upper limit to the contribution that would be appropriate. These limits are as follows:

(a) The lower limit would be a contribution from FEW that is comparable in relative terms to the amount of the RSDA to FEW. As noted in the IR response above, this would be approximately $6 million, representing approximately 50% of FEW's revenue requirement.

(b) The upper limit would be bound by the approximate $12 million balance in FEW's conversion costs deferral account and the approximate $13 million balance in the pipeline capital contribution deferral account.[144] If a contribution were required to recover both of these balances, the upper limit for the contribution would be approximately $25 million, representing more than half of FEW's approximately $41 million rate base.[145]

[144] Original Application, Exhibit B-3, section 3.4.1.3 discussing FEW's Rate Base. Note that these amounts are the 2013 balances, which would be less in subsequent years due to continued amortization.

[145] Original Application, Exhibit B-3, section 3.4.1.3 discussing FEW's Rate Base. Note that these amounts are the 2013 balances, which would be less in subsequent years due to continued amortization.

191. The FEU believe that if a contribution is ordered, a contribution at the lower limit would be appropriate to reflect a similar contribution as that made by FEVI. The FEU do not believe it is necessary to require FEW to contribute its conversion costs for the reasons expressed in section 6.2, pp. 60-61 of the FEU's Final Submission in the original proceeding.

192. Given the range of potential contributions, it is also possible to determine the appropriate length of the phase-in for FEW. As FEW does not have any revenue surplus collected, the contribution would need to be collected from FEW by way of a transition rate rider as explained in response to BCUC-FEU IR 2.1.1.[146] The maximum amount that could be collected without *increasing* the bill impact to FEW customers would be the revenue difference between the proposed postage stamp rates and FEW's existing rates. This difference is approximately $6 million.[147] At $6 million per year, this suggests that even the contribution could be collected within a range of 3 to 5 years. For example,

(a) If the Commission determined that a $6 million contribution was appropriate, this could be collected over three years at $2 million per year.

(b) If the Commission determined that a $25 million contribution was appropriate, this could be collected over five years at $5 million per year.

193. With respect to the four principles initially set out by the FEU above, it is noted that given the size difference between FEW and FEI, the contribution from FEW will be too small to have a material impact on mitigating the rate impact to FEI. A phase-in would, however, be a way for FEW to make a contribution if the Commission were to conclude that is necessary. As explained above, even a maximum contribution could be realized over a three to five year period, which is a reasonable approach to realizing the benefits of postage stamp rates and minimizing complexity and regulatory impact.

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[146] Exhibit B-6 in this proceeding.

[147] See Exhibit C1-4, BCUC-CEC IR 2.1.1, page 8, which identifies the revenue surplus at $5.7 million.

D. ***Response to the CEC's Quantitative Approach and Phase-In***

194. In this section, the FEU set out the reasons why they fundamentally disagree with the quantitative evaluation approach and phase-in set out by the CEC.[148] The FEU understand that the CEC's rationale for providing the quantitative approach was to demonstrate that there is little to no room in a public interest assessment for denying amalgamation of FEVl and FEW. However, the FEU submit the following:

(a) The details of CEC's quantitative approach are flawed.

(b) The CEC inappropriately makes a direct link between the quantitative evaluation and the length of the phase-in.

(c) The CEC's length of phase-in of FEVI and especially for FEW is too long and unjustifiable.

195. The FEU address each of these points below.

i. *Quantitative Approach is Fundamentally Flawed*

196. The FEU submit that it does not add any value to develop a numerical weighting of the factors and assign dollar values to the various factors as the CEC has recommended. It is clear that many of the factors are not conducive to a quantitative evaluation and that any strictly quantitative approach will be contrived. Further, as the CEC states in response to BCUC-CEC IR 1.3.3, "The Commission should preserve to itself the regulatory judgement space to make a decision based on a balance of considerations of the many issues affecting the public interest."

197. More specifically, the FEU submit that the CEC's quantitative approach is fundamentally flawed for a number of reasons. Without attempting to be exhaustive, a few of the key reasons are as follows:

(a) *The scenarios are not scenarios.* The CEC develops four different scenarios, where each scenario successively places one less value on each of the factors. This does not represent a reasonable range of scenarios that is helpful for the

[148] Exhibit B-9 in the original proceeding, BCUC IR 1.24.2; Exhibit C1-4 in this proceeding, BCUC-CEC IR 2.1.1.

Commission's analysis. Nor do the four scenarios, each with one less value on each of the factors, represent a "range of possible uncertainty" as the CEC would appear to suggest.[149]

(b) *The number of factors is arbitrary*. The number of factors chosen and their relative weightings will skew the results of the quantitative analysis. In this context, the factors chosen overlap and are not consistently applied, which distorts the analysis. For example, the FEU note the following:

(i) There is not a material distinction between the Environment and the Health factors, since the health category as defined by CEC only relates to the impacts of lower GHG on health. The CEC states that health benefits are not relevant for FEW, but environmental benefits are. Since CEC's definition of these two items both hinge on GHG reductions, this cannot be the case.

(ii) The CEC assigns 12 public interest factors to FEVI and weights them to achieve 100%. CEC then assign only 7 factors to FEW and weights them to achieve 100%. To achieve a comparable analysis, the same factors should be used in both tables, but a score of 0 should be assigned to those that FEW does not achieve.

(iii) It is not clear why "RSDA Contribution" would be a separate consideration of the public interest.

(c) *Weightings and scoring are subjective.* There is overlap between the weighting assigned and the score assigned. If a factor is considered important it has a high weighting, and then it also has a high score. Due to the lack of transparency and objectivity around the scoring for economic measures, they are all weighted according to CEC's judgement.

(d) *Cost impacts scoring are subjective and not justified*. Cost impacts are defined as cost and rate impacts. As cost differences are defined as differences in the cost of

[149] Exhibit C1-4, BCUC-CEC IR 2.1.1 (p.2).

service which is already reflected in the rates, this comes down to rate impact. There is no explanation of from whose perspective cost impacts are viewed and no justification is provided for the scoring.

(e) *Present Value Estimates are not supported*. The CEC provides various estimates of present value with respect to the various factors. The CEC, however, provides no evidence or rationale in support of these estimates.

198. In summary, the FEU submit that while the CEC's quantitative approach makes the point that the factors weigh in favour of amalgamation and postage stamp rates, it is also fundamentally flawed and cannot be used as a tool to quantitatively assess the public interest in this case.

ii. *Phase-in Approach Unjustifiable*

199. The CEC's approach to determining the appropriate phase-in for FEVI and FEW is unjustifiable. The FEU discuss three reasons for this conclusion, followed by an assessment of the CEC's proposal from the perspective of the FEU's four principles.

200. First, the CEC's proposed 7 and 21 year phase-in period for FEVI and FEW, respectively, is tied directly to the results of the CEC's quantitative approach. Since the quantitative approach is itself fundamentally flawed, the basis for the CEC's phase-in is also fundamentally flawed. Further, the mechanism by which the phase-in length is tied to the results of the quantitative approach is ambiguous. In determining the actual number of years to phase in, CEC states:

> "If all of the factors considered were all evaluated at a positive 10 score the weighted scoring total would be 110 points. The CEC has associated an appropriate transition timing of 1 year for each point of scoring decrement from the 10 maximum potential score from the methodology."

201. There is no rationale for this determination and, in the FEU's submission, it is completely arbitrary. Not surprisingly, the method results in a 7 year phase-in for FEVI which is the phase-in that the CEC proposed in the original proceeding (before the approach was developed).

202. Second, the proposed 7 and 21 year phase-in periods for FEVI and FEW are inconsistent with the benefits of amalgamation and postage rates, even those identified by the CEC itself. For instance, the lengthy phase-ins would be detrimental to the economic opportunities identified by the CEC in support of amalgamation and postage stamp rates, such as the Woodfibre LNG project and use of LNG by BC Ferries. By the time the phase-in was complete for FEVI, these economic opportunities may already have passed. The lengthy phase-in would also undermine the efficiency benefits and the other benefits of postage stamp rates identified by the Ministry.

203. Third, there is simply no rationale for tying the length of a phase-in rider to the relative merits of amalgamating. As reflected in the four principles that the FEU submit are relevant to the determination of a phase-in, there are two possible reasons for a phase-in. First, a phase-in can mitigate the rate impacts to FEI. Second, a phase-in of the rate decreases to FEVI and FEW can generate surplus revenue (based on the difference between the postage stamp rate and the existing rate) which can be applied to FEI as a contribution. The results of the CEC's quantitative approach do not relate to either of the rationales for phase-in.

204. Fourth, the CEC's approach fails to take into account the fact that a phase-in delays the benefits of amalgamation and postage stamp rates, increases complexity and can have a regulatory impact. The CEC states:

> "The CEC submits that the question of the transition timeframe is not necessarily a question of practicality. The CEC submits that the question of timeframe is to achieve a balance of the public interest issues the Commission assesses to be present."

205. Practicality is, however, a consideration in balancing the public interest and it is appropriate to consider the impacts of a phase-in on customers and the utility.

206. From the perspective of the four relevant principles, the CEC's 7 and 21 year phase-in periods are clearly not preferable:

(a) *No material improvement to the mitigation*. The FEU's proposed three-year RSDA rate rider approach already effectively contains annual rate impacts to

1.3%. This 1.3% would be smaller if the FEVI and FEW rate decreases were phased in as well. Given the size of FEW, however, a phase-in of FEW cannot have a material impact on FEI rates. Reducing annual rate impacts to ever-smaller fractions of one percent no longer serves to materially increase the mitigation for FEI customers. Therefore, the CEC's lengthy phase-in periods offer no material benefit under this principle.

(b) *FEVI and FEW Contribution*. FEVI's contribution in the form of the RSDA can be distributed over three years. Any further contribution could also be extracted over a three-year period. As discussed above, a contribution from FEW can be accomplished over a three to five-year period. There is simply no reason why a phase-in period longer than three to five years would be required to collect a contribution from either FEVI or FEW, respectively.

(c) *Benefits of amalgamation and postage stamp rates*. If the Commission concludes that it is beneficial in the public interest to amalgamate and implement postage stamp rates, then these benefits should not be unreasonably delayed. Postponing the effect of postage stamp rates for 7 to 21 years significantly compromises the benefits of amalgamation and postage stamp rates, including benefits of economic opportunities and equality of investment and job opportunities.

(d) *Complexity and Regulatory Impact.* One of the reasons why the FEU believe that the rate decreases should be implemented immediately is to facilitate the migration of FEVI and FEW customers into the rate schedules available to them under FEI Amalco. If the rate decreases are phased-in over the inordinate lengths of time proposed by the CEC, the FEVI and FEW customers will not experience the true impact of the rate schedules, which will hamper their ability to find the appropriate schedule. This will compromise the ability of FEI Amalco to prepare its next rate design application based on the correct customer information. The CEC's phase-in also increases complexity and regulatory impact by virtue of the sheer length of time over which they will have to be administered. The length of the riders, and the fact they differ, would also be likely to reduce customer acceptance and understanding. A rider of the same length for FEVI and FEW and no longer than five years would be more appropriate.

207. In summary, the FEU submit that the CEC's phase-in proposal is not based on sound principles, does not accomplish any public interest objective, delays benefits and increases complexity and regulatory burden. It should therefore be rejected.

VII. **CONCLUSION**

208. The FEU submit that the Commission must consider and weigh a wide range of factors in making its determination on whether amalgamation and postage stamp rates are in the public interest. These factors include broad public interest factors, the benefits that flow from amalgamation and postage stamp rates as well as a consideration of rate design criteria. The FEU respectfully submit that when viewed in the correct legal and factual matrix that the evidence demonstrates that amalgamation and postage stamp rates are in the public interest.

209. While the FEU recognize the rate impacts to FEI, the FEU submit that various beneficial aspects of amalgamation and postage stamp rates outweigh these impacts. This is especially so given the availability of mitigation for FEI customers through the distribution of the RSDA balance and the current low gas costs.

210. The FEU respectfully request that the Commission reconsider and vary Order G-26-13 based on a full assessment of the range of public interest considerations, including the public policy in favour of postage stamp rates as articulated by the Ministry, and conclude that amalgamation and postage stamp rates are in the public interest.

ALL OF WHICH IS RESPECTFULLY SUBMITTED,

Dated: October 16, 2013

[original signed by Christopher Bystrom]

Christopher Bystrom
Fasken Martineau DuMoulin LLP
Counsel for the FortisBC Energy Utilities

APPENDIX “A”

Common Rates, Amalgamation and Rate Design Application

Letters of Comment from Registered Interveners, Interested Parties and Stakeholders

Intervener Letters of Comment

Letter #	Exhibit	Person/Association/Municipality	Service Area	Position
1	C1-2	Rental Owners and Managers Society of BC	FEVI	Supportive
2	C2-1 (C2-1-1)	Fort Nelson & District Chamber of Commerce	FEFN	Opposed
3	C3-1	Northern Rockies Regional Municipality	FEFN	Opposed
4	C5-2	Resort Municipality of Whistler	FEW	Supportive
5	C9-1	AVICC (Association of Vancouver Island and Coastal Communities)	FEVI	Supportive
6	C12-1	George Grant	FEI - Lower Mainland	Opposed
7	C13-1	Frank Blom	FEI - Inland	Opposed

Interested Party Letters of Comment

Letter #	Exhibit	Person/Association/Municipality	Service Area	Position
1	D-3-1	Kevin Friesen	FEFN	Opposed
2	D-8-1	Fred Kardel	FEVI	Supportive
3	D-9	Dave Bakes	FEVI	Supportive
4	D-10	Allan Leuschen	FEVI	Supportive
5	D-13	Steve Bohnen	FEI - Lower Mainland	Opposed
6	D-16	Philip Callaghan	FEI - Lower Mainland	Opposed
7	D-23-1	Greater Victoria Chamber of Commerce	FEVI	Supportive
8	D-24	Charles H. Gairns	FEI - Inland	Opposed

Stakeholder Letters of Comment

Letter #	Exhibit	Person/Association/Municipality	Service Area	Position
1	E-1	Ken Olive	FEVI	Supportive
2	E-2	Town of Ladysmith	FEVI	Supportive
3	E-3	City of Nanaimo	FEVI	Supportive
4	E-5	District of Saanich	FEVI	Supportive
5	E-6	City of Port Alberni	FEVI	Supportive
6	E-7	Sunshine Coast Regional District	FEVI	Supportive
7	E-8	City of Campbell River	FEVI	Supportive
8	E-9	Todd Harold	FEI - Inland	Opposed
9	E-10	Town of Comox	FEVI	Supportive
10	E-11	Paul Biedermann	FEI - Lower Mainland	Opposed
11	E-12	Alberni-Clayoquot Regional District	FEVI	Supportive
12	E-13	District of Central Saanich	FEVI	Supportive
13	E-14	Vera Ganderton	FEI - Lower Mainland	Opposed
14	E-15	District of Lantzville	FEVI	Supportive
15	E-16	Norm Eisner	Unknown	Supportive
16	E-17	Alan Moran	FEI - Lower Mainland	Opposed
17	E-18	Regional District of Nanaimo	FEVI	Supportive
18	E-19	The Corporation of the District of Oak Bay	FEVI	Supportive
19	E-20	Janet Warren	Unknown	Supportive
20	E-21	Dennis Miller	FEI - Inland	Opposed
21	E-22	Jeff Clay	FEI - Lower Mainland	Opposed
22	E-23	Cornerstone Properties	FEVI	Supportive
23	E-24	Eric O'Dell	FEI - Lower Mainland	Opposed
24	E-25	Junko Ikebe	FEI - Lower Mainland	Opposed
25	E-26	S.G. Paulson	FEI - Lower Mainland	Supportive
26	E-27	Terence Peel	Unknown	Opposed
27	E-28	Mike Blodgett	FEI - Inland	Opposed
28	E-29	Rodney Edwards	FEI - Inland	Opposed
29	E-30	Kevin Mowbray	FEI - Lower Mainland	Opposed

Common Rates, Amalgamation and Rate Design Application

Letters of Comment from Registered Interveners, Interested Parties and Stakeholders

Stakeholder Letters of Comment

Letter #	Exhibit	Person/Association/Municipality	Service Area	Position
30	E-31	Mark Doyle	FEVI	Supportive
31	E-32	Ken and Gayle Lungle	FEI - Inland	Opposed
32	E-33	Ron Allen	FEI - Inland	Opposed
33	E-34	Murray Peterson	FEVI	Supportive
34	E-35	Harold Brown	FEVI	Supportive
35	E-36	Arbutus Grove Nursery	FEVI	Supportive
36	E-37	Lyle Young	FEVI	Supportive
37	E-38	Robin Hulme	FEVI	Supportive
38	E-39	Sharon Drews	FEI - Lower Mainland	Opposed
39	E-40	Tri-Eagle Development Corp.	FEVI	Supportive
40	E-41	Greater Nanaimo Chamber of Commerce	FEVI	Supportive
41	E-42	Meriel Wild	FEI - Inland	Opposed
42	E-43	District of Tofino	FEVI	Supportive
43	E-44	Jawl Properties	FEVI	Supportive
44	E-45	Navin Sheriff	FEVI	Supportive
45	E-46	Devon Properties Ltd.	FEVI	Supportive
46	E-47	Fort Nelson Resident	FEFN	Opposed
47	E-48	Canadian Home Builders Association - Victoria	FEVI	Supportive
48	E-49	Castera Investments (member of ROMS)	FEVI	Supportive
49	E-50	Vancouver Island Economic Alliance	FEVI	Supportive
50	E-51	Hayward, Brett	Unknown	Supportive
51	E-52	Kulicki, Ed	FEI - Kootenay	Opposed
52	E-53	Le Gers Properties (member of ROMS)	FEVI	Supportive
53	E-54	Monuk, William	FEI - Lower Mainland	Opposed
54	E-55	Pacholko, Ron	Unknown	Supportive
55	E-56	Town of View Royal	FEVI	Supportive
56	E-57	Community Living Victoria	FEVI	Supportive
57	E-58	Hayes, Graham	Unknown	Supportive
58	E-59	Nanaimo Economic Development Corporation	FEVI	Supportive
	E-60	Provincial Motel - See Exhibit E-47	FEFN	
59	E-61	City of Victoria	FEVI	Supportive
60	E-62	168 Properties	FEVI	Supportive
61	E-63	Hugh Carmichael	FEI - Inland	Opposed
62	E-64	AGB Properties	FEVI	Supportive
63	E-65	Dave Arnsforf	FEVI	Supportive
64	E-66	Island Farms	FEVI	Supportive
65	E-67	Sorenson & Bowers Construction	FEVI	Supportive
66	E-68	Olnick, Dale (Resident)	FEVI	Supportive
67	E-69	David Aujla Personal Law Corp.	FEVI	Supportive
68	E-70	Boehnert, Krista	FEVI	Supportive
69	E-71	Philip Nyren Menswear & Womenswear Ltd	FEVI	Supportive
70	E-72	Galatia Realty	FEVI	Supportive
71	E-73	Wirch-Ryckman, Cheryl	FEVI	Supportive
72	E-74	Atlas Stereo and TV Ltd	FEVI	Supportive
73	E-75	Knowles, Tate	FEVI	Supportive
74	E-76	AXYS Analytical Services	FEVI	Supportive
75	E-77	Sylvan Learning	FEVI	Supportive
76	E-78	GMC Projects Inc	FEVI	Supportive
77	E-79	Roworth, Andrea	FEVI	Supportive
78	E-80	Sports Rent	FEVI	Supportive
79	E-81	Chamber of Commerce	FEVI	Supportive

Stakeholder Letters of Comment

Letter #	Exhibit	Person/Association/Municipality	Service Area	Position
80	E-82	Baker, Morgan	FEVI	Supportive
81	E-83	Greater Victoria Development Agency	FEVI	Supportive
82	E-84	Wildwood Nurseries Ltd	FEVI	Supportive
83	E-85	Hayes Stewart Little & Co.	FEVI	Supportive
84	E-86	Griffin, Pat	FEVI	Supportive
85	E-87	Connelly, Neil	FEVI	Supportive
86	E-88	Prestige Video Transfer	FEVI	Supportive
87	E-89	Grant, Rebecca	FEVI	Supportive
88	E90	Findlay, E	FEVI	Supportive
89	E-91	Terrell, Glenn	FEVI	Supportive
90	E-92	Bows & Arrows Coffee Roasters	FEVI	Supportive
91	E-93	Maximum Group of Companies	FEVI	Supportive
92	E-94	Clean Air Yard Care	FEVI	Supportive
93	E-95	Gibb, Patricia	FEVI	Supportive
94	E-96	Specht, Cecil	FEVI	Supportive
95	E-97	Bresser, Bill	FEVI	Supportive
96	E-98	Spooner, Lawrence, Greater Victoria Chamber of Commerce	FEVI	Supportive
97	E-99	Red Art Gallery	FEVI	Supportive
98	E-100	BayWest RONA Victoria	FEVI	Supportive
99	E-101	Agropro Island Farms	unknown	Supportive
100	E-102	Whitman, Guy	FEVI	Supportive
101	E-103	Glanford Greenhouses	FEVI	Supportive
102	E-104	Carter, Connie	FEVI	Supportive
103	E-105	Henry, Ellen	FEVI	Supportive
104	E-106	Gillespie, Bruce	FEVI	Supportive
105	E-107	Anderton Nursery Ltd	FEVI	Supportive
106	E-108	Mieduniecki, Chris	FEVI	Supportive
107	E-109	Island Blue Print Co. Ltd	FEVI	Supportive
108	E-110	Levin, Michael	FEVI	Supportive
109	E-111	Tapley, Heather	FEVI	Supportive
110	E-112	Knapp, Peter	FEVI	Supportive
111	E-113	The Hospitality Inn	FEVI	Supportive
112	E-114	University of Victoria	FEVI	Supportive
113	E-115	Smith, David	FEVI	Supportive
114	E-116	Robertson, Andrea	FEVI	Supportive
115	E-117	Bickfor, Ronald	FEVI	Supportive
116	E-118	Chase, Lindsay	FEVI	Supportive
117	E-119	Currie, Kendall	FEVI	Supportive
118	E-120	Neilson, Chris	FEVI	Supportive
119	E-121	Hollstein, Darlene	FEVI	Supportive
120	E-122	Ruest, Nelson	FEVI	Supportive
121	E-123	Page, Douglas	FEVI	Supportive
122	E-124	Damant, Gregory	FEVI	Supportive
123	E-125	Hall, Thomas	FEVI	Supportive
124	E-126	Wardle, Garth	FEVI	Supportive
125	E-127	O'Brien, Michael	FEVI	Supportive
126	E-128	Sheets, Debra	FEVI	Supportive
127	E-129	Vancouver Island Health Authority	FEVI	Supportive
128	E-130	Dube, Kevin	FEVI	Supportive
129	E-131	Neilson, Dawn	FEVI	Supportive

Stakeholder Letters of Comment

Letter #	Exhibit	Person/Association/Municipality	Service Area	Position
130	E-132	Robertson, Jamie	FEVI	Supportive
131	E-133	Western Forest Products Inc.	FEVI	Supportive
132	E-134	Low, Susan	FEVI	Supportive
133	E-135	Roberts, Penny	FEVI	Supportive
134	E-136	Lee, Douglas	FEVI	Supportive
135	E-137	Ternent, Steve	FEVI	Supportive
136	E-138	Green, Lori	FEVI	Supportive
137	E-139	Craig, Dave	FEVI	Supportive
138	E-140	Shillington, Wayne	FEVI	Supportive
139	E-141	Scales, R.E.	FEVI	Supportive
140	E-142	Chmielowiec, Chester	FEVI	Supportive
141	E-143	City of Langford	FEVI	Supportive
142	E-144	Moar, Margaret	FEVI	Supportive
143	E-145	Fawles, Adam	FEVI	Supportive
144	E-146	Germain, Franck	FEVI	Supportive
145	E-147	Lodging Innovations	FEW	Supportive
146	E-148	Mccallum, Bruce	FEVI	Supportive
147	E-149	Brown, Clive	FEVI	Supportive
148	E-150	Smith, Brenton	FEW	Supportive
149	E-151	Starling, Kevin	FEVI	Supportive
150	E-152	Ruest, Nelson	FEVI	Supportive
151	E-153	Allenberg, Rick	FEVI	Supportive
152	E-154	McDonnell, Seamus	FEVI	Supportive
153	E-155	Self, Tiffany	FEVI	Supportive
154	E-156	Lees, Shaun	FEVI	Supportive
155	E-157	Price, Stuart	FEVI	Supportive
156	E-158	Sproul, Velma	FEVI	Supportive
157	E-159	Docherty, Neil	FEVI	Supportive
158	E-160	Township of Langley	FEI	Opposed
159	E-161	Le Chamois Hotel	FEW	Supportive

# of Supportive Letters 145
# of Opposed Letters 29