



Diane Roy
Director, Regulatory Service

Gas Regulatory Affairs Correspondence
Email: gas.regulatory.affairs@fortisbc.com

FortisBC Energy Inc.
16705 Fraser Highway
Surrey, B.C. V4N 0E8
Tel: (604) 576-7349
Cell: (604) 908-2790
Fax: (604) 576-7074
Email: diane.roy@fortisbc.com
www.fortisbc.com

November 12, 2014

Via Email
Original via Mail

B.C. Sustainable Energy Association
c/o William J. Andrews, Barrister & Solicitor
1958 Parkside Lane
North Vancouver, B.C. V7G 1X5

Attention: Mr. William J. Andrews

Dear Mr. Andrews:

Re: FortisBC Energy Utilities (FEU)¹

**Application for Removal of the Restriction on the Location of Data and Servers
Providing Service to the FEU, currently Restricted to Canada**

**Response to the B.C. Sustainable Energy Association and the Sierra Club
British Columbia (BCSEA) Information Request (IR) No. 1**

On August 1, 2014, the FEU filed the Application as referenced above. In accordance with British Columbia Utilities Commission letter (Exhibit A-4 Log No. 48300) dated September 29, 2014, the FEU respectfully submit the attached response to BCSEA IR No. 1.

If further information is required, please contact the undersigned.

Sincerely,

on behalf of the FORTISBC ENERGY UTILITIES

Original signed by: Ilva Bevacqua

For: Diane Roy

Attachment

cc: Commission Secretary
Registered Parties (e-mail only)

¹ Comprised of FortisBC Energy Inc., FortisBC Energy (Vancouver Island) Inc. and FortisBC Energy (Whistler) Inc.

FortisBC Utilities (consisting of FortisBC Energy Inc., FortisBC Energy (Vancouver Island) Inc. and FortisBC Energy (Whistler) Inc. (the FEU) Application for Removal of the Restriction on the Location of Data and Servers Providing Service to the FEU, currently Restricted to Canada (the Application)	Submission Date: November 12, 2014
Response to B.C. Sustainable Energy Association and Sierra Club of British Columbia (BCSEA) Information Request (IR) No. 1	Page 1

1 **1.0 Topic: Authorized access by foreign entities**

2 **Reference: Exhibit B-1, p.1**

3 “As directed by Order G-116-05 (and subsequent amendments and clarification) of the
4 British Columbia Utilities Commission (the Commission), the FEU currently store all of
5 their data on servers located within Canada.” [p.1, underline added]

6 1.1 Please confirm that one of the intended effects of the relief requested by the FEU
7 (i.e., removal of the data location restrictions) is to allow the FEU, by themselves
8 or by a contractor, to store customer information on a server(s) outside Canada.
9 If not confirmed, please explain.

10

11 **Response:**

12 Yes, although the FEU have no immediate intention of storing customer information on a
13 server(s) outside Canada. However, if customer information, or any other FEU information, is to
14 be stored in any part outside of the FEU data centres, whether inside or outside of Canada, the
15 FEU cannot do so right now due to the current restriction.

16

17

18

19 1.2 If the Commission was to approve removal of the data location restrictions, and if
20 the FEU, by themselves or by a contractor, was to store customer information on
21 a server(s) outside Canada, then would such information be subject to access
22 authorized by foreign governments, courts or other authorities where such
23 access would not be authorized if the data was stored within Canada as required
24 by the current data location restrictions?

25

26 **Response:**

27 Please see the response to BCUC 1.4.1. Please also refer to the response to BCUC IR 1.2.8.

28

29

30

31 1.3 If the response to the preceding question is affirmative, using the United States
32 as an example, please list the types of authorized access to which FEU customer
33 information would be subject, where such authorized access would not be
34 available if the customer information was stored in Canada.



FortisBC Utilities (consisting of FortisBC Energy Inc., FortisBC Energy (Vancouver Island) Inc. and FortisBC Energy (Whistler) Inc. (the FEU) Application for Removal of the Restriction on the Location of Data and Servers Providing Service to the FEU, currently Restricted to Canada (the Application)	Submission Date: November 12, 2014
Response to B.C. Sustainable Energy Association and Sierra Club of British Columbia (BCSEA) Information Request (IR) No. 1	Page 2

1

2 **Response:**

3 Please refer to the response to BCUC IR 1.4.1. Please also refer to the response to BCUC IR
4 IR 1.2.8.

5

FortisBC Utilities (consisting of FortisBC Energy Inc., FortisBC Energy (Vancouver Island) Inc. and FortisBC Energy (Whistler) Inc. (the FEU) Application for Removal of the Restriction on the Location of Data and Servers Providing Service to the FEU, currently Restricted to Canada (the Application)	Submission Date: November 12, 2014
Response to B.C. Sustainable Energy Association and Sierra Club of British Columbia (BCSEA) Information Request (IR) No. 1	Page 3

1 **2.0 Topic: Utilities Commission Act, s.44**

2 "Duty to keep records

3 **44** (1) A public utility must have in British Columbia an office in which it must keep all
4 accounts and records required by the commission to be kept in British Columbia.

5 (2) A public utility must not remove or permit to be removed from British Columbia an
6 account or record required to be kept under subsection (1), except on conditions
7 specified by the commission."

8 2.1 For the data that is now subject to the location restrictions that the FEU seek to
9 have removed, does s.44 require such data to be kept in B.C and not removed or
10 permitted to be removed from B.C. absent "conditions specified by the
11 commission"?

12
13 **Response:**

14 If the current data/server location restriction is removed as requested, the data/servers do not
15 have to be kept in British Columbia.

16 Section 44(1) contemplates that the utility's records be kept in British Columbia if "required by
17 the Commission to be kept in British Columbia." Thus, a specific order by the Commission is
18 necessary. In other words, unless the Commission has specifically ordered a utility to place its
19 "accounts and records" in British Columbia, the accounts and records can be located outside
20 British Columbia.

21 Section 44(2) addresses the situation where an order has been made requiring the utility to
22 place its accounts and records in British Columbia. The record that has been "required by the
23 Commission to be kept in British Columbia" cannot be removed without the Commission's prior
24 approval.

25 Section 44 does not mandate the utility to apply to the Commission in order to keep its accounts
26 and records outside British Columbia. The utility's obligation to keep its accounts and records in
27 B.C. arises if there has been a Commission's order to that effect. The order may have been
28 imposed by the Commission on its own motion.

29
30

31
32 2.1.1 Are there any current "conditions specified by the commission" under
33 s.44 applicable to the FEU?
34

FortisBC Utilities (consisting of FortisBC Energy Inc., FortisBC Energy (Vancouver Island) Inc. and FortisBC Energy (Whistler) Inc. (the FEU) Application for Removal of the Restriction on the Location of Data and Servers Providing Service to the FEU, currently Restricted to Canada (the Application)	Submission Date: November 12, 2014
Response to B.C. Sustainable Energy Association and Sierra Club of British Columbia (BCSEA) Information Request (IR) No. 1	Page 4

1 **Response:**

2 The data location restriction was imposed as part of the approval of Kinder Morgan's acquisition
3 of then Terasen Utilities. Although in the decision approving the acquisition the Commission
4 "noted" section 44 of the UCA (see Commission Decision of November 10, 2005, at page 39),
5 the authority under which the Commission imposed the data location restriction was section
6 54(9) of the UCA.

7 The Commission Panel notes that under Section 44(2) of the UCA, "...[a] public utility
8 must not remove or permit to be removed from British Columbia an account or record
9 [required by the commission]...except on conditions specified by the Commission.
10 Section 54(9) of the UCA also permits the Commission to attach conditions and
11 requirements to an approval under Section 54 that it considers necessary and desirable
12 in the public interest. **In order to address concerns related to privacy and the
13 general removal of critical functions from the Utilities' service areas, the
14 Commission Panel concludes that it should establish a condition that requires
15 KMI not to change the geographic location of any existing functions or data
16 currently in the Terasen Utilities' service areas, without prior approval of the
17 Commission.**

18 (See also Commission Decision of November 10, 2005, section 4.2, for a discussion on
19 Commission jurisdiction of that acquisition application).

20 For clarity, in the responses to BCUC IR 1.1.1.1 and 1.1.1.2, the FEU provided two other
21 instances where the Commission has allowed variances from the previous order under section
22 54(9) restricting data/server locations to inside Canada. In Order G-112-06, the Commission
23 approved the application to maintain the Companies' process and control documentation
24 required for Ontario Securities Commission compliance purposes on Kinder Morgan Inc.'s (KMI)
25 licensed software and to allow Internal Audit staff to store electronic document files on a shared
26 server owned by KMI and located in Houston, Texas. In Order G-116-06, the Commission
27 approved an application requesting to record incident information on KMI's U.S. based Risk
28 Event Management System (REMS) and to transfer employee contact information (primarily cell
29 phone numbers and email addresses) required to support KMI's U.S. based Emergency
30 Response Line (ERL) and REMS databases.

31
32

33

34 2.1.2 Do the FEU consider that the data location restrictions they seek to
35 have removed are "conditions specified by the commission" under s.44?
36

FortisBC Utilities (consisting of FortisBC Energy Inc., FortisBC Energy (Vancouver Island) Inc. and FortisBC Energy (Whistler) Inc. (the FEU) Application for Removal of the Restriction on the Location of Data and Servers Providing Service to the FEU, currently Restricted to Canada (the Application)	Submission Date: November 12, 2014
Response to B.C. Sustainable Energy Association and Sierra Club of British Columbia (BCSEA) Information Request (IR) No. 1	Page 5

1 **Response:**

2 Please refer to the response to BCSEA IR 1.2.1.1.

3
4

5
6 2.2 If the data location restrictions were removed as requested by the FEU, would
7 s.44 require the subject data to be kept in B.C. and not removed or permitted to
8 be removed from B.C. absent “conditions specified by the commission”?
9

10 **Response:**

11 No. Please refer to the response to BCSEA IR 1.2.1 for a discussion regarding the
12 interpretation of section 44 of the UCA.

13
14

15
16 2.3 If the data location restrictions were removed as requested by FEU, would the
17 FEU need to apply for and receive “conditions specified by the commission” in
18 order to store data outside of B.C. due to s.44?
19

20 **Response:**

21 Please refer to the response to BCSEA IR 1.2.1.

22
23

24
25 2.4 Please compare and contrast the implications for the FEU of (a) the data location
26 restrictions the FEU seek to have removed and (b) section 44.
27

28 **Response:**

29 As discussed in the response to BCSEA IR 1.2.1.1, the data location restriction subject to this
30 Application is imposed as a condition for the approval of the Kinder Morgan acquisition of the
31 then Terasen Utilities under section 54 of the UCA. Section 54(9) states that:

32 (9) The commission may give its approval under this section subject to conditions and
33 requirements it considers necessary or desirable in the public interest, but the
34 commission must not give its approval under this section unless it considers that the

FortisBC Utilities (consisting of FortisBC Energy Inc., FortisBC Energy (Vancouver Island) Inc. and FortisBC Energy (Whistler) Inc. (the FEU) Application for Removal of the Restriction on the Location of Data and Servers Providing Service to the FEU, currently Restricted to Canada (the Application)	Submission Date: November 12, 2014
Response to B.C. Sustainable Energy Association and Sierra Club of British Columbia (BCSEA) Information Request (IR) No. 1	Page 6

1 public utility and the users of the service of the public utility will not be detrimentally
2 affected.

3 This provision gives the Commission the authority and discretion to impose a condition to
4 preserve the public interest in a particular situation where a certain percentage of the utility's
5 shares is being transferred or sold. In the FEU's situation, a condition restricting the geographic
6 location of the data to Canada is imposed under this section in part due to the foreign ownership
7 concern expressed during that proceeding. As the FEU explained in the Application, the
8 condition for such condition is no longer necessary. In order to have this restriction removed,
9 the FEU have filed this Application pursuant to the Commission's orders. (See, e.g., Order G-
10 75-60).

11 In contrast, as explained in the response to BCSEA IR 1.2.1, section 44 specifies that a utility
12 must keep its accounts and records in B.C. if the Commission has ordered it to do so. The
13 process to remove such an order is set out in section 44(2).

14
15

16
17 2.4.1 Is the major difference between the two that the former authorize the
18 FEU to store data only in Canada whereas the latter require the FEU
19 not to store data outside of B.C.?

20

21 **Response:**

22 Please refer to the response to BCUC IR 1.2.4.

23
24

25
26 2.5 With reference to the FEU's response to BCUC IR 8.6, if other B.C. utilities host
27 their data and servers outside of B.C. please indicate whether this is pursuant to
28 "conditions specified by the commission" under s.44(2).

29

30 **Response:**

31 Please refer to the response to the BCUC IR 1.8.6. However, as indicated in that response, the
32 authority under which the condition was imposed is section 54.

33

FortisBC Utilities (consisting of FortisBC Energy Inc., FortisBC Energy (Vancouver Island) Inc. and FortisBC Energy (Whistler) Inc. (the FEU) Application for Removal of the Restriction on the Location of Data and Servers Providing Service to the FEU, currently Restricted to Canada (the Application)	Submission Date: November 12, 2014
Response to B.C. Sustainable Energy Association and Sierra Club of British Columbia (BCSEA) Information Request (IR) No. 1	Page 7

1 **3.0 Topic: Risk assessment**

2 **Reference: Exhibit A-5**

3 BCUC IR 2.9 states: “If there are no specific proposal(s) at this time, please provide a
4 full security risk assessment of the potential harm to customers and the FEU in the event
5 of a security breach or if a foreign jurisdiction requests access to the FEU’s data.”

6 3.1 If FEU provides a response to BCUC IR 2.9 with a request that it be filed in
7 confidence, please provide a summary of the response that is appropriate for
8 public filing.

9
10 **Response:**

11 Please refer to the response to BCUC IR 1.2.9.

12

FortisBC Utilities (consisting of FortisBC Energy Inc., FortisBC Energy (Vancouver Island) Inc. and FortisBC Energy (Whistler) Inc. (the FEU) Application for Removal of the Restriction on the Location of Data and Servers Providing Service to the FEU, currently Restricted to Canada (the Application)	Submission Date: November 12, 2014
Response to B.C. Sustainable Energy Association and Sierra Club of British Columbia (BCSEA) Information Request (IR) No. 1	Page 8

1 **4.0 Topic Data location restrictions under other legislation**

2 **Reference: Decision and Order G-116-05**

3 4.1 Are the FEU bound by commitments made by Kinder Morgan Inc. and 0731297
4 under the *Investment Canada Act* during the acquisition of common shares of
5 Terasen Inc.?

6
7 **Response:**

8 The FEU do not understand the relevance of this question and decline to answer it. The
9 applicable orders arising from the Kinder Morgan acquisition are outlined in the Application.

10
11

12
13 4.2 If so, do any such commitments relate to restrictions on the location of data?
14 Please describe any such commitments. Are they currently in force?

15
16 **Response:**

17 Please refer to the response to BCSEA IR 1.4.2.

18

FortisBC Utilities (consisting of FortisBC Energy Inc., FortisBC Energy (Vancouver Island) Inc. and FortisBC Energy (Whistler) Inc. (the FEU) Application for Removal of the Restriction on the Location of Data and Servers Providing Service to the FEU, currently Restricted to Canada (the Application)	Submission Date: November 12, 2014
Response to B.C. Sustainable Energy Association and Sierra Club of British Columbia (BCSEA) Information Request (IR) No. 1	Page 9

1 **5.0 Topic: Privacy concerns**

2 **Reference: Decision and Order G-116-05; Exhibit B-1, pp.3-4**

3 “The Council of Canadians, Vancouver Chapter (Exhibit C18-8) raise concerns that the
4 privacy of British Columbians may be violated under the provisions of the U.S. *Patriot*
5 *Act* if billing and record keeping functions are relocated to offices within the U.S.”
6 [Decision and Order G-116-05, p.20]

7 “With respect to the privacy concerns raised by the Council of Canadians, Vancouver
8 Chapter, and other concerns about gas procurement and other critical functions, the
9 Commission Panel concludes that it would be appropriate to attach further conditions to
10 the approval of the Transaction to protect customer interests. The Commission Panel
11 notes that under Section 44(2) of the UCA, “[...]a public utility must not remove or permit
12 to be removed from British Columbia an account or record [required by the
13 commission]...except on conditions specified by the Commission. Section 54(9) of the
14 UCA also permits the Commission to attach conditions and requirements to an approval
15 under Section 54 that it considers necessary and desirable in the public interest. **In
16 order to address concerns related to privacy and the general removal of critical
17 functions from the Utilities’ service areas, the Commission Panel concludes that it
18 should establish a condition that requires KMI not to change the geographic
19 location of any existing functions or data currently in the Terasen Utilities’ service
20 areas, without prior approval of the Commission.** [Decision and Order G-116-05,
21 p.39, bold in the original]

22 “The FEU believe that the provincial and federal privacy legislation and framework in
23 place today, along with the FBCU’s privacy policy, sufficiently address any and all
24 privacy concerns, including those that were raised in the initial proceedings in 2005.”
25 [Exhibit B-1, p.4]

26 5.1 Please confirm that the privacy concerns addressed by the commission in
27 Decision and Order G-116-05 included the concern that storing customer
28 information in the United States would potentially allow access to customer
29 information through American legislation such as the U.S. *Patriot Act* that would
30 not be available if the customer information was not stored in the United States. If
31 not confirmed, please explain.

32
33 **Response:**

34 The Order cited in the preamble indicates that the Commission was concerned in part with
35 privacy, and as noted in the Decision the Council of Canadian, Vancouver Chapter, raised
36 concerns with the Patriot Act. However, what specific provisions of foreign law led to the Order

FortisBC Utilities (consisting of FortisBC Energy Inc., FortisBC Energy (Vancouver Island) Inc. and FortisBC Energy (Whistler) Inc. (the FEU) Application for Removal of the Restriction on the Location of Data and Servers Providing Service to the FEU, currently Restricted to Canada (the Application)	Submission Date: November 12, 2014
Response to B.C. Sustainable Energy Association and Sierra Club of British Columbia (BCSEA) Information Request (IR) No. 1	Page 10

1 was not expressly stated, even though the Commission in the decision accompanying the Order
2 referenced concerns raised by the interveners in that proceeding.

3
4

5

6 5.2 Please confirm that in the application the FEU justify the removal of the data
7 location restrictions on the grounds that “any and all privacy concerns, including
8 those raised in the initial proceedings in 2005” (that led to Decision and Order G-
9 116-05) have been “sufficiently addressed” the by provincial (B.C.) and federal
10 (Canadian) privacy legislation and framework in place today.

11

12 **Response:**

13 The FEU can confirm that one of the justifications in support of the request to remove the data
14 location restrictions is that those concerns have been sufficiently addressed by the privacy
15 legislation and framework in place today.

16 Please refer to pages 3 and 4 of the FEU Application and also please refer to the response to
17 BCUC IR 1.4.4.

18

19

20

21 5.3 Do the FEU agree that the B.C. and Canadian federal privacy legislation and
22 framework in place today provides no protection, in law or in practice, against
23 access under U.S. legislation to FEU customer information located in the United
24 States? If not, why not?

25

26 **Response:**

27 Please refer to the response to BCUC IR 1.4.1.

28

FortisBC Utilities (consisting of FortisBC Energy Inc., FortisBC Energy (Vancouver Island) Inc. and FortisBC Energy (Whistler) Inc. (the FEU) Application for Removal of the Restriction on the Location of Data and Servers Providing Service to the FEU, currently Restricted to Canada (the Application)	Submission Date: November 12, 2014
Response to B.C. Sustainable Energy Association and Sierra Club of British Columbia (BCSEA) Information Request (IR) No. 1	Page 11

1 **6.0 Topic: Notice to stakeholders**

2 **Reference: An Application By Kinder Morgan, Inc. and 0731297 B.C. Ltd. for the**
3 **Acquisition of Common Shares of Terasen Inc., Decision and Order**
4 **G-116-05**

5 The proceeding that led to Decision and Order G-116-05 was controversial and had
6 many active intervenors.

7 6.1 Have the FEU provided notice of the current proceeding to the stakeholders who
8 intervened in the proceeding that led to Decision and Order G-116-05? If not,
9 why not?

10

11 **Response:**

12 Yes. Orders G-126-14 and G-150-14 directed that, among other things, the FEU was to send
13 the Public Notice to the parties registered as intervenors in the proceeding that led to Decision
14 and Order G-116-05 (the KMI Proceeding) as well as to participants registered in two other
15 proceedings. On October 1, 2014, the FEU submitted a compliance filing demonstrating that
16 the Public Notice was emailed to the parties registered in the KMI Proceeding on September 2,
17 2014 (in accordance with Order G-126-14) and on September 25, 2014 (in accordance with
18 Order G-150-14).

19