



# **FORTISBC ENERGY INC.**

## **RATE SCHEDULE 36**

### **COMMODITY UNBUNDLING SERVICE**

**Effective January 1, 2004**

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Order No.: G-21-14

Issued By: Diane Roy, Director, Regulatory Services

Effective Date: January 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

Original Page R-36

## TABLE OF CONTENTS

	<b>Page</b>
ARTICLE I PURPOSE .....	R-36.1
ARTICLE II DEFINITIONS .....	R-36.1
ARTICLE III APPLICABLE TERMS AND REPRESENTATIONS.....	R-36.5
ARTICLE IV TITLE, WARRANTY AND INDEMNITY .....	R-36.6
ARTICLE V CUSTOMER ELIGIBILITY, ENROLMENT AND DROPS.....	R-36.7
ARTICLE VI ENTRY DATES AND TERM.....	R-36.10
ARTICLE VII DELIVERY REQUIREMENTS.....	R-36.11
ARTICLE VIII PURCHASE PRICE .....	R-36.13
ARTICLE IX RECEIPT POINTS .....	R-36.13
ARTICLE X FUEL.....	R-36.15
ARTICLE XI QUALITY AND MEASUREMENT.....	R-36.16
ARTICLE XII TRANSPORTATION, NOMINATIONS AND IMBALANCES CHARGES .....	R-36.16
ARTICLE XIII PERFORMANCE OBLIGATION AND MARKETER FAILURE.....	R-36.17
ARTICLE XIV FORCE MAJEURE .....	R-36.19
ARTICLE XV MARKETER BILLING, PAYMENT AND NETTING.....	R-36.21
ARTICLE XVI TRANSACTION FEES .....	R-36.23
ARTICLE XVII BILLING OF CUSTOMER .....	R-36.24
ARTICLE XVIII BAD DEBT FACTOR .....	R-36.26
ARTICLE XIX TAXES .....	R-36.27
ARTICLE XX ASSIGNMENT .....	R-36.28
ARTICLE XXI INTERPRETATION.....	R-36.29
ARTICLE XXII NOTICES.....	R-36.29
ARTICLE XXIII MISCELLANEOUS.....	R-36.30
ARTICLE XXIV LIMITATIONS .....	R-36.32
ARTICLE XXV CONDITION PRECEDENT .....	R-36.32

Order No.: G-21-14

Issued By: Diane Roy, Director, Regulatory Services

Effective Date: January 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

Original Page R-36.i

APPENDIX "A" TRANSACTION NOTIFICATION ..... R-36.33  
APPENDIX "B" TABLE OF CONTENTS ..... R-36.34  
APPENDIX "C" NOTICE OF APPOINTMENT OF MARKETER..... R-36.35  
APPENDIX "D" SAMPLE OF DELIVERY REQUIREMENT CALCULATION. .... R-36.36

SERVICE AGREEMENT BETWEEN MARKETER AND FORTISBC ENERGY INC..... SA-36.1

## RATE SCHEDULE 36: COMMODITY UNBUNDLING SERVICE

### ARTICLE I PURPOSE

#### Section 1.01 Purpose

The purpose of this Rate Schedule 36 ("Rate Schedule") is to set out the terms and conditions upon which FortisBC Energy will purchase, on a Firm basis, a quantity of Gas from the Marketer that is approximately equal to the aggregated normalized forecast load requirements of Customers enrolled in Commodity Unbundling Service under Rate Schedule 1U, 2U or 3U that have a Gas supply contract with the Marketer. In addition to the purchase of Gas from the Marketer by FortisBC Energy, this Rate Schedule provides for the billing by FortisBC Energy of such Customers for such Gas and other Services provided by FortisBC Energy to the Customers' Premises.

### ARTICLE II DEFINITIONS

#### Section 2.01 Definitions

The following words and terms wherever and whenever used or appearing in this Rate Schedule shall have the following meaning unless the context otherwise requires:

- (a) "AECO NIT" shall mean a Nova Inventory Transfer on the TransCanada Alberta System.
- (b) "Annual Contract Plan" means the supply, transportation and storage portfolio plan for FortisBC Energy that is approved by the BCUC each year.
- (c) "Backstopping Gas" has the meaning set out in Section 13.01.
- (d) "Bad Debt Factor" has the meaning set out in Section 18.01.
- (e) "Bad Debt Reduction" has the meaning set out in Section 15.03.
- (f) "Blended Price" has the meaning set out in Section 8.01.
- (g) "BCUC" shall mean the British Columbia Utilities Commission.

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Order No.: G-21-14

Issued By: Diane Roy, Director, Regulatory Services

Effective Date: January 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

Original Page R-36.1

- (h) "Business Day" shall mean any day except Saturday, Sunday, or a statutory or banking holiday observed in the Province of British Columbia. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant party's principal place of business. The relevant party, in each instance unless otherwise specified, shall be the party to whom the Notice, payment or delivery is being sent and by whom the Notice or payment or delivery is to be received.
- (i) "Commodity Unbundling Service" means the FortisBC Energy Service provided for under Rate Schedules 1U, 2U and 3U whereby a Residential or Commercial Service Customer may arrange for supply of the Gas commodity from a party licensed to do so by the BCUC.
- (j) "Compressor Station 2" means Westcoast Energy Inc.'s compressor station number 2 located near Chetwynd, British Columbia.
- (k) "Customer" shall mean the entity enrolled or applying to be enrolled in Commodity Unbundling Service. For the purposes of this Rate Schedule and the Rate Schedule 36 Service Agreement and the applicability of the General Terms and Conditions of FortisBC Energy, the term "Customer" does not include a party defined as the Marketer under this Rate Schedule.
- (l) "Customer Administration Fee" has the meaning set out in Section 16.03.
- (m) "Delivery Period" means the period from 7:00 a.m. PST on one Entry Date to 7:00 a.m. on the next Entry Date.
- (n) "Dispute Resolution Fee" has the meaning as set out in Section 16.05.
- (o) "Entry Date" has the meaning set out in Section 6.01.
- (p) "Essential Services (ESM) Fee" has the meaning as set out in Section 16.06.
- (q) "ETA" shall mean the Excise Tax Act (Canada).
- (r) "Evening Nomination Cycle" means the final nomination cycle that occurs on the Day immediately preceding the Day of Gas flow that the nomination cycle is for.
- (s) "Firm" shall mean that either party may interrupt its performance without liability only to the extent that such performance is excused by the other party's non-performance or Marketer Failure or is prevented by Force Majeure; provided, however, that during Force Majeure interruptions, the party invoking Force Majeure may be responsible for any Imbalance Charges as set forth in Article XII related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by the Transporter.
- (t) "Fixed Price" shall mean a gas purchase price which is a single, non-tiered price per Gigajoule that does not change for the time period specified.

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Order No.: G-21-14

Issued By: Diane Roy, Director, Regulatory Services

Effective Date: January 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

Original Page R-36.2

- (u) "FortisBC Energy" means FortisBC Energy Inc. and its successors and permitted assigns.
- (v) "Gas Daily Common High" means the Daily Common High Price as set out in Gas Daily's Daily Price Survey for Gas delivered to the particular market hub associated with the applicable Receipt Point. If the Gas Daily price is expressed in U.S. dollars per MMBtu, it shall be converted to Canadian dollars using the noon exchange rate as quoted by the Bank of Canada on the same Business Day as the Gas flow date, for each Day, and energy units shall be converted from MMBtu to Gigajoule by application of a conversion factor equal to 1.055056 Gigajoule per MMBtu.
- (w) "Huntingdon Pool" means the Huntingdon Pool delivery area on the Westcoast Energy Inc. pipeline system.
- (x) "Imbalance Charges" shall mean any fees, penalties, costs or charges (in cash or in kind) assessed by a Transporter for failure to satisfy the Transporter's balance and/or nomination requirements.
- (y) "Late Payment Charge" shall refer to the charge as described in Section 21.1 of the FortisBC Energy General Terms and Conditions and as specified in the Standard Fees and Charges Schedule to the FortisBC Energy General Terms and Conditions, as the same may be amended by FortisBC Energy and approved by the BCUC from time to time.
- (z) "Marketer" means the marketer named on page 1 of the Rate Schedule 36 Service Agreement.
- (aa) "Marketer Failure" has the meaning set out in Section 13.03.
- (bb) "Marketer Failure Notice" has the meaning set out in Section 13.03.
- (cc) "Marketer Group" means all Customers' Premises that Marketer has indicated to FortisBC Energy are Customers' Premises that should be invoiced at the same Commodity Cost Recovery Charge under the Commodity Unbundling Service regardless of their specific rate class or Service Area.
- (dd) "Marketer Group Administration Fee" has the meaning set out in Section 16.02.
- (ee) "Marketer Group Delivery Requirement" has the meaning set out in Section 7.04.
- (ff) "Marketer Group Price" has the meaning set out in Section 5.06.
- (gg) "Month" means, subject to any changes from time to time required by FortisBC Energy, the period beginning on the first Day of the calendar month and ending on the first Day of the next succeeding calendar month.
- (hh) "Notice" shall have the meaning set out in Article XXII.

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Order No.: G-21-14

Issued By: Diane Roy, Director, Regulatory Services

Effective Date: January 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

Original Page R-36.3

- (ii) "Obligated Quantity" shall mean the sum of the Receipt Point Delivery Requirement and Fuel Gas Delivery Requirement for the applicable Receipt Point.
- (jj) "Rate Schedule" means this Rate Schedule 36 of the FortisBC Energy Tariff together with all schedules, tables and appendices attached hereto, as may be amended and approved by the BCUC from time to time.
- (kk) "Rate Schedule 1U" shall mean the FortisBC Energy Rate Schedule 1U, including all rates, terms and conditions, and the Table of Charges, appended thereto, as amended from time to time by FortisBC Energy with approval of the BCUC.
- (ll) "Rate Schedule 2U" shall mean the FortisBC Energy Rate Schedule 2U, including all rates, terms and conditions, and the Table of Charges, appended thereto, as amended from time to time by FortisBC Energy with the approval of the BCUC.
- (mm) "Rate Schedule 3U" shall mean the FortisBC Energy Rate Schedule 3U, including all rates, terms and conditions, and the Table of Charges, appended thereto, as amended from time to time by FortisBC Energy with the approval of the BCUC.
- (nn) "Reallocation" has the meaning set out in Section 7.03.
- (oo) "Receipt Point" shall mean the point(s) specified in Section 9.01 where Marketer delivers Gas to FortisBC Energy under the terms of this Rate Schedule.
- (pp) "Receipt Point Allocation Percentage" shall have the meaning set out in Section 9.02.
- (qq) "Receipt Point Delivery Requirement" shall have the meaning set out in Section 9.02.
- (rr) "Receipt Point Fuel Percentage" has the meaning set out in Section 10.01.
- (ss) "Receipt Point Fuel Requirement" has the meaning set out in Section 10.02.
- (tt) "Receiving Transporter" shall mean the Transporter receiving Gas at a Receipt Point, or absent such receiving Transporter, the Transporter delivering Gas at a Receipt Point.
- (uu) "Scheduled Quantity" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- (vv) "Taxes" shall have the meaning set forth in Section 19.01.
- (ww) "Total Delivery Requirement" shall have the meaning set out in Section 7.05.

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Order No.: G-21-14

Issued By: Diane Roy, Director, Regulatory Services

Effective Date: January 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

Original Page R-36.4

- (xx) "Transaction" shall mean any Gas sale, purchase or exchange agreement effected pursuant to this Rate Schedule or the Rate Schedule Service Agreement between FortisBC Energy and Marketer.
- (yy) "Transaction Notification" shall mean the document in the form of Appendix "A", setting forth the terms of a Transaction for a particular Delivery Period or Day.
- (zz) "Transaction Fee" shall have the meaning set out in Section 16.01.
- (aaa) "Transporter(s)" shall mean all Gas gathering or pipeline companies, or local distribution companies, acting in the capacity of a transporter, transporting Gas for FortisBC Energy or Marketer upstream or downstream, respectively, of the Receipt Point pursuant to a particular Transaction.

All other capitalized terms used in this Rate Schedule, unless otherwise defined in this Rate Schedule, will bear the corresponding meanings as defined in the FortisBC Energy General Terms and Conditions and the Rate Schedule 36 Service Agreement.

## **ARTICLE III            APPLICABLE TERMS AND REPRESENTATIONS**

### **Section 3.01            Applicable Terms**

All rates, terms and conditions as set out in Rate Schedule 1U, Rate Schedule 2U or Rate Schedule 3U as well as the FortisBC Energy General Terms and Conditions shall apply to the Customers that Marketer enrolls in Commodity Unbundling Service.

### **Section 3.02            Marketer Representations**

Marketer represents and warrants that:

- (a) Marketer is licensed as a Gas marketer by the BCUC and will abide by the licensing criteria and code of conduct as established and amended from time to time by the BCUC;
- (b) Marketer has obtained the appropriate Customer signature on the "Notice of Appointment of Marketer", in the form attached as Appendix "C" to this Rate Schedule, for each and every Customer for which the Marketer submits a Commodity Unbundling Service enrolment request; and
- (c) Marketer will adhere to the requirements of the British Columbia Consumer Protection Act, the Personal Information Protection Act, and similar applicable legislative requirements as amended from time to time.

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Order No.:            G-21-14

Issued By: Diane Roy, Director, Regulatory Services

Effective Date:    January 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

Original Page R-36.5



## **ARTICLE IV TITLE, WARRANTY AND INDEMNITY**

### **Section 4.01 Title to Pass at Receipt Point**

Unless otherwise specifically agreed, title to the Gas shall pass from Marketer to FortisBC Energy at the Receipt Point(s). Marketer shall have responsibility for and assume any liability with respect to the Gas prior to its delivery to FortisBC Energy at the specified Receipt Point(s). FortisBC Energy shall have responsibility for and assume any liability with respect to said Gas after its delivery to FortisBC Energy at the Receipt Point(s).

### **Section 4.02 Right to Convey Title**

Marketer warrants that it has the right to convey and will transfer good and merchantable title to all Gas sold hereunder and delivered by it to FortisBC Energy, free and clear of all liens, encumbrances, and claims. As long as this Rate Schedule is in place and Marketer has entered into a Rate Schedule 36 Service Agreement with FortisBC Energy in respect of service under this Rate Schedule, Marketer will ensure that no liens, encumbrances or charges of any kind shall be attached to any of the Gas sold by Marketer to FortisBC Energy under this Rate Schedule.

### **Section 4.03 Indemnity**

Marketer agrees to indemnify FortisBC Energy and save it harmless from all losses, liabilities or claims including reasonable legal fees and costs of court ("Claims"), from any and all persons, arising from or out of claims of title, personal injury or property damage from said Gas and other charges thereon which attach before title passes to FortisBC Energy. FortisBC Energy agrees to indemnify Marketer and save it harmless from all Claims, from any and all persons, arising from or out of claims regarding payment, personal injury or property damage from said Gas or other charges thereon which attach after title passes to FortisBC Energy.

### **Section 4.04 Liability for Claims**

Notwithstanding the other provisions of this Article IV, as between Marketer and FortisBC Energy, Marketer and FortisBC Energy, Marketer will be liable for all Claims to the extent that such arise from a failure of Gas delivered by Marketer to meet the quality requirements of Article XI, or Marketer's breach of its warranty obligations pursuant to Section 4.02.

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Order No.: G-21-14

Issued By: Diane Roy, Director, Regulatory Services

Effective Date: January 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

Original Page R-36.6

## **ARTICLE V                    CUSTOMER ELIGIBILITY, ENROLMENT AND DROPS**

### **Section 5.01                    Customer Eligibility**

Residential and Commercial Service Customers currently enrolled under Rate Schedule 1, 2, 3 and 23 in any FortisBC Energy Service Area, except for the Municipality of Revelstoke, are eligible to be enrolled by the Marketer in the Commodity Unbundling Service provided that the Customer provides the required notice of change from the Customer's existing Rate Schedule to the applicable Commodity Unbundling Service Rate Schedule at the subject Premises. Customers who are currently disconnected at a particular Premises for any reason are not eligible to enrol such Premises in the Commodity Unbundling Service.

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### **Section 5.02**

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### **Section 5.03                    Notice of Appointment of Marketer**

For each Customer with whom the Marketer has entered into a contract to supply Gas under Commodity Unbundling Service, Marketer must ensure that the Customer has signed a Notice of Appointment of Marketer, in the form attached as Appendix "C" to this Rate Schedule, authorizing FortisBC Energy to disclose to the Marketer the Customer's historical and ongoing Gas consumption information on a billing cycle basis for such Premises as well as the address and telephone number of a new Premises should the Customer move from the existing Premises. In addition, the Marketer must provide the Customer with a copy of "The Natural Gas Commodity Unbundling Program" booklet.

FortisBC Energy shall have the right to request a copy of the Marketer's contract with the Customer and/or the Notice of Appointment of Marketer for any such Customer Premises. Such request shall be in writing. Marketer shall be required to forward a copy of the requested document within 5 Business Days of receipt of such written request.

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Order No.:            G-21-14

Issued By: Diane Roy, Director, Regulatory Services

Effective Date:    November 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

First Revision of Page R-36.7

#### **Section 5.04            Enrolment**

Marketer must hold a valid license from the BCUC and must have executed a Rate Schedule 36 Service Agreement with FortisBC Energy prior to submitting requests to enrol Customers' Premises in Commodity Unbundling Service. Requests for enrolment of Customer Premises will not be accepted prior to execution of this Service Agreement and will not be accepted in the event the Marketer's license is suspended, revoked or pending at the time the enrolment request is submitted.

Marketer shall be solely responsible for submitting to FortisBC Energy the enrolment request in respect of the Customer Premises in Commodity Unbundling Service. FortisBC Energy will not accept enrolment requests directly from Customers and will not be responsible for the failure of Marketer to submit to FortisBC Energy an enrolment request in respect of any Customer's Premises. All enrolment requests shall be on a Premises specific basis.

Marketer shall submit Customer Premises enrolment requests in a timely fashion in the electronic format required by FortisBC Energy. Enrolments will be received by FortisBC Energy on a first come first served basis from Marketers. FortisBC Energy will indicate to the Marketer in a timely fashion in an electronic format which enrolments have been accepted as valid and which enrolments have been rejected. FortisBC Energy shall also indicate the Marketer Group in which that the Customer Premises has been enrolled in. Once a Customer is enrolled with a Marketer and FortisBC Energy has accepted the enrolment, the Customer cannot be enrolled by another Marketer until enrolment is terminated as per Section 5.06.

#### **Section 5.05            Limitations on Enrolment**

Aggregate enrolment limits may be approved by the BCUC for a particular Entry Date for Commodity Unbundling Service. In the event a total enrolment limit is approved, Marketer shall be informed of the limit at least 3 months prior to the subject Entry Date. FortisBC Energy shall maintain an up-to-date running total of the aggregate number of valid enrolments and shall make this information available to Marketer and all other participating marketers. In the event and at the point in time that the total enrolment for such Entry Date reaches the approved limit, FortisBC Energy will no longer accept enrolment requests for the subject Entry Date.

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Order No.:            G-21-14

Issued By: Diane Roy, Director, Regulatory Services

Effective Date:    January 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

Original Page R-36.8

## **Section 5.06                      Marketer Group and Marketer Group Price**

Prior to submitting Customer Premises enrolment requests, Marketer shall communicate to FortisBC Energy, via the electronic format determined by FortisBC Energy, the Gas commodity price and the Entry Date on which this price shall become effective. FortisBC Energy shall use this price for the purpose of establishing a Commodity Cost Recovery Charge for Customer Premises that the Marketer will subsequently enrol in Commodity Unbundling Service. The price established in the contract between the Marketer and the Customer must be a Fixed Price for 12 Months and may only be changed once per Year on the anniversary of the Entry Date on which the Customer was first enrolled in Commodity Unbundling Service with the Marketer.

Marketer may establish more than one such price with different groups of Customers. Each such price must be expressed as a single Fixed Price per Gigajoule in Canadian dollars taken to a maximum of four decimal places. Such price shall not include amounts payable by the Customer to the Marketer for services other than the Gas commodity cost. Only one such Fixed Price shall be applicable for a particular Customer Premises at any time.

FortisBC Energy shall establish one Marketer Group for each Fixed Price. FortisBC Energy shall assign a unique Marketer Group ID number to the Marketer Group. All Customer Premises that the Marketer has indicated should be invoiced at this price shall be enrolled in the same Marketer Group regardless of rate class or Service Area. Such price shall be referred to as the "Marketer Group Price" and shall be used in the determination of the purchase price for the Gas sold to FortisBC Energy by Marketer under a Rate Schedule 36 Service Agreement. The Marketer shall indicate the appropriate Fixed Price by referencing the appropriate Marketer Group ID when enrolling Customer Premises.

The Customer Premises will remain enrolled in the appropriate Marketer Group until either the Marketer gives notice to FortisBC Energy that the Customer should be enrolled in a different Marketer Group effective a prospective Entry Date, the Customer account with FortisBC Energy is terminated, or the Customer's contract with the Marketer is not continued. The Customer Premises will be removed from the applicable Marketer Group effective the Entry Date specified by the Marketer except where the Customer's account for a Premises is terminated. In the event the Customer's account for a Premises is terminated, the Customer Premises will be removed from the Marketer Group effective the account termination date.

Where no instructions are received by FortisBC Energy from the Gas Marketer prior to the cut-off date for the applicable Customer's renewal, and/or FortisBC Energy has not received a valid enrolment request for the same Customer from a new gas Marketer to enrol the Customer under a different Marketer Group, the Customer will automatically become a Customer of FortisBC Energy.

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Order No.:            G-21-14

Issued By: Diane Roy, Director, Regulatory Services

Effective Date:    January 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

Original Page R-36.9

**Section 5.07                    Limitations on Marketer Group Price Changes**

The price for each Marketer Group must be a Fixed Price for 12 Months and can be changed no more often than once per Year and only then on the anniversary of the initial Entry Date for the Marketer Group. Notices of price changes for a Marketer Group must be sent to FortisBC Energy by midnight on the night before the 1st of the Month that is one calendar months in advance of the effective date of the requested price change.

**Section 5.08                    Customer Not Renewing With Marketer**

If the Customer does not continue to enroll in the Marketer's service at an agreed upon rate at the end of the term of the Customer's contract for Commodity Unbundling Service supply with Marketer for a particular Premises, the contract with the Marketer will expire and the Customer will automatically become a Customer of FortisBC Energy.

**ARTICLE VI                    ENTRY DATES AND TERM**

**Section 6.01                    Entry Dates**

The effective dates upon which Customers may commence Commodity Unbundling Service at a Premises are the first Day of each Month commencing November 1, 2007. Commercial Customers will switch from quarterly to monthly entry dates commencing December 1, 2007. Customer Premises enrolment requests must be submitted to FortisBC Energy by Marketer by midnight on the night before the 1st of the Month that is one calendar month in advance of the applicable Entry Date.

Subject to the foregoing, Marketer may request enrolment of a Customer's Premises in a Marketer Group or removal of a Customer's Premises from a Marketer Group by FortisBC Energy at any time but any such enrolment or removal will only be effective as of the next Entry Date following Notice of such request.

**Section 6.02                    Customer Contract Term**

Customers must enrol Premises in Commodity Unbundling Service for a minimum term of one Year and a maximum term of five Years. The term of the Commodity Unbundling Service supply contract with the Marketer must be a multiple of one full Year.

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Order No.:            G-21-14

Issued By: Diane Roy, Director, Regulatory Services

Effective Date:    January 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

Original Page R-36.10

### **Section 6.03            Term of Service Agreement**

Subject to Section 6.03 of this Rate Schedule, the Rate Schedule 36 Service Agreement between FortisBC Energy and Marketer may be terminated upon 30 days Notice but shall remain in effect until the expiration of the latest Delivery Period of any Transaction Notification(s). The rights of either party pursuant to Article XV of this Rate Schedule, the obligations to make payment hereunder, and the obligation of either party to indemnify the other pursuant hereto shall survive the expiry or earlier termination of the Rate Schedule 36 Service Agreement between FortisBC Energy and Marketer.

## **ARTICLE VII            DELIVERY REQUIREMENTS**

### **Section 7.01            FortisBC Energy Annualized Weather Normalized Forecast**

FortisBC Energy completes an annual weather normalized forecast of consumption annually for budget purposes. This forecast is used in the development of the FortisBC Energy Annual Contract Plan which is approved by the BCUC in the first quarter of each Year. For the purposes of this Rate Schedule, this forecast will also serve as the basis for determining the delivery requirements for Gas purchases from marketers serving Customers Premises enrolled in the Commodity Unbundling Service. The daily delivery requirements for the Gas purchases from Marketer under this Rate Schedule shall be an aggregate of the Customer Premises specific weather normalized forecast annual consumption divided by 365. For Commodity Unbundling Service and for the purposes of this Rate Schedule, these forecast requirements shall become effective November 1<sup>st</sup> following the effective date of the Annual Contract Plan based on such forecast and shall remain unchanged on a Customer Premises basis until November 1<sup>st</sup> of the following Year, subject to the adjustments described in Section 7.02.

### **Section 7.02            Adjustments to Delivery Requirements Due to Re-Forecasts**

FortisBC Energy may undertake a mid-year re-forecast of the aggregate annualized weather normalized forecast consumption. Variances between the re-forecast and the original forecast described in Section 7.01, at the aggregate level, that are due solely to changes in consumer consumption behaviour will be quantified. If the re-forecast is materially different from the forecast used to determine the previous November 1<sup>st</sup> requirements, FortisBC Energy, with the approval of the BCUC, may utilize the revised forecast for the purposes of re-determining delivery requirements under Commodity Unbundling Service. The Marketer Group Delivery Requirements will then be re-determined by FortisBC Energy accordingly for each Marketer Group to be effective the next effective Entry Date following the re-forecast, for which 10 days Notice of the new Marketer Group Delivery Requirements can be provided.

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Order No.:            G-21-14

Issued By: Diane Roy, Director, Regulatory Services

Effective Date:    January 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

Original Page R-36.11

In addition to the mid-year re-forecast, FortisBC Energy reserves the right, to re-forecast the annualized weather normalized forecast consumption for Customers' Premises in a particular Marketer Group and/or determine new Marketer Group Delivery Requirements, with the approval of the BCUC in the event FortisBC Energy determines that the consumer consumption behaviour has changed in some significant and material fashion for the Customer Premises in the Marketer Group or determines that there has been a significant degree of attrition of Customer Premises from the Marketer Group due to account terminations.

Material changes are defined as those that would result in significant Midstream Cost Recovery Charge implications should the new Marketer Group Delivery Requirements not be determined and implemented by FortisBC Energy.

### **Section 7.03 Reallocation of Customers**

Following the close of the enrolment period at midnight on the night before the 1st of the Month that is one calendar month prior to each particular Entry Date, FortisBC Energy will undertake a reallocation ("Reallocation") of Customer Premises to each Marketer Group taking into account the enrolment of Customer Premises by Marketer and the attrition of Customer Premises from the Marketer Groups due to account terminations, Customer Premises enrolment with other marketers and the Customer Premises drops due to non-renewals. Based on this Reallocation, FortisBC Energy will re-determine the Customer Premises enrolled in each Marketer Group effective each Entry Date.

### **Section 7.04 Marketer Group Delivery Requirement**

The Marketer Group delivery requirement ("Marketer Group Delivery Requirement") for a Delivery Period will be based on the FortisBC Energy's annualized weather normalized forecast associated with the specific Customer Premises enrolled in the Marketer Group effective the Entry Date on which the Delivery Period commences, taking into account any scheduled or unscheduled mid-year re-forecast that may have triggered revisions to the Marketer Group Delivery Requirements as described in Section 7.02 and the Reallocation of Customer Premises described in Section 7.03.

FortisBC Energy shall communicate the Marketer Group Delivery Requirements to Marketers via Notice at least 10 days in advance of each Entry Date. Marketer Group Delivery Requirements will become effective on the next Entry Date and shall apply for the full duration of the Delivery Period.

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Order No.: G-21-14

Issued By: Diane Roy, Director, Regulatory Services

Effective Date: January 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

Original Page R-36.12

**Section 7.05 Total Delivery Requirements**

The total delivery requirement ("Total Delivery Requirement") shall be the sum of the Marketer Group Delivery Requirements for all of Marketer's Marketer Groups. The Total Delivery Requirement shall be determined for each Delivery Period and represents the quantity of Gas to be purchased by FortisBC Energy from the Marketer under this Rate Schedule for each Day in the applicable Delivery Period.

**ARTICLE VIII PURCHASE PRICE**

**Section 8.01 Blended Price**

The purchase price for the Total Delivery Requirement shall be a weighted average price, rounded to the fourth decimal place, based on the Marketer Group Delivery Requirements for each Marketer Group and the Marketer Group Price that the Marketer has indicated is applicable for the Marketer Group. Such weighted average price shall be referred to as the "Blended Price".

**ARTICLE IX RECEIPT POINTS**

**Section 9.01 Applicable Receipt Points**

The applicable Receipt Points shall be as follows:

- (a) Huntingdon Pool;
- (b) Compressor Station 2; and
- (c) AECO NIT.

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Order No.: G-21-14

Issued By: Diane Roy, Director, Regulatory Services

Effective Date: January 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

Original Page R-36.13



## **Section 9.02            Receipt Point Delivery Requirement**

The Total Delivery Requirement shall be allocated to the applicable Receipt Points on the basis of allocation percentages that are determined annually to be effective November 1<sup>st</sup> of each Year. The Receipt Point allocation percentages (“Receipt Point Allocation Percentages”) shall be the same allocation percentages as the market hub allocations approved by the BCUC in the FortisBC Energy Annual Contract Plan for a Gas Year as filed with the BCUC. Receipt Point Allocation Percentages will remain unchanged until the next November 1<sup>st</sup> and will apply to any revisions to the Total Delivery Requirements that come into effect during the Year. FortisBC Energy will communicate these Receipt Point Allocation Percentages to Marketers via a Notice at least 30 days in advance of each November 1<sup>st</sup>.

FortisBC Energy reserves the right to change the Receipt Point Allocation Percentages effective an Entry Date other than November 1<sup>st</sup> in the event the BCUC approves a change to the Annual Contract Plan, on which the Receipt Point Allocation Percentages are based, which alters the market hub allocation percentages. FortisBC Energy shall provide Marketer Notice of such change at least 30 days in advance of the subject Entry Date. | C

The Receipt Point delivery requirement (“Receipt Point Delivery Requirement”) shall be the quantity calculated by multiplying the Total Delivery Requirement by the applicable Receipt Point Allocation Percentage. The Receipt Point Delivery Requirement shall be the Firm delivery requirement for the purchase of Gas by FortisBC Energy from the Marketer at each applicable Receipt Point for each Day during the applicable Delivery Period.

## **Section 9.03            Transaction Notification**

FortisBC Energy will send to Marketer a Transaction Notification 10 days in advance of each Entry Date to be effective on the specified Entry Date. There will be one Transaction Notification for each Receipt Point. The Firm quantity of Gas to be purchased by FortisBC Energy from Marketer at the Receipt Point for each Day during the Delivery Period will be the Receipt Point Delivery Requirement and the price will be the Blended Price.

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Order No.:            A-12-15

Issued By: Diane Roy, Director, Regulatory Services

Effective Date:    January 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

First Revision of Page R-36.14

## **ARTICLE X            FUEL**

### **Section 10.01            Receipt Point Fuel Percentages**

Fuel will be provided in-kind by Marketer at each Receipt Point. The fuel in-kind quantities shall be based on Receipt Point fuel percentages (“Receipt Point Fuel Percentages”) that are applied against the Receipt Point Delivery Requirements. The same Receipt Point Fuel Percentages will apply to all marketers participating in Commodity Unbundling Service. Receipt Point Fuel Percentages will be determined annually to be effective November 1<sup>st</sup> each Year based on a forecast of the applicable Transporter fuel percentages for the transportation of Gas from the Receipt Points to the FortisBC Energy interconnections with the applicable Transporters and based on the Annual Contract Plan approved by the BCUC for the Year commencing that November 1<sup>st</sup>. The Receipt Point Fuel Percentages will remain in effective until the next November 1<sup>st</sup>. FortisBC Energy will communicate the Receipt Point Fuel Percentages to Marketer via Notice at least 30 days in advance of each November 1<sup>st</sup>.

In the event the actual fuel percentage experienced is materially different than the Receipt Point Fuel Percentage, FortisBC Energy reserves the right to adjust the particular Receipt Point Fuel Percentage effective any Entry Date prior to November 1<sup>st</sup> provided FortisBC Energy first obtains BCUC approval of such change and then provides Marketer Notice of such change at least 30 days in advance of the subject Entry Date.

### **Section 10.02            Receipt Point Fuel Requirement**

The applicable Receipt Point Fuel Percentage will be multiplied by the Receipt Point Delivery Requirement in effect for each Delivery Period to determine the applicable Receipt Point fuel requirement (“Receipt Point Fuel Requirement”) for each Receipt Point for the subject Delivery Period. The Receipt Point Fuel Requirement for each applicable Receipt Point shall be a Firm delivery requirement from the Marketer to FortisBC Energy for each Day during the Delivery Period. FortisBC Energy will notify Marketer of the Receipt Point Fuel Requirement by sending a Transaction Notification to Marketer at least 30 days in advance of the subject Delivery Period.

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Order No.:            G-21-14

Issued By: Diane Roy, Director, Regulatory Services

Effective Date:    January 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

Original Page R-36.15

## **ARTICLE XI           QUALITY AND MEASUREMENT**

### **Section 11.01           Quality and Measurement**

All Gas delivered by Marketer shall meet the pressure, quality and heat content requirements of the Receiving Transporter. The unit of quantity measurement for purposes of this Rate Schedule shall be specified as one GJ. Measurement of Gas quantities hereunder shall be in accordance with the established procedures of the Receiving Transporter.

## **ARTICLE XII           TRANSPORTATION, NOMINATIONS AND IMBALANCES CHARGES**

### **Section 12.01           Responsibility for Transportation**

Marketer shall have the sole responsibility for transporting the Gas to the Receipt Point(s) and for delivering such Gas at a pressure sufficient to effect such delivery but not to exceed the maximum operating pressure of the Receiving Transporter. FortisBC Energy shall have the sole responsibility for transporting the Gas from the Receipt Point(s).

### **Section 12.02           Nominations**

The parties shall co-ordinate their Gas nomination and scheduling activities, giving sufficient time to meet the deadlines of the affected Transporter(s). Each party shall give the other party timely prior operational notice, sufficient to meet the requirements of all Transporter(s) involved in the Transaction, of the quantities of Gas to be delivered and purchased each Day. Such operational notice may be made by any mutually agreeable means, including phone, fax and email.

### **Section 12.03           Responsibility for Imbalance Charges**

The parties shall use commercially reasonable efforts to avoid imposition of any Imbalance Charges. If FortisBC Energy or Marketer receives an invoice from a Transporter that includes Imbalance Charges, the parties shall determine the validity as well as the cause of such Imbalance Charges. Each party shall be responsible for any and all Imbalance Charges incurred by that party.

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Order No.:           G-21-14

Issued By: Diane Roy, Director, Regulatory Services

Effective Date:    January 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

Original Page R-36.16

**Section 12.04 Fuel Gas Priority**

Receipt Point Fuel Requirements and Receipt Point Delivery Requirement are to be separate nominations at each Receipt Point. Marketer shall ensure that Receipt Point Fuel Requirements shall have a higher delivery priority than Receipt Point Delivery Requirements.

**ARTICLE XIII PERFORMANCE OBLIGATION AND MARKETER FAILURE**

**Section 13.01 Backstopping Gas**

Except for cases of Force Majeure, a mandatory sale of backstopping Gas ("Backstopping Gas") from FortisBC Energy to Marketer in a quantity equal to the amount of the shortfall will be deemed to have occurred in the event there is a shortfall between the total Scheduled Quantity at the Receipt Point and the Obligated Quantity at the Receipt Point for any Day. The Fuel Gas Delivery Requirement shall be determined to have been fulfilled in priority to the Receipt Point Delivery Requirement at each Receipt Point in quantifying the amount of the shortfall to be made up by Backstopping Gas.

In the event the shortfall was due to actions of Marketer, for the Huntingdon Pool Receipt Point only, the Backstopping Gas sale quantity shall be determined based on the lesser of the Scheduled Quantity at the completion of the Evening Nomination Cycle on the day preceding the Day of Gas flow and the Scheduled Quantity at the completion of any of the nomination cycles for the Day that occur on the Day of Gas flow. For all Receipt Points except for the Huntingdon Pool Receipt Point, the Backstopping Gas quantity shall be equal to the shortfall between the Obligated Quantity and the final Scheduled Quantity for the Day of Gas flow. In the event the shortfall was due to actions of FortisBC Energy, the Backstopping Gas sale quantity shall be determined based on the Scheduled Quantity at the completion of the final nomination cycle for the Day of Gas flow.

A deemed sale of Backstopping Gas will be triggered by all delivery shortfalls whether caused by actions of FortisBC Energy or Marketer with the exception of events of Force Majeure. A separate Transaction Notification will be sent by FortisBC Energy to the Marketer for each Day that a Backstopping Gas sale occurs.

**Section 13.02 Backstopping Gas Sale Price**

The price for Backstopping Gas sales shall be set out in Appendix "B". Changes to the Backstopping Gas sale price shall be as approved by the BCUC from time to time.

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Order No.: G-21-14

Issued By: Diane Roy, Director, Regulatory Services

Effective Date: January 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

Original Page R-36.17

### **Section 13.03            Marketer Failure**

If, in the opinion of FortisBC Energy, Backstopping Gas sales due to actions of the Marketer demonstrate a pattern of shortfalls suggestive of inability or unwillingness of Marketer to continue to comply with its Gas delivery obligations under this Rate Schedule, FortisBC Energy will request that the BCUC issue an order ("BCUC Order") returning the Customers to FortisBC Energy as supplier of last resort and revoking the Marketer's license as Gas marketer ("Marketer Failure"). Marketer Failure shall have been deemed to have occurred effective the date the BCUC Order returns the Customers to FortisBC Energy system supply. The trigger for initiating FortisBC Energy's request for the BCUC Order due to Marketer Failure shall be any one of the following:

- (a) 4 Days, not necessarily consecutive, of complete failure by Marketer to deliver to FortisBC Energy the Obligated Quantities in their entirety for the Days in question at any of the applicable Receipt Points in any rolling 30 Day period; or
- (b) failure of Marketer to deliver to FortisBC Energy an aggregate of at least 85% of the Obligated Quantities on an individual Receipt Point basis for any rolling 30-Day period; or
- (c) failure of Marketer to deliver to FortisBC Energy an aggregate of at least 85% of the total of the Obligated Quantities at all of the Receipt Points for any rolling 30-Day period.

FortisBC Energy will send a Notice ("Marketer Failure Notice") to the Marketer in the event that FortisBC Energy applies to the BCUC for an order declaring Marketer Failure and revoking the Marketer's license as Gas Marketer. Issuance of such Marketer Failure Notice would also suspend Marketer's right to resume deliveries under this Agreement until further Notice. Remittances by FortisBC Energy will also be suspended effective the date of the Marketer Failure Notice. In the event the BCUC issues an order declaring Marketer failure and/or revoking the Marketer's license, all of the Customer Premises enrolled in the Marketer's Marketer Groups on the effective date of the order will be returned to FortisBC Energy as supplier of last resort effective the date indicated in the BCUC order.

### **Section 13.04            Marketer License Revoked**

In the event that the BCUC revokes Marketer's license for any reason including Marketer Failure, all of the Customer Premises enrolled in Marketer's Marketer Groups on the effective date that Marketer's license is revoked will be returned to FortisBC Energy effective the date that the BCUC indicates the Marketer's license is revoked.

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Order No.:            G-21-14

Issued By: Diane Roy, Director, Regulatory Services

Effective Date:    January 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

Original Page R-36.18

**Section 13.05 Remedies Not Exhaustive**

In the event of breach by the Marketer of any of its obligations under this Rate Schedule or the Rate Schedule 36 Service Agreement, FortisBC Energy shall have the right to pursue any and all remedies which FortisBC Energy may have at law or in equity against the Marketer, and will not be restricted by the remedies referred to in Sections 13.02, 13.03 and 13.04 above or elsewhere in this Rate Schedule, the Rate Schedule 36 Service Agreement or the FortisBC Energy General Terms and Conditions.

**ARTICLE XIV FORCE MAJEURE**

**Section 14.01 Relief Due to Force Majeure**

Except with regard to a party's obligation to make payment due under this Rate Schedule or the Rate Schedule 36 Service Agreement, neither party shall be liable to the other party for failure to perform any of its obligations hereunder or under the Rate Schedule 36 Service Agreement, to the extent and only for the period during which such failure was caused by Force Majeure as defined in Section 14.02 below.

**Section 14.02 Definition of Force Majeure**

Force Majeure shall mean any event or occurrence which is not within the reasonable control of a party and shall include but not be limited to the following:

- (a) Physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe;
- (b) Interruptions or curtailments of FortisBC Energy's or Marketer's firm delivery or takeaway transportation service at the Receipt Point(s) caused by FortisBC Energy's Transporter or Marketer's Transporter;
- (c) Acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars; and
- (d) Governmental actions such as necessity for compliance with any court order, law, statute, ordinance, or regulation promulgated by a governmental authority having jurisdiction.

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Order No.: G-21-14

Issued By: Diane Roy, Director, Regulatory Services

Effective Date: January 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

Original Page R-36.19

FortisBC Energy and Marketer shall make reasonable efforts to avoid the adverse impact of Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance as soon as reasonably practicable.

### **Section 14.03 Force Majeure Exclusions**

Neither party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances:

- (a) The curtailment of interruptible or secondary firm transportation or gathering and processing service;
- (b) The loss or failure of Marketer's Gas supply or depletion of Gas reserves;
- (c) The party claiming Force Majeure failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or
- (d) Economic hardship or changes in Gas market conditions.

In any event, the party claiming Force Majeure shall not be excused from its responsibility for Imbalance Charges.

### **Section 14.04 Labour Disputes**

Notwithstanding anything to the contrary herein, the parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be entirely within the sole discretion of the party experiencing such disturbance.

### **Section 14.05 Notice of Force Majeure**

The party whose performance is prevented by Force Majeure must provide Notice to the other party. Initial notification may be given orally; however, written Notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing notification of Force Majeure to the other party, the affected party will be relieved of its obligation to make or accept delivery of Gas as applicable to the extent and for the duration of the Force Majeure, and neither party shall be deemed to have failed in such obligations to the other during such occurrence or event.

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Order No.: G-21-14

Issued By: Diane Roy, Director, Regulatory Services

Effective Date: January 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

Original Page R-36.20

**Section 14.06 Pro-rating and Priority of Firm Obligations**

In the event of non-performance due to Force Majeure, the affected party shall, to the extent permitted by the Transporters, prorate all Firm obligations at the affected Receipt Point and shall give Firm obligations priority over all interruptible obligations.

**ARTICLE XV MARKETER BILLING, PAYMENT AND NETTING**

**Section 15.01 Invoicing**

Marketer shall invoice FortisBC Energy for the Receipt Point Delivery Requirement for each Day in the preceding Month for each Receipt Point. Marketer shall deduct the applicable Bad Debt Reduction, all applicable Backstopping Gas sales amounts, and applicable Transaction Fees.

Marketer shall provide supporting documentation acceptable in industry practice to support the amount charged. If the actual quantity delivered is not known by the billing date, billing will be prepared on the Scheduled Quantity, plus the Backstopping Gas quantity. The invoiced quantity will then be adjusted to the actual quantity on the following Month's billing or as soon thereafter as actual delivery information is available.

**Section 15.02 Payment**

With the exception of Force Majeure events, FortisBC Energy shall remit payment to the Marketer for the purchase of Gas at each Receipt Point for each Month. Payment will be based on the Receipt Point Delivery Requirement in effect for each Day of the Month and the Blended Price. As such, remittances will include payment for shortfalls that have been covered by Backstopping Gas sales but not shortfalls due to Force Majeure. Payment will be on the 25th day of the following Month, provided that, if the payment date is not a Business Day, payment will be due on the preceding Business Day. All remittances from FortisBC Energy to Marketer will be effected via electronic funds transfer as directed by Marketer.

In the event of Force Majeure, delivery shortfalls will not be made up with Backstopping Gas sales and remittances from FortisBC Energy to the Marketer will be based on actual Scheduled Quantities.

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Order No.: G-21-14

Issued By: Diane Roy, Director, Regulatory Services

Effective Date: January 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

Original Page R-36.21



**Section 15.03            Bad Debt Reduction**

Remittances from FortisBC Energy to the Marketer for all Gas sold by Marketer to FortisBC Energy shall be reduced by an amount ("Bad Debt Reduction") equal to the Bad Debt Factor multiplied by the Blended Price multiplied by the Total Delivery Requirement multiplied by the number of Days in the Month. Backstopping Gas sale charges and Transaction Fees will also be netted by FortisBC Energy against remittances otherwise due from FortisBC Energy to the Marketer under Section 15.02.

Subject to the provisions of this Section 15.03, FortisBC Energy shall make remittance to the Marketer regardless of the payment status of the Customer bill.

**Section 15.04            Payment from Marketer to FortisBC Energy**

In any event any payments are due from Marketer to FortisBC Energy hereunder, payment to FortisBC Energy shall be made by the due date specified in Section 15.02 above.

**Section 15.05            Interest Charges on Late Payments from Marketer or FortisBC Energy**

If a party fails to remit the full amount payable by it when due, interest on the unpaid portion shall accrue from the date due until the date of payment at a rate equal to the lower of: (i) the per annum rate of interest identified from time to time as the prime lending rate charged to its most credit worthy customers for commercial loans by the Toronto Dominion Bank, Main Branch, Alberta, Canada, plus two percent per annum, compounded monthly; and (ii) the maximum applicable lawful interest rate.

**Section 15.07            Currency**

Payment shall be made in Canadian currency and in immediately available funds.

**Section 15.08            Netting**

The parties shall net all same currency amounts due and owing, and/or past due, arising under this Rate Schedule and the Rate Schedule 36 Service Agreement such that the party owing the greater amount shall make a single payment of the net amount to the other party in accordance with this Article XV; provided that no payment required to be made pursuant to the terms of any credit support document or agreement shall be subject to netting under this or any other provision of this Rate Schedule or the Rate Schedule 36 Service Agreement.

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Order No.:            G-21-14

Issued By: Diane Roy, Director, Regulatory Services

Effective Date:    January 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

Original Page R-36.22

**Section 15.09            Audit Right**

A party shall have the right, at its own expense, upon reasonable notice and at reasonable times, to examine the books and records of the other party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment or computation made under this Rate Schedule or the Rate Schedule 36 Service Agreement. This examination right shall not be available with respect to proprietary information not directly relevant to the Transactions. All invoices and billings shall be conclusively presumed final and accurate unless objected to in writing, with adequate explanation and/or documentation, within two years after the Month of Gas delivery. All retroactive adjustments under this Article XV shall be made in full by the party owing payment within 30 days of notice and substantiation of such inaccuracy.

**ARTICLE XVI        TRANSACTION FEES**

**Section 16.01            Transaction Fees**

FortisBC Energy will charge the Marketer the transaction fees ("Transaction Fees") as defined in this Article XVI. The current Transaction Fees are set out in Appendix "B". Changes to these Transaction Fees shall be as approved by the BCUC from time to time.

**Section 16.02            Marketer Group Administration Fee**

FortisBC Energy will charge the Marketer a Marketer Group administration fee ("Marketer Group Administration Fee") on a Monthly basis based on the number of Marketer Groups in effect for the Marketer as of the first of that Month.

**Section 16.03            Customer Administration Fee**

FortisBC Energy will charge the Marketer a Commodity Unbundling Service Customer administration fee ("Customer Administration Fee") on a monthly basis based on the total number of invoices that were produced for Customer Premises in respect of which FortisBC Energy has billed the Customer a Commodity Cost Recovery Charge based on a Marketer Group Price during the Month, excluding any invoices that were subsequently reversed within the Month and any invoices in respect of which FortisBC Energy has already charged the Marketer a Customer Administration Fee.

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Order No.:            G-21-14

Issued By: Diane Roy, Director, Regulatory Services

Effective Date:    January 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

Original Page R-36.23

**Section 16.04 Confirmation Letter Fee**

FortisBC Energy will charge the Marketer a Commodity Unbundling Service Confirmation Letter Fee on a monthly basis based on the total number of Confirmation Letters that were produced, and sent out to Customers, upon a Rate Schedule 1, 2 or 3 Customer enrolling with a Marketer for Commodity Unbundling.

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**Section 16.05 Dispute Resolution Fee**

FortisBC Energy will charge the Marketer a Dispute Resolution Fee on a monthly basis based on the total number of at fault disputes as determined by the Commission.

**Section 16.06 Essential Services (ESM) Fee**

FortisBC Energy will not charge the Marketer an Essential Services (ESM) Fee at this time.

**ARTICLE XVII BILLING OF CUSTOMER**

**Section 17.01 FortisBC Energy Solely Responsible for Billing Customers**

FortisBC Energy shall be solely responsible for billing Customers on Commodity Unbundling Service for the cost of the Gas commodity. FortisBC Energy shall also be solely responsible for determining payment options to be offered to Customers, payment processing and credit and collections.

**Section 17.02 Commodity Cost Recovery Charge**

FortisBC Energy shall be entitled to rely on Marketer communication to FortisBC Energy of the applicable Marketer Group Price, as set out in Section 5.04, for the purpose of determining the Commodity Cost Recovery Charge applicable for the Gas supplied by Marketer. FortisBC Energy shall have no independent obligation to verify that price with the Customer. Effective the applicable Entry Date, FortisBC Energy will commence invoicing the Customer a Commodity Cost Recovery Charge equal to the Marketer Group Price that was indicated by the Marketer for the Customer's Premises at the time the Marketer submitted the enrolment request for such Customer Premises.

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Order No.: G-21-14

Issued By: Diane Roy, Director, Regulatory Services

Effective Date: January 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

Original Page R-36.24

Effective the Entry Date that the Customer commences Commodity Unbundling Service at a Premises, FortisBC Energy will display a Commodity Cost Recovery Charge on the Customer's invoice, equal to the applicable Marketer Group Price. FortisBC Energy will also display on the Customer's invoice Marketer's name and Marketer's telephone contact number for Customer enquiries regarding the Commodity Cost Recovery Charge. FortisBC Energy will determine the Commodity Cost Recovery Charges (including any applicable taxes) for Marketer supplied Gas in the same manner as FortisBC Energy determines the FortisBC Energy charges for Commodity Cost Recovery Charges for Customers not enrolled in Commodity Unbundling Service, including the provisions for proration of price changes within a billing period.

**Section 17.03          Same Bill**

FortisBC Energy will bill the Customer for Marketer supplied Gas at a Premises on the same bill as FortisBC Energy bills the Customer for the Basic Charge, Delivery Charge, Midstream Cost Recovery Charge and other charges applicable to the Premises as approved by the BCUC. FortisBC Energy shall continue to bill Customers and bills will be issued to Customers for each Premises on the regular billing cycle as established by FortisBC Energy from time to time.

**Section 17.04          FortisBC Energy Solely Responsible for Collections**

FortisBC Energy shall be responsible for collecting the total amount due on the Customer bill from each Customer. Payments made by Customers to FortisBC Energy pursuant to the bills rendered by FortisBC Energy shall be made without any right of deduction or set-off and regardless of any rights the Customers may have against the Marketer. Non-payment of any amounts designated as Commodity Cost Recovery Charges on the bill shall entitle FortisBC Energy to the same recourse as non-payment of any other FortisBC Energy's charges on the Customer's bill and may result in disconnection or termination by FortisBC Energy of Service, including Commodity Unbundling Service, at the Customer's Premises in accordance with the General Terms and Conditions of FortisBC Energy.

In the event the Customer's account is terminated for a particular Premises, the subject Customer Premises will be removed from the Marketer Group effective the date on which the account was terminated. In the event the Customer wishes to re-enrol such Premises in Commodity Unbundling Service, the Customer will be required to re-apply for FortisBC Energy Service as per the General Terms and Conditions of FortisBC Energy prior to the Marketer submitting the Customer Premises enrolment request. Such enrolment request will be processed according to the procedures set out in Article V of this Rate Schedule and all applicable Transaction Fees and other fees will apply in accordance with this Rate Schedule.

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Order No.:          G-21-14

Issued By: Diane Roy, Director, Regulatory Services

Effective Date:    January 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

Original Page R-36.25

Any Late Payment Charge applicable to a Customer will apply equally to the Commodity Cost Recovery Charges and other charges on the bill. No portion of those Late Payment Charges shall be remitted to the Marketer. FortisBC Energy acknowledges that its recourse with respect to the payment of any amounts owed by a Customer shall be limited to making and enforcing a claim against the Customer. FortisBC Energy shall have no recourse against the Marketer in this regard.

## **ARTICLE XVIII    BAD DEBT FACTOR**

### **Section 18.01        Bad Debt Factor**

The factor (“Bad Debt Factor”) to be used to determine the Bad Debt Reduction as set out in Section 15.03 will be determined based on the overall bad debt FortisBC Energy experiences for all Commercial Service Customers. The Bad Debt Factor will be expressed as a percentage. The Bad Debt Factor shall be fixed effective each November 1<sup>st</sup> each Year based on the overall bad debt recovery forecast used for the purposes of the FortisBC Energy annual budget for the calendar Year that includes such November 1<sup>st</sup> and shall remain unchanged until the next November 1<sup>st</sup>. FortisBC Energy will provide Marketers with written Notice of the Bad Debt Factor at least 30 Days prior to the effective date. FortisBC Energy reserves the right to the change the Bad Debt Factor, with the approval of the BCUC, should the actual overall bad debt experienced by FortisBC Energy for Commercial Service Customers be significantly different from the Bad Debt Factor in effect. FortisBC Energy shall provide Marketer with at least 30 days Notice of any changes to the Bad Debt Factor. All changes will be effective on the first of the Month following the giving of such Notice.

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Order No.:        G-21-14

Issued By: Diane Roy, Director, Regulatory Services

Effective Date:    January 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

Original Page R-36.26

## **ARTICLE XIX      TAXES**

### **Section 19.01            Taxes Related to Gas Purchase by FortisBC Energy**

The party selling the Gas, including any fuel Gas and Backstopping Gas, shall pay or cause to be paid all taxes, fees, penalties, licences, interest or charges imposed by any government authority ("Taxes") on or with respect to the Gas, including any fuel Gas and Backstopping Gas, prior to the Receipt Point(s). The party buying the Gas, including any fuel and Backstopping Gas, shall pay or cause to be paid all Taxes on or with respect to the Gas, including any fuel Gas and Backstopping Gas, at the Receipt Point and all taxes after the Receipt Point(s). If a party is required to remit or pay any Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation in support thereof. The party buying the Gas, including the fuel Gas and Backstopping Gas, may, to the extent possible, pass on all such Taxes to the Customers enrolled in the Commodity Unbundling Service.

### **Section 19.02            GST**

The Blended Price and the Backstopping Gas sale price do not include any amounts payable by the party buying the Gas, including the fuel Gas and Backstopping Gas, for the goods and services tax ("GST") imposed pursuant to the ETA or any similar or replacement value added or sales or use tax enacted under successor legislation. Notwithstanding Section 19.01, the party buying the Gas, including the fuel Gas and Backstopping Gas, will pay to the party selling the Gas, including the fuel Gas and Backstopping Gas, the amount of GST payable for the purchase of that Gas in addition to all other amounts payable under this Rate Schedule or the Rate Schedule 36 Service Agreement. The party selling that Gas will hold the GST payable by the party buying that Gas and will remit such GST as required by law. Both parties shall provide each other with the information required, including GST registration numbers, to make such GST remittance or claim any corresponding input tax credits.

### **Section 19.03            Taxes Payable on Breach, etc.**

In the event that any amount becomes payable pursuant to this Rate Schedule or the Rate Schedule 36 Service Agreement as a result of a breach, modification or termination of this Rate Schedule or the Rate Schedule 36 Service Agreement, the amount payable shall be increased by any applicable Taxes or GST remittable by the recipient in respect of that amount.

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Order No.:            G-21-14

Issued By: Diane Roy, Director, Regulatory Services

Effective Date:    January 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

Original Page R-36.27

**Section 19.04            Taxes on Customer Bill**

FortisBC Energy shall be responsible for collecting the applicable taxes related to the Customer bill from the Customer and for remitting the applicable GST and provincial sales taxes thereon to the appropriate authority.

**ARTICLE XX            ASSIGNMENT**

**Section 20.01            Assignment**

The terms of this Rate Schedule and the Rate Schedule 36 Service Agreement shall be binding upon and inure to the benefit of successors and permitted assigns of the respective parties hereto, and the covenants, conditions, rights and obligations of the Rate Schedule shall run for the full term of the Rate Schedule 36 Service Agreement. Except as otherwise specified in this Article XX of this Rate Schedule, no assignment of the Rate Schedule 36 Service Agreement, in whole or in part, will be made without the prior written consent of the non-assigning party, which consent will not be unreasonably withheld or delayed; provided either party may upon Notice transfer its interest to any parent or affiliate by assignment, merger or otherwise without the prior approval of the other party. Upon any transfer and assumption, the transferor shall not be relieved of nor discharged from any obligations hereunder.

Notwithstanding the provisions above, Marketer may assign the Rate Schedule 36 Service Agreement provided:

- (a) The assignee holds a valid Gas marketer license issued by the BCUC;
- (b) The assignee acknowledges to FortisBC Energy that it will comply with and be bound by all the terms and conditions of this Rate Schedule and the Rate Schedule 36 Service Agreement as assigned to the assignee as of and from the date of the proposed assignment; and
- (c) Marketer has given Notice of such assignment to the BCUC, the Marketer's Customers and FortisBC Energy prior to the effective date of the assignment of the Rate Schedule 36 Service Agreement.

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Order No.:            G-21-14

Issued By: Diane Roy, Director, Regulatory Services

Effective Date:    January 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

Original Page R-36.28

## **ARTICLE XXI      INTERPRETATION**

### **Section 21.01      Interpretation**

This Rate Schedule and the Rate Schedule 36 Service Agreement and all provisions herein and therein will be subject to all applicable and valid statutes, rules, orders and regulations of any Federal, Provincial, or local governmental authority having jurisdiction over the parties, their facilities, or Gas supply, this Rate Schedule, the Rate Schedule 36 Service Agreement, the Transactions or any provisions thereof.

## **ARTICLE XXII      NOTICES**

### **Section 22.01      Notices**

A Transaction Notification will be sent from FortisBC Energy to Marketer at least 30 days in advance of each Entry Date for each Delivery Period for each Receipt Point Delivery Requirement purchase obligation and for each in-kind Receipt Point Fuel Requirement. In the event a Backstopping Gas sale is triggered, a Transaction Notification will be sent the Day following the Day on which the shortfall occurred.

All Transaction Notifications, invoices, payments and other communications made pursuant to this Rate Schedule or the Rate Schedule 36 Service Agreement (“Notices”) shall be in writing and made to the addresses for Notices specified by each respective party from time to time.

All Notices required hereunder may be sent by facsimile or mutually agreeable electronic means, a nationally recognized overnight courier service or hand delivered.

Notice shall be given when received on a Business Day by the addressee. In the absence of proof of the actual receipt date, the following presumptions shall apply. Notices sent electronically or by facsimile shall be deemed to have been received upon the sending party’s receipt of confirmation of a successful transmission; if the day on which such electronic or facsimile Notice is received is not a Business Day or is after five p.m. on a Business Day, then such Notice shall be deemed to have been received on the next following Business Day. Notice by overnight mail or courier shall be deemed to have been received on the next Business Day after it was sent or such earlier time as it is confirmed by the receiving party.

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Order No.:            G-21-14

Issued By: Diane Roy, Director, Regulatory Services

Effective Date:    January 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

Original Page R-36.29



## **ARTICLE XXIII MISCELLANEOUS**

### **Section 23.01 Liabilities**

Provision of the Commodity Unbundling Service set out in this Rate Schedule in no way makes FortisBC Energy liable for any obligation incurred by Marketer in favour of the Marketer's Customers or third parties. Notwithstanding any provision herein, nothing in this Rate Schedule or the Rate Schedule 36 Service Agreement shall be deemed to create an agency relationship between FortisBC Energy and Marketer or any partnership or joint venture or like relationship between them.

### **Section 23.02 Severability**

If any provision in this Rate Schedule or the Rate Schedule 36 Service Agreement is determined to be invalid, void or unenforceable by any court having jurisdiction, such provision shall be deemed to have been severed from the remainder of this Rate Schedule or the Rate Schedule 36 Service Agreement, as the case may be, and such determination shall not invalidate, void or make unenforceable any other provision, agreement or covenant of this Rate Schedule or the Rate Schedule 36 Service Agreement.

### **Section 23.03 No Continuing Waiver**

No waiver of any breach of this Rate Schedule or the Rate Schedule 36 Service Agreement shall be held to be a waiver of any other or subsequent breach.

### **Section 23.04 Governing Law**

The interpretation and performance of this Rate Schedule or the Rate Schedule 36 Service Agreement shall be governed by the laws of the Province of British Columbia, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction, and, subject to Section 23.07, the parties hereby attorn to the exclusive jurisdiction of the courts of the Province of British Columbia.

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Order No.: G-21-14

Issued By: Diane Roy, Director, Regulatory Services

Effective Date: January 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

Original Page R-36.30

**Section 23.05 Due Execution**

Each party to the Rate Schedule 36 Service Agreement represents and warrants that it has full and complete authority to enter into and perform the Rate Schedule 36 Service Agreement and to be bound by the terms of that agreement and this Rate Schedule accordingly. Each person who executes the Rate Schedule 36 Service Agreement on behalf of either party represents and warrants that he/she has full and complete authority to do so and that such party will be bound thereby.

**Section 23.06 Arbitration**

Any controversy or claim arising out of or relating to the Rate Schedule 36 Service Agreement or this Rate Schedule shall be determined by the BCUC or by arbitration before a single arbitrator selected by the parties in accordance with the Domestic Commercial Arbitration Rules of the British Columbia Commercial Arbitration Centre in Vancouver, British Columbia.

**Section 23.07 Time is of the Essence**

Time is of the essence of this Rate Schedule and the Rate Schedule 36 Service Agreement and the terms and conditions hereof and thereof.

**Section 23.08 No Modification**

This Rate Schedule together with the Rate Schedule 36 Service Agreement sets forth all understandings between the parties respecting each Transaction, and any prior contracts, understandings and representations, whether oral or written, relating to such Transactions, are merged into and superseded by this Rate Schedule and the Rate Schedule 36 Service Agreement and each Transaction Notification. No modification to this Rate Schedule or the Rate Schedule 36 Service Agreement will be effective unless signed in writing by the parties to this Agreement and consented to by the BCUC.

**Section 23.09 Eligible Financial Contract**

The parties agree that the Transactions constitute an “eligible financial contract” within the meaning of the Bankruptcy and Insolvency Act (Canada) and the Companies Creditors Arrangements Act (Canada) and similar Canadian legislation.

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Order No.: G-21-14

Issued By: Diane Roy, Director, Regulatory Services

Effective Date: January 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

Original Page R-36.31

## **ARTICLE XXIV    LIMITATIONS**

### **Section 24.01        Limitations**

Except as set forth herein, there is no warranty of merchantability or fitness for a particular purpose, and any and all implied warranties are disclaimed. Except as otherwise specifically provided for in this Rate Schedule or the Rate Schedule 36 Service Agreement, for breach of any provision for which an express remedy or measure of damages is provided, such express remedy or measure of damages shall be for the sole and exclusive remedy, a party's liability hereunder shall be limited as set forth in such provision, and all other remedies or damages at law or in equity are waived. If no remedy or measure of damages is expressly provided herein or in a transaction, a party's liability shall be limited to direct actual damages only, such direct actual damages shall be the sole and exclusive remedy, and all other remedies or damages at law or in equity are waived. Unless expressly herein provided, neither party shall be liable for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages, by statute, in tort or contract, under any indemnity provision or otherwise. It is the intent of the parties that the limitations herein imposed on remedies and the measure of damages be without regard to the cause or causes related thereto, including the negligence of any party, whether such negligence be sole, joint or concurrent, or active or passive. To the extent any damages required to be paid hereunder are liquidated, the parties acknowledge that the damages are difficult or impossible to determine, or otherwise obtaining an adequate remedy is inconvenient and the damages calculated hereunder constitute a reasonable approximation of harm or loss.

## **ARTICLE XXV    CONDITION PRECEDENT**

### **Section 25.01        Condition Precedent**

This Rate Schedule together with the Rate Schedule 36 Service Agreement is subject to the consent of the BCUC.

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Order No.:        G-21-14

Issued By: Diane Roy, Director, Regulatory Services

Effective Date:    January 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

Original Page R-36.32

**Appendix "A"**

**Transaction Notification**

**TRANSACTION NOTIFICATION  
For FortisBC Energy Commodity Unbundling Service Transaction**

<p>This Transaction Notification is subject to the Rate Schedule 36 Service Agreement between FortisBC Energy Inc and <i>Marketer</i> dated <i>month, day, year</i>. The terms of this Transaction Notification are binding and have been determined according to the terms and conditions set out in Rate Schedule 36 and the Rate Schedule 36 Service Agreement.</p>	
<p><b>FROM:</b> FortisBC Energy Inc. 16705 Fraser Highway Surrey, B.C. V4N 0E8</p>	<p><b>TO:</b> <i>Marketer Name</i> <i>Marketer Address</i></p>
Attn:	Attn:
Phone:	Phone:
Fax:	Fax:
<b>Contract ID#:</b>	
<b>Transaction Type:</b>	
<b>Special Comments:</b>	
<b>Delivery Period / Day:</b>	
<b>Entry Date:</b>	
<b>Receipt Point:</b>	
<b>Quantity:</b>	
<b>Price:</b>	

Order No.: G-21-14

Issued By: Diane Roy, Director, Regulatory Services

Effective Date: January 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

Original Page R-36.33

## Appendix "B"

### Table of Charges

#### Backstopping Gas Sale Price

1. In the event the Backstopping Gas sale arose due to a delivery shortfall caused by the actions of Marketer, the Backstopping Gas price shall be the Blended Price plus two times the highest Gas Daily Common High for the market hubs associated with each of the Receipt Points where Marketer has a Receipt Point Delivery Requirement under this Rate Schedule and the Rate Schedule 36 Service Agreement.
2. In the event the Backstopping Gas sale arose due to a delivery shortfall caused by the actions of FortisBC Energy, the Backstopping Gas price shall be zero.

#### Transaction Fees

1. Marketer Group Administration Fee	\$150.00	
2. Customer Administration Fee	\$0.40	
3. Confirmation Letter Fee	\$1.02	A
4. Dispute Resolution Fee	\$50.00	

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Order No.: A-12-15

Issued By: Diane Roy, Director, Regulatory Services

Effective Date: January 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

First Revision of Page R-36.34

## Appendix "C"

### Notice of Appointment of Marketer

#### Notice of Appointment of Marketer and Authorization of Release of Information

(required attachment to the marketer's contract with the customer)

TO: FortisBC Energy Inc. ("FortisBC Energy") and \_\_\_\_\_ ("Marketer")

Marketer Name

- Appointment of Marketer** – I confirm that I am the lawful owner or occupier of the service address indicated below ("Premises") and that I have entered into a natural gas supply agreement with \_\_\_\_\_ ("Marketer") for the supply of natural gas and I hereby appoint \_\_\_\_\_ ("Marketer") as my gas supplier on the FortisBC Energy System for the Premises.
- Responsibility** – I confirm that I am the party responsible for the purchase of natural gas for the Premises. I understand that the FortisBC Energy General Terms & Conditions and the terms and conditions of the applicable FortisBC Energy Commodity Unbundling Service Rate Schedule apply and that I will comply and be bound by all terms and conditions set out therein.
- Authorization** – I give my Marketer the authority to do what is required with respect to the supply of natural gas including entering into the necessary agreements with FortisBC Energy. I acknowledge that FortisBC Energy will be entitled to rely solely on communications from the Marketer with respect to my enrolment in the applicable Commodity Unbundling Service as well as the termination or expiry of my natural gas supply agreement with the Marketer. Should I move from my existing Premises to a new Premises, I direct FortisBC Energy to provide my new Premises address and telephone number to the Marketer with whom I have an agreement with. I direct FortisBC Energy to release to my Marketer any and all historical and ongoing consumption information for the Premises.
- FortisBC Energy Role** – I understand that FortisBC Energy remains responsible for midstream commodity services, gas distribution, metering, billing and collections. In addition to the FortisBC Energy Basic Charge, Delivery Charge, Midstream Cost Recovery Charge and any applicable Franchise Fee Charge, applicable Riders or applicable taxes, FortisBC Energy will bill me for the gas supply provided by \_\_\_\_\_ ("Marketer") at the price communicated to FortisBC Energy by my Marketer. I acknowledge that FortisBC Energy has no obligation to verify that the price communicated by the Marketer is the price agreed between myself and the Marketer. All billing terms and conditions as well as payment options set out in the General Terms & Conditions of FortisBC Energy will continue to apply. I agree to keep the payment of my natural gas account up-to-date and pay accounts upon delivery when due and to be bound by and responsible for the billing arrangements made by my Marketer on my behalf. I confirm that my Marketer has provided me with a copy of "The Natural Gas Commodity Unbundling Program" booklet. I confirm that my Marketer has informed me of the Code of Conduct for Gas Marketers and upon request, has made a copy available to me.
- Notice to Return to FortisBC Energy System Supply** – I understand that my Marketer, acting on my behalf, must give FortisBC Energy a minimum of 60 days notice if I wish to return to the FortisBC Energy standard system supply rate at the end of the term of my natural gas supply agreement with marketer name. This rate may be higher than the price set out in my supply contract with my Marketer. I understand that if I return to FortisBC Energy without proper notice to FortisBC Energy that I may be liable for supply costs incurred by FortisBC Energy that are greater than the then current FortisBC Energy standard system supply rates.
- Marketer Failure** – In the event the British Columbia Utilities Commission declares that I will be returned to the FortisBC Energy standard system supply rate due to the failure of my Marketer to deliver gas supply to FortisBC Energy or other reasons, I will be returned to FortisBC Energy as supplier of last resort at the FortisBC Energy standard system supply rate with no interruption in the delivery of my gas supply. I understand that I may be liable for supply costs that are greater than the then current FortisBC Energy standard system supply rates.

Account Name: \_\_\_\_\_ Account Number: \_\_\_\_\_  
(as it appears on the FortisBC Energy bill)

Address of Premises: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Witness Name: \_\_\_\_\_ Witness Signature: \_\_\_\_\_  
(Optional) (Optional)

Order No.: G-21-14

Issued By: Diane Roy, Director, Regulatory Services

Effective Date: January 1, 2015

**Appendix "D"**  
**Sample of Delivery Requirement Calculation**



Print Date: 10/01/2004

**Demand Detail**

**Marketer:** XYZ Gas Marketing  
**Contract:** 00093  
**Effective Date:** 11/01/2004

**Marketer Group Delivery Requirement**

Marketer Group	Marketer Group Delivery Requirement	Amount (\$)	Marketer Group Price (\$)
xyz-g-0093-1	1586	8723.00	5.5000
xyz-g-0093-2	3184	13383.25	4.2500
xyz-g-0093-3	3317	16618.17	5.0100
xyz-g-0093-4	3289	17661.93	5.3700
xyz-g-0093-5	2663	13368.26	5.0200
xyz-g-0093-6	3653	16255.85	5.4500
xyz-g-0093-7	486	2128.68	5.3800
xyz-g-0093-8	105	457.80	4.3600
xyz-g-0093-9	3661	16767.38	5.5800
xyz-g-0093-10	3363	13653.78	4.0600
xyz-g-0093-11	3708	17909.64	4.8300
<b>Total Delivery Requirement</b>	<b>28979</b>	<b>136927.73</b>	<b>4.7251</b>

**Receipt Point Delivery Requirement and Receipt Point Fuel Requirement**

Station	Receipt Point Delivery Requirement	Amount (\$)	Blended Price (\$)	%	Fuel Req'm't	Obligated Quantity
DEGT-273 (Compressor Station 2)	20,285	95,850.07	4.7251	70%	446	20,732
DEGT-995 (Huntingdon)	4,347	20,539.30	4.7251	15%	0	4,347
Nova-1 (Inventory Transfer)	4,347	20,539.30	4.7251	15%	43	4,390
<b>Total</b>	<b>28,979</b>	<b>136,928.67</b>	<b>4.7251</b>	<b>100%</b>	<b>489</b>	<b>29,469</b>

FortisBC Energy Inc. | 16705 Fraser Highway | Surrey, BC V4N 0E8

Order No.: G-21-14 Issued By: Diane Roy, Director, Regulatory Services

Effective Date: January 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

Original Page R-36.36

**RATE SCHEDULE 36 SERVICE AGREEMENT  
BETWEEN MARKETER AND FORTISBC ENERGY INC.**

This Rate Schedule 36 Service Agreement ("Service Agreement") is dated \_\_\_\_\_, 20\_\_\_\_, between FortisBC Energy Inc. ("FortisBC Energy") and \_\_\_\_\_ ("Marketer").

**WHEREAS:**

- A. FortisBC Energy (as defined in Section 2.01 of FortisBC Energy Rate Schedule 36) operates a Gas distribution and transmission system in the province of British Columbia;
- B. Marketer (as defined in Section 2.01 of FortisBC Energy Rate Schedule 36) has entered into arrangements with certain Residential and Commercial Service Customers to supply Gas at a specified price to such Customers' Premises as provided for through FortisBC Energy Rate Schedule 1U, Rate Schedule 2U or Rate Schedule 3U for Commodity Unbundling Service;
- C. Marketer, subject to the provisions of this Service Agreement and the Commodity Unbundling Service terms and conditions approved by the BCUC (as defined in Section 2.01 of FortisBC Energy Rate Schedule 36), from time to time, wishes to sell to FortisBC Energy on a Firm basis a quantity of Gas approximately equal to the amount of Gas that such Customers consume on an annual load factor basis in accordance with the terms of this Service Agreement; and
- D. Once filed and approved by the BCUC, this Service Agreement will form part of Rate Schedule 36 of the FortisBC Energy Tariff and any changes to this Service Agreement are subject to the consent of the BCUC.

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT** in consideration of the terms and conditions contained herein, the parties agree as follows:

**1. Specific Information**

**1.1 Address of Marketer for receiving notices:**

_____	Attention: _____
(name of Marketer)	
_____	Telephone: _____
(address of Marketer)	
_____	Fax: _____
_____	
_____	

Order No.: G-21-14

Issued By: Diane Roy, Director, Regulatory Services

Effective Date: January 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

Original Page SA-36.1



**1.2 Address of FortisBC Energy for receiving notices:**

FortisBC Energy Inc.	Attention: _____
16705 Fraser Highway	Telephone: _____
Surrey, British Columbia V4N 0E8	Fax: _____
Canada	

**1.3 Marketer DUNS Number:** \_\_\_\_\_

**1.4 Contract ID (to be assigned by FortisBC Energy):** \_\_\_\_\_

The information set out above is hereby approved by the parties and each reference in either this Service Agreement or Rate Schedule 36 to any such information is to the information set out above.

**2. Rate Schedule 36**

**2.1 Additional Terms**

All rates, terms and conditions set out in Rate Schedule 36 and the General Terms and Conditions of FortisBC Energy, as either of them may be amended by FortisBC Energy and approved from time to time by the BCUC, are in addition to the terms and conditions contained in this Service Agreement and form part of this Service Agreement and bind FortisBC Energy and Marketer as if set out herein.

**2.2 Payment of Amounts**

Without limiting the generality of the foregoing, Marketer will pay to FortisBC Energy all of the amounts set out in Rate Schedule 36 for the services provided under that Rate Schedule and this Service Agreement.

**2.3 Conflict**

Where anything in either this Service Agreement or Rate Schedule 36 conflicts with any of the rates, terms and conditions set out in the General Terms and Conditions of FortisBC Energy, the terms and conditions of this Service Agreement and Rate Schedule 36 govern.

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Order No.: G-21-14

Issued By: Diane Roy, Director, Regulatory Services

Effective Date: January 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

Original Page SA-36.2

**2.4 Acknowledgment**

Marketer acknowledges receiving and reading a copy of Rate Schedule 36 and the General Terms and Conditions of FortisBC Energy and agrees to comply with and be bound by all terms and conditions set out herein and therein as may be amended from time to time and approved by the BCUC.

**IN WITNESS WHEREOF** the parties hereto have executed this Service Agreement.

**FORTISBC ENERGY INC.**

\_\_\_\_\_  
(here insert name of Marketer)

BY: \_\_\_\_\_  
(Signature)

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Name – Please Print)

\_\_\_\_\_  
(Name – Please Print)

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

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Order No.: G-21-14

Issued By: Diane Roy, Director, Regulatory Services

Effective Date: January 1, 2015

BCUC Secretary: Original signed by Erica Hamilton

Original Page SA-36.3