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Our File No.: 5497-148

April 13, 2007

VIA E-MAIL AND COURIER

British Columbia Utilities Commission  
6<sup>th</sup> Floor, 900 Howe Street  
Vancouver, B.C.  
V6Z 2N3

**Attention: Mr. R.J. Pellatt**  
**Commission Secretary**

Dear Sirs/Mesdames:

**Re: Application by Fortis Inc. ("Fortis") for Approval of the Acquisition of the  
Issued and Outstanding Shares of Terasen Inc. - Project No. 3698454**

Please find enclosed the Reply Submission of Fortis to the British Columbia Utilities Commission (the "Commission") in connection with the above-noted Application.

Owing to the fact that none of the Intervenors in this matter has expressed any objection to the Application, we respectfully request that the Commission expedite its review of the filed submissions and its rendering of a decision in respect of the Application.

Yours truly,

FARRIS, VAUGHAN, WILLS & MURPHY LLP

Per:

  
George K. Macintosh, Q.C.

/fc  
Enclosure

IN THE MATTER OF the *Utilities Commission Act*,  
R.S.B.C. 1996, c. 473, as amended (the “Act”)

- and -

IN THE MATTER OF an Application by Fortis Inc. for  
Approval of the Acquisition of the Issued and  
Outstanding Shares of Terasen Inc.

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

**REPLY SUBMISSION OF FORTIS INC.**

**A. APPLICATION**

1. On March 1, 2007, Fortis Inc. (“**Fortis**”) applied to the British Columbia Utilities Commission (the “**Commission**”) pursuant to Section 54 of the Act for an Order approving the acquisition (the “**Transaction**”) by Fortis of the issued and outstanding shares of Terasen Inc. (“**Terasen**”). Completion of the Transaction will cause Fortis to have indirect control of certain public utilities regulated by the Commission. The public utilities, each of which is a wholly-owned subsidiary of Terasen, are Terasen Gas Inc. (“**TGI**”), Terasen Gas (Vancouver Island) Inc. (“**TGVI**”), Terasen Gas (Whistler) Inc. (“**TGW**”) and Terasen Energy Services Inc. (“**TES**”). TGI, TGVI, TGW and TES are hereinafter collectively referred to as the “**Terasen Utilities**”.

**B. REGULATORY PROCESS**

2. By way of attachment to Fortis’ March 1, 2007 application to the Commission (the “**Application**”), Fortis and Terasen provided to the Commission a summary of initial stakeholder consultation efforts which Fortis and Terasen had commenced on February 26, 2007 in relation to the Transaction (the “**Stakeholder Consultation Summary**”) (see Attachment B to the Application). Those consultation efforts included the following:
  - (a) direct contact with key stakeholders, to advise those stakeholders of the key aspects and anticipated impacts of the Transaction;
  - (b) advisories to all customers of the Terasen Utilities with information regarding the Transaction and advice as to how to access information in regard to the Transaction via the Terasen Gas website and the Fortis website; and
  - (c) posting of information on the Terasen Gas website and the Fortis website for access by customers and stakeholders.

3. On March 2, 2007, the Commission issued Order No. G-22-07 (“**Commission Order G-22-07**”) establishing a Regulatory Agenda and Timetable for review of the Application by a written public hearing process.
4. Pursuant to Item 3 of Commission Order G-22-07, the Commission ordered Fortis and the Terasen Utilities jointly to publish a Notice of Procedural Conference (the “**Notice**”) in display-ad format in local news publications, to provide adequate notice to customers served in the service areas of the Terasen Utilities. By way of letter submitted on March 28, 2007 (the “**March 28, 2007 Letter**”) (see Exhibit B-4 in these proceedings), Fortis and the Terasen Utilities provided details of the publication of the Notice in accordance with Commission Order G-22-07.
5. Pursuant to the March 28, 2007 Letter, Fortis and the Terasen Utilities also updated the Stakeholder Consultation Summary and provided details of the other stakeholder notification efforts made by them (see Exhibit B-4 in these proceedings). The March 28, 2007 Letter further notes that:
  - (a) on March 1, 2007, the Commission issued letters requesting comments from Intervenors participating in the TGI and TGVI settlement extension proceedings which were before the Commission at that time. Four stakeholders in total submitted letters confirming they each had no concerns regarding the Transaction;
  - (b) letters have been received from the Canadian Office and Professional Employees Union (“COPE”) Local 378 and the Rental Owners and Managers Society of BC (“ROMS”). The ROMS letter, submitted to the Commission and marked as Exhibit E-1 to this proceeding, notes that ROMS is encouraged by the return to Canadian ownership;
  - (c) in addition to the Terasen Utilities, five stakeholders have registered as Intervenors and three registered as Interested Parties in these proceedings. As part of their registration, parties were requested by Commission Order G-22-07 to identify any issues that they may intend to pursue during the proceeding. The submissions of the registered participants received thus far have identified no issues related to the Application.
6. The Regulatory Timetable and Agenda established pursuant to Commission Order G-22-07 contemplated (among other things) the submission of Information Requests by registered Intervenors. Two registered Intervenors submitted information requests, and Fortis provided complete responses thereto on April 5, 2007 (see Exhibits B-7 and B-8 in these proceedings).
7. Pursuant to Commission Order G-22-07, on March 29, 2007 the Commission held a procedural conference in relation to the Application. At that procedural conference, none of the parties in attendance raised any issues of concern in relation to the substance of the Application.
8. On March 30, 2007, the Commission issued Order No. G-39-07 (“**Commission Order G-39-07**”) pursuant to which the Commission issued an Amended Regulatory Agenda

and Timetable which included provision for Intervenor Submissions and Fortis Reply Submissions. Four Intervenors have filed submissions with the Commission.

9. Based on the results of the stakeholder consultation process and the written hearing process established under Commission Order G-22-07 and Commission Order G-39-07, Fortis is not aware of any person opposed to the completion of the Transaction. Indeed, Fortis believes that there is strong public support for the Application and that the completion of the Transaction is in the public interest. In this regard, Fortis notes that:
  - (a) the submission of the Ministry of Energy, Mines and Petroleum Resources (the “**Ministry**”) indicates the Ministry is supportive of the Application, being “encouraged by the amalgamation of (Fortis and Terasen), providing an opportunity to enhance Demand Side Management (DSM) activities and to facilitate and promote better cooperation and coordination among energy utilities regulated by the Commission”;
  - (b) the submission of the BC Public Interest Advocacy Centre (the “**BCOAPO**”) indicates that the “BCOAPO has no objection to this transaction”;
  - (c) the submission of Alan Wait indicates that Mr. Wait sees “no compelling reason why the acquisition of Terasen Inc. by Fortis Inc. should be denied”; and
  - (d) the Vancouver Island Gas Joint Venture takes no position with respect to the Application.
10. The only issue raised by the submissions filed by registered Intervenors is, as stated by Mr. Wait in his submission, that he has “some concerns in that both FortisBC and Terasen Inc. will both (sic) be owned by Fortis Inc., and are in competition to supply heating needs to the same customers”. Fortis’ response to this concern is set out in paragraph 18 below.

### **C. RELEVANT STATUTORY PROVISIONS**

11. Section 54(9) of the Act provides that the Commission may give its approval under Section 54

*“subject to conditions and requirements it considers necessary or desirable in the public interest, but the commission must not give its approval under this section unless it considers that the public utility and the users of the service of the public utility will not be detrimentally affected”.*
12. In determining whether the public utility and the users of the service of the public utility will be detrimentally affected by an acquisition of a reviewable interest, the Commission has articulated the following applicable criteria:
  - (a) the utility’s current and future ability to raise equity and debt financing will not be reduced or impaired;

- (b) there be no violation of existing covenants that will be detrimental to the customers;
- (c) the conduct of the utility's business, including the level of service, either now or in the future, will be maintained or enhanced;
- (d) the application is in compliance with appropriate enactments and/or regulations;
- (e) the structural integrity of the assets will be maintained in such a manner as to not impair utility service; and
- (f) the public interest be preserved.

(Reasons for Decision, Kinder Morgan, Inc., November 10, 2005, page 19.)

13. Based on the criteria applied by the Commission in its earlier decisions under Section 54, Fortis submits that the Transaction will not detrimentally affect the Terasen Utilities or any of their customers. (See, for example, Commission Order G-71-03 approving Tricor Acquisition (STP) Inc. acquisition of a Reviewable Interest in Pacific Northern Gas Ltd. and Pacific Northern Gas (N.E.) Ltd.; Commission Order G-8-02 approving BC Gas Inc. acquisition of a Reviewable Interest in Centra Gas British Columbia Inc. and Centra Gas Whistler Inc.; Commission Order G-39-04 approving Fortis Pacific Holdings Inc. acquisition of a Reviewable Interest in Aquila Networks Canada (British Columbia) Ltd.; and Commission Order G-116-05 approving Kinder Morgan, Inc. and 0731297 B.C. acquisition of Common Shares of Terasen Inc.)
14. The Application specifically addresses each of the Commission's approval criteria (see Application, Part H, paragraphs 56 to 70). Fortis submits that there is nothing on the record of these proceedings to challenge or refute the information provided in the Application in relation to the Commission's approval criteria. Accordingly, Fortis submits that the record demonstrates that:
  - (a) the Transaction will not reduce or impair the Terasen Utilities' ability to raise equity and debt financing; indeed, as noted above, the record shows that the Terasen Utilities' ability to raise financing will be enhanced because of the financial strength of Fortis (see Application, Part H, paragraphs 56 to 58; Fortis response to Commission Information Request No. 1, Questions 1.4, 1.5, 1.6, 1.7 and 1.8);
  - (b) the Transaction will not result in any violation of existing covenants (see Application, Part H, paragraph 59; Fortis response to Commission Information Request No. 1, Question 4.2);
  - (c) the Terasen Utilities' businesses will be enhanced by completion of the Transaction (see Application, Part H, paragraphs 60 to 66; Fortis response to Commission Information Request No. 1, Question 5.1);

- (d) the Application is in compliance with all applicable enactments and regulations (see Application, Part H, paragraph 67); and
  - (e) the structural integrity of the assets of the Terasen Utilities will be maintained (see Application, Part H, paragraphs 68 to 70).
15. Fortis submits further that the record shows that the public interest will be preserved by approval of the Application. Specifically, Fortis submits that the Transaction is in the public interest in at least the following respects:
- (a) through its investments in its subsidiaries that operate utilities in the provinces of British Columbia, Alberta, Ontario, Prince Edward Island and Newfoundland and Labrador, in Belize, the Cayman Islands and the Turks and Caicos Islands, Fortis has considerable regulatory, operating and financial expertise in relation to the management of regulated utilities;
  - (b) having successfully operated FortisBC since June 1, 2004, Fortis has a good understanding of the regulatory, business and social environment in which the Terasen Utilities operate in British Columbia;
  - (c) Fortis believes that the Terasen Utilities' businesses, having well-diversified, mature customer bases and operating under principally cost-of-service regulation, are similar in all fundamental respects to the businesses of the utilities in the Fortis group of companies;
  - (d) completion of the Transaction will bring Terasen under the control of a large and diversified Canadian utility holding company;
  - (e) the management of Fortis has substantial experience in integrating newly-acquired enterprises into the Fortis group;
  - (f) Fortis expects to retain the Terasen Utilities' respective employees and management;
  - (g) as with all the utilities which Fortis owns, Fortis intends to operate the Terasen Utilities on a stand-alone basis. In keeping with its policy and normal practice, Fortis plans to maintain existing head offices and to implement, as soon as is reasonably practical, significant independent, local representation on the boards of the Terasen Utilities. (FortisBC, by way of example, has six independent directors, including the Chair, on its board of ten directors.);
  - (h) Fortis places great emphasis on establishing and maintaining strong relationships with its key stakeholders, including (among others) local governments and First Nations groups;
  - (i) the acquisition of the shares of Terasen represents a significant transaction for Fortis and demonstrates Fortis' continuing commitment to British Columbia and confidence in the Province's future;

- (j) the Transaction represents only an indirect acquisition of the Terasen Utilities, which will continue to be owned by Terasen; only the shareholder of Terasen will change;
- (k) Fortis is strong financially: following completion of the Transaction Fortis' total assets will increase to \$8.9 billion; on February 8, 2007, Fortis announced that its board of directors had increased the Company's quarterly dividend for the second time in 12 months; Fortis has increased its annual dividend payments in 34 consecutive years (the longest record of any public corporation in Canada);
- (l) the equity Fortis has raised through a Subscription Receipt financing (which closed on March 15, 2007) will increase the market capitalization of Fortis which will, in turn, further enhance market liquidity and access to the capital markets for the entire Fortis group of companies;

(see Application, Part H, paragraph 53); and

- (m) Fortis expects to maintain the status quo in respect of shared services among the Terasen Utilities (see Fortis response to Commission Information Request No. 1, Question 3.1); further, all services (including administrative services) currently provided to the Terasen Utilities by either Terasen or Kinder Morgan, Inc. will continue to be supplied to the Terasen Utilities (see Fortis response to Commission Information Request No. 1, Question 3.4).

**D. EXISTING CONDITIONS ESTABLISHED BY COMMISSION ORDER G-116-05**

16. As noted in the Application, Fortis acknowledges that the Commission approved KMI's 2005 application to acquire the shares of Terasen subject to the following conditions (the "Conditions") (as set out in the Commission Decision accompanying Order G-116-05, revised by Commission Order G-75-06 and clarified by Commission Letter No. L-30-06):

*Ring-Fencing*

The ring-fencing conditions approved by the Commission Panel are as follows:

- (1) Each Terasen Utility shall maintain, on a basis consistent with BCUC orders and accounting practices, a percentage of common equity to total capital that is at least as much as that determined by the Commission from time to time for ratemaking purposes.
- (2) No Terasen Utility will pay a common dividend without prior Commission approval if the result would reasonably be expected to violate the restriction in (1) above.
- (3) (a) No Terasen Utility will lend to, guarantee or financially support any affiliates of the Terasen Utilities, other than between TGI and TGS, or as otherwise accepted by the Commission.

- (b) TGI and TGS shall together maintain separate banking and cash management arrangements from other affiliates. TGVI shall establish separate banking and cash management arrangements from other affiliates once it has completed its proposed refinancing.
- (c) No Terasen Utility will enter into a tax sharing agreement with any affiliate of the Terasen Utility, unless the agreement has been approved by the Commission.
- (4) No Terasen Utility will enter into transactions with affiliates that are not in compliance with Commission guidelines, policies or directives regarding affiliate transactions, and no Terasen Utility will enter into transactions with affiliates on terms less favourable to the Terasen Utility than those available from third parties on an arms-length basis, unless otherwise approved by the Commission.
- (5) No Terasen Utility will engage in, provide financial support to or guarantee non-regulated businesses, unless otherwise approved by the Commission.

These conditions may be revised and/or supplemented in future by the Commission as required to protect the public interest.

#### *Governance*

The Commission Panel finds that the Terasen Utilities should be required to maintain existing governance policies and that any changes in these policies should be approved by the Commission. In particular, the Commission Panel concludes that the continued independence of Directors, as required in existing governance policies, will provide a further assurance that the Terasen Utilities will comply with the ring-fencing conditions.

#### *Location of Functions and Data*

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

The location of data and servers providing service to the Terasen Utilities is to be restricted to Canada and any proposal to locate data and servers providing services to the Terasen Utilities (including data and servers providing back-up services) outside Canada will require the Commission's approval.

17. As further noted in the Application, Fortis is prepared to accept the continued application of the Conditions (adjusted as necessary to reflect the amalgamation of Terasen Gas (Squamish) Inc. into TGI effective January 1, 2007) as conditions to the approval of the Application. None of the Intervenors has suggested that there should be any amendment

to the Conditions, or that any other or additional requirements should be imposed as conditions to the approval of the Application.

**E. RESPONSE TO INTERVENOR SUBMISSIONS**

18. In response to Mr. Wait's expressed concern about potential competition between FortisBC and Terasen, Fortis submits that it intends to operate each of FortisBC and Terasen on a stand-alone basis, each continuing to supply alternative energy sources to customers. Moreover, Fortis acknowledges and confirms that the operations of both companies will continue to be independently regulated by the Commission, whose regulatory oversight will help to ensure an appropriate balance of cooperation and competition is maintained (see Fortis response to Wait Information Request No. 1, Question 4).

**F. SUMMARY AND CONCLUSION**

19. In summary, Fortis submits that there is nothing on the record of these proceedings to support a conclusion that the Terasen Utilities, or the Terasen Utilities' users of their services, will be detrimentally affected by the Transaction. The evidence is overwhelmingly to the contrary, and the record indicates that Terasen Utilities and their customers will benefit as a result of Fortis' ownership of the shares of Terasen.
20. Fortis submits that in all of the circumstances of this Application, following completion of the Transaction:
- (a) there will be unaffected continuity in the direct ownership, business and operations of the Terasen Utilities;
  - (b) the structural integrity of the assets of the Terasen Utilities will be maintained;
  - (c) there will be unaffected continuity in the services provided to the Terasen Utilities pursuant to the Service Agreements;
  - (d) there will be unaffected continuity in the utility services provided by the Terasen Utilities to their customers;
  - (e) there will be unaffected continuity in the regulation of the Terasen Utilities and their services by the Commission under the Act, since the Terasen Utilities will continue to be subject to all applicable Orders of the Commission (such as (for example) Order No. G-33-07 issued on March 23, 2007, pursuant to which the Commission approved for TGI a two-year extension of the Settlement Agreement for a 2004 – 2007 Multi-Year Performance-Based Rate Plan for 2008 and 2009, and Order No. G-34-07 issued on March 23, 2007, pursuant to which the Commission approved for TGVI a two-year extension of the 2006 – 2007 Revenue Requirement Negotiated Settlement Agreement terms for 2008 and 2009);

- (f) there will be no adverse impact on the ability of the Terasen Utilities to access capital markets;
- (g) there will be no breach of existing covenants given by or in respect of the Terasen Utilities;
- (h) there will be compliance with applicable provincial and federal statutes and regulations; and
- (i) the public interest will be preserved.

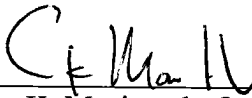
ALL OF WHICH is respectfully submitted.

DATED AT the City of Vancouver, British Columbia, this 13<sup>th</sup> day of April, 2007.

**FORTIS INC.**

by its legal counsel

FARRIS, VAUGHAN, WILLS & MURPHY LLP



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George K. Macintosh, Q.C.

All notices and communications in connection with this Application should be directed to:

Fortis Inc.

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