



EQUS REA LTD.

**Complaint Application for Relief and Orders Concerning the
Transfer of Consumers to EQUS from FortisAlberta Inc.**

December 21, 2021

Alberta Utilities Commission

Decision 26668-D01-2021

EQUUS REA LTD.

Complaint Application for Relief and Orders Concerning the Transfer of Consumers to EQUUS
from FortisAlberta Inc.

Proceeding 26668

December 21, 2021

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EQUUS REA LTD.

**Complaint Application for Relief and Orders Concerning
the Transfer of Consumers to EQUUS from FortisAlberta Inc.**

**Decision 26668-D01-2021
Proceeding 26668**

1 Decision summary

1. In this decision, the Alberta Utilities Commission determines the charges FortisAlberta Inc. may levy on one of its existing customers (Jayson Schwab or the Consumer) in connection with a request it has made to transfer its electric distribution service from Fortis to EQUUS REA LTD. The Commission has determined Fortis may levy exit charges, as defined in Section 7.5 of its terms and conditions of service (T&Cs), on this Consumer when it transfers its service to EQUUS; however, Fortis must use the amount it receives from EQUUS for the transferred facilities as the value of the salvaged facilities for the purposes of calculating the exit charges. The Commission directs Fortis to submit an application by February 28, 2022, proposing modifications to its T&Cs to address the issues noted in this decision respecting the applicability and calculation of exit charges.

2 Background

2. In rural Alberta, electric distribution service is, in general, provided by two public distribution utilities, Fortis and ATCO Electric Ltd., or by rural electrification associations (REAs). The geographic service areas of the public distribution utilities and the REAs overlap.

3. In areas where Fortis's service area overlaps with an REA's service area, REA members are served by the REA, while individuals who are not members of an REA receive electric distribution service from Fortis. EQUUS, like a number of other REAs, has an overlapping service territory with Fortis.

4. In the overlapping service areas, the facilities of EQUUS are often intermingled with the facilities of Fortis. Electrical energy delivered from a transmission substation to an end-user (be it a Fortis customer or an REA member) may be carried through a combination of Fortis and EQUUS assets.¹ EQUUS and Fortis are required by law² to enter into an operating agreement, referred to as an integrated operation agreement (IOA), that sets out their respective roles and responsibilities to operate their respective distribution systems as an integrated system in a single geographic area.³

5. A person receiving electric distribution service from Fortis or EQUUS has the ability to change their electric distribution service provider such that they may become a member of EQUUS or a customer of Fortis. When this occurs, certain facilities required to serve the member or

¹ Decision 25916-D01-2021: FortisAlberta Inc., 2022 Phase II Distribution Tariff Application, Proceeding 25916, July 8, 2021, paragraph 146.

² *Roles, Relationships and Responsibilities Regulation*, 2003, Section 9.

³ The current version of the integrated operating agreement was filed as Exhibit 26668-X0002 (Appendix A).

customer may be transferred between Fortis and EQUUS pursuant to the provisions of an IOA made between them.

6. When a Fortis customer wishes to permanently disconnect from Fortis's electric distribution system, Fortis may levy certain charges (referred to as exit charges) on the customer under Fortis's T&Cs. These charges provide Fortis with an opportunity to recover the investment it made in the customer's connection when it was built.⁴

3 Application and issue identification

7. On July 9, 2021, EQUUS submitted a complaint application to the Commission. EQUUS complained that Fortis levied exit charges on Jayson Schwab and 2033698 Alberta Ltd. (operating as Sunny Beach R.V. Resort) in response to requests they made to transfer electric distribution service to EQUUS. EQUUS sought the following orders and relief:

- (i) A declaration that the Distribution Customer Exit Charges⁵ proposed to be levied by Fortis against J. Schwab and the Sunny Beach R.V. Resort do not apply, and are not lawful, valid or applicable.
- (ii) A declaration that all T&Cs applying to the transfer to EQUUS of J. Schwab's and the Sunny Beach R.V. Resort's services and Fortis's distribution assets to respectively serve them are governed exclusively by the IOA.

8. Subsequent to filing its application, EQUUS submitted that Sunny Beach abandoned its transfer request.⁶ As such, the Commission has limited its determinations in this decision to the transfer request of J. Schwab.

9. In making its determinations, the Commission identified the following issues:

- (i) Does the IOA exclusively govern each transaction in the process to transfer the Consumer's electrical distribution service from Fortis to EQUUS?
- (ii) Do Fortis's current T&Cs permit Fortis to assess exit charges on the Consumer?
- (iii) Did Fortis properly calculate the exit charges in accordance with its T&Cs, and are the resultant exit charges just and reasonable?

4 Discussion of issues and Commission findings

10. As a preliminary matter, it is important to identify the distinct transactions that would occur for the Consumer to cease receiving electric distribution service from Fortis and to start receiving it from EQUUS. Specifically:

⁴ Exhibit 26668-X0018, FortisAlberta Letter and Response to Application of EQUUS REA, paragraph 24.

⁵ Distribution Customer Exit Charge is a defined term in Fortis's terms and condition of service found in Section 7.5.

⁶ Exhibit 26668-X0033, EQUUS-AUC-2021SEP08-003(b).

- the Consumer would discontinue receiving electric distribution service from Fortis and disconnect from Fortis's distribution system;
- Fortis would transfer facilities to EQUUS pursuant to the provisions in the IOA, and the Consumer's request to have its facilities transferred; and
- the Consumer would enroll as a member of EQUUS and connect to EQUUS's distribution system.

11. The distinct transactions listed above would occur to effect the transfer request by the Consumer. However, for ease of reference, in this decision, the Commission will refer to the above transactions collectively as a transfer of the Consumer's service.

4.1 Does the IOA exclusively govern each transaction in the process to transfer the Consumer's electrical distribution service from Fortis to EQUUS?

12. The first determination that the Commission must make is whether the IOA exclusively governs each transaction in the process to transfer the Consumer's service. If it does, then the Commission does not have jurisdiction to assess what charges Fortis can levy on the Consumer, and no further determinations are required.

13. For the reasons that follow, the Commission finds that the IOA does not exclusively govern each transaction in the process to transfer the Consumer's service. In particular, the Commission finds that Fortis's T&Cs, and not the IOA, govern the terms and conditions applicable to the Consumer when it chooses to discontinue receiving service from Fortis and disconnect from its electric distribution system. The Commission, having authority under the *Electric Utilities Act* to approve these T&Cs, may authorize Fortis to impose terms and conditions on its customers (including exit charges) that apply when its customers choose to discontinue receiving service from Fortis.

14. Section 105(1)(k) of the *Electric Utilities Act* expressly confers a duty on owners of an electric distribution system to connect and disconnect customers in accordance with the owner's approved tariff. When the Consumer transfers its service, Fortis will disconnect the Consumer. Fortis will remove the Consumer's meter(s) and dispose of facilities used to serve them.^{7 8} This will physically stop the Consumer from receiving electricity and receiving electric distribution service from Fortis. The Consumer will subsequently be connected by EQUUS.

15. In Decision 21148-D01-2016,⁹ the Commission held that Fortis had a duty under Section 105(1)(k) of the *Electric Utilities Act* to connect and disconnect customers in accordance with its approved tariff irrespective of the transfer provisions of the IOA.¹⁰ In the proceeding leading to that decision, Fortis had argued that the disconnection at issue was a transfer of

⁷ Exhibit 26668-X0018, FortisAlberta Letter and Response to Application of EQUUS REA, paragraph 41.

⁸ Exhibit 26668-X0036, FAI-AUC-2021SEP08-005(f).

⁹ Decision 21148-D01-2016: Sunset Shores RV Resort Inc, Request for FortisAlberta Inc. to Remove Certain Facilities and Effect Permanent Disconnection, Proceeding 21148, September 8, 2016.

¹⁰ Decision 21148-D01-2016, paragraphs 44-49 and 72-73.

service that should be addressed under the provisions of the IOA.¹¹ Sunset Shores RV Resort disagreed¹² and the Commission decided in its favour.

16. The circumstance of the Consumer is similar to that of Sunset Shores in Decision 21148-D01-2016, with the exception that Sunset Shores was requesting to have its existing Fortis facilities physically removed. Nonetheless, the Commission finds that the Consumer will still be disconnected by Fortis in order to transfer its service from Fortis to EQUUS, regardless of whether any of Fortis's facilities are either transferred to EQUUS or physically removed. Accordingly, the Commission holds that when the Consumer transfers its service, Fortis has a duty to disconnect the Consumer in accordance with its approved tariff.

17. Under Section 102(1) of the *Electric Utilities Act*, each owner of an electric distribution system must prepare a distribution tariff for the purpose of recovering the prudent costs of providing electric distribution service by means of the owner's electric distribution system.

18. The Commission has statutory authority under Section 102(2)(a) of the act to approve Fortis's distribution system tariff. In exercising that authority, the Commission is required to ensure that Fortis's tariff is just and reasonable and not unjustly discriminatory, among other things. This would include any terms and conditions Fortis may impose on its customers when those customers choose to disconnect. If EQUUS's argument were accepted, it would fetter the Commission's authority by allowing EQUUS and Fortis to make arrangements in the IOA that would bind the T&Cs applicable to a Fortis customer when it disconnects under specific circumstances (namely a transfer of service to EQUUS).

19. EQUUS's submission also ignores that there are other provisions in the T&Cs that govern the relationship between Fortis and its customers upon a disconnection, and that these provisions must remain in effect even when a customer wishes to transfer its service to EQUUS. Provisions of the T&Cs dealing with rights-of-way and access to facilities, billing, service disconnection and reconnection, among others, must be in place to ensure an orderly disconnection of a Fortis customer's electric distribution service. It logically follows from EQUUS's submissions that these provisions may be invalid, in whole or in part, and should also be part of the IOA.

20. In the Commission's view, Fortis's T&Cs applicable to disconnections are not invalidated simply because a Fortis customer wishes to obtain electric distribution service from EQUUS. EQUUS's argument conflates two different agreements or arrangements that are between different parties and that are made for different purposes.

21. While the IOA contains a provision for payments between Fortis and EQUUS when a transfer of facilities occurs, additional payments from a customer to either of them, such as exit charges, are not prohibited. The payment for transferred facilities included in the IOA does not relieve a customer of obligations the customer assumed by obtaining electric distribution service from either Fortis or EQUUS. These are obligations that arise between Fortis and its customer or EQUUS and its member, and not Fortis and EQUUS. Nor does this payment mechanism govern how disconnection may occur. They are appropriately governed by the T&Cs.

¹¹ Decision 21148-D01-2016, paragraphs 36-37.

¹² Decision 21148-D01-2016, paragraphs 29-30.

22. Finally, the Commission disagrees with EQUUS's attempt to distinguish between exit charges arising from Fortis's T&Cs and electric service agreements entered into between Fortis and its customers prior to September 2016 (which is when the 2016 IOA became effective). In this case, EQUUS has not persuaded the Commission why there should be a distinction between past and future charges of this nature.

23. Based on the foregoing, the Commission finds that the IOA cannot specify or prohibit the terms and conditions Fortis may impose on its customers when they choose to disconnect from Fortis's service, regardless of whether that disconnection is for the purpose of becoming an REA member. Such charges are within the Commission's review and authority under the *Electric Utilities Act*, not in the discretion of Fortis, EQUUS or an arbitrator appointed under the *Roles, Relationships and Responsibilities Regulation*. Accordingly, the IOA does not exclusively govern each transaction in the process to transfer the Consumer's service from Fortis to EQUUS. Having made this determination, the Commission considered the next question.

4.2 Do Fortis's current T&Cs permit Fortis to assess exit charges on the Consumer?

24. For the reasons that follow, the Commission has determined that Fortis's T&Cs allow Fortis to assess exit charges on the Consumer.

25. Fortis relied on Section 7.5 of its T&Cs to levy the exit charges. Section 7.5 of Fortis's T&Cs states:

7.5 Charges Related to Permanent Disconnection

When a Distribution Load Customer wishes to permanently disconnect their Point of Service, in addition to the requirements under Article 10, a Customer may be assessed a Distribution Customer Exit Charge.

The Distribution Customer Exit Charge is:

- (a) the Buy-Down Charge, calculated as prescribed under Section 7.3.2, using a new demand of zero, if the termination of service occurs before the end of the Investment Term;
- (b) plus, for Customers on Rate 63, the metres of Customer Extension multiplied by the corresponding maximum Investment Level for the remaining service life, provided in Table 2 of the Customer Contribution Schedules, if the termination of service occurs before the end of the Investment Term;
- (c) less, the value of any Facilities that may be salvaged, reduced by the cost of undertaking the salvage;
- (d) plus, a PILON [payment in lieu of notice], calculated as prescribed under Section 7.3.2, using a new Contract Minimum Demand of zero; and
- (e) plus, where applicable, any outstanding amounts attributable to the Customer with respect to, but not limited to, any deferral accounts and Commission approved riders, any charges required from FortisAlberta by the Independent System Operator, and charges arising from services supplied by the distribution company prior to the termination of service.

A Customer shall pay any applicable Buy-Down Charges or PILON charges at the time that a contract termination proposal is accepted by the Customer.¹³

26. Fortis argued that the request by the Consumer to transfer its service to EQUUS constitutes a wish to “permanently disconnect” its Point of Service. The definition of “permanent disconnection” in the T&Cs means “the cessation of Electricity Services resulting from removal of facilities...”¹⁴

27. In assessing whether the transfer of the Consumer’s service to EQUUS constitutes a permanent disconnection, the Commission considered two elements of the definition. First, will a transfer of the Consumer’s service result in the cessation of electricity service? Second, will this cessation result from the removal of facilities?

28. As mentioned in the previous section of this decision, the Commission found that Fortis will disconnect the Consumer when its service is transferred to EQUUS. Because Fortis’s T&Cs only apply between Fortis and its customers, the definition for “Permanent Disconnection” can reasonably be interpreted to read as the “cessation of Electricity Service from Fortis.” In the case of the Consumer, when it transfers its service to EQUUS, it will cease to receive service from Fortis.

29. With respect to whether the cessation of electricity service results from the removal of facilities, Fortis submitted that when the Consumer is transferred, Fortis would physically remove and salvage its meter(s). Fortis also explained that the transferred assets would be removed from its distribution system and rate base, which would also constitute a removal of facilities.¹⁵ EQUUS disagreed, arguing that the facilities will be transferred and remain in place, and as such there is no removal of facilities.¹⁶

30. In the Commission’s view, the removal of a customer’s meter is sufficient to satisfy the removal of facilities requirement in the definition of “permanent disconnection.” A meter falls within the meaning of the term “Facilities” under Fortis’s T&Cs.¹⁷ The Commission acknowledges that a meter may be removed in some circumstances to effect a temporary disconnection.¹⁸ However, the situation of the Consumer differs in that the intention of the removal of the meter is to effect a disconnection on a permanent basis.

31. Furthermore, the Commission considers the transfer of facilities to EQUUS is equivalent to a removal of facilities that would satisfy the definition of “permanent disconnection” even though the facilities, except for the meter, are not physically removed. The intent of the permanent disconnection provision in Fortis’s T&Cs is that electricity service from Fortis is ceased on a permanent basis. While this is generally effected through permanently removing

¹³ Decision 25843-D01-2020: FortisAlberta Inc., 2021 Annual Performance-Based Regulation Rate Adjustment, Proceeding 25843, December 18, 2020, Appendix 5 - 2021 customer terms and conditions, pages 33-34.

¹⁴ Decision 25843-D01-2020, Appendix 5 - 2021 customer terms and conditions, page 8.

¹⁵ Exhibit 26668-X0018, FortisAlberta Letter and Response to Application of EQUUS REA, paragraph 44.

¹⁶ Exhibit 26668-X0043, EQUUS REA final argument, paragraph 62.

¹⁷ In Fortis’s T&Cs, facilities are defined as “physical plant (including, without limitation, distribution lines, transformers, meters, equipment and machinery) on FortisAlberta’s side of the Point of Service, excluding a Transmission Facility.”

¹⁸ Exhibit 26668-X0036, FAI-AUC-2021SEP08-004(a) and (b).

facilities, it is also effected when the facilities that serve the customer are no longer owned and operated by Fortis.

32. Accordingly, the Commission finds that the Consumer's request to transfer its service to EQUUS constitutes a "wish to permanently disconnect its point of service" for the purposes of Section 7.5 of Fortis's T&Cs. Section 7.5 of Fortis's T&Cs applies to the Consumer, allowing Fortis to assess exit charges on the Consumer.

33. Having determined that Fortis's current T&Cs permit Fortis to assess exit charges on the Consumer, the Commission considered the next question.

4.3 Did Fortis properly calculate the exit charges in accordance with its T&Cs, and are the resultant exit charges just and reasonable?

34. When a customer requests to connect to Fortis's system (or upgrade its existing connection), Fortis typically constructs new facilities. At the time of construction, the costs for these new facilities are, in general, paid for as follows:

- Fortis invests in new facilities up to the maximum amounts established in its tariff. These investments are then included in Fortis's rate base, and Fortis depreciates the investment over the lifetime of the assets and earns a rate of return on the undepreciated amount. The investment amount is intended to be recovered through the customer's rates over a defined period (the Investment Term).
- If the costs exceed Fortis's investment amount, the customer is required to pay a customer contribution.

35. Fortis explained that if a customer decides to discontinue receiving service before the end of its Investment Term, Fortis and/or other ratepayers stand to be financially harmed. Fortis may not have fully recovered its investment in the facilities constructed for the customer's connection through the customer's rates by the time it disconnects. Further, the facilities constructed to serve the customer may be unnecessary to serve other customers and may need to be removed. As such, Section 7.5 of Fortis's T&Cs includes a provision for exit charges to be assessed to a customer when it permanently disconnects.¹⁹

36. There are a number of components that make up Fortis's exit charges. The one that addresses Fortis's unrecovered investment in the facilities built for the customer's connection is called a buy-down charge. When a customer permanently disconnects, the buy-down charge is calculated based on Fortis's original investment and term, the customer's original load requirements, and the length of the Investment Term that remains. The exit charges Fortis assessed to the Consumer in this case only consisted of buy-down charges.²⁰

37. When the Consumer transfers its service to EQUUS, Fortis will receive a payment from EQUUS for the facilities that are transferred to EQUUS. Under the IOA, the payment Fortis receives

¹⁹ Exhibit 26668-X0018, Fortis Response to application, paragraphs 24 and 67.

²⁰ Exhibit 26668-X0018, Fortis Response to application, paragraph 58.

from EQUUS is determined based on the replacement cost new minus depreciation (RCN-D) of the facilities that will be transferred.²¹

38. The Commission considered whether the exit charges assessed by Fortis on the Consumer should take into account the payment Fortis will receive from EQUUS. Fortis stands to receive compensation from two sources in connection with the transfer of the Consumer's service to EQUUS: the exit charges paid by the Consumer, and the payment by EQUUS for the transferred assets.

39. Fortis was of the opinion that both an exit payment from the Consumer and a payment from EQUUS for the transferred facilities are necessary because they are different amounts owing from different parties for different transactions undertaken for different purposes. Fortis submitted that the payment from EQUUS under the IOA reflects the calculated value of the transferred assets to the REA, while the customer's exit charge reflects Fortis's unrecovered investment in the facilities constructed to serve the customer.²²

40. Fortis noted that the two payments may not relate to the same facilities. For example, Fortis explained that to connect the Consumer, a new pole needed to be placed in-line. The placement of this pole would have been subject to investment by Fortis when the connection was built, but this pole would not be part of the facilities that are transferred to EQUUS.²³

41. Section 7.5(c) of the T&Cs requires Fortis to subtract the "value of the facilities that may be salvaged" (less the cost of undertaking the salvage) when calculating an exit charge. Fortis contended that it does not consider the transfer of facilities to be a "salvage" because ownership of the facilities is transferred to the REA, and Fortis cannot make any further use of the facilities or redeploy them to provide electric distribution service to its remaining customers. Fortis considers the salvage value of the facilities to reduce the exit charges payable only when there is a physical salvage of the facilities and Fortis retains title to the assets.²⁴

42. The Commission is not persuaded by Fortis's submission. It finds that Fortis's position is inconsistent with how it accounts for the assets. In its books of account, when Fortis transfers facilities to EQUUS, the facilities are recorded as a retirement, and the amount received from EQUUS is credited to accumulated depreciation and are considered as "salvage proceeds."²⁵

43. The Commission finds that the compensation Fortis will receive from EQUUS for the transferred facilities must be taken into account to calculate the exit charges payable by the Consumer, as "value of any facilities that may be salvaged" under Section 7.5(c) of the T&Cs.

44. The Commission accepts that not all the facilities initially constructed to serve the Consumer (and subject to Fortis's initial investment) may be transferred to EQUUS; however, there will likely be overlap. Where there is overlap, Fortis would otherwise account for the removal of its invested capital in the facilities from two sources, namely through the exit charge and through the payment Fortis will receive from EQUUS for the transferred assets. Although the

²¹ Exhibit 26668-X0002, EQUUS application, Appendix A - Integrated Operation Agreement as amended and restated, Section 3 Transfers, pages 6-7.

²² Exhibit 26668-X0036, FAI-AUC-2021SEP08-002(b).

²³ Exhibit 26668-X0036, FAI-AUC-2021SEP08-002(b).

²⁴ Exhibit 26668-X0036, FAI-AUC-2021SEP08-001(c).

²⁵ Exhibit 26668-X0036, FAI-AUC-2021SEP08-005(d).

accounting entries differ between the exit charges and the payment by EQUUS, the result is similar: Fortis's rate base is reduced, and the proceeds are used to pay down Fortis's debt.²⁶ If there is no acknowledgment of the payment from EQUUS in the calculation of the exit charges for the Consumer, the exit charges may exceed what is necessary to provide Fortis a reasonable opportunity to recover its investment in the transferred facilities.

45. The Commission has determined Fortis must reduce the exit charges by the payment it receives from EQUUS for the transferred facilities. However, the payment must only be used to offset exit charges applicable to facilities that were subject to investment by Fortis when the Consumer's service was constructed or upgraded. For example, if when the Consumer's connection was built, Fortis constructed and invested in two poles, but when the Consumer transfers, in addition to those two poles, another eight poles are also transferred to EQUUS, only the portion of the payment from EQUUS that relates to the two poles on which the exit charge is calculated should be applied to reduce the exit charges. In this way, the Consumer is not credited for facilities unrelated to its exit charge.

46. If the payment by EQUUS is not sufficient to eliminate the exit charges (which could occur, for example, because facilities that were subject to investment by Fortis when the Consumer's connection was built are not transferred to EQUUS), Fortis can recover any remaining amount through the exit charge.

4.4 Clarification of Fortis's T&Cs

47. Given the debates that have arisen in this proceeding, the Commission considers that Fortis's T&Cs require modification to clarify the applicability of the definition of "permanent disconnection" and associated exit charges. Modifications are also required to ensure that the method by which exit charges are calculated expressly contemplates the circumstances that can occur when a Fortis customer transfers its service to an REA.

48. The Commission acknowledges that it previously denied a request by Fortis to amend the definition of "permanent disconnection" in Decision 25916-D01-2021. In that decision, the Commission found Fortis's proposal to be contrary to regulatory efficiency since Fortis's T&Cs are likely to undergo additional substantive changes within the next few years due to an initiative underway to standardize T&Cs among electric utilities; however, this proceeding has demonstrated this specific issue requires action sooner.

49. The Commission directs Fortis to file an application proposing changes to its T&Cs, which address the above-noted issues, on or before February 28, 2022. The Commission is of the view that clarification will avoid future ambiguity regarding the circumstances under which a permanent disconnection can occur, the calculation of exit charges, and possibly relieve regulatory burden from a future complaint.

²⁶ Exhibit 26668-X0036, FAI-AUC-2021SEP08-005(c) and (d).

4.5 Commission correspondence to Fortis regarding ruling on motion for procedural relief

50. In the Commission's ruling dated October 22, 2021, it denied Fortis's motion respecting EQUUS's reply argument and stated it would provide its reasons for doing so in this decision.²⁷ These reasons are attached as [Appendix 2](#) to this decision.

5 Order

51. It is hereby ordered that:

- (1) FortisAlberta Inc. shall recalculate the exit charges it has assessed Jayson Schwab, in connection with his request to transfer his service to EQUUS REA LTD. When recalculating the exit charges, FortisAlberta Inc. shall consider the payment it will receive from EQUUS REA LTD. for the facilities that will be transferred, consistent with paragraphs 32, 43, 45 and 46 of this decision.
- (2) FortisAlberta Inc. shall file a post-disposition document by January 17, 2022, showing the recalculated exit charges.
- (3) FortisAlberta Inc. shall file an application by February 28, 2022, proposing modifications to its terms and conditions to address the issues noted in this decision respecting the applicability and calculation of exit charges.

Dated on December 21, 2021.

Alberta Utilities Commission

(original signed by)

Carolyn Dahl Rees
Chair

(original signed by)

Vera Slawinski
Commission Member

²⁷ Exhibit 26668-X0050, AUC letter - Ruling on Fortis motion for procedural relief.

Appendix 1 – Proceeding participants

Name of organization (abbreviation) Company name of counsel or representative
EQUUS REA LTD. (EQUUS) McLennan Ross Barristers & Solicitors
FortisAlberta Inc. (Fortis or FAI)

Alberta Utilities Commission
Commission panel
C. Dahl Rees, Chair
V. Slawinski, Commission Member
Commission staff
P. Khan (Commission counsel)
D. Fedoretz
A. Corsi

Appendix 2 – Reasons for the Commission’s October 22, 2021, ruling dismissing Fortis’s motion for procedural relief

[\(return to text\)](#)

1. This appendix provides the Commission’s reasons for dismissing Fortis’s October 21, 2021, motion.
2. On October 21, 2021, Fortis filed a motion¹ requesting a Commission order to:
 - (i) strike paragraphs 51-61 from EQUUS’s reply argument and direct EQUUS to refile its reply argument with those paragraphs removed; or
 - (ii) in the alternative, allow Fortis to file sur-reply argument to be limited to two pages to respond to paragraphs 51-61 of EQUUS’s reply argument; and
 - (iii) grant Fortis an opportunity to ask information requests in respect to certain paragraphs of EQUUS’s reply argument and to present responding evidence to be limited to two pages (not inclusive of supporting documents). This request was made conditional on the Commission intending to give any weight to the submissions and underlying evidence in paragraphs 5, 14, 16-17, 28 and 41-47 of EQUUS’s reply argument.
3. On October 22, 2021, the Commission issued a ruling denying Fortis’s motion.² In its ruling, the Commission indicated that it would provide its reasons for dismissing Fortis’s motion in its decision addressing EQUUS’s application.
4. The Commission denied the motion because the Commission, in reaching its decision, did not rely on any of the material that Fortis objected to in its motion. There was nothing in the impugned materials that was of value to the Commission’s decision-making on the issues raised by the application.
5. Paragraphs 51-61 of EQUUS’s reply argument provide calculations on how exit charges under the T&Cs could amount to double recovery. These calculations do not assist the Commission in determining whether Fortis has authority to levy exit charges or interpreting the T&Cs. Moreover, when the application was filed, it was known that Fortis claimed it is entitled to receive funds from two sources when a customer transfers to EQUUS (exit charges under the T&Cs and the RCN-D transfer payments under the IOA), and EQUUS claimed that the combined effect of these payments amounts to “double recovery.”³ The calculations provided were not relied upon by the Commission to make its determinations on this issue.
6. Paragraphs 5, 14, 16-17, 28 and 41-47 of EQUUS’s reply argument concerned Fortis’s and EQUUS’s historical practices in levying the distribution exit charges. At most, this information could provide a small amount of context to the issues that the Commission had to determine;

¹ Exhibit 26668-X0049, FortisAlberta Inc. Procedural Concerns and Motion for Relief.

² Exhibit 26668-X0050, AUC letter - Ruling on Fortis motion for procedural relief.

³ Exhibit 26668-X0033, EQUUS-AUC-2021SEP08-001(b).

however, they do not directly or indirectly affect whether Fortis had authority under the T&Cs to levy the exit charges. Such a conclusion should be assessed based on the language of the T&Cs.

7. Fortis's motion put the Commission in the position of either holding a process to consider it, thereby reopening the hearing record nine days after it had closed, or dismissing the motion summarily while proceeding to write its decision. Because the materials complained of had no value to the Commission's assessment of the issues, the Commission found that it was more efficient and expeditious to proceed to its decision.

8. It is noteworthy that Fortis made a part of its motion conditional on how much weight the Commission would accord to certain components of EQUUS's reply argument and asked for the right to file information requests, if the Commission were to accord any weight to this material.

9. Parties should not bring motions that are conditional on the Commission's decision-making, particularly when the parties move nine days after the proceeding record has closed and the Commission commenced its decision-writing.

10. Finally, the Commission observes that Fortis's comments in its motion materials to the effect that it "once again" raised procedural concerns and it had "ongoing procedural concerns" are inaccurate.

11. No such concerns were expressed about the Commission's choice of procedure. Fortis provided (unsolicited) comments on the procedure the Commission should use to hear EQUUS's application in response to (unsolicited) procedural comments from EQUUS.⁴ Fortis did not express any concern about the Commission's choice of procedure after the Commission established how it would hear this proceeding.

12. The Commission's process is designed to serve and fulfil the Commission's requirements under its statutory mandate. The Commission is the master of its own procedure and makes determinations about procedure that comply with the common law duty to be fair, and any statutory and constitutional requirements. In its motion, Fortis objected only to various statements made by EQUUS in its reply argument. As noted, none of this material was relied on by the Commission in reaching its decision. Accordingly, there does not appear to be any basis for Fortis's "procedural concerns."

⁴ Exhibit 26668-X0008, Preliminary Motion of FortisAlberta, page 3.

Appendix 3 – Summary of Commission directions

This section is provided for the convenience of readers. In the event of any difference between the directions in this section and those in the main body of the decision, the wording in the main body of the decision shall prevail.

1. The Commission directs Fortis to file an application proposing changes to its T&Cs, which address the above-noted issues, on or before February 28, 2022. The Commission is of the view that clarification will avoid future ambiguity regarding the circumstances under which a permanent disconnection can occur, the calculation of exit charges, and possibly relieve regulatory burden from a future complaint..... paragraph 49