AUC
Alberta Utilities Commission

FortisAlberta Inc.

Application to Amend the Terms and Conditions of Electric Distribution Service Pursuant to Decision 27202-D01-2022

December 5, 2022

Alberta Utilities Commission
Decision 27560-D01-2022
FortisAlberta Inc,
Application to Amend the Terms and Conditions of Electric Distribution Service Pursuant to Decision 27202-D01-2022
Proceeding 27560

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1 Decision summary

1. This is the decision on a second compliance filing from FortisAlberta Inc. following Decision 26668-D01-2021,[1] where the Alberta Utilities Commission directed Fortis to amend its terms and conditions for electrical distribution service (T&Cs) to better address instances where a Fortis customer requests to transfer its service from Fortis's electric distribution system to a rural electrification association (REA).

2. In the first compliance filing, Fortis proposed changes to its T&Cs, as directed in Decision 26668-D01-2021, but in Decision 27202-D01-2022[2] (decision on first compliance filing), the Commission did not approve all of the proposed changes because there was a lack of information on the method by which the proposed changes were to be effected. In Decision 27202-D01-2022, the Commission required Fortis to make a second compliance filing in order to address a number of directions set out in that decision.

3. Fortis filed the present application, in which it proposed the same changes to Section 7.5 of the T&Cs as it did in the first compliance filing, but clarified its method to address instances in which its customer requests to transfer electricity services from Fortis's electric distribution system to that of an REA. For the following reasons, the Commission approves Fortis's application.

2 Background

4. At paragraphs 3 through 8 of Decision 27202-D01-2022, the Commission provided the following relevant background to this matter, including a summary of Decision 26668-D01-2021:

> 3. In rural Alberta, electric distribution service is, in general, provided by distribution utilities, namely Fortis and ATCO Electric Ltd., or by REAs. The geographic service areas of the distribution utilities and the REAs may overlap, so that energy delivered from a transmission substation to an end-user may be carried through a combination of Fortis and REA assets. The owner of a distribution utility and an REA enter into integrated operating agreements (IOAs) that set out the respective roles and responsibilities of each party to operate its respective distribution systems as an integrated system in a single geographic area.

[1] Decision 26668-D01-2021: EQUS REA LTD., Complaint Application for Relief and Orders Concerning the Transfer of Consumers to EQUS from FortisAlberta Inc., Proceeding 26668, December 21, 2021.

[2] Decision 27202-D01-2022: FortisAlberta Inc., Compliance Filing to Amend Terms and Conditions Pursuant to Decision 26668-D01-2021, Proceeding 27202, June 26, 2022.

4. Sometimes, a customer receiving electric distribution service from either Fortis or an REA may wish to change its electric distribution service provider. When that happens, facilities that are required to serve the customer may be transferred between Fortis and an REA pursuant to the provisions of an applicable IOA.

5. When a Fortis customer requests to transfer its service from Fortis's electric distribution system to an REA's system, Fortis may levy certain charges to the customer pursuant to Section 7.5 of the T&Cs, referred to as Distribution Customer Exit Charge (exit charge). As discussed in more detail in Decision 26668-D01-2021, these exit charges provide Fortis with an opportunity to recover the investment Fortis made when the customer was originally connected to the distribution system. The relevant parts of current Section 7.5 state the following:

> **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;
>
> …
>
> (c) less, the value of any Facilities that may be salvaged, reduced by the cost of undertaking the salvage;
>
> …
>
> A Customer shall pay any applicable Buy-Down Charges … at the time that a contract termination proposal is accepted by the Customer.

6. Under Section 7.5, the exit charge is calculated by taking into account a number of components, including a buy-down charge that accounts for Fortis's unrecovered investment in the facilities built for the customer's connection. The exit charge provisions, as currently written, incorporate a component for the salvage of Fortis's facilities; specifically, Section 7.5(c) requires Fortis to subtract from the buy-down charge "the value of any Facilities that may be salvaged, reduced by the cost of undertaking the salvage."

7. However, as became apparent in Proceeding 26668, it was not clear whether, in determining the exit charge for the transferring customer, Section 7.5(c) contemplates a payment that Fortis receives from an REA for transferred facilities when a customer switches its distribution service from Fortis to an REA. (The value of such a payment, under the IOA, is determined based on the replacement cost new minus depreciation (RCN-D) of the facilities that will be transferred.) In Decision 26668-D01-2021, the Commission determined that the REA payment to Fortis must be included under Section 7.5(c) to reduce the exit charges payable by the transferring customer, although that payment could only be used to offset exit charges applicable to facilities that were subject to investment by Fortis when the customer's service was constructed or upgraded. The Commission also determined that a customer's request to transfer its service to an

> REA would result in a "wish to permanently disconnect its point of service" for the purposes of Section 7.5 of the T&Cs.
>
> 8. In Decision 26668-D01-2021, the Commission required Fortis to apply to the Commission with proposed changes to its T&Cs. In particular, the Commission required Fortis to modify the definition of "permanent disconnection" and associated exit charges to clarify the applicability of these provisions. The Commission also indicated that these modifications were required to ensure that the method by which exit charges were calculated expressly contemplated the circumstances that could occur when a Fortis customer transfers its service to an REA. The Commission indicated that clarifications of Fortis's T&Cs would prevent 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. [footnotes omitted]

5. In Decision 27202-D01-2022, the Commission accepted Fortis's proposed amendments to Section 2.1 of its T&Cs to clarify that a permanent disconnection includes the cessation of electric distribution service resulting from the transfer of a customer to an REA. The Commission was satisfied that the proposed changes to Section 2.1 complied with the Commission's direction in Decision 26668-D01-2021 and therefore approved the changes, but indicated that they should not be put into effect until other changes associated with the current application were addressed.

6. However, in Decision 27202-D01-2022, the Commission was not prepared to approve Fortis's applied-for changes to Section 7.5 of the T&Cs. Fortis had proposed an addition to Section 7.5(c) to clarify that the exit charge would be offset by the payment received by an REA for the transfer of facilities to serve the customer. Fortis had also proposed additional language at the very end of Section 7.5 to make the exit change "subject to change," which Fortis said was necessary to ensure the exit charge would be offset by the actual amount of money received by Fortis from an REA for the transfer of facilities.

7. The Commission determined that while the wording proposed by Fortis in Section 7.5 may have complied with the Commission's direction in Decision 26668-D01-2021, the method proposed by Fortis to calculate the exit charge and to effect the transfer of a customer's transfer from Fortis to an REA lacked clarity and completeness, particularly with respect to Fortis's proposed "subject to change" language. The Commission indicated that Fortis's proposed method to effect the customer transfer raised both practical and potentially legal issues that needed to be addressed prior to approval.

8. The Commission directed Fortis to file a second compliance filing to address the following items:

(1) Fortis is to clarify whether a customer who is contemplating transferring its electric services to an REA is required to pay the initially calculated estimation of the exit charge and if so, when, and the rationale for requiring the initial payment in addition to a potential later adjustment when the final amount of the exit charge is known (i.e., once Fortis has received payment of the RCN-D from the REA).

(2) If the response to (1) is that a customer is required to pay both the initially calculated estimation of the exit charge and a potential later adjustment, Fortis is to consider whether the process could be simplified or otherwise improved by

requiring a transferring customer to pay the exit charge only once, when the final amount of the exit charge is known.

(3) Fortis is to provide a sample of its contract termination proposal and explain when that contract termination proposal would be accepted by the customer.

(4) Fortis is to consider whether the way in which it addresses the matters raised in items (1) and (3) would trigger the *Guarantees Acknowledgment Act*, particularly with respect to the contract termination proposal, and whether that proposal requires language informing the customer of some future "obligation to answer for an act or default or omission"[3] of the REA.

(5) Fortis is to consider whether any additional changes are required to Section 7.5 to clarify its intent regarding the items above.

(6) Fortis is to restate the method by which exit charges are calculated to expressly contemplate the circumstances that could occur when a Fortis customer transfers its service to an REA, as the Commission required in Decision 26668-D01-2021. In accordance with the guidance provided by the Commission in this decision, Fortis's restatement should include any necessary modification to steps (i) to (v) (see paragraph 21 of this decision) to effect the permanent disconnection, as well as all necessary additional steps between step (v) and the final step that occurs in the process when the customer transfers its service to an REA, up to and including Fortis's physical removal of the customer's meter.

(7) Fortis is to explain how it intends to communicate the steps in item (6) above to a customer who approaches Fortis for a transfer of service.[4]

3 Application

9. On July 29, 2022, Fortis submitted its compliance application in response to Decision 27202-D01-2022.[5] Fortis has proposed the same additions to Section 7.5 of its T&Cs that it proposed in the last proceeding but, in response to Commission directions, it expanded on the method by which it proposes to carry out the changes to Section 7.5.

10. The sole intervener to Fortis's application was EQUS REA LTD., which was the party that initiated a complaint proceeding leading to Decision 26668-D01-2021, and the sole intervener in Decision 27202-D01-2022. EQUS raised a number of concerns to the effect that Fortis has not complied with Decision 27202-D01-2022.

11. With respect to process in this proceeding, the Commission permitted one round of information requests to Fortis, after which the parties both submitted argument and reply argument.

12. In coming to its decision, the Commission has reviewed the record including the parties' argument and reply argument. The lack of reference in this decision to each and every argument raised or matter addressed in argument does not mean that it was not considered by the Commission.

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3 *Guarantees Acknowledgment Act*, Section 1(a).
4 Decision 27202-D01-2022, paragraph 42.
5 Decision 27202-D01-2022, paragraph 10.

4 Discussion

13. For the reasons that follow, the Commission determines that Fortis complied with the findings and directions in Decision 27202-D01-2022 and therefore approves Fortis's application to amend its T&Cs pursuant to the Commission's direction in Decision 26668-D01-2021.

14. In Proceeding 27202 and in this proceeding, Fortis proposed the underlined additions to Section 7.5 to address the Commission's direction:

> **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;
>
> …
>
> (c) less, the value of any Facilities that may be salvaged, reduced by the cost of undertaking the salvage, <u>and which salvage value shall, where applicable, include the payment to be received by FortisAlberta from an REA purchasing Facilities associated with the Permanent Disconnection provided, however, that only those amounts to be paid by the REA in respect of the Facilities that were subject to investment by FortisAlberta shall be applied to reduce the sum of (a) and (b) above;</u>
>
> …
>
> A Customer shall pay any applicable Buy-Down Charges … at the time that a contract termination proposal is accepted by the Customer. <u>Where the Permanent Disconnection is occurring so that the departing Customer can receive service from an REA, the Distribution Customer Exit Charge is subject to change to reflect the final amount actually paid by the REA in respect of applicable transferred Facilities.</u>[6]

4.1 Proposed changes to Section 7.5(c)

15. The wording proposed by Fortis at the end of subsection (c) responds to the Commission direction in Decision 26668-D01-2021 (at paragraph 45) to ensure that the exit charge would be offset by only those amounts that were subject to investment by Fortis when the customer's service was constructed or upgraded. There was no objection to Fortis's proposed wording, and in the Commission's view, the proposed wording adequately addresses the direction in Decision 26668-D01-2021. The proposed addition to Section 7.5(c) is therefore approved.

[6] Exhibit 27560-X0002, Appendix A - Proposed Customer Terms and Conditions of Service clean, page 40.

4.2 Proposed change to the end of Section 7.5, including the method to implement that change

16. What has proven to be less straightforward and more contentious is Fortis's proposed wording at the end of Section 7.5, which makes the exit charge "subject to change" to reflect the payment that Fortis is to receive by the REA for the transferred facilities (the RCN-D payment). The Commission noted in Decision 27202-D01-2022 that while this specific wording (which has not changed from the language initially proposed by Fortis in Proceeding 27202) may comply with the direction specified in Decision 26668-D01-2021, there was a lack of clarity about the method to carry out the proposed language. Because the proposed wording is very much tied to the method by which the proposal will be carried out, these two aspects of Fortis's application will be considered together in the discussion below.

17. In response to Commission Direction 6 in Decision 27202-D01-2022,[7] in this application Fortis restated and elaborated on the steps it would take to carry out a permanent disconnection arising from the transfer of a customer and the associated facilities to an REA under the proposed Section 7.5:

> (i) Calculate the Buy Down Charge under subsections 7.5(a) and (b);
>
> (ii) Calculate the anticipated replacement cost new, less depreciation (RCN-D), of the facilities to be transferred to the REA to arrive at the estimated credit to be applied under subsection 7.5(c);
>
> (iii) Subtract the anticipated RCN-D of the facilities to be transferred to the REA (i.e. the estimated credit) from the Buy Down Charge calculated under subsections 7.5(a) and (b) and add anything owing under subsections 7.5(d) and (e) to arrive at the initial estimated Distribution Customer Exit Charge;
>
> (iv) Communicate the initial estimated Distribution Customer Exit Charge to the departing customer (assuming that there is one that is owing) via the Termination Letter (i.e., the "contract termination proposal" under the T&Cs);
>
> (v) Request a signed copy of the Termination Letter and payment of the initial estimated amount within 30 days;
>
> (vi) Provide an LPA [Line Purchase Agreement] for the facilities to be transferred to the REA at the RCN-D calculated above;
>
> (vii) Receive signed Termination Letter and payment of the initial Distribution Customer Exit Charge from the customer;
>
> (viii) Execute the LPA with the REA and receive payment of the RCN-D amount from the REA;
>
> (ix) If the RCN-D amount actually received from the REA differs from the Company's initial calculation, FortisAlberta will adjust the Distribution Customer Exit Charge and refund or request the difference from the transferring customer; and
>
> (x) Transfer the FortisAlberta facilities to the REA.[8]

[7] See paragraph 8 of this decision, which identifies the Commission directions in Decision 27202-D01-2022.
[8] Exhibit 27560-X0001, application, paragraph 21

18. Of note is Fortis's clarification that when a customer requests to transfer its service to an REA, the customer will be required to pay the initially calculated exit charge at the time the customer accepts the terms of the contract termination proposal with Fortis (steps (v) and (vii) above).

19. Following receipt of payment of the initial estimate of the exit charge, Fortis proposed to execute the LPA with the REA and to subsequently receive payment of the RCN-D amount from the REA (step (viii)). Fortis would then request from the customer any applicable residual payment owing (or Fortis would offer a refund, as the case may be) if the amount received from the REA somehow differed from Fortis's initial estimate of the RCN-D value. Fortis proposed that it would not transfer its facilities to the REA to effect the permanent disconnection until all of the 10 steps described above have occurred.[9]

4.3 EQUS's objections

20. In this proceeding, EQUS raised several objections directed at Fortis's proposed language at the end of Section 7.5 of the T&Cs and the proposed method to implement that change. Specifically, EQUS: (i) objected to Fortis's proposal to withhold the transfer of facilities pending both REA and final customer payments; (ii) argued that the *Guarantees Acknowledgment Act* would be triggered by Fortis's proposed contract termination proposal; and (iii) asserted that Fortis's method to implement its changes to the end of Section 7.5 would amount to unlawful security. Each of these arguments is discussed below.

4.3.1 Withhold transfer of facilities pending both REA and final customer payments

21. EQUS was not opposed to some of the above steps proposed by Fortis. It was not opposed to requiring the customer to sign a contract termination proposal with Fortis to transfer service to an REA, nor that the customer would be required to pay the initially calculated estimate of the exit charge prior to the transfer of service and facilities. Further, EQUS did not take issue with the proposed requirement that Fortis and the REA are to sign an LPA before the relevant transfer of facilities occurs.

22. EQUS's primary objection with Fortis's proposal was that Fortis would not transfer the facilities to the REA until Fortis was in receipt of payment of both the RCN-D amount agreed to under the LPA, as well as any residual exit charge owing from the customer (which would depend upon the amount received by the REA for the RCN-D). In EQUS's view, Fortis should not be permitted to wait until it received these payments before transferring facilities associated with the customer transfer to the REA. EQUS made a number of arguments in this regard. It submitted that there are too many restrictions on the transfer of customers to REAs, for no good reason. It said that the changes would result in the discriminatory treatment of customers, contrary to the legislative framework. EQUS also argued that the proposal does not promote the reduction of regulatory burden nor avoid future ambiguity; rather, it suggested that the proposals would result in uncertainty, delay and confusion, citing Decision 22872-D01-2018 (Burnco decision).[10]

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[9] See FAI-AUC-2022AUG26-001(c); Exhibit 27560-X0021, Fortis's reply argument, paragraphs 7 and 14; and Fortis's draft customer termination letter, page 3, (iv).

[10] Decision 22872-D01-2018: Burnco Rock Products Ltd., Application to Consider Complaint Regarding FortisAlberta Inc. Fees, Proceeding 22872, April 23, 2018, paragraphs 63 and 72.

23. The Commission is not persuaded by any of these submissions. The Commission was clear in Decision 26668-D01-2021 that a transferring customer's exit charge must be offset by the payment actually received from an REA for the transfer of facilities to serve the customer.[11] That direction was a central consideration in the proposals put forward by Fortis. The proposals will not result in discriminatory treatment of customers because they will ensure that customers seeking a transfer of services to an REA will pay no more and no less than what they are required to pay under the permanent disconnection provisions of the T&Cs. Only when Fortis receives payment of the RCN-D from the REA will the final exit charge be calculable, and once the customer pays any residual amount owing from the final exit charge, the transfer of facilities will follow.

24. EQUS suggested that discrimination arises because Fortis is treating customers who wish to switch services to an REA differently than those who simply wish to permanently disconnect their service from Fortis. The Commission disagrees. Any difference in the treatment of such customers is attributable to the complex interrelationship between Fortis and REAs, which, as described in both Decision 26668-D01-2021 and Decision 27202-D01-2022, are governed by different legislative schemes despite providing similar services in overlapping areas. In both situations (i.e., where a customer is simply permanently disconnecting its service from Fortis, and where a customer is permanently disconnecting in order to transfer its service to an REA), the customer is required to pay its applicable exit charge before Fortis effects the permanent disconnection. In the case of a customer transferring to an REA, the potential for the second, residual payment proposed by Fortis ensures that the customer will pay the entire exit charge owed under the T&Cs, where that charge cannot be finally determined until the REA has paid Fortis for the facilities to be transferred. For these reasons, and contrary to submissions of EQUS, the Commission's view is that Fortis's proposal is not "unjustly discriminatory" nor would it otherwise run afoul of Section 127 of the *Electric Utilities Act*.[12] Moreover, the Commission is of the view that any increase in regulatory burden or delay resulting from the transfer of a customer to an REA is not properly attributable to Fortis's proposed method to effect its proposed additions to Section 7.5 of the T&Cs, but rather to the aforementioned complexities inherent in the relationship between Fortis and REAs.

25. In the first compliance proceeding (Proceeding 27202), the Commission, like EQUS in this application, had some concerns about uncertainty and lack of clarity in Fortis's proposed process, but those concerns were addressed by Fortis in the present application. Among other things, the Commission (in the first compliance proceeding) acknowledged potential uncertainty for the customer given that any final exit charge payable would be determined only after payment was received from the REA for the transferred facilities, which might be a significant period of time after the customer's initial request to transfer service providers. The Commission therefore directed Fortis to consider, as part of the current application, whether its method could be simplified or otherwise improved by requiring a transferring customer to pay the exit charge only once, when the final amount of the exit charge was known (Direction 2).

26. Fortis considered this direction but nevertheless concluded that while charging the customer only once near the end of the process might simplify the process, it would place Fortis and its remaining customers at risk because there may be a greater chance the customer would

[11] Decision 27202-D01-2022, paragraph 7; Decision 26668-D01-2021, paragraphs 37 and 32.
[12] Section 127 of the *Electric Utilities Act* indicates, among other things, that an electric utility shall not act in a manner that is "unjust, unreasonable, unduly preferential, arbitrarily or unjustly discriminatory."

change its mind about wanting to transfer services. Fortis indicated that if a customer were to change its mind after Fortis signed an LPA with the REA, Fortis would be placed in an "untenable" situation in which it would be contractually obligated to complete the transfer despite having a customer that no longer wanted to do so.[13] Fortis's view was that requiring the customer to pay the initial estimate of the exit charge up front would reduce the risk of this eventuality. Fortis also indicated it would be administratively inefficient to proceed with preparation of the LPA and negotiations with the REA only to later find out that the customer did not wish to proceed with the transfer because the customer did not want to pay the final exit charge.

27. EQUS questioned these alleged risks raised by Fortis, pointing out that Fortis provided no evidence to support them, and indicating, among other things, that the argument that an REA would require Fortis to transfer the REA facilities if the customer no longer wished to proceed with the transfer is nonsensical because it would defy commercial efficacy to do so when a customer voluntarily chose to remain taking service from Fortis.

28. The Commission acknowledges these and other submissions raised by EQUS to challenge Fortis's proposal that includes two potential payments by the customer in the transfer process.[14] The Commission is also mindful that even with an initial payment of the estimated exit charge by the customer, the customer may still change its mind at some point in time later in the transfer process, including after an LPA has been signed. Nevertheless, requiring an initial payment may have the effect of ensuring that only customers serious about transferring service will proceed beyond the initial payment stage of Fortis's process. At the end of the day, the Commission is satisfied that Fortis has reasonably addressed the Commission's direction that Fortis consider whether its proposed process could be simplified or otherwise improved.

29. Fortis also included as part of its application a draft contract termination proposal that would be provided to a customer requesting the transfer of services. Among other things, that letter makes it clear to the customer that it may be invoiced for an additional amount than what was included in Fortis's initial estimate of the exit charges. Fortis's draft contract termination proposal addresses Commission directions 3 and 7 from Decision 27202-D01-2022.

30. More generally with respect to Fortis's proposed method to effect the additional wording it has proposed to Section 7.5, the Commission's view is that it is sufficiently clear and unambiguous, and it will provide adequate certainty to all parties about their respective obligations throughout the transfer process.[15] It will also ensure that Fortis customers submit payment for the entire exit charge before Fortis transfers their service to an REA, which will prevent a scenario in which Fortis could be required to take collection steps against a customer

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[13] While Fortis indicated there may be ways to address this contractual issue with REAs, such as making the payment of the final exit charge a condition precedent to the LPA, such a revision would require the consent of all REAs, and Fortis noted that IOA matters are beyond the Commission's jurisdiction to address.

[14] One such submission was that by waiting until the customer makes a final residual exit charge payment before transferring facilities to the REA, Fortis will be in violation of the LPAs, which stipulate that the transfer of assets is made in consideration of the purchase price paid. The Commission offers no opinion about whether this may or may not be the case because the LPAs are not within the Commission's jurisdiction.

[15] In the Commission's view, the circumstances in this case are distinguishable from the Burnco decision referenced by EQUS. The lack of clarity and confusion referenced in that decision is absent in Fortis's current application.

for not payment of any final residual payment owed by the customer after the permanent disconnection from Fortis.

31. As a final point, it should be noted that as a result of EQUS's concerns with respect to timing of the transfer of facilities, Fortis offered to provide the customer with a revised and final exit charge no later than seven (7) days after receipt of payment from the REA for the transferred facilities. The Commission expects Fortis to implement this change by including it in the contract termination proposal.

4.3.2 Guarantees Acknowledgment Act

32. EQUS also argued that Fortis's contract termination proposal would trigger the *Guarantees Acknowledgment Act*, which it stated would add regulatory burden to Fortis's proposed method because compliance with the act requires the guarantor (the customer in this case) to appear before a lawyer and satisfy other formalities provided for in the act.[16] Under the act, a guarantee includes a "written agreement," where "a person … enters into an obligation to answer for an act or default or omission of another."[17] In EQUS's view, Fortis's contract termination proposal would be a written agreement obligating the customer (the person providing the guarantee in this situation) to make a residual payment in the event the REA does not pay the RCN-D amount. EQUS submitted that the obligation to pay the final residual charge is conditional on an REA default or omission to pay, which would trigger the act and formalities contained in that statute.

33. Fortis's response was that the act is not engaged by this application because the customer is obligated to pay the entire exit charge, and that obligation exists between Fortis and its customer regardless of anything done by an REA. Fortis submitted that circumstances where a customer is provided with a credit (or rebate) to an amount that the person is otherwise obligated to pay but which is contingent on a final amount dictated by another process, do not trigger the provisions of the act. Fortis submitted that nowhere in this scenario is the departing customer being asked to answer for the debt of another party.

34. The Commission is mindful that it is the substance of an obligation, not any particular label that determines whether an obligation in an agreement would amount to a guarantee: *Canada v Talsma Farms Ltd.*, 2021 FC 356, at paragraph 27, citing *Royal Bank v Swartout*, 2011 ABCA 362, at paragraph 45. The Commission is further aware that the effect of the *Guarantees Acknowledgment Act*, if applicable, is that "no guarantee has any effect" unless the formalities specified under the act are followed.[18] With the above said, the Commission is satisfied that *Guarantees Acknowledgment Act* issues should not arise if Fortis's proposed method to effect the transfer of its customer to an REA is adhered to.

35. Under Fortis's proposed method, step (viii) states that Fortis is to "Execute the LPA with the REA **and receive payment of the RCN-D amount from the REA**" (emphasis added). The Commission interprets this step to mean that the REA will be required to pay the entire amount of the RCN-D as agreed to in the LPA before the customer is called upon to pay any residual exit

[16] *Guarantees Acknowledgment Act*, Section 3.
[17] *Guarantees Acknowledgment Act*, Section 1(a).
[18] *Guarantees Acknowledgment Act*, Section 3.

charge owing.[19] That being the case, and regardless of the merit of Fortis's submissions relating to the applicability of the *Guarantees Acknowledgment Act*, there can be no "default" or "omission" of the REA that the customer might otherwise be required to answer for because the REA will already have paid what it is required to pay Fortis under the LPA. If the REA does not pay the entirety of the agreed-to RCN-D to Fortis, the Commission's understanding is that the transfer process will simply not proceed.

36. The practical effect of Fortis's proposed method is that there could be no possible default, omission, or some other debt of the REA for the customer to answer for under Fortis's contract termination proposal with its customer. The protection offered by the *Guarantees Acknowledgment Act* would be unnecessary even if an argument could successfully be made that Fortis's contract termination proposal somehow fit within the definition of "guarantee."

37. With all of the above said, the Commission cautions Fortis to take care when finalizing the draft of its contract termination proposal to ensure the non-applicability of the *Guarantees Acknowledgment Act*.

4.3.3 Unlawful security

38. EQUS stated in argument that "the withholding by FortisAlberta of the asset transfer until a residual Exit Charge payment is made is, in substance and effect, a form of security."[20] In its reply, EQUS added some detail to that argument, stating that Fortis's withholding of the asset transfer until a residual exit charge is paid is a form of security "for the REA's obligation to pay the depreciated (RCN-D) value of the transferred assets."[21] It is unclear to the Commission from its review of EQUS's arguments which party, the customer or EQUS, is being asked to provide a form of security, which EQUS submits would be unlawful. In either case, the Commission's view is that there is no merit to EQUS's argument.

39. This matter is distinguishable from a case referred to by EQUS to support its position, Decision 25916-D01-2021,[22] where Fortis unsuccessfully attempted to require customers with "an increased risk of default of loss" to provide security to Fortis under its T&Cs.[23] The security interest in that decision was the pledging or giving of some property by a party as collateral to ensure that an obligation, such as the repayment of a debt, was fulfilled. Incidentally, the notion of the security interest in that decision is consistent with the meaning of "security interest" in the *Personal Property Security Act*, which includes "an interest in goods, chattel paper, investment property, a document of title, an instrument, money or an intangible that secures payment or performance of an obligation."

40. In this case, the customer is not being asked by Fortis to provide any collateral property to secure the customer's obligation under its contract termination proposal with Fortis. Rather, the customer is simply required to pay the entirety of the exit charges that will be owed pursuant

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[19] In the event Fortis and the REA were not able to reach agreement on an LPA and arbitration or some other dispute resolution mechanism ensued, the Commission would similarly expect that Fortis would require full payment of any finally determined RCN-D amount from the REA before invoicing the customer for any applicable residual exit charge fee.

[20] Exhibit 27560-X0018, EQUS argument, paragraph 39.

[21] Exhibit 27560-X0020, EQUS reply argument, paragraphs 8 and 13.

[22] Decision 25916-D01-2021: FortisAlberta Inc., 2022 Phase II Distribution Tariff Application, Proceeding 25916, July 8, 2021.

[23] Decision 25916-D01-2021, paragraphs 242-244.

to Section 7.5 of the T&Cs before Fortis agrees to transfer the customer to the REA. Even if a final, residual payment prior to the transfer of facilities was properly considered "security," EQUS has not provided any support for the proposition that such payment would be contrary to the law; it would simply be an advance payment from the customer for a service requested by that customer.

41. The result is no different if the argument is that it is the REA's obligation to pay the RCN-D before transferring the assets that amounts to the unlawful security. The REA's payment of the RCN-D is a requirement under its LPA with Fortis, and requiring that payment prior to effecting the transfer of facilities would appear to be nothing more than asking for advance payment from the party required to make that payment in order to complete a transaction. If the argument is that what amounts to the unlawful security is making the REA wait until the customer pays the residual exit charge before Fortis transfers the assets to the REA, EQUS has provided no support for this novel proposition.

42. At the end of the day, EQUS has not persuaded the Commission that the residual exit charge payment should be considered security from the perspective of the customer or the REA, nor is it clear why such payment would be unlawful even if properly categorized as security.

4.4 Error correction in Section 7.5

43. Through its response to an information request in this proceeding, Fortis confirmed that a minor correction was necessary to a portion of the currently approved Section 7.5 of the T&Cs, which stated the following:

> A Customer shall pay any applicable **Buy-Down Charges or PILON** [payment in lieu of notice] **charges** at the time that a contract termination proposal is accepted by the Customer. [emphasis added]

44. Given that any Distribution Customer Exit Charge payable by the customer at the time that a contract termination proposal is accepted under Section 7.5 may have more components or considerations than simply "Buy-Down Charges or PILON charges," Fortis proposed to change the above sentence in Section 7.5 to the following:

> A Customer shall pay any applicable **Distribution Customer Exit Charge** at the time that a contract termination proposal is accepted by the Customer. [emphasis added]

45. EQUS did not object to Fortis's proposal to change the above sentence, and the Commission is satisfied that the change more accurately reflects the process by which the exit charge will be determined on a go-forward basis.

4.5 Conclusion

46. For the reasons provided in this decision, Fortis has adequately addressed the seven Commission directions in Decision 27202-D01-2022 (reproduced in Section 2 of this decision).

47. The Commission therefore approves Fortis's proposed changes to Section 7.5 of the T&Cs, including the error correction described in Section 4.4 of this decision. Fortis is directed to implement these changes together with the changes to Section 2.1 of the T&Cs, which were approved (but not put into effect) in Decision 27202-D01-2022.

48. The Commission approves Fortis's method to implement its approved changes to Section 7.5, subject to a minor modification that is discussed in paragraph 31 of this decision. That is, Fortis is directed to provide its transferring customer with any revised and final exit charge no later than seven (7) days after Fortis receives payment from an REA for the transferred facilities, and to reflect this requirement in the contract termination proposal.

49. The Commission directs Fortis to file the updated T&Cs by December 9, 2022, as a post-disposition document in this proceeding. The updated T&Cs are to be effective on January 1, 2023.

5 Order

50. It is hereby ordered that:

(1) The Commission finds FortisAlberta Inc. to be in in compliance with the directions set out in Decision 27202-D01-2022.

(2) The application is approved, subject to FortisAlberta Inc.'s filing of updated terms and conditions in accordance with this decision.

Dated on December 5, 2022.

Alberta Utilities Commission

(original signed by)

Vera Slawinski
Commission Member

Appendix 1 – Proceeding participants

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

Alberta Utilities Commission Commission panel V. Slawinski, Commission Member Commission staff A. Culos (Commission counsel) E. Davis M. Logan

Appendix 2 – 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 therefore approves Fortis's proposed changes to Section 7.5 of the T&Cs, including the error correction described in Section 4.4 of this decision. Fortis is directed to implement these changes together with the changes to Section 2.1 of the T&Cs, which were approved (but not put into effect) in Decision 27202-D01-2022. ..... paragraph 47
2. The Commission approves Fortis's method to implement its approved changes to Section 7.5, subject to a minor modification that is discussed in paragraph 31 of this decision. That is, Fortis is directed to provide its transferring customer with any revised and final exit charge no later than seven (7) days after Fortis receives payment from an REA for the transferred facilities, and to reflect this requirement in the contract termination proposal. ..... paragraph 48
3. The Commission directs Fortis to file the updated T&Cs by December 9, 2022, as a post-disposition document in this proceeding. The updated T&Cs are to be effective on January 1, 2023. ..... paragraph 49