



Burnco Rock Products Ltd.

Application to Consider Complaint Regarding FortisAlberta
Inc. Fees

April 23, 2018

Alberta Utilities Commission

Decision 22872-D01-2018

Burnco Rock Products Ltd.

Application to Consider Complaint Regarding FortisAlberta Inc. Fees

Proceeding 22872

Application 22872-A001

April 23, 2018

Published by the:

Alberta Utilities Commission

Eau Claire Tower, 1400, 600 Third Avenue S.W.

Calgary, Alberta

T2P 0G5

Telephone: 403-592-8845

Fax: 403-592-4406

Website: www.auc.ab.ca

Contents

- 1 Decision summary 1
- 2 Introduction 1
 - 2.1 Background..... 2
- 3 Arguments of the Parties 5
 - 3.1 Fortis’ response 6
- 4 Issues 8
 - 4.1 Do Fortis’ Terms and Conditions apply to Burnco?..... 8
 - 4.1.1 Commission findings..... 8
 - 4.2 Application of the permanent disconnection provisions..... 10
 - 4.2.1 Commission findings..... 11
 - 4.3 Have the requirements of the T&Cs been satisfied? 14
 - 4.3.1 Commission findings..... 15
- 5 Order 19
- Appendix 1 – Proceeding participants 20

1 Decision summary

1. In this decision, the Alberta Utilities Commission must adjudicate a complaint filed by Burnco Rock Products Ltd. against FortisAlberta Inc. In its complaint, Burnco asked the Commission for relief from certain provisions in Fortis' Customer Terms and Conditions of Electric Distribution Service (T&Cs), including a declaration that Burnco is not obligated to pay the Distribution Customer Exit Charge, an order requiring Fortis to immediately repay the overcharges made by Burnco, and that Fortis be required to salvage Site ID 0040592553255 (Site 1) and Site ID 0040667097191 (Site 2) (collectively, the Sites) without further delay.¹

2. For the reasons outlined in this decision, the Commission has determined that:

- a. Fortis' T&Cs, and more specifically, those requiring the provision of notice or the payment of charges for permanent disconnection (the permanent disconnection provisions), apply to Burnco.
- b. The permanent disconnection provisions were applied to Burnco in a manner consistent with the Commission's original approval of the T&Cs.
- c. There has been substantive compliance with the permanent disconnection provisions and their associated objectives of revenue certainty and rate stability have been satisfied:
 - i. By June 28, 2016, Burnco had provided clear and unequivocal notice to Fortis of its intention to leave the distribution system and its desire to have Fortis' equipment at the Sites salvaged. It is from that date that the notice periods prescribed by the T&Cs for each of the Sites begins.
 - ii. The most current evidence on the record indicates that Burnco has paid all the amounts charged by Fortis to the retailer for each of the Sites, up to and including October 31, 2017.
- d. Any distribution tariff payments received by Fortis for the Sites after the expiration of their respective notice periods are overcharges. Fortis is directed to refund any such overcharges in accordance with Article 11.8 of the T&Cs.
- e. There is no need to address salvage because both of the Sites were salvaged by Fortis on January 14, 2018.²

2 Introduction

3. On July 27, 2017, Burnco filed a complaint with the Commission with respect to the salvage of the Sites, and the exit fees charged by Fortis. In its complaint, Burnco stated it had

¹ Exhibit 22872-X0001, Letter to AUC, August 10, 2017, PDF pages 2-3.

² Exhibit 22872-X0040, FortisAlberta Responses to FAI-AUC-2017DEC21-001 to 006, January 18, 2018, PDF page 3.

requested that Fortis terminate electric services and commence salvage of power facilities at the Sites. Burnco submitted that Fortis declined to proceed with the salvage unless Burnco either paid a distribution customer exit charge or provided a notice period for termination. Burnco stated that “[t]he termination and salvage costs proposed by Fortis are exorbitant in the circumstances and accordingly we seek an inquiry into the matter and hereby place the within complaint.”³

2.1 Background

4. On August 31, 2017, the Commission issued a notice of proceeding and set a schedule to consider Burnco’s complaint.⁴

5. To provide context for the parties’ positions, it is helpful to give a brief overview of the events giving rise to this proceeding.

6. The Sites are located on SE 08-22-28-W4. Burnco operated plants at each of the Sites and began receiving electricity services from TransAlta Utilities Corporation for Site 1 by way of an Electric Service Contract dated May 10, 1993, and for Site 2 by way of an Electric Service Contract dated October 22, 1998 (collectively, the ESAs). Fortis is the successor of TransAlta’s distribution business.

7. On April 6, 2016, Burnco made a request to its retailer, TransCanada Corporation, for permanent termination and salvage of the Sites explaining that it had permanently shut down its operations at the Sites and no longer required electric services at either location.⁵ The following day, a representative from TransCanada made a request to Fortis for permanent termination of power and for the salvage of the Sites.⁶ That request included two unsigned salvage request forms (the salvage request forms).⁷

8. On April 8, 2016, Fortis sent letters to Burnco pertaining to each of the Sites. Both letters had the subject line “Termination of Service for LSD: SE-08-22-28-W4” (the termination of service letters)⁸, and set out the following options:

- i. “Option 1 – Immediate Termination of the Existing Service Terms A Distribution Customer Exit Charge will be required if the Distribution Load Customer chooses to terminate the distribution charges for this service immediately without notice.”
- ii. “Option 2 – Notice Period of [9 or 20]⁹ months required to terminate the Existing Service Terms” This option stated that the service will continue to be billed on the existing service terms until the notice period has expired.

The termination of service letters also stated that “[i]f the Distribution Load Customer chooses not to accept any options outlined in this proposal or does not return the completed Signature

³ Exhibit 22872-X0001, Letter to AUC, August 10, 2017, PDF page 1.

⁴ Exhibit 22872-X0005, Notice of Proceeding, August 31, 2017.

⁵ Exhibit 22872-X0015, BURNCO Rock Products – Reply Submission – Schedule “A”, September 29, 2017, PDF page 12.

⁶ *Ibid*, PDF page 9.

⁷ *Ibid*, PDF pages 10-11.

⁸ Exhibit 22872-X0024, Schedule A-1 – Chronological Emails, January 18, 2018, PDF pages 55-63.

⁹ The letter for site identification number 0040592553255 (Site 1) stated a notice period of 20 months, and the letter for site identification number 0040667097191 (Site 2) stated a notice period of nine months.

Page, the Existing Service Terms will continue to be used in the calculation of the kW of Capacity.”

9. On April 8, 2016, the Sites were de-energized by Fortis.¹⁰
10. Burnco did not accept the options outlined in the termination of service letters and did not return the signature pages.
11. On June 23, 2016, Burnco asked TransCanada to verify the status of the salvage with Fortis.¹¹ The next day, TransCanada forwarded that request to Fortis.¹²
12. On June 28, 2016, Fortis responded to TransCanada, copying Burnco, advising that it required sign off on the “Review of Minimums” before it could proceed.¹³ That same day, Burnco responded directly to Fortis and asked whether the “attached Review of Minimums referenced below” were the correct forms.¹⁴ Burnco indicated that those were the only forms it had received.¹⁵ The Commission clarified with the parties that Burnco was referencing the salvage request forms that had previously been sent to Fortis on April 7, 2016.¹⁶
13. Minutes after its receipt of the inquiry from Burnco seeking confirmation of the correct forms, Fortis indicated to Burnco, “[t]hat looks right, just sign and send it back to Site Management to proceed.”¹⁷ Burnco signed and sent the salvage request forms to Fortis on June 28, 2016.¹⁸
14. On June 30, 2016, Fortis sent an email to Burnco stating: “The reviews to salvage these services were done in April and would have been sent to you at that time. We have not received the signed Termination of Service Letter and are unable to proceed until we do. Please see attached copies.”¹⁹ The termination of service letters dated April 8, 2016, were sent a second time. Burnco did not sign or return the termination of service letters.
15. In September 2016, Burnco requested an update on the salvage from Fortis.²⁰ Fortis responded that it had received Burnco’s original request in April 2016, and had forwarded the termination of service letters at that time. It also indicated that it received a second request on June 28, 2016, and that it sent the same termination of service letters a second time. Fortis included its previous email to Burnco, attaching the termination of service letters.²¹ This was the

¹⁰ Exhibit 22872-X0018.01, FortisAlberta Response to AUC Questions, November 17, 2017, question 1(a), PDF page 2.

¹¹ Exhibit 22872-X0024, Schedule A-1 – Chronological Emails, January 18, 2018, PDF page 54.

¹² Exhibit 22872-X0024, Schedule A-1 – Chronological Emails, January 18, 2018, PDF page 53.

¹³ Exhibit 22872-X0024, Schedule A-1 – Chronological Emails, January 18, 2018, PDF page 52.

¹⁴ Exhibit 22872-X0024, Schedule A-1 – Chronological Emails, January 18, 2018, PDF page 49.

¹⁵ In an IR response, Exhibit 22872-X0023, PDF pages 2-3, Burnco advised that this was an honest misstatement and that Burnco had in fact received the ROM / termination of service letters on April 8, 2016.

¹⁶ Exhibit 22872-X0040, FortisAlberta Responses to FAI-AUC-2017DEC21-001 to 006, January 18, 2018, PDF pages 11-12.

¹⁷ Exhibit 22872-X0024, Schedule A-1 – Chronological Emails, January 18, 2018, PDF page 48.

¹⁸ Exhibit 22872-X0024, Schedule A-1 – Chronological Emails, January 18, 2018, PDF pages 45-47.

¹⁹ Exhibit 22872-X0024, Schedule A-1 – Chronological Emails, January 18, 2018, PDF page 36.

²⁰ Exhibit 22872-X0015, BURNCO Rock Products – Reply Submission – Schedule “A”, September 29, 2016, PDF page 2.

²¹ Exhibit 22872-X0031, Attachment FAI-AUC-2017DEC21-004.01 Correspondence, January 18, 2018, PDF page 98.

third time that Burnco received the termination of service letters.²² Fortis stated that it still required the signed forms with Burnco's choice of whether it wanted to pay the PILON charge or "wait out" the notice period.²³

16. On September 16, 2016, Burnco advised Fortis that it did not accept the applicability of the T&Cs to the ESAs for Sites 1 and 2.²⁴

17. Months later, in April 2017, Burnco requested the terms and conditions that were appended to each of the ESAs for the Sites.²⁵ Fortis provided a copy of the ESAs to Burnco on April 13, 2017.²⁶

18. In June 2017, Burnco sent a letter to Fortis explaining its position that the current T&Cs could not be applied to the ESAs.²⁷ Fortis responded on July 4, 2017, stating that the T&Cs apply and that Fortis would not proceed with salvage until Burnco signed and returned the termination of service letters with a selection of its termination option.²⁸

19. On July 27, 2017, Burnco filed a complaint with the Commission.

20. Fortis salvaged the Sites on January 14, 2018, with the explanation that this was for safety and operational concerns.²⁹ Fortis confirmed that the amounts billed on a monthly basis to the retailer for Sites 1 and 2 since April 6, 2016, have all been paid to Fortis by the retailer and further confirmed that those amounts are equivalent, on a monthly basis, to the amounts payable during the notice period for each site, had Burnco elected to give notice.³⁰

21. On January 23, 2018, Fortis provided additional information regarding its response to Burnco. The Commission considers the record for this proceeding closed on that date. In reaching the determinations set out in this decision, the Commission has considered the record of this proceeding. References in this decision to specific parts of the record are intended to assist the reader in understanding the Commission's reasoning relating to a particular matter and should not be taken as an indication that the Commission did not consider all relevant portions of the record with respect to this proceeding.

²² Exhibit 22872-X0023, BURNCO Response to AUC Request for Additional Information, January 18, 2018, answer 1, PDF page 2.

²³ Exhibit 22872-X0015, BURNCO Rock Products – Reply Submission – Schedule "A", September 29, 2016, PDF page 2.

²⁴ Exhibit 22872-X0024, Schedule A-1 – Chronological Emails, January 18, 2018, PDF page 17; and exhibit 22872-X0023, BURNCO Response to AUC Request for Additional Information, January 18, 2018, answer 2(i), PDF page 4.

²⁵ Exhibit 22872-X0027, Schedule C – Email to Fortis, April 12, 2017, PDF page 3.

²⁶ Exhibit 22872-X0024, Schedule A-1 – Chronological Emails, January 18, 2018, PDF page 2.

²⁷ Exhibit 22872-X0026, Schedule B – Letter to Fortis, June 13, 2017, PDF page 2; and exhibit 22872-X0023, BURNCO Response to AUC Request for Additional Information, January 18, 2018, answer 3(vii), PDF page 6.

²⁸ Exhibit 22872-X0041, 2017-07-04 FortisAlberta response letter to Burnco, January 22, 2018, PDF page 2.

²⁹ Exhibit 22872-X0040, FortisAlberta Responses to FAI-AUC-2017DEC21-001 to 006, January 18, 2018, answer 1(d), PDF page 3.

³⁰ Exhibit 22872-X0018.01, FortisAlberta Responses to FAI-AUC-2017NOV03-003, November 17, 2017, answer 3(a), PDF pages 88-89.

3 Arguments of the parties

22. Burnco advanced a number of arguments in its original complaint and in its reply submission. Those arguments can be summarized as follows.

23. Burnco's position is that the terms of the ESAs govern the relationship between it and Fortis. Because the requirement for notice or the disputed charges for permanent disconnection set out in the T&Cs are not part of and do not accord with the terms of the ESAs, Burnco is not bound by them.

24. Burnco further submitted that the ESAs for the Sites have not been varied by Fortis' T&Cs because, as a basic common law principle, one party cannot unilaterally vary contractual terms without the full knowledge and consent of the other party. Burnco stated that it did not have notice of any exit charges until after it requested termination of service, and that the ESAs do not contain a unilateral variation clause that would allow Fortis to vary the terms without consent from Burnco.³¹

25. In the alternative, Burnco argued that even if Fortis' T&Cs apply, the Commission has the jurisdiction to "overrule" the T&Cs where they are unjust and unreasonable, citing Decision 2005-086.³² In summary, Burnco argued that the application of the T&Cs to the Sites would be unjust and unreasonable because:

- a. The distribution exit charges in the T&Cs function to ensure that Fortis can recapture its installation costs as well as salvage and other costs to Fortis in the event of a termination of contract. However, that function was already carried out by the large monthly minimum demands for service under the ESAs. As such, imposing new exit charges to terminate the ESAs, after Fortis has already recouped all its costs under the ESAs, does not accord with the spirit of the original agreement or the basic principles of utility regulation.³³
- b. The exit charges do not relate to an expense prudently incurred by Fortis and are neither just nor reasonable as applied to these legacy contracts.³⁴
- c. The application of the distribution customer exit charge in relation to the Sites, creates an unfair and unreasonable result that was not contemplated by the Commission's original approval.³⁵ When the T&Cs were approved, the Commission did not consider their application to legacy contracts with large monthly minimum demands for service, which already incorporated Fortis' costs on termination, including lost revenue, or to ESAs with shorter notice periods than those provided for in the T&Cs.³⁶

26. In its reply submission, Burnco denied Fortis' assertion that it continued to receive electric distribution service at the Sites, explaining that Fortis disconnected the transformers on

³¹ Exhibit 22872-X0001, Letter to AUC, August 10, 2017, page 2.

³² Decision 2005-086: FortisAlberta Inc., 2005 Distribution Tariff – Payment in Lieu of Notice, Application No. 1371998, August 2, 2005.

³³ Exhibit 22872-X0001, Letter to AUC, August 10, 2017, pages 1-2.

³⁴ Exhibit 22872-X0001, Letter to AUC, August 10, 2017, page 2.

³⁵ Exhibit 22872-X0014, BURNCO Rock Products – Reply Submission, September 29, 2017, paragraph 16.

³⁶ Exhibit 22872-X0014, BURNCO Rock Products – Reply Submission, September 29, 2017, paragraph 17.

April 9, 2016.³⁷ Burnco also requested alternative relief in the event that the Commission ruled that Burnco is obligated to provide notice or pay the distribution customer exit charge:³⁸

33. ... Accordingly BURNCO submits that if a PILON is payable at Site 1 and Site 2, commencement of the notice period for the purpose of calculating the PILON should be the date of BURNCO's original termination request, April 6, 2016.

34. BURNCO further submits that if a PILON charge is payable, the appropriate notice period for terminating service is the length of notice stipulated in the relevant Electric Service Contract.

(a) Clause 12 of the Electric Service Contract for Site 1 provides that BURNCO may terminate the Contract upon 1 year written notice, not 20 months as stated in Fortis's Termination Proposal Letter. Given BURNCO's notice date of April 6, 2016, the notice period for Site 1 ended on April 5, 2017.

(b) Clause 13 of the Electric Service Contract for Site 2 provides that BURNCO may terminate the Contract upon 1 month prior notice, not nine months as stated in the Termination Proposal Letter. Given BURNCO's notice date of April 6, 2016, the notice period for Site 2 ended on May 5, 2016.

BURNCO submits that Fortis is responsible to provide an accurate calculation of the PILON, calculated in accordance with the foregoing notice periods.

35. In the event the Commission finds a PILON is payable at Site 1 and Site 2, BURNCO submits that it should be refunded the amount of its Overpayment (\$114,762.34 as of August 30, 2017) less the amount of the PILON charge calculated in accordance with the notice period provided under the original Contract for each Site.

27. Although Burnco referred to a PILON charge, in the extracts cited above, the Commission understands Burnco to request the notice period, if one is required, to be that set out in the ESAs; that such notice period run from April 6, 2016; and that Fortis be directed to refund the overpayment between the amounts payable during the notice period under the ESAs, and the amounts actually paid to Fortis since April 6, 2016.

3.1 Fortis' response

28. Fortis submitted that the Commission should dismiss Burnco's complaint and confirm Fortis' correct application of its tariff.³⁹ Fortis also specified that the only component of the distribution exit charge in issue in this proceeding is the PILON or notice obligation.⁴⁰

29. Fortis asserted that the notice obligation or PILON is properly applicable to Burnco and that regardless of the express wording of what Burnco refers to as the "TransAlta legacy contracts", by taking electric service Burnco is deemed to have accepted Fortis' T&Cs, including

³⁷ Exhibit 22872-X0014, BURNCO Rock Products – Reply Submission, September 29, 2017, paragraph 9.

³⁸ Exhibit 22872-X0014, BURNCO Rock Products – Reply Submission, September 29, 2017, paragraphs 33-35.

³⁹ Exhibit 22872-X0006, FortisAlberta Response Submission, September 15, 2017, paragraph 4.

⁴⁰ Exhibit 22872-X0006, FortisAlberta Response Submission, September 15, 2017, paragraph 12.

the PILON charge.⁴¹ Fortis added that any changes to the T&Cs supersede the terms of an ESA.⁴²

30. In response to Burnco's arguments regarding the reasonability of the T&Cs and whether they have been applied in a manner not contemplated at the time of their approval by the Commission, Fortis offered the following submissions:⁴³

The current notice obligation for the distribution component of the PILON charge was approved by the Commission's predecessor in Decision 2005-086. As noted by the Commission in Decision 2011-362, the transmission component was approved for the purposes of the Alberta Electric System Operator tariff in Decision 2007-106 and continued on in Decision 2010-606. FortisAlberta's Terms and Conditions in their entirety were confirmed by the Commission to remain in effect in Decision 2014-018: FortisAlberta's 2012-2014 Phase II Distribution Tariff Proceeding. Accordingly, the Commission or its predecessor has found the notice obligation or PILON provision in the Terms and Conditions to be reasonable and properly applicable in the event a Customer requests a change in the Expected Peak Demand or permanent disconnection.

In Decision 2011-362, the Commission determined that FortisAlberta's approved Terms and Conditions and the application thereof should not be viewed as "unfair, unreasonable or unforeseen, in the absence of evidence of specific circumstances that demonstrate that the [Terms and Conditions] are being applied in a manner that was not contemplated in the Commission's original approval." In FortisAlberta's submission, there is no evidence before the Commission in this Proceeding that the Company applied the Terms and Conditions in a manner that was not contemplated in the Commission's original approval. Accordingly, the notice obligation or PILON provision in the Terms and Conditions are properly applicable to BURNCO. [footnotes removed]

31. Fortis submitted that the Commission's predecessor has accepted its explanation of the purpose of the PILON charge, which is to ensure adequate notice for planning and revenue stability.⁴⁴ Fortis added that "the notice obligation or the PILON charge send[s] a financial signal to customers that are reducing load to provide appropriate notice, which assists wire owners like FortisAlberta and the Alberta Electric System Operator ("AESO") in carrying out proper transmission and distribution planning based on load information in the respective planning horizons."⁴⁵

32. In response to Burnco's assertion that the function of PILON is to recoup costs that were already recovered by the contract minimum demands for service in the ESAs, Fortis submitted that the function of the contract minimum demand is different from that of notice or the PILON provision. Notice and PILON ensure adequate notice for planning, while the contract minimum demand is one of the determinants used to calculate the billing charges for operation and use of the service. Fortis stated:⁴⁶

While the Contract Minimum Demand does assist in the recovery of FortisAlberta's investment, it also provides the reasonable revenue required to provide operation and

⁴¹ Exhibit 22872-X0006, FortisAlberta Response Submission, September 15, 2017, paragraph 18.

⁴² Exhibit 22872-X0006, FortisAlberta Response Submission, September 15, 2017, paragraph 19.

⁴³ Exhibit 22872-X0006, FortisAlberta Response Submission, September 15, 2017, paragraphs 23-24.

⁴⁴ Exhibit 22872-X0006, FortisAlberta Response Submission, September 15, 2017, paragraph 29.

⁴⁵ Exhibit 22872-X0006, FortisAlberta Response Submission, September 15, 2017, paragraph 27.

⁴⁶ Exhibit 22872-X0006, FortisAlberta Response Submission, September 15, 2017, paragraph 37.

maintenance for the dedicated service and for the integrated electrical grid as a whole for as long as the service is required. In all cases, this revenue is required for facilities within the integrated distribution system and is not customer-specific.

33. Fortis argued that a Commission order relieving Fortis from a consistent application of its T&Cs would amount to an amendment of those T&Cs on a customer-specific basis without the benefit of a complete regulatory process.⁴⁷ Fortis added that it must apply its T&Cs in a consistent manner and cannot make exceptions for customers on a case-by-case basis, and that the relief Burnco has requested would constitute a discriminatory application of the T&Cs.⁴⁸

34. Fortis further asserted that there is no basis for Burnco's overpayment claim, stating:⁴⁹

[40] ...The retailer of record for BURNCO's Site 1 and Site 2 was correctly charged \$89,756.58. BURNCO did not sign and return the Termination Proposal Letters in respect of Site 1 and Site 2. Consequently, it continued to receive the electric distribution service contracted for at those sites over the relevant time period."

41. Based on the foregoing, FortisAlberta respectfully requests that the Commission dismiss BURNCO's complaint and confirm FortisAlberta's correct application of its tariff in the present case. If confirmed, FortisAlberta will commence salvage at Site 1 and Site 2 once BURNCO provides FortisAlberta with signed acceptance of the option to immediately terminate the existing services at Site 1 and Site 2 as set out in the Termination Proposal Letters dated April 8, 2016, and pays FortisAlberta the applicable PILON charges.

4 Issues

4.1 Do Fortis' Terms and Conditions apply to Burnco?

35. Burnco submitted that with respect to termination of service, the terms of the ESAs govern, rather than Fortis' T&Cs. It argued that both parties must consent to any changes to a contract⁵⁰ and that applying the T&Cs in these circumstances would not accord with the spirit of the original agreement or the basic principles of utility regulation.⁵¹

36. Fortis argued that Burnco is deemed to have accepted the T&Cs by taking electric distribution service.⁵²

4.1.1 Commission findings

37. In Decision 22796-DO1-2018, the Commission considered arguments very similar to those being asserted by Burnco in this complaint. It stated:⁵³

32. In order to determine whether Fortis' T&Cs apply to DEL, the Commission must consider the statutory framework under which the tariff is approved. The Electric Utilities

⁴⁷ Exhibit 22872-X0006, FortisAlberta Response Submission, September 15, 2017, paragraph 32.

⁴⁸ Exhibit 22872-X0006, FortisAlberta Response Submission, September 15, 2017, paragraphs 25-26.

⁴⁹ Exhibit 22872-X0006, FortisAlberta Response Submission, September 15, 2017, paragraphs 40-41.

⁵⁰ Exhibit 22872-X0014, BURNCO Rock Products – Reply Submission, September 29, 2017, paragraph 10.

⁵¹ Exhibit 22872-X0001, Letter to AUC, August 10, 2017, page 2.

⁵² Exhibit 22872-X0006, FortisAlberta Response Submission, September 15, 2017, paragraph 18.

⁵³ Decision 22796-D01-2018, paragraphs 32-38.

Act and its regulations establish a comprehensive regulatory scheme governing the electricity market and the provision of electricity in Alberta.

33. As an owner of an electric distribution system pursuant to the Electric Utilities Act, Fortis has a duty to provide electric distribution service under Section 105 of the Electric Utilities Act. In return, Fortis may recover its prudent costs from eligible customers in accordance with a tariff that is approved by the Commission. The T&Cs, including the PILON provisions at issue in this proceeding, were approved in Decision 2014-018.

34. The Commission cannot accept DEL's arguments that the PILON provisions do not or should not apply because its "original contract" did not contain a PILON provision, that an amendment including a PILON provision would require the consent of both parties, or that to allow the application of the PILON provisions would be "misaligned with the original agreement and the principles of public utility regulation."

35. The Commission has previously held that the terms and conditions between a public utility and its customers are not voluntary contracts, but "legally imposed regulations that bind the utility to provide a service at just and reasonable rates to all who require and demand them." As noted by the Commission in paragraph 95 of Decision 2011-383:

But as we have seen from the law of public utilities, there is no consent let alone agreement between the parties. The doctrine that public utilities are obligated to serve all who request their services for reasonable prices can be traced back to Lord Hale in the late seventeenth century. It was a matter of common law long before it was ever codified in statutes such as those governing electricity in Alberta today. The lack of consent between the two parties over the suppliers' willingness to provide and the prices it can charge indicate that the Terms and Conditions are not a contract in any sense of the common law definition of contract. In fact, the common law has always held, as far back as Lord Hale, that these are obligations and not voluntary contracts.

36. Consistent with the statutory scheme and the principles of public utilities law described above, the Commission finds that the relationship between Fortis and its customers results from legislative regulation and is not a voluntary one. Explicit consent from individual customers to changes to terms and conditions of service is therefore not required. Further, the terms of an ESA do not necessarily contain all those terms and conditions governing the relationship between a public utility and its customers.

37. Under the Electric Utilities Act, a "customer" means a person purchasing electricity for the person's own use. According to the T&Cs, "customer," in part, "has the meaning given such term in, and is determined in accordance with, the [Electric Utilities Act]" DEL began purchasing electricity for its own use in 2000, and continued to purchase electricity until DEL sought to disconnect in late August 2016. Consequently, while the ESA was not signed, the Commission is satisfied that DEL was a customer of Fortis, as defined in the Electric Utilities Act and the T&Cs, at the time DEL disconnected from the site in 2016. By operation of the legislative framework and principles of public utilities law, the agreement between DEL and Fortis is therefore governed, in part, by the T&Cs.

38. Although not determinative, the ESA provisions also expressly acknowledge that the supply of electric service is governed by the applicable terms and conditions, which may be changed from time to time[.]

38. The above analysis applies equally to the circumstances of this complaint. There is no dispute that Burnco has been a customer of Fortis (or its predecessor) since 1993 when Burnco commenced to take electric service at Site 1. The legislative framework and principles of public utilities law described above therefore have application with the result that the relationship between Fortis and Burnco is not a purely contractual or consensual one. Rather, that relationship is bound by legislative regulation and consequently, in part, by Fortis' approved T&Cs. Explicit consent to changes in those approved T&Cs is not required.

39. Pursuant to Fortis' approved T&Cs, where the T&Cs are inconsistent with the terms of the ESAs, it is the former that govern.⁵⁴ While not determinative, it is noteworthy that the paramountcy of the T&Cs is also expressly or implicitly recognized in the ESAs between Fortis and Burnco.

40. The 1998 ESA for Site 2 expressly states that, "[t]he supply of electric service to the Customer is governed by TransAlta's Terms and Conditions of Electric Service, as approved from time to time by the Alberta Energy & Utilities Board."⁵⁵ Although the 1993 ESA does not contain an identical provision, it does contain a provision that makes it clear that the 1993 ESA "shall be subject to TransAlta obtaining all governmental orders, permits, approvals and consents required by law with respect to the supply of electric service."⁵⁶

41. For all of the above reasons, the Commission finds that the T&Cs, including the permanent disconnection provisions at issue in this proceeding, apply to Burnco.

4.2 Application of the permanent disconnection provisions

42. Having found that the T&Cs, including the permanent disconnection provisions, apply to Burnco, the Commission must next consider Burnco's arguments that it should overrule the T&Cs because they are unjust or unreasonable or, in the alternative, that the Commission should find that the T&Cs are being applied in a manner that was not contemplated in its original approval of the T&Cs.

43. In support of the first of those arguments, Burnco submitted that Decision 2005-086 is an example of a situation where the Commission has "overruled" T&Cs considered unreasonable or unjust. As recorded above, Burnco advanced a number of arguments for why the notice or charge provisions should be considered unreasonable or unjust.

44. In support of the second argument, Burnco argued that the ESAs are unique and that when the T&Cs were approved, the Commission did not consider their application to legacy contracts with large contract minimum demands intended to capture all costs associated with the provision of electric service, including those on termination of the contract, or to contracts stipulating much shorter notice periods than those prescribed by the T&Cs.⁵⁷

45. In its response, Fortis argued that the Commission has approved the current notice obligation or PILON provisions in the T&Cs, in several decisions, and has found them reasonable and properly applicable in the event that a customer requests a change in expected

⁵⁴ Section 2.2 of Fortis's T&Cs.

⁵⁵ Exhibit 22872-X0001, Letter to AUC, August 10, 2017, PDF page 20, paragraph 13.

⁵⁶ Exhibit 22872-X0001, Letter to AUC, August 10, 2017, PDF page 16, paragraph 28.

⁵⁷ Exhibit 22872-X0014, BURNCO Rock Products – Reply Submission, September 29, 2017, paragraphs 17-19.

peak demand or permanent disconnection. Fortis further argued that the purpose of contract minimum demands and of the notice and PILON provisions is different, and that there is no evidence before the Commission in this proceeding that Fortis applied its T&Cs in a manner that was not contemplated in the Commission's original approval.⁵⁸

4.2.1 Commission findings

46. The permanent disconnection provisions, that is, the notice obligations and PILON provisions in the event of permanent disconnection, are detailed in articles 10.1.4, 7.3.2, and 7.5 of Fortis' T&Cs, which state:

10.1.4 Permanent Disconnection

If the Customer, or the Customer's Retailer on behalf of the Customer, requests a Permanent Disconnection of the Point of Service, the Customer billing for that service will be finalized. At the discretion of FortisAlberta, the Facilities provided by FortisAlberta may be removed, unless the Customer, or the Customer's Retailer, agrees to pay the Idle Service Charges as set forth in Section 10.1.2 in which case the request will be deemed thereafter to be a De-Energize request. FortisAlberta reserves the right to assess the Customer's Retailer's request for Permanent Disconnection and if the request is determined by FortisAlberta to be improper (such as if the Customer agrees to pay for Electric Distribution Service), to require the Retailer to correct the transaction. If a Point of Service remains disconnected for greater than 12 months, it may be considered by FortisAlberta to be a Permanent Disconnection.

If within 3 years of Permanent Disconnection the Customer requests the Service Connection be restored, the Customer may be required to pay all the costs associated with the original disconnection, removal of the Facilities and restoration of service.

A Customer may be charged a Distribution Customer Exit Charge related to a Permanent Disconnection as set out in Section 7.5 hereof.

...

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 Appendix "B" attached hereto, 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, calculated as prescribed under Section 7.3.2, using a new Contract Minimum Demand of zero; and

⁵⁸ Exhibit 22872-X0006, FortisAlberta Response Submission, September 15, 2017, paragraphs 23-24.

- (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.

7.3.2 Impact of Changes on a Customer's Electric Service Agreement

...

Decreases

...

A Customer is required to give notice to FortisAlberta to reduce the Contract Minimum Demand. For every 30 kW reduction in Minimum Demand, 1 month of notice is required. A Customer may give no more than 1 notice to reduce per year per Point of Service. Any notice provided in this instance shall take the form of signed acceptance by the Customer of FortisAlberta's Review of Minimum ("ROM") Proposal Letter, which FortisAlberta shall use commercially reasonable efforts to provide the Customer in a timely basis. The notice period shall commence upon receipt by FortisAlberta of the accepted ROM Proposal Letter from the Customer. If FortisAlberta determines in good faith that it has caused a delay of greater than 1 month in its issuance of the ROM Proposal Letter to the Customer, and has thereby delayed the commencement of the notice period, the notice period may be adjusted as deemed appropriate by FortisAlberta, acting reasonably and in good faith, and such adjustment will be reflected in the notice period contained in the ROM Proposal Letter.

If less notice than is required is provided, the Customer is charged a "Payment In Lieu Of Notice" amount ("PILON"), calculated as the difference between the Minimum Charge based on the original Contract Minimum Demand and the Minimum Charge on the reduced Contract Minimum Demand, multiplied by the number of months falling short of the required notice. With respect to the distribution component of FortisAlberta's Distribution Tariff charges, the number of months used to calculate the Customer's PILON shall be limited to 24. With respect to the transmission component of FortisAlberta's Distribution Tariff charges, the number of months used to calculate the Customer's PILON shall be limited to 60.

...

If the Customer pays the applicable PILON instead of providing the required notice, demand ratchet history is reduced correspondingly for billing purposes by the amount of the reduction in Operating Demand corresponding to the reduction in Contract Minimum Demand.

The Customer shall pay any applicable Buy-Down Charges or PILON charges at the time that a buy-down proposal is accepted by the Customer.

47. Fortis' current notice obligation and PILON provisions were approved as part of Fortis' T&Cs in Fortis' last Phase II distribution tariff proceeding.⁵⁹ The Commission has consistently held that the formal regulatory process of approving the tariff, which includes the T&Cs, allows affected parties sufficient opportunity to test the T&Cs.⁶⁰ Once approved, it is therefore no longer open to a party such as Burnco to seek to have the Commission "overrule" the approved T&Cs.

⁵⁹ AUC Decision 2014-018: FortisAlberta Inc., 2012-2014 Phase II Distribution Tariff, Application No. 1609211, Proceeding ID No. 2363, January 27, 2014.

⁶⁰ AUC Decision 2011-362: paragraph 61; AUC Decision 22796-D01-2018, paragraph 50.

Decision 2005-086 cited by Burnco does not offer support for a contrary conclusion. In that decision, the Commission did not “overrule” previously approved T&Cs. Rather, the PILON charge was an outstanding issue considered adjunct to a negotiated tariff application, which is the appropriate venue to determine and approve specific changes to the T&Cs.

48. The Commission has also consistently held that it will not consider the application of the approved T&Cs as “unfair, unreasonable or unforeseen” unless there is evidence that establishes that they were applied in a manner “not contemplated in the Commission’s original approval.”⁶¹

49. For the reasons that follow, the Commission is not persuaded by the submissions of Burnco that the permanent disconnection provisions were applied in a manner not contemplated by the Commission’s original approval.

50. Burnco argued that the Commission did not anticipate the application of the T&Cs to “legacy contracts” with inflated or large contract demands for service. It did not provide an explanation of what it meant by the term “legacy contracts.” However, when the Commission’s predecessor approved the PILON charge provisions in Fortis’ T&Cs, the Board expressly acknowledged their application to situations where large contract minimum demands of 720 kilowatt (kW) or greater exist.⁶²

51. Burnco also argued that to apply the notice or charge provisions in the circumstances of this proceeding would allow Fortis to recover the same amounts twice.⁶³ That is, it would allow Fortis to recoup both its “infrastructure cost of construction and salvage of the transformers”,⁶⁴ as well as “lost revenue”⁶⁵ following termination of a contract, notwithstanding that those amounts had already been recovered through the large monthly minimum demands for service under the ESAs. Burnco argued that this would not have been anticipated by the Commission when it approved the T&Cs.

52. This argument by Burnco is not consistent with previous decisions of the Commission or its predecessor on the purpose of notice or a PILON charge, and is otherwise not supported by the evidence.

53. When it initially approved the PILON charges in Fortis’ T&Cs, the Board expressly distinguished between the concepts of the PILON charge and a utility’s recovery of its initial investment, stating:⁶⁶

The Board notes that [Fortis’] larger customers are subject to Electric Service Agreements ranging in duration up to 15 years. The Board notes that such customers who wish to reduce load or terminate service may be subject to a “Buy Down Charge” which is separate from PILON.

...

⁶¹ AUC Decision 22796-D01-2018: paragraph 76; AUC Decision 2011-362: paragraph 61.

⁶² EUB Decision 2005-086: page 6. The Board indicated “FAI’s proposed maximum notice period of 24 months was only to apply to customers with Contract Minimum Demands of 720 kW or greater. The Board notes that most customers would continue to benefit from the flexibility to exit with less than 24 months notice and that customers under 75kW are not subject to PILON.”

⁶³ Exhibit 22872-X0014, BURNCO Rock Products – Reply Submission, September 29, 2017, paragraph 19.

⁶⁴ Exhibit 22872-X0001, Letter to AUC, August 10, 2017, pages 1-2.

⁶⁵ Exhibit 22872-X0014, BURNCO Rock Products – Reply Submission, September 29, 2017, paragraph 19.

⁶⁶ EUB Decision 2005-086: pages 3-4.

Therefore, the Board finds that PILON is not directly associated with recovery of the initial investment, which recovery is more directly dealt with by the investment policy and associated customer contribution, electric service agreement and buy-down policy.

54. The Board further accepted that the purpose of notice or a PILON is to provide a level of revenue certainty and rates stability for the distribution wires company and its customers in circumstances of a request to reduce load or terminate service.⁶⁷

55. Burnco has not offered any persuasive evidence in support of its assertion that the contracted minimum demands incorporated salvage, lost revenue and other costs following termination of a contract and were intended to satisfy the purpose of notice or a PILON; that is, “to provide an appropriate level of revenue certainty and rates stability for a distribution wires company and its remaining customers”⁶⁸ such that no termination notice or payment in lieu of notice was contemplated by the parties. In fact, the language of the ESAs suggests the contrary as both ESAs expressly provide for a notice period in the event of termination.

56. Burnco argued that the Commission did not contemplate the application of the permanent disconnection provisions to ESAs stipulating shorter notice periods than those prescribed by the T&Cs. However, the Commission has consistently held that where the terms of an ESA are inconsistent with a distribution utility company’s T&Cs, the T&Cs will govern.⁶⁹

57. For all the above reasons, Burnco has failed to satisfy the Commission that the application of the permanent disconnection provisions to the Sites would result in the application of the T&Cs in a manner not intended by the Commission.

4.3 Have the requirements of the T&Cs been satisfied?

58. In light of the Commission’s finding that the T&Cs apply to Burnco, the Commission must consider how the permanent disconnection provisions apply to the specific facts before it.

59. Section 7.5 requires that a customer pay the applicable buy-down or PILON charge at the time that a “contract termination proposal” is accepted by the customer. Section 7.3.2 of the T&Cs states that any notice provided shall take the form of a signed acceptance by the customer of Fortis’ review of minimums proposal letter, and that the notice period shall commence upon receipt by Fortis of the accepted review of minimums proposal letter.

60. Burnco submitted that if the Commission found that provision of notice or the payment of PILON were required, commencement of the notice period should be the date of Burnco’s original termination request on April 6, 2016.

61. In its response, Fortis submitted that Burnco did not provide Fortis with signed acceptance of the letters Fortis had sent, and that accordingly, Fortis continued to charge the retailer for the Sites.⁷⁰

Pursuant to the current approved Terms and Conditions, BURNCO was required to complete the signature page on each of the Termination Proposal Letters and provide

⁶⁷ EUB Decision 2005-086: pages 5-6.

⁶⁸ EUB Decision 2005-086: page 5.

⁶⁹ AUC Decision 2011-362: paragraph 8, Decision 22796-D01-2018: paragraph 38.

⁷⁰ Exhibit 22872-X0006, FortisAlberta Response Submission, September 15, 2017, paragraph 16.

copies to FortisAlberta confirming its intent to proceed with either of the options outlined in each of the letters. However, BURNCO did not provide FortisAlberta with signed acceptance. Accordingly, as expressly stated in the Termination Proposal Letters, FortisAlberta proceeded to use the Existing Service Terms to calculate the cost of the electric distribution service that BURNCO continued to receive, and to flow those charges to the retailer of record for Site 1 and Site 2. FortisAlberta understands these charges to be the “overpayment” in the amount of \$89,756.58 that BURNCO claims should be refunded.

62. Fortis submitted that the only discretion available to it with respect to the retroactive adjustment of the notice period for the PILON charge is set out in Section 7.3.2. That section applies if the commencement period is delayed after a signed acceptance of the termination proposal letter is received by Fortis. Fortis argued that because in this case Burnco never provided a signed acceptance of the termination proposal letters, the limited discretion under Section 7.3.2 does not apply.⁷¹

4.3.1 Commission findings

63. It is clear from the record that there was considerable confusion on the part of both parties as to what was required by the T&Cs in order for Burnco to terminate its service, request permanent disconnection, and salvage Fortis’ equipment, and also as to whether the parties individually considered those requirements to have been met.

64. As previously noted, on April 6, 2016, Burnco made a request to its retailer, TransCanada, for permanent termination and salvage of the Sites.⁷² The following day, a representative of TransCanada made a request to Fortis for permanent termination of power and for the salvage of the Sites.⁷³ That request included unsigned copies of the salvage request forms.⁷⁴

65. On April 8, 2016, Fortis sent the termination of service letters to Burnco. The subject line of both of those letter was “Termination of Service for LSD: SE-08-22-28-W4.” The letters contained instructions on how Burnco was to confirm its request for termination and its choice of either a notice period or a PILON charge. However, the letters were not expressly identified as a contract termination proposal as referred to in Section 7.5 of the T&Cs, nor as a review of minimums letter as referenced in Section 7.3.2.

66. Notwithstanding that Burnco did not sign and return the April 8, 2016 termination of service letters, the Sites were de-energized by Fortis on that date.⁷⁵

67. Despite Fortis’ de-energization of the Sites, action that according to Fortis’ own salvage milestones suggests that Fortis was satisfied that Burnco had confirmed its salvage intention and request for de-energization, Fortis nevertheless sent the termination of service letters to Burnco on June 30, 2016, and September 7, 2016, seeking to, among other things, confirm Burnco’s

⁷¹ Exhibit 22872-X0006, FortisAlberta Response Submission, September 15, 2017, footnote 19.

⁷² Exhibit 22872-X0015, BURNCO Rock Products – Reply Submission – Schedule “A”, September 29, 2017 PDF page 12.

⁷³ *Ibid.*, PDF page 9.

⁷⁴ *Ibid.*, PDF pages 10 and 11.

⁷⁵ Exhibit 22872-X0018.01, FortisAlberta Response to AUC Questions, November 17, 2017, PDF page 2.

request for termination.⁷⁶ Just as with the April 8, 2016 letters, those letters were identified in the subject line as “Termination of Service for LSD: SE-08-22-28-W4” and contained the same instructions on how the customer confirms its request for termination of its service and its choice of either a notice period or a PILON charge. As with the April 8, 2016 letters, neither of the letters was expressly identified as a contract termination proposal as referred to in Section 7.5 of the T&Cs, nor as a review of minimums letter as referenced in Section 7.3.2.

68. Further confusing the situation, in other communications with Burnco, Fortis did refer to both “review of minimums” and “termination proposal letters;” but without clearly identifying to which documents it was referring.⁷⁷

69. Most significantly, in the email exchange that occurred between the parties on June 28, 2016, Fortis asked Burnco to “sign off on the Review of Minimums that was sent” before Fortis would proceed with the salvage.⁷⁸ Burnco responded by asking if the review of minimums was the salvage request form previously sent to Fortis unsigned on April 8, 2016.⁷⁹ Fortis replied in the affirmative,⁸⁰ and in response, Burnco submitted signed copies of the salvage request forms.⁸¹

70. Two days later on June 30, 2016, and contrary to its communications with Burnco on June 28, 2016, Fortis again stated that it would not proceed until it received “the signed Termination of Service Letter.”⁸²

71. The Commission does not have any insight into what Fortis considers either a “contract termination proposal” a “review of minimums letter,” a “termination of service letter” or a “salvage request form.” Those terms are not defined in the T&Cs, and Fortis appears to use that terminology loosely. The Commission is not surprised that Burnco was confused when on June 28, 2016, Fortis advised Burnco it required sign off on the “Review of Minimums.” That phraseology was nowhere to be found in the termination of service letters. Furthermore, when Fortis responded to Burnco’s request for confirmation of the correct forms, Fortis confirmed that the salvage request forms were the correct forms.⁸³

72. The Commission finds that Fortis’ inconsistent nomenclature in the identification of its required documents and its inconsistent communications with Burnco regarding what it was requesting, resulted in considerable confusion and delay for both parties. As a consequence, the Commission is unable to reasonably assess whether there has been technical compliance with the T&Cs. It must therefore examine if and when the substantive requirements and objectives of the T&Cs, and more specifically those of the permanent disconnection provisions, were met.

73. Permanent disconnection is defined in Section 2.1 of the T&Cs to mean “the cessation of Electricity Services resulting from removal of Facilities. Permanent Disconnection is also referred to as “salvage.”” The Commission understands this definition to equate the terms

⁷⁶ Exhibit 22872-X0023 BURNCO Response to AUC Request for Additional Information, January 18, 2018, PDF page 2.

⁷⁷ Exhibit 22872-X0006, FortisAlberta Response Submission, September 15, 2017, paragraph 9.

⁷⁸ Exhibit 22872-X0024, Schedule A-1 – Chronological Emails, January 18, 2018, PDF page 52.

⁷⁹ Exhibit 22872-X0024, Schedule A-1 – Chronological Emails, January 18, 2018, PDF page 49.

⁸⁰ Exhibit 22872-X0024, Schedule A-1 – Chronological Emails, January 18, 2018, PDF page 48.

⁸¹ Exhibit 22872-X0024, Schedule A-1 – Chronological Emails, January 18, 2018, PDF pages 45-47.

⁸² Exhibit 22872-X0024, Schedule A-1 – Chronological Emails, January 18, 2018, PDF page 36.

⁸³ Exhibit 22872-X0024, Schedule A-1 – Chronological Emails, January 18, 2018, PDF page 48.

‘permanent disconnection’ and ‘salvage’ such that they can be referred to interchangeably in Fortis’ T&Cs.

74. Fortis outlined that for the Sites, both classified as FortisAlberta Rate 61 sites, its salvage process has five milestones⁸⁴ that can be summarized as follows:

- (1) The customer determines it no longer needs distribution access, notifies its Retailer of such, and requests that the Retailer send a DER 0003 Request to Fortis.
- (2) The Retailer sends Fortis a DER 0003 Transaction.
- (3) Fortis contacts the customer to confirm whether the customer wants the facilities salvaged and to advise that, as per Section 7.5 Charges Related to Permanent Disconnection of Fortis’ T&Cs, a termination letter will be sent outlining unrecovered investment obligations (if applicable) and the customer’s options regarding immediate salvage or salvage after the notice period. **“If the customer’s salvage intention is confirmed and de-energization is requested, the meter is de-energized and removed after the DER 0003 is received.”**⁸⁵ Fortis then creates and sends the termination letter to the customer. [emphasis added]
- (4) The customer receives, reviews, signs and returns the termination letter to Fortis confirming the customer’s choice of options regarding immediate salvage, or salvage after the notice period.
- (5) (a) If immediate salvage is chosen, Fortis sends the customer an invoice for the Distribution Customer Exit Charge Related to Permanent Disconnection pursuant to Section 7.5 (e.g. PILON and any unrecovered investment). Upon receipt of payment from the customer, Fortis will stop distribution tariff billing to the Retailer and schedule the salvage of the facilities if appropriate.
(b) If the customer elects for salvage after completion of the applicable notice period, the facilities remain in place, and distribution tariff billing continues for the duration of the notice period. At the end of the notice period, Fortis sends the customer an invoice for any remaining unrecovered investment (if applicable).

75. On April 6, 2016, Burnco met milestone #1 by asking its retailer to permanently terminate power to the two Sites, and to salvage the power facilities.⁸⁶ Milestone #2 was satisfied when the retailer sent that request on to Fortis. On April 8, 2016, the Sites were de-energized by Fortis.⁸⁷ This conduct on the part of Fortis appears to confirm that milestone #3 took place. That is, Fortis contacted the customer, confirmed Burnco’s salvage intention and request to de-energize the Sites, and then proceeded to de-energize the Sites.

76. The Commission finds that on June 28, 2016, Burnco substantively met milestone #4 when it reviewed, signed and returned the salvage request forms to Fortis. The Commission places considerable weight on the fact that the salvage request forms were positively identified

⁸⁴ Exhibit 22872-X0040, FortsAlberta Responses to FAI-AUC-2017DEC21-001 to 006, January 18, 2018, PDF pages 2-3.

⁸⁵ Exhibit 22872-X0040, FortsAlberta Responses to FAI-AUC-2017DEC21-001 to 006, January 18, 2018, PDF page 2.

⁸⁶ Exhibit 22872-X0024, Schedule A-1 – Chronological Emails, January 18, 2018, PDF page 68.

⁸⁷ Exhibit 22872-X0018.01, FortisAlberta Response to AUC Questions, November 17, 2017, PDF page 2.

by Fortis as being the correct forms. Burnco, not having any insight into Fortis' operations, signed the salvage request forms and returned them to Fortis, as instructed by Fortis.

77. The Commission finds that milestone #5(b) was also substantively met. The facilities remained in place and distribution tariff billing continued at least up to October 31, 2017, and in the absence of evidence to the contrary, likely for the duration of the notice periods for both sites. On January 14, 2018, the Sites were salvaged.

78. Having regard to all of the above, the Commission is satisfied that all of the milestones associated with Fortis' permanent disconnection process have substantively been met.

79. The Commission is further satisfied that the primary objective of the permanent disconnection provisions has also been substantively met. As such, in the unusual circumstances of this complaint and in the absence of a compelling reason to conclude otherwise, the Commission sees no reasonable basis upon which to require Burnco to provide notice or a PILON a second time. The reasons supporting these findings are as follows.

80. Fortis has consistently argued, and the Commission and its predecessors have accepted, that the primary purpose and objective of a notice period, or in the alternative a PILON charge, is to provide an appropriate level of revenue certainty and rates stability for a distribution company and its remaining customers, in circumstances of a request for load reduction or termination of service.^{88 89}

81. Burnco's repeated requests for permanent disconnection and salvage of the Sites were clear, consistent and unequivocal. Most significantly, on June 28, 2016, Fortis received a signed confirmation of Burnco's intention to salvage and request to de-energize. This was in direct response to Fortis' express confirmation that the salvage request forms were the "right" forms and that upon their receipt, Fortis would "proceed." Once it received Burnco's signed salvage request forms on June 28, 2016, Fortis knew, or reasonably ought to have known, that the Sites would no longer be providing revenue. The Commission considers that that knowledge, coupled with Fortis' continued receipt of distribution tariff payments for the Sites during the notice periods prescribed by the T&Cs, provided Fortis with an appropriate level of revenue certainty and rates stability for it and its remaining customers.

82. More specifically, with respect to Site 2, Fortis' evidence was that pursuant to the T&Cs, Burnco was required to provide nine months' notice for the permanent disconnection. The Commission has found that notice was effective on June 28, 2016. It is therefore from that date that the notice period began. Fortis' evidence confirms that the amounts billed on a monthly basis to the retailer for the Sites have all been paid to Fortis by the retailer, at least up to October 31, 2017, and that those amounts are equivalent, on a monthly basis, to the amounts payable during the notice period for each site.⁹⁰ As such, Fortis has already received the full amounts payable during the notice period for Site 2. All distribution tariff payments received for Site 2 beyond the expiration of the nine month notice period are therefore overcharges and Fortis is directed to refund any such overcharges in accordance with Article 11.8 of the T&Cs.

⁸⁸ Exhibit 22872-X0006, FortisAlberta Response Submission, September 15, 2017, paragraph 29.

⁸⁹ Decision 2005-086, pages 5-6.

⁹⁰ Exhibit 22872-X0018.01, FortisAlberta Responses to FAI-AUC-2017NOV03-003, November 17, 2017, PDF page 90.

83. As for Site 1, Fortis' evidence was that pursuant to the T&Cs, Burnco was required to provide a notice period of 20 months. While it is clear from the Fortis evidence referred to above that Fortis has received the distribution tariff payments for Site 1 at least until October 31, 2017, it is not clear from the record whether it has continued to do so since that date. If Fortis continued to receive distribution tariff payments for Site 1 beyond the expiration of the 20 month notice period, Fortis has been overpaid for the notice period. In that event, in accordance with Article 11.8 of the T&Cs, Fortis is directed to refund any overcharges made for Site 1 beyond the expiration of the 20 month notice period.

84. In the event that Fortis has not received the distribution tariff payments for Site 1 between October 31, 2017, and the expiry of the notice period for that site, Fortis is entitled to recover those amounts.

5 Order

85. FortisAlberta Inc. is ordered to calculate the total invoice amount for a notice period of 20 months for Site 1 based on a notice period commencement date of June 28, 2016, and, in accordance with Article 11.8 of Fortis' Customer Terms and Conditions of Electric Distribution Service, refund any payments made for Site 1 beyond the expiration of the 20 month notice period by no later than May 23, 2018.

86. FortisAlberta Inc. is ordered to calculate the total invoice amount for a notice period of nine months for Site 2 based on a notice period commencement date of June 28, 2016, and, in accordance with Article 11.8 of Fortis' Customer Terms and Conditions of Electric Distribution Service, refund any payments made for Site 2 beyond the expiration of the nine month notice period by no later than May 23, 2018.

Dated on April 23, 2018.

Alberta Utilities Commission

(original signed by)

Anne Michaud
Panel Chair

(original signed by)

Carolyn Hutniak
Commission Member

Appendix 1 – Proceeding participants

Name of organization (abbreviation) counsel or representative
Burnco Rock Products Ltd. (Burnco) Shannon Clark Gibbs Dean Barrett
FortisAlberta Inc. (Fortis) Todd Dettling Richard Finn

Alberta Utilities Commission
Commission panel Anne Michaud, Panel Chair Carolyn Hutniak, Commission Member
Commission staff Sara Albert, Commission Counsel Greg Andrews Angela Corsi