

**BRITISH COLUMBIA  
LABOUR RELATIONS BOARD**

**MULTIPLE FAX TRANSMITTAL SHEET**

Re: FortisBC Energy Inc. -and- Canadian Office and Professional  
Employees Union, Local 378  
(Application for Certification under Section 18 - Case No.  
70242/16N)

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**DATE:** April 20, 2017

**SENDER:** LABOUR RELATIONS BOARD

**OPERATOR SENDING:** Susan Noble, Senior Executive Assistant to Bruce R. Wilkins,  
Associate Chair, Adjudication

**TELEPHONE NO:** (604) 660-1329

**INTENDED RECEIVER:**

**FAX NUMBER:**

To: Fasken Martineau DuMoulin LLP  
Attention: Stephanie Gutierrez

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To: Allevato Quail & Worth  
Attention: James L. Quail / Rachel Roy

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To: Hastings Labour Law Office LLP  
Attention: John MacTavish

604.632.9611

To: J.I. LeBlanc  
Industrial Relations Officer

KELOWNA

**NUMBER OF PAGES:** 11 (Including this page)

**SPECIAL INSTRUCTIONS:**

Decision BCLRB No. B66/2017, is attached. A hard copy will follow by mail.

**\*\*NOTE: FACSIMILE OPERATOR, PLEASE CONTACT THE ABOVE INTENDED  
RECEIVER AS SOON AS POSSIBLE. THANK-YOU**

BRITISH COLUMBIA  
**LABOUR RELATIONS BOARD**

April 20, 2017

To Interested Parties

Dear Sirs/Mesdames:

Re: FortisBC Energy Inc. -and- Canadian Office and Professional  
Employees Union, Local 378  
(Application for Certification under Section 18 - Case No.  
70242/16N)

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Enclosed is a copy of the Board's decision (BCLRB No. B66/2017) rendered in connection with the above-noted matter.

For your information, Section 141 of the *Labour Relations Code* allows you to apply to the Board for leave to apply for reconsideration of this decision. Should you decide to apply for leave, then such application must be made within 15 calendar days and in accordance with the *Brinco Coal Mining Corporation* decision, BCLRB No. B74/93 (Leave for Reconsideration of BCLRB No. B6/93), (1994), 20 CLRBR (2d) 44, 93 CLLC ¶16,043. The key elements of the *Brinco* decision are summarized in the Board's Information Bulletin No. 21 on reconsideration, which is enclosed along with copies of Labour Relations Board Rules 2(2), 2(3) and 29 for the assistance of unrepresented parties.

When an application for leave is made within the 15 calendar day time limit, the applicant must deliver to the Registrar and all interested parties copies of the entire application. Requests for an extension of time, usually up to a maximum of three working days, may be granted orally by the Registrar if requested before the expiration of the 15 calendar day time limit. If granted, the applicant must confirm this extension in writing to the Board, with a copy to the respondents.

If an extension of more than three days is required, the applicant must first seek agreement from all interested parties and then request that extension in writing to the Registrar, confirming the consent of the parties, before the expiration of the 15 calendar day time limit. Again, all parties must be copied. If any of the respondents does not agree to the extension requested, a written application to the Board before the expiration of the 15 calendar day time limit is required, with a copy to all parties.

If you require further information on Board procedures, please call the Board's Information Officer.

Re: April 20, 2017  
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Please note that an application for leave for reconsideration shall be subject to a fee of \$200.00. Payment may be made by a credit card, cheque, debit card or by charging the amount to a pre-approved account.

Yours truly,

LABOUR RELATIONS BOARD



Susan Noble, Senior Executive Assistant to  
Bruce R. Wilkins, Associate Chair, Adjudication

Enclosure(s)

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B.C. Labour Relations Board  
102 - 1690 Powick Road  
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ATTENTION: J.J. LeBlanc

BCLRB No. B66/2017

**BRITISH COLUMBIA LABOUR RELATIONS BOARD**

FORTISBC ENERGY INC.

(the "Employer")

-and-

CANADIAN OFFICE AND PROFESSIONAL EMPLOYEES  
UNION, LOCAL 378

(the "Union")

PANEL: Bruce R. Wilkins  
Associate Chair, Adjudication

APPEARANCES: Stephanie Gutierrez, for the Employer  
James L. Quail and Rachel Roy, for the  
Union

CASE NO.: 70242

DATE OF HEARING: March 10, 2017

DATE OF DECISION: April 20, 2017

## DECISION OF THE BOARD

### I. NATURE OF THE APPLICATION

1 The Union applies under Section 18(4) of the *Labour Relations Code* (the "Code") to certify a voluntary recognition agreement. The Board's Notice reads as follows:

The parties are advised that the Canadian Office and Professional Employees Union, Local 378 has applied to be certified for a unit of employees employed by FortisBC Energy Inc., 16705 Fraser Highway, Surrey, BC, V4N 0E8 described as:

Employees in customer service centres located in British Columbia, excluding the Vancouver Island and Whistler areas, in any phase of office, clerical technical, administrative or related work.

2 The parties dispute how the Employer should be described in the certification description. The Union says the certification should reflect FortisBC Energy Inc. (FEI) as the Employer. The Employer says the employer description should reflect both FEI and FortisBC Inc. ("FBC").

3 This is an expedited matter under Section 18(4) of the Code. The parties made extensive arguments which I have read and considered, but I have only included those arguments which I feel are essential to the disposition of this matter.

### II. BACKGROUND FACTS

4 Both FEI, which is a gas facility, and FBC, which is an electric utility, are wholly owned by Fortis Inc. FEI and FBC are separately regulated by the British Columbia Utilities Commission which sets rates for each.

5 The voluntarily recognized bargaining unit performs work within the Employer's customer service centres ("CSC"). Previously, the CSC bargaining unit was composed of employees of FEI performing customer service in Burnaby and Prince George. The Employer and the Union had a collective agreement that covered these employees known as the "CSC Collective Agreement".

6 Customer service work now performed by employees of FBC in Trail and Kelowna had been contracted out between 2002 and January 1, 2012. FBC made the decision to bring the customer service centre work back in house. When it did so, it sought a voluntary recognition agreement with the Union in order to ensure cost certainty. The Union and the Employer negotiated a collective agreement with a term which ran from January 1, 2011 to March 31, 2014.

7 Having achieved a collective agreement for FBC employees the parties then agreed to amalgamate employees working in the Trail and Kelowna locations with the Burnaby and Prince George locations under the CSC Collective Agreement. This was achieved through a letter of understanding (hereinafter "LOU 2") executed by the parties on January 13, 2012. LOU 2 contained the following terms among others:

Letter of Understanding

(Hereinafter "LOU 2")

**Between:**

Canadian Office and Professional Employees' Union, Local 378 ("COPE")

**And:**

FortisBC Inc. ("FBC" or "Electric Division")

**And:**

FortisBC Energy Inc. (*formerly Terasen Gas Inc.*) ("FEI" or "Gas Division")

**Respecting the amalgamation of certain employees from FBC into the FEI - Customer Service Centres ("CSC") collective agreement and bargaining unit structure**

The Parties do hereby agree to the terms and conditions as contained in this LOU 2 subject to the following conditions:

1. The Parties agree that this letter is subject to ratification by the Parties' respective principals.
2. The Parties will unanimously recommend this Letter of Understanding to their principals.
3. FBC and FEI expressly agree that the Union shall not be required to release the results of the ratification vote with respect to this Letter of Understanding unless and until FBC and FEI have ratified this Letter of Understanding and advised the Union in writing of its acceptance.
4. This LOU shall be deemed to be incorporated into the collective agreement between the Parties as if set forth in full therein in writing, and shall so apply.

**Preamble and Purpose:**

The purpose of LOU 2 is to establish the process for transferring employees from the FBC collective agreement and bargaining structure to the CSC collective agreement and bargaining structure, with certain transition or grand-parented rights.

This LOU will supersede and supplement the rights and entitlements that flow from the COPE-CSC collective agreement and sections 35, 37, 38 and 54 of the Labour Relations Code

This LOU constitutes an adjustment plan between FBC and COPE, fulfilling the requirements of section 35, 37, 38 and 54 of the Labour Relations code.

All matters outstanding under the COPE-FBC collective agreement on the date of ratification that concern grand-parented employees shall be resolved under the terms of, and by the parties to, the CSC collective agreement, including this LOU. Any liability flowing from the resolution of adjudication of such shall be borne by FBC or FEI as appropriate to the particular circumstances of each matter.

**Definitions:**

A "new hire CSC employee" is a FBC or FEI employee, who is hired into the new amalgamated CSC bargaining unit after the date of ratification.

A "grand-parented customer services employee" is a FBC employee, covered under the FBC collective agreement, who works for the electric utility in the Trail contact centre of the billing group in Kelowna, at the date of ratification of this agreement, and as such they will have exceptional terms and conditions ("grand-parented customer services rights") as specific under this LOU. FBC and CSC will provide COPE with a complete list of grand-parented customer services employees who will be transferring to the CSC bargaining unit after the date of ratification. The list shall be provided and shall be included in this LOU as Appendix A.

Grand-parented customer services rights are extinguished upon leaving the Trail Contact Centre and billing group in Kelowna.

**Application:**

All new hire CSC employees shall be subject to all the terms and conditions of the CSC collective agreement. This includes joining the "Pension Plan for Employees of FortisBC Energy Inc.", as it applies to employees of the CSC bargaining unit.

Effective the 1<sup>st</sup> of the month following the date of ratification, the grand-parented customer service employees, as specific in the attached Appendix A, shall be amalgamated into the CSC bargaining unit and shall become subject to the terms and conditions of the CSC collective agreement, except as specifically outlined below.

8

Recently, a new collective agreement was reached for the CSC bargaining unit with a term of April 1, 2017 until March 31, 2022. On the front page both FBC and FEI are named as employers.

9 Within the CSC bargaining unit there are now 209 employees on the FEI payroll  
working out of Prince George and Burnaby and 44 FBC employees on the FBC payroll  
working in Trail and Kelowna.

10 There is some sharing of services between FBC and FEI; each cross charges the  
other for services rendered.

11 There is a common management team between FBC and FEI, but employees  
within the CSC bargaining unit generally report on a day to day basis to managers who  
are on the payroll of FBC or FEI.

### 12 III. POSITIONS OF THE PARTIES

#### 13 I. The Employer

12 The Employer argues the Union has incorrectly named the employer in its  
certification application under Section 18(4). It says the Union has named only FEI as  
the employer when both FEI and FBC are both employers of employees in the CSC  
bargaining unit. It says the Union's application is fatally flawed and should be  
dismissed.

13 The Employer relies on LOU 2, which it says identifies two employers, FBC and  
FEI. It says LOU 2 amalgamated FBC customer service employees into the CSC  
bargaining unit and the CSC Collective Agreement, creating a single, voluntarily  
recognized unit covering both FBC and FEI customer service employees.

14 The Employer says the voluntary recognition agreement encompasses two  
employers, FBC and FEI, and the CSC Collective Agreement covers employees who  
are on the payrolls of either FBC or FEI and who work at FBC or FEI customer service  
centres under the direction of FBC or FEI managers.

15 The Employer says the Union has made representations to the effect that FBC  
and FEI are both employers of employees in the CSC bargaining unit, and is estopped  
from now asserting they are not.

16 The Employer says the Union and the Employer recently executed a newly  
ratified collective agreement which specifically names both FBC and FEI as employers.

17 The Employer says FBC and FEI are both willing to concede they are a common  
employer for the purposes of the application in order to convert the existing, voluntarily  
recognized CSC bargaining unit into a certified bargaining unit under the Code. It says  
the Board may, on its own motion, declare FEI and FBC to be a common employer for  
the purpose of the application. The Employer says the Union recognizes in its  
application that the Board has jurisdiction to certify a multi-employer bargaining unit  
where the employers are a common employer.



## II. The Union

18 The Union takes issue with the Employer's interpretation of LOU 2, and says that  
what really happened is that Trail and Kelowna employees were brought into the  
existing FEI bargaining unit, and that FEI continues to be the employer for all of the  
employees in the CSC bargaining unit. It says that FBC was not added as an employer  
through LOU 2. It says the unit that was created as a unit of employees employed by  
FEI and that fundamental character has not changed.

19 The Union says the Code does not permit a two employer unit with FBC and FEI,  
and the only format that can see more than one employer named in a certification is  
under Section 38, the common employer provision of the Code.

20 The Union says Section 18(4) does not create a new species of bargaining unit  
but provides a procedure to obtain a certification.

21 The Union says LOU 2 achieved a transfer of employees. It says LOU 2  
incorporated employees who had worked under the FBC collective agreement and in  
that bargaining unit into the FEI CSC Collective Agreement and bargaining unit and did  
not purport to transform the CSC bargaining unit into a two employer unit.

22 The Union says had the parties wanted to change the bargaining relationship to  
one of two employers it would have been a simple matter to make that clear and  
explicit. It says the Employer's interpretation contradicts LOU 2, which moves  
employees of out of the FBC bargaining unit into the pre-existing CSC bargaining unit  
that had been voluntarily recognized by FEI.

23 The Union says LOU 2 is highly ambiguous. It says the provision which  
references Sections 35, 37, 38 and 54 of the Code are virtually unintelligible. The Union  
says given the ambiguity in LOU 2 it cannot be taken to clearly transform the FEI  
bargaining unit to a unit with two employers.

24 The Union says there is no clear understanding that would reasonably emerge  
from the correspondence and actions of the parties to suggest the Union had agreed  
that the impact of LOU 2 was to change the employment status of all the pre-existing  
employees in the CSC bargaining unit such that they now had two employers. It says  
the estoppel the Employer claims exists has not been created.

25 The Union says if the Board decides in the Employer's favour that the Union has  
no objection to the Board making a common employer declaration. It says the Board  
has jurisdiction to do so under Sections 139 and 143 of the Code. It says if the Board  
concludes that the employer entity consists of the two companies the appropriate  
outcome is that the certification be issued naming FortisBC Energy Inc. and FortisBC  
Inc. as a common employer under Section 38 of the Code as the employer.

26 The Union says the newly ratified collective agreement should not be given weight in the dispute because the Union felt it would be improper to bargain to impasse the names that appeared on the cover sheet.

#### IV. ANALYSIS AND DECISION

27 The issue before me is whether the certification description should reflect FEI as the sole employer or if it should reflect both FBC and FEI as a common employer. I find that the question before me is best answered through an analysis of LOU 2. This is the document which represents the agreement between the parties to consolidate two groups of employees with separate terms and conditions into one CSC bargaining unit and one collective agreement. I find there are two employers of employees in the CSC bargaining unit.

28 The parties do not dispute that employees working out of Trail and Kelowna are on the payroll of FBC, and employees working out of Burnaby and Prince George are on the payroll of FEI. The parties do not dispute that while there is a common overarching management structure, employees of FEI generally report to FEI managers and FBC employees generally report to FBC managers.

29 The definitions section of LOU 2 defines a new hire employee as "a FBC or FEI employee who is hired into the new amalgamated CSC bargaining unit after the date of ratification". There is no reference in LOU 2 to FBC employees being transferred to FEI as their employer. Trail and Kelowna employees were employees of FBC prior to LOU 2 and no term in LOU 2 changes that. I therefore find that LOU 2 does not change any CSC employee's employer; the employees remain employees of either FEI or FBC under LOU 2. The effect of LOU 2 is to change the structure of the CSC bargaining unit by adding FBC employees to that structure. While it is true that the established labour relations structure of the FEI CSC bargaining unit is what FBC employees are being folded into, this did not include a transfer of FBC employees to FEI as their employer; rather, those FBC employees retain their relationship with FBC as their employer.

30 The Employer indicated that it would have no objection to being declared a common employer in an application under Section 18(4) of the Code. The Union agrees and says that if I found in the Employer's favour it would have no objection to this. The Union says the Board may do so pursuant to Sections 139 and 143 of the Code.

V. CONCLUSION AND DECLARATION

- 31 I declare that FEI and FBC are a common employer of employees in the CSC bargaining unit under Section 38 of the Code. As all other outstanding issues are resolved, I order that the vote taken pursuant to the Union's Section 18(4) application be counted. Should the Union win the vote, the certification should name FortisBC Energy Inc. and FortisBC Inc. as a common employer of employees in the bargaining unit applied for.

LABOUR RELATIONS BOARD



BRUCE R. WILKINS  
ASSOCIATE CHAIR, ADJUDICATION