

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (NI 52-107), s. 5.1 – the Filer requests relief from the requirements under section 3.2 of NI 52-107 that financial statements be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises to permit the Filer to prepare its financial statements in accordance with U.S. GAAP.

Applicable Legislative Provisions

National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, s. 5

Citation: Re FortisAlberta Inc., 2022 ABASC 59

Date: 20220531

In the Matter of
the Securities Legislation of
Alberta and Ontario (the **Jurisdictions**)

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
FortisAlberta Inc. (the **Filer**)

Decision

Background

The securities regulatory authority or regulator in each of the Jurisdictions (each a **Decision Maker**) has received an application (the **Application**) from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for an exemption (the **Exemption Sought**) from the requirements of section 3.2 of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (**NI 52-107**) that the financial statements of the Filer (a) be prepared in accordance with Canadian generally accepted accounting principles (**Canadian GAAP**) applicable to publicly accountable enterprises and (b) disclose an unreserved statement of compliance with IFRS in the case of annual financial statements and an unreserved statement of compliance with IAS 34 in the case of an interim financial report.

The Exemption Sought is filed in connection with other applications for exemptive relief on the same terms filed with the Ontario Securities Commission (the **OSC**), as the principal regulator of Newfoundland Power Inc. and Caribbean Utilities Company, Ltd., and with the British Columbia Securities Commission, as principal regulator of FortisBC Energy Inc. and FortisBC Inc. The Filer, together with Newfoundland Power Inc., Caribbean Utilities Company, Ltd., FortisBC Energy Inc. and FortisBC Inc., are referred to collectively as the **Filers**. The Exemption Sought

is similar to the exemption granted by the OSC to the Filers on December 15, 2017 in *Re FortisBC Energy Inc., FortisBC Inc., FortisAlberta Inc., Newfoundland Power Inc. and Caribbean Utilities Company, Ltd.* (the **U.S. GAAP Relief**). The Filer has applied to the OSC to revoke the U.S. GAAP Relief.

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

- (a) the Alberta Securities Commission is the Principal Regulator for this application;
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon by it in each of British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (the **Passport Jurisdictions**); and
- (c) the decision is the decision of the Principal Regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

In this decision:

- (a) unless otherwise defined herein, terms defined in National Instrument 14-101 *Definitions*, MI 11-102 and NI 52-107 have the same meaning; and
- (b) rate-regulated activities has the meaning ascribed thereto in the Chartered Professional Accountants of Canada Handbook (Handbook).

Representations

This decision is based on the following facts represented by the Filer:

Fortis

1. Fortis Inc. (**Fortis**) is a leader in the North American regulated electric and gas utility industry.
2. Fortis is a reporting issuer or equivalent in the Jurisdictions and each of the Passport Jurisdictions and is not in default of securities legislation in any jurisdiction in Canada.
3. Fortis is a registrant with the Securities and Exchange Commission subject to the *United States Securities Exchange Act of 1934*, as amended.
4. Fortis is an SEC issuer and relies on section 3.7 of NI 52-107 to file its financial statements prepared in accordance with U.S. GAAP.

The Filer

5. The Filer is an electricity distribution company incorporated under the laws of Alberta. The head office of the Filer is located in Calgary, Alberta.
6. The Filer is a reporting issuer or equivalent in the Jurisdictions and each of the Passport Jurisdictions and is not in default of securities legislation in any jurisdiction in Canada.

General

7. Each of the Filers is a subsidiary of Fortis and the financial results of each such subsidiary are reflected in the consolidated financial statements prepared and filed by Fortis.
8. Each of the Filers currently prepares and files its financial statements for annual and interim periods in accordance with U.S. GAAP, relied on the U.S. GAAP Relief, or similar prior exemptive relief, and commenced reporting pursuant to U.S. GAAP on January 1, 2012.
9. Each of the Filers has rate-regulated activities.
10. None of the Filers is currently an SEC issuer.
11. Were any of the Filers SEC issuers, they would be permitted by section 3.7 of NI 52-107 to file their financial statements prepared in accordance with U.S. GAAP.
12. The U.S. GAAP Relief provided that it would cease to apply to the Filers on the earliest of: (a) January 1, 2024; (b) if such Filer ceased to have activities subject to rate regulation, the first day of such Filer's financial year that commenced after such Filer ceased to have activities subject to rate regulation; and (c) the effective date prescribed by the International Accounting Standards Board (**IASB**) for the mandatory application of a standard within IFRS specific to entities with activities subject to rate regulation. Accordingly, in the absence of further relief provided by Canadian securities regulators, the Filers would become subject to Canadian GAAP no later than January 1, 2024. Canadian GAAP includes IFRS as incorporated into the Handbook.
13. In January 2021, the IASB published the Exposure Draft - Regulatory Assets and Regulatory Liabilities, which introduces a proposed standard of accounting for regulatory assets and liabilities, applicable to entities with rate-regulated activities. The issuance by the IASB of a standard within IFRS for entities with rate-regulated activities (a **Mandatory Rate-regulated Standard**) would have resulted in the expiry of the U.S. GAAP Relief, giving rise to the obligation of the Filers to commence financial statement preparation and reporting in accordance with IFRS pursuant to NI 52-107. It is not yet known when the IASB will finalize and implement such a standard and the Filers will require sufficient time to: (a) interpret and implement such standard and transition from financial statement preparation and reporting in accordance with U.S. GAAP to IFRS; and (b) interpret and reconcile the implications on the customer rate setting process resulting from the implementation.

Decision

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Makers to make the decision.

The decision of the Decision Makers under the Legislation is that:

- (a) the Exemption Sought is granted to the Filer in respect of the Filer's financial statements required to be filed on or after the date of this order, provided that the Filer prepares such financial statements in accordance with U.S. GAAP; and
- (b) the Exemption Sought will terminate in respect of the Filer on the earliest of the following:
 - (i) January 1, 2027;
 - (ii) if the Filer ceases to have rate-regulated activities, the first day of the Filer's financial year that commences after the Filer ceases to have rate-regulated activities; and
 - (iii) the first day of the Filer's financial year that commences on or following the later of:
 - A. the effective date prescribed by the IASB for a Mandatory Rate-regulated Standard; and
 - B. two years after the IASB publishes the final version of a Mandatory Rate-regulated Standard.

For the Commission:

“original signed by”

Tom Cotter
Vice-Chair

“original signed by”

Kari Horn
Vice-Chair