Written Evidence – Standing Committee Finance:
Bill C-59, Exemption requested for regulated utilities and their holding companies from Section 18.1 *Excessive Interest & Financing Expense Limitation (EIFEL)*

FortisBC Energy Inc. and FortisBC Inc. (FortisBC) are requesting an exemption from the EIFEL rules for regulated utilities and their holding companies. We would be pleased to appear before the Standing Committee on Finance to discuss the impacts of this legislation on our customers, and our recommendation for amending Bill C-59 so it is in line with the practices of other jurisdictions including the United States and the United Kingdom.

Background:
FortisBC Energy Inc. and FortisBC Inc. ("FortisBC") are pleased to provide feedback as part of the Committee's consideration of Bill C-59, the *Fall Economic Statement Implementation Act.*

FortisBC is a combined gas and electric utility providing energy to over 1.2 million homes and businesses across the Province of British Columbia. We serve 135 B.C. cities and towns, and 58 First Nations communities, across 150 traditional territories. We own and operate:

- 7,316 kilometres (km) of electricity transmission and distribution power lines;
- 51,174 km of natural gas lines;
- four hydroelectric generating plants; and
- two LNG facilities.

In addition to FortisBC, there are other Fortis utilities operating in Alberta, Ontario, Prince Edward Island and Newfoundland & Labrador, where our parent company Fortis Inc., has been headquartered since 1987. Operating in five provinces across the nation provides our organization and parent company, Fortis Inc., with a broad perspective on energy and climate policy.

FortisBC's core responsibility is to deliver safe, reliable and affordable energy in an environmentally responsible manner that respects the communities we serve. FortisBC has an important role to play in supporting efforts to combat climate change and investing in the transformation of Canada's energy infrastructure.

Electricity Canada, the Canadian Gas Association and member companies, including FortisBC have been working with Finance Canada and other federal entities to request an exemption from the EIFEL rules for regulated utilities and their holding companies.

Issue:

- The Government of Canada is moving ahead with the OECD-led Excessive interest and financing expenses limitation (EIFEL) rules aimed at reducing a taxpayer's ability to shift profits from high tax rate jurisdictions to low tax rate jurisdictions via financing arrangements.[1]

[1] Electricity Canada and the Canadian Gas Association have been in active discussions with Finance Canada on this matter as described in the following: [Finance Canada's new rules could threaten energy affordability: Electricity Canada and CGA | Electricity Canada]

- Recent media coverage has highlighted the risk that both electricity and gas bills could rise as a result of these tax changes.[2] These findings are supported by initial analysis of the proposed changes and the potential for detrimental impacts on customers in British Columbia.

- The EIFEL rules are included in Bill C-59 which is making its way through the House of Commons and Senate.

Rules inadvertently increase costs for British Columbia's utility customers at a time of affordability challenges

- Customers are already facing rate pressure due to the current cost environment and absorbing the costs associated with pursuing clean energy projects. Applying the EIFEL rules to Canadian Utilities is expected to produce a significant amount of denied net interest expense that results increased income tax expense which would be passed on to customers (the "Increased EIFEL Costs"). This further exacerbates the rate pressure already being experienced by customers today.

- The Increased EIFEL Costs counteract other federal initiatives, such as grants and investment tax credits, which are aimed at addressing affordability challenges associated with the clean energy transition.

- Adding more costs onto customers contradicts the intent of many of Budget 2023's provisions aimed at accelerating progress towards a net-zero grid in an affordable way for customers and increases the potential for rate shock.

- The EIFEL rules do not recognize the fact that the actions of regulated utilities are governed by their provincial regulators. Regulated utilities cannot reduce debt as their debt to equity ratios are prescribed by the regulator. Furthermore, regulators may choose to restrict the ability to utilize certain elections within the rules which may lead to unavoidable Increased EIFEL Costs.

- At the same time, the EIFEL rules do not capture utilities that are owned by a provincial governments (e.g., crown corporations). Therefore, customers of some utilities are expected to experience cost increases and some will not - - creating inequity in energy costs across Canada by province and regulatory jurisdiction.

- Other OECD jurisdictions have taken steps to ensure that utilities, which provide a public good, are not adversely impacted, relieving customers of the financial pressure associated with EIFEL compliance.

- A targeted exemption for utilities and their holding companies would ensure that these costs are not passed on to our customers and be consistent with the approach of other OECD jurisdictions.

---

[2] Federal tax change could raise electricity, gas bills in some provinces - The Globe and Mail

OECD rules allow exemptions: US/ UK provide exemptions for utilities customers, Canada can too

- The OECD EIFEL rules allow for exemptions for certain privately owned public-benefit entities like utilities that are delivering a public good and have prescribed capital structures with high debt to equity ratios.[3]

- The US[4] and the UK have exempted their utilities from the EIFEL provisions based on the OECD rules in order to shield customers from higher costs. The Canadian utility sector is seeking a similar exemption to protect customers and ensure timely investments in reliability and decarbonizations efforts.

- Our sector is uniquely positioned for an exclusion from these rules because it is highly regulated, capital intensive and highly leveraged in order to spread-out the large capital costs for operating energy infrastructure.

- EIFEL has the potential to increase the cost of capital for regulated utilities. Extending the EIFEL exemption to include regulated utilities will ensure that regulated utilities and their customers are protected from any negative implications arising from EIFEL.

- Canadian Utilities are not considered "excluded entities" as defined in 18.2 of proposed rules and are therefore caught under the EIFEL rules simply because they are owned by Canadian parent corporations that have investments in foreign affiliates over the de minimis threshold of $5 million.

[3] OECD: *Limiting Base Erosion Involving Interest Deductions and Other Financial Payments Action 4: 2015 Final Report - Section 64* (2015)

[4] For example, see: US Federal Register / Vol. 85, No. 178 / Monday, September 14, 2020 / Rules and Regulations, Page 4: "*Under section 163(j)(7), the limitation on the deduction for business interest expense in section 163(j)(1) does not apply to certain trades or businesses (excepted trades or businesses). The excepted trades or businesses are the excepted trades or businesses are the trade or business of providing services as an employee, electing real property businesses, electing farming businesses, and certain regulated utility businesses.*"