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December 5, 2016

VIA ELECTRONIC MAIL

British Columbia Utilities Commission
Sixth Floor, 900 Howe Street
Vancouver, BC
V6Z 2N3

Attention: Ms. Laurel Ross, Acting Commission Secretary and Director

Dear Sirs/Mesdames:

Re: FortisBC Energy Inc. ("FEI") All-Inclusive Code of Conduct and Transfer Pricing Policy Application ~ Project No. 3698873

We are counsel to the Commercial Energy Consumers Association of British Columbia (the "CEC"). Attached please find the CEC's Final Submissions with regards to the above-noted matter.

If you have any questions regarding the foregoing, please do not hesitate to contact the undersigned.

Yours truly,

OWEN BIRD LAW CORPORATION

Christopher P. Weafer

CPW/jlb
cc: CEC
cc: FEI
cc: Registered Interveners

INTERLAW MEMBER OF INTERLAW, AN INTERNATIONAL ASSOCIATION OF INDEPENDENT LAW FIRMS IN MAJOR WORLD CENTRES

COMMERCIAL ENERGY CONSUMERS ASSOCIATION OF BRITISH COLUMBIA

FINAL SUBMISSIONS

FortisBC Energy Inc. All-Inclusive Code of Conduct and Transfer Pricing Policy Application Project No. 3698873

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1. The Commercial Energy Consumers Association of BC (CEC) represents the interests of ratepayers consuming natural gas and electricity under commercial tariffs in applications before the BC Utilities Commission (BCUC or Commission).
2. FortisBC Energy Inc. (FEI) has filed an application for an All Inclusive Code of Conduct and Transfer Pricing Policy (COC/TPP) governing the interactions between FEI and its affiliates. The CEC has participated in the proceeding and provides the following submissions for the Commission's consideration.

BACKGROUND

3. FEI files its application in compliance with BCUC Order G-65-15[1] and was premised on BCUC Order G-143-14, which stated that there should only be one integrated COC/TPP to make it easier to compare practices between entities of different natures and to keep track of any changes occurring over time and ensure consistency.[2] FEI provides a list of the Affiliates governed by the COC/TPP and their classification as an Affiliated Utility (AU), Affiliated Non Regulated Business (ANRB), or an Affiliated Regulated Business (ARB). At the present time, FEI is not aware of any pending ANRBs that will invoke an application of the All-Inclusive COC/TPP, but that may change in the future. If a new ANRB is created in the future, FEI will use the approved All-Inclusive COC to govern its interactions with the new ANRB.[3]
4. FEI highlights that an outcome of the current process should not be to limit the sharing of resources between regulated utilities that have been approved by the Commission and beneficial for FEI's customers. FEI notes that it has had a long and successful history sharing resources with affiliate utilities. They state that the sharing arrangements have been transparent with the shared services agreements included in regulatory proceedings for Commission review and approval.[4]
5. The CEC agrees with FEI's position regarding the appropriate outcome of this process and submits that it is important to preserve cost-effective sharing of services, which is in the ratepayers' interest to the extent that it does not create conflicts of interest or

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[1] Exhibit B-2, Page 1
[2] Exhibit B-2, Page 1
[3] Exhibit B-6, BCUC 1.1.3.2
[4] Exhibit B-2, Page 1

inappropriately change the competitiveness of existing or new markets. The CEC submits that cost-effective sharing of services and information can benefit both FEI customers and the affiliate customers, who may be customers of both. The CEC submits it is not appropriate for costs to be unnecessarily duplicated where there is no inappropriate or negative impact in the market or for customers.

6. FEI adopts the following naming conventions in its application. These are also adopted by the CEC for the purposes of these submissions.
   - Affiliated Non-Regulated Business – Affiliate NRB or ANRB;
   - Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment – Affiliate Regulated Business (ARB); and
   - Affiliated Natural Monopoly Utility – Affiliate Utility (AU).
7. FEI outlines the key principles and model for the Code of Conduct/Transfer Pricing Policy based on regulatory history at pages 2-6 of the application.
8. The CEC submits that these principles can be an appropriate foundation for the Code of Conduct/Transfer Pricing Policy, and also that FEI has generally complied with these regulations.
9. FEI relies on the previously approved April 28, 2015 Code of Conduct/Transfer Pricing Policy (COC/TPP) for ARBNNM as the basis for its current document. The CEC submits this is a reasonable approach. FEI provides a blackline copy identifying changes in the document at Appendix A-2.
10. FEI changed the word 'ratepayers' to 'customers' in the All-Inclusive COC/TPP as the term 'customers' is more relevant when referencing Customer Information and Provision of Information.[5] The CEC accepts the change as being reasonable.

CODE OF CONDUCT

11. The initial section of the Code of Conduct (COC) outlines the scope of the policy, provides definitions and outlines the application of the Commission's principles included in the Code of Conduct.

Scope

12. FEI includes the statement that 'The Code will govern the use of FEI's resources and services provided to Affiliates including shared services, employment or contracting of FEI's personnel, and the treatment of Customer Information and Commercial Information. Where there is an agreement between FEI and its Affiliates with respect to the sharing or provision of services, resources, or personnel that has been reviewed by the Commission, the terms of that agreement will govern.[6]

[5] Exhibit B-5, CEC 1.7.1
[6] Exhibit B-2, Appendix A-1, Code of Conduct, Page 1

13. FEI includes a statement with respect to the precedence of other agreements in recognition that there are existing Commission-approved arrangements in place when it comes to dealing with FortisBC (FBC), an AU.[7] FEI explains the difference in the charges that would apply to an ANRB and to FBC in BCUC 1.2.1.

14. FEI is examining the opportunity to develop a Shared Services model approach[8] which would be filed as part of the upcoming Annual Review in 2017.[9] The CEC notes that interveners will have an opportunity to review the model at that time. FEI believes that there is sufficient regulatory oversight of sharing of resources between AUs through ongoing revenue requirements proceedings and that the review of such agreements should not be part of the All Inclusive COC/TPP process.[10]

15. FEI notes that the existing agreement has been approved by the Commission and offers benefits to both organizations. Further, it provides greater flexibility for the Commission to achieve outcomes that may be in the public interest or that allow for greater cost-efficiency.[11] FEI provides an overview of relevant instances in BCUC 1.2.2.

16. The CEC agrees with FEI that the Commission should not be constrained by the global Transfer Pricing Policy and that it is reasonable to allow for other policies that are approved by the Commission to take precedence when and where appropriate. The CEC submits it is appropriate to clarify the superiority of other agreements in the COC/TPP.

17. FEI believes it is reasonable to utilize the word 'reviewed' with respect to the Commission oversight of these policies rather than 'approved' because rate approval reflects cost allocations based on the agreements, making specific approval of the agreement unnecessary.[12]

18. The CEC submits it could be preferable to utilize the words 'reviewed positively' for the sake of clarity, and that there should be no negative implications associated with that determination. The CEC agrees that the Commission's primary approval role is for the rates of the utilities and not for the management policies, though the basis of the rate approval will certainly require positive assessment of numerous policies and practices. Policies reviewed negatively by the Commission ought not to qualify as a basis for rate setting other than where the Commission makes it clear what the limits of its review are.

19. In the Scope section FEI includes a statement to the effect that all sharing of costs, services, Customer Information and any other documentation of information specified by the Commission between Affiliates must be maintained and disclosed to the Commission where required by the Commission.

20. The CEC submits that this is an appropriate inclusion in the Code of Conduct Scope, subject to confidentiality provisions.

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[7] FEI Final Submissions, Page 13
[8] FEI Final Submissions, Page 14
[9] Exhibit B-6, BCUC 1.2.4
[10] Exhibit B-6, BCUC 1.3.1
[11] FEI Final Submissions, Page 13
[12] Exhibit B-6, BCUC 1.2.3

21. The CEC is satisfied with the Scope of the policy as outlined in the document and recommends Commission approval with the change in the word 'reviewed' to 'reviewed positively'.

Definitions

22. The CEC is satisfied with the Definitions section of the document.

Code Of Conduct Principles

23. At page 4 of the document FEI outlines the principles for the COC. In developing its principles FEI incorporated many of the principles from the Retail Market Downstream of the Utility Meter (RMDM) Guidelines, and from the AES Inquiry Report with respect to activities between FEI and AUs and NRBs.[13]

24. The following principles were applied in the development of the Code of Conduct for activities between FEI and an Affiliate.

    i) FEI will protect and consider the interests of its own customers, and having protected its customers FEI may also consider the potential interests of the customers of an Affiliate.

    ii) Aggregated Customer Information or individual Customer Information that is made available to an Affiliate should be made available to all parties, including competitors, on an equal basis, upon request, provided necessary consent is obtained. Individual Customer Information must be treated as required by the Personal Information Protection Act (PIPA), and should only be released with the written consent of the customer. The control of Customer information should not provide a competitive advantage.

    iii) FEI will not provide Commercial Information to an Affiliate except in the case of an AU.

    iv) FEI and its employees will not state or imply that favoured treatment will be available to customers of FEI as a result of using any service of an Affiliate. Additionally, FEI and its employees will not preferentially direct customers to an Affiliate. This principle is not applicable to an AU.

    v) FEI will not normally provide financing, or any form of financial assistance including co-signing of loans, to an Affiliate. No FEI financing or other financial assistance, including cross-guarantees, can occur under any circumstances without advance Commission approval.

    vi) FEI will monitor compliance with this Code by also conducting an annual compliance review. FEI will regularly advise all of its employees of their expected conduct pertaining to this Code.[14]

[13] Exhibit B-2, Pages 3-5
[14] Exhibit B-2, Appendix A-1, Page 4

25. FEI notes that Item i) above is first and foremost of the principles. In its Final Submissions FEI states the following:

> The ARB Decision articulated the following principle: 'After considering all submissions, the Panel continues to believe that in developing the COC, FEI's first and foremost responsibility is to protect its own ratepayers. As a secondary aspect, it is reasonable for FEI also to consider the interests of ARBNNM ratepayers if both parties benefit.' This principle is applicable to all Affiliate transactions, and the All-Inclusive CoC/TPP reflects it.

26. The CEC agrees that protection of FEI ratepayers is the primary principle which should underlie the FEI Code of Conduct/Transfer Pricing Policy.

27. With regard to Item ii, FEI has made some changes to wording regarding the protection and provision of personal information. The CEC submits that the wording in the principles confers adequate protection for customer information and ensures that competitors have equal access to information where applicable. The CEC notes that competitors are required to request the information. The CEC accepts this principle as being approved by stakeholders as noted below in section 3 Provision of Information. The CEC submits that the wording in the last sentence of principle ii could be improved and clarified if it read as follows:

> The control of FEI Customer information should not provide an inappropriate competitive advantage to an Affiliate.'

The CEC recommends the Commission ask FEI to amend this wording.

28. The CEC accepts the wording in subsection ii) as being reasonable, subject to the clarifications that the CEC has identified.

29. In subsection iii) FEI disallows the provision of Commercial information to an Affiliate 'except in the case of an AU.'

30. FEI's interpretation of the principles and guidelines listed in the AES Inquiry Report is that they apply primarily in reference to Affiliated Regulated Businesses which have a competitive aspect (i.e., ARBs such as FortisBC Alternative Energy Services (FAES) which competes for the right to construct thermal energy solutions projects). FAES is regulated, and exhibits monopoly characteristics with respect to its own customers; however, there is competition "for the market", i.e. providers of thermal energy services can compete to supply energy to a particular project.[15] FEI does not believe that the situation is necessarily the same as that for AUs which are regulated businesses that are natural monopolies and are not faced with the same competitive challenge issues as ARBs.[16]

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[15] Exhibit B-5, CEC 1.2.1

[16] Exhibit B-2, Page 5

31. The CEC agrees with FEI that AUs can be treated separately and differently than other competitive businesses in certain instances.
32. The CEC agrees that Commercial information may be appropriately provided to an AU as allowed in Principle iii).
33. FEI provides the following prohibition regarding favoured treatment in subsection Principle iv).

    iv. FEI and its employees will not state or imply that favoured treatment will be available to customers of FEI as a result of using any service of an Affiliate. Additionally, FEI and its employees will not preferentially direct customers to an Affiliate. This principle is not applicable to an AU.

34. The CEC does not believe the disclaimer for AUs in Principle 'iv' is necessary or necessarily appropriate for either statement contained in this subsection. The CEC submits that it would not be appropriate for FEI or its employees to state or imply that favoured treatment would be available to customer as a result of using any service of an Affiliate. The CEC submits that FEI should not engage in any activity which might imply an unfair treatment of an Affiliate Utility's customers and should instead leave the treatment of its customers to the Affiliate. Additionally, in the second sentence, the term 'preferentially' implies that there is an alternate option. The argument in favour of excluding AUs in the first place relies on there being no competition. To the extent that an alternate option even exists for customers to be directed to, it would not be prudent for FEI to 'preferentially' direct customers to an Affiliate. The CEC therefore recommends that the disclaimer in Principle iv) be removed.
35. The CEC is satisfied with subsections v) and vi).
36. The CEC notes that FEI moved subsections vii and viii from the ARBNNM COC/TPP template to the scope section. The CEC submits this is acceptable.

Transfer Pricing for Affiliates

37. FEI will conform with the Commission approved Transfer Pricing Policy.
38. The CEC has no objections to item 1.

Shared Services and Personnel

39. FEI explicitly recognizes the benefits of sharing services and personnel in subsection a) of section 2.
40. The CEC agrees that resource sharing is an appropriate principle and beneficial for ratepayers as discussed above.
41. In sub-section b) FEI limits sharing of its services and non-executive personnel with Affiliates to circumstances where:
    a) the services can be identified and tracked effectively and there are other appropriate safeguards in place as outlined in Section 7 'Compliance and Complaints'

b) there is limited potential for disclosure of confidential information; and
c) there are benefits to FEI's customers.

42. FEI also includes the statement that FEI may also share its services and non-executive personnel with an AU 'where there is no detriment to FEI.'[17]

43. The CEC submits that it is reasonable for FEI to include the provision that it may share its services and non-executive personnel with an AU, but submits that the addition of 'and its customers' should be made for the sake of clarity. FEI accepts the addition of 'and its customers' to this sentence.[18]

44. With this modification the CEC accepts subsection b) as being reasonable qualifications on the sharing of services and personnel.

45. In subsection c) FEI allows for sharing of its business development personnel but precludes the sharing in situations where it deems that competitive concerns exist.

> c) Business Development Personnel
>
> FEI will not share business development personnel with an Affiliate where the Affiliate is carrying out business development activities to acquire customers seeking energy products and services available in a competitive marketplace and where FEI is providing similar energy solutions.
>
> FortisBC Energy and an AU can share business development personnel.

46. The CEC agrees with FEI that the concern regarding a competitive advantage is inapplicable to an AU as it does not operate in a non-monopoly competitive environment.

47. FEI provides a list of personnel that are not to be shared in Appendix A. The term "not to be shared" included in Appendix A of the proposed FEI All-Inclusive COC means staff employed by FEI that are directly responsible for planning activities related to the development of FEI's natural gas supply portfolio, mitigation activities and related contract negotiations will not also be assigned to work for or provide services to FortisBC Midstream Inc./Aitken Creek Gas Storage. (FMI/ACGS). The term "not be shared" does not mean that these personnel could not be transferred, on either a temporary or permanent basis, from FEI to FMI/ACGS or vice versa, however non-disclosure agreements are required.[19]

48. In the ARB Decision on page 21, the Commission concluded that it was appropriate to preclude the sharing of business development personnel with an ARB.[20] In its Final Submissions FEI argues that sharing business development personnel with an AU and with ARBs and ANRB's where they operate in different markets than those serviced by

[17] Exhibit B-2, Appendix A Code of Conduct, Page 5
[18] Exhibit B-5, CEC 1.12.1
[19] Exhibit B-6, BCUC 1.4.1
[20] Exhibit B-2, Page 16

FEI would not confer a competitive advantage on the Affiliate,[21] which is the underlying concern for the prohibition.[22] FEI notes that the concern regarding sharing of business development personnel arises from the AES inquiry.[23] FEI also notes that it is possible that FAES might at some point operate in a different market space than FEI and share business development personnel.[24]

49. FEI believes that sharing of business development personnel for different markets (i.e. lines of businesses where there is competition for the markets[25]) confers no competitive advantage. They state that if, for instance, the Affiliate is competing in the wholesale marketplace for natural gas (i.e. ACGS), then sharing of FEI's business development personnel who have expertise in energy solutions would not confer a competitive advantage to the Affiliate as the Affiliate is competing in a different market than that serviced by FEI. However, if the Affiliate is competing to provide similar energy solutions in the marketplace that FEI and its business development personnel are also in, there would be an advantage conferred to the Affiliate by FEI sharing its business development personnel. FEI believes that its business development personnel who have expertise in energy solutions should not be precluded from being shared with an Affiliate who is competing in different markets than those serviced by the regulated utility.[26]

50. In BCUC 1.8.2 FEI addresses the issue of having not distinguished between Affiliated Non Regulated Businesses and Affiliated Regulated Businesses. Section ii) of the RMDM Guidelines state:

> ii) Utility participation in the unregulated downstream market by completely stand-alone NRBs using no utility resources is the preferred option since it provides the maximum protection to utility ratepayers (Corporate Structure 4 in Figure 4). Variations from this option should be undertaken only when it can be shown that this option would result in substantial stranded costs for the utility and/or that a transfer pricing policy mechanism will act to provide sufficient protection for ratepayers.[27]

51. FEI argues that variations are allowed where there is a transfer pricing mechanism, which is provided, and further that the proposed COC builds on the 1997 COC for NRBs, which considered the RMDM Guidelines which enabled FEI to share services, including supervision and management with an NRB while ensuring that ratepayers will not generally be negatively impacted by Utility involvement.[28] They note that Section 2d) is

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[21] FEI Final Submissions, Page 3
[22] FEI Final Submissions, Page 5
[23] FEI Final Submissions, Page 4
[24] FEI Final Submissions, Page 6
[25] Exhibit B-6, BCUC 1.8.1
[26] Exhibit B-2, Page 16
[27] Exhibit B-6, BCUC 1.8.2
[28] Exhibit B-6, BCUC 1.8.2

wording developed specifically to address the concern regarding the sharing of Natural Gas Portfolio, Mitigation and Contract Negotiation Personnel with the entities ACGS and FMI. As a result, the question of "why shouldn't the shared services restrictions be more restrictive for an ANRB" is less relevant.[29]

52. In sub-section d) Natural Gas Portfolio Mitigation and Contract Negotiation Personnel FEI specifically precludes sharing of business development personnel who are directly responsible for natural gas portfolio planning, mitigation activities and contract negotiations with Aitken Creek Gas Storage ULC and FortisBC Midstream Inc. FEI provides the relevant positions in Appendix A.

53. With regard to extending these restrictions to personnel involved with the Core Market Administration Expense (CMAE), FEI argues that the activities are unlikely to give rise to a conflict of interest.[30]

54. The CEC accepts FEI's argument with regard to CMAE staff and submits that if the Commission determines that FEI is permitted to share business development personnel with Affiliates other than an AU, then these are appropriate limitations that limit the potential for conflicts of interest.

55. In subsection e) FEI requires directors and officer/executives with dual management roles between FEI and an Affiliate to execute a non-disclosure agreement except in the case of an AU. FEI notes that directors and executives are already subject to the FBC Code of Ethics which includes provisions relating to the protection of confidential information.[31] They note that the underlying concern that resulted in the Commission previously imposing the non-disclosure requirement was to protect competition in the thermal energy market, which is not applicable in the situation of an AU.

56. The CEC agrees that non-disclosure agreements are necessary and valuable in managing disclosure and also agrees with FEI that non-disclosure agreements are not necessary in the case of an AU, as discussed above.

Provision of Information by FEI

57. In Section 3, FEI addresses the management of customer information, which must be treated as required by the Personal Information Protection Act (PIPA) (subsection a) and only released to a party that requests it with the written consent of the customer or customer representative unless it is sufficiently aggregated to prevent third parties from identifying specific customer information (subsection b).

[29] Exhibit B-6, BCUC 1.8.2
[30] FEI Final Submission, Page 9
[31] FEI Final Submissions, Page 6

58. The CEC inquired if written customer consent would be required each time a transfer of information was conducted, or if such 'written consent' is included in terms and conditions or other general policy statements that all customers are requested to sign. FEI's intention is that written customer consent would be required each time[32].

59. The CEC submits that for greater clarity it would be reasonable to include a statement to the effect that written consent will not be provided generally in the terms and conditions of service provision. With this caveat the CEC agrees with subsections a) and b) of Section 3.

60. Subsection c) requires that if a customer requests their information be provided to a specific party, only that party may receive the information. If a customer agrees to a general release of their information, or if the aggregated or summarized Customer Information is released, that information must be made available to all interested parties who request it, without discrimination as to access, timing, cost or content. Additionally, when the Customer Information or Commercial Information is provided, the requesting party must pay a reasonable price that allows FEI to recover the cost of extracting and providing the information. All parties should pay the same price for the same information.

61. The CEC inquired as to how competitors would be alerted to information being made available to an Affiliate if it were only available upon request. FEI notes that during the FEI COC/TPP for ARBNNMs proceeding, stakeholders discussed and expressed concern over making the process of providing the information too complicated and costly. Stakeholders agreed that it would be the responsibility of parties interested in the information to request it and not oblige FEI to have to contact the parties. FEI highlights that the words "upon request" were previously included in the approved FEI COC for ARBs.[33]

62. The CEC accepts the wording for subsection c as being reasonable and notes that FEI may be questioned in its regulatory processes with respect to information it has or is providing under this policy.

63. Subsection d) precludes FEI from providing Commercial Information to an Affiliate except in the case of an AU because there is limited benefit from sharing commercial information with an AU. One example is FEI and FBC sharing information to enable a coordinated approach to manage gas and electric customer service connections. This is done so that larger customer projects involving both gas and electric services are internally coordinated to maximize efficiencies in the design and construction process for the customer's benefit.[34]

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[32] Exhibit B-5, CEC 1.8.2
[33] Exhibit B-5, CEC 1.8.1
[34] Exhibit B-5, CEC 1.9.1

64. The CEC agrees that this would be a useful and cost-effective sharing of information. FEI believes the concern about an AU (i.e., FBC) passing on sensitive information provided by FEI to other ARNBs or ARBs is appropriately addressed by the FBC Code of Business Conduct and Ethics Policy that provides guidance to FBC and its employees on how to conduct its affairs. Additionally, FBC has its own Code of Conduct for NRBs containing language to govern the treatment of confidential information. The CEC accepts the Code of Business Conduct and Ethics Policy as sufficient.

65. The CEC is satisfied with the wording for subsection d).

Preferential Treatment

66. In section 4 FEI makes provision to ensure that no favoured treatment will be available or implied to customers of FEI as a result of using an Affiliate, and such treatment would not be condoned. FEI adds a sentence 'This section on Preferential Treatment is not applicable to an AU' to ensure 'clarity' in understanding and treatment.[35]

67. FEI states in its Final Submissions that the rates under which a customer may take service from FEI and AU are tariff rates that are set by the Commission and do not allow for preferential treatment.[36] The CEC submits that Section 4 is a general statement and should be considered to addresses customer fairness as well as competitive interactions. To the extent that FEI is constrained from providing preferential or favoured treatment, the CEC submits that there is no reason to exclude the AU. The CEC submits that customers should be afforded preferential treatment as a result of using any Affiliate, whether it is an AU or otherwise. If no preferential treatment is possible, then the statement is unnecessary in any case.

68. The CEC recommends the disclaimer regarding the AU be removed from this section.

Equitable Access to Services

69. In section 5 FEI precludes the preferential direction of customers to Affiliates, and ensures the provision of a directory of service providers where specific information is requested by customers. FEI also explicitly makes the section inapplicable to an AU.

70. The CEC inquired if there were any instances in which directing customers to an AU such as FBC could confer either a benefit to FBC or a disadvantage to any other market constituents. FEI replied that preferential treatment is not applicable to regulated monopoly utilities such as FEI or FBC.[37] Since AUs enjoy a monopoly in their service territories a simple referral to FBC would not be detrimental.[38]

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[35] Exhibit B-5, CEC 1.13.2
[36] FEI Final Submissions page 11
[37] Exhibit B-5, CEC 1.13.1
[38] FEI Final Submissions page 11

71. FEI notes that periodic review of the COC is required should a relevant situation arise in the future.[39]

72. The CEC accepts that the issue with respect equitable access to services is generally inapplicable under a utility environment and in that regard, the CEC submits that the disclaimer is unnecessary. Additionally, to the extent that a relevant situation arises in the future, the CEC does not believe that the review process is adequately established to address it, as FEI proposes a five year interval between review periods.

73. The CEC recommends that the disclaimer regarding the AU be removed from this section.

Equitable Treatment of Demand-Side Management and Incentive Funds

74. FEI will adhere to the Commission approved mechanism for approval and administration of DSM and incentive funding.

75. FEI may share Customer Information with FBC in the development of DSM programs for the benefit of customers.[40]

76. The CEC is satisfied with the wording in this section and submits it is reasonable to share customer information for DSM purposes, subject to the appropriate personal information constraints.

Compliance and Complaints

77. In subsection a), FEI states the following:

> The Director of Finance at FEI will be responsible for monitoring compliance at FEI with this Code. This will included advising all of its employees of their expected conduct pertaining to this Code, and with quarterly reminders to management of employees who may be directly involved with Affiliate activities.

78. The CEC suggested the inclusion of the phrase 'and regular updates for employees' to ensure that the information is transmitted to the requisite personnel. FEI notes that under the requirements of the existing COC for ARBNNMs, FEI already provides an annual reminder on its intranet site to all of its employees of the FEI COC requirements. FEI would however accept the suggested alteration to the wording by CEC to include quarterly reminders (i.e. regular updates) to all managers and employees of the requirements of the COC who may be directly involved with Affiliate activities.[41]

79. The CEC recommends the addition of the phrase 'and regular updates for employees' in subsection a).

80. The CEC has no objections to the wording in subsections b, c and d.

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[39] Exhibit B-5, CEC 1.13.1.1
[40] Exhibit B-8, BCOAPO 1.7.1
[41] Exhibit B-5, CEC 1.14.1

Financing and Other Risks

81. In section 8 FEI provides wording to ensure that FEI will not normally provide financing or any form of financial assistance to an Affiliate, and no form of financial assistance will be provided under any circumstances without prior Commission approval.
82. The CEC is satisfied with the conditions in this section.

Use of FortisBC name

83. Use of the FortisBC name is acceptable, and caution must be exercised to distinguish between services provided by FEI and its affiliates, except in the case of an AU.
84. The CEC accepts FEI's wording with respect to the use of the FortisBC name.

Amendments

85. In this section FEI ensures reviews in compliance with Commission requirements and with a maximum 5 year interval.
86. The CEC is satisfied with the wording in this section.
87. In Appendix A FEI provides a list of its Affiliates and their classifications.
88. The CEC recommends the Commission review positively and or approve (depending upon its determination on this issue) the Code of Conduct with the modifications identified above.

TRANSFER PRICING POLICY

89. FEI provides the Scope for the Transfer Pricing policy at page 1 of the Transfer Pricing Policy.
90. Paragraph 2 states:

> The transfer pricing mechanism should provide a fair and transparent mechanism to FEI's customers, and after having considered the interests of FEI's customers may consider the potential interests of the customers of an Affiliate.

91. The CEC submits it is reasonable to consider the interests of the Affiliate after the interests of FEI customers in an FEI Transfer Pricing Policy.
92. Paragraph 3 states the following:

> Costs to be allocated from FEI to an Affiliate are on the basis of the higher of market price or fully allocated cost as set out in the FEI Transfer Pricing Policy. FEI is to seek advance approval from the Commission prior to charging a price that is other than as outlined. Where there is an agreement between FEI and its Affiliate with respect to the sharing or provision of services, resources, or personnel that has been reviewed by the Commission, the terms of that agreement will govern.

93. With regard to cost allocation FEI has maintained the same rule as that included in the ARB Decision and in the RMDM Guidelines for ANRBs. FEI considers the distinction between market price and fully allocated costs to be largely moot since FEI is charging rates that are generally market rates.[42]

94. The CEC agrees with FEI but submits that the phrase 'the higher of' is not a useful qualification in the circumstance where a company is charging a market rate. The CEC submits the cost allocation condition is moot where the services being provided are market rate services.

95. With respect to the superiority of the agreement between FEI and FBC, FEI notes that the agreement has been approved by the Commission and offers benefits to both organizations. Further, it provides greater flexibility for the Commission to achieve outcomes that may be in the public interest or that allow for greater cost-efficiency. FEI notes that it has existing agreements in place and may examine opportunities for other agreements.[43]

96. The CEC agrees that the Commission should not be constrained by the global Transfer Pricing Policy and that it is reasonable to allow for another policy that is approved by the Commission to take precedence. The CEC submits it is appropriate to clarify the superiority of other agreements in the TPP.

97. The CEC addressed the use of the term 'reviewed' with respect to this issue in the Code of Conduct section of these submissions. The CEC submits it would be reasonable to change the term 'reviewed' to 'reviewed positively' for clarity in this paragraph as well.

98. Paragraph 4 states the following:

> Allocation of costs to an Affiliate will reflect appropriate compensation for any benefit derived as a result of its affiliation with FEI or other businesses. This will include compensation for additional cost or risk related to the addition of incremental debt to FEI for the new products or services. FEI will ensure that it receives appropriate compensation for the resources and services provided, in order to protect its customers from subsidizing the activities of Affiliates as required by the Code of Conduct for Affiliates and this Transfer Pricing Policy.

99. The CEC submits that this paragraph provides reasonable protection for FEI ratepayers.

100. The CEC is satisfied with the balance of the Scope section in the Transfer Pricing Policy.

Pricing Rules

101. FEI provides the following pricing rules:

i) If an applicable FEI tariff rate exists, the Transfer Price to an Affiliate will be set according to the tariff.

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[42] FEI Final Submissions, Page 12

[43] FEI Final Submissions page 13

ii) Where no tariff rate exists, the Transfer Price will be set on the basis of the higher of market price or the fully allocated cost.

iii) Where there is no market price or a market price is not readily discernable, the Transfer Price will be set on the basis of fully allocated cost.

iv) In situations where it can be shown that an alternative Transfer Price will provide greater benefits to the FEI customers, FEI must apply to the Commission for a variance from the pricing rules i, ii, or iii.

v) If there is an agreement between FEI and an Affiliate that has been reviewed by the Commission, that agreement applies.

102. The CEC notes the addition of subsection v providing for the precedence of agreements between FEI and an Affiliate. The CEC reiterates its comments above with respect to this policy and recommends that the Commission revise the word 'reviewed' to 'reviewed positively' or 'approved', if that is the Commission determination on this issue. The CEC submits that it is not sufficient for the policy just to have been reviewed, particularly if the review has been negative.

103. The CEC submits that with the above change the proposed Transfer Pricing Rules and wording are reasonable and appropriately reflect the already approved pricing rules for ARB and ANRB.[44]

Determining Costs

104. Section 2 provides the proposed methods for determining costs. The costs determinations reflect the existing provisions established in the ARBNNM Code of Conduct/Transfer Pricing Policy.

105. When assessing Fully Allocated Costs, FEI distinguishes the costs based on the type of service being provided. They include Specific Committed Service, As Required Service and Designated Subsidiary/Affiliate Service.

106. FEI added wording explaining that fully allocated costs include all the line items listed including overhead consisting of general overhead, supervision, availability charge and facilities charge.

107. FEI deleted a sentence explaining that costs will include both direct costs and a fair allocation of the parent utility costs to provide the product or service, except where such treatment is precluded by legislation, regulation or special direction.

108. The CEC accepts the revised wording above.

109. FEI also deleted a paragraph stating that if other FEI resources or services are used by an ARBNNM that are not described by this policy or if there are unusual circumstances that warrant a separate review, then FEI will make an application to the Commission on a case-by-case basis.

[44] Exhibit B-2, Page 21

110. The CEC submits that it is also acceptable to eliminate this paragraph as the Scope of the TPP states:

> FEI is to seek advance approval from the Commission prior to charging a price that is other than as outlined.[45]

111. Additionally, in Section 5, Review of Transfer Pricing Policy, FEI includes the following statement:

> However, FEI may make an application to the Commission for approval of changes to the policy including the pricing rules and the formula for determining fully allocated costs as and when required.

112. The CEC is satisfied that the Pricing Rules are appropriately established subject to its above comments.

Cost Relating to the Transfer of Activities from FEI to an Affiliate

113. The CEC notes that the title should reference costs in the plural, rather than the singular.
114. Section 3 provides for the transfer of costs relating to three types of activities including costs relating to activities and start-up of an Affiliate, costs relating to research and costs relating to development.
115. The provisions generally reflect the already approved pricing policies from the ARBNNM TPP.
116. The CEC submits that subsection 3.1 'Transfer Costs' is poorly named and could be relabeled 'Activities and Start-Up Costs'.
117. The CEC is satisfied with the wording in Section 3, subject to its above comments.

Cost Collection Procedures

118. Cost collection procedures relate to the establishment of Internal Orders, Timesheets, Invoicing and Compliance. FEI incorporates a statement clarifying that the Timesheets section applies to all Affiliates. Otherwise Section 4 reflects the already approved pricing policies from the ARBNNM TPP.
119. The CEC is satisfied with the wording in Section 4.

Review of Transfer Pricing Policy

120. The Transfer Pricing Policy will be reviewed on an annual basis. The wording reflects the already approved pricing policies from the ARBNNM TPP.
121. The CEC is satisfied with the wording in Section 5.

[45] Exhibit B-2, Appendix A, Transfer Pricing Policy page 1

122. The CEC recommends Commission approval of the proposed COC/TPP with the above noted changes.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

David Craig

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