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British Columbia Utilities Commission
Sixth Floor, 900 Howe Street, Box 250
Vancouver, BC, V6Z 2N3
Attn: Laurel Ross, Acting Commission Secretary
By Web Posting

Dear Madam:

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

This is the final argument of the interveners B.C. Sustainable Energy Association and Sierra Club British Columbia, pursuant to the regulatory timetable set out in Order G-157-16. This responds to FEI's November 21, 2016 final submission.

1. Background

This proceeding concerns an "All-Inclusive Code of Conduct and Transfer Pricing Policy" (All Inclusive CoC/TPP) that FEI filed on June 26, 2016¹ for Commission approval.

FEI's proposed All-Inclusive CoC/TPP has its origins in the Commission's "FortisBC Energy Inc. Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives" and the ensuing Report issued in December 2012 (AES Inquiry Report). The AES Inquiry Report recommended (among other things) that FEI initiate a process to prepare an updated CoC and TPP regarding interactions between the FortisBC regulated and non-regulated businesses. The term "updated" acknowledged the ongoing applicability of the Commission's Retail Markets Downstream of the Utility Meter (RMDM) Guidelines, issued in April 1997 and endorsed in the AES Inquiry Report. In addition, the AES Inquiry Report recommended that FEI undertake a collaborative process to establish a CoC and TPP to govern interactions between a regulated natural monopoly (e.g., FEI) and "Affiliated Regulated Businesses," differentiated between an affiliated regulated natural monopoly (e.g., FBC²) on the one hand and a regulated affiliate operating in a non-natural monopoly environment (e.g., what became FAES³), on the other hand.

Following the release of the AES Inquiry Report there were discussions within FEI stakeholder consultations and between FEI and Commission staff about whether CoC/TPPs applicable to the various different situations should be developed all at the same time or one by one, and whether the product should be one document or multiple documents. FEI determined, based on

¹ Exhibit B-2.

² FortisBC Inc., the regulated public utility that provides electricity service in South Central B.C.

³ FortisBC Alternative Energy Services, a regulated utility that provides thermal energy services that are now regulated, either fully or by way of "light-handed regulation," under the Commission's Thermal Energy Services Regulatory Framework Guidelines.

stakeholder input, that the first priority was development of a CoC/TPP for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment (ARBNNMs). On June 27, 2014, FEI filed for approval a CoC/TPP for ARBNNMs. In Decision and Order G-143-14 the Commission determined that the proceeding addressing the CoC/TPP for ARBNNMs would continue as a Phase 1, with long-term objective of producing one integrated CoC and TPP document, i.e., Phase 2 (which became the current proceeding).

In Decision and Order G-31-15 dated February 27, 2015, the Commission approved certain principles and directed FEI to file a revised CoC/TPP for ARBNNMs. Pertinent to the current proceeding, the Commission also directed FEI to file for approval at a later time a draft “comprehensive CoC and TPP” that “covers the interactions between FEI and its affiliated natural monopoly utilities (i.e., FBC), FEI and its affiliated non-regulated businesses (e.g., FI⁴, FHI⁵, and FMI⁶), and FEI and its affiliated regulated businesses operating in a non-natural monopoly environment (i.e., FAES and ACGS⁷).⁸ This concept is what is generally referred to as the All-Inclusive CoC/TPP.

In Decision and Order G-65-15 dated April 28, 2015, the Commission approved FEI’s compliance filing of a revised ARBNNM CoC/TPP. Pertinent to the current proceeding, the Commission directed FEI to file for approval the draft All-Inclusive CoC/TPP, no later than April 27, 2016.

On March 18, 2016, the Commission issued Decision and Order G-39-16 approving an application by FMI to acquire shares of ACGS.⁹ In addition, the Commission directed ACGS to file a CoC/TPP covering the interactions between ACGS and its affiliated natural monopoly utilities, and interactions between ACGS and its affiliated non-regulated businesses, and ACGS and its ARBNNMs by no later than FEI’s filing of its All-Inclusive COC and TPP.

On March 30, 2016, FEI requested a two-month extension of the deadline to file the All-Inclusive CoC/TPP, in order for FEI to consider any changes to the All-Inclusive CoC/TPP that may arise from the development of the ACGS CoC/TPP.¹⁰ The request was granted by Order G-52-16 dated April 18, 2016.¹¹

In May 2016, FEI held stakeholder consultations on a draft All-Inclusive CoC/TPP, in which BCSEA-SCBC participated.

On June 30, 2016, FEI filed the draft All-Inclusive CoC/TPP¹² that is the subject of the current proceeding.

⁴ FortisBC Inc., corporate owner of FHI and hence FEI, and corporate owner of FortisBC Pacific Holdings Inc and hence FBC.

⁵ FortisBC Holdings Inc., corporate owner of FEI, FMI, FAES and FortisBC Huntington Inc.

⁶ FortisBC Midstream Inc., corporate owner of ACGS.

⁷ Aitken Creek Gas Storage.

⁸ The examples are provided for clarity; they were not specified in Decision and Order G-31-15.

⁹ With approval of the shares acquisition, ACGS is a subsidiary of FMI. There is a FortisBC Organization chart on page 9 of Exhibit B-2.

¹⁰ Exhibit B-1.

¹¹ Exhibit A-2.

¹² Exhibit B-2.

On the same date, June 30, 2016, ACGS filed for approval the draft CoC/TPP required by G-39-16. On July 14, 2016, the Commission wrote to ACGS and FEI, with copies to interveners and interested parties in the FEI All-Inclusive CoC/TPP proceeding, asking for submissions on three options for the review process. ACGS¹³ and several interveners including BCSEA-SCBC supported Option 2: “Review the FEI Application (Phase A) followed by the ACGS Application (Phase B). On August 3, 2016, the Commission wrote to ACGS and FEI, with copies to interveners and interested parties, stating that the FEI All-Inclusive CoC/TPP proceeding would be held first and that following a decision in that proceeding the Commission will proceed with review of the ACGS CoC/TPP filing (i.e., Option 2).

On September 20, 2016, the Commission wrote to FEI, with copies to interveners and interested parties, inviting submissions on scope and process in the current proceeding.¹⁴

After receiving submissions from FEI and interveners, the Commission issued Decision and Order G-157-16 on October 18, 2016, setting out a regulatory timetable for a written proceeding. Regarding the scope of the proceeding, the Commission panel determined that:

“Detailed review of operational agreements including the Shared Services Agreements is part of on-going regulation of the Commission and is determined to be not in scope for this proceeding.”¹⁵

The panel adds:

“With respect to FEI’s submission that there is sufficient regulatory oversight for sharing of resources between its AUs, the Panel is persuaded that the review of the overarching principles of sharing of resources between FEI and ARBs, NRBs and AUs should be in scope in this proceeding.”¹⁶

2. Shared Service Agreement between FEI and FBC

With reference to paragraph 4 of FEI’s final submission, BCSEA-SCBC are aware that MoveUp has expressed the view that there should be a Commission-approved shared services agreement between FEI and FBC. FEI says that a shared services agreement between FEI and FBC was filed in the 2014-2018 PBR Application. As noted above, the panel in the current proceeding said that detailed review of the shared services agreements is not in scope but that “review of the overarching principles of sharing of resources between FEI and ARBs, NRBs and AUs should be in scope in this proceeding.” FEI does not address the terms of the FEI-FBC shared services agreement in its final submission.

BCSEA-SCBC are not aware at the present time what argument(s) MoveUp may make regarding the principles applicable to shared services agreements between FEI and FBC. Accordingly, BCSEA-SCBC will not address this topic in this submission.

¹³ It is assumed that FEI also supported Option 2. However, BCSEA-SCBC do not have a copy of FEI’s submission.

¹⁴ Exhibit A-3.

¹⁵ Exhibit A-4, Order G-157-16, directive 2.

¹⁶ Exhibit A-4, Order G-157-16, Appendix B, Reasons for Decision, p.3, underline added.

3. Primary protection of FEI's own ratepayers

BCSEA-SCBC agree with FEI¹⁷ that in the ARBNNM Decision the Commission determined that the CoC should articulate that FEI's first responsibility is to protect its own ratepayers and, secondarily, that it is reasonable for FEI also to consider the interests of ARBNNM ratepayers if both parties benefit.

Further, BCSEA-SCBC agree with FEI that "This principle is applicable to all Affiliate transactions...",¹⁸ i.e., including FEI's transactions with Affiliated Utilities and Affiliated Non-Regulated Businesses.

In BCSEA-SCBC's view, this principle is stated effectively as the first item in the list of principles in the proposed All-Inclusive CoC/TPP:

"i. [FortisBC Energy] will protect and consider the interests of its own customers, and having protected its customers [FortisBC Energy] may also consider the potential interests of the customers of an Affiliate."¹⁹

FEI states that this principle is reflected in the All-Inclusive CoC/TPP as filed. BCSEA-SCBC agree. BCSEA-SCBC note that the concept of the primary responsibility being to protect the utility's own ratepayers is at a higher level of abstraction than whether a criterion is expressed in terms of a requirement that a certain arrangement will benefit the utility (i.e., FEI and its ratepayers) as distinct from the arrangement causing no harm to the utility and its ratepayers.

4. Business Development Personnel (CoC section 2(c))

In the ARBNNM Decision, the Commission panel directed FEI to update the CoC to expressly state that business development personnel will not be shared with an ARBNNM.²⁰

Regarding Business Development Personnel, FEI's proposed All-Inclusive CoC/TPP states:

"[FortisBC Energy] 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 [FortisBC Energy] is providing similar energy solutions.
FortisBC Energy and an AU can share business development personnel."²¹

FEI argues that the prohibition on FEI sharing business development personnel with an ARBNNM does not need to apply with the ARBNNM is in "a different market space" where the sharing of such services does not confer an unfair competitive advantage for the ARBNNM. FEI cites ACGS as an example. FEI argues:

"ACGS, although considered an ARB, operates in a different market space from FEI. FEI provides energy solutions for end use consumers. ACGS, by contrast, is

¹⁷ FEI Final Submission, para.5.

¹⁸ *Ibid.*

¹⁹ Exhibit B-2, Appendix A-1, FEI Proposed All-Inclusive CoC/TPP, June 30, 2016, p.4, pdf p.32.

²⁰ Decision and Order G-31-15, p.22.

²¹ Exhibit B-2, Appendix A-1, FEI Proposed All-Inclusive CoC/TPP, June 30, 2016, p.5, pdf p.33, underline added.

engaged in the wholesale marketplace for natural gas. The end use market expertise that FEI's business development employees have developed would confer no particular competitive advantage on ACGS. The value to ACGS of being able to share FEI employees is simply in having access to a supply of labour at market-based labour rates. Other market players in the wholesale market, i.e., ACGS' competitors, also have access to the labour market at market based rates. Sharing business development employees thus offers the potential for both FEI and ACGS to benefit without compromising competition in the wholesale market."²²

BCSEA-SCBC do not see a problem with FEI providing business development personnel to ACGS where there is no detriment to FEI customers. And, BCSEA-SCBC acknowledge that the ACGS example fits the proposed wording (quoted above).

BCSEA-SCBC do have a residual concern as to whether the proposed wording is sufficiently clear to express the desired objective in situations other than that of ACGS. For instance, FEI states that "It is possible that FAES might, at some point, also operate in a different market space than FEI and share business development personnel with FEI."²³ It isn't clear to BCSEA-SCBC whether this is said as a purely theoretical point or if FEI is aware that FAES has in mind a new line of business.

FEI proposes that the prohibition on FEI providing business development personnel to an ARBNNM should not apply where FEI provides such services to an Affiliated Utility (e.g., FBC).²⁴

BCSEA-SCBC concur with FEI that as an Affiliated Utility such as FBC operates within a natural monopoly environment there is no concern that the Affiliated Utility would receive an unfair competitive advantage from using FEI's business development personnel.

BCSEA-SCBC concur with FEI²⁵ that the requirement to show an affirmative benefit to FEI that is applicable in the context of FEI's relationship with an ARBNNM is not necessary where the business development services are shared with an Affiliated Utility. In BCSEA-SCBC's view, the crucial element is that FEI is only permitted to share business development personnel with an Affiliated Utility where doing so causes no detriment to FEI ratepayers. This is expressly stated in section 2(b) of the proposed CoC, quoted above.

5. Executive Non-Disclosure Agreements (CoC s.2(e))

In the ARBNNM Decision, the Commission directed FEI "to revise the wording of the Code of Conduct section on Shared Services and Personnel to require FEI and ARBNNM directors and executives with dual roles to execute non-disclosure agreements."²⁶ The Commission panel concluded that this would provide sufficient protection "given that all FEI directors and senior management are subject to FEI's Business Ethics policy."²⁷

²² FEI Final Submission, para.14, footnotes omitted.

²³ FEI Final Submission, para.15.

²⁴ FEI Final Submission, paras. 7, 8-12.

²⁵ Exhibit B-2, p.16, underline added.

²⁶ Decision and Order G-31-15, p.25.

²⁷ *Ibid.*

FEI proposes that the executive non-disclosure agreement provision be extended to affiliated non-regulated businesses and that it not apply to Natural Monopoly Affiliated Businesses. This is the effect of the proposed wording as follows:

“2 (e) Directors and officers/executives with dual management roles in [FortisBC Energy] and an Affiliate are required to execute a non-disclosure agreement. In the situation of an AU, a non-disclosure agreement is not required.”

BCSEA-SCBC concur with FEI that it is not necessary for the non-disclosure agreement to be applied to dual management roles where the affiliate is a Natural Monopoly Affiliated Business such as FBC. As FEI notes, when the panel in the AES Inquiry Report set out a list of guidelines it stated that:

“Common corporate and management resources may be shared between two Affiliated Regulated Businesses that are natural monopolies, such as gas and electric service”²⁸

6. Non-Operating Parent Corporations

FEI argues that “many of the CoC/TPP provisions designed to govern services provided by FEI to affiliated operating companies have limited applicability.”²⁹ FEI says that:

“The ‘higher of market price or fully allocated cost’ rule is applied to govern the corporate support services (i.e. payroll, finance, human resources) provided to FHI and to the services provided to FMI in support of the acquisition of ACGS...”³⁰

BCSEA-SCBC do not take exception to FEI’s comments on this point. (It is not clear to BCSEA-SCBC if FEI is seeking a particular remedy in this regard.)

7. Sharing Gas Supply Employees with ACGS (CoC s.2(c))

The proposed All-Inclusive CoC/TPP precludes FEI from sharing with ACGS and FMI the five positions identified in Appendix “A”. That is not an issue.

FEI goes on to address whether, as implicitly suggested by a Commission staff information request, “the provisions governing sharing of the identified gas supply personnel should extend to other personnel reflected in FEI’s Core Market Administration Expense (‘CMAE’).”³¹ FEI argues that would not be necessary or appropriate, because the CMAE personnel are not directly involved with the substantive matters dealt with by the employees identified in Appendix “A”. BCSEA-SCBC support that view.

8. Shared Information (CoC s.3)

The proposed All-Inclusive CoC/TPP includes the information protection requirements currently in the CoC/TPP applicable to ARBNMNs and would add applicability to Affiliated Non-Regulated Businesses. To BCSEA-SCBC’s knowledge, that is not an issue.

²⁸ AES Inquiry Report, p.25.

²⁹ FEI Final Submission, para.20.

³⁰ FEI Final Submission, para.21.

³¹ FEI Final Submission, para.24.

FEI proposes different treatment regarding information sharing with an Affiliated Utility such as FBC. The proposed wording is:

“3(d) [FortisBC Energy] will not provide Commercial Information to an Affiliate except in the case of an AU.”³²

FEI says it should be permitted to share Commercial Information with an AU because such information is of less value to an AU than to an ARBNNM and can be shared “without impeding competition, without harming FEI, and still benefitting the ratepayers of the AU.”³³

Nevertheless, FEI acknowledges that “there are limited benefits to be generated from sharing Commercial Information with an AU.”³⁴ FEI says an example would be where “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.”

BCSEA-SCBC favour allowing FEI to share Commercial Information with an AU where there is no detriment to FEI and its ratepayers and where doing so does not provide the AU with an unfair competitive advantage.

9. Preferential Treatment (CoC s.4 and s.5)

The proposed All-Inclusive CoC/TPP includes the existing ARBNNM language on preferential treatment and extends it to Affiliated Non-Regulated Businesses. To BCSEA-SCBC’s knowledge, that is not an issue.

FEI proposes excluding Affiliated Utilities from the preferential treatment language. Section 4 of the proposed CoC states:

“[FortisBC Energy] will not state or imply that favoured treatment will be available to customers of [FortisBC Energy] as a result of using any service of an Affiliate.

In addition, no Company personnel will condone or acquiesce in any other person stating or implying that favoured treatment will be available to customers of the Company as a result of using any product or service of an Affiliate.

This section on Preferential Treatment is not applicable to an AU.”³⁵

And, section 5 of the proposed CoC states:

“Except as required to meet acceptable quality and performance standards, and except for some specific assets or services which require special consideration as approved by the Commission, [FortisBC Energy] will not preferentially direct its customers to an Affiliate.

In discussing energy alternatives with a customer, or a potential customer, [FortisBC Energy] personnel may not preferentially direct customers to an

³² Exhibit B-2, Appendix A-1, FEI Proposed All-Inclusive CoC/TPP, June 30, 2016, p.6, pdf p.34, underline added.

³³ FEI Final Submission, para.28, underline added.

³⁴ *Ibid.*

³⁵ Exhibit B-2, Appendix A-1, FEI Proposed All-Inclusive CoC/TPP, June 30, 2016, p.6, pdf p.34, underline added.

Affiliate. If a customer, or potential customer, requests from [FortisBC Energy] information about products or services offered by an Affiliate, [FortisBC Energy] may provide such information, including a directory of suppliers of the product or service, but shall not promote any specific supplier in preference to any other supplier.

This section on Equitable Access to Services is not applicable to an AU.³⁶

BCSEA-SCBC concur with FEI that the pertinent factor regarding preferential treatment and equitable access regarding AUs is that the rates charged by an Affiliated Utility, such as FBC, are tariff rates that do not allow for preferential treatment. An AU is by definition a regulated utility operating in a monopoly environment. Therefore, a referral by FEI to, e.g., FBC would cause no evident harm.

10. Pricing Rules

In the ARBNNM Decision, the Commission endorsed the ‘higher of market price or fully allocated cost’ approach to services from FEI to an ARBNNM. The All-Inclusive CoC/TPP retains that provision and extends it to Affiliated Non-Regulated Businesses. To BCSEA-SCBC’s knowledge, that is not an issue.

Regarding the pricing of services between FEI and FBC, FEI says that FEI and FBC have a Mutual Shared Services Agreement initially established in 2010. FEI says that Executive Management time is allocated on the basis of the Massachusetts formula as approved in Order G-138-14. Costs of other departmental resources are allocated using a timesheet allocation approach set out in FEI’s 2012-2013 RRA.³⁷ FEI says the proposed All-Inclusive CoC/TPP does not change this existing transfer pricing rule. FEI states:

“...The cross charges to FBC include fully loaded wages including benefits and time away, with no overhead or facilities fees assigned. This practice will continue to be used until FEI evaluates the feasibility of introducing a Shared Services model approach, similar to that successfully used in the past for sharing of resources between FEI and the Vancouver Island and Whistler gas utilities.”³⁸

BCSEA-SCBC asked FEI to explain how this future Shared Services model would differ from the existing Mutual Shared Services Agreement between FEI and FBC. FEI’s explanation is as follows:

“The Shared Services model approach that FEI is evaluating is a cost allocation model utilizing cost drivers as the basis for services shared between FEI and FBC. This cost allocation approach was used successfully for allocating the O&M costs of services provided by FEI to the Vancouver Island and Whistler gas utilities. The three cost drivers used in the previous shared services model included the number of employees, the number of customers, and management time estimates.

³⁶ Exhibit B-2, Appendix A-1, FEI Proposed All-Inclusive CoC/TPP, June 30, 2016, p.7, pdf p.35, underline added.

³⁷ Exhibit B-2, page 12.

³⁸ Exhibit B-2, page 22, underline added.

This is different than the cost allocation methodology used under the existing Mutual Shared Services Agreement between FBC and FEI. Under the Mutual Shared Services Agreement between FEI and FBC, costs for services between FEI and FBC are allocated using primarily a timesheet allocation approach.

The potential benefit of utilizing a Shared Services cost allocation approach for services between FEI and FBC is the streamlining of the existing timesheet allocation approach while still providing a reasonable methodology for allocation of the costs involved.”³⁹

FEI states that “At this time, [it] anticipates completing a review of the Shared Services model approach for cross charging and filing it as part of an upcoming Annual Review or Revenue Requirement proceeding, possibly as early as the Annual Review for 2018 Rates.”⁴⁰

In the meantime, BCSEA-SCBC’s understanding is that FEI’s position in the current proceeding is (a) that the proposed All-Inclusive CoC/TPP reflects the current arrangements between FEI and FBC, with an added proviso that “If there is an agreement between [FortisBC Energy] and an Affiliate that has been reviewed by the Commission, that agreement applies,”⁴¹ and (b) that this is appropriate. FEI argues that the existing pricing arrangements between FEI and FBC are “Commission-approved”⁴² and it provides examples of transfer pricing elements that the Commission has reviewed and in some cases approved.⁴³

BCSEA-SCBC understand, in general terms, that MoveUp takes issue with FEI’s position in this respect. However, as noted above, at the time of writing, BCSEA-SCBC are not aware of MoveUp’s actual argument on this point.

11. Conclusion

Apart from the argument that MoveUp may make regarding Commission approval of an FEI-FBC shared services agreement, regarding which BCSEA-SCBC take no position at this time, BCSEA-SCBC support Commission approval of the proposed All-Inclusive CoC/TPP.

³⁹ Exhibit B-7, BCSEA IR 1.1.

⁴⁰ FEI Final Submission, para.38, underline added.

⁴¹ Exhibit B-2, Appendix A-1, FEI Proposed All-Inclusive CoC/TPP, June 30, 2016, p.4, pdf p.42.

⁴² FEI Final Submission, para.34, underline added.

⁴³ FEI Final Submission, para.36.

All the above is respectfully submitted.

Yours truly,

William J. Andrews

A handwritten signature in black ink, appearing to be 'WJ Andrews', with a horizontal line extending to the right from the bottom of the signature.

Barrister & Solicitor

cc. Distribution List by email