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October 21, 2016

**VIA ELECTRONIC MAIL**

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

Dear Sirs/Mesdames:

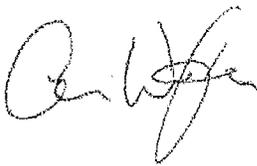
**Re: FortisBC Energy Inc. ("FEI") All-Inclusive Code of Conduct and Transfer Pricing Policy Application ~ Project No. 3698873**

We are counsel to the Commercial Energy Consumers Association of British Columbia (the "CEC"). Attached please find the CEC's first set of information requests 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

# COMMERCIAL ENERGY CONSUMERS ASSOCIATION OF BRITISH COLUMBIA

## INFORMATION REQUEST #1

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

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#### 1. Reference: Exhibit B-2, Page 9

##### Aitken Creek Gas Storage ULC (ACGS)

ACGS owns an interest in the underground reservoir and contained natural gas, wells, on-site equipment and other components of the natural gas storage facility at Aitken Creek.

ACGS is a public utility subject to an exemption and light-handed regulation by the Commission, due to the fact that it operates in a competitive environment for storage. For the purpose of this Code of Conduct, ACGS is classified as an ARB.

In 2015, no sharing of services occurred between FEI and ACGS. ACGS is filing a Code of Conduct and Transfer Pricing concurrently with this Application.

- 1.1. Please provide an overview of what constitutes 'light handed regulation'.
- 1.2. Will interveners have an opportunity to review the ACGS Code of Conduct being filed concurrently with this application?

#### 2. Reference: Exhibit B-2, Pages 9 and 10

##### FortisBC Alternative Energy Services Inc. (FAES)

FAES is a wholly owned subsidiary of FortisBC Holdings Inc. that provides alternative energy solutions, including thermal-energy and geo-exchange systems. The company specializes in designing, owning, operating and maintaining regulated utility thermal assets to help its clients address deferred maintenance, reduce greenhouse gas emissions, support sustainability objectives and improve the performance of thermal energy systems in buildings. For the

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<sup>12</sup> AU – Affiliated Natural Monopoly; ARB – Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment; ANRB – Affiliated Non-Regulated Business.

purpose of this Code of Conduct, FAES is classified as an ARB. This is consistent with how it was treated during the previous CoC/TPP proceeding.

In 2015, services provided by FEI to FAES include facilities and IT support and other back office supporting functions such as accounting. The services provided are governed by a Continuing Services Contract as set out in FEI's Transfer Pricing Policy Appendix A.

- 2.1. Please briefly describe the circumstances that make it appropriate for FAES to be classified as an Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment.

### 3. Reference: Exhibit B-2, Page 10

#### FortisBC Inc. (FBC)

FBC is a wholly owned subsidiary of FortisBC Pacific Holdings Inc, which is an indirect wholly owned subsidiary of Fortis Inc., a Canadian public company. FortisBC Inc. is an integrated regulated electric utility operating in the southern interior of British Columbia, serving approximately 167,600 customers directly and indirectly. For the purpose of this Code of Conduct, FBC is classified as an AU.

In 2015, services provided by FEI to FBC include rental of the Springfield Road Office facility and labour and travel expenses for staff from various departments. The services provided are governed by a Shared Services Agreement that was filed with the Commission as Appendix L-3 in FEI's 2012-2013 RRA.

- 3.1. Please explain how 'labour and travel expenses for staff from various departments' were 'services' provided by FEI to FBC.

### 4. Reference: Exhibit B-2, Pages 15 and 16

For an AU, FEI refers to the ARB Decision where the Commission noted the following regarding the difference in sharing of resources between FEI and FBC at page 41.

*"...the provision of services to FAES as set out above varies from the provision of shared services between two utilities both operating in a monopoly environment. Again, the FortisBC gas and electric utilities share some services to the benefit of both utilities, but these are committed resources sufficient to meet the ongoing needs of both utilities and both utilities have an equal priority in terms of access to and use of the shared resources."*

The above wording from the Commission confirms that by sharing resources with one another, utilities operating in a monopoly environment inherently benefit one another.

FEI's position is that the requirement as specified in section 2 (3) of the wording directed by the Commission in the first excerpt above of "there are benefits to [FortisBC Energy] ratepayers" does not need to apply to an AU, as long as there is no detriment to FEI from sharing resources with an AU such as FBC. This consideration is also consistent with the principle articulated in the approved CoC/TPP for ARBs that "[FortisBC Energy] will protect and consider the interests of its own ratepayers, and having protected its ratepayers [FortisBC Energy] may also consider the potential interests of ARBNNM ratepayers." As FBC is also a regulated utility that is a natural monopoly, sharing FEI resources with FBC with no detriment to FEI ratepayers is warranted.

For an AU situation, the following paragraph has been added to the All-Inclusive CoC/TPP:

*"[FortisBC Energy] may also share its services and non-executive personnel with an AU where there is no detriment to [FortisBC Energy]."*

Refer to page 7 of Appendix A2 CoC.

- 4.1. Please confirm or otherwise clarify that the above quotes from the Commission are intended primarily to ensure the protection of FEI ratepayers, and do not confer equal protection to ratepayers of an ARBNNM (now Affiliated Regulated Businesses operating in a Non-Natural Monopoly’).

**5. Reference: Exhibit B-2, Appendix A2, Page 1**

**SCOPE**

This Code of Conduct (Code) governs the relationships between [FortisBC Energy Inc. (FortisBC Energy)] and its Affiliates for the provision of [FortisBC Energy] resources, and, where applicable, is intended to be consistent with the principles of the British Columbia Utilities Commission (Commission) outlined in the “Retail Markets Downstream of the Utility Meter” (RMDM) Guidelines of April, 1997 and the Commission’s Report on the “Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives” published in December 27, 2012, collectively referred to in this document as Guidelines, or in relevant Commission Orders G-31-15 and G-39-16 and accompanying decisions. If the Code of Conduct is silent on a principle or guideline established in one of the above documents, acceptance of the Code of Conduct does not imply that the principle, guideline or Commission direction is voided or invalid.

- 5.1. Is the Code of Conduct intended to govern the provision of resources two ways? I.e., from Affiliated Natural Monopoly (AU) resources, such as FBC to FEI as well as for the provision of FortisBC Energy resources to Affiliates?
  - 5.1.1. If no, are there codes or documents that govern the provision of resources from Affiliates such as AUs to FEI?
    - 5.1.1.1. If yes, please provide those codes or documents.

**6. Reference: Exhibit B-2, Appendix 2, Page 1**

This Code will govern the use of [FortisBC Energy] resources and services provided to ~~ARBNNM-Affiliates~~ including shared services, employment or contracting of [FortisBC Energy] personnel, and the treatment of customer, utility, or confidential information. The Code will also determine the nature of the relationship between [FortisBC Energy] and ~~ARBNNM-Customer Information and Commercial Information~~. Where there is an agreement between the [FortisBC Energy] 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.

- 6.1. Are there any preceding agreements which this Code will supersede?
  - 6.1.1. If so, please provide.

**7. Reference: Exhibit B-2, Appendix A2, Page 4,**

- i. [FortisBC Energy] will protect and consider the interests of its own ratepayers/customers, and having protected its ratepayers/customers [FortisBC Energy] may also consider the potential interests of the customers of an Affiliate.
- 7.1. Please explain why FEI changed the word ‘ratepayers’ to ‘customers’ at multiple instances in the Code of Conduct and discuss the import of that change.
  - 7.2. Please confirm that the above statement does not require FEI to consider the potential interests of the customers of an Affiliate if its own interests are already protected.

**8. Reference: Exhibit B-2, Appendix 2, Page 5**

~~iii.ii. Aggregated Customer specific information must be treated as required by the Personal Information Protection Act and, in addition, customer specific information should only be released with the written consent of the customer. Information or individual Customer information (aggregate or customer specific with written consent) Information that is made available to an Affiliate should be made available to all parties (Affiliated Regulated and Unregulated Businesses, and, 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.~~

- 8.1. If information is to be made available to all parties, including competitors only ‘upon request’, how would a competitor be alerted to the information being made available to an Affiliate?
- 8.2. Would written customer consent be required each time a transfer of information was conducted, or is such ‘written consent’ included in terms and conditions or other general policy statements that all customers are requested to sign? Please explain.

**9. Reference: Exhibit B-2, page 19 and Appendix 2, Page 5**

For Commercial Information, concerns over sharing of the information are different for an AU than that for an ARB or ANRB. For an ARB or ANRB where competition is more prevalent and with the value of Commercial Information greater than in the situation with an AU, precluding the sharing of Commercial Information between FEI and an ARB and ANRB is warranted. This is not justified with an AU. FEI considers that sharing of Commercial Information as defined with an AU would therefore be acceptable.

~~iii.ii Aggregated Customer specific information must be treated as required by the Personal Information Protection Act and, in addition, customer specific information should only be released with the written consent of the customer. Information or individual Customer information (aggregate or customer specific with written consent) Information that is made available to an Affiliate should be made available to all parties (Affiliated Regulated and Unregulated Businesses, and 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. [FortisBC Energy] will not provide Commercial Information to an Affiliate except in the case of an AU.~~

9.1. Please give examples of the types of benefits that could be generated from sharing Commercial Information with an AU.

**10. Reference: Exhibit B-2, Appendix A2, Page 7**

~~c) Business Development Personnel~~

~~e) [FortisBC Energy] will not share business development personnel with an ARBNNM.~~

~~[FortisBC Energy] and ARBNNM director 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.

- 10.1. If FEI is not providing similar energy solutions in the marketplace, would sharing Business Development Personnel with FEI confer a competitive advantage on an Affiliate? Please explain why or why not.

**11. Reference: Exhibit B-2, Appendix 2A, Page 8**

~~When the Customer information will be~~ Information or Commercial Information is provided at the requesting party must pay a reasonable price reflecting market circumstances and cover that allows FortisBC Energy to recover the cost of extracting and providing the information. All parties should pay the same price for the same or similar information.

- 11.1. Why did FEI remove the term ‘reflecting market circumstances’?  
11.2. Did FEI remove ‘or similar’ information because identical information will be released to all?  
11.2.1. If not, please explain why FEI removed the term ‘or similar’.

**12. Reference: Exhibit B-2, Appendix A2, Page 7**

**2. Shared Services and Personnel**

- a) This Code recognizes the potential benefits to ~~the~~ [FortisBC Energy] and ~~ARBNNM regulated ratepayers~~ Affiliates in sharing resources.
- b) [FortisBC Energy] will only share its services and non-executive personnel with Affiliates in circumstances where:
1. the services can be identified and tracked effectively and there are other appropriate safeguards in place as discussed in Section 7 of this document;
  2. there is limited potential for disclosure of confidential information; and
  3. there are benefits to [FortisBC Energy] ~~ratepayers~~ customers.

[FortisBC Energy] may also share its services and non-executive personnel with an AU where there is no detriment to [FortisBC Energy].

- 12.1. Is it reasonable to include the phrase ‘ratepayer’ at the end of the last sentence such that it would read ‘FortisBC Energy’ may also share its services and non-executive personnel with an AU where there is no detriment to FEI ratepayers?  
12.1.1. If not, please explain why not.

12.2. Is the proposed Code of Conduct intended to provide protection for Affiliate Natural Monopoly (AU) ratepayers such as FBC, or just FEI ratepayers? Please explain why or why not.

12.2.1. If yes, would it be reasonable to alter the statement to the following?  
'FortisBC Energy and its Affiliates may share services and non-executive personnel with each other where there is no detriment to FortisBC Energy ratepayers or to the ratepayers of other AU'

12.2.1.1. If no, please explain why not.

12.2.2. If yes, please identify all the areas in the document which afford protection to FEI ratepayers and do not afford equal protection to Affiliate AUs.

### 13. Reference: Exhibit B-2, Page 20

#### 5. *Equitable Access to Services*

*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 customers to an ARBNNM. In discussing energy alternatives with a customer, or a potential customer, [FortisBC Energy] personnel may not preferentially direct customers to an ARBNNM. If a customer, or potential customer, requests from [FortisBC Energy] information about products or services offered by an ARBNNM, [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.*

No substantive changes have been made to the wording incorporated into the CoC/TPP for ARBs approved by the Commission except for a change to reference "Affiliate" rather than "ARBNNM" so as to extend the existing ARB wording to the ANRB situation. The language is consistent with page 37 of the AES Inquiry Report where it was stated that similar language on preferential treatment would apply to Non-Regulated Businesses or Affiliated Regulated Business.

Preferential treatment language would not be necessary in situations where the services are offered by an AU. Accordingly, for the All-Inclusive CoC/TPP, Section 4 Preferential Treatment and Section 5 Equitable Access, does not apply to an AU situation.

The sentence "*This section on Preferential Treatment is not applicable to an AU.*" has been added to Section 4 of the All-Inclusive CoC/TPP and the sentence "*This section on Equitable Access to Services is not applicable to an AU.*" has been added to Section 5 of the All-Inclusive CoC/TPP.

13.1. Please identify any situations in which directing customers to an AU such as FBC could result in either a benefit to FBC or a disadvantage to other market constituents.

13.1.1. If none, could such situations arise in the future? Please explain why or why not.

13.2. What, if any, would be the effect of removing the sentence ‘This section on Preferential Treatment is not applicable to an AU’ from the CoC?

**14. Reference: Exhibit B-2, Page 20 and Appendix A2, Page 10**

**4.2.4 Compliance (Section 7 of the Code of Conduct)**

FEI believes that the compliance requirements of the CoC outlined in Section 7 Compliance and Complaints of the All-Inclusive CoC/TPP is applicable for all three Affiliate situations. The second sentence in subsection a) has been amended slightly to refer to “with quarterly reminders to management of employees who may be directly involved with Affiliate activities” instead of “with quarterly updates for employees who may be directly involved with ARBNNM activities”. This minor modification is to recognize the responsibility of management in ensuring that all FEI employees adhere to the CoC and TPP.

Refer to page 10 of Appendix A2 CoC.

- a) The Director of Finance at [FortisBC Energy] will be responsible for monitoring compliance at [FortisBC Energy] with this Code. This will include advising all of its employees of their expected conduct pertaining to this Code, and with quarterly updates for reminders to management of employees who may be directly involved with ARBNNM affiliate activities.

14.1. Would FEI accept an alteration as follows in order to ensure that employees received regular updates as well as their managers?

- a) The Director of Finance....will be responsible for monitoring compliance at...with this Code. This will include advising all of its employees of their expected conduct pertaining to the Code, with quarterly reminders to managers and regular updates for employees who may be directly involved with Affiliate activities.

14.1.1. If not, please explain why not.

**15. Reference: Exhibit B-2, Pages 12, 21 and 22**

The already-approved pricing rules for an ARB and ANRB include “the higher of market price or fully allocated cost” and FEI has maintained this rule in the All-Inclusive CoC/TPP for those situations. For sharing of resources with an AU (i.e., FBC), FEI is proposing no change to the existing transfer pricing rule as outlined in the section titled “Mutual Shared Services with FortisBC Inc.” on page 14 of this Application. 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.

Further, wording has been added to recognize that there may be a separate agreement reviewed by the Commission from another proceeding that overrides the TPP rules.

*"If there is an agreement between [FortisBC Energy] and an Affiliate that has been reviewed by the Commission in another proceeding, that agreement applies."*

Refer to page 6 of Appendix A2 TPP.

*Mutual Shared Services with FortisBC Inc.*

FEI and FBC share common resources including the Executive Management team and other departmental resources, providing benefits to both organizations. Executive Management time is allocated on the basis of the Massachusetts formula as approved by the Commission in Order G-138-14<sup>15</sup>. The costs of other departmental resources are allocated between the Gas and Electric businesses using a timesheet allocation approach as set out in FEI's 2012-2013 RRA.

In its 2014 to 2018 Multi-Year PBR Application, FEI provided the following discussion which remains applicable today:<sup>16</sup>

*"Since 2010, the FEU and FortisBC Inc. (FBC) have been sharing common resources starting with the sharing of the Executive Management team. More recently, the sharing of resources between FEI and FBC has continued as the organizations streamline operations and processes.*

*In this Application, sharing of resources between FEI and FBC, except for the Executive Management team, have continued with the approved cross charge process such that the cross charge includes a fully loaded wage including benefits and time away, with no overhead or facilities fees assigned. Executive Management time is being allocated on the basis of the Massachusetts Formula. As mentioned earlier in Section A3, given the evolving nature of integration efforts between the gas and electric businesses, the traditional timesheet allocation approach continues to be the appropriate approach to allocate the majority of shared costs between the two organizations."*

The initial agreement was established in 2010 and filed with the Commission at that time. See Appendix E2 for a copy of the agreement.

15.1. Please provide the rationale for why no overhead or facilities fees should be assigned.

**16. Reference: Exhibit B-2, Appendix A1, PDF Page 58 of 235**

5. Equitable Access to Services

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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 ~~ARBNDM~~ Affiliate.

In discussing energy alternatives with a customer, or a potential customer, [FortisBC Energy] personnel may not preferentially direct customers to an ~~ARBNDM~~ Affiliate. If a customer, or potential customer, requests from [FortisBC Energy] information about products or services offered by an ~~ARBNDM~~ 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.

16.1. Why is the Equitable Access to Services not applicable to an AU?

16.2. If there is no opportunity to preferentially direct a customer to an AU, what is the value in stating that Equitable Access to Services regulation is not applicable to an AU?

**17. Reference: Exhibit B-2, Appendix A2, PDF Page 58 of 235**

- c) Complaints by third parties about the application of this Code, or any alleged breach thereof, should be addressed in writing to the Company's Director of Finance and the Executive Vice-President responsible for Regulatory Affairs, Customer Service and Regulatory Affairs, who will bring the matter to the immediate attention of the Company's senior management and promptly initiate an investigation into the complaint. The complainant, along with the Commission, will be notified in writing of the results of the investigation, including a description of any course of action which will be or has been taken promptly following the completion of the investigation. The Company will endeavour to complete this investigation within 30 days of the written receipt of the complaint.

17.1. Please confirm that 'written' communications will include email.

**18. Reference: Exhibit B-2, Appendix A2, PDF Page 59 of 235**

9. Use of FortisBC Utility Name

The use of the FortisBC name by an ~~ARBNNM~~ affiliate is an acceptable business practice. [FortisBC Energy] will exercise care in distinguishing between services provided by [FortisBC Energy] and services offered by the ~~ARBNNM~~ an Affiliate except in the situation of an AU. The name FortisBC is owned by Fortis Inc.

18.1. Why should FEI not exercise care in distinguishing services provided by FEI and an AU?

**19. Reference: Exhibit B-2, Appendix A2, Transfer Pricing Policy PDF Page 67 of 235**

1. Pricing Rules

- i. If an applicable [FortisBC Energy] tariff rate exists, the Transfer Price to an Affiliate will be set according to the tariff.
- 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 [FortisBC Energy] ~~ratepayer~~ customers, [FortisBC Energy] must apply to the Commission for a variance from the pricing rules i, ii, or iii.
- v. ~~2.~~ If there is an agreement between [FortisBC Energy] and an Affiliate that has been reviewed by the Commission, that agreement applies.

19.1. Please give examples of situations where it might be shown that an alternative Transfer Price would provide greater benefits to the FortisBC Energy customers.

19.2. Please identify any existing agreements which would apply instead of this Transfer Pricing Policy.