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British Columbia Utilities Commission
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Attention: Laurel Ross, Acting Commission Secretary

FILED ELECTRONICALLY

December 5, 2016

Dear Ms. Ross:

Re: FortisBC Energy Inc. ("FEI")
All-Inclusive Code of Conduct and Transfer Pricing Policy ("CoC & TPP")
Compliance filing to Order G-65-15 ~ Project No.3698873

These are the Final Submissions of MoveUP pursuant to the timetable contained in Commission Order G-157-16. MoveUP is the Canadian Office and Professional Employees Union, Local 378 (COPE 378), the sole certified bargaining agent for the majority of FEI's inside (office) workers. The Union has been an active participant in many processes before the BCUC, in each instance bringing forward information and alternatives it has identified as relevant to this Tribunal's jurisdiction and purpose.

In its Final Submission, FEI presents a fundamental mischaracterization of MoveUP's position in this proceeding, setting up a 'straw man' in order to avoid dealing with our client's representations. It says,

> 4. The Commission's letter dated September 20, 2016 stated that the purpose of this proceeding is to determine whether FEI has met the requirements set out in Order G-31- 15. The Commission described the objective of FEI's compliance filing as follows: "to consolidate into one document the codes of conduct and transfer pricing policies applicable to the variety of entities with which FEI has affiliate transactions." **The Commission clarified in the scoping order that the terms of shared services agreements were out of scope, although "parties should be free to debate the concepts and explore applicability of principles, applicable to the varieties of**

> **affiliated entities with which FEI has transactions." Consistent with that determination, FEI is not addressing in this Final Submission the terms of the agreement between FEI and FortisBC Inc. ("FBC"). That agreement was filed in the 2014-2018 PBR Application**. [Bold added]

in case there has been any misunderstanding, the Union is not suggesting that the Commission should examine the adequacy of any particular Shared Services Agreement among Fortis entities in the province. That is a straw man. Our client says that the issue is the nature of the regulatory regime for the oversight of these relationships and transactions. It is the requirement of shared services agreements, their minimum requirements and the process for their approval, generically, that our client is concerned about. This issue is clearly within the scope of this proceeding.

Consideration of specific Shared Services Agreements is a matter that will arise from time to time in the normal course, as they are adopted, modified or terminated, in the context of such proceedings as Annual Reviews (under PBR frameworks), revenue requirements, or proceedings specifically for the approval of proposed agreements.

In this process, the Union is not applying or seeking to reconsider past decisions with respect to any FEI CoC's and TPP's nor a change in this process that would entail a substantive consideration of the contents of any Shared Services Agreement between FEI and its various affiliates. Instead, the Union is seeking to address the applicability of regulatory oversight and accountability principles that should be attached to FEI's shared services agreements, and more specifically their incorporation into its CoC.

The Union's October 5th Submission on Scope and Process (marked as Exhibit C2-2) was explicit regarding MoveUP's primary focus: "One of the principal points that our client will make in this proceeding is that there is a key element missing from the draft Code of Conduct filed as Appendix A-1 to the Application, Exhibit B-2. That is the requirement of a Shared Services Agreement, subject to prior approval by the Commission, identifying the nature and scope of services to be shared, before the sharing of services and resources can occur between these entities."[1] This focus is, the Union submits, entirely consistent with the parameters and scope of this process as defined by the Commission.

The Union notes that in its Final Argument, FEI simply declined to deal with the Union's position on this issue at all despite the fact that the Utility had no reasonable expectation that the Union would abandon this clear and well-defined purpose. Given that Union was abundantly clear about its purpose in its October 5, 2016 scoping and process submission[2], it begs the question why FEI has declined to address MoveUP's call for a codified Shared Services Agreement in its Final Argument. The closest FEI came to addressing this was the inclusion of the following passage in its submission on Scope and Process:

[1] MoveUP Submissions on Scope and Process, Exhibit C2-2, page 1.
[2] Exhibit C2-2

> Additionally, both FEI and FBC are subject to ongoing regulation of the Commission. The Commission has direct oversight of utility operations and has the ability to request information on the interactions between the two utilities in a forum outside of a CoC/TPP proceeding. This approach is to be preferred as it allows for flexibility in changing circumstances over time rather than requiring all considerations be codified at one time. While MoveUP seeks to draw parallels with FortisAlberta and holds up FortisAlberta's Code of Conduct as a precedent, it is overlooking the fact that FortisAlberta's circumstances differ markedly. The provisions of the FortisAlberta Code governing dealings with sister utilities have no practical application because FortisAlberta does not have a sister regulated utility subject to the oversight of the Alberta Utilities Commission.

The purpose of this proceeding is to determine whether FEI has complied with the requirements as set out in Order G-31-15 and formulated its proposals to meet with the Commission's clear instructions that, "[t]his proceeding is not intended as a forum to re-open the past decisions of the Commission with respect to codes of conduct and transfer pricing policy. The objective is to consolidate into one document the codes of conduct and transfer pricing policies applicable to the variety of entities with which FEI has affiliate transactions. It is intended to address whether specific principles may only be applicable to some types of affiliate transactions but not to others, including clarifying where and under what conditions the sharing of personnel or resources, may or may not be appropriate based on the principles established in previous Commission decisions, the Retail Markets Downstream of the Meter Guidelines (RMDM) and the Alternative Energy Services Inquiry Report (AES Inquiry)."

The Union does not support FEI's application for Commission approval of the All-Inclusive CoC/TPP as filed. The Union's position is that this CoC falls far short of the reasonable and prudent examples set in other Canadian jurisdictions, particularly the requirement for a Commission-Approved Shared Services Agreement that clearly defines the types, quantity, and quality of services provided. Instead, the requirement the Union commends to this Panel is a proven means to ensure that the interactions between these affiliated utilities are transparent and subject to an appropriate level of Commission oversight: neither too onerous nor too lax.

The Union's Preferred Model: a Defined and Commission-Approved Shared Services Agreement

The point of this proceeding is to ensure that the Commission has the appropriate tools for regulatory oversight of shared services and transactions among the various corporate and operational manifestations of FortisBC. Its mandate includes ensuring that resources funded by ratepayers of any of Fortis' regulated entities operating within its jurisdiction are used prudently and in the public interest, particularly the interest of ratepayers, and that these relationships are not producing any inappropriate cross-subsidies. The Commission should satisfy itself that these transactions represent a reasonable and efficient use of ratepayer-funded resources of any regulated entities that are touched by them.

One major source of guidance for the Commission is practice as it has evolved in other jurisdictions across Canada, where regulators have grappled with similar issues. Our client says that one such practice that is evidenced on the record of these proceedings is to "hard-wire" into utility codes of conduct the requirement that shared services be subject to approved shared service agreements between the companies, conforming with specified minimum requirements stipulated by the regulators.

In the *AES Inquiry Report*, the Commission specifically cited the FortisAlta Code of Conduct as a source that the utility and intervenors should rely upon to develop inter-utility agreements for FEI.

> The Commission Panel notes there are examples of more detailed Codes of Conduct such as the FortisAlberta Inc. Code of Conduct as approved by the Alberta Energy and Utilities Board in 2005. (Exhibit A2-15) **The Panel recommends that the FEU initiate a process to prepare an updated Code of Conduct and Transfer Pricing Policy in respect of the interaction between the regulated utilities and related non-regulated businesses. This should be done through a collaborative process involving the utilities, stakeholders (including Interveners in this proceeding) and Commission staff. The Commission recommends that participants in this process should consider the Principles and Guidelines outlined herein as well as the FortisAlberta Inc. Code of Conduct. The Panel recommends that this process be initiated as soon as is practicable. The updated Code of Conduct and Transfer Pricing Policy should be submitted to the Commission for approval.**

The Commission should ensure, in setting the rules, that it will put itself in the position where it can be confident that the inter-mixing or other sharing of resources between these companies is appropriate and in the interests of ratepayers and the public.

As we have suggested, one risk that approved shared services agreements can help avoid is inappropriate cross-subsidies. Cross subsidization is where one group of customers is said to be paying "too much" for goods or services while another group is paying "too little". While this is not exclusively a utility issue, issues of utility cross subsidies tend to arise less often in competitive markets and in a much more extreme fashion for utilities than in other sectors, largely because utilities tend to be monopolies an essential service or product; and because they often have costs that can be allocated to more than one accounting output, creating a cost-allocation battlefield where utilities and stakeholders can perpetually seek to calibrate (or recalibrate) the allocation model in the manner that best suits their specific needs and agendas.

Utility regulation by tribunals like the BCUC is intended to level the playing field, to ensure the utility does not take advantage of its economic and political power as a monopoly provider to the disadvantage of its ratepayers. A significant number of academic studies have been undertaken to examine the issue of utility cross subsidization and while some prefer the economist's Stand Alone Cost method and others the accountant's Fully

Distributed Cost approach, the one consistent theme is that transparency is key. Whatever cost allocation methodology is used, if it is too complicated, too poorly defined, or overly changeable, the resulting lack of transparency risks vital customer and regulator buy-in.

In British Columbia, section 60 of the *Utilities Commission Act* clearly contemplates situations like the one before the Commission now, where two divisions of a utility provide different products using shared resources and services. FEI's own evidence (below) from the Alternative Energy Services and Other New Initiatives Inquiry[3] acknowledges that this Commission is bound to ensure that one group of Fortis customers do not subsidize another.

> **3.4 CLASSES OF SERVICE**
>
> One other important element of the legal framework is that the *UCA* expressly contemplates a single utility having different classes of service. This is evident from a review of section 60 of the *Act*:
>
> *60(1) In setting a rate under this Act*
>
> *…*
>
> *(c) If the public utility provides more than one class of service, the Commission must*
>
> *(i) segregate the various kinds of service into distinct classes of service;*
>
> *(ii) in setting a rate to be charged for the particular service provided, consider each distinct class of service as a self contained unit, and*
>
> *(iii) set a rate a rate for each unit that it considers to be just and reasonable for that unit, without regard for the rates fixed for any other unit.*
>
> The import of this provision is that the *Act* expressly contemplates a public utility such as FEI providing, for example, both natural gas service and thermal energy services within the same regulated utility. Not only does the *Act* contemplate this scenario, but it dictates the manner in which rates are to be set so that the customers of one class of service do not cross-subsidize customers of another class.

Cross subsidization is inarguably an important theme in utility regulation in British Columbia. The following Commission Decision in the 2015 CoC and TPP matter also clearly focussed on issues relating to the potential for cross-subsidization existing between FEI and its AES affiliates (the ARBNNMs). The Commission's Order actually required that FEI restructure its business dealings with its ARBNNMs in such a way that that they were more transparent and defensible from any allegation of cross-subsidization.

[3] Exhibit B-2, Section 3.4, page 69

Commission determination

While the Panel does not consider it necessary to use the exact wording from the RMDM Guidelines or the AES Inquiry Report, the Panel has given significant weight to the intent of those two documents. In the Panel's view, language that diverges too far from the intent of the RMDM Guidelines and the AES Inquiry Report should only be approved if the Panel finds there is a sufficient reason to do so.

The Panel notes the deletion from the proposed COC of any reference to maintaining separate financial records and sufficient separation of business operations. The Panel recognizes the initial progress made by FEI and FAES in terms of physically segregating certain operations as well as the investigation by FAES into alternatives to provide greater segregation. Nevertheless, the Panel is of the view that a complete separation of FEI's and FAES' business operations would eliminate any risk of cross-subsidization. The Panel finds that the COC must explicitly ensure that sharing of resources between FEI and an ARBNNM should be limited to the circumstances where the level of sharing is not significant (i.e., a few hours at a time representing only a small portion of any FEI staff members' workload, undertaken when other priorities allow), appropriately designed and implemented safeguards are in place, the ability to track costs exists, and other conditions of this COC are met. These circumstances are further addressed in section 3.4 of this decision "Shared Services and Personnel." Therefore, the Panel finds that it is important to explicitly acknowledge that there are principles and guidelines regarding the overarching issue of whether or not the proposed corporate relationship is appropriate. **To further clarify the scope of the COC, FEI is directed to reinsert a paragraph in the COC: FEI will maintain separate financial records and appropriate documentation as well as implement appropriate safeguards, including a sufficient separation of business operations in order to prevent cross-subsidization and ensure a level of transparency that enables an appropriate allocation of costs between FEI and ARBNNMs.** [4]

This excerpt clearly shows that transparency is recognized as a vital tool to ensure cost allocation is done properly and in a way that facilitates proper BCUC regulation. Additionally, this Decision demonstrates that the BCUC cannot and will not abdicate its statutory responsibility to ensure that utilities will allocate their shared services costs in a manner that adequately protects ratepayers from cross subsidization.

This begs the question: how are the Commission and stakeholders to assess whether cross-subsidization is taking place when the Shared Services Agreement under which FEI operates is incomplete and subject to change without prior examination or Commission approval? Examination after the fact at a Revenue Requirement, particularly when the utilities involved are operating under the light-handed regulation of a PBR, is not sufficient oversight to protect FEI ratepayers.

MoveUP's position, that FEI's CoC must include a clear and well defined Shared Services Agreement subject to Commission oversight and approval is informed by an examination of a number of other Canadian utilities, particularly the OEB's Affiliate Relationships Code for Electricity Distributers and Transmitters, the OEB's Affiliate Relationships Code for Gas Utilities, the AEUB's January 17, 2005 Decision 2005-02 regarding the FortisAlberta Inc. Code of Conduct; the FortisAlberta Inc. Inter-Affiliate Code of Conduct Compliance Plan of

[4] Commission Decision, FortisBC Energy Inc. Code of Conduct and Transfer Pricing Policy for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment, February 27, 2015, pp 11-12.

August 2009; the AEUB's May 22, 2003 Decision 2003-040 regarding the ATCO Group's Inter-Affiliate Code of Conduct; and finally, the NSUARB's August 19, 2015 Decision regarding the Nova Scotia Power Inc.'s Affiliate Code of Conduct[5]. Each of these documents demonstrate it is entirely possible for comparable utilities to operate while being subject to Shared Services Agreements that clearly define the nature and scope of the services to be shared between affiliates with an Agreement that is then subject to the approval of their respective regulators before the sharing of services takes place.

The Union has taken its cue specifically from the FortisAlberta Code of Conduct cited by the Commission in the AES Inquiry Report as a source that parties to the process should refer to when developing the rules for FEI. FortisAlberta's CoC includes a definition of "Shared Services Agreement" and a requirement that, "a Utility shall enter into a Services Agreement with respect to any Share Services it provides to, or acquires from, an Affiliate." FEI's draft CoC & TPP falls far short of this, and is, as a result, deficient on its face.

The Union expects that FEI will seek to rely upon the fact that both the Inquiry and the 2015 CoC and TPP Decision focus on the prevention of cross-subsidies between FEI and its affiliates participating in competitive markets (its ARBNNMs) but the Union notes that there is no basis upon which to determine that FEI's customers should enjoy a lesser degree of protection from cross subsidies depending on which entity the services are shared with, an AU or an ARBNNM. The prohibition against cross-subsidy is so strongly entrenched in our regulatory rules and values that, absent a specific exemption, it cannot be said that any such distinction is a sufficient basis upon which to depart from the norm.

The Union has, throughout this process, relied upon not only the FortisAlberta Inc. Code of Conduct as an example that FEI should follow, but also the Codes of Conduct from Nova Scotia and Ontario. The fact that FortisAlberta does not have a sister regulated utility subject to the oversight of the Alberta Utilities Commission is clearly a red herring, completely irrelevant to the question as to whether the Alberta provisions governing the dealings between affiliated utilities has any practical application in this case.

The Union also notes that while FEI and FBC have, at times in the past decade been subject to the full examination of a Revenue Requirements process, these utilities have also operated (and currently operate) under the light-reined, limited regulation of a PBR scheme. While FEI may wish to continue with its current arrangement with a shared services agreement it can modify or not as it sees fit when and if it sees fit, the value of transparency and the regulatory imperative to avoid cross-subsidies far outweigh that freedom. The fact of the matter is, regulation does not cast FEI's shared services in stone.

Regulation is an ongoing process that evolves as the utility, the customers, and the market change. Now, as FEI changes its practices, increasing its non-executive functions, the need for a clearly defined and transparent shared services agreement has grown, particularly since the escalation in sharing absent specific and focussed Commission oversight increases the chances that cross utility subsidies are taking place in violation of section 60 of the *UCA*.

[5] Exhibit B-4, MoveUP IR 1, Attachment 1.1

Conclusion

FEI has, at every opportunity, sought to avoid dealing with MoveUP's clearly articulated position that because this process is focussed on the design and calibration of the rules and regulatory instruments governing the interactions between FEI and its diverse affiliates, including the regulated natural monopoly FBC, the need to clearly codify the definition and regulation of its Shared Services Agreement is clearly within scope. The fact of the matter is that declining to deal with an issue, or obfuscating its true purpose is not a sufficient response to MoveUP's submission that because the relationships between FEI and its affiliates are changing to such a degree that there is a large-scale de facto merger taking place of FEI and FBC's customer service staff and resources in the absence of any regulatory oversight to ensure that the Shared Services Agreement in place is robust enough to deal with this escalating functional integration as well as capable of

In its responses to intervenor and staff IR's FEI made many unsubstantiated assertions that support its position that inclusion of a SSA in the CoC would be problematic but without any meaningful discussion, any specific examples, or any exploration of how FEI has determined that this is, indeed, the case.

In MoveUP's view, the transparency required of it is markedly absent in FEI's draft CoC and it will continue to be absent unless a requirement for Commission-approved Shared Services Agreements is defined and codified within the CoC. It would be appropriate for the Commission to afford the utilities sufficient time to prepare and present conforming proposed Agreements to the Commission for approval, pursuant to the determinations made in this proceeding.

All of which is respectfully submitted.

Yours truly,
Allevato Quail & Worth

per Leigha Worth and Jim Quail
Barristers & Solicitors

cc: parties of record, via email