



ORDER NUMBER
G-210-20

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

FortisBC Energy Inc.

Complaint filed by Cascadia Energy Ltd., Direct Energy Marketing Ltd. and Access Gas Services Inc.

BEFORE:

B. A. Magnan, Panel Chair
T. A. Loski, Commissioner

on August 10, 2020

ORDER

WHEREAS:

- A. On September 4, 2019, Cascadia Energy Ltd., Direct Energy Marketing Limited and Access Gas Services Inc. (collectively BCGMC) filed a complaint with the British Columbia Utilities Commission (BCUC) (Complaint). BCGMC requested that the BCUC inquire into FortisBC's Energy Inc.'s (FEI) administration of Rate Schedules 22, 23, 25 and 27 related to transportation customer service;
- B. In the Complaint, BCGMC outlines the issues as follows:
 - 1. The nature and adequacy of the information that FEI provides to enable transportation customers to comply with the transportation service gas balancing and tolerance rules;
 - 2. Measures necessary to assure timely access to customer consumption data;
 - 3. Potential adjustments to the balancing rules to allow for inter-customer group balancing;
 - 4. Review of FEI's practices related to decisions to curtail, the timing of curtailment and return of gas, and the associated charges, and offering competitive service to transportation customers served by gas marketers; and
 - 5. The need for a FEI code of conduct for its gas marketing activities to establish a competitive market and level playing field for all participants;
- C. By Order G-135-18 dated July 20, 2018, the BCUC approved amendments to the transportation service customer balancing rules, including implementation of daily balancing for all transportation service customers, a reduction of the daily balancing tolerance and changes to daily balancing charges for gas supply shortfalls. Order G-135-18 directs FEI to file a written report with the BCUC on transportation service balancing by June 1, 2022;
- D. BCUC staff reviewed the Complaint according to the BCUC's Customer Complaints Guide and on September 26, 2019 sought a response from FEI. Following receipt of a reply from FEI on October 11, 2019, BCGMC was provided an opportunity to review FEI's response and provide further comments;

- E. By Orders G-340-19, G-82-20 and G-87-20, the BCUC established and furthered a regulatory timetable to review the Complaint, which consisted of one round of BCUC information requests (IRs), BCGMC and FEI reply comments, BCUC and BCGMC IRs to FEI, and written final arguments;
- F. On February 20, 2020, BCGMC filed an application asserting there was an apprehension of bias (Apprehension of Bias Assertion) in relation to the appointment of Commissioner Loski to the Panel reviewing the Complaint and requested a replacement Commissioner be appointed to the Panel reviewing the Complaint;
- G. On March 16, 2020, Commissioner Loski issued a response to the Apprehension of Bias Assertion and denied BCGMC's request that a replacement Commissioner be appointed to the Panel reviewing the Complaint;
- H. On May 28, 2020, the BCUC received a reply argument submission from BCGMC;
- I. On June 5, 2020, the BCUC received a letter of comment from Absolute Energy Ltd. (Absolute Energy). The BCUC accepted the letter of comment into the evidentiary record and received submissions from FEI and BCGMC on the letter of comment by June 22, 2020;
- J. The BCUC has reviewed the evidence and arguments submitted in this proceeding and makes the following determinations.

NOW THEREFORE pursuant to section 83 of the *Utilities Commission Act*, and for the reasons set out in Appendix A to this order, the BCUC orders as follows:

- 1. The Panel dismisses the Complaint and denies BCGMC's request to establish an inquiry to review FEI's administration of its transportation service, and therefore the complaint is closed.
- 2. Prior to filing its transportation service balancing written report with the BCUC by June 1, 2022, as directed by BCUC Order G-135-18, FEI is directed to engage in stakeholder review with all shipper agents and include results of that review in the report, to be filed. FEI is directed to include the following topics in its stakeholder review:
 - a. Nature, timing and adequacy of information provided to shipper agents to manage gas supply resources;
 - b. Administration of inter-customer group balancing and transparency of inter-customer group balancing rules; and
 - c. FEI's criteria for curtailment of inventory returns to shipper agents.

DATED at the City of Vancouver, in the Province of British Columbia, this 10th day of August 2020.

BY ORDER

Original signed by:

B. A. Magnan
Commissioner

Attachment

FortisBC Energy Inc.
Complaint filed by Cascadia Energy Ltd., Direct Energy Marketing Ltd. and Access Gas Services Inc.

REASONS FOR DECISION

EXECUTIVE SUMMARY

On September 4, 2019, the British Columbia Utilities Commission (BCUC) received a complaint from Cascadia Energy Ltd., Direct Energy Marketing Ltd. and Access Gas Services Inc., collectively known as the BC Gas Marketers Coalition (BCGMC) (Complaint). In the Complaint, BCGMC requests that the BCUC establish an inquiry to review FortisBC Energy Inc.'s (FEI) administration of Rate Schedules 22, 23, 25, and 27 related to its transportation service.¹ BCGMC's members act as transportation customers and shipper agents under FEI's transportation service model.

BCGMC submits that the balancing and tolerance rules related to transportation rate service schedules were tightened following the FortisBC 2016 Rate Design Application (2016 RDA) Decision, but the flow of information from FortisBC to the transportation customers is inadequate to manage gas supply within the new rules.² BCGMC summarizes the issues of the Complaint as follows:

- a. The nature and adequacy of the information that FEI provides to enable transportation customers to comply with the transportation service gas balancing and tolerance rules.
- b. Measures necessary to assure timely access to customer consumption data.
- c. Potential adjustments to the balancing rules to allow for inter-customer group balancing.
- d. Review of FEI's practices related to curtailment and return of gas.
- e. The need for a FEI code of conduct for its gas marketing activities, to establish a competitive market for all gas marketers and their customers.³

The Complaint was reviewed pursuant to the BCUC Customer Complaints Guide and subsequently the BCUC determined that a written hearing for review of the Complaint was warranted. By Orders G-340-19, G-82-20 and G-87-20, the BCUC established a written hearing process to review the Complaint.

Upon review through a written hearing, the Panel makes findings in regard to the individual issues in the Complaint, summarized as follows:

- The Panel finds that the information provided to shipper agents is appropriate and the penalties and curtailments experienced by BCGMC are consistent with the intended outcomes of the transportation model in the 2016 RDA Decision.
- The Panel does not find any evidence to indicate that FEI has changed its "inter-customer group balancing rules" or applied its balancing rules in a manner inconsistent with the transportation model tariffs.

¹ Exhibit B-1, p. 1.

² Ibid., p. 2.

³ BCGMC Final Argument, p. 1, para. 5.

- The Panel is satisfied that the steps taken by FEI to curtail inventory returns were appropriate and in accordance with the terms of its tariffs given the unique operational circumstances faced in Winter 2018/19 following the Enbridge pipeline rupture.
- The Panel does not consider FEI's regulated utility operations to be in competition with gas marketers or receiving a competitive advantage from control of FEI customer information. The Panel rejects BCGMC's argument that a code of conduct is required for FEI's regulated utility business in order to establish a competitive market for all gas marketers and their customers as FEI's regulated service offerings are governed by its tariffs.

The 2016 RDA Decision and Order G-135-18 directs FEI to file a written report with the BCUC on transportation service balancing by June 1, 2022 (Transportation Model Report), which is intended to review "the effectiveness of the approved balancing changes, any adverse impacts and the need for further changes" to the transportation model.⁴ The Panel considers that the stakeholder workshops to be held in advance of the Transportation Model Report provide an appropriate avenue for a collaborative review process with all stakeholders. The Panel considers that any changes to the transportation model prior to the Transportation Model Report would be premature given the need to compile and analyze sufficient data to make an informed assessment of the transportation model.

The Panel finds it appropriate to include certain items from the Complaint during stakeholder workshops in advance of the Transportation Model Report, including the nature, timing and adequacy of information provided to shipper agents to manage gas supply resources; administration of inter-customer group balancing and transparency of inter-customer group balancing rules; and FEI's criteria for curtailment of inventory returns to shipper agents. The Panel directs FEI to include discussion of these topics in stakeholder review sessions with shipper agents in preparation of the Transportation Model Report, and to include results of the stakeholder review in the Transportation Model Report as directed by 2016 RDA Decision and Order G-135-18.

Based on these findings and for the reasons that follow, the Panel dismisses the Complaint and denies BCGMC's request to establish an inquiry to review FEI's administration of its transportation service.

⁴ BCUC 2016 RDA Decision and Order G-135-18, pp. 80-81.

1.0 Complaint Overview

On September 4, 2019, the British Columbia Utilities Commission (BCUC) received a complaint from Cascadia Energy Ltd., Direct Energy Marketing Ltd. and Access Gas Services Inc., collectively known as the BC Gas Marketers Coalition (BCGMC) (Complaint). In the Complaint, BCGMC requests that the BCUC establish an inquiry to review FortisBC Energy Inc.'s (FEI) administration of Rate Schedules 22, 23, 25, and 27 related to its transportation service.⁵ BCGMC's members act as transportation customers and shipper agents under FEI's transportation service model.

In its Complaint, BCGMC submits that:

...the balancing and tolerance rules related to the transportation service rate schedules were tightened in the recent Commission decision on the FortisBC 2016 Rate Design Application ("2016 RDA"), yet the flow of necessary information from FortisBC to the transportation customers is inadequate to manage gas supply within the new rules.⁶

In final argument, BCGMC submits that the issues of its Complaint include the following:

- a. The nature and adequacy of the information that FEI provides to enable transportation customers to comply with the transportation service gas balancing and tolerance rules.
- b. Measures necessary to assure timely access to customer consumption data.
- c. Potential adjustments to the balancing rules to allow for inter-customer group balancing.
- d. Review of FEI's practices related to curtailment and return of gas.
- e. The need for a FEI code of conduct for its gas marketing activities, to establish a competitive market for all gas marketers and their customers.⁷

2.0 Review Process Undertaken

The Complaint was reviewed pursuant to the BCUC Customer Complaints Guide, and the BCUC sought a response from FEI by October 11, 2019. Subsequently, BCGMC was provided an opportunity to reply to FEI's response.

Upon review of the submissions, the BCUC determined that a written hearing for review of the Complaint was warranted. By Orders G-340-19, G-82-20, and G-87-20, the BCUC established and furthered regulatory timetables to review the Complaint, which consisted of one round of BCUC information requests (IRs), BCGMC and FEI reply comments, BCUC and BCGMC IRs to FEI, and written final arguments.

On February 20, 2020, BCGMC filed an application asserting there was an apprehension of bias in relation to the appointment of Commissioner Loski to the Panel reviewing the Complaint. On March 16, 2020, the BCUC denied BCGMC's request that a replacement commissioner be appointed to the Panel reviewing the Complaint.

By May 22, 2020, the BCUC received final argument submissions from BCGMC and FEI. The BCUC subsequently received and accepted into the evidentiary record a reply argument from BCGMC, a letter of comment from

⁵ Exhibit B-1, p. 1.

⁶ Ibid., p. 2.

⁷ BCGMC Final Argument, p. 1, para. 5.

Absolute Energy Ltd. (Absolute Energy) and submissions from FEI and BCGMC on the Absolute Energy letter of comment.

3.0 Legal Framework and Previous Relevant Decisions

3.1 *Utilities Commission Act*

Section 83 of the *Utilities Commission Act* (UCA) states: “If a complaint is made to the Commission, the Commission has powers to determine whether a hearing or inquiry is to be had, and generally whether any action on its part is or is not to be taken.”

3.2 FEI 2016 Rate Design Application

By Order G-135-18 dated July 20, 2018, the BCUC issued its Decision approving the FEI 2016 Rate Design Application (2016 RDA). During the 2016 RDA proceeding, the transportation model was reviewed, and the BCUC approved changes to the transportation model including daily balancing, reduced daily balancing tolerances, and the introduction of charges for shortfalls.⁸ The three members of BCGMC participated as individual interveners in the 2016 RDA proceeding along with interveners representing customer groups and other shipper agents.

In the 2016 RDA Decision, the BCUC directed FEI to file a written report with the BCUC on transportation service balancing by June 1, 2022 (Transportation Model Report). The Transportation Model Report is to include analysis of the impact of the new balancing rules on the use of core resources, effectiveness of imbalance return as a tool for shippers/shipper agents to manage excess inventory, the need for changes to tolerance for under-supply or over-supply, and review of whether the balancing charges appropriately cover the costs of providing balancing to transportation service customers.

The 2016 RDA Decision states:⁹

The Panel considers that the effectiveness of the approved balancing changes, any adverse impacts and the need for further changes should be reviewed by BCUC once there has been sufficient experience with the new balancing rules. The reporting time frame directed above would provide nearly four years of balancing experience for FEI and transportation service customers in the Interior and Lower Mainland regions and three years of experience in the Columbia region. FEI is encouraged to engage in stakeholder review in the preparation of the report.

4.0 Issues and Panel Discussion

4.1 Nature, Adequacy, and Timing of Information Provided to Shipper Agents

BCGMC Position

BCGMC submits that, while shipper agents have access to FEI’s supervisory control and data acquisition (SCADA) information, SCADA data is only available for 39 large-volume transportation service customers, while the

⁸ BCUC 2016 RDA Decision and Order G-135-18, p. iii.

⁹ *Ibid.*, pp. 81-82.

remaining 2,361 transportation service customers do not report real-time data.¹⁰ BCGMC submits that the Web Information & Nomination System (WINS) gas consumption data available to them is at least two days old, and that the quality of the information provided has not improved since the 2016 RDA decision.¹¹ BCGMC references FEI's own difficulty in complying with the balancing rules, as support that the data provided, is insufficient to manage gas supply.¹² BCGMC submits that to compensate for the inadequate information, gas supply managers will tend to over-deliver to the FEI system to avoid penalties, which is not an optimal approach to balance the overall system.¹³

BCGMC submits that if FEI were required to provide additional line-pack information to shipper agents, then shippers could communicate to their customers that the system may become constrained and provide advance notice that customers must manage to their expected burn numbers or expect penalties. BCGMC submits that this would aid FEI in managing its line-pack back to a 'normal state' which is beneficial to all parties.¹⁴

BCGMC states that it believes FEI could optimize the data reported in its WINS system by relaying automated meter reading data directly into its WINS system. BCGMC contends that even if this data has not been vetted, it would still be better than the data currently provided, and that data could easily be vetted throughout the day.¹⁵ BCGMC submits that "FEI could, with nominal cost and technology, implement a 'marketer dashboard' into WINS that would incorporate data from AMR, SCADA, line-pack, and any other relevant data and news," which would enhance gas marketer efficiency and improve overall system efficiency for all customers.¹⁶

FEI Position

FEI submits that the information available to their shipper agents in accordance with the transportation model is the "best available data," and that FEI relies on the same information it provides to the shipper agents when FEI nominates supply on behalf of its core customers and for balancing the system.¹⁷

FEI submits that shipper agents should not rely solely on information provided by FEI to effectively manage gas supply for their customers, and that historical consumption data is only one factor relevant to forecast future loads. FEI submits that the onus is on shipper agents, not FEI, to develop a forecasting methodology that allows them to effectively nominate supply to meet the needs of their customers within the transportation model.¹⁸ FEI submits that the BCUC recognizes that shipper agents have sufficient tools and technology to operate within the transportation model in the 2016 RDA.¹⁹

FEI submits that line-pack information is not an indicator of whether curtailment may be required, as changes in operating pressures due to routine maintenance regularly cause considerable impacts to line-pack with no impact to shipper agents or end-use customers and no relationship to curtailment days.²⁰ FEI also notes that its different service areas operate as independent systems with different characteristic line-pack conditions, and the amount of line-pack relative to the total serviced load on each system will not provide any useful

¹⁰ BCGMC Final Argument, p. 6, paras. 24-25.

¹¹ *Ibid.*, p. 4, paras. 17-18.

¹² *Ibid.*, p. 5, paras. 21-22.

¹³ *Ibid.*, p. 7, para. 30.

¹⁴ *Ibid.*, p. 8, para. 32.

¹⁵ *Ibid.*, p. 8, para. 33.

¹⁶ *Ibid.*, p. 9, para. 35.

¹⁷ FEI Final Argument, pp. 14-15, paras. 38-39.

¹⁸ *Ibid.*, p. 15, para. 41.

¹⁹ *Ibid.*, p. 16, para. 42.

²⁰ Exhibit C-5, FEI Response to BCGMC IR1, pp. 51-52.

comparison.²¹ FEI notes that its curtailment decisions are based on many factors, of which weather forecasts are a primary factor.²²

FEI submits that BCGMC's proposal for review and changes to the transportation model is contrary to the BCUC's 2016 RDA Decision, which directs FEI to file the Transportation Model Report by June 1, 2022. FEI notes that all three members of BCGMC participated as interveners and had ample opportunity to canvas the transportation model issues and FEI's proposed changes during the 2016 RDA proceeding. FEI expresses concern that any premature review of the transportation model may be too heavily influenced by data from the Enbridge pipeline rupture (Enbridge Rupture), which occurred on October 9, 2018 on Enbridge's Westcoast T-South system and caused significant supply constraints over Winter 2018/19 for the entire Pacific Northwest region.²³ FEI submits that the timing of the Transportation Model Report as directed by the 2016 RDA Decision will allow for sufficient data and experience over a range of market conditions.²⁴

FEI further submits that BCGMC's proposed method for revising the transportation model is not in accordance with established regulatory practice. FEI states that in this proceeding, the BCUC has not had the benefit of the participation of interveners representing sales customers, other intervener groups and other shipper agents, which is necessary to fairly consider revisions to the transportation model and its tariffs. FEI states that the nature of the revisions sought by BCGMC require the BCUC to consider rate design principles which are more appropriately considered in the context of the Transportation Model Report or FEI's next rate design application.²⁵

FEI submits that the appropriate time to review if there is a need for any changes to the information provided to shipper agents is during the Transportation Model Report consultation workshops. The workshops will allow for input from various stakeholders on benefits of potential changes and costs associated with FEI collecting and providing additional data.²⁶

Absolute Energy

The BCUC received a letter of comment from Absolute Energy dated June 5, 2020, noting that Absolute Energy declined participation in the complaint process because they do not share the concerns expressed by BCGMC. Absolute Energy acts as a shipper agent for close to 50% of the total transportation class customer volumes across the province. Absolute Energy notes that they provided input regarding the proposed changes to the transportation model in the FEI 2016 RDA workshops and have no issue with the new balancing rules since being implemented effective November 2018. Absolute Energy welcomes opportunity to participate in a collaborative process with FEI and other stakeholders to further improve the transportation model.²⁷

Panel Discussion

The Panel does not find any evidence that the information provided to shipper agents by FEI is inconsistent with the changes to the transportation model as approved by BCUC Order G-135-18. In the Decision accompanying Order G-135-18 from the 2016 RDA proceeding, the BCUC noted that shipper agents have sufficient tools and technology to operate within the transportation model. The Panel is not persuaded that the requested line-pack information is a sufficiently reliable indicator of when curtailment may occur given that many factors beyond

²¹ Exhibit C-5, FEI Response to BCGMC IR1, pp. 51-52.

²² FEI Final Argument, p. 16, para.44.

²³ Exhibit C1-1, pp.1, 3.

²⁴ FEI Final Argument, p. 10, paras.23-24.

²⁵ Ibid., pp. 10-11, paras.25-26.

²⁶ Ibid., p. 16, para. 46.

²⁷ Exhibit E-1, p. 1.

line-pack such as weather are important factors that indicate potential curtailment. As such, the Panel finds that shipper agents continue to have access to sufficient tools and technology, without line-pack details, to operate within the Transport Model as intended in the 2016 RDA. Therefore, the Panel finds that the information provided to shipper agents is appropriate and the penalties and curtailments experienced by BCGMC are consistent with the intended outcomes of the transportation model in the 2016 RDA.

The Panel also observes that the 2016 RDA Decision directs FEI to file its Transportation Model Report by no later than June 1, 2022, which is intended to review “the effectiveness of the approved balancing changes, any adverse impacts and the need for further changes,” and that these items, “should be reviewed by BCUC once there has been sufficient experience with the new balancing rules.”²⁸ The Panel considers that this report continues to offer an appropriate avenue for review of the information FEI provides to shipper agents, and the workshops in advance of the report are consistent with the collaborative review process noted by Absolute Energy in their June 5, 2020 letter of comment. The Panel is not persuaded that a review of the information provided is required in advance of the June 1, 2022 timeline for the Transportation Model Report.

4.2 Inter-Customer Group Balancing Rules

BCGMC Position

BCGMC submits that changing the transportation model rules to allow for intercompany group balancing would be beneficial to shippers to minimize penalties and over-deliveries, which, in turn, would allow FEI to balance its system more efficiently. BCGMC submits that under the current transportation model rules, imbalances between marketer groups are not automatically balanced, so the imbalances are additive and incur penalty charges which exceed what is necessary to protect the core market and promote the desired supply-management behaviour.²⁹

BCGMC notes that in the 2016 RDA Decision, the BCUC encourages FEI to transparently communicate its business practices to shippers and shipper agents, but that FEI’s current practice of intercompany group balancing is done only under certain conditions on a case-by-case basis. BCGMC submits that it is open to working with FEI to allow for inter-customer group balancing consistency, assuming reasonable criteria are met.³⁰

FEI Position

FEI submits that it “has allowed retroactive inter-customer group balancing among shipper agents in a region and continues to do so on a case-by-case basis under certain conditions,” but that formalizing this business practice may distort the transportation model, be of little benefit to the majority of shipper agents and be detrimental to the interests of FEI’s sales customers. FEI notes that the approved balancing rules are intended to incent shipper agents to manage their gas supply to the best of their abilities while allowing FEI to recover some costs for their midstream resources where they are being used to support the shipper agent’s customers. FEI submits that expanding or formalizing inter-company group balancing runs counter to the objective of incenting shipper agents to balance their daily supply and demand.³¹

²⁸ BCUC 2016 RDA Decision and Order G-135-18, pp. 80-81.

²⁹ BCGMC Final Argument, p. 9, para.37-38.

³⁰ Ibid., p. 10, paras.40,43.

³¹ FEI Final Argument, pp. 19-20, paras. 57-58, 60.

FEI submits that any standardization of a practice for inter-customer group balancing is a change to the transportation model which will involve costs and system changes, and that the appropriate time to raise this issue for discussion is during the workshops in advance of the Transportation Model Report.³²

Panel Discussion

The Panel does not find any evidence to indicate that FEI has changed its “inter-customer group balancing rules” or applied its balancing rules inconsistently. The Panel notes that any changes to balancing practices would constitute an important change to the transportation model, which is premature given the need to appropriately compile and analyse sufficient data in order to make an informed assessment of the transportation model. The Panel also observes that Absolute Energy expresses a desire to participate in a collaborative process to improve the transportation model and, as noted by FEI, the stakeholder workshops in advance of the Transportation Model Report provide an appropriate avenue to do so.

The Panel is not persuaded that the proposed amendments to the transportation model rules justify an accelerated review process and note that an earlier review of the transport model will result in a reduced amount of information to review in that proceeding which may reduce the effectiveness of such a review. As such, the Panel finds that the timeline for review of the transportation model set out by Decision and Order G-135-18 remains appropriate.

4.3 Practices for Curtailment and Return of Gas

BCGMC Position

BCGMC submits that in recent years, FEI has often curtailed inventory returns for reasons other than weather-driven supply issues. BCGMC submits that the criteria that FEI applies to its decisions on limiting gas returns is not clear, but that the practice has changed recently. BCGMC submits that FEI has, on occasion, sold some of the curtailed inventory returns for a significant operational and economic benefit for the FEI sales gas system at the expense of transportation service customers.³³

BCGMC submits that during the disruption to the Westcoast T-South system following the Enbridge Rupture, FEI changed its imbalance return practices and did not communicate the changes effectively. During the 2018/19 winter, affected by the disruption, FEI curtailed its system for almost one month, causing substantial volumes of shipper agent inventories to be held by FEI during periods of very high prices and only returned during the subsequent period of low prices. BCGMC submits that the net transfer in value from BCGMC to FEI’s core market customers, due to this curtailment, was in the millions of dollars.³⁴

BCGMC submits that FEI should be required to make clear the order of priority for curtailing various rate schedules, and the basis of and timelines for curtailments. BCGMC submits that the tariff should ensure and incent FEI to curtail “only when necessary, only as long as necessary,” as opposed to “at any time, for any reason.”³⁵

FEI Position

FEI submits that the Enbridge rupture led to unique circumstances during Winter 2018/19 for the Pacific Northwest Region as a whole, including FEI’s service territory. The Enbridge rupture resulted in unprecedented

³² FEI Final Argument, p. 20, para. 62-63.

³³ BCGMC Final Argument, p.11, paras. 44,46.

³⁴ Ibid., p.12, paras.48-49.

³⁵ Ibid., p. 13, para. 50-51.

circumstances for energy market participants, including pipeline restrictions, fluctuating T-South deliveries, price spikes, low levels of market area underground storage compounded by operational issues and cold weather periods causing increased and competing demand for electricity that is generated from natural gas.³⁶

FEI submits that due to the Force Majeure issued by Enbridge, it was necessary for FEI to issue a Force Majeure, curtail customers, reduce imbalance return and/or hold shipper agents to tighter daily balance tolerances for a greater number of days than previous winters. FEI submits that all decisions made with respect to balancing supply restrictions and curtailment were made reasonably and responsibly to balance the system as a whole, and that FEI's administration of its tariff was consistent with actions taken by other regional players in response to the unprecedented operating conditions.³⁷

FEI notes that it issued more frequent communications and notices to impacted customers and shipper agents during the 2018/19 winter period, held conference calls to provide operational updates and allowed the return of banked inventory via imbalance return when possible, even though imbalance return is generally removed during a supply restriction. FEI submits that it assisted shipper agents with managing the changes during these periods, and some shipper agents provided positive feedback to FEI on how it was managing the situation overall.³⁸

FEI submits that its "curtailment practices have remained the same over time and have not changed since FEI implemented the approved Balancing Rules," and that "FEI has been transparent about reasons when issuing curtailments, including Hold to Authorized and Imbalance Return." FEI submits that it only implements "Hold to Authorized" during cold weather or supply restrictions, and as such is "acting reasonably" as required by the transportation model tariffs. FEI submits that it has the ability to issue a "Hold to Authorized" restriction at its discretion under the transportation model tariffs, "in recognition of FEI's obligation to maintain the system as a whole for the benefit of all customers including the Transportation Model."³⁹

FEI notes that in the 2016 RDA Decision, the BCUC found "it appropriate for imbalance returns to continue as a business practice rather than setting out the details of the imbalance returns in the transportation service tariff provisions" and that FEI hosted a workshop in September 2018 which led to the allocation procedures being modified and implemented effective November 1, 2018.⁴⁰

FEI submits that it does not consider shipper agents' gas inventories as a supply resource because it is not reliable and not within FEI's control, and as such it does not consider that the transfer of gas to FEI had a material value. FEI submits that it did not change its Imbalance Return practices during the 2018/19 winter period and that it operated within the transportation model tariffs to curtail the system in response to a gas supply shortage in order to maintain the FEI system as a whole.⁴¹

Panel Discussion

The Panel acknowledges that the Enbridge rupture was an unprecedented event that created unique operational circumstances for energy market participants during Winter 2018/19. The Panel is satisfied that the steps taken by FEI to curtail inventory returns following the Enbridge rupture were appropriate given FEI's obligation to maintain its system as a whole.

³⁶ Exhibit C1-1, pp.3-4.

³⁷ Ibid., p.11.

³⁸ Ibid.

³⁹ FEI Final Argument, pp. 16-17, paras. 47-48.

⁴⁰ Ibid., p. 17, para. 50.

⁴¹ Ibid., pp. 17-18, paras. 51-53.

The Panel finds no evidence that FEI curtailed inventory returns outside of the periods where FEI faced supply issues due to the Enbridge rupture or weather-driven supply issues, and as such the Panel finds that FEI acted in accordance with the terms of its tariffs. Therefore, the Panel does not find a need to review FEI's practices for curtailment and return of gas in advance of the timetable for review of the balancing rules set out in 2016 RDA Decision and Order G-135-18.

4.4 Code of Conduct for Gas Marketing Activities

BCGMC Position

BCGMC submits that FEI has contacted transportation service customers on February 15, 2019, offering rate comparisons for bundled versus transportation service at a time when transportation service customers were receiving high bills from their gas marketers. BCGMC submits that FEI originally imposed a deadline for customers to switch of June 1, 2019, and days before the deadline extended the offer to return to utility service until July 1, 2019, with the note that even later switches may be considered.⁴²

BCGMC submits that FEI must not be permitted to use its access to customer information and dominant market power to compete unfairly.⁴³ BCGMC cites the BCUC's Decision and Order G-25-17 approving the Code of Conduct and Transfer Pricing Policy (CoC/TPP), which states that, "the control of FEI Customer information should not provide an inappropriate competitive advantage to an Affiliate."⁴⁴ BCGMC also submits that FEI is subject to the Code of Conduct of the Gas Marketers, which states that gas marketers must refrain from, among other things, "using comparisons, statistics and visual material which might mislead and/or which are incompatible with the principles of fair competition," and "discrediting any competing company, firm or individual, or any supplies or services provided by such parties, directly or by implication," or inducing "any Consumer to breach a contract with another Gas Marketer."⁴⁵

BCGMC submits that a basic principle underlying the Code of Conduct of the Gas Marketers is that FEI must not use its dominant market position and access to customer information to harm competitors in the marketplace, and that, per the scope of the Code of Conduct of the Gas Marketers, FEI must adhere to the spirit, not just the letter of the codes.⁴⁶

FEI Position

FEI submits that it does not view communicating with transportation model customers as "marketing" in any way. FEI notes that FEI does not receive any benefit or financial gain from transportation model customers returning to bundled sales service, and as such, is indifferent as to the type of service customers choose to meet their business requirements. FEI considers that all natural gas customers, including transportation model customers, are customers of FEI, and that regular communication with customers is both necessary and appropriate.⁴⁷

FEI submits that the Code of Conduct of Gas Marketers applies to licensed gas marketers who participate in the Customer Choice Program serving residential and small commercial customers. FEI notes that it does not

⁴² BCGMC Final Argument, pp. 13-14, paras. 52-54, 56.

⁴³ *Ibid.*, p. 14, para. 57.

⁴⁴ *Ibid.*, p. 15, para. 61.

⁴⁵ *Ibid.*, p. 15, para. 64.

⁴⁶ *Ibid.*, pp. 15-16, paras. 65, 67.

⁴⁷ FEI Final Argument, p. 4, para. 9(e).

participate in the Customer Choice Program, therefore the Gas Marketer Code of Conduct does not apply to FEI or shipper agents who participate in the transportation model only.⁴⁸

FEI further submits that the letters to transportation model customers were issued in accordance with the provisions in the transportation model tariffs under section 26.2, and that given the winter 2018/19 circumstances, supply constraints and market uncertainty, it was necessary for FEI to receive earlier notice from customers who intended to switch to bundled service in order for FEI to secure the required resources for FEI's Annual Contracting Plan requirements. FEI notes that it provided email notice to shipper agents of FEI's intention to send a letter to transportation model customers notifying them of the earlier notification requirements for 2019, and did not receive any response, objection or concern from shipper agents related to the letter.⁴⁹

Panel Discussion

The BCUC licenses and oversees the activities of gas marketers and has established a Code of Conduct of Gas Marketers with the stated purpose, "to foster and uphold a sense of responsibility towards the Consumer and towards the general public by all those engaged in the Marketing of Gas to Low Volume Consumers participating in the Commodity Unbundling Service in the Province of British Columbia."⁵⁰ The Panel observes that the Code of Conduct of Gas Marketers applies to, "all practices used in the Marketing of Gas under the Commodity Unbundling Service for both residential and commercial Consumers."⁵¹

The Commodity Unbundling Service is a separate and independent program from the transportation model. The Commodity Unbundled Service is offered to a group of relatively small volume customers that is distinct from more sophisticated large-volume transportation model customers and shipper agents. As such, the Panel notes that there are significantly different regulatory considerations between the two customer groups. The Code of Conduct of Gas Marketers, which is applicable to the Commodity Unbundling Service program, is not applicable to the transportation model. As such, the Panel finds the Code of Conduct of Gas Marketers is irrelevant to FEI's conduct in regard to transportation model activities and communication with transportation model customers regarding a return to bundled commodity service. The Panel also notes that transportation model customers are regulated under FEI's transportation model tariffs 22, 23, 25 and 17, and the Panel finds no evidence that FEI's communications were in violation of the transportation model tariffs.

The Panel also notes that the CoC/TPP referenced by BCGMC is intended to set rules for conduct between FEI and its affiliated regulated and non-regulated businesses for the purpose of protecting FEI customers and ensuring fair competition in non-natural monopoly environments. The CoC/TPP aims to prevent cross-subsidization between FEI's regulated utility business and its unregulated businesses and to ensure no favorable treatment is offered to non-regulated affiliates of the public utility.⁵² The Panel observes that FEI's communications with transmission model customers were in regards to its regulated utility service, and as such the referenced section of the CoC/TPP does not apply.

The Panel further notes that the transportation service model was designed to provide FEI with the same margin as its bundled service offerings, therefore providing FEI with no financial benefit from transportation service customers returning to bundled service. As such, the Panel does not consider FEI's regulated utility operations to be in competition with gas marketers or receiving a competitive advantage from control of FEI customer

⁴⁸ FEI Final Argument, p. 20, para. 64.

⁴⁹ Ibid., p. 4, para. 9(e).

⁵⁰ BCUC Code of Conduct of Gas Marketers, p. 1.

⁵¹ Ibid.

⁵² FEI All Inclusive Code of Conduct and Transfer Pricing Policy, s. 2.1, pp 3-4.

information. The Panel rejects BCGMC's argument that a separate code of conduct is required for FEI's regulated utility business in order to establish a competitive market for all gas marketers and their customers as FEI's regulated service offerings are governed by its tariffs.

5.0 Other Matters

For the reasons discussed above, **the Panel denies BCGMC's request to establish an inquiry to review FEI's administration of its transportation service and dismisses the Complaint.** As noted in the respective Panel Discussion sections above, the Panel considers that the appropriate time to address issues brought forth in the Complaint is during stakeholder engagement in advance of the Transportation Model Report. **Therefore, the Panel directs FEI to include discussion of these topics in stakeholder review sessions with shipper agents in preparation of the Transportation Model Report, and to include results of the stakeholder review in the Transportation Model Report. The topics covered in FEI's stakeholder review are to include:**

- a. **Nature, timing and adequacy of information provided to shipper agents to manage gas supply resources;**
- b. **Administration of inter-customer group balancing and transparency of inter-customer group balancing rules; and**
- c. **FEI's criteria for curtailment of inventory returns to shipper agents.**