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June 27, 2014

Via Email
Original via Mail

British Columbia Utilities Commission
6th Floor, 900 Howe Street
Vancouver, BC
V6Z 2N3

Attention: Ms. Erica M. Hamilton, Commission Secretary

Dear Ms. Hamilton:

Re: FortisBC Energy Inc. (FEI)
Application for Approval of Code of Conduct (COC) and Transfer Pricing Policy (TPP) for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment (ARBNNM)

Enclosed please find FEI's Application for Approval of FEI's Code of Conduct and Transfer Pricing Policy for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment.

If you require further information or have any questions regarding this submission, please contact the undersigned.

Sincerely,

FORTISBC ENERGY INC.

Original signed:

Diane Roy

Attachments

cc (email only): FEI CoC and TPP Consultation Process Participants



FORTISBC ENERGY INC.

Application for Approval of Code of Conduct and Transfer Pricing Policy for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment

June 27, 2014

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1. PURPOSE OF THE APPLICATION

FortisBC Energy Inc. (FEI) is applying for approval of its proposed Code of Conduct (CoC) and Transfer Pricing Policy (TPP) for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment (ARBNNM)¹ dated June 19, 2014. Copies of these two documents have been included in Appendix A of this Application. FEI believes its proposed CoC and TPP for ARBNNMs most appropriately addresses its interactions with the Thermal Energy Services (TES) provided by its affiliate FortisBC Alternative Energy Service Inc. (FAES), ensuring that natural gas ratepayers' interests are protected, while also recognizing the interests of TES ratepayers.

In developing its proposed CoC and TPP for ARBNNMs, as directed by the British Columbia Utilities Commission (BCUC or the Commission) in the Report on the Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives dated December 27, 2012 (AES Inquiry Report)², FEI led a collaborative consultation process with the participation of interested stakeholders, including Commission staff. FEI highlights that the proposed CoC and TPP documents for ARBNNMs do not reflect a consensus of all stakeholders. As expected, there are differing stakeholder positions on a number of sections of FEI's proposed CoC and TPP for ARBNNMs. For context, FEI highlights that the order of magnitude of the dollar value of FEI resources being shared is relatively small, particularly when a sizeable portion of the overhead allocation (i.e. \$250 thousand) is for Facilities and IT support activities which are fixed in nature. Further discussion of the differences in stakeholders' positions regarding FEI's proposed CoC and TPP for ARBNNMs is included in Section 3 of this Application.

In working through the collaborative process to develop the proposed CoC and TPP, FEI has considered, and where appropriate, adopted the non-binding guidelines and recommendations from the AES Inquiry Report in consideration of the nature of FEI's operations and balancing the interest of natural gas and TES ratepayers.

1.1 BACKGROUND

1.1.1 Sharing of FEI Resources with FAES

Providing resources to TES was first considered in FEI's 2010 and 2011 Revenue Requirements and Delivery Rates Application, and agreed to in the resulting Negotiated Settlement Agreement (2010-2011 NSA). The Thermal Energy Services Deferral Account (TESDA)³ was established and approved by Order G-141-09 approving the 2010-2011 NSA, as

¹ The phrase "Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment" is found in the AES Inquiry Report (Appendix D), page 25.

² Appendix D.

³ Formerly the New Energy Solutions Deferral Account.

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1 a non-rate-base deferral account to capture and record revenues and costs related to
2 Alternative Energy Solutions defined as geo-exchange, solar-thermal and district energy
3 systems (now referred to as TES). The relevant section of the 2010-2011 NSA follows:

4 *“The Parties agree that the costs incurred by TGI to provide AES should not be*
5 *recovered as part of natural gas service rates, and visa versa. The Parties agree that*
6 *TGI’s proposed New Energy Solutions Deferral Account, attracting AFUDC, is an*
7 *appropriate mechanism to address allocation issues as between TGI’s gas customers*
8 *and TGI’s AES customers...”*

9 Costs captured in the TESDA account included the direct costs associated with TES projects;
10 sales and marketing operating and maintenance (O&M) and other development costs; and an
11 appropriate overhead allocation, which was agreed to be \$500 thousand in each of 2010 and
12 2011. This amount was subsequently revised to \$842 thousand for 2012 and \$854thousand for
13 2013 as approved by Commission Order G-44-12. In FEI’s Application for Approval of a Multi-
14 Year Performance Based Ratemaking Plan for 2014 through 2018 (FEI PBR), FEI has proposed
15 that the 2013 amount be inflated by the O&M formula during the 2014-2018 PBR period, with
16 any variance between the inflated amount included in rates and the actual amount determined
17 in this proceeding captured in a deferral account. All former FEI employees who were
18 dedicated solely to the TES business have been transferred out of FEI effective January 1,
19 2014, with the employees currently residing in the affiliated entity FAES.

20 **1.1.2 Commission Directive from the AES Inquiry Report**

21 In the AES Inquiry Report, the Commission recommended FEI engage in a collaborative
22 process to initiate a process to prepare an updated CoC and TPP as described below:

23 *“The Panel recommends that the FEU initiate a process to prepare an updated Code of*
24 *Conduct and Transfer Pricing Policy in respect of the interaction between the regulated*
25 *utilities and related non-regulated businesses.*

26 *This should be done through a collaborative process, carried out in an expeditious*
27 *manner, involving the utilities, stakeholders (including interveners in this proceeding) and*
28 *Commission staff.*

29 *FEU should also undertake in this process to establish a Code of Conduct and Transfer*
30 *Pricing Policy governing the interactions between Affiliated Regulated Businesses and*
31 *should differentiate resource sharing between two natural monopolies on the one hand*
32 *and between a natural monopoly and a regulated affiliate operating in a non-natural*
33 *monopoly environment on the other.”⁴*

34 This Application is the result of that process.

⁴ Appendix D – AES Inquiry Report, December 27, 2012, Page 23.

2. COLLABORATIVE CONSULTATION WITH STAKEHOLDERS

Acting on the Commission's recommendation, FEI representatives met with Commission staff on July 11, 2013, and outlined a proposed process and timeline. It was agreed in the discussion with Commission staff that consultation efforts would start in the Fall 2013 timeframe, recognizing the heavy regulatory agenda at the time. The target date for FEI to file an updated CoC and TPP was the first half of 2014, recognizing that consultation efforts likely would involve workshops with stakeholders.

In all, FEI successfully organized and facilitated three consultation sessions with stakeholders. The sessions included interviews with each of the interested stakeholders during the Fall of 2013 and also two workshops, the first one on February 20, 2014 and the second one on April 24, 2014.

The focus of the interviews with interested stakeholders was to solicit initial input to help shape the development of FEI's CoC and TPP. Stakeholders were provided an overview and the highlights of the AES Inquiry Report⁵. Additionally, FEI provided an overview of the planned consultation process. The consultation process outlined to stakeholders was as follows:

- FEI to conduct interviews with interested stakeholders;
- FEI to prepare a draft TPP and CoC incorporating research and feedback from interviews;
- FEI to circulate to stakeholders for comments and suggestions;
- FEI to incorporate comments and suggestions and highlight outstanding issues;
- FEI to schedule workshop(s) as required to review the draft TPP and CoC (with stakeholder comments);
- Issues outstanding will be highlighted for discussion and resolution; and
- FEI to submit final TPP and CoC to Commission for approval.

The stakeholder consultation list was developed based on the registered interveners in the AES Inquiry Report proceeding. FEI contacted the noted parties and was successful in meeting with those parties with an "✓" noted beside them in Table 1 below. Some of the parties declined to participate in the interview process.

⁵ See Appendix C1.

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Table 1: FEI Code of Conduct and Transfer Pricing Policy Consultation List

	Artex Barn Solutions	✓	Corix Multi Utility Services Inc. (Corix)
✓	BC Sustainable Energy Association (BCSEA)		Energy Services Association of Canada
	BC Hydro		Ferus Inc.
	Board of Education - Delta School District No. 37	✓	Ministry of Energy and Mines
✓	British Columbia Pensioners' and Seniors' Organization (BCPSO)		Pacific Northern Gas
	City of Kamloops		PCI
✓	Canadian Office and Professional Employees Union local 378 (COPE)		Quality Urban Energy Systems of Tomorrow (QUEST)
✓	Clean Energy Fuels		Residential Construction Industry / Greater Vancouver Home Builders Association
✓	Coalition for Open Competition (Coalition)	✓	Sierra Club of Canada (BC Chapter)
	Coalition of Renewable Natural Gas		Thermal Environmental Comfort Association
✓	Commercial Energy Consumers Association (CEC)	✓	Urban Development Institute
✓	Commission staff		

Following the stakeholder interviews, a workshop was held on February 20, 2014. The agenda for the workshop was:

- FEI to provide an update and recap of the stakeholder interviews;
- Stakeholders to provide comments and feedback on an initial draft of the FEI CoC and TPP for ARBNNMs; and
- All to discuss the next steps in the collaborative process.

On February 14, 2014, in advance of the workshop, FEI circulated an initial draft of the FEI CoC of TPP to the participating stakeholders for their review and comment. The draft documents were developed based on the existing FEI CoC and TPP for Non-Regulated Businesses (NRB), the AES Inquiry Report, and feedback provided by stakeholders during the interviews. In the communication to stakeholders on February 14, 2014 and also at the February 20, 2014 workshop, FEI highlighted that based on the AES Inquiry Report and feedback from the stakeholder interviews, the FEI CoC and TPP governing interactions between FEI and ARBNNMs (i.e. FAES) was the primary area of interest for stakeholders. As a result, the focus of efforts going forward specifically addressed the provision of utility services from FEI to ARBNNMs. If required, and once a CoC and TPP was established and approved by the Commission to govern the ARBNNMs situation, some of the same principles and language could be adapted to the other two situations specified in the AES Inquiry Report; namely,

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1 interaction between FEI and related non-regulated businesses, and interactions between two
2 natural monopolies.

3 Highlights of the February 20, 2014 workshop were captured in the minutes for the workshop⁶.

4 Following the February 20, 2014 workshop and after discussion with Commission staff, a
5 decision was made to hold a second workshop on April 24, 2014. The agenda for the workshop
6 was:

- 7 • Discuss and understand stakeholder comments and positions regarding FEI's revised
8 proposed CoC and TPP for ARBNNMs;
- 9 • Confirm sections where there was agreement;
- 10 • Discuss sections where no agreement had been reached; and
- 11 • Agree on the next steps required.

12 On April 3, 2014, FEI circulated the revised draft of the FEI CoC and TPP for ARBNNMs to
13 participating stakeholders for their review and comment, which took into consideration the
14 comments provided at the February 20, 2014 workshop. Stakeholders were to review,
15 comment and provide alternative suggested wording as required for consideration.

16 Highlights of the April 24, 2014 workshop were captured in the minutes for the workshop⁷.

17 After the April 24, 2014 workshop, FEI agreed to circulate another updated draft of the FEI CoC
18 and TPP, dated May 15, 2014, and incorporating feedback received at the April 24, 2014
19 workshop. Stakeholders were asked to review and provide final suggested changes and
20 comments. In the draft of the documents dated May 15, 2014 circulated to stakeholders, to
21 provide more clarity on what sections of the documents stakeholders had agreed to, FEI
22 highlighted sections where agreement had been reached as "Accepted". For sections where no
23 agreement had been reached, the sections were marked as "Under Discussion". Stakeholder
24 suggested wording, comments and rationale provided to date were also included in the
25 documents. Stakeholders were asked to provide further comments and changes by May 30,
26 2014. Copies of FEI CoC and TPP dated May 15, 2014 along with responses provided by
27 stakeholders have been included in Appendix B⁸.

⁶ Presentation material and minutes from the February 20 workshop are included in Appendix C2, along with Commission staff's summary of BCUC directions to FEU (referred to at the meeting as "Coles Notes").

⁷ Presentation material and minutes from the April 24 workshop are included in Appendix C3.

⁸ The drafts of the CoC and TPP circulated to stakeholders are included as Appendix B1. The comments received are included as Appendix B2 (Commission staff), B3 (FAES), B4 (Corix), B5 (Coalition).

3. FEI'S PROPOSED CODE OF CONDUCT AND TRANSFER PRICING POLICY FOR ARBNNMS

FEI requests that the Commission approve the CoC and TPP for ARBNNM dated June 19, 2014 and has included copies of the two documents in Appendix A1. These proposed versions were developed based on feedback provided to the May 15, 2014 draft that was circulated to stakeholders for comment and review. Because of the different stakeholder positions on a number of the sections of CoC and TPP for ARBNNMs, FEI's proposal does not reflect a consensus of all the stakeholders. The sections where differences remain are discussed below.

To provide clarity on what the remaining stakeholder issues are with respect to FEI's proposed CoC and TPP dated June 19, 2014, FEI has provided a blackline version titled, "Changes from May 15" version of the proposed CoC and TPP (Appendix A2). In this document, the explanations are provided for the changes, and references provided to the May 15, 2014 version of the two documents.

FEI provides the following summary of the status of the different sections regarding FEI's proposed CoC and TPP for ARBNNMs. Section 3.1 addresses those areas of agreement that have been accepted by participating parties. Section 3.2 discusses areas where significant differences remain. Section 3.3 summarizes areas of general agreement, with less significant differences.

3.1 *SECTIONS ACCEPTED*

The following sections have been accepted:

- Code of Conduct – Section 1 Transfer Pricing for ARBNNMs
- Code of Conduct - Section 4 Preferential Treatment
- Code of Conduct – Section 5 Equitable Access to Services

3.2 *SECTIONS WHERE SIGNIFICANT DIFFERENCES REMAIN*

The following sections are ones where significant differences remain between FEI and some of the stakeholders.

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3.2.1 Code of Conduct – Section 2 Shared Services and Personnel
References to Stakeholder Comments Provided on this Section⁹

Appendix A2	FEI's proposed Code of Conduct – blackline version; changes from May 15 version highlighted	Page 5
Appendix B1	May 15 FEI Code of Conduct circulated to stakeholders for further discussion of the issues	Pages 10 – 15
Appendix B2	Commission staff's comments to May 15 FEI CoC and TPP	Page 5

FEI Proposed Wording
2. Shared Services and Personnel

- a) This Code recognizes the potential benefits to the [FortisBC Energy] and ARBNNM regulated ratepayers in sharing resources.
- b) [FortisBC Energy] may provide shared services and personnel noted in section (c) below to ARBNNMs while ensuring that its ratepayers will not be negatively impacted by [FortisBC Energy]'s involvement. The costs of providing such services will be as agreed upon by both [FortisBC Energy] and the ARBNNM and be in accordance with the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs.
- c) ARBNNMs may contract for corporate services including senior management and operating personnel from [FortisBC Energy] using the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs, providing [FortisBC Energy] complies with Section 3 of this Code, Provision of Information by [FortisBC Energy], and no conflict of interest exists which will negatively impact ratepayers.

Comments from Stakeholders

Commission staff and Corix suggest wording that is consistent and aligned with the AES Inquiry Report guidelines:

“As a rule, resource sharing should be limited to corporate services and should not include any operational services except possibly emergency services;

Sharing of employee should not be allowed where the employee has access to confidential information, routinely participates in making decision with respect to the provision of traditional utility services or how utility services are delivered, routinely deals

⁹ References to Appendix A and B as shown in the table are to related stakeholder feedback provided to date on the section of the CoC and TPP being discussed.

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with or has direct contact with customer of the utility or is routinely involved in planning or managing the business of the traditional utility”¹⁰.

The Coalition offers different wording and list Energy Solutions, Marketing / Communication / External Relations, Regulatory Affairs, and Customer Billing as groups that cannot be shared¹¹, and state that the office, shops, and places of work of FEI and affiliates are not to be on a common site and must not share mailing addresses, telephone numbers (including fax numbers), switchboards, mailrooms, or ancillary space (such as cafeterias, meeting rooms, first aid rooms, washrooms, etc.).¹², commenting that their suggested wording is intended to operationalize (codify) things that “blur” the line.¹³ In contrast, the CEC and COPE both express concern that the alternative wording suggested by the Coalition is getting into micro-managing FEI’s business and is not practical.

FEI believes its proposed wording for sharing of services and personnel with an ARBNNM as outlined in subsection (c) above is appropriate, providing flexibility for resource sharing arrangements that benefit both FEI ratepayers and ARBNNM ratepayers, and also protect the interests of FEI ratepayers. Using FEI’s proposed wording for sharing of resources, FEI believes that its ratepayers will not be negatively impacted. While the proposed wording by Commission staff and Corix stated above is generally consistent with that used in Alberta’s Code of Conduct, it is not as appropriate for the circumstances and the operating environment in B.C. where much of the operations in B.C. are regulated, including TES. FEI highlights that the Commission in the AES Inquiry Report¹⁴, “recommends that the participants in this process use the Fortis Alberta Inc. Code of Conduct as a guide”. FEI understands this was not intended be prescriptive but rather used as a base for discussion and consideration.

3.2.2 Code of Conduct – Section 8 Financing and Other Risks

References to Stakeholder Comments Provided on this Section

Appendix A2	FEI’s proposed Code of Conduct – blackline version; changes from May 15 version highlighted	Page 7
Appendix B1	May 15 FEI Code of Conduct circulated to stakeholders for further discussion of the issues	Pages 20 - 21
Appendix B2	Commission staff’s comments to May 15 FEI CoC and TPP	Page 6
Appendix B5	Coalition’s comments to May 15 FEI Code of Conduct	Page 2

¹⁰ Appendix D – AES Inquiry Report, pages 25 – 26.

¹¹ Appendix B1 – May 15 Code of Conduct circulated to stakeholders for further discussion of the issues – Page 14.

¹² Appendix B1 – May 15 Code of Conduct circulated to stakeholders for further discussion of the issues – Page 15.

¹³ Appendix C3 – Minutes from April 24 Workshop page 11.

¹⁴ Appendix D – AES Inquiry Report, page 28.

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FEI Proposed Wording**8. Financing and Other Risks**

Unless approved by the Commission, [FortisBC Energy] will not undertake any financing or other financial assistance on behalf of an ARBNNM that exposes [FortisBC Energy] ratepayers to additional costs or risks, unless appropriate compensation is received by [FortisBC Energy] for such financing or other financial assistance, including compensation for additional cost or risk related to the addition of incremental debt to [FortisBC Energy] for a project carried out by the ARBNNM.

Comments from Stakeholders

Commission staff accepts the proposed wording from FEI. In addition, Commission staff suggests two additional paragraphs referencing: 1) The risk of unrecovered costs is to be borne by the Affiliated Regulated Business or Separate Class of Service or the shareholder; 2) All proposals for new business activities should be accompanied by a risk management plan.

The Coalition believes a prohibition on lending to affiliates by FEI is warranted. The Coalition does not believe the guideline referenced in the AES Inquiry Report¹⁵ is relevant, suggesting that the guideline does not give an affiliate (i.e. FAES) the right to receive financing from FEI.

FEI believes its proposed wording is appropriate and entirely consistent with the guidelines outlined in the AES Inquiry Report. FEI does not believe it is appropriate to include the two sections suggested by Commission staff.

Regarding the Commission staff's first suggested addition, it is not lawful to pre-judge the recovery of costs. As established by appellate legal authorities, and as the Commission has previously recognized, a utility's costs are subject to a rebuttable presumption of prudence, and a review of a utility's costs should follow the two-part test arising from *Enbridge Gas v. Ontario*.¹⁶ The suggested addition violates these well-established legal principles regarding cost recovery for public utilities.

Regarding the Commission staff's second suggested addition, the CoC is intended to govern ongoing interactions between FEI and ARBNNMs. It is not intended to provide guidance to a hypothetical future situation, and pre-determine the structure and risk mitigation required (if any) from a new line of business. If FEI decides to venture into a new regulated line of business, it will likely have to seek Commission approval, for instance for a Certificate of Public Convenience and Necessity (CPCN) or for rates to be charged. Therefore, inclusion of the

¹⁵ Page 33 "Allocation of costs is to reflect appropriate compensation for any benefit derived by the new business activity as a result of its affiliation with its parent or other business. This should include compensation for additional cost or risk related to the addition of incremental debt to the parent utility for the new products or services."

¹⁶ (2006), 201 O.A.C. 4. This test was endorsed by the Commission in *BC Hydro and F2009 and F2010 Revenue Requirements*, Decision, March 13, 2009, p. 38.

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need for a risk management plan as part of the Code of Conduct is neither appropriate nor necessary.

3.2.3 Transfer Pricing Policy – Section 1 Pricing Rules, (ii) and Section 2 Determining Costs

References to Stakeholder Comments Provided on this Section

Appendix A2	FEI's proposed Transfer Pricing Policy – blackline version; changes from May 15 version highlighted	Page 3 – 6
Appendix B1	May 15 FEI Transfer Pricing Policy circulated to stakeholders for further discussion of the issues	Pages 5 – 9
Appendix B2	Commission staff's comments to May 15 FEI CoC and TPP	Page 2
Appendix B4	Corix's comments to May 15 FEI Transfer Pricing Policy	Page 7
Appendix B3	FAES' comments to May 15 FEI Transfer Pricing Policy	Page 6

FEI Proposed Wording

1. Pricing Rules

- i. If an applicable [FortisBC Energy] tariff rate exists, the Transfer Price will be set according to the tariff.*
- ii. Where no tariff rate exists, the Transfer Price will be set at no greater than full cost. With Commission approval, the cost may be set at below full cost (see Section 2 below).*
- iii. In situations where it can be shown that an alternative Transfer Price will provide greater benefits to the ratepayer, the Utility may apply to the Commission for special pricing consideration.*

2. Determining Costs

For the purposes of this policy, costs for the resources or services being provided by [FortisBC Energy] to an ARBNNM will be set at no greater than [FortisBC Energy]'s full cost as described below. The definition of full costs will depend on the type of service or resource being provided.

For the most part, the types of resources and services that can be provided to ARBNNMs by [FortisBC Energy] are human resources (labour) and associated equipment and facilities. The example in Appendix A summarizes how full costs are determined for the different types of services described below in Section 2.1. The determination of full costs, specifically the cost loadings, is based on services to be provided in accordance with the [FortisBC Energy] approved Code of Conduct with respect to ARBNNM dated June 19, 2014.

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1 *Costs will include both direct costs and a fair allocation of the parent utility costs required*
2 *to provide the product or service, except where such treatment is precluded by*
3 *legislation, regulation or special direction.*

4 ***If other [FortisBC Energy] resources or services are used by an ARBNNM that are***
5 ***not described by this policy or if there are unusual circumstances that warrant a***
6 ***separate review, then [FortisBC Energy] will make an application to the***
7 ***Commission on a case-by-case basis.***

8 Comments from Stakeholders

9 Corix and the Coalition oppose FEI's proposed wording. Corix indicates it stands by the
10 concept of higher of market price or fully allocated cost, and that the CoC and TPP needs to
11 reflect the orders and decisions of the Commission as reflected in the Guidelines to the AES
12 Inquiry Report. The Coalition states that FEI's Code of Conduct needs to look beyond FEI and
13 FAES ratepayers and consider the impact of FEI's actions on the competitive marketplace.
14 Commission staff indicates that the AES Inquiry Report states the transfer price shall be set at,
15 "the higher of market price or the fully allocated cost". FAES is of the view the sentence, "Costs
16 will include both direct costs and a fair allocation of the parent utility costs required to provide
17 the product or service, except where such treatment is precluded by legislation, regulation or
18 special direction." is not appropriate as the main TPP goal is preventing subsidization of FAES
19 by FEI ratepayers and not the fair allocation of the parent company costs, which is outside of
20 the BCUC's jurisdiction.

21 FEI accepted most of the changes as suggested by Commission staff. However, in recognition
22 of the need to protect the interests of both FEI ratepayers and TES ratepayers and to prevent
23 cross-subsidization from occurring, FEI has adopted the use of, "no greater than full cost"
24 instead of, "higher of market price or fully allocated cost" for determining the Transfer Price. By
25 removing the reference to market pricing, the setting of Transfer Price would be more consistent
26 with the cost-causality principle that was articulated in the AES Inquiry Report.¹⁷ FEI's wording
27 also addresses FEI's and stakeholder concerns that using higher of market price or fully
28 allocated cost would benefit competitors and hurt TES ratepayers.

29 In the Principles section of the Code of Conduct discussion, FEI's customary intervenor groups
30 and FAES offered support for FEI's approach of not adopting a pricing rule of, "higher of market
31 price or fully allocated cost". BCPSO commented that the use of, "higher of market price or fully
32 allocated cost" would benefit competitors and hurt ratepayers. The interests of ratepayers on
33 both sides of the FEI/TES divide are best advanced by requiring FAES to pay the LOWER of
34 market or fully allocated cost, as long as FEI recovers incremental cost plus a premium.¹⁸
35 BCSEA stated that if customers are all regulated (i.e. customers of regulated utility services,
36 natural gas distribution and thermal energy distribution), then the Commission has the

¹⁷ Appendix D – AES Inquiry Report, page 33, Key Principle "The basis of cost allocation is cost causality."

¹⁸ Appendix C2 – FEI Consultation Efforts, Workshop No. 1, February 20, 2014, page 10 and Appendix C3 – Workshop No. 2 April 24, 2014, page 7.

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responsibility for protecting both sets of customers and ensuring appropriate prices are used.¹⁹ CEC also expressed concern about using market price and the difficulties in discovering an appropriate market price.²⁰ COPE commented that the Commission has no obligation to non-regulated customers but it does to regulated customers. If FEI is required to charge the higher of market price or full cost, the introduction of a notional surcharge indicates a form of cross-subsidization from FAES to FEI.²¹ FAES commented that the overarching principle of cost-causality stated in the AES Inquiry Report is inconsistent with the principle of using higher of market price or fully allocated cost for setting the Transfer Price.²²

3.3 SECTIONS WITH GENERAL AGREEMENT OR LESS SIGNIFICANT DIFFERENCES

The remaining sections of FEI's proposed CoC and TPP for ARBNNMs all have some outstanding wording, issues to be resolved or require confirmation by all stakeholders that the sections have been accepted as appropriate.

3.3.1 Code of Conduct – Scope

Status: Outstanding wording to be resolved.

References to Stakeholder Comments Provided on this Section

Appendix A2	FEI's proposed Code of Conduct – blackline version; changes from May 15 version highlighted	Pages 1 - 2
Appendix B1	May 15 FEI Code of Conduct circulated to stakeholders for further discussion of the issues	Pages 1 - 3
Appendix B2	Commission staff's comments to May 15 FEI Code of Conduct	Pages 3 - 4
Appendix B4	Corix's comments to May 15 FEI CoC and TPP	Pages 1 – 3

FEI incorporated a number of the Commission staff's suggestions with a few revisions. Generally, the main thrust of the Commission staff's comments has been included. In addition, FEI has proposed a revision intended to remove immaterial CoC variances from having to be reported to the Commission

The proposed wording is as follows:

"The administration of this Code may have to take into account particular circumstances in respect to a particular resource or service which is being provided and where these issues are at variance with this Code and if the variance results in costs exceeding

¹⁹ Appendix C2 – FEI Consultation Efforts, Workshop No. 1, February 20, 2014, page 10.

²⁰ Appendix C2 – FEI Consultation Efforts, Workshop No. 1, February 20, 2014, page 10.

²¹ Appendix C2 – FEI Consultation Efforts, Workshop No. 1, February 20, 2014, page 9.

²² Appendix C3 – FEI Consultation Efforts, Workshop No. 2, April 24, 2014, page 7.

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benefits received by the ratepayers of [FortisBC Energy], [FortisBC Energy] will be required to seek Commission approval.”

The Commission staff and Corix do not support FEI’s proposed revision.

3.3.2 Code of Conduct – Definitions

Status: FEI believes this section has been accepted, but requires confirmation by all stakeholders that the revised Definitions section has been accepted as appropriate.

References to Stakeholder Comments Provided on this Section

Appendix A2	FEI’s proposed Code of Conduct – blackline version; changes from May 15 version highlighted	Page 3
Appendix B1	May 15 FEI Code of Conduct circulated to stakeholders for further discussion of the issues	Pages 3 – 5
Appendix B2	Commission staff’s comments to May 15 FEI CoC and TPP	Page 4

FEI incorporated Commission staff’s suggested additional wording in the definition Guidelines. The following wording was added:

“This definition does not negate the applicability of other relevant orders or directions such as Commission directions in proceedings regarding affiliates or Special Directions issued by the Province of British Columbia to the Commission on matters related to specific FortisBC Energy business activities.”

FEI also incorporated FAES’ suggested wording in the definition “Transfer Pricing to Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment”. The following wording was added: “as agreed upon by [FortisBC Energy] and the ARBNNM and”

3.3.3 Code of Conduct – Principles

Status: Outstanding wording and issues to be resolved.

References to Stakeholder Comments Provided on this Section

Appendix A2	FEI’s proposed Code of Conduct – blackline version; changes from May 15 version highlighted	Page 4
Appendix B1	May 15 FEI Code of Conduct circulated to stakeholders for further discussion of the issues	Pages 5 - 10
Appendix B2	Commission staff’s comments to May 15 FEI Code of Conduct	Pages 4 - 5
Appendix B4	Corix’s comments to May 15 FEI CoC and TPP	Pages 7 to 11

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FEI developed the proposed principles based on the AES Inquiry Report and feedback received at the workshops. Refer to Appendix B1, pages 5 – 10 for the comments and issues raised by stakeholders on this section. Commission staff suggested an additional principle that deals with the characteristics under which it would be most appropriate to structure a new business activity as an Affiliated Regulated Business²³. Please refer to the discussion in Section 3.2.2 Code of Conduct – Section 8 Financing and Other Risks; FEI concludes that inclusion of a guideline regarding the structure of a hypothetical new regulated business as part of the Code of Conduct that governs ongoing transactions between FEI and its ARBNMM is neither appropriate nor necessary.

3.3.4 Code of Conduct – Section 3 Provision of Information by [FortisBC Energy]

Status: FEI believes this section has been accepted, but requires confirmation by all stakeholders that the revised section has been accepted as appropriate.

References to Stakeholder Comments Provided on this Section

Appendix A2	FEI's proposed Code of Conduct – blackline version; changes from May 15 version highlighted	Page 3
Appendix B1	May 15 FEI Code of Conduct circulated to stakeholders for further discussion of the issues	Page 16
Appendix B2	Commission staff's comments to May 15 FEI CoC and TPP	Page 5

Commission staff commented that they were not clear why the sentence, “This Code precludes [FortisBC Energy] from releasing confidential customer specific information without the written consent of that customer” was not included. FEI believes including the sentence is unnecessary as it is referenced already at the beginning of Section 3 of the CoC. The section begins with the following sentence:

“Customer information (aggregate or customer specific with written consent) should be made available to all Parties (Affiliated Regulated and Unregulated Businesses, separate classes of service, and competitors) on an equal basis, upon request.”

3.3.5 Code of Conduct – Section 6 Equitable Treatment of Demand-Side Management and Incentive Funds

Status: Outstanding wording with confirmation required.

²³ Appendix D – AES Inquiry Report guideline Page 25: “Structuring a new regulated business activity as an Affiliated Regulated Business is most appropriate when some of all of the following characteristics are present:

- The new regulated business activity takes place largely beyond the delivery meter of the traditional utility;
- The new regulated business activity has limited or no use of the traditional utility assets; and
- The new regulated business activity has the potential to impose higher risks on the users of the new service and/or the utility shareholder.”

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References to Stakeholder Comments Provided on this Section

Appendix A2	FEI's proposed Code of Conduct – blackline version; changes from May 15 version highlighted	Page 6
Appendix B1	May 15 FEI Code of Conduct circulated to stakeholders for further discussion of the issues	Page 17
Appendix B2	Commission staff's comments to May 15 FEI CoC and TPP	Page 6

Commission staff believes that it is necessary to include reference to the Economic Efficiency Guidelines in the CoC. Commission staff has proposed the following wording:

“[FortisBC Energy] will establish a mechanism for involving a neutral third party in Demand-Side Management or incentive funding, so that Utility ratepayer funded DSM or other incentive activities are directed fairly to the most effective proposals for meeting the objectives of the funded activities.”

FEI noted that the suggested wording is not the same as that included in the AES Inquiry Report. The wording from the AES Inquiry Report is as follows:

*“The Commission Panel finds that where there is a potential conflict of interest because the FEU may be providing capital or services to a project receiving the DSM or other incentive funds, there should be a neutral third party involved in the decision making process to award such funds. FEU's proposed guidelines do not sufficiently protect against this potential conflict of interest. Accordingly, **the FEU are directed to bring forward a proposal for mechanisms for approval and administration of funds by a neutral third party where the FEU may be involved in providing capital or services to a project receiving DSM or other incentive funds and/or there is a potential for FEU to benefit, either directly or indirectly, from that funding.**”²⁴ [emphasis added]*

FEI has brought forward a proposal in the FEI PBR, which will be subject to a Commission determination. As a result, FEI proposes the following wording to provide a reference for FEI to follow Commission approved DSM funding and administration.

“[FortisBC Energy] will adhere to the Commission approved mechanism for approval and administration of Demand-Side Management or incentive funding.”

3.3.6 Code of Conduct – Section 7 Compliance and Complaints

Status: Outstanding wording to be resolved.

²⁴ Appendix D – AES Inquiry Report, page 87.

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References to Stakeholder Comments Provided on this Section

Appendix A2	FEI's proposed Code of Conduct – blackline version; changes from May 15 version highlighted	Pages 6 – 7
Appendix B1	May 15 FEI Code of Conduct circulated to stakeholders for further discussion of the issues	Page 17 – 20
Appendix B2	Commission staff's comments to May 15 FEI CoC and TPP	Page 6
Appendix B4	Corix's comments to May 15 FEI Code of Conduct	Page 20

FEI's proposed wording for this Section 7 already incorporates changes to address concerns raised by stakeholders. Wording was included to provide additional oversight by designating the Finance Director to be responsible for monitoring compliance with the Code of Conduct. Also, reminders to employees of the Code of Conduct requirements will be more frequent, changing from annual to quarterly.

Corix commented further that there is significant power imbalance between the monopoly gas utility and a potential complainant and that subsection (d) of Section 7, which reads "Where [FortisBC Energy] determines that the complaint is unfounded, the Company may apply to the Commission for reimbursement of the costs of the investigation from the third party initiating the complaint or where this is not possible, for inclusion of those costs in rates.", only serves to discourage what might be a legitimate complaint. FEI believes the proposed wording is appropriate and serves to discourage frivolous complaints while not discouraging potential complainants. The Coalition commented that FEI is not the arbiter of its actions and behaviour and the Code should clearly state this.²⁵ FEI notes in the Scope of the Code of Conduct that the primary responsibility for administering the Code lies with [FortisBC Energy], although the Commission has jurisdiction over matters referred to in this Code.

3.3.7 Code of Conduct – Section 9 Use of Utility Name

Status: Outstanding wording and issue to be resolved.

References to stakeholder comments provided on this section

Appendix A2	FEI's proposed Code of Conduct – blackline version; changes from May 15 version highlighted	Page 7
Appendix B1	May 15 FEI Code of Conduct circulated to stakeholders for further discussion of the issues	Page 21
Appendix B5	Coalition's comments to May 15 FEI Code of Conduct	Page 3

As suggested by the Coalition, to help clarify the ownership of the FortisBC name, FEI agreed to add the words "The name FortisBC is owned by Fortis Inc." to Section 9 of the CoC. The

²⁵ Appendix B1 – May 15 Code of Conduct circulated to stakeholders for further discussion of the issues - Page 19.

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wording is consistent with the wording outlined in the AES Inquiry Report²⁶ and provides sufficient clarity. The Coalition in their comments to the May 15 FEI Code of Conduct further stated “To be clear, we accept only that which is stated in the AES Inquiry Report”. The Coalition noted that there is a great deal of ambiguity that the CoC/TPP could assist in clarifying. The Coalition further added that “It is as important for consumers to know who they are not dealing with as it is to know who they are dealing with so as to not create the inference of regulatory protection that does not exist.”

3.3.8 Code of Conduct – Section 10 Amendments

Status: FEI believes this section has been accepted, but requires confirmation by all stakeholders that the revised section has been accepted as appropriate.

References to Stakeholder Comments Provided on this Section

Appendix A2	FEI's proposed Code of Conduct – blackline version; changes from May 15 version highlighted	Page 7
Appendix B1	May 15 FEI Code of Conduct circulated to stakeholders for further discussion of the issues	Page 21
Appendix B2	Commission staff's comments to May 15 FEI CoC and TPP	Page 7

Commission staff proposed the inclusion of the words outlined below in Section 10 of the CoC.

“.... and may result from a normal period review, from request to the Commission by [FortisBC Energy], an ARBNNM, a customer or other stakeholder, or a review initiative by the Commission.”

FEI has accepted and included the additional wording.

3.3.9 Transfer Pricing Policy – Scope

Status: Outstanding wording to be resolved.

References to Stakeholder Comments Provided on this Section

Appendix A2	FEI's proposed Transfer Pricing Policy – blackline version; changes from May 15 version highlighted	Page 1
Appendix B1	May 15 FEI Transfer Pricing Policy circulated to stakeholders for further discussion of the issues	Pages 1 - 2
Appendix B2	Commission staff's comments to May 15 FEI CoC and TPP	Page 1
Appendix B4	Corix's comments to May 15 FEI Code of Conduct	Page 2
Appendix B3	FAES' comments to May 15 FEI Transfer Pricing Policy	Page 1

²⁶ Appendix D – AES Inquiry Report page 41: “The Panel finds that the use of the FortisBC brand name in the AES and New Initiatives market spaces is an acceptable business practice.”

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FEI accepted most of the Commission staff's proposed wording for this section (refer to Appendix B2, Commission staff's comments) but deleted the words, "sufficient separation of business operations" and, "and where appropriate, between individual ARBNNMs". FEI believes the words, "sufficient separation of business operations" does not fit within the purpose of the Transfer Pricing Policy. However, Commission staff believes that the deleted phrase should remain in, or should be included in the CoC.

3.3.10 Transfer Pricing Policy – Definitions

Status: FEI believes this section has been accepted, but requires confirmation by all stakeholders that the revised section has been accepted as appropriate.

References to Stakeholder Comments Provided on this Section

Appendix A2	FEI's proposed Transfer Pricing Policy – blackline version; changes from May 15 version highlighted	Pages 1 - 2
Appendix B1	May 15 FEI Transfer Pricing Policy circulated to stakeholders for further discussion of the issues	Pages 3 - 4
Appendix B2	Commission staff's comments to May 15 FEI CoC and TPP	Page 1

FEI has accepted most of the Commission staff's suggested wording to the section Definitions with a revision to the definition, "Transfer Pricing to Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment". For consistency, FEI adopted the same definition as that included in the FEI Code of Conduct. Additionally, FEI adopted the wording "as agreed upon by [FortisBC Energy] and the ARBNNM" as proposed by FAES.

3.3.11 Transfer Pricing Policy – Policy

Status: Outstanding wording to be resolved.

References to Stakeholder Comments Provided on this Section

Appendix A2	FEI's proposed Transfer Pricing Policy – blackline version; changes from May 15 version highlighted	Page 3
Appendix B1	May 15 FEI Transfer Pricing Policy circulated to stakeholders for further discussion of the issues	Pages 4 – 5
Appendix B2	Commission staff's comments to May 15 FEI CoC and TPP	Pages 1 – 2
Appendix B4	Corix's comments to May 15 FEI Code of Conduct	Page 5
Appendix B3	FAES' comments to May 15 FEI Transfer Pricing Policy	Page 5

FEI incorporated the Commission staff's proposed revisions to FEI's TPP including the deletion of the sentence, "The approved Code of Conduct and Transfer Pricing for ARBNNMs addresses the need for a transparent pricing mechanism which is fair to both [FortisBC Energy] and

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ARBNNM's ratepayers". At this time, FEI has not incorporated the Commission staff's suggestion to include the sentence, "All sharing of costs, services and information between affiliated regulated utilities must be fully disclosed to the Commission" as reference to the word "information" may be too broad to be practical. FEI believes the reference to the word "information" is specifically referencing customer information and would be amenable to wording that is more specific.

3.3.12 Transfer Pricing Policy – Section 3 Costs Relating to the Transfer of Activities from the Utility to an ARBNNM

Status: FEI believes this section has been accepted, but requires confirmation by all stakeholders that the revised section has been accepted as appropriate.

References to Stakeholder Comments Provided on this Section

Appendix A1	FEI's proposed Transfer Pricing Policy – blackline version; changes from May 15 version highlighted	Page 7
Appendix B1	May 15 FEI Transfer Pricing Policy circulated to stakeholders for further discussion of the issues	Pages 10 – 11
Appendix B2	Commission staff's comments to May 15 FEI CoC and TPP	Page 2

FEI accepted the addition of this section as suggested by Commission staff. FAES is seeking clarification as to who is determining whether research activities are directed towards pursuits related to an ARNNM (i.e. FAES).

3.3.13 Transfer Pricing Policy – Section 4 Cost Collection Procedures

Status: Outstanding wording and issue to be resolved.

References to Stakeholder Comments Provided on this Section

Appendix A2	FEI's proposed Transfer Pricing Policy – blackline version; changes from May 15 version highlighted	Pages 7 – 8
Appendix B1	May 15 FEI Transfer Pricing Policy circulated to stakeholders for further discussion of the issues	Pages 11 – 13
Appendix B2	Commission staff's comments to May 15 FEI CoC and TPP	Page 3

FEI accepted wording proposed by FAES to include, "The invoice will include the number of hours and corresponding activities." under Section 4.3 Invoicing. Commission staff and the Coalition indicated that "Exception Reporting" for completing timesheets was not adequate for proper cost allocation.²⁷ FEI disagrees as it believes its current approach of

²⁷ Appendix B1 – May 15 FEI Transfer Pricing Policy circulated to stakeholders for further discussion of the issues – Page 11.

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allocating costs based on timesheets is appropriate and well established. Currently, completion of timesheets for payroll and cost allocation is done on an exception basis for all management employees regardless of whether the allocation is to an FEI project, a deferral account, another department, or another entity, and is a well-established process. FEI does not believe there is any bias of omission in reporting on time spent on non-FEI activities, particularly with the additional oversight and monitoring proposed by FEI (i.e. Director of Finance provides oversight and quarterly reminders).

3.3.14 Transfer Pricing Policy – Section 5 Review of Transfer Pricing Policy

Status: FEI believes this section has been accepted, but requires confirmation by all stakeholders that the revised section has been accepted as appropriate.

References to Stakeholder Comments Provided on this Section

Appendix A2	FEI's proposed Transfer Pricing Policy – blackline version; changes from May 15 version highlighted	Page 8
Appendix B1	May 15 FEI Transfer Pricing Policy circulated to stakeholders for further discussion of the issues	Page 13

No additional comments were provided by stakeholders to FEI's proposed wording for this section.

3.3.15 Other

Status: Outstanding wording to be resolved.

References to Stakeholder Comments Provided on this Section

Appendix B2	Commission staff's comments to May 15 FEI CoC and TPP	Pages 3 and 7
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Commission staff commented that they believe that a preamble to the TPP will serve a useful purpose in introducing: (1) there is a companion CoC and TPP for FEI's relationship with NRBs that deals with transfers between FEI and non-regulated utilities; (ii) FAES operates both regulated and non-regulated projects and therefore a high degree of transparency is expected in order to understand which CoC and TPP are to be applied; (iii) the background for different treatment between ARBNNMs and NRBs, for example in the area of operational services. Similarly for the CoC, Commission staff commented that a preamble to the CoC will serve a useful purpose in introducing a companion CoC for FEI's relationship with NRBs; and that some overarching principles apply to both codes as well as certain principles apply to one code but not another.

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- 1 FEI highlights that in the Scope of the proposed FEI CoC and TPP for ARBNNMs, there is
- 2 already reference that the proposed CoC and TPP does not replace the existing CoC and TPP
- 3 governing the relationship between [FortisBC Energy] and Non-Regulated Businesses.

Appendix A1

**FEI PROPOSED CODE OF CONDUCT AND
TRANSFER PRICING POLICY
JUNE 19, 2014**

FortisBC Energy Inc.

C O D E O F C O N D U C T

***For Provision of Utility Resources and Services to Affiliated Regulated Businesses
Operating in a Non-Natural Monopoly Environment (ARBNNM)***

June 19, 2014

SCOPE

This Code of Conduct (Code) governs the relationships between [FortisBC Energy Inc. (FortisBC Energy)] and Affiliated Regulated Businesses operating in a non-natural monopoly environment (ARBNNMs) for the provision of [FortisBC Energy] resources, and 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 Commission decisions in proceedings related to specific ARBNNMs. 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.

This Code will govern the use of [FortisBC Energy] resources and services provided to ARBNNMs 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 ARBNNMs.

The primary responsibility for administering this Code lies with [FortisBC Energy], although the Commission has jurisdiction over matters referred to in this Code. The administration of this Code may have to take into account particular circumstances in respect to a particular resource or service which is being provided and where these issues are at variance with this Code and if the variance results in costs exceeding benefits received by the ratepayers of [FortisBC Energy], [FortisBC Energy] will be required to seek Commission approval. The Code also provides that the Commission may review complaints in relation to this Code.

The [FortisBC Energy] Transfer Pricing Policy for ARBNNMs, dated June 19, 2014, will be used in conjunction with this Code to establish the costs and pricing for [FortisBC Energy] resources and services provided to ARBNNMs.

This Code governs the relationships between [FortisBC Energy] and its Affiliated Regulated Businesses operating in a non-natural monopoly environment. This Code does not replace the existing Code of Conduct governing the relationship between [FortisBC Energy] and Non-Regulated businesses (NRBs).

DEFINITIONS

[FortisBC Energy Inc.]	<i>May be abbreviated as follows: [FortisBC Energy], the Utility, or the Company, and may also include employees of the Company.</i>
Commission	<i>British Columbia Utilities Commission.</i>
Guidelines	<i>Principles and Guidelines from the Retail Markets Downstream of the Utility Meter Guidelines published by the British Columbia Utility Commission in April, 1997 and the Commission's Report in the Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives published in December 27, 2012. This definition does not negate the applicability of other relevant orders or directions such as Commission directions in proceedings regarding affiliates or Special Directions issued by the Province of British Columbia to the Commission on matters related to specific FortisBC Energy business activities.</i>
Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment (ARBNNM)	<i>An affiliate of the Utility regulated by the Commission offering regulated products and services in a non-natural monopoly environment.</i>
RMDM	<i>Acronym for "Retail Markets Downstream of the Utility Meter", which may include any utility or energy related activity at or downstream of the utility meter.</i>
Transfer Pricing to Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment	<i>The price established for the provision of Utility resources and services to an ARBNNM. Transfer pricing for any Utility resource or service will be determined by applying the appropriate [FortisBC Energy] Transfer Pricing Policy as agreed upon by [FortisBC Energy] and the ARBNNM and approved by the Commission.</i>

APPLICATION OF COMMISSION PRINCIPLES

CODE OF CONDUCT PRINCIPLES

The following principles were applied in the development of the Code of Conduct for activities between [FortisBC Energy] and Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment [ARBNNM].

- i. The advancement and the protection of the interests of the regulated ratepayers of [FortisBC Energy] and the ARBNNM should be considered.
- ii. [FortisBC Energy] will not provide to an ARBNNM any information that would inhibit the energy services market in a non-natural monopoly environment from functioning.
- iii. The control of information should not provide a competitive advantage.
- iv. 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. Customer information (aggregate or customer specific with written consent) should be made available to all parties (Affiliated Regulated and Unregulated Businesses, and competitors) on an equal basis, upon request.
- v. [FortisBC Energy] and its employees 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 ARBNNM. Additionally, [FortisBC Energy] and its employees will not preferentially direct customers to an ARBNNM.
- vi. The financing of [FortisBC Energy] and the ARBNNM will be accounted for separately with the financing costs reflecting the risk profile of each entity. No cross-guarantees or any form of financial assistance whatsoever should be provided or indirectly provided by [FortisBC Energy] to the ARBNNM without the approval of the Commission.
- vii. [FortisBC Energy] will monitor compliance with this Code by also conducting an annual compliance review. [FortisBC Energy] will regularly advise all of its employees of their expected conduct pertaining to this Code.
- viii. The Transfer Pricing mechanism should provide a fair and transparent mechanism to both [FortisBC Energy] and ARBNNM's ratepayers.
- ix. The basis of cost allocation is cost causality. Costs are to be allocated from [FortisBC Energy] to the ARBNNM on the basis of no greater than [FortisBC Energy]'s full cost, recognizing the needs of both the interests of [FortisBC Energy] and the ARBNNM ratepayers.

1. Transfer Pricing for ARBNNMs

[FortisBC Energy] will conform with the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs.

2. Shared Services and Personnel

- a) This Code recognizes the potential benefits to the [FortisBC Energy] and ARBNNM regulated ratepayers in sharing resources.
- b) [FortisBC Energy] may provide shared services and personnel noted in section (c) below to ARBNNMs while ensuring that its ratepayers will not be negatively impacted by [FortisBC Energy]'s involvement. The costs of providing such services will be as agreed upon by both [FortisBC Energy] and the ARBNNM and be in accordance with the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs.
- c) ARBNNMs may contract for corporate services including senior management and operating personnel from [FortisBC Energy] using the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs, providing [FortisBC Energy] complies with Section 3 of this Code, Provision of Information by [FortisBC Energy], and no conflict of interest exists which will negatively impact ratepayers.

3. Provision of Information by [FortisBC Energy Inc.]

Customer information (aggregate or customer specific with written consent) should be made available to all Parties (Affiliated Regulated and Unregulated Businesses, separate classes of service, and competitors) on an equal basis, upon request.

[FortisBC Energy] will not provide to an ARBNNM any information that would inhibit the energy services market in a non-natural monopoly environment from functioning.

Customer specific information must be treated in accordance with the Personal Information Protection Act. If a customer requests their specific information be provided to a specific party, only that party may receive the information. If a customer agrees to a general release of their specific information, that information must be made available to all interested parties who request it and are willing to pay the price associated with the provision of the information, without discrimination as to access, timing, cost or content. Customer information will be provided at a reasonable price reflecting market circumstances and cover the cost of extracting and providing the information. All parties should pay the same price for the same or similar information.

[FortisBC Energy] may disclose to all interested parties that request it and are willing to pay the appropriate transfer price (see above), customer information that is aggregated or summarized in such a way that confidential information would not be ascertained by third parties.

4. Preferential Treatment

[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 ARBNNM. 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 ARBNNM.

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.

6. Equitable Treatment of Demand-Side Management and Incentive Funds

[FortisBC Energy] will adhere to the Commission approved mechanism for approval and administration of Demand-Side Management or incentive funding.

7. Compliance and Complaints

- a) The Director of Finance and Planning 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, with quarterly updates for employees who may be directly involved with ARBNNM activities.
- b) [FortisBC Energy] will monitor employee compliance with this Code by also conducting an annual compliance review, the results of which will be summarized in a report to be filed with the Commission within 60 days of the completion of this review.
- 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 Planning and the Vice-President, Strategic Planning, Corporate Development and Regulatory, 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 receipt of the complaint.

- d) Where [FortisBC Energy] determines that the complaint is unfounded, the Company may apply to the Commission for reimbursement of the costs of the investigation from the third party initiating the complaint or where this is not possible, for inclusion of those costs in rates.

8. Financing and Other Risks

Unless approved by the Commission, [FortisBC Energy] will not undertake any financing or other financial assistance on behalf of an ARBNNM that exposes [FortisBC Energy] ratepayers to additional costs or risks, unless appropriate compensation is received by [FortisBC Energy] for such financing or other financial assistance, including compensation for additional cost or risk related to the addition of incremental debt to [FortisBC Energy] for a project carried out by the ARBNNM.

9. Use of Utility Name

The use of the FortisBC by an ARBNNM operating in a non-natural monopoly environment is an acceptable business practice. The ARBNNM will exercise care in distinguishing between services provided by [FortisBC Energy] and services offered by the ARBNNM. The name FortisBC is owned by Fortis Inc.

10. Amendments

In order to ensure that this Code remains workable and effective, the Company will review the provisions of this Code on an ongoing basis and as required by the Commission, but with a maximum of five years between reviews.

Amendments to this Code may be made from time to time as approved by the Commission, and may result from a normal periodic review, from a request to the Commission by [FortisBC Energy], an ARBNNM, a customer or other stakeholder, or a review initiative by the Commission.

FortisBC Energy Inc.

T R A N S F E R P R I C I N G P O L I C Y

For Provision of Utility Resources and Services to Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment (ARBNNM)

June 19, 2014

SCOPE

This policy addresses the pricing of resources and services provided by [FortisBC Energy Inc. (FortisBC Energy)] to Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment (ARBNNMs) providing regulated products and services.

Allocation of costs will reflect appropriate compensation for any benefit derived by a new ARBNNM as a result of its affiliation with its parent or other businesses. This will include compensation for additional cost or risk related to the addition of incremental debt to the parent utility for the new products or services. [FortisBC Energy Inc.] will ensure that it receives appropriate compensation for the resources and services provided, in order to protect its ratepayers from subsidizing the activities of ARBNNMs, as required by the Code of Conduct for ARBNNMs and this Transfer Pricing Policy.

FortisBC Energy and ARBNNMs will maintain separate financial records and books of accounts in order to ensure a level of transparency that enables an appropriate allocation of costs between [FortisBC Energy] and ARBNNMs.

The Transfer Pricing Policy for ARBNNMs will be used in conjunction with the [FortisBC Energy] Code of Conduct for Provision of Utility Resources and Services to Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment dated June 19, 2014. This Policy does not replace the existing Transfer Pricing Policy between [FortisBC Energy] and Non-Regulated businesses (NRBs).

DEFINITIONS

[FortisBC Energy Inc.] *May be abbreviated as follows: [FortisBC Energy], the Utility, or the Company, and may also include employees of the Company.*

Commission *British Columbia Utilities Commission.*

Development *The translation of research findings or other knowledge into a plan or design for new or substantially improved materials, devices, products, processes, systems or services prior to the commencement of commercial production or use.*

Guidelines *Principles and Guidelines from the Retail Markets Downstream of the*

Utility Meter Guidelines published by the British Columbia Utilities Commission in April, 1997 and the Commission's Report in the Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives published in December 27, 2012. This definition does not negate the applicability of other relevant orders or directions such as Commission directions in proceedings regarding affiliates or Special Directions issued by the Province of British Columbia to the Commission on matters related to specific [FortisBC] business activities.

Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment (ARBNNM)

An affiliate of the Utility regulated by the Commission offering regulated products and services in a non-natural monopoly environment.

Research

Planned investigation undertaken for the purpose and expectation of gaining new scientific or technical knowledge and understanding. Such investigation may or may not be directed towards a specific practical aim or commercial application.

RMDM

Acronym for "Retail Markets Downstream of the Utility Meter", which may include any utility or energy related activity at or downstream of the utility meter.

Transfer Pricing to Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment

The price established for the provision of Utility resources and services to an ARBNNM. Transfer pricing for any Utility resource or service will be determined by applying the appropriate [FortisBC Energy] Transfer Pricing Policy as agreed upon by [FortisBC Energy] and the ARBNNM and approved by the Commission.

Fair Market Value

"Fair Market Value" means the price reached in an open and unrestricted market between informed and prudent parties, acting at arms length and under no compulsion to act.

POLICY

Provision of services from [FortisBC Energy] to ARBNNMs must be in accordance with the Commission approved Code of Conduct and Transfer Pricing Policy for ARBNNMs.

Transfer Prices charged to ARBNNMs by [FortisBC Energy] are intended to ensure that [FortisBC Energy] ratepayers are not adversely affected and will be established using the following pricing rules.

1. Pricing Rules

- i. If an applicable [FortisBC Energy] tariff rate exists, the Transfer Price will be set according to the tariff.
- ii. Where no tariff rate exists, the Transfer Price will be set at no greater than full cost. With Commission approval, the cost may be set at below full cost (see Section 2 below).
- iii. In situations where it can be shown that an alternative Transfer Price will provide greater benefits to the ratepayer, the Utility may apply to the Commission for special pricing consideration.

2. Determining Costs

For the purposes of this policy, costs for the resources or services being provided by [FortisBC Energy] to an ARBNNM will be set at no greater than [FortisBC Energy]'s full cost as described below. The definition of full costs will depend on the type of service or resource being provided.

For the most part, the types of resources and services that can be provided to ARBNNMs by [FortisBC Energy] are human resources (labour) and associated equipment and facilities. The example in Appendix A summarizes how full costs are determined for the different types of services described below in Section 2.1. The determination of full costs, specifically the cost loadings, is based on services to be provided in accordance with the [FortisBC Energy] approved Code of Conduct with respect to ARBNNM dated June 19, 2014.

Costs will include both direct costs and a fair allocation of the parent utility costs required to provide the product or service, except where such treatment is precluded by legislation, regulation or special direction.

If other [FortisBC Energy] resources or services are used by an ARBNNM that are not described by this policy or if there are unusual circumstances that warrant a separate review, then [FortisBC Energy] will make an application to the Commission on a case-by-case basis.

2.1 Type of Service

There are three types of services: Specific Committed Service, As Required Service and Designated Subsidiary/Affiliate Service. It is important that the type of service is specified before the commencement of any service. This specification is to ensure that the correct cost loadings are applied to any Transfer Price.

i. **Specific Committed Service**

Specific Committed Service is work that is contracted for and billed regardless of whether or not work is actually performed. Typically, this work is on-going or on a continuing basis (such as regulatory) in support of ARBNNM activities. The receiving organization (i.e. the ARBNNM) is, in effect, requiring that the providing organization's department (i.e. [FortisBC Energy]) maintain sufficient staffing levels throughout the year in order to provide this service. The receiving organization must pay for the Specific Committed Service even if the service provided is less than originally contracted.

It is important that the description, scope and quality of the service to be provided be defined and agreed upon by both [FortisBC Energy] and the ARBNNM before the commencement of such a service, including an indication whether the service is performed at the employee's normal place of work ("on-site") or at the ARBNNM's ("off-site"). A request for Specific Committed Service may be raised or terminated at any time throughout the year by the ARBNNM. Termination of a Specific Committed Service as a result of an activity change is subject to a sixty (60) day notice period.

At the end of the fiscal year, Specific Committed Services which were not provided (unless the Utility was unable to meet its commitments) will be offset against services used in excess of those committed. Any excess service on a total pooled basis will be billed, but any deficiency will not be refunded. If there is a shortfall in the level or quality of service provided by [FortisBC Energy] a reasonable refund by [FortisBC Energy] or termination of service by the ARBNNM may be made. In the normal course of business, the time estimates for Specific Committed Service are reviewed and agreed upon by both [FortisBC Energy] and the ARBNNM annually.

To determine the full cost of Specific Committed Service, the following loadings are applied to direct labour costs: concessions loading, benefits loading and general overhead loading. Also facility and/or equipment charges are applied if applicable. Appendix A, Column 1 shows an example of determining full cost for Specific Committed Service, both "on-site" and "off-site".

ii. **As Required Service**

As Required Service is work that is not specifically committed to by the receiving organization. The providing organization charges the cost of the actual time incurred to perform the work to the receiving organization. Typically, this is work that is not budgeted in advance.

As Required Service must be specified to be either for an extended term (greater or equal to three months) or short term (less than three months) period prior to the commencement of the work. In addition, it must be identified whether the individual providing the services will work at his or her normal place of work ("on-site") or at the ARBNNM's ("off-site").

To determine the full cost of As Required Service, the following loadings are applied to direct labour costs: concessions loading, benefits loading, general overhead loading, supervision loading and an availability charge loading. Also facility and/or equipment

charges are made if applicable. Appendix A, Column 2 shows an example of determining full cost for As Required Service.

In certain situations, [FortisBC Energy] will need to retain the immediate right to recall the employee being contracted to the ARBNNM for an As Required Service. In these situations, the availability charge will be waived. Prior notification to the Commission is required to waive the availability charge for As Required Service.

iii. **Designated Subsidiary/Affiliate Service**

A Designated Subsidiary/Affiliate is a related company that is designated by [FortisBC Energy] and approved by the Commission to receive reduced loadings in the Transfer Price. The designation relates to the additional benefits that the related company provides to [FortisBC Energy]'s customers, employees or to the economic development of the Province of British Columbia.

A Designated Subsidiary/Affiliate receives services on the same basis as the As Required Service described above. To determine the full cost of Designated Subsidiary/Affiliate Service, the following loadings are applied to direct labour costs: concessions loading, benefits loading and a general overhead loading. Appendix A, Column 3 shows an example of determining full cost for A Designated Subsidiary/Affiliate Service.

The Commission may approve a subsidiary or affiliate with this status but exclude specific activities or projects of that subsidiary (e.g. projects taking place in certain geographic locations). Similarly, certain work to be performed for an ARBNNM relating to a specific service, project or product may be designated by [FortisBC Energy] and approved by the Commission to receive reduced loadings.

3. Cost Relating to the Transfer of Activities from the Utility to an ARBNNM

3.1 Transfer Costs

Activities initially undertaken within the regulated Utility may, from time to time, be transferred to an ARBNNM with Commission approval. Costs associated with transferring an activity to an ARBNNM, and the start-up of ARBNNM activities, shall be borne by the ARBNNM. To the extent that these activities involve Utility resources during the transfer, the ARBNNM shall reimburse the Utility using the appropriate pricing rules as defined in this Transfer Pricing Policy. Costs relating to the termination of an activity within the Utility shall be borne by the Utility.

3.2 Research Costs

As research is regarded as a continuing activity required to maintain the Utility's business and its effectiveness, such expenses shall be borne by the Utility. However, where it is evident that certain research activities are clearly directed towards specific pursuits related to an ARBNNM, the Utility will ensure it is compensated by the ARBNNM according to the pricing rules defined in this Transfer Pricing Policy, net of any quantifiable benefits received by the Utility.

3.3 Development Costs

Development costs for new products and services transferred to an ARBNNM will be tracked and charged to the ARBNNM according to the pricing rules defined in this Transfer Pricing Policy, net of any quantifiable benefits received by the Utility.

4. Cost Collection Procedures

4.1 Internal Orders

[FortisBC Energy] will be responsible for setting up the appropriate internal orders, documenting the internal order numbers and ensuring that the appropriate individuals charge time to them. The providing organization's accounting group (typically [FortisBC Energy]'s Financial Accounting Group) will be responsible for maintaining the internal orders and collecting the appropriate charges.

4.2 Time Sheets

The individuals performing the service must report all time spent on that service by coding their time to the appropriate internal order numbers. This is to occur whether the type of service is Specific Committed, As Required or Designated Subsidiary/Affiliate Service. The ARBNNM may also review the validity of these charges.

4.3 Invoicing

The ARBNNM will be invoiced for the contracted amount in respect of Specific Committed Service and for the appropriate time based on the actual payroll level in respect of As Required Service or Designated/Affiliate Service (subject to confidentiality of salary information) with the applicable loadings applied. The invoice will include the number of hours and corresponding activities.

The methodology for determining a salary level is on the basis of the average of the respective pay grades or job groups for the employees involved.

5. Review of Transfer Pricing Policy

The Transfer Pricing Policy will be reviewed on an annual basis as part of the Code of Conduct compliance review. However, [FortisBC Energy] may make application to the Commission for approval of changes to the policy including the pricing rules and the formula for determining full costs as and when required.

Appendix “A”

Illustrative Example of Determining Full Cost for the Three Types of Service

(For an employee at an annual salary of \$85,000 and 59% benefits loading)

(Different charge-out rates are used for different positions)

Column	1		2			3
	Specific Committed Service		As Required Service			Designated Subsidiary / Affiliate
	Off-Site Full-time	On-Site Full-time	On-Site Short Term	Off-Site Short Term	Off Site Extended	
BASE PAY PER DAY	\$327.00	\$327.00	\$327.00	\$327.00	\$327.00	\$327.00
PLUS CONCESSIONS and BENEFITS (90%)	\$295.00	\$295.00	\$295.00	\$295.00	\$295.00	\$295.00
LOADED LABOUR PER DAY	\$622.00	\$622.00	\$622.00	\$622.00	\$622.00	\$622.00
GENERAL OVERHEAD	5%	10%	10%	10%	5%	5%
SUPERVISION	N/A	Direct Charge	20%	N/A	N/A	Direct Charge
AVAILABILITY CHARGE	N/A	N/A	20%	20%	20%	N/A
FACILITIES CHARGE (If Applicable)	N/A	\$100.00	\$100.00	\$100.00	N/A	N/A
EQUIPMENT CHARGE (If Applicable)	Direct Charge	Direct Charge	Direct Charge	Direct Charge	Direct Charge	N/A
TOTAL FULL COSTS PER DAY	\$653.00	\$784.00	\$1,033.00	\$909.00	\$778.00	\$653.00
Cost Ratio to Base Pay per day	2.00	2.40	3.16	2.78	2.38	2.00
Cost Ratio to Loaded Labour per day	1.05	1.26	1.66	1.46	1.25	1.05

Appendix A2

**FEI PROPOSED CODE OF CONDUCT AND
TRANSFER PRICING POLICY
CHANGES FROM MAY 15, 2014 BLACKLINED**

FortisBC Energy Inc.

C O D E O F C O N D U C T

***For Provision of Utility Resources and Services to Affiliated Regulated Businesses
Operating in a Non-Natural Monopoly Environment (ARBNNM)***

June 19May 15, 2014

SCOPE

This Code of Conduct (Code) governs the relationships between [FortisBC Energy Inc. (FortisBC Energy)] and Affiliated Regulated Businesses operating in a non-natural monopoly environment (ARBNNMs) for the provision of [FortisBC Energy] resources, and is intended to be consistent with ~~many of 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 Commission decisions in proceedings related to specific ARBNNMs. In instances, where this Code of Conduct is inconsistent with the principles in the Guidelines or other decisions related to specific ARBNNMs, it will be specifically noted.~~ 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.

This Code will govern the use of [FortisBC Energy] resources and services provided to ARBNNMs 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 ARBNNMs. ~~and the treatment by [FortisBC Energy] of its ARBNNMs. [FortisBC Energy] recognizes that the AES Inquiry Report established principles and guidelines regarding the type of business structure for affiliate transactions, and will adopt those principles and guidelines when determining how to structure a new business activity.~~

The primary responsibility for administering this Code lies with [FortisBC Energy], although the Commission has jurisdiction over matters referred to in this Code. ~~The Commission acknowledges that [FortisBC Energy] in~~ The administration of this Code may have to take into account particular circumstances in respect to a particular resource or service which is being provided and where these issues are at variance with this Code and if the variance results in costs exceeding benefits received by the ratepayers of [FortisBC Energy], [FortisBC Energy] will be required to seek Commission approval. The Code also provides that the Commission may review complaints in relation to this Code.

The [FortisBC Energy] Transfer Pricing Policy for ARBNNMs, dated ~~June 19May 15, 2014~~, will be used in conjunction with this Code to establish the costs and pricing for [FortisBC Energy] resources and services provided to ARBNNMs.

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Comment [A1]: Refer to pages 1, 2 and 3 of May 15 CoC with stakeholder comments – incorporated some of Staff’s suggestions and incorporated FEI revisions – see page 2 of May 15 CoC with stakeholder comments for discussion

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Comment [A2]: Deleted this reference – error in draft document as this sentence should have been crossed out.

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Comment [A3]: Updated to reflect next version of FEI CoC

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This Code governs the relationships between [FortisBC Energy] and its Affiliated Regulated Businesses operating in a non-natural monopoly environment. This Code does not replace the existing Code of Conduct governing the relationship between [FortisBC Energy] and Non-Regulated businesses (NRBs).

DRAFT

DEFINITIONS

[FortisBC Energy Inc.]

May be abbreviated as follows: [FortisBC Energy], the Utility, or the Company, and may also include employees of the Company.

Commission

British Columbia Utilities Commission.

Guidelines

Principles and Guidelines from the Retail Markets Downstream of the Utility Meter Guidelines published by the British Columbia Utility Commission in April, 1997 and the Commission's Report the Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives published in December 27, 2012. This definition does not negate the applicability of other relevant orders or directions such as Commission directions in proceedings regarding affiliates or Special Directions issued by the Province of British Columbia to the Commission on matters related to specific FortisBC Energy business activities.

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Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment (ARBNNM)

An affiliate of the Utility regulated by the Commission offering regulated products and services in a non-natural monopoly environment.

Comment [A4]: Refer to page 4 of May 15 CoC with stakeholder comments – accepted Staff's additional wording "This definition does not negate....."

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RMDM

Acronym for "Retail Markets Downstream of the Utility Meter", which may include any utility or energy related activity at or downstream of the utility meter.

Transfer Pricing to Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment

The price established for the provision of Utility resources and services to an ARBNNM. Transfer pricing for any Utility or service will be determined by applying the appropriate [FortisBC Energy] Transfer Pricing Policy as agreed upon by [FortisBC Energy] and the ARBNNM and approved by the Commission.

Comment [A5]: FEI adopted additional wording proposed by FAES, "as agreed upon by [FortisBC Energy] and the ARBNNM and"

APPLICATION OF COMMISSION PRINCIPLES

CODE OF CONDUCT PRINCIPLES

The following principles were applied in the development of the Code of Conduct for activities between [FortisBC Energy] and Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment [ARBNNM].

- i. The advancement and the protection of the interests of the regulated ratepayers of [FortisBC Energy] and the ARBNNM should be considered.
- ii. [FortisBC Energy] will not provide to an ARBNNM any information that would inhibit the energy services market in a non-natural monopoly environment from functioning.
- iii. The control of information should not provide a competitive advantage.
- iv. 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. Customer information (aggregate or customer specific with written consent) should be made available to all parties (Affiliated Regulated and Unregulated Businesses, and competitors) on an equal basis, upon request.
- v. [FortisBC Energy] and its employees 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 ARBNNM. Additionally, [FortisBC Energy] and its employees will not preferentially direct customers to an ARBNNM.
- vi. The financing of [FortisBC Energy] and the ARBNNM will be accounted for separately with the financing costs reflecting the risk profile of each entity. No guarantees or any form of financial assistance whatsoever should be provided or indirectly provided by [FortisBC Energy] to the ARBNNM without the approval of the Commission.
- vii. [FortisBC Energy] will monitor compliance with this Code by also conducting an annual compliance review. [FortisBC Energy] will regularly advise all of its employees of their expected conduct pertaining to this Code.
- viii. The Transfer Pricing mechanism should provide a fair and transparent mechanism to both [FortisBC Energy] and ARBNNM's ratepayers.
- ix. The basis of cost allocation is cost causality. Costs are to be allocated from [FortisBC Energy] to the ARBNNM on the basis of no greater than [FortisBC Energy]'s full cost, recognizing the needs of both the interests of [FortisBC Energy] and the ARBNNM ratepayers.

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Comment [A6]: Refer to page 5 of May 15 CoC with stakeholder comments – FEI added words “customer specific information” and “upon request” to provide further clarity.

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Comment [A7]: Refer to page 6 of May 15 CoC with stakeholder comments – FEI added word “provided”.

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1. Transfer Pricing for ARBNNMs

[FortisBC Energy] will conform with the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs.

2. Shared Services and Personnel

- a) This Code recognizes the potential benefits to the [FortisBC Energy] and ARBNNM regulated ratepayers in sharing resources.
- b) [FortisBC Energy] may provide shared services and personnel noted in section (c) below to ARBNNMs while ensuring that its ratepayers will not be negatively impacted by [FortisBC Energy]'s involvement. The costs of providing such services will be as agreed upon by both [FortisBC Energy] and the ARBNNM and be in accordance with the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs.
- c) ARBNNMs may contract for corporate services including senior management and operating personnel from [FortisBC Energy] using the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs, providing [FortisBC Energy] complies with Section 3 of this Code, Provision of Information by [FortisBC Energy], and no conflict of interest exists which will negatively impact ratepayers.

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Comment [A8]: Refer to page 13 of May 15 CoC with stakeholder comments – FEI incorporated suggestion from FAES to replace word “parties” with “[FortisBC Energy] and the ARBNNM”.

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3. Provision of Information by [FortisBC Energy Inc.]

Customer information (aggregate or customer specific with written consent) should be made available to all Parties (Affiliated Regulated and Unregulated Businesses, separate classes of service, and competitors) on an equal basis, upon request.

Comment [A9]: Added words “upon request” to be consistent with that described under Principles.

[FortisBC Energy] will not provide to an ARBNNM any information that would inhibit the energy services market in a non-natural monopoly environment from functioning.

Customer specific information must be treated in accordance with the Personal Information Protection Act. If a customer requests their specific information be provided to a specific party, only that party may receive the information. If a customer agrees to a general release of their specific information, that information must be made available to all interested parties who request it and are willing to pay the price associated with the provision of the information, without discrimination as to access, timing, cost or content. Customer information will be provided at a reasonable price reflecting market circumstances and cover the cost of extracting and providing the information. All parties should pay the same price for the same or similar information.

[FortisBC Energy] may disclose to all interested parties that request it and are willing to pay the appropriate transfer price (see above), customer information that is aggregated or summarized in such a way that confidential information would not be ascertained by third parties.

4. **Preferential Treatment**

[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 ARBNNM. 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 ARBNNM.

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.

6. **Equitable Treatment of Demand-Side Management and Incentive Funds**

[FortisBC Energy] will adhere to the Commission approved mechanism for approval and administration of Demand-Side Management or incentive funding.

7. **Compliance and Complaints**

a) The Director of Finance and Planning 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, with quarterly updates for employees who may be directly involved with ARBNNM activities.

b) [FortisBC Energy] will monitor employee compliance with this Code by also conducting an annual compliance review, the results of which will be summarized in a report to be filed with the Commission within 60 days of the completion of this review.

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 Planning and the Vice-President, Strategic Planning, Corporate Development and Regulatory, 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

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Comment [A10]: Refer to page 17 of May 15 CoC with stakeholder comments – FEI proposes new wording to provide reference for FEI to follow Commission approved DSM funding approval and administration.

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Comment [A11]: Refer to page 17 of May 15 CoC with stakeholder comments – changed reference to Director of Finance and Planning.

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Comment [A12]: Refer to page 18 of May 15 CoC with stakeholder comments – changed reference to Director of Finance and Planning.

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will endeavour to complete this investigation within 30 days of the receipt of the complaint.

- d) Where [FortisBC Energy] determines that the complaint is unfounded, the Company may apply to the Commission for reimbursement of the costs of the investigation from the third party initiating the complaint or where this is not possible, for inclusion of those costs in rates.

8. **Financing and Other Risks**

Unless approved by the Commission, [FortisBC Energy] will not undertake any financing or other financial assistance on behalf of an ARBNNM that exposes [FortisBC Energy] ratepayers to additional costs or risks, unless appropriate compensation is received by [FortisBC Energy] for such financing or other financial assistance, including compensation for additional cost or risk related to the addition of incremental debt to [FortisBC Energy] for a project carried out by the ARBNNM.

9. **Use of Utility Name**

The use of the FortisBC by an ARBNNM operating in a non-natural monopoly environment is an acceptable business practice. The ARBNNM will exercise care in distinguishing between services provided by [FortisBC Energy] and services offered by the ARBNNM. The name FortisBC is owned by Fortis Inc.

10. **Amendments**

In order to ensure that this Code remains workable and effective, the Company will review the provisions of this Code on an ongoing basis and as required by the Commission, but with a maximum of five years between reviews.

Amendments to this Code may be made from time to time as approved by the Commission, and may result from a normal periodic review, from a request to the Commission by [FortisBC Energy], an ARBNNM, a customer or other stakeholder, or a review initiative by the Commission.

Comment [A13]: Refer to page 21 of May 15 CoC with stakeholder comments. FEI incorporated suggestion by the Coalition for Open Competition to clarify the FortisBC name is owned by Fortis Inc.

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Comment [A14]: Refer to page 21 of May 15 CoC with stakeholder comments. FEI incorporated Staff's suggestion.

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FortisBC Energy Inc.

T R A N S F E R P R I C I N G P O L I C Y

For Provision of Utility Resources and Services to Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment (ARBNNM)

June 19~~May 15~~, 2014

SCOPE

This policy addresses the pricing of resources and services provided by [FortisBC Energy Inc. (FortisBC Energy)] to Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment (ARBNNMs) providing regulated products and services.

~~[FortisBC Energy Inc.] will ensure that it receives adequate compensation for the resources and services provided, thereby protecting its ratepayers from subsidizing the activities of ARBNNMs.~~

~~Allocation of costs will reflect appropriate compensation for any benefit derived by a new ARBNNM as a result of its affiliation with its parent or other businesses. This will include compensation for additional cost or risk related to the addition of incremental debt to the parent utility for the new products or services. [FortisBC Energy Inc.] will ensure that it receives appropriate compensation for the resources and services provided, in order to protect its ratepayers from subsidizing the activities of ARBNNMs, as required by the Code of Conduct for ARBNNMs and this Transfer Pricing Policy.~~

~~FortisBC Energy and ARBNNMs will maintain separate financial records and books of accounts in order to ensure a level of transparency that enables an appropriate allocation of costs between [FortisBC Energy] and ARBNNMs, and where appropriate, between individual ARBNNMs.~~

The Transfer Pricing Policy for ARBNNMs will be used in conjunction with the [FortisBC Energy] Code of Conduct for Provision of Utility Resources and Services to Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment dated ~~May 15~~June 19, 2014. This Policy does not replace the existing Transfer Pricing Policy between [FortisBC Energy] and Non-Regulated businesses (NRBs).

DEFINITIONS

[FortisBC Energy Inc.]

May be abbreviated as follows: [FortisBC Energy], the Utility, or the Company, and may also include employees of the Company.

Commission

British Columbia Utilities Commission.

Comment [A1]: Refer to pages 1 and 2 of May 15 TPP with stakeholder comments – accepted Staff's suggestions and incorporated FEI revisions – see page 2 of May 15 TPP for discussion

Comment [A2]: Updated to reflect next version of FEI TPP

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[FortisBC Energy] Transfer Pricing Policy for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment

Development

The translation of research findings or other knowledge into a plan or design for new or substantially improved materials, devices, products, processes, systems or services prior to the commencement of commercial production or use.

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Comment [A3]: Refer to pages 3 and 4 of May 15 TPP with stakeholder comments – accepted Staff's suggestions

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Guidelines

Principles and Guidelines from the Retail Markets Downstream of the Utility Meter Guidelines published by the British Columbia Utilities Commission in April, 1997 and the Commission's Report in the Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives published in December 27, 2012.

This definition does not negate the applicability of other relevant orders or directions such as Commission directions in proceedings regarding affiliates or Special Directions issued by the Province of British Columbia to the Commission on matters related to specific [FortisBC] business activities.

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Comment [A4]: Refer to pages 3 and 4 of May 15 TPP with stakeholder comments – accepted Staff's suggestions

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Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment (ARBNNM)

An affiliate of the Utility regulated by the Commission offering regulated products and services in a non-natural monopoly environment.

Research

Planned investigation undertaken for the purpose and expectation of gaining new scientific or technical knowledge and understanding. Such investigation may or may not be directed towards a specific practical aim or commercial application.

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Comment [A5]: Refer to pages 3 and 4 of May 15 TPP with stakeholder comments – accepted Staff's suggestions

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RMDM

Acronym for "Retail Markets Downstream of the Utility Meter", which may include any utility or energy related activity at or downstream of the utility meter.

Transfer Pricing to Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment

The price established for the provision of Utility resources and services ~~or the transfer of Utility assets~~ to an ARBNNM. Transfer pricing for any Utility resource or service will be determined by applying the appropriate [FortisBC Energy] Transfer Pricing Policy as agreed upon by [FortisBC Energy] and the ARBNNM and approved by the Commission.

Comment [A6]: Refer to page 3 of May 15 TPP with stakeholder comments – FEI adopted definition of TPP to ARBNNMs as outlined in the Code of Conduct. Also, adopted additional wording proposed by FAES, "as agreed upon by [FortisBC Energy] and the ARBNNM and"

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Comment [A7]: Refer to pages 3 and 4 of May 15 TPP with stakeholder comments – accepted Staff's suggestions

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Fair Market Value

"Fair Market Value" means the price reached in an open and unrestricted market between informed and prudent parties, acting at arms length and under no compulsion to act.

[FortisBC Energy] Transfer Pricing Policy for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment

POLICY

Provision of services from [FortisBC Energy] to ARBNNMs must be in accordance with the Commission approved Code of Conduct and Transfer Pricing Policy for ARBNNMs. ~~The approved Code of Conduct and Transfer Pricing Policy for ARBNNMs addresses the need for a transparent pricing mechanism which is fair to both [FortisBC Energy] and ARBNNM's ratepayers.~~

Transfer Prices charged to ARBNNMs by [FortisBC Energy] ~~will~~ are intended to ensure that [FortisBC Energy] ratepayers are not adversely affected and will be established using the following pricing rules.

Comment [A8]: Refer to pages 4 and 5 of May 15 TPP with stakeholder comments – FEI adopted revised wording including “are intended to” and “that” as suggested by Staff. FEI accepted Staff’s suggestion to delete the sentence “The approved Code of Conduct…….”

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1. Pricing Rules

- i. If an applicable [FortisBC Energy] tariff rate exists, the Transfer Price will be set according to the tariff.
- ii. Where no tariff rate exists, the Transfer Price will be set at no greater than full cost. With Commission approval, the cost may be set at below full cost (see Section 2 below).
- iii. ~~In situations where it can be shown that an alternative Transfer Price will provide greater benefits to the ratepayer, the Utility may apply to the Commission for special pricing consideration.~~

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Comment [A9]: Refer to page 5 of May 15 TPP with stakeholder comments. FEI accepted the addition of paragraph (iii) and the deletion of the last sentence in this section, as suggested by Staff.

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Comment [A10]: Minor wording addition.

Comment [A11]: Minor wording change.

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Comment [A12]: Refer to page 6 of May 15 TPP with stakeholder comments. FEI accepted this addition as suggested by Staff.

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Comment [A13]: Refer to page 6 of May 15 TPP with stakeholder comments. FEI accepted the addition of the words “or if there are unusual circumstances that warrant a separate review” as suggested by Staff.

Comment [A14]: Refer to page 7 of May 15 TPP with stakeholder comments. FEI accepted the deletion of this sentence as suggested by Staff.

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2. Determining Costs

For the purposes of this policy, costs for the resources or services being provided by [FortisBC Energy] to an ARBNNM will be set at no greater than [FortisBC Energy]’s full cost ~~as~~ described below. The definition of full costs will depend on the type of service or resource being provided.

For the most part, the types of resources and services that can be provided to ARBNNMs by [FortisBC Energy] are human resources (labour) and associated equipment and facilities. The example in Appendix A summarizes how full costs are determined for the different types of services described below in Section 2.1. The determination of full costs, specifically the cost loadings, is based on services to be provided in accordance with the [FortisBC Energy] approved Code of Conduct with respect to ARBNNM ~~of [FortisBC Energy] dated June 19 May 15, 2014.~~

~~Costs will include both direct costs and a fair allocation of the parent utility costs required to provide the product or service, except where such treatment is precluded by legislation, regulation or special direction.~~

~~*If other [FortisBC Energy] resources or services are used by an ARBNNM that are not described by this policy or if there are unusual circumstances that warrant a separate review, then [FortisBC Energy] will make an application to the Commission on a case-by-case basis. An example of this would be the determination of costs for a [FortisBC Energy] asset permanently transferred to an ARBNNM.*~~

DRAFT

2.1 Type of Service

There are three types of services: Specific Committed Service, As Required Service and Designated Subsidiary/Affiliate Service. It is important that the type of service is specified before the commencement of any service. This specification is to ensure that the correct cost loadings are applied to any Transfer Price.

i. Specific Committed Service

Specific Committed Service is work that is contracted for and billed regardless of whether or not work is actually performed. Typically, this work is on-going or on a continuing basis (such as regulatory) in support of ARBNNM activities. The receiving organization (i.e. the ARBNNM) is, in effect, requiring that the providing organization's department (i.e. [FortisBC Energy]) maintain sufficient staffing levels throughout the year in order to provide this service. The receiving organization must pay for the Specific Committed Service even if the service provided is less than originally contracted.

It is important that the description, ~~and scope~~ and quality of the service to be provided be defined and agreed upon by both [FortisBC Energy] and the ARBNNM before the commencement of such a service, including an indication whether the service is performed at the employee's normal place of work ("on-site") or at the ARBNNM's ("off-site"). A request for Specific Committed Service may be raised or terminated at any time throughout the year by the ARBNNM. Termination of a Specific Committed Service as a result of an activity change is subject to a sixty (60) day notice period.

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Comment [A15]: Refer to page 8 of the May 15 TPP with stakeholder comments. FEI accepted the wording clarification changes proposed by FAES.

At the end of the fiscal year, Specific Committed Services which were not provided (unless the Utility was unable to meet its commitments) will be offset against services used in excess of those committed. Any excess service on a total pooled basis will be billed, but any deficiency will not be refunded. If there is a shortfall in the level or quality of service provided by [FortisBC Energy] a reasonable refund by [FortisBC Energy] or termination of service by the ARBNNM may be made. In the normal course of business, the time estimates for Specific Committed Service are reviewed, and agreed upon by both [FortisBC Energy] and the ARBNNM annually.

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To determine the full cost of Specific Committed Service, the following loadings are applied to direct labour costs: concessions (~~i.e. paid time off~~) loading, benefits loading and general overhead loading. Also facility and/or equipment charges are applied if applicable. Appendix A, Column 1 shows an example of determining full cost for Specific Committed Service, both "on-site" and "off-site".

Comment [A16]: Refer to page 8 of the May 15 TPP with stakeholder comments. FEI accepted the change as proposed by Staff.

~~With Commission approval, the general overhead loading and/or facility charges may be excluded resulting in charges at below full cost.~~

Comment [A17]: Refer to page 8 of the May 15 TPP with stakeholder comments. FEI accepted the deletion of the sentence as proposed by Staff.

ii. As Required Service

As Required Service is work that is not specifically committed to by the receiving organization. The providing organization charges the cost of the actual time incurred to

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[FortisBC Energy] Transfer Pricing Policy for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment

perform the work to the receiving organization. Typically, this is work that is not budgeted in advance.

As Required Service must be specified to be either for an extended term (greater or equal to three months) or short term (less than three months) period prior to the commencement of the work. In addition, it must be identified whether the individual providing the services will work at his or her normal place of work (“on-site”) or at the ARBNNM’s (“off-site”).

To determine the full cost of As Required Service, the following loadings are applied to direct labour costs: concessions (~~i.e. paid time off~~), loading, benefits loading, general overhead loading, supervision loading and an availability charge loading. Also facility and/or equipment charges are made if applicable. Appendix A, Column 2 shows an example of determining full cost for As Required Service.

Comment [A18]: Refer to page 9 of the May 15 TPP with stakeholder comments. FEI accepted the change as proposed by Staff.

In certain situations, [FortisBC Energy] will need to retain the immediate right to recall the employee being contracted to the ARBNNM for an As Required Service. In these situations, the availability charge will be waived. Prior notification to the Commission is required to waive the availability charge for As Required Service.

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~~With Commission approval, the general overhead loading, supervision loading, availability charge loading and/or facility charges may be excluded resulting in charges at below full cost.~~

Comment [A19]: Refer to page 9 of the May 15 TPP with stakeholder comments. FEI accepted the deletion of the sentence as proposed by Staff.

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Comment [A20]: Refer to page 9 of the May 15 TPP with stakeholder comments. FEI accepted the deletion of the sentence as proposed by Staff.

iii. Designated Subsidiary/Affiliate Service

A Designated Subsidiary/Affiliate is a related company that is designated by [FortisBC Energy] and approved by the Commission to receive reduced loadings in the Transfer Price. The designation relates to the additional benefits that the related company provides to [FortisBC Energy]’s customers, employees or to the economic development of the Province of British Columbia.

A Designated Subsidiary/Affiliate receives services on the same basis as the As Required Service described above. To determine the full cost of Designated Subsidiary/Affiliate Service, the following loadings are applied to direct labour costs: concessions (~~i.e. paid time off~~), loading, benefits loading and a general overhead loading. Appendix A, Column 3 shows an example of determining full cost for A Designated Subsidiary/Affiliate Service.

Comment [A21]: Refer to page 10 of the May 15 TPP with stakeholder comments. FEI accepted the change as proposed by Staff.

The Commission may approve a subsidiary or affiliate with this status but exclude specific activities or projects of that subsidiary (e.g. projects taking place in certain geographic locations). Similarly, certain work to be performed for an ARBNNM relating to a specific service, project or product may be designated by [FortisBC Energy] and approved by the Commission to receive reduced loadings.

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3. Cost Relating to the Transfer of Activities from the Utility to an ARBNNM

3.1 Transfer Costs

Activities initially undertaken within the regulated Utility may, from time to time, be transferred to an ARBNNM with Commission approval. Costs associated with transferring an activity to an ARBNNM, and the start-up of ARBNNM activities, shall be borne by the ARBNNM. To the extent that these activities involve Utility resources during the transfer, the ARBNNM shall reimburse the Utility using the appropriate pricing rules as defined in this Transfer Pricing Policy. Costs relating to the termination of an activity within the Utility shall be borne by the Utility.

3.2 Research Costs

As research is regarded as a continuing activity required to maintain the Utility's business and its effectiveness, such expenses shall be borne by the Utility. However, where it is evident that certain research activities are clearly directed towards specific pursuits related to an ARBNNM, the Utility will ensure it is compensated by the ARBNNM according to the pricing rules defined in this Transfer Pricing Policy, net of any quantifiable benefits received by the Utility.

3.3 Development Costs

Development costs for new products and services transferred to an ARBNNM will be tracked and charged to the ARBNNM according to the pricing rules defined in this Transfer Pricing Policy, net of any quantifiable benefits received by the Utility.

Comment [A22]: Refer to pages 10 and 11 of the May 15 TPP with stakeholder comments. FEI accepted the addition of this section as proposed by Staff.

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4. Cost Collection Procedures

4.1 Internal Orders

[FortisBC Energy] will be responsible for setting up the appropriate internal orders, documenting the internal order numbers and ensuring that the appropriate individuals charge time to them. The providing organization's accounting group (typically [FortisBC Energy]'s Financial Accounting Group) will be responsible for maintaining the internal orders and collecting the appropriate charges.

4.2 Time Sheets

The individuals performing the service must report all time spent on that service by coding their time to the appropriate internal order numbers. This is to occur whether the type of service is Specific Committed, As Required or Designated Subsidiary/Affiliate Service. The ARBNNM may also review the validity of these charges.

4.3 Invoicing

The ARBNNM will be invoiced for the contracted amount in respect of Specific Committed Service and for the appropriate time based on the actual payroll level in respect of As Required

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[FortisBC Energy] Transfer Pricing Policy for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment

Service or Designated/Affiliate Service (subject to confidentiality of salary information) with the applicable loadings applied. The invoice will include the number of hours and corresponding activities.

The methodology for determining a salary level is on the basis of the average of the respective pay grades or job groups for the employees involved.

Comment [A23]: Refer to page 12 of the May 15 TPP with stakeholder comments. FEI accepted the addition of some of the wording proposed by FAES.

5. **Review of Transfer Pricing Policy**

The Transfer Pricing Policy will be reviewed on an annual basis as part of the Code of Conduct compliance review. However, [FortisBC Energy] may make application to the Commission for approval of changes to the policy including the pricing rules and the formula for determining full costs as and when required.

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Appendix “A”

Illustrative Example of Determining Full Cost for the Three Types of Service

(For an employee at an annual salary of \$85,000 and 59% benefits loading)

(Different charge-out rates are used for different positions)

Column	1		2			3
	Specific Committed Service		As Required Service			Designated Subsidiary / Affiliate
	Off-Site Full-time	On-Site Full-time	On-Site Short Term	Off-Site Short Term	Off Site Extended	
BASE PAY PER DAY	\$327.00	\$327.00	\$327.00	\$327.00	\$327.00	\$327.00
PLUS CONCESSIONS and BENEFITS (90%)	\$295.00	\$295.00	\$295.00	\$295.00	\$295.00	\$295.00
LOADED LABOUR PER DAY	\$622.00	\$622.00	\$622.00	\$622.00	\$622.00	\$622.00
GENERAL OVERHEAD	5%	10%	10%	10%	5%	5%
SUPERVISION	N/A	Direct Charge	20%	N/A	N/A	Direct Charge
AVAILABILITY CHARGE	N/A	N/A	20%	20%	20%	N/A
FACILITIES CHARGE (If Applicable)	N/A	\$100.00	\$100.00	\$100.00	N/A	N/A
EQUIPMENT CHARGE (If Applicable)	Direct Charge	Direct Charge	Direct Charge	Direct Charge	Direct Charge	N/A
TOTAL FULL COSTS PER DAY	\$653.00	\$784.00	\$1,033.00	\$909.00	\$778.00	\$653.00
Cost Ratio to Base Pay per day	2.00	2.40	3.16	2.78	2.38	2.00
Cost Ratio to Loaded Labour per day	1.05	1.26	1.66	1.46	1.25	1.05

Appendix B1

**FEI PROPOSED CODE OF CONDUCT AND
TRANSFER PRICING POLICY,
MAY 15, 2014
CIRCULATED TO STAKEHOLDERS**

FortisBC Energy Inc.
C O D E O F C O N D U C T

*For Provision of Utility Resources and Services to Affiliated Regulated Businesses
Operating in a Non-Natural Monopoly Environment (ARBNNM)*

May 15, 2014

SCOPE [UNDER DISCUSSION]

This Code of Conduct (Code) governs the relationships between [FortisBC Energy Inc. (FortisBC Energy)] and Affiliated Regulated Businesses operating in a non-natural monopoly environment (ARBNNMs) for the provision of [FortisBC Energy] resources, and is **intended to be** consistent with ~~many of~~ 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 Commission decisions in proceedings related to specific ARBNNMs. ~~In instances, where this Code of Conduct is inconsistent with the principles in the Guidelines or other decisions related to specific ARBNNMs, it will be specifically noted.~~ 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.

This Code will govern the use of [FortisBC Energy] resources and services provided to ARBNNMs 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 ARBNNMs. ~~and the treatment by [FortisBC Energy] of its ARBNNMs.—[FortisBC Energy] recognizes that the AES Inquiry Report established principles and guidelines regarding the type of business structure for affiliate transactions, and will adopt those principles and guidelines when determining how to structure a new business activity.~~

The primary responsibility for administering this Code lies with [FortisBC Energy], although the Commission has jurisdiction over matters referred to in this Code. ~~The Commission acknowledges that [FortisBC Energy] in~~ The administration of this Code may have to take into account particular circumstances in respect to a particular resource or service which is being provided and where these ~~issues are at variance with this Code and if the variance results in costs exceeding benefits received by the ratepayers of [FortisBC Energy], [FortisBC Energy] will be required to seek Commission approval.~~ The Code also provides that the Commission may review complaints in relation to this Code.

The [FortisBC Energy] Transfer Pricing Policy for ARBNNMs, dated **May 15, 2014** will be used in conjunction with this Code to establish the costs and pricing for [FortisBC Energy] resources and services provided to ARBNNMs.

This Code governs the relationships between [FortisBC Energy] and its Affiliated Regulated Businesses operating in a non-natural monopoly environment. This Code does not replace the existing Code of Conduct governing the relationship between [FortisBC Energy] and Non-Regulated businesses (NRBs).

Stakeholder Comments

As stated in this Scope section, **FEI** clarifies that this proposed Code of Conduct (Code) governs only the relationships between [FortisBC Energy] and Affiliated Regulated Businesses operating in a non-natural monopoly environment (ARBNNMs). This Code does not replace the existing Code of Conduct governing the relationship between [FortisBC Energy] and Non-Regulated businesses (NRBs).

FEI has edited its proposed wording to incorporate some the Commission Staff's suggestions provided. The changes are highlighted above with comments provided, where appropriate.

FEI has added reference to the term "Guidelines" in the opening paragraph to provide a link to the use of the term Guidelines in the Definitions section.

Regarding the proposed sentence, "**In instances, where this Code of Conduct is inconsistent with the principles in the Guidelines or other decisions related to specific ARBNNMs, it will be specifically noted.**", FEI does not believe this is necessary as the sentence following makes the same point.

Regarding the proposed wording by Commission Staff, "**[FortisBC Energy] recognizes that the AES Inquiry Report established principles and guidelines regarding the type of business structure for affiliate transactions, and will adopt those principles and guidelines when determining how to structure a new business activity.**", **FEI** does not believe they are appropriate for the Code of Conduct. This is discussed later on in the section on the Code of Conduct Principles.

FEI has provided alternate wording to the Commission Staff's suggested sentence "In such a circumstance, the onus will be on [FortisBC Energy], the affected affiliate or both, to apply to the Commission justifying the variance." Instead, FEI proposes amending the previous sentence to as follows:

Amended sentence

The administration of this Code may have to take into account particular circumstances in respect to a particular resource or service which is being provided and where these **issues are at variance with this Code and if the variance results in costs exceeding benefits received by the ratepayers of [FortisBC Energy], [FortisBC Energy] will be required to seek Commission approval.**

As it is FEI's Code of Conduct, it is inappropriate to be asking the "affected utility or both" to apply to the Commission justifying the variance.

At the April 24 workshop, **Commission Staff** provided clarification that the proposed wording in paragraphs one and two of the Scope section of the proposed Code of Conduct

was intended to cover the different situations possible including Stream A and Stream B projects.

Commission Staff commented they have no authority to override any of the principles, guidelines or directions previously established by a Commission panel. Thus the Code of Conduct should state that the Code of Conduct is intended to be consistent with previous Commission rulings. If there are instances where the proposed Code of Conduct is inconsistent with previous rulings, then it should be made explicit. Also, it should be made clear that silence on an issue in the Code of Conduct, even if approved by the Commission, does not override or void a previously established principle, guideline or principle. This clarification will be helpful in the event that the Commission is required to later rule on a complaint in relation to the code.

Regarding business structure, Commission Staff indicated that especially since FEI is proposing separate Codes of Conduct for ARBNNMs, NRBs, and other ways of structuring activities into different products and services, it is important to acknowledge that there are principles and guidelines regarding the overarching issue of whether or not the proposed corporate structure is appropriate.

FAES noted that the sentence referencing “The Commission acknowledges that FEI in the administration of this Code.....” is too broad as it refers to “principles” of the BCUC outlined in a list of documents, including any Commission decisions in proceedings related to ARBNNM. At least, a qualification on principles should be added to delineate which principles we are talking about (i.e., only principles related to transfer pricing and code of conduct).

The **Coalition for Open Competition** stated that the principles should be applied consistently regardless of whether the business is regulated or not. It would seem reasonable to combine all such Codes of Conduct under one document to avoid confusion and duplication. It would be more appropriate to use the code in all instances where it is required but exempt the obvious exclusions such as within the gas utilities.

DEFINITIONS **UNDER DISCUSSION**

[FortisBC Energy Inc.]

May be abbreviated as follows: [FortisBC Energy], the Utility, or the Company, and may also include employees of the Company.

Commission

British Columbia Utilities Commission.

Guidelines

Principles and Guidelines from the Retail Markets Downstream of the Utility Meter Guidelines published by the British Columbia Utility Commission in April, 1997 and the Commission’s Report in the Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives published

in December 27, 2012. This definition does not negate the applicability of other relevant orders or directions such as Commission directions in proceedings regarding affiliates or Special Directions issued by the Province of British Columbia to the Commission on matters related to specific FortisBC Energy business activities.

Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment (ARBNNM)

An affiliate of the Utility regulated by the Commission offering regulated products and services in a non-natural monopoly environment.

RMDM

Acronym for “Retail Markets Downstream of the Utility Meter”, which may include any utility or energy related activity at or downstream of the utility meter.

Transfer Pricing to Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment

The price established for the provision of Utility resources and services to an ARBNNM. Transfer pricing for any Utility resource or service will be determined by applying the appropriate [FortisBC Energy] Transfer Pricing Policy approved by the Commission.

Stakeholder Comments

Commission Staff provided additional wording regarding the definition of Guidelines as highlighted. Staff commented that the Code of Conduct should acknowledge that there are other directions and documents that may have a bearing on affiliate transactions. Commission Staff commented that the proposed FEI Code of Conduct for ARBNNM is only for a regulated business offering services in a non-natural monopoly environment. For unregulated businesses, the fall back would be to the RMDM guidelines and the existing FEI Code of Conduct for NRBs.

FEI has no concerns regarding the Commission Staff’s proposed additional wording as highlighted above. FEI understands also that the Commission Staff’s comments mean FEI’s proposed Code of Conduct for ARBNNM does not apply to interactions between two affiliated regulated businesses that are natural monopolies (i.e. natural gas and electric service).

FAES indicated that the term Guideline was not a specific term used in the proposed FEI Code of Conduct for ARBNNM and that the definition Guideline should be deleted.

Instead of deleting the term Guideline the Definitions section to which Commission Staff have suggested additional wording, **FEI** has instead added reference to the term “Guidelines” in the Scope section.

The **Coalition for Open Competition** proposed the use of the term “Affiliate” instead of “ARBNNM”. The Coalition commented further that FEI appeared to acknowledge at the April 24 workshop that FAES is intended to be its only TES affiliate and that it would not create a “Micro TES” affiliate to circumvent this Code to perform smaller TES projects (ie. Stream “A” or Micro TES). Likewise, the Coalition acknowledged that this process is not intended to be a COC/TPP for FAES; the concern is the transfer of services, etc. from FEI to FAES (not what FAES does with those transferred services).

FEI believes it is appropriate to use the term ARBNNM as it serves to highlight and maintain clarity that this proposed Code of Conduct has been developed for a specific set of circumstances. Using a more generic term such as “Affiliate” may create potential confusion in the future about the applicability of this proposed Code of Conduct.

APPLICATION OF COMMISSION PRINCIPLES

Stakeholder Comments

FEI has moved the Code of Conduct principles to the front of this document which previously was included in the Appendix.

CODE OF CONDUCT PRINCIPLES [UNDER DISCUSSION]

The following principles were applied in the development of the Code of Conduct for activities between [FortisBC Energy] and Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment [ARBNNM].

- i. The advancement and the protection of the interests of the regulated ratepayers of [FortisBC Energy] and the ARBNNM should be considered.
- ii. [FortisBC Energy] will not provide to an ARBNNM any information that would inhibit the energy services market in a non-natural monopoly environment from functioning.
- iii. The control of information should not provide a competitive advantage.
- iv. 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. Customer information (aggregate or customer specific with written consent) should be made available to all parties (Affiliated Regulated and Unregulated Businesses, and competitors) on an equal basis, **upon request**.
- v. [FortisBC Energy] and its employees 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 ARBNNM. Additionally, [FortisBC Energy] and its employees will not preferentially direct customers to an ARBNNM.

- vi. The financing of [FortisBC Energy] and the ARBNNM will be accounted for separately with the financing costs reflecting the risk profile of each entity. No cross-guarantees or any form of financial assistance whatsoever should be provided or indirectly **provided** by [FortisBC Energy] to the ARBNNM without the approval of the Commission.
- vii. [FortisBC Energy] will monitor compliance with this Code by also conducting an annual compliance review. [FortisBC Energy] will regularly advise all of its employees of their expected conduct pertaining to this Code.
- viii. The Transfer Pricing mechanism should provide a fair and transparent mechanism to both [FortisBC Energy] and ARBNNM's ratepayers.
- ix. The basis of cost allocation is cost causality. Costs are to be allocated from [FortisBC Energy] to the ARBNNM on the basis of no greater than [FortisBC Energy]'s full cost, recognizing the needs of both the interests of [FortisBC Energy] and the ARBNNM ratepayers.

Stakeholder Comments

The highlighted words in **RED** represent amendments to the Code of Conduct Principles to provide further clarity.

FEI developed the proposed principles based on references to the AES Inquiry Report and feedback received at the February 20, 2014 FEI Code of Conduct workshop. Regarding the inconsistency between the cost causality principle and the higher of market price or fully allocated cost, as the Commission Staff has suggested, the choice of market price is dependent on each situation. In most cases as it applies to FEI resources being provided, the market price is the same as fully allocated cost. This is because FEI's approach to compensation and benefits is to provide its employees with competitive base salaries and wages, incentive compensation and benefits. FEI refers stakeholders to Slide 56 included in the April 24 workshop material where FEI fully loaded labour rates for the type of labour resources being provided are compared to the labour rates available in the marketplace. As a result of its market based approach, FEI labour rates charged are consistent with the market price or fully allocated cost. Given this, removing the reference to Market Pricing in the Code of Conduct would be more consistent with the Cost Causality principle and address some stakeholder concerns that using Higher of Market Pricing or Fully Allocated Cost would benefit competitors and hurt FAES ratepayers.

FAES commented that the overarching principle of Cost Causality found in the AES Inquiry Report is inconsistent with the principle of using Higher of Market Price or Fully Allocated Cost for the Transfer Price, also found in the AES Inquiry Report.

Commission Staff commented that they didn't see an inconsistency between cost causality and the fully allocated cost, and that the choice of market price or fully allocated cost is dependent on each situation, for example, its reliability at the time. Commission Staff also referred to the source for the proposed wording, page 33 of the AES Inquiry decision.

Additionally, Commission Staff provided the following additional wording to include as a Principle to address when a new regulated business activity should be structured as an Affiliated Regulated Business.

- i. Structuring a new regulated business activity as an Affiliated Regulated Business is most appropriate when some or all of the following characteristics are present:
 - o The new regulated business activity takes place largely beyond the delivery meter of the traditional utility;
 - o The new regulated business activity has limited or no use of the traditional utility assets; and
 - o The new regulated business activity has the potential to impose higher risks on the users of the new service and/or the utility shareholder.

Commission Staff expect parties to argue that Commission be consistent in the way it views regulations, whether providing services to FAES or an NRB. If talking of two regulated operations, regulation should work both ways. The notion of how you price a service has to go both ways. When trying to come up with appropriate pricing for services, outside test (i.e. market) is what costs should be paid. Commission Staff expressed concern that FEI does not over-invest in resources it doesn't need and downtime of utility resources not charged to ARBNNMs.

With respect to the Commission Staff's suggestion to include as a Principle to address when a new regulated business activity should be structured as an Affiliated Regulated Business and that "All proposals for new business activities should be accompanied by a risk management plan." discussed later on under section 8 Financing and Other Risks, **FEI's** view is that neither of these subjects are appropriate for the Code of Conduct. The Code of Conduct is intended to address interactions between FEI and ARBNNMs, and not how to structure a new business and how to mitigate risks (if any) from the new line of business. Additionally, the suggested wording is redundant. If and when FEI decides to venture into a new regulated line of business, it will likely have to seek Commission approval, for instance for a CPCN or for rates to be charged.

BCPSO commented that the use of Higher of Market Price or Fully Allocated cost would benefit competitors and hurt ratepayers. The interest of ratepayers on both sides of the FEI/FAES divide are best advanced by requiring FAES to pay the LOWER of market or fully allocated cost as long as FEI recovers incremental cost plus a premium. It's clearly not beneficial when the system disadvantages FEI/FAES relative to those operating only in non-monopoly environments. Receiving the LOWER of market or fully allocated cost benefits FAES ratepayers relative to having a non-monopoly company get the business because they can charge less. That is, shutting FAES out of the business, or preventing them from competing on equal terms does not advance the interests of FAES ratepayers.

BCPSO's interest is to see the market develop in a way that benefits ratepayers and involves all players, and FEI/FAES should not be disadvantaged. There are a lot of efficiencies to be gained from sharing services. We need to deviate from RMDM model as it was not in the best interest of ratepayers.

BCSEA commented that if customers are all regulated, then the Commission has the responsibility for protecting both sets of customers and ensuring appropriate prices are used. BCSEA noted that cross-subsidization can go both ways and there is a need to be careful that FAES does not end up subsidizing FEI. Sharing of resources between two large utilities, such as FEI and BC Hydro, will benefit both sets of ratepayers. It's more an issue of how to value the service. BCSEA's principal interest is in promoting innovative energy solutions in B.C.

CEC asked what the proposed wording from Commission Staff - "the new regulated business activity has the potential to impose higher risks on the users of the new services and/or the utility shareholder." meant? For example, higher risk than what?

CEC also expressed concern about using Market Price and was not sure there is a Market Price, or way to discover a Market Price. This is more a cost allocation issue for ratepayers affected. Customers of regulated utilities have rights.

Corix supported the use of the "Higher of Market Price or the Fully Allocated cost" for FEI's transfer price. The rules need to ensure fair cost of providing shared services to another entity, regardless of whether the entity is regulated. When a regulated utility is involved, have to ensure a fair price is charged. In the case of Corix, it is the shareholders who would suffer (as opposed to regulated ratepayers) if undercharging for shared services provided by the unregulated parent company occurred. The ratepayers of the smaller regulated utility would get a deal. FEI ratepayers would benefit from higher charges for shared service. FEI should not be allowed to charge for service at less than their cost. How the cost is determined is important. It should be a fair charge that recognizes the full cost of FEI offering its expertise, equipment and personnel, all of which have been paid for by ratepayers.

COPE commented that the Commission has no obligation to non-regulated customers but does to regulated customers. The Commission's decisions can suffocate development of alternative energy in B.C. The RMDM was designed to maximize every benefit for gas ratepayers by ensuring ratepayers got every nickel they could out of expansion of the sphere of the utility. If FEI is required to charge higher of market price or full cost, the introduction of a notional surcharge indicates a form of cross-subsidization from FAES to FEI.

The Commission should not venture into a role outside its jurisdiction. The BCUC does not have a role in the market development of the Thermal Energy Services marketplace. Some parties are claiming to be seeking more open competition but may be actually constraining the development of the Thermal Energy Services marketplace. Constraints are being placed on the domestic utility but not on Corix, so not a level playing field. By not allowing FEI to share resources with its regulated affiliate, the victims would be ratepayers who would be required to pay for the duplication of resources.

The **Coalition for Open Competition** restated their view that FEI's Code of Conduct needs to look beyond FEI and FAES ratepayers and to consider the impact of FEI's actions on competitive marketplace. Additionally, they stated that regulatory oversight and enforcement of FEI's Code of Conduct should be provided by the Commission and not just only when a complaint is raised.

The Coalition for Open Competition suggested the following principles. Sections highlighted in RED are where there are differences compared to that proposed by FEI.

CODE OF CONDUCT PRINCIPLES

The following principles were applied in the development of the Code of Conduct for activities between [FortisBC Energy] and Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment [ARBNNM].

- i. The advancement and the protection of the interests of the regulated ratepayers of [FortisBC Energy] and the ARBNNM should be considered.
- ii. In addition, competition within the non-natural monopoly environment should not be compromised by actions of FEI. The code needs to look beyond only the customers of FEI and the FEI affiliate customers but consider the impact of FEI's actions on non-monopoly markets.
- iii. [FortisBC Energy] will not provide to an ARBNNM any information that would inhibit the energy services market in a non-natural monopoly environment from functioning.
- iv. The control of information should not provide a competitive advantage.
- v. Customer specific information must be treated as required by the Personal Information Protection Act and, in addition, should only be released with the written consent of the customer. Customer information (aggregate or customer specific with written consent) should be made available to all parties (Affiliated Regulated and Unregulated Businesses, and competitors) on an equal basis.
- vi. [FortisBC Energy] and its employees 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 ARBNNM. Additionally, [FortisBC Energy] and its employees will not preferentially direct customers to an ARBNNM.
- vii. FEI will not provide financing to any affiliates. Any such financings will be done by FEI's parent or grand-parent companies.
- viii. [FortisBC Energy] will monitor compliance with this Code by also conducting an annual compliance review. [FortisBC Energy] will regularly advise all of its employees of their expected conduct pertaining to this Code.
- ix. The Transfer Pricing mechanism should provide a fair and transparent mechanism to [FortisBC Energy], ARBNNM's ratepayers and competitors in the non-monopoly market environment.
- x. Review and enforcement of the Code will be the role of the Commission.

- xi. The basis of cost allocation is cost causality. Costs are to be allocated from [FortisBC Energy] to the ARBNNM on the basis of the greater of cost or market value per the AES Inquiry Report.

Regarding the wording that “FEI will not provide financing to any affiliates.....”, FEI notes that the proposed wording by the Coalition for Open Competition is inconsistent with that indicated in the AES Inquiry decision (page 33 bullet number two under Guidelines). FEI’s proposed wording as discussed later on in section 8 Financing and Other Risks is more consistent with that indicated in the AES Inquiry decision and that including in FEI’s current Code of Conduct for NRBs.

Additionally, FEI believes the Coalition for Open Competition suggestion that FEI’s Code of Conduct “needs to look beyond FEI and FAES ratepayers and to consider the impact of FEI’s actions on competitive marketplace.” and “In addition, competition within the non-natural monopoly environment should not be compromised by actions of FEI. The code needs to look beyond only the customers of FEI and the FEI affiliate customers but consider the impact of FEI’s actions on non-monopoly markets.” is inappropriate and inconsistent with the intent of the Code of Conduct, which is to protect the interests of FEI’s natural gas ratepayers and ensure there is no cross-subsidization.

1. Transfer Pricing for ARBNNMs [ACCEPTED]

[FortisBC Energy] will conform with the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs.

2. Shared Services and Personnel [UNDER DISCUSSION]

- a) This Code recognizes the potential benefits to the [FortisBC Energy] and ARBNNM regulated ratepayers in sharing resources.
- b) [FortisBC Energy] may provide shared services and personnel noted in section (c) below to ARBNNMs while ensuring that its ratepayers will not be negatively impacted by [FortisBC Energy]’s involvement. The costs of providing such services will be as agreed upon by both [FortisBC Energy] and the ARBNNM and be in accordance with the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs.
- c) ARBNNMs may contract for corporate services including senior management and operating personnel from [FortisBC Energy] using the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs, providing [FortisBC Energy] complies with Section 3 of this Code, Provision of Information by [FortisBC Energy], and no conflict of interest exists which will negatively impact ratepayers.

Stakeholder Comments

FEI believes its proposed wording for sharing of services and personnel with an ARBNNM as outlined in section c are appropriate, providing flexibility for resource sharing arrangements that benefit both FEI and ARBNNM ratepayers. The wording proposed by the Commission Staff and which is consistent with the Alberta Code of Conduct is inappropriate for the circumstances in B.C. While the wording may be appropriate for Alberta which has an operating environment consisting both of regulated and non-regulated activities, the situation is different for FortisBC where much of its operations in B.C. are regulated including FAES/TES. Additionally, the Commission's Staff proposed wording is very broadly and generally defined that it is difficult to operationalize. For example, the proposed wording suggests sharing of personnel be limited to

“.... corporate services and should not include any operational services except possibly emergency services. Sharing of employees will not be allowed where the employee has access to confidential information, routinely participates in making decisions with respect to the provision of traditional utility services or how utility services are delivered, routinely deals with or has direct contact with customers of the utility or is routinely involved in planning or managing the business of the traditional utility.”

For the purpose of the Code of Conduct, what is intended to be confidential information? Is it customer specific information? If so, that is already addressed in the section 3 Provision of Information by [FortisBC Energy] where customer information upon request is being made available to all parties on an equal basis. Another question is who are the people to be included in the definition of “as routinely involved in planning or managing the business of the traditional utility”? The definition as it stands would exclude most FEI managers from being shared, as FEI managers are involved in some way in planning or managing the business of the traditional utility. Another example is the proposed exclusion of operational services (not business development or sales personnel) from being shared. In the context of the B.C. situation where much of the activities are regulated, there is little rationale for excluding sharing of operational (i.e. field) personnel. How would sharing of operating personnel in FEI's situation have a negative impact to FEI's ratepayers?

With the suggested broadly defined wording on sharing of services and personnel by Commission Staff, there likely would be few situations where FEI resources would be shared. This would not be in the interests of FEI and the ARBNNM ratepayers. FEI believes its proposed wording is adequate as the onus is on FEI to operate accordingly. Commission oversight currently exists to ensure this.

Commission Staff indicated that clarification of “confidential information” for the purpose of the Code of Conduct or rewording of it may be required. Staff noted that the reference to confidential information is also used elsewhere in the Code of Conduct. Staff commented that the Commission in the AES Inquiry decision recognized that in situations where there is higher risk to FEI ratepayers, greater separation is required. However, there may not be higher risk in all situations.

Commission Staff suggested the following wording:

Shared Services and Personnel

- a) As a rule, resource sharing will be limited to corporate services and should not include any operational services except possibly emergency services. Sharing of employees will not be allowed where the employee has access to confidential information, routinely participates in making decisions with respect to the provision of traditional utility services or how utility services are delivered, routinely deals with or has direct contact with customers of the utility or is routinely involved in planning or managing the business of the traditional utility; Where potential benefits to the [FortisBC Energy] and ARBNNM regulated ratepayers in sharing resources indicate that sharing of resources and personnel should extend beyond corporate services, the onus is on [FortisBC Energy] or its regulated affiliate to demonstrate that those benefits outweigh any potential harm to the ratepayers of the affected affiliates.
- b) Subject to (a) above, [FortisBC Energy] may provide shared services and personnel noted in section (c) below to ARBNNMs while ensuring that its ratepayers will not be negatively impacted by [FortisBC Energy]'s involvement. The costs of providing such services will be as agreed upon by both parties and be in accordance with the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs.
- c) ARBNNMs may contract for corporate services including senior management and operating personnel from [FortisBC Energy] using the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs, providing [FortisBC Energy] complies with Section 3 of this Code, Provision of Information by [FortisBC Energy], and no conflict of interest exists which will negatively impact ratepayers.
- d) In all cases where services and personnel are shared [FortisBC Energy] will ensure that adequate accounting records are maintained so that the Commission can ensure the appropriate allocation of costs between the entities sharing the services. Moreover, the accounting records of all of the affected affiliates related to the shared services and personnel will be available to the Commission when requested and in the form requested by the Commission.

Commission Staff commented that its suggested wording bring it back into alignment with the AES Inquiry Report (pages 25-26), as well as support for the principle in the Kelowna DES Decision (Order C-8-13). The original sentence in the FEI draft has been reworded to allow for additional resource sharing if it can be demonstrated to the Commission that it is net beneficial to ratepayers of both affiliates. Paragraph 'b)' has been revised to reflect the revision in 'a)'.

FAES suggested changing the reference to "parties" in section b) to "[FortisBC Energy] and the ARBNNM." This has been reflected in the FEI wording highlighted in **RED** above.

CEC expressed concern that the proposed detail wording by the Coalition for Open Competition is getting into micro-managing the business of FEI. This suggests anti-competitive practices.

COPE suggested the exclusions by the Coalition for Open Competition are not practical (i.e. restrictions regarding sharing of the first aid and washrooms, call centre support).

The **Coalition for Open Competition** commented their suggested wording is intended to operationalize (codify) things that “blur” the line. There is a “gulf between us” (i.e. between the Coalition’s position on this and FEI’s). The Coalition has no concerns about sharing of corporate accounting and IT. Their concerns are focused on sharing of sales development and regulatory personnel and senior management (i.e. VP, Doug Stout roles in FEI and FAES).

The proposed wording from the Coalition for Open Competition is as follows:

- a) This Code recognizes that, while there may be potential benefits to the [FortisBC Energy] and ARBNNM regulated ratepayers from sharing resources, the sharing of services and personnel should not result in anti-competitive practices or be harmful in any way to the functioning of competitive markets.

Comment from Coalition for Open Competition

The Code of Conduct primarily exists to protect against abuses by the shareholder and not to condone or ratify the value of shared services.

- b) [FortisBC Energy] may provide shared services and personnel noted in section (c) below to ARBNNMs while ensuring that its ratepayers will not be negatively impacted by [FortisBC Energy]’s involvement. The costs of providing such services will be as agreed upon by both parties and be in accordance with the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs. The exceptions to what FEI can share with [affiliates] are contained in Section 9 below.
- c) ARBNNMs may contract for corporate services including senior management and operating personnel from [FortisBC Energy] using the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs, providing [FortisBC Energy] complies with Section 3 of this Code, Provision of Information by [FortisBC Energy], and no conflict of interest exists which will negatively impact ratepayers.

Separation from Natural Gas Utility Operations

In order to ensure that FEI affiliates are not able to garner uncompetitive advantages in related regulated, or non-regulated, areas, FEI will endeavor to separate its natural gas utility operations from its affiliates in the following manners:

(a) Officers and Directors of the [affiliates] must not be officers or employees of FEI with the following limited exceptions:

- (i) The CEO of FEI,
- (ii) The CFO of FEI
- (iii) The Treasurer of FEI
- (iv) The Corporate Secretary of FEI
- (v) The Assistant Corporate Secretary of FEI

Comment from Coalition for Open Competition

Recognize that there is a need for common corporate oversight but it is not appropriate to have common management of both natural gas (pure monopoly) and thermal energy operations (non-monopoly).

(b) The following departments, business units or services cannot be shared with [affiliates]¹:

- (i) Energy Solutions Group (or equivalent)
- (ii) Marketing/Communications/External Relations
- (iii) Regulatory Affairs
- (iv) Customer Billing, with the exception whereby Customer Billing services are provide an on open basis with a common tariff to all users including FEI, [affiliates] and third parties.

Comment from Coalition for Open Competition

These departments are appropriately large, sophisticated operating units that are difficult and expensive to replicate in the competitive marketplace. They are in place by virtue of the need to support over 1.1 million natural gas and electric utility customer and are paid for by those regulated customers.

Affiliates should develop their own specialty business units if they require them and not rely on the natural gas utility for developing and maintaining such as strategic asset.

¹ ***“For new business activities, the challenge lies in determining the costs that should be borne entirely by the new business customer (or the utility shareholder). An approved Transfer Pricing Policy should ensure that costs are allocated on the basis of the higher of fully allocated cost or market pricing and an approved Code of Conduct should ensure that the sharing of operational and management services is appropriate.”*** AES Inquiry Decision, page 34, emphasis added.

(c) The office, shops, and places of work of FEI and the [affiliates] are not to be on a common site by January 1, 2015. The respective locations must not share the following attributes:

- (i) Mailing Addresses;
- (ii) Telephone numbers (including fax numbers);
- (iii) Switchboards;
- (iv) Mailrooms;
- (v) Ancillary space (such as cafeterias, meeting rooms, first aid rooms, washrooms, etc.).

Comment from Coalition for Open Competition

Concerned about accidental and informal sharing of information that is not possible to ensure that is contained by “confidentiality” provisions; in addition, it aids in the identification and separation of costs between FEI and its affiliates.

Corix provided the following revised wording:

This Code recognizes the potential benefits to the [FortisBC Energy] and ARBNNM regulated ratepayers in sharing resources.

- a) [FortisBC Energy] may provide shared services and personnel noted in section (c) below to ARBNNMs while ensuring that its ratepayers will not be negatively impacted by [FortisBC Energy]’s involvement. The costs of providing such services will conform to the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs.
- b) ARBNNMs may contract for corporate services including senior management but will not include any operational services other than for the provision of emergency services personnel [this revised wording consistent with the recommendations in the AES Inquiry Report] from [FortisBC Energy] using the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs, providing [FortisBC Energy] complies with Section 3 of this Code, Provision of Information by [FortisBC Energy], and no conflict of interest exists which will negatively impact ratepayers.
- c) ARBNNMs may contract for corporate services including senior management but will not include any operational services other than for the provision of emergency services personnel [this revised wording consistent with the recommendations in the AES Inquiry Report] from [FortisBC Energy] using the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs, providing [FortisBC Energy] complies with Section 3 of this Code, Provision of Information by [FortisBC Energy], and no conflict of interest exists which will negatively impact ratepayers.

Corix commented that FEI’s intention to share operating personnel is in direct contradiction of the Commission Panel’s recommendation.

3. Provision of Information by [FortisBC Energy Inc.] [UNDER DISCUSSION]

Customer information (aggregate or customer specific with written consent) should be made available to all Parties (Affiliated Regulated and Unregulated Businesses, separate classes of service, and competitors) on an equal basis.

[FortisBC Energy] will not provide to an ARBNNM any information that would inhibit the energy services market in a non-natural monopoly environment from functioning.

Customer specific information must be treated in accordance with the Personal Information Protection Act. If a customer requests their specific information be provided to a specific party, only that party may receive the information. If a customer agrees to a general release of their specific information, that information must be made available to all interested parties who request it and are willing to pay the price associated with the provision of the information, without discrimination as to access, timing, cost or content. Customer information will be provided at a reasonable price reflecting market circumstances and cover the cost of extracting and providing the information. All parties should pay the same price for the same or similar information.

[FortisBC Energy] may disclose to all interested parties that request it and are willing to pay the appropriate transfer price (see above), customer information that is aggregated or summarized in such a way that confidential information would not be ascertained by third parties.

Stakeholder Comments

FEI has reworded the above section incorporating the suggestion to include wording from page 37 of the AES Inquiry report, Principle 2 and suggestions at the April 24 workshop (see April 24 workshop minutes).

4. Preferential Treatment [ACCEPTED]

[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 ARBNNM. 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 ARBNNM.

5. Equitable Access to Services [ACCEPTED]

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.

Stakeholder Comments

Subject to Commission Staff confirming – this was subsequently confirmed - that the BCUC website is able to maintain a list of registered TES Service Providers (e.g. contact information, possible project names and types, i.e., Stream A or Stream B, etc)

6. Equitable Treatment of Demand-Side Management and Incentive Funds [Under Discussion]

[FortisBC Energy] will establish a mechanism for involving a neutral third party in Demand-Side Management or incentive funding, so that Utility ratepayer funded DSM or other incentive activities are directed fairly to the most effective proposals for meeting the objectives of the funded activities.

Stakeholder Comments

Commission Staff believes the suggested wording above referencing the Economic Efficiency Guidelines should remain in the Code of Conduct.

FEI notes that the suggested wording is not the same as that included in the AES Inquiry Report. On page 87, under Commission Determination,

“.... Accordingly, the FEU are directed to bring forward a proposal for mechanisms for approval and administration of funds by a neutral third party where the FEU may be involved in providing capital or services to a project receiving DSM or other incentive funds and/or there is a potential for FEU to benefit, either directly or indirectly, from that funding.”

The above wording directs FEU to bring forward a proposal and not necessarily to include it in the Code of Conduct. As such, FEI does not believe it is appropriate that the Code of Conduct include such wording. FEI also notes as per Commission directive in the AES proceeding, **FortisBC** has put forward a proposal around independent third party review of EEC funds for thermal energy projects generally, regardless of supplier, and as such, including this wording is inappropriate absent a Commission decision on FortisBC’s proposal.

7. Compliance and Complaints [UNDER DISCUSSION]

- a) The **Director of Finance and Planning** 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, with quarterly updates for employees who may be directly involved with ARBNNM activities.

- b) [FortisBC Energy] will monitor employee compliance with this Code by also conducting an annual compliance review, the results of which will be summarized in a report to be filed with the Commission within 60 days of the completion of this review.
- 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 Planning** and the Vice-President, Strategic Planning, Corporate Development and Regulatory, 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 receipt of the complaint.
- d) Where [FortisBC Energy] determines that the complaint is unfounded, the Company may apply to the Commission for reimbursement of the costs of the investigation from the third party initiating the complaint or where this is not possible, for inclusion of those costs in rates.

Stakeholder Comments

The reference to Director of Regulatory Affairs has been changed to Director of Finance and Planning.

Corix provided the following comments to section (d).

- d) [There is a significant power imbalance between the monopoly gas utility and a potential complainant, and this clause only serves to discourage what might be a legitimate complaint. If Fortis feels that a complaint is frivolous or otherwise unjustified it has the recourse to approach the Commission to discuss this. This clause should be deleted.]

Stakeholder Comments

FEI believes the wording it has proposed is appropriate and serves to discourage frivolous complaints while not discouraging potential complainants. The wording proposed by FEI is consistent with that included in the current approved Code of Conduct for NRBs which has been in place for a number of years. FEI is not aware of any situations in the past where a potential complainant was discouraged from lodging a complaint due to the nature of how the complaint process is defined.

The **Coalition for Open Competition** suggested the following additional wording.

- e) In the event that a third party disputes the results of an [FEI] investigation in relation to this Code of Conduct or Transfer Pricing Policy, the third party will have recourse to the Commission to arbitrate the dispute.

Comment from Coalition for Open Competition

The **Coalition for Open Competition** commented that the premise is that ultimately the Commission adjudicates what is appropriate. FEI is not the arbiter of its actions and behavior and the Code should clearly state this.

- f) Where a third party complaint is found to be valid, the Commission shall determine what penalties or remedies are appropriate consistent with its powers under the UCA.

Comment from Coalition for Open Competition

The **Coalition for Open Competition** commented that if it is the expectation of the parties that the Commission has the existing powers to administer penalties to the parties, the Code should state that this is the expectations.

FEI also does not believe it is necessary to include sections e and f as proposed by the Coalition for Open Competition. In the Scope section of the proposed Code of Conduct, the proposed wording indicates “The primary responsibility for administering this Code lies with [FortisBC Energy], although the Commission has jurisdiction over matters referred to in this Code.” and “The Code also provides that the Commission may review complaints in relation to this Code.” Section e is already covered by FEI’s proposed wording. With regards to the proposed section f, FEI’s view is that under the current UCA, the Commission has authority to impose administrative penalties in the event FEI violates a Commission rule or order. Including the suggested additional wording is not necessary.

Considerable discussion occurred regarding who should pay for the costs of the FEI’s compliance activities.

FAES indicated that there should be no cost to FAES’s ratepayers for FEI’s compliance with Code of Conduct activities.

COPE and BCPSO both commented that since competitors are the ones that benefit from the compliance monitoring activities, they should be paying for FEI’s Code of Conduct compliance costs. The compliance activities put constraints on FortisBC overall in its ability to compete in the TES marketplace, whereas FortisBC’s competitors can easily enter the marketplace. It is hard to understand there is no cost to the competitors.

Corix commented that it is fair that FEI ratepayers pay for the compliance activities as FEI ratepayers are the ones that benefit. It would be fundamentally wrong if TES competitors are charged for compliance activities.

The **Coalition for Open Competition** disagreed with the concept that competitors should pay to stop FEI from harming competition. FEI is the monopoly with access to captive resources paid by natural gas ratepayers and the onus is on FEI to behave responsibly. In some instances, it may be reasonable for the utility shareholder (or FAES shareholder) to fund costs rather than natural gas ratepayers.

8. Financing and Other Risks UNDER DISCUSSION

Unless approved by the Commission, [FortisBC Energy] will not undertake any financing or other financial assistance on behalf of an ARBNNM that exposes [FortisBC Energy] ratepayers to additional costs or risks, unless appropriate compensation is received by [FortisBC Energy] for such financing or other financial assistance, including compensation for additional cost or risk related to the addition of incremental debt to [FortisBC Energy] for a project carried out by the ARBNNM.

Stakeholder Comments

In addition to the wording proposed by FEI, **Commission Staff** provided the following suggested sections:

- b) The risk of unrecovered costs (including, but not limited to, startup, operating and capital costs) is to be borne by the Affiliated Regulated Business or Separate Class of Service or the shareholder. If costs related to the new business activity cannot be recovered from new business customers in a reasonable period of time (as approved by the Commission) these costs will be borne by the shareholder.
- c) All proposals for new business activities should be accompanied by a risk management plan. The risk management plan should address:
 - o The anticipated level of risk that would be faced by the traditional ratepayer, the new business ratepayer, and the shareholder; and
 - o How the incremental costs from these risks will be allocated among these groups.

Commission Staff reviewed the appropriateness of section c and indicates that it is extracted from the Guidelines found at page 35 of the AES Inquiry Report.

Regarding the proposed wording for (b) above, **FEI** does not believe it is appropriate to include in the Code of Conduct as the ability to recover costs would be dependent on a review of the specific circumstances at the time. As such, the general wording proposed by Commission Staff is unnecessary. Also, as discussed earlier in Code of Conduct Principles section, inclusion of the need for a Risk Management plan for new business activities is not appropriate for the Code of Conduct.

Commercial Energy Consumers Association (CEC) commented that section c just adds more costs to the process and that the issue may be better dealt with more generically at the FEI/FAES level.

The **Coalition for Open Competition** provided the following wording:

[Affiliates] will not receive financing or financial assistance from FEI at any time.

The Coalition for Open Competition commented that all funding of Affiliates can and should come from the parent compan(ies). There is simply no need for FEI to be involved in a financial transaction or risk transfer of this nature.

FEI notes that the proposed wording by the Coalition for Open Competition is inconsistent with that indicated in the AES Inquiry decision (page 33 bullet number two under Guidelines).

9. Use of Utility Name [ACCEPTED]

The use of the FortisBC by an ARBNNM operating in a non-natural monopoly environment is an acceptable business practice. The ARBNNM will exercise care in distinguishing between services provided by [FortisBC Energy] and services offered by the ARBNNM. **The name FortisBC is owned by Fortis Inc.**

Stakeholder Comments

As agreed, **FEI** has added the highlighted sentence to clarify ownership of FortisBC name.

10. Amendments [UNDER DISCUSSION]

In order to ensure that this Code remains workable and effective, the Company will review the provisions of this Code on an ongoing basis and as required by the Commission, but with a maximum of five years between reviews.

Amendments to this Code may be made from time to time as approved by the Commission, **and may result from a normal periodic review, from a request to the Commission by [FortisBC Energy], an ARBNNM, a customer or other stakeholder, or a review initiative by the Commission.**

Stakeholder Comments

FEI has no objections to the additional language proposed by Commission Staff.

FortisBC Energy Inc.

T R A N S F E R P R I C I N G P O L I C Y

For Provision of Utility Resources and Services to Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment (ARBNNM)

May 15, 2014

SCOPE

This policy addresses the pricing of resources and services provided by [FortisBC Energy Inc. (FortisBC Energy)] to Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment (ARBNNMs) providing regulated products and services.

[FortisBC Energy Inc.] will ensure that it receives adequate compensation for the resources and services provided, thereby protecting its ratepayers from subsidizing the activities of ARBNNMs.

The Transfer Pricing Policy for ARBNNMs will be used in conjunction with the [FortisBC Energy] Code of Conduct for Provision of Utility Resources and Services to Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment dated **May 15, 2014**. This Policy does not replace the existing Transfer Pricing Policy between [FortisBC Energy] and Non-Regulated businesses (NRBs).

Stakeholder Comments

Commission Staff provided the following revised wording:

This policy addresses the pricing of resources and services provided by [FortisBC Energy Inc. (FortisBC Energy)] to Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment (ARBNNMs) providing regulated products and services.

Allocation of costs will reflect appropriate compensation for any benefit derived by a new ARBNNM as a result of its affiliation with its parent or other businesses. This will include compensation for additional cost or risk related to the addition of incremental debt to the parent utility for the new products or services. [FortisBC Energy Inc.] will ensure that it receives appropriate compensation for the resources and services provided, in order to protect its ratepayers from subsidizing the activities of ARBNNMs, as required by the Code of Conduct for ARBNNMs and this Transfer Pricing Policy.

FortisBC Energy and ARBNNMs will maintain separate financial records and books of accounts and sufficient separation of business operations in order to ensure a level of transparency that enables an appropriate allocation of costs between FEI and ARBNNMs and where appropriate, between individual ARBNNMs.

The Transfer Pricing Policy for ARBNNMs will be used in conjunction with the [FortisBC Energy] Code of Conduct for Provision of Utility Resources and Services to Affiliated Regulated Businesses Operating

in a Non-Natural Monopoly Environment dated **May 15, 2014**. This Policy does not replace the existing Transfer Pricing Policy between [FortisBC Energy] and Non-Regulated businesses (NRBs).

Commission Staff comments:

The Code of Conduct should acknowledge that there are other directions and documents that may have a bearing on affiliate transactions.

Allocation of Costs - The inserted sentence reflects the wording in the AES Inquiry Report (page 33) as to an overarching principle for allocation of costs. Staff has made some wording changes to reflect the narrower focus of a Policy specifically for ARBNNMs.

Compensation – The word ‘adequate’ is an undefined term. It has been replaced with ‘appropriate’ and that term has been referenced to other sections of the Code and TPP. Further, the wording has been changed from “thereby protecting ratepayers” to “in order to protect ratepayers” changing the phrase from a conclusion to a reason, which seems consistent with the purpose of a Transfer Pricing Policy.

The **Coalition for Open Competition** suggested adding the following sentence:

This policy includes the transfer of all FEI resources and services to all “non-regulated” projects conducted by affiliates in the TES competitive market.

The Coalition for Open Competition commented that they have the same concern with respect to Code of Conduct. Non-regulated projects could be for projects that are exempt from regulation due to the ownership of the project (eg. owned by municipalities) or due to the TES Regulatory Framework Decision (G-231-13A). Projects below the “Micro TES Threshold” of \$500,000 thereby exempting it from regulation and the lack of rate regulation for Stream “A” TES projects (below \$15 million in capital cost) imply that these transfers could transfer economic rent from FEI ratepayers to FAES shareholder.

FEI suggests a revision to the Commission Staff wording as outlined below:

FortisBC Energy and ARBNNMs will maintain separate financial records and books of accounts ~~and sufficient separation of business operations~~ in order to ensure a level of transparency that enables an appropriate allocation of costs between FEI and ARBNNMs ~~and where appropriate, between individual ARBNNMs.~~

The words “sufficient separation of business operations” have been deleted as they do not fit within the purpose of Transfer Pricing Policy. The words “and where appropriate, between individual ARBNNMs” have been deleted as the Transfer Pricing Policy under review is between FEI and ARBNNM, and not between ARBNNMs.

FEI does not believe incorporating the suggestion by the Coalition for Open Competition is appropriate as the Code of Conduct is governing transactions between FEI and regulated affiliates operating in a non-natural monopoly and not “non-regulated” projects in a competitive market.

DEFINITIONS

[FortisBC Energy Inc.] *May be abbreviated as follows: [FortisBC Energy], the Utility, or the Company, and may also include employees of the Company.*

Commission *British Columbia Utilities Commission.*

Development *The translation of research findings or other knowledge into a plan or design for new or substantially improved materials, devices, products, processes, systems or services prior to the commencement of commercial production or use.*

Guidelines *Principles and Guidelines from the Retail Markets Downstream of the Utility Meter Guidelines published by the British Columbia Utilities Commission in April, 1997 and the Commission's Report in the Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives published in December 27, 2012. This definition does not negate the applicability of other relevant orders or directions such as Commission directions in proceedings regarding affiliates or Special Directions issued by the Province of British Columbia to the Commission on matters related to specific [FortisBC] business activities.*

Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment (ARBNNM) *An affiliate of the Utility regulated by the Commission offering regulated products and services in a non-natural monopoly environment.*

Research *Planned investigation undertaken for the purpose and expectation of gaining new scientific or technical knowledge and understanding. Such investigation may or may not be directed towards a specific practical aim or commercial application.*

RMDM *Acronym for "Retail Markets Downstream of the Utility Meter", which may include any utility or energy related activity at or downstream of the utility meter.*

Transfer Pricing to Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment *The price established for the provision of Utility resources and services or the transfer of Utility assets to an ARBNNM. Transfer pricing for any Utility resource or service will be determined by applying the appropriate [FortisBC Energy] Transfer Pricing Policy as agreed upon by [FortisBC Energy] and the ARBNNM and approved by the Commission.*

Fair Market Value *"Fair Market Value" means the price reached in an open and unrestricted market between informed and prudent parties, acting at arms*

length and under no compulsion to act.

Stakeholder Comments

The words highlighted in **RED** above indicate the changes suggested by Commission Staff.

Commission Staff provided the following comments:

Definitions of Development and Research – As noted below, in the view of staff, inclusion of the section 3 in the 1997 Transfer Pricing Policy – Costs Relating to the Transfer of Activities from the Utility to the NRB, should also be included in the Policy for ARBNNMs, with the appropriate wording changes to reflect that it reflects to ARBNNMs. The definitions of Development and Research in the 1997 Transfer Pricing Policy relate to that section so are also included in these definitions.

Definition of Transfer Pricing to ARBNNMs – The phrase “or the transfer of utility assets” was deleted from the previous version. Commission Staff recognize there is a separate sentence under “2. Determining Costs” below dealing with that issue but think there is value in leaving the phrase here in the event that the amount of assets transferred is small and not covered in the application.

Definition of “Fair Market Value” – As noted below, Commission staff noted that the AES Inquiry Report indicated that the Transfer Price should include the provision of using a market price rather than the cost in certain circumstances. Given that concerns have been raised about how one determines fair market value or price, the inclusion of the definition of Fair Market Value from the Alberta Code of Conduct would be helpful.

Regarding the phrase “or the transfer of utility assets”, **FEI** notes an inconsistency between the definition of Transfer Pricing to ARBNNMs as outlined in the Transfer Pricing Policy and that included in the Code of Conduct. For consistency, FEI will assume the definition of Transfer Pricing to ARBNNMs as outlined in the Code of Conduct will also apply to the Transfer Pricing policy.

FAES provided the additional wording “as agreed upon by [FortisBC Energy] and the ARBNNM and” as highlighted in **BLUE** above, amending the definition of Transfer Pricing to Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment.

FEI has no objections with the remaining proposed wording from Commission Staff..

POLICY

Provision of services from [FortisBC Energy] to ARBNNMs must be in accordance with the Commission approved Code of Conduct and Transfer Pricing Policy for ARBNNMs. The approved Code of Conduct and Transfer Pricing Policy for ARBNNMs addresses the need for a transparent pricing mechanism which is fair to both [FortisBC Energy] and ARBNNM's ratepayers.

Transfer Prices charged to ARBNNMs by [FortisBC Energy] ~~will~~ **are intended to ensure that** [FortisBC Energy] ratepayers are not adversely affected and will be established using the following pricing rules.

Stakeholder comments

Commission Staff suggest to delete the sentence above starting with “The approved Code of Conduct...”. The rationale for the deletion is that it adds nothings of value to the Policy, but implies that the existence of an approved Code and Policy does address the need for a transparent and fair pricing mechanism. In fact, the Code and the Policy establish the need for a fair and transparent pricing mechanism and the Transfer Pricing Policy attempts to outline the minimum criteria for such a pricing mechanism. The mechanics of how the Code and Policy are implemented will determine whether the need for a fair and transparent mechanism has been addressed.

Consistent with the guiding principles for the Code of Conduct, **FEI** believes there is value in stating the intent of the Code and the Transfer Pricing Policy which is to provide a transparent pricing mechanism that is fair to both [FortisBC Energy] and ARBNM’s ratepayers. FEI’s proposed wording for the Code and Transfer Pricing Policy is consistent with the stated intent.

Commission Staff also suggest adding the sentence:

“All sharing of costs, services and information between affiliated regulated utilities must be fully disclosed to the Commission”.

Commission Staff commented that the sentence was taken from the AES Inquiry Report (p. 33).

While the sentence is from the AES Inquiry Report, FEI seeks clarification what is meant by the “information between affiliated regulated utilities”? Is it in reference to customer specific information which the regulated affiliate has obtained under the rules for Provision of Information in the Code of Conduct? FEI has no objections to disclosure of sharing of services and the costs between itself and an ARBNM to the Commission, as it currently does.

1. Pricing Rules

- i. If an applicable [FortisBC Energy] tariff rate exists, the Transfer Price will be set according to the tariff.
- ii. Where no tariff rate exists, the Transfer Price will be set at no greater than full cost. With Commission approval, the cost may be set at below full cost (see Section 2 below).
- iii. In situations where it can be shown that an alternative Transfer Price will provide greater benefits to the ratepayer, the Utility may apply to the Commission for special pricing consideration.

Stakeholder Comments

FEI proposed the use “no greater than full cost” rather than higher of market price or fully allocated cost in recognition of the need to protect the interests of both FEI and FAES’ ratepayers and to prevent cross-subsidization from occurring. For practical purposes, given FEI’s market-based compensation policy, FEI’s labour services and costs are the same as their market price. Refer to Code of Conduct Principles section discussion.

Commission Staff do not see that “no greater than full cost” is for practical purposes the same as “the higher of market price or the fully allocated cost.” The former phrase means ‘no higher than’ and the latter phrase translates to ‘no lower than’. The two are not equivalent, and the AES Inquiry Report states

[FortisBC Energy] Transfer Pricing Policy for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment

that the transfer price shall be set at “the higher of market price or the fully allocated cost”, which is why staff have inserted that phrase into the draft TPP. The revised sentence is as follows:

Where no tariff exists, the Transfer Price will be set at the higher of market price or the fully allocated cost.

The last sentence of paragraph ii has been deleted and replaced by a new sentence in paragraph iii. The new sentence is taken from the 1997 Code of Conduct and Transfer Pricing Policy, which includes the requirement that a variance must show benefits to the ratepayer.

The **Coalition for Open Competition** suggested revisions to part ii of pricing rules.

- ii. Where no tariff rate exists, the Transfer Price will be set at no less than the greater of full cost or market pricing. With Commission approval, the cost may be set at below full cost (see Section 2 below).

The Coalition for Open Competition provided comment to refer to its discussion for this issue in Code of Conduct regarding basis for “no greater than full cost”.

Corix amended FEI’s proposed wording to “set at the higher of market price or the fully allocated cost” and referenced the AES decision.

2. Determining Costs

For the purposes of this policy, costs for the resources or services being provided by [FortisBC Energy] to an ARBNNM will be set at no greater than [FortisBC Energy]’s full cost described below. The definition of full costs will depend on the type of service or resource being provided.

For the most part, the types of resources and services that can be provided to ARBNNMs by [FortisBC Energy] are human resources (labour) and associated equipment and facilities. The example in Appendix A summarizes how full costs are determined for the different types of services described below in Section 2.1. The determination of full costs, specifically the cost loadings, is based on services to be provided in accordance with the [FortisBC Energy] approved Code of Conduct with respect to ARBNNM of [FortisBC Energy] dated **May 15, 2014**.

Costs will include both direct costs and a fair allocation of the parent utility costs required to provide the product or service, except where such treatment is precluded by legislation, regulation or special direction.

If other [FortisBC Energy] resources or services are used by an ARBNNM that are not described by this policy or if there are unusual circumstances that warrant a separate review, then [FortisBC Energy] will make an application to the Commission on a case-by-case basis. An example of this would be the determination of costs for a [FortisBC Energy] asset permanently transferred to an ARBNNM.

Stakeholder comments

Commission Staff amended the opening paragraph to as follows:

[FortisBC Energy] Transfer Pricing Policy for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment

For the purposes of this policy, the fully allocated costs for the resources or services being provided by [FortisBC Energy] to an ARBNNM will be described below. The definition of full costs will depend on the type of service or resource being provided. In addition, Commission Staff have added a sentence to make it clear that costs include both direct costs and a fair allocation of parent utility costs. This reflects the wording at page 33 of the AES Inquiry Report.

Commission Staff believe that the transfer of assets can be handled in most cases by the original wording in the definition of “Transfer Pricing...”. The rewording in the last sentence of this section attempts to identify the conditions when a separate review of a transaction could occur.

Corix provided amendments to include that the costs be set at the higher of market price or [FortisBC Energy]’s fully allocated cost. Additionally, wording was added “but will not include operational services, with the possible exception of emergency services”.

FEI does not believe the additional wording suggested by Corix is necessary and appropriate. As discussed in the proposed DRAFT FEI Code of Conduct for ARBNNM dated May 15, 2014, FEI believes that other jurisdictions’ Code of Conduct and Transfer Pricing Policy have limited applicability to B.C. For example, Alberta’s Code of Conduct where the words “but will not include operational services, with the possible exception of emergency services” came from, was developed for an operating environment consisting both of regulated and non-regulated activities where it may make sense to exclude sharing of operational services and personnel. However, the situation is different for FortisBC where much of its operations in B.C. are regulated including FAES/TES.

2.1 Type of Service

There are three types of services: Specific Committed Service, As Required Service and Designated Subsidiary/Affiliate Service. It is important that the type of service is specified before the commencement of any service. This specification is to ensure that the correct cost loadings are applied to any Transfer Price.

i. Specific Committed Service

Specific Committed Service is work that is contracted for and billed regardless of whether or not work is actually performed. Typically, this work is on-going or on a continuing basis (such as regulatory) in support of ARBNNM activities. The receiving organization (i.e. the ARBNNM) is, in effect, requiring that the providing organization’s department (i.e. [FortisBC Energy]) maintain sufficient staffing levels throughout the year in order to provide this service. The receiving organization must pay for the Specific Committed Service even if the service provided is less than originally contracted.

It is important that the description and scope of the service to be provided be defined before the commencement of such a service, including an indication whether the service is performed at the employee’s normal place of work (“on-site”) or at the ARBNNM’s (“off-site”). A request for Specific Committed Service may be raised or terminated at any time throughout the year. Termination of a Specific Committed Service as a result of an activity change is subject to a sixty (60) day notice period.

At the end of the fiscal year, Specific Committed Services which were not provided (unless the Utility was unable to meet its commitments) will be offset against services

used in excess of those committed. Any excess service on a total pooled basis will be billed, but any deficiency will not be refunded. If there is a shortfall in the level of service provided by [FortisBC Energy] a reasonable refund may be made. In the normal course of business, the time estimates for Specific Committed Service are reviewed annually.

To determine the full cost of Specific Committed Service, the following loadings are applied to direct labour costs: concessions (~~i.e. paid time off~~) loading, benefits loading and general overhead loading. Also facility and/or equipment charges are applied if applicable. Appendix A, Column 1 shows an example of determining full cost for Specific Committed Service, both “on-site” and “off-site”.

~~With Commission approval, the general overhead loading and/or facility charges may be excluded resulting in charges at below full cost.~~

Stakeholder comments

Commission Staff suggested deleting the parenthetical phrase (i.e. paid time off) as it seems unnecessarily limiting. Also the last sentence has been deleted as it is covered by the addition of ‘1. Pricing Rules, sentence ‘iii’.

FAES suggested adding wording to paragraphs 2 and 3 to provide additional clarity.

It is important that the description ~~and~~, scope ~~and~~ quality of the service to be provided be defined ~~and agreed upon by both [FortisBC Energy] and the ARBNNM~~ before the commencement of such a service, including an indication whether the service is performed at the employee’s normal place of work (“on-site”) or at the ARBNNM’s (“off-site”). A request for Specific Committed Service may be raised or terminated ~~by the ARBNNM~~ at any time throughout the year. Termination of a Specific Committed Service as a result of an activity change is subject to a sixty (60) day notice period.

At the end of the fiscal year, Specific Committed Services which were not provided (unless the Utility was unable to meet its commitments) will be offset against services used in excess of those committed. Any excess service on a total pooled basis will be billed, but any deficiency will not be refunded. If there is a shortfall in the level ~~or quality~~ of service provided by [FortisBC Energy] a reasonable refund ~~by [FortisBC Energy] or termination of service by the ARBNNM~~ may be made. In the normal course of business, the time estimates for Specific Committed Service are reviewed ~~and agreed upon by both [FortisBC Energy] and the ARBNNM~~ annually.

FEI has no objections to the proposed changes by Commission Staff and FAES.

ii. **As Required Service**

As Required Service is work that is not specifically committed to by the receiving organization. The providing organization charges the cost of the actual time incurred to perform the work to the receiving organization. Typically, this is work that is not budgeted in advance.

As Required Service must be specified to be either for an extended term (greater or equal to three months) or short term (less than three months) period prior to the commencement

of the work. In addition, it must be identified whether the individual providing the services will work at his or her normal place of work (“on-site”) or at the ARBNNM’s (“off-site”).

To determine the full cost of As Required Service, the following loadings are applied to direct labour costs: concessions (~~i.e. paid time off~~) loading, benefits loading, general overhead loading, supervision loading and an availability charge loading. Also facility and/or equipment charges are made if applicable. Appendix A, Column 2 shows an example of determining full cost for As Required Service.

In certain situations, [FortisBC Energy] will need to retain the immediate right to recall the employee being contracted to the ARBNNM for an As Required Service. In these situations, the availability charge will be waived. Prior notification to the Commission is required to waive the availability charge for As Required Service.

~~With Commission approval, the general overhead loading, supervision loading, availability charge loading and/or facility charges may be excluded resulting in charges at below full cost.~~

Stakeholder comments

Commission Staff notes that as in the section Specific Committed Service, the parenthetical phrase (i.e. paid time off) has been deleted, as it seems unnecessarily limiting. Similarly, the last sentence has been deleted as it is covered by the addition of ‘1. Pricing Rules, sentence ‘iii’.

The sentence beginning “In certain situations...,” is taken from the 1997 Transfer Pricing Policy. It is unclear why Fortis deleted it from this version, and staff believe it add additional clarity to the section.

FEI has no objections to the changes proposed by Commission Staff.

FAES commented that the sentence “Typically, this is work that is not budgeted in advance.” is not required. FAES also commented on the following section indicating that it is not sure that these rules are necessary and manageable. FAES understands that if the FEI resource is not available to provide the service, FAES would procure the service elsewhere.

As Required Service must be specified to be either for an extended term (greater or equal to three months) or short term (less than three months) period prior to the commencement of the work. In addition, it must be identified whether the individual providing the services will work at his or her normal place of work (“on-site”) or at the ARBNNM’s (“off-site”).

FEI clarifies the intent of the above wording is to allow it to plan appropriately for any short term assignments that an ARBNNM may have. By providing clarity on the service requested including the expected duration, an ARBNNM can help FEI plan accordingly and minimize disruption.

iii. **Designated Subsidiary/Affiliate Service**

A Designated Subsidiary/Affiliate is a related company that is designated by [FortisBC Energy] and approved by the Commission to receive reduced loadings in the Transfer Price. The designation relates to the additional benefits that the related company

provides to [FortisBC Energy]’s customers, employees or to the economic development of the Province of British Columbia.

A Designated Subsidiary/Affiliate receives services on the same basis as the As Required Service described above. To determine the full cost of Designated Subsidiary/Affiliate Service, the following loadings are applied to direct labour costs: concessions (~~i.e. paid time off~~) loading, benefits loading and a general overhead loading. Appendix A, Column 3 shows an example of determining full cost for A Designated Subsidiary/Affiliate Service.

The Commission may approve a subsidiary or affiliate with this status but exclude specific activities or projects of that subsidiary (e.g. projects taking place in certain geographic locations). Similarly, certain work to be performed for an ARBNNM relating to a specific service, project or product may be designated by [FortisBC Energy] and approved by the Commission to receive reduced loadings.

Stakeholder comments

Commission Staff suggests deleted the words “(i.e. paid time off).”

3. Cost Relating to the Transfer of Activities from the Utility to an ARBNNM

3.1 Transfer Costs

Activities initially undertaken within the regulated Utility may, from time to time, be transferred to an ARBNNM with Commission approval. Costs associated with transferring an activity to an ARBNNM, and the start-up of ARBNNM activities, shall be borne by the ARBNNM. To the extent that these activities involve Utility resources during the transfer, the ARBNNM shall reimburse the Utility using the appropriate pricing rules as defined in this Transfer Pricing Policy. Costs relating to the termination of an activity within the Utility shall be borne by the Utility.

3.2 Research Costs

As research is regarded as a continuing activity required to maintain the Utility’s business and its effectiveness, such expenses shall be borne by the Utility. However, where it is evident that certain research activities are clearly directed towards specific pursuits related to an ARBNNM, the Utility will ensure it is compensated by the ARBNNM according to the pricing rules defined in this Transfer Pricing Policy, net of any quantifiable benefits received by the Utility.

3.3 Development Costs

Development costs for new products and services transferred to an ARBNNM will be tracked and charged to the ARBNNM according to the pricing rules defined in this Transfer Pricing Policy, net of any quantifiable benefits received by the Utility.

Stakeholder comments

In the view of **Commission Staff**, unless there is some good reason to exclude it, inclusion of the section 3 in the 1997 Transfer Pricing Policy – “Costs Relating to the Transfer of the Activities from the Utility to the NRB”- should also be included in the Policy for ARBNNMs, with the appropriate wording changes to reflect that it refers to ARBNNMs.

FEI has no objections to the proposed wording.

4. Cost Collection Procedures

4.1 Internal Orders

[FortisBC Energy] will be responsible for setting up the appropriate internal orders, documenting the internal order numbers and ensuring that the appropriate individuals charge time to them. The providing organization’s accounting group (typically [FortisBC Energy]’s Financial Accounting Group) will be responsible for maintaining the internal orders and collecting the appropriate charges.

4.2 Time Sheets

The individuals performing the service must report all time spent on that service by coding their time to the appropriate internal order numbers. This is to occur whether the type of service is Specific Committed, As Required or Designated Subsidiary/Affiliate Service. The ARBNNM may also review the validity of these charges.

Stakeholder comments

Commission Staff suggests adding a sentence that was in the 1997 Policy and that read “Time sheets are to be sent monthly to the immediate supervisor or [FortisBC Energy]’s Payroll Department” was omitted from this version; staff have added it again. In staff’s view, the statement should go further and clarify how long the time records should be kept and available for review if required.

FEI does not believe the proposed wording is required in the Transfer Pricing Policy. Employees are already required to submit timesheets for processing by Payroll. Additionally, FEI has a policy requiring timesheets be kept for a seven year period.

The **Coalition for Open Competition** suggested providing the following additional wording to the Time Sheets section.

Any FEI employee that spends time on affiliate business must account for 100% of their time, by company, including FEI activities in order to minimize the bias of omission in reporting time spent on non-FEI activities.

The Coalition for Open Competition comment that ‘Exception Reporting’ is not adequate as it may lead to under-reporting of time on affiliate work.

FEI believes its current approach of allocating costs based on timesheet is appropriate and well established and leads to accurate and representative costs. FEI’s timesheet based allocation approach has been used successfully for a number of years. The system is designed to capture the necessary input from employees who are best able to assess where their time has been spent.

Additionally, the existing timesheet approach and importance of costing information is well understood by its employees. FEI does not believe there is any bias of omission in reporting of time spent on non-FEI activities.

4.3 Invoicing

The ARBNNM will be invoiced for the contracted amount in respect of Specific Committed Service and for the appropriate time based on the actual payroll level in respect of As Required Service or Designated/Affiliate Service (subject to confidentiality of salary information) with the applicable loadings applied.

The methodology for determining a salary level is on the basis of the average of the respective pay grades or job groups for the employees involved.

Stakeholder comments

The **Coalition for Open Competition** suggested the additional following wording:

4.4 Commission to be Apprised

The Commission is to be apprised of all Invoices on an Annual Basis (or more frequently) that details are cost allocations from FEI to affiliates. In addition, the Commission is to receive any Internal Audit Reports on the review of transfer costs as between FEI and affiliates.

FEI does not believe the additional wording is necessary as it is addressed in section 7 Compliance and Complaints of the Code of Conduct. In section 7, FEI has indicated that it will be conducting an annual compliance review with the results filed with the Commission annually. Regarding disclosure of services and the costs between FEI and an ARBNNM, this has been discussed in the Policy section previously.

FAES suggested the following wording be added at the end of this section:

The invoice will include the number of hours and corresponding activities so that the ARBNNM will have the opportunity to review and agree with the validity of the charges.

FEI suggests the proposed sentence be limited to “The invoice will include the number of hours and corresponding activities.” It is unnecessary to include reference to “opportunity to review and agree with the validity of the charges” as that is what would occur, regardless of whether FAES was dealing with FEI or another service provider.

5. Review of Transfer Pricing Policy

The Transfer Pricing Policy will be reviewed on an annual basis as part of the Code of Conduct compliance review. However, [FortisBC Energy] may make application to the Commission for approval of changes to the policy including the pricing rules and the formula for determining full costs as and when required.

Appendix “A”

Illustrative Example of Determining Full Cost for the Three Types of Service

(For an employee at an annual salary of \$85,000 and 59% benefits loading)

(Different charge-out rates are used for different positions)

Column	1		2			3
	Specific Committed Service		As Required Service			Designated Subsidiary / Affiliate
	Off-Site Full-time	On-Site Full-time	On-Site Short Term	Off-Site Short Term	Off Site Extended	
BASE PAY PER DAY	\$327.00	\$327.00	\$327.00	\$327.00	\$327.00	\$327.00
PLUS CONCESSIONS and BENEFITS (90%)	\$295.00	\$295.00	\$295.00	\$295.00	\$295.00	\$295.00
LOADED LABOUR PER DAY	\$622.00	\$622.00	\$622.00	\$622.00	\$622.00	\$622.00
GENERAL OVERHEAD	5%	10%	10%	10%	5%	5%
SUPERVISION	N/A	Direct Charge	20%	N/A	N/A	Direct Charge
AVAILABILITY CHARGE	N/A	N/A	20%	20%	20%	N/A
FACILITIES CHARGE (If Applicable)	N/A	\$100.00	\$100.00	\$100.00	N/A	N/A
EQUIPMENT CHARGE (If Applicable)	Direct Charge	Direct Charge	Direct Charge	Direct Charge	Direct Charge	N/A
TOTAL FULL COSTS PER DAY	\$653.00	\$784.00	\$1,033.00	\$909.00	\$778.00	\$653.00
Cost Ratio to Base Pay per day	2.00	2.40	3.16	2.78	2.38	2.00
Cost Ratio to Loaded Labour per day	1.05	1.26	1.66	1.46	1.25	1.05

Appendix B2

**FEI PROPOSED CODE OF CONDUCT AND
TRANSFER PRICING POLICY,
MAY 15, 2014
COMMISSION STAFF COMMENTS**

**COMMISSION STAFF COMMENTS ON THE
UPDATED PROPOSED FEI COC AND TPP**

1.0 Final version of Minutes of Apr 24 Minutes

The final version of FEI's April 24, 2014 Workshop Minutes adequately incorporates the previous comments from staff. Staff have no further revisions to suggest.

2.0 Transfer Pricing Policy

2.1 Scope

- Staff had suggested a major revision/addition to the second paragraph of the scope section and the addition of a third paragraph. FEI suggests a revision to the wording of the second paragraph – i.e.,
FortisBC Energy and ARBNNMs will maintain separate financial records and books of accounts ~~and sufficient separation of business operations~~ in order to ensure a level of transparency that enables an appropriate allocation of costs between FEI and ARBNNMs ~~and where appropriate, between individual ARBNNMs.~~

Staff believe continue to believe that the first deleted phrase should remain in, or should be included in the CoC. Staff accept the point between 'FEI and ARBNNMs and accept the deletion as long as any transfers between ARBNNMs individually and collectively are covered under other cost allocation guidelines approved by the Commission and are transparent.

2.2 Definitions

- It appears that FEI has agreed to the staff suggestions.
- Staff find the wording addition proposed by FAES a little ambiguous. Is it intended to mean that what has been approved by the Commission is the TPP, or that also the agreement between FEI and the ARBNNM is also to be approved by the Commission? As long as, operationally, it is clear how FEI has interpreted the TPP, and what pricing principle has been adopted for the transaction, and that it is consistent with the TPP approved by the Commission, staff accept the change.

2.3 Policy

- Staff continue to believe that the following sentence adds nothing useful to the TPP, and that it should be deleted. In the view of staff, the assertion can't be known to be true until the TPP has been put into operation and tested.
"The approved Code of Conduct and Transfer Pricing Policy for ARBNNMs addresses the need for a transparent pricing mechanism which is fair to both [FortisBC Energy] and ARBNNM's ratepayers."
- Staff had suggested the inclusion of the following sentence, noting that it was a direction from the AES Inquiry Report (p.33):
 "All sharing of costs, services and information between affiliated regulated utilities must be fully disclosed to the Commission".
 FEI has not included it in the proposed TPP, saying that it seeks further clarification about what information is to be disclosed, although it has no objections to disclosure of sharing of services and the costs between itself and an ARBNNM. Commission staff note that the AES Inquiry Report discusses information sharing in more detail at pages 36-38. Commission staff also note that information-sharing, and the type of information shared between FEI and FAES were issues in the 2012-2013 RRA.

2.3.1 Pricing Rules

- FEI and Commission staff continue to differ on whether the TPP should be set at "no greater than full cost" (FEI) or "higher of market price or the fully allocated cost" (staff) which is wording taken from the AES inquiry Report.

2.3.2 Determining Costs

- For clarity sake, the revised sentence suggested by staff has gained a small typo in the transcription (p. 7). It should instead read: "For the purposes of this policy, the fully allocated costs for the resources or services being provided by [FortisBC Energy] to an ARBNNM will be as described below." (emphasis added)
- It appears that FEI has adopted the edits suggested by Commission staff in the sections related to Types of Service. Staff find the changes as suggested by FAES to those sections also acceptable.

2.3.3 Cost Relating to the Transfer of Activities from the Utility to an ARBNNM

- This section adopts additions suggested by staff.

2.3.4 Cost Collection Procedures

- Time Sheets:
FEI has not adopted the staff suggestion arguing that it is unnecessary in the TPP. Staff continue to find that filling out timesheets for purposes of payroll requirements is not the same as filling out timesheet for purposes of cost allocation. Staff have reservations about FEI's position that its current approach of allocating costs based on timesheet leads to accurate and representative costs. Staff agree with the position taken up by the Coalition for Open Competition that 'Exception Reporting' is not adequate for proper cost allocation.
- Invoicing

FEI has not referenced the suggested revision by staff, but staff accept FEI's explanation that its internal systems cannot provide the exact wage grade of specific employees for the purposes of billing to ARBNMMs, and thus has to use the average wage grade.

2.3.5 Appendix A

- As suggested by staff, FEI has expanded the format of App A to match that used in the 1997 TPP.

General Comments

Given that this TPP will apply to FEI's relationship with ARBNMMs, staff believe that a Preamble to the TPP will serve a useful purpose in introducing : (i) that there is a companion TPP for FEI's relationship with NRBs that deals with transfers between FEI and non-regulated utilities; Iii) FAES operates both regulated projects and non-regulated projects and therefore a higher degree of transparency is expected in order to understand which TPP is applied; and (iii) the background for different treatment between ARBNMMs and NRBs, for example, in the area of operational services.

3.0 Code of Conduct

3.1 Scope

- FEI has adopted a number of the Commission staff suggestions, with a few revisions and one omission. Generally, the main thrust of the staff comments is included, and with one exception, find the FEI revisions acceptable.
- FEI has included one sentence ["[FortisBC Energy] recognizes that the AES Inquiry Report established principles and guidelines regarding the type of business structure..."], but in the discussion appears to argue that it is not appropriate. Staff

assume that FEI has incorporated it into the CoC, in spite of its concerns, and staff support that inclusion.

- The draft CoC said that, when there are circumstances leading to issues at variance with this Code, Commission approval would be required. Staff suggested adding a sentence that said: *"In such a circumstance, the onus will be on [FortisBC Energy], the affected affiliate or both, to apply to the Commission justifying the variance."*

FEI proposes amending that to: *"...issues are at variance with this Code and if the variance results in costs exceeding benefits received by the ratepayers of [FortisBC Energy], [FortisBC Energy] will be required to seek Commission approval."*

Staff do not support the FEI amendment; the sentence suggested by staff was concerned with where the onus lies to justify a variance. The FEI amendment adds a new restriction that the variance need only be justified if the variance results in costs exceeding benefits received by the ratepayers. In the view of staff this could be interpreted to mean that in a situation where there were net benefits to ratepayers, even though the benefits were less than they would receive if the CoC and TPP were followed, no variance would be required. For example in the event that less than the fully allocated cost was charged for a service, if there was a net benefit (e.g., incremental cost plus a small amount) no approval for a variance would be required.)

3.2 Definitions

- FEI has adopted the addition suggested by Commission staff. This section is acceptable.

3.3 Principles

- Staff had suggested an additional principle (i) that dealt with the characteristics under which it would be most appropriate to structure a new business activity as an Affiliated Regulated Business. That principle has not been incorporated by FEI, because FEI sees the principle as redundant and inappropriate, in that the business structure is something that will have been decided before the CoC takes place. FEI submits that when it decides to venture into a new line of business it will likely require commission approval such as through a CPCN or for rates.

Staff's suggestion was based on the findings of the AES Inquiry that directed FEI towards a greater degree of separation for its competitive utility businesses. A greater degree of separation means closer scrutiny of the appropriateness of co-mingling of costs between different business activities. Staff accept the FEI point, but are concerned that it holds only because of the narrowness of the CoC and TPP (it applies only to transactions between FEI and ARBNMNs). Further staff comments are provided under the General Comments section below.

- FEI has made two small edits regarding release of customer specific information. The first, although potentially redundant, does no harm. The second may be intended to clarify, but staff are not sure that it does; for instance for large aggregations of customer information. (E.g., for an entire customer class or sector) how would a party know that it was available to request it?)
- In addition, the Coalition for Open Competition suggested several additions to the principles. Staff agree with FEI regarding impacts on non-monopoly markets, financing and the TPP. Staff agree with the Coalition regarding review and enforcement, and cost causality.

3.4 Shared Services and Personnel

- Views on this section diverge widely. Staff suggested two major revisions to align the section more closely with previous Commission statements, and FEI has adopted neither.
- The Coalition for Open Competition and Corix each suggested edits and FEI has adopted neither.
- Staff believe that this section requires further work and support its own earlier suggested revisions or a combination of those coupled with parts of the revisions suggested by the Coalition and Corix.
- Staff further believe that its suggested paragraph (d) should be adopted to ensure that staff in proceedings such as revenue requirements proceedings have adequate data to ensure that costs attributed to FEI ratepayers are costs incurred by FEI ratepayers.

3.5 Sharing of Information

- The section has been rearranged but appears to be generally consistent with the staff suggestions.
- One sentence has been removed. It stated: “This Code precludes [FortisBC Energy] from releasing confidential customer specific information without the written consent of that customer.” The reason for its deletion is not clear, although it may be that by stating in the previous sentence that customer specific information must be treated accordance with the *Personal Information Protection Act*, that the sentence was redundant.

3.6 Equitable Treatment of Demand-Side Management and Incentive Funds

- Staff had suggested wording regarding a mechanism for equitably distributing DSM and incentive funding. FEI rejects that proposal and says that it would be inappropriate to include it until the Commission has made a decision on FEI's proposal for third party review of EEC funds for thermal energy projects generally.
- The minutes of the Apr. 24 meeting reflect that FEI had "...agreed to develop appropriate proposed wording referencing the Energy Efficiency Guidelines to include in the Code of Conduct." Although FEI has rejected the staff proposal it has not developed the wording to include referencing the EE Guidelines. Without that staff suggest leaving its proposed wording in.

3.7 Compliance and Complaints

- FEI has revised the title of the responsible executive here. The job responsibility and accountability of those positions will bring greater clarity.
- There was considerable discussion around paragraph (d) that states that FEI can apply to the Commission for costs if it deems a complaint frivolous. Corix felt that this could discourage small parties from lodging complaints.
- The Coalition for Open Competition suggested additional language about the Commission arbitrating disputes, and to assess penalties if a complaint was upheld. FEI argues that both of these were included elsewhere, either in other sections of the CoC or in the UCA.
- There was also discussion about who should pay for the costs of FEI's compliance activities. Staff note that there will also be a risk of additional cost to ratepayers in a 'do-nothing' approach and to allow costs to be transferred from entity to entity in a non-transparent manner.
- Staff have not yet formed a position on these issues.

3.8 Financing and Other Risks

- Staff suggested two additional paragraphs for this section. Both additions are taken from page 35 of the AES Report. FEI did not include the two suggested paragraphs and argues that they are inappropriate and unnecessary.
- Staff continue to support their inclusion on the basis that they are intended to protect the utility ratepayer and were part of the AES report.

3.9 Use of Utility Name

- Staff think the language in the draft is acceptable.

3.10 Amendments

- Staff had suggested a revision that has been adopted in the May 15 draft. Staff have no further suggestions or revisions to suggest.

General Comments

Given that this COC will apply to FEI's relationship with ARBNNMs, staff believe that a Preamble to the COC will serve a useful purpose in introducing the existence of a companion COC for FEI's relationship with NRBs; and that some overarching principles apply to both codes as well as certain principles apply to one code but not another. Staff believe that listing the principles that apply to the ARBNNMs' COC in the Preamble will: (a) clarify that there is a companion COC; and (b) clarify the rationale for structuring the new business activity as regulated business.

Appendix B3

**FEI PROPOSED CODE OF CONDUCT AND
TRANSFER PRICING POLICY,
MAY 15, 2014
FAES COMMENTS**

FortisBC Energy Inc.
C O D E O F C O N D U C T

***For Provision of Utility Resources and Services to Affiliated Regulated Businesses
Operating in a Non-Natural Monopoly Environment (ARBNNM)***

May 15, 2014

SCOPE UNDER DISCUSSION

This Code of Conduct (Code) governs the relationships between [FortisBC Energy Inc. (FortisBC Energy)] and Affiliated Regulated Businesses operating in a non-natural monopoly environment (ARBNNMs) for the provision of [FortisBC Energy] resources, and is **intended to be** consistent with ~~many of~~ 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 Commission decisions in proceedings related to specific ARBNNMs. ~~In instances, where this Code of Conduct is inconsistent with the principles in the Guidelines or other decisions related to specific ARBNNMs, it will be specifically noted.~~ 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.

This Code will govern the use of [FortisBC Energy] resources and services provided to ARBNNMs 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 ARBNNMs. ~~and the treatment by [FortisBC Energy] of its ARBNNMs.~~ [FortisBC Energy] recognizes that the AES Inquiry Report established principles and guidelines regarding the type of business structure for affiliate transactions, and will adopt those principles and guidelines when determining how to structure a new business activity.

The primary responsibility for administering this Code lies with [FortisBC Energy], although the Commission has jurisdiction over matters referred to in this Code. ~~The Commission acknowledges that [FortisBC Energy] in~~ The administration of this Code may have to take into account particular circumstances in respect to a particular resource or service which is being provided and where these issues are at variance with this Code and if the variance results in costs exceeding benefits received by the ratepayers of [FortisBC Energy], [FortisBC Energy] will be required to seek Commission approval. The Code also provides that the Commission may review complaints in relation to this Code.

The [FortisBC Energy] Transfer Pricing Policy for ARBNNMs, dated **May 15, 2014** will be used in conjunction with this Code to establish the costs and pricing for [FortisBC Energy] resources and services provided to ARBNNMs.

This Code governs the relationships between [FortisBC Energy] and its Affiliated Regulated Businesses operating in a non-natural monopoly environment. This Code does not replace the existing Code of Conduct governing the relationship between [FortisBC Energy] and Non-Regulated businesses (NRBs).

Stakeholder Comments

As stated in this Scope section, **FEI** clarifies that this proposed Code of Conduct (Code) governs only the relationships between [FortisBC Energy] and Affiliated Regulated Businesses operating in a non-natural monopoly environment (ARBNNMs). This Code does not replace the existing Code of Conduct governing the relationship between [FortisBC Energy] and Non-Regulated businesses (NRBs).

FEI has edited its proposed wording to incorporate some the Commission Staff's suggestions provided. The changes are highlighted above with comments provided, where appropriate.

FEI has added reference to the term "Guidelines" in the opening paragraph to provide a link to the use of the term Guidelines in the Definitions section.

Regarding the proposed sentence, "**In instances, where this Code of Conduct is inconsistent with the principles in the Guidelines or other decisions related to specific ARBNNMs, it will be specifically noted.**", FEI does not believe this is necessary as the sentence following makes the same point.

Regarding the proposed wording by Commission Staff, "**[FortisBC Energy] recognizes that the AES Inquiry Report established principles and guidelines regarding the type of business structure for affiliate transactions, and will adopt those principles and guidelines when determining how to structure a new business activity.**", **FEI** does not believe they are appropriate for the Code of Conduct. This is discussed later on in the section on the Code of Conduct Principles.

FEI has provided alternate wording to the Commission Staff's suggested sentence "In such a circumstance, the onus will be on [FortisBC Energy], the affected affiliate or both, to apply to the Commission justifying the variance." Instead, FEI proposes amending the previous sentence to as follows:

Amended sentence

The administration of this Code may have to take into account particular circumstances in respect to a particular resource or service which is being provided and where these **issues are at variance with this Code and if the variance results in costs exceeding benefits received by the ratepayers of [FortisBC Energy], [FortisBC Energy] will be required to seek Commission approval.**

As it is FEI's Code of Conduct, it is inappropriate to be asking the "affected utility or both" to apply to the Commission justifying the variance.

At the April 24 workshop, **Commission Staff** provided clarification that the proposed wording in paragraphs one and two of the Scope section of the proposed Code of Conduct

was intended to cover the different situations possible including Stream A and Stream B projects.

Commission Staff commented they have no authority to override any of the principles, guidelines or directions previously established by a Commission panel. Thus the Code of Conduct should state that the Code of Conduct is intended to be consistent with previous Commission rulings. If there are instances where the proposed Code of Conduct is inconsistent with previous rulings, then it should be made explicit. Also, it should be made clear that silence on an issue in the Code of Conduct, even if approved by the Commission, does not override or void a previously established principle, guideline or principle. This clarification will be helpful in the event that the Commission is required to later rule on a complaint in relation to the code.

Regarding business structure, Commission Staff indicated that especially since FEI is proposing separate Codes of Conduct for ARBNNMs, NRBs, and other ways of structuring activities into different products and services, it is important to acknowledge that there are principles and guidelines regarding the overarching issue of whether or not the proposed corporate structure is appropriate.

FAES noted that the sentence referencing “The Commission acknowledges that FEI in the administration of this Code.....” is too broad as it refers to “principles” of the BCUC outlined in a list of documents, including any Commission decisions in proceedings related to ARBNNM. At least, a qualification on principles should be added to delineate which principles we are talking about (i.e., only principles related to transfer pricing and code of conduct).

Comment [A1]: FAES would like to clarify that this comment was intended to apply to the first paragraph under Scope.

The **Coalition for Open Competition** stated that the principles should be applied consistently regardless of whether the business is regulated or not. It would seem reasonable to combine all such Codes of Conduct under one document to avoid confusion and duplication. It would be more appropriate to use the code in all instances where it is required but exempt the obvious exclusions such as within the gas utilities.

DEFINITIONS [UNDER DISCUSSION]

[FortisBC Energy Inc.]

May be abbreviated as follows: [FortisBC Energy], the Utility, or the Company, and may also include employees of the Company.

Commission

British Columbia Utilities Commission.

Guidelines

Principles and Guidelines from the Retail Markets Downstream of the Utility Meter Guidelines published by the British Columbia Utility Commission in April, 1997 and the Commission’s Report in the Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives published

in December 27, 2012. This definition does not negate the applicability of other relevant orders or directions such as Commission directions in proceedings regarding affiliates or Special Directions issued by the Province of British Columbia to the Commission on matters related to specific FortisBC Energy business activities.

Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment (ARBNNM)

An affiliate of the Utility regulated by the Commission offering regulated products and services in a non-natural monopoly environment.

RMDM

Acronym for “Retail Markets Downstream of the Utility Meter”, which may include any utility or energy related activity at or downstream of the utility meter.

Transfer Pricing to Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment

The price established for the provision of Utility resources and services to an ARBNNM. Transfer pricing for any Utility resource or service will be determined by applying the appropriate [FortisBC Energy] Transfer Pricing Policy approved by the Commission.

Stakeholder Comments

Commission Staff provided additional wording regarding the definition of Guidelines as highlighted. Staff commented that the Code of Conduct should acknowledge that there are other directions and documents that may have a bearing on affiliate transactions. Commission Staff commented that the proposed FEI Code of Conduct for ARBNNM is only for a regulated business offering services in a non-natural monopoly environment. For unregulated businesses, the fall back would be to the RMDM guidelines and the existing FEI Code of Conduct for NRBs.

FEI has no concerns regarding the Commission Staff’s proposed additional wording as highlighted above. FEI understands also that the Commission Staff’s comments mean FEI’s proposed Code of Conduct for ARBNNM does not apply to interactions between two affiliated regulated businesses that are natural monopolies (i.e. natural gas and electric service).

FAES indicated that the term Guideline was not a specific term used in the proposed FEI Code of Conduct for ARBNNM and that the definition Guideline should be deleted.

Instead of deleting the term Guideline the Definitions section to which Commission Staff have suggested additional wording, **FEI** has instead added reference to the term “Guidelines” in the Scope section.

The **Coalition for Open Competition** proposed the use of the term “Affiliate” instead of “ARBNNM”. The Coalition commented further that FEI appeared to acknowledge at the April 24 workshop that FAES is intended to be its only TES affiliate and that it would not create a “Micro TES” affiliate to circumvent this Code to perform smaller TES projects (ie. Stream “A” or Micro TES). Likewise, the Coalition acknowledged that this process is not intended to be a COC/TPP for FAES; the concern is the transfer of services, etc. from FEI to FAES (not what FAES does with those transferred services).

FEI believes it is appropriate to use the term ARBNNM as it serves to highlight and maintain clarity that this proposed Code of Conduct has been developed for a specific set of circumstances. Using a more generic term such as “Affiliate” may create potential confusion in the future about the applicability of this proposed Code of Conduct.

APPLICATION OF COMMISSION PRINCIPLES

Stakeholder Comments

FEI has moved the Code of Conduct principles to the front of this document which previously was included in the Appendix.

CODE OF CONDUCT PRINCIPLES **UNDER DISCUSSION**

The following principles were applied in the development of the Code of Conduct for activities between [FortisBC Energy] and Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment [ARBNNM].

- i. The advancement and the protection of the interests of the regulated ratepayers of [FortisBC Energy] and the ARBNNM should be considered.
- ii. [FortisBC Energy] will not provide to an ARBNNM any information that would inhibit the energy services market in a non-natural monopoly environment from functioning.
- iii. The control of information should not provide a competitive advantage.
- iv. 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. Customer information (aggregate or customer specific with written consent) should be made available to all parties (Affiliated Regulated and Unregulated Businesses, and competitors) on an equal basis, **upon request**.
- v. [FortisBC Energy] and its employees 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 ARBNNM. Additionally, [FortisBC Energy] and its employees will not preferentially direct customers to an ARBNNM.

- vi. The financing of [FortisBC Energy] and the ARBNNM will be accounted for separately with the financing costs reflecting the risk profile of each entity. No cross-guarantees or any form of financial assistance whatsoever should be provided or indirectly **provided** by [FortisBC Energy] to the ARBNNM without the approval of the Commission.
- vii. [FortisBC Energy] will monitor compliance with this Code by also conducting an annual compliance review. [FortisBC Energy] will regularly advise all of its employees of their expected conduct pertaining to this Code.
- viii. The Transfer Pricing mechanism should provide a fair and transparent mechanism to both [FortisBC Energy] and ARBNNM's ratepayers.
- ix. The basis of cost allocation is cost causality. Costs are to be allocated from [FortisBC Energy] to the ARBNNM on the basis of no greater than [FortisBC Energy]'s full cost, recognizing the needs of both the interests of [FortisBC Energy] and the ARBNNM ratepayers.

Stakeholder Comments

The highlighted words in **RED** represent amendments to the Code of Conduct Principles to provide further clarity.

FEI developed the proposed principles based on references to the AES Inquiry Report and feedback received at the February 20, 2014 FEI Code of Conduct workshop. Regarding the inconsistency between the cost causality principle and the higher of market price or fully allocated cost, as the Commission Staff has suggested, the choice of market price is dependent on each situation. In most cases as it applies to FEI resources being provided, the market price is the same as fully allocated cost. This is because FEI's approach to compensation and benefits is to provide its employees with competitive base salaries and wages, incentive compensation and benefits. FEI refers stakeholders to Slide 56 included in the April 24 workshop material where FEI fully loaded labour rates for the type of labour resources being provided are compared to the labour rates available in the marketplace. As a result of its market based approach, FEI labour rates charged are consistent with the market price or fully allocated cost. Given this, removing the reference to Market Pricing in the Code of Conduct would be more consistent with the Cost Causality principle and address some stakeholder concerns that using Higher of Market Pricing or Fully Allocated Cost would benefit competitors and hurt FAES ratepayers.

FAES commented that the overarching principle of Cost Causality found in the AES Inquiry Report is inconsistent with the principle of using Higher of Market Price or Fully Allocated Cost for the Transfer Price, also found in the AES Inquiry Report.

Commission Staff commented that they didn't see an inconsistency between cost causality and the fully allocated cost, and that the choice of market price or fully allocated cost is dependent on each situation, for example, its reliability at the time. Commission Staff also referred to the source for the proposed wording, page 33 of the AES Inquiry decision.

Additionally, Commission Staff provided the following additional wording to include as a Principle to address when a new regulated business activity should be structured as an Affiliated Regulated Business.

- i. Structuring a new regulated business activity as an Affiliated Regulated Business is most appropriate when some or all of the following characteristics are present:
 - o The new regulated business activity takes place largely beyond the delivery meter of the traditional utility;
 - o The new regulated business activity has limited or no use of the traditional utility assets; and
 - o The new regulated business activity has the potential to impose higher risks on the users of the new service and/or the utility shareholder.

Commission Staff expect parties to argue that Commission be consistent in the way it views regulations, whether providing services to FAES or an NRB. If talking of two regulated operations, regulation should work both ways. The notion of how you price a service has to go both ways. When trying to come up with appropriate pricing for services, outside test (i.e. market) is what costs should be paid. Commission Staff expressed concern that FEI does not over-invest in resources it doesn't need and downtime of utility resources not charged to ARBNNMs.

With respect to the Commission Staff's suggestion to include as a Principle to address when a new regulated business activity should be structured as an Affiliated Regulated Business and that "All proposals for new business activities should be accompanied by a risk management plan." discussed later on under section 8 Financing and Other Risks, **FEI's** view is that neither of these subjects are appropriate for the Code of Conduct. The Code of Conduct is intended to address interactions between FEI and ARBNNMs, and not how to structure a new business and how to mitigate risks (if any) from the new line of business. Additionally, the suggested wording is redundant. If and when FEI decides to venture into a new regulated line of business, it will likely have to seek Commission approval, for instance for a CPCN or for rates to be charged.

BCPSO commented that the use of Higher of Market Price or Fully Allocated cost would benefit competitors and hurt ratepayers. The interest of ratepayers on both sides of the FEI/FAES divide are best advanced by requiring FAES to pay the LOWER of market or fully allocated cost as long as FEI recovers incremental cost plus a premium. It's clearly not beneficial when the system disadvantages FEI/FAES relative to those operating only in non-monopoly environments. Receiving the LOWER of market or fully allocated cost benefits FAES ratepayers relative to having a non-monopoly company get the business because they can charge less. That is, shutting FAES out of the business, or preventing them from competing on equal terms does not advance the interests of FAES ratepayers.

BCPSO's interest is to see the market develop in a way that benefits ratepayers and involves all players, and FEI/FAES should not be disadvantaged. There are a lot of efficiencies to be gained from sharing services. We need to deviate from RMDM model as it was not in the best interest of ratepayers.

BCSEA commented that if customers are all regulated, then the Commission has the responsibility for protecting both sets of customers and ensuring appropriate prices are used. BCSEA noted that cross-subsidization can go both ways and there is a need to be careful that FAES does not end up subsidizing FEI. Sharing of resources between two large utilities, such as FEI and BC Hydro, will benefit both sets of ratepayers. It's more an issue of how to value the service. BCSEA's principal interest is in promoting innovative energy solutions in B.C.

CEC asked what the proposed wording from Commission Staff - "the new regulated business activity has the potential to impose higher risks on the users of the new services and/or the utility shareholder." meant? For example, higher risk than what?

CEC also expressed concern about using Market Price and was not sure there is a Market Price, or way to discover a Market Price. This is more a cost allocation issue for ratepayers affected. Customers of regulated utilities have rights.

Corix supported the use of the "Higher of Market Price or the Fully Allocated cost" for FEI's transfer price. The rules need to ensure fair cost of providing shared services to another entity, regardless of whether the entity is regulated. When a regulated utility is involved, have to ensure a fair price is charged. In the case of Corix, it is the shareholders who would suffer (as opposed to regulated ratepayers) if undercharging for shared services provided by the unregulated parent company occurred. The ratepayers of the smaller regulated utility would get a deal. FEI ratepayers would benefit from higher charges for shared service. FEI should not be allowed to charge for service at less than their cost. How the cost is determined is important. It should be a fair charge that recognizes the full cost of FEI offering its expertise, equipment and personnel, all of which have been paid for by ratepayers.

COPE commented that the Commission has no obligation to non-regulated customers but does to regulated customers. The Commission's decisions can suffocate development of alternative energy in B.C. The RMDM was designed to maximize every benefit for gas ratepayers by ensuring ratepayers got every nickel they could out of expansion of the sphere of the utility. If FEI is required to charge higher of market price or full cost, the introduction of a notional surcharge indicates a form of cross-subsidization from FAES to FEI.

The Commission should not venture into a role outside its jurisdiction. The BCUC does not have a role in the market development of the Thermal Energy Services marketplace. Some parties are claiming to be seeking more open competition but may be actually constraining the development of the Thermal Energy Services marketplace. Constraints are being placed on the domestic utility but not on Corix, so not a level playing field. By not allowing FEI to share resources with its regulated affiliate, the victims would be ratepayers who would be required to pay for the duplication of resources.

The **Coalition for Open Competition** restated their view that FEI's Code of Conduct needs to look beyond FEI and FAES ratepayers and to consider the impact of FEI's actions on competitive marketplace. Additionally, they stated that regulatory oversight and enforcement of FEI's Code of Conduct should be provided by the Commission and not just only when a complaint is raised.

The Coalition for Open Competition suggested the following principles. Sections highlighted in RED are where there are differences compared to that proposed by FEI.

CODE OF CONDUCT PRINCIPLES

The following principles were applied in the development of the Code of Conduct for activities between [FortisBC Energy] and Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment [ARBNNM].

- i. The advancement and the protection of the interests of the regulated ratepayers of [FortisBC Energy] and the ARBNNM should be considered.
- ii. In addition, competition within the non-natural monopoly environment should not be compromised by actions of FEI. The code needs to look beyond only the customers of FEI and the FEI affiliate customers but consider the impact of FEI's actions on non-monopoly markets.
- iii. [FortisBC Energy] will not provide to an ARBNNM any information that would inhibit the energy services market in a non-natural monopoly environment from functioning.
- iv. The control of information should not provide a competitive advantage.
- v. Customer specific information must be treated as required by the Personal Information Protection Act and, in addition, should only be released with the written consent of the customer. Customer information (aggregate or customer specific with written consent) should be made available to all parties (Affiliated Regulated and Unregulated Businesses, and competitors) on an equal basis.
- vi. [FortisBC Energy] and its employees 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 ARBNNM. Additionally, [FortisBC Energy] and its employees will not preferentially direct customers to an ARBNNM.
- vii. FEI will not provide financing to any affiliates. Any such financings will be done by FEI's parent or grand-parent companies.
- viii. [FortisBC Energy] will monitor compliance with this Code by also conducting an annual compliance review. [FortisBC Energy] will regularly advise all of its employees of their expected conduct pertaining to this Code.
- ix. The Transfer Pricing mechanism should provide a fair and transparent mechanism to [FortisBC Energy], ARBNNM's ratepayers and competitors in the non-monopoly market environment.
- x. Review and enforcement of the Code will be the role of the Commission.

- xi. The basis of cost allocation is cost causality. Costs are to be allocated from [FortisBC Energy] to the ARBNNM on the basis of the greater of cost or market value per the AES Inquiry Report.

Regarding the wording that “FEI will not provide financing to any affiliates……”, FEI notes that the proposed wording by the Coalition for Open Competition is inconsistent with that indicated in the AES Inquiry decision (page 33 bullet number two under Guidelines). FEI’s proposed wording as discussed later on in section 8 Financing and Other Risks is more consistent with that indicated in the AES Inquiry decision and that including in FEI’s current Code of Conduct for NRBs.

Additionally, FEI believes the Coalition for Open Competition suggestion that FEI’s Code of Conduct “needs to look beyond FEI and FAES ratepayers and to consider the impact of FEI’s actions on competitive marketplace.” and “In addition, competition within the non-natural monopoly environment should not be compromised by actions of FEI. The code needs to look beyond only the customers of FEI and the FEI affiliate customers but consider the impact of FEI’s actions on non-monopoly markets.” is inappropriate and inconsistent with the intent of the Code of Conduct, which is to protect the interests of FEI’s natural gas ratepayers and ensure there is no cross-subsidization.

1. Transfer Pricing for ARBNNMs ACCEPTED

[FortisBC Energy] will conform with the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs.

2. Shared Services and Personnel UNDER DISCUSSION

- a) This Code recognizes the potential benefits to the [FortisBC Energy] and ARBNNM regulated ratepayers in sharing resources.
- b) [FortisBC Energy] may provide shared services and personnel noted in section (c) below to ARBNNMs while ensuring that its ratepayers will not be negatively impacted by [FortisBC Energy]’s involvement. The costs of providing such services will be as agreed upon by both [FortisBC Energy] and the ARBNNM and be in accordance with the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs.
- c) ARBNNMs may contract for corporate services including senior management and operating personnel from [FortisBC Energy] using the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs, providing [FortisBC Energy] complies with Section 3 of this Code, Provision of Information by [FortisBC Energy], and no conflict of interest exists which will negatively impact ratepayers.

Stakeholder Comments

FEI believes its proposed wording for sharing of services and personnel with an ARBNNM as outlined in section c are appropriate, providing flexibility for resource sharing arrangements that benefit both FEI and ARBNNM ratepayers. The wording proposed by the Commission Staff and which is consistent with the Alberta Code of Conduct is inappropriate for the circumstances in B.C. While the wording may be appropriate for Alberta which has an operating environment consisting both of regulated and non-regulated activities, the situation is different for FortisBC where much of its operations in B.C. are regulated including FAES/TES. Additionally, the Commission's Staff proposed wording is very broadly and generally defined that it is difficult to operationalize. For example, the proposed wording suggests sharing of personnel be limited to

".... corporate services and should not include any operational services except possibly emergency services. Sharing of employees will not be allowed where the employee has access to confidential information, routinely participates in making decisions with respect to the provision of traditional utility services or how utility services are delivered, routinely deals with or has direct contact with customers of the utility or is routinely involved in planning or managing the business of the traditional utility."

For the purpose of the Code of Conduct, what is intended to be confidential information? Is it customer specific information? If so, that is already addressed in the section 3 Provision of Information by [FortisBC Energy] where customer information upon request is being made available to all parties on an equal basis. Another question is who are the people to be included in the definition of "as routinely involved in planning or managing the business of the traditional utility"? The definition as it stands would exclude most FEI managers from being shared, as FEI managers are involved in some way in planning or managing the business of the traditional utility. Another example is the proposed exclusion of operational services (not business development or sales personnel) from being shared. In the context of the B.C. situation where much of the activities are regulated, there is little rationale for excluding sharing of operational (i.e. field) personnel. How would sharing of operating personnel in FEI's situation have a negative impact to FEI's ratepayers?

With the suggested broadly defined wording on sharing of services and personnel by Commission Staff, there likely would be few situations where FEI resources would be shared. This would not be in the interests of FEI and the ARBNNM ratepayers. FEI believes its proposed wording is adequate as the onus is on FEI to operate accordingly. Commission oversight currently exists to ensure this.

Commission Staff indicated that clarification of "confidential information" for the purpose of the Code of Conduct or rewording of it may be required. Staff noted that the reference to confidential information is also used elsewhere in the Code of Conduct. Staff commented that the Commission in the AES Inquiry decision recognized that in situations where there is higher risk to FEI ratepayers, greater separation is required. However, there may not be higher risk in all situations.

Commission Staff suggested the following wording:

Shared Services and Personnel

- a) As a rule, resource sharing will be limited to corporate services and should not include any operational services except possibly emergency services. Sharing of employees will not be allowed where the employee has access to confidential information, routinely participates in making decisions with respect to the provision of traditional utility services or how utility services are delivered, routinely deals with or has direct contact with customers of the utility or is routinely involved in planning or managing the business of the traditional utility; Where potential benefits to the [FortisBC Energy] and ARBNNM regulated ratepayers in sharing resources indicate that sharing of resources and personnel should extend beyond corporate services, the onus is on [FortisBC Energy] or its regulated affiliate to demonstrate that those benefits outweigh any potential harm to the ratepayers of the affected affiliates.
- b) Subject to (a) above, [FortisBC Energy] may provide shared services and personnel noted in section (c) below to ARBNNMs while ensuring that its ratepayers will not be negatively impacted by [FortisBC Energy]'s involvement. The costs of providing such services will be as agreed upon by both parties and be in accordance with the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs.
- c) ARBNNMs may contract for corporate services including senior management and operating personnel from [FortisBC Energy] using the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs, providing [FortisBC Energy] complies with Section 3 of this Code, Provision of Information by [FortisBC Energy], and no conflict of interest exists which will negatively impact ratepayers.
- d) In all cases where services and personnel are shared [FortisBC Energy] will ensure that adequate accounting records are maintained so that the Commission can ensure the appropriate allocation of costs between the entities sharing the services. Moreover, the accounting records of all of the affected affiliates related to the shared services and personnel will be available to the Commission when requested and in the form requested by the Commission.

Commission Staff commented that its suggested wording bring it back into alignment with the AES Inquiry Report (pages 25-26), as well as support for the principle in the Kelowna DES Decision (Order C-8-13). The original sentence in the FEI draft has been reworded to allow for additional resource sharing if it can be demonstrated to the Commission that it is net beneficial to ratepayers of both affiliates. Paragraph 'b)' has been revised to reflect the revision in 'a)'.

FAES suggested changing the reference to "parties" in section b) to "[FortisBC Energy] and the ARBNNM." This has been reflected in the FEI wording highlighted in **RED** above.

CEC expressed concern that the proposed detail wording by the Coalition for Open Competition is getting into micro-managing the business of FEI. This suggests anti-competitive practices.

COPE suggested the exclusions by the Coalition for Open Competition are not practical (i.e. restrictions regarding sharing of the first aid and washrooms, call centre support).

The **Coalition for Open Competition** commented their suggested wording is intended to operationalize (codify) things that “blur” the line. There is a “gulf between us” (i.e. between the Coalition’s position on this and FEI’s). The Coalition has no concerns about sharing of corporate accounting and IT. Their concerns are focused on sharing of sales development and regulatory personnel and senior management (i.e. VP, Doug Stout roles in FEI and FAES).

The proposed wording from the Coalition for Open Competition is as follows:

- a) This Code recognizes that, while there may be potential benefits to the [FortisBC Energy] and ARBNNM regulated ratepayers from sharing resources, the sharing of services and personnel should not result in anti-competitive practices or be harmful in any way to the functioning of competitive markets.

Comment from Coalition for Open Competition

The Code of Conduct primarily exists to protect against abuses by the shareholder and not to condone or ratify the value of shared services.

- b) [FortisBC Energy] may provide shared services and personnel noted in section (c) below to ARBNNMs while ensuring that its ratepayers will not be negatively impacted by [FortisBC Energy]’s involvement. The costs of providing such services will be as agreed upon by both parties and be in accordance with the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs. The exceptions to what FEI can share with [affiliates] are contained in Section 9 below.
- c) ARBNNMs may contract for corporate services including senior management and operating personnel from [FortisBC Energy] using the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs, providing [FortisBC Energy] complies with Section 3 of this Code, Provision of Information by [FortisBC Energy], and no conflict of interest exists which will negatively impact ratepayers.

Separation from Natural Gas Utility Operations

In order to ensure that FEI affiliates are not able to garner uncompetitive advantages in related regulated, or non-regulated, areas, FEI will endeavor to separate its natural gas utility operations from its affiliates in the following manners:

(a) Officers and Directors of the [affiliates] must not be officers or employees of FEI with the following limited exceptions:

- (i) The CEO of FEI,
- (ii) The CFO of FEI
- (iii) The Treasurer of FEI
- (iv) The Corporate Secretary of FEI
- (v) The Assistant Corporate Secretary of FEI

Comment from Coalition for Open Competition

Recognize that there is a need for common corporate oversight but it is not appropriate to have common management of both natural gas (pure monopoly) and thermal energy operations (non-monopoly).

(b) The following departments, business units or services cannot be shared with [affiliates]¹:

- (i) Energy Solutions Group (or equivalent)
- (ii) Marketing/Communications/External Relations
- (iii) Regulatory Affairs
- (iv) Customer Billing, with the exception whereby Customer Billing services are provide an on open basis with a common tariff to all users including FEI, [affiliates] and third parties.

Comment from Coalition for Open Competition

These departments are appropriately large, sophisticated operating units that are difficult and expensive to replicate in the competitive marketplace. They are in place by virtue of the need to support over 1.1 million natural gas and electric utility customer and are paid for by those regulated customers.

Affiliates should develop their own specialty business units if they require them and not rely on the natural gas utility for developing and maintaining such as strategic asset.

¹ ***“For new business activities, the challenge lies in determining the costs that should be borne entirely by the new business customer (or the utility shareholder). An approved Transfer Pricing Policy should ensure that costs are allocated on the basis of the higher of fully allocated cost or market pricing and an approved Code of Conduct should ensure that the sharing of operational and management services is appropriate.”*** AES Inquiry Decision, page 34, emphasis added.

(c) The office, shops, and places of work of FEI and the [affiliates] are not to be on a common site by January 1, 2015. The respective locations must not share the following attributes:

- (i) Mailing Addresses;
- (ii) Telephone numbers (including fax numbers);
- (iii) Switchboards;
- (iv) Mailrooms;
- (v) Ancillary space (such as cafeterias, meeting rooms, first aid rooms, washrooms, etc.).

Comment from Coalition for Open Competition

Concerned about accidental and informal sharing of information that is not possible to ensure that is contained by “confidentiality” provisions; in addition, it aids in the identification and separation of costs between FEI and its affiliates.

Corix provided the following revised wording:

This Code recognizes the potential benefits to the [FortisBC Energy] and ARBNNM regulated ratepayers in sharing resources.

- a) [FortisBC Energy] may provide shared services and personnel noted in section (c) below to ARBNNMs while ensuring that its ratepayers will not be negatively impacted by [FortisBC Energy]’s involvement. The costs of providing such services will conform to the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs.
- b) ARBNNMs may contract for corporate services including senior management but will not include any operational services other than for the provision of emergency services personnel [this revised wording consistent with the recommendations in the AES Inquiry Report] from [FortisBC Energy] using the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs, providing [FortisBC Energy] complies with Section 3 of this Code, Provision of Information by [FortisBC Energy], and no conflict of interest exists which will negatively impact ratepayers.
- c) ARBNNMs may contract for corporate services including senior management but will not include any operational services other than for the provision of emergency services personnel [this revised wording consistent with the recommendations in the AES Inquiry Report] from [FortisBC Energy] using the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs, providing [FortisBC Energy] complies with Section 3 of this Code, Provision of Information by [FortisBC Energy], and no conflict of interest exists which will negatively impact ratepayers.

Corix commented that FEI’s intention to share operating personnel is in direct contradiction of the Commission Panel’s recommendation.

3. Provision of Information by [FortisBC Energy Inc.] [UNDER DISCUSSION]

Customer information (aggregate or customer specific with written consent) should be made available to all Parties (Affiliated Regulated and Unregulated Businesses, separate classes of service, and competitors) on an equal basis.

[FortisBC Energy] will not provide to an ARBNNM any information that would inhibit the energy services market in a non-natural monopoly environment from functioning.

Customer specific information must be treated in accordance with the Personal Information Protection Act. If a customer requests their specific information be provided to a specific party, only that party may receive the information. If a customer agrees to a general release of their specific information, that information must be made available to all interested parties who request it and are willing to pay the price associated with the provision of the information, without discrimination as to access, timing, cost or content. Customer information will be provided at a reasonable price reflecting market circumstances and cover the cost of extracting and providing the information. All parties should pay the same price for the same or similar information.

[FortisBC Energy] may disclose to all interested parties that request it and are willing to pay the appropriate transfer price (see above), customer information that is aggregated or summarized in such a way that confidential information would not be ascertained by third parties.

Stakeholder Comments

FEI has reworded the above section incorporating the suggestion to include wording from page 37 of the AES Inquiry report, Principle 2 and suggestions at the April 24 workshop (see April 24 workshop minutes).

4. Preferential Treatment [ACCEPTED]

[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 ARBNNM. 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 ARBNNM.

5. Equitable Access to Services [ACCEPTED]

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.

Stakeholder Comments

Subject to Commission Staff confirming – this was subsequently confirmed - that the BCUC website is able to maintain a list of registered TES Service Providers (e.g. contact information, possible project names and types, i.e., Stream A or Stream B, etc)

6. **Equitable Treatment of Demand-Side Management and Incentive Funds** **[Under Discussion]**

[FortisBC Energy] will establish a mechanism for involving a neutral third party in Demand-Side Management or incentive funding, so that Utility ratepayer funded DSM or other incentive activities are directed fairly to the most effective proposals for meeting the objectives of the funded activities.

Stakeholder Comments

Commission Staff believes the suggested wording above referencing the Economic Efficiency Guidelines should remain in the Code of Conduct.

FEI notes that the suggested wording is not the same as that included in the AES Inquiry Report. On page 87, under Commission Determination,

“.... Accordingly, the FEU are directed to bring forward a proposal for mechanisms for approval and administration of funds by a neutral third party where the FEU may be involved in providing capital or services to a project receiving DSM or other incentive funds and/or there is a potential for FEU to benefit, either directly or indirectly, from that funding.”

The above wording directs FEU to bring forward a proposal and not necessarily to include it in the Code of Conduct. As such, FEI does not believe it is appropriate that the Code of Conduct include such wording. FEI also notes as per Commission directive in the AES proceeding, **FortisBC** has put forward a proposal around independent third party review of EEC funds for thermal energy projects generally, regardless of supplier, and as such, including this wording is inappropriate absent a Commission decision on FortisBC's proposal.

7. **Compliance and Complaints** **[UNDER DISCUSSION]**

- a) The **Director of Finance and Planning** 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, with quarterly updates for employees who may be directly involved with ARBNNM activities.

- b) [FortisBC Energy] will monitor employee compliance with this Code by also conducting an annual compliance review, the results of which will be summarized in a report to be filed with the Commission within 60 days of the completion of this review.
- 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 Planning** and the Vice-President, Strategic Planning, Corporate Development and Regulatory, 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 receipt of the complaint.
- d) Where [FortisBC Energy] determines that the complaint is unfounded, the Company may apply to the Commission for reimbursement of the costs of the investigation from the third party initiating the complaint or where this is not possible, for inclusion of those costs in rates.

Stakeholder Comments

The reference to Director of Regulatory Affairs has been changed to Director of Finance and Planning.

Corix provided the following comments to section (d).

- d) [There is a significant power imbalance between the monopoly gas utility and a potential complainant, and this clause only serves to discourage what might be a legitimate complaint. If Fortis feels that a complaint is frivolous or otherwise unjustified it has the recourse to approach the Commission to discuss this. This clause should be deleted.]

Stakeholder Comments

FEI believes the wording it has proposed is appropriate and serves to discourage frivolous complaints while not discouraging potential complainants. The wording proposed by FEI is consistent with that included in the current approved Code of Conduct for NRBs which has been in place for a number of years. FEI is not aware of any situations in the past where a potential complainant was discouraged from lodging a complaint due to the nature of how the complaint process is defined.

The **Coalition for Open Competition** suggested the following additional wording.

- e) In the event that a third party disputes the results of an [FEI] investigation in relation to this Code of Conduct or Transfer Pricing Policy, the third party will have recourse to the Commission to arbitrate the dispute.

Comment from Coalition for Open Competition

The **Coalition for Open Competition** commented that the premise is that ultimately the Commission adjudicates what is appropriate. FEI is not the arbiter of its actions and behavior and the Code should clearly state this.

- f) Where a third party complaint is found to be valid, the Commission shall determine what penalties or remedies are appropriate consistent with its powers under the UCA.

Comment from Coalition for Open Competition

The **Coalition for Open Competition** commented that if it is the expectation of the parties that the Commission has the existing powers to administer penalties to the parties, the Code should state that this is the expectations.

FEI also does not believe it is necessary to include sections e and f as proposed by the Coalition for Open Competition. In the Scope section of the proposed Code of Conduct, the proposed wording indicates “The primary responsibility for administering this Code lies with [FortisBC Energy], although the Commission has jurisdiction over matters referred to in this Code.” and “The Code also provides that the Commission may review complaints in relation to this Code.” Section e is already covered by FEI’s proposed wording. With regards to the proposed section f, FEI’s view is that under the current UCA, the Commission has authority to impose administrative penalties in the event FEI violates a Commission rule or order. Including the suggested additional wording is not necessary.

Considerable discussion occurred regarding who should pay for the costs of the FEI’s compliance activities.

FAES indicated that there should be no cost to FAES’s ratepayers for FEI’s compliance with Code of Conduct activities.

COPE and BCPSO both commented that since competitors are the ones that benefit from the compliance monitoring activities, they should be paying for FEI’s Code of Conduct compliance costs. The compliance activities put constraints on FortisBC overall in its ability to compete in the TES marketplace, whereas FortisBC’s competitors can easily enter the marketplace. It is hard to understand there is no cost to the competitors.

Corix commented that it is fair that FEI ratepayers pay for the compliance activities as FEI ratepayers are the ones that benefit. It would be fundamentally wrong if TES competitors are charged for compliance activities.

The **Coalition for Open Competition** disagreed with the concept that competitors should pay to stop FEI from harming competition. FEI is the monopoly with access to captive resources paid by natural gas ratepayers and the onus is on FEI to behave responsibly. In some instances, it may be reasonable for the utility shareholder (or FAES shareholder) to fund costs rather than natural gas ratepayers.

8. Financing and Other Risks **UNDER DISCUSSION**

Unless approved by the Commission, [FortisBC Energy] will not undertake any financing or other financial assistance on behalf of an ARBNNM that exposes [FortisBC Energy] ratepayers to additional costs or risks, unless appropriate compensation is received by [FortisBC Energy] for such financing or other financial assistance, including compensation for additional cost or risk related to the addition of incremental debt to [FortisBC Energy] for a project carried out by the ARBNNM.

Stakeholder Comments

In addition to the wording proposed by FEI, **Commission Staff** provided the following suggested sections:

- b) The risk of unrecovered costs (including, but not limited to, startup, operating and capital costs) is to be borne by the Affiliated Regulated Business or Separate Class of Service or the shareholder. If costs related to the new business activity cannot be recovered from new business customers in a reasonable period of time (as approved by the Commission) these costs will be borne by the shareholder.
- c) All proposals for new business activities should be accompanied by a risk management plan. The risk management plan should address:
 - o The anticipated level of risk that would be faced by the traditional ratepayer, the new business ratepayer, and the shareholder; and
 - o How the incremental costs from these risks will be allocated among these groups.

Commission Staff reviewed the appropriateness of section c and indicates that it is extracted from the Guidelines found at page 35 of the AES Inquiry Report.

Regarding the proposed wording for (b) above, **FEI** does not believe it is appropriate to include in the Code of Conduct as the ability to recover costs would be dependent on a review of the specific circumstances at the time. As such, the general wording proposed by Commission Staff is unnecessary. Also, as discussed earlier in Code of Conduct Principles section, inclusion of the need for a Risk Management plan for new business activities is not appropriate for the Code of Conduct.

Commercial Energy Consumers Association (CEC) commented that section c just adds more costs to the process and that the issue may be better dealt with more generically at the FEI/FAES level.

The **Coalition for Open Competition** provided the following wording:

[Affiliates] will not receive financing or financial assistance from FEI at any time.

The Coalition for Open Competition commented that all funding of Affiliates can and should come from the parent compan(ies). There is simply no need for FEI to be involved in a financial transaction or risk transfer of this nature.

FEI notes that the proposed wording by the Coalition for Open Competition is inconsistent with that indicated in the AES Inquiry decision (page 33 bullet number two under Guidelines).

9. Use of Utility Name [ACCEPTED]

The use of the FortisBC by an ARBNNM operating in a non-natural monopoly environment is an acceptable business practice. The ARBNNM will exercise care in distinguishing between services provided by [FortisBC Energy] and services offered by the ARBNNM. **The name FortisBC is owned by Fortis Inc.**

Stakeholder Comments

As agreed, **FEI** has added the highlighted sentence to clarify ownership of FortisBC name.

10. Amendments [UNDER DISCUSSION]

In order to ensure that this Code remains workable and effective, the Company will review the provisions of this Code on an ongoing basis and as required by the Commission, but with a maximum of five years between reviews.

Amendments to this Code may be made from time to time as approved by the Commission, **and may result from a normal periodic review, from a request to the Commission by [FortisBC Energy], an ARBNNM, a customer or other stakeholder, or a review initiative by the Commission.**

Stakeholder Comments

FEI has no objections to the additional language proposed by Commission Staff.

FortisBC Energy Inc.

T R A N S F E R P R I C I N G P O L I C Y

For Provision of Utility Resources and Services to Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment (ARBNNM)

May 15, 2014

SCOPE

This policy addresses the pricing of resources and services provided by [FortisBC Energy Inc. (FortisBC Energy)] to Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment (ARBNNMs) providing regulated products and services.

[FortisBC Energy Inc.] will ensure that it receives adequate compensation for the resources and services provided, thereby protecting its ratepayers from subsidizing the activities of ARBNNMs.

The Transfer Pricing Policy for ARBNNMs will be used in conjunction with the [FortisBC Energy] Code of Conduct for Provision of Utility Resources and Services to Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment dated May 15, 2014. This Policy does not replace the existing Transfer Pricing Policy between [FortisBC Energy] and Non-Regulated businesses (NRBs).

Stakeholder Comments

Commission Staff provided the following revised wording:

This policy addresses the pricing of resources and services provided by [FortisBC Energy Inc. (FortisBC Energy)] to Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment (ARBNNMs) providing regulated products and services.

Allocation of costs will reflect appropriate compensation for any benefit derived by a new ARBNNM as a result of its affiliation with its parent or other businesses. This will include compensation for additional cost or risk related to the addition of incremental debt to the parent utility for the new products or services. [FortisBC Energy Inc.] will ensure that it receives appropriate compensation for the resources and services provided, in order to protect its ratepayers from subsidizing the activities of ARBNNMs, as required by the Code of Conduct for ARBNNMs and this Transfer Pricing Policy.

Comment [A1]: FAES seeks clarification as to how this would be implemented in practice?

FortisBC Energy and ARBNNMs will maintain separate financial records and books of accounts and sufficient separation of business operations in order to ensure a level of transparency that enables an appropriate allocation of costs between FEI and ARBNNMs and where appropriate, between individual ARBNNMs.

The Transfer Pricing Policy for ARBNNMs will be used in conjunction with the [FortisBC Energy] Code of Conduct for Provision of Utility Resources and Services to Affiliated Regulated Businesses Operating

in a Non-Natural Monopoly Environment dated May 15, 2014. This Policy does not replace the existing Transfer Pricing Policy between [FortisBC Energy] and Non-Regulated businesses (NRBs).

Commission Staff comments:

The Code of Conduct should acknowledge that there are other directions and documents that may have a bearing on affiliate transactions.

Allocation of Costs - The inserted sentence reflects the wording in the AES Inquiry Report (page 33) as to an overarching principle for allocation of costs. Staff has made some wording changes to reflect the narrower focus of a Policy specifically for ARBNNMs.

Compensation – The word ‘adequate’ is an undefined term. It has been replaced with ‘appropriate’ and that term has been referenced to other sections of the Code and TPP. Further, the wording has been changed from “thereby protecting ratepayers” to “in order to protect ratepayers” changing the phrase from a conclusion to a reason, which seems consistent with the purpose of a Transfer Pricing Policy.

The **Coalition for Open Competition** suggested adding the following sentence:

This policy includes the transfer of all FEI resources and services to all “non-regulated” projects conducted by affiliates in the TES competitive market.

The Coalition for Open Competition commented that they have the same concern with respect to Code of Conduct. Non-regulated projects could be for projects that are exempt from regulation due to the ownership of the project (eg. owned by municipalities) or due to the TES Regulatory Framework Decision (G-231-13A). Projects below the “Micro TES Threshold” of \$500,000 thereby exempting it from regulation and the lack of rate regulation for Stream “A” TES projects (below \$15 million in capital cost) imply that these transfers could transfer economic rent from FEI ratepayers to FAES shareholder.

FEI suggests a revision to the Commission Staff wording as outlined below:

FortisBC Energy and ARBNNMs will maintain separate financial records and books of accounts ~~and sufficient separation of business operations~~ in order to ensure a level of transparency that enables an appropriate allocation of costs between FEI and ARBNNMs ~~and where appropriate, between individual ARBNNMs.~~

The words “sufficient separation of business operations” have been deleted as they do not fit within the purpose of Transfer Pricing Policy. The words “and where appropriate, between individual ARBNNMs” have been deleted as the Transfer Pricing Policy under review is between FEI and ARBNNM, and not between ARBNNMs.

FEI does not believe incorporating the suggestion by the Coalition for Open Competition is appropriate as the Code of Conduct is governing transactions between FEI and regulated affiliates operating in a non-natural monopoly and not “non-regulated” projects in a competitive market.

[FortisBC Energy] Transfer Pricing Policy for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment

DEFINITIONS

[FortisBC Energy Inc.] May be abbreviated as follows: [FortisBC Energy], the Utility, or the Company, and may also include employees of the Company.

Commission British Columbia Utilities Commission.

Development The translation of research findings or other knowledge into a plan or design for new or substantially improved materials, devices, products, processes, systems or services prior to the commencement of commercial production or use.

Guidelines Principles and Guidelines from the Retail Markets Downstream of the Utility Meter Guidelines published by the British Columbia Utilities Commission in April, 1997 and the Commission's Report in the Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives published in December 27, 2012. This definition does not negate the applicability of other relevant orders or directions such as Commission directions in proceedings regarding affiliates or Special Directions issued by the Province of British Columbia to the Commission on matters related to specific [FortisBC] business activities.

Comment [A2]: FAES proposes deleting this definition since the term "Guidelines" is not referenced anywhere in the document. The only two references to the term 'guidelines' are found in this definition.

Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment (ARBNNM) An affiliate of the Utility regulated by the Commission offering regulated products and services in a non-natural monopoly environment.

Research Planned investigation undertaken for the purpose and expectation of gaining new scientific or technical knowledge and understanding. Such investigation may or may not be directed towards a specific practical aim or commercial application.

RMDM Acronym for "Retail Markets Downstream of the Utility Meter", which may include any utility or energy related activity at or downstream of the utility meter.

Transfer Pricing to Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment The price established for the provision of Utility resources and services or the transfer of Utility assets to an ARBNNM. Transfer pricing for any Utility resource or service will be determined by applying the appropriate [FortisBC Energy] Transfer Pricing Policy as agreed upon by [FortisBC Energy] and the ARBNNM and approved by the Commission.

Fair Market Value "Fair Market Value" means the price reached in an open and unrestricted market between informed and prudent parties, acting at arms

[FortisBC Energy] Transfer Pricing Policy for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment

length and under no compulsion to act.

Stakeholder Comments

The words highlighted in **RED** above indicate the changes suggested by Commission Staff.

Commission Staff provided the following comments:

Definitions of Development and Research – As noted below, in the view of staff, inclusion of the section 3 in the 1997 Transfer Pricing Policy – Costs Relating to the Transfer of Activities from the Utility to the NRB, should also be included in the Policy for ARBNNMs, with the appropriate wording changes to reflect that it reflects to ARBNNMs. The definitions of Development and Research in the 1997 Transfer Pricing Policy relate to that section so are also included in these definitions.

Definition of Transfer Pricing to ARBNNMs – The phrase “or the transfer of utility assets” was deleted from the previous version. Commission Staff recognize there is a separate sentence under “2. Determining Costs” below dealing with that issue but think there is value in leaving the phrase here in the event that the amount of assets transferred is small and not covered in the application.

Definition of “Fair Market Value” – As noted below, Commission staff noted that the AES Inquiry Report indicated that the Transfer Price should include the provision of using a market price rather than the cost in certain circumstances. Given that concerns have been raised about how one determines fair market value or price, the inclusion of the definition of Fair Market Value from the Alberta Code of Conduct would be helpful.

Regarding the phrase “or the transfer of utility assets”, **FEI** notes an inconsistency between the definition of Transfer Pricing to ARBNNMs as outlined in the Transfer Pricing Policy and that included in the Code of Conduct. For consistency, FEI will assume the definition of Transfer Pricing to ARBNNMs as outlined in the Code of Conduct will also apply to the Transfer Pricing policy.

FAES provided the additional wording “as agreed upon by [FortisBC Energy] and the ARBNNM and” as highlighted in **BLUE** above, amending the definition of Transfer Pricing to Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment.

FEI has no objections with the remaining proposed wording from Commission Staff..

POLICY

Provision of services from [FortisBC Energy] to ARBNNMs must be in accordance with the Commission approved Code of Conduct and Transfer Pricing Policy for ARBNNMs. The approved Code of Conduct and Transfer Pricing Policy for ARBNNMs addresses the need for a transparent pricing mechanism which is fair to both [FortisBC Energy] and ARBNNM’s ratepayers.

Transfer Prices charged to ARBNNMs by [FortisBC Energy] ~~will~~ **are intended to ensure that** [FortisBC Energy] ratepayers are not adversely affected and will be established using the following pricing rules.

Stakeholder comments

[FortisBC Energy] Transfer Pricing Policy for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment

Commission Staff suggest to delete the sentence above starting with “The approved Code of Conduct...”. The rationale for the deletion is that it adds nothings of value to the Policy, but implies that the existence of an approved Code and Policy does address the need for a transparent and fair pricing mechanism. In fact, the Code and the Policy establish the need for a fair and transparent pricing mechanism and the Transfer Pricing Policy attempts to outline the minimum criteria for such a pricing mechanism. The mechanics of how the Code and Policy are implemented will determine whether the need for a fair and transparent mechanism has been addressed.

Consistent with the guiding principles for the Code of Conduct, **FEI** believes there is value in stating the intent of the Code and the Transfer Pricing Policy which is to provide a transparent pricing mechanism that is fair to both [FortisBC Energy] and ARBNNM’s ratepayers. FEI’s proposed wording for the Code and Transfer Pricing Policy is consistent with the stated intent.

Commission Staff also suggest adding the sentence:

“All sharing of costs, services and information between affiliated regulated utilities must be fully disclosed to the Commission”.

Commission Staff commented that the sentence was taken from the AES Inquiry Report (p. 33).

While the sentence is from the AES Inquiry Report, FEI seeks clarification what is meant by the “information between affiliated regulated utilities”? Is it in reference to customer specific information which the regulated affiliate has obtained under the rules for Provision of Information in the Code of Conduct? FEI has no objections to disclosure of sharing of services and the costs between itself and an ARBNNM to the Commission, as it currently does.

1. Pricing Rules

- i. If an applicable [FortisBC Energy] tariff rate exists, the Transfer Price will be set according to the tariff.
- ii. Where no tariff rate exists, the Transfer Price will be set at no greater than full cost. With Commission approval, the cost may be set at below full cost (see Section 2 below).
- iii. In situations where it can be shown that an alternative Transfer Price will provide greater benefits to the ratepayer, the Utility may apply to the Commission for special pricing consideration.

Stakeholder Comments

FEI proposed the use “no greater than full cost” rather than higher of market price or fully allocated cost in recognition of the need to protect the interests of both FEI and FAES’ ratepayers and to prevent cross-subsidization from occurring. For practical purposes, given FEI’s market-based compensation policy, FEI’s labour services and costs are the same as their market price. Refer to Code of Conduct Principles section discussion.

Commission Staff do not see that “no greater than full cost” is for practical purposes the same as “the higher of market price or the fully allocated cost.” The former phrase means ‘no higher than’ and the latter phrase translates to ‘no lower than’. The two are not equivalent, and the AES Inquiry Report states

Comment [A3]: FAES seeks clarification on the concept of “sharing of costs”. FAES is of the view that it would be more appropriate to refer to “sharing of resources, services and information”, which are what the CoC/TPP cover?

Comment [A4]: Please specify which ratepayer. Perhaps, the term should be plural too.

[FortisBC Energy] Transfer Pricing Policy for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment

that the transfer price shall be set at “the higher of market price or the fully allocated cost”, which is why staff have inserted that phrase into the draft TPP. The revised sentence is as follows:

Where no tariff exists, the Transfer Price will be set at the higher of market price or the fully allocated cost.

The last sentence of paragraph ii has been deleted and replaced by a new sentence in paragraph iii. The new sentence is taken from the 1997 Code of Conduct and Transfer Pricing Policy, which includes the requirement that a variance must show benefits to the ratepayer.

The **Coalition for Open Competition** suggested revisions to part ii of pricing rules.

- ii. Where no tariff rate exists, the Transfer Price will be set at no less than the greater of full cost or market pricing. With Commission approval, the cost may be set at below full cost (see Section 2 below).

The Coalition for Open Competition provided comment to refer to its discussion for this issue in Code of Conduct regarding basis for “no greater than full cost”.

Corix amended FEI’s proposed wording to “set at the higher of market price or the fully allocated cost” and referenced the AES decision.

2. Determining Costs

For the purposes of this policy, costs for the resources or services being provided by [FortisBC Energy] to an ARBNNM will be set at no greater than [FortisBC Energy]’s full cost described below. The definition of full costs will depend on the type of service or resource being provided.

For the most part, the types of resources and services that can be provided to ARBNNMs by [FortisBC Energy] are human resources (labour) and associated equipment and facilities. The example in Appendix A summarizes how full costs are determined for the different types of services described below in Section 2.1. The determination of full costs, specifically the cost loadings, is based on services to be provided in accordance with the [FortisBC Energy] approved Code of Conduct with respect to ARBNNM of [FortisBC Energy] dated **May 15, 2014**.

Costs will include both direct costs and a fair allocation of the parent utility costs required to provide the product or service, except where such treatment is precluded by legislation, regulation or special direction.

*If other [FortisBC Energy] resources or services are used by an ARBNNM that are not described by this policy **or if there are unusual circumstances that warrant a separate review**, then [FortisBC Energy] will make an application to the Commission on a case-by-case basis. ~~An example of this would be the determination of costs for a [FortisBC Energy] asset permanently transferred to an ARBNNM.~~*

Comment [A5]: FAES is of the view this addition is not appropriate as the main TPP goal is preventing subsidization of FAES by FEI ratepayers – not the fair allocation of the parent company costs, which is outside the BCUC jurisdiction.

Stakeholder comments

Commission Staff amended the opening paragraph to as follows:

[FortisBC Energy] Transfer Pricing Policy for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment

For the purposes of this policy, the fully allocated costs for the resources or services being provided by [FortisBC Energy] to an ARBNNM will be described below. The definition of full costs will depend on the type of service or resource being provided. In addition, Commission Staff have added a sentence to make it clear that costs include both direct costs and a fair allocation of parent utility costs. This reflects the wording at page 33 of the AES Inquiry Report.

Commission Staff believe that the transfer of assets can be handled in most cases by the original wording in the definition of “Transfer Pricing....”. The rewording in the last sentence of this section attempts to identify the conditions when a separate review of a transaction could occur.

Corix provided amendments to include that the costs be set at the higher of market price or [FortisBC Energy]’s fully allocated cost. Additionally, wording was added “but will not include operational services, with the possible exception of emergency services”.

FEI does not believe the additional wording suggested by Corix is necessary and appropriate. As discussed in the proposed DRAFT FEI Code of Conduct for ARBNNM dated May 15, 2014, FEI believes that other jurisdictions’ Code of Conduct and Transfer Pricing Policy have limited applicability to B.C. For example, Alberta’s Code of Conduct where the words “but will not include operational services, with the possible exception of emergency services” came from, was developed for an operating environment consisting both of regulated and non-regulated activities where it may make sense to exclude sharing of operational services and personnel. However, the situation is different for FortisBC where much of its operations in B.C. are regulated including FAES/TES.

2.1 Type of Service

There are three types of services: Specific Committed Service, As Required Service and Designated Subsidiary/Affiliate Service. It is important that the type of service is specified before the commencement of any service. This specification is to ensure that the correct cost loadings are applied to any Transfer Price.

i. Specific Committed Service

Specific Committed Service is work that is contracted for and billed regardless of whether or not work is actually performed. Typically, this work is on-going or on a continuing basis (such as regulatory) in support of ARBNNM activities. The receiving organization (i.e. the ARBNNM) is, in effect, requiring that the providing organization’s department (i.e. [FortisBC Energy]) maintain sufficient staffing levels throughout the year in order to provide this service. The receiving organization must pay for the Specific Committed Service even if the service provided is less than originally contracted.

It is important that the description and scope of the service to be provided be defined before the commencement of such a service, including an indication whether the service is performed at the employee’s normal place of work (“on-site”) or at the ARBNNM’s (“off-site”). A request for Specific Committed Service may be raised or terminated at any time throughout the year. Termination of a Specific Committed Service as a result of an activity change is subject to a sixty (60) day notice period.

At the end of the fiscal year, Specific Committed Services which were not provided (unless the Utility was unable to meet its commitments) will be offset against services

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used in excess of those committed. Any excess service on a total pooled basis will be billed, but any deficiency will not be refunded. If there is a shortfall in the level of service provided by [FortisBC Energy] a reasonable refund may be made. In the normal course of business, the time estimates for Specific Committed Service are reviewed annually.

To determine the full cost of Specific Committed Service, the following loadings are applied to direct labour costs: concessions (~~i.e. paid time off~~) loading, benefits loading and general overhead loading. Also facility and/or equipment charges are applied if applicable. Appendix A, Column 1 shows an example of determining full cost for Specific Committed Service, both “on-site” and “off-site”.

~~With Commission approval, the general overhead loading and/or facility charges may be excluded resulting in charges at below full cost.~~

Stakeholder comments

Commission Staff suggested deleting the parenthetical phrase (i.e. paid time off) as it seems unnecessarily limiting. Also the last sentence has been deleted as it is covered by the addition of ‘1. Pricing Rules, sentence ‘iii’.

FAES suggested adding wording to paragraphs 2 and 3 to provide additional clarity.

It is important that the description ~~and~~, scope ~~and~~ quality of the service to be provided be defined ~~and agreed upon by both [FortisBC Energy] and the ARBNNM~~ before the commencement of such a service, including an indication whether the service is performed at the employee’s normal place of work (“on-site”) or at the ARBNNM’s (“off-site”). A request for Specific Committed Service may be raised or terminated ~~by the ARBNNM~~ at any time throughout the year. Termination of a Specific Committed Service as a result of an activity change is subject to a sixty (60) day notice period.

At the end of the fiscal year, Specific Committed Services which were not provided (unless the Utility was unable to meet its commitments) will be offset against services used in excess of those committed. Any excess service on a total pooled basis will be billed, but any deficiency will not be refunded. If there is a shortfall in the level ~~or quality~~ of service provided by [FortisBC Energy] a reasonable refund ~~by [FortisBC Energy] or termination of service by the ARBNNM~~ may be made. In the normal course of business, the time estimates for Specific Committed Service are reviewed ~~and agreed upon by both [FortisBC Energy] and the ARBNNM~~ annually.

FEI has no objections to the proposed changes by Commission Staff and FAES.

ii. **As Required Service**

As Required Service is work that is not specifically committed to by the receiving organization. The providing organization charges the cost of the actual time incurred to perform the work to the receiving organization. Typically, this is work that is not budgeted in advance.

As Required Service must be specified to be either for an extended term (greater or equal to three months) or short term (less than three months) period prior to the commencement

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of the work. In addition, it must be identified whether the individual providing the services will work at his or her normal place of work (“on-site”) or at the ARBNNM’s (“off-site”).

To determine the full cost of As Required Service, the following loadings are applied to direct labour costs: concessions (i.e. ~~paid time off~~) loading, benefits loading, general overhead loading, supervision loading and an availability charge loading. Also facility and/or equipment charges are made if applicable. Appendix A, Column 2 shows an example of determining full cost for As Required Service.

In certain situations, [FortisBC Energy] will need to retain the immediate right to recall the employee being contracted to the ARBNNM for an As Required Service. In these situations, [FortisBC Energy] will need to make this need explicit at the outset so that the ARBNNM may evaluate whether [FortisBC energy] can meet the ARBNNM requirements for the As Required Service. In these situations, the availability charge will be waived. Prior notification to the Commission is required to waive the availability charge for As Required Service.

Comment [A6]: FAES proposes adding this sentence.

~~With Commission approval, the general overhead loading, supervision loading, availability charge loading and/or facility charges may be excluded resulting in charges at below full cost.~~

Stakeholder comments

Commission Staff notes that as in the section Specific Committed Service, the parenthetical phrase (i.e. paid time off) has been deleted, as it seems unnecessarily limiting. Similarly, the last sentence has been deleted as it is covered by the addition of ‘1. Pricing Rules, sentence ‘iii’.

The sentence beginning “In certain situations...,” is taken from the 1997 Transfer Pricing Policy. It is unclear why Fortis deleted it from this version, and staff believe it add additional clarity to the section.

FEI has no objections to the changes proposed by Commission Staff.

FAES commented that the sentence “Typically, this is work that is not budgeted in advance.” is not required. FAES also commented on the following section indicating that it is not sure that these rules are necessary and manageable. FAES understands that if the FEI resource is not available to provide the service, FAES would procure the service elsewhere.

As Required Service must be specified to be either for an extended term (greater or equal to three months) or short term (less than three months) period prior to the commencement of the work. In addition, it must be identified whether the individual providing the services will work at his or her normal place of work (“on-site”) or at the ARBNNM’s (“off-site”).

FEI clarifies the intent of the above wording is to allow it to plan appropriately for any short term assignments that an ARBNNM may have. By providing clarity on the service requested including the expected duration, an ARBNNM can help FEI plan accordingly and minimize disruption.

iii. **Designated Subsidiary/Affiliate Service**

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A Designated Subsidiary/Affiliate is a related company that is designated by [FortisBC Energy] and approved by the Commission to receive reduced loadings in the Transfer Price. The designation relates to the additional benefits that the related company provides to [FortisBC Energy]'s customers, employees or to the economic development of the Province of British Columbia.

A Designated Subsidiary/Affiliate receives services on the same basis as the As Required Service described above. To determine the full cost of Designated Subsidiary/Affiliate Service, the following loadings are applied to direct labour costs: concessions ~~(i.e. paid time off)~~ loading, benefits loading and a general overhead loading. Appendix A, Column 3 shows an example of determining full cost for A Designated Subsidiary/Affiliate Service.

The Commission may approve a subsidiary or affiliate with this status but exclude specific activities or projects of that subsidiary (e.g. projects taking place in certain geographic locations). Similarly, certain work to be performed for an ARBNNM relating to a specific service, project or product may be designated by [FortisBC Energy] and approved by the Commission to receive reduced loadings.

Stakeholder comments

Commission Staff suggests deleted the words "(i.e. paid time off)".

3. Cost Relating to the Transfer of Activities from the Utility to an ARBNNM

3.1 **Transfer Costs**

Activities initially undertaken within the regulated Utility may, from time to time, be transferred to an ARBNNM with Commission approval. Costs associated with transferring an activity to an ARBNNM, and the start-up of ARBNNM activities, shall be borne by the ARBNNM. To the extent that these activities involve Utility resources during the transfer, the ARBNNM shall reimburse the Utility using the appropriate pricing rules as defined in this Transfer Pricing Policy. Costs relating to the termination of an activity within the Utility shall be borne by the Utility.

3.2 **Research Costs**

As research is regarded as a continuing activity required to maintain the Utility's business and its effectiveness, such expenses shall be borne by the Utility. However, where it is evident that certain research activities are clearly directed towards specific pursuits related to an ARBNNM, the Utility will ensure it is compensated by the ARBNNM according to the pricing rules defined in this Transfer Pricing Policy, net of any quantifiable benefits received by the Utility.

3.3 **Development Costs**

Development costs for new products and services transferred to an ARBNNM will be tracked and charged to the ARBNNM according to the pricing rules defined in this Transfer Pricing Policy, net of any quantifiable benefits received by the Utility.

Comment [A7]: FAES is seeking clarification as to who is determining whether research activities are directed towards pursuits related to an ARBNNM (e.g., FAES). FAES is opposed to the addition of this language if it means that FEI would decide to conduct certain research activities that it later deems for the benefits of FAES, without FAES' prior knowledge or consent, in order to be compensated. If this provision remains, FAES would want to ensure that it agrees with the research activities and the price before they are undertaken.

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Stakeholder comments

In the view of **Commission Staff**, unless there is some good reason to exclude it, inclusion of the section 3 in the 1997 Transfer Pricing Policy – “Costs Relating to the Transfer of the Activities from the Utility to the NRB”- should also be included in the Policy for ARBNNMs, with the appropriate wording changes to reflect that it refers to ARBNNMs.

FEI has no objections to the proposed wording.

4. Cost Collection Procedures

4.1 Internal Orders

[FortisBC Energy] will be responsible for setting up the appropriate internal orders, documenting the internal order numbers and ensuring that the appropriate individuals charge time to them. The providing organization’s accounting group (typically [FortisBC Energy]’s Financial Accounting Group) will be responsible for maintaining the internal orders and collecting the appropriate charges.

4.2 Time Sheets

The individuals performing the service must report all time spent on that service by coding their time to the appropriate internal order numbers. This is to occur whether the type of service is Specific Committed, As Required or Designated Subsidiary/Affiliate Service. The ARBNNM may also review the validity of these charges.

Stakeholder comments

Commission Staff suggests adding a sentence that was in the 1997 Policy and that read “Time sheets are to be sent monthly to the immediate supervisor or [FortisBC Energy]’s Payroll Department” was omitted from this version; staff have added it again. In staff’s view, the statement should go further and clarify how long the time records should be kept and available for review if required.

FEI does not believe the proposed wording is required in the Transfer Pricing Policy. Employees are already required to submit timesheets for processing by Payroll. Additionally, FEI has a policy requiring timesheets be kept for a seven year period.

The **Coalition for Open Competition** suggested providing the following additional wording to the Time Sheets section.

Any FEI employee that spends time on affiliate business must account for 100% of their time, by company, including FEI activities in order to minimize the bias of omission in reporting time spent on non-FEI activities.

The Coalition for Open Competition comment that ‘Exception Reporting’ is not adequate as it may lead to under-reporting of time on affiliate work.

FEI believes its current approach of allocating costs based on timesheet is appropriate and well established and leads to accurate and representative costs. FEI’s timesheet based allocation

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approach has been used successfully for a number of years. The system is designed to capture the necessary input from employees who are best able to assess where their time has been spent. Additionally, the existing timesheet approach and importance of costing information is well understood by its employees. FEI does not believe there is any bias of omission in reporting of time spent on non-FEI activities.

4.3 Invoicing

The ARBNM will be invoiced for the contracted amount in respect of Specific Committed Service and for the appropriate time based on the actual payroll level in respect of As Required Service or Designated/Affiliate Service (subject to confidentiality of salary information) with the applicable loadings applied.

The methodology for determining a salary level is on the basis of the average of the respective pay grades or job groups for the employees involved.

Stakeholder comments

The **Coalition for Open Competition** suggested the additional following wording:

4.4 Commission to be Apprised

The Commission is to be apprised of all Invoices on an Annual Basis (or more frequently) that details are cost allocations from FEI to affiliates. In addition, the Commission is to receive any Internal Audit Reports on the review of transfer costs as between FEI and affiliates.

FEI does not believe the additional wording is necessary as it is addressed in section 7 Compliance and Complaints of the Code of Conduct. In section 7, FEI has indicated that it will be conducting an annual compliance review with the results filed with the Commission annually. Regarding disclosure of services and the costs between FEI and an ARBNM, this has been discussed in the Policy section previously.

FAES suggested the following wording be added at the end of this section:

The invoice will include the number of hours and corresponding activities so that the ARBNM will have the opportunity to review and agree with the validity of the charges.

FEI suggests the proposed sentence be limited to “The invoice will include the number of hours and corresponding activities.” It is unnecessary to include reference to “opportunity to review and agree with the validity of the charges” as that is what would occur, regardless of whether FAES was dealing with FEI or another service provider.

Comment [A8]: FAES is okay with FEI's revision.

5. Review of Transfer Pricing Policy

The Transfer Pricing Policy will be reviewed on an annual basis as part of the Code of Conduct compliance review. However, [FortisBC Energy] may make application to the Commission for approval of changes to the policy including the pricing rules and the formula for determining full costs as and when required.

Appendix “A”

Illustrative Example of Determining Full Cost for the Three Types of Service

(For an employee at an annual salary of \$85,000 and 59% benefits loading)

(Different charge-out rates are used for different positions)

Column	1		2			3
	Specific Committed Service		As Required Service			Designated Subsidiary / Affiliate
	Off-Site Full-time	On-Site Full-time	On-Site Short Term	Off-Site Short Term	Off Site Extended	
BASE PAY PER DAY	\$327.00	\$327.00	\$327.00	\$327.00	\$327.00	\$327.00
PLUS CONCESSIONS and BENEFITS (90%)	\$295.00	\$295.00	\$295.00	\$295.00	\$295.00	\$295.00
LOADED LABOUR PER DAY	\$622.00	\$622.00	\$622.00	\$622.00	\$622.00	\$622.00
GENERAL OVERHEAD	5%	10%	10%	10%	5%	5%
SUPERVISION	N/A	Direct Charge	20%	N/A	N/A	Direct Charge
AVAILABILITY CHARGE	N/A	N/A	20%	20%	20%	N/A
FACILITIES CHARGE (If Applicable)	N/A	\$100.00	\$100.00	\$100.00	N/A	N/A
EQUIPMENT CHARGE (If Applicable)	Direct Charge	Direct Charge	Direct Charge	Direct Charge	Direct Charge	N/A
TOTAL FULL COSTS PER DAY	\$653.00	\$784.00	\$1,033.00	\$909.00	\$778.00	\$653.00
Cost Ratio to Base Pay per day	2.00	2.40	3.16	2.78	2.38	2.00
Cost Ratio to Loaded Labour per day	1.05	1.26	1.66	1.46	1.25	1.05

Appendix B4

**FEI PROPOSED CODE OF CONDUCT AND
TRANSFER PRICING POLICY,
MAY 15, 2014
CORIX COMMENTS**

FortisBC Energy Inc.
C O D E O F C O N D U C T

***For Provision of Utility Resources and Services to Affiliated Regulated Businesses
Operating in a Non-Natural Monopoly Environment (ARBNNM)***

May 15, 2014

SCOPE UNDER DISCUSSION

This Code of Conduct (Code) governs the relationships between [FortisBC Energy Inc. (FortisBC Energy)] and Affiliated Regulated Businesses operating in a non-natural monopoly environment (ARBNNMs) for the provision of [FortisBC Energy] resources, and is **intended to be** consistent with ~~many of~~ 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 Commission decisions in proceedings related to specific ARBNNMs. In instances, where this Code of Conduct is inconsistent with the principles in the Guidelines or other decisions related to specific ARBNNMs, it will be specifically noted.~~ 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.

Comment [A1]: The Commission Staff should submit its summary of the Guidelines to the Commission when this document is filed, so the Commission can see if all its directions have been incorporated.

This Code will govern the use of [FortisBC Energy] resources and services provided to ARBNNMs 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 ARBNNMs. ~~and the treatment by [FortisBC Energy] of its ARBNNMs. [FortisBC Energy] recognizes that the AES Inquiry Report established principles and guidelines regarding the type of business structure for affiliate transactions, and will adopt those principles and guidelines when determining how to structure a new business activity.~~

The primary responsibility for administering this Code lies with [FortisBC Energy], although the Commission has jurisdiction over matters referred to in this Code. ~~The Commission acknowledges that [FortisBC Energy] in The administration of this Code may have to take into account particular circumstances in respect to a particular resource or service which is being provided and where these issues are at variance with this Code and if the variance results in costs exceeding benefits received by the ratepayers of [FortisBC Energy], [FortisBC Energy] will be required to seek Commission approval.~~ The Code also provides that the Commission may review complaints in relation to this Code.

Comment [A2]: This sentence is unnecessary. Including it complicates the document.

The [FortisBC Energy] Transfer Pricing Policy for ARBNNMs, dated **May 15, 2014** will be used in conjunction with this Code to establish the costs and pricing for [FortisBC Energy] resources and services provided to ARBNNMs.

This Code governs the relationships between [FortisBC Energy] and its Affiliated Regulated Businesses operating in a non-natural monopoly environment. This Code does not replace the existing Code of Conduct governing the relationship between [FortisBC Energy] and Non-Regulated businesses (NRBs).

Stakeholder Comments

As stated in this Scope section, **FEI** clarifies that this proposed Code of Conduct (Code) governs only the relationships between [FortisBC Energy] and Affiliated Regulated Businesses operating in a non-natural monopoly environment (ARBNNMs). This Code does not replace the existing Code of Conduct governing the relationship between [FortisBC Energy] and Non-Regulated businesses (NRBs).

FEI has edited its proposed wording to incorporate some the Commission Staff's suggestions provided. The changes are highlighted above with comments provided, where appropriate.

FEI has added reference to the term "Guidelines" in the opening paragraph to provide a link to the use of the term Guidelines in the Definitions section.

Regarding the proposed sentence, "**In instances, where this Code of Conduct is inconsistent with the principles in the Guidelines or other decisions related to specific ARBNNMs, it will be specifically noted.**", FEI does not believe this is necessary as the sentence following makes the same point.

Corix believes that this CoC and TPP should be consistent with the Guidelines and that the wording from the Commission's AES Report should be used to avoid inconsistencies. To the extent that wording within the CoC or TPP is differs from the Guidelines and other Commission decisions, Corix supports the wording proposed by Commission Staff.

Regarding the proposed wording by Commission Staff, "**[FortisBC Energy] recognizes that the AES Inquiry Report established principles and guidelines regarding the type of business structure for affiliate transactions, and will adopt those principles and guidelines when determining how to structure a new business activity.**", **FEI** does not believe they are appropriate for the Code of Conduct. This is discussed later on in the section on the Code of Conduct Principles.

Corix believes the principles established in the AES Inquiry Report need to be made readily available to all AES market participants, both current and future, and the CoC is the most appropriate place.

FEI has provided alternate wording to the Commission Staff's suggested sentence "In such a circumstance, the onus will be on [FortisBC Energy], the affected affiliate or both, to apply to the Commission justifying the variance." Instead, FEI proposes amending the previous sentence to as follows:

Amended sentence

The administration of this Code may have to take into account particular circumstances in respect to a particular resource or service which is being provided and where these **issues are**

at variance with this Code and if the variance results in costs exceeding benefits received by the ratepayers of [FortisBC Energy], [FortisBC Energy] will be required to seek Commission approval.

Corix does not agree with this amended sentence. The purpose of the Code is to implement the principles established by the Commission. Those principles were established following comprehensive proceedings before the Commission. The Commission did not allow for FEI to deviate from the principles based on the criteria that FEI is now attempting to set up in this Code. FEI should not be permitted to circumvent the reconsideration process under the Act which is the proper process for seeking a change Commission decisions.

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As it is FEI's Code of Conduct, it is inappropriate to be asking the "affected utility or both" to apply to the Commission justifying the variance.

Corix disagrees. Any variance in issue involves a change to a Commission decision, not the FEI Code of Conduct. Any party seeking a change to a Commission decision should apply under the Act to the Commission for a reconsideration. The applicant bears the onus of proving the reconsideration is warranted based.

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Corix favours a simplified version of this paragraph:

The primary responsibility for administering this Code lies with [FortisBC Energy], although the Commission has jurisdiction over matters referred to in this Code. The Code also provides that the Commission may review complaints in relation to this Code.

At the April 24 workshop, **Commission Staff** provided clarification that the proposed wording in paragraphs one and two of the Scope section of the proposed Code of Conduct was intended to cover the different situations possible including Stream A and Stream B projects.

Commission Staff commented they have no authority to override any of the principles, guidelines or directions previously established by a Commission panel. Thus the Code of Conduct should state that the Code of Conduct is intended to be consistent with previous Commission rulings. If there are instances where the proposed Code of Conduct is inconsistent with previous rulings, then it should be made explicit. Also, it should be made clear that silence on an issue in the Code of Conduct, even if approved by the Commission, does not override or void a previously established principle, guideline or principle. This clarification will be helpful in the event that the Commission is required to later rule on a complaint in relation to the code.

Regarding business structure, Commission Staff indicated that especially since FEI is proposing separate Codes of Conduct for ARBNNMs, NRBs, and other ways of structuring activities into different products and services, it is important to acknowledge that there are principles and guidelines regarding the overarching issue of whether or not the proposed corporate structure is appropriate.

FAES noted that the sentence referencing “The Commission acknowledges that FEI in the administration of this Code.....” is too broad as it refers to “principles” of the BCUC outlined in a list of documents, including any Commission decisions in proceedings related to ARBNNM. At least, a qualification on principles should be added to delineate which principles we are talking about (i.e., only principles related to transfer pricing and code of conduct).

The **Coalition for Open Competition** stated that the principles should be applied consistently regardless of whether the business is regulated or not. It would seem reasonable to combine all such Codes of Conduct under one document to avoid confusion and duplication. It would be more appropriate to use the code in all instances where it is required but exempt the obvious exclusions such as within the gas utilities.

DEFINITIONS **[UNDER DISCUSSION]**

[FortisBC Energy Inc.] *May be abbreviated as follows: [FortisBC Energy], the Utility, or the Company, and may also include employees of the Company.*

Commission *British Columbia Utilities Commission.*

Guidelines *Principles and Guidelines from the Retail Markets Downstream of the Utility Meter Guidelines published by the British Columbia Utility Commission in April, 1997 and the Commission’s Report in the Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives published in December 27, 2012. This definition does not negate the applicability of other relevant orders or directions such as Commission directions in proceedings regarding affiliates or Special Directions issued by the Province of British Columbia to the Commission on matters related to specific FortisBC Energy business activities.*

Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment (ARBNNM) *An affiliate of the Utility regulated by the Commission offering regulated products and services in a non-natural monopoly environment.*

RMDM *Acronym for “Retail Markets Downstream of the Utility Meter”, which may include any utility or energy related activity at or downstream of the utility meter.*

Transfer Pricing to Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment

The price established for the provision of Utility resources and services to an ARBNNM. Transfer pricing for any Utility resource or service will be determined by applying the appropriate [FortisBC Energy] Transfer Pricing Policy approved by the Commission.

Stakeholder Comments

Commission Staff provided additional wording regarding the definition of Guidelines as highlighted. Staff commented that the Code of Conduct should acknowledge that there are other directions and documents that may have a bearing on affiliate transactions. Commission Staff commented that the proposed FEI Code of Conduct for ARBNNM is only for a regulated business offering services in a non-natural monopoly environment. For unregulated businesses, the fall back would be to the RMDM guidelines and the existing FEI Code of Conduct for NRBs.

FEI has no concerns regarding the Commission Staff's proposed additional wording as highlighted above. FEI understands also that the Commission Staff's comments mean FEI's proposed Code of Conduct for ARBNNM does not apply to interactions between two affiliated regulated businesses that are natural monopolies (i.e. natural gas and electric service).

FAES indicated that the term Guideline was not a specific term used in the proposed FEI Code of Conduct for ARBNNM and that the definition Guideline should be deleted.

Instead of deleting the term Guideline the Definitions section to which Commission Staff have suggested additional wording, **FEI** has instead added reference to the term "Guidelines" in the Scope section.

The **Coalition for Open Competition** proposed the use of the term "Affiliate" instead of "ARBNNM". The Coalition commented further that FEI appeared to acknowledge at the April 24 workshop that FAES is intended to be its only TES affiliate and that it would not create a "Micro TES" affiliate to circumvent this Code to perform smaller TES projects (ie. Stream "A" or Micro TES). Likewise, the Coalition acknowledged that this process is not intended to be a COC/TPP for FAES; the concern is the transfer of services, etc. from FEI to FAES (not what FAES does with those transferred services).

FEI believes it is appropriate to use the term ARBNNM as it serves to highlight and maintain clarity that this proposed Code of Conduct has been developed for a specific set of circumstances. Using a more generic term such as "Affiliate" may create potential confusion in the future about the applicability of this proposed Code of Conduct.

APPLICATION OF COMMISSION PRINCIPLES

Stakeholder Comments

FEI has moved the Code of Conduct principles to the front of this document which previously was included in the Appendix.

CODE OF CONDUCT PRINCIPLES **UNDER DISCUSSION**

The following principles were applied in the development of the Code of Conduct for activities between [FortisBC Energy] and Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment [ARBNNM].

- i. The advancement and the protection of the interests of the regulated ratepayers of [FortisBC Energy] and the ARBNNM should be considered.
- ii. [FortisBC Energy] will not provide to an ARBNNM any information that would inhibit the energy services market in a non-natural monopoly environment from functioning.
- iii. The control of information should not provide a competitive advantage.
- iv. 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. Customer information (aggregate or customer specific with written consent) should be made available to all parties (Affiliated Regulated and Unregulated Businesses, and competitors) on an equal basis, **upon request**.
- v. [FortisBC Energy] and its employees 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 ARBNNM. Additionally, [FortisBC Energy] and its employees will not preferentially direct customers to an ARBNNM.
- vi. The financing of [FortisBC Energy] and the ARBNNM will be accounted for separately with the financing costs reflecting the risk profile of each entity. No cross-guarantees or any form of financial assistance whatsoever should be provided or indirectly **provided** by [FortisBC Energy] to the ARBNNM without the approval of the Commission.
- vii. [FortisBC Energy] will monitor compliance with this Code by also conducting an annual compliance review. [FortisBC Energy] will regularly advise all of its employees of their expected conduct pertaining to this Code.
- viii. The Transfer Pricing mechanism should provide a fair and transparent mechanism to both [FortisBC Energy] and ARBNNM's ratepayers.
- ix. *Any sharing of costs and services between Affiliated Regulated Businesses must be done on the basis of the higher of market price or the fully allocated cost, in accordance with a Commission approved Transfer Pricing Policy [wording from the AES Inquiry Report] The basis of cost allocation is cost causality. Costs are to be allocated from [FortisBC Energy] to the ARBNNM on the basis of no greater than*

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~~[FortisBC Energy]'s full cost, recognizing the needs of both the interests of [FortisBC Energy] and the ARBNNM ratepayers.~~

Stakeholder Comments

The highlighted words in **RED** represent amendments to the Code of Conduct Principles to provide further clarity.

FEI developed the proposed principles based on references to the AES Inquiry Report and feedback received at the February 20, 2014 FEI Code of Conduct workshop. Regarding the inconsistency between the cost causality principle and the higher of market price or fully allocated cost, as the Commission Staff has suggested, the choice of market price is dependent on each situation. In most cases as it applies to FEI resources being provided, the market price is the same as fully allocated cost. This is because FEI's approach to compensation and benefits is to provide its employees with competitive base salaries and wages, incentive compensation and benefits. FEI refers stakeholders to Slide 56 included in the April 24 workshop material where FEI fully loaded labour rates for the type of labour resources being provided are compared to the labour rates available in the marketplace. As a result of its market based approach, FEI labour rates charged are consistent with the market price or fully allocated cost. Given this, removing the reference to Market Pricing in the Code of Conduct would be more consistent with the Cost Causality principle and address some stakeholder concerns that using Higher of Market Pricing or Fully Allocated Cost would benefit competitors and hurt FAES ratepayers.

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Corix disagrees. FEI is seeking a reconsideration of the Commission's clear decision on this point. FEI may apply for a reconsideration of that decision, but it is not appropriate to circumvent that process by writing a different principle into this Code. Changing the Commission's decision requires notice to interest parties and a full debate.

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FAES commented that the overarching principle of Cost Causality found in the AES Inquiry Report is inconsistent with the principle of using Higher of Market Price or Fully Allocated Cost for the Transfer Price, also found in the AES Inquiry Report.

Commission Staff commented that they didn't see an inconsistency between cost causality and the fully allocated cost, and that the choice of market price or fully allocated cost is dependent on each situation, for example, its reliability at the time. Commission Staff also referred to the source for the proposed wording, page 33 of the AES Inquiry decision.

Additionally, Commission Staff provided the following additional wording to include as a Principle to address when a new regulated business activity should be structured as an Affiliated Regulated Business.

- i. Structuring a new regulated business activity as an Affiliated Regulated Business is most appropriate when some or all of the following characteristics are present:
 - o The new regulated business activity takes place largely beyond the delivery meter of the traditional utility;
 - o The new regulated business activity has limited or no use of the traditional utility assets;
 - and

- o The new regulated business activity has the potential to impose higher risks on the users of the new service and/or the utility shareholder.

Commission Staff expect parties to argue that Commission be consistent in the way it views regulations, whether providing services to FAES or an NRB. If talking of two regulated operations, regulation should work both ways. The notion of how you price a service has to go both ways. When trying to come up with appropriate pricing for services, outside test (i.e. market) is what costs should be paid. Commission Staff expressed concern that FEI does not over-invest in resources it doesn't need and downtime of utility resources not charged to ARBNNMs.

With respect to the Commission Staff's suggestion to include as a Principle to address when a new regulated business activity should be structured as an Affiliated Regulated Business and that "All proposals for new business activities should be accompanied by a risk management plan." discussed later on under section 8 Financing and Other Risks, **FEI's** view is that neither of these subjects are appropriate for the Code of Conduct. The Code of Conduct is intended to address interactions between FEI and ARBNNMs, and not how to structure a new business and how to mitigate risks (if any) from the new line of business. Additionally, the suggested wording is redundant. If and when FEI decides to venture into a new regulated line of business, it will likely have to seek Commission approval, for instance for a CPCN or for rates to be charged.

Corix agrees with the Commission's comments in this section.

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BCPSO commented that the use of Higher of Market Price or Fully Allocated cost would benefit competitors and hurt ratepayers. The interest of ratepayers on both sides of the FEI/FAES divide are best advanced by requiring FAES to pay the LOWER of market or fully allocated cost as long as FEI recovers incremental cost plus a premium. It's clearly not beneficial when the system disadvantages FEI/FAES relative to those operating only in non-monopoly environments. Receiving the LOWER of market or fully allocated cost benefits FAES ratepayers relative to having a non-monopoly company get the business because they can charge less. That is, shutting FAES out of the business, or preventing them from competing on equal terms does not advance the interests of FAES ratepayers.

BCPSO's interest is to see the market develop in a way that benefits ratepayers and involves all players, and FEI/FAES should not be disadvantaged. There are a lot of efficiencies to be gained from sharing services. We need to deviate from RMDM model as it was not in the best interest of ratepayers.

BCSEA commented that if customers are all regulated, then the Commission has the responsibility for protecting both sets of customers and ensuring appropriate prices are used. BCSEA noted that cross-subsidization can go both ways and there is a need to be careful that FAES does not end up subsidizing FEI. Sharing of resources between two large utilities, such as FEI and BC Hydro, will benefit both sets of ratepayers. It's more an issue of how to value the service. BCSEA's principal interest is in promoting innovative energy solutions in B.C.

CEC asked what the proposed wording from Commission Staff - “the new regulated business activity has the potential to impose higher risks on the users of the new services and/or the utility shareholder.” meant? For example, higher risk than what?

CEC also expressed concern about using Market Price and was not sure there is a Market Price, or way to discover a Market Price. This is more a cost allocation issue for ratepayers affected. Customers of regulated utilities have rights.

Corix supported the use of the “Higher of Market Price or the Fully Allocated cost” for FEI’s transfer price. The rules need to ensure fair cost of providing shared services to another entity, regardless of whether the entity is regulated. When a regulated utility is involved, have to ensure a fair price is charged.

In the case of Corix, it is the shareholders who would suffer (as opposed to regulated ratepayers) if undercharging for shared services provided by the unregulated parent company occurred. The ratepayers of the smaller regulated utility would get a deal.

FEI ratepayers would benefit from higher charges for shared service. FEI should not be allowed to charge for service at less than their cost. How the cost is determined is important. It should be a fair charge that recognizes the full cost of FEI offering its expertise, equipment and personnel, all of which have been paid for by ratepayers.

To be consistent with the Guidelines - as stated in the opening paragraph of this Code of Conduct document – costs charged by FEI should conform to the following principle:

Any sharing of costs and services between Affiliated Regulated Businesses must be done on the basis of the higher of market price or the fully allocated cost, in accordance with a Commission approved Transfer Pricing Policy [wording from the AES Inquiry Report].

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COPE commented that the Commission has no obligation to non-regulated customers but does to regulated customers. The Commission’s decisions can suffocate development of alternative energy in B.C. The RMDM was designed to maximize every benefit for gas ratepayers by ensuring ratepayers got every nickel they could out of expansion of the sphere of the utility. If FEI is required to charge higher of market price or full cost, the introduction of a notional surcharge indicates a form of cross-subsidization from FAES to FEI.

The Commission should not venture into a role outside its jurisdiction. The BCUC does not have a role in the market development of the Thermal Energy Services marketplace. Some parties are claiming to be seeking more open competition but may be actually constraining the development of the Thermal Energy Services marketplace. Constraints are being placed on the domestic utility but not on Corix, so not a level playing field. By not allowing FEI to share resources with its regulated affiliate, the victims would be ratepayers who would be required to pay for the duplication of resources.

The **Coalition for Open Competition** restated their view that FEI’s Code of Conduct needs to look beyond FEI and FAES ratepayers and to consider the impact of FEI’s actions on competitive marketplace. Additionally, they stated that regulatory oversight and enforcement

of FEI's Code of Conduct should be provided by the Commission and not just only when a complaint is raised.

The Coalition for Open Competition suggested the following principles. Sections highlighted in RED are where there are differences compared to that proposed by FEI.

CODE OF CONDUCT PRINCIPLES

The following principles were applied in the development of the Code of Conduct for activities between [FortisBC Energy] and Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment [ARBNNM].

- i. The advancement and the protection of the interests of the regulated ratepayers of [FortisBC Energy] and the ARBNNM should be considered.
- ii. In addition, competition within the non-natural monopoly environment should not be compromised by actions of FEI. The code needs to look beyond only the customers of FEI and the FEI affiliate customers but consider the impact of FEI's actions on non-monopoly markets.
- iii. [FortisBC Energy] will not provide to an ARBNNM any information that would inhibit the energy services market in a non-natural monopoly environment from functioning.
- iv. The control of information should not provide a competitive advantage.
- v. Customer specific information must be treated as required by the Personal Information Protection Act and, in addition, should only be released with the written consent of the customer. Customer information (aggregate or customer specific with written consent) should be made available to all parties (Affiliated Regulated and Unregulated Businesses, and competitors) on an equal basis.
- vi. [FortisBC Energy] and its employees 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 ARBNNM. Additionally, [FortisBC Energy] and its employees will not preferentially direct customers to an ARBNNM.
- vii. FEI will not provide financing to any affiliates. Any such financings will be done by FEI's parent or grand-parent companies.
- viii. [FortisBC Energy] will monitor compliance with this Code by also conducting an annual compliance review. [FortisBC Energy] will regularly advise all of its employees of their expected conduct pertaining to this Code.
- ix. The Transfer Pricing mechanism should provide a fair and transparent mechanism to [FortisBC Energy], ARBNNM's ratepayers and competitors in the non-monopoly market environment.
- x. Review and enforcement of the Code will be the role of the Commission.

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xi. The basis of cost allocation is cost causality. Costs are to be allocated from [FortisBC Energy] to the ARBNNM on the basis of the greater of cost or market value per the AES Inquiry Report.

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Regarding the wording that “FEI will not provide financing to any affiliates……”, FEI notes that the proposed wording by the Coalition for Open Competition is inconsistent with that indicated in the AES Inquiry decision (page 33 bullet number two under Guidelines). FEI’s proposed wording as discussed later on in section 8 Financing and Other Risks is more consistent with that indicated in the AES Inquiry decision and that including in FEI’s current Code of Conduct for NRBs.

Additionally, FEI believes the Coalition for Open Competition suggestion that FEI’s Code of Conduct “needs to look beyond FEI and FAES ratepayers and to consider the impact of FEI’s actions on competitive marketplace.” and “In addition, competition within the non-natural monopoly environment should not be compromised by actions of FEI. The code needs to look beyond only the customers of FEI and the FEI affiliate customers but consider the impact of FEI’s actions on non-monopoly markets.” is inappropriate and inconsistent with the intent of the Code of Conduct, which is to protect the interests of FEI’s natural gas ratepayers and ensure there is no cross-subsidization.

1. Transfer Pricing for ARBNNMs ACCEPTED

[FortisBC Energy] will conform with the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs.

2. Shared Services and Personnel UNDER DISCUSSION

- a) This Code recognizes the potential benefits to the [FortisBC Energy] and ARBNNM regulated ratepayers in sharing resources.
- b) [FortisBC Energy] may provide shared services and personnel noted in section (c) below to ARBNNMs while ensuring that its ratepayers will not be negatively impacted by [FortisBC Energy]’s involvement. The costs of providing such services will be as agreed upon by both [FortisBC Energy] and the ARBNNM and be in accordance with the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs.
- c) ARBNNMs may contract for corporate services including senior management and operating personnel from [FortisBC Energy] using the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs, providing [FortisBC Energy] complies with Section 3 of this Code, Provision of Information by [FortisBC Energy], and no conflict of interest exists which will negatively impact ratepayers.

Stakeholder Comments

FEI believes its proposed wording for sharing of services and personnel with an ARBNNM as outlined in section c are appropriate, providing flexibility for resource sharing arrangements that benefit both FEI and ARBNNM ratepayers. The wording proposed by the Commission Staff and which is consistent with the Alberta Code of Conduct is inappropriate for the circumstances in B.C. While the wording may be appropriate for Alberta which has an operating environment consisting both of regulated and non-regulated activities, the situation is different for FortisBC where much of its operations in B.C. are regulated including FAES/TES. Additionally, the Commission's Staff proposed wording is very broadly and generally defined that it is difficult to operationalize. For example, the proposed wording suggests sharing of personnel be limited to

".... corporate services and should not include any operational services except possibly emergency services. Sharing of employees will not be allowed where the employee has access to confidential information, routinely participates in making decisions with respect to the provision of traditional utility services or how utility services are delivered, routinely deals with or has direct contact with customers of the utility or is routinely involved in planning or managing the business of the traditional utility."

For the purpose of the Code of Conduct, what is intended to be confidential information? Is it customer specific information? If so, that is already addressed in the section 3 Provision of Information by [FortisBC Energy] where customer information upon request is being made available to all parties on an equal basis. Another question is who are the people to be included in the definition of "as routinely involved in planning or managing the business of the traditional utility"? The definition as it stands would exclude most FEI managers from being shared, as FEI managers are involved in some way in planning or managing the business of the traditional utility. Another example is the proposed exclusion of operational services (not business development or sales personnel) from being shared. In the context of the B.C. situation where much of the activities are regulated, there is little rationale for excluding sharing of operational (i.e. field) personnel. How would sharing of operating personnel in FEI's situation have a negative impact to FEI's ratepayers?

With the suggested broadly defined wording on sharing of services and personnel by Commission Staff, there likely would be few situations where FEI resources would be shared. This would not be in the interests of FEI and the ARBNNM ratepayers. FEI believes its proposed wording is adequate as the onus is on FEI to operate accordingly. Commission oversight currently exists to ensure this.

Commission Staff indicated that clarification of "confidential information" for the purpose of the Code of Conduct or rewording of it may be required. Staff noted that the reference to confidential information is also used elsewhere in the Code of Conduct. Staff commented that the Commission in the AES Inquiry decision recognized that in situations where there is higher risk to FEI ratepayers, greater separation is required. However, there may not be higher risk in all situations.

Commission Staff suggested the following wording:

Shared Services and Personnel

- a) As a rule, resource sharing will be limited to corporate services and should not include any operational services except possibly emergency services. Sharing of employees will not be allowed where the employee has access to confidential information, routinely participates in making decisions with respect to the provision of traditional utility services or how utility services are delivered, routinely deals with or has direct contact with customers of the utility or is routinely involved in planning or managing the business of the traditional utility; Where potential benefits to the [FortisBC Energy] and ARBNNM regulated ratepayers in sharing resources indicate that sharing of resources and personnel should extend beyond corporate services, the onus is on [FortisBC Energy] or its regulated affiliate to demonstrate that those benefits outweigh any potential harm to the ratepayers of the affected affiliates.
- b) Subject to (a) above, [FortisBC Energy] may provide shared services and personnel noted in section (c) below to ARBNNMs while ensuring that its ratepayers will not be negatively impacted by [FortisBC Energy]'s involvement. The costs of providing such services will be as agreed upon by both parties and be in accordance with the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs.
- c) ARBNNMs may contract for corporate services including senior management and operating personnel from [FortisBC Energy] using the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs, providing [FortisBC Energy] complies with Section 3 of this Code, Provision of Information by [FortisBC Energy], and no conflict of interest exists which will negatively impact ratepayers.
- d) In all cases where services and personnel are shared [FortisBC Energy] will ensure that adequate accounting records are maintained so that the Commission can ensure the appropriate allocation of costs between the entities sharing the services. Moreover, the accounting records of all of the affected affiliates related to the shared services and personnel will be available to the Commission when requested and in the form requested by the Commission.

Commission Staff commented that its suggested wording bring it back into alignment with the AES Inquiry Report (pages 25-26), as well as support for the principle in the Kelowna DES Decision (Order C-8-13). The original sentence in the FEI draft has been reworded to allow for additional resource sharing if it can be demonstrated to the Commission that it is net beneficial to ratepayers of both affiliates. Paragraph 'b)' has been revised to reflect the revision in 'a)'.

FAES suggested changing the reference to "parties" in section b) to "[FortisBC Energy] and the ARBNNM." This has been reflected in the FEI wording highlighted in **RED** above.

CEC expressed concern that the proposed detail wording by the Coalition for Open Competition is getting into micro-managing the business of FEI. This suggests anti-competitive practices.

COPE suggested the exclusions by the Coalition for Open Competition are not practical (i.e. restrictions regarding sharing of the first aid and washrooms, call centre support).

The **Coalition for Open Competition** commented their suggested wording is intended to operationalize (codify) things that “blur” the line. There is a “gulf between us” (i.e. between the Coalition’s position on this and FEI’s). The Coalition has no concerns about sharing of corporate accounting and IT. Their concerns are focused on sharing of sales development and regulatory personnel and senior management (i.e. VP, Doug Stout roles in FEI and FAES).

The proposed wording from the Coalition for Open Competition is as follows:

- a) This Code recognizes that, while there may be potential benefits to the [FortisBC Energy] and ARBNNM regulated ratepayers from sharing resources, the sharing of services and personnel should not result in anti-competitive practices or be harmful in any way to the functioning of competitive markets.

Comment from Coalition for Open Competition

The Code of Conduct primarily exists to protect against abuses by the shareholder and not to condone or ratify the value of shared services.

- b) [FortisBC Energy] may provide shared services and personnel noted in section (c) below to ARBNNMs while ensuring that its ratepayers will not be negatively impacted by [FortisBC Energy]’s involvement. The costs of providing such services will be as agreed upon by both parties and be in accordance with the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs. The exceptions to what FEI can share with [affiliates] are contained in Section 9 below.
- c) ARBNNMs may contract for corporate services including senior management and operating personnel from [FortisBC Energy] using the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs, providing [FortisBC Energy] complies with Section 3 of this Code, Provision of Information by [FortisBC Energy], and no conflict of interest exists which will negatively impact ratepayers.

Separation from Natural Gas Utility Operations

In order to ensure that FEI affiliates are not able to garner uncompetitive advantages in related regulated, or non-regulated, areas, FEI will endeavor to separate its natural gas utility operations from its affiliates in the following manners:

(a) Officers and Directors of the [affiliates] must not be officers or employees of FEI with the following limited exceptions:

- (i) The CEO of FEI,
- (ii) The CFO of FEI
- (iii) The Treasurer of FEI
- (iv) The Corporate Secretary of FEI
- (v) The Assistant Corporate Secretary of FEI

Comment from Coalition for Open Competition

Recognize that there is a need for common corporate oversight but it is not appropriate to have common management of both natural gas (pure monopoly) and thermal energy operations (non-monopoly).

(b) The following departments, business units or services cannot be shared with [affiliates]¹:

- (i) Energy Solutions Group (or equivalent)
- (ii) Marketing/Communications/External Relations
- (iii) Regulatory Affairs
- (iv) Customer Billing, with the exception whereby Customer Billing services are provide an on open basis with a common tariff to all users including FEI, [affiliates] and third parties.

Comment from Coalition for Open Competition

These departments are appropriately large, sophisticated operating units that are difficult and expensive to replicate in the competitive marketplace. They are in place by virtue of the need to support over 1.1 million natural gas and electric utility customer and are paid for by those regulated customers.

Affiliates should develop their own specialty business units if they require them and not rely on the natural gas utility for developing and maintaining such as strategic asset.

¹ ***“For new business activities, the challenge lies in determining the costs that should be borne entirely by the new business customer (or the utility shareholder). An approved Transfer Pricing Policy should ensure that costs are allocated on the basis of the higher of fully allocated cost or market pricing and an approved Code of Conduct should ensure that the sharing of operational and management services is appropriate.”*** AES Inquiry Decision, page 34, emphasis added.

(c) The office, shops, and places of work of FEI and the [affiliates] are not to be on a common site by January 1, 2015. The respective locations must not share the following attributes:

- (i) Mailing Addresses;
- (ii) Telephone numbers (including fax numbers);
- (iii) Switchboards;
- (iv) Mailrooms;
- (v) Ancillary space (such as cafeterias, meeting rooms, first aid rooms, washrooms, etc.).

Comment from Coalition for Open Competition

Concerned about accidental and informal sharing of information that is not possible to ensure that is contained by “confidentiality” provisions; in addition, it aids in the identification and separation of costs between FEI and its affiliates.

Corix provided the following revised wording:

This Code recognizes the potential benefits to the [FortisBC Energy] and ARBNNM regulated ratepayers in sharing resources.

- a) [FortisBC Energy] may provide shared services and personnel noted in section (c) below to ARBNNMs while ensuring that its ratepayers will not be negatively impacted by [FortisBC Energy]’s involvement. The costs of providing such services will conform to the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs.
- b) ARBNNMs may contract for corporate services including senior management but will not include any operational services other than for the provision of emergency services personnel [this revised wording consistent with the recommendations in the AES Inquiry Report] from [FortisBC Energy] using the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs, providing [FortisBC Energy] complies with Section 3 of this Code, Provision of Information by [FortisBC Energy], and no conflict of interest exists which will negatively impact ratepayers.
- c) ARBNNMs may contract for corporate services including senior management but will not include any operational services other than for the provision of emergency services personnel [this revised wording consistent with the recommendations in the AES Inquiry Report] from [FortisBC Energy] using the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs, providing [FortisBC Energy] complies with Section 3 of this Code, Provision of Information by [FortisBC Energy], and no conflict of interest exists which will negatively impact ratepayers.

Corix commented that FEI’s intention to share operating personnel is in direct contradiction of the Commission Panel’s recommendation.

3. Provision of Information by [FortisBC Energy Inc.] [UNDER DISCUSSION]

Customer information (aggregate or customer specific with written consent) should be made available to all Parties (Affiliated Regulated and Unregulated Businesses, separate classes of service, and competitors) on an equal basis.

[FortisBC Energy] will not provide to an ARBNNM any information that would inhibit the energy services market in a non-natural monopoly environment from functioning.

Customer specific information must be treated in accordance with the Personal Information Protection Act. If a customer requests their specific information be provided to a specific party, only that party may receive the information. If a customer agrees to a general release of their specific information, that information must be made available to all interested parties who request it and are willing to pay the price associated with the provision of the information, without discrimination as to access, timing, cost or content. Customer information will be provided at a reasonable price reflecting market circumstances and cover the cost of extracting and providing the information. All parties should pay the same price for the same or similar information.

[FortisBC Energy] may disclose to all interested parties that request it and are willing to pay the appropriate transfer price (see above), customer information that is aggregated or summarized in such a way that confidential information would not be ascertained by third parties.

Stakeholder Comments

FEI has reworded the above section incorporating the suggestion to include wording from page 37 of the AES Inquiry report, Principle 2 and suggestions at the April 24 workshop (see April 24 workshop minutes).

4. Preferential Treatment [ACCEPTED]

[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 ARBNNM. 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 ARBNNM.

5. Equitable Access to Services [ACCEPTED]

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.

Stakeholder Comments

Subject to Commission Staff confirming – this was subsequently confirmed - that the BCUC website is able to maintain a list of registered TES Service Providers (e.g. contact information, possible project names and types, i.e., Stream A or Stream B, etc)

6. **Equitable Treatment of Demand-Side Management and Incentive Funds** **[Under Discussion]**

[FortisBC Energy] will establish a mechanism for involving a neutral third party in Demand-Side Management or incentive funding, so that Utility ratepayer funded DSM or other incentive activities are directed fairly to the most effective proposals for meeting the objectives of the funded activities.

Stakeholder Comments

Commission Staff believes the suggested wording above referencing the Economic Efficiency Guidelines should remain in the Code of Conduct.

FEI notes that the suggested wording is not the same as that included in the AES Inquiry Report. On page 87, under Commission Determination,

“.... Accordingly, the FEU are directed to bring forward a proposal for mechanisms for approval and administration of funds by a neutral third party where the FEU may be involved in providing capital or services to a project receiving DSM or other incentive funds and/or there is a potential for FEU to benefit, either directly or indirectly, from that funding.”

The above wording directs FEU to bring forward a proposal and not necessarily to include it in the Code of Conduct. As such, FEI does not believe it is appropriate that the Code of Conduct include such wording. FEI also notes as per Commission directive in the AES proceeding, **FortisBC** has put forward a proposal around independent third party review of EEC funds for thermal energy projects generally, regardless of supplier, and as such, including this wording is inappropriate absent a Commission decision on FortisBC’s proposal.

7. **Compliance and Complaints** **[UNDER DISCUSSION]**

- a) The **Director of Finance and Planning** 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, with quarterly updates for employees who may be directly involved with ARBNNM activities.

- b) [FortisBC Energy] will monitor employee compliance with this Code by also conducting an annual compliance review, the results of which will be summarized in a report to be filed with the Commission within 60 days of the completion of this review.
- 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 Planning** and the Vice-President, Strategic Planning, Corporate Development and Regulatory, 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 receipt of the complaint.
- d) Where [FortisBC Energy] determines that the complaint is unfounded, the Company may apply to the Commission for reimbursement of the costs of the investigation from the third party initiating the complaint or where this is not possible, for inclusion of those costs in rates.

Stakeholder Comments

The reference to Director of Regulatory Affairs has been changed to Director of Finance and Planning.

Corix provided the following comments to section (d).

- d) [There is a significant power imbalance between the monopoly gas utility and a potential complainant, and this clause only serves to discourage what might be a legitimate complaint. If Fortis feels that a complaint is frivolous or otherwise unjustified it has the recourse to approach the Commission to discuss this. This clause should be deleted.]

Stakeholder Comments

FEI believes the wording it has proposed is appropriate and serves to discourage frivolous complaints while not discouraging potential complainants. The wording proposed by FEI is consistent with that included in the current approved Code of Conduct for NRBs which has been in place for a number of years. FEI is not aware of any situations in the past where a potential complainant was discouraged from lodging a complaint due to the nature of how the complaint process is defined.

The **Coalition for Open Competition** suggested the following additional wording.

- e) In the event that a third party disputes the results of an [FEI] investigation in relation to this Code of Conduct or Transfer Pricing Policy, the third party will have recourse to the Commission to arbitrate the dispute.

Comment from Coalition for Open Competition

The **Coalition for Open Competition** commented that the premise is that ultimately the Commission adjudicates what is appropriate. FEI is not the arbiter of its actions and behavior and the Code should clearly state this.

- f) Where a third party complaint is found to be valid, the Commission shall determine what penalties or remedies are appropriate consistent with its powers under the UCA.

Comment from Coalition for Open Competition

The **Coalition for Open Competition** commented that if it is the expectation of the parties that the Commission has the existing powers to administer penalties to the parties, the Code should state that this is the expectations.

FEI also does not believe it is necessary to include sections e and f as proposed by the Coalition for Open Competition. In the Scope section of the proposed Code of Conduct, the proposed wording indicates “The primary responsibility for administering this Code lies with [FortisBC Energy], although the Commission has jurisdiction over matters referred to in this Code.” and “The Code also provides that the Commission may review complaints in relation to this Code.” Section e is already covered by FEI’s proposed wording. With regards to the proposed section f, FEI’s view is that under the current UCA, the Commission has authority to impose administrative penalties in the event FEI violates a Commission rule or order. Including the suggested additional wording is not necessary.

Considerable discussion occurred regarding who should pay for the costs of the FEI’s compliance activities.

FAES indicated that there should be no cost to FAES’s ratepayers for FEI’s compliance with Code of Conduct activities.

COPE and BCPSO both commented that since competitors are the ones that benefit from the compliance monitoring activities, they should be paying for FEI’s Code of Conduct compliance costs. The compliance activities put constraints on FortisBC overall in its ability to compete in the TES marketplace, whereas FortisBC’s competitors can easily enter the marketplace. It is hard to understand there is no cost to the competitors.

Corix commented that it is fair that FEI ratepayers pay for the compliance activities as FEI ratepayers are the ones that benefit. It would be fundamentally wrong if TES competitors are charged for compliance activities.

The **Coalition for Open Competition** disagreed with the concept that competitors should pay to stop FEI from harming competition. FEI is the monopoly with access to captive resources paid by natural gas ratepayers and the onus is on FEI to behave responsibly. In some instances, it may be reasonable for the utility shareholder (or FAES shareholder) to fund costs rather than natural gas ratepayers.

8. Financing and Other Risks **UNDER DISCUSSION**

Unless approved by the Commission, [FortisBC Energy] will not undertake any financing or other financial assistance on behalf of an ARBNNM that exposes [FortisBC Energy] ratepayers to additional costs or risks, unless appropriate compensation is received by [FortisBC Energy] for such financing or other financial assistance, including compensation for additional cost or risk related to the addition of incremental debt to [FortisBC Energy] for a project carried out by the ARBNNM.

Stakeholder Comments

In addition to the wording proposed by FEI, **Commission Staff** provided the following suggested sections:

- b) The risk of unrecovered costs (including, but not limited to, startup, operating and capital costs) is to be borne by the Affiliated Regulated Business or Separate Class of Service or the shareholder. If costs related to the new business activity cannot be recovered from new business customers in a reasonable period of time (as approved by the Commission) these costs will be borne by the shareholder.
- c) All proposals for new business activities should be accompanied by a risk management plan. The risk management plan should address:
 - o The anticipated level of risk that would be faced by the traditional ratepayer, the new business ratepayer, and the shareholder; and
 - o How the incremental costs from these risks will be allocated among these groups.

Commission Staff reviewed the appropriateness of section c and indicates that it is extracted from the Guidelines found at page 35 of the AES Inquiry Report.

Regarding the proposed wording for (b) above, **FEI** does not believe it is appropriate to include in the Code of Conduct as the ability to recover costs would be dependent on a review of the specific circumstances at the time. As such, the general wording proposed by Commission Staff is unnecessary. Also, as discussed earlier in Code of Conduct Principles section, inclusion of the need for a Risk Management plan for new business activities is not appropriate for the Code of Conduct.

Commercial Energy Consumers Association (CEC) commented that section c just adds more costs to the process and that the issue may be better dealt with more generically at the FEI/FAES level.

The **Coalition for Open Competition** provided the following wording:

[Affiliates] will not receive financing or financial assistance from FEI at any time.

The Coalition for Open Competition commented that all funding of Affiliates can and should come from the parent compan(ies). There is simply no need for FEI to be involved in a financial transaction or risk transfer of this nature.

FEI notes that the proposed wording by the Coalition for Open Competition is inconsistent with that indicated in the AES Inquiry decision (page 33 bullet number two under Guidelines).

9. Use of Utility Name [ACCEPTED]

The use of the FortisBC by an ARBNNM operating in a non-natural monopoly environment is an acceptable business practice. The ARBNNM will exercise care in distinguishing between services provided by [FortisBC Energy] and services offered by the ARBNNM. **The name FortisBC is owned by Fortis Inc.**

Stakeholder Comments

As agreed, **FEI** has added the highlighted sentence to clarify ownership of FortisBC name.

10. Amendments [UNDER DISCUSSION]

In order to ensure that this Code remains workable and effective, the Company will review the provisions of this Code on an ongoing basis and as required by the Commission, but with a maximum of five years between reviews.

Amendments to this Code may be made from time to time as approved by the Commission, **and may result from a normal periodic review, from a request to the Commission by [FortisBC Energy], an ARBNNM, a customer or other stakeholder, or a review initiative by the Commission.**

Stakeholder Comments

FEI has no objections to the additional language proposed by Commission Staff.

FortisBC Energy Inc.

T R A N S F E R P R I C I N G P O L I C Y

For Provision of Utility Resources and Services to Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment (ARBNNM)

May 15, 2014

SCOPE

This policy addresses the pricing of resources and services provided by [FortisBC Energy Inc. (FortisBC Energy)] to Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment (ARBNNMs) providing regulated products and services.

[FortisBC Energy Inc.] will ensure that it receives adequate compensation for the resources and services provided, thereby protecting its ratepayers from subsidizing the activities of ARBNNMs.

The Transfer Pricing Policy for ARBNNMs will be used in conjunction with the [FortisBC Energy] Code of Conduct for Provision of Utility Resources and Services to Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment dated May 15, 2014. This Policy does not replace the existing Transfer Pricing Policy between [FortisBC Energy] and Non-Regulated businesses (NRBs).

Stakeholder Comments

Commission Staff provided the following revised wording:

This policy addresses the pricing of resources and services provided by [FortisBC Energy Inc. (FortisBC Energy)] to Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment (ARBNNMs) providing regulated products and services.

Allocation of costs will reflect appropriate compensation for any benefit derived by a new ARBNNM as a result of its affiliation with its parent or other businesses. This will include compensation for additional cost or risk related to the addition of incremental debt to the parent utility for the new products or services. [FortisBC Energy Inc.] will ensure that it receives appropriate compensation for the resources and services provided, in order to protect its ratepayers from subsidizing the activities of ARBNNMs, as required by the Code of Conduct for ARBNNMs and this Transfer Pricing Policy.

FortisBC Energy and ARBNNMs will maintain separate financial records and books of accounts and sufficient separation of business operations in order to ensure a level of transparency that enables an appropriate allocation of costs between FEI and ARBNNMs and where appropriate, between individual ARBNNMs.

The Transfer Pricing Policy for ARBNNMs will be used in conjunction with the [FortisBC Energy] Code of Conduct for Provision of Utility Resources and Services to Affiliated Regulated Businesses Operating

in a Non-Natural Monopoly Environment dated May 15, 2014. This Policy does not replace the existing Transfer Pricing Policy between [FortisBC Energy] and Non-Regulated businesses (NRBs).

Commission Staff comments:

The Code of Conduct should acknowledge that there are other directions and documents that may have a bearing on affiliate transactions.

Allocation of Costs - The inserted sentence reflects the wording in the AES Inquiry Report (page 33) as to an overarching principle for allocation of costs. Staff has made some wording changes to reflect the narrower focus of a Policy specifically for ARBNNMs.

Compensation – The word ‘adequate’ is an undefined term. It has been replaced with ‘appropriate’ and that term has been referenced to other sections of the Code and TPP. Further, the wording has been changed from “thereby protecting ratepayers” to “in order to protect ratepayers” changing the phrase from a conclusion to a reason, which seems consistent with the purpose of a Transfer Pricing Policy.

Corix agrees with the suggested Commission Staff edits.

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The **Coalition for Open Competition** suggested adding the following sentence:

This policy includes the transfer of all FEI resources and services to all “non-regulated” projects conducted by affiliates in the TES competitive market.

The Coalition for Open Competition commented that they have the same concern with respect to Code of Conduct. Non-regulated projects could be for projects that are exempt from regulation due to the ownership of the project (eg. owned by municipalities) or due to the TES Regulatory Framework Decision (G-231-13A). Projects below the “Micro TES Threshold” of \$500,000 thereby exempting it from regulation and the lack of rate regulation for Stream “A” TES projects (below \$15 million in capital cost) imply that these transfers could transfer economic rent from FEI ratepayers to FAES shareholder.

FEI suggests a revision to the Commission Staff wording as outlined below:

FortisBC Energy and ARBNNMs will maintain separate financial records and books of accounts ~~and sufficient separation of business operations~~ in order to ensure a level of transparency that enables an appropriate allocation of costs between FEI and ARBNNMs ~~and where appropriate, between individual ARBNNMs.~~

The words “sufficient separation of business operations” have been deleted as they do not fit within the purpose of Transfer Pricing Policy. The words “and where appropriate, between individual ARBNNMs” have been deleted as the Transfer Pricing Policy under review is between FEI and ARBNNM, and not between ARBNNMs.

Corix suggests that the “sufficient separation of business operations” idea should be included in the Code of Conduct.

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FEI does not believe incorporating the suggestion by the Coalition for Open Competition is appropriate as the Code of Conduct is governing transactions between FEI and regulated affiliates operating in a non-natural monopoly and not “non-regulated” projects in a competitive market.

[FortisBC Energy] Transfer Pricing Policy for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment

DEFINITIONS

[FortisBC Energy Inc.]	<i>May be abbreviated as follows: [FortisBC Energy], the Utility, or the Company, and may also include employees of the Company.</i>
Commission	<i>British Columbia Utilities Commission.</i>
Development	<i>The translation of research findings or other knowledge into a plan or design for new or substantially improved materials, devices, products, processes, systems or services prior to the commencement of commercial production or use.</i>
Guidelines	<i>Principles and Guidelines from the Retail Markets Downstream of the Utility Meter Guidelines published by the British Columbia Utilities Commission in April, 1997 and the Commission's Report in the Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives published in December 27, 2012. This definition does not negate the applicability of other relevant orders or directions such as Commission directions in proceedings regarding affiliates or Special Directions issued by the Province of British Columbia to the Commission on matters related to specific [FortisBC] business activities.</i>
Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment (ARBNNM)	<i>An affiliate of the Utility regulated by the Commission offering regulated products and services in a non-natural monopoly environment.</i>
Research	<i>Planned investigation undertaken for the purpose and expectation of gaining new scientific or technical knowledge and understanding. Such investigation may or may not be directed towards a specific practical aim or commercial application.</i>
RMDM	<i>Acronym for "Retail Markets Downstream of the Utility Meter", which may include any utility or energy related activity at or downstream of the utility meter.</i>
Transfer Pricing to Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment	<i>The price established for the provision of Utility resources and services or the transfer of Utility assets to an ARBNNM. Transfer pricing for any Utility resource or service will be determined by applying the appropriate [FortisBC Energy] Transfer Pricing Policy as agreed upon by [FortisBC Energy] and the ARBNNM and approved by the Commission.</i>
Fair Market Value	<i>"Fair Market Value" means the price reached in an open and unrestricted market between informed and prudent parties, acting at arms</i>

[FortisBC Energy] Transfer Pricing Policy for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment

length and under no compulsion to act.

Stakeholder Comments

The words highlighted in **RED** above indicate the changes suggested by Commission Staff.

Commission Staff provided the following comments:

Definitions of Development and Research – As noted below, in the view of staff, inclusion of the section 3 in the 1997 Transfer Pricing Policy – Costs Relating to the Transfer of Activities from the Utility to the NRB, should also be included in the Policy for ARBNNMs, with the appropriate wording changes to reflect that it reflects to ARBNNMs. The definitions of Development and Research in the 1997 Transfer Pricing Policy relate to that section so are also included in these definitions.

Definition of Transfer Pricing to ARBNNMs – The phrase “or the transfer of utility assets” was deleted from the previous version. Commission Staff recognize there is a separate sentence under “2. Determining Costs” below dealing with that issue but think there is value in leaving the phrase here in the event that the amount of assets transferred is small and not covered in the application.

Definition of “Fair Market Value” – As noted below, Commission staff noted that the AES Inquiry Report indicated that the Transfer Price should include the provision of using a market price rather than the cost in certain circumstances. Given that concerns have been raised about how one determines fair market value or price, the inclusion of the definition of Fair Market Value from the Alberta Code of Conduct would be helpful.

Regarding the phrase “or the transfer of utility assets”, **FEI** notes an inconsistency between the definition of Transfer Pricing to ARBNNMs as outlined in the Transfer Pricing Policy and that included in the Code of Conduct. For consistency, FEI will assume the definition of Transfer Pricing to ARBNNMs as outlined in the Code of Conduct will also apply to the Transfer Pricing policy.

FAES provided the additional wording “as agreed upon by [FortisBC Energy] and the ARBNNM and” as highlighted in **BLUE** above, amending the definition of Transfer Pricing to Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment.

FEI has no objections with the remaining proposed wording from Commission Staff..

POLICY

Provision of services from [FortisBC Energy] to ARBNNMs must be in accordance with the Commission approved Code of Conduct and Transfer Pricing Policy for ARBNNMs. The approved Code of Conduct and Transfer Pricing Policy for ARBNNMs addresses the need for a transparent pricing mechanism which is fair to both [FortisBC Energy] and ARBNNM’s ratepayers.

Transfer Prices charged to ARBNNMs by [FortisBC Energy] ~~will~~ **are intended to ensure that** [FortisBC Energy] ratepayers are not adversely affected and will be established using the following pricing rules.

Stakeholder comments

[FortisBC Energy] Transfer Pricing Policy for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment

Commission Staff suggest to delete the sentence above starting with “The approved Code of Conduct...”. The rationale for the deletion is that it adds nothings of value to the Policy, but implies that the existence of an approved Code and Policy does address the need for a transparent and fair pricing mechanism. In fact, the Code and the Policy establish the need for a fair and transparent pricing mechanism and the Transfer Pricing Policy attempts to outline the minimum criteria for such a pricing mechanism. The mechanics of how the Code and Policy are implemented will determine whether the need for a fair and transparent mechanism has been addressed.

Consistent with the guiding principles for the Code of Conduct, **FEI** believes there is value in stating the intent of the Code and the Transfer Pricing Policy which is to provide a transparent pricing mechanism that is fair to both [FortisBC Energy] and ARBNNM’s ratepayers. FEI’s proposed wording for the Code and Transfer Pricing Policy is consistent with the stated intent.

Commission Staff also suggest adding the sentence:

“All sharing of costs, services and information between affiliated regulated utilities must be fully disclosed to the Commission”.

Commission Staff commented that the sentence was taken from the AES Inquiry Report (p. 33).

While the sentence is from the AES Inquiry Report, FEI seeks clarification what is meant by the “information between affiliated regulated utilities”? Is it in reference to customer specific information which the regulated affiliate has obtained under the rules for Provision of Information in the Code of Conduct? FEI has no objections to disclosure of sharing of services and the costs between itself and an ARBNNM to the Commission, as it currently does.

Corix supports the Commission Staff edits

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1. **Pricing Rules**

- i. If an applicable [FortisBC Energy] tariff rate exists, the Transfer Price will be set according to the tariff.
- ii. Where no tariff rate exists, the Transfer Price will be set at no greater than full cost. With Commission approval, the cost may be set at below full cost (see Section 2 below).
- iii. In situations where it can be shown that an alternative Transfer Price will provide greater benefits to the ratepayer, the Utility may apply to the Commission for special pricing consideration.

Stakeholder Comments

FEI proposed the use “no greater than full cost” rather than higher of market price or fully allocated cost in recognition of the need to protect the interests of both FEI and FAES’ ratepayers and to prevent cross-subsidization from occurring. For practical purposes, given FEI’s market-based compensation policy, FEI’s labour services and costs are the same as their market price. Refer to Code of Conduct Principles section discussion.

[FortisBC Energy] Transfer Pricing Policy for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment

Commission Staff do not see that “no greater than full cost” is for practical purposes the same as “the higher of market price or the fully allocated cost.” The former phrase means ‘no higher than’ and the latter phrase translates to ‘no lower than’. The two are not equivalent, and the AES Inquiry Report states that the transfer price shall be set at “the higher of market price or the fully allocated cost”, which is why staff have inserted that phrase into the draft TPP. The revised sentence is as follows:

Where no tariff exists, the Transfer Price will be set at the higher of market price or the fully allocated cost.

The last sentence of paragraph ii has been deleted and replaced by a new sentence in paragraph iii. The new sentence is taken from the 1997 Code of Conduct and Transfer Pricing Policy, which includes the requirement that a variance must show benefits to the ratepayer.

The **Coalition for Open Competition** suggested revisions to part ii of pricing rules.

- ii. Where no tariff rate exists, the Transfer Price will be set at no less than the greater of full cost or market pricing. With Commission approval, the cost may be set at below full cost (see Section 2 below).

The Coalition for Open Competition provided comment to refer to its discussion for this issue in Code of Conduct regarding basis for “no greater than full cost”.

Corix amended FEI’s proposed wording to “set at the higher of market price or the fully allocated cost” and referenced the AES decision.

2. Determining Costs

For the purposes of this policy, costs for the resources or services being provided by [FortisBC Energy] to an ARBNNM will be set at no greater than [FortisBC Energy]’s full cost described below. The definition of full costs will depend on the type of service or resource being provided.

For the most part, the types of resources and services that can be provided to ARBNNMs by [FortisBC Energy] are human resources (labour) and associated equipment and facilities. The example in Appendix A summarizes how full costs are determined for the different types of services described below in Section 2.1. The determination of full costs, specifically the cost loadings, is based on services to be provided in accordance with the [FortisBC Energy] approved Code of Conduct with respect to ARBNNM of [FortisBC Energy] dated **May 15, 2014**.

Costs will include both direct costs and a fair allocation of the parent utility costs required to provide the product or service, except where such treatment is precluded by legislation, regulation or special direction.

*If other [FortisBC Energy] resources or services are used by an ARBNNM that are not described by this policy **or if there are unusual circumstances that warrant a separate review**, then [FortisBC Energy] will make an application to the Commission on a case-by-case basis. ~~An example of this would be the determination of costs for a [FortisBC Energy] asset permanently transferred to an ARBNNM.~~*

Stakeholder comments

[FortisBC Energy] Transfer Pricing Policy for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment

Commission Staff amended the opening paragraph to as follows:

For the purposes of this policy, the fully allocated costs for the resources or services being provided by [FortisBC Energy] to an ARBNNM will be described below. The definition of full costs will depend on the type of service or resource being provided. In addition, Commission Staff have added a sentence to make it clear that costs include both direct costs and a fair allocation of parent utility costs. This reflects the wording at page 33 of the AES Inquiry Report.

Commission Staff believe that the transfer of assets can be handled in most cases by the original wording in the definition of “Transfer Pricing....”. The rewording in the last sentence of this section attempts to identify the conditions when a separate review of a transaction could occur.

Corix provided amendments to include that the costs be set at the higher of market price or [FortisBC Energy]’s fully allocated cost. Additionally, wording was added “but will not include operational services, with the possible exception of emergency services”.

FEI does not believe the additional wording suggested by Corix is necessary and appropriate. As discussed in the proposed DRAFT FEI Code of Conduct for ARBNNM dated May 15, 2014, FEI believes that other jurisdictions’ Code of Conduct and Transfer Pricing Policy have limited applicability to B.C. For example, Alberta’s Code of Conduct where the words “but will not include operational services, with the possible exception of emergency services” came from, was developed for an operating environment consisting both of regulated and non-regulated activities where it may make sense to exclude sharing of operational services and personnel. However, the situation is different for FortisBC where much of its operations in B.C. are regulated including FAES/TES.

Corix stands by its suggested edits. The CoC and TPP need to reflect the orders and decisions of the Commission as reflected in the Guidelines.

2.1 Type of Service

There are three types of services: Specific Committed Service, As Required Service and Designated Subsidiary/Affiliate Service. It is important that the type of service is specified before the commencement of any service. This specification is to ensure that the correct cost loadings are applied to any Transfer Price.

i. Specific Committed Service

Specific Committed Service is work that is contracted for and billed regardless of whether or not work is actually performed. Typically, this work is on-going or on a continuing basis (such as regulatory) in support of ARBNNM activities. The receiving organization (i.e. the ARBNNM) is, in effect, requiring that the providing organization’s department (i.e. [FortisBC Energy]) maintain sufficient staffing levels throughout the year in order to provide this service. The receiving organization must pay for the Specific Committed Service even if the service provided is less than originally contracted.

[FortisBC Energy] Transfer Pricing Policy for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment

It is important that the description and scope of the service to be provided be defined before the commencement of such a service, including an indication whether the service is performed at the employee's normal place of work ("on-site") or at the ARBNNM's ("off-site"). A request for Specific Committed Service may be raised or terminated at any time throughout the year. Termination of a Specific Committed Service as a result of an activity change is subject to a sixty (60) day notice period.

At the end of the fiscal year, Specific Committed Services which were not provided (unless the Utility was unable to meet its commitments) will be offset against services used in excess of those committed. Any excess service on a total pooled basis will be billed, but any deficiency will not be refunded. If there is a shortfall in the level of service provided by [FortisBC Energy] a reasonable refund may be made. In the normal course of business, the time estimates for Specific Committed Service are reviewed annually.

To determine the full cost of Specific Committed Service, the following loadings are applied to direct labour costs: concessions (~~i.e. paid time off~~) loading, benefits loading and general overhead loading. Also facility and/or equipment charges are applied if applicable. Appendix A, Column 1 shows an example of determining full cost for Specific Committed Service, both "on-site" and "off-site".

~~With Commission approval, the general overhead loading and/or facility charges may be excluded resulting in charges at below full cost.~~

Stakeholder comments

Commission Staff suggested deleting the parenthetical phrase (i.e. paid time off) as it seems unnecessarily limiting. Also the last sentence has been deleted as it is covered by the addition of '1. Pricing Rules, sentence 'iii'.

FAES suggested adding wording to paragraphs 2 and 3 to provide additional clarity.

It is important that the description ~~and~~, scope ~~and~~ **quality** of the service to be provided be defined **and agreed upon by both [FortisBC Energy] and the ARBNNM** before the commencement of such a service, including an indication whether the service is performed at the employee's normal place of work ("on-site") or at the ARBNNM's ("off-site"). A request for Specific Committed Service may be raised or terminated **by the ARBNNM** at any time throughout the year. Termination of a Specific Committed Service as a result of an activity change is subject to a sixty (60) day notice period.

At the end of the fiscal year, Specific Committed Services which were not provided (unless the Utility was unable to meet its commitments) will be offset against services used in excess of those committed. Any excess service on a total pooled basis will be billed, but any deficiency will not be refunded. If there is a shortfall in the level **or quality** of service provided by [FortisBC Energy] a reasonable refund **by [FortisBC Energy] or termination of service by the ARBNNM** may be made. In the normal course of business, the time estimates for Specific Committed Service are reviewed **and agreed upon by both [FortisBC Energy] and the ARBNNM** annually.

FEI has no objections to the proposed changes by Commission Staff and FAES.

[FortisBC Energy] Transfer Pricing Policy for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment

ii. **As Required Service**

As Required Service is work that is not specifically committed to by the receiving organization. The providing organization charges the cost of the actual time incurred to perform the work to the receiving organization. Typically, this is work that is not budgeted in advance.

As Required Service must be specified to be either for an extended term (greater or equal to three months) or short term (less than three months) period prior to the commencement of the work. In addition, it must be identified whether the individual providing the services will work at his or her normal place of work (“on-site”) or at the ARBNNM’s (“off-site”).

To determine the full cost of As Required Service, the following loadings are applied to direct labour costs: concessions (i.e. ~~paid time off~~) loading, benefits loading, general overhead loading, supervision loading and an availability charge loading. Also facility and/or equipment charges are made if applicable. Appendix A, Column 2 shows an example of determining full cost for As Required Service.

In certain situations, [FortisBC Energy] will need to retain the immediate right to recall the employee being contracted to the ARBNNM for an As Required Service. In these situations, the availability charge will be waived. Prior notification to the Commission is required to waive the availability charge for As Required Service.

~~With Commission approval, the general overhead loading, supervision loading, availability charge loading and/or facility charges may be excluded resulting in charges at below full cost.~~

Stakeholder comments

Commission Staff notes that as in the section Specific Committed Service, the parenthetical phrase (i.e. paid time off) has been deleted, as it seems unnecessarily limiting. Similarly, the last sentence has been deleted as it is covered by the addition of ‘1. Pricing Rules, sentence ‘iii’.

The sentence beginning “In certain situations...,” is taken from the 1997 Transfer Pricing Policy. It is unclear why Fortis deleted it from this version, and staff believe it add additional clarity to the section.

FEI has no objections to the changes proposed by Commission Staff.

FAES commented that the sentence “Typically, this is work that is not budgeted in advance.” is not required. FAES also commented on the following section indicating that it is not sure that these rules are necessary and manageable. FAES understands that if the FEI resource is not available to provide the service, FAES would procure the service elsewhere.

As Required Service must be specified to be either for an extended term (greater or equal to three months) or short term (less than three months) period prior to the commencement of the work. In addition, it must be identified whether the individual providing the services will work at his or her normal place of work (“on-site”) or at the ARBNNM’s (“off-site”).

[FortisBC Energy] Transfer Pricing Policy for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment

FEI clarifies the intent of the above wording is to allow it to plan appropriately for any short term assignments that an ARBNNM may have. By providing clarity on the service requested including the expected duration, an ARBNNM can help FEI plan accordingly and minimize disruption.

iii. **Designated Subsidiary/Affiliate Service**

A Designated Subsidiary/Affiliate is a related company that is designated by [FortisBC Energy] and approved by the Commission to receive reduced loadings in the Transfer Price. The designation relates to the additional benefits that the related company provides to [FortisBC Energy]'s customers, employees or to the economic development of the Province of British Columbia.

A Designated Subsidiary/Affiliate receives services on the same basis as the As Required Service described above. To determine the full cost of Designated Subsidiary/Affiliate Service, the following loadings are applied to direct labour costs: concessions ~~(i.e. paid time off)~~ loading, benefits loading and a general overhead loading. Appendix A, Column 3 shows an example of determining full cost for A Designated Subsidiary/Affiliate Service.

The Commission may approve a subsidiary or affiliate with this status but exclude specific activities or projects of that subsidiary (e.g. projects taking place in certain geographic locations). Similarly, certain work to be performed for an ARBNNM relating to a specific service, project or product may be designated by [FortisBC Energy] and approved by the Commission to receive reduced loadings.

Stakeholder comments

Commission Staff suggests deleted the words "(i.e. paid time off)".

3. **Cost Relating to the Transfer of Activities from the Utility to an ARBNNM**

3.1 **Transfer Costs**

Activities initially undertaken within the regulated Utility may, from time to time, be transferred to an ARBNNM with Commission approval. Costs associated with transferring an activity to an ARBNNM, and the start-up of ARBNNM activities, shall be borne by the ARBNNM. To the extent that these activities involve Utility resources during the transfer, the ARBNNM shall reimburse the Utility using the appropriate pricing rules as defined in this Transfer Pricing Policy. Costs relating to the termination of an activity within the Utility shall be borne by the Utility.

3.2 **Research Costs**

As research is regarded as a continuing activity required to maintain the Utility's business and its effectiveness, such expenses shall be borne by the Utility. However, where it is evident that certain research activities are clearly directed towards specific pursuits related to an ARBNNM, the Utility will ensure it is compensated by the ARBNNM according to the pricing rules defined in this Transfer Pricing Policy, net of any quantifiable benefits received by the Utility.

3.3 Development Costs

Development costs for new products and services transferred to an ARBNNM will be tracked and charged to the ARBNNM according to the pricing rules defined in this Transfer Pricing Policy, net of any quantifiable benefits received by the Utility.

Stakeholder comments

In the view of **Commission Staff**, unless there is some good reason to exclude it, inclusion of the section 3 in the 1997 Transfer Pricing Policy – “Costs Relating to the Transfer of the Activities from the Utility to the NRB”- should also be included in the Policy for ARBNNMs, with the appropriate wording changes to reflect that it refers to ARBNNMs.

FEI has no objections to the proposed wording.

4. Cost Collection Procedures

4.1 Internal Orders

[FortisBC Energy] will be responsible for setting up the appropriate internal orders, documenting the internal order numbers and ensuring that the appropriate individuals charge time to them. The providing organization’s accounting group (typically [FortisBC Energy]’s Financial Accounting Group) will be responsible for maintaining the internal orders and collecting the appropriate charges.

4.2 Time Sheets

The individuals performing the service must report all time spent on that service by coding their time to the appropriate internal order numbers. This is to occur whether the type of service is Specific Committed, As Required or Designated Subsidiary/Affiliate Service. The ARBNNM may also review the validity of these charges.

Stakeholder comments

Commission Staff suggests adding a sentence that was in the 1997 Policy and that read “Time sheets are to be sent monthly to the immediate supervisor or [FortisBC Energy]’s Payroll Department” was omitted from this version; staff have added it again. In staff’s view, the statement should go further and clarify how long the time records should be kept and available for review if required.

FEI does not believe the proposed wording is required in the Transfer Pricing Policy. Employees are already required to submit timesheets for processing by Payroll. Additionally, FEI has a policy requiring timesheets be kept for a seven year period.

The **Coalition for Open Competition** suggested providing the following additional wording to the Time Sheets section.

Any FEI employee that spends time on affiliate business must account for 100% of their time, by company, including FEI activities in order to minimize the bias of omission in reporting time spent on non-FEI activities.

The Coalition for Open Competition comment that 'Exception Reporting' is not adequate as it may lead to under-reporting of time on affiliate work.

FEI believes its current approach of allocating costs based on timesheet is appropriate and well established and leads to accurate and representative costs. FEI's timesheet based allocation approach has been used successfully for a number of years. The system is designed to capture the necessary input from employees who are best able to assess where their time has been spent. Additionally, the existing timesheet approach and importance of costing information is well understood by its employees. FEI does not believe there is any bias of omission in reporting of time spent on non-FEI activities.

4.3 Invoicing

The ARBNNM will be invoiced for the contracted amount in respect of Specific Committed Service and for the appropriate time based on the actual payroll level in respect of As Required Service or Designated/Affiliate Service (subject to confidentiality of salary information) with the applicable loadings applied.

The methodology for determining a salary level is on the basis of the average of the respective pay grades or job groups for the employees involved.

Stakeholder comments

The **Coalition for Open Competition** suggested the additional following wording:

4.4 Commission to be Apprised

The Commission is to be apprised of all Invoices on an Annual Basis (or more frequently) that details are cost allocations from FEI to affiliates. In addition, the Commission is to receive any Internal Audit Reports on the review of transfer costs as between FEI and affiliates.

FEI does not believe the additional wording is necessary as it is addressed in section 7 Compliance and Complaints of the Code of Conduct. In section 7, FEI has indicated that it will be conducting an annual compliance review with the results filed with the Commission annually. Regarding disclosure of services and the costs between FEI and an ARBNNM, this has been discussed in the Policy section previously.

FAES suggested the following wording be added at the end of this section:

The invoice will include the number of hours and corresponding activities so that the ARBNNM will have the opportunity to review and agree with the validity of the charges.

FEI suggests the proposed sentence be limited to "The invoice will include the number of hours and corresponding activities." It is unnecessary to include reference to "opportunity to review and agree with the validity of the charges" as that is what would occur, regardless of whether FAES was dealing with FEI or another service provider.

5. Review of Transfer Pricing Policy

[FortisBC Energy] Transfer Pricing Policy for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment

The Transfer Pricing Policy will be reviewed on an annual basis as part of the Code of Conduct compliance review. However, [FortisBC Energy] may make application to the Commission for approval of changes to the policy including the pricing rules and the formula for determining full costs as and when required.

DRAFT

Appendix “A”

Illustrative Example of Determining Full Cost for the Three Types of Service

(For an employee at an annual salary of \$85,000 and 59% benefits loading)

(Different charge-out rates are used for different positions)

Column	1		2			3
	Specific Committed Service		As Required Service			Designated Subsidiary / Affiliate
	Off-Site Full-time	On-Site Full-time	On-Site Short Term	Off-Site Short Term	Off Site Extended	
BASE PAY PER DAY	\$327.00	\$327.00	\$327.00	\$327.00	\$327.00	\$327.00
PLUS CONCESSIONS and BENEFITS (90%)	\$295.00	\$295.00	\$295.00	\$295.00	\$295.00	\$295.00
LOADED LABOUR PER DAY	\$622.00	\$622.00	\$622.00	\$622.00	\$622.00	\$622.00
GENERAL OVERHEAD	5%	10%	10%	10%	5%	5%
SUPERVISION	N/A	Direct Charge	20%	N/A	N/A	Direct Charge
AVAILABILITY CHARGE	N/A	N/A	20%	20%	20%	N/A
FACILITIES CHARGE (If Applicable)	N/A	\$100.00	\$100.00	\$100.00	N/A	N/A
EQUIPMENT CHARGE (If Applicable)	Direct Charge	Direct Charge	Direct Charge	Direct Charge	Direct Charge	N/A
TOTAL FULL COSTS PER DAY	\$653.00	\$784.00	\$1,033.00	\$909.00	\$778.00	\$653.00
Cost Ratio to Base Pay per day	2.00	2.40	3.16	2.78	2.38	2.00
Cost Ratio to Loaded Labour per day	1.05	1.26	1.66	1.46	1.25	1.05

Appendix B5

**FEI PROPOSED CODE OF CONDUCT AND
TRANSFER PRICING POLICY,
MAY 15, 2014
COALITION COMMENTS**

COALITION FOR OPEN COMPETITION

Comments on FEI's COC/TPP of May 15, 2014 & Proposed Submission

Positions of FEI (relative to FAES)

We note that FAES is participating as an entity separate from FEI in this process. In FAES comments on the Minutes of the April 24th Workshop, it listed Mr. Stout as an FAES participant in addition to his participation for FEI. This introduces some confusion into which comments are those of FEI or FAES, or both.

We would ask that when FEI files its submission to the Commission that it clearly state which positions of FAES it adopts and which are those that are solely the position of FAES. We have no objection to FAES being a participant in this process however it is important that the position of the applicant, FEI, be clearly on the record.

General Comment on COC/TPP

We believe that it is in the interest of all parties to have the COC/TPP as practical and workable documents. It should reasonable anticipate situations that are likely to emerge that are affected by how FEI interacts with its regulated or non-regulated affiliates. In this light, we offer these additional comments on Financing and Use of the Utility Name.

Section 8 – Financing and Other Risks

In response to our comment that “Affiliates will not receive financing or financial assistance at any time”, FEI believes that we are inconsistent with comments in the AES Inquiry and refer to page 33. The wording referred to is as follows:

“Allocation of costs is to reflect appropriate compensation for any benefit derived by the new business activity as a result of its affiliation with its parent or other businesses. This should include compensation for additional cost or risk related to the addition of incremental debt to the parent utility for the new products or services.”

[AES Inquiry Report, page 33, 2nd bullet under “Guidelines”]

We support the guideline as stated by the Commission and agree with the principal that compensation should flow related to the cost or risk associated with incremental debt. However, this guideline does not give an affiliate (eg. FAES) the right to receive financing from FEI. It clearly states the “parent utility” – the COC/TPP we are discussing are for affiliates; by definition, FEI is not the “parent”.

Notwithstanding the fact that we do not believe that section of the AES Inquiry Report to be relevant to this point, we feel compelled to follow this to its logical conclusion. In the scenario where FEI is the lender to FAES corporately, or for a specific project, is a situation that either should be prohibited (our preference) or, if permitted, should be carefully scrutinized by the Commission.

In the event that FEI were to offer financing, financial assistance or guarantees, there needs to be a process followed to ensure that the “appropriate compensation” for that benefit be identified and captured consistent with the AES Inquiry Report reference, above. The process of calculating the “benefit derived” would not be trivial. It is presumed that the Commission or a third party would need to undertake this process given the inherent conflict of interest of FEI. This review would come with a cost; this cost should not be a natural gas rate payer expense as it should be borne by the borrower (ie. the affiliate).

At the end of the day, it is difficult to imagine a scenario that either a third party lender (such as a financial institution) or the affiliate’s ultimate parent (Fortis Inc.) would not choose to finance a project that a FortisBC affiliate would pursue. In this unlikely scenario, the FEI natural gas ratepayer would find itself the lender of last resort.

It is for these reasons that we believe a prohibition on lending to affiliates by the FEI is warranted. If the Commission ultimately decides this is acceptable practice, we would hope that the COC/TPP spells out specifically how this financial support is to be reviewed so that the appropriate cost and risk can be determined and which party is responsible for the additional cost of this process.

Section 9 – Use of the Name

FEI lists the issue as “ACCEPTED”. To be clear, we accept only that which is stated in the AES Inquiry Report.

“The Panel finds that the use of the FortisBC brand name in the AES and New Initiatives market spaces is an acceptable business practice. Care should be taken to distinguish between the services offered by the traditional natural gas utility and services offered by Affiliated Regulated or Non-Regulated Businesses.”

[AES Inquiry Report, page 41]

The addition to the COC provided by FEI that name of FortisBC is owned by Fortis Inc. is helpful in that we know it is not owned by either FEI or FAES.

Beyond this point, there is a great deal of ambiguity that the COC/TPP could assist in clarifying. The Commission stated that “care should be taken to distinguish between the services offered...”. The COC as drafted does not assist in this regard. We strongly suggest that FEI provide clarity with the proposed COC/TPP as to how it intends to exercise care. It would not be helpful to anyone if this issue is not resolved in a robust fashion as to minimize future disputes about what is and is not acceptable practice with respect to use of the brand name.

As a starting point, we believe that the public should know that an affiliate, such as FAES, is neither the regulated natural gas utility nor the regulated electric utility. It is as important for consumers to know who they are not dealing with as it is to know who they are dealing with so as to not to create the inference of regulatory protection that does not exist.¹

¹ This is particularly relevant given the Commission’s TES Regulatory Framework Decision to have thresholds for Stream “A” (\$15 million) and Micro TES (\$500,000) below which there is no economic regulation and complete exemption, respectively. *Reference: Order G-231-13A.*

Appendix C1

FEI CONSULTATION MATERIAL

Update of Code of Conduct and Transfer Pricing Policy

Discussion with Stakeholders

October/November 2013

Agenda

- Overview / Recap
 - AES Inquiry and Directives
 - Application of Updated Transfer Pricing (TPP) and Code of Conduct (CoC)
- Process for updating TPP and CoC
- Highlights of BCUC directives and guidelines on TPP and CoC
- Research of TPP and CoC in other jurisdictions
- Key issues for consideration related to non-natural and natural monopolies
- Next steps

AES Inquiry

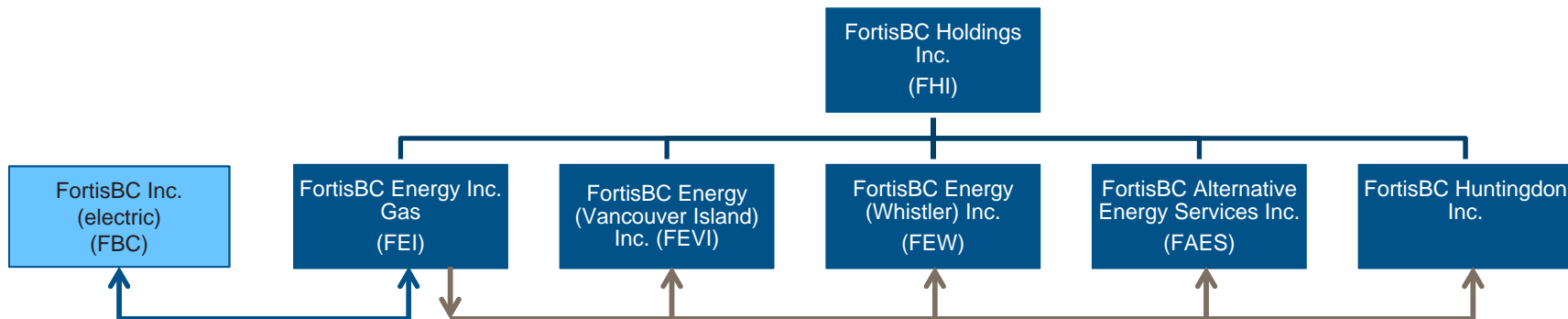
Thermal Energy Services

Other Recommendations:

- a. The FEU should initiate a process to prepare an updated Code of Conduct and Transfer Pricing Policy in respect of the interaction between the regulated utility and related Non-Regulated Businesses, as per the further recommendations set out in the attached Reasons for Decision.
- b. The FEU should undertake a collaborative process to establish a Code of Conduct and Transfer Pricing Policy governing the interactions between the affiliated regulated businesses consistent with the Principles and Guidelines set out in the attached Report.
 - Differentiate resource sharing between two natural monopolies on the one hand and between a natural monopoly and a regulated affiliate operating in a non-natural monopoly environment on the other.
- d. Sharing of services among affiliates should be done on the basis of the higher of market pricing or fully allocated cost in accordance with the Principles and Guidelines and an approved Code of Conduct and Transfer Pricing Policy.

Source: page 4 of 5 Appendix H of AES Inquiry report

FortisBC Gas / Integrated Energy Corporate Structure



Application of updated TPP / CoC for sharing of resources

- FEI to FEVI and FEW – *exists today, regulated natural monopoly*
- FEI to Huntingdon – *exists today, NEB regulated asset*
- FEI to FAES – *under review, regulated entity in non-natural monopoly environment*
- FEI to/from FBC – *exists today, regulated natural monopoly*

Excludes

- Financing only entities, IEC and Mt Hayes LP
- CNG/LNG as separate classes of service – GGRR all costs stay in FEI NG class of service; non-GGRR covered by Commission decision on overhead and marketing fee
- Biogas is another source of supply for the regulated utility and considered as part of FEU's regulated service offering
- FHI to FEI, FEVI, FEW corporate services management fee – subject to RRA review process
- Sharing of resources from non-regulated to regulated gas utilities FEI, FEVI, FEW – consider outside of initial scope requested

Updating the TPP and CoC *Process*

- FortisBC to prepare draft TPP and CoC incorporating research and feedback from interviews
- FortisBC to circulate to stakeholders for comments and suggestions
- FortisBC to incorporate comments and suggestions and highlight outstanding issues
- FortisBC to schedule workshop as required to review draft TPP and CoC (with stakeholder comments)
 - Issues outstanding will be highlighted for discussion and resolution
- FortisBC to submit final TPP and CoC to Commission for approval

Collaborative Process involving Stakeholders

Interveners (23)

- BC Sustainable Energy Association
- Sierra Club of Canada
- Ferus Inc.
- Corix Multi Utility Services Inc.
- Clean Energy Fuels
- Ministry of Energy and Mines
- Artex Barn Solutions
- Coalition of Renewable Natural Gas
- Pacific Northern Gas
- Urban Development Institute
- BC Hydro
- PCI
- Commercial Energy Consumers Association
- Coalition for Open Competition
- City of Kamloops
- Board of Education - Delta School District No. 37
- Energy Services Association of Canada
- British Columbia Pensioners' and Seniors' Organization (BCPSO)
- QUEST
- Canadian Office and Professional Employees Union local 378
- Thermal Environmental Comfort Association
- The Residential Construction Industry / Greater Vancouver Home Builders Association
- Commission Staff

BCUC Directives and Guidelines on TPP and CoC

- Non-regulated businesses
 - Key Principle
 - The Commission Panel reaffirms the following RMDM objectives:
 - There must be no subsidy of unregulated business activities, whether undertaken by the utility or its [non-regulated business], by utility ratepayers.
 - The risks associated with participation in the unregulated market must be borne entirely by the unregulated business activity, that is the risks must have no impact on the utility ratepayers.
 - The most economically efficient allocation of goods and resources for ratepayers should be sought.

Source: page 21 AES Inquiry report

BCUC Directives and Guidelines on TPP and CoC

- Non-regulated businesses
 - Guidelines
 - “.... that a transfer pricing policy mechanism will act to provide sufficient rate protection to ratepayers.”
 - Where activities undertaken as a related non-regulated business do involve sharing of resources, the following Guidelines apply:
 - An approved Code of Conduct and Transfer Pricing Policy must be in effect and require:
 - minimal sharing of resources between regulated and non-regulated activities
 - use of the full cost to provide the service or market pricing, whichever is higher
 - All costs and services provided between a Regulated and a Non-regulated Affiliated Business are to be fully disclosed to the Commission.
 - To the extent that information is shared by a Regulated Business with a Non-regulated Business, it must also be shared with any interested non-related business.

Source: page 21 AES Inquiry report

BCUC Directives and Guidelines on TPP and CoC

- Non-regulated businesses
 - Guidelines
 - The following principles from RMDM remain valid:
 - The onus should always be on the utility to provide that the benefits associated with the use of utility resources are sufficient to warrant the changed structure and that the transfer pricing policy mechanism will provide sufficient protection to ratepayers.
 - If the commission decides to allow the use of utility resources in the provision of the unregulated good or service, the preferred option is through a related-NRB. Direct participation by the utility in the provision of an unregulated good or service should be allowed only when the costs associated with forcing the provision through the related-NRB structure would significantly offset the benefits associated with the use of the utility's resources and it can be shown that a transfer pricing mechanism will provide sufficient protection for ratepayers.
 - Utilities and their related-NRBs will be encouraged to move unregulated products which use utility resources into stand-alone NRBs as soon as market conditions warrant.....

Source: page 21 AES Inquiry report

BCUC Directives and Guidelines on TPP and CoC

- Affiliated Regulated Businesses

- Guidelines (excerpt)

- Common corporate and management resources may be shared between two Affiliated Regulated Businesses that are natural monopolies, such as gas and electric service.
 - The sharing of any common resources between a natural monopoly and an affiliate that is regulated business in a non-natural monopoly environment, however, should be much more limited. As a rule, resource sharing should be limited to corporate services and should not include any operational services except possibly emergency services.
 - Sharing of employees should not be allowed where the employee has access to confidential information, routinely participates in making decisions with respect to the provision of traditional utility services or how utility services are delivered, routinely deals with or has direct contact with customers of the utility or is routinely involved in planning or managing the business of the traditional utility.
 - All sharing of costs, services, and information between affiliated utilities must be fully disclosed to the Commission.
 - “This does not preclude the use of some common resources between these two natural monopolies where it is in the interest of the ratepayers of both utilities.”

BCUC Directives and Guidelines on TPP and CoC

- Determining Cost Allocation for Regulated Utilities
 - Key Principle
 - The basis of cost allocation is cost causality.
 - Guidelines (excerpt)
 - “.... Cost are to be allocated to the new business or shareholder, on the basis of the higher of market price or fully allocated cost, and be free from all forms of cross-subsidization from the traditional utility. These costs include both direct costs and a fair allocation of the parent utility costs required to provide the product or service.”
 - All proposals for new business activities must be accompanied by a clear and concise description of the planned cost allocation methodology.

Source: page 33 AES Inquiry report

BCUC Directives and Guidelines on TPP and CoC

- Determining Appropriate Information Sharing
 - Key Principles
 - Customer specific information must be treated as required by the Personal Information Protection Act and, in addition, should only be released with the written consent of the customer.
 - Customer information (aggregate or customer specific with written consent) should be made available to all Parties on an equal basis.
 - The control of information should not provide a competitive advantage.

Source: page 37 AES Inquiry report

Research of TPP and CoC in Other Jurisdictions – Separation / Sharing

TPP / CoC	FEU (Current)	Alberta	Ontario	BCUC Guidelines
Employee Separation / Sharing of common resources	Non regulated businesses may contract for any personnel provided that the utility complies with the provision of information rules (i.e. releasing customer specific information without the consent of the customer) and no conflict of interest exists which will negatively impact ratepayers.	A utility may share employees on a cost recovery basis provided that the employee does not have access to confidential information, does not participate in decision making with respect to the provision of utility services, and does not routinely deal with customers of the utility. In the event of an emergency situation, a utility may share services and resources.	A utility may share employees with an affiliate provided that the employees are not directly involved in collecting, or have access to confidential information. In the event of an emergency situation, a utility may share services and resources with an affiliate which is also a utility.	Minimal sharing of resources between regulated and non-regulated affiliates.

Research of TPP and CoC in Other Jurisdictions – Transfer Pricing

TPP / CoC	FEU (Current)	Alberta	Ontario	BCUC Guidelines
Pricing of services/products	Applicable tariff. Where no tariff, higher of full cost or market price	Charge not less than fair market value	Where a competitive market exists, charge no less than the market price. Where a competitive market does not exist, charge no less than the fully allocated cost. For shared core corporate services, fully allocated cost pricing may be applied.	Use of the full cost to provide the service or market pricing; whichever is higher.
Determination of transfer value	Costs include direct labour costs, facility and equipment charges	Costs include salary, benefits, vacation, materials, disbursements and all applicable overheads. Includes also capital costs (i.e. share of capital and operating costs appropriate for equipment) in providing the service.	Costs include direct costs plus a proportional share of indirect costs. The fully allocated cost includes a return on utility or affiliate's invested capital.	

Research of TPP and CoC in Other Jurisdictions – Transfer Pricing

TPP / CoC	FEU (Current)	Alberta	Ontario	BCUC Guidelines
Fair market value / Market price	Price in a fully functioning, competitive (unregulated) market or the prices of goods or services that can serve as substitutes for the resources or services being offered may also be used.	Price reached in an open end and unrestricted market between informed and prudent parties, acting at arms length and under no compulsion to act. It is determined by methods that include: competitive tendering, competitive quotes, benchmarking studies, catalogue pricing, replacement cost comparison, or recent market transactions depending on the circumstances.	The price reached in an open and unrestricted market between informed and prudent parties, acting at arm's length and under no compulsion. It is established by a fair and open competitive bidding process.	

Research of TPP and CoC in Other Jurisdictions – Equal Treatment

TPP / CoC	FEU (Current)	Alberta	Ontario	BCUC Guidelines
Equal treatment with respect to utility services – preferential treatment	Except as required to meet acceptable quality and performance standards, and except for some specific assets or services as approved by the BCUC, the utility will not preferentially direct customers seeking competitively offered services to an NRB or a specific retailer.	A utility shall not condition or otherwise tie the receipt of utility services to a requirement that a customer must also deal with an affiliate. Each utility shall ensure that its employees do not suggest that an advantage will accrue to a customer in dealing with the utility if the customer also deals with an affiliate.	A utility shall not preferentially endorse or support marketing activities of an affiliate that is an ESP. A utility may include an affiliate as part of a listing of alternative service providers, but the affiliate's name shall not in any way be highlighted. A utility, including its employees and agents, shall not state or imply to consumers a preference for any affiliate who is an ESP.	

Research of TPP and CoC in Other Jurisdictions – Confidentiality of Information

TPP / CoC	FEU (Current)	Alberta	Ontario	BCUC Guidelines
Provision of information	Utility will not provide to an NRB any information that would inhibit a competitive energy services market from functioning. If a customer agrees to a release of customer specific information, that information must be made available to any market participant who is willing to pay its associated costs, without any discrimination. If a customer requests customer information be provided to a specific market participant, only that participant may receive the information.	A utility shall not release to an affiliate confidential Information relating to a customer, without receiving the prior written consent of the customer, unless: a) for law enforcement and legal requirements (request of courts, police, quasi-judicial bodies or order of government or agency having jurisdiction over the utility) b) for the purpose of providing or receiving shared services or for profit affiliate services to/from the affiliate.	Confidential information may be disclosed where the information has been sufficiently aggregated such that any individual consumer, marketer or other utility service customer's information cannot be identified. If such information is aggregated it must be disclosed on a non-discriminatory basis to any party requesting the information.	<p>To the extent that information is shared by a regulated business with a non-regulated business, it must also be shared with any interested non-related business.</p> <p>Customer specific information must be treated as required by the Personal Information Protection Act and in addition should only be released with the written consent of the customer.</p> <p>The control of information should not provide a competitive advantage.</p>

Research of TPP and CoC in Other Jurisdictions - Other

TPP / CoC	FEU (Current)	Alberta	Ontario	BCUC Guidelines
Regulatory oversight	An annual compliance review is performed with report filed with the Commission. The utility is to advise employees of the Code of Conduct requirements. The utility to carry out periodic audits no less than once a calendar year with report filed with Commission.	Annual review and update of compliance plan that details measures, policies, procedures and monitoring mechanisms. A third party has to audit the state of compliance.	The utility shall perform periodic compliance reviews and communicate Code requirements to its employees. The utility shall monitor its employees for compliance with the Code.	All costs and services provided between a regulated and non-regulated affiliated business are to be fully disclosed to the Commission.

Key Issues for consideration related to non-natural and natural monopolies

- What should the TPP / CoC be for resource sharing between:
 - A natural monopoly and a regulated affiliate operating in a non-natural monopoly environment (i.e. FEI (Gas) and FAES)
 - Limited to corporate services and not include operational services except possible emergency services
 - Sharing of employees not allowed where employee has access
 - Two natural monopolies - i.e. FEI (Gas) and FBC (Electric)
 - Direct cost only vs. fully allocated cost for two natural monopolies
 - Sharing of employees / common resources

BCUC Directives and Guidelines on TPP and CoC *(duplicated here for reference)*

- Affiliated Regulated Businesses

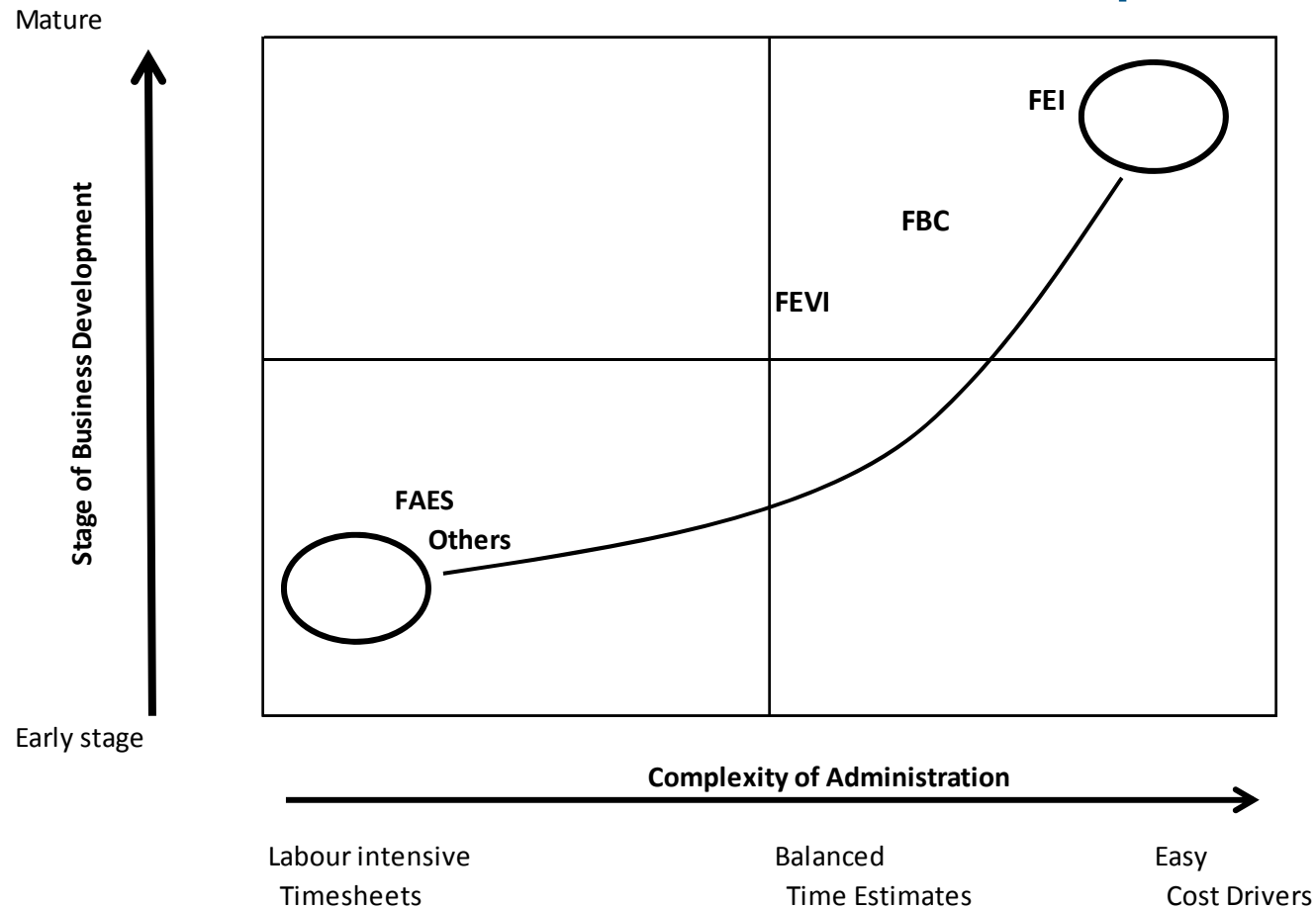
- Guidelines (excerpt)

- Common corporate and management resources may be shared between two Affiliated Regulated Businesses that are natural monopolies, such as gas and electric service.
 - The sharing of any common resources between a natural monopoly and an affiliate that is regulated business in a non-natural monopoly environment, however, should be much more limited. As a rule, resource sharing should be limited to corporate services and should not include any operational services except possibly emergency services.
 - Sharing of employees should not be allowed where the employee has access to confidential information, routinely participates in making decisions with respect to the provision of traditional utility services or how utility services are delivered, routinely deals with or has direct contact with customers of the utility or is routinely involved in planning or managing the business of the traditional utility.
 - All sharing of costs, services, and information between affiliated utilities must be fully disclosed to the Commission.
 - “This does not preclude the use of some common resources between these two natural monopolies where it is in the interest of the ratepayers of both utilities.”

Key Issues for consideration related to non-natural and natural monopolies

- Should TPP and CoC principles and guidelines apply to all service providers in the regulated thermal energy market
 - Based on the statement “While the Commission does not regulate competition *per se*, the Panel accepts that it should not act to hinder competition, where competition is feasible.” – p 14 of AES Inquiry report
 - Does a level playing field mean that the TPP and CoC principles/guidelines should apply equally to other thermal energy market service providers
 - Services provided from parent company should be costed at full cost or market, whichever is higher

Key Issues for consideration related to non-natural and natural monopolies



Next Steps

- Complete interviews and summarize feedback
- Initiate a first draft of suggested TPP / CoC
- Highlight outstanding issues
- Schedule a workshop as required for discussion

Appendix C2

**FEBRUARY 20, 2014 WORKSHOP MATERIALS
AND MINUTES**

FEI Code of Conduct and Transfer Pricing Review Workshop

Affiliated Regulated Businesses Operating in a Non-Natural Monopoly (ARBNNM)

February 20, 2014



Workshop Objectives

- Update and recap of recent stakeholder consultation discussions
- Stakeholders to provide comment and feedback on proposed FEI Code of Conduct (CoC) and Transfer Pricing Policy (TPP) for ARBNM
- Discuss next steps

Agenda

9:00 – 9:10 am	Workshop Objectives and Agenda Overview
9:10 – 9:45 am	Introduction and Opening Remarks from Stakeholders
9:45 – 10:00 am	Stakeholder Consultation Efforts To-Date
10:00 – 10:20 am	Evolution of FAES – Cost Allocation Process
10:20 – 10:30 am	Break
10:30 – 11:50 am	Review Proposed FEI CoC and TPP for ARBNNM
11:50 am – 12:00 pm	Summary and Next Steps

Opening Remarks from Stakeholders

- Introductions
- Opening remarks from stakeholders on FEI Code of Conduct and Transfer Pricing
 - Comments
 - Suggestions

Opportunity later on in agenda for discussion and specific feedback on language in proposed FEI Code of Conduct and Transfer Pricing for ARBNNMs

Stakeholder Consultation sessions

<u>Stakeholder</u>	<u>Date</u>	<u>Representative</u>
BC Sustainable Energy Association	Oct-16	Bill Andrews, Tom Hackney
British Columbia Pensioners' and Seniors' Organization	Oct-18	Tannis Braithwaite
Canadian Office and Professional Employees Union Local 378	Nov-01	Jim Quail, Leigha Worth
Clean Energy Fuels	Dec-03	Iain Johnstone
Coalition for Open Competition	Nov-27	Ron Cliff, Philip Hochstein, Robert Flipse, Robert Noel
Commercial Energy Consumers Association	Oct-15	David Craig
Corix Multi Utility Services Inc.	Nov-27	Ian Wigington
Ministry of Energy and Mines	Oct-24	Scott Cutler
Sierra Club of Canada (BC Chapter)	Oct-16	Bill Andrews, Tom Hackney
Urban Development Institute	Nov-12	Jeff Fisher

Stakeholder' Feedback - *unofficial* (1)

Supportive of regulated utility resources being used

- Encourages the development of thermal energy services
- Dynamic, growing utility leads to more jobs for the utility
- Keep overall costs low for TES solutions for the benefit of customers
- Sharing of resources between regulated utilities benefits all ratepayers
- FortisBC regulated entity should be treated no differently than other market participants – *level playing field*
- Rules for governing utility resources should be designed to reflect what is happening in the marketplace
- Existing CoC/TPP rules are designed to hinder competition instead of promoting competition

Stakeholder' Feedback - *unofficial* (2)

Supportive of regulated utility resources being used

- Questioned the use of “higher of market price or fully allocated cost”
 - What's the value of this?
 - Using higher of market or fully allocated cost means FAES customers are being charged too much
 - Use incremental cost plus approach
- Preferential treatment
 - Should provide list of other TES providers (eg. competitive options)

Stakeholder' Feedback - *unofficial* (3)

Non supportive of regulated utility resources being used

- Utility should not be allowed to participate in markets downstream of the meter
- Should not be able to use FortisBC name and resources
- Unfair advantage and competition
- Should be structured as a separate FortisBC non-regulated entity
- TPP/CoC does not apply to other competitors

Evolution of FAES

Cost Allocation process

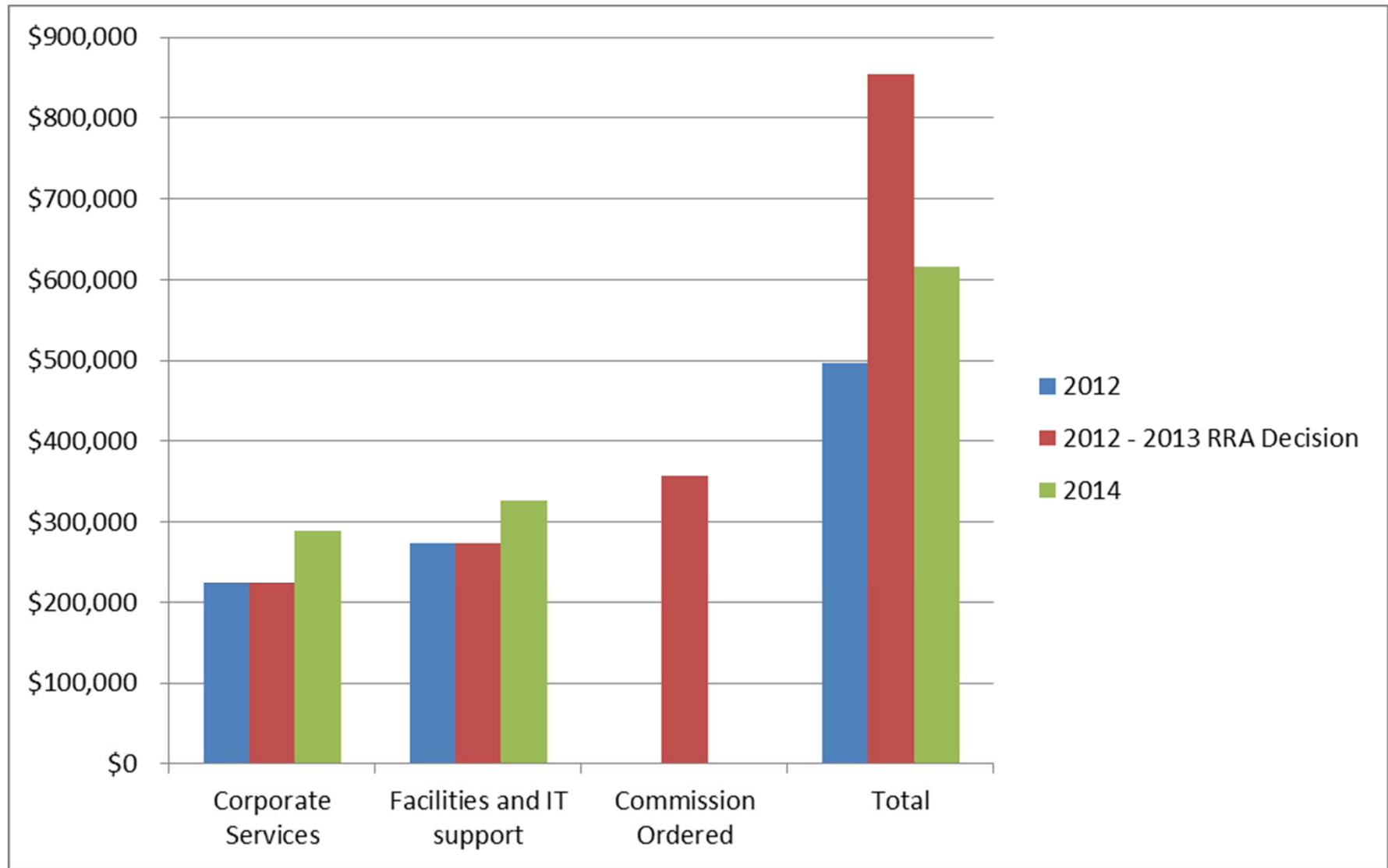
	2009	2010	2011	2012	2013	2014 +
Corporate Structure	Terasen Energy Services (TES)	FortisBC Energy Inc. (FEI)			FortisBC Alternative Energy Services (FAES)	FortisBC Alternative Energy Services (FAES)
Business Status	Non Regulated	Regulated			Regulated	Regulated
Business development employees	In TES	All employees part of FEI - January 2010				Outside of FEI
Operating employees	In TES					In FEI
Corporate services employees	In TES and FEI					In FEI
Code of Conduct Policy	Approved Code of Conduct for NRB	Adhere to Approved Code of Conduct for NRBs until a Code of Conduct is established for Affiliated Regulated Businesses operating in a non-natural monopoly				
Transfer Pricing Policy	Approved Transfer Pricing for NRB	Adhere to Approved Transfer Pricing for NRBs until a Transfer Pricing Policy is established for Affiliated Regulated Businesses operating in a non-natural monopoly				

Evolution of FAES

Cost Allocation process

	2009	2010	2011	2012	2013	2014 +
Cost Allocation principle	Based on higher of fully allocated cost or market price	Based on higher of fully allocated cost or market price				Based on no greater than fully allocated cost
Cost Allocation process from FEI	Continuing services agreement and timesheets	Timesheets for FAES business development/projects and \$500K overhead estimate as approved in 2010/2011 RRA Decision - Also continuing services agreement for legacy TES assets	Timesheets for FAES business development/projects and ~\$850K overhead estimate as approved in the 2012/2013 RRA Decision - Also continuing services agreement for legacy TES assets		Timesheets for FEI labour related to FAES overhead activities Also continuing services agreement for legacy TES assets	
Costs Allocated	n/a	Direct project costs	Direct project costs	Direct project costs	Direct project costs	Direct project costs
	n/a	Thermal Energy Services Deferral Account (TESDA)	Thermal Energy Services Deferral Account (TESDA)	Thermal Energy Services Deferral Account (TESDA)	Thermal Energy Services Deferral Account (TESDA)	Thermal Energy Services Deferral Account (TESDA)
TES Projects Approved by BCUC	n/a	Projects approved by BCUC	Projects approved by BCUC	Projects approved by BCUC	Projects approved by BCUC	Projects approved by BCUC under Streamlined Review process

FEI FAES Overhead Allocation



Proposed FEI Code of Conduct and Transfer Pricing Policy for ARBNNMs

Key sections of proposed ARBNNM CoC and TPP for discussion

- Regulatory Oversight
- Provision of Information
- Preferential Treatment
- Brand Name
- Sharing of Resources
- Transfer Pricing – Pricing of Services

Proposed FEI Code of Conduct and Transfer Pricing Policy for ARBNNMs

Regulatory Oversight

Section 7 Compliance and Complaints (ref: page 4 of proposed CoC)

- a) [FortisBC Energy] will advise all of its employees of their expected conduct pertaining to this Code, with annual updates for employees who may be directly involved with ARBNNM activities.
- b) [FortisBC Energy] will monitor employee compliance with this Code by conducting an annual compliance review, the results of which will be summarized in a report to be filed with the Commission within 60 days of the completion of this review.

Section 10 Amendments (ref: page 5 of proposed CoC)

In order to ensure that this Code remains workable and effective, the Company will review the provisions of this Code on an ongoing basis and as required by the Commission, but with a maximum of five years between reviews.

Proposed FEI Code of Conduct and Transfer Pricing Policy for ARBNNMs

Regulatory Oversight

Section 5 Review of Transfer Pricing Policy (ref: page 6 of proposed TPP)

The Transfer Pricing Policy will be reviewed on an annual basis as part of the Code of Conduct compliance review. However, [FortisBC Energy] may make application to the Commission for approval of changes to the policy including the pricing rules and the formula for determining full costs as and when required.

Proposed FEI Code of Conduct and Transfer Pricing Policy for ARBNNMs

Provision of Information

Section 4 Provision of Information – (ref: page 3 of proposed CoC)

[FortisBC Energy] will not provide to an ARBNNM any market-sensitive or confidential information that would inhibit the energy services market in a non-natural monopoly environment from functioning.

The following should act as a guideline for employees confronted with issues related to the sharing of confidential information:

- a) Customer specific information must be treated in accordance with the Personal Information Protection Act. This Code precludes [FortisBC Energy] from releasing confidential customer specific information without the consent of that customer. If a customer agrees to a general release of their customer specific information, that information must be made available to any market participant who requests it and is willing to pay costs associated with the provision of the information, without discrimination as to access, timing, cost or content. At minimum, the price paid should cover the cost of extracting and providing the information. All parties should pay the same price for the same or similar information.

Proposed FEI Code of Conduct and Transfer Pricing Policy for ARBNNMs

Provision of Information

[FortisBC Energy] will not provide to an ARBNNM any market-sensitive or confidential information that would inhibit the energy services market in a non-natural monopoly environment from functioning.

The following should act as a guideline for employees confronted with issues related to the sharing of confidential information:

- b) If a customer requests their respective customer specific information be provided to a specific market participant, only that participant may receive the information, subject to payment of associated costs incurred to provide the information.
- c) [FortisBC Energy] may disclose to any market participant that requests it and is willing to pay the appropriate transfer price for customer information that is aggregated or summarized in such a way that confidential information would not be ascertained by third parties.

Proposed FEI Code of Conduct and Transfer Pricing Policy for ARBNNMs

Preferential Treatment

Section 5 Preferential Treatment (ref: page 4 of proposed CoC)

[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 ARBNNM. 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 ARBNNM.

Section 6 Equitable Access to Services (ref: page 4 of proposed CoC)

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.

Proposed FEI Code of Conduct and Transfer Pricing Policy for ARBNNMs

Brand Name

Section 9 Use of Utility Name - (ref: page 9 of proposed CoC)

The use of the FortisBC name by an ARBNNM operating in a non-natural monopoly environment is an acceptable business practice. The ARBNNM will exercise care in distinguishing between services provided by [FortisBC Energy] and services offered by the ARBNNM.

Proposed FEI Code of Conduct and Transfer Pricing Policy for ARBNNMs

Sharing of Resources

Section 2 Shared Services and Personnel (ref: page 3 of proposed CoC)

- a) This Code recognizes the need for and potential benefits to [FortisBC Energy] of resource sharing.
- b) [FortisBC Energy] may provide shared services and personnel noted in section (c) below to ARBNNMs while ensuring that ratepayers will not generally be negatively impacted by [FortisBC Energy]'s involvement. The costs of providing such services will be as agreed upon by both parties and be in accordance with the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs.
- c) ARBNNMs may contract for corporate services and operating personnel from [FortisBC Energy] using the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs, providing [FortisBC Energy] complies with Section 4 of this Code, Provision of Information by [FortisBC Energy], and no conflict of interest exists which will negatively impact on ratepayers.

Proposed FEI Code of Conduct and Transfer Pricing Policy for ARBNNMs

Transfer Pricing

Section 2 Determining Costs (ref: page 3 of proposed TPP)

- ii. Where no tariff rate exists, the Transfer Price will be set at no greater than full cost. With Commission approval, the cost may be set at below full cost (see Section 2 below).

Section Determining Costs (ref: page 4 of proposed TPP)

Specific Committed Service

- i. To determine the full cost of Specific Committed Service, the following loadings are applied to direct labour costs: concessions (i.e. paid time off) loading, benefits loading and general overhead loading. Also facility and/or equipment charges are applied if applicable.
 - General Overhead Loading – services (excluding facilities) in support of day-to-day functioning of employees including payroll, human resources, purchasing, IT application and infrastructure support
 - Facilities Charges – services in support of employees including space costs, furniture and equipment, telecommunication, SAP and Microsoft licences and Telus computer maintenance (i.e. HelpDesk)

Summary and Next Steps

- Recap of discussion today
 - Sections we are in agreement
 - Sections we are not in agreement
- Next steps
 - FEI to summarize stakeholder comments on FEI proposed CoC and TPP for ARBNNM
 - FEI to circulate DRAFT stakeholder comments during the week of February 24
 - Opportunity for stakeholders to review and confirm their comments provided
- March 5 workshop (tentative)

**Commission Staff Summary of BCUC Directions to
Fortis Utilities relating to Affiliate Transactions,
Code of Conduct, and Transfer Pricing Policy**

1. Introduction:

The Commission has made several rulings, in various proceedings related to the relationship between the business activities of affiliated Fortis companies, and to codes of conduct and transfer pricing policies. This document summarizes the principles, guidelines and directions that, in the view of Commission staff, primarily relate to Fortis affiliate transactions, codes of conduct and transfer pricing policies.

The Retail Markets Downstream of the Utility Meter (RMDM) Guidelines of April 1997 related to affiliate transactions between Fortis regulated utilities and non-regulated businesses (NRBs). The Alternative Energy Services (AES) Inquiry Report of December 27, 2012 extended the discussion to transactions relating to different types of business activities within utilities and between affiliated utilities. In addition, the Commission has issued directions in decisions concerning specific projects, but which also relate to the general issue of affiliate transactions, codes of conduct and transfer pricing. The AES report also found that the RMDM Guidelines relating to NRBs are valid and confirmed them.

The AES Report recommends that “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 non-regulated businesses...” (AES Report, pp. 22, 23) [emphasis added]

The AES Report recommends that the “FEU undertake a collaborative process to establish a Code of Conduct and Transfer Pricing Policy governing the interactions between Affiliated Regulated Businesses These documents should differentiate resource sharing between two natural monopolies on the one hand and between a natural monopoly and a regulated affiliate operating in a non-natural monopoly environment on the other.” (AES Report pp. 27-28).

In some instances, specific Special Directions to the BCUC from the province will create exceptions to application of the principles and guidelines in the AES Report for certain activities.

The purpose of this document is simply to list the various directions that have been issued by the Commission to Fortis utilities, in order to assist Fortis and other interested parties in evaluating the Code of Conduct (CoC) and Transfer Pricing Policy (TPP) created by Fortis. Staff recognize that parties may have different interpretations of the various directions or may believe that the spirit and intent of the RMDM Guidelines, the AES Inquiry Report, and the other decisions require more or less emphasis in some areas relative to others. Thus the intent of this summary is not to limit the discussion or review, but to establish an initial framework for evaluating the Fortis CoC and TPP.

Staff have endeavoured to summarize the guidelines, principles and directions as accurately as possible, but in the event of an inconsistency between the summary and the original, the wording of the original documents should apply. Moreover, if an element of a specific report or

decision is omitted from this document, it does not imply that the Commission, Commission staff or other parties may not refer to the element or use it as they see fit.

This document is structured as follows:

1. Introduction
2. Process
3. Scope and Other Issues

Appendix A: Principles and Guidelines From the FEI AES Inquiry Report and the RMDM Guidelines

Appendix B: Summary of BCUC Decisions Related to Thermal Energy Services and New Initiatives

Appendix C: Summary of Key Elements of FortisAlberta Inc. Inter-Affiliate Code of Conduct

2. Process

The AES Report states that updating and preparing CoCs and TPPs should be done through collaborative processes. Specifically, the AES Report stated that:

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. (p. 23, emphasis in the original).**

The AES Report further stated that:

...the Panel recommends that the FEU undertake a collaborative process to establish a Code of Conduct and a Transfer Pricing Policy governing the interactions between Affiliated Regulated Businesses, consistent with the Principles and Guidelines set out in this Report. These documents should differentiate resource sharing between two natural monopolies on the one hand and between a natural monopoly and a regulated affiliate operating in a non-natural monopoly environment on the other.

This process should be carried out in an expeditious manner, involving the utilities, stakeholders (including Interveners in this proceeding) and Commission staff. The Panel

further recommends that the participants in this process use the Fortis Alberta Inc. Code of Conduct as a guide.

Staff note, in both instances above, the references to the FortisAlberta Code of Conduct. Staff have prepared a summary highlighting the various standards in the FortisAlberta Inc. CoC, which are included in Appendix C.

3. Scope and Other Issues

In addition to the principles, guidelines and directions in the AES Report, the RMDM Guidelines, and the FortisAlberta CoC, Commission staff note that there are Special Directions from government related to specific Fortis business activities. In addition there are other agreements, such as Shared Services Agreements between Fortis utilities, and other Commission processes, such as current and future Fortis Revenue Requirement proceedings that will have a bearing on the Fortis CoCs and TPPs. In staff's view these should be explicitly acknowledged in the CoC and TPP so that they can be reviewed over time as updates.

Brand Name

The RMDM Guidelines addressed the issue of the Fortis brand on page 17, where it said:

"NRBs will not be allowed to use the utility name as the primary identifier of the company, but can make reference to the name of its parent company on letter head, advertisements, etc."

On page 40 of the AES Report, the Commission says the following:

"ESAC expresses a concern that use of the FortisBC "brand" has a "disproportionately large impact" in the emerging TES market..... The Panel finds that the use of the FortisBC brand name in the AES and New Initiatives market spaces is an acceptable business practice. Care should be taken to distinguish between the services offered by the traditional natural gas utility and services offered by Affiliated Regulated or Non-Regulated Businesses.

This 'brand' name issue was also explored in the FortisBC RRA PBR 2014-2018 by the Coalition for Open Competition (Exhibit C6-2 and Exhibit B-13 in that proceeding):

The response to an Information Request question from FEI is as follows:

"The use of the FortisBC brand name, as done so in this advertisement, to promote AES is still acceptable practice based on the AES Inquiry Report. Furthermore, an appropriate portion of the costs of this 2012 sponsorship and advertisement were allocated to the TESDA;"

An issue for the discussion of the Fortis CoC/TPP is whether or not it should include an item relating to appropriate use of the Fortis brand name by affiliates in unregulated or competitive markets.

Use and Sharing of Customer Information, Preferential Treatment

The RMDM Guidelines p. 27 item (ii) states:

“No regulated company personnel will preferentially direct customers seeking competitively offered services to an NRB.....”

The AES Report adapted the RMDM principle to include both regulated and unregulated businesses, stating: “No regulated company personnel will preferentially direct customers seeking competitively offered services to a Non-Regulated Business or Affiliated Regulated Business.”

In the concurrent 2014-2018 RRA proceeding, Exhibit B-11, BCUC IR 1.204.1 FEI responds to a “preferential treatment” question as follows:

“The FEI Energy Solutions Department is dedicated to identifying the needs of customers so that the best solution may be found for them. In this context, natural gas service is discussed along with other viable alternatives. In some cases, natural gas is not the solution that the customer desires, but TES is. In those cases, the customer may be informed of the FAES-dedicated contact to reach to explore a TES solution.”
[emphasis added]

The current CoC has a section (Sec 5) on Preferential Treatment, but does not address the above situation specifically. Staff is of the view that the new CoC /TPP should include a section regarding FEI personnel preferentially directing customers seeking competitively offered services. This section should apply to both the NRB as well as affiliated regulated utilities.

APPENDIX A

PRINCIPLES AND GUIDELINES FROM THE FEI AES INQUIRY REPORT AND THE RMDM GUIDELINES

A. THE FEI AES DECISION

The AES Inquiry was set up in response to several applications filed by FEI related to the provision of products and services that are outside of traditional gas distribution utility activities, and the commission's various decisions about these applications. In some of these proceedings, the commission and interveners raised issues about the regulation of these new business activities.

1.1. Objectives

The inquiry report identified seven objectives of the Inquiry; those were to:

- Provide guidance to future Commission Panels dealing with applications related to new business activities;
- Provide guidance to FEU and other utilities dealing with or entering into new business activities outside of the traditional gas distribution utility business;
- Provide clarity as to the Commission's views on activities that should be regulated and activities that should be kept outside the regulatory umbrella;
- Provide guidance as to how new activities that are to be regulated should be structured so as to be fair to the traditional ratepayer, the user of the new service and the utility;
- Provide direction as to how EEC or other incentive funds should be administered to ensure fair, effective and non-discriminatory treatment;
- Address specific issues referred to the Inquiry Panel from other proceedings; and
- Provide direction to FEU as to a process to deal with the Thermal Energy Services Deferral Account.

1.2. Relationship to the RMDM Guidelines

The Commission Panel found that many of the objectives and principles of RMDM remain relevant and applicable, and noted that it generally based its findings on RMDM, and that it developed Principles and Guidelines that address areas, business structures and technologies beyond those addressed by RMDM. The Commission Panel confirmed the RMDM principle "[t]here must be no subsidy of unregulated business activities, whether undertaken by the utility or its NRB, by utility ratepayers" and extended this principle to apply to regulated businesses.

1.3. Principles and Guidelines for Determining the Need for Regulation

The Panel concluded that the determination of the need for regulation should be based on the principles and guidelines set out below.

Principles:

- Only regulate where required.
- Regulation should not impede competitive markets.

Guideline

Regulation is required when:

- natural monopoly characteristics are present and there is a need to regulate to protect the public interest; and/or
- legislation (such as the *Utilities Commission Act* or the *Clean Energy Act*), requires an activity to be regulated.

The Commission Panel made the following conclusions and findings:

- The commission should not act to hinder competition, where competition is feasible. Further, there must be no cross-subsidization when a utility purports to enter a competitive market.
- Customer preference does not determine the need for regulation. Regulation itself is not a choice. The need for regulation is determined by natural monopoly characteristics, the resulting need for consumer protection and/or the relevant legislation.
- In general, a provider of services which meets the definition of a public utility in the *UCA*, and where natural monopoly characteristics are present and consumers require protection, will be subject to regulation.
- A reasonable interpretation of the *UCA* should consider the market context within which the proposed service or facility will exist, the degree to which natural monopoly characteristics are present and whether the consumer requires protection.
- Given the current lack of clarity in the *UCA* the Commission Panel recommends the use of exemptions, which are contemplated under the *UCA*, where the Commission finds regulation is not warranted.
- The Commission Panel found that it does have the jurisdiction to control a public utility's service offerings and/or to require greater structural separation between services for the reasons advanced both in the RMDM Guidelines proceeding and by Ferus LNG.

1.4. Principles and Guidelines for Determining the Form of Regulation

Once an activity is found to require regulation, the appropriate form of regulation must be determined, which should be based on the following principles and guidelines.

Principles

- Where regulation is required use the least amount of regulation needed to protect the ratepayer.
- The benefits of regulation should outweigh the costs.

Guidelines

The form of regulation should:

- provide adequate customer protection in a cost effective manner;
- consider administrative efficiency;
- consider the level of expenditure, the number of customers, the sophistication of the parties involved and the track record of the utility in undertaking similar projects; and
- require the provision of sufficient information to allow the Commission to assess the new business activity, and any rates to be set, against BC's Energy Objectives and the requirements of the *Utilities Commission Act* and the *Clean Energy Act*.

1.5. Principles and Guidelines for Determining Business Structure and the Use of Monopoly Resources

When an existing regulated utility enters into a new line of business, there is a spectrum of options from complete integration within the traditional utility to complete separation.

Integration -----			----- Separation	
One class of service/ class of customer	Separate Class of Customer	Separate Class of Service	Affiliated Regulated Business	Affiliated Non-regulated Business

The business structure affects the potential for cross-subsidization and the Panel developed the following guidelines setting out which of the various business structures is most appropriate for a new business activity.

1.5.1 Non-Regulated Businesses

The AES Report stated that "where a utility seeks to participate in an activity where there are no monopoly characteristics, the utility must demonstrate that its participation is necessary and in the public interest, to the exclusion of other forms of enterprise. If the utility is to provide the new business activity as a Non-Regulated Business, there must be an approved Transfer Pricing Policy and Code of Conduct to prevent cross-subsidization." (pp. 22-23)

The AES Panel reaffirmed the three objectives ultimately adopted in the RMDM Guidelines:

- "There must be no subsidy of unregulated business activities, whether undertaken by the utility or its [non-regulated business], by utility ratepayers."
- "The risks associated with participation in the unregulated market must be borne entirely by the unregulated business activity, that is the risks must have no impact on utility ratepayers."
- "The most economically efficient allocation of goods and resources for ratepayers should be sought."

The AES Panel found that the guidelines of RMDM that relate to Non-Regulated Businesses are valid and confirmed them.

1.5.2 Regulated Businesses

For regulated businesses, the AES Panel found that the business structure options range from an affiliated regulated company to full integration within an existing class of service.

The AES Panel established the following principle for assessing the appropriate business structure.

- The business structure for a new regulated business activity should be determined on the basis of the degree of integration or separation that is appropriate to:
 - provide the necessary protection to the traditional utility ratepayer from subsidizing the new business activity;
 - provide a fair and reasonable allocation of risk among utility ratepayers, the new business ratepayers and the utility shareholder; and
 - allow for fair allocation of costs and benefits among different groups of customers.

The AES Panel also found that a greater reliance on structural separation as opposed to the use of accounting will minimize the potential for abuse, and would make it easier to assess whether the allocation of costs and risk was undertaken in a fair and reasonable manner.

The AES Decision stated that use of an Affiliated Regulated Business to pursue a new regulated business activity provides the greatest degree of business separation for regulated activities. The AES Panel established the following Guidelines.

Guidelines

- Structuring a new regulated business activity as an Affiliated Regulated Business is most appropriate when some or all of the following characteristics are present:
 - The new regulated business activity takes place largely beyond the delivery meter of the traditional utility;
 - The new regulated business activity has limited or no use of the traditional utility assets; and
 - The new regulated business activity has the potential to impose higher risks on the users of the new service and/or the utility shareholder.
- An approved Code of Conduct and Transfer Pricing Policy should govern interactions between Affiliated Regulated Businesses and the natural gas monopoly (the traditional utility);
- Common corporate and management resources may be shared between two Affiliated Regulated Businesses that are natural monopolies, such as gas and electric service;
- The sharing of any common resources between a natural monopoly affiliate and an affiliate that is a regulated business in a non-natural monopoly environment, however,

should be much more limited. As a rule, resource sharing should be limited to corporate services and should not include any operational services except possibly emergency services;

- Sharing of employees should not be allowed where the employee has access to confidential information, routinely participates in making decisions with respect to the provision of traditional utility services or how utility services are delivered, routinely deals with or has direct contact with customers of the utility or is routinely involved in planning or managing the business of the traditional utility;
- All sharing of costs, services and information between affiliated utilities must be fully disclosed to the Commission.

Consequently the AES Panel recommended that:

“...the FEU undertake a collaborative process to establish a Code of Conduct and a Transfer Pricing Policy governing the interactions between Affiliated Regulated Businesses, consistent with the Principles and Guidelines set out in this Report. These documents should differentiate resource sharing between two natural monopolies on the one hand and between a natural monopoly and a regulated affiliate operating in a non-natural monopoly environment on the other.” (pp. 27-28; emphasis in the original)

The AES Panel also indicated (p. 23) that the process should involve the utilities, stakeholders (including AES interveners) and Commission staff, and that the participants in this process use the Fortis Alberta Inc. Code of Conduct as a guide.”

1.5.3 Separate Classes of Service

Guidelines

- Structuring a new regulated business activity as Separate Class of Service within the Regulated Utility is most appropriate when some or all of the following characteristics are present:
 - o The new regulated business activity largely uses and is dependent on the traditional gas utility distribution infrastructure but with additional clearly identifiable costs and/or assets that pertain specifically to the new business activity;
 - o The risk of the new business activity differs from the risk faced by the traditional natural gas ratepayer; and
 - o An identifiable customer base is served by the new regulated business activity.

The Commission determinations section referenced section 60(1)(c) of the *UCA* regarding separate classes of service and stated that a separate class of service provides some degree of ring-fencing from other classes of service within the traditional utility, which allows for greater transparency and facilitates the appropriate allocation of costs to users of the service. It also stated that:

“Where the risk of costs flowing back to the traditional regulated ratepayer is found to be minimal, a separate class of service may be appropriate.” (emphasis added).

1.5.4 Separate Classes of Customers

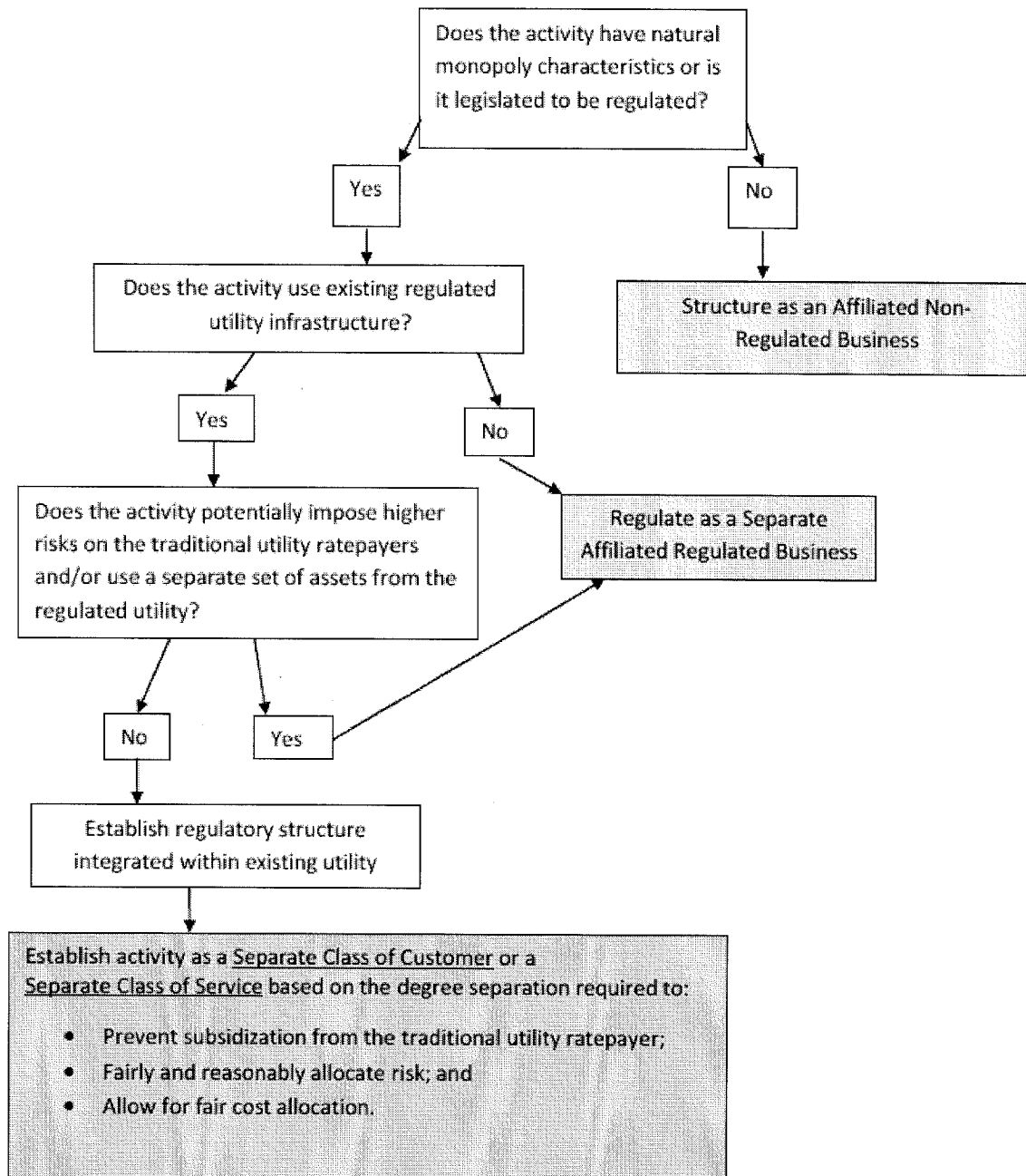
Guidelines

- Structuring a new regulated business activity as a Separate Class of Customers within the regulated utility is most appropriate when some or all of the following characteristics are present:
 - o The new regulated business activity uses the traditional utility distribution infrastructure to serve a specific set of customers attached to the utility;
 - o The new regulated business activity does not include assets beyond the traditional utility;
 - o The risk incurred in adding the new class of customer is comparable to the overall risk faced by the existing customers; and
 - o There are identifiable sets of customers with common characteristics receiving a common set of services. These customer groups may be established to facilitate a rate design that provides an acceptable cost allocation for the provision of the common set of services.

A class of customer within the traditional regulated utility represents the least amount of separation contemplated in the spectrum of options and can be used when there is little need to prevent cross-subsidization of costs and risks from the traditional utility to the new regulated business activity.

1.5.5 Decision Flowchart – Assessment of a New Business Activity

The AES Report created the flow chart below to illustrate how the Guidelines can be used by future Commission Panels to determine the business structure that best meets the circumstances.



1.5.6 Ownership by a Regulated Utility of Facilities Not Part of a Traditional Utility

Principle:

The ownership of facilities by a regulated utility outside of the bounds of the traditional gas distribution utility is not recommended where there are viable alternative options and should only be allowed in exceptional circumstances, or where required by legislation.

The onus is on the utility to prove that extenuating circumstances making such ownership in the public interest.

1.6 Principles and Guidelines for Determining Cost Allocation for Regulated Utilities

Key Principle: The basis of cost allocation is cost causality.

Guidelines:

- For new business activities provided through a Regulated or Non-Regulated Affiliated Business or a Separate Class of Service, costs are to be allocated to the new business or shareholder, on the basis of the higher of market price or the fully allocated cost, and be free of all forms of cross-subsidization from the traditional utility. These costs include both direct costs and a fair allocation of the parent utility costs required to provide the product or service, except where such treatment is precluded by legislation, regulation or special direction.
- Allocation of costs is to reflect appropriate compensation for any benefit derived by the new business activity as a result of its affiliation with its parent or other businesses. This should include compensation for additional cost or risk related to the addition of incremental debt to the parent utility for the new products or services.
- A service provided by the parent utility, or from one class of service or affiliate to another class or affiliate, will be on the basis of an approved Transfer Pricing Policy.
- There should be transparency in cost allocation among different customer groups.
- All proposals for new business activities must be accompanied by a clear and concise description of the planned cost allocation methodology.

For an Affiliated Regulated Business, the specific guidelines set out below should be followed:

- A Commission approved Code of Conduct must govern interactions;
- Any sharing of costs and services between Affiliated Regulated Businesses must be done on the basis of the higher of market price or the fully allocated cost, in accordance with a Commission approved Transfer Pricing Policy; and
- All sharing of costs, services and information between affiliated regulated utilities must be fully disclosed to the Commission.

When an activity is determined to be in a Separate Class of Service, the following guideline should be followed:

- All costs of establishing the new business activity taking place under the new Separate Class of Service should be borne by the new class of service or the utility. The traditional natural gas distribution ratepayer should be shielded from all such costs.

1.7 Principles and Guidelines for Determining Allocation of Risk for Regulated Utilities

When a utility enters a new business, the issue of allocation of additional risk to: (1) the traditional utility ratepayer; (2) the new business ratepayer; and (3) the shareholder, arises. The AES Panel set out the following Principles and Guidelines regarding allocation of risk.

Key Principles

- The traditional ratepayer is to be free of risk for a new product or service to be distributed through an Affiliated Regulated Business or a Separate Class of Service.
- Within Regulated Affiliates or Separate Classes of Service, there is to be a fair balance of risk and reward between the customer and the shareholder.
- If a utility seeks a higher rate of return (i.e. a risk premium) for its investments related to a new business activity, the utility shareholder must bear the additional risk, and not the traditional natural gas ratepayer. The incremental cost burden to customers resulting from an approved higher rate of return should be borne by the users of the new business activity and not by the traditional gas distribution utility ratepayer.

Guidelines

- The risk of unrecovered costs (including, but not limited to, start up, operating and capital costs) is to be borne by the Affiliated Regulated Business or Separate Class of Service or the shareholder. If costs related to the new business activity cannot be recovered from new business customers in a reasonable period of time (as approved by the Commission) these costs will be borne by the shareholder.
 - All proposals for new business activities should be accompanied by a risk management plan. The risk management plan should address:
 - The anticipated level of risk that would be faced by the traditional ratepayer, the new business ratepayer, and the shareholder; and
 - How the incremental costs from these risks will be allocated among these groups.

1.8 Principles and Guidelines for Determining Appropriate Information Sharing

Key Principles

- Customer specific information must be treated as required by the *Personal Information Protection Act* and, in addition, should only be released with the written consent of the customer.
- Customer information (aggregate or customer specific with written consent) should be made available to all Parties (Affiliated Regulated and Unregulated Businesses, separate classes of service, and competitors) on an equal basis.
- The control of information should not provide a competitive advantage.

Guidelines

Consistent with the key principles, when deciding what information can be shared with: (i) anyone, including competitors; and (ii) a related utility; or (iii) a division of the utility; information sharing should be treated in accordance with the following guidelines:

- Subject to customer consent:
 - o Information that is shared by the utility should be provided at a reasonable price reflecting market circumstances and, at a minimum, cover the cost of extracting and providing the information. All parties should pay the same price for the same or similar information;
 - o Information provided from the traditional natural gas distribution utility to persons within the utility or a related utility dealing with AES or other New Initiatives should be available to all interested parties;
 - o The following Code of Conduct principles from the RMDM Guidelines (pp. 26-7), which were developed for sharing information between regulated and Non-Regulated Businesses, were adapted to include information sharing among Affiliated Regulated Businesses:
 - The regulated utility will not provide to the Non-Regulated Business or Affiliated Regulated Business any market-sensitive or confidential information that would inhibit a competitive energy services market from functioning;
 - No regulated utility personnel will state or imply that favoured treatment will be available to customers of the company as a result of using any service of the Non-Regulated Business or Affiliated Regulated Business;
 - No regulated company personnel will preferentially direct customers seeking competitively offered services to a Non-Regulated Business or Affiliated Regulated Business.

B. RMDM GUIDELINES

The RMDM Guidelines were established to deal with the relationship between regulated utilities and affiliated NRBs. In the RMDM Guidelines the Commission set out the objectives, criteria and principles which it intended to use to guide its determinations regarding the extent to which utility assets and services may be used to provide goods and services to the downstream retail market. These are summarized below.

1.1. Objectives

Although other objectives were also suggested, the three ultimately adopted in the RMDM guidelines were the following:

- There must be no subsidy of unregulated business activities, whether undertaken by the utility or its NRB, by utility ratepayers.
- The risks associated with participation in the unregulated market must be borne entirely by the unregulated business activity, that is, the risks must have no impact on utility ratepayers.
- The most economically efficient allocation of goods and resources for ratepayers should be sought.

1.2. Criteria

Although more criteria were proposed, the Commission adopted the following three:

- Does a natural monopoly currently exist for the good or service?
- If the good or service is not a natural monopoly, can the utility ratepayer be sufficiently protected through a transfer pricing policy mechanism if either a division of the utility or a related-NRB offers the good or service?
- Will the use of utility assets or services in the provision of the good or service reduce the risk of utility assets being stranded to the detriment of ratepayers or otherwise provide benefits to ratepayers?

The Commission also said: "If the new service is to be provided within the utility, the Commission will consider the appropriateness of this service within the mandate of the public utility."

1.3. Principles

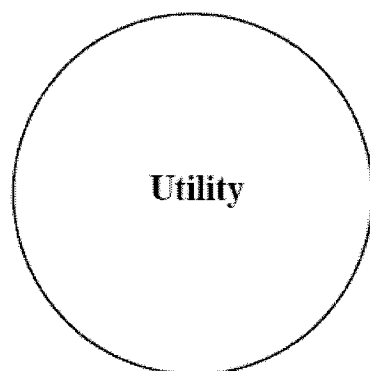
The Commission accepted five principles to govern the choice of corporate structure. Figure 4 which is referenced in these principles is reproduced below.

- i) If a natural monopoly exists for the good or service, it should be provided as a regulated tariff item (Corporate Structure 1 in Figure 4).
- ii) Utility participation in the unregulated downstream market by completely stand-alone NRBs using no utility resources is the preferred option since it provides the maximum protection to utility ratepayers (Corporate Structure 4 in Figure 4). Variations from this option should be undertaken only when it can be shown that this option would result in substantial stranded costs for the utility and/or that a transfer pricing policy mechanism will act to provide sufficient protection for ratepayers.
- iii) The onus should always be on the utility to prove that the benefits associated with use of utility resources are sufficient to warrant the changed structure and that the transfer pricing policy mechanism will provide sufficient protection to ratepayers.
- iv) If the Commission decides to allow the use of utility resources in the provision of the unregulated good or service, the preferred option is through a related-NRB (Corporate Structure 3 in Figure 4). Direct participation by the utility in the provision of an unregulated good or service should be allowed only when the costs associated with forcing the provision through the related-NRB structure would significantly offset the benefits associated with the use of the utility's resources and it can be shown that a transfer pricing policy mechanism will provide sufficient protection for ratepayers (Corporate Structure 2 in Figure 4).
- v) Utilities and their related-NRBs will be encouraged to move unregulated products which use utility resources into stand-alone NRBs as soon as market conditions warrant (Corporate Structure 4 in Figure 4). When a utility-provided

product is moved to an NRB, the NRB will be required to pay fair market value to the utility for the assets, including goodwill, associated with the product. In addition, utilities will be required to provide periodic proof that the benefits associated with the use of utility services continue to exist and that ratepayers continue to be sufficiently protected. The Commission will make directions to prohibit the use of utility assets and services in the provision of goods and services downstream of the retail market at any time that it finds it in the interests of ratepayers to do so.

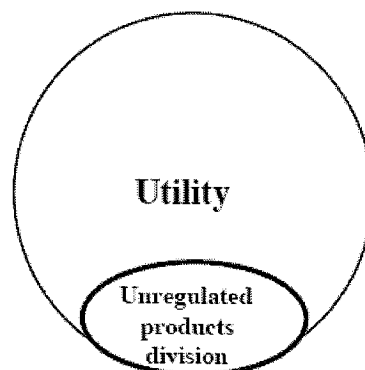
Figure 4

Potential Corporate Structures



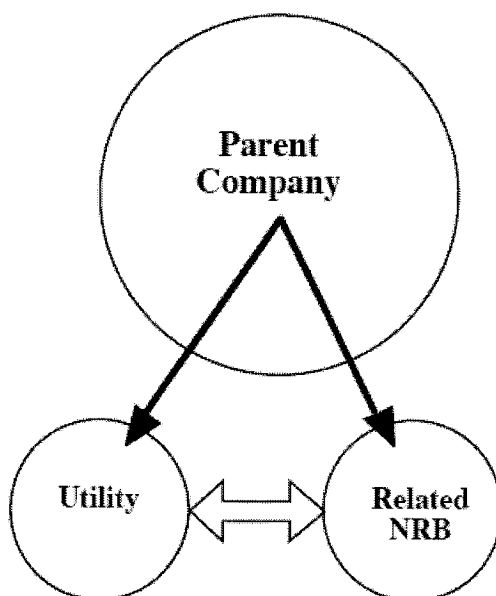
1

The utility is the sole corporate entity, providing downstream products through a regulated tariff.



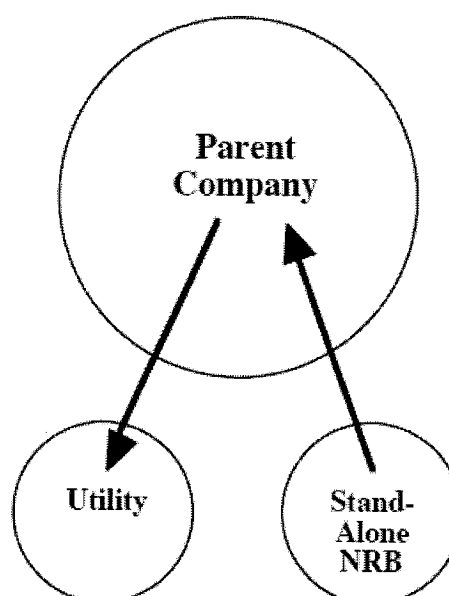
2

The utility is the sole corporate entity, providing downstream products on an unregulated basis, perhaps through a division.



3

Unregulated retail products provided by related NRB using some utility facilities and services.



4

Unregulated retail products provided by stand-alone NRB using no utility facilities or services.

1.4. Transfer Pricing Policy

The Commission concluded that a utility's transfer pricing policy should ensure the following:

- Operating costs of non-regulated activities not be reflected in the utility cost of service.
- Costs of developing new business ventures are charged to and recovered from the NRB.
- Accounting costs are transparent and will normally fully recover for all services. If the service provided by the utility to the related-NRB could also be obtained from an independent supplier, the price for the service should be no less than the competitive market price and never below the incremental cost.
- The financial costs of each business are borne by the business. In the exceptional case where the utility provides guarantees, it must be given financial compensation.
- Utilities will be required to file periodic reports that demonstrate that they are adhering to the TPP; the form and timing of the report will be determined by the Commission.

1.5. Code of Conduct

The Commission required each utility to bring forward for approval a code of conduct for the relationship between the utility and its NRBs or the utility and any division within the utility which offers unregulated goods or services, at the time the utility brings forward any application to use utility assets or services in the provision of unregulated goods and services.

The Commission determined that the following code of conduct principles should be adopted.

- The regulated company will not provide to the NRB any market-sensitive or confidential information that would inhibit a competitive energy services market from functioning. If customers agree to a release of customer information to the NRB, it should be provided to other market participants under the same terms and conditions and for the same price. Should an individual customer make a specific request to have information released to a particular third party, it will be released to that party only. The utility will be able to recover from the customer the costs associated with the provision of this information.
- No regulated company personnel will state or imply that favoured treatment will be available to utility customers as a result of using any service of an NRB, and no regulated company personnel will condone or acquiesce in any other person stating or implying the same.
- No regulated company personnel will preferentially direct customers seeking competitively offered services to an NRB. If a customer, or potential customer, requests information about products or services offered by an NRB or its competitors in

downstream markets, the regulated company may provide such information, including a directory of retailers of the product or service, but shall not promote any specific retailer.

- The regulated company will formally advise all employees of expected conduct related to these principles and it will undertake to perform audits to ensure compliance with these principles. The audits will occur at least once a year and be filed with the Commission.
- Complaints by non-affiliated parties about the application, or any alleged breach, of these principles will be brought to the immediate attention of the senior management of the regulated company and subsequently a report of the complaints, and action taken, will be filed with the Commission. The report will be filed with the Commission within one month of the complaint being made.
- The financing of the utility and NRB will be accounted for entirely separately with the financing costs reflecting the risk profile of each entity. No cross-guarantees or any form of financial assistance whatsoever should be provided directly or indirectly by a utility to its NRB without approval of the Commission.
- Use of the utility name by a related-NRB will require approval by the Commission to ensure that its use will not interfere with the Commission's ability to protect ratepayers.

In those cases where retail customers have direct market access to the commodity, the utility's code of conduct will also include the following provision.

- The regulated company will treat all requests for distribution system access for the purpose of direct commodity marketing equitably and according to the requirements approved for direct commodity marketing in British Columbia.

APPENDIX B

SUMMARY OF BCUC DECISIONS RELATED TO THERMAL ENERGY SERVICES AND NEW INITIATIVES

Order G-71-12 to FAES: Revisions to Rates and Rate Design for Thermal Energy Service to Delta School District Number 37, British Columbia Utilities Commission Order G-31-12 Compliance Filing (June 2012)

“c. FAES is to file an annual affiliate charges report with the Commission detailing the actual costs incurred by FEI or other related entities that have provided services to the Delta School District and charged through the Transfer Pricing Policy mechanism. Details of the report should include the type and value of charges. The first report is due to the Commission no later than one year from the date of this Decision. The \$50,000 per annum proxy is accepted for the time being but FAES is directed to provide full detailed forecasts of overhead and shared services costs as part of its next Delta School District revenue requirement application.” [emphasis added]

Reasons attached to Order G-100-12 Tsawwassen Springs Development

“The Panel finds that where cross-subsidization is a concern, greater operational separation is desired or even required to protect the interests of all ratepayers. While cost allocation remains a concern irrespective of the final corporate structure, the amount of cost allocation required is reduced, depending on the degree of operational separation. In this regard, the Panel notes that assignment to a separate legal entity is by itself insufficient to eliminate concerns about cross-subsidization. However, an assignment to a separate entity does go a long way to alleviating these concerns. This was the approach taken by the Commission in the Delta decision and the Panel finds that nothing has changed since then that would persuade it that this approach shouldn’t be taken in the current application, pending the outcome of the AES Inquiry. ”

Reasons attached to Order C-1-13 on TELUS Garden Development

“FAES is an affiliate of FEI, with no employees, and relies on FEI and FEI’s parent company, Fortis Holdings Inc., to provide all resources for the services it provides. (PCI Marine Decision, pp. 3, 52-3) Thus, FAES is not a standalone entity and relies wholly on intercompany transfers to function. The Commission has expressed concerns about the appropriateness of the modified Transfer Pricing Policy for cross-charges between FEI and FAES in the Delta School District Project Compliance Filing. The Commission noted that the current, fully integrated, business structure requires a great deal of diligence to prevent cross-subsidization. (Reasons for Decision attached to Order G-71-12, p. 4) In the AES Inquiry, the Panel expressed concerns about intercompany cost allocations between FEI and FAES. In particular, it cited the difficulty that FEU has demonstrated in tracking and documenting these costs in FEU’s 2012-2012 Revenue Requirements

Application. As a result, the Panel found that to eliminate the potential for cross subsidization, in addition to a cost allocation methodology, a substantial effort is required to establish appropriate accounting controls. (AES Report, p. 79)

The AES Panel further found that sharing of services among affiliates should be done on the basis of the higher of market price or the fully allocated cost of such service. (AES Inquiry Decision, p. 81)

In previous decisions, such as Delta, Tsawwassen Springs, PCI Marine and the AES, concerns were noted with issues of cost allocation, both between FEI and FAES and between projects in FAES. This Panel restates those concerns. In addition the Panel notes that there is no code of conduct in place. The Commission Panel directs FAES to address these issues when it files the TGTES rate application. FAES must provide a complete description of the services that FEI and other affiliated companies are providing or will provide to FAES, the cost at which those services are being provided and the rational (sic) for that cost. FAES must also provide a description of the methodology for the allocation of overhead cost to each project within FAES."

Reasons attached to Order C-10-12, PCI Marine Gateway

Fortis Holdings Inc. (FHI) provides billing, financial reporting, shareholder services and corporate finance, in addition to aspects of billing and financial reporting.

"The Panel identifies two issues affecting the sharing of monopoly resources. One is the allocation of costs between FEI and FAES. The second is the presence of both regulated and non-regulated activities within FAES between regulated and non-regulated business. This latter issue requires FAES to allocate direct costs correctly to each project and then allocate overhead in a reasonable manner.

The Panel defers the appropriateness of the current TPP to the AES Inquiry or other such future Commission process, but notes that the current fully business structure requires a great deal of diligence to prevent cross-subsidization between the gas and thermal business areas and also across separate thermal customers. Accordingly, the Panel reiterates the previous direction in the Delta SD decision to increase the degree of operational separation between FAES and FEI."

Reasons attached to Order C-8-13, Kelowna DES

"The Panel finds that to prevent any undue cross-subsidization, and to promote transparency and fair open access, FAES should not purchase any services from FEI for the KDES, unless they are purchased pursuant to an updated TPP and CoC approved by the Commission, which addresses:

1) The need for a fair, open and transparent pricing mechanism which is fair to both FEI and KDES ratepayers;

2) The principles contained in the AES Inquiry Report and RMDM; and

3) The principles and concerns raised in this Decision.

Recognizing that a proceeding to approve the TPP and CoC could take some time, in the absence of an approved TPP and CoC, the Commission is prepared to approve a subsequent revised KDES Rate Design and Rates application only on an interim basis.

Both RMDM and the AES Inquiry Report imply that the sharing of support services and resources (such as billing) is appropriate when fairly priced and without cross-subsidization. In the absence of a clear market price, the open access concept mentioned in RMDM, and the Delta principles appear helpful: sharing is permissible in the event that FEI is charging FAES a price that it would be willing to charge other thermal utilities for the same services, and where the use of and access to monopoly resources is fair. The terms under which FAES contracts support services from FEI should be the same terms that FEI would be prepared to offer to arms-length parties.

The offering of support services by FEI to non-affiliated businesses on an open access basis would establish a market price, and provide a self-regulating pricing mechanism. Using the example of customer information provided in this proceeding, FAES has stated that the market price for this information from a third party “would likely be higher than if FEI provided these services to FAES as a regulated affiliate.” Without knowing the exact magnitude of the cross-subsidization, this appears to be against the cost allocation principles contained within RMDM and AES Inquiry Report Guidelines. In this instance, FEI’s ratepayers should be receiving the additional benefit of market based pricing, and KDES ratepayers should be paying the market value for these services. **The Panel directs FAES to ensure that a fair market value of the customer information provided by FEI to FAES is included in the subsequent KDES rate filing.**

With regard to the sharing of utility information generally, the Panel supports the AES Inquiry Report Guideline (pp. 26-27) that: “Sharing of employees should not be allowed where the employee has access to confidential information, routinely participates in making decisions with respect to the provision of traditional utility services or how utility services are delivered, routinely deals with or has direct contact with customers of the utility or is routinely involved in planning or managing the business of the traditional utility.”

APPENDIX C

Summary of Key Elements of FortisAlberta Inc. Inter-Affiliate Code of Conduct

Purpose/Objective	Conduct/Protocol	Exception Allowed
<p>Interaction between each FortisAlberta Inc. Utility and its Utility and Non-Utility Affiliates.</p> <p>* its purpose and objectives follow the ATCO Group Inter-affiliate CoC which establishes standards and conditions for interaction between each ATCO Utility and its Utility and Non-Utility Affiliates – May 22, 2003</p>	<p>Equal access to information concerning Utility Services.</p> <p>No undue influence.</p> <p>Ensure that an Affiliate does not imply in its marketing material or otherwise, favoured treatment or preferential access to Utility Services.</p> <p>Ensure that an Affiliate does not use the Utility's name, logo or other distinguishing characteristics in a manner that would mislead consumers as to the distinction or a lack of distinction between the Utility and the Affiliate.</p>	
Transactions	<p>Loan, investment or other financial support provided to a Non-Utility Affiliate is provided on terms no more favourable than what that Non-Utility Affiliate would be able to obtain as a stand-alone entity from the capital markets.</p> <p>The onus is on the Utility to demonstrate that the For Profit Affiliate Services have been acquired at a price that is no more than the Fair Market Value of such services.</p> <p>When a Utility provides For Profit Affiliate Services, it shall not charge less than the Fair Market Value of such services.</p>	

	Assets transferred, mortgaged, leased or otherwise disposed of by a Utility to an Affiliate or by an Affiliate to a Utility shall be at Fair Market Value.	
Information sharing	<p>A utility shall ensure accounting separation from all Affiliates and maintain separate financial records and books of accounts.</p> <p>When a Utility shares Information Services with an Affiliate, all Confidential Information must be protected from unauthorized access by the Affiliate.</p> <ul style="list-style-type: none"> - Computer data management and data access protocols - Contractual provisions - Periodically confirmed through a review <p>A Utility shall not provide Non-Utility Affiliates with information relating to the planning, operations, finances or strategy of the Utility or of an Affiliated Utility before such information is publicly available.</p> <p>A Utility shall not release to an Affiliate Confidential Information relating to a customer or prospective customer, without receiving the prior written consent.</p>	<p>Exceptions include for the purpose of providing Shared Services or For Profit Affiliate Services to/from the Affiliate and only for the purpose intended by the Utility.</p> <p>When the Confidential Information is aggregated in such a manner that an individual customer's</p>

		Confidential Information cannot be identified.
Sharing of Services and Resources	<p>A Utility must have a separate management team and separate officers from its Non-Utility Affiliates.</p> <p>A Utility shall be located in a separate building or shall otherwise be physically separated from all Non-Utility Affiliates through the use of appropriate security-controlled access.</p> <p>Sharing of employees are on a Cost Recovery Basis with an Affiliate provided that the employees</p> <ul style="list-style-type: none"> - Do not have access to Confidential Info - Do not routinely participate in making decisions on provision of services - Do not routinely deal with customers of the Utility <p>Plants, assets and equipment shall be separated in ownership and physically from other Non-Utility Affiliates. Utility Affiliates may share ownership and may physically share office space, equipment, rights-of-way and other assets on a Cost Recovery Basis.</p> <p>A Utility may enter Shared Services to and from an Affiliate. Shared</p>	<p>Management Team</p> <ul style="list-style-type: none"> - may share management team members or officers with other Affiliated Utilities. - Officers of a Utility may also be officers of any Affiliate of which the Utility is a subsidiary or of any Affiliate that is a subsidiary of the Utility. <p>A Utility may transfer employees to and from an Affiliate provided any employee transferred by the Utility who had access to Confidential Information shall execute a confidentiality agreement.</p> <p>In the event of an emergency, a Utility may share services and resources with an</p>

	Services arrangements should be reviewed to ensure that each of the Utilities and its Affiliates bears its proportionate share of costs.	Affiliate without a Services Agreement on a Cost Recovery Basis.
Economies of Scale	Separate Operations <ul style="list-style-type: none"> - Utility and Non-Utility Affiliates' business and affairs should be managed and conducted separately 	Separate Operations <ul style="list-style-type: none"> - Exception allowed as required to fulfill corporate governance, policy, and strategic direction responsibilities
Operating Efficiencies	A Utility may have common directors with its Affiliates.	
Compliance of the Code	Communication to each of its directors, officer, employees, consultancy, contractors, agents and Affiliates	

FORTISBC ENERGY INC.

CODE OF CONDUCT AND TRANSFER PRICING POLICY WORKSHOP

MINUTES

FEBRUARY 20, 2014

9:00 am – 12:00 pm

1125 Howe Street, Vancouver, B.C.

Purpose of the Workshop

- Objectives
 - Update and recap of recent stakeholder consultation discussions
 - Stakeholders to provide comment and feedback on proposed FEI Code of Conduct (CoC) and Transfer Pricing Policy (TPP) for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment (ARBNNM)
 - Discuss next steps
- FEI explained that, based on the AES Inquiry Decision and feedback from stakeholder consultation sessions, the CoC and TPP governing interactions between FAES and FortisBC Energy Inc. (FEI) is the primary area of interest.
- Once a CoC and TPP is established and approved by the BCUC to govern ARBNNM situations (i.e. FAES), some of the same principles and language can be adapted as required to the other two situations specified in the AES Inquiry Decision; interaction between FEI and related non-regulated businesses and that between two natural monopolies (i.e. FEI and FEVI/FEW and FEI and FBC).
- A follow-up workshop is tentatively scheduled for March 5. We will be making the decision whether to proceed with the March 5 workshop after today's session.
- FortisBC stated that minutes of this meeting will be circulated early next week for participants to review and propose edits on their comments as noted.

Attached is a copy of the workshop presentation material.



Feb 20 workshop
presentation FINAL.pdf

- **FEI provided opening comments and remarks**

- For interaction between two natural monopolies (i.e. FEI and FEVI/FEW), FEI believes that the sharing of resources under shared services agreements are being appropriately reviewed as part of the Revenue Requirements proceedings. The shared services arrangements are well established and have benefited both companies and its ratepayers.
- For interaction between FEI and related non-regulated businesses, sharing of resources in recent years has been relatively minor, lessening the urgency to update the existing FEI CoC and TPP for non-regulated businesses, which have been in place for a number of years.
- Concluded with introductions of FEI and FAES staff.
 - FEI staff - James Wong, Diane Roy, Shawn Hill, Roger Dall'Antonia, Robin Jenkins
 - FAES staff - Julie Tran, Grant Bierlmeier
 - FEI and FAES – Doug Stout

Introduction and Opening Remarks from Stakeholders (participants)

- **Coalition for Open Competition (Coalition)**

- Ron Cliff (Highcliff Energy Services)
- Martin Luymes, Heating, Refrigeration and Air Conditioning Institute of Canada (HRAI)
- Dana Taylor, Mechanical Contractors of B.C. (MCABC)
- Robert Flipse (MCABC, HRAI)
- Comments and suggestions included:
 - Don't understand why this is fundamentally different than Retail Market Downstream of the Meter Guidelines (RMDM).
 - Coalition has no issue with what happens inside in the utility, between Gas to Gas and between Gas and Electric. The Coalition's focus is between FEI and FAES.
 - With regards to the process to date, the initial presentation package from November 2013 looked like a good starting point and it was a reasonable background document, but it was only a start. The Coalition did meet with FortisBC representatives in November 2013. However, the Coalition's view is that today's workshop, from their perspective, is the start of the review of FEI's CoC and TPP.

- The Coalition commented that the proposed FEI's CoC and TPP for ARBNNM look light and minimal.
 - Martin Luymes (HRAI)
 - Commented on CoC and TPP from a national level and his experience in other Canadian jurisdictions, mainly Alberta and Ontario.
 - The process is usually driven by the regulator, not the utility. Under the current situation, the Coalition is not clear on the role of the BCUC on FEI's CoC and TPP.
 - Commented that it appears the proposed FEI's CoC/TPP for ARBNNMs was based on the existing Terasen Gas' CoC/TPP, which was confirmed by FEI.
 - Commented that the existing Terasen Gas' CoC/TPP is not a good model to start with. There is a wealth of information and principles in Alberta and Ontario available so it would be helpful to follow some of those models.
 - It will be important to include reference in the CoC/TPP to the punitive consequences of non-compliance.
- **Corix Multi-Utility Services**
 - David Bursey
 - Ian Wigington
 - Expressed dismay and disappointment at the progress to date.
 - The AES decision came out in 2012. FEI's proposed CoC and TPP for ARBNNM is the first substantive document and is nothing more than window dressing.
 - Commission made it clear that it wanted to see RMDM principles adopted as outlined in the AES Inquiry Decision, but those principles are not reflected in the draft documents. The proposed FEI's CoC/TPP to ARBNNM document has no statement of principles and won't be easy to enforce.
 - The Commission should be more actively involved because they don't believe that FEI is motivated to draft a CoC/TPP that has teeth. Accountability, enforcement and penalties provisions are missing.
 - There are fundamental design issues with the Code proposed by FEI and thus it is too early to engage in wordsmithing.
 - The CoC and TPP must follow the direction in the Commission AES Decision.

- **Customer Groups**

- Jim Quail COPE local 378 (COPE)
 - The Commission should not venture into a role outside its jurisdiction. The BCUC does not have a role in the market development of the Thermal Energy Services marketplace. Discussed was the example of the Insurance Corporation of B.C.
 - Some parties are claiming to be seeking more open competition but may be actually constraining the development of the Thermal Energy Services marketplace. Constraints are being placed on the domestic utility but not on Corix, so not a level playing field.
 - By not allowing FEI to share resources with its regulated affiliate, the victims would be ratepayers who would be required to pay for the duplication of resources.
- Bill Andrews, BC Sustainable Energy Association (BCSEA)
 - BCSEA's principal interest is in promoting innovative energy solutions in B.C. The BCSEA is neutral on who the Thermal Energy Solutions provider is.
 - BCSEA's interest is to ensure that there is no interference in innovative energy solutions in B.C.
- Tannis Braithwaite, British Columbia Pensioners' and Seniors' Organization (BCPSO)
 - Interest is to see market develop in a way that benefits ratepayers and involves all players, and FEI/FAES should not be disadvantaged.
 - There are a lot of efficiencies to be gained from sharing services.
 - Need to deviate from RMDM model as it was not in the best interest of ratepayers.
- David Craig, Commercial Energy Consumers Association (CEC)
 - The objective is to make sure everyone makes money here.

- **Interested Parties**

- Janet Kennedy, Pacific Northern Gas (PNG)
 - PNG is participating in an Observer role.
- Alan Barber, B.C. Ministry of Energy and Mines (MEM)
 - MEM participating in an Observer role and is interested in everybody's feedback.

- **Commission Staff**

- Phil Nakoneshny
- Eileen Cheng
 - Commission staff has been consulted by FEI staff to update FEI's CoC and TPP. Staff confirmed FEI has been following the timeline as agreed to by Staff.
 - Staff commented that it has put together a "Coles Notes" of AES Inquiry Decision and RMDM. Copies of the document were distributed to workshop participants.

A PDF version of the document is provided here for reference.



Feb 20 CoC and TPP
workshop material fro

Stakeholder Consultation Efforts To-Date

- Summary of interviews (unofficial comments)
 - FEI provided an overview of the unofficial comments (refer to the workshop presentation material).

Evolution of FAES – Cost Allocation Process

- Slide 9, 10 and 11 of the workshop presentation material were intended to provide a bit of history on the evolution of FAES from a cost allocation perspective. It shows how the cost allocation process has evolved over time with the development of the FAES business. This will provide some context necessary later on in the discussion of the FEI proposed CoC and TPP.
- \$854 thousand overhead allocation from FEI to FAES
 - Correction to first bar – label should be 2010/2011, not 2012.
 - Revisited assumptions with updated overhead allocation from FEI to FAES at approximately \$600 thousand.
 - The proposal by FEI to require timesheets for FEI personnel working on overhead activities for FAES will help validate the accuracy of the FAES overhead estimate.

Review Proposed FEI CoC and TPP ARBNM

- Key sections of the proposed FEI CoC and TPP for ARBNM include:
 - Regulatory Oversight
 - Provision of Information

- Preferential Treatment
- Brand Name
- Sharing of Resources
- Transfer Pricing – Pricing of Services

For each of these sections, please refer to the workshop presentation material for language proposed by FEI. The slide number will be included in the section for reference.

Regulatory Oversight – slide 13/14 of workshop presentation

Stakeholder	Comments
Coalition for Open Competition	<p>The proposed language in FEI's CoC and TPP will act as a deterrent to filing complaints when FEI makes the decision as to the validity of the complaints. The validity of a complaint should be determined by the Commission.</p> <p>Consequence for non-compliance is a key piece missing from FEI's proposed CoC/TPP. According to the Coalition, the language used in the Ontario jurisdiction has worked well.</p> <p>The Commission must ensure that penalties for non-compliance are included.</p> <p>FEI stated the annual compliance review is prepared by its Internal Audit group.</p>
Corix Multi Utility Services	<p>The CoC/TPP needs more teeth (i.e. enforcement and penalties). There needs to be stronger certification and commitment from senior executives of FEI for monitoring and compliance.</p> <p>There needs to be consequences for non-compliance (penalties). The BCUC could impose escalating penalties.</p>
COPE Local 378	<p>Commission already has authority to levy penalties under Section 42 of the Utilities Commission Act (UCA).</p> <p>Including some wording (i.e. wordsmithing) in FEI's proposed CoC/TPP referencing administrative penalties in UCA would be preferred, rather than creating new language specifically for this.</p> <p>Should not duplicate what is provided by law and could lead to litigation around which law is applicable.</p>

Commission Staff	On administrative penalties, staff asked COPE to clarify whether they envisage that the Commission would issue an Order that the CoC/TPP must be followed and if it isn't, the administrative penalties provisions would be triggered.
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Provision of Information – slide 15/16 of workshop presentation

Stakeholder	Comments
Coalition for Open Competition	How do we know that information is going to be used in a non-competitive way when dealing with customers? Looking for assurance that FEI is sensitive to this. FEI stated that it would not give market leads to FAES.
Corix Multi Utility Services	Would information provided to ARBNNM also be available to competitors? Not sure what the proposed words “inhibit the energy services market...” mean and how that can be interpreted Also, wording needs to be fair both ways.
COPE Local 378	Provision of information is a consumer privacy matter.
Commission Staff	Indicated that the proposed wording is less broad than previous wording used – see below. Proposed wording - [FEI] will not provide to an ARBNNM any market-sensitive or confidential information that would inhibit the energy services market in a non-natural monopoly environment from functioning. Existing wording – [FEI] will not provide to an NRB any information that would inhibit a competitive energy services market from functioning.

Preferential Treatment – slide 17 of workshop presentation

Stakeholder	Comments
Coalition for Open Competition	Could happen through customer service while just trying to be helpful, so need to be explicit around instructions. FEI has natural gas contractors listed on its website so would be helpful to have other TES providers listed on FEI's website also.

Corix Multi Utility Services	There should be a list of TES providers on FEI's website.
British Columbia Pensioners' and Seniors' Organization	It's not clear to BCPSO why FEI should be required to provide a list of TES providers on their website when the BCUC has no ability to require other TES providers to do so. That doesn't sound like an even playing field.
Commission Staff	<p>The proposed wording should also be directed to FEI and ARBNM personnel when communicating with customers.</p> <p>By including specific wording in the FEI CoC/TPP, the Company will demonstrate it is making a commitment, instead of just making information available.</p> <p>Asked whether FEI would be willing to include its position stated in response to BCUC IR 2.358.2 directly in the CoC, to which FEI answered yes.</p>

Brand Name – slide 18 of workshop presentation

Stakeholder	Comments
Coalition for Open Competition	<p>Codes in other jurisdictions put more of a burden on the regulated distribution company to protect its name (i.e. wording used in Ontario).</p> <p>Need to exercise care to what can and cannot be done to avoid complaints later.</p>
Corix Multi Utility Services	Looking for stronger wording as to what can and can't be done. Instead of "can be", use "will be", etc.
Commission Staff	The wording is pretty clear at what it is getting at. They are generally OK.

Sharing of Resources – slide 19 of workshop presentation

Stakeholder	Comments
Corix Multi Utility Services	<p>Significant concern expressed about section 2a). This CoC is about ensuring that, where resources are shared, there will be no cross-subsidization. Section 2a) turns this issue on its head by saying "this code recognizes the need for and potential benefits to FEI of resource sharing."</p> <p>Expressed concern about the use of proposed wording "...while ensuring that ratepayers will not generally be</p>

	negatively impacted by [FEI]’s involvement.” They are inappropriate. Why not use ‘never’ instead of ‘not generally’?
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Transfer Pricing – Pricing of Services – slide 20 of workshop presentation

Stakeholder	Comments
Coalition for Open Competition	Commission hasn’t yet set lower threshold for small projects. Contractors’ typical projects are under \$500 thousand and non-regulated. The Commission should not lose track of the little guy. This CoC has to cover scenarios that fall below the minimum threshold where the industry will be unregulated.
Corix Multi Utility Services	<p>Need to ensure fair cost of providing shared services to another entity, regardless whether the entity is regulated.</p> <p>When regulated utility is involved, have to ensure a fair price is charged. In the case of Corix, it is the shareholders who would suffer (as opposed to regulated ratepayers) if undercharging for shared services provided by the unregulated parent company occurred. The ratepayers of the smaller regulated utility would get a deal.</p> <p>FEI ratepayers would benefit from higher charges for shared service. FEI should not be allowed to charge for service at less than their cost. How the cost is determined is important. It should be a fair charge that recognizes the full cost of FEI offering its expertise, equipment and personnel, all of which have been paid for by ratepayers.</p> <p>Questioned why the CoC/TPP should be different for regulated and unregulated entities.</p>
COPE local 378	<p>Commission has no obligation to non-regulated customers but does to regulated customers. The Commission’s decisions can suffocate development of alternative energy in B.C.</p> <p>RMDM was designed to maximize every benefit for gas ratepayers by ensuring ratepayers got every nickel they could out of expansion of the sphere of the utility.</p> <p>If FEI is required to charge higher of market price or full cost, the introduction of a notional surcharge indicates a form of cross-subsidization from FAES to FEI.</p>

Commercial Energy Consumers Association	<p>Concern about using of Market Price. Not sure there is a Market Price, or way to discover a Market Price.</p> <p>This is more a cost allocation issue for ratepayers affected.</p> <p>Customers of regulated utilities have rights.</p>
BC Sustainable Energy Association	<p>If customers are all regulated, then the Commission has the responsibility for protecting both sets of customers and ensuring appropriate prices are used. Noted that cross-subsidization can go both ways and there is a need to be careful that FAES does not end up subsidizing FEI.</p> <p>Sharing of resources between two large utilities, such as FEI and BC Hydro, will benefit both sets of ratepayers. It's more an issue of how to value the service.</p>
British Columbia Pensioners' and Seniors' Organization	<p>The interest of ratepayers on both sides of the FEI/FAES divide are best advanced by requiring FAES to pay the LOWER of market or fully allocated cost as long as FEI recovers incremental cost plus a premium. It's clearly not beneficial when the system disadvantages FEI/FAES relative to those operating only in non-monopoly environments. Receiving the LOWER of market or fully allocated cost benefits FAES ratepayers relative to having a non-monopoly company get the business because they can charge less. That is, shutting FAES out of the business, or preventing them from competing on equal terms does not advance the interests of FAES ratepayers.</p>
Commission Staff	<p>Expect parties to argue that Commission be consistent in the way it views regulations, whether providing services to FAES or an NRB.</p> <p>If talking of two regulated operations, regulation should work both ways. The notion of how you price a service has to go both ways.</p> <p>When trying to come up with appropriate pricing for services, outside test (i.e. market) is what costs should be paid.</p> <p>Expressed concern that FEI does not over-invest in resources it doesn't need and downtime of utility resources not charged to ARBNNMs.</p>

Discussion of Transfer Pricing occurred amongst the stakeholders during one section of the agenda. The above table attempts to capture the key points and perspectives provided. For further details about slide 20, please contact James Wong at FEI.

FortisBC commented that other jurisdictions' CoC and TPP have limited applicability to B.C. For example, Alberta's CoC was developed for an operating environment consisting both of regulated and non-regulated activities. However, the situation is different for FortisBC where much of its operations in B.C. are regulated including FAES/TES.

Summary and Next Steps

- A summary of the workshop was provided. Comments and suggestions will be noted and taken into consideration. There are differences that remain unresolved.
- Commission staff outlined some Next Steps options for consideration including use of information requests and a review process potentially involving a proceeding of some form.
- The Commission would be uneasy with getting final version without an information request process or more detail around what is supporting rationale behind the proposed wording in the different sections.
- Some stakeholders asked for a quick process rather than information requests and a proceeding. It was agreed that further meetings would be more efficient than a written process.
- Commission staff suggested use of working groups to address the outstanding issues. Stakeholders supported workshops to address specific issues. Additionally, for those issues where no agreement is reached, the issues would be submitted to the Commission for consideration with submissions from all parties. The Commission could then determine the process required for the outstanding issues. FEI agreed to take the lead on the process and would discuss with Commission staff.

Appendix C3

**APRIL 24, 2014 WORKSHOP MATERIALS
AND MINUTES**

FEI Code of Conduct and Transfer Pricing Policy Workshop

Summary of Stakeholders Comments / Suggestions to
FEI's Proposed Code of Conduct and Transfer Pricing
Policy

April 24, 2014



Workshop Agenda

- Discuss and understand stakeholder comments and positions on FEI's proposed Code of Conduct and Transfer Policy – dated April 3, 2014
 - Four submissions received including BCUC Staff, Corix, Coalition for Open Competition and FAES
- Confirm sections where there is agreement
- Discuss sections where no agreement has been reached
- Discuss next steps required.

Code of Conduct Discussion

April 24, 2014



Summary of Comments and Positions

In agreement

Preferential Treatment As proposed by FEI	Commission Staff	Corix	Coalition for Open Competition	FAES
[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 ARBNM. 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 ARBNM.	No change	No change	No change	No change

Summary of Comments and Positions

In agreement – clarification required

Equitable Access to Services As proposed by FEI	Commission Staff	Corix	Coalition for Open Competiti on	FAES
<p>Except as required to meet acceptable quality and performance standards, and <u>except for some specific assets or services which require special consideration as approved by the Commission</u>, [FortisBC Energy] will not preferentially direct customers to an ARBNM. In discussing energy alternatives with a customer, or a potential customer, [FortisBC Energy] personnel may not preferentially direct customers to an ARBNM. If a customer, or potential customer, requests from [FortisBC Energy] information about products or services offered by an ARBNM, [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.</p>	No change	[What is does this mean? When would “special consideration” be warranted?]	No change	No change

Summary of Comments and Positions

In agreement – clarification / discussion required

Provision of Information by FEI As proposed by FEI	Commission Staff
<p>[FortisBC Energy] will not provide to an ARBNM any information that would inhibit the energy services market in a non-natural monopoly environment from functioning.</p> <p>[FortisBC Energy] employees confronted with issues related to the sharing of confidential information should adhere to the following guidelines:</p>	No change to this part of the section

No comments from Corix, Coalition for Open Competition and FAES on the Provision of Information section.

Summary of Comments and Positions

In agreement – clarification / discussion required

Provision of Information by FEI As proposed by FEI Continue	Commission Staff
<p>a) Customer specific information must be treated in accordance with the Personal Information Protection Act. This Code precludes [FortisBC Energy] from releasing confidential customer specific information without the written consent of that customer. If a customer agrees to a general release of their customer specific information, that information must be made available to all interested parties who request it and are willing to pay costs associated with the provision of the information, without discrimination as to access, timing, cost or content. At minimum, the price paid should cover the cost of extracting and providing the information. All parties should pay the same price for the same or similar information.</p>	<p>a) Customer specific information must be treated in accordance with the Personal Information Protection Act. This Code precludes [FortisBC Energy] from releasing confidential customer specific information without the written consent of that customer. If a customer agrees to a general release of their customer specific information, that information must be made available to all interested parties who request it and are willing to pay costs associated with the provision of the information, without discrimination as to access, timing, cost or content. At minimum, the price paid should cover the cost of extracting and providing the information. <u>Information that is shared by the utility will be provided at a reasonable price reflecting market circumstances and, at a minimum, cover the cost of extracting and providing the information.</u> All parties should pay the same price for the same or similar information.</p>

Summary of Comments and Positions

In agreement – clarification / discussion required

Provision of Information by FEI As proposed by FEI Continue	Commission Staff
<p>b)If a customer requests their respective customer specific information be provided to a specific party, only that party may receive the information, subject to payment of associated costs incurred to provide the information.</p> <p>c)[FortisBC Energy] may disclose to all interested parties that requests it and is willing to pay the appropriate transfer price for customer information that is aggregated or summarized in such a way that confidential information would not be ascertained by third parties.</p>	<p>b)If a customer requests their respective customer specific information be provided to a specific party, only that party may receive the information, subject to payment of associated costs incurred to provide the information.</p> <p>c)[FortisBC Energy] may disclose to all interested parties who request it and are willing to pay the appropriate transfer price for customer information that is aggregated or summarized in such a way that confidential information would not be ascertained by third parties. <u>Such information will be provided at a reasonable price reflecting market circumstances and, at a minimum, cover the cost of extracting and providing the information.</u></p> <p>d)<u>Information provided from the traditional natural gas distribution utility to persons within the utility or a related utility dealing with AES or other New Initiatives will be made available to all interested parties.</u></p>

Summary of Comments and Positions

For discussion

Code of Conduct Scope

As proposed by FEI

SCOPE

This Code of Conduct (Code) governs the relationships between [FortisBC Energy Inc. (FortisBC Energy)] and Affiliated Regulated Businesses operating in a non-natural monopoly environment (ARBNNMs) for the provision of [FortisBC Energy] resources, and is 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 on December 27, 2012.

This Code will govern the use of [FortisBC Energy] resources and services provided to ARBNNMs 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 ARBNNMs and the treatment by [FortisBC Energy] of its ARBNNMs.

The primary responsibility for administering this Code lies with [FortisBC Energy], although the Commission has jurisdiction over matters referred to in this Code. The Code also provides that the Commission may review complaints in relation to this Code.

The [FortisBC Energy] Transfer Pricing Policy for ARBNNMs, dated April 3, 2014, will be used in conjunction with this Code to establish the costs and pricing for [FortisBC Energy] resources and services provided to ARBNNMs.

This Code governs the relationships between [FortisBC Energy] and its Affiliated Regulated Businesses operating in a non-natural monopoly environment. This Code does not replace the existing Code of Conduct governing the relationship between [FortisBC Energy] and Non-Regulated businesses (NRBs).

Summary of Comments and Positions

For discussion

Code of Conduct Scope

As proposed by Commission Staff

SCOPE

This Code of Conduct (Code) governs the relationships between [FortisBC Energy Inc. (FortisBC Energy)] and Affiliated Regulated Businesses operating in a non-natural monopoly environment (ARBNNMs) for the provision of [FortisBC Energy] resources, and is intended to be consistent with ~~many of~~ the principles of the British Columbia Utilities Commission (Commission) outlined in the “Retail Markets Downstream of the Utility Meter” (RMDM) Guidelines of April, 1997; ~~in 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 (AES Inquiry Report); or in Commission decisions in proceedings related to specific ARBNNMs. In instances, where this Code of Conduct is inconsistent with the principles in the RMDM Guidelines, the AES Inquiry Report, or other decisions related to specific ARBNNMs, it will be specifically noted. 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.

This Code will govern the use of [FortisBC Energy] resources and services provided to ARBNNMs 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 ARBNNMs and the treatment by [FortisBC Energy] of its ARBNNMs. [FortisBC Energy] recognizes that the AES Inquiry Report established principles and guidelines regarding the type of business structure for affiliate transactions, and will adopt those principles and guidelines when determining how to structure a new business activity.

The primary responsibility for administering this Code lies with [FortisBC Energy], although the Commission has jurisdiction over matters referred to in this Code. The Commission acknowledges that [FortisBC Energy] in the administration of this Code may have to take into account particular circumstances in respect to a particular resource or service which is being provided and where these issues are at variance with this Code, Commission approval will be required. In such a circumstance, the onus will be on [FortisBC Energy], the affected affiliate or both, to apply to the Commission justifying the variance. The Code also provides that the Commission may review complaints in relation to this Code.

The [FortisBC Energy] Transfer Pricing Policy for ARBNNMs, dated April 3, 2014, will be used in conjunction with this Code to establish the costs and pricing for [FortisBC Energy] resources and services provided to ARBNNMs.

This Code governs the relationships between [FortisBC Energy] and its Affiliated Regulated Businesses operating in a non-natural monopoly environment. This Code does not replace the existing Code of Conduct governing the relationship between [FortisBC Energy] and Non-Regulated businesses (NRBs).

Summary of Comments and Positions

For discussion

Code of Conduct Scope

Comments from Coalition for Open Competition

[Will Code (or will it not?) apply to **non-regulated or exempt** thermal energy services? For instance, will FAES own or operate projects that are not regulated? This would include situations where FAES operates TES projects that are non-regulated by virtue of their ownership by others or projects that are exempt from regulation due to the Micro TES threshold exemption?]

It would seem reasonable to combine all such Codes of Conduct under one document to avoid confusion and duplication. It would be more appropriate to use the code in all instances where it is required but exempt the obvious exclusions such as within the gas utilities (eg. FEI-FEW-FEVI)]

On March 6, 2014, the Commission issued its report on the TES Micro Exemption. It determined that all projects below \$500,000 are exempt from regulation. Ref: Exh A-6, Proposed Regulatory Framework and Guide for TES Utilities.

Note that Commission Order G-231-13A also exempted all Stream “A” TES projects from rates regulation. As a result, all projects up to \$15 million capital cost are, in effect, not subject to cost of service review.

We believe that the implication is that if FEI uses a transfer pricing that is less than the “greater of cost or market value” that there will likely be a transfer of economic rent from the FEI ratepayer to the FAES shareholder as the TES projects under \$15 million are effectively not rate regulated.

Summary of Comments and Positions

For discussion

Code of Conduct - Scope

As proposed by FAES

This Code will govern the use of [FortisBC Energy] resources and services for regulated activities provided to ARBNNMs including shared services, employment or contracting of [FortisBC Energy] personnel, and the treatment of customer, utility[FortisBC Energy], or confidential information. The Code will also determine the nature of the relationship between [FortisBC Energy] and ARBNNMs ~~and the treatment by [FortisBC Energy] of its ARBNNMs.~~

Corix provided no comments here.

Summary of Comments and Positions

For discussion

Definitions As proposed by FEI	
[FortisBC Energy Inc.]	<i>May be abbreviated as follows: [FortisBC Energy], the Utility, or the Company, and may also include employees of the Company.</i>
Commission	<i>British Columbia Utilities Commission.</i>
Guidelines	<i>Principles and Guidelines from the Retail Markets Downstream of the Utility Meter Guidelines published by the British Columbia Utility Commission in April, 1997 and the Commission's Report in the Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives published in December 27, 2012.</i>
Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment (ARBNNM)	<i>An affiliate of the Utility regulated by the Commission offering regulated products and services in a non-natural monopoly environment.</i>
RMDM	<i>Acronym for "Retail Markets Downstream of the Utility Meter", which may include any utility or energy related activity at or downstream of the utility meter.</i>
Transfer Pricing to Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment	<i>The price established for the provision of Utility resources and services to an ARBNNM. Transfer pricing for any Utility resource or service will be determined by applying the appropriate [FortisBC Energy] Transfer Pricing Policy approved by the Commission.</i>

Summary of Comments and Positions

For discussion

Definitions As proposed by Commission Staff	
[FortisBC Energy Inc.]	<i>May be abbreviated as follows: [FortisBC Energy], the Utility, or the Company, and may also include employees of the Company.</i>
Commission	<i>British Columbia Utilities Commission.</i>
Guidelines	<i>Principles and Guidelines from the Retail Markets Downstream of the Utility Meter Guidelines published by the British Columbia Utility Commission in April, 1997 and the Commission's Report in the Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives published in December 27, 2012. <u>This definition does not negate the applicability of other relevant orders or directions such as Commission directions in proceedings regarding affiliates or Special Directions issued by the Province of British Columbia to the Commission on matters related to specific FortisBC Energy business activities.</u></i>
Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment (ARBNNM)	<i>An affiliate of the Utility regulated by the Commission offering regulated products and services in a non-natural monopoly environment.</i>
RMDM	<i>Acronym for "Retail Markets Downstream of the Utility Meter", which may include any utility or energy related activity at or downstream of the utility meter.</i>
Transfer Pricing to Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment	<i>The price established for the provision of Utility resources and services to an ARBNNM. Transfer pricing for any Utility resource or service will be determined by applying the appropriate [FortisBC Energy] Transfer Pricing Policy approved by the Commission.</i>

Summary of Comments and Positions

For discussion

Definitions As proposed by Coalition	
[FortisBC Energy Inc.]	<i>May be abbreviated as follows: [FortisBC Energy], the Utility, or the Company, and may also include employees of the Company.</i>
Commission	<i>British Columbia Utilities Commission.</i>
Guidelines	<i>Principles and Guidelines from the Retail Markets Downstream of the Utility Meter Guidelines published by the British Columbia Utility Commission in April, 1997 and the Commission's Report in the Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives published in December 27, 2012.</i>
Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment (ARBNNM)	<i>An affiliate of the Utility regulated by the Commission offering regulated products and services in a non-natural monopoly environment. <u>[Prefer the simple reference of "affiliate" to "ARBNNM" as it applies in all instances]</u></i>
RMDM	<i>Acronym for "Retail Markets Downstream of the Utility Meter", which may include any utility or energy related activity at or downstream of the utility meter.</i>
Transfer Pricing to Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment	<i>The price established for the provision of Utility resources and services to an ARBNNM. Transfer pricing for any Utility resource or service will be determined by applying the appropriate [FortisBC Energy] Transfer Pricing Policy approved by the Commission.</i>

Summary of Comments and Positions

For discussion

Definitions As proposed by FAES	
[FortisBC Energy Inc.]	<i>May be abbreviated as follows: [FortisBC Energy], the Utility, or the Company, and may also include employees of the Company.</i>
Commission	<i>British Columbia Utilities Commission.</i>
Guidelines	<i>Principles and Guidelines from the Retail Markets Downstream of the Utility Meter Guidelines published by the British Columbia Utility Commission in April, 1997 and the Commission's Report in the Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives published in December 27, 2012.</i>
Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment (ARBNNM)	<i>An affiliate of the Utility regulated by the Commission offering regulated products and services in a non-natural monopoly environment.</i>
RMDM	<i>Acronym for "Retail Markets Downstream of the Utility Meter", which may include any utility or energy related activity at or downstream of the utility meter.</i>
Transfer Pricing to Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment	<i>The price established for the provision of Utility resources and services to an ARBNNM. Transfer pricing for any Utility resource or service will be determined by applying the appropriate [FortisBC Energy] Transfer Pricing Policy approved by the Commission.</i>

Summary of Comments and Positions

For discussion

Code of Conduct Principles

As proposed by FEI

The following principles were applied in the development of the Code of Conduct for activities between [FortisBC Energy] and Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment [ARBNNM].

- i. The advancement and the protection of the interests of the regulated ratepayers of [FortisBC Energy] and the ARBNNM should be considered.
- ii. [FortisBC Energy] will not provide to an ARBNNM any information that would inhibit the energy services market in a non-natural monopoly environment from functioning.
- iii. The control of information should not provide a competitive advantage .
- iv. Customer specific information must be treated as required by the Personal Information Protection Act and, in addition, should only be released with the written consent of the customer. Customer information (aggregate or customer specific with written consent) should be made available to all parties (Affiliated Regulated and Unregulated Businesses, separate classes of service, and competitors) on an equal basis.
- v. [FortisBC Energy] and its employees 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 ARBNNM. Additionally, [FortisBC Energy] and its employees will not preferentially direct customers to an ARBNNM.

Summary of Comments and Positions

For discussion

Code of Conduct Principles

As proposed by FEI

Continue.....

The following principles were applied in the development of the Code of Conduct for activities between [FortisBC Energy] and Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment [ARBNNM].

- vi. The financing of [FortisBC Energy] and the ARBNNM will be accounted for separately with the financing costs reflecting the risk profile of each entity. No cross-guarantees or any form of financial assistance whatsoever should be provided or indirectly by [FortisBC Energy] to the ARBNNM without the approval of the Commission .
- vii. [FortisBC Energy] will monitor compliance with this Code by also conducting an annual compliance review. [FortisBC Energy] will regularly advise all of its employees of their expected conduct pertaining to this Code.
- viii. The Transfer Pricing mechanism should provide a fair and transparent mechanism to both [FortisBC Energy] and ARBNNM's ratepayers .
- ix. The basis of cost allocation is cost causality . Costs are to be allocated from [FortisBC Energy] to the ARBNNM on the basis of no greater than [FortisBC Energy]'s full cost , recognizing the needs of both the interests of [FortisBC Energy] and the ARBNNM ratepayers.

Summary of Comments and Positions

For discussion

Code of Conduct Principles

As proposed by Commission Staff

The following principles were applied in the development of the Code of Conduct for activities between [FortisBC Energy] and Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment [ARBNNM].

- i. Structuring a new regulated business activity as an Affiliated Regulated Business is most appropriate when some or all of the following characteristics are present:
 - o The new regulated business activity takes place largely beyond the delivery meter of the traditional utility;
 - o The new regulated business activity has limited or no use of the traditional utility assets; and
 - o The new regulated business activity has the potential to impose higher risks on the users of the new service and/or the utility shareholder.
- ii. The advancement and the protection of the interests of the regulated ratepayers of [FortisBC Energy] and the ARBNNM should be considered.
- iii. [FortisBC Energy] will not provide to an ARBNNM any information that would inhibit the energy services market in a non-natural monopoly environment from functioning.
- iv. The control of information should not provide a competitive advantage.
- v. Customer specific information must be treated as required by the Personal Information Protection Act and, in addition, should only be released with the written consent of the customer. Customer information (aggregate or customer specific with written consent) should be made available to all parties (Affiliated Regulated and Unregulated Businesses, and competitors) on an equal basis.

Summary of Comments and Positions

For discussion

Code of Conduct Principles

As proposed by Commission Staff

Continue.....

- vi. [FortisBC Energy] and its employees 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 ARBNNM. Additionally, [FortisBC Energy] and its employees will not preferentially direct customers to an ARBNNM.
- vii. The financing of [FortisBC Energy] and the ARBNNM will be accounted for separately with the financing costs reflecting the risk profile of each entity. No cross-guarantees or any form of financial assistance whatsoever should be provided or indirectly by [FortisBC Energy] to the ARBNNM without the approval of the Commission.
- viii. [FortisBC Energy] will monitor compliance with this Code by also conducting an annual compliance review. [FortisBC Energy] will regularly advise all of its employees of their expected conduct pertaining to this Code.
- ix. The Transfer Pricing mechanism should provide a fair and transparent mechanism to both [FortisBC Energy] and ARBNNM's ratepayers.
- x. The basis of cost allocation is cost causality. ~~Costs are to be allocated from [FortisBC Energy] to the ARBNNM on the basis of no greater than [FortisBC Energy]'s full cost, recognizing the needs of both the interests of [FortisBC Energy] and the ARBNNM ratepayers.~~

Summary of Comments and Positions

For discussion

Code of Conduct Principles

As proposed by Coalition for Open Competition

The following principles were applied in the development of the Code of Conduct for activities between [FortisBC Energy] and Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment [ARBNNM].

- i. The advancement and the protection of the interests of the regulated ratepayers of [FortisBC Energy] and the ARBNNM should be considered.
- ii. In addition, competition within the non-natural monopoly environment should not be compromised by actions of FEI. The code needs to look beyond only the customers of FEI and the FEI affiliate customers but consider the impact of FEI's actions on non-monopoly markets.
- iii. [FortisBC Energy] will not provide to an ARBNNM any information that would inhibit the energy services market in a non-natural monopoly environment from functioning.
- iv. The control of information should not provide a competitive advantage.
- v. Customer specific information must be treated as required by the Personal Information Protection Act and, in addition, should only be released with the written consent of the customer. Customer information (aggregate or customer specific with written consent) should be made available to all parties (Affiliated Regulated and Unregulated Businesses, and competitors) on an equal basis.

Summary of Comments and Positions

For discussion

Code of Conduct Principles

As proposed by Coalition for Open Competition

Continue.....

- vi. [FortisBC Energy] and its employees 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 ARBNNM. Additionally, [FortisBC Energy] and its employees will not preferentially direct customers to an ARBNNM.
- ~~vii. The financing of [FortisBC Energy] and the ARBNNM will be accounted for separately with the financing costs reflecting the risk profile of each entity. No cross-guarantees or any form of financial assistance whatsoever should be provided or indirectly by [FortisBC Energy] to the ARBNNM without the approval of the Commission.~~
- vii. FEI will not provide financing to any affiliates. Any such financings will be done by FEI's parent or grand-parent companies.
- viii. [FortisBC Energy] will monitor compliance with this Code by also conducting an annual compliance review. [FortisBC Energy] will regularly advise all of its employees of their expected conduct pertaining to this Code.
- ix. The Transfer Pricing mechanism should provide a fair and transparent mechanism to ~~both~~ [FortisBC Energy] ~~and~~ ARBNNM's ratepayers. and competitors in the non-monopoly market environment.
- x. Review and enforcement of the Code will be the role of the Commission.
- xi. The basis of cost allocation is cost causality . Costs are to be allocated from [FortisBC Energy] to the ARBNNM on the basis of ~~no~~the greater ~~than [FortisBC Energy]'s full~~of cost ~~, recognizing the needs of both the interests of [FortisBC Energy] and the ARBNNM ratepayers.~~ or market value per the AES Inquiry Report.

Summary of Comments and Positions

For discussion

Code of Conduct Principles

As proposed by Corix – highlighted suggested change

The following principles were applied in the development of the Code of Conduct for activities between [FortisBC Energy] and Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment [ARBNM].

- ix. Any sharing of costs and services between Affiliated Regulated Businesses must be done on the basis of the higher of market price or the fully allocated cost, in accordance with a Commission approved Transfer Pricing Policy [wording from the AES Inquiry Report] .

Summary of Comments and Positions

For discussion

Transfer of Assets or Services As proposed by FEI	Coalition for Open Competition
<p>3. Transfer of Assets or Services</p> <p>The price for all transfers of assets or services shall be determined in accordance with the [FortisBC Energy] Transfer Pricing Policy for ARBNNMs approved by the Commission. The transfer price will reflect the potential for risk (stranded assets, future costs, etc.) and the recall availability of shared or transferred personnel to ensure [FortisBC Energy] receives the appropriate benefit from expertise resident in the Company. [FortisBC Energy] will comply with acceptable business practices if it wishes to purchase assets, goods or services from an ARBNNM.</p>	<p><u>3.[please explain “limited applicability” of Transfer of Assets or Services]</u></p>

Commission Staff and Corix have no changes for this section.

Summary of Comments and Positions

For discussion

Compliance and Complaints As proposed by FEI	Corix	Coalition for Open Competition
The Director of Regulatory Affairs 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, with quarterly updates for employees who may be directly involved with ARBNM activities.	No change	No change

Commission Staff have no changes for the Compliance and Complaints section.

Summary of Comments and Positions

For discussion

Compliance and Complaints As proposed by FEI Continue	Corix	Coalition for Open Competition
b)[FortisBC Energy] will monitor employee compliance with this Code by also conducting an annual compliance review, the results of which will be summarized in a report to be filed with the Commission within 60 days of the completion of this review .	No change	b) [FortisBC Energy] will monitor employee compliance with this Code by also conducting an annual compliance review, the results of which will be summarized in a report to be filed with the Commission within 60 days of the completion of this review . <u>There will be an annual Internal Audit review conducted in addition to the ongoing monitoring by the Director or Regulatory Affairs</u>

Commission Staff have no changes for the Compliance and Complaints section.

Summary of Comments and Positions

For discussion

Compliance and Complaints As proposed by FEI Continue	Corix	Coalition for Open Competition
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 Regulatory Affairs and the Vice-President, Strategic Planning, Corporate Development and Regulatory, 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 receipt of the complaint.	No change	No change

Summary of Comments and Positions

For discussion – Compliance and Complaints

Corix	Coalition for Open Competition
<p>d) Where [FortisBC Energy] determines that the complaint is unfounded, the Company may apply to the Commission for reimbursement of the costs of the investigation from the third party initiating the complaint or where this is not possible, for inclusion of those costs in rates . [There is a significant power imbalance between the monopoly gas utility and a potential complainant, and this clause only serves to discourage what might be a legitimate complaint. If Fortis feels that a complaint is frivolous or otherwise unjustified it has the recourse to approach the Commission to discuss this. This clause should be deleted.]</p>	<p>a) — d) — Where [FortisBC Energy] determines that the complaint is unfounded, the Company may apply to the Commission for reimbursement of the costs of the investigation from the third party initiating the complaint or where this is not possible, for inclusion of those costs in rates.</p> <p>e) <u>In the event that a third party disputes the results of an [FEI] investigation in relation this Code of Conduct or Transfer Pricing Policy, the third party will have recourse to the Commission to arbitrate the dispute .</u></p> <p>f) <u>Where a third party complaint is found to be valid, the Commission shall determine what penalties or remedies are appropriate consistent with its powers under the UCA .</u></p>

Summary of Comments and Positions

For discussion

Financing and Other Risks As proposed by FEI	Commission Staff	Coalition for Open Competition
<p>Unless approved by the Commission, [FortisBC Energy] will not undertake any financing or other financial assistance on behalf of an ARBNM that exposes [FortisBC Energy] ratepayers to additional costs or risks, unless appropriate compensation is received by [FortisBC Energy] for such financing or other financial assistance, including compensation for additional cost or risk related to the addition of incremental debt to [FortisBC Energy] for a project carried out by the ARBNM.</p>	<p><u>In addition to proposed wording by FEI, added the following:</u></p> <p>b) <u>The risk of unrecovered costs (including, but not limited to, startup, operating and capital costs) is to be borne by the Affiliated Regulated Business or Separate Class of Service or the shareholder. If costs related to the new business activity cannot be recovered from new business customers in a reasonable period of time (as approved by the Commission) these costs will be borne by the shareholder.</u></p> <p>c) <u>All proposals for new business activities should be accompanied by a risk management plan. The risk management plan should address:</u></p> <ul style="list-style-type: none"> ○ <u>The anticipated level of risk that would be faced by the traditional ratepayer, the new business ratepayer, and the shareholder; and</u> ○ <u>How the incremental costs from these risks will be allocated among these groups.</u> 	<p><u>[Affiliates] will not receive financing or financial assistance from FEI at any time.</u></p>

Corix provided no comments here.

Summary of Comments and Positions

For discussion

Use of Utility Name As proposed by FEI	Commission Staff	Coalition for Open Competition
<p>The use of the FortisBC name by an ARBNNM operating in a non-natural monopoly environment is an acceptable business practice. The ARBNNM will exercise care in distinguishing between services provided by [FortisBC Energy] and services offered by the ARBNNM.</p>	<p><u>A [FortisBC Energy] and ARBNNMs shall take reasonable steps to ensure that an ARBNNM does not use the Utility's name, logo or other distinguishing characteristics in a manner that would mislead consumers as to the distinction or a lack of distinction between the Utility and the ARBNNM.</u></p>	<p>The use of the FortisBC name by an ARBNNM operating in a non-natural monopoly environment is an acceptable business practice. The ARBNNM will exercise care in distinguishing between services provided by [FortisBC Energy] and services offered by the ARBNNM. <u>The name "FortisBC" is property of FortisBC Holdings Inc.</u></p>

Summary of Comments and Positions

For discussion

Amendments As proposed by FEI	Commission Staff
<p>In order to ensure that this Code remains workable and effective, the Company will review the provisions of this Code on an ongoing basis and as required by the Commission, but with a maximum of five years between reviews.</p> <p>Amendments to this Code may be made from time to time as approved by the Commission.</p>	<p>In order to ensure that this Code remains workable and effective, the Company will review the provisions of this Code on an ongoing basis and as required by the Commission, but with a maximum of five years between reviews.</p> <p>Amendments to this Code may be made from time to time as approved by the Commission, <u>and may result from a normal periodic review, from a request to the Commission by [FortisBC Energy], an ARBNNM, a customer or other stakeholder, or a review initiated by the Commission.</u></p>

Corix and Coalition for Open Competition provided no comments.

Summary of Comments and Positions

For discussion - NEW

As proposed by Commission Staff

Equitable Treatment of Demand-Side Management and Incentive Funds

[FortisBC Energy] will establish a mechanism for involving a neutral third party in Demand-Side Management or incentive funding, so that Utility ratepayer funded DSM or other incentive activities are directed fairly to the most effective proposals for meeting the objectives of the funded activities.

Summary of Comments and Positions

For discussion

Shared Services and Personnel

As proposed by FEI

2. Shared Services and Personnel

- a) This Code recognizes the potential benefits to the [FortisBC Energy] and ARBNNM regulated ratepayers in sharing resources.
- b) [FortisBC Energy] may provide shared services and personnel noted in section (c) below to ARBNNMs while ensuring that its ratepayers will not be negatively impacted by [FortisBC Energy]'s involvement. The costs of providing such services will be as agreed upon by both parties and be in accordance with the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs.
- c) ARBNNMs may contract for corporate services including senior management and operating personnel from [FortisBC Energy] using the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs, providing [FortisBC Energy] complies with Section 3 of this Code, Provision of Information by [FortisBC Energy], and no conflict of interest exists which will negatively impact ratepayers.

Summary of Comments and Positions

For discussion

Shared Services and Personnel

As proposed by Commission Staff

2. Shared Services and Personnel

- a) As a rule, resource sharing will be limited to corporate services and should not include any operational services except possibly emergency services. Sharing of employees will not be allowed where the employee has access to confidential information, routinely participates in making decisions with respect to the provision of traditional utility services or how utility services are delivered, routinely deals with or has direct contact with customers of the utility or is routinely involved in planning or managing the business of the traditional utility; ~~This Code recognizes~~ Wherethe potential benefits to the [FortisBC Energy] and ARBNNM regulated ratepayers in sharing resources indicate that sharing of resources and personnel should extend beyond corporate services, the onus is on [FortisBC Energy] or its regulated affiliate to demonstrate that those benefits outweigh any potential harm to the ratepayers of the affected affiliates.
- b) Subject to (a) above, [FortisBC Energy] may provide shared services and personnel noted in section (c) below to ARBNNMs while ensuring that its ratepayers will not be negatively impacted by [FortisBC Energy]'s involvement. The costs of providing such services will be as agreed upon by both parties and be in accordance with the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs.

Summary of Comments and Positions

For discussion

Shared Services and Personnel

As proposed by Commission Staff

2. Shared Services and Personnel

- c) ARBNNMs may contract for corporate services including senior management and operating personnel from [FortisBC Energy] using the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs, providing [FortisBC Energy] complies with Section 3 of this Code, Provision of Information by [FortisBC Energy], and no conflict of interest exists which will negatively impact ratepayers.
- d) In all cases where services and personnel are shared [FortisBC Energy] will ensure that adequate accounting records are maintained so that the Commission can ensure the appropriate allocation of costs between the entities sharing the services. Moreover, the accounting records of all of the affected affiliates related to the shared services and personnel will be available to the Commission when requested and in the form requested by the Commission.

Summary of Comments and Positions

For discussion

Shared Services and Personnel

As proposed by Coalition for Open Competition

2. Shared Services and Personnel

- a) This Code recognizes ~~the~~that, while there may be potential benefits to the [FortisBC Energy] and ARBNNM regulated ratepayers ~~in~~from sharing resources~~-. the sharing of services and personnel should not result in anti-competitive practices or be harmful in any way to the functioning of competitive markets.~~
- b) [FortisBC Energy] may provide shared services and personnel noted in section (c) below to ARBNNMs while ensuring that its ratepayers will not be negatively impacted by [FortisBC Energy]'s involvement. The costs of providing such services will be as agreed upon by both parties and be in accordance with the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs. The exceptions to what FEI can share with [affiliates] is contained in Section 9 below.
- c) ARBNNMs may contract for corporate services including senior management and operating personnel from [FortisBC Energy] using the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs, providing [FortisBC Energy] complies with Section 3 of this Code, Provision of Information by [FortisBC Energy], and no conflict of interest exists which will negatively impact ratepayers.

Summary of Comments and Positions

For discussion

Shared Services and Personnel

As proposed by Coalition for Open Competition

Separation from Natural Gas Utility Operations

In order to ensure that FEI affiliates are not able to garner uncompetitive advantages in related regulated, or non-regulated, areas, FEI will endeavour to separate its natural gas utility operations from its affiliates in the following manners:

- (a) Officers and Directors of the [affiliates] must not be officers or employees of FEI with the following limited exceptions :
 - (i) The CEO of FEI,
 - (ii) The CFO of FEI
 - (iii) The Treasurer of FEI
 - (iv) The Corporate Secretary of FEI
 - (v) The Assistant Corporate Secretary of FEI
- (b) The following departments, business units or services cannot be shared with [affiliates]:
 - (i) Energy Solutions Group (or equivalent)
 - (ii) Marketing/Communications/External Relations
 - (iii) Regulatory Affairs
 - (iv) Customer Billing, with the exception whereby Customer Billing services are provide an on open basis with a common tariff to all users including FEI, [affiliates] and third parties.
- (c) The office, shops, and places of work of FEI and the [affiliates] are not to be on a common site by January 1, 2015. The respective locations must not share the following attributes:
 - (i) Mailing Addresses;
 - (ii) Telephone numbers (including fax numbers);
 - (iii) Switchboards;
 - (iv) Mailrooms;
 - (v) Ancillary space (such as cafeterias, meeting rooms, first aid rooms, washrooms, etc.).

Summary of Comments and Positions

For discussion

Shared Services and Personnel

As proposed by Corix

2. Shared Services and Personnel

- a) This Code recognizes the potential benefits to the [FortisBC Energy] and ARBNNM regulated ratepayers in sharing resources.
- b) [FortisBC Energy] may provide shared services and personnel noted in section (c) below to ARBNNMs while ensuring that its ratepayers will not be negatively impacted by [FortisBC Energy]'s involvement. The costs of providing such services will conform to the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs.
- c) ARBNNMs may contract for corporate services including senior management but will not include any operational services other than for the provision of emergency services personnel [this revised wording consistent with the recommendations in the AES Inquiry Report] from [FortisBC Energy] using the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs, providing [FortisBC Energy] complies with Section 3 of this Code, Provision of Information by [FortisBC Energy], and no conflict of interest exists which will negatively impact ratepayers.

Summary of Comments and Positions

For discussion

Shared Services and Personnel

As proposed by FAES

2. Shared Services and Personnel

- b) [FortisBC Energy] may provide shared services and personnel noted in section (c) below to ARBNNMs while ensuring that its ratepayers will not be negatively impacted by [FortisBC Energy]'s involvement. The costs of providing such services will be as agreed upon by both [FortisBC Energy] and the ARBNNM and be in accordance with the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs.

Transfer Pricing Policy Discussion

April 24, 2014



Summary of Comments and Positions

For discussion

Transfer Pricing Policy Scope

As proposed by FEI

SCOPE

This policy addresses the pricing of resources and services provided by [FortisBC Energy Inc. (FortisBC Energy)] to Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment (ARBNNMs) providing regulated products and services.

[FortisBC Energy Inc.] will ensure that it receives adequate compensation for the resources and services provided, thereby protecting its ratepayers from subsidizing the activities of ARBNNMs.

The Transfer Pricing Policy for ARBNNM will be used in conjunction with the [FortisBC Energy] Code of Conduct for Provision of Utility Resources and Services to Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment dated April 3, 2014. This Policy does not replace the existing Transfer Pricing Policy between [FortisBC Energy] and Non-Regulated businesses (NRBs).

Summary of Comments and Positions

For discussion

Transfer Pricing Policy Scope

As proposed by Commission Staff

SCOPE

This policy addresses the pricing of resources and services provided by [FortisBC Energy Inc. (FortisBC Energy)] to Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment (ARBNNMs) providing regulated products and services.

Allocation of costs will reflect appropriate compensation for any benefit derived by a new ARBNNM as a result of its affiliation with its parent or other businesses. This will include compensation for additional cost or risk related to the addition of incremental debt to the parent utility for the new products or services. [FortisBC Energy Inc.] will ensure that it receives appropriate compensation for the resources and services provided, in order to protect its ratepayers from subsidizing the activities of ARBNNMs, as required by the Code of Conduct for ARBNNMs and this Transfer Pricing Policy.

FortisBC Energy and ARBNNMs will maintain separate financial records and books of accounts and sufficient separation of business operations in order to ensure a level of transparency that enables an appropriate allocation of costs between FEI and ARBNNMs and where appropriate, between individual ARBNNMs.

The Transfer Pricing Policy for ARBNNMs will be used in conjunction with the [FortisBC Energy] Code of Conduct for Provision of Utility Resources and Services to Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment dated April 3, 2014. This Policy does not replace the existing Transfer Pricing Policy between [FortisBC Energy] and Non-Regulated businesses (NRBs).

Summary of Comments and Positions

For discussion

Transfer Pricing Policy Scope

As proposed by Coalition for Open Competition

SCOPE

This policy addresses the pricing of resources and services provided by [FortisBC Energy Inc. (FortisBC Energy)] to Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment (ARBNNMs) providing regulated products and services.

[FortisBC Energy Inc.] will ensure that it receives adequate compensation for the resources and services provided, thereby protecting its ratepayers from subsidizing the activities of ARBNNMs.

The Transfer Pricing Policy for ARBNNM will be used in conjunction with the [FortisBC Energy] Code of Conduct for Provision of Utility Resources and Services to Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment dated April 3, 2014. This Policy does not replace the existing Transfer Pricing Policy between [FortisBC Energy] and Non-Regulated businesses (NRBs). [This policy includes the transfer of all FEI resources and services to all “non-regulated” projects conducted by affiliates in the TES competitive market .](#)

Summary of Comments and Positions

For discussion

Transfer Pricing Policy Definitions

[FortisBC Energy Inc.]

As proposed by FEI

May be abbreviated as follows: [FortisBC Energy], the Utility, or the Company, and may also include employees of the Company.

Commission

British Columbia Utilities Commission.

Guidelines

Principles and Guidelines from the Retail Markets Downstream of the Utility Meter Guidelines published by the British Columbia Utilities Commission in April, 1997 and the Commission's Report in the Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives published in December 27, 2012.

Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment (ARBNNM)

An affiliate of the Utility regulated by the Commission offering regulated products and services in a non-natural monopoly environment.

RMDM

Acronym for "Retail Markets Downstream of the Utility Meter", which may include any utility or energy related activity at or downstream of the utility meter.

Transfer Pricing to Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment

The price established for the provision of Utility resources and services to an ARBNNM. Transfer pricing for any Utility resource or service will be determined by applying the appropriate [FortisBC Energy] Transfer Pricing Policy approved by the Commission.

Summary of Comments and Positions

For discussion

Transfer Pricing Policy Definitions

[FortisBC Energy Inc.]

As proposed by Commission Staff

May be abbreviated as follows: [FortisBC Energy], the Utility, or the Company, and may also include employees of the Company.

Commission

British Columbia Utilities Commission.

Development

The translation of research findings or other knowledge into a plan or design for new or substantially improved materials, devices, products, processes, systems or services prior to the commencement of commercial production or use.

Guidelines

*Principles and Guidelines from the Retail Markets Downstream of the Utility Meter Guidelines published by the British Columbia Utilities Commission in April, 1997 and the Commission's Report in the Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives published in December 27, 2012. *This definition does not negate the applicability of other relevant orders or directions such as Commission directions in proceedings regarding affiliates or Special Directions issued by the Province of British Columbia to the Commission on matters related to specific [FortisBC Energy] business activities.**

Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment (ARBNNM)

An affiliate of the Utility regulated by the Commission offering regulated products and services in a non-natural monopoly environment.

Summary of Comments and Positions

For discussion

Transfer Pricing Policy Definitions

Research

As proposed by Commission Staff

Planned investigation undertaken for the purpose and expectation of gaining new scientific or technical knowledge and understanding. Such investigation may or may not be directed towards a specific practical aim or commercial application.

RMDM

Acronym for “Retail Markets Downstream of the Utility Meter”, which may include any utility or energy related activity at or downstream of the utility meter.

Transfer Pricing to Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment

The price established for the provision of Utility resources and services or the transfer of Utility assets, to an ARBNNM. Transfer pricing for any Utility resource or service will be determined by applying the appropriate [FortisBC Energy] Transfer Pricing Policy approved by the Commission. The price established for the provision of Utility resources and services to an ARBNNM. Transfer pricing for any Utility resource or service will be determined by applying the appropriate [FortisBC Energy] Transfer Pricing Policy approved by the Commission.

Fair Market Value

“Fair Market Value” means the price reached in an open and unrestricted market between informed and prudent parties, acting at arms length and under no compulsion to act.

Summary of Comments and Positions

For discussion

Transfer Pricing Policy Definitions

[FortisBC Energy Inc.]

As proposed by FAES

May be abbreviated as follows: [FortisBC Energy], the Utility, or the Company, and may also include employees of the Company.

Commission

British Columbia Utilities Commission.

Guidelines

Principles and Guidelines from the Retail Markets Downstream of the Utility Meter Guidelines published by the British Columbia Utilities Commission in April, 1997 and the Commission's Report in the Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives published in December 27, 2012.

Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment (ARBNM)

An affiliate of the Utility regulated by the Commission offering regulated products and services in a non-natural monopoly environment.

RMDM

Acronym for "Retail Markets Downstream of the Utility Meter", which may include any utility or energy related activity at or downstream of the utility meter.

Transfer Pricing to Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment

The price established for the provision of Utility resources and services to an ARBNM. Transfer pricing for any Utility resource or service will be determined by applying the appropriate [FortisBC Energy] Transfer Pricing Policy as agreed upon by [FortisBC Energy] and the ARBNM and approved by the Commission.

Summary of Comments and Positions

For discussion

Transfer Pricing Policy As proposed by FEI	Commission Staff
<p><u>POLICY</u></p> <p>Provision of services from [FortisBC Energy] to ARBNNMs must be in accordance with the Commission approved Code of Conduct and Transfer Pricing Policy for ARBNNMs. The approved Code of Conduct and Transfer Pricing Policy for ARBNNMs addresses the need for a transparent pricing mechanism which is fair to both [FortisBC Energy] and ARBNNM's ratepayers.</p> <p>Transfer Prices charged to ARBNNMs by [FortisBC Energy] will ensure [FortisBC Energy] ratepayers are not adversely affected and will be established using the following pricing rules.</p>	<p>Provision of services from [FortisBC Energy] to ARBNNMs must be in accordance with the Commission approved Code of Conduct and Transfer Pricing Policy for ARBNNMs. The approved Code of Conduct and Transfer Pricing Policy for ARBNNMs addresses the need for a transparent pricing mechanism which is fair to both [FortisBC Energy] and ARBNNM's ratepayers.</p> <p>Transfer Prices charged to ARBNNMs by [FortisBC Energy] <u>are intended</u> to ensure <u>that</u> [FortisBC Energy] ratepayers are not adversely affected and will be established using the following pricing rules.</p> <p>All sharing of costs, services and information between affiliated regulated utilities must be fully disclosed to the Commission.</p>

Summary of Comments and Positions

For discussion

Transfer Pricing Policy – Pricing Rules As proposed by FEI	Commission Staff	Coalition	Corix
<p>i. If an applicable [FortisBC Energy] tariff rate exists, the Transfer Price will be set according to the tariff.</p> <p>ii. Where no tariff rate exists, the Transfer Price will be set at no greater than full cost . With Commission approval, the cost may be set at below full cost (see Section 2 below).</p>	<p>i. If an applicable [FortisBC Energy] tariff rate exists, the Transfer Price will be set according to the tariff.</p> <p>ii. <u>Where no tariff rate exists, the Transfer Price will be set at higher of market price or the fully allocated cost.</u></p> <p>iii. <u>In situations where it can be shown that an alternative Transfer Price will provide greater benefits to the ratepayer, the Utility may apply to the Commission for special pricing consideration.</u></p>	<p>i. If an applicable [FortisBC Energy] tariff rate exists, the Transfer Price will be set according to the tariff.</p> <p>ii. Where no tariff rate exists, the Transfer Price will be set at no <u>less than the</u> greater than of full cost <u>or market pricing</u>. With Commission approval, the cost may be set at below full cost (see Section 2 below).</p>	<p>i. If an applicable [FortisBC Energy] tariff rate exists, the Transfer Price will be set according to the tariff.</p> <p>ii. Where no tariff rate exists, the Transfer Price will be set at <u>the higher of market price or the fully allocated cost</u> . [AES decision]</p>

Summary of Comments and Positions

For discussion

Transfer Pricing Policy – Determining Costs

As proposed by FEI

For the purposes of this policy, costs for the resources or services being provided by [FortisBC Energy] to an ARBNNM will be set at no greater than [FortisBC Energy]'s full cost described below. The definition of full costs will depend on the type of service or resource being provided.

For the most part, the types of resources and services that can be provided to ARBNNMs by [FortisBC Energy] are human resources (labour) and associated equipment and facilities. The example in Appendix A summarizes how full costs are determined for the different types of services described below in Section 2.1. The determination of full costs, specifically the cost loadings, is based on services to be provided in accordance with the [FortisBC Energy] approved Code of Conduct with respect to ARBNNM of [FortisBC Energy] dated April 3, 2014.

If other [FortisBC Energy] resources or services are used by an ARBNNM that are not described by this policy, then [FortisBC Energy] will make an application to the Commission on a case-by-case basis. An example of this would be the determination of costs for a [FortisBC Energy] asset permanently transferred to an ARBNNM.

Summary of Comments and Positions

For discussion

Transfer Pricing Policy – Determining Costs

As proposed by Commission Staff

For the purposes of this policy, the fully allocated costs for the resources or services being provided by [FortisBC Energy] to an ARBNM will be as described below. The definition of full costs will depend on the type of service or resource being provided.

For the most part, the types of resources and services that can be provided to ARBNMs by [FortisBC Energy] are human resources (labour) and associated equipment and facilities. The example in Appendix A summarizes how full costs are determined for the different types of services described below in Section 2.1. The determination of full costs, specifically the cost loadings, is based on services to be provided in accordance with the [FortisBC Energy] approved Code of Conduct with respect to ARBNM of [FortisBC Energy] dated April 3, 2014.

Costs will include both direct costs and a fair allocation of the parent utility costs required to provide the product or service, except where such treatment is precluded by legislation, regulation or special direction.

If other [FortisBC Energy] resources or services are used by an ARBNM that are not described by this policy, or if there are unusual circumstances that warrant a separate review, then [FortisBC Energy] will make an application to the Commission on a case-by-case basis.

Summary of Comments and Positions

For discussion

Transfer Pricing Policy – Determining Costs

As proposed by Coalition

For the purposes of this policy, costs for the resources or services being provided by [FortisBC Energy] to an ARBNNM will be set at the higher of market price or [FortisBC Energy]'s fully allocated cost. The definition of full costs will depend on the type of service or resource being provided.

For the most part, the types of resources and services that can be provided to ARBNNMs by [FortisBC Energy] are human resources (labour) and associated equipment and facilities, but will not include any operational services, with the possible exception of emergency services. The example in Appendix A summarizes how full costs are determined for the different types of services described below in Section 2.1. The determination of full costs, specifically the cost loadings, is based on services to be provided in accordance with the [FortisBC Energy] approved Code of Conduct with respect to ARBNNM of [FortisBC Energy] dated April 3, 2014.

If other [FortisBC Energy] resources or services are used by an ARBNNM that are not described by this policy, then [FortisBC Energy] will make an application to the Commission on a case-by-case basis. An example of this would be the determination of costs for a [FortisBC Energy] asset permanently transferred to an ARBNNM.

Summary of Comments and Positions

For discussion

Transfer Pricing Policy – Determining Costs

As proposed by Corix

For the purposes of this policy, costs for the resources or services being provided by [FortisBC Energy] to an ARBNNM will be set at the higher of market price or [FortisBC Energy]’s fully allocated cost. The definition of full costs will depend on the type of service or resource being provided.

For the most part, the types of resources and services that can be provided to ARBNNMs by [FortisBC Energy] are human resources (labour) and associated equipment and facilities, but will not include any operational services, with the possible exception of emergency services. The example in Appendix A summarizes how full costs are determined for the different types of services described below in Section 2.1. The determination of full costs, specifically the cost loadings, is based on services to be provided in accordance with the [FortisBC Energy] approved Code of Conduct with respect to ARBNNM of [FortisBC Energy] dated April 3, 2014.

If other [FortisBC Energy] resources or services are used by an ARBNNM that are not described by this policy, then [FortisBC Energy] will make an application to the Commission on a case-by-case basis. An example of this would be the determination of costs for a [FortisBC Energy] asset permanently transferred to an ARBNNM.

Summary of FEI Approach to Determining Fully Allocated Costs

- Employee hourly labour rate including benefits and time off
- Apply appropriate overhead loading factors
 - General overhead – 10% on labour
 - Facilities charge - \$100 per day
- Equals full costs allocated
- This is an approach that has been in practice for a numbers of years and was reviewed by KPMG in support of the 2010 FEU RRA filing and found to be “complete and reflective of the guidelines set out in the Code of Conduct”.

Transfer Pricing Policy

Illustrative Example Only – Full Costing

- Refer to Appendix A of DRAFT Transfer Pricing Policy
- \$85,000 per year in base salary + 39% benefits
- Worked hours in a year = 1636 hours
 - Accounts vacation, statutory holidays and sick time
- Chargeable hourly rate = ~ \$72 per hour worked
- Chargeable daily rate = 7.5 hours per day X \$72 / hour = \$550 per day (rounded)
- ADD General overhead = 10% X \$550 per day = \$55
- ADD Facilities charge = \$100 per day
- TOTAL Full costs = \$705 per day
 - Consisting of \$550 (labour) + \$55 (general overhead) + \$100 (facilities charge)

Transfer Pricing Policy

Comparison of Hourly Charge-Out Rates - FEI to Market			
2014 Hourly Charge-Out Rates			
(includes time off and benefits)			
Position		<u>FEI</u> ⁽¹⁾	<u>Market</u> ⁽²⁾
Junior accountants		\$ 54	\$ 54
Intermediate accountants		\$ 61	\$ 57
Accounting/Finance manager		\$ 83	\$ 75
Recruitment staff		\$ 61	\$ 43
Communications specialists		\$ 65	\$ 60
Regulatory staff – regulatory manager, regulatory specialists		\$ 89	\$ 73
Procurement specialists		\$ 70	\$ 67
Junior engineers		\$ 56	\$ 56
(1) FEI Charge-out rates are based on 2014 included in SAP.			
(2) Based on Hay survey from designated peer group consisting of ~110 companies.			
(3) Rates indicated do not include any assigned overhead charges.			

Summary and Next Steps

FORTISBC ENERGY INC.

CODE OF CONDUCT AND TRANSFER PRICING POLICY WORKSHOP (2)

MINUTES

April 24, 2014

9:00 am – 12:00 pm

1125 Howe Street, Vancouver, B.C.

Workshop Agenda

- Discuss and understand stakeholder comments and positions regarding FEI's proposed Code of Conduct (CoC) and Transfer Pricing Policy (TPP) for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment (ARBNNM) dated April 3, 2014
- Confirm sections where there is agreement
- Discuss sections where no agreement has been reached
- Discuss next steps required

Attached is a copy of the workshop material.



April 24 workshop
material summary of r

Participants at the meeting included:

FortisBC Energy Inc (FEI)

- James Wong, Diane Roy, Doug Stout, Shawn Hill

FortisBC Alternative Energy Service (FAES)

- Grant Bierlmeier, Julie Tran, Doug Stout

Commercial Energy Consumers Association (CEC)

- David Craig

British Columbia Pensioners' and Seniors' Organization (BCPSO)

- Tannis Braithwaite

Corix Multi-Utility Services

- David Bursey, Ian Wigington

COPE local 378 (COPE)

- Jim Quail

Commission Staff

- Phil Nakoneshny, Eileen Cheng, Jim Fraser

Coalition for Open Competition (COC)

- Ron Cliff (Highcliff Energy Services)
- Martin Luymes, Heating, Refrigeration and Air Conditioning Institute of Canada (HRAI) – by phone

BC Sustainable Energy Association (BCSEA)

- Tom Hackney – by phone

B.C. Ministry of Energy and Mines (MEM)

- Julie Chace – by phone

Opening Remarks from Stakeholders (participants)

- **Corix Multi-Utility Services (David Bursey)**
 - It is important that FEI's Code of Conduct references the relevant key decisions made by the Commission.
 - The discussion at today's workshop should be focused on developing language to implement instead of changing the decision and/or the principles.
 - Commended the Commission staff for taking the lead in providing a very useful reference summary document containing the relevant decisions. Corix encouraged the Commission staff for greater involvement in this proceeding.
- **Coalition for Open Competition (Martin Luymes)**
 - Martin Luymes echoed his agreement with Corix's suggestion to have greater involvement from Commission staff.

No other opening comments were provided.

Review FEI's Code of Conduct for ARBNM

(Changes highlighted in yellow following are considered to be agreed to and will be incorporated into the updated Code of Conduct and marked as "Accepted")

Sections where there is Agreement

- Preferential Treatment [Slide 4]
 - All agreed that the FEI's proposed wording as included in the April 3, 2014 version was acceptable.

- Equitable Access to Services [Slide 5]
 - Clarification was provided by FEI to Corix's question about what the words "except for some specific assets or services which require special consideration as approved by the Commission" meant. The wording was carried over from the 1997 FEI Code of Conduct and was intended to provide direction on how to deal with unusual circumstances should they arise. The key point was that Commission approval would be required.
 - FEI provided clarification on the issue raised by stakeholders at the February 20, 2014 workshop on having a list of Thermal Energy Services (TES) providers listed on FortisBC's website. FEI indicated it was in agreement with the value in having TES providers listed on a website. However, FEI was of the opinion that it made more sense to have the TES providers listed on a neutral site such as the BCUC's website. This would be consistent with the current practice of having gas marketers participating in the Customer Choice program listed on the BCUC website.
- Commission staff indicated that they will check to see if this can be done. Subject to Commission staff's confirmation, all parties accepted the proposed wording as included in the April 3, 2014 version. This was confirmed by Commission Staff - confirm that the BCUC website is able to maintain a list of registered TES Service Providers (e.g., contact information, possible project names and types, i.e., Stream A or Stream B, etc). Provision of Information by FEI [Slide 6]
 - No changes suggested. Corix commented that the wording ".... any information that would inhibit the energy services market " remains ambiguous.
- Provision of Information by FEI [Slides 7,8]
 - Commission staff commented that the additional wording "information that is shared by the utility will be provided at a reasonable price reflecting market circumstances and, at a minimum, cover the cost of extracting and providing the information." was to address an issue with other utilities (not at FortisBC) where in the past, there has been concern about pricing the services either too low (not cost recovery) or too high which may inhibit the marketplace.

Stakeholder	Comments
FEI	As this is related primarily to customer specific information, if the process is complicated and/or costly, and if the information is available elsewhere, parties may never come to FEI to get the information.
FAES	All parties should pay the same price for the information. The price of the information must be reasonable. Cost of regulation should not outweigh the benefits.
COPE	This is work in progress and there will be considerations that arise over time.
BCPSO	Suggested using a fixed price model to price the costs of providing information. This would provide an efficient way to price the information.
Commission staff	Expressed concern that, if the cost of providing the information is low, the cost of billing can become more than cost of providing the information.
CEC	Questioned the value of assigning a cost to extracting and providing information. May want to think about proposed language and whether it forces pricing of information. Commented to let the “minimum” stuff go and to keep access to information open and fair to all parties.
Corix	Proposed wording by Commission staff was fine. Wanted to keep it simple so there is not an unrealistic burden.
Coalition for Open Competition	As long as all parties are treated the same (i.e. pricing, access to information), then it would work.

- All agreed to removing the following words “at a minimum” from section (a) and (c).
- To provide more clarity, the proposal was to add wording at the beginning of the Provision of Information by FEI section. The wording would come from page 37 of the AES Inquiry report Principle 2 (see below).
 - ii) Customer information (aggregate or customer specific with written consent) should be made available to all Parties (Affiliated Regulated and Unregulated Businesses, separate classes of service, and competitors) on an equal basis.
- The suggestion was to rewrite sections b, c, d as part of section a.

Sections where no Agreement has been reached

- Code of Conduct Scope [Slides 9, 10, 11, 12]
 - General discussions occurred regarding Commission staff proposed changes on Slide 10. Questions were raised regarding other regulated utilities (e.g., FAES, Corix) may have multiple affiliate utilities and the issues of equal treatment with FEI in terms of their COC and TPP, and whether other utilities follow the existing RMDM Guidelines. Some parties commented that the governance of a COC is more applicable to the natural gas utility.
 - Comments were provided on what the words on (slide 10) meant - “The Commission acknowledges that FEI in the administration of this Code may have to take into account particular circumstances in respect.....”.

Stakeholder	Comments
Commission staff	Provided clarification that the proposed wording in paragraphs 1 and 2 on Slide 10 was intended to cover the different situations possible including Stream A and Stream B projects.
CEC	Commented that this section was worded awkwardly.
Corix	Supported staff’s proposed wording and commented that the Code of Conduct is to apply to the entity and not necessarily to the business activities within the entity.
Coalition for Open Competition	The principles should be applied consistently regardless of whether the business is regulated or not.
FAES	FAES noted the sentence as currently worded is too broad as it refers to “principles” of the BCUC outlined in a list of documents, including any Commission decisions in proceedings related to ARBNNM. At least, a qualification on principles should be added to delineate which principles we are talking about (i.e., only principles related to transfer pricing and code of conduct).

- Corix suggested deleting paragraph two on slide 10 and inserting words like “In circumstances where FEI seeks a variance from the Code of Conduct, the company will have to apply to the Commission for approval.”
 - FEI supported the deletion of the words “The Commission acknowledges....” and replace with “The administration...”
- Code of Conduct Definitions [Slides 13, 14, 15, 16]

Stakeholder	Comments
FEI	Asked Commission staff if the intent was to use the existing FEI Code of Conduct for NRBs would continue to be applied to non-regulated businesses.
Commission staff	Commented that the proposed FEI Code of Conduct for ARBNNM is only for a regulated business offering services in a non-natural monopoly. For unregulated businesses, the fall back would be to the RMDM guidelines and the existing FEI Code of Conduct for NRBs.
FAES	Indicated that the word Guideline was not a specific term used in the Code of Conduct and should be deleted.
Corix	Indicated the term “ratepayer” is proposed to be deleted.
Coalition for Open Competition	<p>Suggested the use of term “Affiliate” instead of “ARBNNM”.</p> <p>FEI appeared to acknowledge that FAES is intended to be its only TES affiliate and that it would not create a “Micro TES” affiliate to circumvent this Code to perform smaller TES projects (ie. Stream “A” or Micro TES).</p> <p>Likewise, the Coalition acknowledged that this process is not intended to be a COC/TPP for FAES; the concern is the transfer of services, etc. from FEI to FAES (not what FAES does with those transferred services).</p>

- Code of Conduct Principles [Slides 17, 18, 19, 20, 21, 22, 23]
 - FEI noted that its proposed Code of Conduct was developed based on review of the AES Inquiry decision and stakeholder feedback received at the February 20, 2014 workshop.

Stakeholder	Comments
FAES	Commented that the overarching principle of Cost Causality found in the AES Inquiry Report is inconsistent with the principle of using Higher of Market Price or Fully Allocated Cost for the Transfer Price, also found in the AES Inquiry Report.
Commission staff	Staff commented that they didn't see an inconsistency between cost causality and the fully allocated cost, and that the choice of market price or fully allocated cost is dependent on each situation, for example, its reliability at the time. Staff also referred to the source for the proposed wording, page 33 of the AES Inquiry decision.
BCPSO	Use of Higher of Market Price or Fully Allocated cost would benefit competitors and hurt ratepayers.
CEC	Asked what the proposed wording "the new regulated business activity has the potential to impose higher risks on the users of the new services and/or the utility shareholder." from Commission staff means? For example, higher risk than what?
Corix	Supported the use of the "Higher of Market Price or the Fully Allocated cost" for FEI's transfer price.
Coalition for Open Competition	<p>Restated their view that FEI's Code of Conduct needs to look beyond FEI and FAES ratepayers and to consider the impact of FEI's actions on competitive marketplace.</p> <p>Stated that regulatory oversight and enforcement of FEI's Code of Conduct should be provided by the Commission and not just only when a complaint is raised.</p>

- Transfer of Assets or Services [Slide 24]
 - The Coalition for Open Competition asked FEI to explain why this section was characterized as “limited applicability” and proposed to be deleted.
 - FEI commented that all costs belonging to FAES have been appropriately charged to FAES (i.e. pension costs of employees transferred out, vehicles, etc). As a result, on a forward looking basis, this section would have limited use and applicability as future services provided by FEI would follow the approved Code of Conduct and Transfer Pricing Policy for ARBNM.
- Compliance and Complaints [Slides 25, 26, 27, 28]
 - FEI clarified that the reference in the proposed wording (see below) to “annual compliance review” is to the annual Internal Audit review conduct.
 - b) [FortisBC Energy] will monitor employee compliance with this Code by also conducting an annual compliance review, the results of which will be summarized in a report to be filed with the Commission within 60 days of the completion of this review.
 - It was agreed the words as proposed by FEI on slide 26 was acceptable.
 - Discussion occurred regarding who should pay for the costs of the FEI’s compliance activities.

Stakeholder	Comments
FEI	Indicated that under the Commodity Unbundling program, there is a process for determination of costs and who to recover the costs from.
FAES	There should be no cost to FAES’s ratepayers for carrying out Code of Conduct compliance activities.
Commission staff	Indicated that the UCA states the Commission can recover costs and decides who pays for the costs.
COPE / BCPSO	<p>Both commented that since competitors are the ones that benefit from the compliance monitoring activities, they should be paying for FEI’s Code of Conduct compliance costs.</p> <p>The compliance activities put constraints on FortisBC overall in its ability to compete in the TES marketplace, whereas FortisBC’s competitors can easily enter the marketplace. It is hard to understand there is no cost</p>

	to the competitors.
Corix	<p>It is fair that FEI ratepayers pay for the compliance activities as FEI ratepayers are the ones that benefit. It would be fundamentally wrong if TES competitors are charged for compliance activities.</p> <p>Indicated that FEI's proposed wording on slide 28 may discourage legitimate complaints from very small players in the marketplace.</p>
Coalition for Open Competition	<p>The Coalition disagreed with the concept that competitors should pay to stop FEI from harming competition. FEI is the monopoly with access to captive resources paid by natural gas ratepayers and the onus is on FEI to behave responsibly.</p> <p>In some instances, it may be reasonable for the utility shareholder (or FAES Shareholder) to fund costs rather than natural gas ratepayers.</p>

- Financing and Other Risks [Slide 29]
 - Both Commission staff and the Coalition for Open Competition provided suggested changes and comments

Stakeholder	Comments
FEI	<p>FEI highlighted that the proposed wording by the Coalition is inconsistent with that indicated in the AES Inquiry decision (page 33 bullet number two under Guidelines).</p> <p>FEI also questioned the purpose of proposed section C – "All proposals for new business activities should be accompanied by a risk management plan."</p>
Commission staff	<p>Staff indicated that they would review further whether proposed wording in section C needs to be included in the Code of Conduct.</p> <p>Staff later commented they reviewed this and section (c) is extracted from the Guidelines found at page 35 of the AES Inquiry Report. Staff therefore suggest including the wording.</p>

CEC	Noted that this just adds more costs to the process. This issue may be better dealt with more generically at the FEI/FAES level.
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- Use of Utility Name [Slide 30]
 - After FEI clarified the FortisBC name is owned by Fortis Inc., it was agreed by all that the proposed wording for this section by FEI was appropriate as the wording was similar to that included in the AES Inquiry decision. FEI agreed to add wording clarifying the ownership of the FortisBC name.
- Amendments [Slide 31]
 - Due to time limitations, this slide was not discussed
- Equitable Treatment of Demand-Side Management and Incentive Funds [Slide 32]
 - Commission staff proposed this new section addition as it was discussed in the AES Inquiry decision (pages 85 to 87).

Stakeholder	Comments
FEI	This wording more appropriately belongs as part of the Energy Efficiency Guidelines developed by FortisBC.
Commission staff	Staff indicated that they would review further and suggested for now to leave as a placeholder in the Code of Conduct. Staff later commented they continue to believe that the suggested wording on Slide 32 or other wording referencing the Economic Efficiency Guidelines, should remain in the Code of Conduct.

- FortisBC agreed to develop appropriate proposed wording referencing the Energy Efficiency Guidelines to include in the Code of Conduct.
- Shared Services and Personnel [Slides 33, 34, 35, 36, 37, 38, 39]
 - FEI commented that the proposed wording varied here with a wide spectrum of suggestions starting from FEI's proposal which incorporates some of language suggested by the Commission to that proposed by the Coalition in which suggested including significantly more details on the conditions and what personnel can be shared. Additionally, FEI asked for clarification from Commission staff on how to operationalize the suggested wording (i.e. what is intended as confidential information for the purpose of the Code of Conduct, etc.)

Stakeholder	Comments
FEI	FEI believes its proposed wording is adequate as the onus is on FEI to operate accordingly. Commission oversight currently exists to ensure this.
Commission staff	<p>Indicated that clarification of “confidential information” for the purpose of the Code of Conduct or rewording of it may be required.</p> <p>Staff commented that the Commission in the AES Inquiry decision recognized that in situations where there is higher risk to FEI ratepayers, greater separation is required. However, there may not be higher risk in all situations.</p>
CEC	Expressed concern that the proposed detail wording by the Coalition is getting into micro-managing the business of FEI. This suggests anti-competitive practices.
COPE	The suggested exclusions by the Coalition (i.e. slide 37) are not practical (i.e. restrictions regarding sharing of the first aid and washrooms, call centre support).
Coalition for Open Competition	<p>Suggested wording from the Coalition is intended to operationalize (codify) things that “blur” the line. There is a “gulf between us” (i.e. between the Coalition’s position on this and FEI’s).</p> <p>Have no concerns about sharing of corporate accounting and IT. Concerns are focused on sharing of sales development and regulatory personnel and senior management (i.e. VP, Doug Stout roles in FEI and FAES).</p>

- Transfer Pricing Policy [Slides 41 to 56]
 - Due to time limitations, these slides were not discussed in detail. However, during the discussion of the Code of Conduct (see earlier references), discussion occurred regarding the Transfer Pricing Policy and the wording “the Transfer Price will be set at the higher of market price or the fully allocated cost”. FEI’s proposed wording was “the Transfer Price will be set at no greater than full cost”.

Next Steps

- Discussed at the workshop were the following next steps as proposed by FEI. This schedule was circulated to stakeholders on April 24, 2014 after the workshop.
 - May 1 - FEI to circulate April 24 workshop minutes to stakeholders for review and suggested edits.
 - May 8 - Stakeholders to provide comments / suggested edits and return to FEI.
 - May 15 - FEI to circulate updated Code of Conduct and Transfer Pricing Policy for ARBNNM (April 3, 2014 version) to stakeholders incorporating feedback provided to date and at the April 24 workshop.
 - For sections where agreement has been reached, they will be marked as "Accepted"
 - For sections where agreement has not been reached on the specific wording, these sections will be highlighted as "Under Discussion". These sections in turn will be consolidated into a separate part of the document starting with FEI's proposed wording and any accompanying comments / rationale. In addition, stakeholder suggested wording and comments / rationale provided to date will be included.
- May 30 - Stakeholders to review and provide final suggested changes / comments to FEI on updated Code of Conduct and Transfer Pricing Policy circulated on May 15.
- June 4 - FEI to update Code of Conduct and Transfer Pricing Policy for ARBNNM and send to Commission with copy to all stakeholders.

Appendix D

AES INQUIRY REPORT DECEMBER 27, 2012

(Provided in electronic format only due to
document size and in order to conserve paper)



IN THE MATTER OF

FORTISBC ENERGY INC.

INQUIRY INTO THE OFFERING OF PRODUCTS AND SERVICES
IN ALTERNATIVE ENERGY SOLUTIONS
AND OTHER NEW INITIATIVES

REPORT

December 27, 2012

Before:

N.E. MacMurchy, Commissioner/Panel Chair

D.A. Cote, Commissioner

L.A. O'Hara, Commissioner

A.A. Rhodes, Commissioner

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SECTION 1 INTRODUCTION

1.1 Background

FortisBC Energy Inc. has filed several applications with the British Columbia Utilities Commission (Commission) related to the provision of products and services that are outside of traditional gas distribution utility activities. These “alternative energy services” applications have resulted in a series of *ad hoc* Commission decisions and orders. In a number of these proceedings, the Commission and Interveners have raised issues with respect to the scope and nature of regulation of these new business activities.

On December 14, 2010 and February 1, 2011, the Commission issued its Decisions on the FortisBC Energy Inc. (FEI) (then Terasen Gas Inc.¹) Biomethane Application and the FortisBC Energy Utilities (FEU) 2012 Long Term Resource Plan, respectively. In both these decisions, the Commission considered issues related to utility ownership of assets up the supply chain, and the allocation of costs and risks for new business activities. The Commission indicated that a more formal process to determine how these new activities would fit within the context of a regulated utility would be required.^{2,3}

On April 27, 2011, the Energy Services Association of Canada (ESAC), an industry association of energy service companies, requested the Commission exercise its general supervisory powers under section 23 (1) of the *Utilities Commission Act (UCA)* to inquire into the practices and conduct of FEI in the Alternative Energy Services (AES) market. (Exhibit A2-1)

¹ The FortisBC Energy Utilities (composed of FortisBC Energy Inc., FortisBC (Vancouver Island) Inc., and FortisBC (Whistler) Inc. were formerly known as Terasen Gas Inc., Terasen Gas (Vancouver Island) Inc, and Terasen Gas (Whistler) Inc. All Terasen matters are referred to as FortisBC Energy matters for the remainder of this decision.

² *In the Matter of An Application by Terasen Gas Inc. for Approval of a Biomethane Service Offering and Supporting Business Model and for the Approval of the Salmon Arm Biomethane Project and for the Approval of the Catalyst Biomethane Project*; Decision and Order G-194-10, December 14, 2010 (Biomethane Decision), p. 63.

³ *In the Matter of Terasen Gas Inc. and Terasen Gas (Vancouver Island) Inc. and Terasen Gas (Whistler) Inc. 2010 Long Term Resource Plan*; Decision and Order G-14-11, February 1, 2011 (2010 LTRP Decision), pp. 26-7.

ESAC raised the following concerns:

1. A lack of adequate public consultation by FEI;
2. The use and distribution of Energy Efficiency and Conservation (EEC) Funds by FEI;
3. FEI's role as a regulated utility in the delivery of AES and the potential cross-subsidization of AES activities by natural gas ratepayers; and
4. The inappropriate use of sensitive market information within FEU.

On May 24, 2011, the Commission issued Order G-95-11 which initiated this "Inquiry into FortisBC Energy Inc's Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives" (AES Inquiry). On July 8, 2011, by Order G-118-11, the Commission determined the AES Inquiry would: address issues at a principles level; focus on FEI (while recognizing that the principles set out may have application beyond FEI), and not re-open past Commission Decisions.

1.2 Objectives of the AES Inquiry

Over the course of this Proceeding, the Commission Panel has refined the Objectives of this Inquiry to be to:

- a) Provide guidance to future Commission Panels dealing with applications related to new business activities;
- b) Provide guidance to FEU and other utilities dealing with or entering into new business activities outside of the traditional gas distribution utility business;
- c) Provide clarity as to the Commission's views on activities that should be regulated and activities that should be kept outside the regulatory umbrella;
- d) Provide guidance as to how new activities that are to be regulated should be structured so as to be fair to the traditional ratepayer, the user of the new service and the utility;
- e) Provide direction as to how EEC or other incentive funds should be administered to ensure fair, effective and non-discriminatory treatment;
- f) Address specific issues referred to the Inquiry Panel from other proceedings; and
- g) Provide direction to FEU as to a process to deal with the Thermal Energy Services Deferral Account.

1.3 Report Structure

The report is set out in four sections as described below:

- Section 1 - introduces the AES Inquiry and sets out its objectives.
- Section 2 - sets out key principles and guidelines to determine appropriate regulatory schemes for AES and New Initiatives.
- Section 3 - applies the principles and guidelines outlined in Section 2 to FEU's current AES activities and New Initiatives.
- Section 4 – deals with issues that have arisen over the course of the proceedings, including the allocation of hearing costs, EEC funding, the Thermal Energy Services Deferral Account (TESDA) and issues referred to the Panel from other Commission proceedings.

Throughout this Proceeding various terms have been used for the energy services at issue. For clarity, the terms “AES and New Initiatives” and “new business activities” are used to denote current and future offerings of products and services that relate to alternative energy sources to those offered by the traditional natural gas distribution utility. The terms AES and Thermal Energy Services (TES) are used somewhat interchangeably. For greater clarity, a glossary has been included as Appendix A.

1.4 Panel Approach in Setting out its Views

There is an extensive record in this Proceeding. The Panel acknowledges the valuable contribution made by all parties. Given the voluminous nature of the filed material, in the interest of clarity and readability the Panel decided to omit a detailed review of all of the positions taken. The Panel has endeavoured to show the reasoning behind its key findings.

1.4.1 Adoption of the RMDM Guidelines

Many of the issues in this proceeding are similar to those addressed in the Retail Markets Downstream of the Utility Meter (RMDM) Guidelines issued by the Commission in April 1997. (An excerpt from the RMDM Guidelines is included as Appendix D to this Report).

Those Guidelines describe three Commission objectives:

- “There must be no subsidy of unregulated business activities, whether undertaken by the utility or its NRB⁴, by utility ratepayers.
- The risks associated with participation in the unregulated market must be borne entirely by the unregulated business activity, that is the risks must have no impact on utility ratepayers; and
- The most economically efficient allocation of goods and services for ratepayers should be sought.”⁵

FEU and other parties to the proceeding endorsed the Objectives set out in the RMDM Report.

ESAC considers that “[t]he RMDM Guidelines are a useful starting point for guidelines to apply to the conduct of regulated utilities.” Corix Utilities Inc. (Corix), a Registered Intervener, submits that these guidelines are appropriate and useful wherever different utility affiliates transact with each other. (ESAC Final Submission, para. 103; Corix Final Submission p. 20)

Dr. Jaccard, Corix’s expert economist, notes that the new TES business being proposed by FEU is a return to the circumstances which existed at the time of the RMDM review in 1997. He recommends that the RMDM Guidelines be adapted to the new TES business. (Exhibit C12-5, pp. 18-19)

FEU endorse the Guidelines as they apply to non-regulated businesses (NRBs) but do not see them as relevant to determining the scope of regulation for new regulated business activities.

⁴ Non-Regulated Business

⁵ Retail Markets Downstream of the Utility Meter Guidelines, Exhibit B-1, Tab 17

Commission Determination

The Commission Panel finds that many of the objectives and principles of RMDM remain relevant and applicable today. In this Report, the Commission Panel has generally based its findings on RMDM and developed Principles and Guidelines that address areas, business structures and technologies beyond those addressed by RMDM. The Commission Panel especially confirms the RMDM principle “[t]here must be no subsidy of unregulated business activities, whether undertaken by the utility or its NRB, by utility ratepayers” and extends this principle to apply to regulated businesses as set out in Sections 2 and 3.

SECTION 2 OVERARCHING ISSUES

This section sets out a framework of key principles and guidelines to determine an appropriate regulatory scheme for AES and New Initiatives. While the Panel's deliberations are based on the evidence relating to FEU's activities, the principles and guidelines can be applied to other utilities or firms looking to undertake similar business activities.

In general, firms looking to undertake AES or New Initiatives will be guided by this Section to determine first, whether the activity is regulated or not (Section 2.1) and second, the appropriate form of regulation for the activity (Section 2.2). Regulated utilities will be guided by the additional considerations in Sections 2.3-2.5 to determine the appropriate business structure, cost allocation and risk allocation for the activity.

2.1 Principles and Guidelines for Determining the Need for Regulation

Before a discussion can be held on how to regulate new business activities, it is essential to first determine if the activity requires regulation. The Panel assessed the extensive evidence provided on this matter, and reviewed decisions of the BC Court of Appeal and the Supreme Court of Canada. The Panel concludes that the determination of the need for regulation should be based on the principles and guidelines set out below. Given the fundamental importance of the determination of whether or not there is a need for regulation, this section sets out the basis for these findings by reviewing what constitutes a natural monopoly, the role of regulation, an outline of what regulation entails, the role of regulation compared to the role of competitive forces, the regulator's role vis à vis competition, the *Utilities Commission Act* requirements to regulate, and whether the Commission can control a utility's entry into a market or require greater separation of utility services.

Key Principles:

- i) Only regulate where required.

- ii) Regulation should not impede competitive markets.

Guideline

- Regulation is required when:
 - natural monopoly characteristics are present and there is a need to regulate to protect the public interest; and/or
 - legislation (such as the *Utilities Commission Act* or the *Clean Energy Act*), requires an activity to be regulated.

Discussion

What Constitutes a Natural Monopoly?

Dr. Jaccard states “[n]atural monopolies occur in sectors of the economy in which extreme economies-of-scale mean the monopoly firm can provide service at a lower cost than two or more competing firms.” (Exhibit C12-5, p. 7)

The market conditions which result in the creation of a natural monopoly may include:

- Large initial capital costs;
- Significant barriers to entry for competitors;
- Infrastructure which is not cost-effective or otherwise amenable to duplication;
- Subadditivity of costs: all the industry output (or array of outputs) demanded can be produced most efficiently only by a single firm; and
- Economies of scale, with decreasing costs or (internal) increasing returns to scale over the demanded range of output.

(Exhibit C12-5, p. 12; Exhibit B-11, BCUC IR 1.151.1)

In a market with natural monopoly characteristics, the lowest cost to provide a service can only be achieved by a single firm, and the presence of competition, or entry of other firms, would only serve to increase costs to society. (Bonbright *et al.*, 1988: 8, Exhibit B-11, BCUC 1.149.0)

Because a public utility tends to represent a single supplier of an essential product or service, its customers are basically captive, lacking the ability to readily change providers, and the demand curve is “inelastic”, such that a change in price will not result in an equivalent change in demand.

Public utilities are typically natural monopolies because their fixed costs, as determined by their technology and demand, are lower, such that it is a more efficient use of society’s scarce resources for a single firm to supply the market than multiple firms. (*ATCO*, para. 3⁶)

The Role of Regulation

Monopolies may abuse their power by way of:

- Excessive Pricing - resulting in excess monopoly profits;
- Predatory Pricing- where the monopoly is able to discourage competitors from entering the market through pricing below cost in the short term;
- Cross-subsidization - excessive pricing in some areas, subsidizing low cost pricing in others.

Regulation exists to protect the public from potential monopolistic behaviour on the part of a public utility while ensuring the continued quality of an essential service.

It is the regulator’s function to prevent the abuse of monopoly power, so that customers have access to the utility product or service at a fair price, but at the same time allow the utility the opportunity to earn a fair return on its investment so that it can continue to operate and attract the capital required to sustain and/or grow its business.

The *Utilities Commission Act* is an example of public utility regulation that balances the public interest between monopoly, where monopoly is accepted as necessary, and the consumer protection provided by competition. (*BC Hydro v. BCUC*, para. 46⁷)

⁶ *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4, [2006] 1 SCR 140

⁷ *British Columbia Hydro and Power Authority v. British Columbia (Utilities Commission)*, 1996 CanLII 3048 (BC CA)

What Does Utility Regulation Entail?

Regulation entails granting the monopoly the exclusive right to construct and operate plant and equipment, and provide services within a specific area, and to recover the costs of these activities in approved rates which are determined to be just and reasonable.

Regulation also involves an ongoing general supervisory role over the public utility, including its equipment and extensions of its works or systems. As noted by the Supreme Court of Canada in *ATCO*, “the regulator limits the utility’s managerial discretion over key decisions, including prices, service offerings and the prudence of plant and equipment investment decisions.” (*ATCO*, para. 4)

The Role of Regulation Compared to the Role of Competition

There are numerous examples in Canada dealing with the role of regulation versus the role of competition.

The *Ontario Energy Board Act* provides that the Ontario Energy Board, the public utility regulator in Ontario, is to refrain from exercising its power if it finds that, among other things, a class of products or services “is or will be subject to sufficient competition to protect the public interest.”⁸

In the telecommunications industry, technological developments have, in large measure, removed the natural monopoly which had previously existed due to the wire infrastructure. The Canadian Radio-television Telecommunications Commission (CRTC) voiced the opinion that “regulation should focus primarily on services supplied on a monopoly (or near-monopoly) basis or in markets that are not yet workably competitive...Where markets are sufficiently competitive, market forces are generally preferable...”⁹ The governing legislation for the CRTC, the *Telecommunications Act*, specifically provides for the CRTC to forbear from regulation in circumstances where it determined there was “competition sufficient to protect the interests of users...”¹⁰

⁸ *Ontario Energy Board Act*, 1998, SO 1998, c 15, Sch B

⁹ Canadian Radio-television and Telecommunications Commission Decision 94-19 Review of Regulatory Framework, Exhibit A2-26, p. 9

¹⁰ *Telecommunications Act*, SC 1993 c.38, ss. 34(1) as set out in CRTC 94-19, Exhibit A2-26, p. 27

The Competition Bureau of Canada “believes that a market can be deemed subject to sufficient competition to protect the public interest if no firm operating in it has sufficient market power to unilaterally and profitably impose a significant and non-transitory price increase.” Its view, as outlined in a paper prepared by one of its members in respect of deregulation of portions of the electricity market, is that regulation should be avoided where there is sufficient competition to protect the public interest. (Exhibit A2-30, p. 7)

Dr. Jaccard, in this proceeding, states “[t]he underlying principle of economic regulation is that monopoly should only exist where it is not possible to replace it with competition. Competitive forces are accepted as providing societal benefits more efficiently and effectively than economic regulation.” (Exhibit B-19, Appendix B, p. 10)

Dr. Ware, the expert economist retained by FEU, takes the position that “it is incorrect to argue that just because a product class can function as a competitive industry, then it is optimal to allow it to do so.” He argues that “[t]here is a substantial literature on the sustainability of natural monopoly which highlights this regulatory dilemma.” He quotes a 1977 article entitled: “Free Entry and the Sustainability of Natural Monopoly”: “[a]lthough “free entry may encourage cost control and stimulate innovation”, it may also encourage firms “with neither new products nor improved technology to enter the industry...The potential effects of such entry are higher overall costs and a reduction in the average welfare of customers.” (Exhibit B-19, Attachment B, pp. 14-15)

The Regulator’s Role Vis à Vis Competition

The British Columbia Utilities Commission and other sectoral regulators do not regulate competition *per se*, because that is the domain of the Competition Bureau. In Dr. Jaccard’s submission, regulators try to foster competition where possible and constrain monopoly activities which might distort the competitive environment because regulation is typically a surrogate for a competitive market.

Dr. Ware argues that although a regulated utility may have a cost advantage in a new market resulting from its investments in its existing operations, these “economies of scope” result in a lower cost to the benefit of the marketplace. He is of the view that there is nothing inherently unfair about having FEI, in its position as a traditional gas distribution utility, enter the AES market and compete for AES projects. He argues that, as long as concerns relating to cross-subsidization and other issues are addressed, “FEI will bring an important competitive presence to the marketplace, and the rivalry generated by its participation will generate benefits for all TES customers.” (Exhibit B-19, Attachment B, pp. 8-9, 10-12)

The Regulator’s Role Vis à Vis Cross-Subsidization

Regarding cross-subsidization, Dr. Jaccard notes, “an ... important concern, especially for the utility regulator, is that the resources of the monopoly utility not be diverted into the competitive market in ways that might adversely affect its captive customers- its existing ratepayers.” (Exhibit C12-5, pp. 7-8)

Dr. Ware opines that appropriate regulation can prevent cross-subsidization between FEI’s traditional natural gas distribution utility and new AES activities. Dr. Ware suggests that the “term ‘cross-subsidization’ is often used and abused in equal measure.” He explains that the concept of “Stand Alone Costs” (being the cost to produce a single product class alone, without regard to any other activities in which the utility maybe engaged) and “Incremental Costs” (being the additional cost to add a product class given that the utility is already operating) represent the bounds within which a product is said to be “subsidy free” and no cross-subsidization is occurring.

He notes that the incentive to cross-subsidize for FEI is mitigated as both its gas utility business and the TES market will be regulated, and, more importantly, that the regular rate hearings for the FEI gas utility business, which entail extensive scrutiny, would reveal the presence of any cross-subsidization. (Exhibit B-19, Attachment B, pp. 8-13, 15-16)

Dr. Jaccard explains that, although regulating monopolies with extreme economies-of-scale may provide benefits to society, natural monopoly conditions are not static and the regulator must pay close attention to changes in market conditions, government regulations and technologies to identify situations where natural monopoly conditions may no longer exist, or, in the case of a new market, not yet exist. (Exhibit C12-5, p. 10)

This approach can also be seen as a staged approach where, prior to the establishment of a competitive market, the sectoral regulator acts, and may attempt to enable competition, but, once competition is established, the Competition Bureau will take over and monitor the behaviour of competitors.

Utilities Commission Act Requirements to Regulate

The legislative requirement to regulate is, in British Columbia, governed mainly by the *Utilities Commission Act* which defines a “**public utility**” as meaning:

a person... who owns or operates in British Columbia, equipment or facilities for

(a) the production, generation, storage, transmission, sale, delivery or provision of electricity, natural gas, steam or any other agent for the production of light, heat, cold or power to or for the public or a corporation for compensation, or...

but does not include...

(c) a municipality or regional district in respect of services provided by the municipality or regional district within its own boundaries,

(d) a person not otherwise a public utility who provides the service or commodity only to the person or the person's employees or tenants, if the service or commodity is not resold to or used by others,

(e) a person not otherwise a public utility who is engaged in the petroleum industry [defined in the *Act* as, in part, (e) the retail distribution of liquefied or compressed natural gas] or in the wellhead production of oil, natural gas or other natural petroleum substances,

(f) a person not otherwise a public utility who is engaged in the production of a geothermal resource¹¹, as defined in the *Geothermal Resources Act*, or

(g) a person, other than the authority, who enters into or is created by, under or in furtherance of an agreement designated under section 12 (9) of the *Hydro and Power Authority Act*, in respect of anything done, owned or operated under or in relation to that agreement;

Considerable debate occurred in this Proceeding on the interpretation of the definition of a public utility in the *UCA*.

The FEU's initial position was:

“[t]he *Utilities Commission Act* dictates what services are regulated through the definition of public utility in section 1 of the *UCA*. There is no discretion embedded in the definition of public utility; either it applies to an entity or it does not. The Commission is not empowered to decide, as a matter of regulatory policy, that certain entities which otherwise meet the definition are not subject to the *UCA*.” (Exhibit B-2, p. 171)

ESAC submits that such an interpretation is overly broad and could lead to the absurd result that sellers of “light bulbs; flashlights; lighters; household appliances such as stoves, ovens, microwaves, kettles, refrigerators, freezers, and air conditioners; furnaces; boilers; hot water tanks; space heaters; camp stoves; barbeques; fuels such as wood, coal, charcoal and biofuels of various kinds; and batteries; etc.”, for example, are public utilities. (ESAC Final Submission, para. 45)

The FEU now submit that the definition of “public utility” must be read harmoniously with the purpose of the *UCA*, namely “to regulate natural monopolies and also to protect consumers from the exercise of economic power.” (FEU Reply Submission, para. 35) FEU also accept that the size of the service and the market barriers affecting the potential for the service provider to become a monopoly supplier after the fact are considerations in determining whether a service meets the definition of public utility. (FEU Reply Submission, paras. 39-40)

¹¹ The definition of geothermal resource from the *Geothermal Resources Act* does not apply to the typical geo-exchange systems discussed in this Decision.

Commission Determination

Regulation exists to protect consumers against the abuse of monopoly power but, in the Commission Panel's view, the superior protection for consumers is the competitive marketplace. The Commission Panel accepts Dr. Jaccard's statement that "[t]he underlying principle of economic regulation is that monopoly should only exist where it is not possible to replace it with competition." This is consistent with the first principle outlined in this Section, to only regulate where required. Competitive forces are generally accepted as providing societal benefits and consumer protection more efficiently and effectively than economic regulation. The Commission Panel further notes that this premise is not disputed by FEU's expert, Dr. Ware, who takes the position that, subject to certain safeguards, it is possible for a monopoly service provider to enter a market and compete fairly in a way that will generate benefits for all customers.

Regulation is costly, time-consuming, and limited by informational asymmetries. It is only in natural monopoly situations where consumer protection is needed that these limitations are outweighed by the benefits of regulation.

Based on the above, the Commission Panel finds as a fundamental principle that regulation is only appropriate where required and is driven by the inability of competitive forces to operate with greater efficiency and effectiveness than a sole service provider.

While the Commission does not regulate competition *per se*, the Panel accepts that it should not act to hinder competition, where competition is feasible. In this regard, the Commission Panel confirms that there must be no cross-subsidization when a utility purports to enter a competitive market.

Regarding regulation as a choice in a competitive market, FEU and certain Interveners have argued that the regulated cost of service model is simply another choice or "value proposition" which should be available to the thermal customer. Corix and ESAC take a counterview that the *UCA* must be applied consistently and that an activity is either regulated within the definition of "public utility" under the *UCA* or not.

The Panel finds that customer preference does not determine the need for regulation. Regulation itself is not a choice. The need for regulation is determined by natural monopoly characteristics, the resulting need for consumer protection and/or the relevant legislation.

The legislative requirements to regulate are defined in British Columbia by the *UCA*. The Commission Panel agrees that a strict, literal interpretation of the definition of “public utility” in the *UCA* could lead to an absurd result such that a host of services and technologies that are available in a competitive marketplace would require regulation. Accordingly, the Commission Panel must do its best to interpret the legislation and does so following the legal test set out in *Rizzo*¹² i.e., that the grammatical and ordinary sense of the words must be read “harmoniously” with the purpose of the Act.

The Commission Panel agrees that the purpose of the *UCA* is to regulate natural monopolies and protect consumers from the exercise of economic power. The Commission Panel is of the view that a reasonable interpretation should consider the market context within which the proposed service or facility will exist, the degree to which natural monopoly characteristics are present and whether the consumer requires protection. **The Commission Panel finds that in general, a provider of services which meets the definition of a public utility in the *UCA*, and where natural monopoly characteristics are present and consumers require protection, will be subject to regulation.**

The definition of public utility is set out in the *UCA* but, given the discussion on the economic purposes of regulation, applying the legal definition of public utility does not always lead to an outcome that makes the most economic sense. The Panel notes that the *UCA* was developed at a time when many of the technologies at issue in this Proceeding were not contemplated. The current energy market requires a practical definition of public utility. There would be greater clarity if the Government were to explicitly amend the *UCA* to exclude regulation of activities

¹² *Rizzo & Rizzo Shoes Ltd. (RE)*, [1998] 1 SCR 27

where competitive forces are found to provide sufficient protection to the public¹³. Given the current lack of clarity in the *UCA* the Commission Panel recommends the use of exemptions, which are contemplated under the *UCA*, where the Commission finds regulation is not warranted.

Can the Commission Control a Regulated Utility's Entry into a Market or Require Greater Separation of Utility Services?

The RMDM Guidelines state:

“[t]he Commission has the jurisdiction to prohibit a public utility from participating in retail markets downstream of the meter if prohibition is the only reasonable and effective means by which the Commission can mitigate or alleviate any negative effects on ratepayers.”
(RMDM Guidelines, p. 21)

Ferus Inc., LNG Division (Ferus LNG), an Intervener in the Inquiry, argues that this principle is still relevant and takes the position that the Commission has the jurisdiction in appropriate circumstances, to prohibit a public utility from participating in a market, or to require greater separation of utility services. Ferus LNG submits that this jurisdiction is not only grounded in the Commission's traditional ratemaking jurisdiction but now also in broader public interest considerations, such as the promotion of British Columbia's Energy Objectives. Prohibiting a utility from participating in a market or requiring greater separation is, in Ferus LNG's submission, the only reasonable and effective means to further BC's Energy Objectives such as the development of the clean energy industry in BC. (Ferus LNG Final Submission, pp. 8-10)

FEU argue “that the approach of having as a ‘starting point’ full corporate separation is inconsistent with section 60(1) [of the *UCA*], unnecessary and undesirable.” (FEU Final Submission, para. 99)

¹³ For example, the *Ontario Energy Board Act* states: “On an application or in a proceeding, the Board shall make a determination to refrain, in whole or part, from exercising any power or performing any duty under this Act if it finds as a question of fact that a licensee, person, product, class of products, service or class of services is or will be subject to competition sufficient to protect the public interest.” *Ontario Energy Board Act*, 1998, SO 1998, c. 15, Sch. B, s. 29 (1).

Corix submits that “multiple utilities within the same corporate entity should be permitted only if the Commission is satisfied that cross-subsidization risks have been address and the public interest has been taken into account.” (Corix Final Submission, p. 25)

Commission Determination

The Commission Panel finds that it does have the jurisdiction to control a public utility’s service offerings and/or to require greater structural separation between services for the reasons advanced both in the RMDM Guidelines proceeding and by Ferus LNG.

The Commission further finds that this jurisdiction stems from its jurisdiction over a utility’s investments, through such processes as applications for Certificates of Public Convenience and Necessity. In *BC Hydro v. BCUC* the Court of Appeal noted that “[t]he certification process is at the heart of the regulatory function delegated to the Commission by the legislature...The other function the legislature has entrusted to the regulatory tribunal is the supervision of the utility’s use of property dedicated to service as the result of the certification process.” (paras. 48, 49)

In *ATCO*, the Court explained that “[a]s in any business venture, public utilities make business decisions, their ultimate goal being to maximize the residual benefits to shareholders. However, the regulator limits the utility’s managerial discretion over key decisions, including prices, service offerings and the prudence of plant and equipment investment decisions.” [Emphasis added] (para. 4)

From the above, it can be concluded that the regulator, through the certification process, as well as through cost recovery approval mechanisms, can limit a utility’s service offerings or, in other words, can limit the markets a utility may enter.

2.2 Principles and Guidelines for Determining the Form of Regulation

Once an activity is found to require regulation, the appropriate form of regulation must be determined. Regulation itself runs a spectrum from what could be considered full and more onerous regulation, which is often based on the fully allocated cost of service of the utility, or rate base/rate of return “earnings” regulation, to the most light-handed form of regulation, being forbearance and/or regulation by complaint. The form of regulation is not dependent on the business structure through which the regulated activity is to be delivered. The Panel finds that the form of regulation to be used should be driven by the principles and guidelines set out below.

Key Principles:

- i) Where regulation is required use the least amount of regulation needed to protect the ratepayer.
- ii) The benefits of regulation should outweigh the costs.

Guidelines:

- The form of regulation should:
 - provide adequate customer protection in a cost effective manner;
 - consider administrative efficiency;
 - consider the level of expenditure, the number of customers, the sophistication of the parties involved and the track record of the utility in undertaking similar projects; and
 - require the provision of sufficient information to allow the Commission to assess the new business activity, and any rates to be set, against BC’s Energy Objectives and the requirements of the *Utilities Commission Act* and the *Clean Energy Act*.

Discussion and Commission Determination

While the rate base-rate of return-cost of service model is the most common type of regulation used by the Commission, options available to the Commission include, but are not limited to:

- Rate base - rate of return - cost of service regulation;
- Performance based regulation;
- Negotiated settlements;

- Limited exemptions from regulation;
- Market based pricing; and
- Regulation by complaint.

Regulation in and of itself imposes significant costs on the utility ratepayer. It is important that these costs do not exceed the benefits derived. Hence, the question “what is the least amount of regulation needed to protect the interests of ratepayers”?

For new business activities, the least amount of regulation to protect customers may involve different considerations depending on the characteristics of the activity. If, for example, a new regulated activity has only limited monopoly characteristics and limited consumer protection is needed, there may be opportunities to use lighter handed forms of regulation such as market based pricing or regulatory exemption. This would be the case where the Commission found that there were sufficient market forces at play to protect the interests of the ratepayer. Long term contracts setting out rates and terms and conditions of service may also provide sufficient consumer protection under light handed regulation. In other instances, it may be appropriate for the Commission to closely scrutinize new business activities until there is a track record related to the performance of this type of activity. Once such a track record is achieved, and the Commission has benchmarks or a basis of comparison upon which to judge new applications, a lighter handed form of regulation may be appropriate. The cost of service methodology, or, the “model of last resort”¹⁴, is unsuited to many projects that are regulated under the *UCA*, especially those with few natural monopoly characteristics and which require little consumer protection.

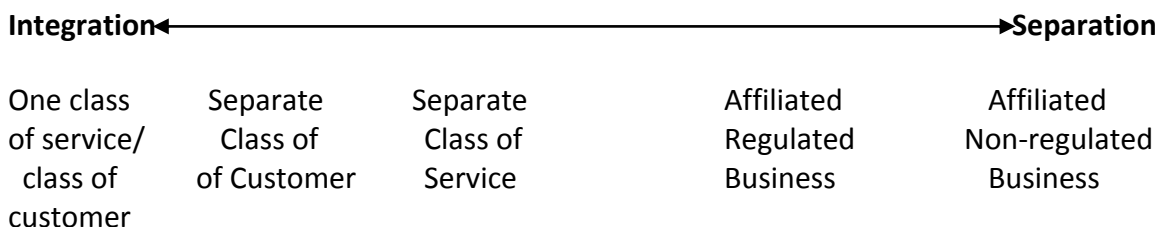
¹⁴ In the Delta School District Decision, the Panel stated: “In a competitive environment, the Panel is not convinced that a COS [cost of service] model, where any cost overruns are paid by the ratepayer, is the most appropriate pricing model as competition itself will incent the service provider to determine a fair price. It is clear that the own/operate model contains much stronger built-in incentives to increase efficiency, reduce costs and enhance performance, which a regulator would struggle to emulate within the COS model. In the presence of an actively competitive market, there appears to be no reason to apply a model which was developed to be a surrogate for competition. The Panel sees the traditional COS rate-base model as the ‘model of last resort’ that was initially developed for traditional utilities with natural monopoly attributes.” (p. 83)

2.3 Principles and Guidelines for Determining Business Structure and the Use of Monopoly Resources

Introduction

In the traditional natural gas utility, natural gas is typically purchased from a producer, and transported to the distribution utility through a provincial or interprovincial pipeline. The utility then distributes the gas through its network of pipes to a variety of customers within its franchise territory.

When an existing regulated utility enters into a new line of business, it is necessary to determine the degree to which the new activity can or should be integrated into the existing organizational structure. There is a spectrum of options varying from complete integration within the traditional natural gas distribution utility to complete separation as illustrated below.



The business structure affects the potential for cross-subsidization between the traditional monopoly natural gas utility ratepayer and the ratepayer of the new business activity. The potential for cross-subsidization is of most concern where the new activity is to be undertaken in a market which is competitive, or has the potential to be so. The Panel has developed the following guidelines setting out which of the various business structures is most appropriate for a new business activity.

2.3.1 Non-Regulated Businesses

The topic of when regulation is needed or required has been discussed at some length in Section 2.1. Where it is found that a new business activity is not regulated the Panel finds the following principles and guidelines to be appropriate.

Key Principle:

- i) The Commission Panel reaffirms the following RMDM objectives:
 - “There must be no subsidy of unregulated business activities, whether undertaken by the utility or its [non-regulated business], by utility ratepayers.”
 - “The risks associated with participation in the unregulated market must be borne entirely by the unregulated business activity, that is the risks must have no impact on utility ratepayers.”
 - “The most economically efficient allocation of goods and resources for ratepayers should be sought.” (RMDM Guidelines, p. 23)

Guidelines:

Under RMDM it was determined that “[u]tility participation in the unregulated downstream market by completely stand-alone¹⁵ [non-regulated businesses] using no utility resources is the preferred option since it provides the maximum protection to utility ratepayers. Variations from this option should be undertaken only when it can be shown that this option would result in substantial stranded costs for the utility and/or that a transfer pricing policy mechanism will act to provided sufficient protection for ratepayers.”

Where activities undertaken as a related non-regulated business do involve sharing of resources, the following Guidelines apply:

- An approved Code of Conduct and Transfer Pricing Policy must be in effect and require:
 - minimal sharing of resources between regulated and non-regulated affiliates; and
 - use of the full cost to provide the service or market pricing, whichever is higher.
- All costs and services provided between a Regulated and a Non-regulated Affiliated Business are to be fully disclosed to the Commission.
- To the extent that information is shared by a Regulated Business with a Non-regulated Business, it must also be shared with any interested non-related business.
- The following principles from RMDM remain valid:
 - “The onus should always be on the utility to prove that the benefits associated with the use of utility resources are sufficient to warrant the changed structure and that the transfer pricing policy mechanism will provide sufficient protection to ratepayers.”

¹⁵ “Stand-alone Non-Regulated Businesses” use no utility facilities or services, and Related Non-Regulated Businesses use some utility facilities and services. Both business types are set out in the RMDM guidelines.

- “If the commission decides to allow the use of utility resources in the provision of the unregulated good or service, the preferred option is through a related-NRB. Direct participation by the utility in the provision of an unregulated good or service should be allowed only when the costs associated with forcing the provision through the related-NRB structure would significantly offset the benefits associated with the use of the utility’s resources and it can be shown that a transfer pricing policy mechanism will provide sufficient protection for ratepayers.”
- “Utilities and their related-NRBs will be encouraged to move unregulated products which use utility resources into stand-alone NRBs as soon as market conditions warrant. When a utility-provided product is moved to an NRB, the NRB will be required to pay fair market value to the utility for the assets, including goodwill, associated with the product. In addition, utilities will be required to provide periodic proof that the benefits associated with the use of utility services continue to exist and that ratepayers continue to be sufficiently protected. The Commission will make directions to prohibit the use of utility assets and services in the provision of goods and services downstream of the retail market at any time that it finds it in the interests of ratepayers to do so.” (RMDM Guidelines, p. 24)

Discussion and Commission Determination

FEU and other parties to the proceeding endorsed the Objectives set out in the RMDM Report. However, FEU argue that the third RMDM objective, that the most economically efficient allocation of goods and services must be sought, provides a rationale for them to provide a competitive service within a regulated utility where economies of scope make the utility the low cost provider of the new business activity. (FEU Reply Submission, p. 1)

The Commission Panel has previously determined that many of the objectives and principles of RMDM remain relevant and applicable today. Specifically, the Commission Panel finds the guidelines of RMDM that relate to Non-Regulated Businesses are valid and confirms them.

New business activities with no natural monopoly characteristics should be carried out by a stand-alone or related non-regulated business and not by a regulated utility unless specifically required by legislation. Where a utility seeks to participate in an activity where there are no monopoly characteristics, the utility must demonstrate that its participation is necessary and in the public interest, to the exclusion of other forms of enterprise. If the utility is to provide the new

business activity as a Non-Regulated Business, there must be an approved Transfer Pricing Policy and Code of Conduct to prevent cross-subsidization.

Where resources are provided by a corporate parent, fewer concerns with cross-subsidization arise than when resources are shared between a traditional utility and a new business activity.

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.**

2.3.2 Regulated Businesses

Where a new business activity is subject to regulation, it will be necessary to determine the degree of integration of that new activity with the existing public utility. The options range from the use of an affiliated¹⁶ regulated company to full integration within an existing class of service. The Panel finds that application of the principle outlined below provides the foundation for assessing the appropriate business structure.

Key Principle

- i) The business structure for a new regulated business activity should be determined on the basis of the degree of integration or separation that is appropriate to:

¹⁶ The Panel uses the term “affiliated” to mean stand-alone and related, as those terms are used in RMDM. For clarity, stand-alone is where no utility facilities or services are used and related is where some utility services and facilities are used.

- provide the necessary protection to the traditional utility ratepayer from subsidizing the new business activity;
- provide a fair and reasonable allocation of risk among utility ratepayers, the new business ratepayers and the utility shareholder; and
- allow for fair allocation of costs and benefits among different groups of customers.

Discussion and Commission Determination

A major issue in dealing with new business activities proposed by an existing regulated utility is the degree to which the new activity is integrated within the existing organizational structure.

The Commission in the Delta School District Decision found that greater separation “allows for: easier evaluation and measurement of segments, future divestiture, clearer reporting, improved transparency and cost accuracy, clearer cost allocation, reduced possibility of cross-subsidization, improved objectivity and regulatory efficiency through simpler rate setting.”¹⁷ (Delta School District Decision, p. 95)

In the view of the Panel, an appropriate business structure should:

- adequately protect the public interest;
- protect against cross-subsidization among ratepayer groups;
- provide a fair and reasonable allocation of risk among existing ratepayers, the new business ratepayers and the utility shareholder; and
- allow for fair cost allocation among different groups of customers.

In many cases, the choice of business structure is based on a judgment as to the degree of separation that will provide the most cost effective means to ensure appropriate cost and risk allocation. Where the new business is more fully integrated into the structure of an existing utility, cost and risk allocation may require complex methodologies and more detailed scrutiny of utility activities than will be the case in a less integrated model. In keeping with the Delta School District

¹⁷ *In the Matter of An Application by FortisBC Energy Inc. for a Certificate of Public Convenience and Necessity for Approval of Contracts and Rate for Public Utility Service to Provide Thermal Energy Service to Delta School District Number 37; Order G-31-12, March 9, 2012 (Delta School District Decision)*

Decision, the Panel finds a greater reliance on structural separation as opposed to the use of accounting will minimize the potential for abuse. Such separation will make it easier for the Commission to assess whether the allocation of costs and risk has been undertaken in a fair and reasonable manner.

The following guidelines provide assistance in determining the type of business structure that will achieve the objectives set out above. The guidelines also provide additional clarity for the use of natural gas monopoly resources in Affiliated Regulated Businesses.

2.3.2.1 Affiliated Regulated Businesses

The use of an Affiliated Regulated Business to pursue a new regulated business activity provides the greatest degree of business separation for regulated activities.

Guidelines:

- Structuring a new regulated business activity as an Affiliated Regulated Business is most appropriate when some or all of the following characteristics are present:
 - The new regulated business activity takes place largely beyond the delivery meter of the traditional utility;
 - The new regulated business activity has limited or no use of the traditional utility assets; and
 - The new regulated business activity has the potential to impose higher risks on the users of the new service and/or the utility shareholder.
- An approved Code of Conduct and Transfer Pricing Policy should govern interactions between Affiliated Regulated Businesses and the natural gas monopoly (the traditional utility);
- Common corporate and management resources may be shared between two Affiliated Regulated Businesses that are natural monopolies, such as gas and electric service;
- The sharing of any common resources between a natural monopoly affiliate and an affiliate that is a regulated business in a non-natural monopoly environment, however, should be much more limited. As a rule, resource sharing should be limited to corporate services and should not include any operational services except possibly emergency services;
- Sharing of employees should not be allowed where the employee has access to confidential information, routinely participates in making decisions with respect to the provision of traditional utility services or how utility services are delivered, routinely deals with or has

direct contact with customers of the utility or is routinely involved in planning or managing the business of the traditional utility;

- All sharing of costs, services and information between affiliated utilities must be fully disclosed to the Commission.

Discussion and Commission Determination

Greater separation is needed when there is an increased risk of cross-subsidization from the traditional utility and where the new business activity presents a different risk profile.

The level of use of the traditional gas utility infrastructure by the new business activity can indicate the degree of separation required. Many of the new business activities being initiated by FEU involve incidental or no utilization of the traditional natural gas distribution utility infrastructure. For example, district energy systems may utilize new technologies such as geothermal ground loops that have no relationship to the distribution of natural gas. These systems may be backed up by gas boilers, but this is an incidental use of the distribution system that is no different than would occur if the district energy system were a residential or commercial customer. The assets being regulated in this case, even if they are gas related assets such as centralized high efficiency gas boilers serving a district energy system, lie outside the traditional gas distribution system. In these cases, a greater degree of corporate separation is warranted.

The risk profile is another characteristic that can determine the requisite amount of separation. For example, it is important that the traditional natural gas utility be insulated from the risk posed by a new business activity. Maintaining the TES activity within the regulated gas distribution utility makes it more difficult to insulate the traditional natural gas ratepayer from the costs associated with the increased risk driven by the new activity. As well, FEU has stated that the TES activities carry a higher degree of risk than the traditional gas distribution business. A separate regulated affiliate facilitates the establishment of a separate approved rate of return and/or capital structure that reflects the risk profile of the TES business activity.

New business activities may also be operating in an environment where there are competitive elements to the activity. For example, there may be several companies competing to provide a district energy system to a proposed new development. The use of a separate regulated business to undertake this activity will reduce the likelihood of distortions to the competitive market environment resulting from any inappropriate transfers, such as cross-subsidization. Given the findings in Section 2.1 that the competitive market environment provides the best form of protection for consumers, the most desirable business structure for a regulated utility is one that allows the competitive market to operate freely and without distortion. The use of a separate regulated affiliate reduces the likelihood of such distortion.

The Fortis group of companies already includes Affiliate Regulated companies. FEU provide regulated gas service, for example, while FortisBC Inc. provides a regulated electric service. The capital assets of FortisBC Inc. are related to the generation, transmission and delivery of electricity and are quite separate and distinct from FEU's capital assets, which are used for the distribution of natural gas. This does not preclude the use of some common resources between these two natural monopolies where it is in the interest of the ratepayers of both utilities. It is important that there is a clear understanding of how interactions between Affiliated Regulated Businesses are to be governed. Therefore, it is recommended that an approved Code of Conduct and Transfer Pricing Policy be in place.

A larger concern, however, is the sharing of common resources between the natural gas monopoly (or any natural monopoly business) and a regulated business affiliate operating in a non-natural monopoly environment. As interactions between regulated affiliated utilities with very different characteristics have not received the same degree of attention in the past as have interactions between a utility and its non-regulated affiliates, extra care must be taken in developing a proper Code of Conduct.

To this end, the Panel recommends that the FEU undertake a collaborative process to establish a Code of Conduct and a Transfer Pricing Policy governing the interactions between Affiliated Regulated Businesses, consistent with the Principles and Guidelines set out in this Report. These

documents should differentiate resource sharing between two natural monopolies on the one hand and between a natural monopoly and a regulated affiliate operating in a non-natural monopoly environment on the other.

This process should be carried out in an expeditious manner, involving the utilities, stakeholders (including Interveners in this proceeding) and Commission staff. The Panel further recommends that the participants in this process use the Fortis Alberta Inc. Code of Conduct as a guide. The process should include the review of the Code of Conduct and Transfer Pricing Policy between FEU and non-regulated businesses as recommended in Section 2.3.1.

2.3.2.2 Separate Classes of Service

A closer integration of a new business activity into the structure of the existing regulated utility through the use of a separate class of service is warranted in instances as set out in the following guidelines and discussion.

Guidelines

- Structuring a new regulated business activity as Separate Class of Service within the Regulated Utility is most appropriate when some or all of the following characteristics are present:
 - The new regulated business activity largely uses and is dependent on the traditional gas utility distribution infrastructure but with additional clearly identifiable costs and/or assets that pertain specifically to the new business activity;
 - The risk of the new business activity differs from the risk faced by the traditional natural gas ratepayer; and
 - An identifiable customer base is served by the new regulated business activity.

Discussion and Commission Determination

The creation of separate classes of service is contemplated in the “Setting of Rates” section of the *UCA* (Section 60 (1)(c)) which states:

(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 for each unit that it considers to be just and reasonable for that unit, without regard to the rates set for any other unit. [Emphasis added]

A separate class of service therefore provides some degree of ring-fencing from other classes of service within the traditional utility. This allows for greater transparency and facilitates the appropriate allocation of costs to users of the service.

New regulated business activities that have the characteristics listed above generally require some separation from the traditional utility to prevent cross-subsidization and risk transfer to the traditional utility ratepayer. These new business activities may have unique costs relevant to that service but are still dependent on the assets of the traditional natural gas distribution utility. In these cases, the need for separation is not as great as when the new regulated business activity uses separate assets.

Where the risks of providing the new service are different from the risk of the existing gas distribution system a Separate Class of Service may be appropriate. Compared to undertaking the activity in a separate affiliated regulated utility, the separate class of service could increase risk to existing ratepayers, for example, from stranded assets related to the new business activity. Where the risk of costs flowing back to the traditional regulated ratepayer is found to be minimal, a separate class of service may be appropriate.

2.3.2.3 Separate Class of Customers

From an economic point of view, if a new business activity were to involve only the use of the traditional distribution system with no upstream or downstream components, it might be appropriate to manage the new activity as part of the existing natural gas service, but with a separate class of customers¹⁸.

Guidelines

- Structuring a new regulated business activity as a Separate Class of Customers within the regulated utility is most appropriate when some or all of the following characteristics are present:
 - The new regulated business activity uses the traditional utility distribution infrastructure to serve a specific set of customers attached to the utility;
 - The new regulated business activity does not include assets beyond the traditional utility;
 - The risk incurred in adding the new class of customer is comparable to the overall risk faced by the existing customers; and
 - There are identifiable sets of customers with common characteristics receiving a common set of services. These customer groups may be established to facilitate a rate design that provides an acceptable cost allocation for the provision of the common set of services.

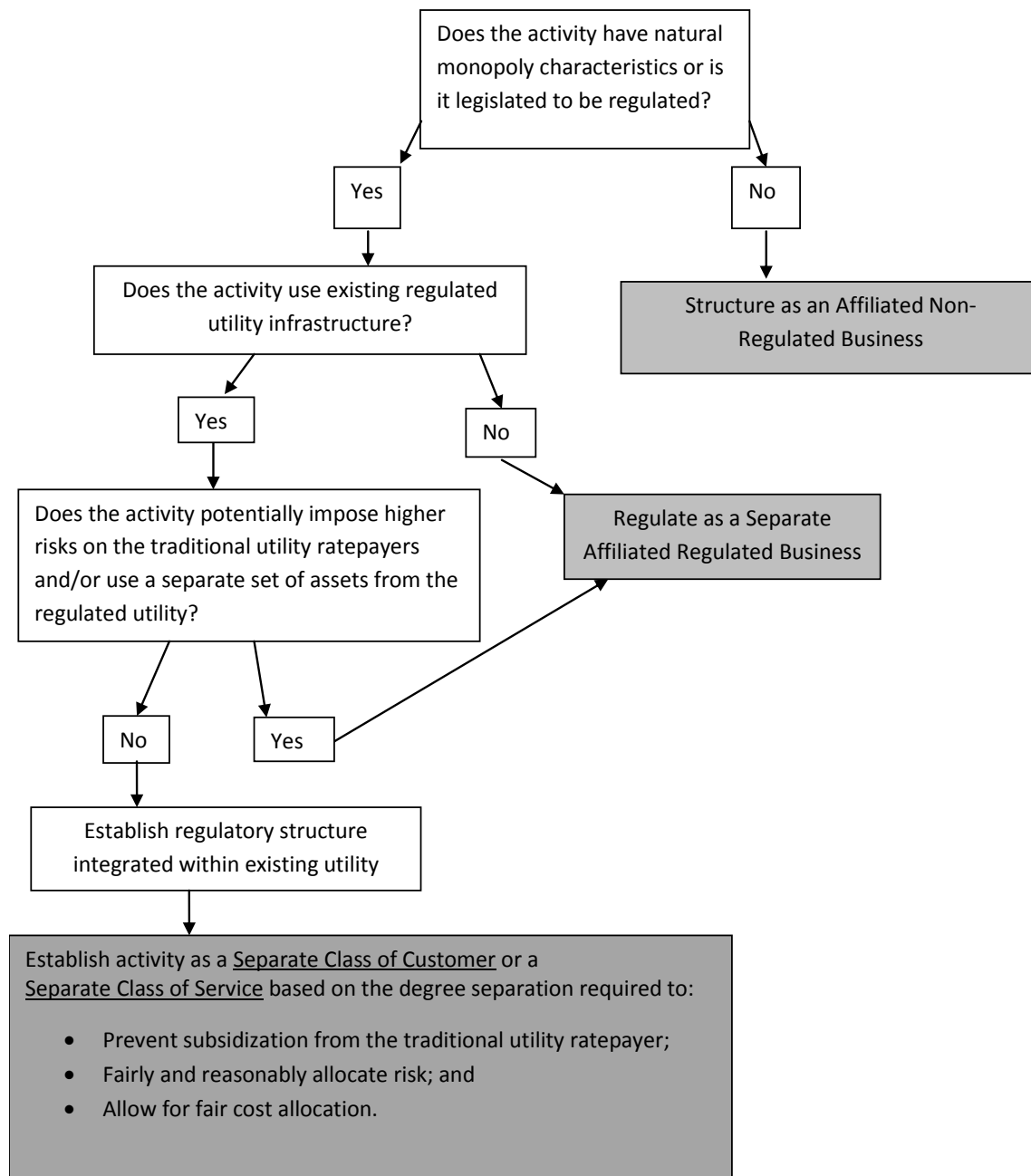
Discussion and Commission Determination

A class of customer within the traditional regulated utility represents the least amount of separation contemplated in the spectrum of options. This structure can be used when there is little need to prevent cross-subsidization of costs and risks from the traditional utility to the new regulated business activity.

¹⁸ A class of customer is a group of individuals taking service under the same rate schedule. Common examples are residential, commercial, and industrial customers.

Decision Flowchart – Assessment of a New Business Activity

The flow chart below illustrates how the Guidelines can be used by future Commission Panels to determine the business structure that best meets a given set of circumstances.



2.3.3 Extension of Ownership for Regulated Utilities

An additional issue is - when is it appropriate for a regulated utility to own assets that are not part of the traditional regulated utility? In entering into new business activities a utility may consider acquiring assets that are located upstream of the receipt meter or downstream of the delivery meter of the traditional gas distribution utility. The Panel has set out Principles and Guidelines for when such acquisitions should be allowed.

Key Principle:

- i) The ownership of facilities by a regulated utility outside of the bounds of the traditional gas distribution utility is not recommended where there are viable alternative options and should only be allowed in exceptional circumstances, or where required by legislation.

Discussion and Commission Determination

As discussed earlier, cross-subsidization by the traditional utility ratepayer is an issue in this Proceeding. Therefore, to reduce the likelihood of cross-subsidization, the Panel finds that ownership of facilities by a utility outside the bounds of the traditional utility system should not be allowed unless there are extenuating circumstances that make such ownership in the public interest. The onus is on the utility to prove that such extenuating circumstances exist.

2.4 Principles and Guidelines for Determining Cost Allocation for Regulated Utilities

A key issue under any regulated business structure is cost allocation. The Commission Panel is mindful that to achieve the objective of fairness in cost allocation, the principle that those causing costs should be responsible for paying them must be followed. No party in this proceeding took exception to this rule. How best to achieve the goal of cost causality was a focus of many of the Interveners, with a variety of positions taken. Based on the evidence provided, the Panel came to the views as set out below.

Key Principle:

- i) The basis of cost allocation is cost causality.

Guidelines:

- For those new business activities provided through a Regulated or Non-Regulated Affiliated Business or a Separate Class of Service, costs are to be allocated to the new business or shareholder, on the basis of the higher of market price or the fully allocated cost, and be free of all forms of cross-subsidization from the traditional utility. These costs include both direct costs and a fair allocation of the parent utility costs required to provide the product or service. An exception to this rule would be any cost handling which has been prescribed by legislation, regulation or special direction.
- Allocation of costs is to reflect appropriate compensation for any benefit derived by the new business activity as a result of its affiliation with its parent or other businesses. This should include compensation for additional cost or risk related to the addition of incremental debt to the parent utility for the new products or services.
- A service provided by the parent utility, or from one class of service or affiliate to another class or affiliate, will be on the basis of an approved Transfer Pricing Policy.
- There should be transparency in cost allocation among different customer groups.
- All proposals for new business activities must be accompanied by a clear and concise description of the planned cost allocation methodology.

For an Affiliated Regulated Business, the specific guidelines set out below should be followed:

- A Commission approved Code of Conduct must govern interactions;
- Any sharing of costs and services between Affiliated Regulated Businesses must be done on the basis of the higher of market price or the fully allocated cost, in accordance with a Commission approved Transfer Pricing Policy; and
- All sharing of costs, services and information between affiliated regulated utilities must be fully disclosed to the Commission.

When an activity is determined to be in a Separate Class of Service, the following guideline should be followed:

- All costs of establishing the new business activity taking place under the new Separate Class of Service should be borne by the new class of service or the utility. The traditional natural gas distribution ratepayer should be shielded from all such costs.

Discussion and Commission Determination

For new products or services using an existing class of service, FEU argue that allocation of costs among different customer groups within the utility is a matter of rate design. FEU state that the fundamental test in rate design as mandated by the *UCA* is that rates must not be unduly discriminatory or preferential. Imbedded within this is the principle of “cost causality” with the provision that those causing costs should be responsible for them. (FEU Final Submission, p. 41)

The Panel does not believe that the principle of cost causality suggests any significant change to the practices that have been consistently followed by the Commission. The aim of this principle is to have customers bear the share of costs that are attributable to their service, to prevent cross-subsidization among customer groups.

For new business activities, the challenge lies in determining the costs that should be borne entirely by the new business customer (or the utility shareholder). An approved Transfer Pricing Policy should ensure that costs are allocated on the basis of the higher of fully allocated cost or market pricing and an approved Code of Conduct should ensure that the sharing of operational and management services is appropriate.

Interactions between affiliated regulated utilities have not received the same degree of attention in the past as have interactions between a regulated utility and its non-regulated affiliates. Although the FEU 2012-2013 RRA Decision¹⁹ accepted the use of the Transfer Pricing Policy for cross-charges between FEU and its Affiliated Regulated Business, FortisBC Inc., the Commission Panel believes that in light of the Principles set out in this Inquiry, it is appropriate to provide greater clarity around the form and nature of interactions between Affiliated Regulated Businesses. The affiliated regulated utilities have distinct sets of ratepayers and it is important that each ratepayer group is properly protected.

¹⁹ *In the Matter of An Application by The FortisBC Energy Utilities Inc. for the 2012-2013 Revenue Requirements and Rates*, Decision and Order G-44-12, Dated April 12, 2012. (2012-2013 RRA Decision)

2.5 Principles and Guidelines for Determining Allocation of Risk for Regulated Utilities

Risk allocation is the assessment of how costs will be allocated in the case of unforeseen events. Failure of the business to develop as expected is an example of an unforeseen event. When a utility enters a new business, the issue of allocation of additional risk to: (1) the traditional utility ratepayer; (2) the new business ratepayer; and (3) the shareholder, arises. The Panel sets out the following Principles and Guidelines to ensure fair and reasonable allocation of risk associated with a new business activity.

Key Principles:

- i) The traditional ratepayer is to be free of risk for a new product or service to be distributed through an Affiliated Regulated Business or a Separate Class of Service.
- ii) Within Regulated Affiliates or Separate Classes of Service, there is to be a fair balance of risk and reward between the customer and the shareholder.
- iii) If a utility seeks a higher rate of return (i.e. a risk premium) for its investments related to a new business activity, the utility shareholder must bear the additional risk, and not the traditional natural gas ratepayer. The incremental cost burden to customers resulting from an approved higher rate of return should be borne by the users of the new business activity and not by the traditional gas distribution utility ratepayer.

Guidelines:

- The risk of unrecovered costs (including, but not limited to, start up, operating and capital costs) is to be borne by the Affiliated Regulated Business or Separate Class of Service or the shareholder. If costs related to the new business activity cannot be recovered from new business customers in a reasonable period of time (as approved by the Commission) these costs will be borne by the shareholder.
- All proposals for new business activities should be accompanied by a risk management plan. The risk management plan should address:
 - The anticipated level of risk that would be faced by the traditional ratepayer, the new business ratepayer, and the shareholder; and
 - How the incremental costs from these risks will be allocated among these groups.

Discussion and Commission Determination

An issue in this proceeding is the allocation of the risk associated with the recovery of start-up costs, operating costs and wind-up costs to natural gas service customers and to Thermal Energy Service Customers. FEU argue just as prudently incurred costs related to natural gas service customers should be recoverable from those customers, prudently incurred costs for a new business service, such as Thermal Energy Service, should be recoverable from the new business service customers. If this is not possible, then the risk falls on the shareholder. (FEU Final Submission, p. 41)

The traditional natural gas utility does not operate free of risk. Even under cost of service regulation the utility may fail to earn its approved rate of return due to, for example, unforeseen market conditions or the utility's inability to contain costs. The Panel finds that a traditional gas distribution utility entering into a new regulated business activity bears a similar risk to that which it bears in its traditional business activities. If the market for the new business activity fails to meet the expectations under which the costs related to this activity were approved by the Commission, then the unrecovered costs are to be borne by the shareholder. Where the new activity results from the decision of the utility to enter into a competitive market (i.e. to compete for the market) it should be noted that, as discussed in Section 2.8.1, the costs of entering into this market may fall outside the regulatory compact and not accrue to the account of the new business customer.

2.6 Principles and Guidelines for Determining Appropriate Information Sharing

A traditional gas distribution utility (such as FEI) entering into a new business activity may have access to a considerable body of customer specific information. Competitive regulated or unregulated businesses may wish to access this information. The issue arises as to how the utility can or should share information: (a) within its own organization, (b) with Affiliated Regulated or Unregulated Businesses, and (c) with unrelated businesses. A variety of positions were taken on this issue. The Panel finds that information sharing should occur under the Principles and Guidelines outlined below.

Key Principles:

- i) Customer specific information must be treated as required by the *Personal Information Protection Act* and, in addition, should only be released with the written consent of the customer.
- ii) Customer information (aggregate or customer specific with written consent) should be made available to all Parties (Affiliated Regulated and Unregulated Businesses, separate classes of service, and competitors) on an equal basis.
- iii) The control of information should not provide a competitive advantage.

Guidelines:

Consistent with the key principles, when deciding what information can be shared with: (i) anyone, including competitors; and (ii) a related utility; or (iii) a division of the utility; information sharing should be treated in accordance with the following guidelines:

- Subject to customer consent:
 - Information that is shared by the utility should be provided at a reasonable price reflecting market circumstances and, at a minimum, cover the cost of extracting and providing the information. All parties should pay the same price for the same or similar information;
 - Information provided from the traditional natural gas distribution utility to persons within the utility or a related utility dealing with AES or other New Initiatives should be available to all interested parties;
 - The following Code of Conduct principles from the RMDM report²⁰, which were developed for sharing information between regulated and Non-Regulated Businesses, have been adapted to include information sharing among Affiliated Regulated Businesses:
 - The regulated utility will not provide to the Non-Regulated Business or Affiliated Regulated Business any market-sensitive or confidential information that would inhibit a competitive energy services market from functioning;
 - No regulated utility personnel will state or imply that favoured treatment will be available to customers of the company as a result of using any service of the Non-Regulated Business or Affiliated Regulated Business;
 - No regulated company personnel will preferentially direct customers seeking competitively offered services to a Non-Regulated Business or Affiliated Regulated Business.

²⁰ RMDM Guidelines, pp. 26-7

Discussion and Commission Determination

As customer information possessed by a utility is considered to be valuable market intelligence, the issue of sharing this information becomes contentious. Questions arise concerning information sharing within a utility, between related regulated utilities, and between Regulated and Non-Regulated Affiliated Businesses.

The *Personal Information Protection Act* (SBC 2003, Chapter 63) sets out the general rules regarding: protection of personal information by organizations; collection, use and disclosure of personal information; and issues related to consent. Pursuant to this Act, “personal information” cannot be collected, used or disclosed without the prior informed consent of the individual to whom the information relates.

The Commission Panel finds that the information held by the traditional gas distribution utility is of potential value to a number of interested parties. It is in the public interest that the control of this information is not used to inhibit competition to the detriment of consumers. Customer information collected by the utility should be available on an equal access basis to all interested parties, and in a manner which is consistent with the provisions of the *Personal Information Protection Act*. The Panel requires that the Code of Conduct to be developed be consistent with these Principles and Guidelines.

2.7 Determining the Public Interest

There are numerous areas where the Commission must consider the following in making its decisions:

- British Columbia’s Energy Objectives;
- The applicable requirements of the *Clean Energy Act*;
- Whether an activity incorporates adequate cost-effective demand side measures; and
- The interests of persons in British Columbia who receive or may receive service related to an activity.

Any decision of the Commission must also be consistent with the public interest.

FEU have requested the Commission find certain new business activities as “in the public interest” apart from cost considerations. They argue that this would allow for more efficient streamlined applications focused on economic considerations.

Commission Determination

The Commission Panel finds that determination of whether an application meets the “public interest test” is dependent on the circumstances existing at a particular point in time and is largely an evidence-driven process. Future Commission Panels must make their determination of whether the public interest test is met based on the specific facts contained in the evidence before them in a particular case. To find certain aspects of new business activities as “in the public interest”, without the specific facts of an application, is not appropriate.

2.8 Other Issues

2.8.1 Regulatory Compact as it Applies to New Business Activities

In *ATCO*, the “regulatory compact” was explained as an economic and social arrangement which ensures that all customers have access to the utility at a fair price, nothing more. *ATCO* states:

“[u]nder the regulatory compact, the regulated utilities are given exclusive rights to sell their services within a specific area at rates that will provide companies the opportunity to earn a fair return for investors. In return for this right of exclusivity, utilities assume a duty to adequately and reliably serve all customers in their determined territories, and are required to have their rates and certain operations regulated...” (para. 63)

In their final submission, FEU state that the allocation of cost and risk under the regulatory compact is that customers are responsible for prudently incurred costs of providing utility service, and the shareholder is at risk for imprudently incurred costs. (FEU Final Submission, p. 40, para. 88)

Commission Determination

A utility entering into the general market place to participate in a new business activity, where the utility does not have an exclusive right or franchise for the activity, is making a business decision to “compete” for this business against other service providers. Costs related to entering into this market are therefore not governed by the regulatory compact. Once a project has been acquired that is found to require regulation, such as a District Energy Project, prudently incurred costs related to the specific project are properly subject to the regulatory compact.

In other words, costs related to competing “for the market” are not subject to the regulatory compact, although costs related to a regulated project “in the market” are properly treated within the regulatory compact concept. This does not preclude the recovery of costs of competing for the market, but it puts the onus on the utility to demonstrate a reasonable business case for the recovery of such costs, with any residual risk of cost recovery falling on the utility.

The Panel notes that for certain AES activities, there is no “right of exclusivity” with respect to participating in the activity. Other parties can and do participate in the market and are free to do so. The extent of a utility’s “duty to serve” for such activities is generally limited to specific customers to whom the utility is contractually bound.

2.8.2 Use of the FortisBC Brand Name

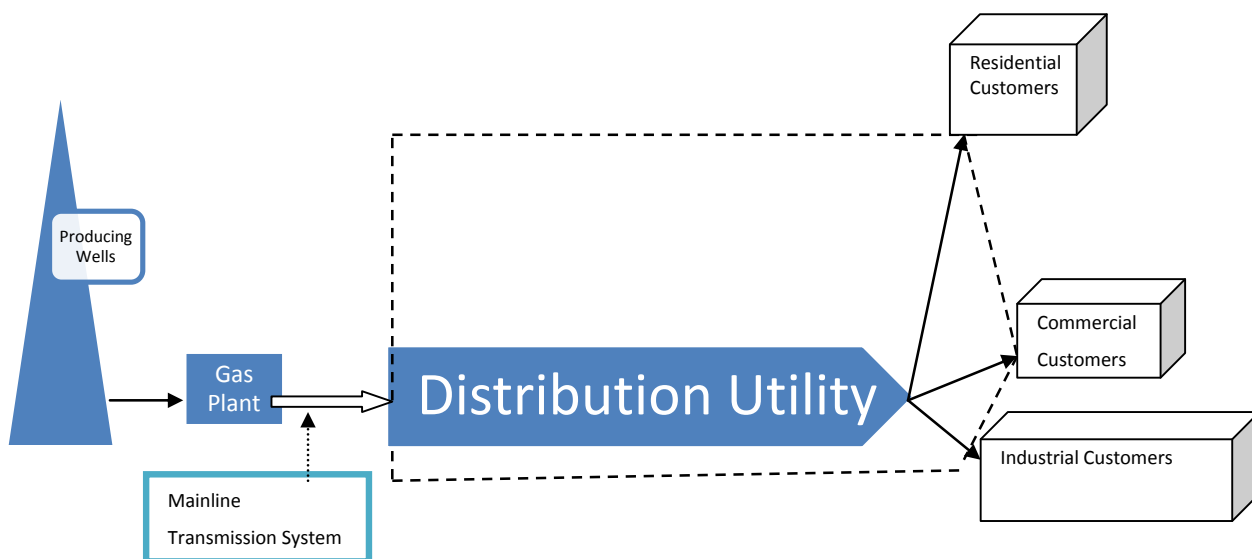
ESAC expresses a concern that use of the FortisBC “brand” has a “disproportionately large impact” in the emerging TES market. (Exhibit C 12-5, pp. 14-15) FEU’s response is that the FortisBC name is used by the FEU under licence and reflects the reputation earned by FEU on how they deliver services. FEU point out that other market participants, like Corix, use their name and reputation to market multiple product lines to the broader public. (FEU Rebuttal Evidence, p. 15, para. 25)

Commission Determination

The Panel finds that the use of the FortisBC brand name in the AES and New Initiatives market spaces is an acceptable business practice. Care should be taken to distinguish between the services offered by the traditional natural gas utility and services offered by Affiliated Regulated or Non-Regulated Businesses.

SECTION 3 APPLICATION OF PRINCIPLES AND GUIDELINES TO FEU'S AES AND NEW INITIATIVES

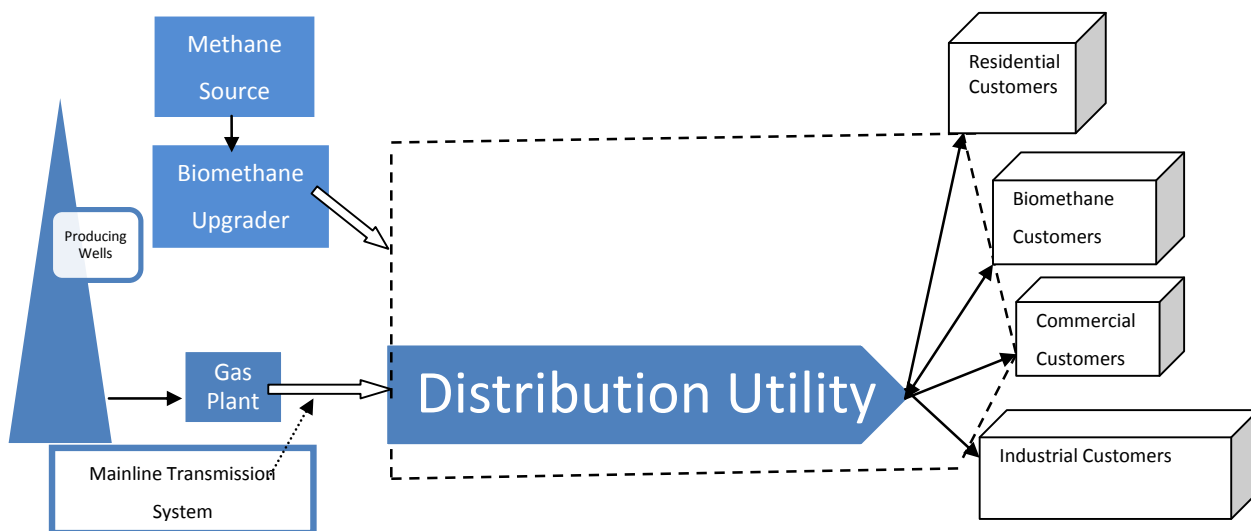
In looking at FEU's new business activities and assessing if and how they should be regulated it is useful to bear in mind the traditional gas distribution utility model as illustrated below. As each of the new business activities is discussed, a similar diagram is included to provide some perspective and clarity to the discussion.



Traditional Gas Distribution Utility Configuration

The traditional gas distribution utility is represented by the portion of the diagram above contained within the dotted lines, labelled as “Distribution Utility”. In the traditional utility, gas is received from a provincial or interprovincial mainline transmission system (represented by the arrow from the gas plant to the distribution system). The distribution system consists of the interconnection facilities to the mainline, large diameter pipe moving the gas to various parts of the distribution system, and small diameter pipes taking the gas to specific customers. The traditional utility boundary at the delivery end is at the meter going to the individual customer.

3.2 Biomethane Service



3.2.1 Key Characteristics

As outlined in the diagram above, the introduction of biomethane is more closely related to the introduction of a new supply of fuel than it is to a new business activity. While the source of the fuel may differ, Biomethane Service (the distribution of biomethane to customers) utilizes the same distribution network as the existing natural gas supply and the biomethane product is available to the same set of customers. While the diagram shows biomethane customers as a separate customer group, the customers of this service are, for the most part, already connected to the system as part of the residential, commercial or industrial classes. As all gas going into the distribution system is commingled, the customer buying “biomethane” is simply paying a premium to bring a more environmentally friendly form of methane onto the system.

The part of the biomethane initiative that moves beyond the umbrella of the traditional natural gas distribution utility is the inclusion of assets upstream of the distribution utility (including the upgrader and pipe leading up to the interconnection point where gas is delivered into the traditional gas utility system).

3.2.2 Current Status of Activities

On June 8, 2010, FEI applied for approval to offer biomethane to customers and to undertake two initial biomethane projects, one in which FEI was to take delivery of biomethane that was already upgraded to pipeline specifications by a project partner, and one in which FEI was to take delivery of raw landfill biogas from the project partner. In the latter case, FEI was to own and operate the assets to upgrade and deliver the biogas to the traditional gas distribution utility.

On December 14, 2010, the Commission approved both projects.²¹ The Commission ordered FEI to thoroughly test the proposed business in the marketplace over a two year period and to come to the Commission no later than December 2012 with a full review of the program. As well, a total cap of approximately double the anticipated production from the two approved projects was set to allow for additional projects, while containing the risk.

In the Biomethane Decision, costs were separated into two groups – those allocated to all customers and those allocated to biomethane customers.

Costs Allocated to All Customers	Costs Allocated to Biomethane Customers
<ul style="list-style-type: none"> • Costs for analyzing gas quality equipment; • Meters; • Transmission or distribution pipeline extensions to connect to the biomethane; • Any capital costs for application development and system modifications; • Costs associated with program management, customer education and additional call volume. 	<ul style="list-style-type: none"> • All costs associated with the purchase and upgrading of biomethane; • Any direct administrative costs.

²¹ Biomethane Decision and Order G-194-10

3.2.3 Key Issues

Cost and Risk Allocation

Because the project was only approved on a test basis and the costs were relatively small, the Commission did not undertake a detailed analysis in its determination of cost and risk allocation.

The Commission allowed much of the cost and risk to be borne by the traditional natural gas distribution utility customer and identified this issue as one that would need to be examined more carefully during the review process.

Identified risks included: operational and system, facilities cost, failure to supply biomethane, risk to the gas supply portfolio, and risk of obtaining sufficient customers for this service. Realization of any of these risks could potentially result in stranded assets.

Ownership of Upgrading Facilities

In the Biomethane Proceeding, the Commission made no finding on the acceptability of FEI performing the upgrading role but noted that the upgrading process does not have the significant upfront capital investment typical of a natural monopoly and may evolve into an industry with a number of small upgrading businesses. The Commission directed costs for upgrading to be segregated so as to be severable if it was determined that this business ought to be conducted through a separate entity in the future.

FEU's view is that when Biomethane projects are owned and operated by FEI, and interconnected with FEI's existing natural gas distribution system, they are "extensions" of its existing natural gas distribution system as that word is used in Section 45 of the *UCA*. (Exhibit B-17, p. 6)

FEU propose that upgrading facilities could be exempted from both Certificate of Public Convenience and Necessity (CPCN) and rate filing requirements on the basis that the purchaser of the biomethane will be FEI, whose supply contract for the biomethane will be subject to review and acceptance by the Commission regardless of whether the third-party upgrader is subject to, or

exempt from, regulation. FEU submit there is precedent for this treatment in that Independent Power Producers that sell only to BC Hydro have been exempted from the operation of regulation under Part 3 of the *UCA* despite being “public utilities”, but are not exempt to the extent that they otherwise sell to the public for compensation. (FEU Final Submission, pp. 97-98)

The Coalition for Renewable Natural Gas (CRNG):

“question[s] the notion that existing safety and regulation concerns warrant action by FortisBC, considering there are sophisticated, competent, well financed, nimble, un-regulated, competitors active and able to deliver in this space, upstream of FortisBC’s transmission or distribution ‘pipelines.’... [CRNG also] question[s] the need for a regulated gas utility to collect, process, odorize, transport or meter gas prior to supply to off-transmission, or distribution pipeline, or ‘discrete’ customers, or injection into any transmission or distribution system for further transportation, or re-sale to its, or other customers.” (CRNG Final Submission p. 2)

Biomethane Service

Need for Regulation

In Biomethane Service a different source of methane (biomethane) is brought onto the distribution system to supplement the traditional source of methane (natural gas). **Biomethane Service can therefore best be viewed as another source of supply for the regulated utility. As such, it is part of FEU’s regulated service offering.**

Business Structure

Biomethane is distributed through the traditional utility infrastructure. As well, there is an identifiable set of customers who choose to take this service. This set of customers is a subset of the traditional utility ratepayers. The difference in this case is that the Biomethane Service customer chooses to take a higher cost source of methane because of the environmental attributes. To the extent that these customers pay for the higher cost of the product, no additional risk is imposed on the traditional utility ratepayers. For these reasons, **Biomethane Service is appropriately considered a Separate Class of Customer within the natural gas class of service.**

Cost Allocation

The Panel notes that detailed cost allocation decisions will require assessment of the specific facts in each situation and will be determined based on the evidence tendered at that time. The Panel recommends that such decisions should take into account the Principle and Guidelines on cost allocation set out in Section 2.4.

Biomethane Upgrading Facilities and Extensions to Connect to Facilities

Need for Regulation

Biogas upgrading facilities are analogous to gas plants that treat conventional “raw gas” to remove impurities and gas liquids to ensure the natural gas is of pipeline quality. Such plants are regulated under the *UCA*, but are not generally part of the traditional natural gas distribution utility. They are typically owned and operated by third parties, such as pipeline companies or producers. Also, because gas plants typically are owned by sophisticated parties who usually negotiate with other knowledgeable sophisticated parties (producers), they generally apply for and are granted an exemption from regulation by the Lieutenant Governor in Council, as allowed for in the *UCA*. There is currently no exemption in place for biogas upgrading facilities.

The Commission Panel is of the view that biogas upgraders are similar to provincial gas plants in function and are regulated under the *UCA*.

Form of Regulation

The Commission Panel finds that neither biomethane upgraders nor the pipe connecting them to the traditional distribution utility are extensions of the utility system as contemplated in subsections 45(1) and (2) of the *UCA*. These pipes are a connection to a new source of supply similar to connections to interprovincial pipelines.

Regarding upgraders, the Commission Panel will not make a blanket determination in this Proceeding and future Commission Panels will be required to assess the form of regulation to be imposed on biomethane upgraders, including the possibility of a subsection 88(3) exemption,

taking into consideration factors such as the sophistication of the parties involved, the nature of the contract entered into with the utility, and whether there is a demonstrated track record in operating such facilities.

Regarding the pipe from the upgrader, these are capital additions for which there is no set test for economic feasibility. The Panel considers these additions should be reviewed on a case by case basis. The Panel reviewing the Biomethane Post Implementation Report relating to the existing Biomethane Pilot Project may wish to establish rules or parameters covering pipeline connections to upgraders.

CPCN Threshold

Submissions were sought on the CPCN threshold for biomethane activities. A \$5 million CPCN threshold was set in the Biomethane Decision in 2010. FEU submit that the threshold should be maintained because there is low risk with these assets and a modest cost.

FEU also submit that biomethane supply agreements should be reviewed as filings under section 71 of the *UCA* and that this review will provide sufficient oversight because investment in upgrading and interconnection facilities will not occur without section 71 approval, at which time the Commission can decide to require a CPCN. (FEU Final Submission, pp. 91, 97)

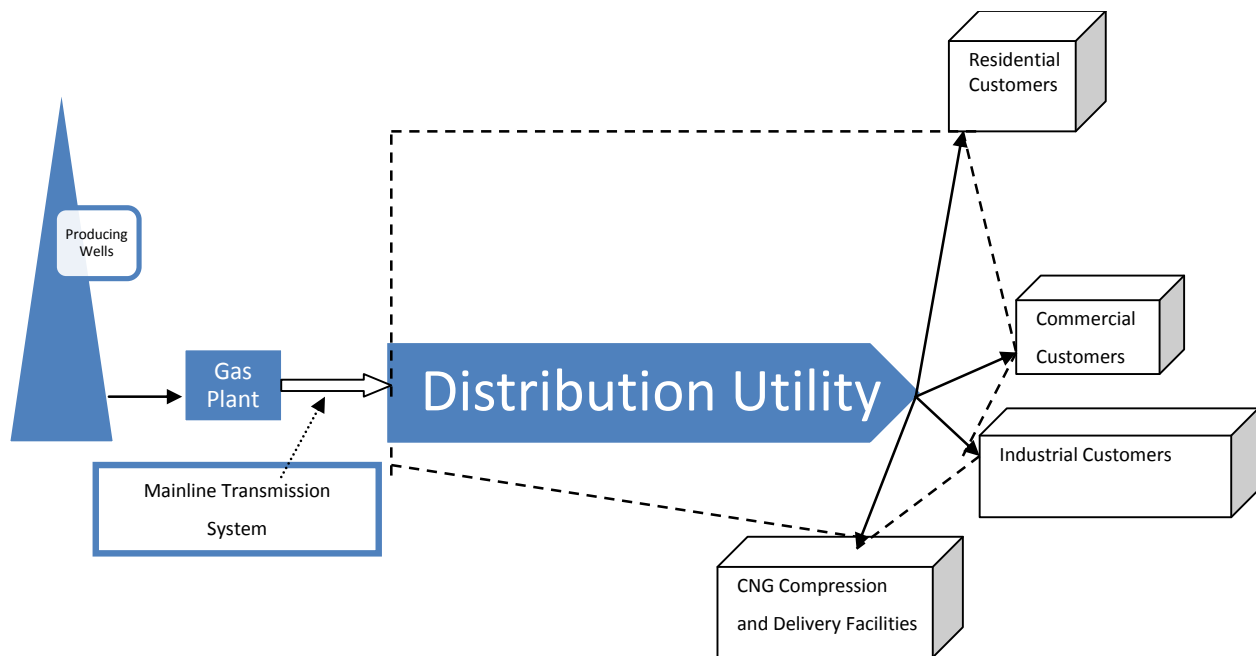
Clean Energy Fuels (Clean Energy), an Intervener in the proceeding, disagrees, and supports a zero threshold for the biomethane markets as these are not traditional markets for a utility. (Exhibit 17-5, pp. 1-2)

The Panel recognizes that the Biomethane Post Implementation Report is due in December 2012 and considers that the appropriate CPCN threshold and regulatory review (i.e. supply agreements reviewed under s. 71 of the *UCA*) will be dealt with in that Review. **The Commission Panel reaffirms the \$5 million CPCN threshold until that time.**

Ownership of Upgraders and Business Structure

With respect to FEU ownership of upgrader facilities, the Commission Panel, in keeping with the Extension of Ownership principle, recommends that the utility not own the upgrading facilities where there are viable options. A viable option is put forward by the FEU where biomethane is supplied from third parties and is regulated through filing supply contracts under section 71 of the UCA. In the case where FEU own the upgrader, the upgrader should be owned and operated in a Regulated Affiliated Business and biogas supplied to FEI under a section 71 contract.

3.3 CNG Service



Adding Compressed Natural Gas Service to the Traditional Utility Model

3.3.1 Key Characteristics

“CNG Service” is the compression and dispensing of natural gas through specialized fuelling stations. To create Compressed Natural Gas (CNG), natural gas is typically distributed through the traditional utility infrastructure to the fuelling station. At the station, the natural gas is compressed and dispensed at high pressure into a specialized vehicle’s storage tank.

As illustrated in the diagram above, compressed natural gas facilities are similar to the addition of a new type of customer for the distributor.

3.3.2 Current Status of Activities

FEU previously owned CNG fuelling stations as a regulated service to the public for high-mileage light duty vehicles. This venture was not successful and FEU left the business in 1999.

Currently FEI has two main Rate Schedules under which it sells gas for use at CNG fuelling stations: Rate Schedules 6 and 26. As well, in 2012 FEU's General Terms and Conditions 12B (GT&C12B) were approved.²² GT&C12B provide the conditions under which FEU can own and operate CNG fuelling stations for the compression and dispensing of CNG. FEU's foray into the natural gas vehicle market since GT&C12B were first proposed in 2011 has focused on commercial, return-to base fleets of buses and heavy duty trucks.

At this time, after a series of applications to the Commission, FEI is approved to provide CNG Service to Waste Management²³, to the general public from its Surrey Operations Centre²⁴, and to BFI Canada²⁵. In the BFI Decision and the subsequent Reconsideration Decision, the Commission ordered CNG Service to be maintained as a Separate Class of Service within FEI.

There are also private companies providing CNG Refuelling Service. Clean Energy, an Intervener in this Proceeding, receives natural gas from FEI and compresses and dispenses CNG for customers in British Columbia. (Exhibit C17-2, pp. 2-4; T2: 206)

²² By Order G-14-12

²³ *In the Matter of An Application by FortisBC Energy Inc. for Approval of a Service Agreement for Compressed Natural Gas Service with Waste Management of Canada Corporation and General Terms and Conditions for Compressed Natural Gas and Liquefied Natural Gas Service*; Decision and Order G-128-11, July 19, 2011.

²⁴ *In the Matter of An Application by FortisBC Energy Inc. for Approval of a Compression Rate Schedule, Compression and Dispensing Rate Calculation and Resulting Effective Rate to Provide for Public Natural Gas Vehicle Refuelling at the Surrey Operations Centre*; Decision and Order G-165-11A.

²⁵ *In the Matter of An Application by FortisBC Energy Inc. for a Certificate of Public Convenience and Necessity for Constructing and Operating a Compressed Natural Gas Refueling Station at BFI Canada Inc.*; Decision and Order C-6-12. (BFI Decision)

UCA Definition of CNG Retail Distribution

The definition section of the *UCA* provides that the retail distribution of Liquefied Natural Gas (LNG) or CNG is only a “public utility” business if it is undertaken by a public utility. This result follows from the interaction of the definition of “public utility,” which specifically does not include “...(e) a person not otherwise a public utility who is engaged in the petroleum industry...” and the definition of “petroleum industry,” which “...includes the carrying on within British Columbia of [the business of] ...(e) the retail distribution of liquefied or compressed natural gas.”

Greenhouse Gas Reduction (Clean Energy) Regulation

On May 15, 2012 the Government of British Columbia passed the Greenhouse Gas Reduction (Clean Energy) Regulation under section 18 of the *Clean Energy Act*. The regulation permits a public utility, as a “Prescribed Undertaking” to expend a total of \$104.5 million over five years on:

- Grants or zero-interest loans to persons in British Columbia, for the purchase of “Eligible Vehicle[s]” operated in British Columbia. Eligible Vehicles are medium or heavy duty vehicles, transit or school buses or marine vehicles;
- Administration, marketing, training and education for activities under the Regulation;
- Construction/purchase and operation of one or more CNG fuelling stations, within the public utility’s service area, for natural gas vehicles for transportation;
- Construction/purchase and operation of one or more tanker load out or fuelling station for LNG within BC for natural gas vehicles.

The regulation is repealed on April 1, 2017, and provides for sub-caps, within the overall \$104.5 million cap, for each specific activity listed above, among others.

3.3.3 Key Issues

In examining FEU’s CNG Service, the Commission also looked at LNG Service and made observations that relate to both. In its Decisions on CNG and LNG Service, the Commission raised concerns about cross-subsidization from the traditional natural gas distribution ratepayer to the CNG/LNG Service customer and about a regulated utility entering a competitive market.

Regarding CNG/LNG Service, the Commission has found:

- A CNG/LNG refuelling facility is not an extension of the distribution system;
- CNG/LNG fuelling infrastructure has no natural monopoly characteristics;
- It is not in public interest to provide FEI with a competitive advantage in this industry by allowing FEI to subsidize the costs of service with existing ratepayer funds;
- FEI must provide CNG/LNG Service without using any potential economic leverage it has as a public utility; and
- GHG emission reductions provide a justification for FEI's proposed NGV programs, [but] FEI's ratepayers must be insulated, to the greatest extent possible, from the costs and risks of the program.

The Commission raised concern about the risk of failure of this new business activity and who would bear the cost of such failure. Regarding cost allocation, the Commission raised concerns that costs were not properly allocated and that a cost of service model is not necessarily appropriate where FEI is proposing to enter a competitive market as a regulated entity.

The Commission has noted that if this activity were being undertaken by a person other than an existing public utility it would not be subject to regulation at all.

In its Decision on the Surrey Operations Centre, the Commission expressed concern that FEI was proposing to enter an otherwise unregulated, competitive market with a product priced considerably below the market price, which also failed to recognize/recover a number of costs.

FEU's position is that CNG Service will result in higher demand for natural gas flowing through the system and, if this new volume can be delivered without significant costs incurred to provide new facilities, this will result in lower delivery rates for all ratepayers, other things being equal, given the current rate design. In the NGV EEC Decision, the Commission found that "long term benefits to existing customers from increased throughput on the delivery system [had] not been

established.”²⁶ The Commission has also noted that, to the extent there is a benefit to FEU’s ratepayers from increased throughput, such benefit does not flow from FEU’s involvement, and if a third party were involved instead, the same claimed benefit would follow. (BFI Decision, p. 11)

Commission Determination

Need for Regulation

In the Panel’s view, the construction of a CNG dispensing facility, downstream of the natural gas meter, does not constitute an extension of the monopoly distribution system for natural gas. As noted by previous Commission Panels, if this form of activity were being undertaken by a person other than an existing public utility it would not be subject to regulation at all. This is because it is only by definition under the *UCA* that CNG Service undertaken by a public utility is also a public utility function.

CNG Service

Business Structure

CNG activities done under the Prescribed Undertaking should be structured as a separate Class of Service with the costs to be recovered from the traditional gas utility ratepayers, to the prescribed limit. The Greenhouse Gas Reduction Regulation indicates that the Government supports traditional utility ratepayers providing limited incentives and other funding for certain prescribed CNG activities, in certain limited circumstances, and for a limited period of time, presumably to “kick start” the natural gas for transportation market. The Panel notes that the monetary and temporal limits placed on the Prescribed Undertaking activities are maximum limits and, in the Panel’s view, these limits represent the maximum subsidization which ratepayers should be required to provide. In the Commission Panel’s view, it is crucial that, except to the extent required by legislation, there be no cross-subsidization as between existing ratepayers and CNG Service customers. A record of the costs for CNG Service as a Prescribed Undertaking should

²⁶ *In the Matter of An Application by Terasen Energy Inc. Energy Efficiency and Conservation Program Natural Gas Incentives Review*; Decision and Order G-145-11, August 15, 2011.

be separate from those costs for CNG Service other than under the Prescribed Undertaking to ensure that proper cost reporting can occur.

The Panel notes that the BFI CNG station is ordered to be in a Separate Class of Service. The Waste Management CNG Station was approved within the existing natural gas class of service, subject to the conditions contained in its approval. While the Panel believes it would be appropriate to have the Waste Management CNG Station within the CNG Class of Service, this report is a forward looking document and does not apply to previous decisions, unless specific issues were referred to this Inquiry. The Panel does not see this report as directing any change to the BFI or Waste Management Decisions.

Future panels may wish to consider whether the CNG market has, in fact, been kick started and whether projects in this Class of Service should be transferred to a Non-Regulated Business.

For CNG activities outside the Prescribed Undertaking, the Panel finds that the best protection against cross subsidization and the least impediment to the existence of a competitive market is to have all parties participating in the market do so as unregulated, non-utility entities. While the *UCA* sets out that the retail distribution of CNG, when done by a public utility, is a public utility enterprise and subject to regulation, the Commission has also determined, in Section 2.1 of this Decision, that it has the jurisdiction to control a utility's entry into a particular market, where necessary.

The Panel recommends that for proposed CNG projects other than Prescribed Undertakings, FEU should pursue such projects through a Non-Regulated Business. The Panel notes that a business engaged in the "petroleum industry" (which includes the retail distribution of CNG) is not a "public utility" under the *UCA*, (unless such CNG Service is being provided by an existing public utility), and views this definition as contemplating the existence of a number of unregulated participants in the industry. An existing public utility (with its market power) is required to seek Commission approval through the CPCN process before entering this potentially competitive arena. In the Panel's view, a functioning, competitive CNG market, which is desirable, is more likely to be developed with the

participation of multiple parties than with a single monopoly player. The Panel is of the further view that the existence of a single dominant player could, in fact, be detrimental to the development of this market, as potential competitors believe the playing field to be uneven and decline to participate. Accordingly, in the Panel's view, the CNG market is most likely to be successfully developed if FEU create an NRB to pursue CNG projects. If FEU do not use an NRB then they are required to file a CPCN prior to the construction or operation of any CNG facilities. Future Commission Panels in such instances would then have to consider whether it is in the public interest to accept any such proposed project and grant a CPCN given the state of the market and whether there is a need for consumer protection. The Panel also notes that, for CNG projects other than Prescribed Undertakings, future Commission Panels also have the ability to deny cost recovery for CNG projects from traditional gas utility customers.

CPCN Threshold

FEU submit that in light of the approval of GT&C 12B²⁷, the Commission should reinstate the \$5 million CPCN threshold for FEU's investments in CNG/LNG Fueling Service stations (FEU Final Submission, pp. 84-85).

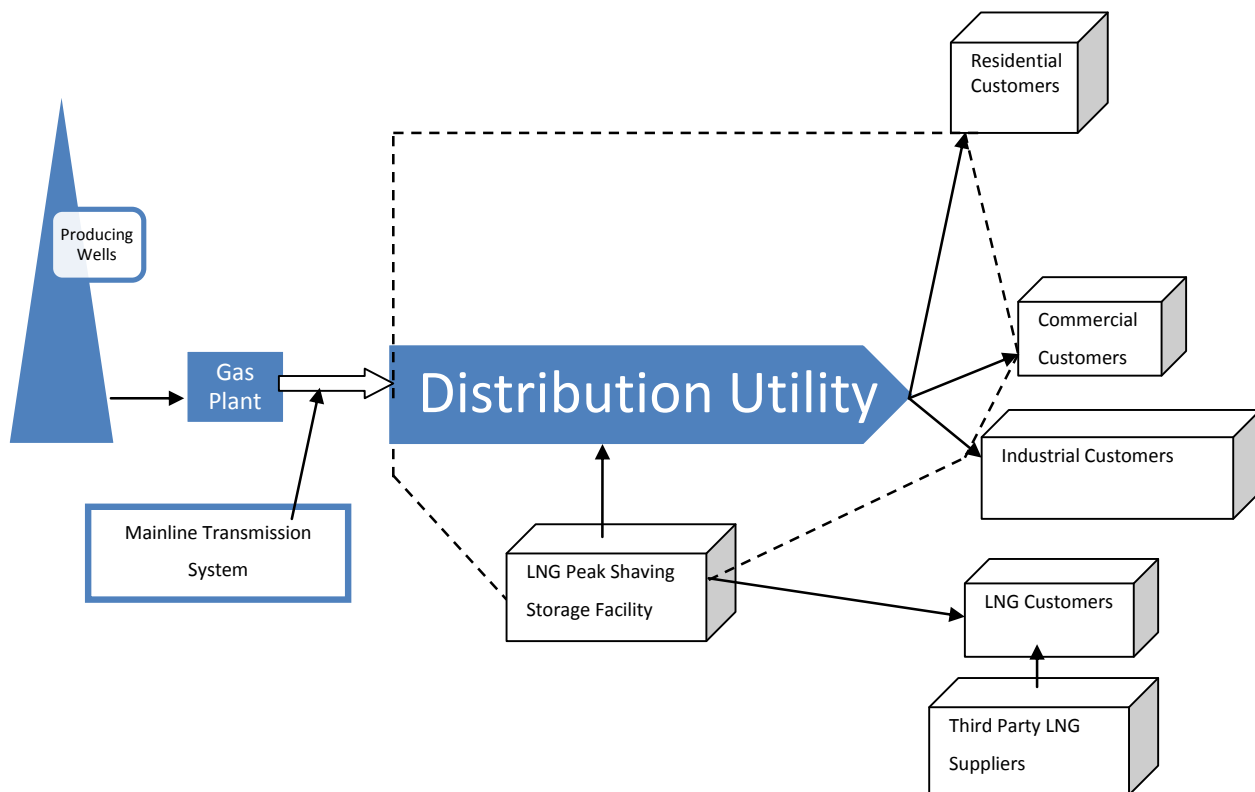
Intervener views were varied on the subject. While CEC supports the \$5 million threshold, British Columbia Pensioners' and Seniors' Organization *et al* (BCPSO), Ferus LNG and Clean Energy do not. BCPSO suggests a lower threshold to provide sufficient oversight of an unproven line of business and Clean Energy supports a zero threshold for the CNG/LNG as these are not traditional markets for a utility. (CEC Final Submission, p. 26; BCPSO Final Submission, pp. 19-20; Exhibit C8-10, p. 2; Exhibit 17-5, pp. 1-2)

The Panel determines that for CNG Service as Prescribed Undertakings no CPCN is required. For all other FEU CNG Services, a CPCN is required. The Panel agrees with Ferus LNG and Clean Energy Fuels that, at this stage, while the market is being developed in BC, it would be useful to have a transparent process for any additional utility activities occurring beyond the ambit of the Prescribed Undertaking, and, accordingly, maintains the CPCN threshold at zero. As this market

²⁷ By Order G-14-12

is otherwise not regulated, as discussed above, there is no CPCN requirement for participants which are not “otherwise public utilities.”

3.4 LNG Service



Adding LNG Services to a Traditional Gas Utility Model

3.4.1 Key Characteristics

LNG is natural gas which has been cooled to - 160 degrees Celsius, such that it condenses to a liquid state, significantly increasing the density of the fuel. LNG must be maintained at or below this temperature to remain liquid. To produce or liquefy LNG, natural gas is piped to a liquefaction facility where the cooling occurs. LNG must then be stored in an insulated tank. LNG supply in the storage tank can be re-gasified for injection back into the traditional natural gas distribution system or shipped in liquid form in a tank by truck, rail or ship. For natural gas vehicles, LNG is dispensed through a fuelling station as a liquid into the vehicle. “LNG Service” is the onsite storage and

dispensing of LNG through specialized fuelling stations. The LNG supply for a fuelling station is usually produced in a central liquefaction facility, transported by tanker truck, and stored on site.

3.4.2 Current Status of Activities

The FEU have two liquefaction facilities. These facilities were approved by the Commission for peak shaving and emergency back-up supply for the traditional natural gas utility ratepayers. For these same purposes, FEU own two tanker trailers.

Recently, FEU have begun involvement in selling LNG for transportation and have also been exploring the use of LNG as a replacement fuel for power generation. FEI is approved to provide a limited amount of excess LNG under Rate Schedule 16 which is used primarily for natural gas vehicles. The terms and conditions under which it can own and operate fuelling stations and dispense LNG are currently set out in General Terms and Conditions 12B.

Peak Shaving Supply Facilities

LNG liquefaction and storage facilities are maintained as part of the traditional gas distribution utility to provide a source of peaking supply for periods of high demand, and to provide emergency gas supplies to a part of the distribution system when a disruption occurs due to maintenance or an unplanned outage. As this supply source is necessary and integral to the ability of the natural gas distribution utility to serve its core customers, these LNG facilities are included in rate base and form part of the utility's regulated function. LNG is added back into the distribution system either at the LNG plant itself, after being returned to a gaseous state, or, as noted above, it can be transported by tanker, in its liquid form, to another injection site on the system.

FEU's two liquefaction facilities were constructed pursuant to CPCNs to provide peak shaving capability and emergency back-up supply to serve the traditional natural gas distribution utility ratepayer. The first facility is located at Tilbury, in the Lower Mainland, the other at Mt. Hayes on Vancouver Island.

These facilities are operated to fill the tanks in periods of low demand so the tanks are full by November, the start of the peak demand season. The Tilbury liquefaction facility has a storage capacity of approximately 606,500 GJs and a LNG liquefaction capacity of 5,110 GJs/day. It takes approximately 133 days (or almost 4.5 months) to fill the tank at Tilbury, and four days to empty it into the system in a gaseous form. The Mt. Hayes LNG facility has a storage capacity of approximately 1.6 million GJs and a liquefaction rate of approximately 8,200 GJs per day, such that it takes close to 200 days (or over 6.5 months) to fill the storage tank and 10 days to empty it.

Tanker Trailers

The FEU currently own two tanker trailers which are used to transport LNG to customers. However, their primary function, and the reason for their inclusion in the monopoly distribution utility rate base, is to transport backup supply to the system during emergency outages or scheduled work.

Fuelling Stations and General Terms and Conditions 12B

GT&C12B provides the terms and conditions under which FEU can own and operate fuelling stations.

GT&C12B defines LNG Service as the storage and dispensing of LNG and provides that LNG Service typically consists of transport and delivery of LNG from FEU's peak shaving plants, installing and maintaining an LNG fuelling station, and dispensing LNG.

GT&C12B also sets out the terms and conditions under which the FEU will own the fuelling stations. In addition, it sets out various terms of service including a "take-or-pay" provision (customers have a minimum contract demand), and the costs to be included in the cost of service calculation for the fuelling station.

FEI purchased a mobile LNG refuelling station in December 2011. The Commission denied inclusion of the asset in rate base because it would require the cost of the station to be borne by traditional gas ratepayers.²⁸

In 2012, the Commission approved FEI under GT&C12B to own, construct and operate a refuelling station on Vedder Transport Ltd.'s property.²⁹

FEI Rate Schedule 16

LNG is sold or dispensed from Tilbury under Rate Schedule 16 (RS 16). RS 16 was approved by the Commission in 2009 as a five year pilot and allows for interruptible service, to preserve supply for the traditional utility ratepayers. The maximum quantity of LNG for sale under RS 16 is currently 1,040 GJ (which is equivalent to one tanker load) per day, or 379,600 GJs per year and any single customer may only take 50 percent of the available LNG capacity in one month. FEI has three commercial customers who take LNG Service under RS 16. Currently there is an application for a permanent RS 16 with increased quantity and firm supply before the Commission. (Appendix A to Order G-145-11, p. 15; Terasen Gas Inc. Application for Rate Schedule 16, pp. 4, 18)

Competitive LNG Market

Ferus LNG advises that it has immediate plans to produce, store, transport, and provide fuelling services for LNG. It also submits evidence of other providers including Clean Energy, EnCana, and Shell who intend to enter the BC LNG market. (Exhibit C8-5-1, pp. 5-7)

UCA Definition of LNG Retail Distribution

As with CNG, the definition of “public utility” in the UCA provides that it is only where an entity engaged in the “petroleum industry” (which includes the retail distribution of liquefied or compressed natural gas) is “otherwise a public utility” that the business of the retail distribution of LNG meets the definition of public utility.

²⁸ 2012-2013 RRA Decision

²⁹ *In the Matter of An Application by FortisBC Energy Inc. for a Certificate of Public Convenience and Necessity for Constructing and Operating a Liquefied Natural Gas Refueling Station at Vedder Transport*, Order C-11-12.

Greenhouse Gas Reduction (Clean Energy) Regulation

The Greenhouse Gas Reduction Regulation, described in the CNG section, also provides for a public utility's expenditures for LNG facilities and services, specifically for vehicle grants and zero-interest loans and for construction/purchase and operation of one or more tanker load out facilities or fuelling stations for LNG within BC for natural gas vehicles. Of note is that while the CNG fuelling stations are required to be within the service territory of the public utility, the LNG load-outs or fuelling stations are not subject to this restriction and are not required to be in the public utility's service area.

3.4.3 Key Issues

As noted in the CNG Section, the Commission has raised concerns about cross-subsidization and whether a regulated utility should be entering a potentially competitive market, as well as the business risks related to CNG/LNG which significantly differ from those of the traditional utility.

The risk of cross-subsidization for LNG Service is even more acute than for CNG because the liquefaction process requires extensive capital-intensive infrastructure. In the case of FEU, the Tilbury and Mt. Hayes facilities and the two LNG tankers were (or will be) paid for by the traditional utility ratepayers. LNG Service has three additional considerations beyond those relating to CNG Service. These are:

- the use of excess capacity of LNG supply from the Peak Shaving facilities;
- the use of FEU's two LNG tankers for the natural gas vehicle market; and
- the benefits of LNG sales to the traditional natural gas distribution utility ratepayers.

Commission Determination

Need for Regulation

Based on the evidence in the Inquiry, the Commission Panel considers that LNG production, transportation, and retail distribution are, or are anticipated to become, competitive markets. As

per the Guidelines in Section 2, new business activities are regulated when there are sufficient natural monopoly characteristics to warrant regulation or when legislation requires regulation, and should not impede competitive markets. Like CNG, the retail distribution of LNG is considered to be part of the petroleum industry in the *UCA* and, unless the person engaged in the retail distribution of LNG is “otherwise a public utility”, this activity falls outside the definition of public utility and is not subject to regulation. Therefore, LNG Services are regulated if they are undertaken by a public utility, but are not regulated otherwise.

As with CNG, the Commission Panel notes that the Greenhouse Gas Reduction Regulation provides for certain limited expenditures to promote the use of LNG for transportation to be recovered from the traditional utility ratepayer. The Panel therefore sees LNG services under the Regulation (as a Prescribed Undertaking) as different from those outside the Regulation.

LNG Activities Other Than Prescribed Undertakings

Business Structure

The Panel finds that the best protection against cross-subsidization and the least impediment to the competitive market is to have all industry participants do so as unregulated, non-utility entities. While the *UCA* sets out that LNG retail distribution when done by a public utility is regulated, the Commission has also determined, in Section 2.1 of this Decision, that it has the jurisdiction to control a regulated entity’s entry into a particular market, where necessary.

In the case of LNG activities, other than for a Prescribed Undertaking, the Commission recommends that that if FEU wish to participate in this market, they do so through a separate Non-Regulated Business. The Commission Panel considers that the public interest will be best served by ensuring that all participants in the nascent LNG market (other than utility participants doing so as Prescribed Undertakings) be non-regulated entities so the existence of a dominant player and the additional costs which flow from regulation do not impede the competitive market. The Panel further finds that public interest considerations in respect of LNG include protection of the traditional natural gas distribution customers from excessive rates that may result from

cross-subsidization and from taking business risks which ought to be borne by participants in a competitive market. The potential risks from LNG Service are exacerbated by the large capital investment required for LNG infrastructure.

Although FEU urge consideration of the benefit of LNG Service to the traditional gas utility ratepayer, the Commission Panel finds that a benefit to those ratepayers may not be present. LNG can be sourced anywhere, subject to price and transportation costs. The connection to the traditional natural gas distribution franchise ends at the nozzle of the LNG facility producing the product. If another LNG producer or FEU themselves build an LNG production facility connected to a mainline transmission system to meet the needs of LNG transportation customers, there would be no use of the traditional natural gas distribution system and no benefit to the traditional natural gas distribution customer. The Panel notes that the Greenhouse Gas Reduction Regulation contemplates funding for CNG Service within the utility franchise area. In contrast, funding can be applied to LNG Service anywhere within the province.

In all cases, if FEU have excess capacity to supply LNG and/or tanker service, the FEU should supply that LNG at the higher of the market price or the fully allocated cost of service. This upholds the guideline that “[a]n approved Code of Conduct and Transfer Pricing Policy should govern interactions between the Regulated Business and any Unregulated Affiliated Business and should include the following features:

- minimal sharing of resources – at the level of corporate services only; and
- use of the full cost to provide the service or market pricing, whichever is higher.

LNG Activities as a Prescribed Undertaking

Business Structure

LNG Activities which are done as a Prescribed Undertaking under the Greenhouse Gas Reduction Regulation are to be maintained as a Separate Class of Service with the costs recoverable from the traditional gas utility ratepayers, to the prescribed limit. In the Panel’s view, the Regulation was put in place by Government to kick start the natural gas for transportation market. The Regulation allows for the subsidization by the traditional natural gas utility ratepayer of specific

activities to support this market to a maximum amount for a period of approximately five years. The benefit of a Separate Class of Service is that it segregates and accounts for costs related to LNG activities in a transparent manner. This Class of Service does not preclude the utility from recovering its costs incurred with respect to the Prescribed Undertaking from the traditional utility ratepayer, as required by the Regulation.

Future panels may wish to consider whether the LNG market has, in fact, been kick started and whether projects in this Class of Service should be transferred to a Non-Regulated Business.

CPCN Threshold

No CPCN requirement exists for LNG activities undertaken within the Prescribed Undertaking or by non-utility providers of LNG refuelling services. While the Commission strongly recommends that any LNG activities outside the Prescribed Undertaking be undertaken by an NRB, if the FEU wish to apply to undertake LNG activities within the utility, the CPCN threshold is maintained at zero, for the reasons set out in section 3.3.

General Terms and Conditions 12B

FEU should file an application with the Commission to revise GT&C 12B to reflect the provisions of the Greenhouse Gas Reduction Regulation and the findings of this Report.

3.5 Thermal Energy Services

3.5.1 Current Status of Activities

Prior to 2010, FEI undertook AES projects through its non-regulated subsidiary Fortis Alternative Energy Services Inc. (FAES). FAES is an affiliate of FEI, with no employees, and relies on FEI and FEI's parent company, Fortis Holdings Inc., to provide all resources for the services it provides. (PCI Marine Decision, pp. 3, 52-3)

In 2009, as part of FEI's Revenue Requirements Negotiated Settlement³⁰, General Terms and Conditions 12A were approved. GT&C12A sets out the conditions under which FEI would provide alternative energy extensions. These alternative energy technologies were specified as geo exchange, solar-thermal and district energy systems. GT&C12A also sets out that the utility would own these systems and that the cost of service model would be used to determine any rate charged.

In that negotiated settlement FEI was approved to undertake AES services as a Separate Class of Service within the utility under GT&C12A and to create the Thermal Energy Services Deferral Account, or TESDA, to allocate costs between the traditional utility ratepayer and the new AES Class of Service.³¹ In this Proceeding, FEU renamed AES to TES because, in part, there are more technologies than the three originally contemplated in GT&C12A.

In this Decision "AES" is defined as geo-exchange, solar-thermal and district energy systems, as specified in FEI's tariff General Terms and Conditions 12A and FEI's 2010/2011 Revenue Requirement Negotiated Settlement Agreement while "TES" includes AES but also covers a broader range of technologies and activities.

Also in this Proceeding, FEU have used the term "Discrete Energy Systems", and there has been significant debate on whether a useful distinction can be made between this term and District Energy Systems, for the purposes of regulation. Most Interveners have not recognized a distinction between the two terms in their evidence, and have instead referred to an overall thermal class of service. As a result, much of the discussion in this section relates to thermal services in general.

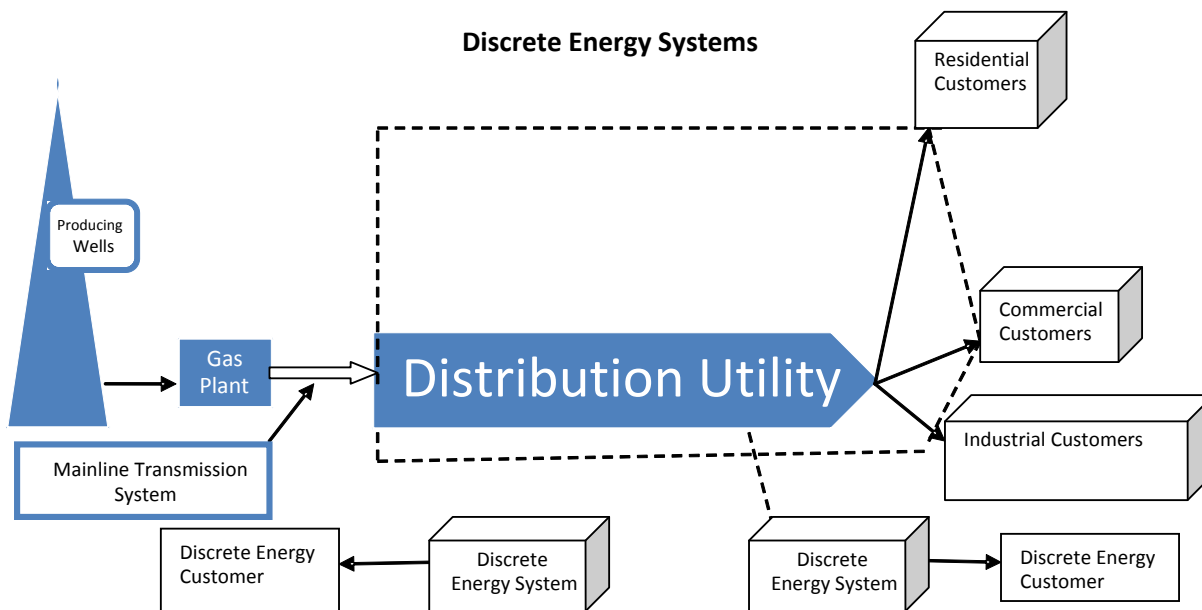
³⁰ *In the Matter of An Application by Terasen Gas Inc. for Approval of 2010 and 2011 Revenue Requirements and Delivery Rates*; Order G-141-09, November 26, 2009.

³¹ *Ibid*

In the Delta School District Decision,³² the Panel found there are sufficient differences between Discrete and District Energy Systems to justify consideration of these system types separately and this Report will follow suit.

This Section of the Report defines Discrete and District Energy Systems, considers the need to regulate each type and, if so, the best form of regulation. As well, this Section discusses the appropriate business structure and cost and risk allocation for a regulated utility undertaking TES.

3.5.2 Discrete Energy Systems



Introduction of Discrete Energy Systems to a Traditional Distribution Utility Model

³² Delta School District Decision, Appendix D, p. 2

3.5.2.1 Key Characteristics

A Discrete Energy System, such as a geothermal ground loop, is connected to a single customer. There may or may not be a connection to the gas utility to provide backup or supplementary energy (as illustrated by the system connected to the utility by the dashed arrow). Potential sources of thermal energy include solar, biomass, air source heat pumps, ground source heat pumps, geo-exchange systems, electrical heat, fuel cell heat, waste heat systems, and high efficiency gas boilers. A Discrete Energy project may entail the supply of equipment or facilities alone, energy alone, or all of the equipment, facilities and energy.

The Panel finds that a “typical” Discrete Energy System has the following characteristics:

- a stand-alone system, beyond the traditional utility meter;
- a single customer;
- no shared or common facilities beyond the boundaries of a single site. If there is a distribution system, it serves one or more buildings within a site;
- no use of public rights of way or streets;
- a system sized to meet the energy demands of a specific, known user;
- use of a range of possible technologies and energy sources.

These characteristics potentially allow the single customer to choose to own the assets, which is more difficult where an energy system serves multiple customers.

ESAC describes discrete energy projects as being “fundamentally private commercial transactions” where “a single customer is served in a private commercial transaction. The customer has available to it a range of competitive options in equipment and facilities and may choose from a variety of suppliers.” (ESAC Final Submission, pp. 4, 20)

3.5.2.2 Current Status of Activities

As of the date of this Report, the Commission has dealt with Discrete Energy System issues in three recent applications and subsequent orders, namely the Delta School District Decision,³³ the Tsawwassen Springs Decision,³⁴ and the PCI Marine-Gateway Decision.³⁵

Delta School District

In the Delta School District Decision, FEI was awarded a CPCN and a rate was approved for public utility service to provide thermal energy to the Delta School District. The project involved the replacement of conventional boilers with high efficiency condensing boilers at eight sites, the conversion of existing thermal plants to geo-exchange systems at 11 sites, and the retrofit/replacement of existing mechanical infrastructure at all 19 sites to accept the new technologies.

FEI sought to provide this thermal service to the Delta School District under GT&C12A. However, the thermal service involved both ground source heat pumps in combination with high-efficiency boilers and stand-alone gas boilers. The Commission deferred a decision on the inclusion of stand-alone natural gas boilers in GT&C 12A to this AES Inquiry. GT&C12A was also declared interim.³⁶

The Commission directed that the thermal services be provided to the Delta School District by a separate business entity. FEI was further directed to develop a consistent cost allocation methodology and to follow its Transfer Pricing Policy, if applicable, to allocate appropriate costs to Delta School District thermal services.

³³ Delta School District Decision, Order G-31-12, March 9, 2011

³⁴ *In the Matter of An Application by FortisBC Energy Inc. For Approval of a Capital Expenditure Schedule, Rate Design and Rates for an Operating and Maintenance Agreement to Provide Thermal Energy Services Between FortisBC Energy Inc. and the Strata Corporation of Tsawwassen Springs Development*, Decision and Order G-100-12, July 20, 2012 (Tsawwassen Springs Decision)

³⁵ *In the Matter of An application by FortisBC Alternative Energy Services Inc. for a Certificate of Public Convenience and Necessity for the PCI Marine Gateway Thermal Energy Project and Approval of Rates for Thermal Energy Service to PCI Developments Inc.*; Decision and Order C-10-12, September 27, 2012 (PCI Marine Decision)

³⁶ By Commission Order G-223-11.

Tsawwassen Springs

In the Tsawwassen Springs Proceeding, FEI applied to purchase four loop field systems which are key components of a ground source heat pump system. The systems to be purchased were originally constructed by the developer of the Tsawwassen Springs Project to serve a single strata condominium development. The Strata retains ownership of all other components of the energy system, including backup and peaking boilers. The agreement between FEI and the Strata Corporation (originally executed between FEI and the developer of the Tsawwassen Springs Project and subsequently assigned to the Strata Corporation) was for FEI to own the loop field systems and provide thermal energy services at a fixed rate. The Commission approved the purchase but denied the proposed rate and rate design. The Commission identified a number of shortcomings with the cost of service model and rate design, including the use of the TESDA as a variance account and an insufficient contribution by the Tsawwassen Springs Project to the reduction of the TESDA. Any costs for the provision of thermal energy to Tsawwassen Springs were directed to be removed from the TESDA and borne by the shareholder. FEI was also directed to assign the Tsawwassen Springs Development to a separate affiliate.

FEI subsequently assigned both the Delta School District and Tsawwassen Springs Projects to FAES.

3.5.2.3 Key Issues

Since FEU have entered into the AES business, issues relating to cross-subsidization by the traditional gas utility ratepayers have been raised. Other key issues include:

- The nature of the discrete thermal services market;
- Whether the Projects should be considered regulated activities;
- The need to regulate contracts negotiated in good faith by two sophisticated parties;
- The need to regulate in cases where parties seek regulatory protection under the *UCA*;
- The appropriate pricing methodology, namely, whether it is appropriate to use full cost of service rate of return regulation where market based pricing is available, and the implications for the balance of risk and reward between the thermal ratepayer and FAES;
- The appropriateness of the economic test in and use of GT&C12A for FEI's TES projects;

- The appropriateness of the current Transfer Pricing Policy for transactions between FEI and FAES;
- The fair allocation of the TESDA;
- What costs are appropriately shared among TES ratepayers taking service from different systems;
- The degree of alignment between the interests of the developer and the final customer where service agreement contracts are signed by developers, and then assigned to the final customer.

In the Tsawwassen Springs Decision, the Commission also noted the importance of each project recovering its associated costs only from its own customer base to the proper operation of the market in a regulated, non-natural monopoly environment, thereby attempting to ensure that customers are faced with prices which promote efficient investment decisions.

FEI/FAES have proposed the use of a modified Transfer Pricing Policy as the basis for cross-charges between FEI and FAES (which excludes an allocation of FEI's overhead and facilities fee). As noted earlier, FAES is not a standalone entity and relies wholly on intercompany transfers to function. The Commission expressed concerns about the appropriateness of the modified Transfer Pricing Policy for cross-charges between FEI and FAES in the Delta School District Project Compliance Filing³⁷. The Commission noted that the current, fully integrated, business structure requires a great deal of diligence to prevent cross-subsidization.

Commission Determination

Need for Regulation

FEU submit that TES is a regulated public utility service, irrespective of the provider of the thermal energy and whether it is a Discrete or District Energy System because these systems meet the definition of "public utility" in the *UCA*. (FEU Final Submission, pp. 48-49)

³⁷ Reasons for Decision attached to Order G-71-12, p. 4

FEU acknowledge that TES is not regulated in any other jurisdiction in Canada or the USA, but argue that the B.C. legislation is different, and that, under the *UCA*, all thermal activities are properly regulated. (Exhibit B-2, p. 126)

Beyond meeting the legal definition of a public utility, FEU argue that regulation of thermal services is also appropriate:

“because TES are generally complex and costly to operate and maintain, and once installed, the owner or operator has a measure of monopoly power over the customers because there will only be one thermal energy services provider within a certain area, and it is also costly to switch to another energy source. As a result, the customers of these systems have a strong interest in having recourse to a regulator who can ensure just and reasonable rates for the service, and ensure that the service provided is reasonable, safe, adequate and fair.” (Exhibit B-2, p. 113)

Dr. Jaccard’s opinion is that TES in British Columbia does not have the characteristics of a natural monopoly (there are no large initial capital costs creating barriers to entry and no franchise agreements granting the exclusive or near-exclusive right to serve in an area). Rather, his view is that the market is competitive for the right to construct TES projects in the first instance, but that when TES results in the creation of a public utility, regulation is appropriate. (Exhibit C12-5, pp. 11-12)

The issue of customer protection was raised by ESAC and BCPSO. BCPSO’s view is that TES should be subject to full regulation because it is an emerging market and there is no real-time competitive market for customers to resort to if their situations are untenable. (BCPSO Final Submission, pp. 16, 18) ESAC submits that Discrete and District Energy Systems are different in that District Systems have multiple customers who are vulnerable to the actions of the project’s owner and therefore warrant regulation. (ESAC Final Submission, p. 26)

In the case of Discrete Energy Systems with a single customer, the Commission Panel finds that the *UCA* requires regulation of these Systems. Despite this legal requirement, the Commission Panel’s opinion is that there are not sufficient monopoly characteristics or a sufficient need for consumer protection for these systems to warrant regulation. The customer has the opportunity

to purchase such a system or to have one of a number of service providers install, own and operate such a system exclusively for the use of the customer. If not satisfied with the offering of a specific service provider, the customer is free to choose an alternative supplier. The magnitude of the purchase or the contractual terms with the service provider may inhibit switching away from the service once it is implemented. However, this is no different than many types of purchases, none of which are regulated.

As well, the Panel finds there is a competitive market for the provision of these systems

(indicating there is no need for a monopoly provider), and as noted in Section 2.2, competitive forces are accepted as providing societal benefits more efficiently and effectively than economic regulation.

The Commission Panel finds that economic regulation of Discrete Energy Systems is not warranted given the lack of natural monopoly characteristics and the lack of a need for consumer protection in light of the presence of a functioning competitive marketplace. In the Commission Panel's view, when the *UCA* was drafted this type of activity was not contemplated. The Panel recommends that when the *UCA* is next reviewed it should be amended to allow the Commission to forebear from regulating where it finds there is no natural monopoly or need for consumer protection.

The Panel recommends that until such time as the *UCA* is amended, an exemption from regulation pursuant to subsection 88(3) of the *UCA* be considered for Discrete Energy Systems with no natural monopoly characteristics or need for consumer protection. The Panel finds that where such exemptions are granted, it would be appropriate for FEU to pursue the construction and/or operation of Discrete Energy Systems through a stand-alone Non-Regulated Business that is separate from the traditional gas distribution utility. Consistent with the principles contained in Section 2.4, any sharing of utility resources must be consistent with an approved Code of Conduct and Transfer Pricing Policy.

CPCN Thresholds

Prior to exemptions being made as contemplated by the *UCA*, or a revision to the *UCA*, a CPCN threshold for TES projects must be considered. FEU recommend a \$5 million threshold to reflect the small scale of the operations. FEU argue that this threshold is appropriate because the Commission has the ability to approve TES rates and service agreements and the ability to require the FEU to seek a CPCN for a particular TES project in appropriate circumstances. FEU take the position that the alternatives analysis typically included with a CPCN application is less important where the customer has chosen the FEU's cost of service model and has agreed to the terms and conditions of service. (FEU Final Submission, pp. 47, 55-56)

The CEC supports a \$5 million threshold but allows for the possibility of different thresholds for other regulated providers depending upon the circumstances and the experience the Commission has with the provider. (CEC Final Submission, p. 21)

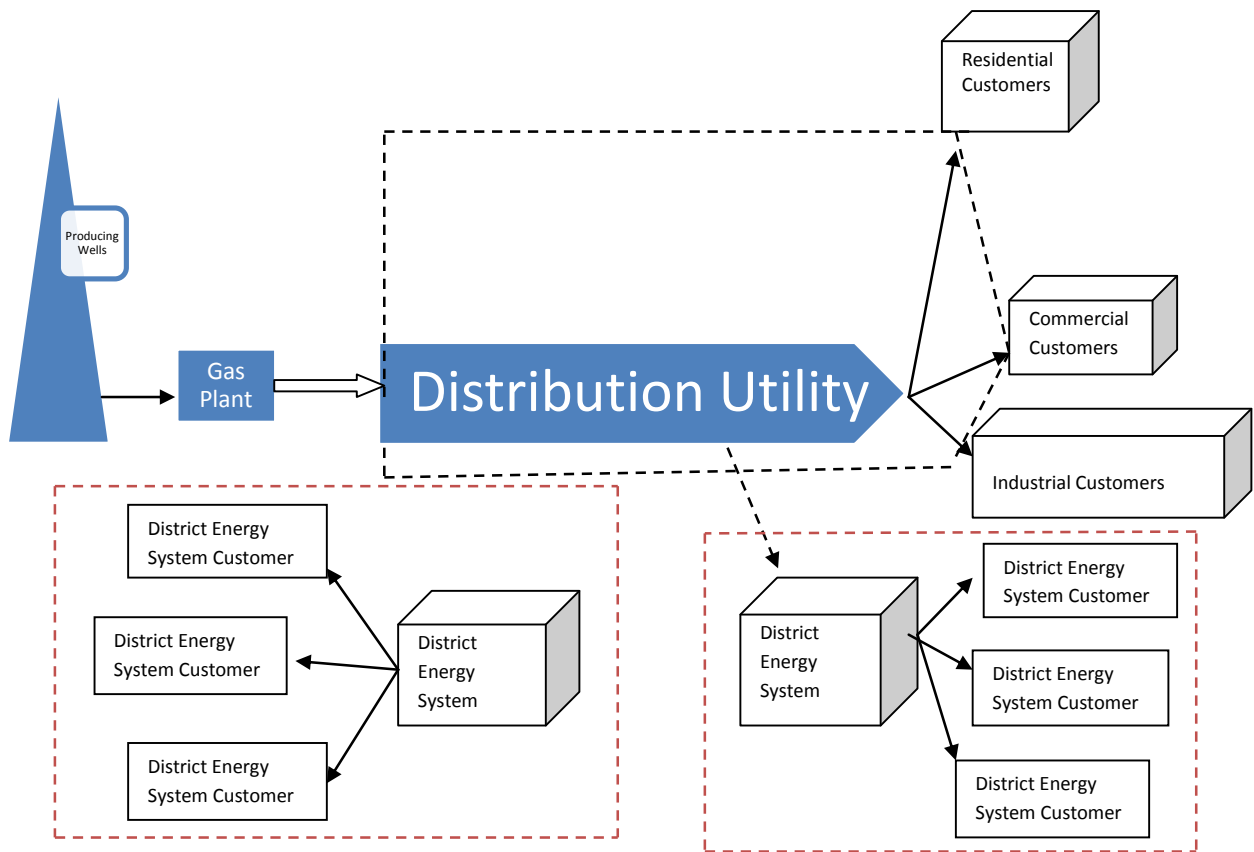
Corix agrees in principle with the need for a threshold and submits that any threshold applied must apply equally to all TES providers. (Corix Final Submission, pp. 18-19)

BCPSO and ESAC both argue for a zero threshold because those TES projects are investments in a novel line of business. (BCPSO Final Submission, p. 17; ESAC Reply Submission, p. 7)

Due to the standalone nature of each thermal district project, **the Commission agrees with BCPSO and ESAC that at this stage an appropriate CPCN threshold for TES Projects should remain at zero.**

3.5.3 Other Thermal Energy Systems

Thermal Energy Systems which have more than one customer come in a number of models and configurations. The most commonly discussed are District Energy Systems.



Introduction of District Energy Systems to the Traditional Gas Utility Model

In District Energy Systems, customers are generally served from one centralized energy source. This could consist of geothermal systems, a large gas boiler system, or other centralized sources of energy used to provide heat (and in some instances, cooling). A number of customers are attached to the central energy provision system. A traditional gas utility entering into this business may be providing natural gas to the centralized energy facilities (either as a primary energy source or as a supplementary or backup energy source). This is illustrated in the diagram above with the District Energy System connected to the distribution utility by the dashed arrow. It is also possible that the District Energy System uses no natural gas.

3.5.3.1 Key Characteristics

As Thermal Energy Systems other than Discrete Systems come in a range of configurations, their characteristics also range. The key differentiating factor is that typically, more than one customer is served.

The Panel finds that a “typical” district energy system has the following characteristics:

- Multiple customers in multiple buildings receive service through a common energy distribution system;
- The system is connected to one or more shared heat sources or central energy plants;
- There may be more than one class of customers with corresponding rates;
- There is a physically interconnected energy system, with shared or common facilities distributing thermal energy to buildings or customers within the service area; the system does not encompass equipment which is located within one building and/or site, and which is solely for the benefit of one building/customer;
- Thermal distribution piping and energy transfer stations are present;
- Thermal energy demand is uncertain because final customers, timing and building design are unknown;
- Economies of scale are present;
- The ability to increase the centralised energy supply to meet the needs of new customers exists; and
- There are multiple stakeholders, requiring multiple agreements to be negotiated, and development tends to be longer due to the greater scope and scale.

3.5.3.2 Current Status of Activities

The District Energy Systems currently regulated by the Commission are Central Heat in Vancouver, the Dockside Green Energy project in Victoria, the Neighbourhood Utility Service for UniverCity at Burnaby Mountain and the most recently approved, River District Development Project in Southeast Vancouver.

In Dockside Green, UniverCity and River District, restrictions are in place so that residents are obliged to use heat provided by the utility. In other words, in these developments customers are captive to the central heating system.

Central Heat, on the other hand, operates its steam District Energy System in the same geographic area in downtown Vancouver as BC Hydro (electricity) and FEI (natural gas). Building owners in Downtown Vancouver are not obligated to obtain space heating from Central Heat, which must compete for the business. In this system there are limited barriers to entry or exit of customers as there are other heating options available.

3.5.3.3 Key Issues

Whether Thermal Energy Services are regulated and if so, the proper form of regulation, were key issues in this Proceeding.

Where a traditional utility, with its access to a large ratepayer base, operates District Energy Systems on an integrated basis, cross-subsidization is a concern.

In the Panel's view there is a grey area as to what constitutes a Discrete Energy System as compared to a District Energy System. This, for example, could involve the service to a single strata, but with multiple customers in the strata and a need to regulate to protect customer interests.

A further issue is where ownership of the TES system is driven by financial considerations. ESAC submits:

“one test for the Commission to apply in assessing AES projects is whether, if the project was owned by the customer, there would be any basis for regulation. In a Discrete Energy Project, with a single customer, the question of who owns the project should not determine whether regulation is required. This would be contrasted with a District Energy System, where there are multiple customers who are not owners and who must rely upon the shared use of the project and

who are thus vulnerable to the actions of the project's owner.” (ESAC Final Submission, p. 26)

Commission Determination

Need for Regulation

FEU and the Interveners concur that District Energy Systems should be regulated. ESAC submits that regulation of District Energy Systems is appropriate as they exhibit the characteristics of a “natural monopoly”. In addition, as they involve multiple customers using shared or common facilities, ESAC argues that in this sense they can reasonably be regarded as providing service to “the public” and, if they otherwise meet the criteria in the definition of “public utility” in the *UCA*, they should generally be regulated. (ESAC Final Submission, p. 20; ESAC Reply Submission, p. 4)

B.C. Sustainable Energy Association and the Sierra Club of British Columbia (BCSEA) submit that “there is no bright line between discrete and district thermal energy services. It is better to focus on the best regulatory system for the particular situation.” (BCSEA Final Submission, p. 13)

The Panel finds that TES systems other than Discrete Energy Systems meet the definition of “public utility” in the *UCA*, and are regulated. However, the degree of natural monopoly characteristics and the degree of consumer protection required will affect the form of regulation.

Form of Regulation

Interveners provided a number of views on the appropriate form of regulation.

Corix submits that the form and degree of regulation should match the scope and scale of the project and the public interest in regulation to protect the customers. It notes:

“the Commission has discretion in how it applies its regulatory mandate. In accordance with the principles established in its previous decisions and the general Canadian approach to public utility regulation, the commission should regulate only as necessary to protect the public interest – i.e. where the competitive market is failing in some respect.” (Corix Final Submission, p. 1)

“Starting with a competitive market as the foundation for TES regulation has more merit than moving directly to supplant competition with a potentially unnecessary regulated approach.”
(Corix Final Submission, p. 17)

ESAC argues that, in the absence of competition, the only incentive for efficiency is regulation, and notes that it is very difficult to regulate efficiency. (ESAC Reply Submission, Schedule A, p. 6)

There was broad support in the Proceeding for streamlined regulation, but little clarity on what that should entail.

In keeping with the Principles and Guidelines set out in Section 2.2, the least amount of regulation to protect the ratepayer should be used. The Commission Panel has serious reservations about the applicability of the regulated cost of service model across the entire regulated TES market and reiterates the comments of the Commission in the Delta School District Decision that full cost of service regulation is the “method of last resort” (see Section 2.2 of this Report). The presence of market-based pricing or the protection of consumer interests through the execution of long term contracts may result in a better alignment and balance of risks and incentives between ratepayers and the thermal provider. Regulation by complaint may also provide the appropriate level of consumer protection.

The Commission agrees with ESAC that it is difficult to regulate efficiency, and finds that market-based pricing or long term contracts may be better at promoting efficiency, cost-reduction and enhancing performance. Regulated TES utilities are encouraged to pursue market-based pricing mechanisms to “increase efficiency, reduce costs and enhance performance” as contemplated by section 60(1)(b) of the *UCA*.

Commission Staff will be conducting consultations on a scaled regulatory framework for TES utilities, following the conclusion of this Inquiry. This process will, with further input from stakeholders, establish the form of regulation required, in accordance with the Principles and

Guidelines set out in Section 2. The framework that results from this consultation process will be brought to the Commission for approval.

Business Structure

FEU consider that the class of service model for TES captures “legitimate economies of scope” that benefit both natural gas and TES customers, and that there are a variety of sound cost-allocation methodologies that can be employed to permit the Commission to treat a thermal class of service as a self-contained unit for ratemaking purposes. (FEU Final Submission, pp. 1, 58)

As well, FEU submit that TES services are part of their energy delivery system because, in part, they almost always rely on a conventional energy source to provide backup and peak demand.
(Exhibit B-17, p. 5)

Corix argues for full corporate separation of the TES and natural gas businesses with a comprehensive Code of Conduct governing inter-affiliate dealings. It argues that “FEI’s TES is a new line of business “downstream” of the FEI natural gas meter, not merely a separate class of service”. Corix submits that its proposed structure is “the most efficient and practical way to protect against the risks (to both the ratepayers and the emerging TES market itself which flow from FEI’s “strong incentive ...to take unfair advantage of its monopoly position as a natural gas distribution utility”). Corix recommends that all components of FEI’s TES business be transferred to a separate legal entity operating at arm’s length from FEI, on a fully loaded accounting basis, including accrued research and development costs. (Corix Final Submission, pp. 2, 25, 30)

Corix also submits that this structure will reduce the need for intense regulatory oversight, and the regulatory burden on all participants. Any residual costs that FEI does not include in the TES cost of service would be absorbed by the FEI TES company shareholder, not the natural gas ratepayer.
(Corix Reply Submission, p. 9)

The Commission Panel agrees with Corix that TES comprise a fundamentally different line of business, occurring beyond the gas distribution meter, and cannot therefore be considered an extension of the utility distribution system.

Regarding potential cross-subsidization, FEU submit that cost allocation methodologies can be employed to address cross-subsidization concerns. The Panel observes that FEI has demonstrated the difficulty it has in tracking and documenting these costs in FEU's 2012-2012 RRA and other proceedings. The Panel finds that the presence of an approved cost-allocation methodology is not sufficient in itself to eliminate the potential for cross-subsidization, as substantial effort is required to establish appropriate accounting controls, especially when a company is undergoing a major transformation. The Panel has noted previously that separation, rather than accounting practices, minimizes the potential for abuse.

As described above, TES Projects other than Discrete Systems largely take place outside the bounds of the traditional natural gas distribution utility, and are typically a separate energy system from the regulated utility. They have different business risks and a competitive market exists for the service. **Accordingly, TES Projects that are not exempt from regulation are most appropriately undertaken through an Affiliated Regulated Business.**

GT&C12A (including its use as an economic screening tool) was made interim effective January 1, 2012 by Order G-223-11 dated December 22, 2011. **Given the Principles and Guidelines herein, it follows that no further applications should be brought forward by FEI based on GT&C12A. FEI/FAES should nonetheless review GT&C12A to determine if it can be eliminated altogether or if it requires an amendment to accommodate previously-approved TES projects.**

Any Regulated Affiliated company which intends to own and operate TES projects requires a thermal tariff. FAES should therefore bring forward a thermal tariff for Commission review and approval based on the Principles and Guidelines contained in this Report.

CPCN Thresholds

The Commission sets the CPCN threshold for TES Projects at zero as discussed in the Discrete Energy Systems section.

Cost Allocation

FEU argue that if TES is to be provided through a corporate affiliate, the best approach is to: allocate common costs to the TES affiliate using the approved formula specified in the Shared Services Agreement and to charge direct costs using the FEU's existing Transfer Pricing Policy, which contemplates fully loaded costs. Since the services are being provided to a regulated entity, and not an NRB, FEU argue that it is appropriate to modify the transfer pricing formula in this case to exclude profit, overheads and facilities fee components. (FEU Final Submission, pp. 69, 79)

BCPSO:

"...is not satisfied that the FEU's methodology to determine the cost allocation accurately captures the incremental cost of the TES. [In BCPSO's view] [it] certainly does not capture the value of the shared services of which natural gas ratepayers are paying a larger percentage of their stand-alone costs. [BCPSO] submits that a full and transparent allocation methodology must be implemented so that natural gas ratepayers can be certain they are not cross-subsidizing the TES business." (BCPSO Final Submission, p. 11)

Corix argues FEU's current approach of allocating costs by way of timesheets "has failed to capture some of the value received by the TES business from the natural gas business." Corix details a number of areas where it believes the value received by the TES business has been under-recovered. It concludes that it is challenging for the Commission to detect cross-subsidies when they occur. "For comparison, Corix submits that in [its] case, "default" costs go to the shareholder and not a large captive customer class, greatly reducing the incentive or ability to cross-subsidize." (Corix Final Submission, pp 22-23, 25)

"...Transfer pricing should be on a fully-loaded basis – as required by the FortisAlberta Inc. Code of Conduct...Recovering only incremental costs (as FEI proposes) would mimic the current scenario where "default costs" are borne by the natural gas business. It is patently unfair for the TES ratepayers to bear only the incremental costs that are actually recorded which then leaves the FEI

natural gas ratepayers to bear the balance of the costs of the co-mingled FEI business platform. That cost allocation model also creates an unfair cost advantage for FEI TES projects.” (Corix Final Submission, p. 2)

The Panel finds that sharing of services among affiliates should be done on the basis of the higher of market pricing or the fully allocated cost of such services in accordance with the Principles and Guidelines in this Report and an approved Code of Conduct and Transfer Pricing Policy. FEU should allocate costs accordingly.

3.6 Steps to be Followed by a Utility Endeavouring to Enter into a New Regulated Business

The Panel finds that the approach taken by FEI in entering into Biomethane Service and the Commission Decision on the Biomethane Application have a number of positive characteristics. These include:

- The Applicant coming to the Commission before significant funds were expended to set out:
 - (a) the proposed service offering; and
 - (b) the business model the Applicant proposed to utilize;
- Use of a pilot project to allow for testing of the proposed new service, including assessment of the reliability of biomethane supply and the sufficiency of demand for the product; and
- Providing for some growth during the pilot period but placing a limit on the cost and risk exposure faced by ratepayers and the utility by setting a cap on biomethane production.

Detailed planning of the business model and early involvement of the Commission are key elements in the efficient management of costs related to AES and other New Initiatives.

Additionally, the use of a pilot program with parameters that allow for sufficient activity to test the market for a new product while providing limitations on the costs and risks represents a balanced approach to allowing new business activities to proceed. The Panel recommends that FEU or other utilities considering a new business activity take note of the example provided by the proposed introduction of Biomethane Service in any future applications.

As well, based on the content of this Report, a utility entering into a new line of regulated business should submit an application to the Commission setting out the proposed:

- Business structure;
- Form of regulation;
- Cost allocation methodology; and
- Risk allocation.

SECTION 4 SPECIFIC ISSUES REQUIRING A DECISION

4.1 Allocation of Hearing Costs

Background

Order G-118-11 (Exhibit A-5) dated July 8, 2011 set out the scope of the Inquiry and the issues to be addressed at a principles level. The allocation of the hearing costs is an issue. In the Reasons attached as Appendix A to Order G-118-11, the Commission Panel found that this Proceeding has arisen from issues raised in previous FEU proceedings and in complaints regarding FEU activities. The Panel concluded that the costs of the Inquiry should be allocated in the usual manner, i.e., as if FEU were the applicant. The Commission Panel further stated that if, at the time of final argument, FEU were of the view that this allocation of costs was not appropriate, the Commission Panel would consider arguments on how this allocation might be amended.

In their Final Submission, FEU argue that the Inquiry costs are legitimate costs of service and are recoverable from customers, and submit that the allocation of Inquiry costs as between TES and natural gas classes of service should reflect the drivers of these initiatives and where the benefits fall. (FEU Final Submission, p. 13)

FEU submit that a fair allocation of the Inquiry costs would be 75 percent to natural gas and 25 percent to TES customers. The bases of FEU's submissions are:

- Three of the four issues being considered in the Inquiry, that is, CNG/LNG Fuelling Service, Biomethane Service, and EEC, are options focussed solely on the natural gas business and provide benefits to natural gas customers;
- Past decisions relating to Biomethane, CNG/LNG Fuelling and EEC contemplated recovery of hearing costs as part of the general natural gas revenue requirement; and
- The TES offering also provides a choice to natural gas customers that want to meet their thermal energy requirements in a different manner.

BCPSO argued that while TES makes up only one of four issues considered, TES was the primary driver for the Inquiry. It suggests the cost split for the Inquiry should be 50/50 between TES and FEU's gas customers.

Commission Determination

The Commission Panel finds that while FEU's TES activities were one of the drivers for the Inquiry, considerable time and resources were focussed on other issues. The Panel accepts FEU's proposed allocation of the Inquiry hearing costs of 75 percent to natural gas and 25 percent to TES customers and further directs that the portion allocated to TES be maintained in the current TESDA account.

4.2 Applicability of CPCN Thresholds

FEU believe that whatever approach is ultimately applied to FEU should also apply to other public utilities. If the Commission establishes a CPCN threshold for FEU, then it should also do so for Corix and other utilities, and the same applies if no threshold is ordered. (Exhibit B-17, p. 1-2)

Corix agrees that the threshold for triggering a CPCN application should be the same for all AES service providers. The previous CPCN exemption for AES projects under \$5 million was unique to FEI. Other AES service providers, like Corix, must apply for a CPCN when the proposed service brings the service provider within the definition of "public utility" under the *Utilities Commission Act*. Corix argues that the presence of a different threshold for FEI versus other parties would serve to significantly reduce FEI's regulatory burden relative to its competitors which is unfair and not in the public interest. Corix submits all AES service providers should be treated equally. (Exhibit C12-11, p. 1)

Commission Determination

The Panel agrees with FEU and Corix, and finds that where a CPCN threshold is found to be appropriate, it will apply equally to all parties.

4.3 Administration of Demand Side Management and Other Incentive Funding

4.3.1 Current Status of Activities

FEU design and administer Demand Side Management (DSM) programs (referred to by FEU as Energy Efficiency and Conservation or EEC Programs) in accordance with the requirements of the *Utilities Commission Act* and the *Clean Energy Act*, including applicable regulations.

Utilities propose DSM expenditure schedules which the Commission reviews and accepts or rejects on a regular basis. These expenditure schedules typically set out: (a) who is eligible; (b) the level of the incentive to be provided; and (c) the activities that must be undertaken to receive the incentive, for each DSM program. DSM is funded by the traditional utility ratepayers.

The FEU have DSM programs that provide incentives for TES projects. Corix and ESAC have raised concerns about the way DSM funds are currently administered by the FEU. In particular they argue: i) provision of DSM funds creates a risk of cross-subsidization from the traditional natural gas ratepayer to the TES customer; and ii) there is a risk that if the FEU have preferential access to DSM incentives for their own projects, they will have a competitive advantage in the TES market. (Corix Final Submission, pp. 27-30) ESAC refers to “an inherent conflict of interest in allowing a regulated utility to collect [DSM] funds and then, while acting effectively as a trustee of those funds, to ensure the funds are properly allocated when the utility or its affiliate is in a position to benefit from allocation decisions.” (ESAC Final Submission, para. 12)

Corix recommends that third-party administration of FEU DSM funds should be required while ESAC recommends that the management of EEC funds for projects in which the FEU is involved should be made subject to a Code of Conduct. (Corix Final Submission, pp. 27-30; ESAC Final Submission, paras. 132, 136)

BCPSO agrees that a Code of Conduct could work but strongly objects to outsourcing EEC management because it poses administrative and regulatory “pitfalls.” (BCSPO Final Submission, p. 23 and Reply Submission, p. 2)

CEC submits that in its view, there is no issue with EEC funding and thus third party assessment is unnecessary. (CEC Final Submission, p. 29)

BCSEA agrees that the administration of EEC funds should be transparent but submits that most of the FEU's DSM funding is not for TES and it is not desirable to disrupt that funding. (BCSEA Final Submission, p. 11 and Reply Submission, pp. 2-3)

The FEU propose that EEC funding decisions remain with them because their existing mechanisms ensure funds are made available in an impartial manner. They propose specific guidelines for the administration of the funding, including:

- “(a) The FEU establish EEC programs and determines (sic) incentive criteria, set in terms and conditions;
- (b) The FEU inform customers about the EEC programs through different communication channels;
- (c) Customer identifies its EEC needs to the FEU;
- (d) Customer completes its EEC improvements/investments;
- (e) Customer applies to the FEU for EEC incentives;
- (f) Applications are reviewed by the FEU to ensure that the program criteria outlined in the terms and conditions of the EEC program are met;
- (g) Incentives are distributed to customers, and not to the third party project partner (whether that is Corix, ESAC member, or the FEU); and
- (h) Customer selects the TES project partner that it sees fit, applying its incentive dollars towards the project cost, if they so choose to use the incentive to reduce their rate for the TES project.

... Third parties interested in partnering with customers are responsible for finding out what EEC is offered and can encourage their customer-partners to apply to the FEU for incentives.” (Exhibit B-2, p. 155)

The FEU submit that their current mechanisms and Commission oversight are adequate to ensure the fair administration of EEC funds. The FEU propose that as an additional low cost measure, they could report on any incentive granted to TES projects in their EEC annual reports. Alternatively, the FEU are amenable to contract with a third party engineering firm to assess EEC incentives for all TES projects, regardless of ownership or the proponent. (FEU Final Submission, para. 271)

4.3.2 Key Issues

In respect of DSM funding, the key issue before the AES Inquiry Panel relates to those cases where FEU are the direct or indirect beneficiary of the funds that they are awarding. As participants in the AES market (building and/or operating AES projects) and as distributors of DSM funds, two concerns arise for the Commission:

- Where FEU are the direct or indirect beneficiary of funds being awarded by themselves, there is a conflict of interest with the potential for preferential treatment; and
- The potential exists for DSM funds to be used to partially pay for a utility asset included in a project where the utility is already earning a full return on that asset. When this occurs, the utility earns a full return on the asset plus a further return on the DSM funds used to finance the asset. This can occur where there is a lack of definition as to where incentive funds are to be expended.

Commission Determination

The Commission Panel finds that where there is a potential conflict of interest because the FEU may be providing capital or services to a project receiving the DSM or other incentive funds, there should be a neutral third party involved in the decision making process to award such funds. FEU's proposed guidelines do not sufficiently protect against this potential conflict of interest. Accordingly, the FEU are directed to bring forward a proposal for mechanisms for approval and administration of funds by a neutral third party where the FEU may be involved in providing capital or services to a project receiving DSM or other incentive funds and/or there is a potential for FEU to benefit, either directly or indirectly, from that funding.

To prevent the possibility of the utility potentially earning a double return, the Commission Panel is of the view that the presumption should be that incentive funds are being used to reduce the capital cost of the FEU assets, in those instances where the Company is providing capital equipment to a project that is receiving DSM or other incentive funds. In practice, this will require FEU to rebut this presumption. Where this is not done, the Panel recommends that the cost of these capital assets be reduced by the amount of the incentive funds prior to the assets being added to rate base.

4.4 Treatment of the Thermal Energy Services Deferral Account

Background

Commission Order G-141-09 approved the TESDA (then the New Energy Solutions Deferral Account) as part of the 2010-2011 Revenue Requirement Negotiated Settlement. The TESDA was agreed to be an appropriate mechanism to address allocation issues between FEI's traditional natural gas distribution customers and FEI's AES customers for costs incurred by FEI to provide Alternative Energy Services.

The following costs are currently allocated to the TESDA:

- Overhead - using an annual allocation to represent the administrative costs of supporting TES services;
- Sales and marketing - based on the 12 employees in the TES Group as well as any direct time from other employees in other areas of the Companies and certain contributions to industry associations; and
- Direct costs - which relate to a particular project or projects and may be capitalized as part of project costs, such as feasibility studies, design and construction of various actual thermal energy projects.

The balance in the TESDA as of May 31, 2012 was \$7.5 million, including amounts allocated for both discrete energy systems and district energy systems pursued by FEI.

This balance has accrued from a number of FEI AES projects that have been reviewed by the Commission. In its decisions, the Commission has made a number of determinations that have implications on the treatment of TESDA, including:

Delta School District Decision

- A subset deferral account of the TESDA was created and will be separately tracked from other AES projects in the future. In other words, the School District is fully responsible for its proportional share of the TESDA balance;
- The entire TESDA is to be maintained within FEI until such time as the Panel in the AES Inquiry directs otherwise. (Delta School District Decision, pp. 96, 100)

Tsawwassen Springs Decision

- FEI's proposal for the Tsawwassen Springs Project, i.e. that any variances between forecast project costs and revenues would accrue in the TESDA, to be recovered from all TES customers (except the Tsawwassen Springs customer), before the shareholder would be at risk was found to be an inappropriate use of the TESDA.
- The TESDA should include only general costs that apply to all thermal projects and cannot easily be directly allocated to a particular project, and balances in the TESDA should be recovered in a fair and timely manner from all thermal customers to prevent cross-subsidization of some TES customers and not others. (Tsawwassen Springs Decision, pp. 20, 35-36, 40-42)

PCI Marine Gateway Decision

- Concern was raised over the current use of the TESDA to mitigate the business risk of the shareholder, by making TESDA primarily responsible for any residual stranded costs in the event that all Marine-Gateway customers leave the system. Only in the event that there are no thermal customers sharing in the TESDA would the ultimate risk fall to Fortis shareholders.

Commission Determination

The Panel concludes that the current TESDA, now maintained within FEI, should be reviewed and a methodology developed for its allocation and recovery. FEI is directed to file an application that sets out:

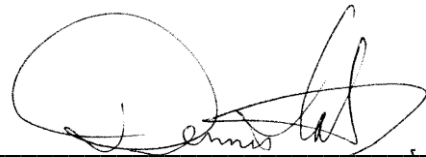
- (a) the circumstances where a deferral account would be established for a specific Thermal Energy Services project;

- (b) a methodology that defines costs that are allocated to the general TESDA and costs that may be allocated to a project-specific deferral account;
- (c) the types of costs that would be allocated to the TESDA or to a deferral account related to a specific Thermal Energy Services project;
- (d) a methodology for the recovery of the current TESDA, including setting out a timeline for the recovery of the current balance;
- (e) a methodology for the allocation and recovery of future additions to the TESDA including a timeline for the recovery of balances; and
- (f) a methodology that will allow any allocation of balances in the TESDA to be assigned to specific TES customers or to the utility shareholder in a manner that is fair and reasonable.

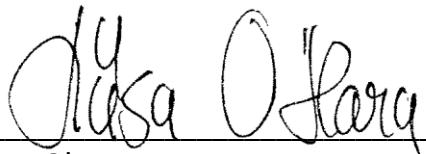
DATED at the City of Vancouver, in the Province of British Columbia, this 27th day of December 2012.



N.E. MACMURCHY
PANEL CHAIR AND COMMISSIONER



D.A. COTE
COMMISSIONER



L.A. O'HARA
COMMISSIONER



A.A. RHODES
COMMISSIONER

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-201-12**

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**IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473

and**

**An Inquiry into FortisBC Energy Inc.'s
Offering of Products and Services in
Alternative Energy Solutions and Other New Initiatives**

BEFORE: N.E. MacMurchy, Panel Chair
D.A. Cote, Commissioner December 27, 2012
L.A. O'Hara, Commissioner
A.A. Rhodes, Commissioner

O R D E R

WHEREAS:

- A. On May 24, 2011, the British Columbia Utilities Commission (Commission) issued Order G-95-11 establishing an Inquiry into FortisBC Energy Inc.'s (FEI) transformation into an integrated energy service provider. A Commission staff working paper on scoping of issues was attached as Appendix B to Order G-95-11 to facilitate discussions at the First Procedural Conference scheduled on June 15, 2011;
- B. At the First Procedural Conference the Commission Panel heard submissions from all Parties on the issues and scope contained in the staff working paper, and on alternative regulatory processes and timelines. On July 8, 2011, the Commission issued Order G-118-11 setting out the scope of the proceeding along with a Regulatory Timetable set out as Appendix C to that Order;
- C. The Inquiry into Alternative Energy Services and New Initiatives (AES Inquiry) was established to evaluate three major issues:
 - i. What principles or guidelines should be followed by the Commission to protect the public interest, what process should the Commission use before it allows the utility to undertake AES and New Initiatives, and how should Energy Efficiency and Conservation (EEC) funds or other incentive funds being made available to support AES and New Initiatives be administered to ensure fair, effective and non-discriminatory treatment;
 - ii. What are the principles that should be applied to determine whether an AES or other New Initiatives project can or should be pursued as a Regulated Business;

- iii. What standards should the Commission apply to determine whether the activity being carried out by the utility is done in the most cost-effective manner and what principles or guidelines should be applied to ensure that, where feasible, competitive forces can be utilized.
- D. The AES Inquiry was set to address the issues at a principles level and not as a means to re-open past decisions of the Commission or to impinge on any regulatory processes that are underway before the Commission. The Inquiry would focus on the activities of FEI but the Commission expects that principles established in the Inquiry would be of wider application beyond FEI to other utilities in future proceedings;
- E. By Order G-164-11 issued on September 23, 2011, the Commission amended the regulatory timetable and ordered a Second Procedural Conference for January 25, 2012;
- F. Registered Interveners who filed evidence in this Inquiry included the Energy Services Association of Canada, Ferus Inc., Corix Utilities Inc. (Corix), Clean Energy Fuels, and the Coalition for Renewable Natural Gas;
- G. On December 22, 2011, the Commission issued Order G-223-11 and determined General Terms and Conditions (GT&C) 12A for AES projects as interim, effective January 1, 2012. On January 4, 2012, the Commission issued Order G-4-12 and established a zero dollar threshold for a Certificate of Public Convenience and Necessity (CPCN) application effective the date of the order and invited submissions from all Parties on the appropriate CPCN threshold(s) for AES and other New Initiatives;
- H. By Order G-9-12 issued on January 31, 2012 after the Second Procedural Conference, the Commission ordered a zero dollar CPCN threshold on an interim basis for AES projects and New Initiatives other than Biomethane projects, with a final CPCN threshold to be determined at the completion of the Inquiry;
- I. Order G-9-12 also determined that the review of the Inquiry would proceed by way of a Written Hearing Process with Submissions and Reply Submissions to take place between March 15, 2012 and April 24, 2012;
- J. On February 7, 2012, the Commission issued Order G-14-12 which accepted for filing the GT&C 12B relating to tariffs for vehicle fuelling stations;
- K. On May 14, 2012 the Lieutenant Governor in Council approved and ordered the Greenhouse Gas Reduction (Clean Energy) Regulation (Section 18 Regulation). By letter dated May 17, 2012, the Commission established a timetable to allow Parties to make submissions that would form part of the record in the AES Inquiry related to the significance of the Section 18 Regulation. The last date of the argument phase was June 8, 2012;
- L. The Commission Panel has considered the evidence and submissions filed by all Parties.

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-201-12

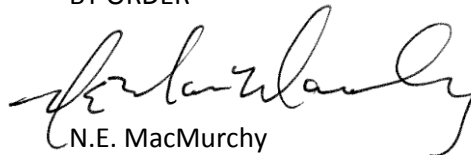
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NOW THEREFORE pursuant to sections 23, 72, 82 and 83 of the Act, the Commission orders that:

1. The principles and guidelines set forth in the attached Inquiry Report shall apply to regulated public utilities who provide products and services outside traditional utility activities.
2. The CPCN thresholds, as applicable and as determined and set forth in the Inquiry Report, apply to all regulated public utilities.
3. FEI is directed to file an application to address the allocation and recovery of the TESDA account as set forth in the attached Inquiry Report.
4. The costs of this Inquiry are to be allocated 75 percent to FEU's natural gas customers and 25 percent to FEU's Thermal Energy customers.

DATED at the City of Vancouver, in the Province of British Columbia, this 27th day of December 2012.

BY ORDER



N.E. MacMurchy
Panel Chair

GLOSSARY

Alternative Energy Services and New Initiatives	Offerings of products and services that are alternative to those offered by the traditional gas distribution utility. Denotes both current and future energy services. Since 2009, the Alternative Energy Services and New Initiatives project filed by FEI for regulation are in the areas of thermal energy services, natural gas for transportation, and biomethane. See also <i>Alternative Energy Services</i> and <i>Thermal Energy Services</i> .
Alternative Energy Services	As specified in FEI's tariff General Terms and Conditions (GT&C) 12A and FEI's 2010/2011 Revenue Requirement Negotiated Settlement Agreement, AES include geo-exchange, solar-thermal and district energy systems. See also <i>Thermal Energy Services</i> .
Affiliate	For the purpose of this Decision, an affiliate of a regulated utility is another entity directly or indirectly owned or controlled by the same shareholders of the utility, and the affiliated business may also be regulated by the Commission or may operate as a non-regulated business. This Decision does not address how an "affiliate" should be further defined for other purposes, for example, in a Code of Conduct context.
Biomethane Service	The distribution of biomethane to customers.
Class of Service	Section 60 (1)(c) of the <i>Utilities Commission Act</i> contemplates a public utility offering more than one class of service. Multiple classes of service separate or compartmentalize operations within a utility.
CNG Service	The compression and subsequent dispensing of compressed natural gas.
Code of Conduct	An established standard with conditions for interaction between a utility and its affiliates (utility and/or non-utility).
Cost of Service Regulation	A methodology where the total forecast costs to be incurred will be recovered from the customers of the utility. Total costs include depreciation, all related accounting costs, applicable property and income taxes, as well as the appropriate return on rate base as approved by the Commission for the utility.

Discrete Energy Systems	A Discrete Energy System is typically limited to a single site or customer.
District Energy Systems	District Energy Systems involve the provision of central heating and sometimes cooling services. District energy systems typically consist of one or more central energy plants connected to buildings via a network of pipes.
BC's Energy Objectives	<p>In 2007, the provincial government of BC released its Energy Plan, which was followed by the passage of the <i>Clean Energy Act</i> (June 2010). The <i>CEA</i> sets out BC's energy objectives including:</p> <ul style="list-style-type: none"> ...(d) to use and foster the development in British Columbia of innovative technologies that support energy conservation and efficiency and the use of clean or renewable resources; ... (g) to reduce BC greenhouse gas emissions... (h) to encourage the switching from one kind of energy source or use to another that decreases greenhouse gas emissions in British Columbia; (i) to encourage communities to reduce greenhouse gas emissions and use energy efficiently; (j) to reduce waste by encouraging the use of waste heat, biogas and biomass; (k) to encourage economic development and the creation and retention of jobs; (l) to foster the development of first nation and rural communities through the use and development of clean or renewable resources;...
Greenhouse Gas Reduction (Clean Energy) Regulation	The regulation is made pursuant to section 18 of the <i>CEA</i> . The regulation supports traditional ratepayers providing limited incentives and other funding for certain CNG and LNG activities in certain circumstances and for a limited time period. See also <i>Prescribed Undertaking</i> and <i>Section 18 Regulation</i> .

Levelized Rate	Levelizing is a method of converting a non-uniform stream of future costs into a present value equivalent uniform stream of costs.
LNG Service	The onsite storage and dispensing of LNG through specialized fuelling stations
New Business Activities	A synonym to <i>Alternative Energy Services and New Initiatives</i> .
Prescribed Undertaking	A Prescribed Undertaking is an activity prescribed by Section 18 of the <i>CEA</i> . A Prescribed Undertaking is defined as “a project, program, contract or expenditure that is in a class of projects, programs, contracts or expenditures prescribed for the purpose of reducing greenhouse gas emissions in British Columbia”. The <i>Greenhouse Gas Reduction (Clean Energy) Regulation</i> identifies certain activities of public utilities which support the use of CNG and LNG for transportation as Prescribed Undertakings.
Section 18 Regulation	The provincial government passed the Greenhouse Gas Reduction (Clean Energy) Regulation under Section 18 of the <i>CEA</i> . The regulation permits a public utility, as a Prescribed Undertaking, to expend a total of \$104.5 million in direct incentives and other expenditures related to the purchase of “eligible vehicles” and the purchase or construction and operation of CNG or LNG facilities. See also <i>Prescribed Undertaking</i> .
Thermal Energy Services	FEU use TES to describe activities formerly known as Alternative Energy Services in the Inquiry. The TES projects filed by FEI with the Commission cover a broader range of technologies than was considered in its tariff GT&C 12A. In this Decision, TES is used interchangeably with AES.
Transfer Pricing Policy	A policy document which addresses the pricing of resources and services provided by the regulated utility to: (i) an NRB; (ii) a division of the utility providing unregulated products or services, and/or; (iii) a regulated affiliated utility. The aim is to protect the core ratepayers from subsidizing unregulated activities or new regulated activities.
Biomethane Upgrader	Equipment used to upgrade raw biogas to pipeline quality biomethane. Upgrading facilities are not an extension of the gas distribution system.

LIST OF ACRONYMS

AES	Alternative Energy Services or Alternative Energy Solutions
BCPSO	British Columbia Pensioners' and Seniors' Organization, <i>et al.</i>
BCSEA	B.C. Sustainable Energy Association and the Sierra Club of British Columbia
Commission	British Columbia Utilities Commission
CEA	Clean Energy Act
CEC	Commercial Energy Consumers of B.C.
Clean Energy	Clean Energy Fuels
CNG	Compressed Natural Gas
Corix	Corix Utilities Inc.
CPCN	Certificate of Public Convenience and Necessity
CRNG	Coalition for Renewable Natural Gas
DSM	Demand Side Management
DES	District Energy Systems
EEC	Energy Efficiency and Conservation
ESAC	Energy Services Association of Canada
FEI	FortisBC Energy Inc.
Ferus LNG	Ferus Inc. LNG Division
FEU	FortisBC Energy Utilities
GT&C	General Terms and Conditions
LTRP	Long Term Resource Plan
LNG	Liquefied Natural Gas
MEM	Ministry of Energy and Mines
NGV	Natural Gas Vehicle
NRB	Non-Regulated Business
O&M	Operating and Maintenance

CRNG	Coalition for Renewable Natural Gas
RMDM	Retail Market Downstream of the Meter
TES	Thermal Energy Services
TESDA	Thermal Energy Services Deferral Account
TGI	Terasen Gas Inc.
<i>UCA</i>	<i>Utilities Commission Act</i>

SUMMARY OF PROCESS

By Order G-95-11 issued on May 24, 2011, the Commission determined that an inquiry into FEI's transformation from a traditional gas distribution utility into an integrated energy provider (Inquiry) was warranted.

FortisBC filed a number of applications to the British Columbia Utilities Commission (the Commission) for approval to provide products and services in alternative energy services and other new initiatives. These applications led to a series of *ad hoc* Commission Decisions and Orders. In each of these proceedings, as cited in the recitals to Order G-95-11, registered Interveners raised issues with respect to the scope of regulation as it relates to these new initiatives.

In their most recent Long Term Resource Plan (2010 LTRP), Terasen Utilities [as the FortisBC Energy Utilities (FEU) were formerly known], stated that "going forward, the utilities will seek approval of an overall business and regulatory model and seek CPCN approval of specific projects." The Commission Panel in that proceeding commented that this statement raised the issue of the need to better understand the utilities' view of the line separating regulated and non-regulated activities, as the companies pursue what some might define as potentially competitive enterprises, as opposed to more traditional activities.

The regulatory questions that arose in the 2010 LTRP proceeding resulted in the following findings, among others¹:

- Each 'unique situation' as FEU describe their new initiatives, needs to be tailored within a regulatory policy framework to be determined after a more holistic review;
- The changes being contemplated by FEU and the issues arising from them are significant enough to warrant a formal process to address them at a future date.

On April 27, 2011, the Energy Services Association of Canada (ESAC), an industry association of member energy service companies, applied to the Commission requesting that the Commission exercise its general supervisory powers under section 23 (1) of the *Utilities Commission Act* (the *UCA*) to inquire into the practices and conduct of FEI in the Alternative Energy Services (AES) business and to make such orders as it considers appropriate to protect the public interest. (Exhibit A2-1,)

¹ *In the Matter of Terasen Gas Inc. and Terasen Gas (Vancouver Island) Inc. and Terasen Gas (Whistler) Inc. 2010 Long Term Resource Plan*; Decision and Order G-14-11, February 1, 2011 (2010 LTRP Decision).

On May 6, 2011, Corix Utilities (Corix) filed a letter in support of ESAC's application, citing that Corix has similar concerns about FortisBC's AES activities, albeit from a different market perspective. (Exhibit A2-2)

The Complaint Letter from ESAC

The Complaint Letter lists four specific concerns ESAC has with FEI:

1. A lack of adequate public consultation by FEI;
2. The use and distribution of Energy Efficiency and Conservation (EEC) Funds by FEI;
3. The role of a "regulated utility" (FEI) in the delivery of Alternative Energy Services (AES) and the potential cross-subsidization of AES activities by natural gas rate payers;
4. The inappropriate use of sensitive market information within FEU.

ESAC asked the Commission to undertake the following actions:

1. Create an unbiased entity or group to oversee the distribution of all EEC funds that are obtained from FEI's natural gas rate payers and to ensure that all industry participants have equal access to receive these funds for worthwhile projects;
2. Ensure the natural gas rate payers of FEU are not supporting the AES endeavours of FEI or its affiliates. This should require that the AES activities should not be undertaken within the natural gas utility or by a subsidiary thereof;
3. Ensure that the market information that resides within the natural gas utility is not shared with the AES business so as to create a competitive advantage not enjoyed by other industry participants. This should require that people, offices, and resources are not shared between the natural gas utility and the AES business unit(s) within FEI.

Corix Utilities' Letter in Support of ESAC's Letter

Corix alleged that the market for alternative energy services and systems, both small regulated utility operations and non-regulated energy services, is a competitive market that is currently well served by companies such as Corix and others. It submits that FEI's participation in this market through its AES business is open to abuse of its market power which would frustrate the development of this important market and harm the public interest.

In its letter, Corix described FortisBC as building a new energy service utility within the existing gas utility structure.

Order G-95-11 and G-118-11

Order G-95-11 established the Inquiry into FEI offering Products and Services in Alternative Energy Solutions and New Initiatives. Comments were also sought from the parties on the scope of issues for the Inquiry.

FEU defined AES as only related to geoexchange systems, solar thermal and district energy systems.² The description of AES can be found in the General Terms and Conditions 12A (GT&C 12A) in the FEI tariff. The Commission Panel, however, did not see merit in narrowly defining the term AES or new and innovative energy technologies for the purpose of the Inquiry.

After the First Procedural Conference, the Commission issued Order G-118-11 (Exhibit A-5). The Order provided that this Inquiry will address issues at a principles level, and consider all types of AES and new initiative activities, including the application of EEC or other funding.

In the Evidence of FEU, the Companies summed up “AES and other New Initiatives” as related to:

- The FEU’s ownership of facilities that upgrade raw biogas into biomethane for the sale to the FEU customers under the Biomethane Service;
- Natural gas vehicle (NGV) fuelling service, which involves the provision of Compressed Natural Gas (CNG) and Liquefied Natural Gas (LNG) to customers under service agreements; Thermal Energy systems or Thermal Energy Services (TES)³ or projects offered under the FEI GT&C 12A: Alternative Energy Extensions; and
- Their EEC program. (Exhibit B-2, p. 1)

As the Inquiry was triggered in part by the Complaint Letter and the identification of issues raised in past FEI proceedings, the focus of this Inquiry was determined to be on FEI. The Commission Panel also acknowledged that the outcome of the Inquiry could have application beyond FEI to other utilities engaged, or who become engaged, in similar activities or programs.

² The definition can be found in Section 13 of the Negotiated Settlement Agreement of FEI (formerly TGI) 2010 and 2011 revenue requirements application which was approved by Order G-141-09.

³ The reference to TES first appeared in the Evidence filed by FEU in the Inquiry proceeding. FEU consider that TES describes what was formerly known as AES as TES is more descriptive. In the Delta School District Decision the Commission found that the original AES concept contemplates providing access to alternative energy sources and solutions in conjunction with the gas system rather than just the provision of thermal energy.

The Commission Panel also established, in the Inquiry's Terms of Reference (Appendix B to Order G-118-11), that this Inquiry is not a vehicle to re-open past decisions.

Interveners, Key Stakeholders and the Regulatory Process

Interveners and Key Stakeholders

The stakeholders in this Inquiry are FEI, its shareholders and ratepayers, ESAC, Corix and other Registered Interveners who may be affected by the way FEI does business in AES and New Initiatives. The key stakeholders who registered as Interveners were:

- ratepayer groups – Commercial Energy Consumers Association of BC (CEC), British Columbia Seniors' and Pensioners' Organization (BCPSO);
- environmental group – BC Sustainable Energy Association and Sierra Club of British Columbia (BCSEA et al.);
- other public utilities – Pacific Northern Gas (PNG), British Columbia Hydro and Power Authority (BC Hydro);
- Potential competitors to FEU in AES and New Initiatives – Clean Energy Fuels (CEF), Coalition for Renewable Natural Gas (CRNG), Ferus Inc. (Ferus); Business and industry groups – Greater Vancouver Home Builders' Association (GVHBA), PCI Developments (PCI), Urban Development Institute (UDI) Coalition;
- Others – Ministry of Energy and Mines (MEM), Canadian Office and Professional employees' Union, Local 378 (COPE 378), Thermal Environmental Comfort Association (TECA), Artex Barn Solutions (ABS).

Ten parties also registered as Interested Parties to the Inquiry proceeding.

The regulatory process included one round of Information Requests (IRs) on FEU's Evidence. The following Registered Interveners also filed Evidence and all parties were provided with the opportunity to ask one round of IRs. Evidence was put forward by the following parties:

- Energy Services Association of Canada;
- Ferus Inc.;
- Corix Utilities;
- Clean Energy Fuels;
- Coalition for Renewable Natural Gas.

On January 4, 2012, the Commission issued Order G-1-12 which set the threshold for Certificate of Public Convenience and Necessity (CPCN) at zero dollars for AES and other New Initiatives projects on an interim basis (Exhibit A-17). Prior to this Order, the CPCN threshold was \$5 million for AES projects under GT&C 12A. All parties were provided with the opportunity to file written submissions on the appropriate CPCN thresholds.

On January 31, 2012, following the Second Procedural Conference, the Commission issued Order G-9-12. The Commission ordered, among other things, that: (i) a zero dollar CPCN threshold be established on an interim basis for AES projects and New Initiatives other than Biomethane projects, with a final CPCN threshold to be determined at the completion of the Inquiry; (ii) a \$5 million CPCN threshold be set for Biomethane activities, with a final CPCN threshold to be determined at the completion of the Inquiry (Exhibit A-20).

Order G-9-12 also established a written hearing format with the last day of Reply arguments being April 24, 2012.

On May 14, 2012, the Lieutenant Governor in Council approved and ordered the Greenhouse Gas Reduction (Clean Energy) Regulation under section 18 of the *Clean Energy Act (CEA)*. (Section 18 Regulation) As a result of the promulgation of the section 18 Regulation, the Commission sought submissions to address matters arising from section 18.

The last date of the Inquiry Proceeding was June 8, 2012.

Requests from Participants and Orders Sought

The Inquiry is a Commission initiative the purpose of which is to address issues raised in the Complaint Letter as well as issues raised by key stakeholders within the scope as established in Order G-95-11. In the absence of an applicant seeking approvals or requesting acceptance, the following are brief summaries of requests made by three key parties: FEI, ESAC and Corix:

FEU

- The overarching objective is to restore a measure of certainty. The Commission should give weight to the merits of maintaining regulated options for customers within a regulatory framework that permits customers to retain the benefits of legitimate economies of scope.
- The Inquiry and resulting Guidelines should be focused on the four New Initiatives and not seek to anticipate other future offerings.
- The Inquiry and the resulting Guidelines should address how, not if, the FEU provide the New Initiatives.

- The allocation of Inquiry costs as between TES and natural gas classes of service should reflect the drivers of these initiatives and where the benefits fall. FEU submit that an allocation of the Inquiry costs of 75 percent to natural gas ratepayers and 25 percent to TES ratepayers would be fair to customers. (FEU Final Submission, pp. 3-13)
- The Commission should implement TES Guidelines that contemplate:
 - A CPCN threshold for TES of \$5 million;
 - Differing content requirements for TES project-related applications depending on a project's particular size and complexity; and
 - Streamlined rate regulation once the initial approvals are in place. (FEU Final Submission, p. 55).
- The use of the FortisBC name to market TES is appropriate.
- Debt financing for stand-alone the TES project should reflect an allocated amount at FEI's embedded cost of debt. (FEU Final Submission, p. 62, para. 142)
- Whatever the outcome of this Inquiry, the FEU must be provided with a mechanism by which to recover prudently incurred costs in the Thermal Energy Services Deferral Account (TESDA).

ESAC

- It is crucial that the Commission not authorize the FEU to engage in business practices in the AES market free from the constraints of the *Competition Act* unless the Commission is also prepared to diligently oversee those activities to ensure that there is no abuse of market dominance. (ESAC Submission, p. 16)
- District Energy Systems, serve "the public" and a cost of service model is likely to be the most appropriate. (ESAC Submission, p. 20)
- For Discrete Energy Systems, the principles underlying the RMDM Guidelines continue to be relevant to guide the Commission in its oversight of the utility. (ESAC Submission, pp. 21, 26)
- For business enterprises that are not otherwise "public utilities" (such as NRBs) whose activities might fall within the definition of a "public utility", the Commission should forbear from regulation where that activity is conducted in an open and competitive market. (ESAC Submission, p. 21)
- The Commission should seek to find legal and practical boundaries to the scope of its jurisdiction to achieve a realistic and manageable result consistent with the objective of the legislation. The Commission should not allow itself or the UCA to be used as an instrument by which the FEU can stifle competition and effectively expand their monopoly and market dominance. (ESAC Submission, p. 23)

- Ratepayers are entitled to expect a full return on their investment in surplus capacity including full compensation for any and all risk associated with the use of that capacity in support of any other business. (ESAC Submission, p. 30)
- Information should be treated the same as a transfer from the established utility to any unrelated party. The regulated utility should charge a market price for that information and should make the information freely available to all parties willing to pay. (ESAC p. 32).
- The management of EEC Funds should be made the subject of a code of conduct. (ESAC Submission, p. 33)

Corix

- FEI should be directed to transfer its TES business to a separate legal entity that operates at arm's length from FEI.
- The transfer should include all components of the TES business on a fully loaded accounting basis, including accrued research and development costs.
- The Commission should establish guidelines similar to RMDM, a Transfer Pricing Policy and a Code of Conduct to govern interactions between affiliated public utilities.
- The Commission should adopt light-handed (complaint-based) regulation for TES projects below a \$5 million threshold.
- Any exemptions for TES projects should apply equally to all TES service providers.
- FEI should transfer the administration of the EEC program to a third party who would ensure the funds are available equally to all TES providers. (Corix Submission, pp. 2, 3)

A2 Exhibits

Counsel for FEU expressed a concern as to the large number of A2 (or Commission staff) exhibits on the record and how they might be handled. The Panel Chair advised that A2 exhibits did not represent any particular position, but were placed on the record for the use of all parties, and saved having them be introduced into the evidentiary record as IR responses. (T2: 149-151)

RETAIL MARKETS DOWNSTREAM OF THE METER GUIDELINES

5 0 COMMISSION GUIDELINES WITH RESPECT TO UTILITY OR NRB PARTICIPATION IN DOWNSTREAM RETAIL MARKETS

5.1 Use of Utility Assets and Services in the Downstream Retail Market

5.1.1 Jurisdiction

Based on the submissions received as well as the legal opinion sought by staff, the Commission understands its jurisdiction with respect to the use of utility assets and services to provide unregulated goods and services to be as follows.

The Commission does not have the power to control the activities or to determine what services an NRB will provide if the NRB is a self-financing, stand-alone, arm's length affiliate using no resources of the utility.

The Commission has the jurisdiction to regulate the relationship between a public utility and an affiliated NRB to the extent that the relationship affects ratepayers. The Commission may implement a transfer pricing policy to regulate the interface between the utility and the NRB or may prohibit a utility from providing an NRB with any utility assets and services if, in the Commission's judgment, this is required to protect ratepayers.

The Commission has the jurisdiction to prohibit a public utility from participating in retail markets downstream of the meter if prohibition is the only reasonable and effective means by which the Commission can mitigate or alleviate any negative effects on ratepayers. In this case, the parent corporation of the utility may still decide to create a subsidiary NRB to participate in the retail market downstream of the meter. Alternatively, the Commission may implement a transfer pricing policy to regulate the interface between the regulated and unregulated activities of the utility if in the Commission's opinion this provides ratepayers with sufficient protection.

The Commission supports the general position of staff that determinations regarding the extent and manner in which utility assets and services may be used to provide goods and services to the downstream retail market should be made on a basis which takes into account individual circumstances. However, it is clear from the submissions received and the legal opinion that certain changes to the specific objectives, criteria and principles initially proposed by staff are needed. The objectives, criteria and principles which the Commission intends to use to guide its determinations regarding the extent to which utility assets and services may be used to provide goods and services to the downstream retail market are outlined below.

5.1.2 Objectives

Based on the information received, it is clear that the Commission has jurisdiction to consider the first two objectives given in the staff position paper when considering the extent to which utility assets and services may be used to provide goods and services to the downstream retail market. Conversely, the Commission finds that it has no jurisdiction to consider the impacts of the use of

utility assets and services, either directly or through NRBs, on the retail market downstream of the meter. Accordingly, the fourth staff objective, that customer choice should be maximized, and the additional objective proposed by Enron, that robust competition in downstream markets should be preserved and enhanced, are beyond the responsibilities of the Commission in making its determinations.

With respect to the third objective identified by staff, that the most efficient allocation of goods and resources should be sought, the Commission believes that this forms a proper part of its consideration, but only to the extent that ratepayers are affected. Accordingly, the Commission believes that it may consider whether a proposal would enhance or reduce the possibility of stranded utility assets, or otherwise increase the economic efficiency with which utility assets are used for the benefit of ratepayers, but may not consider the implications for economic efficiency with respect to the larger market. The Commission accepts the concern voiced by some parties that a precise measurement of economic efficiency is not possible, particularly when considered from a societal perspective, but expects that it is possible to determine directionally whether a particular proposal enhances or reduces the likelihood of stranded costs or otherwise provides benefits to ratepayers.

Accordingly, the objectives which will guide the Commission's determinations with respect to utility and NRB participation in the retail market downstream of the meter are as follows.

Figure 6: Commission Objectives

There must be no subsidy of unregulated business activities, whether undertaken by the utility or its NRB, by utility ratepayers.
The risks associated with participation in the unregulated market must be borne entirely by the unregulated business activity, that is the risks must have no impact on utility ratepayers.
The most economically efficient allocation of goods and resources for ratepayers should be sought.

In addition, the Commission agrees with staff that greater achievement of one objective may require a lesser achievement of another objective so that trade-offs may be required. The Commission will be the sole arbiter of how the trade-off between objectives should be made in determining the extent and manner in which utility services and assets may be used to participate in the retail market downstream of the utility meter.

5.1.3 Criteria

With regard to the six criteria proposed by staff, the Commission has concluded that they should be revised as follows:

- i) Does a natural monopoly currently exist for the good or service?
- ii) If the good or service is not a natural monopoly, can the utility ratepayer be sufficiently protected through a transfer pricing policy mechanism if either a division of the utility or a related-NRB offers the good or service?

- iii) Will the use of utility assets or services in the provision of the good or service reduce the risk of utility assets being stranded to the detriment of ratepayers or otherwise provide benefits to ratepayers?

In coming to the conclusion that staff criteria three, five and six should not form a basis for its determinations, the Commission finds that it has jurisdiction to consider the impacts, either positive or negative, of the use of utility assets or services in the provision of goods to the downstream retail market, only with respect to utility ratepayers. If the new service is to be provided within the utility, the Commission will consider the appropriateness of this service within the mandate of the public utility.

5.1.4 Principles

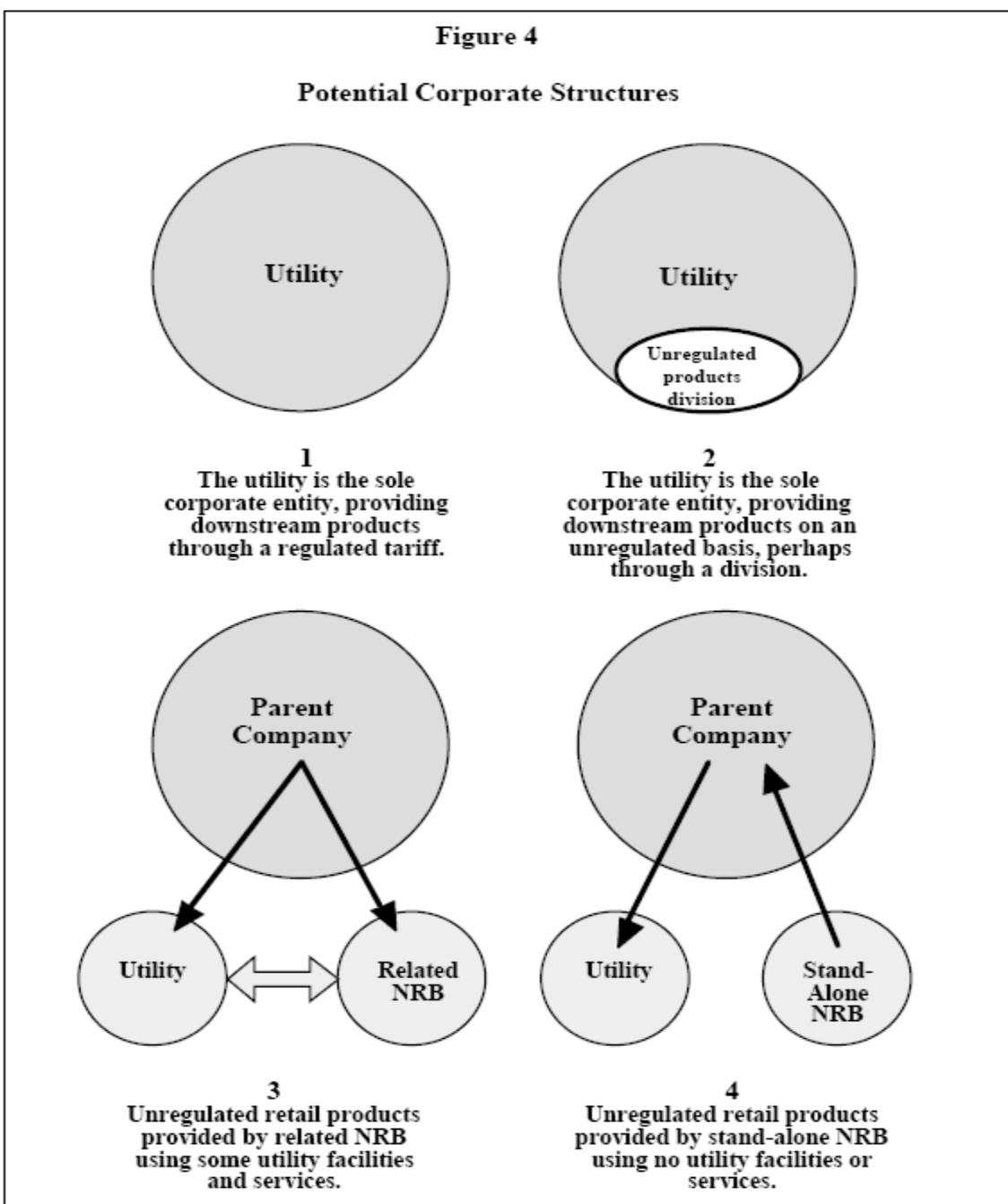
Based on its analysis of the submissions, the Commission determines that principle six, that in all cases the Commission should consider the long-term effects on the markets of utility or related-NRB provision of unregulated goods and services, falls outside of its jurisdiction. Similarly, the Commission accepts that the principles must be revised to exclude references to considerations of customer choice. Accordingly, the Commission accepts that the following principles should govern the choice of corporate structure:

- i) If a natural monopoly exists for the good or service, it should be provided as a regulated tariff item (Corporate Structure 1 in Figure 4).
- ii) Utility participation in the unregulated downstream market by completely stand-alone NRBs using no utility resources is the preferred option since it provides the maximum protection to utility ratepayers (Corporate Structure 4 in Figure 4). Variations from this option should be undertaken only when it can be shown that this option would result in substantial stranded costs for the utility and/or that a transfer pricing policy mechanism will act to provide sufficient protection for ratepayers.
- iii) The onus should always be on the utility to prove that the benefits associated with use of utility resources are sufficient to warrant the changed structure and that the transfer pricing policy mechanism will provide sufficient protection to ratepayers.
- iv) If the Commission decides to allow the use of utility resources in the provision of the unregulated good or service, the preferred option is through a related-NRB (Corporate Structure 3 in Figure 4).

Direct participation by the utility in the provision of an unregulated good or service should be allowed only when the costs associated with forcing the provision through the related-NRB structure would significantly offset the benefits associated with the use of the utility's resources and it can be shown that a transfer pricing policy mechanism will provide sufficient protection for ratepayers (Corporate Structure 2 in Figure 4).

- v) Utilities and their related-NRBs will be encouraged to move unregulated products which use utility resources into stand-alone NRBs as soon as market conditions warrant (Corporate Structure 4 in Figure 4). When a utility-provided product is moved to an NRB, the NRB will

be required to pay fair market value to the utility for the assets, including goodwill, associated with the product. In addition, utilities will be required to provide periodic proof that the benefits associated with the use of utility services continue to exist and that ratepayers continue to be sufficiently protected. The Commission will make directions to prohibit the use of utility assets and services in the provision of goods and services downstream of the retail market at any time that it finds it in the interests of ratepayers to do so.



(RMDM Guidelines, pp. 6, 21-24)

FORTISBC ENERGY INC.
TRANSFER PRICING POLICY FOR PROVISION OF UTILITY RESOURCES AND SERVICES, AUGUST 1997

Effective: OCT 16 1997 L-64-1997 BCUC Secretary: *Original signed by R.J. Pellatt*

{FortisBC Energy Inc.}
TRANSFER PRICING POLICY
For Provision of Utility Resources and Services August 1997

SCOPE

This policy addresses the pricing of resources and services provided by [FortisBC Energy Inc. (FortisBC Energy)] to:

- Non-Regulated Businesses (NRBs); and
- Divisions of the Utility providing unregulated products or services (collectively NRBs).

[FortisBC Energy Inc.] will ensure that it receives adequate compensation for the resources and services provided, thereby protecting ratepayers from subsidising unregulated activities.

The Transfer Pricing Policy will be used in conjunction with the [FortisBC Energy Inc.] Code of Conduct for Provision of Utility Resources and Services dated August, 1997. However, this policy does not replace [FortisBC Energy]/NRB contracts and undertakings in existence prior to approval of this Transfer Pricing Policy.

POLICY

Transfer Prices charged to NRBs by the Utility will ensure Utility ratepayers are not adversely affected and will be established using the following pricing rules.

1. Pricing Rules

- i. If an applicable [FortisBC Energy] tariff rate exists, the Transfer Price will be set according to the tariff.
- ii. Where no tariff rate exists, the Transfer Price will be set at either the full cost (see Section 2 below) or, where feasible and practical, the Competitive Market Price, whichever is greater.
- iii. In situations where it can be shown that an alternative Transfer Price will provide greater benefits to the ratepayer, the Utility may apply to the Commission for special pricing consideration.

2. Determining Full Costs

For the purposes of this policy, costs for the resources or services being provided by the Utility to an NRB will be based on the Utility's full cost as described below. The definition of full costs will depend on the type of service or resource being provided.

For the most part the types of resources and services that can be provided to NRBs by the Utility are human resources and associated equipment and facilities. The example in Appendix A summarizes how full costs are determined for the different types of services described below in Section 2.1. The determination of full costs, specifically the cost loadings, is based on the approved Code of Business Conduct with respect to Non-Regulated Businesses of [FortisBC Energy] dated March 31, 1995, with modifications reflecting the types of resources and services involved in RMDM.

If other Utility resources or services are used by an NRB that are not described by this policy, then [FortisBC Energy] will make an application to the Commission on a case-by-case basis. An example of this would be the determination of costs for a Utility asset permanently transferred to an NRB.

2.1 Type of Service

There are three types of services: i. Specific Committed Service, ii. As Required Service and iii. Designated Subsidiary/Affiliate Service. It is important that the type of service is specified before the commencement of any service. This specification is to ensure that the correct cost loadings are applied to any Transfer Price.

i. Specific Committed Service

Specific Committed Service is work that is contracted for and billed regardless of whether or not work is actually performed. Typically, this work is ongoing or on a continuing basis (such as accounting) in support of NRB activities. The receiving organization (i.e. the NRB) is, in effect, requiring that the providing organization's department (i.e. [FortisBC Energy]) maintain sufficient staffing levels throughout the year in order to provide this service. The receiving organization must pay for the Specific Committed Service even if the service is provided less than originally contracted.

It is important that the description and scope of the service to be provided be defined before the commencement of such a service, including an indication whether the service is performed at the employee's normal place of work ("on-site") or at the NRB's ("offsite"). A request for Specific Committed Service may be raised or terminated at any time throughout the year. Termination of a Specific Committed Service as a result of an activity change is subject to a sixty (60) day notice period.

At the end of the fiscal year, Specific Committed Services which were not provided (unless the Utility was unable to meet its commitments) will be offset against services used in excess of those committed. Any excess service on a total pooled basis will be billed, but any deficiency will not be refunded. If there is a shortfall in the level of service provided by [FortisBC Energy] a reasonable refund may be made. In the normal course of business, the time estimates for Specific Committed Service are reviewed annually.

To determine the full cost of Specific Committed Service, the following loadings are applied to direct labour costs: concessions loading, benefits loading and general overhead loading. Also facility and/or equipment charges are made if applicable. Appendix A, Column 1 shows an example of determining full cost for Specific Committed Service, both “on-site” and “off-site”.

ii. As Required Service

As Required Service is work that is not specifically committed to by the receiving organization. The providing organization charges the cost of the actual time incurred to perform the work to the receiving organization. Typically, this is work that is not or cannot be budgeted in advance.

As Required Service must be specified to be either for an extended term (greater or equal to three months) or short term (less than three months) period prior to the commencement of the work. In addition, it must be identified whether the individual providing the services will work at his or her normal place of work (“on-site”) or at the NRB’s (“off-site”).

To determine the full cost of As Required Service, the following loadings are applied to direct labour costs: concessions loading, benefits loading, general overhead loading, supervision loading and an availability charge loading. Also facility and/or equipment charges are made if applicable. Appendix A, Column 2 shows an example of determining full cost for As Required Service.

In certain situations, the Utility will need to retain the immediate right to recall the employee being contracted to the NRB for an As Required Service. In these situations the availability charge will be waived. Prior notification to the Commission is required to waive the availability charge for As Required Service.

iii. Designated Subsidiary/Affiliate Service

A Designated Subsidiary/Affiliate is a related company that is designated by [FortisBC Energy] and approved by the Commission to receive reduced loadings in the Transfer Price. The designation relates to the additional benefits that the related company provides to [FortisBC Energy]’s customers, employees or to the economic development of the Province of British Columbia.

A Designated Subsidiary/Affiliate receives services on the same basis as the As Required Service described above. To determine the full cost of Designated Subsidiary/Affiliate Service, the following loadings are applied to direct labour costs: concessions loading, benefits loading and a general overhead loading. Appendix A, Column 3 shows an example of determining full cost for A Designated Subsidiary/Affiliate Service. The Commission may approve a subsidiary or affiliate with this status but exclude specific activities or projects of that subsidiary (e.g. projects taking place in certain geographic locations). Similarly, certain work to be performed for an NRB relating to a specific service, project or product may be designated by [FortisBC Energy] and approved by the Commission to receive reduced loadings.

3. Costs Relating to the Transfer of Activities from the Utility to NRB

3.1 Transfer Costs

Activities initially undertaken within the regulated Utility may, from time to time, be transferred to an NRB with Commission approval. Costs associated with transferring an activity to an NRB, and the start-up of NRB activities, shall be borne by the NRB. To the extent that these activities involve Utility resources during the transfer, the NRB shall reimburse the Utility using the appropriate pricing rules as defined in Section 1. Costs relating to the termination of an activity within the Utility shall be borne by the Utility.

3.2 Research Costs

As research is regarded as a continuing activity required to maintain the Utility's business and its effectiveness, such expenses shall be borne by the Utility. However, where it is evident that certain research activities are clearly directed towards specific non-regulated pursuits, the Utility will ensure it is compensated by the NRB according to the pricing rules defined in Section 1, net of any quantifiable benefits received by the Utility.

3.3 Development Costs

Development costs for new products and services transferred to an NRB will be tracked and charged to the NRB according to the pricing rules defined in Section 1, net of any quantifiable benefits received by the Utility.

4. Employment Issues

This section provides the guidelines which (FortisBC Energy) will follow in addressing the issues of employee transfers and human resource sharing between the Utility and NRBs. These guidelines implicitly recognize the fact that Utility ratepayers can realize significant benefits when employees have the opportunity to work for NRBs, by providing Utility employees with opportunities to expand their breadth of experience, enhance their skills and attributes, and continue their career development by taking advantage of the diversity of the (FortisBC Holdings Inc.) Organization.

Accordingly, it is not the intent of these guidelines to restrict employee transfers or human resource sharing, but rather to ensure that the benefits gained by employees can be brought back to the Utility and realized by ratepayers, and ratepayers are not negatively impacted. In all cases of Utility employee transfers or human resource sharing, the terms of transfers or sharing must be clearly understood by the Utility, NRB and the employee prior to commencement, and properly documented.

These guidelines distinguish between three distinct types of human resource issues: Rotational Transfers, Non-Rotational Transfers and Human Resource Sharing.

4.1 Rotational Transfers

Rotational Transfers represent a career training and development vehicle, in which employees are transferred between the Utility and an NRB on a full-time basis, for a period of time not to exceed 3 years. In these instances, the salary and associated benefits of the employee in question will be assumed by the NRB for the duration of the rotational transfer period. As this initiative is specifically intended as a career training and development mechanism with expected benefits back to the Utility, the individual will typically be assured of continued employment by the Utility at the conclusion of the transfer period.

4.2 Non-Rotational Transfers

Non-Rotational Transfers represent transfers of personnel between the Utility and an NRB, which are not subject to a maximum time duration. As neither the Utility nor its NRBs are required to provide preference to the other's employees in filling permanent positions, non-rotational transfers typically represent instances in which an employee has successfully responded to a posting or advertisement for a position.

In the interest of retaining qualified individuals within the [FortisBC Holdings Inc.] group of companies, and recognizing that many NRB companies already contract with the Utility for human resource services (including common payroll systems and benefits packages), a non-rotational transfer will typically be considered an employee transfer rather than a termination and re-employment. In this manner, employees will not be subjected to a termination of continued employment status and the Utility and NRB will not be required to assume the administrative burden associated with a termination and new hire process.

As a non-rotational transfer is not specifically classified as a career development and training initiative, there will typically be no assurance of employment security from the Utility, unless such assurance is considered to be in the best interest of the Utility, in which case a specific agreement should be negotiated and documented. Any recruitment or administrative costs associated with a non-rotational transfer will be borne by the entity to which the employee is transferring.

4.3 Human Resource Sharing

These guidelines specifically recognize that human resource sharing initiatives can provide a variety of benefits to the Utility and NRBs. For example, circumstances occasionally occur in which the Utility and one or more NRBs each require an individual with similar skills and attributes, but the time commitment required by each entity is insufficient to justify the hiring of a full-time person. In the absence of a human resource sharing initiative, each individual entity would likely be forced to incur the significant cost associated with securing the services of an external consultant, whereas significant cost savings could be realized by hiring an individual on a full-time basis and entering into a cost sharing arrangement. This cost sharing method may also pay future dividends to the Utility by developing in-house expertise and experience rather than developing this expertise and experience in consultants. Additionally, Utility departments or NRBs that are subject to large fluctuations in human resource requirements may have individuals that are not fully utilized at all times, but for whom termination and subsequent re-hire is not a viable option (e.g. due to uncertainty of future availability, termination costs, retraining costs, etc.). In these instances, human resource

sharing provides a mechanism through which the receiving entity can fulfill short term resource demands with a qualified individual, while the employing entity can eliminate inefficient salary and benefit costs.

Human resource sharing initiatives also represent an ideal mechanism through which to realize some of the career development and training benefits associated with a rotational transfer, without having to commit to the absolute loss of an individual's services for a certain period of time.

These guidelines are predicated upon the assumption that although all of the applicable entities benefit from human resource sharing initiatives, the employing entity is assuming the greatest degree of risk due to the need to ensure continued employment or incur termination costs. Therefore, a key principle of the human resource sharing initiative proposed by [FortisBC Energy] is that the employing entity will always retain first rights on the services of the individual in question, assuming reasonable notice is provided to the entity for which the individual is providing services at a given point in time.

Employment costs, including salary and benefits, will be allocated to the various entities on a pro rata basis, in accordance with the number of hours dedicated to each entity, and in a manner consistent with the [FortisBC Energy] Code of Conduct for the Provision of Utility Resources and Services.

5. Cost Collection Procedures

5.1 Work Orders

The Utility will be responsible for setting up the appropriate work order, documenting the work order number and ensuring that the appropriate individuals charge time to it. The providing organization's accounting group (typically [FortisBC Energy]'s Financial Accounting Group) will be responsible for maintaining the work order and collecting the appropriate charges.

5.2 Time Sheets

The individuals performing the service must report all time spent on that service by coding their time to the appropriate work order numbers. This is to occur whether the type of service is Specific Committed, As Required or Designated Subsidiary/Affiliate Service. Time sheets are to be sent monthly to the immediate supervisor or [FortisBC Energy]'s Payroll Department. The NRB shall also review the validity of these time sheets.

5.3 Invoicing

The NRB will be invoiced for the contracted amount in respect of Specific Committed Service and for the appropriate time based on the actual payroll level in respect of As Required Service or Designated/Affiliate Service (subject to confidentiality of salary information) with the applicable loadings applied.

The methodology for determining a salary level is on the basis of the average pay grade in the case of Management and Exempt employees or the exact wage grade in the case of bargaining unit employees.

6. Accounting for Services

6.1 Detailed Operating & Maintenance Expense Forecast

In the event that [FortisBC Energy] makes an application to the Commission for revenues related to operations and maintenance expenses (O&M), time estimates for Specific Committed Services will need to be estimated or forecast for each of the years covered by the application. These estimates or forecasts should be consistent with the relevant costs and assumptions contained in that application.

In the event that an activity change causes a reduction in the actual level of the Specific Committed Service compared to the annual budget (or revenue requirement application), [FortisBC Energy] will use these amounts to offset additional contributions from the NRBs. Net contributions received by the Utility through Transfer Pricing for As Required Service and Designated Subsidiary/Affiliate will be held in a deferral account for future return to [FortisBC Energy]'s customers.

6.2 Operating & Maintenance Expense Forecast Determined by Formula

In the event [FortisBC Energy] makes a multi-year application to the Commission for revenues related to O&M, and the allowed O&M level is determined by means of a formula, for the duration of the test period and in accordance with the terms of the Commission Order G-85-97, [FortisBC Energy] will be entitled to capture the financial savings, such as cost reductions resulting from intercompany charges for RMDM or other NRB activities.

7. Review of Transfer Pricing Policy

The Transfer Pricing Policy will be reviewed on an annual basis as part of the Code of Conduct compliance review. However, [FortisBC Energy] may make application to the Commission for approval of changes to the policy including the pricing rules and the formula for determining full costs as and when required.

Terasen Gas Inc. Code of Conduct for Provision of Utility Resources and Services, August 1997

Effective: OCT 16 1997 L-64-1997

BCUC Secretary: Original signed by R.J. Pellatt

[Terasen Gas Inc.]

C O D E O F C O N D U C T

***For Provision of Utility Resources and Services
August 1997***

SCOPE

This Code of Conduct (Code) governs the relationships between [Terasen Gas Inc. (Terasen Gas)] and Non-Regulated Businesses (NRBs) for the provision of Utility resources, and conforms with the British Columbia Utilities Commission (Commission) "Retail Markets Downstream of the Utility Meter" (RMDM) Guidelines of April, 1997. The Commission Code of Conduct Principles from the Guidelines are attached as Appendix 'A'.

This Code will govern the use of Utility resources for unregulated activities (products or services for which there are no Commission approved tariffs) including shared services, employment or contracting of Utility personnel, and the treatment of customer, utility, or confidential information. The Code will also determine the nature of the relationship between the Utility and NRBs and the treatment by the Utility of its' NRBs.

The primary responsibility for administering this Code lies with [Terasen Gas], although the Commission has jurisdiction over matters referred to in this Code. The Commission acknowledges that the Utility in the administration of the Code may have to take into account particular circumstances in respect to a particular product or service which is being provided or transferred out of the Utility, and where these issues are at variance with this Code Commission approval will be required. The Code also provides that the Commission may review complaints in relation to the Code.

The [Terasen Gas] Transfer Pricing Policy, dated August 1997, will be used in conjunction with this Code to establish the costs and pricing for Utility resources and services.

This Code supersedes and replaces the [Terasen Gas] Code of Business Conduct dated March 31, 1995. However, this Code does not replace contracts and undertakings between [Terasen Gas] and NRB affiliates in existence prior to approval of the Code.

[Terasen Gas] Code of Conduct

DEFINITIONS

[Terasen Gas Inc.]	<i>May be abbreviated as follows: [Terasen Gas], the Utility, or the Company, and may also include employees of the Company.</i>
Commission	<i>British Columbia Utilities Commission.</i>
Guidelines	<i>Retail Markets Downstream of the Utility Meter Guidelines published by the British Columbia Utility Commission in April, 1997.</i>
Non-Regulated Business (NRB)	<i>An affiliate of the Utility not regulated by the Commission or a division of the Utility offering unregulated products and services. "Related NRB" refers to any NRB which is an affiliate of the Utility and which uses any resources of the Utility.</i>
Ratepayers	<i>Ratepayers in most cases are considered as a whole rather than one group or rate class.</i>
RMDM	<i>Acronym for "Retail Markets Downstream of the Utility Meter", which may include any utility or energy related activity at or downstream of the utility meter.</i>
Transfer Pricing	<i>The price established for the provision of Utility resources and services, or the transfer of Utility assets, to an NRB or division of the Utility providing unregulated products and services. Transfer pricing for any Utility resource or service will be determined by applying the [Terasen Gas] Transfer Pricing Policy approved by the Commission.</i>

[Terasen Gas] Code of Conduct

APPLICATION OF COMMISSION PRINCIPLES**1. Transfer Pricing**

The Utility will conform with the Commission approved [Terasen Gas] Transfer Pricing Policy.

2. Shared Services and Personnel

- a) This Code recognizes the need for and potential benefits to the Utility of employee transfers and human resource sharing.
- b) [Terasen Gas] may provide shared services to NRBs, including supervision and management, while ensuring that ratepayers will not generally be negatively impacted by Utility involvement. The costs of providing such services will be as agreed upon by both parties and be in accordance with the Commission approved [Terasen Gas] Transfer Pricing Policy.
- c) NRBs may contract for any Utility personnel using the Commission approved [Terasen Gas] Transfer Pricing Policy, providing the Utility complies with Section 4 of this Code, Provision of Information by [Terasen Gas Inc.], and no conflict of interest exists which will negatively impact on ratepayers.

3. Transfer of Assets or Services

The price for all transfers of assets or services shall be determined in accordance with the [Terasen Gas] Transfer Pricing Policy approved by the Commission, and the Utility must be able to demonstrate that the benefits to the ratepayer are greater than the cost. The transfer price will reflect the potential for risk (stranded assets, future costs, etc.) and the recall availability of shared or transferred personnel to ensure the Utility receives the appropriate benefit from expertise resident in the Utility. [Terasen Gas] will comply with acceptable business practices if it wishes to purchase assets, goods or services from an NRB.

An appropriate allocation of development costs for products or services as defined in the [Terasen Gas] Transfer Pricing Policy, will be included in the transfer price.

4. Provision of Information by [Terasen Gas Inc.]

[Terasen Gas] will not provide to an NRB any information that would inhibit a competitive energy services market from functioning.

The following should act as a guideline for employees confronted with issues related to the sharing of confidential information:

- a) This Code precludes [Terasen Gas] from releasing confidential customer specific information without the consent of that customer. If a customer agrees to a general release of customer specific information, that information must be made available to any market participant who requests it and is willing to pay costs associated with the

[Terasen Gas] Code of Conduct

provision of the information, without discrimination as to access, timing, cost or content. If a customer requests customer specific information be provided to a specific market participant, only that participant may receive the information, subject to payment of associated costs incurred to provide the information.

- b) [Terasen Gas] may disclose to any market participant that requests it and is willing to pay the appropriate transfer price customer information that is aggregated or summarized in such a way that confidential information would not ordinarily be ascertained by third parties.
- c) [Terasen Gas] may provide or sell any non-customer specific information to any market participant that requests it and is willing to pay the appropriate transfer price.

5. Preferential Treatment

[Terasen Gas] will not state or imply that favoured treatment will be available to customers of the Utility as a result of using any service of an NRB. 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 NRB.

6. 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, [Terasen Gas] will not preferentially direct customers seeking competitively offered services to an NRB or a specific retailer.

7. Compliance and Complaints

- a) [Terasen Gas] will advise all of its employees of their expected conduct pertaining to this Code, with annual updates for employees who may be directly involved with NRB activities.
- b) [Terasen Gas] will monitor employee compliance with this Code by conducting an annual compliance review, the results of which will be summarized in a report to be filed with the Commission within 60 days of the completion of this review.
- 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 [Vice-President, Finance & 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 receipt of the complaint.

[Terasen Gas] Code of Conduct

- d) Where [Terasen Gas] determines that the complaint is unfounded, the Company may apply to the Commission for reimbursement of the costs of the investigation from the third party initiating the complaint or where this is not possible, for inclusion of those costs in rates.

8. Financing and Other Risks

[Terasen Gas] will not undertake any financing or other financial assistance on behalf of an NRB that exposes utility ratepayers to additional costs or risks, unless appropriate compensation is received by [Terasen Gas] for such financing or other financial assistance, and such financing or other financial assistance is approved by the Commission.

9. Use of Utility Name

[Terasen Gas Inc.] agrees that newly established NRBs engaging in RMDM activities will not use the Utility's name as the primary identifier within British Columbia, and will not use the Utility name in a manner that indicates that Utility resources will support the NRB.

10. Distribution System Access

[Terasen Gas] will treat all requests for distribution system access for the purpose of direct commodity marketing equitably and in accordance with the requirements approved for direct commodity marketing in British Columbia.

11. Amendments

In order to ensure that this Code remains workable and effective, the Company will review the provisions of this Code on an ongoing basis and as required by the Commission, but with a maximum of three years between reviews.

Amendments to this Code may be made from time to time as approved by the Commission.

[Terasen Gas] Code of Conduct*Appendix 'A'***COMMISSION CODE OF CONDUCT PRINCIPLES**

The Commission has established the following principles in the Guidelines which [Terasen Gas] intends to apply to RMDM activities and the Utility's relationships with NRBs.

- i) The regulated company will not provide to the NRB any market-sensitive or confidential information that would inhibit a competitive energy services market from functioning. If customers agree to a release of customer information to the NRB, it should be provided to other market participants under the same terms and conditions and for the same price. Should an individual customer make a specific request to have information released to a particular third party, it will be released to that party only. The utility will be able to recover from the customer the costs associated with the provision of this information.
- ii) No regulated company personnel will state or imply that favoured treatment will be available to customers of the company as a result of using any service of an NRB. In addition, no regulated 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 service of an NRB.
- iii) No regulated company personnel will preferentially direct customers seeking competitively offered services to an NRB. If a customer, or potential customer, requests from the regulated company information about products or services offered by an NRB or its competitors in downstream markets, the regulated company may provide such information, including a directory of retailers of the product or service, but shall not promote any specific retailer in preference to any other retailer.
- iv) The regulated company will formally advise all employees of expected conduct related to these principles and it will undertake to perform periodic audits of the relationships to ensure compliance with these principles. These audits will be performed no less than once a calendar year and filed with the Commission.
- v) Complaints by non-affiliated parties about the application of these principles, or any alleged breach thereof, will be brought to the immediate attention of the senior management of the regulated company and subsequently a report of the complaints, and action taken, will be filed with the Commission. The report will be filed with the Commission within one month of the complaint being made.
- vi) The financing of the utility and NRB will be accounted for entirely separately with the financing costs reflecting the risk profile of each entity. No cross-guarantees or any form of financial assistance whatsoever should be provided directly or indirectly by a utility to its NRB without approval of the Commission.

[Terasen Gas] Code of Conduct

- vii) Use of the utility name by a related NRB will require approval by the Commission to ensure that its use will not interfere with the Commission's ability to protect ratepayers.

In those cases where retail customers have direct market access to the commodity, the utility's code of conduct will also include the following provision,

The regulated company will treat all requests for distribution system access for the purpose of direct commodity marketing equitably and according to the requirements approved for direct commodity marketing in British Columbia.

IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473
and
An Inquiry into FortisBC Energy Inc.
regarding the Offering of Products and Services in
Alternative Energy Solutions and Other New Initiatives

EXHIBIT LIST

COMMISSION DOCUMENTS

- A-1 Letter and order G-95-11 dated May 24, 2011 – Procedural Conference Notice and Timetable
- A-2 Letter dated May 25, 2011 – Appointment of Commission Panel
- A-3 Letter dated June 13, 2011 – Additional member of the Panel
- A-4 Letter dated June 14, 2011 – Agenda for the Procedural Conference on June 15, 2011
- A-5 Letter dated July 8, 2011 – Order G-118-11 Scope of Issues, Reasons for Decision, Terms of Reference, Regulatory Timetable
- A-6 Letter dated September 16, 2011 – Commission Information Request No. 1
- A-7 Letter dated September 20, 2011 – Request for Comments regarding Amendments to Regulatory Timetable
- A-8 Letter dated September 23, 2011 – Order G-164-11 issuing Amended Regulatory Timetable
- A-9 Letter dated June 13, 2011 – Procedural Information to Participants
NOTE: Was Exhibit A3-1 was mis-allocated renamed as Exhibit A-9
- A-10 Letter dated December 6, 2011 – Letter L-91-11 issuing Amended Regulatory Timetable
- A-11 Letter dated December 9, 2011 – Information Request No. 1 to CEF
- A-12 Letter dated December 9, 2011 – Information Request No. 1 to CRNG
- A-13 Letter dated December 9, 2011 – Information Request No. 1 to Corix

- A-14 Letter dated December 9, 2011 – Information Request No. 1 to ESAC
- A-15 Letter dated December 16, 2011 – Information Request No. 1 to Ferus
- A-16 Letter dated January 3, 2012 – PACA Budget Estimates
- A-17 Letter dated January 4, 2011 – Order G-1-12 and Reasons for Decision establishing a written comment process on the threshold for CPCNs for AES and other New Initiatives projects
- A-18 Letter dated January 19, 2012 – Response to Registered Interveners regarding filing extension request by ESAC
- A-19 Letter dated January 24, 2012 – Procedural Conference No. 2 Agenda and Proposed Regulatory Timetables A, B and C
- A-20 Letter dated January 31, 2012 – Order G-9-12 and Reasons for Decision establishing Format of Inquiry Proceeding and Regulatory Timetable
- A-21 Letter dated February 6, 2012 - Information Request No. 2 to FEI
- A-22 Letter dated February 9, 2012 – Issuing Final Submission Guidelines
- A-23 Letter dated March 8, 2012 – Response to FEU Letter dated March 2, 2012
- A-24 Letter dated March 12, 2012 – Issuing Excerpt from the Commission Decision on FEI’s Application for a CPCN in respect of thermal energy service to Delta School District No. 37
- A-25 Letter dated May 3, 2012 – Issuing Notice for Oral Hearing not required

COMMISSION STAFF DOCUMENTS

- A2-1 Letter dated May 25, 2011 – Commission Staff filing Energy Services Association of Canada application dated April 27, 2011
- A2-2 Letter dated May 25, 2011 – Commission Staff filing Corix Utilities May 6, 2011 letter supporting the Energy Services Association of Canada April 27, 2011 Application
- A2-3 Letter dated September 16, 2011 - Commission Staff filing Community Energy Association, Renewable Energy Guide for Local Governments in BC: Utilities & Financing module, February 2008

- A2-4 Letter dated September 16, 2011 - Commission Fraser Basin Council Community Energy Planning: Policies and Tools Presentation
- A2-5 Letter dated September 16, 2011 - Commission Staff filing BC Hydro Featured Projects (BC Hydro webpage)
- A2-6 Letter dated September 16, 2011 - Commission Staff filing Ontario Power Authority District Energy Research Report Briefing Note
- A2-7 Letter dated September 16, 2011 - Commission Staff filing Con Edison Steam Long Range Plan 2010-2030
- A2-8 Letter dated September 16, 2011 - Commission Staff filing Con Edison 2010 Annual Report Excerpt
- A2-9 Letter dated September 16, 2011 - Commission Staff filing TerraSource Geothermal Utility Provider (TerraSource webpage)
- A2-10 Letter dated September 16, 2011 – Commission Staff filing GeoTility Commercial Projects (GeoTility webpage)
- A2-11 Letter dated September 16, 2011 - Commission Staff filing City of Surrey Gas Stations and Alternative Fuel Source Press Release May 30, 2011
- A2-12 Letter dated September 16, 2011 - Commission Staff filing Californian Public Utilities Commission Affiliate Rules D9809035
- A2-13 Letter dated September 16, 2011 - Commission Staff filing FortisBC CDEA-IDEA Integrated Energy Solutions Presentation June 2011
- A2-14 Letter dated September 16, 2011 - Commission Staff filing Alberta EUB Decision 2003-040: ATCO Group Inter-Affiliate Code of Conduct
- A2-15 Letter dated September 16, 2011 - Commission Staff filing FortisAlberta Inc. Inter-Affiliate Code Of Conduct (and copy of webpage source)
- A2-16 Letter dated September 16, 2011 - Commission Staff filing TGI 2010-11 RRA Attachment C-27 Alternative Energy System Cost of Service
- A2-17 Letter dated September 16, 2011 - Commission Staff filing Californian Public Utilities Commission Rulemaking regarding Affiliates D9712088
- A2-18 Letter dated September 16, 2011 - Commission Staff filing Terasen Energy Services Inc. Waterstone Pier Case-study

- A2-19 Letter dated September 16, 2011 - Commission Staff filing Ontario Energy Board Enbridge Gas Distribution Inc. Decision EB2009-0172
- A2-20 Letter dated September 16, 2011 - Commission Staff filing Gaz Métro Corporate Structure (Gaz Métro webpage)
- A2-21 Letter dated September 16, 2011 - Commission Staff filing ÉBI Énergie Green Natural Gas Service (ÉBI Énergie webpage)
- A2-22 Letter dated September 16, 2011 - Commission Staff filing Terasen Energy Services Inc. Press Release November 3 2008
- A2-23 Letter dated December 9, 2011 – Commission Staff filing City of Coquitlam, bclocalnews.com report – dated November 18, 2011
- A2-24 Letter dated December 9, 2011 – Commission Staff filing City of Coquitlam Committee Memo – dated October 18, 2011
- A2-25 Letter dated December 9, 2011 – Commission Staff filing OFGEM RIIO: A new way to regulate energy networks, Final Decision – dated October 2010
- A2-26 Letter dated December 9, 2011 – Commission Staff filing Canadian Radio-television and Telecommunications Commission Decision 94-19 Review of Regulatory Framework – dated September 16, 1994
- A2-27 Letter dated December 9, 2011 – Commission Staff filing Illinois 1998 Rulemaking on Non-Discrimination in Affiliate Transactions for Electric Affiliates
- A2-28 Letter dated February 6, 2012 - Commission Staff filing The Economics of Regulation – Principles and Institutions, Alfred E. Kahn
- A2-29 Letter dated February 6, 2012 - Commission Staff filing Whom Does the Regulatory Commission of Alaska Regulate?” - Dated September 1, 2007
- A2-30 Letter dated February 6, 2012 - Commission Staff filing Competition Bureau Canada – Canadian Competition Law Roles, Responsibilities and Relations in Emerging Electricity Markets – Dated September 20-21, 2001
- A2-31 Letter dated February 6, 2012 - Commission Staff filing The American Economic Review – Behavior of the Firm Under Regulatory Constraint, H. Averch and L. L. Johnson – Dated December 1962

- A2-32 Letter dated February 13, 2012 – Commission Staff filing B.C. Sustainable Energy Association January 31, 2012, letter regarding the status of the FortisBC Energy Inc. Compressed Natural Gas Service/Liquefied Natural Gas General Terms and Conditions Section 12B
- A2-33 Letter dated February 13, 2012 – Commission Staff filing FortisBC Energy Inc. February 1, 2012, letter in response to B.C. Sustainable Energy Association January 31, 2012 letter inquiring on the status of the FortisBC Energy Inc. Compressed Natural Gas Service/Liquefied Natural Gas General Terms and Conditions Section 12B
- A2-34 Letter dated February 13, 2012 – Commission Staff filing BCUC February 2, 2012, letter in response to BCSEA January 31, 2012 letter inquiring on the status of the FortisBC Energy Inc. for Compressed Natural Gas Service/Liquefied Natural Gas General Terms and Conditions Section 12B
- A2-35 Letter dated February 13, 2012 – Commission Staff filing BCUC Order G-14-12 dated February 7, 2012, approving Section 12B of FortisBC Energy Inc.'s General Terms and Conditions
- A3-1 Removed September 29, 2011 – Exhibit was mis-allocated renamed as Exhibit A-9

FEU DOCUMENTS

- B-1 **FORTISBC ENERGY UTILITIES (FEU)** Letter dated June 9, 2011 – Submission regarding the scope of the Inquiry and Exhibit Book
- B-2 Letter dated August 29, 2011 – FEU Submitting Evidence
- B-3 Letter dated September 19, 2011 – FEU Submitting Request to Amend Regulatory Timetable
- B-4 Letter dated September 22, 2011 – FEU Submitting Proposed Regulatory Timetable
- B-5 Letter dated November 3, 2011 - FEU Response to BCOAPO Information Request No. 1
- B-6 Letter dated November 3, 2011 - FEU Response to BCSEA Information Request No. 1
- B-7 Letter dated November 3, 2011 - FEU Response to CEC Information Request No. 1
- B-8 Letter dated November 3, 2011 - FEU Response to Corix Information Request No. 1

- B-9 Letter dated November 3, 2011 - FEU Response to ESAC Information Request No. 1
- B-10 Letter dated November 3, 2011 - FEU Response to Ferus Information Request No. 1
- B-11 Letter dated November 3, 2011 - FEU Response to BCUC Information Request No. 1
- B-11-1 **CONFIDENTIAL** Letter dated November 3, 2011 - FEU **CONFIDENTIAL** Response to BCUC Information Request No. 1
- B-12 Letter dated December 9, 2011 – FEU Submitting Information Request No. 1 to CEF
- B-13 Letter dated December 9, 2011 – FEU Submitting Information Request No. 1 to CRNG
- B-14 Letter dated December 9, 2011 – FEU Submitting Information Request No. 1 to ESAC
- B-15 Letter dated December 9, 2011 – FEU Submitting Information Request No. 1 to Corix
- B-16 Letter dated December 19, 2011 –FEU Submitting Information Request No. 1 to FI
- B-17 Letter dated January 16, 2012 – FEU Submissions regarding the CPCN threshold
- B-18 Letter dated January 18, 2012 – FEU Submitting Notice of Late Filing regarding Rebuttal Evidence
- B-19 Letter dated January 19, 2012 – FEU Submitting Rebuttal Evidence
- B-20 Letter dated January 20, 2012 – FEU Submissions on the Format of the Proceeding
- B-21 Letter dated January 23, 2012 – FEU Submissions Regarding Interim CPCN Threshold
- B-22 Letter dated February 7, 2012 - FEU Submitting BC Natural Gas Strategy - Ministry of Energy and Mines
- B-23 Letter dated February 7, 2012 - FEU Submitting BC LNG Strategy - Ministry of Energy and Mines
- B-24 Letter dated February 10, 2012 - FEU Submitting Response to Ferus Exhibit C8-12
- B-25 Letter dated February 13, 2012 - FEU Submitting Response to BCUC IR No. 2

INTERVENER DOCUMENTS

- C1-1 **ENERGY SERVICES ASSOCIATION OF CANADA (ESAC)** Letter Dated June 1, 2011 Via Email – Request for Intervener Status by Karl Gustafson and Ronald Cliff
- C1-2 Letter Dated June 9, 2011- ESAC Submission regarding scope and process
- C1-3 Letter dated September 16, 2011 - ESAC Submitting Information Request No. 1
- C1-4 Letter dated September 21, 2011 – ESAC Submitting Comments regarding Amendments to Regulatory Timetable
- C1-5 Letter dated November 21, 2011 – ESAC Submitting evidence
- C1-6 Letter dated December 23, 2011 – ESAC Response to BCUC Information Request No. 1
- C1-7 Letter dated December 23, 2011 – ESAC Response to CEC Information Request No. 1
- C1-8 Letter dated December 23, 2011 – ESAC Response to BCOAPO Information Request No. 1
- C1-9 Letter dated December 23, 2011 – ESAC Response to BCSEA Information Request No. 1
- C1-10 Letter dated December 23, 2011 – ESAC Response to FEU Information Request No. 1
- C1-11 Letter dated January 16, 2012 – ESAC Submissions regarding the CPCN threshold
- C1-12 Letter dated January 18, 2012 – ESAC Submissions regarding FEU Late Filing of Rebuttal Evidence
- C1-13 Letter dated January 23, 2012 – ESAC Submissions on the Format of the Proceeding
- C2-1 **COMMERCIAL ENERGY CONSUMERS ASSOCIATION OF BC (CEC) VIA EMAIL** Letter Dated June 6, 2011- Request for Intervener Status by Christopher Weafer
- C2-2 Letter Dated June 9, 2011 –CEC submitting Comments on Issues, Scope and Process and confirmation on attending the procedural conference
- C2-3 Letter dated September 16, 2011 - CEC Submitting Information Request No. 1

- C2-4 Letter dated September 22, 2011 – CEC Submitting Comments regarding Amendments to Regulatory Timetable
- C2-5 Letter dated December 9, 2011 – CEC Submitting Information Request No. 1 to Corix
- C2-6 Letter dated December 9, 2011 – CEC Submitting Information Request No. 1 to ESAC
- C2-7 Letter dated December 19, 2011 –CEC Submitting Information Request No. 1 to FI
- C2-8 Letter dated January 23, 2012 – CEC Submissions on the Format of the Proceeding
- C3-1 **CITY OF KAMLOOPS (CK)** Online Registration Dated June 7, 2011 - Request for Intervener Status by Jen Fretz
- C4-1 **BC SUSTAINABLE ENERGY ASSOCIATION AND SIERRA CLUB BRITISH COLUMBIA (BCSEA)** Letter and Online Registration dated June 8, 2011 – Request for Intervener Status by William J. Andrews and Thomas Hackney
- C4-2 Letter dated September 16, 2011 - BCSEA Submitting Information Request No. 1
- C4-3 Letter dated September 21, 2011 - BCSEA Submitting Comments regarding Amendments to Regulatory Timetable
- C4-4 No Exhibit
- C4-5 Letter dated December 9, 2011 – BCSEA Submitting Information Request No. 1 to CEF
- C4-6 Letter dated December 9, 2011 – BCSEA Submitting Information Request No. 1 to FI
- C4-7 Letter dated December 9, 2011 – BCSEA Submitting Information Request No. 1 to Corix
- C4-8 Letter dated December 9, 2011 – BCSEA Submitting Information Request No. 1 to ESAC
- C4-9 Letter dated January 16, 2012 – BCSEA Submissions regarding the CPCN threshold
- C4-10 Letter dated January 20, 2012 – BCSEA Submissions on the Format of the Proceeding
- C4-11 Letter dated January 20, 2012 – BCSEA Submitting Comments regarding the CPCN threshold

- C5-1 **PACIFIC NORTHERN GAS LTD (PNG)** Online Registration dated June 8, 2011 – Request for Intervener Status by Craig Donohue
- C6-1 **BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 37 DELTA (BESD)** Online Registration dated June 8, 2011 – Request for Intervener Status by Frank Geyer
- C7-1 **BRITISH COLUMBIA HYDRO AND POWER AUTHORITY (BCH)** Online Registration dated June 9, 2011 – Request for Intervener Status by Janet Fraser
- C7-2 Letter Dated June 9, 2011 –BCH submitting Comments on Issues, Scope and Process and confirmation on attending the procedural conference
- C8-1 **FERUS INC. (FI)** Online Registration dated June 9, 2011 – Request for Intervener Status by Nick Gretener and Sean Lalani
- C8-2 Letter Dated June 9, 2011 –FI submitting Comments on Issues, Scope and Process and notice of not attending the procedural conference
- C8-3 Letter Dated September 16, 2011 – FI Submitting Information Request No. 1
- C8-4 Letter dated September 21, 2011 - FI Submitting Comments regarding Amendments to Regulatory Timetable
- C8-5 Letter dated December 2, 2011 - FI Submitting Request to File Late Evidence
- C8-5-1 Letter dated December 2, 2011 - FI Submitting Evidence
- C8-6 Letter dated December 23, 2011 – FI Response to FEU Information Request No. 1
- C8-7 Letter dated December 23, 2011 – FI Response to BCUC Information Request No. 1
- C8-8 Letter dated December 23, 2011 – FI Response to CEC Information Request No. 1
- C8-9 Letter dated December 23, 2011 – FI Response to BCSEA Information Request No. 1
- C8-10 Letter dated January 16, 2012 – FI Submissions regarding the CPCN threshold
- C8-11 Letter dated January 23, 2012 – FI Submissions on the Format of the Proceeding
- C8-12 Letter dated February 10, 2012 – FI Comments on FortisBC letter from February 1, 2012
- C9-1 **QUEST (QUEST)** Online Registration dated June 9, 2011 – Request for Intervener Status by Richard Laszlo

- C10-1 **BRITISH COLUMBIA OLD AGE PENSIONERS' ORGANIZATION (BCOAPO) VIA EMAIL** Letter Dated June 8, 2011 – Request for Intervener Status by Leigha Worth and James Wightman and confirmation on attending the procedural conference
- C10-2 Letter dated September 16, 2011 - BCOAPO Submitting Information Request No. 1
- C10-3 Letter dated September 16, 2011 - BCOAPO Submitting update to contact information
- C10-4 Letter dated September 20, 2011 - BCOAPO Submitting Comments regarding Amendments to Regulatory Timetable
- C10-5 Letter dated January 16, 2012 – BCOAPO Submissions regarding the CPCN threshold
- C10-6 Letter dated January 23, 2012 – BCOAPO Submissions on the Format of the Proceeding
- C11-1 **GREATER VANCOUVER HOME BUILDERS' ASSOCIATION (GVHBA)** Online Registration dated June 9, 2011 – Request for Intervener Status by Peter Simpson
- C12-1 **CORIX UTILITIES INC (CORIX)** Letter Dated June 9, 2011 – Request for Intervener Status by Ian Wigington and David Bursey
- C12-2 Letter Dated June 15, 2011 – Corix submitting summary
- C12-3 Letter dated September 16, 2011 - Corix Submitting Information Request No. 1
- C12-4 Letter dated September 22, 2011 – Corix Submitting Comments regarding Amendments to Regulatory Timetable
- C12-5 Letter dated November 21, 2011 – Corix Submitting evidence
- C12-6 Letter dated November 22, 2011 – Corix Submitting further evidence
- C12-7 Letter dated December 23, 2011 – Corix Response to BCUC Information Request No. 1
- C12-7-1 Errata dated January 7, 2012 to Corix Response to BCUC Information Request No. 1
- C12-8 Letter dated December 23, 2011 – Corix Response to BCSEA Information Request No. 1
- C12-8-1 Errata dated January 7, 2012 to Corix Response to BCSEA Information Request No. 1

- C12-9 Letter dated December 23, 2011 – Corix Response to CEC Information Request No. 1
- C12-10 Letter dated December 23, 2011 – Corix Response to FEU Information Request No. 1
- C12-10-1 Errata dated January 7, 2012 to Corix Response to FEU Information Request No. 1
- C12-11 Letter dated January 16, 2012 – Corix Submissions regarding the CPCN threshold
- C12-12 Letter dated January 23, 2012 – Corix Submissions on the Format of the Proceeding
- C13-1 **MINISTRY OF ENERGY AND MINES (MEM)** Letter Dated June 9, 2011 – Request for Intervener Status by Jennifer Champion and submitting Comments on Issues, Scope and Process, confirmation on attending the procedural conference
- C13-2 Letter dated September 22, 2011 – MEM Submitting Comments regarding Amendments to Regulatory Timetable
- C14-1 **PCI DEVELOPMENTS (PCI)** Online Registration dated June 9, 2011 – Request for Intervener Status by Brennan Cook
- C15-1 **URBAN DEVELOPMENT INSTITUTE (UDI)** Online Registration dated June 27, 2011 – Request for Late Intervener Status by Jeffrey Fisher
- C16-1 **CANADIAN OFFICE AND PROFESSIONAL EMPLOYEES' UNION, LOCAL 378 (COPE 378)** Letter Dated September 14, 2011 – Request for Late Intervener Status by Jim Quail
- C16-2 Letter dated January 19, 2012 – COPE 378 Submitting Comments on Regulatory Process
- C17-1 **CLEAN ENERGY FUELS (CEF)** Letter dated September 14, 2011 – Request for Late Intervener Status by Brian Powers
- C17-2 Letter dated November 21, 2011 – CEF Submitting evidence
- C17-3 Letter dated December 23, 2011 – CEF Response to FEU Information Request No. 1
- C17-4 Letter dated January 4, 2012 – CEF Response to BCUC and BCSEA Information Requests No. 1
- C17-5 Letter dated January 16, 2012 – CEF Submissions regarding the CPCN threshold
- C17-6 Letter dated January 20, 2012 – CEF Submissions on the Format of the Proceeding
- C17-7 Letter dated February 10, 2012 - CEF Submitting Comments

- C18-1 **COALITION FOR RENEWABLE NATURAL GAS (CRNG)** Letter dated November 3, 2011 – Request for Late Intervener Status by Johannes Escudero and David Cox
- C18-2 Letter dated November 21, 2011 – CRNG Submitting evidence
- C18-3 Letter dated December 14, 2011 – CRNG Response to FEU Information Request No. 1
- C18-4 Letter dated December 22, 2011 – CRNG Response to BCUC Information Request No. 1
- C19-1 **THERMAL ENVIRONMENTAL COMFORT ASSOCIATION (TECA)** Letter dated November 18, 2011 – Request for Late Intervener Status by Kim Savage
- C20-1 **ARTEX BARN SOLUTIONS (ABS)** Online Registration Dated January 19, 2012 – Request for Late Intervener Status by John de Jonge

INTERESTED PARTY DOCUMENTS

- D-1 **CENTRAL HEAT DISTRIBUTION LTD (CHD)** Letter Dated May 30, 2011 - Request for Interested Party Status by John Barnes
- D-2 **ALTAGAS UTILITIES INC (ALTAGAS)** Online Registration Dated June 6, 2011 - Request for Interested Party Status
- D-3 **ENBRIDGE GAS DISTRIBUTION INC (EGD)** Online Registration Dated June 7, 2011 - Request for Interested Party Status by Lesley Austin
- D-4 **BC TRANSIT (BCT) VIA FAX** Received June 9, 2011 – Request for Interested Party Status by Brian Anderson
- D-5 **CITY OF VANCOUVER (CV)** Online Registration Dated June 10, 2011 - Request for Interested Party Status by Chris Baber
- D-6 **CANADIAN DISTRICT ENERGY ASSOCIATION (CDEA)** Online Registration dated June 11, 2011 – Request for Interested Party Status by Mary Richardson
- D-7 **ACTIVE RENEWABLE (BC)** – Online Registration dated July 14, 2011 – Request for Interested Party Status by Bill Daly
- D-8 **BELANGER, CLARE** – Letter dated July 6, 2011 – Request for Interested Party Status and Letter of Comment

- D-9 **HONEYWELL BUILDING SOLUTIONS (HBS)** Online Registration dated November 22, 2011 – Request for Interested Party Status by Donald Thibodeau
- D-9-1 Letter dated November 22, 2011 – HBS Submitting letter of comment
- D-10 **HEATING, REFRIGERATION AND AIR CONDITIONING INSTITUTE OF CANADA (HRACIC)** Online Registration dated December 6, 2011 - Request for Interested Party Status by Martin Luymes
- D-11 **JOHNSON CONTROLS CANADA LP (JCCLP)** Letter and Online Registration dated December 8, 2011 - Request for Interested Party Status by Stuart Morrow and Letter of Comment

SUMMARY OF DIRECTIVES, DETERMINATIONS AND RECOMMENDATIONS**Biomethane Service****Directives:**

1. Biomethane Service is part of FEU's regulated service offering.
2. Biomethane Service is a Separate Class of Customer within the natural gas class of service.
3. Biomethane upgraders are similar in function to provincial gas plants and are regulated under the *UCA*.
4. Biomethane upgraders and the pipe connecting them to the traditional distribution utility are not extensions of the utility system as contemplated in sections 45(1) and (2) of the *UCA*.
5. The \$5 million CPCN Threshold for Biomethane Projects is maintained.

Recommendations:

- a. Future Commission Panels will be required to assess the form of regulation to be imposed on biomethane upgraders, including the possibility of a section 88.3 exemption.
- b. The addition of the pipe from the biomethane upgrader to the utility system should be reviewed on a case-by-case basis.
- c. The Panel reviewing the Biomethane Post Implementation Report relating to the existing Biomethane pilot project may wish to establish rules or parameters covering pipeline connections to upgraders.
- d. Regarding ownership of biomethane upgraders, it is recommended FEU not own upgrading facilities where viable options exist but if the case in does, the upgrader should be owned and operated in an Affiliated Regulated Business and biogas supplied to FEI under a section 71 contract.

CNG Activities**Directives:**

1. CNG Service is regulated when undertaken by a public utility but is not regulated otherwise.
2. CNG activities undertaken as Prescribed Undertakings, are to be structured as a Separate Class of Service with the costs to be recovered from the traditional gas utility ratepayers, to the prescribed limit.
3. No CPCN is required for CNG Service as a Prescribed Undertaking and for CNG activities undertaken by non-public utility providers. For all other CNG Service to be provided by a public utility, a CPCN is required.
4. A \$0 CPCN Threshold is set for CNG activities undertaken by the FEU or any other public utility outside the Prescribed Undertaking.

Recommendations:

- a. The FEU undertake CNG activities outside the Prescribed Undertaking in a Non-Regulated Business.
- b. Future Commission Panels may wish to consider whether the CNG market has, in fact, been kick started and whether projects in FEU's CNG Class of Service should be transferred to a Non-Regulated Business.

LNG Activities**Directives:**

1. LNG Service is regulated when undertaken by a public utility but is not regulated otherwise.
2. LNG activities undertaken as Prescribed Undertakings are to be maintained as a Separate Class of Service with the costs recoverable from the traditional natural gas ratepayer.
3. No CPCN is required for LNG activities undertaken as Prescribed Undertakings. A \$0 CPCN Threshold is set for LNG activities undertaken by the FEU or any other public utility outside the Prescribed Undertaking.

Recommendations:

- a. FEU participate in LNG activities outside the Prescribed Undertaking through a separate Non-Regulated Business.
- b. In all cases, if FEU have excess capacity to supply LNG and/or tanker service, the FEU should supply that LNG at the higher of the market price or the fully allocated cost of service.
- c. Future panels may wish to consider whether the LNG market has, in fact, been kick started and whether projects in FEU's Class of Service should be transferred to a Non-Regulated Business.

Thermal Energy Services**Directives and Determinations:**

1. Thermal Energy Services are regulated under the *UCA*.
2. The \$0 CPCN Threshold for TES Projects is maintained.
3. TES comprise a fundamentally different line of business, occurring beyond the gas distribution meter, and cannot therefore be considered an extension of the utility distribution system.
4. Commission Staff will conduct consultation on a scaled regulatory framework for TES utilities. The resulting framework will be brought to the Commission for approval.

Recommendations:

- a. Until such time as the *UCA* is amended, exemptions from regulation should be sought for Discrete Energy Systems with no monopoly characteristics or need for consumer protection. Where such exemptions are granted it would be appropriate for FEU to pursue Discrete Energy Systems through a stand-alone Non-Regulated Business that is separate from the traditional gas distribution utility.
- b. TES Projects (that are not exempt from regulation) are most appropriately undertaken through an Affiliated Regulated Business.

Other Findings and Determinations:

1. CPCN Thresholds, where appropriate, will apply equally to all parties.
2. The costs of this hearing are to be allocated 75 percent to FEU's natural gas customer and 25 percent to FEU's Thermal Energy Services customers.
3. FEI is to file an application for the allocation and recovery of the Thermal Energy Services Deferral Account as set out in the attached Report.
4. The FEU are directed to bring forward a proposal for mechanisms for approval and administration of DSM and other incentive funds by a neutral third party where there is a potential for FEU to benefit, either directly or indirectly, from that funding.
5. FEI, and, where applicable, all other regulated public utilities, are directed to comply with all the directives of the Commission set out in the Inquiry Report issued concurrently with this Order.

Other Recommendations:

- a. The FEU should initiate a process to prepare an updated Code of Conduct and Transfer Pricing Policy in respect of the interaction between the regulated utility and related Non-Regulated Businesses, as per the further recommendations set out in the attached Reasons for Decision.
- b. The FEU should undertake a collaborative process to establish a Code of Conduct and Transfer Pricing Policy governing the interactions between affiliated regulated businesses consistent with the Principles and Guidelines set out in the attached Report.
- c. The FEU and other utilities considering a new business activity should follow the example provided by the Biomethane Service Introduction in any future applications.
- d. Sharing of services among affiliates should be done on the basis of the higher of market pricing or the fully allocated cost in accordance with the Principles and Guidelines and an approved Code of Conduct and Transfer Pricing Policy.
- e. The FEU should file an application with the Commission to revise General Terms and Conditions 12B to reflect the findings of the Inquiry Report.
- f. No further applications should be brought forward by FEI based on General Terms and Conditions 12A. FEI/FAES should review GT&C 12A to determine if it can be eliminated or requires amendment, and bring the results of this review to the Commission for approval.

- g. Fortis Alternative Energy Services should bring a general thermal tariff to the Commission for review and approval following the approval of the regulatory framework for TES utilities.
- h. The *Utilities Commission Act* should be amended to:
 - i. exclude regulation of activities where competitive forces are found to provide sufficient protection to the public.
 - ii. allow the Commission to forebear from regulating where it finds there is no monopoly or need for consumer protection.