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August 8, 2014

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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 and Transfer Pricing Policy for
Affiliated Regulated Businesses Operating in a Non-Natural Monopoly
Environment (the Application)**

FEI Reply Submission

On June 27, 2014, FEI submitted the Application and an updated Code of Conduct (COC) and Transfer Pricing Policy (TPP) for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment (ARBNNM).

On July 25, 2014, the British Columbia Utilities Commission (Commission) issued a Letter (Log No. 48063) to the participants that had been involved in the consultation process to develop the COC and TPP for ARBNNM, seeking submissions on the following:

1. Comments on the Application;
2. Recommendations on the process steps required to complete the review and ensure the resultant CoC and TPP meet the intent of the AES Inquiry Report; and
3. Any other relevant matters.

Participants were required to provide their submissions by August 1, 2014 with FEI's reply due August 8, 2014. The table provided in Appendix A summarizes the six submissions provided by the participants in this proceeding.

As part of the Commission's request outlined in the Letter dated July 25, 2014, FEI was requested to provide its reply. The following is FEI's response to the Commission's request seeking comments on the Application; recommendations on the process steps required to

complete the review and any other relevant matters. Additionally, where applicable, FEI also provides its response to the participants' comments outlined in their submissions.

Comments on the Application

FEI highlights that the majority of participants have indicated in their submissions that the Application describes the issues in a fair and reasonable manner. The B.C. Sustainable Energy Association and Sierra Club of British Columbia (BCSEA) commented that "the Application is a reasonable outcome of the consultation process, recognizing that the consultation process did not and was not intended to achieve consensus among all the participants." FEI shares a similar view on the intended outcome of the collaborative consultation process recommended by the AES Inquiry Report.

FEI disagrees with the Coalition for Open Competition's (the Coalition) comment that the process FEI led was not collaborative. FEI believes it has taken reasonable steps to foster a collaborative process including two workshops with stakeholders and a number of interviews with participants. As outlined in the Application (Section 2 Table 1 FEI COC and TPP Consultation List), FEI met individually with a number of stakeholders including the Coalition. While consensus was not reached on all issues, the collaborative process which FEI facilitated provided an organized and efficient forum for participants to "work jointly together with others or together". However, as stated earlier, the process was not necessarily intended to achieve consensus among all the participants on all the issues, nor would it be reasonable to expect consensus on all matters given the varying interests of the participants involved.

FEI wishes also to comment on the Coalition's comment that during the process, the Coalition had identified several opportunities (e.g. examples of some issues outlined in the Coalition's submission) to provide greater clarity to issues, in part to make the COC and TPP more meaningful and workable. The Coalition states that the concepts identified did not make it to the draft COC and TPP filed with the Application in any meaningful way. While the Coalition's suggested wording was not included in the proposed COC and TPP, FEI has provided in the Application the reasons why they were not included along with comments and reasons provided by some of the other participants. For example, with regard to the Coalition's comment and suggestion that FEI should be required to show how it will take care with the use of the Fortis name to distinguish between services as directed by the AES Inquiry Report, FEI does not believe it is necessary to introduce additional wording to that contained in the proposed COC and TPP. As noted on pages 16/17 of the Application, the proposed wording on use of the Utility Name is consistent with the wording outlined in the AES Inquiry Report. Another example the Coalition characterizes as a missed opportunity to provide greater clarity to issues was to clarify that the natural gas utility (FEI) cannot finance affiliates. As explained on page 9 of the Application, FEI believes its proposed wording for the section Financing and Other Risks is entirely consistent with the guidelines outlined in the AES Inquiry Report. The Coalition's position that FEI cannot finance affiliates is inconsistent with that outlined in the AES Inquiry Report. The Coalition's stated desire for greater clarity really boils down to disagreement with the substance of FEI's proposal. Disagreements of substance are matters for final argument, not demonstrative of a flawed process.

The Coalition comments in its submission that it is concerned that FortisBC Alternative Energy Services Inc. (FAES) is acting as a separate entity in this process. The Coalition states that, "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.” FEI confirms that the proposed COC and TPP included in the Application represents FEI’s views which may or may not be aligned with those of FAES or other participants. FEI and FAES have been providing separate submissions throughout the collaborative consultation process, in response to feedback received from Commission staff. This intention was communicated to participants on April 4, 2014 in an email where FEI noted that in order to provide further clarity and to reduce possible confusion about the FEI/FAES relationship for the purpose of the FEI COC and TPP proceedings, going forward, FAES will be treated as a regulated utility and interested party in the current proceedings and separate from FEI. To make it clear in the Application as to what a participant’s view on an issue was (for example, refer to Section 3.2.3 Transfer Pricing Policy Section 1 Pricing Rules, (ii) and Section 2 Determining Costs), for each of the issues, FEI presented its proposed wording (e.g. its position on the issue) followed by comments provided by participants on that wording. Similar to how other participants’ comments were presented, where FAES provided comments on the issue, it was noted as provided by FAES and thus representing FAES’ position on the issue.

Recommendations on the Process

For the review of the Application, FEI proposes a written process, recognizing the extensive work and collaborative process already completed. The COC and TPP related issues have been previously canvassed in FEI’s revenue requirements applications. Additionally, there has been significant discussion on these issues during the consultation process. The issues are well documented and laid out in the Application with some of the sections resolved and accepted; some sections with general agreement or less significant differences; and some sections where significant differences remain. For the sections where significant differences remain, as outlined in the Application and listed below, the issues are policy related issues that are best suited to being explained in written submissions:

- 3.2.1 Code of Conduct – Section 2 Shared Services and Personnel
- 3.2.2 Code of Conduct – Section 8 Financing and Other Risks
- 3.2.3 Transfer Pricing Policy – Section 1 Pricing Rules, (ii) and Section 2 Determining Costs

Adding one round of information requests from the Commission Panel might be warranted in the narrow circumstances where there are items that are unclear to the Panel specifically related to factual matters (e.g. what took place at consultation, what is done operationally, what will be done operationally under certain scenarios, effects of particular decisions etc.); however, it would be redundant for there to be information requests on larger policy matters that were all canvassed in the AES Inquiry (e.g. competition issues), or for there to be information requests by interveners and Staff that participated in the consultation process.

With regards to Canadian Office and Professional Employees’ Union, Local 378’s (COPE) recommendation to refer the remaining issues between the parties to a Negotiated Settlement Process (NSP), FEI agrees it may provide for an effective means for resolving some of the outstanding issues where the parties are in general agreement or have less significant differences. However, given the significantly different views on the key issues remaining, FEI does not believe a NSP will be successful in resolving those issues. An NSP

to address wording on matters where there is general agreement on concepts would not be an efficient use of participants' time.

With regard to the Coalition's recommendation to initiate a staff-led process to develop a strawman COC and TPP, FEI agrees with BCSEA that there is no requirement for such a process. All of the participant's views are available to the Commission in the Application including those of the Commission Staff.

In summary, FEI recommends written submissions from all parties except FEI, followed by reply from FEI two to three weeks later. If necessary, one round of Commission Panel information requests could be accommodated prior to the participant submissions.

Any Other Relevant Matters

There are two additional matters that FEI will comment on.

First, FEI disagrees generally with the comments included in the July 14, 2014 letter from Corix Utilities (Corix). In particular, FEI does not accept Corix's characterization of FEI departing from the Commission directives in the AES Inquiry Report, for reasons that will be explained in FEI's written submissions.

Second, FEI wishes to comment on the Coalition's request that if the Commission decides on a more extensive process, that the Commission consider allowing intervener access to Participant Funding. FEI would object to any Participant Award/Cost Allowance (PACA) application by the Coalition. The PACA Guidelines state:

"If the Commission Panel considers it to be an appropriate consideration in a proceeding, the Commission Panel may consider the Participant's ability to participate in the proceeding without an award."

FEI respectfully submits that the Coalition, which represents the Mechanical Contractors Association of British Columbia; the Heating, Refrigeration and Air Conditioning Institute of Canada; Independent Contractors and Business Association and Ameresco Canada Inc., is an entity representing sophisticated commercial entities with substantial financial means.

If further information is required, please contact the undersigned.

Sincerely,

FORTISBC ENERGY INC.

Original signed:

For: Diane Roy

Attachment

cc (email only): Registered Parties

APPENDIX A – Summary of Participants’ Submissions

Participant	Comments on the Application	Recommendations on the Review Process	Any Other Relevant Matters
British Columbia Public Interest Advocacy Centre (BCOAPO)	<p>Application fairly describes the issues and points of contention remaining.</p>	<p>An appropriate process will include one round of information requests. This will allow participants to seek clarification from other participants on the reasons for their positions on particular issues. It will also allow for participants to put forward their views in their own words rather than relying on FEI to accurately recite those views to the Commission.</p> <p>A round of information requests could be followed either by a Commission-led oral process, or by written submissions from participants to the Commission panel on each of the outstanding issues.</p>	<p>None</p>
BC Sustainable Energy Association (BCSEA) and Sierra Club of British Columbia (SCBC)	<p>Generally support the Application. The Application is a reasonable outcome of the consultation process, recognizing that the consultation process did not, and was not intended to, achieve consensus among all the participants.</p> <p>The purpose of the COC and TPP for ARBNNMs should be to protect the interests of <u>both</u> natural gas ratepayers and thermal energy services ratepayers.</p>	<p>Suggest a short (e.g., one day) oral argument based on the Application. Oral argument would allow the parties to articulate their respective positions and to respond to each other’s submissions. It would allow the Commission Panel to ask the parties questions that would help clarify the parties’ positions and let the parties know the points the panel wants addressed.</p>	<p>Do not support the suggestion that the Commission staff prepare some further documentation on this topic. That would be inconsistent with the AES Inquiry Report’s recommendation that assigns FEI with the responsibility for initiating a process to prepare an updated Code of Conduct and Transfer Pricing Policy. FEI has carried out that responsibility. The Application has been filed and is complete. Differences of opinion exist. What exists is for the panel to hear the parties’ positions and to make a decision.</p>

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Coalition for Open Competition (Coalition)	<p>From Coalition letter dated August 1, 2014.</p> <p>“We are concerned that FEI has been using its version of a “collaborative process” to re-set the starting point of COC and TPP as a means to avoid complying with the Commission’s Principles and Guidelines as clearly stated in the AES Inquiry Report”.</p>	<p>The Coalition strongly believe that the only reasonable way to move this process forward is to delegate Commission Staff to develop both a draft COC and TPP that meets the principles and guidelines set out by the AES Inquiry Report. The Commission Staff has access to considerable information upon which to develop both a “strawman” COC and TPP for comments by the participants.</p> <p>The Coalition emphasizes that the alternative of using the FEI Application as the starting point upon which to base a process would be extremely challenging and unfair. The Coalition would find itself having to expend considerable effort to repeat and restate positions that it has taken over the past nine months since the inception of the process but failed to be adopted by FEI.</p>	<p>In the event that the Panel determines that a more extensive process than what is proposed by the Coalition, the Coalition urge the Panel to consider allowing intervener access to Participant Funding.</p>
Canadian Office and Professional Employees Union local 378 (COPE)	<p>Agreed that the Application captures FEI’s position on the material issues and describes them in a fair and reasonable manner.</p>	<p>We agree with FAES that there is no need for further discovery, for example through information requests.</p> <p>However, COPE recommends that the remaining issues between the parties be referred to a Negotiated Settlement Process as it would provide a more effective means than a written hearing for fine-tuning the outstanding issues. It may not be possible to achieve complete consensus of all the stakeholders, but we believe that there is considerable commonality among key participants.</p> <p>Alternatively, the participants may agree that certain issues are resolved and that any outstanding details should be identified for potential resolution through a written or oral process.</p>	<p>Agreed with the comments of FAES regarding Corix Utilities characterization of the degree to which some of the issues arising in the Application are already set in stone.</p>

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<p>Corix Utilities (Corix)¹</p>	<p>Indicated that in the AES Inquiry Report, the Commission Panel set out a number of principles and guidelines. All of these principles and guidelines need to be included in developing FEI’s COC and TPP.</p> <p>Noted that from the outset of the consultation process, FEI failed to include several key principles and guidelines in the COC and TPP.</p> <p>Corix does not believe it was the intention of the Commission Panel, in releasing the AES Inquiry Report, to provide FEI with a menu of directives from which it could choose to include or ignore.</p>	<p>Similar to the Coalition’s recommendation, Corix recommends that Commission Staff produce a final draft of the COC and TPP consistent with the Commission Panel’s directives and policies as contained in the AES Inquiry Report, taking into account the information gathered from the consultation process.</p>	
<p>FortisBC Alternative Energy Services Inc. (FAES)</p>	<p>Satisfied that the Application and the proposed COC/TPP reflect the collaborative consultation process initiated by FEI and participated by FAES and others and the intent of the AES Inquiry Report.</p> <p>FAES’ position is 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.”</p>	<p>Given that the Application has identified certain remaining issues to be resolved, FAES believes that the Commission’s review process of the Application should focus on resolving those outstanding issues. FAES believes that an abbreviated written hearing would be sufficient. In particular, FAES does not believe that information requests would be of particular assistance given that the outstanding issues are predominately differences of option. Rather, a process where FEI and the consultation participants can provide in writing their position and supporting rationale on sections/areas that FEI has identified in the Application to be outstanding.</p>	<p>FAES disagrees with the submission by Corix Utilities on July 14, 2014. In particular, in FAES’ view, FEI has followed the directives from the AES Inquiry Report.</p>

¹ From Corix’s submission dated July 14, 2014 provided before the Commission’s request in its Letter dated July 25, 2014.