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November 10, 2016

British Columbia Public Interest Advocacy Centre
Suite 208 – 1090 West Pender Street
Vancouver, B.C.
V6E 2N7

Attention: Ms. Tannis Braithwaite, Executive Director

Dear Ms. Braithwaite:

Re: FortisBC Energy Inc. (FEI)

Project No. 3698873

All-Inclusive Code of Conduct and Transfer Pricing Policy Application (the Application)

Response to the British Columbia Public Interest Advocacy Centre representing the British Columbia Old Age Pensioners' Organization, Active Support Against Poverty, Disability Alliance BC, Council of Senior Citizens' Organizations of BC, and the Tenant Resource and Advisory Centre *et al.* (BCOAPO) Information Request (IR) No. 1

On June 30, 2016, FEI filed the Application referenced above. In accordance with the British Columbia Utilities Commission Order G-157-16 setting out the Regulatory Timetable for the review of the Application, FEI respectfully submits the attached response to BCOAPO IR No. 1.

If further information is required, please contact the undersigned.

Sincerely,

FORTISBC ENERGY INC.

Original signed:

Diane Roy

Attachments

cc (email only): Commission Secretary
Registered Parties

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1 **1.0 Reference: Exhibit B-2, page 6**

2 **Preamble:** FEI states:

3 “Regarding the guideline for sharing of resources between two AUs:

4 *“Common corporate and management resources may be shared between two*
5 *Affiliated Regulated Businesses that are natural monopolies, such as gas and*
6 *electric service;*

7 “Regarding cost allocation between regulated utilities.

8 *“For an Affiliated Regulated Business, the specific guidelines set out below*
9 *should be followed:*

10 *“ Any sharing of costs and services between Affiliated Regulated*
11 *Business must be done on the basis of the higher of market price or the*
12 *fully allocated cost, in accordance with a Commission approved Transfer*
13 *Pricing Policy.”*

14 1.1 Please confirm or otherwise explain that an “AU” as defined in this proceeding is
15 not the same as an “Affiliated Regulated Business” as defined in the AES Inquiry
16 Report.

17
18 **Response:**

19 FEI is not able to confirm that the term “AU” as defined in this proceeding (i.e. a separate legal
20 entity that is an affiliate of FEI regulated by the Commission or the NEB offering regulated
21 products and services in a natural monopoly environment) is the same as the term “Affiliated
22 Regulated Business” in the AES Inquiry Report. Affiliated Regulated Business is not a defined
23 term in the Report. However, based on the sentence in the AES Inquiry Report, page 27, “As
24 *interactions between regulated utility affiliates with very different characteristics have not*
25 *received the same degree of attention in the past....”,* FEI’s interpretation is that for the AES
26 Inquiry Report, the term “Affiliated Regulated Business” was intended to include both a
27 regulated business that is a natural monopoly and also a regulated business operating in a non-
28 natural monopoly environment.

29 FEI notes that the AES Inquiry Report was specifically focused on the development and
30 treatment of Alternative Energy Solutions and Other New Initiatives. As a result, FEI does not
31 believe the intention was to apply the guidelines from the AES Inquiry Report to existing
32 traditional natural monopoly services. This is supported by the Commission’s sentence in the
33 AES Inquiry Report, pages 27 and 28, stating “*The documents should differentiate resource*

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1 *sharing between two natural monopolies on one hand and between a natural monopoly and a*
2 *regulated affiliate operating in a non-natural monopoly on the other.”*

3 With regards to the allocation of costs In the AES Inquiry Report, the guidelines stated that
4 costs are to be allocated on the basis of the higher of market price or the fully allocated cost.
5 The AES Inquiry Report (page 33, in the Guidelines section) states that “*An exception to this*
6 *rule would be any cost handling which has been prescribed by legislation, regulation or special*
7 *direction.”*

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11 1.2 If confirmed, please explain the relevance, if any, of the quote regarding cost
12 allocation, applicable to Affiliated Regulated Businesses as defined in the AES
13 Inquiry Report, to AUs as defined in this proceeding.

14

15 **Response:**

16 As discussed in the response to BCOAPO IR 1.1.1, FEI believes the above quote regarding
17 cost allocation for Affiliated Regulated Business in the AES Inquiry Report was intended to
18 cover both regulated business situations - a natural monopoly (AU in this proceeding) and one
19 that operates in a non-natural monopoly environment (ARB in this proceeding). Please refer to
20 the response to BCOAPO IR 1.5.2.

21

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1 **2.0 Reference: Exhibit B-2, pages 3 and 5, and Appendix F, pages 6-7, Subsidy and**
2 **Transfer Pricing**

3 The referenced pages state:

4 Regarding the Commission's objectives:

5 *"There must be no subsidy of unregulated business activities, whether undertaken by the*
6 *utility or its NRB, by utility ratepayers.*

7 and

8 **"Key Principle**

9 *i. The Commission Panel reaffirms the following RMDM objectives:*

- 10 • *"There must be no subsidy of unregulated business activities, whether*
11 *undertaken by the utility or its [non-regulated business], by utility ratepayers."*

12 2.1 The above appear to be the only two references to the word "subsidy" in Exhibit
13 B-2 (including all appendices.) Please provide the operational definition of
14 "subsidy" used by FEI to ensure compliance with the above objective and Key
15 Principle with respect to transfer pricing.

16
17 **Response:**

18 FEI's definition of a "subsidy" would be where the transfer price is not sufficient to recover the
19 incremental costs for the service provided.

20
21

22
23 2.2 Please confirm that it is FEI's understanding that there should also be no subsidy
24 of other regulated business activities, whether they are operating in a natural
25 monopoly or non-natural monopoly environments. If unable to so confirm, please
26 explain fully.

27
28 **Response:**

29 Confirmed that this is the principle, although FEI notes that page 33 of the AES Inquiry Report
30 notes: *"An exception to this rule would be any cost handling which has been prescribed by*
31 *legislation, regulation or special direction."*



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2.3 The Summary Matrix at Appendix F appears to only contemplate resource sharing and transfer pricing in the case of FEI providing resources to other AU, ARB, and ANRB. Can FEI confirm that it is never the case that another AU or an ARB or ANRB shares resources or provides transfer priced services to FEI? If unable to so confirm, please explain and specify the terms and pricing under which such affiliates would be bound in the provision of resources and/or services to FEI.

Response:

Not confirmed. Please refer to the response to CEC IR 1.5.1.

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1 **3.0 Reference: Exhibit B-2, pages 3-4**

2 The referenced pages state:

3 Regarding the Commission's conclusion vis-a-vis a utility's Code of Conduct:

4 *"Based on all the submissions provided, the Commission determined that the code of*
5 *conduct principles contained in the staff position paper should be modified as follows:*

6 *i. The regulated company will not provide to the NRB any market-sensitive or*
7 *confidential information that would inhibit a competitive energy services market from*
8 *functioning. If customers agree to a release of customer information to the NRB, it*
9 *should be provided to other market participants under the same terms and conditions*
10 *and for the same price. Should an individual customer make a specific request to have*
11 *information released to a particular third party, it will be released to that party only. The*
12 *utility will be able to recover from the customer the costs associated with the provision of*
13 *this information. ... [Emphasis added.]*

14 3.1 Is it FEI's view that by complying with the direction given by the Commission on
15 page 4 (in points I to vii) that it is ensuring that it is not inhibiting "a competitive
16 energy services market from functioning" or are there any other steps that FEI
17 takes to ensure such "non inhibition" of market functioning?
18

19 **Response:**

20 FEI clarifies that the reference by BCOAPO to the direction given by the Commission on page 4
21 points (i) to (vii) in Exhibit B-2 is to the Code of Conduct principles included in the RMDM
22 guidelines and not specifically to actions that FEI is taking to comply with any requirement that it
23 will not provide market-sensitive or confidential information that would inhibit a competitive
24 energy services market from functioning (i.e. the first principle (i) of the seven principles listed).

25 Specific actions that FEI is taking to ensure it does not provide confidential information to an
26 ARB/ANRB which may operate in a competitive energy services market include the following
27 which have been included in the All-Inclusive COC/TPP:

28 • Directors and officers/executives with dual management roles in FEI and an Affiliate are
29 required to execute a non-disclosure agreement. In the situation of an AU, a non-
30 disclosure agreement is not required (section 2e);

31 • FEI will not provide Commercial Information to an Affiliate except in the case of an AU
32 (section 3d);

33 • Sections 3a, b, and c provide guidance to sharing of and access to Customer
34 Information; and



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- 1 • Section 7 Compliance and Complaints outlines specific actions that FEI is taking to
2 ensure compliance with the overall COC, including compliance with the language
3 regarding disclosure of market-sensitive or confidential information.

4
5 For clarification, as indicated in the RMDM guidelines from which items (i) to (vii) have been
6 extracted, the Commission does not, however, have the jurisdiction to regulate the relationship
7 between the regulated utility FEI and an NRB so as to ensure the relationship does not affect
8 the competitive retail market downstream of the meter. The Commission's jurisdiction is limited
9 to consideration of the effects of the relationship on FEI's ratepayers.

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11
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13 3.2 Please provide details of any prior instances of customers agreeing to share
14 customer information with NRBs, including the recovery of costs associated with
15 the provision of the information.

16
17 **Response:**

18 To the best of its knowledge, FEI has not had any prior instances of customers agreeing to
19 share customer information with NRBs and requesting FEI provide the information to the NRB.
20 Typically, if an FEI customer requires their consumption information, they would request it
21 directly from FEI or access the information on the Account Online portal. The customer would
22 then pass on the information to whomever they wish.

23

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1 **4.0 Reference: Exhibit B-2, page 3, Transfer Pricing**

2 The referenced page states:

3 Regarding the Commission's conclusion vis-a-vis a utility's transfer pricing policy:

4 *"Accordingly, the Commission concludes that a utility's transfer pricing policy should*
5 *Ensure the following:*

6 *i. The operating costs of non-regulated activities are not reflected in the utility's cost of*
7 *service.*

8 *ii. The costs of developing new business ventures are charged to and recovered from*
9 *the NRB.*

10 *iii. The accounting costs are transparent and will normally fully recover for all services,*
11 *including overhead, space, employee benefits, inconvenience, and a profit margin where*
12 *appropriate. If the service provided by the utility to the related-NRB could also be*
13 *obtained from an independent supplier, the price paid by the related-NRB to the utility*
14 *should be no less than the competitive market price and will never be below the*
15 *incremental cost. [Emphasis added.]*

16 4.1 Please explain how FEI generally determines (i) whether or not it can determine
17 whether a competitive market price exists and (ii) how FEI goes about
18 determining what the "competitive market price" is.

19 For example:

20 (a) Does FEI require affiliates to request competitive bids from potential
21 suppliers prior to requesting resources or services from FEI?

22 (b) If not, does FEI generally have access to competitive posted prices
23 when determining whether or not to provide resources or services to
24 affiliates?

25 (c) Does FEI ever distinguish between competitive and
26 monopolistic/oligopolistic market prices in the markets potentially
27 supplied by third parties?

28 (d) Historically, can FEI provide the number of cases for which an affiliate
29 requested FEI to provide resources or services and FEI determined that
30 the market price exceeded the fully allocated cost of providing services
31 the market price exceeded the fully allocated cost of providing services
32 the market price exceeded the fully allocated cost of providing services
33 the market price exceeded the fully allocated cost of providing services
34 the market price exceeded the fully allocated cost of providing services
35 the market price exceeded the fully allocated cost of providing services

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1 and therefore charged the affiliate the higher market price. If there are
2 such cases, please provide a brief, general description of these cases

3
4 **Response:**

5 FEI provides services to its affiliates through its employees; FEI's employees are paid at
6 competitive market rates. Information in support of this was provided in FEI's application for
7 approval of the Code of Conduct and Transfer Pricing Policy for Affiliated Regulated Businesses
8 Operating in a Non-Natural Monopoly Environment.

9 In that proceeding, FEI submitted supplementary information – Request #4¹ providing examples
10 of services that FEI provides FAES and the estimated differential between fully allocated cost
11 and market price for the services. FEI outlined that its approach to compensation and benefits
12 is to provide its employees with competitive base salaries and wages, incentive compensation,
13 benefits and paid time-off. FEI's competitive approach (i.e. market based) was evident in the
14 hourly rate differentials provided, with the FEI hourly rates comparable to those outlined for the
15 Market.

16 In its decision dated February 27, 2015, page 41, the Commission stated the following:

17 The Panel agrees with FEI that in large part the issue of market price or full
18 allocated cost is a moot point, given the evidence that FEI is generally charging
19 rates that are consistent with market rates.

20 As a result, the response to examples (a) through (d) above is no.

21

¹ FEI 2015 Code of Conduct and Transfer Pricing Policy for ARBNNM proceeding, Exhibit B-7, pages 7-8
<http://www.bcuc.com/ApplicationView.aspx?ApplicationId=448>.

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1 **5.0 Reference: Exhibit B-2, page 11**

2 **Preamble:** The Application states:

3 “FEI currently shares resources with affiliates under sharing agreements which
4 outline the scope of the services being provided and the fees for the services
5 provided.”

6 The Mutual Shared Service Agreement between FEI and FBC states:

7 “1.1(e) "Services" means the professional and management services to be
8 provided by FEI or by FBC respectively, as required by the each of the parties
9 from time to time.”

10 and

11 “2.1 Each party hereby agrees to provide to the other the Services on an as
12 required basis and to the extent the party providing the Services has the
13 capacity, as determined by it in its sole discretion, to provide such Services.”

14 and,

15 “3.1 The party receiving Services agrees to reimburse the party providing
16 Services for all reasonable expenses it has incurred in providing such Services,
17 including, without limitation, such portion of the annual salary and benefits of
18 relevant employees as is determined by the party providing Services to be
19 allocable to the party receiving Services based on the nature and extent of
20 Services actually provided during the applicable period.”

21 5.1 Are these passages what FEI means when it says the sharing agreements
22 “outline the scope of the service being provided and the fees for the services
23 provided”?

24
25 **Response:**

26 Yes, these are the main passages from the FEI and FBC Mutual Shared Services agreement
27 that provide general guidance for the scope of services provided and the fees for the services
28 provided.

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31

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1 5.2 Please explain how the fee set out in 3.1 of the Mutual Shared Service
2 Agreement between FEI and FBC conforms to the principle quoted above in the
3 preamble to IR 1.0 (above) regarding cost allocation between regulated utilities.

4
5 **Response:**

6 Section 3.1 outlines guidance as what to charge for the services provided which at a minimum
7 includes salary and benefits. As FEI has discussed in response to BCOAPO IR 1.4.1, FEI's
8 salary and benefits are considered to be market priced. Although the AES Inquiry had set out
9 guidelines that the principle should be the higher of market price or fully allocated cost, FEI has
10 in place a specific method for setting the fees to be charged between FEI and FBC, that was
11 first approved in the 2012/2013 RRA and then subsequently reviewed in the 2014-2018 PBR
12 Decision. "*Cross charges between FortisBC and its affiliates regulated by the Commission are*
13 *approved to be based on fully loaded costs, not including overhead.*"

14 Please refer to the response to BCUC IR 1.2.2 for discussion of this decision.

15

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1 **6.0 Reference: Exhibit B-2, pages 15-16**

2 **Preamble:** In its discussion of shared resources, FEI proposes to restrict FEI sharing
3 of services and non-executive personnel with AUs to situations where there is no
4 detriment to FEI.

5 6.1 Given the limited amount of information available to the Commission and to
6 intervenor relating to the sharing of services and personnel, how does FEI
7 envision those parties being able to identify whether the sharing of services or
8 personnel causes a detriment to FEI?
9

10 **Response:**

11 FEI believes that for sharing of services with an AU, as long as FEI recovers the incremental
12 costs of the services being provided, there is no detriment to FEI. FEI confirms that for charges
13 with AUs (i.e. FBC and FBCH), it is charging no less than the incremental costs for the services
14 provided. Additionally, the Internal Audit department as part of its Annual Review of the FEI
15 Code of Conduct and Transfer Pricing Policy reviews the cross charges for compliance with the
16 Transfer Pricing Policy. The report is filed with the Commission annually.

17



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1 **7.0 Reference: Exhibit B-2, page 18**

2 7.1 Please confirm that FBC does not propose to share Customer Information with its
3 AUs.

4
5 **Response:**

6 FEI interprets the reference here to be referring to FortisBC Energy Inc (FEI), not FortisBC Inc.
7 (FBC) as this is a FEI proceeding. FEI is proposing to share Customer Information with its AUs
8 subject to the provisions outlined in Section 3 of the proposed COC. FEI may share Customer
9 Information with FBC in the development of DSM programs for the benefit of customers.

10

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1 **8.0 Reference: Exhibit B-2, pages 21-22**

2 8.1 Please explain why FEI thinks it is not appropriate to use the same pricing rules
3 for services provided to AUs as for services provided to ARBs and ANRBs?
4

5 **Response:**

6 Please refer to the response to BCUC IR 1.2.2.
7
8

9
10 8.2 Please explain why FEI thinks it is appropriate to not apply overhead or a
11 facilities fee for services provided to an AU?
12

13 **Response:**

14 Please refer to the response to BCUC IR 1.2.2.
15