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November 10, 2016

British Columbia Utilities Commission
Sixth Floor
900 Howe Street
Vancouver, B.C.
V6Z 2N3

Attention: Ms. Laurel Ross, Acting Commission Secretary and Director

Dear Ms. Ross:

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 Utilities Commission (BCUC or the Commission) Information Request (IR) No. 1

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

If further information is required, please contact the undersigned.

Sincerely,

FORTISBC ENERGY INC.

Original signed:

Diane Roy

Attachments

cc (email only): Registered Parties

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1 **1.0 Reference: Exhibit B-2, Section 2.3, pp. 7-9 and Section 3.1, pp. 9-10;**

2 **Appendix C-2 CoC for Non-Regulated Businesses;**

3 **Exhibit A2-1 Retail Markets Downstream of the Utility Meter (RMDM)**
4 **Guidelines¹**

5 **Affiliate Non-Regulated Businesses (Affiliate NRB, ANRB)**

6 The All-Inclusive Code of Conduct and Transfer Pricing Policy Application (Application)
7 states on pages 7 and 8 that in developing the proposed All-Inclusive Code of Conduct
8 and Transfer Pricing Policy (CoC/TPP), FortisBC Energy Inc. (FEI) has reviewed the
9 existing CoC/TPP for Affiliate Regulated Businesses (ARBs) which is based on the
10 principles and guidelines of the Alternative Energy Solutions (AES) Inquiry Report. The
11 Application also says that FEI has used the existing COC/TPP for Affiliate NRBs to
12 govern and provide protection to FEI ratepayers in the sharing of FEI's resources with
13 affiliated non-regulated entities.

14 In Figure 1, the chart depicts FortisBC's organizational structure and FEI's affiliates and
15 shows Fortis Inc. (FI), FortisBC Pacific Holdings Inc. (FPHI), FortisBC Holdings Inc.
16 (FHI) and FortisBC Midstream Inc. (FMI) as ANRBs.

17 1.1 In FEI's view, are the RMDM Guidelines applicable only to entities in the retail
18 market downstream of the utility meter or are they equally applicable to any
19 ANRBs including those that are parent companies of FEI? Please explain your
20 answer including a discussion of any RMDM conditions that should only apply to
21 downstream market participants.
22
23

24 **Response:**

25 FEI references the AES Inquiry Report in which the Commission provides some guidance on
26 the applicability of the RMDM guidelines to Affiliated Regulated Businesses Operating in Non-
27 Natural Monopoly Environment (ARBNNM).

28 (AES Inquiry Report, page 5)

29 **Commission Determination**

30 **The Commission Panel finds that many of the objectives and principles of**
31 **RMDM remain relevant and applicable today.** In this Report, the Commission
32 Panel has generally based its findings on RMDM and developed Principles and
33 Guidelines that address areas, business structures and technologies beyond

¹ <http://www.bcuc.com/Guidelines.aspx> on Retail Markets Downstream the Meter Guidelines.

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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.

In the proceeding, the Commission found that many of the objectives and principles of RMDM were relevant and applicable to the ARBNNM situation which is not considered downstream of the meter. FEI understands the RMDM guidelines (refer to Exhibit B-2, pages 3 and 4) have in some form been considered, modified and incorporated as part of the approved COC/TPP for ARBNNMs. Consistent with the Commission’s direction that the proposed All-Inclusive COC/TPP should be modeled on the approved COC/TPP for ARBNNMs, FEI has used the approved COC/TPP for ARBNNMs as the starting point. As a result, FEI’s understanding is that the proposed All-Inclusive COC/TPP was to address situations that had competition and cross-subsidization concerns, regardless of whether they were downstream of the meter or not.

FEI highlights the parent companies affiliated with FEI (FI, FPHI, FHI and FMI), are non-operating companies (i.e. not providing products and services directly to customers). As a result, many of the COC/TPP provisions which are designed to govern services provided by FEI to affiliated operating companies have limited applicability. The provision which is most applicable to the parent companies is the Transfer Pricing rule requiring that services be priced at the “higher of market price or fully allocated cost”. Applying this rule, subject to any Commission direction in other proceedings, will help to ensure that there is no detriment to FEI ratepayers. The “higher of market price or fully allocated cost” rule is applied to govern the corporate support services (i.e. payroll, finance, human resources) provided to FHI and to the services provided to FMI in support of the acquisition of ACGS. There have been no significant services to FI and FPHI in recent years.

1.2 Does FEI agree that the British Columbia Utilities Commission (BCUC) review of RMDM was “to examine the forces which are causing utilities to wish to expand the number and kinds of services which they offer and to determine if, and to what extent, utilities and/or their affiliated non-regulated businesses, (“NRBs”) should be allowed to participate in downstream retail markets?” (RMDM Guidelines, April 1997, Introduction, p. 1)

Response:

That appears to be the case, according to what is stated in the RMDM Guidelines document.

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1.3 According to pages 9 to 11 of the Application, FEI provided no services to FPHI and FI in 2015, FEI provided services to FMI to assist in the acquisition of Aitken Creek Gas Storage ULC (ACGS) in 2015, and FEI provided FHI services which are governed by a Continuing Services Contract as set out in FEI's TPP Appendix A. In this context, please comment on the applicability of the CoC that is in Appendix C-2 to Affiliate NRBs such as FI, FPHI, FHI and FMI despite the fact that these entities are not downstream of the meter.

Response:

Please refer to the response to BCUC IR 1.1.1.

1.3.1 How often has the CoC in Appendix C-2 been actively applied to FEI's transactions in the past 10 years?

Response:

The existing COC for NRBs has been in place since 1997 and has been used to govern and provide protection to FEI ratepayers in the sharing of FEI's resources with non-monopoly affiliates. In the past 10 years, it has been actively used to govern FEI services provided to:

- FHI for ongoing corporate support functions (refer to page 10 of Exhibit B-2 for details);
- FMI (2015-2016) to assist in the acquisition of ACGS;
- FortisBC Alternative Energy Services (2011-2015): FEI provided services including facilities and IT support and other back office;
- Terasen Energy Services Inc. (2006-2010), predecessor to FortisBC Alternative Energy Services: FEI provided services relating to Finance, Regulatory, Marketing and Distribution;
- Terasen International Inc. (2006-2007): FEI provided services relating to Operations Engineering, Distribution Operations, Measurement Services, Labour Relations, Gas Supply & Transmission, Infrastructure Management, and Regulatory;
- Terasen Utility Services Inc. (2006): FEI provided services relating to Distribution Operations and Commercial & Development Relations;

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- Kinder Morgan Canada (20006-2007): FEI provided services relating to Finance, IT and HR; and

- Inland Energy Corporation (2006-2016): FEI provided accounting services.

1.3.2 To the best of FEI's knowledge, will there be new ANRBs in the future that will invoke an application of the All-inclusive CoC/TPP? If so, please describe the nature of the ANRB businesses that might be developed.

Response:

At the present time, FEI is not aware of any pending ANRBs that will invoke an application of the All-Inclusive COC/TPP, but that may change in the future. If a new ANRB is created in the future, FEI will use the approved All-Inclusive COC to govern its interactions with the new ANRB.

1.3.3 For each of FAES, FMI and ACGS, please identify the services provided by FEI in 2015 and 2016, the service payments made by the ARB/ANRB to FEI and whether the costing arrangements were based on fully loaded cost, a higher market price or another pricing arrangement approved by the Commission.

Response:

FEI provides FAES with facilities and information technology support and other supporting functions such as human resources, regulatory, procurement, information system and select finance functions. The 2015 service payments made by FAES to FEI were \$316 thousand and the projected 2016 service payments are approximately \$250 thousand. The labour costs were based on fully loaded cost.

In 2015, FEI provided services to FMI to assist in the acquisition of ACGS. The 2015 service payments of \$307 thousand were recorded in 2016 upon the closing of the ACGS transaction. FEI also provided similar services in 2016 related to the acquisition of ACGS. The actual 2016 service payments made by FMI to FEI were \$1.083 million. Any labour costs were based on fully loaded cost.

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FEI did not provide ACGS with any services in 2015. However, in 2016, FEI provides ACGS with shared labour services for certain support functions like human resources, select finance functions like accounts payable and asset accounting, procurement and information system support. The projected 2016 service payments are \$475 thousand. The labour costs were based on fully loaded cost.

1.3.4 Did FEI receive any services from its ARB/ANRB affiliates in 2015 and 2016 and were those services priced at market price, fully loaded cost or another pricing method? Please explain differences, if any, in service pricing between services provided by FEI and those received by FEI.

Response:

Yes, in 2015 and 2016, FEI received services from FHI for corporate functions. These services are outlined in the Corporate Services Agreement previously reviewed by the Commission and approved to be charged to FEI following the approved Massachusetts Formula.

FEI did not receive any services from any ARB or ANRB in 2015 and 2016 other than these services from FHI.

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2.0 Reference: Exhibit B-2, Section 2.3 pp. 12, 14, and

Section 4.2.6 pp. 21, 22; Appendix A-2 Black-lined CoC p. 1 and TPP p. 4

FEI Shared Services Agreements and determining costs

According to the Application, FEI and FBC share common resources including the Executive Management team and other departmental resources, providing benefits to both organizations. This mutual shared services agreement is included in Appendix E-2 of the Application.

On pages 21 and 22 of the Application, FEI states:

For sharing of resources with an AU (i.e., FBC), FEI is proposing no change to the existing transfer pricing rule as outlined in the section titled “Mutual Shared Services with FortisBC Inc.” on page 14 of this Application. The cross charges to FBC include fully loaded wages including benefits and time away, with no overhead or facilities fees assigned. This practice will continue to be used until FEI evaluates the feasibility of introducing a Shared Services model approach, similar to that successfully used in the past for sharing of resources between FEI and the Vancouver Island and Whistler gas utilities.

Under the Scope heading in the black lined proposed CoC included in Appendix A-2, FEI’s proposed wording includes the following:

Where there is an agreement between the [FortisBC Energy] and its Affiliates with respect to the sharing or provision of services, resources or personnel that has been reviewed by the Commission, the terms of that agreement will govern. [emphasis added]

2.1 Please explain the difference between the charges that would apply to an ANRB and those being charged to FBC. Please include in your explanation an estimate of the differences in costs between an Affiliate Utility (AU) and an ANRB.

Response:

Under the existing transfer pricing rule for an ANRB, where no tariff rate exists, the Transfer Price will be set on the basis of the higher of market price or the fully allocated cost. For an AU, the same rule applies unless there is an agreement between FEI and an Affiliate that has been reviewed by the Commission.

In the case of FBC, with the Commission’s approval to not include overhead in the cross charges from FEI to FBC, FBC is only charged the fully loaded wages including benefits and time away. Using 2015 charges to FBC as an illustrative example (refer to Exhibit B-2,

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Appendix D – 2015 Affiliated Party Transactions Report) and assuming the type of service is Specific Committed with a 10 percent general overhead loading, for the \$3.4 million charged to FBC in 2015, the overhead (10 percent) and the facilities charge (\$100 per day) would have totaled approximately \$600 thousand. Similarly, for the FBC to FEI charges in 2015 of \$5.1 million, following FBC TPP policy, the general and administrative overhead loading (5.5 percent) and profit margin (10 percent) charged to FEI would have totaled to approximately \$550 thousand. The net difference is \$50 thousand.

Please also refer to the response to BCUC IR 1.2.2.

2.2 On page 14 of the Application, FEI comments on the objective of an All-Inclusive CoC/TPP, quotes the Commission decision on the ARB CoC/TPP: "... there should be only one integrated document which would make it easier to compare practices between entities of different natures; to keep track of any changes occurring over time; and to ensure consistency." In FEI's view, does allowing the existing agreement between FEI and its affiliates with respect to the sharing or provision of services to take precedence, defeat the purposes of the All-inclusive CoC/TPP? If not, why not?

Response:

FEI clarifies that in the Application it was not commenting on the objective of an All-Inclusive CoC/TPP but instead stating that it "...has prepared the All-Inclusive CoC/TPP consistent with the guidance outlined by the Commission". The reference "... there should be only one integrated document which would make it easier to compare practices between entities of different natures; to keep track of any changes occurring over time; and to ensure consistency." was a quote from the Commission and not FEI.

FEI believes that having separate agreements between FEI and its affiliates with respect to the sharing or provision of services take precedence over the All-Inclusive CoC/TPP is appropriate. It provides for flexibility in recognizing the Commission's direction in other proceedings that may have other considerations than those contemplated in the CoC/TPP. FEI believes that, where the Commission has jurisdiction over both utilities, it is preferable to allow for different transfer pricing policies to be approved for different purposes, to achieve outcomes that may be determined to be in the public interest, or allow for greater efficiency in sharing of resources between those utilities. Two examples are:

- The Commission in its decision in Order G-110-12 related to FBC's 2012-2013 Revenue Requirements Application, approved the treatment that "Cross charges between FortisBC and its affiliates regulated by the Commission are approved to be based on

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1 *fully loaded costs, not including overhead.”* FEI and FBC had requested this treatment
2 as the approach is reasonable as it provides for sharing of resources between the two
3 companies while simplifying the cross charges; there were no incremental overhead /
4 facilities costs for each company; and as FEI and FBC are both regulated by the
5 Commission, it is able to make a decision on Transfer Pricing that is in the interest of the
6 public for both companies.

- 7 • FEI had a successful shared services agreement with its sister utilities in Vancouver
8 Island and Whistler that was approved through revenue requirement proceedings, but
9 may not have fit squarely under a pre-defined CoC/TPP.

10
11 The All-Inclusive COC/TPP needs to incorporate suitable language to accommodate such
12 Commission approvals.

13 This desire to recognize that there may be other proceedings and decisions that may take
14 precedence was recognized during the regulatory proceeding for FEI’s COC and TPP for ARBs
15 (i.e. previously called ARBNMNs). During that proceeding, Commission staff requested the
16 inclusion of the following wording for the definition “Guidelines”:

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

21 Staff commented that *“the Code of Conduct should acknowledge that there are other directions*
22 *and documents that may have a bearing on affiliate transactions.”*²

23 The same wording as outlined above regarding the definition of “Guidelines” has been
24 incorporated in the All-Inclusive COC/TPP.

25
26
27
28 2.3 Should the proposed wording “... that has been reviewed by the Commission” be
29 better stated as “... that has been approved by the Commission”? Why or why
30 not?
31

² FEI 2015 Application for Approval of COC and TPP for ARBNMNs, Exhibit B-1, Appendix B1, Stakeholder Comments, Page 4.

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1 **Response:**

2 FEI believes the wording is appropriate, reflecting the standard practice of filing agreements
3 with the Commission in support of a Revenue Requirements Application. The rate approval
4 reflects cost allocations based on the agreements, making specific approval of the agreement
5 unnecessary.

6
7

8

9 2.4 When will the Shared Services model approach for cross charging be completed
10 and filed with the Commission?

11

12 **Response:**

13 At this time, FEI anticipates completing a review of a Shared Services model approach for cross
14 charging in 2017. If FEI decides to proceed with this model, it would be filed as part of an
15 upcoming Annual Review or Revenue Requirement proceeding, possibly as early as the Annual
16 Review for 2018 Rates.

17

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3.0 Reference: Exhibit B-2, Section 2.3 pp. 7 and 8;
Appendix E-2, Mutual Shared Services – FEI and FBC p. 7

Shared services agreements with AUs

In developing the All-Inclusive CoC/TPP, FEI's approach is to combine the existing CoC/TPPs into one integrated CoC/TPP, modelling it on the approved CoC/TPP for ARBs.

In the Mutual Shared Services Agreement, under Section 6.2 on Termination, it states:

This Agreement may be terminated by either FEI or FBC in their sole and absolute discretion at any time by giving fourteen (14) days notice after receipt by either FEI or FBC of written notice thereof from the other party. Such termination shall not affect any rights of the parties which have accrued prior to the date of termination and shall not relieve any party from its obligations which have arisen during the term of this Agreement.

3.1 If the All-inclusive CoC/TPP as proposed is approved and becomes effective, what is FEI's intention with respect to the Mutual Shared Services Agreement with FBC? Please explain how the Mutual Shared Services Agreement can work side by side with the All-inclusive CoC/TPP, for example, updating the Mutual Shared Services Agreement to reflect the wording and intent of an approved All-inclusive CoC/TPP? Terminating the Mutual Shared Services Agreement?

Response:

FEI's intention is to continue to have a Mutual Shared Services Agreement to govern sharing of services between FEI and FBC. As indicated in the response to BCUC IR 1.2.2, this is consistent with the All-Inclusive COC/TPP which incorporates suitable language to accommodate such Commission approvals.

FEI believes that there is sufficient regulatory oversight of sharing of resources between AUs through ongoing revenue requirements proceedings and that the review of such sharing agreements should not be part of the All Inclusive COC/TPP process. In its decision in order G-157-16, the Commission also stated this view:

Detailed review of operational agreements including the Shared Services Agreements is part of the on-going regulation of the Commission and is determined to be not in the scope for this proceeding.

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3.2 Can FEI confirm that no major terms or conditions in the Mutual Shared Services Agreement have been left out of the All-inclusive CoC/TPP, such that the conducting of business between FEI and FBC would be fundamentally changed as a result?

Response:

The existing Mutual Shared Services Agreement between FEI and FBC is a general agreement to govern sharing of services. Adoption of language in the All-Inclusive COC/TPP, where appropriate, is not expected to change the sharing arrangement between FEI and FBC.

3.2.1 Please comment if FEI's AUs, FBC and FortisBC Huntingdon Inc. (FBCH) have been consulted when preparing this Application. If not, why not? If yes, please provide a summary of FEI's consultation with the AUs.

Response:

Please refer to Figure 1, page 6 of Exhibit B-2 for a listing of FEI AUs. FEI clarifies that the only two AUs are FBC and FBCH.

For a discussion of consultation with FBCH, please refer to the response to BCUC IR 1.7.3.1.

With regards to consultation with FBC, FEI did not believe this was necessary as FEI and FBC have an existing Mutual Shared Services agreement in place and share common management and leadership resources and operate in an integrated manner, where appropriate. FEI understands FBC's views concerning FEI's All-Inclusive COC and believes it has addressed FBC's views.

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4.0 Reference: Exhibit B-2, pp. 16-17; Appendix A-1 CoC, p. 5 and Appendix A; Exhibit A2-5, November 10, 2015 FEI 2016 Core Market Administration Expense Budget Application, p. 2 and Schedule 1, Sharing of FEI personnel with ANRB and ARB (FMI and ACGS)

On page 16 of the Application, FEI states that further to the ARB Decision, clarification of the specific wording and its application to precluding the sharing of business development personnel with an ARB is useful before applying the same wording in the All-Inclusive CoC/TPP. As an example, FEI cites the irrelevance of the wording in the ARB Decision for Aitken Creek Gas Storage ULC which is also considered an ARB, but where business is wholesale marketplace for natural gas which is different than that of FEI.

FEI proposes wording to clarify the sharing of business development personnel where FEI is providing similar energy solutions. FEI also proposes to include wording that it would not share FEI personnel directly responsible for natural gas portfolio planning and mitigation, and related contract negotiation activities with Aitken Creek Gas Storage ULC and FortisBC Midstream Inc. The proposed wording on page 5 of the proposed CoC states:

“[FortisBC Energy] will not share personnel directly responsible for natural gas portfolio planning and mitigation activities and related contract negotiations with Aitken Creek Gas Storage ULC and FortisBC Midstream Inc. Refer to Appendix A for the relevant positions.”

In Appendix A of the proposed CoC the list of relevant positions is provided as follows:

- Director, Energy Supply and Gas Control;
- Midstream Services Manager;
- Midstream Operations Manager;
- Energy Supply Planning Coordinator;
- Senior Manager, Price Risk and Resource Planning.

4.1 Please describe what the term “not to be shared” means. Does it mean in the narrow sense that FEI staff currently working on the natural gas portfolio planning activities will not also work on assignments to FMI/ACGS? Or does it mean that in the broader sense, that these personnel will not be transferred, on either a temporary or permanent basis, from FEI to FMI/ACGS?

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1 **Response:**

2 The term “not to be shared” included in Appendix A of the proposed FEI All-Inclusive COC
3 means staff employed by FEI that are directly responsible for planning activities related to the
4 development of FEI’s natural gas supply portfolio, mitigation activities and related contract
5 negotiations will not also be assigned to work for or provide services to FMI/ACGS. This
6 interpretation is consistent with the wording proposed in Section 2 b) of the FEI All-Inclusive
7 COC where FEI outlined circumstances for sharing of services and non-executive personnel
8 with Affiliates:

9 From Section 2 b) – Shared Services and Personnel on page 5 of the proposed COC:

10 b) [FortisBC Energy] will only share its services and non-executive
11 personnel with Affiliates in circumstances where:

12 1. the services can be identified and tracked effectively and there are
13 other appropriate safeguards in place as discussed in Section 7 of
14 this document;

15 2. there is limited potential for disclosure of confidential information;
16 and

17 3. there are benefits to [FortisBC Energy] customers.

18 [FortisBC Energy] may also share its services and non-executive
19 personnel with an AU where there is no detriment to [FortisBC Energy].

20 The term “not be shared” does not mean that these personnel could not be transferred, on
21 either a temporary or permanent basis, from FEI to FMI/ACGS or vice versa. The transfer of
22 employees between FEI and FMI, whether temporary or permanent, was addressed by FMI in
23 its response dated April 29, 2016 to the Commission’s Decision on FMI’s application to acquire
24 the shares of Aitken Creek Gas Storage ULC (ACGS). In that Decision, the Commission
25 directed that FMI file an Action Plan that would include details on how and when FMI or ACGS
26 will implement personnel rules, proposed limits on swapping employees between FMI/FEI, or
27 similar inter-affiliate transfers, temporary or not, which could result in the “leakage” of
28 confidential information.

29 In its response, FMI stated that any employees directly responsible for the gas portfolio planning
30 and mitigation and related contract negotiation activities for FEI or FMI that are being assigned
31 or transferred between those two entities will be required to sign a non-disclosure agreement.
32 The non-disclosure agreement is to ensure that the affected employees being transferred
33 between FEI and FMI do not disclose and/or use the confidential commercial information gained
34 while employed in one organization (i.e. FEI) for the benefit of the other organization. By
35 requiring the affected FEI/FMI employees that are being transferred between the two

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1 organizations sign a separate non-disclosure agreement, the affected employees are held to a
2 higher level of standard to maintain confidentiality of information.

3 Further, in the response, FMI stated that besides the requirement for non-disclosure
4 agreements for employees directly responsible for the gas portfolio planning and mitigation and
5 related contract negotiation activities, they do not believe any other restrictions are necessary to
6 address potential sharing of confidential commercial information between the two entities.
7 Restrictions of such nature would limit the opportunities for the affected employees for career
8 development and advancement which could benefit both FEI and FMI. FEI agrees with this
9 view.

10 For reference, please refer to Attachment 4.1 for a copy of FMI's response to the Commission
11 direction to file an Action Plan as part of the Commission's Decision on FMI's application to
12 acquire the shares of Aitken Creek Gas Storage ULC (ACGS).

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14
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16 4.1.1 In FEI's view, does the narrow definition address the "Shared Services
17 and Personnel" principles as listed in section 2 b), on page 5 of the
18 proposed CoC?
19

20 **Response:**

21 Yes. Please refer to the response to BCUC IR 1.4.1.
22
23

24
25 4.1.2 Have any personnel directly responsible for FEI's "natural gas portfolio
26 planning and mitigation activities, and related contract negotiations"
27 been transferred to FMI/ACGS? If so, please provide the list of
28 personnel and the dates of the transfers.
29
30

31 **Response:**

32 As of October 31, 2016, one FEI employee from the FEI group of personnel directly responsible
33 for natural gas portfolio planning and mitigation activities and related contract negotiation moved
34 to a permanent role as part of FMI's commercial team. This individual previously held the
35 position of Midstream Service Manager with FEI and began employment with FMI effective April

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1, 2016. Compliant with the process outlined in FMI's response to the Commission direction to file an Action Plan providing details of personnel rules for employee transfers between FMI and FEI, that individual has signed a non-disclosure agreement to ensure there is no disclosure and/or use of the confidential commercial information gained while employed in FEI.

FEI included a total of 19.9 full-time equivalent staff in the costs allocated to the 2016 Core Market Administration Expense (CMAE) Budget in Schedule 1 of the FEI 2016 CMAE Budget application. On page 2 of this application the CMAE function is described as follows:

The Core Market Administration Expense is a component of the cost of gas, recovered through gas cost recovery rates. The CMAE costs incurred and forecast budget amounts are required to manage the gas supply functions which encompass most elements of the merchant role and ensure that there are reliable, secure, and cost effective supplies of gas for core customers.

4.2 Please confirm that the FEI personnel allocated to the CMAE are the specific FEI personnel directly responsible for and involved in the day-to-day "natural gas portfolio planning and mitigation activities and related contract negotiations", referred to on page 5 of the CoC. If not confirmed, please explain.

Response:

The FEI personnel allocated to the CMAE does include the specific FEI personnel that have been identified as directly responsible for and involved in the day-to-day "natural gas portfolio planning and mitigation activities and related contract negotiation". The CMAE also includes costs for the analytical and mid and back office personnel responsible for various support activities that support the overall energy supply function, including information system support, contract administration, regulatory and financial reporting, budgeting and cost accounting functions, and counterparty credit management.

Please also refer to the response to BCUC IR 1.4.3.

4.3 Please confirm that in addition to the five positions listed in Schedule A of the CoC, a number of other personnel allocated to the CMAE would reasonably be

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considered to have access to, and knowledge of confidential “Commercial Information” regarding FEI’s “natural gas portfolio planning and mitigation activities and related contract negotiations.” If it cannot be confirmed, please explain why not.

Response:

The five positions identified represent the personnel where the potential for conflict of interest exists if they were to also provide services to affiliated entities that engage in similar activities. They are directly involved in developing the long term strategy and short term tactics regarding the nature of the gas supply portfolio, building relationships with counterparties, the procurement of gas supplies and contracting for storage and transportation resources, and the day to day mitigation of the portfolio to maximise value for customers. They are externally focussed and participate directly in the energy markets.

As discussed in the response to BCUC IR 1.4.2, the remaining personnel funded through CMAE generally represent analytical and mid and back office functions that support the overall energy supply function. Depending on their roles, certain of these employees could have access to confidential commercial information associated with gas supply arrangements; however FEI does not consider that the potential for conflict of interest, that could influence commercial negotiations or pricing, exists with these employees. Nevertheless, all employees must abide by FEI’s Code of Conduct policy as well as other guidelines and policies that govern employee behavior such as the Code of Business Conduct and Ethics Policy.

4.4 Please explain why the list of FEI personnel not to be shared with ACGS or FMI, should not include all of the personnel allocated to the CMAE.

Response:

The nature of other CMAE personnel’s access to Commercial Information regarding FEI’s natural gas portfolio planning and mitigation activities and related contract negotiations is different than the five front office staff listed in Appendix A who are directly responsible for the activities. Instead, the other CMAE personnel require access to the information to perform back office supporting functions including Accounting, Risk Compliance and Information Technology support). The nature of the back office work performed by these other employees in supporting functions in CMAE does not lend itself to a situation where there may be a conflict of interest between FEI and FMI/ACGS.

To date, any CMAE employees in a back office function being shared with FMI/ACGS has been limited to the Business Integration Manager who is responsible for the administration and on-

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going support of the Entegrate Deal Capture system being shared between FEI and FMI/ACGS. In addition to the Business Integration Manager, FEI's Compliance Analyst has also assisted with the initial setup of the Entegrate Deal Capture system for FMI/ACGS.

4.4.1 By limiting the list of FEI personnel to only five in Appendix A of CoC, does it not raise the need to amend or add more general conflict check language to the All-Inclusive CoC?

Response:

No, for the reasons described in the response to BCUC IR 1.4.4.

4.5 Please provide an organizational chart for FEI's Energy Supply and Resource Development Department highlighting the personnel allocated to the CMAE.

Response:

Please refer to Attachment 4.5 for the current organizational chart showing all the FEI gas supply employees in the Energy Supply group. Currently all of the positions funded through CMAE are part of the Energy Supply group and are highlighted in yellow in the chart.

Please note that an organizational change during 2016 resulted in the Resource Development group moving to a separate business unit from Energy Supply.

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5.0 Reference: Exhibit B-2, pp. 9 and 11; Exhibit B-2, Appendix A-1 Proposed CoC; Appendix F, p. 2, Sharing of Natural Gas Portfolio, Mitigation and Contract Negotiation Personnel Exhibit A2-6, Aitken Creek Gas Storage ULC (ACGS) Order G-39-16 ACGS Code of Conduct and Transfer Pricing Policy Compliance Filing dated June 30, 2016, cover letter, p. 2 Use of FMI employees by ACGS

On page 2 of the Aitken Creek Gas Storage ULC Order G-39-16 ACGS Code of Conduct and Transfer Pricing Policy Compliance Filing, ACGS states that the CoC and TPP documents filed by ACGS in compliance with Commission Order G-39-16 “differ in material respects from the FEI documents in recognition of the significant differences between the two utilities.” ACGS goes on to state:

ACGS does not currently have any employees. Instead, ACGS relies on its parent company, FMI, for all personnel and services required to operate. The CoC/TPP are drafted to account for both the current circumstances where FMI provides all personnel and services, and a hypothetical future scenario in which ACGS might have employees of its own. It is a term of the CoC that personnel of another entity (including FMI) who provide services on behalf ACGS will be bound by the CoC in the course of the duties those personnel are providing for and on behalf of ACGS. ACGS is thus answerable to the Commission for the conduct of personnel during the course of their work for ACGS.

On page 9 of the Application, FEI states “In 2015, no sharing of services occurred between FEI and ACGS.” And on page 11, FEI states “In 2015, FEI provided services to FMI to assist in the acquisition of ACGS.”

In Appendix A of the proposed FEI All-Inclusive Code of Conduct FEI provides the following list of FEI personnel that will not be shared:

- Director, Energy Supply and Gas Control;
- Midstream Services Manager;
- Midstream Operations Manager;
- Energy Supply Planning Coordinator;
- Senior Manager, Price Risk and Resource Planning.

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1 5.1 While the proposed Code stipulates that there is no 'sharing' of the five listed
2 positions in Appendix A, is it the intention of FEI that employees from these five
3 positions can be transferred to an ANRB or ARB? If it is FEI's intention, please
4 explain how effective is the Code in addressing the concerns of distinct
5 competitive advantage to the affiliate by sharing FEI's employees. If it is not FEI's
6 intention, please explain if the proposed wording in 2d, on page 12 of Appendix F
7 is sufficient in preventing the transfer of employees.

8
9 **Response:**

10 It is the intention of FEI that employees from these five positions can be transferred to an ANRB
11 or ARB.

12 To address concerns that the employees being transferred between FEI and an ANRB or ARB
13 do not disclose and/or use the confidential commercial information gained while employed in
14 one organization (i.e. FEI) for the benefit of the other organization (i.e. FMI – ANRB), the
15 employees will be required to sign a non-disclosure agreement.

16 Please refer to the response to BCUC IR 1.4.1.

17

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6.0 Reference: Exhibit B-2, Section 2.3, p. 8;
Appendix D-1 Affiliated Party Transactions Report Summary p. 9;
Exhibit A2-4 excerpts from Pacific Northern Gas (N.E.) Ltd.
(Fort St. John/Dawson Creek Division) and (Tumbler Ridge Division)
2012 Revenue Requirements Decision [2012 PNG (N.E.) Decision], p.
33
Sharing common resources

On page 8 of the Application, FEI states:

For FBC, since 2010, FEI and FBC have been sharing common resources under a shared services agreement. This arrangement was discussed in FEI's 2012-2013 RRA Application and also in its 2014 to 2018 Multi-Year PBR Application.

6.1 The affiliated party operating transactions summary report shows that in 2015, FEI charged FBC \$3.756 million, and charged FEI \$5.818 million. Please provide a schedule showing the annual operating transactions (\$) between FEI and FBC from 2010 – 2015.

Response:

The requested FEI-FBC cross-utility charges from 2010 through 2015 are provided in the table below. FEI has also included 2016 YTD and annual projected amounts to respond to MoveUp IR 1.3.3.

		2010	2011	2012	2013	2014	2015	2016 Sept	2016
	(\$millions)	Actual	Actual	Actual	Actual	Actual	Actual	YTD	Projected
FEI charging FBC	\$	0.429	\$ 1.177	\$ 1.661	\$ 2.673	\$ 3.637	\$ 3.756	\$ 2.648	\$ 3.531
FBC charging FEI	\$	0.957	\$ 1.868	\$ 2.362	\$ 3.891	\$ 5.066	\$ 5.818	\$ 4.774	\$ 6.365

6.1.1 Does the schedule above show an increasing, constant, or decreasing trend? Please discuss.

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Response:

The schedule provided in the response to BCUC IR 1.6.1 shows an increasing trend for cross-utility charges, although the trend for charges from FEI to FBC appears to have leveled off in recent years. This reflects the integration efforts between the utilities which are now reaching a more stable level.

The 2012 PNG (N.E) Decision states on page 33:

...the total Shared Service allocation to PNG (N.E.) has been an issue in each RRA for the last several years. PNG (N.E.) FSJ/DC Division has seen its share of the pool of Shared Service costs rise from \$1,685,000 in 2008 to \$2,233,000 proposed for 2012. (Exhibit B 1, Tab Application, p. 11; Exhibit B-9, BCUC 1.23.1) This 33 percent increase over 4 years is the result of rising Shared Service costs and increasing allocations to PNG (N.E.) FSJ/DC Division as that utility has had increased customers and gas sales while PNG [West] has stagnated.

6.2 The 2012 PNG (N.E) Decision notes that the stagnation of sales and customer additions results in increased allocation to a more robust affiliate. Is this a concern for FEI and its cost allocation with its AUs? Why or why not?

Response:

FEI does not have the same level of concern as PNG does regarding the increased allocation of shared services costs as a result of stagnating sales and customer additions in one AU affiliate compared to a more robust AU affiliate.

From the excerpt above, FEI understands the PNG Shared Service allocation to be based on the drivers of customers and sales. FEI and FBC are not currently using a Shared Service (driver based) approach to cost allocation, although they are considering implementing one in the future. FEI and FBC currently use a timesheet based approach for the majority of cross charges between each other with the exception of Board of Director and Executive costs which are allocated based on the Massachusetts Formula. The charges based on a timesheet approach reflect specific work performed and are not affected by changes in the drivers of the respective AUs.

If in the future FEI and FBC move to a Shared Service allocation approach, it is likely that it will include drivers such as number of customers and number of employees among others.

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1 However, FEI and FBC can be considered relatively “mature” utilities with stable customer and
2 employee bases and sales volumes. The likelihood of a significant shift in the profile of the two
3 mature AUs creating an increased allocation of costs to a more robust affiliate is unlikely. If this
4 did occur, it may in fact be appropriate as the utility with a smaller proportion of these drivers
5 may actually be consuming fewer resources. Regardless, such a shift would be a consideration
6 for future revenue requirement proceedings.

7
8
9
10 6.3 While a shared resource between two AUs may not require an increase in total
11 resources over time, a declining utility would see its share of the total costs
12 declining while the stable utility would see its allocated share of shared services
13 increasing. Would this be fair to the customers of the stable utility?
14

15 **Response:**

16 FEI cannot speculate on such a hypothetical situation. The specific circumstances would need
17 to be considered if such a situation arose. Please refer to the response to BCUC IR 1.6.2.
18

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7.0 Reference: Exhibit B-2, Appendix A-1 Proposed CoC pp. 6 - 9, Appendix A on Affiliates of FEI; Appendix F Summary Matrix, pp. 1, 2 and 4; Exhibit A2-3 Pipeline Companies Regulated by the National Energy Board (NEB) Shared resources with AUs and ANRB, Shared commercial information for AUs and preferential treatment for AUs

Under the proposed All-Inclusive CoC, AUs are treated differently from ARB and ANRB in that they can: (i) share services and non-executive personnel with Affiliates as long as there is no detriment to FEI, (ii) can share business development personnel, and (iii) directors and officers/executives with dual management roles are not required to sign a non-disclosure agreement.

The proposed All-Inclusive CoC's section on Preferential Treatment is not applicable to AUs.

On treatment on information sharing, the rules that FEI will not provide commercial information to an Affiliate do not apply to AUs.

7.1 According to Figure 1 in the Application, the AUs for FEI are FBC and FBCH. Does FBCH have any non-regulated businesses, projects or subsidiaries? If so, please describe.

Response:

FBCH does not have any non-regulated businesses, projects or subsidiaries.

7.2 Is there not a concern that an AU might pass on sensitive information provided by FEI to other ANRBs or ARBs? Would it be appropriate to add wording to the CoC to make it clear that any information provided by FEI to an AU must not be shared with any other party? Please discuss the concern and suggest any appropriate wording that should be added to the CoC.

Response:

FEI believes the concern about an AU (i.e. FBC) passing on sensitive information provided by FEI to other ARNBs or ARBs is appropriately addressed by the FortisBC Code of Business Conduct and Ethics Policy that provides guidance to FortisBC (including FBC) and its employees on how to conduct its affairs. Additionally, FBC has its own Code of Conduct for NRBs containing language to govern the treatment of confidential information.

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1 The Code of Business Conduct and Ethics describes the specific standards of ethical business
2 practice and conduct expected of employees. Specifically, section 5.0 Proprietary and
3 Confidential Information of the Code of Business Conduct and Ethics Policy states:

4 5.1 Employees shall not disclose any confidential or proprietary information about
5 the Corporation, or any person or organization with which the Corporation has
6 a current or potential business relationship, to any person or entity, either
7 during or after service with the Corporation, except (i) in furtherance of the
8 business of FortisBC, (ii) with the written authorization of a member of senior
9 management or (iii) as may be required by law. Employees shall return all
10 proprietary and confidential information in their possession forthwith upon the
11 termination of their employment with the Corporation.

12 5.3 In addition to the confidentiality obligations contained in the Code of Ethics,
13 employees are required to comply with the Corporation's privacy policies
14 related to the protection of confidential employee or customer information.

15 Additionally, the Code of Business Conduct and Ethics also outlines compliance requirements.
16 Specifically, section 10.1 states that:

17 Strict adherence to this Code of Ethics and FortisBC's corporate policies is
18 mandatory. Failure to comply with this Code of Ethics or any other FortisBC
19 corporate policy may result in disciplinary action up to and including termination.

20
21
22
23 7.3 Please describe the key stakeholders of FBCH. Do FBCH's stakeholders overlap
24 FEI's own stakeholder group?

25
26 **Response:**

27 FBCH's stakeholders are shippers contracting for service. Two shippers currently contract for
28 service with FBCH. They are FEI, which is the largest shipper, and NW Natural. This
29 stakeholder group is separate from FEI's own stakeholder group because FBCH's shippers do
30 not contract for any distribution service offered by FEI.

31
32
33 7.3.1 Have FBCH and its stakeholders been consulted? If so, has any party
34 expressed potential concerns? If not, why not?
35

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1 **Response:**

2 Shippers including NW Natural (currently contracting for service from FBCH) that may contract
3 for service from FBCH have not been consulted on FEI's proposed Application for the All
4 Inclusive COC and TPP. As outlined in Exhibit B-2, page 10, the nature of services provided
5 from FEI to FBCH is limited only to operating and maintaining FBCH's two interconnecting
6 pipelines and two distribution lines that cross the international border. The nature of services
7 provided by FEI to FBCH is expected to remain unaffected by FEI's proposed All Inclusive COC
8 and TPP. FEI files its Transportation Services Agreement with FBCH with the Commission, and
9 files its Toll Schedules each year with the National Energy Board. Both of these filings set out
10 the amount charged for the services provided by FEI to FBCH.

11

12

13

14 7.4 For the purposes of this CoC/TPP Application, FEI classifies FBCH as an AU.
15 According to the NEB (Exhibit A2-3), FBCH is regulated on a complaints basis
16 only. Does this make FBCH's activities more akin to unregulated activities and
17 therefore an ANRB classification is more appropriate? Why or why not?

18

19 **Response:**

20 FBCH is appropriately classified as an AU. FBCH's activities are not akin to those of
21 unregulated businesses in any way. FBCH is a cost of service regulated business like FEI and
22 differs only in that it is regulated by the National Energy Board (the Board) and that the Board
23 permits this regulation to be conducted largely on a complaints basis because of the small size
24 of its business. FBCH is required to consult with its shippers prior to filing updated new annual
25 tolls with the Board. This approach helps to ensure that agreement is reached with shippers in
26 a manner that avoids a further and more costly review process led by the Board.

27

28

29

30

31 Regarding Preferential Treatment, the rule that FEI will not state or imply that favoured
32 treatment will be available to customers of FEI as a result of using any service of an
33 Affiliate does not apply to AUs.

34 7.5 Under the proposed FEI All-Inclusive CoC/TPP, could FEI state or imply that
35 favoured treatment will be available to customers of FEI as a result of using any
36 service of an AU? For example, could FEI state or imply that favoured treatment

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will be available to customers of FEI as a result of using FBC to install an electric vehicle charging station on an FEI customer's premise?

Response:

The requirement for inclusion of the preferential treatment language in the All Inclusive COC/TPP is to ensure that no unfair advantage is conferred to an Affiliate operating in competitive market environment by the Affiliate's association with FEI.

The issue of preferential treatment is not applicable to regulated monopoly utilities such as FEI and FBC. The rates under which customers may take service from the utilities are tariff rates that are set by the Commission and do not allow for preferential treatment. The following sections of the UCA are relevant to the issue of preferential treatment:

Public utility must provide service

38 A public utility must

(a) provide, and

(b) maintain its property and equipment in a condition to enable it to provide,

a service to the public that the commission considers is in all respects adequate, safe, efficient, just and reasonable.

No discrimination or delay in service

39 On reasonable notice, a public utility must provide suitable service without undue discrimination or undue delay to all persons who

(a) apply for service,

(b) are reasonably entitled to it, and

(c) pay or agree to pay the rates established for that service under this Act.

Discrimination in rates

59 (1) A public utility must not make, demand or receive

(a) an unjust, unreasonable, unduly discriminatory or unduly preferential rate for a service provided by it in British Columbia, or

(b) a rate that otherwise contravenes this Act, the regulations, orders of the commission or any other law.

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1 (2) A public utility must not

2 (a) as to rate or service, subject any person or locality, or a
3 particular description of traffic, to an undue prejudice or
4 disadvantage, or

5 (b) extend to any person a form of agreement, a rule or a facility or
6 privilege, unless the agreement, rule, facility or privilege is
7 regularly and uniformly extended to all persons under substantially
8 similar circumstances and conditions for service of the same
9 description.

10 (3) The commission may, by regulation, declare the circumstances and
11 conditions that are substantially similar for the purpose of subsection (2) (b).

12 (4) It is a question of fact, of which the commission is the sole judge,

13 (a) whether a rate is unjust or unreasonable,

14 (b) whether, in any case, there is undue discrimination,
15 preference, prejudice or disadvantage in respect of a rate or
16 service, or

17 (c) whether a service is offered or provided under substantially
18 similar circumstances and conditions.

19 (5) In this section, a rate is "unjust" or "unreasonable" if the rate is

20 (a) more than a fair and reasonable charge for service of the
21 nature and quality provided by the utility,

22 (b) insufficient to yield a fair and reasonable compensation for the
23 service provided by the utility, or a fair and reasonable return on
24 the appraised value of its property, or

25 (c) unjust and unreasonable for any other reason.

26 Orders respecting contracts

27 64(1) If the commission, after a hearing, finds that under a contract entered into
28 by a public utility a person receives a regulated service at rates that are
29 unduly preferential or discriminatory, the commission may

30 (a) declare the contract unenforceable, either wholly or to the
31 extent the commission considers proper, and the contract is then
32 unenforceable to the extent specified, or

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1 (b) make any other order it considers advisable in the
2 circumstances.

3 (2) If a contract is declared unenforceable either wholly or in part, the
4 commission may order that rights accrued before the date of the order be
5 preserved, and those rights may then be enforced as fully as if no
6 proceedings had been taken under this section.

7

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8.0 Reference: Exhibit B-2, Section 4.2.1, pp. 15 - 17; Appendix A-2 black-lined CoC p. 7;

Exhibit A2-2 Annual Review of CoC and TPP

Sharing of business development personnel

The ARB CoC precludes sharing of FEI business development personnel with an ARB.

On page 16 of the Application, FEI says that it believes clarification of this specific wording is useful before applying the same wording in the All-Inclusive CoC/TPP. FEI says that the clarification is based on recognizing the concern by interveners in the AES Inquiry Report proceeding, that the focus was on energy solutions in a competitive marketplace and where there may be a distinct competitive advantage to the affiliate. FEI believes that its business development personnel with expertise in energy solutions should not be precluded from being shared with an Affiliate for the development of other lines of business that are different than those provided by the regulated utility. It cites as an example the Aitken Creek Gas Storage ULC which is an ARB, but the business is in the wholesale marketplace for natural gas, which is different than that of FEI energy solutions for end use customers.

In the internal audit report carried out to provide reasonable assurance of compliance with the CoC/TPP (October 16, 2015), it was observed that one employee had business development responsibilities for both FEI and FAES. The internal audit report noted that this was because management had interpreted the policy (i.e., no sharing of business development personnel) to mean that no similar business development activity was to be undertaken by business development personnel.

On page 15 of the Application, FEI states that it believes that the restrictions on shared services and personnel in an ARB situation is also appropriate for an ANRB situation, ensuring that FEI ratepayers are protected and that the non-regulated affiliate is not subsidized by FEI.

8.1 Under the proposed wording in paragraphs 2 c) and 2 d) on page 7 of the black-lined All-inclusive CoC, would the incident as reported in the 2015 internal audit still be considered not in compliance of the CoC for: (a) ARB, or (b) ANRB? Please explain your answer.

Response:

The wording in paragraph 2 c) referring to Business Development Personnel is most relevant to this question on the sharing of business development personnel reported in the 2015 internal audit report. Paragraph 2 d) refers specifically to Natural Gas Portfolio, Mitigation and Contract Negotiation Personnel.

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The circumstances discussed in the internal audit report would be in compliance with the proposed wording in the All-Inclusive COC/TPP. As indicated in the internal audit report, management had interpreted the words to mean no sharing of FEI business development personnel for similar markets (i.e. lines of businesses where there is competition for the markets). As indicated in Exhibit B-2, page 16, the fact that FEI's business development personnel have expertise in the energy solutions market should not preclude them from being shared with an Affiliate that competes for customers in different markets than that being serviced by FEI.

The revised wording in paragraph 2 c) provides clarification, by adding the words "and where [FortisBC Energy] is providing similar energy solutions". This revised wording will allow sharing of business development personnel in different markets where a different energy solution is being provided.

8.2 Paragraph 2 c) and 2 d) of the proposed All-inclusive CoC seem to treat ARBs and ANRBs the same with respect to the sharing of services and personnel. In FEI's view, does it adhere to the principles enunciated in the RMDM Guidelines which state that, "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..."? (Exhibit A2-1, RMDM Guidelines, p. 24)

Response:

For clarity, the referred to section ii of the RMDM guidelines (Exhibit A2-1 RMDM Guidelines, p. 24) is provided here for reference.

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.

Section ii states that the preferred option is not to use utility resources for participation in the unregulated downstream market but does also state variations from the preferred option are allowed. The second sentence provides wording as to when it is appropriate to use utility

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resources in NRBs, being in those situations where there is a transfer pricing mechanism that will act to provide sufficient protection for ratepayers. From this perspective, FEI has proposed a transfer pricing mechanism in the All Inclusive COC that provides sufficient protection for ratepayers and is consistent with TPP requirements outlined in the RMDM guidelines.

For reference, following are the wording in the RMDM guidelines regarding Transfer Pricing Policy (Exhibit A2-1 RMDM Guidelines, p. 25).

Accordingly, the Commission concludes that a utility's transfer pricing policy should ensure the following:

- i) The operating costs of non-regulated activities are not reflected in the utility's cost of service.
- ii) The costs of developing new business ventures are charged to and recovered from the NRB.
- iii) The accounting costs are transparent and will normally fully recover for all services, including overhead, space, employee benefits, inconvenience, and a profit margin where appropriate. If the service provided by the utility to the related-NRB could also be obtained from an independent supplier, the price paid by the related-NRB to the utility should be no less than the competitive market price and will never be below the incremental cost.
- iv) 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.
- v) Utilities will be required to file periodic reports which demonstrate that they are adhering to the transfer pricing policy. The form and timing of the report will be determined by the Commission.

FEI's proposed rules for sharing of services and personnel for ARBs and ANRBs adhere to the RMDM principle referred to in this question and are also consistent with the TPP rules outlined in the RMDM guidelines.

FEI's proposed wording in Sections 2 c) provides for language regarding the sharing of Business Development Personnel with Affiliates and is intended to apply to ARBs and ANRBs. FEI has adopted similar wording for ANRBs as that for ARBs which was previously approved as part of the FEI COC/TPP for ARBNNMs proceeding. In that proceeding, the Commission recognized the need to impose greater restrictions on sharing of resources with ARBNNMs to address competition concerns expressed by the Coalition for Open Competition and to prevent cross-subsidization. FEI believes these additional restrictions are also appropriate and adequate for ANRBs.

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Further, FEI highlights the proposed All Inclusive COC/TPP builds on the existing approved COC for NRBs developed in 1997 which considered and incorporated the RMDM guidelines. When compared to the existing COC for NRBs, section 2 c) of the proposed All Inclusive COC has been enhanced to provide for ratepayer protection. In the existing COC for NRBs, the equivalent section (i.e. labelled as section 2 b)) currently specifies that “FEI may provide shared services to NRBs, including supervision and management while ensuring that ratepayers will not generally be negatively impacted by Utility involvement.” The proposed wording in section 2 c) of the All Inclusive COC/TPP is much more specific outlining wording that restricts sharing of Business Development Personnel.

Section 2 d) is wording developed specifically to address the concern regarding the sharing of Natural Gas Portfolio, Mitigation and Contract Negotiation Personnel with the entities ACGS and FMI. As a result, the question of “why shouldn’t the shared services restrictions be more restrictive for an ANRB” is less relevant.

8.2.1 Please provide FEI’s rationale that the shared services CoC for ARB is also appropriate for ANRB. Why shouldn’t the shared services restrictions be more restrictive for an ANRB, since those companies are not regulated in their competition with other market participants?

Response:

Please refer to the response to BCUC IR 1.8.2.

8.3 While FEI proposed new wording to clarify the specific wordings in the existing CoC for ARBs in order to accommodate the development of other lines of business that is different from the energy solutions projects contemplated in the CoC for ARBs, are the new wordings in paragraph 2 d) in the proposed All-Inclusive CoC, general enough to address other future ARB or ANRB businesses?

Response:

Given the potential concerns about the sharing of FEI personnel who are directly responsible for natural gas portfolio planning and mitigation activities and related contract negotiations with

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- 1 ARB/ANRB businesses (i.e. ACGS/FMI), to ensure clarity on interpretation and compliance, FEI
- 2 decided to include specific wording tailored to the situation instead of general wording.
- 3 FEI believes paragraphs 2c) and 2d) will be adequate for the foreseeable future. FEI will
- 4 assess the need to update the COC for any changes over time as part of the review
- 5 requirements outlined in Section 10 Amendments of the All-Inclusive COC.
- 6

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9.0 Reference: Exhibit B-2, p. 13; Appendix B-2 Minutes from Workshop

FEI Workshop participants

FEI held a workshop on May 26, 2016 that was attended by FEI utility-related participants, but no potential or actual competitors of ARBs or ANRBs of FEI.

9.1 What efforts did FEI undertake to encourage participation by companies in competition with those ARBs and ANRBs? Why does FEI think those potential or actual competitors did not participate?

Response:

Only FAES and FMI/ACGS are operating in a competitive environment. The interactions between FEI and those two affiliates have been very recently reviewed, with active participation from competitors. FEI's interactions with FAES were reviewed in 2015 through the FEI COC/TPP for ARBNMNs proceeding (the predecessor of ARBs). FEI's interactions with FMI/ACGS were reviewed earlier in 2016 through FMI's ACGS Facility Purchase application. The interests of these parties have already been brought forward for the Commission's considerations in these earlier proceedings.

This application did not include any material changes to FEI's recently approved CoC/TPP for its ARBs, and therefore, FEI did not encourage participation from the competitors that had previously participated in those proceedings.

FEI's invitation list to the workshop on its All-Inclusive COC was based on the Registered Parties (MoveUP, BCOAPO, CEC, BCSEA) in FEI's PBR Proceeding and also Commission staff. FEI believes these stakeholders would be the most interested in the language included for AUs, which is the only area that resulted in significant revisions to the CoC/TPP (since it had not been previously included).

9.2 Following the workshop, what efforts has FEI made to engage those competitors and advise them of the content of this Application?

Response:

No further engagement has been undertaken.

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10.0 Reference: Exhibit B-2, pp. 16 and 19

FEI sharing resources with FBC

FEI states on page 16 of the Application that: “As FBC is also a regulated utility that is a natural monopoly, sharing FEI resources with FBC with no detriment to FEI ratepayers is warranted.” On page 19 of the Application, it states: “For Commercial Information, concerns over sharing of the information are different for an AU than that for an ARB or ANRB. For an ARB or ANRB where competition is more prevalent and with the value of Commercial Information greater than in the situation with an AU, precluding the sharing of Commercial Information between FEI and an ARB and ANRB is warranted. This is not justified with an AU. FEI considers that sharing of Commercial Information as defined with an AU would therefore be acceptable.”

10.1 British Columbia Hydro and Power Authority (BC Hydro) is also a regulated utility that is a natural monopoly and may have interests in acquiring customer or market information for such purposes as designing DSM programs or rate design. Would FEI equally share any customer or market related information that it would provide to FBC with BC Hydro? Why or why not?

Response:

Subject to restrictions of privacy legislation and other applicable laws, FEI shares customer or market related information with FBC and BC Hydro. For example, FEI, FBC and BC Hydro share information in order to collaborate in the development of some DSM programs. The information is shared amongst the regulated utilities for the benefit of customers in the province of B.C. and not for competitive gains.

10.1.1 Please discuss whether the current wording in the proposed CoC regarding sharing information with an AU is appropriate for this type of situation?

Response:

FEI believes that the wording in the proposed CoC regarding sharing of information with an AU is generally appropriate for governing sharing also with BC Hydro as it considers many of the same issues concerning the sharing of information including the *Personal Information Protection Act*. However, some wording is inappropriate as FEI would not charge BC Hydro as required in the All-Inclusive CoC for information provided given that the information will be used for joint DSM programs.

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- 1 FEI highlights that sharing information with BC Hydro, a regulated utility not affiliated with FEI, is
- 2 not what the All-Inclusive COC is designed for, which is to govern information sharing between
- 3 FEI and its Affiliates. There is no concern that FEI will be providing preferential treatment to BC
- 4 Hydro, or that FEI's customers may be negatively impacted.

5

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11.0 Reference: Exhibit B-2, p. 17

FEI business development personnel

On page 17 of the Application, FEI proposes the following wording to clarify the interpretation of the current wording which states: “[FortisBC Energy] will not share business development personnel.”

“[FortisBC Energy] will not share business development personnel with an Affiliate where the Affiliate is carrying out business development activities to acquire customers seeking energy products and services available in a competitive marketplace and where [FortisBC Energy] is providing similar energy solutions.

FortisBC Energy and an AU can share business development personnel.”

11.1 Why is the wording, “and where (FortisBC Energy) is providing similar energy solutions” needed? Would it not be preferable to replace that wording with “unless approved by the Commission”? Please explain FEI’s rationale.

Response:

FEI believes it is more efficient and timely administratively to specify in a clear manner the circumstances where sharing of business development personnel is allowed. FEI believes it has done so by providing suitable wording to describe the situation and is requesting approval for this as part of the overall review of the All-Inclusive COC. Replacing FEI’s proposed wording with words like “unless approved by the Commission” would be administratively challenging as it would require FEI to seek Commission approval in separate proceedings with the timing of these separate proceedings uncertain.

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12.0 Reference: Exhibit B-2, Appendix A-1 proposed CoC, p. 2

ANRB definition

FEI includes the following definition of an ANRB: *“A separate legal entity that is an affiliate of FortisBC Energy not regulated by the Commission or the National Energy Board or a division of FortisBC Energy offering products and services unregulated by the Commission.”*

12.1 What divisions of FEI offer products and services unregulated by the Commission, and why are they included within the regulated utility that is FEI?

Response:

There are currently no divisions of FEI that are offering products and services unregulated by the Commission. The wording “..... a division of FortisBC Energy offering products and services unregulated by the Commission” is consistent with that currently included in the definition Non-Regulated Business (NRB) in the Code of Conduct for NRBs. The wording recognizes the fact that the UCA allows public utilities to carry on businesses not regulated by the Commission.

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13.0 Reference: Exhibit B-2, Appendix A-1 proposed CoC, pp. 2, 4 and 5

Shared services and personnel and non-disclosure agreements

FEI includes the following statement in the All-inclusive CoC:

[FortisBC Energy] may also share its services and non-executive personnel with an AU where there is no detriment to [FortisBC Energy].

Directors and officers/executives with dual management roles in [FortisBC Energy] and an Affiliate are required to execute a non-disclosure agreement. In the situation of an AU, a non-disclosure agreement is not required.

The proposed CoC defines Commercial Information as “Information related to FortisBC Energy’s commercial or trading activities such as natural gas supply portfolio planning, mitigation activities and related contract negotiations, or information that will inhibit a competitive energy services market from functioning.”

13.1 Are there situations where FEI is sharing services or personnel with an AU at rates below fully loaded cost? If yes, then please identify the charge out rate and the fully loaded rate equivalent.

Response:

No. All cross charges for labour services to FBC and FBCH include fully loaded hourly rates including benefits and time away.

13.2 Please identify situations where a non-disclosure agreement would be detrimental to the operations of FEI directors and officers/executives?

Response:

FEI is proposing NDAs when it comes to ARB/ANRBs, but not for AUs. As such, FEI interprets the question as being “where a non-disclosure agreement would be detrimental to the operations of FEI directors and officers/executives in an AU situation”. As outlined in Exhibit B-2, page 18, FEI believes the issue of disclosure of confidential information by directors and officers/executives with dual roles in AUs is not a concern as there are no competitive considerations for sharing of confidential information between FEI and AUs.

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13.3 Would a non-disclosure agreement in the case of an AU help to overcome the risk that market or customer information might be passed on inappropriately to an ARB or ANRB?

Response:

FEI understands this question to be asking whether a non-disclosure agreement for directors and officers/executives with dual management roles in AUs helps to overcome the risk that market or customer information might be passed on inappropriately to an ARB or ANRB.

FEI believes the requirement to have directors and officers/executives with dual management roles in FEI and an Affiliate that is an ARB/ANRB sign a non-disclosure is sufficient to limit the potential disclosure of confidential information. FEI does not believe a non-disclosure agreement is necessary to deter passing on confidential information in the situation of an AU to an AU and then to an ARB or ANRB. FEI's directors and senior management are subject to FEI's Business Ethics policy. Further, as indicated in the FEI COC/TPP for ARBNM proceeding, the Commission recognized that it is appropriate to balance the risk of disclosure of confidential information, given the effectiveness of the measures put in place, against the benefits to FEI and the ARB/ANRB.

13.4 Should a non-disclosure agreement be required for any FEI employee with direct responsibility for, access to, or knowledge of FEI's Commercial Information as part of their role at FEI and who is subsequently transferred, either on a permanent or a temporary basis, to an ARB or ANRB? If not, why not?

Response:

Compliant with the process outlined in FMI's response to the Commission direction to file an Action Plan providing details of personnel rules for employee transfers between FMI and FEI, employees directly responsible for the gas supply portfolio planning, mitigation activities and related contracted negotiations that are being assigned or transferred to FMI are required to sign a non-disclosure agreement to ensure there is no disclosure and/or use of the confidential commercial information gained while employed in FEI.

Please refer to the response to BCUC IR 1.4.1.2.

For FEI employees with access to information related to FEI's commercial or trading activities, the nature of the back office work performed by these other employees in supporting functions

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- 1 does not lend itself to a situation where there may be a conflict of interest. Therefore, non-
- 2 disclosure requirements are not required.
- 3 Please refer to the response to BCUC IR 1.4.4.
- 4 FEI does not at this time have any other affiliates (other than AUs) that have commercial
- 5 operations, so there is no need for consideration of any other NDAs.
- 6

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1 **14.0 Reference: Exhibit B-2, Appendix A-1 proposed CoC, p. 6**

2 **Provision of Information**

3 FEI includes the following statement in 3 b): “A written consent will be not required for
4 the release of aggregated or summarized Customer Information.”

5 14.1 Please correct the wording.

6

7 **Response:**

8 The corrected wording is as follows and replaces the last sentence of section 3 b):

9 Written consent will not be required for the release of aggregated or summarized
10 Customer Information.

11 The corrected wording for section 3 b) is as follows:

12 b) [FortisBC Energy] may disclose to a party that requests Customer
13 Information that is aggregated or summarized in such a way that
14 confidential or individual information would not be ascertained by third
15 parties. Written consent will not be required for the release of aggregated
16 or summarized Customer Information.

17

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1 **15.0 Reference: Exhibit B-2, Appendix A-1 proposed CoC, p. 9**

2 **FBCH**

3 FEI includes the following statement in reference to FBCH: “The Corporations owns two
4 interconnecting pipelines near Abbotsford, British Columbia which are used in the
5 transmission of natural gas to and from the United states.”

6 15.1 Please correct the wording.

7

8 **Response:**

9 The typographical errors - reference to “Corporations” and “United states” have been corrected.
10 The corrected wording for the definition of FortisBC Huntingdon Inc. is as follows:

11 FortisBC Huntingdon Inc. (FBCH) – FBCH is a wholly owned subsidiary of
12 FortisBC Holdings Inc. The Corporation owns two interconnecting pipelines near
13 Abbotsford, British Columbia which are used in the transmission of natural gas to
14 and from the United States. The Corporation is regulated by the National Energy
15 Board, an independent regulatory authority. For the purpose of this Code of
16 Conduct, FBCH is classified as an AU.

17

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16.0 Reference: Exhibit B-2, Appendix A-1 Proposed TPP, p. 3

TPP under the heading: Policy

FEI includes the following statement: “Transfer Prices charged to Affiliates by [FortisBC Energy] are intended to ensure that [FortisBC Energy] customers are not adversely affected by the pricing for services performed for Affiliates, and will be established using the following pricing rules.”

16.1 Should the words “not adversely affected” be replaced by “benefitted”? If no, please explain the situations where FEI customers would not be benefitted.

Response:

FEI believes that the wording should remain “not adversely affected”. The focus of the CoC/TPP should be on avoiding harm to FEI, although FEI’s current practices would generally provide an actual “benefit” to FEI’s customers.

Since FEI’s labour costs are primarily fixed, recovery of any portion of the costs will be of benefit to FEI’s customers through a lower cost of service, in addition to softer benefits such as broader skill development and expanded knowledge of utility operations.

However, FEI can envision a situation where an incremental resource is required that supports both FEI work and work on behalf of FBC. In this case, it is clear that FEI is not adversely affected as long as the incremental labour costs are charged to FBC. However, the resource may have been hired sooner than had there only been work in FEI, because there was enough work between the two utilities to require a resource. The financial “benefit” would be more difficult to quantify, but the wording “not adversely affected” can be clearly supported.

FEI highlights that the words “not adversely affected” originated in the 1997 approved Transfer Pricing Policy for NRBs and was also included in the recently approved Transfer Pricing Policy for ARBNNMs (i.e. ARBs). FEI believes that it is generally easier to demonstrate that there have been not adverse impacts than that there has been a benefit. As stated above, benefits are not always going to be of a purely financial nature.

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17.0 Reference: Exhibit B-2, Appendix A-1 proposed TPP, pp. 5 and 6

Section 2.1 Type of Service and overtime charges

17.1 How are overtime charges incorporated into the three 'types of service' identified in the TPP section 2.1? Are these charges reflected in Appendix A to the TPP?

Response:

While not specifically stated in Appendix A of the TPP, overtime charges (i.e. at double hourly rate but with no benefits and concessions loadings) incurred by FEI employees for Affiliate work are allocated to the Affiliate for all three types of services; Specific Committed, As Required and Designated Subsidiary/Affiliate.

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18.0 Reference: Exhibit B-2, Appendix A-1 Proposed TPP, p. 7

Research Costs

Section 3.2 states: “As research is regarded as a continuing activity required to maintain [FortisBC Energy]’s business and its effectiveness, such expenses shall be borne by [FortisBC Energy]. However, where it is evident that certain research activities are clearly directed towards specific pursuits related to an Affiliate, [FortisBC Energy] will ensure it is compensated by the Affiliate according to the pricing rules defined in Section 1 of this Transfer Pricing Policy, net of any quantifiable benefits received by [FortisBC Energy].”

18.1 Please explain all those cases where FEI has reduced its research information charges to an affiliate due to “quantifiable benefits received by” FEI.

Response:

For ARBs and ANRBs, to the best of its knowledge, FEI believes there have been no cases where it has utilized the clause to reduce its charges to an ARB/ANRB due to “quantifiable benefits received” by FEI.

For its AU affiliate FBC, FEI has undertaken general customer and other research efforts on behalf of both utilities. At a minimum, FBC is cross charged a percentage of the project administration costs based on the ratio of FBC and FEI customers to FortisBC’s total number of customers. By sharing costs for research efforts, costs are lower for both FEI and FBC. FBC is being charged less than it would have if FEI was just providing the research support for a FBC study only. This an example where FEI has reduced its charges to an AU due to “quantifiable benefits” received by FEI (i.e. FEI benefits from shared research costs).

Attachment 4.1



FortisBC Midstream Inc.
10th Floor - 1111 West Georgia St.
Vancouver, BC. V6E 4M3
Tel: 604-592-7837
Email: FMI.regulatory.affairs@fortisbc.com

April 29, 2016

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

Attention: Ms. Laurel Ross, Acting Commission Secretary and Director

Dear Ms. Ross:

Re: FortisBC Midstream Inc. (FMI)

Project No. 3698861

Application for Approval of the Acquisition of the Shares of Aitken Creek Gas Storage ULC (the Application)

British Columbia Utilities Commission (Commission) Decision dated March 18, 2016 and Order G-39-16 – Action Plan Compliance Filing

On March 18, 2016, the Commission issued its Decision and Order G-39-16 in the FMI Application to acquire the shares of Aitken Creek Gas Storage ULC (ACGS). Directive No. 5 of Order G-39-16 directed FMI to file an Action Plan within 30 days of the share acquisition date. FMI confirms that the transaction to acquire the shares of ACGS closed on April 1, 2016.

In the Decision, the Panel directed that the Action Plan include details on how and when FMI or ACGS will:

- Implement personnel rules, proposed limits on swapping employees between FMI/FEI, or similar inter-affiliate transfers, temporary or not, which could result in the “leakage” of confidential information;
- Ensure ACGS/FMI directors and executives that also have management roles with FEI execute nondisclosure agreements; and
- File with the Commission a draft COC/TPP which covers the interactions between ACGS and its affiliated natural monopoly utilities, ACGS and its affiliated non-regulated businesses, and ACGS and its affiliated regulated businesses operating in a non-natural monopoly environment.¹

The following constitutes FMI’s Action Plan in compliance with the Decision and Order G-39-16.

¹ Decision on page 21.



1. *Implement personnel rules, proposed limits on swapping employees between FMI/FEI, or similar inter-affiliate transfers, temporary or not, which could result in the “leakage” of confidential information.*

Similar to the requirement that ACGS/FMI directors and executives that also have management roles with FEI execute nondisclosure agreements, employees directly responsible for the gas portfolio planning and mitigation and related contract negotiation activities for FEI or FMI that are being assigned or transferred between those two entities will be required to sign a non-disclosure agreement.

The positions within FEI that are currently responsible for the gas portfolio planning and mitigation and related contract negotiation activities and would be required to sign a non-disclosure agreement if they were transferred to FMI are:

- Director, Energy Supply and Gas Control
- Midstream Services Manager
- Midstream Operations Manager
- Energy Supply Planning Coordinator
- Senior Manager, Price Risk and Resource Planning

The non-disclosure agreement is to ensure that the affected employees being transferred between FEI and FMI do not disclose and/or use the confidential commercial information gained while employed in one organization (i.e. FEI) for the benefit of the other organization (i.e. FMI). By requiring the affected FEI/FMI employees that are being transferred between the two organizations sign a separate non-disclosure agreement, the affected employees are held to a higher level of standard to maintain confidentiality of information. This will be a requirement for all affected FEI/FMI employees.

FEI/FMI employees not directly responsible for the gas portfolio planning and mitigation and related contract negotiation activities (i.e. back office personnel including Accounting, Human Resources, Risk Compliance, Information Technology and Operating personnel) will not be required to execute similar non-disclosure agreements. The nature of the work performed by the employees in these Corporate Services activities (i.e. supporting functions) and Operations activities does not lend itself to a situation where a conflict of interests exists between FMI and FEI.

Besides the requirement for non-disclosure agreements to be executed for FEI/FMI employees directly responsible for the gas portfolio planning and mitigation and related contract negotiation activities, the Companies do not believe any other restrictions are necessary to address potential sharing of confidential commercial information between the two entities. Imposing other conditions that would restrict employees to transfer between entities should be at the discretion of the Companies and subject to the Code of Conduct rules and policies. Further, restrictions of this nature would limit the opportunities for the affected employees for career development and advancement which could benefit both FEI and FMI.

In addition to the non-disclosure agreement requirement for FEI employees directly responsible for the gas portfolio planning and mitigation and related contract negotiation activities that are being transferred to FMI, all FEI employees are expected to abide by the existing FEI Code of Conduct for Non Regulated Businesses (NRBs) which governs the use

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Page 3



of utility resources for NRBs. Similarly, FMI employees are expected to abide by a FMI/ACGS Code of Conduct which will provide guidance on use of FMI resources for affiliates. A FMI/ACGS Code of Conduct is currently being developed for review and approval by the Commission.

2. *Ensure ACGS/FMI directors and executives that also have management roles with FEI execute nondisclosure agreements.*

Non-disclosure agreements were completed on April 1, 2016, the closing date of the acquisition, for ACGS/FMI directors and executives that currently also have management roles with FEI. The ACGS/FMI executives and directors include Cynthia Des Brisay, President; Ian Lorimer, Vice President and CFO; and Michael Mulcahy, Director.

As changes occur in the ACGS/FMI directors and executives over time, the non-disclosure agreements will be updated.

3. *File with the Commission a draft COC/TPP which covers the interactions between ACGS and its affiliated natural monopoly utilities, ACGS and its affiliated non-regulated businesses, and ACGS and its affiliated regulated businesses operating in a non-natural monopoly environment.*

As directed in Order G-39-16 dated March 18, 2016 approving FMI's Application to Acquire the Shares of Aitken Creek Storage ULC, ACGS will be filing for approval with the Commission a draft Code of Conduct and Transfer Pricing Policy (COC/TPP) covering the interactions between ACGS and its affiliates. ACGS was to file its submission no later than the time FEI filed its all-inclusive Code of Conduct and Transfer Pricing Policy.

Originally, as outlined in Directive 2 of Order G-65-15 approving the COC/TPP for ARBNMIs, FEI was to file its draft all-inclusive COC and TPP that covers the interactions between FEI and its affiliates by April 27, 2016. Subsequent to that Order, FEI requested the Commission approve an approximate two-month extension in order to ensure adequate time to consider and incorporate any potential changes as a result of Order G-39-16. In Order G-52-16 dated April 18, 2016, the Commission approved FEI's extension request, extending the timeline of FEI's all-inclusive Code of Conduct and Transfer Pricing Policy filing from April 27, 2016 to June 30, 2016.

With this change, similar to FEI's COC/TPP, ACGS also intends to file its proposed COC/TPP with the Commission by June 30, 2016.

If further information is required, please contact the undersigned.

Sincerely,

FORTISBC MIDSTREAM INC.

Original signed:

Justin Cha

Attachment 4.5

Energy Supply - FEI Gas Supply and Gas Control Positions as of November 02, 2016

