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BY ELECTRONIC FILING

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

Attention: Laurel Ross
Acting Commission Secretary and Director

Dear Sirs/Mesdames:

Re: Reply Submission of FortisBC Energy Inc.
All-Inclusive Code of Conduct/Transfer Pricing Policy Order G-65-15
Compliance Filing

We enclose FortisBC Energy Inc.'s Reply Submission in respect of the above mentioned matter.

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP

[original signed by Matthew Ghikas]

Matthew Ghikas

MTG/pw
Enc.

BRITISH COLUMBIA UTILITIES COMMISSION

IN THE MATTER OF THE UTILITIES COMMISSION ACT

R.S.B.C. 1996, CHAPTER 473

and

**FORTISBC ENERGY INC.
CODE OF CONDUCT AND TRANSFER PRICING POLICY ORDER G-65-15
COMPLIANCE FILING**

**REPLY SUBMISSION OF
FORTISBC ENERGY INC.**

December 16, 2016

TABLE OF CONTENTS

PART ONE: INTRODUCTION	1
PART TWO: PROTECTION OF FEI RATEPAYERS IS PARAMOUNT IN FEI'S PROPOSALS.....	1
PART THREE: FEI SUBMISSIONS ON SPECIFIC ISSUES RAISED.....	2
A. RESOURCES SHARED (SECTION 2 OF THE COC)	2
(a) <i>Sharing Business Development Personnel When No Competitive Concerns Exist</i>	<i>2</i>
(b) <i>Non-disclosure Agreements Not Required for Sharing Executives/Directors with AU</i>	<i>3</i>
(c) <i>FEI's Proposal Addresses Sharing of Gas Supply Employees With ACGS.....</i>	<i>3</i>
B. INFORMATION SHARED (SECTION 3 OF COC)	4
C. PREFERENTIAL TREATMENT (SECTIONS 4 AND 5 OF COC).....	5
D. PRICING RULES	6
E. FEI'S ANSWER TO MOVEUP'S ARGUMENTS.....	7
(a) <i>Cost Allocation is Already Addressed.....</i>	<i>7</i>
(b) <i>Labour Assignments Are Within the Purview of Management.....</i>	<i>8</i>
(c) <i>Commission's Existing Oversight.....</i>	<i>8</i>
F. "CUSTOMER" AND "RATEPAYER" ARE SYNONYMOUS.....	9
G. SERVICES PROVIDED TO FEI BY AFFILIATES	10
PART FOUR: CONCLUSION.....	10

PART ONE: INTRODUCTION

1. FEI's Reply Submission responds to the main arguments set out in the submissions of BCOAPO, CEC, BCSEA-SCBC and MoveUP, avoiding unnecessary repetition of FEI's Final Submission.¹ The interveners representing ratepayers (CEC, BCSEA-SCBC and BCOAPO), who benefit from appropriate sharing of employees, support the key elements of the proposed All-Inclusive CoC/TPP. Move Up's rejection of FEI's proposals -- and the union's willingness to overlook FEI's long and successful track record of appropriate and efficient sharing -- in favour of more rigid models from other jurisdictions reflects the union's differing interest when it comes to efficient sharing of employees among Affiliates. FEI respectfully submits that the Commission should approve the All-Inclusive CoC/TPP pursuant to sections 59 to 61 of the *Utilities Commission Act*.

2. This Reply Submission is organized to generally follow the outline of FEI's Final Submission.

PART TWO: PROTECTION OF FEI RATEPAYERS IS PARAMOUNT IN FEI'S PROPOSALS

3. The sharing of employees is an area where customer interests and the interests of the union conflict, and where customer interests should prevail. CEC, as a party representing customer interests, is unequivocal in favouring efficient sharing where it can be done appropriately. CEC emphasizes, for instance:

...that cost-effective sharing of services and information can benefit both FEI customers and the affiliate customers, who may be customers of both. The CEC submits it is not appropriate for costs to be unnecessarily duplicated where there is no inappropriate or negative impact in the market or for customers.²

BCSEA-SCBC express support for the principle underlying FEI's proposal that, once FEI customers are protected (which BCSEA-SCBC concurs should be defined as an absence of

¹ FEI has not addressed the intervener submissions on a line by line basis. As such, FEI's silence on a particular matter should not be construed as agreement.

² CEC Submission, para. 5.

detriment, not demonstration of positive benefit³), consideration should be given to the customers of the Affiliate.⁴ BCOAPO does not address this principle explicitly, but (as described below) the general thrust of its submissions is to permit sharing where harm to FEI and its customers can be avoided.

PART THREE: FEI SUBMISSIONS ON SPECIFIC ISSUES RAISED

4. In this Part, FEI replies to intervenor submissions by topic.

A. RESOURCES SHARED (SECTION 2 OF THE COC)

(a) Sharing Business Development Personnel When No Competitive Concerns Exist

5. Both CEC⁵ and BCSEA-SCBC⁶ favour sharing of employees with Affiliated Utilities (“AU”), recognizing that no competitive concern arises with a monopoly. BCOAPO states, however, that the requirements applicable to shared services in the ARB situation should also apply in the AU situation because “In the absence of systems to identify and track services, and to reduce the potential for disclosure of confidential information, it cannot be said there is no detriment to FEI.”⁷ FEI responds as follows:

- First, BCOAPO is mistaken. FEI does identify and track shared services.
- Second, there is an inherent inconsistency in BCOAPO’s position in this regard, as BCOAPO also concedes that it “does not see any issue with sharing business development personnel as between FEI and AUs that are operating in different markets (e.g., FEI and FBC).”⁸ BCOAPO also appears to be unconcerned about sharing of confidential information in the context of executives, stating “BCOAPO

³ BCSEA-SCBC Submission, p. 5.

⁴ BCSEA-SCBC Submission, p. 4.

⁵ CEC Submission, p. 7, para. 46: “CEC agrees with FEI that the concern regarding a competitive advantage is inapplicable to an AU as it does not operate in a non-monopoly competitive environment.”

⁶ BCSEA-SCBC Submission, p. 5: “BCSEA-SCBC concur with FEI that as an Affiliated Utility such as FBC operates within a natural monopoly environment there is no concern that the Affiliated Utility would receive an unfair competitive advantage from using FEI’s business development personnel.”

⁷ BCOAPO Submission, para. 7.

⁸ BCOAPO Submission, para. 9.

agrees that the issue of disclosure of confidential commercial information by directors and officers/executives with dual roles in AUs is not a concern to ratepayers.”⁹

- BCOAPO’s position runs counter to the Commission’s determinations in the AES Inquiry Report (cited in paragraphs 17 and 18 of FEI’s Final Submissions) that recognize circumstances involving monopolies are different from ARBs.

(b) Non-disclosure Agreements Not Required for Sharing Executives/Directors with AU

6. The customer interveners agreed with FEI that non-disclosure agreements for executives shared with an AU are unnecessary.¹⁰ MoveUp did not address this issue directly.

(c) FEI’s Proposal Addresses Sharing of Gas Supply Employees With ACGS

7. FEI’s proposed All-Inclusive CoC/TPP precludes FEI from sharing with ACGS and FMI the five positions identified in Appendix “A”, but would otherwise allow sharing of CMAE employees.¹¹ BCSEA-SCBC agrees with FEI.¹² CEC similarly states: “The CEC accepts FEI’s argument with regard to CMAE staff and submits that if the Commission determines that FEI is permitted to share business development personnel with Affiliates other than an AU, then these are appropriate limitations that limit the potential for conflicts of interest.”¹³

8. BCOAPO objects to sharing of business development employees with ACGS. BCOAPO suggests that there is a potential conflict of interest because “It seems likely that ACGS potential wholesale customers are the same businesses that act as counterparties in mitigation transactions carried out by both FEI and ACGS.”¹⁴ FEI submits that the evidence does not

⁹ BCOAPO Submission, para. 10.

¹⁰ BCOAPO Submission, para. 10; CEC Submission, para. 56; BCSEA-SCBC Submission, p. 6.

¹¹ 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.”

¹² BCSEA-SCBC Submission, p. 6.

¹³ CEC Submission, para. 54.

¹⁴ BCOAPO Submission, para. 9.

support this concern. In the Commission's decision on FMI's Application for Approval of the Acquisition of the Shares of Aitken Creek Gas Storage ULC, the issue of potential conflict related to FEI gas supply mitigation activities was addressed.¹⁵ The Panel stated "Assuming adequate separation exists, the Panel has no concerns regarding the competition between FMI and FEI in day-to-day commercial trading activities." The Panel acknowledged FMI's argument that the differing nature and focus of the activities of the two entities (i.e. FMI and FEI) will tend to mitigate the conflict of interest. The separation and segregation of FEI's and FMI/ACGS's commercial teams, as provided for in Section 2d of the All-Inclusive COC (precluding the sharing of FEI 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.), removes any potential conflict of interest.

B. INFORMATION SHARED (SECTION 3 OF COC)

9. BCSEA-SCBC and CEC generally agree with FEI's submissions on the topic of information sharing. BCSEA-SCBC favour allowing FEI to share Commercial Information with an AU where there is no detriment to FEI and its ratepayers and where doing so does not provide the AU with an unfair competitive advantage.¹⁶

10. CEC suggests that "for greater clarity it would be reasonable to include a statement to the effect that written consent will not be provided generally in the terms and conditions of service provision."¹⁷ FEI confirms the intent was that customer consent should be specific to the information, rather than inferred from the General Terms and Conditions (GT&Cs) of the Tariff. The additional wording suggested by CEC is unnecessary because FEI's GT&Cs do not state or imply that customers are consenting to information sharing by taking service.

¹⁵ Order G-39-16 FMI Application for Approval of the Acquisition of the Shares of Aitken Creek Gas Storage ULC, p. 14.

¹⁶ BCSEA-SCBC Submission, p. 7.

¹⁷ CEC Submission, para. 59.

11. CEC submits that principle ii on Customer Information in the FEI All-Inclusive COC could be made clearer with some minor revisions to the last sentence which states “The control of Customer Information should not provide a competitive advantage.” CEC proposes the addition of the words “FEI” and “inappropriate” to the sentence, such that it would read:

“The control of FEI Customer Information should not provide an inappropriate competitive advantage to an Affiliate.”

FEI has no concerns about these suggested revisions.

C. PREFERENTIAL TREATMENT (SECTIONS 4 AND 5 OF COC)

12. FEI addressed this topic in paragraphs 30 and 31 of its Final Submissions.

13. BCSEA-SCBC agrees with FEI that a referral by FEI to an AU, e.g., FBC, would cause no evident harm.¹⁸ CEC also appears to concede that the issue with respect to Equitable Access to Services is generally inapplicable under a utility environment.¹⁹ However, CEC believes it is unnecessary and inappropriate to indicate in principle iv. and in Sections 4 (Preferential Treatment) and 5 (Equitable Access to Services) that the principles are inapplicable to AUs.²⁰ FEI submits that an express statement that the principles are inapplicable to AUs is appropriate because it reflects the reality that Commission-approved tariff rates under which customers may take service from FEI and AUs do not allow for preferential treatment. Further, since AUs enjoy a monopoly in their service territories, a simple referral to FBC would not be detrimental.²¹ An express statement that the principles in Section 4 Preferential Treatment and Section 5 Equitable Access to Services are inapplicable to AUs brings clarity to the interpretation of both sections.²²

14. CEC goes on to indicate that the five year interval review process for the All-Inclusive COC is not adequate to address specific circumstances that might arise in the context

¹⁸ BCSEA-SCBC Submission, p. 8.

¹⁹ CEC Submission, para. 72.

²⁰ CEC Submission, para. 34. See also para. 72.

²¹ FEI Final Submission, para. 31.

²² CEC IR 13.2.

of preferential treatment and AUs. In fact, the five year interval in Section 10 is expressed as the *maximum* time between reviews and does not preclude changes to address particular circumstances that might arise in the interim. Section 10 Amendments specifies that amendments to the COC may be made from time to time at the direction of the Commission or upon request to the Commission by FEI, an Affiliate, a customer, or other stakeholder.

D. PRICING RULES

15. BCOAPO maintains that, when pricing services provided to FBC, some amount should be assigned to the cost of overhead and facilities.²³ The agreement between FEI and FBC has been approved by the Commission. The agreement includes pricing based on fully loaded wages including benefits and time away, with no overhead or facilities fees assigned.²⁴ FEI submits that any changes to the pricing of services should be the subject of a future application.

16. BCOAPO and CEC addressed FEI's use of the word 'reviewed' with respect to the Commission oversight of shared services policies. BCOAPO submits that "for an agreement between FEI and an affiliate to take precedence over the All Inclusive CoC/TPP, Commission approval should be required."²⁵ CEC states that "it could be preferable to utilize the words 'reviewed positively' for the sake of clarity, and that there should be no negative implications associated with that determination."²⁶ The Commission does have authority under sections 59 to 61 of the UCA to approve shared services agreements, but FEI's proposed terminology of "review" is consistent with the typical nature of the oversight in the context of a revenue requirements application. The Commission's rate approval, as CEC recognizes, will be based on the Commission's assessment (whether implicit or explicit) that the agreement is yielding appropriate results.

²³ BCOAPO Submission, para. 12.

²⁴ FEI Submission, para. 36.

²⁵ BCOAPO Submission, para. 11.

²⁶ CEC Submission, para. 18.

E. FEI'S ANSWER TO MOVEUP'S ARGUMENTS

17. MoveUp's interests are not aligned with those of ratepayers in this context. MoveUP's position involves the Commission assuming FEI management's role of overseeing staff assignments, and would be an impediment to the efficient and reasonable sharing of resources. FEI customers, as well as customers of FBC and FAES, benefit from appropriate sharing of employees because it can lead to more efficient use of labour and reduce the need for each utility to take on more staff. Indeed, the current PBR is intended to encourage and give FEI the flexibility to find efficiencies and share the benefits with customers. FEI's proposed All-Inclusive CoC/TPP allows FEI to operate efficiently within appropriate parameters that are aligned with the Commission's mandate.

(a) Cost Allocation is Already Addressed

18. MoveUp has framed its submission in terms of avoiding cross-subsidy, but the All-inclusive CoC/TPP and shared services agreement between FEI and FBC already ensure that costs are allocated appropriately. The All-inclusive CoC/TPP is drafted to reflect prior Commission determinations, including the CoC/TPP for ARBNNM Decision, the AES Inquiry Report, and the RMDM Guidelines. All of those Commission decisions considered cost allocation and avoidance of cross-subsidy. FEI's shared services agreement with FBC was approved by the Commission, and reflects a BC model that has worked well.

19. MoveUp included a submission about section 60(1)(c) of the UCA relating to classes of service as authority for the importance of avoiding cross-subsidization. This section governs the provision of multiple lines of business within a single public utility. It does not have any application to inter-affiliate relationships. The section was discussed in the AES Inquiry because, at the time, FEI was providing the thermal energy services class of service that is now provided by FAES. The Commission's authority over inter-affiliate relationships arises from the just and reasonable rate provisions in sections 59-61 of the Act.

(b) Labour Assignments Are Within the Purview of Management

20. The effect of MoveUP's proposal to require Commission-approved agreements spelling out "the nature and scope of services to be shared, before the sharing of services and resources can occur between these entities"²⁷ would be to place the Commission in a management role for FEI and the Affiliate with which staff are being shared. The allocation of work and human resources falls outside of the Commission's mandate as a utility rate regulator where cost allocation and fair practices are a non-issue.

21. MoveUp raised similar arguments in the most recent FEI Annual Review. In the Annual Review Decision, the Commission observed that MoveUp's focus on how employees are being shared between FEI and FBC strays into the realm of corporate management. The Commission restricted its focus to the reasonableness of the cost allocation:

The Panel agrees with the positions taken by FEI with regard to this issue. The Panel also notes that some of the issues are more within the purview of management of operations rather than issues to be addressed by the Commission, with the exception of the potential analysis required to be provided by FEI in the event that the annual costs being allocated to FBC from FEI for handling calls exceeds \$100,000 in any one year, as directed by the Commission in the FEI Annual Review of 2016 Delivery Rates Reasons for Decision. The Panel is satisfied that FEI has shown that the costs for 2016 have not exceeded the \$100,000 threshold, and therefore declines to take any further action on the issues raised by MoveUP.²⁸

(c) Commission's Existing Oversight

22. The proposed All-Inclusive CoC/TPP recognizes that there are existing arrangements in place when it comes to dealings with FBC (AU).²⁹ Revisions to shared services agreements are filed with revenue requirements applications or Annual Reviews under the current PBR Plan. Details of Affiliated Party transactions are reported annually to the

²⁷ MoveUp Submission, p. 2.

²⁸ Order No. G-82-16, p. 25.

²⁹ Wording has been added to recognize that there may be a separate agreement reviewed by the Commission from another proceeding that overrides the TPP rules. "If there is an agreement between [FortisBC Energy] and an Affiliate that has been reviewed by the Commission in another proceeding, that agreement applies."

Commission in the FEI Annual Report.³⁰ Additionally, the Internal Audit department as part of the Annual Review of the FEI CoC/TPP reviews the affiliate cross charges for compliance with the Transfer Pricing Policy.³¹

23. MoveUP's characterization of the current regulation of FEI under PBR as "light-reigned, limited regulation" does not reflect reality. Proceedings now occur annually, rather than every two years. They are in-depth written processes, followed by an oral component structured as a workshop. During these processes, the Commission and interveners have the opportunity to request information on the sharing of services, and they have done so. In its Decision on the 2014 – 2018 PBR Plan, the Commission recognized that "a more extensive Annual Review process is necessary to build trust among all stakeholders and to ensure the PBR Plan functions as intended."³² Simply put, the Commission continues to have the ability to probe the interactions between FEI and FBC on a regular basis.

24. FEI anticipates completing a review of the Shared Services model approach for cross charging and filing it as part of an upcoming Annual Review or Revenue Requirement proceeding, possibly as early as the Annual Review for 2018 Rates.³³ That is a better forum for addressing the nature of the agreements between FEI and FBC.

F. "CUSTOMER" AND "RATEPAYER" ARE SYNONYMOUS

25. BCOAPO sought confirmation that changing the term "ratepayer" to "customer" was non-substantive, and "the two groups are coextensive".³⁴ FEI confirms that the terms are intended to be synonymous.

³⁰ Exhibit B-2, Appendix D-1 Affiliated Party Transactions for the period January 1, 2015 to December 31, 2015.

³¹ BCOAPO IR 1.6.1.

³² Commission Decision on FEI Multi-Year Performance Based Ratemaking Plan for 2014 Through 2018, p. 184.

³³ BCUC IR 1.2.4.

³⁴ BCOAPO Submission, para. 13.

G. SERVICES PROVIDED TO FEI BY AFFILIATES

26. BCOAPO states in paragraph 14: “Although we have been speaking of the current process as creating an “All-Inclusive” CoC/TPP, in fact the proposed All-Inclusive CoC/TPP covers only services provided by FEI to affiliates and does not cover services provided by affiliates to FEI. This is an area which, in our submission, should be addressed in future proceedings.” Among FEI’s Affiliates, FEI would generally only acquire services from FortisBC Holdings Inc. and FBC. The costs incurred by FEI to obtain these services are already considered by the Commission in the sense that they will form a part of FEI’s revenue requirements. FortisBC Holdings Inc. is not regulated and does not serve customers; the Commission need not be concerned with how FortisBC Holdings Inc.’s provision of corporate services to FEI impacts the unregulated parent company. FBC, like FEI, is a regulated utility and it acquires services from FEI under the reciprocal shared services agreement that is discussed in FBC’s own Annual Reviews. It is not possible for FEI to file a CoC for approval on behalf of another company.

PART FOUR: CONCLUSION

27. FEI has a long history of sharing directors, officers and employees with affiliate utilities with no concerns raised. The All-Inclusive CoC/TPP should recognize and reflect that success. The adoption of MoveUP’s position would represent a step backwards. FEI respectfully submits that the Commission should approve the All-Inclusive CoC/TPP as proposed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated:

December 16, 2016

[original signed by Matthew Ghikas]

Matthew Ghikas
Counsel for FortisBC Energy Inc.