



IN THE MATTER OF

FORTISBC ENERGY INC.

**CODE OF CONDUCT AND TRANSFER PRICING POLICY
FOR AFFILIATED REGULATED BUSINESSES OPERATING IN A
NON-NATURAL MONOPOLY ENVIRONMENT**

DECISION

February 27, 2015

Before:

**L. A. O'Hara, Panel Chair/Commissioner
K. A Keilty, Commissioner
N. E. MacMurchy, Commissioner**

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EXECUTIVE SUMMARY

FortisBC Energy Inc. (FEI) filed its application for approval of the Code of Conduct and Transfer Pricing Policy (COC and TPP) for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment (ARBNNM) on June 27, 2014 (Application). The Application was developed by FEI as directed by the Commission in the report issued following the Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other Initiatives (AES Inquiry Report). It was filed after a consultative process that included interviews and two workshops.

FEI states that the COC and TPP are intended to be consistent with the principles of the Commission Retail Markets Downstream of the Utility Meter (RMDM) Guidelines of April 1998 and the AES Inquiry Report published on December 27, 2012. In this regard, while the Panel does not consider it necessary to use exact wording from the RMDM Guidelines or the AES Inquiry Report, the Panel has given significant weight to the intent of those two documents. In the Panel's view, language that diverges too far from the intent of the RMDM Guidelines and the AES Inquiry Report should only be approved if there is a strong reason to do so.

The Application sets out the participants' positions characterized as consisting of three different segments:

- (1) Sections where significant differences remain or parties have substantive issues within a general agreement
- (2) Sections where there is general agreement or less significant differences or wording issues
- (3) Sections where there is acceptance by participating parties or where parties have no issues.

The reasons in this decision primarily focus on the segments where significant differences and or substantive issues remain. The Panel's findings regarding those issues are as follows.

Code of Conduct principles

FEI's first and foremost responsibility is to protect its own ratepayers, to ensure there is no cross-subsidization and to ensure none of the risks of ARBNNMs are transferred to FEI. FEI has no obligation to protect or consider the interests of FortisBC Alternative Energy Services Inc. (FAES) ratepayers, who are the responsibility of FAES. FAES has the option of purchasing services from FEI in accordance with the COC and TPP, or elsewhere if that is more advantageous to its ratepayers' interests. As a secondary aspect, having protected its ratepayers, FEI may also wish to consider the potential interests of ARBNNM ratepayers if both parties benefit. The Panel's view on this hierarchy of protection of two sets of ratepayers is based on the legal and regulatory framework addressed in this decision. Specifically, the Panel notes that the Commission's role in the setting of rates for thermal energy services (TES) projects and in dealing with complaints about TES rates is subject to significant limitations.

Shared services and personnel

The Panel recognizes the initial progress made by FEI and FAES in terms of physically segregating certain operations as well as the investigation by FAES into alternatives to provide greater segregation. Nevertheless, the Panel notes that a complete separation of FEI's and FAES' business operations would eliminate any risk of cross-subsidization. The Panel finds that the COC must explicitly ensure that sharing of resources between FEI and an ARBNNM should be limited to circumstances addressed in this decision.

Services and non-executive personnel

The Panel finds that sharing of services and non-executive personnel between FEI and an ARBNNM should be limited to the circumstances where:

- The level of sharing is not significant to FEI (i.e., a few hours at a time representing only a small portion of any FEI staff member's workload, undertaken when other priorities allow);
- The sharing of resources does not expose FEI to business risks from an ARBNNM or allow for cross-subsidization;
- The sharing of resources benefits FEI ratepayers;
- There is limited potential for disclosure of confidential information and consequently little risk that confidential information could be abused by the ARBNNM;
- The nature and extent of services can be identified and tracked effectively; and
- There are appropriately designed and operating safeguards in place.

FEI is also directed to update the COC to expressly state that business development personnel will not be shared with an ARBNNM.

Sharing of directors and executives

The Panel finds that requiring FEI and FAES directors and executives with roles within both FEI and FAES to execute non-disclosure agreements and to adhere to FEI's Business Ethics Policy addressing confidentiality obligations will sufficiently limit the potential for disclosure of confidential information.

Financing and other risks

The Panel directs FEI to revise the COC principle (vi) to include an acknowledgement that FEI would normally not provide financing, or any form of financial assistance including co-signing of loans, to the ARBNNM. Further, FEI is directed to clarify this principle to state that no FEI financing or other financial assistance, including cross-guarantees, can occur under any circumstances without advance Commission approval.

Transfer Pricing Policy – pricing rules

FEI proposes that "costs are to be allocated from FEI to the ARBNNM on the basis of no greater than FEI's full cost, recognizing the needs of both the interests of FEI and the ARBNNM ratepayers." This proposed principle was the subject of considerable debate as the proposal differs from the AES Inquiry Report guideline, which required that any sharing of costs and services between Affiliated Regulated Businesses must be done on the basis of the higher of market price or the fully allocated costs. The Panel's approach and findings related to this issue are summarized below.

Impact on regulation of the market

The Panel determines that for the purpose of developing a COC and TPP it is not appropriate to make decisions based on whether or not a specific decision will have an impact on the marketplace or the ability of FAES or its competitors to compete in the marketplace. Instead, the primary focus of the Panel is the impact of the COC and TPP on FEI's ratepayers, taking into consideration, to the extent it is appropriate to do so, the impact on FAES' regulated ratepayers.

Incremental versus fully allocated costs

The Panel acknowledges that as the customer base of a large utility like FEI grows, the addition of a new customer may impose incremental costs that are below the average cost to provide services to the existing customer base. Nonetheless, the Panel observes it is a long established regulatory practice in that instance that the new customer is not charged the incremental cost of providing the service. Instead it is charged the customer's share of the fully allocated costs imposed by that class. Therefore, it would be inconsistent if a new FAES customer, to whom FEI has no obligation to serve, would receive cost allocation treatment that is more favourable than the treatment afforded to the FEI utility customer. Therefore, the Panel finds that the floor or minimum basis for which costs should be allocated to an ARBNMM is the fully allocated cost.

Market price versus fully allocated costs

The Panel first notes that the COC is developed for FEI and it should protect the interest of FEI ratepayers whereas FEI's obligation to FAES is of limited nature and services provided by FEI to FAES are provided "off the corner of the desk." In contrast, the FortisBC gas and electric utilities share some services to the benefit of both utilities. However, in this case there are committed resources sufficient to meet the on-going need of both utilities. The Panel recognizes that there are a number of benefits of using the "higher of market price or fully allocated cost" but acknowledges that there may not always be a readily determinable market price or that there could be special cases where it might be beneficial to price the service below market to the benefit of both the FAES and FEI. Finally, the Panel agrees with FEI that the issue of market price or full cost is, for the most part, a moot point, given the evidence that FEI human resource costs are market based.

In summary, FEI is directed to include the following pricing rules in the applicable section of the TPP:

- (i) If an applicable FEI tariff rate exists, the transfer price will be set according to the tariff.
- (ii) Where no tariff rate exists, the transfer price will be set on the basis of the higher of market price or the fully allocated cost.
- (iii) Where the market price is not readily determinable the transfer price will be set on the basis of fully allocated costs.
- (iv) In situations where it can be shown that an alternative transfer price will provide greater benefits to the FEI ratepayer, FEI must apply to the Commission for a variance from the pricing rules i, ii, or iii.

Safeguards related to compliance with COC and TPP

The Panel recognizes that during this proceeding, FEI incorporated changes to the monitoring and oversight processes to ensure compliance with the COC and TPP and to ensure that all FEI charges for activities in support of FAES are appropriately allocated to FAES. The Panel directs FEI to revise the wording of the COC and TPP to reflect enhancements to safeguards related to compliance with the COC and TPP. In addition, FEI is directed to update the wording of the COC and TPP to reflect the Director of Finance's responsibility for FEI compliance with the COC and TPP, including ensuring the on-going design and operating effectiveness of related controls and safeguards (including the timekeeping process) and maintenance of adequate records and documentation.

Compliance filing

FEI is directed to file its COC and TPP based on this decision with the Commission for approval within 30 working days from the date of this decision.

Whereas FEI filed only one policy, it was directed to file three separate policies by the AES Inquiry Report. After hearing submissions, the Panel accepted this limited scope in the interest of ensuring that the new policy is put in place without undue delay. However, to ensure that progress continues to be made in the drafting of one all-inclusive COC and TPP, FEI is further directed to file, for approval, within one year of final approval of the COC and TPP for ARBNNMs, a draft all-inclusive document. It is to cover the interactions between FEI and its affiliated natural monopoly utilities, FEI and its affiliated non-regulated businesses; and FEI and its affiliated regulated businesses operating in a non-monopoly environment.

1.0 INTRODUCTION AND BACKGROUND

1.1 AES Report and the Commission recommendations to FortisBC Energy Inc.

FortisBC Energy Inc. (FEI) filed an application for approval of its proposed Code of Conduct (COC) and Transfer Pricing Policy (TPP) for Affiliated Regulated Businesses operating in a Non-Natural Monopoly Environment (ARBNNM) on June 27, 2014 (Application), in response to recommendations of the British Columbia Utilities Commission (Commission) in the Alternative Energy Solutions (AES) Inquiry Report.¹

The AES Inquiry Report contains, among other things, two recommendations to FEI related to the COC and TPP:

The Panel recommends that the FEU initiate a process to prepare an updated Code of Conduct and Transfer Pricing Policy in respect of the interaction between the regulated utilities and related non-regulated businesses. This should be done through a collaborative process involving the utilities, stakeholders (including Interveners in this proceeding) and Commission staff. The Commission recommends that participants in this process should consider the Principles and Guidelines outlined herein as well as the Fortis Alberta Inc. Code of Conduct. The Panel recommends that this process be initiated as soon as is practicable. The updated Code of Conduct and Transfer Pricing Policy should be submitted to the Commission for approval.

To this end, the Panel recommends that the FEU undertake a collaborative process to establish a Code of Conduct and a Transfer Pricing Policy governing the interactions between Affiliated Regulated Businesses, consistent with the Principles and Guidelines set out in this Report. These documents should differentiate resource sharing between two natural monopolies on the one hand and between a natural monopoly and a regulated affiliate operating in a non-natural monopoly environment on the other.²

This Application contains FEI's proposed COC and TPP with respect to FEI's interactions with regulated affiliates operating in a non-natural monopoly environment.

The delivery of thermal energy services in British Columbia takes place in a regulated non-natural monopoly environment. FortisBC Alternative Energy Services Inc. (FAES) is engaged in the delivery of thermal energy services and, like FEI, is a subsidiary of FortisBC Holdings Inc. FAES is currently FEI's only affiliated regulated business operating in a non-natural monopoly environment, i.e., the ARBNNM. The evolution of FAES is depicted in a chart in the Appendix of the Application.³ FAES submitted that the FEI COC and TPP applicable to ARBNNMs should apply to dealings with FAES, the corporate entity that is the regulated provider of thermal energy services regardless of whether a particular project undertaken by FAES is subject to regulatory exemption or not.⁴

¹ Report on the Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives dated December 27, 2012 (AES Inquiry Report).

² Exhibit B-1, Appendix D AES Inquiry Report, pp. 23, 27.

³ Ibid., Appendix C2 Workshop Slides, pp. 9–10.

⁴ Exhibit C3-2, p. 2.

Other AES Inquiry Report recommendations related to an updated COC and TPP for dealings with Non-Regulated Businesses (NRBs) and inter-utility dealings between natural monopolies are addressed in Section 5 in this Decision.

1.2 Consultative process and the regulatory review process

1.2.1 The FEI-led process

In response to the Commission's recommendation in the AES Inquiry Report, FEI led a process that began in the fall of 2013. FEI organized consultation sessions with stakeholders that included two workshops held on February 20, 2014, and April 24, 2014.

Parties who participated in the FEI-sponsored workshops were:

- 1) BC Sustainable Energy Association/Sierra Club of Canada (BCSEA-SCBC);
- 2) British Columbia Old Age Pensioners' Organization *et al.* (BCOAPO);
- 3) Canadian Office and Professional employees Union local 378 (COPE);
- 4) Coalition for Open Competition (the Coalition);
- 5) Commercial Energy Consumers Association (CEC);
- 6) Commission staff;
- 7) Corix Multi-Utility Services Inc. (Corix);
- 8) FAES; and
- 9) B.C. Ministry of Energy and Mines.⁵

As part of the consultation process, FEI prepared and circulated a document summarizing the stakeholders' feedback from the interviews it conducted as well as an outline of its proposed COC and TPP to all participants. Prior to each of the two workshops, FEI provided, in advance, materials containing the workshop objectives, agenda and background information. After each of the two workshops, FEI circulated the workshop minutes and provided parties the opportunity to comment on them.

Commission staff participated in the FEI-led process in accordance with the recommendation in the AES Inquiry Report that the FEI initiated process "should be done through a collaborative process" involving the utilities, stakeholders (including interveners in this proceeding) and Commission staff. Commission staff focused on assessing the draft COC and TPP presented by FEI to stakeholders against the Principles and Guidelines issued by the Commission in relevant decisions. At Workshop No. 1, Commission staff provided all participants with a document "Commission Staff Summary of BCUC Decisions to FortisBC Utilities relating to Affiliate Transactions, Code and Conduct, and Transfer Pricing Policy."⁶ Along with other participants, Commission staff also provided feedback and comments on the working versions of the COC and TPP during the consultation process. The Commission staff feedback and comments are included in the Application.

FEI filed its Application with the Commission on June 27, 2014. The consultation session and workshop materials, as well as comments by stakeholders and Commission staff were duly recorded and included in Appendix C in the Application.

⁵ Exhibit B1, Appendix C3, Minutes (April 24, 2014).

⁶ Exhibit B1, Appendix C2 Workshop No. 1 Attachment.

By letter dated July 14, 2014, Corix submitted to the Commission that significant differences remained in the Application and that the collaborative process led by FEI resulted in revising or ignoring the Commission's previous decisions. Corix submitted that differences arose largely from omissions of and inconsistencies in key Principles and Guidelines contained in the Application when compared to the AES Inquiry Report. Corix recommended that Commission staff produce a final draft of the COC and TPP.⁷

The Commission, by letter dated July 25, 2014, invited all parties to make submissions on the Application, the process steps required to complete the review, and any other relevant matters.⁸

In addition to Corix's letter dated July 14, 2014, and a reply submission from FEI, the following participants filed submissions in response to the Commission letter dated July 25, 2014:

- BCOAPO;
- FAES;
- COPE;
- the Coalition;
- BCSEA-SCBC.

COPE submitted that there was no need for further discovery as there was an extensive pre-filing process including informal consultations with stakeholders and more formal discussions involving all of the participants under the aegis of the Commission staff. COPE recommended that the remaining issues from the FEI-led process be referred to a Negotiated Settlement Process.⁹

The Coalition submitted that it did not agree with FEI's characterization of the pre-filing process as collaborative. Rather, the Coalition described the process led by FEI as consultative where parties were given several opportunities to provide input which was reasonably and fairly captured in the Application. The Coalition expressed concern that FEI used its version of a "collaborative process" to re-set the starting point of COC and TPP as a means to avoid complying with the Commission's Principles and Guidelines as clearly stated in the AES Inquiry Report. Coalition submitted that it desired Commission staff act as facilitators in moving the Application forward.¹⁰

BCSEA submitted that FEI had carried out the responsibility to lead a collaborative process as directed in the AES Inquiry Report. BCSEA proposed a short, for example, one-day, oral argument based on the Application.¹¹

BCOAPO proposed a process that included one round of information requests (IRs) followed by either an oral or written process.¹²

⁷ Exhibit C1-1, p. 3.

⁸ Exhibit A-2.

⁹ Exhibit C4-1, p. 1.

¹⁰ Exhibit C5-1 pp. 2-3.

¹¹ Exhibit C6-1, p. 1.

¹² Exhibit C2-1.

FAES submitted that it was satisfied that the comments attributed to FAES in the Application accurately reflected its position, mainly that the “overarching principle of cost causality stated in the AES Inquiry Report is inconsistent with the principle of using higher of market price or fully allocated cost for setting the Transfer Price.” FAES also submitted that an abbreviated written hearing process would be sufficient.¹³

In reply, FEI submitted that it disagreed with the Coalition that the process it led was not collaborative. While acknowledging that consensus was not reached on all issues, FEI believed that it facilitated an organized and efficient forum for participants to work jointly. Where some of the participants’ wording did not make it to the draft, FEI commented that it has provided in the Application the reasons why certain suggested wordings were not included, along with comments and reasons provided by some of the other participants. FEI takes the view that “disagreements of substance are matters for final argument, not demonstrative of a flawed process.”¹⁴

In the same reply, FEI also stated that it disagreed with Corix’s characterization of FEI departing from the Commission directives in the AES Inquiry Report.

1.2.2 The Regulatory Review Process

By letter dated August 18, 2014, the Commission advised all parties that a pre-hearing conference was warranted to offer parties to speak to, among other things, six matters that had arisen from the Application and the submissions on process. The six matters were:

- 1) The advantages and disadvantages of only one comprehensive COC document for affiliated natural monopoly utilities, ARBNMNs and NRBs as compared to multiple documents.
- 2) Whether the scope of the project should also address costs incurred by a non-regulated business on behalf of regulated businesses.
- 3) Whether the format of the Fortis Alberta Inter-Affiliate COC can provide a template for FEI.
- 4) The importance of following the Guidelines and Recommendations outlined in the AES Inquiry Report.
- 5) Advanced written submission from FEI before the pre-hearing conference date to explain why it does not accept Corix’s characterization of FEI departing from the Commission directives.
- 6) Advanced written submission from FEI before the pre-hearing conference date to address the specific facts and circumstances that support FEI’s departure from the Guidelines and Recommendations outlined in the AES Inquiry Report in each of the areas where there are significant differences remaining between FEI and some stakeholders.

On September 2, 2014, FEI provided, in advance of the pre-hearing conference, its submissions on item No. 5 and item No. 6 raised in the Commission letter dated August 18, 2014.¹⁵

Also on September 2, 2014, in response to the Commission’s notice that it would be seeking oral confirmation at the pre-hearing conference from parties of their respective position on issues from the COC and TPP, FEI provided a summary table, filed as Exhibit B-3, on issues from the COC and TPP documents and the respective positions of each party in the stakeholder consultation process.

¹³ Exhibit C3-1, p. 2.

¹⁴ Exhibit B-2, p. 2.

¹⁵ Exhibit B-4.

In the pre-hearing conference that took place on September 5, 2014, no party disagreed with the positions as summarized in the document filed as Exhibit B-3. After the pre-hearing conference, the Commission found that it needed further supplementary information and evidence on the record before proceeding to the argument phase.

By Order G-143-14 dated September 18, 2014, the Commission established a written hearing process, which included a regulatory timetable for the filing of supplementary information and evidence by FEI, IRs to FEI, FEI's response to IRs, final submissions and reply submissions.¹⁶ Three parties issued IRs to FEI on the supplementary information and evidence: the Commission, COPE and the Coalition.

In addition to FEI, six interveners filed final submissions, namely: BCOAPO, the Coalition, COPE, BCSEA, Corix and CEC. Four interveners in addition to FEI filed reply submissions to the final submissions of other interveners, namely: BCSEA, COPE, Corix and BCOAPO.

1.3 FEI Application for approval of COC and TPP

1.3.1 Overview of the Application

The COC and TPP in the Application reflects FEI's proposal and FEI acknowledges that the proposed documents do not reflect a consensus of all the participants in the consultation process.

FEI also submits that its proposed COC and TPP for ARBNM most appropriately addresses its interactions with its affiliate FAES and that the proposed documents ensure that natural gas ratepayers' interests are protected, while also recognizing the interests of thermal energy service ratepayers.

FEI further submits that in developing the proposed COC and TPP, it "... has considered, and where appropriate has adopted the non-binding guidelines and recommendations from the AES Inquiry Report."¹⁷

On September 26, 2014, FEI filed supplementary information and evidence pursuant to Order G-143-14.¹⁸ The Panel notes that certain information contained in FEI's response to IRs has the effect of updating the proposed COC and TPP, for example, safeguards relating to compliance with COC and oversight of safeguards related to the TPP.

1.3.2 Status groupings of the different sections in FEI's proposed COC and TPP in the Application

In the summary table filed as Exhibit B-3, FEI identified the status of each section of the proposed COC and TPP as achieving one of the following three levels of agreement during the consultation process. The participants' positions are described by FEI as follows: (1) the sections where significant differences remain or parties have substantive issues within a general agreement; (2) the sections where there is general agreement or less significant differences or wording issues; and (3) the sections where there is acceptance by participating parties

¹⁶ Exhibit A-4.

¹⁷ Exhibit B-1, p. 1.

¹⁸ Exhibit B-7.

or where parties have no issues. At the pre-hearing conference, parties were provided with the opportunity to disagree or add further comments to their respective positions but none were put forward.¹⁹

The three sections of the COC and TPP and FEI's corresponding characterizations are listed below:

1.3.2.1 Sections in the COC and TPP where significant differences remain or parties have substantive issues within a general agreement

1. Code of Conduct section on Shared Services and Personnel (pages 7-8 of the Application and Appendix A1, COC page 4);
2. Code of Conduct section on Finance and Other Risks (pages 8-9 of the Application and Appendix A1, COC page 6);
3. Transfer Pricing Policy section on Pricing Rules and Determining Costs (pages 10-12 of the Application and Appendix A1, TPP page 3);
4. Code of Conduct section on Principles (pages 13-14 of the Application and Appendix A1, COC page 3);
5. Transfer Pricing Policy section on Cost Collection Procedures (pages 19-20 of the Application and Appendix A1, TPP page 6).

1.3.2.2 Sections in the COC and TPP where parties have less significant differences or have wording issues

1. Code of Conduct section on Scope (pages 12-13 of the Application and Appendix A1, COC page 1);
2. Code of Conduct section on Provision of Information by FEI (page 14 of the Application and Appendix A1, COC page 4);
3. Code of Conduct section on Equitable Treatment of Demand Side Management and Incentive Funds (pages 14-15 of the Application and Appendix A1, COC page 5);
4. Code of Conduct section on Compliance and Complaints (pages 15-16 of the Application and Appendix A1, COC pages 5-6);
5. Code of Conduct section on Use of Utility Name (pages 16-17 of the Application and Appendix A1 COC page 6);
6. Transfer Pricing Policy section on Scope (pages 17-18 of the Application and Appendix A1, TPP page 1);
7. Transfer Pricing Policy section on Policy (page 18 of the Application and Appendix A1, TPP page 3);
8. Code of Conduct and Transfer Pricing Policy Other issue regarding Preamble (page 20 of the Application).

1.3.2.3 Sections in the COC and TPP where the parties accepted or do not have issues

1. Code of Conduct section on Definitions (page 13 of the Application and Appendix A1, COC page 2);
2. Code of Conduct section on Amendments (page 17 of the Application and Appendix A1, COC page 6);
3. Transfer Pricing Policy section on Definitions (page 18 of the Application and Appendix A1, TPP pages 1–2);

¹⁹ Transcript, Volume 1, p. 133.

4. Transfer Pricing Policy section on Costs Relating to the Transfer of Activities from the Utility to an ARBNNM (page 19 of the Application and Appendix A1, TPP pages 5–6);
5. Transfer Pricing Policy Review of TPP section (page 20 of the Application and Appendix A1, TPP page 6);
6. Code of Conduct – Transfer Pricing for ARBNNM (page 6 of the Application and Appendix A1, COC page 4);
7. Code of Conduct section on Preferential Treatment (page 6 of the Application and Appendix A1 COC pages 4–5);
8. Code of Conduct section on Equitable Access to Services (page 6 of the Application and Appendix A1, COC page 5).

1.4 Structure of the Decision

Following this introductory section, Section 2 discusses the Commission’s jurisdiction and regulatory framework for the review of this Application.

Section 3 addresses the proposed Code of Conduct and the Panel’s discussion and findings on matters related to the application of the principles, operational considerations in the administration of the Code of Conduct, as well as issues that arose during the FEI-led consultation process. Section 4 discusses the operational considerations and pricing rules in the administration of the Transfer Pricing Policy based on the approved Code of Conduct determined in Section 3. Section 5 contains tables summarizing the Panel’s findings and determinations in this decision and Section 6 deals primarily with the issue of multiple COC and TPP documents for different corporate business relationships versus a single all-inclusive document.

The Commission Panel’s approach to this decision is based on the three characterizations with respect to status groupings of the levels of agreement in FEI’s Application:

- (1) where parties have significant differences remaining or substantive issues within a general agreement, the Panel focuses on these issues and detailed discussions are included in Sections 3 and 4 in this decision.
- (2) where the parties have less significant differences or have wording issues, the Panel addresses this segment with one of the following findings: (a) agreeing with either FEI proposed wording or the alternative proposal(s); (b) providing the Panel’s own suggested wording; or (c) describing the Panel’s decision on the subject and directing FEI to amend the wording such that the wording reflects the Panel’s decision.
- (3) where the parties accepted or do not have issues, the Panel, after reviewing those sections, approves them as proposed in the Application, or approves them subject to amendment with reasons given.

For ease of referencing the required changes as determined in this decision with the proposed COC and TPP, the summaries of the required changes to the COC and TPP are included respectively in Appendix A and Appendix B.

2.0 LEGAL AND REGULATORY FRAMEWORK

2.1 Commission Jurisdiction

While no party has challenged the power of the Commission to require an approved COC and TPP, different views have been put forward as to what the Commission may properly include within the scope of the COC and TPP. FEI, supported by the views of BCSEA, BCOAPO and COPE, asserts that, as set out in the AES Inquiry Report, the Commission does not have the power to regulate competition, but only to regulate rates. Corix and the Coalition assert that the Commission's power extends beyond this and encompasses assessment of the impact of the COC and TPP on third parties.²⁰ They also argue that the general supervision sections of the Utilities Commission Act (UCA) give the Commission the ability to protect the public interest which can include the impact of Commission decisions on third parties (i.e., the impact on the market). Corix and the Coalition, while agreeing that a core role of the Commission is to set rates and the terms of service, asserts that under sections 45 and 46 of the UCA (dealing with the issuance of Certificates of Public Convenience and Necessity) the Commission must also take into account government policy objectives which include the objectives set out in the *Clean Energy Act* such as the goal of fostering the development of innovative technologies that support energy conservation and efficiency and the use of clean or renewable resources.²¹

The Panel agrees that the findings set out in the AES Inquiry Report, which dealt extensively with the jurisdiction issue, remain pertinent in the current circumstances. The Panel is not persuaded by the arguments put forward by FEI that findings of the AES Inquiry Report are in error or need revision to suit the circumstances of the current application. Therefore the Panel reiterates the position put forward on page 14 of the AES Inquiry Report: *While the Commission does not regulate competition per se, the Panel accepts that it should not act to hinder competition, where competition is feasible. In this regard, the Commission Panel confirms that there must be no cross-subsidization when a utility purports to enter a competitive market.*

2.2 Regulatory Framework

The ARBNMM that FEI currently interacts with, FAES, owns and operates a number of regulated thermal energy projects. The regulatory framework for these projects is set out in the Commission's Thermal Energy System Regulatory Framework Guidelines (TES Framework). While the applied for COC and TPP is intended to be of general application to all ARBNMMs that FEI may deal with, FAES' activities operating within the TES Framework provides an example against which these general principles can be assessed.

For thermal energy projects the Commission has found it appropriate to use a regulatory model that is tailored to the marketplace within which they operate. This framework is consistent with the finding in the AES Inquiry Report that the least amount of regulation needed to protect the ratepayer should be utilized.²²

Under Orders in Council and Commission orders TES providers are exempt from certain provisions of the UCA.²³ These exemptions provide a scaled approach to the regulation of TES as set out below:

²⁰ Corix Final Submission p. 7; Coalition Final Submission p. 3.

²¹ Corix Final Submission pp. 3–6; Coalition Final Submission p. 2.

²² AES Inquiry Report p. 18.

²³ OIC 400 and 401, Orders G-119-14, G-120-14, and G-121-14.

- i. **Micro TES:** A TES with a capital cost of \$500,000 or less is exempt from Part 3 of the UCA other than sections 42, 43, and 44. (Duty to obey orders, duty to provide information and duty to keep records).
- ii. **Strata Corporation TES:** A TES owned or operated by a Strata Corporation that supplies Strata Corporation's owners, is exempt from Part 3 of the UCA other than sections 42, 43 and 44.
- iii. **Stream A TES:** An on-site TES with an initial capital cost above \$500,000 but less than \$15 million is exempt from sections 44.1, 45, 46, and 59-61 of the UCA. TES providers are required to register Stream A TES projects prior to building or otherwise acquiring a TES. In summary, Stream A TES projects are subject to complaints-based regulation only.
- iv. **Stream B TES:** All other TES projects will be regulated in a similar manner to other public utility systems. An application for a Certificate of Public Convenience and Necessity and a rate approval application are required.²⁴

Role of the Commission with respect to TES projects

For Stream A projects the Commission does not review rates or contracts upon which the rates are based. All contracts must contain a clause wherein the customer(s) of a TES provider acknowledge that the "BCUC has not reviewed this Agreement, nor has it approved the rates charged for thermal services."²⁵

Stream B TES projects are required to consider the Commission rate setting principles in establishing rates. Details must be set out for the rates for at least the first five years and include information on rate design, rate increase mechanisms, and justification as to why the rates are considered just and reasonable.²⁶ Use of a cost of service rate methodology is to be considered only as a last resort. If this methodology is chosen the applicant must provide an analysis of alternative rate setting mechanisms and a justification as to why an alternative methodology is not preferable.²⁷

With respect to responding to complaints from TES customers of exempt TES projects (Micro and Strata Corporation TES projects), the Commission will only hear complaints as to whether the project should be exempt or should be treated as a Stream A or Stream B project. Only if the Commission finds that the project should not be exempt will it examine the complaint further.²⁸

For Stream A TES projects the Commission will review complaints about safety and reliability. However, it will not consider propriety of rates that the TES provider is charging provided the rate is in accordance with a long-term contract and the rates were fully disclosed to the customer up front.²⁹

²⁴ TES Framework p. 3.

²⁵ Ibid., p. 9.

²⁶ TES Framework, p. 15.

²⁷ Ibid., p. 16.

²⁸ Ibid., p. 7.

²⁹ Ibid., pp. 9–10.

3.0 CODE OF CONDUCT

3.1 Scope

Scope description

The sub-heading of the proposed Code of Conduct document dated June 19, 2014, directionally defines the scope of the proposed COC. It is entitled “For Provision of Utility Resources and Services to Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment.”

In contrast, the AES Inquiry Report recommended that FEI is to file with the Commission the following three documents:

- An updated Code of Conduct and Transfer Pricing Policy in respect of the interactions between a regulated natural monopoly utility and its affiliated non-regulated businesses;
- A new COC and TPP governing interactions between affiliated natural monopoly utilities; and
- A new COC and TPP governing interactions between a natural monopoly utility and its affiliated regulated businesses operating in a non-natural monopoly environment.³⁰

During the pre-hearing conference held on September 5, 2014, participants were asked to speak to the advantages and disadvantages (if any) of providing only one comprehensive COC document that establishes standards and conditions for interactions between affiliated businesses in the three scenarios listed above. FEI stated that “as a long-term objective Fortis has no issue with moving towards a combined document.”³¹ After hearing submissions by the parties, the Panel found that in the interest of ensuring that a COC and TPP governing interactions between FEI and FAES is put in place without undue delay, the scope of this review is limited to the COC and TPP for affiliated regulated businesses operating in a non-natural monopoly environment (Phase 1).³² The future process for moving towards a combined document is discussed in Section 6.0 of this decision

Consistency with RMDM Guidelines and the AES Inquiry Report

FEI states that the COC is intended to be consistent with the principles of the Commission RMDM Guidelines of April 1997 and the AES Inquiry Report published on December 27, 2012. Specifically, FEI notes that if the COC is silent on a principle or guideline established in those documents, acceptance of the COC by the Commission does not imply that the principle, guideline or Commission direction is voided or invalid. This is an area where there was a general agreement or less significant differences among the parties. For instance, Corix stated that the COC and TPP should be consistent with the Guidelines and that the wording from the AES Inquiry Report should be used to avoid inconsistencies.³³

³⁰ AES Inquiry Report, pp. 23, 27–28.

³¹ Transcript Volume 1, p. 20.

³² Exhibit A-4, Appendix A to Order G-143-14, p. 3.

³³ Exhibit B-1, Appendix B4, p. 2.

Maintaining separate financial records and sufficient separation of business operations

While the proposed COC is silent on this topic, earlier drafts included discussion of the following: FortisBC Energy and ARBNNMs will maintain separate financial records and books of accounts and sufficient separation of business operations in order to ensure a level of transparency that enables an appropriate allocation of costs between FEI and ARBNNMs and where appropriate, between individual ARBNNMs. FEI suggested the deletion of *'and sufficient separation of business operations'* as well as *'and where appropriate, between individual ARBNNMs.'*

In the RMDM Guidelines the Commission stated the following: "In addition, utilities will be required to provide periodic proof that the benefits associated with the use of utility services continue to exist and that ratepayers continue to be sufficiently protected." The AES Inquiry Report, in addressing applicable business structures noted that all sharing of costs, service and information between affiliated utilities must be fully disclosed.

Responsibility for administration of the COC

FEI first proposes that the primary responsibility for administering the COC lies with FEI, although the Commission has jurisdiction over matters referred to in the COC. Second, FEI states the administration of the COC may have to take into account particular circumstances in respect to a particular resource or service which is being provided and where these issues are at variance with the COC, and if the variance results in costs exceeding benefits received by the ratepayers of FEI, FEI will be required to seek Commission approval.

Corix did not agree with the proposed sentence. Corix stated the purpose of the COC is to implement the principles established by the Commission and that the Commission did not allow for FEI to deviate from the principles based on the criteria that FEI is now attempting to set up in this COC. Finally, Corix stated FEI should not be permitted to circumvent the reconsideration process under the UCA which is the proper process for seeking a change in Commission decisions.³⁴

Commission determination

While the Panel does not consider it necessary to use the exact wording from the RMDM Guidelines or the AES Inquiry Report, the Panel has given significant weight to the intent of those two documents. In the Panel's view, language that diverges too far from the intent of the RMDM Guidelines and the AES Inquiry Report should only be approved if the Panel finds there is a sufficient reason to do so.

The Panel notes the deletion from the proposed COC of any reference to maintaining separate financial records and sufficient separation of business operations. The Panel recognizes the initial progress made by FEI and FAES in terms of physically segregating certain operations as well as the investigation by FAES into alternatives to provide greater segregation. Nevertheless, the Panel is of the view that a complete separation of FEI's and FAES' business operations would eliminate any risk of cross-subsidization. The Panel finds that the COC must explicitly ensure that sharing of resources between FEI and an ARBNNM should be limited to the circumstances where the level of sharing is not significant (i.e., a few hours at a time representing only a small portion of any FEI staff members' workload, undertaken when other priorities allow), appropriately designed and implemented

³⁴ Ibid., p. 3.

safeguards are in place, the ability to track costs exists, and other conditions of this COC are met. These circumstances are further addressed in section 3.4 of this decision “Shared Services and Personnel.” Therefore, the Panel finds that it is important to explicitly acknowledge that there are principles and guidelines regarding the overarching issue of whether or not the proposed corporate relationship is appropriate. **To further clarify the scope of the COC, FEI is directed to reinsert a paragraph in the COC: FEI will maintain separate financial records and appropriate documentation as well as implement appropriate safeguards, including a sufficient separation of business operations in order to prevent cross-subsidization and ensure a level of transparency that enables an appropriate allocation of costs between FEI and ARBNNMs.**

The last issue in Scope, that invited some comments and suggested wording changes was the responsibility for administration of the COC. Specifically, the topic debated related to circumstances where a particular resource or service is being provided while being at variance with the COC. The Panel has considered the proposed wording “... and where these issues are at variance with this Code and if the variance results in costs exceeding benefits received by the ratepayers of [FortisBC Energy], [FortisBC Energy] will be required to seek Commission approval.” The Panel notes that the suggested wording does not address or circumstances where the benefits exceed the costs. The Panel considers that the emphasis in the wording should be on the *variances* and not the condition of whether it is costs or benefits that are being exceeded. The Panel accepts that there may be special circumstances where FEI can justify not complying with the COC. Regardless, to respect the principles of RMDM and AES Inquiry Report, FEI should seek approval from the Commission in advance. **Accordingly, FEI is directed to amend the third paragraph of the Scope section to delete the words “... and if the variance results in costs exceeding benefits received by the ratepayers of [FortisBC Energy]”. Furthermore, the amended wording should emphasize the requirement for an advance Commission approval in cases of variances from the COC.**

3.2 Definitions

The Definitions section defines FortisBC Energy Inc., the Commission, Guidelines, Affiliated Regulated Business Operating in a Non-natural Monopoly Environment (ARBNNM), RMDM and Transfer Pricing to ARBNNM.

Commission determination

No parties had issues related to these definitions included in the COC. The Panel notes that the Definitions have been amended from those included in the Code of Conduct for FEI interactions with non-regulated businesses but the Panel does not consider that to be a problem.

The Panel accepts that the COC is designed to address interactions between the legal affiliated entities. The Panel notes, however, that within FEI there are some new business activities, such as biomethane service as well as the Compressed Natural Gas (CNG) and Liquefied Natural Gas (LNG) fueling service that do not represent the traditional markets for a utility. Previous Commission decisions have emphasized the importance of ensuring that there is no cross-subsidization of those businesses within FEI.

The TES Framework Decision addressed the confusion related to references of a person, utility, project or a system. This confusion arises because the UCA defines a public utility as a person providing, in the case of TES, certain thermal energy related services. The TES Framework Decision noted that the proposed exemptions were

based on the characteristics of a particular TES system (project) and not the person providing those services.³⁵ In the Generic Cost of Capital Stage Two Decision, the Commission considered FAES as a corporate entity that contains numerous TES projects under its umbrella. Each project was assessed on a stand-alone basis from the risk and reward (allowed return on equity) perspective.³⁶

Similarly, in this decision, the Panel considers FAES as a legal corporate entity that encompasses numerous TES projects. Accordingly, the Code of Conduct document has to recognize that FEI, as a traditional utility when dealing with FAES, is in fact dealing with an entity that has a number of regulated projects subject to different degrees of regulation under the TES Regulatory Framework, as well as some non-regulated activities. The Panel therefore considers that the interactions with FAES governed by this COC and TPP include FEI interactions with individual TES projects under the FAES umbrella but do not include interactions related to FAES' non-regulated activities.

Accordingly, the Panel approves the Definitions section of the COC as filed with the understanding that a definition of an affiliate includes FEI's interactions with individual regulated projects that an ARBNNM undertakes.

3.3 Code of Conduct Principles

This section addresses those principles where parties have significant differences or substantive issues.

3.3.1 Principle (i)

The advancement and the protection of the interests of the regulated ratepayers of [FortisBC Energy] and the ARBNNM should be considered.

FEI submits the dispute over the COC principles centres on the fact that FEI's proposal contemplates consideration being given to the interests of both FEI customers and FAES customers. Interveners appear divided on this issue. BCOAPO, BCSEA, CEC and COPE support FEI's proposal for principle (i) while Corix and the Coalition oppose consideration of FAES ratepayers. FEI submits that its proposal is appropriate because it reflects the governing legal principles it also articulates in its final submission.³⁷

Corix submits that the COC must contain a clear set of principles that reflects the Commission's AES Inquiry Report. Corix further submits that the focus should be on protection of FEI and FAES ratepayers' interests, rather than promoting FAES alternative energy solutions business through the subsidized use of FEI resources.³⁸ Finally, Corix asks that the Commission's decision in the AES Inquiry be implemented in such a way that FEI does not use its privileged gas monopoly position to support FAES' business inappropriately. In other words, Corix submits, "If the AES Decision is implemented, then the FEI customers would receive an even greater contribution towards the costs they pay in FEI rates."³⁹

³⁵ Thermal Energy Systems Regulatory Framework, Order G-127-14, dated August 28, 2014.

³⁶ Generic Cost of Capital Proceeding, Stage 2 Decision, Order G-47-14, dated March 25, 2014.

³⁷ FEI Final Submission, November 12, 2014, p. 11.

³⁸ Corix Response Submission, December 1, 2014, p. 7.

³⁹ Corix Response to Intervener submissions, p. 2.

Commission determination

After considering all submissions, the Panel continues to believe that in developing the COC, FEI's first and foremost responsibility is to protect its own ratepayers. As a secondary aspect, it is reasonable for FEI also to consider the interests of ARBNNM ratepayers if both parties benefit. The Panel has a concern over the passively written style of the principle.

The Panel considers that the COC and TPP is written as a code for FEI to describe and define FEI's behaviour in interactions with its affiliates, with protection of its own ratepayers as the primary responsibility. It follows that FEI should do no harm to its ratepayers and that the ARBNNM ratepayers are not of equal importance to FEI. FAES ratepayers are the responsibility of FAES rather than of FEI. FAES has the option of purchasing services from FEI in accordance with the COC and TPP, or elsewhere if that is more advantageous to its and its ratepayer's interests. Accordingly, FEI may consider the interests of FAES ratepayers only if that consideration is also in the interest of FEI ratepayers. The Panel's view on this hierarchy of protection of the two sets of ratepayers is based on the legal and regulatory framework addressed in Section 2.0 of this decision. The Panel notes that as set out in Section 2.2 in this decision, the Commission's role in the setting of rates for TES projects and in dealing with complaints about TES rates is subject to significant limitations.

After concluding that FEI's primary obligation in COC is to protect its own ratepayers, to ensure there is no cross-subsidization and to ensure no risks of ARBNNMs or NRBs are transferred to FEI, the Panel finds that '*advancement*' is inappropriate for principle (i) and should be deleted. **The Panel directs FEI to replace principle (i) with the following: '*FortisBC Energy will protect and consider the interests of its own ratepayers, and having protected its ratepayers, FEI may also consider the potential interests of the ARBNNM ratepayers*'.**

3.3.2 Principle (vi)

FEI suggests the following wording for principle (vi):

The financing of [FortisBC Energy] and the ARBNNM will be accounted for separately with the financing costs reflecting the risk profile of each entity. No cross-guarantees or any form of financial assistance whatsoever should be provided by [FortisBC Energy] to the ARBNNM without the approval of the Commission.

Section 8 of the COC, Financing and Other Risks, is closely related to principle (vi) so the topic is dealt with primarily in this section and more briefly in Section 3.7 of this decision. As noted in the Application, significant differences remain between the parties regarding financing.

The Coalition suggested a prohibition on lending to affiliates by FEI, and that all funding of affiliates can and should come from the parent compan(ies).⁴⁰ The Coalition argues that FAES' parent or grandparent company presumably could finance the operations with its relatively low cost of capital. Coalition also sees a moral hazard that would require examination if FEI wanted to finance specific ARBNNMs or projects - is the parent funding the good projects and FEI funding the riskier projects?⁴¹

⁴⁰ Exhibit B-1, Appendix B1, pp. 20–21.

⁴¹ Coalition Final Submission, p. 7, para. 24.

The Coalition also submits that its position and FEI's are not dissimilar. It says that even with a prohibition, there is nothing preventing FEI from filing a project-specific application with the Commission in the future so that, with or without a prohibition, any FEI financing of an affiliate would require an application to the Commission. The Coalition submits that what is different is the "default" position, and asks the Commission to clearly signal that it is not acceptable practice for the regulated monopoly to finance the activities of an affiliate in a non-monopoly market. The Coalition argues that the Commission can do this knowing that FEI will always have the right to file a future application to do so and have the opportunity to demonstrate that such financing is unique or in the public interest.⁴²

FEI argues that there is no need for a blanket prohibition given current safeguards. FEI states that it is not currently providing any financing to FAES and has no plans to do so, and that FAES obtains all debt financing from its unregulated parent company. FEI submits that there is no harm to FEI customers in allowing for that potential in the future and that FEI would be compensated for any additional cost or risk. Further FEI states that any debt issuance by FAES is reviewed and approved by the Commission, and that FEI would require prior Commission approval pursuant to the ring-fencing conditions that were imposed when Terasen Gas Inc. was acquired by Fortis Inc.⁴³

BCOAPO does not see any benefit to FEI ratepayers in allowing FEI to provide this assistance, but rather sees the potential for increased risk and cost to FEI ratepayers. BCOAPO notes that no such assistance is currently provided, and that it does not appear necessary that FEI be able to provide financial assistance to an ARBNM. BCOAPO agrees with comments made by Coalition that calculating the benefit derived by FAES and the appropriate compensation for FEI for the assumption of additional cost and risk would not be trivial, and that the cost of this exercise would likely be borne by FEI's ratepayers.⁴⁴

BCSEA supports amending the section such that FEI will undertake no financing or other financial assistance on behalf of an ARBNM without prior approval of the Commission.⁴⁵

CEC submits that economies of scope and scale apply to financing; that it would be inappropriate to prohibit future potential financing arrangements; and that it would be more appropriate for future Commission panels to consider facts and circumstances at the time."⁴⁶

Commission determination

The Panel agrees with the Coalition that there appears to be little separating the parties. FEI is not currently providing any financing to FAES and has no plans to do so. According to FEI, FAES obtains all debt financing from its unregulated parent company. Parties supporting a prohibition argue that there is the potential for harm to FEI ratepayers if FEI is allowed to provide financing to an ARBNM. Those opposing a prohibition argue that there are safeguards in place to eliminate or mitigate such harm, such as the requirement for Commission approval of any financing proposal, and potential compensation for any added cost or risk. The Coalition supports a prohibition as the default position, but acknowledges that even with a prohibition, there is nothing

⁴² Ibid., para. 26.

⁴³ FEI Final Submission, p. 15, para 34.

⁴⁴ BCOAPO Final Submission, p. 3, para 9-11.

⁴⁵ BCSEA Final Submission, p. 4.

⁴⁶ CEC Final Submission, p. 2.

preventing FEI from filing a project-specific application with the Commission in the future.

The Panel is not persuaded that there is, in the ordinary course of events, any requirement or good reason why FEI should provide financing to FAES. Further, the Panel is concerned about the risk to FEI ratepayers if FEI is providing financing or other financial assistance to ARBs. Thus the Panel determines that financing (including co-signing for loans or any forms of financial assistance) for an ARBNNM should not come from FEI, except in exceptional circumstances after approval by the Commission. However, if such financing is limited to exceptional cases, and there are appropriate safeguards in place, the Panel does not see a need for the Code of Conduct to contain a blanket prohibition on financial assistance.

As suggested by Code of Conduct Principle (vi), if FEI does provide financing to an ARBNNM, a premium reflecting the risk of the ARBNNM should be charged, and FEI should account for any financing of FEI and the ARBNNM separately. No cross-guarantees or any form of financial assistance whatsoever should be provided by FEI, directly or indirectly, to an ARBNNM without the approval of the Commission.

Accordingly, FEI is directed to revise the Code of Conduct principle (vi) to include an acknowledgement that FortisBC Energy would normally not provide financing, or any form of financial assistance including co-signing of loans to the ARBNNM. Further, FEI is directed to clarify this principle to state that no FEI financing or other financial assistance, including cross-guarantees, can occur under any circumstances without advance Commission approval.

3.3.3 Principle (vii)

FortisBC Energy will monitor compliance with this Code by also conducting an annual compliance review. FortisBC Energy will regularly advise all of its employees of their expected conduct pertaining to this Code.

In its response to the supplemental information and evidence requested by the Panel, FEI addressed the existing safeguards and its proposed enhancements to achieve the objectives of the COC and TPP.⁴⁷ FEI summarizes the safeguards again in its final submission. Below are the safeguards either proposed, or already in place effective January 1, 2014, that are additional to the safeguards that existed prior to that date:

- Transfer from FEI to FAES individuals dedicated to supporting FAES, effective January 1, 2014.
- Physical separation of premises, with FAES employees provided only with visitor access to FEI sites, effective January 1, 2014.
- Quarterly reminders about the importance of following COC and TPP for employees who are likely to be directly involved with FAES activities.
- New oversight responsibility to the Director of Finance.⁴⁸

⁴⁷ Exhibit B-7.

⁴⁸ FEI Final Submission, p. 20.

Commission determination

The Panel acknowledges the new safeguards added and/or proposed during the evidentiary phase of this proceeding. **The Panel approves principle (vii) of the COC given the new safeguards that have been put in place and given the general nature of the principle.** These are addressed in more detail in Section 3.6 of this decision, where the Panel directs FEI to revise the wording of the COC to reflect the enhancements to safeguards related to compliance with the COC.

3.3.4 Principle (viii)

The Transfer Pricing mechanism should provide a fair and transparent mechanism to both [FortisBC Energy] and ARBNNM's ratepayers.

Principle (viii) relates very closely to the issues discussed in the section addressing principle (i). For the reasoning behind the Panel's findings please refer to Section 3.3.1 of this decision.

Commission determination

The Panel restates its finding that, in developing the COC, FEI's primary responsibility is the protection of its own ratepayers. Thus, the transfer pricing mechanism should first and foremost be established in consideration of the best interests of the FEI ratepayers, i.e., the transfer pricing mechanism should maximize the benefits to the FEI ratepayers. In contrast, the ARBNNM does have a choice to obtain resources or services elsewhere if it concludes that the ARBNNM ratepayers are not receiving good value from FEI under the transfer pricing mechanism.

The Panel directs FEI to, after amending principle (i), reconsider principle (viii) and amend it accordingly to ensure consistency.

3.3.5 Principle (ix)

The basis of cost allocation is cost causality. Costs are to be allocated from FortisBC Energy to the ARBNNM on the basis of no greater than FortisBC's full cost, recognizing the needs of both the interest of [FortisBC Energy] and the ARBNNM ratepayers.

Principle (ix) is very closely related to the Transfer Pricing Policy, its specific pricing rules and determining costs. It was the focus of considerable discussion by a number of parties. For a more comprehensive discussion and the Panel's findings on this issue, please refer to Section 4.3.2 of this decision.

3.4 Shared Services and Personnel

FEI's proposal with respect to shared services and personnel is an area of substantive disagreement.⁴⁹ FEI proposes the following COC wording:

⁴⁹ Exhibit B-1, FEI Application Section 3.2.1, p. 7; Exhibit B-3, p. 1.

Shared Services and Personnel

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

b) [FortisBC Energy] may provide shared services and personnel noted in section (c) below to ARBNNMs while ensuring that its ratepayers will not be negatively impacted by [FortisBC Energy]'s involvement. The costs of providing such services will be as agreed upon by both [FortisBC Energy] and the ARBNNM and be in accordance with the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs.

c) ARBNNMs may contract for corporate services including senior management and operating personnel from [FortisBC Energy] using the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNNMs, providing [FortisBC Energy] complies with Section 3 of this Code, Provision of Information by [FortisBC Energy], and no conflict of interest exists which will negatively impact ratepayers.⁵⁰

The guidelines in Section 2.3.2.1 of the AES Inquiry Report provide that:

- Common corporate and management resources may be shared between two Affiliated Regulated Businesses that are natural monopolies, such as gas and electric service;
- The sharing of any common resources between a natural monopoly affiliate and an affiliate that is a regulated business in a non-natural monopoly environment, however, should be more limited. As a rule, resource sharing should be limited to corporate services and should not include any operational services except possibly emergency services.
- Sharing of employees should not be allowed where the employee has access to confidential information, routinely participates in making decisions with respect to the provision of traditional utility services or how utility services are delivered, routinely deals with or has direct contact with customers of the utility or is routinely involved in planning or managing the business of the traditional utility.⁵¹

In reaching its decisions on the acceptability of FEI's proposed wording, the Panel considered the following key areas of significant disagreement in the context of the AES Inquiry Report guidelines:

1. Sharing of services and non-executive personnel; and
2. Sharing of directors and executives.

3.4.1 Sharing of services and non-executive personnel

FEI's view

FEI argues there are three reasons why their proposal is appropriate.⁵² First, the FEI proposed approach precludes the sharing of business development personal since business development personnel are not specifically listed as a resource that can be shared in Section 2 of the draft COC. FEI describes precluded business

⁵⁰ Exhibit B-1, FEI Application, Appendix A1, COC, p. 4, section 2.

⁵¹ AES Inquiry Report, Section 2.3.2.1, pp. 25–26.

⁵² Exhibit B-4, pp. 8–9.

development roles as roles with the primary responsibility of identifying and developing new projects and business opportunities for FAES including involvement in business planning, marketing, market development and customer relations.⁵³ FEI states that the employees fulfilling business development roles were transferred out of FEI effective January 1, 2014, and reside in separate FAES offices.⁵⁴ FEI submits that the preclusion of sharing of business development personnel addresses the primary objection raised in the past by FAES' competitors.⁵⁵

Second, FEI submits that its proposed COC precludes the sharing of business development staff, but otherwise provides flexibility for resource sharing arrangements that (1) benefit both FEI customers and ARBNNM/FAES customers, and (2) present limited potential for disclosure of confidential information.⁵⁶ FEI argues the AES Inquiry guidelines in Section 2.3.2.1 are worded in a manner that is overly broad and as a result would unnecessarily preclude sharing where both parties can benefit.⁵⁷ In this proceeding, FEI had provided details of the services currently being provided by FEI to FAES and the reasons for concluding that no conflict of interest exists that will negatively impact FEI ratepayers.⁵⁸ FEI concludes the current sharing of resources is primarily corporate services, the nature of which do not represent a conflict of interest and 'among these, the functions or personnel who are likely to have commercially valuable information are limited in number'.⁵⁹

FEI argues that sharing of resources with FAES provides benefits to FEI since "there is no situation that exists where there is enough surplus capacity at FEI to constitute an entire position where an employee could otherwise be redeployed. Therefore, it makes sense to offer services to FAES at any amount, since it is a recovery that would not otherwise be realized by FEI and its ratepayers."⁶⁰

FEI states that FEI ratepayers are protected from any negative impact because the employees or functions of FEI that continue to serve FAES do so only as a small portion of their responsibilities and they remain primarily dedicated to serving FEI on a priority basis.⁶¹ FEI argues these tasks represent 'a few hours at a time when other priorities allow.'⁶² FEI indicates its staff has no additional financial incentive that will pay an employee of FEI more for performing more work related to FAES and that FEI staff is compensated based on FEI's Balanced Scorecard with the scorecard objectives focused on meeting customer, safety, regulatory and financial targets related to FEI and not FAES.⁶³

FEI further submits that there are benefits to FAES in that if FAES did not utilize any of the services of FEI staff, FAES would not benefit from the background experience and knowledge of the existing FEI staff and FAES would also face the additional challenge of procuring these services from a third party for a few hours at a time.⁶⁴

⁵³ Exhibit B-7, Supplementary Information Request, response to question 2, p. 4.

⁵⁴ *Ibid.*, p. 4.

⁵⁵ FEI Final Submission, p. 12, para 24.

⁵⁶ *Ibid.*, p. 11, para 23.

⁵⁷ Exhibit B-4, p. 8.

⁵⁸ Exhibit B-7, pp. 1–3.

⁵⁹ *Ibid.*, p. 4.

⁶⁰ Exhibit B-9, BCUC IR 1.4.2.

⁶¹ Exhibit B-11, COC IR 1.1.1 and 1.1.2.

⁶² Exhibit B-9, p. 2.

⁶³ Exhibit B-7, p. 3.

⁶⁴ Exhibit B-9, BCUC IR 1.1.1.

Third, FEI notes that the proposed wording is consistent with the COC for NRBs, which was developed on the objectives and principles of the RMDM Inquiry and FEI argues that “There is no principled rationale why the obligations imposed by the COC for ARBNNM should be more onerous than those approved by the Commission for NRBs following the RMDM inquiry.”⁶⁵ FEI summarizes that its proposed COC wording is generally consistent with the wording contained in FEI’s existing COC for NRBs, which has served to adequately protect FEI ratepayers from the misuse of utility information for many years.⁶⁶

In its responses to BCUC IR 1.6.3 and COPE IR No. 1.1.3, FEI indicates that FAES has been investigating alternatives to provide greater separation from FEI and to replace some of the services currently provided by FEI.

Interveners’ views

BCOAPO submits that for rates to remain just and reasonable, FEI must receive an incremental benefit related to the services provided to FAES.⁶⁷ BCOAPO supports FEI’s proposed wording on Shared Services and Personnel and submits that to the extent FEI personnel or assets are underutilized and a benefit can accrue to FEI ratepayers for their more efficient utilization then, to ensure just and reasonable rates, the segregation of services/personnel/assets should be limited to only what is necessary to prevent cross-subsidization and/or the misuse of utility customer information imposes.⁶⁸

In the consultation process, the Coalition listed Energy Solutions, Marketing/Communication/External Relations, Regulatory Affairs, and Customer Billings as groups that cannot be shared⁶⁹ and proposed restrictions on sharing of workspace, addresses and other services.⁷⁰ In its final submission, the Coalition focuses its arguments on the roles and reporting relationships of FEI utility executives but does not specifically address non-executive resource sharing except to indicate they have no issue with the dual role of the FEI assistant corporate secretary.⁷¹ The Coalition’s concerns are focused on the possibility that information will flow from FEI to FAES which could give FAES an advantage over its competitors and potentially result in a less competitive market and higher TES rates overall, thereby harming TES ratepayers.⁷²

COPE does not have any issues with the proposed wording with respect to shared services, and submits that the rules surrounding the exchanges of services must be designed to treat both groups fairly.⁷³

BCSEA is satisfied the proposed COC is acceptable and adequately protects the customers of both FEI and FAES, and they agree with FEI’s view that the content of the COC and TPP should be determined based on what is reasonably necessary to ensure no cross-subsidization.⁷⁴

⁶⁵ Exhibit B-4, p. 9.

⁶⁶ FEI Final Submission, para 33.

⁶⁷ BCOAPO Final Submission, p. 2, para 7.

⁶⁸ Ibid., para. 8.

⁶⁹ Exhibit B-1, Appendix B1, p. 14.

⁷⁰ Ibid., p. 15.

⁷¹ Coalition Final Submission, para. 34 (d).

⁷² Ibid., para. 29.

⁷³ COPE Final Submission, p. 7.

⁷⁴ BCSEA-SCBC Final Submission, p. 4, item 5.

CEC submits that specific proposals of having business development personnel located in FAES, corporate service personnel shared and directors and officers shared, is appropriate and justified.⁷⁵ CEC is satisfied that the policies for protection of confidential information within FEI and FAES will protect customer interests in the confidentiality of information.⁷⁶

Corix argues that since FEI is only charging FAES for actual time spent, under-utilized spare capacity and unrecorded time is, by default, allocated to FEI with the result being that FEI ratepayers bear the greater burden of carrying staff for the combined business.⁷⁷ Corix refers to the AES Inquiry Report guidance and submits the guidance related to sharing of resources should be followed.⁷⁸ Corix acknowledges that FEI has taken some steps to avoid some of the concern but “the concern has not been eliminated.”⁷⁹

Commission determination

Consistent with the guidelines in the AES Inquiry Report, the Panel agrees that shared services and non-executive personnel between FEI and an ARBNNM should be limited to the circumstances where:

- The level of sharing is not significant to FEI, e.g., a few hours at a time representing only a small portion of any FEI staff member’s workload, undertaken when other priorities allow;
- The sharing of resources does not expose FEI to business risks from an ARBNNM or result in cross subsidization;
- The sharing of resources benefits primarily FEI ratepayers;
- There is limited potential for disclosure of confidential information and consequently little risk that confidential information could be abused by the ARBNNM;
- The nature and extent of services can be identified and tracked effectively; and
- There are appropriately designed and operating safeguards in place.

The Panel concludes that the COC wording should be more explicit in setting out the circumstances where it is considered appropriate to share services and personnel. In addition, the reference to ‘no conflict of interest exists which will negatively impact ratepayers’ should be expanded to include clear wording related to ensuring there is limited potential for disclosure of confidential information.⁸⁰

With respect to the governance of interactions between FEI and FAES, the Panel agrees that it is appropriate to preclude the sharing of business development personnel and concludes that the wording in the COC should be updated to expressly state that business development personnel will not be shared with an ARBNNM. The Panel has considered the nature and extent of FEI services and the roles of the non-executive FEI personnel providing services to FAES and concludes that, subject to the adequate design and operating effectiveness of appropriate safeguards, there are benefits to both FEI and FAES ratepayers and the current sharing of services and non-executive personnel present limited potential for disclosure of confidential information.

⁷⁵ CEC Final Submission, p. 2.

⁷⁶ Ibid., p. 2.

⁷⁷ Corix Final Submission, p. 8.

⁷⁸ Ibid., p. 8.

⁷⁹ Ibid., p. 8.

⁸⁰ Exhibit B-1, Appendix A-1, p. 4, para. C.

As part of monitoring the operating effectiveness of controls and safeguards as discussed in Section 3.6.1 of this decision, the Panel recommends that FEI perform a periodic review of shared services and personnel to determine if the level of utilization of FEI personnel by FAES continues to be insignificant, e.g., at the current level and to ensure there continues to be potential benefits to both FEI and FAES and there is no conflict of interest or inappropriate access to information. The Panel supports FAES's investigation into alternatives to provide greater separation from FEI and to replace some of the services currently provided by FEI.

FEI is directed to revise the wording of the Code of Conduct section on Shared Services and Personnel to explicitly state that services and non-executive personnel will only be shared in circumstances where: (1) the services can be identified and tracked effectively and there are other appropriate safeguards in place, (2) there is limited potential for disclosure of confidential information, and (3) there are benefits to FEI ratepayers. FEI is also directed to update the wording in the Code of Conduct to expressly state that business development personnel will not be shared with an ARBNM.

3.4.2 Sharing of directors and executives

FEI's proposal is to permit the sharing of directors and executives. FEI proposes the following COC wording:

2 c) ARBNMs may contract for corporate services including senior management and operating personnel from [FortisBC Energy] using the Commission approved [FortisBC Energy] Transfer Pricing Policy for ARBNMs, providing [FortisBC Energy] complies with Section 3 of this Code, Provision of Information by [FortisBC Energy], and no conflict of interest exists which will negatively impact ratepayers.⁸¹

With respect to the interactions between FEI and FAES, FEI describes the nature of senior management services provided to FAES as including executive management services providing corporate governance, policy and strategic direction and review of the current status of projects, monitoring status of projects and reviewing and approving potential projects.⁸²

In response to the Coalition IR 1.2.1, FEI provided the following table:

Individual	Role Within FAES	Role Within FEI
John Walker	Member of Board of Directors	Member of Board of Directors
Roger Dall'Antonia	Member of Board of Directors	Executive Vice President, Customer Service & Regulatory Affairs
Douglas Stout	President Member of Board of Directors	Vice President, Market Development & External Relations
Gareth Jones	Vice President and General Manager	Director, Business Development*
Debra Nelson	Corporate Secretary	Assistant Corporate Secretary

**This is a job title within FEI. It is not a position on FEI's Board of Directors.*

⁸¹ Exhibit B-1, Appendix 1, p. 4, section 2.

⁸² Exhibit B-7, p. 1.

FEI indicated that Mr. Gareth Jones' responsibilities as FEI Director, Business development include services in support of FEI's Tilbury LNG expansion project and FEI's natural gas transportation service⁸³ and on an as-required basis, he provides support to FEI in the development of capital projects.⁸⁴ Mr. Douglas Stout's market development role within FEI is focused on the development of major projects such as the Tilbury LNG expansion.⁸⁵ FEI clarified that Mr. Stout's previous responsibilities for the Energy Solutions group, which deal with adding natural gas customers and the Energy Efficiency and Conservation group, now fall under Mr. Roger Dall'Antonia, EVP, Customer Services and Regulatory Affairs, FEI and member of Board of Directors of FAES.⁸⁶ Ms. Debra Nelson provides corporate secretary services to the entire FortisBC group and is located in the Vancouver downtown office.⁸⁷ Mr. Stout's responsibilities require him to work from different office locations (FAES Burnaby operations site is not listed as one of them).⁸⁸ Mr. Jones is primarily based at the FAES Burnaby location and is required to work from different locations.⁸⁹

FEI's view

FEI argues that its proposal to permit sharing of directors and executives/senior management is appropriate and serves the interests of FEI.⁹⁰ FEI argues its customers benefit from having the right individuals on the senior leadership team and the individuals who hold positions with both FEI and FAES meet the current needs of FEI.⁹¹ FEI argues that Mr. Stout and Mr. Jones, the two shared officers engaged in market development, play very different roles for each corporation. FEI states that the Energy Solutions group, who deal with adding natural gas customers for thermal energy use to the FEI system and the Energy Efficiency and Conservation groups now no longer report to Mr. Stout.⁹²

FEI submits that all FEI directors and senior management are subject to FEI's Business Ethics policy, which addresses confidentiality obligations.⁹³ FEI does not believe that confidentiality disclosure agreements are required as its existing FEI Business Ethics policy cover confidentiality obligations.⁹⁴

FEI argues that its proposal is similar to the situation in Alberta's Code of Conduct, which allows for sharing of company directors with non-utility affiliates and officers and management with affiliated utilities. FEI submits that in reviewing the Alberta Code of Conduct the Commission should note that ARBNNM's are the equivalent of "Affiliated Utilities," for which the Alberta Code of Conduct requirements provide greater flexibility."⁹⁵

FEI states in its reply submission, "The only basis upon which the Commission could limit sharing of executives is if the limitation is necessary to protect FEI customers. A prohibition on sharing utility executives would increase costs for both utilities, particularly FAES. It would be inappropriate for the Commission to take measures to

⁸³ Exhibit B-11, p. 7.

⁸⁴ Exhibit B-10, COPE IR 1.1.1(a) and 1.2, pp. 12.

⁸⁵ Exhibit B-11, p. 7.

⁸⁶ *Ibid.*, p. 7.

⁸⁷ *Ibid.*,

⁸⁸ *Ibid.*, p. 8.

⁸⁹ *Ibid.*,

⁹⁰ FEI Final Submission, para. 29.

⁹¹ *Ibid.*, para 30.

⁹² *Ibid.*, para 31.

⁹³ *Ibid.*, para 31; Exhibit B-9, BCUC IR 1.2.1.

⁹⁴ Exhibit B-9, p. 4.

⁹⁵ FEI Final Submission, para. 32.

disadvantage both utilities and their regulated ratepayers when the use of commercial information in the hands of FEI can be managed via the means proposed by FEI without additional costs being imposed.”⁹⁶

Interveners’ views

BCOAPO supports FEI’s view and argue that any requirement for greater segregation of services/personnel/assets than is necessary to prevent cross-subsidization and/or the misuse of utility customer information imposes costs on utility ratepayers for the benefit of market competitors.⁹⁷ BCOAPO argues measures designed to enforce such limited disclosure must balance cost and efficient use of resources against the extent and likely effectiveness of the measure taken.⁹⁸ BCOAPO submits that the most appropriate solution is to allow FEI executives to maintain dual roles in FEI and FAES, but require executives with dual roles to sign confidentiality undertakings.⁹⁹

The Coalition argues for separation measures that ensure no formal and informal transfer of confidential information from FEI to FAES, and states that it is not satisfied that non-disclosure agreements will be adequate.¹⁰⁰ The Coalition argues that steps should be taken to minimize the chain of reporting relationships and suggests that the Commission require the elimination of “dual roles” of FEI/FAES executives and that the senior executive of FAES report directly to the CEO of the holding company, FortisBC Holding Inc.¹⁰¹

BCSEA is satisfied the COC is acceptable and adequately protects the customers of both FEI and FAES.¹⁰²

CEC submits that specific proposals of having business development personnel located in FAES, corporate service personnel shared and directors and officers shared, is appropriate and justified. CEC is satisfied that the policies for protection of confidential information within FEI and FAES will protect customer interests in the confidentiality of information.¹⁰³

Commission determination

Throughout the proceeding FEI has argued that the sharing of resources precludes business development staff. In Section 3.4.1 of this decision, the Commission directs FEI to update the wording in the COC to expressly state that business development personnel will not be shared with an ARBNNM. Consistent with its conclusion related to shared services and non-executive personnel, the Panel finds that sharing of directors and executives/senior management between FEI and an ARBNNM should be limited to the circumstances where (1) the services can be identified and tracked effectively and there are other appropriate safeguards in place, (2) there is limited potential for disclosure of confidential information, and (3) there are potential benefits to FEI and ARBNNM ratepayers.

⁹⁶ FEI Reply Submission, pp. 13–14.

⁹⁷ BCOAPO Final Submission, p. 3.

⁹⁸ BCOAPO Reply to Other Interveners, p. 2.

⁹⁹ *Ibid.*, p. 2.

¹⁰⁰ Coalition Final Submission, p. 8.

¹⁰¹ *Ibid.*, pp. 910.

¹⁰² BCSEA-SCBC Final Submission p. 4, item 5.

¹⁰³ *Ibid.*, p. 2.

The Panel agrees with Coalition's suggestion that steps should be taken to minimize the chain of reporting relationships and also recognizes that FEI has taken steps to rearrange the responsibilities of shared executives.¹⁰⁴ FEI recently restructured the role of the VP of Market Development & External Relations whose responsibilities for the Energy Solutions group that deals with adding natural gas customers to the FEI system and the Energy Efficiency and Conservation group now fall under the EVP, Customer Services and Regulatory Affairs for FEI who is also a member of the Board of Directors of FAES. The Panel remains concerned with whether this reporting structure sufficiently limits the potential disclosure of confidential information given the individual has the governance role as a member of the Board of Directors at FAES and a business development role at FEI as an EVP for Customer Service & Regulatory Affairs.

Although the Panel recognizes Coalition's concern that non-disclosure agreements will not be adequate,¹⁰⁵ the Panel accepts BCOAPO's argument 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 ARBNNM.¹⁰⁶

The Panel has considered the current roles and responsibilities of the shared directors and executives/senior management and concludes that requiring FEI and FAES directors and executives/senior management with dual roles to execute non-disclosure agreements will sufficiently limit the potential for disclosure of confidential information given that all FEI directors and senior management are subject to FEI's Business Ethics policy.

As part of monitoring the operating effectiveness of controls and safeguards as discussed in Section 3.4.1, the Panel recommends that FEI perform a periodic review of the roles and responsibilities of shared directors and executives/senior management to confirm that the risk of disclosure of confidential information remains low. In particular, FEI should continue to monitor any conflict of interest and potential for disclosure of confidential information given the EVP, Customer Service & Regulatory Affairs business development role within FEI and his governance role as a member of the FAES Board of Directors.

FEI is directed to revise the wording of the Code of Conduct section on Shared Services and Personnel to require FEI and ARBNNM directors and executives with dual roles to execute non-disclosure agreements.

3.5 Sections in the COC where parties accepted the proposal or have wording issues

3.5.1 Provision of information by FEI

All parties accepted the wording of section 3 of the Code of Conduct: Provision of Information by FEI, with the possible exception of Commission staff, as shown by Exhibit B-3. A review of the Commission staff comments on this section in Appendix B2 (p. 5) of the Application suggests that FEI has, largely and perhaps completely, resolved these staff issues in its filed draft COC.

The Panel notes that the information is either customer-specific, in which case this section of the COC requires the information to be treated in accordance with the *Personal Information Protection Act* and the customer's wishes about who the information can be provided to, or the information is aggregated such that confidential

¹⁰⁴ Coalition Final Submission, p. 9.

¹⁰⁵ Ibid., p. 8.

¹⁰⁶ BCOAPO Reply to Other Interveners, p. 2.

information cannot be determined. **Therefore, the Panel approves the Code of Conduct section 3 regarding the provision of information by FEI as filed by FEI.**

3.5.2 Preferential treatment

The Application identifies section 4 of the Code of Conduct: Preferential Treatment as accepted by all participants, and Exhibit B-3 confirms that.

Given the acceptance amongst the participants, and upon its own review, the Panel approves COC section 4 regarding Preferential Treatment as filed by FEI.

3.5.3 Equitable access to services

As identified in the Application and confirmed by Exhibit B-3, all participants accept section 5 of the Code of Conduct: Equitable Access to Services.

Given the acceptance amongst the participants, and upon its own review, the Panel approves COC section 5 regarding Equitable Access to Services as filed in the Application.

3.5.4 Equitable treatment of demand side management and incentive funds

Section 6 of the COC concerns equitable treatment of demand-side management and incentive funds. The Application shows that there was significant discussion about this section up to and including the wording in the May 15, 2014 draft. Commission staff's comments included in the Application indicate that staff did not agree with the wording proposed in the May 15 draft.¹⁰⁷

In the Application, FEI states that it brought forward a proposal on this issue in the FEI Performance Based Ratemaking (FEI PBR) proceeding; that issue would be the subject of a Commission determination in the FEI PBR proceeding.¹⁰⁸ The Application proposes wording in the Code of Conduct that would require FEI to adhere to the mechanism approved by the Commission in the FEI PBR proceeding for approval and administration of demand-side management or incentive funding.

The revised wording in the Application supersedes that in the May 15 draft, and makes the discussion between FEI and Commission staff moot. Exhibit B-3 and the final submissions indicate that none of the other parties object to the wording of section 6 of the COC as filed by FEI in the Application.

The Panel notes that section 4.6.4 (pp. 282284) of the Commission's September 15, 2014 FEI PBR Decision deals with Energy Efficiency and Conservation (EEC) Fund Administration for TES projects. That decision states that:

In the AES Inquiry the Commission Panel directed FEU to bring forward a proposal for mechanisms for approval and administration of funds by a neutral third party where FEU may be involved in providing capital or services to a project receiving DSM or other incentive funds and/or there is a potential for FEU to benefit, either directly or indirectly, from that funding. (2012 Commission AES Inquiry Report, p. 87)

¹⁰⁷ Exhibit B-1, p. 15; Appendix B1, p. 17; Appendix B2, p. 6.

¹⁰⁸ FEI's Application for Approval of a Multi-Year Performance Based Ratemaking Plan for 2014 through 2018 (FEI PBR).

In response to this directive, FEU submitted a proposal from Price Waterhouse Coopers (PWC) to review applications and administer EEC funds for all projects with a third party thermal energy component, whether the provider is FAES or another provider (Exhibit B-1-1, Appendix I, Attachment 4).

In the FEI PBR decision, the Commission approved the third-party administration portion of the PWC proposal put forward by FEU, although it declined to approve the initial and subsequent annual backward-looking review portion of the PWC proposal.¹⁰⁹

Given positions of participants in the FEI COC and TPP proceeding, and given that FEI submitted a proposal to the Commission in the FEI PBR proceeding, which the Commission has at least in part approved, **this Panel approves the wording in section 6 of the COC regarding the equitable treatment of demand-side management and incentive funds.**

3.6 Compliance and Complaints

In Section 7 of the proposed COC, FEI sets out processes for monitoring compliance with the COC and third party complaints about the application of the COC.

In order to gain a better understanding of FEI's existing safeguards, the Panel requested supplementary information and evidence relating to: (a) description of the business development roles that are precluded from sharing, (b) description of the safeguards and oversight processes either currently in place or intended to be implemented, and (c) description of the cost collection processes and controls that are currently in place or intended to be implemented if the proposed COC and TPP is approved, among other things.¹¹⁰

In the supplementary information and evidence filed with the Commission, FEI described, among other things, the significant enhancement to the COC oversight and compliance process.

3.6.1 Compliance – safeguards related to compliance with the COC

With respect to Compliance, FEI proposes the following COC wording:

a) The Director of Finance and Planning at [FortisBC Energy] will be responsible for monitoring compliance at [FortisBC Energy] with this Code. This will include advising all of its employees of their expected conduct pertaining to this Code, with quarterly updates for employees who may be directly involved with ARBNNM activities.

b) [FortisBC Energy] will monitor employee compliance with this Code by also conducting an annual compliance review, the results of which will be summarized in a report to be filed with the Commission within 60 days of the completion of this review.¹¹¹

FEI provided further details of the existing safeguards and proposed enhancements in its response to the Commission's request for supplementary Information. In its final submission, FEI presented a summary table of safeguards, newly proposed and existing, relating to compliance with the COC:

¹⁰⁹ September 15, 2014 Decision on the FEI PBR Application, pp. 283–284.

¹¹⁰ Exhibit A-4, Order G-143-14, Appendix C.

¹¹¹ Exhibit B1, Appendix 1, p 4.

Table 3.1 FEI's Existing and Newly Proposed Safeguards Relating to COC

Safeguard	Status
Transfer from FEI to FAES individuals dedicated to supporting FAES, effective January 1, 2014. ⁵⁹	New as of January 1, 2014
Physical separation of premises, with FAES employees provided only with visitor access to FEI sites. ⁶⁰	New as of January 1, 2014
<p>Communication with employees on regular basis as to the importance of following the CoC/TPP. This includes,</p> <ul style="list-style-type: none"> • the Code of Conduct and Transfer Pricing Policy is referenced in the company's "Business Ethics" eLearning course, a course that all employees are required to take.⁶¹ • Quarterly reminders for employees who are likely to be directly involved with FAES activities.⁶² 	Existing (first bullet) and new (second bullet)
The Director of finance has responsibility for identifying and managing potential conflict of interest situations and monitoring compliance. ⁶³	New proposal
<p>Annual compliance review is performed by the Internal Audit group, the results of which will be summarized in a report and filed with the Commission.</p> <p>Objectives:</p> <ul style="list-style-type: none"> • Confirm the existence of appropriate policies, processes, procedures and business information systems that ensure compliance with the CoC and TPP; • Review and determine whether the control procedures were in effect and operating effectively as of the date of the assessment: • Determine who the key business process owners are and their roles in the process; • Assess the activities of the individuals carrying out key functions or supervising the activities to ensure the Company's control processes meet the criteria; and • Evaluate the alignment and consistency between the Coc/TPP and current business practices. 	Existing
Third parties can state their complaints in writing to the Company's Director of Finance and the Executive Vice-President, Customer Services and regulatory Affairs, who will bring the matter to the immediate attention of the Company's senior management and promptly initiate an investigation into the complaint. The Company will endeavour to complete this investigation within 30 days of the receipt of the complaint. ⁶⁴	Existing

(Source: FEI Final Submission, pp. 2021, paragraph 45)

FEI submits that the mechanisms are appropriate and should provide the necessary comfort to the Commission that FEI will give effect to the intention of the COC and TPP.¹¹²

CEC submits that the FEI and FAES approach to safeguards for the COC are appropriate and acceptable.¹¹³ With the exception of the Coalition's views on the complaint process (Section 3.6.2), there are no other specific comments by Interveners.

¹¹² FEI Final Submission, para. 44.

¹¹³ CEC Final Submission, p. 3.

Commission determination

With respect to the safeguards related to compliance with the COC, the Panel recognizes that during the consultation process, FEI incorporated changes to address concerns related to the monitoring of compliance and communication to employees.¹¹⁴ In addition, in this proceeding FEI has proposed further enhancements to safeguards related to compliance with the COC. The Panel finds that sections 7 a) and b) require updated wording to reflect these enhancements.

The Panel notes that the Director of Finance has responsibility for identifying and managing potential conflict of interest situations and monitoring compliance.¹¹⁵ The Panel concludes that this wording should be clarified to reflect that the Director of Finance is responsible for FEI's compliance with the COC, including ensuring the ongoing design and operating effectiveness of related controls and safeguards and maintenance of adequate records and documentation.

FEI is directed to revise the wording of the Code of Conduct sections 7 a) and b) to reflect enhancements to safeguards related to compliance with the Code of Conduct. In addition, FEI should update the wording of the Code of Conduct to reflect the Director of Finance's responsibility for FEI's compliance with the Code of Conduct, including ensuring the ongoing design and operating effectiveness of related controls and safeguards and maintenance of adequate records and documentation.

3.6.2 Complaints

With respect to the complaints, FEI proposes the following COC wording:

c) Complaints by third parties about the application of this Code, or any alleged breach thereof, should be addressed in writing to the Company's Director of Finance and Planning and the Vice-President, Strategic Planning, Corporate Development and Regulatory, who will bring the matter to the immediate attention of the Company's senior management and promptly initiate an investigation into the complaint. The complainant, along with the Commission, will be notified in writing of the results of the investigation, including a description of any course of action which will be or has been taken promptly following the completion of the investigation. The Company will endeavour to complete this investigation within 30 days of the receipt of the complaint.

d) Where [FortisBC Energy] determines that the complaint is unfounded, the Company may apply to the Commission for reimbursement of the costs of the investigation from the third party initiating the complaint or where this is not possible, for inclusion of those costs in rates.¹¹⁶

FEI's view

FEI believes the proposed wording is appropriate and serves to discourage frivolous complaints while not discouraging potential complainants.¹¹⁷ FEI notes in the Scope of the proposed COC that the primary

¹¹⁴ Exhibit B-1, p. 16.

¹¹⁵ Exhibit B-7, p. 5.

¹¹⁶ Exhibit B-1, Appendix A1 COC, pp. 5–6.

¹¹⁷ Exhibit B-1, p. 16.

responsibility for administering the COC lies with FEI, although the Commission has jurisdiction over matters referred to in the COC.¹¹⁸

With respect to the Coalition's views on the complaint process, FEI submits that its proposed complaints process reflects what has long been in place in the existing COC for NRBs and argues there is no compelling reason to depart from it.¹¹⁹

Interveners' views

Coalition suggests that the COC should be written to allow for complaints to be made directly to the Commission, providing the Commission the opportunity to elect to immediately commence its own review, refer it to FEI to review or dismiss the complaint outright.¹²⁰ The Coalition argues:

Third Parties may require immediate remedy to a particular situation where time delays result in an unfair balance of power resting with FEI. Given the high cost (to the Complainant) of filing a Complaint with the Commission, this will serve as a significant deterrent to frivolous complaints. On balance, one would expect fewer complaints under this proposal. Furthermore, the basis for FEI to recover costs of investigation would be obviated as the Commission will have assessed the merits of the complaint at the outset. In addition, if the Commission finds a complaint to be frivolous in the first instance, it could preclude the need for FEI to investigate thereby saving the time and effort to investigate.¹²¹

While BCOAPO takes no position on the Coalition's submission regarding the complaints process, BCOAPO does note that 'the usual Commission complaints process requires the complainant to first attempt to resolve their complaint by engaging with the utility.'¹²²

Commission determination

The Panel does not see a need to vary from its usual involvement in the complaint process and accepts FEI's proposed wording of Section 7 c) of the COC.

The Panel is concerned that the lack of clarity in the word 'unfounded' could lead to the reluctance of a party to bring forward a legitimate complaint, and finds that the wording should be updated to be more precise.

FEI is directed to revise the wording of the Code of Conduct section 7 d) to substitute the word 'unfounded' with wording that indicates this section applies to a complaint that is frivolous and without merit.

3.7 Financing and Other Risks

Section 8 of the Code of Conduct: Financing and Other Risks is on the same topic as principle (vi). FEI proposed the following wording for Section 8:

¹¹⁸ Ibid., p. 5.

¹¹⁹ FEI Reply Submission, para. 50.

¹²⁰ Coalition Final Submission, para. 41.

¹²¹ Ibid., para. 43.

¹²² BCOAPO Reply to Other Interveners, para.13.

Unless approved by the Commission, [FortisBC Energy] will not undertake any financing or other financial assistance on behalf of an ARBNNM that exposes [FortisBC Energy] ratepayers to additional costs or risks, unless appropriate compensation is received by [FortisBC Energy] for such financing or other financial assistance, including compensation for additional cost or risk related to the addition of incremental debt to [FortisBC Energy] for a project carried out by the ARBNNM.¹²³

During the consultation process, Commission staff accepted FEI's proposed wording, but suggested two additional provisions be added stipulating that the risk of unrecovered costs would be borne by the ARB[NNM] or separate class of service or the shareholder, and that proposals for new business activities would include a risk management plan.¹²⁴

FEI submitted that the two additional paragraphs suggested by Commission staff were inappropriate. Regarding the first suggestion, FEI argued that it is not lawful to pre-judge recovery of costs. Regarding the second suggestion, FEI submitted that it is not the purpose of the COC to guide hypothetical future activities and moreover, if FEI were to enter any new regulated line of business it would likely have to seek Commission approval of a Certificate of Public Convenience and Necessity or for rates to be charged.¹²⁵

Commission determination

This topic is addressed in detail in section 3.3.2 in this decision. If such financing by FEI is limited to exceptional circumstances, then the Panel sees no need to include the two suggestions from Commission staff.

For the same reasons as given in section 3.3.2 on COC principle (vi) of this decision, **FEI is directed to amend section 8 of the Code of Conduct on financing and other risks to include an acknowledgement that FEI would normally not provide financing (or any form of financial assistance including co-signing of loans) to the ARBNNM, and to clarify that no financing or other financial assistance (including cross-guarantees) can occur under any circumstance without prior Commission approval.**

3.8 Use of utility name

FEI's Application lists the Code of Conduct section on use of the utility name as an area where parties have less significant differences or wording issues. FEI notes that it added the words "The name FortisBC is owned by Fortis Inc." as suggested by the Coalition to help clarify the ownership of the FortisBC name.¹²⁶ The resulting wording in the Application is as follows:

The use of the FortisBC [sic] by an ARBNNM operating in a non-natural monopoly environment is an acceptable business practice. The ARBNNM will exercise care in distinguishing between services provided by [FortisBC Energy] and services offered by the ARBNNM. The name FortisBC is owned by Fortis Inc.¹²⁷

¹²³ Exhibit B-1, p. 9, and Appendix A1, p. 6.

¹²⁴ Exhibit B-1, Appendix B1, p. 20; Appendix B2, p. 6.

¹²⁵ Exhibit B-4, p. 16.

¹²⁶ Exhibit B-1, p. 16.

¹²⁷ Exhibit B-1, Appendix A1, p. 6.

Appendix B1 in the Application identifies this section as ‘Accepted’ by the parties, but the Coalition, in its May 30 2014 comments on FEI’s proposed submission states that it only accepts the wording in the AES Inquiry Report on the use of the FortisBC brand name, and that it strongly suggests that FEI provide clarity with the proposed COC and TPP as to how it intends to exercise care.¹²⁸

The Coalition begins its submissions on the utility name by saying: “The Commission clearly stated in the AES Inquiry Report that FAES is entitled to the use of the Utility Name; that is not in dispute.” The Coalition submits that it is important to clarify what is not common between FEI and FAES and that, in order to prevent customers from incorrectly assuming they are one and the same entity, some form of “clarification statement” that should be attached to FAES contracts, marketing materials, advertisements, invoices and public documents that make it clear that FAES is not the natural gas or electric utility but is, in fact, a separate legal entity that is an affiliate of FEI. The Coalition cites some hypothetical scenarios of the consequences that could arise from confusion by customers about the linkage between FAES and FEI, and then notes that contracts of TES Stream A providers are required by the Commission to include a clause outlining the role of the Commission. The Coalition suggests the Code of Conduct should also include a similar clarification statement.¹²⁹

FEI disputes the Coalition’s hypothetical scenarios arguing that they could not occur, or that there are measures in place to prevent the consequences cited by the Coalition, or that for the scenario using the Delta School District as an example, there is no evidence to support the allegations of the Coalition. FEI also argues that the analogy drawn by Coalition from the TES Stream A contracts is inapt, as the clause in those contracts outlines the role of the Commission, whereas the clause requested by the Coalition for inclusion in the Code of Conduct relates to a “perceived deceptive marketing practice”¹³⁰ BCOAPO also disagrees that Delta School District case fairly represents customer or public understanding.¹³¹

However, BCOAPO agrees with the submission of the Coalition that it is important for customers and potential customers to be able to distinguish between the FortisBC gas utility and the FortisBC thermal energy utility. BCOAPO advocates simplicity in messaging saying that, while sophisticated customers will generally understand the nuances of corporate structure and naming, unsophisticated customers generally will not; nor will they understand (or attempt to understand) complex or detailed explanations of it. Accordingly, BCOAPO prefers simple methods of distinguishing FEI and FAES to lengthy or complex explanations.¹³²

BCOAPO submits that this can be accomplished by requiring Fortis to identify the gas utility as “FortisBC Energy Inc.” and the affiliate as “FortisBC Alternative Energy Services Inc.” BCOAPO argues that the addition of “Inc.” to “FortisBC Alternative Energy Services” clarifies that FAES is a separate corporate entity and not just a division of FortisBC Energy Inc., and that the “Inc.” should be included on all materials directed to or regularly accessed by customers or the public.¹³³

¹²⁸ Exhibit B-1, Appendix B5, p. 3.

¹²⁹ Coalition Final Submission, pp. 46, para. 1322.

¹³⁰ FEI Reply Submission, pp. 11–13.

¹³¹ BCOAPO Reply Submission, pp. 1-2, para. 3-5.

¹³² Ibid.

¹³³ Ibid.

Commission determination

As the Coalition notes in its final submission, the Commission clearly stated in the AES Inquiry Report that FAES is entitled to the use of the Utility Name; no party has disputed that point. The issue now is how much separation of the FortisBC Energy Inc. and the FortisBC Alternative Energy Services Inc. names is required for the protection of ratepayers, and how much detail the Code of Conduct should contain about how to achieve the required degree of name separation.

The Panel agrees with FEI and BCOAPO that the hypothetical scenarios put forward by the Coalition are largely unlikely to occur, or if they do, they have remedies elsewhere in the Code of Conduct (e.g., Principle (v), in contracts, or in the general oversight of ARBNNMs by the Commission). The Panel also agrees with BCOAPO that simplicity is preferable to detailed or complex explanations or descriptions that unsophisticated customers might not understand.

The second sentence of FEI's proposed section 9—Use of the Utility Name reads as follows: "The ARBNNM will exercise care in distinguishing between services provided by [FortisBC Energy] and services offered by the ARBNNM."¹³⁴ The Panel notes that the document under review is a Code of Conduct for FEI in its transactions with ARBNNMs, and not a Code of Conduct for ARBNNMs. The COC should refer to the responsibility of FEI to reflect FEI needs to distinguish services provided by FEI and services offered by other affiliates.

Therefore, in this instance, **FEI is directed to amend the second sentence of section 9—Use of the Utility Name to read "FEI will exercise care in distinguishing between services provided by [FortisBC Energy] and services offered by the ARBNNM."** The Panel also notes that there appears to be a typographical error in the first sentence that should be corrected in the revised COC to be filed for Commission approval. **With the foregoing amendment and minor correction, the Panel will approve the section.**

While not requiring it to be added to the Code of Conduct, the Panel finds some merit in the BCOAPO suggestion that the word "Inc." be included in the FAES name in its materials to reinforce to ratepayers and potential customers that it is a separate corporate entity from FortisBC Energy Inc. Thus the Panel recommends FAES to adopt the practice.

3.9 Amendments

For the COC filed in the Application, FEI adopted a previous Commission staff suggestion for the wording in section 10-Amendments. Exhibit B-3 indicates that all participants accept section 10-Amendments as it now appears in the Application.

Given the general acceptance by the participants, and upon its own review, the Panel approves section 10-Amendments as filed by FEI.

¹³⁴ Exhibit B-1, Appendix, A1, p. 6.

4.0 TRANSFER PRICING POLICY

This portion of the decision is structured in accordance with the sections in the proposed Transfer Pricing Policy.¹³⁵ There are three sections to the TPP – Scope, Definition and Policy. The Policy section contains a number of sub-sections, some of which were the focus of submissions in this proceeding due to the difference of views held by some parties. For this reason in reviewing the Policy section the Panel deals separately with each of the sub-sections. Where issues have been dealt with in previous sections of this Decision, rather than repeat the material that has previously been set out, references are provided to the relevant sections and the conclusions or findings are re-stated.

4.1 Scope

The wording of the section entitled Scope was agreed to by all parties in the consultation process with the exception of Commission staff.¹³⁶

As applied for, the paragraph where a difference of views exists reads:

*FortisBC Energy and ARBNNMs will maintain separate financial records and books of account in order to ensure a level of transparency that enables an appropriate allocation of costs between [FortisBC Energy] and ARBNNMs.*¹³⁷

Commission staff suggests:

*FortisBC Energy and ARBNNMs will maintain separate financial records and books of account and sufficient separation of business operations in order to ensure a level of transparency that enables an appropriate allocation of costs between [FortisBC Energy] and ARBNNMs and where appropriate between individual ARBNNMs.*¹³⁸ (emphasis added)

FEI believes that the words “and sufficient separation of business operations” does not fit within the purpose of the Transfer Pricing Policy.¹³⁹

Commission determination

This issue was dealt with in Section 3.1 of the decision under the sub-heading “Maintaining separate financial records and sufficient separation of business operations.” **Consistent with the conclusion reached in Section 3.1 of this decision, FEI is directed to revise the paragraph cited above in the Scope section of the Transfer Pricing Policy:**

FEI will maintain separate financial records and appropriate documentation as well as implement appropriate safeguards including a sufficient separation of business operations in order to ensure a level of transparency that enables an appropriate allocation of costs between FEI and ARBNNMs.

¹³⁵ Exhibit B-1, Appendix A1, Transfer Pricing Policy.

¹³⁶ Exhibit B-1, p. 18.

¹³⁷ Ibid, Appendix A1, Transfer Pricing Policy, p. 1.

¹³⁸ Ibid, Appendix B2, Transfer Pricing Policy, p. 1.

¹³⁹ Ibid., p. 18.

4.2 Definitions

While all parties are in general agreement with the Definitions, for reasons as set out in Section 3.2 in this decision, the Panel has some concerns with the clarity of the definition of an affiliate. **Consistent with the findings in Section 3.2 of this decision, the Panel the Panel approves the Definitions section of the TPP as filed with the understanding that a definition of an affiliate includes FEI's interactions with individual regulated projects that an ARBNNM undertakes.**

4.3 Policy

4.3.1 Introduction

The proposed introductory section to the Policy section states:

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

Transfer Prices charged to ARBNNMs by [FortisBC Energy] are intended to ensure that [FortisBC Energy] ratepayers are not adversely affected and will be established using the following pricing rules.¹⁴⁰

FEI has identified, as the one area of disagreement, the proposal by Commission staff that the introduction should include the sentence "All sharing of costs, services and information between affiliated regulated utilities must be fully disclosed to the Commission."^{141,142} FEI states that "it finds the term 'information' is too broad to be practical. FEI believes that the term relates to customer information and states it would be amenable to inclusion of this sentence if more specific language was incorporated."¹⁴³

The Panel finds that the statement from the AES Inquiry Report is generally appropriate, but recognizes that, as stated by FEI the term 'information' is very broad and could cause difficulty from a practical perspective. To deal with FEI's concerns but remain consistent with the principles in the AES Inquiry Decision, **the Panel directs FEI to add the following sentence: All sharing of costs, services, customer information, and any other documentation of information as specified by the Commission between affiliated regulated utilities must be maintained and disclosed to the Commission when required by the Commission.**

4.3.2 Pricing rules

This section encompasses one of the main areas of contention in this document, namely the basis on which the transfer price will be set. In its Application FEI proposes in its list of Code of Conduct principles the following statement which sets out the basis for determining the price to be charged by FEI for services provided to an ARBNNM:

¹⁴⁰ Ibid, Appendix A1, Transfer Pricing Policy, p. 3.

¹⁴¹ Ibid., p. 19.

¹⁴² Ibid., Appendix B1, Transfer Pricing Policy, p. 5.

¹⁴³ AES Inquiry Report, p. 33.

Principle (ix)

The basis of cost allocation is cost causality. Costs are to be allocated from [FortisBC Energy] to the ARBNMM on the basis of no greater than [FortisBC Energy]'s full cost, recognizing the needs of both the interests of [FortisBC Energy] and the ARBNMM ratepayers.¹⁴⁴

This principle was the subject of considerable discussion by interveners, some of whom supported the proposed wording, with other interveners expressing opposing views. The crux of the issues centres on the fact that the proposal differs from the guidelines set out in the AES Inquiry Report which states that for an affiliated regulated business:

Any sharing of costs and services between Affiliated Regulated Businesses must be done on the basis of the higher of market price or the fully allocated cost, in accordance with a Commission approved Transfer Pricing Policy.¹⁴⁵

The following sections set out the rationale put forward by FEI and interveners that are in support of its proposal, the views of Interveners opposed to FEI's proposal, and the determinations of the Panel.

FEI's views and views in support of FEI position

FEI supports its proposal based on the following reasons:

- The use of "higher of market price or fully allocated cost" is inconsistent with the key principle set out in the AES Inquiry Report that "The basis for cost allocation is cost causality;"¹⁴⁶
- FEI's pricing is consistent with market rates;
- FEI's proposal recognizes that both FAES and FEI are public utilities with customers and shareholders to whom the Commission owes statutory duties;
- FEI's proposal reflects the Commission's lack of jurisdiction over competition.¹⁴⁷

In elaborating on these points FEI argues that from a practical perspective the pricing issue is largely moot as services provided to FAES are consistent with market rates. However, FEI sees the issue as important from the perspective of jurisdiction and principle.¹⁴⁸ FEI believes its proposed wording recognizes that there are legitimate economies of scope that can be used to benefit FEI, FEI customers, FAES and FAES customers – the four stakeholders to whom the Commission owes a statutory duty.¹⁴⁹

From FEI's perspective, the Commission should be concerned about a transfer price that, through deliberate cross-subsidization (through the requirement to use a market price that is higher than fully allocated cost) will act as a disincentive to the realization of legitimate economies of scope.¹⁵⁰ FEI states that the use of the "higher

¹⁴⁴ Exhibit B-1, Appendix A-1, p. 3.

¹⁴⁵ AES Inquiry Report, p. 33.

¹⁴⁶ Ibid., p. 33; FEI Final Submission, p. 16.

¹⁴⁷ Ibid., p. 16.

¹⁴⁸ Ibid., pp. 16-17.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

of” full cost or market price can only be explained by a policy of actively promoting competition and represents a subsidy to FAES’s competitors.^{151,152}

FEI further argues that a comparison of FEI’s rates to market rates without consideration of the expertise and familiarity of the FEI staff with FAES’ requirements, and the availability of FEI personnel to provide services for a limited number of hours at a time, is missing a key component of the benefit to both FAES and FEI ratepayers.¹⁵³ BCOAPO, BCSEA, CEC and COPE in their Final Submissions support the wording proposed by FEI. BCOAPO raises the additional point that, while it does not agree that the use of a ‘higher of market price or fully allocated cost’ requirement represents a policy of actively promoting competition, it does see this requirement as narrowing the field of competition to one where the regulated utility and its affiliates are less likely to play any role.¹⁵⁴ CEC is not sure there is a market price or a way to discover a market price for services provided by FEI to FAES.¹⁵⁵

Views of interveners opposed to FEI’s position

Coalition and Corix oppose the use of the proposed FEI wording of “no greater than fully allocated cost,” instead arguing for the wording proposed in the AES Inquiry Report “the higher of market price or the fully allocated cost.” In support of this position, arguments put forward include:

- The Commission must be concerned with all TES customers, including customers outside of FAES.¹⁵⁶
- Affiliates in a ‘non-natural monopoly environment’ whether they are regulated or non-regulated, should be treated the same, i.e., as if they are NRBs.¹⁵⁷
- A “premium” should be applied to the transfer price of services to FAES in light of the enhanced access to premium resources, such as FEI’s experienced and knowledgeable staff.¹⁵⁸
- The Commission's direction (in the AES Inquiry Report) was based on the sound principle of avoiding any cross-subsidy from FEI to the FEI AES business (now housed within FAES). The Commission's formulation allows FEI ratepayers to realize the full value for the transferred service or asset rather than just a limited contribution to cost.¹⁵⁹
- FEI's proposal is based on the idea that some contribution to the fixed costs is better than none since the cost burden to FEI rate payer is reduced. That rationale, however, misses the point that the FEI rate payers should receive a greater contribution. FAES ratepayers would be still paying a fair market rate for the service or asset.¹⁶⁰
- The fact that FEI will only offer the discounted service and assets to FAES is simply to help improve and promote the FAES business within the competitive AES market. That is a misuse of FEI resources that the Commission should not permit.¹⁶¹

¹⁵¹ Ibid.

¹⁵² Pre-hearing Conference, September 5, 2014, Transcript p. 34.

¹⁵³ Exhibit B-9, BCUC IR 1.4.1.

¹⁵⁴ Ibid, p. 4.

¹⁵⁵ Exhibit B-1, p. 12.; Exhibit B-1, Appendix C2, Code of Conduct and Transfer Pricing Policy Workshop Minutes, February 20, 2014, p. 10.

¹⁵⁶ Coalition Final Submission p. 3, Corix Final Submission p. 9

¹⁵⁷ Coalition Final Submission p. 4.

¹⁵⁸ Coalition Final Submission p. 11.

¹⁵⁹ Corix Final Submission p. 9.

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

Panel discussion

There are a number of elements were raised by FEI and Interveners with respect to the considerations that they believe the Commission should take into account, or not take into account when addressing Transfer Pricing. The Panel believes it would be useful to spell out some of the considerations that it assessed in making its decision.

Impact of Regulation on the market

FEI and most other parties argued that the Commission regulates rates and does not have a mandate to regulate markets. (i.e., promote competition). The Coalition argues that the Commission has a public interest duty to ensure the code of conduct and transfer pricing policy should not come at the expense of the greater TES market. On the other side, BCOAPO suggests that:

And so one of the things that can come back to ratepayers for that cost that's being imposed on them, is the potential to benefit from FAES's successful competition in the market, and in our submission that can occur, subject to the discussion that was had earlier about incremental costs, whenever FEI receives a premium over the incremental cost of providing the service.¹⁶²

This would appear to suggest that it is appropriate for the Commission to consider, as a positive benefit, inclusions in the code of conduct that promote the ability for FAES to compete in the marketplace.

The Panel in making its decisions has determined that for the purposes of developing a Code of Conduct and a Transfer Pricing Policy it is not appropriate to make decisions based on whether or not a specific decision will have an impact on the marketplace or the ability of FEI's affiliate or FEI's competitors to compete in the marketplace. Consistent with the findings with respect to principle (i) in section 3.3.1, the primary focus of the Commission is the impact of the COC and TPP on FEI ratepayers, taking into consideration, to the extent it is appropriate to do so, the impact on FAES' regulated ratepayers.

Incremental versus fully allocated cost

FEI argues that "to the extent that the service is priced above incremental cost, there is a benefit going to the customers: The incremental cost is what defines how much it cost for the utility to provide that service, and to the extent that anywhere between incremental cost and full cost, that is providing a net benefit to the utility."¹⁶³ FEI further argues that the full cost is generating a benefit or at least is neutral.¹⁶⁴

FEI states, despite its view that service priced above incremental cost provides a benefit, that its proposal "is not to put forward the lower of incremental and full cost, it's full cost."¹⁶⁵ BCSEA's submission is that the allocation of costs on the basis of full cost best meets the cost causality principle.¹⁶⁶

¹⁶² Pre-hearing Conference, September 5, 2014, Transcript p. 88.

¹⁶³ Ibid., Transcript p. 40.

¹⁶⁴ Ibid., Transcript p. 41.

¹⁶⁵ Ibid.

¹⁶⁶ Ibid., Transcript p. 104.

Given FEI's position with respect to the benefits provided to FEI ratepayers for any cost allocation for services provided to FAES that exceeds incremental costs, coupled with the proposed wording in the Code of Conduct principles that "Costs are to be allocated from [FortisBC Energy] to the ARBNMM **on the basis of no greater than** [FortisBC Energy]'s full cost." (emphasis added) some comments on the use of incremental versus fully allocated costs are warranted.

The Panel acknowledges that, as the customer base of a large utility like FEI grows, the addition of a new customer may impose incremental costs that are below the average cost to provide services to the existing customer base. It is long established regulatory practice in that instance that the new customer is not charged the incremental cost of providing the service, but instead it is charged the customer's share of the fully allocated costs imposed by that customer class. It would be inconsistent with long established regulatory practice for a new customer, to whom FEI has no obligation to serve, would receive cost allocation treatment that is more favourable than the treatment afforded to the utility customer that falls within the monopoly ambit of FEI. The Panel finds in principle that the floor or minimum basis for which costs should be allocated to an ARBNMM is the fully allocated cost.

Market Price versus Fully Allocated Cost

FEI and several interveners argue that the allocation of costs to the ARBNMM using the "higher of market price or the fully allocated cost" is unfair and discriminatory against the ratepayer of the TES and violates the principle of cost causality. It is further argued by a number of the same parties that this provision could lead to FEI not having the opportunity to take advantage of any surplus resource capacity due to the likelihood of the ARBNMM, gaining no pricing advantage, would elect to go to another service provider. Parties also argue that FEI should be able to take advantage of its "economies of scope" and offer services at fully allocated cost when such costs are below market price. It is further argued requiring cost allocation on the basis of a market price higher than fully allocated cost would be a cross subsidy of FEI customers by FAES customers and in addition would be an implicit subsidy of FAES' competitors.

Other interveners argue that if the market price that FEI could obtain for selling its surplus capacity is above the fully allocated cost and FEI fails to do so, it is depriving its ratepayers of some of the value that is generated by the resources that the ratepayer has paid for. These interveners also argue that the AES Inquiry Report, which sets out the "higher of market price or the fully allocated cost" language, should not be ignored. It is further argued that offering discounted services (i.e., services priced below market prices) to FAES is simply to improve the competitive position of FAES and should not be permitted.¹⁶⁷

The Panel recognizes that the "higher of market price or the fully allocated cost" approach set out in the AES Inquiry Report was arrived at following an extensive review of the treatment of alternative energy services, including assessing the interactions between utilities and ARBNMMs. Given the comprehensive examination that occurred at that time, the Panel finds that the AES Inquiry Report finding should be given considerable weight. Having said this, the Panel further recognizes that FEI has the right to make, and the Commission has the obligation to consider, recommendations that vary from those of the Report where a case can be made to support such a variation.

¹⁶⁷ Corix Final Submission p. 9.

There a number of considerations to be made in assessing FEI's proposed wording. First of all, the Code of Conduct is an FEI code of conduct and should protect the interest of FEI ratepayers. FEI's obligation to FAES is of a limited nature. It has no obligation to serve FAES, and hence can refuse to provide service if it does not see the provision of the service as being beneficial to the FEI ratepayers. In utilizing resources, "natural gas customers receive priority of service and FAES' requirements are in secondary priority."¹⁶⁸ FEI states that it does not staff to meet the requirements of FAES. In terms of human resources, they are provided "off the corner of the desk" taking advantage of the downtime in the peaks and valleys in an employee's work schedule.¹⁶⁹ FEI also states that a consideration in providing services to FAES is the expertise and familiarity of the FEI staff with FAES' requirements.

The provision of services to FAES as set out above varies from the provision of shared services between two utilities both operating in a monopoly environment. For example, the FortisBC gas and electric utilities share some services to the benefit of both utilities. However in this case the services are not "provided off the corner of the desk," but are committed resources sufficient to meet the ongoing needs of both utilities. Both utilities have an equal priority in terms of access to and use of the shared resources.

The Panel views the benefits of using the "higher of market price or fully allocated cost" are:

- The FEI ratepayer receives fair value for the services it provides;
- It can be utilized without having to be concerned how costs are allocated within the ARBNMM between the ratepayer and the shareholder; and
- It allows the ARBNMM to acquire the expertise and familiarity of the FEI staff for any market priced services it obtains from FEI.

The downside in using the "higher of market price or fully allocated cost" is:

- There may not be a readily determinable market price for services, particularly services that are provided on a secondary priority or part time basis, or where FEI has special expertise or familiarity; and
- There may be specific exceptional circumstances where a market price is readily determinable and significantly in excess of the fully allocated cost of providing the service to the ARBNMM and a case can be made that it is beneficial to FEI ratepayers to set a transfer price for the service at below market price or even below fully allocated cost.

Recognizing the factors involved, including those set out above the Panel finds that the use of the "higher of market price or fully allocated cost" is more appropriate than the use of the proposed "on the basis of no greater than full cost" with the proviso that:

- Where there is not a readily determinable market price, allocation of costs should be on a fully allocated cost basis; and
- FEI can apply to the Commission for a price that is less than market price or fully allocated cost if it can demonstrate that it is in the interest of FEI ratepayers to do so.

¹⁶⁸ Fortis Final Submission, p. 2.

¹⁶⁹ Transcript Volume 1, p. 125.

The Panel agrees with FEI that in large part the issue of market price or fully allocated cost is a moot point, given the evidence that FEI is generally charging rates that are consistent with market rates. However the Panel disagrees that the use of “the higher of market price or fully allocated cost” is an implicit subsidy of FAES’ competitors. FAES has the right to pursue resources from the marketplace even if the resources are available from FEI, if it believes that it is in FAES’ ratepayers’ interest to do so. If the price for these services in the marketplace is below the price for the services available from FEI (taking into account the expertise of FEI staff and their familiarity with FAES operations) one would expect that FAES would avail itself of these third party resources. There is no obligation for FAES to take these services from FEI even though it would benefit FEI ratepayers.

With respect to the argument that requiring the market pricing of services provided to FAES prices could result in FAES going to a third party provider, thus depriving FEI ratepayers of any benefit, the Panel is not persuaded this argument should be given much weight. As pointed out by FEI, one of the values that FAES acquires when obtaining services from FEI is the expertise of FEI staff and their familiarity with FAES operations. This would imply that where a third party has a comparable price that FAES would still find it advantageous to deal with FEI.

Commission determination

The Panel considers cost causality as the foundation for allocating costs within a utility, but for allocating cost between utilities other issues must be considered. First, as noted above, the code of conduct is an FEI code of conduct and should protect the interests of FEI ratepayers. FEI’s obligation to FAES is of a limited nature, and as FEI states, “natural gas customers receive priority of service and FAES’ requirements are in secondary priority.”¹⁷⁰ FEI further states that it does not staff to meet the requirements of FAES. In terms of human resources, they are provided “off the corner of the desk” taking advantage of the downtime in the peaks and valleys in an employee’s work schedule.¹⁷¹ FEI also states that a consideration in providing services to FAES is the expertise and familiarity of the FEI staff with FAES’ requirements.

Second, the provision of services to FAES as set out above varies from the provision of shared services between two utilities both operating in a monopoly environment. Again, the FortisBC gas and electric utilities share some services to the benefit of both utilities, but these are committed resources sufficient to meet the ongoing needs of both utilities and both utilities have an equal priority in terms of access to and use of the shared resources.

For the reasons set out above **the Panel directs FEI to:**

- **delete the reference in principle (ix) of the COC to cost causality as the primary driver;**
- **amend the principle to state that FEI charges for services provided to an ARBNM should be the higher of the fully allocated costs or the market price;**
- **acknowledge in the principle that FEI will seek an advance approval from the Commission prior to charging a price that is other than “the higher of market price or fully allocated cost.”**

¹⁷⁰ FEI Final Submission, p. 2.

¹⁷¹ Procedural Conference Transcript, p. 125.

Consistent with the determinations of the Commission set out above the Panel finds that the section on Pricing Rules needs to be redrafted. **The Panel directs FEI to include the following in the Pricing Rules section.**

Pricing Rules

- i. **If an applicable [FortisBC Energy] tariff rate exists, the Transfer Price will be set according to the tariff.**
- ii. **Where no tariff rate exists, the Transfer Price will be set on the basis of the higher of market price or the fully allocated cost.**
- iii. **Where the market price is not readily determinable the Transfer Price will be set on the basis of fully allocated cost.**
- iv. **In situations where it can be shown that an alternative Transfer Price will provide greater benefits to the FEI ratepayer, FEI must apply to the Commission for a variance from the pricing rules i, ii, or iii.**

4.3.3 Determining costs

Section 2 in the TPP contains language reflecting FEI's proposed pricing rule. **Given the Panel's determinations with respect to principles as set out in Section 3.1 of this decision and reflected in Section 4.3.2 above, FEI is directed to re-draft this section to be consistent with those determinations.**

4.3.3.1 Type of Service

Stakeholders have not identified concerns with the subsections set out under Section 2.1 (Type of Service) of the proposed Transfer Pricing Policy.¹⁷² **The Panel approves these subsections as filed.**

4.3.4 Costs relating to the transfer of activities from the utility to an ARBNMM

Stakeholders have not identified concerns with the subsections set out under Section 3 (Costs Relating to the Transfer of Activities from the Utility to an ARBNMM) of the proposed TPP.¹⁷³ **The Panel approves these subsections as filed.**

4.3.5 Cost Collection Procedures

FEI's proposed wording related to cost collection procedures is set out in Section 4 of the proposed TPP.¹⁷⁴ FEI has provided details of its existing and proposed safeguards to ensure that all FEI charges, both direct and overhead costs, for activities in support of FAES are appropriately allocated to FAES. The table below presents FEI's summary of the safeguards related to transfer pricing:

¹⁷² Exhibit B-1, Appendix A1, TPP pp. 35.

¹⁷³ Exhibit B-1, Appendix A1, TPP pp. 56.

¹⁷⁴ Exhibit B-1, Appendix A1, TPP, p. 6

Table 4.1 FEI's Existing and Newly Proposed Safeguards for its Transfer Pricing¹⁷⁵

Safeguard	Status
Education and awareness: <ul style="list-style-type: none"> • All employees, are reminded of the importance of completing timesheets and TPP.⁶⁵ • the CoC and TPP are referenced in the company's "Business Ethics" a Learning course, a course that all employees are required to take.⁶⁶ 	Existing
Timesheet: <ul style="list-style-type: none"> • FEI employees are expected to complete timesheets on a regular basis where there is costing or payroll information to be submitted. • For unionized employees, timesheets also require the review and approval of the department manager.⁶⁷ 	Existing
Internal orders: <ul style="list-style-type: none"> • provide a mechanism whereby costs specific to an activity (e.g., FAES work) are captured and reported separately from other costs. • Departments/employees providing support to FAES are advised of the internal order number(s) to be used and notified of the requirement to charge their time and related costs accordingly to FAES, in compliance with the COC and TPP.⁶⁸ 	Existing
Oversight by Director of Finance: <ul style="list-style-type: none"> • Will review charges on a quarterly basis, comparing actual charges in the quarter to that planned. • Will seek confirmation every quarter from the FEI department managers who are responsible for managing the employees that may have performed work for FAES, that the actual charges recorded in the internal orders by their employees for the quarter are appropriate.⁶⁹ 	New proposal

The key issues related to FEI's proposed TPP wording outlined in Section 4, Cost Collection Procedures are considered below.

4.3.5.1 Internal Orders

Stakeholders have not identified concerns with the subsection set out under Section 4.1 (Internal Orders) of the filed Transfer Pricing Policy. **The Panel approves the TPP section 4.1 regarding Internal Orders as filed in the Application.**

4.3.5.2 Time sheets

FEI's view

In the Application, FEI states:

*... allocating costs based on timesheets is appropriate and well established. Currently, completion of timesheets for payroll and cost allocation is done on an exception basis for all management employees regardless of whether the allocation is to an FEI project, a deferral account, another department, or another entity, and is a well-established process. FEI does not believe there is any bias of omission in reporting on time spent on non-FEI activities, particularly with the additional oversight and monitoring proposed by FEI (i.e., Director of Finance provides oversight and quarterly reminders).*¹⁷⁶

¹⁷⁵ FEI Final Submission, para. 46.

¹⁷⁶ Exhibit B-1, p. 20.

FEI argues that changing its timekeeping practices would not improve the accuracy and transparency of timekeeping and would result in more time being charged to FAES and potentially introduce administrative inefficiency related to accounting for a very small amount of time relative to the total work time of FEI employees.¹⁷⁷ FEI submits that it has allocated costs using its proposed approach for a number of years and in a variety of contexts beyond allocating time to FAES.¹⁷⁸

FEI argues that the existing and enhanced safeguards relating to transfer pricing, including the additional oversight to be provided by the Director of Finance related to the review of charges quarterly and the requirement for confirmation from department managers are sufficient and appropriate.¹⁷⁹

Interveners' views

The Coalition indicates a preference for all FEI employees providing services to FAES to account for 100 percent of their time, not just the portion that is attributed to FAES because what is not charged to FAES falls to FEI ratepayers.¹⁸⁰ Corix is also concerned about the proposed timekeeping process and states the "result is that the FEI ratepayers bear the greater burden of carrying the staffing cost for the combined business."¹⁸¹

BCOAPO agrees with Corix and the Coalition that having FEI employees report 100 percent of their time is likely to produce more accurate time records and to better allocate cost and risk relating to shared employees between FEI and FAES."¹⁸²

CEC submits that the FEI's and FAES' approach to safeguards for the TPP processes are appropriate and acceptable.¹⁸³

Commission determination

With respect to the safeguards related to compliance with the TPP, the Panel recognizes that during the consultation process and as shown in Table 4.1, FEI incorporated changes to the monitoring and oversight processes to ensure that all FEI charges for activities in support of FAES are appropriately allocated to FAES. In addition, the Panel accepts FEI's position that the current process for completion of timesheets for payroll and cost allocation which is done on an exception basis for all management employees regardless of whether the allocation is to an FEI project, a deferral account, another department, or another entity, is well-established and that change to this process would result in administrative inefficiency.

The Panel notes the new proposal related to oversight by the Director of Finance. The Panel finds that the TPP wording should be revised to specify this.

¹⁷⁷ Ibid.

¹⁷⁸ Ibid.

¹⁷⁹ Exhibit B-7, p. 13; FEI Final Submission, para. 45.

¹⁸⁰ Coalition Final Submission, para. 45.

¹⁸¹ Corix Final Submission, para. 25.

¹⁸² BCOAPO Reply to Other Interveners, para. 14.

¹⁸³ CEC Final Submission, p. 3.

FEI is directed to update the wording of Section 4 of the Transfer Pricing Policy to add a section reflecting that the Director of Finance is responsible for oversight of safeguards related to the Transfer Pricing Policy, including the ongoing design and operating effectiveness of the timekeeping process and other related controls and safeguards and the maintenance of adequate records and documentation.

4.3.5.3 Invoicing

Stakeholders have not identified concerns with the subsection set out under Section 4.3 (Invoicing) of the filed Transfer Pricing Policy. **The Panel approves TPP section 4.3 regarding Invoicing as filed in the Application.**

4.3.6 Review of Transfer Pricing Policy

Stakeholders have not identified concerns with Section 5 of the proposed TPP (Review of Transfer Pricing Policy). **The Panel approves TPP section 5.0 regarding Review of Transfer Pricing Policy as filed in the Application.**

5.0 SUMMARY OF DETERMINATIONS

This section summarizes the Commission Panel's findings and determinations in tabular format. The summary tables are provided for purposes of easy reference; in the event of discrepancy between the main text in the Decision and the summary tables, the relevant sections in the Decision should be used.

5.1 Summary Tables

FEI groups the stakeholders' positions under three levels of agreement in the Application. They are: (1) the sections where significant differences remain or parties have substantive issues within a general agreement; (2) the sections where there is general agreement or less significant differences or wording issues; and (3) the sections where there is agreement or acceptance by participating parties. The following three tables present the Panel's findings under each grouping.

5.1.1 Sections where significant differences remain or parties have substantive issues within a general agreement

Sections where significant differences remain or parties have substantive issues within a general agreement	Description	Panel findings and/or determinations	Reference in Decision
1. Code of Conduct section on Shared Services and Personnel (pages 7-8 of the Application and Appendix A1 COC page 4)	Sharing of services and personnel to include corporate services including senior management and operating personnel	FEI is directed to revise the wording of the Code of Conduct section on Shared Services and Personnel to explicitly state that services and non-executive personnel will only be shared in circumstances where: (1) the services can be identified and tracked effectively and there are other appropriate safeguards in place, (2) there is limited potential for disclosure of confidential information, and (3) there are benefits to FEI ratepayers. FEI is also directed to update the wording in the Code of Conduct to expressly state that business development personnel will not be shared with an	Section 3.4.1 page 22

Sections where significant differences remain or parties have substantive issues within a general agreement	Description	Panel findings and/or determinations	Reference in Decision
		<p>ARBNNM.</p> <p>FEI is directed to revise the wording of the Code of Conduct section on Shared Services and Personnel to require FEI and ARBNNM directors and executives with dual roles to execute non-disclosure agreements.</p>	Section 3.4.2 page 25
2. Code of Conduct section on Finance and Other Risks (pages 8–9 of the Application and Appendix A1 COC page 9)	Principle (vi) The financing of FEI and the ARBNNM	FEI is directed to amend section 8 of the Code of Conduct on financing and other risks to include an acknowledgement that FEI would normally not provide financing (or any form of financial assistance including co-signing of loans) to the ARBNNM, and to clarify that no financing or other financial assistance (including cross-guarantees) can occur under any circumstance without prior Commission approval.	Section 3.7 page 31
3. Transfer Pricing Policy section on Pricing Rules and Determining Costs (pages 10-12 of the Application and Appendix A1 TPP page 3)	The basis of cost allocation and Principle (ix) in the COC	<p>The Panel directs FEI to amend Principle (ix) in the COC to:</p> <ul style="list-style-type: none"> • delete the reference in principle (ix) of the COC to cost causality as the primary driver; • amend the principle to state that FEI charges for services provided to an ARBNNM should be the higher of the fully allocated costs or the market price; • acknowledge in the principle that FEI will seek an advance approval from the Commission prior to charging a price that is other than “the higher of market price or fully allocated cost.” <p>The Panel directs FEI to include the following in the Pricing Rules section.</p> <p>Pricing Rules</p> <p>i. If an applicable [FortisBC Energy] tariff rate exists, the Transfer Price will be set according to the tariff.</p> <p>ii. Where no tariff rate exists, the Transfer Price will be set on the basis of the higher of market price or the fully allocated cost.</p> <p>iii. Where the market price is not readily determinable the Transfer Price will be set on the basis of fully allocated cost.</p> <p>iv. In situations where it can be shown that an alternative Transfer Price will provide greater benefits to the FEI ratepayer, FEI must apply to the Commission for a variance from the pricing rules i,</p>	Section 4.3.2 page 41, 42

Sections where significant differences remain or parties have substantive issues within a general agreement	Description	Panel findings and/or determinations	Reference in Decision
		ii, or iii.	
4. Code of Conduct section on Principles (pages 13-14 of the Application and Appendix A1 COC page 3)	<p>On Determining Costs FEI's wording of "no greater than fully allocated cost" instead of the AES Report "higher of market price or the fully allocated cost."</p> <p>Principle (i) protection of the interests of FEI and FAES ratepayers.</p> <p>Principle (vi) on financing and other risks</p> <p>Principle (viii) transfer pricing mechanism as fair and transparent to both FEI and FAES ratepayers.</p>	<p>Given the Panel's determinations with respect to principles as set out in Section 3.1 and reflected in Section 4.3.2 above, FEI is directed to re-draft this section to be consistent with those determinations.</p> <p>The Panel directs FEI to replace principle (i) with the following: 'FortisBC Energy will protect and consider the interests of its own ratepayers, and having protected its ratepayers, FEI may also consider the potential interests of the ARBNNM ratepayers'.</p> <p>Accordingly, FEI is directed to revise the Code of Conduct principle (vi) to include an acknowledgement that FortisBC Energy would normally not provide financing, or any form of financial assistance including co-signing of loans, to the ARBNNM. Further, FEI is directed to clarify this principle to state that no FEI financing or other financial assistance, including cross-guarantees, can occur under any circumstances without advance Commission approval.</p> <p>The Panel directs FEI to, after amending principle (i), reconsider principle (viii) and amend it accordingly to ensure consistency.</p>	<p>Section 4.3.3 page 42</p> <p>Section 3.3.1 page 14</p> <p>Section 3.3.2 page 16</p> <p>Section 3.3.4 page 17</p>
5. Transfer Pricing Policy section on Cost Collection Procedures (pages 19-20 of the Application and Appendix A1 TPP page 6)	Wordings related to timesheets, internal orders and oversight.	FEI is directed to update the wording of Section 4 of the Transfer Pricing Policy to add a section reflecting that the Director of Finance is responsible for oversight of safeguards related to the Transfer Pricing Policy, including the ongoing design and operating effectiveness of the timekeeping process and other related controls and safeguards and the maintenance of adequate records and documentation.	Section 4.3.5 page 45

5.1.2 Sections where parties have less significant differences or have wording issues

Sections where significant differences remain or parties have substantive issues within a general agreement	Description	Panel findings and/or determinations	Reference in Decision
1. Code of Conduct section on Scope (pages 12-13 of the Application and Appendix A1 COC page 1)	<p>Consistency with RMDM Guidelines or the AES Report.</p> <p>Deletion of reference to maintaining separate financial records and sufficient separation of business operations.</p> <p>Wording change on the responsibility regarding the administration of the COC.</p>	<p>Language that diverges too far from the intent of the RMDM Guidelines and the AES Inquiry Report should only be approved if the Panel finds there is a sufficient reason to do so.</p> <p>FEI is directed to reinsert a paragraph in the COC: FEI will maintain separate financial records and appropriate documentation as well as implement appropriate safeguards, including a sufficient separation of business operations in order to prevent cross-subsidization and ensure a level of transparency that enables an appropriate allocation of costs between FEI and ARBNNMs.</p> <p>FEI is directed to amend the third paragraph of the SCOPE section to delete the words "... and if the variance results in costs exceeding benefits received by the ratepayers of [FortisBC Energy]." Furthermore, the amended wording should emphasize the requirement for an advance Commission approval in cases of variances from the COC.</p>	<p>Section 3.1 Scope, page 11</p> <p>Section 3.1 Scope, page 12</p> <p>Section 3.1 Scope page 12</p>
2.Code of Conduct section on Provision of Information by FEI (page 14 of the Application and Appendix A1 COC page 4)	Wording issue regarding the inclusion of 'information'	The Panel approves the Code of Conduct section regarding the provision of information by FEI as filed in the Application.	Section 3.5.1 page 26
3.Code of Conduct section on Equitable Treatment of Demand Side Management and Incentive Funds (pages 14-15 of the Application and Appendix A1 COC page 5)	Wording issue	This Panel approves the wording in section 6 of the COC regarding the equitable treatment of demand-side management and incentive funds.	Section 3.5.4 page 27
5. Code of Conduct section on Use of Utility Name (pages 16-17 of the Application and Appendix A1 COC page 6)	Coalition suggests the COC should include a clarification statement regarding why is not common between FEI and FAES.	FEI is directed to amend the second sentence of section 9–Use of the Utility Name to read "FEI will exercise care in distinguishing between services provided by [FortisBC Energy] and services offered by the ARBNNM." [The Panel also notes that there appears to be a typographical error in the first sentence that should be corrected in the revised COC to be filed for Commission approval.] With the foregoing amendment and minor correction, the Panel will approve the section.	Section 3.8 page 33

Sections where significant differences remain or parties have substantive issues within a general agreement	Description	Panel findings and/or determinations	Reference in Decision
6. Transfer Pricing Policy section on Scope (pages 17-18 of the Application and Appendix A1 TPP page 1)	Wording issue with respect to sufficient separation of business operations.	<p>Consistent with the conclusion reached in Section 3.1, FEI is directed to revise the paragraph cited above in the Scope section of the Transfer Pricing Policy:</p> <p>FEI will maintain separate financial records and appropriate documentation as well as implement appropriate safeguards including a sufficient separation of business operations in order to ensure a level of transparency that enables an appropriate allocation of costs between FEI and ARBNNMs.</p>	Section 4.1 page 34
7. Transfer Pricing Policy section (pages 18-19 of the Application and Appendix A1 TPP page 3)	Wording issue regarding 'information'	<p>The Panel directs FEI to add the following sentence:</p> <p>"All sharing of costs, services, customer information, and any other documentation of information as specified by the Commission between affiliated regulated utilities must be maintained and disclosed to the Commission when required by the Commission."</p>	Section 4.3.1 page 35

5.1.3 Sections where parties have accepted or have no issues

Sections where significant differences remain or parties have substantive issues within a general agreement	Description	Panel findings and/or determinations	Reference in Decision
1. Code of Conduct section on Definitions (page 13 of the Application and Appendix A1 COC page 2)	Wordings in Definition as proposed by FEI	The Panel approves the Definitions section of the COC as filed with the understanding that a definition of an affiliate includes FEI's interactions with individual regulated projects that an ARBNNM undertakes.	Section 3.2 Definitions, page 13
2. Code of Conduct section on Amendment (page 17 of the Application and Appendix A1 COC page 6)	FEI adoption of Commission staff wording.	Given the general acceptance by the participants, and upon its own review, the Panel approves section 10 regarding Amendments as filed by FEI.	Section 3.9 page 33
3. Transfer Pricing Policy section on Definitions (page 18 of the Application and Appendix A1 TPP pages 1-2)	Parties have no issues.	Consistent with the findings in Section 3.2 of this decision, the Panel the Panel approves the Definitions section of the TPP as filed with the understanding that a definition of an affiliate includes FEI's interactions with individual regulated projects that an ARBNNM undertakes.	Section 4.2 page 35

Sections where significant differences remain or parties have substantive issues within a general agreement	Description	Panel findings and/or determinations	Reference in Decision
4. Transfer Pricing Policy – Costs Relating to the Transfer of Activities from the Utility to an ARBNNM, (p. 19 of the Application and Appendix A1 FEI Transfer Pricing Policy page 3)	No issue.	The Panel approves these subsections as filed.	Section 4.3.4 page 42
5. Transfer Pricing Policy – section on Review of TPP (page 20 of the Application and Appendix A1 TPP page 6)	TPP to be reviewed on an annual basis.	The Panel approves TPP section 5.0 regarding Review of Transfer Pricing Policy as filed in the Application.	Section 4.5 page 45
7. Code of Conduct section on Preferential Treatment section (page 6 of the Application and Appendix A1 COC pages 4-5)	Accepted by all.	Given the acceptance amongst the participants, and upon its own review, the Panel approves COC section 4 regarding Preferential Treatment as filed by FEI.	Section 3.5.2 page 26
8. Code of Conduct section on Equitable Access to Services (page 6 of the Application and Appendix A1 COC page 6)	Accepted by all.	Given the acceptance amongst the participants, and upon its own review, the Panel also approves COC section 5 regarding Equitable Access to Services as filed in the Application.	Section 3.5.3 page 26

6.0 COMPLIANCE FILING

6.1 Preparation of an all-inclusive COC and TPP

At the time of the AES Inquiry, there was already an approved COC and TPP for NRBs. The AES Inquiry Report recommended that the FortisBC Energy Utilities initiate a process to prepare an updated COC and TPP in respect of the interaction between the regulated utilities and related non-regulated businesses.¹⁸⁴ The AES Inquiry Report also recommended that the Fortis Energy Utilities should undertake a collaborative process to establish a COC and TPP to govern interactions between Affiliated Regulated Businesses, and that these documents should differentiate resource sharing between two natural monopolies on the one hand and between a natural monopoly and a regulated affiliate operating in a non-natural monopoly environment on the other. [emphasis added]¹⁸⁵

¹⁸⁴ AES Inquiry Report, p. 23.

¹⁸⁵ Ibid., pp. 27–28.

Correspondence between Commission staff and FEI also discussed the issue of whether there should be one document or multiple documents to govern the different relationships between FEI and its affiliates, and when that issue should be addressed.¹⁸⁶

In its Application, FEI stated that it had determined in its preliminary interviews with stakeholders that their primary area of interest was a COC and TPP governing interactions between FEI and ARBNNMs, and that it subsequently indicated to stakeholders during the consultation that a COC and TPP to govern interactions between FEI and ARBNNMs would be FEI's focus going forward. FEI further stated that, if required, and once a COC and TPP was established and approved by the Commission to govern the ARBNNMs situation, then some of the same principles and language could be adapted to the other two situations specified in the AES Inquiry Report, namely, interaction between FEI and related non-regulated businesses, and interactions between two natural monopolies.¹⁸⁷

By letter dated August 18, 2014, the Commission advised all parties that a pre-hearing conference was warranted in order to address matters that had arisen from the Application and the submissions on process. The first of those matters was the advantages and disadvantages of only one comprehensive COC document for affiliated natural monopoly utilities, ARBNNM and NRBs as compared to multiple documents.¹⁸⁸

After the Pre-hearing Conference, the Panel issued Order G-143-14 with attached Reasons for Decision. In those Reasons, the Panel determined that in the interest of ensuring that a COC and TPP governing interactions between FEI and FAES is in place without undue delay, the scope of the current review would be limited to the COC and TPP for affiliated regulated businesses operating in a non-natural monopoly environment (Phase 1). However, it also determined that ultimately 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. Accordingly, the Panel recommended that the long-term objective for FEI should be the production of one integrated COC and TPP document (Phase 2).

Therefore, in order to ensure that progress continues to be made in the drafting of one comprehensive COC and TPP, the Panel directs FEI to file, for approval, within one year of final approval of the COC and TPP for ARBNNMs, a draft all-inclusive COC and TPP that covers the interactions between FEI and its affiliated natural monopoly utilities; FEI and its affiliated non-regulated businesses; and FEI and its affiliated regulated businesses operating in a non-natural monopoly environment.

This all-inclusive draft COC and TPP should be modeled on the approved COC and TPP for ARBNNMs. The panel notes that the scope section of the draft COC for ARBNNMs states that it is intended to be consistent with the principles of the RMDM Guidelines, the AES Inquiry Report, and Commission decisions related to specific ARBNNMs (the "Guidelines" as defined in the draft COC).

The Panel expects that the all-inclusive COC and TPP will also be consistent with the RMDM and AES Guidelines, but acknowledges that some higher level principles will readily apply to a variety of affiliated transactions whereas more specific principles may only be applicable to one or two types of affiliate transactions. When FEI

¹⁸⁶ October 10, 2013 letter from Commission staff to FEI; and January 31, 2014 letter from FEI to the Commission staff.

¹⁸⁷ Exhibit B-1, pp. 4–5.

¹⁸⁸ Exhibit A-3, pp. 1–2.

files the draft all-inclusive COC, it is directed to clearly identify the rationale for any variances from the approved COC and TPP for ARBNNMs or from the Guidelines.

6.2 Compliance Filing

FEI is directed to file its COC and TPP based on this decision with the Commission on or before April 7, 2015 for approval.

FEI is further directed to file, for approval, within one year of final approval of the COC and TPP for ARBNNMs, a draft all-inclusive COC and TPP that covers the interactions between FEI and its affiliated natural monopoly utilities, FEI and its affiliated non-regulated businesses; and FEI and its affiliated regulated businesses operating in a non-natural monopoly environment.

DATED at the City of Vancouver, in the Province of British Columbia, this 27th day of February 2015.

Original signed by:

L. A. O'HARA
PANEL CHAIR/COMMISSIONER

Original signed by:

K. A. KEILTY
COMMISSIONER

Original signed by:

N. E. MACMURCHY
COMMISSIONER



**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-31-15**

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IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473

and

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

BEFORE: L. A. O'Hara, Panel Chair/Commissioner
K. A. Keilty, Commissioner February 27, 2015
N. E. MacMurphy, Commissioner

O R D E R

WHEREAS:

- A. FortisBC Energy Inc. (FEI) was directed in the Report on the Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives dated December 27, 2012 (AES inquiry Report) to undertake a collaborative process to establish a Code of Conduct (COC) and Transfer Pricing Policy (TPP) for Affiliated Regulated Businesses consistent with the guidelines and principles in the AES Inquiry Report;
- B. An FEI-led process with the participation of interested stakeholders, including Commission staff, took place between October 2013 and May 15, 2014. The process included consultation sessions with stakeholders as well as two workshops held on February 20, 2014 and April 24, 2014;
- C. By letter dated June 27, 2014, to the British Columbia Utilities Commission (Commission), FEI filed an application for approval of FEI's COC and TPP for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment (Application). The Application seeks approval of FEI's proposed documents, namely, the COC and TPP for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment (ARBNNM);
- D. In the Application, FEI states that the primary area of interest for stakeholders during the stakeholders' interviews was a COC and TPP governing interactions between FEI and ARBNNMs. FEI further states that, if required, and once a COC and TPP is established and approved by the Commission to govern the ARBNNMs situation, then some of the same principles and language could be adapted to the other two situations specified in the AES Inquiry Report, namely, interaction between FEI and related non-regulated businesses, and interactions between two natural monopolies;

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- E. The Application contains, in addition to the proposed COC and TPP documents, detailed references to FEI's process, including summaries of individual stakeholders' positions and comments as well as descriptions of issues from the process that fall under one of the following three levels of agreement: (1) parties have significant differences remaining or substantive issues within a general agreement, (2) parties have less significant differences or have wording issues, and (3) parties have accepted or have no issues;
- F. On July 14, 2014, Corix Multi-Utility Services (Corix) filed a letter with the Commission submitting that FEI ignored several of the AES Inquiry Report's key principles and guidelines in the Application;
- G. By letter dated July 25, 2014 (Exhibit A-2), the Commission invited all participants in the FEI-led process to comment on the Application and to recommend the further steps required to complete the review and to ensure the resultant COC and TPP meet the intent of the AES Inquiry Report;
- H. By letter dated August 18, 2014 (Exhibit A-3), the Commission advised all parties that a pre-hearing conference was warranted in order to address, in particular, six matters that had arisen from the Application and the submissions on the process steps;
- I. In the same letter dated August 18, 2014, the Commission also advised all parties that the Panel would be seeking oral confirmation from the participants in the pre-hearing conference that each participant was in agreement with FEI's characterization of its respective position as belonging to one of the three status groupings outlined in Recital E;
- J. By letter dated September 2, 2014 (Exhibit B-3), FEI provided a summary table that was circulated earlier to participants for their review and confirmation. The table was confirmed by the participants at the pre-hearing conference as an accurate representation of a summary of their positions on the issues;
- K. The pre-hearing conference took place on September 5, 2014. At the Pre-hearing conference, FEI, FAES, Corix, the Coalition, Commercial Energy Customers of BC (CEC), BCOAPO, BCSEA-SCBC, COPE and Commission staff provided submissions;
- L. By Order G-143-14 dated September 18, 2014, the Commission ordered, among other things, that the scope of the Application review be limited to the COC and the TPP for affiliated regulated business operating in a non-natural monopoly environment. The Commission also directed FEI to file supplementary information and evidence, as outlined in Appendix C to the order, and allowed one round of information requests and responses, in accordance with a regulatory timetable for a written hearing format established as part of that order; and
- M. The Commission has reviewed the FEI proposed COC and TPP documents, stakeholders' comments during the consultative process, supplementary information and evidence, and final submissions and reply submissions to other interveners.

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NOW THEREFORE pursuant to sections 58-61 of the *Utilities Commission Act*, the Commission orders as follows:

1. FortisBC Energy Inc. (FEI) is directed to comply with the findings and determinations in the decision by amending the Code of Conduct and the Transfer Pricing Policy in a manner consistent with the Commission determinations.
2. FEI is to file for approval its Code of Conduct and Transfer Pricing Policy based on this decision to the Commission on or before April 7, 2015.
3. FEI is to file for approval a draft all-inclusive Code of Conduct and Transfer Pricing Policy within one year of final approval of the Code of Conduct and Transfer Pricing Policy for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment that covers the interactions between FEI and its affiliated natural monopoly utilities, FEI and its affiliated non-regulated businesses, and FEI and its affiliated regulated businesses operating in a non-natural monopoly environment.

DATED at the City of Vancouver, in the Province of British Columbia, this 27th day of February 2015.

BY ORDER

Original signed by:

L. A. O'Hara
Panel Chair/Commissioner

SUMMARY OF REQUIRED CHANGES TO THE CODE OF CONDUCT

This appendix reproduces the applied for Code of Conduct as set out in Exhibit B-1, Appendix A (the Application). Where the Panel has directed that changes are required is indicated by the italicized sentences set out within parentheses in the document. Reference to Sections (i.e. *see Section ..*) refers to the Sections of the Decision.

This Appendix is intended to provide a convenient summary of the changes that the Panel requires. If there are any differences between the required changes as set out in this Appendix and the required changes as set out in the body of the Decision, the findings in the body of the Decision are to be relied on.

*FortisBC Energy Inc.***C O D E O F C O N D U C T*****For Provision of Utility Resources and Services to Affiliated Regulated Businesses
Operating in a Non-Natural Monopoly Environment (ARBNNM)******June 19, 2014*****SCOPE**

This Code of Conduct (Code) governs the relationships between [FortisBC Energy Inc. (FortisBC Energy)] and Affiliated Regulated Businesses operating in a non-natural monopoly environment (ARBNNMs) for the provision of [FortisBC Energy] resources, and is intended to be consistent with the principles of the British Columbia Utilities Commission (Commission) outlined in the “Retail Markets Downstream of the Utility Meter” (RMDM) Guidelines of April, 1997 and the Commission’s Report on the “Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives” published in December 27, 2012, collectively referred to in this document as (Guidelines) or in Commission decisions in proceedings related to specific ARBNNMs. If the Code of Conduct is silent on a principle or guideline established in one of the above documents, acceptance of the Code of Conduct does not imply that the principle, guideline or Commission direction is voided or invalid.

This Code will govern the use of [FortisBC Energy] resources and services provided to ARBNNMs including shared services, employment or contracting of [FortisBC Energy] personnel, and the treatment of customer, utility, or confidential information. The Code will also determine the nature of the relationship between [FortisBC Energy] and ARBNNMs.

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

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

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

(The Scope Section is to be modified in accordance with the following:

FEI is directed to reinsert a paragraph in the COC: FEI will maintain separate financial records and appropriate documentation as well as implement appropriate safeguards, including a sufficient separation of business operations in order to prevent cross-subsidization and ensure a level of transparency that enables an appropriate allocation of costs between FEI and ARBNNMs. (See Section 3.1)

FEI is directed to amend the third paragraph of the SCOPE section to delete the words “... and if the variance results in costs exceeding benefits received by the ratepayers of [FortisBC Energy]”. Furthermore, the amended wording should emphasize the requirement for an advance Commission approval in cases of variances from the COC. (See Section 3.1)

DEFINITIONS

[FortisBC Energy Inc.]

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

Commission

British Columbia Utilities Commission.

Guidelines

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

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

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

(Modify the above definition to state “A separate legal entity that is an affiliate....”)(See Section 3.2.2)

RMDM

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

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

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

APPLICATION OF COMMISSION PRINCIPLES

CODE OF CONDUCT PRINCIPLES

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

- i. The advancement and the protection of the interests of the regulated ratepayers of [FortisBC Energy] and the ARBNNM should be considered.

(Principle i. must be changed to 'FortisBC Energy will protect and consider the interests of its own ratepayers, and having protected its ratepayers, FEI may also consider the potential interests of the ARBNNM ratepayers'.)(See Section 3.3.1)

- ii. [FortisBC Energy] will not provide to an ARBNNM any information that would inhibit the energy services market in a non-natural monopoly environment from functioning.
- iii. The control of information should not provide a competitive advantage.
- iv. Customer specific information must be treated as required by the Personal Information Protection Act and, in addition, customer specific information should only be released with the written consent of the customer. Customer information (aggregate or customer specific with written consent) should be made available to all parties (Affiliated Regulated and Unregulated Businesses, and competitors) on an equal basis, upon request.
- v. [FortisBC Energy] and its employees will not state or imply that favoured treatment will be available to customers of [FortisBC Energy] as a result of using any service of an ARBNNM. Additionally, [FortisBC Energy] and its employees will not preferentially direct customers to an ARBNNM.
- vi. The financing of [FortisBC Energy] and the ARBNNM will be accounted for separately with the financing costs reflecting the risk profile of each entity. No cross guarantees or any form of financial assistance whatsoever should be provided or indirectly provided by [FortisBC Energy] to the ARBNNM without the approval of the Commission.

(FEI is directed to revise the Code of Conduct principle (vi) to include an acknowledgement that FortisBC Energy would normally not provide financing, or any form of financial assistance including co-signing of loans, to the ARBNNM. Further, FEI is directed to clarify this principle to state that no FEI financing or other financial assistance, including cross-guarantees, can occur under any circumstances without advance Commission approval)(See Section 3.3.2)

- vii. [FortisBC Energy] will monitor compliance with this Code by also conducting an annual compliance review. [FortisBC Energy] will regularly advise all of its employees of their expected conduct pertaining to this Code.

(The Panel approves principle (vii) of the COC given the new safeguards that have been put in place and given the general nature of the principle) See Section 3.3.3)

- viii. The Transfer Pricing mechanism should provide a fair and transparent mechanism to both [FortisBC Energy] and ARBNNM's ratepayers.

(FEI is directed, after amending the principle (i), to reconsider the principle (viii) and amend it accordingly to ensure consistency)(See Section 3.3.4)

- ix. The basis of cost allocation is cost causality. Costs are to be allocated from [FortisBC Energy] to the ARBNNM on the basis of no greater than [FortisBC Energy]'s full cost, recognizing the needs of both the interests of [FortisBC Energy] and the ARBNNM ratepayers.

(FEI is directed to re-draft this principle, deleting the first sentence, and setting out that the allocation of costs from FEI to the ARBNNM is to be on the basis of the higher of market price or fully allocated cost as set out in the FEI Transfer Pricing Policy. The principle also acknowledges that FEI is to seek advance approval from the Commission prior to charging a price that is other than "the higher of market price or fully allocated cost") (See Sections 3.3.5 and 4.3.2)

1. Transfer Pricing for ARBNNMs

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

2. Shared Services and Personnel

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

(FEI is directed to revise the wording of the Code of Conduct section on Shared Services and Personnel to explicitly state that services and non-executive personnel will only be shared in circumstances where (1) the services can be identified and tracked effectively and there are other appropriate safeguards in place, (2) there is limited potential for disclosure of confidential information, and, (3) there are benefits to FEI ratepayers. FEI is also directed to update the wording in the COC to expressly state that business development personnel will not be shared with an ARBNNM. FEI is directed to revise the wording of the Code of Conduct section on Shared Services and Personnel to require FEI and ARBNNM directors and executives with dual roles to execute non-disclosure agreements.) (See Sections 3.4.1 and 3.4.2)

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

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

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

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

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

4. Preferential Treatment

[FortisBC Energy] will not state or imply that favoured treatment will be available to customers of [FortisBC Energy] as a result of using any service of an ARBNNM. In addition, no Company personnel will condone or acquiesce in any other person stating or implying that favoured treatment will be available to customers of the Company as a result of using any product or service of an ARBNNM.

5. Equitable Access to Services

Except as required to meet acceptable quality and performance standards, and except for some specific assets or services which require special consideration as approved by the Commission, [FortisBC Energy] will not preferentially direct customers to an ARBNNM. In discussing energy alternatives with a customer, or a potential customer, [FortisBC Energy] personnel may not preferentially direct customers to an ARBNNM. If a customer, or potential customer, requests from [FortisBC Energy] information about products or services offered by an ARBNNM, [FortisBC Energy] may provide such information, including a directory of suppliers of the product or service, but shall not promote any specific supplier in preference to any other supplier.

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

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

7. Compliance and Complaints

- a) The Director of Finance and Planning at [FortisBC Energy] will be responsible for monitoring compliance at [FortisBC Energy] with this Code. This will include advising all of its employees of their expected conduct pertaining to this Code, with quarterly updates for employees who may be directly involved with ARBNNM activities.
- b) [FortisBC Energy] will monitor employee compliance with this Code by also conducting an annual compliance review, the results of which will be summarized in a report to be filed with the Commission within 60 days of the completion of this review.

- c) Complaints by third parties about the application of this Code, or any alleged breach thereof, should be addressed in writing to the Company's Director of Finance and Planning and the Vice-President, Strategic Planning, Corporate Development and Regulatory, who will bring the matter to the immediate attention of the Company's senior management and promptly initiate an investigation into the complaint. The complainant, along with the Commission, will be notified in writing of the results of the investigation, including a description of any course of action which will be or has been taken promptly following the completion of the investigation. The Company will endeavour to complete this investigation within 30 days of the receipt of the complaint.
- d) Where [FortisBC Energy] determines that the complaint is **unfounded**, the Company may apply to the Commission for reimbursement of the costs of the investigation from the third party initiating the complaint or where this is not possible, for inclusion of those costs in rates.

(FEI is directed to revise the wording of the Code of Conduct section 7d) to substitute the word 'unfounded' with wording that indicates this section applies to a complaint that is frivolous and without merit.)(See Section 3.6.2)

8. Financing and Other Risks

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

(FEI is directed to amend section 8 of the Code of Conduct on financing and other risks to include an acknowledgement that FEI would normally not provide financing (or any form of financial assistance including co-signing of loans) to the ARBNNM, and to clarify that no financing or other financial assistance (including cross-guarantees) can occur under any circumstance without prior Commission approval.)(See Section 3.7)

9. Use of Utility Name

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

(The second sentence of section 9 should be amended to read " FEI will exercise care in distinguishing between services provided by [FortisBC Energy] and services offered by the ARBNNM." [The Panel also notes that there appears to be a typographical error in the first sentence that should be corrected in the revisedCOC.]) (See Section 3.8)

10. Amendments

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

Amendments to this Code may be made from time to time as approved by the

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

SUMMARY OF REQUIRED CHANGES TO THE TRANSFER PRICING POLICY

This appendix reproduces the applied for Transfer Pricing Policy as set out in Exhibit B-1, Appendix A (the Application). Where the Panel has directed that changes are required is indicated by the italicized sentences set out within parentheses in the document. Reference to Sections (i.e. *see Section ..*) refers to the Sections of the Decision.

This Appendix is intended to provide a convenient summary of the changes that the Panel requires. If there are any differences between the required changes as set out in this Appendix and the required changes as set out in the body of the Decision, the findings in the body of the Decision are to be relied on.

*FortisBC Energy Inc.***TRANSFER PRICING POLICY*****For Provision of Utility Resources and Services to Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment (ARBNNM)*****June 19, 2014****SCOPE**

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

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

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

(FEI is directed to revise the paragraph above : FEI will maintain separate financial records and appropriate documentation as well as implement appropriate safeguards including sufficient separation of business operations in order to ensure a level of transparency that enables an appropriate allocation of costs between FEI and ARBNNMs.)(See Section 4.1)

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

DEFINITIONS

[FortisBC Energy Inc.]	<i>May be abbreviated as follows: [FortisBC Energy], the Utility, or the Company, and may also include employees of the Company.</i>
Commission	<i>British Columbia Utilities Commission.</i>
Development	<i>The translation of research findings or other knowledge into a plan or design for new or substantially improved materials, devices, products, processes, systems or services prior to the commencement of commercial production or use.</i>
Guidelines	<i>Principles and Guidelines from the Retail Markets Downstream of the Utility Meter Guidelines published by the British Columbia Utilities</i>

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

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

(Modify the above definition to state "A separate legal entity that is an affiliate....") (See Sections 3.2.2 and 4.2)

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

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

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

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

POLICY

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

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

(FEI is directed to add the following sentence: "All sharing of costs, services, customer information, and any other documentation of information as specified by the Commission between affiliated regulated utilities must be maintained and disclosed to the Commission when required by the Commission.

") (See Section 4.3)

1. Pricing Rules

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

(The Panel finds that the section on Pricing Rules needs to be redrafted. The Panel directs FEI to include the following in the Pricing Rules section.)

Pricing Rules

- i. If an applicable [FortisBC Energy] tariff rate exists, the Transfer Price will be set according to the tariff.
- ii. Where no tariff rate exists, the Transfer Price will be set on the basis of the higher of market price or the fully allocated cost.
- iii. Where there is no market price or a market price is not readily discernable the Transfer Price will be set on the basis of fully allocated cost.
- iv. In situations where it can be shown that an alternative Transfer Price will provide greater benefits to the FEI ratepayer, FEI must apply to the Commission for a variance from the pricing rules i, ii, or iii. *(See Sections 4.3.2 and 3.1)*

2. Determining Costs

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

(FEI is directed to re-draft this paragraph to be consistent with the determinations set out in Sections 3.1 and 4.3.2. Subject to any amendments to ensure congruence with the determinations with respect to the pricing rules, the Panel finds the final three paragraphs are acceptable.)

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

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

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

2.1 Type of Service

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

i. Specific Committed Service

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

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

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

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

ii. As Required Service

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

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

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

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

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

iii. **Designated Subsidiary/Affiliate Service**

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

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

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

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

3.1 **Transfer Costs**

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

3.2 **Research Costs**

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

3.3 Development Costs

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

4. Cost Collection Procedures

4.1 Internal Orders

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

4.2 Time Sheets

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

4.3 Invoicing

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

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

(FEI is directed to update the wording of Section 4 of the Transfer Pricing Policy to add a section reflecting that the Director of Finance is responsible for FEI's compliance with the TPP cost collection processes, including the ongoing design and operating effectiveness of the timekeeping process and other related controls and safeguards.)(See Section 4.4.2)

5. Review of Transfer Pricing Policy

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

(Example Table from Appendix A of Exhibit B-1 to be added)

IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473

and

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

EXHIBIT LIST

Exhibit No.	Description
<i>COMMISSION DOCUMENTS</i>	
A-1	Letter Dated July 18, 2014 – Appointment of Commission Panel
A-2	Letter Dated July 25, 2014 – Requests for Submissions
A-3	Letter Dated August 18, 2014 – Pre-hearing Conference Issues List
A-4	Letter Dated September 18, 2014 – Order G-143-14 Reasons for Decision, Regulatory Timetable for further process, and request for Supplemental Information
A-5	Letter Dated October 8, 2014 – Commission Information Request No. 1 to FEI
A-6	Letter Dated October 14, 2014 – Regulatory Timetable Amendment – Request for Comments
A-7	Letter Dated October 16, 2014 – Commission Order G-160-14 and Amended Regulatory Timetable
A-8	Letter Dated December 1, 2014 – Corix Extension Request
A-9	Letter Dated December 17, 2014 – Oral Argument not required
A-10	Letter dated January 30, 2015 – Notice of member extension
<i>APPLICANT DOCUMENTS</i>	
B-1	FORTISBC ENERGY INC. (FEI) Letter Dated June 27, 2014 - Application for Approval of Code of Conduct (COC) and Transfer Pricing Policy (TPP) for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment (ARBNNM)
B-2	Letter dated August 8, 2014 – FEI Reply Submission on Process (Exhibit A-2)

Exhibit No.	Description
B-3	Letter dated September 2, 2014 - FEI Summary of Participants' Positions for the Pre-Hearing Conference
B-4	Letter dated September 2, 2014 - FEI Pre-Hearing Conference Submission on Items 5 and 6
B-5	Submitted at Pre-hearing Conference September 5, 2014 - Corporate Services Cost Allocation Model
B-6	Submitted at Pre-hearing Conference September 5, 2014 – Retail Markets Downstream of the Utility Meter Guidelines
B-7	Letter dated September 26, 2014 – FEI Filing Supplemental Information
B-8	Letter dated October 10, 2014 – FEI Regulatory Timetable Extension Request
B-9	Letter dated November 5, 2014 – FEI Submitting Response to BCUC IR No. 1
B-10	Letter dated November 5, 2014 – FEI Submitting Response to COPE IR No. 1
B-11	Letter dated November 5, 2014 – FEI Submitting Response to COC IR No. 1
B-11-1	CONFIDENTIAL Letter dated November 5, 2014 – FEI Submitting Confidential Response to COC IR No. 1
B-11-2	CONFIDENTIAL Letter dated November 7, 2014 – FEI Submitting Confidential Response to COC IR No. 1.1.8.1

INTERVENER DOCUMENTS

C1-1	CORIX UTILITIES (CORIX) Letter Dated July 14, 2014 – Submitting Comments
C1-2	Letter Dated October 14, 2014 – Corix Submitting Comments regarding FEI Extension Request
C2-1	BRITISH COLUMBIA OLD AGE PENSIONERS' ORGANIZATION, ACTIVE SUPPORT AGAINST POVERTY, DISABILITY ALLIANCE BC (FORMERLY KNOWN AS BC COALITION OF PEOPLE WITH DISABILITIES), COUNSEL OF SENIOR CITIZENS' ORGANIZATIONS OF BC, AND THE TENANT RESOURCE AND ADVISORY CENTRE (BCOAPO) Letter Dated July 31, 2014 – Submitting Comments
C2-2	Letter Dated October 14, 2014 – BCSEA Submitting Comments regarding FEI Extension Request
C3-1	FORTISBC ALTERNATIVE ENERGY SERVICES INC. (FAES) – Letter Dated August 1, 2014 – Submitting Comments
C3-2	Letter dated September 4, 2014 - FAES Pre-Hearing Conference Submission

Exhibit No.	Description
C4-1	CANADIAN OFFICE AND PROFESSIONAL EMPLOYEES UNION LOCAL 378 (COPE) – Letter Dated August 1, 2014 – Submitting Comments
C4-2	Letter dated August 8, 2014 – COPE Correction to Comments in Exhibit C4-1
C4-3	Letter Dated October 8, 2014 – COPE Information Request No. 1 to FEI
C5-1	COALITION FOR OPEN COMPETITION (COALITION) – Letter Dated August 1, 2014 – Submitting Comments
C5-2	Letter Dated October 8, 2014 – Coalition Information Request No. 1 to FEI
C5-3	Letter Dated October 14, 2014 – Coalition Submitting Comments regarding FEI Extension Request
C5-4	Letter dated November 6, 2014 – Coalition Submitting Comments regarding IR No. 1.8.1
C6-1	B.C. SUSTAINABLE ENERGY ASSOCIATION AND THE SIERRA CLUB BRITISH COLUMBIA (BCSEA) – Letter Dated August 1, 2014 – Submitting Comments
C6-2	Letter Dated October 6, 2014 – BCSEA Information Request No. 1 Comments
C6-3	Letter Dated October 14, 2014 – BCSEA Submitting Comments regarding FEI Extension Request