



**ORDER NUMBER
G-157-16**

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

FortisBC Energy Inc.
All-Inclusive Code of Conduct and Transfer Pricing Policy Application

BEFORE:

N.E. MacMurchy, Panel Chair/Commissioner
W. M. Everett, Commissioner
K.A. Keilty, Commissioner

on October 18, 2016

ORDER

WHEREAS:

- A. On February 27, 2015, the British Columbia Utilities Commission (Commission) issued its decision and accompanying Order G-31-15 to FortisBC Energy Inc. (FEI) regarding its Application for a Code of Conduct (CoC) and Transfer Pricing Policy (TPP) for Affiliated Regulated Businesses operating in a Non-Natural Monopoly Environment (ARBNNM);
- B. Order G-31 15 directed FEI to comply with the findings and determinations in the accompanying decision and to file for approval its CoC and TPP for ARBNNM on or before April 7, 2015. In the same order, FEI was also directed to file for approval a draft all-inclusive CoC and TPP within one year of the Commission's final approval of the CoC and TPP for ARBNNM;
- C. By letter dated April 7, 2015, FEI filed for Commission approval its CoC and TPP for ARBNNM in compliance with Order G-31-15 and determinations in the accompanying decision. By Order G-65-15, dated April 28, 2015, the Commission approved the CoC and TPP for ARBNNM as filed;
- D. Directive 2 of Order G-65-15, ordered FEI to file by April 27, 2016, a draft all-inclusive CoC and TPP that covers the interactions between: (a) FEI and its affiliated natural monopoly utilities, (b) FEI and its affiliated non-regulated businesses, and (c) FEI and its affiliated regulated businesses operating in a non-natural monopoly environment;
- E. By letter dated March 30, 2016, FEI requested Commission approval of an approximate two month extension for the filing date for the draft all-inclusive CoC and TPP, which was approved as requested by Order G-52-16 dated April 19, 2016;
- F. On June 30, 2016, FEI filed its draft all-Inclusive CoC and TPP (Application);

- G. By letter dated September 20, 2016 to all parties, the Commission described the purpose of this proceeding and the objective of consolidating into one document the codes of conduct and transfer pricing policies applicable to the variety of entities with which FEI has affiliate transactions. The letter invited interveners and the applicant to provide submissions on the scope and process and the proposed regulatory timetable that was attached to the letter;
- H. Commercial Energy Consumers Association of British Columbia (CEC); the Canadian Office and Professional Employees Union, Local 378 (MoveUp), and the British Columbia Old Age Pensioners Organization *et al.* (BCOAPO), each filed submissions by October 5, 2016. FEI filed its reply on October 11, 2016;
- I. The Panel has reviewed the submissions and reply submissions and makes the following determinations with respect to the scope and procedural process.

NOW THEREFORE the Commission orders as follows, with Reasons attached as Appendix B to this order:

1. A written public hearing process for the review of the FortisBC Energy Inc. Code of Conduct and Transfer Pricing Policy application is established in accordance with the regulatory timetable attached as Appendix A to this order.
2. Detailed review of operational agreements including the Shared Services Agreements is part of on-going regulation of the Commission and is determined to be not in scope for this proceeding.

DATED at the City of Vancouver, in the Province of British Columbia, this 18th day of October 2016.

BY ORDER

Original signed by:

N. E. MacMurchy
Commissioner

Attachments

FortisBC Energy Inc.
All-Inclusive Code of Conduct and Transfer Pricing Policy Application

REGULATORY TIMETABLE

ACTION	DATE (2016)
Intervener registrations deadline	Wednesday, September 28
Information Requests (IRs) No. 1 from BCUC and Interveners	Tuesday, October 25
FEI responses to IR No. 1	Thursday, November 10
FEI Final Argument	Monday, November 21
Interveners Final Argument	Monday, December 5
FEI Reply Argument	Monday, December 19

FortisBC Energy Inc.
All-Inclusive Code of Conduct and Transfer Pricing Policy Application

REASONS FOR DECISION

1.0 Background and introduction

On February 27, 2015, the British Columbia Utilities Commission (Commission) issued its decision and accompanying Order G-31-15 to FortisBC Energy Inc. (FEI) regarding its Application for a Code of Conduct (CoC) and Transfer Pricing Policy (TPP) for Affiliated Regulated Businesses operating in a Non-Natural Monopoly Environment (ARBNNM). Order G-31-15 directed FEI to comply with the findings and determinations in the accompanying decision, and to file for approval its CoC and TPP for ARBNNM on or before April 7, 2015. In the same order, FEI was also directed to file for approval a draft all-inclusive CoC and TPP within one year of the Commission's final approval of the CoC and TPP for ARBNNM.

By letter dated April 7, 2015, FEI filed for Commission approval of its CoC and TPP for ARBNNM in compliance with Order G-31-15, and the determinations in the accompanying decision Order G-65-15 dated April 28, 2015, approved the CoC and TPP for ARBNNM as filed. Directive 2 of Order G-65-15 ordered FEI to file by April 27, 2016, a draft all-inclusive CoC and TPP that covers the interactions between: (a) FEI and its affiliated natural monopoly utilities, (b) FEI and its affiliated non-regulated businesses, and (c) FEI and its affiliated regulated businesses operating in a non-natural monopoly environment.

As a result of Order G-39-16 dated March 18, 2016, issued pursuant to a proceeding reviewing the acquisition of Aitken Creek Gas Storage ULC by FortisBC Midstream Inc. (an affiliated company of FEI), FEI requested that the Commission grant an extension of time for filing its draft All-Inclusive CoC/TPP so that FEI could ensure appropriate consideration of changes effected by Order G-39-16 This request for extension was approved by Order G-52-16.

FEI filed its draft All-Inclusive CoC and TPP (Application) on June 30, 2016. In the Application, FEI observes that the need for an All-Inclusive CoC/TPP was decided in Order G-143-14,¹ where the Commission stated that "ultimately there should be only one integrated document" thereby "making it easier to compare practices between entities of different natures."²

By letter dated September 20, 2016 to all parties, the Commission stated that the purpose of this proceeding is to determine whether FEI has met the requirements set out in Order G-31-15. In the same letter, the Commission described the objective of FEI's compliance filing which is: "to consolidate into one document the codes of conduct and transfer pricing policies applicable to the variety of entities with which FEI has affiliate transactions." The letter invited parties to comment on the scope and process, and the proposed regulatory timetable that was attached to the letter.

¹ Order G-143-14 was issued in the proceeding on FEI Code of Conduct and Transfer Pricing Policy for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment.

² Appendix A to Order G-143-14, pages 3 of 5.

2.0 Submissions on scope and process

The following Interveners filed submissions by October 5, 2016:

- Commercial Energy Consumers Association of British Columbia (CEC);
- The Canadian Office and Professional Employees Union, Local 378 (MoveUp); and
- The British Columbia Old Age Pensioners Organization et al. (BCOAPO).

FEI filed its reply on October 11, 2016.

Intervener submissions

CEC submits that the overriding focus of the proceeding should be to create a single, combined CoC and TPP, and to ensure that good consistent principles are established, consistent with that objective. The focus should be on getting the concepts set in the CoC and TPP correct. CEC submits that it is comfortable with either a written hearing or streamlined review process (SRP), but would like a two-week period between the filing date of FEI's argument and CEC's argument.

BCOAPO submits that, to the best of its knowledge, there has been no substantive process to address transactions between regulated utilities and their Affiliate Utilities (AUs). It observes that there is only limited and after-the-fact Commission approval for AU transactions, such as at the Utilities' Annual Reviews under Performance-Based Ratemaking (PBR). BCOAPO requests that the Commission use this proceeding to determine whether the status quo provides sufficient regulatory oversight of AU transactions. As an example, BCOAPO raises the issue of pricing rule for AU transactions. BCOAPO supports MoveUp's proposal to file intervener evidence and believes that an oral hearing on the evidence may be necessary. BCOAPO also supports the admission of evidence from FEI's and FBC's prior and current Annual Reviews under PBR into this proceeding. In BCOAPO's view, one round of information requests with written argument to follow after or in the absence of an oral hearing is sufficient.

MoveUp submits that it will focus on the CoC. MoveUp submits there is a key element missing from the draft CoC and states:

That is the requirement of a Shared Services Agreement, subject to prior approval by the Commission, identifying the nature and scope of services proposed to be shared, before the sharing of services and resources can occur between these entities.

and submits that the Commission should ensure that approval of sharing arrangements is hard-wired into the CoC.

MoveUp argues that the point of this proceeding is the design of proper tools to address the deficiency. As a result of its position, MoveUp seeks an opportunity to introduce evidence in this proceeding. It lists as examples: evidence from the record of the Annual Reviews of FEI and FBC, documents generated from the operations of FEI and FBC, and evidence gathered by the Union from the workforce. MoveUp submits that a written hearing is appropriate.

FEI reply submission

FEI submits that there is sufficient regulatory oversight for sharing of resources between its AUs through ongoing revenue requirement proceedings and no further review is required as part of this proceeding.

FEI submits that its relationship with FBC is a straightforward rate issue and has been examined in recent rate proceedings. FEI submits that MoveUp should not be granted the leave to file evidence in this proceeding as it is intended to be a compliance process and does not lend itself to evidence from other parties.

FEI submits that a written process is more appropriate than an SRP.

3.0 Commission determination

The Panel notes that this Application is filed in compliance with Order G-65-15, but is cognizant that this proceeding is more than a mechanical consolidation of the various principles applying to a variety of transactions that FEI has with its different affiliates. In this sense, the Panel is of the view that parties should be free to debate the concepts and explore applicability of principles, applicable to the varieties of affiliated entities with which FEI has transactions.

However, the Panel does not accept that operational agreements such as shared services should be reviewed in this proceeding which, by necessity, focuses on the high level principles of sharing of services among various affiliates. While the scope of the current proceeding could include ascertaining the appropriate approval process for Shared Services Agreements, the actual approval of an agreement is more properly dealt with in other on-going regulatory proceedings. The Panel agrees with FEI that the revenue requirements application proceeding is the proper place to review operational agreements and therefore denies MoveUp's request to file evidence in this proceeding. **Detailed review of operational agreements including the Shared Services Agreements is part of on-going regulation of the Commission and is determined to be not in scope for this proceeding.**

With respect to FEI's submission that there is sufficient regulatory oversight for sharing of resources between its AUs, the Panel is persuaded that the review of the overarching principles of sharing of resources between FEI and ARBs, NRBs and AUs should be in scope in this proceeding.