



ORDER NUMBER
G-25-17

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:

K. A. Keilty, Commissioner / Panel Chair
W. M. Everett, QC, Commissioner

on March 1, 2017

ORDER

WHEREAS:

- A. On June 30, 2016, FortisBC Energy Inc. (FEI) filed an application for the approval of its draft All-Inclusive Code of Conduct and Transfer Pricing Policy (CoC/TPP) (Application);
- B. The filing of the Application was preceded by a FEI-sponsored stakeholders workshop held on May 26, 2016;
- C. Concurrent to this Application, an affiliate of FEI, the Aitken Creek Gas Storage (ACGS), filed another all-inclusive CoC and TPP application. After inviting a round of submission on the review process, the British Columbia Utilities Commission (Commission) advised parties that FEI's Application would be reviewed first and following its decision on this Application, the Commission would then proceed with a separate review of ACGS' CoC and TPP application;
- D. By Order G-157-16 dated October 18, 2016, the Commission established a written hearing process with one round of information requests (IRs). The order also set out the scope of review of this proceeding, which, among other things, determined that a detailed review of operational agreements including the shared services agreements is part of on-going regulation of the Commission and were not in scope for this proceeding;
- E. Four parties registered as interveners: Commercial Energy Consumers of British Columbia (CEC), British Columbia Old Age Pensioners' Organization *et al.* (BCOAPO), Canadian Office and Professional Employees Union, Local 378 (MoveUP) and BC Sustainable Energy Association and Sierra Club BC (BCSEA); and
- F. The Commission has reviewed the Application, FEI's proposed All-Inclusive CoC and TPP document, the evidence in this proceeding, final and reply arguments from FEI and interveners and finds approval is warranted.

NOW THEREFORE, pursuant to sections 58 to 61 of the *Utilities Commission Act* and for the reasons attached as Appendix A to this order, the British Columbia Utilities Commission orders as follows:

1. FortisBC Energy Inc.'s (FEI) draft All-Inclusive Code of Conduct and Transfer Pricing Policy (CoC/TPP) is approved subject to the following changes:
 - a) FEI is directed to update the Definition sections of the proposed CoC/TPP to include the definition of customer as being synonymous with ratepayer; and
 - b) FEI is directed to amend the last sentence of Principle ii of the Code of Conduct Principles to read as follows: The control of FEI Customer Information should not provide an inappropriate competitive advantage to an Affiliate.
2. FEI is directed to file, as a compliance filing, an amended All-Inclusive CoC and TPP within 90 days of the date of this order, reflecting the directives in this order and reasons for decision.
3. FEI is directed to file, as part of the amended All-Inclusive CoC and TPP compliance filing, an assessment of the design effectiveness of the proposed non-disclosure agreement safeguard, including consideration of whether implementation of a cooling-off period, pre-approval by the Director of Finance of a transfer of precluded employees or other enhancements to the controls is necessary or preferable and an assessment of the adequacy of the process for identifying potential conflicts of interest between FEI and its affiliates prior to the provision or transfer of FEI resources to an affiliate.
4. FEI is directed to file a review of its shared services model as part of its 2018 Annual Review under its Performance Based Rate Plan or alternatively, as part of its next revenue requirement proceeding.

DATED at the City of Vancouver, in the Province of British Columbia, this 1st day of March 2017.

BY ORDER

Original signed by:

K. A. Keilty
Commissioner

Attachment



**British Columbia
Utilities Commission**

IN THE MATTER OF

FortisBC Energy Inc.

**All-Inclusive Code of Conduct and Transfer Pricing Policy
Application**

**REASONS FOR
DECISION**

March 1, 2017

Before:

**K. A. Keilty, Commissioner/Panel Chair
W. M. Everett, QC, Commissioner**

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1.0 INTRODUCTION, BACKGROUND AND REGULATORY PROCESS

1.1 Introduction and background

On June 30, 2016, FortisBC Energy Inc. (FEI) filed for approval, by the British Columbia Utilities Commission (Commission), its draft All-Inclusive Code of Conduct and Transfer Pricing Policy (CoC/TPP) (Application). The FEI CoC/TPP for Affiliated Regulated Businesses (ARB) Decision with accompanying Order G-65-15 dated February 27, 2015¹ approved FEI's Code of Conduct and Transfer Pricing Policy for affiliated regulated businesses operating in a non-natural monopoly environment and included the following directive:

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.

In the ARB Decision, the Commission determined that, ultimately, there should be only one integrated All-Inclusive CoC/TPP document to make it easier to compare practices between affiliated entities of different natures, to keep track of any changes occurring over time and to ensure consistency.²

FEI's June 27, 2014 application for approval of its proposed CoC/TPP for ARBs (2014 ARB CoC/TPP application) was filed in response to Commission recommendations in the Alternative Energy Solutions (AES) Inquiry Report³ which, among other things, directed FEI to undertake a collaborative process to establish a CoC/TPP for ARBs consistent with the guidelines and principles in the AES Inquiry Report. The AES Inquiry Report confirmed the ongoing applicability of the principles set out in the Commission's April 1998 Retail Markets Downstream of the Utility Meter (RMDM) Guidelines.⁴ In the 2014 ARB CoC/TPP proceeding, FortisBC Alternative Energy Services Inc. (FAES) was FEI's only ARB.

1.2 Regulatory process

Prior to filing the Application, FEI requested, and was granted, an approximate two months filing delay to have adequate time to consider and incorporate any potential changes as a result of Order G-39-16 with reasons for decision approving FortisBC Midstream Inc.'s (FMI) acquisition of the shares of Aitken Creek Gas Storage ULC (ACGS).⁵ In this decision, FMI and ACGS, affiliates of FEI, were directed to file a CoC/TPP covering interactions

¹ FortisBC Energy Inc. (FEI) Code of Conduct and Transfer Pricing Policy for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment (ARB), Decision dated February 27, 2015 (ARB Decision).

² ARB Decision, p. 51.

³ Report on the Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives, Report dated December 27, 2012 (AES Inquiry Report).

⁴ ARB Decision, Executive Summary, p. i.

⁵ FortisBC Midstream Inc. (FMI) Application for Approval of the Acquisition of the Shares of Aitken Creek Gas Storage ULC, Decision dated March 18, 2016 (FMI Acquisition Decision).

between ACGS and its affiliated natural monopoly utilities (AU), affiliated non-regulated businesses (ANRB) and ARBs with the Commission.⁶

FEI held a pre-application workshop for stakeholders on May 26, 2016 to inform stakeholders of the format and key issues of the All-Inclusive CoC/TPP. At the workshop, FEI highlighted the Commission's expectation that an abridged collaborative process, such as an FEI-led workshop to consult all stakeholders on the format and key issues of the all-inclusive document in advance of FEI filing its application, should be sufficient due to the benefit of efforts invested by all parties in the 2014 ARB CoC/TPP application.⁷ FEI's invitation list for the pre-application workshop was based on the registered parties in FEI's Multi-Year Performance Based Ratemaking (PBR) Plan for 2014 through 2018 proceeding and included Commission staff. FEI stated it did not encourage participation from the competitors that had previously participated in the 2014 ARB CoC/TPP application since the current application does not include any material changes to FEI's recently approved CoC/TPP for ARBs.⁸

By letter dated September 20, 2016, the Commission:

- Stated the purpose of this proceeding was to determine if FEI has met the requirements set out in Order G-31-15;
- Outlined that the proceeding is intended to address whether specific principles may only be applicable to some types of affiliate transactions but not to others, including clarifying where and under what conditions the sharing of personnel or resources, may or may not be appropriate based on the principles established in previous Commission decisions, the RMDM Guidelines and the AES Inquiry Report; and
- Invited FEI and stakeholders to make submissions on scope and process for review of the Application.⁹

Following submissions by Commercial Energy Consumers Association of British Columbia (CEC), Canadian Office and Professional Employees Union, Local 378 (MoveUP) and British Columbia Old Age Pensioners' Organization *et al.* (BCOAPO) with reply submission by FEI, the Commission issued Order G-157-16 with reasons for decision on October 18, 2016, establishing a written hearing process for the review of the Application with one round of information requests (IRs). In that order, the Commission also determined that a detailed review of operational agreements, including the shared services agreements, is not in the scope of the proceeding but indicated "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."¹⁰ BC Sustainable Energy Association and Sierra Club BC (BCSEA) applied for late intervener status and did not make submissions prior to filing its IR No. 1.

The final written arguments of FEI and the interveners and FEI's reply argument were filed between November 21, 2016 and December 16, 2016.

⁶ On June 30, 2016, the same day FEI filed this Application, ACGS filed for approval its draft CoC/TPP required by Order G-39-16.

⁷ Exhibit B-1, Appendix B-1 Workshop Presentation Slides, page 5.

⁸ Exhibit B-6, BCUC IR 9.1

⁹ Exhibit A-3, p. 2.

¹⁰ Exhibit A-4, p. 3.

2.0 PROTECTION OF FEI RATEPAYERS AND DECISION FRAMEWORK

2.1 Overarching principle – protection of FEI ratepayers

FEI seeks approval of its All-Inclusive CoC/TPP pursuant to sections 59 to 61 of the *Utilities Commission Act* (UCA).

FEI submits that an overarching principle to guide the Panel's decision in determining whether the proposed All-Inclusive CoC/TPP is just, reasonable and not unduly discriminatory is outlined in the ARB Decision:

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.¹¹

FEI also states the primary intention of the All-Inclusive CoC/TPP is to protect and consider the interests of FEI's own ratepayers and only having protected its own ratepayers then FEI may also consider the potential interests of the customers of an affiliate.¹²

To develop its All-Inclusive CoC/TPP, FEI states it used guidance from the RMDM Guidelines and the AES Inquiry Report.¹³ The applicable guidance from these documents is summarized below.

RMDM Guidelines for ANRB¹⁴

- There must be no subsidy of unregulated business activities whether undertaken by the utility or its ANRB, by utility ratepayers.
- The risks associated with the participation in the unregulated market must be borne entirely by the ANRB; that is the risks must have no impact on AU¹⁵ ratepayers.
- The most economically efficient allocation of goods and resources for ratepayers should be sought.¹⁶

AES Inquiry Report guidance

- Where activities undertaken as an ANRB to involve sharing of resources, the following Guidelines apply:
 - An approved Code of Conduct and Transfer Pricing Policy must be in effect and require:
 - minimal sharing of resources between an AU and ANRBs; and
 - use of full cost to provide the service or market pricing, whichever is higher.
- All costs and services provided between an AU and ANRBs are to be fully disclosed to the Commission.¹⁷

¹¹ FEI Final Argument, p. 2; ARB Decision, p. 12.

¹² Exhibit B-5, CEC IR 1.12.2.

¹³ Exhibit B-2, pp. 2 – 6.

¹⁴ Formerly affiliated non-regulated business.

¹⁵ Formerly utility or affiliated utility operating in natural monopoly environment.

¹⁶ Exhibit B-2, p. 5; RMDM Guidelines, p. 23.

¹⁷ Exhibit B-2, pp. 5 – 6; AES Inquiry Report, p. 21.

- To the extent that information is shared by an AU with an ANRB, it must also be shared with any interested non-related business.¹⁸

Other principles and guidelines for information sharing are also included in the AES Inquiry Report.¹⁹

- Common corporate and management resources may be shared between two AUs that are natural monopolies, such as gas and electric service.²⁰
- Any sharing of costs and services between ARBs²¹ must be done on the basis of the higher of market price or the fully allocated cost, in accordance with a Commission approved TPP.²²

Intervener arguments

CEC and BCSEA agree that protection of FEI ratepayers is the primary principle in the development of FEI's All-Inclusive CoC/TPP.²³ BCSEA agrees with FEI and notes protection of FEI's own ratepayers is more abstract than if the criterion were expressed as a requirement that an arrangement "will benefit" FEI and its ratepayers rather than the arrangement causing "no harm" to FEI and its ratepayers.²⁴

FEI reply argument

FEI notes BCSEA's support for the principle underlying FEI's proposal that, once FEI customers are protected as evidenced by an absence of detriment rather than a demonstration of positive benefit, consideration should be given to the customers of the Affiliate. FEI states that while BCOAPO does not address this principle explicitly, the general thrust of its submissions is to permit sharing where harm to FEI and its ratepayers can be avoided.

Panel discussion

Consistent with the ARB Decision and the view expressed by the parties, the Panel agrees protection of FEI ratepayers is paramount in considering FEI's proposed All-Inclusive CoC/TPP. The Panel also agrees with BCSEA that protection of FEI ratepayers does not require a demonstration of positive benefits but only an absence of detriments.

2.2 Decision framework

FEI outlines its current organizational structure as shown in Figure 1.1 below:

¹⁸ AES Inquiry Report, p. 21.

¹⁹ Ibid., p. 37.

²⁰ Ibid., p. 25.

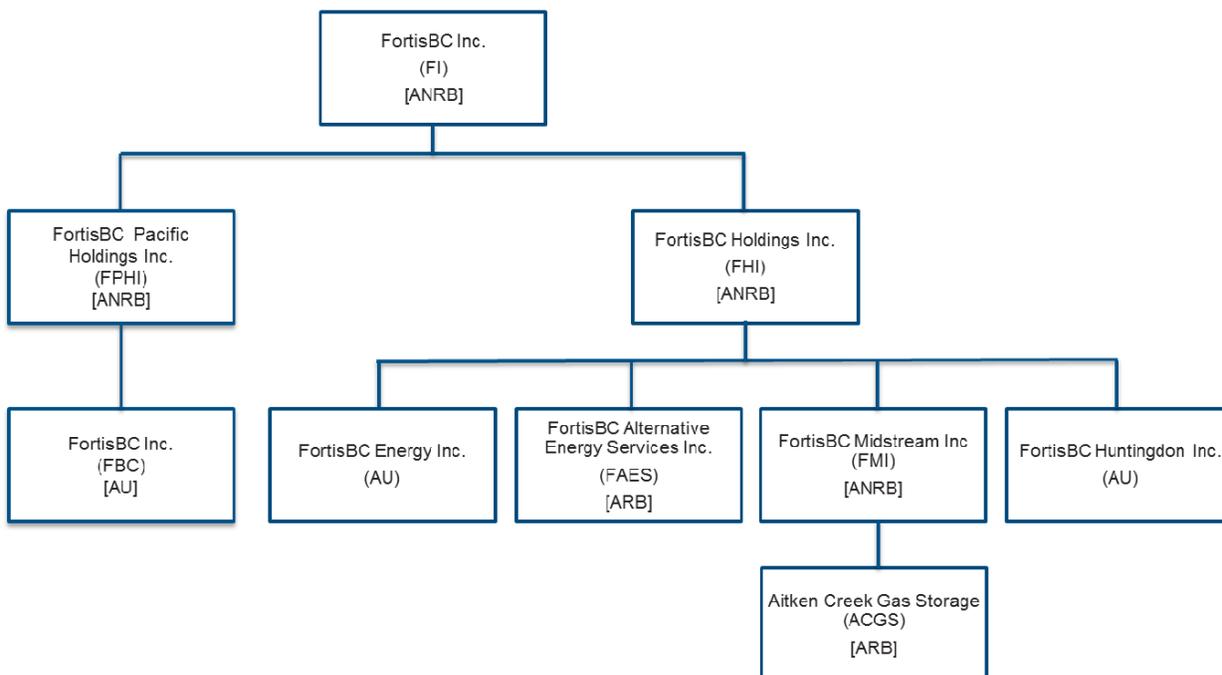
²¹ Formerly affiliated regulated business operating in non-natural monopoly environment.

²² Ibid., p. 33.

²³ CEC Final Argument, p. 5.

²⁴ BCSEA Final Argument, p. 4.

Figure 1.1 FEI Affiliates²⁵



In the Application, FEI states it has existing CoC/TPPs in place to guide its interactions with its affiliates. To develop the All-Inclusive CoC/TPP, FEI states it combined the existing CoC/TPPs into one document, modelling it on the CoC/TPP for ARBs approved by the Commission in 2015. FEI states it modified the provisions and language as required to reflect specific AU and ANRB circumstances while ensuring consistency with the ARB Decision.²⁶ Using the key sections of the existing CoC/TPP for ARBs as a starting point, FEI discusses its rationale for any proposed changes.²⁷

The Panel considers it appropriate to use a similar approach for its decision framework. Accordingly, the decision is structured as follows:

- Section 3 sets out identified issues related to key sections of the All-Inclusive CoC including the scope, definitions, CoC principles, shared services and personnel, sharing of information and other sections;
- Section 4 sets out identified issues related to the All-Inclusive TPP;
- Section 5 addresses issues raised by MoveUp; and
- Section 6 covers other issues.

²⁵ Application, Exhibit B-2, p. 9.

²⁶ Exhibit B-2, p. 7.

²⁷ Ibid., p. 15.

3.0 ALL-INCLUSIVE CODE OF CONDUCT

3.1 Scope section of Code of Conduct (CoC)

FEI's proposed wording in the Scope section of CoC is consistent with the ARB Decision with the exception of some housekeeping items and the following addition:

Where there is an agreement between the [FortisBC Energy] and its Affiliates with respect to the sharing or provision of services, resources, or personnel that has been reviewed by the Commission, the terms of that agreement will govern.²⁸

With respect to the Scope section of the CoC, CEC raises an issue with FEI's use of the word "reviewed" with respect to the Commission oversight of shared services agreements. BCOAPO also raises this issue in the context of the Scope section of the TPP. The Panel's consideration of this issue is included in Section 4.1.

3.2 Definitions section of CoC

The proposed All-Inclusive CoC/TPP includes a definition section applicable to the CoC section of the policy and a separate Definition section applicable to the TPP section of the policy. The parties' submissions in respect of the Definition sections are considered below.

Intervener arguments

CEC states it is satisfied with the Definition section for the CoC section of the proposed policy and makes no submissions on the Definition section for the TPP section of the proposed policy.²⁹

BCOAPO notes FEI's proposal to change "ratepayer" to "customer" throughout the proposed CoC/TPP and queries whether the class of FEI "ratepayers" is identical to the class of FEI "customers," or whether one of those terms is broader than the other. BCOAPO further states it has no objection to the change in terminology, subject to confirmation that the two groups are coextensive.³⁰

FEI reply argument

FEI, in its reply argument, confirms its proposal to change the term from "ratepayer" to "customer" is non-substantive and that the terms are intended to be synonymous.³¹

Commission determination

FEI is directed to update the Definition sections of the proposed CoC/TPP to include the definition of customer as being synonymous with ratepayer.

²⁸ Exhibit B-2, Appendix A-1, p. 1. (Emphasis added)

²⁹ CEC Final Argument, para. 22.

³⁰ BCOAPO Final Argument, para. 13.

³¹ FEI Reply Argument, para. 25.

The Panel notes BCOAPO's concern that FEI's proposal to change the word "ratepayer" to "customer" throughout the proposed CoC/TPP may result in a substantive change in meaning. Although FEI has satisfied BCOAPO's concern by confirming the change is not substantive and the terms are synonymous, the Panel is of the view that it will assist in providing clarity to anyone reading the proposed CoC/TPP and avoiding any future uncertainty, to include the definition of "customer" as synonymous with "ratepayer" in each of the Definition sections of the proposed CoC/TPP.

3.3 CoC principles

The proposed All-Inclusive CoC/TPP includes a section entitled Code of Conduct Principles setting out in six subsections, the principles that were applied in the development of the CoC for activities between FEI and an affiliate.³² The parties' submissions in respect of the proposed CoC Principles are considered below.

Intervener arguments

BCSEA expresses general agreement with the principle that FEI's first responsibility is to protect its own customers and, having done so, may also consider the potential interests of the customers of an affiliate.³³

CEC agrees with many of the provisions in the CoC Principles section but raises issues with the following:

Principle ii

In respect of Principle ii, FEI proposes changes to the wording regarding the protection and disclosure of individual or aggregated customer information. CEC submits that the proposed wording of the last sentence of Principle ii could be improved and clarified if it read as follows:

The control of FEI customer information should not provide an inappropriate competitive advantage to an Affiliate.³⁴

Principle iv and sections 4 and 5 of the CoC

CEC submits that AUs should not be excluded from the provisions of this principle as follows:

....that FEI should not engage in any activity which might imply an unfair treatment of an Affiliate Utility's customers and should instead leave the treatment of its customers to the Affiliate. Additionally, in the second sentence [of principle iv], the term 'preferentially' implies that there is an alternate option. The argument in favour of excluding AU's in the first place relies on there being no competition. To the extent that an alternate option even exists for customers to be directed to, it would not be prudent for FEI to 'preferentially' direct customers to an Affiliate. The CEC therefore recommends that the disclaimer [for AUs] be removed.³⁵

CEC also submits that AUs should not be excluded from the application of Sections 4 and 5 of the proposed CoC/TPP regarding Preferential Treatment and Equitable Access to Services, respectively. CEC submits that, to

³² FEI Order G-65-15 Compliance Filing June 30, 2016, Appendix A-1, p. 4.

³³ BCSEA Final Argument, p. 4.

³⁴ CEC Final Argument, paras. 27 – 28.

³⁵ Ibid., paras. 33 – 34.

the extent FEI and its employees are constrained from providing preferential or favoured treatment (Section 4), there is no reason to exclude an AU and that customers should not be afforded preferential treatment as a result of using any Affiliate, whether it is an AU or not.³⁶ CEC further argues the issue with respect to equitable access to services (Section 5) is generally inapplicable under a utility environment and in that regard, submits that excluding AUs from its application is, therefore, unnecessary.³⁷

BCSEA agrees with FEI that the pertinent factor regarding preferential treatment and equitable access regarding AUs is that the rates charged by an AU, such as FBC, are tariff rates that do not allow for preferential treatment and as such, a referral by FEI to FBC would cause no evident harm.³⁸

FEI reply argument

FEI states it has no concerns about revising the wording of the last sentence of Principle ii of the Code of Conduct Principles section of the proposed policy to the wording suggested by CEC, as set out above.

FEI submits that AUs should be exempted from the application of Principle iv and Sections 4 and 5 of the proposed CoC/TPP.

It argues that rates under which customers may take services from FEI and an AU are set by the Commission and therefore do not allow for preferential treatment and that since AUs enjoy a monopoly in their service territories, a simple referral by FEI to an AU (such as FBC) would not be detrimental. FEI elaborates as follows:

The requirement for inclusion of the Equitable Access to Services (i.e. no preferential direction) language in the All-Inclusive COC/TPP is to ensure that no unfair advantage is conferred to an Affiliate operating in competitive market environment by the Affiliate's association with FEI.

The issue of preferential treatment is not applicable to a regulated monopoly utility such as FBC as it has a natural monopoly for electric distribution services within its service territories. There would be no unfair advantage conferred if FEI were to direct customers to FBC that were seeking an electricity energy solution in FBC's service territories.³⁹

FEI submits that express wording in Principle iv and Sections 4 and 5 of the proposed CoC/TPP excluding their application to AUs brings clarity to those provisions.⁴⁰

Commission determination

The Panel notes FEI expressed no concerns about revising the wording of the last sentence of Principle ii of the Code of Conduct Principles section to the wording suggested by CEC. The Panel agrees CEC's suggested wording provides clarity. **FEI is directed to amend the last sentence of Principle ii of the Code of Conduct Principles to**

³⁶ Ibid.

³⁷ Ibid., 69 – 73.

³⁸ BCSEA Final Argument, pp. 7 – 8.

³⁹ FEI Final Argument, para. 31; Exhibit B-5, CWEC IR 16.1.

⁴⁰ FEI Reply Argument, para. 13.

read as follows: The control of FEI Customer information should not provide an inappropriate competitive advantage to an Affiliate.

In the Panel's view, it is not necessary for the provisions of Principle iv and Sections 4 and 5 of the proposed CoC/TPP to be applicable to AUs.

FEI has incorporated into Principle iv and Sections 4 and 5 of the proposed CoC/TPP the wording approved by the Commission in its ARB Decision, in respect of preferential treatment and equitable access. It has extended the application of those provisions to "Affiliates" as defined in the proposed CoC/TPP.

FEI's specific exclusion of AUs from application of the requirements of Principle iv and Section 4 (Preferential Treatment) and Section 5 (Equitable Access to Services – Preferential Direction) is acceptable since FEI and AUs both operate as regulated natural monopolies in their respective service territories and provide their services to customers on the basis of tariff rates approved by the Commission. These important factors, in the Panel's view, do not allow for preferential treatment or preferential direction as a simple referral or direction by FEI to an AU would not, in the circumstances, cause an unfair advantage or be detrimental. The Panel therefore finds it unnecessary for the provisions of Principle iv and Sections 4 and 5 of the proposed CoC/TPP to be applicable to AUs.

3.4 Shared services and personnel

In the ARB Decision, the Commission determined that shared services and non-executive personnel between FEI and an ARB 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 ARB 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 ARB;
- The nature and extent of services can be identified and tracked effectively; and
- There are appropriately designed and operating safeguards in place.⁴¹

In the 2014 ARB CoC/TPP application, FEI outlined its existing and enhanced safeguards relating to the CoC including the assignment of the responsibility for FEI's compliance with the CoC to the Director of Finance. In the ARB Decision, the Commission directed the following:

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

⁴¹ ARB Decision, p. 21.

design and operating effectiveness of related controls and safeguards and maintenance of adequate records and documentation.⁴²

FEI's ARB TPP section 4.4 states the Director of Finance is responsible for the 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.

With respect to the governance of interactions between FEI and FAES, the Commission determined in the ARB Decision:

- The sharing of business development personnel should be precluded and the CoC should state that business development personnel will not be shared with an ARB; and
- The existing sharing arrangements and the roles of the non-executive FEI personnel providing services to FAES, subject to the adequate design and operating effectiveness of appropriate safeguards, resulted in benefits to both FEI and FAES ratepayers and presented limited potential for disclosure of confidential information.⁴³

Section 2 of FEI's proposed All-Inclusive CoC governs the sharing of services and personnel. FEI states its proposed wording is consistent with the ARB Decision with the following exceptions:

1. The sharing of business development personnel with AUs and with ARBs and ANRBs operating in a different market from FEI;
2. A restriction on sharing FEI personnel directly responsible for natural gas portfolio planning and mitigation activities and related contract negotiation with ACGS; and
3. The requirement for safeguards for sharing executives/directors with AUs.

With respect to the third item, the Panel notes the interveners agree with FEI that non-disclosure agreements for executives shared with an AU are unnecessary. The Panel, upon its own review, agrees implementation of this safeguard is not required for AUs.

The Panel's review of the first two issues is considered below.

3.4.1 Sharing of business development personnel

FEI submits the prohibition on sharing business development personnel in the ARB Decision reflects a concern that FAES' competitors originally expressed in the AES Inquiry Report that the sharing of personnel who have the knowledge and expertise to compete for energy solutions projects could provide a distinct competitive advantage to FAES. FEI argues the consideration underlying these concerns is applicable to FAES and not to the

⁴² Ibid, pp. 28 – 29. The Panel notes the emphasized part of the directive was omitted from the Summary of Required Changes to the Code of Conduct included in Appendix A of the ARB Decision and the language was not included in FEI's final CoC/TPP filed in compliance with Order G-31-15.

⁴³ ARB Decision, pp. 21 – 22.

sharing of business development personnel with an AU, ACGS or an ARB and ANRB operating in different markets.⁴⁴

FEI argues the sharing of business development personnel with an AU is consistent with the AES Inquiry Report and cites the following points from the report:⁴⁵

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 much more limited.⁴⁶

FEI states the acquisition of ACGS has highlighted the prohibition on sharing business development personnel with an ARB is overly broad since it precludes sharing in circumstances where the underlying concern related to FAES does not exist. As a result, FEI proposes the following CoC wording:

[FortisBC Energy] will not share business development personnel with an Affiliate where the Affiliate is carrying out business development activities to acquire customers seeking energy products and services available in a competitive marketplace and where [FortisBC Energy] is providing similar energy solutions.⁴⁷

FEI considers that ACGS operates in a different market space than FEI since FEI provides energy solutions for end-use consumers, whereas, ACGS is engaged in the wholesale marketplace for natural gas. FEI submits:

- The expertise that FEI's business development employees have developed would confer no particular competitive advantage on ACGS;
- The value of sharing business development personnel is derived from ACGS' ability to access a supply of labour at market-based labour rates and ACGS' competitors also have access to the labour market at market-based rates; and
- There is the potential for both FEI and ACGS to benefit without compromising competition in the wholesale market.

FEI concludes it should also be able to share its business development personnel with its other ARB and ANRB under like circumstances (i.e. where the ARBs and ANRBs operate in a different market from FEI).⁴⁸

Intervener arguments

Both BCSEA and CEC agree with FEI that no competitive concerns arise with AUs sharing business development

⁴⁴ FEI Final Argument, pp. 3 – 4.

⁴⁵ Ibid., p. 4.

⁴⁶ AES Inquiry Report, p. 25.

⁴⁷ Exhibit B-2, Appendix A-1, p. 5.

⁴⁸ FEI Final Argument, pp. 5 – 6.

personnel given they operate in a natural monopoly environment.⁴⁹ BCOAPO has no issue with sharing among AUs.⁵⁰

BCSEA has no problem with FEI providing business development personnel to ACGS since there is no detriment to FEI customers and acknowledges that the ACGS example fits FEI's proposed CoC wording.⁵¹ CEC submits that if the Commission determines that FEI is permitted to share business development personnel with affiliates other than an AU, then FEI has identified appropriate limitations on the potential for conflicts of interest.⁵²

In its final argument, BCOAPO raises two issues related to sharing of resources. First, BCOAPO submits the requirements applicable to shared services in the ARB situation should also apply to an AU because "In the absence of systems to identify and track services, and to reduce the potential for disclosure of confidential information, it cannot be said there is no detriment to FEI."⁵³

Second, referring to ACGS as an example, BCOAPO disagrees with FEI that such sharing should not be precluded where any affiliate is involved in lines of business that are different than those provided by FEI. BCOAPO does not agree with FEI that there is no potential conflict with the sharing of business development personnel with ACGS because both FEI and ACGS engage in mitigation activities as an essential component of their businesses and this constitutes a potential conflict of interest such that business development personnel should not be shared.⁵⁴

FEI reply argument

FEI states it does identify and track services with AUs. FEI also submits there is an inherent inconsistency in BCOAPO's position, referring to BCOAPO's statement that it "does not see any issue with sharing business development personnel as between FEI and AUs that are operating in different markets (e.g., FEI and FBC)." FEI also argues BCOAPO's view runs counter to the Commission's determinations in the AES Inquiry Report that recognize circumstances involving monopolies are different from ARBs.

With respect to BCOAPO's objection to the sharing of business development employees with ACGS, FEI submits that this concern is not supported and refers to the FMI Acquisition Decision where the issue of potential conflict related to FEI gas supply mitigation activities was addressed.⁵⁵

Panel discussion

The Panel accepts FEI's proposed policy with respect to the sharing of business development personnel.

⁴⁹ BCSEA Final Argument, p. 5; CEC Final Argument, p. 7.

⁵⁰ BCOAPO Final Argument, p. 2.

⁵¹ BCSEA Final Argument, p. 5.

⁵² CEC Final Argument, p. 9.

⁵³ BCOAPO Final Argument, p. 2.

⁵⁴ Ibid., pp. 2 – 3.

⁵⁵ FEI Reply Argument, pp. 2 – 3.

The Panel agrees with FEI, BCSEA and CEC that sharing of business development personnel is not an issue for AUs and ARBs and ANRBs operating in a different market than FEI. The Panel notes the issue of sharing with AUs is consistent with the principle articulated in the AES Inquiry Report, in that there is limited risk to sharing between natural monopolies. The Panel acknowledges the prohibition on sharing of business development personnel determined in the 2014 ARB CoC/TPP application resulted from a focus on the circumstances related to FAES and that these issues do not apply to ARBs and ANRBs operating in different markets than FEI.

The Panel does not agree with BCOAPO's argument that conflict arises if FEI and ACGS share business development personnel. It appears that BCOAPO is equating business development activities with portfolio planning and mitigation activities while FEI's evidence is that business development and portfolio planning and mitigation activities are unrelated and carried out by different employees.

3.4.2 Sharing of employees with ACGS and FMI

To address potential conflict of interests identified in the FMI Acquisition Decision with respect to natural gas portfolio planning and mitigation activities and related contract negotiation activities at FEI, FEI's proposed All-Inclusive CoC precludes FEI from sharing with ACGS and FMI five personnel in positions that are directly responsible for: (i) FEI's natural gas portfolio planning and mitigation; and (ii) related contract negotiation activities. FEI also indicates personnel holding these positions will not be assigned to work for or provide services to FMI/ACGS.⁵⁶

FEI described the conflict of interest as follows:

The five positions identified represent the personnel where the potential for conflict of interest exists if they were to also provide services to affiliated entities that engage in similar activities. They are directly involved in developing the long term strategy and short term tactics regarding the nature of the gas supply portfolio, building relationships with counterparties, the procurement of gas supplies and contracting for storage and transportation resources, and the day to day mitigation of the portfolio to maximise value for customers. They are externally focussed and participate directly in the energy markets.⁵⁷

FEI clarified the term "not be shared" does not mean that these personnel cannot be transferred, on either a temporary or permanent basis, from FEI to FMI/ACGS or vice versa. FEI referred to FMI's response dated April 29, 2016 to the FMI Acquisition Decision which directed FMI to file an Action Plan that would include details on how and when FMI or ACGS will implement personnel rules, proposed limits on swapping employees between FMI/FEI, or similar inter-affiliate transfers, temporary or not, which could result in the "leakage" of confidential information.⁵⁸

FEI noted FMI's response stated before any transfer of one of these employees, the employee is required to sign an agreement to not disclose and/or use the confidential commercial information gained while employed in one organization (i.e. FEI) for the benefit of the other organization. FEI stated this requirement to sign a separate

⁵⁶ Exhibit B-2, p. 17 and Appendix A 1, p. 5.

⁵⁷ Exhibit B-6, BCUC IR 4.3.

⁵⁸ Ibid., BCUC IR 4.1.

non-disclosure agreement holds the affected employees to a “higher level of standard to maintain confidentiality of information.”⁵⁹ FEI submits the non-disclosure agreement safeguard provides “an additional layer of protection when it comes to maintaining confidentiality of FEI’s information.”⁶⁰

FEI also referred to FMI’s response stating they do not believe any other restrictions are necessary to address potential sharing of confidential commercial information between the two entities and other restrictions would limit the opportunities of the affected employees for career development and advancement which could benefit both FEI and FMI. FEI submitted it agrees with FMI’s view.⁶¹

FEI stated that effective April 1, 2016, an individual employed as the Midstream Service Manager with FEI, a position directly responsible for natural gas portfolio planning and mitigation activities and related contract negotiation, moved to a permanent role as part of FMI’s commercial team and the individual has signed a non-disclosure agreement to ensure there is no disclosure and/or use of the confidential commercial information gained while employed in FEI.⁶²

With respect to the remaining personnel funded through the core market administration expense (CMAE) budget, FEI submits that extending the safeguards to other CMAE positions would be inappropriate since other personnel within CMAE are not involved in activities likely to give rise to a conflict of interest.⁶³ FEI stated the other CMAE personnel perform back office supporting functions.⁶⁴

Intervener arguments

BCSEA takes no issue with FEI’s proposal to preclude sharing of the five positions and supports FEI’s argument that the other CMAE employees are not directly involved with the substantive matters dealt with by the five precluded employees.⁶⁵ CEC states:

The CEC accepts FEI’s argument with regard to CMAE staff and submits that if the Commission determines that FEI is permitted to share business development personnel with Affiliates other than an AU, then these are appropriate limitations that limit the potential for conflicts of interest.

As noted in Section 3.4.1, BCOAPO raises an issue with respect to business development personnel which is addressed in that section.

⁵⁹ Exhibit B-6, BCUC IR 4.1.

⁶⁰ FEI Final Argument, p. 8.

⁶¹ Exhibit B-6, BCUC IR 4.1.

⁶² Ibid., BCUC IR 4.1.2.

⁶³ FEI Final Argument, pp. 8 – 9.

⁶⁴ Exhibit B-6, BCUC IR 4.4.

⁶⁵ BCSEA Final Argument, p. 6.

FEI reply argument

FEI notes that BCSEA and CEC agree with its proposal.

Commission determination

The Panel acknowledges FEI's identification of the potential for a conflict of interest if personnel involved in natural gas portfolio planning and mitigation activities and related contract negotiation activities were to also provide services to affiliated entities that engage in similar activities. Further, the Panel notes FEI's view that the other CMAE personnel who perform back office supporting functions are not involved in activities likely to give rise to a conflict of interest. Further, CEC and BCSEA support FEI's proposal and BCOAPO raises no objection other than the issue addressed in Section 3.4.1. In the Panel's view, FEI's proposal to preclude FEI from sharing with ACGS and FMI the five personnel in positions that are directly responsible for these activities sufficiently addresses the potential conflict of interest.

The Panel notes FEI's argument has addressed the transfer of employees in one of these five positions with the requirement for a non-disclosure agreement, thereby providing an additional layer of protection to maintain the confidentiality of FEI's data. None of the interveners take exception to the transfer of these personnel, on either a temporary or permanent basis. The interveners do not comment on whether the requirement to sign a non-disclosure agreement is a sufficient safeguard that adequately protects FEI's interests, especially given protection of FEI ratepayers is paramount in considering FEI's proposed All-Inclusive CoC/TPP.

The Panel is concerned there may be little practical difference between the "sharing" of FEI employees and the ability for FEI to freely transfer the five precluded employees on a temporary or permanent basis. Further, based on the evidence in this proceeding, the Panel is not persuaded of the effectiveness of the non-disclosure agreement as a safeguard to address the potential harm to FEI arising from the conflict of interest.

The Panel notes the Director of Finance's responsibility for the ongoing design and operating effectiveness of the related controls and safeguards and for monitoring compliance with the CoC/TPP. **FEI is directed to file, as part of the amended All-Inclusive CoC and TPP compliance filing, an assessment of the design effectiveness of the proposed non-disclosure agreement safeguard, including consideration of whether implementation of a cooling-off period, pre-approval by the Director of Finance of a transfer of precluded employees or other enhancements to the controls is necessary or preferable and an assessment of the adequacy of the process for identifying potential conflicts of interest between FEI and its affiliates prior to the provision or transfer of FEI resources to an affiliate.**

3.5 Provision of information by FEI

Section 3 of the proposed All-Inclusive CoC addresses the management and disclosure of individual customer information and commercial information (Customer and Commercial Information) by FEI.

Customer Information is defined as information relating to a specific or potential customer of FEI obtained or compiled in the process of providing current or prospective public utility services and which is not otherwise

available to the public. Subsection 3 a) provides that Customer Information must be treated as required by the *Personal Information Protection Act* (PIPA) and only released to a party that requests it with the written consent of the customer or the customer's representative, unless, as provided by subsection 3 b), the Customer Information requested is aggregated or summarized in such a way that confidential or individual information would not be ascertainable by third parties.

Commercial Information is defined as information related to FEI's commercial or trading activities such as natural gas supply portfolio planning, mitigation activities and related contract negotiations, or information that will inhibit a competitive energy services market from functioning.

Subsection 3 d) provides that FEI will not provide Commercial Information to an Affiliate except in the case of an AU.

With respect to Customer Information, CEC in its IR No. 1 inquired whether a customer's written consent would be required each time a transfer of information was conducted or whether such written consent was, expressly or impliedly, included in the terms and conditions or other general policy statements that all customers are requested to sign. FEI, in its response, stated that "its intention is that written customer consent would be required each time."⁶⁶

Issues raised by the interveners in respect to the proposed wording of Section 3 of the proposed CoC are considered below.

Intervener arguments

BCOAPO notes that under the proposed wording of Section 3, customer information must remain protected and noted that it is subject to the requirements of the Personal Information Protection Act (PIPA).

CEC submits that a provision requiring FEI to obtain the customer's written consent should, for greater certainty, be included in FEI's terms and conditions of service. Subject to this submission, CEC agrees with the proposed wording of subsections 3 a) and b).⁶⁷

With respect to the proposed wording of subsection 3 d) regarding the sharing of commercial information, BCSEA favours allowing FEI to share commercial information with an AU provided there is no detriment to FEI and its ratepayers and where doing so does not provide the AU with an unfair competitive advantage.⁶⁸

FEI reply argument

In response to CEC, FEI confirms its intent is that customer written consent should be specific to the customer information being considered for release and not inferred from the terms and conditions of the tariff. FEI

⁶⁶ Exhibit B-5, CEC 8.2.

⁶⁷ CEC Final Argument, paras. 57 – 59.

⁶⁸ BCSEA Final Argument, para. 8.

submits it is therefore not necessary to add the additional wording suggested by CEC because FEI's terms and conditions do not state or imply that customers are consenting to information sharing by taking service.⁶⁹

FEI notes that BCSEA favours allowing FEI to share commercial information with an AU provided there is no detriment to FEI and its ratepayers and where doing so does not provide the AU with an unfair competitive advantage.⁷⁰

Panel discussion

Principle ii of the proposed CoC Principles section makes clear that individual customer information must be treated as required by PIPA and should only be released with the written consent of the customer. Section 3 a) of the proposed provision of information section makes clear, subject to customer information aggregated or summarized so that confidential or individual information would not be ascertainable by third parties, that individual customer information must be treated as required by PIPA and only released with the written consent of the customer. FEI has confirmed that its intent is that customer written consent should be specific to the customer information being considered for release and that such written consent is neither expressly stated in nor can it be inferred from the terms and conditions of the tariff. The Panel is satisfied that it is therefore not necessary to add the additional wording suggested by CEC to FEI's terms and conditions as the provision of customer information is clearly and adequately protected by the proposed wording in the CoC/TPP.

With respect to BCSEA's proviso that there be no detriment to FEI and its ratepayers, the Panel finds it unnecessary to update the language used in section 3 d) given that Principle i of the proposed CoC Principles requires, first and foremost, that FEI protect and consider the interests of its own ratepayers.

With respect to BCSEA's second proviso that sharing of commercial information will not provide the AU with an unfair competitive advantage, the Panel notes AUs operate as regulated natural monopolies in their respective territory and are not operating in a competitive environment. Accordingly, in the Panel's view, no change to FEI's proposed wording is required.

3.6 Other sections of the CoC

Sections 4 to 10 of the proposed All-Inclusive CoC contain policies on: preferential treatment; equitable access to service; equitable treatment of demand-side management and incentive funds; compliance and complaints; financing and other risks; use of the FortisBC name and amendments. The Panel notes FEI's proposed wording in these other sections of the All-Inclusive CoC is consistent with the ARB Decision with the exception of some housekeeping changes.

The issues raised by interveners, related to preferential treatment and equitable access, are considered in Section 3.3. No other issues were raised in the other sections of the CoC.

⁶⁹ FEI Reply Argument, para. 10.

⁷⁰ Ibid., para. 9.

4.0 ALL-INCLUSIVE TRANSFER PRICING POLICY (TPP)

The proposed All-Inclusive TPP contains unnumbered scope, definition, policy sections and sections 1 to 5 regarding pricing rules, determining costs, costs relating to the transfer of activities from FEI to an affiliate, cost collection procedures and review of transfer pricing policy, respectively.

The foregoing sections of the proposed TPP address the pricing of resources and services provided by FEI to its affiliates and contain provisions that reflect past Commission decisions on transfer pricing and acknowledge the role of shared service agreements.⁷¹

The parties' submissions in respect of the proposed wording of the various sections of the proposed TPP section of the policy are considered below.

4.1 Scope section of the All-Inclusive TPP

The Panel notes FEI's proposed wording in the Scope section of the All-Inclusive TPP is consistent with the ARB Decision with the exception of some housekeeping changes and the addition of the following:

Costs to be allocated from [FortisBC Energy] to an Affiliate are on the basis of the higher of market price or fully allocated cost as set out in the [FortisBC Energy] Transfer Pricing Policy. [FortisBC Energy] is to seek advance approval from the Commission prior to charging a price that is other than as outlined. Where there is an agreement between [FortisBC Energy] and its Affiliate with respect to the sharing or provision of services, resources, or personnel that has been reviewed by the Commission, the terms of that agreement will govern.⁷²

Intervener arguments

CEC submits it is satisfied with the Scope section of the policy and recommends the Commission approve this section with the exception of changing "reviewed" to "reviewed positively."⁷³

BCOAPO states it is not entirely clear on whether "reviewed" in this context is the same as "approved" and is concerned that "reviewed" means simply "filed" and does not indicate any Commission approval. BCOAPO submits for an agreement between FEI and an affiliate to take precedence over the All-Inclusive CoC/TPP, Commission approval should be required.⁷⁴

FEI reply argument

FEI submits:

The Commission does have authority under sections 59 to 61 of the UCA to approve shared services agreements, but FEI's proposed terminology of "review" is consistent with the typical

⁷¹ FEI Final Argument, para. 32.

⁷² Exhibit B-2, Appendix A-1, p. 1.

⁷³ CEC Final Argument, p. 4.

⁷⁴ BCOAPO Final Argument, p. 3.

nature of the oversight in the context of a revenue requirements application. The Commission's rate approval, as CEC recognizes, will be based on the Commission's assessment (whether implicit or explicit) that the agreement is yielding appropriate results.⁷⁵

Panel discussion

The Panel notes Directive 2 in Order G-157-16, with respect to the scope of 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.

The Panel continues to be of the view 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 and, as previously stated, the parties should be free to debate the concepts and explore applicability of principles, relating to the varieties of affiliated entities with which FEI has transactions. However, as noted in the above directive, it is not the purpose of this proceeding to change the nature of Commission oversight of shared services agreements.

While there does appear to be some level of discomfort among interveners with FEI's proposed use of the term "reviewed," the Panel accepts that FEI's the use of the term "reviewed" as meaning the item has been reviewed and expressly or implicitly accepted or approved as part of another Commission regulatory process such as revenue requirement applications or annual reviews under its PBR plan.

4.2 Definitions section of TPP

As addressed in Section 3.2 of these reasons for decision, BCOAPO makes the same submission regarding FEI's proposal to change the word "ratepayer" to "customer" in the TPP section of the proposed policy.

4.3 Pricing rules

The pricing rules set out in section 1 of the proposed All-Inclusive TPP outline how a transfer price to an affiliate will be set. The Panel notes FEI's proposed All-Inclusive TPP is largely consistent with the ARB TPP except as follows:

1. Section 1v. of the proposed TPP provides if there is an agreement between FEI and an affiliate that has been reviewed by the Commission, such agreement applies with respect to the setting of the Transfer Prices; and
2. Additional wording provided to clarify the term "fully allocated costs."

Intervener argument

BCOAPO submits that with respect to FBC (an AU), FEI proposes no change to the existing rule which is "fully loaded wages including benefits and time away, with no overhead or facilities fees assigned."⁷⁶ BCOAPO is not clear on whether the existing rule has either been reviewed or approved by the Commission and in any event

⁷⁵ FEI Reply Argument, p. 6.

⁷⁶ BCOAPO Final Argument, para. 12; Exhibit B-2, pp. 21 – 22.

submits the actual cost of the services being provided by FEI to FBC clearly includes overhead and facilities components and therefore some amount should be assigned to the cost of overhead and facilities.⁷⁷

FEI reply argument

FEI states there is an agreement between FEI and FBC regarding the pricing of services provided by FEI to FBC that has been approved by the Commission and that the agreement includes a provision for pricing based on fully loaded wages including benefits and time away, with no overhead or facility fees assigned.⁷⁸

Panel discussion

As noted by the Panel in Section 4.1, Order G-157-16 directed a detailed review of operational agreements including the shared services agreements as part of on-going regulation of the Commission and is determined to be not in the scope of this proceeding. In the Panel's view, the issue raised by BCOAPO regarding the inclusion of overhead costs in agreements with FBC relates to a provision within an existing shared services agreement and is therefore not in the scope of this proceeding.

5.0 ISSUES RAISED BY MOVEUP

The Canadian Office and Professional Employees Union, Local 378 (MoveUP) is the sole certified bargaining agent for the majority of FEI's inside (office) workers.⁷⁹ MoveUP does not support FEI's application for Commission approval of the proposed All-Inclusive CoC/TPP as filed.⁸⁰ Instead, it submits the proposed All-Inclusive CoC/TPP should require Commission approval of shared service agreements between FEI and any Affiliates as a means to ensure that the interactions between these affiliated utilities are transparent and subject to an appropriate level of Commission oversight: neither too onerous nor too lax.⁸¹

FEI does not agree with MoveUP and their respective submissions are considered below.

MoveUP final argument

MoveUP submits the point of the proposed CoC/TPP is to ensure that the Commission has the necessary tools for regulatory oversight of shared services and transactions between FEI and its various affiliates and to ensure that such relationships are a reasonable use of ratepayer funded resources, are not producing any inappropriate cross-subsidies and are in the interest of the ratepayers and the public.⁸² A principal point in its argument is that the proposed CoC/TPP is missing a key element; namely, the requirement that a shared services agreement between FEI and an Affiliate be subject to prior approval by the Commission, identifying the nature and scope of

⁷⁷ BCOAPO Final Argument, para. 12.

⁷⁸ FEI Reply Argument, para. 15.

⁷⁹ MoveUp Final Argument, p. 1.

⁸⁰ Ibid., p. 3.

⁸¹ Ibid., pp. 2 – 3.

⁸² Ibid., pp. 3 – 5.

services to be shared, before the sharing of services can occur.⁸³ MoveUP further submits, that such Commission oversight in the proposed CoC/TPP is informed specifically by the Fortis-Alberta Code of Conduct which was cited by this Commission in the AES Inquiry Report as a source that the parties to this process should refer to when developing the rules for FEI.⁸⁴ MoveUP submits that without such oversight, the Commission cannot properly regulate when the shared services agreement under which FEI operates is incomplete and subject to change without prior examination or Commission approval. MoveUp also submits the current “light-handed regulation of a PBR” is not sufficient oversight to protect ratepayers.⁸⁵

FEI reply argument

FEI submits the proposed CoC/TPP and shared services agreement with FBC already ensure that costs are allocated appropriately in that:

- The proposed CoC/TPP is drafted to take into account prior Commission determinations, including the ARB Decision, the AES Inquiry Report and the RMDM Guidelines, all of which considered cost allocation and the avoidance of cross-subsidization; and
- The FEI shared services agreement with FBC was approved by the Commission and reflects a BC model that has worked well.⁸⁶

FEI further submits that the effect of MoveUP’s proposal to require Commission approval of shared services agreements including the assignment of labour services would be to place the Commission in a management role for FEI and the Affiliate with which staff are being shared. FEI submits such allocation of labour resources falls outside of the Commission’s mandate where cost allocation and fair practices are a non-issue. FEI points out that in its most recent annual review under its PBR plan, the Commission restricted its focus to the reasonableness of the cost allocation and not issues that were more within the purview of management of operations.⁸⁷

Regarding Commission oversight, FEI points out the proposed CoC/TPP provides that when it comes to shared services with FBC (AU), if there is a separate shared services agreement “reviewed by the Commission from another proceeding” it overrides the proposed TPP rules. FEI states:

- Revisions to shared services agreements are filed with revenue requirement applications or annual reviews under the current PBR plan;
- Details of affiliated party transactions are reported annually to the Commission in the FEI Annual Report; and
- The Internal Audit department as part of the annual review of the FEI CoC/TPP reviews affiliate cross charges for compliance with Transfer Pricing Policy.⁸⁸

⁸³ MoveUP Final Argument, p. 2.

⁸⁴ Ibid., pp. 4 – 7.

⁸⁵ Ibid., p. 6.

⁸⁶ FEI Reply Argument, para. 18.

⁸⁷ Ibid., paras. 20 – 21.

⁸⁸ FEI Reply Argument, para. 22.

FEI submits that MoveUP's characterization that the current regulation of FEI under PBR as "light-reigned, limited regulation" does not reflect reality. FEI argues the Commission continues to have the ability to probe the interactions between FEI and FBC on a regular basis through the annual PBR proceedings, which include an in-depth written process in which the Commission and interveners have an opportunity to request information on the sharing of services and have done so.⁸⁹

FEI also anticipates completing a review of the shared services model approach for cross charging and filing as part of an upcoming annual review or revenue requirement proceeding, possibly as early as the Annual Review for 2018 Rates application.⁹⁰

Panel discussion

MoveUP asserts that the proposed All-Inclusive CoC/TPP fails to provide the Commission with the tools necessary for regulatory oversight of shared services and transactions between FEI and its various affiliates and the shared services agreement between FEI and FBC.

The Panel does not agree with MoveUP and is persuaded by FEI's arguments. The Panel agrees with FEI that the proposed CoC/TPP is drafted to take into account prior Commission determinations, including the ARB Decision, the AES Inquiry Report and the RMDM Guidelines, all of which considered appropriate cost allocation methodologies and the avoidance of cross-subsidization. In the Panel's view, the proposed CoC/TPP together with other Commission processes, including revenue requirement applications or annual reviews under PBR plans, provide the Commission with the tools necessary to provide the required regulatory oversight of shared services and resources between FEI and its Affiliates.

In the Panel's view, FEI customers, as well as customers of FBC and FAES, benefit from appropriate sharing of employees because it can lead to more efficient use of labour and reduce the need for each utility to take on more staff. Indeed, the current PBR is intended to encourage and give FEI the flexibility to find efficiencies and share the benefits with customers. FEI's proposed All-Inclusive CoC/TPP allows FEI to operate efficiently within appropriate parameters that are aligned with the goals under performance based regulation.

The Panel agrees with the positions taken by FEI and declines to take any action on the submissions made by MoveUP. However, the Panel notes that FEI states it anticipates completing a review of the shared services model approach and filing it as part of an upcoming annual review or revenue requirement proceeding, possibly as early as the Annual Review for 2018 Rates application. The Panel agrees with FEI that this would be appropriate. **FEI is directed to file a review of its shared services model as part of its 2018 Annual Review under its PBR plan or alternatively, as part of its next revenue requirement proceeding.**

⁸⁹ FEI Reply Argument, para. 23.

⁹⁰ Ibid., para. 24.

6.0 OTHER

Other issues raised by the parties are considered below.

6.1 Interactions with non-operating parent companies

FEI submits its affiliated parent or holding companies (Fortis Inc., Fortis Pacific Holdings Inc., FortisBC Holdings Inc. and FMI), are non-operating companies and as a result, many of the CoC/TPP provisions have limited applicability to these entities. FEI states the most applicable provision to the parent companies is the TPP requirement that services be priced at the “higher of market price or fully allocated cost.” FEI submits that applying this rule, subject to any Commission direction in other proceedings, will ensure that there is no detriment to FEI ratepayers.⁹¹

Panel discussion

The Panel agrees with FEI that application of the TPP pricing principle protects FEI ratepayers. The Panel also notes none of the interveners raise issues with respect to non-operating affiliates.

6.2 Services provided to FEI by affiliates

Intervener argument

BCOAPO submits the proposed All-Inclusive CoC/TPP covers only services provided by FEI to affiliates and does not cover services provided by affiliates to FEI and that this is an area which should be addressed in future proceedings.⁹²

FEI reply argument

In reply, FEI states:

- FEI generally only acquires services from FortisBC Holdings Inc. and FBC and the costs incurred to obtain these services are already considered by the Commission in that they form a part of FEI’s revenue requirements proceedings;
- Since FortisBC Holding Inc. is not regulated, the Commission need not be concerned with how FortisBC Holdings Inc.’s provision of corporate services to FEI impacts the parent company;
- FBC, like FEI, is a regulated utility and it acquires services from FEI under the reciprocal shared services agreement that is discussed in FBC’s own annual reviews; and
- It is not possible for FEI to file a CoC for approval on behalf of another company.

Panel discussion

The Panel agrees with FEI that services provided to FEI by affiliates are considered in other Commission proceedings and accordingly, no further review process is required.

⁹¹ FEI Final Argument, p. 7.

⁹² BCOAPO Final Argument, pp. 3 – 4.