



**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-143-14**

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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
K.A. Keilty, Commissioner
N.E. MacMurchy, Commissioner
September 18, 2014

ORDER

WHEREAS:

- A. On June 27, 2014, FortisBC Energy Inc. (FEI) filed an Application for Approval of FEI's Code of Conduct and Transfer Pricing Policy for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment (Application). The Application seeks approval of FEI's proposed documents, namely, the Code of Conduct (COC) and the Transfer Pricing Policy (TPP) for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment (ARBNNM) that were prepared subsequent to an FEI-led process of stakeholder engagement;
- B. 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) recommended FEI undertake a collaborative process to establish a COC and TPP for Affiliated Regulated Businesses consistent with the guidelines and principles in the AES Inquiry Report;
- C. The Application contains, in addition to the proposed COC and TPP documents, detailed references to FEI's collaborative consultation 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 status: (1) generally accepted, (2) significant differences remain, and (3) general agreement or less significant differences;
- D. By letter dated July 25, 2014, the British Columbia Utilities Commission (Commission) invited consultation process participants to comment on the Application and to recommend the further steps required to complete the review and ensure the resultant COC and TPP meet the intent of the AES Inquiry Report;

E. The Commission received submissions from the following participants:

- Corix Utilities Inc. (Corix)
- British Columbia Old Age Pensioners' Organizations *et al.* (BCOAPO)
- FortisBC Alternative Energy Services Inc. (FAES)
- Canadian Office and Professional Employees Union, Local 378 (COPE)
- Coalition for Open Competition (Coalition)
- B.C. Sustainable Energy Association and the Sierra Club British Columbia (BCSEA)

F. By letter dated August 18, 2014, the Commission advised all parties that a Pre-hearing Conference is warranted in order to address, in particular, six matters that have arisen from the Application and the submissions on the process steps. The six matters are:

1. The advantages and disadvantages of only one comprehensive COC document for affiliated natural monopoly utilities, ARBNNM 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 FortisAlberta 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 area where there are significant differences remaining between FEI and some stakeholders.

G. The Pre-hearing Conference took place on September 5, 2014. At the Conference, FEI, FAES, Corix, the Coalition, Commercial Energy Customers of B.C., BCOAPO, BCSEA, COPE and Commission staff provided submissions; and

H. The Commission Panel has considered the views of all parties leading up to the Pre-hearing Conference as well as the discussions on the six matters and new issues raised in the conference. The Panel deals with Issue (1), Issue (2) and Issue (3) in this Order and the Reasons attached as Appendix A, and sets a Regulatory Timetable included in Appendix B for further process. The Panel also seeks Final Written Submissions on Issues (4) to (6). Appendix C outlines the supplementary information and evidence that FEI is requested to provide.

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NOW THEREFORE the British Columbia Utilities Commission orders as follows:

1. The scope of the Application review is limited to the Code of Conduct and the Transfer Pricing Policy for affiliated regulated business operating in a non-natural monopoly environment.
2. The scope of the Application review excludes costs incurred by a non-regulated business on behalf of FortisBC Energy Inc.
3. FortisBC Energy Inc. is directed to file supplementary information and evidence as outlined in the attached Appendix C.
4. Parties are to make their Written Final Submissions on the Application and on a Code of Conduct and Transfer Pricing Policy for Affiliated Regulated Businesses operating in a Non-Natural Monopoly environment in accordance with the Regulatory Timetable attached as Appendix B.

DATED at the City of Vancouver, in the Province of British Columbia, this 18th day of September 2014

BY ORDER

Original signed by:

L.A. O'Hara
Panel Chair

Attachments

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

REASONS FOR DECISION

INTRODUCTION

On June 27, 2014, FortisBC Energy Inc. (FEI) filed an Application for Approval of FEI's Code of Conduct and Transfer Pricing Policy for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment (Application). The Application is in response to directives, recommendations and guidelines included in the Report on the Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives (AES Inquiry Report) dated December 27, 2012. During the Inquiry, the British Columbia Utilities Commission (Commission) focused on FEI and its role as a regulated utility in the delivery of AES and the potential cross-subsidization of AES activities by natural gas ratepayers. In the AES Inquiry Report, the Commission recommended that FEI engage in a collaborative process to establish a Code of Conduct (COC) and Transfer Pricing Policy (TPP) governing interactions between affiliated regulated businesses, differentiating resource sharing between two natural monopolies on the one hand and an affiliate regulated business operating in a non-natural monopoly environment (ARBNNM) on the other. FEI states it led a collaborative consultation process with interested stakeholders and Commission staff. Nonetheless, the Application makes it clear that the proposed COC and TPP do not reflect a consensus of all stakeholders.

By letter dated July 25, 2014, the Commission invited all consultation process participants to comment on the Application and make recommendations on the process steps required to complete the review and ensure the resultant COC and TPP meet the intent of the AES Inquiry Report. Submissions were made by the following participants:

- Corix Utilities Inc. (Corix);
- British Columbia Old Age Pensioners' Organization *et al* (BCOAPO);
- FortisBC Alternative Energy Services Inc. (FAES);
- Canadian Office and Professional Employees Union, Local 378 (COPE);
- Coalition for Open Competition (Coalition); and
- B.C. Sustainable Energy Association and the Sierra Club British Columbia (BCSEA).

After reviewing the Application and the submissions received the Commission Panel established a Pre-hearing Conference which took place on September 5, 2014 to address six specific matters. The six matters are:

1. The advantages and disadvantages of only one comprehensive COC document for affiliated natural monopoly utilities, ARBNNM 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 FortisAlberta 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 area where there are significant differences remaining between FEI and some stakeholders.

The resultant Order includes the Panel's rulings on three issues and establishes a Regulatory Timetable which seeks supplementary information and evidence from FEI, provides an opportunity for Information Requests (IRs), and concludes the review process by way of written submissions on Issues 4 to 6. These Reasons for Decision address the Panel's rationale for its findings on the three matters and the required process steps to complete this review.

RESOLUTION OF THREE ISSUES ADDRESSED IN THE PRE-HEARING CONFERENCE

Issue 1: The advantages and disadvantages of only one comprehensive COC document which established standards and conditions for interactions between affiliated natural monopoly utilities, ARBNNMs and non-regulated businesses (NRB) as compared to multiple documents?

FEI states that at this point in time there is very little upside in producing a combined document whereas there is significant downside. FEI points out that currently there is an existing gap only in the rules governing interactions between the natural gas monopoly (FEI) and the ARBNNMs and that this is the area of most contention. Expanding the scope of the proceeding to accommodate production of a combined document would result in a delay in the progress made regarding FEI interactions with its ARBNNMs. In summary, FEI states there is value in resolving the issues related to the interactions between FEI and FAES sooner rather than later as this resolution in turn provides clarity for FEI as to how to conduct itself. (T1: 8, 12, 13)

Commission staff's view is that in the long-run a single document would be preferable. However, Commission staff does not propose to expand or extend the review process at this time. Staff recommend that the Commission should consider directing the production of one integrated document that addresses all relationships when the existing COC and TPP for interactions between FEI and non-regulated businesses is updated. This long-term objective ensures consistency while enabling the reader to gain a more comprehensive view of the different relationships. It also minimizes the risk of various documents not being sufficiently synchronized. (T1: 114-115)

Other parties also described similar advantages and disadvantages of having only one comprehensive document. BCOAPO, for instance, recognizes the complexity of drafting one comprehensive document and states it is important for each COC and TPP to have a very similar format to accommodate an easy comparison between

them. In summary, BCOAPO envisions a book with similarly repeating chapters for different COCs. (T1: 84)

In reply, FEI agreed that a long-term objective should be one combined document for all COCs and TPPs. (T1: 120)

Commission Determination

The Commission Panel finds 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 this review is limited to the COC and TPP for affiliated regulated businesses operating in a non-natural monopoly environment (Phase 1). However, FEI is reminded that eventually it needs to address the other items in the AES Inquiry Report as listed in paragraph 1 of the July 25 letter (Exhibit A-2). The Panel believes that ultimately there should be only one integrated document. This makes it easier to compare practices between entities of different natures. It also makes it easier to keep track of any changes occurring over time and ensure consistency. Accordingly, the Panel recommends that the long-term objective for FEI should be the production of one integrated COC and TPP document (Phase 2).

Issue 2: Should the scope of the project also address costs incurred by a non-regulated business (e.g., FortisBC Holdings Inc.) on behalf of regulated businesses rather than primarily focusing on interactions between FEI and FAES?

FEI states that interactions with its non-regulated parent, FortisBC Holdings Inc., are managed through a corporate services agreement. Furthermore, FEI states those interactions are the subject of revenue requirement proceedings because they impact the amount that FEI incurs in delivering service to its utility customers. FEI also confirmed that the updated shared services agreements will be addressed during the Annual Review Process. (T1: 17, 116)

Similarly, Commission staff's view is that the costs incurred by a non-regulated business on behalf of FEI are only an issue for the Commission to the extent the NRB is asking for the regulated business to pay some or all of the reported costs. It follows that the Commission does have jurisdiction to approve the monies paid by FEI through either approval of costs on a stand-alone basis or a shared services agreement or shared services study. Staff does not believe that focus of the review should be on the non-regulated business. Therefore corporate costs incurred by the parent, such as board, legal or audit expenses, should not be in scope of this review. (T1:115-116) In response to a Commission staff query, FEI confirmed that should the Performance Based Ratemaking (PBR) multi-year application be approved corporate and shared services agreements can be reviewed as part of the annual review process. (T1: 116)

Other parties mostly held the view that corporate service agreements and related arrangements between the parent and FEI should be subject to review in a revenue requirement proceeding. BCSEA emphasizes that the filed Application should be the focus of the review. Therefore, BCSEA states that if there are issues related to

interactions between the parent and a public utility, they should be addressed in other proceedings. (T1: 92)
Corix also agrees with FEI that the corporate services agreement issues can be dealt with in the revenue requirement proceedings. (T1: 51)

Commission Determination

The Commission Panel accepts the rationale that costs incurred by a non-regulated business on behalf of FEI should be reviewed in a revenue requirement proceeding, and therefore those interactions are excluded from the scope of this review. FEI's confirmation of the plan to include the assessment of corporate services agreements in the annual review process while the PBR is in effect gives the Panel additional assurance of the on-going review.

Issue 3: Can the format of the FortisAlberta Inc. Inter-Affiliate COC provide a template for FEI?

FEI's submission is that the Commission can certainly consider the FortisAlberta COC as evidence, just as it would consider Commission's prior determinations. However, FEI objects to elevating the FortisAlberta COC to the level of a template for either NRBs or Affiliated Regulated Businesses. FEI submits that the starting point for the review should be the Application or the product that has been filed as a result of a lengthy collaborative process. In FEI's view there is no principled reason to "go back to square one" and restart the process by using another point of reference. (T1: 20-21)

Corix disagrees with FEI's position and submits that the FortisAlberta COC should be considered now because FEI omitted a proper consideration of that document from the outset as recommended by the AES Inquiry Panel. Corix states that although the FortisAlberta COC should not be followed like a template, the concepts that are good should be brought forward into this proceeding. (T1: 53-54)

BCSEA states that the Commission should consider the FortisAlberta COC but not be bound by it. In BCSEA's submission, "the parties will and ought to have an opportunity to make submissions to the Commission going forward" regarding what aspects of that COC ought and ought not to be incorporated in the FEI COC. (T1: 92)

The Coalition points out that the Alberta Ministry of Energy is currently reviewing the 2005 FortisAlberta and other COCs with a view to strengthen and clarify them. The Coalition also sees FAES as a non-monopoly and therefore a non-utility affiliate in the context of the FortisAlberta COC. Accordingly, the Coalition believes that there may be elements in the FortisAlberta COC that are worthy of review. (T1: 68-69)

Commission staff agrees that the FortisAlberta COC should not be literally followed. However, Commission staff sees value in following the style of that COC to some extent. For instance, in the FortisAlberta COC the purpose and objectives are clearly defined and interactions between all Fortis utility and non-utility affiliates are covered. Furthermore, the TPP document is also combined with the COC in one centralized document. In summary, the long-term objective should be the production of one integrated COC and TPP document covering all interactions

between FEI and its ARBNNMs and NRBs. (T1: 117)

Commission Determination

The Commission Panel sees value in considering inclusion of some elements of language and style of the FortisAlberta Inter-Affiliate in the FEI COC and TPP document. There may be some valuable principles and ideas that could be applicable and enhance the FEI documents. However, this does not have to mean “going back to square one.” **Accordingly, the Panel will continue to review the Application filed without using the FortisAlberta COC as a template.** With the benefit of the Final Submissions and Reply Submission the Panel will determine what amendments or additions may be required.

REGULATORY TIMETABLE TO COMPLETE THE REVIEW

After hearing submissions during the Pre-hearing conference, the Commission Panel believes that the most efficient way to conclude the review process is to establish a Regulatory Timetable for Written Final Submissions. However, the Panel also finds that it needs further supplementary information and evidence on the record before proceeding to the argument phase. The Panel wishes to have a better understanding of how FEI intends to carry out the interactions with its ARBNNMs to ensure full compliance with the spirit of the COC. The evidence that FEI is asked to file will assist the Panel in this regard. The Regulatory Timetable, which provides for this further process, is attached as Appendix B to this Order. The Supplementary Information and Evidence that FEI is requested to provide is outlined in Appendix C.

**Application by FortisBC Energy Inc.
for Approval of Code of Conduct and Transfer Pricing Policy
In a Non Natural Monopoly Environment**

REGULATORY TIMETABLE

ACTION	DATE (2014)
Filing of Supplementary Information and Evidence by FEI	Friday, September 26
BCUC and Interveners Information Request (IRs) to FEI, if any	Wednesday, October 8
FEI Response to BCUC and Interveners IRs	Monday, October 20
Final Submission from FEI	Monday, October 27
Intervener Final Submission	Monday, November 3
Reply Submission	Monday, November 10
Oral Argument, if required	TBD

SUPPLEMENTARY INFORMATION AND EVIDENCE REQUESTED FROM FORTISBC ENERGY INC.

After reviewing the Application, the submissions received to date, and hearing the views presented during the Pre-hearing Conference held on September 5, 2014, including the circumstances where FortisBC Energy Inc. (FEI) believes a departure from the Principles and Guidelines outlined in the AES Inquiry Report is warranted, the Panel is seeking supplementary information and evidence from FEI on the following:

- A description of the nature of any currently provided [FEI services](#), including services of senior management and operating personnel and the reason for concluding that no conflict of interest exists that will negatively impact ratepayers;
- A description of those business development roles precluded from sharing referred to in FEI submission dated September 2, 2014 and discussed in the Pre-hearing Conference and whether these roles and functions include individuals who are engaged in functions such as business planning, marketing and communications, market development, advertising, customer services and any other functions or personnel who are likely to have commercially valuable information;
- A description of the safeguards and oversight processes either currently in place or intended to be implemented if the proposed COC and TPP is approved that ensure an appropriate assessment and monitoring of potential conflicts of interest and segregations of activities where conflict has been identified;
- Examples of services that FEI currently provides FAES and the estimated differential between fully allocated cost and market price for those services;
- How a reduction in FAES costs, as a result of receiving services from FEI at below-market rates, will affect the rates of FAES ratepayers, and the time-frame over which such cost reductions may be passed on to ratepayers;
- A 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 that identify all services provided and costs incurred within FEI to meet the needs of FAES, including direct charges, timesheets and the methodology for overhead allocation. This description should include the monitoring, internal verification and oversight processes that will ensure (i) all appropriate services provided to FAES have been identified and (ii) the amount of the costs allocated to FAES are appropriate and accurate; and
- Under the recent PBR Decision a detailed revenue rate review will not occur until late 2016 or early 2017. Describe the processes that over the PBR period will allow the Commission and ratepayers to be assured that the appropriate level of costs incurred by FEI to meet the needs of FAES, or other ARBNMMs, are charged to FAES or the ARBNMM and are not paid for by the FEI ratepayer. The Panel is particularly concerned with the determination of indirect costs such as overheads.

The Panel is seeking the above supplementary information and evidence in order to have a better understanding of how FEI intends to carry out the interactions with its ARBNMMs to ensure full compliance with the spirit of the COC.