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May 26, 2022

British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, B.C.
V6Z 2N3

Attention: Mr. Patrick Wruck, Commission Secretary

Dear Mr. Wruck:

Re: FortisBC Energy Inc. (FEI)

**Application for an Updated Code of Conduct and Transfer Pricing Policy –
(Application) - Project No. 1599314**

**Response to the British Columbia Utilities Commission (BCUC) Information
Request (IR) No. 1**

On March 3, 2022, FEI filed the Application referenced above. In accordance with the regulatory timetable established in BCUC Order G-108-22 for the review of the Application, FEI respectfully submits the attached response to BCUC IR No. 1.

If further information is required, please contact the undersigned.

Sincerely,

FORTISBC ENERGY INC.

Original signed:

Diane Roy

Attachments

cc (email only): Registered Parties

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5 **A. CODE OF CONDUCT REVIEW**

6 **1.0 Reference: CODE OF CONDUCT REVIEW**

7 **Exhibit B-1 (Application), p. 2; Appendix D (Blacklined COC), pp. 4,**
 8 **6, 9; Appendix A (Current COC Effective March 1, 2017), p. 2;**
 9 **Appendix B (Summary of FEI’s Review of the COC and TPP), p. 2**

10 **Exchange of Customer Information**

11 On page 2 of the Application for an Updated Code of Conduct and Transfer Pricing Policy
 12 (Application), FortisBC Energy Inc. (FEI) proposes to update the language of its current
 13 Code of Conduct (COC or Code) for an exchange of Customer Information between FEI
 14 and an Affiliated Natural Monopoly Utility (AU).

15 The British Columbia Utilities Commission (BCUC) Staff note that page 9, or Appendix A,
 16 of the Blacklined COC filed as Appendix D to the Application, identifies, as at June 30,
 17 2016, that FEI has two Affiliates that are classified as an AU: FortisBC Inc. (FBC) and
 18 FortisBC Huntingdon Inc. (FBCH).

19 On pages 4 and 6 of the Blacklined COC, FEI provides the following proposed language:

20 FortisBC Energy may exchange Customer Information with an AU to further
 21 develop, enhance and provide integrated products and services offered by
 22 FortisBC Energy and the AU to customers, without being required to disclose the
 23 Customer Information to other parties.

24 On page 2 of the Current COC Effective March 1, 2017 filed as Appendix A to the
 25 Application, it states that an “Affiliate” includes: an AU, an Affiliated Regulated Business
 26 Operating in a Non-Natural Monopoly Environment (ARB), an Affiliated Non-Regulated
 27 Business (ANRB), and “refers to the entities listed in Appendix A to this Code.”

28 1.1 Please confirm, or explain otherwise, that the proposed language in the Blacklined
 29 COC would mean that FEI may only exchange Customer Information with an AU
 30 and not any other Affiliate (i.e. an ARB or ARNB), if approved.

31

32 **Response:**

33 Confirmed. The proposed language will only apply to an Affiliate that is an Affiliated Natural
 34 Monopoly Utility (AU). In practice, this means only FBC, since the only other AU (FBCH) has no
 35 end user customers.

1 FEI is asking for this change so that it can share Customer Information with FBC for the purpose
2 noted, namely “to further develop, enhance and provide integrated products and services offered”.
3 To address any potential concerns about future changes to the definition of an AU, FEI would be
4 amenable to revising the proposed language to substitute “FortisBC Inc.” for “AU”.

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8 1.2 Please confirm whether FBC and FBCH are currently the only two Affiliates of FEI
9 classified as an AU.

10

11 **Response:**

12 Confirmed. The amendment was proposed with FBC in mind.

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16 1.2.1 If confirmed, please also confirm that any changes to the Affiliates of FEI
17 (including their classification) would require BCUC approval. If not
18 confirmed, please explain the regulatory process for changes to the
19 Affiliates in the COC.

20

21 **Response:**

22 Confirmed, given the current wording in the COC. After considering this question, FEI identified
23 that there is a simple change to the definition of Affiliate that would avoid having to continually
24 update the list each time a new affiliated entity is established. Specifically, FEI is now proposing
25 to amend the definition of Affiliate in the COC, to replace the words “and refers to” with “and
26 includes” such that the definition reads:

27 Includes an Affiliated Natural Monopoly Utility, an Affiliated Regulated Business
28 Operating in a Non-Natural Monopoly Environment, and an Affiliated Non-
29 Regulated Business, and includes ~~refers to~~ the entities listed in Appendix A to the
30 Code of Conduct.

31

32 This simple change would avoid any uncertainty that the COC always applies to any AU, ARB
33 and ARNB.

34 FEI files an Affiliated Transactions Report with the BCUC as part of its Annual Report each year,
35 including a list of the affiliated entities, a list of service agreements, and the nature and amount of
36 any transactions in the year. FEI views this report as providing the necessary information so that
37 the BCUC can be updated on any changes to FEI’s affiliates through regular ongoing reporting.

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4 1.3 In the proposed language, please clarify who the other parties are in the statement
5 “without being required to disclose the Customer Information to other parties.”

6

7 **Response:**

8 The reference to “other parties” in the proposed language is intended to refer to any party other
9 than the AU (in practice, this means anyone other than FBC).

10 FEI clarifies that the intent of the proposed language in the Application is for FEI to disclose
11 aggregate or summarized Customer Information with an Affiliate that is considered an Affiliated
12 Natural Monopoly Utility (AU) and not Affiliates that are an ARB or an ANRB, without being
13 required to disclose the Customer Information to other parties, if requested. Under the current
14 approved COC, no customer consent is required to share aggregated or summarized data.

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18 On page 2 of the Summary of FEI’s Review of the COC and TPP filed as Appendix B to
19 the Application, FEI states:

20 This new language for exchange of Customer Information applicable only to an AU
21 is consistent with the exceptions included in the COC applicable only to AU (i.e.
22 subsection (d) where FortisBC Energy will not provide Commercial Information to
23 an Affiliate except in the case of an AU).

24 1.4 Please explain the expected benefits (e.g. financial, operational, planning, other)
25 to each of FEI and to the AU from the exchange of Customer Information.

26

27 **Response:**

28 Sharing of Customer Information between FEI and FBC, subject to complying with applicable
29 privacy legislation, can help with optimizing the development and delivery of new regulated
30 products and services to customers in common service territories served by FBC and FEI, such
31 as demand side management or other energy efficiency programs and services. For example,
32 by sharing Customer Information, FEI and FBC will better understand customers’ preferences for
33 regulated energy products and services and be in a position to design products and services that
34 best meet the total energy needs in a customer’s household or business. Additionally, combining
35 marketing and delivery activities of FEI and FBC may result in synergies, such as higher customer
36 participation in offerings and cost efficiencies in administration.

37 FEI expects that by sharing Customer Information with FBC, it will be able to develop, enhance
38 and provide integrated products and services offered to FEI and FBC’s customers.

1 Please refer to the response to BCOAPO IR1 1.2 for examples of integrated energy efficiency
2 programs (products and services) FEI currently offers for joint FEI/FBC customers that are
3 possible with the sharing of Customer Information between FEI and FBC.

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1.4.1 Please explain the drawbacks, if any, to FEI or its customers from the
8 exchange of Customer Information with an AU.

9

10 **Response:**

11 FEI does not see any drawbacks to FEI or its customers from the exchange of Customer
12 Information with an AU (in this case FBC) because such exchange of Customer Information is
13 subject to compliance with all requirements of privacy legislation. Both FEI and FBC operate as
14 regulated natural monopolies in their respective territories and are not operating in a competitive
15 environment. As such, sharing of Customer Information would not be detrimental to FEI's
16 business or to its customers.

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1.5 Other than consistency, please describe the factors and criteria considered by FEI
21 for why the treatment in the COC in respect of the exchange of Commercial
22 Information and Customer Information between FEI and an AU should be the
23 same.

24

25

Response:

26 In the FEI All Inclusive COC and TPP proceeding in 2016, FEI stated the following regarding why
27 exchange of Commercial Information between FEI and an AU should be different than between
28 an ARB or ANRB:¹

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For Commercial Information, concerns over sharing of the information are different
for an AU than that for an ARB or ANRB. For an ARB or ANRB where competition
is more prevalent and with the value of Commercial Information greater than in the
situation with an AU, precluding the sharing of Commercial Information between
FEI and an ARB and ANRB is warranted. This is not justified with an AU. FEI
considers that sharing of Commercial Information as defined with an AU would
therefore be acceptable.

36

37

38

In its Decision and Order G-25-17, the BCUC commented that "... 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."

¹ FEI All Inclusive COC and TPP Application (Project No. 3698873), June 30, 2016, p. 19.

1 FEI's view is that the same treatment and rationale should apply to the exchange of Customer
2 Information between FEI and an AU, as the concerns over the sharing of information are different
3 than that for an ARB or an ANRB. For an ARB or ANRB, where competition is more prevalent
4 and the value of the Customer Information is greater than in the situation with an AU, the
5 preclusion of the sharing of Customer Information between FEI and an ARB and ANRB is
6 warranted. However, the same rationale does not apply to preclude the sharing of Customer
7 Information between FEI and an AU, particularly given that the AU, in this case FBC, is regulated
8 by the BCUC and also has its own BCUC approved COC, thus the sharing of information between
9 FEI and FBC does not result in greater risk to the information. Similar to the sharing of
10 Commercial Information, the sharing of Customer Information between FEI and an AU should be
11 acceptable.

12
13

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15 On page 2 of the Current COC Effective March 1, 2017, Customer Information is defined
16 as follows:

17 Information relating to a specific Customer or potential Customer of [FEI], which
18 [FEI] has obtained or compiled in the process of providing current or prospective
19 public utility services and which is not otherwise available to the public.

20 Section 4.1 of the FortisBC² privacy policy (Privacy Policy)³ states:

21 The type of Personal Information we collect and maintain in your customer file,
22 may include, but is not limited to your: name, mailing and property address, email
23 address, telephone number, date of birth, credit history, transaction history,
24 electricity consumption, driver's license number and other payment and billing
25 information. [*Emphasis added*]

26 Section 4.2 of the Privacy Policy states:

27 FortisBC limits the use and disclosure of personal information for purposes other than
28 those identified purposes, unless the consent of the Individual has been obtained or if the
29 use and disclosure is permitted or required by Privacy Legislation.

30 Unless we have your explicit Consent to do so, we will not sell, rent or lease your Personal
31 Information to third parties. [...]

32 We may further disclose your personal information without your consent, in the following
33 circumstances:

34 (a) as permitted or required by applicable law or regulatory requirements; [...]

² On the FortisBC.com website, "FortisBC" includes the Gas Holding Company, Gas Utility (FortisBC Energy Inc.) and Electricity Utility (FortisBC Inc.): <https://www.fortisbc.com/about-us/corporate-information/regulatory-affairs>

³ Retrieved from: <https://www.fortisbc.com/fortisbc-privacy-policy>.

1 [...] (d) any other circumstances permitted or required under PIPA [*Personal Information*
2 *Protection Act*].

3 1.6 Please clarify whether **Customer Information** as defined in FEI's COC includes
4 Personal Information (e.g. as defined in FortisBC's Privacy Policy). As part of the
5 response, please explain and provide examples of the differences and areas of
6 overlap between "Customer Information" and "Personal Information." For clarity,
7 please provide a list for the following types of information:

- 8 (i) Customer Information but not Personal Information;
9 (ii) Both Customer Information and Personal Information; and
10 (iii) Personal Information but not Customer Information.
11

12 **Response:**

13 Customer Information for the purpose of the COC and as defined in FEI's COC includes the
14 Personal Information as outlined in FortisBC's Privacy Policy. FEI's treatment of Customer
15 Information required for the COC is consistent with the treatment of Personal Information in
16 FortisBC's Privacy Policy.

17 All Personal Information is Customer Information but not all Customer Information is Personal
18 Information. For example, if a customer's address was published in a public directory it would fall
19 under an exception to the definition of Personal Information in PIPA so would not be considered
20 Personal Information. It would, however, still be considered Customer Information. Customer
21 Information includes information about the customer (i.e., name, address, contact information)
22 and their gas consumption and billing information which may have commercial value to another
23 energy provider and may also include Personal Information as listed below.

24 Personal Information, as indicated in FortisBC's Privacy Policy, may include, but is not limited to,
25 the customer's name, mailing and property address, email address, telephone number, date of
26 birth, credit history, transaction history, energy consumption, driver's license number and other
27 payment and billing information. FortisBC may collect the customer's social insurance number for
28 very limited purposes (i.e., to run a credit check), however, FortisBC will not retain a copy of the
29 customer's social insurance number in its files.

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33 1.7 Please explain if FEI has obtained explicit consent, or otherwise provided notice,
34 to customers or potential customers that the utility may share Customer
35 Information with an AU, subject to the BCUC's approval in this Application.

36 1.7.1 If yes, please describe in detail how explicit consent has been granted or
37 notice has been provided. As part of the response, please provide a
38 summary of any feedback received, including whether any customers or
39 potential customers indicated that they do not consent to sharing

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1 Customer Information with an AU and how FEI intends to incorporate this
2 feedback.

3 1.7.2 If no, please explain whether explicit consent or, at minimum, notice is
4 required pursuant to FortisBC's Privacy Policy. If not, please explain why
5 not and include the applicable references to the Privacy Policy.
6

7 **Response:**

8 For joint energy efficiency programs between FEI and FBC customers, FEI obtains customer
9 consent for the exchange of individual Customer Information between FEI and FBC (AU) through
10 the program terms and conditions. Customers are required to accept the terms and conditions in
11 order to participate in a given program. Customers who do not consent to sharing Customer
12 Information are not eligible to participate in a given program. As such, FEI does not have a
13 summary of customer feedback received. Please refer also to the response to BCOAPO IR1 1.5.

14 FEI clarifies that the intent of the proposed language in the Application is for FEI to disclose
15 aggregate or summarized Customer Information with an Affiliate that is considered an Affiliated
16 Natural Monopoly Utility (AU) and not Affiliates that are an ARB or an ANRB, without being
17 required to disclose the Customer Information to other parties, if requested. Under the current
18 approved COC, no customer consent is required to share aggregated or summarized data.

19 Disclosure of individual Customer Information would continue to be subject to the requirements
20 of PIPA, which includes requiring the consent of the customer. For example, for individual
21 Customer Information required for FEI's energy efficiency programs, customer consent is
22 currently being obtained by making all participants aware through the applicable program terms
23 and conditions that FEI may disclose their provided information to affiliates and contractors, the
24 other program administrators, and any collaborating third party. This is consistent with FortisBC's
25 Privacy Policy, which states the following:

26 **3. Consent for collection, use and disclosure of personal information**

27 **3.1 Types of consent**

28 We may seek consent in various ways, depending on the circumstances and the
29 type of information collected, including, for example, using an application form
30 and/or a check-off box, or collecting oral consent - in particular, when information
31 is collected over the telephone. Consent may also be implied where we have
32 provided you with notice of our intended collection, use and or disclosure of
33 Personal Information, or as otherwise provided by Privacy Legislation.

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37 1.8 Please confirm whether FEI has solicited input from other stakeholders on FEI's
38 proposed change to the treatment of Customer Information in FEI's COC. If so,
39 please summarize that input. If not, please explain why not.
40

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1 **Response:**

2 Stakeholders are involved in the current regulatory process before the BCUC, and FEI did not
3 otherwise solicit input from other stakeholders on FEI's proposed change to the treatment of
4 Customer Information. FEI considers the rationale for the proposed treatment of Customer
5 Information to be consistent with the justification used for Commercial Information, which has
6 previously been reviewed and approved by the BCUC in prior proceedings.

7 Please refer to the response to BCUC IR1 1.5 for discussion of the rationale for the same
8 treatment of Customer Information and Commercial Information.

9

1 **B. TRANSFER PRICING POLICY REVIEW**

2 **2.0 Reference: TRANSFER PRICING POLICY REVIEW**

3 **Exhibit B-1, p. 2; Appendix B (Summary of FEI's Review of the COC**
4 **and TPP), p. 5; Appendix A (Current TPP Effective March 1, 2017), p.**
5 **4**

6 **Update to the General Overhead Rate**

7 On page 5 of the Summary of FEI's Review of the COC and TPP, FEI states:

8 Starting January 1, 2017, for the purpose of determining the appropriate general
9 overhead rate to use for calculating the fully allocated cost for the three types of
10 services, FEI has been applying a higher general overhead rate of 15% instead of
11 10% for Specific Committed – On- Site Full time; As Required – On-Site Short
12 Term; As Required – Off-Site Short Term. The 15% appropriately reflects FEI's
13 general overhead costs applicable to each situation.

14 FEI requests to update the reference to the COC effective date and to increase the
15 general overhead rate referenced in the [sic] Appendix A of the TPP to 15% for the
16 indicated types of services. [Emphasis added]

17 On page 2 of the Application, FEI states:

18 FEI believes that at this time the 15 percent appropriately reflects FEI's general
19 overhead costs applicable to each situation and, therefore, should be updated.
20 [Emphasis added]

21 On page 4, Section 2 of the Current TPP Effective March 1, 2017 filed as Appendix A to
22 the Application, it states:

23 The example in Appendix A summarizes how fully allocated costs are determined
24 for the different types of services described below in Section 2.1.

25 2.1 Given that FEI started applying a general overhead rate of 15 percent as of
26 January 1, 2017, please clarify why this general overhead rate for the three types
27 of services noted above was not already reflected in Appendix A of the Current
28 TPP Effective March 1, 2017 given that effective date.

29 **Response:**

31 FEI did not consider it necessary to request approval to update Appendix A in the TPP as the
32 information in Appendix A was intended to be only an illustrative calculation to show the
33 determination of fully allocated costs as required under the TPP.

34 The TPP establishes a pricing rule and methodology, rather than dictating a specific overhead
35 rate percentage; that is, the overhead rate used must, at the time resource sharing occurs, be
36 sufficient to meet the following requirement in Section 1 (Pricing Rules):

1 iii. Where there is no market price or a market price is not readily discernable,
2 the Transfer Price will be set on the basis of fully allocated cost.

3 Fully Allocated Cost is defined in the TPP as “the sum of the direct costs and overhead costs
4 required to provide the product or service.”

5 The method of determining Fully Allocated Costs is set out in Section 2 (Determining Costs):

6 i. **Fully Allocated Costs**

7 ...

8 For the most part, the types of resources and services that can be provided
9 to an Affiliate by FortisBC Energy are human resources (labour) and
10 associated equipment and facilities. The example in Appendix A
11 summarizes how fully allocated costs are determined for the different types
12 of services described below in Section 2.1. Fully allocated costs include
13 all the line items listed including overhead consisting of general overhead,
14 supervision, availability charge and facilities charge.

15 The only time the specific overhead percentage is used in the TPP is in an illustrative example
16 (Appendix A to the TPP “Illustrative Example of Determining Fully Allocated Cost for the Three
17 Types of Services”), the point of which is to make clear that overhead is a component of fully
18 allocated cost, not to establish a particular percentage. As such, updating the illustrative example
19 in the TPP to the current overhead rate flowing from the principle 1.iii has no practical impact and
20 the provisions of the TPP governing the determination of the transfer price are unchanged.

21 Since FEI has been applying the 15 percent rather than the 10 percent for a number of years in
22 order to adhere to the requirements in section 1.iii and section 2.i, this seemed a convenient time
23 to update the illustrative example. However, since the specific percentage in the illustrative
24 example has no substantive impact on how FEI determines fully allocated cost, FEI has no
25 objection to leaving the illustrative example unchanged if the BCUC prefers.

26

27

28

29 2.1.1 Please explain the change in circumstances since the effective date of
30 the current TPP to support the rationale for reflecting a higher general
31 overhead rate in Appendix A of the TPP at this time. If FEI relied on a
32 recent third-party assessment, please provide a summary of the findings.

33

34 **Response:**

35 As described in FEI’s response to BCUC IR1 2.1, changing the specified percentage in the
36 illustrative example does not, per se, have any substantive effect. The requirement is to charge
37 “fully allocated cost”, not to charge the percentage in the illustrative example. FEI elaborates on
38 how it determines “fully allocated cost” and overhead below.

1 As part of the annual review requirement specified in Section 5 of the TPP, FEI reviews the
 2 overhead factors annually to determine if changes to the factors are necessary to be consistent
 3 with charging fully allocated costs. In its review, FEI recognizes that the determination of
 4 overhead is a process involving indirect costs and allocations (versus timesheets for direct labour)
 5 and involves estimates. FEI reviews the overhead factors for significant changes or the presence
 6 of an observed persistent trend. For example, persistent higher estimated overhead factors
 7 calculated in consecutive years would suggest an update may be required to recover fully
 8 allocated costs.

9 In deciding to increase the general overhead rate to 15 percent from 10 percent as part of its
 10 annual review of the TPP in 2017, FEI noted that the estimated general overhead rate at that time
 11 was 13.7 percent (refer to Table 1 below for supporting calculations), higher than the 10 percent
 12 included in Appendix A, and represented a continuation of a trend of higher estimated general
 13 overhead rates in the preceding years of approximately 13 to 14 percent per year (i.e., from 2014
 14 to 2016). FEI also notes that this same higher rate has persisted in every year since 2017.

15 **Table 1: Calculation of General Overhead Rate for 2017**

| Detailed overhead rate calculation | 2017 | Description |
|--------------------------------------|--------------|---|
| Gross O&M | 274,172,171 | All Labour and Non-Labour Costs per SAP System |
| Capitalized Overheads | (32,900,660) | 12% of Gross O&M |
| Net O&M (after capitalized overhead) | 241,271,510 | |
| General Overhead pool | 32,992,404 | Cost centres 2038, 2043, 2071, 2103, 2117, 2118, 2153, 2172-2174, 2182, 2184, 2188, 2225, 2249, 2290, 2320, 2324, 2325, 2901 per SAP System less Costs Included in Facilities Charge above. |
| Estimated General Overhead rate | 13.7% | |

16
 17 With respect to third party assessment, the overheads and the process for determination was last
 18 independently reviewed by KPMG as part of the TGI 2010-2011 RRA and has not been subject
 19 to a third party assessment since that time. The study, entitled “Terasen Gas Inc. Transfer Pricing
 20 Methodology Review”, dated June 12, 2009, was included in the TGI 2010-2011 RRA filing
 21 (Appendix H-6). Therein, KPMG indicated that the overhead factors included in the current
 22 approved TPP were appropriate:

23 **Page 3:**

24 **Transfer Pricing Policy** – KMPG finds the Transfer Pricing Policy, used by TGI
 25 for services provided to NRBs, to be complete, and reflective of the guidelines set
 26 out in the Code of Conduct, with the following observations regarding the
 27 implementation of the policy:

28 **Page 4**

29 **Transfer Pricing Model** – KPMG assessed the reasonableness and
 30 completeness of the calculations in the transfer pricing model and tested them
 31 against the guidelines and the principles in the Code of Conduct and Transfer
 32 Pricing Policy. KPMG found the model calculations to be reasonable, complete,

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1 and in line with the Code of Conduct and Transfer Pricing Policy with the following
2 observations:”

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2.2 Please clarify the impacts, if any, to each of FEI shareholder and ratepayers in the
7 event that the requested update to the general overhead rate in Appendix A of the
8 TPP is not approved.

9

10 **Response:**

11 As discussed in the response to BCUC IR1 2.1, the 15 percent is an update to the illustrative
12 example provided. If the BCUC determines that the illustrative example should remain
13 unchanged showing 10 percent, then this will not change the amount that FEI has calculated to
14 be required to properly recover the full overhead costs from its Affiliates. FEI will continue to apply
15 the overhead rate necessary to ensure that FEI meets the TPP requirement to recover fully
16 allocated costs, which will be determined through the process described in response to BCUC
17 IR1 2.1.

18

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2.2.1 Please explain the benefits to updating Appendix A of the TPP given that
22 FEI has already been applying the higher general overhead rate of 15
23 percent since January 1, 2017.

24

25

Response:

26 While the change is not, strictly speaking, necessary (for the reasons described in the response
27 to BCUC IR1 2.1), FEI believes now is a convenient time to update the overhead rate given that
28 other changes are being made. However, since the specific percentage in the illustrative example
29 has no substantive impact on how FEI determines fully allocated cost, FEI has no objection to
30 leaving the illustrative example unchanged if the BCUC prefers.

31