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## **By Electronic Filing**

British Columbia Utilities Commission  
Suite 410, 900 Howe Street  
Vancouver, BC V6Z 2N3

**Attention: Patrick Wruck, Commission Secretary**

Dear Sirs/Mesdames:

**Re: FortisBC Energy Inc.  
Application for an Updated Code of Conduct and Transfer Pricing Policy**

We enclose for filing FortisBC Energy Inc.'s Final Submissions in the above-noted proceeding.

Yours truly,

**FASKEN MARTINEAU DuMOULIN LLP**

*[Original signed by]*

Matthew Ghikas  
Personal Law Corporation

MTG/lh  
Enclosure



**BRITISH COLUMBIA UTILITIES COMMISSION  
IN THE MATTER OF THE UTILITIES COMMISSION ACT  
RSBC 1996, CHAPTER 473**

**AND**

**FORTISBC ENERGY INC.  
APPLICATION FOR AN UPDATED CODE OF CONDUCT AND  
TRANSFER PRICING POLICY**

**Final Submissions of FortisBC Energy Inc.**

**May 31, 2022**

FASKEN MARTINEAU DuMOULIN LLP  
Matthew Ghikas and Nathan Surkan

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**A. INTRODUCTION**

1. The existing Code of Conduct (**COC**) and Transfer Pricing Policy (**TPP**) has been in place for a number of years. FortisBC Energy Inc. (**FEI**) is seeking only two changes in this Application, and only one of them has practical and substantive effect. Specifically, the changes sought are:

(a) A change to the provision of the COC governing sharing of aggregate or summary Customer Information with an Affiliated Utility (**AU**). This amendment is intended to facilitate sharing of aggregate or summary information for the mutual benefit of customers of both FEI and FortisBC Inc. (**FBC**) by removing the requirement to share certain information with third parties if provided to FBC.

(b) A non-substantive change to the overhead percentage used in an illustrative example of how fully allocated costs are determined. FEI updated this overhead percentage only to be more reflective of the real percentage used at present, but the operative provisions of the TPP remain unchanged.

2. The COC and TPP will continue to function as intended with the updated provisions.

**B. SHARING OF AGGREGATED INFORMATION WITH AN AFFILIATED UTILITY**

3. FEI proposes to add the following sentence to subsection (ii) of the Principles related to Customer Information in the COC:

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

**(a) The Proposal Promotes Beneficial Information Sharing Between FEI and FBC**

4. As proposed, the COC would be updated to permit the sharing of certain information between FEI and an AU. In practice, there is only one AU with end-use customers, FBC, and the sharing of Customer Information would only apply as between FEI and FBC.<sup>1</sup> To avoid any confusion related to the AUs that may receive Customer Information, FEI is amenable to revising the proposed language to substitute “FortisBC Inc.” for “the AU” in the proposed addition, such that it would read:<sup>2</sup>

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

5. In the common service territories served by both FBC and FEI, the sharing of aggregated Customer Information, as that term is defined in the COC, between the two utilities allows for FEI and FBC to best meet the total energy demands of a customer’s household or business. Overall, the intent is to share the Customer Information generally on a *quid pro quo* basis between FEI and FBC for the benefit of its customers. This helps the utilities understand customer end use and preferences and how to increase customer participation in offerings, including demand side management or other energy efficiency programs and services.<sup>3</sup> It permits the sharing of Customer Information “to further develop, enhance and provide integrated products and services offered” by FEI and FBC.<sup>4</sup>

**(b) The Proposed Treatment Is Consistent with How Commercial Information Is Addressed**

6. The rationale for the proposed treatment of Customer Information is consistent with the justification used for Commercial Information, which has been reviewed and approved by the BCUC in prior proceedings.<sup>5</sup> The sharing of Customer Information with an AU does not offer an

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<sup>1</sup> FEI Response to BCUC IR 1.1.

<sup>2</sup> FEI Response to BCUC IR 1.1.

<sup>3</sup> FEI Response to BCUC IR 1.4.

<sup>4</sup> FEI Response to BCUC IR 1.3.

<sup>5</sup> FEI Response to BCUC IR 1.4.

undue competitive advantage to the AU, as it might in the case of an ARB or ANRB Affiliate, because an AU is a regulated monopoly. The AU in question, FBC, is regulated by the BCUC and has its own BCUC-approved COC.

7. The BCUC has previously approved of the differential treatment for the sharing of Commercial Information with an AU compared to ARB and ANRB Affiliates. Where an entity operates in a competitive environment, such as an ARB or ANRB, the preclusion of the sharing of information is justified, as the value of the information is heightened. However, the same rationale does not apply for entities operating as regulated natural monopolies, such as FEI and FBC. FEI submits that the sharing of aggregated or summarized Customer Information is justified by the same reasoning.

8. The potential to having to disclose this aggregated Customer Information to parties other than FBC, an AU operating as a regulated natural monopoly, may impact the competitive markets and the market participants that may benefit from access to the aggregate Customer Information. Market participants in the competitive markets should not gain an advantage as a consequence of FEI and FBC sharing aggregate Customer Information in the development of regulated products and services such as joint demand side management programs.

**(c) COC Already Exempts Aggregated Information from Consent and Privacy Is Protected**

9. FEI was asked a number of questions about customer consent to the sharing of Customer Information. The only information at issue is aggregate or summarized Customer Information.<sup>6</sup> Under the current approved COC, customer consent is not required to share such aggregated or summarized data.<sup>7</sup> There are no proposed changes to the types of Customer Information that may be shared by FEI to FBC without consent.<sup>8</sup> The only change is that FEI will not be required to share the Customer Information that it shared with FBC with third parties, if requested.

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<sup>6</sup> FEI Response to BCUC IR 1.7.2.

<sup>7</sup> FEI Response to BCOAPO IR 1.2, 1.3.

<sup>8</sup> FEI Response to BCUC IR 1.7.2.

10. The sharing of individual Customer Information, which is not affected by the proposed amendment to the COC, remains subject to section 3(b) of the existing approved COC. Section 3(b) requires the sharing of information “in such a way that confidential or individual information would not be ascertained by third parties.” FEI has confirmed that it continues to prioritize and ensure compliance with applicable privacy legislation and FortisBC’s Privacy Policy.<sup>9</sup>

11. For joint energy efficiency programs, customers are required to accept the terms and conditions in order to participate in a given program. FEI will continue to obtain customer consent for the exchange of individual Customer Information between FEI and FBC through the terms and conditions of the specific programs, which are subject to the requirements of FortisBC’s Privacy Policy and the *Personal Information Protection Act* (PIPA). This includes protection of individual Customer Information, as required by PIPA, and the disclosure of aggregated or summarized Customer Information, which is currently permitted under the current approved COC.

### **C. NON-SUBSTANTIVE CHANGE TO THE ILLUSTRATIVE OVERHEAD RATE**

12. The change sought to the illustrative example of the overhead rate is not a substantive change to the method that applies for the calculation of overhead. The rule is that FEI will fully recover its costs. There is no change to this requirement, or to the method of calculation.

#### **(a) Updating the Illustrative Example of Fully Allocated Costs Is Non-Substantive**

13. The method of determining Fully Allocated Costs is set out in Section 2 (Determining Costs). This remains unchanged, as the operative provision for calculation of cost recovery is in the body of the TPP, which establishes a pricing rule and methodology. Fully Allocated Cost is defined in the TPP as “the sum of the direct costs and overhead costs required to provide the product or service.”

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<sup>9</sup> FEI Response to BCUC IR 1.6; FEI Response to CEC IR 4.3.

14. FEI was asked why it didn't make the change sooner if the actual overhead has been determined to be different. FEI submits that this line of questions is based on a misinterpretation of the existing TPP, which sets the principle and methodology but leaves the determination of inputs to FEI to calculate. The change is, in reality, unnecessary but FEI viewed it as convenient to use more reflective data in the sample calculation. Since FEI has been applying the 15 percent rather than the 10 percent for a number of years in order to adhere to the requirements in sections 1.iii and 2.i, this seemed a convenient time to update the illustrative example.

15. The general overhead rate is not set by the example in Appendix A, but is a function of the appropriate cost inputs, such as the actual labour costs, and assumptions. The fully allocated costs are not required, nor are likely, to be identical to the illustrative example set out in Appendix A, as the inputs may vary. Rather, it is the method of cost calculation, as exemplified in Appendix A, that FEI follows in calculating its fully allocated costs.<sup>10</sup>

16. If the BCUC determines that the illustrative example set out in Appendix A should remain unchanged (showing 10 percent) it will not change the amount that FEI has calculated to be required to properly recover the full overhead costs from its Affiliates.<sup>11</sup>

**(b) FEI's Actions Demonstrate its Adherence to the Letter and Spirit of the TPP**

17. FEI reviews its overhead annually as specified in section 5 of the TPP. These reviews are conducted, in part, to determine whether the overhead factors should be changed to be consistent with charging fully allocated costs. This ensures that FEI is fully recovering its costs, as required by the TPP.<sup>12</sup>

18. If FEI's annual review of the rates determines that an increase in a specific input, or the overhead factors, is warranted, this change is made and costs are fully recovered. The overhead

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<sup>10</sup> FEI Response to CEC IR 3.1, BCUC IR 2.1.

<sup>11</sup> FEI Response to BCUC IR 2.2.

<sup>12</sup> FEI Response to BCUC IR 2.1.1.



factors that are applied may be altered if FEI's annual review finds a significant change or higher than estimated overhead factors in consecutive years.<sup>13</sup>

19. An overhead rate of 15 percent, which FEI has been applying, is better for FEI customers (all else equal) relative to the 10 percent figure in the illustrative calculation.<sup>14</sup>

**D. OTHER ISSUES RAISED: LIST OF AFFILIATES AND RESPONSIBLE PERSONNEL**

20. FEI was asked about two other aspects of the COC, neither of which was specifically related to FEI's proposals.

21. First, FEI was asked about changes to the Affiliates of FEI, or the classification of the Affiliates currently identified as an Affiliate in the Definitions of the COC.

22. FEI indicated that it had no objection to a simple change to the definition of Affiliate in the COC, as outlined below, to avoid uncertainty that the COC applies to any Affiliate, regardless of whether it is listed as such in the COC. As FEI files an Affiliated Transactions Report with the BCUC as part of its Annual Report each year, FEI provides the BCUC with the necessary information to update the status of any affiliates through its regular reporting.<sup>15</sup> The simple change would read:

**Affiliate:** Includes an Affiliated Natural Monopoly Unit, an Affiliated Regulated Business Operating in a Non-Natural Monopoly Environment, and an Affiliated Non-Regulated Business, and includes ~~refers to~~ the entities listed in Appendix A to the Code of Conduct.

23. Second, FEI was asked about whether the list of responsible personnel is current. There have been no changes to the responsible personnel positions, such that an update is not

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<sup>13</sup> FEI Response to BCUC IR 2.1.1.

<sup>14</sup> FEI Response to CEC IR 1.5.

<sup>15</sup> FEI Response to BCUC IR 1.2.1.

essential. However, as there have been changes to the titles of the positions as a result of organizational changes, FEI is amenable to updating the list if the BCUC feels it is appropriate to direct the change.

**E. CONCLUSION AND ORDER SOUGHT**

24. FEI submits that the proposed changes are just and reasonable, and consistent with the existing overall framework. The BCUC should approve the order sought in the form set out in Appendix E to the Application, and if desired address the minor amendments set out in paragraphs 4 and 22 above.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated: May 31, 2022 *[original signed by Matthew Ghikas]*  
Matthew Ghikas Counsel for FEI

Dated: May 31, 2022 *[original signed by Nathan Surkan]*  
Nathan Surkan Counsel for FEI