



ORDER NUMBER
G-237-22

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

BEFORE:

A. K. Fung, QC, Panel Chair
A. Pape-Salmon, Commissioner

On August 18, 2022

ORDER

WHEREAS:

- A. On March 3, 2022, FortisBC Energy Inc. (FEI) filed with the British Columbia Utilities Commission (BCUC), pursuant to sections 58 to 61 of the *Utilities Commission Act*, an application for approval of an updated Code of Conduct (COC) and Transfer Pricing Policy (TPP), effective April 1, 2022 (Application);
- B. By letter dated March 11, 2022, FEI revised its request relating to the effective date of the updated COC and TPP from April 1, 2022 to the first day of the month following a BCUC decision on the Application;
- C. By Order G-25-17 dated March 1, 2017, the BCUC approved FEI's current COC and TPP;
- D. By Orders G-77-22 and G-108-22, the BCUC established a regulatory timetable for the review of the Application which included FEI providing public notice, letters of comment from stakeholders, one round of information requests (IRs) to FEI, and written final and reply arguments; and
- E. The BCUC has reviewed the Application, evidence and arguments filed in the proceeding and makes the following determinations.

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 BCUC orders as follows:

- 1. FEI's updated COC and TPP as set out in Appendix C of the Application, are approved subject to the following changes:
 - (i) FEI is directed to update the wording of the proposed amendments in the COC relating to the exchange of Customer Information to specify FortisBC Inc. in place of the reference to an affiliated natural monopoly utility (AU);

- (ii) FEI is directed to change the effective date of the revised COC and TPP, including any internal cross references to that new effective date, to the first day of the month following the acceptance of the compliance filing as set out in Directive 2; and
 - (iii) FEI is directed to update the personnel listing in Appendix A of the COC to reflect the current titles of the responsible FEI personnel.
2. FEI is directed to file, within 15 days of the date of this order, as a compliance filing, the revised COC and TPP reflecting the directives in this order and the attached reasons for decision.
 3. FEI is directed to update the Affiliate list in Appendix A of the COC upon the establishment of a new affiliated entity to which the COC and TPP apply and to file a copy of the updated Affiliate list with the BCUC.

DATED at the City of Vancouver, in the Province of British Columbia, this 18th day of August 2022.

BY ORDER

Original signed by:

A. K. Fung, QC
Commissioner

Attachment

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

REASONS FOR DECISION

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Executive Summary

On March 3, 2022, FortisBC Energy Inc. (FEI) filed with the British Columbia Utilities Commission (BCUC), an application for approval of an updated Code of Conduct (COC) and Transfer Pricing Policy (TPP) (Application).

The Panel approves the following amendments to FEI's COC and TPP as applied for by FEI:

1. A change to the provision of FEI's current COC governing the exchange of aggregate or summary Customer Information with FortisBC Inc. (FBC). The Panel finds the exchange of Customer Information between FEI and FBC is in the interest of both sets of ratepayers and warrants approval.
2. A change to the overhead percentage (from 10 percent to 15 percent) used in Appendix A to the TPP as an illustrative example of how fully allocated costs and cost ratios per day are determined for two types of on-site services and one type of off-site service. While the Panel accepts that the example is intended to be illustrative, the Panel finds that to the extent possible, it should be more reflective of FEI's actual General Overhead Rate used in determining the transfer price of these services.
3. The effective date of the revised COC and TPP will be the first day of the month following the acceptance of FEI's compliance filing reflecting the directives in this decision.

In addition to the changes as applied for by FEI, the Panel directs FEI to do the following:

1. Change the personnel listing in Appendix A of the COC to reflect the current titles of the responsible FEI personnel.
2. Update the Affiliate list in Appendix A of the COC upon the establishment of a new affiliated entity to which the COC and TPP apply and to file a copy of the updated Affiliate list with the BCUC.

The Panel finds that these additional updates to the current COC and TPP, which will render them more specific and more accurate reflections of current conditions, are beneficial and informative, and serve to better protect customers' interests.

1.0 Introduction

On March 3, 2022, FortisBC Energy Inc. (FEI) filed with the British Columbia Utilities Commission (BCUC), an application for approval of an updated Code of Conduct (COC) and Transfer Pricing Policy (TPP), effective April 1, 2022 (Application). FEI subsequently revised its request relating to the effective date of the updated COC and TPP from April 1, 2022 to the first day of the month following the issuance of the BCUC's decision on the Application.¹

By Order G-25-17 dated March 1, 2017, the BCUC approved FEI's current COC and TPP. FEI's current COC governs the relationship and interactions between FEI and its affiliates, including its affiliated natural monopoly utilities (AUs), affiliated non-regulated businesses (ANRBs), and affiliated regulated businesses operating in a non-natural monopoly environment (ARBs) (collectively, Affiliates). The COC provides that, where applicable, it is intended to be consistent with the principles outlined in the BCUC's Retail Markets Downstream of the Utility Meter Guidelines of April 1997, and the BCUC's Report on the Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives published on December 27, 2012 (collectively, the Guidelines).² The Guidelines state, among other things, that to the extent that information is shared by an AU with an ANRB, it must also be shared with any interested non-related business.³ The COC defines its scope in the following manner:

This Code will govern the use of FortisBC Energy resources and services provided to Affiliates including shared services, employment or contracting of FortisBC Energy personnel, and the treatment of Customer Information and Commercial Information.

FEI's TPP, which is intended to be used in conjunction with the COC, addresses the pricing of resources and services provided by FEI to its Affiliates.⁴

FEI states that the proposed updates to the provisions of the COC and TPP followed its review of the current COC within the maximum five years between reviews for changes to the COC that may be required, as contemplated in section 10 of the COC.⁵ FEI outlines that it also reviewed the current TPP as the COC and TPP work together in providing guidance for interactions between FEI and its Affiliates.⁶

As already noted, FEI's current COC and TPP took effect on March 1, 2017, following an open and transparent public hearing process by the BCUC.⁷ The changes proposed by FEI to the current COC and TPP are a result of its review of the COC and TPP after five years of operation, during which FEI noted no issues nor received any complaints with respect to their operation.⁸

¹ Exhibit B-1, p. 1; Exhibit B-2.

² Exhibit B-1, Appendix A (Current COC Effective March 1, 2017), p. 1.

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), p. 21.

⁴ Exhibit B-1, Appendix A (Current TPP Effective March 1, 2017), p. 1.

⁵ Section 10 of the COC states: "In order to ensure that this Code remains workable and effective, [FEI] will review the provisions of this [COC] on an ongoing basis and as required by the [BCUC], but with a maximum of five years between reviews. Amendments to this [COC] may be made from time to time as approved by the [BCUC], and may result from a normal periodic review, from a request to the [BCUC] by [FEI], an Affiliate, a Customer or other stakeholder, or a review initiative by the [BCUC]." (Exhibit B-1, p. 1).

⁶ Ibid., pp. 1–2.

⁷ FEI All-Inclusive Code of Conduct and Transfer Pricing Policy Application, Order G-25-17 dated March 1, 2017.

⁸ Exhibit B-1, p. 3.

1.1 Approvals Sought

FEI seeks the following approvals pursuant to sections 58 to 61 of the *Utilities Commission Act* (UCA):⁹

1. A change to the provision of FEI's current COC governing the exchange of aggregate or summary Customer Information with an AU, as discussed in Section 2.1 of this decision;
2. A change to the overhead percentage used in an illustrative example of how fully allocated costs and cost ratios per day are determined within FEI's current TPP, as discussed in Section 2.2 of this decision; and
3. A change to the effective date of the updated COC and the TPP, as discussed in Section 3.0 of this decision.

1.2 Application Review Process

On March 15, 2022, the BCUC established a regulatory timetable for the review of the Application which provided an opportunity for stakeholders to submit comments on the Application.¹⁰ The BCUC received one letter of comment suggesting that interested parties should have the opportunity to pose one information requests to FEI to better understand the proposed changes.¹¹ Beyond that one letter of comment, the BCUC did not receive any other submissions on further process to examine FEI's proposals.

On April 25, 2022, BCUC amended the regulatory timetable¹² to include intervenor registration, BCUC and intervenor IRs to FEI, followed by written and reply arguments. The BCUC specified that the purpose of this proceeding is to review FEI's requests as outlined in Section 1.1 above.¹³

Three registered intervenors participated in the proceeding:

- The Commercial Energy Consumers Association of British Columbia (the CEC);
- British Columbia Old Age Pensioners' Organization et al. (BCOAPO); and
- BC Sustainable Energy Association (BCSEA).

BCSEA did not submit any IRs to FEI, but filed a final argument. There were no interested parties and the BCUC did not receive any further letters of comment.

2.0 Review of FEI's Proposed Changes to the COC and the TPP

In this decision, the Panel addresses FEI's proposed changes to the COC and the TPP, reviews the evidence, discusses the issues arising and makes its determinations. As noted above, the BCUC determined at the outset of the proceeding that the scope of the proceeding is limited to a review of FEI's request as outlined in Section 1.1 above, rather than opening the review to the entire COC and TPP. The Panel notes that the current COC and TPP were approved effective March 1, 2017 following a comprehensive public review process. The COC contemplated that FEI would conduct a review of the COC on a regular basis, and at a minimum every five years, to assess if any changes are needed. However, none of the parties to this proceeding have asked to revisit the

⁹ FEI Final Argument, p. 1; Exhibit B-1, pp. 1, 3.

¹⁰ Order G-77-22.

¹¹ Exhibit E-1.

¹² Order G-108-22.

¹³ Exhibit A-4, p. 1.

COC and TPP in their entirety. Accordingly, the BCUC determined that the limited scope of this proceeding to review the specific changes requested by FEI is sufficient. However, in the course of the IR process, it became evident to the parties and to the BCUC that further changes to the COC and the TPP may be warranted, which are discussed in Section 4.0 below.

2.1 Exchange of Customer Information between FEI and an AU

Section 3 of FEI's COC addresses the management and disclosure of customer and commercial information (Customer Information and Commercial Information, respectively) by FEI.¹⁴ 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. 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.¹⁵

With respect to Customer Information, subsection (ii) of the COC Principles states on page 4 of the COC:

Aggregated Customer Information or individual Customer Information that is made available to an Affiliate should be made available to all parties, including competitors, on an equal basis, upon request, provided necessary consent is obtained. Individual Customer Information must be treated as required by the Personal Information Protection Act (PIPA), and should only be released with written consent of the Customer. The control of Customer information should not provide an inappropriate competitive advantage to an Affiliate.¹⁶

With respect to Commercial Information, section 3(d) in the current COC states, "FortisBC Energy will not provide Commercial Information to an Affiliate except in the case of an AU."¹⁷

In the Application, FEI proposes to add an additional sentence to the end of subsection (ii) of the COC Principles and to add a new subsection (e) to section 3 of the COC, as follows:¹⁸

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.

FEI clarifies that, in practice, the proposed language above only applies to the exchange of Customer Information between FEI and FBC because the only other AU of FEI, FortisBC Huntingdon Inc., has no end-user customers and presumably has no need to access FEI's Customer Information.¹⁹

FEI submits that the new proposed language recognizes that the sharing of aggregated or summarized Customer Information between FEI and an AU, subject to compliance with applicable privacy legislation, can help with optimizing the development and delivery of new integrated products and services in common service territories

¹⁴ FEI All-Inclusive Code of Conduct and Transfer Pricing Policy Application Order G-25-17 dated March 31, 2017, Appendix A, p. 18.

¹⁵ Exhibit B-1, Appendix A (Current COC Effective March 1, 2017), p. 2.

¹⁶ Ibid., p. 4.

¹⁷ Ibid., p. 6.

¹⁸ FEI Final Argument, p. 1.

¹⁹ Exhibit B-1, Appendix B, p. 2; Exhibit B-4, BCUC IR 1.1.

served by FEI and the AU, such as demand side management (DSM) or other energy efficiency programs and services.²⁰ For example, FEI outlines that, by sharing Customer Information, both utilities will better understand customers' preferences for energy products and services and be in a better position to design products and services that best meet the total energy needs in a customer's household or business. FEI also believes that combining marketing and delivery activities of FEI and the AU may result in synergies, such as higher customer participation in offerings and cost efficiencies in administration.²¹

FEI argues that this new request regarding the exchange of Customer Information is consistent with the justification with respect to the exchange of Commercial Information with an AU, which is currently permitted in section 3(d) of the current COC, and previously approved by the BCUC.²² That provision, as quoted above, allows FEI to provide Commercial Information to an AU.

In the proceeding which approved the current COC,²³ FEI had outlined that the exchange of Commercial Information between FEI and an AU should be treated differently than the exchange of information between FEI and an ARB or ANRB, considering that competition is more prevalent for an ARB or ANRB than is the case with an AU which is a monopoly. In the former case, the value of the Commercial Information is greater than in the situation with an AU. For similar reasons, FEI submits that there should be consistency in treatment of the proposed permitted exchange of Customer Information as well as the exchange of Commercial Information between FEI and an AU.²⁴

As FBC is regulated by the BCUC and also has its own BCUC-approved COC, FEI further submits that the sharing of Customer Information between FEI and FBC does not result in a greater risk to the information.²⁵ FEI states that it would be amenable to revising the proposed language to substitute "FortisBC Inc." for "the AU" in order to avoid any confusion as well as to confirm that the proposed exchange of Customer Information does not extend beyond the two gas and electric utilities.²⁶

FEI notes, under the current COC, that no customer consent is required to share aggregated or summarized data, as outlined in section 3(b) of the current COC:

FortisBC Energy may disclose to a party that requests Customer Information that is aggregated or summarized in such a way that confidential or individual information would not be ascertained by third parties. A written consent will not be required for the release of aggregated or summarized Customer Information.

For Individual Customer Information, FEI explains that consent is obtained through the terms and conditions of the joint energy efficiency programs, which must be accepted by the customer in order to participate in such programs, and disclosure of that information is subject to the requirements of PIPA. FEI submits that these policies are consistent with the FortisBC's Privacy Policy, which states the following:

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

²⁰ Exhibit B-1, Appendix B, p. 1; Exhibit B-4, BCUC IR 1.4.

²¹ Exhibit B-4, BCUC IR 1.4.

²² Ibid., BCUC IR 1.8.

²³ FEI All-Inclusive COC and TPP proceeding.

²⁴ Exhibit B-4, BCUC IR 1.5.

²⁵ Ibid.

²⁶ FEI Final Argument, p. 2.

3.1 Types of consent

We may seek consent in various ways, depending on the circumstances and the type of information collected, including, for example, using an application form and/or a check-off box, or collecting oral consent - in particular, when information is collected over the telephone. Consent may also be implied where we have provided you with notice of our intended collection, use and or disclosure of Personal Information, or as otherwise provided by Privacy Legislation.²⁷

Positions of the Parties

BCSEA and the CEC support FEI's proposal with respect to the sharing of Customer Information, with the additional wording change as contemplated by FEI.²⁸

BCOAPO does not comment specifically on this proposal. but submits that FEI's approach to sharing information with an AU is not aligned with "2022 best practice." BCOAPO recommends that the COC should be modified to seek "specific and express customer acceptance or acknowledgement," even as it relates to aggregated or summarized Customer Information, stating that there is a proliferation of practices and programs which can be used to de-anonymize customer information from anonymized datasets.²⁹

In reply to the BCOAPO, FEI submits that there is no reasonable basis, rooted in evidence, upon which the BCUC could conclude that FEI's current COC departs from best practice. FEI reiterates also that its proposed language does not modify any of its current customer consent requirements.³⁰

Panel Determination

The Panel is persuaded that FEI's proposed amendments relating to the exchange of Customer Information between FEI and FBC are in the interest of both sets of ratepayers and warrant approval. Both of the affected utilities (FEI and FBC) are BCUC regulated utilities. FEI's customers could benefit from the efficiency gains of sharing customer information with its electric utility affiliate and vice versa. FEI cites specific benefits for its DSM program, namely, understanding customers' preferences for energy products and services, program design that meets the total customer energy needs, synergies in program delivery and marketing that could lead to higher customer participation and cost efficiencies in administration.³¹ Within the narrow context of the proposed exchange of Customer Information between FEI and an AU, namely, "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,"³² the Panel finds that this does not confer an inappropriate advantage to the AU vis-a-vis third parties.

During the IR process, FEI acknowledged that the proposed COC amendment pertaining to the exchange of Customer Information could be modified to specify FBC, rather than the generic category of AU, given FBC is the only affiliated natural monopoly utility that has customers in FEI's shared service territories. The Panel finds this further amendment to be reasonable as providing clarity on the intended scope of the permitted exchange of

²⁷ Exhibit B-4, BCUC IR 1.7.2; Exhibit B-6, BCOAPO IR 1.5; Exhibit B-5, CEC IR 4.3.

²⁸ BCSEA Final Argument, p. 2; CEC Final Argument, p. 4.

²⁹ BCOAPO Final Argument, pp. 3–4.

³⁰ FEI Reply Argument, p. 1.

³¹ Exhibit B-4, BCUC IR 1.4.

³² FEI Final Argument, p. 1.

Customer Information as between the two utilities only. **The Panel directs FEI to make this change to the proposed amendment in the COC to specify “FortisBC Inc.” in place of the generic reference to an AU.**

On the issue of privacy of information and the consent for sharing aggregated or summarized data based on personal information, the Panel finds that FEI’s current practice for obtaining consent through general acceptance by customers of the terms and conditions of programs to be reasonable. The Panel rejects BCOAPO’s submission that specific and express customer acceptance, is a required element in the context of jointly administered energy efficiency programs. Participation in such programs is entirely voluntary and benefits customers, and the Panel agrees with FEI’s submission that general acceptance of the terms and conditions of these programs by customers is sufficient for them to participate in such programs. The Panel views that requiring specific and express customer acceptance of the exchange of Customer Information between FEI and FBC would be administratively cumbersome and add costs to these programs to the detriment of both FEI’s and FBC’s customers. Furthermore, customers who object to such exchange of their Customer Information may avail themselves of the BCUC’s complaint process should they wish to do so.

2.2 Update to the General Overhead Rate

Appendix A of the TPP provides an illustrative example of how the pricing provisions for sharing of resources between FEI and its Affiliates is applied pursuant to the TPP. FEI’s proposal is to update Appendix A of the TPP, reflecting a General Overhead Rate of 15 percent for the following types of services, along with the associated illustrative fully allocated costs per day and cost ratios per day:

- Specific Committed – On-Site Full time;
- As Required – On-Site Short Term; and
- As Required – Off-Site Short term.³³

The General Overhead rate shown in Appendix A of the current TPP for those three types of services is 10 percent.³⁴ FEI states that the updated overhead rate of 15 percent does not change the operative provisions of the TPP but is meant to be more reflective of the real percentage used at present.³⁵ FEI explains that section 2 of the current TPP sets out the determination of Fully Allocated Costs for specific types of services, with Appendix A to the TPP merely providing a table as an illustrative example using the method set out in section 2.³⁶ Since the TPP establishes a pricing rule and methodology rather than dictating a specific overhead rate percentage at any point in time, FEI understands that the overhead rate used must, at the time that resource sharing occurs, be sufficient to meet the requirements in the TPP. In other words, the only time the specific overhead percentage is used in the TPP is in the illustrative example in Appendix A and that percentage is merely illustrative rather than determinative of the actual General Overhead Rate.³⁷

Starting January 1, 2017, FEI states that it has been applying a higher General Overhead Rate of 15 percent instead of 10 percent for the types of service noted above because the 15 percent appropriately reflects FEI’s general overall costs applicable to each situation.³⁸ FEI’s calculation of the actual General Overhead Rate for 2017 is reproduced in Table 1 below:

³³ Exhibit B-1, pp. 1, 2.

³⁴ Ibid., p. 1.

³⁵ FEI Final Argument, p. 1.

³⁶ Exhibit B-1, p. 2; FEI Final Argument, p. 4.

³⁷ Exhibit B-4, BCUC IR 2.1.

³⁸ Exhibit B-1, Appendix B, p. 5.

Table 1: Calculation of General Overhead Rate for 2017³⁹

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%	

Based on the calculation above, FEI explained that it increased the General Overhead Rate to 15 percent from 10 percent as part of its annual review of the TPP in 2017 as it represented a continuation of a trend of higher estimated general overheads in the preceding years of approximately 13 to 14 percent per year (i.e. from 2014 to 2016). FEI notes that this higher rate has persisted in every year since 2017 when the TPP was first approved.⁴⁰

In FEI's view, the requested approval has no practical impact and is, in reality, unnecessary. FEI only sought approval to update the General Overhead Rate shown in Appendix A of the TPP because this seemed a convenient time to update that information in Appendix A by using more reflective data given that other changes are being made to the COC and TPP at the same time. FEI states, however, that it has no objection to leaving the illustrative example unchanged in Appendix A if the BCUC prefers.⁴¹

Positions of the Parties

BCSEA and the CEC support FEI's proposed change to Appendix A of the TPP, with the CEC stating that the illustrative example should set the correct percentage to the greatest extent possible.⁴² The CEC further recommends that the BCUC direct FEI to notify the BCUC and update the illustrative example in the TPP, if and when FEI makes a change to its overhead rate.⁴³

BCOAPO disagrees with FEI's characterization that the overhead rate in Appendix A to the TPP is an illustrative example, stating that it should not be left to FEI to change and then charge the overhead rates "at levels set at its own sole discretion."⁴⁴ In BCOAPO's view, failing to ensure that the overhead rates charges have been reviewed by the BCUC would reasonably create a public perception that they are arbitrary and, perhaps, unfair or inequitable.⁴⁵ BCOAPO notes, for example, that the overhead rate in Appendix A for two other services provided off-site is 5 percent rather than the 15 percent specified for on-site services. As any employee providing service off-site would still likely have an office or workplace or other overhead costs associated with their employment with FEI that should be included in the cost charged for that employee's work, BCOAPO

³⁹ Exhibit B-4, BCUC IR 2.1.1.

⁴⁰ Ibid.

⁴¹ Ibid., BCUC IR 2.1, 2.2.1; FEI Final Argument, p. 5.

⁴² BCSEA Final Argument, p. 2; CEC Final Argument, p. 6.

⁴³ CEC Final Argument, p. 6.

⁴⁴ BCOAPO Final Argument, p. 8.

⁴⁵ Ibid.

submits that the differential between the off-site and on-site overhead rate does not “hold up.” BCOAPO recommends that the BCUC address this point specifically in this decision.⁴⁶ Finally, BCOAPO submits that the evidence shows the calculation of the 15 percent overhead rate is based on 2017 data. BCOAPO recommends that the BCUC direct FEI to update the calculation to rely on 2021 data.⁴⁷

In reply, FEI submits that the CEC’s proposal is unnecessary and inefficient and that BCOAPO has mischaracterized how the TPP works or otherwise erred, for a number of reasons including the following:⁴⁸

1. The specific percentage shown in Appendix A has no substantive impact on how FEI determines fully allocated costs given that the method to be applied for determining the fully allocated cost of a specific committed service is outlined in section 2 of the TPP;
2. The General Overhead Rate is only one of various inputs that it reviews during FEI’s annual audit. Therefore, it is illogical to single out specific reporting on one of those inputs.
3. FEI’s approach of updating the inputs as a housekeeping amendment in conjunction with other substantive proposals is consistent with the recommendations of the 2014 Independent Review of the BCUC Report, which recommended that the BCUC make efforts to eliminate reporting requirements that are not necessary or useful.
4. BCOAPO is effectively asking the BCUC to perform an audit function to confirm FEI’s math and accounting; and
5. FEI’s calculations show that the higher estimated General Overhead Rate has persisted every year since 2017, and not that it is based only on 2017 data.

With respect to the lower General Overhead Rate for the two other off-site services, FEI submits that the lower rate is merely a high-level estimation. FEI has no basis to conclude that a change to the 5 percent is required for those off-site services. Notwithstanding, FEI submits that it is “not adverse” to changing the overhead rate for those off-site services to 7.5 percent in Appendix A in order to maintain the illustrative example at the current rate of one half of the overhead rate for other on-site employee services. FEI states, however, that changing the illustrative example will not change the actual General Overhead Rate percentage that is applied by FEI due to the employee working off-site.⁴⁹

Panel Determination

The Panel approves FEI’s proposed update to the illustrative example of General Overhead Rate from 10 percent to 15 percent in Appendix A to the TPP for the following types of services:

- **Specific Committed – On-Site Full time;**
- **As Required – On-Site Short Term; and**
- **As Required – Off-Site Short term.**

The Panel finds the evidence supporting this revision to be persuasive. Furthermore, while the Panel accepts that Appendix A is intended merely to be an illustrative example of the methodology specified for determining the fully allocated cost and cost ratio per day for specific committed services as prescribed in section 2 of the TPP, the illustrative example should nonetheless accurately represent FEI’s actual transfer pricing and General Overhead Rate. In any event, the illustrative example should not be misleading. Finally, while Appendix A is only

⁴⁶ Ibid.

⁴⁷ BCOAPO Final Argument, p. 9.

⁴⁸ FEI Reply Argument, pp. 2–3.

⁴⁹ Ibid., p. 4.

illustrative, it nonetheless serves to inform customers and Affiliates of the particulars of the transfer pricing methodology and inputs. Thus, the illustrative example in Appendix A would benefit from reflecting, to the extent possible, current information relating to the actual General Overhead Rate used by FEI to determine the transfer price of the services.

The Panel rejects the BCOAPO submission for explicit BCUC oversight of actual overhead charged, as that is outside of the scope of this proceeding and would be better suited to a comprehensive review of the TPP with the further input of those who participated in the proceeding which approved the current COC and TPP. As for the BCOAPO submission for a change to the overhead percentage for two other off-site services, BCOAPO has not provided any evidence in this proceeding in support of any specific change to the overhead percentage for those off-site services beyond its observation in final argument that the percentage should be higher than five percent. Accordingly, the Panel declines to direct FEI to make any specific change to the overhead percentage for those off-site services in Appendix A.

3.0 Overall Determination on Approvals Sought

For the reasons set out above, the Panel approves FEI's updated COC and TPP as set out in Appendix C of the Application, subject to the following changes:

- (a) FEI is directed to update the wording of the proposed amendments in the COC relating to the exchange of Customer Information to specify FortisBC Inc. in place of the reference to an AU;
- (b) FEI is directed to change the effective date of the revised COC and TPP, including any internal cross references to that new effective date, to the first day of the month following the acceptance of the compliance filing as directed below; and
- (c) FEI is directed to make further changes to the COC as discussed in Sections 4.1 and 4.2 below.

FEI is directed to file, within 15 days of the date of this order, as a compliance filing, the revised COC and TPP, reflecting the directives in these reasons for decision.

4.0 Other Issues Arising

FEI raised two other potential updates to the current COC in the course of this proceeding. The Panel reviews these additional changes in the sections below.

4.1 List of Affiliates

The definition of an Affiliate, for the purposes of the COC, is outlined on page 2 of the Code.⁵⁰ When asked in the IR process whether changes to the list of defined Affiliates of FEI (including their classification) would require the BCUC's approval, FEI confirmed that this would be the case.⁵¹

FEI stated, however, that after considering this question, it has since identified "a simple change" to the definition of an Affiliate that would avoid having to update the Affiliate list each time a new affiliated entity is established. FEI outlined that the change would avoid uncertainty as to whether the COC applies to each new

⁵⁰ Exhibit B-1, Appendix A, p. 2.

⁵¹ Exhibit B-4, BCUC IR 1.2.1.

Affiliate, regardless of whether it is listed as such in the COC. FEI proposes the following change to the COC which is redlined as follows:⁵²

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.

FEI stated that it provides an “Affiliated Transactions Report,” which includes a list of the affiliated entities, a list of service agreements, and the nature and amount of any transactions in the year, as part its annual reporting to the BCUC. In FEI’s view, this report provides the necessary information so that the BCUC can be updated on any applicable changes to FEI’s Affiliates from time to time.⁵³

Intervenors did not comment on this issue.

Panel Determination

The Panel is not persuaded by the FEI submission to avoid having to update the Affiliate list in Appendix A of the COC each time a new affiliated entity is established. **The Panel rejects FEI’s proposed additional amendment and directs FEI to retain the original definition of “Affiliate” in the current COC.** The BCUC is unable to predict the number and types of entities which may become affiliated with FEI in the future, nor is it able to determine in advance which, if any, of these entities should be subject to the COC and what the resulting impacts may be on FEI customers. It is in the interest of ratepayers and the BCUC as the responsible regulator to know the specific entities to which FEI’s COC and TPP purport to apply at any point in time in order to determine whether FEI is complying with its provisions. **Accordingly, the Panel directs FEI to update the Affiliate list in Appendix A of the COC upon the establishment of a new affiliated entity to which the COC and TPP apply and to file a copy of the updated Affiliate list with the BCUC.** The Panel is not satisfied that the Affiliated Transactions Report filed as part of FEI’s Annual Report to the BCUC provides sufficient public transparency with respect to transactions between FEI and its various Affiliates as that report is only filed with the BCUC and is not readily available to third parties.

4.2 List of Responsible Personnel

In addition to the list of entities that are Affiliates of FEI, Appendix A of the current COC also provides a list of the FEI personnel responsible for natural gas portfolio planning and mitigation activities and related contract negotiations not to be shared with Aitken Creek Gas Storage ULC and FortisBC Midstream Inc. When asked during the IR process whether the list of responsible personnel in the COC is current, FEI explained that there have been no changes to the responsible personnel positions listed; however, there have been changes to the titles of the positions as a result of internal organizational changes.⁵⁴

FEI stated that it is amenable to updating the list of positions, if the BCUC feels it is appropriate.⁵⁵ FEI provides the following table showing a comparison of the positions listed in the COC to the current title of the positions:⁵⁶

⁵² Ibid.; FEI Final Argument, p. 6.

⁵³ Exhibit B-4, BCUC IR 1.2.1.

⁵⁴ Exhibit B-5, CEC IR 7.1; FEI Final Argument, pp. 6–7.

⁵⁵ FEI Final Argument, pp. 6–7.

⁵⁶ Exhibit B-5, CEC IR 7.1.

Table 2: Personnel Listing in Appendix A Compared to Current Titles

Personnel Listing in Appendix A	Current
Director, Energy Supply and Gas Control	Director, Energy Supply
Midstream Services Manager	Transportation Services Manager
Midstream Operations Manager	Commercial and Ops Manager
Energy Supply Planning Coordinator	Commercial & Planning Lead Energy Supply
Senior Manager, Price Risk and Resource Planning	Price Risk and Market Specialist

Intervenors did not comment on this issue.

Panel Determination

The Panel finds that amendments to the personnel listing in Appendix A of the COC to update the current titles of the positions to be reasonable. In a vein similar to its other findings in this decision, the Panel considers that updates to the current COC to render them more specific and more accurate reflections of current conditions are beneficial and informative, and serve to better protect customers' interests. **The Panel directs FEI to incorporate the necessary changes to the personnel listing in Appendix A of the COC to reflect the current titles of the responsible FEI personnel.**