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**ELECTRONIC FILING**

British Columbia Utilities Commission
6th floor, 900 Howe Street
Vancouver, BC V6Z 2N3

**Attention: Erica Hamilton**
**Commission Secretary**

Dear Sirs/Mesdames:

**Re: FortisBC Energy Inc. and Fortis Energy (Vancouver Island) Inc.**
**(the "FortisBC Energy Utilities")**
**Energy Efficiency and Conservation Program Natural Gas Vehicles Incentive**

We enclose for filing in the above proceeding the electronic version of the Final Submissions on behalf of FortisBC Energy Utilities.

Twenty hard copies of the Final Submissions will follow by courier.

Yours truly,

**FASKEN MARTINEAU DuMOULIN LLP**

*[original signed by Matthew Ghikas]*

Matthew Ghikas

MTG/fxm
Enc

**BRITISH COLUMBIA UTILITIES COMMISSION**

**IN THE MATTER OF the *Utilities Commission Act,***
**R.S.B.C. 1996, Chapter 473 (the "*Act*")**

**and**
**FortisBC Energy Inc. and**
**FortisBC Energy (Vancouver Island) Inc.**
**(the "FortisBC Energy Utilities")**

**ENERGY EFFICIENCY AND CONSERVATION PROGRAM**

**NATURAL GAS VEHICLE INCENTIVES**

# Final Submissions of the FortisBC Energy Utilities

**May 12, 2011**

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# PART ONE: INTRODUCTION AND OVERVIEW

## A. INTRODUCTION

1. The FortisBC Energy Utilities (the "FEU" or the "Companies") have engaged in significant Energy Efficiency and Conservation ("EEC") initiatives since 2009, following the Commission's acceptance pursuant to section 44.2 of the *Utilities Commission Act* ("UCA") of expenditure schedules for expanded EEC funding in the 2008 FEVI and FEI EEC Application ("EEC Application"). The Commission accepted an expenditure schedule for further funding, including for a new Innovative Technologies Program Area, as part of the Negotiated Settlement Agreement ("NSA") in the FEI and FEVI 2010-2011 Revenue Requirements Applications ("RRA").[1] The FEU initiated EEC program activity related to Natural Gas Vehicles ("NGV") following the Commission's order approving the 2010-2011 RRA, in response to market developments. The Companies have committed significant funding to the NGV program to encourage market transformation, and have begun to see results. Planned funding is on hold pending the resolution of this process, and it very important to the objective of market transformation that the program be put back on track.[2]

2. Based on the Commission's comments in the NGV Application Interim (Waste Management) Decision ("NGV Decision"), the three questions set out in Letter L-30-11, and drawing inferences from the Commission's IRs, the FEU understand the Commission's issue to be specific to NGVs, and not with respect to how the EEC framework operates generally. In particular, the Commission's letter expresses the view that NGV was "an initiative that was specifically excluded in prior Decisions and Orders (G-36-09, G-140-09 and G-141-09)". The root of the issue in this proceeding is that the FEU did not consider NGVs to be "an initiative that was specifically excluded in prior Decisions and Orders (G-36-09, G-140-09 and G-141-09)"; rather, the FEU considered that these new activities fell within the scope of the Innovative Technologies Program Area that had been approved in the 2010-2011 RRA. The FEU

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1 In November 2009, in the orders approving the 2010-2011 RRA Negotiated Settlement Agreements for each of the Companies, FEI received approval for the Innovative Technologies Program Area, based on a budget of $2.334 million in 2010 and $4.669 million for 2011, for a total budget of $7.003 million. FEVI's budget was $478,000 in 2010 and $958,000 for 2011, for a total budget of $1.435 million.

2 FEI has committed a total of $5.587 million to date. These incentives were committed during 2010. The future commitments that are on hold are $3.780 million. BCUC 1.7.1 and 1.7.1.1.

considered the addition of an NGV program to the Innovative Technologies Program Area to be no different from the number of new programs that the FEU have introduced within most of the approved Program Areas with the objective of optimizing the EEC portfolio as a whole. The NGV program activity met the objectives of the Innovative Technologies Program Area as a whole. The Companies would never have spent EEC funding on NGV initiatives had they realized there was any residual doubt regarding the scope of the Innovative Technologies Program Area. It is in the Companies' best interest to have unequivocal prior public interest determinations covering all EEC activities. The magnitude of EEC expenditures is too significant for the Companies to defer the issue of whether certain EEC activities are in the public interest until a future revenue requirement proceeding, in which the FEU are applying for rates that include forecast amortization expense for past expenditures. As such, the present uncertainty regarding NGV expenditures has necessitated the current freeze on the initiatives.[3] At this time, the Companies continue to engage in other non-NGV related programs developed since the EEC Application on the understanding that the Commission's concern relates to the NGV program alone. However, only express confirmation by the Commission in this process of the EEC framework generally can restore the necessary certainty for the Companies to pursue these non-NGV programs going forward.

3. The benefits of including NGV funding within the approved Innovative Technologies Program Area are well-established, and the rationale for stakeholders supporting those initiatives is clear. The NGV initiatives pursued to date are among the strongest initiatives in the overall EEC portfolio when assessed according to the Commission-approved Total Resource Cost ("TRC") test,[4] and high-to-low carbon fuel switching has environmental and other benefits. NGV load has a favourable delivery rate impact for existing customers. The FEU respectfully submit the NGV-related expenditures are in the public interest, and it makes sense for them to be included within the Innovative Technologies Program Area.[5] Stakeholders, including government, have confirmed their support for the NGV program in comment letters filed in this process.[6] If the Commission concludes that these expenditures are not currently covered by the existing approvals, a new determination ensuring that result is warranted.

[3] BCUC 1.1.1, 1.7.1.

[4] Exhibit A2-1 p.182. Please refer to Table 10-2 or Table 10-10 of the 2010 EEC Report which shows the TRC for NGV programs (TRC 1.4) and the Innovative Technologies portfolio as a whole including the Commercial NGV Demonstration program for 2010.

[5] Exhibit A2-1 p. 213. Including the NGV initiatives as part of the Innovative Technologies Program Area is important because of the significant contribution the program makes to ensuring that the TRC for the Innovative Technologies Program Area is greater than 1.0, which is a requirement of the NSA.

[6] Exhibit A2-1 Appendix F (CEC, City of Vancouver, BCAOMA, Fraser Basin Council and BCSEA)

Acceptance of these expenditures will bring lasting benefits, achieve the intended effect of the NSA, be consistent with the desire of stakeholders, and resolve the uncertainty regarding the future of NGV-related funding.

## B. OVERVIEW

4. The remainder of this Submission is organized as follows:

- Part Two addresses the regulatory framework governing EEC expenditures generally, and how the NGV-related programs fit within it;
- Part Three summarizes the evidence as to why NGV-related expenditures are in the public interest;
- Part Four provides specific answers to the questions posed by the Commission in Letter L-30-11; and
- Part Five is a conclusion, and includes the specific determinations sought.

# PART TWO: THE EEC FRAMEWORK AND HOW NGV-RELATED ACTIVITY FITS WITHIN IT

## A. INTRODUCTION

5. The three questions in Letter L-30-11 are generally directed at the effect of prior Commission orders in establishing parameters for EEC spending, the proper process to be followed in allocating previously accepted EEC funding to new initiatives, and how the current status of the Commission's orders affects the recoverability of NGV-related EEC funding. In this Part, the FEU addresses:

- The EEC framework approved in the EEC Decision;
- How NGV-related activity fits within it; and
- The implications of the issue regarding the scope of the approved Innovative Technologies Program Area for cost recovery of NGV-related EEC funds incurred to date.

The FEU submit that under the approved EEC framework the FEU retained the ability to develop NGV-related programs within the Innovative Technology Program Area, and to allocate Commission-accepted funding to the programs.

## B. THE COMMISSION-APPROVED EEC FRAMEWORK

6. The FEU's position on NGV programs is rooted in the EEC framework approved in the EEC Decision, which is discussed below. The FEU submit that, in introducing NGV-related initiatives after the RRA, they were exercising a discretion contemplated in the EEC Application and EEC Decision to introduce new programs *within* the approved Innovative Technologies Program Area in order to optimize the portfolio. This same approach has been used in program development in several Program Areas to date.

### (a) The 2008 EEC Decision Framework

7. The aspects of the Commission-approved framework that are relevant for the purposes of this process are depicted in the diagram below.[7]

[7] BCUC 1.1.1.

## Annual Funding Envelope

**2010: Expenditure Schedule Accepted: $31.0 million (includes FEI+FEVI)**
**2011: Expenditure Schedule Accepted: $35.3 million (includes FEI+FEVI)**

⇩ ⇩

## Program Areas

Scope of Expenditure Schedule Approval Defined by Expressly Approved Program Areas

| Residential | Commercial | High Carbon Fuel Switching | Conservation for Affordable Housing | Innovative Technologies | Joint Initiatives | Industrial |
|---|---|---|---|---|---|---|
| (G-36-09, G-140-09, G-141-09) | (G-36-09, 140-09, G-141-09) | (G-36-09, G-140-09) | (G-140-09, G-141-09) | (G-140-09,G-141-09) | (G-36-09, G-140-09, G-141-09) | (G-36-09, G-141-09) |
| ⇩ | ⇩ | ⇩ | ⇩ | ⇩ | ⇩ | ⇩ |

## Programs or Initiatives

The FEU has flexibility to develop programs or initiatives within approved Program Areas and reports in the EEC Annual Report and EEC Stakeholder Committee meetings

| | | | | | | |
|---|---|---|---|---|---|---|
| ENERGY STAR® Heating System Upgrade | Spray N'Save 2010 Program* | Switch 'N' Shrink | REnEW* | Solar Water Heating PSECA Program | LiveSmart BC | Energy Audit Funding Agreement* |
| Furnace Service "TLC"* | Efficient Boiler Program | | Energy Savings Kit* | Commercial NGV Demonstration Program* | Washer Rebates* | Heat Exchanger Program* |
| Domestic Hot Water Heaters | Light Commercial ENERGY STAR® Boiler Program | | Ministry of Energy Low Income Partnership Grant | Solar Air Heating PSECA Program | City of Vancouver Weatherization* | |
| EnerChoice Fireplace | Efficient Commercial Water Heater Program | | | SolarBC Schools Incentive | | |
| | Energy Assessment Program | | | | | |
| | PSECA Initiative* | | | | | |
| | Fireplace Timers Pilot* | | | | | |
| | Radiant Tube Heaters Pilot* | | | | | |
| | Spray N'Save Program* | | | | | |
| | Commercial Custom Design Program* | | | | | |

*Indicates the program was added after the NSA (G-140-09, G-141-09)
This table does not show the Conversation Education and Outreach Program Area
Programs "in development" are not included in list of programs and initiatives

8. The key elements of the existing EEC framework, as reflected in the above diagram, are:

(a) Only the Commission has the ability to accept EEC expenditures pursuant to section 44.2. An EEC expenditure schedule accepted under section 44.2 is defined as

- a total funding envelope for EEC activity,

- comprised of Program Areas (e.g. Residential, Commercial and Innovative Technologies) that have been expressly accepted by the Commission.

(b) While the amount of the expenditure schedule reflects the sum of the Companies' budgets for the individual approved Program Areas, the FEU retain the flexibility to re-allocate funding within the overall portfolio with the objective of improving the benefits achieved by the overall EEC portfolio.

(c) While the budget for an accepted Program Area may reflect the sum of the Companies' budgets for individual programs or initiatives that are included within an approved Program Area, the FEU retain the flexibility to add, modify or discontinue programs within a Program Area and to re-allocate funding with the objective of improving the benefits of the overall EEC portfolio.

(d) The Company's engagement with stakeholders, and the EEC Annual Report must include reporting on the new programs or initiatives added and how the envelope of funding has been re-allocated among accepted Program Areas. For clarity, the stakeholder engagement is a consultation exercise, not an approval process. The EEC Annual Report is compliance reporting. Neither the mere consent of the EEC stakeholder group, nor the inclusion of information in a compliance report to the Commission, can alter the overall scope of an accepted expenditure schedule.

Below, the FEU elaborate on the scope of an expenditure schedule and the role of the stakeholder consultation and compliance reporting, as these matters are specifically impugned by the three questions posed in Letter L-30-11.

Scope of an Expenditure Schedule

9. The FEU submit that the outcome of the EEC Decision was that an EEC expenditure schedule accepted under section 44.2 is defined as a total funding envelope for EEC activity, comprised of Program Areas that have been expressly accepted by the Commission. This submission is based on the Companies' position in the 2008 EEC Application, and the resulting EEC Decision.

10. In the EEC Application, the Companies requested that the Commission approve the overall expenditure level, rather than approving the funding by program area, or by individual program initiative. The FEU explained this request as follows:[8]

> …that it is most efficient for the Commission to approve the overall expenditure level, by utility, for the Funding Period, rather than approving the funding by program area, or by individual program initiative. This approach will allow the Companies' to respond quickly to changes within initiatives and to new opportunities that might arise. For example, if a particular initiative within the commercial energy efficiency program area has a higher than expected number of participants, and a strong cost-benefit ratio, the Companies would like to have the ability to shift funds from another, underutilized program area to that commercial energy efficiency initiative, without coming back to the Commission for approval to do so. Not only will this allow the Companies' to respond quickly to opportunities, it will also reduce the Companies' administrative burden related to EEC activity, and both the speed of response and reduced administrative burden will increase the value to customers of the Companies' EEC activity. [Emphasis Added]

11. The Companies' EEC Application submission discussed FEU adding programs and reporting in consultation with stakeholders. The Companies' submission stated in part, in discussing reporting mechanisms:

> Fourth, the Companies have indicated their intention to hold annual EEC workshops with stakeholders, at which the Companies would present updates on program progress and obtain stakeholder input on new programs and refinements to existing programs. [Emphasis added.][9]

12. The EEC Decision expressly contemplated re-allocation of funding within the funding envelope: "Commission Panel directs that the annual EEC Report include the following…any inter and intra Program Area initiative funding transfers, with supporting rationale, and the impact of such transfers on the transferor and transferee Program areas, initiatives, and measures as the case may be."[10] It follows from this funding flexibility that the scope of an accepted EEC expenditure schedule is defined in relation to the total amount of the portfolio.

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8 Exhibit A2-2 EEC Application, at pages 50 and 51.

9 Exhibit A2-3 EEC Decision p. 41 .

10 Exhibit A2-3 EEC Decision, p.42.

13. The EEC Decision, at page 41, summarized what the FEU had proposed regarding accountability mechanisms, and the reference to the FEU adding programs has been underlined for emphasis:

> In this Application the Companies have recognized the need for accountability for the funds approved for EEC programs. First, any funds not spent will not be charged to the regulatory asset deferral account. Second, the Companies intend to monitor the portfolio TRC on a monthly basis, and have proposed to file an Annual EEC Report with the Commission by the end of the first quarter every year. The Report will detail program activity, expenditures, and cost-benefit results for the previous year, as well as describe program activity and provide forecasts for the upcoming year. Third, in the event that the relief sought is granted, the Companies would form and engage an EEC stakeholder group with membership representing a broad cross section of stakeholders identified in the Application. Fourth, the Companies have indicated their intention to hold annual EEC workshops with stakeholders, at which the Companies would present updates on program progress and <u>obtain stakeholder input on new programs and refinements to existing programs</u>. [Emphasis added]

The Commission noted in the EEC Decision[11] that interveners supported this approach:

> BCSEA-BCSC states that they: ". . . support this approach, noting that the proposed accountability mechanisms <u>are designed to be more effective and efficient than having on-going Commission involvement in decision-making within the portfolio during the Funding Period"</u> and "BCSEA-SCBC acknowledge and support the additional accountability mechanisms proposed by Terasen in [Terasen Argument] paragraph 112." (BCSEA-SCBC Argument, pp. 5, 20) [Emphasis added.]

The Commission then accepted these accountability mechanisms stating:

> The Commission Panel accepts Terasen's accountability undertakings, and considers that, while the proposal to evaluate the EEC project using the TRC test at the Portfolio level has been accepted, TRC calculations for each program area, initiative and measure should also be included in the accountability reporting as a means of assessing the components of the Project and their ongoing effectiveness.[12]

14. The FEU respectfully submit that it was reasonable for the Companies to conclude based on these approvals that they had been given the flexibility to develop and fund

[11] Exhibit A2-2 EEC Decision, p.41.

[12] Exhibit A2-2 EEC Decision, p.42.

new programs within the accepted Program Areas, with the goal of maximizing the benefits achieved from the Program Area funding.

15. The corollary was that Program Areas under the approved framework must be defined by reference to the objectives they are achieving, or the customers they serve, and not as the sum of the specific initiatives enumerated in the section 44.2 application. In all Program Areas, programs that are added to the Program Area should support the general area of activity, be within Program Area scope, and support goals for that Program Area.[13] A process that would contemplate the Commission managing the EEC portfolio at the level of requiring approvals for individual programs that advanced the goals of existing Program Areas undermines the objective of administrative and regulatory efficiency. Based on that understanding, the FEU have added a variety of new programs within existing Program Areas.

Stakeholder Consultation and Compliance Reporting

16. The Commission's Letter L-30-11 refers to the FEU "chang[ing] the scope of the Innovative Technologies program to include NGV purchase incentives via the EEC Stakeholder Group and the EEC Program – 2009 Report".[14] For clarity, the FEU's position is that neither the mere consent of the EEC stakeholder group, nor the inclusion of information in a compliance report to the Commission, can alter the scope of an accepted expenditure schedule. The FEU's engagement with the EEC stakeholder group is a consultation exercise, and a means of ensuring that the stakeholders remain apprised of, and have an opportunity for input into, the FEU's EEC activities.[15] The Commission's jurisdiction to accept or extend the scope of an expenditure schedule under section 44.2 has not been (nor could it be) delegated to the stakeholder group. Compliance reporting is just that – reporting – and ensures transparency *vis a vis* the Commission.[16] If the NGV program is covered by an expenditure schedule – and the FEU submits that it is – it is by virtue of the inclusion of the Innovative Technologies Program Area in the approved NSA. This is discussed in section (d) below.

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[13] CEC 1.1.2.

[14] There are also Commission IRs, see for instance BCUC 1.3.1 and 1.3.2, that appear to misinterpret the FEU's evidence regarding these mechanisms.

[15] BCUC 1.3.1, 1.3.2, 1.3.3, 1.3.3.1, and CEC 1.1.4. The relevant evidence from the EEC Application is quoted in the response to BCUC 1.4.1. For instance, EEC Application BCUC 2.17.1 stated in part: "It is the Companies' intent to engage in a consultative process with stakeholders, rather than one in which stakeholders feel the need to direct the Companies one way or another." The relevant passages from the EEC Decision are set out in BCUC 1.4.3.

[16] BCUC 1.5.1-1.5.5. A representative of Commission Staff has been in attendance at the stakeholder meetings as well.

Resolving Present Uncertainty Regarding the EEC Framework and Other Program Areas

17. The FEU have acted in good faith throughout, and have sought to operate within what it understood the EEC framework to be. All decisions to add new EEC programs within established Program Areas have been transparent and supported by stakeholders. There seems to be broad agreement among stakeholders who have commented thus far regarding the EEC framework generally. If the FEU's actions with regard to the addition of new programs (including but not limited to the NGV program) have not met the Commission's intent, the Companies respectfully look to the Commission to provide the necessary clarification of the EEC framework generally in this process. The Company explained the difficulties with the present uncertainty regarding the EEC framework in the following terms:

> A change in how program development occurs within approved Program Areas so as to require individual approvals for each and every new program or change in programs would result in the administrative burden that the EEC framework was seeking to avoid. Also, the additional financial risk to the FEU that this would represent in respect of expenditures incurred to date, would necessarily cause a disruption in EEC activities pending such approvals, given that so many of the current programs have been introduced on the understanding that this was permissible. It is thus of critical importance to the FEU and customers to have the uncertainty as to the scope of the expenditure schedule approval determined in this process.[17]

The FEU submit that past program additions within accepted Program Areas should be endorsed in this process, and the EEC framework described in this Part should be confirmed as the approach going forward. Under the framework described in these Submissions, the FEU are accountable for how they spend EEC funding. Retaining flexibility at an operational level has worked well, as is evident from the broad consensus among stakeholders participating in the consultation processes as to the framework and direction being pursued by the FEU.[18]

### (b) How NGV Program Fits Within Approved EEC Framework

18. The NGV-related activities are a discreet EEC program that shares the same fundamental objectives and characteristics as the other programs within the Innovative Technologies Program Area. The differences in the case of NGV were:

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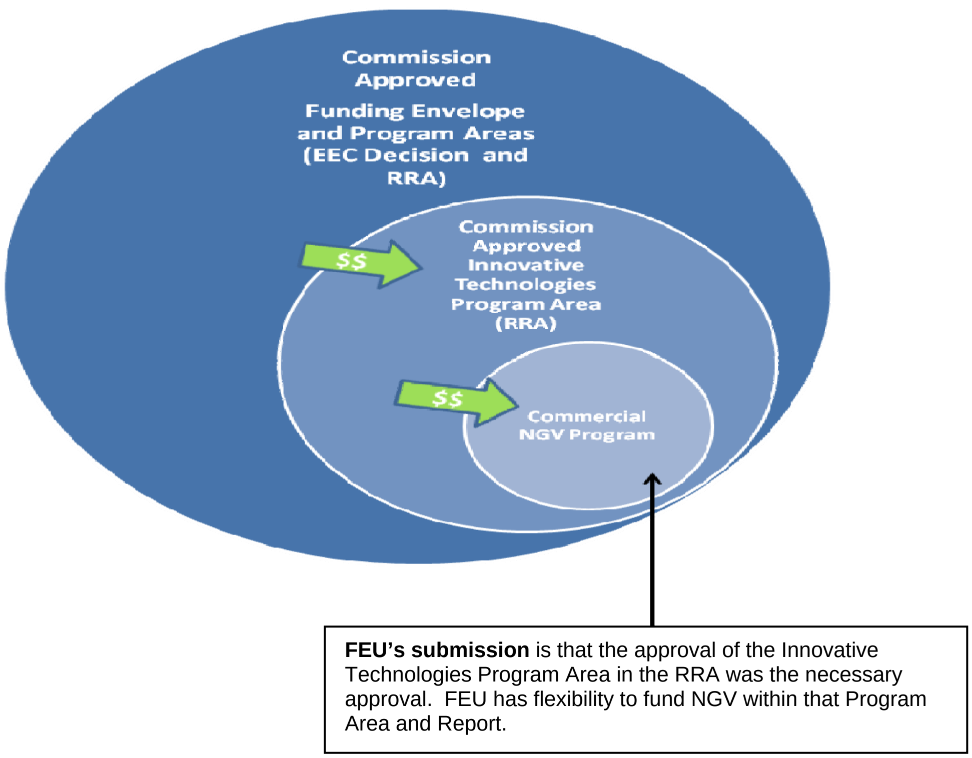
[17] BCUC 1.1.1.

[18] Exhibit A2-1 Appendix F.

- the NSA contemplated FEI withdrawing (in the Commission's words) "its other requests related to NGV";[19] and
- in the RRA evidence, the programs identified in the discussion of the Innovative Technologies Program Area did not include NGVs.

The FEU submit that these facts should not affect the status of the NGV program. NGV-related programs were introduced by the FEU within the *existing Commission-approved scope* of the Innovative Technologies Program Area and be treated as part of the existing expenditure schedule.

19. The FEU's submission as to how the NGV program fits within the overall framework approved in the EEC Decision is depicted in the diagram below:




This puts the new NGV program on the same footing as three solar-energy related programs that were explicitly identified in the RRA evidence as being included in the Innovative Technologies Program Area (see the EEC framework table earlier in this Submission).

20. The Commission's explanation in the NGV Decision for why it considered that the Companies were at risk focused on the rate schedules that the FEU had requested (and

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[19] Exhibit A2-10 Waste Management Decision, Appendix A, p.5, and Exhibit A2-1 page 213-215.

subsequently withdrew) in the RRA, rather than on the Companies' EEC request in that application:

> "The Commission Panel is not presently persuaded that Terasen has Commission approval for the incentive grant to Waste Management that is described under Vehicle Reimbursement in the WM Agreement. Directive 2 of Order G-36-09 explicitly rejected expenditures for Natural Gas Vehicles. The Negotiated Settlement approved by Order G-141-09 approved Rate Schedule 26 – NGV Transportation Service and marketing costs in support of NGV. Terasen withdrew its other requests related to NGV. Rate Schedules 6 and 26 provide for NGV incentive grants, but it seems unlikely that Waste Management will use these Rate Schedules. Therefore, the Commission Panel believes that Terasen is at risk of not being able to recover incentive payments to Waste Management in its rates."[20]

21. The requests in the RRA for EEC funding and NGV fueling service rate schedules were distinct requests, and were addressed in separate sections of the NSA.[21] As the FEU maintained in the NGV Application, NGV fueling service offerings and NGV-related EEC are distinct issues. The value of EEC expenditures is dependent neither on the approval of fueling service rate schedules, nor on fleets deciding to take CNG or LNG service from the Companies. The Commission accepted that position in the context of the NGV Decision, excluding discussion of EEC from the scope of that proceeding.[22] The FEU respectfully submit that the withdrawal of their request for CNG/LNG fuelling service rate schedules, per the NSA, was on a "without prejudice" basis as part of a comprehensive settlement, and should not have any bearing on the present issue. Rather, the focus should be on whether the approved Innovative Technologies Program Area was sufficiently broad to cover NGV-related programs.

22. In determining the intended scope of the Innovative Technologies Program Area agreed to in the NSA it is necessary to consider the overall context in which the parties to the NSA undertook their negotiations. That context includes the EEC Application. For instance:

- First, the evidence in the EEC Application was that the "Innovative Technologies, NGV and Measurement" (which was presented as a single Program Area)[23] was and is intended to support the deployment of forward-looking low carbon technologies, and technologies that are market ready and commercially

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[20] Exhibit A2-10 NGV (Waste Management) Decision, Appendix A, p.5, and Exhibit A2-1 page 213-215.

[21] Exhibit A2-1 2010 EEC Report page 213-215.

[22] Exhibit A2-10 Waste Management Decision Appendix A p.5.

[23] This is evident in the way in which the Program Area was described in the Exhibit A2-2 (EEC Application): BCUC 1.2.1. It is also evident in the Exhibit A2-3 EEC Decision on p.26 where it discussed the Program Area.

available, but that have little or no market penetration in the BC marketplace.[24] NGV programs were an aspect of that Program Area. The evidence in this regard included:

> "This Section of the Application provides an overview of potential areas of opportunity for innovative technology investment that the Companies intend to pursue if the Application is approved. The information is divided into energy efficiency and fuel substitution activities, and by sector (Residential and Commercial). It should be noted that the initiatives listed in this Section do not include all the innovative technologies that the Companies may pursue, but rather provide an overview of the types of initiatives the Terasen Utilities intend to pursue, all having the same underlying characteristics:
>
> 1) Each promotes the efficient use of natural gas through sustainable design
>
> 2) None are currently a mainstream technology
>
> 3) Each offers the potential for at least a 10% GHG benefit.
>
> For all sectors, programs for fuel-substitution include plans that displace less efficient and dirtier fuels with natural gas or add cleaner renewable fuels to natural gas for further efficiency and GHG benefits."[25] [Emphasis added.]

And:

> "The initiatives listed in Section 6.9 of the Application do not include all the innovative technologies that the Companies may support, but rather provide an overview of the types of initiatives the Terasen Utilities are aiming to promote that all have the same underlying characteristics; 1) they promote the efficient use of natural gas through sustainable design 2) are not currently mainstream technology 3) offer at a minimum a GHG benefit."[26] [Emphasis added.]

- Second, as discussed above, the Companies' evidence in the EEC Application contemplated the Companies having flexibility at the program level to discontinue, modify and add new programs within an approved Program Area. The EEC Decision echoed the desire of the Companies and intervenors to

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[24] CEC 1.1.1.

[25] Exhibit A2-2 EEC Application p.69 (quoted in CEC 1.1.3).

[26] Exhibit A2-2 EEC Application, BCUC 1.36.2 (quoted in CEC 1.1.3).

ensure that the Companies had the necessary flexibility to manage the program efficiently, without the involvement of the Commission during the funding period.

- Third, in the EEC Decision, while the Commission rejected funding for the "Innovative Technology, NGV and Measurement" Program Area based on "insufficient evidence" it was receptive to the Company coming forward again in the future.[27]

23. When the FEU brought forward its request in the 2010-2011 RRA for funding for the "Innovative Technologies" Program Area the programs contemplated within that Program Area continued support the deployment of forward-looking, low carbon technologies that are market ready and commercially available, but that have little or no market penetration in the BC marketplace.[28] The FEU were, in effect, re-initiating the request that had been denied in the 2008 EEC Decision.

24. In hindsight, there are two elements of the FEU's request in the 2010-2011 RRA that have "muddied the waters" regarding the scope of the Program Area that was expressly approved in the NSA. First, the name of the Program Area changed, without any intention to make a substantive change to the scope of the Program Area.[29] Second, the FEU's description in the RRA filing of the Innovative Technologies Program Area focussed on a specific list of initiatives, rather than emphasizing the broader objectives of the Program Area as had been done to a greater extent in the EEC Application. The list set out in the RRA did not expressly include NGV. It was never the intent of the FEU to define Program Areas as the sum of their constituent parts listed in the RRA; the EEC Application and the EEC Decision had suggested otherwise. However, in retrospect, the description provided by the FEU in the RRA could reasonably be understood to have implied that approach.[30]

25. While the FEU take full responsibility for the way the evidence was presented in the RRA, there are several reasons why the FEU is confident that other parties that negotiated the NSA shared FEU's view regarding how the EEC framework was intended to operate:

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[27] Exhibit A2-3 EEC Decision, p.26.

[28] BCUC 1.1.1: "In developing those NGV-related programs within the Innovative Technologies Program Area, the Companies had in mind the broader definition of the program area used in the 2008 EEC Application which definition was more geared to the purpose being served by the programs, and not a specific list of programs."

[29] BCUC 1.2.1.

[30] BCUC 1.6.1.1, 1.6.1, 1.6.2, 1.6.3, 1.1.1.

(a) First, another key participant in the NSA has confirmed that this was their intention. In a March 22, 2011 letter[31] to FEI, the Commercial Energy Consumers Association of BC ("CEC") stated:

> …The CEC is precluded (as a consequence of confidentiality provisions) from discussing the specific content of discussion in a Negotiated Settlement Process ("NSP") but may disclose its own positions at any time. The CEC believes that its sign off with respect to the RRA NSA carried the weight of its support for FEI providing funding for its NGV initiatives. Specifically the CEC believes that item 14 of the NSA supports the fuelling and transportation services to be provided and that item 11 of the NSA supports the funding envelope for the Innovative technologies for 2010-2011.

(b) Second, the requirement in the NSA that "Innovative Technology programs will be managed by TGI as a separate segment of the overall portfolio to have a weighted average TRC of 1.0 or more" necessarily implied that the FEU would be introducing new programs, as the combined TRC of the programs expressly identified in the RRA was well below 1.0.[32]

(c) Third, NGV-related programs were discussed with stakeholders after the NSA and prior to implementation,[33] without any objection by representatives of stakeholders who had been present in the NSP. The following excerpt from the 2009 EEC Annual Report, filed on March 31, 2010 on Page 115 reflected the approach taken in the consultation: "TGI and TGVI restructured the existing portfolio list of Innovative Technologies to include Solar Thermal Hot Water, <u>NGV for Commercial Vehicles</u>, Hydronic and Combination Space Heating Systems, Residential GSHP and Commercial and Industrial GSHP Systems. <u>TGI and TGVI will treat NGV fuel switching from diesel as part of our normal course of EEC activities</u>." [Emphasis Added] Stakeholders involved in the consultation have confirmed that the FEU were transparent with respect to NGVs.[34]

(d) Fourth, it made sense that the Innovative Technology Program Area would be approached the same way as other Program Areas. The FEU were adding programs in other Program Areas consistent with the objectives of each Program Area. The NGV-related EEC expenditures advance the objective of Innovative Technologies generally: supporting the deployment of forward-looking, low carbon

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31 Exhibit A2-1 Appendix F for a copy of the letter from CEC and others

32 BCUC 1.1.1.

33 Consultation on NGV took place on March 11, 2010, with a follow up request for input: Exhibit A2-10, 2010 Report, page 216-218. NGV was discussed in the LTRP filed in July 2010, with no objections from stakeholders: Exhibit A2-10 2010 EEC Report page 218-219. The first funding took place in September 2010: CEC 1.1.4.

34 CEC 1.1.4, CEC 1.1.5, A2-1 2010 EEC Report Appendix F.

technologies that are market ready and commercially available, but that have little or no market penetration in the BC marketplace.[35]

26. In summary, the overall context supports a finding that NGV programs could be added within the Innovative Technologies Program Area.

## C. IMPLICATIONS FOR COST RECOVERY

27. The second and third questions in Commission Letter L-30-11 give rise to issues relating to the legal implications of a section 44.2 order, which is the section pursuant to which the Commission has accepted the EEC expenditures. More specifically, they touch on the implications for FEU of a Commission determination that FEU (a) already have or (b) do not yet have, section 44.2 approval for NGV program expenditures. The Commission's determination of this point may have implications for the evidence supporting cost recovery in future revenue requirements applications, but does not determine the recoverability of the expenditures.

28. Before addressing cost recovery, the FEU feel it necessary given the tenor of some of the Commission IRs[36] to make the point that there is no provision in the UCA that prohibits a public utility from engaging in EEC activities without prior approval from the Commission. The funding requests included in the 2008 EEC Application and the 2010-2011 RRA were made pursuant to section 44.2 of the UCA. The section also contemplates that a request for acceptance can be made in respect of expenditures already incurred. Unlike a CPCN required under section 45 for plant extensions, section 44.2 approvals are optional; the section provides that a public utility "may" file an expenditure schedule. The acceptance of an expenditure schedule under 44.2 is thus not an authorization to undertake activity, rather it represents a determination that the expenditures in question are in the public interest. In the event that the Commission determines that the NGV program is outside of the expenditure schedule, this is not the same as the FEU having breached a Commission order.

29. In terms of cost recovery, the UCA requires that rates be set to recover the forecast costs for the test period that the Commission reasonably considers will be prudently incurred. A prior public interest approval of an expenditure schedule is evidence (to be cited by the applicant utility in the context of rate setting) that it was or will be prudent for the utility to

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[35] CEC 1.1.1, CEC 1.1.3.

[36] A number of Commission Information Requests relate to whether or not FEI had "authority" or "approval" to engage in NGV-related EEC activities. For the reasons described in this paragraph, these terms are actually out of step with the legal nature of the section 44.2 approval, which is an optional public interest determination.

engage in the activities contemplated in an accepted schedule that have cost implications in the test period. However, a section 44.2 public interest determination is also not a precondition of future recovery of the accepted costs in rates. The fact that a public utility has not applied for, or has not received approval for, an EEC expenditure schedule prior to applying for rates that account for those forecast EEC expenditures does not make it imprudent to undertake the forecasted EEC activities.[37] The prudence of EEC expenditures must be determined with reference to the costs and benefits associated with the activities.[38] There is obvious overlap between a public interest determination and the prudence test; however, the FEU submit that the Commission would err by disallowing NGV-related expenditures on the basis of a finding that they fell outside a Commission-accepted Program Area.

30. That said, the matters raised in this proceeding are of great importance to the FEU because the Companies had intended only to spend EEC funding on programs that are backed by a public interest approval, as a means of forestalling any suggestion in future revenue requirements proceedings (when forecast amortization expense for past EEC expenditures is sought to be included in rates) that the types of expenditures undertaken were imprudent. The FEU are confident that it is prudent for the Companies to be pursuing NGV-related EEC expenditures for the reasons described in Part Three. These expenditures, if otherwise prudently incurred, should therefore be recoverable in future revenue requirements proceedings regardless of whether they are covered by a section 44.2 approval. Nevertheless, the magnitude of EEC investment is too great for the FEU to proceed with in the absence of a prior section 44.2 acceptance.[39] The FEU's decision to temporarily cease providing EEC funding for NGVs pending the determination of this proceeding is a reflection of this.[40] For similar reasons, the Companies also require clarity regarding the other non-NGV programs that they have introduced in consultation with stakeholders (see EEC framework table above).

[37] For capital expenditures below the CPCN threshold, and for O&M generally, it is less common to have section 44.2 approval than to proceed to a revenue requirements proceeding without one. But there will be circumstances, and EEC is one of them expressly contemplated in the UCA, where obtaining the protection of an expenditure schedule only makes sense.

[38] Evidence that supports the inclusion of budgeted EEC expenditures in rates will include the Conservation Potential Review ("CPR"), which indicates the level of EEC activity that can be achieved cost-effectively. The Total Resource Cost ("TRC") test, which the Commission has endorsed as a test for evaluating EEC expenditures, is also evidence.

[39] BCUC 1.4.3.

[40] BCUC 1.7.2

## D. SUMMARY

31. While the thrust of this proceeding is directed at determining the scope of the existing EEC expenditure schedules, and the implications for cost recovery of expenditures incurred to date, the FEU submit that an equally important outcome of this proceeding will be greater clarity regarding the EEC framework. The fact that the current proceeding is even necessary, speaks to the need for this additional clarity, as the FEU have at all times acted with the utmost good faith.[41] All stakeholders who have commented in this proceeding thus far accept that the FEU have acted in a transparent manner, more so than examining the FEU's good faith conduct to date.[42]

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[41] BCUC 4.2.1 and 5.3

[42] Exhibit A2-1 Appendix F and Section 10.2.3.3.2.1 pages 216-218.

# PART THREE: NGV INCENTIVES ARE IN THE PUBLIC INTEREST

## A. INTRODUCTION

32. The Commission, in Letter L-30-11, acknowledged that the replacement of diesel/gasoline fuelled commercial vehicles with NGVs "appears to align with the objectives of the *Clean Energy Act,* other environmentally focussed legislation and policies, and potential rate payer interests". These considerations all play a part in the public interest assessment, and demonstrate that cost-effective EEC initiatives aimed at NGVs are an appropriate component of an overall EEC portfolio. The FEU submit that the substantive merits of NGV-related programs should be the focus of this proceeding.

## B. FACTORS CONSIDERED IN PUBLIC INTEREST ASSESSMENT

33. Section 44.2 involves a public interest assessment. Section 44.2(3) provides:

> (3) After reviewing an expenditures schedule submitted under subsection (1), the commission, subject to subsections (5), (5.1) and (6) must
>
> (a) accept the schedule, if the commission considers that making the expenditures referred to in the schedule would be in the public interest, or
>
> (b) reject the schedule.

34. Section 44.2(5) sets out factors that the Commission must consider in making the public interest assessment. It provides in part:

> (5) In considering whether to accept an expenditure schedule filed by a public utility other than the authority, the commission must consider
>
> (a) the applicable of British Columbia's energy objectives,
>
> (b) the most recent long-term resource plan filed by the public utility under section 44.1, if any,
>
> …
>
> (d) if the schedule includes expenditures on demand-side measures, whether the demand-side measures are cost-effective within the meaning prescribed by regulation, if any, and
>
> (e) the interests of persons in British Columbia who receive or may receive service from the public utility.

35. "British Columbia's energy objectives" are defined in s. 2 of the *Clean Energy Act* ("CEA") and apply to FEI as a public utility. The applicability of "British Columbia's energy objectives" to applications for approval of expenditure schedules under section 44.2 of the UCA, among other sections, speaks to Government's intention to use cost-effective investments by public utilities to help achieve targeted reductions of GHG emissions, greater energy efficiency, and other public policy goals.

## C. NGV-RELATED EEC IS IN THE PUBLIC INTEREST

36. Each of paragraphs (a), (b), (d) and (e) of section 44.2(5) is relevant in the context of FEI's investment in NGV-related EEC programs. This section addresses each of those factors.

37. Item (a) requires consideration of "British Columbia's energy objectives". "British Columbia's energy objectives" support the use of NGV incentives to promote NGVs in place of vehicles operated by traditional fuels in two important ways:[43]

- First, objective (d) is "to use and foster the development in British Columbia of innovative technologies that support energy conservation and efficiency and the use of clean or renewable resources". BC-developed engine technology can be used to permit the efficient use of natural gas in substitution for higher emitting diesel fuel.
- Second, objective (g) is "to reduce greenhouse gas emissions …" and objective (h) is "to encourage the switching from one kind of energy source or use to another that decreases greenhouse gas emissions in British Columbia." Facilitating fleet conversion from diesel to natural gas will reduce GHGs. The NGVs incented in the 2010 Innovative Technologies Program Area are expected to produce between 20 - 30% fewer GHG emissions than their diesel counterparts. At this time, FEI estimates that the vehicles under the 2010 program expenditures represent annual GHG savings of approximately 4,100 tonnes of $CO_2e$ per year, which is the equivalent to taking 800 passenger vehicles off the road.[44]

NGV-related EEC initiatives are not detrimental to any of the other "British Columbia's energy objectives".

[43] Exhibit A2-2 EEC Application, p. 45.
[44] Exhibit A2-1 2010 EEC Report p.215-216.

38. Item (b) requires the Commission to consider FEI's most recent resource plan. The 2010 Terasen Utilities Long-Term Resource Plan ("LTRP"), reiterated the Companies' concern about declining throughput, attributable in part to declining use per customer rates, which increases upward pressure on delivery rates and also represents a long-term stranding risk for the distribution system assets as a whole. NGVs were discussed in the LTRP because they represent one of the best opportunities to mitigate the adverse delivery rate impact on existing customers flowing from this declining throughput. The addition of cost-effective NGV load on the FEI distribution system favourably affects customer delivery rates in two ways: First, delivery costs are shared over more GJs of natural gas, thus reducing the delivery charge per GJ; and second, adding NGV load is one of a few means available to FEI to combat declining throughput that, left unchecked, will continue to contribute to a higher cost of capital over time.[45] Given the state of the market, NGVs will not see uptake at this point without EEC. The NGV program is vital to market transformation.[46]

39. Item (d) is a reference to the TRC test. The NGV-related EEC initiatives are cost-effective when assessed on a portfolio basis using the TRC test.[47] The NGV programs to date, with a TRC of 1.4, have one of the highest program TRC ratios in the entire EEC portfolio.[48] NGV incentives, because of having a TRC well above 1.0, make a significant contribution to ensuring that the Innovative Technologies portfolio maintains a portfolio TRC greater than 1.0. This is illustrated in table 10-10, reproduced below:[49]

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[45] BCUC 1.7.4.

[46] BCUC 1.7.3. As described in that response, the amount of funding required to incent a particular fleet owner to adopt NGVs is anticipated to be reduced over time.

[47] The Commission discussed the application of a TRC at page 34 of the Exhibit A2-3 EEC Decision: "The Commission Panel also takes note of the DSM Regulation which will apply to Terasen as of June 1, 2009 requiring the Commission to use, in addition to any other test it considers appropriate, the TRC test in determining whether a demand-side measure is cost-effective. While the DSM Regulation is not in effect for the purposes of this EEC Decision, the Commission Panel does consider the TRC test to be appropriate and adequate for the purposes of this Application and accepts it as such." Please refer to Table 10-2 of the 2010 EEC Report which shows the TRC for the Innovative Technologies portfolio as a whole including the Commercial NGV Demonstration program for 2010.

[48] 2010 EEC Report, Table 2.2, p.7 shows the TRC by Program Area for all Program Areas. NGV on its own has a TRC of 1.4, as specified in Table 10-10 of the 2010 EEC Report.

[49] 2010 EEC Annual Report, p.215. A further breakdown by project is included in BCUC 1.7.2.

**Table 10-10: Innovative Technologies Program Area TRC for 2010**

| Program | TRC | |
|---|---|---|
| | FEI | FEVI |
| Solar Water Heating PSECA Program | 0.2 | 0.3 |
| Commercial NGV Demonstration Program | 1.4 | - |
| Total | 1.2 | |

40. Section 44.2(5)(e) requires the Commission to assess the public interest from the perspective of both existing customers and potential customers of FEI. In addition to benefits to existing non-bypass customers addressed above, EEC funding also benefits the owner of NGVs. The benefits include: operating cost savings due to favourable natural gas costs relative to diesel and gasoline; reduced fuel cost volatility as compared to diesel and gasoline; and reduced GHG emissions.[50] The customer comments in support of the FEU providing incentives for NGVs, which are included with the 2010 EEC Report, underscore the benefits to customers.

41. Stakeholder comments, included in the 2010 EEC Report, support a determination that NGV programs are in the public interest.

42. Section 44.2 provides that the Commission must accept an expenditure schedule if it determines that the expenditures contemplated are in the public interest. If the Commission determines in this process that NGV programs align with the objectives of the *Clean Energy Act,* other environmentally focussed legislation and policies, and potential rate payer interests (which is suggested by the Commission's comments in Letter L-30-11), the FEU submit that the Commission would be required under section 44.2 to accept an expenditure schedule on application by the FEU. The FEU respectfully request that acceptance be extended to NGV programs in this process by defining the scope of the existing expenditure schedule to include NGV programs within the Innovative Technologies Program Area.

[50] BCUC 1.7.4, 1.7.3.

## PART FOUR: RESPONSE TO COMMISSION'S QUESTIONS

43. In specific response to the Commission's three questions:

1) Was it appropriate for the Companies to change the scope of the Innovative Technologies program to include NGV purchase incentives via the EEC Stakeholder Group and the EEC Program – 2009 Report (filed March 31, 2010)?

- The Companies submit that they proceeded in good faith with NGV initiatives based on the belief that they were included within the scope of the Innovative Technologies Program Area approved in the 2010-2011 RRA NSA.
- The EEC Stakeholder Group is a consultation exercise, and does not have the power to expand the scope of an approved expenditure schedule. The EEC Report is a compliance report only, and the Companies would have had to make a specific application to change the scope of the accepted expenditure schedule.
- The Companies did not legally require the (optional) section 44.2 acceptance of NGV related expenditures to proceed with them, but the Companies would never have proceeded with those initiatives (due to financial risk) had they not believed that they were covered by the Commission's public interest determination.

2) If the scope of the Innovative Technologies program was appropriately changed, does the associated NGV purchase incentive funding become: a) a Commission-approved expenditure; or b) an approved EEC expenditure; or c) an expenditure eligible for cost recovery from rate payers in whole or part?

- The Companies cannot unilaterally, or with the consent of the stakeholder group, or by virtue of filing a compliance report, expand the scope of an expenditure schedule that has been accepted by the Commission. The answer to this question depends on how the "scope" of a Program Area is defined. As stated above, the NGV initiatives were discrete programs aimed at the same objectives as all other programs within the Innovative Technologies Program Area. The FEU believed that they were included within the scope of the accepted expenditure schedule because the scope is defined by reference to the objectives, not a pre-approved list of programs. The only way the "scope" could be considered to have changed is if "scope" is defined solely by reference to the list of programs explicitly referenced when seeking a prior section 44.2 order. This interpretation, if adopted, would have broader implications for the other new EEC programs introduced by the FEU.
- Cost recovery is addressed under issue three.

3) If NGV purchase incentive funding is found to be inappropriately included in the Innovative Technologies program, should incentive payments already made by the Companies be eligible for cost recovery from rate payers in whole or in part?

- The UCA requires that rates be set to recover the forecast costs for the test period that the Commission reasonably considers will be prudently incurred.
- A prior public interest determination in respect of an expenditure schedule is evidence in a rate-setting proceeding that it was prudent for the utility to engage in past activities contemplated in an accepted schedule (and thus assists in being able to recover in rates the forecast amortized cost of those activities occurring during the test period). However, a determination in this proceeding that the approved Innovative Technologies Program Area did not include NGV-related expenditures does not in any way mean that the activities were imprudent; rather, it just means that the FEU have not yet obtained an optional section 44.2 approval.
- For capital expenditures under the CPCN threshold, and for O&M generally, it is less common to have section 44.2 approval than to proceed to a revenue requirements proceeding without one. In the absence of a section 44.2 acceptance, the prudence of EEC expenditures must still be determined in the context of rate setting with reference to the costs and benefits associated with the activities.
- The FEU submit that the NGV-related expenditures to date, which have a relatively high TRC and confer delivery rate reductions (all else equal) and environmental benefits, are in the public interest. When the time comes to determine future rates, the forecasted amortization expense associated with NGV-related EEC expenditures are eligible for recovery as prudent expenditures.

## PART FIVE: CONCLUSION AND ORDERS SOUGHT

44. The evidence demonstrates that the FEU have at all times acted in good faith in pursuing NGV-related EEC programs and other new programs within various existing Program Areas. While the focus of this proceeding is on the NGV program, this process has given rise to uncertainty regarding how the scope of an approved Program Area is to be defined, i.e. according to the underlying purpose and objective of the Program Area, or a pre-approved (by the Commission) list of programs. The ramifications of the current uncertainty extends to almost every Program Area, as the FEU have already introduced a number of new non-NGV programs in consultation with stakeholders, and are always seeking new opportunities to improve the portfolio. Further, the recently filed 2012-2013 RRA has sought EEC funding without the expectation of having to obtain specific prior Commission approval for individual programs. The FEU submit that the Commission should use this opportunity to provide greater clarity going forward as to the EEC framework in general, rather than dealing with the same issues in the RRA as well. The FEU submit that the framework as outlined in Part Two of these Submissions makes the most sense for all stakeholders going forward. The FEU respectfully request that the Commission make the following determinations in respect of the EEC framework generally:

(a) that non-NGV past program additions were within the scope of the expenditure schedule;

(b) that the EEC framework described in Part Two of these Submissions accurately reflects the approved EEC-framework; and

(c) that the EEC framework described in Part Two of these Submissions will continue to be the approach going forward.

These determinations will provide a strong basis for the Companies to proceed with EEC funding that is in the interests of all customers and the public generally.

45. The NGV-related expenditures, which were the intended focus of this process, are beneficial and enjoy broad stakeholder support. They support the objectives of Government set out in the *Clean Energy Act*. EEC funding for NGV are integral to market transformation. There are third parties that have spent considerable time and effort in the expectation that the FEU would be making more EEC funding available for NGV, and meeting those expectations by quickly restoring NGV programs is vital to avoid set backs in achieving the goal of market

transformation. In short, the evidence confirms that the NGV-related expenditures to date, and the planned expenditures for 2011, are in the public interest.

46. Section 44.2 contemplates the Commission accepting an expenditure schedule where the expenditures are in the public interest. The FEU respectfully request the following determinations to resolve the present uncertainty regarding NGV programs:

(a) The FEU's NGV programs are in the public interest; and

(b) NGV-related programs were already, or are now, within the scope of the currently approved expenditure schedule as part of the Innovative Technologies Program Area.[51]

47. The FEU appreciate the Commission's willingness to consider this matter on an expedited basis in recognition of the importance of these EEC initiatives for all stakeholders.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated: May 12, 2011

***[original signed by Matthew Ghikas]***
**Matthew Ghikas**
**Counsel for FortisBC Energy Inc.**

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[51] Including the NGV initiatives as part of the Innovative Technologies Program Area is important because of the significant contribution the program makes to ensuring that the TRC for the Innovative Technologies Program Area is greater than 1.0, which is a requirement of the NSA.