

November 23, 2012

BC Sustainable Energy Association
5-4217 Glanford Avenue
Victoria, BC
V8Z 4B9

Attention: Thomas Hackney, Director

Dear Mr. Hackney:

Re: FortisBC Energy Inc. ("FEI")

Application for Approval of Rate Treatment of Expenditures under the Greenhouse Gas Reductions (Clean Energy) Regulation ("GGRR") and Prudency Review of Incentives under the 2010 – 2011 Commercial NGV Demonstration Program (the "Application")

Response to the BC Sustainable Energy Association ("BCSEA") Information Request ("IR") No. 2

On August 21, 2012, FEI filed the Application as referenced above. In accordance with the Regulatory Timetables set out by Commission Order No. G-154-12 for Phase 3, FEI respectfully submits the attached response to BCSEA IR No. 2.

In addition, Appendix W of the Application has been amended to correct the volume assumption used for Waste Management in the derivation of the delivery rate benefit. The Amended Appendix W has been included as Attachment 4.1 provided in the response to the Commercial Energy Consumers Association of British Columbia ("CEC") IR 2.4.1.

If there are any questions regarding the attached, please contact the undersigned.

Yours very truly,

FORTISBC ENERGY INC.

Original signed by: Shawn Hill

For: Diane Roy

Attachment

cc (e-mail only): Commission Secretary
Registered Parties



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21.0 Topic: Form of order requested

Reference: Exhibit B-1, Application, Appendix Z, Form of Order

21.1 If not provided elsewhere, please provide the form of order FEI seeks within Phase 3 of this proceeding.

Response:

The form of order that FEI seeks in this proceeding is found at Appendix Z of the Application (Exhibit B-1). The specific orders sought within Phase 3 of this proceeding are orders 1, 2 and 3(a) of the Draft Order found at Appendix Z of the Application.

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22.0 Topic: Legal test

Reference: Exhibit B-1, s.7.5

22.1 In FEI's view, what is the legal test by which the Commission should determine if the 2010-2011 NGV Incentives were prudent expenditures? On which party does the onus of proof lie? What is the standard of proof? What factors should be considered? As of what point in time should the factors be evaluated? To what extent and for what purposes can, and should in the present case, events subsequent to the making of the expenditures in question be considered?

Response:

"In FEI's view, what is the legal test by which the Commission should determine if the 2010-2011 NGV Incentives were prudent expenditures?"

The legal test that the Commission should apply to determine if the 2010-2011 Incentives were prudent expenditures is the test described by the Ontario Court of Appeal in the *Enbridge Gas* decision. This test was confirmed and set out by the Commission in BC Hydro's F2009 and F2010 Revenue Requirements Decision (the *BC Hydro RRA Decision*), dated March 13, 2009, as follows at pp. 31-32:

"It was common ground among the parties to the hearing that the following paragraphs from the Ontario Court of Appeal decision in Enbridge Gas Distribution Inc. v. Ontario (Energy Board) [2006] O.J. No. 1355, 41 Admin L.R. (4th) 69(C.A.) ("Enbridge Gas") represent the law on the proper approach to an examination of the prudence of a utility's expenses:

10 The approach of the OEB to the "prudence" inquiry is captured in the following extract from its reasons:

While the parties described it in somewhat varying terms, in the Board's view they were in substantial agreement on the general approach the Board should take to reviewing the prudence of a utility's decision.

The Board agrees that a review of prudence involves the following:

** Decisions made by the utility's management should generally be presumed to be prudent unless challenged on reasonable grounds.*

** To be prudent, a decision must have been reasonable under the circumstances that were known or ought to have been known to the utility at the time the decision was made.*

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** Hindsight should not be used in determining prudence, although consideration of the outcome of the decision may legitimately be used to overcome the presumption of prudence.*

** Prudence must be determined in a retrospective factual inquiry, in that the evidence must be concerned with the time the decision was made and must be based on facts about the elements that could or did enter into the decision at the time.*

11 Neither the Divisional Court nor either party to this appeal takes issue with the correctness of the above quoted passage from the OEB's reasons. The "prudence" inquiry described by the Board has two stages. At the first stage, the decision of Enbridge is presumed to have been made prudently unless those challenging the decision demonstrate reasonable grounds to question the prudence of that decision. At the second stage of the inquiry, reached only if the presumption of prudence is overcome, Enbridge must show that its business decision was reasonable under the circumstances that were known to, or ought to have been known to, Enbridge at the time it made the decision.

12 In the above quoted extract from its reasons, the OEB expressly alluded to the limited role played by hindsight. Hindsight, that is knowledge of facts relevant to the prudence of the business decision gained after the decision was made, could not be used at the second stage of the "prudence" inquiry to determine the ultimate question of whether the decision was prudent. Those facts could, however, be taken into consideration at the first stage in determining whether the presumption of prudence had been rebutted."

At p. 38 of the *BC Hydro RRA Decision* the Commission stated:

"Having considered the extensive submissions and authorities cited by the parties, the Commission Panel determines that in the case of reviewing the cost consequences of BC Hydro's past management decisions a rebuttable presumption of prudence is relevant, and that the two part test arising from the Enbridge Gas and ATCO 2005 decisions applies."

More recently, this approach to prudence reviews was confirmed by the Commission in the FortisBC Inc. Prudency Expenditure Review Regarding the Kettle Valley Distribution Source Project proceeding (see Ex. A-2, Appendix A to Order G-36-12, p. 2 of 5). Again, in this Decision the Commission confirmed the formulation of the prudence test from the *Enbridge Gas* decision cited above.

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"On which party does the onus of proof lie? What is the standard of proof?"

With respect to the question of "onus of proof", as the passages from the *Enbridge Gas* decision cited above make clear, a prudence review involves two stages of inquiry and there is a different onus of proof at each stage. At the first stage, FEI's expenditures are presumed to have been made prudently unless those challenging the decision demonstrate reasonable grounds to question the prudence of the decision. At the second stage of the inquiry, reached only if the presumption of prudence is overcome, FEI has the onus of showing that its expenditures were reasonable under the circumstances that were known to, or ought to have been known to, FEI at the time the expenditures were made.

With respect to the question of "standard of proof", FEI's view is that the civil standard (balance of probabilities) applies at each stage of the inquiry.

As the Commission has not divided the submissions portion of this proceeding into two stages (one for "stage one" and the other for "stage two"), FEI will speak to both stages in its initial submissions.

What factors should be considered?

There is no specific legal requirement as to what particular factors should be considered in a prudence review. FEI believes that the factors described in sections 7.5, 7.6 and 7.7 of the Application, and any additional discussion of those factors (or new factors) in response to information requests, are the primary factors that should be considered in this review.

"As of what point in time should the factors be evaluated? To what extent and for what purposes can, and should in the present case, events subsequent to the making of the expenditures in question be considered?"

With respect to the last two questions set out in this information request, FEI submits that at stage one of the review, the parties may refer to and the Commission may consider "hindsight" evidence related to the expenditures; that is, the Commission may consider evidence of facts and events that occurred after the expenditures were made in considering whether or not the presumption of prudence has been rebutted. At the second stage of the inquiry, as the *Enbridge Gas* decision makes clear, FEI must show that its business decision to issue the expenditures was reasonable under the circumstances that were known to, or ought to have been known to, FEI at the time it made the decision.



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22.2 In what ways does the reduction of GHG emissions due to the incentive expenditures factor into the prudency of the expenditures?

Response:

The Application (Exhibit B-1) sets out a number of factors that, considered in aggregate, demonstrate that (a) FEI had a reasonable and good faith belief that it had approval to issue the funds, (b) the anticipated benefits and overarching policy and legislative framework existing at the time the incentives were issued justified FEI in doing so. The Application also describes how FEI's customers supported the use of the incentives, and that the incentives issued are consistent with the intent of the GGRR. The factors described in the Application (as augmented through information responses), considered in aggregate, demonstrate that the 2010-2011 NGV Incentives were prudently incurred and recoverable through rates.

The reduction of GHG emissions, which is described in section 7.5.6 of the Application, is one of the many factors that is described in section 7.5. It factors into the prudency review in the same way as the other factors listed by FEI. That is, it is one of the many benefits that FEI was aware of at the time the incentives were issued that supported the use of these incentives. The reduction of GHG emissions, as a benefit, is one that extends beyond FEI's customers and to all British Columbians who benefit from reduced GHG emissions. It is also a benefit that was supported and encouraged by Provincial policy and legislation (see section 7.5.3 of the Application).

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23.0 Topic: Effective date of information

Reference: Exhibit B-1, s.7.3; Table 7-1: Commercial NGV Demonstration Program – 2010/2011 Incentives Committed; Appendix R GREENHOUSE GAS ("GHG") EMISSION REDUCTIONS CALCULATIONS

"Please note the data in Table 7-1 is current as of May 10, 2011."

23.1 Please explain why the data in Table 7-1 is current as of May 10, 2011 and not later. Does the explanation involve the prudency test and the effective date as of which prudency is determined?

Response:

Table 7-1 was provided to the BCUC on May 10, 2011 as part of the 2011 NGV Incentive Review proceeding (Exhibit B-1, BCUC IR 1.7.2). The date of May 10, 2011, is simply the date on which the information request in which the table was provided was filed with the Commission. Table 7-1 in the Application contains the same information as was provided in the response to BCUC IR 1.7.2 in the NGV Incentive Review proceeding.

For each of the customers shown in the table, the estimated fuel savings, avoided diesel, revenue to FEI, and TRC was estimated, derived by, or known to FEI prior to or at the time FEI was agreeing to provide the incentive funding, and formed part of the basis upon which the incentive was granted.

The reason why Table 7-1 provides this information, i.e. information known to FEI prior to or at the time it issued the incentives, is related to the second stage of the prudence inquiry, as described by FEI in the response to BCSEA IR 2.22.1. Updated information regarding the benefits that have actually resulted from the incentives has been provided by FEI in section 7.6 of the Application. This evidence is relevant to the first stage of the prudence inquiry.

23.2 Would an updated Table 7-1 be relevant and material in the prudency proceeding? If so, please provide one. If an updated Table 7-1 is provided, please use the most recent GHGenius version for the GHG estimations.

Response:

Updated consumption information shows the funding effectiveness (i.e. incentive dollars per diesel litre displaced, greater GHG emission reductions) is greater than initially anticipated.



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Please refer to the response to CEC IR 1.11.2 for an updated version of Table 7-1. For convenience, FEI has replicated this table below.

Customer Receiving NGV Incentive	Incentive Amount Committed (\$)	Date of Agreement for EEC Incentive Funding (MM/DD/YYYY)	Estimated Fuel Savings to Customer (\$ per year)	Customer Estimated Avoided Diesel (L per year)	Customer Estimated GHG Reductions (tonnes per year)	Estimated Revenue to FortisBC Energy (\$ per year)	Total Resource Cost (TRC) Test Ratio
City of Surrey	\$ 13,350	9/15/2010	\$ 19,889	29,751	10	\$ 4,448	2.1
Kelowna School District	\$ 363,286	3/17/2011	\$ 17,587	116,415	132	\$ 17,406	1.3
Waste Management	\$ 803,560	12/3/2010	\$ 562,320	776,100	317	\$ 39,679	1.8
Vedder Transport	\$ 4,393,300	12/10/2010	\$ 2,595,060	4,656,600	5,604	\$ 729,000	1.6
Total	\$ 5,573,496		\$ 3,194,856	5,578,866	6,063	\$ 790,534	

The GHG estimations in the table above are based on the most recent version of GHGenius (version 4.01) which shows GHG emission reductions of 6,063 tonnes of CO₂e per year. This compares to 4,180 tonnes of CO₂e per year in the previous version of Table 7-1. This kind of updated information is relevant to stage one of the prudence inquiry (see FEI's response to BCSEA 2.22.1).

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24.0 Topic:

Reference: Exhibit B-1, s.7.3; Table 7-1: Commercial NGV Demonstration Program – 2010/2011 Incentives Committed; Exhibit B-2, BCUC IR 4.6.1

Table 7-1 column 7 shows "Estimated Revenue to FortisBC Energy" (in dollars per year - - Exhibit B-2, BCUC IR 4.6.1). This is described as a "delivery margin benefit estimate ... calculated assuming delivery service under Rate Schedule 6 (at the 2011 rate of \$3.648 per GJ.)" [p.32.]

24.1 Please confirm that "Estimated Revenue to FortisBC Energy" is to the account of ratepayers, not to the account of FEI's shareholder.

Response:

Confirmed. The "Estimated Revenue to FortisBC Energy" will be to the account of ratepayers. The revenues from these and other NGT customers will be included in the normal fashion in the Revenue Requirement Application revenue forecasts. Subject to any deferral accounts affecting these revenues, any variances from forecast within the RRA test period, positive or negative, will flow to the account of the shareholder.

24.2 Does the question of whether CNG and LNG customers are in different rate classes than core natural gas customers have any impact on the prudency of the Commercial NGV Incentives expenditures? In other words, is the argument that incremental delivery rate revenues due to the expenditures are a benefit of the expenditures affected in any way by whether CNG and LNG are different classes than the core customer class? If not, why not? If so, please explain.

Response:

The question refers to "rate classes", which would be a reference to rate schedules within the natural gas class of service. FEI has assumed that the question was intended to refer to "classes of service", which is something different and is addressed in Section 60(1)(c) of the *Utilities Commission Act*. There is currently a separate class of service for CNG, but not for LNG. The status of this is to be addressed in the AES Inquiry.

No, the existence of separate classes of service would not affect the analysis.



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The separate classes of service that have been addressed in the BFI proceeding and the AES Inquiry encompass only fuelling station infrastructure. The debate has focussed on how the costs of the fuelling station equipment are recovered and from whom, and where the dispensing service revenues flow. Dispensing service revenues are the amount that the fuelling service customer is paying for the ability to use the fuelling station itself, as distinct from the cost of the commodity or the cost of getting the gas across FEI's system to the fuelling station. There has been no debate about whether revenues associated with delivery service across FEI's system to the fuelling station should flow to the natural gas class of service. It has been contemplated in each of the Commission's NGT-related decisions thus far that the revenue associated with additional throughput on the natural gas system from NGT load is applied to delivery margin for the benefit of all non-bypass customers. The incentives that FEI provided were designed to encourage adoption of natural gas powered vehicles (i.e. were based on cost differential between conventional and natural gas vehicles), rather than being applied to the capital cost of the fuelling station. As anticipated, the net result of the incentives has been increased throughput on the delivery system and a contribution to delivery margin.

As the benefits were intended to flow, and do flow, to all non-bypass customers, the prudence of the incentive expenditures should be assessed by reference to the benefits to the natural gas class of service.



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25.0 Topic: Rate impact

Reference: Exhibit B-1, Appendix G

25.1 If the Commission determines that the Commercial NGV Demonstration Program expenditures were imprudent, to whose account is the Net Annual Cost of Service Benefit from the additional NGT volume induced by the Program expenditures?

Response:

The delivery margin benefits of the throughput arising from the Commercial NGV Demonstration Program grants are in the relevant FEI natural gas rates classes (Rate Schedules 3, 5, 6, 23 or 25 for CNG and Rate Schedule 16 for LNG). If the grants were found to be imprudent the associated delivery margin revenues would remain with the natural gas class of service but FEI's shareholder would bear the costs.

Clearly, this result would not be fair which suggests that a finding by the Commission that the expenditures under the Commercial NGV Demonstration Program were imprudent is not warranted. While FEI believes that its evidence fully supports the prudence of these expenditures, if the Commission was to find otherwise FEI believes that, because of the benefits FEI's ratepayers have received, the Commission is constrained to a partial disallowance rather than a finding of imprudence on the total amount.

FEI will speak further to this in its final submissions.