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April 16, 2013

BC Sustainable Energy Association
c/o William J. Andrews, Barrister & Solicitor
1958 Parkside Lane
North Vancouver, B.C.
V7G 1X5

Attention: William J. Andrews

Dear Mr. Andrews:

Re: FortisBC Energy Inc. ("FEI")

Biomethane Third Party Suppliers – Application for Approval of Third-Party Suppliers' Rates and Acceptance of FEI Biomethane Supply Agreements with Third-Party Suppliers and FEI Capital Expenditures for Related Interconnection Facilities (the "Application")

Response to the BC Sustainable Energy Association ("BCSEA") Information Request ("IR") No. 1

In accordance with Commission Order No. G-46-13 setting out the Revised Regulatory Timetable for the review of the Application, FEI respectfully submits the attached response to BCSEA IR No. 1.

If there are any questions regarding the attached, please contact Shawn Hill at (604) 592-7840.

Yours very truly,

FORTISBC ENERGY INC.

Original signed:

Diane Roy

Attachment

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



FortisBC Energy Inc. ("FEI" or the "Company") Biomethane Third-Party Suppliers Regulatory Process for Approval of Third-Party Suppliers' Rates and Acceptance of FEI Biomethane Supply Agreements with Third-Party Suppliers and FEI Capital Expenditures for Related Interconnection Facilities Project	Submission Date: April 16, 2013
Response to BC Sustainable Energy Association and Sierra Club of British Columbia ("BCSEA") Information Request ("IR") No. 1	Page 1

1 **1.0 Topic: Orders requested**

2 **Reference: Exhibit A-4, Order G-46-13, p.2; Exhibit A-5, Letter L-23-13, p.1**

3 "1. The Commission will review the proposed rates under sections 58-61 of the Utilities
4 Commission Act (UCA) and the related supply agreements under subsection 71(1) of the
5 UCA as well as the capital expenditure schedule for the related interconnection facilities
6 under section 44.2(3) of the UCA in one proceeding." [Order G-46-13, p.2]

7 "This letter outlines the Streamlined Review Process (SRP) that will be followed for the
8 review of:

- 9 • the applications by FortisBC Energy Inc. (FEI) noted above; and
- 10 • the associated rate applications by Earth Renu Energy Corp. (Earth Renu),
11 Dicklands Farms (Dicklands), and Seabreeze Farms Ltd (Seabreeze)." [Letter L-
12 23-13, p.1]

13 1.1 Please confirm the orders FEI is requesting in this proceeding and FEI's
14 understanding of the orders being requested by third-party suppliers in this
15 proceeding.

16

17 **Response:**

18 FEI is seeking the following orders in this proceeding.

- 19 1. Pursuant to Section 71 of the Act, approval of the following energy supply contracts:
- 20 a. The Biomethane Purchase Agreement with EarthRenu Energy Corp. ("Earth
21 Renu") filed as Exhibit B-4-4.
- 22 b. The Biomethane Purchase Agreement with Seabreeze Farm Ltd. ("Seabreeze"),
23 filed as Exhibit B3-2.
- 24 c. The Biomethane Purchase Agreement with Dicklands Farms ("Dicklands"), filed
25 as Exhibit B2-2.
- 26 2. Pursuant to section 44.2(3) of the Act, acceptance of the capital expenditures described
27 in Section 7 of the Application, which are the interconnection costs related to the
28 facilities required for the three biomethane supply projects from whom FEI will purchase
29 biomethane.
- 30

31 With respect to the need for FEI's applications pursuant to Section 71 of the Act, please refer to
32 FEI's submission in response to the Commission's Letter L-23-13 (Exhibit A-5).



FortisBC Energy Inc. ("FEI" or the "Company") Biomethane Third-Party Suppliers Regulatory Process for Approval of Third-Party Suppliers' Rates and Acceptance of FEI Biomethane Supply Agreements with Third-Party Suppliers and FEI Capital Expenditures for Related Interconnection Facilities Project	Submission Date: April 16, 2013
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1 FEI understands that Earth Renu, Seabreeze and Dicklands are each seeking approval
2 pursuant to Sections 59 to 61 of the Act of their respective supply contracts.

3
4

5 1.2 For each of the orders sought, please state the legal test and the factors that the
6 Commission can or should consider.

7

8 **Response:**

9 The applicable legal test for approval of an energy supply contract under Section 71 of the Act is
10 whether the energy supply contract is in the public interest (see Section 71(2) of the Act). The
11 legal test applicable to the rate approvals sought by the suppliers under Sections 59 to 61 of the
12 Act is, generally, whether the rates are just and reasonable.

13 Commission Order No. G-29-13 states:

14 *The Guidelines established in Order G-194-10 and the accompanying Decision, with*
15 *respect to the criteria for supply contracts to meet the filing requirements in sections*
16 *71(1)(a) and 71(1)(b) of the Act, including the pilot price cap of \$15.28 per GJ, will apply*
17 *to the evaluation of these contracts.*

18 Thus, the relevant factors that should be considered with respect to the Section 71 approvals
19 sought by FEI and the rate approvals sought by the suppliers are the criteria established for
20 FEI's biomethane pilot program in Order G-194-10 and the accompanying Decision.

21 These criteria are:

22 1. *The projected supply meets the proposed economic test with the maximum price for*
23 *delivered Biomethane recalculated from time to time based on updates to the BC Hydro*
24 *RIB Tier 2 rate;*

25 2. *The supply contract is at least ten years in length;*

26 3. *Terasen has, by agreement, retained final control over the injection location;*

27 4. *Terasen is satisfied that the upgrade technology is sufficiently proven;*

28 5. *Terasen has, by agreement, reserved the right to refuse gas if customer safety or asset*
29 *integrity is at stake; and*

30 6. *The partner is a municipality, regional district or other public authority, or is a private*
31 *party with a track record in dealings with Terasen or that posts security to reduce the risk*
32 *of stranding.*

FortisBC Energy Inc. ("FEI" or the "Company") Biomethane Third-Party Suppliers Regulatory Process for Approval of Third-Party Suppliers' Rates and Acceptance of FEI Biomethane Supply Agreements with Third-Party Suppliers and FEI Capital Expenditures for Related Interconnection Facilities Project	Submission Date: April 16, 2013
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1 7. *The total production of Biomethane for all projects undertaken under what has been*
2 *approved in this Decision does not exceed an annual purchase in each year of 250,000*
3 *GJ.*

4 8. *The maximum price for delivered Biomethane on the system is set at \$15.28 per GJ.*
5

6 With respect to number 7 above, Order No. G-45-13 increased the supply cap to accommodate
7 an additional 280,000 GJ of supply annually from the following biomethane suppliers in the
8 following amounts:

- 9 • Earth Renu: 100,000 GJ annually
10 • GVS&DD: 40,000 GJ annually
11 • Dicklands: 70,000 GJ annually
12 • Seabreeze: 70,000 GJ annually

13 The legal test applicable to FEI's request for acceptance of the interconnection costs under
14 Section 44.2 of the Act is whether the expenditures are in the public interest (see Section
15 44.2(3)(a) of the Act). Section 44.2(5) requires certain factors to be considered, as follows:

16 (5) *In considering whether to accept an expenditure schedule filed by a public*
17 *utility other than the authority, the commission must consider*

18 (a) *the applicable of British Columbia's energy objectives,*

19 (b) *the most recent long-term resource plan filed by the public utility under*
20 *section 44.1, if any,*

21 (c) *the extent to which the schedule is consistent with the applicable*
22 *requirements under sections 6 and 19 of the Clean Energy Act,*

23 (d) *if the schedule includes expenditures on demand-side measures,*
24 *whether the demand-side measures are cost-effective within the meaning*
25 *prescribed by regulation, if any, and*

26 (e) *the interests of persons in British Columbia who receive or may*
27 *receive service from the public utility.*

28

FortisBC Energy Inc. ("FEI" or the "Company") Biomethane Third-Party Suppliers Regulatory Process for Approval of Third-Party Suppliers' Rates and Acceptance of FEI Biomethane Supply Agreements with Third-Party Suppliers and FEI Capital Expenditures for Related Interconnection Facilities Project	Submission Date: April 16, 2013
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1 **2.0 Topic: GVS&DD**

2 **Reference: Exhibit D-2, GVS&DD April 5, 2013 letter**

3 "The GVS&DD is interested in this proceeding because it has a conditional agreement
4 dated October 16, 2012 regarding the sale to FEI of biomethane that would be produced
5 by a proposed project at GVS&DD's Lulu Island wastewater treatment plant. FEI has
6 submitted the agreement to the BCUC under section 71 of the Utilities Commission Act
7 as part of the BCUC proceeding to review the 2012 Biomethane Application (Project No.
8 3698699). The GVS&DD is registered as an Intervener in that proceeding.

9 The GVS&DD is not an applicant for the Biomethane Third-Party Suppliers proceeding in
10 part because it continues to explore the option of applying for an exemption order under
11 section 88(3) of the Utilities Commission Act in relation to the sale of biomethane to FEI."

12 2.1 Please confirm that in this proceeding FEI is seeking Commission acceptance for
13 filing under s.71 the biomethane supply contract between FEI and the GVS&DD.
14 Alternatively, please explain.

15
16 **Response:**

17 Not confirmed. FEI's application for acceptance of the biomethane supply contract between FEI
18 and the GVS&DD is not before the Commission in this proceeding.

19 As explained in FEI's letter of March 6, 2013 (Exhibit B-12), since Order No. G-18-13
20 determined that the GVS&DD requires a CPCN for its supply project and that consideration of
21 the supply agreement cannot precede the CPCN approval, FEI's understanding is that
22 consideration of the supply agreement would occur after either the GVS&DD has been granted
23 a CPCN or an exemption from regulation. While this means that the GVS&DD supply contract
24 is on a different regulatory path than the other three supply contracts, which do not require a
25 CPCN and have related applications for approval as a rate, this does not mean that FEI is less
26 committed to seeking approval of its supply contract with the GVS&DD.

27
28

29 2.2 What is the status of the biomethane project at Lulu Island that is the subject of
30 the biomethane supply contract between FEI and the GVS&DD? Will the project proceed
31 if the orders requested in this proceeding regarding the supply contract are issued?

32
33 **Response:**

34 FEI understands that GVS&DD intends to proceed with the project at the Lulu Island
35 Wastewater Plant. In order to move the project forward the GVS&DD is exploring the option of



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1 gaining an exemption from regulation. Alternately, GVS&DD may wait for the outcome of the
2 Upgrader Exemption Process initiated by the Commission (Order No. G-54-13).

3 It appears that GVS&DD is in the process of determining the best path forward. FEI recognizes
4 there must yet be some kind of process for this specific contract. There is provision within the
5 recently approved change to the RNG maximum supply volumes to account for the volume of
6 the GVS&DD contract (BCUC Order No. G-29-13).

7
8

9 2.3 What is FEI's understanding of the status of GVS&DD's efforts to obtain
10 exemption from being considered a public utility under the Act?

11

12 **Response:**

13 Please refer to the response to BCSEA IR 1.2.2.

14

FortisBC Energy Inc. ("FEI" or the "Company") Biomethane Third-Party Suppliers Regulatory Process for Approval of Third-Party Suppliers' Rates and Acceptance of FEI Biomethane Supply Agreements with Third-Party Suppliers and FEI Capital Expenditures for Related Interconnection Facilities Project	Submission Date: April 16, 2013
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1 **3.0 Topic: Inquiry into an Exemption for Biogas and Biomethane Suppliers**

2 **Reference: "Preliminary Notification of Initiation of Inquiry into an Exemption for**
3 **Biogas and Biomethane Suppliers," March 28, 2013, Log No. 4332**

4 3.1 Please provide a copy of the Biomethane Exemption Inquiry Preliminary
5 Notification (Log No. 4332).

6
7 **Response:**

8 Please refer to Attachment 3.1 for a copy of BCUC Order No. G-54-13.

9

10

11 3.2 What is FEI's understanding of the current status of the Biomethane Exemption
12 Inquiry?

13

14 **Response:**

15 The Commission has issued Order No. G-54-13, dated April 10, 2013, establishing an Inquiry
16 into an Exemption for Biogas and Biomethane Suppliers.

17

18

19 3.3 Please provide FEI's view of how the Biomethane Exemption Inquiry relates, or
20 will relate, to the current proceeding (Third-Party Suppliers).

21

22 **Response:**

23 Based on the terms of the exemption proposed in Commission Order No. G-54-03, FEI believes
24 that the exemption would apply to the four suppliers (Earth Renu, Seabreeze, Dicklands and the
25 GVS&DD). FEI's understanding is that Earth Renu, Seabreeze and Dicklands are seeking rate
26 approvals because they do not have the time to wait for an exemption to take effect and that
27 their rate applications should not prejudice their ability to become exempt from regulation in the
28 future. As already seen in this process, the CPCN requirement has prompted Earth Renu to
29 reduce the size of its project. In the long-term, FEI believes that the public interest would be
30 better served if these suppliers were not regulated as public utilities.

31 Accordingly, if the exemption were granted on the terms currently contemplated then the four
32 suppliers would be exempt from regulation in accordance with the terms of the exemption order,
33 the suppliers would no longer require rate approvals and any existing rate approvals would no
34 longer be in effect. FEI would therefore need approval under section 71 of the Act of the supply
35 agreements as "energy supply contracts". Please also see FEI's submission in response to
36 Commission Letter L-23-13.



FortisBC Energy Inc. ("FEI" or the "Company") Biomethane Third-Party Suppliers Regulatory Process for Approval of Third-Party Suppliers' Rates and Acceptance of FEI Biomethane Supply Agreements with Third-Party Suppliers and FEI Capital Expenditures for Related Interconnection Facilities Project	Submission Date: April 16, 2013
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1 **4.0 Topic: Supply contract prices**

2 **Reference: Exhibit B-1, Application**

3 4.1 Please confirm that the price of biomethane under the four biomethane supply
4 contracts is less than the maximum approved by the Commission in the
5 December 14, 2010 Biomethane Decision.

6
7 **Response:**

8 Confirmed. In addition, FEI has included a clause that limits all contracts to any currently
9 approved BCUC maximum price for Biomethane.

10

FortisBC Energy Inc. ("FEI" or the "Company") Biomethane Third-Party Suppliers Regulatory Process for Approval of Third-Party Suppliers' Rates and Acceptance of FEI Biomethane Supply Agreements with Third-Party Suppliers and FEI Capital Expenditures for Related Interconnection Facilities Project	Submission Date: April 16, 2013
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1 **5.0 Topic: Biomethane quantities**

2 **Reference: Exhibit B-1, Application, p.10**

3 "The estimated total amount of yearly additional Biomethane supply once all four
 4 projects are operational is an additional 340,000 GJ and a total contracted maximum of
 5 385,000 GJ. The addition of these projects would bring the expected production in 2016
 6 to about 509,000 GJ."

7 5.1 Please confirm or provide an update regarding the quantity of Biomethane supply
 8 associated with the four supple contracts.

9

10 **Response:**

11 The volumes for the four additional projects are as follows:

Project	Maximum (GJ/year)	Expected (GJ/year)
GVS&DD (MetroVan)	40,000	40,000
Seabreeze	70,000	42,000
Dicklands	70,000	46,000
Earth Renu	100,000	50,000
Total	280,000	178,000

12

13 Assuming all four of these projects are operational in 2016, and based on these numbers, the
 14 new projected supply volume in 2016 would be approximately 178,000 GJ. If the existing three
 15 projects are added to that, the total supply would be approximately 362,000 GJ.

16



FortisBC Energy Inc. ("FEI" or the "Company") Biomethane Third-Party Suppliers Regulatory Process for Approval of Third-Party Suppliers' Rates and Acceptance of FEI Biomethane Supply Agreements with Third-Party Suppliers and FEI Capital Expenditures for Related Interconnection Facilities Project	Submission Date: April 16, 2013
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1 **6.0 Topic: Interconnection Capital Costs**

2 **Reference: Exhibit B-1, Application, section 5.5**

3 6.1 Please confirm or provide an update regarding the capital costs of
4 interconnection facilities for the four biomethane supply contracts.

5

6 **Response:**

7 FEI confirms the forecast capital costs for Sea Breeze Farm, Earth Renu and Dicklands Farm in
8 Section 7.3 are still unchanged.

9

10

11 6.2 Please confirm that FEI's proposal is that the capital costs of interconnection
12 facilities for the four biomethane supply contracts would be borne by all non-
13 bypass customers. Alternatively, please explain.

14

15 **Response:**

16 FEI has no proposal for cost allocation of the interconnection costs in this proceeding. As the
17 four new supply projects are being considered under the Biomethane Pilot Program, FEI's
18 understanding is that the interconnection costs would be treated in the manner approved by the
19 Commission for the Biomethane Pilot Program, which is that all interconnection costs are borne
20 by all non-bypass customers. Cost allocation is, however, an item within the scope of the FEI
21 Biomethane Post Implementation and Program Expansion (2012 Biomethane Application)
22 proceeding.

23

24

25 6.3 Please provide, or refer to in the filed materials, FEI's rationale for proposing that
26 interconnection capital costs would be borne by all customers as distinct from
27 being borne only by biomethane service customers.

28

29 **Response:**

30 As the Commission has determined that it will consider the four projects as part of an expansion
31 of the Biomethane Pilot Program, the cost allocation of the projects would be treated in a
32 manner consistent with the approved Biomethane Pilot Program. A change to the cost
33 allocation treatment of interconnection costs is not before the Commission in this proceeding.

34 As indicated by Order No. G-18-13, Appendix A, page 9-10, cost allocation is within the scope
35 of the FEI Biomethane Post Implementation and Program Modification (2012 Biomethane



FortisBC Energy Inc. ("FEI" or the "Company") Biomethane Third-Party Suppliers Regulatory Process for Approval of Third-Party Suppliers' Rates and Acceptance of FEI Biomethane Supply Agreements with Third-Party Suppliers and FEI Capital Expenditures for Related Interconnection Facilities Project	Submission Date: April 16, 2013
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1 Application) proceeding. FEI addresses the cost allocation of interconnection costs in Section
2 9.2.3 of its Application (Exhibit B-1, pp. 122-123).

3 There are at least two primary reasons why interconnection capital costs should be borne by all
4 customers.

5 First, as argued in the original Biomethane Application (2010) this is consistent with the general
6 principle of providing universal access to RNG. The costs associated with ensuring the
7 biomethane reaches the distribution system safely is a portion of that cost. In other words, all
8 customers have the option to purchase biomethane once it is on the system, therefore all
9 customers pay for that option. This is consistent with other programs at FEI such as the
10 Customer Choice program where all customers bear the cost of providing the program.

11 Secondly, this is consistent with the acquisition of traditional natural gas from major gas
12 transport companies such as Spectra. In the case of supplying traditional natural gas to
13 customers, for example, in Williams Lake there is a capital cost associated with a regulation and
14 measurement station which is located adjacent to the Spectra transmission line. There is also
15 interconnection piping to provide gas to the community. This is analogous to a biomethane
16 project where the upgrade plant can be considered as the point of supply (like the Spectra
17 transmission line) and the interconnection pipe can be considered as a supply pipe to connect
18 to the local distribution system. Therefore, like traditional natural gas, these costs should be
19 borne by all customers.

20 FEI will address this issue as necessary in the 2012 Biomethane Application proceeding.

21

Attachment 3.1



ERICA HAMILTON
COMMISSION SECRETARY
Commission.Secretary@bcuc.com
web site: <http://www.bcuc.com>

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Log No. 43322

VIA EMAIL

April 10, 2013

**BCUC INQUIRY EXEMPTION FOR BIOGAS
AND BIOMETHANE SUPPLIERS EXHIBIT A-1**

To All Regulated Public Utilities:

Re: British Columbia Utilities Commission
Inquiry into an Exemption for Biogas and Biomethane Suppliers

Enclosed please find British Columbia Utilities Commission Order G-54-13 establishing an Inquiry into a potential exemption for Biogas and Biomethane Suppliers. Interveners and Interested Parties must register by April 23, 2013 and submissions on Commission questions, outlined in appendix B to the Order, must be provided by April 24, 2013.

Yours truly,

Erica Hamilton

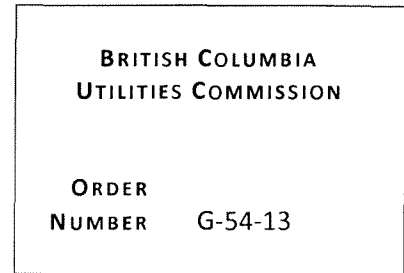
/nd
Enclosure

cc: FEI-2012 Biomethane - RI
FEI 2012 Biomethane Registered IP
FEI Third-Party Suppliers Applicants
FortisBC Energy 2012 Alternative Energy Solutions Inquiry - RI
FEU F2012-F2013 RRA - RI
FortisBC Inc 2012-2013 RR and Review of ISP - RI

BC Hydro 2012-2014 Revenue Requirements - RI
PNG West 2013 RRA – RI
PNG NE 2013 RRA – RI
Fraser Valley Biogas (formerly Catalyst Power)
City of Kelowna (Kelowna Landfill)
City of Salmon Arm (Salmon Arm Landfill)
BC Bioenergy Network
Ministry of Energy, Mines and Natural Gas



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

and

An Inquiry into an Exemption for Biogas and Biomethane Suppliers

BEFORE: L.F. Kelsey, Panel Chair

April 10, 2013

ORDER

WHEREAS:

- A. On December 27, 2012, the British Columbia Utilities Commission (Commission) issued its Report on the FortisBC Energy Inc. Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives (AES Inquiry Report). The AES Inquiry Report indicated that future Commission Panels will be required to assess the form of regulation to be imposed on biomethane upgraders, including the possibility of a subsection 88(3) exemption, by taking into consideration factors such as the sophistication of the parties involved, the nature of the contract entered into with the utility, and whether there is a demonstrated track record in operating such facilities;
- B. On February 5, 2013, the Commission Panel in Appendix A to Order G-18-13 regarding the FortisBC Energy Inc. (FEI) Biomethane Service Offering: Post Implementation Report and Application for Approval of the Continuation and Modification of the Biomethane Program on a Permanent Basis (2012 Biomethane Application) stated the issues concerning the size and scope of the Certificate of Public Convenience and Necessity (CPCN) requirements for biomethane facilities, and the appropriateness of any exemption to regulation, to be within the scope of the 2012 Biomethane Application review;
- C. The Commission also commenced by Order G-30-12 on March 4, 2013, the FEI Biomethane Third-Party Suppliers Regulatory Process: Applications for Approval of Third-Party Suppliers' Rates and Acceptance of FEI Biomethane Supply Agreements with Third-Party Suppliers and FEI Capital Expenditures for Related Interconnection Facilities after receiving rate applications from three biomethane suppliers selling to FEI;
- D. On March 28, 2013, the Commission issued Order G-45-13 with regard to the FEI Application for Reconsideration of British Columbia Utilities Commission Order G-29-13 in the Matter of Biomethane Service Offering: Post Implementation Report and Application for Approval of the Continuation and

BRITISH COLUMBIA
UTILITIES COMMISSION

ORDER
NUMBER G-54-13

2

Modification of the Biomethane Program on a Permanent Basis. In the Reconsideration, a submission letter dated March 25, 2013, by Paradigm Environmental Technologies Inc. (Paradigm) encouraged the Commission to "Expediently pursue appropriate changes to the Utilities Commission Act or an order in council where the Commission be empowered to issue exemptions for biomethane producers. It is our understanding that this change would ensure that it is the energy sales contract with the utility (e.g. FortisBC) and not the supplier itself that would be regulated by the Commission"; and

- E. Given the AES Inquiry Report, the evolving developments in the biogas and biomethane industry, and the request from Paradigm, the Commission considers initiating a regulatory process and seeking submissions on an exemption is warranted.

NOW THEREFORE pursuant to section 82 of the *Utilities Commission Act*:

1. The Commission initiates an Inquiry into an Exemption for Biogas and Biomethane Suppliers. The purpose and scope of the Inquiry is as set out in Appendix A to this Order.
2. Appendix B to this Order contains the Proposed Terms of the Exemption. Interveners may file their submissions, if any, on the Commission Questions contained in Appendix B to this Order to the Commission Secretary by April 24, 2013.
3. The Regulatory Timetable is attached as Appendix D to this Order.
4. Interveners or Interested Parties must register with the Commission, in writing or electronic submission, by April 23, 2013. Interveners must state the nature of their interest in this Inquiry.

DATED at the City of Vancouver, in the Province of British Columbia, this 10th day of April 2013.

BY ORDER



L.F. Kelsey
Panel Chair

Attachments



AN INQUIRY INTO AN EXEMPTION FOR BIOGAS AND BIOMETHANE SUPPLIERS

PURPOSE AND SCOPE OF THE INQUIRY

This Inquiry into an Exemption for Biogas and Biomethane Suppliers is initiated by the British Columbia Utilities Commission (Commission) pursuant to section 82 of the *Utilities Commission Act (UCA)*.

PURPOSE OF THE INQUIRY

The purpose of this proceeding is to inquire and hear into whether an exemption pursuant to subsection 88(3) of the *UCA* for biogas and biomethane suppliers is warranted. If warranted, the Commission intends to make a determination on the appropriate terms and conditions of the exemption, all subject to the advance approval of the Lieutenant Governor in Council.

SCOPE OF THE INQUIRY

This Inquiry into an Exemption for Biogas and Biomethane Suppliers is intended to reduce the regulatory burden of the biogas and biomethane industry, while enabling the Commission to have continued regulatory oversight of the biogas and biomethane energy supply contracts through the purchasing public utilities' regulatory processes. The Commission plans to expeditiously complete the Inquiry process after hearing from Interveners on any issues raised during the process.

BACKGROUND

On December 27, 2012, the Commission issued its Inquiry into the FortisBC Energy Inc. (FEI) Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives Report (AES Inquiry Report). The AES Inquiry Report indicated that future Commission Panels will be required to assess the form of regulation to be imposed on biomethane upgraders, including the possibility of a subsection 88(3) exemption, by taking into consideration factors such as the sophistication of the parties involved, the nature of the contract entered into with the utility, and whether there is a demonstrated track record in operating such facilities. Subsequently, on February 5, 2013, the Commission Panel in Appendix A to Order G-18-13 regarding the FEI Biomethane Service Offering: Post Implementation Report and Application for Approval of the Continuation and Modification of the Biomethane Program on a Permanent Basis (2012 Biomethane Application) stated the issues concerning the size and scope of the Certificate of Public Convenience and Necessity (CPCN) requirements for biomethane facilities, and the appropriateness of any exemption to regulation, to be within the scope of the 2012 Biomethane Application review.

The Commission also commenced on March 4, 2013, the FEI Biomethane Third Party Suppliers Proceeding after receiving rate applications from three biomethane suppliers selling to FEI. In the Reconsideration, a submission letter dated March 25, 2013, by Paradigm Environmental Technologies Inc. (Paradigm) encouraged the Commission to “Expediently pursue appropriate changes to the Utilities Commission Act or an order in council where the Commission be empowered to issue exemptions for biomethane producers. It is our understanding that this change would ensure that it is the energy sales contract with the utility (e.g. FortisBC) and not the supplier itself that would be regulated by the Commission.”

WHAT IS BIOGAS AND BIOMETHANE?

FortisBC Energy Inc. describes biogas and biomethane as:

Biogas is a renewable energy source that can be used for heating applications, electricity generation, or as a transportation fuel. It is primarily composed of methane, which is the same gas that makes up more than 95 per cent of conventional natural gas that consumers all around the world have relied on for decades. Biogas is produced when bacteria break down organic waste, from sources such as landfills, wastewater plants and agriculture, in a process called anaerobic digestion. In its raw form, biogas contains other gases that are not typically found in natural gas. It can, however, be purified (or upgraded) so that it is interchangeable with natural gas. Once upgraded, the biogas is often referred to as Biomethane or renewable natural gas (“RNG”). Biomethane can be directly introduced into existing natural gas pipeline systems such as the FEI system and used in the same way as natural gas. Biomethane offers the advantage of being a carbon-neutral, renewable source of energy. When used in the place of natural gas, it results in the reduction of greenhouse gas (“GHG”) emissions.

(Source: FortisBC Energy Inc. Biomethane Post Implementation Report And Application For Approval Of The Biomethane Program On A Permanent Basis; December 19, 2012; p. 1)

The Definitions section of the FortisBC Energy Inc. General Terms and Conditions tariff defines biogas and biomethane as:

- Biogas** Means raw gas substantially composed of methane that is produced by the breakdown of organic matter in the absence of oxygen.
- Biomethane** Means Biogas purified or upgraded to pipeline quality gas.

REGULATED BIOGAS OR BIOMETHANE SUPPLIERS AS PUBLIC UTILITIES

For the purposes of this Inquiry, a biogas or biomethane supplier is a person who is a public utility under the UCA when the person owns or operates in British Columbia equipment or facilities for the production, sale, delivery or provision of biogas or biomethane for the production of light, heat, cold or power to or for the public or a corporation for compensation unless that person is designated as an exempt person under the UCA.

UTILITIES COMMISSION ACT AND EXEMPTIONS

The *UCA* can be found online at:

http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96473_01

Pertinent sections of the *UCA* for the purpose of this Inquiry are provided in Appendix C for reference. Appendix C also contains examples of previous exemptions granted by the Commission.

AN INQUIRY INTO AN EXEMPTION FOR BIOGAS AND BIOMETHANE SUPPLIERS

PROPOSED TERMS OF THE EXEMPTION

The proposed terms of the biogas and biomethane suppliers exemption are shown below.

Proposed Terms of the Exemption

- a. Pursuant to subsection 88(3) of *Utilities Commission Act* the biogas and biomethane suppliers exemption applies to a person not otherwise a public utility.
- b. Biogas is defined as raw gas substantially composed of methane that is produced by the organic breakdown of matter in the absence of oxygen. Biomethane is defined as biogas that is purified or upgraded to pipeline quality gas.
- c. The exemption is applicable to a class of cases for each qualifying person pursuant to subsection 88(1) of the *Utilities Commission Act*.
- d. The exemption applies to the person and the person's equipment, facilities, plant, projects or systems, selling biogas or biomethane to a public utility, where the Commission would review the purchase of energy by a public utility through an energy supply contract under section 71 of the *Utilities Commission Act*.
- e. The person is exempt from the application of Part 3 of the *Utilities Commission Act* with the exception of sections 38 and 42 to 44.
- f. The exemption to the person would remain in effect for that person until the Commission, after a hearing on its own motion or after a hearing on a complaint by an interested person, orders that the exemption no longer applies to the person.

Commission Questions

Registered Interveners may make submissions to the Commission Secretary on the following questions:

1. In principle, should this Inquiry proceed with an exemption for biogas and biomethane suppliers when selling to a public utility? Please explain why or why not.
2. If an exemption were to be granted based on the purpose and scope of this Inquiry would this be in the public interest?
3. Is each of the items listed above in the Terms of the Exemption appropriate? Please explain why or why not for each item.
4. Are there other additional terms that should be considered?

- a. If so, explain these other additional terms and why they should be considered. Also explain the benefits and challenges of each of these other additional terms.
5. Is any further process required before the Commission submits its request to the Lieutenant Governor in Council (LGIC) for approval? If yes:
- a. Would an oral submissions process, held within a single day, be appropriate for Interveners to review and submit comments on the Commission's draft Order and proposed exemption wording to the LGIC before the Commission submits its request to the LGIC for approval?
 - b. Would a written or other regulatory process be warranted? If so please explain.

Interveners may file their submissions, if any, on the above Commission Questions to the Commission Secretary by April 24, 2013.

Only Registered Interveners may participate in any further regulatory process if the Commission determines further regulatory process is warranted.

The Commission at this time does not plan to make any participant assistance/cost awards for this proceeding.

AN INQUIRY INTO AN EXEMPTION FOR BIOGAS AND BIOMETHANE SUPPLIERS

PERTINENT SECTIONS OF THE UTILITIES COMMISSION ACT AND PREVIOUS EXEMPTIONS GRANTED

PERTINENT SECTIONS OF THE UTILITIES COMMISSION ACT

Pertinent sections of the *Utilities Commission Act (UCA)* for the purpose of this Inquiry are provided below for reference.

Section 1 of the *UCA* defines public utility as:

"public utility" means a person, or the person's lessee, trustee, receiver or liquidator, who owns or operates in British Columbia, equipment or facilities for

(a) the production, generation, storage, transmission, sale, delivery or provision of electricity, natural gas, steam or any other agent for the production of light, heat, cold or power to or for the public or a corporation for compensation, or

(b) the conveyance or transmission of information, messages or communications by guided or unguided electromagnetic waves, including systems of cable, microwave, optical fibre or radiocommunications if that service is offered to the public for compensation,

but does not include

(c) a municipality or regional district in respect of services provided by the municipality or regional district within its own boundaries,

(d) a person not otherwise a public utility who provides the service or commodity only to the person or the person's employees or tenants, if the service or commodity is not resold to or used by others,

(e) a person not otherwise a public utility who is engaged in the petroleum industry or in the wellhead production of oil, natural gas or other natural petroleum substances,

(f) a person not otherwise a public utility who is engaged in the production of a geothermal resource, as defined in the Geothermal Resources Act, or

(g) a person, other than the authority, who enters into or is created by, under or in furtherance of an agreement designated under section 12 (9) of the Hydro and Power Authority Act, in respect of anything done, owned or operated under or in relation to that agreement;

Section 22 of the *UCA* states the following:

22 (1) In this section:

"eligible person" means a person, or a class of persons, that

(a) generates, produces, transmits, distributes or sells electricity,

(b) for the purpose of heating or cooling any building, structure or equipment or for any industrial purpose, heats, cools or refrigerates water, air or any heating medium or coolant, using for that purpose equipment powered by a fuel, a geothermal resource or solar energy, or

(c) enters into an energy supply contract, within the meaning of section 68, for the provision of electricity;

"minister" means the minister responsible for the administration of the Hydro and Power Authority Act.

(2) The minister, by regulation, may

(a) exempt from any or all of section 71 and the provisions of this Part

(i) an eligible person, or

(ii) an eligible person in respect of any equipment, facility, plant, project, activity, contract, service or system of the eligible person, and

(b) in respect of an exemption made under paragraph (a), impose any terms and conditions the minister considers to be in the public interest.

(3) The minister, before making a regulation under subsection (2), may refer the matter to the commission for a review.

Section 38 of the UCA states the following:

Public utility must provide service

38 A public utility must

(a) provide, and

(b) maintain its property and equipment in a condition to enable it to provide,

a service to the public that the commission considers is in all respects adequate, safe, efficient, just and reasonable.

Sections 42 to 44 of the UCA states the following:

Duty to obey orders

42 A public utility must obey the lawful orders of the commission made under this Act for its business or service, and must do all things necessary to secure observance of those orders by its officers, agents and employees.

Duty to provide information

43 (1) A public utility must, for the purposes of this Act,

(a) answer specifically all questions of the commission, and

(b) provide to the commission

(i) the information the commission requires, and

(ii) a report, submitted annually and in the manner the commission requires, regarding the demand-side measures taken by the public utility during the period addressed by the report, and the effectiveness of those measures.

(1.1) [Repealed 2010-22-64.]

(2) A public utility that receives from the commission any form of return must fully and correctly answer each question in the return and deliver it to the commission.

(3) On request by the commission, a public utility must deliver to the commission

(a) all profiles, contracts, reports of engineers, accounts and records in its possession or control relating in any way to its property or service or affecting its business, or verified copies of them, and

(b) complete inventories of the utility's property in the form the commission directs.

(4) On request by the commission, a public utility must file with the commission a statement in writing setting out the name, title of office, post office address and the authority, powers and duties of

- (a) every member of the board of directors and the executive committee,
- (b) every trustee, superintendent, chief or head of construction or operation, or of any department, branch, division or line of construction or operation, and
- (c) other officers of the utility.

(5) The statement required under subsection (4) must be filed in a form that discloses the source and origin of each administrative act, rule, decision, order or other action of the utility.

Duty to keep records

44 (1) A public utility must have in British Columbia an office in which it must keep all accounts and records required by the commission to be kept in British Columbia.

(2) A public utility must not remove or permit to be removed from British Columbia an account or record required to be kept under subsection (1), except on conditions specified by the commission.

Section 68 of the UCA provides definitions for Part 5 of the UCA. The definitions include, in part:

"energy" means electricity or natural gas;

"energy supply contract" means a contract under which energy is sold by a seller to a public utility or another buyer, and includes an amendment of that contract, but does not include a contract in respect of which a schedule is approved under section 61 of this Act;

"natural gas" means any methane, propane or butane that is sold for consumption as a domestic, commercial or industrial fuel or as an industrial raw material;

"public utility" means a public utility to which Part 3 applies;

Section 71(1) and (1.1) contained in Part 5 of the UCA states the following:

Energy supply contracts

71 (1) Subject to subsection (1.1), a person who, after this section comes into force, enters into an energy supply contract must

- (a) file a copy of the contract with the commission under rules and within the time it specifies, and
- (b) provide to the commission any information it considers necessary to determine whether the contract is in the public interest.

(1.1) Subsection (1) does not apply to an energy supply contract for the sale of natural gas unless the sale is to a public utility.

Section 82 of the UCA states the following:

Power to inquire without application

82 (1) The commission

- (a) may, on its own motion, and

(b) must, on the request of the Lieutenant Governor in Council, inquire into, hear and determine a matter that under this Act it may inquire into, hear or determine on application or complaint.

(2) For the purpose of subsection (1), the commission has the same powers as are vested in it by this Act in respect of an application or complaint.

Section 88 of the UCA states the following:

Application of orders

88 *(1) In making an order, rule or regulation, the commission may make it apply to all cases, or to a particular case or class of cases, or to a particular person.*

(2) The commission may exempt a person from the operation of an order, rule or regulation made under this Act for a time the commission considers advisable.

(3) The commission may, on conditions it considers advisable, with the advance approval of the Lieutenant Governor in Council, exempt a person, equipment or facilities from the application of all or any of the provisions of this Act or may limit or vary the application of this Act.

(4) The commission has no power under this section to make an order respecting a person, or a person in respect of a matter, who has been exempted under section 22.

PREVIOUS EXEMPTIONS GRANTED

Exemptions from regulation has been granted to various parties under different sections of the *Utilities Commission Act (UCA)*.

Section 22 Ministerial Exemption:

- Ministerial Order No. M-22-0205 dated June 6, 2002 made pursuant to section 22 of the *UCA* exempts persons who are not otherwise a public utility, and their equipment, facilities, plant, projects or systems, from provisions of Part 3 of the *UCA* with respect to the production and sale of electricity to BC Hydro or Powerex.
<http://www.bcuc.com/Documents/SpecialDirections/M202-MO22-0205.pdf>

Subsection 88(3) Exemptions:

The following, in descending order by date, are some examples of exemption Orders that the Commission has issued following advance approval from the Lieutenant Governor in Council. The exemptions vary depending on the nature of the exemption request.

- G-81-12 Quicksilver Resources Canada Inc.
http://www.bcuc.com/Documents/Orders/2012/DOC_30944_G-81-12_Quicksilver-UCA-Exemption.pdf
- G-79-12 Telecommunications Service Provider Class of Cases Exemption
http://www.bcuc.com/Documents/Orders/2012/DOC_30943_G-79-12_Strata-Plan-VR1104-UCA-Exemption.pdf
- G-75-12 Cove Power Society
http://www.bcuc.com/Documents/Orders/2012/DOC_30921_G-75-12_Cove-Power-UCA-Exemption.pdf
- G-81-08 Al Stober Construction Ltd.
http://www.bcuc.com/Documents/Orders/2008/DOC_18724_G-81-08_Al%20Stober%20Construction%20UCA%20Xmptn.pdf [Rescinded by Order G-139-08]

AN INQUIRY INTO AN EXEMPTION FOR BIOGAS AND BIOMETHANE SUPPLIERS

REGULATORY TIMETABLE

ACTION	DATE (2013)
Intervener and Interested Party Registration	Tuesday, April 23
Intervener Submissions on the Proposed Terms of the Exemption	Wednesday, April 24