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File No.: 253248.00152/15275

**By Electronic Filing**

British Columbia Utilities Commission  
Sixth Floor, 900 Howe Street  
Vancouver, BC V6Z 2N3

**Attention: Erica M. Hamilton**  
**Commission Secretary and Director**

Dear Sirs/Mesdames:

**Re: Project No. 3698858**  
**FortisBC Energy Inc.**  
**Section 71 Filing – Biomethane Purchase Agreement with the City of Surrey**

In accordance with the Regulatory Timetable set for this proceeding, we enclose for filing the electronic version of the Final Argument of FortisBC Energy Inc.

Yours truly,

**FASKEN MARTINEAU DuMOULIN LLP**

*[original signed by Christopher R. Bystrom]*

Christopher R. Bystrom

CB/ta  
Enclosure

**BRITISH COLUMBIA UTILITIES COMMISSION**  
**IN THE MATTER OF THE UTILITIES COMMISSION ACT,**  
**R.S.B.C. 1996, CHAPTER 473**

**and**

**BIOMETHANE PURCHASE AGREEMENT BETWEEN**  
**FORTISBC ENERGY INC. AND THE CITY OF SURREY**

**FINAL SUBMISSION OF**  
**FORTISBC ENERGY INC.**

**JANUARY 26, 2016**

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## PART ONE: INTRODUCTION

1. On November 24, 2015, FortisBC Energy Inc. (“FEI”) filed an application (the “Application”) for acceptance of a Biomethane Purchase Agreement (the “Agreement”) between FEI and the City of Surrey (“Surrey” or “the City”).<sup>1</sup> FEI filed Amendment #1 to the Agreement (the “Amendment”) on January 19, 2015.<sup>2</sup> FEI is seeking the following approvals from the Commission:

- (a) acceptance of the Agreement, as amended, for filing pursuant to section 71 of the *Utilities Commission Act* (the “UCA”); and
- (b) approval of the monthly Facilities Fee as set out in Schedule D of the Agreement, as amended, as being just and reasonable pursuant to sections 59-61 of the UCA.
- (c) The Commission keep confidential the non-redacted version of the Agreement filed as Appendix A of Exhibit B-1-1, the live working spreadsheet financial schedules filed as Appendix B of Exhibit B-1-1, the Purchase Scenarios filed as Appendix C of Exhibit B-1-1 and the non-redacted version of the Amendment filed as Exhibit B-4-1, together with the confidential response to information requests disclosing the Net-Sale Rate in the Agreement.

2. As described in section 3 of the Application, Surrey will be constructing, owning, and operating a biofuel processing facility (the “Surrey Facility”), which will take organic waste and generate, capture, purify and upgrade biogas to pipeline quality biomethane (also referred to as renewable natural gas or “RNG”).<sup>3</sup> As indicated in Appendix E of the Agreement, the City’s vision is to have a waste system where its CNG waste collection fleet is fueled with biomethane from the organic waste collected by the fleet itself.<sup>4</sup> Given that the volume of production from

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<sup>1</sup> Exhibit B-1 and B-1-1.

<sup>2</sup> Exhibits B-3 and B-3-1.

<sup>3</sup> Application, Appendix D.

<sup>4</sup> Exhibit B-1, Appendix E.

the Surrey Facility is expected to be greater than what Surrey can consume itself, and the City wanted its contracted CNG waste collection fleet to use biomethane, the City expanded this vision to having designated corporate affiliates and third-party contractors (“Designated Customers”) also consuming biomethane.<sup>5</sup> The Agreement between FEI and the City has been designed to allow the City to realize this vision to the extent possible using FEI’s existing Biomethane Program,<sup>6</sup> while also providing FEI with a supply of biomethane.

3. Pursuant to the terms of the Agreement as amended, FEI will pay the City for the supply of biomethane from the Surrey Facility up to a maximum of 160,000 GJ/year.<sup>7</sup> It is expected that the City and its Designated Customers will purchase in the range of 100,000 GJ of RNG annually from FEI, although the actual amount is at the discretion of the City and the Designated Customers.<sup>8</sup> FEI will pay the Net Sale Rate for the biomethane purchased throughout the year, subject to the annual true-up mechanism set out in Schedule D of the Agreement. Through the annual true-up mechanism, for biomethane supplied from the Surrey Facility up to the amount of biomethane that the City and its Designated Customers consume (the “Re-Purchased Biomethane”), FEI will pay the City the same price as the City pays for its biomethane. In this way, the City will, in effect, be able to realize its vision for supply of its CNG waste collection fleet from the biomethane produced by the Surrey Facility. For all biomethane produced by the Surrey Facility in excess of the amount consumed by Surrey and its Designated Customers, FEI will pay the Net-Sale Rate. The Agreement therefore accomplishes two goals: first, it allows the City (and its Designated Customers) to consume biomethane that is notionally produced by the Surrey Facility; second, it provides FEI with a supply of biomethane at a reasonable price from the Surrey Facility.

4. In order to monitor the quantity and quality of the biomethane supplied to FEI from the Surrey Facility and inject the biomethane into FEI’s natural gas distribution system, FEI

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<sup>5</sup> Exhibit B-1, pp. 9-10 and Appendix E.

<sup>6</sup> As approved on a permanent basis by Order G-210-13 dated December 11, 2013 and the accompanying Commission Decision.

<sup>7</sup> Exhibit B-1, p. 5.

<sup>8</sup> Exhibit B-7, CEC IR 1.6.2.

will construct, own and operate an interconnect station and interconnection pipe (the “Interconnection Facilities”).<sup>9</sup> Given that there is no minimum supply guarantee in the Agreement or contribution in aid of construction and that the City may consume all or substantially all of the biomethane produced by the Surrey Facility, the City will pay FEI a monthly Facilities Fee over a 25-year period to cover the cost of the construction, operation and maintenance of the Interconnection Facilities, as well as the costs of the Application, the administration of the Agreement and a contribution to the costs of the administration of the Biomethane Program.

5. In the remainder of this final submission, FEI addresses its request for acceptance of the Agreement pursuant to Section 71 of the UCA, its request for approval of the Facilities Fee and its confidentiality request.

## **PART TWO: ACCEPTANCE OF BIOMETHANE PURCHASE AGREEMENT**

6. FEI requests that the Commission accept for filing the Agreement as amended pursuant to section 71 of the UCA. The subsections below address the main topics explored in information requests in the proceeding. As discussed in the subsections below, the amended Agreement satisfies the criteria for biomethane supply contracts determined by the Commission and the deviations from the standard template for such contracts are in the public interest.

### **A. Surrey as Consumer of Biomethane**

7. The Agreement between FEI and the City contemplates the City both producing biomethane for sale to FEI and consuming it as a customer of FEI’s Biomethane Program. Further, the Agreement contemplates that the City may have certain Designated Customers also consuming biomethane as customers of FEI’s Biomethane Program. FEI can confirm that

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<sup>9</sup> Exhibit B-1, pp. 6-7.

the City and its Designated Customers will be treated the same as all other customers of FEI's Biomethane Program.<sup>10</sup>

8. FEI clarified in response to information requests that FEI is not separating the biomethane produced by the Surrey Facility into two pools of biomethane and that FEI is not giving the City a right to consume its own biomethane.<sup>11</sup> Rather, all of the biomethane produced from the Surrey Facility will go into the single biomethane supply pool for the Biomethane Program. The City and its Designated Customers, like all other biomethane customers, will purchase biomethane under FEI's approved biomethane rate schedules from the same biomethane pool.<sup>12</sup> All of the biomethane sold by FEI, including to Surrey and its Designated Customers, will be at the applicable BERC rate pursuant to FEI's approved biomethane rate schedules.<sup>13</sup>

9. To clarify what will physically occur, the City will physically deliver pipeline quality biomethane to FEI's Interconnection Facilities and, to the extent that Surrey and its Designated Customers purchase biomethane, Surrey will physically receive natural gas (deemed to be renewable natural gas) from FEI at different locations on FEI's distribution system.<sup>14</sup>

10. FEI also clarified in response to the second round of BCUC information requests that the ownership and transfer of environmental attributes of the biomethane is consistent with previous supply agreements and FEI's existing Biomethane Program. As with other supply agreements, the City as supplier will retain the environmental attributes associated with the destruction of methane, while the City will transfer to FEI the environmental attributes associated with the displacement of natural gas. Like all other customers of FEI's Biomethane Program, the City and its Designated Customers will receive the environmental attributes

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<sup>10</sup> Exhibit B-7, CEC IR 1.8.3; Exhibit B-9, BCUC IR 2.1.1.

<sup>11</sup> Exhibit B-6, BCSEA IR 1.9.2.1 and 1.9.2.2; Exhibit B-7, CEC IR 1.9.2.

<sup>12</sup> Exhibit B-7, CEC IR 1.9.2.

<sup>13</sup> Exhibit B-1, p. 10; Exhibit B-3, BCUC IR 1.4.1, 1.5.2 and 1.6.1; Exhibit B-7, CEC IR 1.8.3. Exhibit B-9, BCUC IR 2.1.1. Also see section 7.3 of Agreement.

<sup>14</sup> Exhibit B-6, BCSEA 1.8.1.

associated with the displacement of natural gas when they purchase biomethane from FEI pursuant to FEI's approved biomethane rate schedules.<sup>15</sup>

11. Through its contractual arrangements with the Designated Customers, the City will ultimately have the right to the environmental attributes associated with the displacement of natural gas related to all of the Re-Purchased Biomethane. Section 7.2(f) of the Agreement as amended provides the necessary assurance that the Designated Customers agree that the City has the right to claim the environmental attributes of the Re-Purchased Biomethane and that there will be no double-claiming of environmental attributes associated with the Re-Purchased Biomethane. However, the arrangements between the City and its Designated Customers are fundamentally a private contractual matter which do not impact FEI's Biomethane Program.<sup>16</sup>

12. FEI therefore submits that the purchase and consumption of biomethane by the City and its Designated Customers as contemplated in the Agreement is consistent with FEI's existing Biomethane Program.

## **B. Impact of BERC Rate Methodology Application**

13. FEI received information requests inquiring how the Agreement would be affected by the outcome of the BERC Rate Methodology Application.<sup>17</sup> In the BERC Rate Methodology Application, FEI proposed a BERC rate for Short Term Contract customers and a dollar discount from the BERC rate for Long Term Contract customers.<sup>18</sup> To accommodate potential outcomes of the BERC Rate Methodology proceeding, FEI and the City agreed to amend the Agreement. As amended, the Agreement accommodates the potential for both a

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<sup>15</sup> Exhibit B-[to be determined], BCUC IR 2.10.1.

<sup>16</sup> Exhibit B-[to be determined], BCUC IR 2.10.1 and 2.10.2.

<sup>17</sup> Exhibit B-3, BCUC 1.4.4 and Exhibit B-56, BCSEA 1.11.1.

<sup>18</sup> Exhibit B-3, BCUR 1.4.4.



long-term and a short-term BERC, and the potential for BERC changes throughout the year.<sup>19</sup> FEI explained in the response to BCUC IR 1.4.1, as follows:

In the course of responding to information requests, FEI recognized that the calculations of how FEI would pay for the supply of biomethane in the Agreement assumed that there would be only one BERC rate in place for an entire year. FEI's BERC Rate Methodology Application, however, proposes two different BERC rates that could be in place – a Short Term BERC Contract Rate and a Long Term BERC Contract Rate. There is also a possibility that in the future BERC rate changes could occur more frequently than once a year. Both of these scenarios introduce complications in calculating the correct monthly payments from FEI to the City for the production of biomethane from the Surrey Facility. As a result, FEI and the City have agreed to amendments to the Agreement (the Amending Agreement) to adjust how the monthly payments are calculated so that they will achieve the intended result regardless of the BERC rate at which the City and its Designated Customers may purchase biomethane during the year.

The key difference in the Agreement as amended is that FEI will use the Net Sale Rate (NSR) (rather than the BERC rate) to calculate the monthly payments to the City for the biomethane produced by the Surrey Facility. The NSR is unchanged by the amendments, and will be a constant rate throughout the November 1 to October 31 contract year. The City and its Designated Customers will continue to purchase biomethane at the applicable BERC rate(s), and there will still be a year-end true-up payment. The true-up payment will be either from FEI to the City or from the City to Surrey, depending on if the BERC is higher or lower than the NSR.<sup>20</sup>

14. As a result of the Amendment, the price paid to Surrey for biomethane supplied to FEI will, through the annual true-up, reflect the annual weighted average BERC rate paid by Surrey and its Designated Customers ("Annualized Repurchase Rate" or "ARR"), and is compatible with the current BERC rate and the BERC rate proposed by FEI in the BERC Rate Methodology Application.<sup>21</sup>

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<sup>19</sup> Exhibit B-6, BCSEA 1.11.1.

<sup>20</sup> Exhibit B-3, BCUC IR 1.4.1; Exhibit B-[to be determined], BCUC IR 2.11.3.

<sup>21</sup> Exhibit B-3, BCUC IR 1.4.1; Exhibit B-6, BCSEA 1.11.1; Exhibit B-[to be determined], BCUC IR 2.11.3.

15. Furthermore, as explained in response to BCUC IR 2.11.4, the formula for the annual true up in Schedule D of the Agreement as amended is compatible with all BERC rate structures where the revenues and volumes of biomethane purchased by Surrey or Designated Customers are clearly identifiable. This is because an Average Repurchase Rate can be readily calculated by taking the revenues from Surrey or Designated Customers divided by the corresponding volumes.<sup>22</sup>

16. FEI therefore submits that the Agreement is sufficiently flexible to accommodate the majority of the possible changes to the BERC rate and it is unlikely that it will need to be changed in the future to accommodate adjustments to the BERC rate.

### **C. Transaction Flow between FEI and the City**

17. One of the topics explored during the proceeding was how the transactions flow between Surrey and FEI for the production and consumption of biomethane. The payments between FEI and Surrey for biomethane supplied from the Surrey Facility and biomethane purchased by Surrey and its Designated Customers are governed by section 2 of Schedule D of the Agreement as amended. FEI described the transaction flow in formula form as follows:

The financial transactions can now be summarized in a formula, as follows, where P represents the amount of biomethane produced by the Surrey Facility and U represents the use/purchase of Biomethane by Surrey and its Designated Customers.

#### Monthly Transactions (excluding the payment of the Facilities Fee from the City to Surrey):

1. FEI pays the City for production of biomethane from the Surrey Facility at the NSR ( $P \times \text{NSR}$ )
2. City of Surrey and Designated Customers purchase biomethane through the RNG program at the applicable BERC rate ( $U \times \text{BERC}$  where BERC is the applicable BERC rate that customer has contracted for).

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<sup>22</sup> Exhibit B-[to be determined], BCUC IR 2.11.4.

Annual True-up Transaction – after October 31:

1. Annual True-up Amount is calculated as: the lower of annual P and annual U x (ARR - NSR) where ARR is the annual weighted average rate at which the City and its Designated Customers purchased RNG.
2. If the result of the calculation is positive, FEI will pay Surrey the result; if the result is negative, Surrey will pay FEI the absolute value of the result. Note that a positive result will occur when the BERC is greater than the NSR and a negative result will occur when the NSR is greater than the BERC.<sup>23</sup>

18. FEI provided working spreadsheets illustrating the transaction flows in 12 different scenarios representing the various possibilities for the relationship between the amount of production from the Surrey Facility and the amount consumed by the City and its Designated Customers, if the BERC is greater than or less than the Net-Sale Rate.

19. The workings of the Agreement as amended are follows:

1. FEI will purchase at the Net Sale Rate all of the biomethane delivered to FEI from the Surrey Facility that meets the specifications and volumetric limits under the Agreement.
2. RNG is always sold to Surrey or its Designated Customers at the BERC rate:
  - a. Surrey may purchase RNG from FEI at the BERC rate under the applicable rate schedule (like all other RNG customers);
  - b. Surrey may require its Designated Customers to purchase RNG from FEI through written agreements;
  - c. The biomethane purchased by Surrey itself plus the volume purchased by its Designated Customers is defined in the Agreement as the “Re-purchased Biomethane”;
  - d. The amount of Re-Purchased Biomethane is expected to vary annually and may also vary month to month.

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<sup>23</sup> Exhibit B-3, BCUC IR 1.4.1.

3. On an annual basis, FEI will true up the amount paid for delivered biomethane such that:
  - a. FEI pays the ARR (which is the annual weighted average BERC rate) for each GJ of biomethane produced from the Surrey Facility and accepted by FEI up to the total amount of the Re-Purchased Biomethane;
  - b. FEI pays the Net Sale Rate to Surrey for each GJ of biomethane produced from the Surrey Facility and accepted by FEI that is in excess of the total amount of Re-Purchased Biomethane.
4. While all the biomethane that the Surrey Facility supplies is added to the RNG pool, the amount of biomethane produced by the Surrey Facility and accepted by FEI in excess of the Re-Purchased Biomethane is the amount of biomethane that the Surrey Facility supplies that is available to RNG customers other than the City and its Designated Customers.
5. Surrey pays a monthly Facilities Fee regardless of the amount of biomethane that is produced by the Surrey Facility and whether or not it or its Designated Customers purchase any RNG from FEI.<sup>24</sup>

20. The result of the above transactions is that there is no net financial effect (other than the Facilities Fee) if the City and its Designated Affiliates purchase the same amount of biomethane that is produced by the Surrey Facility (as both transactions are at the applicable BERC rate). Any biomethane produced by the Surrey Facility that is in excess of the amount purchased by the City and its Designated Affiliates is purchased by FEI at the Net Sale Rate and is available for other RNG customers.<sup>25</sup> Finally, the City pays the Facilities Fee regardless of the amount of biomethane produced or purchased by the City.

21. In sum, FEI submits that its amended formula for determining the transaction flows between FEI and the City is clear and has been demonstrated to produce the correct outcome in the various scenarios that might arise over the 25-year term of the Agreement.

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<sup>24</sup> Exhibit B-3, BCUC IR 1.4.1; Exhibit B-6, BCSEA IR 1.9.1; Exhibit B-[to be determined], BCUC IR 2.11.3.

<sup>25</sup> Exhibit B-3, BCUC IR 1.4.1.

**D. Biomethane Energy Supply Contract Criteria**

22. The Agreement is further to FEI’s Biomethane Program as approved on a permanent basis by Order G-210-13 dated December 11, 2013 and the accompanying Commission Decision (the “2013 Biomethane Decision”). The filing requirements pursuant to section 71(1)(a) and (b) for energy supply contracts that are part of FEI’s Biomethane Program were first set by Commission Order G-194-10, dated December 14, 2010 as part of the approval of FEI’s Biomethane Program on a pilot basis and were then modified when the Biomethane Program was approved on a permanent basis by the Commission in the 2013 Biomethane Decision.

23. Table 1 below sets out the how the Agreement satisfies the criteria set out by the Commission.<sup>26</sup>

**Table 1: Satisfaction Supply Contract Criteria**

Criteria	Contract Reference	Comment
The supply contract is at least 10 years in length.	Section 2.1, 2.3	The Agreement is a 25 year contract.
FEI has, by agreement, retained final control over injection location.	Sections 3.2 and 3.7; Article 4	FEI owns the Interconnection Facilities, and has the necessary control over the leased lands used for the Interconnection Facilities in order to construct, operate, maintain or remove FEI’s Interconnection Facilities without interference.
FEI is satisfied that the selected upgrader is sufficiently proven.	N/A	FEI relies upon Surrey to ensure that it selects appropriate and proven equipment for the operation of its Surrey Facility and relies on the terms of the Agreement to mitigate FEI’s investment in the Interconnection Facilities as discussed below.
FEI has, by agreement, reserved the right to refuse gas if customer safety or asset integrity is at stake.	Clause 5.2	FEI may reject any biomethane that does not meet the biomethane specifications in Schedule A of the Agreement or the volumetric limits in Schedule D section 1 of the Agreement.

<sup>26</sup> Based on Table 5-1 of the Application.

Criteria	Contract Reference	Comment
The partner is a municipality, regional district or other public authority or is a private party with a track record in dealings with FEI or that posts security to reduce the risk of stranding.	N/A	Surrey is a municipality.
The total production of biomethane for all projects undertaken does not exceed an annual purchase of 1.5 PJ.	Clause 5.1, Schedule D Clause 1.1 (a)	The Agreement sets the maximum volume of biomethane to supply to FEI from the Surrey Facility is 160,000 GJ annually. Added this amount to current contracted supply from all supply projects, the total annual GJ is 589,250.
The price for delivered biomethane is below \$15.28 per GJ.	Schedule D, Section 2.1 (a) and (b)	<p>FEI pays the Annualized Repurchase Rate (which is the annual weighted average BERC rate paid by the City and Designated Customers) for each GJ of biomethane produced from the Surrey Facility and accepted by FEI up to the total amount of the Re-Purchased Biomethane. The purchase by FEI of biomethane at the Annualized Repurchase Rate will have no financial effect on the BVA as it will be offset by the sale of an equal amount of biomethane to Surrey and its Designated Customers at the same price.</p> <p>FEI pays the Net Sale Rate to Surrey for each GJ of biomethane produced from the Surrey Facility and accepted by FEI that is in excess of the total amount of the Re-Purchased Biomethane. Inflation will not be added to the Net Sale Rate if it results in a Net Sale Rate that is higher than the maximum approved rate for delivered biomethane, currently set at \$15.28.</p>

24. Information requests on this topic confirm that the Agreement satisfies the criteria.

- (a) Regarding the criteria that the selected upgrader is sufficiently proven, FEI is relying upon Surrey’s procurement process for the selection of an appropriate partner and upgrader that is sufficiently proven.<sup>27</sup> As indicated in the Application, the City Council of Surrey has approved the development of the

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<sup>27</sup> Exhibit B-7, CEC IRS 1.10.1 and 1.10.2.

Surrey Facility and awarded the project to Orgaworld, which has already commenced construction.<sup>28</sup> The risk with respect to the success of the upgrader is managed in the City's contract with Orgaworld which provides that Orgaworld bears the risk of successfully producing biomethane.<sup>29</sup> As between the City and FEI, the terms of the Agreement mitigate any stranded asset risk. The Facilities Fee, as explained in section 6 of the Application, is designed so that FEI will recover the costs associated with the design, construction, operation and maintenance of the Interconnection Facilities over the term of the Agreement. Surrey is obligated to pay the Facilities Fee independent of the volume of biomethane produced and sold to FEI. Article 10 of the Agreement mitigates potential stranded asset risk in the case of the City defaulting on or terminating the Agreement.<sup>30</sup> Further, as described in section 7.1 of the Application, FEI will maintain control of and access to the Interconnection Facilities and the portion of the interconnection facilities that is above ground will be designed to maximize the ability of FEI to remove it and use it for other projects if circumstances require. As stated in response to CEC IR 1.10.2, FEI does not expect any financial consequences if it were to reject any or all of the supply of biomethane from the Surrey Facility.<sup>31</sup>

- (b) FEI provided details on how it can and will reject biomethane that does not meet the required quality specifications for biomethane or maximum volume limits.<sup>32</sup>
- (c) A comparison of the confidential Net-Sale Rate in the Agreement to the price for supply of biomethane from other projects is provided in BCUC Confidential IR 1.2.1.<sup>33</sup>

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<sup>28</sup> Exhibit B-1, p. 18.

<sup>29</sup> Exhibit B-1, p. 18.

<sup>30</sup> Exhibit B-5, BCOAPO IR 1.3.3.

<sup>31</sup> Exhibit B-7, CEC IR 1.10.2.

<sup>32</sup> Exhibit B-3, BCUC IR 1.9 series; Exhibit B-7, CEC IR 1.4 series.

<sup>33</sup> Exhibit B-4, BCUC Confidential IR 1.2.1.

25. FEI submits that the Agreement satisfies the criteria for biomethane supply contracts approved by the Commission.

**E. Deviations from Contract Template**

26. In the 2013 Biomethane Decision, FEI was directed to describe in each application for section 71 acceptance any departures from the contract template for biomethane supply agreements. FEI used the standard contract template (as provided to the Commission) as a starting point for the Agreement. The Agreement deviates from the standard template in some ways to meet the specific requirements of Surrey and to ensure that no additional risks are added or shifted to FEI ratepayers. Each of the deviations from the appropriate contract template is summarized in Table 2 below, along with the relevant Agreement clause reference and a brief reason for the deviation

**Table 2: Deviations from Template<sup>34</sup>**

Departures	Contract Reference	Comment
Milestones	Section 3.3; Schedule C	The Agreement contains target dates for various activities, including the targeted filing dates for the Application, for the expected approval from the Commission, and for the completion of the Interconnection Facilities. The Agreement provides target dates for the Interconnection Facilities to ensure that these facilities would be in-service at the same time as the Surrey Facility (expected to be January 2017).
Facilities Fee	Section 6.2; Schedule D, section 3	The Facilities Fee is designed to allow FEI to recover the costs associated with the design, construction, operation and maintenance of the Interconnection Facilities, the Application, the administration of the Agreement and a contribution to the administration of the Biomethane Program. See Part 2, Section F and Part 3 of this Final Argument.
Re-purchase of Biomethane	Article 7	The Agreement is structured to facilitate and accommodate Surrey's intent and plan to purchase biomethane from FEI and also have Designated Customers purchase biomethane from FEI. Surrey and any Designated Customers will purchase biomethane under the applicable biomethane rate schedules.

<sup>34</sup> Based on Table 5-2 of the Application.



Departures	Contract Reference	Comment
Greenhouse Gas	Article 8	The City as supplier will retain the environmental attributes associated with the destruction of methane, while the City will transfer to FEI the environmental attributes associated with the displacement of natural gas. The City and its Designated Customers will receive the environmental attributes associated with the displacement of natural gas when they purchase biomethane from FEI pursuant to FEI's approved biomethane rate schedules. Through its contractual arrangements with the Designated Customers, the City will ultimately have the right to the environmental attributes associated with the displacement of natural gas related to all of the Re-Purchased Biomethane. <sup>35</sup>
Termination Payment	Section 10.2	If the Agreement is terminated due to a default by the City or the City exercises its right to early termination, the City will pay the costs associated with removing FEI's facilities and the unrecovered net book value of the Interconnection Facilities.
Additional Equipment at Interconnection Facilities	Schedule C	The City requested the addition of a return meter to track the volume of gas returned to the City.
Minimum Volume	Section 6.2	There is no minimum volume commitment. Instead, the City will pay the Facilities Fee to recover FEI's costs. See Part 2, Section F and Part 3 of this Final Argument.

27. The deviations from the template adjust for the particular requirements of Surrey related to the “re-purchase” of biomethane, while ensuring that FEI ratepayers are protected through the payment of the Facilities Fee. FEI therefore submits that the terms of the Agreement that deviate from the standard template are in the public interest.

#### **F. Facilities Fee**

28. As discussed below, FEI is requesting approval of the Facilities Fee under sections 59-61 of the UCA. However, the Facilities Fee is also a key term of the supply agreement filed under section 71. Notably, the Facilities Fee in the Agreement mitigates FEI's stranded asset risk, negates the need for a minimum supply and contribution in aid of construction from Surrey and appropriately covers FEI's costs of providing service to Surrey as contemplated in the Agreement.

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<sup>35</sup> Exhibit B-[to be determined], BCUC IR 2.10.1 and 2.10.2.

29. As discussed in response to BCUC IR 1.1.1, given that the Facilities Fee is a key term of the supply agreement, if the Commission determines under sections 59-61 that the Facilities Fee must be modified in some manner in order to be approved under sections 59-61, then FEI does not believe the Commission can or should accept the Agreement as filed under Section 71. FEI believes that section 71(3)(b) gives the Commission the option described in BCUC IR 1.1.1.1 to issue an order accepting the Agreement in principle but rejecting the Agreement as filed and indicating that a new version of the Agreement with the modified Facilities Fee would be accepted for section 71 filing if filed as a compliance filing.<sup>36</sup>

30. FEI explained the relationship between the Facilities Fee, the minimum volume criteria and the interconnection test in the Application as follows:

In Order G-159-14 and accompanying decision, the Commission determined a methodology for determining an Interconnect Test. The Interconnection Test is designed to fairly allocate interconnection costs between the biomethane supplier and FEI and thus considers the cost to connect the supplier and the contractual minimum amount of biomethane supplied over the life of the contract. The test is to be applied to all supply projects. The Interconnection Test is similar in concept to a main extension test whereby revenues and costs are reviewed to determine whether a contribution from the customer is required in order for the main to be constructed. The difference in the Interconnection Test is that there is an established rate per GJ based upon costs for interconnection piping and a minimum supply in volume in the contract. It also considers a maximum allowed spend on an interconnection station. FEI is required to ask for a Contribution in Aid of Construction (CIAC) in the event that either the Interconnection Station Cost or the cost per GJ is above a threshold.

In negotiations with Surrey, the concept of minimum supply requirement was discussed as well as the Interconnection Test and the recovery of interconnection costs. A specific rate per GJ of biomethane supply was considered as a means of ensuring that Surrey covered the costs of the Interconnection Station. It was noted that if the volumes of biomethane produced by Surrey increase, or become greater than the volume used as part of the Interconnection Test, then Surrey would be paying more than their costs for the interconnection. As a result, it was proposed to recover the interconnection

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<sup>36</sup> Exhibit B-3, BCUC IR 1.1.1.

costs on a monthly basis irrespective of the volume of biomethane that Surrey produced and FEI purchased.

The parties agreed to the monthly Facility Fee as a way to recover the interconnection costs. The fee is paid to FEI monthly irrespective of any production of biomethane by Surrey. As there is no minimum volume, it is not possible to calculate the Interconnection Test in the manner it was designed. However, since Surrey is paying for all of the interconnection costs as part of the monthly Facility Fee, FEI believes that the intent of the Interconnection Test has been satisfied and as such a CIAC is not required.

Therefore, FEI believes that the Facility Fee, together with the agreement for Surrey to pay the full costs associated with any assets (unrecovered net book value) in the event of an early termination of the Agreement, provides fulsome protection for FEI and its customers and is just and reasonable.<sup>37</sup>

31. The Facilities Fee is also necessary given that the City may consume all or substantially all of the biomethane it produces. If this situation occurs, the Facilities Fee ensures that the City will pay its cost of service, as discussed further below.

32. FEI therefore submits that the inclusion of the Facilities Fee in the Agreement as amended is in the public interest.

#### **G. Summary of Acceptance of Supply Agreement under Section 71**

33. In summary, FEI submits that the terms of the Supply Agreement satisfy the criteria for biomethane supply contracts and that the deviations from the standard template are appropriate and in the public interest. FEI submits that the Agreement provides a service to the City which enables it to produce biomethane from its Surrey Facility and consume it at different locations through FEI's approved biomethane rate schedules, and provides FEI with a supply of biomethane at a reasonable cost for the Biomethane Program without any material risk to FEI's ratepayers. FEI therefore submits that the Agreement as amended should be accepted for filing under section 71 of the UCA.

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<sup>37</sup> Exhibit B-1, pp. 16-17.

### PART THREE: APPROVAL OF FACILITIES FEE

34. FEI requests approval of the Facilities Fee in the Agreement pursuant to sections 59-61 of the UCA. The components of the Facilities Fee are set out in section 3 of Schedule D of the Agreement as amended. Pursuant to Article 6.2 of the Agreement, as amended, the City will pay the Facilities Fee for a 25 year period starting on the in-service date of the facilities.<sup>38</sup>

35. The Facilities Fee is a levelized charge recovered over a 25-year period that will recover the following costs:

- (a) the capital costs, cost of capital, and undepreciated capital cost at the end of the contract term of the Interconnection Facilities;
- (b) operating and maintenance costs of the Interconnection Facilities, including income taxes;
- (c) FEI's costs directly related to developing the supply project and the Agreement;
- (d) Expected costs associated with administering the Agreement;
- (e) Forecast costs of \$75 thousand associated with the filing of this Application; and
- (f) A negotiated incremental fee designed to provide incremental benefits to other RNG customers (the "Heritage Fee").<sup>39</sup>

36. A forecast Facilities Fee is set out in Schedule 10 of the financial schedules filed non-confidentially as Attachment 2.1.2 of Exhibit B-3. The forecast Facilities Fee will be adjusted to recover FEI's actual capital costs and costs of the Application as contemplated in Schedule D of the Agreement as amended.

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<sup>38</sup> Exhibit B-4, BCUC IR 1.5.1.

<sup>39</sup> Exhibit B-1, pp. 15-16.

37. FEI provided further details related to the Facilities Fee in response to information requests, such as the inflation rates and depreciation used in the calculation,<sup>40</sup> a breakdown of the Application costs,<sup>41</sup> description of the taxes<sup>42</sup> and the rationale for the Heritage Fee.<sup>43</sup>

38. In sum, the Facilities Fee recovers the costs of providing service to the City pursuant to the terms of the Agreement and mitigates stranded asset risk related to FEI's Interconnection Facilities. The Facilities Fee is appropriate in the context of the Agreement since the Agreement contains no minimum supply guarantee or contribution in aid of construction and the City and its Designated Customers may consume all or substantially all of the biomethane produced from the Surrey Facility at the same value at which FEI purchases it from the City. In these particular circumstances, it is just and reasonable that the Facilities Fee recover the range of costs set out in Schedule D of the Agreement as amended, including the costs of the Interconnection Facilities, the Application, administration of the Agreement and a contribution to the administration of the Biomethane Program.

39. FEI submits that the Facilities Fee is just and reasonable and respectfully requests that the Commission approve the Facilities Fee as filed.

#### **PART FOUR: CONFIDENTIALITY**

40. In the Application FEI requested that the Agreement, the cost of service model (fully functional Excel model) and the purchase scenarios, attached as Appendices A, B and C, respectively, be held confidentially in accordance with the BCUC Practice Directive related to Confidential Filings. The Commission granted the requested confidential treatment in Order G-186-15 filed as Exhibit A-2 in this proceeding.

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<sup>40</sup> Exhibit B-4, BCUC IR 1.6 and 1.7 series, respectively.

<sup>41</sup> Exhibit B-4, BCUC IR 1.8.1.

<sup>42</sup> Exhibit B-4, BCUC IR 1.9 series.

<sup>43</sup> Exhibit B-4, BCUC IR 1.10 series.

41. In response to BCUC IR 1.2.1.2, FEI agreed that only the fully functional Excel version of the cost of service model filed as Appendix B of the Application is confidential as it is propriety and commercially sensitive to FEI. FEI filed a non-confidential pdf version of Appendix B in response to BCUC IR 1.2.1.2.<sup>44</sup> FEI also filed a non-confidential redacted version of the Agreement and the Amendment in response to BCUC IR 2.1.4. However, the unredacted versions of the Agreement and the Amendment remain confidential as they contains commercially sensitive, negotiated rates which could negatively impact FEI's ability to negotiate rates with other potential biomethane suppliers if released to the public.<sup>45</sup>

42. In summary, consistent with the Commission's past practice of granting confidential treatment of biomethane supply agreements,<sup>46</sup> FEI requests that the Commission continue to hold confidential the non-redacted version of the Agreement filed as Appendix A of Exhibit B-1-1, the live working spreadsheet financial schedules filed as Appendix B of Exhibit B-1-1, the Purchase Scenarios filed as Appendix C of Exhibit B-1-1 and the non-redacted version of the Amendment filed as Exhibit B-4-1, together with the confidential response to information requests disclosing the Net-Sale Rate in the Agreement.

#### **PART FIVE: CONCLUSION**

43. FEI submits that based on the evidence in this proceeding, the approvals sought are just and reasonable and should be approved as filed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated: January 26, 2016

***[original signed by Christopher Bystrom]***

Christopher Bystrom  
Counsel for FortisBC Energy Inc.

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<sup>44</sup> Exhibit B-3, Attachment 2.1.2.

<sup>45</sup> Exhibit B-3. BCUC IR 1.2.1.4, Attachments 2.1.4 and 4.1a.

<sup>46</sup> E.g., see Order E-13-13 (keeping confidential the supply agreement and the live working financial model).