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February 5, 2016  
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 Reply Submission 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**

**REPLY SUBMISSION OF**  
**FORTISBC ENERGY INC.**

**FEBRUARY 5, 2016**

## **A. Introduction**

1. In accordance with the regulatory timetable approved by the Commission for this proceeding, FortisBC Energy Inc. (“FEI”) filed its final submission on January 26, 2016. On February 2, 2016, final submissions were filed by the City of Surrey (the “City”), British Columbia Old Age Pensioners et al. (“BCOAPO”), the Commercial Energy Consumers Association of B.C. (“CEC”) and B.C. Sustainable Energy Association and Sierra Club B.C. (“BCSEA”). FEI files this Reply submission to respond to the issues raised by interveners in their submissions.

## **B. Relationship between Rate Approval and Acceptance of Supply Agreement**

2. Both BCOAPO and the City commented on how the approvals under section 71 and sections 59-61 of the *Utilities Commission Act* (the “UCA”) relate to each other and, in particular, what the Commission should do if it did not approve the Facilities Fee, but otherwise wished to accept the Biomethane Purchase Agreement (the “Agreement”) for filing under section 71. BCOAPO says that the Commission could approve the Agreement pursuant to section 71(3) of the UCA subject to modifications to the Facilities Fee which could then be filed as a compliance filing.<sup>1</sup> Although section 71 does not use the word “approve”, FEI understands BCOAPO’s proposal to be substantially the same as the option described in BCUC IR 1.1.1.1, where it was suggested that “the Commission could 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”. FEI agrees that this is an option for the Commission.<sup>2</sup> In essence, the Commission could indicate that it will accept the Agreement subject to modifications to the Facilities Fee being filed for approval in a compliance filing.

3. The City is a party to the Agreement and is supportive of FEI’s Application. However, the City does express some disagreement with FEI’s position on how the approvals

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<sup>1</sup> BCOAPO Argument, paras. 3.

<sup>2</sup> Exhibit B-3, BCUC IR 1.1.1.1.

under section 71 and sections 59-61 of the UCA relate to each other. The City submits that the Commission could accept the Agreement for filing under section 71, while at the same time not approving the Facilities Fee. In the City's view, the Commission's ratemaking powers operate to the exclusion of the Commission's powers under section 71.<sup>3</sup> FEI will confine its comments to the situation presently before the Commission.

4. In FEI's view, the Facilities Fee as set out in the Agreement is subject to rate approval under the UCA because it is a "rate" as defined in the UCA, but is also part of the Agreement subject to acceptance under section 71 since it is an essential term of the supply agreement. As discussed in FEI's final submission, the Facilities Fee in the Agreement mitigates FEI's stranded asset risk, negates the need for a minimum supply commitment and contribution in aid of construction from Surrey and appropriately recovers FEI's costs of providing service to the City as contemplated in the Agreement. If the Commission does not approve the Facilities Fee under its ratemaking powers, then the Facilities Fee is illegal and of no force and effect. If the Facilities Fee is illegal and of no force and effect, then an essential term of the supply agreement cannot be enforced, e.g. FEI would not be able to charge the City for the cost of its interconnection facilities as contemplated in the Agreement. Therefore, if the Commission does not approve the Facilities Fee, FEI does not believe the Commission should simply accept the Agreement under section 71 because that would indicate that the Commission had concluded that the Agreement is in the public interest even though the Facilities Fee was not enforceable. Rather, as discussed above, the Commission should make its acceptance conditional on a refiling of the Agreement with a modified Facilities Fee.

5. FEI understands that the City is concerned about the potential delay in requiring an amendment to the Agreement and a compliance filing. FEI submits that the Commission should accept the Agreement and approve the Facilities Fee, in which case there will be no delay.

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<sup>3</sup> City of Surrey Final Argument, p. 5.

**C. Confidentiality of Net-Sale Rate**

6. BCOAPO submits that it is impossible for it to determine whether the proposed Agreement is in the public interest because the Net-Sale Rate is confidential.<sup>4</sup> It was open to BCOAPO to access the confidential information by executing the standard form of undertakings of confidentiality. The fact that BCOAPO chose not to do does not in any way impact the Commission's assessment of the public interest in this case.

**D. The City's Purchase of Biomethane**

7. At paragraph 15 and 17 of its submissions, BCOAPO appears to be suggesting the City should be given an incentive to purchase biomethane or should have made a contractual commitment to do so. Neither an incentive nor a commitment is required for a biomethane supply agreement to be in the public interest. The Commission approved criteria for biomethane supply agreements and did not set down any requirement that supply be backed up by a commitment by the supplier to purchase biomethane, or that FEI provide an incentive for suppliers to purchase biomethane.<sup>5</sup> Clearly, not all suppliers are in the position to be consumers of biomethane; nor could FEI compel a supplier to purchase biomethane. Moreover, while the City has not committed to purchasing a particular amount of biomethane, the evidence is clear that the City plans to do so and indeed has its own business or policy reasons for doing so.<sup>6</sup>

8. BCOAPO submits that it does not appear to be in the public interest to increase biomethane supply when there is not enough demand for the existing supply.<sup>7</sup> BCOAPO appears to be ignoring that the Commission already determined that the Biomethane Program is in the public interest and approved a maximum supply limit.<sup>8</sup> The Agreement satisfies the criteria for biomethane supply agreements, including that it is within the supply limit.

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<sup>4</sup> BCOAPO Argument, paras. 11-13.

<sup>5</sup> Order G-210-13; Exhibit B-1, p. 14.

<sup>6</sup> E.g., Exhibit B-1, Appendices D and E.

<sup>7</sup> BCOAPO Final Argument, para. 16.

<sup>8</sup> Order G-210-13.

Moreover, it is likely that the City and its Designated Customers will consume all or substantially all of the biomethane produced by the Surrey Facility.

9. BCOAPO submits that the Agreement is not required for Surrey to purchase biomethane.<sup>9</sup> This does not accurately reflect the situation. Surrey and its Designated Customers are of course legally able to purchase biomethane under FEI's rate schedules like any other eligible customer. However, FEI understands that in fact the City and its designated customers would not purchase biomethane without the Agreement in place.<sup>10</sup> Further, without the Agreement in place, the City would have to take steps to consume its own biomethane without using FEI's system.<sup>11</sup> In this case, Surrey and its designated customers not only would not purchase biomethane from FEI, but could cease being FEI customers if all their natural gas needs could be met by biomethane from the Surrey facility.

10. FEI therefore submits that BCOAPO's submissions on this topic are inaccurate and should be rejected.

#### **E. The Net-Sale Rate**

11. The CEC says that the Net-Sale Rate is a negotiated price, but then states at paragraph 48 that "under typical agreements the CEC understands that the contracted rate would recover costs for the interconnection facilities." This is incorrect. The recovery of the costs of the interconnection facilities requires a revenue flow from the City to FEI. As the Net-Sale Rate is the price paid by FEI to the City for the biomethane it produces, it cannot recover the costs of interconnection facilities. In the Agreement, the payment of the Facilities Fee to FEI recovers the costs of the interconnection facilities. In the absence of the Facilities Fee,

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<sup>9</sup> BCOAPO Final Argument, para. 17.

<sup>10</sup> Exhibit B-7, CEC IR 1.10.5.

<sup>11</sup> Exhibit B-7, CEC IR 1.7.3.

there would be a minimum supply guarantee and, depending on the outcome of the approved interconnection test, a contribution in aid of construction paid by the City to FEI.<sup>12</sup>

12. The CEC states at paragraph 50 that “in order for the project to be beneficial to ratepayers it is likely appropriate for the Net-Sale Rate to be set below the BERC rate in order for the NSR purchase rate to recover the non-gas costs which are included in the BERC.”<sup>13</sup> This submission is also incorrect. The Commission approved a maximum price for delivered biomethane of \$15.28 per GJ.<sup>14</sup> The Net-Sale Rate is below this maximum. Furthermore, under the current BERC rate methodology, the BERC recovers the full cost of service of providing biomethane. FEI’s biomethane supply costs (e.g. the Net-Sale Rate per GJ produced by the Surrey Facility) is an input into FEI’s cost of service which is recorded in the biomethane variance account (the “BVA”), which is then recovered along with all other costs in the BVA through the BERC rate. Under a BERC rate that recovers the full cost of service, it would be circular to suggest that the Net-Sale Rate be set by reference to the BERC.

13. The CEC submits at paragraph 53 of its submission, as amended, that the Commission should “ensure the Net-Sale Rate is established below the BERC rate, before any premium discount, less the Facility Fee and sufficiently at a level below the BERC rate, before any premium discount, to capture an adequate contribution to the RNG program.” [Emphasis added.] As best FEI can determine, the CEC appears to be confusing what is at issue in this proceeding versus what is at issue in the proceeding dealing with FEI’s Application for Approval of a BERC Methodology. As the existing BERC rate methodology contains no “premium discount”, the CEC appears to be contemplating the situation in which the Commission approves FEI’s Application for Approval of BERC Methodology. In that Application, FEI is proposing that a market-based BERC rate be set at a premium to the natural gas commodity rate. If the Commission determines that the BERC rate should be set below the full cost of service in a separate proceeding, then it follows that there will be some costs not recovered by

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<sup>12</sup> Exhibit B-1, pp. 16-17.

<sup>13</sup> CEC submission, para. 50.

<sup>14</sup> Order G-210-13; Exhibit B-1, p. 14.

the payment of the BERC rate. This is not relevant to the price paid by FEI for supply of biomethane from the City of Surrey.

14. The CEC appears to be suggesting that FEI should charge a Net-Sale Rate which is back-calculated from FEI's proposed market-based BERC rate. First, as noted above, the Commission approved a maximum price for delivered biomethane of \$15.28 per GJ and the Net-Sale Rate is below this maximum.<sup>15</sup> Second, the CEC's suggestion is not feasible. The purchase price of biomethane is based on the supplier's cost to produce and supply the biomethane, and is subject to the maximum cost of supply approved by the Commission. There is no evidence or reason to believe that the price of supply of biomethane could reasonably be set at a discount to FEI's proposed market-based BERC rate. FEI submits that the CEC's submissions on this issue are without merit and must be rejected.

#### **F. Price of Re-Purchased Biomethane and Designated Customers**

15. The CEC's concerns expressed on pages 11 to 14 of its submission under the headings "BERC" and "Designated Customers" all hinge on the mistaken notion that there is some unrecovered program costs not being recovered when the City and Designated customers purchase biomethane from FEI as contemplated in the Agreement. At paragraph 59 the CEC states:

The CEC submits that since the BERC rate is intended to recover overhead and program costs, a purchase of RNG at the BERC rates results in the 'gas-only' purchase price being the same as the 'gas plus overhead' sale price, so the overhead and program costs are not appropriately recovered. However, the CEC also notes that the Facility Fee covers facility costs and includes a negotiated incremental fee designed to provide incremental benefits to other RNG customers. To the extent that the Facility Fee is able to recover the non-gas related costs (in addition to the interconnection station), and contribute positively to the overall RNG program costs, this concern may be alleviated.

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<sup>15</sup> G-210-13; Exhibit B-1, p. 14.



16. At paragraph 67, CEC extends its concern to Designated Customers saying that “as the Designated Customers will effectively be purchasing City of Surrey supply purchased at the BERC rate, the remaining non-bypass customers will be left to absorb the program costs not otherwise collected in the Facility Fee.”<sup>16</sup> At paragraph 68, the CEC goes on to state that it is concerned that potential customers may find it preferable to wait until they become a Designated Customer of a municipality rather than purchasing biomethane independently.

17. The CEC’s concerns above relate to the price FEI pays for biomethane up to the quantity that is re-purchased by the City and any Designated Customers. The CEC’s concerns are misplaced.

18. Up to the amount of biomethane re-purchased by the City and any Designated Customers, the price FEI pays for the supply from the Surrey Facility will be the same as the price paid by the City and any Designated Customers for biomethane from FEI. As such, there is no impact to the BVA, other than the flow of revenue to the BVA from the payment of the Facilities Fee.<sup>17</sup> FEI’s customers are unaffected by this transaction because: (1) the costs of supply from the Surrey Facility are completely offset by the revenue from the City and Designated Customers; (2) all of FEI’s costs of providing service to the City are recovered by the Facilities Fee. The Facilities Fee ensures recovery of all relevant costs of the Agreement, including the interconnection facilities, the costs of developing the Agreement, the costs of the present proceeding, the costs of administering the Agreement and a contribution to the administration of the Biomethane Program.<sup>18</sup> Furthermore, the City and its Designated Customers will pay for delivery costs under the conventional natural gas rate schedules.<sup>19</sup> In sum, for all re-purchased biomethane, all the relevant costs of FEI are recovered. FEI therefore submits that the CEC’s concerns are misplaced and that there are no additional program and overhead costs that should be recovered in the Facilities Fee.

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<sup>16</sup> CEC argument, para. 67.

<sup>17</sup> Exhibit B-6, BCSEA IR 1.9.1

<sup>18</sup> Exhibit B-1, p. 16; Exhibit B-3, Attachment 4.1a, Redacted Amended Agreement, Schedule D.

<sup>19</sup> Exhibit B-3, BCUC IR 1.5.2.

19. Finally, it is important to recognize that in the absence of the Agreement being in place, the City and the Designated Customers would likely not purchase biomethane from FEI<sup>20</sup> and the City would likely bypass FEI's system and find some other way to supply it and its Designated Customers with biomethane from the Surrey Facility.<sup>21</sup> The arrangement in the Agreement facilitates the City's plans, helps retain the City as a customer on FEI's system, ensures that FEI's cost of service is recovered, mitigates FEI's stranded asset risk and provides a source of biomethane from the Surrey Facility to the extent that there is supply in excess of the re-purchased biomethane on terms that meet the approved criteria for biomethane supply agreements. For these reasons, the Agreement is in the public interest.

#### **G. Conclusion**

20. FEI submits that based on the evidence in this proceeding and the reasons set out above and in its final submission, the concerns raised by interveners in their submissions should be rejected and the approvals sought are just and reasonable and should be approved as filed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated: February 5, 2016

*[original signed by Christopher Bystrom]*  
Christopher Bystrom  
Counsel for FortisBC Energy Inc.

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<sup>20</sup> Exhibit B-7, CEC IR 1.10.5.

<sup>21</sup> Exhibit B-7, CEC IR 1.7.3.