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November 21, 2017

British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, B.C.
V6Z 2N3

Attention: Mr. Patrick Wruck, Commission Secretary and Manager, Regulatory Support

Dear Mr. Wruck:

Re: FortisBC Energy Inc. (FEI)

Project No. 1598930

Application for Approval of Tariff Supplement No. K-1 Biomethane Long Term Large Volume Interruptible Sales Agreement between the University of British Columbia (UBC) and FEI (the Application)

Response to the British Columbia Utilities Commission (BCUC or the Commission) Information Request (IR) No. 1

On September 14, 2017, FEI filed the Application referenced above. In accordance with Commission Order G-154-17 setting out the Regulatory Timetable for the review of the Application, FEI respectfully submits the attached response to BCUC IR No. 1.

If further information is required, please contact Ilva Bevacqua at 604-592-7664.

Sincerely,

FORTISBC ENERGY INC.

Original signed:

Diane Roy

Attachments

cc (email only): Registered Parties



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1 **A. GENERAL**

2 **1.0 Reference: Exhibit B-1, pp. 1–3**

3 **Approval sought**

4 FEI is seeking approval and endorsement of Appendix A, the Tariff Supplement No. K-1,
5 the Biomethane Long Term Large Volume Interruptible Sales Agreement between the
6 University of British Columbia and FortisBC Energy Inc. (Tariff Supplement No. K-1, or
7 Agreement).

8 1.1 Based on the all of the IR No. 1 responses filed by FEI, please file a separate
9 document that highlights all amendments to the original Agreement that FEI
10 views are warranted. Provide black-lined and clean word searchable versions.
11

12 **Response:**

13 Based on FEI's responses to IR No. 1, FEI believes that amendments to the Agreement are not
14 necessary at this time.
15
16

17
18 1.1.1 If amendments to the Agreement are warranted, please indicate
19 whether FEI will require additional time to renegotiate with UBC. In
20 FEI's view, what are the next steps should there be any amendments to
21 the Agreement?
22

23 **Response:**

24 Please refer to the response to BCUC IR 1.1.1. If the Commission cannot accept the
25 Agreement without amendments, FEI expects it would require anywhere from two to six weeks
26 for FEI and UBC to agree to amendments, depending on the nature of such amendments and
27 giving consideration to potential delays due to the holiday season. FEI would request that the
28 existing Agreement remain approved on an interim basis during this time.
29



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1 **2.0 Reference: Exhibit B-1, Appendices A and B**
2 **FEI Biomethane Energy Recovery Charge (BERC) Rate Methodology**
3 **Decision, p. 30**
4 **Tariff Supplement No. K-1**

5 FEI provides the Agreement in Appendix A of the Application. Appendix B provides the
6 blacklined table of contents.

7 On page 30 of the FEI BERC Rate Methodology Decision, the Commission states: “The
8 Panel directs FEI to make the Long Term Contract offering available to all customers
9 willing to commit to the required minimum take term and quantities...”

10 2.1 Please confirm that the biomethane long term contracts created as Tab K is a
11 new series of FEI tariff supplements. If not confirmed, please clarify.

12
13 **Response:**

14 Confirmed.

15
16

17
18 2.2 Please explain how this tariff supplement will be organized. For example, if
19 another customer chooses to enter into a biomethane long term contract, will FEI
20 file a Tariff Supplement No. K-2 for Commission approval?

21
22 **Response:**

23 Confirmed. The next biomethane long term agreement which FEI enters into with a customer
24 will be filed for approval with the Commission as Tariff Supplement No. K-2.

25
26

27
28 2.3 Is this tariff supplement a template rate schedule that is publicly available on
29 FEI’s website?

30
31 **Response:**

32 FEI intends to use and has used Tariff Supplement K-1 as a basis for commencing negotiations
33 with future potential long term biomethane customers, but it is not publicly available on FEI’s
34 website.



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1 Using the terms and conditions in Tariff Supplement K-1 as the basis for future long term
2 biomethane agreements with customers will serve to provide a level of consistency among all
3 long term biomethane customers. The terms and conditions of Tariff Supplement K-1 are
4 generally acceptable terms which incorporate the requirements set out by the Commission in
5 the BERC Decision and Order G-133-16. It is important to note, however, that since future long
6 term agreement customers will be independent, sophisticated parties, there may be certain
7 sections or clauses in future agreements which may be unique to each customer. The minimum
8 and maximum quantities of biomethane stipulated in the agreement will certainly be unique to
9 each customer.

10 Tariff supplements, in most cases, “supplement” a specific FEI rate schedule. They are each
11 unique in that they are an Agreement between FEI and one (or more) customer(s) with specific
12 terms, conditions, and/or rates for that particular customer. While they are filed with the
13 Commission for approval, the Company does not view them as documents suitable for posting
14 on its website on an ongoing basis as they are contracts with specific parties and contain
15 information specific to customers. FEI will, however, make Tariff Supplement K-1 available upon
16 request.

17
18

19

20 2.3.1 If approved, will Tariff Supplement No. K-1 be publicly available on
21 FEI’s website? If not, please explain why.

22

23 **Response:**

24 Please refer to the response to BCUC IR 1.2.3.

25

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1 **3.0 Reference: Exhibit B-1, p. 2; Agreement, Index**

2 **Contract date**

3 In the Agreement, it states the Contract Date is 07/01/17 and Expiry Date is 06/30/27, as
4 follows:

Index

Tariff Supplement No.	Customer	Rate Schedule	Contract Date	Expiry Date
K-1	The University of British Columbia – Biomethane Long Term Large Volume Interruptible Sales Agreement	11B	07/01/17	06/30/27

5

6 On page 2 of the Application, FEI states:

7 Tariff Supplement No. K-1, negotiated and entered into by FEI and UBC,
8 is for the sale of long term large volume interruptible Biomethane,
9 effective October 1, 2017. Tariff Supplement No. K-1 has an effective
10 date noted on the agreement of July 1, 2017; however, due to the length
11 of time required for UBC to execute the agreement, FEI is seeking interim
12 and permanent approval for the rate, effective October 1, 2017.

13 3.1 Please clarify the exact term of the Agreement. Specifically, what are the start
14 and end dates for which the Agreement is in effect?

15

16 **Response:**

17 The tariff supplement states that the Commencement Date is July 1, 2017 and the Expiry Date
18 is ten years later, on June 30, 2027. There was a delay in the ability for UBC to execute the
19 Agreement due to the summer period. Once the Agreement was executed (September 8, 2017)
20 and returned to FEI, FEI filed the Application which allowed for the earliest possible effective
21 date being October 1, 2017. As a result, according to its terms, the Agreement will be effective
22 for slightly less than 10 years.

23 It is both FEI and UBC's intention that the effective period of the Agreement should be ten
24 years. To give effect to this intention, FEI and UBC may in the future agree to amend the
25 wording of the Agreement to shift the commencement date to align with the effective date so
26 that the expiry date is September 30, 2027. If so, FEI would file the amendment at a later date
27 for Commission approval.

28

29

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3.1.1 If the Agreement is in effect for the period from October 1, 2017 to June 30, 2027, please indicate whether any amendments are necessary. For example, sections 1.4.1 and 1.4.2 of the Agreement, and any other sections that may indicate the Agreement is for a ten year term.

Response:

Please refer to the response to BCUC IR 1.3.1.

3.1.2 If the Agreement is in effect for the period from October 1, 2017 to September 30, 2027, please indicate whether any amendments are necessary.

Response:

Please refer to the response to BCUC IR 1.3.1.

3.1.3 If the Agreement is in effect for the period from July 1, 2017 to June 30, 2027, please explain how the period between July 1, 2017 and September 30, 2017 will be treated in the Agreement. Can FEI provide evidence to support that this proposed treatment is acceptable by both parties?

Response:

Please refer to the response to BCUC IR 1.3.1.

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1 **B. RATES AND CHARGES**

2 **4.0 Reference: Exhibit B-1, p. 2 and Agreement, pp. 2-5**

3 **Long Term Biomethane Service Charge**

4 Page 2 of the Application states that:

5 The list below highlights key terms and conditions of Tariff Supplement
6 No. K-1:

- 7
- 8 • Schedule A Table of Charges
 - 9 ○ a Long Term Biomethane Service Charge per GJ equal to the
 - 10 current Commission approved Long Term Biomethane Contract
 - 11 Rate of \$10.00 per GJ (the Minimum Contract Strike Price), **for**
 - 12 **the first five years of the agreement;** (emphasis added)

13 4.1 Please specify where in the Agreement the Long Term Biomethane Service
14 Charge is set at the Long Term Biomethane Contract Rate of \$10.00 per GJ for
15 the first five years.

16
17 **Response:**

18 The Long Term Biomethane Service Charge of \$10.00 per GJ is set out in Schedule A of the
19 Agreement. \$10.00 per GJ is the Commission approved minimum contract strike price¹ at the
20 point in time that FEI and UBC entered into the Agreement. The Long Term Biomethane
21 Service Charge is a constant value, subject to section 1.6.4 (Annual Adjustment) and, after the
22 first five years of the Agreement, it is also subject to Section 1.6.5 (Floor Price). Please also
23 refer to responses to BCUC IRs 1.5.2 and 1.8.1 for additional information.

24
25

26
27 4.1.1 If the Long Term Biomethane Service Charge is not set at the Long
28 Term Biomethane Contract Rate of \$10.00 per GJ for the first five years
29 in the Agreement, please explain the relevance of the inclusion of “for
30 the first five years of the agreement.”

31
32 **Response:**

33 Please refer to the response to BCUC IR 1.4.1.

34

¹ BERC Decision and Order G-133-16, page 30.



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1 **5.0 Reference: Exhibit B-1, Agreement, pp. 2–6**

2 **Long Term Biomethane Service Charge**

3 Section 1.1.1 of Agreement provides the following definitions:

4 (a) “Adjusted Long Term Biomethane Service Charge” means the Long
5 Term Biomethane Service Charge as adjusted annually in
6 accordance with Section 1.6.4.

7 ...

8 (j) “Long Term Biomethane Service Charge” means the rate set out in
9 Schedule A to this Agreement.

10 Section 1.6.4 on page 6 of the Agreement defines the Annual Adjustment as:

11 ... The Long Term Biomethane Service Charge set out in Schedule A to
12 this Agreement will be **adjusted** effective January 1 of each year of the
13 Contract Term **multiplied** by 50% of the percentage increase, if any, in
14 the Consumer Price Index (Canada - all items) over the previous year.
15 (Emphasis added)

16 5.1 Please confirm, or otherwise explain, that the Long Term Biomethane Service
17 Charge is a constant value (\$10) throughout the term of the Agreement.

18
19 **Response:**

20 Confirmed.

21 The Long Term Biomethane Service Charge set out in Schedule A is the approved minimum
22 contract strike price at the time that FEI and UBC entered into the Agreement. This charge is a
23 constant value, subject to contract escalation through an increase in CPI as set out in section
24 1.6.4, and, after the fifth year, subject to the floor price in accordance with Section 1.6.5 of
25 Agreement. Please also refer to FEI’s responses to BCUC IRs 1.2.3, 1.5.2, and 1.8.1.

26
27

28
29 5.2 Using the definitions of Adjusted Long Term Biomethane Service Charge, Long
30 Term Biomethane Service Charge and Annual Adjustment, all provided in the
31 pre-amble above, the formulae to calculate the Adjusted Long Term Biomethane
32 Service Charge (for each contract year starting on January 1, 2018) appear to
33 be:

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1
2 Year 3 = January 2019

3 Annual Adjustment (year 2019) = ALTBSC (Year 2018) x (50% x %CPI) (Year 2018)

4 ***Annual Adjustment (Year 2019) = \$10.10 x (0.5x2) = \$ 0.101***

5 ALTBSC (Year 2019) = ALTBSC (year 2018) + Annual Adjustment (year 2019)

6 ***ALTBSC (Year 2019) = \$10.10 + \$0.101 = \$10.201***

7
8 Year 4 = January 2020

9 Annual Adjustment (year 2020) = ALTBSC (Year 2019) x (50% x %CPI) (Year 2019)

10 ***Annual Adjustment (Year 2020) = \$10.201 x (0.5x2) = \$ 0.10201***

11 ALTBSC (Year 2020) = ALTBSC (year 2018) + Annual Adjustment (year 2020)

12 ***ALTBSC (Year 2020) = \$10.201 + \$ 0.10201 = \$10.30301***

13
14
15

16
17 5.2.1 If not confirmed, please provide the formulae to calculate the Adjusted
18 Long Term Biomethane Service Charge.

19
20 **Response:**

21 Please refer to the response to BCUC IR 1.5.2.

22
23

24
25 5.3 Please reconcile the difference between the \$10 Long Term Biomethane Service
26 Charge (per gigajoule) found in Schedule A of the Agreement vs. the Long Term
27 Biomethane Service Charge that appears to suggest a formulaic calculation.

28
29 **Response:**

30 Please refer to the responses to BCUC IRs 1.5.1 and 1.5.2.

31

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1 **6.0 Reference: Exhibit B-1, Agreement, p. 5**
2 **FEI BERC Rate Methodology Decision, p. 30**
3 **Charge escalation**

4 On page 5 of the Agreement, section 1.6.4 states:

5 Annual Adjustment. The Long Term Biomethane Service Charge set out
6 in Schedule A to this Agreement will be adjusted effective January 1 of
7 each year of the Contract Term multiplied by 50% of the percentage
8 increase, if any, in the Consumer Price Index (Canada - all items) over
9 the previous year.

10 Section 4.2.1 on page 30 of the FEI BERC Rate Methodology Decision states:

11 The Panel notes that all contract terms, including those not specified as
12 part of this Decision will be subject to a complete review by the
13 Commission pursuant to sections 59 to 61 of the UCA when FEI files the
14 contract for approval as a tariff supplement. **The Panel expects FEI will**
15 **address the issue of discriminatory treatment of long term**
16 **customers when it files each contract and that the Commission**
17 **would consider it at that time.** (Emphasis added)

18 6.1 Please provide a summary of the alternate charge escalation mechanisms
19 considered and the rationale for selection of the proposed Annual Adjustment.

20
21 **Response:**

22 In considering a suitable escalation mechanism, FEI noted that in the BERC Methodology
23 proceeding the purpose of the Long Term Contract Offering was to provide price certainty for
24 the customer and demand certainty for FEI.²

25 Two escalation mechanisms were contemplated during agreement negotiations:

26 1. Fixed Price Escalation Mechanism:

27 This method would apply a fixed price per GJ to the Long Term Biomethane Service Charge set
28 out in Schedule A and would remain constant across the term of the Agreement. While
29 providing more price certainty for the customer, this mechanism may under or overstate the
30 inflationary trends across a contract term of 10 years. Furthermore, it will be difficult for a fixed
31 price escalation mechanism to mitigate differences between the Long Term BERC Rate and the
32 prevailing Short Term BERC Rate throughout a 10-year term.

² BERC Decision, p. 31, Sec. 4.2.2.2.

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1 For these reasons, this mechanism was not chosen.

2 2. Consumer Price Index Escalation Mechanism

3 This method sets an escalation rate based on 50 percent of the annual inflation rates in Canada
4 as measured by the Consumer Price Index, which is widely accepted as a reliable source for
5 establishing inflation trends. This method provides less certainty for the customers compared to
6 the Fixed Price Escalation Mechanism, but is a more accurate means of applying escalation,
7 satisfies the requirements for reasonable price stability, and is consistent with FEI business
8 practices.

9 FEI and UBC agreed to use the Consumer Price Index escalation mechanism.

10

11

12

13 6.1.1 Please discuss the merits of using the Consumer Price Index (Canada -
14 all items) compared to the Consumer Price Index (BC – all items).

15

16 **Response:**

17 In the BERC Decision on page 26, Table 4 sets out a summary of some of the terms and
18 conditions FEI proposed for a Long Term contract. No issue was taken with the use of Canada
19 CPI during the BERC proceeding. In addition to being consistent with FEI's proposal in the
20 BERC proceeding, the use of the CPI (Canada – all items) was agreed to by both UBC and FEI.

21

22

23

24 6.1.2 Further to the BERC Rate Methodology Decision expectation, please
25 discuss why the proposed Annual Adjustment is reasonable and not
26 discriminatory.

27

28 **Response:**

29 The Annual Adjustment is reasonable for the reasons noted in response to BCUC IR 1.6.1 and
30 1.6.1.1.

31 The Annual Adjustment is not unduly discriminatory in favour of UBC by comparison to the other
32 Rate Schedule 11B Biomethane customers for the following reasons:

33 1. The adjustment for UBC in the Agreement will be adjusted annually subject to CPI,
34 which is similar to the annual frequency of adjustment to the Short Term rate that other
35 Rate Schedule 11B customers purchasing biomethane would be subject to, if any.



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- 1 2. UBC has agreed to purchase a large volume of biomethane for a period of 10 years
2 providing demand certainty. A customer like UBC who commits to a minimum annual
3 quantity for an extended period requires a reasonable degree of price certainty before
4 making such a commitment. By contrast a Rate Schedule 11B customer may choose to
5 discontinue purchasing biomethane at any time in the event the Short Term rate for
6 biomethane increases.
- 7 3. The Agreement additionally includes a floor price provision noted in section 1.6.5 which
8 precludes UBC's Adjusted Long Term Biomethane Recovery Charge (beyond year 5 of
9 the Agreement) from becoming too advantageous over the Short Term rate at which
10 other Rate Schedule 11B customers purchase biomethane. Beyond year 5 of the
11 Agreement, the charge that UBC will pay for Biomethane is the higher of the Adjusted
12 Long Term Biomethane Recovery Charge and the Floor Price, that is, the sum of the
13 Commodity Cost Recovery Charge and applicable Carbon Tax per GJ at that point in
14 time, if necessary.
- 15

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1 **7.0 Reference: Exhibit B-1, Agreement, pp.2–6**

2 **Floor Price**

3 Section 1.1.1 of the Agreement defines Floor Price as “the rate for Biomethane as set
4 out in section 1.6.5 of this Agreement”.

5 On page 6 of the Agreement, section 1.6.5 states:

6 After the fifth anniversary of the Commencement Date to the Expiry Date,
7 the charge for Biomethane of this Agreement shall be adjusted as
8 necessary effective January 1 of each year to be the higher of:

9 (a) the Long Term Biomethane Service Charge or the Adjusted Long Term
10 Biomethane Service Charge, as applicable; or

11 (b) the sum of the following:

12 (i) the British Columbia Utilities Commission-approved January 1st
13 Commodity Cost Recovery Charge per Gigajoule;

14 (ii) the current British Columbia carbon tax applicable to conventional
15 natural gas Customers; and

16 (iii) any other taxes applicable to conventional natural gas sales.”

17 7.1 Section 1.6.5 does not appear to provide a definition of Floor Price, please
18 provide the definition of Floor Price.

19
20 **Response:**

21 In definition (h) of Section 1.1, Floor Price is defined as being the rate for Biomethane set out in
22 section 1.6.5 of the Agreement. Section 1.6.5 sets out the floor price and when it will be
23 imposed. According to Section 1.6.5, after the fifth anniversary of the Commencement date, the
24 price of biomethane cannot be lower than conventional gas cost as set out in Section 1.6.5(b).

25 The floor price mechanism in Section 1.6.5, including the description of the conventional cost of
26 gas in Section 1.6.5(b), is consistent with the long term price of biomethane in Section 28.4 (b)
27 of FEI’s approved Tariff General Terms and Conditions. Section 1.6.5 is also consistent with
28 the BERC Decision and Order G-133-16³, where the Floor Price means a charge for
29 Biomethane which is not less than the then prevailing Conventional Gas Cost for any period
30 beyond year five.

31

³ Page 32.

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1 **8.0 Reference: Exhibit B-1, p. 2 and Agreement, pp. 2–5**

2 **Rates and charges**

3 On page 5 of the Agreement, section 1.6.1 states:

4 In each month, the Customer will pay to FortisBC Energy an amount
5 equal to the actual amount of Biomethane sold by FortisBC Energy to the
6 Customer, as multiplied by the Long Term Biomethane Service Charge
7 set out in Schedule A to this Agreement, the Adjusted Long Term
8 Biomethane Service Charge, or the Floor Price, **as applicable**, in lieu of
9 the Biomethane Energy Recovery Charge set out in the Table of Charges
10 in Rate Schedule 11B. (Emphasis added)

11 On page 5 of the Agreement, section 1.6.2 states:

12 If at the end of any Year of the Contract, the Customer has taken less
13 than the Minimum Annual Quantity in that Year, the Customer shall pay to
14 FortisBC Energy the difference, between the quantity of Biomethane sold
15 to the Customer in that Year and the Minimum Annual Quantity multiplied
16 by the Long Term Biomethane Service Charge, the Adjusted Long Term
17 Biomethane Service Charge, or the Floor Price, **as applicable**, in
18 accordance with Section 1 .7 .1 of this Agreement. (Emphasis added)

19 On page 5 of the Agreement, section 1.6.5 states:

20 After the fifth anniversary of the Commencement Date to the Expiry Date,
21 the charge for Biomethane of this Agreement shall be adjusted as
22 necessary effective January 1 of each year to be the higher of:

23 (a) the Long Term Biomethane Service Charge or the Adjusted Long
24 Term Biomethane Service Charge, **as applicable**; or.....
25 (emphasis added)

26 8.1 Please provide a formula, or otherwise explain, how the phrase “as applicable”
27 should be interpreted for the determination of the charge in each of section 1.6.1,
28 1.6.2 and 1.6.5.

29
30 **Response:**

31 The phrase “as applicable” in the Agreement refers to the appropriate long term biomethane
32 charge given the specific conditions which may occur during the ten year term of the
33 Agreement. The three different referenced charges within the Agreement are:

- 34 • “The Long Term Biomethane Service Charge per GJ”, as set out in Schedule A of
35 the Agreement, is equal to the current Commission approved Long Term

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1 Biomethane Contract Rate of \$10.00 per GJ (the Minimum Contract Strike Price),
2 unadjusted, effective October 1; and

3 • “The Adjusted Long Term Biomethane Service Charge”, is equal to the Long Term
4 Biomethane Service Charge per GJ, as adjusted annually (if required as a result of
5 increase in CPI), effective January 1 of each year and applicable to the first
6 anniversary onward of the Agreement, in accordance with section 1.6.4 Annual
7 Adjustment. The Annual Adjustment is the Long Term Biomethane Charge
8 multiplied by 50 percent of the Consumer Price Index (CPI) (Canada-all items), if
9 any, over the previous year; and

10 • “The Floor Price”, which, after the fifth anniversary of the Commencement Date to
11 the Expiry Date effective January 1, is equal to the higher of:

12 ○ The Long Term Biomethane Service Charge or the Adjusted Long Term
13 Biomethane Service Charge⁴;

14 ○ The sum of: the Commission approved January 1 Commodity Cost Recovery
15 Charge per GJ; the current British Columbia carbon tax applicable to
16 conventional natural gas customers and any other taxes applicable to
17 conventional natural gas sales.⁵

18 As an example, FEI lists the following formulas to summarize where the appropriate Long Term
19 Biomethane charge, given the specific conditions, may occur during the ten year term of the
20 Agreement, as set out sections 1.6.1, 1.6.2 and 1.6.5.

21 **Long Term Biomethane Service Charge = Year 1**

22 **Adjusted Long Term Biomethane Service Charge = Year X, CPI > 0**

23 **Floor Price Adjustment = Year Y, CCRC > LTBSC/ALTBSC**

24 Where:

25 X= Year 2-10

26 Y= Year 6-10

⁴ For years 2 to 5, if there is no increase in the CPI, and therefore no adjustment to the Long Term Biomethane Service Charge per GJ of \$10.00 per GJ effective January 1, then the appropriate biomethane rate would be referenced as the Long Term Biomethane Service Charge per GJ and not the Adjusted Biomethane Service Charge per GJ. If there is an increase in the CPI, and therefore an adjustment is required January 1, the appropriate biomethane rate would be referenced as the Adjusted Biomethane Service Charge per GJ and not the initial year 1 Long Term Biomethane Service Charge per GJ of \$10.00 per GJ.

⁵ In accordance with the BERC Decision and Order G-133-16, section 4.2.2.2 Contract floor price, page 32.



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- 1 CPI = Consumer Price Index
- 2 CCRC = Commodity Cost Recovery Charge per GJ
- 3 LTBSC = Long Term Biomethane Service Charge per GJ
- 4 ALTBSC = Adjusted Long Term Biomethane Service Charge per GJ

5
6

- 7
- 8 8.2 Please explain who would make the assessment as to the interpretation of “as
- 9 applicable” for each of section 1.6.1, 1.6.2 and 1.6.5.

10

11 **Response:**

12 FEI will review the Agreement and make the assessment as necessary with respect to the
13 applicability of the terms and conditions within sections 1.6.1, 1.6.2 and 1.6.5 of the Agreement.

14 The defined terms and references to the Long Term Biomethane Service Charge and Floor
15 Price in sections 1.6.1, 1.6.2 and 1.6.5 are in accordance with the BERC Decision and Order G-
16 133-16⁶. The defined term and reference to the Adjusted Long Term Biomethane Service
17 Charge was agreed upon by FEI and UBC where FEI may apply the charge if the CPI
18 escalation conditions in section 1.6.4 of the Agreement occur during the term of the Agreement
19 (throughout years 2 to 10).

20 Please also refer to the responses to BCUC IRs 1.5.2 and 1.8.1 for additional information.

21

⁶ Section 4.2.2.1 Minimum Contract Strike Price on page 30 and Section 4.2.2.2 Contract floor price on page 32 respectively.

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1 **9.0 Reference: Exhibit B-1, Agreement, p. 7**

2 **Rate Schedule 11B**

3 On page 7 of the Agreement, section 2.4 states:

4 Without limiting the generality of the foregoing, the Customer will pay to
5 FortisBC Energy all of the amounts set out in Rate Schedule 11B for the
6 services provided under that Rate Schedule and this Agreement.

7 9.1 Please identify what amounts set out in Rate Schedule 11B that UBC will be
8 required to pay.
9

10 **Response:**

11 UBC currently takes service from FEI under FEI Rate Schedule 11B and is required to pay all
12 the applicable charges under the following sections:

- 13 • 5 (Table of Charges) (which includes a Municipal Operating Fee Charge, if applicable⁷);
14 • 10 (Statement and Payments) (which includes interest charges for late payments);
15 • 12 (Default or Bankruptcy);
16 • 15 (Mediation and Arbitration) (which allows an arbitrator to award money damages and
17 interest on unpaid amounts);
18 • Table of Charges; and
19 • Biomethane Large Volume Interruptible Sales Agreement.⁸
20

21 Tariff Supplement K-1 (the Agreement) sets out (among other things), a Long Term Biomethane
22 Service Charge per GJ⁹, replacing the Rate Schedule 11B Cost of Biomethane per GJ¹⁰ in the
23 Table of Charges on page R-11B.17. Section 1.4.6 of the Agreement sets out a Termination
24 Payment which replaces the right FEI has under Section 12.1 (b) of Rate Schedule 11B to
25 collect unspecified amounts due under the remainder of the term of the Sales Agreement.
26 Other than the Cost of Biomethane per GJ, and the Termination Payment, UBC will be required
27 to pay all the applicable charges under Rate Schedule 11B, as set out in section 2.4 (Payment
28 of Amounts).
29

⁷ UBC facilities to which Biomethane is sold are not located in a municipality or First Nations lands for which FEI currently pays Municipal Operating Fees.

⁸ Rate Schedule 11B, page SA-11B.1.

⁹ Subject to sections 1.3 (Security), 1.4 (Term, Expiry and Termination of the Agreement), 1.6 (Rates and Charges), 1.7 (Year End Payment Adjustment) and Schedule A.

¹⁰ Short Term BERC Rate in accordance with the BERC Application, Commission Order and Decision G-133-16.

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1 **C. CONDITIONS OF SALES**

2 **10.0 Reference: Exhibit B-1, Agreement, p. 4**

3 **FEI BERC Rate Methodology Decision, p. 30**

4 **Early termination**

5 On page 4 of the Agreement, sections 1.4.3, 1.4.4, and 1.4.6 respectively state:

6 Early Termination by FortisBC. This Agreement is subject to early
7 termination by FortisBC Energy in accordance with Section 12 of Rate
8 Schedule 11B (Default or Bankruptcy).

9 Early Termination by Customer. The Customer may terminate this
10 Agreement before the expiry of the Contract Term by providing one year's
11 notice to FortisBC and by paying 50% of the Termination Payment.

12 Termination Payment. The Customer and FortisBC Energy acknowledge
13 that the Termination Payment is a genuine pre-estimate of the damages
14 to be incurred by FortisBC Energy from early termination of this
15 Agreement and is not a penalty. **In the event that the Agreement is**
16 **terminated prior to the Expiry Date through operation of Sections**
17 **1.4.3, 1.4.4 or 1.4.5** of this Agreement, in addition to any other amounts
18 due and owing by the Customer to FortisBC Energy and despite any
19 other remedies available at law or in equity, **the Customer agrees to pay**
20 **to FortisBC Energy the Termination Payment** and to waive any right it
21 may have to raise as a defense that the Termination Payment is
22 excessive or punitive. (Emphasis added)

23 Section 4.2.1 on page 30 of the BERC Rate Methodology Decision states:

24 The Panel notes that all contract terms, including those not specified as
25 part of this Decision will be subject to a complete review by the
26 Commission pursuant to sections 59 to 61 of the UCA when FEI files the
27 contract for approval as a tariff supplement. **The Panel expects FEI will**
28 **address the issue of discriminatory treatment of long term**
29 **customers when it files each contract and that the Commission**
30 **would consider it at that time.** (Emphasis added)

31 10.1 Please explain the rationale for the Termination Payment for each event of
32 termination described in sections 1.4.3 and 1.4.4.
33

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1 **Response:**

2 The Termination Payment for each event of termination in this Agreement are liquidated
3 damages clauses. Canadian contract law recognizes that parties to a contract may wish to
4 predict the financial consequences of a breach and agree upon a genuine pre-estimate of the
5 damages in the event of breach of the agreement in order to reduce the risk of litigation.
6 However, Canadian contract law also provides that a liquidated damages clause that exceeds
7 the likely damages caused by breach will be unenforceable as a “penalty”.

8 In this instance, FEI sought UBC’s agreement to a fixed termination payment as FEI believes it
9 is in the interests of FEI’s other customers to avoid litigation over the reasonableness of
10 damages that FEI would seek in the event of breach of the Agreement by UBC. The large
11 volume of the Minimum Annual Quantity of the Biomethane and the long length of the term (ten
12 years) means that in the event of breach, there is potential for disagreement between UBC and
13 FEI over the appropriate damages if the Agreement did not specify the termination payment.

14 In order to pre-estimate the damages FEI would suffer in the event UBC breached the
15 Agreement, FEI considered the following:

- 16 a) FEI’s estimate of its damages in the event UBC breached the Agreement, potentially an
17 amount up to the whole of the Minimum Annual Quantity multiplied by the remainder of
18 the term; and
- 19 b) FEI’s duty to mitigate its damages.

20
21 In relation to FEI’s duty to mitigate its damages, FEI could mitigate its long term damages by
22 contracting with replacement customers for the volume of Biomethane for which UBC has
23 contracted. FEI estimates that it would take FEI two years to mitigate its damages in this way.
24 FEI also estimated that in the event that it received a year’s notice from UBC that it wished to
25 terminate the Agreement, FEI would be able to begin looking for and negotiating with
26 replacement customers for this volume.

27 In addition, FEI recognizes in the event of default by UBC, FEI could mitigate its immediate
28 damages by using Biomethane immediately to displace conventional gas that FEI would
29 otherwise acquire on the market for its customers. As a result, the Termination Payment
30 formula set out in the Agreement uses the BERC rate less the Commodity Cost Recovery
31 Charge.

32
33

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35 10.1.1 Further to the BERC Rate Methodology Decision expectation, please
36 address why the Termination Payment for each event of termination
37 described in sections 1.4.3 and 1.4.4 is reasonable and not
38 discriminatory.



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Response:

The Termination Payment for each event of termination is reasonable and not unduly discriminatory in favour of UBC. The Termination Payments described in Sections 1.4.3 and 1.4.4 are reasonable for the reasons set out in FEI’s response to BCUC IR 1.10.1. The Termination Payments for early termination described in Sections 1.4.3 and 1.4.4 are not unduly discriminatory in favour of UBC by comparison to the other Rate Schedule 11B Biomethane customers for the reasons set out below:

1. A Rate Schedule 11B customer may terminate its Sales Agreement by providing FEI with 10 days’ notice prior to the end of the Contract Year in effect. In contrast, UBC may terminate the Agreement by providing FEI with one year’s notice and by paying 50 percent of the Termination Payment.
2. In the event of early termination by reason of default, a Rate Schedule 11B customer is unlikely to be responsible for the payment of any amount to FEI other than quantity of Biomethane that the Rate Schedule 11B customer has already consumed or nominated. Rate Schedule 11B customers (other than UBC) are not required to take and pay for a minimum annual quantity of Biomethane. As a result, although section 12.1 (a) of Rate Schedule 11B contemplates that FEI has the right to “collect any amount due to it from the Customer for what would otherwise have been the remainder of the term of the Sales Agreement will immediately be due and payable by the Customer”, FEI does not currently contemplate instances where a Rate Schedule 11B customer would be liable for any amounts other than Biomethane that the Rate Schedule 11B customer consumed or nominated before FEI suspended or terminated service to that customer. In contrast, if UBC defaults under the Agreement, UBC must pay to FEI a significant Termination Payment based on the Minimum Annual Quantity of Gas for the remainder of the term of the Agreement, or two years, whichever is less, multiplied by the BERC rate less the Commodity Cost Recovery Charge.

10.2 In the event that UBC terminates the Agreement by providing one year’s notice to FEI, please explain whether the amount payable by UBC will be (i) 50% of the Termination Payment as stated in section 1.4.4 or (ii) the Termination Payment as stated in section 1.4.6.

Response:

In the event that UBC terminates the Agreement by providing one year’s notice to FEI, the Termination Payment will be 50 percent of the Termination Payment, as set out in Section 1.4.4.

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10.2.1 Please describe the consequence of early termination by UBC with less than one year's notice and indicate where this consequence is defined.

Response:

The Agreement does not allow UBC to terminate with less than one year's notice. As a result, if UBC purported to terminate the Agreement with less than one year's notice and ceased paying for the Minimum Annual Quantity of Biomethane for which it has contracted, UBC would be in default of the Agreement.

10.3 Will all of the termination payment revenue be immediately transferred into the Biomethane Variance Account? If not, please explain why.

Response:

Yes, termination payment revenue will be immediately transferred to the Biomethane Variance Account.

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1 **11.0 Reference: Exhibit B-1, Appendix A, p. 4**
2 **FEI BERC Rate Methodology Decision, p. 33**
3 **Termination due to rate class change**

4 Section 1.4.5 on page 4 of the Agreement states: “Automatic Termination. This
5 Agreement will be terminated automatically if the Customer no longer receives service
6 under a Transportation Agreement.”

7 Page 33 of the FEI BERC Rate Methodology Decision, the Commission determination
8 states:

9 There is no reason why the Long Term Contract offering should only be
10 available for transportation service customers through an on-system sales
11 tariff modelled on Rate Schedule 11B. Any of FEI’s customers who can
12 commit to the firm purchase of the required minimum quantity of RNG
13 should be eligible for the long term BERC rate offering. In addition to
14 transportation service contracts supplied by FEI acting as Shipper Agent,
15 this includes bundled sales customers, transportation service customers
16 directly, transportation service customers supplied by a Shipper Agent
17 other than FEI and marketers (i.e. Shipper Agents) supplying a group of
18 transportation service customers. **In addition, a customer who has**
19 **committed directly to a long term BERC contract should be able to**
20 **take the contract with them if they move between transportation and**
21 **bundled sales service or from one Shipper Agent to another over the**
22 **term of the commitment to buy RNG.** (Emphasis added).

23 **The Panel directs FEI to make the Long Term Contract offering**
24 **available to all customers willing to commit to the required minimum**
25 **take term and quantities....**

26 11.1 Pursuant to the Commission’s determination above, please explain why the
27 Agreement would terminate if UBC no longer receives service under a
28 Transportation Agreement.

29
30 **Response:**

31 The automatic termination clause was included in the Agreement to be consistent with section
32 3.1 of RS 11B. In order for UBC to receive service under Tariff Supplement K-1, it is subject to
33 the terms and conditions set out in RS 11B,¹¹ which requires the customer to receive service
34 under an FEI transportation rate schedule. RS 11B, section 3.1 Conditions (b) sets out:

¹¹ Unless noted in Tariff Supplement K-1 in section 2.5 Conflict.



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1 Conditions

2 FortisBC Energy will only sell Biomethane to a Customer in the applicable
3 territory served by FortisBC Energy, under the FortisBC Energy tariff of which
4 this Rate Schedule is a part if:

5 (b) the Customer has entered into a Transportation Agreement pursuant to Rate
6 Schedule 22, 22A, 22B, 23, 25 or 27; or all members of the Group which the
7 Customer represents, if the customer is a Shipper Agent, have entered into a
8 Transportation Agreement under the applicable Rate Schedule;...

9 UBC currently receives service from FEI under the transportation RS 22 Large Volume
10 transportation service¹². FEI understands that UBC has no intention at this time of switching to
11 a bundled sales service rate schedule.

12 Since UBC has no intention of moving to bundled sales service, FEI believes that it is not
13 necessary at this time to amend the UBC Agreement to allow for automatic switching between
14 transportation service and bundled sales service.

15 Should UBC express a desire to move to bundled sales service at some point during the term of
16 the Agreement, FEI proposes that at that time FEI and UBC can enter into an amendment to the
17 Agreement to allow for that to take place without triggering the termination provisions. Such an
18 amendment to the Agreement would be filed with the Commission for approval.

19 For future long-term biomethane customers, FEI will seek to incorporate terms and conditions to
20 allow for automatic switching between transportation service and bundled sales service.

21
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23
24 11.2 Consistent with the FEI BERC Rate Methodology Decision, how would FEI
25 propose the Agreement be amended if the Commission requires that the
26 Agreement will allow the customer the flexibility to “take the contract with them if
27 they move between transportation and bundled sales service or from one
28 Shipper Agent to another over the term of the commitment to buy RNG”?

29
30

Response:

31 As discussed in response to BCUC IR 1.11.1 above, FEI proposes that, in the event that UBC
32 wishes to switch to bundled service in the future, FEI and UBC would amend the Agreement at
33 that time to allow it to continue under a bundled service rate schedule.

¹² Section 6. Minimum Charge of RS 22 sets out a minimum monthly charge per month based on a minimum quantity of 12,000 GJs.



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1 If the Commission were to require that the Agreement be amended now to reflect that UBC may
2 move from transportation service to bundled sales service, FEI and UBC would need to
3 commence further negotiations to enter into an amendment to the Agreement to allow UBC the
4 flexibility to do so.

5 While the wording would be subject to negotiation with UBC, the amendment to the Agreement
6 would include removal of section 1.4.5 Automatic Termination and likely include a new section
7 1.2.2 as follows:

8 1.2.2 Conditions. This Agreement is available on the condition that customer
9 receives service under a FortisBC Transportation Rate Schedule, FortisBC
10 Energy Rate Schedule 3B or FortisBC Energy Rate Schedule 5B.

11 RS 3B Large Commercial Biomethane Service and RS 5B General Firm Biomethane Service
12 are the only two FEI bundled sales rate schedules which would meet the required minimum take
13 term and quantities for a long term biomethane agreement. FEI notes that it may need to make
14 amendments to Rate Schedules 3B or 5B to accommodate a long-term biomethane charge.

15 In addition, various amendments may need to be made throughout the Agreement where RS
16 11B is referenced, so that it could be applicable to RS 3B or RS 5B. Alternatively, FEI and UBC
17 may agree to agree on amendments when and if UBC wished to switch to bundled service.

18 FEI expects it would require anywhere from two to six weeks for FEI and UBC to agree to
19 amendments, depending on the nature of such amendments and giving consideration to
20 potential delays due to the holiday season. FEI would request that the existing Agreement
21 remain approved on an interim basis during this time.

22