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## **BY ELECTRONIC FILING**

British Columbia Utilities Commission  
Suite 410, 900 Howe Street  
Vancouver, BC V6Z 2N3

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

Dear Sirs/Mesdames:

**Re: FortisBC Energy Inc. Application for Approval of Tariff Supplement K-1  
Biomethane Long Term Large Volume Interruptible Sales Agreement  
between the University of British Columbia and FEI ~ Project No. 1598930**

In accordance with the Regulatory Timetable set for this proceeding by Order G-178-17, 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 Bystrom]*

Christopher Bystrom

Encl.

**BRITISH COLUMBIA UTILITIES COMMISSION**

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

**and**

**FORTISBC ENERGY INC.**

**APPLICATION FOR APPROVAL OF TARIFF SUPPLEMENT NO. K-1**

**BIOMETHANE LONG TERM LARGE VOLUME  
INTERRUPTIBLE SALES AGREEMENT BETWEEN  
THE UNIVERSITY OF BRITISH COLUMBIA  
AND FORTISBC ENERGY INC.**

**FINAL SUBMISSION OF  
FORTISBC ENERGY INC.**

**DECEMBER 19, 2017**

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## **PART ONE: INTRODUCTION**

1. On September 14, 2017, FortisBC Energy Inc. (“FEI”) filed an Application pursuant to sections 59 to 61 and section 89 of the *Utilities Commission Act* (the “UCA”), seeking interim and permanent approval, and endorsement from the British Columbia Utilities Commission (the “Commission”) of Rate Schedule 11B Tariff Supplement No. K-1: Biomethane Long Term Large Volume Interruptible Sales Agreement with UBC (the “UBC Biomethane Sales Agreement”). Appendix A of the Application contains the executed version of the UBC Biomethane Sales Agreement for Commission approval and endorsement. A Draft Form of Order is provided in Appendix C of the Application.
  
2. For the reasons discussed below, FEI submits that the UBC Biomethane Sales Agreement is just and reasonable and should be approved as filed.

## **PART TWO: THE UBC BIOMETHANE SALES AGREEMENT IS JUST AND REASONABLE**

3. FEI submits that the UBC Biomethane Sales Agreement is just and reasonable:
  - (a) The UBC Biomethane Sales Agreement complies with the Long Term BERC Rate approved by the Commission in the BERC Rate Methodology Decision;
  - (b) FEI will negotiate the continuation of the UBC Biomethane Sales Agreement if UBC determines that it wishes to switch to a bundled sales rate in the future;
  - (c) The UBC Biomethane Sales Agreement is not unduly discriminatory;
  - (d) The UBC Biomethane Sales Agreement will be beneficial to non-biomethane customers;
  - (e) The UBC Biomethane Sales Agreement will reduce UBC’s greenhouse gas emissions; and

(f) The UBC Biomethane Sales Agreement reflects the negotiated outcome of two sophisticated parties.

4. Each of these points is discussed below.

**A. Complies with Long-Term Rate Approved by Commission**

5. The UBC Biomethane Sales Agreement is compliant with the criteria for a Long Term BERC Rate specified in the BERC Rate Methodology Decision.<sup>1</sup> The BERC Rate Methodology Decision approved (among other things):

- the Short Term BERC Rate at a premium of \$7.00 per GJ above the Commodity Cost Reconciliation Account (“CCRA”) rate, the British Columbia carbon tax, and any other taxes applicable to conventional natural gas sales, effective January 1st of each year; and
- the Long Term BERC Rate set at a \$1.00 per GJ discount to the Short Term BERC Rate subject to:
  - eligible contracts must be for a commitment to purchase not less than 60,000 GJ in aggregate over the term of the contract;
  - the term of the contract must not be less than five years and no more than ten years;
  - a Minimum Contract Strike Price of \$10.00 per GJ; and
  - Long-term contracts must include a Contract Floor Price provision that results in the price of Renewable Natural Gas beyond year five of a contract that is not less than the prevailing Conventional Gas Cost.

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<sup>1</sup> Exhibit B-3, BCOAPO IR 1.1.

6. The terms and conditions of the UBC Biomethane Sales Agreement comply with the above criteria as follows:<sup>2</sup>

- Section 1.5.1, Minimum Annual Quantity, specifies a minimum annual purchase quantity of 71,000 GJ of biomethane, which is greater than the minimum aggregate purchase commitment of 60,000 GJ specified by the Commission.
- Definition (g), “Expiry Date”, specifies a contract term of ten years from the Commencement Date of July 1, 2017. Due to a delay in the effective date (the agreement was executed on September 8, 2017), the agreement will be effective for slightly less than 10 years.<sup>3</sup> The length of term satisfies the Commission’s requirement that the term of the contract must not be less than five years and no more than ten years.
- Schedule A, Table of Charges, specifies a Long Term Biomethane Service Charge per GJ of \$10.00 per GJ, which is equal to the Minimum Contract Strike Price approved by the Commission. The Long Term Biomethane Service Charge is a constant value, subject to escalation for inflation and, after the first five years of the Agreement, the floor price.<sup>4</sup>
- Section 1.6.5(b) specifies the contract floor price equal to the prevailing conventional gas cost for years five to ten of the agreement. The description of the conventional cost of gas in Section 1.6.5(b) is the same as the long-term price of biomethane in Section 28.4 (b)(iii) of FEI’s approved Tariff General Terms and Conditions, and the BERC Rate Methodology Decision.<sup>5</sup>

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<sup>2</sup> Exhibit B-1, Application, p. 2.

<sup>3</sup> Exhibit B-2, BCUC IR 1.3.1.

<sup>4</sup> Exhibit B-2, BCUC IR 1.4.1, 1.5.2 and 1.8.1.

<sup>5</sup> Exhibit B-2, BCUC IR 1.7.1.

**B. Transfer to Bundling Service would be Negotiated**

7. The BERC Rate Methodology Decision stated at page 33 that “a customer who has committed directly to a long-term BERC contract should be able to take the contract with them if they move between transportation and bundled sales service or from one Shipper Agent to another over the term of the commitment to buy RNG.”<sup>6</sup> While the UBC Biomethane Sales Agreement does not provide for this, UBC has no intention of moving to bundled sales service.<sup>7</sup> Therefore, FEI submits that it is not necessary at this time to amend the agreement to allow for automatic switching between transportation service and bundled sales service. As FEI stated in response to BCUC IR 1.11.1:

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

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

8. FEI submits that this proposal is satisfactory and would permit UBC to continue its long-term biomethane contract if it decided to switch to bundled service in the future.

**C. Not Unduly Discriminatory**

9. The UBC Biomethane Sales Agreement is not unduly discriminatory (1) as between UBC and short-term biomethane customers or (2) amongst UBC and other long-term biomethane customers.

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<sup>6</sup> Exhibit B-2, BCUC IR 1.11.1

<sup>7</sup> Exhibit B-2, BCUC IR 1.11.1.

**(a) Long-Term vs. Short-Term Biomethane Customers**

10. The UBC Biomethane Sales agreement is not unduly discriminatory as between UBC and short-term biomethane customers because it complies with the Commission's approved criteria for long-term biomethane contracts and there are no other material terms that favour UBC over short-term customers. The Commission's approved criteria cover the key terms and conditions of the contract, including: (1) price, (2) volume, and (3) length of term. The Commission's pricing criteria was established to maximize biomethane sales revenues, while still providing long-term customers with a discount over the cost of acquisition of biomethane.<sup>8</sup> The Long Term Biomethane Service Charge is at a \$0.54 cents per GJ discount from the current Short Term BERC Rate. This discount is in exchange for UBC's long-term volume commitment and is not unduly discriminatory as it is already approved by the Commission.

11. There are no other terms of the agreement that offer a material benefit to UBC over short-term biomethane sales customers. FEI notes the following terms that were discussed in responses to information requests:

- The escalation mechanism sets an escalation rate based on 50 percent of the annual inflation rates in Canada as measured by the Consumer Price Index, which is widely accepted as a reliable source for establishing inflation trends. This method is an accurate means of applying escalation, satisfies the requirements for reasonable price stability, and is consistent with FEI's business practices. The mechanism is consistent with FEI's proposal in the BERC Rate Methodology proceeding, where no issue was taken with the use of Canada CPI. The adjustment is similar to the annual frequency of adjustment to the Short Term BERC Rate that other Rate Schedule 11B customers purchasing biomethane would be subject to, if any. Furthermore, the price paid by UBC is subject to the

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<sup>8</sup> BERC Rate Methodology Decision, p. 30.



minimum floor price approved by the Commission.<sup>9</sup> As such, the escalation rate will result in a reasonable increase in cost recovery from UBC.

- The Termination Payments in sections 1.4.3 and 1.4.4 are liquidated damages clauses that reflect an agreement between UBC and FEI as to a genuine estimate of the financial consequences of terminating the agreement in certain circumstances. These terms are not unduly discriminatory to short-term customers because they are only applicable to contracts with a specified term and minimum volumes where there would in fact be financial damages if the agreement were terminated. Short-term customers, in contrast, can terminate their biomethane sales contract without financial consequences at any time, other than payment for biomethane that the customer has already consumed or nominated.<sup>10</sup>

12. In summary, UBC has agreed to purchase a large volume of biomethane for a period of 10 years which provides demand certainty for FEI. A customer like UBC who commits to a minimum annual quantity for an extended period requires a reasonable degree of price certainty before making such a commitment. In contrast, a short-term biomethane may choose to discontinue purchasing biomethane at any time in the event the Short Term BERC Rate for biomethane increases. The Commission's approved criteria in the BERC Rate Methodology Decision provide the minimum terms that must be met by a long-term customer to have the benefit of the approved discounted long-term BERC rate. The UBC Biomethane Sales Agreement meets these criteria and is not unduly discriminatory.

**(b) Amongst Long-Term Biomethane Customers**

13. UBC is FEI's first long-term biomethane sales customer. As such, there is no other long-term customer which could be unduly discriminated against due to the terms of FEI's agreement with UBC. However, FEI intends to use, and has used, the UBC Biomethane Sales

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<sup>9</sup> Exhibit B-2, BUC IR 1.6 series.

<sup>10</sup> Exhibit B-2, BCUC IR 10 series.

Agreement as a basis for commencing negotiations with future potential long-term biomethane customers. Using the terms and conditions of the UBC agreement as the basis for future long-term biomethane agreements will provide consistency among long-term biomethane sales contracts. While there may be certain sections or clauses in future agreements that are unique to each customer (e.g., the quantities of biomethane will be unique to each customer),<sup>11</sup> this would not be unduly discriminatory as the terms will reflect the specific circumstance of the individual customer. All future long-term contracts will be subject to the Commission's review and approval, at which time a comparison between the UBC contract and future long-term contracts can be made.

#### **D. Beneficial to Non-Biomethane Customers**

14. Non-biomethane customers will benefit from the long-term committed purchase volumes and the consequent guaranteed recoveries from UBC to the Biomethane Variance Account ("BVA"). In accordance with the BERC Rate Methodology Decision, all non-bypass customers bear the cost of biomethane supply not recovered through BERC revenues. Having UBC as a long-term biomethane customer provides for a certain revenue stream that will offset biomethane costs, and reduce the risk of cost recovery from non-biomethane customers. In addition, the early termination notice and termination payment provisions in the agreement provide further certainty of revenues to the BVA.<sup>12</sup>

#### **E. Use of Biomethane will Reduce UBC's Greenhouse Gas Emissions**

15. Based on FEI's discussions with UBC, the biomethane delivered to UBC will be used as a renewable/green source to continue to operate UBC's cogeneration system to create electricity and generate heat at the BioEnergy Research Demonstration Facility. Heat, in the form of hot water and steam, will be distributed within UBC's Vancouver Campus via the recently completed hot water distribution district system and existing steam pipeline.<sup>13</sup> All of

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<sup>11</sup> Exhibit B-2, BCUC IR 1.2.3.

<sup>12</sup> Exhibit B-3, BCOAPO IR 1.2.1 and 1.2.2.

<sup>13</sup> Exhibit B-4, BCSEA IR 1.2.2.

the biomethane delivered to UBC will displace the equivalent amount of conventional natural gas on the system, and will therefore reduce UBC's greenhouse gas emissions.<sup>14</sup>

**F. Negotiated and Agreed to by UBC and FEI**

16. The UBC Biomethane Sales Agreement reflects the result of negotiations between FEI and UBC, both of whom are sophisticated parties with the resources to protect their financial and other interests. By executing the agreement, both parties have determined that the terms and conditions are acceptable and reflect the intentions of the parties. The Commission may therefore conclude that the terms of the UBC Biomethane Sales Agreement adequately protects the financial and other interests of UBC and FEI.

**PART THREE: CONCLUSION**

17. FEI submits that the UBC Biomethane Sales Agreement should be approved as filed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated: December 19, 2017

*[original signed by Christopher Bystrom]*

Christopher Bystrom  
Counsel for FortisBC Energy Inc.

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<sup>14</sup> Exhibit B-4, BCSEA IR 1.2.3.