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File No.: 240148.00855**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 FortisBC Energy Inc. ~  
Project No. 1598930  
Reply Submission of FortisBC Energy Inc.**

In accordance with the regulatory timetable set for this proceeding by Order G-178-17, the following is the Reply Submission of FortisBC Energy Inc. ("FEI").

In this proceeding, FEI is seeking Commission approval pursuant to sections 59-61 of the Utilities Commission Act of the long-term, large volume, interruptible sales agreement for biomethane between UBC and FEI included in Appendix A of the Application (the "UBC Biomethane Sales Agreement" or the "Agreement"). Following the submission of FEI's Final Submission on December 9, 2017, intervener arguments were filed by the BC Sustainable Energy Association and Sierra Club ("BCSEA") and the British Columbia Old Age Pensioners' Organization et al ("BCOAPO") on January 9, 2018.

BCSEA supports the approval of the UBC Biomethane Sales Agreement and FEI has no comments in reply.

BCOAPO takes no issue with approval of the UBC Biomethane Sales Agreement, but expresses concern with the words "as applicable" in sections 1.6.1, 1.6.2 and 1.6.5 of the Agreement. BCOAPO offers no argument, evidence, explanation or case law to substantiate its concern that the terms of the Agreement may be ambiguous. FEI submits that BCOAPO's concerns are not warranted and should be dismissed.

The words “as applicable” simply indicate that the referenced sections of the Agreement apply according to what the words in each section mean. As is the case for any contract, the Agreement must be interpreted as a whole.<sup>1</sup>

The words of each relevant section of the Agreement are clear on their face:<sup>2</sup>

- Section 1.6.1 says that the rate will be the (1) Long Term Biomethane Service Charge in Schedule A of the Agreement (i.e. \$10), (2) the Adjusted Long Term Biomethane Service Charge in accordance with Section 1.6.4, or (3) the Floor Price as set out in Section 1.6.5. The phrase “as applicable” denotes that one must look to the wording of each of the referenced sections to determine how it applies. For instance, since the floor price only applies in the last five years of the Agreement, it would not apply to the first five years.
- Section 1.6.2 says that the same rate described in the bullet above applies to cases where UBC takes less than the Minimum Annual Quantity in a given year. Again, the phrase “as applicable” denotes that one must look to the wording of each of the referenced sections to determine how it applies.
- Section 1.6.4 says that the \$10 Long Term Biomethane Charge will increase each year by 50 percent of the increase to the Consumer Price Index. This is a simple calculation.<sup>3</sup>
- Section 1.6.5 says that in that last five years of the Agreement, the rate will be the higher of two things: either (1) the \$10 Long Term Biomethane Charge, as adjusted for inflation if any, or (2) the commodity charge for conventional natural gas. The phrase “as applicable” in this section denotes that inflation will only be added to the \$10 charge if required by the words of Section 1.6.4. For instance, in the first year, there would be no inflation adjustment, so the adjusted price would not be applicable. Section 1.6.5 sets a floor price after year 5 of the Agreement, because it ensures that the biomethane charge is not lower than the commodity charge for conventional natural gas. This floor price provision is in accordance with Commission Order G-133-16 and FEI’s approved General Terms & Conditions, so there can no doubt as to its meaning.

Each of the above sections sets out how it applies and, together, it is clear what the rate will be at any particular time. The terms leave no room for discretion in determining the rate: during the first five years the rate will be \$10 adjusted for inflation; during the last

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<sup>1</sup> “The normal rules of construction of a contract require that the various clauses of a contract cannot be considered in isolation but must be given an interpretation that takes the entire agreement into account.”: *Canadian Newspapers Co. v. Kanda General Insurance Co.* (1996), 30 O.R. (3d) 257 (C.A.), 1996 CanLII 2482, at pdf page 20, leave to appeal refused [1996] S.C.C.A. No. 553. Online: <https://www.canlii.org/en/on/onca/doc/1996/1996canlii2482/1996canlii2482.pdf>

<sup>2</sup> Exhibit B-1, Appendix A

<sup>3</sup> Exhibit B-2, BCUC IR 1.5.2.

five years the rate will be the higher of \$10 adjusted for inflation or the commodity charge for conventional natural gas.<sup>4</sup>

FEI also notes that the evidence and argument in this proceeding, and past Commission decision on the requirements for a long-term biomethane charge, provide a robust and detailed factual matrix to aid in interpreting the contract. Both the words of the Agreement and the surrounding facts make the intent of the parties to the Agreement clear.

While the terms above are somewhat complex, this can be said of many contractual terms and rates approved by the Commission. Moreover, both UBC and FEI are sophisticated parties and are satisfied with the terms as written in the executed Agreement. In FEI's submission, it is inefficient and irregular to use the Commission's regulatory process as an opportunity to try to wordsmith the contractual terms of an agreement between two parties.

It is reasonable and necessary for FEI to administer the terms of the Agreement. FEI is the utility providing service to UBC. As part of its ordinary operations, FEI will be calculating the rate charged for service at any time and sending bills to UBC in the ordinary course, as it does with all of its approximately 1 million customers. FEI will have an ongoing relationship with UBC, and UBC can raise issues with FEI if it has concerns regarding the administration of the contract terms or the bills for service that it receives. UBC has executed the Agreement and has not filed any comment in this proceeding expressing any concern. There is no evidence to suggest that FEI and UBC have anything other than a good working relationship.

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

Yours truly,

**FASKEN MARTINEAU DuMOULIN LLP**

*[Original signed by Christopher Bystrom]*

Christopher Bystrom

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<sup>4</sup> Exhibit B-2, BCUC IR 1.5.2, 1.8.1 and 1.8.2.