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December 11, 2018
File No.: 240148.00855/15275

By Electronic Filing

British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, BC
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Dear Mr. Patrick Wruck, Commission Secretary and Manager, Regulatory Support

Re: FortisBC Energy Inc. – Application for Acceptance of the Biogas Purchase Agreement Between FortisBC Energy Inc. and the City of Vancouver – Project No. 1598977 – Request for Submissions on Renewable Natural Gas Acquisition

We are counsel for FortisBC Energy Inc. (FEI) in the referenced proceeding.

The British Columbia Utilities Commission (BCUC) requested in Order G-234-18 that FEI and registered interveners provide written submissions on whether the term "the public utility acquires renewable natural gas" in section 2(3.8) of the *Greenhouse Gas Reduction (Clean Energy) Regulation*, B.C. Reg. 102/2012 (the GRR) includes:

1. The purchase of landfill gas (LFG) (as opposed to renewable natural gas (RNG)); and/or
2. The construction of capital facilities to upgrade LFG to RNG for injection into FEI's natural gas system.

For the reasons discussed below, FEI submits that the reference to acquiring RNG in section 2(3.8) of the GRR does in fact include either or both of the above.

Principles of Statutory Interpretation

Section 2(3.8) of the GRR must be interpreted in accordance accepted principles of statutory interpretation. The leading case on statutory interpretation is *Rizzo & Rizzo Shoes Ltd. (Re)*,

[1998] 1 S.C.R. 27,¹ in which the Supreme Court of Canada relied on the following statement from Elmer Driedger in *Construction of Statutes* (2nd ed. 1983):

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

When interpreting section 2(3.8) of the GRR, the BCUC must also have regard to section 8 of the *Interpretation Act*, R.S.B.C. 1996, Chapter 238, which states that every enactment must be interpreted remedially:

8. Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

As indicated above, the BCUC must give section 2(3.8) of the GRR a fair, large and liberal interpretation that best ensures the attainment of its objects.

Definition of Acquisition is Broad

The meaning of “acquires” as it occurs in section 2(3.8) of the GRR is broad. As noted by the BCUC in its letter of December 7, 2018, section 29 of the *Interpretation Act* defines “acquire” in these terms:

In an enactment:

‘acquire’ means to obtain by any method and includes accept, receive, purchase, be vested with, lease, take possession, control or occupation of, and agree to do any of those things, but does not include expropriate. [Emphasis added.]

As stated in the above definition, the word “acquire” is broad, meaning “to obtain by any method” except expropriation. The wording of the definition makes it clear that the meaning of “acquire” is not limited to the particular examples provided in the definition; it means to “obtain by any method”. The only method that is not included is “expropriation”.

Based on the grammatical and ordinary sense of the words, “obtain by any method” is broad enough to include the method of purchasing LFG and constructing capital facilities to upgrade LFG to RNG for injection into FEI’s natural gas system. The result of purchasing LFG and constructing facilities to upgrade the LFG is that FEI acquires RNG.

¹ Online: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1581/index.do>

Context of FEI's Established RNG Supply Side Model

As noted above, the words of any Act are to be read in their entire context. In *Sullivan on the Construction of Statutes*, the author states:²

Under Driedger's modern principle, interpreters are obliged to consider the entire context of the text to be interpreted. As Driedger himself indicated, this includes the external context in its broadest sense.

In the case of section 2(3.8) and (3.9) of the GRR, the relevant context is FEI's well-established RNG supply side model for its Biomethane Program.

Section 2(3.5) to (3.9) of the GRR were added by B.C. Reg. 114/2017, effective March 22, 2017. At that time, FEI's Biomethane Program was well established and FEI's RNG supply ownership model had been extensively described and discussed in BCUC proceedings, including:

- FEI's original June 8, 2010 Application for the approval of a Biomethane Service Offering (the "2010 Biomethane Application");
- FEI's December 19, 2012 application entitled Biomethane Service Offering: Post Implementation Report and Application for Approval of the Continuation and Modification of the Biomethane Program on a Permanent Basis (the "2012 Biomethane Application"); and
- FEI's August 28, 2015 Application for Approval of Biomethane Energy Recovery Charge Rate Methodology (the "2015 BEREC Rate Methodology Application").

As discussed in these proceedings, all of FEI's supply project consists of three major components that work together to produce raw biogas, purify the raw biogas to become RNG and confirm that the RNG meets strict pipeline quality standards. These components consist of the following:

- Assets required to digest organic material to create raw biogas and collect raw biogas also known as the biogas source (which can include a landfill and associated collection system);
- Assets required to upgrade the raw biogas to biomethane (upgrader); and
- Interconnection facilities, including metering, monitoring and piping.

Under FEI's RNG supply side model, FEI may enter into long-term contracts with suppliers for either raw biogas (which can include a landfill and associated collection system) or RNG. In the case of raw biogas, FEI may invest in the upgrading plants that purify it so that it is

² Sullivan, Ruth, *Sullivan on the Construction of Statutes*, 6th Edition (Lexis Nexis Canada Inc., 2014), p. 655.

interchangeable with natural gas.³ In the case of RNG, it is already interchangeable with natural gas.

It is in the context of the above supply-side model that sections 2(3.8) and 2(3.9) of the GRRR was enacted. In this context, the use of the term “acquire”, meaning “to obtain by any method,” must be understood to include at least all the methods of acquiring RNG that were contemplated in FEI’s Biomethane Program.

FEI submits that in the context of FEI’s well-established Biomethane Program it is clear that section 2(3.8) of the GRRR includes the method of acquiring RNG by purchasing LFG and constructing capital facilities to upgrade LFG to RNG for injection into FEI’s natural gas system as contemplated under FEI’s Biomethane Program.

Object and Intention of Section 2(3.8) of the GRRR Supports a Broad Interpretation

Given that the object and intention of section 2(3.8) of the GRRR is to increase FEI’s ability to obtain RNG supply for its Biomethane Program, FEI submits that it should be interpreted as applying to all of FEI’s supply side ownership models for RNG, including the purchasing of LFG and the construction of capital facilities to upgrade LFG to RNG for injection into FEI’s natural gas system.

The GRRR is a regulation under section 18 of the *Clean Energy Act*, S.B.C. 2010 c. 22 (“CEA”). As FEI has stated in past Applications, the CEA provided a new and heightened importance to FEI’s role in developing renewable resources, reducing greenhouse gas (“GHG”) emissions, and reducing waste by using biogas.

In the BCUC’s Decision and Order G-194-10, dated December 14, 2010 (the 2010 Biomethane Decision),⁴ which approved FEI’s Biomethane Program on a pilot basis, the BCUC concluded that the Biomethane program is consistent with the energy objectives in the CEA, stating at page 26 and 27:

The Commission Panel is of the view that the process of converting biomass to biogas to usable Biomethane uses innovative technology, as evidenced by the government’s commitment to its bioenergy strategy. Biomethane is also considered to be clean and is a renewable resource. Further, the use of Biomethane in place of natural gas will reduce greenhouse gas emissions, as explained above, and the Biomethane Program entails the use of biomass and biogas.

³ The BCUC limited this option to when FEI is dealing with regional or municipal governments. BCUC Decision on FEI’s 2012 Biomethane Application, p. 100. Online: <https://www.ordersdecisions.bcuc.com/bcuc/decisions/en/111609/1/document.do>

⁴ In The Matter Of Terasen Gas Inc. Biomethane Application Decision, December 14, 2010. Online: <https://www.ordersdecisions.bcuc.com/bcuc/decisions/en/111617/1/document.do>

The Commission Panel also considers the carbon tax to be another clear expression of government policy aimed at reducing carbon and the fact that Biomethane is not considered subject to the tax (albeit in a pure form) provides additional support for the Program.

Consistent with the above, one of the overarching purpose of the CEA is to increase FEI's role in developing RNG.

To understand the object of section 2(3.8) of the GGRR, it is important to note that the 2010 Biomethane Decision approved a maximum price and maximum volume for RNG supply. The 2010 Biomethane Decision states:

Accordingly, we have determined that future energy supply contracts for the purchase of biogas or Biomethane that meet the criteria listed in Section 3.3.3 of these Reasons with the following additional criteria will meet the filing requirements in sections 71(1)(a) and 71(1)(b) of the Act:

- The total production of Biomethane for all projects undertaken under what has been approved in this Decision does not exceed an annual purchase in each year of 250,000 GJ.
- The maximum price for delivered Biomethane on the system is set at \$15.28 per GJ.

Notably, the maximum price was for “delivered Biomethane”, which includes the costs of any facilities constructed and operated by FEI to upgrade raw biogas to RNG. The supply side aspects of the program were revisited in FEI's 2012 Biomethane Application, following which the BCUC decided to retain the original maximum price and increase the maximum supply volume to 1.5 PJ.

It is significant that the effect of section 2(3.8) of the GGRR was to increase the maximum price and maximum volume for RNG supply for FEI's Biomethane Program. In this context, it is clear that the object and intention of section 2(3.8) of the GGRR is to increase FEI's ability to obtain RNG for its Biomethane Program, by bringing into effect a more generous maximum supply price and maximum supply volume than previously approved by the BCUC.

As required by section 8 of the *Interpretation Act*: “Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.”

In FEI's submission, the fair, large and liberation construction and interpretation that best ensures the attainment of the object of section 2(3.8) of the GGRR is that acquiring RNG means acquisition by *any method*, and must specifically include any of the models under which FEI obtains RNG under its Biomethane Program. These methods include purchasing LFG and constructing capital facilities to upgrade LFG to RNG for injection into FEI's natural gas system.

Conclusion

Given the principles of statutory interpretation, FEI submits that the reference to acquiring RNG in section 2(3.8) of the GRR includes the purchasing of LFG and the construction of capital facilities to upgrade LFG to RNG for injection into FEI's natural gas system. This interpretation is supported by the broad definition of "acquire" in the *Interpretation Act*, the context in which section 2(3.8) of the GRR was enacted (namely, FEI's well-established RNG supply side model), and the object of section 2(3.8) of the GRR to increase FEI's ability to acquire RNG. The BCUC must interpret this section of the GRR in a fair, large and liberal manner that obtains its purpose. FEI submits that, as such, the BCUC should determine that section 2(3.8) of the GRR includes the purchasing of LFG and the construction of capital facilities to upgrade LFG to RNG for injection into FEI's natural gas system.

Yours truly,

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Christopher Bystrom

cc Registered Parties