



LETTER L-14-13

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Log No. 42229

VIA EMAIL

March 11, 2013

**FORTISBC ENERGY BIOMETHANE POST IMPLEMENTATION &
PROGRAM MODIFICATION** **EXHIBIT A-9**

To: FortisBC Energy Inc.	Registered Intervenors and Interested Parties (FEI-2012 Biomethane Application)
CH Four Biogas on behalf of Dicklands Farm	CH Four Biogas on behalf of Seabreeze Farm
EarthRenu Energy	Greater Vancouver Sewerage and Drainage District

Re: FortisBC Energy Inc.
Biomethane Service Offering: Post Implementation Report
and Application for Approval of the Continuation and Modification of
the Biomethane Program on a Permanent Basis
(2012 Biomethane Application)

FEI Response to British Columbia Utilities Commission Order G-29-13

By the enclosed FortisBC Energy Inc. (FEI) response to Commission Order G-29-13 submitted on March 6, 2013, FEI indicates that it wishes to request a reconsideration of Order G-29-13 issued by the British Columbia Utilities Commission (Commission) on February 28, 2013.

FEI states in its letter:

"FEI therefore respectfully requests that the need for FEI to assume the economic risk on the four supply contracts be reconsidered and that it be confirmed that any risk of over supply be borne by all non-bypass customers subject to a finding that FEI has acted imprudently.

In the alternative, if the above request is not granted, FEI respectfully requests that the supply agreements and related rate applications be heard in conjunction with the 2012 Biomethane Application."

Enclosed is a copy of the Reconsideration and Appeals section of "Understanding Utility Regulation: A Participant's Guide to the B.C. Utilities Commission," which identifies the criteria the Commission applies to determine whether a reasonable basis exists to allow a reconsideration.

An application for reconsideration with the Commission proceeds in two phases. In the first phase, the applicant must establish a *prima facie* case sufficient to warrant full reconsideration by the Commission. The Commission usually invites submissions from the other participants in the original proceeding, or may consider that comments from the parties are not necessary. The Commission generally applies the following criteria to determine whether or not a reasonable basis exists for allowing reconsideration:

- the Commission has made an error in fact or law;
- there has been a fundamental change in circumstances or facts since the Decision;
- a basic principle had not been raised in the original proceedings; or
- a new principle has arisen as a result of the Decision.

Where an error is alleged to have been made the application must meet the following criteria to advance to the second phase of reconsideration:

- the claim of error is substantiated on a *prima facie* basis; and
- the error has significant material implications.

If the Commission determines that a full reconsideration is warranted, the second phase begins where the Commission hears arguments on the merits of the application.

FEI in this reconsideration request has not fully elaborated on its reasons for a reconsideration. However, in order to accommodate the timelines of the third party biomethane suppliers the Commission acknowledges it will proceed directly to Phase 2 for the Reconsideration Application if the two conditions outlined below are met.

The Commission receives from FEI:

1. A fulsome amended Reconsideration Application by no later than Friday, March 15, 2013, in accordance with the Reconsideration and Appeals section of "Understanding Utility Regulation: A Participant's Guide to the B.C. Utilities Commission," and
2. The amended Reconsideration Application includes all necessary evidence required in Phase 2 of a Reconsideration Application.

If the above conditions are satisfied, Registered Interveners, Registered Interested Parties and the four biomethane suppliers in the 2012 Biomethane Application proceeding would be eligible to be Participants in the Reconsideration Proceeding.

The Commission will then proceed with an expedited Reconsideration Proceeding process whereby Participants' arguments on the merits of the application are to be provided to the Commission and copied to FEI and other Participants within four business days of the filing of FEI's amended Reconsideration Application. FEI may respond to arguments from other Participants within three business days of the filing deadline of the Participant comments.

Yours truly,

Erica Hamilton

CM/dg
Enclosures

March 6, 2013

British Columbia Utilities Commission
6th Floor, 900 Howe Street
Vancouver, BC
V6Z 2N3

Attention: Ms. Erica M. Hamilton, Commission Secretary

Dear Ms. Hamilton:

Re: FortisBC Energy Inc. ("FEI")

Biomethane Service Offering: Post Implementation Report and Application for Approval of the Continuation and Modification of the Biomethane Program on a Permanent Basis (the "Application")

FEI Response to British Columbia Utilities Commission ("BCUC" or the "Commission") Order No. G-29-13

FEI is writing to respond to Commission Order No. G-29-13.

Economic Risk on Four Supply Contracts

Commission Order No. G-29-13, as clarified by the Commission's letter of March 4, 2013, requests that FEI confirm that natural gas non-bypass customers bear no actual or potential risk for unsold biomethane from the four new supply contracts. To be clear, FEI understands that the Commission is requesting that FEI assume this economic risk over the lives of the four supply contracts, subject to the possibility of the Commission absolving it of this risk in its decision on the 2012 Biomethane Application.

FEI will not assume this risk. Biomethane is a commodity requested by FEI's customers and is being developed in accordance with provincial policy to reduce GHG emissions.¹ If there is biomethane that cannot be sold at the BERC rate, then such biomethane should be considered to be a part of the overall gas supply for all customers. While FEI has developed a Biomethane Program which is primarily a "user pay model," biomethane is interchangeable with conventional natural gas, is mixed with all other sources of supply and consumed by customers. In principle, FEI believes that commodity costs are fully and appropriately recoverable from all non-bypass customers.

¹ Exhibit B-1, Section 2; *In the Matter of Terasen Gas Inc. Biomethane Application*, Decision, dated December 14, 2010, p. 27.

FEI has put forward its evidence of demand and all stakeholders support FEI's view that there is sufficient demand to justify the increase in supply. FEI also has supply risk mitigation measures in place,² and FEI believes it would be prudent to take on the proposed new supply. In the "worst case scenario," all natural gas customers will pay immaterial amounts more for their natural gas.³ In return, a portion of all customers' commodity supply would be GHG-free and, in addition, renewable sources of biomethane would be developed for the benefit of generations of natural gas customers. In FEI's view, this result would be fair and reasonable and in accordance with policy.

FEI therefore respectfully requests that the need for FEI to assume the economic risk on the four supply contracts be reconsidered and that it be confirmed that any risk of over supply be borne by all non-bypass customers subject to a finding that FEI has acted imprudently.

In the alternative, if the above request is not granted, FEI respectfully requests that the supply agreements and related rate applications be heard in conjunction with the 2012 Biomethane Application.

Annual Expected Volume

Order No. G-29-13 also requested that FEI confirm "the exact maximum annual expected amount of the four contracts." Upon consideration, FEI is not clear what information is being requested. The maximum supply that FEI expects from the Supply Agreements is the contract maximum. However, it will take time for supply to ramp up and the suppliers are not projecting that the maximum contract amount will be reached in all cases. The following is the contract maximums for each Supply Agreement and estimates of the expected annual amount of biomethane based on supplier projections that were included in the Application, as updated to reflect the amended Earth Renu contract:

- Greater Vancouver Sewage and Drainage District: 40,000 GJ/year (contract maximum); 30,000 to 40,000 GJ/year (expected).⁴
- Seabreeze Farm Ltd.: 70,000 GJ/year (contract maximum); 40,000 - 50,000 GJ/year (expected)⁵
- Dicklands Farms: 70,000 GJ/year (contract maximum); 40,000 to 50,000 GJ/year (expected)⁶
- EarthRenu Energy Corp.: 100,000 GJ/year (contract maximum); 50,000 to 100,000 GJ/year (expected)⁷

This indicates a total contract maximum of 280,000 GJ/year and expected annual volumes in the range of 160,000 to 240,000 GJ/year.

² Exhibit B-1, Section 8.

³ Exhibit B-1, p. 116.

⁴ Exhibit B-1, p. 103 (expected amounts exceed the contract maximum).

⁵ Exhibit B-1, p. 106.

⁶ Exhibit B-1, p. 109.

⁷ Exhibit B-10, Section 2(c) of the Amending Agreement.

If you require further information or have any questions regarding this submission, please contact Shawn Hill at (604) 592-7840.

Yours very truly,

FORTISBC ENERGY INC.

Original signed by: Shawn Hill

For: Diane Roy

cc (email only): Registered Parties

Reconsideration and Appeals

An intervenor's role does not necessarily end with the announcement of the Commission's decision. If the utility or an intervenor believes the Commission made a significant error, they may raise the issue again for further scrutiny by way of a reconsideration or an appeal. It is important to realize, however, that an intervenor cannot have a decision reconsidered or appealed merely because he or she is unhappy with the result of the decision. Rather, the intervenor must be able to identify a specific error which the Commission made in arriving at its decision.

The *Utilities Commission Act* provides three remedies for parties who wish to challenge a Commission decision. An application can be made to the Commission to reconsider its own decision under Sections 99 and 100 of the *Utilities Commission Act*. Under Section 101(1), an appeal of the decision can be made to the Court of Appeal for British Columbia on the grounds that the Commission has made an error of law or jurisdiction in reaching its decision. A third remedy is a complaint to the Ombudsman. If a party is dissatisfied with the Commission's procedure, a complaint can be made. However, only procedural issues will be reviewed by the Ombudsman.

Commission Reconsideration

An application for reconsideration by the Commission proceeds in two phases. In the interests of both efficiency and fairness, and before the Commission proceeds with a determination on the merits of an application for reconsideration, the application undergoes an initial screening phase. In this phase the applicant must establish a *prima facie* case sufficient to warrant full consideration by the Commission. The first phase, therefore, is a preliminary examination in which the application is assessed in light of some or all of the following questions:

- Should there be a reconsideration by the Commission?
- If there is to be a reconsideration, should the Commission hear new evidence and should new parties be given the opportunity to present evidence?
- If there is to be a reconsideration, should it focus on the items from the application for reconsideration, a subset of these items or additional items?

The Commission then issues an order which invites registered intervenors and interested parties to comment on the application for reconsideration by addressing those questions set out in the order. The order also specifies the process to be followed which is either by written submissions and reply by the

applicant or by written submissions and oral argument.

After the first phase evidence has been received, the Commission generally applies the following criteria to determine whether or not a reasonable basis exists for allowing reconsideration:

- the Commission has made an error in fact or law;
- there has been a fundamental change in circumstances or facts since the Decision;
- a basic principle had not been raised in the original proceedings; or
- a new principle has arisen as a result of the Decision.

In addition, the Commission will exercise its discretion to reconsider, in other situations, wherever it deems there to be just cause.

Where an error is alleged to have been made, in order to advance to the second phase of the reconsideration process, the application must meet the following criteria:

- the claim of error is substantiated on a prima facie basis; and
- the error has significant material implications.

If necessary, the reconsideration proceeds to the second phase where the Commission hears full arguments on the merits of the application. The applicant and the intervenors may appear before the Commission at this stage to argue why the original decision should or should not be varied or overturned. Finally, after considering these arguments, the Commission renders its decision on the reconsideration application.

The Court of Appeal for British Columbia

The second means of challenging a Commission decision is by way of the Court of Appeal for British Columbia. Unlike the reconsideration process, however, the court is quite restricted in terms of the nature of the errors which it can address. The Court of Appeal for British Columbia will consider only alleged errors of law or jurisdiction.

An appeal to the Court must be launched within 30 days after the Commission has issued its Decision. However, it is necessary first to seek the court's leave for the appeal. The court will normally grant leave only if other remedies have been exhausted. Therefore, the appellant should also apply for a reconsideration by the Commission.

If a participant chooses to pursue an appeal, the procedures become quite complex and formal. Normally, lawyers become involved at this stage, as their knowledge of court procedures and legal arguments tends to be very useful. It is not necessary, however, to hire a lawyer in order to make an appeal in court.

The Ombudsman

If a customer is not satisfied with the Commission's handling of a complaint, he or she may contact the provincial Ombudsman's Office to review the process used. The Ombudsman has the authority to review the processes used by the Commission, including the process for resolving complaints. The Ombudsman generally has the power to recommend reconsideration of a matter because of an error in procedure, but cannot overturn a Commission decision.