



ORDER NUMBER
G-233-18

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

FortisBC Energy Inc.
Rate Schedule 46 – Liquefied Natural Gas Sales, Dispensing and Transportation Service
Application for Expedited Temporary Tariff Changes

BEFORE:

D. M. Morton, Commissioner/Panel Chair
A. K. Fung, QC, Commissioner

December 7, 2018

ORDER

WHEREAS:

- A. On November 7, 2018, pursuant to sections 59 to 61 and 89 of the *Utilities Commission Act* (UCA), FortisBC Energy Inc. (FEI) applied to the British Columbia Utilities Commission (BCUC) for expedited approval, on an interim and permanent basis, of temporary tariff changes to the curtailment priority in Section 5.2 and to title transfer in Section 5.4 of Rate Schedule 46 (RS 46), effective November 15, 2018 and ending March 31, 2019 (collectively, the Application);
- B. By BCUC Order G-211-13 dated December 12, 2013, RS 46 was approved in accordance with Order in Council (OIC) 557, B.C. Regulation 245/2013, deposited November 28, 2013, issuing Direction No. 5 to the BCUC, as amended by OIC 749, B.C. Regulation 265/2014, and further amended by OIC 162, B.C. Regulation 115/2017;
- C. By Order G-215-18 dated November 14, 2018, the BCUC approved interim changes to Section 5.2 and Section 5.4 of FEI's RS 46 effective November 15, 2018 and established a regulatory table, which included one round of information requests, deadline for letters of comment and a deadline for FEI to respond to letters of comment;
- D. The BCUC received letters of comment from each of Ledcor Forest Products Limited (Ledcor), BC Ferries Corporation (BC Ferries) and Seaspans Ferries Corporation (Seaspans Ferries). In consideration of the letters of comment, FEI responded on November 23, 2018;
- E. The BCUC reviewed the submissions and requested additional comments from participants on the need for further process. The participants indicated that further process was necessary;
- F. On December 4, 2018, the BCUC approved a request to intervene from Commercial Energy Consumers Association of BC;

- G. On December 5, 2018, BC Ferries, Seaspans Ferries, FEI, BCUC staff and the Panel participated in the Streamlined Review Process (SRP); and
- H. The BCUC has reviewed the Application and considered the evidence filed in the proceeding, including the submissions made by FEI, BC Ferries and Seaspans Ferries at the SRP, and makes the following determinations.

NOW THEREFORE with Reasons for Decision to follow, the BCUC orders as follows:

1. The proposed rate schedule changes to the following sections of RS 46 as shown in Appendix B of the Application are approved until March 31, 2019:
 - a. Changes to Section 5.2(b) and associated provisions that allow RS 46 customers relief from their take or pay obligations to the extent they are curtailed or use alternative fuel; and
 - b. Section 5.4
2. All other proposed rate schedule changes are denied.
3. Seaspans Ferries' proposal to receive compensation from FEI in the event it is curtailed ahead of other RS 46 firm service customers is denied.
4. FEI is directed to refile the amended RS 46 tariff within 15 days of this order.
5. FEI is further directed to file replacement RS 46 tariff pages for the tariff expiring March 31, 2019 by no later than March 31, 2019.

DATED at the City of Vancouver, in the Province of British Columbia, this 7th day of December 2018.

BY ORDER

Original Signed by:

D. M. Morton
Commissioner

FortisBC Energy Inc.

**Rate Schedule 46 – Liquefied Natural Gas Sales, Dispensing and
Transportation Service Application for Expedited Temporary Tariff
Changes**

Reasons for Decision

December 12, 2018

Before:

D. M. Morton, Commissioner/Panel Chair

A. K. Fung, QC, Commissioner

1.0 Introduction

1.1 Background

On November 7, 2018, and pursuant to sections 59 to 61 and 89 of the *Utilities Commission Act* (UCA), FortisBC Energy Inc. (FEI) filed for expedited approval on an interim and permanent basis of temporary tariff changes to Rate Schedule 46 (RS 46) for the balance of the 2018/19 Winter Season (Application). FEI's request for interim and permanent rate changes stems from potential shortages in the amount of Liquefied Natural Gas (LNG) available for sale under RS 46 resulting from the rupture of the 36-inch natural gas pipeline on the Enbridge Inc. (Enbridge) Westcoast T-South system, which occurred October 9, 2018.

On November 14, 2018, the BCUC approved interim changes to Section 5.2 and Section 5.4 of FEI's RS 46 effective November 15, 2018.

1.2 Approvals sought

Pursuant to sections 59 to 61 and 89 of the UCA, FEI proposed the following changes to RS 46:

Section 5.2 (b)

- To allow LNG Service customers to voluntarily agree to be curtailed either in whole or in part.

Section 5.2 (c)

- To allow FEI to curtail customers that it believes have alternative fuel back-up systems before those who do not have that capability.

Section 5.2 (d) (e) (f)

- To move from pro rata curtailment to a customer-by-customer curtailment based on the volume of contract demand first amongst short-term and then amongst long term LNG service customers.

Section 5.2 (general)

- To provide relief to curtailed customers from take or pay obligations to the extent such customers are curtailed or use an alternative fuel.

Section 5.4

- To ensure FEI is able to contract additional LNG supply from third parties.

1.3 Application review process

The review of the Application included one round of information requests, letters of comment and a Streamlined Review Process (SRP). Ledcor Forest Products Limited, BC Ferries Corporation (BC Ferries) and Seaspans Ferries Corporation (Seaspans Ferries) provided letters of comment. BC Ferries and Seaspans Ferries attended the SRP.

2.0 Key issues

2.1 Voluntary curtailment (Section 5.2 [b])

In the Application, FEI proposes changes to Section 5.2 (b) of RS 46 to allow FEI to curtail customers who voluntarily agree to be curtailed either in whole or in part.

Position of parties

FEI states the current curtailment priority requires it to curtail customers in priority sequence regardless if a customer is willing to decline service. The proposed changes allow FEI to curtail customers if they volunteer to do so¹. During the SRP, FEI stated it is important to have the flexibility and the ability to work with customers if it is in a critical situation that requires curtailment².

Seaspan Ferries supports this change and is “enthusiastic about the tariff amendments proposed that relate to voluntary curtailment”³.

BCUC determination

The Panel approves RS 46 tariff changes to Section 5.2 (b) to allow FEI to curtail customers who voluntarily agree to be curtailed either in whole or in part. The Panel agrees with FEI that it is important for it to have the flexibility to work with those customers who are willing and have the capacity to be curtailed in the event such a situation is necessary. We therefore find this tariff change to be just, reasonable and not unduly discriminatory.

2.2 Curtailing customers with alternative fuel back-up systems (Section 5.2 [c])

FEI requests to make changes to Section 5.2 (c) of RS 46 to allow curtailment of customers that it believes to have alternative fuel back-up systems before those who do not have that capability.

Position of parties

Seaspan Ferries does not support the requested changes to Section 5.2 (c). Seaspan Ferries considers the requested changes to Section 5.2 (c) of RS 46 to be unduly discriminatory as it targets its organization for curtailment before other long-term customers due to its fuel switch ability⁴.

Seaspan Ferries argues, based on the evidence provided during the SRP, that the proposed tariff change to Section 5.2 (c) is not necessary to respond to the Enbridge circumstances, and therefore the requested changes should not be made at this time⁵.

FEI states that curtailing customers who have access to alternative fuel back-up systems before those who do not have that capability allows FEI to continue to serve those customers with no alternative fuel back-up systems⁶. FEI argues that although changes to Section 5.2 (c) may treat customers differently, it is not unduly discriminatory. FEI states if it is in a situation where it cannot meet its obligations to provide firm service, it has a

¹ Exhibit B-1, p. 5.

² Transcript Volume 1, pp. 59–60.

³ Transcript Volume 1, p. 160.

⁴ Exhibit E-3, p. 1.

⁵ Transcript Volume 1, p. 157.

⁶ Exhibit B-1, p. 5.

responsibility to try and maintain the system. To accomplish that, one or more customers will need to be curtailed. FEI believes it is reasonable, in the event curtailment is necessary, that it would first curtail those with known alternative fuel capabilities⁷.

FEI argues that allocating the risk of curtailment and outages to those entities that are likely to be most capable of managing that risk (such as those customers that have alternative fuels), is appropriate because they potentially have capabilities to dial back their systems or to just reduce use of LNG⁸.

BCUC determination

The Panel does not approve tariff changes to 5.2 (c). FEI has failed to demonstrate the need of the proposed change to Section 5.2 (c) that would allow FEI to curtail customers that have fuel back-up systems before those who do not have that capability. During the SRP when asked to describe a scenario where FEI would make use of this curtailment order, a FEI representative stated “it can't see a situation where that portion of the ask comes into play”⁹. When specifically asked about the current situation as it relates to Enbridge, that representative stated “I don't know that the order will ever come into play”¹⁰. Therefore the Panel is not persuaded that the proposed tariff changes to Section 5.2 (c) are needed at this time.

2.3 Move from pro rata curtailment to a customer-by-customer curtailment (Section 5.2 [d, e, f])

FEI requests to make changes to Section 5.2 (d), (e) and (f) of RS 46 that move RS 46 customers from pro rata curtailment to a customer-by-customer curtailment based on the volume of contract demand amongst short-term and then long term LNG service customers.

Position of parties

FEI views that the current pro rata curtailment priority will not result in optimal outcomes as pro rata curtailment could result in an insufficient amount of LNG available to each customer for any single customer to operate its business¹¹.

In contrast, Seaspan Ferries is of the view that the new tariff proposal must either be changed or rejected as the status quo pro rata approach is fairer than the one FEI proposes¹².

BCUC determination

The Panel does not approve tariff changes to Section 5.2 (d), (e) and (f) in RS 46. The Panel is of the view that FEI has failed to demonstrate the need to switch from a pro rata curtailment to a customer-by-customer curtailment based on the volume contract. When specifically asked about the current situation as it relates to Enbridge, FEI stated curtailment is not likely to ever be just 50 percent for all RS 46 customers due to the fact that Enbridge is a main supply line. In this situation if curtailment was necessary it would affect hundreds of

⁷ Transcript Volume 1, p. 169.

⁸ Transcript Volume 1, pp. 73–74.

⁹ Transcript Volume 1, p. 82.

¹⁰ Transcript Volume 1, p. 81.

¹¹ Transcript Volume 1, p. 54.

¹² Transcript Volume 1, p. 119.

customers, so any pro rata curtailment would in all likelihood be 100 percent¹³. Accordingly, given the current circumstance, the Panel is not convinced that these proposed amendments are either necessary or justified at this time.

2.4 Relief from take or pay obligation (Section 5.2 general)

FEI requests to make changes to Section 5.2 of RS 46 generally in order to provide relief to curtailed customers from take or pay obligations to the extent such customers are curtailed or use an alternative fuel.

Position of parties

No issues were raised by participants with respect to providing relief to curtailed customers from take or pay obligations.

BCUC determination

The Panel approves RS 46 tariff changes to Section 5.2 generally that provide relief to curtailed customers from take or pay obligations to the extent such customers are curtailed or use an alternative fuel. This is a just and reasonable approach to a customer who has agreed to make voluntary curtailment and does not unduly discriminate against other customers.

2.5 LNG supply from third parties (Section 5.4)

FEI requests to make changes to Section 5.4 of RS 46 in order to ensure FEI is able to contract for additional LNG supply from third parties.

Position of parties

FEI states this is a housekeeping item that is intended to facilitate the delivery of LNG to RS 46 customers that is sourced from third parties¹⁴.

No issues were raised by participants with respect to relief to accommodate the transfer of title of LNG in the case where the LNG facility is owned by a third party.

BCUC determination

The Panel approves RS 46 tariff changes to Section 5.4 that accommodate the transfer of title of LNG in the case where the LNG facility is owned by a third party.

2.6 Compensation for curtailed customers

Seaspan Ferries proposes that if it is curtailed ahead of other firm service customers because it has fuel back-up capabilities then the additional costs associated for switching fuel should be borne by system customers rather than Seaspan Ferries individually¹⁵.

¹³ Transcript Volume 1, pp. 63–64.

¹⁴ Transcript Volume 1, p. 51.

¹⁵ Exhibit E-3.1, p. 2.

Position of parties

Seaspan Ferries argues that if it is going to be asked to curtail or forced to curtail for the benefit of the broader system, it's only fair and consistent in a principled way that other ratepayers pay that cost as well¹⁶.

FEI considers that providing compensation to curtailed customers is not in the public interest and is not just and reasonable. FEI states that RS 46 and all other FEI rate schedules do not provide for compensation for curtailment and therefore providing compensation for curtailment of RS 46 customers would not be consistent with other rate schedules¹⁷. During the SRP, FEI referenced a decision from the Supreme Court of Texas in the case of *Houston Lighting and Power Company v. Auchan U.S. Inc.* on whether a grocer should recover losses it sustained after a power outage caused the grocer's goods to spoil. The Supreme Court of Texas held that the grocer could not recover its losses from the power company as it has limitation of liability clauses in the utility's tariff in order to protect it from losses it could not anticipate¹⁸. FEI stated that "having no compensation or a limitation of liability results in lower rates for all customers. If the utility had to estimate and assume risk of averages, this would increase costs and rates for all customers. It also prevents subsidization of larger customers by smaller customers"¹⁹.

BCUC determination

The Panel denies Seaspan Ferries' proposal to receive compensation from FEI in the event it is curtailed ahead of other RS 46 firm service customers. The Panel agrees with FEI that if compensation is provided to curtailed customers it would increase costs and rates for all customer classes and would not be consistent with the approach taken in other rate schedules. In the Panel's view providing compensation to Seaspan Ferries is unduly discriminatory to other FEI affected customers. The Panel also notes that to the extent that RS 46 customers are already not bearing all of the midstream costs that are allocated to other core customers, the RS 46 customers are enjoying a benefit not available to others.

DATED at the City of Vancouver, in the Province of British Columbia, this 12th day of December 2018.

Original signed by:

D. M. Morton
Panel Chair/Commissioner

Original signed by:

A. K. Fung, QC
Commissioner

¹⁶ Transcript Volume 1, p. 162.

¹⁷ Transcript Volume 1, p. 149.

¹⁸ Transcript Volume 1, pp. 149–150.

¹⁹ Transcript Volume 1, p. 150.