



**ORDER NUMBER
G-235-19**

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

and

FortisBC Energy Inc.
Application for Acceptance of the Biogas Purchase Agreement
Between FortisBC Energy Inc. and the City of Vancouver

BEFORE:

D. M. Morton, Panel Chair
A. Fung, QC, Commissioner
R. I. Mason, Commissioner

on September 27, 2019

ORDER

WHEREAS:

- A. On September 21, 2018, FortisBC Energy Inc. (FEI) filed with the British Columbia Utilities Commission (BCUC) an application for acceptance of a Biogas Purchase Agreement (BPA) between FEI and the City of Vancouver (COV) pursuant to section 71 of the *Utilities Commission Act* (UCA) (Application);
- B. By Order G-130-06 dated October 27, 2006, the BCUC approved the Rules for Natural Gas Energy Supply Contracts (Rules). The Rules are intended to facilitate the BCUC's review of natural gas energy supply contracts pursuant to section 71 of the UCA;
- C. On April 18, 2010, the Government of British Columbia enacted the Clean Energy Act (CEA). The CEA provides that the Lieutenant Governor in Council (LGIC) can enact "prescribed undertakings" that are intended to encourage "the use of electricity, or energy directly from a clean or renewable resource instead of the use of other energy sources that produce higher greenhouse gas emissions."¹;
- D. Section 18(1) of the CEA defines a prescribed undertaking as "...a project, program, contract or expenditure that is in a class of projects, programs, contracts or expenditures prescribed for the purpose of reducing greenhouse gas emissions in British Columbia."²;
- E. On May 14, 2012, the LGIC issued Order in Council (OIC) No. 295/2012 approving the Greenhouse Gas Reduction (Clean Energy) Regulation (GGRR), which describes classes of prescribed undertakings pursuant to section 18 of the CEA;

¹ *Clean Energy Act*, SBC 2010, c. 22, s. 35.

² *Ibid.*, s. 18.

- F. On August 1, 2013, the LGIC issued OIC No. 347/2013, giving direction to the BCUC to exempt biomethane suppliers selling biogas and biomethane to a public utility from certain sections of the UCA where the BCUC can review the supply contract under section 71 of the UCA;
- G. By OIC No. 161/2017 the LGIC approved an amendment to the GGRR which, among other things, classifies the acquisition of RNG as a prescribed undertaking. Sections 2(3.7) to 2(3.9) of the GGRR states that:
 - (3.7) A public utility's undertaking that is in the class defined in subsection (3.8) is a prescribed undertaking for the purposes of section 18 of the Act.
 - (3.8) The public utility acquires renewable natural gas
 - a) for which the public utility pays no more than \$30 per GJ, and
 - b) that, subject to subsection (3.9), in a calendar year, does not exceed 5% of the total volume of natural gas provided by the public utility to its non-bypass customers in 2015;
- H. Under the BPA, FEI intends to: purchase landfill gas from the COV; construct and operate facilities on COV land to upgrade landfill gas to renewable natural gas; and construct interconnection facilities including a 500-metre pipeline to connect to FEI's existing natural gas distribution system (together, the Project);
- I. FEI submits the Project qualifies as a prescribed undertaking as the cost to acquire RNG under the COV BPA is below the \$30 per gigajoule (\$/GJ) threshold price and is within the volume limits pursuant to sections 2(3.8) and 2(3.9) of the GGRR;
- J. By Order G-219-18, the BCUC established a regulatory timetable for review of the Application, which was subsequently amended pursuant to Orders G-234-18 and G-14-19;
- K. On June 6, 2019, the BCUC issued decision and Order G-122-19 which adjourned the proceeding for 60 days to allow FEI to restructure and resubmit to the Panel the Project and/or its BPA with the COV in a way that provides the required certainty to FEI's RNG acquisition cost so as to qualify as a prescribed undertaking within the specified cost threshold under the provisions of the GGRR;
- L. On July 16, 2019, FEI filed a response to BCUC decision and Order G-122-19 (Response);
- M. In the Response, FEI proposes to limit the average production cost for the Project flowed to ratepayers to a maximum of the \$30/GJ GGRR threshold price by creating a new non rate base deferral account (COV BPA Deferral Account);
- N. Under the mechanism, each year the cumulative average Project costs up to the \$30/GJ GGRR threshold price will be recorded in the Biomethane Variance Account (BVA) and any costs exceeding the \$30/GJ GGRR threshold price, if any, will be recorded in the COV BPA Deferral Account;
- O. By Order G-182-19 dated August 1, 2019, the BCUC established a regulatory timetable for review of the Response which included BCUC and intervener information requests (IR), FEI's response to IRs and further process to be determined;
- P. On September 25, 2019 pursuant to Order G-223-19, the BCUC held a Streamlined Review Process which included FEI's final oral argument, intervener final oral argument and FEI oral reply argument;
- Q. The Panel determines the Project is a prescribed undertaking;

- R. Section 18(3) of the CEA states that “the commission must not exercise a power under the UCA in a way that would directly or indirectly prevent a public utility...from carrying out a prescribed undertaking.”;
- S. The Panel is satisfied that the Project costs that flow to the BVA, and subsequently into rates, will not exceed the \$30/GJ GGRR threshold price during the life of the Project;
- T. The BCUC has not reviewed the Application from a public interest perspective as it is a prescribed undertaking; and
- U. The BCUC has reviewed the evidence and arguments submitted in this proceeding and makes the following determinations.

NOW THEREFORE pursuant to sections 59 to 61 and 71 of the *UCA* and OIC No. 161/2017, the BCUC orders as follows:

- 1. The COV BPA is accepted for filing.
- 2. FEI is to establish a non rate base COV BPA Deferral Account to capture the cumulative costs of the Project to the extent that the average cost of the Project is greater than the \$30/GJ GGRR threshold price.
- 3. FEI is to amend the Fourth Quarter Gas Cost Report and the BVA Status Report to include the following information relevant to the Project:
 - a. forecast and actual production costs;
 - b. forecast and actual capital costs;
 - c. the cost of service model, including, but not limited to, raw landfill gas flows, landfill gas composition, gas facility uptime and gas recovery rates;
 - d. variance analysis;
 - e. an explanation of variances over 10 percent;
 - f. additions to the BVA; and
 - g. additions to the COV BPA Deferral Account

DATED at the City of Vancouver, in the Province of British Columbia, this 27th day of September 2019.

BY ORDER

Original signed by:

D. M. Morton
Commissioner