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March 28, 2019

British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, B.C.
V6Z 2N3

Attention: Mr. Patrick Wruck, Commission Secretary and Manager, Regulatory Support

Dear Mr. Wruck:

Re: FortisBC Energy Inc. (FEI) and Mt. Hayes (GP) Ltd. (on behalf of Mt. Hayes Limited Partnership)

Application for Approvals to Reorganize the Ownership Interests in the Mt. Hayes LNG Storage Facility (the Application)

Response to the British Columbia Utilities Commission (BCUC) Information Request (IR) No. 1

On January 31, 2019, FEI filed the Application referenced above. In accordance with BCUC Order G-44-19 setting out the Regulatory Timetable for the review of the Application, FEI respectfully submits the attached response to BCUC IR No. 1.

FEI requests that Attachment 4.5.1 be filed on a confidential basis pursuant to Section 18 of the BCUC's Rules of Practice and Procedure regarding confidential documents as set out in Order G-15-19. The documents contained in Confidential Attachment 4.5.1 contain information related to the First Nations that is sensitive and should not be publicly disclosed.

If further information is required, please contact Justin Cha, Director, Corporate Finance and Assistant Treasurer at (604) 443-6543.

Sincerely,

**FORTISBC ENERGY INC.
MT. HAYES (GP) LTD.**

Original signed:

Doug Slater

Attachments



FortisBC Energy Inc. (FEI or the Company) Application for Approval to Reorganize the Ownership Interests in the Mt. Hayes LNG Storage Facility (the Application)	Submission Date: March 28, 2019
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1 **A. ACCOUNTING IMPACT AND BENEFITS**

2 **1.0 Reference: BACKGROUND**

3 **Exhibit B-1, Application, Section 3.4, p. 5; Terasen Gas (Vancouver**
 4 **Island) Inc. and Mt. Hayes (GP) Ltd. Application for the Chemainus**
 5 **Indian Band and Cowichan Tribes Acquisition of an Ownership**
 6 **Interest in the Liquefied Natural Gas Storage Facility (2011**
 7 **Application), Exhibit B-1, pp. 5–6; Appendix A; Final Order G-109-**
 8 **11A, Appendix A, p. 6; Exhibit B-3, IR 2.1–2.4**
 9 **Existing Limited Partnership Agreement**

10 On pages 5 & 6 of the 2011 Application, FortisBC Energy Inc. (FEI) stated:

11 Under the leasing arrangements contemplated in this Application the Offset
 12 CCA will not be available to offset other TGVI income. The inability of Mt.
 13 Hayes LP to deduct CCA in excess of its income in 2012 will result in higher
 14 income taxes being payable by TGVI in 2012. While this will be the case in
 15 2012, in subsequent years Mt. Hayes LP will have sufficient leasing income to
 16 be able to deduct the maximum amount of CCA (determined without regard to
 17 those special tax rules). It is important to note that the unused CCA in 2012 will
 18 still be available in future years...

19 In Appendix A of the 2011 Application, FEI provided a forecast income tax and CCA
 20 schedule:

INCOME TAX SCHEDULES

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033
Taxes Payable Calculation																						
Income Tax																						
Large Corp. Tax																						
Add Return on Common Equity	7,870	7,655	7,439	7,223	7,008	6,792	6,576	6,360	6,144	5,928	5,712	5,496	5,280	5,064	5,047	4,897	4,689	4,481	4,273	4,064	3,856	3,648
Add Depreciation Expense	5,509	5,513	5,517	5,521	5,524	5,528	5,533	5,537	5,541	5,545	5,550	5,554	5,559	5,564	5,408	5,365	5,370	5,375	5,381	5,386	5,391	5,397
Subtract CCA	(12,873)	(12,084)	(11,141)	(10,273)	(9,473)	(8,737)	(8,059)	(7,436)	(6,861)	(6,333)	(5,846)	(5,398)	(4,985)	(4,606)	(4,482)	(4,369)	(4,039)	(3,735)	(3,455)	(3,198)	(2,961)	(2,743)
Total	507	1,083	1,815	2,471	3,059	3,583	4,049	4,461	4,824	5,141	5,416	5,653	5,854	6,022	5,972	5,893	6,021	6,121	6,198	6,252	6,287	6,303
Tax Rate	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250
Tax Rate Gross Up	0.333	0.333	0.333	0.333	0.333	0.333	0.333	0.333	0.333	0.333	0.333	0.333	0.333	0.333	0.333	0.333	0.333	0.333	0.333	0.333	0.333	0.333
Income Tax	169	361	605	824	1,020	1,194	1,350	1,487	1,608	1,714	1,805	1,884	1,951	2,007	1,991	1,964	2,007	2,040	2,066	2,084	2,096	2,101

21
 22 In Order G-109-11A, Section 3.1 of Appendix A noted that FEI expected the tax effect
 23 of restructuring would be "...lower taxes being payable in future years as the unused
 24 CCA [Capital Cost Allowance] from 2012 is applied against taxable income."

25 In response to British Columbia Utilities Commission (BCUC) Information Request (IR)
 26 2.3, FEI stated:

27 TGVI will transfer the LNG Storage Facility to Mt. Hayes LP, electing for income
 28 tax purposes to have the transfer occur on a tax deferred basis. As a result,



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1 under the current forecast TGVI will not incur a capital gain or loss for tax
2 purposes on the transfer.

3 On an annual basis in its income tax returns, TGVI will include in its taxable
4 income the partnership earnings allocated to TGVI and deduct the lease
5 payments made to Mt. Hayes LP.

6 However, for rate making purposes, TGVI taxes will be calculated as if TGVI
7 continued to own the LNG Storage Facility, with one exception; the CCA
8 deduction in the TGVI utility tax calculation will be limited to the maximum CCA
9 that TGVI can actually deduct as a limited partner. In the current forecasts, the
10 2012 CCA that TGVI can deduct is slightly less than the CCA that it would be
11 able to deduct if the assets were owned in TGVI. In subsequent years, this
12 difference will reverse and the maximum CCA deductible by TGVI as a limited
13 partner will be slightly more than the comparable CCA if TGVI continued to own
14 the LNG Storage Facility.

15 1.1 Please confirm, or explain otherwise, that the maximum CCA deductible by
16 Terasen Gas (Vancouver Island) Inc. (TGVI, now FEI) as a limited partner was,
17 and continues to be, more than the comparable CCA if FEI owned the
18 Liqueified Natural Gas (LNG) storage facility.

19
20 **Response:**

21 FEI confirms that, starting in 2013, the maximum CCA deductible by FEI as a limited partner
22 was, and continues to be, more than the comparable CCA if FEI owned the LNG Storage
23 Facility.

24
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26
27 1.2 Please explain why the unused CCA has not resulted in lower taxes paid as
28 expected?

29
30 **Response:**

31 The unused CCA in 2012 has resulted in higher CCA being deducted in computing taxable
32 income allocated to FEI for 2013 and subsequent taxation years and has resulted in lower
33 taxes paid as expected.

34 To put the amount in context, the total amount of unused CCA in 2012 was \$119 thousand.
35 This has resulted in an increase in the amount of CCA claimed in 2013 of \$10 thousand



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1 declining at 8 percent for subsequent years. This results in a small tax saving for FEI of
2 approximately \$2 thousand in 2013 declining at 8 percent for subsequent years.

3
4

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6 1.3 Please provide an updated income tax schedule, with actuals for the period
7 2012–2018 and an updated forecast for 2018 onwards.

8

9 **Response:**

10 Please refer to Attachment 1.3.

11

12

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14 1.4 Please confirm, or explain otherwise, that the Chemainus Indian Band
15 (Chemainus) and Cowichan Tribes (Cowichan) (collectively, the First Nations)
16 are subject to the same corporate tax rates as FEI.

17

18 **Response:**

19 The First Nations limited partners are independent organizations whose financial structures
20 and tax characteristics are private. FEI is not able to confirm, or explain otherwise, whether
21 the First Nations are subject to the same corporate tax rates as FEI.

22

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26 On page 5 of the FEI and Mt. Hayes (GP) Ltd. Application for Approvals to Reorganize
27 the Ownership Interests in the Mt. Hayes LNG Storage Facility (Application) FEI
28 states:

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FEI has received distributions from Mt. Hayes LP since the inception of the limited partnership structure. The distributions have resulted in a negative adjusted cost base of the investment starting in 2016. This negative adjusted cost base for tax purposes has automatically triggered a deemed capital gain that has been included in taxable income and resulted in tax payable that has been borne by FEI's shareholder. It has not had any impact on FEI's customers, or the First Nations.



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1 1.5 Prior to 2016, please confirm, or explain otherwise, that distributions resulted in
2 a positive adjusted cost base.

3

4 **Response:**

5 For tax purposes, distributions to FEI from Mt. Hayes LP result in a reduction to adjusted cost
6 base of FEI's investment in Mt. Hayes LP.

7 Although the distributions reduced the adjusted cost base of FEI's investment in Mt. Hayes
8 LP, the reductions did not result in a negative adjusted cost base prior to 2016.

9

10

11

12 1.6 Have costs and expenditures related to Mt. Hayes Limited Partnership (LP)
13 been greater than the distributions received by the partners at any time since
14 the 2011 Application? Please discuss.

15

16 **Response:**

17 The combined amount of costs and expenditures has never exceeded the partner distributions
18 in a given year. For more information, please refer to the response to BCUC IR 1.1.8.

19 For the purpose of responding to this question, FEI assumes "costs" means operating
20 expenditures as presented in the Statement of Earnings which are typically general and
21 administrative expenses. FEI assumes "expenditures" means all capital expenditures
22 (sustaining and expansion) that are capitalized on the Balance Sheet. Finally, FEI assumes
23 "distributions" means the total distributions made to the partners as presented in the
24 Statement of Partners' Equity. These are summarized on the lines titled Operating
25 expenditures, Capital expenditures and Partner distributions as shown in the Cash Flows
26 Items table provided in response to BCUC IR 1.1.8.

27

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31 1.7 Please explain why distributions from Mt. Hayes LP to FEI have resulted in a
32 negative adjusted cost base from 2016.

33



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1 **Response:**

2 FEI's negative adjusted cost base in Mt. Hayes LP from 2016 has resulted because the sum
3 of distributions to FEI from Mt. Hayes LP since 2012 has exceeded the sum of:

- 4 1. The tax cost of the assets contributed by FEI to Mt. Hayes LP in 2012, plus
- 5 2. FEI's share of net income for tax purposes from Mt. Hayes LP since 2012, plus
- 6 3. FEI contributions to the equity of Mt. Hayes LP since 2012.

7 Please refer to Section 5.2 of the 2011 Application in which the existing ownership
8 arrangement was approved. As indicated in the 2011 Application, FEI transferred the LNG
9 Storage Facility assets to Mt. Hayes LP at a price equal to their net book value (book cost less
10 depreciation taken). For tax purposes, the assets were transferred at their tax cost, which
11 was significantly less than net book value, to defer any immediate tax cost on the transfer. In
12 addition to the lower opening tax cost for the assets, annual distributions have exceeded net
13 income for tax purposes since distributions are largely driven by the higher net book value
14 while net income for tax purposes has been reduced by higher available CCA. These factors
15 have resulted in the negative adjusted cost base for tax purposes.

16

17

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20 1.7.1 Did FEI expect a negative adjusted cost base to occur in future years
21 when the 2011 Application was submitted? Please explain why or why
22 not.

23

24 **Response:**

25 FEI did not anticipate that a negative adjusted cost base would occur in future years when the
26 2011 Application was submitted. In Section 2 of FEI's 2011 Application, FEI indicated that
27 "The sole purpose of this Application is to obtain approvals necessary to provide Chemainus
28 and Cowichan with the opportunity to acquire an ownership interest in the LNG Storage
29 Facility. TGVI is not seeking approval of this Application in order to achieve any additional
30 return on investment".

31 Except for the effect of delaying claiming a small amount of CCA (please refer to the response
32 to BCUC IR 1.1.2), FEI anticipated that establishment of Mt. Hayes LP would be tax neutral
33 when the 2011 Application was submitted. FEI did not anticipate a reduction in its return on
34 investment as a result of additional tax costs associated with incurring a negative adjusted
35 cost base of its partnership interest in Mt Hayes LP.

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1 If FEI anticipated such negative adjusted cost base would occur at the time of filing the 2011
 2 Application, FEI would have applied to structure its investment in Mt. Hayes LP in accordance
 3 with this Application, or possibly in a different manner, in order to mitigate the tax cost borne
 4 by the shareholder and be consistent with the rate of return had the partnership structure not
 5 been put in place in the first place.

6 The purpose of this Application is to allow FEI to restructure its investment in Mt. Hayes LP to
 7 mitigate the unintended tax costs while continuing to ensure that ratepayers are unaffected.

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11 1.7.2 Did FEI anticipate reorganization of ownership interests in the event
 12 of a negative adjusted cost base occurring? Please discuss.

13

14 **Response:**

15 FEI did not anticipate the negative adjusted cost base at the time of the 2011 Application and
 16 therefore did not anticipate a reorganization of ownership interests in the event of a negative
 17 adjusted cost base occurring.

18

19

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21 1.8 Please provide a yearly cash flow analysis from 2012, clearly showing any
 22 capital expenditures, O&M costs, and contributions by and distributions to each
 23 partner since 2011.

24

25 **Response:**

26 Analysis of key cash flow items is summarized below as requested:

27

Cash Flow Items (\$000s)

	2012	2013	2014	2015	2016	2017	2018
Revenue	18,719	18,143	17,664	15,978	16,226	16,292	16,047
Opex	(150)	(50)	(29)	(33)	(30)	(31)	(23)
Interest Expense	(6,031)	(6,161)	(5,049)	(4,724)	(4,566)	(4,214)	(3,784)
Changes in Working Capital	(454)	739	305	(71)	(295)	2,551	(2,544)
Capital Expenditures	(379)	(21)	(21)	(5,021)	(3,921)	(2,562)	(452)
Change in Loan	(2,286)	(3,612)	(5,635)	5,258	(810)	(1,799)	(3,135)
Capital contributions	76,080		2,782	1,925	809		

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	2012	2013	2014	2015	2016	2017	2018
Partner distributions	(9,317)	(8,853)	(9,713)	(13,383)	(7,708)	(7,687)	(8,654)
Issuance of loan for PPE	114,120						
Transfer of PPE	(190,200)						
Net Change in Cash	101	185	304	(72)	(295)	2,550	(2,544)

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Note 1 - Partners Equity Continuity Schedule

(\$000s)	FEI	Chemainus	Cowichan	Mt. Hayes (GP) Ltd.	Total
As at December 31, 2011	0.10	-	-	0.00	0.10
Redemption of Initial Contribution	(0.10)	-	-	(0.00)	(0.10)
Capital Contributions	64,667	5,706	5,706	0.76	76,080
Net Earnings	6,311	557	557	0.07	7,424
Distribution of Capital	(1,609)	(142)	(142)	(0.02)	(1,893)
Distribution of Income	(6,311)	(557)	(557)	(0.07)	(7,424)
As at December 31, 2012	63,058	5,564	5,564	0.74	74,187
Net Earnings	5,792	511	511	0.07	6,814
Distribution of Capital	(1,733)	(153)	(153)	(0.02)	(2,039)
Distribution of Income	(5,792)	(511)	(511)	(0.07)	(6,814)
As at December 31, 2013	61,325	5,411	5,411	0.72	72,148
Capital Contributions	2,365	209	209	0.03	2,782
Net Earnings	6,425	567	567	0.08	7,559
Distribution of Capital	(1,831)	(162)	(162)	(0.02)	(2,154)
Distribution of Income	(6,425)	(567)	(567)	(0.08)	(7,559)
As at December 31, 2014	61,859	5,458	5,458	0.73	72,776
Net Earnings	5,266	465	465	0.06	6,195
Capital Contributions	1,636	144	144	0.02	1,925
Distribution of Capital	(6,109)	(539)	(539)	(0.07)	(7,188)
Distribution of Income	(5,266)	(465)	(465)	(0.06)	(6,195)
As at December 31, 2015	57,386	5,064	5,064	0.68	67,513
Net Earnings	5,433	479	479	0.06	6,392
Capital Contributions	687	61	61	0.01	809
Distribution of Capital	(1,118)	(99)	(99)	(0.01)	(1,316)
Distribution of Income	(5,433)	(479)	(479)	(0.06)	(6,392)
As at December 31, 2016	56,954	5,025	5,025	0.67	67,006
Net Earnings	5,577	492	492	0.07	6,561

(\$000s)	FEI	Chemainus	Cowichan	Mt. Hayes (GP) Ltd.	Total
Distribution of Capital	(957)	(84)	(84)	(0.01)	(1,126)
Distribution of Income	(5,577)	(492)	(492)	(0.07)	(6,561)
As at December 31, 2017	55,997	4,941	4,941	0.66	65,880
Net Earnings	5,687	502	502	0.07	6,691
Distribution of Capital	(1,668)	(147)	(147)	(0.02)	(1,963)
Distribution of Income	(5,687)	(502)	(502)	(0.07)	(6,691)
As at December 31, 2018	54,329	4,794	4,794	0.64	63,917

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1.9 Please confirm, or explain otherwise, that income tax liabilities will continue to be borne by FEI's shareholders and not affect ratepayers or the First Nations in the event that the proposed restructure is approved.

Response:

The income tax liabilities as specifically related to the negative adjusted cost base would continue to be borne by FEI's shareholder and not affect or impact ratepayers or the First Nations whether or not the Proposed Restructuring is approved.

However, any tax liabilities that are the result of earnings from using the LNG Storage Facility in FEI's ongoing rate regulated utility operations will continue to be borne by FEI's ratepayers, as was the case prior to the Proposed Restructuring.

1.10 Does FEI anticipate earnings forecasts will be significantly impacted as a result of this proposed restructuring? Please elaborate.

Response:

If the Proposed Restructuring does not proceed, it will have a significant negative impact on FEI's shareholder's earnings forecasts in the short and medium term. The tax cost to FEI's shareholder in the short to medium term will be higher than contemplated when the existing structure was originally implemented.

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1
 2 1.10.1 Please provide a yearly earnings forecast based on the existing
 3 organization of Mt. Hayes LP compared to the reorganization
 4 proposed in the Application.

5
 6 **Response:**

7 FEI has derived an estimated earnings forecast under the existing partnership structure, as
 8 compared to after the Proposed Restructuring below. FEI has also derived the expected
 9 “Return On Capital” amounts that would potentially be distributed to each partner.

10 Please note that under the Proposed Restructuring, the earnings appear to increase;
 11 however, the apparent increase in earnings is caused by the “interest expense”, becoming the
 12 “return on capital” distributed to Non-Voting Unit holders. As a result, the total return on capital
 13 distributions to unit holders would result in the same amount that would be distributed to FEI
 14 and the minority partners under the current structure.

15 Earnings forecast under the current structure are estimated to be as follows:

Current Structure (CAD \$000's)		
	2019	2020
	Statement of Income	
Interest/Lease Income	10,843	10,753
Less G&A	(31)	(32)
Earnings Before Interest	10,812	10,722
Interest Expense	(4,044)	(3,941)
Net Income	6,768	6,780
Return on Capital for LP Units (CAD \$000's)		
Interest Expense Distributed to FEI	4,044	3,941
Return on Capital to FEI	5,753	5,763
Total Income Distributions to FEI	9,797	9,704
Return on Capital to Cowichan	508	509
Return on Capital to Chemainus	508	509
Return on Capital to GP	0	0
Total Income Distributions to Partners and Interest Payments	10,812	10,722

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1 Earnings forecast after the Proposed Restructuring is as follows:

Proposed Restructuring (CAD \$000's)		
	2019	2020
	Statement of Income	
Interest/Lease Income	10,843	10,753
Less G&A	(31)	(32)
Earnings Before Interest	10,812	10,722
Interest Expense	-	-
Net Income	10,812	10,722
Return on Capital to FEI Non-Voting	(4,044)	(3,941)
Available Income for Voting Units	6,768	6,780
Return on Capital for LP Units (CAD \$000's)		
Return on Capital to FEI (Non-Voting)	4,044	3,941
Return on Capital to FEI (Voting)	5,753	5,763
Total Income Distributions to FEI	9,797	9,704
Return on Capital to Cowichan	508	509
Return on Capital to Chemainus	508	509
Return on Capital to GP	0	0
Total Income Distributions and Return on Capital to Partners	10,812	10,722

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1 **2.0 Reference: BACKGROUND**

2 **Exhibit B-1, Section 1, p. 2; Section 3.4, pp. 5–6**

3 **Proposed Restructuring**

4 On page 2 of the Application, FEI states:

5 The Proposed Restructuring is intended to reduce FEI's short and medium
6 term tax burden, which will defer tax for the benefit of FEI... The Proposed
7 Restructuring... will not affect the rates customers pay for use of the LNG
8 Storage Facility... FEI and Mt. Hayes LP seek approvals from the BCUC that
9 will allow the Proposed Restructuring to proceed as it will not detrimentally
10 affect the business and operations of FEI and Mt. Hayes LP or their customers.

11 2.1 Please explain how FEI benefits from this proposed restructure in the long
12 term.

13
14 **Response:**

15 The Proposed Restructuring defers FEI's short and medium term tax burden associated with
16 the negative adjusted cost base to the longer term. While there is no difference in the total
17 amount of tax before or after the Proposed Restructuring, the impact of the timing of tax
18 payments will benefit FEI's shareholder as compared to the status quo while not affecting
19 ratepayers.

20
21

22
23 2.1.1 What effects, if any, does the proposed restructure have on FEI's
24 longer term tax burden? Please discuss.

25
26 **Response:**

27 Please refer to the response to BCUC IR 1.2.1.

28
29

30
31 2.2 Please discuss what benefit, if any, this restructure will have on ratepayers.

32
33 **Response:**

34 There will be no benefit or cost to ratepayers beyond the public interest benefit described in
35 the response to BCUC IR 1.2.4.



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2.3 Please explain if rates will be affected in any way as a result of this restructure.

Response:

Rates will not be impacted in any way as a result of the Proposed Restructuring.

2.4 Please discuss how the proposed restructure is in the public interest.

Response:

The intention of the Proposed Restructuring is to allow the business of the limited partnership to continue in a financially efficient manner in accordance with its original objective. As set out in the response to BCUC IR 2.1.3.1 dated May 13, 2011, the purpose of the original Mt. Hayes LP structure was to allow the First Nations to participate in the LNG Storage Facility while keeping customers whole. Allowing the First Nations to participate in the LNG Storage Facility creates constructive and positive relationships between FEI and the First Nations, which benefit FEI's operations generally as well as with respect to the LNG Storage Facility. The BCUC approved the existing structure through Order G-109-11A, confirming it was in the public interest. The Proposed Restructuring does not alter the original purpose or objective of the ownership structure, returns the structure to being tax neutral to FEI's shareholder and remains in the public interest.

2.5 Please discuss the tax consequences and earning impacts to both ratepayers and FEI from the proposed restructure compared with the status quo.

Response:

There will be no tax consequences or earnings impacts to ratepayers from the Proposed Restructuring compared with the status quo.

The Proposed Restructuring will enable FEI to defer the income tax costs in the short and medium term that are expected to result in the absence of the proposed restructure. These



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1 income tax costs and earnings impacts would otherwise be borne by the shareholder of FEI
2 and not by ratepayers.

3
4

5
6

7 On pages 5 & 6 of the Application, FEI states:

8 At the core of the Proposed Restructuring is the conversion of the debts owing
9 by Mt. Hayes LP to FEI pursuant to the Existing Loan Agreement and Existing
10 Grid Promissory Note into non-voting equity of the partnership. This conversion
11 may lead to a change in the nature of the income allocated from the
12 partnership to FEI for accounting and tax purposes but is not expected to result
13 in a change to the total amount. The conversion will not impact the amount of
14 accounting and taxable income allocated to the First Nations. There should
15 also not be any changes or impacts to the total cash distributions to the First
16 Nations.

17 2.6 Please explain how the conversion “may lead to a change in the nature of the
18 income allocated”.

19

20 **Response:**

21 The proposed restructuring will create a new class of non-voting partnership units which will
22 ultimately be issued to FEI to replace the total of all amounts owing to FEI under the Existing
23 Loan Agreement and Existing Grid Promissory Note. As a result of the loans being
24 extinguished, FEI will no longer receive interest income from Mt. Hayes LP. The interest
25 payments will be replaced by a non-voting distribution from Mt. Hayes LP.

26 Under the existing structure, FEI receives a combination of interest income on the Existing
27 Loan Agreement and Existing Grid Promissory Note and a distribution of the net income of Mt.
28 Hayes LP from its existing equity interest in Mt. Hayes LP.

29 Under the Proposed Restructuring, the income FEI will receive from its non-voting partnership
30 equity in Mt. Hayes LP and from its existing equity interest in Mt. Hayes LP will be considered
31 a distribution of the net income of Mt. Hayes LP. In other words, FEI will no longer receive
32 interest income from Mt. Hayes LP; however, the total amounts received by FEI under the
33 existing structure and the Proposed Restructuring are equal.

34

35

36

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1 **Response:**

2 Please refer to the response to BCUC IR 1.2.6.

3
4

5

6 2.9 Please confirm, or explain otherwise, that the First Nations' cash distributions
7 will not be impacted.

8

9 **Response:**

10 FEI confirms that the First Nations' cash distributions will not be impacted.

11

12

13

14 2.9.1 Under what scenario would changes or impacts to the total cash
15 distributions to the First Nations occur? Please discuss.

16

17 **Response:**

18 At this time, FEI is unaware of any scenario where the proposed restructure would change
19 cash distributions to First Nations when compared to the status quo.

20

21

22

23 2.10 Please discuss the likelihood and implication from changing the nature of
24 income; including the possibility of changes or impacts to total cash
25 distributions to the First Nations.

26

27 **Response:**

28 The change in the nature of the income allocated to FEI will occur as a consequence of the
29 Proposed Restructuring. Please refer to the response to BCUC IR 1.2.6.

30 FEI does not expect any change in the nature of the income allocated to the First Nations or
31 any change in the total cash distributions to the First Nations as a result of the Proposed
32 Restructuring. Please also refer to the response to BCUC IR 1.1.10.1.

33

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1 **B. OWNERSHIP INTERESTS**

2 **3.0 Reference: BCUC APPROVAL**

3 **Exhibit B-1, Sections 4.2.3, 5.1 and 5.2, pp. 11, 13–14**

4 **Approvals Related to Ownership Interests and Approvals Related**
5 **to Amended and Restated Facility Lease**

6 On page 11 of the Application, FEI states:

7 If either Chemainus or Cowichan does not contribute its portion of the required
8 capital when the general partner requests the contribution, then FEI, as a
9 limited partner, will provide the capital that should have been contributed by the
10 other limited partner. Additional partnership units in Mt. Hayes LP will be issued
11 to the limited partners that contribute capital to the limited partnership;...

12 3.1 Please confirm that no partner has failed to provide an additional capital
13 contribution when the general partner has requested the contribution.

14

15 **Response:**

16 Confirmed. All partners have provided the required capital contribution when it has been
17 requested. This includes capital calls and requirements for capital based on changes in the
18 regulated capital structure.

19

20

21

22 3.1.1 If not confirmed, please provide details of the capital contributions
23 requested and the reasons why the partner could not provide this
24 capital.

25

26 **Response:**

27 Please refer to the response to BCUC IR 1.3.1.

28

29

30

31 3.1.2 Please explain if any additional partnership units have been issued
32 since the acquisition of ownership interests in the LNG storage facility.

33



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1 **Response:**

2 Additional partnership units were issued to the existing partners at the time of each capital call
3 for major capital expenditures and when required due to a change in regulated capital
4 structure. When additional capital contributions were required from the partners, Mt. Hayes LP
5 issued additional units to the existing partnership unit classes; however, no new unit
6 partnership classes were established at any time, nor were any new partners admitted to the
7 partnership.

8

9

10

11

12

13 On page 13 of the Application, FEI states:

14 Under the Amended and Restated LP Agreement, Mt. Hayes LP will continue
15 to issue additional partnership units when its partners make additional capital
16 contributions for capital expenditures, or if there is an increase in the equity
17 component of the partnership. Also, as discussed above, under the Amended
18 and Restated LP Agreement, FEI may increase its interest in Mt. Hayes LP,
19 potentially to 100 percent.

20 3.2 Please explain the circumstances under which FEI would increase its interest
21 to 100 percent.

22

23 **Response:**

24 FEI does not intend to increase its interest in Mt. Hayes LP to 100 percent. However, the only
25 way to increase FEI's interest in Mt. Hayes LP to 100 percent is where both minority partners
26 sell or assign their interests in Mt. Hayes LP to FEI.

27 Under the Existing LP Agreement or the Amended and Restated Limited Partnership
28 Agreement, the First Nations have the right (put option) to require FEI to purchase their
29 partnership units. FEI also continues to have the right (call option) to require the First Nations
30 partners to sell their partnership units to FEI upon (1) the expiry or termination of the Facility
31 Lease Agreement, or (2) bankruptcy or default.

32 In contrast, the capital call mechanism could increase FEI's interest in the partnership if one or
33 both of the minority partners fails to make payment of additional capital contributions as
34 requested through a capital call, but this will not increase FEI's interest to 100 percent. The
35 amount that FEI would be able to increase its interest by is limited to the pro-rata share in the
36 additional contribution that would be forgone by the partners. This process is outlined in



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1 section 7.11(c) of the Amended and Restated LP agreement. This is virtually identical to the
2 process outlined in section 7.12(c) of the Existing LP Agreement.

3
4

5

6 3.3 Please confirm, or explain otherwise, if the First Nations partners were to
7 increase their equity component or make a capital contribution, they would
8 receive additional voting partnership units.

9

10 **Response:**

11 The First Nations partners are not able to increase their pro-rata share of the voting
12 partnership units beyond the amount they currently hold.

13 However, if a capital contribution is required by each of the partners through the capital call
14 mechanism and the required capital contribution is made by each of the partners, each
15 partner would receive additional voting partnership units pro-rata with their current partnership
16 percentages.

17

18

19

20 3.4 Can FEI increase its interest in Mt. Hayes LP to 100 percent under the Existing
21 LP Agreement? Please elaborate.

22

23 **Response:**

24 Under the Existing LP Agreement, unless the minority partners sold their interests to FEI or
25 are otherwise required under certain conditions to transfer their interests to FEI, FEI would not
26 be able to increase its interest in the Mt. Hayes LP to 100 percent.

27 For more information, please refer to the response to BCUC IR 1.3.2.

28

29

30

31 3.4.1 Does this differ to the Amended and Restated LP Agreement? Please
32 discuss.

33



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1 **Response:**

2 No. FEI confirms that there is no difference between the Existing LP Agreement and the
3 Amended and Restated LP Agreement with respect to:

- 4 1. The issuance of additional partnership units when its partners make additional capital
5 contributions for capital expenditures; and
6 2. FEI's ability to increase its interest in Mt. Hayes LP potentially to 100 percent.

7
8
9

10 On page 14 of the Application, FEI states:

11 ...Mt. Hayes LP and FEI also seek the BCUC's approval, under section 54 of
12 the UCA, for a change in the ownership interests, should FEI acquire LP Units
13 from the First Nations at any time, or should FEI's interest in Mt. Hayes LP be
14 increased as a result of FEI providing funding for a capital expenditure if
15 another limited partner fails to do so.

16 3.5 Please provide details of the conditions in which FEI would acquire LP units
17 from the First Nations "at any time".

18

19 **Response:**

20 The terms that govern the relationships among the partners of Mt. Hayes LP in the Existing LP
21 Agreement are unchanged in the Amended and Restated LP Agreement.

22 The First Nations continue to have the right (put option) to require FEI to purchase their
23 partnership units. FEI also continues to have the right (call option) to require the First Nations
24 partners to sell their partnership units to FEI upon (1) the expiry or termination of the Facility
25 Lease Agreement, or (2) bankruptcy or default.

26 If one or both of the First Nations partners does not contribute its portion of the required
27 capital when the general partner requests the contribution, then FEI as a limited partner will
28 provide the capital that should have been contributed by the First Nations limited partner(s). In
29 this circumstance, FEI will receive additional partnership units. While this does not mean FEI
30 has acquired partnership units directly from its First Nations partners, the additional limited
31 partnership units received by FEI will dilute the First Nations partners' interest in the
32 partnership and allow for FEI to increase its ownership share of the partnership.

33
34



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1
2 3.6 Please confirm, or explain otherwise, that acquisition of LP units from the First
3 Nation partners would only occur if the First Nations failed to provide additional
4 capital requirements.

5
6 **Response:**

7 Please refer to the response to BCUC IR 1.3.5.

8



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1 **4.0 Reference: BCUC APPROVAL**
2 **Exhibit B-1, Sections 3.5 and 4.2.2, pp. 6 and 10**
3 **First Nations Approval of Proposed Restructuring**

4 On page 6 of the Application, FEI states:

5 FEI has discussed the Proposed Restructuring with the First Nations, and
6 Cowichan has approved and Chemainus has agreed in principle to the
7 changes outlined in the revised agreements. Formal internal approval from
8 Chemainus is expected before or shortly after approval from the BCUC.

9 On page 10 of the Application, FEI states:

10 As before, the following rights may only be exercised by special resolution of
11 the partnership, which is 90 percent: dissolving the partnership or winding-up
12 its affairs; subdividing the units; amending, modifying, altering or repealing any
13 special resolution; amending the partnership agreement;... [t]herefore, Mt.
14 Hayes LP cannot change the nature of its business or partnership structure as
15 presented in this Application unless FEI agrees it should change.

16 4.1 Please confirm, or explain otherwise, that the rights and obligations of the First
17 Nations partners and FEI (and the LP) will be unchanged by the proposed
18 restructure.

19
20 **Response:**

21 Confirmed. Though the limited partnership structure is modified, the rights and obligations of
22 the First Nations partners and FEI will be unchanged by the Proposed Restructuring. The
23 Proposed Restructuring is only intended to provide short and medium term tax relief to FEI's
24 shareholder, and it is not intended to change the main purpose of, or any of the rights and
25 allocations under, the Existing LP Agreement.

26
27

28
29 4.2 Please confirm that the changes to the agreement have only been revised to
30 reflect the conversion of debt to a non-voting LP.

31
32 **Response:**

33 All substantive changes to the Existing LP Agreement contained in the Amended and
34 Restated LP Agreement are for the sole purpose of converting the existing debt structure to a
35 Non-Voting LP Unit, and will not change the nature of the underlying business, or the rights



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1 previously provided to any of the existing partnership units. However, as described at page 9
2 of the Application, also reflected in the Amended and Restated LP Agreement are:

3 Certain other required updates to clarify the current capital of the partnership
4 given the number of partnership units issued has changed since formation of
5 the partnership as a result of capital calls and changes in FEI's regulated
6 capital structure; and

7 Certain deletions relating to the creation of and the initial contributions made by
8 partners to the partnership, which are no longer necessary given those
9 obligations are historical.

10
11
12

13 4.2.1 If not confirmed, please discuss the other ways in which the
14 agreement has been changed.

15
16 **Response:**

17 Please refer to the response to BCUC IR 1.4.2.

18
19

20
21 4.3 Please confirm, or explain otherwise, that FEI can seek changes without the
22 approval of Chemainus as it has more than 90 per cent due to the support of
23 Cowichan.

24
25 **Response:**

26 Section 6.1 of the Existing LP Agreement states that a 90 percent approval through a special
27 resolution is required in order to amend the Existing LP Agreement. However, FEI has
28 received agreement in principle (please refer to BCUC IR 1.4.5.1) and expects to formalize
29 and implement the Amended and Restated LP Agreement.

30
31

32
33 4.3.1 Would FEI be entitled to the rights under special resolution in this
34 case? Please elaborate.

35

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1 **Response:**

2 FEI would have the right to a special resolution to approve the Amended and Restated LP
3 Agreement; however, FEI intends to have the approval of both minority partners prior to
4 formalizing this agreement.

5
6

7

8 4.4 What are the implications if Chemainus does not approve the revised
9 agreement? Please discuss.

10

11 **Response:**

12 It is FEI's expectation that Chemainus will formally approve the proposed restructuring, as
13 they have confirmed that they agree in principle with the Proposed Restructuring. If
14 Chemainus did not formally approve the Amended and Restated LP Agreement, FEI would
15 work with them to address any additional concerns they may have with the Proposed
16 Restructuring, in order to arrive at a resolution that would address the concerns of both
17 parties.

18 As stated in the preamble above, the Existing LP Agreement states that a 90 percent approval
19 through a special resolution is required to amend the Existing LP Agreement. However, FEI
20 intends to receive the approval of both minority partners prior to formalizing and implementing
21 the Amended and Restated LP Agreement.

22
23

24

25 4.4.1 Could FEI purchase Chemainus LP Units in this event? Please
26 explain.

27

28 **Response:**

29 FEI cannot, through a special resolution, purchase a limited partner's interest in Mt. Hayes LP
30 without that partner's consent. Amendments to the partnership agreement by special
31 resolution are limited by Article 13 of the Existing LP Agreement, which requires unanimous
32 consent of all partners for amendments which would reduce the interest of any limited partner.

33
34

35

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1 4.5 Please provide details of the consultation process FEI has had with the First
2 Nations.

3

4 **Response:**

5 FEI held separate preliminary meetings with each First Nations partner in early 2018. During
6 these meetings, FEI introduced the concept of the Proposed Restructuring and the high level
7 terms and conditions. At these meetings, both groups were generally receptive to the idea of
8 the proposed restructuring. FEI then worked with external legal counsel in order to draft the
9 Amended and Restated LP Agreement and provided the agreement to the partners in
10 September 2018 for their review.

11 During their review, FEI provided the First Nations partners with access to FEI's internal
12 corporate finance and tax team and external counsel to address any questions or concerns
13 they may have had with the agreements. FEI provided several clarifications to both First
14 Nations partners and worked with the partners to revise some minor terms in the agreement.
15 FEI also received consent of the proposed restructuring from both First Nations partners prior
16 to submitting the Application.

17

18

19

20 4.5.1 Please provide any letter(s) of support for the proposed restructuring
21 from the First Nations.

22

23 **Response:**

24 Please refer to Confidential Attachment 4.5.1 for the following:

25 1) A copy of the Cowichan Band Council Resolution approving the Proposed
26 Restructuring, which is being shared with permission from the Cowichan.

27 2) A copy of an e-mail from counsel representing the Chemainus investment entity,
28 confirming agreement in principle with the Proposed Restructuring.

29 FEI is requesting that this information be filed on a confidential basis pursuant to Section 18 of
30 the BCUC's Rules of Practice and Procedure regarding confidential documents as set out in
31 Order G-15-19. The documents contained in Confidential Attachment 4.5.1 contain
32 information related to the First Nations that is sensitive and should not be publicly disclosed.

33

34

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1 **C. OTHER MATTERS**

2 **5.0 Reference: BLACKLINE OF FACILITY LEASE**

3 **Exhibit B-1, Appendix D, p. 14**

4 **Rent Formula**

5 In Schedule A of Appendix D, FEI states the annual rent for the LNG Storage Facility
6 will be calculated as follows:

7 Rent = Return on Equity + Income Tax Component + Return on Capital
8 Component + Annual Depreciation

9 ...

10 Return on Capital Component = an amount equal to the Return on Capital for
11 Non-Voting Units as defined and determined, from time to time, under
12 Schedule C to the Partnership Agreement.

13 5.1 Please confirm, or explain otherwise, that the change in rent formula will not
14 affect the annual rent charged.

15
16 **Response:**

17 Confirmed. The annual rent amount charged is equivalent to cost of service of the
18 partnership, including the deemed return on capital amounts. The calculation of this amount
19 will remain the same under the proposed restructuring, with the return on capital component
20 essentially replacing the interest component that was previously included in this calculation.

21
22

23
24 5.1.1 If changing to a return on capital component will change the annual
25 rent charge, please explain the impact.

26
27 **Response:**

28 The return on capital component is replacing the lease interest amount that was previously
29 included in the total rent amount. The determination of the lease interest amount and the
30 return on capital component follow the same formula and will produce the same result.
31 Therefore, there will not be any change to the determination of the total rent amount.

32
33

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1

2 5.2 Please explain whether any capital expenditures are forecast.

3

4 **Response:**

5 For regular sustaining capital, FEI forecasts capital expenditures at the beginning of each year
6 for the purposes of accurately estimating Mt. Hayes LP's quarterly payments for its partners.
7 This forecast is updated every quarter based on discussions with FEI's operations team and
8 the quarterly payments are revised if needed. For 2019, FEI has forecast capital expenditures
9 of approximately \$1.5 million related to the LNG Storage Facility.

10 For major projects, FEI will forecast capital expenditures at least a year in advance for the
11 purposes of notifying Mt. Hayes LP's partners that a capital call may be required.

12

13

14

15 5.2.1 Please discuss what capital contributions have been made
16 previously.

17

18 **Response:**

19 Since the inception of Mt. Hayes LP, partners have made total equity capital contributions of
20 approximately \$81.6 million. Of this amount, approximately \$76 million was contributed at the
21 inception of the partnership in 2012. In 2014, a capital contribution of approximately \$2.8
22 million was required as a result of the second stage of the Generic Cost of Capital proceeding,
23 which increased the equity component of capital structure of FEVI from 40 percent to 41.5
24 percent. In the following year, approximately \$5.3 million was returned to partners in the form
25 of a distribution as a result of the amalgamation of FEI, FEVI, and FEW, which reduced the
26 equity component of capital structure from 41.5 percent to 38.5 percent. The remaining capital
27 calls took place in 2015 and 2016 to support the construction of an LNG truck loading facility
28 and related infrastructure at the LNG Storage Facility.

29 Please refer to the response to BCUC IR 1.1.8 for further detail on the amount and timing of
30 capital contributions.

31

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1 **6.0 Reference: Consequential Changes in Amended and Restated Facility Lease**
2 **Exhibit B-1, Section 4.3, p. 11**
3 **Existing Facility Lease**

4 On page 11 of the Application, FEI states:

5 At the end of the Existing Facility Lease, FEI must reacquire the LNG Storage
6 Facility. FEI will have the option of (i) purchasing the LNG storage Facility's
7 assets from Mt. Hayes LP or (ii) acquiring the Voting LP Units of Chemainus
8 and Cowichan in Mt. Hayes LP. The purpose of FEI having the flexibility to
9 either purchase the LNG Storage Facility assets or the limited partnership units
10 of the First Nations reflects the uncertainty regarding income tax laws which
11 may be in place at the time of the termination of the lease. These terms are
12 unchanged in the Amended and Restated Facility Lease.

13 6.1 Please discuss what criteria FEI will consider when determining whether to
14 follow option (i) or (ii) when the Existing Facility Lease expires.

15
16 **Response:**

17 Upon the expiry of the Facility Lease (which is anticipated to be in 2051), FEI expects to base
18 its decision on taxation efficiency; however, any other specific criteria for evaluating these
19 options will be developed closer to the end of the lease term in consideration of the prevailing
20 conditions at that time.

21
22

23
24 6.1.1 What are the potential implications of the proposed restructuring on
25 FEI's end of lease decision? Please discuss.

26
27 **Response:**

28 FEI does not expect any impact on its end of lease decision arising from the Proposed
29 Restructuring.

30
31

32
33 6.2 Please explain if there are any anticipated impacts to ratepayers from either
34 option (i) or (ii) at the end of the Existing Facility Lease.

35



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1 **Response:**

- 2 There are no anticipated impacts to ratepayers from either option (i) or (ii) at the end of the
- 3 Existing Facility Lease before or after the Proposed Restructuring.

Attachment 1.3

REFER TO LIVE SPREADSHEET MODEL

Provided in electronic format only

(accessible by opening the Attachments Tab in Adobe)

Attachment 4.5.1

FILED CONFIDENTIALLY