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August 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)

Project No. 1598977

Application for Acceptance of the Biogas Purchase Agreement Between FEI and the City of Vancouver (the Application)

Response to the British Columbia Utilities Commission (BCUC) Information Request (IR) No. 2

On September 21, 2018, FEI filed the Application referenced above. In accordance with BCUC Order G-182-19 setting out a further Regulatory Timetable for the review of the Application and directing FEI to file its responses to IR No. 2 by August 29, 2019, FEI respectfully submits the attached response to BCUC IR No. 2.

If further information is required, please contact Sarah Smith, Director NGT, RNG, and Regional LNG at (604) 582-7528.

Sincerely,

FORTISBC ENERGY INC.

Original signed:

Doug Slater

Attachment



FortisBC Energy Inc. (FEI or the Company) Application for Acceptance of the Biogas Purchase Agreement Between FEI and the City of Vancouver (City or COV) (the Application)	Submission Date: August 28, 2019
Response to British Columbia Utilities Commission (BCUC) Information Request (IR) No. 2	Page 1

1 **1.0 Reference: City of Vancouver (COV) Biogas Purchase Agreement (BPA) Deferral**
2 **Account**
3 **Exhibit B-7, pp. 2–3, 6; Utilities Commissions Act (UCA), section**
4 **59(5)**
5 **COV BPA Deferral Account Mechanism**

6 On page 2 of FortisBC Energy Inc.’s (FEI) response to British Columbia Utilities
7 Commission (BCUC) Decision and Order G-122-19, FEI states:

8 FEI continues to be of the view that the Project qualifies as a prescribed
9 undertaking under the Greenhouse Gas Reduction Regulation (GGRR) because
10 the cost estimates demonstrate that the levelized cost over the life of the Project
11 is not expected to exceed the maximum price set under the GGRR...

12 [...]

13 ...FEI proposes an accounting mechanism for this Project only at this time – the
14 COV BPA Deferral Account - which provides certainty to the Panel that the
15 cumulative average cost per GJ flowing into the BVA [Biomethane Variance
16 Account] and subsequently into rates over the life of the Project will not exceed
17 the GGRR Threshold Price of \$30 per GJ.

18 On page 6 of FEI’s response to BCUC Decision and Order G-122-19, FEI states:

19 In the unlikely event that a balance remains in the COV BPA Deferral Account at
20 the end of the Project’s initial term and any subsequent renewals, that balance
21 would not be recoverable from customers absent clarification from the
22 government regarding the GGRR language or BCUC approval.

23 Section 59(5) of the UCA states that “a rate is ‘unjust’ or ‘unreasonable’ if the rate is:

- 24 (a) More than a fair and reasonable charge for service of the nature and quality
25 provided by the utility,
- 26 (b) insufficient to yield a fair and reasonable compensation for the service provided
27 by the utility, or a fair and reasonable return on the appraised value of its
28 property, or
- 29 (c) unjust and unreasonable for any other reason.”

30 1.1 Please confirm, or explain otherwise, that absent clarification from the
31 government regarding the GGRR language or BCUC approval for recovery in
32 rates, any balance remaining in the COV BPA Deferral Account at the end of the

FortisBC Energy Inc. (FEI or the Company) Application for Acceptance of the Biogas Purchase Agreement Between FEI and the City of Vancouver (City or COV) (the Application)	Submission Date: August 28, 2019
Response to British Columbia Utilities Commission (BCUC) Information Request (IR) No. 2	Page 2

1 Project's initial term and any subsequent renewals would be written off and
2 recovered from FEI's shareholders.

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4 **Response:**

5 Confirmed.

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9 1.1.1 If confirmed, please discuss whether the resulting amounts that are
10 recovered from the shareholder would still be in compliance with the
11 UCA, in particular Section 59(5). As part of the response, please
12 discuss whether this scenario would violate the regulatory compact and
13 the Fair Return Standard for the services provided by the utility.

14
15 **Response:**

16 FEI's proposed COV BPA Deferral Account does not violate the regulatory compact or the Fair
17 Return Standard as it preserves FEI's right to apply for recovery of any remaining balance in the
18 COV BPA Deferral Account at the end of the term of the COV BPA. As a matter of practice and
19 for regulatory efficiency, FEI will only apply for recovery of the balance in the account if there is
20 a significant balance that, absent recovery, would violate the Fair Return Standard, or where
21 changes in the wording of the GGRR or other legislation enable recovery of the balance.

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25 1.1.2 If confirmed, please discuss whether the recovery of any balance from
26 FEI's shareholder equates to FEI waiving its rights to recovery of its
27 costs of doing business. Would this require express approvals from the
28 BCUC? Please discuss.

29
30 **Response:**

31 Please refer to the response to BCUC IR 2.1.1.1.

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FortisBC Energy Inc. (FEI or the Company) Application for Acceptance of the Biogas Purchase Agreement Between FEI and the City of Vancouver (City or COV) (the Application)	Submission Date: August 28, 2019
Response to British Columbia Utilities Commission (BCUC) Information Request (IR) No. 2	Page 3

1 1.2 Please confirm, or explain otherwise, that FEI's proposed treatment of the COV
2 BPA Deferral Account in the event the Project is terminated early would be the
3 same as the proposed treatment of the deferral account at the end of the
4 Project's initial term and any subsequent renewals.

5
6 **Response:**

7 Confirmed.

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FortisBC Energy Inc. (FEI or the Company) Application for Acceptance of the Biogas Purchase Agreement Between FEI and the City of Vancouver (City or COV) (the Application)	Submission Date: August 28, 2019
Response to British Columbia Utilities Commission (BCUC) Information Request (IR) No. 2	Page 4

1 **2.0 Reference: Background**

2 **Exhibit B-7, p. 3**

3 **Project Costs and Anniversary & Supply-Based Reviews**

4 On page 3 of FEI's response to BCUC Decision and Order G-122-19, FEI states:

5 Inherent in all cases except fixed-price contracts for RNG [renewable natural
6 gas], costs for construction and operation of the Facilities are estimates...

7 [...]

8 There are a number of factors, as discussed in the evidence, which can affect
9 total costs and thus FEI's resulting acquisition cost for RNG from the Project.
10 Such factors include actual construction costs, quality of LFG [landfill gas],
11 performance of equipment, and resulting volumes of LFG. These factors are not
12 within FEI's ability to control and for that reason FEI included the provision of
13 both anniversary reviews and supply-based reviews in the COV BPA. The
14 purpose of these reviews is to allow for the evaluation of the performance of the
15 Project to determine its ongoing economic viability and whether renegotiation of
16 any of the terms of the BPA is required. FEI can use these reviews, if necessary,
17 to make adjustments to the terms of the COV BPA related to volumes of gas and
18 LFG gas quality and recalculate the COS [cost of service], to ensure the price for
19 RNG remains within the maximum threshold for prescribed undertakings under
20 the GGRR at that time.

21 2.1 Please explain how anniversary and supply-based reviews could address actual
22 construction costs and performance of equipment.

23
24 **Response:**

25 The anniversary reviews are time based, while the supply-based reviews are triggered by either
26 a failure by FEI to construct and commission its facilities or a failure by COV to provide a
27 minimum amount of LFG. However, FEI believes that construction costs and equipment
28 performance will play a role in the review process.

29 For example, the purpose of the anniversary review is to determine Project financial viability, as
30 stated in section 5.8 (a) of the agreement:

31 The purpose of the 10th Anniversary Review is to determine Project financial
32 viability for the balance of the Term...

33 FEI will consider and evaluate the Project's financial viability by taking into consideration factors
34 such as actual construction costs and equipment performance. If equipment performance is not
35 as projected or actual costs are higher than expected, FEI will negotiate a contract modification

FortisBC Energy Inc. (FEI or the Company) Application for Acceptance of the Biogas Purchase Agreement Between FEI and the City of Vancouver (City or COV) (the Application)	Submission Date: August 28, 2019
Response to British Columbia Utilities Commission (BCUC) Information Request (IR) No. 2	Page 5

1 with the COV, such as a reduction to the LFG price paid, which would improve the Project's
2 financial viability.

3 With respect to the supply-based review, the triggering event is low supply. However, like the
4 anniversary review, FEI would include the actual costs and equipment performance as part of
5 the review process which could also result in contract modifications such as increased LFG
6 volumes provided by COV or a reduction in the LFG price paid by FEI.

7 Regardless, FEI continues to believe that its expected capital and operational costs are
8 conservative and financial viability should be interpreted as a cost of service that is below the
9 GGRR Threshold Price for biomethane acquisition of \$30 per GJ.

10
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13 2.2 In the event that the cost of RNG increases, please discuss any factors that FEI
14 has control over that could be adjusted as a result of the anniversary or supply-
15 based reviews.

16

17 **Response:**

18 The anniversary and supply-based reviews will allow for an assessment of the financial viability
19 of the Project to determine whether adjustments need to be made to the BPA terms, such as a
20 lower price for raw LFG or the possibility of COV supplying a greater volume of LFG. In the
21 unlikely event of significant increases to the cost of RNG, the BPA also provides for termination
22 if the parties are unable to agree to amendments.

23

24

25

26 2.2.1 How do the anniversary or supply-based reviews allow FEI to adjust the
27 terms related to LFG volumes and gas quality? Please elaborate.

28

29 **Response:**

30 The review process in both the anniversary and supply-based reviews will be a collaborative
31 approach where both FEI's and the COV's information will be used to conduct an evaluation of
32 the performance of the Project to determine whether changes or adjustments to the BPA are
33 necessary.

34 FEI will share operating data, such as historical gas volumes and quantities, with the COV.
35 These values will be used in conjunction with actual costs to determine the cost of service of the



FortisBC Energy Inc. (FEI or the Company) Application for Acceptance of the Biogas Purchase Agreement Between FEI and the City of Vancouver (City or COV) (the Application)	Submission Date: August 28, 2019
Response to British Columbia Utilities Commission (BCUC) Information Request (IR) No. 2	Page 6

1 FEI facilities at the time of the review and to negotiate adjustments, if required, to ensure the
2 price for RNG remains within the GRR Threshold Price.

3 FEI also anticipates that the COV will share updated projections for LFG volumes and quality
4 based on the mix of waste in place and forecast plans for collection of LFG. The COV has a
5 means to change the volume delivered and gas quality through its LFG collection system, which
6 is comprised of numerous wells feeding into a central collection header. Because the LFG
7 system is comprised of multiple wells, the COV is able to adjust the total flow, and the flow from
8 individual wells, to change gas volume and quality.

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12 2.3 Please discuss the potential dollar impact on the total cost of COV RNG supply
13 as a result of the anniversary and supply-based review adjustments related to
14 LFG volumes and gas quality.

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16 **Response:**

17 FEI could, if warranted and with agreement from the COV, reduce the purchase price of raw
18 LFG.

19 The total cost of service is also sensitive to total volume. In a situation where the COV is at (or
20 below) the minimum volume, it could increase flow or it could adjust the volume of LFG
21 committed to other parties so that the COV could provide FEI's maximum volume.

22 However, given that the conditions at the time of an anniversary or supply-based review are
23 unknown, any discussion of impact on the cost of COV RNG supply would be hypothetical. An
24 analysis of sensitivities of the cost of COV RNG supply to various factors was provided in the
25 response to the BCUC Confidential IR 1.2 series (Exhibit B-4-1), along with a working model.

26

FortisBC Energy Inc. (FEI or the Company) Application for Acceptance of the Biogas Purchase Agreement Between FEI and the City of Vancouver (City or COV) (the Application)	Submission Date: August 28, 2019
Response to British Columbia Utilities Commission (BCUC) Information Request (IR) No. 2	Page 7

1 **3.0 Reference: Proposal to Address Price Certainty**
2 **Exhibit B-7, pp. 3–5; GGRR section 2(3.7)–2(3.8); BCUC Decision and**
3 **Order G-122-19**
4 **COV BPA Deferral Account Mechanism**

5 On pages 4 to 5 of FEI’s response to BCUC Decision and Order G-122-19, FEI states:

6 In order to provide the Panel with the requested cost certainty, FEI will limit the
7 average production cost for the Project flowed to ratepayers to a maximum of the
8 GGRR Threshold Price.

9 ...FEI proposes to create a new non-rate base deferral account (COV BPA
10 Deferral Account) to capture the cumulative average cost per GJ of the Project
11 that is greater than the GGRR Threshold Price.

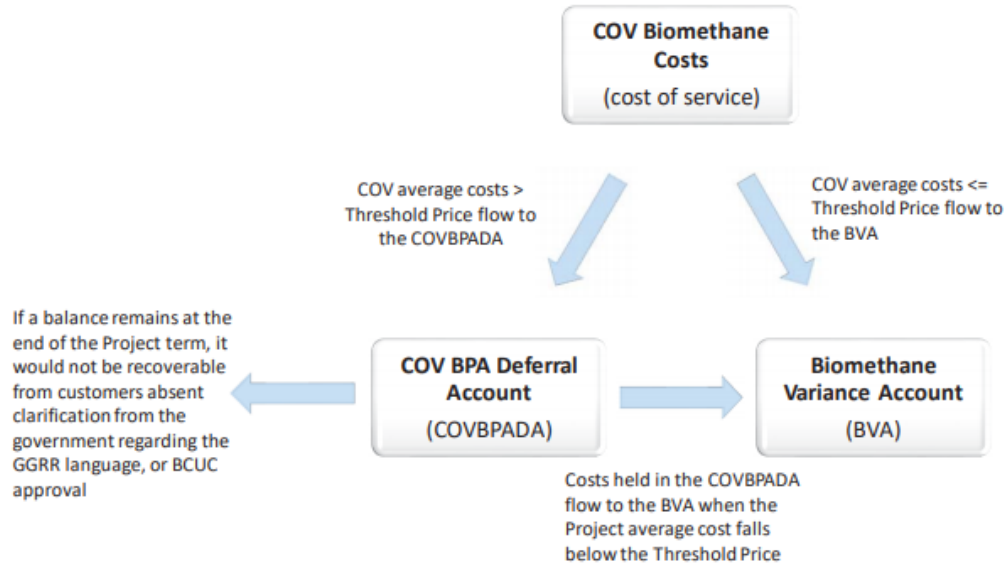
12 Under the proposed mechanism, each year the cumulative average Project costs up to
13 the Threshold Price established in the GGRR will be recorded in the BVA and costs
14 exceeding the GGRR Threshold Price, if any, will be recorded in the COV BPA Deferral
15 Account, as follows:

- 16 • If the Project cumulative average cost of RNG (\$/GJ) is greater than the GGRR
17 Threshold Price, FEI will flow that portion of the cost of service of the Project to
18 the COV BPA Deferral Account such that the cumulative average cost per GJ
19 that flows to the BVA does not exceed the GGRR Threshold Price.
- 20 • If the Project cumulative average cost of RNG (\$/GJ) falls below the GGRR
21 Threshold Price, FEI will flow the cost of service of the Project to the BVA plus an
22 amount from the COV BPA Deferral Account such that the cumulative average
23 cost per GJ that flows to the BVA is no greater than the GGRR Threshold Price.

24 Put more simply, the above mechanism ensures that the biomethane volume produced
25 under the term of the COV BPA and that flows to the BVA will cost no more than \$30 per
26 GJ.

FortisBC Energy Inc. (FEI or the Company) Application for Acceptance of the Biogas Purchase Agreement Between FEI and the City of Vancouver (City or COV) (the Application)	Submission Date: August 28, 2019
Response to British Columbia Utilities Commission (BCUC) Information Request (IR) No. 2	Page 8

Figure 1: COV Biomethane Cost Flow



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Section 2(3.7) to 2(3.8) of the GRR 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 2015.¹

In BCUC Decision and Order G-122-19, the BCUC adjourned the proceeding for 60 days in order to:

...allow FEI, should it so choose, to restructure and resubmit the Project and its BPA with the COV in a way that provides the required **certainty to FEI's acquisition cost of the RNG** so as to qualify as a prescribed undertaking within the specified cost threshold. [Emphasis Added]

3.1 Please confirm, or explain otherwise, that the purpose of the COV BPA Deferral Account mechanism is to "limit the average production cost for the Project flowed to ratepayers."

¹ Clean Energy Act, SBC 2010, c. 22, ss. 18 and 35. Emphasis added.



FortisBC Energy Inc. (FEI or the Company) Application for Acceptance of the Biogas Purchase Agreement Between FEI and the City of Vancouver (City or COV) (the Application)	Submission Date: August 28, 2019
Response to British Columbia Utilities Commission (BCUC) Information Request (IR) No. 2	Page 9

1 **Response:**

2 Confirmed.

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6 3.2 Please explain how the proposed COV BPA Deferral Account mechanism
7 provides the required certainty to FEI's acquisition cost as stated in BCUC
8 Decision and Order G-122-19.

9

10 **Response:**

11 FEI's proposal provides the required certainty to FEI's acquisition cost or, in the words of the
12 GGRR, what the public utility pays, by ensuring that costs above the GGRR threshold of \$30
13 per GJ will be borne by the shareholder, absent clarification of the GGRR or approval of the
14 BCUC. The shareholder is not the public utility; therefore, costs borne by the shareholder are
15 not ultimately paid for by the public utility and are not part of the public utility's acquisition cost.
16 This view is consistent with the scheme of the *Utilities Commission Act* as a whole, which is
17 centered on setting rates for the utility that balance the interests of customers and shareholders.

18 As FEI has submitted, when interpreting section 2(3.8) of the GGRR, the BCUC must have
19 regard to section 8 of the *Interpretation Act*, R.S.B.C. 1996, Chapter 238, which states that
20 every enactment must be interpreted remedially:

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

24 Therefore, the BCUC must give section 2(3.8) of the GGRR a fair, large and liberal
25 interpretation that best ensures the attainment of its objects, which includes the object and
26 intention to increase FEI's ability to obtain RNG supply for its Biomethane Program. (See FEI's
27 submission in Exhibit B-2 of this proceeding).

28 Given the requirement to construe the GGRR in a large and liberal construction to obtain the
29 object and intention of the GGRR, the utility's acquisition cost should not be interpreted to
30 include amounts borne by the shareholder, which is a separate entity from the public utility.
31 FEI's proposed COV BPA Deferral Account mechanism, therefore, provides the required
32 certainty to FEI's acquisition cost as stated in BCUC Decision and Order G-122-19.

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FortisBC Energy Inc. (FEI or the Company) Application for Acceptance of the Biogas Purchase Agreement Between FEI and the City of Vancouver (City or COV) (the Application)	Submission Date: August 28, 2019
Response to British Columbia Utilities Commission (BCUC) Information Request (IR) No. 2	Page 11

1 **4.0 Reference: Proposal to Address Price Uncertainty**
2 **Exhibit B-7, p. 5**
3 **Return on the COV BPA Deferral Account**

4 On Page 5 of FEI’s response to BCUC Decision and Order G-122-19, FEI states:

5 FEI proposes that the COV BPA Deferral Account attract a weighted average
6 cost of capital (WACC) return...if a balance in the COV BPA Deferral Account
7 accumulates, it will flow to the BVA if the average costs fall below the Threshold
8 Price. As a result, the COV BPA Deferral Account may carry a balance for a
9 number of years before ultimately being recovered in rates through the BVA. The
10 COV BPA Deferral Account should, therefore, receive similar financial treatment
11 as FEI’s other deferred charges.

12 4.1 Please confirm, or explain otherwise, that the WACC return on the COV BPA
13 Deferral Account would accumulate in the COV BPA Deferral Account and would
14 only be recovered from ratepayers when it is flowed to the BVA.

15
16 **Response:**

17 Confirmed.