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May 20, 2021

British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, BC
V6Z 2N3

Attention: Mr. Patrick Wruck, Commission Secretary

Dear Mr. Wruck:

Re: FortisBC Energy Inc. (FEI)

Filing of a Biomethane Purchase Agreement (BPA) between FEI and Shell North America (Canada) Inc. (Shell) pursuant to Section 71 of the *Utilities Commission Act* (UCA) and British Columbia Utilities Commission (BCUC) Rules for Natural Gas Energy Supply Contracts

Request to Amend the Regulatory Timetable for an Expedited Process

FEI is writing to respectfully request an amendment to the regulatory timetable issued under Order G-150-21 in the above-referenced proceeding to accommodate the condition in section 17 of the BPA between Shell and FEI (Shell BPA) that FEI receive BCUC approval to purchase the biomethane on or before May 31, 2021. While FEI did not expect a regulatory process given the Shell BPA is a prescribed undertaking, FEI recognizes that it should have highlighted the May 31, 2021 date to the BCUC in the Application, and apologizes for not doing so.

Regulatory Process May Cause Termination of the Shell BPA

Since receiving the BCUC's Order G-150-21 on May 17, which extends the regulatory process into July, FEI has been in discussions with Shell regarding extending the May 31 date. While Shell is willing to extend the May 31 date, the extension would be conditional on the upstream supplier of the RNG also agreeing to an extension of its agreement with Shell. However, the upstream supplier will need approval by its Board, which cannot be received prior to June 15, 2021. If its Board does not approve the extension, then the Shell BPA would be terminated.

The Shell BPA represents over a year of negotiations between the parties in an increasingly competitive market for the supply of RNG. The loss of the Shell BPA would be a significant blow to FEI's RNG program in two ways.

- First, FEI would lose the RNG supply under the Shell BPA. The Shell BPA is particularly important as it from an existing facility that is already producing RNG. The Shell BPA would, therefore, provide much needed RNG supply this year to meet the demand from FEI's customers, which has exceeded FEI's existing supply. The Shell BPA would also be an important piece of FEI's RNG supply portfolio in the long term.
- Second, future suppliers may charge FEI a premium due to the uncertainty of the regulatory process that FEI has to undertake to get approval of its supplies, or simply may not transact with FEI at all. As noted above, the market for RNG supply has become increasingly competitive across North America. Suppliers in Canada are selling into the larger U.S. market, forcing FEI to compete with both Canadian and US buyers for the supply of RNG, which is limited. Other buyers do not appear to have the same regulatory requirements as FEI and suppliers watch FEI's regulatory processes with interest. As suppliers have more and more options for the sale of their product, the regulatory processes that FEI has to undertake can be a significant impediment to completing a deal.

From a legal perspective in BC, as the Shell BPA is a prescribed undertaking, section 18 of the *Clean Energy Act* (CEA) indicates that the BCUC should not be indirectly preventing FEI from carrying out the prescribed undertaking, through the regulatory process or otherwise. As FEI has explained above, the extended regulatory process that the BCUC has set out in Order G-150-21 may lead to the termination of the BPA. While the upstream RNG supplier may agree to an extension, FEI has no assurance that this will be the case, and FEI does not wish to risk losing the RNG supply and the impact to our competitive position in the RNG market.

Therefore, FEI submits that the BCUC should consider an expedited regulatory process to reach a decision on this Application by May 31, 2021.

Proposed Regulatory Process

In considering the appropriate regulatory process, it is relevant that the only issue in this proceeding should be whether the Shell BPA is a prescribed undertaking, which FEI submits is clearly the case.¹

FEI proposes that any questions regarding the Shell BPA be addressed through a single day hearing. Depending on the issues that the BCUC needs to explore, FEI would propose one of the following alternatives:

1. If the BCUC has only legal questions, such as related to the interpretation of the CEA and the GGRR, these could be addressed through oral submissions by legal counsel.
2. If the BCUC has broader questions, that involve questions of fact that FEI representatives would need to be present to answer, then a streamlined review

¹ If the BCUC is concerned with the fact that the BPA is with a supplier from the U.S., FEI notes that neither the *Clean Energy Act* nor the Greenhouse Gas Reduction (Clean Energy) Regulation (GGRR) impose any restriction on the location of the supply of RNG. FEI also notes that it reports to the Ministry on all its prescribed undertakings, including its acquisitions of RNG.

process, involving a question and answer period and legal submissions, would be suitable.

In both cases, FEI would appreciate as much advance warning of the questions or issues as practicable.

FEI would propose that the hearing be held on May 27 (up to 3 pm)² or on May 28, 2021 to facilitate an Order by May 31, 2021.

FEI further submits that if the BCUC is concerned with the interpretation of the supply cap in the GGRR, that this is not an issue for the Shell BPA as FEI's expected acquisitions are significantly below the cap. It is highly improbable that all of FEI's BPAs would ever produce at their maximum amount all at the same time over an entire year. However, to resolve this issue going forward, FEI would be open to a proceeding set by the BCUC to set guidelines on how to apply the supply cap in the GGRR. This would avoid the need to address this general issue in this proceeding.

If further information is required, please contact the undersigned.

Sincerely,

FORTISBC ENERGY INC.

Original signed:

Diane Roy

cc (email only): Registered Interveners in FEI's 2020-2024 MRP and FEI Tidal BPA proceedings.

² FEI is already scheduled to make oral submissions in a separate proceeding on May 27 at 3 pm.