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By Email

British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, BC
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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**

I am acting as counsel for FEI in the above referenced proceeding.

I am writing to provide a correction to the Additional Evidence filed by FEI in which it was indicated that the maximum price applicable to the SHELL BPA was \$31. This was based on the incorrect assumption that the SHELL BPA was signed within the 2021/2022 fiscal year, as defined in the *Greenhouse Gas Reduction (Clean Energy) Regulation* (the “GRR”), as amended. In fact, the SHELL BPA was signed prior to the 2021/2022 fiscal year. As a result, for the reasons described below, the maximum price of \$30 under the repealed section 2(3.8) of the GRR applies to the SHELL BPA and all of FEI’s other BPAs signed prior to the 2021/2022 fiscal year.

**Amended GRR Does Not Set Maximum Price for BPAs Signed Prior to the 2021/2022
Fiscal Year**

The operative sections of the amended GRR is the definition of “fiscal year” in section 1, section 2(3.8)(a), and section 9, which state:



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1 ...“fiscal year” means the period from April 1 in one year to March 31 in the next year

2 (3.8) The public utility acquires renewable natural gas

(a) at costs that meet the following criteria, as applicable:

(i) if the public utility acquires renewable natural gas by purchasing it, the price of the renewable natural gas does not exceed the maximum amount, determined in accordance with section 9, in effect in the fiscal year in which the contract for purchase is signed;

(ii) if the public utility acquires renewable natural gas by producing it, the levelized cost of production reasonably expected by the public utility does not exceed the maximum amount, determined in accordance with section 9, in effect in the fiscal year in which the public utility decides to construct or purchase the production facility, and

(b) that, in a calendar year, does not exceed 15% of the total amount, in GJ, of natural gas provided by the public utility to its non-bypass customers in 2019, subject to subsection (3.9) and section 10.

9 For the purposes of sections 2 (3.8) (a), 6 (c), 7 (2) (b) and 8 (1) (b),

(a) the maximum amount in effect in the 2021/2022 fiscal year is \$31 per GJ, and

(b) for fiscal years subsequent to the 2021/2022 fiscal year, the maximum amount is calculated on April 1 of each year by multiplying (i) the maximum amount in effect in the immediately preceding fiscal year, and (ii) the sum of (A) 1, and (B) the annual percentage change for the previous calendar year.

As is apparent from the above, section 9(a) sets out the maximum price for BPAs signed in the 2021/2022 fiscal year and section 9(b) sets out the maximum price for BPAs signed in subsequent fiscal years. These provisions do not address the maximum price for BPAs signed prior to the 2021/2022 fiscal years.

The SHELL BPA was signed prior to the 2021/2022 fiscal year, on March 24 and 25 of 2021. All of FEI’s other BPAs, including those currently before the BCUC, were also signed prior to the 2021/2022 fiscal year. Therefore, the GRR, as amended, does not set the maximum price for these BPAs.



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For BPAs Signed Prior to the 2021/2022 Fiscal Year, the Maximum Price is \$30 as set by Previous GRR

For all BPAs signed prior to the 2021/2022 fiscal year, the maximum price is \$30 as set out in section 2(3.8) of the GRR prior to its recent amendment. This follows from section 35 of the *Interpretation Act*, which states:

- 35 (1) If all or part of an enactment is repealed, the repeal does not
- (a) revive an enactment or thing not in force or existing immediately before the time when the repeal takes effect,
 - (b) affect the previous operation of the enactment so repealed or anything done or suffered under it,
 - (c) affect a right or obligation acquired, accrued, accruing or incurred under the enactment so repealed,
 - (d) subject to section 36 (1) (d), affect an offence committed against or a contravention of the repealed enactment, or a penalty, forfeiture or punishment incurred under it, or
 - (e) affect an investigation, proceeding or remedy for the right, obligation, penalty, forfeiture or punishment.
- (2) Subject to section 36 (1), an investigation, proceeding or remedy described in subsection (1) (e) may be instituted, continued or enforced and the penalty, forfeiture or punishment imposed as if the enactment had not been repealed.

FEI's BPAs signed prior to the 2021/2022 fiscal year were done prior to the amendment of the GRR, under the previous version of section 2(3.8) of the GRR, which states:

- (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.

As indicated by section 35(1)(b) of the *Interpretation Act* quoted above, the repeal of 2(3.8) does not affect its previous operation or anything done under it.



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Application of Maximum Volume under GRR

Regarding the maximum volume of RNG that may be acquired in a calendar year, the analysis is as follows:

- For the 2020 calendar year and all previous calendar years, the amended GRR was not yet in force; therefore, the maximum volume cap for these previous calendar years is the cap in the GRR prior to the amendment. This cap is “5% of the total volume of natural gas provided by the public utility to its non-bypass customers in 2015.” FEI’s actual RNG acquisitions in 2020 and previous calendar years have been well below this cap. Therefore, the old cap has not been exceeded.
- For the 2021 calendar year and future calendar years, the maximum volume cap for a calendar year is as set out in the amended GRR. This cap is “15% of the total amount, in GJ, of natural gas provided by the public utility to its non-bypass customers in 2019, subject to subsection (3.9) and section 10.” FEI’s acquisitions of RNG to date are well below this new cap. As indicated in the Additional Evidence, FEI has not yet acquired any hydrogen, lignin or synthesis gas that would contribute to the maximum volume cap.

In summary, for the SHELL BPA the applicable maximum price is \$30 and, going forward, the maximum volume cap applicable to FEI’s acquisitions of RNG is “15% of the total amount, in GJ, of natural gas provided by the public utility to its non-bypass customers in 2019, subject to subsection (3.9) and section 10.”

I would be pleased to respond to any questions on the above analysis at the streamlined review process scheduled for tomorrow afternoon.

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP

Original signed

Christopher Bystrom
Personal Law Corporation

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