

FortisBC Energy Inc. Biomethane Purchase Agreement with SHELL NORTH AMERICA (CANADA) INC. (SHELL)

Streamlined Review Process

May 28, 2021

Agenda

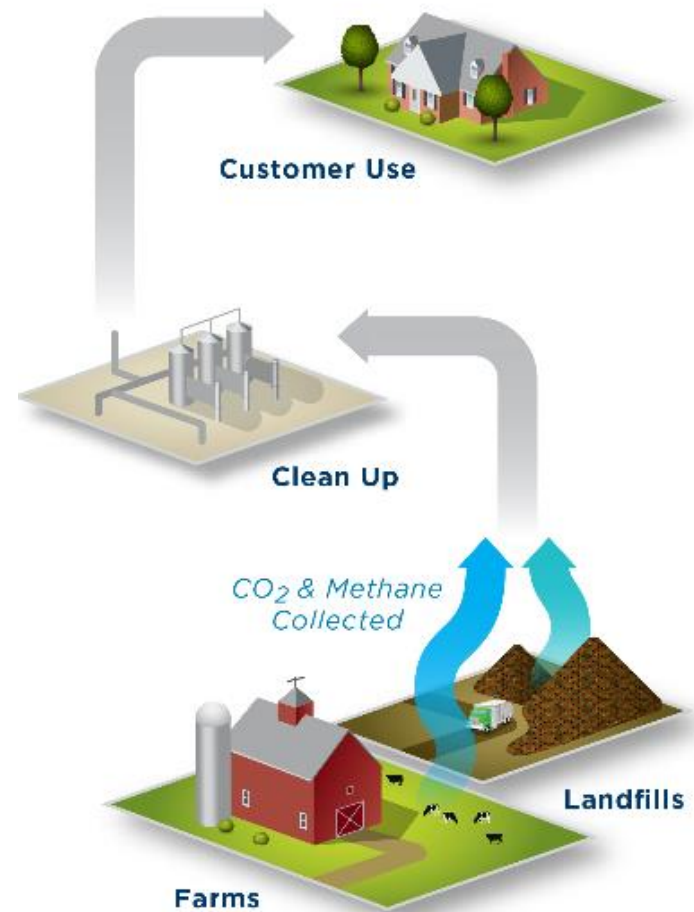
1. SHELL BPA Overview
2. Regulatory and Reporting Frameworks
3. Section 18(1) of the Clean Energy Act
4. Requirements of the GGRR
5. Question Period

SHELL BPA Overview

Project Characteristic	Description
Is FEI acquiring biogas or biomethane?	Yes. FEI is purchasing finished biomethane from SHELL delivered to BC.
Is FEI making a capital investment?	No.
Does the price to acquire biomethane (including any capital or operating costs incurred by FEI) exceed the \$30 per GJ maximum price at any time during the Project term?	No – Section 9 of the Transaction Confirmation in the SHELL BPA stipulates that the Maximum Price payable to SHELL for RNG cannot exceed the GRR maximum (\$30 per GJ)
Will the Project’s supply of biogas or biomethane result in FEI’s total annual volume of biomethane exceeding 15% of the total volume of natural gas provided by FEI to its non-bypass customers in 2019?	No.

Point of RNG Production (U.S)

- Bio-genic carbon (i.e. already part of the natural carbon cycle) is physically captured at the point of RNG production.
- There is no difference in physical emissions at the end use as customers consume methane (both before and after the BPAs)
- The use of RNG displaces an equivalent volume of fossil-based methane, avoiding emissions associated with gas extraction and processing, and the consumption of the fossil-based methane.
- Point of RNG production is irrelevant: What really counts is who can claim the credit for the reduction in GHG emissions.



In-Scope Topic: “The regulatory and reporting framework in place for greenhouse gas emission accounting for acquisitions of RNG that originate outside of Canadian jurisdiction(s)”

- There are no regulatory and reporting frameworks in BC for GHG emission accounting for acquisitions of RNG outside of BC.
 - Quebec-California joint cap and trade system (an example)
 - Article 6 of the Paris Accord: Interjurisdictional Transfers (rulebook being written)
 - BC Low Carbon Fuel Standard (FEI can opt into)
- FEI is purchasing RNG, including the environmental attributes, by contract

Realities of Bulk Energy Delivery and Green Attributes

- It is inescapable that any green attributes are 'detached' at the point of injection of an otherwise indistinguishable commodity into a common delivery system.
- This applies equally to electrons and gas molecules. For example, a solar farm in BC which is built to displace higher-carbon electricity imports from the U.S. does not result in any physical reduction of emissions in BC. Rather, emissions are reduced at the point of electricity production
- Therefore, to facilitate their delivery and avoid double-counting, green attributes must be delivered contractually or within legislative frameworks.
- In the absence of legislative framework, FEI has contractually secured the green attributes.

In-Scope Topic: “How FEI’s proposed acquisition of RNG from SHELL satisfies the requirements of a prescribed undertaking as set out in section 18(1) of the *Clean Energy Act*”

- Section 18(1) is a definition that explains that a prescribed undertaking is an undertaking prescribed by regulation for the purpose of reducing GHG emissions in BC.
- There are no requirements of a prescribed undertaking in s. 18(1) of the *Clean Energy Act*.
 1. *Definitions do not contain substantive law*
 2. *Purpose statements do not create legally binding rights and obligations*
 3. *The purpose statement is a guide to the LGIC for drafting the GGRR*

Definitions Do Not Contain Substantive Law

- S. 18(1) is the definition of “prescribed undertaking”:

“**18** (1) In this section, "prescribed undertaking" means 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.”

- Sullivan, Ruth, Sullivan on the Construction of Statutes, 6th ed (Lexis Nexis Canada Inc., 2014), §14.39:

“It is well-established that statutory definitions should not be drafted so as to contain substantive law. Their purpose is limited to indicating the intended meaning or range of meaning attaching to a word or expression in a particular legislative context.”

Purpose Statements Do Not Create Binding Rights or Obligations

- The words “for the purpose of reducing greenhouse gas emissions in British Columbia” are a purpose statement.
- Sullivan on the Construction of Statutes, 6th Edition (Lexis Nexis Canada Inc., 2014), §14.39, states:

“Purpose statements may reveal the purpose of legislation either by describing the goals to be achieved or by setting out governing principles, norms or policies. ...Like definitions and application provisions, purpose statements do not apply directly to facts but rather give direction on how the substantive provisions of the legislation - that do apply to facts - are to be interpreted.

...statements of purpose and principle do not create legally binding rights or obligations, nor do they purport to do so. They merely state goals or principles that may be referred to in interpreting the rights and obligations that are created elsewhere in the legislation.”

Section 18(1) is a guide to the LGIC for drafting the GRR

- Section 35(n) provides that the Lieutenant Governor in Council may make regulations “for the purposes of the definition of ‘prescribed undertaking’ in section 18”.
- Section 41(1)(a) of the Interpretation Act:

“(1) If an enactment provides that the Lieutenant Governor in Council or any other person may make regulations, the enactment must be construed as empowering the Lieutenant Governor in Council or that other person, for the purpose of carrying out the enactment according to its intent, to

(a) make regulations as are considered necessary and advisable, are ancillary to it, and are not inconsistent with it, ...”

In-Scope Topic: “How FEI is acquiring renewable natural gas, pursuant to section 2(3.8) of the GGRR”

- Requirement: “The public utility acquires renewable natural gas”
- The *Interpretation Act* states that, in an enactment, “acquire” means “to obtain by any method and includes accept, receive, purchase, be vested with, lease, take possession, control or occupation of, and agree to do any of those things, but does not include expropriate.”
- FEI is purchasing renewable natural gas pursuant to the terms of the SHELL BPA.
- There is no requirement that the renewable natural gas be produced in B.C. or physically delivered onto FEI’s system.

How the BPA between FEI and SHELL satisfies the maximum price limit pursuant to section 2(3.8)(a) of the GGRR

- Amended GGRR does not set maximum price for BPAs signed prior to the 2021/2022 fiscal year, such as the SHELL BPA
- Section 35 of the *Interpretation Act*:
 - 35 (1) If all or part of an enactment is repealed, the repeal does not ...
 - (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,
- GGRR maximum price: \$30
- SHELL BPA price: below \$30

In-Scope Topic: “How the BPA between FEI and SHELL satisfies the volume limit pursuant to section 2(3.8)(b) of the GGRR”

- The volume limit has been increased under recent amendment:

“(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.”

- GGRR maximum volume: approximately 30,079,000 GJs per calendar year
- Expected / Maximum contract amount of all BPAs: 6,687,375 GJs / 9,233,650 GJs per calendar year

Question Period