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March 30, 2022

Electronic Filing

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

Attention: Mr. Patrick Wruck, Commission Secretary

Dear Sirs/Mesdames:

Re: FortisBC Energy Inc. – Application for Approval of Rates and Agreement for Constructing and Operating a Compressed Natural Gas Fueling Station under the Province's Greenhouse Gas Reduction (Clean Energy) Regulation for GFL Environmental Inc. and for Amendments to Rate Schedule 6P – Public Service – Natural Gas Refueling Service Tariff and Rates

Pursuant to the regulatory timetable set by Order G-43-22, we enclose for filing in the above referenced proceeding the Final Argument of FortisBC Energy Inc.

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP

[Original signed by]

Christopher Bystrom

Encl.

British Columbia Utilities Commission

FortisBC Energy Inc.

Application for Approval of Rates and Agreement for Constructing and Operating a Compressed Natural Gas Fueling Station under the Province's Greenhouse Gas Reduction (Clean Energy) Regulation for GFL Environmental Inc. and for Amendments to Rate Schedule 6P – Public Service – Natural Gas Refueling Service Tariff and Rates

Final Argument of

of

FortisBC Energy Inc.

March 30, 2022

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PART ONE: INTRODUCTION

1. On October 27, 2021, FortisBC Energy Inc. (FEI) filed its application (Application) with the British Columbia Utilities Commission (BCUC) seeking approval pursuant to sections 59 to 61 of the *Utilities Commission Act* (UCA) on an interim basis of a Fueling Services Agreement and amending agreement to the Fueling Services Agreement (Amending Agreement No. 1), (collectively referred to as the GFL Agreement), between FEI and GFL Environmental Inc. (GFL), for compressed natural gas (CNG) service from the GFL Abbotsford Fueling Station.[1] FEI has constructed, and owns and operates, the GFL Abbotsford Fueling Station as a prescribed undertaking pursuant to section 2(2) of the *Greenhouse Gas Reduction (Clean Energy) Regulation* (GGRR) and section 18 of the *Clean Energy Act* (CEA). Under the proposed rates in the GFL Agreement, FEI will recover 60 percent of its forecast cost of service of the Abbotsford Fueling Station, which meets the requirements of section 2(2)(c)(i) of the GGRR.

2. FEI is also seeking approval of amendments to Rate Schedule 6P – Public Service – Natural Gas Refueling Service (RS 6P) to accommodate point-of-sale public fueling at the Abbotsford Fueling Station.[2] Public fueling service at the Abbotsford Station is a condition of FEI receiving a capital contribution towards the station from the Natural Resources Canada (NRCan) Electric Vehicle and Alternative Fuel Infrastructure Deployment Program, which reduces the initial investment required from FEI. Allowing public fueling service will also allow a broader base of customers for the Abbotsford Fueling Station, which increases FEI's ability to fully recover the cost of service of the station from station customers.

3. In Order G-320-21, the BCUC approved the GFL Agreement and amendments to RS 6P on an interim basis and established a regulatory process for review of the Application. Over the course of the proceeding, FEI responded to two rounds of information requests (IRs) from the BCUC and the Commercial Energy Consumers Association of British Columbia (CEC). CEC is the only intervener registered in this proceeding.

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[1] Exhibit B-1.

[2] Exhibit B-1.

4. On March 24, 2022, the BCUC issued a letter requesting that parties address certain questions in their arguments.[3] FEI's responses to these questions are addressed in this submission. In summary:

(a) Under the GFL Agreement, FEI will recover at least 60 percent of the station's forecast total operating costs for the first 7 years of operation, which satisfies the requirement of section 2(2)(c)(i) of the GGRR.[4] Actual costs are not required to determine that FEI can recover at least 60 percent of the station's forecast total operating costs for the first 7 years of operation under the GFL Agreement. Therefore, no provision is required to amend the Capital Rate if actual capital expenditures for the construction of the GFL Abbotsford Fueling Station may exceed the forecast capital expenditures.

(b) While the GFL Agreement does not include a provision to amend the capital rate of the Abbotsford Fueling Station if the final actual capital expenditures differ from the forecast capital expenditures, this remains FEI's practice.[5] It is for this reason that FEI is only seeking approval of the GFL Agreement on an interim basis pending the finalization of actual capital costs, and the determination of the resulting final rates. Once final capital costs are known, FEI and the GFL may enter into an amending agreement, if required, based on the final costs of the GFL Abbotsford Fueling Station. Once final capital costs are known, FEI will file with the BCUC for approval of rates on a permanent basis. Any variance between interim and permanent rates will be refunded to or recovered from GFL following the approval of permanent rates.[6]

(c) FEI's practice to amend its fueling agreements is to limit cost recovery risk from its non-bypass customers, but is not a requirement of the GGRR. Therefore, the GFL Agreement need not be amended to include a provision to amend the Capital Rate if FEI's actual capital expenditures, net of any contributions received from NRCan, differ from the forecast in order for the GFL Abbotsford Fueling Station to meet the requirements to be a prescribed undertaking under subsection 2(2)(c) of the GGRR.

(d) FEI has met the conditions for a capital funding contribution from NRCan towards the GFL Abbotsford Fueling Station and FEI expects to receive the full contribution in 2022.[7] As there is no basis to forecast that FEI will not receive the NRCan

[3] Exhibit A-6.

[4] Exhibit B-1, Application, pp. 5 to 8.

[5] Exhibit B-3, CEC IR1 1.5.

[6] Exhibit B-1, Application, p. 2.

[7] Exhibit B-2, BCUC IR1 2.2.

contribution, an amendment to the GFL Agreement is not required to cover this unlikely scenario.

(e) FEI submits that the letter agreement between FEI and GFL dated November 15, 2021 (Letter Agreement), which extends the project completion deadline to December 31, 2021, should be approved pursuant to sections 59 to 61 of the UCA as it is part of a contract related to the rate, per the definition of “rate” in section 1 of the UCA. However, FEI acknowledges that the Letter Agreement is very limited in scope and could be considered not part of the rate. If the BCUC determines that it does not qualify as a “rate”, then no approval is required and FEI will take guidance from the BCUC in this regard.

5. In the remainder of this Final Submission, FEI makes the following points:

(a) FEI’s construction and operation of the Abbotsford Fueling Station is a prescribed undertaking under section 18 of the *Clean Energy Act* and section 2(2) of the GGRR.

(b) The amendments to RS 6P are just and reasonable as they allow for FEI to access contributions from NRCan, which reduces the initial investment required by FEI to construct and operate the Abbotsford Fueling Station, thereby reducing risk to FEI’s other non-bypass users.

PART TWO: ABBOTSFORD FUELING STATION IS A PRESCRIBED UNDERTAKING

6. In this part, FEI submits that the Abbotsford Fueling Station has met the requirements to be a prescribed undertaking under section 2(2) of the GGRR. The relevant sections of the GGRR are:

> 2 … (2) A public utility's undertaking that is in the class defined as follows is a prescribed undertaking for the purposes of section 18 of the Act:
>
> > a) the public utility, before March 31, 2022, enters into a binding commitment to
> >
> > > (i) construct and operate, or
> > >
> > > (ii) purchase and operate
> >
> > one or more compressed natural gas fuelling stations, including storage, compression and dispensing equipment and facilities, within the service territory of the public utility for the purposes of providing compressed natural gas fuel and fuelling services to owners of vehicles that operate on compressed natural gas;
> >
> > (b) the average expenditure on stations, in any year of the undertaking period, does not exceed $3 million per station;
> >
> > (b.1) expenditures, during the undertaking period, on administration and marketing do not exceed $240 000;
> >
> > (c) at least
> >
> > > (i) 80% of the station's forecast total operating costs for the first 5 years of the operation are recovered from one or more persons under a take-or-pay agreement with a minimum term of 5 years, or
> > >
> > > (ii) 60% of the station's forecast total operating costs for the first 7 years of the operation are recovered from one or more persons under a take-or-pay agreement with a minimum term of 7 years.
>
> …
>
> (3.01) The amount determined by adding the following must not exceed $62.5 million:

> (a) total expenditures during the undertaking period on the undertaking described in subsection (2), including expenditures on administration and marketing;
>
> (b) total expenditures during the undertaking period on the undertaking described in subsection (3), including expenditures on administration and marketing.

7. In satisfaction of section 2(2)(a) of the GGRR, FEI has entered into a binding commitment to construct, own, and operate the GFL Abbotsford Fueling Station within its service territory for the purpose of providing CNG fuel and fuelling services to owners of vehicles that operate on compressed natural gas.[8] On December 3, 2020, FEI entered into a Property Access and Use Agreement with Kartar Investments Limited (Host Agreement), which was amended by letter agreement dated March 30, 2021 and further amended by agreement dated April 19, 2021. Under the Host Agreement, FEI has leased a portion of land in Abbotsford on which it can construct, own and operate a CNG fueling station.[9] The Abbotsford Fueling Station has been built and has been operational since December 16, 2021.[10]

8. Per section 2(2)(b) of the GGRR, FEI will not exceed the $3 million per station average in Year 11 (April 1, 2021 to March 31, 2022).[11]

9. As of December 31, 2021, FEI had spent approximately $130 thousand on administration and marketing, well below the available budget under section 2(2)(b.1) of the GGRR.[12]

10. On December 14, 2020, FEI entered into the GFL Agreement for FEI to provide fueling service to GFL's CNG trucks at the GFL Abbotsford Fueling Station.[13] Under the GFL Agreement, GFL has committed to take 7,000 GJs in Year 1, 11,500 GJs in Year 2, and 15,500 GJs in Years 3 through 10. These volumes allow FEI to recover at least 60 percent of its forecasted total

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[8] Exhibit B-1, Application, p. 5.

[9] Exhibit B-1, Application, p. 1; Exhibit B-1, Application, Appendix A.

[10] Exhibit B-3, CEC IR1 1.1.

[11] Exhibit B-1, Application, p. 6.

[12] Exhibit B-2, BCUC IR1 1.1.

[13] Exhibit B-1, Application, p. 1.

operating costs over the initial ten year term, satisfying the requirements of section 2(2)(c)(ii) of the GGRR.[14]

11. As of December 31, 2021, FEI had spent approximately $44.2 million, including capital expenditures, administration and marketing, of the $62.5 million available under section 2(3.01) of the GGRR.[15]

12. FEI therefore submits that it has met the requirements for the Abbotsford Fueling Station to be a prescribed undertaking under the GGRR.

13. The following addresses the main topics explored during the IR process and the questions raised by the BCUC's March 24, 2022 letter.

A. Forecast Costs are Reasonable

14. FEI submits that its forecast cost of service for the Abbotsford Fueling Station is reasonable and that FEI has satisfied the requirements of section 2(2)(c)(ii) of the GGRR.

15. The forecast operating costs of the GFL Abbotsford Fueling station are based on factors that are unique to the Abbotsford Fueling Station, such as the station design, the number and size of compressors used, the volume of CNG expected to be taken, and the location.[16] For example, the average annual repair and maintenance costs were based on a station specific forecast that takes into consideration factors such as the design and construction of the station, the preventative maintenance schedule, inflation, and the expected usage and throughput volume of the station.[17] Further, the electricity cost forecast is based on the expected electrical consumption to operate the station for 7,500 GJs in Year 1, 11,500 GJs in Year 2, and 15,000 GJs in Years 3 to 10. The costs were based on BC Hydro's Large General Service rate, the specifications

[14] Exhibit B-1, Application, p. 7.

[15] Exhibit B-2, BCUC IR1 1.2.

[16] Exhibit B-1, Application, p. 8; Exhibit B-4, BCUC IR2 2.1 and 2.7.

[17] Exhibit B-3, CEC IR1 3.1

of the equipment, runtime of the compressors, inflation and demand throughput of the fueling station.[18]

16. FEI capital expenditures estimate of $2.121 million is an AACE Class 3 estimate, which is the level of accuracy required by the BCUC for CPCN applications, in its CPCN Guidelines.[19] The breakdown of the forecast is provided in response to CEC IR1 4.1.

17. FEI relies on its over 35 years of experience of operating other similarly sized CNG stations to validate the forecast.[20] FEI has considerable experience building and operating fueling stations similar to the GFL Abbotsford Fueling Station. FEI has built and operates 19 CNG or LNG refuelling stations throughout British Columbia. This significant knowledge and experience has informed FEI's forecast of operating costs of the Abbotsford Fueling Station's first 10 years.[21] For example, FEI has explained the various factors that influence the O&M costs of a station,[22] why station O&M variances from year to year,[23] and the reasons why its forecast costs for the GFL Abbotsford Fueling Station differs from the actual average costs of other stations.[24]

18. FEI's agreement with NRCan will provided FEI with a capital contribution, and will not reduce FEI's recovery of its operating costs.[25] First, the capital contribution from NRCan reduces the initial capital cost of FEI and, as such, reduces the risk to FEI's non-bypass customers. Second, FEI only needs to make a repayments to NRCan if the Abbotsford Fueling Station makes a profit, where FEI recovers greater than 100 percent of the operating costs on a cumulative basis of the GFL Abbotsford Fueling Station.[26] FEI has shown that there is no amount of NRCan repayment that could result in the GFL Abbotsford Fueling Station falling below the minimum

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[18] Exhibit B-3, CEC IR1 3.2.

[19] Exhibit B-3, CEC IR 4.2.

[20] Exhibit B-3, CEC IR1 3.1

[21] Exhibit B-2, BCUC IR1 2.1, Attachment 2.1.

[22] Exhibit B-2, BCUC IR1 2.1.

[23] Exhibit B-2, BCUC IR1 2.1.

[24] Exhibit B-2, BCUC IR1 3.2.

[25] Exhibit B-2, BCUC IR1 2.2, 2.3.

[26] Exhibit B-2, BCUC IR1 2.3, p. 4.

GGRR requirement of 60 percent recovery over the initial term, given that the capital and O&M rates for the GFL Abbotsford Fueling Station are set at 60 percent recovery of the station's forecast operating costs over a total of ten years, and the NRCan repayment only occurs when the station has a profit and only shares a portion of the profit.[27]

19. FEI has taken into account that variances from the forecast are to be expected, as actual operating costs can fluctuate for a number of reasons. FEI has forecasted the operating costs using an appropriate methodology that accounts for the possibility of these variances and its forecast is reasonable.[28] For instance, FEI has shown that the volume scenarios posed in IRs, or any other level of increase volume from the GFL Abbotsford Fueling Station's contracted volume as set out in Table 3 of the Application, will only improve the station's cost recovery above the minimum 60 percent, even when including an NRCan repayment. None of the scenarios would reduce the cost recovery to below 60 percent of the forecast operating cost. This provide assurance that the GFL Abbotsford Fueling Station will continue to meet the criteria set out under section 2(2)(c)(ii) of the GGRR.

B. Clause to Amend Capital Rate Not Required

20. FEI submits that the GFL Agreement does not require a clause to have the capital rate amended in the case of variances from forecast.

21. First, such a clause is not required for the GFL Abbotsford Fueling Station to be a prescribed undertaking. The requirement of section 2(2)(c)(ii) of the GGRR is that FEI recover at least 60 percent of the station's <u>forecast</u> total operating costs for the first 7 years of operation. As the GGRR refers to forecast costs, actual costs are not required to determine that FEI can recover under the GFL Agreement at least 60 percent of the station's <u>forecast</u> total operating costs for the first 7 years of operation if the GFL Agreement.

22. Second, while the GFL Agreement does not include a provision to amend the capital rate of the Abbotsford Fueling Station, if the final actual capital expenditures differ from the

[27] Exhibit B-2, BCUC IR1 2.3.

[28] Exhibit B-4, BCUC IR2 2.1.

forecast capital expenditures, this remains FEI's practice.[29] It is for this reason that FEI is only seeking approval of the GFL Agreement on an interim basis pending the finalization of actual capital costs, and the determination of the resulting final rates. Once final capital costs are known, FEI and the GFL may enter into amending agreements, if required, based on the final costs of the GFL Abbotsford Fueling Station. Once final capital costs are known, FEI will file with the BCUC for approval of rates on a permanent basis. Any variance between interim and permanent rates will be refunded to or recovered from GFL following the approval of permanent rates.[30]

23. Third, FEI has met the conditions for a capital funding contribution from NRCan towards the GFL Abbotsford Fueling Station and FEI expects to receive the full contribution in 2022.[31] As there is no basis to forecast that FEI will not receive the NRCan contribution, an amendment to the GFL Agreement is not required to cover this unlikely scenario.

24. FEI therefore submits that the BCUC should approve the GFL Agreement on an interim basis as the Abbotsford Fueling Station is a prescribed undertaking. Consistent with past practice, once final capital costs are known, FEI will file with the BCUC for approval of rates on a permanent basis. Any variance between interim and permanent rates will be refunded to or recovered from GFL following the approval of permanent rates.

C. Amending Agreement Should be Approved

25. FEI submits that the Letter Agreement[32] should be approved pursuant to sections 59 to 61 of the UCA as it is a contract related to GFL's rate to take service from the Abbotsford Fueling Station. The definition of "rate" in section 1 of the UCA is as follows:

> "rate" includes
> (a) a general, individual or joint rate, fare, toll, charge, rental or other compensation of a public utility,

[29] Exhibit B-3, CEC IR1 1.5.

[30] Exhibit B-1, Application, p. 2.

[31] Exhibit B-2, BCUC IR1 2.2.

[32] Exhibit B-4, BCUC IR2 1.4.

> (b) a rule, practice, measurement, classification or contract of a public utility or corporation relating to a rate, and
> (c) a schedule or tariff respecting a rate; [Emphasis added.]

26. However, FEI acknowledges that the Letter Agreement is limited to the project completion deadlines and, as noted by the BCUC in its March 24 letter, does not impact the rates previously approved on an interim basis by Order G-320-21, or the timing of the annual rate escalation. On this basis, it could be considered that the Letter Agreement is not "relating" to the rate for the Abbotsford Fueling Station. If the BCUC determines that the Letter Agreement does not qualify as a "rate" per the UCA, then no approval is required and FEI will take guidance from the BCUC in this regard.

PART THREE: AMENDMENT TO RATE SCHEDULE 6P IS JUST AND REASONABLE

27. FEI submits that its proposed amendments to Rate Schedule 6P are reasonable, will benefit customers and should be approved.

28. Pursuant to FEI's agreement with NRCan, fuelling services must be available for third party public use at the Abbotsford Fueling Station in order to receive the capital contribution.[33] FEI is therefore proposing amendments to Rate Schedule 6P to make the Abbotsford Fueling Station available to the public. This will allow FEI to receive the NRCan capital cost contribution and will also allow for additional revenue from any public use of the Abbotsford Fueling Station which will reduce risk of cost recovery from FEI's non-bypass customers.[34]

29. FEI proposes that RS 6P be amended based on FEI's approved Rate Schedule 5 (RS 5), as the station will be served under RS 5. The proposed amendments would alter the delivery margin and commodity related charges by using the RS 5 calculations, ensuring a consistent delivery margin and commodity related charges for all users of the station, including GFL.[35]

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[33] Exhibit B-2, BCUC IR1 2.1, Confidential Attachment 2.1, p. 13.

[34] Exhibit B-2, BCUC IR1 2.7.

[35] Exhibit B-1, Application, p. 11.

30. FEI also proposes that the station service-related charges reflect the rates set out in the GFL Agreement for the Capital Rate, the O&M Rate, and the OH&M Charge.[36] Again, this will ensure a consistent charge for all users of the station. FEI confirms that if any rates change as a result of annual escalations or by BCUC Order, FEI will apply to amend the public fueling rates in RS 6P for the Abbotsford Fueling Station to maintain consistency.

PART FOUR: CONCLUSION

31. FEI submits that the Abbotsford Fueling Station is a prescribed undertaking and that the GFL Agreement and proposed amendments to Rate Schedule 6P should be approved.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated:	March 30, 2022	***[original signed by Chris Bystrom]***
		Christopher R. Bystrom
		Counsel for FortisBC Energy Inc.

[36] Exhibit B-1, Application, p. 11.