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**CONFIDENTIAL**

November 18, 2022

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

Attention: Ms. Sara Hardgrave, Acting Commission Secretary

Dear Ms. Hardgrave:

**Re: FortisBC Energy Inc. (FEI)**

***Utilities Commission Act (UCA) – Section 71 Filing of Amending Agreement No. 1 to the Biomethane Purchase Agreement (BPA) with Fraser Valley Biogas Ltd. –***  
**CONFIDENTIAL**

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In accordance with Section 71 of the UCA and Sections 2.0 and 6.0 of the British Columbia Utilities Commission (BCUC) Rules for Natural Gas Energy Supply Contracts, FEI hereby files for BCUC acceptance of an Amending Agreement dated October 31, 2022 (Amending Agreement No. 1), which amends the Biomethane Purchase Agreement between FEI and Fraser Valley Biogas Ltd. (FVB) dated January 18, 2012 (Original BPA) for the supply of biomethane (renewable natural gas or RNG)<sup>1</sup> (Application). Attached in Appendix A is a copy of Amending Agreement No. 1.

The Original BPA between FEI and FVB (included in Appendix B) was accepted by the BCUC in Order E-7-12. Amending Agreement No. 1 makes two material amendments to the Original BPA, which are to supply RNG at a price of [REDACTED] per gigajoule (GJ) and an extension of the term to expire on [REDACTED].

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<sup>1</sup> RNG or Renewable Natural Gas is interchangeable with the term “biomethane” for this Application. In previous regulatory decisions, FEI and the BCUC have used biomethane and RNG, while the GGRR uses the term “renewable natural gas.”

The Original BPA as amended by Amending Agreement No. 1 (Amended FVB BPA) is a prescribed undertaking under the *Greenhouse Gas Reduction (Clean Energy) Regulation* (GGRR).

FEI respectfully requests acceptance of Amending Agreement No. 1 on or before December 15, 2022 in order for FEI to implement the price change to align with the billing cycle under the agreement. A draft form of order sought is attached in Appendix C.

**Request for Confidentiality:**

FEI is requesting that this Application and its related information be filed on a confidential basis pursuant to Section 19 of the BCUC's Rules of Practice and Procedure regarding confidential documents as set out in Order G-178-22, and section 71(5) of the *Utilities Commission Act*. FEI requests that the BCUC exercise its discretion under Section 6.0 of the Rules for Natural Gas Energy Supply Contracts and allow these documents to remain confidential. FEI believes this will ensure that market sensitive information is protected, and FEI's ability to obtain favorable commercial terms for future natural gas contracting strategies is not impaired. FEI operates within a competitive environment when securing commodity to serve customers. If FEI's supply purchasing strategies are released to the public, this could prejudice or influence the negotiations of contracts between FEI and suppliers or counterparties, which could result in higher commodity costs for customers.

## **1. LEGISLATIVE AND REGULATORY FRAMEWORK**

On April 18, 2010, the Province of BC enacted the Clean Energy Act (CEA). The CEA established a number of energy objectives and provided that the Lieutenant Governor in Council (LGIC) can prescribe undertakings to encourage public utilities to pursue certain greenhouse gas (GHG) reducing initiatives. Section 18 of the CEA states:

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.

(2) In setting rates under the Utilities Commission Act for a public utility carrying out a prescribed undertaking, the commission must set rates that allow the public utility to collect sufficient revenue in each fiscal year to enable it to recover its costs incurred with respect to the prescribed undertaking.

(3) The commission must not exercise a power under the Utilities Commission Act in a way that would directly or indirectly prevent a public utility referred to in subsection (2) from carrying out a prescribed undertaking.

(4) A public utility referred to in subsection (2) must submit to the minister, on the minister's request, a report respecting the prescribed undertaking.

(5) A report to be submitted under subsection (4) must include the information the minister specifies and be submitted in the form and by the time the minister specifies.

On May 14, 2012, the LGIC issued Order in Council (OIC) 295/2012 approving the GGRR, which described classes of prescribed undertakings pursuant to section 18 of the CEA.

On March 21, 2017, the LGIC issued OIC 161/2017 approving an amendment to the GGRR related to RNG as follows:

(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 [gigajoule], 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.

(3.9) The volume referred to in subsection (3.8) (b) does not include renewable natural gas acquired by the public utility that the public utility provides to a customer in accordance with a rate under which the full cost of the following is recovered from the customer:

(a) the acquisition of the renewable natural gas;

(b) the service related to the provision of the renewable natural gas.

The Ministry has stated that the “amendments were made to the Greenhouse Gas Reduction (Clean Energy) Regulation in the spring of 2017 to increase incentives for using renewable natural gas in transportation and to establish measures to increase the supply of RNG.”<sup>2</sup>

The BCUC in its Decision and Order G-122-19<sup>3</sup> determined that for a project to qualify as a prescribed undertaking under section 2(3.8) of the GGRR as written at that time, it must satisfy the following three-part test:

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<sup>2</sup> In the Matter of FEI's Application for Acceptance of the Biogas Purchase Agreement between FEI and the City of Vancouver, Exhibit C1-2.

<sup>3</sup> In the Matter of FEI's Application for Acceptance of the Biogas Purchase Agreement between FEI and the City of Vancouver.

- The public utility must be acquiring renewable natural gas (as opposed to some other form of commodity);
- The utility must pay no more than \$30 per GJ for that renewable natural gas; and
- Subject to certain exceptions, the annual volume of renewable natural gas acquired must not exceed 5% of the total volume of natural gas the utility provided to its non-bypass customers in 2015.<sup>4</sup>

On May 25, 2021 the LGIC issued OIC 306/2021 which further amended section 2 to the GGRR related to RNG, including as follows:

*(a) by adding the following subsection:*

(3.71) For the purposes of subsection (3.8), “acquires renewable natural gas” includes producing renewable natural gas by producing or purchasing biogas and upgrading it to renewable natural gas, and

*(b) by repealing subsection (3.8) and substituting the following:*

(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.

OIC 306/2021 also added section 9 of the GGRR, which sets a maximum price of \$31 dollars for fiscal year 2021/22.<sup>5</sup> The maximum price increases each fiscal year.

<sup>4</sup> Decision and Order G-122-19, page 8.

<sup>5</sup> Beginning April 1, 2021 and ending March 31, 2022.

OIC 306/2021 also added section 10 of the GGRR, which indicates that acquisitions of hydrogen, synthesis gas, and lignin under sections 6, 7 and 8 of the GGRR also count towards the maximum volume.

The maximum volume of 15 percent in the GGRR is the implementation of the Province's CleanBC plan. The CleanBC plan stated that there would be a minimum requirement for 15 per cent renewable content in natural gas by 2030, stating:<sup>6</sup>

As part of CleanBC, we will work with natural gas providers to put in place a minimum requirement for 15 per cent renewable content in natural gas by 2030. That means the gas we use in our furnaces, water heaters, dryers, stoves and other gas appliances will have less impact on the environment, and the methane that is wasted from agriculture, sewage and landfills will be significantly reduced. Waste hydrogen can also be mixed with the natural gas we use in our homes and will provide additional renewable natural gas for our needs.

The purpose of this class of prescribed undertaking is to facilitate FEI acquiring RNG, or other renewable gases, up to the maximum amount so that the Province can realize its greenhouse gas reduction goals in the CleanBC plan.

The BCUC initiated an Inquiry into the Acquisition of Renewable Natural Gas by Public Utilities in British Columbia (Inquiry) in response to a recommendation made by the BCUC in Order E-14-21 and accompanying Reasons for Decision with respect to FEI. On July 28, 2022, the BCUC issued the Phase 1 Report for the Inquiry (Phase 1 Report). The Phase 1 Report found, among other things, that:<sup>7</sup>

In order to distinguish different sources of Natural Gas, for the purpose of this report the Panel therefore will use the term Conventional Natural Gas for that Natural Gas which is formed from fossils and extracted from and below rocks within the earth's surface.

....

Therefore, the Panel determines that biomethane is pipeline quality gas derived from upgrading and processing biogas or biomass. Biomethane is indistinguishable from Conventional Natural Gas and can be injected into a gas pipeline system.

...

Notwithstanding, we find that the creation of biomethane gives rise to specific Environmental Attributes and that these attributes may be contractually transferred between parties.

...

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<sup>6</sup> CleanBC plan, at page 36. Online: [CleanBC: our nature. our power. our future. \(gov.bc.ca\)](https://www2.gov.bc.ca/gov/content/sustainability/2030/cleanbc).

<sup>7</sup> Inquiry into the Acquisition of Renewable Natural Gas by Public Utilities in British Columbia - Phase 1 Report, Section 8, Summary of Findings and Recommendations.

Therefore, the Panel determines that a unit of Natural Gas plus the Environmental Attributes associated with the production of an equivalent unit of biomethane is an example of Renewable Natural Gas.

...

[T]he Panel finds that when Environmental Attributes associated with the production of biomethane are acquired by a BC public utility and then combined with an equivalent amount of Natural Gas acquired separately, this results in Renewable Natural Gas for the purpose of the GRR.

...

Therefore, given the nature of the delivery of RNG, for the purposes of interpreting the GRR the Panel finds that Renewable Natural Gas is acquired in each of these scenarios:

- (a) biomethane is acquired with its associated Environmental Attributes – as, for example, in the case of FEI's biomethane purchase agreements; and
- (b) Conventional Natural Gas is acquired and an appropriate quantum of Environmental Attributes that are associated with the production of biomethane are acquired separately.

In either case, the acquired product is Renewable Natural Gas for the purpose of the GRR.

The BCUC also concluded (at page 28) the following regarding the annual volume test in the GRR:

The Panel is persuaded that the actual delivered volume of RNG in a calendar year is the appropriate quantity on which to base the calculation for the annual volume test as set out in section 2(3.8)(b) of the GRR.

The above findings from the Phase 1 Report are consistent with FEI's filings of BPAs as prescribed undertakings under the GRR.

## **2. AMENDING AGREEMENT NO. 1 IS A PRESCRIBED UNDERTAKING**

The Original BPA between FEI and FVB was accepted by BCUC Order E-7-12 as being in the public interest. At the time of BCUC Order E-7-12, the GRR had not yet been amended to include a class of prescribed undertaking for the acquisition of RNG.

Amending Agreement No. 1 makes two material amendments to the Original BPA, which are to supply RNG at a price of [REDACTED] per GJ and extend the term until [REDACTED].

Under the GRR, the three-part test for a BPA or project to qualify as a prescribed undertaking can be stated as follows:

1. The public utility must be acquiring RNG (as opposed to some other form of commodity);
2. The public utility must pay no more than the applicable maximum price for that RNG; and
3. The actual delivered volume of RNG, hydrogen, synthesis gas, and lignin that the public utility acquires in a calendar year must not exceed 15 percent 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 of the GGRR.

The Amended FVB BPA satisfies the three-part test and qualifies as a prescribed undertaking.

## 2.1 FEI is Acquiring RNG Under the Amended FVB BPA

Amending Agreement No. 1 makes no changes to the RNG that FEI will be acquiring from the FVB.

Under the Amended FVB BPA, FEI is purchasing RNG from the FVB, which qualifies as the acquisition of RNG under the GGRR. 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.” [Emphasis added.]

FVB generates biogas from an anaerobic digester system and purifies it to pipeline quality renewable natural gas that meets FEI’s specifications. This is consistent with the definition of “biomethane” in the *Carbon Tax Act*, SBC 2008, Chapter 40,<sup>8</sup> in FEI’s approved General Terms and Conditions of Service,<sup>9</sup> and in the Phase 1 Report.<sup>10</sup>

All environmental attributes, namely GHG emissions reduction benefits, of the biomethane purchased under the Amended FVB BPA are owned by FEI.

The Phase 1 Report determined that FEI’s acquisitions of RNG under its BPAs are an example of the acquisition of RNG for the purposes of the GGRR:

Therefore, given the nature of the delivery of RNG, for the purposes of interpreting the GGRR the Panel finds that Renewable Natural Gas is acquired in each of these scenarios:

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<sup>8</sup> *Carbon Tax Act*, SBC 2008, Chapter 40, s. 1: “biomethane” means methane produced from biomass.

<sup>9</sup> FEI General Terms and Conditions, Definitions:

**Biogas** Means raw gas substantially composed of methane that is produced by the breakdown of organic matter in the absence of oxygen.

**Biomethane** Means Biogas purified or upgraded to pipeline quality gas, also referred to as renewable natural gas.

<sup>10</sup> The Panel determined: “biomethane is pipeline quality gas derived from upgrading and processing biogas or biomass. Biomethane is indistinguishable from Conventional Natural Gas and can be injected into a gas pipeline system.”

- (a) biomethane is acquired with its associated Environmental Attributes – as, for example, in the case of FEI’s biomethane purchase agreements; and
- (b) Conventional Natural Gas is acquired and an appropriate quantum of Environmental Attributes that are associated with the production of biomethane are acquired separately.

Therefore, the Amended FVB BPA is an acquisition of RNG pursuant to the GRR.

## **2.2 FEI Will Not Pay More than the Applicable Maximum Price for RNG under the Amended FVB BPA**

Amending Agreement No. 1 was signed October 31, 2022 and, therefore, the applicable maximum price is \$32.21 per GJ. Section 2(3.8)(a)(2) states that the cost of the RNG acquired must meet the following criterion: “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.” Section 9(b) of the GRR states that, “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”. The “annual percentage change” in the GRR “means the annual percentage change in the annual average All-items Consumer Price Index for British Columbia, as published by Statistics Canada under the authority of the Statistics Act (Canada)”. Based on the Statistics Canada output (provided in Appendix D) to determine the annual percentage change, the calculation of the maximum amount for 2022/2023 fiscal year below.

$$\$32.21 \text{ per GJ} = \$31.00 \text{ per GJ} \times (1 + 3.9\%^{11})$$

The acquisition price for RNG in Amending Agreement No. 1 is less than the \$32.21 per GJ maximum acquisition price.

## **2.3 FEI Will Not Exceed the Maximum Volume Amount in the GRR**

Amending Agreement No. 1 does not amend the volume of RNG that FEI will purchase from the FVB under the Original BPA.

The annual delivered volume of RNG that FEI expects to acquire each year is still below the calculated maximum of 15 percent of the total amount, in GJ, of natural gas provided by the

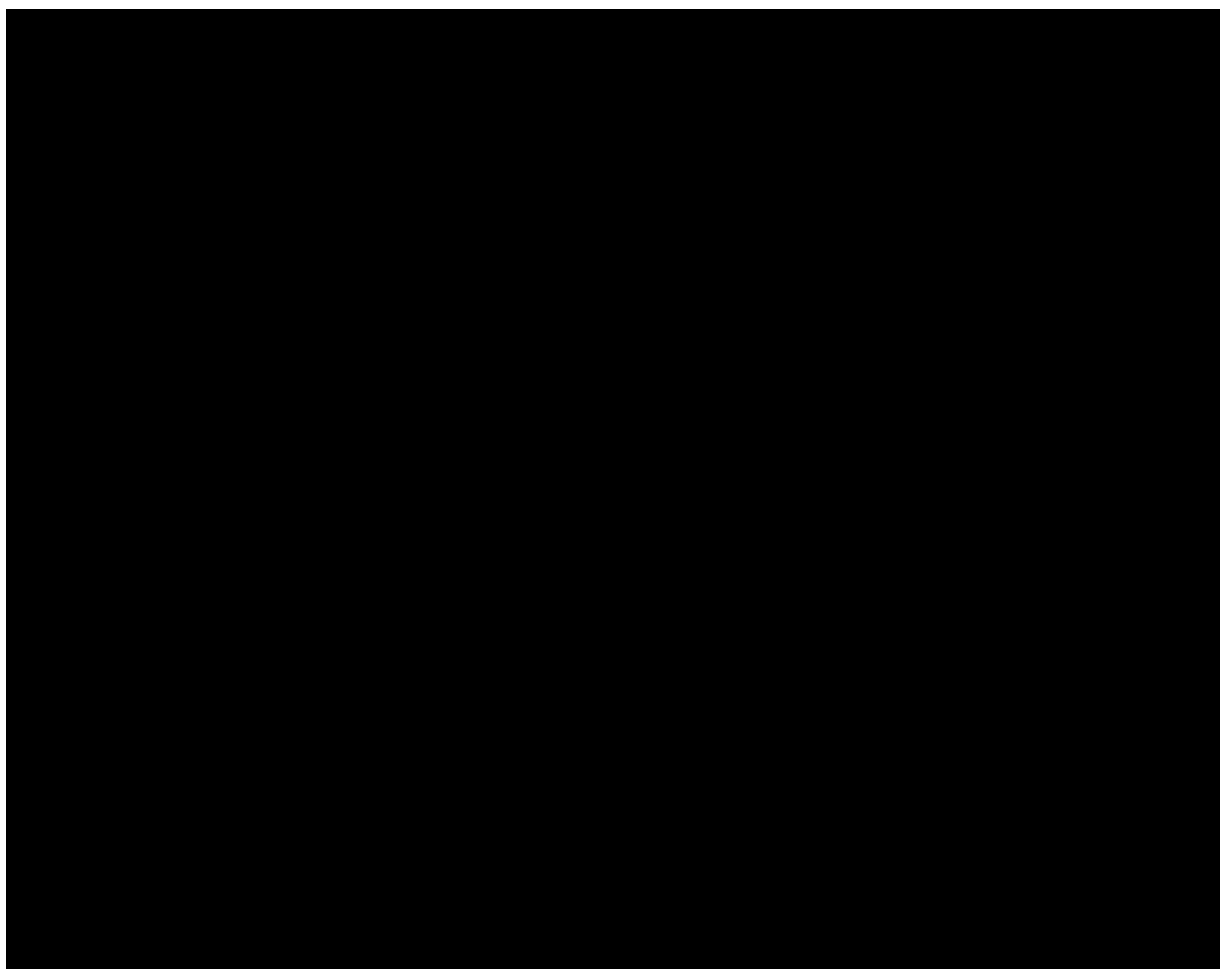
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<sup>11</sup> Statistics Canada, BC All-Items, annual percentage change December 2020 to December 2021 of 3.9 percent set out in Appendix D.



public utility to its non-bypass customers in 2019, which is approximately 30 PJ. FEI has not yet acquired any hydrogen, lignin or synthesis gas. A summary of FEI's accepted BPAs and contracted volumes is included in Table 1 below. As shown in the table, both FEI's contractual maximum supply and expected annual supply is below the 30 PJ (or 30,000 TJ) maximum in the GGRR.

While FEI's current capacity to acquire RNG, hydrogen, synthesis gas, and lignin does not approach the maximum volume in the GGRR at this time, in the future FEI will manage its volumes of RNG supply to be within the maximum volume allowed by the GGRR each calendar year. For instance, to manage within the maximum volume, FEI may sell an equivalent amount of RNG at full cost such that it does not count towards the cap per s. 2(3.9) of the GGRR.



### **3. FEI FACILITIES**

In order to monitor the quantity and quality of the biomethane supplied to FEI from the FVB facility, and to inject the supplied biomethane into FEI's pipeline, FEI owns and operates the

FEI Facilities, which include an interconnection station and interconnection pipeline. The interconnection station is located adjacent to the FVB facilities on the supplier's property. Amending Agreement No. 1 requires no changes to FEI's interconnection facilities for this project.

#### **4. CONCLUSION**

Amended Agreement No. 1 satisfies the three-part test to be a prescribed undertaking under section 2(3.8) of the GGRR. Amending Agreement No. 1 is for the acquisition of RNG at a fixed acquisition price that does not exceed the GGRR maximum price. FEI's current capacity to acquire RNG, hydrogen, synthesis gas, and lignin does not approach the maximum volume in the GGRR at this time and, in the future, FEI will manage its volumes of RNG supply to be within the maximum volume allowed by the GGRR each calendar year.

FEI has filed a copy of Amending Agreement No. 1 with the BCUC pursuant to FEI's obligation under section 71 of the UCA to file energy supply contracts. As the acquisition of RNG under the Amended FVB BPA is a prescribed undertaking, FEI respectfully submits that the BCUC must accept the BPA under section 71 of the UCA due to section 18 of the CEA, which prohibits the BCUC from exercising its powers in any way that would directly or indirectly prevent FEI from carrying out a prescribed undertaking. Therefore, FEI respectfully requests that the BCUC accept Amending Agreement No. 1 without further regulatory process.

If further information is required, please contact Scott Gramm, Senior Manager, Renewable & Low Carbon Fuel Development, at (604) 576-7242.

Sincerely,

**FORTISBC ENERGY INC.**

***Original signed:***

Diane Roy

Attachments

~~CONFIDENTIAL~~

**Appendix A**

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**FRASER VALLEY BIOGAS AMENDING AGREEMENT NO. 1**

~~FILED CONFIDENTIALLY~~

**AMENDING AGREEMENT #1 TO BIOMETHANE PURCHASE AGREEMENT**

THIS AMENDING AGREEMENT #1 ("**Amending Agreement #1**") is made effective as at October 31, 2022 2022 (the "**Effective Date**")

BETWEEN:

**FORTISBC ENERGY INC.**, 16705 Fraser Highway, Surrey, British Columbia V4N 0E8.

("**FEI**")

AND:

**FRASER VALLEY BIOGAS LTD.**, 2016 Inter-Provincial Highway, Abbotsford, British Columbia V3G 2H8.

("**Supplier**")

**WHEREAS:**

- A. Supplier and FEI entered into a Biomethane Purchase Agreement dated January 18, 2012, (the "**Agreement**").
- B. Supplier is upgrading the Biogas Facility in order to process more feedstock and generate more Biomethane.
- C. A new agreement is being negotiated between FEI and Supplier (the "**New Agreement**") for the purchase and sale of Biomethane given the pending expiry of the term of the Agreement.
- D. If FEI and Supplier agree on the terms and conditions of the New Agreement, in their respective sole and absolute discretion, upon execution of the New Agreement, certain conditions precedent for the benefit of FEI will need to be satisfied or waived by FEI, prior to the initial commencement of Biomethane purchases and sales pursuant to the New Agreement (the "**Start Date Conditions Precedent**"). These Start Date Conditions Precedent will include, without limitation, the New Agreement being reviewed and accepted by the BCUC.
- E. To continue purchases and sales of Biomethane between the parties, whilst providing time for (a) the negotiation of the New Agreement, and (b) if the New Agreement is executed by FEI and Supplier, in their respective sole and absolute discretion, the satisfaction or waiver of the Start Date Conditions Precedent thereunder, the parties desire to extend the term of the Agreement, on the terms and conditions set forth in this Amending Agreement #1.

**NOW THEREFORE IN CONSIDERATION** of the promises and mutual covenants and agreements hereinafter contained and other good and valuable consideration, the parties hereto covenant and agree with each other as follows:

- 1. Unless otherwise defined in this Amending Agreement #1, capitalized words and expressions shall have the same meanings as are assigned to them in the Agreement.
- 2. Subject to Section 3 of this Amending Agreement #1, the following amendments are made to the Agreement:
  - a. Section 2.1 is hereby deleted in its entirety and replaced with the following:

**Term.** This Agreement will be for a period commencing on the Effective Date and expiring on [REDACTED] (the "**Expiry Date**"); unless terminated earlier in accordance with the terms of this Agreement; provided that each party may terminate this Agreement, without liability to either party, by providing the other party with not less than 30 days prior written notice of termination; and further provided that this Agreement will be deemed terminated, without liability to either party, prior to the Expiry Date if the parties enter into a new agreement for the future purchase and sale of equivalent Biomethane volumes purchased and sold hereunder and on the date all conditions precedent to the purchase and sale of Biomethane under such new agreement are satisfied or waived in accordance with the terms of such new agreement (the "**Term**").

- b. Section 2.2 is hereby deleted in its entirety and replaced with the following:

*Deliberately blank*

- c. Addition of Section 6.1(d):

Notwithstanding anything in this Agreement to the contrary, for Biomethane delivered after 31st October 2022, the rate of [REDACTED] per GJ, until the date of expiry or termination of this Agreement in accordance with its terms.

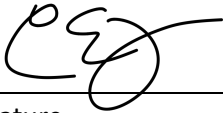
3. The amendments to the Agreement provided for in Section 2 of this Amending Agreement #1 are subject to BCUC acceptance of the Agreement, as amended by this Amending Agreement #1, as a "prescribed undertaking" under section 18 of the *Clean Energy Act* and section 2(3.8) of the *Greenhouse Gas Reduction (Clean Energy) Regulation* ("**BCUC Acceptance**"). The parties acknowledge and agree that if BCUC Acceptance is not obtained for any reason whatsoever, the Agreement will remain in full force and effect unamended by this Amending Agreement #1.
- a. FEI will file this Amending Agreement #1 with the BCUC within a reasonable period of time, but no later than 45 days after the Effective Date, or at a later date as agreed to in writing by the parties. FEI will thereafter take all steps reasonably required to secure BCUC Acceptance, including those procedural steps related to filing this Amending Agreement #1 and providing argument and witnesses in support of BCUC Acceptance.
- b. Supplier will, at the request of FEI, and at Supplier's cost and expense, provide any assistance reasonably required by FEI to secure BCUC Acceptance, including filing documents with the BCUC and providing argument and witnesses in support of the filing.
- c. At least ten (10) business days before filing this Amending Agreement #1 with the BCUC, FEI will provide to Supplier for review and comment an un-redacted copy of the documentation FEI intends to submit to the BCUC in connection with this Amending Agreement #1. Notwithstanding the foregoing, FEI may redact from the documentation any information that is subject to existing confidentiality obligations of FEI to any third parties. Supplier will have five (5) business days from the date of receipt of the documentation to provide any comments with respect to the same to FEI. If Supplier does not provide any comments within the five (5) business day period, then Supplier will be deemed to have accepted the documentation and FEI may submit the same to BCUC in the form provided. If Supplier provides comments within the five (5) business day period, then FEI will consider reasonable amendments to the documentation in response to the Supplier's comments.

- d. If FEI intends to submit any additional information to the BCUC in connection with this Amending Agreement #1, FEI will provide this information, un-redacted, to Supplier for an opportunity to review prior to FEI submitting the information to the BCUC. Notwithstanding the foregoing, FEI may redact any such information that is subject to existing confidentiality obligations of FEI to any third parties.
4. Except as specifically amended by this Amending Agreement #1, the Agreement will remain in full force and effect and is hereby ratified and confirmed. In the event of any inconsistency or conflict between the Agreement and this Amending Agreement #1, the terms and conditions of this Amending Agreement #1 will govern.
5. This Amending Agreement #1 enures to the benefit of and is binding on the parties and their respective successors and permitted assigns.
6. The parties will sign such further and other documents and do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Amending Agreement #1.
7. Time remains of the essence of the Agreement.
8. This Amending Agreement #1 may be executed and delivered by electronic means and in counterparts with the same effect as if the parties had signed the same original document. All counterparts will be construed together and will constitute one and the same instrument.

**IN WITNESS WHEREOF** the parties have executed this Amending Agreement #1 as of the Effective Date.

**FRASER VALLEY BIOGAS LTD.**

by its authorized signatory:



\_\_\_\_\_  
Signature

Name: Chase Edgelow

Title: CEO

**FORTISBC ENERGY INC.,**

by its authorized signatory:



\_\_\_\_\_  
Signature

Name: Joe Mazza

Title: VP, Energy Supply & Resource Development

~~CONFIDENTIAL~~

**Appendix B**

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**FRASER VALLEY BIOGAS ORIGINAL BPA  
DATED JANUARY 18, 2012**

~~FILED CONFIDENTIALLY~~

## BIOMETHANE PURCHASE AGREEMENT

**THIS AGREEMENT** made as of January 18, 2012 (the “**Effective Date**”)

**BETWEEN:**

**FORTISBC ENERGY INC.**, 16705 Fraser Highway, Surrey, BC V4N 0E8  
(“**FEI**”)

**AND:**

**FRASER VALLEY BIOGAS LTD.**, 2016 Inter-Provincial Highway,  
Abbotsford, BC V3G 2H8  
(the “**Supplier**”)

**WHEREAS:**

- A. FEI is a combined electric and natural gas utility with a transmission and distribution system in British Columbia;
- B. The Supplier, pursuant to a written lease agreement (the “**Lease Agreement**”) is the tenant of certain lands and premises owned by HEPPELL’S POTATO CORPORATION (the “**Landlord**”) located at 2016 Inter-Provincial Highway, in the City of Abbotsford and legally described as follows:  
PID: 010-837-906  
Lot 79, Section 13, Township 10, NWD, Plan 4211  
(the “**Lands**”)
- C. The Supplier operates an anaerobic digester and gas purification facility (the “**Biogas Facility**”) located on the Lands to increase biogas production and to purify biogas to pipeline quality renewable natural gas (the “**Biomethane**”), which Biomethane the Supplier wishes to sell to FEI.
- D. Pursuant to an agreement with the previous owner of the Lands, FEI installed and owns certain facilities located on the Lands (the “**Interconnection Facilities**”) and connected to the Biogas Facility to monitor the quality and quantity of the Biomethane and inject the Biomethane into FEI’s existing natural gas distribution system adjacent to the Biogas Facility.
- E. The Landlord, by written agreement (the “**Consent Agreement**”), has acknowledged FEI’s ownership of the Interconnection Facilities and has consented to the Supplier granting FEI’s access to and use of the Lands for the purpose of operating and maintaining the Interconnection Facilities pursuant to the terms and conditions herein contained.
- F. FEI wishes to purchase and the Supplier wishes to sell the Biomethane to FEI on the terms and conditions provided in this Agreement.



**NOW THEREFORE**, in consideration of the mutual promises set out herein and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged) the parties agree as follows:

**1. CONDITION PRECEDENT**

1.1 The obligation of FEI to carry out the transactions contemplated by this Agreement is subject to fulfillment of the following conditions on or before the dates set out below, which is for the sole benefit of FEI, and which may be waived by FEI in writing:

- (a) On or before March 31, 2012, obtaining the necessary approvals of all regulatory or other applicable governmental authorities having jurisdiction, including the British Columbia Utilities Commission (“**BCUC**”), on terms and conditions which are satisfactory to FEI acting reasonably having regard to its bona fide business interests; and
- (b) Within five (5) business days of execution of this Agreement, the Supplier providing FEI a fully executed copy of:
  - (i) the Consent Agreement; and
  - (ii) the Lease Agreement.

**2. TERM**

2.1 **Term.** This Agreement will be for a period of commencing on the Effective Date and expiring on October 31st following the [REDACTED] anniversary of the Effective Date (the “**Initial Term**”), unless terminated earlier or renewed in accordance with the terms of this Agreement (the “**Term**”).

2.2 **Renewal.** This Agreement will renew automatically for additional two (2) year terms (each a “**Renewal Term**”) unless a party provides the other party with written notice of its intention to terminate this Agreement at least one (1) year prior to the expiry of the Initial Term and six (6) months prior to the expiry of any Renewal Term.

2.3 **Change of Interest in Lands.** In the event of any sale or lease of the Lands to a third party or any other loss or diminishment of the interest of the Supplier in the Lands or if the Lease Agreement is terminated for any reason, this Agreement, at the option of FEI, will terminate as at the effective date of any such sale, lease, loss or diminishment of interest or the date of termination of the Lease Agreement, and the provisions of sections 10.1 and 10.2 shall apply.

**3. DIVISION OF RESPONSIBILITY**

3.1 **Supplier Facilities.** The Supplier will be responsible at its own cost for operating, maintaining, repairing, upgrading, replacing and supporting the Biogas Facility, including but not limited to:

- (a) Anaerobic digesters;
- (b) Waste receiving and conditioning facilities (such as pasteurizer);

- (c) Biogas purification/upgrading equipment;
- (d) Control systems,
- (e) Compression equipment to reach the minimum required delivery pressure of 420 kilopascals (“kPa”);
- (f) a flare system; and
- (g) piping between the purification/upgrading equipment and the Interconnection Facilities.

3.2 **FEI Facilities** - FEI will be responsible at its own cost for operating, maintaining, repairing, replacing, upgrading and supporting the Interconnection Facilities, including but not limited to:

- (a) Outlet piping from fenced area to main located in Inter-Provincial Highway;
- (b) Inlet shut-off valves located immediately adjacent to fenced area built by FEI;
- (c) metering;
- (d) gas quality monitoring;
- (e) pressure regulation;
- (f) odorizing;
- (g) safety shut offs;
- (h) monitoring sensors and communications equipment capable of automatically re-starting injection of Biomethane into the distribution system once Biomethane has met the Specifications, in the event that the Biomethane has temporarily failed to meet the Specifications;
- (i) foundation; and
- (j) fence.

3.3 **FEI Approvals.** FEI shall obtain and maintain any consents, permits, filings, orders or other approvals, including governmental consents and approvals, building and construction permits, environmental permits, zoning changes or variances (collectively the “**Approvals**”) required, affecting or necessary for the ownership, installation, maintenance and operation of the Interconnection Facilities.

3.4 **Supplier Approvals.** The Supplier shall obtain and maintain the Approvals required, affecting or necessary for the ownership, installation, maintenance and operation of the Biogas Facility and use of the Lands.

3.5 **BCUC Approval.** The Supplier acknowledges FEI is a public utility as defined in the *Utilities Commission Act (British Columbia)* and this Agreement, including the terms and conditions contained herein, are subject to BCUC approval. If BCUC approval is granted subject to terms and conditions which are not reasonably satisfactory to FEI having regard to its *bona fide* business interests, the parties will negotiate in good faith to address the impacts thereof, including mitigation of costs.

- 3.6 **Ownership.** The Interconnection Facilities are, and shall at all times remain, personalty and the property of FEI despite the degree to which they may be annexed or affixed to the Lands and despite any rule of law or equity to the contrary. FEI shall be entitled at any time and from time to time to remove the Interconnection Facilities in whole or in part, and the Interconnection Facilities shall be freely alienable by FEI as its own property. FEI shall be entitled to install signage and notices on the Interconnection Facilities identifying FEI's ownership.
- 3.7 **Quality Monitoring.** FEI shall be responsible, at its own cost, for Biomethane quality monitoring from the Biogas Facility prior to injection into its natural gas distribution system.
- 3.8 **Operating Certificates.** The Supplier will ensure any relevant permits or operating certificates are updated to reflect the operation of the Interconnection Facilities on the Lands.
- 3.9 **Utilities.** The Supplier will make electrical power and telephone lines available for use by FEI with respect to the Interconnection Facilities. FEI will be responsible to pay for telephone and electricity usage costs directly associated with the Interconnection Facilities.
- 3.10 **Cooperation.** In order to facilitate the connectivity between the Biogas Facility and the Interconnection Facilities and maximize the production of Biomethane, FEI and the Supplier agree to:
- (a) cooperate in the design, permitting and construction of any upgrades and modifications to such facilities;
  - (b) share operating data and work together to optimize operation of their respective facilities; and
  - (c) notify each other in advance of proposed operational changes or system modifications or upgrades to their respective facilities to ensure such changes, modifications or upgrades do not negatively impact the operation of the other parties facilities.

#### 4. ACCESS TO AND USE OF LANDS

- 4.1 **Grant of License.** The Supplier, with the consent of the Landlord pursuant to the Consent Agreement, hereby grants to FEI, at no cost, a non-exclusive irrevocable license to the Lands and the right to enter upon and have continual access to, over and across the Lands, at all times and from time to time, with or without vehicles, machinery and equipment, for FEI and its authorized employees, contractors and agents, to excavate, install, place, construct, renew, alter, repair, maintain, use, abandon, remove or replace the Interconnection Facilities, in whole or in part. FEI's right of access over the Lands is subject to FEI's compliance with the reasonable requirements of the Supplier for the safety and security of the Lands, including as to access points and limitation on access during normal working hours except in the case of emergency.
- 4.2 **Use of Lands.** FEI shall:
- (a) not do, suffer or permit anything in, on or from the Lands that may be or become a nuisance or annoyance to the owners, occupiers or users of land or premises

adjacent to or near the Lands or to the public, including the accumulation of rubbish or unused personal property of any kind;

- (b) not do, suffer or permit any act or neglect that may in any manner directly or indirectly cause injury to the Lands;
- (c) use the Lands only for the purposes set out in this Agreement;
- (d) except as otherwise provided in this Agreement, pay all costs and expenses of any kind whatsoever associated with and payable in respect of FEI's use of the Lands, the Interconnection Facilities and all equipment, furniture and other personal property brought onto the Lands by FEI, including without limitation, all property taxes, levies, charges and assessments, permit and license fees, repair and maintenance costs, administration and service fees and other utility and service charges and payments for work and materials; and
- (e) carry on and conduct its activities in, on and from the Lands in compliance with any and all Laws from time to time in force, and to obtain all required approvals and permits thereunder, and not to do or omit to do anything in, on or from the Lands in contravention thereof.

4.3 **Non-Interference.** The Supplier will not do or knowingly permit to be done anything in, under, over, upon or with respect to the Lands which, in the reasonable opinion of FEI, may interfere with, diminish or injure FEI's rights hereunder or the installation, maintenance use or operation of the Interconnection Facilities, including but not limited to, anything which:

- (a) interrupts, endangers, impedes, disturbs or causes damage to the Interconnection Facilities or its operation, use, security or functionality;
- (b) removes, diminishes or impairs any vertical or lateral support for, or causes the movement or settlement of, the Interconnection Facilities; and
- (c) causes, permits or suffers any structure, equipment, act or function to exert any vertical load or lateral load upon or against, or impair the structural integrity of, the Interconnection Facilities;

without the prior written consent of FEI and in accordance with any conditions FEI may specify as a condition of such consent.

4.4 **Compliance with Lease.** The Supplier covenants and agrees, as a material term of this Agreement, to comply with the terms and conditions of the Lease Agreement.

## 5. QUALITY, QUANTITY, TITLE AND INDEMNITY

5.1 **Biomethane Quality.** In order to be accepted by FEI, the Biomethane must meet the specifications set out in Schedule A (the "Specifications") as determined by FEI.

5.2 **Biomethane Volume and Delivery Quantity.** The parties expect the volume of Biomethane produced by Biogas Facility to range from approximately [REDACTED] gigajoules ("GJ") per year. Subject to section 5.4, the Supplier agrees to exclusively sell to FEI the Biomethane in the following quantities and subject to the following limitations, as measured by equipment forming part of the Interconnection Facilities:

- (a) **Minimum Daily Delivery** - [REDACTED] per day;
- (b) **Maximum Daily Delivery** – [REDACTED] per day;
- (c) **Maximum Hourly Delivery** – [REDACTED] per hour;
- (d) **Base Daily Delivery** – [REDACTED] per day;
- (e) **Base Monthly Delivery** – [REDACTED] per day multiplied by number of days in the given calendar month;

FEI will be responsible for measurement of Biomethane flow and the calculation of energy delivered for the purpose of determining delivery quantities.

5.3 **Calculation of Daily Delivery Quantity** –Daily delivery quantities will be calculated by dividing the total monthly flow by the number of days in a given calendar month.

5.4 **Excess Production** – If, from time to time, the Supplier anticipates Biomethane production may exceed the maximum limits set out above, the Supplier shall notify FEI immediately of the anticipated delivery quantity, and FEI may, in its discretion, accept the additional Biomethane production volume. The Supplier will notify FEI at least six (6) months in advance of any proposed changes or improvements to the Biogas Facility or the Lands that could result in long term increase to Biomethane flow by more than 10% above the Maximum Daily Delivery quantity set out above to allow FEI to evaluate the impacts of such increase on the Interconnection Facilities and its gas distribution system and FEI’s ability to accommodate and accept such increased production volume.

5.5 **Exclusivity.** The Supplier covenants and agrees to exclusively sell the Biomethane to FEI; provided that if FEI is unable to accommodate and accept all the Biomethane from time to time, the Supplier shall be entitled to use, sell or otherwise dispose of the Biomethane in a commercially and environmentally reasonable manner after consultation with FEI.

5.6 **Title and Warranty.** Title to and responsibility for the Biomethane shall pass from the Supplier to FEI upon delivery to the Interconnection Facilities. The Supplier warrants that it has the right to convey and will transfer good and merchantable title to the Biomethane free and clear of all liens, encumbrances and claims.

5.7 **Indemnity.** The Supplier hereby agrees to indemnify and save FEI harmless from all losses, liabilities or claims including reasonable legal fees and costs of court arising from or out of claims of title, personal injury or property damage from the Biomethane or other charges thereon (“**Claims**”) which attach before title passes to FEI. FEI hereby agrees to indemnify and save the Supplier harmless from all Claims which attach after title passes to FEI. Despite the foregoing, the Supplier will be liable for all Claims to the extent that such Claims arise from the failure of the Biomethane to meet the Specifications or to deliver title to the Biomethane to FEI free and clear of any encumbrances.

## 6. PURCHASE PRICE AND PAYMENT

6.1 **Purchase Rate.** FEI shall pay the Supplier for the quantity of Biomethane delivered to the Interconnection Facilities, as determined by meter readings, at the following rates, effective receipt of BCUC approval:

- (a) For Biomethane delivered up to Base Monthly Delivery, the rate of [REDACTED] per GJ, subject to annual adjustment pursuant to section 6.2 (the “**Base Rate**”); and
- (b) For Biomethane delivered in excess of the Base Monthly Delivery, a Cost Adjustment will be applied. The “Cost Adjustment” will be calculated as the Base Rate less [REDACTED] of the Marginal Biogas Profit; where “**Marginal Biogas Profit**” is calculated as indicated in the following clause, and subject to verification by FEI;

[REDACTED]

A sample monthly calculation is shown in Schedule B.

6.2 **Purchase Rate Inflation.** The Base Rate shall be subject to an annual increase of [REDACTED] percent [REDACTED] from the previous Base Rate on 1<sup>st</sup> of November of each year of the Term beginning November 1, 2012.

6.3 **Payment Terms.** Payment will be made in Canadian dollars and be subject to the following terms:

- (a) On or about the 15th day of each month, FEI shall generate a statement for the preceding month showing the quantity of Biomethane delivered to the Interconnection Facilities in GJ, the applicable rate and the amount payable. If the quantity of Biomethane delivered or the Cost Adjustment is not known by the billing date, FEI will issue the statement based on a reasonable estimate of the amount delivered and the Cost Adjustment and make the necessary adjustments as soon as practical and in any event by the next billing period.
- (b) FEI will pay the purchase price within 30 days of delivery of the Biomethane delivery statement to the Supplier .
- (c) Any errors in any statement or disputes as to amounts due shall be promptly reported to FEI and any resulting underpayments or overpayments identified will be refunded or repaid with accrued interest at the rate set out in section 6.3(d).
- (d) Overdue payments shall be subject to a late payment charge of 1.5% per month (19.56% per annum).

## 7. GREENHOUSE GAS (GHG) EMISSIONS

[REDACTED]

7.2 **Verification by the Supplier.** At the request of FEI, the Supplier will verify the Biomethane is carbon neutral in accordance with the 2006 IPCC Guidelines for National Greenhouse Gas Inventories.

7.3 **Right of First Refusal.** If the Supplier generates and is entitled to any GHG credits for the capture and destruction of methane through the use and operation of the Biogas Facility, FEI retains the first right of refusal to purchase such GHG credits in excess of those the Supplier may retain for its own use at fair market price.

## 8. LETTER OF CREDIT

8.1 **Letter of Credit.** The Supplier shall, at the request of the FEI, provide FEI with a letter of credit issued by a Canadian Chartered Bank satisfactory to FEI in an amount equal to the value of those portions of the Interconnection Facilities located below-ground which can reasonably be expected to be stranded in the case of Termination. The value of the Letter of Credit will be reduced by an amount equal to 25% of the total value each anniversary date of the Effective Date until the value is equal to zero. FEI acknowledges and agrees that provided the Supplier is in compliance with all the terms and conditions of this Agreement, FEI will not request a letter of credit within the first twelve (12) months of the Effective Date of this Agreement.

## 9. DEFAULT

9.1 **Default.** Either party (the “**Defaulting Party**”) shall be in default of this Agreement if the Defaulting Party is in breach of any term, covenant, agreement, condition or obligation imposed on it under this Agreement, provided that:

- (a) the other party (the “**Non-Defaulting Party**”) provides the Defaulting Party with a written notice of such default and a 10-day period within which to cure such a default (the “**Cure Period**”); and
- (b) the Defaulting Party fails to cure such default during the Cure Period, or if such default is not capable of being cured within the Cure Period, fails in good faith to commence the curing of such default upon receipt of notice of default and to continue to diligently pursue the curing of such default thereafter until cured.

9.2 **Effect of Default.** Upon default, the Non-Defaulting Party may, at its option and in addition to and without liability therefore or prejudice to any other right or remedy it may have:

- (a) cease performing its obligations under this Agreement, including suspending or refusing to make any payment due hereunder, until the default has been fully remedied, and no such action shall relieve the Defaulting Party from any of its obligations under this Agreement;
- (b) undertake the necessary steps to remedy the default at the Defaulting Party’s expense, and such action shall not relieve the Defaulting Party from any of its obligations under this Agreement; or
- (c) terminate this Agreement immediately upon notice to the other party, whereupon the provisions of section 10 shall apply.

**10. EFFECT OF EXPIRY OR TERMINATION.**

- 10.1 **Removal of Interconnection Facilities.** Upon the expiry or early termination of this Agreement, including in the event of termination upon default pursuant to section 9.2(c), FEI will, within 90 days following the expiry date or termination date, as the case may be, remove the Interconnection Facilities from the Lands; provided that FEI will be obligated to remove only those portions of the Interconnection Facilities to surface level, and any portion of the Interconnection Facilities not removed by FEI will become the property of the Supplier at no cost to the Supplier.

**11. INSURANCE REQUIREMENTS**

- 11.0 **Insurance.** Each party shall obtain and maintain the following insurance coverage and provide proof of coverage to the other party:

- (a) General Commercial Liability Insurance from insurers registered in and licensed to underwrite insurance in British Columbia for bodily injury, death and property damage in the amount of \$5,000,000 per occurrence naming the other party as an additional insured with respect to this Agreement; and
- (b) Such other insurance as reasonably required by the other party from time to time.

Each party shall be responsible for payment of any deductibles of their policies. All such policies shall provide that the insurance shall not be cancelled or changed in any way without the insurer giving at least 10 calendar days written notice to the other party.

**12. ENVIRONMENTAL PROVISIONS**

- 12.1 **Definition of Contaminants.** “Contaminants” means collectively, any contaminant, toxic substances, dangerous goods, or pollutant or any other substance which when released to the natural environment is likely to cause, at some immediate or future time, material harm or degradation to the natural environment or material risk to human health, and includes any radioactive materials, asbestos materials, urea formaldehyde, underground or aboveground tanks, pollutants, contaminants, deleterious substances,



dangerous substances or goods, hazardous, corrosive or toxic substances, hazardous waste or waste of any kind, pesticides, defoliants, or any other solid, liquid, gas, vapour, odour or any other substance the storage, manufacture, disposal, handling, treatment, generation, use, transport, remediation or release into the environment of which is now or hereafter prohibited, controlled or regulated by law.

12.2 **Supplier Release and Indemnity.** Despite any other provision of this Agreement, the Supplier acknowledges and agrees that FEI is not and shall not be responsible for any Contaminants now present, or present in the future, in, on or under the Lands, or that may or may have migrated on or off the Lands and hereby releases and agrees to indemnify FEI and its directors, officers, employees, successors and permitted assigns, from any and all liabilities, actions, damages, claims (including remediation cost recovery claims), losses, costs, orders, fines, penalties and expenses whatsoever (including all consulting and legal fees and expenses on a solicitor-client basis) arising from or in connection with:

- (a) any release or alleged release of any Contaminants at or from the Lands;
- (b) the presence of any Contaminants on or off the Lands before or after the Effective Date of this Agreement;

except with respect to any Contaminants brought onto the Lands by FEI or any Contaminants released from the Lands as a result of any negligent act or omission of FEI.

12.3 **FEI Release and Indemnity.** Despite any other provision of this Agreement, FEI shall release and indemnify the Supplier and its directors, officers, employees, successors and permitted assigns, from any and all liabilities, actions, damages, claims (including remediation cost recovery claims), losses, costs, orders, fines, penalties and expenses whatsoever (including all consulting and legal fees and expenses on a solicitor-client basis) arising from or in connection with to any Contaminants brought onto the Lands by FEI or any Contaminants released from the Lands as a result of any negligent act or omission of FEI.

### 13. INDEMNIFICATION AND LIMITATION OF LIABILITY.

13.1 **Indemnification.** Each party shall indemnify and hold harmless the other party and its employees, directors and officers from and against any and all adverse claims, losses, suits, actions, judgments, demands, debts, accounts, damages, costs, penalties and expenses (including all legal fees and disbursements) arising from or out of:

- (a) the negligence or wilful misconduct of such party, its employees, directors, officers or contractors; or
- (b) the breach by such party of any of the provisions contained in this Agreement.

13.2 **Limitation of Liability.** Each party's liability to the other party under this Section 13 shall be limited to the payment of direct damages. In no event shall either party be responsible or liable to the other party for any indirect, consequential, punitive, exemplary or incidental damages of the other party or any third party arising out of or related to this Agreement even if the loss is directly attributable to the gross negligence or wilful misconduct of such party, its employees, or contractors.

13.3 **Duty to Mitigate.** Each party has a duty to mitigate the damages that would otherwise be recoverable from the other party pursuant to this Agreement by taking appropriate and commercially reasonable actions to reduce or limit the amount of such damages or amounts.

#### 14. ARTICLE 14 - FORCE MAJEURE

14.1 **Effect of Force Majeure.** Neither party will be in default of this Agreement by reason only of any failure in the performance of such party's obligations pursuant to this Agreement if such failure arises without the fault or negligence of such party and is caused by any event of Force Majeure (as defined below) that makes it commercially impracticable or unreasonable for such party to perform its obligations under this Agreement and, in such event, the obligations of the parties will be suspended to the extent necessary for the period of the Force Majeure condition, save and except neither party will be relieved of or released from its obligations to make payments to the other party as a result of an event of Force Majeure. For the purpose of this section, "**Force Majeure**" means any cause which is unavoidable or beyond the reasonable control of any party to this Agreement and which, by the exercise of its reasonable efforts, such party is unable to prevent or overcome, including, acts of God, war, riots, intervention by civil or military authority, strikes, lockouts, accidents, acts of civil or military authority, or orders of government or regulatory bodies having jurisdiction, or breakage or accident to machinery or lines of pipes, or freezing of wells or pipelines or the failure of gas supply, temporary or otherwise; provided however, the lack of funds or other financial cause shall not be an event of Force Majeure.

14.2 **Notice of Force Majeure.** The party whose performance is prevented by an event of Force Majeure must provide notification to the other party of the occurrence of such event as soon as reasonably possible.

#### 15. DISPUTE RESOLUTION

15.1 **Dispute Resolution.** Where any dispute arises out of or in connection with this Agreement, including failure of the parties to reach agreement hereunder, either party may request the other party to appoint senior representatives to meet and attempt to resolve the dispute either by direct negotiations or mediation. Unresolved disputes shall be settled by arbitration under the National Arbitration Rules of the ADR Institute of Canada Inc. for Dispute Resolution conducted by a single arbitrator.

15.2 **Performance of Obligations.** The parties shall continue to fulfill their respective obligations pursuant to this Agreement during the resolution of any dispute in accordance with this section.

#### 16. CONFIDENTIALITY

16.1 **Confidentiality.** All information or documentation received by a party (the "**Receiving Party**") which has been specifically marked by other party (the "**Disclosing Party**") as confidential (the "**Information**") shall be deemed to be confidential and proprietary to the Disclosing Party. Except as otherwise provided herein, the Receiving Party shall not directly or indirectly disclose the Information to any third party without the prior written

consent of the Disclosing Party. Such consent is not required where the third party is another contractor or consultant retained by the Receiving Party for the purposes contemplated in this Agreement and to the extent that such disclosure is necessary for the proper performance of this Agreement or such disclosure is required by law.

- 16.2 **Exception for Regulatory Submission.** Despite the foregoing, the Receiving Party may use the Information in the preparation of and submissions to regulatory agencies.
- 16.3 **Exclusions.** The obligation of confidentiality set out above shall not apply to material, data or information which is known to either party prior to their receipt thereof, which is generally available to the public or which has been obtained from a third party which has the right to disclose the same.

## 17. GENERAL

- 17.1 **Costs.** Except as otherwise set out in this Agreement, each party will be responsible for the payment of its own costs related to performing its obligations under this Agreement.
- 17.2 **Publicity.** Neither party shall initiate any media releases, interviews, or presentations to the media relating to this Agreement without the agreement and approval of the other party, not to be unreasonably withheld or delayed
- 17.3 **Compliance with Laws.** Each party covenants, as a material provision of this Agreement, it will comply with all codes, statutes, by-laws, regulations or other laws in force in British Columbia during the Term.
- 17.4 **Governing law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada. The parties hereby attorn to the jurisdiction of the courts of British Columbia and all courts competent to hear appeals therefrom.
- 17.5 **Notice.** Any invoices, payments, notices or other communication required to be given or made pursuant to the Agreement shall, unless otherwise expressly provided herein, shall be in writing and shall be personally delivered to or sent by facsimile to either party at its address set forth below and deemed to have been received the next business day following delivery or facsimile transmittal:

If to: FortisBC Energy Inc.  
16705 Fraser Highway, Surrey, BC V4N 0E8  
Attention: Doug Stout, VP Energy Solutions & External Relations  
Fax: 604-592-7670

With a copy to: **Scott Gramm**  
Email: [scott.gramm@fortisbc.com](mailto:scott.gramm@fortisbc.com)

If to: Fraser Valley Biogas Ltd.  
2016 Inter-Provincial Highway, Abbotsford, BC, V3G 2H8

Attention: **Pete Schouten**

With a copy to: [pete@heppells.ca](mailto:pete@heppells.ca)

- 17.6 **Schedules.** The schedules attached to this agreement are an integral part of this Agreement and are hereby incorporated into this Agreement as a part thereof.
- 17.7 **Amendments to be in writing.** Except as set out in this Agreement, no amendment or variation of the Agreement shall be effective or binding upon the parties unless such amendment or variation is set forth in writing and duly executed by the parties.
- 17.8 **Waiver.** No party is bound by any waiver of any provision of this Agreement unless such waiver is consented to in writing by that party. No waiver of any provisions of this Agreement constitutes a waiver of any other provision, nor does any waiver constitute a continuing waiver unless otherwise provided.
- 17.9 **Assignment.** Neither party shall assign its rights and obligations under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld, delayed or conditioned. Despite the foregoing, FEI may assign the Agreement, or parts thereof, to any of its affiliates.
- 17.10 **Enurement.** This Agreement enures to the benefit of and is binding on the parties and their respective successors and permitted assigns.
- 17.11 **Survival.** The following provisions shall survive the termination or expiration of this Agreement: Sections 12, 13, 15, 16 and section 17.5.
- 17.12 **Remedies Cumulative.** All rights and remedies of each party under this Agreement are cumulative and may be exercised at any time and from time to time, independently and in combination.
- 17.13 **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination does not impair or affect the validity, legality or enforceability of any other provision of this Agreement.
- 17.14 **Further Assurances.** The parties shall sign such further and other documents and do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement.
- 17.15 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no conditions, covenants, representations, warranties or other provisions, whether express or implied, collateral, statutory or otherwise, relating to the subject matter of this Agreement except as provided in this Agreement.
- 17.16 **Time is of the essence.** Time is of the essence of this Agreement.

17.17 **Execution.** This Agreement may be executed in counterparts, each of which shall be deemed as an original, but all of which shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile or electronic transmission hereof shall be as effective as delivery of an originally executed counterpart hereof.

17.18 **Interpretation.** In and for the purpose of this Agreement

- (a) this “**Agreement**” means this agreement as the same may from time to time be modified, supplemented or amended in effect,
- (b) the headings are for convenience only and do not form a part of this Agreement and are not intended to interpret, define or limit the scope, extent or intent of this Agreement, and
- (c) the singular of any term includes the plural, and vice versa, the use of any term is generally applicable to any gender and, where applicable, a corporation, the word “or” is not exclusive and the word “including” is not limiting (whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto).

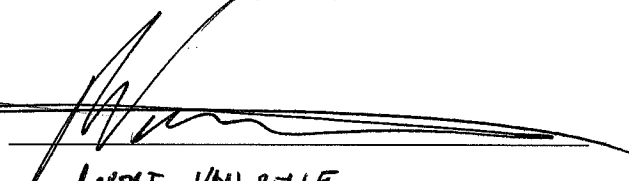
**IN WITNESS WHEREOF** the parties hereto have executed this Agreement as of the day and year first above written.

**FORTISBC ENERGY INC.**  
by its authorized signatory:

**FRASER VALLEY BIOGAS LTD.**  
by its authorized signatory:



**D.L. Stout, Vice-President**  
Energy Solutions &  
External Relations



**ROBERT VAN BELLE**  
DIRECTOR

*Schedules attached:*

*Schedule A – Biomethane Specifications*

*Schedule B – Sample Monthly Calculation of Purchase Price*

**SCHEDULE A**  
**BIOMETHANE SPECIFICATIONS**

1. The Biomethane must meet the pipeline quality specifications identified in the Westcoast Energy General Terms and Conditions, Article 12, item 12.06, as may be amended, replaced or superseded from time to time, provided that if, during the Term, such terms and conditions cease to exist, then the applicable specifications shall be those prescribed by FEI, acting reasonably, at such time and from time to time.

For references purposes only, the applicable Westcoast Energy General Terms and Conditions, Article 12, item 12.06 as at the Effective Date of this Agreement are recreated below:

<p>12.06 <i>Residue Gas at Receipt Points - Residue gas delivered to Westcoast by or for the account of a Shipper at a Receipt Point shall:</i></p> <p>(a) <i>not contain sand, dust, gums, oils and other impurities or other objectionable substances in such quantities as may be injurious to pipelines or may interfere with the transmission or commercial utilization of the gas;</i></p> <p>(b) <i>not contain more than six milligrams per cubic meter of hydrogen sulphide;</i></p> <p>(c) <i>not contain water in the liquid phase and not contain more than 65 milligrams per cubic meter of water vapour;</i></p> <p>(d) <i>be free of hydrocarbons in liquid form and not have a hydrocarbon dew-point in excess of minus 9°C at the delivery pressure;</i></p> <p>(e) <i>not contain more than 23 milligrams per cubic meter of total sulphur;</i></p> <p>(f) <i>not contain more than two percent by volume of carbon dioxide;</i></p> <p>(g) <i>be as free of oxygen as Shipper can keep it through the exercise of all reasonable precautions and shall not in any event contain more than 0.4 percent by volume of oxygen;</i></p> <p>(h) <i>have a temperature not exceeding 54°C; and</i></p> <p>(i) <i>have a total heating value of not less than 36.00 megajoules per cubic meter."</i></p>
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2. In addition to the foregoing, the Biomethane shall:
- (a) contain not more than 1 milligram per cubic meter of total siloxanes; and
- (b) must be free of objectionable materials.

**Biomethane Agreement Sample Monthly Payment Calculation**

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The following is a sample calculation for the purposes of clarification:

Scenario 1 - Month of May, year 1

Total Biomethane delivered = [REDACTED]  
Days = [REDACTED]  
Daily Delivery = [REDACTED] Day  
This is less than the Base Daily Delivery, therefore the rate is [REDACTED] GJ

---

Payment for month

[REDACTED] J [REDACTED] \$

---

Scenario 2 - Month of April year 2 of Term

Total Biomethane delivered = [REDACTED]  
Days = [REDACTED]  
Daily Delivery = [REDACTED]

This is above the Base Daily Delivery, therefore:

- (a) Gas up to 175 GJ/day (5,250 GJ for this month) is purchased at a rate of [REDACTED] due to inflation) and;
- (b) the remaining gas is purchased at \$10.76 GJ
  - a. Assumes Marginal Gas Profit of [REDACTED]/GJ
  - b. Multiply by [REDACTED]
  - c. Reduce rate [REDACTED]

---

Payment for month:

[REDACTED]

---

~~CONFIDENTIAL~~

---

**Appendix C**  
**DRAFT ORDER**

~~FILED CONFIDENTIALLY~~





**ORDER NUMBER**

E-xx-xx

IN THE MATTER OF  
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

FortisBC Energy Inc.

Section 71 Filing of an Amending Agreement to the Biomethane Purchase Agreement between FortisBC Energy Inc. and Fraser Valley Biogas Ltd.

**BEFORE:**

[Panel Chair]  
Commissioner  
Commissioner

on Date

**ORDER**

**WHEREAS:**

- A. On November 18, 2022, FortisBC Energy Inc. (FEI) filed with the British Columbia Utilities Commission (BCUC) an application for acceptance of an amending agreement dated October 31, 2022 (Amending Agreement No. 1) to the original Biomethane Purchase Agreement (BPA) between FEI and Fraser Valley Biogas Ltd. (FVB), pursuant to section 71 of the *Utilities Commission Act* (UCA) and BCUC Rules for Natural Gas Energy Supply Contracts (Rules) (Application);
- B. On March 22, 2012, by Order E-7-12, the BCUC accepted the BPA between FEI and FVB, dated January 18, 2012, which expired October 31, 2022 (Original BPA);
- C. Section 18(1) of the *Clean Energy Act* (CEA) defines a prescribed undertaking as “...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”;
- D. Section 18(3) of the CEA states that “the commission must not exercise a power under the UCA in a way that would directly or indirectly prevent a public utility...from carrying out a prescribed undertaking”;
- E. On May 25, 2021, the LGIC, by Order in Council (OIC) 306/2021, approved an amendment to the Greenhouse Gas Reduction (Clean Energy) Regulation (GGRR), which among other things, repealed and replaced section 2 (3.8) to state:

(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;
- F. Amending Agreement No. 1 amends the price for which FEI will acquire the biomethane and extends the term to now expire on May 1, 2023;
- G. FEI requests that the Application including Appendices be kept confidential due to the commercially sensitive nature; and
- H. The BCUC has reviewed the Application and considers the following determinations are warranted

**NOW THEREFORE** pursuant to section 71 of the UCA and section 18 of the CEA and the GGRR, the BCUC orders as follows:

1. The BCUC accepts for filing Amending Agreement No. 1 between FEI and FVB.
2. The BCUC will keep the Application including Appendices confidential as requested by FEI as they contain commercially sensitive information.

**DATED** at the City of Vancouver, in the Province of British Columbia, this (XX) day of (Month Year).

BY ORDER

(X. X. last name)  
Commissioner

Attachment (Yes? No?)

~~CONFIDENTIAL~~

Appendix D

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**STATISTICS CANADA – CONSUMER PRICE INDEX FOR  
BRITISH COLUMBIA**

~~FILED CONFIDENTIALLY~~



[Home](#) > [Data](#)

> [Consumer Price Index by geography, all-items, monthly, percentage change, not seasonally adjusted, Canada, provinces...](#)

## Add/Remove data

# Consumer Price Index by geography, all-items, monthly, percentage change, not seasonally adjusted, Canada, provinces, Whitehorse, Yellowknife and Iqaluit <sup>1, 2, 3</sup>

Frequency: Monthly

[Help](#)

Table: 18-10-0004-02

[Save my customizations](#)

Release date: 2007-06-19

Geography: Canada, Province or territory, Census subdivision, Census metropolitan area, Census metropolitan area part

▼ Customize table (Add/Remove data)

1 of 30 items selected | [Clear all](#)

Select all items

**Select specific levels only**

Canada [11124]

**Select all**

- Newfoundland and Labrador [10]
- Prince Edward Island [11]
- Nova Scotia [12]
- New Brunswick [13]
- Quebec [24]
- Ontario [35]
- Manitoba [46]
- Saskatchewan [47]
- Alberta [48]
- British Columbia [59]
- Whitehorse, Yukon [6001009]
- Yellowknife, Northwest Territories [6106023]
- Iqaluit, Nunavut [6204003]

1 of 333 items selected | [Clear all](#)

Select all items | Show  members (min. 5/max. 1000 members) ⓘ

**Select specific levels only**

All-items

- All-items (1992=100) (Terminated)
- All-items excluding food
- All-items excluding food and energy
- All-items excluding mortgage interest cost
- All-items excluding alcoholic beverages, tobacco products and smokers' supplies and recreational cannabis
- All-items excluding alcoholic beverages and recreational cannabis (Terminated)
- All-items excluding tobacco products and smokers' supplies and recreational cannabis (Terminated)
- All-items excluding shelter
- All-items excluding energy
- All-items excluding gasoline
- All-items excluding shelter, insurance and financial services (Terminated)
- Private transportation excluding gasoline
- Food and energy
- Fresh fruit and vegetables

▼ ...

Time :

Estimated number of data points selected is 1.

[Download options](#)

Didn't find what you're looking for? [View related tables, including other calculations and frequencies](#)

Showing 1 records

Geography	Products and product groups <sup>3, 4</sup>	December 2020	November 2021	December 2021	November 2021 to December 2021	December 2020 to December 2021
British Columbia ( <a href="#">map</a> )	All-items	132.8	138.1	138.0	-0.1	3.9
<b>2002=100</b>						

**How to cite:** Statistics Canada. [Table 18-10-0004-02. Consumer Price Index by geography, all-items, monthly, percentage change, not seasonally adjusted, Canada, provinces, Whitehorse, Yellowknife](#)