bcuc
British Columbia
Utilities Commission

Patrick Wruck
Commission Secretary

Commission.Secretary@bcuc.com
bcuc.com

Suite 410, 900 Howe Street
Vancouver, BC Canada V6Z 2N3
P: 604.660.4700
TF: 1.800.663.1385
F: 604.660.1102

October 29, 2021

Sent via email/eFile

Ms. Diane Roy
Vice President, Regulatory Affairs
FortisBC Energy Inc.
16705 Fraser Highway
Surrey, BC V4N 0E8
gas.regulatory.affairs@fortisbc.com

Re: FortisBC Energy Inc. (FEI) – Application for Approval of Revised/Renewal Rates for the Langford Compressed Natural Gas Fueling Station in Langford, BC pursuant to the Province of British Columbia's Greenhouse Gas Reduction (Clean Energy) Regulation – Project No. 1599169 – Decision and Order G-311-21

Dear Ms. Roy:

Further to your December 23, 2020 filing of the above-noted application, enclosed please find British Columbia Utilities Commission Decision and Order G-311-21.

Sincerely,

Original signed by:

Patrick Wruck
Commission Secretary

/jo
Enclosure

British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, BC Canada V6Z 2N3
bcuc.com
P: 604.660.4700
TF: 1.800.663.1385
F: 604.660.1102

FortisBC Energy Inc.

Application for Approval of Revised/Renewal Rates for the Langford Compressed Natural Gas Fueling Station in Langford, BC pursuant to the Province of British Columbia's Greenhouse Gas Reduction (Clean Energy) Regulation

---

Decision and Order G-311-21

October 29, 2021

Before:
W. M. Everett, QC, Commissioner
B. A. Magnan, Commissioner
R. I. Mason, Commissioner

TABLE OF CONTENTS

Page no.

Executive Summary

On December 23, 2020, FortisBC Energy Inc. (FEI) filed an application requesting approval of the rates established in the Fueling Services Agreements with ColdStar Solutions Inc. (ColdStar)(ColdStar Agreement) and GFL Environmental Inc. (GFL) (GFL Agreement and together the Agreements), on an interim and permanent basis, effective January 1, 2021, for Compressed Natural Gas (CNG) fueling service at FEI's Victoria Regional Office located in Langford, BC (Langford Fueling Station) (Application).

Further, as a result of GFL's acquisition of the solid waste business of Evergreen Industries Ltd. (Evergreen), FEI requests that Evergreen's existing third-party fueling agreement for the Langford Fueling Station be terminated.[1]

The British Columbia Utilities Commission (BCUC) approved FEI's rates for providing fueling service to ColdStar from the Langford Fueling Station in the CNG fueling service agreement (Original Fueling Agreement) on November 19, 2013.[2] In addition to ColdStar, there are currently five other customers approved by the BCUC for fuelling at the Langford Fueling Station.[3] The overall demand for CNG provided by the Langford Fueling Station between 2014 and 2020 resulted in FEI recovering approximately 106 percent of the station's actual cost of service in that period.[4]

The Panel finds that the Langford Fueling Station is a prescribed undertaking as defined in Section 18 of the *Clean Energy Act* (CEA) and section 2(2) of the Greenhouse Gas Reduction (Clean Energy) Regulation (GGRR), and further finds that the Langford Fueling Station will not cease to be a prescribed undertaking after March 31, 2022 as a result of the termination of the undertaking period defined in section 1 of the GGRR. The Langford Fueling Station meets the conditions set out for a prescribed undertaking in section 2(2)(a) and (c) of the GGRR and the Panel is satisfied that FEI has not exceeded the limit on average station expenditures set out in section 2(2)(b) of the GGRR. There is no provision in the GGRR for prescribed undertakings to cease to be prescribed undertakings after the expiration of the undertaking period, which is defined in section 1 of the GGRR as "the period that ends on March 31, 2022."

Section 3 of Order in Council Direction No. 5 to the BCUC[5] provides that the BCUC must treat FEI's costs and revenues associated with its CNG service as part of its natural gas class of service and allocate those costs and revenues to all non-bypass customers. As a result of section 18 of the CEA, section 2(2) of the GGRR and Direction No. 5 to the BCUC, the Panel must allow FEI to recover the costs of the Langford Fueling Station from its non-bypass natural gas customers. The Panel does, however, retain the discretion to determine how the costs of the station are allocated between FEI's non-bypass natural gas customers; to determine the rates charged by FEI to users of the station; and to determine whether these rates are just and reasonable.

The Panel finds that the proposed rates in the Agreements are just and reasonable and approves them. The Panel agrees with the conclusion of the BCUC's Alternative Energy Services (AES) Inquiry that "it is crucial that, except to the extent required by legislation, there be no cross-subsidization as between existing ratepayers and

[1] Exhibit B-1, Section 1.3, p. 2.
[2] Order G-187-13, dated November 19, 2013.
[3] Exhibit B-1, Section 1.2, p. 1.
[4] Exhibit B-2, FEI Response to BCUC IR 2.2.
[5] Issued on November 28, 2013 by the Lieutenant Governor OIC No. 557.

CNG Service customers."[6] FEI's proposed rates for ColdStar and GFL are forecast to recover 107 percent of the Langford Fueling Station's cost of service over the next five years once the forecast revenues from other customers fueling at the station are taken into consideration. Accordingly, the Panel is persuaded that there is a reasonable expectation that FEI will recover the station's full cost of service from the station's users over the next five years.

The Panel also finds it is just, reasonable and not unduly discriminatory or unduly preferential to charge new third-party customers the rate approved in the Agreements and to continue to charge existing third-party customers their existing rates until their agreements expire or are amended. The Panel considers it is not unduly discriminatory that existing third-party customers continue to be charged their existing rate because these customers are eligible for the new rate should they extend or amend their agreements.

The Panel consents to the termination of the Evergreen third-party fueling agreement for the Langford Fueling Station.

The Panel cannot accept Clean Energy Fuels' arguments that the BCUC should reject the Application because FEI hinders competition as a result of its monopoly position, and that the BCUC should direct FEI to operate its CNG service as a non-regulated business. Direction No. 5 constrains the Panel from taking actions such as directing FEI to offer its CNG service as an unregulated business to avoid hindering competition where it is feasible, a concern accepted by the BCUC in the AES Inquiry.

---

[6] FEI Inquiry regarding the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives (AES Inquiry), AES Report, p. 53.

1.0 Introduction

1.1 Application and Approvals Sought

On December 23, 2020, FortisBC Energy Inc. (FEI) applied to the British Columbia Utilities Commission (BCUC), pursuant to sections 59 to 61 and 89 of the *Utilities Commission Act* (UCA) (Application), seeking approval of the rates separately established in the Fueling Service Agreements with ColdStar Solutions Inc. (ColdStar) (ColdStar Agreement) and GFL Environmental Inc. (GFL) (GFL Agreement and together the Agreements), on an interim and permanent basis effective January 1, 2021, for compressed natural gas (CNG) fueling service at FEI's Victoria Regional Office location in Langford, BC (Langford Fueling Station).[7] FEI proposes that any variance between the interim and permanent rates will be refunded to or collected from ColdStar and GFL by way of a billing mechanism following the approval of the permanent rates.[8]

Additionally, as a result of GFL's acquisition of the solid waste business of Evergreen Industries Ltd. (Evergreen) on Vancouver Island, FEI has requested that its existing third-party fueling agreement at the Langford Fueling Station be terminated and GFL be permitted to assume Evergreen's minimum annual quantity commitment under the GFL Agreement.[9]

1.2 Background

On April 11, 2013,[10] the BCUC accepted that the Greenhouse Gas Reduction (Clean Energy) Regulation (GGRR) established the need for CNG and Liquefied Natural Gas (LNG) fueling stations that are undertaken by FEI as prescribed undertakings as defined by section 18 of the *Clean Energy Act* (CEA) and the GGRR, and that these prescribed undertakings are exempt from the Certificate of Public Convenience and Necessity requirements under the UCA for the term of the GGRR.

On November 19, 2013,[11] the BCUC approved FEI's rate design and rates for providing fueling service from the Langford Fueling Station, as set out in the CNG fueling service agreement between FEI and ColdStar (Original Fueling Agreement). The rates in the Original Fueling Agreement were effective beginning on the in-service date of the Langford Fueling Station and for an initial term of five years (Initial Term), and a two-year renewal term ending December 31, 2020. The Langford Fueling Station met the requirements of section 2(2)(c)(i) of the GGRR, as 80 percent of the station's forecast total operating costs for the first five years of the operation were recovered from one or more persons under a take-or-pay agreement with a minimum term of five years.[12]

In addition to ColdStar, there are currently five other customers approved by the BCUC for fuelling at the Langford Fueling Station. The overall demand served from the Langford Fueling Station in the Initial Term of operation resulted in FEI recovering approximately 117 percent of the forecast cost of service.[13]

---

[7] Exhibit B-1, Cover Letter; Section 1.1, p. 1.
[8] Exhibit B-1, Section 1.3, p. 2.
[9] Exhibit B-1, Section 1.2, p. 2.
[10] Order G-56-13.
[11] Order G-187-13.
[12] Exhibit B-1, Section 1.2, pp. 1–2.
[13] Exhibit B-1, Section 1.2, p. 2

On December 17, 2020, FEI separately entered into the ColdStar Agreement and GFL Agreement each of which established the terms, conditions and rates for ColdStar and GFL, respectively, to receive fueling service from the FEI Langford Fueling Station. GFL will be a new customer at the Langford Fueling Station.[14]

By Order G-6-21, the BCUC, among other things, approved the rates established in the Agreements on an interim basis, effective January 1, 2021. FEI was directed to refund to or recover from ColdStar and GFL any variance between the interim rates and the permanent rates, as determined by the BCUC following the final determination of the Application.

1.3 Regulatory Process and Participants

On January 8, 2021, the BCUC established a preliminary regulatory timetable for the review of the Application, which included one round of BCUC information requests (IR) and responses to IRs.[15] On April 13, 2021, the BCUC determined that public notification was warranted and established a further regulatory timetable for the review of the Application, which included intervener registration, a second round of BCUC IRs, one round of intervener IRs, and responses to IRs.[16] On June 24, 2021, the BCUC established the remainder of the regulatory process, which included written final and reply arguments.[17]

ColdStar and Clean Energy Fuels (Clean Energy) registered as interveners in the proceeding. One letter of comment was received.

1.4 Legislative and Regulatory Framework

Sections 58–60 of the *Utilities Commission Act* (UCA) provide the BCUC with its rate setting jurisdiction over public utilities. These sections require the BCUC to set rates that are not unjust, unreasonable, unduly preferential, or unduly discriminatory in respect of services provided by regulated utilities.

Section 61(2) of the UCA provides that a public utility must not rescind a rate schedule without the consent of the BCUC.

Section 18 of the CEA modifies the BCUC's rate setting powers under the UCA where a public utility is carrying out a prescribed undertaking as defined in that section. Section 18(1) of the 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."[18]

Further, sections 18(2) and 18(3) of the CEA establish the BCUC's role in the setting of rates related to prescribed undertakings in these terms:[19]

> (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

[14] Exhibit B-1, Section 1.2, p. 2; Exhibit B-2, FEI Response to BCUC IR 3.1.
[15] Order G-6-21.
[16] Order G-111-21.
[17] Order G-191-21.
[18] *Clean Energy Act*, SBC 2010, c. 22, s. 18(1).
[19] *Clean Energy Act*, SBC 2010, c. 22, s. 18(2) – 18(3).

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.

On May 14, 2012, the Lieutenant Governor in Council (LGIC) issued Order in Council (OIC) No. 295 approving the GGRR, which describes classes of prescribed undertakings pursuant to section 18 of the CEA.

Section 2(2) of the GGRR establishes CNG fueling station service as a prescribed undertaking:

> (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 [CEA]:
>
> (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.

Section 1 of the GGRR defines "undertaking period" as "the period that ends on March 31, 2022."

In addition to the abovementioned legal framework, the BCUC's oversight of CNG services is guided by Direction No. 5 to the BCUC issued on November 28, 2013 by OIC No. 557.[20] Subsections 3(a) and (b) of Direction No. 5 to the BCUC state that when setting rates under the UCA for FEI, the BCUC must:

> (a) treat CNG service and LNG service, and all costs and revenues related to those services, as part of the utility's natural gas class of service;

[20] B.C. Reg. 245/2013, including amendments up to B.C. Reg. 115/2017, March 22, 2017.

(b) allocate all costs and revenues related to CNG service and LNG service to all applicable customers…

The term "applicable customers" is defined as customers of FEI other than customers receiving service: (a) under a fixed rate, or (b) in the Fort Nelson service area of FEI, unless the Fort Nelson service area no longer has a distinct rate base.[21]

Direction No. 5 to the BCUC defines "CNG service" as a service that includes one or both of the following:[22]

(a) compressing and dispensing of natural gas through specialized fuelling facilities or equipment;

(b) transporting CNG using specialized trailers or equipment;

1.5 Decision Framework

The Decision will address the following items:

- Section 2.0 examines whether the Langford Fueling Station continues to be a prescribed undertaking once the "undertaking period" as defined in section 1 of the GGRR and/or the terms as outlined in subsection 2(2)(c) of the GGRR has concluded;
- Section 3.0 considers the proposed rate design and rates established in the Agreements and discusses the expected cost recovery under the proposed rates, as well as past precedent of an approved rate that does not recover the full cost of service. Included in this section are key findings from the FEI Inquiry into the Offering of Products and Services in Alternative Energy Solutions (AES) and Other New Initiatives (AES Inquiry) Report that are relevant to the proposed rates for the provision of CNG service;
- Section 4.0 addresses the proposed rates for ColdStar and GFL as compared to the rates for third party customers of the station. This section also examines the proposed termination of Evergreen's existing third party fueling agreement; and
- Section 5.0 considers the issue raised by FEI in its reply argument that Clean Energy's final argument included new evidence that was not filed or tested in this proceeding.

2.0 Is the Langford Fueling Station a Prescribed Undertaking?

The table below summarizes the terms under the GGRR that the Original Fueling Agreement, approved by Order G-187-13, has completed.[23]

[21] Direction No. 5 to the BCUC, Section 1.
[22] Direction No. 5 to the BCUC, Section 1.
[23] Exhibit B-1, Section 2, p. 3.

Table 1: Fueling Agreement and Minimum GGRR Requirements[24]

Item	Term	Notes	GGRR Section	ColdStar and GFL Agreements	Agreement Section
1	Description of service	• Public utility constructs and operates, or purchases and operates, one or more compressed natural gas fueling stations	Section 2(2), (a)(i)(ii)	FEI owns and operates the Langford Fueling Station	Part 2 (B)
2	Expenditure limits	• Average station expenditures do not exceed $3 million per station in any year	Section 2(2), (b)	FEI did not exceed the $3 million per station average when the Langford Fueling Station was completed. No additional expenditures are expected.	Program related; no specific contract reference
3	Minimum term and minimum energy use	• 80 percent of the forecast total operating costs of the asset for the first five years of operation; or 60 percent of the forecast total operating costs of the asset for the first seven years of operation.	Section 2(2), (c)	Minimum term and minimum energy use completed.	Program related; no specific contract reference

FEI states there are no provisions of section 2(2) of the GGRR, or the GGRR generally, that limit the amount of time that a CNG fueling station is a prescribed undertaking. Rather, FEI considers that the correct legal analysis is that the Langford Fueling Station fits the definition of the class defined in section 2(2) of the GGRR and, therefore, is a prescribed undertaking for the purpose of section 18 of the CEA.

FEI states that even after the "undertaking period" as defined in section 1 of the GGRR (the period that ends on March 31, 2022), the Langford Fueling Station will continue to be in the class defined in section 2(2) of the GGRR and, therefore, will continue to be a prescribed undertaking.[25]

In being a prescribed undertaking as defined by section 18 of the CEA, any difference between the actual annual cost of service and actual annual revenue collected from customers (deficit or surplus), is recovered from or refunded to FEI's non bypass ratepayers.[26]

Based on the above, FEI maintains there is no provision of the CEA or any other legislation that indicates that a prescribed undertaking as determined by section 18 of the CEA ceases to be a prescribed undertaking at some point in time.[27] Accordingly, FEI expects to continue to execute fueling contracts for CNG service at the Langford Fueling Station by securing volume commitments to provide maximum cost recovery certainty and mitigate non-bypass customer risk, while meeting the requirements of the station customers. FEI considers this is the best approach to encourage continued adoption of natural gas for transportation and use of FEI fueling stations constructed as prescribed undertakings under the GGRR and to maximize cost recovery on a go forward basis.[28]

Positions of the Parties

FEI submits that the Langford Fueling Station has met the requirements to be a prescribed undertaking under section 2(2) of the GGRR. FEI explains that it entered into a binding agreement to construct and operate the

[24] Exhibit B-1, Section 2, Table 1, p. 3.
[25] Exhibit B-4, FEI Response to BCUC IR 11.1.
[26] Exhibit B-4, FEI Response to BCUC IR 11.4.
[27] Exhibit B-4, FEI Response to BCUC IR 11.1.
[28] Exhibit B-1, Section 2, pp. 3–4.

Langford Fueling Station within its service territory for the purposes of providing CNG fuel and fueling services to owners of vehicles that operate on compressed natural gas, and the minimum cost recovery requirements over the first five years of the station have been satisfied.[29]

FEI adds that over the Initial Term of the Original Fueling Agreement, the Langford Fueling Station met the requirements of section 2(2)(c)(i) of the GGRR, as 80 percent of the station's forecast total operating costs for the first five years of the operation were recovered from one or more persons under a take-or-pay agreement with a minimum term of five years.[30]

FEI submits that the Langford Fueling Station is, and will continue to be, a prescribed undertaking under section 18 of the CEA. FEI notes that section 2(2) of the GGRR provides that "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 [CEA]:…" [Emphasis added by FEI], and that section 7(1) of the *Interpretation Act* provides that "Every enactment must be construed as always speaking." Therefore, FEI submits that section 2(2) of the GGRR "continually has the effect of stating that stations that are in the class defined in that section are a prescribed undertaking."[31]

FEI submits that the term "undertaking period" in the GGRR cannot be construed as imposing a time limit on prescribed undertakings, as the term is not used anywhere in the GGRR to impose a time at which a CNG fueling station ceases to be a prescribed undertaking. Rather, the term is used as part of the definition of classes of prescribed undertakings, most notably, to impose maximum spending limits during the "undertaking period."[32]

Clean Energy submits that the undertaking period for a prescribed undertaking defined in the GGRR was not intended to be and cannot be construed as an "evergreen period," and that the period has already expired, or, alternatively, expires on March 31, 2022. Clean Energy further submits that FEI's reasons for why the Langford Fueling Station is still a prescribed underrating are "inconsistent, contradictory, and an extreme stretch of legal principles to benefit FEI and will continue to 'freeze out' open market competitors."[33]

FEI submits in reply that Clean Energy offers no explanation for its argument that the GGRR "was not intended to be and cannot be construed as an 'evergreen period' and that the subsidization period ends on March 31, 2022." FEI submits that Clean Energy is mistaken in its interpretation of the term "undertaking period" in the GGRR, and that FEI's investments made under the GGRR within the undertaking period will always be prescribed undertakings.[34]

Panel Discussion

The Panel finds that the Langford Fueling Station is a prescribed undertaking as defined in section 18 of the CEA and section 2(2) of the GGRR, and further finds that the Langford Fueling Station will not cease to be a prescribed undertaking after March 31, 2022 as a result of the termination of the undertaking period defined in section 1 of the GGRR.

[29] FEI Final Argument, p. 3.
[30] FEI Final Argument, p. 4.
[31] FEI Final Argument, p. 4.
[32] FEI Final Argument, p. 5.
[33] Clean Energy Final Argument, pp. 3–4, 16.
[34] FEI Reply Argument, p. 2.

The Langford Fueling Station meets the conditions set out for a prescribed undertaking in section 2(2)(a) and (c) of the GGRR because FEI entered into a binding commitment to construct and operate the station prior to March 31, 2022 within its service territory for the purposes of providing CNG fuel and fueling services to owners of vehicles that operate on compressed natural gas, and the minimum cost recovery requirements over the first five years of the station have been satisfied. The Panel is also satisfied that FEI has not exceeded the limit on average station expenditures set out in section 2(2)(b) of the GGRR.

Clean Energy submits that the undertaking period for a prescribed undertaking "has already expired, or, alternatively, expires on March 31, 2022," and infers that as a result the Langford Fueling Station is no longer or may shortly no longer be a prescribed undertaking. The Panel disagrees.

The term "undertaking period" is defined in section 1 of the GGRR as "the period that ends on March 31, 2022." That date is in the future, so clearly the undertaking period has not already expired, and Clean Energy offers no reason for why it might have done so. Further, even after March 31, 2022, when the undertaking period has expired, there is no provision in the GGRR for prescribed undertakings to cease to be prescribed undertakings after the expiration of the undertaking period. The undertaking period is used in section 2(2) of the GGRR only in reference to the definition of the tests for the average expenditure status on stations and the expenditures on administration and marketing.

The Panel notes that no party in this proceeding, including Clean Energy, disputes that the Langford Fueling Station has been a prescribed undertaking in the past.

3.0 Proposed Rates for the Renewal Period

Below is a comparison of the current rates calculated based on the terms and conditions of the Original Fueling Agreement and the proposed rates.

Table 2: Comparison of Current and Proposed 2021 Rates[35]

Output	Current Rates	Proposed 2021 Rates
Capital Rate	$8.479 per GJ	$4.420 per GJ
O&M Rate	$2.995 per GJ	$2.286 per GJ
OH&M Rate	$0.520 per GJ	$0.520 per GJ
Total Dispensing Rate	**$11.994 per GJ**	**$7.226 per GJ**

The "Total Dispensing Rate" as indicated in the above table is the sum of the components (i.e. Capital Rate, Operation and Maintenance (O&M) Rate, and Overhead and Marketing (OH&M) Rate) that make up the proposed rates for which approval is being sought. The Total Dispensing Rate will be applied to ColdStar's and GFL's consumption that is dispensed from the Langford Fueling Station and is subject to the annual minimum take-or-pay volume. The Capital, O&M and OH&M rate components allow FEI to recover from ColdStar and GFL

[35] Exhibit B-1, Section 3.1, Table 3, p. 6.

the capital costs of the station as well as account for incremental O&M and overhead expenditures associated with the use of the Langford Fueling Station in accordance with the Agreements.[36]

The proposed rates are based on a cost of service model that results in recovery of 82 percent of FEI's forecast cost of service of the station over a five-year period.[37] The expected level of recovery is discussed further in the subsection below. The proposed Capital Rate is based on the undepreciated capital of the Langford Fueling Station as of December 31, 2020, the minimum contract demand, and expected annual cost of service to be recovered.[38] FEI calculates the proposed O&M Rate using a forecast average of the annual O&M expense for the station over the next five years and the minimum contract demand, adjusted to reflect expected annual cost of service to be recovered. FEI anticipates average annual O&M expenses of $60 thousand to be reasonable considering the expected station load growth, aging equipment and electricity costs.[39] The OH&M Rate of $0.52/gigajoules (GJ) is unchanged and is in accordance with Order G-78-13.

FEI states the ColdStar and GFL Agreements reflect a market competitive rate that was sufficiently competitive for both ColdStar and GFL to make five-year take-or-pay collective volume commitments of 21,000 GJ per year,[40] and maximizes cost recovery to minimize cost risk to FEI's other non-bypass customers.[41] FEI considers the proposed total dispensing rate to be market competitive because it finds CNG fueling station customers tend to compare the CNG fueling service rates with competing transport fuel options, such as diesel fuel (based on diesel litre equivalent (DLE) prices). FEI states the proposed rates will allow ColdStar and GFL to fuel at the Langford Fueling Station at a competitive rate of approximately $0.61 per DLE[42] and adds that this is within the price range of its existing CNG fueling stations.[43] FEI provides as a comparison the average price per litre for diesel fuel in the Victoria area for the month of December 2020, which was $1.14,[44] and states that typically customers expect a 40 to 50 percent reduction in fuel savings when compared to diesel to justify their investment in CNG vehicles.[45] FEI adds that as vehicle incentives are scaled back every year in accordance with GGRR section 2(1)(b) (currently the base is at 10 percent), customers are seeking a competitive rate that provides a fuel savings that supports their ongoing and future investments in natural gas powered vehicles.[46]

FEI states that ColdStar currently has a volume commitment of 15,000 GJs with a fleet of 23 tractors and ColdStar intends to renew its volume commitment for another five years, provided FEI can offer a competitive rate at the Langford Fueling Station. FEI considers that a competitive rate will continue to encourage ColdStar to operate its existing CNG trucks while also growing its CNG fleet for the next five years, further contributing to greenhouse gas (GHG) reductions and air quality improvements in the province of BC.[47] FEI adds that GFL is

[36] Exhibit B-1, Section 3.1.1; p. 7, Table 4; Appendix A, Schedule A, p. 1.
[37] Exhibit B-1, Section 1.2, p. 2; Exhibit B-2, FEI Response to BCUC IR 3.1; Exhibit B-5, FEI Response to Clean Energy IR 1.2.
[38] Exhibit B-1, Section 3.1.1, p. 7.
[39] Exhibit B-1, Section 3.1.1, Table 5, p. 7; Exhibit B-2, FEI Response to BCUC IR 4.1.
[40] ColdStar and GFL have separately entered into Fueling Service Agreements with FEI for the five year renewal term. ColdStar has committed to a minimum annual quantity of 15,000 GJ; and GFL has committed to a minimum annual quantity of 6,000 GJ (Exhibit B-1, Section 3.1.1, Table 4, p. 6).
[41] Exhibit B-1, Section 1.2, p. 2; Section 3, p. 4.
[42] Exhibit B-2, FEI Response to BCUC IR 1.1.
[43] Exhibit B-4, FEI Response to BCUC IR 7.1
[44] Exhibit B-2, FEI Response to BCUC IR 1.1.
[45] Exhibit B-5, FEI Response to Clean Energy IR 2.1.
[46] Exhibit B-2, FEI Response to BCUC IR 1.1.
[47] Exhibit B-1, Section 3, p. 4.

seeking to add CNG vehicles to its Vancouver Island fleet with a plan to add more CNG trucks over time, dependent upon its ability to access fueling service at the Langford Fueling Station at a competitive rate.[48]

In addition to the volume commitments in the ColdStar and GFL Fueling Agreements, FEI had approximately 5,000 GJs of demand from other customers (third party customers) in 2020 at the Langford Fueling Station. FEI expects that the 5,000 GJs will continue to be consumed by these customers on a go forward basis.[49] Further, at the proposed rates, FEI considers that it will likely be able to attract additional volumes from ColdStar, GFL, other new and renewal customers, and spot customers.[50]

Cost Recovery

FEI states that although the GGRR enables it to recover costs from both the users of the fueling station and the non-bypass customer, FEI seeks to maximize station revenue from users of a station and minimize non-bypass customer cost recovery.[51] Over the first seven years of operation (2014 to 2020) at the Langford Fueling Station, FEI recovered 106 percent of the actual cost of service from its station customers, resulting in $83,362 (i.e. 6 percent of the actual cost of service) being refunded to its non-bypass customers.[52] FEI further states that although the rates in the Original Fueling Agreement were set at 91 percent recovery at the time of constructing the station, it successfully attracted additional volumes which resulted in it exceeding 100 percent cost recovery overall.[53]

Given the competitive markets in which ColdStar and GFL operate, FEI states that a CNG fueling rate based on 100 percent recovery of the Langford Fueling Station costs from ColdStar and GFL's take-or-pay volumes was not acceptable. GFL indicated it would not sign a fueling agreement for the Langford Fueling Station at a 100 percent cost recovery rate and ColdStar indicated that at a 100 percent cost recovery rate it would only renew on a spot basis, begin retiring its existing CNG trucks, and make no further investments in new CNG vehicles. FEI adds the scenario of 100 percent cost recovery would reduce revenue from the station and increase cost recovery risk for FEI's non-bypass customers. As such, FEI considered it was necessary to negotiate a market competitive rate with ColdStar and GFL.[54]

To illustrate the benefit of securing the ColdStar Agreement and GFL Agreement, FEI calculated the difference in the cost recovery of the Langford Fueling Station between the proposed rates, volume and term commitments in the Agreements and the continuation of the existing rates in the Original Fueling Agreement on a spot basis. As GFL would not fuel at the Langford Fueling Station if a competitive rate is not offered, no GFL fueling volumes were included in the short-term spot scenario in the calculation.[55] The following BCUC prepared table summarizes the difference in recovery between committed volumes and short-term spot volumes:

[48] Exhibit B-1, Section 3, p. 4.
[49] Exhibit B-1, Section 3, p. 5.
[50] Exhibit B-1, Section 3, p. 5.
[51] Exhibit B-5, FEI Response to Clean Energy IR 1.3.
[52] Exhibit B-2, FEI Response to BCUC IR 2.2.
[53] Exhibit B-5, FEI Response to Clean Energy IR 1.4.
[54] Exhibit B-1, Section 3, p. 4.
[55] Exhibit B-1, Section 3, p. 5.

Table 3: Comparison of the Percent Recovery Between Committed Volumes and Short-Term Spot Volumes[56]

	2021	2022	2023	2024	2025	Percent Recovery
Committed Volume Basis (under proposed rates)						
Committed Volume Only (GJ)	21,000	21,000	21,000	21,000	21,000	82%
Committed Volume and Historical Third Party Volume*	26,000	26,000	26,000	26,000	26,000	107%
Short-Term Spot Volume Basis (under current rates)						
Spot Volume Only (GJ)	15,000	10,000	5,000	2,000	-	49%
Spot Volume and Historical Third Party Volume*	20,000	15,000	10,000	7,000	5,000	92%

* Third Party Volume refers to the 5,000 GJs of demand from the five other customers in 2020 at the Langford Fueling Station, which under this scenario is forecast to continue over the five-year renewal term.

Based on the calculation, the revenues under the ColdStar Agreement and GFL Agreement would recover 82 percent[57] of the forecast annual cost of service of the station over the next five years compared to the recovery of 49 percent of the forecast annual cost of service over the same period if the rates under the Original Agreement were continued.[58]

FEI also expects that similar to the Initial Term of operation, the Langford Fueling Station will be used by additional customers which will increase the cost recovery of the station. FEI states that only considering cost recovery levels from the anchor tenant(s) committed volume at the time of establishing rates is not determinative of the actual cost recovery over the five-year term. FEI's goal is to maximize recovery of the costs of its fueling stations through station rates from station customers over time.[59]

In response to IRs, FEI illustrated that when the historical volume (5,000 GJ) for the five other customers of the Langford Fueling Station is included with the committed volumes in the abovementioned calculation the percentage of recovery increases from 82 percent to 107 percent. And, under a scenario where there are no committed volumes from ColdStar and GFL, and all customers, including the five other customers, fuel at the current rates in the Original Fueling Agreement on a short-term spot basis, the percentage of recovery increases from 49 percent to 92 percent.[60]

FEI also recalculated the Capital Rate and O&M Rate assuming 100 percent recovery of the forecast cost of service by including both the collective volumes of ColdStar and GFL (21,000 GJ) and the volumes of the other existing customers (5,000 GJ).[61] Including the other customers in the rate design for a recovery of 100 percent forecast cost of service reduces the Capital Rate due to the additional volume, while it slightly increases the O&M Rate due to the 100 percent recovery of O&M. In combination this results in an overall rate reduction from the proposed rates.[62]

[56] Exhibit B-1, Section 3, Table 2, p. 5; Exhibit B-4, FEI Response to BCUC IR 10.2
[57] Based on a correction to the opening balance of the accumulated depreciaton in the cost of service model for 2021, the recovery of the forecast cost of service over the term of the Agreements increased from 80 percent to 82 percent (Exhibit B-2, FEI Response to BCUC IR 3.1).
[58] Exhibit B-1, Section 3, p. 5.
[59] Exhibit B-5, FEI Response to Clean Energy IR 1.4.
[60] Exhibit B-4, FEI Response to BCUC IR 10.2
[61] Exhibit B-4, FEI Response to BCUC IR 10.3.
[62] Exhibit B-4, FEI Response to BCUC IR 10.3.

FEI acknowledges that while including the volumes from all other customers could, in theory, lower the Capital Rates, they are not committed volumes and including them would result in under recovery if these volumes do not materialize. FEI adds that ColdStar and GFL are both committed volumes over the term of the agreement and, therefore, ensure a minimum recovery of costs up to their committed volumes.[63]

FEI states it is proposing a competitive rate for GFL and Cold Star at the Langford Fueling Station which was prudently negotiated between sophisticated parties and results in a recovery of at least 82 percent of the forecast operating costs over the five year term of the Agreements.[64] It maintains that at the proposed rates, ColdStar and GFL are both willing to commit to long term fueling volumes (collectively 21,000 GJs), which creates revenue and cost recovery certainty, and mitigates non-bypass customer risk from the Langford Fueling Station for an additional five years. [65]

Precedents in Setting Rates in Competitive Contexts

FEI points out that the BCUC has previously approved market competitive rates in situations where competitive forces are present in the regulated market and adds that a relatively common exception to the traditional full cost of service rate model is the allowance for by-pass rates, which are negotiated and do not specifically account for the entire cost of service delivery to the particular industrial customer.[66] In this context FEI adds that it has prudently negotiated rates for service at the Langford Fueling Station to maximize the contribution from ColdStar and GFL while also ensuring that the rate is competitive enough with diesel fuel to ensure the customers continue to use the station.[67]

FEI also states that the BCUC approved competitive rates for service on Vancouver Island when natural gas service was introduced in the 1990s following the construction of the Vancouver Island Natural Gas Pipeline. In this instance, natural gas was in competition with lower cost fuel sources, and FEI adds that the BCUC established the natural gas rates to be competitive with these alternative fuels.[68]

Additionally, FEI points to its Biomethane Program, which is a voluntary program where customers must be willing to pay a premium over conventional natural gas. Based on the principle of maximizing cost recovery, FEI states that the BCUC approved the biomethane rates at a premium over conventional natural gas, but below the full cost of service in recognition of the fact that charging the full cost of service would result in too few customers. By lowering the premium FEI maintains that it has attracted more customers than expected and consequently has increased the Biomethane Program's cost recovery.[69]

Alternative Energy Solutions Inquiry

The AES Inquiry Report established the standards for the BCUC to apply in determining whether an AES or other new initiative can or should be pursued as a regulated business. As part of the AES Inquiry Report, the BCUC

[63] Exhibit B-4, FEI Response to BCUC IR 10.3.
[64] Exhibit B-1, Section 3.2, p. 8; Exhibit B-2, FEI Response to BCUC IR 3.1; Exhibit B-4, FEI Response to BCUC IR 8.2; Exhibit B-5, FEI Response to Clean Energy IR 1.4.
[65] Exhibit B-1, Section 3, pp. 4–5.
[66] Exhibit B-4, FEI Response to BCUC IR 8.2; Inland Natural Gas – Rate Design 1987 Rate Design Application, Order No. G-80-87, December 11, 1987 – Appendix B: Correspondence and Orders, p. 3.
[67] Exhibit B-4, FEI Response to BCUC IR 8.2.
[68] Exhibit B-4, FEI Response to BCUC IR 8.2.
[69] Exhibit B-4, FEI Response to BCUC IR 8.2.

stated that "regulation exists to protect consumers against the abuse of monopoly power," but considered "the superior protection for consumers" to be "the competitive marketplace." As a result, the BCUC found that regulation is only appropriate where required and is driven by the inability of competitive forces to operate with greater efficiency and effectiveness than a sole service provider.[70] In those situations, where a new business activity is not regulated, the BCUC found the following key principles from the Retail Markets Downstream of the Utility Meter (RMDM) Report continue to be appropriate:[71]

- "There must be no subsidy of unregulated business activities, whether undertaken by the utility or its [non-regulated business], by utility ratepayers."
- "The risks associated with participation in the unregulated market must be borne entirely by the unregulated business activity, that is the risks must have no impact on utility ratepayers."
- "The most economically efficient allocation of goods and resources for ratepayers should be sought."

The BCUC accepted in the AES Inquiry Report that it should not act to hinder competition, where competition is feasible.[72]

As part of the AES Inquiry Report, the BCUC evaluated the FortisBC Energy Utilities (FEU) new business activities and assessed whether they should be regulated.[73] With respect to CNG service (i.e. the compression and dispensing of natural gas through specialized fueling stations) done as a prescribed undertaking, the BCUC found that these activities should be structured as a separate class of service with the costs to be recovered from the traditional gas utility ratepayers to the prescribed limits. In the AES Inquiry Report, the BCUC states the GGRR indicates that the BC Government "supports traditional utility ratepayers providing limited incentives and other funding for certain prescribed CNG activities, in certain limited circumstances, for a limited period of time, presumably to 'kick start' the natural gas for transportation market" and that the monetary and temporal limits placed on the prescribed undertaking activities are maximum limits that represent the maximum subsidization which ratepayers would be required to provide. In the AES Inquiry Report, the BCUC added that "it is crucial that, except to the extent required by legislation, there should be no cross-subsidization as between existing ratepayers and CNG [s]ervice customers."[74]

In addition to the above, the AES Inquiry Report set out the following code of conduct principles for sharing information between regulated and non-regulated businesses, which were adapted from the code of conduct principles from the RMDM Report:[75]

- The regulated utility will not provide to the Non-Regulated Business or Affiliated Regulated Business any market-sensitive or confidential information that would inhibit a competitive energy services market from functioning;

[70] BCUC FortisBC Energy Inc. Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives Report, dated December 27, 2012 (AES Inquiry Report), p. 14.
[71] AES Inquiry Report, pp. 20-21; Retail Markets Downstream of the Utility Meter (RMDM) Report, p. 23.
[72] AES Inquiry Report, p. 14.
[73] AES Inquiry Report, p. 42.
[74] AES Inquiry Report, pp. 49, 53.
[75] AES Inquiry Report, p. 37.

- No regulated utility personnel will state or imply that favoured treatment will be available to customers of the company as a result of using any service of the Non-Regulated Business or Affiliated Regulated Business; and
- No regulated company personnel will preferentially direct customers seeking competitively offered services to a Non-Regulated Business or Affiliated Regulated Business.

Positions of the Parties

FEI submits that the proposed Agreements are just and reasonable and should be approved because:[76]

(a) The Agreements necessarily reflect marketing competitive prices,

(b) FEI prudently negotiated the Agreements, and

(c) FEI's approach to negotiating the Agreements is consistent with the approach taken by the BCUC when setting rates in other competitive contexts.

FEI submits that the ColdStar and GFL Agreements reflect a market rate that was "sufficiently competitive for both ColdStar and GFL to make five-year take-or-pay volume commitments." FEI notes that both ColdStar and GFL are not captive customers and have options to take other types of fuel, and that using diesel would be an easier choice as it is the incumbent fuel with the benefits of long-proven technology and supply chain infrastructure. FEI submits that its proposed rate of approximately $0.61 per diesel litre equivalent is competitive enough with diesel to offer an attractive business case for ColdStar and GFL to continue to make their investments in natural gas vehicles and to commit to taking CNG from the Langford Fueling Station. [77]

FEI further submits that it "prudently negotiated the ColdStar and GFL Fueling Agreements to maximize cost recovery and to minimize cost risk to FEI's other non-bypass customers." FEI explains that its proposed Agreements will recover 82 percent of the cost of service of the Langford Fueling Station over their five-year term, which FEI submits is a high level of cost recovery and is consistent with the 80 percent of the station's costs recovered in the Initial Term of the Original Fueling Agreement with ColdStar.[78]

FEI adds that the level of cost recovery in the Agreements is sufficient given that ColdStar and GFL are not the only customers of the Langford Fueling Station, and that it expects the demand from other third-party customers, approximately 5,000 GJs in 2020, will continue. FEI notes that the overall demand served from the Langford Fueling Station resulted in FEI recovering approximately 117 percent of its forecast cost of service, and submits that the 82 percent cost recovery from the Agreements provides a reasonable prospect for FEI to recover all of its station costs.[79]

FEI notes that its proposed rates are within the price range of other FEI-owned natural gas stations, and submits that this should provide comfort to the BCUC that FEI has prudently negotiated the rates in the Agreements.[80]

---

[76] FEI Final Argument, p. 6.
[77] FEI Final Argument, p. 6, 8.
[78] FEI Final Argument, p. 9.
[79] FEI Final Argument, pp. 9–10.
[80] FEI Final Argument, p. 10.

FEI submits that its approach to negotiating the rates in the Agreements is consistent with rates the BCUC has previously approved in situations where competitive forces are present in the regulated market. FEI cites the example of bypass rates, which are negotiated and do not specifically account for the entire cost of service delivery to the particular industrial customer. FEI submits that it has prudently negotiated the rates for service at the Langford Fueling Station to maximize the contribution from ColdStar and GFL while also ensuring that the rate is competitive enough with diesel to ensure customers continue to use the station.[81]

ColdStar submits that if the price of CNG at the Langford Fueling Station increases dramatically then "this will be the end of our CNG program." ColdStar explains that CNG trucks are dramatically more expensive than diesel trucks, incentives are declining, and finding drivers willing to drive CNG-fueled vehicles is "almost impossible." ColdStar submits that buying diesel trucks is "the easy thing to do" but not "the right thing to do," and that the fueling agreement with FEI will allow it to continue with its CNG program and continue reducing its GHG emissions.[82]

Clean Energy submits that FEI's Application for rates in the Agreements should be denied because "this is clearly a request for further cross-subsidization and also leads to yet more risk to FEI's ratepayers."[83]

Clean Energy submits that FEI's cross-subsidization of CNG rates at the Langford Fueling Station and other public access truck stops fueling stations will "effectively continue to "freeze out" Clean Energy and other open market competitors." Clean Energy submits there is no natural monopoly in CNG for commercial vehicle fueling stations in BC, and that it is unreasonable, discriminatory, and contrary to the UCA and normal rate-setting principles to allow FEI to charge less than its costs "basically, forever."[84]

Clean Energy cites the BCUC's RMDM Guidelines, reaffirmed by the BCUC in the AES Inquiry:[85]

- There must be no subsidy of unregulated business activities, whether undertaken by the utility or its [non-regulated business], by utility ratepayers.
- The risks associated with participation in the unregulated market must be borne entirely by the unregulated business activity, that is the risks must have no impact on utility ratepayers; and
- The most economically efficient allocation of goods and services for ratepayers should be sought.

FEI submits in reply that Clean Energy's assertion that FEI is subsidizing the Langford Fueling Station is incorrect. FEI notes that overall demand served from the station in the first five years of operation resulted in FEI recovering 117 percent of the forecast cost of service. Further, FEI submits that it expects to recover more than its full cost of service based on the proposed Agreements, and that Clean Energy has provided no evidence or argument that shows why FEI's expectations are incorrect or unreasonable.[86]

Clean Energy submits that FEI's ownership and operation of the Langford Fueling Station and other natural gas commercial truck stop fueling stations in BC hinders competition. Clean Energy explains that these stations

[81] FEI Final Argument, pp. 11–13.
[82] ColdStar Final Argument, p. 1.
[83] Clean Energy Final Argument, p. 17.
[84] Clean Energy Final Argument, pp. 3–4.
[85] Clean Energy Final Argument, p. 7, AES Inquiry, p. 4.
[86] FEI Reply Argument, p. 5.

enjoy "inappropriate cross-subsidization and therefore create additional risk for FEI's non-bypass ratepayers," and that the GGRR has achieved its purpose of "kick-starting" a nascent CNG market in BC.[87]

Clean Energy further submits that it is within the BCUC's jurisdiction to require FEI to move its CNG service assets to a non-regulated FEI company where all associated costs and risks are "fully covered by FEI's shareholders or divested."[88]

Clean Energy adds that the BCUC's mandate is not to protect monopoly utilities but rather to protect the public in what is otherwise a competitive market from "abuse by a monopoly exercising its vast arsenal of monopoly powers." Clean Energy adds that a network of natural gas commercial truck stop fueling locations is forming in BC and "must be encouraged, not thwarted." In Clean Energy's view, FEI has an unfair advantage and can potentially use this to drive other open market competitors, including Clean Energy, out of the market at no risk to FEI's shareholders.[89]

Clean Energy cites the BCUC's determinations in the AES Inquiry that the competitive marketplace is superior protection for consumers than regulation, that the BCUC should "only regulate where required," and that the BCUC "should not act to hinder competition."[90]

Clean Energy asks the BCUC to review whether FEI has appropriately been applying updated Code of Conduct and Transfer Pricing Policy with respect to Langford and the other fueling locations. Clean Energy notes that in the AES Inquiry, the BCUC set out adapted code of conduct principles restricting a utility's ability to share information between its regulated and non-regulated businesses and regulating the behaviour of regulated utility personnel when dealing with its customers.[91]

FEI submits in reply that its CNG service is part of its natural gas class of service as a result of the provisions of section 3 of the government's Direction No. 5. As a result, FEI submits that the BCUC must reject Clean Energy's arguments that FEI's CNG service should be moved to a non-regulated business or otherwise segregated, or that a code of conduct and transfer pricing policy must be applied.[92]

Clean Energy further submits that it is disingenuous for FEI to claim that it had to negotiate a lower price to retain ColdStar and add GFL as customers at the Langford Fueling Station or these customers would have reverted to using diesel-fueled vehicles, as Clean Energy would have been surprised if such for-profit companies had not asked for a lower price. Clean Energy adds that it considers FEI's survey of natural gas commercial truck stop fueling station pricing across Canada and the US was "superficial and inadequate," and that FEI's comparison of pricing between its locations is self-serving.[93]

FEI disputes Clean Energy's submission that FEI's survey of CNG prices is inadequate, noting that Clean Energy has provided no contrary evidence. Further, FEI submits that its reference to prices at other FEI fueling stations

[87] Clean Energy Final Argument, p. 9.
[88] Clean Energy Final Argument, p.10.
[89] Clean Energy Final Argument, pp. 3–4.
[90] Clean Energy Final Argument, pp. 5–6.
[91] Clean Energy Final Argument, p. 10.
[92] FEI Reply Argument, p. 3.
[93] Clean Energy Final Argument, pp. 14–15.

is not self-serving but provides a useful comparison to rates set at stations that have "the same regulations, taxes, incentives and business environments."[94]

With respect to FEI's reference to bypass rates, Clean Energy does not understand why this reference applies to CNG commercial truck stop fueling, an activity downstream of FEI's gas distribution network business.[95]

FEI submits that Clean Energy's inability to understand FEI's reference to bypass rates rests on its mistaken belief that the Langford Fueling Station is not a prescribed undertaking. As the Langford Fueling Station is a prescribed undertaking, its costs must continue to be recovered in rates. Therefore, like a pipeline serving a bypass customer, FEI submits the appropriate ratemaking approach is to "maximize the revenue from the customer, while retaining the customer, to minimize cost risk to other customers."[96]

FEI notes that Clean Energy does not explain why 80 percent cost recovery is not reasonable. Given that ColdStar and GFL are not the sole customers of the Langford Fueling Station, FEI submits it would not be reasonable on a pure cost of service basis to require them to pay 100 percent of the costs of the station, as there is a reasonable prospect that other third-party customers will continue to fuel at the station.[97] FEI also submits that Clean Energy does not comment on the challenges faced by operators when converting from incumbent fuels such as diesel, including the lack of fueling stations. [98]

Panel Determination

The Panel finds that FEI's proposed rates in the Agreements are just and reasonable and approves them.

The Panel has already found that the Langford Fueling Station is a prescribed undertaking as defined in section 18 of the CEA and section 2 of the GGRR. As a result, section 18(2) of the CEA requires that the BCUC must allow FEI to recover its costs associated with the Langford Fueling Station in rates.

Further, section 3 of Direction No. 5 provides that the BCUC must treat FEI's costs and revenues associated with its CNG service as part of its natural gas class of service and allocate those costs and revenues to all non-bypass customers.

As a result of these two legislative requirements, the Panel must allow FEI to recover the costs of the Langford Fueling Station from its non-bypass natural gas customers. However, the Panel does retain the discretion to determine how the costs of the station are allocated among FEI's non-bypass natural gas customers.

Further, the Panel cannot accept Clean Energy's arguments that the BCUC should reject the Application because FEI hinders competition as a result of its monopoly position, and that the BCUC should direct FEI to operate its CNG service as a non-regulated business. Direction No. 5 constrains the Panel from taking actions such as directing FEI to offer its CNG service as an unregulated business to avoid hindering competition where it is feasible, notwithstanding that hindering competition was a concern accepted by the BCUC in the AES Inquiry.[99]

---

[94] FEI Reply Argument, p. 4.
[95] Clean Energy Final Argument, p. 16.
[96] FEI Reply Argument, p. 5.
[97] FEI Reply Argument, p. 4.
[98] FEI Reply Argument, p. 4.
[99] AES Inquiry Report, p. 14.

Notwithstanding the constraints imposed by the legislative requirements, the BCUC also retains the jurisdiction to determine the rates charged by FEI to users of the Langford Fueling Station, and whether these rates are just and reasonable.

The BCUC took the view in the AES Inquiry that "it is crucial that, except to the extent required by legislation, there be no cross-subsidization as between existing ratepayers and CNG Service customers."[100] The Panel agrees. Our view is that we may apply the cost causation principle and ensure as far as possible that the costs associated with the Langford Fueling Station are recovered from its users and are not subsidized by FEI's other non-bypass natural gas customers.

Based on the total projected sales volumes for the Langford Fueling Station for the next five years, including both committed volumes from ColdStar and GFL and the estimated volume from other third-party customers, the proposed rates are forecast to recover approximately 107 percent of the costs of the Langford Fueling Station. Therefore, using the rates in the Agreements, the Langford Fueling Station is forecast to require no subsidy from other non-bypass natural gas customers. The Panel notes that FEI recovered 106 percent of the Langford Fueling Station's cost of service for the period from 2014 to 2020 and is persuaded that there is a reasonable expectation that FEI will recover the station's full cost of service from the station's users over the next five years.

The Panel makes no determination on whether FEI's analogy to bypass rates is apt in this circumstance because the proposed rates for the Langford Fueling Station in the Agreements are forecast to cover the station's costs for the next five-year period.

The Panel is also of the view that FEI's proposed rates for CNG service were sufficiently competitive to be accepted by ColdStar and GFL; these customers were not obligated to enter into the Agreements as they have the choice of using diesel fuel for their vehicles. However, the Panel does not consider there is sufficient evidence to conclude that these customers would not have paid higher rates for CNG fueling service than those in the Agreements. The Panel does not consider this to be determinative in this case, because the proposed rates in the Agreements are sufficient to provide reasonable assurance that the costs of the Langford Fueling Station will be recovered from its users and not from FEI's other non-bypass natural gas customers.

4.0 Third Party Customers

Unlike ColdStar and GFL, which are considered anchor customers,[101] FEI defines third-party customers as all other customers who enter into agreements for refueling service at the station after the effective date of rates approved by the BCUC. Third-party customer agreements (which may or may not include term or volume commitments) are not used to calculate and establish the rates at the station as the third-party customers execute fueling agreements after the establishment of the rates based on anchor tenant(s)' committed

[100] AES Inquiry Report, p. 53.

[101] Following the initial GGRR term, FEI considers anchor customers to include those customers that execute new fueling agreements with term and volume commitments at the time of establishing renewal rates for a station, because these anchor customers agreement(s) from the basis of calculating the renewal rates for the station.

volumes.[102] The following subsections discuss the rates FEI would apply to new and existing third-party fueling agreements for the Langford Fueling Station and FEI's existing fueling agreement with Evergreen.

4.1 Third-Party Rates

FEI states that there is no operational difference in the fueling service provided to its customers (anchor and third-party customers) at the Langford Fueling Station, and adds that all customers have access to the same fast-fill fueling equipment at the station.[103] Based on this FEI considers that the most fair, reasonable, and balanced approach is to apply the "Total Dispensing Rate" approved by the BCUC for ColdStar and GFL, plus Spot and/or Short-term charges as applicable (these charges are discussed further below), on a permanent basis for the station in effect at the time the third-party agreement is entered into. Under this approach, the proposed rates FEI would be charging new third-party customers would be the same as the proposed rates under the ColdStar and GFL (the anchor customers) Agreements and FEI would not be recovering less per GJ toward the capital and operating costs of the Langford Fueling Station from ColdStar and GFL (the anchor customers) compared to other new third-party customers. In contrast, existing third-party agreements with customers at the station previously approved by the BCUC on a permanent basis would remain at their existing rates for the remainder of the term for these contracts, unless subsequently amended or replaced by a new agreement.[104]

FEI acknowledges that in applying this approach, differences in the rates, whether between the anchor customer and third-party customers or among third-party customers at the same station, can occur based on timing of execution of fueling service agreements and the effective permanent rates approved for the station at that time.[105] FEI states that recovery of less or more per GJ in the rates from existing third-party agreements that were established under different permanent rates approved for the station at the time of executing the agreement should not be considered to be unduly discriminatory or unduly preferential by the BCUC. FEI maintains that such differences in rates are merely a result of timing.[106]

Despite the discussion above, FEI points out that there is a distinction between ColdStar and GFL (anchor tenants) and third-party customers. ColdStar and GFL are subject to more risk as compared to third-party customers who have committed to a term shorter than five years and a lower volume commitment, or who take spot service. Both ColdStar and GFL have committed to a five-year term and an annual combined fueling volume of 21,000 GJs. Third-party customers are not required to commit to any amount of fuel or term. If ColdStar or GFL decide to terminate their agreement prior to the expiry of their term, they are required to provide a payment equal to their outstanding volume commitment multiplied by the Total Dispensing Rate for the balance of their term. This ensures that FEI obtains the required cost recovery over the five-year term as established in the cost recovery financial model. By executing long-term agreements, ColdStar and GFL take on the financial risk of paying for their committed amount of fuel over the term regardless of external unforeseen factors or events that may impact their business over term of the Agreements.[107]

---

[102] Exhibit B-4, FEI Response to BCUC IR 8.2.
[103] Exhibit B-4, FEI Response to BCUC IR 8.1 and 8.2.
[104] Exhibit B-4, FEI Response to BCUC IR 8.2.
[105] Exhibit B-2, FEI Response to BCUC IR 8.7.
[106] Exhibit B-4, FEI Response to BCUC IR 8.2 and 8.7.
[107] Exhibit B-2, FEI Response to BCUC IR 6.1 and 8.3.

FEI states that many third-party customers mitigate this risk by executing short-term spot agreements with no volume or term commitment to minimize their financial risk. However, these customers are subject to additional charges, including the Spot Charge ($1 per GJ applicable to customers without a minimum volume commitment) and the Short-term Charge ($1 per GJ applicable to customers committing to less than a three-year term). FEI considers these additional charges adequately increase the effective rate for these third-party customers who are unwilling to take the financial risk of committing to minimum volumes and term. FEI adds that the revenue recovered from the Spot Charge and Short-Term Charge all contribute to additional cost recovery for the station beyond the Total Dispensing Rate approved for the station.[108]

Positions of the Parties

FEI submits that the most fair, reasonable and balanced approach is to charge any new third-party customers of the Langford Fueling Station the same Total Dispensing Rate approved by the BCUC for ColdStar and GFL, because:[109]

- there is no operational difference in the service provided to new third-party customers compared to the service provided to ColdStar and GFL;
- third-party customers are subject to additional spot and / or short-term charges which adequately increase the rate for customers who are unwilling to take the financial risk of committing to minimum volumes and term; and
- the approach of charging new third-party customers the same rate as ColdStar and GFL is consistent with the third-party customer rates approved during the Initial Term, which were based on the anchor tenant rates at that time.

FEI notes that new third-party customers would have different rates to those of existing third-party customers, but submits this is only difference of timing. As existing third-party agreements expire or are amended, the third-party customers will be able to sign new agreements that reflect the new Total Dispensing Rates of ColdStar and GFL.[110]

Panel Discussion

The Panel finds that it is just, reasonable and not unduly discriminatory or unduly preferential to charge new third-party customers the Total Dispensing Rates approved in the Agreements and to continue to charge existing third-party customers their existing rates until their agreements expire or are amended.

The Panel notes that there is no operational difference between the service provided to ColdStar and GFL and to other third-party customers, so all else being equal, all these customers should pay the same base rate. We accept that existing third-party customers will continue to pay their existing rates until their agreements expire or are amended, and we do not consider this to be unduly discriminatory because they are eligible for the new rate should they extend or amend their agreements.

[108] Exhibit B-2, FEI Response to BCUC IR 8.3.
[109] FEI Final Argument, pp. 3–4.
[110] FEI Final Argument, p. 4.

4.2 Evergreen Industries Ltd.'s Existing Third-Party Fueling Agreement

As a result of GFL's acquisition of Evergreen, GFL has requested that FEI terminate Evergreen's existing third-party fueling services agreement for the Langford Fueling Station (Evergreen Agreement), effective December 31, 2020.[111] The Evergreen Agreement was filed with the BCUC under Tariff Supplement J-13 and expires on January 11, 2022. FEI proposes that for administrative efficiency and consolidated billing, GFL will assume Evergreen's minimum annual quantity commitment of 500 GJs within the GFL Agreement, effective January 1, 2021. FEI adds that GFL has made the termination of the Evergreen Agreement a condition to its execution of the GFL Agreement.[112]

Positions of the Parties

FEI seeks an order that the Evergreen Industries Ltd. third-party fueling agreement for the Langford Fueling Station (Tariff Supplement J-13) be terminated. FEI explains that GFL is assuming Evergreen's minimum annual quantity commitment of 500 GJs per year within the GFL Agreement, and notes that GFL has made the termination of Tariff Supplement J-13 a condition to the GFL Agreement.

Panel Determination

Pursuant to section 61(2) of the UCA, the Panel consents to the termination of the Evergreen Industries Ltd. third-party fueling agreement for the Langford Fueling Station (rescindment of Tariff Supplement J-13).

The Panel notes that GFL is assuming the minimum annual quantity commitment of Evergreen Industries Ltd. As previously set out in Section 3, the Panel is satisfied that the proposed rates in the Agreements are just and reasonable based on FEI's total forecast demand for the Langford Fueling Station, which includes the annual quantity commitment from GFL which in turn includes the commitment formerly made by Evergreen Industries Ltd.

5.0 New Evidence in Final Argument

In FEI's reply argument, FEI noted that Clean Energy's final argument includes new evidence, as referenced below, which was not filed and tested in this proceeding:[113]

- Page 2 – all paragraphs;
- Page 3 – 4th full paragraph;
- Page 10 – 2nd to last paragraph; and
- Page 14 – table and the sentence above the table.

Panel Discussion

The Panel finds that the above-listed sections of Clean Energy's final argument contain new evidence that Clean Energy has failed to file prior to the close of the evidentiary record. Clean Energy did not request that the Panel re-open the evidentiary record or explain why it could not have submitted this evidence earlier, in accordance with the established regulatory timetable in this proceeding. Nor would it be procedurally fair to allow such new

[111] Exhibit B-2, FEI Response to BCUC IR 6.1.
[112] Exhibit B-1, Section 1.3, p. 2
[113] FEI Reply Argument, p. 2.

evidence without the other parties having an opportunity to test it through the normal process. As such, this evidence is not admissible, does not form part of the evidentiary record in this proceeding and the Panel places no weight on it.

DATED at the City of Vancouver, in the Province of British Columbia, this 29th day of October 2021.

Original signed by:

W. M. Everett, QC
Panel Chair / Commissioner

Original signed by:

B. A. Magnan
Commissioner

Original signed by:

R. I. Mason
Commissioner

bcuc
British Columbia
Utilities Commission

Suite 410, 900 Howe Street
Vancouver, BC Canada V6Z 2N3
bcuc.com

P: 604.660.4700
TF: 1.800.663.1385
F: 604.660.1102

ORDER NUMBER
G-311-21

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

and

FortisBC Energy Inc.
Application for Approval of Revised/Renewal Rates for the Langford Compressed Natural Gas Fueling Station in Langford, BC pursuant to the Province of British Columbia's Greenhouse Gas Reduction (Clean Energy) Regulation

BEFORE:
W. M. Everett, QC, Commissioner
B. A. Magnan, Commissioner
R. I. Mason, Commissioner

on October 29, 2021

ORDER

WHEREAS:

A. On December 23, 2020, FortisBC Energy Inc. (FEI) applied to the British Columbia Utilities Commission (BCUC), pursuant to sections 59 to 61 and section 89 of the *Utilities Commission Act* (UCA), for approval of rates established in separate Fueling Services Agreements between ColdStar Solutions Inc. (ColdStar) and FEI (Coldstar Agreement) and GFL Environmental Inc. (GFL) and FEI (GFL Agreement), on an interim and permanent basis, effective January 1, 2021 (Application);

B. By Order G-56-13 dated April 11, 2013, the BCUC accepted that the Greenhouse Gas Reduction (Clean Energy) Regulation (GGRR) established the need for Compressed Natural Gas (CNG) and Liquefied Natural Gas (LNG) fueling stations that are undertaken by FEI as prescribed undertakings as defined by the GGRR, and that these prescribed undertakings are exempt from the Certificate of Public Convenience and Necessity requirements for the term of the GGRR;

C. By Order G-187-13 dated November 19, 2013, the BCUC found that FEI's CNG fueling station located at its Victoria Regional Office Facility in Langford, BC (Langford Fueling Station) met the requirements for a prescribed undertaking as defined by the GGRR;

D. On December 17, 2020, FEI separately entered into the Coldstar Agreement and the GFL Agreement each of which established the terms, conditions and rates for ColdStar and GFL, respectively, to receive fueling service from the Langford Fueling Station;

E. FEI also applies for approval to terminate the existing Fueling Services Agreement between FEI and Evergreen Industries Ltd. (Evergreen) approved by Order G-13-15 (Evergreen Agreement) (Tariff Supplement

No. J-13), effective December 31, 2020. GFL acquired the solid waste business of Evergreen and is assuming the volume commitment from the Evergreen Agreement under the GFL Agreement;

F. By Order G-6-21 dated January 8, 2021, the BCUC approved the rates established in the ColdStar Agreement and the GFL Agreement on an interim and refundable/recoverable basis, effective January 1, 2021, and granted the live financial model filed as Appendix C to the Application be kept confidential due to is commercially sensitive nature. The order also established a preliminary regulatory timetable for the review of the Application;

G. By Orders G-111-21 and G-192-21 the BCUC established the reminder of the regulatory process, including written final and reply arguments;

H. ColdStar and Clean Energy Fuels participated as interveners in the proceeding; and

I. The BCUC has completed its review of the Application and evidence filed in the proceeding, and finds that approval is warranted.

NOW THEREFORE pursuant to sections 59 to 61 of the UCA, the BCUC orders as follows:

1. The rate design and rates established in the ColdStar Agreement and the GFL Agreement, previously approved on an interim basis under Order G-6-21, are approved to be permanent, effective January 1, 2021.
2. The BCUC consents to the rescindment of Tariff Supplement No. J-13, effective December 31, 2020.
3. FEI is to file the ColdStar Agreement and GFL Agreement in tariff supplement form for endorsement by the BCUC within 30 days of the date of this order.

DATED at the City of Vancouver, in the Province of British Columbia, this 29th day of October 2021.

BY ORDER

Original signed by:

W. M. Everett, QC
Commissioner

List of Acronyms

ACRONYM	DESCRIPTION
AES	Alternative Energy Services
AES Inquiry	New initiatives in Alternative Energy Solutions
Agreements	Fueling Services Agreements with ColdStar Solutions Inc. and GFL Environmental Inc
Application	Application for Approval of Revised/Renewal Rates for the Langford Compressed Natural Gas Fueling Station in Langford, BC pursuant to the Province of British Columbia's Greenhouse Gas Reduction (Clean Energy) Regulation
BCUC	The British Columbia Utilities Commission
CEA	*Clean Energy Act*
CNG	Compressed Natural Gas
ColdStar	ColdStar Solutions Inc.
ColdStar Agreement	Fueling Services Agreement between FEI and ColdStar
DLE	diesel litre equivalent
Evergreen	Evergreen Industries Ltd.
Evergreen Agreement	Fueling Services Agreement between FEI and Evergreen approved by Order G-13-15, dated January 30, 2015
FEI	FortisBC Energy Inc.
FEU	FortisBC Energy Utilities
GFL	GFL Environmental Inc.
GFL Agreement	Fueling Services Agreement between FEI and GFL
GHG	Greenhouse gas
GGRR	Greenhouse Gas Reduction (Clean Energy) Regulation
Initial Term	Effective term of 5 years for the rates in the Original Fueling Agreement beginning on the in-service date of the Langford Fueling Station and ending January 1, 2019
IR	Information request
Langford Fueling Station	CNG station located at FEI's Victoria Regional Office Facility in Langford, BC
LGIC	Lieutenant Governor in Council
LNG	Liquefied Natural Gas
O&M	Operation and Maintenance
OH&M	Overhead and Marketing
OIC	Order in Council

Original Fueling Agreement	CNG fueling service agreement between FEI and ColdStar approved by Order G-187-13, dated November 19, 2013
RMDM	Retail Markets Downstream of the Utility Meter
UCA	*Utilities Commission Act*
Undertaking period	Defined in section 1 of the GGRR as the period that ends on March 31, 2022
Anchor Customers	ColdStar and GFL Environmental Inc.
Third Party Customers	All customers other than Coldstar and GFL who enter into agreements for CNG refueling service at the station after the effective date of rates approved by the BCUC

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

and

FortisBC Energy Inc.
Application for Approval of Revised/Renewal Rates for the
Langford Compressed Natural Gas Fueling Station under the Province's
Greenhouse Gas Reduction (Clean Energy) Regulation in Langford, BC

EXHIBIT LIST

Exhibit No.	Description
COMMISSION DOCUMENTS	
A-1	Letter dated January 8, 2021 – Appointment of Panel for review of FortisBC Energy Inc. Application for Approval of Revised/Renewal Rates for the Langford Compressed Natural Gas Fueling Station under the Province's Greenhouse Gas Reduction (Clean Energy) Regulation in Langford, BC
A-2	Letter dated January 8, 2021 – BCUC Order G-6-21 establishing the regulatory timetable
A-3	Letter dated February 5, 2021 – BCUC Information Request No. 1 to FEI
A-4	**CONFIDENTIAL** - Letter dated February 5, 2021 – BCUC Confidential Information Request No. 1 to FEI
A-5	Letter dated April 13, 2021 – BCUC Order G-111-21 establishing a further regulatory timetable
A-6	Letter dated May 12, 2021 – BCUC Information Request No. 2 to FEI
A-7	Letter dated June 24, 2021 – BCUC Order G-192-21 establishing a further regulatory timetable

COMMISSION STAFF DOCUMENTS

A2-1	Letter dated February 5, 2021 – BCUC Staff Submission of ColdStar Langford 2013 Application
A2-2	Letter dated February 5, 2021 – BCUC Staff Submission of CNG and LNG 2019 Report
A2-3	Letter dated February 5, 2021 – BCUC Staff Submission of Vedder 2017 Application

APPLICANT DOCUMENTS

B-1	**FORTISBC ENERGY INC. (FEI)** - Application for Approval of Revised/Renewal Rates for the Langford Compressed Natural Gas (CNG) Fueling Station under the Province's Greenhouse Gas Reduction (Clean Energy) Regulation (GGRR) in Langford, BC (the Application) dated December 23, 2020
B-1-1	**CONFIDENTIAL -** Letter dated December 23, 2020 – FEI Submitting Confidential Appendix C to the Application
B-2	Letter dated February 25, 2021 – FEI Submitting response to BCUC Information Request No. 1
B-3	**CONFIDENTIAL** - Letter dated February 25, 2021 – FEI Submitting response to BCUC Confidential Information Request No. 1
B-4	Letter dated June 9, 2021 – FEI Submitting response to BCUC Information Request No. 2
B-4-1	**CONFIDENTIAL** - Letter dated June 9, 2021 – FEI Submitting Confidential Attachment to BCUC Information Request No. 2 response
B-5	Letter dated June 9, 2021 – FEI Submitting response to Clean Energy Information Request No. 1

INTERVENER DOCUMENTS

C1-1	**CLEAN ENERGY FUELS (CLEAN ENERGY) -** Letter dated May 6, 2021 Request to Intervene by Brett Barry
C1-2	Letter dated May 19, 2021 – Clean Energy Submitting Information Request No. 1 to FEI
C2-1	**COLDSTAR SOLUTIONS INC. (COLDSTAR) -** Submission dated May 20, 2021 – Request for Interested Party status by Kelly Hawes

INTERESTED PARTY DOCUMENTS

D-1	REMOVED – Now C2-1
D-1-1	REMOVED – NOW E-1

LETTERS OF COMMENT

E-1	Coldstar Solutions Inc. (Coldstar) – Letter of Comment dated May 18, 2021