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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-150-12**

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IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473

and

Application by FortisBC Energy Inc.
for a Certificate of Public Convenience and Necessity
for Constructing and Operating a Compressed Natural Gas Refuelling Station at BFI Canada Inc.; and
Application for Variance and Reconsideration and
Revised Application for Rates for Fuelling Service for BFI Canada Inc.

BEFORE: A.A. Rhodes, Panel Chair/Commissioner October 17, 2012
D.M. Morton, Commissioner

O R D E R

WHEREAS:

- A. By Order G-95-11 dated May 24, 2011, the British Columbia Utilities Commission (Commission) established an Inquiry into FortisBC Energy Inc. (FEI)'s offering of products and services in Alternative Energy Services (AES) and other New Initiatives (AES Inquiry) including the appropriateness of FEI's entry into the competitive domain of compressed natural gas (CNG) and liquefied natural gas (LNG) fuelling;
- B. On February 29, 2012, FEI applied to the Commission for approval for a Certificate of Public Convenience and Necessity (CPCN) to construct and operate a CNG refuelling station at the premises of BFI Canada Inc. (BFI) (CPCN Application);
- C. On April 30, 2012, the Commission issued Order C-6-12 which granted FEI a CPCN for the BFI project but denied the rate and rate design as applied for in the CPCN Application and directed FEI to file an updated rate and rate design within 30 days of the date of the Order;
- D. On May 15, 2012 the Province of British Columbia passed the Greenhouse Gas Reduction (Clean Energy) Regulation BC Reg. No. 102/2012 (GHG Regulation) which, through a "prescribed undertaking" under section 18 of the *Clean Energy Act*, contemplates public utility involvement in natural gas transportation programs including the construction and operation of CNG refuelling stations subject to certain limits and conditions;
- E. On June 16, 2012, FEI submitted an application for Variance and Reconsideration of Order C-6-12 (Reconsideration Application) and a revised application for rates and rate design for CNG Service for BFI (Revised Rates Application);

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- F. On September 14, 2012, the Commission issued Order G-126-12 approving, on an interim basis, an Agreement between BFI and FEI, amended to incorporate the updated rates filed by FEI in the Revised Rates Application and directed FEI, within 30 days of the Commission Order that determines the outcome of Phase 2 of the Reconsideration Application, to submit either a confirmation that the rates as applied for in the Revised Rates Application remain applicable or an application for revised rates, as appropriate;
- G. In the Reconsideration Application FEI states it is applying for Reconsideration of Items 3, 5(b) and 5(e) of Order C-6-12;
- H. The Commission issued Letter L-38-12 dated June 25, 2012 to Registered Interveners and Interested Parties in the CPCN Application establishing Phase 1 of the Reconsideration as a written comment process on the matter of whether FEI submitted an application with a reasonable basis to allow a reconsideration and requesting Intervener comments by July 4, 2012 and reply comments from FEI by July 11, 2012;
- I. The Commission received comments from the BC Sustainable Energy Association (BCSEA) on July 4, 2012 and from the British Columbia Old Age Pensioners' Association, known as British Columbia Pensioners' and Seniors' Organization (BCPSO), on July 5, 2012, both of which supported proceeding to Phase 2 of the Reconsideration;
- J. FEI filed a reply submission on July 11, 2012 in which it stated the Reconsideration Application will serve as the FEI submission for Phase 2;
- K. The Commission issued Letter L-42-12 dated July 17, 2012 finding that FEI had established a prima facie case to warrant proceeding to Phase 2 of the Reconsideration. The Commission also determined there was potential overlap with issues relevant to the AES Inquiry and invited registered Interveners in the AES Inquiry to register for Phase 2, if interested, by July 11, 2012;
- L. No registered Interveners from the AES Inquiry other than BCSEA and BCPSO indicated they wished to participate in Phase 2 of the Reconsideration;
- M. On August 21, 2102, the Commission issued Order G-112-12 setting out the regulatory review process as a written submission process, defining the scope and evidentiary record, and setting the regulatory timelines; and
- N. The Commission has reviewed the FEI Reconsideration Application, the submissions of BCSEA and BCPSO and the Reply Submission of FEI and has determined that Items 3, 5(b) and 5(e) of Commission Order C-6-12 should be varied.

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NOW THEREFORE the Commission determines for the Reasons attached as Appendix A to this Order:

1. Commission Order C-6-12 should be varied as follows:
 - a. The Panel varies Order 5(b) to state: "... the figures of \$569,396 for 2012 and \$601,119 for 2013, [are] to be allocated among CNG/LNG Service customers and non-bypass natural gas customers in a reasonable manner."
 - b. The Panel varies Order 3 to state: "FEI is directed to establish a new class of service for CNG Service on an interim basis pending the outcome of the AES Inquiry."
 - c. Given the creation of a separate class of service for CNG, the Panel varies Order 5(e) to state: "FEI is to include all other amounts paid by BFI for volumes in excess of the 'take or pay' commitment in a new rate base deferral account separate from the deferral account approved in the Waste Management Decision, to capture incremental CNG Service recoveries received from actual volumes purchased in excess of minimum take or pay commitments, for disposition to be determined at a future date."
2. The Panel will consider an alternative allocation of overhead amounts of \$569,396 for 2012 and \$601,119 for 2013, between the natural gas ratepayers and the customers taking service under tariff General Terms and Conditions Section 12B, if FEI can provide a sufficient evidentiary basis for its proposed allocation.
3. As set out in Order G-126-12, within 30 days of this Order, FEI is to submit either a confirmation that the rates as applied for in the Revised Rates Application remain applicable or an application for revised rates, as appropriate.

DATED at the City of Vancouver, in the Province of British Columbia, this 17th day of October 2012.

BY ORDER

Original signed by:

A.A. Rhodes
Commissioner

Attachment

Application by FortisBC Energy Inc.
for a Certificate of Public Convenience and Necessity
For Constructing and Operating a Compressed Natural Gas Refuelling Station at BFI Canada Inc.; and
Application for Variance and Reconsideration and
Revised Application for Rates for Fuelling Service for BFI Canada Inc.

REASONS FOR DECISION

By Order C-6-12 dated April 30, 2012, the British Columbia Utilities Commission (Commission) granted a Certificate of Public Convenience and Necessity (CPCN) to FortisBC Energy Inc. (FEI) to construct, own and operate a Compressed Natural Gas (CNG) fueling facility on the premises of BFI Canada Inc (BFI). The Commission also:

- Declined to approve the rates sought to be charged to BFI on the basis that a significant number of costs were omitted from the Cost of Service calculation,
- Directed FEI to establish two new classes of service, one for CNG Service and the other for Liquefied Natural Gas (LNG) Service,
- Reaffirmed the following Directives from its earlier Reasons for Decision accompanying Commission Order G-128-11 in *An Application for Approval of a Service Agreement for Compressed Natural Gas Service for Waste Management of Canada Corporation and for Approval of General Terms and Conditions for Compressed Natural Gas and Liquefied Natural Gas Service* which was made by Terasen Gas Inc., now FEI, (the Waste Management Decision) requiring FEI to:

Estimate the overhead and marketing expenses which related to the FEI program to construct, own and operate CNG and LNG fuelling facilities (CNG/LNG Service) and the expected sales volume from such service offerings and allocate those costs in a reasonable manner among CNG/LNG Service customers going forward,

Keep the costs and revenues associated with the Waste Management Agreement and any other offerings separate and distinct and monitor such offerings over a two-year test period...

- Directed

FEI to include all overhead and marketing expenses relating to the CNG/LNG Service program, as determined using approved fully allocated cost of service methodology, in the cost of service,

FEI to recalculate the Operations and Maintenance (O&M) charge contained in the BFI rate to reflect the forecast cost of the CNG/LNG Service program for 2012 and 2013 using the figures of \$569,396 for 2012 and \$601,119 for 2013, allocated in a reasonable manner,

FEI to include in the rate for BFI:

- Actual construction costs of the BFI fuelling station
- Costs of the BFI Application in the amount of \$75,000
- Branding costs for signs and decals
- BFI's proportionate share of all costs relating to the CNG/LNG Service program

- Any other relevant costs not factored into the rate proposed to be charged to BFI such as increased insurance premiums

FEI to establish a rate base deferral account to capture any revenues associated with BFI's purchase of CNG volumes in excess of its "take or pay" commitment which were subject to being credited back to BFI in the event that BFI was required to pay the un-depreciated capital cost of the fuelling station to FEI (excess revenues to be credited to BFI are valued at one half of the applicable capital component of the rate)

FEI to include all amounts other than the portion of the capital component of the rate (which is subject to possible return to BFI) included in the excess take or pay revenues in the existing rate base deferral account approved in the Waste Management Decision to capture incremental CNG/LNG Service recoveries for refund to all non by-pass customers,

In recognition of the fact that no revenues or costs associated with the BFI project were included in the FortisBC Energy Utilities Revenue Requirements Application for the 2012 and 2012 test years (2012-2013 RRA), FEI to also establish

- a rate base deferral account for all revenues received from the BFI project, other than those revenues collected in excess of BFI's take or pay commitment; and
- A rate base deferral account for all costs of the BFI project.

FEI to identify any amounts that it chooses to allocate to its shareholder, as opposed to BFI,

FEI to provide an updated rate filing within 30 days of the Order.

On June 15, 2012, FEI submitted an application to the Commission for reconsideration of certain aspects of Order C-6-12 (the Reconsideration Application). The specific directives that were subject to potential reconsideration were:

3. FEI is directed to establish two new service classes, one for CNG Service and one for LNG Service.

5. The Commission further directs:

(b). Fortis is to recalculate the Operations and Maintenance charge in the BFI rate to reflect the cost of the CNG/LNG Service program using the figures of \$569,396 for 2012 and \$601,119 for 2013, to be allocated among CNG/LNG Service customers in a reasonable manner.

(e). FEI is to include all other amounts paid by BFI for volumes in excess of the "take or pay" commitment in the existing rate base deferral account approved in the Waste Management Decision to capture incremental CNG and LNG Service recoveries received from actual volumes purchased in excess of minimum take or pay commitments, for refund to all non by-pass customers.

In this decision, these directives will be referred to as Order 3, Order 5(b), and Order 5(e), respectively. Two Interveners from the FEI BFI CPCN proceeding participated in the Reconsideration Application: the BC Sustainable Energy Association (BCSEA) and the British Columbia Pensioners' and Seniors' Association *et al.* (BCPSO, formerly known as BCOAPO *et al.*). Interveners in the Inquiry into FEI's offering of products and services in the Alternative Energy Solutions and other New Initiatives (AES Inquiry) were invited to participate in Phase 2 of the Reconsideration but no additional Interveners chose to participate.

Order 5(b)

FEI submits that in making Order 5(b), if the Commission had intended that the figures of \$569,396 for 2012 and \$601,119 for 2013 that are used in the Order pertain only to FEI's CNG/LNG Service, the Commission erred in fact and law. FEI states that to comply with the order would result in overcharging BFI, and undercharging other customers in relation to these expenditures. In this sense, the order amounts to a cross-subsidization. (Exhibit B-1, p. 2)

FEI submits that the overcharging arises because these activities are to the benefit of all ratepayers by increasing system throughput and hence, delivery revenues, and do not pertain only to CNG/LNG Service customers. Therefore, only a small portion of the \$569,396 for 2012 and \$601,119 for 2013 may be properly attributable to CNG and LNG Service customers. (Exhibit B-1, p. 3)

FEI further submits that these costs were embedded in the rates approved by the Commission in the Fortis Energy Utilities' (FEU) 2012-2013 Revenue Requirements Decision (RRA Decision) dated April 12, 2012. (Exhibit B-1, p. 9) BCSEA also submits that these expenditures were approved as contributing to the rates of the distribution rate class by the Commission's April 12, 2012 FEU 2012-2013 RRA Decision. (BCSEA Final Submission, p. 2)

However, FEI included a charge of \$0.20 per GJ to reflect an allowance for overhead and marketing costs, based on 25% of the cost of its Sales Manager for Natural Gas for Transportation (NGT, NGV). This charge of \$0.20 per GJ was embedded in the O&M portion of the fueling charge under the BFI Agreement and escalates by BC CPI annually. (BFI CPCN Application Proceeding Exhibit B -1, pp. 18-19) FEI further noted that overhead costs will also be recovered through delivery charges under rate schedules used by CNG/LNG Service customers. (BFI CPCN Application Proceeding, Exhibit B-1, p. 18)

BCPSO takes no position with respect to the reconsideration of Order 5(b). In its view, it is not clear from the BFI Decision whether the Commission Panel actually misapprehended either the facts or the law relating to the allocation of O&M costs proposed by FEI, or whether the Commission Panel simply disagreed with FEI's proposed allocation. BCPSO further submits that it is within the Commission's discretion to allocate the full cost of FEI's CNG/LNG Service program to FEI's CNG and LNG Service customers. It also states that although FEI is correct in saying that non by-pass customers will benefit from any increased throughput associated with NGT Services, it does not follow from this that FEI's promotion of NGT Services will result in a net benefit to residential ratepayers. BCPSO notes that the forecast expenditures of \$569,396 for 2012 and \$601,119 for 2013 for overhead, marketing, business development and customer education in respect of natural gas vehicles include the cost of "guidance and advice on the Province's Greenhouse Gas Reduction Regulation." BCPSO further notes that this regulation requires FEI's non by-pass customers to finance prescribed undertakings in the order of magnitude of \$100 million, directed toward establishing a Natural Gas for Transportation market in BC. BCPSO argues that "[i]t remains to be seen whether the contributing customers will ever see a benefit commensurate with the amount expended by them pursuant to the new Greenhouse Gas Reduction (Clean Energy) Regulation BC Reg. No.102/2012 (the Regulation). If they do not, FEI's promotional activity of providing "guidance and advice" on the Regulation will have resulted in a net loss to FEI's non by-pass customers". (BCPSO Submission, pp. 3-4)

Commission Panel Discussion

When considering the issue of cross subsidization in the Waste Management Decision, the Panel stated “.... that FEI failed to provide a convincing argument that it is just and reasonable that existing ratepayers should subsidize the costs of the refuelling facilities. We believe that there should be as little potential for cross-subsidization as it is possible to achieve. In its submission, FEI endorses this approach when it describes its cost of service model: ‘At a high level, it captures all of the costs associated with providing service to an NGV customer, and uses these costs to generate a rate that recovers the cost of service from the NGV customer over the term of the service agreement. The intent is to keep other natural gas customers whole.’” (Exhibit B-1, p. 11) However, as discussed, the Panel is concerned about the effect of unbudgeted costs, cost overruns and other factors that could require ratepayer subsidization. The Panel therefore requires that, to the extent possible, none of the actual costs of the CNG/LNG service offerings be recovered from existing ratepayers. Any General Terms and Conditions must therefore include additional assurance that the total actual cost of the refuelling facility will be recovered from the CNG/LNG customer to the extent possible.” (Waste Management, pp. 24-25)

The Panel further commented: “...to be approved, any General Terms and Conditions must include a cost of service calculation which reflects the actual full cost of service, *including the cost of establishing, maintaining and promoting the program, as closely as possible*”. (Waste Management Decision, p. 28 emphasis added) In Appendix I of the 2012-2013 RRA, FEI stated: “As agreed to in Item 14 (b) of the NSA, “the marketing costs in support of NGV that are included in the revenue requirements Application are appropriately recoverable in 2010 and 2011 rates.” However, the Panel in the 2012-2013 RRA concurred with the Panel’s findings in the Waste Management Decision and reiterated that natural gas distribution ratepayers should bear none of the costs of the NGV business, stating that “... there is no need to protect CNG/LNG customers and shareholders at the expense of existing ratepayers.” (FEU 2012-2013 RRA Decision, pp. 103, 113)

In the 2012-2013 RRA Evidentiary Update, dated September 12, 2011 (Exhibit B-22, FEU 2012-2013 RRA), FEI stated: “On July 19, the Commission issued Order No. G-128-11 and Reasons for Decision which denied the general terms and conditions as proposed in the CNG-LNG Application. In its Decision, the Commission invited FEI to file revised terms and conditions with changes as identified in the Reasons for the Decision. Although presenting some challenges to the negotiations of the fueling station contract rates, based on the premise that NGV incentives would remain in place, BCUC Order No. G-128-11 did not have serious implications on the cost and revenue forecasts for NGV fueling stations contained in the revenue requirements for 2012 and 2013. FEI anticipates filing revised terms and conditions this Fall, incorporating the revisions described by the Commission.”

Commission Determination

The Panel varies Order 5(b) to state: “... the figures of \$569,396 for 2012 and \$601,119 for 2013, [are] to be allocated among CNG/LNG Service customers and non-bypass natural gas customers in a reasonable manner.”

In directing FEI to recover all costs associated with CNG/LNG Service from CNG/LNG Service customers, the Panel in the Waste Management Decision clearly articulated the position that distribution rate class customers should be kept whole. The 2012-2013 FEU RRA Panel reiterated this view. This was a marked change in direction from the result of the FEI 2010-2011 Revenue Requirements Negotiated Settlement Agreement, in which the parties agreed that NGV marketing costs could be recovered in distribution customer rates. Accordingly, an approval to recover a particular amount in the 2012-2013 FEU RRA should not be construed as an approval to recover most or all of that amount from non by-pass customers. However, when FEI provided

the rate calculation resulting from the Commission's Decision in the 2012-2013 RRA, apparently either all or the vast majority of the identified forecast overhead amounts for CNG/LNG service (i.e. \$569,396 for 2012 and \$601,119 for 2013) were included in the rates for distribution customers instead of being allocated to CNG/LNG Service customers, current and/or future, as was directed.

FEI submits that because these costs are already included in distribution customers' rates, a proportion of them cannot now be allocated to BFI. However, although FEI argues that the 2012 and 2013 forecast overhead and business development costs were approved to be allocated to non-bypass ratepayers in the 2012-2013 FEU RRA, in the BFI application, it has proposed an incremental allowance for overhead and marketing costs for inclusion in BFI rates and proposed that overhead costs will be recovered from other CNG/LNG Service customers. FEI submits that the appropriate allocation is a small portion of one manager's time. (Exhibit B-1, pp. 18-20) The Commission Panel disagrees with this allocation and finds that it is entirely insufficient. It is entirely unclear to this Panel what amounts of what overheads are allocated to what customers; and what was intended to be and what was actually approved. Accordingly, Order 5(b) now requires FEI to recalculate that proportion to ensure that the allocation to BFI is just and fair.

With regard to FEI's submission that the sales and marketing costs benefit all ratepayers by increasing system throughput, the Panel agrees that, to the extent that fuelling stations increase throughput, all things being equal, there may be a benefit. However, assuming increased throughput does, in fact, provide a benefit on the distribution system, all ratepayers will receive any benefit of increased throughput no matter who builds the fuelling stations. FEI's ratepayers will thus benefit to the same extent from any CNG vehicle service stations in FEI's service territory.

When FEI owns and operates the fuelling stations, there is an inherent element of risk that the existing ratepayer may be required to assume. While General Terms and Conditions Section 12B – Vehicle Fueling Stations (GT&C 12B) does mitigate much risk, there is operational risk to the utility itself that, if it materializes, may have an effect on all customers. If a third party owns and/or operates these facilities, the ratepayer would face no such risk.

In any event, the Panel is not persuaded that the current allocation, which would appear to amount to all the marketing and business development costs except for the amount represented by the \$.20 per GJ surcharge to BFI being borne by the natural gas ratepayers, is a just and fair allocation. FEI has provided no evidence to support such a disproportionate allocation and the Panel does not accept it. **However, the Panel would consider an alternative allocation of forecast overhead amounts of \$569,396 for 2012 and \$601,119 for 2013, between the natural gas ratepayers and the customers taking service under tariff GT&C 12B, if FEI can provide a sufficient evidentiary basis for its proposed allocation.** The evidentiary basis should include, but not be limited to, a chronology of the negotiations with each of the existing customers (Waste Management, BFI, Vedder), the staff resources allocated, a list of activities undertaken to develop the NGT market generally, and a description of activities with other vendors in the marketplace to assist them in their marketing efforts. The analysis should also include a description of any amounts of overhead included in the various rate schedules applicable to CNG/LNG service and their source. In addition, FEI should provide evidence that increased throughput will benefit core customers and quantify those benefits as well as all benefits accruing to NGT customers. FEI is further directed to provide justification for the allocation of costs among the customers taking service under GT&C 12B. FEI is also directed to propose a mechanism to ensure that there is no double recovery of any such costs.

Order #3

FEI submits that in making Order #3, requiring two new classes of service, one for CNG Service, one for LNG Service, the Commission determined one of the high level principles that is currently before the AES Inquiry Panel. In FEI's submission, this was either an error of law, because it was contrary to principles of procedural fairness and other fundamental principles of administrative law; alternatively, it should be reconsidered on the basis of the Commission's residual category of "just cause". (Exhibit B-1, p. 2) FEI further submits that the Regulation is not consistent with the formation of separate classes of service for CNG Service and LNG Service.

However, FEI also submits that in this Reconsideration Application, the Commission should receive and consider evidence and submissions previously filed in the AES Inquiry. In FEI's view, the basis for the receipt of this evidence is that a primary issue in this Reconsideration concerns the issues raised in the AES Inquiry. It argues that both BCPSO and BCSEA have been active participants in the AES Inquiry and are well acquainted with the issues raised in that proceeding and its evidentiary record. FEI therefore proposes that the parties to this Reconsideration should be permitted to refer to exhibits from the AES Inquiry in their submissions, should the need arise, without the need to file those exhibits as evidence in this Reconsideration Application. (FEI Final Submission, p. 2)

BCSEA submits that the fact that Order 5(b) reverses the premise of the 2012-2013 FEU RRA Decision, that NGV service is within the distribution rate class, highlights that BFI Order #3 is a decision on a broad policy question not argued in either the 2012-2013 FEU RRA proceeding or the BFI proceeding. In BCSEA's view, this reinforces the conclusion that the AES Inquiry is the appropriate proceeding in which to decide the question. (BCSEA Final Submission, p. 2)

Generally speaking, both interveners agree with FEI's submissions. However, BCPSO disagrees with FEI's position regarding the significance of the Regulation. BCPSO submits that it is not appropriate for the Commission to revisit previous decisions simply because new legislation has come into effect (Exhibit C 2-1, p. 2). BCSEA takes no position on the Regulation.

In the Waste Management Decision, the Commission Panel questioned whether it was in the interests of FEI's existing ratepayers to bear the costs or risks associated with that project's benefits, being a reduction of carbon emissions for the transportation sector, when those ratepayers represent only a portion of the province's population and, generally speaking, are not responsible for the emissions. The Panel concluded that FEI's ratepayers should not bear those costs or risks and should be kept whole; insulated, to the greatest extent possible, from the costs and risks associated with FEI's entry into the NGV fuelling business. (Waste Management Decision, p. 17)

The Commission Panel expressed the view that, to the extent that FEI intended to provide CNG/LNG fuelling services in its capacity as a public utility, the public interest required that it "do so without utilizing any potential economic leverage which it may have as a result of its status as a monopoly distributor of natural gas." It found that the public interest would not be served by effectively providing FEI with a competitive advantage over other potential industry participants if FEI were able to subsidize the cost of what would otherwise be an unregulated service, with monies from existing ratepayers. (Waste Management Decision, pp. 19, 29)

The Waste Management Decision Panel found that it was not "just and reasonable" for FEI's ratepayers to subsidize the cost of CNG/LNG fuelling facilities. The Panel found:

“[a] CNG or LNG facility is not an extension of the distribution system If a CNG station...were provided by an unregulated entity, there would be no requirement, or need, for existing ratepayers to share the cost of providing the facilities, yet they would still benefit from increased throughput in [Fortis’] distribution system.”

The Panel therefore “require[d] that, to the extent possible, none of the actual costs of the CNG/LNG service offerings be recovered from existing ratepayers.” (Waste Management Decision, p. 24)

The BCPSO agrees with the Commission Panel that the creation of separate rate classes for CNG and LNG Service may ultimately prove to be the simplest, fairest and more effective method of limiting potential subsidy to FEI’s CNG and LNG Service. However, BCPSO does not believe the creation of separate rate classes was necessary for the protection of residential ratepayers in the context of the BFI Decision. It submits that GT&C 12B plays an important role in limiting any potential subsidy flowing to CNG and LNG Service from FEI’s residential ratepayers and that the provision creating separate rate classes could be removed from Order C-6-12 with no substantive effect on the accounting aspects of the rate design. (BCPSO Final Submission, p. 2)

Commission Determination

The Panel varies Order 3 to state: "FEI is directed to establish a new class of service for CNG Service on an interim basis pending the outcome of the AES Inquiry."

The Panel agrees with the BCPSO that the Commission is not required to revisit previous decisions because new legislation has come into effect. The Panel also acknowledges FEI’s submission that the Regulation is relevant as an indication of legislative intent. However, the Regulation is silent on the specific issue of separate classes, and the Panel does not agree with FEI that the Regulation demonstrates that the legislative intent is that CNG and LNG Service should only be contained within FEI’s natural gas class of service.

It appears to the Panel at least equally likely that the intent of the legislation is to ensure that a subsidy is available for CNG/LNG fuelling services, even in the event that CNG/LNG fuelling services are found to be separate customer classes. Accordingly, it could be inferred the Regulation was intended to allow for either cross-class subsidization or inter-class subsidization. However, a further intent of the Regulation is arguably to limit the potential subsidies provided by a utility’s ratepayers to finance eligible natural gas vehicles and build CNG/LNG fuelling infrastructure, as well as the time over which such subsidies can be provided.

Customers within a class of service share benefits among themselves – utility infrastructure provided to a customer in a class tends generally to be shared by all customers in a class. In this circumstance, there is less need for a regulation to limit the amount of costs that are so shared. However, customers in different classes of service have a greater degree of separation from customers in other classes of service with respect to costs that can potentially be recovered from them. As BCPSO points out, the creation of separate rate classes is a simple, fair and efficient method of preventing cross subsidization. This is consistent with section 60(1)(c) of the *Utilities Commission Act (UCA)*, which considers each class to be a “self contained unit”. Accordingly, in the Panel’s view it is more likely that specific regulation would be required in the case where separate classes existed than if they didn’t. Thus the Panel finds that it is not inconsistent with the legislative intent of the Regulation that CNG Service become a separate class of service.

In the previous section of this decision, the Panel reviewed the approach taken to the allocation of overhead costs and found that, even though the Waste Management Decision required FEI to separate overhead costs for recovery from CNG and LNG Service customers, this was not done. Accordingly, there was apparent confusion in the 2012-2013 FEU RRA proceeding concerning from whom those overheads were recovered. In this regard, the Panel reiterates the comments of the BCPSO that separate rate classes are a simple fair and efficient method of preventing cross subsidization. The Panel is concerned that even though GT&C 12B was intended to limit cross subsidization, this is apparently not the case. Accordingly, the creation of a separate class for CNG is a further and necessary step to ensure that this separation is effective. This approach, in the Panel's view, best provides the necessary separation directed by the Waste Management Decision. Accordingly, the Panel is of the view that CNG Service should remain a separate class of service, as ordered.

With regard to LNG Service, the Panel acknowledges that LNG Service is not before this hearing. However, GT&C 12B is a tariff for both CNG and LNG Service. Additionally, the marketing and business development costs are for both the CNG and the LNG vehicle program. The Panel finds that there are sufficient differences between the two services that they should not be part of the same class.

The Panel also agrees with the parties that the creation of a separate rate class for CNG Service is an issue under consideration in the AES Inquiry. However, the AES Inquiry has previously acknowledged that it does not wish to tie the hands of other Panels who are also considering the same or related issues. Accordingly, this Panel is of the opinion that, even though an issue is active in the AES Inquiry, that does not preclude it from being considered in another, concurrent, hearing, if it is germane to that hearing also. Additionally, as noted above, all the evidence and submissions from the AES Inquiry are also before this hearing.

The Panel has considered the AES evidence and submissions in addition to the submissions made by the parties in this hearing and is not persuaded that there is any compelling reason that CNG Service should not be made a separate class of service. However, in consideration of the ongoing AES Inquiry, the Panel varies Order 3 so that it is applied to CNG Service on an interim basis only, pending the result of the AES Inquiry.

The Panel also finds that the separation provided by this service class further reinforces the principle that it is not appropriate to recover the costs of the CNG/LNG Service program from non-bypass natural gas customers.

Order 5(e)

FEI submits that if the Commission does not reconsider Order #3 and vary it to allow FEI to provide the service to BFI within the existing natural gas class of service, the Commission must vary Order 5(e). The basis of its argument is that providing excess revenue earned on BFI's CNG Fuelling Service to the natural gas class of service will violate section 60 of the UCA. (Exhibit B-1, p. 2)

BCSEA agrees, stating that if CNG Service is a separate rate class, then s. 60(1)(c) of the UCA requires it to be considered a "self contained unit". If CNG Service revenue from BFI were diverted, this requirement would be contravened.

BCPSO disagrees, re-stating submissions it has previously made to the AES Inquiry. It submits that recoveries from actual volumes purchased in excess of minimum take or pay commitments can flow to non by-pass customers in the same way that money flows from by-pass customers to the CNG and LNG Service customers by virtue of the Regulation. It further maintains that allowing these recoveries does not violate UCA s.60(1)(c) because such recoveries do not arise out of the Commission's exercise of its rate setting function. However, it

also acknowledges that Order #3 and Order #5e are connected such that it is inappropriate to consider them in isolation. (BCPSO Submission, p. 3)

Commission Determination

Given the creation of a separate class of service for CNG, on an interim basis pending the outcome of the AES Inquiry, the Panel varies Order 5(e) to state: "FEI is to include all other amounts paid by BFI for volumes in excess of the 'take or pay' commitment in a separate rate base deferral account from the one approved in the Waste Management Decision to capture incremental CNG Service recoveries received from actual volumes purchased in excess of minimum take or pay commitments. Disposition of this deferral account will be determined at a future date."