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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-126-13**

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

and

**Exemption from Certain Provisions of the *Utilities Commission Act* for
Biogas and Biomethane Suppliers Selling to a Public Utility**

BEFORE: L.F. Kelsey, Commissioner August 20, 2013

O R D E R

WHEREAS:

- A. On April 10, 2013, by Order G-54-13, the British Columbia Utilities Commission (Commission) initiated an Inquiry into an Exemption for Biogas and Biomethane Suppliers (the Inquiry);
- B. During the Inquiry the Commission received submissions from Registered Interveners on its proposed terms of the exemption and accompanying questions;
- C. Following receipt of response submissions, on May 23, 2013, the Commission issued an Inquiry Report. The Inquiry Report determined that the Commission should proceed with an exemption for biogas and biomethane suppliers when selling to a "public utility";
- D. The *Utilities Commission Act* (UCA) defines a "public utility," in part, as "a person, or the person's lessee, trustee, receiver or liquidator, who owns or operates in British Columbia, equipment or facilities for the production, generation, storage, transmission, sale, delivery or provision of electricity, natural gas, steam, or any other agent for the production of light, heat, cold or power to or for the public or a corporation for compensation";
- E. Applicable persons who enter into energy supply contracts as defined by section 68 of the UCA must file copies of the contracts with the Commission under section 71 of the UCA;
- F. Subsection 82(1) of the UCA provides that the Commission may on its own motion inquire into, hear and determine a matter that under the UCA it may inquire into, hear or determine on application;
- G. Subsection 88(1) of the UCA allows the Commission to make an order, rule or regulation apply to all cases, or to a particular case or class of cases, or to a particular person;

- H. Subsection 88(3) of the UCA provides that the Commission may, with the advance approval of the Lieutenant Governor in Council (LGIC) and on conditions it considers advisable, exempt a person, equipment or facilities from the application of all or any of the provisions of the UCA, or may limit or vary the application of the UCA;
- I. Part 3 of the UCA includes various requirements including: section 42 – duty to obey orders and section 43 – duty to provide information;
- J. For the purposes of this Order, the Commission considers the class of cases for exemption to be that where a person who owns or operates equipment, facilities, plant, or systems used for the production and sale of biogas or biomethane to a public utility, where the Commission can review or has reviewed the purchase of biogas or biomethane by a public utility through an energy supply contract under section 71 of the UCA;
- K. By Order G-194-10, the Commission accepted the original Purchase of Biogas Agreement between FortisBC Energy Inc. (FEI) and Catalyst Power Inc. (CPI) for a biogas facility in the vicinity of Abbotsford, BC. Fraser Valley Biogas Ltd. (FVB) then subsequently acquired the CPI biogas facility. By Order E-7-12 dated March 22, 2012, the Commission accepted the Biomethane Purchase Agreement between FEI and FVB;
- L. By Order G-79-13, dated May 14, 2013, the Commission approved rates for each of Earth Renu Energy Corp., Dicklands Farms, and Seabreeze Farm Ltd. under section 61 of the UCA for the sale of biomethane to FortisBC Energy Inc. Also, the Commission in Directive 3 of G-79-13 stated: “If, subsequent to this order, a biomethane supplier listed in Directive 2 above is exempted from section 61 of the UCA, then, pursuant to subsection 90(1) of the UCA, the following directive will apply to that Biomethane Supplier effective the date the exemption comes into effect:
- The approval granted in Directive 2 above pursuant to sections 59 to 61 is cancelled; and
 - Pursuant to section 71 of the UCA and the Commission’s Rules for Natural Gas Energy Supply Contracts, the Commission accepts for filing the Biomethane Purchase Agreement and any amendments between FEI and that Biomethane Supplier”;
- M. For the purpose of this Order:
- “biogas” is defined as raw gas from any organic source that is capable of being purified or upgraded to pipeline quality gas, such as raw gas substantially composed of methane that is produced by the organic breakdown of matter in the absence of oxygen, and
- “biomethane” is defined as biogas that is purified or upgraded to meet the public utility's specifications for injection into its natural gas pipeline;

- N. By Order in Council No. 347 dated August 1, 2013 and attached as Appendix A to this Order, the LGIC granted advance approval to the Commission to exempt biogas and biomethane suppliers selling to a public utility from certain provisions of the UCA for the purposes of and subject to the terms substantially set out in the draft Commission Order attached to the Order in Council; and
- O. The Commission has considered the issues in the Inquiry, considered the submissions received from Interveners, and has determined that exempting a biogas or biomethane supplier who sells to a public utility, where the Commission would review the purchase of biogas or biomethane by a public utility through an energy supply contract under section 71 of the UCA, from certain provisions of the UCA is in the public interest.

NOW THEREFORE the Commission orders as follows:

1. Subject to Directive 2 of this Order, the Commission hereby exempts:
 - i. a person who owns or operates equipment, facilities, plant, projects, or systems used for the production and sale of biogas or biomethane to a public utility, where the Commission can review or has reviewed the purchase of biogas or biomethane by a public utility through an energy supply contract under section 71 of the *Utilities Commission Act* (UCA);
 - ii. subsection (i) above shall not apply to a person who, at the time of entering into an agreement to produce and sell biogas or biomethane to a public utility, is otherwise a public utility and not exempt from all rate provisions of Part 3 of the UCA; and
 - iii. subsection (ii) above shall not apply to a person who is a biogas or biomethane supplier with a Commission approved rate schedule under section 61 of the UCA that is in effect on the date of this Order who sells biogas or biomethane to a public utility and who otherwise would not be a public utility. If the supplier's rate schedule under section 61 of the UCA is cancelled, the person applicable under subsection (iii) does qualify for exemption under subsection (i) above;

from the following provisions of the UCA:

- (a) Part 3 other than sections 42 and 43 (1) (a) and (b) (i) and (2) to (5); and
 - (b) Section 71.
2. The exemption to the person referred to in Directive 1 of this Order remains in effect for that person until the Commission, after a hearing on its own motion or after a hearing on a complaint by an interested person, orders that the exemption no longer applies to the person referred to in Directive 1 of this Order.

**BRITISH COLUMBIA
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DATED at the City of Vancouver, in the Province of British Columbia, this 20th day of August 2013.

BY ORDER

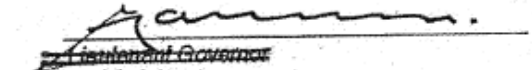
Original Signed By:

L.F. Kelsey
Commissioner

Attachment

PROVINCE OF BRITISH COLUMBIA
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

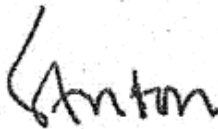
Order in Council No. 347, Approved and Ordered AUG - 1 2013


~~Lieutenant Governor~~
Administrator

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the ~~Lieutenant Governor~~ ^{Administrator}, by and with the advice and consent of the Executive Council, orders that approval is given to the British Columbia Utilities Commission to exempt biogas and biomethane suppliers selling to a public utility from the following provisions of the *Utilities Commission Act* for the purposes of and subject to the terms substantially set out in the attached draft order of the British Columbia Utilities Commission:

- (a) Part 3 other than sections 42 and 43 (1) (a) and (b) (i) and (2) to (5);
- (b) Section 71.



Attorney General and Minister of Justice



Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: *Utilities Commission Act*, R.S.B.C. 1996, c. 473, s. 88 (3)

Other:

June 10, 2013