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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-79-13**

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

and

FortisBC Energy Inc.
Biomethane Third-Party Suppliers Regulatory Process:
Applications for Approval of Third-Party Suppliers' Rates &
Acceptance of FEI Biomethane Purchase Agreements with Third-Party Suppliers and
FEI Capital Expenditures for Related Interconnection Facilities

BEFORE: L.A. O'Hara, Panel Chair/Commissioner
C. van Wermeskerken, Commissioner May 14, 2013

O R D E R

WHEREAS:

- A. On December 14, 2010, the British Columbia Utilities Commission (Commission) issued the Terasen Gas Inc., [now FortisBC Energy Inc. (FEI)], Biomethane Application Decision (Biomethane Decision). The Biomethane Decision allowed FEI to move forward with a Biomethane Program on a test basis for a two year period (Pilot). Commission Order G-194-10 and the Biomethane Decision set the governing criteria for the Pilot and related biomethane supply contracts. The Biomethane Decision also capped the annual amount of biomethane FEI could purchase under all projects and set a maximum price of \$15.28 per gigajoule (GJ) for delivered biomethane;
- B. On December 19, 2012, FEI filed a Post Implementation Report on the Biomethane Service Offering and Application for Approval of the Continuation and Modification of the Biomethane Program on a Permanent Basis (Application). The Application sought the following from the Commission, *inter alia*:
- (a) Pursuant to section 71 of the *Utilities Commission Act* (UCA), acceptance of the following energy supply contracts as described in section 7 of the Application and filed in Confidential Appendix J:
- (i) The Biomethane Purchase Agreement with Earth Renu Energy Corp. (Earth Renu);
- (ii) The Biomethane Purchase Agreement with Greater Vancouver Sewage and Drainage District (GVS&DD);
- (iii) The Biomethane Purchase Agreement with Seabreeze Farm Ltd. (Seabreeze); and

(iv) The Biomethane Purchase Agreement with Dicklands Farms (Dicklands);

(b) Pursuant to section 44.2(3) of the UCA, acceptance of the capital expenditures described in section 7 of the Application related to the interconnection facilities required for the four biomethane supply projects;

- C. On January 28, 2013, CH Four Biogas, Inc. filed applications for approval of rates under sections 58 to 61 of the UCA on behalf of Dicklands and Seabreeze. On January 30, 2013, Earth Renu filed its application seeking approval of a rate pursuant to sections 58 to 61 of the UCA and amended its application on February 21, 2013;
- D. On February 28, 2013, the Commission issued Order G-29-13, conditionally increasing the supply cap set by Order G-194-10 by an amount sufficient to accommodate the supply from the four biomethane suppliers, namely, Dicklands, Seabreeze, Earth Renu and GVSⅅ
- E. Commission Order G-29-13 also directed FEI to confirm to the Commission by March 6, 2013, that natural gas non-bypass customers would bear no actual or potential risk for unsold biomethane pending the outcome of the 2012 Biomethane Application;
- F. Order G-29-13 further directed that the review of the applications for rates by Earth Renu, GVS&DD, Dicklands and Seabreeze, and the applications by FEI for acceptance of expenditures under section 44.2 of the UCA and the supply contracts under section 71 of the UCA be heard by way of a separate Streamlined Review Process (SRP);
- G. On March 4, 2013, Commission Order G-30-13 established a SRP for the review of the Biomethane Third-Party Suppliers' applications filed by March 7, 2013;
- H. On March 6, 2013, FEI filed its response to Commission Order G-29-13, stating FEI would not assume the economic risk for the unsold biomethane from the four new supply contracts. FEI further requested that the Commission reconsider the need for FEI to assume this risk;
- I. Commission Letter L-13-13 dated March 7, 2013, suspended the Third-Party Suppliers' SRP;
- J. FEI submitted its Application for Reconsideration of Commission Order G-29-13 (Reconsideration Application) on March 15, 2013;
- K. On March 18, 2013, Commission Order G-39-13 invited comments from participants on the FEI Reconsideration Application;

- L. Submissions supporting the reconsideration of Commission Order G-29-13 were filed by Dicklands, Seabreeze, and the University of British Columbia on March 20, 2013, Earth Renu on March 21, 2013, and GVS&DD on March 25, 2013;
- M. On March 28, 2013, Commission Order G-45-13 varied Directive 1 of Order G-29-13 and removed the condition that FEI bear the risk of unsold biomethane;
- N. On April 2, 2013, Commission Order G-46-13 established a revised Regulatory Timetable for a combined SRP for the proposed rates under sections 58 to 61 of the UCA and the related supply agreements under subsection 71 of the UCA, as well as the capital expenditure schedule for the related interconnection facilities under section 44.2(3) of the UCA;
- O. The SRP for the review of the applications took place on April 22, 2013. The applicants and the following Registered Interveners participated: British Columbia Pensioners' and Seniors' Organization, the Commercial Energy Consumers Association of British Columbia, B.C. Sustainable Energy Association *et al*; and
- P. The Commission has considered the applications, evidence and submissions received.

NOW THEREFORE the Commission orders as follows:

- 1. Pursuant to section 44.2 of the *Utilities Commission Act* (UCA), capital expenditures described in section 7 of the Application related to the interconnection facilities required for the Dicklands, Seabreeze and Earth Renu Biomethane supply projects are accepted.
- 2. Pursuant to sections 59 to 61 of the UCA, the Commission approves the respective Biomethane Purchase Agreements for the following biomethane suppliers as rates schedules for the proposed biomethane supply service and approves the following rates:
 - i. Dicklands
 - a. \$13.00 per GJ for the volume accepted up to the Base Monthly Quantity, where "Base Monthly Quantity" means 137 GJ/day multiplied by the number of days in the current calendar month; and
 - b. For Biomethane accepted in excess of the Base Monthly Quantity, the applicable rate will be \$11.00 per GJ.

ii. Seabreeze

- a. \$13.25 per GJ for the volume accepted up to the Base Monthly Quantity, where "Base Monthly Quantity" means 137 GJ/day multiplied by the number of days in the current calendar month; and
- b. For Biomethane accepted in excess of the Base Monthly Quantity, the applicable rate will be \$10.25 per GJ.

iii. Earth Renu

- a. \$13.95 per GJ, subject to annual adjustment pursuant to section 1.2 of this Schedule for each GJ up to 190 GJ per day; and
 - b. \$12.95 per GJ, subject to annual adjustment pursuant to section 1.2 of this Schedule for each GJ greater than 190 GJ per day.
3. 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.

DATED at the City of Vancouver, in the Province of British Columbia, this 14th day of May 2013.

BY ORDER

Original Signed By:

L.A. O'Hara
Panel Chair/Commissioner

Attachment

FortisBC Energy Inc.
Biomethane Third-Party Suppliers Regulatory Process:
Applications for Approval of Third-Party Suppliers' Rates &
Acceptance of FEI Biomethane Purchase Agreements with Third-Party Suppliers and
FEI Capital Expenditures for Related Interconnection Facilities

REASONS FOR DECISION

Introduction

The applications before the British Columbia Utilities Commission (Commission) in this proceeding were as follows:

- 1. Application by FortisBC Energy Inc. (FEI) for acceptance of capital expenditures for related interconnection facilities:**
 - FEI seeks approval of the capital expenditures associated with the Suppliers and the supply agreements, pursuant to subsection 44.2(1)(b) of the *Utilities Commission Act* (UCA).
- 2. Applications by biomethane suppliers for approval of public utility rate schedules:**
 - Dicklands Farms (Dicklands), Seabreeze Farm Ltd. (Seabreeze), and Earth Renu Energy Corp. (Earth Renu) (collectively the Biomethane Suppliers) seek approval of their Biomethane supply agreements (Biomethane Purchase Agreements) with FEI as public utility rate schedules pursuant to sections 58 to 61 of the UCA.
- 3. Application by FEI for acceptance of Biomethane Purchase Agreements:**
 - FEI seeks conditional approval of the Biomethane Purchase Agreements pursuant to sections 71 and 90 of the UCA, in the event that the Biomethane Suppliers subsequently cease to be subject to public utility regulation under Part 3 of the UCA, including the rate-setting requirements of section 61.

These applications arose within the scope of the Terasen Gas Inc. (now FEI) Biomethane Application Decision (Biomethane Decision) issued on December 14, 2010. The Biomethane Decision allowed FEI to move forward with its Biomethane Program on a test basis for a two year period (Pilot). The Commission has decided to approve these applications for the reasons that follow.

Background

The Streamlined Review Process (SRP) took place on April 22, 2013. It proceeded in two parts:

- Part 1 reviewed FEI's application for acceptance of capital expenditures for related interconnection facilities;
- Part 2 reviewed the supply agreements:

- First, the Commission considered the supply agreements under sections 59 to 61 of the UCA, as public utility rate schedules for the sale of biomethane; and
- Second, the Commission considered the supply agreements under section 71 of the UCA, as energy supply contracts.

The Commission Letter L-23-13 regarding the direction on the SRP dated April 9, 2013, initially proposed separate in-camera sessions to consider each of the supply agreement. (Exhibit A-5) Ultimately, the Commission combined the sessions into one.

At the outset of the SRP, the Commission reviewed the process with participants and the following two issues in particular:

- The confidentiality of biomethane rates once approved by the Commission; specifically, how would a request to keep the contracts confidential reconcile with the requirement of section 62 of the UCA, which requires rate schedules to be public once approved; and
- The applicability of section 71, given that the definition of “energy supply contract” under section 68 of the UCA excludes a contract in respect of which a rate schedule is approved under section 61 of the UCA.

All participants agreed that the Biomethane Purchase Agreements must be made public if approved as a rate schedule under section 61 of the UCA. The participants also agreed that the review of the Biomethane Purchase Agreements could proceed in a single and public review, subject to assurances of confidentiality related to certain items supporting financial information or proprietary economic analytical models continuing to be held in confidence.

The participants further supported the Commission issuing a contingent ruling under section 90 accepting the Biomethane Purchase Agreements under section 71 as energy supply contracts, to avoid the need for further review of the supply agreements if the Biomethane Suppliers are subsequently exempted from section 61 of the UCA. On this issue, the Commission and the participants took notice of the concurrent Commission inquiry initiated by Order G-54-13 considering whether biomethane suppliers should be exempt from public utility regulation under Part 3 of the UCA.

At the conclusion of the SRP, the Registered Interveners – British Columbia Pensioners' and Seniors' Organization, the Commercial Energy Consumers Association of British Columbia and B.C. Sustainable Energy Association *et al* – supported the applications. Their support, however, was for these three projects only. This ruling should not create any expectations for the 2012 Biomethane Application. Further discussion of the specific applications follows.

Application by FEI for Acceptance of Capital Expenditures for Related Interconnection Facilities – Section 44.2

FEI seeks acceptance, pursuant to section 44.2 of the UCA, of the capital costs related to the facilities required to connect the Dicklands, Seabreeze and Earth Renu supply projects as described in section 7 of the Application.

The interconnection facilities include metering, monitoring, odorizing, safety control, and piping at each site. The projected costs for Earth Renu, Dicklands and Seabreeze are: \$786,000, \$1,014,000 and \$1,189,000 respectively. (Exhibit B1-1, pp. 95-96) The main unit cost per meter for these biomethane supply projects range

from \$328 to \$378 per meter. These unit costs are somewhat higher than the cost of the previous projects either because of requirement of steel pipe or requirements for residential crossings. (Exhibit B1-4, BCUC 1.2.2)

A key risk for the interconnection facilities is the potential for stranded assets. FEI states that this risk is modest because the interconnection assets are movable, and therefore the potential stranded costs will be limited to the costs of the interconnection piping. In the event of a project termination, FEI requires a termination payment from the Biomethane Suppliers equal to the stranded asset costs. (Exhibit B1-2, p. 96) The termination payment is secured by letter of credit from the Supplier. (T1:108-109)

Subsection 44.2(5) of the UCA sets out the criteria the Panel must consider, including the following items:

- (a) the applicable of British Columbia's energy objectives;
- (b) the most recent long-term resource plan filed by the public utility under section 44.1, if any; and
- (e) the interests of persons in British Columbia who receive or may receive service from the public utility.

FEI addresses cost allocation in section 9.2.3 of the Application, Exhibit B1-1, p. 123, and states the principle of providing universal access to Renewable Natural Gas (RNG), and eventually providing the option to all customers to purchase Biomethane. (Exhibit B1-7, BCSEA: 1.6.3) FEI also states that biomethane interconnection costs ought to be viewed "consistent with the acquisition of traditional natural gas from major gas transport companies."

Commission Determination

The Commission Panel finds the application by FEI for acceptance of capital expenditures for the related interconnection facilities meets the applicable energy objectives, is consistent with the last FEI Long-Term Resource Plan and is in the public interest. The interconnection facilities are required to safely and reliably interconnect the biomethane supply projects to FEI's system. Furthermore, FEI has sufficiently mitigated the risk of stranded costs. **Therefore, pursuant to section 44.2 of the UCA, the Commission accepts the capital expenditures described in section 7 of the Application related to the interconnection facilities required for the Dicklands, Seabreeze and Earth Renu Biomethane supply projects.**

The Commission Panel makes no determination on the general concepts expressed by FEI, but does find that for the purposes of the Pilot, the interconnection costs for the three Biomethane Suppliers are acceptable. Since the projects are part of an expansion to the Pilot, the cost allocation of the project is to be treated in a manner consistent with the Pilot. It is appropriate to have interconnection costs borne by all customers.

Applications by Biomethane Suppliers for Approval of Public Utility Rate Schedules – Sections 59 to 61

The Biomethane Suppliers request approval of their rates, pursuant to sections 58 to 61 of the UCA. The applicable sections of the UCA are 59 to 61. The criteria set by Order G-194-10 for the Pilot also apply to the Commission's review of the Biomethane Purchase Agreements.

CH Four Biogas, Inc. states on behalf of Dicklands and Seabreeze that their lenders required a payback period no longer than 10 years. The lenders are also securing the dairy farm assets as collateral for the loan. (Exhibit D-5, Exhibit D-6)

Earth Renu states that a reasonable return for the level of project risk was determined based on the fact that much of the project is financed with private equity. (Exhibit D-7)

FEI explained how the rates proposed for the three suppliers were determined through an open book methodology recognizing the payback requirements in an entrepreneurial environment while respecting the interest of the rate payers at the same time. FEI also noted that the rates are below the \$15.28 per GJ ceiling. (T1: 96-97)

Commission Determination

The Commission Panel finds that the criteria for approving the biomethane supply projects under the approved Pilot apply to the evaluation of the Biomethane Purchase Agreements as rate schedules and notes the proposed rates are below the \$15.28 ceiling set for the Pilot. The Panel further finds that the rates allow for a reasonable payback and are sufficient for the Biomethane Suppliers to earn a reasonable return and thereby ensure viability. Finally, since the rates were negotiated through an open book methodology with FEI, a knowledgeable purchaser with competitive options, the Commission is satisfied in these circumstances that the rates represent a fair and reasonable charge for the nature and quality of the biomethane supply service.

The Panel considers the rates requested by Dicklands, Seabreeze and Earth Renu as just and reasonable and accordingly approves the respective Biomethane Purchase Agreements as the rates schedules for the proposed biomethane supply services and approves rates set out in those Biomethane Purchase Agreements.

Application by FEI for Acceptance of Biomethane Purchase Agreements – Sections 71 and 90

FEI initially filed the Biomethane Purchase Agreements for acceptance by the Commission as “energy supply contracts” under section 71 of the UCA. (Exhibit B1-1) Subsequent to that filing, the Commission issued its Inquiry into FortisBC Energy Inc’s Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives (AES Inquiry Report) dated December 27, 2012, which decided that biomethane suppliers were public utilities. The Biomethane Suppliers then applied to the Commission under section 61 to approve their Biomethane Purchase Agreements as rate schedules.

As a result, both FEI’s section 71 application and the Supplier’s rate applications are before the Commission in this proceeding. However, the Biomethane Purchase Agreements cannot be both an energy supply contract and a rate schedule under the UCA. They must be one or the other, which in turn affects how the Commission reviews them under the UCA.

Section 68 of the UCA defines “energy supply contract” as follows:

"energy supply contract" means a contract under which energy is sold by a seller to a public utility or another buyer, and includes an amendment of that contract, but does not include a contract in respect of which a schedule is approved under section 61 of this Act;” [emphasis added]

In the AES Inquiry Report, the Commission decided that the biomethane suppliers were public utilities. This Panel has therefore considered the Biomethane Purchase Agreements under sections 59 to 61 as public utility rate schedules.

The question then arises about how the Commission is to dispose of FEI's section 71 application. All participants in the SRP agreed that the Commission need not make a decision under section 71 because the Biomethane Purchase Agreements currently fall under the decision making process under section 61 rather than 71. However, FEI with the support of the other participants asked the Commission to issue an "interim" or contingent decision pursuant to sections 71 and 90 to deal with the possibility that the Commission inquiry initiated by Order G-54-13 results in these Biomethane Suppliers and other biomethane suppliers being exempt from public utility regulation under Part 3 of the UCA. The Biomethane Purchase Agreements would then fall within the definition of "energy supply contract" and the decision process under section 71.

Given the unique circumstances, the Commission decided with the support of the participants that the SRP should consider the Biomethane Purchase Agreements under both sections 59 to 61 and section 71. The SRP record therefore includes a full review under both sets of decision-making criteria. The Commission has also decided that it would be helpful and efficient to issue a contingent decision under sections 71 and 90 to avoid further regulatory process in the event that the G-54-13 Inquiry results in a Part 3 exemption for these Biomethane Suppliers.

Section 90 reads as follows:

Commencement of orders

90(1) In an order or regulation, the commission may direct that the order or regulation or part of it comes into operation:

- (a) at a future time;
- (b) on the happening of an event specified in the order or regulation; or
- (c) on the performance, to the satisfaction of the commission, by a person named by it of a term imposed by the order.

(2) The commission may, in the first instance, make an interim order, and reserve further direction for an adjourned hearing or further application.

FEI requests pursuant to section 71 of the UCA, acceptance of the Biomethane Purchase Agreements as described in section 7 of the FEI Application and filed in Confidential Appendix J, Exhibit B-1-1:

1. The Biomethane Purchase Agreement with Earth Renu dated September 21, 2012, and as amended in the Amending Agreement dated February 21, 2013;
2. The Biomethane Purchase Agreement with Dicklands dated November 30, 2012; and
3. The Biomethane Purchase Agreement with Seabreeze dated September 16, 2012.

The redacted versions of the Biomethane Purchase Agreements are entered as Exhibit B1-5-1.

By Order G-194-10 and the accompanying Decision dated December 14, 2010, the Commission ordered that that future two-year pilot program biomethane program supply contracts for the purchase of biogas or biomethane that meet prescribed criteria would meet the requirements of sections 71(1)(a) and (b) of the UCA.

The prescribed criteria from Order G-194-10 are:

1. Maximum price for delivered biomethane of \$15.28/GJ;

2. The supply contract is at least 10 years in length;
3. FEI has, by agreement, retained final control over injection location;
4. FEI is satisfied that the upgrade technology is sufficiently proven;
5. FEI has, by agreement, reserved the right to refuse gas if customer safety or asset integrity is at stake;
6. The partner is a municipality, regional district or other public authority, or is a private party with a track record in dealings with FEI or that posts security to reduce risk of stranding;
7. The total production of biomethane from all projects undertaken under what has been approved in the Decision does not exceed an annual purchase of 250,000 GJ.

Subsequently, by Order G-45-13 dated March 28, 2013, the Commission increased the 250,000 GJ supply cap set by Order G-194-10 to an amount sufficient to accommodate up to an additional 280,000 GJ of supply annually from the following biomethane suppliers in the following amounts: Earth Renu, 100,000 GJ annually; Greater Vancouver Sewerage and Drainage District, 40,000 GJ annually; Dicklands, 70,000 GJ annually; and Seabreeze, 70,000 GJ annually.

The Commission stated in Directive 1 of Order G-29-03: “The Guidelines established in Order G-194-10 and the accompanying Decision, with respect to the criteria for supply contracts to meet the filing requirements in sections 71(1)(a) and 71(1)(b) of the Act, including the pilot price cap of \$15.28 per GJ, will apply to the evaluation of these contracts.” In summary, the Biomethane Purchase Agreements are to be evaluated using the criteria set out for the two-year pilot program in Order G-194-10 except for the increased supply cap approved by Order G-45-13.

The Biomethane Suppliers and the Interveners at the SRP all support acceptance of the Biomethane Purchase Agreements.

Commission Determination

The Commission Panel is satisfied that each of the Biomethane Purchase Agreements meets the energy supply contract criteria set forth in Commission Orders G-194-10, G-29-13, and G-45-13, and should be accepted in the event that the G-54-13 Inquiry results in a Part 3 exemption for the Biomethane Suppliers.

If, subsequent to this order, a Biomethane Supplier 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 of the Biomethane Purchase Agreements as rate schedules for the proposed biomethane supply service 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**