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**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER G-54-13**

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

**and**

**An Inquiry into an Exemption for Biogas and Biomethane Suppliers**

**BEFORE:** L.F. Kelsey, Panel Chair

April 10, 2013

**ORDER**

**WHEREAS:**

- A. On December 27, 2012, the British Columbia Utilities Commission (Commission) issued its Report on the FortisBC Energy Inc. Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives (AES Inquiry Report). The AES Inquiry Report indicated that future Commission Panels will be required to assess the form of regulation to be imposed on biomethane upgraders, including the possibility of a subsection 88(3) exemption, by taking into consideration factors such as the sophistication of the parties involved, the nature of the contract entered into with the utility, and whether there is a demonstrated track record in operating such facilities;
- B. On February 5, 2013, the Commission Panel in Appendix A to Order G-18-13 regarding the FortisBC Energy Inc. (FEI) Biomethane Service Offering: Post Implementation Report and Application for Approval of the Continuation and Modification of the Biomethane Program on a Permanent Basis ( 2012 Biomethane Application) stated the issues concerning the size and scope of the Certificate of Public Convenience and Necessity (CPCN) requirements for biomethane facilities, and the appropriateness of any exemption to regulation, to be within the scope of the 2012 Biomethane Application review;
- C. The Commission also commenced by Order G-30-12 on March 4, 2013, the FEI Biomethane Third-Party Suppliers Regulatory Process: Applications for Approval of Third-Party Suppliers' Rates and Acceptance of FEI Biomethane Supply Agreements with Third-Party Suppliers and FEI Capital Expenditures for Related Interconnection Facilities after receiving rate applications from three biomethane suppliers selling to FEI ;
- D. On March 28, 2013, the Commission issued Order G-45-13 with regard to the FEI Application for Reconsideration of British Columbia Utilities Commission Order G-29-13 in the Matter of Biomethane Service Offering: Post Implementation Report and Application for Approval of the Continuation and

Modification of the Biomethane Program on a Permanent Basis. In the Reconsideration, a submission letter dated March 25, 2013, by Paradigm Environmental Technologies Inc. (Paradigm) encouraged the Commission to “Expediently pursue appropriate changes to the Utilities Commission Act or an order in council where the Commission be empowered to issue exemptions for biomethane producers. It is our understanding that this change would ensure that it is the energy sales contract with the utility (e.g. FortisBC) and not the supplier itself that would be regulated by the Commission”; and

- E. Given the AES Inquiry Report, the evolving developments in the biogas and biomethane industry, and the request from Paradigm, the Commission considers initiating a regulatory process and seeking submissions on an exemption is warranted.

**NOW THEREFORE** pursuant to section 82 of the *Utilities Commission Act*:

1. The Commission initiates an Inquiry into an Exemption for Biogas and Biomethane Suppliers. The purpose and scope of the Inquiry is as set out in Appendix A to this Order.
2. Appendix B to this Order contains the Proposed Terms of the Exemption. Interveners may file their submissions, if any, on the Commission Questions contained in Appendix B to this Order to the Commission Secretary by April 24, 2013.
3. The Regulatory Timetable is attached as Appendix D to this Order.
4. Interveners or Interested Parties must register with the Commission, in writing or electronic submission, by April 23, 2013. Interveners must state the nature of their interest in this Inquiry.

**DATED** at the City of Vancouver, in the Province of British Columbia, this tenth day of April 2013.

BY ORDER

*Original signed by:*

L.F. Kelsey  
Panel Chair

Attachments



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## **AN INQUIRY INTO AN EXEMPTION FOR BIOGAS AND BIOMETHANE SUPPLIERS**

### **PURPOSE AND SCOPE OF THE INQUIRY**

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This Inquiry into an Exemption for Biogas and Biomethane Suppliers is initiated by the British Columbia Utilities Commission (Commission) pursuant to section 82 of the *Utilities Commission Act (UCA)*.

#### **PURPOSE OF THE INQUIRY**

The purpose of this proceeding is to inquire and hear into whether an exemption pursuant to subsection 88(3) of the *UCA* for biogas and biomethane suppliers is warranted. If warranted, the Commission intends to make a determination on the appropriate terms and conditions of the exemption, all subject to the advance approval of the Lieutenant Governor in Council.

#### **SCOPE OF THE INQUIRY**

This Inquiry into an Exemption for Biogas and Biomethane Suppliers is intended to reduce the regulatory burden of the biogas and biomethane industry, while enabling the Commission to have continued regulatory oversight of the biogas and biomethane energy supply contracts through the purchasing public utilities' regulatory processes. The Commission plans to expeditiously complete the Inquiry process after hearing from Interveners on any issues raised during the process.

#### **BACKGROUND**

On December 27, 2012, the Commission issued its Inquiry into the FortisBC Energy Inc. (FEI) Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives Report (AES Inquiry Report). The AES Inquiry Report indicated that future Commission Panels will be required to assess the form of regulation to be imposed on biomethane upgraders, including the possibility of a subsection 88(3) exemption, by taking into consideration factors such as the sophistication of the parties involved, the nature of the contract entered into with the utility, and whether there is a demonstrated track record in operating such facilities. Subsequently, on February 5, 2013, the Commission Panel in Appendix A to Order G-18-13 regarding the FEI Biomethane Service Offering: Post Implementation Report and Application for Approval of the Continuation and Modification of the Biomethane Program on a Permanent Basis (2012 Biomethane Application) stated the issues concerning the size and scope of the Certificate of Public Convenience and Necessity (CPCN) requirements for biomethane facilities, and the appropriateness of any exemption to regulation, to be within the scope of the 2012 Biomethane Application review.

The Commission also commenced on March 4, 2013, the FEI Biomethane Third Party Suppliers Proceeding after receiving rate applications from three biomethane suppliers selling to FEI. In the Reconsideration, a submission letter dated March 25, 2013, by Paradigm Environmental Technologies Inc. (Paradigm) encouraged the Commission to “Expediently pursue appropriate changes to the Utilities Commission Act or an order in council where the Commission be empowered to issue exemptions for biomethane producers. It is our understanding that this change would ensure that it is the energy sales contract with the utility (e.g. FortisBC) and not the supplier itself that would be regulated by the Commission.”

## WHAT IS BIOGAS AND BIOMETHANE?

FortisBC Energy Inc. describes biogas and biomethane as:

*Biogas is a renewable energy source that can be used for heating applications, electricity generation, or as a transportation fuel. It is primarily composed of methane, which is the same gas that makes up more than 95 per cent of conventional natural gas that consumers all around the world have relied on for decades. Biogas is produced when bacteria break down organic waste, from sources such as landfills, wastewater plants and agriculture, in a process called anaerobic digestion. In its raw form, biogas contains other gases that are not typically found in natural gas. It can, however, be purified (or upgraded) so that it is interchangeable with natural gas. Once upgraded, the biogas is often referred to as Biomethane or renewable natural gas (“RNG”). Biomethane can be directly introduced into existing natural gas pipeline systems such as the FEI system and used in the same way as natural gas. Biomethane offers the advantage of being a carbon-neutral, renewable source of energy. When used in the place of natural gas, it results in the reduction of greenhouse gas (“GHG”) emissions.*

(Source: FortisBC Energy Inc. Biomethane Post Implementation Report And Application For Approval Of The Biomethane Program On A Permanent Basis; December 19, 2012; p. 1)

The Definitions section of the FortisBC Energy Inc. General Terms and Conditions tariff defines biogas and biomethane as:

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

**Biomethane** Means Biogas purified or upgraded to pipeline quality gas.

## REGULATED BIOGAS OR BIOMETHANE SUPPLIERS AS PUBLIC UTILITIES

For the purposes of this Inquiry, a biogas or biomethane supplier is a person who is a public utility under the UCA when the person owns or operates in British Columbia equipment or facilities for the production, sale, delivery or provision of biogas or biomethane for the production of light, heat, cold or power to or for the public or a corporation for compensation unless that person is designated as an exempt person under the UCA.

#### **UTILITIES COMMISSION ACT AND EXEMPTIONS**

The *UCA* can be found online at:

[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/00\\_96473\\_01](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96473_01)

Pertinent sections of the *UCA* for the purpose of this Inquiry are provided in Appendix C for reference. Appendix C also contains examples of previous exemptions granted by the Commission.

## AN INQUIRY INTO AN EXEMPTION FOR BIOGAS AND BIOMETHANE SUPPLIERS

### PROPOSED TERMS OF THE EXEMPTION

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The proposed terms of the biogas and biomethane suppliers exemption are shown below.

#### Proposed Terms of the Exemption

- a. Pursuant to subsection 88(3) of *Utilities Commission Act* the biogas and biomethane suppliers exemption applies to a person not otherwise a public utility.
- b. Biogas is defined as raw gas substantially composed of methane that is produced by the organic breakdown of matter in the absence of oxygen. Biomethane is defined as biogas that is purified or upgraded to pipeline quality gas.
- c. The exemption is applicable to a class of cases for each qualifying person pursuant to subsection 88(1) of the *Utilities Commission Act*.
- d. The exemption applies to the person and the person's equipment, facilities, plant, projects or systems, selling biogas or biomethane to a public utility, where the Commission would review the purchase of energy by a public utility through an energy supply contract under section 71 of the *Utilities Commission Act*.
- e. The person is exempt from the application of Part 3 of the *Utilities Commission Act* with the exception of sections 38 and 42 to 44.
- f. The exemption to the person would remain 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.

#### Commission Questions

Registered Interveners may make submissions to the Commission Secretary on the following questions:

1. In principle, should this Inquiry proceed with an exemption for biogas and biomethane suppliers when selling to a public utility? Please explain why or why not.
2. If an exemption were to be granted based on the purpose and scope of this Inquiry would this be in the public interest?
3. Is each of the items listed above in the Terms of the Exemption appropriate? Please explain why or why not for each item.
4. Are there other additional terms that should be considered?

- a. If so, explain these other additional terms and why they should be considered. Also explain the benefits and challenges of each of these other additional terms.
- 5. Is any further process required before the Commission submits its request to the Lieutenant Governor in Council (LGIC) for approval? If yes:
  - a. Would an oral submissions process, held within a single day, be appropriate for Interveners to review and submit comments on the Commission's draft Order and proposed exemption wording to the LGIC before the Commission submits its request to the LGIC for approval?
  - b. Would a written or other regulatory process be warranted? If so please explain.

**Interveners may file their submissions, if any, on the above Commission Questions to the Commission Secretary by April 24, 2013.**

Only Registered Interveners may participate in any further regulatory process if the Commission determines further regulatory process is warranted.

The Commission at this time does not plan to make any participant assistance/cost awards for this proceeding.

## AN INQUIRY INTO AN EXEMPTION FOR BIOGAS AND BIOMETHANE SUPPLIERS

### PERTINENT SECTIONS OF THE UTILITIES COMMISSION ACT AND PREVIOUS EXEMPTIONS GRANTED

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#### PERTINENT SECTIONS OF THE UTILITIES COMMISSION ACT

Pertinent sections of the *Utilities Commission Act* (UCA) for the purpose of this Inquiry are provided below for reference.

Section 1 of the UCA defines public utility as:

**"public utility"** means a person, or the person's lessee, trustee, receiver or liquidator, who owns or operates in British Columbia, equipment or facilities for

(a) 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, or

(b) the conveyance or transmission of information, messages or communications by guided or unguided electromagnetic waves, including systems of cable, microwave, optical fibre or radiocommunications if that service is offered to the public for compensation,

but does not include

(c) a municipality or regional district in respect of services provided by the municipality or regional district within its own boundaries,

(d) a person not otherwise a public utility who provides the service or commodity only to the person or the person's employees or tenants, if the service or commodity is not resold to or used by others,

(e) a person not otherwise a public utility who is engaged in the petroleum industry or in the wellhead production of oil, natural gas or other natural petroleum substances,

(f) a person not otherwise a public utility who is engaged in the production of a geothermal resource, as defined in the Geothermal Resources Act, or

(g) a person, other than the authority, who enters into or is created by, under or in furtherance of an agreement designated under section 12 (9) of the Hydro and Power Authority Act, in respect of anything done, owned or operated under or in relation to that agreement;

Section 22 of the UCA states the following:

**22 (1)** In this section:

**"eligible person"** means a person, or a class of persons, that

(a) generates, produces, transmits, distributes or sells electricity,

(b) for the purpose of heating or cooling any building, structure or equipment or for any industrial purpose, heats, cools or refrigerates water, air or any heating medium or coolant, using for that purpose equipment powered by a fuel, a geothermal resource or solar energy, or



- (c) enters into an energy supply contract, within the meaning of section 68, for the provision of electricity;
- "minister"** means the minister responsible for the administration of the Hydro and Power Authority Act.
- (2) The minister, by regulation, may
- (a) exempt from any or all of section 71 and the provisions of this Part
    - (i) an eligible person, or
    - (ii) an eligible person in respect of any equipment, facility, plant, project, activity, contract, service or system of the eligible person, and
  - (b) in respect of an exemption made under paragraph (a), impose any terms and conditions the minister considers to be in the public interest.
- (3) The minister, before making a regulation under subsection (2), may refer the matter to the commission for a review.

Section 38 of the UCA states the following:

**Public utility must provide service**

**38** A public utility must

- (a) provide, and
  - (b) maintain its property and equipment in a condition to enable it to provide,
- a service to the public that the commission considers is in all respects adequate, safe, efficient, just and reasonable.

Sections 42 to 44 of the UCA states the following:

**Duty to obey orders**

- 42** A public utility must obey the lawful orders of the commission made under this Act for its business or service, and must do all things necessary to secure observance of those orders by its officers, agents and employees.

**Duty to provide information**

- 43** (1) A public utility must, for the purposes of this Act,
- (a) answer specifically all questions of the commission, and
  - (b) provide to the commission
    - (i) the information the commission requires, and
    - (ii) a report, submitted annually and in the manner the commission requires, regarding the demand-side measures taken by the public utility during the period addressed by the report, and the effectiveness of those measures.
- (1.1) [Repealed 2010-22-64.]
- (2) A public utility that receives from the commission any form of return must fully and correctly answer each question in the return and deliver it to the commission.
- (3) On request by the commission, a public utility must deliver to the commission
- (a) all profiles, contracts, reports of engineers, accounts and records in its possession or control relating in any way to its property or service or affecting its business, or verified copies of them, and

*(b) complete inventories of the utility's property in the form the commission directs.*

*(4) On request by the commission, a public utility must file with the commission a statement in writing setting out the name, title of office, post office address and the authority, powers and duties of*

- (a) every member of the board of directors and the executive committee,*
- (b) every trustee, superintendent, chief or head of construction or operation, or of any department, branch, division or line of construction or operation, and*
- (c) other officers of the utility.*

*(5) The statement required under subsection (4) must be filed in a form that discloses the source and origin of each administrative act, rule, decision, order or other action of the utility.*

***Duty to keep records***

**44** *(1) A public utility must have in British Columbia an office in which it must keep all accounts and records required by the commission to be kept in British Columbia.*

*(2) A public utility must not remove or permit to be removed from British Columbia an account or record required to be kept under subsection (1), except on conditions specified by the commission.*

Section 68 of the *UCA* provides definitions for Part 5 of the *UCA*. The definitions include, in part:

***"energy"*** means electricity or natural gas;

***"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;

***"natural gas"*** means any methane, propane or butane that is sold for consumption as a domestic, commercial or industrial fuel or as an industrial raw material;

***"public utility"*** means a public utility to which Part 3 applies;

Section 71(1) and (1.1) contained in Part 5 of the *UCA* states the following:

***Energy supply contracts***

**71** *(1) Subject to subsection (1.1), a person who, after this section comes into force, enters into an energy supply contract must*

*(a) file a copy of the contract with the commission under rules and within the time it specifies, and*

*(b) provide to the commission any information it considers necessary to determine whether the contract is in the public interest.*

*(1.1) Subsection (1) does not apply to an energy supply contract for the sale of natural gas unless the sale is to a public utility.*

Section 82 of the *UCA* states the following:

***Power to inquire without application***

**82** *(1) The commission*

*(a) may, on its own motion, and*

*(b) must, on the request of the Lieutenant Governor in Council, inquire into, hear and determine a matter that under this Act it may inquire into, hear or determine on application or complaint.*

*(2) For the purpose of subsection (1), the commission has the same powers as are vested in it by this Act in respect of an application or complaint.*

Section 88 of the UCA states the following:

***Application of orders***

**88** *(1) In making an order, rule or regulation, the commission may make it apply to all cases, or to a particular case or class of cases, or to a particular person.*

*(2) The commission may exempt a person from the operation of an order, rule or regulation made under this Act for a time the commission considers advisable.*

*(3) The commission may, on conditions it considers advisable, with the advance approval of the Lieutenant Governor in Council, exempt a person, equipment or facilities from the application of all or any of the provisions of this Act or may limit or vary the application of this Act.*

*(4) The commission has no power under this section to make an order respecting a person, or a person in respect of a matter, who has been exempted under section 22.*

## PREVIOUS EXEMPTIONS GRANTED

Exemptions from regulation has been granted to various parties under different sections of the *Utilities Commission Act (UCA)*.

### Section 22 Ministerial Exemption:

- Ministerial Order No. M-22-0205 dated June 6, 2002 made pursuant to section 22 of the *UCA* exempts persons who are not otherwise a public utility, and their equipment, facilities, plant, projects or systems, from provisions of Part 3 of the *UCA* with respect to the production and sale of electricity to BC Hydro or Powerex.  
<http://www.bcuc.com/Documents/SpecialDirections/M202-MO22-0205.pdf>

### Subsection 88(3) Exemptions:

The following, in descending order by date, are some examples of exemption Orders that the Commission has issued following advance approval from the Lieutenant Governor in Council. The exemptions vary depending on the nature of the exemption request.

- G-81-12 Quicksilver Resources Canada Inc.  
[http://www.bcuc.com/Documents/Orders/2012/DOC\\_30944\\_G-81-12\\_Quicksilver-UCA-Exemption.pdf](http://www.bcuc.com/Documents/Orders/2012/DOC_30944_G-81-12_Quicksilver-UCA-Exemption.pdf)
- G-79-12 Telecommunications Service Provider Class of Cases Exemption  
[http://www.bcuc.com/Documents/Orders/2012/DOC\\_30943\\_G-79-12\\_Strata-Plan-VR1104-UCA-Exemption.pdf](http://www.bcuc.com/Documents/Orders/2012/DOC_30943_G-79-12_Strata-Plan-VR1104-UCA-Exemption.pdf)
- G-75-12 Cove Power Society  
[http://www.bcuc.com/Documents/Orders/2012/DOC\\_30921\\_G-75-12\\_Cove-Power-UCA-Exemption.pdf](http://www.bcuc.com/Documents/Orders/2012/DOC_30921_G-75-12_Cove-Power-UCA-Exemption.pdf)
- G-81-08 Al Stober Construction Ltd.  
[http://www.bcuc.com/Documents/Orders/2008/DOC\\_18724\\_G-81-08\\_Al%20Stober%20Construction%20UCA%20Xmptn.pdf](http://www.bcuc.com/Documents/Orders/2008/DOC_18724_G-81-08_Al%20Stober%20Construction%20UCA%20Xmptn.pdf) [Rescinded by Order G-139-08]

**AN INQUIRY INTO AN EXEMPTION FOR BIOGAS AND BIOMETHANE SUPPLIERS**

**REGULATORY TIMETABLE**

<b>ACTION</b>	<b>DATE (2013)</b>
Intervener and Interested Party Registration	Tuesday, April 23
Intervener Submissions on the Proposed Terms of the Exemption	Wednesday, April 24