

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-56-13**

TELEPHONE: (604) 660-4700
BC TOLL FREE: 1-800-663-1385
FACSIMILE: (604) 660-1102

SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, BC V6Z 2N3 CANADA
web site: <http://www.bcuc.com>



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

and

An Application by FortisBC Energy Inc.
for Approval of Rate Treatment of Expenditures
under the Greenhouse Gas Reductions (Clean Energy) Regulation and
Prudency Review of Incentives under the 2010 – 2011 Commercial NGV Demonstration Program

BEFORE: L.F. Kelsey, Commissioner

April 11, 2013

O R D E R

WHEREAS:

- A. On May 14, 2012, the Lieutenant Governor in Council approved the Greenhouse Gas Reduction (Clean Energy) Regulation, B.C. Reg. 102/2012 (the GGRR; Regulation);
- B. On August 21, 2012, FortisBC Energy Inc. (FEI) applied to the British Columbia Utilities Commission (the Commission), pursuant to sections 59 to 61, and 90 of the *Utilities Commission Act*, for approval of deferral accounts and the accounting and rate treatment methodology for the three prescribed undertakings established by the GGRR (the Application);
- C. FEI also seeks an order from the Commission that past natural gas vehicle (NGV) incentive expenditures totaling \$5.6 million (the 2010-2011 Incentives), as described in Section 7 of the Application, were prudently incurred and can be recovered through rates from FEI's non-bypass natural gas customers;
- D. In the Application, FEI proposes that the 2010-2011 Incentives be considered within the \$62 million expenditure cap that is established in section 2(1)(c) of the GGRR;
- E. FEI proposed a Streamlined Review Process (SRP) to review the Application as it considers the information and approvals sought related to the accounting and rate recovery treatment of expenditures to be generic in nature. FEI advised that it planned to execute contracts with successful applicants under its Natural Gas for Transportation Incentive Program before the end of October 2012 and the expedited approval from an SRP will provide the required clarity before FEI proceeds with agreements for awards;
- F. The Commission determined that the Application should be reviewed in three phases:
 - Phase 1 – "Prescribed Undertaking 1: Vehicle Incentives or Zero Interest Loans";
 - Phase 2 – "Prescribed Undertaking 2: CNG Stations & Prescribed Undertaking 3: LNG Stations";
 - Phase 3 – "Prudence of Past Incentives" and associated cost recovery.

- G. Commission Orders G-125-12 and G-127-12 established an SRP to hear Phase 1 and Phase 2 matters. Commission Order G-154-12 established a written hearing process for the review of Phase 3 of the Application;
- H. The SRP took place on October 24, 2012;
- I. By Order G-161-12 dated October 29, 2012, the Commission Panel made determinations on certain approvals sought by FEI in Phases 1 and 2 of the Application in order for FEI to reach agreements with successful applicants on the grants. The determinations on those matters were made with reasons to follow. The four determinations made in Order G-161-12 were:
- (1) the approvals granted for Phase 1 and Phase 2 of the Application are effective from the date of the GGRR which is May 14, 2012;
 - (2) the accounting and rate recovery treatment for the Natural Gas for Transportation (NGT) Incentives Account;
 - (3) the accounting and rate recovery treatment for the Fueling Station Variance Account;
 - (4) to provide certainty for grant recipients and FEI under the GGRR the cost recovery from non-bypass natural gas customers of the NGT Incentives Account and the Fueling Station Variance Account is fixed;
- J. Order G-161-12 also contemplates that the Commission Panel will issue a further Order that addresses all non-grant related issues, and that the reasons for its determinations on those issues will be included with the Reasons for Order G-161-12;
- K. FEI filed a supplemental submission with the Commission on November 2, 2012. No Intervener comments were filed in response to the submission;
- L. The Commission Panel has considered the evidence and the submissions on non-grant related issues in Phases 1 and 2 of the Application.

NOW THEREFORE the Commission, for the reasons set out in the Reasons for Decision attached as Appendix A, orders as follows:

1. The Regulation established the need for the fuelling stations under Prescribed Undertakings 2 and 3; therefore these projects are exempt from the Certificate of Public Convenience and Necessity requirements for the term of the Regulation. (reference 6.5)
2. The Commission will set rates considering FEI's total expenditures on the Prescribed Undertakings as described in the GGRR. (reference 6.6)
3. The Commission Panel accepts FEI's explanations of the categories of costs as identified in the Reasons that should be recoverable under the Prescribed Undertakings, as described in the listed information responses. (reference 6.7)
4. The Commission Panel makes no decision on prudence reviews at this time. A decision on whether to advance a prudence review of FEI's expenditures is situation specific, therefore the Commission will make this decision as necessary if and when circumstances arise. (reference 6.8)
5. The Commission Panel confirms that the Commission's role does not include reviewing whether FEI ought to have negotiated different terms and conditions for those negotiated fuelling station agreements with NGT customers. (reference 6.9)

6. The Commission Panel concludes that since the Minster is reviewing FEI's total expenditures for the Prescribed Undertakings, only with a revised Regulation concerning the Prescribed Undertaking could the Commission approve recovery of an excess expenditure or other changes to the GGRR. (reference 6.10)
7. The Commission Panel confirms that the costs that FEI incurs during the term of the Regulation that have also been accepted by the Commission for cost recovery, will not be open to challenge except for prudency reviews, following the expiration of the Regulation in 2017. (reference 6.11)
8. The term of the GGRR is effective on April 1, 2011. (reference 7.1)
9. All expenditures under the program must be made by the end of the expenditure period on March 31, 2017, with an opportunity to apply for relief if extenuating circumstances arise. (reference 7.1)
10. The program commenced on April 1, 2011 and the first year ends on March 31, 2012, therefore the year of undertaking cannot be the particular year when FEI made a commitment. (reference 7.2)
11. The Commission Panel confirms that the percentages identified in the table in section 2(1)(b) of the Regulation are the maximums allowed under the Regulation. (reference 7.3)
12. The Commission Panel confirms that expenditures under the Prescribed Undertakings are net of any contribution in aid of construction provided by the fuelling station customer or the shareholder. The Commission Panel also confirms that the expenditures and the spending limits that define the Prescribed Undertakings are exclusive of financing costs. (reference 7.4)
13. A separate class of service to recognize the Prescribed Undertakings under the GGRR is required. (reference 7.5)
14. The proposed high level reporting requirements listed in the Reasons should be reviewed by FEI, Ministry staff and Commission staff to work out the actual reporting methodologies, formats and other requirements. (reference 7.6)

DATED at the City of Vancouver, in the Province of British Columbia, this 11th day of April 2013.

BY ORDER

Original signed by:

L.F. Kelsey
Commissioner

Attachment



IN THE MATTER OF

**AN APPLICATION BY FORTISBC ENERGY INC.
FOR APPROVAL OF RATE TREATMENT OF EXPENDITURES
UNDER THE GREENHOUSE GAS REDUCTIONS (CLEAN ENERGY) REGULATION AND
PRUDENCY REVIEW OF THE INCENTIVES UNDER THE 2010-2011 COMMERCIAL NGV
DEMONSTRATION PROGRAM**

**REASONS FOR DECISION
for Order G-161-12 and
Order G-56-13**

April 11, 2013

BEFORE:

L.F. Kelsey, Panel Chair/Commissioner

TABLE OF CONTENTS

	Page No.
1.0 INTRODUCTION	1
1.1 The Application and Regulatory Review Process	1
1.2 Legislative Framework	3
1.3 Other Relevant Proceedings	5
2.0 ORDERS SOUGHT	6
3.0 PROPOSED RATE TREATMENT AND COST RECOVERY	6
3.1 Other Considerations	8
4.0 VIEWS OF FORTISBC ENERGY INC.	10
5.0 VIEWS OF INTERVENERS	12
6.0 DETERMINATIONS	12
6.1 Cost Recovery	13
6.2 Deferral Accounts	14
6.3 Amortization Period	14
6.4 Carrying Cost on Proposed Deferral Accounts	15
6.5 CPCN exemption for Prescribed Undertakings 2 and 3	15
6.6 Setting Rates Considering Total Expenditures of the Prescribed Undertakings	15
6.7 Categories of Costs Recoverable under the Prescribed Undertakings	16
6.8 Prudency Reviews	16
6.9 Negotiated Fuelling Service Agreements	16
6.10 Expenditures in Excess of GGRR Limitations	17

TABLE OF CONTENTS
(continued)

6.11	Costs of Prescribed Undertakings Not Open to Challenge when Regulation expires in 2017	17
7.0	OTHER ISSUES	17
7.1	Year 1 of the “Undertaking Period”; Actual or Incurred Costs; Commitments for Vehicle Grants under Prescribed Undertaking 1; and Commitments under Prescribed Undertaking 2 and 3	17
7.2	Current Year of Undertaking	19
7.3	Maximum Percentages in section 2(1)(b) of the Regulation	20
7.4	Expenditures being net of any Contribution in Aid of Construction and Exclusive of Financing Costs	20
7.5	Separate Classes of Service	20
7.6	Reporting	20

EXECUTIVE SUMMARY

On August 21, 2012, FortisBC Energy Inc. (FEI) submitted an application to the British Columbia Utilities Commission (Commission; BCUC) for approval of the Rate Treatment of Expenditures under the Greenhouse Gas Reductions Regulation (GGRR; Regulation) and Prudency Review of Incentives under the 2010 - 2011 Commercial Natural Gas Vehicles (NGV) Demonstration Program (together, the Application).

FEI proposed a Streamlined Review Process (SRP) for the Commission to review this Application which would allow FEI to execute its contracts with successful applicants under its Natural Gas for Transportation (NGT) Incentive Program before the end of October of 2012. The Commission determined that the Application should be reviewed in three phases:

- Phase 1 – “Prescribed Undertaking 1: Vehicle Incentives or Zero Interest Loans”;
- Phase 2 – “Prescribed Undertaking 2: CNG Stations & Prescribed Undertaking 3: LNG Stations”;
- Phase 3 – “Prudence of Past Incentives” and associated cost recovery.

On September 14 and September 18, 2012 respectively, the Commission issued Orders G-125-12 (for Phase 1) and G-127-12 (for Phase 2). The preliminary regulatory timetables established in the two Orders incorporated an SRP to review Phases 1 and 2 of the Application. On October 18, 2012, the Commission issued Order G-154-12 for Phase 3 of the Application providing for a written hearing process for that Phase. A decision on Phase 3 is pending.

The SRP was held on October 24, 2012. On October 29, 2012, the Commission issued Order G-161-12 which approved the grant related requests for Phase 1 and Phase 2 of the Application.

On October 29, 2012, by Order G-161-12, the Commission determined, with Reasons to follow, that:

- The grant-related requests of Phase 1 and 2 of the Application are effective from the date of the GGRR which is May 14, 2012.
- FEI’s request for a non-rate base deferral account (the NGT Incentives Account) attracting Allowance for Funds used During Construction (AFUDC) related to Prescribed Undertaking 1 for the period until December 31, 2013 is approved. The NGT Incentives Account is to be transferred to rate base effective January 1, 2014, to capture the actual incentives granted by year, from 2014 onward and will be amortized over a 10 year period into delivery rates for all non-bypass natural gas customers.
- FEI’s request for a non-rate base deferral account attracting AFUDC (the Fueling Station Variance Account) for Prescribed Undertakings 2 and 3 is approved. The Fueling Station Variance Account is to be transferred to rate base effective January 1, 2014 and amortized over 3 years into the delivery rates of all non-bypass natural gas customers.
- For the certainty of grant recipients and FEI under the GGRR, the cost recovery from non-bypass customers of the NGT Incentives Account and the Fueling Station Variance Account is fixed.

Order G-161-12 states that the Commission Panel will issue a further Order that addresses all non-grant related issues and issue Reasons for both Orders.

Order G-56-13 issued concurrently with these Reasons determines that for the non-grant related issues of Phase 1 and 2:

- A separate class of service to recognize the prescribed undertakings under the GGRR is required.
- The modifications to the Commission's rate setting power by Section 18 of the *Clean Energy Act* (CEA) and the Regulation do not limit its responsibility, or the authority to review the prudence of FEI's expenditures. A decision on whether to advance a prudence review is situation specific; therefore the Commission will make this decision as necessary, if and when circumstances arise.
- The term of the GGRR is effective on April 1, 2011.
- All expenditures under the program must be made by the end of the expenditure period on March 31, 2017, with an opportunity to apply for relief if extenuating circumstances arise.
- The program commenced on April 1, 2011, and the first year ends on March 31, 2012.
- Proposed high level reporting requirements listed in the Reasons should be reviewed by FEI, Ministry staff and Commission staff to work out the actual reporting methodologies, formats and other requirements.

1.0 INTRODUCTION

1.1 The Application and Regulatory Review Process

On August 21, 2012, FortisBC Energy Inc. (FEI) filed an application with the British Columbia Utilities Commission (Commission; BCUC) for approval of the Rate Treatment of Expenditures under the Greenhouse Gas Reductions Regulation (GGRR; Regulation) and Prudency Review of Incentives under the 2010 – 2011 Commercial Natural Gas Vehicles (NGV) Demonstration Program (together, the Application).

FEI proposed a Streamlined Review Process (SRP) for the Commission to review the Application which would allow FEI to execute its contracts with successful applicants under its Natural Gas for Transportation (NGT) Incentive Program before the end of October of 2012. (Exhibit B-1, cover letter)

The Commission issued Orders G-125-12 (Phase 1) and G-127-12 (Phase 2) on September 14 and September 18, 2012, and determined that the Application should be reviewed in three phases:

- Phase 1 – “Prescribed Undertaking 1: Vehicle Incentives or Zero Interest Loans”;
- Phase 2 – “Prescribed Undertaking 2: CNG Stations & Prescribed Undertaking 3: LNG Stations”;
- Phase 3 – “Prudence of Past Incentives” and associated cost recovery.

The preliminary regulatory timetables in the above Orders incorporated an SRP to review Phase 1 and Phase 2 of the Application. The remainder of this Decision deals only with Phase 1 and Phase 2 matters. By Order G-154-12 dated October 18, 2012, the Commission established a written hearing process for Phase 3. A decision on that Phase is pending.

The following registered as Interveners for this proceeding:

- Commercial Energy Consumers Association of British Columbia (CEC);
- B.C. Sustainable Energy Association (BCSEA);
- British Columbia Pensioners’ and Seniors’ Organization (BCPSO);
- The Ministry of Energy, Mines and Natural Gas (the Ministry);
- Ferus Inc., LNG Division (Ferus LNG);
- Ledcor Resources & Transportation LP (LEDOR).

The SRP was held in Vancouver on October 24, 2012. CEC, BCSEA, BCPSO, the Ministry and Commission Staff participated in the SRP. Participants asked questions of the FEI Phase 1 and Phase 2 witness panels who gave their evidence under oath. With the exception of Commission Staff, participants were given the opportunity to make submissions on each Phase.

FEI provided a written outline of its oral final submissions (Exhibit B-6) in advance of the SRP. Other participants provided oral submissions at the SRP.

At the conclusion of the Phase 2 SRP, the Commission Panel requested submissions on the definition and treatment of expenditures under Phase 1 and Phase 2. The Commission Panel noted that FEI described Phase 1 expenditures as commitments made but not spent, but Phase 2 expenditures are actual spending. (T1, pp. 47-50) FEI agreed to file a letter that addressed the discrete issue by November 2, 2012, and the Commission Panel invited interveners to provide comments by November 8, 2012, with a reply from FEI by November 15, 2012.

On November 2, 2012, FEI filed a supplemental submission (the Supplemental Submission) on the issues identified by the Commission at the conclusion of the SRP. FEI stated that its submission was in response to the Commission's request:

“for further submissions on whether the costs of the “prescribed undertakings” in the GGRR include either:

- the costs associated with any firm contracted commitments by FEI entered into before the March 31, 2017 end date of the GGRR “undertaking period”, or alternatively
- only the actual amounts paid out by FEI under firm contractual commitments prior to the March 31, 2017 end date of the GGRR undertaking period.”

The above issue has relevance for all three Prescribed Undertakings.” (Exhibit B-14, pp. 1-2)

FEI provided the following interpretation of the GGRR which it submits is as internally consistent and best achieves the object of the GGRR and the intent of the Government:

- “(a) Year 1 of the “undertaking period” for FEI is the first year (defined as April 1 to March 31) in which FEI commits to providing the incentives;
- (b) Prescribed Undertakings 1 to 3 include all actual costs related to commitments that have been made during the “undertaking period”, whether or not those costs are actually disbursed or paid out before April 1, 2017; and
- (c) Consistent with (b) above, costs relating to Prescribed Undertakings should be tied to a particular “year of undertaking” based on when FEI has made commitments, rather than when costs related to those commitments are actually disbursed or paid out.” (Exhibit B-14, p. 2)

The Supplemental Submission went beyond the issue identified in the Commission Panel's request for submissions. FEI elaborated on each of the points it raised by:

- stating that it anticipated committing to its first vehicle incentives under Prescribed Undertaking 1 before the end of Q1 2013 and the timetable for LNG grants will depend on when the Commission approves Rate Schedule 16 on a permanent basis;
- addressing the inclusion of amounts disbursed after March 31, 2017 and, harmonious interpretation of the various sections of the GGRR;
- the consistency with the scheme and object of the GGRR and the Intent of the Legislator;
- submitting that expenditures should be determined by reference to net costs, exclusive of carrying costs;
- defining costs relating to a “Year of the Undertaking”;
- providing a summary of the determinations sought and conclusion.

No comments were received from other participants on FEI's supplemental submission.

The Commission Panel considers that the Supplemental Submission exceeds the limited scope of the Commission Panel's request for submissions. The Commission Panel will not address the additional matters in these Reasons, except to the extent it provides its comments on the summary of determinations FEI seeks in Section F of the Supplemental Submission. The items forming the summary are listed in section 3.1 and addressed in section 6 of these Reasons.

On October 29, 2012, the Commission Panel issued Order G-161-12 that provided approvals for the grant related requests of Phase 1 and Phase 2 of the Application with Reasons to follow. Order G-161-12 also states that a further Order would be issued that addresses all non-grant related issues and that the Commission would issue Reasons for both Orders. These are the Reasons.

1.2 Legislative Framework

Sections 58-60 of the *Utilities Commission Act (UCA)*¹ provide the Commission with its rate setting jurisdiction over public utilities. Subsection 60(1) provides in part:

“60(1) In setting a rate under this Act

(a) the commission must consider all matters that it considers proper and relevant affecting the rate,

(b) the commission must have due regard to the setting of a rate that

(i) is not unjust or unreasonable within the meaning of section 59,

(ii) provides the public utility for which the rate is set a fair and reasonable return on any expenditure made by it to reduce energy demands,

(iii) encourages public utilities to increase efficiency, reduce costs and enhance performance,

...

(c) if the public utility provides more than one class of service, the commission must

(i) segregate the various kinds of service into distinct classes of service,

(ii) in setting a rate to be charged for the particular service provided, consider each distinct class of service as a self contained unit, and

(iii) set a rate for each unit that it considers to be just and reasonable for that unit, without regard to the rates set for any other unit.”

...

Subsection 59(5) provides that a rate is “unjust” or “unreasonable” if the rate is:

“(a) more than a fair and reasonable charge for service of the nature and quality provided by the utility,

(b) insufficient to yield a fair and reasonable compensation for the service provided by the utility, or a fair and reasonable return on the appraised value of its property, or

(c) unjust or unreasonable for any other reason.”

Section 18 of the *Clean Energy Act (CEA)*² modifies the Commission’s rate setting powers under the *UCA* where a public utility is carrying out a prescribed undertaking as defined in that section. In addition it prevents the Commission from exercising a power under the *UCA* that would “directly or indirectly” prevent a public utility “from carrying out a prescribed undertaking.”

¹ R.S.B.C. 1996, c. 473

² S.B.C. 2010, c.22

Subsection 18(1) of the *CEA* defines a “prescribed undertaking” as follows:

“18(1) In this section, “prescribed undertaking” means a project, program, contract or expenditure that is in a class of projects, programs, contracts or expenditures prescribed for the purpose of reducing greenhouse gas emissions in British Columbia.”

Subsections 18(2) and (3) provide:

“18(2) In setting rates under the Utilities Commission Act for a public utility carrying out a prescribed undertaking, the commission must set rates that allow the public utility to collect sufficient revenue in each fiscal year to enable it to recover its costs incurred with respect to the prescribed undertaking.”

“18(3) The commission must not exercise a power under the Utilities Commission Act in a way that would directly or indirectly prevent a public utility referred to in subsection (2) from carrying out a prescribed undertaking.”

Under subsections 18 (4) and (5), a public utility must report on the prescribed undertakings to the Minister of Energy, Mines and Natural Gas (the Minister). The Minister has the responsibility of establishing the reporting requirements, both in terms of timing and the information required. The subsections specifically provide as follows:

“18(4) A public utility referred to in subsection (2) must submit to the minister, on the minister's request, a report respecting the prescribed undertaking.”

“18(5) A report to be submitted under subsection (4) must include the information the minister specifies and be submitted in the form and by the time the minister specifies.”

FEI expects that the Minister will require regular reporting on the programs being offered to review the results and determine if any changes are required. The timing and form of reporting requirements is still to be determined. (Exhibit B-1, p. 16)

The *CEA* signaled the government of British Columbia’s (Government) desire to promote the use of natural gas as a transportation fuel. (Exhibit B-1, section 1.1, para 3; Section 35(n) *CEA*) On May 14, 2012, the Lieutenant Governor in Council approved and ordered the GGRR which established three prescribed undertakings for the purposes of section 18 of the *CEA*. The GGRR enables public utilities to pursue programs and expenditures that advance Government objectives for medium and heavy duty fleet vehicles, buses and marine vessels. FEI states that in summary the three prescribed undertakings permit a public utility to:

1. provide grants or zero-interest loans (and related expenditures) of up to \$62 million in total for the purchase of eligible vehicles to be operated in British Columbia and for the implementation of safety practices or to improved maintenance facilities to meet safety guidelines for the operation and maintenance of such vehicles;
2. make expenditures of up to \$12 million to construct and operate or purchase and operate Compressed Natural Gas (CNG) fueling stations and infrastructure; and
3. make expenditures of up to \$30.5 million to construct and operate or purchase and operate Liquefied Natural Gas (LNG) fueling stations and infrastructure.

The GGRR is attached as Appendix B to these Reasons. It is in effect until March 31, 2017, and sets out a number of requirements for each of the prescribed undertakings.

1.3 Other Relevant Proceedings

A number of proceedings prior to this hearing have raised issues regarding FEI's NGT business.

The Alternative Energy Services (AES) Inquiry before the Commission considered the FEI's involvement in NGT initiatives and specifically how the GGRR affects the determinations to be made on FEI's NGT initiatives. The AES Inquiry Report was issued on December 27, 2012³ but the outcomes of the AES Inquiry were not known at the time the Phase 1 and Phase 2 Decision was made, and therefore the Commission Panel made its determinations independent from that Report.

Also, on June 15, 2012, FEI filed a variance and reconsideration application with respect to some of the Commission's determinations in the BFI Canada Inc. Decision (the BFI Reconsideration). The BFI Reconsideration sought, among other things, a reconsideration of the Panel's determination that FEI's CNG fueling service activities and LNG fueling service activities each be placed in a separate class of service from the natural gas class of service. (Exhibit B-1, p. 21) Commission Order G-150-12 reviewed the BFI Reconsideration and, among other matters, varied Order 3 of Commission Order C-6-12 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."⁴ The AES Inquiry Report determined that CNG activities done under a Prescribed Undertaking should be structured as a separate Class of Service and that LNG activities that are carried out as a Prescribed Undertaking are to be maintained as a separate Class of Service. (AES Inquiry Report, pp. 53 and 62)

The Delivery Agreement between FEI and Vedder Transport Ltd. approved by Commission Order G-156-12 is instructive with respect to the fully allocated cost basis of the Tanker Rental Fee and a charge for tractor trucking service that is the actual costs from the outside service provider plus a 15 percent surcharge.⁵ That Decision pre-dated the GGRR and recipients of GGRR grants would be competitors to other CNG/LNG providers. The aspects of fairness in that Decision should be followed as the Program expands as contemplated in this Application.

³ *In the Matter of FortisBC Energy Inc. Inquiry into the Offering of Products and services in Alternative Energy Solutions and Other New Initiatives*; Report and Order G-201-12, December 27, 2012.

⁴ *In the Matter of an 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.*; Decision and Order G-150-12, October 17, 2012.

⁵ *In the Matter of an Application by FortisBC Energy Inc. For Approval of a Temporary Service Agreement for Liquefied Natural Gas Service, for Approval of a Service Agreement for LNG Delivery, for Approval of a Daily Charge for the Use of an LNG Tanker and for Approval of a Daily Charge for the Use of a Mobile LNG Refuelling Station*; Decision and Order G-156-12, October 22, 2012.

2.0 ORDERS SOUGHT

FEI seeks approval of the following two deferral accounts relating to Phase 1 and Phase 2 prescribed undertakings:

1. A non-rate base deferral account (the “NGT Incentives Account”) to capture:
 - (a) all grants and costs, including a portion of application costs, related to Prescribed Undertaking 1 for the period until December 31, 2013; and
 - (b) to capture the 2010-2011 Incentives in the amount of \$5.6 million.

FEI proposes that this deferral account attract a carrying cost equivalent to the Allowance of Funds Used During Construction (AFUDC). FEI also proposes that this deferral account be transferred to rate base, effective January 1, 2014, and continue to capture the actual incentives granted under Prescribed Undertaking 1. The proposed amortization period is 10 years which will be incorporated into the delivery rates of all non-bypass natural gas customers.

2. A non-rate base deferral account (the “Fueling Station Variance Account”) to capture the total revenue surplus or deficiency pertaining to fueling station facility costs that have not been forecast in rates, as well as the administration and application costs, for the prescribed undertakings established under sections 2(2) and 2(3) of the GGRR.

FEI also proposes that this deferral account attract AFUDC as a carrying cost. In addition, FEI seeks approval to transfer this deferral account to rate base effective January 1, 2014, with an amortization period of 3 years which will be incorporated into the delivery rates of all non-bypass natural gas customers.

FEI also seeks approval of the accounting and rate treatment methodology to be applied to these deferral accounts, and the related expenditures associated with the three prescribed undertakings identified in the GGRR for the current period of the 2012-2013 RRA and for future years. The methodology entails recovering program costs from all FEI non-bypass natural gas customers. (Exhibit B-1, p. 4) The methodology is further discussed in the following section of these Reasons.

In response to the GGRR and to encourage the further development of natural gas as a transportation fuel, FEI submits that it developed a program which provides incentives to encourage parties in the heavy-duty transportation sector to convert all or portions of their vehicle fleets to natural gas. (Exhibit B-1, p. 9)

3.0 PROPOSED RATE TREATMENT AND COST RECOVERY

In the Application, FEI seeks approval from the Commission of a generic regulatory accounting, and rate recovery treatment for the expenditures relating to the prescribed undertakings. The requested generic treatment for the Phase 1 and Phase 2 prescribed undertakings is described in the paragraphs that follow.

FEI submits that the costs it forecasts to incur for the prescribed undertakings are incremental expenditures to the levels of deferral, capital, and operating and maintenance expenses approved for the 2012-2013 RRA, in the Commission's Decision dated May 11, 2012.⁶ FEI further submits that the expenditures set out in the GGRR dated May 14, 2012, were not included in the 2012-2013 RRA requests. (Exhibit B-1, p. 17)

Phase 1

FEI proposes to include a portion of the regulatory costs of the Application as an administrative expense of Prescribed Undertaking 1. Total expenditures for that prescribed undertaking are not to exceed \$62 million in the undertaking period. (Exhibit B-1, p. 18)

FEI states that it considered alternative accounting and rate recovery methodologies that recover costs from all non-bypass customers, and concluded that the appropriate treatment for all expenditures under Prescribed Undertaking 1 is to include them in a rate base deferral account, and amortize the expenditures in delivery rates of all non-bypass customers over a 10 year period. FEI notes that this methodology was approved and utilized for the Energy Efficiency and Conservation expenditures, and submits that it remains appropriate for NGT Incentive Program expenditures. For future revenue requirement applications, FEI proposes to include a forecast of the rate base deferral account (opening balance, new expenditures and amortization) and related cost of service impacts in the annual revenue requirements for its non-bypass natural gas customers. (Exhibit B-1, p. 18)

FEI believes that it is appropriate to recover the costs of Prescribed Undertaking 1 from all non-bypass natural gas customers, because non-bypass customers will benefit directly from the additional throughput on the distribution system. FEI also states that other significant benefits to non-bypass customers include a reduction in Greenhouse Gas (GHG) emissions and air contaminants. (Exhibit B-1, p. 19)

FEI considers a 10 year amortization period to be an appropriate time frame for amortization as this approximates the expected life of the CNG/LNG vehicles, as well as the period over which the benefits of the program are expected. (Exhibit B-1, p. 20)

Phase 2

Prescribed Undertakings 2 and 3 are made up of capital expenditures on stations, administration and marketing expenditures, and in the case of LNG Fueling Stations, truck load-out equipment. They support the development of CNG and LNG fueling infrastructure. (Exhibit B-1, p. 20)

⁶ *In the Matter of The FortisBC Energy Utilities [comprised of FortisBC Energy Inc., FortisBC Energy Inc. Fort Nelson Service Area, FortisBC Energy (Vancouver Island) Inc. and FortisBC Energy (Whistler) Inc.] 2012-2013 Revenue Requirements and Rates*; Decision and Order G-44-12, August 12, 2012.

FEI indicates that the costs for fueling stations developed as prescribed undertakings will be determined in the same manner as the costs for fueling stations developed under General Terms and Conditions (GT&C) Section 12B. However, with regard to rates and revenues from the stations, the GGRR permits less than full cost recovery from the energy provided at the station. As such, FEI proposes to capture the total revenue surplus or deficiency pertaining to these un-forecast fueling station facilities in a non-rate base deferral account (attracting AFUDC), the “Fueling Stations Variance Account”. FEI describes the total revenue surplus or deficiency to be the net of the total recoveries and the cost of service of the fueling stations, where total recoveries is defined as the summation of fueling station, tanker transportation and delivery margin recoveries. (Exhibit B-1, pp. 22-23)

FEI also proposes the Fueling Stations Variance Account capture the administration allowances for fueling stations as provided for in the prescribed undertakings and will record the actual administrative costs incurred, up to a maximum in the undertaking period of \$240 thousand for CNG stations and \$250 thousand for LNG stations, for a total maximum addition to the deferral account of \$490 thousand. (Exhibit B-1, p. 23)

FEI indicates that a portion of the Application costs identified in Section 2 of these Reasons (that is, legal fees, intervener and participant funding, Commission costs, required public notifications and miscellaneous stationery and supplies costs) will also be captured in the administrative cost allowance of Prescribed Undertaking 1. (Exhibit B-1, p. 23)

The accumulated balance on a net-of-tax basis would attract AFUDC and would then be incorporated into rate base and amortized in the cost of service when the non-bypass natural gas delivery rates are reset. (Exhibit B-1, p. 23)

FEI states that it will maintain records on the CNG and LNG stations that will allow for each station to be tracked separately, including its contribution to this deferral account. FEI proposes an amortization period of 3 years for this account, to align with the timeframe of the regulation. (Exhibit B-1, p. 23) The amortization period is different from that proposed for the Phase 1 deferral account discussed above.

3.1 Other Considerations

Aside from the proposed rate treatment and cost recovery mechanism sought by FEI in this Application, the Commission Panel notes that other issues raised in the Application and during the SRP require consideration and determinations by the Panel.

In its written outline of oral final submissions filed the day before the SRP commenced, FEI made the following submission which includes 9 requests:

“The Commission can and should demonstrate a leadership role in making this GGRR initiative a success, a role that is consistent with the requirement of section 18(3) of the CEA, by making the following express findings regarding its jurisdiction under the GGRR:

- (a) The Commission must put in place the appropriate rate mechanisms to allow cost recovery from non-bypass customers.

- (b) The need for the Prescribed Undertakings has been determined by legislation. FEI's ability to make expenditures as Prescribed Undertakings under the GGRR is not open to challenge before the Commission. The corollary is that requiring a CPCN application for fuelling stations under the Prescribed Undertaking 2 and 3 is unnecessary (i.e., the Commission could not decline to grant a CPCN), making it appropriate for the Commission to exempt such expenditures from the CPCN requirements.
- (c) When setting future rates the Commission may consider whether the total expenditures incurred falls within the dollar parameters of the Prescribed Undertakings as defined in the GGRR.
- (d) The categories of costs that FEI will potentially be required to incur, and that will be recoverable as part of a Prescribed Undertaking, include the costs identified in paragraph 14 below.
- (e) As Government has determined, by virtue of promulgating the GGRR, that there is value in public utilities undertaking the Prescribed Undertakings, the Commission's role will not include an after the fact cost/benefit assessment for the purpose of assessing the prudence of the costs associated with the Prescribed Undertakings.
- (f) Where FEI is operating within the thresholds specified in the GGRR, the Commission's role does not include reviewing whether the level of vehicle incentives provided by FEI to particular customers, or the level of incentives provided generally, or the level of overhead and marketing expenditures, is/was in the public interest or prudent.
- (g) Where FEI is employing fuelling service agreements that fall within the parameters established by the GGRR, the Commission's role does not include reviewing whether FEI ought to have negotiated different terms and conditions with NGT customers.
- (h) If an expenditure exceeds a limitation in the GGRR, then the treatment accorded by the GGRR would not extend to the expenditure or project that is causing the limit to be exceeded. The net result would be that the Commission would consider the eligibility of those excess expenditures for recovery in rates by applying its normal test (i.e. the prudence test).
- (i) Costs associated with Prescribed Undertakings in the period while the GGRR do not become open to challenge by virtue of the GGRR expiring in 2017." (Exhibit B-6, para. 10)

In the Supplemental Submission, FEI provides the following summary of determinations that it seeks:

- "(a) Year 1 of the "undertaking period" for FEI is the first year (defined as April 1 to March 31) in which FEI commits to providing vehicle incentives.
- (b) The percentages identified in the table in section 2(1)(b) of the GGRR are maximums.
- (c) Prescribed Undertakings 1 to 3 include all actual costs related to commitments that have been made during the "undertaking period", whether or not those costs are actually disbursed or paid out before April 1, 2017.

(d) Costs relating to Prescribed Undertakings should be tied to a particular “year of the undertaking” based on when FEI has made commitments, rather than when costs related to those commitments are actually disbursed or paid out.

e) A commitment for vehicle grants under Prescribed Undertaking 1 occurs when FEI concludes a contribution agreement with the recipient.

(f) A commitment under Prescribed Undertaking 2 and 3 is the execution of a fueling station agreement.

(g) Actual costs for the purpose of determining whether expenditures qualify as Prescribed Undertakings are net of any CIAC provided by the fuelling station customer or the shareholder.

(h) “Expenditures”, and thus the spending limitations that define Prescribed Undertakings, are exclusive of financing costs.” (Exhibit B-14, pp. 8-9)

FEI’s requests and the determinations it seeks raise issues relating to operation of the GGRR and the Commission Panel will address them in Section 6.

The Commission Panel also considers there are issues that should be addressed that were not raised by FEI in the Application or in the Supplemental Submission, but were discussed at the SRP. These issues are:

- How should the Commission Panel approach the “separate class of service” considerations?
- Should the Commission be involved with establishing the reporting requirements for the undertakings report to the Minister?

The Commission Panel discusses these issues further in Sections 4 and 5 and makes its determinations in Section 6.

4.0 VIEWS OF FORTISBC ENERGY INC.

FEI states that the adoption of natural gas as a transportation fuel has the potential to produce a number of benefits, including a reduction in GHG emissions and air contaminants, an economic payback to the citizens of BC, and load building benefits to all natural gas utility customers, among other complementary benefits. The Regulation is expected to result in a cost effective way to lower GHG emissions across the Province, and help offset declining natural gas load with additional throughput volume which results in more cost effective and efficient utilization of the natural gas distribution system. (Exhibit B-1, p. 10)

In its view, FEI sees absolute clarity of the Government’s desire for public utilities to make significant investments to achieve its legislative objectives for reducing greenhouse gas emissions. FEI submits that the Commission does not need information on the quantification of benefits and costs on any particular program elements, nor does it need to look into whether a zero interest loan is better than a grant. FEI submits that those matters have been determined by the Regulation and are being discussed on an ongoing basis with the Ministry. (Transcript, Phase 1, pp. 149-151)

FEI also expressed its concerns over past Commission decisions and states that FEI faced difficulties over the past three years advancing the NGT initiative before the Commission. (Exhibit B-6, para. 9; Transcript, Phase 1, pp. 151-152)

FEI does not agree that the Commission could reserve the right to a prudency review of the expenditures after the expiry of the GGRR, and submits that the potential for such a review “will cast a shadow over FEI’s involvement in Prescribed Undertakings and represent an impediment to the success of the GGRR.” (Exhibit B-6, para. 9) FEI views a prudency review as a mechanism whereby the Commission denies cost recovery, and therefore submits that the idea of a prudency review is “fundamentally” incompatible with the cost recovery element that is apparent in the GGRR. (Transcript, Phase 1, pp. 152-153)

FEI submits that the mechanisms that have been put in place by the Regulation contemplate exactly what is being done by FEI today whereby, FEI is talking to the Ministry and designing the mechanisms so that the Ministry knows in advance what the outcomes are going to be. (Exhibit B-6, para. 7 and Transcript, Phase 1, p. 154)

FEI further submits that the GGRR differs from the “exempt projects” applicable to BC Hydro in that the GGRR is “a scenario where you’ve got not only the need established, but also an amount,” ultimately, establishing the upper limits of the project. (Transcript, Phase 1, pp. 154-155)

In terms of cost recovery, FEI’s position is one which urges the Commission to view the Regulation in a “positive” lens in that, if the Commission is given a range of rate design options, the options that the Commission should be pursuing and going with is the option that is most likely, in the Commission’s view, to make this initiative a success. FEI submits that the Commission must take the necessary steps to bring certainty and clarity to the way in which this program is going to be undertaken at the onset so that all parties understand “what the rules are in advance”. (Transcript, Phase 1, pp. 146-149)

Although FEI agrees that the issue of recovering costs from which ratepayers is an obvious grey area (Transcript, Phase 1, p. 159), it says its proposal to recover all of its costs from all non-bypass customers rather than trying to allocate more to the specific customer receiving the incentive, is the most appropriate because costs are then spread out among a larger group of customers which will further the success of the program. (Transcript, Phase 1, pp. 159-160) FEI further submits that by recovering costs from the small group of customers taking LNG or CNG incentives, it effectively turns that into a loan, not a grant, which would take away from one of the options that is available under the GGRR to offer an incentive. (Transcript, Phase 1, pp. 59-62)

Further, on the issue of a separate class of service, FEI believes that “a class of service is defined by the characteristics of the service, and it is not defined by whether or not something needs to be segregated for accounting purposes, to keep it separate, or isolated or not.” FEI submits that the segregation of costs does not require a separate class of service as the mechanisms put forward more than suffice for that purpose. (Transcript, Phase 1, pp. 161-162)

5.0 VIEWS OF INTERVENERS

Amongst the list of registered interveners, three parties actively participated in the SRP, BCPSO, CEC, and BCSEA by asking questions of the FEI witness panels and making oral submissions. The Ministry, which participated by telephone, made oral submissions. The following summarizes their views and submissions.

The BCPSO submits that FEI overstated the restrictions that are placed on the Commission's jurisdiction by the Regulation, such as whether the public utility will provide grants or loans. BCPSO suggests that the Regulation leaves open the issues related to the prudence of specific investments or specific grants or loans and that the utility also maintains an obligation to maximize the benefits of any programs to ratepayers, and to minimize the costs and also to consider the impact of its actions on the public interest.

The BCPSO believes that the Commission should be ensuring that FEI does not "over-incent" vehicle purchases as it is not convinced that the level of incentives that are being provided are necessary to get take-up of the program. While the BCPSO does not appear to take a position on the issues of cost recovery and from whom, it does argue that the majority of the benefits are going to accrue to the natural gas transportation customers. (Transcript, Phase 1, pp. 163-66)

CEC submits that it has been aggressively supportive of natural gas vehicle incentives and indicates that the Commission needs to make sure the rate making principles are fair to the customers who ultimately will pay the bills. The CEC agree to the proposed deferral account treatment but suggests a 20 year amortization period to better recognize the long-term benefits of the program. However, if it is found that FEI has not been successful in achieving the market transformation, the CEC suggests that recovery time could be shortened. The CEC suggests that the Commission leave a regulatory alternative to review the program and its success, and at a later point in time which may allow the Commission an opportunity to revisit (during revenue requirement proceedings) a change in the allocation of the costs of this program to those customers who are specifically and significantly benefiting from it. (Transcript, Phase 1, pp. 170-175)

BCSEA supports FEI's application. BCSEA's interest stems from the greenhouse gas emission reductions and the air pollution reduction benefits along with intergenerational equity. BCSEA submits that the Commission should make decisions related to the NGV program that are permanent in nature and not revisit those decisions when the GGRR ends in 2017, in order to provide certainty on the terms of the grants. (Transcript, Phase 1, pp. 166-170)

The Ministry relies upon its press releases and the Province's submission to the AES Inquiry. (Transcript Phase 1, pp. 175-176) That submission is quoted in part by FEI in Exhibit B-6 at paragraph 8 and more fully in Exhibit B-2, BCUC IR 1.4.5.1.

6.0 DETERMINATIONS

In making its determinations on the issues before it, the Commission Panel must interpret the statutory framework established by the *UCA*, the *CEA* and the GGRR. In that respect, it must apply principles of statutory interpretation to determine the intent of the Legislature. FEI, supported by BCSEA, provided its interpretation. The Ministry's interpretation is aligned with that of FEI and BCSEA. BCPSO submits that FEI's interpretation is too narrow.

In making its determinations, therefore, the Commission Panel will apply the fundamental principle of statutory interpretation found in *Rizzo & Rizzo Shoes Ltd. (Re)* [1998] 1 S.C.R. 27 where the Court, citing from p. 87 of Elmer Driedger's *Construction of Statutes* (2nd ed. 1983), states as follows:

“Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, and the object of the Act, and the intention of Parliament.”⁷

The same rules of statutory interpretation that apply to statutes also apply to regulations. At p. 26 of Pierre-Andre Cote's *The Interpretation of Legislation in Canada* (4th ed.), the following statement is made:

“Case law leaves no doubt that the principles of statutory interpretation developed by the courts apply equally to regulations, both to determine meaning and to specify ambit:
Regulations passed under statutory authority are subject to the same rules of interpretation as the statute itself.” [Footnotes omitted.]

The Panel agrees with FEI that there is a need for certainty in the operational details of the program. Accordingly, the Panel will deal with a number of program and operational items that go beyond the specific decisions requested, questions raised and positions advanced during the hearing.

The Commission Panel will now address FEI's request for cost recovery, deferral account treatment, amortization period and carrying cost on proposed deferral accounts from the Application that are described in Section 2 of these Reasons.

6.1 Cost Recovery

The Panel finds that the funding of the grants and financing costs are recoverable from all non-bypass ratepayers, as requested in the Application.

The Panel interprets the Regulation to be quite clear in specifying “grant” or “loan”. The definition of “grant” as submitted in evidence during the SRP is defined by the Oxford dictionary as “a sum of money given by a government or other organization for a particular purpose...”⁸ It is the Commission Panel's view that this definition precludes the expectation that the grantee will directly pay back the grant in any amount. Further, to support the intention of Government that the funding issued by way of a grant would not be repayable by the grantee, the Regulation provides for the alternative of a zero interest loan which, of course, would be repayable according to the terms of the loan.

⁷ [1998]1 S.C.R.27 at. 41.

⁸ Exhibit B-12.

The Commission understands the concerns of interveners that the grantee is receiving a benefit by way of the grant and will also enjoy economy in fueling costs. The Regulation provides for the scaling down of the allowed grant as a percent of the incremental cost difference between diesel and natural gas powered vehicles as the undertaking evolves. It is the Commission Panel's view that this addresses both the objective of jump starting the market and providing smaller grants particularly as the market gains traction over time. By paying more of the upfront cost of the natural gas alternative rather than repaying all or a portion of the grant by sharing operating savings as has been advanced by some interveners, the benefit received will in fact reduce as the undertaking evolves.

6.2 Deferral Accounts

The two proposed non-rate base deferral accounts (the NGT Incentives Account and the Fueling Station Variance Account) are approved as filed. These two deferral accounts are to be transferred to rate base effective January 1, 2014.

The Commission Panel finds that the proposed method of accounting for the GGRR grants and program costs through the use of the proposed deferral accounts is a reasonable mechanism to capture costs until the next revenue requirement where all costs could be forecast and included in the cost of service through rate base deferral accounts for the next test period. This approach is consistent with established practice.

Specifically on the expenditures on CNG/LNG stations (Phase 2), FEI states in Exhibit B-14 section D that by using the contract commitment date to determine the year and the actual as-spent dollars to calculate the average cost for the stations for that year, you can determine if the expenditures exceeded the threshold of average cost in a year. The Panel clarifies that expenditures will not be the budget or estimated cost for the station but the actual construction cost on which the rate will be calculated. This treatment is consistent with the rate calculation required for the BFI Canada Inc. by Commission Order C-6-12. Also, the Panel believes the Regulation to be quite clear when the Regulation refers to "in any year of the undertaking" that the average expenditure relates to expenditures on completed stations in any specific year of the undertaking. Accordingly, the Panel determines that the year is the year of completion and not FEI's proposal based on the contract commitment date. If within the year that a contract is let there is a fixed price commitment for completion in the following year the committed cost can be used to calculate the average station cost, (in the year the commitment was made) under the GGRR and the rate calculation.

6.3 Amortization Period

Phase 1 Undertakings

The Commission Panel is persuaded that the 10-year amortization period, on a program basis, generally matches the asset life and is therefore approved.

For Phase 1 undertakings, the Panel understands that the 10 year period is proposed to match the life of the asset and is also a reasonable compromise between an accelerated write down and minimizing the rate impact. Other amortization time periods were proposed by interveners but little rationale was provided other than to further minimize the rate impact to customers. On the side of a shorter amortization period, FEI did indicate that some types of trucks would have a shorter life span due to the manner in which they were deployed. On balance and at this stage of the undertaking the 10 year amortization period seems reasonable.

Phase 2 Undertakings

For Phase 2 undertakings, the Panel approves a 3 year amortization period. Unlike the Phase 1 undertakings these amounts are of an operating nature and should therefore be amortized into rates as quickly as is reasonable.

6.4 Carrying Cost on Proposed Deferral Accounts

The proposed AFUDC return is approved for the two non-rate base deferral accounts and the Commission approves the opportunity for FEI to earn the allowed return on rate base as may be approved from time to time.

The Panel considers that these two non-rate base deferral accounts provide for the cost recovery of expenditures allowed by the GGRR. The Commission Panel approves the transfer of these two deferral accounts to rate base effective January 1, 2014. The Commission Panel accepts that allowing the proposed AFUDC return on these expenditures while recorded in non-rate base deferral accounts is consistent with the treatment allowed when these same expenditures are transferred to rate base.

The Commission Panel will now address the 8 remaining requests made by FEI in Exhibit B-6 in the sequence listed in section 3.1 of these Reasons. FEI's request for cost recovery from non-bypass customers has already been addressed.

6.5 CPCN exemption for Prescribed Undertakings 2 and 3

The Panel accepts that the Regulation established the need for the fuelling stations under Prescribed Undertakings 2 and 3; therefore these projects are exempt from the CPCN requirements for the term of the Regulation.

6.6 Setting Rates Considering Total Expenditures of the Prescribed Undertakings

FEI made reference to Exhibit B-2, BCUC IR 1.1.2 when it requested confirmation that the Commission would consider the total expenditures in setting rates. That information request sought clarification of who determines when FEI exceeds a spending limit of the Regulation and whether it was the utility, the Ministry or the Commission. FEI stated that it will manage its programs and expenditures to stay within the limits of the Prescribed Undertakings, will submit the required report to the Ministry that demonstrates FEI's compliance with the spending limits and expects that the Ministry will confirm FEI's compliance.

FEI's request under this item and its request that is addressed in item 6.10 are similar in nature. This determination will address FEI's expenditures that are in accordance with the limits of the Prescribed Undertakings and item 6.10 will address FEI expenditures that exceed the limits of the Prescribed Undertakings. **The Commission will set rates considering FEI's expenditures on the Prescribed Undertakings.**

6.7 Categories of Costs Recoverable under the Prescribed Undertakings

FEI requests the Commission find that the costs that it may potentially be required to incur and that are recoverable as part of the Prescribed Undertakings, include the costs identified under paragraph 14 of its submission which are costs related to incentives, administration, marketing and training and education. FEI also referred to its responses in Exhibit B-2, BCUC IRs 1.6.5 and 1.6.1 to 1.6.5.2 as explanations of the costs it will be incurring.

The Commission Panel accepts FEI's explanations of the categories of costs that should be recoverable under the Prescribed Undertakings as described in the listed information responses.

6.8 Prudency Reviews

FEI's position is that the Commission does not have jurisdiction over the program and the actions of FEI in executing the program should not be open to a possible prudence review. (Exhibit B-6, paras. 7-11; Transcript Phase 1, pp. 152-153) The Ministry shares the same view. (Exhibit B-6, para. 8; Transcript Phase 1, pp. 175-176) With respect, the Commission Panel disagrees. Section 1.2 of these Reasons identify the modifications to the Commission's rate setting powers by Section 18 of the CEA and the Regulation but in the Commission's view the modifications do not limit its responsibility or authority to determine the prudency of FEI's expenditures. **The Commission makes no decision on prudency reviews at this time. A decision on whether to advance a prudency review is situation specific; therefore the Commission will make this decision as necessary, if and when circumstances arise.**

There is no question that the need for the program is established and the program design is detailed in the GGRR. However, as is the case with any other regulation, the utility has a responsibility to follow the Regulation, and the Commission has a responsibility to ensure that (in this case) FEI, as a regulated utility, complies with the Regulation.

On the matter of prudency, it is expected and assumed that FEI will act prudently in the execution of the program at the time decisions are made and the actions carried out as described in the Regulation. However, many decisions must be made by FEI that affect the ability of the program to maximize the achievement of the program objectives and to allow non-bypass customers to enjoy maximum value for the program funding they must provide.

6.9 Negotiated Fuelling Service Agreements

In Exhibit B-6, p. 5 FEI seeks confirmation that where "FEI is employing fuelling service agreements that fall within the parameters established by the GGRR, the Commission's role does not include reviewing whether FEI ought to have negotiated different terms and conditions with NGT customers."

The Commission Panel agrees and confirms the Commission's role does not include reviewing whether FEI ought to have negotiated different terms and conditions for those agreements with NGT customers.

6.10 Expenditures in Excess of GGRR Limitations

FEI requests that if an expenditure exceeds a limitation in the GGRR then the treatment under the GGRR would not extend to the expenditure or project that is causing the limit to be exceeded. In FEI's view the net result would be that the Commission consider the eligibility for cost recovery in rates by applying its normal test, the prudence test.

As noted in Section 1.2 above, subsection 18(2) of the *CEA* requires the Commission to set rates that allow a public utility to collect sufficient revenue in each fiscal year, to enable it to recover its costs with respect to a prescribed undertaking. Subsections 18(4) and (5) of the *CEA* provide for reports to the Minister relating to the prescribed undertaking. **The Commission Panel considers that it is to set rates in accordance with the *UCA* as modified by the *CEA* and within the prescribed limits. The Commission Panel concludes that since the Minister is reviewing FEI's total expenditures for the prescribed undertakings, only with a revised Regulation concerning the Prescribed Undertaking could the Commission approve recovery of an excess expenditure or other changes to the GGRR.**

6.11 Costs of Prescribed Undertakings Not Open to Challenge when Regulation expires in 2017

The Commission Panel confirms that the costs that FEI incurs during the term of the Regulation that have been accepted by the Commission for cost recovery, will not be open to challenge except for prudence reviews following the expiration of the Regulation in 2017. This approach follows established regulatory practice for cost recovery and prudence reviews.

7.0 OTHER ISSUES

The Commission Panel stated in section 1.1 of these Reasons that the Supplemental Submission went beyond the issue for which the Commission sought submissions. However, the Commission Panel also stated it would provide its comments on the summary of determinations FEI seeks in Section F of the Supplemental Submission. It considers that those matters raise practical issues that require clarity. It will therefore address the 8 points (a) to (h) raised by FEI in the sequence they are listed in section 3.1.

7.1 Year 1 of the "Undertaking Period"; Actual or Incurred Costs; Commitments for Vehicle Grants under Prescribed Undertaking 1; and Commitments under Prescribed Undertaking 2 and 3

Under this heading, the Commission Panel addresses FEI's requests for determinations on (a) Year 1 of the "undertaking period", (c) whether costs need to be actually disbursed or paid out before April 1, 2017, (e) whether under Prescribed Undertaking 1 a commitment for a vehicle grant occurs when FEI concludes a contribution agreement with the recipient and (f) whether a commitment under Prescribed Undertaking 2 and 3 is the execution of a fuelling station agreement.

The Regulation states that it is repealed on April 1, 2017. This was confirmed by the Ministry in its letter dated June 8, 2012, and filed as Appendix P in the Application.

The Panel sees two issues concerning the effective date of the Regulation:

- 1) Should the requested rate treatments be approved effective the OIC date of May 14, 2012, or the Application date of August 21, 2012, or some other date?
- 2) Should the approval end on March 31, 2017, since the GGRR is repealed on April 1, 2017?

There was discussion during the SRP concerning the need for clarification of the start date for the GGRR as it pertains to FEI as the public utility offering the prescribed undertakings. Given that the GGRR does not specify a start date for the prescribed undertaking (but does specify an end date), FEI submits that the public utility may use its discretion as to when to begin making the expenditures under any of the three prescribed undertakings. (Exhibit B-2, BCUC 1.1.1) FEI also submits that Year 1 of the “undertaking period” is the first year (defined as April 1 to March 31) in which FEI commits to providing vehicle incentives. **The Commission Panel does not agree with FEI’s interpretation for the reasons that follow.**

The Commission notes that NGV activities including the granting of incentives of the same type as described in the Regulation were being made in 2010 and 2011. The Government was aware of these incentives being granted by FEI and on June 10, 2011, submitted a letter of support in the Commission’s review of the FEI and FortisBC Energy (Vancouver Island) Inc. (collectively the Fortis Energy Utilities) Energy Efficiency and Conservation Natural Gas Vehicle Incentive Review (June 10, 2011 letter). In its June 10, 2011 letter, the Government recognizes that \$5.587 million of NGV incentive grants have been committed and states that FEU’s NGV program is in alignment with British Columbia’s energy objectives and is in the interests of ratepayers and the public. (Exhibit B-1, Appendix K)

The structure of the Regulation is rather unusual in that the start date of the undertaking working back from the end date predates the issuance of the Regulation. Unusual or not the Commission Panel concludes that the Legislature intended the undertaking period to commence six years before the end of the undertaking period (March 31, 2017) which would be April 1, 2011. **As there was NGV activity at this time, for clarity, the Commission interpreted the terms of the GGRR to be effective on April 1, 2011. This interpretation is consistent with the Government’s view in its June 10, 2011 letter, that the committed NGV incentive grants are prudent.** The Commission Panel notes that the choice of dates has no effect on the cost of the program as costs are capped in any event. This decision will inform the consideration of matters in Phase 3 but will not be determinative of the outcome.

Also for certainty and in a response to a comment by FEI during the SRP, the GGRR makes no specific mention of its application to a named utility. The Regulation outlines the timetable for the undertaking and is described in detail in the following section of these Reasons. For clarity, should another gas utility initiate a program to engage in the undertaking, it would do so under the terms of the Regulation and be obliged to conform to the percentage cap that applies for the year of the undertaking in which a commitment under the Regulation was made. This interpretation is consistent with this Panel’s view of the intention of the Legislature as described above. It is also considered fair to all participants that uniform implementation and administration of the Regulation should be followed.

In terms of the end date of March 31, 2017, FEI submits that this signifies the date by which FEI must be under binding commitment to make expenditures (Prescribed Undertaking 1) or contractual fuelling service commitments (Prescribed Undertakings 2 and 3), but the actual expenditures may occur after March 31, 2017, and still be covered by the GGRR. (Exhibit B-6, p. 7)

FEI submitted the definition of “expenditure,” as defined through Webster’s on-line dictionary: 1) the act or process of expending or; 2) something expended. (Exhibit B-11) The Commission Panel observes that the definition of expenditure makes no mention of a commitment or undertaking; rather it is quite clear it is an “act” or process in the present tense. **The Commission Panel determines that all expenditures must be made by the end of the expenditure period. The Commission does not see this clarification as in any way preventing FEI from carrying out the prescribed undertakings as the undertaking period ends on March 31, 2017, leaving considerable time to plan for the end date. Rather, it provides program certainty to all concerned as requested by FEI. If there are extenuating circumstances related to equipment delivery or other delays that could not reasonably be anticipated, FEI or another gas utility participating in the program may file, in a timely manner, an application for relief.**

7.2 Current Year of Undertaking

Related to the above issue is the need for clarification on the current year of undertaking.

There were a number of instances where clarification was sought as to which year of the undertaking FEI is currently operating under as this would effectively limit its spending caps, depending on the year. In the Supplemental Submission FEI also requests the following determination: (d) that the costs related to Prescribed Undertakings should be tied to a particular “year of undertaking” based on when FEI made commitments, rather than when costs related to those commitments are actually disbursed or paid out.

The Commission Panel does not agree with FEI’s requested determination as the Panel sees no ambiguity in year 1 beginning on April 1, 2011, and therefore the year of undertaking cannot be the particular year when FEI made a commitment. For clarity and certainty, the program commenced on April 1, 2011, and the first year of the undertaking ends on March 31, 2012. For further clarity, the third year of the undertaking commences on April 1, 2013 and ends on March 31, 2014. The following Table describes the six years of undertaking:

Year	Start	End
1	April 1, 2011	March 31, 2012
2	April 1, 2012	March 31, 2013
3	April 1, 2013	March 31, 2014
4	April 1, 2014	March 31, 2015
5	April 1, 2015	March 31, 2016
6	April 1, 2016	March 31, 2017

The year of undertaking determines the maximum percentage of a grant or loan that may be committed to regardless (except for the last year of the program) of when the grant or loan is paid.

7.3 Maximum Percentages in section 2(1)(b) of the Regulation

Under this heading, the Commission Panel addresses FEI's request for determination (b) in its Supplemental Submission: that the percentages identified in the table in section 2(1)(b) of the GGRR are maximums.

The Commission Panel confirms that the percentages identified in the table in section 2(1)(b) of the Regulation are the maximums allowed under the Regulation.

7.4 Expenditures being net of any Contribution in Aid of Construction and Exclusive of Financing Costs

Under this heading, the Commission Panel addresses FEI's request for determinations (g) and (h) in its Supplemental Submission. FEI's determination (g) seeks the Commission Panel's determination that the actual costs used for the purpose of determining whether expenditures qualify as prescribed undertakings are net of any CIAC provided by the fuelling service customer and shareholder. FEI's determination (h) seeks the Commission Panel's determination that "Expenditures" and thus the spending limitations that define Prescribed Undertakings, are exclusive of financing costs.

The Commission Panel confirms that expenditures under the Prescribed Undertakings are net of any contribution in aid of construction provided by the fuelling station customer or the shareholder. The Commission Panel also confirms that expenditures and the spending limits that define the Prescribed Undertakings are exclusive of financing costs.

Section 3 of the Reasons listed two items that the Panel needs to address that were not requested by FEI. These two items are:

- How should the Commission Panel approach the "separate class of service" considerations?
- Should the Commission be involved with establishing the reporting requirements for the undertakings report to the Minister?

7.5 Separate Classes of Service

A separate class of service to recognize the prescribed undertakings under the GGRR is required.

The Panel is concerned that there should be an accurate segregation and recording of all financial activities for each undertaking, particularly given the rather unique objectives of the program and the cost recovery arrangements for the program. The need for transparency is, in the Panel's view, essential and is best achieved by a separate class of service for the prescribed undertakings. This treatment is consistent with the directions contained in Commission Order C-6-12 regarding the BFI CPCN Application as varied by Commission Order G-150-12 regarding the BFI Reconsideration. Although not a consideration in these Reasons the Panel notes that this treatment is also consistent with the findings of the AES Inquiry Report.

7.6 Reporting

The Commission Panel proposes the reporting requirements that are detailed in this section and that FEI, Ministry staff and Commission staff work out the actual reporting methodologies, formats and other requirements.

At the SRP the Commission Panel noted the reporting requirements of the *CEA* and the Commission's need to understand what is happening within the program and to ensure that the program is adhering to the Regulation. The Panel also observed that Ministry and Commission staff discussions on reporting requirements focused on identifying an agreed format that would serve everyone's need. The Panel proposed that it would lay out those requirements at a high level and leave it to FEI, Ministry staff and Commission staff to work out the actual reporting methodologies, format and other requirements. FEI, BCSEA and CEC stated that the Panel's proposal was acceptable. (Transcript, Phase 2, pp. 53-54)

The Commission Panel proposes that FEI and any other utility that participates in the program provide a report to the Ministry and the Commission every six months during the program, and a final report six months after the end of the program. For clarity, the first report would be due on September 1, 2013, and the second report would be due on March 1, 2014, with the final report on September 1, 2017.

For Phase 1 the reporting should identify:

- Who received the incentive;
- What level of grant or loan was given;
- Was the grant or loan to purchase eligible vehicles;
- Was the grant to implement safety practices or to improve maintenance facilities;
- Grants are usually issued in two parts - did the recipient receive both payments (City of Surrey only received the first payment, p. 32);
- What type of vehicle will be used, how many vehicles and the expected annual consumption per vehicle;
- The expenditures on administration, marketing, and education per year and how they are tracked separately from similar costs in non-prescribed undertakings;
- The information should be detailed by year and demonstrate that it is in compliance with the funding limit;
- What is the current balance in each expenditure category showing the dollars paid and the dollars committed but not paid?

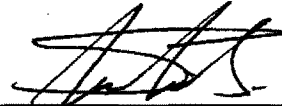
For Phase 2 the reporting should identify:

- Is this a CNG or LNG station;
- The term of the take-or-pay contract and what percentage of energy is included in the contract;
- Which customer(s) is served by the station and where is it located;
- Did FEI construct and operate this station;
- Did FEI purchase and operate this station;
- The forecast unrecovered cost of service and unrecovered capital cost for each station;
- The expenditures on administration and marketing per year and how they are tracked separately from similar costs in non-prescribed undertakings;
- The information should be detailed by year and demonstrate that it is in compliance with the funding limit.

In making its proposal, the Panel recognizes that the Minister has the power to request reports that differ in content from that proposed and which may be filed on different timelines.

PROVINCE OF BRITISH COLUMBIA
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. 295, Approved and Ordered MAY 14 2012


Lieutenant Governor

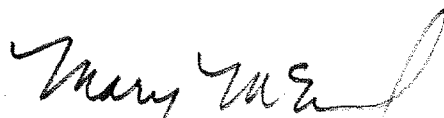
Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that the attached Greenhouse Gas Reduction (Clean Energy) Regulation is made.

DEPOSITED

May 15, 2012

B.C. REG. 102/2012


Minister of Energy and Mines and Minister
Responsible for Housing
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: Clean Energy Act, S.B.C. 2010, c. 22, s. 35 (n)

Other:

April 2, 2012

R/847/2011/27

GREENHOUSE GAS REDUCTION (CLEAN ENERGY) REGULATION

Definitions

1 In this regulation:

“**Act**” means the *Clean Energy Act*;

“**eligible vehicle**” means

(a) a specified vehicle with a power train and fuel system that has not been modified after manufacture, and

(b) a marine vehicle

that uses, as a primary fuel source, compressed natural gas or liquefied natural gas;

“**heavy-duty vehicle**” means a truck or tractor-trailer with a manufacturer’s gross vehicle weight rating of 11 793 kg or more;

“**medium-duty vehicle**” means a vehicle, including a waste-haulage truck, with a manufacturer’s gross vehicle weight rating of more than 5 360 kg but less than 11 793 kg;

“**safety guidelines**” means safety guidelines adopted by the British Columbia Safety Authority;

“**specified vehicle**” means a heavy-duty vehicle, medium-duty vehicle, school bus or transit bus;

“**tanker truck load-out**” means equipment for transferring liquefied natural gas from a storage tank to a liquefied natural gas tank trailer;

“**undertaking period**” means the period that ends on March 31, 2017.

Prescribed undertakings

2 (1) A public utility’s undertaking that is in the class defined as follows is a prescribed undertaking for the purposes of section 18 of the Act:

(a) the public utility provides, through an open and competitive application process,

(i) grants or zero-interest loans to persons in British Columbia for the purchase of an eligible vehicle to be operated in British Columbia, or

(ii) grants to persons in British Columbia

(A) to implement safety practices, or

(B) to improve maintenance facilities

to meet safety guidelines for operating and maintaining an eligible vehicle;

(b) a grant or zero-interest loan for an eligible vehicle do not, in a year of the undertaking, exceed the percentage difference as indicated in the following table:

	Year of Undertaking					
	1	2	3	4	5	6
Percentage of the difference between the cost of the eligible vehicle and the cost of a comparable vehicle that uses gasoline or diesel	100	80	70	60	50	40

- (c) total expenditures on the undertaking during the undertaking period, including expenditures on administration, marketing, training and education, do not exceed \$62 million, and
- (i) expenditures on the undertaking during the undertaking period on marine vehicles do not exceed \$11 million, and
 - (ii) expenditures on the undertaking during the undertaking period
 - (A) on administration, marketing, training and education do not exceed \$3.1 million, and
 - (B) on grants referred to in paragraph (a) (ii) do not exceed \$4 million;
- (2) A public utility's undertaking that is in the class defined as follows is a prescribed undertaking for the purposes of section 18 of the Act:
- (a) the public utility
 - (i) constructs and operates, or
 - (ii) purchases and operates,

one or more compressed natural gas fuelling stations, including storage, compression and dispensing equipment and facilities, within the service territory of the public utility for the purposes of providing compressed natural gas fuel and fuelling services to owners of vehicles that operate on compressed natural gas;
 - (b) total expenditures on the undertaking during the undertaking period, including expenditures on administration and marketing, do not exceed \$12 million, and
 - (i) the average expenditure on stations, in any year of the undertaking, does not exceed \$1.1 million per station, and
 - (ii) expenditures, during the undertaking period, on administration and marketing do not exceed \$240 000;
 - (c) at least 80% of the energy provided at each station during the undertaking period is provided to one or more persons under a take-or-pay agreement with a minimum term of 5 years.
- (3) A public utility's undertaking that is in the class defined as follows is a prescribed undertaking for the purposes of section 18 of the Act:
- (a) the public utility
 - (i) constructs and operates, or

- (ii) purchases and operates
one or more tanker truck load-outs or liquefied natural gas fuelling stations
for the purposes of providing within British Columbia liquefied natural gas
fuel and fuelling services to owners of vehicles that operate on liquefied
natural gas;
- (b) total expenditures on the undertaking during the undertaking period,
including expenditures on administration and marketing, do not
exceed \$30.5 million, and
 - (i) in any year of the undertaking period an expenditure on a station does
not exceed \$2.75 million, and
 - (ii) expenditures during the undertaking period on a tanker truck load-out
do not exceed \$4 million, and on administration and marketing do not
exceed \$250 000;
- (c) at least 80% of the energy provided at each station during the undertaking
period is provided to one or more persons under a take-or-pay agreement
with a minimum term of 5 years.

Expiry

- 3** This regulation is repealed on April 1, 2017.