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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-27-14**

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

and

**FortisBC Energy Inc.
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)
Certificate of Public Convenience and Necessity Threshold**

BEFORE: D.M. Morton, Panel Chair/Commissioner
D.A. Cote, Commissioner March 4, 2014
L.A. O'Hara, Commissioner
C. van Wermeskerken, Commissioner

O R D E R

WHEREAS:

- A. On December 19, 2012, FortisBC Energy Inc. (FEI) filed an application with the British Columbia Utilities Commission (Commission) seeking approvals for the continuation of the Biomethane Program on a permanent basis with certain modifications (2012 Biomethane Application);
- B. The Biomethane Program described in the 2012 Biomethane Application includes FEI designing, building, owning and operating the interconnection facilities related to the supply projects and the option of FEI, in some cases, designing, building, owning and operating the upgrader facilities as well. The Biomethane Application does not include FEI building and owning facilities other than upgrader and interconnection facilities as these fall out of FEI's core expertise;
- C. On December 27, 2012, the Commission issued Order G-201-12 and its report on the Inquiry into Alternative Energy Services and New Initiatives (AES Inquiry Report) in which the Commission made the determination that the appropriate Certificate of Public Convenience and Necessity (CPCN) requirements for biomethane supply projects would be dealt with in the 2012 Biomethane Application and reaffirmed the \$5 million CPCN threshold until that time;
- D. Seven Interveners registered for the 2012 Biomethane Application proceeding: the Commercial Energy Consumers Association of British Columbia; the British Columbia Old Age Pensioners Association *et al.*, which subsequently underwent a name change to the British Columbia Pensioners' and Seniors' Organization *et al.*

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(BCPSO); the B.C. Sustainable Energy Association (BCSEA); British Columbia Hydro and Power Authority; Greater Vancouver Sewerage and Drainage District; CHFour Biogas; and the City of Vancouver;

- E. On December 11, 2013, the Commission Panel issued its Decision and accompanying Order G-210-13 on the 2012 Biomethane Application (Biomethane Decision);
- F. In the Biomethane Decision, the Commission Panel finds that FEI may own and operate an upgrader when dealing with regional or municipal governments;
- G. Further, in the Biomethane Decision, the Commission Panel notes that no further submissions on the CPCN threshold for biomethane facilities were received and set out a process for parties to provide submissions on the matter of the appropriateness of a \$5 million threshold;
- H. FEI filed a submission on the CPCN threshold dated January 13, 2014, and submits that a \$5 million threshold is appropriate;
- I. BCSEA filed a submission on February 3, 2014, in which it agrees with the FEI's submission;
- J. BCPSO filed a submission on February 3, 2014, and states it is of the view the CPCN threshold should be lower than \$5 million;
- K. FEI responded to BCPSO's concerns in a Reply submission dated February 13, 2014; and
- L. The Commission reviewed the submissions on the quantum of the CPCN threshold, and the evidence in the 2012 Biomethane Application, and determines that the \$5 million CPCN threshold remains appropriate and aligned with the purpose of a CPCN threshold.

NOW THEREFORE pursuant to section 45(4) of the *Utilities Commission Act*, and for the Reasons attached as Appendix A, the Commission determines that where FortisBC Energy Inc. builds the interconnection and/or upgrader facilities for biomethane supply projects, the threshold below which a Certificate of Public Convenience and Necessity is not required remains \$5 million.

DATED at the City of Vancouver, in the Province of British Columbia, this 4th day of March 2014.

BY ORDER

Original signed by:

D.M. Morton
Panel Chair/Commissioner

Attachment

FortisBC Energy Inc.
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)
Certificate of Public Convenience and Necessity Threshold

REASONS FOR DECISION

1.0 INTRODUCTION

On December 19, 2012, FortisBC Energy Inc. (FEI) filed an application with the British Columbia Utilities Commission (Commission) seeking approvals for the continuation of the Biomethane Program on a permanent basis with certain modifications (2012 Biomethane Application). The Biomethane Program described in the 2012 Biomethane Application includes FEI designing, building, owning and operating the interconnection facilities related to the supply projects. In some cases, it includes the option of FEI designing, building, owning and operating the upgrader facilities as well. The Biomethane Program does not include FEI building and owning facilities other than upgrader and interconnection facilities, as these fall outside of FEI's core expertise.

On December 27, 2012, the Commission issued Order G-201-12 and its report on the Inquiry into Alternative Energy Services and New Initiatives (AES Inquiry Report) in which the Commission made the determination that the appropriate Certificate of Public Convenience and Necessity (CPCN) requirements for biomethane supply projects would be dealt with in the 2012 Biomethane Application and reaffirmed the \$5 million CPCN threshold until that time.

Seven Interveners registered for the 2012 Biomethane Application proceeding: the Commercial Energy Consumers Association of British Columbia; the British Columbia Old Age Pensioners Association *et al.*, which subsequently underwent a name change to the British Columbia Pensioners' and Seniors' Organization *et al.* (BCPSO); the B.C. Sustainable Energy Association (BCSEA); British Columbia Hydro and Power Authority; Greater Vancouver Sewerage and Drainage District; CHFour Biogas; and the City of Vancouver.

On December 11, 2013, the Commission Panel issued its Decision and accompanying Order G-210-13 on the 2012 Biomethane Application. In its Decision, the Commission Panel found that FEI may own and operate an upgrader when dealing with regional or municipal governments. Further, the Commission Panel noted that no further submissions on the CPCN threshold for biomethane facilities were received and set out a process for parties to provide submissions on the matter of the appropriateness of a \$5 million threshold.

2.0 POSITIONS OF THE PARTIES

2.1 FEI

FEI "continue[s] to believe that the \$5 million threshold is appropriate," providing the following rationale in support of its position:

1. "The Biomethane Program has been reviewed in the recent post implementation review proceeding which has resulted in the Commission setting out the structure and rules for a permanent Biomethane Program. With the benefit of actual operating information on the Biomethane Program, the Commission has considered how the service achieves British Columbia's energy objectives, the appropriate cost allocation methodology, the demand for biomethane, the appropriate supply cap, the price of supply, FEI's over and under-supply risk mitigation and other issues. There is no need to revisit these general issues in detail for each new investment in a facility going forward.

2. There is low stranding risk associated with the interconnection and upgrading assets for a number of reasons, including contract provisions that guard against stranded assets, the engineering of the assets to be mobile where possible and the incentive of the contracting party to recover its own capital investment. For example, one of the requirements for supply contracts has been and will continue to be that the partner is a municipality, regional district or other public authority, or is a private party with a track record in dealings with FEI or that posts security for FEI's capital costs. In the case of upgraders, FEI is limited to ownership when the partner is a regional or municipal government which reduces the risk on these investments. Other key factors are that the components of the interconnection assets that are above ground can be redeployed and Order G-201-13 requires that there must be a minimum supply requirement to avoid stranding of assets.
3. FEI will, in respect of each upgrading and interconnection facility, still be required to submit the supply contracts for acceptance under Section 71. Under its Section 71 filing, FEI will have to meet the supply criteria and explain any variances from the relevant supply contract template. The investment in the upgrading and interconnection facilities would not proceed if the supply contract were not accepted.
4. The Commission will receive a quarterly review of the costs and state of the Biomethane Program when the Biomethane Energy Recovery Charge (BERC) is recalculated. The reports to the Commission will include a forecast of all the costs of the Biomethane Program allocated to the BERC as set out in the Commission's Decision, computed into an average rate for the coming year." (FEI Submission, pp. 1-2)

2.2 BCSEA

BCSEA agrees with FEI that a CPCN threshold of \$5 million would appropriately provide for rigorous, CPCN-level review of substantial biomethane investments and allow smaller biomethane investments to be governed efficiently by the Biomethane Program rules. In its view, "[t]he regulatory issues regarding biomethane projects have now been largely settled... the size of the CPCN threshold for biomethane projects should be determined on the basis of regulatory efficiency, as distinct from matters related to biomethane as a novel service." (BCSEA Submission, pp. 1-2)

2.3 BCPSO

BCPSO is of the view that the \$5 million CPCN threshold is too high. In its view, the capital costs for most biomethane facilities will be less than that amount, citing as examples, Earth Renu, Sea Breeze and Dicklands Farms. In support of its position, it quotes FEI from Exhibit B-5, p. 5 that "[t]he capital costs of upgrading facilities will typically be between \$2 and \$3 million, while the capital cost of interconnection facilities will typically be below \$1 million."

BCPSO does not propose an alternative threshold, but "encourage[s] the Commission to establish a threshold that would not exempt every project from the CPCN requirement, particularly given that biomethane is a relatively novel service." It further submits that "Commission oversight of these projects is important for adequate ratepayer protection; namely, in determining if proposed projects are, in fact, in the public interest." (BCPSO Submission, pp. 1-2)

2.4 FEI Reply

In Reply, FEI provides the following comments:

1. "BCPSO is incorrect when it states that the \$5 million threshold will exempt "every project." The existing threshold will appropriately capture the larger biomethane projects, such as for the City of Vancouver landfill in Delta, and not the smaller projects. It is appropriate and in line with the purpose of a CPCN threshold to only capture the larger projects that warrant more detailed regulatory scrutiny.

2. FEI has received approval for seven biomethane or biogas supply contracts to date. Any remaining “novelty” of biomethane projects is offset by the regulatory process that FEI’s Biomethane Program has undergone in recent years. Through this process, the Commission has set out the parameters under which FEI may advance the Biomethane Program, which has included consideration of the various risks of undertaking biomethane projects.
3. The Commission will still have oversight over projects that fall under the threshold. FEI will still be required to submit the supply contracts for acceptance under section 71 [of the Utilities Commission Act], and the investment in the upgrading and interconnection facilities would not proceed if the supply contract were not accepted. The cost and risks of undertaking Biomethane projects are accounted for in the criteria for supply contracts under the Biomethane Program. In addition, in accordance with the Commission’s Decision, an interconnect test will also be developed for interconnection facilities.” (FEI Reply, p. 2)

Commission Determination

The Commission finds that where FEI builds the interconnection and/or upgrader facilities for biomethane supply projects, the threshold below which a CPCN is not required remains \$5 million.

While the Panel acknowledges BCPSO’s concern about “regulatory oversight “and”adequate ratepayer protection,” it is not persuaded by the arguments put forth. FEI is only authorized to own upgrader facilities for projects associated with municipal or regional governments. Further, the Biomethane Application does not include FEI building and owning biogas or biomethane facilities other than upgrader and interconnection facilities as these fall out of FEI’s core expertise. For those projects where FEI does have an investment the Panel finds that an exemption threshold of \$5 million provides sufficient regulatory oversight to provide adequate ratepayer protection.

The Panel agrees with FEI that not every project will be exempt. For example, the proposed project for the City of Vancouver will not be exempt. The Panel also agrees with FEI that it is “in line with the purpose of a CPCN threshold to only capture the larger projects that warrant more detailed regulatory scrutiny.” For smaller projects, adequate regulatory scrutiny will be provided by the process for acceptance of energy supply contracts under section 71 of the *Utilities Commission Act*, which requires sales of natural gas to a public utility to be in the public interest. Further, the Panel is satisfied that the risk of asset stranding has been mitigated, principally by the contract provisions that FEI is required to include in any future biomethane purchase contract. This contractual requirement can be reviewed as part of the section 71 review; therefore a CPCN review is not required. Further, the capital and operations and maintenance expenditures for biomethane projects that are exempt from the requirement for a CPCN will continue to be reviewed and approved as part of revenue requirements applications.

The Panel notes that the Biomethane Program has been reviewed in this proceeding, which has resulted in the Commission setting out the structure and rules for the permanent Biomethane Program. The Panel agrees with FEI that there is no need to revisit general issues in detail for each new investment in a facility going forward.