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ORDER NUMBER
G-329-19

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

FortisBC Energy Inc.
Application for Approval of Rates and Agreements for Constructing and Operating a Compressed Natural Gas Fueling Station under the Province's Greenhouse Gas Reduction (Clean Energy) Regulation for ColdStar Solutions Inc. at Annacis Island, British Columbia

BEFORE:
R. I. Mason, Commissioner
W. M. Everett, QC, Commissioner
B. A. Magnan, Commissioner

on December 13, 2019

ORDER

WHEREAS:

A. On September 20, 2019, FortisBC Energy Inc. (FEI) applied to the British Columbia Utilities Commission (BCUC), pursuant to sections 59 to 61 and 89 of the *Utilities Commission Act* (UCA), for approval of the following:

   1. The rates established in the Fueling Services Agreement and the amending agreement between FEI and ColdStar Solutions Inc. (ColdStar) on an interim basis, effective June 1, 2020, and

   2. The cancellation of Tariff Supplement No. 7 upon interim approval of the rates established in the Fueling Services Agreement and the amending agreement between FEI and ColdStar, effective June 1, 2020 (Application);

B. FEI requests the live financial model filed as Appendix D to the Application be held confidential on the basis that it is the result of significant development efforts by FEI on behalf of its customers and, therefore, the formulas and configuration of the model are commercially sensitive;

C. On April 11, 2013, the BCUC issued Order G-56-13 accepting that the Greenhouse Gas Reduction (Clean Energy) Regulation (GGRR) established the need for Compressed Natural Gas (CNG) and Liquefied Natural Gas (LNG) fueling stations that are undertaken by FEI, as prescribed undertakings as defined by the GGRR, and that these prescribed undertaking projects are exempt from the Certificate of Public Convenience and Necessity requirements for the term of the GGRR;

D. BCUC Order G-56-13 also states the BCUC will set rates considering FEI's total expenditures on the prescribed undertakings, but confirms the BCUC's role does not include whether FEI ought to have negotiated different terms and conditions for those agreements with CNG or LNG fueling station customers;

E. On November 13, 2013 by Order G-187-13, the BCUC approved, on a permanent basis, the rate design and rates established in a Fueling Services Agreement executed between FEI and ColdStar on July 31, 2013. The Fueling Services Agreement established the terms and conditions for ColdStar to receive CNG fueling service from FEI's CNG station located in Langford, British Columbia (Langford Fueling Station) (Tariff Supplement No. 7);

F. On June 11, 2019, FEI and Coastland Wood Industries Ltd. (Coastland Wood) entered into a Property Access and Use Agreement for FEI to lease a portion of Coastland Wood's land on Annacis Island to construct a CNG fueling station (Annacis Island Fueling Station);

G. On June 12, 2019, FEI and ColdStar entered into a Fueling Services Agreement, which established the terms and conditions for ColdStar to receive CNG fueling service from the Annacis Island Fueling Station and from the Langford Fueling Station. On July 31, 2019, FEI and ColdStar entered into an amending agreement to the Fueling Services Agreement, which revised the commencement date and the start date of the initial term of the agreement (collectively ColdStar-Annacis-Langford Agreement);

H. The in-service date for the Annacis Island Fueling Station is anticipated to be June 1, 2020;

I. FEI submits it will file for permanent rate approval once the final capital costs for the construction of the Annacis Island Fueling Station are known; and

J. The BCUC has reviewed the evidence and arguments submitted in this proceeding and makes the following determinations.

NOW THEREFORE pursuant to sections 59 to 61 of the UCA, and for the reasons outlined in the reasons for decision attached as Appendix A to this order, the BCUC orders as follows:

1. The rate design and rates established in the ColdStar-Annacis-Langford Agreement are not approved.
2. The cancellation of Tariff Supplement No. 7 is not approved.
3. The live financial model filed as Appendix D to the Application will be kept confidential due to its commercially sensitive nature.

DATED at the City of Vancouver, in the Province of British Columbia, this 13th day of December 2019.

BY ORDER

Original Signed By:

R. I. Mason
Commissioner

Attachment

FortisBC Energy Inc.
Application for Approval of Rates and Agreements for Constructing and Operating a Compressed Natural Gas Fueling Station under the Province's Greenhouse Gas Reduction (Clean Energy) Regulation for ColdStar Solutions Inc. at Annacis Island, British Columbia

REASONS FOR DECISION

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1.0 Introduction

1.1 Application and Regulatory Process

On September 20, 2019, FortisBC Energy Inc. (FEI) filed with the British Columbia Utilities Commission (BCUC), pursuant to sections 59 to 61 and 89 of the *Utilities Commissions Act* (UCA), an application for approval of the rates established in the Fueling Services Agreement and the amending agreement between FEI and ColdStar Solutions Inc. (ColdStar) on an interim basis, effective June 1, 2020. FEI also seeks cancellation of Tariff Supplement No. 7, effective June 1, 2020, upon interim approval of the Fueling Services Agreement between FEI and ColdStar (Application).

FEI is seeking approval of these rates on the basis that the agreement between FEI and ColdStar is a prescribed undertaking as defined by section 18(1) of the *Clean Energy Act* (CEA) and section 2(2) of the Greenhouse Gas Reduction (Clean Energy) Regulation (GGRR).[1]

As part of the review of the Application, responses to one round of BCUC staff questions and a final argument were submitted by FEI.[2]

1.2 Background

On June 11, 2019, FEI and Coastland Wood Industries Ltd. (Coastland Wood) entered into a Property Access and Use Agreement for FEI to lease a portion of Coastland Wood's land on Annacis Island (Coastland Host Agreement). The Coastland Host Agreement allows FEI to construct, own and operate a Compressed Natural Gas (CNG) fueling station on that property (Annacis Island Fueling Station).[3]

On June 12, 2019, FEI and ColdStar entered into a Fueling Services Agreement to allow ColdStar to receive CNG fueling service at the Annacis Island Fueling Station and FEI's CNG fueling station in Langford (Langford Fueling Station) under a single dispensing rate. On July 31, 2019, FEI and ColdStar entered into an amending agreement to the Fueling Services Agreement to revise the commencement date and start date of the initial term of the agreement (collectively, ColdStar-Annacis-Langford Agreement).[4]

ColdStar currently receives CNG fueling services at the Langford Fueling Station under a fueling services agreement executed between FEI and ColdStar on July 31, 2013 (ColdStar Original Agreement or Tariff Supplement No. 7). The rate design and rates established in the agreement were approved by the BCUC on a permanent basis by Order G-187-13, dated November 19, 2013. FEI is seeking cancellation of Tariff Supplement No. 7, effective June 1, 2020, once the rates in the ColdStar-Annacis-Langford Agreement have been approved by the BCUC on an interim basis.[5]

1.3 Legislative Framework

On April 18, 2010, the Government of British Columbia enacted the CEA. The CEA provides that the Lieutenant Governor in Council (LGIC) can enact "prescribed undertakings" that are intended to encourage "the use of electricity, or energy directly from a clean or renewable resource instead of the use of other energy sources that produce higher greenhouse gas emissions."[6]

[1] Final Argument, p. 6.
[2] FEI Reply to Staff Questions dated October 29, 2019; Final Argument dated November 26, 2019.
[3] Application, p. 1.
[4] Ibid.
[5] Ibid., p. 2.
[6] *Clean Energy Act*, SBC 2010, c. 22, s. 35.

Section 18(1) of the CEA defines a prescribed undertaking as "…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."[7]

On May 14, 2012, the LGIC issued Order in Council (OIC) No. 295 approving the GGRR, which describes classes of prescribed undertakings pursuant to section 18 of the CEA.

Section 2(2) of the GGRR establishes CNG fueling station service as a prescribed undertaking:

> (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 [CEA]:
>
> (a) the public utility, before March 31, 2022, enters into a binding commitment to
>
> (i) construct and operate, or
>
> (ii) purchase and operate 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) the average expenditure on stations, in any year of the undertaking period, does not exceed $3 million per station;
>
> (b.1) expenditures, during the undertaking period, on administration and marketing do not exceed $240 000;
>
> (c) at least
>
> (i) 80% of the station's forecast total operating costs for the first 5 years of the operation are recovered from one or more persons under a take-or-pay agreement with a minimum term of 5 years, or
> (ii) 60% of the station's forecast total operating costs for the first 7 years of the operation are recovered from one or more persons under a take-or-pay agreement with a minimum term of 7 years.

Section 2(3.01) of the GRRR also requires that total expenditures on prescribed undertakings under section 2(2) and 2(3) of the GGRR not exceed $62.5 million.

Further, sections 18(2) and 18(3) of the CEA establish the BCUC's role in the setting of rates related to prescribed undertakings in these terms:

> (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.
>
> (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.[8]

[7] *Clean Energy Act*, SBC 2010, c. 22, s. 18.

2.0 Project Description

The Annacis Island Fueling Station is designed as a fast-fill station, which allows trucks to fuel as they arrive. The station has a budgeted total capital cost of $1.807 million (excluding Allowance for Funds Used During Construction (AFUDC)). Under the Government of Canada's Natural Resources Canada (NRCan) Electric Vehicle and Alternative Fuel Infrastructure Deployment Program, FEI secured a capital contribution of $0.743 million. Thus, FEI's budgeted net capital expenditure on the Annacis Island Fueling Station is approximately $1.064 million.[9]

The proposed location of the Annacis Island Fueling Station is expected to enable multiple users to receive fueling service as it will be located on a major transportation hub along Highway 91 and 91A. FEI submits it has been in discussions with several potential customers who are interested in adding CNG vehicles once the Annacis Island Fueling Station is operational. Furthermore, FEI has received letters of support for the Annacis Island Fueling Station from several parties who have expressed interest in fueling at that station.[10]

FEI anticipates the Annacis Island Fueling Station to be in service by June 1, 2020. FEI expects to know the final actual capital expenditures on the station by July 2020, at which time FEI and ColdStar may enter into an agreement to amend the rates in the agreement, if required, based on the final actual costs. FEI plans to file an application for permanent rates approval at that time.[11]

2.1 Summary of the ColdStar-Annacis-Langford Agreement

The term of the ColdStar-Annacis-Langford Agreement is seven years, starting on the first of the month following the date the Annacis Island Fueling Station is operational (Initial Term).[12] After the Initial Term, the ColdStar-Annacis-Langford Agreement can be renewed for another two years.[13] If the ColdStar-Annacis-Langford Agreement is terminated prior to the expiry of the Initial Term, ColdStar is responsible for paying FEI the minimum take-or-pay quantity at the Dispensing Rate calculated to the end of the Initial Term.[14]

The ColdStar-Annacis-Langford Agreement contains one minimum annual volume commitment of 17,000 GJ and allows ColdStar to fuel at both the Annacis Island Fueling Station and the Langford Fueling Station under a single dispensing rate. To support ColdStar's operational and budgeting needs, one fueling rate will be applied to ColdStar's fueling service from both stations. The rates established in the ColdStar-Annacis-Langford Agreement only applies to ColdStar and does not apply to other current fueling customers at the Langford Fueling Station.[15]

The rates established in the ColdStar-Annacis-Langford Agreement are based on FEI's estimated net capital expenditures for the Annacis Island Fueling Station.[16] The rates consist of the capital rate, the operating and maintenance (O&M) rate and the overhead and marketing (OH&M) rate as summarized in the table below:

Table 1

[8] *Clean Energy Act*, SBC 2010, c. 22, s. 18(2)–18(3).
[9] Application, p. 4.
[10] Ibid., p. 4-5, Appendix F.
[11] Ibid., p. 4.
[12] Ibid., Appendix C, Amending Agreement, Section 2.
[13] Ibid., Appendix B, Fueling Services Agreement, Part I.
[14] Ibid., Appendix B, Fueling Services Agreement, Part II, Section 6(d).
[15] Ibid., p. 2-3.
[16] Application, p. 4.

Output	Notes	Amount (for 2018)
Capital Rate	• Escalates at 2% per year beginning on the Rate Change Date, to begin escalating on January 1, 2021.	$5.193 per GJ
O&M Rate	• Escalates annually by British Columbia Consumer Price Index (BC CPI), to begin escalating on January 1, 2021	$2.901 per GJ
OH&M Rate	• Not inflated by BC CPI	$0.520 per GJ
Total Dispensing Rate	• **Sum of Capital, O&M and OH&M Rates**	**$8.614 per GJ**

[17]

The Rate Change Date in the above table is anticipated to be January 1 of each year as defined in Part I of the ColdStar-Annacis-Langford Agreement. As such, the first rate change is expected to be on January 1, 2021.

2.2 Summary of the ColdStar Original Agreement

The ColdStar Original Agreement has an initial term of five years and was renewed under the renewal provision in the agreement for a further two years. The agreement is set to expire on December 31, 2020.[18] The agreement has a minimum annual volume commitment of 15,000 GJ under a take-or-pay agreement, which applies only to purchases from the Langford Fueling Station. The rates currently charged to customers at the Langford Fueling Station are summarized below:[19]

Table 2

$/GJ	
Capital Rate	$8.313
O&M Rate	$2.933
OH&M Rate	$0.520
Total Dispensing Rate	**$11.766**

The minimum requirements of the GGRR for the Langford Fueling Station have been satisfied during the initial 5-year term of the ColdStar Original Agreement. Therefore, although the ColdStar Original Agreement has a minimum annual volume commitment, FEI states the Langford Fueling Station currently does not require a minimum annual fueling volume under a take-or-pay agreement to meet the requirements of the GGRR.[20]

FEI submits, in the absence of suitable fueling locations, ColdStar may not renew or renegotiate a new agreement at the Langford Fueling Station upon the expiry of ColdStar's Original Agreement.[21]

3.0 Is the Project a Prescribed Undertaking?

In order for the Panel to determine whether to approve the rates sought in the Application, it must first consider whether the Annacis Island Fueling Station as structured under the ColdStar-Annacis-Langford Agreement meets the requirements for a prescribed undertaking under section 2(2) of the GGRR. If so, the Panel is precluded from exercising a power in a manner that would directly or indirectly prevent the utility from carrying out the prescribed undertaking pursuant to section 18(3) of the CEA.

[17] Ibid., p. 10.
[18] October 29, 2019 FEI response to BCUC Staff Questions, 1.1.
[19] FEI Fueling Services Agreement for BC Transit at the Langford CNG Station Application dated January 28, 2019, p. 1, Table 1: CNG Fueling Rates for 2019.
[20] Application, p. 1, 12.
[21] October 29, 2019 FEI response to BCUC Staff Questions, 1.1.

Position of FEI

FEI is applying for approval of the rates established in the ColdStar-Annacis-Langford Agreement on the basis that the agreement is a prescribed undertaking. In FEI's view, the ColdStar-Annacis-Langford Agreement satisfies the requirements of the GGRR. FEI focuses its final argument around three main points: (1) Annacis Island as a strategic location for a CNG station; (2) a fair, large and liberal interpretation of the GGRR; and (3) the ColdStar-Annacis-Langford Agreement with respect to section 2(2) of the GGRR.

1) Annacis Island as a strategic location for a CNG station

FEI submits the Annacis Island Fueling Station "is an ideal fueling location for the large number of trucks serving the ports" as it is located along key trucking corridors. FEI explains that Annacis Island is located on a major transportation hub along highways that connect several municipalities in the Lower Mainland, and "are major routes for port drayage and other commercial transport." As such, FEI expects a number of potential customers will want to receive CNG fueling services at the Annacis Island Fueling Station. In FEI's view, a CNG fueling station on Annacis Island would provide current and potential CNG fleets with the ability to fuel "medium and heavy duty CNG trucks, on a third-party basis, along this main transportation route."[22]

FEI submits ColdStar has been FEI's CNG fueling customer since 2013 and operates a CNG fleet of 17 vehicles. Further, ColdStar plans to add five new CNG vehicles in the near future as well as potentially more CNG vehicles in the next few years. FEI explains ColdStar plans to allocate more CNG vehicles to its routes in the Lower Mainland and that it deploys its CNG trucks interchangeably between the geographic regions of the Lower Mainland and Vancouver Island. Thus, to meet its operational requirements, ColdStar will need fueling from both the Lower Mainland and from the Langford Fueling Station on Vancouver Island where it currently fuels.[23]

FEI submits it has been in discussions with several potential customers, in addition to ColdStar, who would be interested in fueling at the Annacis Island Fueling Station once it is operational, and has received several letters of support from potential customers. FEI also submits the United Parcel Service Canada Ltd. recently entered into a binding fueling services agreement with an annual take-or-pay commitment of 5,000 GJ from the Annacis Island Fueling Station. FEI expects further binding commitments from other customers once the station is operational.[24]

In FEI's view, the Annacis Island Fueling Station will help grow the natural gas for transportation market, benefit FEI's non-bypass customers by increasing CNG revenue recoveries and contribute to the British Columbia government's policy and climate objectives.[25]

2) Interpretation of the GGRR

FEI submits that the GGRR must be given a fair, large and liberal interpretation, and that the words of any legislation should be read in their entire context and "interpreted in accordance with the accepted principles of statutory interpretation." FEI references section 8 of the *Interpretation Act*, which states:

> 8. Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.[26]

[22] Final Argument, p. 5.
[23] Ibid., p. 4.
[24] Ibid., p. 5-6.
[25] Ibid., p. 6.
[26] Final Argument, p. 8.

FEI submits the BCUC had previously commented that the relevant object of the CEA is "to promote the use of natural gas as a transportation fuel." Thus, in FEI's view, the purpose of section 2(2) of the GGRR is to enable public utilities to construct and operate CNG stations to achieve that objective.[27]

3) The ColdStar-Annacis-Langford Agreement and section 2(2) of the GGRR

FEI states the ColdStar-Annacis-Langford Agreement meets the requirements for a prescribed undertaking under section 2(2) of the GGRR for the following reasons:[28]

a. The ColdStar-Annacis-Langford Agreement is a binding commitment to construct and operate a CNG fueling station per section 2(2)(a) of the GGRR.

b. FEI will not exceed the limit on station expenditures in the undertaking period per section 2(2)(b) of the GGRR.

c. FEI will not exceed the limit on administrative and marketing expenditures in the undertaking period per section 2(2)(b.1) of the GGRR.

d. FEI will not exceed the total expenditure limit in section 2(3.01) of the GGRR.

e. FEI will recover at least 60 percent of the operating costs of the Annacis Island Fueling station from the rates in the ColdStar-Annacis-Langford Agreement over the initial seven years of the station's operation, per section 2(2)(c) of the GGRR.

FEI submits the Annacis Island Fueling Station is within its service territory and the ColdStar-Annacis-Langford Agreement commits FEI to the construction and operation of the station.[29]

The GGRR provides for an eleven-year undertaking period ending on March 31, 2022.[30] FEI anticipates the station will be in-service in the tenth year of the undertaking period.[31] FEI's estimated budgeted gross and net capital expenditure on the Annacis Island Fueling Station are approximately $1.807 million and $1.064 million, respectively. Since the Annacis Island Fueling Station is currently the only fueling station that FEI has applied for BCUC approval to construct in the tenth year, the average expenditure per station in that year of the undertaking period is below the $3 million average per station limit in the GGRR.[32] Furthermore, FEI submits it used the net budgeted capital expenditure of $1.064 million to assess whether it conformed with the spending limits in the GGRR because the NRCan funding is treated as a contribution in aid of construction (CIAC) in accordance with the BCUC's Uniform System of accounts for Gas Utilities.[33]

Furthermore, FEI confirms it will not exceed the expenditure limit of $240 thousand on administration and marketing. FEI also confirms it will not exceed the expenditure limit of $62.5 million on prescribed undertakings under section 2(2) and 2(3) of the GGRR.[34]

With respect to the requirement in section 2(2)(c)(ii) of the GGRR, FEI submits the rates in the ColdStar-Annacis-Langford Agreement is "designed to recover at least 60 percent of the forecast operating costs of the Annacis

[27] Ibid., p. 8-9.
[28] Ibid., p. 9.
[29] Ibid., p. 9.
[30] GGRR, section 1, 2(1)(b).
[31] Application, p. 8, Table 1; October 29, 2019 FEI Response to Staff Questions, 2.3.1.
[32] Final Argument, p. 10.
[33] Application, p. 8, Table 1; October 29, 2019 FEI response to Staff Questions, 2.3.1.
[34] Final Argument, p. 11-12.

Island Fueling Station over the initial term of the first seven years."[35] FEI also submits the entire annual take-or-pay volume commitment in the ColdStar-Annacis-Langford Agreement needs to be allocated to the Annacis Island Fueling Station to meet the requirements of section 2(2)(c)(ii) of the GGRR. Therefore, under a scenario where ColdStar only consumes its annual take-or-pay commitment, then the revenue collected from ColdStar under the ColdStar-Annacis-Langford Agreement would not contribute to the recovery of the cost of service at the Langford Fueling Station.[36]

FEI also notes the wording of that section of the GGRR "does not include any requirement as to where the customer fuels its vehicles." In FEI's view, the GGRR does not have a requirement for a customer to take all of its take-or-pay commitment from the fueling station being constructed.[37]

FEI states the BCUC had previously confirmed "where FEI is employing fueling service agreements that fall within the parameters established by the GGRR, the BCUC's role does not include reviewing whether FEI ought to have negotiated different terms and conditions with NGT [Natural Gas for Transportation] customers." FEI submits the option for ColdStar to fuel at either station is part of the negotiated terms and conditions of the ColdStar-Annacis-Langford Agreement. Therefore, in FEI's view, this "should not be the subject of scrutiny by the BCUC or an impediment to approval of the ColdStar-Annacis-Langford Agreement as a prescribed undertaking under the GGRR."[38]

BCUC Determination

The Panel agrees that Annacis Island may be a strategic location for a CNG station, and that the Annacis Island Fueling Station has the potential to grow the natural gas for transportation market, increase CNG revenue recoveries and contribute to the British Columbia government's policy and climate objectives. The Panel also recognizes there are potential customers interested in fueling at the Annacis Island Fueling Station, as demonstrated by the letters of support submitted by FEI. However, section 2(2)(c) of the GGRR refers specifically to take-or-pay agreements, so the Panel will review this Application based on the committed revenues from the fueling services agreements already executed.

The Panel notes section 18(2) of the CEA requires the BCUC to "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." Thus, the Panel considers the expenditure limits contained in sections 2(2)(b), (b.1) and (3.01) and the minimal revenue recovery from the CNG station's customers contained in section 2(2)(c) are intended to protect the public utility's ratepayers, other than the CNG fueling station customers. This is accomplished by limiting the amount of revenue the public utility would need to collect from its ratepayers, other than its CNG station's customers, to recover the costs incurred with respect to the CNG fueling station.
The Panel does not disagree that the accepted principles of statutory interpretation require that the legislation be given a fair, large and liberal interpretation to accomplish the purpose of the GGRR and the CEA. Further, the Panel does not disagree with FEI's view that the purpose of section 2(2) of the GGRR is to enable public utilities to construct and operate CNG stations to promote the use of natural gas as a transportation fuel to reduce greenhouse gas emissions in the province. However, section 2(2) of the GGRR imposes expenditure limits and minimum direct cost recovery requirements on the activities that are statutorily defined as prescribed undertakings. In the Panel's view, the principles of statutory interpretation do not support over-riding these limits and cost recovery requirements in the pursuit of other objectives of the regulation.

[35] Ibid., p. 12.
[36] October 29, 2019 FEI response to BCUC Staff Questions, 2.7, 2.9.
[37] Final Argument, p. 12-13.
[38] Ibid., p.13.

The Panel does not take issue with FEI's submission that the ColdStar-Annacis-Langford Agreement meets the requirements of sections 2(2)(a) to 2(2)(b.1) and section 2(3.01) of the GGRR. The Panel also does not take issue with FEI's approach to treating the NRCan funding as CIAC for the purposes of assessing whether the capital expenditure conformed with the spending limits in the GGRR. However, the Panel is not persuaded the ColdStar-Annacis-Langford Agreement meets the requirements of section 2(2)(c)(ii) of the GGRR.

The Application proposes to allocate the revenue from the entire take-or-pay volume contained in the ColdStar-Annacis-Langford Agreement towards the recovery of the Annacis Island Fueling Station's costs regardless of which station ColdStar fuels at. In the Panel's view, allowing revenue from one CNG fueling station to contribute towards the minimum revenue recovery threshold of another station reduces the protection for ratepayers intended by section 2(2) of the GGRR.

Section 2(2)(c) requires a minimum recovery of forecasted costs from a CNG fueling station for that CNG fueling station to be a prescribed undertaking. In the Panel's view, the revenues collected to cover the forecast costs of a CNG fueling station must be related to that specific CNG fueling station. If this were not true, then any revenues FEI collects could be arbitrarily assigned to meet the minimum cost recovery. Thus, the take-or-pay commitment required by section 2(2)(c) must necessarily refer to the CNG fueling station whose costs are to be recovered.

For the foregoing reasons, the Panel finds the Annacis Island Fueling Station, as structured under the ColdStar-Annacis-Langford Agreement, does not meet the requirements for a prescribed undertaking under section 2(2)(c) of the GGRR. Therefore, the rates established in the ColdStar-Annacis-Langford Agreement are not approved. Furthermore, since the rates established in the ColdStar-Annacis-Langford Agreement are not approved, FEI's request to cancel Tariff Supplement No. 7 is also not approved.

The Panel notes FEI has indicated that it believes it can secure additional volume commitments in the future, and in the event the Panel does not find the Annacis Island Fueling Station to meet the requirements for a prescribed undertaking, it would seek to refile the Application once an additional anchor tenant commitment is secured.[39] Accordingly, the Panel invites FEI to resubmit the Application once it has secured additional volume commitments for the Annacis Island Fueling Station to meet the requirements of section 2(2)(c) of the GGRR.

[39] October 29, 2019 FEI response to BCUC Staff Questions, 2.12.