



ORDER NUMBER

G-40-20

IN THE MATTER OF

the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

FortisBC Energy Inc.

Application for Acceptance of the Biomethane Purchase Agreements between
FortisBC Energy Inc and Tidal Energy Marketing Inc.

BEFORE:

R. I. Mason, Panel Chair
W. M. Everett, Commissioner
R. D. Revel, Commissioner

on February 27, 2020

ORDER

WHEREAS:

- A. On June 3, 2019, FortisBC Energy Inc. (FEI) filed with the British Columbia Utilities Commission (BCUC) an application for acceptance of two Biomethane Purchase Agreements (BPAs) between FEI and Tidal Energy Marketing Inc. (Tidal Energy) pursuant to section 71 of the Utilities Commission Act (UCA) (Application);
- B. By Order G-130-06 dated October 26, 2006, the BCUC approved the Rules for Natural Gas Energy Supply Contracts (Rules). The Rules are intended to facilitate the BCUC's review of natural gas energy supply contracts pursuant to section 71 of the UCA;
- C. Section 18(1) of the Clean Energy Act (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.";
- D. Section 18(3) of the CEA states that "the commission must not exercise a power under the UCA in a way that would directly or indirectly prevent a public utility...from carrying out a prescribed undertaking."
- E. Section 2(3.8) of the Greenhouse Gas Reduction Regulation (GGRR) states that the acquisition of renewable natural gas (RNG) is a prescribed undertaking subject to:
 - a. the public utility paying no more than \$30/GJ; and
 - b. the total volume of RNG purchased in a calendar year does not exceed 5% of the total volume of natural gas provided by a public utility to its non-bypass customers in 2015;

- F. On August 8, 2019, FEI filed a non-confidential, redacted version of the Application and the BPAs, requesting that certain portions of the Application be kept confidential due to their commercially sensitive nature;
- G. By Orders G-213-19, G-283-19 and G-19-20 the BCUC established a public hearing process and regulatory timetable to review the Application which included intervenor registration, one round of staff and intervenor information requests (IRs), submissions on further process, written final arguments, written reply arguments, one round of panel IRs, and an oral submission process;
- H. The British Columbia Old Age Pensioners' Organization et al. (BCOAPO), the BC Sustainable Energy Association (BCSEA), and The Commercial Energy Consumers Association of British Columbia (CEC) participated as registered intervenors in the proceeding;
- I. By December 11, 2019, the BCUC received final argument submissions from BCOAPO, BCSEA, and the CEC and a reply argument submission from FEI;
- J. On February 4, 2020, the BCUC received a letter of comment from the Ministry of Energy, Mines and Petroleum Resources, expressing support for the ability of utilities to undertake a broad range of activities, actions and investments to reduce the greenhouse gas emissions resulting from the natural gas sector in British Columbia;
- K. On February 27, 2020, the BCUC received oral submissions from FEI, BCOAPO, BCSEA, and the CEC and a reply submission from FEI;
- L. The BCUC has not reviewed the Application from a public interest perspective as the BPAs are prescribed undertakings under section 18(1) of the CEA; and
- M. The BCUC has reviewed the evidence and arguments submitted in this proceeding, notes that all intervenors supported the acceptance of the BPAs and makes the following determinations.

NOW THEREFORE with reasons to follow, the BCUC orders as follows:

1. Pursuant to section 71 of the UCA, the Rules and the GGRR, the BCUC accepts for filing the BPA between FEI and Tidal Energy dated March 19, 2019.
2. Pursuant to section 71 of the UCA, the Rules and the GGRR, the BCUC accepts for filing the BPA between FEI and Tidal Energy dated April 29, 2019.
3. The BCUC will keep confidential the redacted portions of the Application, its supporting documents and responses to information requests as they contain commercially sensitive information.

DATED at the City of Vancouver, in the Province of British Columbia, this 27th day of February 2020.

BY ORDER

Original signed by:

R. I. Mason
Commissioner

FortisBC Energy Inc.
Application for Acceptance of the Biomethane Purchase Agreements
between FortisBC Energy Inc. and Tidal Energy Marketing Inc.

REASONS FOR DECISION

Table of Contents

	Page no.
1.0 Introduction	2
1.1 Application and Approvals Sought	2
1.2 Regulatory Process	2
2.0 Legislative Framework and Previous Relevant Decisions	2
2.1 Legislative Framework.....	2
2.2 Previous Relevant Decisions.....	3
3.0 The Tidal Energy Biomethane Purchase Agreements	4
4.0 Criteria For Establishing a Prescribed Undertaking	4
4.1 Acquires Renewable Natural Gas	5
4.2 Pays no more than \$30 per GJ.....	6
4.3 Volume Does Not Exceed Five Percent of the Total Volume of Natural Gas	7
5.0 Request for BCUC Acceptance of the Tidal Energy BPAs	8
6.0 Request for Confidentiality.....	9

1.0 Introduction

1.1 Application and Approvals Sought

On August 8, 2019, FortisBC Energy Inc. (FEI) filed with the British Columbia Utilities Commission (BCUC) for acceptance pursuant to section 71 of the *Utilities Commission Act* (UCA), two executed Biomethane Purchase Agreements (BPAs) between FEI and Tidal Energy Marketing Inc. (Tidal Energy) dated March 19, 2019 and April 29, 2019 (Application). Under the BPAs, FEI will purchase Renewable Natural Gas (RNG) from a landfill project in Niagara Falls, Ontario, and an organic waste digestion project located in London, Ontario (Projects), with delivery to the FEI system at the Huntingdon interconnection point from Westcoast Energy Inc., for a term of 20 years. FEI seeks acceptance of the two BPAs as prescribed undertakings under section 18 of the *Clean Energy Act* (CEA), pursuant to sections 2(3.7) and 2(3.8) of the of the Greenhouse Gas Reduction (Clean Energy) Regulation (GGRR).

Additionally, FEI requests that the BCUC keep confidential the non-redacted version of the Application filed as Exhibit B-1-1, including the non-redacted version of the BPAs filed as Appendix A of Exhibit B-1-1 and the non-redacted version of the RNG Request for Expression of Interest Summary of Results filed as Appendix B of Exhibit B-1-1, together with the confidential responses to information requests (IRs) containing commercially sensitive information, filed as Exhibits B-2-1 and B-5-1.

1.2 Regulatory Process

The proceeding was heard by way of a written hearing consisting of one round of IRs, final arguments and reply, followed by one round of Panel IRs and oral submissions. The BC Sustainable Energy Association (BCSEA), the British Columbia Old Age Pensioners' Organization *et al.* (BCOAPO) and the Commercial Energy Consumers Association of British Columbia (CEC) registered as interveners.

2.0 Legislative Framework and Previous Relevant Decisions

2.1 Legislative Framework

On April 18, 2010, the Government of British Columbia enacted the CEA. The CEA provides that the Lieutenant Governor in Council (LGIC) may 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.”¹

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.”²

Section 35(n) of the CEA specifically allows the LGIC to make regulations “for the purposes of the definition of “prescribed undertaking” in section 18 of the CEA”.

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.

¹ *Clean Energy Act*, SBC 2010, c. 22, s. 35.

² *Clean Energy Act*, SBC 2010, c. 22, s. 18.

Section 2(3.7-3.9) of the GGRR establishes the acquisition of renewable natural gas as a prescribed undertaking:

(3.7) A public utility's undertaking that is in the class defined in subsection (3.8) is a prescribed undertaking for the purposes of section 18 of the Act.

(3.8) The public utility acquires renewable natural gas

(a) for which the public utility pays no more than \$30 per GJ, and

(b) that, subject to subsection (3.9), in a calendar year, does not exceed 5% of the total volume of natural gas provided by the public utility to its non-bypass customers in 2015.

(3.9) The volume referred to in subsection (3.8) (b) does not include renewable natural gas acquired by the public utility that the public utility provides to a customer in accordance with a rate under which the full cost of the following is recovered from the customer:

(a) the acquisition of the renewable natural gas;

(b) the service related to the provision of the renewable natural gas.³

Energy supply contracts (ESC) are required to be filed with the BCUC pursuant to section 71 of the UCA. The BCUC may hold a hearing to determine that an ESC is not in the public interest. In determining whether an ESC is in the public interest, the BCUC must consider the criteria set out in section 71(2.1) of the UCA.

By Order G-130-06, dated October 27, 2006, the BCUC established the Rules for Natural Gas Energy Supply Contracts (Rules) to facilitate the review of natural gas energy supply contracts pursuant to section 71 of the UCA.

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.⁴

2.2 Previous Relevant Decisions

In Decision and Order G-122-19 dated June 6, 2019, the BCUC set out the three-part test for a prescribed undertaking under section 2(3.8) of the GGRR, as follows⁵:

³ Province of British Columbia, Lieutenant Governor in Council, Order in Council No. 161, approved and ordered March 21, 2017, section 2(3.7) and 2(3.8).

⁴ *Clean Energy Act*, SBC 2010, c. 22, s. 18.

⁵ FortisBC Energy Inc. Application for Acceptance of the Biogas Purchase Agreement Between FortisBC Energy Inc. and the City of Vancouver, BCUC Decision and Order G-122-19, dated June 6, 2019, p. 8.

To avail itself of the benefit of section 18(3) of the CEA, however, FEI must demonstrate to the reasonable satisfaction of the [BCUC] that the BPA or the Project qualifies as a prescribed undertaking as defined under Section 2(3.8) of the GGRR, which sets out a three-part test:

- The public utility must be acquiring renewable natural gas (as opposed to some other form of commodity);
- The utility must pay no more than \$30 per GJ for that renewable natural gas; and
- Subject to certain exceptions, the annual volume of renewable natural gas acquired must not exceed 5% of the total volume of natural gas the utility provided to its non-bypass customers in 2015.⁶

3.0 The Tidal Energy Biomethane Purchase Agreements

FEI's Tidal Energy BPAs establish terms and conditions for the purchase of RNG from a landfill project in Niagara Falls, Ontario, and an organic waste digestion project located in London, Ontario, with delivery to the FEI system at the Huntingdon interconnection point.

FEI's Tidal Energy BPAs use Gas Electronic Data Interchange (GasEDI) standard forms of contract, consistent with the form of contract used for FEI's out-of-province purchases of conventional natural gas. The standard terms and conditions of the GasEDI contract cover the elements of the BPAs that are common to all natural gas transactions, including but not limited to: performance; transportation; quality obligations; billing and payment conditions; financial responsibilities and remedies; and liability limitations. The Transaction Confirmation addresses items including contract term, delivery point, quantities, nominations, environmental attributes, audit rights, carbon intensity and default termination payment.⁷ FEI has requested that terms of the agreement including RNG supply volume, purchase price, carbon intensity, and termination payment be kept confidential.

4.0 Criteria for Establishing a Prescribed Undertaking

In order for the Panel to evaluate the Tidal Energy BPAs under section 71 of the UCA, it first considers whether the BPAs constitute a prescribed undertaking under sections 2(3.7) to 2(3.9) of the GGRR. If determined to be a prescribed undertaking, the BCUC is precluded from exercising its power in a manner that would directly or indirectly prevent FEI from carrying out the prescribed undertaking pursuant to section 18(3) of the CEA.

In order to qualify under section 18 of the CEA as a prescribed undertaking, FEI must demonstrate that the BPA qualifies as a prescribed undertaking as defined under section 2(3.8) of the GGRR, which sets out a three-part test:

- The public utility must be acquiring renewable natural gas (as opposed to some other form of commodity);
- The utility must pay no more than \$30 per GJ for that renewable natural gas; and

⁶ FortisBC Energy Inc. Application for Acceptance of the Biogas Purchase Agreement Between FortisBC Energy Inc. and the City of Vancouver, BCUC Decision and Order G-122-19, dated June 6, 2019, p. 8.

⁷ Exhibit B-1, p. 5.

- Subject to certain exceptions, the annual volume of renewable natural gas acquired must not exceed 5% of the total volume of natural gas the utility provided to its non-bypass customers in 2015.

In Sections 4.1 to 4.3 below, the Panel considers whether each element of this three-part test has been met.

4.1 Acquires Renewable Natural Gas

In considering whether FEI is carrying out a prescribed undertaking, the Panel must first consider whether FEI's purchase of RNG under the Tidal Energy BPAs satisfies the first requirement of section 2(3.8) of the GGRR and that FEI has demonstrated it is acquiring RNG as opposed to some other form of commodity.

Position of FEI

In its final argument, FEI submits that the meaning of "acquire" as it occurs in section 2(3.8) of the GGRR is broad⁸ and that the CEA and the GGRR must be interpreted in accordance with the accepted principles of statutory interpretation, which would require that the BCUC "give section 18 of the Clean Energy Act and sections 2(3.7) to 2(3.9) of the GGRR a fair, large and liberal interpretation that best ensures the attainment of its objects."⁹

FEI submits that the purpose of the GGRR is to reduce greenhouse gas emissions in BC, specifically, by enabling the acquisition of RNG that is within the maximum price and maximum supply volume limits established pursuant to sections 2(3.7) to 2(3.9) of the GGRR. FEI cites the CleanBC plan, which sets out a target to make residential and industrial natural gas consumption cleaner by requiring a minimum of 15 percent to come from RNG. In addition, FEI states the Ministry of Energy, Mines, and Petroleum Resources February 27, 2019 letter of comment confirms that the policy position of the Government of BC is to support projects and initiatives that will lead to an increased RNG supply in BC, as clear policy support for FEI's interpretation of the objects of the GGRR.¹⁰

Position of the Interveners

The CEC, BCSEA, and BCOAPO all support FEI's submission that the proposed Tidal Energy BPAs constitute an acquisition of RNG for the purposes of the CEA.

The CEC submits that "FEI is purchasing the physical Renewable Natural Gas ("RNG"), including securing the rights to the associated environmental attributes and GHG emissions reduction benefits," and that this scenario fulfills a reasonable interpretation of acquiring RNG.¹¹

BCSEA submits that the RNG acquired under the BPAs meets the criteria to be considered RNG within the meaning of the GGRR.¹²

BCOAPO does not make specific submissions to the requirement to "acquire" RNG, but states that, "in this case FEI has adequately demonstrated that both BPAs meet the three-part test established in the BCUC Decision and

⁸ FEI Final Argument, p. 7.

⁹ FEI Final Argument, p. 5.

¹⁰ FEI Final Argument, pp. 5–6.

¹¹ CEC Final Argument, p. 3.

¹² BCSEA Final Argument, p. 6.

Order G-122-19. Accordingly, in our submission both FEI's BPAs with Tidal Energy meet the legislative requirements to be prescribed undertakings."¹³

Panel Determination

The Panel first considers whether FEI's proposed purchase of RNG from the Projects satisfies the section 2(3.8) of the GGRR and that FEI has demonstrated it is acquiring RNG as opposed to some other form of commodity.

The Panel turns to Decision and Order G-122-19, and section 29 of the *Interpretation Act*, which defines the word "acquire" as:

...to obtain by any method and includes accept, receive, purchase, be vested with, lease, take possession, control or occupation of, and agree to do any of those things, but does not include expropriate;

The Panel notes that under the Tidal Energy BPAs, FEI has entered into an agreement whereby there is a contractual obligation for Tidal Energy to sell and for FEI to purchase RNG and agrees with FEI's submission that under the Tidal Energy BPAs, FEI contractually receives ownership of RNG in a manner consistent with the definition of acquire in section 29 of the *Interpretation Act*.¹⁴

The Panel then considers whether the commodity acquired from Tidal Energy is "renewable natural gas" in the context of the GGRR. Under the Tidal Energy BPAs, the Panel notes that raw landfill gas and biogas is produced from the Projects. However, after an upgrading process at a third-party facility, RNG as a finished commodity is produced and it is RNG as a commodity that is purchased by FEI.

Considering the above, **the Panel finds that under the Tidal Energy BPAs, FEI will acquire renewable natural gas in a manner consistent with section 2(3.7) to 2(3.9) of the GGRR.**

4.2 Pays no more than \$30 per GJ

Next, the Panel considers the second part of the three-part test, that, for the RNG acquired "the public utility pays no more than \$30 per GJ."

FEI's Position

FEI submits that the two BPAs with Tidal Energy are fixed-price contracts, set at an amount well below \$30 per GJ. In addition, both Tidal Energy BPAs contain contractual terms whereby the purchase price of RNG cannot be increased beyond the maximum acquisition price of \$30 per GJ as set out in the GGRR.¹⁵ FEI confirms that the purchase price for RNG under the Tidal Energy BPAs will not exceed the maximum acquisition price in the GGRR or other legislation affecting the maximum acquisition price, or, in the absence of the GGRR, a BCUC decision that increases the maximum acquisition price.¹⁶

FEI also notes in its submission that the Tidal Energy BPAs include termination payments in the case that either party defaults. FEI submits that termination payments are not part of the purchase price and therefore should not be considered relevant to the \$30 per GJ maximum price for RNG as set out in the GGRR. Moreover, FEI

¹³ BCOAPO Final Argument, p. 5.

¹⁴ Exhibit B-7, FEI Response to Panel IR 3.5.

¹⁵ Exhibit B-1, Appendix A Transaction Confirmation 8(b,c).

¹⁶ FEI Final Argument, p. 8.

submits that the termination payments are the same for both parties, so if the potential for FEI to make a termination payment is considered, the termination payments made by Tidal Energy to FEI in the event of default should also be considered. FEI further submits that it is highly unlikely that FEI would default on its obligations under the BPAs given that FEI needs the RNG for its biomethane program, and the BCUC's acceptance of the agreements will ensure that FEI has a reasonable opportunity to recover the costs of the agreements in rates.¹⁷

Intervener Positions

In their submissions, the CEC, BCSEA, and BCOAPO submit that the Tidal Energy BPAs satisfy the maximum acquisition price of \$30 per GJ as outlined in section 2(3.8)(a) of the GGRR.¹⁸ The CEC and BCSEA accept FEI's submission that the BPAs will not exceed the maximum acquisition price currently set out in section 2(3.8)(a) of the GGRR, unless there is an increase to the maximum acquisition price in the GGRR or other legislation affecting the maximum acquisition price, or (in the absence of the GGRR) a BCUC decision that increases the maximum acquisition price.¹⁹ BCSEA also concurs with FEI's assessment that "termination payments are not within the purchase price or the cost cap in s.2(3.8)(a), but that in any event the termination payment provisions in the BPAs are reciprocal and offset each other. Further, there is no reasonable likelihood of FEI defaulting on its obligations under the BPAs and thereby incurring a termination payment liability."²⁰

Panel Determination

The Panel considers that the \$30 per GJ limit set out in section 2(3.8) of the GGRR must include all the associated costs of acquiring the RNG.

The Panel has reviewed the purchase price and terms and conditions of both BPAs filed confidentially by FEI and finds them to be consistent with FEI's submission. The Panel further observes that section 8(c) of both BPAs, filed as Appendix A to the Application, includes mechanisms that guarantees the purchase price will not increase beyond the applicable of (i) the maximum RNG supply purchase price established by the Province of British Columbia; or (ii) the then current maximum RNG supply purchase price approved by the BCUC.

The Panel agrees with FEI's position that it is highly unlikely that FEI would default on its obligations under the BPAs, given that the 15 percent target in the CleanBC plan is expected to increase FEI's future RNG purchase volumes. Therefore, the Panel does not consider that termination payments should be included in its consideration of the RNG purchase price under the BPAs.

Therefore, the Panel finds that the price for FEI's acquisition of RNG under the Tidal Energy BPAs satisfies the price constraint set out in section 2(3.8)(a) of the GGRR.

4.3 Volume Does Not Exceed Five Percent of the Total Volume of Natural Gas

To satisfy the third part of the three-part test set out in the GGRR, FEI must demonstrate that the volume of RNG purchased will not exceed five percent of the total volume of natural gas provided by FEI to its non-bypass customers in 2015, not including any RNG for which the entire cost of the acquisition of the RNG and the service related to the provision of the RNG is recovered from customers.

¹⁷ FEI Final Argument, p.8.

¹⁸ CEC Final Argument, p. 4; BCSEA Final Argument, p. 6; BCOAPO Final Argument, p. 5.

¹⁹ CEC Final Argument, p.4; BCSEA Final Argument, p. 6.

²⁰ BCSEA Final Argument, p. 6.

FEI's Position

FEI submits that the maximum volume of RNG acquisition that would qualify under section 2(3.8)(b) of the GGRR is approximately 8,900,000 GJs, and that the current maximum supply volume contracted by FEI, including the recent BPA with the City of Vancouver, totals 899,250 GJ annually.²¹ Further, FEI submits that the combined total maximum supply from both Tidal Energy BPAs will increase the contracted maximum supply volume to 1,829,500 GJ annually, or approximately 17 percent of the maximum amount specified in the GGRR.²²

Intervener Positions

BCOAPO, BCSEA, and the CEC all submit that FEI has adequately demonstrated that the contracted supply volume of the Tidal Energy BPAs will not exceed the maximum set out in GGRR section 2(3.8)(b).²³ The CEC further submits that based on FEI's submission, if the two Tidal Energy projects are completed and FEI develops all of the one petajoule (PJ) of its current prospective RNG projects, FEI will still remain below the maximum volume of RNG acquisition that would qualify as prescribed undertakings, which is approximately nine PJ.²⁴

Panel Determination

The Panel is satisfied that FEI has demonstrated that after adding the projected RNG volume for the Tidal Energy BPAs, FEI remains well within the maximum annual RNG acquisition volume of 8,900,000 GJ that would qualify under section 2(3.8)(b) of the GGRR, given that FEI's current contracted maximum supply of RNG is 899,2500 GJ annually.

Therefore, the Panel finds that the forecast RNG volumes in the Tidal Energy BPAs amount to an acquisition of RNG within the volume limit stipulated under section 2(3.8)(b) of the GGRR.

5.0 Request for BCUC Acceptance of the Tidal Energy BPAs

In light of the above findings, the Panel is satisfied that FEI's Tidal Energy BPAs constitute a prescribed undertaking under section 18(1) of the CEA. As such, in accordance with section 18(3) of the CEA, the Panel has not reviewed the Application from a public interest perspective or considered any other aspects of the Application as the BCUC may not exercise a power under the UCA in a way that would directly or indirectly prevent a public utility from carrying out a prescribed undertaking.

Therefore, pursuant to section 71 of the UCA, the Rules, section 18 of the CEA and section 2(3.8) the GGRR, the BCUC accepts for filing the BPAs between FEI and Tidal Energy dated March 19, 2019, and April 29, 2019.

²¹ FEI Final Argument, p. 9.

²² FEI Final Argument, p. 9.

²³ BCOAPO Final Argument, p. 5; BCSEA Final Argument p. 6; CEC Final Argument, p. 6.

²⁴ CEC Final Argument, p. 5.

6.0 Request for Confidentiality

FEI's Position

FEI requests the BCUC keep confidential the non-redacted version of the Application filed as Exhibit B-1-1, including the non-redacted version of the Tidal Energy BPAs filed as Appendix A of Exhibit B-1-1 and the non-redacted version of the RNG Request for Expression of Interest Summary of Results filed as Appendix B of Exhibit B-1-1, together with the confidential responses to IRs which contain commercially sensitive information, filed as Exhibits B-2-1 and B-5-1.

FEI submits that the scope of confidentiality sought in this proceeding was to protect FEI's negotiating position with other suppliers and the commercially sensitive information of FEI's counterparty, Tidal Energy. FEI submits that it was required to enter into a non-disclosure agreement with Tidal Energy in order to engage in commercial discussions with Tidal Energy, and that this is an ordinary business practice as counterparties do not wish to risk compromising their commercial interests during negotiations. FEI submits that it is in the interest of customers that FEI be able to provide assurances to counterparties that it will be able to keep their commercially sensitive information confidential.²⁵

Intervener Positions

BCOAPO submits that there is significant value in having the BCUC's processes open to the public and expresses concern that Tidal Energy and FEI have insisted on an overly broad level of confidentiality that threatens to undermine the value of public hearings and erode the public trust in the hearing process, the utility, and the BCUC.²⁶

BCOAPO notes in its submission that FEI has asserted that a wide and unprecedented amount of information in these agreements is commercially sensitive. BCOAPO notes that the redactions in this process include "a myriad of factors like the purchase volumes, carbon intensity, and information about the location of parties Tidal Energy has contracted with to procure the RNG, the nature of their commercial relationships, and their partners, owners, and operators."²⁷ BCOAPO contends that in this Application, FEI did not provide compelling reasons to demonstrate that these aspects were truly commercially sensitive to the degree that the benefits of confidentiality to FEI and Tidal Energy outweigh the public interest of having them on the record.²⁸

Panel Determination

The Panel finds that the disclosure of the confidentially filed information including commercial information regarding the upstream parties not directly contracting with FEI, including the address, acquisition price, termination payments, volumes and carbon intensity, could reasonably be expected to result in harm to the competitive negotiating position of FEI and Tidal Energy, and that the non-disclosure agreement entered into by FEI constitutes a legal obligation on FEI's part to maintain confidentiality.

The Panel agrees with FEI's submission that its ability to provide assurances to counterparties that it will be able to keep their commercially sensitive information confidential is in the interest of FEI and its ratepayers and finds

²⁵ FEI Reply Argument, p. 2.

²⁶ BCOAPO Final Argument, pp. 1–2.

²⁷ BCOAPO Final Argument, p. 2.

²⁸ BCOAPO Final Argument, p. 3.

that their shared interest outweighs the public interest of disclosing the information. The Panel additionally notes that confidential materials are available to participating parties that file the appropriate BCUC declaration and undertaking form, providing they have no competing commercial interest as set out in Section 24 of the BCUC Rules of Practice and Procedure.²⁹

Considering the above, the Panel determines that FEI's request to keep certain items confidential is consistent with Section 20 of the BCUC Rules of Practice and Procedure. **As requested by FEI, the following documents are to be kept confidential by the BCUC due to their commercially sensitive nature:**

- a. **Non-redacted version of the application filed as Exhibit B-1-1;**
- b. **Non-redacted version of the agreements filed as Appendix A of Exhibit B-1-1;**
- c. **Non-redacted version of the RNG Request for Expression of Interest Summary of Results filed as Appendix B of Exhibit B-1-1;**
- d. **Confidential responses to the BCUC information requests filed as Exhibit B-2-1; and**
- e. **Confidential responses to the CEC information request No. 1 filed as exhibit B-5-1.**

DATED at the City of Vancouver, in the Province of British Columbia, this 22nd day of May 2020.

Original signed by:

R. I. Mason
Panel Chair/Commissioner

Original signed by:

W. M. Everett
Commissioner

Original signed by:

R. D. Revel
Commissioner

²⁹ BCUC Order G-15-19, Rules of Practice and Procedure, p. 14.