



**ORDER NUMBER**  
**G-387-22**

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

and

British Columbia Utilities Commission Inquiry into the Acquisition of Renewable Natural Gas (RNG)  
by Public Utilities in British Columbia – Phase 2

**BEFORE:**

D. M. Morton, Panel Chair  
D. A. Cote, Commissioner  
R. I. Mason, Commissioner  
A. Pape-Salmon, Commissioner

on December 23, 2022

**ORDER**

**WHEREAS:**

- A. By letter dated December 22, 2021, the British Columbia Utilities Commission (BCUC) established an Inquiry into the Acquisition of Renewable Natural Gas (RNG) by Public Utilities in British Columbia (Inquiry) and invited parties to provide submissions as laid out in the letter;
- B. On July 28, 2022, the BCUC issued Order G-212-22 with Reasons for Decision and issued a blackline and clean version of the Phase 1 Report;
- C. On July 28, 2022, by Order G-213-22, the BCUC established Phase 2 of the Inquiry and issued a regulatory timetable which included, among other things, intervenor registration, intervenor submissions on specific questions and topics sought in the Phase 1 Report, reply submissions, intervenor evidence, and BCUC and intervenor information requests (IR No. 1) on evidence;
- D. By September 1, 2022, B.C. Sustainable Energy Association, Movement of United Professionals, Direct Energy, GNAR Inc., Pacific Northern Gas Ltd., British Columbia Old Age Pensioners' Organization et al (BCOAPO), NEWT Energy Inc., Commercial Energy Consumers Association of British Columbia (CEC), Residential Consumer Intervention Association (RCIA) and FortisBC Energy Inc. (FEI) registered as intervenors in Phase 2 of the Inquiry;
- E. On September 15, 2022, by Order G-258-22, the BCUC amended the regulatory timetable to allow additional time to file submissions, as requested by BCOAPO and FEI;
- F. By September 20, 2022, intervenors filed submissions on specific questions and topics sought in the Phase 1 Report. Intervenors filed their reply submissions by October 4, 2022;

- G. On October 4, 2022, the BCUC also notified registered interveners of BCUC staff's intention to file evidence and by Order G-276-22, further amended the regulatory timetable to provide additional time to file evidence, as requested by RCIA;
- H. By October 12, 2022, RCIA and CEC filed evidence;
- I. On November 7, 2022, RCIA requested a 2-week extension to the date to file responses to BCUC and intervener IR No. 1 on evidence which was granted by Order G-322-22;
- J. On November 18, 2022, a letter of comment was filed by staff from the Ministry of Energy, Mines and Low Carbon Innovation (EMLI). Subsequent letters of comment were filed by Vancouver Airport Authority, Metro Vancouver staff and Advanced Biofuels Canada;
- K. By November 29, 2022, RCIA and CEC filed responses to BCUC and intervener IR No. 1 on evidence;
- L. On December 1, 2022, in response to the EMLI's letter of comment, FEI requested that the BCUC adjourn the Inquiry (Adjournment Request);
- M. On December 6, 2022, by Order G-353-22, the BCUC further amended the regulatory timetable to include, intervener submissions on FEI's Adjournment Request, FEI reply submission, with further process to be determined;
- N. By December 13, 2022, interveners filed submissions on FEI's Adjournment Request and further process;
- O. On December 20, 2022, FEI filed its reply submission; and
- P. The BCUC has reviewed the submissions and evidence to date and finds that the following determination is warranted.

**NOW THEREFORE** for the reasons set out in Appendix A to this order, the BCUC denies FEI's Adjournment Request.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 23<sup>rd</sup> day of December 2022.

BY ORDER

*Original signed by:*

D. M. Morton  
Commissioner

Attachment

**British Columbia Utilities Commission Inquiry into the Acquisition  
of Renewable Natural Gas (RNG)  
by Public Utilities in British Columbia – Phase 2**

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**Reasons for Decision**

December 23, 2022

Before:

D. M. Morton, Panel Chair  
D. A. Cote, Commissioner  
R. I. Mason, Commissioner  
A. Pape-Salmon, Commissioner

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## 1.0 Introduction

### 1.1 Background

The British Columbia Utilities Commission (BCUC) is an independent regulatory agency of the BC Government, charged with the administration of the *Utilities Commission Act* (UCA). The BCUC is responsible for ensuring safe and reliable energy supply at fair rates for energy consumers across the province. The BCUC balances this responsibility with the need to ensure public utilities<sup>1</sup> under its jurisdiction are afforded a reasonable opportunity to earn a fair return on their investments.

On July 28, 2022, the BCUC issued the Final Phase 1 Report into the BCUC's Inquiry into the Acquisition of Renewable Natural Gas (RNG) by Public Utilities in British Columbia (Inquiry) and concurrently issued Decision and Order G-212-22, which, among other things, added a Phase 2 to continue the Inquiry (Phase 2 Inquiry).

In Decision and Order G-212-22, the BCUC also included a table of specific questions and topics and sought intervenor submissions on these for the Phase 2 Inquiry.

### 1.2 Phase 2 Inquiry Regulatory Process

Also on July 28, 2022, the BCUC established the Phase 2 Inquiry and issued a regulatory timetable which included, among other things, intervenor registration, intervenor submissions on specific questions and topics sought in the Final Phase 1 Report, reply submissions, intervenor evidence, one round of BCUC and intervenor information requests on evidence (IR No. 1) and a letter of comment period, with further process to be determined.<sup>2</sup>

By September 1, 2022, B.C. Sustainable Energy Association (BCSEA), Movement of United Professionals (MoveUp), Direct Energy, GNAR Inc., Pacific Northern Gas Ltd. (PNG), British Columbia Old Age Pensioners' Organization et al (BCOAPO), NEWT Energy Inc. (NEWT), Commercial Energy Consumers Association of British Columbia (CEC), Residential Consumer Intervention Association (RCIA) and FortisBC Energy Inc. (FEI) registered as intervenors in the Phase 2 Inquiry.

The regulatory timetable was further amended by Orders G-258-22, G-276-22, G-322-22, and G-353-22.

By September 20, 2022, submissions were filed by intervenors on the specific questions and topics sought in the Phase 1 Final Report.

By October 4, 2022, reply submissions were filed by BCSEA, BCOAPO, NEWT, CEC and RCIA.

IR No. 1 were issued to the two intervenors that filed evidence, CEC and RCIA, with IR. No.1 responses filed November 15, 2022.

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<sup>1</sup> In the UCA, a "public utility" is defined as a person, or the person's lessee, trustee, receiver or liquidator, who owns or operates in BC, equipment or facilities for the production, generation, storage, transmission, sale, delivery or provision of electricity, natural gas, steam or any other agent for the production of light, heat, cold or power to or for the public or a corporation for compensation. There are a number of exclusions from the definition of a public utility, including municipalities or regional districts that provide services within their own boundaries, and a person that provides services to employees or tenants.

<sup>2</sup> BCUC Order G-213-22.

Five letters of comment were also filed with the BCUC, including a letter from the Ministry of Energy, Mines and Low Carbon Innovation (EMLI) staff (EMLI Letter).

### 1.3 EMLI Letter

The EMLI Letter included submissions on the carbon intensity (CI) and life cycle emissions of low-carbon resources, including RNG, the eligibility of notional delivery of low-carbon resources and an appropriate regime to regulate Environmental Attributes (EA).

With respect to CI, the EMLI Letter indicated that the Province is currently contemplating amendments to the *Greenhouse Gas Reduction (Clean Energy) Regulation* (GGRR) that would set a maximum CI threshold for low-carbon resources under the GGRR. This could include prescribing a methodology for public utilities to demonstrate compliance with the BCUC that the low-carbon resources are at or below this threshold.<sup>3</sup> EMLI notes CI for fuels produced from the same feedstock may be different due to production processes, regional characteristics and the model and method used for calculation, which could cause confusion for RNG producers. If the BCUC sets a CI threshold, the EMLI noted that regional factors and modelling methodology should be considered and the BCUC should explain the reasons for any differences.<sup>4</sup>

The EMLI Letter also noted that the GGRR was part of the BC's broader strategy to meet its Greenhouse Gas (GHG) reduction objectives. The EMLI observes the support of decoupling EA and notional delivery by interveners in from the Phase 2 Inquiry<sup>5</sup> and a robust approach to verifying and tracking EA is integral to ensure no double counting of EA occurs across jurisdictions and BC's climate actions remain credible. In addition, EMLI observed that there was general agreement amongst interveners that the public utility bears responsibility to ensure the integrity of EA, with the BCUC providing oversight, and that this position is shared by the Province.<sup>6</sup>

The EMLI Letter indicates that should the BCUC not establish its own criteria and process for verifying and tracking EA, the Province would contemplate establishing a regulatory framework for this purpose, emphasizing that the BCUC and Province should work together to clarify jurisdiction, role and ensure alignment.<sup>7</sup>

## 2.0 FEI Adjournment Request

In response to the EMLI Letter, on December 2, 2022, FEI filed a request to adjourn the Phase 2 Inquiry<sup>8</sup>, pending amendments to the GGRR that would set a CI threshold and for the Province to establish a regulatory framework for verifying and tracking EA (Adjournment Request). FEI provides the following reasons for the BCUC to grant the Adjournment Request:

### GGRR Amendments

FEI refers to the potential amendments to the GGRR the Province is currently contemplating that would set a maximum CI threshold for low-carbon resources under the GGRR. FEI submits that given EMLI's statement that "[a] CI verification program is being developed to provide third-party verification of the accuracy of fuel carbon

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<sup>3</sup> Exhibit E-2, p.2.

<sup>4</sup> Ibid, p.3.

<sup>5</sup> Ibid, p.4.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Exhibit C1-5.

intensities,”<sup>9</sup> it would be beneficial to the Phase 2 Inquiry to be informed by these amendments, rather than potentially working at cross-purposes to them.<sup>10</sup>

### *Approaches to CI threshold*

FEI notes the potential for the BCUC and EMLI to take potentially contradictory approaches to the method to calculate a maximum CI threshold, which could create confusion in BC’s RNG market, as stated in the EMLI letter:

If the BCUC sets a CI threshold for RNG, regional factors and lifecycle model choices should be considered. Attributing multiple CIs to the same fuel without highlighting the reasons for the differences may cause confusion for RNG suppliers who are subject to the LCFS [Low Carbon Fuel Standards].<sup>11</sup>

Further, FEI submits that the requirement for the BCUC to establish a CI threshold is removed should a CI threshold be included in any amendment to the GGRR; moreover, the Province is best placed to define and enact CI thresholds in its policy-making authority.<sup>12</sup>

### *Regulatory Framework*

FEI submits that a regulatory framework to track and verify EA should be established by the Province to ensure consistency amongst other legislative frameworks to reduce GHG’s. FEI argues that the BCUC does not have the jurisdiction to establish such framework, whereas EMLI clearly does. FEI goes on to say that it would be advisable for an adjournment to the Phase 2 Inquiry so that the BCUC can clarify its jurisdiction and ensure the approach to any framework is consistent, enforceable and sends clear signals to the industry.<sup>13</sup>

In response to FEI’s Adjournment Request, the Panel amended the regulatory timetable to allow for intervenor submissions on the Adjournment Request and further process, and FEI reply.<sup>14</sup>

By December 13, 2022, submissions were filed by BSCEA, MoveUp, BCOAPO, PNG, and RCIA.

FEI filed its reply on December 20, 2022.

## **3.0 Intervener Submissions**

### *Support for FEI’s Adjournment Request*

Submissions in support of FEI’s Adjournment Request were filed by BSCEA, MoveUp, PNG, and RCIA.

BCSEA considers the Province should take the primary role in regulating the CI of low-carbon resources under the GGRR, as these should be consistent with the CI of fuels under LCFS, which is administered by the Province.

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<sup>9</sup> Exhibit C10-5, p.1.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid, p.2

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> BCUC Order G-353-22.

Further, BCSEA is of the view that EMLI has the resources required to establish and update a regulatory regime for CI, given the complexity.<sup>15</sup>

BCSEA submits the BCUC should defer to the Province for development of CI thresholds for low-carbon energy types under the GGRR, including defining the methodology by which public utilities would demonstrate to the BCUC the CI of the energy the utilities acquire under the GGRR.<sup>16</sup> In addition, BCSEA submits that the GGRR is one of many instruments designed to meet the Province's GHG's emissions reduction target and the Province has the primary responsibility to ensure the GGRR contributes to effectively meet these targets, including amendments to the GGRR if necessary.<sup>17</sup>

BCSEA "takes no position at this time on the need for a new regulatory framework for verification and tracking of EAs of low-carbon Resources under the GGRR", however it considers the Province would be in a better place to do this and presumably align the framework with its other climate policy initiatives.<sup>18</sup>

With respect to process, BCSEA submits that an adjournment should be coupled with an explicit reference with respect to the Panel's authority to resume the Phase 2 Inquiry on its own motion.<sup>19</sup>

MoveUp adopts the position taken by BCSEA and submits that "getting it right" is of paramount importance. Further, there is no urgency to conclude the Phase 2 Inquiry and MoveUp suggests that the BCUC monitors the relevant EMLI processes to determine when to resume.<sup>20</sup>

PNG is of the view that Phase 2 Inquiry would benefit from being informed by the GGRR amendments currently being contemplated, and it is not efficient nor desirable for the BCUC and the Province to develop methodologies that public utilities would be required to use demonstrate low-carbon resources are below a CI threshold. In PNG's view, the Province is better placed to regulate the CI of low-carbon resources under the GGRR.<sup>21</sup>

PNG also submits clarification of the jurisdiction and roles of the Province and BCUC would be helpful regarding the regulation of CI thresholds and tracking and verifying EA to avoid the possibility of conflicting or overlapping approaches.<sup>22</sup>

RCIA agrees with the reasons articulated by FEI; in particular that it is preferable for the Province to establish a framework for the tracking and verification of EA.<sup>23</sup>

### *Opposition to FEI's Adjournment Request*

BCOAPO was the sole intervener who opposed FEI's Adjournment Request.

BCOAPO submits that FEI has not provided compelling evidence to support its Adjournment Request. Among BCOAPO's reasons are the uncertain timing of any GGRR amendments; available remedy for potential

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<sup>15</sup> Ibid, p.2

<sup>16</sup> Exhibit C1-7, p. 1.

<sup>17</sup> Ibid, p.2.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Exhibit C2-5.

<sup>21</sup> Exhibit C5-3, p.2.

<sup>22</sup> Ibid, p.3.

<sup>23</sup> Exhibit C9-12.



contradictory approaches; BCUC jurisdiction; the present need to address a void in the regulatory framework; and not to waste the time and resources expended in the work to date.

BCOAPO submits that in EMLI's Letter, the Province states that it is "contemplating amendments to the GGRR (sic)" but does not provide a timeline or a guarantee that amendments will be made or confirmation of which contemplated methodologies will be utilized.<sup>24</sup>

BCOAPO finds no merit in FEI's suggested "wait and see" approach and submits that the facts clearly show a void in the regulatory framework that the BCUC has recognized. BCOAPO notes that FEI has tripled its RNG supply in 2021 and is likely to do so again this year and that there is a growing market for RNG's EA.<sup>25</sup>

With respect to possible contradictory approaches to a CI threshold, BCOAPO states, "we note the Ministry has provided comments in this process and we would expect the Commission to take note of its contents to harmonize, to the extent possible, its approach to those most likely to be taken by the Ministry."<sup>26</sup>

Furthermore, BCOAPO notes that the under section 3 of the UCA, the Province can issue a direction to the BCUC, should a BCUC determination be out of step with its policies. BCOAPO submits that this situation is no different than any other application, investigation, or inquiry before the BCUC.<sup>27</sup>

BCOAPO submits that FEI has not provided adequate information or argument for its assertion that the BCUC does not have jurisdiction to establish a CI threshold on RNG or establish a regulatory framework for the verification and tracking of EA. Further, BCOAPO contends that using the Phase 2 Inquiry to collect information to inform the BCUC's interpretation of the GGRR's application in the context of the acquisition of RNG by public utilities, is clearly within the BCUC's jurisdiction.<sup>28</sup>

BCOAPO recommends that the Panel continue the Phase 2 Inquiry, allowing closing submissions from the parties unless further evidence and information requests are ordered.<sup>29</sup>

### *FEI Reply*

In its reply, FEI notes that, with the exception of BCOAPO, all interveners support the Adjournment Request.

In response to BCOAPO's opposing view, FEI submits that deferring to an approach to be taken by EMLI would make best use of the Phase 2 Inquiry work done to date and would avoid expending resources on work that will be superseded by EMLI.<sup>30</sup>

## **4.0 Panel Determination**

For the reasons set out below, the Panel denies FEI's Adjournment Request.

FEI raises two issues:

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<sup>24</sup> Exhibit C6-5, p.2.

<sup>25</sup> Exhibit C6-5, p. 3.

<sup>26</sup> Ibid, p. 3.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> Exhibit C10-6.

- The Province is contemplating setting a maximum threshold for CI and that the requirement for the BCUC to establish a CI threshold is removed should a CI threshold be included in any amendment to the GGRR; moreover, the Province is best placed to define and enact CI thresholds in its policy-making authority.<sup>31</sup>
- The BCUC does not have the jurisdiction to establish a regulatory framework to track and verify EA

We acknowledge that the Province is currently contemplating amendments to the GGRR that may include setting a maximum CI threshold for low-carbon resources under the GGRR. However, in the words of BCOAPO, the EMLI letter “does not provide any timeline for their completion, confirmation regarding which of the contemplated methodologies will be utilized, or even an unenforceable promise that these kinds of amendments will be made at all.”<sup>32</sup>

Further, and more importantly, the CI of RNG is but one issue in this Inquiry. This Inquiry seeks to define RNG and the Panel is currently considering evidence and submissions on, among other things, the appropriateness of combining various kinds of EA acquired separately and combined with conventional natural gas; the role of carbon offsets in the purchase of RNG; and how fugitive methane emissions might be considered when RNG is purchased. We have not yet determined many of these matters but have already gathered evidence in this Inquiry, which is now before us to review, adjudicate and, if appropriate, make recommendations.

With respect to the CI of RNG, the question posed in Final Phase 1 Report was as follows:

Given the GGRR does not specify a Carbon Intensity (CI) requirement for RNG, nor is the CI of RNG provided in BC’s Low Carbon Fuel Standard (LCFS), should any maximum CI be established for acquired Environmental Attributes arising from the production of biomethane? [*emphasis added*]

This question was driven by the intent of this Inquiry, which is to determine the definition of RNG and we are considering whether a CI may be a factor in defining RNG. While we have not considered the issue of the quantum or calculation method of a CI, we note that the EMLI’s Letter contemplates the possibility of the BCUC setting a CI requirement for RNG, stating “[i]f the BCUC sets a CI threshold for RNG, regional factors and lifecycle model choices should be considered.”

FEI also submits that the BCUC does not have the jurisdiction to establish a regulatory framework to track and verify EA. We disagree. When reviewing FEI’s RNG purchases, the EA associated with the purchased RNG are acquired through a contractual mechanism. The *UCA* and the Clean Energy Act require the BCUC to review and accept those contracts if they are determined to be a prescribed undertaking. If an EA of any kind is acquired as part of the purchase of RNG, the BCUC would similarly be required to confirm that it satisfies the definition of RNG for the purpose of the GGRR and establishing a framework to do so is an essential element of that process.

The EMLI Letter appears to support this view, stating that “should the BCUC not establish its own criteria and process for verifying and tracking EA, the Province of BC would contemplate establishing a regulatory framework for this purpose, emphasizing that the BCUC and Province work together to clarify jurisdiction, role and ensure alignment.”

FEI notes the potential for the BCUC and the EMLI to take potentially contradictory approaches to the method to calculate a maximum CI threshold, which could create confusion in BC’s RNG market, as stated in the EMLI

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<sup>31</sup> Ibid.

<sup>32</sup> Exhibit B-5, p.2.

letter.<sup>33</sup> We acknowledge and share this concern. The need for consultation and regulatory alignment is also clear from the Premier's Mandate Letter to EMLI:<sup>34</sup>

Work with the BC Utilities Commission to identify an appropriate role for the Commission in supporting B.C.'s clean energy transition, in alignment with our province's climate goals to achieve net zero by 2050 and affordability objectives.

The BCUC's regulatory approach should align with the Province's energy policy and it is in that spirit that we will continue this Inquiry. If, in the course of this Inquiry, the Panel concludes that a specific CI for RNG is necessary to define RNG, that will inform EMLI in the event that it seeks to amend the GGRR.

Similarly, EMLI will be consulted with regard to the implementation of any other recommendations of this Inquiry.

## **5.0 Next Steps**

An updated procedural timetable providing for Final and Reply Argument will be issued as soon as possible, but likely the first week of January 2023. At that time, the Panel will also issue a letter providing guidance on the scope of Argument requested.

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<sup>33</sup> Ibid, p.2.

<sup>34</sup> [https://www2.gov.bc.ca/assets/gov/government/ministries-organizations/premier-cabinet-mlas/minister-letter/emli\\_-\\_osborne.pdf](https://www2.gov.bc.ca/assets/gov/government/ministries-organizations/premier-cabinet-mlas/minister-letter/emli_-_osborne.pdf).