

FASKEN

Fasken Martineau DuMoulin LLP
Barristers and Solicitors
Patent and Trade-mark Agents

550 Burrard Street, Suite 2900
Vancouver, British Columbia V6C 0A3
Canada

T +1 604 631 3131
+1 866 635 3131
F +1 604 631 3232

fasken.com

Christopher R. Bystrom
Direct +1 604 631 4715
Facsimile +1 604 632 4715
cbystrom@fasken.com

March 15, 2019
File No.: 240148.00855/15275

By Electronic Filing

British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, BC
V6Z 2N3

Dear Mr. Patrick Wruck, Commission Secretary and Manager, Regulatory Support

Re: FortisBC Energy Inc. – Application for Acceptance of the Biogas Purchase Agreement Between FortisBC Energy Inc. and the City of Vancouver – Project No. 1598977 – Reply Submission

We are counsel for FortisBC Energy Inc. (FEI) in the referenced proceeding and are filing this reply submission in accordance with the regulatory timetable set out in BCUC Order G-14-19.

Intervener Support for FEI’s Application

The two interveners that filed final submissions in this proceeding are supportive of the acceptance of the Biogas Purchase Agreement between FEI and the City of Vancouver dated July 30, 2018 (CoV BPA). The City of Vancouver (CoV) supports and adopts FEI’s final argument filed on March 1, 2018, while the Commercial Energy Consumers Association of British Columbia (CEC) “recommends that the Commission accept the BPA between FEI and the CoV.”¹

The only other intervener in this proceeding, the Ministry of Energy, Mines and Petroleum Resources, filed a letter of comment “to confirm that the policy position of the Ministry and the Government of British Columbia (Government) is to support projects and initiatives that will lead to an increased Renewable Natural Gas (RNG) supply in British Columbia (BC).”²

¹ CEC Final Argument, p. 2.

² Exhibit C1-2.

As the interveners are supportive of FEI's Application, this reply submission only responds to some views expressed by the CEC that are not essential to the acceptance of the CoV BPA, but are related to the status of the CoV BPA as a prescribed undertaking under the *Clean Energy Act*.

CoV Project as a Prescribed Undertaking

CEC agrees that the CoV Project is a prescribed undertaking.³ The CEC also states that the conditions in section 2(3.8) of the GRR are ongoing and that, if the CoV Project fails to continue to meet the constraints projected on a levelized basis, then the CoV Project no longer qualifies as a prescribed undertaking.⁴ As to the consequences of this, the CEC submits that, "if project reporting suggests that the cost/GJ or volumes on a levelized basis will fall outside the constraints defined in Section 2(3.8) of the GRR, it would then be appropriate for the Commission to undertake a review process to examine the issue of whether or not to assess the prudence of the expenditures."⁵

FEI first notes that the cost of renewable natural gas (RNG) acquired by FEI through the CoV Project is estimated to be well below a levelized cost of \$30 per GJ, and FEI does not expect the levelized cost to be above \$30 per GJ at any time. Therefore, in FEI's submission, the issue of what may happen in the future if the costs of acquiring RNG exceed \$30 per GJ is hypothetical, and is best left to when and if such circumstances actually arise.

Second, once the CoV BPA is accepted as being in the public interest, it is prudent and in the public interest for FEI to proceed with the CoV Project. This is true whether or not one accepts FEI's position that the CoV Project remains a prescribed undertaking indefinitely. However, FEI's views of the ongoing status of the CoV Project as a prescribed undertaking are consistent with the BCUC's previously expressed views as set out in paragraph 67 of FEI's Final Argument.

Third, if at some future date the levelized costs for some unexpected reason exceed \$30 per GJ, FEI agrees with the CEC that FEI's costs are subject to review "to examine the issue of whether or not to assess the prudence of the expenditures". Indeed, this is the case for all of FEI's investments. As such, FEI does not believe there is any need for the BCUC to make any particular determination in this proceeding regarding this circumstance.⁶

However, if at some future date the levelized costs for some unexpected reason exceed \$30 per GJ, it would not be open to the BCUC to prevent FEI from recovering its prudently incurred costs of proceeding with the CoV Project. In these circumstances, it would still have been in the public interest for FEI to proceed with the CoV Project based on the fact that it is (or was) a prescribed undertaking, and the CoV BPA was accepted as being in the public interest. FEI does not understand the CEC as disagreeing with this analysis. As such, FEI submits that there is no

³ CEC Final Argument, p. 4, para. 26.

⁴ CEC Final Argument, p. 7, para. 44 to 47.

⁵ CEC Final Argument, p. 13, para. 102.

⁶ CEC Final Argument, p. 13, para. 102.

disagreement in substance between FEI and CEC on the consequences if the costs of acquiring RNG exceed \$30 per GJ.

Need to Reapply at End of CoV BPA

CEC also states that once the CoV Project has exceeded its original term and any embedded extensions, the CoV Project should not be considered a prescribed undertaking and FEI should be required to reapply based on the updated evidence.⁷ In reply, once the CoV BPA has come to an end, FEI would need to sign a new BPA with the CoV, or amend the original agreement. As section 71 of the UCA requires FEI to file energy supply contracts with the BCUC, FEI will have to apply for acceptance of any new energy supply contract with the CoV. Given the length of time before this occurs, FEI recommends that the BCUC reserve any judgment on the process to be followed at that time.

Conclusion

FEI's Application enjoys support from the interveners in the proceeding. FEI submits that the COV BPA is a prescribed undertaking under section 18 of the Clean Energy Act and should be accepted by the BCUC as being in the public interest.

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP

[Original signed by]

Christopher Bystrom

cc Registered Parties

⁷ CEC Final Argument, p. 7, para. 49.