

BRITISH COLUMBIA UTILITIES COMMISSION

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

Final Argument of BC Sustainable Energy Association

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1.0 Introduction

1. This is the final argument of the B.C. Sustainable Energy Association (BCSEA) in the B.C. Utilities Commission’s proceeding regarding the application by FortisBC Energy Inc. (FEI) for acceptance under section 71 of the *Utilities Commission Act* (UCA) of two Biomethane Purchase Agreements (BPAs) with Tidal Energy Marketing Inc. (Tidal).
2. FEI seeks acceptance of the BPAs on the basis that they are prescribed undertakings under section 18 of the *Clean Energy Act* (CEA) and sections 2(3.7), 2(3.8) and 2(3.9) of the Greenhouse Gas Reduction (Clean Energy) Regulation (GGRR). FEI also argues that the BPAs are in the public interest.
3. The two BPAs are for the purchase of biomethane produced in the Province of Ontario. The “London BPA” is for biomethane from an organic waste digestion project in London, ON. The “Niagara BPA” is for biomethane from a landfill project in Niagara Falls, ON. FEI will sell the biomethane to customers for end use under FEI’s Biomethane (or “Renewable Natural Gas”) program.¹ The counterparty is Tidal Energy, which is a wholly owned subsidiary of Enbridge Inc.
4. The BPAs are for 20-year terms. The biomethane purchase price is under \$30/GJ.² The contracts are exclusive, i.e., for purchase of all the biomethane produced at the Niagara and London facilities. Quantities are subject to minimum and maximum bounds. Reciprocal termination payment provisions are defined. Estimated Carbon Intensity of the biomethane is addressed as a term of the contracts. The notional delivery point is the FEI’s system at Huntington.
5. This final argument responds to FEI’s November 21, 2019 Final Argument.³

¹ Exhibit B-3, FEI Response to BCSEA IR 10.1.

² The exact price has been provided to the Commission in confidence.

³ https://www.bcuc.com/Documents/Arguments/2019/DOC_56338_2019-11-21-FEI-Final-

2.0 BCSEA's Key Points

6. BCSEA respectfully submits that the Commission should accept the London and Niagara BPAs. The BPAs are prescribed undertakings under the GGRR and CEA, and the BPAs are in the public interest.
7. BCSEA strongly supports FEI's Biomethane program. After implementation of all cost-effective conservation and efficiency measures, the use of biomethane as a substitute for fossil fuel (conventional) natural gas is an important way to reduce BC's GHG emissions. Growth in the volume of biomethane delivered to customers under FEI's Biomethane program is currently hampered by a shortage of biomethane supply. This shortage would be lessened, although not eliminated, by the London BPA and the Niagara BPA.
8. BCSEA has carefully considered that the two BPAs are for biomethane produced outside the Province of B.C. Until now, all of FEI's contracts have been for the purchase of biomethane or biogas produced in B.C. BCSEA believes that in-province production of biomethane is inherently desirable, and that acquisition of biomethane produced outside the province should be considered an exception to the general approach.
9. In BCSEA's view, in-province production of biomethane is generally preferable to out-of-province production basically because production in B.C. is closer to home. Philosophically, we British Columbians bear the primary responsibility for reducing our own GHG emissions. And, on a practical level, producing biomethane within B.C. contributes to managing B.C.'s own organic waste challenges and keeps the biomethane production jobs in B.C.
10. BCSEA supports approval of the out-of-province-based London and Niagara BPAs as an exception, in consideration of the following four factors.
11. First, in BCSEA's view, there is an urgent⁴ need for new biomethane supply to meet pent up, unfulfilled demand for long-term Biomethane purchase contracts by large commercial, institutional and industrial natural gas customers and by transportation entities that currently use natural gas or, worse, diesel or marine fuel. New B.C.-based biomethane production projects are not yet sufficiently developed to be able to

[Argument.pdf](#)

⁴ FEI does not use the term "urgent." However, BCSEA considers that expanding the displacement of fossil fuel natural gas in B.C. through the Biomethane program is indeed urgent.

meet this demand. In contrast, the Niagara and London BPAs will provide Biomethane almost immediately.

12. Second, implementation of the Niagara and London BPAs will not hinder or delay the development of new in-province sources of biomethane.⁵ FEI continues to advance biomethane projects located within B.C.⁶ FEI's commitment is unequivocal:

“FEI sees BC-based projects as critical to achieving its goals and ultimately reaching the 15 percent Renewable Gas content target within its portfolio as published in the CleanBC plan. As such, FEI will continue to pursue all known and potential opportunities within BC.”⁷

13. Third, in BCSEA's view the contractual terms and conditions of the London and Niagara BPAs are reasonable and adequately protect the interests of Biomethane purchasers and FEI customers more broadly. There is no stranded asset risk. Technical risk is borne by Tidal, and has been appropriately addressed by FEI. Counterparty risk is reasonable: FEI has ongoing business dealings with Tidal, which is a well established company wholly owned by Enbridge Inc.
14. Fourth, the London and Niagara BPAs will be effective in reducing GHG emissions in B.C. within the established GHG emissions reporting and accounting mechanism. Under the terms of the BPAs, FEI has secured the rights to the environmental attributes and GHG emission reduction benefits of the biomethane to be provided to FEI under the BPAs.
15. To be clear, BCSEA's support for acceptance of the London and Niagara BPAs is based on three understandings:
- a. Acquisition of biomethane produced outside the province is an exception to the inherently preferred approach of in-province production.
 - b. Acceptance of the London and Niagara BPAs will not hinder or delay new in-province sources of biomethane, and FEI will continue to pursue all known and potential opportunities within B.C.
 - c. BCSEA's support of the London and Niagara BPAs is limited to those two BPAs and does not imply a position regarding any future agreements for the purchase of biomethane produced outside of B.C.

⁵ Exhibit B-3, BCSEA IR 2.2.

⁶ Exhibit B-1, p.7. FEI says it “holds an active prospect list of over 15 RNG projects within BC representing over one Petajoule (PJ) of incremental annual RNG supply.”

⁷ Exhibit B-3, BCSEA IR 2.2.

3.0 Prescribed Undertaking

16. As noted above, FEI seeks acceptance of the two BPAs on the basis that they are prescribed undertakings under s.18 of the CEA and s.2(3.7), 2(3.8) and 2.(3.9) of the GGRR.
17. BCSEA concurs with FEI that the Commission must give s.18 of the CEA and s.2(3.7), 2(3.8) and 2.(3.9) of the GGRR a fair, large and liberal interpretation that best ensures the attainment of their objects.⁸
18. BCSEA concurs with FEI that the purpose of sections 2(3.7) to 2(3.9) of the GGRR is to increase FEI's ability to acquire renewable natural gas in order to reduce greenhouse gas emissions.⁹
19. This is supported by the policy context. BCSEA endorses FEI's summary statement as follows:
- “The *Clean Energy Act* heightened FEI's role in the production of renewable natural gas, and the importance of FEI's role in developing renewable natural gas has been significantly increased again by the BC Government's CleanBC plan. The key actions of the CleanBC plan include making residential and industrial natural gas consumption cleaner by requiring a minimum of 15 percent to come from renewable gas.”¹⁰
20. FEI notes that s.2(3.8) of the GGRR has the effect of increasing the price and maximum volume for RNG acquired under FEI's Biomethane program in comparison with the figures previously established by the Commission in 2010.¹¹ BCSEA agrees that the object of s.2(3.8) is to increase FEI's ability to obtain renewable natural gas for its Biomethane Program, by bringing into effect a more generous maximum supply price and maximum supply volume.
21. Provincial Government support for the out-of-province aspect of the London and Niagara BPAs is indirect. As FEI puts it, “The Provincial Government is supportive of the growth and development of FEI's RNG program and out-of-province supply is necessary to achieve the targets in the CleanBC plan.”¹²
22. The three-part test for prescribed undertakings under s.2(3.8) of the GGRR is described in Decision and Order G-122-19. The commodity must be “renewable

⁸ FEI Final Argument, para.17.

⁹ FEI Final Argument, para.18.

¹⁰ FEI Final Argument, para.20.

¹¹ FEI Final Argument, para.21.

¹² Exhibit B-3, FEI Response to BCSEA IR 2.1.

natural gas.” The utility must pay no more than \$30 per GJ. And, the annual volume must not exceed 5% of the total volume of natural gas the utility provided to its non-bypass customers in 2015. These criteria are met by the London and Niagara BPAs.

23. First, the renewable natural gas acquired under the BPAs is renewable natural gas within the meaning of the GGRR. The GGRR contemplates that renewable natural gas is delivered to the end-use customer notionally, not physically. The key is that FEI has acquired the environmental attributes and GHG reduction benefits and conveys them to the customer who purchases Biomethane under the program. This is the case with the London and Niagara BPAs.

24. Second, the cost to FEI of the RNG under the BPAs will not exceed the maximum set out in s.2(3.8), which is currently \$30 per GJ. FEI explains:

“The purchase price in each BPA (refer to clause 8 (c)) cannot exceed the maximum acquisition price, which is currently set at \$30/GJ in the GGRR. Therefore, FEI’s cost of RNG under the BPAs will not exceed the maximum acquisition price of \$30/GJ in 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.”¹³

25. BCSEA concurs with FEI 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.¹⁴

26. Third, the volume of RNG under the BPAs will not exceed the maximum set out in s.2(3.8)(b). The 5% of 2015 non-bypass deliveries is approximately 8,900,000 GJs. FEI estimates that its total RNG supply with the London BPA and Niagara BPA will be approximately 17% of the 5 percent GGRR criterion.¹⁵

27. BCSEA submits that the London and Niagara BPAs meet the criteria and should be accepted by the Commission as prescribed undertakings under the CEA and the GGRR. Accordingly, the BPAs should be accepted under s.71 of the UCA.

¹³ Exhibit B-3, FEI Response to BCSEA IR 1.3.

¹⁴ FEI Final Argument, paras.31-32.

¹⁵ Exhibit B-3, FEI Response to BCSEA 1.4.

4.0 Public Interest

28. BCSEA submits that the London and Niagara BPAs are in the public interest under s.71 of the UCA.
29. BCSEA concurs with the points made in paragraph 34 of FEI's Final Argument.
30. FEI's Biomethane program is aligned with the B.C. energy objectives, and the London and Niagara BPAs are an important contribution to the Biomethane program.
31. The London and Niagara BPAs will assist in achieving the CleanBC renewable natural gas target for reducing B.C. GHG emissions by displacing the use of conventional natural gas.
32. There is a confirmed need for new Biomethane supply to meet the unfulfilled demand from customers in B.C. FEI elaborates as follows:

"As of August 2019, FEI has temporarily stopped accepting new requests for RNG service and curtailed service to larger volume customers due to supply limitations. FEI estimates that this will prevent approximately 1,500 residential rate class customers from enrolling in 2020, representing an estimated annual 15 TJ shortfall. Given that the number of customer enrolments has, since the adoption of the new BERC rate, scaled up year over year as the program has grown, FEI expects that 1,500 customers represents a lower limit of customers that are not able to participate per year. Similarly, FEI estimates that approximately 20 small commercial customers will not be added to the program in 2020, for an unmet annual RNG demand of 1.5 TJ.

Larger volume customers often approach FEI to determine the availability of RNG, with their decision to subscribe to the service often contingent upon various factors required to make their business case viable. Based on these expressions of interest for RNG among larger volume customers, FEI estimates there to be 15 to 21 customers currently unable to participate, and a requested volume approaching 3,000 TJ which cannot currently be met."¹⁶

33. The BPAs will contribute materially toward meeting the pent up demand. FEI expects that the demand for RNG will exceed contracted RNG supply, even after the approval of the BPAs.¹⁷
34. The acquisition of Biomethane under the London and Niagara BPAs will reduce GHG emissions in B.C. Under the established framework, GHG emission reductions are accounted for at the end use, which will be in British Columbia in the case of the

¹⁶ Exhibit B-5, FEI Response to CEC 11.1.

¹⁷ Exhibit B-3, FEI Response to BCSEA 9.1.

Biomethane acquired under the BPAs. The BPAs provide a clear contractual path, real displacement of conventional gas, and the retirement of environmental attributes upon use.

35. The evidence establishes that the supply developers are properly funded and reliable.
36. BCSEA concurs with FEI that the London and Niagara BPAs will have the beneficial effect of diversifying FEI's Biomethane supply portfolio.
37. The BPAs are low risk. As noted in paragraph 13, above, BCSEA considers that the BPAs are reasonable and adequately protect the interests of Biomethane purchasers and FEI customers more broadly.
38. FEI's evidence is that the contract price in the London and Niagara BPAs is competitive, based on over 30 responses to its request for expressions of interest.¹⁸ There is no evidence to the contrary.
39. In BCSEA's view, one of the most important points supporting a conclusion that the London and Niagara BPAs are in the public interest is that acceptance of these BPAs will not hinder or delay new in-province sources of biomethane, and that FEI will continue to pursue all known and potential opportunities within B.C. BCSEA acknowledges FEI's statement that it "expects that it will need to develop all of the renewable natural gas supply available within BC, as well as projects outside of BC, to reach the CleanBC plan target of 15 percent renewable gas content."

5.0 Conclusion

40. BCSEA supports Commission acceptance of the London and Niagara BPAs under s.71 of the UCA. As noted above, this is based on three understandings:
 - a. Acquisition of biomethane produced outside the province is an exception to the inherently preferred approach of in-province production.
 - b. Acceptance of the London and Niagara BPAs will not hinder or delay new in-province sources of biomethane, and FEI will continue to pursue all known and potential opportunities within B.C.

¹⁸ See FEI Final Argument, para.34, bullet 8.

- c. BCSEA's support of the London and Niagara BPAs is limited to those two BPAs and does not imply a position regarding any future agreements for the purchase of biomethane produced outside of B.C.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

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