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ORDER NUMBER
G-64-18

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

and

FortisBC Energy Inc.
Application for Approval of Tariff Supplement No. K-1
Biomethane Long Term Large Volume Interruptible Sales Agreement between
the University of British Columbia and FortisBC Energy Inc.

BEFORE:
H. G. Harowitz, Commissioner/Panel Chair
B. A. Magnan, Commissioner
W. M. Everett, QC, Commissioner

On March 21, 2018

ORDER

WHEREAS:

A. On September 14, 2017, FortisBC Energy Inc. (FEI) applied to the British Columbia Utilities Commission (Commission), pursuant to sections 59 to 61 and section 89 of the *Utilities Commission Act* (UCA), for interim and permanent approval and endorsement of a Rate Schedule 11B Tariff Supplement No. K-1, a Biomethane Long Term Large Volume Interruptible Sales Agreement (Tariff Supplement No. K-1 or Agreement), effective October 1, 2017 (Application), filed as Appendix A of the Application;

B. By Order G-133-16 and the accompanying Reasons for Decision regarding the FEI Application for Approval of Biomethane Energy Recovery Charge (BERC) Rate Methodology (BERC Methodology Decision) dated August 12, 2016, the Commission approved the following:

    1. a premium of $7 per gigajoule (GJ) above the Conventional Gas Cost (defined as the sum of the Commodity Cost Recovery Charge, the carbon tax and any other taxes applicable to conventional natural gas sales) as the Short Term BERC Rate; and

    2. the Long Term BERC Rate set at the greater of $10 per GJ, and a $1 per GJ discount to the Short Term BERC Rate, subject to certain conditions set out in Directive 2 of Order G-133-16;

C. The BERC Methodology Decision also stipulated that approval of the specific terms will be on a contract-by-contract basis as FEI executes each contract and files it as a tariff supplement for approval as a rate, as required under sections 59 to 61 of the UCA;

D. By Order G-154-17 dated September 28, 2017, the Commission approved on an interim basis the rates established in Rate Schedule 11B Tariff Supplement No. K-1 Biomethane Long Term Volume Interruptible Sales Agreement between FEI and UBC, of $10.00/GJ, effective October 1, 2017;

E. By Orders G-154-17 and G-178-17, the Commission established a regulatory timetable for the review of the Application, which set out intervener registration, one round of Information Requests (IR), and written final arguments;

F. The British Columbia Old Age Pensioners' Organization et al. and the BC Sustainable Energy Association and Sierra Club BC registered as interveners; and

G. The Commission has reviewed the Application and evidence filed in the proceeding and considers that approval of the Application is warranted.

NOW THEREFORE pursuant to sections 59 to 61 of the *Utilities Commission Act*, and for the reasons attached as Appendix A to this order, the Commission orders that the Tariff Supplement No. K-1 Biomethane Long Term Large Volume Interruptible Sales Agreement Rate Schedule 11B between the University of British Columbia and FortisBC Energy Inc. is approved on a permanent basis, effective October 1, 2017.

DATED at the City of Vancouver, in the Province of British Columbia, this *21st* day of March 2018.

BY ORDER

Original signed by:

H. G. Harowitz
Panel Chair/Commissioner

Attachment

FortisBC Energy Inc.
Application for Approval of Tariff Supplement No. K-1
Biomethane Long Term Large Volume Interruptible Sales Agreement between
the University of British Columbia and FortisBC Energy Inc.

REASONS FOR DECISION

Table of Contents

Page no.

1.0 Introduction 2
1.1 Proceeding at a glance 2
1.2 Background and context 2
1.3 FEI/UBC Long Term Biomethane Agreement 3
1.4 Regulatory requirements 3
2.0 Decision summary 4
2.1 Compliance with the BERC Rate Methodology Decision 4
2.2 Issues arising in this proceeding 4
2.2.1 Use of the phrase “as applicable” in the Agreement 5
2.2.2 Transfer from transportation to bundled service under the Agreement 5
2.3 Compliance with Sections 59–61 of the UCA 6

1.0 Introduction

1.1 Proceeding at a glance

Date of application	• September 14, 2017
Approvals sought	• FortisBC Energy Inc. (FEI) seeks the British Columbia Utilities Commission's (Commission) approval and endorsement of Rate Schedule 11B, Tariff Supplement No. K-1: a Biomethane Long Term Large Volume Interruptible Sales Agreement with the University of British Columbia (UBC), effective October 1, 2017, pursuant to sections 59 to 61 and section 89 of the *Utilities Commission Act* (UCA)
Panel	• William Everett, QC • Howard Harowitz (Chair) • Bernard Magnan
Registered interveners	• British Columbia Old Age Pensioners' Organization *et al.* (BCOAPO) • B.C. Sustainable Energy Association and Sierra Club B.C.(BCSEA)
Regulatory process	• One round of Information Requests • FEI Final Argument • Intervener Final Arguments • FEI Reply Argument
Date of decision	• March 21, 2018

1.2 Background and context

The FEI Renewable Natural Gas (RNG) Program (initially referred to as the FEI Biomethane Program) was approved by the Commission as a two-year pilot in 2010.[1] The Commission subsequently approved the RNG Program on a permanent basis in 2013 pursuant to Order G-210-13.[2] The RNG Program offers residential, small commercial, large commercial and large volume commercial customers a choice of 5, 10, 25, 50 or 100 percent RNG blends in combination with conventional natural gas. Transportation service customers who are responsible for arranging their own natural gas supply may also purchase fixed monthly quantities of RNG under Rate Schedule 11B as part of their supply portfolio.[3]

The Biomethane Energy Recovery Charge (BERC) is the rate FEI charges for biomethane purchased on a voluntary basis by customers on the FEI system. The initial BERC rate setting mechanism was intended to fully recover the biomethane supply and program costs as recorded in the Biomethane Variance Account. [4]

[1] The FEI Biomethane Program, now referred to as the RNG Program, was approved by the Commission initially as a two-year pilot in the FEI (formerly Terasen Gas Inc.) Biomethane decision dated December 14, 2010 accompanying Order G-194-10 (2010 Decision).
[2] FEI Biomethane Service Offering: Post Implementation Report and Application for Approval of the Modification of the Biomethane Program on a Permanent Basis Decision accompanying Order G-210-13 (2013 Decision).
[3] FortisBC Energy Inc. Application for Approval of Biomethane Energy Recovery Charge Rate Methodology Decision and Order G-133-16 dated August 12, 2016 (BERC Rate Methodology Decision), pp. 4–6.
[4] 2013 Decision, p. 65 and Executive Summary, p. iii.

In 2015, FEI filed an application with the Commission seeking approval of a BERC rate methodology to replace the previous cost-based methodology. By Order G-133-16 dated August 12, 2016 and the accompanying Reasons for Decision (BERC Rate Methodology Decision), the Commission approved a BERC rate methodology whereby:

- the Short Term BERC rate is reset effective January 1 of each year at a premium of $7 per gigajoule (GJ) above the Conventional Gas Cost (defined as the sum of the Commodity Cost Recovery Charge, the carbon tax and any other taxes applicable to conventional natural gas sales), and
- the Long Term BERC Rate is set at a discount of $1.00 per GJ to the Short Term BERC rate, subject to certain conditions, which are discussed later in this Decision.

Further, in its BERC Rate Methodology Decision, the Commission stated as follows regarding the approval of long term biomethane contracts:

> The Panel notes that approval of the specific terms will be on a contract-by-contract basis as FEI executes each contract and files it as a tariff supplement for approval as a rate as required under sections 59 to 61 of the UCA. The appropriateness of the terms and conditions negotiated by FEI, including whether they are considered to be an unjust, unreasonable, unduly discriminatory or unduly preferential rate under section 59 of the UCA, will be determined by the Commission review of the application to approve the contract as a tariff supplement. [5]

By Order G-177-16 dated December 2, 2016, the Commission approved an increase to the Short Term BERC rate applicable to all biomethane rate schedules within the Mainland, Vancouver Island and Whistler Service Areas from $10.209/GJ to $10.54/GJ effective January 1, 2017. The Long Term BERC rate remained unchanged at $10.00/GJ.

1.3 FEI/UBC Long Term Biomethane Agreement

On September 13, 2017, FEI and UBC signed and entered into Rate Schedule 11B, Tariff Supplement No. K-1, a Biomethane Long Term Large Volume Interruptible Sales Agreement, with an effective date of July 1, 2017 (Agreement). In this application, FEI seeks Commission approval of the Agreement.

By Order G-148-17, made in this proceeding on September 28, 2017, the Commission approved, on an interim basis, the rates established in the Agreement of $10.00/GJ effective October 1, 2017, on the terms set out in the Order.

1.4 Regulatory requirements

In considering whether to approve the long term BERC rate established in the Agreement and the terms and conditions of the Agreement, the Commission must be satisfied that the Agreement is compliant with the criteria for a long term BERC rate agreement as specified in the BERC Rate Methodology Decision.

In addition, the Commission must be satisfied under sections 59 to 61 of the UCA that the proposed rates are not unjust, unreasonable, unduly discriminatory or unduly preferential.

[5] Decision dated August 12, 2016, pp. 34–35.

2.0 Decision summary

The Panel approves Rate Schedule 11B, Tariff Supplement No. K-1 Biomethane Long Term Large Volume Interruptible Sales Agreement between FEI and the UBC on a permanent basis, effective October 1, 2017.

Reasons supporting this decision are set out below, organized into three sections:

- Compliance with the BERC Rate Methodology Decision
- Issues arising in this proceeding
- Compliance with sections 59–61 of the UCA

2.1 Compliance with the BERC Rate Methodology Decision

This section of the decision considers whether the terms of the Agreement are compliant with the criteria for a long term BERC rate agreement as specified in the BERC Rate Methodology Decision.

The BERC Rate Methodology Decision approved the Long Term BERC Rate at a discount of $1.00 per GJ to the Short Term BERC rate, subject to the following conditions:

- eligible contracts must be for a commitment to purchase not less than 60,000 GJ in aggregate over the term of the contract;
- the term of the contract must not be less than five years and no more than ten years;
- a minimum contract strike price of $10.00 per GJ; and
- long-term contracts must include a Contract Floor Price provision that results in the price of RNG beyond year five of a contract that is not less than the prevailing Conventional Gas Cost.

The evidence establishes that the terms and conditions of the Agreement provide for a minimum annual purchase of 71,000 GJ of biomethane (section 1.5.1), for a term that is not less than five years and no more than ten years (sections 1.1.1 (f) and (g)), for a long term biomethane service charge of $10.00 per GJ (Schedule A), and for a contract floor price equal to the prevailing conventional gas costs for years five to ten of the Agreement (section 1.6.5 (b)). [6]

The interveners agree that the overall terms and conditions of the Agreement comply with the BERC Rate Methodology Decision.[7]

Commission determination

Based on the above, the Panel finds the Agreement complies with the conditions set out in the BERC Rate Methodology Decision.

2.2 Issues arising in this proceeding

This section of the decision considers other issues raised by interveners regarding the terms and conditions of the Agreement.

[6] Exhibit B-1, Appendix A, FEI Tariff Supplement No. K-1, pp. 2, 5, 6, 9.
[7] BCOAPO Final Argument, p. 2; BCSEA Final Argument, pp. 1, 3.

2.2.1 Use of the phrase "as applicable" in the Agreement

In general terms, section 1.6 of the Agreement deals with rates and charges UBC must pay to FEI and each of sub-sections 1.6.1, 1.6.2 and 1.6.5 includes the phrase "as applicable" in the determination or the adjustment of amounts UBC is required to pay for the biomethane.

BCOAPO expresses concern that the use of the phrase "as applicable" could result in the determination of the rates and charges under those sections to be solely within FEI's responsibility and purview. BCOAPO further submits this could create uncertainty regarding any determinations or adjustments made under these sections of the Agreement which in turn could result in the risk of future litigation. BCOAPO requests that this Panel consider the risk this uncertainty may pose in its decision making process and that FEI avoid such ambiguous language in its future agreements.[8]

FEI, in response, points out that the Agreement has been entered into by sophisticated parties and that BCOAPO has not provided any surrounding facts to support its submission that the phrase "as applicable " is uncertain and ambiguous and could result in future litigation between the parties to the Agreement.[9]

Panel discussion

The Panel agrees with FEI. By negotiating and executing the Agreement, FEI and UBC have agreed to terms that are acceptable and that reflect their intentions. UBC has not participated in this hearing or raised any concern with the wording of the Agreement. FEI, in its administration of the Agreement will calculate the rates, charges and adjustments under the provisions of sections 1.6.1, 1.6.2 and 1.6.5 and UBC will be in a position to raise any concerns that may arise. It not appropriate for the Commission, in these circumstances, to get involved in drafting the wording of the Agreement made between sophisticated parties and it declines to do so.

2.2.2 Transfer from transportation to bundled service under the Agreement

In the BERC Rate Methodology Decision, the Commission stated:

> There is no reason why the Long Term Contract offering should only be available for transportation service customers through an on-system sales tariff modelled on Rate Schedule 11B. Any of FEI's customers who can commit to the firm purchase of the required minimum quantity of RNG should be eligible for the long term BERC rate offering. In addition to transportation service contracts supplied by FEI acting as Shipper Agent, this includes bundled sales customers, transportation service customers directly, transportation service customers supplied by a Shipper Agent other than FEI and marketers (i.e. Shipper Agents) supplying a group of transportation service customers. In addition, a customer who has committed directly to a long term BERC contract should be able to take the contract with them if they move between transportation and bundled sales service or from one Shipper Agent to another over the term of the commitment to buy RNG.[10]

In its final argument, BCSEA noted the Agreement is silent on whether long term biomethane customers are able to take their contracts with them if they decide to move from transportation services to bundled service.[11]

[8] BCOAPO Final Argument, p. 2.
[9] FEI Reply, p. 1.
[10] BERC Rate Methodology Decision, p. 33. Emphasis added.
[11] BCSEA Final Argument, p. 2.

FEI acknowledges the Agreement does not provide for such movement between services for long term customers. It points out, however, that UBC has no present intention of moving from transportation service to bundled service and therefore submits, in the event UBC expresses a desire to make such a move in the future, an amendment to the Agreement can be negotiated allowing for that to occur without triggering the Agreement's termination provisions.[12]

FEI, in response to an IR, also stated that it will seek to incorporate terms and conditions to allow automatic movement between transportation service and bundled service for future long term biomethane customers.[13]

BCSEA further submits that the passage above from the BERC Rate Methodology Decision regarding movement of customers from transportation to bundled services, should be applied by the Commission as a guideline. Given that FEI has indicated that it will seek to incorporate wording in future long-term biomethane contracts that will allow for such movement and that FEI is prepared to negotiate such an amendment if requested by UBC, BCSEA is of the view, in the present circumstances, that it is not necessary to reopen the Agreement on this point.[14]

Panel discussion

In the Panel's view, the intent of the BERC Rate Methodology Decision was to allow committed long term biomethane customers the opportunity to continue under the provisions of a long term BERC contract regardless of whether they decide to move between transportation and bundled sales services or from one Shipper Agent to another over the term of the commitment**.**

While the Agreement contains no such provision, the Panel does not consider that absence to present an impediment to approving the Agreement. This is based on three considerations. First, as noted in Section 2.2.1 (above), the Agreement was negotiated between two sophisticated parties. Second, FEI submitted that it would be prepared to amend the Agreement to allow portability if at some future date UBC made such a request. Finally, the Panel takes comfort from FEI's undertaking that it intends to draft such language for inclusion in future long term contracts.

2.3 Compliance with Sections 59–61 of the UCA

This section of the decision considers whether the long term BERC rate proposed in the Agreement is just, reasonable and not unduly discriminatory or preferential.

In its final argument, BCSEA agreed that the Agreement is just and reasonable and that it is not unduly discriminatory.[15] BCOAPO, in its final argument states it has reviewed all the evidence and overall it does not take issue with the Agreement.[16]

Commission determination

UBC's agreement to take a minimum quantity of biomethane for a long term requires a reasonable degree of price certainty before it makes such a commitment. The benefit of a discount for long term customers is not

[12] Exhibit B-2, BCUC IR 1.11.1; FEI Final Argument, p. 4.
[13] Exhibit B-2, BCUC IR 1.11.1.
[14] BCSEA Final Argument, p. 2.
[15] BCSEA Final Argument, pp. 1–2.
[16] BCOAPO Final Argument, p. 2.

unjust, unreasonable or unduly discriminatory prejudicial given the long term duration of the UBC's commitment to purchase the biomethane and the Commission's approval of the discount in the BERC Rate Methodology Decision.

For the above reasons, the Panel finds the long term BERC rate as set out in the Agreement is just and reasonable and not unduly discriminatory or preferential.