

December 11, 2020

Sent By E-mail

British Columbia Utilities Commission
6th Floor – 900 Howe Street
Vancouver, BC V6Z 2V3

**Attention: Marija Tresoglavic, Acting Commission
Secretary**

BCUC File 64606

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Your reference
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Dear Ms. Tresoglavic:

**Vancouver Airport Authority (“YVR”) – Application for an Exemption Pursuant to
Section 88(3) of the *Utilities Commission Act* (“UCA”) for the Resale of Natural Gas**

We are legal counsel to YVR. Enclosed, please find YVR’s application for an exemption pursuant to section 88(3) of the *UCA* for the resale of natural gas.

If you have any questions, please contact the writer.

Yours very truly,



For: Matthew D. Keen
Partner

MDK/roe

Enclosure

CAN_DMS: \136924631\1

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Application by Vancouver Airport Authority (“YVR”) for an Exemption Pursuant to Section 88(3) of the *Utilities Commission Act* (“UCA”) for the Resale of Natural Gas

YVR is a not-for-profit organization that manages the Vancouver International Airport (the “**Airport**”). Pursuant to section 88(3) of the *UCA*, YVR hereby applies for an exemption from the application of section 71 and Part 3 of the *UCA*, except for sections 25, 38, 41 and 42, in relation to YVR’s resale of natural gas at the Airport.

Below, YVR first provides background information regarding its purchase and resale of natural gas at the Airport, and regarding its prior application to the Commission regarding the resale of natural gas. YVR then sets out details regarding the application of the *UCA* to YVR’s resale of natural gas to tenants, and finally provides the justification for YVR’s present application for an exemption.

A. Background

In the following section, YVR provides background information regarding (i) YVR’s purchase of natural gas, (ii) YVR’s resale of natural gas to tenants, and (iii) YVR’s prior application to the Commission regarding natural gas resale.

YVR addresses each topic in turn.

i. YVR’s purchase and use of natural gas

YVR currently purchases the natural gas that it resells to tenants from the gas marketer Direct Energy Marketing Limited (“**Direct Energy**”), which is transported to the Airport by FortisBC Energy Inc. (“**FEI**”) under two different rate schedules, as follows:¹

1. **Rate Schedule 25:** YVR purchases natural gas from Direct Energy, which is transported to YVR’s Main Terminal at 3211 Grant McConachie Way, Richmond, British Columbia (the “**Main Terminal**”) by FEI under Rate Schedule 25. YVR uses a portion of the natural gas it receives under Rate Schedule 25 for operating hot water tanks that provide hot water for uses such as showers and washrooms, and resells a portion of the natural gas to tenants, as described in greater detail below.
2. **Rate Schedule 23:** YVR purchases natural gas from Direct Energy, which is transported to YVR’s South Terminal Building at 4440 Cowley Crescent, Richmond, British Columbia (the “**South Terminal**”) by FEI under Rate Schedule 23. Similarly to the Main Terminal, YVR uses a portion of the natural gas it receives under Rate Schedule 23 for operating hot water tanks that provide hot water for uses such as showers and washrooms, and resells a portion of the natural gas to a tenant, as described in further detail below.

¹ The present application does not discuss YVR’s purchase and use of natural gas that is not involved in resale.



ii. YVR's resale of natural gas to tenants

YVR currently resells natural gas that it receives under Rate Schedule 25 to 11 tenants in the Main Terminal, and resells natural gas that it receives under Rate Schedule 23 to one tenant in the South Terminal. YVR owns the distribution pipes that carry the natural gas to these tenants.

The tenants to which YVR resells natural gas include tenants with lease terms of more than five years. YVR understands that the tenants use the natural gas purchased from YVR for food preparation (i.e. to operate natural gas kitchen appliances). To the best of YVR's knowledge, YVR's tenants do not resell the natural gas provided by YVR.

YVR separately meters each tenant that YVR charges for natural gas, and bills each such tenant for the natural gas it consumes on a quarterly basis. In order to determine the price that YVR charges its tenants for the supply of natural gas, YVR calculates its average cost of natural gas for the quarter, based on the invoices received from FEI for service under Rate Schedule 25 and from Direct Energy for the purchase of natural gas, and adds a 15% surcharge.

Further, it is a term of YVR's lease with each tenant to which YVR resells natural gas that the amount YVR charges the tenant for natural gas will be no more than the amount the tenant would pay if the tenant's premises were a separate, free standing building and the natural gas were supplied directly to the tenant and the tenant's consumption thereof were separately metered.

iii. YVR's prior application to the Commission regarding natural gas resale

YVR applied to the Commission, on July 26, 2000, for authorization to resell a portion of its natural gas supply to its tenants (the "**2000 Application**"), at a rate based on YVR's average cost of natural gas per GJ with a 15% surcharge "for the purpose of recovering the cost of system capital and maintenance, as well as billing and administration".²

The Commission subsequently wrote a letter to BC Gas (the predecessor of FEI) on August 10, 2000, asking "whether BC Gas is prepared to provide [YVR] with written authorization and/or an amendment to Rate Schedule 5 to permit the resale of gas".³ YVR understands that BC Gas provided that consent.⁴

Although YVR has been unable to find any final correspondence from the Commission with respect to the 2000 Application, YVR can confirm that it has always believed it has had all of the necessary authorizations to resell natural gas to its tenants.

² [BCUC Letter No. L-40-00](#), pdf pp. 3-4.

³ [BCUC Letter No. L-40-00](#), pdf p. 1.

⁴ FEI has identified a "previous authorization for the Vancouver Airport Authority, one of the partners of Templeton LP, to resell gas at the Vancouver International Airport", and stated that "the Vancouver Airport Authority was previously authorized by FortisBC to resell gas at Vancouver International Airport". See Templeton Exemption for the Resale of Natural Gas, [Exhibit B-1](#), pdf pp. 14-15.



B. Application of the UCA

Section 1 of the *UCA* defines a “public utility”, in part, as “a person, or the person's lessee... who owns or operates in British Columbia, equipment or facilities for (a) the production, generation, storage, transmission, sale, delivery or provision of... natural gas... to or for the public or a corporation for compensation...” The definition also establishes a number of exclusions in paragraphs (c)-(g).

In particular, paragraph (d) of the definition provides that a person is not a public utility as long as that person is “not otherwise a public utility”, the person “provides the service or commodity only to the person or the person's employees or tenants”, and “the service or commodity is not resold to or used by others”. However, the definition of “tenant” in section 1 of the *UCA* excludes “a lessee for a term of more than 5 years”. Since YVR resells natural gas to tenants with leases for terms of more than 5 years, it is captured by the definition of “public utility”.

The circumstances of YVR's resale of natural gas are similar to the criteria established by the Commission in Order G-177-18 for a class exemption for certain resellers of electricity. YVR accordingly merits a similar exemption with respect to the resale of natural gas.

C. Application for Exemption

The Commission has previously described the test for granting an exemption under section 88(3) of the *UCA* as follows:

The Commission is of the view that a section 88(3) exemption order should be issued, with the advance approval of the [Lieutenant Governor in Council], when such exemption serves the objects and purposes of the [UCA] and it is in the public interest to do so.⁵

YVR submits that, based on the application of this test, the Commission should forebear from regulation in this case. As described below, the Commission has previously determined that sufficient protections exist, without Commission regulation, for tenants such as those to which YVR resells natural gas. The regulatory burden associated with Commission oversight of YVR's natural gas resale activities is accordingly unnecessary.

More specifically, in Order G-177-18, the Commission established a class exemption pursuant to section 88(3) of the *Utilities Commission Act* for certain resellers of electricity who satisfied the following criteria:⁶

- a) a lessor provides electricity purchased from British Columbia Hydro and Power Authority (BC Hydro) to a lessee at a cost that does not exceed what BC Hydro would have charged for the electricity had the lessee been a customer of BC Hydro;

⁵ [BCUC Order G-41-06](#), Appendix A, pdf p. 10. See also Ridley Terminal Exemption Application, [Exhibit A-5](#), in which the Commission Secretary confirmed his view (in a letter dated October 11, 2019) that BCUC Order G-41-06 sets out the test for granting a section 88(3) exemption order.

⁶ [BCUC Order G-177-18](#), Directive 2.



- b) the term of the lease arrangement between the lessor and lessee is greater than five years;
- c) the lessor is not otherwise a public utility;
- d) the electricity provided by the lessor is not resold by the lessee;
- e) both the lessor and lessee comply with any applicable provisions of the BC Hydro Electric Tariff and Terms and Conditions, as amended from time to time;
- f) the lessor registers as an exempt public utility by submitting a letter to the BCUC indicating the lessor's name, physical location of the lessor's operations and the approximate number of tenants of the lessor; and
- g) the lessor and lessee meet all other requirements of the UCA.

The Commission further noted, in its report to the Minister of Energy and Mines seeking approval for Order G-177-18, that “the proposed draft exemption provides relief from regulatory burden with sufficient provisions to adequately protect tenants”.⁷

YVR submits that YVR satisfies analogous criteria with respect to the resale of natural gas in the case at hand, as follows:

(a) YVR provides natural gas to its tenants at a cost that does not exceed what the tenants would have been charged for the natural gas had the tenants purchased it directly;

As noted above, it is a term of YVR's lease with each tenant to which YVR resells natural gas that the amount YVR charges the tenant for natural gas will be no more than the amount the tenant would pay if the tenant's premises were a separate, free standing building and the natural gas were supplied directly to the tenant and the tenant's consumption thereof were separately metered.

b) the term of the lease arrangements between YVR and its tenants is greater than five years;

YVR resells natural gas to its tenants, including tenants with lease terms of more than five years.

c) YVR is not otherwise a public utility;

YVR confirms it is not otherwise a public utility.

d) the natural gas provided by YVR is not resold by its tenants;

As noted above, to the best of YVR's knowledge, YVR's tenants use and do not resell the natural gas provided by YVR.

⁷ Class Exemption for BC Hydro Customers under Certain Lease Arrangements, [Exhibit A-6](#), pdf p. 5.



e) both YVR and its tenants comply with any applicable provisions of the Rate Schedules under which YVR receives natural gas from FEI;

YVR confirms that, to the best of its knowledge, both it and its tenants comply with any applicable provisions of the Rate Schedules under which YVR receives natural gas from FEI. In particular, FEI has previously authorized YVR to resell natural gas at the Airport.⁸

f) YVR is applying for an exemption under section 88(3) of the UCA, and has included its name, the physical location of its operations and the approximate number of tenants to which it resells natural gas; and

YVR's present application includes its name, the physical locations where it resells natural gas to tenants, and the number of tenants to which YVR resells natural gas (12).

g) YVR and its tenants meet all other requirements of the UCA.

YVR confirms that, to the best of its knowledge, it and the tenants to which it resells natural gas meet all other requirements of the UCA.

YVR accordingly requests that the Commission issue an exemption under section 88(3) of the UCA from the application of section 71 and Part 3 of the UCA, except for sections 25, 38, 41 and 42, to YVR in relation to YVR's resale of natural gas at the Airport.

⁸ See footnote 4, above.