



June 11, 2021

Sent By E-mail

British Columbia Utilities Commission
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Attention: Patrick Wruck, Commission Secretary

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Your reference
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Dear Mr. Wruck:

Vancouver Airport Authority ("YVR") - Amendment to the 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. Further to BCUC Order G-85-21, please find enclosed YVR's amended 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,

A handwritten signature in black ink, appearing to read "M. Keen".

for: Matthew D. Keen*
Partner

MDK/roe

Enclosure

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Amended 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

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A. Introduction

YVR is a not-for-profit organization that manages the Vancouver International Airport (the “**Airport**”), as noted in YVR’s original Application in this proceeding (the “**Original Application**”).¹ Pursuant to BCUC Order G-85-21² and section 88(3) of the *UCA*, YVR submits this amended application for an exemption from the application of section 71 and Part 3 of the *UCA*, except for sections 24, 25, 38, 39, 41 and 42, in relation to YVR’s resale of natural gas at the Airport (the “**Amended Application**”).

Recently, as part of YVR’s 2021 Strategic Plan,³ YVR accelerated its goal of achieving net zero carbon emissions by 2030. In light of this, YVR requested a three-month suspension of the regulatory timetable in this proceeding to allow YVR to consider the implications of providing low carbon fuels to its tenants, and how this may impact the way YVR resells natural gas. The Commission granted YVR’s request, and directed YVR to submit any necessary amendments to its Original Application by no later than Friday, June 11, 2021.⁴

YVR now plans to transition all of the natural gas it purchases to Renewable Natural Gas (“**RNG**”)⁵ by 2030 in order to meet its emissions target. To balance YVR’s climate goals with its current contractual obligations to its tenants, and to ensure that YVR’s tenants have the time they need to plan their own adoption of a smaller carbon footprint, YVR does not intend to charge current tenants for the additional costs of RNG for the duration of their current lease terms, but will require new tenants and tenants who renew their leases and continue to purchase natural gas from YVR to pay for the price of RNG under their new leases or lease renewals. YVR also proposes to implement a new billing structure for natural gas resale that ensures equal treatment of its tenants and better implements YVR’s lease obligations. YVR has notified its tenants of these changes and invited tenants to provide any feedback. To date, no tenants have raised any concerns.

As YVR explains below, YVR resells natural gas to a small number of tenants, and the mechanisms that YVR proposes do not prejudice its tenants. Furthermore, sufficient protections for YVR’s tenants exist, without Commission regulation. The regulatory burden associated with Commission oversight of YVR’s natural gas resale activities is accordingly unnecessary. On this basis, YVR submits that an exemption similar to the class exemption established in Order G-177-18 is in the public interest, and should be granted.

The sections that follow provide additional background information, details on changes that YVR plans to make to the way it resells natural gas to tenants and the justification for YVR’s present application for an exemption.

¹ Exhibit B-1.

² Exhibit A-5.

³ Available here: <https://www.yvr.ca/en/about-yvr/2021-strategic-plan>. See also Exhibit B-4.

⁴ Exhibit A-5; BCUC Order G-85-21.

⁵ RNG, also referred to as “Biomethane”, is natural gas made from organic waste produced by every day activities. See the FortisBC Energy Inc. (“**FEI**”) website, here: <https://www.fortisbc.com/services/sustainable-energy-options/renewable-natural-gas#>. See also the definitions of “Biogas” and “Biomethane” in FEI’s [General Terms and Conditions](#).



B. Background

In the following section, YVR provides additional background information about: (i) YVR's historical and current treatment of the resale of natural gas to tenants, and (ii) additional information about YVR's natural gas resale activities that respond to elements of the Commission's information requests ("IRs") on the Original Application, and recent steps YVR has taken.

YVR addresses each topic in turn below.

i. YVR's historical and current treatment of the resale of natural gas to tenants

a. Rate schedules under which YVR resells natural gas

YVR currently purchases the majority of 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 FEI under two different rate schedules, as follows:⁶

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 twelve 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 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 one tenant, as described in further detail below.

YVR also resells natural gas that it purchases from FEI under **Rate Schedule 3** to one tenant in the Main Terminal.⁷

YVR owns the distribution pipes that carry the natural gas to these tenants.

b. YVR's resale of natural gas to tenants

The tenants to which YVR resells natural gas include tenants with lease terms of more than five years. As a result, and as further described in Section D, YVR is captured by the definition of "public utility" and is therefore seeking an exemption pursuant to BCUC Order G-85-21 and section 88(3) of the *UCA*.

⁶ The present application does not discuss YVR's purchase and use of natural gas that is not involved in resale.

⁷ This is a correction from the Original Application, which earlier identified Rate Schedule 25 rather than Rate Schedule 3.



YVR understands that the tenants use the natural gas purchased from YVR for food preparation (i.e., to operate natural gas kitchen appliances), and 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. Prior to April 1, 2021, when YVR's interim natural gas rates came into effect,⁸ in order to determine the price that YVR charged its tenants for the supply of natural gas, YVR calculated its average unit cost of natural gas for the quarter using the invoices received from FEI (Rate Schedule 25) and Direct Energy (for the purchase of natural gas), and added a 15% surcharge. Since April 1, 2021, YVR charges its tenants the interim rates established by the BCUC pursuant to Order No. G-99-21. The permanent rates that YVR intends to charge tenants going forward are described further in Section C.ii, below.

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 was separately metered.

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

As described in its Original Application, 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."⁹

The Commission subsequently wrote a letter to BC Gas (a 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".¹⁰ YVR understands that BC Gas provided that consent, based on correspondence from FEI on the record of a prior BCUC proceeding.¹¹

Earlier this year, as part of this proceeding, YVR sought formal documentation from FEI respecting FEI's consent to YVR's resale of natural gas to tenants, and FEI informed YVR that FEI was unable to find any documentation in its files regarding any prior authorization, beyond the publicly available documents referenced in footnotes 9 to 11, above.

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

⁸ Exhibit B-5; BCUC Order No. G-99-21.

⁹ [BCUC Letter No. L-40-00](#), pdf pp. 3-4.

¹⁰ [BCUC Letter No. L-40-00](#), pdf p. 1.

¹¹ 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.



ii. Rectifying past natural gas resale billing errors

In the course of preparing its responses to the Commission's IRs on the Original Application and the current Amended Application, YVR has identified several instances of historic overbilling relative to the "ceiling" imposed by its lease terms, as well as some underbilling. YVR has taken steps to address these administrative errors, described below. YVR has notified affected tenants of the steps taken to rectify billing errors, and no tenants have raised any concerns.

a. YVR has refunded any tenants who were overcharged

YVR identified that in some past instances, it had charged tenants more for natural gas than those tenants would have been charged by FEI under Rate Schedule 2, which is contrary to the terms of YVR's lease with each tenant. The majority of the overcharging stemmed from a sudden and unexpected spike in natural gas rates that YVR experienced after Enbridge's natural gas pipeline near Prince George, B.C. exploded on October 9, 2018 and caused province-wide natural gas shortages and market distortions. YVR has now re-calculated the total amount that tenants would have been charged for natural gas under FEI's Rate Schedule 2, for the period from January 2016 to the present, and YVR has credited each affected tenant for any overcharging from January 2016 to the present.

b. YVR is billing additional tenants for natural gas use

YVR also discovered that seven tenants in its Main Terminal have not been charged for natural gas due to either not having a gas meter in their unit, or issues with their gas meter's connection to YVR's billing system. One additional tenant was not charged due to an administrative oversight. YVR has notified all eight tenants that it will begin charging them by the end of September 2021. YVR will not back-charge these eight tenants. No tenants have raised any concerns with YVR's plans.

Those tenants that have been charged for natural gas have not been impacted by the fact that YVR has not been charging other tenants for natural gas because YVR has borne the natural gas costs associated with the tenants that are currently not being charged. In other words, the tenants that have been charged for natural gas have not been subsidizing the tenants who have not been charged. YVR has simply not recovered a portion of its own natural gas costs from its tenants.

c. YVR's Planned Changes to its Resale of Natural Gas

i. Status of YVR's planned transition to RNG

YVR expects to be on FEI's RNG waitlist¹² soon and begin purchasing RNG after 2023, gradually increasing the percentage of RNG in its natural gas supply until it achieves 100% RNG by 2030.

¹² Currently, demand for RNG exceeds FEI's available supply, and any FEI customers who wish to apply for RNG must place themselves on a waitlist. See, for example, FEI's webpage here: <https://www.fortisbc.com/services/sustainable-energy-options/renewable-natural-gas/interested-in-signing-up-for-renewable-natural-gas>



ii. **YVR's planned changes to how it charges tenants for natural gas**

As part of YVR's planned transition to RNG, YVR plans to change the way its tenants are charged for natural gas.

Consistent with YVR's current contractual obligations to its tenants further to their respective leases,¹³ YVR does not plan to pass the additional costs associated with RNG on to its tenants until each tenant's respective lease term has expired. For each tenant that is purchasing natural gas from YVR, once the tenant's lease has expired, YVR will require as a condition of lease renewal that the tenant agree that any kitchen operated by that tenant will be low-carbon. A tenant may accomplish this by either installing an electric kitchen or by paying for the price of RNG. Each new tenant will also be required to agree to this as a condition of its lease.

This approach balances YVR's goal of achieving net zero carbon emissions by 2030 with existing tenant obligations, and provides tenants time to reduce the carbon footprint of their operations.

In order to implement this plan, YVR intends to do the following:

1. **Prior to YVR beginning to purchase RNG**, YVR will continue to charge all tenants a natural gas rate equal to FEI's Rate Schedule 2, consistent with YVR's current interim rates.¹⁴
2. **After YVR begins purchasing RNG**, YVR will:
 - a. continue to charge its existing tenants whose lease terms have not yet expired a natural gas rate equal to FEI's Rate Schedule 2; and
 - b. charge new tenants and existing tenants whose leases have been renewed a natural gas rate equal to FEI's Rate Schedule 2B (Small Commercial Biomethane Service).

YVR has selected FEI Rate Schedule 2 because it assumes that, if conventional natural gas were to be supplied directly to a tenant, it would be supplied by FEI under this rate schedule, because all of the tenants to which YVR resells natural gas are small commercial customers with an annual consumption at their respective premises of less than 2,000 GJ per year. Similarly, YVR assumes that, if RNG were to be supplied directly to a tenant, it would be supplied by FEI under FEI's Rate Schedule 2B.

For those tenants which YVR is charging a rate equal to FEI's Rate Schedule 2B, YVR will calculate the percentage of the tenant's consumption that is RNG¹⁵ on the basis of the percentage of YVR's natural gas consumption that is RNG, for the natural gas that is being resold to that tenant. For example, if a tenant is receiving gas that YVR is purchasing from FEI under Rate Schedule 5B, and YVR is deemed to be using

¹³ 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.

¹⁴ Exhibit B-5; BCUC Order No. G-99-21.

¹⁵ See FEI's [Rate Schedule 2B](#), Table of Charges, Notes 1-3.



10% RNG under Rate Schedule 5B,¹⁶ then YVR will calculate its charges to the tenant on the basis that the tenant is using 10% RNG under Rate Schedule 2B.

If FEI changes the rates charged under Rate Schedule 2 or 2B, YVR plans to adjust the rates it charges its tenants within 10 business days, to reflect any FEI rate changes.

Given the small number of tenants to which YVR resells natural gas,¹⁷ YVR submits that the foregoing will be an administratively simple way to both (a) ensure that YVR's tenants are charged no more than they would be by FEI directly (avoiding any prejudice to the tenants) and (b) ensure that YVR complies with its contractual obligations under its lease with each tenant.

D. Application of the UCA

As described in the Original Application, because YVR resells natural gas to tenants with leases for terms of more than 5 years, it is captured by the definition of "public utility".¹⁸

YVR submits that its proposed method of natural gas resale described in Section C.ii above will allow it to meet criteria analogous to the criteria established by the Commission in Order G-177-18 for a class exemption for certain resellers of electricity. YVR accordingly seeks a similar exemption with respect to the resale of natural gas, and submits that the exemption would serve the objects and purposes of the UCA and is in the public interest.

E. 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.*¹⁹

YVR submits that, based on the application of this test, the Commission should forebear from regulation in this case. 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.

¹⁶ See FEI's [Rate Schedule 5B](#), Table of Charges, Notes 2-4.

¹⁷ Even with the addition of the eight tenants which YVR was not previously charging, YVR will still only be charging 22 tenants for natural gas.

¹⁸ Exhibit B-1, p. 3.

¹⁹ [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.



The exemption that YVR now seeks is similar to the class exemption that the Commission established in Order G-177-18 for YVR's resale of electricity it purchases from BC Hydro to YVR's tenants, including tenants with lease terms of more than five years.

In Order G-177-18, the Commission established a class exemption pursuant to section 88(3) of the *UCA* for certain resellers of electricity who satisfied the following criteria:²⁰

- 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;
- 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".²¹

YVR satisfies analogous criteria for the resale of natural gas in the case at hand, as described below.

- (a) YVR will provide 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;**

It is currently 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. By charging its tenants a rate equal to FEI's Rate Schedule 2 prior to each tenant's lease expiry, YVR will ensure that its tenants are not charged more than they would have been charged by FEI directly.²²

²⁰ [BCUC Order G-177-18](#), Directive 2.

²¹ Class Exemption for BC Hydro Customers under Certain Lease Arrangements, [Exhibit A-6](#), pdf p. 5.

²² See section C.ii above.



For any new tenants and existing tenants whose leases have been renewed that intend to purchase natural gas from YVR, YVR will require that the tenant agree to paying for the price of RNG. By charging these tenants a rate equal to FEI's Rate Schedule 2B, YVR will ensure that they pay no more than they would have been charged by FEI directly for RNG.

- (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 the natural gas provided for their own operations and do not resell the natural gas provided by YVR.

- (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.²³

- (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 (i.e., 14, to be increased to 22).

- (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.

F. Requested Exemption

YVR meets criteria analogous to those set by the Commission in BCUC Order G-177-18.

In Order G-177-18, the Commission exempted qualifying resellers of electricity from section 71 and Part 3 of the UCA except for sections 25, 38, 41 and 42. However, given YVR's proposed changes to its natural gas resale activities in order to implement YVR's climate initiatives, and the staged implementation of these

²³ See footnote 11, above.



changes described in Section C.ii above, YVR acknowledges that the Commission may wish to retain the jurisdiction to make the examinations and conduct the inquiries it considers necessary to keep itself informed about YVR's natural gas resale activities.

Similarly, YVR accepts that it should be required to provide natural gas service on a non-discriminatory basis to all tenants who are willing to agree to pay for RNG moving forward in accordance with the proposal set forth in this Amended Application. YVR is therefore willing to remain subject to sections 24 and 39 of the *UCA*, in addition to the exceptions set out in Order G-177-18.

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 24, 25, 38, 39, 41 and 42, to YVR in relation to YVR's resale of natural gas at the Airport.