



**ORDER NUMBER
E-3-16**

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

and

An Application by FortisBC Energy Inc.
For Acceptance of the Biomethane Purchase Agreement Between
FortisBC Energy Inc. and the City of Surrey and Approval of the Monthly Facility Fee

BEFORE:

R. D. Revel, Panel Chair/Commissioner

on February 29, 2016

ORDER

WHEREAS:

- A. On November 24, 2015, FortisBC Energy Inc. (FEI) filed with the British Columbia Utilities Commission (Commission) an application under section 71 of the *Utilities Commission Act* (UCA) for acceptance of an executed Biomethane Purchase Agreement between FEI and the City of Surrey dated September 16, 2015 (Agreement) and also under sections 59 to 61 of the UCA for approval of a Monthly Facilities Fee as set forth in Schedule D of the Agreement (Application);
- B. Previously, by Order G-194-10 and its decision dated December 14, 2010, the Commission approved the FEI (formerly known as Terasen Gas Inc.) 2010 Biomethane Application. Also, by Order G-210-13 and its decision dated December 11, 2013 (2013 Biomethane Decision), the Commission approved the continuance of the Biomethane Program on a permanent basis with certain modifications as directed in the 2013 Biomethane Decision;
- C. In the Application, FEI further requests the Agreement, the financial model and purchase scenario illustrations appended to the Application as Appendices A, B and C respectively, be held confidential due to their commercially sensitive nature;
- D. FEI did not object to customer group interveners and environmental interveners, who are not competitors of FEI or potentially negotiating with FEI for biomethane supply projects, being provided with these confidential appendices upon executing standard form undertakings of confidentiality;
- E. The Commission issued Order G-186-15 dated December 2, 2015 and Order G-3-16 dated January 14, 2016, establishing the Regulatory Timetable for the review of the Application. Directive 5 of Order G-186-15 granted FEI's request that the Agreement, the financial model and purchase scenario illustrations appended to the Application as Appendices A, B and C respectively, be kept confidential due to their commercially sensitive nature;

- G. The Commercial Energy Consumers Association of British Columbia (CEC), City of Surrey, the British Columbia Old Age Pensioners' Organization *et al.*, and the BC Sustainable Energy Association and the Sierra Club of BC participated as registered interveners in the proceeding;
- H. On January 19, 2016, FEI filed with the Commission, on a non-confidential basis, an Amending Agreement with the City of Surrey dated January 19, 2016 which contains three changes to the Agreement, as set out in FEI's covering letter to its Information Request (IR) Response No. 1. FEI also included as Attachment 2.1.4 to BCUC IR No. 1, a non-confidential version of the Agreement with information related to the Net-Sale Rate redacted;
- I. In its final argument dated January 26, 2016, FEI requests the following documents be kept confidential in the proceeding as they contain information that is commercially sensitive in nature:
- (a) Non-redacted version of the Agreement filed as Appendix A of Exhibit B-1-1;
 - (b) Live working spreadsheet financial schedule filed as Appendix B of Exhibit B-1-1 as it is propriety and commercially sensitive to FEI;
 - (c) Purchase scenarios filed as Appendix C of Exhibit B-1-1;
 - (d) Non-redacted version of the Amendment filed as Exhibit B-4-1, together with the confidential response to information requests disclosing the Net-Sale Rate in the Agreement;
- J. On February 2, 2016, interveners filed their final arguments. On February 4, 2016, CEC filed an errata to its final argument as it has identified an omission in a paragraph. FEI filed its reply argument dated February 5, 2016;
- K. In their final arguments, no interveners opposed the acceptance of the Agreement as amended by the Amending Agreement or the approval of the Monthly Facilities Fee; and
- L. The Commission reviewed the evidentiary record and submissions and considers that the Agreement as amended by the Amending Agreement is in the public interest and the Monthly Facilities Fee is just and reasonable.

NOW THEREFORE the British Columbia Utilities Commission, as set out in the reasons for decision attached as Appendix A, orders as follows:

1. The Biomethane Purchase Agreement between FortisBC Energy Inc. and the City of Surrey dated September 16, 2015, as amended by the Amending Agreement dated January 19, 2016 (together the Amended Agreement), is accepted as being in the public interest under section 71 of the *Utilities Commission Act*.
2. The Monthly Facilities Fee in the Amended Agreement is approved under sections 59 to 61 of the *Utilities Commission Act*. FortisBC Energy Inc. is directed to file the final Monthly Facilities Fee amount, and details of the calculation of such, within 30 days when the actual initial capital costs and project development costs are known. If the actual costs are not available for filing on or before December 31, 2016, FEI is directed to file a status update on the final Monthly Facilities Fee.
3. Directive 5 of Order G-186-15, which granted FEI's confidentiality request on Appendices A, B and C of the Application (Exhibit B-1 and Exhibit B-1-1), is replaced due to the changes in the evidentiary record. As requested by FortisBC Energy Inc., the following documents are confirmed to be kept confidential due to their commercially sensitive nature:

- (a) Non-redacted version of the Agreement filed as Appendix A of Exhibit B-1-1;
- (b) Live working spreadsheet financial schedule filed as Appendix B of Exhibit B-1-1 as it is propriety and commercially sensitive to FEI;
- (c) Purchase scenarios filed as Appendix C of Exhibit B-1-1;
- (d) Non-redacted version of the Amendment, together with the confidential response to information requests disclosing the Net-Sale Rate in the Agreement.

DATED at the City of Vancouver, in the Province of British Columbia, this 29th day of February 2016.

BY ORDER

Original Signed By:

R. D. Revel
Panel Chair/Commissioner

Attachment

An Application by FortisBC Energy Inc.
For Acceptance of the Biomethane Purchase Agreement Between
FortisBC Energy Inc. and the City of Surrey and Approval of the Monthly Facility Fee

REASONS FOR DECISION

1.0 INTRODUCTION

On November 24, 2015, FortisBC Energy Inc. (FEI) filed with the British Columbia Utilities Commission (Commission, BCUC) an application under section 71 of the *Utilities Commission Act (UCA)* for acceptance of an executed Biomethane Purchase Agreement between FEI and the City of Surrey (Surrey) dated September 16, 2015 (Agreement) and also under sections 59 to 61 of the UCA for approval of a Monthly Facilities Fee as set forth in Schedule D of the Agreement (Application).

Additionally, FEI also seeks the Commission to keep confidential the non-redacted version of the Agreement filed as Appendix A of Exhibit B-1-1, the live working spreadsheet financial schedules filed as Appendix B of Exhibit B-1-1, the Purchase Scenarios filed as Appendix C of Exhibit B-1-1 and the non-redacted version of the Amendment filed as Exhibit B-4-1, together with the confidential response to information requests disclosing the Net-Sale Rate in the Agreement.

The Application was heard by way of a written hearing consisting of two rounds of information requests followed by final arguments and reply. The BC Sustainable Energy Association and the Sierra Club of BC (BCSEA-SCBC), the British Columbia Old Age Pensioners' Organization *et al.* (BCOAPO), the Commercial Energy Consumers Association of BC (CEC) and the City of Surrey registered as interveners.

As a result of certain information requests in BCUC Information Request (IR) No. 1, FEI filed an Amending Agreement dated January 19, 2016 which led to a second round of information requests focused on the amendments to the Agreement.

1.1 2013 Biomethane Decision

The biomethane supply contract criteria are set out in the Biomethane Service Offering: Post Implementation Report and Application for Approval of the Continuation and Modification of the Biomethane Program on a Permanent Basis Decision dated December 11, 2013 (2013 Biomethane Decision).

In the 2013 Biomethane Decision, the Commission acknowledged that, with the exception of the proposed supply contract volume cap, FEI's proposed criteria are a reasonable starting point for the minimum requirements in a review process but the Commission must also take into account other factors where necessary. The 2013 Biomethane Decision panel observed that it retains discretion to depart from the criteria noted below and can require further process to address the public interest on a case-by-case basis.¹ The total contracted maximum amount must not exceed 2 petajoules (PJ) with the expectation that this will result in a maximum annual supply of 1.5 PJ.²

¹ FortisBC Energy Inc. Biomethane Service Offering: Post Implementation Report and Application of the Continuation and Modification of the Biomethane Program on a Permanent Basis (FEI 2013 Biomethane Decision), Decision dated December 11, 2013, p. 105.

² FEI 2013 Biomethane Decision, pp. 84–85.

In the Application, FEI lists the criteria for the review of a biomethane supply contract as follows:

- The supply contract is at least 10 years in length;
- FEI has, by agreement, retained final control over injection location;
- FEI is satisfied that the selected upgrader is sufficiently proven;
- FEI has, by agreement, reserved the right to refuse gas if customer safety or asset integrity is at stake;
- The partner is a municipality, regional district or other public authority, or is a private party with a track record in dealings with FEI or that posts security to reduce the risk of stranding;
- The total production of biomethane for all projects undertaken does not exceed an annual purchase of 1.5 PJ; and
- The price for delivered biomethane is below \$15.28 per GJ.³

FEI was also directed to fully describe, in each application for section 71 acceptance, any departures from the applicable contract template.

1.2 BERC rate

In the 2013 Biomethane Decision, the Commission also established the way in which the Biomethane Energy Recovery Charge (BERC) will be reset. The BERC is a cost based rate calculated based on the balance in the Biomethane Variance Account (BVA) along with expected sales and purchases over the forecast period. The BERC was last changed and set at \$14.414 per gigajoule (GJ), effective January 1, 2015 as approved by Order G-177-14, and applicable to Rate Schedules 1B, 2B, 3B, 5B and 11B within the Mainland Service Area.

On August 28, 2015, FEI filed an application for Approval of Biomethane Energy Recovery Charge Rate Methodology seeking approval of a non cost-based BERC rate methodology, among other matters (BERC Rate Methodology Application). The review of the BERC Rate Methodology Application is currently ongoing.

2.0 APPLICATION

2.1 Project description

The City of Surrey will own a biofuel processing facility (Surrey Facility), which will be used to generate, capture, purify and upgrade biogas to pipeline quality biomethane and deliver the biomethane to FEI's facilities. The Surrey Facility is an organic waste processing facility and the organic feedstock will be processed at the Surrey Facility through a combination of anaerobic digestion and in-vessel composting and will produce biogas and compost products. The raw biogas will be captured and upgraded onsite prior to delivery to FEI's interconnection facilities and injection into FEI's natural gas system. The City of Surrey selected Orgaworld Canada to be responsible for designing, constructing, financing, operating and maintaining the Surrey Facility over a 25-year term. Construction of the Surrey Facility commenced in April 2015 and is scheduled for completion in late 2016 with initial operation expected in early 2017.⁴

³ Exhibit B-1, pp. 13-14.

⁴ Exhibit B-1, p. 4.

Once fully operational, the Surrey Facility is anticipating an average annual biomethane production of approximately 119,000 GJ. The upper limit of the Surrey Facility at its optimum capacity is an annual production of 160,000 GJ of biomethane.⁵

FEI will construct, own and operate facilities on Surrey's land (Interconnection Station) including equipment that serves the following basic functions: gas composition analysis; biomethane flow measurement; pressure regulation; safety shutoff and return to customer flow; odorizing; communications; and automatic control. FEI will also install, own and operate approximately 30 metres of 114mm PE interconnection pipe, which will connect the FEI Interconnection Station to an existing FEI distribution main.⁶ Together, these FEI facilities are defined as the Interconnection Facilities in these reasons for decision.

The City of Surrey intends to re-purchase notional renewable natural gas (RNG) that the Surrey Facility produces and delivers to FEI. To facilitate Surrey's plan, FEI and Surrey have negotiated an agreement to enable the City of Surrey or its affiliates or service providers (Designated Customers) to re-purchase RNG from FEI.⁷

2.2 Agreement summary

The Agreement is a 25-year agreement that allows Surrey to sell biomethane to FEI and enables FEI to recover all costs of the Interconnection Facilities.⁸ FEI will purchase up to a maximum of 160,000 GJ per year of biomethane.⁹ It is expected that the City of Surrey and its Designated Customers will purchase in the order of 100,000 GJ of RNG annually from FEI. However, the actual amount is at the discretion of the City of Surrey and the Designated Customers.¹⁰

As a supplier, Surrey will retain the environmental attributes associated with the destruction of methane for all organic waste processed by the Surrey Facility. Surrey will transfer to FEI the environmental attributes related to the displacement of conventional natural gas for all of the biomethane Surrey produces and delivers to FEI. Surrey and its Designated Customers will receive these environmental attributes when they re-purchase biomethane from FEI pursuant to FEI's approved biomethane rate schedules. Further, Surrey and its Designated Customers have arrangements so that Surrey has the right to claim the environmental attributes associated with the gas re-purchased by the Designated Customers. The arrangements between Surrey and its Designated Customers are private contractual matters and do not impact FEI's biomethane program.¹¹

FEI will pay the Net-Sale Rate for the biomethane purchased throughout the year, subject to the annual true-up mechanism set out in Schedule D of the Agreement. Through the annual true-up mechanism, for biomethane supplied from the Surrey Facility up to the amount of biomethane that the City of Surrey and its Designated Customers re-purchase, FEI will pay Surrey the same price as Surrey pays for its biomethane. In this way, Surrey will, in effect, realize its vision for supply of its compressed natural gas-waste collection fleet from the biomethane produced by the Surrey Facility. For all biomethane produced by the Surrey Facility in excess of the amount re-purchased by Surrey and its Designated Customers, FEI will pay the Net-Sale Rate.¹²

⁵ Exhibit B-1, p. 5.

⁶ Exhibit B-1, pp. 5-6.

⁷ Exhibit B-1, p. 10.

⁸ Exhibit B-1, p. 8.

⁹ Exhibit B-1, p. 15.

¹⁰ Exhibit B-7, CEC IR 6.2.

¹¹ Exhibit B-9, BCUC IR 10.1.

¹² FEI Final Argument, p. 2; Exhibit B-3, BCUC IR 4.1.

As a part of the Agreement, the City of Surrey has also agreed that it will pay FEI a Monthly Facilities Fee, expected to be in the range of \$10,460 and \$14,030 per month, based on actual completed cost of the Interconnection Facilities. The City of Surrey pays the Monthly Facilities Fee regardless of whether or not the Surrey Facility delivers biomethane to FEI. The Monthly Facilities Fee is designed to recover the full capital and operating cost of the Interconnection Facilities and the costs associated with the development and administration of the Agreement.¹³

In its response to BCUC IR No. 1 on January 19, 2016, FEI stated that it, and the City of Surrey, had entered into an Amending Agreement to the Biomethane Purchase Agreement (Amending Agreement).¹⁴ FEI explains that the Amending Agreement provides for three changes: (i) the method in calculating the monthly payments for biomethane produced from the Surrey Facility and the annual true up; (ii) the commencement of the term over which the City of Surrey will pay the Monthly Facilities Fee; and (iii) clarification regarding the retention of environment attributes between Designated Customers and the City of Surrey.¹⁵

2.3 Acceptance of Biomethane Purchase Agreement

The Agreement and the Amending Agreement (together the Amended Agreement) are subject to review under section 71 of the UCA where all energy supply contracts must be filed with the Commission to determine whether the contract is in the public interest. In the case of a biomethane supply contract, as mentioned earlier, the 2013 Biomethane Decision sets out the criteria in which the Commission considers for section 71 acceptance. In Table 5-1 of the Application on pages 13 and 14, and restated on pages 10 and 11 of its final argument, FEI provides how the Agreement has met the biomethane supply contract criteria. Additionally, the 2013 Biomethane Decision requires that FEI explain any deviations from the standard biomethane contract template. In Table 5-2 of the Application on pages 14 and 15, and restated on pages 13 and 14 in its final argument, FEI shows how the Agreement deviates from the standard contract template.

The main features of the Amended Agreement include: (i) the 25-year contract period which meets the minimum 10-year term; (ii) the aggregate biomethane supply portfolio now including the maximum contracted quantity of 160,000 GJ supplied by the City of Surrey at a total of 589,520 GJ is below the maximum annual contracted supply amount; and (iii) the Net-Sale Rate is below the current maximum price of \$15.28 per GJ for delivered biomethane.

In addition to the biomethane supply contract criteria, the proceeding primarily focuses on the mechanism by which FEI and the City of Surrey account for FEI's purchases of Surrey's biomethane as well as how Surrey and its Designated Customers' repurchases biomethane, particularly in the relationship between the Net-Sale Rate and the BERC rate. Another area of focus is the Monthly Facilities Fee which the City of Surrey has agreed to pay FEI in place of a minimum gas volume that the City of Surrey must purchase from FEI. In these reasons for decision, the Panel will focus on these two aspects of the Amended Agreement as discussed below.

2.3.1 Purchase and re-purchase arrangement

Section 2.2 of these reasons for decision described the mechanism of how the Net-Sale Rate works. In essence, any biomethane that FEI purchases from the City of Surrey will offset the biomethane repurchased by Surrey

¹³ Exhibit B-1, p. 8.

¹⁴ Attachment 4.1a of Exhibit B-3 shows a blacklined redacted version and Confidential Attachment 4.1 of Exhibit B-3-1 shows the complete version.

¹⁵ Exhibit B-3, covering letter, pp. 1–2.

and its Designated Customers at the prevailing BERC rate. The Net-Sale Rate applies to the remaining contracted amount of biomethane supplied by Surrey that is not repurchased by Surrey or its Designated Customers.¹⁶

Through the IR process, FEI recognized that the purchase scenarios originally filed did not contemplate that the BERC rate can change more than once a year and that there is a possibility of two BERC rates as proposed in FEI's BERC Rate Methodology which is currently under review by way of another proceeding.¹⁷ Accordingly, FEI in the Amended Agreement provides a formula that works on all scenarios where the BERC rate structure allows the revenues and volumes of biomethane purchased to be clearly identifiable. The formula is set out in Schedule D of the Amended Agreement. In Exhibit B-3, BCUC IR 4.1, FEI showed six scenarios in the event that the amount of biomethane produced by the Surrey Facility is greater than the re-purchase of biomethane by Surrey and its Designated Customers, vice versa, and at equal amounts.

FEI noted that a customer-determined flat fee contribution would be problematic in the formula as there would not be a specific volume to use to calculate the annual weighted average rate for purchases by the City of Surrey and its Designated Customers.¹⁸ FEI stated that in the event a BERC rate structure is approved, that does not allow the revenues and volumes of biomethane purchased by Surrey or Designated Customers to be clearly identifiable, FEI and Surrey would have to amend the Agreement to deal with such a significant change in program structure in order to effect the intended outcomes.¹⁹

2.4 Approval of Monthly Facilities Fee

In normal circumstances, FEI would be required to conduct an Interconnection Test for all supply projects, as determined by Order G-159-14. The Interconnection Test is designed to fairly allocate interconnection costs between the biomethane supplier and FEI. Thus, it considers the cost to connect the supplier and the contractual minimum amount of biomethane supplied over the life of the contract. FEI is required to ask for a Contribution in Aid of Construction if the Interconnection Test is not met.²⁰

FEI and the City of Surrey have agreed to a Monthly Facilities Fee as a way to recover the interconnection costs.²¹ The Monthly Facilities Fee is independent of the maximum supply amount of 160,000 GJ from the Surrey Facility and of Surrey's intent and plan to repurchase biomethane.²² FEI is seeking approval to charge this fee as a rate under sections 59 to 61 of the UCA. Under sections 59 to 61 of the UCA, it states that a public utility must not make, demand, or receive an unjust, unreasonable, unduly discriminatory or unduly preferential rate. Under the Amended Agreement, the Monthly Facilities Fee is payable to FEI by the City of Surrey calculated based on a 25-year levelized cost of service.²³ FEI considers that the Monthly Facilities Fee provides fulsome protection for FEI and its customers and is just and reasonable.²⁴ If the Amended Agreement is terminated due to a default by the City of Surrey, or the City of Surrey exercises its right to early termination, Surrey will pay FEI's net costs of removing the FEI facilities and the unrecovered net book value of the Interconnection Facilities.²⁵

¹⁶ Exhibit B-3, BCUC IR 4.2.

¹⁷ Exhibit B-3, BCUC IR 4.1.

¹⁸ Exhibit B-9, BCUC IR 11.4.

¹⁹ Exhibit B-9, BCUC IR 11.5.

²⁰ Exhibit B-1, p. 16.

²¹ Exhibit B-1, p. 17.

²² Exhibit B-1, p. 15.

²³ Exhibit B-3, Attachment 4.1a, Schedule D, p. 3.

²⁴ Exhibit B-1, p. 17.

²⁵ Exhibit B-1, p. 15; Exhibit B-3, Attachment 4.1a, clause 10.2.

The table below shows the Monthly Facilities Fee based on Section 3 of Schedule D of the redacted Amended Agreement:

COST COMPONENT	DESCRIPTION AND PURPOSE	AGREED AMOUNT	ESTIMATED AMOUNT (Will be based on actuals)
Initial capital costs	Actual costs of FEI's Facilities		\$650,000 - \$829,000
Project Development Costs	Actual costs for project development (including internal and external costs) but excluding any historical program costs		\$75,000 - \$150,000
Average cost of capital	Most recent BCUC-approved after tax weighted average cost of capital for FEI	Fixed at 6.14%	
Operations and maintenance costs	Annual costs for the operation and maintenance of FEI's Facilities	\$11,000 per year, escalated annually by CPI	
Gas Supply Administration	Annual costs of contract administration	\$5,760 per year, fixed with no annual escalation	
Heritage Fees	A contribution to: (i) historical costs of FEI's original biomethane application; (ii) ongoing RNG program administration for re-purchased gas; and (iii) a rate contribution	\$14,653 per year, fixed with no annual escalation	

3.0 POSITIONS OF THE PARTIES

FEI, the City of Surrey and all interveners agree with the acceptance of the Amended Agreement and approval of the Monthly Facilities Fee although some interveners raise concerns or request that they wish the Commission to consider and confirm certain factors in making its decision.

3.1 FEI

FEI submits that the Amended Agreement satisfies the criteria for biomethane supply contracts approved by the Commission.²⁶ The deviations from the standard biomethane contract template adjusts for particular requirements of Surrey related to the repurchase of biomethane, while ensuring that FEI ratepayers are

²⁶ FEI Final Argument, p. 3.

protected through the payment of the Monthly Facilities Fees. FEI also notes that a comparison of the confidential Net-Sale Rate in the Agreement to the price for supply of biomethane from other projects is provided in BCUC Confidential IR 2.1.²⁷

With respect to the purchases and repurchases of biomethane, FEI states:

[T]here is no net financial effect (other than the Facilities Fee) if the City [of Surrey] and its Designated Affiliates purchase the same amount of biomethane that is produced by the Surrey Facility... Any biomethane produced by the Surrey Facility that is in excess of the amount purchased by the City [of Surrey] and its Designated Affiliates is purchased by FEI at the Net Sale Rate and is available for other RNG customers.²⁸

With respect to the Monthly Facilities Fee, FEI notes that the City of Surrey pays the Monthly Facilities Fee regardless of the amount of biomethane produced or purchased by the City of Surrey.²⁹ FEI states that “the Facilities Fee in the Agreement mitigates FEI’s stranded asset risk, negates the need for a minimum supply and Contribution in Aid of Construction from Surrey and appropriately covers FEI’s costs of providing service to Surrey as contemplated in the Agreement.”³⁰

3.2 City of Surrey

Both FEI and the City of Surrey maintain that the Amended Agreement should be accepted by the Commission at its earliest convenience.³¹ Surrey notes that it has negotiated with FEI for almost two years to reach the agreement, that the biogas production and upgrading facilities are presently under construction, and that the FEI Interconnection Facilities are now on a critical path for completion.³²

Surrey indicates that while it agrees with the principles and structure of the Monthly Facilities Fee, it has not had the opportunity to review FEI’s cost of service for the Monthly Facilities Fee or to verify the reasonableness of the costs as presented by FEI. Surrey is not able to verify the reasonableness of FEI’s capital costs of the interconnection and FEI’s project development/application costs.³³

3.3 BCSEA-SCBC

BCSEA-SCBC submits that the Commission should determine that the Amended Agreement is in the public interest and should be accepted for filing under section 71 of the UCA. BCSEA-SCBC also submits that the Monthly Facilities Fee in the Agreement is reasonable and appropriate. If the Commission determines that the size of the Monthly Facilities Fee is adequately supported, then in BCSEA-SCBC’s view, the Monthly Facilities Fee should be approved under sections 59 to 61 of the UCA.³⁴

With respect to the purchases and re-purchases of biomethane, BCSEA-SCBC submits that the Amended Agreement is very clear that the City of Surrey and its Designated Customers will purchase RNG for the same

²⁷ FEI Final Argument, p. 12.

²⁸ FEI Final Argument, p. 9.

²⁹ FEI Final Argument, p. 9.

³⁰ FEI Final Argument, p. 14.

³¹ Exhibit B-1, p. 2; City of Surrey Final Argument, p. 2.

³² City of Surrey Final Argument, p. 2.

³³ Exhibit C2-1, pp. 1–2; City of Surrey Final Argument, p. 4.

³⁴ BCSEA-SCBC Final Argument, p. 1.

price as other customers who purchase RNG under FEI's RNG Program. The Amended Agreement does not provide Surrey and its Designated Customers with any preferential treatment under the RNG Program.³⁵

BCSEA-SCBC is also satisfied that the Monthly Facilities Fee is appropriately designed and takes no position regarding the size of the Monthly Facilities Fee.

3.4 BCOAPO

BCOAPO takes no issue with the proposed Monthly Facilities Fee and notes that provided Surrey pays the actual capital and operations and maintenance cost of the Interconnection Facilities and the cost of administering the Agreement, BCOAPO sees no ground in which to object to FEI's capital cost estimate or to the lack of a minimum supply provision in the Agreement.³⁶

However, BCOAPO submits that it is impossible to determine whether the proposed Biomethane Purchase Agreement is in the public interest based on the public record in this proceeding as the Net-Sale Rate is not a matter of public record. BCOAPO indicates that it does not know: (i) whether the Net-Sale Rate is more or less than the existing BERC rate; (ii) how the Net-Sale Rate was determined; or (iii) how the Net-Sale Rate in the proposed Agreement compares to the purchase price paid by FEI pursuant to existing biomethane supply agreements. Accordingly, BCOAPO asks the Commission to fully consider this issue based on the confidential information filed with the Agreement.³⁷

BCOAPO also expresses the concern that the Biomethane Purchase Agreement does not appear to be in the public interest to increase biomethane supply when there is not enough demand for the existing supply.³⁸

3.5 CEC

CEC raises a number of concerns regarding the biomethane supply agreement and FEI's RNG Program and makes recommendations to the Commission to address CEC's concerns.

CEC notes that while the Monthly Facilities Fee is a reasonable means by which to address the risk of stranded assets, CEC recommends that the Commission satisfy itself that the Monthly Facilities Fee will adequately cover the interconnection and other costs that should otherwise be included in the Interconnection Test.³⁹

CEC submits that the FEI non-bypass customers may be at risk if the in-service date is delayed depending upon the termination payment that would be required from the City of Surrey. CEC recommends that the Commission satisfy itself that such termination payment is satisfactory to mitigate the stranded asset risks of the project terminating. CEC recommends that the Commission further satisfy itself that the Monthly Facilities Fee does not recover a return on equity that is in excess of that permitted by the Commission.⁴⁰

CEC is of the view that in order for the project to be beneficial to ratepayers, it is appropriate for the Net-Sale Rate to be set below the BERC rate. If there is a positive margin, in which case the Net-Sale Rate is less than the BERC rate, then non-bypass customers will benefit from oversupply to the extent it is eventually sold. CEC

³⁵ BCSEA-SCBC Final Argument, p. 4.

³⁶ BCOAPO Final Argument, p. 2.

³⁷ BCOAPO Final Argument, Paras. 11–13.

³⁸ BCOAPO Final Argument, para. 16.

³⁹ CEC Final Argument, p. 6.

⁴⁰ CEC Final Argument, p. 6.

recommends that the Commission ensure the Net-Sale Rate is established below the BERC rate, before any premium discount, less the Monthly Facilities Fee and sufficiently at a level below the BERC rate, before any premium discount, to capture an adequate contribution to the RNG Program.⁴¹

CEC is concerned that extending the purchase at the BERC rate to supply for “Designated Customers” benefits the City of Surrey and diminishes the opportunity for FEI customers to benefit. To the extent that “Designated Customers” notionally consume the City of Surrey RNG, the City of Surrey is acquiring the margin that would otherwise be attributed to other costs in the RNG Program. CEC is concerned with the precedent being established, in that other municipalities with biomethane production could also wish to sell and re-purchase at the same rate; and may establish “Designated Customer” classes that will be linked directly to their respective supply, effectively removing the available margin for the base RNG class.⁴²

3.6 FEI reply

In reply to the BCOAPO observation that the Net-Sale Rate is not a matter of the public record, FEI states that: “[the opportunity] was open to BCOAPO to access the confidential information by executing the standard form of undertakings of confidentiality. The fact that BCOAPO chose not to do so does not in any way impact the Commission’s assessment of the public interest in this case.”⁴³

With respect to the demand and supply within the RNG Program, FEI states that “BCOAPO appears to be ignoring that the Commission already determined that the Biomethane Program is in the public interest and approved a maximum supply limit. The Agreement satisfies the criteria for biomethane supply agreements, including that it is within the supply limit.”⁴⁴

FEI is of the view that CEC’s submissions regarding the Net-Sale Rate being set below the BERC rate to be beneficial to ratepayers are incorrect. FEI cites the approved maximum price for delivered biomethane at \$15.28/GJ and confirms that the Net-Sale Rate is below the maximum. FEI further submits that CEC appears to be confusing what is at issue in this proceeding versus the FEI BERC Rate Methodology Application, in which FEI is proposing a market-based BERC rate relative to the natural gas commodity rate. If the Commission determines that the BERC rate should be set below full cost of service in a separate proceeding, then it follows that there will be some costs not recovered by the payment of the BERC rate. This is not relevant to the price paid by FEI for supply of biomethane from the City of Surrey.⁴⁵

4.0 COMMISSION DISCUSSION AND DETERMINATION

The Panel has considered the evidence, arguments and reply as well as requests for consideration to the Commission by interveners. The Panel also notes the complexity of the contractual arrangement which has been exemplified by the fact that IRs during the course of the hearing have resulted in modifications of a contract that has exceeded two years in the making. Furthermore, the Panel notes that both parties to the Amended Agreement are sophisticated parties capable of ensuring their own interests.

⁴¹ CEC Final Argument Errata, p. 11.

⁴² CEC Final Argument, p. 14.

⁴³ FEI Reply, p. 3.

⁴⁴ FEI Reply, p. 3.

⁴⁵ FEI Reply, pp. 5–6.

As a general observation, the Biomethane Purchase Agreement between FEI and the City of Surrey is unique. Under section 71 of the UCA, an energy supply contract is accepted for filing if it is determined to be in the public interest. In this Amended Agreement, the City of Surrey plays dual roles of being a gas supplier to FEI and a gas customer of FEI. A Monthly Facilities Fee is embedded in the energy supply contract which requires approval under section 59 to 61 of the UCA as a rate and the test for the approval of such rate is that it must not be unjust, unreasonable, unduly discriminatory or unduly preferential.

The Panel will first address the submissions regarding the Amended Agreement, in particular the criteria to consider a biomethane supply contract and the purchase and repurchase mechanism in the Amended Agreement. Second, the Panel will address the Monthly Facilities Fee. Third, the Panel will discuss the request for confidentiality as proposed by FEI. The Panel will conclude as to whether the Amended Agreement should be accepted under section 71 of the UCA and whether the Monthly Facilities Fee should be approved under sections 59 to 61 of the UCA.

4.1 Amended Agreement

The primary concerns that BCOAPO and CEC shared were regarding the Net-Sale Rate and the overall FEI RNG Program. While the Panel understands interveners' views on the supply and demand situation of the RNG Program, the FEI BERC Rate Methodology Application is currently under review by way of a separate proceeding. The biomethane supply contract in this proceeding relates to the supply of biomethane, not the BERC rate which is more pertinent to the customer demand in the RNG Program. Therefore, the Panel must defer any decision related to the BERC rate to the FEI BERC Rate Methodology proceeding panel.

In the 2013 Biomethane Decision, the panel established the criteria to consider in accepting a biomethane supply contract for section 71 filing. The criteria established in that decision represent a minimum requirement and that the Commission must take into account other factors as necessary. The guidance in the 2013 Biomethane Decision is relevant and applicable to the Amended Agreement being reviewed in this proceeding. This Panel sees no compelling reason to depart from the 2013 Biomethane Decision as that decision was made after an extensive process. This Panel will use the criteria set out in the 2013 Biomethane Decision to determine whether or not the Amended Agreement is in the public interest.

In its submissions, FEI confirms that the Net-Sale Rate is below the supply cap rate of \$15.28 under the RNG Program as approved in the 2013 Biomethane Decision. Under the approved RNG Program, FEI is also allowed to contract up to the maximum annual contract quantity of 2 PJ. The aggregate annual supply including the City of Surrey contract is currently well below that maximum at 589,520 GJ. Subject to the approval of the Monthly Facilities Fee, the Panel is also satisfied that the Amended Agreement meets all remaining components required in a biomethane supply contract. **Therefore, the Biomethane Purchase Agreement between FEI and the City of Surrey dated September 16, 2015, as amended by the Amending Agreement dated January 19, 2016, (Amended Agreement) is accepted as being in the public interest under section 71 of the UCA.**

4.2 Monthly Facilities Fee

The Monthly Facilities Fee paid to FEI, regardless of supply volume, is designed to minimize stranded asset risk of FEI's interconnection of the Surrey Facility in the event that the City of Surrey does not flow any biomethane into the FEI system. Thus, the Panel accepts FEI's view that the Monthly Facilities Fee substitutes for the minimum supply requirement in the standard biomethane contract template.

The Panel notes that there are several components within the Monthly Facilities Fee. First, the majority of the Monthly Facilities Fee is made up of initial capital cost and project development cost, expected to be in the combined range of \$725,000 to \$979,000. Given that the final Monthly Facilities Fee will be based on the actual

cost of these two components, the Panel find this arrangement just and reasonable to the extent that the risks to FEI ratepayers are sufficiently mitigated. The remaining components of the Monthly Facilities Fee relate to the average cost of capital, operating and maintenance costs, gas supply administration fee and heritage fee. The Panel views that these are reasonable costs to recover from the City of Surrey, although the gas supply administration fee and heritage fee are new and unique to this biomethane supply arrangement. With regard to the agreed amount for the average cost of capital, the Commission finds it to be reasonable to fix the amount for the term of the contract given the Monthly Facilities Fee is a levelized rate.

The Monthly Facilities Fee in the Amended Agreement is approved under sections 59 to 61 of the UCA. FEI is directed to file the final Monthly Facilities Fee amount, and details of the calculation of such, within 30 days when the actual initial capital costs and project development costs are known. If the actual costs are not available for filing on or before December 31, 2016, FEI is directed to file a status update on the final Monthly Facilities Fee.

4.3 Confidentiality

In Directive 5 of Order G-186-15, the Commission granted FEI's request that the Agreement, the financial model and purchase scenario illustrations appended to the Application as Appendices A, B and C respectively, be kept confidential due to their commercially sensitive nature. As the proceeding continued and based on various IR responses, FEI provided information on a non-confidential manner including a redacted version of the Agreement, the Amending Agreement and the financial model. The Panel notes that the main purpose for keeping certain information confidential is the commercial sensitivity of the Net-Sale Rate. FEI also requests the live working spreadsheet financial schedule be kept confidential due to its proprietary and commercially sensitive nature. However, the output of the financial schedule is publicly available in Exhibit B-3, Attachment 2.1.2.

The Panel finds that Directive 5 must be updated and replaced due to the proceeding's discovery process. **Directive 5 of Order G-186-15, which granted FEI's confidentiality request on Appendices A, B and C of the Application (Exhibit B-1 and Exhibit B-1-1), is replaced due to the changes in the evidentiary record. As requested by FEI, the following documents are confirmed to be kept confidential due to their commercially sensitive nature:**

- a. Non-redacted version of the Agreement filed as Appendix A of Exhibit B-1-1;**
- b. Live working spreadsheet financial schedule filed as Appendix B of Exhibit B-1-1 as it is propriety and commercially sensitive to FEI;**
- c. Purchase scenarios filed as Appendix C of Exhibit B-1-1;**
- d. Non-redacted version of the Amendment, together with the confidential response to information requests disclosing the Net-Sale Rate in the Agreement.**