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BRITISH COLUMBIA UTILITIES COMMISSION

ORDER NUMBER C-6-12

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IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473

and

An Application by FortisBC Energy Inc.
for a Certificate of Public Convenience and Necessity
for Constructing and Operating a Compressed Natural Gas Refueling Station at BFI Canada Inc.

BEFORE: A.A. Rhodes, Panel Chair/Commissioner April 30, 2012
D.M. Morton, Commissioner

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

WHEREAS:

A. On July 19, 2011 by Order G-128-11, the British Columbia Utilities Commission (Commission), among other thing, approved a revised contract between Waste Management of Canada Corporation (Waste Management) and FortisBC Energy Inc. (FEI, Fortis) for the provision of compression and dispensing services for Compressed Natural Gas (CNG) to Waste Management by FEI and accepted the expenditures required for FEI to construct the compression and dispensing facility. The Commission denied approval of the General Terms and Conditions for the provision of CNG Service and Liquefied Natural Gas (LNG) Service as applied for by FEI and indicated that it would approve revised General Terms and Conditions which better reflected full cost recovery from potential CNG and LNG Service customers (Waste Management Decision);

B. By Order G-95-11 dated May 24, 2011, the Commission established an Inquiry into FEI's offering of products and services in Alternative Energy Solutions (AES) and other New Initiatives (AES Inquiry), including the issue of the appropriateness of FEI's entry into the competitive domain of CNG and LNG fuelling;

C. By Order G-1-12 dated January 4, 2012, and Order G-9-12 dated January 31, 2012, the AES Inquiry Commission Panel established a zero dollar threshold for Certificate of Public Convenience and Necessity (CPCN) applications relating to AES and other New Initiatives projects on an interim basis, pending completion of the AES Inquiry;

D. On April 12, 2012, the Commission issued its Decision regarding the FortisBC Energy Utilities Revenue Requirements Application for the 2012 and 2013 test years (2012-2013 RRA) which approved, among other things, forecast expenditures of $569,396 and $601,119 for 2012 and 2013, respectively, for overhead, marketing, business development and customer education related to natural gas vehicle (NGV) services;

E. Revised General Terms and Condition Section 12B (GT&C 12B) were filed by FEI and were approved by Commission Order G-14-12 dated February 7, 2012;

F. On February 29, 2012, FEI applied to the Commission, pursuant to sections 45 and 46 of the *Utilities Commission Act* (the Act), for a CPCN for construction and operation of a CNG refuelling station at the premises of BFI Canada Inc. (BFI) located in Coquitlam, British Columbia (BFI Project) (the BFI Application);

G. FEI also seeks approval, pursuant to sections 59-60 of the Act, of the rate design and rates established in the Fueling Station License and Use Agreement with BFI for CNG Service (BFI Agreement) as just and reasonable;

H. By Order G-23-12 dated March 2, 2012, the Commission established a written hearing process for its review of the Application;

I. The Commission has reviewed the BFI Application and concludes that the CPCN should be granted;

J. The Commission has concerns regarding cross subsidization of the CNG and LNG Service by FEI's existing ratepayers and is also concerned that a significant number of costs are not included in the rate design and rates for the BFI Project.

NOW THEREFORE, the Commission determines as follows:

1. A CPCN for the construction of a CNG refuelling station at the premises of BFI is granted to FEI, pursuant to sections 45 and 46 of the *Utilities Commission Act*.

2. The Commission declines to approve the rates to be charged to BFI as proposed in the BFI Application.

3. FEI is directed to establish two new service classes, one for CNG Service and one for LNG Service.

4. The Commission re-affirms the following Commission directives in the Waste Management Decision and confirms their applicability to the BFI Application:

    a. Estimate the overhead and marketing expenses which relate to the CNG/LNG Service program and the expected sales volume and allocate those costs in a reasonable manner among CNG/LNG Service customers going forward;

    b. Keep the costs and revenues associated with the Waste Management Agreement and any other offerings separate and distinct and monitor such offerings during a two-year test period and provide a report by March 31, 2013, which includes the topics listed in Appendix 2 of the Waste Management Decision.

…/3

5. The Commission further directs:

    a. All overhead and marketing expenses, including, without limitation, business development, customer education and all costs relating to the CNG/LNG Service program are to be determined using approved fully allocated cost of service methodology and included in the cost of service.
    b. Fortis is to recalculate the Operations and Maintenance charge in the BFI rate to reflect the cost of the CNG/LNG Service program using the figures of $569,396 for 2012 and $601,119 for 2013, to be allocated among CNG/LNG Service customers in a reasonable manner.
    c. In order to set a fair and equitable rate which is not unjust or unreasonable within the meaning of section 59 of the *Utilities Commission Act*, and that therefore reflects the full cost of service of this offering, for more particularity, FEI is to include the following amounts in the rate applicable to BFI:
        - Actual construction costs for the BFI Fuelling Station;
        - Cost of the BFI Application in the amount of $75,000;
        - Branding Costs for the installation of signs and to affix decals;
        - BFI's proportionate share of the overhead and marketing costs, including, without limitation, business development, customer education and all costs relating to the CNG/LNG Service program;
        - Any other costs which may not have been factored into the cost charged to BFI including, for example, increased insurance premiums, as Fortis is required to obtain a number of specific insurance coverages, and to include BFI as an additional insured on it Comprehensive General Liability Policy.
    d. FEI is to establish a rate base deferral account to capture the revenues associated with volumes in excess of BFI's "take or pay" commitment which may be credited back to BFI in the event that BFI is required to pay the un-depreciated capital cost of the fuelling station (i.e. amounts collected in excess of the "take or pay" commitment representing one half of the applicable capital rate).
    e. FEI is to include all other amounts paid by BFI for volumes in excess of the "take or pay" commitment in the existing rate base deferral account approved in the Waste Management Decision to capture incremental CNG and LNG Service recoveries received from actual volumes purchased in excess of minimum take or pay commitments, for refund to all non by-pass customers.

6. In recognition of the fact that the costs and revenues associated with the BFI Project were not included in the 2012-2013 RRA, the Commission directs that:

    a. FEI establish a rate base deferral account for all revenues from the BFI Project excluding revenues in excess of the "take or pay" commitment;
    b. FEI establish a rate base deferral account for all costs for the BFI Project.

…/4

7. If FEI chooses to have its shareholders bear any of the costs which the Commission has found properly attributable to BFI, these amounts are to be identified and reported on a line by line basis and are to be specifically disclosed in and excluded from any future revenue requirement applications.

8 FEI is directed, within 30 days of the date of this Order, to provide the Commission with an updated rate filing, including the details of any amounts to be borne by the shareholder.

DATED at the City of Vancouver, in the Province of British Columbia, this 30th day of April 2012.

BY ORDER

Original signed by:

A.A. Rhodes
Commissioner/Panel Chair

Attachment

IN THE MATTER OF

FORTISBC ENERGY INC.
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY APPLICATION FOR CONSTRUCTING AND OPERATING A COMPRESSED NATURAL GAS REFUELLING STATION AT BFI CANADA

REASONS FOR DECISION

April 30, 2012

BEFORE:

A.A. Rhodes, Commissioner/Panel Chair
D.M. Morton, Commissioner

TABLE OF CONTENTS

PAGE NO.

1.0 APPLICATION 3

2.0 BACKGROUND 4

2.1 Regulatory Framework 4

2.1.1 Definition of a Public Utility 4

2.1.2 Certificate of Public Convenience and Necessity 4

2.1.3 Setting of Rates 5

2.2 Waste Management Application – General Terms and Conditions Application 5

2.3 Alternative Energy Solutions Services Inquiry 7

3.0 CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY CONSIDERATIONS 8

3.1 Project Need and Justification 8

3.2 Analysis of Alternatives 9

3.3 Public Consultation 9

3.4 Alignment with Energy Policy 9

3.5 Project Benefits 9

3.6 Public Interest 10

3.7 Commission Panel Determination 10

4.0 RATE DESIGN ISSUES 12

4.1 Capital Costs 13

4.1.1 Construction Costs 13

4.1.2 Capital Cost Recovery 14

4.1.3 Cost of this Application 14

4.2 O&M Costs 14

4.2.1 Branding Costs 15

4.2.2 Unanticipated Events and Insurance Costs 15

4.3 Overhead, Marketing, Business Development and Customer Education Costs 16

4.4 Termination for Cause 16

4.5 Commission Panel Determination 17

1.0 APPLICATION

On February 29, 2012, FortisBC Energy Inc. (Fortis or FEI) applied to the British Columbia Utilities Commission (BCUC or Commission) seeking:

- A Certificate of Public Convenience and Necessity (CPCN) for the construction and operation of a Compressed Natural Gas (CNG) fuelling station on the premises of BFI Canada Inc. (BFI) pursuant to sections 45 and 46 of the Utilities Commission Act (UCA or Act) and Commission Order G-9-12; and
- Approval of the rate design and rates agreed to as between BFI and Fortis in the Fuelling Station License and Use Agreement made January 31, 2012, pursuant to sections 59 to 61 of the UCA.

  (the BFI Application or BFI Project)

BFI is a waste hauler with operations and facilities in, among other places, Coquitlam, British Columbia. The Coquitlam operation site is designated to serve the City of Surrey. BFI was awarded the contract for curbside waste collection services for the City of Surrey in December of 2011, pursuant to its response to Surrey's Request for Proposals for Municipal Waste Collection Services (RFP). The RFP required the use of natural gas trucks for the waste collection services. BFI's bid for the Surrey work was an annual price of $9,505,923, which was approximately $2 million lower than the next lowest bid. (Exhibit A2-7, p. 10; Exhibit B-1, p. 7)

BFI and Fortis subsequently entered into a contract dated January 31, 2012 (the Fuelling Station Agreement) pursuant to which Fortis is to supply, install and maintain a natural gas compression and dispensing facility on BFI's Coquitlam site. The CNG fuelling facility is to accommodate a return-to-base fleet of 52 waste haul vehicles, which BFI plans to acquire initially, with a potential increase to 86 vehicles in the future. (Exhibit B-1, p. 7)

The fuelling facility will be located on BFI property, but will be owned by FEI. Its primary purpose is to compress natural gas that is purchased by BFI, as an FEI natural gas monopoly distribution customer. BFI will pay FEI for delivery of the "uncompressed" natural gas. BFI will also pay FEI a fuelling charge, under the terms of the Fuel[l]ing Station Agreement, to compress the natural gas and deliver it into BFI's vehicles.

The fuelling facility has an estimated capital cost of $1.9 million. Although this is below the CPCN threshold amount of $5 million that is generally applicable to FEI, the Commission recently established a zero-dollar threshold for projects involving Alternative Energy and other New Initiatives. (Commission Order G-9-12)

FEI proposes to charge BFI a fuelling charge of $4.66/GJ, on a "take-or-pay" basis, with a minimum contract demand of 60,000 Gigajoules (GJ) per year. Over the seven-year term of the contract, this represents a recovery of $1,957,200 (in nominal dollars).

2.0 BACKGROUND

2.1 Regulatory Framework

2.1.1 Definition of a Public Utility

Section 1 of the UCA defines a public utility, in part, as follows: **"public utility"** means a person... 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...
>
> but does not include …
>
> (e) a person not otherwise a public utility who is engaged in the petroleum industry or in the wellhead production of oil, natural gas or other natural petroleum substances...

Section 1 of the UCA defines "petroleum industry" as including... "(e) the retail distribution of liquefied or compressed natural gas."

The exemption from regulation cited in part (e) of the definition of public utility (above) is of particular applicability to this Application is Only because the Applicant is a public utility, are its activities to provide CNG as a vehicle fuel regulated. An entity that is not "otherwise a public utility" would not be subject to regulation for the provision of the identical service.

2.1.2 Certificate of Public Convenience and Necessity

Subsection 45(1) of the UCA states:

> "Except as otherwise provided, after September 11, 1980, a person must not begin the construction or operation of a public utility plant or system, or an extension of either, without first obtaining from the commission a certificate that public convenience and necessity require or will require the construction or operation."

Subsection 46(3) sets out the Commission's powers with respect to granting a CPCN, and states, in part, that the Commission:

> "...may attach to the exercise of the right or privilege granted by the certificate, terms, including conditions about the duration of the right or privilege under this Act as, in its judgment, the public convenience or necessity may require."

Section 45(8) states that the Commission:

> "… must not give its approval unless it determines that the privilege, concession or franchise proposed is necessary for the public convenience and properly conserves the public interest."

Subsection 46(3.1) requires the Commission, in deciding whether to issue a CPCN to a public utility (other than British Columbia Hydro and Power Authority), to consider British Columbia's energy objectives, which are set out

in section 2 of the *Clean Energy Act*, SBC 2010, c. 22 (CEA) as well as the most recent long-term resource plan filed by the utility under section 44.1 of the Act*.*

By Order G-50-10, the Commission provided guidelines to assist public utilities and other parties wishing to construct or operate utility facilities in preparing CPCN applications to facilitate the Commission's review of such applications (CPCN Guidelines).

2.1.3 Setting of Rates

The Commission must address the setting of rates under sections 59 and 60 of the UCA*,* which require that rates are not unjust, unreasonable, unduly discriminatory or unduly preferential.

In this Application, the Panel is further guided by the General Terms and Conditions, as approved by Commission Order G-14-12 for the provision of CNG and Liquefied Natural Gas (LNG) Service (GT&C 12B).

2.2 Waste Management Application – General Terms and Conditions Application

On December 1, 2010, Fortis applied to the Commission for approval of expenditures in the amount of approximately $775,000 for a similar project, being the construction and operation of a CNG fuelling station on the premises of another waste hauler, Waste Management of Canada Corporation (Waste Management). Fortis also sought Commission approval of its contract with Waste Management and approval of General Terms and Conditions for the provision of compression and dispensing services for CNG and the provision of transportation, delivery, storage and dispensing services for LNG for inclusion in future agreements with customers for these services. Approval for the expenditures was sought pursuant to section 44.2 of the UCA. (Waste Management Application)

On July 19, 2011, by Order G-128-11, the Commission, among other things, approved a revised contract between Fortis and Waste Management on a final basis and accepted the expenditures required for Fortis to construct the compression and dispensing facility. The Commission declined to approve the General Terms and Conditions proposed, but indicated that it would approve revised General Terms and Conditions which better reflected full cost recovery from potential CNG/LNG Service customers. It also approved three deferral accounts:

- A non-rate base deferral account attracting an Allowance for Funds Used During Construction (AFUDC) to capture the cost of the Application for General Terms and Conditions for the provision of compression and dispensing service for CNG and for the provision of transportation, delivery, storage and dispensing services for LNG, including the cost of the Application relating to the contract with Waste Management. This deferral account was to be amortized through delivery rates charged to all non-bypass customers over a three-year period commencing on January 1, 2012. *Future individual application costs must be recovered from those customers.* [Emphasis added]
- A non-rate base deferral account attracting AFUDC to capture the Operating and Maintenance costs and the cost of service associated with capital additions to the delivery system as well as CNG and LNG Service recoveries received prior to January 1, 2012 for contracts approved by the Commission, and to recover or refund the balance to all non-bypass customers by amortizing the balance through delivery rates over a three-year period commencing on January 1, 2012.

- An ongoing rate base deferral account to capture incremental CNG and LNG recoveries from actual volumes purchased in excess of minimum contract "take or pay" commitments to be refunded to all non-bypass customers by amortizing the balance through delivery rates over a one-year period, commencing the following year, to be effective as of January 1, 2012.

In its accompanying Reasons for Decision (Waste Management Decision), the Commission Panel questioned whether it was in the interests of Fortis' existing ratepayers to bear the costs or risks associated with the project's benefits, being a reduction of carbon emissions for the transportation sector, when those ratepayers represent only a portion of the province's population and, generally speaking, are not responsible for the emissions. The Panel concluded that Fortis' ratepayers should not bear those costs or risks and should be kept whole; insulated, to the greatest extent possible, from the costs and risks associated with Fortis' entry into the Natural Gas Vehicle (NGV) fuelling business. (Waste Management Decision, p. 17)

The Commission Panel also noted that Fortis was proposing to enter the CNG/LNG fuelling services business in its capacity as a regulated public utility when it was free to do so through a non-regulated subsidiary and thereby avoid Commission oversight. (Waste Management Decision, p. 18) The Commission Panel expressed the view that, to the extent that Fortis intended to provide CNG/LNG fuelling services in its capacity as a public utility, the public interest required that it "do so without utilizing any potential economic leverage which it may have as a result of its status as a monopoly distributor of natural gas". It found that the public interest would not be served by effectively providing Fortis with a competitive advantage over other potential industry participants if Fortis were able to subsidize the cost of what would otherwise be an unregulated service, with monies from existing ratepayers. It also found that Commission approval of a tariff for the provision of CNG/LNG fuelling services would not result in any corresponding obligation on the part of Fortis to serve other potential customers. (Waste Management Decision, pp. 19, 29)

The Panel in the Waste Management Application also required that Fortis include a provision in its General Terms and Conditions requiring the CNG/LNG Service customer to bear the risk of the stranding of fuel station assets and directed that the ratepayer be insulated from any risk relating to the long-term viability of the CNG/LNG transportation fuel market to the fullest extent possible. The Panel also rejected Fortis' argument that it needed flexibility to negotiate different terms with different customers in favour of a more structured, standard form approach to the draft General Terms and Conditions for which approval was sought. (Waste Management Decision, pp. 22-23)

The Panel found that it was not "just and reasonable" for Fortis' ratepayers to subsidize the cost of CNG/LNG fuelling facilities. The Panel found:

> "[a] CNG or LNG facility is not an extension of the distribution system.... If a CNG station...were provided by an unregulated entity, there would be no requirement, or need, for existing ratepayers to share the cost of providing the facilities, yet they would still benefit from increased throughput in [Fortis'] distribution system."

The Panel therefore "require[d] that, to the extent possible, none of the actual costs of the CNG/LNG service offerings be recovered from existing ratepayers." (Waste Management Decision, p. 24)

In accordance with this line of reasoning, the Panel required that, to be approved, any General Terms and Conditions would need to use actual, as opposed to forecast, construction costs, charge all O&M costs to the cost-of-service calculation without reduction for capitalized overhead and escalated in accordance with the British Columbia Consumer Price Index, include negative salvage value and also include an allocation of estimated overhead and marketing costs (among CNG/LNG customers only) in the cost-of-service calculation as reflected in the General Terms and Conditions. The Panel stated: "...to be approved, any General Terms and Conditions must include a cost of service calculation which reflects the actual full cost of service, including the cost of establishing, maintaining and promoting the program, as closely as possible." (Waste Management Decision, p. 28)

Also pursuant to this line of reasoning, the Panel directed that Fortis include a provision to ensure that the entire cost of the fuelling station be recovered from the customer over the term of the contract in any revised General Terms and Conditions. (Waste Management Decision, p. 29)

The Panel also directed Fortis to keep the costs and revenues associated with the Waste Management Agreement and any other offerings separate and distinct, to be monitored over a two-year test period, with a detailed report to be provided by March 31, 2013. (Waste Management Decision, pp. 30-31)

Revised General Terms and Conditions Section 12B (GT&C 12B) were filed on February 6, 2012, and approved by Commission Order G-14-12 dated February 7, 2012. GT&C 12B uses a Cost of Service model and specifies that "[t]he total costs to be used in determining the cost of service to be recovered from the Customer under the Service Agreement include, *without limitation*:

> (a) the actual capital investment in the fuel[l]ing station including any associated labour, material, and other costs necessary to serve the Customer, less any contributions in aid of construction by the Customer or third parties, grants, tax credits or nonfinancial factors offsetting the full costs that are deemed to be acceptable by the British Columbia Utilities Commission;
>
> (b) depreciation and net negative salvage rates and expense related to the capital assets associated with the vehicle fuel[l]ing station;
>
> (c) all operating and maintenance expenses, with no adjustment for capitalized overhead, necessary to serve the Customer, escalated annually by British Columbia CPI inflation rates as published by BC Stats monthly; and
>
> (d) an allowance for overhead and marketing costs relating to developing NGV Fuel[l]ing Station Agreements to be recovered from the Customer." [Emphasis added]

In addition to the costs identified, GT&C 12B requires the cost of service recovery to include applicable property and income taxes and the appropriate return on rate base as approved by the Commission for FEI.

2.3 Alternative Energy Solutions Services Inquiry

By Order G-95-11 dated May 24, 2011, the Commission established an Inquiry into Fortis' offering of products and services in Alternative Energy and other New Initiatives (AES Inquiry). One of the issues in the AES Inquiry is the appropriateness of Fortis' entry into the competitive domain of CNG/LNG fuelling. That Inquiry is ongoing.

By Order G-1-12 dated January 4, 2012, and Order G-9-12 dated January 31, 2012, the AES Inquiry Commission Panel established a zero-dollar threshold for CPCN applications relating to AES and other New Initiatives projects on an interim basis, pending completion of the Inquiry.

Appendix A to Order G-118-11: Scope of the AES Inquiry, the AES Inquiry Panel emphasized it does not intend to frustrate ongoing business:

> "The Panel agrees that it is not appropriate for this Inquiry to be used as a vehicle to re-open past Decisions of the Commission. With respect to ongoing processes that may have some degree of overlap with the issues being considered by this proceeding, the Panel believes that such processes will be decided on the basis of the evidence put before them. While it may be beneficial to have the outcome of this proceeding known before similar issues are dealt with in other ongoing proceedings, it would be inefficient and potentially unfair for such proceedings to be delayed. The Panel sees the outcome of this proceeding as being applied in a forward looking manner and not impinging on past or current ongoing proceedings." (Order G-118-1, Appendix A, p. 5)

3.0 CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY CONSIDERATIONS

3.1 Project Need and Justification

FEI submits that the City of Surrey's mandate for using CNG powered waste collection vehicles gave impetus to BFI's CNG fuelling station, the BFI Project advances British Columbia's energy objectives and the Project cost is reasonable. (FEI Final Submission, p. 10)

In the Waste Management Application, FEI argued that it was unaware of other businesses with the requisite expertise and technical capability to develop the fuelling station market in British Columbia that had also committed to do so. FEI did acknowledge that other non-regulated options had been available in the market for a number of years, but argued that the NGV market had stagnated prior to its promotion of CNG/LNG Service as a regulated offering. FEI took the position that if it did not provide the [regulated] service to "kick-start" the market, the market would not develop as quickly. (Waste Management Application, FEI Final Argument, pp. 23-24)

FEI also argued that "mandating that assets be held in a Non-Regulated Business ("NRB") would be inappropriate and counterproductive." (Waste Management Application, FEI Final Argument, p. 23)

With respect to the need for FEI, as a regulated public utility, to provide the compression and dispensing service to BFI, "FEI acknowledges the CNG/LNG fuel[l]ing service can be provided by a non-public utility third party in British Columbia" and lists a number of reasons BFI decided to work with FEI after a competitive bidding process. These reasons include, among other things, that the service was "competitively priced." FEI argues that since BFI chose FEI, it is necessary for FEI to provide the fuelling service. (FEI Final Submission, pp. 6-7)

The British Columbia Sustainable Energy Association (BCSEA) supports FEI's CPCN application, but submits that its support is "… limited to FEI's proposed focus on providing CNG and LNG service to the heavy duty vehicle sector in B.C., as distinct from the passenger vehicle sector where the current and anticipated availability of hybrid-electric and plug-in electric vehicles creates a very different GHG-reduction analysis." However, it further

submits that "… the Commission should conclude that the BFI fuel[l]ing project is in the public interest and warrants a CPCN." (BCSEA Final Submission, pp. 1, 4)
The Commercial Energy Consumers Association of British Columbia (CEC) submits that the proposed BFI refuelling station can be clearly seen to be in the public interest. It further submits that it has demonstrable benefits for FEI customers and notably demonstrable benefits for BFI's customers. (CEC Final Submission, p. 2)

3.2 Analysis of Alternatives

FEI states that the BFI Project is at the request of a customer and will be built to serve this particular customer's need and that this is unlike the usual CPCN applications to build and operate energy infrastructure. It submits that since BFI had decided to use CNG trucks for its waste collection services before contacting FEI, no analysis of alternatives is necessary. (Exhibit B-1, p. 5)

3.3 Public Consultation

FEI submits that, since the refuelling station will be completely built and operated on BFI's premises, its installation and operation will have little potential effect on First Nations and the public. Thus, FEI has not included any discussion on public and First Nations consultation in the BFI Application. Nor has FEI identified and assessed potential effects of the BFI Project on First Nations and the general public in terms of the physical, social or biological environment. FEI further submits that this is consistent with what was done for Waste Management. (Exhibit B-1, p. 5)

3.4 Alignment with Energy Policy

FEI estimates, using the GHGenius Model v3.20, that the greenhouse gas (GHG) emissions reduction of this project is 419 tonnes per year. It further states that this is equivalent to taking 75 passenger cars off the road. (Exhibit B-1, pp. 8-9)

FEI further states that any potential GHG emission reduction offsets generated by the operation of these CNG trucks will flow to BFI, but that FEI understands that BFI is obligated to pass these benefits on to the City of Surrey. (Exhibit B-1. p. 9)

The CEC submits that FEI has established that the proposed CNG Service will be aligned with government energy objectives and that it will create a significant impact on reducing GHG emissions. (CEC Final Submission, p. 2)

3.5 Project Benefits

Fortis attributes a number of benefits to the BFI Project including reduced fuel cost for BFI due to the lower cost of natural gas as compared to diesel, which may translate into a lower waste collection charge to the City of Surrey, benefitting Surrey residents; reduced GHG emissions of approximately 419 tonnes per year (based on 52 vehicles) and royalties to the Province flowing from natural gas production from Crown leases. (Exhibit B-1, pp. 8-9)

FEI also claims a small delivery rate benefit to existing natural gas ratepayers in the approximate amount of $84,000 per year from increased natural gas sales, which corresponds to a savings of approximately seven cents per year per Lower Mainland residential customer, all else equal. (Exhibit B-1, pp. 10-11)

Fortis also submits that the BFI Project is consistent with the most recent Long-Term Resource Plan filed by the Fortis Energy Utilities, which contemplated natural gas vehicle initiatives as part of a low carbon strategy. (Exhibit B-1, p. 11)

3.6 Public Interest

A significant public interest issue is that of a regulated entity operating in a competitive market and the potential for cross-subsidization of its new offerings by its existing ratepayers. The Waste Management Panel noted that FEI's CNG/LNG activities are subject to regulation only because it is otherwise a monopoly, and the regulatory framework exists to protect the public from the abuse of monopoly power. The Panel found that if FEI is to provide CNG/LNG Services in its capacity as a public utility, it must do so without utilizing any potential economic leverage which it may have as a result of its status as a monopoly distributor of natural gas. (Waste Management Decision, p. 18)

In response to questions about FEI's long-term role in the NGV market, FEI has clearly stated its intention to remain in the CNG/LNG market in its capacity as a regulated public utility. While FEI acknowledges that in the Waste Management Application it submitted that it should build fuelling facilities to "kick-start" the market, it asserts that at no time did it suggest that such offerings would be withdrawn once other participants entered the competitive marketplace. (Exhibit B-3, BCUC IR 1.3.1)

FEI relies on the opinion of its expert, Dr. Ware, in the AES Inquiry to the effect that 'if a regulated entity such as FEI is able, *without cross-subsidization from gas ratepayers*, to bring a cost effective service offering to the natural gas fuel[l]ing market the participation by FEI "would exert a valuable disciplinary force on the costs of rival suppliers." (Exhibit - B-3, BCUC IR 1.3.3) [Emphasis added]

As a result of concerns about the effect of unbudgeted costs, cost overruns and other factors that could require ratepayer subsidization, the Waste Management Panel directed that none of the actual costs of the CNG/LNG Service offerings be recovered from existing ratepayers (Waste Management Decision, p. 24). The Panel also directed that ratepayers were to be insulated from the risk in assuming the long-term viability of the NGV market, to the fullest extent possible.

3.7 Commission Panel Determination

As discussed elsewhere in this Decision, the BFI Application fails to adequately address these concerns.

The Commission Panel accepts that BFI's use of CNG as a fuel in place of diesel will reduce GHG emissions in the province and that the BFI Project is not inconsistent with Fortis Energy Utilities' (FEU) most recent Long-Term Resource Plan. **The Panel is generally satisfied that the compression facilities for the BFI Project meet the CPCN Guidelines and grants the CPCN.** However, in doing so, it has a number of significant concerns.

First, the Panel notes that the concept of a CPCN – a Certificate of Public Convenience and Necessity – was developed historically as a means to regulate capital projects of private companies operating in a monopoly environment. A CPCN is generally applied for, and granted, for a project that lies within the franchise area of the applicant, where no other company is in a position to undertake the project. In such circumstances, it is incumbent on the applicant company to show that the project is necessary, and, once it has done so, some or all of the costs of the project may be recovered from a broad base of its ratepayers. It is important to note that in the case of the BFI fuelling station, there is no exclusive franchise area for CNG fuelling services and any

company could build the compressor station. Further, if another company did so, it would not be subject to regulation (provided that it is "not otherwise a public utility") and a CPCN would not be necessary.

This issue was explored in some detail in the Waste Management Application and is also a key issue in the ongoing AES Inquiry. Accordingly, this Panel makes no determinations on whether FEI should or should not be participating in this activity in its capacity as a regulated public utility in this Proceeding. However, the Panel is mindful that there are competitive aspects to the Natural Gas for Transportation (NGT) marketplace and finds that the public interest requires the Panel to ensure that granting this CPCN does not impose unfair burdens on either FEI's ratepayers or other companies seeking to provide a similar service.

The Panel finds the presence of both regulated and unregulated competitors in a competitive market is problematic. It underscores the need for this Panel to ensure that there is no cross-subsidization from FEI's distribution customers and also that there is no assignment of CNG/LNG-related risk to those customers. In this regard, the Panel notes that the recent Commission decision dated March 9, 2012 in FortisBC Energy Inc.'s Application for a CPCN to provide Thermal Energy Service to Delta School District No. 37 (the Delta School District Decision) was informed by the regulatory principle that a competitive service provider that is also a natural monopoly requires active Commission oversight to reduce the potential for cross-subsidization between the competitive service and the natural monopoly service. The Panel is encouraged that FEI agrees with this principle, as is evidenced by its assertion that its role in the marketplace should be "without cross-subsidization from gas ratepayers." Later in this Decision, the Panel will address how this goal can be achieved.

The Panel does not agree with FEI's position as to the relationship of the CNG Service to the natural gas system. In the Waste Management Decision, the Panel found that "…a CNG or LNG refuelling facility is not an extension of the distribution system." (Waste Management Decision, p. 35) This Panel finds that circumstances have not changed in any way that would cause that finding to be different in this case. Since the CNG Service is not an extension of the existing service, it is irrelevant whether BFI is an existing customer or not. The CNG Service is a new class of service for FEI, with only a single existing customer – Waste Management – already taking that service. Further, the Panel notes that the CNG Service is downstream of the meter, so it is in no way the same service as FEI's monopoly distribution business. Of additional concern to the Panel is the fact that no material benefits accrue to Fortis' existing ratepayers from the BFI Project yet they are being asked to bear risk as well as to fund any costs which have not been included in the rate to be paid by BFI. This finding flows from the fact that the City of Surrey mandated the use of NGVs and BFI made the decision to purchase NGVs, hence requiring natural gas as a fuel. Thus, little to no incremental benefits flow to Fortis' ratepayers as a result of Fortis' construction, ownership and operation of a CNG fuelling facility. A third party could perform this task and the same throughput benefit claimed throughout the BFI Application (i.e., $84,000 per year or a $0.07 reduction in Lower Mainland residential customers' annual bills) would follow. There are no alternatives for BFI to obtain natural gas other than through the Fortis monopoly natural gas distribution system. The same is true of the claim for GHG reduction benefits and for royalty revenues to the Province, although in the case of royalty revenues, there is also no evidence that the incremental natural gas to be purchased by BFI would necessarily come from Crown leases in British Columbia or that the royalty revenue would be forgone if a fuelling station was not constructed for BFI.

The only arguable benefit which could flow to existing Fortis ratepayers would be sourced in the $0.20 per GJ contribution towards overhead included in the fuelling charge, discussed in the next section. Assuming 60,000 GJs per year, this would amount to $12,000 per annum or less than a $0.01 reduction in the annual bill for existing Lower Mainland residential ratepayers. (This also assumes that there is no increase to overhead costs as a result of the BFI Project.)

4.0 RATE DESIGN ISSUES

The proposed charge to BFI for FEI to recover the cost of the CNG facility is structured by way of an annual commitment from BFI to take delivery of, or pay a fuelling charge of $4.66 per GJ for, a minimum volume of 60,000 GJs of CNG (the "take or pay" commitment). The contract term is seven years (expiry date is September 30, 2019) and is renewable at the option of the customer (BFI) for a further term of three years. Over the course of the initial contract term, this equates to 1,153 GJs per vehicle per year, based on 52 vehicles.

The fuelling charge amounts are broken down as follows:

Component	Fuelling Charge $/GJ	Escalation Per Year
Capital	$3.63	2%
O&M	$0.83	CPI
Overhead	$0.20	CPI
Total Charge	**$4.66**	

(Source: Exhibit B-1, p. 17, Table 6)

Volumes in excess of 5,000 GJs in any month are charged at the O&M rate plus one half the capital rate (as set out above). (Exhibit B-1, pp. 7, 11; Exhibit B-1, Appendix A, section 7.1(c); Exhibit B-1, Appendix A, section 1; Exhibit B-3, BCUC IR 1.24.1)

Volumes in excess of 60,000 GJs per annum (the "take or pay" amount) are therefore proposed by FEI to be charged at approximately $2.845/GJ. (Exhibit B-3, BCUC IR 1.39.1 – numbers may vary slightly due to rounding)

The Fuelling Station Agreement provides that the "take or pay" volume and rates have been based on a 20-year term, notwithstanding the actual seven-year term of the contract (with a provision for a three-year extension). The Fuelling Station Agreement provides, among other things, that if it is terminated without cause before the 20th anniversary of its effective date, BFI will pay, at a minimum, the remaining unrecovered, un-depreciated capital cost of the fuelling station (Buy Out Provision). (Exhibit B-1, Appendix A, clause 11.1)

The Fuelling Station Agreement also provides, however, that "[t]he payments received [from BFI] with respect to the Capital Rate pursuant to section 7.1(c), [which determines the rate payable for volumes of CNG taken in excess of the annual 60,000 GJs "take or pay" amount], if any, will be applied to the...capital cost calculation...to reduce the un-depreciated capital cost of the Fuel[l]ing Station" (Exhibit B-1, Appendix A, Schedule B) Thus, to the extent that BFI takes CNG volumes in excess of its "take or pay" commitment, it will receive a credit of one half of the capital rate of $3.63 per GJ, or $1.815 per GJ towards any un-depreciated capital cost it would otherwise be required to pay when the Buy Out Provision is triggered.

Consequently, if the Buy Out Provision is not triggered, FEI's non-bypass customers will receive a possible benefit of $2.845/GJ for volumes in excess of 60,000 GJ (assuming that the O&M charge is not variable with volume). If the Buy Out Provision is triggered, non-bypass customers would receive only a possible benefit of $1.033/GJ for volumes in excess of 60,000 GJ, again assuming that O&M is not variable with volume. (Exhibit B-3, BCUC IR 1.39.1, BCUC IR 1.43.1)

Fortis takes the position that the service charge to BFI complies with GT&C 12B. Fortis also submits that where it has deviated from the requirements of the approved General Terms and Conditions, it has taken adequate

steps to mitigate ratepayer risk. However, it also states that it "does not foresee conditions where [Natural Gas for Transportation] losses would be borne by the shareholder." (Exhibit B-3, BCOAPO IR 1.4.2)

The British Columbia Old Age Pensioners' Organization (BCOAPO) suggests that "[s]ince FEI's shareholders receive a significant return on investment, it is reasonable that they also assume some risk for the potential failure of the BFI Agreement and other NGT related opportunities FEI may wish to pursue in the future. Accordingly, BCOAPO requests that the Commission consider the need to include a risk factor for extraordinary events in the calculation of cost of service." The BCOAPO also submits that if the Commission determines that GT&C 12B does not appropriately insulate captive ratepayers from the costs and risks associated with FEI's provision of NGT services, GT&C 12B should be revisited and the BFI Agreement approved on an exception basis only. (BCOAPO Final Submission, pp. 4, 6)

With regard to potential cross-subsidization and the assumption of risk by FEI's distribution customers, Clean Energy Fuels submitted, in the AES inquiry, that any regulated gas distribution utility "…should be precluded from using ratepayer funding to build, own and operate CNG or LNG refueling stations that are primarily intended to compete directly with refueling stations owned by non-utility enterprises. Ratepayer funding should be limited to the construction of refueling stations located on utility property that are needed to refuel the utility's fleet natural gas vehicles (NGVs). Public access refueling services should only be provided from such facilities when the retail refueling price is sufficiently high to recover the fully allocated cost of service..." (Exhibit A2-8, p. 3)

The BCOAPO submits that the delivery revenue margin of $84,000 per year, which accrues to FEI's natural gas ratepayers, provides a benchmark for the maximum level of reasonable cost and risk that can be imposed on ratepayers. (BCOAPO Final Submission, p. 2)

BCSEA submits that: "…it appears that the BFI Service Agreement does conform with section 12B, however BCSEA is not in a position to verify that conclusion because it has not conducted a detailed analysis and does not have access (by choice) to FEI's confidentially filed evidence." (BCSEA Final Submission, p. 5)

CEC submits that the rate for the BFI refuelling service is fair, just and reasonable and that the Commission can approve the rate as in the public interest. (CEC Final Submission, p. 4)

4.1 Capital Costs

4.1.1 Construction Costs

The General Terms and Conditions require actual construction costs to be used in the rate calculation. However, Fortis has chosen to use forecast as opposed to actual construction costs in determining the capital component of the fuelling charge, although if the actual cost varies from the forecast cost by plus or minus two percent the parties have agreed to amend the charge. Based on the expected construction costs, the variance limit is $37,000, the impact of which Fortis argues is immaterial to delivery rates for natural gas customers.

The BCOAPO submits that this "…imposes an acceptable level of risk on ratepayers." (BCOAPO Final Submission, p. 2; Exhibit B-1, p. 15; Exhibit B-3, BCUC IR 1.33.5)

4.1.2 Capital Cost Recovery

The capital component of the fuelling charge is based on the (forecast) cost to construct the fuelling facility of $1,885,259. This component of the fuelling charge will recover depreciation expense for the plant in service, including negative salvage, over the seven-year contract term. It also recovers property taxes, income taxes and earned interest. (Exhibit B-1, pp. 17-18)

The rate of return is based on a mix of 40 percent equity at a rate of 9.5 percent, 58.37 percent long-term debt at a rate of 6.95 percent, and 1.63 percent short-term debt at a rate of 4.5 percent. (Exhibit B-1, Appendix D, Schedule 10) FEI states that the fuelling charge will not be adjusted to reflect changes in the approved return on equity, debt rates or capital structure during the term of the BFI Agreement. (Exhibit B-3, BCUC IR 54.1.1, p. 128)

As discussed above, BFI is obliged to pay the un-depreciated capital cost of the fuelling station asset at the end of the contract, or when the Buy Out Provision is triggered. (Exhibit B-1, p.16, Exhibit B-1, Appendix A, subsection 11.1) However, Fortis has agreed to credit BFI with the capital rate amounts it pays on any fuel purchases in excess of the 5,000 GJs monthly "take or pay" commitment, to reduce the un-depreciated capital cost it would otherwise owe. (Exhibit B-1, Appendix A, subsection 7.1(c), Schedule B)

4.1.3 Cost of this Application

Although specifically instructed to do so in the Waste Management Decision, Fortis did not include the costs of the BFI Application in the fuelling service charge. It estimates the cost of the BFI Application to be in the order of $75,000. Fortis takes the position that it did not include these costs because it did not expect the associated regulatory process to be as lengthy. (Exhibit B-3, BCUC IR 1.46.2, 1.147.2)

The BCOAPO submits that in future applications, the estimated cost of the regulatory process should be included in the cost-of-service calculation. (BCOAPO Final Submission, p. 3)

4.2 O&M Costs

Fortis has calculated the $0.83 per GJ charge for O&M from an estimated operating and maintenance cost of $50,000 per year, which it advises is based on its previous experience maintaining fuelling stations. No portion of the O&M charge is capitalized. (Exhibit B-1, p. 18) The O&M cost estimate includes:

- Regular maintenance labour
- Emergency call out labour
- Regular preventative maintenance parts
- General repair parts
- Major overhauls
- Recertification of relief valves – bi-annual
- Regulatory inspections and permits
- Communications lines (phone and internet)

- External contractors (control systems changes and electrical)
- Emergency calls for service
- Waste oil and dryer water disposal

(Exhibit B-3, BCUC IR 1.41.1.2)

BCOAPO states that it is satisfied that the Service Charge includes a reasonable estimate of FEI's normal operating and maintenance costs, but hopes that in the future, as FEI's experience with operating NGT fuelling stations grows, ordinary O&M costs can be more accurately tracked and forecast to ensure there is a match between actual operation costs and the forecasts used in the cost-of-service calculation. (BCOAPO Final Submission, p. 2)

4.2.1 Branding Costs

The Fuelling Station Agreement entitles Fortis to install signage within the fuelling station area (which is to be situated on the premises of BFI), and also allows Fortis to affix its corporate logo and other branding and marketing materials to the exterior of the fuelling station, and to attach decals to the exterior of the vehicles owned by BFI advertising the vehicles as being powered by natural gas by Fortis. (Exhibit B-1, Appendix A, clauses 5.5, 5.6)

Fortis estimates the cost of affixing signage to the fuelling station to be approximately $265 and the cost of affixing decals to 52 vehicles to be approximately $2,500 based on past experience. These costs are not proposed to be charged to the BFI Project but to the general communications budget for the account of existing ratepayers. (Exhibit B-3, BCUC IR 1.50.1)

The BCOAPO submits that ratepayers should not bear the cost of corporate branding for the BFI fuelling station and trucks because the benefits of goodwill, including the name recognition function of corporate branding, accrues primarily to FEI's shareholders, not to its ratepayers. (BCOAPO Final Submission, p. 4)

4.2.2 Unanticipated Events and Insurance Costs

The application is silent on costs arising from unanticipated technical or environmental issues. In its final submission, BCOAPO expresses concern that there does not appear to be any monetary allocation for bearing the risks associated with extraordinary events: "For example, does FEI carry insurance to cover costs arising out of unexpected technical or environmental failures? If so, what deductible applies, and how is FEI compensated for being at risk on the deductible or for premium increases consequent on making a claim?" (BCOAPO Final Submission, p. 3)

BCOAPO also raises the issue of a hypothetical BFI insolvency. It submits, all else being equal, the longer the contract term, the greater the risk of insolvency. FEI states that it has performed an internal credit assessment and deemed BFI to be approved for service with no security requirements. BCOAPO submits that since there is no way to determine the adequacy of FEI's internal credit assessment or to estimate the risk of a BFI credit default, it may be appropriate for the Commission to require security or, alternatively, to weigh the relative costs and benefits of such a requirement and provide guidance as to when security may be appropriate and the form it should take. (Exhibit B-3, BCUC IR 1.33.1.1; BCOAPO Final Submission, p. 3)

4.3 Overhead, Marketing, Business Development and Customer Education Costs

In the Waste Management Decision, the Commission required that to be approved, any General Terms and Conditions Section 12B would need to "include a cost of service calculation which reflects the actual full cost of service, including the cost of establishing, maintaining and promoting the program, as closely as possible." It directed "that any revised General Terms and Conditions contain a provision whereby FEI will estimate the overhead and marketing expenses which relate to the CNG/LNG program and the expected CNG/LNG sales volume and allocate those costs in a reasonable manner among CNG/LNG customers going forward." (Waste Management Decision, p. 28) As a result, the approved revised GT&C 12B require an allowance for overhead and marketing costs relating to developing NGV fuelling station agreements to be recovered from the Customer.

In the FEU's 2012-2013 Revenue Requirements Application (2012-2013 RRA), Appendix I, Fortis estimated costs for development of its NGT business to be $480,275 and $551,637 for 2010 and 2011, respectively. These amounts "represent the cost associated with contacting, signing up customers to FEI Rate Schedules and fuel[l]ing station agreements, customer education, as well as short and long term business development activities." (Exhibit B-1, p. 19) FEU forecast these costs to increase to $569,396 in 2012 and $601,119 in 2013 (Exhibit B-3, BCUC IR 1.51.99)

In this Application, FEI submits that a reasonable cost allocation for overhead and marketing recovered under Section 12B of FEI's GT&Cs should be limited to the incremental cost associated with adding a new CNG/LNG fuelling service customer. It states that NGT activities such as customer education and long-term business development are not directly related to the cost of adding incremental CNG/LNG Service customers such as BFI. To this end, it has included an amount of $0.20 per GJ to recover a portion of the overhead and marketing costs which relate to the CNG/LNG Service program. FEI estimates this based on the assumption that its Commercial and Industrial Manager (now known as its Natural Gas for Transportation Sales Manager), spends approximately 25 percent of his time signing up new CNG/LNG Service customers. This cost of this position is $131,762 per year, a quarter of which amounts to approximately $33,000. Fortis further estimates that it will sell 163,489 GJs of CNG/LNG Service in 2012. This number is derived from estimated sales to the following customers:

Customer	**Amount (GJ)**
Waste Management	30,000
Kelowna School District	5,000
BFI	15,000
Vedder	113,489
TOTAL	**163,489**

(Source: Exhibit B-1, p. 19)

Fortis then calculates the incremental cost for a new CNG/LNG Service customer by dividing the cost of one quarter of the manager's time by the total estimated GJ sales for 2012 of 163,489 GJs. Consequently, the only cost included in the CNG/LNG Service overhead component is a portion of one manager's time.

4.4 Termination for Cause

The BCOAPO submits that, if BFI terminates the BFI Agreement for cause, BFI can require FEI to remove the fuelling station without compensation and at FEI's cost. It further submits that while it is uncommon for parties

to enter into contracts with the intention of breaching them, if a breach occurs, or even if one is alleged, FEI's residential ratepayers will likely suffer the consequences. (BCOAPO Final Submission, p. 3) There is no contingency provided for termination for cause.

4.5 Commission Panel Determination

The Commission Panel has a number of concerns with the proposed rate and with the potential for the assumption of risk by FEI's distribution ratepayers. Of paramount concern is the fact that no unique, material benefits accrue to Fortis' existing ratepayers from the BFI Project by virtue of FEI's expenditures for this CPCN, yet they are being asked to bear a number of risks in addition to funding any costs which have not been included in the rate to be paid by BFI. This result flows from the fact that the City of Surrey mandated the use of NGVs so that any successful proponent for the RFP was compelled to use natural gas, and they could have contracted with any company to compress that gas for their delivery trucks. In any other circumstance, the resultant amount of natural gas used would be exactly the same. The demand for natural gas is driven by the City of Surrey's garbage collection requirements, not by the choice of operator of the compression facility.

As the BFI fuelling station is located in FEI's distribution franchise area, there are no alternatives for BFI to obtain natural gas other than through the Fortis monopoly natural gas distribution system. Thus the Panel particularly disagrees with the BCOAPO's suggestion that the delivery margin is a "benchmark for the maximum level of reasonable cost and risk that can be imposed on ratepayers." Given that the ratepayers would receive the delivery margin benefit no matter what organization was awarded the CNG compression and fuelling contract, the Panel considers $0 to be a more appropriate benchmark for the maximum level of reasonable cost and risk that can be imposed on ratepayers.

As discussed, there are also a significant number of costs that have not been included in the Cost of Service calculation. The Panel declines to approve the recovery from FEI's existing ratepayers of this under-allocation of costs. **Accordingly, the Commission Panel declines to approve the rate proposed to be charged to BFI. FEI is directed to either revise the rate or, alternatively, to ensure that any amounts which relate to the BFI Project and are not borne by BFI are borne by the shareholder and not the ratepayer. Amounts to be borne by the shareholder are to be identified and reported on a line by line basis and are to be specifically disclosed in and excluded from any future revenue requirement applications.**

Also of concern to the Panel is the allocation of marketing, business development and customer education and other overhead expenses. There were approximately $1 million in expenses associated with NGT incurred in F2010 and F2011. FEI has provided a forecast of the amounts to be spent going forward, which exceed the amounts spent in 2010 and 2011, but argues that GT&C 12B requires only the incremental cost of the BFI addition to be charged to BFI. Fortis provides an amount of some $33,000 annually as that incremental cost. This represents the cost of 0.25 FTE. No other justification has been provided for that amount. (Exhibit B-1, p. 19)

FEI argues that it is taking the lead in the development of the NGT market in the province and also that NGT activities such as customer education and long-term business development are not directly related to the cost of adding incremental CNG/LNG Service customers such as BFI. Presumably for this reason, it has excluded most of the overhead costs from the Cost of Service calculation for BFI's rate. To the extent that FEI is indeed taking the lead, the Panel agrees that there may be an argument that some of the business development costs may not be directly attributable to FEI's fuelling station customers and could be borne by the distribution ratepayers. However, in this regard, the Panel points out that in the case of a competitor also promoting NGT, none of its

business development activities will be subsidized by FEI's distribution ratepayers, even though those activities would, in all likelihood, similarly result in increased throughput and therefore lower prices for FEI's distribution customers. In this eventuality, the competitor would also have long-term business development costs which would include customer education and these costs would not be recoverable from FEI's distribution ratepayers. In any event, the Panel has seen no evidence that FEI is kick-starting a market on behalf of other companies who may provide compression services. On the contrary, it appears to the Panel that FEI's marketing and business development activities have primarily been focussed on the development of its own fuelling station business.

The issue of cross-subsidization was thoroughly examined by the Waste Management Panel. Further, GT&C 12B was specifically intended to address cross-subsidization issues. Cross-subsidization and its potential effect on competition is also an issue for the AES Inquiry. However, this Panel is not of the opinion that there is a need to wait until that Inquiry is completed in order to reach a decision on this matter. The AES Panel has clearly stated that the AES Inquiry is forward looking and is not intended to impinge on any current proceeding and that such proceedings should consider the evidence before them. Accordingly, this Panel will further direct FEI in how the issues of cross-subsidization and risk due to be addressed.

The Panel disagrees with both FEI's interpretation of GT&C 12B, and with its calculation; use of an "incremental portion" of its overhead and marketing costs. GT&C 12B states that an allowance for overhead and marketing costs relating to developing NGV fuelling station agreements is to be recovered from the customer. This means that overhead and marketing costs, including, without limitation, business development, customer education and all other costs relating to the CNG/LNG Service program, should be allocated proportionately, not incrementally, to NGT customers. When a business venture is initiated, there is no way of knowing what the actual business development and marketing costs will be, just as there is no way of knowing what the actual sales will be. However, it is incumbent upon a nascent business to arrive at an estimate of these amounts, in order to come up with an input cost for its pricing model. If actual costs are greater than estimated, the business is faced with choices such as: attempting to recover additional costs from customers that have already taken service; recovering such costs from future customers; or failing to recover such costs, which would impact investors. If actual costs are less than estimated, the business is at risk of having over-priced its offering and thus possibly being less successful than planned.

The Panel requires FEI to structure its cost recovery of overheads proportionately for two reasons. First, it ensures that there is no cross-subsidization from distribution customers. Second, importantly, in the NGT market FEI is potentially competing with other unregulated organizations. In this regard, the Panel notes Clean Energy Fuels' concerns. Generally speaking, none of FEI's potential competitors has access to a large group of customers in a regulated monopoly market that is available to assume risk, cost overruns and start-up costs of an NGT venture. To allow FEI access to its ratepayer base in this manner is neither just nor fair.

Previously in this Decision, we have discussed FEI's position that the NGT business is an extension of the natural gas distribution service. The Waste Management Panel disagreed with this characterization as discussed in the Waste Management Decision. This Panel concurs. The NGT business is "downstream of the meter" and it is not a natural monopoly, unlike the regulated distribution franchise. The Panel considers that those taking service under GT&C 12B are not in the same customer class as are any of FEI's existing distribution customers (at least in respect of the service taken under GT&C 12B – an NGT customer may also be a distribution customer). Further, the Panel considers that there are sufficient differences between the nature of CNG Service and LNG Service that it would be premature to conclude that these services should be contained within the same class.

Accordingly, the Panel directs that FEI establish two new service classes, one for CNG Service and one for LNG Service.

The employment of appropriate and approved cost allocation methodologies and policies would serve to alleviate the Panel's concerns relating to cross-subsidization of the new classes by existing ratepayers. In the Panel's further view, this is of particular importance here, where it has found that the benefits to Fortis' ratepayers from the Fuelling Service Agreement are negligible.

The Panel re-affirms the following Commission directives in the Waste Management Decision and confirms their applicability to this Decision:

1. **Estimate the overhead and marketing expenses which relate to the CNG/LNG Service program and the expected sales volume and allocate those costs in a reasonable manner among CNG/LNG Service customers going forward.**

2. **Keep the costs and revenues associated with the Waste Management Agreement and any other offerings separate and distinct, monitor such offerings during a two-year test period and provide a report by March 31, 2013, which includes the topics listed in Appendix 2 of the Waste Management Decision.**

The Panel further directs:

1. **All overhead and marketing expenses referred to above, including, without limitation, business development, customer education and all costs relating to the CNG/LNG Service program are to be determined using approved fully allocated cost of service methodology and included in the cost of service.**

2. **Fortis to recalculate the Operating and Maintenance charge in the BFI rate to reflect the cost of the CNG/LNG Service program using the figures of $569,396 for 2012 and $601,119 for 2013, to be allocated in a reasonable manner.**

3. **Therefore, in order to set a fair and equitable rate which is not unjust or unreasonable within the meaning of section 59 of the *Utilities Commission Act*, and that therefore reflects the full cost of service of this offering, for more particularity, Fortis is to include the following amounts in the rate applicable to BFI:**

    - **Actual construction costs for the BFI fuelling station;**
    - **Cost of the BFI Application in the amount of $75,000;**
    - **Branding costs for the installation of signs and to affix decals;**
    - **BFI's proportionate share of the overhead and marketing costs, including, without limitation, business development, customer education and all costs relating to the CNG/LNG Service program;**
    - **Any other costs which may not have been factored into the cost charged to BFI including, for example, increased insurance premiums, as Fortis is required to obtain a number of specific**

insurance coverages, and to include BFI as an additional party insured on its Comprehensive General Liability Policy.

4. **Fortis to establish a rate base deferral account to capture the revenues associated with volumes in excess of BFI's "take or pay" commitment which may be credited back to BFI in the event that BFI is required to pay the un-depreciated capital cost of the fuelling station (i.e., amounts collected in excess of the "take or pay" commitment representing one half of the applicable capital rate).**

5. **Fortis to include all other amounts paid by BFI for volumes in excess of the "take or pay" commitment in the existing rate base deferral account approved in the Waste Management Decision to capture incremental CNG and LNG Service recoveries received from actual volumes purchased in excess of minimum "take or pay" commitments, for refund to all non-bypass customers.**

As the Panel notes that the costs and revenues associated with the BFI Project were not included in FEU's recent Revenue Requirements Application, **the Panel further directs Fortis to**:

1. **Establish a rate base deferral account for all revenues (excluding revenues in excess of the "take or pay" commitment) from the BFI Project.**

2. **Establish a rate base deferral account for all costs of the BFI Project.**

If Fortis chooses to have its shareholder bear any of the amounts which the Panel has found properly attributable to BFI, these amounts are to be identified and reported on a line by line basis and are to be specifically disclosed in and excluded from any future revenue requirement applications.

Fortis is directed, within 30 days of the date of this order, to provide the Commission with an updated rate filing, including details of any amounts to be borne by shareholders.

Alternatively, the Commission Panel notes that the Fuelling Station Agreement specifically contemplates the assignment by Fortis to any of its affiliates. (Exhibit B-1, Appendix A, clause 18.4) In the Panel's view, and as discussed throughout these Reasons, the necessity for proper and fair cost allocation is heightened by Fortis' entry, in its capacity as a public utility, into what would otherwise be a competitive business environment. The Panel is of the view that the BFI Project is a prime candidate for the use by Fortis of a non-regulated subsidiary to provide the fuelling service. The use of a separate entity and employment of appropriate and approved transfer pricing policies would serve to alleviate the Panel's concerns relating to cost allocation and cross-subsidization. It would also reduce costs associated with the regulatory process which this Application has necessitated. However, while FEI has clearly stated its preference not to provide CNG/LNG Services through a separate affiliate, given the above noted concerns with inadequate cost-recovery and cross-subsidization, the Panel defers the ultimate resolution of the appropriate framework for FEI's participation in a competitive, unregulated activity to the AES Inquiry.