



**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER G-45-13**

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

and

FortisBC Energy Inc.  
Application for Reconsideration of British Columbia Utilities Commission Order G-29-13  
in the Matter of Biomethane Service Offering:  
Post Implementation Report and Application for Approval  
of the Continuation and Modification of the Biomethane Program on a Permanent Basis

**BEFORE:** D.M. Morton, Panel Chair/Commissioner  
D.A. Cote, Commissioner March 28, 2013  
L.A. O'Hara, Commissioner  
C. van Wermeskerken, Commissioner

**O R D E R**

**WHEREAS:**

- A. On December 19, 2012, FortisBC Energy Inc. (FEI) filed an application with the British Columbia Utilities Commission (Commission) seeking approvals for the continuation of the Biomethane Program on a permanent basis with certain modifications (the 2012 Biomethane Application);
- B. In the 2012 Biomethane Application, in addition to a number of other approvals, FEI seeks acceptance, pursuant to section 71 of the *Utilities Commission Act* (the *Act*), of four Biomethane Purchase Agreements between FEI and the following suppliers (the Four Biomethane Suppliers):
  - EarthRenu Energy Corp. (EarthRenu),
  - Greater Vancouver Sewerage and Drainage District (GVS&DD),
  - Seabreeze Farm Ltd. (Seabreeze), and
  - Dicklands Farms (Dicklands);
- C. FEI also seeks acceptance, pursuant to section 44.2 of the *Act*, of the capital costs related to the facilities required for the four biomethane supply projects as described in Section 7 of the 2012 Biomethane Application;

**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER**            G-45-13

2

- D. On January 8, 2013, by Order G-1-13, the Commission issued a Preliminary Regulatory Timetable establishing a Workshop on the Post-Implementation Report and a Procedural Conference. The Workshop was held on January 17, 2013, and the Procedural Conference was held on January 22, 2013;
- E. On February 5, 2013, the Commission issued Order G-18-13 that established a Regulatory Timetable and provided an opportunity for FEI, Interveners and other stakeholders to make comments on a number of issues regarding the biomethane suppliers' regulatory process to approve rates and other matters relating to four new supply contracts (the biomethane suppliers' regulatory process);
- F. Submissions from Interveners and other stakeholders on the issues regarding to the biomethane suppliers regulatory process were received from the British Columbia Seniors' and Pensioners' Organization *et al.* (BCSPO), the Commercial Energy Consumers Association of British Columbia (CEC), the B.C. Sustainable Energy Association (BCSEA), Dicklands, Seabreeze , EarthRenu, GVS&DD, Paradigm Environmental Technologies, Inc. (Paradigm), and FEI;
- G. The Commission reviewed the submissions regarding the biomethane suppliers regulatory process and on February 18, 2013 issued Commission Order G-29-13. In Order G-29-13 the Commission determined that the supply cap set in Commission Order G-194-10 would be increased by an amount sufficient to accommodate the supply from the four new biomethane suppliers provided FEI confirmed to the Commission by March 6, 2013 that the natural gas non-bypass customers bear no actual or potential risk for unsold biomethane pending the outcome of the 2012 Biomethane Application;
- H. On March 6, 2013, FEI filed its Response to Commission Order G-29-13 and stated that FEI understood the Commission to be requesting FEI to assume the economic risk for the unsold biomethane from the four new supply contracts over the lives of the four supply contracts subject to the possibility of the Commission absolving it of this risk in its decision on the 2012 Biomethane Decision and that FEI would not assume this risk. In its March 6, 2013 letter, FEI requested that the need for FEI to assume the economic risk on the four supply contracts be reconsidered;
- I. The Commission issued Letter L-14-13 dated March 11, 2013, and noted that in FEI's reconsideration request FEI had not fully elaborated on its reasons for a reconsideration. However, in order to accommodate the timelines of the third party biomethane suppliers the Commission acknowledged it would proceed directly to Phase 2 of the reconsideration provided FEI filed a fulsome amended reconsideration application, in accordance with the Reconsideration Guidelines, by March 15, 2015, and further provided that this reconsideration application included all necessary evidence required in Phase 2 of a reconsideration;
- J. The Commission also determined that if the conditions set out in Order G-29-13 were satisfied, Registered Interveners, Registered Interested Parties, and the Four Biomethane Suppliers in the 2012 Biomethane Application proceeding would be eligible to be Participants in the reconsideration proceeding;

**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER** G-45-13

3

- K. FEI submitted its Application for Reconsideration of Commission Order G-29-13 (Reconsideration Application) on March 15, 2013;
- L. In Order G-39-13, the Commission determined that the criteria set out in Letter L-14-13 were satisfied and the Reconsideration Application would proceed to Phase 2 where the Commission would hear written submissions on the merits of the Reconsideration Application;
- M. Submissions on the Reconsideration Application were received from Seabreeze, Dicklands, EarthRenu, CEC, BCPSO, BCSEA, Paradigm, GVS&DD and FEI. A letter of comment was also submitted by the University of British Columbia;
- N. The Commission has reviewed the submissions and determined that Order G-29-13 should be varied for the Reasons for Decision set out in Appendix A to this Order.

**NOW THEREFORE** the Commission determines as follows:

1. Directive 1 of Order G-29-13 is varied to remove the condition that FEI bear the risk of unsold biomethane and will now read as follows:

*“The supply cap, set by Order G-194-10, is increased by an amount sufficient to accommodate up to an additional 280,000 GJ of supply annually from the following biomethane suppliers in the following amounts:*

<i>Earth Renu</i>	<i>100,000 GJ annually</i>
<i>GVS&amp;DD</i>	<i>40,000 GJ annually</i>
<i>Dicklands</i>	<i>70,000 GJ annually</i>
<i>Seabreeze</i>	<i>70,000 GJ annually</i>

2. The risk of unsold amounts of biomethane up to the caps specified in Directive 1 will be borne by FEI's ratepayers and not its shareholders, issues relating to prudence aside. Any further determination regarding the allocation of risk of unsold biomethane will be made in the review of the 2012 Biomethane Application.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 28<sup>th</sup> day of March 2013.

BY ORDER

*Original signed by:*

D.M. Morton  
Panel Chair/Commissioner

Attachment

**FortisBC Energy Inc.**  
**Application for Reconsideration of British Columbia Utilities Commission Order G-29-13**  
**in the Matter of Biomethane Service Offering:**  
**Post Implementation Report and Application for Approval**  
**of the Continuation and Modification of the Biomethane Program on a Permanent Basis**  
**Reasons for Decision**

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## **1.0 INTRODUCTION**

On February 28, 2013, the British Columbia Utilities Commission (Commission) issued Order G-29-13. This Order provided for an increase in the supply cap for the Biomethane Pilot Program approved under Order G-194-10 to accommodate four new supply agreements. The increase was conditional on FortisBC Energy Inc. (FEI) confirming that natural gas non-bypass customers bear no actual or potential risk for unsold biomethane from the four supply agreements unless determined otherwise in the Commission's upcoming review of FEI's 2012 Biomethane Pilot Program.

On March 6, 2013, FEI indicated it would not accept the economic risk on the four supply contracts and requested reconsideration of Order G-29-13. On March 7, 2013, the Commission issued Letter L-14-13 and stated that it would proceed with an expedited Reconsideration Proceeding process if FEI filed an amended reconsideration application, in accordance with the Reconsideration Guidelines, by March 15, 2013, with more expansive reasons and evidence in support.

On March 15, 2013, FEI filed an amended application requesting reconsideration of item 1 of Order G-29-13 dated February 28, 2013. (Reconsideration Application)

FEI is seeking reconsideration on the basis that the condition in Order G-29-13 raises a new principle regarding who should bear the economic risk on biomethane supply. In its view, submissions and new and updated evidence should be considered on the issue. FEI submits that "... it should not be required to take the economic risk because biomethane supply is being developed to meet customer demand and provincial government energy policy objectives and that the cost of biomethane supply, like all gas supply, is properly borne by customers." FEI also submits that "... a requirement that it absorb the economic risk on biomethane supply, regardless of whether it is acting prudently, is inconsistent with the regulatory compact." (Exhibit B-1, p. 2) FEI further submits that the requirement that it take the risk of unsold biomethane raises a new principle - the principle of who should bear the economic risk on biomethane supply - that was not considered during the original proceedings. In FEI's view, this issue has not been previously addressed by FEI or the Commission in any explicit manner. FEI submits that the risk that biomethane may not be sold at the Biomethane Energy Recovery Charge (BERC) rate should be borne by FEI's non-bypass customers because gas supply is appropriately a customer cost. FEI states that imposing the risk on FEI is inconsistent with the regulatory compact. (Exhibit B-1, p. 5)

## **2.0 SUBMISSION OF FEI**

### **2.1 Updated Demand Projections**

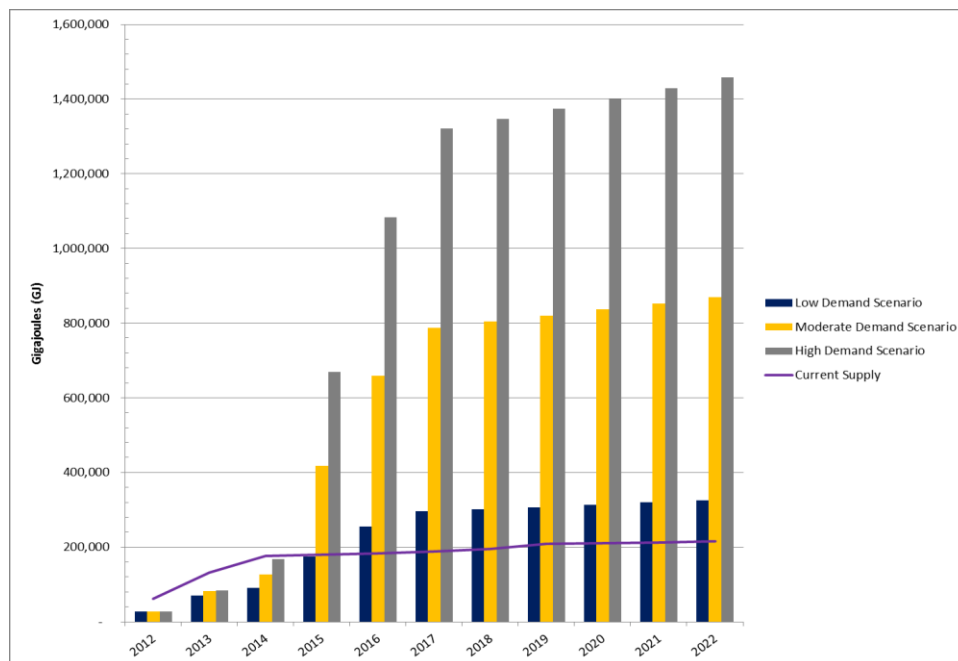
FEI states that the University of British Columbia (UBC) has now confirmed its commitment to purchase 20,000 GJ of biomethane beginning April 1<sup>st</sup> 2013 by signing the enrollment form on January 23, 2013. In addition, UBC "...is looking at adding up to 100,000 GJ of biomethane this year for their cogeneration facility." This 100,000 GJ

of potential new load is not captured for the years 2013 and 2014 under any scenarios of the projected demand in Section 4.5 of the 2012 Biomethane Application. Further, UBC notes that this 100,000 GJ biomethane would be used as a “standby” fuel source. (Exhibit B-1, p. 10; Exhibit B-1, p. 17; Exhibit E-1, p. 1)

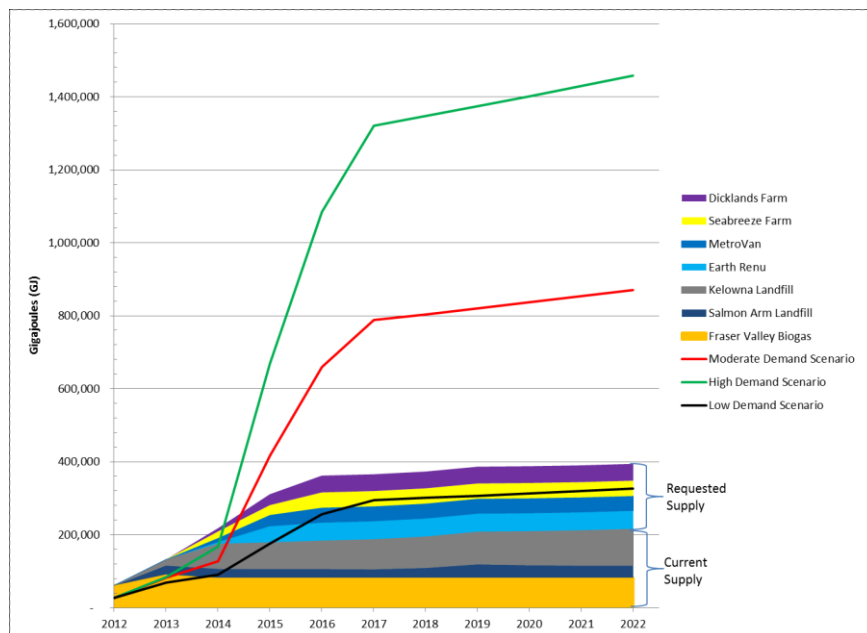
UBC is exploring several clean energy projects one of which is the potential feasibility of a larger Combined Heating and Power Facility (CHP). If this facility were approved then UBC could have a requirement for up to 500,000 GJ’s annually of renewable natural gas (RNG) supply from FEI to be supplied by end 2017. In its letter of comment, UBC states that it wishes to work with FEI to allow FEI to develop the supply contracts necessary to be in place now in order to serve UBC’s potential future demand requirements. UBC further submits that it has concerns that there will not be enough RNG supply built up or developed to meet its current or future needs if the commission does not allow FEI to add supply contracts, such as the four currently being considered in this application. (Exhibit E-1, pp. 1-2)

With these additional UBC volumes, reduced supply and momentum in the market place, and government support, FEI submits that it is reasonable to conclude that the demand for biomethane should outstrip supply and that it is therefore prudent to expand the supply cap for the Biomethane Pilot Program at this time. (Exhibit B-1, p. 10; Exhibit B-1, p. 17; Exhibit E-1, pp. 1-2)

FEI provided updated Figures 4-3 and 8-1, reproduced here as Figures 1 and 2. In FEI’s view, all of these factors lead to an increase in demand in 2013 and 2014, with a slight decrease in the forecast demand by 2017. It submits that the demand forecast is remaining stable; and the prospects of significant demand from UBC are on track and more certain. (Exhibit B-1, p. 12)



[Figure 1: Updated Figure 4-3 (Exhibit B-1, p. 61; Exhibit B-1, p. 14)]



[Figure 2: Updated Figure 8-1 (Exhibit B-1, p. 112; Exhibit B-1, p. 15)]

The changes in annual demand are summarized in Table 1. The table incorporates the impact of removing FortisBC Energy (Vancouver Island) Inc. (FEVI) demand, which FEI submits is approximately 1,100 GJ in the low scenario and 2,100 GJ in the medium scenario in 2015, increasing to approximately 6,000 GJ in the low scenario and 11,000 GJ in the moderate scenario in 2017. (FEI Reply Submission, Attachment p. 1)

	2013	2014	2015	2016	2017
High	2,600	10,000	(2,227)	(6,789)	(11,565)
Moderate	6,600	14,000	(2,227)	(6,789)	(11,565)
Low	10,600	18,000	(1,114)	(3,851)	(5,772)

[Table 1: Overall Impact of Changes (FEI Reply Submission, Attachment p. 1)]

FEI also provides a summary of the expected supply, from the existing and the proposed new biogas facilities. This information is shown in Table 2.

	2013	2014	2015	2016	2017
Fraser Valley Biogas	63,875	82,125	82,125	82,125	82,125
Salmon Arm Landfill	25,000	25,000	24,375	24,375	23,750
Kelowna Landfill	15,956	68,457	72,559	77,483	81,841
Earth Renu	0	5,000	45,000	50,000	50,000
GVS & DD (MetroVan)	0	10,160	30,000	40,000	40,000
Seabreeze Farm	0	18,000	27,000	42,000	42,000
Dicklands Farm	0	9,000	30,000	46,000	46,000

[Table 2: Biomethane Supply (FEI Reply Submission, Attachment p. 2)]

In addition, FEI provides a letter of support from the BC Ministry of Environment. The letter states that this RNG program aligns with objectives set in the Province's strategy to encourage biomethane opportunities, including

offering consumers low-carbon natural gas. It further states that the RNG program aligns with the BC Jobs Plan priority to maintain a competitive advantage in the clean energy technology sector. (Exhibit B-1, Appendix B)

## **2.2 Non-bypass Ratepayer Rate Impacts**

FEI submits that if all of the incremental biomethane volume, estimated at the maximum amounts of the four contracts, was sold at current market prices, the impact on a typical residential customer taking 95 GJ annually would be approximately \$2.18. (Exhibit B-1, p. 16)

## **3.0 SUBMISSIONS OF INTERVENERS AND INTERESTED PARTIES**

### **3.1 Submissions of the Commercial Energy Consumers Association of British Columbia**

The Commercial Energy Consumers Association of British Columbia (CEC) agrees that the principle of who should bear the economic risk on biomethane supply is a new principle and has not been addressed in any explicit manner in this proceeding. However, it also recognizes the necessity for establishing, in a timely fashion, who should bear the economic risk of oversupply with respect to the four supply contracts. The CEC submits that the issue of who bears the risk associated with the biomethane service offering may be more fully canvassed in the review of the 2012 Biomethane Application, and it is not necessary or appropriate for the risk to the non-bypass customer to be eliminated as a precondition for the approval of the four supply contracts. (Exhibit C-4-1, p. 2)

### **3.2 Submissions of the British Columbia Pensioners' and Seniors' Organization *et al.***

The British Columbia Pensioners' and Seniors' Organization *et al.* (BCPSO) agree that biomethane supply should be dealt with in the same manner as other gas supply. However, it is "unaware of any cases where gas distribution customers were required to bear the risk of their utility over-developing supply from particular suppliers." It notes that the updated forecasts provided by FEI "... indicate that under all scenarios there is a forecast short term overabundance of supply to the end of 2014 with a forecasted swing to demands in excess of supply after....Given the relatively low cost risk and the evidence filed indicating that the potential for excess supply is only a concern in the very near term, our clients are of the view that the risk to FEI is very low." (Exhibit C-5-1, p. 1)

BCPSO's submits that with risk goes reward. If the risk of oversupply is borne by non-bypass ratepayers, it is BCPSO's view that "...the appropriate ROE to be charged to those customers, who largely are not expected to request this new service is 0%." (Exhibit C-5-1, p. 1)

BCPSO also suggests that "[t]he long-term implications of bearing the risks relate to this new program will properly be considered in the Biomethane application". (Exhibit C-5-1, p. 2)

#### **3.2.1 Reply of FEI to BCPSO**

In response to BCPSO's suggestion that the ROE be 0%, FEI states that it "has a statutory right to earn a fair return on its invested capital. However, FEI does not earn a return on commodity costs, or on the suppliers' invested capital. Further, in the case of the four new suppliers, FEI does not own any of the upgrading equipment and the supply costs under the supply agreements will not include any ROE for FEI. Accordingly, there is nothing to consider with respect to BCPSO's proposal regarding ROE." (FEI Reply Submission p. 2)

### 3.3 Submissions of the B.C. Sustainable Energy Association

The B.C. Sustainable Energy Association (BCSEA) "... is satisfied that FEI's evidence of a combination of firm and reasonably expected incremental demand for biomethane from UBC and customers such as municipalities in the near term establishes that the existing supply cap of 250,000 GJ is inadequate to meet reasonably anticipated future demand for biomethane." (Exhibit C-3-1, p. 2)

The BCSEA expresses concern that "... postponement of consideration of acceptance of the four biomethane supply agreements in question until after the completion of the review of the 2012 Biomethane Application would jeopardize the viability of these projects." (Exhibit C-3-1, p. 2)

### 3.4 Submissions of Biomethane Suppliers

#### 3.4.1 EarthRenu Energy Corp.

In EarthRenu Energy Corp. (EarthRenu)'s view, Order G-29-13 should be varied by removing the condition that "natural gas non-bypass customers bear no actual or potential risk for unsold biomethane pending the outcome of the 2012 Biomethane Application." It submits that the supply cap should be increased by an amount sufficient to accommodate the supply from the four new biomethane suppliers. (Exhibit C-6-1)

In support of its position, EarthRenu states that the will of the electorate on both the provincial and municipal level in respect to the development of clean energy, citing objectives found in the *Clean Energy Act* and the approval Metro Vancouver received from the provincial government for its solid waste plan. (Exhibit C-6-1, p. 1)

EarthRenu also stated, "... in the strongest terms that every time there is an additional delay in securing approval for the Supply Contracts signed with FEI, there is a signal sent to renewable energy developers that it is a lengthy process to develop sustainable energy projects in BC even though these projects meet the legislated objectives of our provincial government and are consistent with the objectives of the Solid Waste Plan of Metro Vancouver where three of the four projects under review are located."

EarthRenu acknowledged that the Commission has a mandate to protect consumers from paying excessive rates for energy, but submits that there is clearly a sentiment within the public that desires to be able to purchase sustainable energy. (Exhibit C-6-1, pp. 1-2)

#### 3.4.2 Dicklands and Seabreeze Farms

Both Dicklands Farms (Dicklands) and Seabreeze Farm Ltd. (Seabreeze) submit that FEI should not be required to bear the risk for unsold biomethane from the proposed supply contracts, but the supply cap should be increase to accommodate the new biomethane suppliers is left in place. They also believe that FEI has provided ample evidence with regard to the projected demand for biomethane in the Province. (Exhibit C-1-1, p. 1; Exhibit C-2-1, p. 1)

They submit that "...their rate for biomethane is well within the allowed maximum price set by the BCUC and their projected volumes will be only a small portion of the biomethane demand in the province over the coming years." (Exhibit C-1-1, p. 1; Exhibit C-2-1, p. 1)



Dicklands submits that at this point in time the farm will only be able to produce gas for sale to FEI in late summer or early fall, 2014. Seabreeze expects that it will be able to produce by late spring or early summer, 2014. Both parties request Commission approval by April 19, 2013. (Exhibit C-1-1, p. 1; Exhibit C-2-1, p. 1)

### **3.5 Submissions of Paradigm Environmental Technologies, Inc.**

Interested Party Paradigm Environmental Technologies, Inc. (Paradigm) supports FEI's request for the Commission to rescind Item 1 of Order No. G-29-13 and submits that the new principle requesting FEI to bear the economic risk of developing Biomethane supply is not in the best interests of the BC Energy Policy nor the Province's economic goal to develop a healthy BC clean tech industry that creates jobs and develops exports. It describes the risk to all rate payers of the total program requested by FEI for up to 3,000,000 GJ per year is about 1% of all natural gas sales in the province, and these four new 4 contracts at about 400,000 GJ, less than 0.2%. It further submits that it "[h]inders the development of both innovative and proven projects for biomethane by increasing the time and risk that projects are approved." In its view, if this decision is not reversed "...we believe that it would cause the outright cancellation of our current project with Metro Vancouver and future biomethane into electricity projects." Paradigm also states that it is contrary to the original three contracts of the RNG program, which did not require FortisBC to take the risk for any unsold RNG. (Exhibit D-1, p. 1)

Paradigm also requests that the Commission "... [e]xpeditiously pursue appropriate changes to the Utilities Commission Act or an order in council where the Commission be empowered to issue exemptions for biomethane producers. It is our understanding that this change would ensure that it is the energy sales contract with the utility (e.g. FortisBC) and not the supplier itself that would be regulated by the Commission." (Exhibit D-1-1, p. 1)

#### **Commission Determination**

The Panel makes no determination, at this time, on the issue of allocation of risk for unsold biomethane except as it relates to these four contracts. This is an issue to be decided in the review of the 2012 Biomethane Application. In this regard, the Panel notes that FEI, CEC and BCPSO acknowledge the need for more fully canvassing opinions on this issue. However, the Panel does not interpret this to mean that in the absence of a more fulsome review, it is acceptable to allocate significant risk to non-bypass customers. The Panel will only consider raising the cap if there exists sufficient evidence of demand such that any residual risk borne by non-bypass ratepayers is minimal. In this case, FEI's shareholder will not be expected to bear the residual risk for unsold biomethane from these four contracts, issues related to prudence aside.

Turning to Figure 1, the Panel notes that with the demand from FEVI removed and additional demand from UBC, all three demand scenarios are met by current supply until 2015. After 2015, demand outstrips current supply for all scenarios. Of particular significance to the Panel is that given the confirmations received from UBC, there is greater confidence associated with all three scenarios. The Commission Panel acknowledges the potential of additional demand for UBC's proposed CHP facility, and notes UBC's stated intent to work together with FEI to develop supply contracts.

The Panel accepts the potential CHP project as sufficient evidence of increased demand to justify the increase in the cap, even though it isn't firm at this time. Given the business model implicit in the pilot program, the Panel agrees with UBC that evidence of supply is required before demand can fully develop. The Panel finds the risk of oversupply related to these new projects to be minimal and in the event the demand doesn't materialize,

ratepayer impact is also minimal. Accordingly, the Panel is prepared to approve an increase of 280,000 GJ in the cap with all other terms of the pilot project unchanged and is prepared to vary Order G-29-13 so that the risk of unsold amounts of the 280,000 GJ biomethane will be borne by FEI's ratepayers and not its shareholders.

The Commission Panel varies directive 1 of Order G-29-13 to remove the condition that FEI bear the risk of unsold biomethane. For greater clarity, directive one will now read:

*The supply cap, set by Order G-194-10, is increased by an amount sufficient to accommodate up to an additional 280,000 GJ of supply annually from the following biomethane suppliers in the following amounts:*

<i>Earth Renu</i>	<i>100,000 GJ annually</i>
<i>GVS&amp;DD</i>	<i>40,000 GJ annually</i>
<i>Dicklands</i>	<i>70,000 GJ annually</i>
<i>Seabreeze</i>	<i>70,000 GJ annually</i>

With regard to the concerns about the complexity of the regulatory process as described by the biomethane producers, the Commission Panel notes the frustration expressed. However, the Commission has to abide by the provisions of the *Utilities Commission Act* and the *Administrative Tribunals Act* in the conduct of all proceedings. Biomethane producers should also be mindful of the fact that the facilities they propose to build may be considered public utility infrastructure and, as such, they are also required to comply with the applicable terms of the *Utilities Commission Act*.

The Commission has made every effort, within the terms of its mandate, to accommodate expedited review processes for the new contracts. As was noted in the previous decision, the circumstances of these supply contracts represent a departure from the circumstances of the pilot program. Also, as previously discussed, these contracts introduce principles of risk allocation that can only be determined after a more fulsome review. The Commission Panel appreciates the pressures faced by producers, but cannot consider this a reason to short-circuit this review process.

With regard to Paradigm's submission that the Commission should pursue an exemption for biomethane producers, the Panel takes no position at this time as this is not within the scope of the reconsideration.