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Our File No. 143880

December 12, 2014

VIA RESS, EMAIL AND COURIER

Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, Ontario
M4P 1E4

Attention: Kirsten Walli
Board Secretary

Dear Ms. Walli:

Re: EB-2014-0012 - Union Gas Limited - Hagar Liquefaction

Please find attached BOMA's Intervenor Argument.

Yours truly,

FOGLER, RUBINOFF LLP

Tom Brett per

Thomas Brett
TB/dd
Encls.
cc: All Parties

IN THE MATTER OF the Ontario Energy Board Act, 1998, S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF an Application by Union Gas Limited, pursuant to section 36(1) of the Ontario Energy Board Act, 1998, for an order or orders approving rates and other charges for an interruptible natural gas liquefaction service.

INTERVENOR ARGUMENT OF

BUILDING OWNERS AND MANAGERS ASSOCIATION, GREATER TORONTO ("BOMA")

December 12, 2014

Introduction/Union's Application

Union plans to add new LNG dispensing facilities adjacent to its existing LNG liquefaction plant at Hagar, in Northern Ontario (Union North operating region) to enable it to dispense LNG to LNG wholesalers, or to individual LNG powered vehicles, for use as a vehicle transportation fuel. Hagar is a "needle-peak" facility which permits a high deliverability gas delivery from storage during a pipeline or compressor outage or extreme weather condition in Union North.

Union's application, filed on May 14, 2014, is for:

"(i) an order approving the proposed cost allocation methodology used to allocate 2013 Board-approved costs between liquefaction, storage and vapourization functions performed at Hagar;

(ii) an order approving the proposed cost allocation methodology that allocates 2013 Board-approved Union North distribution costs to the Rate L1 service;

(iii) an order approving a new Rate L1 rate schedule and a cost-based rate to accommodate an interruptible liquefaction service at Hagar;

(iv) an order approving a maximum interruptible liquefaction rate on short-term (i.e. one year or less) liquefaction service equal to approximately three times the cost-based interruptible liquefaction rate;

(v) an order approving modifications to the Union North Schedule "A" to accommodate Rate L1 gas supply charges expressed in dollars per gigajoules ($/GJ);

(vi) for such interim order or orders approving interim rates or other charges and accounting orders as may from time to time appear appropriate or necessary; and

(vii) all necessary orders and directions concerning pre-hearing and hearing procedures for the determination of this application".

Subsequent to the Union application on October 15, 2014, Northeast Midstream LP filed a motion asking the Board to forbear from regulating the LNG dispensing facilities proposed by Union pursuant to section 29(1) of the Ontario Energy Board Act (the "Act") on the basis that the markets for fuel for trucks, and for LNG dispensing for trucking was subject to competition sufficient to protect the public interest.

For completeness, section 29(1) reads as follows:

> "On an application or in a proceeding, the Board shall make a determination to refrain, in whole or part, from exercising any power or performing any duty under this Act if it finds as a question of fact that a licensee, person, product, class of products, service or class of services is or will be subject to competition sufficient to protect the public interest."

The Board decided to hear the Northeast motion and the Union application sequentially, as separate phases of one proceeding. BOMA cross-examined both Northeast and Union and presented oral argument on the motion on day one of the proceeding. In its submission, BOMA urged the Board to grant the Northeast motion. In the event the Board were to grant Northeast's motion, it would not approve a rate schedule pursuant to paragraphs (iii), (iv) and (v) on page 2 of Union's application. BOMA's understanding is that even in the event the Northeast motion were successful, Union wishes the Board to "issue an order approving the proposed cost allocation methodology used to allocate Board approved costs between liquefaction, storage, and vapourization functions performed at Hagar". BOMA understands this to be the cost functionalization study performed by KPMG and which Union has accepted, and included as part of the evidence in its application.

BOMA will consider the cost allocation part of Union's request in Part II of this Argument.

In the event the Board rejects the Northeast motion, the Board needs to deal with the entire Union application, summarized at page 2 above.

Part I. Union Proposed Liquefaction Rate and the LNG Dispensing Business

BOMA urges the Board not to approve Union's request for an L1 rate under which it would manufacture, store, and dispense LNG to trucks. BOMA makes this recommendation for several reasons.

First and foremost, Union's proposal places most of the risk of the failure of the proposed new business on the ratepayers. It does this because at rebasing in 2019, the assets underlying the business, namely the new assets required to dispense LNG to the trucks, will be placed in Union's rate base. From 2019 on, ratepayers will be paying the revenue requirement for those assets. The dollar amount of these is substantial. They are currently estimated at $9.9 million (Exhibit A, Tab 1, Page 21). The incremental O&M for the new business is forecast at $298,000.00, $812,000.00, and $986,000.00 in 2016, 2017, and 2018, respectively (Exhibit A, Tab 1, Page 22). The revenue requirement associated with that business is shown at Exhibit A, Tab 2, Schedule 5 (Updated) and is $669,000.00, $1,736,000.00 and $1,906,000.00 in 2016, 2017 and 2018, respectively.

In 2019 and thereafter, ratepayers continue to pay that revenue requirement. Union will be responsible only for any excess expenditure beyond the $9.9 million required to establish the new business (our emphasis). The underlying obligation remains with ratepayers regardless of whether Union realizes its revenue forecasts for the business. Moreover, Union has provided no analysis to show whether the new business is economic on a standalone basis, that is, whether the net present value of the revenue forecast to be earned by the business will earn a utility rate of return over a reasonable period. Union has forecast average revenues over the period 2016 to 2019 of $2,094,000.00 (Exhibit A, Tab 1, Page 3), but not beyond 2019, and has provided some detail justifying the forecasts, but there are caveats (see below). In effect, they have assumed that by 2018, they will be at capacity of the available liquefaction facilities.

BOMA noted in its argument on the motion, the fact that Union is in the middle of an IRM period (2014-2018) somewhat obscures the risk the new business poses for ratepayers, since no additional assets are added to rate base during the IRM period. However, the new business assets have a very long life and ratepayers will pay the return, depreciation, and taxes, on those assets for that period, regardless of how long the "demonstration project" lasts.

Moreover, Union has made it clear that it will not take on the volume underperformance risk. In response to ExB.BOMA.8, it has stated it would not agree with the Board imputing revenue to the business in the event it generates insufficient revenue to reach the allowed utility return depreciation taxes and operating costs (the revenue requirement) assets in any year. It also stated that it would not adopt the ratepayer protection mechanism proposed by CME in its letter dated November 18, 2014.

In BOMA's view, given the fact that "LNG-for-trucks" is a new business, distinct from the current business, which involves substantial upfront capital expenditures, it must demonstrate that on a standalone basis, it generates sufficient revenue to cover its cost of service over each year of its operations, or at least over a reasonably short period of time. Otherwise, the Board would need to annually impute revenue to the project to avoid the existing ratepayers from subsidizing the business in any year. The Board has taken this approach in the past in dealing with both Union's and Enbridge's so-called ancillary businesses. Ultimately, the utilities transferred those businesses to affiliates. Some of them were later sold by the affiliates to third parties. The fact that Union proposes to introduce the new business in the middle of the IRM period does not alter the basic test that must be met by the new business; it must not draw capital from the existing business in order to earn the allowed rate of return, as determined by the Board each year.

Union instead states that revenues for the new business would go to earnings sharing during the IRM period, agreed to in the EB-2011-0210 Settlement Agreement. However, the earnings sharing formula in that Settlement Agreement contained a 100 basis points dead-band, so that the initial net revenues may well go to Union's shareholder. Unless the return in any year exceeds the base allowed return by more than 100 basis points, the revenues from LNG sales during the IRM period will go to the Union shareholder.

Union, in BOMA's view, is launching the new regulated business to test the waters on the LNG trucking market. If its new business is successful on this initial scale, it has stated that it would not rule out a greenfield project on a much larger scale, which it agrees would be unregulated. It is not clear why the status should change once the plant is a "greenfield plant". What is clear is that the trial phase is being underwritten by the ratepayers; Union has very little risk.

The danger to ratepayers from the assumption of the volume risk is heightened by the rather uncertain prospects for the business. Union has already postponed its commencement of commercial operation date to July 1, 2016 because of lack of orders (Exhibit A, Addendum, Page 3). Moreover, it's evidence is that:

> "Although there is interest in the liquefaction service, some of the customers who expressed interest in the liquefaction service, as noted in Table 2, Exhibit A, Tab 1, are no longer in negotiations with Union at this time. It is evident this market is not developing at a rate consistent with Union's expectation" (Ibid, Page 3).

Moreover, Union has stated that it requires only a "minimum commitment" or a <u>very high expectation of completing contracts</u> prior to the <u>in-service date</u> of at least 50% of the liquefaction capacity available, and that if it received a "minimum commitment" before the Board's ruling, it would commit to make the necessary infrastructure investment required for the service (all at Page 4 of the Addendum) (our emphasis).

BOMA is concerned with this very aggressive approach to implementing the business. Union is saying here that it does not require a minimum number of signed contracts prior to ordering major equipment, or commencing construction, that it anchors the need to have "commitments" prior to "the in-service date" which is too late, because the capital expenditures have by then all been made, and will begin implementation in advance of a Board approval if it achieves its minimum commitment which could be merely a "high expectation" of completing contracts for "50% of the liquefaction capacity available" prior to commercial operation. First, Union appears to be saying it will proceed with the business either on a regulated or unregulated business, contrary to what it stated elsewhere in its evidence (see page 10 below). Second, this approach increases the risk of stranded costs in the event the Board approves a rate and the inclusion of the business in the utility, but the forecast revenues are not realized. In BOMA's view, given Union's approach, the Board should make it clear, in the event it decides the new business can be part of Union's regulated business, that any stranded costs should be for Union's shareholder. Stranded costs would include LNG project construction costs, equipment costs, penalty charges on cancellation of contracts.

A particularly egregious part of Union's proposal is the proposed inclusion in rate base of a $500,000.00 repair/upgrade Union has agreed to make to a township road that leads to the Hagar plant. Union offered this expenditure as a way to ensure township and homeowners' approval for the new facilities. The municipality will continue to own the road.

While BOMA does not oppose the expenditure on the road per sé, it is of the view that in the event the Board were to approve Union's proposal, it not approve the inclusion of the road repair/upgrade in rate base. The upgrade/repair is such a maintenance or repair expense and should be included in O&M. Union has provided no precedent for the inclusion in rate base of an asset it doesn't own, nor has it provided details of the accounting principles on which it relies to categorize the expenditure as capital, and which makes that particular capital expenditure as eligible for inclusion in rate base. A Board member questioned the practice of putting an asset that one does not own into rate base.

While the LNG truck fuel business has some enthusiastic supporters, including Union and Northeast, the market is still immature. Union has termed it a nascent market, which suggests that early participants will have a considerable degree of risk. Some trucking companies that use LNG have cautioned that while diesel LNG spreads were considerable, there are incremental costs. The gas utilities' earlier experience with CNG is not encouraging. Panel members will recall the number of years during which the utilities maintained compressed natural gas for transportation fuel programs. Union discontinued its program in 2002. As Mr. Gaske noted, they went nowhere (Transcript, Volume 1, Page 51).

To summarize, ratepayers are being asked to assume a large part of the risk of this new business while receiving little reward. That is not appropriate.

Second, Union requires Board approval for the establishment of the "LNG-for-trucks" dispensing business, pursuant to its undertakings to the Government of Ontario dated December 7, 1998. The undertakings provide:

> "Union shall not, except through an affiliate or affiliates, carry on any business activity other than the transmission, distribution, or storage of gas without the prior approval of the Board".

BOMA is of the view that the "LNG-for-trucks" business is clearly not the transmission, distribution, or storage of gas. If the Board wishes to approve an exemption for Union, it should do so only if existing ratepayers are protected through the imputation of revenue.

In BOMA's view, Union has not demonstrated a need for a "demonstration project" for "LNG-for-trucks" from a public interest point of view. Commercial scale greenfield plants are on the drawing boards. There is already significant experience in the "LNG-for-trucks" business in Ontario, Quebec, British Columbia and many US states. The industry is beyond the demonstration plant stage. LNG technology is a well understood technology, used extensively on a worldwide basis at the present time. If Union wishes to get into the "LNG-for-trucks" business (for third parties), it can do so through an affiliate.

That is the model used in Quebec, which also appears simpler and more straightforward. Thus, the utility liquefies the gas and sends it to an affiliated company (Gaz Met) for dispensing. The Régie decided in D-2010-057, described at Exhibit J2.2, Attachment, Pages 5-6, that LNG sales to third parties was not part of the regulated utility.

The circumstances in BC are somewhat different. In short, the BC Government has overrode the regulatory process by legislation to ensure special status for LNG related expenditures. The Government has directed the BCUC to allow Fortis BC to:

- place the lesser of $400 million or the cost for a new LNG of the project into rate base;
- establish rates to recover the costs of the project from all appropriate customers.

The Ontario Government has taken no such steps.

A copy of the Directive is attached as Appendix A to these submissions.

The BC Government announced a Natural Gas Strategy on February 12, 2012, which includes the substitution of natural gas for diesel fuel for fleet use. Further to that policy, the Province issued Greenhouse Gas Regulation in May 2012 (BC Regulation 102/2012).

The Regulation included from NGV initiatives that Fortis BC might undertake that the BCUC may not interfere with. Further, the combined efforts of the measure was to impose on other customers the risk that the NGV revenue will be less than cost of service.

Finally, the BCUC was required to recover the cost of those NGV initiatives in its regulated rates, up to $104.5 million in a five year period.

Finally, with respect to the Tilbury LNG expansion project, the Government, through Directive #5 to the BCUC, BC Regulation 245/2013, directed the BCUC not to require the project to file for a Certificate of Convenience and Necessity.

However, the BCUC, in a series of decisions over the same period, has, notwithstanding the Government's intervention, taken the consistent position, that any new LNG initiative should not rely on the ratepayers to make up deficiencies in its revenue to recover its cost, and has used its rate-setting discretion to ensure Fortis does propose more cross-subsidization that is specifically required by law. These decisions include G-38-13, BCUC Order C-6-12, BCUC Order G-150-12.

Part II. The Cost Allocation Issue

In the event the Board declines to approve a new rate for the liquefaction service and to allow Union to put the LNG/dispensing assets into rate base, BOMA understands that Union still wants approval for its cost functionalization/allocation proposal for its existing Hagar facilities.

BOMA is of the view that the Board should decline to approve the cost functionalization/allocation proposal for Union's existing Hagar assets for several reasons.

First, the reason Union had the study done in the first instance was to assist in developing those components of its proposed L1 rate that reflected the use the new business made of Union's liquefaction and storage assets at Hagar.

Union's notion appears to be that, if the Board declines to approve "LNG-for-trucks" investment as part of the regulated utility, in the event Union wished to enter the business through an unregulated affiliate or unregulated division, the affiliate would pay an amount to Union to compensate Union for the use of existing liquefaction and storage facilities, which Union calls that amount a "cross-charge". Union's evidence is that the cross-charge would be the same amount that would be reflected in the L1 rate if the new business were regulated (our emphasis) (Transcript, Volume 1, Page 63).

However, in the event the Board does not allow the "LNG-for-trucks" business to become part of the regulated utility, it is not clear at this point how Union would propose to participate, if at all, in that business, and the nature of the relationship between the new business and the utility. Nor has Union filed any substantive evidence on the matter. Mr. Kaiser stated in his opening remarks, in response to a written question posed by Mr. Thompson:

> "To the extent they [Union] would do this [the "LNG-for-trucks" business] through a non-utility, then, in my view that's not the issue currently before the Board.
>
> But we would have to assess as to the nature and scope of that application, which we haven't yet contemplated, or we haven't also contemplated the criteria which the Board would apply if it was going to grant us that right. We haven't applied on that basis, and it's not the issue currently before the Board."

It is likely that if Union decided to proceed with the "LNG-for-trucks" business outside of regulation, it would need to do so through an affiliate.

If that were the case, it is very unlikely that a "cross-charge" of the kind and in an amount envisaged by Union would be appropriate (see below).

Union's entering the business through an affiliate would trigger the application of the Board's Affiliate Relationship Code for Gas Utilities (the "Code"), the principle objectives of which:

> "are to enhance a competitive market while, at a minimum, keeping ratepayers unharmed by the actions of gas distributors, transmitters and storage companies with respect to dealing with their affiliates. The standards established in the Code are intended to:
>
> (a) minimize the potential for a utility to cross-subsidize competitive or non-monopoly activities" (Code, page 2).

Assuming that the affiliate wishes to purchase its liquefaction (and perhaps other services) from Union, a number of provisions of the Code would likely apply, including section 2.2.1, which stipulates the need for a Services Agreement (the "Agreement"), where a utility shares services or resources with an affiliate.

Section 2.2.1(b) of the Code provides that the Agreement should include:

> "pricing mechanisms, which shall be consistent with section 2.2.5 and section 2.3".

Subsection 2.3.9 of the Code provides:

> "Where a reasonably competitive market exists for a service, product, resource or use of asset, a utility shall charge no less than the market price of the service, product, resource or use of asset when selling that service, product, resource or <u>use of asset</u> to an affiliate".

So, the utility would need to charge its affiliate a price equivalent to the price charged by other dispensers in Ontario, accounting for any transportation differential.

The Service Agreement also needs to address the apportionment of risks (including risks related to the under or over provision of service). BOMA suggests this would include the degree to which the affiliate could guarantee the utility minimum annual demand charges for reservation of utility liquefaction and storage availability and the more intense usage of withdrawal and injection rights from utility storage.

Without further evidence, it is not possible to determine what the amounts payable by the affiliate to the utility should be.

Union's evidence is that the "cross-charge" idea came from the method in which Union's unregulated storage business compensated the utility for its use of excess utility storage capacity to offer short term storage services to its customers. In that instance, Union's short term storage services are provided from sales of Union's utility assets that are temporarily excess to in-franchise needs. (EB-2005-0551; NGEIR, page 100). Mr. Tetrault's evidence is:

> "Folks may be familiar with our utility storage business, and on the – and the fact that on a short-term basis, we have utility storage space that is excess to utility needs. We refer to that as our excess utility storage space; that is, storage that is sold on a short-term basis by the non-utility.
>
> And there is a cross-charge or a cost to the non-utility associated with being able to utilize that short-term storage.
>
> So in my view, a methodology similar to a cross-charge as we have on excess utility storage is the right way to compensate the utility, should, in this case, the non-utility be using what are regulated assets at the Hagar facility" (Transcript, Volume 1, Page 63).

However, the Board's treatment of the revenue earned through the sale of short term storage revenue is very different from Union's proposal in this case. The Board had also decided in the NGEIR case that Union's total storage space should be divided into a utility asset and a non-utility asset, in the ratio of 79% utility to 21% non-utility. The 21% was deemed to be the space that would support Union's long term storage sales (Ibid, page 104). The Board then decided that the net revenues (after Union's O&M costs) from each short term storage transaction shall be allocated in that same proportion, 79% to Union ratepayers, who had paid for that excess in rates storage space, and 21% to Union's shareholder. The Board went on to state (at page 101):

> "The Board finds that the entire margin on storage transactions that are underpinned by "utility asset" storage space, less an appropriate incentive payment to the utilities, should accrue to ratepayers. Ratepayers bear the cost of that space through the regulated storage rates and should benefit from transactions that utilize temporarily surplus space. The Board finds that shareholders will retain all of the margin on shortterm transactions arising from the "non-utility" storage space".

The Board found that Union would also receive 10% of the revenue as an incentive to aggressively pursue short term storage transactions, and because it had already provided the same incentive to Enbridge. To summarize, the ratepayers would receive approximately 81% of the net annual revenue from each short term storage transactions after payment of the 10% incentive fee to Union. In this case, Union is not proposing to share with ratepayers its revenues from its "LNG-for-trucks" business. The revenue would accrue to the shareholder during the IRM period, except to the extent that Union's earnings in a year were more than 100 basis points in excess of the OEB allowed return, in which case, 50% of the earnings would go to the ratepayers. After rebasing, the revenue would simply be treated as utility revenue, rather than a total or partial credit to the cost of service.

BOMA suggests that, in the event the Board decides that "LNG-for-trucks" is a non-utility service, the Board not rely on the NGEIR decision storage short term revenue as a precedent for a cross-charge approach to compensating the utility, but rather as a precedent for allocating to Union ratepayers a substantial share of the revenue from the new service.

Union might also seek, in the event it is not able to make the "LNG-for-trucks" business part of the regulated utility, to include the business inside the utility company, but not in the regulated part of the company.

BOMA would not support such an arrangement for several reasons.

First, it introduces needless complexity into the regulated business which is confusing for ratepayers, and increases the Board's workload. It requires, among other things, a division of the corporate books into a regulated portion and a non-regulated part, which then requires separate accounting treatment, and annual reconciliations between the regulated utility accounts and the corporate accounts. It requires appropriate allocation of depreciation, attribution of capital cost allowance, financing charges, and other costs. It lacks the protections for ratepayers found in the Affiliate Relationships Code, which does not apply to a "LNG-for-trucks division" of Union Gas Ltd.

Such structures have occasionally been used by Ontario utilities in the past, but have been generally discontinued in favour of provision of the services by a separate unregulated affiliate company. BOMA's initial view, at least, is that once the decision is made that it cannot be a regulated business, Union should, if it wishes to proceed on a non-regulated business, carry out the business in an affiliate. However, BOMA does not believe the detailed structure need be determined at this time.

In addition, the prohibition in the undertakings refer to the company, Union Gas Ltd., not to the regulated part of the company.

All of which is respectfully submitted, this 12th day of December, 2014.

Tom Brett

Tom Brett,
Counsel for BOMA

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APPENDIX A

CanLII

Greenhouse Gas Reduction (Clean Energy) Regulation, BC Reg 102/2012

Current version: as posted on Jan 23, 2014

Link to the latest version:	http://canlii.ca/t/8r20
Stable link to this version:	http://canlii.ca/t/525xj
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Currency:	Last updated from the BC Laws site on 2014-12-09

B.C. Reg. 102/2012 Deposited May 15, 2012
O.C. 295/2012

Clean Energy Act

GREENHOUSE GAS REDUCTION (CLEAN ENERGY) REGULATION

Note: Check the Cumulative Regulation Bulletin 2013 and 2014 for any non-consolidated amendments to this regulation that may be in effect.

[includes amendments up to B.C. Reg. 235/2013, November 28, 2013]

Definitions

1 In this regulation:

"Act" means the *Clean Energy Act*;

"eligible vehicle" means

(a) a specified vehicle with a power train and fuel system that has not been modified after manufacture,

(b) a marine vehicle,

(c) a mine haul truck, and

(d) a locomotive

that uses, as a primary fuel source, compressed natural gas or liquefied natural gas;

"heavy-duty vehicle" means a truck or tractor-trailer with a manufacturer's gross vehicle weight rating of 11 793 kg or more;

"medium-duty vehicle" means a vehicle, including a waste-haulage truck, with a manufacturer's gross vehicle weight rating of more than 5 360 kg but less than 11 793 kg;

"safety guidelines" means safety guidelines adopted by the British Columbia Safety Authority;

"specified vehicle" means a heavy-duty vehicle, medium-duty vehicle, school bus or transit bus;

"tanker truck load-out" means equipment for transferring liquefied natural gas from a storage tank to a liquefied natural gas tank trailer;

"undertaking period" means the period that ends on March 31, 2017.

[am. B.C. Reg. 235/2013, s. 1.]

Prescribed undertakings

2 (1) A public utility's undertaking that is in the class defined as follows is a prescribed undertaking for the purposes of section 18 of the Act:

(a) the public utility provides, through an open and competitive application process,

(i) grants or zero-interest loans to persons in British Columbia for the purchase of an eligible vehicle to be operated in British Columbia, or

(ii) grants to persons in British Columbia

(A) to implement safety practices, or

(B) to improve maintenance facilities

to meet safety guidelines for operating and maintaining an eligible vehicle;

(b) an expenditure on a grant or zero-interest loan for an eligible vehicle does not, in a year of the undertaking, exceed the percentage difference as indicated in the following table:

	Year of Undertaking					
	1	2	3	4	5	6
Percentage of the difference between the cost of the eligible vehicle and the cost of a comparable vehicle that uses gasoline or diesel	100	80	70	60	50	40

(c) total expenditures on the undertaking during the undertaking period, including expenditures on administration, marketing, training and education, do not exceed $62 million, and

(i) expenditures on the undertaking during the undertaking period on marine vehicles do not exceed $11 million, and

(ii) expenditures on the undertaking during the undertaking period

(A) on administration, marketing, training and education do not exceed $3.1 million, and

(B) on grants referred to in paragraph (a) (ii) do not exceed $6 million.

(1.1) Despite the reference in subsection (1) (a) to an open and competitive application process, a public utility may, in carrying out the undertaking described in subsection (1), give priority to a person in British Columbia who fuels an eligible vehicle using natural gas delivered through the public utility's pipeline system.

(2) A public utility's undertaking that is in the class defined as follows is a prescribed undertaking for the purposes of section 18 of the Act:

(a) the public utility, before April 1, 2017, enters into a binding commitment to

(i) construct and operate, or

(ii) purchase and operate

one or more compressed natural gas fuelling stations, including storage, compression and dispensing equipment and facilities, within the service territory of the public utility for the purposes of providing compressed natural gas fuel and fuelling services to owners of vehicles that operate on compressed natural gas;

(b) total expenditures on the undertaking during the undertaking period, including expenditures on administration and marketing, do not exceed $12 million, and

(i) the average expenditure on stations, in any year of the undertaking, does not exceed $2 million per station, and

(ii) expenditures, during the undertaking period, on administration and marketing do not exceed $240 000;

(c) at least 80% of the energy provided at each station is provided to one or more persons under a take-or-pay agreement with a minimum term of 5 years.

(3) A public utility's undertaking that is in the class defined as follows is a prescribed undertaking for the purposes of section 18 of the Act:

(a) the public utility, before April 1, 2017, enters into a binding commitment to

(i) construct and operate, or

(ii) purchase and operate

one or more tanker truck load-outs, liquefied natural gas tank trailers or liquefied natural gas fuelling stations for the purposes of providing within British Columbia liquefied natural gas fuel and fuelling services to owners of vehicles that operate on liquefied natural gas;

(b) total expenditures on the undertaking during the undertaking period, including expenditures on administration and marketing, do not exceed $30.5 million, and

(i) in any year of the undertaking period an expenditure on a station does not exceed $2.75 million, and

(ii) expenditures during the undertaking period on a tanker truck load-out do not exceed $5.5 million, and on administration and marketing do not exceed $250 000;

(c) at least 80% of the energy provided at each station is provided to one or more persons under a take-or-pay agreement with a minimum term of 5 years.

(4) In subsections (1) to (3), **"expenditures"** includes, except with respect to expenditures on administration and marketing, binding commitments to incur expenditures in the future.

[am. B.C. Reg. 235/2013, s. 2.]

Repealed

3 Repealed. [B.C. Reg. 235/2013, s. 3.]

[Provisions relevant to the enactment of this regulation: *Clean Energy Act*, S.B.C. 2010, c. 22, section 35]