

**BRITISH COLUMBIA UTILITIES COMMISSION**

**IN THE MATTER OF THE UTILITIES COMMISSION ACT  
R.S.B.C. 1996, CHAPTER 473**

**and**

**FortisBC Alternative Energy Services Inc.  
Application for Approval of the Fiscal 2018/2019 Revenue  
Requirements and Cost of Service Rates for the Thermal Energy  
Service to Delta School District No. 37**

**VANCOUVER, B.C.  
April 5, 2018**

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**PROCEDURAL CONFERENCE**

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**BEFORE:**

**W.M. Everett, QC,                      Panel Chair/Commissioner**

**A. Fung, QC,                              Commissioner**

**M. Kresivo, QC,                         Commissioner**

**VOLUME 1**

## APPEARANCES

P. MILLER

Commission Counsel

M. GHIKAS

FortisBC Alternative Energy Services Inc. (FAES)

D. ROSSI

Delta School District No. 37

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**VANCOUVER, B.C.**  
**April 5<sup>th</sup>, 2018**

**(PROCEEDINGS COMMENCED AT 9:00 A.M.)**

THE CHAIRPERSON: Good morning. My name is Bill Everett, and I'm the Panel Chair for review of the FortisBC Alternative Energy Services application for revenue requirements and cost of service rates for thermal energy service to Delta School District No. 37.

With me today are Commissioners Miriam Kresivo and Anna Fung.

On March 8<sup>th</sup>, 2018, by Order G-56-18, the BCUC established a regulatory process for this procedural conference. The purpose of this procedural conference is set out in Appendix B to the Order. In general, it is to hear from FortisBC Alternative Energy Services, Delta School District No. 37, and other parties, on the appropriate level of intervention and the regulatory process for the review of this application.

Appendix B includes a list of topics the panel requested the parties to address at this procedural conference. I'm not going to read the entire list of topics, as they are clearly set out in Appendix B. I will just provide a brief description of each topic area.

(1) Whether parties other than Fortis

1           Alternative Energy Systems and Delta School District  
2           should be permitted to participate in this proceeding.  
3           If so, should there be limitations on the level of  
4           participation; should PACA funding be available to  
5           those parties; and why.

6                       (2) Regarding PACA funding, parties other  
7           than Fortis Alternative Energy Services and Delta  
8           School District should indicate whether they would  
9           participate if PACA funding was not made available,  
10          and if they would not participate without PACA  
11          funding, why.

12                      (3) The appropriate regulatory process.  
13          The parties should address whether there should be a  
14          written hearing; an oral hearing; a negotiated  
15          settlement process; streamlined review process; or  
16          some combination of processes, for example, written  
17          IRs followed by a form of oral process.

18                      (4) Whether Delta School District or other  
19          parties intend to file intervener evidence and, if so,  
20          the nature of the evidence and the timing for filing.

21                      (5) If the BCUC does not issue a decision  
22          in this proceeding by July 1, 2018, whether it should  
23          approve interim rates at the proposed cost of service  
24          rates set out in the application.

25                      And lastly, any other procedural matters.

26                      To assist the panel in being able to set a

1 regulatory timetable going forward, please also advise  
2 us of any periods when you will not be available in  
3 the next six months.

4 After considering all the submissions  
5 today, the panel will adjourn and will, as soon as  
6 possible, issue an Order which will address the  
7 matters that are the subject of today's procedural  
8 conference.

9 I would also like to acknowledge and  
10 introduce a number of individuals. Sarah Walsh,  
11 Yolanda Domingo, and Josh O'Neal are BCUC staff on  
12 this application. Paul Miller is BCUC counsel for the  
13 proceeding, and Hal Bemister is the Hearing Officer.

14 Before Mr. Miller takes over, I ask that  
15 you please make sure that your submissions are  
16 directed to the topics that I have just outlined,  
17 together with any other issues that you, or any of the  
18 other participants, identify and that the panel  
19 accepts as appropriate for addition to the agenda.

20 In identifying any issues in addition to  
21 the requested input, please bear in mind that this is  
22 not -- that it is not the purpose of this procedural  
23 conference to consider or discuss the merits of the  
24 application, but rather to address the procedural  
25 matters that I have just described.

26 **Proceeding Time: 9:04 a.m. T02**

1                   After appearances, the order of submissions  
2 will begin with Fortis Alternative Energy Services  
3 followed by the Delta School District, and then other  
4 parties in the order of appearances. Fortis  
5 Alternative Energy Services will have the final right  
6 of reply.

7                   I am now going to ask Mr. Miller to call  
8 for appearances, and as you enter your appearance,  
9 please state and spell your name for the record,  
10 indicate the party that you represent and identify any  
11 additional issues at that time. As this proceeding is  
12 being transcribed, I ask that you please speak clearly  
13 into the microphone at the podium so that your  
14 submissions can be accurately recorded by our  
15 reporter.

16                   Mr. Miller, if you'd like to start with  
17 appearances.

18 MR. MILLER:       Thank you, Mr. Chair. The first in the  
19 order of appearances is FortisBC Alternative Energy  
20 Services Inc.

21 MR. GHIKAS:       Good morning, Mr. Chairman, Commissioners.  
22 My name is Matthew Ghikas, G-H-I-K-A-S, and I'm  
23 appearing this morning on behalf of FortisBC  
24 Alternative Energy Services Inc.

25                   With me from Fortis, or FAES, is Doug  
26 Slater to my immediate right. He's the general

1 manager, and Grant Bierlmeier, B-I-E-R-L-M-E-I-E-R,  
2 who is the business development director. And behind  
3 me is Mr. Jordan Bell who is just here to observe.

4 Thank you. I have no other issues to add  
5 to the list.

6 MR. MILLER: Mr. Chair, the next in the order of  
7 appearances is Delta School District No. 37.

8 MR. ROSSI: Mr. Chairman, Commissioners, my name is  
9 Dionysios Rossi, D-I-O-N-Y-S-I-O-S, last name, R-O-S-  
10 S-I. With me is Erika Lambert-Shirzad, E-R-I-K-A, L-  
11 A-M-B-E-R-T dash S-H-I-R-Z-A-D. Together we represent  
12 the Delta School District.

13 With us from the District today are Laura  
14 Dixon, D-I-X-O-N, the chair of the schoolboard and  
15 John Vantol, V-A-N-T-O-L, one of the maintenance  
16 managers. Thank you.

17 MR. MILLER: Mr. Chair, that concludes the order of  
18 appearances.

19 THE CHAIRPERSON: So Mr. Miller, I take it there are no  
20 other parties that have appeared today?

21 MR. MILLER: Mr. Chair, I'm informed that staff have  
22 not heard from anyone further, nor have I been  
23 contacted by anyone.

24 THE CHAIRPERSON: All right, thank you.

25 **SUBMISSIONS BY MR. GHIKAS:**

26 MR. GHIKAS: Thank you, Mr. Chairman. Some of my

1        submissions have been truncated by the fact that no  
2        one else has shown up this morning, obviously. But I  
3        will just go through the issues one at a time.

4                    The first one is with respect to the  
5        parties and interventions and interested party status.  
6        The crux of FAES's submission this morning is that the  
7        issues in the proceedings can be fairly and  
8        effectively addressed with the active participation of  
9        FAES and the Delta School District.

10                    FAES is not objecting to, and is open to  
11        having other parties provide comments as interested  
12        parties. FAES would urge a cautious approach to  
13        permitting active interventions in this case. That  
14        may be forestalled by the fact that nobody else is  
15        here, but I would simply, in that regard, highlight  
16        that the mere fact that a party was interested or was  
17        intervening in the past really shouldn't mean that it  
18        makes sense for it to have ongoing involvement. And  
19        any party wishing to intervene, should that occur at  
20        some future point, should have to demonstrate an  
21        ongoing material interest in the outcome of the  
22        application. And I can give individual examples, if  
23        necessary.

24                    But FAES sees no obvious rationale to  
25        expand the list of potential candidates for  
26        intervention beyond those who receive notice of the

1 procedural conference this morning.

2 **Proceeding Time 9:09 a.m. T3/4**

3 I'll just highlight a couple of points  
4 which do dovetail with future submissions, so I'll  
5 just spend a couple of moments on those,  
6 notwithstanding the fact that no other parties have  
7 attended this morning.

8 First of all, the Delta School District and  
9 FAES are the only two parties with a direct interest  
10 in the outcome of the proceeding. They are the  
11 parties to a contract, a service agreement, between  
12 two obviously sophisticated parties. And all of the  
13 parties here agree that the parties are sophisticated  
14 and are capable of negotiating an agreement, and the  
15 Commission has spoken on that. And you'll see quotes  
16 -- I should, as an aside, say that in Appendix F of  
17 the application there are passages from Information  
18 Requests in the past decisions, and the like, on these  
19 issues. And some of them pertain to this issue with  
20 respect to the sophistication of the parties.

21 The issues which flow from that contract or  
22 whether it's the appropriate time for the Delta School  
23 District to move from a market rate to a cost of  
24 service rate, and what is the cost of service? And  
25 those really are contractual interpretation matters  
26 that involve discerning the intent of the parties.

1 And only the parties can really inform that analysis.

2 In previous applications -- take, for  
3 example, the initial application -- the initial  
4 application raised broader policy issues. And the  
5 initial application in this predated the Alternative  
6 Energy Services inquiry that the Commission held. And  
7 a lot of those issues about how to regulate thermal  
8 energy services were raised in the initial application  
9 here. It prompted participation from energy services  
10 providers, competitors of Fortis Alternative Energy  
11 Services, and a variety of other parties.

12 Those issues no longer arise with the  
13 determination of the alternative energy services  
14 inquiry. What we have now is, the project is built.  
15 It's owned by FAES and not FortisBC Energy Inc., the  
16 gas utility. So at that time, the project was  
17 actually owned by the gas utility and there was a  
18 degree of interest from traditional ratepayer groups,  
19 if I can put it that way. And those issues related,  
20 to a significant degree, to issues of cost allocation  
21 that would arise when Fortis gas utility was the owner  
22 of the utility.

23 And also issues with respect to the proper  
24 -- the propriety of a natural gas utility owning a  
25 different type of utility system. Those issues were  
26 at play. So you'll see that flavour through the

1 initial decision.

2 And that -- we now have the project built.  
3 It's owned by FAES. The form of regulation has been  
4 determined, and really the issues remaining is a  
5 standard contractual interpretation issue that is  
6 really of primary interest to the parties that are --  
7 the parties to the contract. And that, in my  
8 submission, would explain why no other parties have  
9 attended today, despite past interest.

10 The efficiency of the proceeding is  
11 important to FAES, and I expect it's important to the  
12 Delta School District as well. One of the  
13 considerations that should go into both the parties  
14 and, which I will touch on later when it comes to  
15 establishing appropriate process, is that the costs of  
16 the regulatory process are going to flow into the  
17 deferral account. And one of the primary factual  
18 considerations in this proceeding is, the deferral  
19 account balance is growing and has to be recovered at  
20 some point.

21 And so, the long-term interests of both  
22 parties, in my submission, are served by ensuring that  
23 the process is done in a manner that tries to keep the  
24 additions to that account to the minimum.

25 **Proceeding Time 9:15 a.m. T5**

26 The next issue, turning to the next issue

1 is intervener funding. I won't speak to that in any  
2 detail. But I would note that in the past when  
3 parties such as -- well, FAES's competitors aren't  
4 here, so it's difficult, but when they were  
5 participating, the general -- they are multinational  
6 corporations and don't -- should they become involved  
7 in this process in any way, they don't need the  
8 funding from this to -- intervener funding to support  
9 their involvement in the process. And indeed, their  
10 interests are not aligned with those of the parties in  
11 this proceeding in that inefficiency may actually  
12 serve its competitive interest, so.

13 With respect to any other parties that  
14 should intervene, again my submission is that their  
15 interests are at best indirect and the real concerns  
16 have fallen by the wayside over the development of the  
17 -- given that the project is now well developed and is  
18 moving forward under its ordinary course of business.

19 Turning to the regulatory process, FAES's  
20 position and submission is that this application can  
21 be addressed appropriately through a written hearing  
22 process and using the procedural steps that are  
23 outlined on page 3 of the application, which would  
24 involve the Delta School District filing any evidence,  
25 which I would expect they would do; followed by rounds  
26 of IRs -- a single round of IRs to both parties; and

1           then any rebuttal evidence and written submissions as  
2           required later on down the road.

3                     In my submission, that type of process is  
4           sufficient given that this -- the matters in this  
5           proceeding are driven by contractual interpretation  
6           issues. Should the Commission determine that a second  
7           round is necessary, FAES would urge the Commission to  
8           consider that round being provided just simply by  
9           Commission Staff and keeping the issues focused on  
10          anything that required further elaboration.

11                    I would highlight three considerations that  
12          support having a written process. First of all, is  
13          that all prior processes relating to this customer and  
14          arrangement between the parties, including the CPCN  
15          itself when the broader policy considerations were at  
16          play, they've all been conducted in writing.

17                    Second of all, this proceeding at its core,  
18          as I've said, involves the interpretation of a written  
19          agreement between sophisticated parties that were  
20          represented by legal counsel.

21                    And thirdly, the written process brings  
22          efficiencies and, as I indicated before, given the  
23          rising balance in the deferral account we should be  
24          looking to make the proceeding as efficient as  
25          possible. Even streamline revenue -- I'm sorry,  
26          streamline review processes have material costs

1 associated with them in terms of the hearing room and  
2 in terms of the parties' involvement and required  
3 preparation to prepare for them, and it simply, in my  
4 submission, isn't justified in this case.

5 I want to spend a couple of minutes  
6 responding to Delta School District's initial  
7 submissions on its preferred process. And Delta had  
8 provided some comments to FAES and they were included  
9 in FAES's application as an appendix, so you can refer  
10 to those if necessary. But essentially Delta provided  
11 three main rationales, and I want to just deal with  
12 each of those in summary form. These responses were  
13 provided in a little more detail of page 4 of the  
14 application.

15 **Proceeding Time: 9:19 a.m. T06**

16 But the first stated rationale for  
17 departing from what would be a typical practice is  
18 that Delta says this proceeding turns on credibility,  
19 including with respect to prior representations made  
20 by FAES. And in my submission, this position or this  
21 argument that Delta is making in that regard is  
22 symptomatic of Delta's desire to look beyond the terms  
23 of the commercial agreement between the parties.

24 The agreement that Delta signed, with the  
25 benefit of experienced legal counsel, as the  
26 Commission had noted, is unequivocal that the written

1 agreement contains the entire agreement between the  
2 parties. Clause 11.8 is the entire agreement clause.  
3 And in my submission, that is a full answer to Delta's  
4 submission in that regard.

5 Delta's next argument is that live  
6 witnesses are necessary to address what it refers to  
7 as "prior submissions that FAES made to the Commission  
8 concerning the allocation of risk within the RDA, the  
9 agreement, and liability for the DDA, the deferral  
10 account".

11 Again, there is an entire agreement clause.  
12 And to the extent that that argument is relating to  
13 things that occurred in prior proceedings, following  
14 the negotiation of the initial agreement, I would  
15 submit that if that evidence could be submitted in  
16 writing, there's no reason why this evidence couldn't  
17 be submitted in writing too, to the extent that it's  
18 relevant.

19 The final argument that Delta makes is that  
20 other parties such as the original intervenors should  
21 have an opportunity to participate in this proceeding.  
22 The fact that none are here may take some of the wind  
23 out of that argument, and indeed does take wind out of  
24 that argument. But as I've said before, the other  
25 processes involved other parties and they were  
26 conducted in writing and parties -- the Commission

1 routinely holds written processes for very significant  
2 applications, including BC Hydro's last revenue  
3 requirements application, and many others.

4 And the interests of intervenors and the  
5 participation of other parties can certainly be  
6 obtained in a reasonable and fair and meaningful way  
7 through a written process.

8 With respect to a negotiated settlement  
9 process, I'll wait in part to hear what my friend Mr.  
10 Rossi says in this regard. FAES has always been open  
11 to a negotiated solution, and the parties have  
12 conducted negotiations in the past, and there is  
13 reference to that in the application and also in DSD's  
14 letter that's filed in the application. Those  
15 negotiations were obviously held on a without  
16 prejudice basis, so neither party will be going into  
17 the details of those. But it can be safely stated  
18 that the negotiations haven't resulted in an agreement  
19 at this point, and they have been going on for quite  
20 some time.

21 And in FAES's submission, there does come a  
22 point in any negotiation where it just simply takes a  
23 decision to break an impasse, and FAES believes that  
24 we are at that point and that further negotiations in  
25 a negotiated settlement process will add to the cost,  
26 and that really it simply makes sense to move forward

1 at this point and have the matter resolved.

2 I have a few comments in the event that the  
3 Commission is minded to try a negotiated settlement  
4 process anyway.

5 The first would be that an NSP would best  
6 be held after Delta first files its evidence and the  
7 one round of information requests are provided to the  
8 parties. That way all of the information is on the  
9 table going into any negotiation.

10 Secondly, the cost sensitivity that I  
11 believe the parties will all share, would suggest that  
12 a mediation be conducted by members of Staff with the  
13 assistance of Commission counsel, given that this is  
14 about the interpretation of a written agreement,  
15 rather than bringing in a third party to conduct the  
16 mediation. That would add to the cost unnecessarily  
17 in FAES's submission.

18 **Proceeding Time 9:24 a.m. T7**

19 And finally that the participants to any  
20 negotiated settlement process be limited to the Delta  
21 School District and FAES, which are the parties that  
22 should sign off on any agreement. They are the two  
23 parties to the project -- to the agreement. They are  
24 the ones directly affected and the outcome of any  
25 negotiation shouldn't be impacted by the willingness  
26 of another third party, should there be any, to sign

1           on or not.

2                       Delta has warranted in the agreement that  
3           they have the authority to enter the agreement, and in  
4           my submission there should be the ability of both  
5           parties to deal on their own in a negotiated  
6           settlement process, should one occur.

7                       On the topic of intervener evidence, I will  
8           defer -- hear what my friend Mr. Rossi says in that  
9           regard. FAES's expectation would be that -- or from  
10          the outset was that Delta would want to file some  
11          materials. It provided some initial comments in the  
12          application. And that is why Fortis has provided for  
13          a date, which will have to be changed now, but a  
14          procedural step that accounts for Delta wanting to  
15          file further evidence. And we obviously have no  
16          objection to that.

17                      Taking me finally to the issue of interim  
18          rates. There is, in my submission, a very high  
19          likelihood that the process will extend such that the  
20          decision will be rendered after July 1<sup>st</sup>, and so this  
21          issue does need to be addressed. In such  
22          circumstances interim rates are appropriate. And  
23          they're established as a matter of course. Interim  
24          rates allow for an appropriate process to unfold while  
25          protecting the interests of both parties. They are  
26          interim and the true-up can occur after the fact when

1 the final order is made.

2 The real crux of the issue is whether the  
3 rate, the interim rate, should be set at the proposed  
4 cost of service rate or at the market rate. And  
5 FAES's submission is that the interim rate should  
6 affect -- should reflect the proposed cost of service  
7 rate. And I will outline a few reasons why I say that  
8 is the case.

9 First of all, the approach of granting  
10 interim rates as applied for is a common one, as we're  
11 dealing with a *prima facie* case and the rates are  
12 refundable. The second is that the evidence on the  
13 record amply shows that the current rates aren't even  
14 covering the ongoing variable costs of operating the  
15 utility, let alone the amortization.

16 And if you -- I'll just simply refer you to  
17 -- I don't believe everybody has applications today,  
18 but there is a good graph that shows that on page 18,  
19 where the individual cost elements are stacked up.  
20 And it shows clearly that not even the variable costs  
21 are being covered by the market rate at this point.  
22 So the net result of that is that we're going to have  
23 a continued accumulation in the deferral account over  
24 the period in which interim rates are in effect.

25 The third point is that -- and it relates  
26 to what I just indicated, is that when the central

1 concern in the application is the growing balance in  
2 that deferral account and how to deal with it, we  
3 should be adopting interim rates that will serve the  
4 long-term interests of making sure that we manage the  
5 balance in that account.

6 The fourth point, and this deals with the  
7 *prima facie* case, really, and I do take -- Mr.  
8 Chairman, I take your point that we're not arguing the  
9 substance here. But the issue with respect to interim  
10 rates does tend to pick up some of the merits in terms  
11 of the *prima facie* case. So I'll simply highlight two  
12 points in this regard, and I won't dwell on them.

13 As much as Delta argues that FAES is  
14 bearing all the risk, that's plainly not how the  
15 Commission has interpreted the contract in the past.  
16 And if you were to look at Appendix F on page 2,  
17 there's a quote from pages 53 and page 84 from the  
18 original decision.

19 **Proceeding Time: 9:29 a.m. T08**

20 And in that passage it's clear that the  
21 Commission is talking about both the sophistication of  
22 Delta School District, and also the fact that the  
23 Commission was asking Delta whether they were  
24 interested in exploring other rate models that  
25 allocated more risk to the utility, and that -- and  
26 I'll just simply make sure that I paraphrase this

1           correctly.

2                           The passage the Commission says:

3           "We encourage Delta School District and FEI  
4           to revisit the cost of service model and  
5           will consider a pricing model that may  
6           better allocate risks between the two  
7           parties. We will provide the parties with  
8           30 days to reconsider their positions, at  
9           which time the parties are requested to  
10          provide the Commission with an updated rate  
11          filing. With respect to the issue of the  
12          rate, the panel urges Delta School District  
13          to negotiate a rate with FEI that both fits  
14          the current budget, yet does not result in  
15          unreasonably deferring costs to the future."

16          So the Commission, right from the outset, is signaling  
17          that these costs will have to be recovered over the  
18          period of the contract, and there are other relevant  
19          passages, but that's the only one I'm going to  
20          highlight this morning.

21                        The final point relating to the *prima facie*  
22          case is that Delta's interpretation is not a  
23          commercially reasonable one. Their position boils  
24          down to arguing that the agreement was one in which  
25          FAES would enter into an agreement that did not even  
26          allow it recover its variable costs, and that, in my

1 submission, is not a reasonable outcome and speaks to  
2 the importance of, at least on a *prima facie* basis at  
3 this point, putting into effect the rates that are  
4 proposed by FEI.

5 I'll leave anything else to reply on that  
6 point.

7 Just in terms of the scheduling, Mr.  
8 Chairman, you asked about availability dates, and the  
9 key folks involved -- I'm not really focusing on  
10 single days here, I'm just in terms of general  
11 periods.

12 THE CHAIRPERSON: Yes, that's what we were looking for,  
13 Mr. Ghikas, is whether either party was going to be  
14 unavailable during any significant periods during the  
15 next six months, then we could take that into account  
16 when we are considering what we do after we hear  
17 submissions.

18 MR. GHIKAS: Perfect. The general periods that parties  
19 are otherwise engaged would be the May 13<sup>th</sup> to 20<sup>th</sup>, and  
20 the last week of June and first two weeks of July, and  
21 then --

22 THE CHAIRPERSON: Sorry, what was that one?

23 MR. GHIKAS: Last week of June, first two weeks of  
24 July. And then the third week of August. That's our  
25 best take on it at this point. If anything changes, I  
26 can just advise Mr. Miller, and I, of course, advise

1 Mr. Rossi as well.

2 THE CHAIRPERSON: No, that's very helpful. Thank you.

3 MR. GHIKAS: Thank you.

4 **Proceeding Time 9:34 a.m. T9**

5 COMMISSIONER FUNG: Before you sit down, Mr. Ghikas, if I  
6 could ask a couple questions.

7 MR. GHIKAS: Yes.

8 COMMISSIONER FUNG: I just want to make sure I understand  
9 you. I take it based on your submissions that your  
10 first preference in terms of regulatory process is for  
11 a written hearing. And then assuming that we do not  
12 agree with that, your next proposal is that you're  
13 open to a negotiated settlement process, is that  
14 correct?

15 MR. GHIKAS: Yes, my submission is that it should be in  
16 writing. And that if the Commission was minded to try  
17 a negotiated settlement process, that it would be  
18 inserted in the written process in -- after the step  
19 of the initial IRs. And should that be unsuccessful,  
20 the hearing would be completed in writing.

21 My submission is that no formal oral  
22 component, whether that be streamline review process  
23 or traditional oral hearing, is necessary. Certainly,  
24 if an oral component is necessary, a streamlined  
25 approach would be preferable to a full-blown oral  
26 hearing, but my submission is that that's not

1 required.

2 COMMISSIONER FUNG: Okay, thank you. And then my next  
3 question is that under the contract signed between  
4 FAES and the Delta School District, there's a clause  
5 that provides for arbitration of any disputes relation  
6 to the contract. May I ask why -- did the parties  
7 consider that and if so why was it rejected?

8 MR. GHIKAS: I will have to go back and read the clause  
9 again before I provide you with a final response on  
10 that, but the application here is setting a rate. And  
11 so we have to be before the Commission in order to get  
12 the rate set, whether that be by cost of service or  
13 the market rates. The ultimate determination here is  
14 which one of those has to be determined. That can't  
15 be determined by arbitration. The Commission can't  
16 give up its jurisdiction over that point. I will take  
17 a look, when I sit down here, at the scope of the  
18 arbitration clause, but in my submission it's clear  
19 that any disputes regarding what the rate should be  
20 must be addressed by the Commission. And that's why  
21 we're here.

22 COMMISSIONER FUNG: Okay, thank you. Now my third  
23 question relates to your reference to the initial  
24 application and what the Commission said in that  
25 decision. Now, I take it that original decision  
26 occurred at a time when Fortis, the relegated utility,

1 owned the facility or it was the proponent for the  
2 facility. So that ratepayers, other ratepayers of  
3 Fortis, the electrical utility, would have been  
4 affected by any determination of rates and what  
5 happens to the deferral account, is that not correct?

6 MR. GHIKAS: That's right. So it was actually the gas  
7 utility that owned it.

8 COMMISSIONER FUNG: Right, okay

9 MR. GHIKAS: And, yeah, so what had happened was Fortis  
10 had established a separate class of service under  
11 Section sixty- -- there's a subsection there that  
12 deals with class of service that in the sense of not a  
13 customer class, but a class of service as, you know,  
14 thermal energy versus gas, versus electric, that type  
15 of thing. That was set up to have its own rate base  
16 and set up to have a separate rate system so that it  
17 would be kept distinct from the gas utility. But  
18 obviously the fact that a utility was a gas utility,  
19 there was disputes about whether or not that gas  
20 utility as a corporate entity should be involved in  
21 the business. And ultimately the determination was  
22 made that it should be in a separate business, and as  
23 a result it was transferred.

24 So does that answer your question?

25 COMMISSIONER FUNG: I think so.

26 MR. GHIKAS: Okay.

1 COMMISSIONER FUNG: But let me think about it. But a  
2 related question to that though is to your point about  
3 a *prima facie* case for determining the interim rates  
4 on the cost of service model. I would remind you  
5 though, that in the previous application that was  
6 issued in Order G-146-15A, and I'm quoting directly  
7 from page 2 of the decision. It says:

8 "FAES confirms that the financial risk  
9 associated with the potential non-recovery  
10 of the deferral account will be borne by its  
11 shareholders and that will endeavour to work  
12 with the Delta School District to achieve a  
13 mutually desirable approach if and when it  
14 were to seek approval from the Commission to  
15 switch to cost of service rate."

16 MR. GHIKAS: No -- sorry, did you finish your question?

17 COMMISSIONER FUNG: Yes, I am done.

18 **Proceeding Time 9:39 a.m. T10**

19 MR. GHIKAS: Okay. Yes, and that would make sense for  
20 any utility, because under the regulatory compact the  
21 shareholder is ultimately the bearer of all utility  
22 risk that are not recovered through rates. The issue  
23 is that just and reasonable rates require, under the  
24 ATCO decision, require a reasonable opportunity to  
25 recover costs and -- prudently incurred costs. And  
26 so, while the shareholder owns the residual risk under

1           any regulated environment, the failure to provide  
2           rates that allow a reasonable opportunity to recover  
3           the cost of service would be a violation of the  
4           regulatory compact under the *ATCO* case.

5                        So, the point being here, that what -- is  
6           not that the shareholder bears residual risk. It owns  
7           the asset, so it's a bearer of residual risk for any  
8           unrecovered balance. The point here is that the rate  
9           mechanism that is being put in place has to provide  
10          that opportunity to recover the cost of service. And  
11          the rate model -- the argument that Delta is making is  
12          that -- is one in which, if you were set rates on that  
13          basis, would never provide that opportunity, because  
14          it's not even recovering the variable costs, let alone  
15          the amortization of the deferred balance.

16                       So under a cost of service system,  
17          ratepayer is responsible for recovering all prudently  
18          incurred costs to the utility; shareholder bears the  
19          residual effects when rate -- when costs are not  
20          prudently incurred, or when assets are no longer used  
21          and useful. That's the regulatory compact, and it's  
22          entirely consistent with the passage that you read to  
23          me.

24   COMMISSIONER FUNG:    Okay, thank you.

25   MR. GHIKAS:        Thank you.

26   THE CHAIRPERSON:    Anything further?

1 Thank you, Mr. Ghikas.

2 MR. GHIKAS: Thank you.

3 THE CHAIRPERSON: Mr. Rossi?

4 **SUBMISSIONS BY MR. ROSSI:**

5 MR. ROSSI: Thank you, Mr. Chairman. I'll do my best to  
6 give an overview of my client's position and  
7 intersperse some comments on my friend Mr. Ghikas's  
8 submissions in the course of doing that.

9 On the issue of other parties, and possible  
10 interveners, it's DSD's submission that a broad  
11 approach, a liberal approach, should be adopted by the  
12 Commission because there are broader policy issues  
13 that are engaged by this proceeding. And there are a  
14 number of reasons for that.

15 One is that the contract between the  
16 parties in this case, at its inception, was made  
17 possible by a significant contribution of public money  
18 in the form of a grant by one or more provincial  
19 Ministries.

20 The second is what I would call the co-  
21 funding model according to which my client operates,  
22 which is in partnership with the Ministry of  
23 Education.

24 Thirdly, I would say that -- and this is a  
25 fact which should inform and which colours this entire  
26 proceeding, it seems to me -- should FAES be granted

1 the relief that it's seeking, the impact on my  
2 client's financial position is going to be very  
3 significant. As you may be -- as the panel may be  
4 aware, school boards are legislatively prohibited from  
5 running deficits year to year. So the estimated \$1  
6 million in additional costs that will result from a  
7 switch to the cost of service rate at this time is  
8 going to have to come out of the program budget by  
9 which the district operates its schools.

10 And for all of those reasons, I say that a  
11 liberal approach to the issue of interveners is  
12 warranted. In light of the fact that no other parties  
13 have shown up, I'll refrain from making further  
14 comments on that point.

15 But the last point that I made about the  
16 impact of the relief sought by FAES on my client's  
17 financial position should inform the process that is  
18 adopted by the Commission in having this matter heard.  
19 And so, I appreciate that my friend's submission is  
20 that this is a narrow issue of contractual  
21 interpretation that can be dealt with by way of  
22 written submissions alone. We strongly disagree with  
23 that. We disagree for some of the reasons alluded to  
24 in my client's response to the application, which is  
25 included as an appendix to the application.

26 One of the reasons is, because this -- the

1 relief sought in this application engages fundamental  
2 issues going to the factual matrix upon which the  
3 contract was entered into, as well as collateral  
4 representations made, DSD alleges, by FAES to DSD  
5 during the course of this agreement.

6 **Proceeding Time: 9:44 a.m. T11**

7 And we say that for each of those reasons,  
8 a mixed process, as suggested by the Commission, would  
9 be appropriate. My client's aims are two-fold in that  
10 regard. One, is that it would like opportunity to  
11 test any evidence adduced by FAES in support of its  
12 application and it would like the opportunity to  
13 adduce any of its own evidence that it feels is  
14 germane to the proceedings in the form of both lay and  
15 possibly expert evidence.

16 On the issue of lay evidence and  
17 scheduling, I can advise the panel that unfortunately  
18 our two main witnesses in this proceeding, Joe Strain  
19 and the former secretary-treasurer of the District,  
20 and Frank Guyer, who was largely responsible for  
21 negotiating the contract, have left the district right  
22 around the time that this application was filed,  
23 unfortunately.

24 Mr. Strain is out of the country until the  
25 end of May and so it's not going to be possible for us  
26 to obtain his evidence prior to that.

1                   Mr. Guyer now works for the Richmond School  
2                   District, and he will be available to us but obviously  
3                   not in the same capacity as he would have been had he  
4                   remained an employee of the DSD. And so I provide  
5                   that information for the purposes of informing your  
6                   decisions about deadlines and scheduling.

7                   In addition to that, as I alluded to, DSD  
8                   expects that it may be necessary for it to adduce  
9                   expert evidence and possibly rebuttal expert evidence  
10                  in the event that Fortis seeks to adduce any expert  
11                  evidence of its own. That expert evidence obviously  
12                  is going to be informed by whatever lay evidence is  
13                  adduced in this proceeding. I would ask that the  
14                  panel note that in any procedural order that is  
15                  subsequently issued.

16 THE CHAIRPERSON:       If this is, as your friend says, a  
17                   determination of -- or an interpretation of a contract  
18                   between two sophisticated parties, what is the nature  
19                   of the expert evidence that you foresee you may need,  
20                   your client may need, Mr. Rossi?

21 MR. ROSSI:       Right. So, I guess the initial point I would  
22                   make in response to that is that we disagree with the  
23                   way that my friend has characterized the issue, and we  
24                   would say that the contract expressly provides for  
25                   FAES to apply to the Commission in the event that it  
26                   would like to switch DSD from the market rate to the

1 cost of service rate; does not speak to the factors  
2 that the Commission must take into account pursuant to  
3 its statutory mandate in deciding whether or not that  
4 should occur; does not provide a mechanism or a list  
5 of factors by which the Commission should decide  
6 whether or not to grant that relief. So in my  
7 respectful submission, the factors to be taken into  
8 account by the panel are broader than what might  
9 ordinarily be the case as a matter of black-letter law  
10 under the terms of the agreement.

11 COMMISSIONER KRESIVO: Can you explain to me -- you said  
12 that you want to be able -- the process needs to test  
13 FAES's evidence and you want to provide your own  
14 evidence.

15 MR. ROSSI: Yes.

16 COMMISSIONER KRESIVO: Clearly, every one of our  
17 hearings allows for that.

18 MR. ROSSI: Yes.

19 COMMISSIONER KRESIVO: So what is it that's unique in  
20 your situation that requires something other than a  
21 written hearing?

22 MR. ROSSI: Again, I think there are three things that  
23 are unique about this. And one is, again, the factual  
24 matrix that gave rise to this particular agreement, I  
25 think is unique in the sense that many of the issues  
26 surrounding whether and to extent the Commission

1           should regulate the delivery of alternative energy  
2           services were subsequently determined by the AES  
3           inquiry, right? And so this has been a sort of  
4           stand-alone agreement in that regard.

5                         Secondly, I would say that there have been  
6           a series, in my submission, of collateral  
7           representations made by FAES that are germane to the  
8           issue of whether or not the Commission should grant  
9           the relief that is being sought in this proceeding.  
10          That, again, I would submit may be unique in  
11          comparison to other cases that have come before the  
12          Commission.

13                         So those are the two main reasons. I'm  
14          sorry?

15   COMMISSIONER KRESIVO:        So there's collateral  
16          representations that change the agreement? Amend the  
17          agreement? Vitiating the agreement? I don't quite  
18          understand the evidence on collateral evidence.

19   MR. ROSSI:            Right. In our submission, and again I don't  
20          want to get into the substance of our argument at this  
21          point, but we would say that those representations  
22          estop or preclude FAES from seeking the relief that it  
23          is seeking in this application, yes.

24   COMMISSIONER KRESIVO:        Okay, thank you.

25   COMMISSIONER FUNG:        Okay, Mr. Rossi, I'm going to push  
26          you a little bit on that.

1 MR. ROSSI: Sure.

2 COMMISSIONER FUNG: What do you say to the entire  
3 agreement clause though, that says there are no  
4 representations? This supersedes every other  
5 discussion you've had up to the point where you signed  
6 the agreement?

7 MR. ROSSI: I say that that clause has to be read in  
8 light of the -- what I will term the fail-safe  
9 mechanism that the parties built into the agreement to  
10 have this body decide whether and to what extent Delta  
11 should be switched from the market rate to the cost of  
12 service rate. That the entire agreement clause must  
13 be read in that context and that in order to give  
14 effect to the right of Fortis to come here and to seek  
15 the approval of that switch, we have to consider the  
16 statutory mandate of the Commission in determining  
17 whether that should occur.

18 **Proceeding Time 9:50 a.m. T12**

19 COMMISSIONER FUNG: And does that statutory mandate  
20 include looking behind the words of the contract?

21 MR. ROSSI: In my submission, yes.

22 COMMISSIONER FUNG: To see what was said when, and where,  
23 prior?

24 MR. ROSSI: In my submission, yes, it does.

25 COMMISSIONER FUNG: Okay, thank you.

26 MR. ROSSI: Mr. Chairman, on the question of expert

1 evidence, again, I don't want to stray too far into  
2 the substance of my client's position, but it is our  
3 position that --

4 THE CHAIRPERSON: I'm just asking you the nature -- just  
5 the broadest nature of the evidence. I'm not asking  
6 you to get into detail.

7 MR. ROSSI: Yes. Sure.

8 THE CHAIRPERSON: We don't want to get into the merits  
9 here. I'm just curious where the primary issue is  
10 contract interpretation, then perhaps if permitted  
11 some evidence of collateral representations, where  
12 does an expert come into that, that scenario, if I can  
13 call it that?

14 MR. ROSSI: Right. So insofar as FAES is seeking to have  
15 my client pay the cost of service rate, and in order  
16 to deal with the amounts that have accrued in the  
17 deferral account, we say what comprises that deferral  
18 account is something worthy of examination by an  
19 expert. And so, broadly speaking, we may adduce  
20 expert evidence on the questions of rate design,  
21 energy forecasting, and accounting issues pertaining  
22 to how that DDA, the deferral account, the amounts  
23 contained within it, were arrived at. And how they  
24 should be calculated on a go-forward basis.

25 THE CHAIRPERSON: Okay, thank you.

26 Sorry, I didn't mean to interrupt you.

1 Carry on.

2 MR. ROSSI: Thank you, Mr. Chairman.

3 So, in terms of the procedural issues that  
4 I was speaking to, it's our submission that if a mixed  
5 process were to be adopted by the panel, that multiple  
6 rounds of IRs would be appropriate.

7 Another issue that I failed to mention in  
8 speaking to the panel just now was that we are dealing  
9 with a situation where we have a contractual  
10 relationship that has unfolded over a period of many  
11 years. And in my submission, that complicates  
12 somewhat the issue of the evidence to be adduced and  
13 tested in this proceeding. And which is another  
14 factor, I think, that speaks to perhaps some of the  
15 unique features with respect to the application that  
16 we're dealing with now.

17 COMMISSIONER KRESIVO: Can I just ask for a  
18 clarification? You said you'd like a mixed process.

19 MR. ROSSI: Yes.

20 COMMISSIONER KRESIVO: Can you define what a mixed  
21 process is to you?

22 MR. ROSSI: Certainly. Some combination of written and  
23 oral evidence, or perhaps direct evidence in the form  
24 of affidavits or information -- responses to  
25 Information Requests. And then the opportunity to  
26 cross-examine the opposing party or witness on some of



1 parties have engaged in some discussions. I don't  
2 have any instructions on what that might look like,  
3 but we are certainly open to it should the Commission  
4 wish to proceed in that fashion.

5 With respect to the setting of the interim  
6 rate, it's my submission that any interim rate that's  
7 set should be at the market rate, not the cost of  
8 service rate, for many of the reasons that I've  
9 already outlined, which I will not reiterate once  
10 again.

11 On the question of -- I will make one  
12 additional point though, and that is with respect to  
13 Mr. Ghikas's submission that the current market rate  
14 does not cover the variable costs being borne by  
15 Fortis, I would say that my client is in no way  
16 receiving a windfall here. Its energy costs compared  
17 to prior to this agreement and prior to the switch to  
18 thermal energy services are essentially a wash. Any  
19 savings are negligible, and once, for example, legal  
20 costs are factored in and other professional services  
21 costs, in my submission, there have been no savings as  
22 a result of the switch to thermal energy.

23 Numerous times in his submissions Mr.  
24 Ghikas referred to the fact that the parties were  
25 sophisticated and represented by counsel. That is  
26 true, but requires some elaboration, in my submission.

1 DSD was represented by counsel for the limited purpose  
2 -- again without waiving any privilege over the terms  
3 of my firm's retainer, I can say that DSD was retained  
4 for the limited -- or excuse me. My firm was retained  
5 for the limited purpose of essentially papering the  
6 agreement, drafting the agreement. It was not, as the  
7 panel members may note from the proceedings, the  
8 record of the proceedings that have taken place with  
9 respect to the rate agreement, represented by counsel  
10 in those proceedings at all.

11 Subject to any questions from the panel,  
12 those are my submissions.

13 COMMISSIONER FUNG: Mr. Rossi, did you address the issue  
14 of general availability beyond the two witnesses that  
15 you specifically mentioned?

16 MR. ROSSI: I don't believe I have any further  
17 information for the panel on that. I don't expect  
18 that availability is going to be an issue in respect  
19 of the time frame that was mentioned, and if an issue  
20 does arise in that regard, I can certainly advise the  
21 panel immediately.

22 COMMISSIONER FUNG: Thank you.

23 THE CHAIRPERSON: I understand you won't have one  
24 witness available to you until the end of May, is that  
25 correct?

26 MR. ROSSI: That's correct.

1 THE CHAIRPERSON: Okay, thank you.

2 MR. MILLER: Staff have no submissions, Mr. Chair.

3 THE CHAIRPERSON: Thank you, Mr. Miller.

4 Mr. Ghikas, reply?

5 MR. GHIKAS: In my scrambling --

6 THE CHAIRPERSON: Would you like a minute, Mr. Ghikas.

7 MR. GHIKAS: No, I'm okay, as long -- maybe if we had

8 five minutes I could look at the arbitration issue,

9 unless I've addressed that question for you

10 adequately.

11 COMMISSIONER FUNG: No, that's fine. We can deal with

12 it in the information requests.

13 MR. GHIKAS: Okay, if we could take five minutes, I

14 think that's all it would take for me to tighten my

15 notes up a bit.

16 THE CHAIRPERSON: We'll adjourn for five minutes.

17 Thank you.

18 MR. GHIKAS: Thank you.

19 **(PROCEEDINGS ADJOURNED AT 9:58 A.M.)**

20 **(PROCEEDINGS RESUMED AT 10:07 A.M.)** T14

21 THE CHAIRPERSON: Mr. Ghikas.

22 **REPLY BY MR. GHIKAS:**

23 MR. GHIKAS: Thank you, Mr. Chairman, for the break.

24 I will be very brief. The first point that

25 I wanted to reply to, made by my friend, was with

26 respect to this point about this proceeding engaging

1 broader policy issues, and he cited the fact that the  
2 project had government involvement in the funding and  
3 the like.

4 The first point I'd make in response to  
5 that, Mr. Chairman, is the fact that a commercial  
6 party is a government body does not make it such that  
7 public police issues arise in the context of  
8 regulations such that it would require some different  
9 treatment than what would typically be the case.

10 The second point is that with respect to  
11 the co-funding, you'll see from the history of the  
12 CPCN application, there was a contribution made, I  
13 believe it was through the PSECA funding approach, but  
14 it was green initiatives kind of funding. That was  
15 included in the initial capital cost -- reflected in  
16 the initial capital costs. The money has been spent,  
17 the project has been built, and as far as I can tell,  
18 there is no suggestion that that money is not being  
19 accounted for when the cost of service is being  
20 calculated. So in my submission, that is a moot issue  
21 from the perspective of determining the nature of the  
22 proceeding or the parties to it.

23 Finally, I would add in that regard that in  
24 the agreement itself Delta warranted in Section 5.1  
25 that it had the authority to enter the agreement, and  
26 in my submission, Delta does HAVE -- if it has the

1 authority to enter into the agreement, it should be  
2 able to proceed in the ordinary course with a  
3 proceeding that deals with a commercial arrangement as  
4 between the parties and the follow-up to that  
5 agreement.

6 The second point that I want to respond to  
7 is with respect to the significant financial impact,  
8 and obviously the amount of money in the deferral  
9 account is significant. It's significant not only for  
10 Fortis Alternative Energy Service -- not only for  
11 Delta, but also for Fortis Alternative Energy  
12 Services, and it's clearly in the best interests of  
13 the party to resolve the issue and move forward.

14 But I would highlight that one of the key  
15 issues that -- and the key themes that will come out  
16 of this proceeding, in my submission, is that Delta  
17 has been budgeting without regard to the terms of the  
18 contract, and that's part of the issue, is that the  
19 market rate has not only been lower than the cost of  
20 service in the past years, it's also been lower than  
21 what the parties anticipated the market rate would be  
22 based on the forecasts that were included in the  
23 original CPCN application, and that's discussed on  
24 page 1 of the application filed by FAES, the current  
25 application.

26 And you'll see the figures cited that Delta

1 has paid \$4.2 million less than the expected business  
2 as usual costs and \$2.7 million less than the cost of  
3 service during that period. And that's on page 2.  
4 And there's a graph that shows that very nicely on  
5 page 18 of the application.

6 So when my friend talks about there being  
7 no savings, you know, the business as usual cost is  
8 the reference point, and there are savings, and  
9 moreover, the fact is that Delta's interest was in  
10 greening up its system, and this is part of that  
11 initiative. So those were also considerations that  
12 went into it.

13 So while -- you know, Delta has  
14 sophisticated budgeting in place and while obviously,  
15 you know, as a member of the public it's always a  
16 concern with respect to a public body budgeting, and  
17 so I have some sympathy, but only to a point. And  
18 the fact is that Delta has been budgeting based on  
19 that scenario that it's been experiencing continuing  
20 irrespective of the growing balance in the account and  
21 the contractual provisions that allow FAES to trigger  
22 a switch and apply to the Commission to switch at any  
23 time.

24 **Proceeding Time 10:12 a.m. T15**

25 And the fact that the costs that Delta  
26 could expect to pay are consistent with the

1 predictions that were made at the outset in 2012. And  
2 that's on page 1 of the application too. And the note  
3 of caution that's been sounded by the Commission in  
4 past proceedings regarding the recovery of the  
5 accumulated balance.

6 And so in my submission, while we can be  
7 sympathetic to Delta in its budgeting constraints, we  
8 should also be considering the fact that it really  
9 cannot, in a commercial arrangement, rely on its own  
10 budgeting practices as a defence to the enforcement of  
11 a commercial arrangement. And in my submission, that  
12 is important.

13 Now, obviously the Commission is charged  
14 with determining just and reasonable rates overall,  
15 and the Commission can examine the agreement. But  
16 I'll take you, in a moment, to what fairly sums up the  
17 warning that the Commission gave about when two  
18 commercial parties agree on a rate, there is a  
19 significant amount of deference placed to that  
20 sophisticated agreement in determining what is just  
21 and reasonable.

22 And that takes me to the next point, which  
23 is with respect to my friend's arguments about why an  
24 oral hearing is required.

25 The primary submissions that my friend  
26 cited were with respect to what he says were

1 collateral representations. Obviously, you know, I  
2 won't go into the details of why FAES says that's not  
3 accurate, because in my submission it simply does not  
4 matter given the terms of the agreement.

5 The argument that my friend raised with  
6 respect to estoppel -- he cited, and I'm not going to  
7 get his words right, but effectively that type of  
8 clause should be interpreted in the context of the  
9 Commission being a backstop and the fail-safe, I think  
10 were the words he used, in that context. And that  
11 submission is answered by the quote I'm going to take  
12 you to in a moment, which is the same quote that I  
13 just referred to you, that the Commission is there,  
14 but when two parties, sophisticated commercial  
15 parties, agree to a rate, there is going to be some  
16 deference paid to that. And in my submission, that's  
17 exactly what should happen in the current case.

18 And finally with respect to expert  
19 evidence, the issues that were cited were rate design  
20 accounting issues and how balances should be  
21 calculated. And in my submission, those are  
22 determined by the contract. And there is not going to  
23 be a useful purpose for expert evidence in this such  
24 that my friend is at liberty to file it. I'm not  
25 going to object to it being filed. But it certainly  
26 doesn't take on the import that my friend is

1 suggesting would cause us to need to have an oral  
2 hearing to deal with experts. In my submission, the  
3 factual evidence about the costs is straightforward  
4 and the Commission has been amply situated to  
5 determine the cost of service in the past years, and  
6 has been able to apply the rate design as set out in  
7 the contract, and this should be no different.

8 Now, the quote that I want to take you to  
9 is actually in Appendix F, and I'll read it out  
10 because I recognize not everybody has their  
11 application here. It's in Appendix F, it's a quote  
12 from page 70 of the decision on the original CPCN  
13 application. And the Commission -- and I'm at line 20  
14 on page 2 of Appendix F. It says:

15 "The Panel agrees with the Delta School  
16 District that regulatory oversight can  
17 provide protective benefits. However, the  
18 Panel cautions Delta School District that in  
19 providing regulatory oversight of this  
20 project and the ensuing rates, the  
21 Commission must make a determination of what  
22 it considers to be just and reasonable. The  
23 Panel will consider the fact that the rates  
24 proposed have been agreed to by two  
25 sophisticated commercial parties fully  
26 capable of representing themselves, that the

1           agreements signed are the result of arm's  
2           length negotiations represented by competent  
3           legal counsel, and that the Delta School  
4           District has its own accountability  
5           mechanisms in place, such as elected  
6           trustees to ensure that its interests are  
7           protected."

8                         Now, in my submission, and you'll recall  
9           that the Commission sent the parties away to look at  
10          the issue again as to whether an alternate rate  
11          construct was necessary.

12                                 **Proceeding Time: 10:17 a.m. T16**

13          That the existing construct, the negotiated construct  
14          was reaffirmed by the parties. And in my submission,  
15          those trustees that are there to protect the interests  
16          of Delta, they should also be adhering to the  
17          contractual terms in their budgeting process, and the  
18          like, and the real issue and the theme that's been  
19          picked up through my friend's submission, is that they  
20          want a different agreement, and in my submission, this  
21          process is not the place to be arguing for a different  
22          agreement, it's the place to enforce the agreement  
23          that the parties knew they had from the get-go. And  
24          the appropriate process to do that is a written  
25          process based on the terms of the agreement that we  
26          have in writing before us, as was done in the past.

1                                   Those are my submissions in reply, Mr.  
2                   Chairman.

3   THE CHAIRPERSON:           Thanks, Mr. Ghikas.

4                                   Mr. Miller?

5   MR. MILLER:            There is nothing further that I am aware  
6                   of, Mr. Chair.

7   THE CHAIRPERSON:           Thank you. I think that concludes  
8                   today's proceeding on the procedural conference. We  
9                   will adjourn, and as I said earlier, as quickly as  
10                  possible issue a procedural order as to how this  
11                  application will go forward, and I thank you all for  
12                  your attendance and helpful submissions.

13                                  Thank you.

14                   **(PROCEEDINGS ADJOURNED AT 10:19 A.M.)**

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I HEREBY CERTIFY THAT THE FORGOING  
is a true and accurate transcript of  
the recording provided to me, to the  
best of my skill and ability.

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A.B. Lanigan,           Transcriber

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April 5<sup>th</sup>, 2018

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