

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

**and**

**RE: FortisBC Energy Inc. - Application for Acceptance of  
the Biogas Purchase Agreement Between FortisBC  
Energy Inc. and the City of Vancouver -  
Project No. 1598977**

**Vancouver, B.C.**  
**January 16, 2019**

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**PROCEDURAL CONFERENCE**

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**BEFORE:**

<b>D. Morton,</b>	<b>Chair</b>
<b>A. Fung, Q.C.,</b>	<b>Commissioner</b>
<b>R. Mason,</b>	<b>Commissioner</b>

**VOLUME 1**

## APPEARANCES

P. MILLER

Commission Counsel

C. BYSTROM

FortisBC Energy Inc.

D. LI,

City of Vancouver (COV)

C. WEAVER,

Commercial Energy Consumers Association of British Columbia (CEC)

J DAVISON,

BC Ministry of Energy, Mines and Petroleum Resources (MEMR)

C. LITTLER,

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**VANCOUVER, B.C.**  
**January 16<sup>th</sup>, 2019**

**(PROCEEDINGS COMMENCED AT 9:00 a.m.)**

THE CHAIRPERSON: Please be seated.

Good morning, ladies and gentlemen. And also Happy New Year to all. I realize we're well into January now, but I don't think that changes the fact that I wish you all a Happy New Year.

My name is Dave Morton and with me are Commissioners Anna Fung and Richard Mason. Welcome to this morning's proceeding to consider matter related to Fortis Energy Inc's application for acceptance of the biogas purchase agreement between Fortis Energy and the City of Vancouver.

To date we've had one round of information requests from BCUC Staff, along with submissions from the parties on questions posed by the panel. And the purpose of this procedural conference is to hear from parties so that the panel can determine the appropriate regulatory process going forward.

In our letter dated January 14<sup>th</sup>, which is Exhibit A-35 we requested participants address the following in today's procedural conference. Comments on the need for intervener information, requests to Fortis, comments on the appropriate issues to be included in final argument, and each parties proposed

1 regulatory timetable for the remainder of the  
2 proceeding.

3 At this stage I'd like acknowledge and  
4 introduce some individuals who will play an important  
5 role in the review of this application. Sitting at  
6 the front here, Aidan Kehoe is lead staff, Tanya Lai  
7 is a regulatory analyst, and Nicola Simone is the  
8 director of facilities and planning, and she's the  
9 project manager for this application. Commission  
10 counsel for the proceeding is Paul Miller from  
11 Boughten, and our hearing officer is Mr. Keith  
12 Bemister.

13 Before Mr. Miller takes over, I'd like to  
14 ask you to please make sure that your submissions are  
15 directed to the issues that I've just outlined,  
16 together with any other issues that you or any of the  
17 other participants identify, and that the panel  
18 accepts is appropriate for addition to the agenda. In  
19 identifying any additional issues, please bear in mind  
20 that it's not the purpose or goal of this conference  
21 to compare or discuss the merits of the application,  
22 but to address the issues that I've just described.

23 In our view, the issues are most  
24 efficiently canvassed collectively as opposed to issue  
25 by issue, but if anyone disagrees, we'll consider any  
26 alternative approach you may suggest. However, please

1 address this during your appearance.

2 After appearances, the order of submissions  
3 will follow the order of appearances, and then when we  
4 reach the end of the interveners, staff -- I  
5 understand staff will make a submission and then we'll  
6 go back up the list and Fortis then will have the  
7 final right of reply.

8 So I'm now going to ask Mr. Miller to call  
9 for appearances, and as you enter your appearance,  
10 please state and spell your name for the record, and  
11 identify the party you represent, and at that time if  
12 you have any additional issues please bring them to  
13 the panel's attention. And also whether you are okay  
14 with dealing with all of the issues at the same time.

15 So on that note, Mr. Miller, I'll ask you  
16 to go ahead, please.

17 **Proceeding Time 9:02 a.m. T02/03**

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

21 MR. BYSTROM: Good morning Chair, Commissioners.

22 THE CHAIRPERSON: Good morning.

23 MR. BYSTROM: Name is Chris Bystrom, last name is spelled  
24 B-Y-S-T-R-O-M. Counsel for FortisBC Energy Inc. I  
25 prefer to address the issues collectively and we have  
26 no issues to add to the agenda.

1 THE CHAIRPERSON: Thank you, Mr. Bystrom.

2 MR. MILLER: The next in the order of appearances is the  
3 City of Vancouver.

4 MR. LI: Good morning, Commissioners. My name is David  
5 Li, last name is L-I. In-house counsel at the City of  
6 Vancouver. We're happy with the process and we have  
7 nothing to add.

8 THE CHAIRPERSON: Thank you, Mr. Li.

9 MR. MILLER: The next in the order of appearances is the  
10 Commercial Energy Consumers Association of B.C.

11 MR. WEAFFER: Good morning, Commissioners, and happy New  
12 Year to you as well.

13 THE CHAIRPERSON: Thank you.

14 MR. WEAFFER: My name is Chris Weafer, spelled  
15 W-E-A-F-E-R, appearing for the Commercial Energy  
16 Consumers, and we have no issues to add to the agenda  
17 and we are happy to deal with all three items in one  
18 appearance.

19 THE CHAIRPERSON: Thank you, Mr. Weafer.

20 MR. WEAFFER: Thank you.

21 MR. MILLER: Mr. Chair, the last in the order of  
22 appearances is appearing via telephone I understand.  
23 It's the Ministry of Energy, Mines and Petroleum  
24 Resources.

25 MS. DAVIDSON: Yes. Jennifer Davidson, that's  
26 D-A-V-I-S-O-N. And I have nothing further to add to

1 the agenda for today.

2 THE CHAIRPERSON: Thank you, Ms. Davidson.

3 Mr. Miller? Is that it? Thank you.

4 Okay, Mr. Bystrom, are you set to go?

5 MR. BYSTROM: Yes, thank you.

6 THE CHAIRPERSON: Okay.

7 **Proceeding Time 9:04 a.m. T04**

8 **SUBMISSIONS BY MR. BYSTROM:**

9 MR. BYSTROM: Good morning again. And Fortis appreciates  
10 this opportunity to provide their comments on the  
11 issues identified. And our comments on the questions  
12 identified by the panel are really shaped by our view  
13 that the biogas purchase agreement and Fortis's  
14 related facilities are a prescribed undertaking under  
15 the Greenhouse Gas Reduction Clean Energy Regulation,  
16 or I'll refer to it as the GGRR.

17 As you know, Section 18 of the *Clean Energy*  
18 *Act* is clear that the BCUC must not exercise a power  
19 under the *Utilities Commission Act* in a way that would  
20 directly or indirectly prevent FEI from carrying out a  
21 prescribed undertaking. Thus, if the biogas purchase  
22 agreement and related facilities are a prescribed  
23 undertaking, then the biogas purchase agreement must  
24 be approved or accepted by the Commission.

25 And in this context, just wanted to note  
26 that we believe that it's significant that the

1 government policy objective to increase FEI's  
2 biomethane acquisition has been made abundantly clear  
3 by the Clean B.C. Climate Action Energy Plan that was  
4 published in December 2018. And I just wanted to  
5 highlight a few things, as it provides some context  
6 for the application.

7 The key actions of this new plan include  
8 making residential, industrial natural gas consumption  
9 cleaner by putting in place a minimum requirement of  
10 15 percent to come from renewable gas. So renewable  
11 gas is responsible for 75 percent of the reduction in  
12 emissions from buildings. Renewable natural gas also  
13 represents 2.4 megatons of emissions reductions in the  
14 plan or approximately 13 percent of the emission  
15 reductions in the entire plant. So the new Clean B.C.  
16 Climate Action Plan therefore calls for a significant  
17 increase in renewable natural gas production. In our  
18 submission the GGRR must be read in that context.

19 So it's our submission that the scope of  
20 any process in this proceeding at this stage should be  
21 limited to whether the biogas purchase agreement and  
22 related facilities are indeed a prescribed undertaking  
23 under Section 2(3.8) of the GGRR. And there are three  
24 elements to that question.

25 The first element is whether the biogas  
26 purchase agreement and FEI infrastructure will result

1 in the acquisition of renewable natural gas within the  
2 meaning of Section 2(3.8) of the GGRR. So this was  
3 the question that the Commission posed earlier in  
4 December and that we had submissions on. And those  
5 submissions showed that there were no disagreement, or  
6 there was no dispute among the participants that  
7 indeed the biogas purchase agreement and  
8 infrastructure will result in the acquisition of  
9 renewable natural gas within the meaning of the GGRR.  
10 Accordingly, in our view, there is no need to address  
11 that element of the scope further.

12 The second element is whether the cost  
13 estimates for the biogas purchase agreement and  
14 facilities are reasonable and will fit under the \$30  
15 per gigajoule maximum in Section 2(3.8) of the GGRR.  
16 This question was explored quite thoroughly by the  
17 BCUC's information requests and in our view the  
18 responses provided by FEI clearly establish that,  
19 indeed, the cost estimates are reasonable and that the  
20 price of biomethane will fall under the \$30 maximum.

21 The third element is whether the biomethane  
22 volumes are not in excess of the maximum amount in  
23 Section 2(3.8) of the GGRR. This is clearly not an  
24 issue as the volumes are well below this maximum.

25 **Proceeding Time 9:08 a.m. T05**

26 So I provided that outline of what we say

1 the scope is and the process to date just to frame our  
2 comments on the topics you raised, which I'll deal  
3 with directly right now.

4 And the first topic, in FEI's view the IRs  
5 from the BCUC sufficiently explored the questions  
6 within scope, including numerous questions related to  
7 the maximum -- sorry, related to the acquisition price  
8 in relation to the \$30 gigajoule maximum. We don't  
9 therefore see any need for further information  
10 requests.

11 Second, the only appropriate issue to be  
12 included in final argument is whether the biogas  
13 purchase agreement and facilities constitute a  
14 prescribed undertaking and specifically whether the  
15 maximum price and maximum supply requirements in the  
16 GGRR are satisfied.

17 Third, it follows from what I said that we  
18 would propose that the BCUC should proceed directly to  
19 final argument, leaving time for a BCUC decision. Our  
20 proposal with respect to process would be that we  
21 would file argument on Thursday, February 7<sup>th</sup> and that  
22 intervener arguments and FEI reply would follow in one  
23 week increments after that, which would result in  
24 intervener arguments being due on February 14<sup>th</sup> and  
25 FEI's reply being due on February 21<sup>st</sup>.

26 So I believe now I've addressed the three

1 points and those are our submissions, unless there are  
2 any questions from the panel.

3 THE CHAIRPERSON: No, we don't. No questions, Mr.  
4 Bystrom. Thank you.

5 MR. BYSTROM: Thank you very much.

6 THE CHAIRPERSON: Mr. Li?

7 **SUBMISSIONS BY MR. LI:**

8 MR. LI: Thank you for this opportunity. I'd just like  
9 to say that the City of Vancouver is very happy with  
10 selecting our partner, Fortis Energy Inc. And I  
11 understand that Brian and his team are very keen to  
12 get started on the project.

13 With that in mind, we have no further  
14 issues. And I'll just address the three questions  
15 that you wanted input on today. We don't think that  
16 there's a need for further intervener information  
17 request, at least not from the City of Vancouver.

18 Furthermore, we defer to our partner,  
19 Fortis, on the issues in the final arguments and  
20 having heard my friend, Chris Bystrom, we support and  
21 adopt the issues that he's put forward. And  
22 furthermore, in respect of the regulatory timetable, I  
23 also adopt and support Chris Bystrom's suggestions for  
24 the process and the timetable that he's laid out.

25 THE CHAIRPERSON: Great.

26 MR. LI: Thank you.

1 THE CHAIRPERSON: Thank you, sir.

2 Mr. Weafer?

3 **SUBMISSIONS BY MR. WEAFER:**

4 MR. WEAFER: Thank you. From the CEC's perspective I'd  
5 like to deal with the three questions in reverse order  
6 if that's okay.

7 THE CHAIRPERSON: Sure.

8 MR. WEAFER: The CEC thinks that this is an appropriate  
9 application to proceed to a streamlined review  
10 process. We think it may be even more efficient than  
11 the proposal of IRs and then final written argument  
12 and in fact will probably be more timely than the  
13 proposal that Mr. Bystrom has put forward in terms of  
14 scheduling of argument, reply and then decision.

15 So the CEC thinks that it can avoid  
16 information requests by going through an SRP because  
17 we're really in the area of clarification and  
18 understanding. We acknowledge staff has done a good  
19 job with their IRs, but there are still some matters  
20 that would be helpful to have a discussion through an  
21 SRP process and we would be able to make submissions  
22 at the end of that day and the Commission could render  
23 a decision that day.

24 So I would just highlight a timing issue.  
25 I'm away the first two weeks of February, but that's  
26 not critical, I'm just making the panel aware.

1 **Proceeding Time 9:12 a.m. T06**

2 THE CHAIRPERSON: Sorry, when you say that's not  
3 critical, you mean that CEC would participate even if  
4 you weren't --

5 MR. WEAFFER: I would expect we would be able to  
6 participate. If that schedule was more appropriate  
7 for the panel, we could --

8 THE CHAIRPERSON: Okay, but if we had it not during the  
9 first two weeks of February, then presumably sometime  
10 between the 14 and 21<sup>st</sup> would still meet Fortis's  
11 proposal to have it wrapped up by the 21<sup>st</sup> and that  
12 would be all right.

13 MR. WEAFFER: Yes, that would be our view for certain.

14 THE CHAIRPERSON: Thank you.

15 MR. WEAFFER: Those are our submissions.

16 COMMISSIONER FUNG: Mr. Weafer, have you canvassed this  
17 with either the applicant or other interveners?

18 MR. WEAFFER: I mentioned it to staff counsel, Commission  
19 counsel before the representations this morning. I  
20 mentioned it to Mr. Bystrom this morning as well. I  
21 got instructions on this last night, so that was the  
22 first opportunity to share that thought.

23 THE CHAIRPERSON: Well, everyone will have an  
24 opportunity to comment on it so, good.

25 COMMISSIONER MASON: In the event that the panel  
26 doesn't see the benefits of a streamlined review

1 process, do I assume that you would still wish to have  
2 IRs of some kind?

3 MR. WEAFFER: I'm instructed we're comfortable with the  
4 argument schedule. Again, we're still -- to be frank,  
5 we're still reviewing the confidential material that  
6 was just requested yesterday, so I can't say we've  
7 actually looked at every bit of evidence at this  
8 point, and that's our issue, not yours, so I  
9 acknowledge that. By my instructions at this point is  
10 we're fairly comfortable moving to argument, but we  
11 see value and value to the panel in having an  
12 opportunity to clarify some things and have a  
13 discussion on the table. That's our thinking on it.

14 COMMISSIONER MASON: Okay.

15 MR. WEAFFER: Thank you.

16 THE CHAIRPERSON: Thank you, sir.

17 Ms. Davison, are you still on the phone?

18 **SUBMISSIONS BY MS. DAVISON:**

19 MS. DAVISON: Good morning. I would just like to note  
20 that my colleague Christine Littler -- that's  
21 L-I-T-T-L-E-R -- has also joined me, and we appreciate  
22 the opportunity to speak to the panel today. We would  
23 like to just note that our interest is primarily  
24 around this proceeding within the context of British  
25 Columbia's Clean B.C. initiative that was alluded to  
26 earlier, and the province's climate change objectives,

1 and the role that biofuels and biogas can play in  
2 that.

3 In terms of your three questions, the need  
4 for IRs, we have no comment; appropriate issues for  
5 final arguments, again B.C.'s climate change  
6 objectives; and for the proposed regulatory timetable,  
7 we have no comment.

8 THE CHAIRPERSON: Okay. Okay, thank you, Ms. Davison,  
9 appreciate it.

10 Mr. Miller, staff has a submission?

11 **SUBMISSIONS BY MR. MILLER:**

12 MR. MILLER: Yes. Staff's submission is only the issues  
13 to be addressed in either submissions, if there's an  
14 SRP or in written argument if you chose to follow  
15 Fortis's proposal. We have no other issues to address  
16 on the issues list.

17 The first issues is, as my friend, Mr.  
18 Bystrom has noted, we do have submissions already on  
19 the definition of "acquire" but one intervener has yet  
20 to make a submission on that, the Ministry, and there  
21 may be a need or a desire to have the Ministry address  
22 that issue in either submissions or written argument.

23 Other than that, the next issue relates to  
24 the \$30 price cap in the GGRR. And that raises two  
25 issues from staff's perspective. The first Mr.  
26 Bystrom alluded to. At the present time we have cost

1 estimates, but what happens if the project is actually  
2 built and drives the cost over \$30. So from staff's  
3 perspective there's two sub-issues that flow from  
4 that. The first is, should there be a reporting  
5 requirement, and secondly, what are the consequences  
6 if the cost is over \$30 once the project is built.  
7 Those are issues we believe should be addressed in  
8 submissions.

9 **Proceeding Time 9:16 a.m. T07**

10 Then next is with respect to how the \$30 is  
11 to be calculated. Again, Mr. Bystrom addressed this  
12 issue, or Fortis has, in its IRs in terms of a  
13 levelized cost, but we're not sure that the other  
14 parties agree with that. Or should it be done on an  
15 annual basis. And similar to the first issue does  
16 that then require a reporting requirement and what are  
17 the consequences if on an annual basis it goes over?  
18 And I acknowledge that Fortis has already addressed  
19 this in IR responses, but we don't have submissions  
20 from the other parties and it may be useful for the  
21 panel to receive those.

22 And those are our submissions.

23 THE CHAIRPERSON: Thank you, Mr. Miller. Mr. Miller, do  
24 -- I want to clarify, are you characterizing staff as  
25 agnostic on the SRP or does --

26 MR. MILLER: Staff takes no position.

1 THE CHAIRPERSON: Takes no position on the SRP. Thank  
2 you.

3 Okay, Ms. Davison, do you have any further  
4 comments?

5 MS. DAVISON: Not at this time.

6 THE CHAIRPERSON: Okay, thank you.

7 Mr. Weafer?

8 **REPLY BY MR. WEAFER:**

9 MR. WEAFER: I would submit that the staff comments and  
10 concerns about the evidence on the record point to the  
11 usefulness of the SRP as opposed to an IRP process,  
12 because they're in the nature of clarification, topics  
13 that could be discussed in that form. Thank you.

14 THE CHAIRPERSON: Thank you, sir.

15 Does the City of Vancouver have any further  
16 comment?

17 MR. LI: No further comments, thank you.

18 THE CHAIRPERSON: Thank you.

19 And Fortis. Mr. Bystrom, does Fortis have  
20 any further remarks?

21 **REPLY BY MR. BYSTROM:**

22 MR. BYSTROM: I have some comments in reply to Mr. Weafer  
23 in particular, regarding the proposal for an SRP.  
24 Fortis is opposed to a streamline review process. If  
25 the Commercial Energy Consumers wish to ask further  
26 questions of a clarifying type, we would prefer them

1 to be in writing rather than having to respond to them  
2 on the fly at an SRP.

3 And the reason for that is twofold, is that  
4 as demonstrated by Fortis's responses to the  
5 Commission's IRs a lot of the questions relate to the  
6 levelized price and different calculations of that  
7 price, different scenario analysis about what could  
8 happen to that price in different circumstances. So  
9 they're -- if we're getting clarifying questions on  
10 those sorts of things we'll need to do calculations  
11 that can't be done on the fly in an SRP.

12 In addition, due to the nature of the  
13 issues there's legal -- sort of a legal framework here  
14 that intertwines all the factual questions. So in our  
15 view it would be preferable to address those in  
16 writing so that we can thoughtfully prepare our  
17 responses.

18 And in terms of just sort of timing, it  
19 doesn't appear that an SRP would resolve this  
20 proceeding substantially sooner than a written  
21 process. While my client does wish to proceed with  
22 the project as soon as practical, an extra month  
23 process is not a concern at this point, and so we'd  
24 much prefer to have a proceeding in writing rather  
25 than the SRP. I think it would also be beneficial for  
26 the Commission to have written submissions on the

1 legal questions, particularity those proposed by  
2 staff.

3 So other than that I don't think there were  
4 -- anyone took issue with any of my submissions or the  
5 scope items and so we understand the Commercial Energy  
6 Consumers have some clarifying questions. While we  
7 don't know the nature of those questions and Mr.  
8 Weafer didn't describe what they might be, again, if  
9 questions need to be asked we'd prefer that they be  
10 done in writing. And the process we proposed could be  
11 amended to include a round of information requests if  
12 that's deemed necessary.

13 THE CHAIRPERSON: So you would be supportive of that?

14 MR. BYSTROM: We would be amenable to that, yeah.

15 THE CHAIRPERSON: Okay. Thank you.

16 **Proceeding Time 9:21 a.m. T08**

17 MR. BYSTROM: Those are my submissions.

18 THE CHAIRPERSON: Thank you, sir. So I think we'll  
19 take -- the panel would like to take a few minutes and  
20 review what we've heard. So twenty past nine. So  
21 give us up to ten minutes. We'll reconvene at the  
22 latest at 9:30. Thank you.

23 **(PROCEEDINGS ADJOURNED AT 9:22 A.M.)**

24 **(PROCEEDINGS RESUMED AT 9:27 A.M.)** **T09**

25 THE CHAIRPERSON: Please be seated. Thank you. The  
26 panel has considered the arguments, in particular

1           concerning the SRP and we tend to agree with Mr.  
2           Bystrom that the issues at the -- or the questions, at  
3           least, at the SRP are at least likely to involve --  
4           and again, at least to some extent, calculations,  
5           legal matters which is probably best not done in that  
6           scenario. However, notwithstanding that, we do  
7           acknowledge that there may be additional questions  
8           that parties have and CEC may have some additional  
9           questions. At least I infer that from what Mr. Weafer  
10          has said, and I acknowledge that Mr. Bystrom is open  
11          to that.

12                        So what we would like to see is another  
13          either round of IRs from anyone that has any further  
14          questions to ask, and the panel is going to propose  
15          these two dates: That the questions be asked by the  
16          31<sup>st</sup> of January and the responses from Fortis on the  
17          15<sup>th</sup> of February. I'll just ask informally if there's  
18          any objection to that schedule?

19                        Thank you. Does the Ministry have any --  
20          continues with no comment on the schedule?

21   MS. DAVISON:     No, that sounds fine to us.

22   THE CHAIRPERSON:    Thank you. So then I'll ask Mr.  
23                        Bystrom to advise us on how much time Fortis would  
24                        require to prepare its final argument, given that the  
25                        responses would be in on the 15<sup>th</sup>?

26   MR. BYSTROM:        We propose two weeks after the date the

1           IRs are due.

2   THE CHAIRPERSON:     Okay.  So that would be then -- not  
3           being able to do that math in my head.  That would be  
4           March 1<sup>st</sup>, and we'll just continue with the one week,  
5           one week that was originally proposed and everyone has  
6           agreed to.  So that would then be the 8<sup>th</sup> and the 15<sup>th</sup>.

7                         So March 1<sup>st</sup> for the final argument,  
8           Fortis's final argument; March 8<sup>th</sup> for intervener final  
9           arguments; and March 15<sup>th</sup> for reply.

10                        Unless there's any further comment, then I  
11           think that concludes the business that we had to do  
12           today.

13                        Mr. Miller?

14   MR. MILLER:         Is the panel going to rule on the issues  
15           that it wants addressed given the submissions made?

16   THE CHAIRPERSON:     Yes, I think we're satisfied with the  
17           issues that you have outlined, Mr. Miller.

18                        And having heard no objection to that, or  
19           having heard no additional issues then -- and the  
20           restriction on scope that Mr. Bystrom provided, that  
21           it be within the context of the Greenhouse Gas  
22           Reduction Regulation and the definition of the  
23           activity.

24   MR. BYSTROM:         So just to clarify, the scope is  
25           restricted to whether the biogas purchase agreement  
26           and facilities are a prescribed undertaking under the

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GRR and that would include the scope items put forward by Mr. Miller.

THE CHAIRPERSON: Thank you for the clarification. That's exactly right.

Okay, so thank you very much everyone, we are adjourned. Hope you have a good remainder of the day. Thank you.

**(PROCEEDINGS ADJOURNED AT 9:31 P.M.)**

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



A.B. Lanigan, Court Reporter

January 16<sup>th</sup>, 2019