

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.
September 25, 2019

STREAMLINED REVIEW PROCESS

BEFORE:

D. Morton,	Chairperson/Panel Chair
A. Fung, Q.C.,	Deputy Chair/Commissioner
R. Mason,	Commissioner

VOLUME 2

APPEARANCES

P. MILLER,

Commission Counsel

C. BYSTROM,

FortisBC Energy Inc.

B. BECK,
L. BELANGER,

City of Vancouver (COV)

C. WEAVER,
J. RHODES,

Commercial Energy Consumers Association of British Columbia (CEC)

FEI/FBC STAFF

D. Slater
R. Gosselin
S. Gramm
I. Bevacqua

BCUC STAFF

A. Kehoe
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VANCOUVER, B.C.

September 25th, 2019

(PROCEEDINGS RESUMED AT 9:05 a.m.)

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4 THE CHAIRPERSON: Good morning, and welcome to this SRP
5 of certain matters related to FEI's application for
6 acceptance of the Biogas Purchase Agreement between
7 FortisBC Energy Inc. and the City of Vancouver. My
8 name is Dave Morton. My co-panel members are Anna
9 Fung and Richard Mason. Welcome. In a few minutes
10 we'll go around and ask everyone to introduce
11 themselves.

12 The streamline review process is intended
13 to review, in a relatively informal manner,
14 applications that appear to lend themselves to an
15 expedited review while still providing procedural
16 fairness, public participation and transparency.
17 While the process isn't as formal as an oral hearing,
18 it will be transcribed.

19 As you are all aware, the Commission has
20 found this project generally satisfies the criteria
21 for treatment under the GGRR provided FEI can provide
22 assurance that ratepayers will pay no more than \$30
23 per gigajoule for renewable natural gas over the 20-
24 year lifetime of the project.

25 The only remaining issue to be determined
26 is whether FEI can provide a mechanism that provides

1 that assurance. Therefore, the topic for this SRP is
2 whether FEI's proposed mechanism provides that
3 required certainly that FEI's RNG acquisition cost is
4 within the specified cost threshold. Please restrict
5 your questions and your submissions, and the
6 presentation to the scope of the SRP.

7 The Commission letter dated August the 11th,
8 Exhibit A-11, states that FEI may make a presentation
9 on the items within the scope. We request that you
10 limit your presentation to no longer than 30 minutes
11 in order to allow time for subsequent questions and
12 responses.

13 We'll take breaks on depending on how
14 things flow and if you need a break, please feel free
15 to ask for one. In any event, we'll take a break
16 following the last question and answer to allow Fortis
17 and interveners time to prepare their final
18 submissions. FEI will present its submission, after
19 which interveners will present theirs, and then FEI
20 will have an opportunity to present a reply
21 submission. After submissions, the panel will either
22 make a determination or indicate when you could expect
23 one.

24 Finally, a caution about confidentiality.
25 Although all parties present have signed
26 confidentiality agreements, if confidential

1 information is discussed, we'll need to go *in camera*
2 to allow Allwest staff to separate the confidential
3 portions of the transcript and also turn off the
4 internet broadcast. Therefore, before you disclose
5 any confidential information, please alert the Court
6 Reporter. Before the transcript is published, FEI
7 will be provided an opportunity to review it to ensure
8 the public version does not contain confidential
9 information.

10 So we're going to go around and introduce
11 ourselves. We'll start with the table with Fortis,
12 and then we'll just go around the room. Thank you.

13 MR. SLATER: Good morning. My name is Doug Slater, S-
14 L-A-T-E-R. I'm the director of regulatory affairs at
15 FortisBC.

16 MR. BYSTROM: Good morning. Chris Bystrom, last name
17 B-Y-S-T-R-O-M. Counsel for FortisBC.

18 MR. GRAMM: Scott Gramm, last name G-R-A-M-M. Manager
19 of renewable gas at FortisBC.

20 MR. GOSSELIN: Richard Gosselin, G-O-S-S-E-L-I-N.
21 Manager in regulatory affairs, FortisBC.

22 MS. BEVACQUA: Ilva Bevacqua, B-E-V-A-C-Q-U-A. Manager
23 of regulatory affairs, FortisBC.

24 MR. BECK: I am Brian Beck with the City of Vancouver.
25 I'm an engineer. And it's spelled B-E-C-K, B as in
26 boy. Thank you.

1 THE CHAIRPERSON: Thank you.

2 MS. BELANGER: Good morning. I am Lynn Belanger, I'm
3 manager of transfer and landfill operations for the
4 City of Vancouver. And it's B-E-L-A-N-G-E-R.

5 MR. WEAVER: Good morning. Chris Weaver, counsel for
6 the Commercial Energy Consumers. Last name is spelled
7 W-E-A-F-E-R. And with me is Janet Rhodes, consultant
8 for the Commercial Energy Consumers. Her last name is
9 R-H-O-D-E-S. Thank you.

10 THE CHAIRPERSON: Thank you.

11 MR. MILLER: Paul Miller, M-I-L-L-E-R. Commission
12 counsel.

13 MR. KEHOE: Aidan Kehoe, K-E-H-O-E. BCUC Staff.

14 MS. SIMON: Nicola Simon, S-I-M-O-N. BCUC Staff.

15 MS. LAI: Tanya Lai, L-A-I. BCUC Staff.

16 THE CHAIRPERSON: Thank you. Okay, is the panel ready
17 for your presentation? Thank you.

18 **Proceeding Time 9:10 a.m. T2**

19 **PRESENTATION BY MR. SLATER:**

20 MR. SLATER: All right, good morning and thank you for
21 an opportunity to do a brief presentation. And as per
22 the scope of the streamlined review process, I would
23 like to make a presentation to assist the Panel by
24 addressing some of the issues that have arisen with
25 respect to our July 16th proposal.

26 So the scope of the process, as mentioned,

1 is focused on the proposed deferral mechanism, how it
2 provides the required certainty that the costs will be
3 within the GGRR threshold; the need for a deferral
4 account and the circumstances where shareholders may
5 bear the costs of RNG. So accordingly, I would to
6 start by addressing the question of what certainty --
7 or what we've interpreted as the required degree of
8 certainty. I would like to address what certainty --
9 what additional certainty is provided by the deferral
10 mechanism. I would like to discuss the circumstances
11 where FEI would seek to recover any remaining balance
12 in the proposed deferral account, including the
13 similarities with the Whistler conversion project.
14 And finally I will address an alternative to enable
15 the project to move forward.

16 So, what is the required degree of
17 certainty? FEI's interpretation of the decision
18 starts with the Panel's finding that this form of RNG
19 acquisition is accepted under the GGRR. And there are
20 two implications to this. So first, because this
21 method involves the construction of facilities, costs
22 can only be provided on a forecast basis. This means
23 that there is a degree of uncertainty over what actual
24 costs will be in the future as there is with any
25 forecast. Second, the implication of this form of
26 acquisition is that costs will fluctuate from year to

1 year.

2 So with that in mind, FEI's view is that a
3 reasonable level of price certainty is required and
4 what was provided based on the levelized cost
5 determination of \$22.24 per GJ. That is, that 22.24
6 is well below the GRR threshold price of \$30. FEI
7 provided a Class 3 estimate of capital cost which was
8 examined in the IR process. FEI has made conservative
9 assumptions and has performed due diligence and
10 sensitivity analysis on those assumptions. I note
11 that those assumptions were subject to staff questions
12 and we can certainly address those after the
13 presentation.

14 And finally, FEI has also incorporated
15 anniversary and supply based reviews in the project so
16 that adjustments can be made during the life of the
17 project if necessary. And all of these factors
18 contribute to a reasonable level of price certainty.

19 However, the Panel did not find that FEI
20 would pay no more than \$30 per GJ. And in the
21 decision a couple of key conclusions include: The
22 Panel was unable to determine with any degree of
23 certainty whether the costs is below, at or above the
24 \$30 per GJ threshold. And also, the decision stated
25 that FEI failed to satisfy the panel that it would be
26 paying no more than \$30 per GJ throughout the life of

1 the project, even on a conservative levelized basis.
2 The Panel gave FEI and opportunity to restructure its
3 application in a way that provides the required
4 certainty to its acquisition costs of RNG to qualify
5 as a prescribed undertaking within a certain costs
6 threshold.

7 So out of this FEI interpreted two key
8 issues. The first is the need to manage cost
9 fluctuation throughout the life of the project. In
10 other words, minimize or eliminate the possibility
11 that costs could rise about the threshold price during
12 the life of the project. The second issue is the
13 issue of adding further certainty that overall costs
14 would be no greater than \$30 overall. And FEI filed
15 its July 16th proposal with these two issues in mind.

16 So, next I'll turn to the issue of what
17 degree of certainty does FEI's proposed deferral
18 mechanism add to the project? So first, let's look at
19 the mechanics of the deferral mechanism at a high
20 level. So the proposed treatment ensures that the
21 cumulative costs flowed to customers at any point
22 during the project will not exceed the threshold price
23 of \$30.

24 **Proceeding Time 9:14 a.m. T3**

25 Costs in excess of the \$30 price threshold
26 on a cumulative basis are captured in a deferral

1 account. And if a balance remains at the end of the
2 project, FEI cannot recover those costs and rates
3 unless approved by the BCUC. And I'll come back to
4 the issue of the balance on the next slide.

5 So turning quickly to the alterative
6 treatment. The alternative treatment accomplishes the
7 same thing, but it does so on an annual basis.
8 Meaning that costs flowed to customers will not exceed
9 \$30 in any given year. And just like the proposed
10 treatment, costs in excess of \$30 on an annual basis
11 are captured in the deferral account.

12 So, therefore, the deferral account adds a
13 degree of certainly. First, it smooths the year-to-
14 year fluctuation, preventing costs flowed to customers
15 from exceeding the GGRR threshold price. In a sense,
16 it mimics a fixed price contract, and this addresses
17 the first issue I identified earlier. Second, with no
18 guarantee of the recovery of the remaining balance,
19 this presents a risk to the shareholder, and this
20 shift in risk adds a degree of certainty to the
21 overall costs and addresses the second issue.

22 So next I'll turn to the issue of what
23 might occur if a balance remains at the end of the
24 project. So as discussed at the outset, this form of
25 RNG acquisition requires that costs be forecast.
26 Therefore, FEI cannot guarantee with a hundred percent

1 certainty that there will be no remaining balance in
2 the deferral account at the end of the project. And
3 in the unlikely event that a balance remains at the
4 end of the term, FEI would only seek to recover costs
5 if there was a material balance that remained and that
6 it believed was prudently incurred. So FEI would bear
7 the onus to prove prudence in such a case, and cost
8 recovery is ultimately subject to BCUC approval.

9 So next I'll turn to the Whistler
10 conversion project. Now, factually the two projects
11 are different. The Whistler conversion project
12 involved converting thousands of household appliances
13 within customers' homes over to natural gas, whereas
14 the COV project involves the construction and
15 operation of biogas upgrading equipment. However, the
16 Whistler conversion project also has a number of
17 similarities.

18 For instance, a cap was imposed and it
19 served to rebut the presumption of prudence. So in
20 that case, FEI exceeded the cap and it had to prove
21 that its costs were prudently incurred. FEI believed
22 its costs were prudently incurred, so it applied to
23 recover those costs. The BCUC ultimately agreed, for
24 the most part, and approved the majority of those
25 costs, but not all of those costs.

26 So, in other words, there is no difference

1 between the COV and Whistler projects in relation to
2 the right to apply for recovery of prudently incurred
3 costs.

4 THE CHAIRPERSON: Is it all right if I ask questions
5 now or should I save them to the end?

6 MR. SLATER: I'm good either way.

7 THE CHAIRPERSON: Okay. What I'm going to ask you may
8 require a legal opinion and you may want to save it
9 for final argument, but it would be helpful if you
10 could provide your thoughts on it at this point.

11 Another difference between the Whistler
12 case and this case is that in this case the approval
13 would be -- or is or would be subject to -- or would
14 be in the context of a Greenhouse Gas Reduction
15 Regulation, and so we are approving it because it
16 satisfies the criteria. And one of the criteria is
17 that the costs be no more than \$30 a gigajoule.

18 So if the approval is premised on that
19 basis, is it possible, is it even possible for the
20 BCUC to approve any additional costs on top of that,
21 even if they are prudently incurred?

22 MR. SLATER: Yeah, do you want to --

23 MR. BYSTROM: I think I'll take a try and respond to
24 that question. So I guess the short answer is in my
25 view it's not necessary, for one thing, for the
26 Commission to impose that kind of cap, given the *GRR*

1 structure. And also the Commission has the obligation
2 to approve just and reasonable rates, which include
3 the right to earn a return and recovery of prudent
4 costs, in our view.

5 **Proceeding Time 9:19 a.m. T4**

6 So in our view I don't think the Commission
7 has the jurisdiction to, at this point, impose a cap
8 that would forbid the utility from recovering its
9 prudently incurred costs in the project. And when
10 applying the GRR and interpreting the scope of this
11 prescribed undertaking, in my submission the
12 Commission must determine now, based on a balance of
13 probabilities whether the project is a prescribed
14 undertaking. Whether it meets the criteria set out in
15 section 2(3.8) of the GRR. Commission comes to that
16 conclusion that it is a prescribed undertaking, then
17 the Commission is obligated under the *Clean Energy Act*
18 to approve the project, and I think it's as really
19 simple as that.

20 THE CHAIRPERSON: Thank you.

21 COMMISSIONER FUNG: Sorry, Mr. Bystrom, can I just ask
22 you one question. Why -- what is it that precludes
23 the shareholder in this case from guaranteeing that it
24 will not seek recovery of any balance in the deferral
25 account?

26 MR. BYSTORM: I think --

1 COMMISSIONER FUNG: Beyond a desire not to do that.

2 MR. BYSTROM: Yes. I think two things, and I think
3 there's the -- I can approach it from the rights of
4 the shareholder and then the obligations of the
5 Commission.

6 So from the perspective of the shareholder,
7 it has a legal right as confirmed by the law, common
8 law, in this country, a right to earn a fair return.
9 So, if we say now we won't make a promise not to come
10 back, we still have that right in law. So how -- we
11 can't give up our rights, so to speak. It is the law
12 of the land and it'll be there no matter what we say.
13 We can't change the law by making a commitment.

14 Secondly, from the Commission's
15 perspective, the Commission has an obligation under
16 the *Utilities Commission Act* to approve just and
17 reasonable rates, which includes providing a
18 reasonable opportunity to earn a fair return. So,
19 from both sides of -- both the Commission and the
20 utility, we can't circumvent the law.

21 THE CHAIRPERSON: So can I state back to you what I
22 think I just heard you say?

23 MR. BYSTROM: Yeah.

24 THE CHAIRPERSON: Is it's, it's not possible for the
25 shareholder to guarantee the \$30? It's just simply
26 not possible under the law as is currently exists.

1 MR. BYSTROM: I think that's right.

2 THE CHAIRPERSON: Thank you.

3 MR. BYSTROM: And that's, you know, and that's what
4 Fortis' presentation is here saying. You can't
5 guarantee that hundred percent certainty.

6 And I think it might be appropriate at this
7 time to give a little foreshadow of what my argument
8 will be at the end of the day here. In my submission,
9 the burden of proof on FEI is the balance of
10 probabilities, meaning more likely than not. That's
11 the civil burden of proof. It's not a criminal case
12 where the burden of proof is beyond a reasonable
13 doubt. So, FEI has to show on a balance of
14 probabilities that it will pay no more than \$30.

15 THE CHAIRPERSON: Sorry, so to complete that thought
16 then, I think what you're saying is, if you satisfy
17 that burden of proof then it satisfies a prescribed
18 undertaking conditions. Is that correct?

19 MR. BYSTROM: Yes. That's my submission, yes.

20 THE CHAIRPERSON: Thank you.

21 MR. BYSTROM: And it's common in front of this
22 Commission to approve projects -- to present projects
23 and costs on a forecast basis. Forecasts always have
24 that element of uncertainty. This is what happens in
25 the regulatory process where we are looking forward,
26 not back. And we have to make determinations on a

1 forecast basis with a level of uncertainty. And in my
2 submission the burden of proof is the same, it's
3 balance of probabilities. And in my submission the
4 evidence does establish that the price will be below
5 the \$30 threshold on a balance of probabilities.

6 THE CHAIRPERSON: Thank you.

7 MR. SLATER: Okay, so getting back to the presentation,
8 the, you know -- I guess it was kind of covered here,
9 but the right to apply to recover the balance is
10 necessary to ensure fair rates are set in accordance
11 with the UCA.

12 **Proceeding Time 9:24 a.m. T5**

13 And with that in mind, let's then turn back
14 to the proposal to recap what it accomplishes. So
15 first, to start with, a reasonable degree of certainly
16 was provided by the levelized cost determination of
17 22.24. As I mentioned, it was well below the
18 threshold and it was prepared on a conservative basis
19 using Class 3 level of definition for capital costs.

20 FEI's proposed deferral account adds a
21 degree of certainty to that or on top of that. So,
22 first, it does this by adding a degree of certainty by
23 capping cost fluctuation throughout the life of the
24 project. And, again, this addresses the first issue I
25 mentioned at the outset, which was to manage cost
26 fluctuation throughout the life of the project.

1 Second, the deferral account also adds a
2 degree of certainty by placing the shareholder at risk
3 for any remaining balance, and in such a case the onus
4 is on FEI to prove its costs were prudently incurred
5 should a balance remain at the end of the project.
6 This addresses the second issue by adding certainty to
7 the overall cost of the project.

8 With that, FEI believes it has provided the
9 highest degree of certainty that can be achieved for
10 this form of RNG acquisition and, therefore, FEI
11 believes that the added degree of certainty is
12 reasonable and meets the spirit and intent of the
13 GGRR, which is to enable the acquisition of RNG within
14 a reasonable degree of certainty.

15 THE CHAIRPERSON: Excuse me. I haven't read that,
16 those words in the GGRR, so I'm wondering if you could
17 provide any background about why that is the intent of
18 the GGRR. The words I read in the GGRR is that the
19 RNG should cost no more than \$30 a gigajoule. Those
20 are the words on the page. So is there something in
21 Hansard that we could look at that would help us
22 interpret that?

23 MS. SLATER: Yeah, so I'll pass it over to Chris that
24 answer that one.

25 MR. BYSTROM: Right. So as I've submitted in writing
26 several times in this proceeding, when interpreting

1 legislation such as this piece of regulation, it needs
2 to be interpreted in its entire context, and the
3 courts have been very clear about that. It is
4 standard principles of statutory interpretation. And
5 there is abundant context available to the Commission
6 to determine what the purpose of the GRR is in this
7 case, these particular sections. It's clear that they
8 are there to enable the production of RNG to reduce
9 greenhouse gas emissions.

10 The Ministry has confirmed in its letter of
11 comment that the purpose was to -- for that purpose,
12 to enable RNG production. This is consistent with
13 multiple policies of the government that have been
14 confirmed most recently again in the Ministry's
15 letter. If you look at the history of the biomethane
16 program. So this regulation was not issued in a
17 vacuum. It was issued in the very complex legal and
18 policy and factual matrix in which it came, which
19 included years of history of the biomethane program in
20 which Fortis had proposed -- the Commission had
21 accepted over time a set of criteria which said, "If
22 you meet these criteria, you're in the public
23 interest." It's like, "We've decided." And the GRR
24 came into that context and kind of raised up the price
25 and volume caps. And it was -- it's clear in that
26 context the purpose was to increase the ability of FEI

1 to produce RNG to reduce greenhouse gas emissions in
2 line with provincial policy.

3 And so in my submission, it's clear the
4 purpose of the GGRR is not to constrain RNG
5 production; it is to further, it is to promote RNG
6 production for the purposes of reducing greenhouse gas
7 emissions.

8 THE CHAIRPERSON: But does it not constrain the
9 purchase of RNG to RNG that costs no more than \$30 a
10 gigajoule? It's not an unlimited licence to --

11 MR. BYSTROM: It is not. So there are limits. The
12 prescribed undertaking has a set of criteria and the
13 Commission has set those out. Where -- and I go back
14 to my submission, so what does it mean, "Pay no more
15 than \$30"?

16 THE CHAIRPERSON: Right.

17 **Proceeding Time 9:28 a.m. T6**

18 MR. BYSTROM: In my submission that is a fact we need
19 to prove. How must we prove it? To what -- what is
20 the burden of proof on the applicant in this case?
21 It's the burden of proof in all civil cases, on a
22 balance of probabilities. And my submission, the
23 evidence is abundantly clear that it is indeed likely
24 to cost less than \$30 per gigajoule.

25 THE CHAIRPERSON: Thank you.

26 MR. SLATER: So, turning to the last slide. While we

1 believe the project qualifies as a prescribed
2 undertaking, if the Panel cannot find the project
3 meets the definition of a prescribed undertaking, the
4 Panel can still approve the BPA -- or accept the BPA
5 and approve the project as a CPCN.

6 So first, the COV Biomethane Project is in
7 the public interest. It is aligned with the clean
8 B.C. policy to achieve 15 percent renewable gas
9 content. And in fact the COV project is the single
10 largest landfill gas project in the province
11 contributing to this objective. The Ministry of
12 Energy, Mines and Petroleum Resources has confirmed
13 policy support for these types of projects in their
14 letter found in Exhibit C1-2. And RNG demand is
15 currently greater than supply.

16 Second, the application filed September 21st
17 of 2018 includes detailed project information which
18 has been subject to two rounds of IRs already. We've
19 reviewed the information on the record and we believe
20 it meets the spirit and intent of the CPCN guidelines
21 and would allow the Panel to make such a
22 determination.

23 To that end we've prepared a side-by-side
24 comparison of the CPCN guidelines and the project and
25 included that at the end of our presentation deck to
26 assist the Panel.

1 So in summary, while we think this
2 qualifies as a prescribed undertaking, we believe that
3 the project is in the public interest and if the
4 language of the GGRR presents an insurmountable
5 hurdle, we think that approving it as a CPCN would
6 avoid this issue and would help move the project
7 forward. It would also recognize a substantial
8 progress on the regulatory process so far. And it
9 would inform a process for future projects of this
10 nature. And FEI is open to additional process, such
11 as additional round of IRs or written submissions
12 aimed at CPCN approval if the Panel believes those are
13 necessary.

14 So, with that I'd like to thank you for the
15 opportunity to present. And we'd be happy to answer
16 further questions.

17 THE CHAIRPERSON: Thank you, thank you very much.

18 COMMISSIONER MASON: Mr. Bystrom, thank you for your
19 answers to those questions. A few minutes ago you, I
20 think, explained that the shareholders of FortisBC
21 were not able to give up their right to apply for an
22 excess of \$30 in this case, as opposed to they weren't
23 choosing to give up that right. Did I interpret that
24 first correctly?

25 MR. BYSTROM: Yes, I think you did. And it comes down
26 to, you know, we can't -- you can't get around the

1 law. Like, that is the law. We have -- that is the
2 right of the shareholder. The shareholder can make a
3 promise that it won't but it can't subvert the law.
4 The law is what it is and you can't get around that by
5 just saying, "Oh, I won't."

6 I mean, you can -- it may have some force
7 of course. It might be a sincere promise and so --
8 but the law is what it is.

9 COMMISSIONER MASON: Okay. So in a hypothetical case
10 where Fortis were to contract with another entity,
11 let's say it's not a public utility. So Fortis
12 contracts with that other entity and says, "We will
13 buy RNG for some figure." Let's call it 30 for the
14 sake of simplicity. Do the shareholders of that other
15 entity have the right to come back to Fortis if the
16 costs turn out to be more than is stated in the
17 contract?

18 MR. BYSTROM: No, they wouldn't have a contractual
19 right. But then it just comes down to risk and what
20 that other party would charge. So as a private non-
21 public utility they would not be limited to a
22 regulated rate of return. And when they give their
23 price of \$30 it's going to include a risk premium. So
24 the certainty comes with the cost, as always, right?
25 You can get certainty but you're going to pay for it.
26 And that other entity is going to charge 30 bucks and

1 of RNG. Would you agree with that? It would have to.

2 MR. BYSTROM: It would have to in the sense that the
3 GGRR just has the \$30. It doesn't say what's in the
4 \$30. And presumably if it's a fixed priced contract
5 that's before the Commission, yeah, then the supplier
6 has incorporated whatever risk premium it needs to to
7 come to the conclusion that it can agree to that.

8 THE CHAIRPERSON: So, from that then, do you think it's
9 reasonable to conclude that the intent of the GGRR is
10 that the risk premium is built into the \$30?

11 MR. BYSTROM: I don't think I can give an unqualified
12 agreement to that because in my view the -- and as the
13 Commission has concluded, the GGRR used the word
14 "acquisition of RNG" which is very broad. The word
15 "acquire" has a definition in the *Interpretation Act*
16 that is very broad. And that word was chosen because
17 it's very broad. And it included all types of
18 acquisition, right? Including a form where you
19 acquire the raw biogas and then construct and operate
20 an upgrader facility. So that where the utility is
21 doing that, so in that case the risk premium -- that
22 would just include the utilities regulated rate of
23 return and not a risk premium that a third party
24 supplier would take.

25 So the \$30 may or may not include that kind
26 of risk premium. It really depends on what type of

1 acquisition is coming before the Commission.

2 THE CHAIRPERSON: So, would I be correct in concluding
3 then that as long as Fortis is acquiring RNG from a
4 third party, the third party has to bear the risk
5 under 30 -- the risk within the \$30 cap. But if
6 Fortis is actually manufacturing the RNG themselves,
7 then they're not restricted to a \$30 cap. And they
8 can charge a premium on the \$30 for their risk. Is
9 that a conclusion I can draw here?

10 MR. SLATER: Sorry, I didn't understand that last part
11 of the question about the premium on the risk that
12 Fortis would charge.

13 THE CHAIRPERSON: So let's look at two alternatives.
14 One is a third party builds an upgrader and sells you
15 the RNG. In that scenario, presuming it's under the
16 GGRR, then the third party has to take the risk of
17 construction and operation of the upgrader. And they
18 take all risk above \$30 a gigajoule.

19 However, if you construct the upgrader,
20 then your risk isn't capped. In fact, you have no
21 risk at all, because if it's prudently incurred you're
22 saying the law allows you to recover those
23 expenditures. So in fact there is no GGR cap if you
24 build the upgrader.

25 MR. BYSTROM: But that's where I can't agree, there is
26 no GGRR cap. Because I don't think it follows from

1 the facts that you outlined in the sense that there is
2 a burden of proof for FEI to demonstrate that the cost
3 will be under \$30. We can't come in here with a
4 levelized costs projection of \$40 and say it's a
5 prescribed undertaking. There is a cap, it does have
6 force. And the utility has taken that seriously.

7 And it's done its due diligence, it's done
8 its sensitivity analysis, it's created conservative
9 assumptions, did the Class 3 estimate. It didn't --
10 it's not like the utility is sitting here saying,
11 "This has no force and effect." It takes it seriously
12 and it does impose a restriction. We just believe
13 we've met it.

14 THE CHAIRPERSON: I understand, Mr. Bystrom. But what
15 we're talking about it risk. And we're talking about
16 the risk of overruns above and beyond the projections.
17 And the comparable case is the case where the third
18 party similarly did their analysis and felt that they
19 could deliver for \$30.

20 **Proceeding Time 9:38 a.m. T8**

21 But in that case they're committed to delivering for
22 \$30 and they're bearing the risk of overrunning. And
23 what I'm suggesting is that in your case you're saying
24 that you shouldn't bear that risk and you can't bear
25 that risk because the law doesn't allow you to. And
26 that's the difference and there's an asymmetry there

1 between you acquiring -- there's an asymmetry in terms
2 of who bears the risk when you compare acquiring it --
3 acquiring the RNG to manufacturing the RNG.

4 MR. BYSTROM: So I think, right, there are two -- there
5 are differences between the two types of RNG
6 acquisition in terms of who bears the risk and there's
7 also who bears the benefits if the costs are lower.
8 So, you know, with the fixed price contract, customers
9 have to pay the risk premium, whether or not the risk
10 materializes. With Fortis doing the construction,
11 operation of the upgrader, customers get the benefit
12 if costs are lower then -- and there's no -- because
13 there's not that risk premium that the third-party
14 would've built in.

15 So there's two sides to that coin. At the
16 end of the day, when it comes to the legal analysis,
17 the GRR does not talk about a risk premium or forbid
18 one type of acquisition or the other.

19 THE CHAIRPERSON: Agreed. As a purely hypothetical
20 question, purely hypothetical, would Fortis agree if
21 the panel set a price of \$30 a gigajoule and said that
22 was the price? But presumably that would still not
23 preclude the shareholder from coming back if the cost
24 was still more than \$30.

25 MR. BYSTROM: Yeah, I mean think that's right. I think
26 at the end of the day, it comes back then to the

1 Whistler case and what happened there. I also just
2 struggle with how kind of mechanically the Commission
3 would do -- like impose that \$30 per gigajoule price.
4 In terms of ratemaking, in terms of mechanics, how you
5 set rates and things like that, it's unclear to me
6 exactly how that would occur. But at the end of the
7 day if it's essentially a cap, then we go back to the
8 Whistler case and the analysis applies as it did
9 there.

10 THE CHAIRPERSON: Would Fortis be open to building and
11 operating the upgrader through an unregulated
12 subsidiary and purchasing the RNG from the unregulated
13 subsidiary with a section 71 contract at a fixed
14 price?

15 MR. SLATER: That's not something that -- we've
16 certainly contemplated different alternatives, but,
17 you know, we -- the alternative that I proposed would
18 be preferred over, you know, constructing and building
19 the project as a -- under a non-regulated subsidiary.

20 THE CHAIRPERSON: I'm sorry, so is the answer yes or
21 no?

22 MR. SLATER: No.

23 THE CHAIRPERSON: Thank you.

24 COMMISSIONER FUNG: I have a question. Mr. Slater, is
25 Fortis currently considering entering into similar
26 arrangements with other municipalities for these types

1 of projects?

2 MR. SLATER: So I would say that there are a number of
3 landfill gas projects throughout the province that
4 Fortis is considering and that some may involve
5 capital -- construction of capital facilities. So,
6 yes.

7 COMMISSIONER FUNG: Can you give me an idea of the
8 order of magnitude we're talking about here?

9 MR. SLATER: I think I'm going to have to pass that one
10 to Scott Gramm.

11 COMMISSIONER FUNG: Mr. Gramm?

12 MR. GRAMM: Can you clarify when you say order of
13 magnitude, approximately how much money you want to
14 spend or how many gigajoules? What were you looking
15 at --

16 COMMISSIONER FUNG: Either. Just give me some idea of
17 what we're talking here.

18 MR. GRAMM: Yeah, so the City of Vancouver is the
19 largest gas producing landfill in the province. So I
20 would say less than -- maybe in the range of five, six
21 projects additionally, with gas volumes ranging from
22 about the size of the Salmon Arm landfill up to close
23 to the size of the City of Vancouver landfill. So
24 five or six more projects.

25 COMMISSIONER FUNG: Okay.

26 MR. GRAMM: Yeah.

1 COMMISSIONER FUNG: Thank you.

2 THE CHAIRPERSON: I'm going to go around -- I think the
3 panel -- thank you very much for your answers. We
4 appreciate that. We'll just go around the room now.
5 And perhaps we could start with Staff, if Staff has
6 any questions.

7 Staff go last? Okay, we'll start with --

8 COMMISSIONER FUNG: Yes, that's fine.

9 THE CHAIRPERSON: We'll start with the CEC.

10 MR. WEAVER: Thank you. Chris Weaver from Commercial
11 Energy Consumers. And really following up on the
12 discussion with the Panel, and I'm taking you to
13 Exhibit B-7, which is your letter of July 16th to the
14 Commission. And I just would -- in the scope of the
15 proceeding, just want to turn you to the third
16 paragraph on page 2. And it's -- and I can summarize
17 it and it's effectively -- I'll read it into the
18 record.

19 **Proceeding Time 9:44 a.m. T9**

20 "In the unlikely event that the balance
21 remains in the COV BPA Deferral Account at
22 the end of the Project's initial term, that
23 balance would not be recoverable from
24 customers absent clarification from the
25 government regarding the GGRR language, or
26 BCUC approval."

So as I've looked at this what I'm

1 understanding the company's position to be is your
2 application satisfies the \$30 cap in the GGRR, so
3 therefore this is a prescribed undertaking based on
4 how you file the application, and your estimate is the
5 impact on the ultimate cost of per gigajoule of
6 renewable natural gas, is that correct?

7 MR. BYSTROM: Yes.

8 MR. WEAFFER: And so, the issue we're trying to deal
9 with is what about on the back end if an affect, your
10 \$30.50 and then in retrospect we're looking back and
11 going this wasn't actually satisfying that requirement
12 under the regulations. Is that the fundamental issue
13 that we're trying to resolve here?

14 MR. BYSTROM: I think so, I just have to -- I can't
15 quite agree with how you characterized it. Like when
16 you said, "didn't actually satisfy it." Again, my
17 position is you have to make a determination now
18 whether the criteria are met. And we think we've met
19 that. I think in 20 years now, it's not like the
20 decision today would have been wrong, it was -- the
21 conclusion was right at the time. So, I mean it's
22 just a matter of characterization, but I think --

23 MR. WEAFFER: In fair, and I think that's the nub of the
24 issue, because while you can point to the regulatory
25 compact in terms of the shareholder has a right to
26 recover it's prudently incurred costs, as ratepayers

1 looking at the regulation today we're seeing the
2 regulatory compact had been amended to say that's what
3 it's going to cost and no more.

4 So when we look at the regulatory compact
5 we're saying, and I think this is what's challenging
6 the Commission, this isn't a typical regulatory
7 compact, we've got a cap. And further I distinguish
8 the Whistler situation where the cap was set as a
9 result of regulatory process and the Commission
10 setting the cap and the company didn't apply for
11 reconsiderations of it. They said, we're going to
12 work with that cap, you went over on cost, you came
13 back got it fixed.

14 Here the cap was actually set by the
15 legislation. So I think it's a little different than
16 Whistler and I'm just trying to get -- and the CEC is
17 not opposed to this application, we're trying or be
18 helpful here.

19 MR. BYSTROM: Yeah.

20 MR. WEAFFER: But that's the dilemma. It's a different
21 regulatory compact effective -- we can't ignore that
22 \$30 a GJ provision in the regulation, correct?

23 MR. BYSTROM: We can't ignore it but it is -- and I
24 understand the challenge the Panel is facing in how to
25 interpret this, but I do think that if you -- it
26 really comes down to how to interpret those words, and

1 what I'll be submitting is that you can't interpret
2 them as in saying it must be a fixed price contract.
3 That's not -- that can't be a correct interpretation
4 of what that means.

5 MR. WEAFFER: Right. But you will agree that from
6 anybody other than the company or the shareholder
7 reading it, the \$30 is expected to be as much as this
8 is going to cost per GJ for the term of the contract.
9 That's a reasonable interpretation from a ratepayer
10 perspective, you would agree?

11 MR. BYSTROM: Well I guess, you know, I think I
12 understand what you're saying, but this has to be
13 interpreted in the context in which it is issued. And
14 it is in the context of the *Utilities Commission Act*
15 and the regulatory process that are happening all the
16 time in which costs are looked at on a forecast basis
17 where there is uncertainty. And so I understand your
18 point that, you know, the customer wants to hold
19 everyone to that \$30, but in my submission in this
20 context \$30 reasonably means on a forecast basis it's
21 -- on a balance of probabilities it's going to be
22 under \$30.

23 MR. WEAFFER: But just to be clear. It's not the
24 ratepayers just saying that's the cap, it's the
25 government in passing the legislation. That's the
26 number they've put in in terms of what the cap would

1 be. And that may be the wrong number and maybe they
2 want to revisit that, and that may happen, but that's
3 what the Commission and that's what us participating
4 in the process have in front of us. And we can
5 interpret it from either side of the fence, and both
6 sides of the fence are reasonable and the ratepayers
7 are saying that the objective of pursuing this
8 initiative should not be done at a significant burden
9 to ratepayers.

10 I mean the government is also concerned
11 about rates for ratepayers, so in putting this in
12 place an assumption -- a fair assumption is also
13 there's a desire to manage particularly the
14 unpredictable nature of this fairly new initiative
15 that the ratepayers aren't exposed to unexpected
16 premiums for something.

17 MR. BYSTROM: Yeah. Well, except for it was -- it was
18 drafted by government, the GGRR, and which was intent
19 on expanding the production of the RNG in this
20 province. Where it was well known that a form in
21 which FEI could acquire RNG is where FEI acquires the
22 biogas and then constructs and operates the upgrading
23 facilities.

24 **Proceeding Time 9:49 a.m. T10**

25 And in that form of acquisition there is
26 uncertainty as to the forecast costs. So when they

1 put in costs no more than \$30, in my submission it's
2 -- the only reasonable interpretation of that meant on
3 a forecast basis -- on a balance of probabilities it's
4 not going to cost more than \$30. And that is the
5 restriction, that is the protection. That does
6 provide protection. It doesn't provide the hard cap
7 you're looking for in this case. But that's what, in
8 my submission, that's the only reasonable
9 interpretation of the GGRR.

10 MR. WEAFFER: I'm not sure I understood that.

11 MR. BYSTROM: So I guess the point is that you're
12 saying you want some protection for ratepayers. It
13 does provide protection for ratepayers. What it
14 doesn't do is say it must be a fixed price contract
15 where there is no potential risk that costs could ever
16 be above \$30 per GJ.

17 MR. WEAFFER: Fair enough. And the proposal -- and so
18 let's just move forward. And I appreciate that the
19 expansion of the understanding. So now I understand
20 the proposal we have, the company's position is, "We
21 think we're within the -- under our interpretation of
22 the regulation, we think we're within the prescribed
23 undertaking definition and we are protecting
24 ratepayers by establishing a deferral account process
25 that we can look back on it at a later date."

26 And so today the argument of the company is

1 we're within the definition, clearly. So this should
2 be approved. If we fall outside of that as a result
3 of the passage of time the onus will be to go back to
4 the Commission or go to government and say, "You set
5 the number too low, you need to help us out here." Is
6 that essentially the position?

7 MR. SLATER: Yeah, that's correct. Yeah.

8 MR. WEAFFER: Okay. And so the -- if neither of those
9 things occur, the Commission doesn't approve the
10 overage because they find the costs were imprudently
11 occurred, or alternatively the government steps in at
12 a later date and says, "Ratepayers were politically
13 accountable. The costs are more than we said when we
14 started this project. That's what it is, there's
15 accountability for the change in price." If they
16 don't -- if neither of those two things happens
17 shareholders don't bare the risk, is that --

18 MR. SLATER: That's correct.

19 MR. WEAFFER: Okay, thank you. I'm just going to move
20 on to the last topic that came up. And I apologize if
21 I missed this in the earlier materials. But the new
22 alternative, the alternative to the alternative to the
23 alternative of a CPCN application. This is relatively
24 new, right? Did I miss something or has this just
25 happened today?

26 MR. SLATER: It was part of our July 16th proposal. It

1 was just contained in a confidential appendix that we
2 discussed alternatives that we considered. And it was
3 located in that appendix. So it might explain why you
4 never saw it.

5 MR. WEAVER: I've been hit or miss on the confidential
6 material and I don't go with the confidential material
7 discussion. But can I just understand if it's -- and
8 I realize you've put a detailed comparison in there
9 and I'm not going to pretend I've looked at it in any
10 detail. Just simplistically put, what's the
11 difference? In terms of, this issue was to the
12 shareholder's expectation that they'll be made whole
13 if they go over.

14 I take it the forecast -- everything else
15 remains the same as you've filed. If you end up being
16 over the 22.50 or whatever number you forecast, or if
17 you end up being over the 30 that you've -- in either
18 event, you may come back to the Commission and say "We
19 prudently incurred in the costs under the CPCN
20 application, we're coming back and saying we need to
21 revisit because there were unanticipated events that
22 we prudently couldn't have anticipated." Is that --
23 is there a difference, is the fundamental question.

24 MR. SLATER: So, just at a really high level, the
25 difference is that the proposed -- what we've proposed
26 as the proposed treatment looks at costs on a

1 cumulative basis. So, you know, over -- through the
2 passage of the project it looks at the total costs and
3 total volume produced and ensures that the costs that
4 flow into rates are no greater than \$30 on that
5 cumulative basis.

6 Whereas the alternative treatment that we
7 considered does the same thing but it looks on an
8 annual basis. So each year, are the costs greater
9 than or less than \$30? If they're greater than \$30,
10 an amount is placed into the deferral account and
11 later flowed back into rates where costs would be
12 otherwise lower than the \$30 threshold. So cumulative
13 versus annual is the difference between the two.

14 MR. BYSTROM: They may be -- are we talking -- when you
15 said "alternate" were you talking about -- which
16 "alternate"?

17 MR. WEAFFER: The CPCN alternate. Yeah, sorry. The new
18 alternate.

19 MR. SLATER: The other alternative.

20 MR. WEAFFER: And I appreciate you offered a round of
21 information requests, and I recognize this is early
22 days on this approach. I'm just trying to at a high-
23 level understand if we go down that path, what's the
24 difference in terms of the shareholder accepting risks
25 for being over the \$30? Or is that just simply not in
26 play because it's not being done as a prescribed

1 MR. SLATER: Yeah, so under the prescribed undertaking
2 and under the proposal, our July 16 proposal, the
3 shareholder would be more at risk. It would bear the
4 onus to prove its costs are prudent, whereas under a
5 CPCN there's a presumption of prudence. So that would
6 be the difference.

7 COMMISSIONER FUNG: Actually, maybe I can interject. I
8 think Mr. Weafer is trying to get at the point that I
9 think we have not talked about, and that is, under the
10 CPCN analysis you wouldn't even offer up the deferral
11 account treatment. You would just be looking at the
12 application based on your forecasts of costs.

13 MR. SLATER: That's correct.

14 COMMISSIONER FUNG: That's correct, yeah.

15 THE CHAIRPERSON: Is it also fair to say -- and I'm
16 sorry to interrupt.

17 MR. WEAFER: No, go ahead. Go ahead.

18 THE CHAIRPERSON: Is it also fair to say that you're
19 offering the CPCN alternative in the event that the
20 Panel does not accept My. Bystrom's argument that this
21 should be adjudicated on the balance of probabilities?
22 And if we rejected that and the result was to reject
23 it under the GGRR, then this is -- then in that
24 alternative you would offer the CPCN. Is that -- do
25 we understand that correctly? Do I understand that
26 correctly?

1 MR. SLATER: Yes, that's correct. Yeah.

2 THE CHAIRPERSON: Okay. But your preferred choice, as
3 it were, would be that we accept your argument about
4 the balance of probabilities and that this be approved
5 as a GGRR.

6 MR. SLATER: I think -- I don't know that we have a
7 preference between either. The prescribed undertaking
8 would certainly be a faster process. So I couldn't
9 say which one we would prefer, but the preference is
10 to move forward with the project, I'll say that
11 instead.

12 THE CHAIRPERSON: So what should the Panel be looking
13 at then? What should be do?

14 MR. BYSTROM: Well, I think since the GGRR exists, we
15 have to look at that and determine whether it is a
16 prescribed undertaking. If the determination is yes,
17 then that. If no, then alternative.

18 THE CHAIRPERSON: Okay, thank you.

19 MR. WEAVER: Those are my questions. Thank you. Thank
20 you, panel.

21 THE CHAIRPERSON: Does the City of Vancouver have any
22 questions? Please. Thank you.

23 MR. BECK: Thank you. Wasn't intending to have any
24 questions today. I wanted to just come -- and my
25 colleague Lynn Belanger and I wanted to generally
26 support the project today.

1 percentage for the safety margin versus the \$30 cap?
2 MR. SLATER: So the capital costs for the project were
3 prepared to ACE Class 3 level of definition, which has
4 a margin of plus 30 percent, minus 20 percent
5 variance. And in the IR responses that we provided
6 there is a -- you know, I'm just going to refer to it
7 quickly.
8 MR. BECK: I'm putting my partner on the spot here, I
9 didn't preplan this questions. I think it's an
10 important question though, because I'm a professional
11 engineer and we like to put safety margins in to
12 assure the success of projects in the long term. It
13 can be approximate too by the way.
14 MR. SLATER: I just wanted to flip open, so I'm looking
15 at BCUC responses to confidential IR set number 1,
16 just going to answer generally, so this isn't
17 confidential information.
18 MR. BECK: Thank you.
19 MR. SLATER: When we looked at the project, even with
20 an increase of 50 percent, so outside of that Class 3
21 margin, the costs are below \$30 per gigajoule
22 threshold.
23 MR. BECK: Thank you. And so I'm just back of the
24 envelope when I was reading it originally it was about
25 25 percent below the \$30, but that was just my rough
26 calculation when I was looking at it originally. I'm

1 not asking you to confirm that, but that's the order
2 of magnitude. So that would be typical for me in
3 ensuring large capital engineering project. My point
4 is what I heard at the beginning and all the way
5 through is consistently a large safety margin being
6 put in by Fortis versus this \$30 cap, or cap or
7 whatever you want to call it, because it was important
8 to stay below that and have a safety margin. That was
9 important of the City of Vancouver to see and we've
10 seen that safety margin being put in all the way
11 through.

12 Thank you.

13 THE CHAIRPERSON: Excuse me sir, Mr. Beck. Mr. Mason
14 has a question for you.

15 MR. BECK: Yes.

16 COMMISSIONER MASON: Thanks very much for that. I
17 wonder if I could take the opportunity to ask you, ask
18 the City a question.

19 MR. BECK: Sure.

20 COMMISSIONER MASON: I'm referring to an exhibit, for
21 the record it's C2-3, but it's a letter that your
22 colleague Sadhu Johnston wrote to the government, to
23 the Ministry and copied us on it. And in that letter
24 the City states that in the event that Fortis isn't
25 able to convince the Commission that the GGRR
26 prescribed underling would apply there were two

1 possibilities. And the City suggests that the
2 government might choose to, number one, eliminate the
3 price cap, or number 2, modify the language to allow
4 projects to go when a reasonable degree of confidence
5 had been achieved.

6 So the first question is, have you heard
7 back from the government whether they have any
8 intention or desire to do or make either of those two
9 changes?

10 MR. BECK: No.

11 COMMISSIONER MASON: Okay, and then the second
12 questions, the second point is you, your colleague
13 explicitly refers to this concept of "modifying the
14 language to allow RNG projects to proceed when they
15 demonstrate a reasonable degree of confidence." Does
16 that mean that -- does that infer that your opinion is
17 that the language doesn't allow for that today, which
18 is why you would be suggesting that modification?

19 MR. BECK: So I can't speak on behalf of Sadhu, who is
20 actually my indirect boss, he's the Chief
21 Administrative Officer of the City, he's a colleague
22 of mine but he's also my overall boss. And so the
23 response I believe came from our sustainability group
24 in that letter providing input into that response. So
25 I can't speak on behalf of that -- I work in the
26 engineering department.

1 COMMISSIONER MASON: Okay.

2 MR. BECK: However, yeah, the simple answer is it
3 wouldn't be up to the city, from my understanding, to
4 decide on how a regulation will be set by the
5 provincial government. We were just looking for a way
6 forward for any other way in trying to submit in good
7 faith a couple of ideas, a few ideas. So that's why I
8 believe Sandhu Johnston provided a couple of ideas,
9 just to stimulate some thought and not have it fail
10 because we were very concerned about the possibility
11 of not being able to reduce these greenhouse gas
12 emissions. So at the time I'm not sure if those till
13 apply or they're relevant, I think it's for the
14 Utility Commission and B.C. Government to determine
15 whether that would be viable. And we have not, to
16 your first question, have not heard back from the B.C.
17 government about either possibility.

18 We did receive a letter back, I saw a copy,
19 of saying, I believe the Deputy Minister or member
20 responded saying that the B.C. government respected
21 the independence of the B.C. Utility Commission -- I'm
22 paraphrasing from my understanding, the independent
23 decision and look forward to that independent
24 decision. So that's basically what we received in
25 response.

26 **Proceeding Time 10:04 a.m. T13**

1 COMMISSIONER MASON: Great, thank you very much.

2 MR. MILLER: Paul Miller, Commission Staff. So, I have
3 a few questions on process and I believe Staff has
4 some follow up questions. So my process related
5 questions relate to the concept of approval under the
6 CPCN provisions under the Act, 45, 46. I may be
7 wrong, but I don't think there's been a formal
8 application to amend to request relief under 45 and
9 46, is that right?

10 MR. BYSTROM: That's correct.

11 MR. MILLER: Okay. So, do you intend to apply,
12 formally apply to amend under 45 and 46? And the
13 reason I'm asking that is I'm not really sure what
14 you're asking the Commission to do at this point in
15 time. Are you asking them when they consider after
16 submissions in rendering a decision to contemplate
17 section 45 and 46 approval? Or are you asking them
18 only to rule on the GGRR and then if you're not
19 successful or if they don't give you the relief you
20 want, that then you'll come back and apply under 45,
21 46? Because I believe the Chair already -- or sorry,
22 it was you guys making mention of the fact that
23 further process may be required.

24 So I'm not really sure what it is you're
25 asking the panel to do at this point in time and
26 perhaps you can provide some clarification.

1 MR. BYSTROM: Thanks, appreciate that question. And
2 understand that, you know, what we've put forward here
3 is a little unusual procedurally. Really it comes
4 down to that we're looking for a way to move this
5 project forward. We believe it's a prescribed
6 undertaking. But we also believe that regardless of
7 whether it is or not, it's in the public interest and
8 should move forward. It's a good project and it
9 shouldn't be held back by the words, you know,
10 interpreting these particular words.

11 And so what we put forward is -- so first,
12 stand by our position about the prescribed
13 undertaking. But the Commission does have the power
14 to issue a decision, say, grant a CPCN if it
15 determines that it's in the public interest right now.
16 We think, sitting here today, we think it's clear it's
17 in the public interest and the Commission could do
18 that if it believes that -- you know, if it agrees.
19 But we recognize that further process may be required.

20 So that if you -- so we're asking -- maybe
21 I should just do this in order. So we're asking that
22 you consider our arguments around the prescribed
23 undertaking and make that determination. If you find
24 it's not a prescribed undertaking, then we're asking
25 that you consider whether you can grant a CPCN for the
26 project and accept the BPA under section 71 because

1 it's in the public interest, and clearly so in our
2 view.

3 MR. MILLER: Do you intend to formally apply in writing
4 to amend the application through?

5 MR. BYSTROM: We can do that. If that helps, like, we
6 can file a letter. We --

7 MS. BEVACQUA: It's on the record here today.

8 MR. BYSTROM: So, I mean, can we --

9 MS. BEVACQUA: If we can avoid additional processes --

10 MR. MILLER: So I understand the part about avoiding
11 additional process, but there's also notification to
12 other parties that may have an interest and haven't
13 appeared so far, which is why I was referring to the
14 fact that are we going to document it in writing?
15 Because that's broad and public notice as possible.

16 THE CHAIRPERSON: And if I could add, the consequence
17 of that then would be that we would need a separate
18 process after final argument today because there may
19 be other parties that would be part of that
20 proceeding.

21 MR. BYSTROM: Okay. So, we can file an amended order
22 sought. But I guess what we're asking is that the
23 Commission first consider our first argument. If it
24 concludes not, then we can proceed with whatever
25 process is needed to see through the CPCN request, but
26 --

1 MR. MILLER: Yes. So the reason I was asking was that
2 - and you can think about this and maybe address it
3 more fully in argument - is I just want to make sure
4 the Panel understands exactly what it is you're
5 requesting at this point in time. Whether it's in
6 addition to consideration of the GGR, also the CPCN
7 requirements.

8 MR. BYSTROM: Okay. I will clarify in argument to the
9 extent I can do that. And we -- yeah, I'll prepare
10 that.

11 MR. MILLER: Thank you. So, I believe Staff have some
12 follow up questions.

13 MR. KEHOE: Yes. At this point Staff did prepare a
14 number of questions, but most of them have already
15 been answered. So I just have one clarification
16 question. In Exhibit B-8, BCUC IR 1.1.1, the question
17 was,

18 "If confirmed, please discuss whether the
19 resulting amounts that are recovered from
20 the shareholder would still be in compliance
21 with the *UCA*, in particular Section 59(5).
22 As part of the response, please discuss
23 whether this scenario would violate the
24 regulatory compact and the Fair Return
25 Standard for services provided by the
26 utility."

FEI responded with -- FEI's proposed here

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reads,

"...BPA Deferral Account does not violate the regulatory compact or the Fair Return Standard as it preserves FEI's right to apply for recovery of any remaining balance in the COV BPA Deferral Account at the end of the term of the COV VBA. As a matter of practice and for regulatory efficiency, FEI will only apply for a recovery of the balance in the account if there is a significant balance that, absent recovery, would violate the Fair Return Standard, or where changes in the wording of the GGRR or other legislation enable recovery of the balance."

So I just had a question on that "FEI will only apply for recovery of the balance in the account if there is a significant balance." So could FEI speak to how that value would be determined, that significant amount?

Proceeding Time 10:10 a.m. T14

MR. SLATER: Yes. So we can't provide a dollar figure, but what we're talking about there is a material amount. And it would need to be, you know, judgment applied to that at the time that is applied, what is material, and whether it be -- you know, whether it would make sense to apply for recovery. But I can't

1 provide a sort of dollar value interpretation of that,
2 unfortunately.

3 MR. KEHOE: Okay, that was it. Thank you.

4 THE CHAIRPERSON: Just a couple of follow-up questions.
5 One is, I know this is probably covered in the -- is
6 covered in the IRs, but just to clarify, that balance
7 in the account after 20 years will include carrying
8 costs, correct?

9 MR. SLATER: It's possible that it could include
10 carrying costs, yes, correct.

11 THE CHAIRPERSON: And how are they calculated?

12 MR. SLATER: I'm going to pass that question over to
13 Richard Gosselin.

14 MR. GOSSELIN: The carrying costs applied are the after
15 tax weighted average cost of capital of the utility.

16 THE CHAIRPERSON: Thank you. And I think my final
17 question is I'd like to go back to the regulatory
18 compact, Mr. Bystrom, that you've been talking about,
19 that we've all been talking about, and the right of
20 shareholders to apply for recovery of expenditures
21 that they've been -- that they've financed themselves.

22 In a revenue requirement typically there
23 are some accounts to which deferral account treatment
24 is granted if it's considered that it's not reasonable
25 that the company bear or the shareholder bear the
26 risk, that it's out of their control. But there's

1 some accounts that our Commission, and many other
2 commissions across the world in fact, consider that
3 the utility should be at risk for it. When they make
4 a projection, then that's the amount that gets
5 approved. And in those circumstances I don't think we
6 expect the company to come back and say, "Well, we
7 prudently incurred more money than we forecast that we
8 were going to incur."

9 Is it your position then that the
10 regulatory compact would also allow for shareholder
11 recovery of those amounts?

12 MR. BYSTROM: No, I think in my submissions I was
13 probably leaving out the words "reasonable
14 opportunity". So in a revenue requirement case, say
15 in a cost service forecast, you make your forecast of
16 costs and the Commission approves the rates based on
17 that forecast, and so that's a reasonable opportunity.
18 We had our chance to forecast the cost and we
19 recovered them. And, I'm sorry, and then if we -- if
20 the utility goes over that in a year, then it's at
21 risk for that and it's had its reasonable opportunity.

22 I think the issue with a capital project
23 like this is that you forecast it, you build it, then
24 it comes into rates. The actual -- it doesn't
25 actually go into rates until it's completed and you
26 know what to put into rate base, and so, what goes

1 into rate base is the actual capital costs.

2 Yeah. So, no, I mean so I think it's the
3 "reasonable opportunity" language that is key to
4 answering your question there.

5 THE CHAIRPERSON: Thank you. Does anyone have any
6 further questions? Okay.

7 Are all parties prepared to make their
8 final submissions at this point?

9 MR. BYSTROM: Yes.

10 THE CHAIRPERSON: Do we need to take a few minutes?
11 Yeah, we can take ten minutes.

12 COMMISSIONER FUNG: Okay.

13 MR. BYSTROM: I would just like a few minutes, yeah, to
14 chat with my client before we proceed.

15 COMMISSIONER FUNG: That's fine. Great.

16 THE CHAIRPERSON: Sure. But you are prepared to --

17 MR. BYSTROM: Yes.

18 THE CHAIRPERSON: Okay, so we'll come back at twenty-
19 five after 10:00. Thank you.

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

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

T16

22 THE CHAIRPERSON: Okay, my continuing legal education,
23 Mr. Bystrom.

24 MR. BYSTROM: I should have told you there was a spoiler
25 alert coming there. But I think you heard much of
26 what I need to say but I do have a few things to add.

1 THE CHAIRPERSON: Please go ahead. Thank you.

2 MR. BYSTROM: Thank you.

3 **ARGUMENT BY MR. BYSTROM:**

4 MR. BYSTROM: So as you know, Fortis initially filed its
5 Application for acceptance of the Biomethane Purchase
6 agreement with the City of Vancouver in September of
7 2018 and under that BPA, FEI will purchase the raw
8 biogas from the city and will construct and operate
9 facilities on the City of Vancouver's land, upgrade
10 the landfill gas to pipeline quality renewable natural
11 gas. And we refer to the acquisition of the raw
12 biogas and the construction operation of the
13 facilities as "the project".

14 So my submission this morning will have two
15 parts. In the first part I will address how the
16 project qualifies as a prescribed undertaking under
17 Section 18 of the *Clean Energy Act* pursuant to Section
18 2(3.7) to (3.9) of the *Greenhouse Gas Reduction*
19 *Regulation*.

20 Further to the Panel's decision in June,
21 the issue specifically to be address is whether the
22 project meets the criteria of "pays no more than \$30
23 per GJ". And so, as I alluded to already, my
24 submission is that the burden of proof on FEI to
25 demonstrate this is on the balance of probabilities,
26 meaning more likely than not. In my submission, the

1 evidence is clear that on a balance of probabilities
2 FEI will pay no more than \$30 per GJ. FEI's Class 3
3 capital cost estimate, conservative assumptions and
4 analysis, and now the proposed deferral account to cap
5 fluctuations make it unlikely that the cost per GJ
6 will exceed \$30, and for this reason, in my
7 submission, the project is a prescribed undertaking
8 and should be approved.

9 In the second part of my submission, I will
10 address the alternate relief sought. If, despite of
11 our submissions, the BCUC finds that the project is
12 not a prescribed undertaking, FEI's view is the
13 project should not be further delayed but we should
14 find a way to move forward. In our submission, it's a
15 good project that is clearly in the public interest
16 and that the evidence on the record shows this.

17 And I will address some of the procedural
18 elements around that request in that part of the
19 submission as well.

20 So the first part of my submission: So in
21 my submission the project with the City of Vancouver
22 is precisely the type of project that was meant to be
23 a prescribed undertaking under Section 2(3.8) of the
24 GGRR. So I'm sure the language of that section is
25 very familiar at this point, but the key words are
26 "the public utility acquires renewable natural gas for

1 in the account if they were prudently incurred.
2 However, certainty in my submission is the incorrect
3 standard to apply when considering section 2(3.8) of
4 the GRR. And I've two key reasons for this, which
5 I'll develop.

6 The first one is that the burden of proof
7 on FEI in BCUC proceedings is the civil one of a
8 balance of probabilities, meaning more likely than
9 not. And in my submission we've met that burden.

10 The second reason is that imposing
11 certainty requirement is to interpret the GRR as only
12 allowing fixed priced contracts, which would preclude
13 this type of RNG acquisition. In my submission that
14 would be inconsistent with the wording of Section
15 2(3.8) and would be inconsistent with the purpose of
16 the section to increase the production of RNG to
17 reduce greenhouse gas emissions.

18 So turning to my first point about
19 regarding the burden of proof. So the burden of proof
20 on a party trying to demonstrate a fact in front of
21 the Commission is the balance of probabilities,
22 meaning more likely than not. This is the proof,
23 burden of proof in civil cases generally and in
24 support of this proposition I have handed out an
25 excerpt from Macaulay and Sprague Practice and
26 Procedure before Administrative Tribunals. And I

1 won't go through it in detail, but on the third page
2 of the handout, that's the third page including the
3 title page, around the fourth paragraph down it says,
4 "To the extent that most proceeding before
5 administrative agencies are civil as opposed
6 to criminal in nature the burden of proof is
7 the civil burden of balance of probabilities
8 as opposed to the criminal standard."

9 And there's footnote 93 there which you can
10 look at at your leisure, which walks you through some
11 of the case laws. And the key point is that the
12 burden of proof of balance of probabilities is the
13 common law. That is, what the common law says. To
14 apply a different burden of proof you would need
15 statutory language that imposes a higher standard.
16 And in my submission there is no such statutory
17 language that imposes a higher burden on the applicant
18 in this case.

19 And in the footnote there is an example of
20 a case, which is very specific, to overturn the common
21 law of a legislation has to be quite clear that it is
22 overturning the common law and imposing a higher
23 standard. There's simply nothing like that right now
24 for this proceeding.

25 So in the present case the question before
26 the Commission is whether the utility will pay more

1 than \$30. The burden of proof on FEI is to
2 demonstrate that on a balance of probabilities,
3 meaning more likely than not.

4 Now, I mentioned that you would need
5 legislation to impose a different standard, and there
6 is none. And moreover, far from suggesting a higher
7 standard the legislation would suggest the opposite.
8 Section 18(3) of the *Clean Energy Act* makes it clear
9 that the Commission should not be doing anything
10 directly or indirectly to prevent the utility from
11 carrying out a prescribed undertaking. It's states,

12 "The commission must not exercise a power
13 under the *Utilities Commission Act* in any
14 way that would directly or indirectly
15 prevent a public utility referred to in
16 subsection (2) from carrying out a
17 prescribed undertaking."

18 So in my submission, imposing a higher
19 burden of proof when none is required would be
20 indirectly be preventing the utility from carrying out
21 the prescribed undertaking and therefore would be an
22 error. And so in my submission the burden of proof is
23 what it always is in civil cases and before this
24 Commission, which is the balance of probabilities and
25 FEI has convincingly demonstrated that it is more
26 likely than not that the utility would pay no more

1 than \$30 per GJ for RNG through the project.

2 FEI has shown this through its evidence in
3 a number of way, including the price of the raw
4 biogas, the Class 3 cost estimate for capital costs
5 and the use of conservative assumptions regarding
6 factors such as volumes and upgrader availabilities.

7 **Proceeding Time 10:38 a.m. T18**

8 In my written final submission in this
9 proceeding I have laid out some of those conservative
10 assumptions. I won't repeat that here, it's on the
11 record in the proceeding. Including steps that FEI
12 has taken to reduce risk for the project, which
13 includes the preliminary geotechnical investigations,
14 receiving agreement from the city to place the
15 interconnecting gas line along the existing roadway
16 and conducting a comprehensive technology review to
17 identify the proven feasibility options. And those
18 points are all developed on the record.

19 But the point is, FEI has done its
20 homework. It has done the preliminary work to ensure
21 that its cost estimate is reasonable. And given the
22 robust cost estimate, the conservative assumptions and
23 risk mitigation strategies, FEI does not expect the
24 cost per GJ for the project to exceed \$30 per GJ at
25 any time. In other words, it is unlikely that it will
26 exceed that threshold.

1 So, in my submission the various scenarios
2 that were presented in some of the BCUC Staff
3 exhibits, they show various ways in which the factors
4 could be adjusted to increase the cost above 30 GJs.
5 There's no evidence to suggest that any of those
6 scenarios are reasonable or likely to occur. In fact,
7 it's the opposite. All those factors that FEI has put
8 forward are based on already conservative assumptions.
9 And the alternate assumptions that they will be less,
10 the capital costs will be over 60 percent or that
11 methane content will be several percentages less than
12 what is already conservatively assumed, there's simply
13 no evidence to suggest that FEI -- that those
14 assumptions will happen. If there are -- things may
15 go wrong over the course of the project, but FEI will,
16 and the city will, work together to fix those. It is
17 unreasonable, in my view, to think that the issues
18 won't be corrected over the life of the project. And
19 FEI's deferral account proposal, as it made in July,
20 add certainty by ensuring that fluctuations won't
21 exceed the \$30 cap.

22 So in my submission, based on all the
23 evidence, FEI has met its burden of proof. On a
24 balance of probabilities the acquisition of RNG will
25 not cost more than \$30 per GJ.

26 And I mentioned I had a second point I

1 wanted to make. That in my submission it would be
2 incorrect to import a standard of certainty into the
3 criteria that the utility pays no more than \$30, as
4 this would be interpreting the section as requiring a
5 fixed price contract. As has been stated several
6 times, where there is an acquisition of RNG involving
7 the construction and operation of upgrading facilities
8 there will always be an element of uncertainty. An
9 interpretation that 100 percent certainty is required
10 would therefore limit the acquisition of RNG to fixed
11 priced contracts. In my view that cannot be a correct
12 interpretation of section 2(3.8)(a) of the GRR.

13 And there are at least two reasons why. In
14 my submission, it would be inconsistent with the
15 wording of "acquisition of RNG" in that section. And
16 it would be inconsistent with the purpose of the GRR
17 and the *Clean Energy Act*.

18 So in terms of the inconsistency with the
19 wording of the section. The Commission determined
20 that the GRR permits a broad meaning of acquiring
21 RNG. The Commission indicated in its decision that
22 "acquire" must be given a fair, large and liberal
23 interpretation to accomplish the purpose of the GRR
24 and the *Clean Energy Act*. After citing the definition
25 of the meaning of "acquire" in the *Interpretation Act*
26 and the Cambridge Dictionary, the BCUC's June decision

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states that,

"Given the accepted principles of statutory interpretation and these broad definitions, the Panel is satisfied that when considered together the process of purchasing and taking possession of raw landfill gas from the COV and upgrading it RNG satisfies the meaning of 'acquires renewable natural gas' in section 2(3.8) of the GGRR."

Proceeding Time 10:43 a.m. T19

So, section 2(3.8) of the GGRR did not constrain the types of RNG acquisition, but instead intentionally used the word "acquire" which has a very broad meaning in the *Interpretation Act*. In my submission, that makes clear that the intention of those words was to be broad with respect to how the utility may acquire RNG.

In addition, the GGRR must be interpreted in its entire context, and a key part of this context -- the context of this section of the GGRR is FEI's biomethane program. It was well established that FEI could acquire RNG in two ways. Namely, it could enter into a long-term contract with suppliers for either raw biogas, which can include landfill gas, or for finished RNG. In the case of raw biogas, FEI could invest in the upgrading plants that purify it so that it is interchangeable with natural gas. The

1 Commission explicitly approved that FEI could acquire
2 RNG in this fashion, especially with municipalities.

3 If the intent of the GRR was to restrict
4 the forms of acquisition of RNG, the GRR could easily
5 have described the purchase of biomethane from a
6 supplier for a fixed price, but it didn't. Instead it
7 referred to the acquisition of RNG, knowing that the
8 *Interpretation Act* defined "acquire" broadly. The
9 conclusion to be drawn is that the GRR was
10 intentionally worded to include all forms of RNG
11 acquisition. This makes eminent sense, given its
12 purpose. The purpose of the regulation is to increase
13 the production of RNG to reduce greenhouse gas
14 reductions. Given this purpose, the GRR is rightly
15 indifferent as to whether the acquisition is through a
16 fixed price contract or the construction and operation
17 of facilities. What is important is the production of
18 RNG and the reduction of greenhouse gasses.

19 To put it another way, it would be
20 internally inconsistent to suggest that pays no more
21 than \$30 means that it has to be a fixed price
22 contract. The language "pays no more than \$30" must
23 be given a meaning that can be applied to this form of
24 RNG acquisition. This means that the BCUC must assess
25 whether FEI will pay more than \$30 per GJ on a
26 forecast basis, which implies a level of uncertainty.

1 As I have submitted, the burden of proof is the
2 balance of probabilities and FEI has met that burden.

3 I also submit that it would inconsistent
4 with the purpose of the regulation to interpret the
5 GGRR as requiring that it must be a fixed price
6 contract.

7 As I have indicated, the Commission said in
8 its decision that "acquire" must be given a fair,
9 large and liberal interpretation to accomplish the
10 purpose of the GGRR and the *CEA*. The same can be said
11 for Section 2(3.8) of the GGRR as a whole. The words
12 "pay no more than \$30" must also be given a fair,
13 large and liberal interpretation to accomplish the
14 purposes of the GGRR and the *Clean Energy Act*. There
15 is abundant evidence that the purpose is to increase
16 FEI's ability to acquire RNG in order to reduce
17 greenhouse gas emissions.

18 To summarize some of that evidence, I have
19 four points. First, the purpose of the section of the
20 *Greenhouse Gas Reduction Regulation* is readily
21 apparent from its title. It is about increasing
22 production of RNG to reduce greenhouses gasses.
23 Consistent with that, Section 18(a) of the *Clean*
24 *Energy Act* states that,

25 "...prescribed undertaking' means a project,
26 program, contract or expenditure that is in

1 a class of projects, programs, contracts or
2 expenditures prescribed for the purpose of
3 reducing greenhouse gas emissions in British
4 Columbia."

5 Second, the policy context of the GRR
6 could not be more clear. The *Clean Energy Act*
7 heightened FEI's role in the production of RNG and the
8 importance of FEI's role in developing RNG has been
9 significantly increased again by the B.C. Government's
10 *Clean B.C. Plan*. In case there could be any doubt,
11 the Ministry of Energy, Mines and Petroleum Resources
12 filed a letter of comment in February of 2019 to
13 confirm that the policy position of the Ministry and
14 the government of B.C. is to support projects and
15 initiatives that will lead to an increased RNG supply
16 in B.C.

17 Third, the object of this section of the
18 GRR is clear when it's considered the 2010 biomethane
19 decision of the Commission approved a maximum price
20 and a maximum volume for RNG supply.

21 **Proceeding Time 10:48 a.m. T20**

22 Within this context it was clear that the effect of
23 the GRR was to increase the maximum price and maximum
24 volume for RNG supply for FEI's biomethane program.
25 The object of section 2(3.8) of the GRR therefore is
26 to increase FEI's ability to obtain RNG for its

1 biomethane program by bringing into effect a more
2 generous maximum supply price and maximum supply
3 volume than previously approved by the BCUC.

4 Fourth, the Ministry has confirmed the
5 intention of the GRR in this case as stated by the
6 Ministry in its letter of comment.

7 "Amendments were made to the Green House Gas
8 Reduction Clean Energy Regulation in the
9 spring of 2017 to increase incentives for
10 using RNG in transportation and to establish
11 measures to increase supply of RNG."

12 I belabor this point and to make -- because
13 I believe that the context of the GRR is important.
14 It makes it abundantly clear that the object of
15 section 2(3.8) of the GRR is to increase FEI's
16 ability to acquire RNG in order to reduce greenhouse
17 gas emissions. And as I've said, the GRR must be
18 given a fair, liberal and large interpretation to
19 accomplish that object. Reading in a requirement of a
20 certainty that is not on the face of the regulation
21 and eliminates important forms of acquisition of RNG
22 is inconsistent with that purpose. And in my
23 submission would be an error of law.

24 To put the matter more positively, in my
25 respectful submission the Commission's stance towards
26 prescribed undertakings should be to interpret them

1 liberally to ensure that the purpose of the
2 legislation is accomplished. In my submission there
3 can be no serious doubt that the project before the
4 Commission today is exactly the type of project that
5 was meant to be a prescribed undertaking. This is the
6 type of project that furthers the object of the GRRR
7 and government policy to reduced greenhouse gas
8 emissions.

9 So in summary, my submission is the burden
10 of proof in this case is not certainty but the balance
11 of probabilities. FEI has met that burden, showing
12 that it will not pay more than \$30 for RNG through the
13 project. Requiring certainty would not only
14 incorrectly increase the burden of proof but eliminate
15 this form of RNG acquisition altogether. As I have
16 submitted, such an interpretation would be
17 inconsistent with the words of section 2(3.8) and the
18 purpose of the GRRR and would be an error of law.
19 Therefore, I submit that the project is a prescribed
20 undertaking and should be approved as such.

21 I'm going to turn to the second broad part
22 of my submission, which is the alternate public
23 interest approval. So, we have proposed this
24 alternate because at the end of the day FEI believes
25 that this is a good project that is clearly in the
26 public interest. And that it should not be delayed

1 further due to a technical argument around what the
2 meaning of the words in the GRR should be. As Mr.
3 Slater said, it's hard to say what preference the
4 utility has for what mode of approval is given. The
5 interest of the utility is to move this project
6 forward.

7 That is why in the alternative we have
8 requested that BCUC accept the BPA with the City of
9 Vancouver and approve the project as being in the
10 public interest. We have not yet filed a formal CPCN
11 application. But as a matter of principle, the BCUC
12 does not need a formal application. Section 82 of the
13 UCA does empower the Commission to approve, make
14 determinations in the absence of an application. And
15 in our view the evidence is sufficient to meet the
16 requirements of CPCN guidelines.

17 But to address apparent concerns around
18 process, maybe first before I go on, our proposal is
19 that the Commission first consider our primary relief,
20 which is that this a prescribed undertaking. If the
21 Commission cannot come to that conclusion, then we
22 request that the Commission set out what regulatory
23 process is required for us to move this project
24 forward through a CPCN. And given the amount of
25 process to date, we just ask that that process, if one
26 is ordered, be expedited to the extent possible.

Proceeding Time 10:53 a.m. T21

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2 In terms of the information on the record
3 already, the regulatory process over the past year has
4 resulted in the information on the record for the BCUC
5 to determine the public interest. FEI provided a cost
6 estimate to the Commission to the desired level of
7 accuracy per the CPCN guidelines. In amongst other
8 things, FEI has demonstrated that it has taken the
9 necessary precautions to manage risk. It has
10 incorporated lessons learned from past projects.

11 On a technical level, there should be no
12 doubt that FEI and the City of Vancouver are capable
13 of carrying out this project.

14 In my submission, the project clearly is in
15 the public interest. The City of Vancouver landfill
16 is the single largest available landfill gas project
17 in the province. It will provide a significant supply
18 of renewable natural gas. The Commission has
19 previously confirmed on numerous occasions that the
20 biomethane program is in the public interest.
21 Currently the demand for biomethane under the program
22 is outstripping supply. The project will therefore
23 provide a much needed supply for the program to help
24 meet demand from customers for this product.

25 The project is also in clear alignment with
26 policy at every level of government to reduce

1 greenhouse gas emissions and transition to a lower
2 carbon economy. Specifically it has aligned with the
3 CleanBC policy to achieve 15 percent renewable gas
4 content. The Ministry has confirmed policy support
5 for these types of projects per their letter found at
6 Exhibit C1-2 and the Ministry has emphasized a key
7 role that increased RNG will play in reaching the
8 provinces legislated greenhouse gas emissions targets
9 and the role this project can play in achieving those
10 targets.

11 So in my submission, this project is a good
12 one and is in the public interest. And regardless of
13 whether it's a prescribed undertaking it can be
14 approved on that basis. In terms of process, if the
15 Commission can't find it's a prescribed undertaking,
16 we'd ask the Commission set out an expedited process
17 to consider the public interest so this project can
18 move forward.

19 Those are my submissions. I'm available to
20 answer any questions the Panel may have.

21 COMMISSIONER FUNG: Mr. Bystrom, I apologize, I probably
22 should have asked this question earlier of Mr. Slater,
23 but my interest relates to page 21 of your
24 presentation. I just want to understand about the
25 deferral account mechanism that you are proposing.
26 You have a slide at page 21 which shows the comparison

1 between the proposed mechanism versus an alternate
2 treatment of it, and I just want to make sure I
3 understand the difference between the two.

4 As I read it, when you look at the five-
5 year comparison, what it shows between the proposed
6 mechanism is that the rate is slightly higher on an
7 annual basis in terms of the actual cost to the
8 ratepayer, but the deferral account balance is
9 actually lower than the alternative. Is that correct?
10 I just want to make sure I understand that.

11 MR. SLATER: Yes, so this comparison does show that the
12 deferral balance is higher with the alternative
13 treatment and that's a function of the fact that the
14 test is performed on an annual basis. The cost of --
15 average cost of biomethane in the proposed treatment
16 at \$29.20 reflects that all of the costs, like all of
17 the costs have flowed through the customers. The only
18 difference in this case is that the alternative
19 treatment, a dollar remains in the deferral balance
20 and has not yet flowed through to customers.

21 However, the bottom line in both of these,
22 the average deferral balance would indicate that the
23 alternative treatment would incur higher financing
24 charges as a result of carrying that balance, a higher
25 balance for a longer period of time.

26 COMMISSIONER FUNG: And is that the reason you've chosen

1 to put forth the proposed mechanism, because it
2 doesn't attract as much deferral account balance for
3 ultimate disposal?

4 MR. SLATER: That's one of the reasons, certainly, that
5 it represents a lower cost to customers because the
6 alternative treatment tends to capture more costs and
7 have a higher balance and result in higher financing
8 charges. But another issue with the alternative
9 treatment that was raised in our submission is that
10 because the test is performed on an annual basis, it
11 is possible that an amount could be left in the
12 deferral account at the end of the term, even though
13 the cumulative costs of the project were below \$30.
14 And that is because of the asymmetrical treatment when
15 costs are in the initial period of the project costs
16 are below \$30, that credit, if you will, is not
17 carried forward to be offset against costs when
18 they're higher than \$30, and for those reasons that's
19 why we recommended the -- and proposed the proposed
20 treatment.

21 **Proceeding Time 10:58 a.m. T22**

22 COMMISSIONER FUNG: Okay, thank you very much.

23 COMMISSIONER MASON: Mr. Bystrom, if I could just take
24 you back to your argument, your submission. Just one
25 point of clarification. If I understood you
26 correctly, you said that you believe that the test

1 that the Commission should consider, such as one might
2 in civil cases, is the balance of probabilities. And
3 I believe that you said "unless overridden by
4 legislation in some way".

5 MR. BYSTROM: Mm-hmm.

6 COMMISSIONER MASON: So, is it fair to suggest that
7 your submission is that the Greenhouse Gas Regulation
8 itself is not legislation that might override the test
9 where the Greenhouse Gas Regulation says for which the
10 public utility pays no more than \$30 a GJ?

11 MR. BYSTROM: Yeah.

12 COMMISSIONER MASON: So in your example you didn't --
13 obviously you didn't need to, but you didn't refer
14 specifically to that. You said the test should be the
15 balance of probabilities unless it's overridden by
16 legislation. Could you perhaps enhance your argument
17 as a little bit as to why you think that legislation
18 doesn't override the balance of probabilities test?

19 MR. BYSTROM: Yes. So it pays no more than 30
20 gigajoules --

21 COMMISSIONER FUNG: Dollars.

22 MR. BYSTROM: Thirty dollars per gigajoule, thank you.
23 Doesn't speak to a burden of proof. So it sets out a
24 criteria that has to be met, but it actually doesn't
25 speak to a burden of proof, and that's why it doesn't
26 change the burden of proof. And I was just looking

1 through this, I think there was an example -- if you
2 just give me a moment. One of those cases where I'm
3 sure I read it, but now when I go to look, I seem to
4 can't find it.

5 But the point is, if the legislation is
6 going to override the common law, it has to be very
7 clear that it's overriding the common law. It would
8 have to say something like, "When considering this the
9 Commission should ensure that there is, you know, no
10 more -- like only a reasonable doubt," or like it
11 should somehow explicitly override the common law, and
12 that's not apparent from the "pays no more than \$30,"
13 in my submission.

14 COMMISSIONER MASON: Thanks for the clarification.

15 COMMISSIONER FUNG: I think that case you were looking
16 for is *Sahota* on page -- well, there's no page
17 reference. But that's the driving -- administrative
18 driving prohibitions, a blood alcohol concentration
19 over .08.

20 MR. BYSTROM: Yes. I'm sorry, I'm trying to read, and
21 absorb, and talk. It's challenging.

22 COMMISSIONER MASON: We have a moment, it's okay.

23 MR. BYSTROM: Well, that's a good case where there was
24 a, yeah, prescribed standard of .08, so that -- so
25 that's kind of similar to a standard of \$30 per
26 gigajoule. So in that case the standard proof was the

1 civil standard. They had to be satisfied that it was
2 more probable than not that the person – this is a
3 driving case – driving the vehicle had a level of
4 alcohol in his blood in excess of 80 milligrams. So
5 the standard is -- would be -- the criteria to be
6 proven is one thing, the standard -- burden of proof
7 to prove that criteria is another thing. And so the
8 \$30 per GJ is criteria, not the burden of proof.

9 COMMISSIONER MASON: Thank you.

10 THE CHAIRPERSON: Mr. Bystrom, if I could ask a follow-
11 up question then. Is there anything in the material -
12 - just because I haven't had a chance to read this
13 yet, is there anything in this material that would
14 indicate whether the burden of proof test should be
15 retrospectively applied or retroactively applied?
16 Because presumably in year 20 one could very easily
17 apply the \$30 a gigajoule test. It's difficult to
18 apply it before the fact. But you have set up a
19 mechanism that makes it possible to apply that test in
20 20 years' time and to apply it determinately -- or
21 deterministically.

22 MR. BYSTROM: Yeah, I think the way I would like to
23 answer this is that we have to interpret this
24 legislation and make it work within the context of the
25 *Utilities Commission Act*, the *Clean Energy Act*, how
26 the Commission sets rates. It's a fairly complex

1 factual legal matrix in which this regulation
2 operates. And in particular, as we -- like here, the
3 utility -- the way the Utilities Commission is set up,
4 we -- the utility has to come forward to the
5 Commission and ask for approval of this contract in
6 order to have it legally binding.

7 So, and yet we have this regulation that
8 prescribes undertakings that make certain things
9 exempt from that -- the Commission's public interest
10 determination.

11 **Proceeding Time 11:03 a.m. T23**

12 So how do you do that in this case? Clearly you can't
13 wait 20 years. We need either -- we need the approval
14 now to proceed to get to year 20.

15 So that's why having to interpret this,
16 it's important to have the context and we're forced to
17 interpret these words in a framework in which the
18 utility has to get the approvals it needs from the
19 Commission under the *Utilities Commission Act*. So
20 we're forced to make the determination now whether
21 it's a prescribed undertaking. And then the
22 Commission, if it is, then the Commission must accept
23 the agreement under section 71.

24 THE CHAIRPERSON: I don't know if this is necessarily
25 going to be a question, perhaps an observation, but
26 presumably then though it would be -- if it were not

1 for the fact that, as you point out, the shareholder
2 always has the right to recover prudently incurred
3 expenses, were it not for that circumstance then it
4 would be relatively easy to do what you just said
5 would be difficult to do. Because we as a Commission
6 would simply order that the ratepayer pay no more than
7 \$30 and your shareholder would make sure that that was
8 the case. What's complicating this, though, is your
9 submission that your shareholder can't do that.

10 So I don't completely agree that it's that
11 complicated. It seems simpler than that to me if it
12 were not for the fact that the shareholder's inability
13 to guarantee complicates it. And I believe -- my
14 recollection is that the GGRR applies only to
15 utilities. So, obviously then, this issue applies to
16 any party that would apply under the GGRR. They would
17 always have this complication that the shareholder
18 can't backstop it. And were not for that, it would be
19 relatively straightforward at this point in time to
20 ensure that it's no more than \$30.

21 MR. BYSTROM: I think I -- yeah, I hear your point.
22 And I can only say that when interpreting it, the GGRR
23 is issued within that context. Like it -- we must
24 presume that the legislature knew the law of the land,
25 the regulatory compact, how the *Utilities Commission*
26 *Act* works. And that's -- you must interpret it within

1 that context.

2 THE CHAIRPERSON: Thank you. Mr. Weafer?

3 **ARGUMENT BY MR. WEAFER:**

4 MR. WEAFER: Thank you, I'll be brief in my
5 submissions. This is one of these rare occasions when
6 I say I generally agree with what Mr. Bystrom says, so
7 we'll -- and I do have some qualifications on that
8 submission. But I recognize the quandary that we're
9 in with respect to trying to implement the valid and
10 important objectives of the *Greenhouse Gas Regulations*
11 and the *Clean Energy Act* and converting in terms of
12 trying to deal with the important policy initiatives
13 that may not be accurately or more clearly provided
14 for in the legislation that you're interpreting. So
15 we're in a bit of a quandary.

16 The CEC participated in this proceeding
17 since the beginning and have been generally supportive
18 of the applications. And while we represent a
19 ratepayer perspective, we also understand the
20 environment objectives that are sought to be achieved
21 by the proposal. We haven't in our participation come
22 up with a better idea than has been proposed by
23 Exhibit B-7 of the company in terms of a deferral
24 account process, an attempt to recognize that as this
25 time as they propose their application they are
26 compliant with the *Greenhouse Gas Regulations* with the

1 cap of \$30 a gigajoule for the cost of renewable
2 energy. That, Mr. Bystrom, on a balance of
3 probabilities, I think that's correct.

4 **Proceeding Time 11:07 a.m. T24**

5 But I don't agree that we can ignore the
6 cap set out in the legislation. That is open to
7 ratepayers, the Commission and anybody, and most
8 importantly the shareholder to look at and say that's
9 that risk of entering into this agreement. It's going
10 to be capped at \$30 for however we choose to go
11 forward with our application. That is alive, and
12 therefore any shareholder of the company, the
13 investor, to look at in terms of management going into
14 this deal or not. But that's a risk that will be held
15 to that cap. Different than the Whistler situation,
16 this is legislation, not acceptance of the Commission
17 decision.

18 So, we respect the efforts of the
19 Commission to try and get a better understanding as to
20 how to -- I'm not going to say get around the cap, but
21 acknowledge that there is a cap and we're trying to
22 work with the company to make the project work.

23 So from the CEC's perspective, as I say, we
24 don't have a better idea than that which the company
25 had proposed with respect to the application being
26 approved to go above the \$30 cap, they're going to

1 have to either come back to the Commission or
2 alternatively see legislative amendment. And based on
3 what we're seeing in terms of input of the government,
4 there's a probability that might occur. They
5 certainly want it to happen, and they have that power
6 to do that, and in that event there is at least
7 accountability to the ratepayers that the government
8 made the decision that the price needs to be higher,
9 and they haven't done that at this point.

10 You've got the \$30 cap and as long as
11 that's there we think that needs to be enforced in
12 terms of what the company does over the period of the
13 agreement, go over the \$30 cap. And Mr. Bystrom has
14 said the city is going to work with Fortis if there
15 are anomalies or thing that cause potential increases.
16 But they should be operating at a highly mindful of
17 there's a bright line in terms of where ratepayers
18 would be if they come back to the Commission. That
19 they should not be recovering in excess of what the
20 legislation and regulations presently provides.

21 So with that approach we're generally
22 supportive of the application. Generally supportive
23 of the proposal set out at Exhibit B-7. We have not
24 turned our mind in any detail to the CPCN approach
25 except to conclude that it's probably worse than the
26 approach through Exhibit B-7. And we're mindful of

1 the objectives of the parties to move forward with the
2 project.

3 So those are our submission, and I'm happy
4 to take any questions that anyone might have.

5 THE CHAIRPERSON: Thank you, sir.

6 MR. WEAVER: Thank you.

7 THE CHAIRPERSON: Mr. Beck, does the City of Vancouver
8 have any comments or any argument?

9 MR. BECK: No, no further comments. Thanks for
10 allowing us to be at the hearing today.

11 THE CHAIRPERSON: Thank you for your interest, we
12 appreciate it.

13 Mr. Bystrom, anything in reply?

14 MR. BYSTROM: I'll just make a few comments in reply.

15 **REPLY BY MR. BYSTROM:**

16 MR. BYSTROM: First, appreciate the CEC's support. I
17 don't want to belabour this, but in reply to the
18 comment that the cap should not be ignored our
19 position is not to ignore it. We believe that we've
20 given it its intended meaning and that we have
21 satisfied that criteria.

22 And just as a general note, we've been
23 forced, because of the nature of this conversation, to
24 talk a lot about cost being over \$30 and what the
25 shareholder's rights are. But it's not the intension
26 of the utility to go over \$30. We don't believe

1 that's going to be the case. The utility, it's in the
2 utility's interest to keep costs low and we will be
3 diligently pursuing that goal. So I think the utility
4 and the shareholder is highly mindful of impacts to
5 customers. And it fully intends to act prudently and
6 diligently in controlling cost and bringing the cost
7 per GJ in as low as it can.

8 And in terms of this being a legislated cap
9 versus the cap in Whistler, I think I've addressed
10 that already as best I can. And I think at the end of
11 the day it comes down to: this is a determination the
12 Commission has to make based on the balance of
13 probabilities, whether it is a prescribed undertaking.
14 And then -- and if so then what follows is that the
15 biomethane purchase agreement has to be approved under
16 Section 71 and there's no cap beyond that. We meet
17 the criteria and then the implications are that it
18 must be approved.

19 And so, and again I think I just reiterate
20 on behalf of the company that there is no intension to
21 go above \$30 and that the company will be diligent in
22 keeping costs low and is always concerned about
23 ratepayer impacts and we'll be highly mindful of that
24 throughout the course of the project.

25 Those are my submissions.

26 THE CHAIRPERSON: Thank you.

1 So, just confirmed with the panel that we
2 will not be making a decision at this time. However,
3 we will attempt to get it to you as soon as possible.
4 We do appreciate the need for a timely conclusion to
5 this and so I'm reluctant to commit to a specific
6 date, but it will be as soon as possible.

7 And the last thing before we go, can we
8 mark these as exhibits?

9 MR. MILLER: Mr. Chair, I addressed that with Fortis
10 already. They will be taking steps to file them
11 through the Commission.

12 COMMISSIONER FUNG: Okay, great. Thank you.

13 THE CHAIRPERSON: Thank you. Okay, well thank you. I
14 would like to thank everyone, thank the Fortis panel
15 and the City of Vancouver and the CEC and Commission
16 Staff and Mr. Miller. I appreciate everyone's
17 attendance and interest in this, and we're adjourned
18 then. Thank you.

19 (PROCEEDINGS ADJOURNED AT 11:14 A.M.)

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

24 
25 A.B. Lanigan, Court Reporter

26 September 25th, 2019