

**BRITISH COLUMBIA UTILITIES COMMISSION**

**IN THE MATTER OF THE UTILITIES COMMISSION ACT**

**R.S.B.C. 1996, CHAPTER 473**

**and**

**FortisBC Energy Inc. - Application for Acceptance of Biomethane**

**Purchase Agreements between FortisBC Energy Inc. and**

**Tidal Energy Marketing Inc.**

**Vancouver, B.C.  
February 27<sup>th</sup>, 2020**

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**ORAL SUBMISSIONS**

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**BEFORE:**

**R. Mason,                      Panel Chair/Commissioner**

**R. Revel,                      Commissioner**

**W. Everett,                    Commissioner**

**VOLUME 1**

## APPEARANCES

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Commission Counsel

C. BYSTROM,

FortisBC Energy Inc. (FEI)

W. ANDREWS,  
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B.C. Sustainable Energy Association (BCSEA)

L. WORTH,  
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British Columbia Old Age Pensioners' Organizations, Active Support Against Poverty, Disability Alliance B.C., Council of Senior Citizens' Organizations of B.C., Tenants Resource and Advisory Centre (BCOAPO)

C. WEAVER,

Commercial Energy Consumers Association of British Columbia (CEC)

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**VANCOUVER, B.C.**

**February 27<sup>th</sup>, 2020**

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

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3  
4 THE CHAIRPERSON: Good morning everyone. My name is  
5 Richard Mason. With me are Commissioners William  
6 Everett and Rich Revel.

7 Welcome to the oral submissions for  
8 FortisBC Energy Inc.'s application for acceptance of  
9 two biomethane purchase agreements between FEI and  
10 Tidal Energy Marketing Inc. The goal of these oral  
11 submissions is to assist the panel to determine  
12 whether the biomethane purchase agreements qualify as  
13 prescribed undertakings as defined in the *Clean Energy*  
14 *Act* and the *Greenhouse Gas Reduction Regulations*.  
15 Specifically, the panel wishes to understand how the  
16 biomethane purchase agreements achieve the purpose of  
17 reducing greenhouse gas emissions in British Columbia  
18 as specified in section 18(1) of the *Clean Energy Act*.

19 The oral hearing will generally follow the  
20 procedures outlined in BCUC Exhibit A-8. We will  
21 begin with appearances, starting with FEI and followed  
22 by interveners. When a participant's name is called  
23 the participant or its representative should come  
24 forward to the microphone and identify who they are  
25 and whom they represent. Please spell out your name  
26 for the record.



1                   Finally a few housekeeping matters. We  
2 will take a mid-morning break if we need to, but the  
3 actual time will be flexible to minimize disruption.  
4 Generally this break may be between 10:00 and 10:30  
5 depending how the proceedings are going, and I do  
6 expect the proceeding to be completed before noon.

7                   So, Mr. Bussoli, would you please call for  
8 appearances.

9 MR. BUSSOLI:     Thank you, Mr. Chair. The first in order  
10 of appearances is FortisBC Energy Inc.

11 MR. BYSTROM:     Good morning, Mr. Chair, Panel, my name is  
12 Chris Bystrom, last name is spelt B-Y-S-T-R-O-M,  
13 counsel for FortisBC Energy Inc., and I will just ask  
14 the members of the panel here to introduce themselves  
15 as well to folks in the audience.

16 MR. GRAMM:       I am Scott Gramm, G-R-A-M-M, FortisBC.

17 MS. SMITH:       My name is Sarah Smith, S-M-I-T-H, FortisBC.

18 MR. SLATER:      Good morning, my name is Doug Slater, S-L-  
19 A-T-E-R, director of regulatory affairs, FortisBC.

20 MR. BRYANT:      Tyler Bryant, FortisBC, upper policy  
21 manager. My last name is spelt B-R-Y-A-N-T.

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

24 MS. WALSH:       Sarah Walsh, FortisBC, manager of regulatory  
25 projects. Walsh, W-A-L-S-H.

26 THE CHAIRPERSON:    Good morning everyone.

1 MR. BUSSOLI: Next is B.C. Sustainable Energy  
2 Association.

3 MR. ANDREWS: William Andrews, last name A-N-D-R-E-W-S,  
4 representing the B.C. Sustainable Energy Association.  
5 With me today is Tom Hackney.

6 THE CHAIRPERSON: Good morning.

7 MR. BUSSOLI: Next is Commercial Energy Consumer's  
8 Association of B.C.

9 MR. WEAVER: Good morning. Chris Weaver, spelled W-E-A-  
10 F-E-R, appearing for the Commercial Energy Consumers  
11 Association of British Columbia.

12 THE CHAIRPERSON: Good morning.

13 MR. WEAVER: Good morning.

14 MR. BUSSOLI: And finally, B.C. Old Age Pensioner's  
15 Organization, Active Support Against Poverty, Council  
16 of Senior Citizens Organizations of B.C., Disability  
17 Alliance B.C. and the Tenant Resource and Tenant  
18 Advisory Centre, otherwise known as BCOPAO *et al.*

19 MS. WORTH: Thank you, Mr. Bussoli. My name is Leigha  
20 Worth, W-O-R-T-H, and I'm accompanied today by my co-  
21 counsel, Irena Mis, M-I-S, and we are here  
22 representing the groups known collectively as BCOAPO  
23 as Mr. Bussoli just went through. Thank you.

24 THE CHAIRPERSON: Thank you. Good morning.

25 MR. BUSSOLI: That concludes the order of appearances.

26 THE CHAIRPERSON: Thank you very much. May I ask Fortis

1 to start its presentation then, or your submission, I  
2 should say.

3 **SUBMISSIONS BY MR. BYSTROM:**

4 MR. BYSTROM: Thank you, Mr. Chair. Thank you for this  
5 opportunity to make these submissions this morning.  
6 I'll be endeavouring to bring as much clarity as I can  
7 to the issues before the Commission in this  
8 proceeding.

9 I've handed out two documents that you  
10 should find in front of you. The first -- I'm not  
11 sure what order they are in, but the Cerlox copy I see  
12 you have in your hand, so this is a brief of  
13 authorities and you'll see there's an index and ten  
14 tabs. You might also note in the upper right-hand  
15 corner of each page is a page number. So it's a  
16 continuous page number throughout the entire book, so  
17 that if I refer to a page it doesn't matter which  
18 document, it's a continuous page number system so  
19 you'll be able to find the authorities easily.

20 THE CHAIRPERSON: That is very helpful.

21 **Proceeding Time 9:07 a.m. T3**

22 MR. BYSTROM: The other thing I've handed out is my  
23 speaking notes from my oral submissions this morning.  
24 Given that I'll be taking you through quite a bit of  
25 law I thought it would be helpful for you to have a  
26 written copy to follow along with. And with that,

1 I'll get started, I'm going to -- beginning at page 2  
2 of the speaking notes that I've handed out.

3 So, my submissions this morning will be  
4 focusing on six points. First my submission will be  
5 that FEI's BPA with Tidal clearly meets the three-part  
6 test under section 2(3.8) of the *Green House Gas*  
7 *Reduction Regulations* or the GGRR. My submission is  
8 that this is sufficient to determine that the Tidal  
9 BPAs are prescribed undertakings.

10 Second my submission is that it would be an  
11 error of law to interpret section 18(1) of the *Clean*  
12 *Energy Act* as a fourth test that requires all the  
13 physical GHG emission reductions to be in British  
14 Columbia.

15 Third, the true function of the purpose  
16 statement is section 18(1) of the *Clean Energy Act* is  
17 to work with section 35(n) of the *Clean Energy Act* and  
18 section 41 of the *Interpretation Act* to define the  
19 statutory mandate of the Lieutenant Governor in  
20 Council, or LGIC, to prescribe undertakings in the  
21 GGRR.

22 Fourth, the law is that a regulation is  
23 presumed to be valid and it is not the role the courts  
24 or the Commission to second guess the wisdom of the  
25 government policy choices. And it would have to be an  
26 egregious case for a court to strike down a regulation

1 such as the GGRR as invalid for reason on  
2 inconsistency with its statutory mandate.

3 Fifth, in fact section 2(3.8) of the GGRR  
4 and the Tidal BPAs are consistent with the purpose  
5 statement in section 18(1) of the *Clean Energy Act* to  
6 reduce GHG emissions in B.C.

7 Sixth, the Ministry's letter supports FEI's  
8 innovative efforts to meet clean B.C. targets,  
9 including the Tidal BPAs. So that's by way of an  
10 outline of what I plan to say. I'm going to get to  
11 the first point now. So this is paragraph 2 on page 3  
12 of my submission.

13 So first, as I've set out in my written  
14 submissions filed in the proceeding it is clear cut  
15 that the Tidal PBAs meet each of the three tests in  
16 section 2(3.8) of the GGRR. I don't want to spend a  
17 lot of time on this because I don't think it's the  
18 major focus this morning, but I will emphasis three  
19 points on why it is clear that the Tidal BPAs are an  
20 acquisition of RNG. First, the meaning of "acquire"  
21 is set out in section 29 of the *Interpretation Act*.  
22 The *Interpretation Act* states that

23 "In an enactment  
24 acquire" means...

25 Just underline the word "means" there for your -- just  
26 to highlight that.

1                    "...to obtain my any method and includes accept,  
2                    receive, purchase, be invested with, lease, take  
3                    possession, control or occupation of, and agree  
4                    to do any of those things, but does not include  
5                    expropriate..."

6                    So the word "means" and the definition here  
7                    signals that this is what is referred to as an  
8                    exhaustive definition. That means it displaces any  
9                    other meaning of acquire in ordinary usage. And the  
10                   authority for that is at tab 4 of the book of  
11                   authorities, section 4.34 of *Sullivan* and you can -- I  
12                   will actually be coming to that later in the  
13                   submission.

14                   So in other words you have to use the  
15                   definition of acquire in the *Interpretation Act* not  
16                   any other definition. The definition is extremely  
17                   broad, essentially any method of obtaining a thing  
18                   except expropriation. In the Tidal BPAs FEI is  
19                   acquiring RNG within the meaning of the definition of  
20                   acquire because FEI is purchasing it. Purchasing is  
21                   explicitly mentioned as a way to acquire a thing.

22                   **Proceeding Time 9:11 a.m. T4**

23                   Second point I want to make here is that  
24                   FEI is purchasing RNG in the same way that  
25                   conventional natural gas is purchased. If the  
26                   legislature intended that some novel form of

1 acquisition was required for RNG they would have  
2 needed to spell that out in the legislation. But it  
3 did not. Instead it chose to use the word "acquire"  
4 which is broadly defined to include essentially any  
5 method except expropriation.

6 Third point I want to make is that the GRR  
7 uses the word "in B.C." or "within B.C." 12 times.  
8 There is no occurrence of those words in Section  
9 2(3.8) the GRR. That section simply states,

10 "The public utility acquires renewable natural  
11 gas."

12 Simply put, FEI is obtaining renewable  
13 natural gas by buying it from Tidal. It is clear that  
14 this is an acquisition of renewable natural gas within  
15 the meaning of the GRR. And in my submission,  
16 meeting those three tests is sufficient to dispose of  
17 the issue before the Commission in this proceeding.

18 I wanted to devote the rest of my  
19 submissions now to section 18(1) of the *Clean Energy*  
20 *Act*.

21 So I believe the issue before the BCUC is  
22 how to interpret the words, "prescribe for the purpose  
23 of reducing greenhouse gas emissions in B.C." in  
24 section 18(1) of the *Clean Energy Act*?

25 And it may be helpful to note that the word  
26 "prescribed" means, "prescribed by regulation," per

1 section 29 of the *Interpretation Act*. So, 18(1) is  
2 referring to a class of projects, programs, contracts  
3 or expenditures that are prescribed by regulation for  
4 a particular purpose, for the purpose of reducing GHG  
5 emissions in B.C. The purpose statement is explaining  
6 the purpose for which classes of undertakings are  
7 written into the regulations. In my submission, it  
8 would be an error of law to interpret this explanation  
9 of the purpose for which undertakings are prescribed  
10 as a substantive legal test that FortisBC has to meet.  
11 Let me explain why, and I have three points.

12 First, section 18(1) is a definition. It  
13 is a definition of "prescribed undertaking." It is in  
14 fact referred to as a definition in section 35(n) of  
15 the *Clean Energy Act*. And I belabor that point  
16 because there is an established drafting convention  
17 that definitions are not intended to contain  
18 substantive law.

19 So I have included at tab 4 of the Book of  
20 Authorities, *Sullivan on the Construction of Statutes*  
21 regarding definitions. And so at Tab 4, page 24, you  
22 will find this statement at section 4.332, and onto  
23 the next page too.

24 "It is well established that statutory  
25 definitions should not be drafted so as to  
26 contain substantive law. Their purpose is



1 use and purpose of statutory definitions and  
2 recognized drafting conventions. As stated in  
3 *Sullivan and Dreidger on the Construction of*  
4 *Statutes...*"

5 I'm going to skip the citation.

6 "...there are two kinds of statutory definitions,  
7 exhaustive and non-exhaustive. Exhaustive  
8 definitions are normally introduced what the  
9 term means and serve the following purposes: to  
10 clarify a vague or ambiguous term, to narrow the  
11 scope of a word or expression, to ensure that  
12 the scope of a word or expression is not  
13 narrowed and to create an abbreviation or other  
14 concise form of reference to a lengthy  
15 expression.

16 Non-exhaustive definitions are normally  
17 introduced by the word 'includes' and serve to  
18 expand the ordinary meaning of a word or  
19 expression to deal with borderline applications  
20 and to illustrate the application of a word or  
21 expression by setting examples. Thus is can be  
22 seen that a statutory definition does not  
23 typically have substantive content. Indeed, the  
24 inclusion of substantive content in the  
25 definition is viewed as a drafting error."

26 As stated by Francis Bennion in statutory

1 interpretation definitions with substantive effect, it  
2 is a drafting error, less frequently now than  
3 formerly, to incorporate a substantive enactment in a  
4 definition. A definition is not expected to have  
5 operative effect as an independent enactment. If it  
6 is worded in that way the courts will tend to construe  
7 it restrictively and confine it to the proper function  
8 of a definition.

9 Although intended to be used only as a  
10 guide, this same hue is echoed in the drafting  
11 conventions of the *Uniform Law of the Conference of*  
12 *Canada*, section 21(2) states that a definition should  
13 not have any substantive content. So we can apply  
14 this to section 18(1) of the *Clean Energy Act*.  
15 Section 18(1) uses the word "means", so it is an  
16 exhaustive definition. It serves to create a concise  
17 form of reference to a lengthy expression. Section  
18 18(1) identifies what a prescribed undertaking is but  
19 should not be read as including substantive content  
20 such as a legal test that requires a certain amount of  
21 physical GHG reductions to occur in B.C.

22 Second point on this is that as I have  
23 noted the words, "for the purpose of reducing  
24 greenhouse gas emissions in British Columbia," is a  
25 purpose statement. So at tab 6 of the book of  
26 authorities is *Sullivan on the Constructions of*

1           *Statutes* again, this time on purpose statements. So  
2           at page 40 of the authority, section 14.39 states,  
3                       "Purpose statements may reveal the purpose of  
4                       legislation either by describing the goals to be  
5                       achieved or by setting out governing principals,  
6                       norms or policies. Like definitions and  
7                       application provisions, purpose statements do  
8                       not apply directly to facts but rather give  
9                       direction on how the substantive provisions of  
10                      the legislation that do apply to facts are to be  
11                      interpreted."

12                     So Sullivan goes on to cite the case of  
13                     *Greater Vancouver Regional District v. British*  
14                     *Columbia Attorney General*. In that case the appellant  
15                     argued that a purpose statement in British Columbia's  
16                     *Local Government Act* created a binding manner and form  
17                     requirement that obliged the provincial legislature to  
18                     consult with the Regional District before passing  
19                     legislation affecting the district. Sullivan sums up  
20                     the result in that case as follows:

21                     "The Regional District's argument did not  
22                     succeed as the British Columbia Court of Appeal  
23                     rightly observed, statements of purpose and  
24                     principle do not create the legally binding  
25                     rights or obligations, nor do they purport to do  
26                     so. They merely state goals or principles that



1 of the *Clean Energy Act* as an example. So if we look  
2 at (2) in setting rates under the *Utilities Commission*  
3 *Act* it says, the Commission must set rates. There is  
4 an obligation, substantive law. The Commission must  
5 set rates.

6 (3), the commission must not exercise a  
7 power. Clearly substantive law, a requirement.

8 (4), a public utility must submit to the  
9 Minister. Again a clear substantive obligation.

10 (5), report to be submitted under  
11 subsection (4) must include. These are clear  
12 obligations, substantive law.

13 If we look at sub (1), the word "must",  
14 "shall" does not appear, anything of the sort. It  
15 just says "prescribed undertaking means". It's a  
16 definition, it does not include substantive law.

17 Therefore in my submission it would be an  
18 error of law to interpret that section as imposing an  
19 in B.C. requirement that must be applied in addition  
20 to the tests set out in the *Greenhouse Gas Reduction*  
21 *Regulation*. Doing so would run contrary to the  
22 function of statutory definitions, the function of  
23 purpose statements, recognized drafting conventions  
24 and the plain language of the section.

25 And I could stop there in my submission.  
26 In my submission what I've said so far is sufficient

1 to dispose of the issue. But I'm going to go on for  
2 some time now to help the Commission understand what  
3 that language is doing in the enactment, in the  
4 framework.

5 So I'm going to talk about what is the  
6 function of that phrase in the *Clean Energy Act*. I'm  
7 going to talk about what issues that raises and how  
8 the courts have looked at consistency between a  
9 statute and a regulation.

10 So on page 10 of my submission, starting at  
11 paragraph 3. So what then is the function of the  
12 purpose statement in section 8(1) of *Clean Energy Act*?  
13 It needs to be considered in combination with two  
14 other stator sections. One is section 35(n) of the  
15 *Clean Energy Act* and the other is section 41 of the  
16 *Interpretation Act*. The function of these provisions  
17 together is to provide the mandate to the LGIC when  
18 drafting the GRR.

19 So section 35(n) of the *Clean Energy Act* is  
20 the GRR's enabling provision we call it. It provides  
21 the LGIC may make regulations for the purposes of the  
22 definition of prescribed undertaking in section 18.

23 And then the *Interpretation Act* is at tab 3  
24 of the book of authorities. And at page 21 we have  
25 section 41 and sub (1)(a) of that says this:

26 "If an enactment provides that the Lieutenant

1 Governor in Council or any other person may make  
2 regulation, the enactment must be construed as  
3 empowering the Lieutenant Governor in Council or  
4 that other person for the purposes of carrying  
5 out the enactment according to its intent to  
6 make regulations as are considered necessary or  
7 advisable or ancillary to it and are not  
8 inconsistent with it."

9 That makes it clear that the LGIC has power to pass  
10 regulations only according to the intent of the  
11 statute.

12 And section 18(1) the purpose statement  
13 makes it clear what that intent is. It's essentially  
14 an instruction or guide to the Lieutenant Governor in  
15 Council for drafting a GGRR.

16 So the LGIC, when it drafted the GGRR is  
17 setting out classes of undertaking that the LGIC  
18 believes are necessary and advisable ancillary to  
19 *Clean Energy Act* and not inconsistent with it.

20 **Proceeding Time 9:23 p.m. T7**

21 If the LGIC had not succeed in doing this  
22 in some respect, then that aspect of the GGRR would be  
23 invalid or *ultra vires*, that is outside the  
24 jurisdiction of the LGIC. So in other words, although  
25 no one is arguing it in this proceeding, indeed all of  
26 the interveners support the application, if a

1 regulation such as the GRR is shown to be  
2 inconsistent with the intent of the statute or the  
3 scope of the mandate then it can be struck down by the  
4 courts.

5 So my next point is that -- is I'm going to  
6 take you through a case called *Katz Group Canada v.*  
7 *Ontario Health and Long-term Care*. In this case the  
8 Supreme Court of Canada has helpfully summarized the  
9 law as it relates to when a court might find that a  
10 regulation is *ultra vires*. And this is at tab 7 of  
11 your book of authorities. The facts of the case are  
12 not important for our purposes so I'll just summarize  
13 them briefly for you. The context is legislative  
14 attempts in Ontario to control rising drug costs.  
15 Regulations were passed to ban the sale of so-called  
16 private label products, essentially where pharmacies  
17 would set up a subsidiary that would then buy the  
18 products and they would get relabeled under their own  
19 name and then the pharmacy would sell them. One way  
20 or another it appears to have been some kind of scheme  
21 to avoid the price controls.

22 The pharmacies Shoppers and Catts  
23 challenged the regulations on the grounds that they  
24 were inconsistent with the purpose and mandate of the  
25 two enabling statutes. The court disagreed. And the  
26 courts description of the law in this case is

1           instructive. First the court states that,  
2                   “A successful challenge to the Regulations  
3                   requires that they be shown to be inconsistent  
4                   with the objective of the enabling statute  
5                   or the scope of the statutory mandate.”

6                   So as I’ve shown you this is essentially  
7           what section 41 of the *Interpretation Act* requires.  
8           The court goes on to state at paragraph 25 -- now this  
9           is at page 62 of the book of authorities. And I’m  
10          just going to read the substantive parts and not all  
11          the citations. “Regulations benefit from a  
12          presumption of validity. This presumption has two  
13          aspects: it places the burden on challengers to  
14          demonstrate the invalidity of regulations rather than  
15          on regulatory bodies to justify them and it favours an  
16          interpretative approach that reconciles the regulation  
17          with its enabling statute so that, where possible, the  
18          regulation is construed in a manner which renders it  
19          *intra vires*.”

20                   *Inter vires* means within the jurisdiction.  
21          So therefore, the GRR is presumed to be valid.  
22          FortisBC does not have to demonstrate that it is  
23          valid. Rather the burden would be on a challenger to  
24          the GRR to show that they are invalid. Obviously  
25          there is no challenge into the validity of the GRR in  
26          this proceeding.



1           strike down regulations as *ultra vires* on this  
2           basis, as Judge Dickson observed, it would take  
3           an egregious case to warrant such action."

4           So the Supreme Court of Canada is very  
5           clear in considering the validity of a regulation,  
6           neither a court nor this Commission is to assess the  
7           policy merits of the legislation or determine whether  
8           in its view, the regulation will actually achieve the  
9           statutory objectives.

10          In other words, it's not the Commission's  
11          job to assess whether the prescribed undertakings will  
12          actually achieve GHG reductions in B.C. To strike  
13          down a portion of a regulation such as the GRRR the  
14          legislation must be irrelevant, extraneous or  
15          completely unrelated to the statutory purpose. As the  
16          Supreme Court of Canada says, it would have to be an  
17          egregious case.

18          And the next part of my submission will be  
19          to say that in fact the GRRR is consistent with the  
20          *Clean Energy Act* and the purpose we've discussed.

21          So while there's no party challenging the  
22          validity of section 2(3.8) of the GRRR, I do wish to  
23          provide the Commission with some comfort how this all  
24          fits together and how the acquisition of RNG from  
25          outside the province pursuant to section 2(3.8) of the  
26          GRRR is in fact consistent with reducing GHG emissions

1 in B.C.

2 And the first point I want to make is there  
3 is absolutely no inconsistency in creating GHG  
4 emissions outside of B.C. and creating GHG emissions  
5 within B.C. In fact, reducing GHG emissions outside  
6 of the province is perfectly consistent, if not  
7 complementary to, reducing them within the province.

8 In this respect I note that when the *Clean*  
9 *Energy Act* was tabled in 2010, the Ministry of Energy  
10 Mines and Petroleum Products emphasized that the *Act*  
11 would reduce greenhouse gas emissions by enabling new  
12 utility programs to encourage the use of clean or  
13 renewable energy.

14 And at the second reading, which I've  
15 included at tab 8 of the book of authorities, at page  
16 82 of the authorities, the Minister acknowledged that  
17 greenhouse gas emissions do not recognize artificial  
18 geography divides. The Minister stated:

19 "Greenhouse gas emissions don't recognize  
20 boundaries. They don't recognize the  
21 B.C./Alberta boundary, they don't recognize the  
22 Canada/U.S. boundary. It's important not to  
23 lose sight of this fact. Reducing greenhouse  
24 gas emissions outside of B.C. is not  
25 inconsistent with the *Clean Energy Act*."

26 Second, in its evidence FortisBC has

1 described various ways in which the Tidal BPAs will  
2 reduce greenhouse gas emissions in B.C. One, we have  
3 spoken of how transportation customers will be  
4 motivated to switch from higher GHG content fuels to  
5 natural gas if RNG option is available.

6 Two, we have spoken about how under B.C.  
7 legislation end users in B.C. will be able to claim  
8 credit for reducing GHG emissions in B.C.

9 Now, two quick points on this topic. As  
10 GHG emissions don't respect borders, it is difficult  
11 to separate the accounting of reductions and the  
12 actual physical reductions. It's almost more  
13 important who can claim the reduction than where it  
14 occurs. For this reason, my submission is that  
15 legally recognized reductions in GHG emissions by  
16 legislation passed by the legislature of B.C. can  
17 satisfy the purpose of the *Clean Energy Act*.

18 We've also shown in our evidence there will  
19 be no double counting of emissions reductions. The  
20 prohibition against double counting is a bedrock  
21 principle of greenhouse gas reduction accounting  
22 schemes for obvious reasons. Double counting would  
23 undermine the very purpose of the legislation to  
24 reduce GHG emissions and would undermine markets for  
25 GHG reductions.

26 And we can answer questions on those

1 points, but right now I want to focus on a third point  
2 which has been made. That is that through the BPAs  
3 FEI is fostering the development of a renewable gas  
4 market in B.C. which will assist in achieving the  
5 overall goal of greater GHG emissions reductions. And  
6 I've cited evidence where that is in this proceeding  
7 in footnote 9 of my speaking notes.

8 Now, I want to dwell on this one, because  
9 courts have previously found that fostering a market  
10 for renewable fuels has to be done in order to achieve  
11 the overall goal of greater greenhouse gas emissions  
12 reductions.

13 **Proceeding Time 9:31 a.m. T9**

14 So this brings me to the last authority I  
15 wish to take you to, which is *Synchrude Canada Limited*  
16 *v. Canada (Attorney General)*, and this is at tabs 9  
17 and 10 of the book of authorities. Tab 9 is the  
18 Federal Court decision and tab 10 is the Federal Court  
19 of Appeal decision.

20 So the *Synchrude* case was about Federal  
21 regulations that required that all diesel fuel  
22 produced, imported or sold in Canada, contain at least  
23 two percent renewable fuel. *Synchrude* Canada produced  
24 diesel fuel at its oil sands operation in Alberta  
25 which it used in its vehicles and equipment. *Synchrude*  
26 argued that the regulations were invalid on the basis

1           that the provision was *ultra vires*, the regulation  
2           making power in section 140 of the *Canadian*  
3           *Environmental Protection Act*.

4                       Essentially, Syncrude claimed that the  
5           purpose of the statute was to reduce air pollution and  
6           the regulation wasn't going to accomplish that  
7           purpose. Syncrude claimed that the regulation was  
8           actually an economic measure aimed at the creation of  
9           a local market. Syncrude pointed to significant  
10          expenditures by the federal government to promote the  
11          renewable fuels industry as evidence.

12                      So at tab 9 of the book of authorities,  
13          page 96, the Federal Court emphasized that market  
14          demand must be created in order to achieve the overall  
15          goal of greater greenhouse gas emissions reductions.

16                      Paragraph 32 of the decisions says,  
17                      "Canadian jurisprudence has held that the  
18                      economy and the environment are not mutually  
19                      exclusive – they are intimately connected. The  
20                      Supreme Court of Canada, in *Friends of Oldman*  
21                      *River Society v. Canada (Ministry of*  
22                      *Transportation)*...stated,  
23                      'The environment, as understood in its generic  
24                      sense, encompasses the physical, economic and  
25                      social environment touching several heads of  
26                      power assigned to the respective levels of

1                   government.' "

2       The court when on at paragraph 96 to say that,

3                   "It defies reason to assert that Parliament is

4                   constitutionally barred from weighing the broad

5                   environmental repercussions, including socio-

6                   economic concerns, when legislating with respect

7                   to decisions of this nature."

8                   This is consistent with the expression in

9                   the preamble of the CEPA, or C-E-P-A, which states

10                  that, "Environmental or health risks and social

11                  economic and technical matters are be considered."

12                  Paragraph 34 of the decision says,

13                  "In my view, Syncrude takes a myopic view of the

14                  role of the RFR..."

15       That was the abbreviation for the regulation in

16       question here,

17                  "...in ultimately reducing GHG emissions. Part of

18                  the long-term strategy was to create a demand

19                  for renewable fuels that would drive development

20                  of next generation technologies. Parliament

21                  expected that these next generation technologies

22                  would contribute to greater reductions of GHG

23                  emissions in the long term. However, it had to

24                  create the "conditions necessary to drive these

25                  next generation technologies to market." These

26                  conditions include establishing a demand for

1           renewable fuels to "give industry the certainty  
2           needed in order to secure investment and the  
3           supply of renewable fuels for the Canadian  
4           market"..."

5           Paragraph 35 of the decision:

6           "Creating a demand for renewable fuels was  
7           therefore a necessary part of the overall  
8           strategy to reduce GHG emissions, but it was not  
9           the dominant purpose. The reason the government  
10          wanted to create a demand for the fuels was to  
11          make a greater contribution to the long term  
12          lowering of GHG emissions."

13          Paragraph 38:

14          "Synchrude recognizes at paragraph 76 of its  
15          Amended Memorandum of Fact and Law that part of  
16          the objective of [regulations] was to encourage  
17          next-generation renewable fuels production and  
18          create capital incentives to provide  
19          opportunities to farmers in the biofuels sector.  
20          It observes that these and other incentives  
21          collective create a demand for biofuels. What  
22          Synchrude overlooks is that the market demand for  
23          renewable fuels and advanced renewable fuels  
24          technology has to be created to achieve the  
25          overall goal of greater GHG emissions  
26          reductions."



1 government investments, while relevant to the  
2 characterization exercise, do not detract from  
3 the dominant purpose of what the regulations do  
4 and why they do it. The inquiry does not end  
5 with proof of an incentive or market subsidy.  
6 Consistent with *Ward*, one must inquire as to the  
7 purpose and effect."

8 So this is getting into the particular legal question  
9 before the court at that time. But to go on they say:

10 "The fact that capital investments are made to  
11 assist the lock industry to transition to new  
12 requirements would not detract from the dominant  
13 purpose being addressed to peace, order,  
14 security, morality, health or some other  
15 purpose. Here the RIAS...states the purpose of  
16 collateral investments in infrastructure costs  
17 related to the production of renewable fuels was  
18 to generate greater environmental benefits in  
19 terms of GHG emissions reductions.

20 And I just quoted that part because regulation can  
21 have some other benefit. That doesn't mean it's going  
22 to achieve its ultimate purpose.

23 Paragraph 68:

24 "The evidence demonstrates that part of the  
25 objectives of RFRs was to encourage next  
26 generation renewable fuels production and to

1 create opportunities for farmers in renewable  
2 fields. However, the evidence also demonstrates  
3 that a market demand and a market supply for  
4 renewable fuels and advanced renewable fuels  
5 technologies had to be created to achieve the  
6 overall goal of greater greenhouse gas emission  
7 reductions."

8 So applying that rationale to the case  
9 before the Commission. The acquisition of RNG will  
10 create market demand and supply for renewable fuels  
11 and advanced renewable fuels technology to achieve the  
12 overall goal of GHG reductions in B.C.

13 So in my submission Section 2(3.8) is valid  
14 as there are multiple ways in which the acquisition of  
15 RNG inside and outside of B.C. will result in GHG  
16 reductions in B.C. in the short and long term,  
17 although FortisBC strongly believes this is the right  
18 court of action, that the evidence is clearly there to  
19 support it. It's not FEI's burden to disprove that it  
20 will be successful. Nor is it the role of the  
21 Commission to vet the necessity or efficacy of  
22 government policy choices.

23 The Commission has to presume the GGRR is  
24 valid unless someone proves otherwise. There are many  
25 interpretations that reconcile the GGRR with the *Clean*  
26 *Energy Act*. The Commission must favour those

1           interpretations.

2                         Paragraph 4 [*sic*] of my submission, the  
3           Ministry letter. We are asked to comment on this so  
4           I've done that. And I note that the Ministry of  
5           Energy, Mines and Petroleum resources has previously  
6           filed letters with the BCUC confirming that the policy  
7           position of the government of B.C. is to support  
8           projects and initiatives that will lead to an  
9           increased renewable natural gas supply in B.C. The  
10          Ministry confirmed the intent of the GGR when it  
11          stated that amendments were made to the greenhouse gas  
12          reduction and Clean Energy regulation in the spring of  
13          2017 to increase incentive for using renewable natural  
14          gas in transportation and to establish measures to  
15          increase the supply of RNG.

16                        The Ministry has filed a letter in this  
17          proceeding as well, which is also supportive of the  
18          Tidal BPAs. The Ministry affirms that renewable  
19          natural gas is a clean alternative, which is a key  
20          pathway to achieve GHG reductions. It states that  
21          FortisBC's RNG program is highly successful. The  
22          demand exceeds supply. Says natural gas utilities  
23          require innovative approaches and significant  
24          flexibility to achieve greenhouse gas reduction  
25          targets, expresses support for utilities to take a  
26          broad range of activities, actions and investments to

1           reduce greenhouse gas emissions resulting from the  
2           natural gas sector in B.C.

3                         In the context of this application,  
4           particularly the timing of this letter being filed,  
5           shows a great deal of support for FortisBC's  
6           application.

7   **Proceeding Time 9:40 p.m. T11**

8                         FortisBC's proposal is new and innovative  
9           and in that context the Ministries letter supporting  
10          broad range of activities, actions and investments is  
11          clearly supportive of FortisBC efforts to acquire  
12          renewable natural gas.

13                        That brings me to summarize my submissions.  
14          So FEI's acquisition of renewable natural gas through  
15          the BPAs with Tidal meets the BCUC's three part test  
16          for a prescribed undertaking under section 2(3.8) of  
17          the GRR. This is sufficient to dispose of this case.  
18          Interpreting section 18 as imposing a strict  
19          geographical requirement goes against the rules of  
20          statutory interpretation, including the function of  
21          definitions and purpose statements and legislative  
22          drafting conventions. The correct interpretation of  
23          the function of the purpose statement at section 18(1)  
24          is that it works with section 35 of the *Clean Energy*  
25          *Act* and section 41 of the *Interpretation Act* to limit  
26          the discretion of the LGIC in prescribing

1           undertakings.

2                           In other words the GGRR cannot be  
3           inconsistent with this purpose. However, like all  
4           regulations the GGRR is presumed to be valid and the  
5           burden is on the challenger of a regulation to prove  
6           otherwise. Nonetheless, a reasonable interpretation  
7           of the prescribed undertaking legislative framework is  
8           that in meeting the test set out in the GGRR the BPAs  
9           help achieve the overarching purpose of reducing GHG  
10          emissions in British Columbia. The Tidal BPAs can  
11          help achieve this purpose through physical reductions  
12          by encouraging switching from higher carbon fuels,  
13          through legally recognized reductions under GHG  
14          accounting legislations or reduce production of  
15          conventional natural gas. Or, as the courts have  
16          previously found, by creating a market for renewable  
17          fuels that will in the long run achieve greater GHG  
18          reductions. So, while we have explained how the GGRR  
19          is consistent with reducing GHG emissions in B.C.,  
20          it's not FEIs burden to do so, nor is it the  
21          Commissions or the Courts role to question the wisdom  
22          of efficacy of government policy.

23                           So to conclude, given the passage of time  
24          since the signing of the BPAs FEI counterparty is  
25          anxious to proceed and FEI would like to acquire the  
26          RNG for its customers as soon as possible for

1 customers who are demanding the product. FEI  
2 therefore requests a speedy approval of the Tidal BPAs  
3 on the basis that they are prescribed undertakings  
4 under the *Clean Energy Act*.

5 Subject to any questions that brings me to  
6 the conclusion of my submission.

7 THE CHAIRPERSON: Thank you, Mr. Bystrom.

8 Well, we do indeed have the opportunity for  
9 questions and I think, Mr. Andrews, are you first up  
10 in the order of appearances? Yes, you are.

11 MR. ANDREWS: Thank you, Mr. Chairman and members of  
12 the Commission panel. BCSEA appreciates this  
13 opportunity to make oral submissions to the panel.  
14 First with the leave of the panel, I may somewhat  
15 exceed the 15 minute objective. I do have prepared  
16 remarks and I will, of course --

17 THE CHAIRPERSON: Could you just hold on a minute, Mr.  
18 Andrews. Mr. Weafer, are you --

19 MR. WEAFER: Mr. Chairman, I understood this was the  
20 questions phase of the process, not the submission  
21 phase of the process (inaudible).

22 THE CHAIRPERSON: No, I think that's a fair comment.  
23 Mr. Andrews, is it possible to keep the commentary  
24 piece to what is sufficient to ask your questions?

25 MR. ANDREWS: I stand corrected. My perhaps  
26 misunderstanding was that I was going to make an oral

1 argument as to -- from asking questions of the Fortis  
2 panel. And if so I will stand down, because my  
3 position is consistent with FEI's argument and I  
4 endorse FEI's argument.

5 I would like the opportunity in due course  
6 to make BCSEA's argument going to the questions that  
7 the staff put out in Exhibit A-9.

8 **Proceeding Time 9:44 a.m. T12**

9 THE CHAIRPERSON: So, if possible then, I would prefer  
10 to keep this section to questioning and then we said  
11 that we would take a short break, and then we will  
12 come back with submissions on whether further process  
13 is necessary. And perhaps you will bring your  
14 comments there as to whether this process still needs  
15 further argument and perhaps you'll make that point  
16 them.

17 MR. BYSTROM: Mr. Chair, if I could just interrupt, I  
18 believe the order set out in the letter was that after  
19 the question and answer period there would be an  
20 opportunity for interveners to make submissions.

21 THE CHAIRPERSON: Yes, thank you for that correction,  
22 that's appropriate. So, yes, if we could stick to the  
23 questioning now and then, thank you Mr. Bystrom, we  
24 will have an opportunity for submissions after that.  
25 Then potentially for --

26 MR. ANDREWS: Then I will stand down at this point.

1 THE CHAIRPERSON: Thanks, Mr. Andrews.

2 Mr. Weafer, did you have any questions?

3 MR. WEAFER: Just for full transparency, I don't have  
4 questions at this time because I believe it might be  
5 perceived as friendly cross in sight that we've  
6 supported the application at this point. But as I  
7 understand how the process will unfold, staff may have  
8 questions and normally staff would go at the end of  
9 questions and I just like to reserve the right if  
10 something arises in the questioning process to ask a  
11 question. If it should influence our view, but it  
12 could be up front CEC remains supportive of the  
13 application.

14 So I can stand down, I don't have questions  
15 at this point, but something may arise as a result of  
16 the staff's questions.

17 THE CHAIRPERSON: Understood. I appreciate that, thank  
18 you. And Ms. Worth?

19 MS. WORTH: Rather than shouting from the back of the  
20 room, I would like to echo Mr. Weafer's comments. We  
21 don't have any questions. We remain supportive of  
22 FEI's submission at this point or their application at  
23 this point. But again because of the issues and the  
24 questions that may come from staff, we would like to  
25 reserve the right to follow up on anything that may  
26 come up as a result. Thank you.

1 THE CHAIRPERSON: Notes, thank you. So, do staff have  
2 any outstanding questions?

3 MR. BUSSOLI: Yes, Mr. Chair, if I can just request  
4 perhaps a five minute break so that staff can just go  
5 through their final questions and eliminate those that  
6 were answered within the 30-minute submission that FEI  
7 provided. I think that will probably short circuit  
8 some questions.

9 THE CHAIRPERSON: I think that might be a efficient use  
10 of time. We will adjourn for -- let's call it 10  
11 minutes. Let's reconvene at five to ten then. Thank  
12 you.

13 **(PROCEEDINGS ADJOURNED AT 9:47 A.M.)**

14 **(PROCEEDINGS RESUMED AT 9:57 A.M.)** **T13/14**

15 THE CHAIRPERSON: Please be seated.

16 Mr. Bussoli?

17 MR. BUSSOLI: Thank you, Mr. Chair. Staff does have a  
18 few questions from Exhibit A-9 that they just want  
19 some clarification, so I'll just go through a couple  
20 of those.

21 The first is 1.3, and that question was,  
22 please discuss whether FEI considers capturing  
23 atmospheric CO<sub>2</sub> and reducing new emissions are  
24 equivalent under the *Clean Energy Act*.

25 MR. BYSTROM: Maybe I can ask Doug to just start us off  
26 on that question and then I'll address it from a legal

1 perspective.

2 MR. SLATER: Sure. So for the purpose of this question  
3 FEI interprets new emissions to mean emissions arising  
4 from fossil fuel use. And to answer the question,  
5 neither the CEA nor the GGRR includes specific  
6 reference to a class of projects relating to the  
7 capture of CO<sub>2</sub> from the atmosphere. However, we know  
8 that if a project that captures atmospheric CO<sub>2</sub>  
9 occurred it would be capable of reducing emissions and  
10 in this application, as we discussed in the BCUC panel  
11 IR 2.1, the use of biogenic carbon sources, which are  
12 considered a part of the natural carbon cycle, are  
13 recognized as carbon neutral because they don't  
14 increase the amount of carbon in the atmosphere and at  
15 the same time the use of RNG or biogenic carbon  
16 prevents the introduction of new carbon into the  
17 atmosphere by leaving fossil fuel in the ground.

18 MR. BYSTROM: And maybe just to address it from a legal  
19 perspective, to put that question in the framework  
20 which I have presented to you this morning, it seems  
21 to be going at -- and I'm making some assumptions here  
22 about the purpose of the question, but it seems to be  
23 in line with interpreting section 18(1) as some kind  
24 of test that -- and the question is going to whether  
25 undertakings will in fact meet that test and will in  
26 fact reduce GHG emissions in B.C. And as I submitted

1           that is, in my submission, reflects an error of law  
2           and it's not the Commission's role to be vetting  
3           whether these undertakings will achieve that purpose.

4 MR. BUSSOLI:       Thank you. Moving on to question 1.5,  
5           and that is actually -- I'll just read the preamble  
6           there, which is a response to the BCUC panel IR 2.1,  
7           which you just referenced. But FEI states,

8                        "As a result of substituting the RNG for a  
9                        conventional gas at the point of combustion FEI  
10                      has a contractual right to claim the benefit of  
11                      that reduction under the legislation in B.C.  
12                      FEI's customers, the end users, are able to  
13                      claim a reduction in their GHG emissions in  
14                      B.C."

15           Could you explain how that statement that FEI's  
16           customers, the end users, are able to claim a  
17           reduction in their greenhouse gas emissions is  
18           consistent with the *Clean Energy Act*?

19 MR. BYSTROM:       Maybe Mr. Bryant, do you want to comment  
20           on that first?

21 MR. BRYANT:        Sure, thank you. So, Tyler Bryant, again  
22           with FortisBC. FEI's customers can claim the  
23           greenhouse gas reductions under two programs or two  
24           policy frameworks here in B.C. That is the renewable  
25           and *Low-Carbon Fuel Requirement Act* and the *Climate*  
26           *Change Accountability Act* under the carbon neutral

1 government program. So when transport consumers are  
2 regulated bodies under the RLCFRA, our acronym for  
3 this, purchase RNG from FortisBC or others, so long as  
4 that supply of RNG is registered under the RLCFRA.

5 **Proceeding Time 10:02 a.m. T15**

6 Sorry, as long as that fuel is registered under that  
7 Act with a registered carbon intensity, then consumers  
8 of that fuel or purchasers of that fuel, suppliers of  
9 that fuel may generate credits, compliance credits  
10 under the Act. And we have indications from the  
11 Ministry that RNG supplied from this application would  
12 be eligible to register under the Act to generate  
13 credits, compliance credits.

14 The other statute is the Carbon Neutral  
15 Governance Program under the *Climate Change*  
16 *Accountability Act* and in that there is no prohibition  
17 from using RNG from outside of province for those  
18 users under -- that are affected by the carbon neutral  
19 government program. To use RNG supply from this  
20 application to achieve the objective of the carbon  
21 neutral government program.

22 MR. GRAMM: Mr. Bryant, if I could just add as well,  
23 Scott Gramm here Fortis, just within the agreement  
24 between FortisBC and Tidal we've specifically added  
25 clauses that allow us to register for that Act. I'm  
26 not going to repeat the acronym. So in other words

1 we're ensuring that the suppliers all the way through  
2 to our end customers know and we can in fact register  
3 that fuel under that Act for use as transportation  
4 customers.

5 MR. BYSTROM: And from a legal point I would just add  
6 that the fact that entities in B.C. are able to claim  
7 reductions in their GHG emissions under B.C.  
8 legislation is consistent with our position and the  
9 acquisition of RNG reducing GHG emissions in B.C.  
10 under section 18 and subsection -- of the *Clean Energy*  
11 *Act* sorry, and under the GGRR. And you have to read  
12 all these statutes together harmoniously, and the way  
13 these -- that other B.C. legislation works to allow  
14 entities to claim credits for GHG reductions for the  
15 use of RNG is harmonious with our interpretation of  
16 the *Clean Energy Act*.

17 MR. BUSSOLI: Thank you. I'm going to move on to  
18 questions 1.10 and 1.11. They also reference BCUC  
19 panel IR 2.1. And I'll read in the quote,  
20 "FEI states that as discussed on page 9 of the  
21 application the use of RNG in the NGT market  
22 will reduce GHG emissions at the end use because  
23 customers seeking the GHG neutral transportation  
24 solution may switch to CNG or LNG in  
25 anticipation of electing to participate in FEI's  
26 RNG program. For example, to switch from CNG to

1 diesel in and of itself reduced GHG by 10 to 30  
2 percent. Switching to RNG from conventional CNG  
3 further reduces GHG emissions by approximately  
4 75 percent. These reductions in GHG emissions  
5 will physically occur in B.C.”

6 And the question was,

7 “Please confirm or otherwise explain that the  
8 reduction in physical greenhouse gas tailpipe  
9 emissions would be the same regardless of  
10 whether the transportation customers switched  
11 from diesel to RNG or from diesel to CNG, or  
12 conventional natural gas?”

13 MR. BYSTROM: Ms. Smith can answer that question.

14 MS. SMITH: Sarah Smith, FortisBC. So, Fortis confirms  
15 that the physical greenhouse gas emissions at the end  
16 use are the same regardless of whether the  
17 transportation customers switched from diesel to RNG  
18 or from diesel to conventional fossil natural gas.  
19 Both RNG and conventional natural gas are methane. As  
20 discussed in the response to BCUC panel IR 2.1, since  
21 conventional and renewable natural gas molecules are  
22 indistinguishable, the combustion of both renewable  
23 and conventional natural gas results in the same  
24 physical volumes of GHGs emitted into the atmosphere  
25 at the end use.

26 As you heard my colleague Mr. Bryant state

1 earlier, the use of renewable natural gas by a  
2 transportation customer is eligible for credit  
3 generation under the RLCFRA, the Renewable Fuels  
4 Requirement Regulation, and that is a reflection of  
5 the environmental attributes associated with the use  
6 of renewable natural gas in transportation.

7 **Proceeding Time 10:06 a.m. T16**

8 MR. BUSSOLI: Thank you. Is FEI aware of any  
9 transportation customers in B.C. who only intend to  
10 switch to natural gas vehicles if renewable natural  
11 gas is available?

12 MS. SMITH: Yes, we are. FEI is aware of  
13 transportation customers that will only switch from  
14 diesel to natural gas when an adequate supply of  
15 renewable natural gas is available in sufficient  
16 volume, because they are high volume customers, to  
17 meet their needs. As discussed in the response to CEC  
18 IR 7.5, customers consider the availability of long  
19 term RNG supply in relation to their long term  
20 emissions reductions targets and sustainability goals.  
21 For example, customers like TransLink have adopted  
22 climate objectives to reduce emissions by 80 percent  
23 and to utilize 100 percent renewable energy by 2050.  
24 RNG achieves both of these goals and provides  
25 customers like TransLink with a cost effective,  
26 commercially driven pathway to achieve both of these

1 objectives.

2 The availability of RNG, long term, and in  
3 sufficient volume therefore drives the switch from  
4 diesel to lower carbon fuels such as compressed  
5 natural gas and renewable natural gas.

6 MR. BUSSOLI: Thank you. The final questions all  
7 relate to section 2.0, which is the greenhouse gas  
8 emission accounting practices, and staff would like a  
9 bit more clarity on all of those questions. I will  
10 read in the preamble, which is a response to BCUC  
11 panel IR 3.1. FEI states,

12 "FEI may sell RNG to transportation customers,  
13 including bus fleets, waste haulers and other  
14 fleet operators who can claim the GHG reductions  
15 due to RNG as a credit under the B.C. RLCFRA.  
16 FEI is able to register its RNG as an eligible  
17 fuel under section 6(6) of the B.C. RLCFRA.  
18 Eligible fuels under the B.C. RLCFRA can be  
19 produced within and outside of B.C. For  
20 example, B.C. imports hydrogenation derived  
21 renewable diesel from Neste Oil Singapore, and  
22 Ethanol from Future Fuels Ltd. in Alberta.

23 The carbon intensity of these fuels include  
24 both emissions reductions that have occurred  
25 during production and also that will occur at  
26 the end use. This demonstrates that the B.C.

1 RLCFRA recognizes emissions reductions that  
2 occur outside of B.C. FEI's public sector  
3 customers such as universities, schools, or  
4 hospitals, may purchase RNG to meet their  
5 obligations under the carbon neutral government  
6 program, under the *Climate Change Accountability*  
7 *Act*. This program uses the smart tool for GHG  
8 evaluation, which recognizes RNG as an eligible  
9 fuel.

10 Public sector customers purchase RNG and  
11 account for the emissions reductions for  
12 reporting to the B.C. Government. There is no  
13 prohibition against using RNG from outside of  
14 B.C., and the emissions are accounted for by the  
15 public sector facility at their end-use."

16 So, question 2.1, "Please explain where the  
17 CEA allows for the B.C. *Renewable and Low Carbon Fuel*  
18 *Requirements Act*, or the *Climate Change Accountability*  
19 *Act* accounting methods, as methods of reducing  
20 greenhouse gas emissions in B.C., and then please  
21 explain how these methods are suitable for accounting  
22 GHG emissions in B.C.?"

23 MR. BYSTROM: So I will take the first stab at  
24 answering those. I guess the beginning point is just  
25 a question -- I mean, the assumption and the question  
26 appears to be that the *Clean Energy Act* has to specify

1 other legislation to allow for GHG accounting, and  
2 that's just not the case, that's not the purpose of  
3 the *Clean Energy Act*. *Clean Energy Act* defines B.C.'s  
4 energy objectives and creates a policy framework for  
5 achieving those objectives. The scope of the *Clean*  
6 *Energy Act* does not include greenhouse gas accounting  
7 methodologies, nor does it define where certain  
8 accounting methodologies apply, nor does other  
9 legislation doing that need any allowance from the  
10 *Clean Energy Act* to do that.

11 **Proceeding Time 10:11 a.m. T17**

12 So the -- and the accounting methods in  
13 those other acts, the B.C. RLCFRA and the *Climate*  
14 *Change Accountability Act* are not methods of reducing  
15 greenhouse gas emissions in B.C. Rather, these two  
16 acts, rather than saying their names again, reduce GHG  
17 emissions by imposing obligations on fuel suppliers to  
18 lower the GHG content of their fuels or on government  
19 entities to reduce their GHG emissions. So they are  
20 two different ways in which the government is trying  
21 to reduce GHG emissions in B.C., which is consistent  
22 with the *Clean Energy Act*. And the fact that these  
23 two B.C. legislative structures recognize the use of  
24 RNG as reducing greenhouse gas emissions in B.C., it's  
25 consistent with the acquisition of RNG to reduce GHG  
26 emissions in B.C.

1                   So all three acts, *Clean Energy Act*, the  
2                   B.C. RLCFRA and the *Climate Change Accountability Act*  
3                   are all consistent with one another, they're all  
4                   related to the purpose of reducing greenhouse gas  
5                   emissions and read together and harmoniously they  
6                   support our submission that the acquisition of RNG  
7                   will reduce GHG emissions in B.C.

8                   And in terms of explaining how these  
9                   methods are suitable for accounting for GHG emissions  
10                  in B.C., so my understanding is that the methods used  
11                  under these two Acts are both consistent with  
12                  international protocols and are perfectly acceptable  
13                  ways to account for GHG emission reduction targets --  
14                  sorry, not targets, but GHG emissions reductions.

15                  At the end of the day the government has  
16                  passed this legislation. This is, the government has  
17                  set this out, it's not really for us to say what the  
18                  appropriate way to do it is. We think it is the  
19                  appropriate way, it's consistent with protocols used  
20                  elsewhere and around the world but it's the law in  
21                  this province and therefore it is appropriate.

22                  MR. BUSSOLI:        Thank you. I'll just move on to 2.2.  
23                  Could you explain how the carbon intensity of the  
24                  specific RNG sources is calculated and where the GHG  
25                  emissions are accounted for under those two Acts using  
26                  the smart tool?

1 MR. BYSTROM: Yeah. I'll leave that to Mr. Bryant,  
2 yeah.

3 MR. BRYANT: Hi there, Tyler Bryant again. So both  
4 Acts are quite different in how they account for the  
5 carbon intensity of RNG, but just to say that the low-  
6 carbon fuel -- I call it the low-carbon fuel standard  
7 but the RFCLRA, if I can just call it the low-carbon  
8 fuel standard, that'd be great.

9 THE CHAIRPERSON: We would be fine with that, thank  
10 you.

11 MR. BRYANT: Okay, perfect. So at the low-carbon fuel  
12 standard it is a lifecycle analysis of the carbon  
13 intensity of fuels. So that takes into account both  
14 the production of those fuels into, kind of, consumer  
15 end use fuels. So taking raw bitumen, for example,  
16 and refining that into gasoline, all of the emissions  
17 that come from that into the gasoline and then also  
18 the use and combustion of that gasoline. Similarly  
19 for RNG it accounts for all of the emissions or fuels  
20 that may have gone into producing the RNG and then for  
21 end use. Specifically on RNG at the end use RNG is  
22 considered to be carbon neutral, as we've gone through  
23 in previous IRs. And it also accounts for the  
24 reductions that may occur from using RNG, say, from a  
25 landfill and avoided methane emissions for example.

26 The point that I want to make there is that



1           that's not a lifecycle assessment and furthermore it  
2           does not take into account where the RNG is coming  
3           from. It does not differentiate from the different  
4           sources of where the RNG may be produced.

5 MR. BUSSOLI:           Thank you. And then finally question 2.3  
6           from Exhibit A-9, can you explain how landfill gas  
7           emissions which are captured for processing into  
8           renewable natural gas instead of being released into  
9           the atmosphere, would be accounted for using that  
10          smart tool under the CCAA?

11 MR. BRYANT:           Hi, so Tyler again. I believe I just  
12          answered that. It is a blanket carbon intensity for  
13          all of RNG, so it does not make any specific carbon  
14          intensity calculations for landfill gas.

15 MR. BUSSOLI:           Thank you, those are all staff questions.

16 THE CHAIRPERSON:       Thanks, Mr. Bussoli.

17                        Yeah, I think our agenda now calls for some  
18          potential panel questions. Perhaps Mr. Everett, you  
19          may have one?

20 COMMISSIONER EVERETT:    Yes. This may just reflect my  
21          lack of understanding, but I would like to take you to  
22          page 18 of your written submission and there's a small  
23          roman numeral II in the middle of the page there, Mr.  
24          Bystrom?

25 MR. BYSTROM:            Yes.

26 COMMISSIONER EVERETT:    So,

1                    "We have shown in our evidence..."  
2                    Just keep that phrase in mind,  
3                    "...that there will be no double counting of  
4                    emission reductions. The prohibition against  
5                    double counting is a bedrock principle of GHG  
6                    accounting schemes for obvious reasons. Double  
7                    counting would undermine the very purpose of the  
8                    legislation to reduce GHG emissions and would  
9                    undermine markets for GHG reductions."  
10                    So my question is this: this RNG is being  
11                    purchased from Tidal in Ontario, correct?  
12 MR. BYSTROM:        The purchase is with Tidal, I don't know  
13                    if --  
14 COMMISSIONER EVERETT:    Well, okay, I don't want you to  
15                    read anything in to these sort of words.  
16 MR. BYSTROM:        The location of the facilities is in  
17                    Ontario.  
18 COMMISSIONER EVERETT:    Thank you, yeah. And the credit  
19                    is being accounted for at the end use in British  
20                    Columbia.  
21 MR. BYSTROM:        So, these two --  
22 COMMISSIONER EVERETT:    The question I have is, what if  
23                    Tidal or someone in Ontario was taking a similar  
24                    credit for it, then is there double counting?  
25 MR. BYSTROM:        Well, if that were to occur --  
26 COMMISSIONER EVERETT:    Well, do we know if it's

1 occurring or not?

2 MR. BYSTROM: Yes, we do. So as we have said, it's  
3 not --

4 COMMISSIONER EVERETT: That may be the answer, yeah.

5 MR. BYSTROM: So as we've explained in our IR  
6 responses, there is no legislative scheme in the  
7 Province of Ontario under which anyone could count  
8 these credits.

9 COMMISSIONER EVERETT: Yes, I saw that.

10 MR. BYSTROM: The federal carbon tax has kicked in as a  
11 backstop mechanism and we've explained that there's  
12 provision that if you are producing biomethane and  
13 delivering not to the end user, then that's not  
14 captured by that carbon tax. So there's no other  
15 legislative structure in place in Ontario federally  
16 where Tidal can claim that.

17 And so the IR there is -- so that's BCUC  
18 Panel IR 3.6 as one option and then it's really the  
19 whole 3 series. And then there's also, we have  
20 contractual safeguards. If Tidal is not able to  
21 deliver the attributes to us, then Fortis has the  
22 right to terminate the contract and we'd have no  
23 stranded assets or other obligations, just walk away.  
24 So that's it.

25 COMMISSIONER EVERETT: Thank you, that's helpful.

26 THE CHAIRPERSON: Do you have any other questions?

1 COMMISSIONER EVERETT: No, thank you.

2 THE CHAIRPERSON: Mr. Revel, do you have any questions?

3 COMMISSIONER REVEL: Thank you, Mr. Chair, I have no  
4 questions.

5 THE CHAIRPERSON: I think I only have one question  
6 myself and it's, perhaps, dwelling on section 18(1) of  
7 the *Clean Energy Act*. I hesitate to paraphrase, but  
8 if I understand your position, Mr. Bystrom, it's that  
9 the clause in that section 18 of the *Clean Energy Act*  
10 which says that the purpose of the regulation is to  
11 reduce greenhouse gas emissions in B.C., that purpose  
12 is almost a communication directed at the Lieutenant  
13 Governor in Council when setting the regulation. Is  
14 it fair to say that you think that that clause doesn't  
15 apply in any sense once that regulation is created,  
16 that is has no legal effect once that regulation is in  
17 power?

18 MR. BYSTROM: So, yes. The purpose phrase there is  
19 essentially an instruction to the Lieutenant Governor  
20 in Council. It does have legal effect, as I  
21 explained, if -- and we see it's having its legal  
22 effect when a party challenges the validity of a  
23 legislation.

24 **Proceeding Time 10:22 a.m. T19**

25 They'll say, this regulation is not valid  
26 because it exceeds that statutory mandate. So the

1 regulation can't be inconsistent with its enabling  
2 statute, and that's why I took you to Section 41 of  
3 the *Interpretation Act* which says if the LGCI is given  
4 those powers to make regulation it has to do it  
5 according to the intent of the statute. And so  
6 there's all sorts of cases. And the *Katz* case which I  
7 took you through is the leading case in the Supreme  
8 Court of Canada where that arises. So it does have  
9 legal effect in -- but it's not a substantive  
10 requirement that FortisBC has to approve. That is --  
11 where that comes into play is if you're questioning  
12 the validity of the regulation.

13 THE CHAIRPERSON: Okay, so you view it as being  
14 important if one were to challenge the validity of the  
15 regulation, but you don't view it as being important  
16 in the operation of the regulation after it's taken  
17 effect.

18 MR. BYSTROM: Exactly. The law is, as I explained, that  
19 definitions don't have substantive content. The same  
20 with purpose statements, statutory drafting  
21 conventions are that you don't have substantive law in  
22 a definition and the plain reading of those words does  
23 not impose a requirement on FortisBC Energy Inc. So  
24 yes, my position is that would be an error of law to  
25 interpret it otherwise than what I have suggested.

26 THE CHAIRPERSON: Okay. So hypothetically, if a utility

1           was to apply under the *Greenhouse Gas Reduction*  
2           *Regulation* and hypothetically their application met  
3           the three tests of that, but it was demonstrably true  
4           that it had no purpose, the application from this  
5           utility had no purpose to do with reducing greenhouse  
6           gas emissions whatsoever, then you feel that section  
7           18 of the *Clean Energy Act* has no bearing on whether  
8           the Commission would -- how the Commission would  
9           interpret that application and that the Commission  
10          should only be looking at the tests set out in the  
11          Greenhouse Gas Regulation regardless of the purpose in  
12          Section 18 of the *Clean Energy Act*.

13 MR. BYSTROM:       As I've said, the presumption is that  
14                       regulations are valid. So unless there's a challenger  
15                       to the validity of the regulation, then yes, you  
16                       should be not inquiring to whether the purpose is met.  
17                       You meet the test in the *Greenhouse Gas Reduction*  
18                       *Regulation*, and that's the end of the story. It's the  
19                       burden on the party claiming that the regulation is  
20                       invalid to show that it is in fact invalid.

21 MR. BYSTROM:       But in my hypothetical example, if the  
22                       application were to be completely valid -- sorry to  
23                       completely meet the three tests in the regulation, and  
24                       perhaps nobody is questioning whether the regulation  
25                       itself is invalid, but merely that the purpose of --  
26                       the substance of the application had nothing to do

1 with reducing greenhouse gas emissions at all, you  
2 feel that Section 18 of the *Clean Energy Act* should  
3 not be considered by the Commission. Is that fair or  
4 not?

5 MR. BYSTROM: I think that the Commission -- so, as I  
6 said, let me just flip to the authority. So in the  
7 *Katz* case that I took you to, the test is that the  
8 regulation must be irrelevant, extraneous or  
9 completely unrelated to the statutory purpose. So if  
10 that were the finding of the Commission, the question  
11 for the Commission not -- wouldn't just be, well, we  
12 can't approve this application, would be, "Is this  
13 regulation valid?" That would be the question that  
14 the Commission would be asking.

15 So it's -- in order to deny the application  
16 you would have to conclude that the regulation was  
17 illegal.

18 THE CHAIRPERSON: But if an application was  
19 hypothetically for the acquisition of renewable  
20 natural gas at a price less than \$30 a gigajoule with  
21 appropriate volume constraints, and yet the clear and  
22 demonstrable purpose of the contract, the acquisition  
23 contract, was for something other than greenhouse gas  
24 regulation, you would say that it meets the test in  
25 the greenhouse gas regulation and that the Commission  
26 should not be looking at the meaning and purpose of



1 on the applicant to demonstrate that its application  
2 is a prescribed undertaking?

3 MR. BYSTROM: Yes, and the Lieutenant Governor in  
4 Council has set out in section 2(3.8) three tests that  
5 describe a class of prescribed undertakings. We have  
6 to show that our undertaking falls within that class  
7 and we have done that.

8 THE CHAIRPERSON: Thank you. I have no further  
9 questions, so I believe if I glance at our agenda, it  
10 might be a good time to take a short break. May we  
11 reconvene at 20 to 11? Thank you.

12 **(PROCEEDINGS ADJOURNED AT 10:29 A.M.)**

13 **(PROCEEDINGS RESUMED AT 10:47 A.M.)**

**T21/22**

14 THE CHAIRPERSON: Thanks. Please be seated.

15 MR. BYSTROM: Mr. Chair?

16 THE CHAIRPERSON: Yes.

17 MR. BYSTROM: May I have another chance at answering  
18 your last question. I feel like I may have not fully  
19 understood where you're going. I would appreciate an  
20 opportunity to address it again.

21 THE CHAIRPERSON: I would be delighted. Thank you.

22 MR. BYSTROM: So I think the first point that I should  
23 have made is one that we cannot conceive of an RNG  
24 project that meets the three-part test in the GGRR and  
25 doesn't reduce GHG emissions. So, and that was the  
26 reason I was having trouble with the hypotheticals

1           because I couldn't imagine that scenario that you were  
2           putting to me.

3                       The second thing is, the Lieutenant  
4           Governor in Council has put its mind to this and is  
5           saying effectively that all projects that meet the  
6           three-part tests reduce GHG emissions. So that's the  
7           LGIC's view.

8                       And so our inability to conceive a project  
9           that meets that test and doesn't reduce emissions is  
10          consistent with the LGC's view.

11                      And then a third point I need to clarify.  
12          If your question was going to the intent of the  
13          utilities in bringing forward an application, then I  
14          need to clarify that the purpose statement in 18(1) of  
15          the *Clean Energy Act* is saying -- it's the purpose of  
16          prescribing undertakings in the GRR. It is not  
17          describing the purpose of the utilities in bringing  
18          forward applications.

19                      So the test is not that the utility's  
20          purpose in bringing forth the application is to reduce  
21          GHG emissions, that's not what it says. That would  
22          have to be written into the GRR that that was a  
23          requirement. And then finally just bringing it home  
24          and to apply to this case, in this case the Tidal BPAs  
25          will reduce GHG emissions, the intent of the utility  
26          is to reduce GHG emissions, and that's perfectly

1 consistent with the LGIC's view when it drafted the  
2 GGRR.

3 So hopefully that helps.

4 THE CHAIRPERSON: Thank you very much for that  
5 additional information.

6 I did say, I believe at the outset that if  
7 there were any other questions from interveners that  
8 came as a result of the staff questions or responses  
9 to them, that we'd be very happy to allow that. So I  
10 think perhaps just going quickly, Mr. Andrews, did you  
11 have any subsequent questions as a result of --

12 MR. ANDREWS: No, I do not.

13 THE CHAIRPERSON: Thank you. Mr. Weafer?

14 MR. WEAFER: No, I do not.

15 THE CHAIRPERSON: Ms. Worth, Ms. Mis?

16 MS. WORTH: We do not, thank you.

17 THE CHAIRPERSON: Okay. Thank you very much for that.

18 Then we'll move onto intervenors'  
19 submissions. Just to repeat what was in the  
20 procedural order and my opening comments, we would  
21 appreciate the comments being kept to 15 minutes if at  
22 all possible and obviously within the scope of the  
23 panel IRs that have been asked and responses given to  
24 date.

25 I would also just say that if somebody --  
26 and I think you alluded to this potentially, Mr.

1        Andrews, if somebody does have material that's  
2        significantly more than 15 minutes, we'd be very open  
3        to the suggestion of submitting them in writing  
4        immediately after this proceeding and having them  
5        entered either as additional argument or -- yes, as  
6        additional argument. So I leave that up to you. I'm  
7        very happy to hear comments in the order of  
8        appearances, but again, if it's substantially over  
9        fifteen minutes, we would appreciate any creative  
10       suggestions you have on written submissions.

11                    I believe Mr. Andrews, you would be first  
12        up.

13        **SUBMISSIONS BY MR. ANDREWS:**

14                    Thank you, Mr. Chairman and members of the  
15        panel. I do take seriously the need for efficiency  
16        and desirability of 15 minutes, and I think I may be  
17        able to accommodate that, and if not, then I would ask  
18        to file my prepared arguments in writing.

19                    **Proceeding Time 10:52 a.m. T23**

20                    I'm going to begin by perhaps emphasizing  
21        that BCSEA comes to the legal issues that are before  
22        the panel right now from a very different perspective  
23        than the Fortis Energy Inc gas utility. These are --  
24        these comments and arguments that I'm going to make  
25        overlap in many respects with those that have been  
26        made by FEI. But my submission it will help the

1 Commission to understand the issues, to realize that  
2 my client is not just another gas utility repeating  
3 the same thing for the same purpose as Fortis. My  
4 clients approach this from a very different  
5 perspective.

6 So, and I think it's probably fastest for  
7 me to just make my argument rather than try to shape  
8 it to refer back to what Mr. Bystrom argued. The  
9 issue raised by the questions in Exhibit A-9 concern  
10 interpretation of sections 3.7 and 3.8 of the  
11 *Greenhouse Reduction Regulation* under the *Clean Energy*  
12 *Act*. Section 3.7 and 3.8 say that,

13 "The acquisition of renewable natural gas by a  
14 public utility is a prescribed undertaking if it  
15 meet certain price and quantity criteria."

16 The two BPAs in question certainly meet the  
17 price and quantity criteria for the purpose of my  
18 argument here. And significantly the two BPAs are for  
19 the acquisition of renewable natural gas. Nothing in  
20 the wording of section 3.7 or 3.8 limits "renewable  
21 natural gas" to renewable natural gas produced in B.C.

22 So, the question implied in A-9, is whether  
23 the Commission should read down the term "renewable  
24 natural gas" in the GGRR to exclude renewable natural  
25 gas produced outside of B.C. The suggestion is that  
26 the Commission should adopt this statutory

1 interpretation because section 18(1) of the *Clean*  
2 *Energy Act*, describes a prescribed undertaking as  
3 being of the purpose of -- for the purpose of reducing  
4 greenhouse gases within -- gas emissions within  
5 British Columbia.

6 My submission is that the statement of the  
7 purpose of an prescribed undertaking in section 18(1)  
8 is a description of what constitutes a prescribed  
9 undertaking. It is not a restriction, it's not intend  
10 to and it does not legally have the effect of  
11 narrowing the content of a prescribed undertaking.  
12 Rather, the legislative framework authorizes the  
13 Lieutenant Governor to define in detail what actually  
14 constitutes a prescribed undertaking for the purpose  
15 of reducing greenhouse gas emissions in B.C. So the  
16 statutory authority for the GGRR regulation does not  
17 come from section 18(1), it comes from section 35(n)  
18 that authorizes the Lieutenant Governor in Council to  
19 make regulations, and I'll quote the material portion,  
20 "for the purposes of defining" -- the purpose of the  
21 definition of prescribe undertaking in section 18  
22 prescribing classes of projects, programs, contracts  
23 or expenditures that encourage the use of,

24 "...the energy directly from a clean or renewable  
25 resource instead of the use of other energy  
26 sources that produce higher greenhouse gas



1 or renewable energy from Cabinet's regulation making  
2 authority, there is no basis to conclude that Cabinet  
3 lacked authority to include out-of-province sources  
4 within the term "renewable natural gas".

5 BCSEA submits that the *Clean Energy Act*  
6 contemplates that the task of defining a section 18  
7 prescribed undertaking is the responsibility of the  
8 Lieutenant Governor in Council. The LGIC could have  
9 chosen to exclude out-of-province sources of renewable  
10 natural gas from section 3.8 of the GGRR, but it did  
11 not do so. BCSEA submits that the Commission should  
12 not venture into the terrain of the Lieutenant  
13 Governor in Council in determining how best to define  
14 what section 18 describes as a prescribed undertaking  
15 for the purposes of reducing GHG emissions in British  
16 Columbia.

17 In interpreting section 3.7 and 3.8 of the  
18 regulation the Commission must take into account not  
19 only the wording of the sections themselves, which as  
20 I've said in my submissions do not limit renewable  
21 natural gas to RNG produced within B.C., but also the  
22 legislative context. In my submission, the  
23 legislative context here includes not only the *Clean*  
24 *Energy Act* but also the whole suite of GHG emissions  
25 reduction statutes and regulations, and in this respect  
26 I differ considerably from the implied thinking behind

1 the questions in Exhibit A-9.

2 In addition to the *Clean Energy Act* and  
3 greenhouse gas regulation, the suite of legislation  
4 the Commission must take into account includes the *GHG*  
5 *Industrial Reporting and Control Act*, the *GHG*  
6 *Emissions Reporting Regulation*, the *Climate Change*  
7 *Accountability Act*, the *Greenhouse Gas Emission*  
8 *Recording Regulation* and the *Greenhouse Gas Reduction*  
9 *Renewable and Low Carbon Fuel Requirements Act*. And I  
10 won't list all of the regulations, but my point is  
11 that there is an elaborate regulator structure in  
12 British Columbia for the management and reduction of  
13 greenhouse gas emissions. And it is not the expertise  
14 of the Utilities Commission to manage GHG resources  
15 and reductions within the province.

16 And I want to give some examples of while  
17 the concept of reducing GHG emissions in B.C. is quite  
18 simple at the very highest level, the legislative  
19 framework and the regulations is very complex and  
20 sophisticated. It's not limited to specific molecules  
21 at physical locations. Rather it incorporates nuanced  
22 conceptual factors including, starting with the very  
23 notion of carbon dioxide equivalent.

24 **Proceeding Time 11:01 a.m. T25**

25 There's no such thing as GHG reductions. Instead it's  
26 a concept of GHG equivalents which is at the basis of

1 a lot of the regulatory framework.

2 Similarly the framework includes principles  
3 of attribution of GHG emissions, both for reporting  
4 purposes and also for compliance purposes, and these  
5 are different. So it's not just willy-nilly GHG  
6 emissions, it's attributed to specific parties or not.

7 And thirdly, there's an elaborate regime of  
8 emission offsets, offset units. An emission offset  
9 project. A recognized unit. A funded unit. There's  
10 a registry. There's a compliance unit, an earned  
11 credit compliance unit transaction. There's a whole  
12 regime that defines how GHG emissions are to be  
13 regulated and this is not the realm of the Utilities  
14 Commission, I submit.

15 Included in that regime, the B.C. regime,  
16 our concepts under the Western Climate Initiative and  
17 that gets to the point about double counting. It's  
18 fundamental to the Western Climate Initiative that  
19 double counting is not to happen and they spend a lot  
20 of time ensuring that it doesn't.

21 With respect, the Lieutenant Governor in  
22 Council is in a better position than the BCUC to  
23 determine whether out-of-province sources of renewable  
24 natural gas should be excluded from prescribed  
25 undertakings under section 3.8 of the GGRR and hence  
26 from section 18 of the *Clean Energy Act*.

1 BCSEA submits that the two BPAs in question  
2 are prescribed undertakings under section 18 and  
3 further, that in the alternative, that they are within  
4 the public interest.

5 I have comments on the specific questions  
6 in Exhibit A-9 and I'm not sure of my time, but I  
7 think if I may, I will attempt to address the  
8 questions that the staff asked. It left out some of  
9 the questions that I have responded to and I will put  
10 those in a written submission with the leave of the  
11 panel.

12 THE CHAIRPERSON: So Mr. Andrews, are you suggesting  
13 that you are only going to make some comments based on  
14 the questions that staff asked today and not the ones  
15 that they've chosen not to?

16 MR. ANDREWS: Yes, and my comments will be brief. I'll  
17 try not to repeat the questions and so on. So I'll  
18 jump to 1.3, and the term "capturing atmospheric CO<sub>2</sub>"  
19 reducing new emissions. My submission is that both of  
20 those concepts are within the umbrella of the  
21 reduction of B.C. GHG emissions under *Clean Energy Act*  
22 and more broadly. However, I would hesitate the use  
23 the term equivalent, as that's a term of art and it  
24 may not be completely accurate in this situation.

25 Regarding question 1.4.1, how the process  
26 aligns with reducing GHG emissions in British

1 Columbia. I've stated my position that nothing in the  
2 *Clean Energy Act* or in the suite of legislation  
3 necessarily precludes consideration in the B.C. GHG  
4 accounting system of renewable natural gas produced in  
5 another jurisdiction.

6 In response to 1.5 to do with FEI's  
7 customers and end users and how they are able to claim  
8 a credit, in brief Fortis customers are able to claim  
9 a credit for a reduction in GHG emissions due to their  
10 use of renewable natural gas under the complex  
11 framework established under the *Renewable Low Carbon*  
12 *Fuel Act*, which is itself a component of the larges  
13 GHG emissions reduction framework under the statues  
14 that I mentioned earlier.

15 **Proceeding Time 11:06 a.m. T26**

16 And that is how Fortis customers, using RNG  
17 under these two BPAs, would be able to claim GHG  
18 emission reduction credits.

19 So turning to 1.10, to do with -- the  
20 question contemplates the reduction in physical  
21 greenhouse gas tail-pipe emissions. My submission on  
22 this point will end up being the same as Fortis' but  
23 coming at it from a very different perspective. Where  
24 a Fortis customer uses renewable natural gas as a  
25 transportation fuel, the tail-pipe emissions are the  
26 same as the use of conventional natural gas. This is

1 the same as any Fortis customers' use of renewable  
2 natural gas. The GHG emissions at the burner tip are  
3 the same for both RNG and for conventional natural  
4 gas. The salient point is that RNG is carbon neutral  
5 because it was produced from plant material that  
6 recently extracted CO<sub>2</sub> from the atmosphere and so there  
7 is no net-incremental CO<sub>2</sub> to the atmosphere. That's at  
8 the heart of the concept of renewable natural gas as a  
9 mechanism for GHG emissions reductions and that  
10 concept has been acknowledged, both by the Commission  
11 in its earlier proceedings and by the legislature and  
12 Lieutenant Governor in Council.

13 The response to 1.1, Fortis confirmed that  
14 it does have customers who would only intend to switch  
15 to natural gas vehicles if RNG is available. My  
16 comment there is I didn't know what they were going to  
17 say but -- and while that's interesting information  
18 it's important to note that that is irrelevant to  
19 whether section 3.8 of the GGRR is to be read down to  
20 exclude out-of-province sources. The point of whether  
21 there's customers lined up to actually use this BPA  
22 for that regulatory purpose is relevant to the public  
23 interest. It supports that this will have a  
24 meaningful impact, but it's not relevant to the legal  
25 question.

26 In 2.1 the question is how the *Clean Energy*

1           Act allows for other climate change statutes to use  
2           accounting methods. And as I've emphasized already,  
3           there is an elaborate framework of GHG emissions  
4           legislation and regulations in British Columbia. And  
5           so in that context the *Clean Energy Act* is actually a  
6           very small, very important, but a small element of a  
7           much larger regulatory framework that is within the  
8           purview of the Lieutenant Governor in Council and not,  
9           I submit, the Utilities Commission.

10                           And with that I will conclude my remarks.  
11           I do have more detail that if it's acceptable I'll  
12           provide later today in writing.

13 THE CHAIRPERSON:       Thank you very much.

14 MR. BYSTROM:       Mr. Chair, could I just address that  
15           proposal? I would much prefer that you just take five  
16           more minutes to get whatever your further submissions  
17           on the record now so that all submissions are  
18           completed as of this morning, so we don't  
19           unnecessarily extend the process by filing new things  
20           after this is completed. If that's acceptable to the  
21           panel, that would be my preference.

22 THE CHAIRPERSON:       Before we comment, I think Mr. Weafer  
23           may have a submission here as well?

24 MR. WEAFER:       I will be very brief, and Mr. Andrews can  
25           certainly use five to ten minutes of my time.

26 THE CHAIRPERSON:       Thank you very much. Yeah, please,

1 Mr. Andrews, if it's -- please continue.

2 MR. ANDREWS: Thank you. I think it may accelerate my  
3 responses to the questions that are in A-9 to say that  
4 these questions are really interesting and appropriate  
5 for an outside party wishing to learn more about the  
6 GHG management regime in British Columbia.

7 **Proceeding Time 11:11 a.m. T27**

8 The questions themselves I respectfully submit  
9 illustrate that the Commission is not a source of  
10 expertise in the regulations of GHG emission  
11 reductions. And that then supports the conclusion  
12 that the Commission should not step into the shoes of  
13 the Lieutenant Governor in Council in trying to second  
14 guess whether renewable natural gas without limitation  
15 is in fact one of the very many ways in which GHG  
16 emissions reductions can be reduced in British  
17 Columbia. That is the technical expertise and the  
18 regulatory responsibility lies in places other than  
19 the Utilities Commission to determine whether out-of-  
20 province RNG is in fact a effective and desirable and  
21 for whatever other appropriate policy considerations a  
22 legally determined method of reducing GHG emissions in  
23 British Columbia.

24 And I think some of my comments relate to  
25 the specific wording of the questions and I don't  
26 think at this stage I need to go through those.

1                   There are questions to do with what would  
2                   happen at the two RNG facilities in the absence of the  
3                   BPAs with Fortis. In my submission that is utterly  
4                   speculative, but more importantly irrelevant to the  
5                   question of statutory interpretation, which is what  
6                   the questions in A-9 really raise. The question  
7                   that's raised is should the phrase "renewable natural  
8                   gas" in 3.8 be read down to exclude out-of-province  
9                   sources. And what would happen in Ontario is not, I  
10                  submit, relevant to the consideration of the  
11                  appropriate meaning of section 3.8.

12                  I think that allows me to complete the  
13                  submissions that I would like to make on behalf of  
14                  BCSEA and so I'll withdraw it's necessary my request  
15                  to file anything in writing and I appreciate the  
16                  opportunity to make these submissions.

17 THE CHAIRPERSON:       Thank you. Can you wait just a  
18                  moment there. Anybody else on the panel have any  
19                  questions?

20 COMMISSIONS REVEL:       I have no further questions.

21 COMMISSIONER EVERETT:    No questions.

22 THE CHAIRPERSON:        I'm wondering, again if you can just  
23                  remain at the podium just for a second. No, I changed  
24                  my mind. Thank you very much. We will speak again  
25                  but in a moment, so thanks.

26                  Mr. Weafer, your submission, please.



1           they're correct. We think that position is buttressed  
2           by Mr. Andrews' submissions just before me. So from  
3           the CEC's perspective, you have what you need to  
4           consider the application and we don't require any  
5           further process, nor any further legal submissions.

6                           And those are my submissions.

7 THE CHAIRPERSON:       Thank you very much. Ms. Worth.

8 **SUBMISSIONS BY MS. WORTH:**

9 MS. WORTH:       Thank you, Mr. Chair and members of the  
10           panel. BCOAPO still accepts FEI's position that the  
11           CEA and GGRR must be interpreted according to  
12           Driedger's principle requiring consideration of the  
13           object and purpose of the enactments, and in this case  
14           it would be our government's intentions. And we think  
15           that there's ample evidence on the record now of the  
16           government's intentions both expressed prior to the  
17           enactments and then continuing with the Minister's  
18           letter that is currently on the record.

19                           Basically we think that this is a question  
20           of whether you want to interpret the Act, and  
21           specifically the regulation, in a very narrow manner  
22           or a very broad manner and I think that the evidence  
23           that I've just referred to and then Mr. Bystrom  
24           referred to this morning is a clear signal from the  
25           government that their intention was a broad  
26           application.

1                   So we continue to support Fortis's  
2                   application and we leave the consideration of whether  
3                   you wish to interpret these broadly or narrowly to the  
4                   panel.

5                   Thank you. Those are my submissions.

6 THE CHAIRPERSON: Thank you.

7                   Okay, so I think the final item on our  
8                   agenda today was submissions on further process.  
9                   Sorry, and I apologize, Mr. Andrews, that's why I was  
10                  hesitating, because I realized I needed to ask FEI  
11                  first.

12                  So Mr. Bystrom, do you have any submissions  
13                  on further process?

14 MR. BYSTROM: Well, if I may, I believe I have a right  
15                  to reply to the submissions so maybe I'll just --

16 THE CHAIRPERSON: Please.

17 **REPLY BY MR. BYSTROM:**

18 MR. BYSTROM: I only have one comment and then I'll  
19                  address the further process. And it's really a minor  
20                  one, but my friend Ms. Worth said that the issue  
21                  before the Commission is whether it would take a  
22                  narrow or broad approach and I don't think this was  
23                  the intention but I just wanted to clarify that I  
24                  don't think there is actually a choice in that regard.  
25                  So in the *Katz* case that I referred to, tab 7 of my  
26                  book of authorities, page 62, paragraph 25 of the case

1 -- sorry, paragraph 26.

2 "Both the challenge regulation and the enabling  
3 statute should be interpreted using a broad and  
4 purposive approach consistent with the Court's  
5 approach to statutory interpretation generally."

6 So that was my only reply point.

7 In terms of further process, we don't see  
8 the need for any further process. Of course, we'd be  
9 happy to address any concerns the Commission may have  
10 but at this point we believe the Commission has what  
11 it needs to make a decision.

12 THE CHAIRPERSON: Well, you will have the right of reply  
13 on the question of further process as well if anything  
14 different comes up. So thank you very much for that  
15 submission.

16 Mr. Andrews.

17 MR. ANDREWS: For BCSEA we see no need for further  
18 process. As Mr. Bystrom said, the Commission has what  
19 it needs from BCSEA's perspective. Time is of the  
20 essence in reducing greenhouse gas emissions and that  
21 is something that we respectfully ask the Commission  
22 to take into account in terms of the proceeding going  
23 forward. Thank you.

24 THE CHAIRPERSON: Thank you very much. Mr. Weafer?

25 MR. WEAFER: I'm trying to get in the habit of not  
26 speaking from the back, because I don't mean to be



1 THE CHAIRPERSON: Okay, thank you. What I would like  
2 to do is just take a two-minute break if I may, and  
3 perhaps if I could ask Mr. Bussoli to join the panel?

4 **(PROCEEDINGS ADJOURNED AT 11:21 A.M.)**

5 **(PROCEEDINGS RESUMED AT 11:27 A.M.)**

**T30/31**

6 THE CHAIRPERSON: Thanks, please be seated.

7 So, the panel would like to thank everybody  
8 for their submissions today. They've been very  
9 informative, instructive and very helpful and very  
10 useful for the panel in their determinations.

11 So the panel would like to state that the  
12 evidentiary record is now close. We're satisfied that  
13 there's no need for additional process based on the  
14 submissions, the unanimous submissions, we've received  
15 toady.

16 Further the panel accepts the two  
17 biomethane purchase agreements as applied for by  
18 Fortis Energy Inc. and there will be an order to  
19 follow, but we accept them.

20 So, thank you again, everybody, for your  
21 time. It's been a very instructive day, very useful  
22 and constructive and this proceeding is adjourned,  
23 thank you.

24 **(PROCEEDINGS ADJOURNED AT 11:28 A.M.)**

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



A.B. Lanigan, Court Reporter

February 27<sup>th</sup>, 2020