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November 21, 2019

British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, BC
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Attention: Mr. Patrick Wruck, Commission Secretary and Manager, Regulatory Support

Dear Mr. Wruck:

Re: FortisBC Energy Inc. (FEI)
Filling of Biomethane Purchase Agreements between FEI and Tidal Energy
Marketing Inc. (Tidal Energy) (the Application)
FEI Final Argument

On June 3, 2019, FEI filed the Application referenced above. In accordance with British Columbia Utilities Commission Order G-283-19 setting out the Regulatory Timetable for the review of the Application, please find attached FEI's Final Argument.

If further information is required, please contact the undersigned.

Sincerely,

FORTISBC ENERGY INC.

Original signed:

Doug Slater

Attachments

cc (email only): Registered Parties

British Columbia Utilities Commission

**FortisBC Energy Inc. Application for Acceptance of
Biomethane Purchase Agreements between FortisBC Energy
Inc. and Tidal Energy Marketing Inc.**

**Final Argument of
FortisBC Energy Inc.**

November 21, 2019

Table of Contents

PART ONE: INTRODUCTION.....	1
PART TWO: INTERPRETATION OF THE LEGISLATION CONTEXT	3
A. Legislative Context	3
B. Principles of Statutory Interpretation.....	4
C. GGRR Must Be Given a Liberal Interpretation to Enable Acquisition of Renewable Natural Gas	5
PART THREE: MEETING THE LEGAL TEST FOR A PRESCRIBED UNDERTAKING	6
A. The Three-Part Legal Test Set out by the BCUC.....	6
B. The BPAs are an Acquisition of Renewable Natural Gas	7
C. FEI will Pay No More than \$30 Per GJ.....	8
D. Annual Volume of Renewable Natural Gas Will not Exceed Maximum	9
PART FOUR: PROPOSED BIOMETHANE PURCHASE AGREEMENTS IN THE PUBLIC INTEREST	9
PART FIVE: CONCLUSION	11

PART ONE: INTRODUCTION

1. FortisBC Energy Inc. (“FEI”) is seeking acceptance, pursuant to section 71 of the *Utilities Commission Act* (“UCA”), of two Biomethane Purchase Agreements (“BPAs”) between FEI and Tidal Energy Marketing Inc. (“Tidal”). FEI’s BPAs with Tidal are described in detail in FEI’s Application¹ and responses to information requests.² FEI is requesting acceptance of the BPAs with Tidal on the basis that they are prescribed undertakings under section 18 of the *Clean Energy Act* and section 2(3.8) of the Greenhouse Gas Reduction (Clean Energy) Regulation (“GGRR”). A draft form of the Order sought is included as Appendix C of FEI’s Application.

2. FEI’s BPAs with Tidal are for the purchase of renewable natural gas from projects in Niagara Falls and London, Ontario. The “Niagara BPA” establishes the terms and conditions on which Tidal will provide renewable natural gas from a landfill project located in Niagara Falls, Ontario to FEI at the Huntingdon interconnection point on FEI’s system. The “London BPA” establishes the terms and conditions on which Tidal will provide renewable natural gas from an organic waste digestion project located in London, Ontario to FEI at the Huntingdon interconnection point.

3. Whether FEI purchases renewable natural gas within or outside of BC, the delivery of the renewable natural gas to customers is notional in the sense that the molecules of renewable natural gas from each individual project cannot be traced from the point of production to the customer’s meter. As with previous biomethane purchase agreements, FEI has secured the rights to the environmental attributes and greenhouse gas emission reduction benefits of the renewable natural gas from these projects, such that the full value of the renewable natural gas will be received by FEI and its customers.³

4. While the production of the renewable natural gas will occur in Ontario, FEI’s purchase of the renewable natural gas will reduce greenhouse gas emissions in BC, as greenhouse gas emission reductions are accounted for at the end use. Claiming reductions in emissions due to the use of renewable natural gas requires a clear contractual path for the environmental attributes, real displacement of conventional gas, and the retirement of environmental attributes upon use. The BPAs with Tidal meet these requirements, such that the reduction in greenhouse gas emissions will be accounted for in B.C. where the renewable natural gas is used.⁴

¹ Exhibit B-1.

² Exhibits B-2 to B-5-1.

³ Exhibit B-1, pp. 5-6.

⁴ Exhibit B-2, BCUC IR 1.2.1.

5. Greenhouse gas reductions in BC will also occur because the renewable natural gas supply from the BPAs with Tidal will allow FEI to lift curtailments to existing long-term biomethane agreement customers and sign up new customers that have been precluded from subscribing to the Biomethane Program due to supply constraints. This is particularly critical for large commercial, institutional and industrial customers, and for customers in the Natural Gas for Transportation market. Significantly, there are transportation fleet operators seeking a greenhouse gas neutral transportation solution that wish to subscribe to FEI's Biomethane Program. These customers will switch from diesel to compressed natural gas. This switch to compressed natural gas from diesel in and of itself reduces greenhouse gas emissions by 10 to 30 percent.⁵ The adoption of renewable natural gas by these new compressed natural gas customers will reduce their greenhouse gas emissions even further. Therefore, the acquisition of renewable natural gas under the proposed BPAs will reduce greenhouse gas emissions in BC both through the use of renewable natural gas and the reduction in use of higher carbon-emitting fuels like diesel.

6. FEI has been clear that it continues to advance renewable natural gas supply projects in BC,⁶ and that the acceptance of the BPAs with Tidal will not impede or delay the pursuit of renewable natural gas opportunities within the province.⁷ Given the growing demand and increased policy pressure to increase the supply of renewable natural gas, renewable natural gas from both outside and inside the province is needed. FEI has an opportunity now to secure long-term contracts ahead of other jurisdictions that have been slower in their adoption of renewable natural gas. This opportunity will allow FEI to secure renewable natural gas at better prices than if it were competing for the renewable natural gas with other jurisdictions, leading to lower overall renewable natural gas supply costs for customers.⁸ The purchase of renewable natural gas supply from outside of BC will allow FEI to grow the Biomethane Program, reducing greenhouse gas emissions in BC, and help reach the Government's CleanBC target of 15 percent renewable gas.⁹

7. This Final Submission is organized around the following three points:

- The object of sections 2(3.7) to 2(3.9) of the GGRR is to increase FEI's ability to acquire renewable natural gas in order to reduce greenhouse gas emissions. The BCUC's stance should be to interpret these provisions liberally to ensure that this purpose is accomplished.

⁵ Exhibit B-2, BCUC IR 1.2.1.

⁶ Exhibit B-1, p. 7.

⁷ E.g., Exhibit B-3, BCSEA IR 1.2.2.

⁸ Exhibit B-1, pp. 8-9.

⁹ Exhibit B-1, p. 7.

- FEI's BPAs with Tidal meet the three-part legal test set out by the BCUC for a prescribed undertaking under section 2(3.8) of the GGRR.
- FEI's BPAs with Tidal are in the public interest and should be accepted.

8. Each of these points is discussed in detail in the following sections.

PART TWO: INTERPRETATION OF THE LEGISLATION CONTEXT

A. Legislative Context

9. FEI's BPAs with Tidal are energy supply contracts which are subject to acceptance by the BCUC under section 71 of the UCA. Section 71 of the UCA sets out the criteria the BCUC must consider when determining whether an energy supply contract is in the public interest. By Order G-130-06, dated October 27, 2006, the BCUC established the Rules for Natural Gas Energy Supply Contracts to facilitate the review of natural gas energy supply contracts pursuant to section 71 of the UCA.

10. FEI is requesting acceptance of the BPAs with Tidal on the basis that they are prescribed undertakings under section 18 of the *Clean Energy Act*. The *Clean Energy Act* provides that the Lieutenant Governor in Council can enact "prescribed undertakings" that are intended to encourage "the use of electricity, or energy directly from a clean or renewable resource instead of the use of other energy sources that produce higher greenhouse gas emissions." Section 18(1) of the *Clean Energy Act* defines a prescribed undertaking as "...a project, program, contract or expenditure that is in a class of projects, programs, contracts or expenditures prescribed for the purpose of reducing greenhouse gas emissions in British Columbia."

11. Sections 18(2) and 18(3) of the *Clean Energy Act* describe the BCUC's role in the setting of rates related to prescribed undertakings:

(2) In setting rates under the Utilities Commission Act for a public utility carrying out a prescribed undertaking, the commission must set rates that allow the public utility to collect sufficient revenue in each fiscal year to enable it to recover its costs incurred with respect to the prescribed undertaking.

(3) The commission must not exercise a power under the Utilities Commission Act in a way that would directly or indirectly prevent a public utility referred to in subsection (2) from carrying out a prescribed undertaking.

12. The GGRR describes classes of prescribed undertakings pursuant to section 18 of the *Clean Energy Act*. Sections 2(3.7) to (3.9) of the GGRR describe a class of prescribed undertaking for the acquisition of renewable natural gas, as follows:

(3.7) A public utility's undertaking that is in the class defined in subsection (3.8) is a prescribed undertaking for as the purposes of section 18 of the Act.

(3.8) The public utility acquires renewable natural gas

(a) for which the public utility pays no more than \$30 per GJ, and

(b) that, subject to subsection (3.9), in a calendar year, does not exceed 5% of the total volume of natural gas provided by the public utility to its non-bypass customers in 2015.

(3.9) The volume referred to in subsection (3.8) (b) does not include renewable natural gas acquired by the public utility that the public utility provides to a customer in accordance with a rate under which the full cost of the following is recovered from the customer:

(a) the acquisition of the renewable natural gas;

(b) the service related to the provision of the renewable natural gas.

13. As set out in Part Three of this Final Submission, FEI's BPAs with Tidal meet the requirements of sections 2(3.7) and (3.8) of the GGRR to be a prescribed undertaking.

B. Principles of Statutory Interpretation

14. The *Clean Energy Act* and the GGRR must be interpreted in accordance with the accepted principles of statutory interpretation. The leading case on statutory interpretation is *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27,¹⁰ in which the Supreme Court of Canada relied on the following statement from Elmer Driedger in *Construction of Statutes* (2nd ed. 1983):

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

15. In *Sullivan on the Construction of Statutes*, the author explains further:¹¹

Under Driedger's modern principle, interpreters are obliged to consider the entire context of the text to be interpreted. As Driedger himself indicated, this includes the external context in its broadest sense.

¹⁰ Online: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1581/index.do>.

¹¹ Sullivan, Ruth, *Sullivan on the Construction of Statutes*, 6th Edition (Lexis Nexis Canada Inc., 2014), p. 655.

16. The BCUC must also have regard to section 8 of the *Interpretation Act*, which states that every enactment must be interpreted remedially:

8. Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

17. Therefore, the BCUC must give section 18 of the *Clean Energy Act* and sections 2(3.7) to 2(3.9) of the GGRR a fair, large and liberal interpretation that best ensures the attainment of its objects.

C. GGRR Must Be Given a Liberal Interpretation to Enable Acquisition of Renewable Natural Gas

18. The purpose of sections 2(3.7) to 2(3.9) is to increase FEI's ability to acquire renewable natural gas in order to reduce greenhouse gas emissions.

19. First, the purpose of the GGRR is readily apparent from its title. Its aim is to reduce greenhouse gases. Sections 2(3.7) to 2(3.9), in particular, seek to reduce greenhouse gas emissions by enabling the acquisition of renewable natural gas.

20. Second, the policy context of the GGRR is clear. The *Clean Energy Act* heightened FEI's role in the production of renewable natural gas, and the importance of FEI's role in developing renewable natural gas has been significantly increased again by the BC Government's CleanBC plan.¹² The key actions of the CleanBC plan include making residential and industrial natural gas consumption cleaner by requiring a minimum of 15 percent to come from renewable gas.

21. Third, the object of section 2(3.8) of the GGRR is clear when it is considered that the BCUC's Decision and Order G-194-10, dated December 14, 2010,¹³ approved a maximum price and maximum volume for renewable natural gas supply. With this context, the effect of section 2(3.8) of the GGRR was to increase the maximum price and maximum volume for renewable natural gas supply for FEI's Biomethane Program. The object of section 2(3.8) of the GGRR, therefore, is to increase FEI's ability to obtain renewable natural gas for its Biomethane Program, by bringing into effect a more generous maximum supply price and maximum supply volume.

22. Fourth, the Ministry of Energy, Mines and Petroleum Resources (the "Ministry") has filed letters with the BCUC in recent proceedings confirming the policy position of government. The Ministry filed a letter of comment on February 27, 2019 to confirm that the policy position

¹² The B.C. Government's CleanBC plan is online at <https://cleanbc.gov.bc.ca/>.

¹³ In The Matter Of Terasen Gas Inc. Biomethane Application Decision, December 14, 2010. Online: <https://www.ordersdecisions.bcuc.com/bcuc/decisions/en/111617/1/document.do>.

of the Government of BC is to support projects and initiatives that will lead to an increased renewable natural gas supply in BC.¹⁴ The Ministry also stated that “amendments were made to the Greenhouse Gas Reduction (Clean Energy) Regulation in the spring of 2017 to increase incentives for using renewable natural gas in transportation and to establish measures to increase the supply of RNG.”¹⁵

23. This context is important as it makes it clear that the object of sections 2(3.7) to 2(3.9) of the GGRR are to increase FEI’s ability to acquire renewable natural gas in order to reduce greenhouse gas emissions. The BCUC’s stance should be to interpret these provisions liberally to ensure that their purpose is accomplished.

PART THREE: MEETING THE LEGAL TEST FOR A PRESCRIBED UNDERTAKING

A. The Three-Part Legal Test Set out by the BCUC

24. In Decision and Order G-122-19, the BCUC described a three-part test for prescribed undertakings under section 2(3.8) of the GGRR, as follows:

To avail itself of the benefit of section 18(3) of the CEA, however, FEI must demonstrate to the reasonable satisfaction of the Panel that the BPA or the Project qualifies as a prescribed undertaking as defined under Section 2(3.8) of the GGRR, which sets out a three-part test:

- The public utility must be acquiring renewable natural gas (as opposed to some other form of commodity);
- The utility must pay no more than \$30 per GJ for that renewable natural gas; and
- Subject to certain exceptions, the annual volume of renewable natural gas acquired must not exceed 5% of the total volume of natural gas the utility provided to its non-bypass customers in 2015.

25. FEI’s BPAs with Tidal meet this three-part test, as discussed below.

¹⁴ FortisBC Energy Inc. Application for Acceptance of the Biogas Purchase Agreement Between FortisBC Energy Inc. and the City of Vancouver ~ Project No. 1598977, Exhibit C1-2. Online: https://www.bcuc.com/Documents/Proceedings/2019/DOC_53500_C1-2-MEMPR-Letter-of-Comment.pdf.

¹⁵ FortisBC Energy Inc. Application for Acceptance of the Biogas Purchase Agreement Between FortisBC Energy Inc. and the City of Vancouver ~ Project No. 1598977, Exhibit C1-2. Online: https://www.bcuc.com/Documents/Proceedings/2019/DOC_53500_C1-2-MEMPR-Letter-of-Comment.pdf.

B. The BPAs are an Acquisition of Renewable Natural Gas

26. The meaning of “acquire” in the GGRR is broad. The meaning of “acquire” is set out in section 29 of the Interpretation Act. The Interpretation Act states that, in an enactment, “acquire” means “to obtain by any method and includes accept, receive, purchase, be vested with, lease, take possession, control or occupation of, and agree to do any of those things, but does not include expropriate.”

27. In the Tidal BPAs, FEI is acquiring renewable natural gas within the meaning of the definition of “acquire” as FEI is purchasing the physical renewable natural gas, including securing the rights to the associated environmental attributes and greenhouse gas emissions reduction benefits. There is no requirement in the *Clean Energy Act* or GGRR that the renewable natural gas must be produced in B.C.

28. The BCUC’s determination in Decision and Order G-122-19, pp. 10-11, confirms that “acquire” has a broad meaning. The BCUC stated:

The Panel does not disagree that the accepted principles of statutory interpretation require that “acquire” be given a fair, large and liberal interpretation to accomplish the purpose of the GGRR and the CEA.

However, before considering the purpose of this legislation, the Panel must first consider the meaning of the term “acquire” as it is commonly used. The *Interpretation Act* states that “acquire” means to obtain by any method and includes: “...accept, receive, purchase, be vested with, lease, take possession, control or occupation of, and agree to do any of those things, but does not include expropriate.”

As noted earlier, the commodity relinquished or sold to FEI by the COV is raw biogas in the form of LFG, not RNG. RNG is only extractable following an additional upgrading process which entails initial capital expenditures and operating costs related to the Facilities over the life of the contractual arrangement, all of which must be taken into account in determining the overall cost of the RNG.

We turn then to the Cambridge Dictionary, which defines “acquire” as:

to obtain or begin to have something

Similarly, “obtain” is defined as:

to get something, especially by asking for it, buying it, working for it, *or producing it from something else*

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

29. Simply put, FEI is obtaining renewable natural gas by buying it from Tidal. It is clear that this is an acquisition of renewable natural gas within the meaning of the GGRR.

C. FEI will Pay No More than \$30 Per GJ

30. FEI’s two BPAs with Tidal are fixed-price contracts set at an amount well below \$30 per GJ.¹⁶ While the purchase price escalates each year, the purchase price in each biomethane purchase agreement cannot exceed the maximum acquisition price, which is currently set at \$30 per GJ in the GGRR. Therefore, FEI’s cost of renewable natural gas under the BPAs will not exceed the maximum acquisition price of \$30 per GJ in the GGRR, unless there is an increase to the maximum acquisition price in the GGRR or other legislation affecting the maximum acquisition price, or (in the absence of the GGRR) a BCUC decision that increases the maximum acquisition price.¹⁷ As such, the BPAs meet the requirement that the utility must pay no more than \$30 per GJ for renewable natural gas.

31. The BPAs include termination payments in the case either party defaults. Termination payments are not part of the purchase price and, as such, should not be considered as relevant to the \$30 per GJ maximum price for renewable natural gas. Notably, if the potential for FEI to make a termination payment is to be considered, then so should the revenue from Tidal if it were to default and make termination payments. As the termination payments are the same for each party, they would offset each other.

32. Moreover, it is highly unlikely that FEI would default on its obligations under the BPAs.¹⁸ FEI needs the renewable natural gas for its Biomethane Program and the BCUC’s acceptance of the agreements will ensure that FEI has a reasonable opportunity to recover the costs of the agreements in rates. Given that there is no reasonable prospect of FEI defaulting on its obligations under the BPAs, FEI making a termination payment due to an event of default is not a scenario that the BCUC should consider in relation to whether the price will exceed the GGRR threshold price.

¹⁶ Exhibit B-1, Appendix A. Exhibit B-2, BCUC IR 1.3.2.

¹⁷ Exhibit B-3, BCSEA IR 1.1.3. Also see Exhibit B-2-1, BCUC IR 1.3.1.

¹⁸ Exhibit B-5-1, CEC CONF 1.2.8.

D. Annual Volume of Renewable Natural Gas Will not Exceed Maximum

33. FEI's acquisition of renewable natural gas under the BPAs with Tidal will not exceed the maximum volumes in the GGRR. The maximum volume of biomethane acquisition that would qualify under section 2(3.8)(b) of the GGRR is approximately 8,900,000 GJs. The current maximum supply contracted by FEI, including the recently BPA with the City of Vancouver, totals 899,250 GJs annually. The actual production for all biomethane projects in 2018 was approximately 180,000 GJs. The combined total maximum supply from both the BPAs will increase the contracted maximum to 1,829,500 GJs annually, which remains well below the prescribed amount for the GGRR.¹⁹ FEI estimates that its total renewable natural gas supply with the London BPA and Niagara BPA will be approximately 17 percent of the maximum amount specified in the GGRR.²⁰

PART FOUR: PROPOSED BIOMETHANE PURCHASE AGREEMENTS IN THE PUBLIC INTEREST

34. While not necessary to consider given that the BPAs are prescribed undertakings, FEI submits that the BPAs with Tidal are in the public interest and should be accepted under section 71 even in the absence of the GGRR. FEI has provided detailed information on the agreements in its Application and responses to information requests. The public interest in the agreements is illustrated by the following points:

- **Biomethane Program Aligned with Energy Objectives:** It has been established that the Biomethane Program and increasing biomethane supply is aligned with the Province of BC's Energy Objectives in the *Clean Energy Act*. The London BPA and Niagara BPA increase FEI's biomethane supply, thereby growing FEI's Biomethane Program and benefitting BC's environment by reducing the requirement for conventional natural gas and reducing greenhouse gas emissions.²¹
- **Assists in Achieving the CleanBC Renewable Gas Target:** The CleanBC plan proposes a provincial target to achieve a 15 percent renewable gas blend in the downstream gas system by 2030. This target, which is calculated to be approximately 30 PJ's per year, will require FEI to increase supply acquisition more quickly and broadly than the status quo. The two BPAs with Tidal support the achievement of this provincial policy.²²
- **Need for Renewable Natural Gas:** The demand for biomethane is outstripping supply. As of August 2019, FEI has temporarily stopped accepting new requests for biomethane service and curtailed service to larger volume customers due to supply limitations.²³ FEI

¹⁹ Exhibit B-1, p. 12.

²⁰ Exhibit B-3, BCSEA IR 1.1.4.

²¹ Exhibit B-1, p. 12.

²² Exhibit B-1, p. 12.

²³ Exhibit B-5, CEC 1.11.1.

estimates that this will prevent approximately 1,500 residential rate class customers and 20 small commercial customers from enrolling in 2020. FEI also estimates there to be 15 to 21 larger industrial customers currently unable to participate.²⁴ FEI expects that the demand for renewable natural gas will exceed contracted renewable natural gas supply, even after the acceptance of the agreements.²⁵

- **Reduction of Greenhouse Gas Emissions:** FEI's acquisition of biomethane through the BPAs will reduce greenhouse gas emissions in B.C., as greenhouse gas emission reductions are accounted for at the end use. Claiming reductions in emissions due to the use of renewable natural gas requires a clear contractual path, real displacement of conventional gas, and the retirement of environmental attributes upon use. The BPAs with Tidal meet these requirements, such that the reduction in greenhouse gas emissions will be accounted for in B.C. where the renewable natural gas is used. Increasing the supply of renewable natural gas for FEI's Biomethane Program will allow new customers to subscribe to the program and will allow FEI to remove curtailments of existing customers. The use of renewable natural gas by transportation customers that currently use diesel will further reduce greenhouse gas emissions because the switch to compressed natural gas from diesel in and of itself reduces greenhouse gas emissions by 10 – 30 percent.²⁶
- **Reliable Supply:** The supply developers are properly funded and reliable. Both of these projects have the depth of financial resources and technical expertise to face challenges during construction.²⁷
- **Increased Diversity of Supply:** Diversification of FEI's renewable natural gas portfolio is beneficial to the reliability of supply for FEI's Biomethane Program. FEI's total renewable natural gas volumes have been higher in recent years, but individual project volume has varied. Having more supply projects from different suppliers will improve the overall reliability and stability of the renewable natural gas supply portfolio.²⁸
- **Low Risk:** There is no risk to FEI in the event that there are performance issues as FEI only pays for delivered renewable natural gas under the BPAs with Tidal. Additionally, in the event of ongoing and persistent shortfalls in the delivery of renewable natural gas, FEI is protected with a minimum supply volume. In the event that Tidal does not meet the minimum volumes, FEI may terminate the agreement and Tidal will be required to pay a termination payment.²⁹
- **Competitive Price:** FEI conducted a request for expressions of interest and received over thirty responses across Canada. Based on the responses received, the BPAs with

²⁴ Exhibit B-5, CEC 1.11.1.

²⁵ Exhibit B-3, BCSEA IR 1.9.1.

²⁶ Exhibit B-2, BCUC 1.2.1.

²⁷ Exhibit B-1, pp. 9-10.

²⁸ Exhibit B-1, p. 9.

²⁹ Exhibit B-5, CEC 1.14.2.

Tidal are competitive from a pricing and carbon intensity perspective.³⁰ The acquisition prices align with the prices of similar projects in BC³¹ and are competitive when compared to FEI's customers' next best low carbon alternative, namely, BC's low-carbon electricity supply.³² The price for renewable natural gas under the BPAs with Tidal is also below the price of environmental attributes in the Renewable Identification Number market in the U.S. plus the equivalent cost of conventional natural gas.³³

- **No Delay to BC Projects:** FEI expects to fully utilize all renewable natural gas from prospective projects. FEI does not expect to delay, terminate or curtail any in-province projects as a result of the purchase of renewable natural gas from out-of-province. FEI expects that it will need to develop all of the renewable natural gas supply available within BC, as well as projects outside of BC, to reach the CleanBC plan target of 15 percent renewable gas content. The CleanBC plan confirms the critical role that renewable gas will play in reducing emissions, accounting for approximately 75 percent of the emissions reduction in the building sector. As a result, FEI sees continued growth and development of the renewable gas portfolio in the future in order to achieve these objectives.³⁴

35. In FEI's submission, the London BPA and Niagara BPA are both in the public interest and should be accepted even in the absence of the GGRR.

PART FIVE: CONCLUSION

36. FEI's acquisition of renewable natural gas through the BPAs with Tidal meet the BCUC's three-part test for a prescribed undertaking under section 2(3.8) of the GGRR. The acquisition will result in a much-needed increase in the supply of renewable natural gas for FEI's Biomethane Program, and will reduce greenhouse gas emissions in BC. Therefore, FEI requests that the BCUC find that the two BPAs with Tidal are prescribed undertakings under the GGRR and accept them pursuant to section 71 of the UCA.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated: November 21, 2019

[original signed by C.R. Bystrom]

Christopher R. Bystrom

Counsel for FortisBC Energy Inc.

³⁰ Exhibit B-2-1, BCUC CONF IR 1.1.2.

³¹ Exhibit B-2-1, BCUC IR 1.1.1.

³² Exhibit B-2-1, BCUC CONF IR 1.1.3.

³³ Exhibit B-2-1, BCUC CONF IR 1.6.2.

³⁴ Exhibit B-5, CEC IR 1.7.12.

Appendix A

Sullivan, Ruth, *Sullivan on the Construction of Statutes*, 6th Edition
(Lexis Nexis Canada Inc., 2014), pp. 655-656.

**SULLIVAN
ON THE
CONSTRUCTION OF STATUTES**

Sixth Edition

by

Ruth Sullivan



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else) adjusts his or her understanding of the world to a greater or lesser degree. The impressions produced by every encounter with social science data leave a trace that affects subsequent encounters with statutory provisions and facts. To ensure the truth and validity of legislative facts, courts must be prepared to have their assumptions challenged. The point is neatly made by Binnie J. in the *Spence* case:

[W]hat “everybody knows” may be wrong. Until *Parks*, “everybody” knew the solemnity of a criminal trial and careful jury instructions from the judge meant there was little possibility that potential jurors in Toronto would be influenced by racial prejudice (Doherty J.A., at p. 360 of *Parks*, cites a number of trial decisions where race-based challenges for cause were rejected for that reason). Common law judges in early Tudor England would presumably have taken judicial notice of the “fact” that the sun revolves around the earth.⁴⁹

§22.24 Social science evidence not only promotes the truth, but also promotes impartiality. As McLachlin and L’Heureux-Dubé JJ. wrote in *R. v. S. (R.D.)*:

Judicial inquiry into the factual, social and psychological context within which litigation arises is not unusual. Rather, a conscious, contextual inquiry has become an accepted step towards judicial impartiality. In that regard, Professor Jennifer Nedelsky’s “Embodied Diversity and the Challenges to Law” ... offers the following comment:

What makes it possible for us to genuinely judge, to move beyond our private idiosyncrasies and preferences, is our capacity to achieve an “enlargement of mind”. We do this by taking different perspectives into account....^[50]

Judicial inquiry into context provides the requisite background for the interpretation and the application of the law....

An understanding of the context or background essential to judging may be gained from testimony from expert witnesses in order to put the case in context ...,⁵¹ from academic studies properly placed before the Court; and from the judge’s personal understanding and experience of the society in which the judge lives and works. This process of enlargement is not only consistent with impartiality; it may also be seen as its essential precondition.⁵²

§22.25 Conclusion. Under Driedger’s modern principle, interpreters are obliged to consider the entire context of the text to be interpreted. As Driedger himself indicated, this includes the external context in its broadest sense. As

⁴⁹ *R. v. Spence*, [2005] S.C.J. No. 74, [2005] 3 S.C.R. 458, at para. 51 (S.C.C.).

⁵⁰ (1997), 42 McGill L.J. 91, at 107.

⁵¹ *R. v. Lavallee*, [1990] S.C.J. No. 36, [1990] 1 S.C.R. 852 (S.C.C.); *R. v. Parks*, [1993] O.J. No. 2157, 15 O.R. (3d) 324 (Ont. C.A.), leave to appeal to S.C.C. refused [1993] S.C.C.A. No. 481, [1994] 1 S.C.R. x (S.C.C.), and *Moge v. Moge*, [1992] S.C.J. No. 107, [1992] 3 S.C.R. 813 (S.C.C.).

⁵² [1997] S.C.J. No. 84, [1997] 3 S.C.R. 484, at paras. 42-44 (S.C.C.).

courts work out the implications of total context, it becomes increasingly evident that interpretation using the modern principle is hard work. It requires interpreters not only to be experts in language and law (including common law, international law, constitutional law and statute law) but also to develop expertise in history, sociology, anthropology, psychology and more.