

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

**and**  
**British Columbia Hydro and Power Authority**  
**Call for Tenders for Capacity on Vancouver Island**  
**Review of Electricity Purchase Agreement**

**Vancouver, B.C.**  
January 22, 2005

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**PROCEEDINGS AT HEARING**

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**BEFORE:**

<b>R. Hobbs,</b>	<b>Chairperson</b>
<b>L. Boychuk,</b>	<b>Commissioner</b>

**VOLUME 11**

## APPEARANCES

G.A. FULTON  
P. MILLER

Commission Counsel

C.W. SANDERSON, Q.C.,  
H. CANE  
J.C. KLEEFELD

B. C. Hydro

L. KEOUGH

Duke Point Power Limited

C.B. LUSZTIG  
A. CARPENTER

British Columbia Transmission Corporation

D. PERTTULA

Terasen Gas (Vancouver Island) Inc.

G. STAPLE

Westcoast Energy Inc.

R. B. WALLACE

Joint Industry Electricity Steering Committee

C. BOIS

Norske Canada

D. NEWLANDS

Elk Valley Coal

F. J. WEISBERG

Green Island Energy

D. LEWIS

Village of Gold River

D. CRAIG

Commercial Energy Consumers

J. QUAIL.  
D. GATHERCOLE

BCOAPO  
(B.C. Old Age Pensioners' Organization, Council Of  
Senior Citizens Organizations Of B.C., End Legislated  
Poverty Society, Federated Anti-Poverty Groups Of B.C.  
Senior Citizens' Association Of B.C., And West End  
Seniors' Network)

W. J. ANDREWS  
T. HACKNEY

GSX Concerned Citizens Coalition  
B.C. Sustainable Energy Association  
Society Promoting Environmental Conservation

R. MCKECHNIE

Himself

R. YOUNG

Gabriola Ratepayers' Associations

K. STEEVES

Himself

1

**CAARS**

2

VANCOUVER, B.C.

3

January 22<sup>ND</sup>, 2005

4

**(PROCEEDINGS RESUMED AT 8:30 A.M.)**

5

THE CHAIRPERSON: Please be seated.

6

Mr. Fulton?

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MR. FULTON: Thank you, Mr. Chairman. Good morning. The

8

first panel this morning is Green Island Energy. I

9

have circulated an order of cross-examination. The

10

only correction to that order of cross-examination is

11

that Duke Point Power Limited, will move, once again,

12

from the number one position to the number seventeen

13

position.

14

THE CHAIRPERSON: Mr. Fulton, I noted in your procedural

15

letter, on page three, at the bottom of the page,

16

where it says "Parties who support the testimony of a

17

witness or a witness panel should not expect to cross-

18

examine that witness or witness panel."

19

**Proceeding Time 8:32 a.m. T2**

20

MR. FULTON: Yes. I have canvassed people with estimates

21

of cross-examination, Mr. Chairman, and they all for

22

this panel appear to be very brief for those who are

23

cross-examining.

24

THE CHAIRPERSON: Okay. Let's proceed then.

25

MR. WEISBERG: Good morning, Mr. Chairman. I'm pleased

26

to be here today to present for you the Green Island

1 Energy witness panel. They will be speaking to  
2 evidence found in items which I will identify now and  
3 then refer to collectively later, to keep the record  
4 briefer.

5 That evidence is found first in Exhibit C9-  
6 3, which is the term sheet dated November 18<sup>th</sup>, 2004.  
7 Secondly, Exhibit C9-10, which is the prefilled  
8 evidence of Green Island Energy; Exhibit C9-13 which  
9 is a confidentially filed compact disc containing  
10 data; C9-14, which is the confidentially filed price  
11 information form. C9-16, which is the response to  
12 Duke Point Power Information Request; C9-17, which is  
13 the response to B.C. Hydro's Information Request; C9-  
14 18 is the response to BCUC IR; and finally, C9-19 is a  
15 confidentially filed backup document for the BCUC  
16 Information Request response.

17 In my examination in chief of the witness  
18 panel, I'll refer to all of those items collectively  
19 as simply the evidence of Green Island Energy.

20 **Proceeding Time 8:34 a.m. T03**

21 Mr. Chair, before I proceed further, may I  
22 ask if you have established any pre-set time  
23 allotments for cross-examination of this panel?

24 THE CHAIRPERSON: No, my only concern is the one that  
25 I've raised already with respect to people cross-  
26 examining who support the position of this panel. But

1 other than that, no.

2 MR. WEISBERG: With that, then, I would ask that the  
3 Green Island panel be sworn, please.

4 **GREEN ISLAND ENERGY PANEL**

5 **PAUL WILLIS, Affirmed:**

6 **SEAN EBNET, Affirmed:**

7 **DAVID MORROW, Affirmed:**

8 EXAMINATION IN CHIEF BY MR. WEISBERG:

9 MR. WEISBERG: Q: Mr. Chair, Madam Commissioner, seated  
10 closest to you is Mr. Paul Willis.

11 Just for the record, Mr. Willis, please  
12 state your full name on the record.

13 MR. WILLIS: A: Paul Willis.

14 MR. WEISBERG: Q: And you are president and founder of  
15 Willis Energy Services Limited, is that correct?

16 MR. WILLIS: A: That is right.

17 MR. WEISBERG: Q: And you're here in a capacity as a  
18 contractor to Green Island Energy.

19 MR. WILLIS: A: Yes.

20 MR. WEISBERG: Q: Have you previously testified before  
21 this Commission?

22 MR. WILLIS: A: No, I don't believe I've ever been a  
23 witness before this Commission.

24 MR. WEISBERG: Q: Was the evidence that I've referred  
25 to prepared either by you or under your direction?

26 MR. WILLIS: A: Yes, I helped prepare much of that

1 evidence.

2 MR. WEISBERG: Q: And do you have any changes or  
3 amendments to that evidence?

4 MR. WILLIS: A: I do have one with respect to the  
5 tables that I prepared. And it's concerned with the  
6 firm gas transportation adder of \$131 million that I  
7 calculated for the Duke Point Power, which occurs in a  
8 number of the tables. Based -- that, based upon Mr.  
9 Simpson's testimony, I would want to increase that 131  
10 million by \$21 million.

11 So I endeavour to send tables back with  
12 that correction.

13 MR. WEISBERG: Q: Thank you. And with that  
14 qualification and the undertaking that you've  
15 provided, do you adopt the evidence as your direct  
16 testimony in this proceeding?

17 MR. WILLIS: A: Yes.

18 MR. WEISBERG: Q: Thank you. Mr. Morrow, can you  
19 please state your full name for the record.

20 MR. MORROW: A: David Morrow.

21 MR. WEISBERG: Q: And you're president of Hydraft  
22 Development Services Inc., is that right?

23 MR. MORROW: A: Yes.

24 MR. WEISBERG: Q: And again, you've been retained as a  
25 consultant to provide expert services to Green Island  
26 Energy?

1 MR. MORROW: A: That's correct.

2 **Proceeding Time 8:37 a.m. T4**

3 MR. WEISBERG: Q: Have you previously testified before  
4 this Commission?

5 MR. MORROW: A: No, I have not.

6 MR. WEISBERG: Q: Was the evidence prepared by you or  
7 under your direction?

8 MR. MORROW: A: Yes.

9 MR. WEISBERG: Q: And do you have any changes or  
10 amendments to make to that evidence?

11 MR. MORROW: A: Nothing.

12 MR. WEISBERG: Q: Do you then adopt the evidence as  
13 your direct testimony in this proceeding?

14 MR. MORROW: A: Yes.

15 MR. WEISBERG: Q: Thank you.

16 And finally Mr. Ebnet, state your full name  
17 please.

18 MR. EBNET: A: Sean Ebnet.

19 MR. WEISBERG: Q: And confirm please that you are the  
20 Vice-President Energy Development of Green Island  
21 Energy Limited.

22 MR. EBNET: A: That is correct.

23 MR. WEISBERG: Q: And have you previously testified  
24 before this Commission?

25 MR. EBNET: A: Once before I testified in the VIGP  
26 hearings in 2003.

1 MR. WEISBERG: Q: Was the Green Island evidence  
2 prepared either by you or under your direction?

3 MR. EBNET: A: I directed all of the Green Island  
4 evidence that was submitted.

5 MR. WEISBERG: Q: And do you, sir, have any changes or  
6 amendments that you wish to make to that evidence?

7 MR. EBNET: A: Just one point of clarification. In the  
8 evidence we submitted, as I'm told by my environmental  
9 expert on our team, it's standard practice to refer to  
10 greenhouse gas credits as CO<sub>2</sub> emission credits. So  
11 references of our evidence where it's referenced as  
12 GHG offsets, it should actually be clarified as CO<sub>2</sub>  
13 offsets since CO<sub>2</sub> is the only GHG gas where credits are  
14 issued or applied.

15 MR. WEISBERG: Q: And with that clarification, sir, do  
16 you adopt the evidence as your direct testimony in  
17 this proceeding?

18 MR. EBNET: A: I do.

19 MR. WEISBERG: Q: And sir, you have an opening  
20 statement that you wish to make?

21 MR. EBNET: A: Yes, briefly.

22 Green Island Energy Limited came to British  
23 Columbia and invested in the community of Gold River,  
24 believing that we could make a valuable contribution  
25 to the energy supply needs of Vancouver Island. We  
26 believed that we would be bidding into a fair an



1 unbiased competition, wherein the lowest-cost energy  
2 provider could also produce the required reliable  
3 capacity that would be awarded an EPA.

4 We recognize that B.C. Hydro has tremendous  
5 responsibility to ensure the reliable, cost-effective  
6 supply of electricity to Vancouver Island.  
7 Furthermore, we understand the need for clear, pre-  
8 determined criteria to ensure that only viable  
9 projects are qualified for more detailed consideration  
10 and evaluation of contract award.

11 We acknowledge the value of the QEM model  
12 as an evaluation tool in this Call for Tender.

13 We participated in this hearing to  
14 establish, by our evidence, that our Gold River Power  
15 Project is an excellent, reliable capacity project  
16 with extremely low energy costs and no fuel risk to  
17 the ratepayers. As such, it is a key component of the  
18 most cost-effective option to meet the capacity  
19 deficiency on Vancouver Island commencing in winter of  
20 2007 and 2008.

21 For reasons we do not agree with, the cost-  
22 effectiveness of our project has not been evaluated by  
23 B.C. Hydro, either alone or in combination with any  
24 other projects.

25 **Proceeding Time 8:40 a.m. T05**

26 B.C. Hydro had the discretion to invoke the

1       privative clause that it -- and to evaluate our  
2       project in combination with other projects, in  
3       portfolios aggregating less than 150 megawatts.  
4       Regrettably, B.C. Hydro chose not to do so.

5               To directly address what the Commission  
6       panel has identified as the principal issue for this  
7       proceeding, Green Island Energy has submitted evidence  
8       of portfolios of Tier 2 projects, evaluated using B.C.  
9       Hydro's QEM model. That analysis clearly demonstrates  
10      both significant cost savings and improved reliability  
11      for the ratepayers of British Columbia. As a  
12      proponent of a successfully-tendered project, Green  
13      Island Energy is ready, willing and able to make an  
14      immediate and long-term contribution to, and cost-  
15      effective new generation, and improve reliability for  
16      Vancouver Island.

17   MR. WEISBERG:    Q:    Thank you, Mr. Ednet.

18               Mr. Chairman, with that opening statement,  
19      the panel is available for cross-examination.

20   THE CHAIRPERSON:   Thank you, Mr. Weisberg.

21   MR. FULTON:      British Columbia Transmission Corporation?  
22      No questions.

23               Joint Industry Electricity Steering  
24      Committee.

25   MR. WALLACE:      No questions, thank you.

26   MR. FULTON:      NorskeCanada.

1 MR. BOIS: No questions, thank you.

2 MR. FULTON: Village of Gold River? No questions?

3 MR. LEWIS: No questions.

4 MR. FULTON: Commercial Energy Consumers?

5 MS. COCHRANE: No questions.

6 MR. FULTON: British Columbia Old Age Pensioners'

7 Organization?

8 MR. QUAIL: No questions.

9 MR. FULTON: GSX Concerned Citizens Coalition?

10 MR. ANDREWS: No questions.

11 MR. FULTON: Is Mr. Steeves here this morning?

12 Mr. Steeves apparently has questions, Mr.

13 Chairman.

14 MR. STEEVES: Good morning, Mr. Chairman.

15 Well, first of all, I should start off by

16 saying I don't have a question at this point in time,

17 but I have to rule -- raise to state that I'm -- we

18 are not amused. We are extremely annoyed.

19 I came across this proceedings *In Camera*

20 from Volume 8, January 19<sup>th</sup>, 2005, ran over this

21 document last night, and I thoroughly must object. So

22 I'm putting forward a point of order or an objection,

23 or a legal statement or whatever, but at this point in

24 time I must bring this forward and say that, for lack

25 of a better description, there is an objection --

26 apprehension of bias.

1                   That what has happened in this document is  
2                   that there is a pre-determined decision that has been  
3                   arrived at at less than one-third of the way through  
4                   these proceedings, which means that this is not a fair  
5                   process, it's not just, and hence these proceedings  
6                   should be stopped or delayed. And something should be  
7                   done.

8                   Right now, I don't know what should be  
9                   done, but looking at this document, I feel that  
10                  something has gone awry. That if the Panel Commission  
11                  can come in and come to a decision before the  
12                  proceeding has gone through the full process, that  
13                  this is a written indication, for the record, this is  
14                  a written indication that there is something wrong  
15                  here, and we have to do a full re-evaluation. And at  
16                  this point in time, I say the proceedings should be  
17                  stopped and some sort of reconsideration should be  
18                  undertaken.

19                  And with regards to the reconsideration  
20                  issue that was raised earlier, the joint steering  
21                  committee -- Joint Industrial Steering Committee, with  
22                  regards to that reconsideration, I would like to point  
23                  out that in the reconsideration they have, regarding  
24                  the issue of Section 71, that in Section 71 they raise  
25                  the issue of "public interest", and under the  
26                  documents for the *Commission Act*, there is no

1 definition of "public interest."

2 I put it to you, sir, what is the  
3 definition of "public interest"? How is that served?

4 THE CHAIRPERSON: It's not a question that I'll take, Mr.  
5 Steeves, but I will -- because your comments are ones  
6 that need to be taken very seriously by this Panel, I  
7 will give an opportunity at the appropriate time to  
8 consider the issues that you're raising and give an  
9 opportunity for others to comment.

10 I may have an obligation to do that right  
11 now, however I would prefer to proceed with this  
12 panel, Mr. Steeves, if that's satisfactory to you.

13 **Proceeding Time 8:45 a.m. T6**

14 If it's satisfactory to you then, we will  
15 then need to determine when to deal with the issues  
16 that you're raising.

17 MR. STEEVES: All right. It is satisfactory. I just  
18 have one question for the panel, and that is the  
19 material that they're using, I read a local article in  
20 a local paper here, the *Georgia Straight*, and it gave  
21 a quick description of their facility and their  
22 project, and in it they refer to the issue of the  
23 material that they use, I believe it's called the RFP,  
24 and basically it's a word that refers to the material  
25 which is reconstituted municipal waste material. And  
26 from an industrial pollution aspect, we should

1 actually raise the issue of what type of material that  
2 is -- what impact does that have on the environment.  
3 There are costs with regards to the environment and I  
4 feel that should be in scope. So I just raise that to  
5 inquire as to what that material would be, what  
6 environmental safeguards they have put in place with  
7 regards to that material.

8 THE CHAIRPERSON: And that's an issue that we can deal  
9 with another time in this proceeding if you want a  
10 ruling with respect to scope for that.

11 Let's first deal with the first issue that  
12 you've raised with respect to the apprehension of bias  
13 arising from the *In Camera* session.

14 Mr. Fulton, do I need to consider that now?

15 MR. FULTON: Mr. Chairman, you did indicate earlier on in  
16 these proceedings that we would deal with procedural  
17 matters at the end of the day or at the beginning of  
18 the day. We're in the course of this panel now. It  
19 would be my suggestion that we at least finish with  
20 this panel and hopefully also the Norske panel, and  
21 then deal with that issue that Mr. Steeves has raised.

22 THE CHAIRPERSON: Is that satisfactory to you, Mr.  
23 Steeves?

24 MR. STEEVES: All right.

25 THE CHAIRPERSON: Thank you.

26 Mr. Fulton, we need to continue with your

1 list of cross-examiners.

2 MR. FULTON: Yes, the next cross-examiner is Duke Point  
3 Power.

4 MR. KEOUGH: Thank you, Mr. Chairman, good morning.

5 **CROSS-EXAMINATION BY MR. KEOUGH:**

6 MR. KEOUGH: Q: Good morning, gentlemen. Just as a  
7 matter of clarification, Mr. Morrow, I wanted to  
8 confirm that you are not here to speak to anything  
9 associated with your prior employment or prior work  
10 with Epcor?

11 MR. MORROW: A: That's correct.

12 MR. EBNET: A: If I could also add, Mr. Morrow has been  
13 retained by Green Island Energy to specifically assist  
14 in an analysis of reliability of the Tier 2  
15 portfolios. Any information regarding the numbers or  
16 the information presented in those tables was solely  
17 developed by Mr. Willis. So your questions are best  
18 addressed to Mr. Willis. Mr. Morrow provided no  
19 information regarding Epcor's bid to Green Island  
20 Energy. He's bound by confidentiality agreements and  
21 prohibited from doing so.

22 MR. KEOUGH: Q: I assumed that. I just wanted to  
23 confirm it for the record, so thank you both.

24 I'd like to start off here by talking for a  
25 few moments about certain of the CFT criteria, if I  
26 might. Am I correct in my understanding that Green

1 Island knew and understood that the minimum bid size  
2 for a single bid or a portfolio of bids was 150  
3 megawatts?

4 MR. EBNET: A: We recognized what was clearly spelled  
5 out in the Call for Tender, which included a reference  
6 to 150 megawatt minimum as well as a privative clause  
7 that allowed B.C. Hydro the option to consider  
8 projects or portfolios of projects that aggregated  
9 less than 150 megawatts. And as also our view of the  
10 January 23<sup>rd</sup> letter by the Commission addressing a  
11 minimum threshold of 115 megawatts.

12 **Proceeding Time 8:50 a.m. T07**

13 MR. KEOUGH: Q: Okay, that clause that we're talking  
14 about, that had the -- putting aside your views on  
15 what the Commission did or did not say, because I'm  
16 really not interested in exploring that with you at  
17 this point, I'm interested in talking about the CFT  
18 document and what was in there and what you understood  
19 or didn't understand from that. So if we could narrow  
20 it to that right now, I'd appreciate that.

21 With regard to the CFT document, was there  
22 any confusion on your part that the CFT document was  
23 seeking a minimum bid of -- single bid or an aggregate  
24 portfolio of 150 megawatts? That was fairly clear in  
25 the document, wasn't it?

26 MR. EBNET: A: We understand that the CFT sought a



1 minimum of 115 -- or, excuse me, 150 megawatts.

2 MR. KEOUGH: Q: Okay. And you knew, therefore, that  
3 your bid, which I understand was 75 megawatts alone,  
4 would not meet the 75 -- the 150 threshold. You knew  
5 that, did you?

6 MR. EBNET: A: Seventy-five --

7 MR. WEISBERG: Mr. Chairman, I believe that the answer  
8 that Mr. Ebnet already gave provided an important  
9 qualification, that I don't think is accounted for in  
10 Mr. Keough's question.

11 MR. KEOUGH: Well, he doesn't have to repeat the  
12 qualification every question I ask. He's made his  
13 statement and I'm just trying to get an answer to my  
14 question now. I'm not sure what the issue is here.

15 Maybe I can make it really simple.

16 MR. KEOUGH: Q: You knew 75 was less than 150?

17 MR. EBNET: A: Seventy-five is less than 150.

18 MR. KEOUGH: Q: Doesn't it follow from that, that you  
19 knew that in order to meet the 150 threshold, Green  
20 Island knew that it would have to be aggregated in a  
21 portfolio with some other bidders? In other words,  
22 you know, you knew you'd need a little help from your  
23 friends, to quote from the song. You knew that,  
24 right?

25 MR. EBNET: A: We recognized that the minimum bid to  
26 bid into the Call For Tender was 25 megawatts, and as

1 a 75-megawatt plant, that if there was other projects  
2 that would form a portfolio with us greater than 115  
3 megawatts, we believed we would have been evaluated  
4 under this Call For Tender.

5 MR. KEOUGH: Q: Right. But, just to make sure we're  
6 really clear, you knew that as a 75-megawatt bid, in  
7 order to meet the 150 threshold, again, 75 being less  
8 than 150, that you would have to be aggregated with  
9 someone else. You knew that?

10 MR. EBNET: A: We knew that there would be -- we needed  
11 to be aggregated with another project to meet the  
12 minimum threshold --

13 MR. KEOUGH: Q: Okay.

14 MR. EBNET: A: -- established in the 23<sup>rd</sup> January  
15 letter.

16 MR. KEOUGH: Q: Right. And you also knew -- or maybe I  
17 can confirm this. You did not control those other  
18 bidders, did you?

19 MR. EBNET: A: That is correct, we did not.

20 MR. KEOUGH: Q: All right. Thank you, gentlemen.  
21 Thank you, Mr. Chairman. Those are my questions.

22 MR. FULTON: B.C. Hydro and Power Authority.

23 MR. SANDERSON: No questions, thank you, Mr. Chairman.

24 **CROSS-EXAMINATION BY MR. FULTON:**

25 MR. FULTON: Q: I have a few questions, panel. Good  
26 morning.



1 MR. FULTON: Q: Okay, thank you. Let me then move to  
2 the change in term which was provided in the March  
3 2004 Addendum 10 to the CFT. That change in term  
4 changed the minimum term from 10 years to 25 years,  
5 with the option of B.C. Hydro to extend the agreement  
6 by a further 10 years, agreed?

7 MR. EBNET: A: Yes.

8 MR. FULTON: Q: Okay. Did that extension present any  
9 problems for Green Island?

10 MR. EBNET: A: No it did not, either from a fuel  
11 standpoint or a GHG emission standpoint.

12 MR. FULTON: Q: Okay, thank you. And finally, on the  
13 subject of the fuel risk to the buyer, is any member  
14 of the panel aware of any cases where a large power  
15 buyer has taken a tolling approach to fuels other than  
16 natural gas?

17 MR. EBNET: A: Speaking personally again, I am not  
18 aware of any arrangements such as that.

19 MR. FULTON: Q: Mr. Willis?

20 MR. WILLIS: A: Well, it's kind of a difficult issue.  
21 I am aware, but for confidential reasons I can't  
22 indicate what they are.

23 MR. FULTON: Q: Okay, well, that's fine.

24 MR. WILLIS: A: But I am aware.

25 MR. FULTON: Q: There are some circumstances.

26 MR. WILLIS: A: Yeah.

1 MR. FULTON: Q: Thank you. Those are my questions, Mr.  
2 Chairman.

3 COMMISSIONER BOYCHUK: Good morning, gentlemen. In your  
4 evidence, and look at Part 2, I guess, and I'm looking  
5 at Exhibit C9-10. I'll call it section 2 on page 2  
6 and onwards, you discussed resource option bias, and  
7 in section 3 the unduly stringent mandatory criteria  
8 in the CFT process, that in Green Island Energy's view  
9 would not have been appropriate in terms of the design  
10 of the CFT process.

11 MR. EBNET: A: Yes.

12 COMMISSIONER BOYCHUK: And I guess what I'm wondering is,  
13 as you know, we've had this Section 71 application  
14 before us at this time, and we've clarified in a  
15 letter that what is before us is the Duke Point EPA  
16 that has been entered into between Duke Point and B.C.  
17 Hydro. And what we're looking at is whether we're  
18 going to accept that contract as filed, make changes  
19 to it, or simply does not accept it.

20 And what I'm wondering from a procedural  
21 point of view, if I may, and I'm sure counsel have  
22 more to say about this later perhaps in argument, is  
23 where you think we'd be going if we were to accept  
24 your arguments laid out in Sections 2 and 3 in terms  
25 of the resource option bias and the unduly stringent  
26 criteria.

1                   If we were to accept those arguments and  
2           find that it wouldn't be appropriate in the  
3           circumstance to accept that contract as filed, where  
4           would we be going at that point?

5 MR. EBNET:   A:   I'm sorry, the last part of our  
6           question, if you could repeat that for me.

7 COMMISSIONER BOYCHUK:   If the Commission were not to --  
8           based on the submissions of Green Island Energy and  
9           other parties in this proceeding, if we were to agree  
10          that there was resource option bias in this project  
11          and/or the terms were unduly stringent enough to  
12          warrant our not accepting the contract as filed under  
13          Section 71, where would we be at that point?

14 MR. EBNET:   A:   Oh, I understand, thank you.

15                   Well, it was our attempt in the evidence  
16          that we submitted to demonstrate several different  
17          portfolios of a Tier 2 option, all of which could be  
18          our pre-qualified bidders and projects in the Call for  
19          Tender. Also projects that could meet an online date  
20          prior to May of 2007. And of the various options  
21          identified, we have reason to believe, certainly on  
22          behalf of Green Island Energy, we remain ready and  
23          able and willing to initiate immediately the  
24          construction of our project, and we believe that the  
25          other bidders -- we'll let Norske speak for  
26          themselves, but are in a similar position to do so as

1 well.

2 So in answer to your question, we believe  
3 that an option, if the EPA award to the Duke Point  
4 Project is not awarded, that there is a very viable  
5 option to immediately address the shortfalls on  
6 Vancouver Island by 2007, and can be done so in a more  
7 cost-effective manner with less fuel risk to the  
8 ratepayer.

9 **Proceeding Time 9:00 a.m. T09**

10 COMMISSIONER BOYCHUK: Thank you.

11 And you spoke briefly this morning with Mr.  
12 Keough for Duke Point Power, and reference was made to  
13 the Commission's January 23<sup>rd</sup> letter.

14 MR. EBNET: A: Yes.

15 COMMISSIONER BOYCHUK: And the statement therein, at page  
16 three, and just for the benefit of the record that's  
17 tab -- Appendix F to Exhibit B-1. You don't need to  
18 pull it up, I think you're familiar with it, you had  
19 the discussion with Mr. Keough.

20 The Commission statement that "the VIGP  
21 Commission panel also stated..." -- we're referring to a  
22 place in the VIGP decision. "...that B.C. Hydro should  
23 consider other resource additions if a dependable  
24 capacity (cost-effective), and the CFT does not exceed  
25 150 megawatts."

26 And I know you've discussed this briefly

1 with Mr. Keough, but how did you interpret that when  
2 you read that? I presume you saw the January 23<sup>rd</sup>  
3 letter?

4 MR. EBNET: A: Yes.

5 COMMISSIONER BOYCHUK: Earlier in the process?

6 MR. EBNET: A: Yes. Our interpretation is that Hydro,  
7 B.C. Hydro was given the opportunity, both through  
8 their own privative clause as well as direction from  
9 the Commission, to consider alternative portfolios,  
10 aggregating less than 150 megawatts, if they  
11 considered those projects for that portfolio to be  
12 more cost-effective than a portfolio above 150  
13 megawatts, and still meet the reliability needs for  
14 the Vancouver Island. Our contention is that Hydro  
15 never evaluated that.

16 COMMISSIONER BOYCHUK: For the reasons that you've set  
17 out in your evidence.

18 MR. EBNET: A: Yes. That's correct.

19 COMMISSIONER BOYCHUK: Because Mr. Keough asked you  
20 whether you understood that they had to be aggregated  
21 with other bids.

22 MR. EBNET: A: Right.

23 COMMISSIONER BOYCHUK: And your answer, it wasn't  
24 properly evaluated based on -- as you've laid out.

25 MR. EBNET: A: Right. There was a portfolio of at  
26 least 122 megawatts that could have been evaluated



1 under the QEM model, but was not.

2 COMMISSIONER BOYCHUK: Okay, thank you. I think that  
3 will do, gentlemen. Thank you very much.

4 THE CHAIRPERSON: Thank you. I have no questions. Is  
5 there any re-examination, Mr. Weisberg?

6 MR. WEISBERG: I don't think it's necessary to explore  
7 with Mr. Ednet the basis for his calculation that --  
8 or his conclusion that 75 is less than 150. So I have  
9 no re-examination, thank you.

10 THE CHAIRPERSON: Thank you, you're excused. Thank you.

11 (PANEL ASIDE)

12 MR. FULTON: Mr. Chair, while the Green Island Energy  
13 panel is standing down, the next panel is the  
14 NorskeCanada panel, and I'm going to suggest that we  
15 use the same order of cross-examination that we used  
16 for Green Island, again with the exception that Duke  
17 Power go down to the 17<sup>th</sup> position and also that BCTC,  
18 which is in the number two position, cross-examine  
19 immediately before Duke Point Power.

20 MR. BOIS: Good morning, Mr. Chairman. Good morning,  
21 Commissioner Boychuk.

22 Norske is pleased to present a panel of two  
23 witnesses today to speak to evidence it's filed in  
24 these proceedings. For your information and for those  
25 who wish to question these witnesses, Mr. Lindstrom  
26 and Mr. Fitzgerald are here primarily to speak to the

1 following evidence; Norske's direct evidence, which is  
2 essentially its demand management proposal, which has  
3 been filed and identified as Exhibit C2-3;  
4 NorskeCanada's responses to the Commission -- or  
5 Information Requests from the Commission, Exhibit C2-  
6 10; NorskeCanada's responses to the IRs of the Gasex  
7 *et al.*, or GSX CCC *et al.*, which is Exhibit C2-9; and  
8 Norske's responses to the IRs of Duke Point Power,  
9 Exhibit C2-11.

10 The witnesses before you are Mr. Robert  
11 Lindstrom, Vice-President, Strategy, for NorskeCanada,  
12 and Mr. Dennis Fitzgerald, Director of Energy for  
13 NorskeCanada.

14 I'll have the witnesses sworn.

15 **NORSKECANADA PANEL**

16 **ROBERT LINDSTROM, Affirmed:**

17 **DENNIS FITZGERALD, Affirmed:**

18 MR. BOIS: The CVs of these witnesses were also filed in  
19 these proceedings as Exhibit C2-7, and unless you wish  
20 me to take them through their CVs, I wasn't planning  
21 to do that, but if you want me to I can ask them to  
22 just give a brief description of their  
23 responsibilities.

24 THE CHAIRPERSON: I don't think that's necessary, thank  
25 you.

26 MR. BOIS: Thank you.

1 **EXAMINATION IN CHIEF BY MR. BOIS:**

2 MR. BOIS: Q: Mr. Lindstrom, do you have a copy before  
3 you of the four exhibits that I just referred to:  
4 Exhibit C2-3, which is your demand-side management  
5 proposal, Exhibit C2-9, the responses to the IRs of  
6 the GSXCCC, Exhibit C2-10, which is the IRs --  
7 Norske's responses to the Commission's IRs, and  
8 Exhibit C2-11 which are the responses of Norske to the  
9 Duke Point IRs?

10 **Proceeding Time 9:05 a.m. T10**

11 MR. LINDSTROM: A: I do.

12 MR. FITZGERALD: A: Yeah.

13 MR. BOIS: Q: Thank you. And were those pieces of  
14 evidence prepared by you or under your direction?

15 MR. LINDSTROM: A: Yes they were.

16 MR. BOIS: Q: And do you have any changes, corrections  
17 or updates that you wish to make to that evidence?

18 MR. LINDSTROM: A: None.

19 MR. BOIS: Q: Do you adopt that evidence as your  
20 testimony in these proceedings?

21 MR. LINDSTROM: A: I do.

22 MR. BOIS: Q: Mr. Fitzgerald, do you have a copy before  
23 you of the four exhibits that we just referred to:  
24 Norske's demand management proposal C2-3; the IR  
25 responses to the GSX CCC Exhibit 2-9; the IR responses  
26 to Duke Point Power, Exhibit C2-11; and the IR

1 responses to the Commission IRs C2-10?

2 MR. FITZGERALD: A: I do.

3 MR. BOIS: Q: And were those pieces of evidence  
4 prepared by you or under your direction?

5 MR. FITZGERALD: A: They were.

6 MR. BOIS: Q: And do you have any changes, corrections  
7 or updates that you wish to make to those?

8 MR. FITZGERALD: A: No, I do not.

9 MR. BOIS: Q: And do you adopt that evidence as your  
10 testimony in these proceedings?

11 MR. FITZGERALD: A: Yes I do.

12 MR. BOIS: Q: Thank you.

13 Mr. Chairman, now that the formalities are  
14 done, last night we filed electronically an opening  
15 statement of Mr. Lindstrom, and I have copies here  
16 which Mr. Lindstrom is prepared to read into the  
17 record. But I provided copies for all of the  
18 interested parties here today, sir. And I've been  
19 advised that that should be marked as C2-14.

20 THE CHAIRPERSON: Thank you.

21 THE HEARING OFFICER: C2-14.

22 (LETTER DATED JANUARY 20, 2005 FROM MILLER THOMSON  
23 WITH ATTACHED OPENING STATEMENT OF NORSKECANADA,  
24 PRESENTED BY R.H. LINDSTROM, MARKED AS EXHIBIT C2-14)

25 MR. BOIS: And if it's acceptable to you, Mr. Chairman, I  
26 would ask that Mr. Lindstrom read his opening

1 statement now, or deliver his opening statement.

2 THE CHAIRPERSON: Yes, it is.

3 MR. BOIS: Thank you.

4 MR. LINDSTROM: A: Mr. Chair, thank you for the  
5 opportunity to provide the Panel with our input.

6 We are here today to offer our perspective  
7 as part of a solution for Vancouver Island.

8 NorkseCanada operates three paper mills on the Island  
9 which comprise a large part of the load that B.C.  
10 Hydro currently supplies.

11 We appreciate the importance B.C. Hydro  
12 places on providing Vancouver Island customers with  
13 adequate, reliable and affordable energy. We maintain  
14 an active interest in how B.C. Hydro operates its  
15 system, because every customer big and small, will  
16 ultimately bear the impact of resources B.C. Hydro  
17 uses, and as importantly the rates charges for the  
18 installation of any new capacity.

19 We agree with dozens of islanders who  
20 shared their views in Nanaimo on January 8<sup>th</sup>, that  
21 there are more efficient options available at lower  
22 cost to the ratepayer, with lower risks attached.

23 NorkseCanada maintains that the proposed  
24 EPA and generation plant is not the best choice for  
25 Vancouver Island. We maintain the best choice for  
26 Vancouver Island is one that includes efficiency

1 improvements, industrial demand-side management, and  
2 new transmission. It could also include new cost-  
3 effective power generation.

4 In the last two years, through VIGP and now  
5 DPP, we have offered various alternatives using our  
6 mills to demonstrate how NorkseCanada can be part of a  
7 solution that helps B.C. Hydro and islanders address  
8 the capacity shortfalls. We have repeatedly indicated  
9 our willingness to be part of a long-term strategy for  
10 the Island.

11 In the current proceedings, we are  
12 presenting the NorkseCanada demand management  
13 proposal, or NCDMP. We are confident that our  
14 proposal will provide the capacity as expected. We  
15 presented the NCDMP during the BCT capital plan review  
16 last year, and we believe it is a good fit with the  
17 new 230 kV line. We are strong supporters of the 230  
18 kV line. It addresses the need for capacity in the  
19 system and it corrects the vulnerability of a reliance  
20 on a single electricity corridor to serve the vast  
21 majority of the Island customer base.

22 NorkseCanada was encouraged by the  
23 Commission's direction to BCTC to complete a technical  
24 review of NCDMP, with the participation of B.C. Hydro  
25 as necessary. We appreciate the review by BCTC and  
26 we're disappointed to learn that B.C. Hydro was not

1 part of that review. Nonetheless, our NCDMP proposal  
2 incorporates what we understand to be the most  
3 important characteristics to address the capacity  
4 shortfall.

5 It is important to emphasize that the  
6 configurations contained within the NCDMP do not  
7 represent the only possible choices. But we do  
8 believe they would be typical.

9 **Proceeding Time 9:10 a.m. T11**

10 The configurations proposed reflect our  
11 best assessment of requirements, based on our review  
12 of the evidence presented in the VIGP hearing, and  
13 with our own expertise as a large industrial energy  
14 consumer. If there are other configurations that  
15 would better suit the requirement defined by B.C.  
16 Hydro and BCTC, we are quite prepared to adapt the  
17 proposal.

18 In summary, we believe that the NCDMP is a  
19 well-defined, commercially-sound proposal, that is  
20 complementary to the 230 kV line. We have offered  
21 this proposal as part of a solution to the needs on  
22 Vancouver Island because we believe that the DPP is  
23 not the most cost-effective method to resolve the  
24 capacity requirements on Vancouver Island. We stand  
25 behind the terms of the NCDMP proposal, with the full  
26 commitment of our corporation.

1                               Thank you again, Mr. Chairman, for the  
2                               opportunity to present our case.

3   MR. BOIS:    Mr. Chairman, if there are no questions from  
4                               the panel, this panel is available for cross-  
5                               examination.

6   MR. FULTON:   Joint Industry Electricity Steering  
7                               Committee.

8   MR. WALLACE:   No questions, thank you.

9   MR. FULTON:   Green Island Energy? I take that as being  
10                              no questions, Mr. Chairman.

11                             Village of Gold River? Also no response.  
12                             Commercial Energy Consumers.

13   VOICE:    No questions.

14   MR. FULTON:   British Columbia Old Age Pensioners'  
15                              Organization *et al*.

16   MR. QUAIL:    No questions.

17   MR. FULTON:   GSX Concerned Citizens' Coalition.

18   MR. ANDREWS:   No questions.

19   MR. FULTON:   Mr. Steeves.

20   **CROSS-EXAMINATION BY MR. STEEVES:**

21   MR. STEEVES:   Q:   Once again, hello. I have one  
22                              question, and this is in regards to the statement. In  
23                              the statement it is said that there are three paper  
24                              mills on the Island, one being in Port Alberni, is  
25                              that correct?

26   MR. LINDSTROM:   A:   That's correct.



1 MR. STEEVES: From my understanding, Mr. Chairman, prior  
2 to the Vancouver Island generation -- prior to the  
3 Vancouver Island generation project B.C. Hydro had  
4 undertaken previous studies going back a number of  
5 years, and they originally started out at Port  
6 Alberni. They did discuss with the local mill there  
7 the opportunity to undertake a project there for  
8 electrical power generation, and this is in  
9 conjunction with ATCO out of Calgary. They declined  
10 the project, stating that this site would be subject  
11 to tsunami damage coming up the fjord.

12 Given the circumstances that have occurred  
13 in South Asia, loss of 160,000 people there, I would  
14 question whether this facility site at Port Alberni  
15 would be an appropriate project under the  
16 circumstances. This may not be in scope, but it has  
17 to be raised.

18 MR. BOIS: Mr. Chairman, I don't have any concerns with  
19 respect to the comments raised by Mr. Steeves, but the  
20 proposal isn't contemplated using Port Alberni's mill  
21 or the mill at Port Alberni. It uses the Crofton and  
22 Elk Falls mills.

23 MR. STEEVES: Fair enough, thank you.

24 MR. FULTON: British Columbia Transmission Corporation?

25 MR. CARPENTER: No questions.

26 MR. FULTON: Duke Point Power Limited Partnership?

1 MR. KEOUGH: Thank you.

2 **CROSS-EXAMINATION BY MR. KEOUGH:**

3 MR. KEOUGH: Q: Good morning, gentlemen. I hate for  
4 you to come here and not have any questions, so I feel  
5 sort of compelled to come up.

6 MR. BOIS: My witnesses would have preferred not to have.  
7 If you could have told us that, they could be sleeping  
8 right now.

9 MR. KEOUGH: Q: Okay, that was a lie, I want them here.  
10 Could I ask you to turn to Exhibit C2-11,  
11 which is your responses to Duke Point Power  
12 Information Requests, and specifically question 1.2?  
13 And I don't want to be picky -- actually, that's not  
14 true either. I do want to be picky. The question  
15 says: "Please confirm that the proposal did not meet  
16 the B.C. Hydro CFT criterion (versus the BCTC  
17 criterion referred to on page two of the cover  
18 letter)."

19 And I don't really think you answered that  
20 question, and to me the answer, just to help you out,  
21 the answer could be either "Confirmed," it could be  
22 "correct" or it could be "yes". Could we get you to  
23 agree to one of those?

24 **Proceeding Time 9:15 a.m. T12**

25 MR. BOIS: Mr. Chairman, I think the answer is actually  
26 provided. I think the answer clearly states the B.C.

1 Hydro CFT was a call for generation and CDMP is a  
2 demand-based proposal. I think that answers the  
3 question.

4 THE CHAIRPERSON: Are you objecting to your panel  
5 responding to the question?

6 MR. BOIS: Well, I think the question has already been  
7 answered. I don't think it needs to be asked again,  
8 but if Mr. Keough has some reason that he can't factor  
9 out his answer from that, I think that that's okay.

10 MR. KEOUGH: Q: I just couldn't get it confirmed. Is it  
11 tough for you to say "confirmed".

12 MR. FITZGERALD: A: I think that maybe I can add to  
13 that. I think the response -- we think the response  
14 answers your question, but directly, we did not submit  
15 the NorskeCanada demand management proposal as part of  
16 the CFT process.

17 MR. KEOUGH: Q: No, I understand you didn't. That was  
18 the question 1.1, you told me that. I would like to  
19 confirm that your DM proposal did not meet the CFT  
20 criteria.

21 MR. LIDSTROM: A: Because we didn't put it in the CFT,  
22 we didn't measure it against the CFT criteria.

23 MR. KEOUGH: Q: So you never examine the CFT criteria?

24 MR. LIDSTROM: A: Well, yes, we've had the CFT  
25 criterion, but we didn't examine it in a detailed --  
26 we never directly compared the two.

1 MR. KEOUGH: Q: Oh, so in your mind it might have met  
2 the criteria.

3 MR. LIDSTROM: A: We never submitted under it, so we  
4 never had any reason to directly compare it.

5 MR. KEOUGH: Q: Okay, thank you. Thank you, gentlemen.  
6 Thank you, Mr. Chairman.

7 MR. FULTON: British Columbia Hydro and Power Authority?

8 **CROSS-EXAMINATION BY MR. SANDERSON:**

9 MR. SANDERSON: Q: Good morning, gentlemen. Mr.  
10 Chairman, just a couple of questions.

11 Now, you've just testified to Mr. Keough,  
12 Mr. Lidstrom, Mr. Fitzgerald, that you didn't involve  
13 the Norske DSM proposal in the CFT process, but you  
14 were involved in the CFT process, were you not?

15 MR. LIDSTROM: A: We were involved up to the pre-  
16 qualification stage, that is correct.

17 MR. SANDERSON: Q: Yes. And the distinction being that  
18 you had a generation project that was one that you  
19 were considering and indeed went so far as to pre-  
20 qualify through the process?

21 MR. LIDSTROM: A: That's correct.

22 MR. SANDERSON: Q: And in the context of the process up  
23 until bids were actually tendered, you were an active  
24 participant?

25 MR. LIDSTROM: A: We actively participated at the pre-  
26 qualification. After that we did not necessarily take

1 all the steps that were necessary within the process.

2 MR. SANDERSON: Q: Well, I guess that's what I wanted  
3 to explore with you a little bit, and if I can ask you  
4 to, for a moment, put B.C. Hydro's perspective,  
5 difficult as I can appreciate that may be, on it.  
6 There was no communication from Norske to Hydro prior  
7 to the deadline for bids being received to indicate  
8 that Norske had lost interest in putting forward a  
9 bid, was there?

10 MR. FITZGERALD: A: There was a document filing in, I  
11 believe, May, early May, that required applications  
12 for interconnections; and secondly, there was an  
13 election of fueling option at about the same time. We  
14 did not make that election, nor did we file the  
15 application for interconnection as required.

16 MR. SANDERSON: Q: Is it your evidence that you  
17 communicated with Hydro prior to the deadline for bids  
18 received to indicate that you would not be submitting  
19 a bid?

20 MR. FITZGERALD: A: Other than that, no.

21 MR. SANDERSON: Q: Were you aware of the no lobbying  
22 provisions that existed within the CFT process?

23 MR. FITZGERALD: A: Yes.

24 MR. SANDERSON: Q: And those are provisions that you  
25 honoured?

26 MR. FITZGERALD: A: I'm sorry.

1 MR. SANDERSON: Q: Those are provisions that you  
2 honoured as a participant in the process.

3 MR. FITZGERALD: A: Yes.

4 MR. SANDERSON: Q: And so you were aware up until the  
5 time of the bids that it would have been quite  
6 inappropriate, you not having withdrawn, for there to  
7 be any communication between you and Hydro with  
8 respect to the resolution of the issue on the Island.

9 MR. FITZGERALD: A: Yes we were.

10 MR. SANDERSON: Q: Okay. Now --

11 MR. FITZGERALD: A: If I could clarify, we were aware  
12 of those provisions for things within the scope of the  
13 CFT.

14 MR. SANDERSON: Q: Yes. Now, at that stage -- let me  
15 then explore that qualification. At that stage you  
16 hadn't, and Hydro had no way of knowing if you had --  
17 and I'll put that in two steps so you can answer it in  
18 two steps; completely separated your DSM proposal from  
19 your generation proposal, had you?

20 **Proceeding Time 9:20 a.m. T13**

21 MR. FITZGERALD: A: Could you repeat that question  
22 please?

23 MR. SANDERSON: Q: Yes. At that stage had you ever  
24 advised Hydro that in your mind, at least, it was  
25 possible to completely separate your bid in the CFT  
26 process, your potential generation project, and your

1 DSM proposal, and suggested to Hydro that it was  
2 appropriate and possible to talk about one without  
3 violating the mutual limitations in the CFT process?  
4 MR. LINDSTROM: A: We met with Hydro, I believe it was  
5 in the middle of July. We informed them at that time  
6 that we had withdrawn from the CFT process and that we  
7 were considering how to best move our demand  
8 management proposal forward, which was outside the  
9 bounds of the CFT. So we thought -- we said to them  
10 we thought that we were not there to lobby. Obviously  
11 we had withdrawn, therefore we thought we were -- it  
12 was an appropriate forum to talk about it.  
13 MR. SANDERSON: Q: I'm sorry, I must have misunderstood  
14 a response previously from --  
15 MR. LINDSTROM: A: Sorry. I was just saying we met  
16 with Hydro, we informed them that we had withdrawn --  
17 MR. SANDERSON: Q: Yes.  
18 MR. LINDSTROM: A: -- in the middle of July, right, and  
19 that we were going to put forward a demand management  
20 proposal. And we said that that was outside, this had  
21 nothing to do with the CFT, the CFT was a generation  
22 proposal, this was not a generation proposal, and we  
23 had no reason to disrupt our process or have anything  
24 to do with that process from a demand management point  
25 of view.  
26 MR. SANDERSON: Q: I'd understood Mr. Fitzgerald to

1 tell me, though, that you hadn't communicated to Hydro  
2 your determination not to bid until in fact you didn't  
3 submit a bid on the deadline. Was that correct?

4 MR. FITZGERALD: A: Mr. Lindstrom is correct.

5 MR. SANDERSON: Q: Well, I'm sorry, but are the two  
6 answers conflicting and you're now suggesting that Mr.  
7 Lindstrom's is right?

8 MR. FITZGERALD: A: He is correct.

9 MR. BOIS: Mr. Chairman, perhaps we could clarify this by  
10 Mr. Sanderson discussing the timelines when those  
11 documents were to be filed versus when Norske met with  
12 B.C. Hydro. I think it would be better to set the  
13 record straight with respect to that, rather than  
14 having this confusion on the record as to when things  
15 did or should have happened or shouldn't have  
16 happened.

17 MR. SANDERSON: All right, I'm quite content if there is  
18 any confusion. I'm not sure there is.

19 MR. SANDERSON: Q: But my understanding is that the bid  
20 deadline was, I think, August 14<sup>th</sup>, is that right?

21 MR. LINDSTROM: A: That's our understanding.

22 MR. SANDERSON: Q: Pardon me?

23 MR. LINDSTROM: A: That's our understanding.

24 MR. SANDERSON: Q: Yes, all right. And I'd understood  
25 and I understand now that you're qualifying this. I  
26 had previously understood Mr. Fitzgerald to say that



1 prior to August 14<sup>th</sup> when you didn't bid, there hadn't  
2 been a formal communication to Hydro that you weren't  
3 going to bid. And my very precise question to you,  
4 Mr. Lindstrom, is, in the meeting in July that I've  
5 heard you testify to, did you inform directly B.C.  
6 Hydro that you were not intending to bid on August the  
7 14<sup>th</sup>?

8 MR. LINDSTROM: A: It's my memory that we informed them  
9 that we were not planning to bid.

10 MR. SANDERSON: Q: I don't mean for a minute to  
11 question that, but I guess I do note a bit of  
12 hesitation in your voice. Do you have a clear memory  
13 of advising them of that specific point?

14 MR. FITZGERALD: A: Yes. We advised them we were not  
15 planning to bid.

16 MR. SANDERSON: Q: And do you have -- there was no  
17 documentation of that meeting, I assume, or there's no  
18 letter or anything else that confirmed that?

19 MR. FITZGERALD: A: We didn't follow up with any  
20 written correspondence on that point.

21 MR. SANDERSON: Q: All right, okay.

22 The DSM proposal you have offered as filed  
23 contemplates 140 megawatts being made available from  
24 Elk Falls or 70 megawatts being available from  
25 Crofton, is that right?

26 MR. LINDSTROM: A: That's correct.

1 MR. SANDERSON: Q: And the proposal as presently  
2 constructed does not propose both. It's one or the  
3 other.

4 MR. LINDSTROM: A: When we designed them, yes, we  
5 designed them independently.

6 MR. SANDERSON: Q: Yes, that's correct. Thank you,  
7 those are my questions, gentlemen. Thank you very  
8 much.

9 **CROSS-EXAMINATION BY MR. FULTON:**

10 MR. FULTON: Q: Good morning, panel. I also don't have  
11 many questions, but it would be helpful if you could  
12 have before you Exhibit C2-10, which is the response  
13 to BCUC IRs 1.2 and 1.3, and I'll be referring to that  
14 in the first few questions and coming back to it at  
15 the end. And also if you could have before you the  
16 response by B.C. Hydro to BCUC IR 1.40.2 which is in  
17 Exhibit B9.

18 **Proceeding Time 9:25 a.m. T14**

19 MR. BOIS: I'm sorry, just while I was confused there,  
20 could you tell me those references again, please?

21 MR. FULTON: Yes, the references are Exhibit C2-10 --

22 MR. BOIS: Yes.

23 MR. FULTON: -- which is the response to BCUC IR 1, and  
24 Exhibit B-9, the response of B.C. Hydro to BCUC IR  
25 1.40.2.

26 MR. BOIS: Actually, if we could have a copy of that

1 response, I don't have that particular response  
2 available for this witness.

3 Thank you.

4 MR. FULTON: Q: And I'll let you read through the  
5 response to the BCUC IR to B.C. Hydro first, and then  
6 I'll come back to C2-10.

7 Thank you. And for the purposes of my  
8 cross-examination, can we agree that I can use the  
9 acronym "NCDMP" for NorskeCanada Demand Management  
10 Portfolio?

11 MR. FITZGERALD: A: You can.

12 MR. FULTON: Q: Thank you. Starting, then, first with  
13 the responses to BCUC IRs 1.2 and 1.3 in Exhibit C2-  
14 10, can you tell me whether a new tariff would need to  
15 be designed to deliver cost neutrality for demand  
16 charges set by potentially higher demand ratchets  
17 associated with increased light load power demand?

18 MR. FITZGERALD: A: We aren't anticipating any higher  
19 light load demand requirements, so I would expect  
20 there wouldn't be a need for a new tariff or an  
21 adjustment to current contract demands within our  
22 existing tariffs.

23 MR. FULTON: Q: Thank you. Has Norske worked with B.C.  
24 Hydro to achieve greater certainty, at least with  
25 respect to setting the maximum cost and latest dates  
26 of implementing the NCDMP?

1 MR. FITZGERALD: A: No.

2 MR. FULTON: Q: You have now reviewed the response --  
3 B.C. Hydro response to BCUC IR 1.40.2.

4 MR. FITZGERALD: A: Yes, I have.

5 MR. FULTON: Q: And I wanted to particularly refer you  
6 to the second-to-the-last paragraph about midway,  
7 where the statement appears:

8 "However, compared to the CFT Tier 1 result,  
9 both the NCDMP and temporary generation  
10 options were considered higher risk with  
11 respect to date and cost certainty."

12 Can you tell us what NorskeCanada's view is  
13 of the "higher risk with respect to date and cost  
14 certainty" of implementing the NCDMP?

15 MR. FITZGERALD: A: We would not agree with that  
16 statement.

17 MR. FULTON: Q: And can you tell us why, Mr.  
18 Fitzgerald?

19 MR. FITZGERALD: A: We don't believe it's higher cost,  
20 based on the proposal that we made relative to what  
21 our understanding is of the costs of the proposal  
22 before the panel, and secondly on the subject of risk,  
23 we are quite confident that demand management can be  
24 delivered in a completely reliable and dependable  
25 fashion.

26 MR. FULTON: Q: Is Norske aware of any issues that may

3 MR. FITZGERALD: A: We are aware of internal cost  
4 consequence issues, but as far as the proposal is  
5 concerned or the cost consequences with a contract,  
6 there are none.

8 MR. FULTON: Q: We can agree that the NCDMP specifies  
9 only a fixed number of winter period and non-winter  
10 days?

12 MR. FULTON: Q: And given the needs then for summer  
13 line maintenance, in any given contract year can  
14 unused winter period days be carried over to the non-  
15 winter period?

18 MR. FULTON: Q: And when you say you hadn't anticipated  
19 that, by that you mean you hadn't anticipated that  
20 happening?

25 MR. FULTON: Q: And if I could ask you to turn back to  
26 the Exhibit C2-10 and the response to BCUC IR 3.1 --

1 MR. FITZGERALD: A: Sorry, 1.3?

2 MR. FULTON: Q: 3.1

3 MR. FITZGERALD: A: I'm sorry, I don't have it.

4 MR. FULTON: Q: It should form part of Exhibit --

5 MR. FITZGERALD: A: I have, it, yeah.

6 MR. FULTON: Q: -- 2-10, C2-10. And my question to you

7 on that response in terms of follow-up is this: In

8 light of the scheduled F2009, that is before November

9 2008 installation of the 230 kV AC line, can you tell

10 us what fixed costs would have to be recouped for

11 consideration of demand reduction contract shorter

12 than three years?

13 MR. FITZGERALD: A: Well, I believe we've estimated \$2

14 million in fixed costs, of which a portion of that

15 would be to NorskeCanada's account and a portion would

16 be to the system's account.

17 MR. FULTON: Q: And are you able to tell us what the

18 portions are, either now or by way of undertaking?

19 MR. FITZGERALD: A: I believe we answered in one of the

20 IRs that the Norske portion is estimated to be half a

21 million.

22 MR. FULTON: Q: All right, thank you. Has NorskeCanada

23 received any details as to the extent of integration

24 required with existing remedial action schemes and

25 potential costs?

26 MR. FITZGERALD: A: Not directly related to this

1       proposal. We are, of course, aware and understanding  
2       of the interface with the existing remedial action  
3       scheme within our mills.

4   MR. FULTON:   Q:     If I might just have a minute.

5                   Thank you, panel. Thank you, Mr. Chairman,  
6       those are my questions.

7   THE CHAIRPERSON:   The panel has no questions.

8   MR. BOIS:     Thank you, Mr. Chairman. I just want to  
9       clarify a couple of points that came up.

10   **RE-EXAMINATION BY MR. BOIS:**

11   MR. BOIS:   Q:     I still think, for the record, there's a  
12       bit of confusion with respect to timing as to when  
13       Norske notified B.C. Hydro that it wasn't going to be  
14       participating in the tender. And Mr. Fitzgerald, you  
15       referenced some documents that were required to be  
16       filed in the CFT process. Were those documents  
17       required to be filed before you met with B.C. Hydro in  
18       July?

19   MR. FITZGERALD:   A:     Yes they were. My recollection is  
20       that they were early May.

21   MR. BOIS:   Q:     Thank you. And at that meeting, Mr.  
22       Lindstrom, that you referred to that you talked with  
23       B.C. Hydro about your proposal, were any people at the  
24       meeting -- do you recall if any people at the meeting  
25       were also involved in the CFT process or were aware of  
26       the CFT process?

1 MR. LIDSTROM: A: They were aware of the CFT process,  
2 but I don't whether all was -- it was the senior  
3 executive of B.C. Hydro, so.

4 MR. BOIS: Q: Thank you. And just one last point,  
5 getting to Mr. Fulton's question with regard to  
6 shifting days in the winter from the summer, Mr.  
7 Fitzgerald, you indicated that you hadn't anticipated  
8 that in the proposal when Norske prepared it. But  
9 would you also indicate -- would you also, just to  
10 clarify, I think the proposal suggests that there's a  
11 certain degree of flexibility with respect to Norske's  
12 ability to switch the days. Would you agree that that  
13 would be an opportunity for discussion?

14 **Proceeding Time 9:35 a.m. T16**

15 MR. FITZGERALD: A: We would welcome the opportunity to  
16 have a dialogue on a number of areas of flexibility in  
17 the proposal. So, yes, there are opportunities to  
18 make adjustments as required. But at this point we  
19 haven't had the opportunity to do that.

20 MR. BOIS: Q: Thank you. Those are all my questions,  
21 Mr. Chairman.

22 THE CHAIRPERSON: Thank you. You're excused.

23 (PANEL ASIDE)

24 MR. FULTON: Mr. Chairman, that concludes the evidence of  
25 the panels that were scheduled for today.  
26 Accordingly, we -- it would now be appropriate to go



1 back to Mr. Steeves in terms of his submission.

2 THE CHAIRPERSON: I think so too.

3 Mr. Andrews?

4 MR. ANDREWS: I'd like to take this opportunity to give  
5 notice that I intend to make an application arising  
6 out of the transcript of the *In Camera* meeting. I  
7 think it may be best that there at least be some  
8 discussion about when that motion should be filed, so  
9 that it's appropriately and thoughtfully worded, and  
10 that consideration be given to the procedure for  
11 submissions and making a decision on it. But I did  
12 want to take this immediate -- this first available  
13 opportunity to give you notice that that is my  
14 intention, and perhaps I'll just leave it at that.

15 THE CHAIRPERSON: When would you be prepared to file the  
16 motion? Or to make the motion?

17 MR. ANDREWS: Well, I -- if it's your pleasure, I could  
18 make the motion today. But it may be better if -- at  
19 least for the other parties, to get instructions  
20 fully, that it be made on Monday or perhaps in writing  
21 prior to Monday morning.

22 THE CHAIRPERSON: I'm sorry, in writing prior to Monday  
23 morning.

24 MR. ANDREWS: So that we would be in a position to have  
25 submissions made on Monday morning.

26 THE CHAIRPERSON: Oh, I see. You would make the motion

1 in writing before Monday morning, and then there would  
2 be submissions made on that Monday morning? Is that  
3 what you're suggesting?

4 MR. ANDREWS: I'm in your hands, but that would be one  
5 possibility. Although others may have different  
6 suggestions.

7 THE CHAIRPERSON: Okay. Thank you.

8 MR. QUAIL: Mr. Chairman, various parties need an  
9 opportunity for conferrals and so on, in order to  
10 determine what, if any, course they intend to follow.  
11 I would ask that this matter be put over to Monday.  
12 Perhaps ask the parties refrain from filing off things  
13 in writing -- you know, get people an opportunity to  
14 examine the situation and do some conferring to  
15 attempt to marshal the issue in a coherent manner.

16 So I'd suggest that this issue be adjourned  
17 to Monday morning, perhaps determine whether it be  
18 dealt with either then or at the end of the day on  
19 Monday, but something of that order would be my  
20 request.

21 THE CHAIRPERSON: Is there a need for you to receive  
22 anything from any other party prior to Monday so that  
23 on Monday you're prepared?

24 MR. QUAIL: I need an opportunity for conferral, in terms  
25 of attempting to deal with the issue now, and suggest  
26 that simply the whole matter be put on the agenda for

1       -- tentatively for Monday morning, potentially with a  
2       view to scheduling some other particular time to  
3       address it if there are issues to be addressed then.

4   THE CHAIRPERSON:    Okay.

5   MR. WEISBERG:    Mr. Chairman, I too would like some  
6       opportunity to explore that with my client and  
7       determine how they would like to proceed, and so I  
8       would support the suggestion that we deal with it on  
9       Monday morning.

10  THE CHAIRPERSON:    Thank you.

11  MR. WALLACE:    Mr. Chairman, it's not quite clear to me  
12       what's going to be dealt with on Monday morning. This  
13       is a very serious issue and we take it as such. I  
14       will need to be able to take instructions, and I don't  
15       think it can be limited to just Mr. Potts and myself  
16       on an issue of this significance.

17                   Accordingly, I would like -- before we deal  
18       with the merits -- if Monday is just to say, "Okay, if  
19       there are going to be motions on this, they must be  
20       filed by Tuesday, or Wednesday, and then we'll deal  
21       with them at another time," then that's fine. But if  
22       it comes down to actually taking a position, then my  
23       very serious request would be that it be no earlier  
24       than Tuesday or Wednesday, to allow proper  
25       instructions to be taken. Thank you.

26  THE CHAIRPERSON:    Mr. Wallace, my concern at the moment,



1 I can have instructions until we've had an opportunity  
2 to clarify what it is we're talking about, and also I  
3 think that the people that I'm receiving instructions  
4 from would prefer to go back to their corporate  
5 management to get a particular position of  
6 NorskeCanada.

7 And I know from the *In Camera* transcript  
8 that there were a number of issues potentially  
9 raisable in this, and I don't know where this could  
10 go. So I think we would prefer to have more time than  
11 less time to discuss this internally.

12 THE CHAIRPERSON: And so are you -- although it's ill  
13 defined at this stage as to what those matters might  
14 be, would it be your proposal that nothing further  
15 happen in terms of procedural steps until Tuesday  
16 morning, as Mr. Wallace is suggesting?

17 MR. BOIS: I think that might be the safest course of  
18 action till everyone has had an opportunity to digest  
19 what's happened, although I do know that that delays  
20 the proceedings if we decide to adjourn and the  
21 applications are moving forward, and it might be just  
22 as expeditious to have panels testify and give  
23 evidence. But I'm a little bit concerned that if we  
24 go too far down the road, it could just -- if I  
25 understand where we're going with these motions, it  
26 might be more dangerous than not.

1 THE CHAIRPERSON: What might be --

2 MR. BOIS: Well, if as I understand -- well, I'm not sure  
3 I understand the motion but one of the things I've  
4 heard today is that the Panel disqualify itself for  
5 reasonable apprehension of bias, or potentially one of  
6 the issues. And then also there's policy questions  
7 coming out of that transcript that maybe are not the  
8 scope of this hearing and that were potentially  
9 deciding -- by deciding this question, the question in  
10 this hearing about the CPA. And so I am really not --  
11 I'm really confused about what it is we're going to be  
12 discussing.

13 THE CHAIRPERSON: Thank you.

14 MR. SANDERSON: Mr. Chairman, I want to make a couple of  
15 suggestions if I could. I think there is a great deal  
16 of uncertainty with respect to, as Mr. Bois puts it,  
17 which way whatever issues are being raised might take  
18 us. And in those circumstances I think there's a lot  
19 of merit in asking those who believe there is one or  
20 more motions that they may wish to bring or that  
21 different parties may wish to bring, do so in writing  
22 by a date that's certain. And from just hearing my  
23 friends, I would suggest at the close of the hearing  
24 of Monday, the end of Monday might be an appropriate  
25 time or reasonable time by which to ask for that, so  
26 that by the end of Monday everyone submitted any

1 initiating motion that they may choose to; and that  
2 there be a time for parties to consider those motions  
3 and then be ready to argue about them, say by  
4 Wednesday.

5 And I say that because it seems to me that  
6 the way we're going through the evidence, there is a  
7 good prospect of being through all the evidence, with  
8 the sole possible exception of rebuttal, by sometime  
9 on Wednesday. And if that were the case, then the  
10 oral submissions, if that were the way that you chose  
11 to go on whatever motions have been filed, could be  
12 heard say on Wednesday or Thursday morning.

13 The one thing that I would suggest that  
14 that would recommend is, without knowing what anyone's  
15 motion is going to be, it's a little hard to know  
16 whether the Panel carrying on and hearing the rest of  
17 the evidence somehow influences the outcome or  
18 prejudices things. I can't see how it would. We're  
19 so far into this that a motion to disqualify,  
20 certainly at this stage, has the same ramifications  
21 whether done Monday or Thursday, to me. But others  
22 may have a different view of that, I don't know.

23 But if they don't, then I think it would be  
24 useful for the record for all counsel to waive any  
25 objection they may have to the hearings continuing,  
26 for the next few days, until a reasonable opportunity

1 can be afforded to everybody to address the motion.

2 **Proceeding Time 9:45 a.m. T18**

3 So there's no prejudice one way or the other to  
4 delaying hearing this till Wednesday or Thursday.

5 If that accommodation can be agreed to,  
6 then it seems to me we can have an orderly process to  
7 deal with the motion along the lines I've just  
8 described.

9 THE CHAIRPERSON: Thank you.

10 MR. QUAIL: Mr. Chairman, I'm simply not prepared to  
11 waive anything at this point. Perhaps on Monday. I  
12 suggest, you know, we sort of punt this over till  
13 Monday, and consider the lay of the land, including  
14 potentially the procedural course my friend Mr.  
15 Sanderson has laid out. But certainly I'm not in a  
16 position to waive any rights at this point.

17 THE CHAIRPERSON: The difficulty, though, is if there's  
18 merit in Mr. Sanderson's proposal that we receive  
19 motions by the end of the day on Monday, if we do what  
20 you're proposing there's not very much time to  
21 accomplish that. And if people feel that this needs  
22 to be dealt with earlier, rather than later, delaying  
23 it until Monday, in terms of establishing a date for  
24 filing of motions, is -- that delayed, it maybe isn't  
25 necessary, so --

26 MR. QUAIL: Yes, the end of the day Monday, for instance,



1        would -- is a time frame that I could accommodate in  
2        that sense, but I would not be -- I would want to be  
3        emphatic, for the record, that that would not  
4        constitute a waiver of any rights on my part or my  
5        client's part in agreeing to that time frame. I don't  
6        think it really does necessarily entail any waiver, I  
7        just want to make it clear because my friend seemed to  
8        think there was a potential waiver involved in  
9        exceeding to that time frame.

10    MS. McLENNAN:    Good morning, panel. I'm Mary McLennan.  
11        Thank you for trying to save me a trip.

12                    I'm not sure what's happening, and I  
13        despair that the lawyers don't appear to know what's  
14        happening. I would suggest that you give serious  
15        consideration to suspending your schedule until this  
16        is dealt with, because I guarantee, given the fact  
17        that most intervenors who are not in attendance at  
18        these hearings receive the transcripts at about 6:30  
19        in the evening, if you rush ahead with your  
20        proceedings before they have a chance to catch up with  
21        those transcripts, you will have some very angry  
22        intervenors on Vancouver Island who will wish to make  
23        submissions on this point, and I would suggest that,  
24        given the seriousness of whatever it is we're  
25        discussing here, there should be time to read, absorb  
26        and respond before we go down the road and arrive at

1 the end of the proceedings.

2 So, far be it from me to argue with you  
3 once again about your scheduling, but I really think  
4 you should put a pause here and give everyone who  
5 isn't here a chance to wrap their heads around this,  
6 because I've been averaging 12-hour turnaround time in  
7 best efforts to understand what's happening, and I  
8 guarantee that if I get home on Monday evening and  
9 start reading the transcripts at 10:00, and there's a  
10 response required by Tuesday, I will probably write a  
11 very short letter and it will not be very polite.

12 So thank you for listening.

13 THE CHAIRPERSON: Thank you for being here this morning.

14 MR. WALLACE: Mr. Chairman, having a panel that's due to  
15 appear on Monday morning, and an outside expert coming  
16 in to town, I would like to see us proceed with the  
17 evidence.

18 While Mr. Sanderson spoke of "waiver", he  
19 later spoke of "without prejudice either way" and I  
20 think that's the key thing. There are, I think, cases  
21 that say that if you are raising a request that the  
22 panel stand down for apprehension of bias or  
23 otherwise, that you should not delay, but I think if  
24 we make proceeding with evidence without prejudice to  
25 either side, then we should be able to carry on, and I  
26 think that's the appropriate way to do it without any

1 waiver of rights by anybody.

2 MR. ANDREWS: I have two things to say, and perhaps the  
3 first one is the more practical, which is that perhaps  
4 we take a break so that people can talk about some  
5 things that may allow us to propose more thought-  
6 through solutions here.

7 Alternatively, I could elaborate on what my  
8 sense of -- at least what my client's motion would be,  
9 to answer the question that has been raised as of what  
10 specifically may be involved.

11 THE CHAIRPERSON: Yes. I accept your suggestion and I  
12 think it's a good one, for a variety of reasons. And  
13 I'm willing to make it a fairly lengthy time. So we  
14 can stand down for -- why don't you make a suggestion  
15 as to how long you would like for us to stand down  
16 today.

17 MR. ANDREWS: Half an hour.

18 THE CHAIRPERSON: Well, let's make it until 10:30.

19 MR. ANDREWS: Thank you.

20 **(PROCEEDINGS ADJOURNED AT 9:50)**

21 **(PROCEEDINGS RESUMED AT 10:28 A.M.)** **T19**

22 THE CHAIRPERSON: Please be seated.

23 MR. STEEVES: Hello, Mr. Chairman. It has been suggested  
24 to me that I should make a motion to withdraw my  
25 motion for reconsideration and then sit down, which I  
26 will do.

1 THE CHAIRPERSON: You've been trumped by the lawyers, Mr.  
2 Steeves. Don't give up that quickly though.

3 MR. ANDREWS: The respite will be brief.

4 I reluctantly make a motion that the  
5 Commission Panel disqualify itself on the grounds of  
6 reasonable apprehension of bias, based on comments  
7 made by the Panel during the -- and reported in the  
8 transcript of the January 19<sup>th</sup>, 2005 *In Camera* session,  
9 which appear to indicate that conclusions have been  
10 made regarding the outcome of this proceeding.

11 That is the gist of my motion. I will  
12 support that with reasons and confirm the motion in  
13 writing.

14 I have a corollary motion which is that the  
15 Panel not hear evidence until the reasonable  
16 apprehension of bias motion has been dealt with.

17 **Proceeding Time 10:30 a.m. T20**

18 THE CHAIRPERSON: When would you be able to provide your  
19 submissions in writing to support your motion?

20 MR. ANDREWS: I would be able to provide my submissions  
21 in writing by Monday morning, but I'm quite aware that  
22 other parties may not be able to do that.

23 THE CHAIRPERSON: Are you joined by anyone?

24 MR. ANDREWS: Not in this motion at this time, though  
25 that -- there may be other motions with other grounds,  
26 and of course I can't speak to those.

1 THE CHAIRPERSON: Okay.

2 MR. ANDREWS: Thank you.

3 THE CHAIRPERSON: Is there anyone else who wishes to  
4 speak to this or make another motion?

5 MR. WALLACE: Mr. Chairman, I only wish to speak to  
6 timing at this point, and that is, I appreciate Mr.  
7 Andrews making a motion so that what we're talking  
8 about is at least clear. We do need time to consider  
9 whether we would support or not that motion, and we  
10 need that time during business hours.

11 I would ask that it not be dealt with any  
12 earlier than Tuesday, and possibly -- I think  
13 preferably Wednesday morning, as again, our steering  
14 committee is a diverse group. Communication, even  
15 though it will start today and tomorrow, with whatever  
16 motion comes forward, takes time. And it is important  
17 to us.

18 With respect to the other timing, and re  
19 Mr. Andrews' corollary motion, that you hear no  
20 evidence, our preference would be to have our panel  
21 testify on Monday morning.

22 THE CHAIRPERSON: So you're -- your position is that we  
23 should continue with the proceeding, or just continue  
24 with your panel?

25 MR. WALLACE: I won't take a position beyond our panel,  
26 our panel is where our self-interest is, that the

1 people will be here. I mean, it can, obviously, be  
2 adjourned, but our preference would be that our panel  
3 proceed on Monday.

4 THE CHAIRPERSON: Is there a point of departure between  
5 you and Mr. Andrews on that?

6 MR. WALLACE: Yes.

7 THE CHAIRPERSON: I assume there is.

8 MR. WALLACE: Yes.

9 THE CHAIRPERSON: Okay.

10 **Proceeding Time 10:32 a.m. T21**

11 MR. BOIS: Mr. chairman, I'm going to need some time to  
12 get some instructions as well, and I would agree with  
13 the timeline set out by Mr. Wallace, that responses  
14 would probably not be due until Wednesday. Some  
15 people that we need to contact are not available today  
16 or tomorrow, or may not be available today or  
17 tomorrow, and we need to get some instructions.

18 With respect to carrying on, that's a  
19 little bit more problematic in the sense that we're  
20 hesitant to say "stop" because a lot of people have  
21 invested a lot of time and effort into this  
22 proceeding, and we're hesitant to say "carry on"  
23 because of the serious nature of the motion.

24 However, if this Panel were to continue to  
25 hear evidence on a without prejudice basis with  
26 respect to, I think, the recommendations that Mr.

1 Sanderson had made, my clients would be prepared to  
2 support that. And in that sense we are taking a bit  
3 of a departure from Mr. Andrews' motion, but I think  
4 it's -- as long as everyone's rights are preserved, I  
5 think that that's probably the most efficient way of  
6 proceeding.

7 MR. KEOUGH: Thank you, Mr. Chairman. Just a couple of  
8 practical points I would hope to make and I don't  
9 think it's anything new, but I think the Commission  
10 should set a definite time sometime Monday, whether  
11 it's morning or afternoon I'm indifferent to, for  
12 people who want to file these types of motions on this  
13 point to actually file them, so we know what they're  
14 talking about. I think the first critical thing is to  
15 get an understanding of what's at issue here, and I  
16 think in order to do that you've got to tell people by  
17 Monday lunchtime or Monday whenever, I'm splitting the  
18 difference, we get something in writing.

19 The second -- and obviously then, people  
20 need a bit of time to consider it, and you can argue  
21 it a day or two later.

22 The other point is with regard to  
23 continuing on, I wholeheartedly endorse what Mr.  
24 Sanderson said. If this Panel is biased, you're not  
25 going to become more or less biased by hearing any  
26 further evidence. If you've got to disqualify

1       yourself at the end of the day, the fact you heard a  
2       couple of extra days' evidence may have been time that  
3       we all could have used doing something else. But  
4       other than that, I think that the risk of not hearing  
5       the evidence is too great, because if you choose not  
6       hear the evidence, then you have -- if you decide that  
7       you, at the end of the day, you can and should  
8       continue, then you've, you know, delayed the schedule  
9       here, which is already tight.

10               So my submission to you would be that we do  
11       proceed on the "without prejudice" basis to anyone's  
12       rights. Thank you, Mr. Chairman.

13                               **Proceeding Time 10:35 a.m. T22**

14       MR. QUAIL:   Yes, Mr. Chairman. After considering, I  
15       confirm that we would support essentially Mr.  
16       Sanderson's proposal for the time frame to marshal  
17       these issues, that parties be entitled to -- be  
18       required to file any motions related to this matter by  
19       the close of business on Monday.

20               Regarding the question of evidence  
21       continuing in the interim, we take no position.  
22       Again, subject to the understanding that there's no  
23       prejudice to any party, and I don't hear anyone  
24       suggesting that there would be any such prejudice.

25       MR. WEISBERG:   Mr. Chairman, from Green Island's  
26       perspective, we would support -- I think there's been



1 largely general agreement on the time line. Motions  
2 on Monday by the end of the day. A day for parties to  
3 consider the impact of that, and submissions on the  
4 merits on Wednesday.

5 Regarding whether the panel continued to  
6 hear evidence on Monday, we have no position at this  
7 time, we'd like to see what unfolds on Monday. Thank  
8 you.

9 MS. COCHRANE: Good morning, Mr. Chair. Penny Cochrane  
10 on behalf of the Commercial Energy Consumers and the  
11 Commercial Energy Consumers require time to confer  
12 with our members and with other executive, and -- but  
13 we also agree with Mr. Sanderson's proposed schedule  
14 in these matters.

15 On the question of evidence, we have no  
16 position. Continuing to hear evidence, sorry, we have  
17 no position.

18 MR. SANDERSON: Mr. Chairman, if my tally is correct, we  
19 have -- assuming we can carry on with the evidence,  
20 about which most parties take no position, on a  
21 "without prejudice" basis, and I want to confirm that  
22 Mr. Wallace and I are *ad idem*. If I used two  
23 different ways to describe it, I'm quite prepared to  
24 accept Mr. Wallace's without prejudice  
25 characterization as opposed to any other.

26 We seem to be *ad idem* with the timing. The

1 exception is Mr. Andrews' proposition that we can't  
2 proceed -- or this panel ought not to proceed to hear  
3 any more evidence. Difficult -- it's difficult to  
4 deal with that one, in isolation, without hearing a  
5 bit more from Mr. Andrews as to what prejudice he  
6 believes the parties will incur, or the process will  
7 incur, by virtue of this Panel hearing more evidence.

8 **Proceeding Time 10:38 a.m. T23**

9 And in that respect, I note that all of the  
10 supporters of the contract's testimony has been heard,  
11 so all of that's in. A significant percentage of  
12 those who have contrary views have also been heard.  
13 And it isn't clear to me what prejudice any remaining  
14 party who's not yet been heard would suffer from  
15 having their evidence heard by this Panel, even if in  
16 the end this Panel does determine that it should  
17 properly disqualify itself.

18 And in those circumstances, I guess what  
19 I'm suggesting is it might be beneficial to hear from  
20 Mr. Andrews to see if he does have the ability now to  
21 articulate why he thinks the Panel shouldn't hear any  
22 more evidence. We should resolve that issue now, and  
23 then either adopt the schedule that I suggested and  
24 seems to be accepted by everybody if we don't need to  
25 hear evidence -- I'm sorry, if this panel can continue  
26 to hear evidence.

1                   In the event you were to rule otherwise  
2           that you shouldn't hear evidence, then I think we  
3           should readdress the schedule issue.

4 THE CHAIRPERSON:   Thank you.

5 MR. ANDREWS:   In support of my motion that the -- the  
6           corollary motion that the Panel not hear evidence  
7           until the reasonable apprehension of bias argument is  
8           resolved, my concern is twofold. One is that in terms  
9           of resources, that a practice of hearing evidence that  
10          may or may not be necessary is intrinsically wasteful.  
11          And secondly, that my clients at this point and until  
12          there is a ruling from the Panel, lack confidence in  
13          the Panel's ability to proceed.

14                   And I say that with the greatest respect,  
15          and emphasize until the Panel makes a decision, and  
16          that for them to be in a position of presenting a  
17          witness panel to present evidence would put them in  
18          what they would consider to be a very awkward  
19          position, and would certainly make -- I can say  
20          specifically it would make them feel defensive when  
21          they are answering questions from the Panel, for  
22          instance, and more generally they would have a sense  
23          that -- a lack of confidence in the process at that  
24          point in time, unless, as I say, unless and until the  
25          Panel has made a ruling on the motion, at which point  
26          their confidence, at least legally if not in other

1 respects, would by definition be restored. So those  
2 are my submissions on that point.

3 THE CHAIRPERSON: Thank you. I do think Mr. Sanderson is  
4 correct. We do need to deal with your corollary issue  
5 today. We'll deal with it this morning.

6 I think in all other respects we've -- I'll  
7 speak to it when I've finally resolved your issue, Mr.  
8 -- your corollary issue, Mr. Andrews, but I think in  
9 all other respects we're -- it's going to be easy for  
10 us to establish the schedule.

11 So let's hear submissions with respect to  
12 whether or not there's a suspension of this proceeding  
13 now.

14 MR. SANDERSON: Mr. Chairman, before we do that, having  
15 heard now Mr. Andrews articulate his reasons, it may  
16 be possible that we can deal with that without a  
17 motion needing to be heard; and that is, speaking for  
18 Hydro alone, we would have no objection to a schedule  
19 which saw GSX CC being put off until after this motion  
20 could be argued Wednesday.

21 In other words, if it is only Mr. Andrews  
22 who takes the position that they would prefer not to  
23 have the Panel hear their evidence until the Panel has  
24 had an opportunity to consider the motion for  
25 disqualification, but other parties don't share that  
26 concern on the corollary motion, then a practical

1 solution might be to hear all other evidence, except  
2 Mr. Andrews' evidence in rebuttal.

3 If we can get through the process by  
4 Wednesday night, which I think the schedule we talked  
5 about would accommodate, then on Thursday, we can  
6 either proceed with Mr. Andrews' evidence if the panel  
7 has concluded that it's appropriate to do so, or  
8 alternatively, if the panel's concluded it's not  
9 appropriate to carry on, then Mr. Andrews' concerns  
10 will have not given rise to any prejudice because the  
11 hearing won't proceed.

12 **Proceeding Time 10:43 a.m. T24**

13 So maybe the -- I'm throwing out there the  
14 notion that there may be a practical solution, but  
15 albeit the need to make a decision.

16 MR. QUAIL: With respect, Mr. Chairman, that sounded like  
17 a practical solution, but it's a bit like being half-  
18 pregnant. I mean, it doesn't really resolve the  
19 underlying problems. We don't really take a position  
20 on it, but in terms of, really, the convenience of  
21 everybody here, I suspect either we should all sort of  
22 -- we can deal with filing motions on Monday and then  
23 all go away and come back to argue the matter, or we  
24 can sit through all of the evidence, but to chop and  
25 splice the proceedings in that manner, in my  
26 submission, really isn't an efficient way of

1 marshalling the proceedings.

2 I would also anticipate, with the panels  
3 that are left, there's Mr. Wallace's panel and there's  
4 GSX. So really the only identified panels, I believe,  
5 that are left. Judging by the length of time that's  
6 been taken with cross-examinations of the panels, you  
7 know, we'll be out of here some time on Monday or so  
8 in any event. And leaving a little piece of evidence  
9 for Thursday, or whenever a determination is made,  
10 whenever motions are filed, may not be an efficient  
11 way to marshal the proceeding, and might increase the  
12 cost and inconvenience to participants.

13 THE CHAIRPERSON: Yes, I think I do need to know from  
14 CEC, whether or not -- thank you, Mr. Quail; whether  
15 or not they would like to proceed, to have their panel  
16 called before the disqualification is addressed.

17 MS. COCHRANE: Thank you, Mr. Chairman. I believe that  
18 we would be willing to be called before the decision  
19 on disqualification.

20 THE CHAIRPERSON: Thank you.

21 Mr. Fulton, are there many other  
22 intervenors that have -- Ms. McLennan, your timing is  
23 good.

24 MS. MCCLENNAN: Not surprisingly, I agree with Mr.  
25 Andrews. I think to proceed with the evidence,  
26 notwithstanding the fact that all the lawyers would

1       like to get those out of the way, I think there's a  
2       credibility issue here. I would find it offensive to  
3       have the intervenor panel cross-examined when there is  
4       the possibility that you have already pre-judged the  
5       outcome of this hearing. I think if it can be  
6       presumed, or alleged, or discussed as to whether  
7       you've been biased to date, then it puts the  
8       continuation of the panels in the light of nothing  
9       more than a façade.

10               And from a public perspective, I would have  
11       a grave concern about that. I believe it would be  
12       shared by others. I would -- as you're aware, I've  
13       had many concerns about this process, and I would like  
14       to see it sorted out so that it doesn't descend from  
15       the sublime to the ridiculous.

16               Thank you.

17       MR. FULTON: I'm not aware of anyone else who wishes to  
18       contest this issue, Mr. Chairman. I'm casting my eyes  
19       about the room, and I don't see -- Mr. Lewis is coming  
20       forward.

21       MR. LEWIS: I apologize for my casual dress, I wasn't  
22       expecting to have to address you this morning, and I  
23       probably could have asked for a tie, but I didn't.

24               I'm in a really tough position here,  
25       representing a great number of people that are not  
26       available. And I guess as far as my evidence, I

5                   So with that said, I think each panel  
6           should be left to their own, to decide if they want  
7           their evidence heard, but I would have to refrain from  
8           any further, I guess, questions on the issue, until I  
9           got some guidance from my council.

12 MR. LEWIS: No, it's not. But not being familiar with  
13 the process, I'm not sure if that is entirely up to  
14 me. If I'm just going to adopt the evidence that I've  
15 submitted, then that's simply it. So a lot of this  
16 has to deal with just my lack of experience with the  
17 process.

19 MR. LEWIS: Thank you.

21 MR. FULTON: And just to recall the transcript from  
22 yesterday, parties were asked to advise me by the  
23 close of the day on Monday whether they wished to  
24 cross-examine any of the other intervenors.

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1 doesn't need to come and formally adopt her evidence.

2 THE CHAIRPERSON: Right, and the end of the day Monday  
3 was established as the time by which parties who do  
4 wish to call a panel were to let you know that they  
5 intended to do that.

6 Mr. Andrews, given the reasons for your  
7 second motion, that the proceedings be suspended, I  
8 expect you're object to this as well, but I'll ask in  
9 any case.

10 Would you object to us hearing evidence  
11 from JIESC and CEC?

12 MR. ANDREWS: Yes I would. My position, and I do  
13 appreciate Mr. Sanderson's attempt to reach in a sense  
14 a compromise, but my position would be all or nothing;  
15 that if you make your ruling on whether to continue  
16 with hearing evidence and depending on the outcome, we  
17 would either have all the evidence heard after the  
18 procedural motion or my panel would be ready in due  
19 course.

20 THE CHAIRPERSON: Okay. Is there anyone else who wishes  
21 to speak to Mr. Andrews' second motion?

22 If not, then we will adjourn for 15 minutes  
23 or so and return and then attempt to address that  
24 second motion this morning.

25 **(PROCEEDINGS ADJOURNED AT 10:50 A.M.)**

26 **(PROCEEDINGS RESUMED AT 11:02 A.M.)**

**T26**

1 THE CHAIRPERSON: Please be seated.

2 We will hear from JIESC on Monday and CEC  
3 immediately following JIESC, and we will follow the  
4 schedule with respect to Mr. Andrews' first motion as  
5 follows. Mr. Andrews in writing by the end of the day  
6 on Monday will provide the submissions with respect to  
7 his motion, and we will hear from all parties with  
8 respect to that motion on Wednesday, and the time on  
9 Wednesday will be established when we finish with CEC.

10 Is there any matter that I need to address  
11 that I haven't?

12 MR. SANDERSON: Mr. Chairman, if I could just get  
13 clarification on one point. The one thing that I  
14 think would make the process work more fairly and  
15 expeditiously would be if those parties who either  
16 support or have their own motions to the same end as  
17 Mr. Andrews be required to file their submissions in  
18 some way before those who are opposed to those motions  
19 are required to respond. It's difficult -- otherwise  
20 you're going to end up needing another round.

21 And so I guess my hope was that we'd get  
22 all the motions on the table on Monday. That we'd at  
23 least have some opportunity for those who supported  
24 the motions to get their views known, and then similar  
25 opportunities for those who didn't to respond in light  
26 of all of those submissions.

1 MR. QUAIL: Mr. Chairman, I think there's probably a  
2 simpler way of dealing with sorting that out, and that  
3 would be if anybody has anything to file, it goes in  
4 by the end of the day Monday. Wednesday whenever we  
5 deal with, people have prepared their submissions, pro  
6 or con.

7 **Proceeding Time 11:04 a.m. T27**

8 That we simply marshal the order of people  
9 speaking to the matter, perhaps to first hear from the  
10 people who support the motions and then hear from the  
11 people who oppose them. I don't think we need to set  
12 other dates for people to file other materials. The  
13 whole problem is, people need potentially until  
14 Wednesday morning to obtain instructions and decide  
15 whether they're the "pro" or "con" mike, so to speak.

16 MR. SANDERSON: Mr. Chairman, if Mr. Quail is suggesting  
17 that everything be oral after those initial motions on  
18 Monday, then I'm totally fine with that. With the  
19 proviso that anybody who has a motion file it by the  
20 end of Monday. And we speak to them orally, just as  
21 Mr. Quail has suggested, thereafter. That works.

22 THE CHAIRPERSON: Ms. McLennan?

23 MS. McLENNAN: I would like some clarity for the  
24 intervenors who will not be in attendance Wednesday,  
25 how they may put their views forward. Thank you.

26 THE CHAIRPERSON: If we deal with it orally, you will not

1 have that opportunity.

2 MS. McLENNAN: If that's your decision, sir, then that's  
3 your decision, but I would object to that also.

4 Thank you.

5 THE CHAIRPERSON: Thank you.

6 MR. FULTON: Mr. Chairman, perhaps in the context of  
7 those people who would not be there, then they should  
8 deliver their position in writing by the end of the  
9 day on Tuesday, and we can take some steps to make  
10 sure that they're all collected for Wednesday morning.

11 THE CHAIRPERSON: Ms. McLennan, does that help you?

12 MS. McLENNAN: The logistics would be very difficult.  
13 (inaudible) time to deal with it, it would leave us  
14 Tuesday evening.

15 THE CHAIRPERSON: Well, you would receive the motions by  
16 -- well, you might not receive them, they would be  
17 filed by 4:30 on Monday, and then you would have until  
18 the end of the day Tuesday to make a written  
19 submission. It means that we're in a process that  
20 accommodates you, but it also is a process that is,  
21 you know, it's much better if you were here orally. I  
22 appreciate that that's inconvenient for you, but it's  
23 -- maybe Mr. Fulton's suggestion has some merit for  
24 you, I don't know.

25 **Proceeding Time 11:07 a.m. T28**

26 MS. McLENNAN: Would it be possible to accept written

1       submissions from intervenors not in attendance by  
2       sometime Wednesday morning? For intervenors who have  
3       other lives, that would really only leave us Tuesday  
4       evening to review what is filed Monday.

5       THE CHAIRPERSON: The difficulty is that you very likely  
6       want the Panel to have read your submission before the  
7       oral submission commences, and others need an  
8       opportunity to comment on that during the oral  
9       submissions. So I think they really need to be in  
10      before the oral submission, your oral submissions.

11               So if I'm going to accommodate you, I think  
12      you need to file by 4:30 on Tuesday.

13      MR. FULTON: In that context, Mr. Chairman, it may be  
14      highly problematic for the people who are not coming  
15      on Wednesday to hit the 4:30 timeline. It seems to me  
16      that if they were able to get something to the  
17      Commission by no later than midnight on Tuesday, that  
18      would give them time after work to deal with it, and  
19      then we could see about collecting those first thing  
20      on Monday -- or on Wednesday morning, and bringing  
21      them over and distributing them to the people who are  
22      here.

23      THE CHAIRPERSON: Yes, the difficulty, though, is that  
24      we're going to hear from JIESC and we're going to hear  
25      from CEC, and then we're not going to hear from anyone  
26      else until we hear -- until the determination has been

1       made with respect to that application or those motions  
2       that are filed. And so I think it's going to be  
3       necessary so that the parties who are here on  
4       Wednesday to have a reasonable opportunity to review  
5       those and to respond to those orally, that they do so  
6       by 4:30 on Tuesday. We'll hear -- I expect we'll be  
7       here early Wednesday morning to hear their oral  
8       submissions, and I don't see an alternative, Mr.  
9       Fulton.

10   MR. FULTON:   Well, I'm wondering if the alternative might  
11       be, Mr. Chairman, that we canvass with the people who  
12       are regularly here as to whether they would have any  
13       objection to those who are not here getting their  
14       submissions in by midnight on Tuesday night, and the  
15       submissions being distributed on Wednesday morning  
16       first thing.

17   THE CHAIRPERSON:   But it's absolutely necessary that the  
18       Panel review those. If we're going to accept them,  
19       it's absolutely necessary that the Panel review those  
20       before we commence proceedings on Wednesday.

21   MR. FULTON:   Could the Panel not review them after the  
22       submissions on Wednesday?

23   THE CHAIRPERSON:   No, because the proceeding is not going  
24       to proceed until we've made a decision with respect to  
25       the disqualification. And in order to do that, we'll  
26       do it in a timely way.

1 MR. FULTON: Yes, but presumably you're going to -- there  
2 will be some time between the time that you get the  
3 final submissions of the people here, and that  
4 decision, so that there will be some reading time.

5 THE CHAIRPERSON: Ms. McLennan, does it help you if we  
6 make it sometime between 4:30 on Tuesday and midnight  
7 on Tuesday?

8 **Proceeding Time 11:12 a.m. T29**

9 MS. MCCLENNAN: Given that I get home from my work at  
10 6:15 in the evening, that would be immensely helpful.

11 THE CHAIRPERSON: It would be immensely helpful? Well,  
12 thank you.

13 MS. MCCLENNAN: After 4:30 would be immensely helpful.

14 THE CHAIRPERSON: Okay. Well, if there are no  
15 objections, then, we can establish 8 P.M. on Tuesday  
16 evening for written submissions. Are there any  
17 objections to that process? No.

18 Hearing none, then -- well, I -- Mr.  
19 Andrews, do you want to --

20 MR. ANDREWS: It's another matter, sorry.

21 THE CHAIRPERSON: It's another matter?

22 MR. ANDREWS: Related to scheduling.

23 Let's deal with this first.

24 THE CHAIRPERSON: So let me --

25 MR. ANDREWS: You were about to make a decision, I didn't  
26 want to interrupt, I was just --

1 THE CHAIRPERSON: All right. What I'm going to do is,  
2 I'm going to state what I think our process is. If  
3 there are no objections, then I'm going to confirm it.

4 That we receive notices of motion, with  
5 submissions, by 4:30 on Monday, from all parties who  
6 wish to make a notice of motion and submission. That  
7 does not preclude parties later joining those notices  
8 of motion, and we will hear -- and there will be an  
9 opportunity to receive written submissions with  
10 respect to the notices of motion by 8:00 P.M. on the  
11 Tuesday evening. And then we will hear oral  
12 submissions on Wednesday, and I suspect the process at  
13 that stage will be -- we will hear those in support  
14 and those against, and then reply from those in  
15 support, although that's getting to a level of detail  
16 perhaps we don't need to get to until Wednesday.

17 The time for Wednesday will be established  
18 when we finish with the CEC panel, unless people want  
19 notice now as to when it will be. I don't think  
20 there's any reason to expect it will be any other time  
21 than first thing on Wednesday morning. And for the  
22 panels to follow, the remaining panels -- how much  
23 notice does your panel need, Mr. Andrews?

24 MR. ANDREWS: Frankly, my one really difficult time is  
25 Tuesday night, which is apparently not going to be a  
26 problem. It would certainly help me if I knew that my



1 panel would not be expected before Thursday morning.  
2 And I could have them ready to go Thursday morning, or  
3 later. So my only -- that basically comes back to  
4 whether the Commission panel anticipates making an  
5 oral decision on Wednesday, and expecting evidence to  
6 be heard immediately afterward. My submission would  
7 be that at the very least it be understood that the  
8 GSX CCC panel would not go until Thursday morning. So  
9 that you have at least all day Wednesday. And you  
10 may, of course, decide that you need more time, or the  
11 submissions may go longer, and then we would be bumped  
12 in the normal course.

13 THE CHAIRPERSON: Right. There's -- thank you. There's  
14 GSX CCC and who else remains, Mr. Fulton, other than  
15 GSX CCC? There is the rebuttal evidence, if we  
16 proceed --

17 MR. FULTON: Yes, and subject to me being advised by  
18 Monday afternoon, there may be some.

19 THE CHAIRPERSON: Subject to you being advised by --  
20 okay.

21 Then I think, Mr. Andrews, you can -- we  
22 will not -- if we do proceed with the -- to the  
23 conclusion of this proceeding, your panel will not be  
24 called until Thursday morning, because I think there's  
25 a reasonable expectation that if we do proceed, we  
26 will be able to conclude the proceeding by the end of

1 the day on Friday in any case.

2 Now, having what I think is of the process  
3 that we've established, are there any comments,  
4 questions of clarification, objections?

5 Hearing none, then I confirm the schedule  
6 and the process that I've identified, and I think --  
7 unless there's any other matters -- we're adjourned.

8 MR. SANDERSON: Sorry, and this is just a notice.

9 Adjourned -- somebody has to get to their feet.

10 I just wanted all the parties to know that  
11 advance notice of the potential rebuttal evidence has  
12 been distributed electronically now. For a couple of  
13 parties, like Ms. McLennan, and one or two others who  
14 have indicated difficulty receiving it that way, we've  
15 also given them hard copy this morning. Mr. Wallace  
16 was provided with his hard copy last night, and should  
17 have an electronic copy now as well.

18 THE CHAIRPERSON: Mr. Andrews?

19 **Proceeding Time 11:17 a.m. T30**

20 MR. ANDREWS: On a prosaic note, I can inform the Panel  
21 that my reply submission on the reconsideration motion  
22 has been filed and copies are available on the table.

23 THE CHAIRPERSON: Thank you, that's helpful.

24 I'm about to adjourn unless I hear from  
25 anyone. We are adjourned until 8:30 on Monday morning.

26 **(PROCEEDINGS ADJOURNED AT 11:17 A.M.)**