

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 24, 2005

PROCEEDINGS AT HEARING

BEFORE:

R. Hobbs,	Chairperson
L. Boychuk,	Commissioner

VOLUME 12

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 24th, 2005

4

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

5

THE CHAIRPERSON: Please be seated.

6

Good morning, Mr. Fulton.

7

MR. FULTON: Thank you, Mr. Chairman.

8

There are two preliminary matters. One,

9

which Mr. Andrews wishes to speak to; and the second

10

that is to be spoken to on behalf of Duke Point Power

11

Limited Partnership. Some people have indicated to

12

me, as well, that they have some filings in responses

13

to undertakings. I've said to them that unless they

14

may impact on the evidence of the next two panels that

15

we hear, that those filings should take place at the

16

end of the day.

17

So Mr. Andrews.

18

MR. ANDREWS: My motion and submissions Exhibit C20-35

19

has been circulated electronically, and hard copies

20

are available on the table at the left end.

21

THE HEARING OFFICER: C20-35.

22

(LETTER DATED JANUARY 23, 2005 FROM W.J. ANDREWS TO

23

BCUC, MARKED AS EXHIBIT C20-35)

24

THE CHAIRPERSON: Thank you.

25

THE HEARING OFFICER: You need to speak to this one as

26

well because it wasn't physically here on Saturday,

1 right? This is the first one, right? This went in
2 Saturday.

3 MR. ANDREWS: I had intended to speak to this, but in any
4 event I will speak to it again.

5 This is Exhibit C20-34, January 21, 2005.
6 It's my reply submission regarding the reconsideration
7 motion, and it has been filed now.

8 (LETTER DATED JANUARY 21, 2005 FROM W.J. ANDREWS TO
9 BCUC, MARKED AS EXHIBIT C20-34)

10 THE CHAIRPERSON: Mr. Keough.

11 MR. KEOUGH: Thank you, Mr. Chairman. I come forward at
12 this time because I am potentially getting embroiled
13 in the allegations of bias debate, for which the
14 filings are due this afternoon. And I was just handed
15 a copy of Mr. Andrews' letter. I've sort of skimmed
16 it, but it's sort of made my submissions to you all
17 the more pressing.

18 I am not sure if my submissions to you
19 constitute a Notion of Motion. They may well. I'm
20 not sure they may constitute a request for clarity,
21 and they may also constitute a waiver of
22 confidentiality by Duke Point Power, or they may be a
23 combination of all three of those things.

24 We are extremely troubled by this type of
25 allegation, it's pretty serious; and the consequences
26 of the motion are potentially very severe for Duke

1 Point Power. It is for that reason that over the last
2 day and a half, Duke Point Power, probably like
3 others, have tried to figure out exactly what's going
4 on here.

5 We, like the other parties, were excluded
6 from the *In Camera* session and have only had access to
7 the redacted transcript, and we think it's this --
8 I'll call it the veil of secrecy that has led to
9 mistrust on the part of some of the parties and
10 probably caused them to think the worst and to think
11 they are being disadvantaged, when in reality it may
12 be quite different.

13 So what we've done is we've tried to figure
14 out what's going on here. We've relied solely on the
15 public record to assist in that regard, and we think
16 we've figured it out.

17 **Proceeding Time 8:33 a.m. T2/3**

18 We think it's time to let the boogey-man
19 out of the closet, so my friends can see what's really
20 happening, and maybe their fears will be alleviated,
21 and at least they can make their submissions to you on
22 an informed basis.

23 Now, I'd like to, if I could, Mr. Chairman,
24 just string together our logic for the benefit of
25 everybody, and then I'm going to invite the Commission
26 to do a couple of things. I'm going to ask for a

1 ruling, and I would invite you as well to speak to it
2 as you see fit.

3 And what we did first, Mr. Chairman, is we
4 took a look at volume 8 of the redacted portion of the
5 transcript, and page 1741. And your initial comments
6 there at lines 9 and 10 have you going back to Mr.
7 Soulsby, talking about a results summary. And this,
8 in our view, takes you back to the questioning that
9 you started of the B.C. Hydro panel in the non-
10 redacted transcript, Volume 8, at page 1717, at line
11 12, where you commence your questioning. And there
12 again you begin by asking Mr. Soulsby a question, and
13 you take him to the model at the portfolio tab column
14 B, and that's at lines 12 and 16.

15 **Proceeding Time 8:35 a.m. T04**

16 And Mr. Soulsby confirms he has a fully-populated
17 version of the model before him, and so we understand
18 that's what you're looking at.

19 Now, if you flip over to page 1718, Mr.
20 Chairman, you're speaking to an issue that you're
21 dealing with at lines 5 through 7. And you then pose
22 a question and ask if the third portfolio is better
23 value to customers than the first portfolio. And you
24 repeat that question at lines 18 to 20, and Ms.
25 Hemmingsen confirms this is an appropriate conclusion
26 because you get 28 megawatts of capacity for a low

1 price.

2 Now, when you turn the page to page 1719,
3 lines 3 to 7, you indicate that you will pursue the
4 issue *In Camera*. Now, I'm not sure if Duke Point
5 Power had unique sensitivities here or not, but as
6 soon as we heard the 28 megawatts, it immediately
7 occurred to us that the reference was to Duke Point
8 Power's duct firing capability, because that's stated
9 in our evidence. And nowhere else on the record were
10 we aware of a 28 megawatt project. And we knew that
11 this was the amount that was available from Duke Point
12 Power's duct firing and that's on the public record.
13 And this, I don't know if you'll call it suspicion or
14 inclination of ours, was further confirmed by comments
15 made by Ms. Hemmingsen at transcript page 1752 of the
16 redacted version, and her reference to an option to
17 secure extra capacity.

18 Now, I also acknowledge that Duke Point
19 Power's knowledge of its own bids, its non-winning
20 bid, probably helped us out here. I don't know,
21 that's something probably other people wouldn't have
22 had access to, obviously. But if we flip back to the
23 redacted pages of Volume 8, page 1741, again you pick
24 up your conversation with Mr. Soulsby and Ms.
25 Hemmingsen and it's clear, you go back to right where
26 you left off at transcript page 1719 of the unredacted

1 version. And I think it's -- I should also say that
2 we made use of the comment that you made at transcript
3 Volume 10, I don't think people need to scurry for
4 that one, at page 2268, lines 7 to 10, wherein you
5 stated the *In Camera* session was dealing with one of
6 many issues that are before us in the proceeding. So
7 from that we knew the -- what was going on *In Camera*,
8 it was fairly narrow in focus.

9 And so in summary, the public record has
10 enabled us to figure out, at least we think so, the
11 issue that was being discussed. And that was Duke
12 Point Power's non-duct firing case, versus Duke Point
13 Power's duct firing case. Now, this all -- is all
14 speculation, I suppose, to some degree, but it's very
15 educated guess, and we may be wrong but we don't think
16 so.

17 Now, if we return to the transcript, the
18 redacted version, with this understanding, and I'm
19 looking at page 1741, lines 21 and 22, there, Mr.
20 Chairman, you indicate that this may be an area where
21 you could add some value to customers. And that ties
22 back into the similar comment you made on the
23 unredacted version.

24 As an aside, it struck us as somewhat
25 ironic that you're, in our view, exploring -- and I
26 use that word instead of saying you're not deciding,

1 but you're exploring a matter that could add benefit
2 to customers, and yet we're confronted with this
3 situation that we appear to be.

4 Nonetheless, when you flip the page to page
5 1742, you again talk about benefit to customers, and
6 not surprisingly this ties back to page 1718, which is
7 in the -- before the *In Camera* session, at lines 18 to
8 20.

9 So we pieced all that together, Mr.
10 Chairman, and then we said, "Okay, where does this all
11 leave us?" And what we've concluded, that it's pretty
12 clear that you're talking about this specific issue,
13 and you're not talking about the overall matter before
14 the Commission in this case, you're not talking about
15 the overall decision you have to make. And we submit
16 it's also pretty clear that you're talking about the
17 availability of Duke Point Power's duct firing
18 capability being in the best interests of customers.

19 The fact that you are only discussing an
20 issue as a possibility is also, in our view, firmly
21 confirmed by your statement at page 1742, line 20,
22 where you say "If the Commission issues a decision",
23 not that it will issue a decision.

24 **Proceeding Time 8:40 a.m. T5**

25 It's also at least clear to us that you are
26 not making any decision on anything, particularly the

1 overall case, at this point because the overall case
2 is not even being discussed.

3 In the end result, Mr. Chairman, we think
4 it is this fear of the unknown that is the impetus for
5 the allegations that are being made. We're not sure
6 if we're right about that either, but we think we are.
7 So we're going to urge you to do two things to address
8 this situation and then let my friends proceed with
9 their motions in the light of this information, if
10 they still want to.

11 First we request that the Commission
12 disclose the complete text of at least the discussions
13 on pages 1741 and 1742 of the redacted transcript. Or
14 for that matter, you can disclose anything that
15 involves Duke Point Power's non-winning bid. And
16 second, I would invite you to put this discussion in
17 context to the extent you can, so that we know what's
18 going on here.

19 As I said before, Mr. Chairman, let's let
20 the bogeyman out of the closet and then my friends can
21 decide if they want to do something on an informed
22 basis as opposed to operating under this veil of
23 secrecy that I think they are fearing. Otherwise, we
24 do fear that the unknown here could lead to a
25 situation that's in our view unwarranted and
26 unnecessary, and indeed, most importantly, unfair.

1 And Mr. Chairman, finally, if we're right
2 on this, to the extent that you need to disclose
3 information regarding Duke Point Power's non-winning
4 bid in order to achieve what I've requested, we are
5 prepared to waive confidentiality on the matter. And
6 I think is consistent with your January 6th, '05
7 decision on confidentiality, particularly page 9, and
8 the Commission's willingness to accept information if
9 the proponent waived confidentiality and willingly
10 filed it.

11 So to the extent you need to do that to
12 make this information know, we would willingly give up
13 that confidentiality because we do, I think, Mr.
14 Chairman, think that when the information is on the
15 table, my friends can make a decision on the informed
16 basis versus on the basis that they're currently
17 operating on, and we think that will be of assistance
18 to everybody in the circumstances.

19 Those are my comments, Mr. Chairman, thank
20 you, and my requests.

21 THE CHAIRPERSON: Let's assume for the moment that your
22 reading of the record has led to a conclusion, a
23 number of conclusions, I would say, and observations
24 that in fact are correct.

25 MR. KEOUGH: We're dying to find out.

26 THE CHAIRPERSON: My hesitation is this, Mr. Keough, and

1 since you've raised it I'll raise it with you.

2 If there is a boogeyman to be let out of
3 the closet, I am not convinced that further comments
4 from the Panel regarding the context of the *In Camera*
5 session will in fact, as you were thinking, change the
6 view of those who are making the notices of motion.
7 So I'm thinking, I'm thinking that we -- your offer
8 with respect to the waiver of confidentiality
9 certainly deserves thorough consideration on the part
10 of the Panel. But I need more convincing than you've
11 offered for further comments than are already on the
12 record that you've identified with respect to the need
13 for further comments from the Panel with respect to
14 the *In Camera* session, so as to, as you suggest, put
15 it into context.

16 And my hesitation -- I'm open to being
17 persuaded on this point, of course, but my hesitation
18 is that the -- I would have thought that the record
19 needs to speak for itself, and that comments of that
20 nature that we might make now will not advance to the
21 outcome that you're hoping for.

22 **Proceeding Time 8:45 a.m. T06**

23 And because they're not contemporaneous with the
24 record that you've spoken to, they may not be very
25 helpful to those who are concerned.

26 MR. KEOUGH: Mr. Chairman, I appreciate that, and that is

1 a very valid point. I guess I still think that --
2 maybe I'm overly optimistic in life, but I still think
3 that the parties would be in a better position if they
4 were informed about what's going on, so that they
5 weren't just thinking the worst, and they would know
6 the facts. I'm not here -- standing here thinking I'm
7 going to do a whole lot to persuade Mr. Andrews to
8 fold his tent and go home. I'm not that optimistic.
9 But I'm thinking that at least if the record is
10 disclosed, then we don't have to have him operate in
11 an environment where he doesn't know, so he's
12 speculating and inferring and creating a record which
13 argues for the worst. I guess that's what I'm looking
14 at.

15 THE CHAIRPERSON: Right. But that goes to the issue of
16 the waiver of the confidentiality. That doesn't
17 necessarily go to the issue of further comments from
18 the panel with respect to the *In Camera* session.

19 MR. KEOUGH: Yes, Mr. Chairman, I do recognize they're
20 two things, and if the panel -- I do take your
21 comments, and if the panel doesn't feel appropriate to
22 make any further comments then that's fine, but I
23 would still ask that you consider the other half of
24 this.

25 THE CHAIRPERSON: Given my questions to you, with respect
26 to -- and my comments with respect to further comments

1 from the panel, with respect to the *In camera* session,
2 are you still of the view that we should make those
3 comments? Or are you thinking now, given the exchange
4 that we've just had, that the waiver of the
5 confidentiality is the more appropriate course? And
6 that alone.

7 MR. KEOUGH: Mr. Chairman, I think you should at least
8 disclose the transcript and, as I say, we're prepared
9 to waive any confidentiality required to do that.

10 The reason for the second request was
11 simply to put it in context. I mean, we're just
12 trying to understand what's going on, to be quite
13 honest. And you know, I mean, to that extent I
14 appreciate your comments, but if we can understand
15 what's going on, and to the extent that you can say
16 anything that would help us understand that, I think
17 that does advance the thing. I appreciate the
18 comments that you've made and the fact that, given
19 that they come after the fact, it's not the same as if
20 they came before the fact. And they may certainly not
21 influence Mr. Andrews' thinking one iota.

22 But that's the reason I request it, is just
23 simply to put it in context so we know what's
24 happening. I mean, we can all read the words and come
25 out a dozen different ways, but I think -- I was
26 hoping that there would be something come out of that

3 Clearly, if you're not comfortable with
4 that, that's fine, but I would ask that you seriously
5 consider the disclosure side of this, anyway.

13 Can I take from your comments that you're
14 waiving confidentiality with respect to any matters in
15 Volume 8, and the entirety of the *In Camera* session,
16 with respect to confidentiality, or is it just those
17 two pages that you're waiving confidentiality?

23 THE CHAIRPERSON: Is it necessary for you to review --
24 and this may raise concerns, and I don't want -- I'm
25 just being really cautious here.

Proceeding Time 8:50 a.m. T7

1 Is it necessary for you to review those
2 sections of the redacted *In Camera* session that the
3 Panel concluded in fact fell within what the
4 parameters of what you're proposing for disclosure
5 before we disclose it, or are you willing to accept
6 whatever it is that we think is falling within the
7 scope of what you're proposing?

8 MR. KEOUGH: I don't think I should see it, Mr. Chairman.

9 THE CHAIRPERSON: Yes.

10 MR. KEOUGH: I really don't. I think that Mr. Fulton and
11 Mr. Sanderson, I guess with the Panel's oversight or
12 with the Panel's final say, have decided what should
13 or should not be disclosed, and I really don't think
14 it's appropriate for me to be involved in that.

15 THE CHAIRPERSON: Okay. Let me ask you, I think the last
16 question. In terms of process for establishing what
17 was to be redacted, I requested that Mr. Sanderson and
18 Mr. Fulton review the transcript and redact those
19 portions that need to be. I did that for a variety of
20 reasons.

21 There was a little confusion with respect
22 to that process, and at one stage I indicated that
23 there were additional redactions that I was making.
24 As it turn out, it was a matter of the notes that were
25 given to me in fact not being correct, and in the end
26 there were -- except for one reference that

1 Commissioner Boychuk picked up, that the redacted copy
2 that you gave was exactly what was recommended by Mr.
3 Sanderson and Mr. Fulton to the Panel.

4 Just for the purposes of clarity here so
5 that we're not creating any more boogeymen, the
6 reference that I just made to Commissioner Boychuk's
7 change simply was to include the name Ms. Hemmingsen
8 before the quote that was redacted.

9 Getting the long way to get to the question
10 to you, is that same process satisfactory to you?

11 MR. KEOUGH: Yes, Mr. Chairman. I don't think we take
12 issue with the process, and I guess where we're coming
13 from is if there's anything in there that relates to
14 Duke Point Power's non-winning bid have added -- feel
15 free to disclose it. I mean at this point in time
16 it's somewhat academic that that be kept confidential,
17 and if keeping it confidential is causing considerable
18 difficulty to this record, you know, we would rather
19 have it out there and have people operating on an
20 informed basis.

21 THE CHAIRPERSON: Okay, that's helpful. Thank you for
22 your comments this morning.

23 MR. KEOUGH: Thank you, Mr. Chairman.

24 THE CHAIRPERSON: Now I want to open up the floor up to
25 anyone else who wishes to comments on the matters that
26 I've discussed with Mr. Keough.

1 MR. QUAIL: Mr. Chairman, just for the record, I'd like
2 to register my concern and I'm still in the process of
3 formulating my analysis of this, about the role that
4 one of the parties to the proceeding appears to have
5 taken in determining the contents of the record, in
6 terms of redactions. That is specifically the role
7 that Mr. Sanderson apparently was delegated to him.

8 My understanding is that -- it may not be a
9 problem if this understanding is correct; that the
10 Panel had asked the two counsel respectively, the
11 Commission's counsel and the Applicant's counsel, to
12 go over the record and make some form of joint
13 proposals to the Panel as to what should be redacted.

14 Is that a correct -- I see you nodding your
15 head. Is that a correct description of the what the
16 process was?

17 THE CHAIRPERSON: Yes, and in fact I think the transcript
18 that has been given to you makes that quite clear that
19 that was the process. And that's why I asked Mr.
20 Keough that very question, whether or not he had any
21 comments with respect to whether or not that's the
22 appropriate process. I hear you saying that it's not.

23 MR. QUAIL: Well, just seeking clarification and doing
24 some pondering. Obviously the situation is a very
25 complex one and I thank you for that clarification.

26 THE CHAIRPERSON: Yes. I mean if -- I just want to make

1 clear, though, are you objecting to Mr. Sanderson and
2 Mr. Fulton reviewing the transcript and making a
3 recommendation, given the waiver of disclosure from
4 Mr. Keough, and then the Panel reviewing that? Or are
5 you not objecting to that?

6 MR. QUAIL: At this moment, at 8:55 in the morning, I'm
7 not making any objection. I may have no objection.
8 Say, it's a complex matter, I'll have to ponder it.

9 **Proceeding Time 8:55 a.m. T08**

10 I believe parties have the end of business
11 today if they wish to file any further motions.
12 Otherwise, there will be -- parties have an
13 opportunity to speak to at least the motion that's
14 been filed by my friend, Mr. Andrews, on Wednesday.

15 So I understand that's the agenda for this,
16 and if I have anything further to file on point, in
17 accordance with that agenda, I'll do so by the end of
18 the day today.

19 THE CHAIRPERSON: I'm going to be moving more quickly
20 than that, Mr. Quail, but that's okay. You're -- I
21 hear you're not taking a position, so -- I'm going to
22 be moving more quickly than that with respect to Mr.
23 Keough's suggestion with respect to waiver of the
24 confidentiality as related to the document, because I
25 think we need to get it on the public record earlier
26 than later. I think that's to everyone's benefit.

1 And Mr. Keough has made a -- given us an opportunity
2 to do that. So I'm going to take that opportunity to
3 provide that to you as soon as possible.

4 MR. QUAIL: Yes, and obviously then it's parties' domain
5 to determine whether and to what extent they wish to
6 waive any confidentiality of proprietary information.
7 That's for them to do. The consequences, I suppose,
8 will be determined in the course of the discussion of
9 the motion that's been filed.

10 THE CHAIRPERSON: Okay. I think that's true.

11 MR. SANDERSON: Mr. Chairman, if I might, just a couple
12 of comments on the process that Mr. Keough's
13 suggesting.

14 B.C. Hydro invoked confidentiality in
15 connection with its request that certain information
16 be kept -- be redacted on two bases. One was the
17 disclosure of information relating to unsuccessful
18 bids, consistent with the previous January 6th Order of
19 the Commission. To the extent that there's
20 information with respect to Duke's unsuccessful bid on
21 that record, B.C. Hydro stands down, then, from that
22 objection. To Hydro, that's completely dealt with by
23 what Mr. Keough has had to say.

24 The second basis on which confidentiality
25 was invoked was more narrow, and that was anything
26 that would affect direct negotiations that would

1 affect ultimate EPAs. And I want to highlight first
2 that there may be portions of the transcript in which
3 it's appropriate still to invoke that. And what I
4 would seek to do, and I'm mindful of your discussion
5 just now with Mr. Quail, but what I would seek to do
6 is just continue the process we had in place.

7 That is, it is what it was, the process by
8 which the original redactions were determined. Mr.
9 Fulton and I adopted a process together, came up with
10 a suggestion together, and the Panel ultimately
11 decided whether to accept that suggestion or not. If
12 Mr. Fulton and I had been unable to agree, I think it
13 was our mutual expectation the Panel would have
14 resolved whatever differences there were as well as
15 imposing its own views regardless of what we had to
16 say.

17 Whether that's the right procedure or not,
18 Mr. Quail has said he's not prepared to concede or
19 not. That is admittedly the procedure that was taken
20 -- undertaken last week, and I suggest that procedure
21 be undertaken again this morning. It maintains the
22 *status quo*, if you want, in terms of approach.

23 For that reason, I would suggest that it
24 probably is not desirable to include, with great
25 respect, Mr. Keough in that. That is, I think on the
26 whole question of invoking confidence with respect to

1 the unsuccessful bidders, that's been Hydro's
2 responsibility throughout this process. If we've
3 discharged that poorly, then we may have obligations
4 on complaints to field from the bidders that are
5 aggrieved by that. But that's a responsibility we've
6 got, and we've been conducting ourselves that way
7 throughout. So my suggestion first is, we continue
8 with that process.

9 My second area of comment is with respect
10 to the exchange you had with Mr. Keough around further
11 comments from the Panel. And I understand the
12 Commission's concerns in that respect, and concur with
13 them in large measure, but I do think that there are
14 two things which it's possible for the Commission to
15 elaborate if it wishes, which it could not have
16 reasonably done before now.

17 The first of those is why the Commission
18 chose to have the discussion that it did, that's on
19 the record, *In Camera*. It seems to me that, given Mr.
20 Keough's view of events, the Commission was somewhat
21 constrained in what it could do in terms of
22 identifying the issue, if Mr. Keough's
23 characterization of it is correct. And what would be
24 useful is to understand what the Commission's thinking
25 was, it seems to me, in terms of going *In Camera* in
26 the first place.

Proceeding Time 9:00 a.m. T09

What would also be useful is to understand how the Commission believes the issues that were raised in that session should now be dealt with. Are they resolved? Or does the Commission envisage further process with respect to them. And I think the parties would benefit from knowing the answer to that question, and what the nature of that process might be. It's very difficult to assess the relative position of the parties, and the fairness of the treatment of the parties, without understanding the full picture of the Commission has in mind.

So, just to summarize that, I don't suggest the Commission should explain itself in terms of what's on that record. I think it does speak for itself. But I think those two questions I've identified might benefit from the Commission now indicating why in the first place it felt the need to go *In Camera*, and second, what it now proposes to do by way of further process on the issues that were discussed in that session.

THE CHAIRPERSON: Mr. Sanderson, with respect to your second suggestion with respect to comments from the panel, I will -- I'm not suggesting the panel won't do that. That may very well be something that is accepted by the panel.

1 There are issues that I think arise from
2 the *In Camera* session that will benefit from further
3 evidence from -- depending on whether Mr. Gunther
4 entertains my questions to him, maybe Mr. Craig as
5 well, that will be helpful.

6 So my thinking is not developed yet to the
7 point where I can fully frame the issues that I think
8 need to be addressed in argument with respect to the
9 issues raised *In Camera*. However, I think it's
10 probably -- it goes without saying that whatever we
11 say in that regard now will be subject to further
12 deliberations and further thinking, from the Panel
13 before directions are given with respect to argument
14 on that issue.

15 So I guess I'm not perhaps adding very much
16 to this other than to qualify that should we in fact
17 adopt your suggestion on that part. Qualified in --
18 at least to that regard, that whatever we suggested at
19 this stage, because it was earlier than I was thinking
20 we would, we would return to it in final directions.

21 MR. SANDERSON: I wasn't meaning to imply that I was
22 seeking a final determination of the scope of argument
23 or anything like that. I was really simply just
24 wanting to suggest that the transcript as it is leaves
25 the matter hanging, and to the extent that the
26 Commission thinks that there are further issues that

1 will ultimately need discussion, it would be helpful
2 to understand what those are.

3 THE CHAIRPERSON: You're on your feet, so let me ask you,
4 and then I'll probably need to open it up for further
5 comment.

6 It is my view, as Mr. Keough suggested,
7 that there is some merit in pursuing with this
8 expeditiously so that between now and 4:30, there's
9 more disclosure than there has been, and I think Mr.
10 Keough's waiving confidentiality for the -- in part
11 for the purposes of the submissions that are to be
12 made today at 4:30.

13 It may not be possible to hold to that 4:30
14 time, but I'd like to. That's my preference.

15 So, just in terms of the proceeding this
16 morning, I'm thinking that we will follow your
17 suggestion. That is, you and Mr. Fulton will review
18 the *In Camera* session, make recommendations to the
19 Panel, the Panel will review those, make a
20 determination with respect to what should further be
21 disclosed, and then a transcript of that would need to
22 be made. And I think we can do all of that relatively
23 quickly. And I'm thinking we could -- you know, we
24 may be in a position to do that within an hour, if we
25 were to stand down. And this involves Mr. Wallace as
26 well, of course, because his panel is here.

1 But if that sounds like something that can
2 be accomplished within the next hour, I'm thinking
3 that we should stand down for that hour.

4 MR. SANDERSON: Mr. Chairman, from my perspective, I
5 agree. I think that it did not take Mr. Fulton and I
6 a great deal of time to get to common ground, once we
7 managed to get ourselves together the first time
8 around. And we're now dealing with a much smaller
9 subset, we're dealing just with the portions that were
10 redacted.

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

12 So I would not think that would take long
13 at all, and then it's just over to Mr. Bemister to
14 reproduce it in the form that is ultimately first
15 proposed, and then ultimately ruled on by the panel.

16 So I would agree, an hour is probably ample
17 time to do that. And if it's a comfort to Mr. Wallace
18 in terms of timing, at least speaking from my end, and
19 I'll defer to what Mr. Fulton has learned, but I don't
20 expect to be with this panel for an extended period.
21 I mean, I do have a cross-examination to do. It may
22 take an hour. At the outside, it might take two, at
23 the very outside, I would think. So I would have
24 thought that in the normal course, we ought to be able
25 to deal with this panel today in any event.

26 THE CHAIRPERSON: Thank you. Are there -- Mr. Fulton,

1 did you want to speak?

2 MR. FULTON: Yes. Two things. First of all, in terms of
3 the timing of this panel, on the estimates that I
4 have, Mr. Sanderson is certainly the longest. There
5 are parties who will not be examining this panel, so I
6 do not think it will be a challenge to complete this
7 panel today. Nor do I think it will be a challenge on
8 the present estimates to complete the CEC panel today.

9 THE CHAIRPERSON: Thank you.

10 MR. FULTON: And so then moving next to next steps, with
11 respect to the redacted transcript, I'll ask the
12 Hearing Officer if he could provide me with the
13 working copy of the redacted version that was -- the
14 working copy of the transcript that we used to create
15 the redacted version, and we'll use that again as our
16 centerpiece for the redactions, but use a different
17 colour ink to indicate the add-ons that we're adding
18 back.

19 THE CHAIRPERSON: Right. And so when you and Mr.
20 Sanderson complete that exercise, then you can deliver
21 it to the Panel. And so when we come back, the Panel
22 will have made its determination with respect to that
23 as well.

24 MR. FULTON: Yes. And then I'm assuming that all the
25 Hearing Officer will need to do will be to add back
26 those portions into the redacted version, and we'll

1 either have a completely unredacted version or we will
2 have a redacted version that is less than the
3 redactions that we presently have.

4 THE CHAIRPERSON: Thank you. Mr. Quail?

5 MR. QUAIL: This is another sort of logistics thing. I'd
6 also ask, if possible, if the final version of what's
7 going to be released could be posted on the
8 Commission's website as expeditiously as possible.

9 THE CHAIRPERSON: Yes.

10 MR. QUAIL: Once that's settled.

11 MR. FULTON: And that will be done, Mr. Chairman.

12 THE CHAIRPERSON: Thank you. Mr. Weisberg?

13 MR. WEISBERG: Mr. Chairman, just for clarity in your
14 exchange this morning with Mr. Keough, I think you
15 posed a question to him along the lines of, "Should
16 Duke Point be given an opportunity to review the --
17 what was the redacted transcript with the redacted
18 sections replaced, before they were released to
19 intervenors?" I think Mr. Keough declined that
20 suggestion, and I would suggest that that is the
21 proper way to proceed, that parties should not be
22 afforded an opportunity to make that determination in
23 advance.

24 Regarding whether the Commission makes
25 comments about the circumstances of the *In Camera*
26 session, I'd agree with what you've expressed this

1 morning, that the record should speak for itself.
2 That comments that the panel would make now would not
3 be contemporaneous with that aspect of the hearing.
4 And I would observe that if clarification is required,
5 then that perhaps could be provided after a
6 determination of the reasonable apprehension of bias
7 issue, assuming that the proceeding continues.
8 THE CHAIRPERSON: Any further comments?
9 Thank you. We will step down until 10:30.
10 **(PROCEEDINGS ADJOURNED AT 9:10 A.M.)**
11 **(PROCEEDINGS RESUMED AT 10:30 A.M.)** T11
12 THE CHAIRPERSON: Please be seated.
13 Mr. Fulton?
14 MR. FULTON: Thank you, Mr. Chairman. Mr. Chairman, I'm
15 pleased to report that Mr. Sanderson and myself have
16 recommended that, with the exception of one section of
17 the transcript at page 1744, that includes part of
18 line 8 down to line 14, that the remainder of the
19 transcript of the proceedings *In Camera* which took
20 place on January 19th, 2005 can be disclosed. And the
21 exception related to a possible negotiating position
22 of B.C. Hydro.
23 THE CHAIRPERSON: Thank you. The Panel has reviewed the
24 recommendation of Mr. Sanderson and Mr. Fulton and has
25 accepted it as is.
26 MR. FULTON: Thank you.

1 firing?

2 We expect that participants will want to
3 draw their own conclusions from this new evidence, and
4 may also identify additional issues that may arise
5 from the evidence, and this will be particularly
6 important in the context of the legislative parameters
7 for us and what options are available to us under
8 Section 71 of the Act.

9 With that, Mr. Wallace, I think you can
10 proceed.

11 MR. WALLACE: Thank you, Mr. Chairman. I'm beginning to
12 feel like you must at the close of the day when you
13 ask if there are any more matters and try to adjourn
14 the proceeding.

15 Mr. Chairman, this panel consists of Mr.
16 Lloyd Gunther, who is sitting closest to you, and Mr.
17 Sheldon Fulton. If I could have them sworn at this
18 point.

19 **JOINT INDUSTRY ELECTRICITY STEERING COMMITTEE PANEL**

20 **LLOYD GUNTHER, Affirmed:**

21 **SHELDON FULTON, Affirmed:**

22 **EXAMINATION IN CHIEF BY MR. WALLACE:**

23 MR. WALLACE: Q: Mr. Fulton, you are responsible for
24 preparing the evidence under your name in Exhibit 11?

25 MR. S. FULTON: A: Yes.

26 MR. WALLACE: Q: And similarly the information

1 responses under your name in Exhibit 19?

2 MR. S. FULTON: A: Yes.

3 MR. WALLACE: Q: And those -- and also for the
4 supplementary evidence, Exhibit 24.

5 MR. S. FULTON: A: That's correct.

6 MR. WALLACE: Mr. Chairman, Exhibit 24 was supplementary
7 evidence filed by the JIESC responding to matters that
8 were not available at the time Mr. Sheldon's original
9 was filed. I trust that that's in order.

10 THE CHAIRPERSON: Thank you.

11 MR. WALLACE: Thank you.

12 MR. WALLACE: Q: Mr. Fulton, do you have any
13 corrections or amendments?

14 MR. S. FULTON: A: No, I do not.

15 MR. WALLACE: Q: And do you adopt the material I've
16 just referenced as your evidence in this proceeding?

17 MR. S. FULTON: A: Yes. Yes I do.

18 MR. WALLACE: Q: And your CV is part of Exhibit 11?

19 MR. S. FULTON: A: That's correct.

20 MR. WALLACE: And Mr. Chairman, I could have Mr. Fulton
21 give a brief summary of that. Or if the Panel has had
22 an opportunity to review it, then I can just move
23 along.

24 **Proceeding Time 10:35 a.m. T13**

25 THE CHAIRPERSON: I don't think that's going to be
26 necessary, but can you provide us with a copy of

1 Exhibit C19-24?

2 MR. WALLACE: C19-24, yes, I can.

3 Mr. Chairman, I only have one copy, which
4 I've just passed up. And I have another copy without
5 the cover letter.

6 THE CHAIRPERSON: Okay.

7 MR. WALLACE: Unfortunately it's not in colour, but I
8 think --

9 MR. WALLACE: Q: Mr. Gunther, you were responsible for
10 the evidence filed as Exhibit C19-11?

11 MR. GUNTHER: A: Yes I was.

12 MR. WALLACE: Q: And the Information Responses directed
13 to you in Exhibit C19-19?

14 MR. GUNTHER: A: Yes.

15 MR. WALLACE: Q: And do you have any corrections?

16 MR. GUNTHER: A: No. I have some -- two new matters
17 that arose out of --

18 MR. WALLACE: Q: Yes, I'll get to your opening
19 statement in a moment. And do you adopt Exhibits C19-
20 11 and the material at C19-19 as your evidence in this
21 proceeding?

22 MR. GUNTHER: A: Yes, I do.

23 MR. WALLACE: Q: And your qualifications are also set
24 out in your evidence?

25 MR. GUNTHER: A: Yes they are.

26 MR. WALLACE: Q: Thank you. And Mr. Chairman, Mr.

1 Gunther has a brief opening statement which was
2 circulated to other parties, which I would like to
3 have him proceed with now, if that's in order.

4 THE CHAIRPERSON: Okay.

5 MR. WALLACE: Q: Go ahead.

6 MR. GUNTHER: A: Thank you. There are two new matters
7 arising out of the evidence given during the hearing
8 by B.C. Hydro that I would like to address.

9 First, Mr. Lin, on transcript page 1909, in
10 response to Mr. Wallace, provided a levelized cost per
11 megawatt for the backfill energy used for the cost
12 effectiveness analysis of \$64. This was confirmed by
13 Ms. Hemmingsen on transcript page 1914.

14 I've calculated that, using an 8 percent
15 discount factor and 1200 gigawatt hours for Tier 2,
16 and 1800 gigawatt hours in no award, starting in 2010
17 -- for every \$1.00 a megawatt-hour reduction in the
18 cost of backfill energy, the net present value
19 increase for Tier 2 is \$12.24 million and for no award
20 is \$18.36 million.

21 Second, Mr. Petersen, on transcript page
22 1911 in response to Mr. Wallace, provided the energy
23 margin for Tier 1 of \$172 million. In my evidence, I
24 use \$127 million from Table 3 in the CFT report. I
25 have reviewed the effect that the higher energy net
26 margin has on the net present value sensitivity

1 analysis provided as Attachment C and summarized on
2 page 9 of my evidence. As a capacity factor falls,
3 assuming that the energy margin per unit remains
4 unchanged, the reduction in the forecast net energy
5 margin is greater, resulting in a proportionately
6 lower net present value for Tier 1.

7 MR. WALLACE: Q: Thank you. Mr. Chairman, this
8 question -- this panel is available to answer
9 questions.

10 MR. G. FULTON: Terasen Gas (Vancouver Island) Inc.?

11 **CROSS-EXAMINATION BY MR. JOHNSON:**

12 MR. JOHNSON: Q: Good morning, gentlemen.

13 MR. GUNTHER: A: Good morning.

14 MR. JOHNSON: Q: My name is Johnson, Cal Johnson, I'm
15 appearing for Terasen Gas (Vancouver Island) Inc. And
16 my questions are all for you, Mr. Gunther.

17 **Proceeding Time 10:39 a.m. T14**

18 I'm referring to your filed evidence in
19 C19-11, and in particular page 4, Mr. Gunther.

20 MR. GUNTHER: Q: Yes.

21 MR. JOHNSON: Q: And again, all of my questions are
22 with respect to the section of your evidence that
23 starts near the bottom of page 4, to do with the TGVI
24 Gas transportation toll.

25 MR. GUNTHER: A: Yes.

26 MR. JOHNSON: Q: That's one of the items you address.

1 In the answer at the bottom of page 4 you say that
2 B.C. Hydro has missed three major cost elements that
3 will eventually form part of the revenue requirements
4 of Terasen Gas (Vancouver Island) and be reflected in
5 Terasen Gas (Vancouver Island's) tolls. Does that
6 continue to be your evidence, Mr. Gunther?

7 MR. GUNTHER: A: Yes, it does.

8 MR. JOHNSON: Q: Okay, thank you. And the three
9 elements you refer to as B.C. Hydro having missed,
10 those are the three items that are numbered and appear
11 on the top half of page 5, is that correct?

12 MR. GUNTHER: A: Yes.

13 MR. JOHNSON: Q: Okay. So you're saying that B.C.
14 Hydro missed TGVI's costs relating to its LNG
15 facility?

16 MR. GUNTHER: A: If I could expand on that, what
17 they've missed is the fact that there's a risk that
18 those cost allocations could change either up or down.

19 MR. JOHNSON: Q: Okay, but you're not suggesting, are
20 you, Mr. Gunther, that the costs associated with the
21 LNG facility were missed from the toll analysis?

22 MR. GUNTHER: A: No. In fact, the toll analysis was
23 based on various scenarios including the LNG facility,
24 and those toll estimates or forecasts as prepared by
25 Terasen included the LNG facility.

26 MR. JOHNSON: Q: Right. And you're aware, are you

1 not, Mr. Gunther, that what B.C. Hydro used for its
2 costs associated with Terasen Gas (Vancouver Island's)
3 tolls was based on information that TGVI had provided
4 to B.C. Hydro.

5 MR. GUNTHER: A: Yes. To expand on that, there were
6 two scenarios that were considered by B.C. Hydro. One
7 was with the revenue-to-cost ratio falling to 1.10,
8 and the other one staying at 1.25. B.C. Hydro elected
9 to go with the tolling scenario with the 1.10 revenue-
10 to-cost ratio.

11 MR. JOHNSON: Q: Okay. And just going back to the
12 statement that appears in the last two lines on page 4
13 of your evidence, you say there that you believe that
14 B.C. Hydro has missed three major cost elements, and
15 do I understand correctly that you no longer say that
16 B.C. Hydro missed the LNG facility-related costs?

17 **Proceeding Time 10:43 a.m. T15**

18 MR. GUNTHER: A: I'll go back to my original statement,
19 where I think that the risk associated with the
20 recovery of those costs is still not dealt with.

21 MR. JOHNSON: Q: Okay. But your evidence doesn't say,
22 Mr. Gunther, that you believe that B.C. Hydro missed
23 some risks associated with the recovery of that cost.
24 Your evidence says that B.C. Hydro missed that major
25 cost element. And that's incorrect.

26 MR. GUNTHER: A: That -- actually, it's not incorrect

1 in the sense that those cost elements are risk factors
2 which were not dealt with, which is what my evidence
3 speaks to.

4 MR. JOHNSON: Q: The second item you identify on page 5
5 are the royalty credits on the natural gas supply to
6 Terasen. And just to put that in perspective so
7 everyone understands it, what we're talking about, am
8 I correct that, at the present time, the provincial
9 government provides revenue to Terasen Gas (Vancouver
10 Island) and that revenue arises from an agreement
11 called the Vancouver Island Natural Gas Pipeline
12 Agreement? And that revenue relates to the royalties
13 that the provincial government collects on the gas
14 commodity that is consumed by the residential and
15 commercial customers on the TGVI system?

16 MR. GUNTHER: A: That's my understanding, yes.

17 MR. JOHNSON: Q: Thank you. And that's the -- what you
18 refer to as "royalty credit"

19

20

21

22

23

24

25

26