

CAARS

VANCOUVER, B.C.

February 10, 2005

(PROCEEDINGS RESUMED AT 9:30 A.M.)

THE CHAIRPERSON: Please be seated. I have very few preliminary comments. The Commission panel has now reviewed your arguments. The oral phase of argument is the panel's opportunity to raise issues arising from your arguments. It is important that you restrict your comments to issues raised by the panel. As stated in the procedural letter, which is Exhibit A-22 at page 3, participants are not to re-argue their respective positions today nor to comment on the final arguments of others, unless asked to do so by the Commission panel.

We do not have questions on every participant's submission, but I do intend to provide all participants with an opportunity to respond to matters that are raised by the panel.

Proceeding Time 9:31 a.m. T2

It is difficult to predict how long oral phases are going to be, but I will be surprised if we do not finish well before lunch today.

I understand, Mr. Fulton, that you have some preliminary comments that you wish to make as well, and then I'll take any questions that there are

1 with respect to the procedure for today.

2 MR. FULTON: Thank you, Mr. Chairman. I just wish to
3 place on the record the fact that I did receive some
4 correspondence last night by way of e-mail relative to
5 the proceedings today, from two intervenors. The
6 first intervenor I responded by referencing them back
7 to Exhibit A-22 as to what to expect today. All
8 parties received a copy of that response. That
9 intervenor replied and said that they would not be
10 here today, and if there are questions for the
11 intervenor they would be pleased to answer them by e-
12 mail.

13 The second letter from an intervenor also
14 queried the process for today, and suggested that this
15 process had not been followed in the past by the
16 Commission, and also asked that his written argument
17 be read into the record by the court reporter. I
18 responded by advising him again of Exhibit A-22
19 telling him that the court reporter would not be asked
20 to read his written argument into the record, and
21 advising him that there was ample precedent for the
22 oral phase of argument, and referred him to the VIGP
23 decision, the Heritage Contract Inquiry Report and
24 Recommendations, and the B.C. Hydro 2004-05, 2005-6
25 revenue requirements decision.

26 Finally on an unrelated matter, there was a

1 letter that came in from one of the intervenors
2 responding to B.C. Hydro and Duke Point's comments.
3 Given that there was no right of reply to that
4 intervenor, in my submission that letter ought not
5 form part of the record.

6 THE CHAIRPERSON: I agree.

7 MR. FULTON: And there was also -- I don't have it here
8 this morning but there was also correspondence from
9 another intervenor to one of the other intervenors
10 with comments, and again that arrived after the close
11 of evidence. Neither of them have a right of reply,
12 and again I don't propose that that correspondence
13 form part of the record.

14 THE CHAIRPERSON: And again I agree.

15 MR. FULTON: Thank you. Those are my opening comments,
16 Mr. Chairman.

17 THE CHAIRPERSON: Thank you. Are there any questions
18 with respect to the procedure for today?

19 MR. WEISBERG: Mr. Chairman, my only question is about
20 the order, and I assume that you're probably getting
21 to that. But if you could address that before we
22 begin, thank you.

23 **Proceeding Time 9:34 a.m. T03**

24 THE CHAIRPERSON: Yes, I will. What I will do is give
25 others who have not been asked the question an
26 opportunity to comment on the comments that have been

1 made, and, in most cases, depending on who the
2 question's directed to, I'll give Mr. Sanderson and
3 Mr. Keough an opportunity to speak last to the issue.
4 If the issue is for DPP or B.C. Hydro, then I'll give
5 everyone else an opportunity to comment on those
6 issues that have been raised, and then again an
7 opportunity to DPP and B.C. Hydro to comment.

8 It in part will depend on the question, and
9 Mr. Fulton, as always, will ensure that if I need to
10 be corrected with respect to the rulings that I make
11 with respect to when you have an opportunity to speak,
12 then he'll bring them to my attention.

13 One thing that is important with respect to
14 the oral phase of argument is that you restrict your
15 questions to those issues raised by the panel. This
16 isn't an opportunity to re-argue the case. We've read
17 your arguments, we don't need to hear them again. We
18 have some questions that we'd like to raise with you
19 that arise from those questions, but it's not fair for
20 one participant to take an advantage -- take advantage
21 of an opportunity to wander from the questions that
22 are raised from the panel without everyone having an
23 opportunity to then comment on their questions. And
24 soon the procedure would really be unwieldy. So I do
25 ask you to restrict your comments to those issues
26 raised by the Commission panel.

1 Mr. Weisberg, does that satisfactorily
2 answer your question?

3 MR. WEISBERG: Yes, thank you, Mr. Chairman.

4 THE CHAIRPERSON: Thank you. Are there any other
5 questions with respect to the procedure for today?

6 COMMISSIONER BOYCHUK: Okay, good morning. I'm going to
7 begin. And I'll start off first by saying that I'm
8 from a background that I'm a little more familiar with
9 the oral argument process, where parties make their
10 presentations and you have an opportunity to ask
11 questions immediately following, and when you have all
12 the arguments before you to come up with questions, I
13 found that an interesting exercise. I clearly see the
14 benefits, though, of written argument, and I just want
15 to reiterate what the Chairman has said, is we have
16 read your arguments and we want to thank you for your
17 efforts in that regard, they've been very helpful.

18 I had thought that we'd probably have more
19 questions when we set this down. We had to make a
20 decision early yesterday to try to be fair to
21 everyone, and I realize in sort of going through
22 carefully the arguments that have been presented, and
23 the evidence, that on many of the significant and
24 substantial issues there's a lot there from which we
25 can make our decision, and there probably isn't much
26 benefit or, actually, utility in oral argument

1 questions. But that being said, I do have some
2 questions that I would like to raise, initially first
3 with B.C. Hydro and then with some of the parties.

4 And as well, Mr. Fulton, I would ask that
5 if I broach into a question that inadvertently sounds
6 like I'm trying to get evidence or something onto the
7 record, something that should be inappropriate at this
8 time, I would ask you to alert me to that so that I
9 can rephrase my question and do it properly, because
10 my intention certainly wouldn't be to do that.

11 **Proceeding Time 9:38 a.m. T4**

12 Okay. The first area that I'd like to get
13 a little bit more feedback, if you will, from parties
14 on what has been termed by many of the parties as the
15 CFT being a short-term problem -- a long-term solution
16 to a short-term problem. And I notice -- I'll just
17 give some background before I get into the question,
18 but B.C. Hydro's evidence has been in this proceeding
19 that the CFT process sought a long-term reliable
20 solution for the capacity problem on the Vancouver
21 Island, and there's a quote on the transcript from
22 cross-examination of Mr. Wallace of Ms. Van Ruyven.
23 It's at T6 1098 to 99 and she says, and I'll just
24 quote it:

25 "While we always were trying to resolve the
26 long-term problem of Vancouver Island, we

1 are looking for a long-term solution to meet
2 our capacity shortfalls to replace a long-
3 term asset that we've had there for some 50
4 years. So we were always looking long term.
5 We were never looking for a short-term
6 problem."

7 And that, I understand it, is certainly B.C. Hydro's
8 position and others that support them.

9 But contrary to B.C. Hydro's position,
10 we've had many many strong arguments or strong
11 statements made in argument that the -- by parties who
12 are categorizing the CFT as being designed to address
13 the short-term capacity problem. And I won't go
14 through all of them, but BCOAPO had commented -- I
15 realize this is in the context of the fact as well
16 that there is no contract with TGV, but they
17 described the situation as ludicrous, the scenario
18 that we're looking at. And Mr. Hill, Mr. McKechnie,
19 Marie McLennan and the JIESC all have shared that
20 view, that what we're dealing with here is a long-term
21 solution to a short-term problem.

22 And with all that background now, my
23 question I guess I would start with B.C. Hydro to you
24 is: What is the disconnect? Why are we so far apart
25 on that at this stage?

26 MR. SANDERSON: Commissioner, that's, as I suppose one

1 should expect in oral argument, starting off with a
2 fairly tough question.

3 COMMISSIONER BOYCHUK: I realize that.

4 MR. SANDERSON: If we understood --

5 COMMISSIONER BOYCHUK: That's my only real tough one.

6 MR. SANDERSON: If we understood why we are all so far
7 apart, maybe we wouldn't be.

8 COMMISSIONER BOYCHUK: Yes, I appreciate that and I
9 didn't mean to be naïve in this.

10 MR. SANDERSON: No, no, no, I wasn't suggesting you were,
11 but from B.C. Hydro's perspective I think you need to
12 go back to the VIGP decision.

13 COMMISSIONER BOYCHUK: Right.

14 MR. SANDERSON: The VIGP decision resulted from a long
15 debate around precisely these issues, and again,
16 indeed it could probably go back further to the mid-
17 nineties. But in the VIGP decision, B.C. Hydro took
18 the Commission to have accepted, out of the evidence
19 of that proceeding, that a solution was needed to make
20 Vancouver Island, on a long-term basis, a reliable
21 place to consume electricity, and that in order for
22 that to occur, generation was needed on the Island.

23 Generation by its nature is long term.

24 That is, the Commission cannot have been taken to have
25 contemplated short-term generation, it seems to me,
26 unless someone wants to argue that what the Commission

1 was meeting at that time was temporary generation just
2 for the year, but I don't think a fair reading of the
3 VIGP decision can support that. I think there was
4 recognition, for the reasons that I believe Ms. Van
5 Ruyven was testifying to in the portion that you've
6 described, of that long run. And by the way, I think
7 Mr. Mansour said the same thing in his argument, as we
8 said in our -- sorry, in his evidence as we said in
9 our argument. Long run, you need generation on the
10 Island to make for a balanced system.

11 **Proceeding Time 9:42 a.m. T05**

12 What I think was going on in this
13 proceeding is that a number of parties don't accept
14 that conclusion, and continue to challenge, really,
15 that basic reliability standard. B.C. Hydro's belief
16 is that that was pre-determined, and indeed was
17 arguably out of scope here, and we've said that in our
18 argument. I won't repeat what's said there.

19 But I think that's the disconnect. The
20 disconnect is that parties have not accepted that
21 conclusion, and want to argue again that, no, once
22 transmission is there you don't need generation on the
23 Island at all, Vancouver Island is perfectly okay
24 without the generation balance. And Hydro's view is,
25 that goes against prudent planning and it goes against
26 the evidence of both BCTC and B.C. Hydro in the

1 proceeding.

2 COMMISSIONER BOYCHUK: Okay, thank you, that's helpful.

3 The parties who are taking a different position, of
4 course, the language they've used is that, you know,
5 the Commission should use common sense to realize
6 that, you know, what's happening here is -- I'll keep
7 saying -- a long-term solution to a short-term
8 problem.

9 MR. SANDERSON: Right. And if it were a short-term
10 problem, there might be merit in that submission. And
11 there lies the difference.

12 COMMISSIONER BOYCHUK: Yeah.

13 MR. SANDERSON: In other words, Hydro just doesn't see
14 that as being the complete and full extent of the
15 problem. It is a driver of the problem, no question,
16 but it isn't the entire problem. And that's, perhaps,
17 the difference between the parties.

18 COMMISSIONER BOYCHUK: Thank you. And the fact that the
19 VIGP decision, when the arguments were made that were
20 accepted by the panel that heard that case, the fact
21 that that was now almost two years ago, or a year and
22 some ago, does that give some -- the mayor, Mayor
23 Lewis's made comments about the change in
24 circumstances, does that give them some credence to be
25 challenging at this point?

26 MR. SANDERSON: Well, I think the evidence here is

13 **Proceeding Time 9:45 a.m. T06**

14 COMMISSIONER BOYCHUK: If the Commission panel were to

15 accept the submissions -- or the interpretation of Mr.

16 Mansour's evidence, or the BCTC panel's evidence about

17 the in-service date for the 230 kV lines -- and what I

18 mean by that, if we were to accept parties'

19 submissions that it's reasonable that it could be

20 achieved by October, 2008 -- does that change

21 anything?

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1 And so -- and as you've seen from the cost-
2 effectiveness study, it affects the sort of numeric
3 evaluation, significantly, and you've got in
4 Attachment A to Appendix J that, you know, the way
5 that that's an influencer in sort of the numeric
6 calculation. In terms of your initial question,
7 though, in the long-run perspective on the Island, no,
8 the Island continues to benefit from that generation
9 to make the system more stable indefinitely.

10 COMMISSIONER BOYCHUK: So then conversely, if we were to
11 accept B.C. Hydro's position in terms of what a
12 reasonable or probable date for the proposed 230 kV
13 lines would be, that probably wouldn't appease, or
14 make the situation more palatable for the other
15 parties?

16 MR. SANDERSON: Well, I guess that's a question that
17 you'll have to ask them. I mean, Mr. Mansour made it
18 clear, I think, that in the short term, he's got what
19 -- and there's an important distinction here -- are
20 operational solutions to any short-term deficiency
21 that does develop. And he was clear to distinguish
22 between operational solutions and planning solutions.
23 And Hydro has endeavoured to maintain that distinction
24 in its argument as well.

25 What I understood him to say in his
26 evidence is, "Sure, I've thought about what happens if

1 there is a short-fall. I have various operational
2 steps I can take to cope. I am uncomfortable, in the
3 winter of '07/'08, I lose a couple of hours sleep a
4 night. If it goes on longer, I'm going to lose more
5 hours sleep a night." Now, maybe he's off to
6 California now, I'm not sure, and maybe he won't --
7 he'll forget about this and not lose sleep. But his
8 successor will. And so, you know, it seemed to be a
9 continuum, as I heard his testimony, and if there are
10 more years of that shortfall, then there's going to be
11 more short-term loss of sleep by whoever's trying to
12 operate the system.

13 COMMISSIONER BOYCHUK: Okay, thank you.

14 THE CHAIRPERSON: Thank you, Mr. Sanderson. Are there
15 any comments that anyone wishes to make in response to
16 the exchange between Commissioner Boychuk and Mr.
17 Sanderson?

18 I think, Mr. Keough, I'll give you the
19 opportunity to speak last, and Mr. Sanderson's going
20 to have that opportunity as well, so I encourage you
21 to wait. Mr. Wallace?

22 MR. WALLACE: Thank you.

23 Ms. Boychuk, with respect to "Why are we so
24 far apart," first, Mr. Sanderson indicated that the
25 difference was, in his view, that the other parties
26 didn't accept the long-run need for generation on

1 Vancouver Island. And I would disagree with that. I
2 think that we've made it clear in our argument that we
3 accept that in the longer term it will be beneficial
4 if future generation is built on Vancouver Island.
5 What we don't accept is this project. It is a very
6 expensive solution, as we've submitted in our
7 argument, and we believe that, in the future,
8 generation will happen on Vancouver Island but it will
9 not necessarily meet the overly-stringent requirements
10 of the CFT, which -- whether you agree with them or
11 not as necessary for the short-term problem -- cause
12 problems with respect to long-term.

13 For example, to be ready by the fall of
14 2007 rules out coal plants. It undertakes a gas price
15 risk. Would that be necessary, or are there other
16 options that simply couldn't meet the time? Ruled out
17 projects that were going to be 10 or 15 years. Well,
18 those can be good projects if you get them
19 cumulatively. Ruled out projects with less than 97
20 per cent reliability. Well, if you get two projects
21 with 90 percent reliability, then you can have a
22 cumulative reliability for a good part of that power
23 that's far better than 97 percent.

24 So, it was really that we accept generation
25 will be good, we hope it will be built on Vancouver
26 Island, and think that it will be more cost-effective

1 if, in the future, as B.C. Hydro does its generation
2 calls, they are broad calls -- they go to generation,
3 and they resolve these problems.

4 So it isn't that generation isn't good,
5 it's that this project

6 **Proceeding Time 9:50 a.m. T7**

7 So it isn't that generation isn't good,
8 it's that this project, this CFT, called so rapidly
9 with such stringent requirements, does not lead to the
10 best long-term cost-effective solution.

11 With respect to the other question, "If the
12 Commission accepts BCTC's submission that it can be
13 available in 2008, does that change anything," from
14 our point of view I think Mr. Sanderson quite
15 correctly pointed out it changes the economics under
16 Appendix J, and in our submission simply confirms that
17 reasonableness of our approach.

18 COMMISSIONER BOYCHUK: Thank you.

19 MR. WALLACE: Thank you.

20 THE CHAIRPERSON: Mr. Wallace, your comments with respect
21 to cost-effectiveness are at least in part set out
22 on page 35 of your argument where you provide the
23 table --

24 MR. WALLACE: Yes.

25 THE CHAIRPERSON: -- where you make certain adjustments
26 with respect to the analysis that B.C. Hydro has done.

1 Is that table in the adjustments you have made the
2 focus of your comments, or the focus of your concerns
3 with respect to cost-effectiveness?

4 MR. WALLACE: No, I think they go well beyond that. That
5 table makes simply some adjustments, if I can just
6 grab it.

7 First if I can say in my response to my
8 comments to Commissioner Boychuk, those go right to
9 the call for tenders and are not raised by the cost-
10 effectiveness analysis at all. So they're on top of
11 the table you're talking about. And I would say also,
12 on top of the table that you've referred to are
13 concerns about gas price risk, electricity price risk,
14 and utilization rate. The table we have put and
15 incorporate in our evidence simply goes to some of the
16 adjustments we say arise specifically with the cost-
17 effectiveness analysis as it was set out in a very
18 narrow and defined way with very specific numbers
19 drawn from the record, if that helps.

20 THE CHAIRPERSON: So from your perspective, it would not
21 follow that if the panel concluded that the
22 adjustments that you've made are inappropriate, that
23 the EPA should be accepted. You would then also want
24 the panel to look at the issues with respect to the
25 CFT itself and whether or not it's resulted in a
26 reasonable set of options from what's available out

1 there in the universe of the Vancouver Island
2 generation options.

3 MR. WALLACE: Absolutely, and I just want to make it sure
4 that -- clear that I'm including in that gas price
5 risk, electricity price risk and utilization risk,
6 plus the factors I also put forward in response to
7 Commissioner Boychuk.

8 THE CHAIRPERSON: Yes, which are specific to the DPP
9 project.

10 MR. WALLACE: Yes, that's true.

11 THE CHAIRPERSON: So if you will, is there then three
12 elements? There's the cost-effectiveness analysis,
13 there's the design of the CFT, and then there's
14 specific characteristics of the DPP project that
15 concern you.

16 MR. WALLACE: I think that covers it, subject to what
17 I've already said.

18 THE CHAIRPERSON: All right, thank you.

19 MR. WALLACE: Thank you.

20 MR. QUAIL: The question why we're so far apart is
21 actually a very interesting one. The dynamics of this
22 process are very interesting, and how do we get at
23 such cross-purposes as between Hydro and the groups
24 representing customer classes and so on? And I think
25 it requires us to sort of step back a little bit at
26 what's really going on. There's sort of deeper

1 dynamics here, and in my submission not a question of
2 white hats or black hats or somebody doesn't
3 understand what they're doing or somebody does.

4 COMMISSIONER BOYCHUK: I didn't mean to suggest that.

5 MR. QUAIL: Yes. No, just sort of to place the issue.

6 I don't think there can be any doubt that
7 everyone is acting in good faith. But in my
8 submission, the problem lies deep in the dynamics of
9 the way corporation decision-making can happen, that a
10 project like this -- and it's a longstanding project
11 -- takes on momentum of its own. It takes on sort of
12 a life of its own and can become unhitched from its
13 context and its rationale, and then becomes a process
14 of developing the project and then finding a way to
15 connect it with its context, to develop a rationale.
16 It's sort of a cart-before-the-horse thing, but it's
17 the way that, you know, these things often happen.

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

19 And it's why, just from my general
20 observation, corporations are often not as intelligent
21 as the people within them. There's a lot of very
22 intelligent people at B.C. Hydro, but I don't think
23 this is an intelligent plan. I don't think that's a
24 matter of individual fault, it's more corporate
25 dynamics, I think, that's caused this divergence.

26 On the question of long term and short

1 term, I'd suggest there's a litmus test which can be
2 quite telling, that I'll just leave you with. I just
3 pose this question. If the 230 kV line were projected
4 to be in place in 2006, would anybody be seriously
5 proposing this Duke Point proposal? If the answer to
6 that is "no," then the conclusion to that must be,
7 this is a one-year problem with a 25-year solution.

8 That's all I have to say on those issues.

9 MR. BOIS: Commissioner Boychuk, I don't have much to add
10 in terms of why we're so far apart, other than to say
11 that I think everyone in the room is probably
12 disappointed that we are this far apart. And I agree
13 with Mr. Quail's efforts to say that we're all trying
14 to do the right thing here, but we just have a
15 difference of opinion as to what the right thing
16 really is.

17 You questioned Mr. Sanderson on the
18 question of whether the fact that the VIGP decision
19 was two years ago, does it give rise to change? Mr.
20 Sanderson, I think, in response said that no progress
21 was being made on other fronts, and I think the
22 evidence on the record is quite clear that there is
23 significant progress on a number of other fronts, as a
24 result of that decision being so long ago. While I
25 think he characterized some of the efforts of BCTC as
26 being operational, it struck me that some of the

1 contingency plans that BCTC had listed were far more
2 than operational in nature. Some of them were, in
3 fact, increasing capacity, and I'm thinking
4 particularly of the ability to increase the
5 temperature of the cables and to get generating
6 another 200 megawatts.

7 They're not certain, and there's no
8 question that they're not certain, but neither is this
9 particular project that we're here about here, for
10 various reasons -- other than that there's a binding
11 agreement to produce power, but there's a number of
12 other uncertainties as to whether or not that will
13 ever happen.

14 Mr. Sanderson also raised that there's a
15 significant growth on Vancouver Island, and I think
16 the record is very clear also that there's a lot of
17 people that question those numbers, and the growth
18 estimates, and whether or not they're real. And I
19 would also draw the Commission, in our argument, to --
20 and I don't want to re-state it, but I think it's
21 important to remember that in VIGP, the Commission re-
22 evaluated or at least re-considered the forecasting
23 information of B.C. Hydro at that point, and here we
24 are now again with another forecast that's some 250
25 percent greater than what we were two years ago. No
26 one denies that there may be growth in demand, but

1 that seems to be a phenomenal growth. I don't even
2 think the provincial government has expounded that
3 kind of growth in its latest electioneering stuff, so
4 I think it's -- I'm not criticizing B.C. Hydro in the
5 sense of their forecast, in the sense that if it's
6 that number, that's great. It's good for Vancouver
7 Island. I just think it's questionable whether that's
8 the number.

9 With regard to some comments that Mr.
10 Wallace made on the CFT terms, I would just add that
11 one of the other conditions, I guess, of the CFT --
12 changing from a 10-year term to a 25-year-plus term --
13 is it effectively ruled out co-generation facilities
14 at the mills, at least that's what I'm told. And so,
15 those options would have been ruled out as being
16 unviable. Certainly, I think if you're going to have
17 generation on the Island, and I think it's Norske's
18 position that generation is also in the longer term
19 and beyond 2008 and out to 2012, 2016, generation is
20 probably one of the things that should be considered,
21 but it's probably on a smaller scale that what we're
22 looking at here, in terms of enhancing system
23 reliability. Co-generation would be an ideal solution
24 for that.

25 THE CHAIRPERSON: Do you have an evidentiary reference
26 for the comment that you just made with respect to co-

1 gen?

2 MR. BOIS: No, I don't. In terms of the evidential
3 reference? No. I don't have an evidential reference,
4 no.

5 Is there anything else?

6 THE CHAIRPERSON: Thank you, Mr. Bois.

7 MR. BOIS: Thank you.

8 COMMISSIONER BOYCHUK: Thank you.

9 MR. CRAIG: Good morning.

10 COMMISSIONER BOYCHUK: Good morning.

11 **Proceeding Time 10:00 a.m. T9**

12 MR. CRAIG: To Commissioner Boychuk's questions, I'd like
13 to approach it from a little different point of view.
14 I think we're actually a lot closer together than you
15 might think. And I think the test of that is in fact
16 that B.C. Hydro itself posed a cost-effectiveness test
17 between Tier 1, Tier 2, and no award. The Commission
18 has also proposed that test.

19 And I think it goes along with Mr. Quail's
20 litmus test that this is also a litmus test. If you
21 are prepared to accept a no award as one of the
22 options you're going to seriously consider, you have
23 already accepted that short-term is the nature of the
24 problem because you've adopted that bridging in that
25 case will be appropriate. And the reason that you've
26 adopted it, I'm presuming as a Commission and

1 certainly from the customer's point of view we see it
2 as appropriate, and I believe from Hydro's point of
3 view that it's appropriate, is because cost-
4 effectiveness is critical in this issue. It is not
5 just the questions of reliability. It is not
6 reliability at any price.

7 And I think that is something that all of
8 us are agreed on, and where things come apart is that
9 the customers clearly see both Tier 2 and no award as
10 more cost-effective than the Tier 1, and for all the
11 reasons that they've put in their arguments. So I
12 don't think we come apart just on the short-term/
13 long-term problem.

14 Mr. Sanderson, in his comments to you,
15 raised that a lot of this had come out of the VIGP
16 decision, and I think it's important from our
17 perspective to view that the Commission in that -- and
18 we've put that on page 15 in our argument, merely
19 suggested that on-Island generation would be
20 appropriate. And I take from the Commission's
21 decision that cost-effectiveness was a consideration
22 in not saying on-Island generation was a must. And
23 it's clear from that decision that cost-effectiveness
24 needed to be in the balance. And so the customers are
25 looking for that balance between reliability and cost-
26 effectiveness.

1 And lastly, when we refer to Mr. Mansour's
2 evidence, he's pursuing primarily the reliability
3 mandate and is clear in his evidence that he would
4 prefer whatever the next project is because it goes to
5 getting reliability. And that's his mandate, that's
6 his issue, that's his concern.

7 B.C. Hydro and its customers must be
8 concerned about both the reliability and the cost-
9 effectiveness, as the Commission must be. And I think
10 when the customers have finally gone through the
11 evidence, it's quite clear that Tier 2 is not the most
12 cost-effective, it's the least cost-effective, and the
13 arguments are full of evidence cited for that purpose.
14 I think that litmus test shows that B.C. Hydro and the
15 customers are actually fairly close, both in terms of
16 the objectives and in terms of their view of short-
17 term and long-term. We're clearly not clear on what's
18 most cost-effective.

19 COMMISSIONER BOYCHUK: Thank you, Mr. Craig.

20 MR. CRAIG: Sorry, I was advised that I may have said
21 Tier 2 was the least cost-effective. I meant Tier 1
22 was the least cost-effective. Tier 2 and no award are
23 more cost-effective.

24 MR. WEISBERG: I'm very glad I stood back for that
25 important clarification to be made.

26 Commissioner Boychuk, in framing your

1 question, you referred to a transcript reference of
2 Mr. Wallace's cross-examination of Ms. Van Ruyven.
3 And if I made my notes correctly, I believe that in
4 part that testimony was that B.C. Hydro was always
5 looking long-term.

6 COMMISSIONER BOYCHUK: Right.

7 MR. WEISBERG: I'd like you to consider that evidence in
8 the context of the fact that the CFT originally, and I
9 believe up until March of last year, was of course for
10 10 to 25 years, and in that context you have to
11 reconcile whether 10 years was considered by Hydro
12 then to be long-term, or if in fact B.C. Hydro didn't
13 always look at long-term. I think the case is that
14 they did look long-term but 10 years, at least up
15 until March 2004, qualified as long-term in their
16 view.

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

18 The other comment I've got in this is that
19 I believe it was near the end of my cross-examination
20 of panel 2. If I'm wrong about that, it was panel 4.
21 And I don't recall the witness, I wish I could be more
22 helpful. But I asked one of the gentlemen on the
23 panel whether 20 years would be considered long-term
24 in the context of resource planning, and I believe the
25 record is that he agreed with me in that proposition.
26 And I believe that's significant in the context of

1 Calpine's lease term being 22 years, and therefore
2 exceeding the 20 years which was itself considered
3 long-term.

4 And finally, Mr. Sanderson said that, in
5 the long run, generation will be needed. We certainly
6 agree with that in the context of the long run. And
7 we do look forward to calls for generation, and we
8 expect that those will be needed in the event that the
9 panel determines that either Tier 2 or no award is the
10 most cost-effective option. And those calls, in our
11 estimation, could be held quickly, and I think our
12 evidence establishes how quickly the projects that
13 we've discussed could respond to such calls.

14 COMMISSIONER BOYCHUK: Thank you. Before you move back
15 to your seat -- just a moment -- since you are on your
16 feet. They're saying about -- oral argument as
17 opposed to this type of argument, my questions aren't
18 organized to suit the process, here. You mentioned
19 that the change in the term in March from 10 to 25
20 years. And I just wanted to broach with you
21 something. One of the arguments that was presented by
22 B.C. Hydro's witnesses is that when you're looking a
23 green-field project such as DPP, it's reasonable for
24 you to typically have terms of 20 to 30 years. Okay.
25 And if that's the case, and if we were to accept that,
26 would you be asking the Commission to interfere into

1 -- I'll use the word "interfere" -- in B.C. Hydro's
2 decision to go from 20 to 25? Do you feel that's a
3 judgment call that the panel should be making? So
4 we're starting at 20 to 30 years, accepting that, the
5 decision for B.C. Hydro to choose 25, is that a
6 judgment call we should be making?

7 MR. WEISBERG: I think that is a judgment call that the
8 Commission should make, and you know, Green Island
9 went into the process and abided by the rules. So we
10 understood that as the CFT evolved that the term was
11 changed to 25 years. With respect to Green Island's
12 bid, we're not challenging that.

13 But when we get back to your initial
14 question, Commissioner Boychuk, about what is the --
15 what's the disconnect here between -- is there a
16 short-term need and we're looking for a long-term
17 solution?

18 COMMISSIONER BOYCHUK: Mm-hmm.

19 MR. WEISBERG: I think that's a view that Green Island
20 takes. And in my comments, I'm trying to get you to
21 look at some considerations about what was the need,
22 really, going into this CFT? And I think there's
23 evidence that it wasn't as long-term as we now find it
24 characterized, as being 25 years.

25 COMMISSIONER BOYCHUK: Okay, thank you. And as I said,
26 that was just accepting that if we were to accept that

1 a green-field project should be looking at 20 to 30
2 years. I could have probably asked you as well
3 whether you think that is appropriate.

4 MR. WEISBERG: I think certainly 20 years is consistent,
5 and above that maybe it's a judgment call. But I do
6 think the evidence of B.C. Hydro that I referred to
7 put 20 years in the ballpark as well, for addressing
8 that. So --

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

10 COMMISSIONER BOYCHUK: Thank you, but I do take your
11 earlier point.

12 MR. WEISBERG: Okay, thank you.

13 MR. ANDREWS: Mr. Chairman, Madam Commissioner, the
14 question that was posed by the panel is why the
15 parties are so far apart as to the analysis that DPP
16 is a long-term solution to a short-term problem. Mr.
17 Sanderson had two answers, I submit, to that question,
18 quite different. The first is that it isn't a short-
19 term problem because even after the 230 kV line is in
20 service, there is a general need for additional
21 generation on Vancouver Island. And secondly, his
22 answer was that for planning purposes, it is a short-
23 term gap, but that BCTC has proposed only operational
24 solutions as opposed to planning level solutions,
25 which he characterized as being significantly
26 different, something that he's been trying to point

1 out all along. So I want to address both of those
2 points.

3 In my respectful submission, the first
4 answer that it's not a short-term problem because
5 there's a long-term generalized need for generation on
6 the Island, is simply not correct, that there is no
7 evidence, at least even properly in scope, as to the
8 long-term requirements. I mean, we've heard it said
9 that there's a certain date at which B.C. Hydro's
10 provincial-wide system will require additional
11 capacity, and a certain date at which the provincial-
12 wide system will be out of energy balance. But those
13 are not the driving factors for this particular
14 project.

15 And I would go back to the answer that Ms.
16 Van Ruyven gave to the question about capacity, where
17 she said that they are replacing a 50-year asset,
18 referring to the HVDC cables. And in my submission,
19 what that is referring to -- and here I am stepping
20 back a bit -- well, first let me just say the most
21 obvious and clear replacement of the 50-year asset of
22 HVDC cables is the new 230 kilovolt line. That is far
23 and away the closest in terms of replacement in terms
24 of its functionality and the way that it serves the
25 overall system. But the context -- as Mr. Sanderson
26 did acknowledge, this does go back to the mid-90s and

1 it goes back to a period when gas prices were not
2 considered to be a problem. It was thought that B.C.
3 had more gas in the northeast than we could get rid
4 of, and the B.C. government thought that cogen on the
5 Island was a dandy idea and decided to implement a
6 natural gas-fired generation strategy on Vancouver
7 Island. Incorporated in that was the GSX Pipeline
8 proposal as it emerged.

9 So what has changed since VIGP? The GSX
10 pipeline has been cancelled. This is the last gasp of
11 that original notion of a Vancouver Island gas-fired
12 generation strategy. And so the reason that Hydro was
13 looking to gas-fired generation on the Island instead
14 of replacing the HVDC cable, which would have seemed
15 to have been the obvious solution when an asset gets
16 to the end of its useful life, was they thought they
17 didn't need to replace the HVDC cable quite
18 immediately because -- or they couldn't get approval
19 to do that because they had the GSX Pipeline proposal
20 gas-fired generation was supposed to be the answer.

21 But we heard from the VIGP proceeding that
22 BCTC desperately wanted -- sorry, excuse me, that
23 Transmission people within what was then B.C. Hydro
24 desperately wanted to replace and deal with the
25 transmission connection to the Island, but because of
26 GSX, that was, for whatever reasons, not considered a

1 priority.

2 So we're back to a situation now where the
3 GSX Pipeline is dead, BCTC is on its own, and the 230
4 kilovolt line is well underway. It's vastly different
5 than in the time of the VIGP decision, when the 230
6 kilovolt line was just one project among many on the
7 sort of potential options list. Now they have a plan
8 and an expedited date, and evidence as to an expected
9 in-service date.

10 **Proceeding Time 10:15 a.m. T12**

11 So, in my submission, what we have is that,
12 when the 230 kilovolt line is in service, then there
13 is no more planning problem. And the argument that
14 Vancouver Island requires generation and transmission
15 is valid, but it's not a planning constraint. At
16 least, there's no evidence of that, and certainly no
17 evidence of dates at which that becomes a planning
18 constraint on Vancouver Island.

19 THE CHAIRPERSON: Mr. Andrews, your comments are pushing
20 the scope of the original question. I'd like it if
21 you can, in your subsequent comments, to try to bring
22 a closer nexus between your comments and the question
23 that's been asked.

24 MR. ANDREWS: That may mean that I haven't made myself
25 clear, because what I was trying to get at is that the
26 most that has been claimed is that there is a capacity

1 shortfall for planning purposes. And I submit that
2 the evidence supports the conclusion that the most
3 that has been established is that there would be a
4 shortfall for planning purposes between the date of
5 zero rating of HVDC and the in-service date of the 230
6 kilovolt line.

7 And so the first answer that Mr. Sanderson
8 gave to the question being that it's not just a short-
9 term problem, I say is wrong, that that is a short-
10 term problem, it's even asserted to be a shortfall for
11 planning purposes, and it's within a very defined
12 window of time. And that by way of explanation, when
13 Hydro says that they want a long-term solution for a
14 short-term problem, that is exactly what is happening
15 here. And that is why the arguments have been made,
16 that I won't repeat, about the merits of the project
17 itself.

18 The question that was raised by
19 Commissioner Boychuk, "Should the panel make a
20 judgment regarding the change in the CFT from 20 to 25
21 years," in my submission, the answer is clearly "yes,"
22 but of course only in the context of all of the
23 evidence. That the panel, I would submit, should not
24 be kind of micro-managing and trying to point out
25 where Hydro exactly went wrong or did something right,
26 but looking at the evidence as a whole, and it

1 certainly should not ignore specific issues like that
2 20 to 25 years, or a myriad of other what could be
3 considered small points. The big issue for the panel
4 is, what happens when you look at all of those small
5 things together?

6 Those are my submissions.

7 COMMISSIONER BOYCHUK: Yes, thank you.

8 MR. LEWIS: Good morning. Why are we so far apart?

9 COMMISSIONER BOYCHUK: I'm not sure that's how I meant to
10 actually characterize that question, but I see it's
11 catchy.

12 MR. LEWIS: I believe that B.C. Hydro may have been
13 slaves to a process. I think that that process was
14 based on determinations that came out of a previous
15 regulatory decision, which is VIGP.

16 At the time of the VIGP proceedings, I
17 think there was a decision to be made, which was: Do
18 we proceed with on-Island generation to meet the
19 capacity needs, or do we pursue the transmission
20 solution?" The fact that, based on the best
21 information at the time, Hydro was urged to pursue
22 generation, based on the reasons of balancing load, as
23 Mr. Sanderson subscribed, is largely irrelevant now, I
24 think.

25 **Proceeding Time 10:20 a.m. T13**

26 The fact that B.C. Hydro has conducted a

1 process based on that determination is a reality. But
2 what is also a reality is that there has been
3 significant change since then, as you identified. I
4 think the panel should take that change into account
5 when considering a 25-year contract. That change I
6 think can be summarized as such. B.C. Transmission
7 Company is now solely responsible for the reliability
8 of the system. They have made commitments to a
9 transmission component of that solution. They are
10 confident that they will meet their objectives. B.C.
11 Hydro has agreed with them proceeding with that
12 transmission solution and they haven't disputed it.
13 In my argument I pointed out that Bob Elton, the CEO
14 of Hydro, has supported that. I think the panel
15 should also accept that change as a reality and base
16 its judgments on that. Change is inevitable and it's
17 not necessarily good or bad, but how we manage change
18 is what's most relevant.

19 I think in this process we've seen B.C.
20 Hydro try to fight to ignore that change rather than
21 manage it, and maybe that goes back to being slaves of
22 the process. But irregardless, the panel should deal
23 with the here and now, and what is best for the public
24 over the next 25 years is what is most relevant in
25 this determination.

26 Generation or energy is important and it

1 has been valued in all of my arguments. The question
2 that remains is are we willing to pay the cost for
3 this excess generation? So I submit that this entire
4 discussion has changed from, at the VIGP decision, "Is
5 on-Island generation the best way to meet the Island's
6 capacity needs?" to "Does the Tier 1 solution that's
7 within this EPA of on-Island generation provide enough
8 value to the ratepayer for the excess costs and risks
9 that the ratepayers are being asked to undertake?" We
10 are so far apart simply because of this.

11 I don't feel that any reasonable and well-
12 informed members of the public have supported this
13 proposal. I've seen the largest industrial users with
14 the most to lose from a lack of the reliability not
15 supporting it, yet B.C. Hydro continues to push it
16 forward. To me that's truly an indication that we're
17 fairly far apart in this matter, and I think that that
18 is an indication of which way the panel should rule as
19 far as the public interest goes.

20 COMMISSIONER BOYCHUK: Thank you.

21 THE CHAIRPERSON: Mr. --

22 MR. DUGGLEBY: Hello. I haven't spoken before in the
23 hearing for evidence, so my name is Tony Duggleby, I'm
24 with the -- chief executive officer for Seabreeze
25 Pacific Regional Transmission. I would ask the
26 panel's indulgence in the fact that I'm not a lawyer,

1 I'm an engineer, so I don't necessarily follow all the
2 intricacies of argument, and feel free to correct me
3 if I step over the bounds, please.

4 THE CHAIRPERSON: The rules are simple and I'm sure
5 they're going to be easy for you to understand. You
6 need to confine your comments to the issues that have
7 been raised by the panel. That's a very simple rule
8 and one that I'd ask you to abide by.

9 MR. DUGGLEBY: Fair enough. Commissioner Boychuk has
10 asked why the intervenor community, which seems to be
11 operating fairly much with one voice, and the
12 proponents and B.C. Hydro, which form apparently the
13 other side of the question, are so far apart. Is that
14 correct? Is that a good characterization?

15 COMMISSIONER BOYCHUK: Well, yes, it's in the terms of
16 the goal or the purpose of the CFT and what it was
17 designed to achieve.

18 MR. DUGGLEBY: Okay. And so from an engineering point of
19 view, the CFT is designed to achieve both reliability
20 and energy supply to Vancouver Island, with the
21 overriding principle of least cost to the rate base,
22 if I understand the situation. Would that be fair?

23 I mean, I'm looking at it from an
24 engineering point of view, not a legalese point of
25 view, so I'm trying to bring to the table what we see.
26 And I'd like to cast the answer a little differently

1 from what has been said today, which is that we've
2 talked about how the process has diverged. There's
3 also the issue of perception and the ability to B.C.
4 Hydro to accept evidence. And I would put it to the
5 panel that B.C. Hydro has framed the question in such
6 a way that they have in fact disallowed solutions
7 which are much less cost and much higher reliability.

8 **Proceeding Time 10:25 a.m. T14**

9 And the fact that they have framed the
10 question in this way and refused to accept new
11 evidence, or other solutions, and have ruled them out
12 of place, if I recall correctly, the VIGP decision --
13 MR. FULTON: Mr. Chairman, I'm going to interject at this
14 point, because we are getting into argument. We're
15 not addressing what today is meant to address. Sea
16 Breeze intervened in the proceedings, they have had
17 access to all the exhibits, they would have presumably
18 received a copy of my correspondence yesterday to two
19 of the other intervenors telling them what the purpose
20 of today was, and referring them to Exhibit A-22. And
21 so, with that in mind, I'm going to ask again that Mr.
22 Duggleby restrict his response to the question that
23 was asked, and not move into argument. Because if
24 he's going to move into argument, then it's going to
25 be my advice to the Commission panel that that's the
26 end of it. He's not following the rules, which the

1 Chairman has identified as simple, and we move on to
2 the next party.

3 THE CHAIRPERSON: Thank you, Mr. Fulton. Mr. Duggleby,
4 Mr. Fulton is correct. I really can't permit you to
5 do that, because if I permit you to do that, I have to
6 permit everyone else to do that --

7 MR. DUGGLEBY: Absolutely.

8 THE CHAIRPERSON: -- and so you really need to confine
9 yourself to the issues that have been raised, or
10 comments that have been made at this stage.

11 MR. DUGGLEBY: I thought that I was. I will try hard
12 to.

13 THE CHAIRPERSON: You haven't. Oh, I'm going to
14 interrupt you if you do it again.

15 MR. DUGGLEBY: Okay. My point is, is that the question
16 -- I'm trying to answer the question. And the
17 question is, "Why is there such a disparity of opinion
18 here? Why is there such a gulf between the two
19 groups?"

20 THE CHAIRPERSON: That's very broadly characterizing the
21 question, and it's much too broad for you to
22 characterize the question that way. The question that
23 you need to be speaking to now, Mr. Duggleby, is with
24 respect to the issue regarding whether or not -- why
25 is there a difference of viewpoint with respect to the
26 limited issue as to whether or not DPP is a long-term

1 solution to a short-term problem or not. That's --

2 MR. DUGGLEBY: I would agree.

3 THE CHAIRPERSON: You need to confine your comments to
4 DPP in that regard.

5 MR. DUGGLEBY: Other people presenting argument here
6 have said that BCTC's transmission option was in fact
7 relevant to the proceedings. Am I to assume that
8 that's not the case?

9 THE CHAIRPERSON: Not to this question. Not to the
10 question that's before us now.

11 MR. DUGGLEBY: Because that has been addressed by other
12 people this morning without them being reined in.

13 So, at any rate, my point would be that
14 Duke Point, on its own, does not satisfy common load
15 contingency issues for Vancouver Island, and from a
16 planning perspective, from an engineering perspective,
17 the issues at hand are reliability for Vancouver
18 Island capacity. Once you take that out of the
19 question, then the issue of Duke Point can be resolved
20 over a period of a very long discussion. The driver,
21 the fundamental driver that I perceive, in the haste
22 with which Duke Point is being presented as a
23 solution, and the process which has been evolved to
24 shed all other possibilities, is driven by the
25 question of reliability.

26 And the concept that there should be on-

1 Island generation is nice, I agree. My parent company
2 has quite a few proposals for on-Island generation.
3 But the driver which creates the tempo of this
4 proceeding is the reliability and capacity issue, as
5 was properly laid out in the original VIGP
6 proceedings.

7 **Proceeding Time 10:30 a.m. T15**

8 And I would point out that one of the
9 issues -- and I'm going to try to phrase this
10 correctly -- that drives the disjunct between the two
11 sides of the table, which is what I understand to be
12 the question, is that there are, in fact, other
13 lesser-cost solutions on the table, currently being
14 proposed, currently being engineered, and currently in
15 process which B.C. Hydro would like to consider out of
16 scope. That's their argument. My argument is that if
17 you're concerned with reliability, if you're concerned
18 with the rate base and cost, then engineering
19 solutions which are in process, and which will resolve
20 those, including BCTC's 230 kV lines, and including
21 Sea Breeze's solutions, should be considered. That's
22 all.

23 THE CHAIRPERSON: Thank you. Is there anyone now other
24 than Mr. Sanderson and Mr. Keough who wishes to speak?

25 Mr. Keough?

26 MR. KEOUGH: Commissioner Boychuk, at the risk of being

1 less delicate than I typically am, I think we can cut
2 through this quite easily, because I addressed it at
3 page two of my reply argument.

4 I think the reason intervenors are
5 attempting to characterize this as a short-term
6 problem with a long-term solution proposed, is nothing
7 more than an argument of convenience. Because if they
8 do not make that argument, then they cannot point to
9 the short-term gap -- and defining "short term" in
10 whatever number of years you want -- between when one
11 line comes out of service and the other proposed
12 project comes in service. So I think parties are
13 taking advantage of the fact that there is a line
14 coming out of service and another one going in service
15 to say that's a short-term gap and this is a long-term
16 solution. But I can tell you from Duke Point Power's
17 perspective, this has always been viewed as consistent
18 with the VIGP decision, which says on-Island
19 generation is the next appropriate resource addition.
20 And I've pointed out, you can't view generation as a
21 short-term answer. That's simply not the case. And I
22 think it also goes to the evidence that a combination
23 of generation and transmission are appropriately
24 viewed as addressing the long-term capacity needs.

25 So I think it's always been a long-term
26 problem that's being solved by this project, not a

1 short-term problem. And I think, as I've said, it is
2 nothing more than an attempt by parties to take
3 advantage of this gap that exists between the time
4 frame of two cable solutions. And I think that's why
5 people are making the argument.

6 COMMISSIONER BOYCHUK: Mr. Keough, I have read your
7 argument, and in fact I have entertained the idea of
8 mentioning your conclusion in terms of why the gap for
9 parties, before we got into this discussion, and
10 neglected to do so. So they didn't have an
11 opportunity to comment on it, so I appreciate your
12 comments again now.

13 MR. KEOUGH: I'm sure they've seen the argument, as well.

14 COMMISSIONER BOYCHUK: Yes, I'm sure they have.

15 MR. KEOUGH: The other thing is, there has been an
16 attempt -- which has been reiterated here this morning
17 -- of people to suggest that the determinations made
18 in the VIGP decision are outdated, have been overcome
19 by events, and should not bar you from taking any
20 course of action you want. The thing that's striking
21 about those comments is that the findings from -- the
22 specific finding from the VIGP decision with respect
23 to on-Island generation was reiterated by the
24 Commission at the pre-hearing conference, page 307 of
25 the transcript. And as we pointed out, no one -- no
26 one at any point has stepped forward and said,

1 "Listen, Commission, that finding is outdated, that
2 finding is no longer appropriate, it's been overcome
3 by events."

4 And so, if anyone wanted to challenge
5 that finding as being relevant to these proceedings, they
6 had the full opportunity to do so and did not do so. And
7 did not do so at any point in time. That finding has
8 never been challenged or the subject of any review in
9 variance, or appeal, or any process before this
10 Commission. In fact, nobody has challenged it in evidence
11 or in argument. So I think it's a little bit late for
12 them now to come back and say that the reason that you
13 should cast doubt on that finding is circumstances have
14 changed. They had full opportunity to raise that and we
15 could have debated it, but they did not. So again I think
16 you're just taking advantage of an argument of
17 convenience.

18 **Proceeding Time 10:35 a.m. T16**

19 COMMISSIONER BOYCHUK: Mr. Keough, again just before you
20 continue, I know some of the parties have actually
21 responded to that question, I think JIESC in
22 particular. But my question to you would be: How
23 should they have done that? How should they have
24 challenged it to this point?

25 MR. KEOUGH: Ms. Boychuk, I think what they should have
26 properly done is the minute the Commission said, "This

1 is a relevant finding and we're going to take it into
2 account in these proceedings," they should have
3 stepped up and said, "We have a real problem with that
4 finding. We want to challenge that finding. We want
5 to review that finding," and put forward an
6 evidentiary base and followed the process to challenge
7 a finding.

8 COMMISSIONER BOYCHUK: I don't know if this helps or not,
9 but the finding of the VIGP decision panel in terms of
10 on-Island generation of course was in that decision,
11 and in our January 23rd letter to parties we reiterated
12 that. So it was in terms of the scoping decision
13 where that particular finding was determined to be
14 relevant but it was also referred to in the January
15 23rd letter. Anyway.

16 MR. KEOUGH: I understand, and it was also referred to in
17 the transcript Volume 2, page 307. So it's been
18 reiterated many times that it is a relevant finding
19 for purposes -- or a relevant determination for
20 purposes of these proceedings.

21 And I guess my point is, having put it out
22 there as a relevant determination, there was no action
23 taken to specifically challenge that determination.
24 There are processes that challenge previous
25 determinations is I guess what I'm saying.

26 COMMISSIONER BOYCHUK: Thank you.

1 MR. KEOUGH: I think a couple of other points. There was
2 some discussion about -- and this was with Green
3 Island -- about whether or not it was a judgment call
4 establishing things like the term of the CFT. And I
5 think Mr. Weisberg said yes, it is something the
6 Commission should intervene in and make a
7 determination on. I think there he is losing sight of
8 the fact that the Commission right from the start
9 refused to intervene in that way. They said at least
10 the initial obligation is on B.C. Hydro to decide how
11 to run the CFT and what the terms are and what to do.
12 Sure they've got to come in and justify after the fact
13 what they've done, but I think it goes to whether or
14 not you're going to micromanage the utility and
15 dictate the precise terms, or allow them to exercise
16 their judgment in terms of obtaining the product they
17 think they need.

18 And I think it's bit late now, after the
19 Commission has said to B.C. Hydro, "You've got to go
20 do what you want to do and then come back and justify
21 it," to say that the Commission should start
22 micromanaging and determining whether 10, 15 or 20
23 years is an appropriate term, whether it's 97 percent
24 or 95 percent reliability. I really think that that
25 would be contrary to what the Commission has already
26 decided at the outset.

1 I've got a note down here I will resist
2 commenting on the JIESC and Norske plugs for their
3 projects. I think in terms of your question that's
4 pretty much all I have. Thank you.

5 COMMISSIONER BOYCHUK: You're welcome.

6 **Proceeding Time 10:40 a.m. T17**

7 THE CHAIRPERSON: Mr. Sanderson.

8 MR. SANDERSON: Thank you, Mr. Chairman. Just a couple
9 of points in reply. First to Mr. Quail's speculations
10 on institutional sociological theory, if that's what
11 they amounted to, I guess all I'd say without taking
12 on his comments directly is that most institutions
13 have patterns of behaviour and their own internal
14 issues to deal with, and I'm sure that his institution
15 is no different than any other in that respect, and
16 the same with each of the intervenors here.

17 I think the more generalized point probably
18 is that positions in this particular proceeding got
19 entrenched at VIGP, and all of the players have found
20 it difficult to deviate from some fairly entrenched
21 positions. We have parties here who actually only got
22 here in the first place because they were worried
23 about GSX. They're still here. I'm not questioning
24 their right to be here, but I am saying that the
25 notion of staying with positions is not unique to any
26 particular party here. It's common probably to all of

1 them.

2 I think what underlies the difference
3 between Hydro's perspective and others, is that in the
4 end, the obligation to provide reliable service and
5 the focus there is Hydro's obligation. No one else
6 has that obligation. It's easy to treat that
7 obligation lightly -- and I'm not suggesting people
8 are doing anything inappropriate in that -- but still
9 to treat it lightly when it isn't you who has to be
10 there when the lights go out. And sure, various
11 intervenors may be affected if that happens, but maybe
12 someone else will be affected, not them. In other
13 words, their interest in that outcome is very precise
14 and narrow.

15 The utility's obligation, and in my
16 respectful submission this Commission's obligation, is
17 to look at all customers and look at all the needs and
18 ensure reliable service in the province. And it's
19 that obligation which so underlies, I think, so much
20 of what Hydro's evidence is focused on and
21 distinguishes its perspective perhaps.

22 Next, just a response to Mr. Bois. He cast
23 doubt in his response on the load forecast, and I just
24 point out, as in his argument, that he seems to
25 neglect the evidence as to what's actually happened to
26 load on Vancouver Island.

1 Mr. Andrews, and this is picking up a point
2 of Mr. Keough but I'll take it home directly to a
3 comment of Mr. Andrews. Mr. Andrews went further than
4 just saying that GSX CCC or other intervenors
5 challenge some of the VIGP underpinnings, if I
6 understood him properly, he observed that Hydro had
7 entirely failed to lead evidence about some of the
8 long-term issues that VIGP dealt with. And in my
9 respectful submission and picking up Mr. Keough's
10 point, there's no failure there. The reliance that
11 was placed on the VIGP conclusions was confirmed in
12 the scoping decisions, and all Hydro has done, in my
13 submission here, is stay within the confines that the
14 Commission set when it raised the issues it believed
15 important to assist it in determining whether or not
16 the public interest is served by the contract. This
17 goes back to the basic proposition that this hearing
18 is about whatever you have said it's about, because
19 it's your determination of the public interest that
20 matters here.

21 Lastly, again Mr. Andrews made the comment
22 that the one major change since VIGP is that BCTC's
23 project for the 230 kV is "well underway". Well, we
24 can quarrel about how likely it is to be finished on
25 time, how strong the evidence, whatever; that's all
26 been dealt with in the arguments. But the one thing

1 that's absolutely clear in the evidence is, well,
2 whatever else you might want to say about the project,
3 it is not underway. It's a long way yet from
4 underway. The basic applications for the fundamental
5 permits haven't yet been filed. So we're a very long
6 way from having BTC's project underway, and that is
7 one of the reasons for the uncertainty that we've
8 addressed in argument.

9 Those are my comments in reply.

10 THE CHAIRPERSON: Thank you.

11 **Proceeding Time 10:45 a.m. T18**

12 COMMISSIONER BOYCHUK: Thank you.

13 Mr. Sanderson, I have another question that
14 I'll direct to B.C. Hydro initially because it deals
15 with the privative clause of Article 17.3 of the CFT.
16 And again I'll try not to give too long-winded a
17 background and be more focused in terms of the
18 question I have, but the background, as I understand
19 it, is that Addendum 10, which is dated March 5th,
20 2004, where the privative clause was introduced,
21 followed the period when the suspension took place in
22 the CFT process, when B.C. Hydro was considering the
23 comments that were made by the Commission in its
24 January 23rd letter. And in that Addendum, the Section
25 17.3 was added that specifically provided for the
26 acceptance of tenders aggregating less than 150

1 megawatts under certain conditions. I believe that's
2 correct. I'm looking at what Green Island Energy has
3 -- their submissions because my questions are going to
4 relate to some points that you've addressed in your
5 argument relating to their argument.

6 I note, again just in terms of background
7 because I think it might be helpful, there was some
8 minutes of the August 12th meeting, wherein how this
9 was going to be applied, how you were going to move
10 from Tier 1 to Tier 2, was discussed. And that's
11 where we understand now that what was intended was
12 that B.C. Hydro wouldn't invoke the Tier 2 privative
13 clause as long as the tenders were competitive and
14 there was no evidence of collusion. And the evidence
15 on the record, B.C. Hydro, is that you didn't invoke
16 that clause because you felt that there was no
17 evidence of collusion, and that the process had been
18 competitive. So that's correct so far, right? I
19 haven't mischaracterized anything yet?

20 MR. SANDERSON: No, I think you've characterized it very
21 clearly, Commissioner Boychuk.

22 COMMISSIONER BOYCHUK: Okay, thank you.

23 And in your argument, at paragraph 70, I
24 think it's the -- it's your reply argument. You
25 suggest that B.C. Hydro didn't adjust the size of the
26 acceptable portfolios, when you introduced Addendum

1 10. Instead, Article 17 was revised to give B.C.
2 Hydro the ability to salvage whatever it could out of
3 the CFT process if no acceptable portfolio emerged
4 from it. And I've just taken that from your argument.

5 Now, Green Island, of course, has raised a
6 number of issues concerning the application or the
7 interpretation of that clause, or that section, and
8 B.C. Hydro's argument to us is that we ought not
9 comment on the proper interpretation of Section 17.3
10 of the CFT, and this isn't the proper forum for it.
11 And if I understand correctly, it's because there's a
12 highly developed law governing tendering processes and
13 therefore GIE's, Green Island Energy's remedies would
14 lie in court, in the courts of law.

15 Now, my question, finally after all that is
16 Section 17.3, if I understand it correctly, was
17 created to deal with comments that were raised by the
18 Commission in its January 23rd letter. Why wouldn't
19 the Commission be in a position in this circumstance
20 -- maybe not in every circumstance, looking at
21 competitive bidding processes -- but in this
22 circumstance, to consider and interpret that
23 provision?

24 MR. SANDERSON: There's a number of aspects to the answer
25 to that, Commissioner. The first is, the caution
26 that's contained in the reply based on the strata

1 corporation case was to draw to your attention the
2 consequence of interpreting contractual relations.
3 That's not to say that you don't have the
4 jurisdiction, but it's to say that the exercise of
5 that jurisdiction may have unintended consequences. I
6 don't think that anybody can have sat in this room
7 over the last few weeks, listening to the submissions
8 of Mr. Weisberg and the evidence of his client,
9 without understanding that there is a -- and I can't
10 think of another noun at the moment, so I'll call it a
11 "game" being played, and I don't mean that in a
12 pejorative sense, I just mean there are other aspects
13 to what went on over the last year that will resonate
14 in different forms.

15 **Proceeding Time 10:50 a.m. T19**

16 It is clear, in my respectful submission,
17 that Mr. Weisberg was exploring the development of a
18 record which would assist him in those other forums.
19 I don't know whether there's any decisions made in
20 that respect and I don't know whether that will
21 happen, but there was no question in my mind listening
22 the cross-examination and the arguments that have been
23 made, that one of the objectives of Green Island was
24 to explore whether they could use this opportunity to
25 develop a record which might allow them to complain
26 about the conduct of the bidding process. And in

1 argument and in reply where B.C. Hydro says there is
2 complex and difficult tendering law around all of
3 that, that law governed the way that process was
4 conducted. All the parties know that if you establish
5 a tendering process of a particular type and don't
6 comply with it in the way that you've said you have,
7 you may create rights in some of the parties that
8 claim to have been prejudiced by the way you did
9 behave. And so this was a very opportune occasion for
10 Green Island to have an opportunity to explore exactly
11 what happened in a way that will allow them to
12 determine what their next step should be in another
13 forum.

14 With that backdrop, what B.C. Hydro is
15 trying to say in reply is, if the Commission now seeks
16 to make a ruling which says what the obligations of
17 the parties were and when they could exercise what
18 powers, that's going to be used in a court in favour
19 of whoever your ruling favours. The interpretation of
20 that contract shouldn't be undertaken without a very
21 clear understanding of tendering law.

22 On the submissions of the party in this
23 proceeding, and with great respect, this Commission
24 can't have any understanding of what those obligations
25 are or what that law is. Now, I don't know whether
26 the panel happens to know some of that law or not, but

1 you haven't heard any submissions from the parties on
2 those. And again in reply, what we're trying to say
3 is, and with great respect, we don't think this
4 Commission was established for the purpose of
5 interpreting tendering law, and we don't see how that
6 can be interpreted without that understanding, and we
7 do believe that that interpretation is going to have
8 an implication in the context of the tendering
9 obligations of the parties. And so that's the caution
10 that's being sounded.

11 We're not saying that jurisdiction doesn't
12 exist to interpret it to the extent necessary, but we
13 are saying to the extent that you actually stray into
14 explaining the obligations to the parties, that could
15 bind them or could be a binding decision to which a
16 subsequent court defers, in the same way as occurred
17 in the strata corporation case. And that's, we say,
18 you ought not to take the invitation of Green Island
19 to stray there because it doesn't bear, we think, on
20 this case.

21 In other words, the second half of my
22 submission is, having said why we're nervous, the
23 reason we don't think that you need to go there is
24 because the evidence is this power in Hydro was
25 something put in to allow it to rescue some of the
26 projects should it choose to, just as you

1 characterized it. Because it didn't find the need
2 within the CFT process to move out of Tier 1, didn't
3 exercise 17.3, the need for you to consider whether or
4 not it did that appropriately doesn't arise anyway.
5 What you've been told in the evidence, in my
6 submission, is that that clause, despite the fact it
7 was put in for that purpose, was never used for that
8 purpose; that is, it didn't need to be used, in the
9 view of the people administering the process. The
10 cost-effectiveness study that was done was done quite
11 outside that, and you've had evidence on that and you
12 can deal with that without interpreting 17.3.

13 COMMISSIONER BOYCHUK: Okay, thank you, I better
14 understand your argument now.

15 MR. SANDERSON: Thank you.

16 THE CHAIRPERSON: I think I will give you an opportunity
17 to comment, Mr. Weisberg, but you may want to go after
18 others, and I'll give you that choice. Is there
19 anyone other than Mr. Weisberg who wishes to comment
20 on this? Mr. Lewis?

21 MR. LEWIS: I think that I might limit my comments to
22 that rather than the Commission panel trying to
23 determine if it had the authority to delve into the
24 privative clause and whether it was exercised, you
25 simply say, "Well, we have the authority and the
26 responsibility to uphold the public interest, and in

1 order to do that, we specified in the January 23rd
2 letter that we are willing to accept less capacity if
3 the Tier 1 is not the most cost-effective." And that
4 goes straight back to the principal issue which was
5 identified.

6 **Proceeding Time 10:55 a.m. T20**

7 So I think it's irrelevant that B.C. Hydro
8 structured the privative clauses they did, and it's
9 also irrelevant that their choice not to explore the
10 cost-effectiveness of smaller portfolios is also
11 irrelevant. Because the Commission panel has the
12 obligation to ensure that, according to that principal
13 issue, is Tier 2, Tier 1 or the no award the most
14 cost-effective?

15 Hydro has made it very clear that they have
16 not evaluated a Tier 2 122-megawatt portfolio based on
17 the same objective of securing capacity as they did in
18 the CFT. Now, if the panel restricts its evaluation
19 or examination of a smaller portfolio to see if it is
20 the most cost-effective, simply based on the rules
21 that Hydro has set, I think one has to question what's
22 the purpose of having a regulatory body. So
23 irrelevant of the privative clause, I think you have
24 the authority, the responsibility and the obligation
25 to do that analysis, and I think everything that's
26 been put forward is available for you to do that. And

1 I don't think your right is hindered one bit by what's
2 gone forward.

3 THE CHAIRPERSON: Is there anyone other than Mr. Weisberg
4 -- in that context, I'm including Mr. Keough -- that
5 wishes to speak to this issue?

6 Mr. Weisberg?

7 MR. WEISBERG: Thank you, Mr. Chairman. Let me begin by
8 just addressing Mr. Sanderson's remarks. He suggested
9 that I, through the hearing, was trying to develop a
10 record for another purpose, for use in court. I'm
11 flattered by that speculation that I'd think that far
12 ahead, but it is only speculation. It's irrelevant
13 speculation. What view a court -- if a court was
14 brought into play -- might have of the Commission's
15 determination should have no bearing on whether you
16 make that determination or not.

17 Further, Mr. Sanderson --

18 THE CHAIRPERSON: Mr. Weisberg, do you deny the comments
19 of Mr. Sanderson, or are you just simply saying that
20 they're speculative?

21 MR. WEISBERG: That question pushes me pretty far, Mr.
22 Chairman. But I can tell you that I didn't
23 specifically think of building a record for court. I
24 didn't exclude -- you know, in the realm of
25 possibility, of what happens after this I didn't
26 exclude that, but I didn't have a specific goal, and

1 I'll even go so far as to say I wasn't instructed by
2 my client to go in that direction. If Mr. Sanderson,
3 though, was concerned about that, at the time, he
4 could have objected, and he didn't.

5 What Hydro is asking the panel to do,
6 though, is decline to interpret or decline to consider
7 the application of the privative clause. And we
8 submit that the Commission panel should reject that
9 suggestion. And the reason being that if you go back
10 to the scope ruling, the way the Commission framed the
11 principal issue, it included consideration of whether
12 Tier 2 was the most cost-effective of three possible
13 options: Tier 1, Tier 2 and no award. And having
14 made that ruling, we think that fairness requires that
15 the Commission panel follow through to the logical
16 conclusion.

17 If you look at B.C. Hydro's own definition
18 of Tier 2, they say that it arises from the exercise
19 of the privative clause. And there's a reference in
20 Exhibit B-1, page 13, for that.

21 **Proceeding Time 11:00 a.m. T21**

22 So if you recognize that B.C. Hydro did not
23 exercise the privative clause, which it clearly
24 didn't, then the only possible way that Tier 2 could
25 realistically have been considered as a tier outcome
26 -- sorry, as a hearing outcome -- is if the Commission

1 panel was persuaded that the privative clause should
2 have been invoked.

3 So if Hydro had an objection to the
4 Commission panel considering the interpretation of
5 that clause, the time to raise that objection was when
6 the scope ruling was made, November 30th. Largely on
7 the basis of that ruling, and what we saw as the
8 implications that flowed from it, that you really had
9 to look at whether the privative clause should have
10 been invoked, Green Island went to -- considering the
11 size of the company -- very significant effort and
12 expense to take part in this proceeding. It's
13 unacceptable, in our view, for B.C. Hydro now, in its
14 reply argument, the next-to-last step in this
15 proceeding, to raise that objection now, and say,
16 "Whoa, Commission, you shouldn't look at that."

17 It seems to us like a last-ditch effort to
18 try to fetter the Commission's discretion. But it's
19 important to note that in suggesting that, B.C. Hydro
20 hasn't said that you don't have that jurisdiction.
21 They concede that you do, they concede that in their
22 reply -- I think in paragraph 86 you'll find that --
23 and in Mr. Sanderson's remarks. But they do try to
24 dissuade you from doing that by conjuring up some
25 perceived dangers that are inherent in exercising that
26 jurisdiction. And their reply, in part, says that

1 there is a real risk that an interpretation of the CFT
2 process by the Commission will lead to arguments that
3 that interpretation binds a court on the meaning of a
4 CFT. So what they're saying is, there's a risk it
5 could lead to arguments. That doesn't seem
6 tremendously dangerous to us.

7 Hydro also submits that the Utilities
8 Commission doesn't contemplate that this Commission
9 would have the expertise and experience to determine
10 the respective rights and responsibilities of parties
11 to a contractual tendering process. We think that is
12 just an amazing suggestion to make, in the specific
13 context of the exercise of the privative clause. When
14 you read the privative clause, even a casual reading,
15 it's readily apparent that the exercise of Hydro's
16 discretion turns on this:

17 "...on whether a portfolio is not the most
18 cost-effective solution, having regard to
19 B.C. Hydro's ratepayers..."

20 and is exercisable

21 "...with a view to procuring the most cost-
22 effective dependable capacity meeting its
23 requirements on Vancouver Island."

24 So we submit that not only do you, the
25 panel, have the expertise and the experience to
26 interpret that aspect of the privative clause -- and

1 that is the part that we're asking you to interpret,
2 because it's the exercise, it's a threshold for
3 exercising it -- you have that expertise, you have
4 that experience, and the relevant portion of what
5 we're asking you to look at speaks directly to the
6 Commission panel's core competency in determining what
7 is the most cost-effective option.

8 If B.C. Hydro really stands by its
9 assertion that the Commission panel lacks that
10 expertise, that you don't have the necessary
11 experience to determine what the most cost-effective
12 option is, then it should have made an application
13 some time in the course of this hearing for the panel
14 to recuse itself on the grounds of gross incompetence.
15 Because it speaks directly to what you have said you
16 will decide in this hearing.

17 If you strip away all the forceful
18 arguments about why you shouldn't step into this
19 dangerous ground of interpreting something in the
20 privative clause that speaks directly to what you said
21 you're going to do, you're left with something else --
22 and that is, there's a fundamental omission in B.C.
23 Hydro's case. If you read the privative clause, when
24 you get to the end, after they've decided whether they
25 will exercise it or not, there's a calculation. The
26 calculation says, if the clause is exercised, here's

1 how we decide who the winner is, under the privative
2 clause.

3 **Proceeding Time 11:05 a.m. T22**

4 B.C. Hydro had multiple opportunities in
5 this proceeding to address that. They could have done
6 it with their own witness panels. They could have
7 done it on cross-examination of the Green Island
8 panel. They could have done it in their rebuttal
9 evidence. They didn't do that. The simplest way to
10 silence and discredit Green Island for our insistence
11 that you look at the privative clause and determine
12 whether or not it should have been exercised was for
13 B.C. Hydro to do that calculation and to prove us
14 wrong. They didn't do that.

15 The implication -- and with the evidentiary
16 record now closed, B.C. Hydro can't disprove this.
17 But we say the implication is that the Green Island
18 and Ladysmith projects, the portfolio that they
19 created, 122 megawatts, would have been the winning
20 portfolio if the privative clause had been exercised.

21 Just to bring it back to your question --

22 THE CHAIRPERSON: That's a good idea.

23 MR. WEISBERG: -- Commissioner Boychuk, there is no
24 reason at all why this panel should not determine
25 whether the privative clause in fact should have been
26 exercised. And more than that, it's a responsibility

1 that the panel identified for itself in your initial
2 scope ruling when you said that Tier 2 was one of
3 three options for a potential outcome of this hearing.

4 Thank you.

5 COMMISSIONER BOYCHUK: You're welcome. Thank you.

6 THE CHAIRPERSON: Mr. Sanderson.

7 MR. SANDERSON: Mr. Chairman, I just want to disassociate
8 myself completely with the characterization of the
9 remarks that I made that Mr. Weisberg just engaged in.
10 To do that, and to understand the nature of my remarks
11 and give them anything like a fair reading, I think
12 you do need now to go back to reply arguments 85 and
13 86, which in turn respond to certain pages and certain
14 submissions of the JIE argument.

15 You look at the way the reply is
16 structured. It begins with the response to pages 8 to
17 11 of the JIE argument, which is dealing with Section
18 17.3, which was the focus of Commissioner Boychuk's
19 question. The reference to the strata council case
20 actually arose in the argument in paragraph 86, which
21 was intended to deal with both pages 8 to 11, and as
22 well a continuation of the argument in JIE at pages 11
23 to 13. Pages 11 to 13 move on from 17.3 of the CFT
24 and get into an interpretation that they urge on you
25 of the definition of "material" in the non-compliant
26 tender provisions of the CFT.

1 When you put the JIE argument together in
2 those two segments, the 17.3 argument followed by the
3 18.17 argument, it is in my submission absolutely
4 clear they're making the argument to you that Hydro,
5 within the CFT process, had obligations. Now they
6 don't say how you enforce those, they don't say what
7 consequence stems from a breach of them but whenever,
8 in a tendering process, a party is told by another
9 that they think they've got obligations, antennae
10 quite reasonably go up. And it's in respect of
11 defining those obligations, the working together of
12 17.3 and 18.17, and what Hydro was obliged in law to
13 do or not do, that the cautions I have expressed were
14 intended to be made. Thank you.

15 COMMISSIONER BOYCHUK: Thank you.

16 THE CHAIRPERSON: We'll take a 15-minute break now.

17 **(PROCEEDINGS ADJOURNED AT 11:09 A.M.)**

18 **(PROCEEDINGS RESUMED AT 11:24 A.M.)** **T23**

19 THE CHAIRPERSON: Please be seated. I have a series of
20 questions, although they are all on one theme, and so
21 I think I'm going to ask Mr. Sanderson my series of
22 questions and then open up the floor as opposed to
23 opening the floor as I ask each of the questions. And
24 the theme is this: What are the implications of
25 acceptance of the EPA for the recovery of costs
26 arising from the DPP project?

1 And my first question to you, Mr.
2 Sanderson, I think really only needs confirmation from
3 you, but I assume that approval of -- or acceptance of
4 the EPA means the acceptance of the costs that are
5 arising from Appendix 3 of the EPA.

6 MR. SANDERSON: Mr. Chairman, the costs arising from
7 Appendix 3 of the EPA extend out over the life of the
8 contract, and if I'm understanding your question, it's
9 one that I think we addressed in the revenue
10 requirement proceeding in argument in terms of the
11 significance of the REAP process, et cetera. In our
12 respectful submission it would be the same as if the
13 Commission had determined that entering into the
14 contract is prudent, and that in consequence, flowing
15 from that would be acceptance of the payments made
16 under it.

17 The reason I'm being careful is I don't
18 think I can suggest to the Commission that you would
19 lack fundamental jurisdiction to ever think about the
20 issue again in future years if there was a basis on
21 which somebody could say, well, sure, it was prudent
22 then, or in the public interest then, but some
23 circumstances changed. In other words, if your
24 question is: Has the Commission lost jurisdiction
25 forever in respect of any payment made under it? I
26 think my answer is: Lost jurisdiction? Perhaps not.

1 Can I envisage circumstances where it would be
2 appropriate for the Commission to, after the fact,
3 question the payments being made under it. Not
4 easily, I can't. There's no circumstance that I can
5 think of that springs to mind where, from Hydro's
6 perspective, it would be fair to question the payments
7 having authorized the contract to proceed here.

8 **Proceeding Time 11:27 a.m. T24**

9 THE CHAIRPERSON: Thank you. The next cost for which the
10 question is a similar one, and that's the gas
11 purchasing costs. Are those costs included in the
12 deferral accounts that are established by the NHDA
13 deferral account? And if that is true, then are those
14 costs subject to the -- and I may be using this
15 expression inappropriately, but subject to the privacy
16 review that's contemplated for those costs that are
17 captured by that deferral account?

18 MR. SANDERSON: I needed some help with that one. But,
19 recalling the NHDA accumulates until parties seek
20 review, and recalling that the typical cycle at the
21 moment, as proposed by Hydro at least, is a two-year
22 revenue forecast, and what the NHDA has in it is the
23 difference between actual and forecast, what that
24 would mean is that every two years, the prudence -- or
25 the amount in the NHDA would be defined between the
26 discrepancy just in that two-year period, not over any

1 longer period, and then the prudence assessment would
2 be when you came to empty the deferral account,
3 because one party or another or, I guess, the
4 Commission had concluded that there should be a review
5 as to how to dispose of the monies in the deferral
6 account. So generally speaking, I think I'm agreeing
7 with your comment, but it's with two-year snapshots as
8 opposed to accumulated over the life.

9 **Proceeding Time 11:30 a.m. T25**

10 THE CHAIRPERSON: Two-year snapshots or whatever terms
11 established for the NHDA, assuming that it's a
12 continuation of the NHD from time to time by the
13 Commission.

14 MR. SANDERSON: Yes, there's two timeframes. One is the
15 timeframe for revenue requirements, which is the
16 difference between actual and forecast, so that
17 determined what goes in. And then the Commission is
18 going to determine when review occurs to determine
19 what goes out on some sort of other periodic basis or
20 when it gets above certain levels or -- I mean that's
21 as yet to be determined.

22 THE CHAIRPERSON: All right. Thank you.

23 The next cost item relates to the
24 greenhouse gases and regulations that may result in
25 costs that are not within the scope of the EPA and
26 borne by DPP. So in the event, assuming for the

1 moment there are costs that are either on the upstream
2 side or in some other form borne by B.C. Hydro, does
3 acceptance of the EPA speak to whether or not the
4 ratepayer or the shareholder is at risk with respect
5 to those costs?

6 MR. SANDERSON: We said in reply that the most likely
7 scenario that we could think of based on the evidence
8 from the intervenors that would not necessary fall to
9 Duke, was the imposition of say a carbon tax or
10 something like that on the gas stream itself. In
11 reply we say that really just affects the price of
12 gas, is what that does. And so the previous responses
13 with respect to the gas supply costs falling within
14 the NHDA I think apply.

15 Again, I can't think of a circumstance
16 where that wouldn't be what would happen. There may
17 be such circumstance, I don't know. I mean you're
18 conjecturing about any possibility of upstream taxes
19 or permitting fees or whatever with respect to the use
20 of hydrocarbons or greenhouse gas-emitting fuels. So
21 it may be somebody came up with a conjecture for
22 something that wouldn't be caught in the NHDA. But
23 certainly the most plausible circumstance that I can
24 think of would be caught in the NHDA because it would
25 just affect the price of gas.

26 THE CHAIRPERSON: Let's assume for the purposes of the

1 question -- let me ask the question this way. As I
2 understood your submissions, because it was
3 speculative with respect to what the upstream costs
4 might be both in terms of whether there are any and
5 then speculative with respect to quantification of
6 them, that that should not be included in the economic
7 analysis of the EPA. And if that's true in terms of
8 my characterization of your position on this point, my
9 question -- I guess I'm repeating it -- my question
10 is: Should an event arise that results in costs that
11 be attributed to greenhouse gas effects that are to be
12 borne by B.C. Hydro, does acceptance of the EPA speak
13 to whether or not the shareholders or the ratepayer
14 are going to be assuming those costs?

15 MR. SANDERSON: Thank you, Mr. Chairman, I do understand
16 the question now. And I think, though I probably
17 didn't understand it adequately before, I implicitly
18 answered it. That is, to the extent that the costs
19 are found within the cost of gas, they'll go in the
20 NHDA, and the NHDA burden is determined subsequently
21 by the Commission when it comes to decide what to do
22 with the amounts in the deferral account. And so at
23 that time, notwithstanding having now approved the
24 EPA, the Commission will be in a position to determine
25 what costs should go where.

26 **Proceeding Time 11:35 a.m. T26**

1 And I'm not prepared to argue what the
2 answer to that's going to be, but clearly if it's in
3 the deferral account, the Commission has still got
4 jurisdiction over who assumes the burden of that -- of
5 the amounts in the deferral account. And so, the
6 ability to deal with that in the way that seems fair
7 to the Commission then, based on all the
8 circumstances, I think will continue to exist.

9 I go back to saying, is that true in every
10 conceivable characterization of how the upstream costs
11 might be imposed? I don't know. Because I can't -- I
12 haven't really seen in evidence a suggestion as to how
13 else it might be done, other than through an impact on
14 the cost of gas.

15 But certainly, if it affects the cost of
16 gas, and if that's too generalized to pass on to Duke
17 -- because remember, B.C. Hydro's basic position is
18 the intent of the EPA is all of this gets passed
19 through to Duke -- and we're now conjecturing a
20 situation where the EPA fails to accomplish that
21 because the form is so indirect as to not be
22 attributable within the contract language. And if all
23 that happens, the most likely circumstance, I think,
24 is to affect the price of gas, and I've said that I
25 think that ends up in the deferral account.

26 THE CHAIRPERSON: Which I think I'm hearing you suggest

1 means that it's -- in the normal course, subject to
2 prudence review of those amounts, the risk would be
3 borne by the ratepayers.

4 MR. SANDERSON: Yes. Yes. I think that's so. But
5 again, it's subject to prudence review, and subject to
6 whatever else amounts in the deferral account are
7 subject to. In other words, they're in the deferral
8 account because you can't pre-decide where they
9 belong.

10 THE CHAIRPERSON: If the Commission panel was to conclude
11 that those costs, however difficult it is now to
12 speculate as to what they might be, that the risk of
13 those was to be borne by the shareholder and not the
14 customers, do you think that that conclusion would be
15 within our jurisdiction to make at this point?

16 MR. SANDERSON: No. I don't. I think that the
17 Commission is here charged with determining whether to
18 permit or not permit the EPA, first, to proceed --
19 i.e., to declare enforceable or not enforceable all of
20 its provisions. In the case where you declare it
21 enforceable, you do have jurisdiction to impose
22 conditions. But I would suggest that it's likely
23 outside your jurisdiction, when you look at it -- and
24 I'll come back to why in a moment -- it's likely
25 outside your jurisdiction to impose rate terms in
26 those conditions, and it's almost assuredly ill-

1 advised, in my respectful submission.

2 Jurisdictionally, I say it's outside,

3 because if you look at where the power you're

4 exercising in this proceeding comes from, it comes

5 from Part 5 of the Act. That's not Part 3, has

6 nothing to do directly with the determination of just

7 and reasonable rates. And to pre-decide a rate issue,

8 as you'd be doing in that circumstance, in a Part 5

9 hearing, strikes me -- and I want to be clear, this is

10 not an issue I've thought about in the way that you're

11 framing it, and so when I say this, it's my initial

12 reaction, but it seems to me that the powers you have

13 under Part 5 can't be taken to have given you a power

14 to make Part 3 determinations, if you will, sort of

15 outside of the context of the Part 3 proceeding. And

16 we haven't had a Part 3 proceeding here. So I would

17 think there's a strong jurisdictional issue around --

18 or reason why you don't have the jurisdiction.

19 Whether you do or you don't, it would be ill-advised

20 for exactly that reason. That is, you get a different

21 cast of players, you've got different issues before

22 you, when you're looking at rates in their totality in

23 a Part 3 proceeding, and that isn't what this has been

24 about. This has been about those interested in the

25 Vancouver Island solution specifically, and with, you

26 know, the narrowed interest that that implies.

1 So, it's -- I guess I -- you know, well, I
2 think I've said what I have to say.

3 **Proceeding Time 11:40 a.m. T27**

4 THE CHAIRPERSON: Okay. And my fourth and last cost that
5 falls in that category is referenced is the VIGP
6 development cost and it's referenced in your argument
7 at page, and I'll take you to it, and then I may need
8 to take you to some transcript references, but it's
9 referenced in your argument at page 32, so paragraph
10 75. And it's the third last sentence in that
11 paragraph about two-thirds of the way down, that
12 paragraph where it starts:

13 "What is really happening is that the
14 deferral account in which there is currently
15 \$67 million or thereabouts on account of
16 VIGP costs will be reduced to \$17 million."

17 And my simple question is, and it may need
18 to become much more complicated, but my simple
19 question is: Is B.C. Hydro, if we accept the EPA, at
20 risk for the full amount in the deferral account, or
21 is it at risk for just the \$17 million that's there?

22 MR. SANDERSON: Well, the burden of this sentence, I
23 think, is that all Hydro -- and I guess I may quibble
24 with the words "Hydro's at risk". All that remains to
25 be potentially applied in rates is whatever is in the
26 deferral account. So it's really the ratepayer, if

1 you will, that's at risk because there's an amount of
2 money not yet collected in rates, which would
3 otherwise be lost were it not for the deferral
4 account. What the deferral account does is create the
5 possibility that that money will be recovered in rates
6 in some future period. That money from the past will
7 be recoverable in the future. Absent the deferral
8 account, money that you haven't collected in the past,
9 you don't have an ability to impose on future
10 ratepayers. So what the deferral account did was keep
11 that alive.

12 What this sentence is intended to say is
13 that upon the VGA payment being made, the amount at
14 which ratepayers are at risk will be reduced from 67
15 million to 17 million because the 50 million will
16 remove that historical loss, if I can call it that,
17 which was preserved for later recovery through the
18 deferral account by the 50 million.

19 THE CHAIRPERSON: Okay. I do need to take you to some
20 transcript references. Let's begin at transcript 7,
21 at Volume 7. This is the transcript reference that's
22 provided for that sentence that I just referred you
23 to, and it's a comment at line 13 of page 1515. Page
24 1515, line 13, is the reference that you've given for
25 that reduction to the amount in the deferral account,
26 and at line 16 Ms. Hemmingsen says:

1 "And ratepayers also benefit by realizing
2 the value for those assets, and that 50
3 million could be..."
4 and I emphasize "could be",
5 "...credited against the provision that we
6 currently have, resulting in us going
7 forward only with \$17 million to recover."

8 MR. SANDERSON: Yes.

9 THE CHAIRPERSON: She didn't say "would". And then in
10 Volume 8, page 1723, starting on line 2, and I'll give
11 you a chance to read lines 2 through to 15 -- well,
12 16.

13 MR. SANDERSON: Yes.

14 THE CHAIRPERSON: And now I need to take you to a
15 document that I made available to Mr. Fulton. He can
16 circulate it now, and then I'll refer you to it.
17 There are three documents and Mr. Fulton should make
18 them all available to you.

19 **Proceeding Time 11:45 a.m. T28**

20 The panel has copies. Although I've made
21 three different documents available to you, I may only
22 wind up referring to one of them, and it's the letter
23 from Mr. Stout dated June the 7th, 2004.

24 MR. SANDERSON: Yes, I have that. Oh, June 7th?

25 THE CHAIRPERSON: June 7th, yes.

26 MR. SANDERSON: Yes, I have that.

1 THE CHAIRPERSON: And while Mr. Fulton is distributing
2 them, if you look to IR 1.0 and your response to that,
3 in the last sentence of that response, you state:

4 "The purpose of the account is to provide
5 regulatory clarity around the amounts that
6 are subject to further proceedings when the
7 outcomes of the VIGP and GS projects are
8 known."

9 And I'm not suggesting, Mr. Sanderson, that what
10 you've just told me is inconsistent with those
11 references. But I will at least say that when Ms.
12 Hemmingsen told me on the record that the treatment of
13 the amounts for the VIGP credit and the initial
14 investment would be completely independent of each
15 other, and then in argument you advised me that there
16 would be a reduction to the amount in the deferral
17 account, it struck me that those two things are
18 inconsistent. And so I'll give you an opportunity to
19 comment.

20 MR. SANDERSON: Well, I think that's being described in
21 the final argument, and alluded to in Ms. Hemmingsen's
22 response, is as a matter of accounting entry, the
23 effect in the books, from an accounting perspective,
24 would be as described. That is, and I'm always told
25 by accountants that I'm insufficiently precise in my
26 language when I try and articulate my limited

1 understanding of accounting principles, but as I
2 understand, just to save me that -- the accounting
3 analysis side of it is simply that an asset was
4 devalued, if you want, because of the potential that
5 it didn't carry, in the future, the value it was
6 recorded on the books at. And so, as a matter of GAAP
7 accounting, there was sufficient doubt about its value
8 that it was appropriate to not reflect value on the
9 books.

10 From the Commission's perspective, that
11 amount -- and from Hydro's perspective, that amount --
12 had still been undetermined as to where the burden
13 lay. Did the burden lie with ratepayer or not? Was
14 it a loss which would be attributed to the shareholder
15 with no prospect of future recovery or not? In those
16 circumstances, the regulatory device is the creation
17 of a deferral account, as I've described.

18 **Proceeding Time 11:50 a.m. T29**

19 Going back to the accounting, once the 50
20 million is received, again on Hydro's books, from an
21 accounting perspective you can't say those assets
22 don't have value. They did. I mean, they transferred
23 out for 50 million. So the accountants will adjust on
24 Hydro's books to reflect for the receipt of the \$50
25 million.

26 Ms. Hemmingsen's testimony at the first

1 reference says, in response to that, "You could reduce
2 the deferral account to 17 million." That's the
3 Commission's discretion to determine, or to do, so
4 that's why the "could," not "would", because it's the
5 Commission's deferral account, if you will. But B.C.
6 Hydro was offering up, through Ms. Hemmingsen's
7 testimony, acceptance that that would be an
8 appropriate thing to do.

9 The beneficiary of that, as I said in
10 argument, is the ratepayer. Because what's happened
11 is that 50 million that would otherwise be argued
12 about for recovery from ratepayers is no longer
13 available for recovery from ratepayers. So the
14 beneficiary of that treatment ultimately by the
15 Commission would be the ratepayer.

16 And Ms. Hemmingsen can't say it would be
17 done this way, because that, in the end, is the
18 subject of a Commission order, and not subject of an
19 accounting entry, which is what Hydro will be doing on
20 its books.

21 So I don't know if that entirely resolves
22 your feeling that there's an inconsistency, but I
23 don't think there is, for that reason.

24 One other observation I would make is that,
25 in Ms. Hemmingsen's testimony throughout this, she's
26 attempting to distinguish between the accounting

1 analysis, which I hope I've vaguely adequately just
2 described, and the cash flow analysis which was being
3 done when the determination of how properly to handle
4 in the QEM the 50 million was being undertaken. And
5 she was at pains throughout her testimony to say,
6 "Accounting analysis is one thing. What we were doing
7 in the QEM was a cash-flow analysis, and here's how
8 that worked."

9 THE CHAIRPERSON: Let me ask you the flip side of your
10 comments with respect to the reduction to the amount
11 that the ratepayer's at risk for as a result of the
12 accounting entry. Does that reduction, from the 67 to
13 the 17 million, mean that if we deny recovery from the
14 ratepayers, that the amount that the shareholder is at
15 risk for is the 17 million, as opposed to the 67
16 million?

17 MR. SANDERSON: I'm sorry. Has the 50 million dollars
18 been paid by DPP pursuant to the EPA, in your
19 question?

20 THE CHAIRPERSON: Yes. It's assumed for the moment that
21 the cash that's received from DPP as a reduction, as
22 you're suggesting in argument is a reduction to the
23 amount in the deferral account by the \$50 million
24 dollars. Does it then follow that if we deny recovery
25 from the ratepayers of the amount in the deferral
26 account, that the amount that the shareholder is at

1 risk for is just the \$17 million?

2 MR. SANDERSON: Yes. What will have happened, I think,
3 is that the shareholder will have invested \$67 million
4 in some assets. The assets will have been sold for
5 50, and so the shareholder will have received \$50
6 million on account of that \$67 million investment. At
7 that point, the shareholder is down 17 million.

8 Because of the deferral account, the
9 shareholder can seek to recover that 17 million it's
10 down, if it can demonstrate that it was prudently
11 incurred and meet the other tests that are
12 appropriately applicable on that application. So all
13 that, at that point, the shareholder is at risk to
14 lose in this historical expenditures is 17 million.
15 All that the ratepayer is at risk of having to assume
16 the future obligation for is the 17 million.

17 **Proceeding Time 11:55 a.m. T30**

18 THE CHAIRPERSON: Then I go back to Ms. Hemmingsen's
19 evidence, that it's truly incremental cash flow to --
20 and that that's a condition precedent, if you will, to
21 including it in the VIGP as a VIGP credit, as it is.
22 Does it not then suggest, because those monies are
23 reducing the amount in the deferral account, that it's
24 no longer incremental, that it's not new money to, if
25 you will, to the customers because the amount that is
26 received, or the amount that's included in the VIGP

1 credit is actually a reduction to the amount in the
2 deferral account, and that results in, as you've just
3 said, the amount that's at risk whether it be the
4 ratepayer or the shareholders, the \$17 million?

5 And so it's a bit like saying to the
6 customers, well, we'll give you the benefit of \$50
7 million and we'll consider that incremental cash flow,
8 but it does mean that a portion of -- or that money is
9 going to be used to reduce the amount in the deferral
10 credit, and from the ratepayer's point of view they're
11 thinking, hey, that money's going to be coming from
12 the shareholder.

13 MR. SANDERSON: Well, let me posit three different
14 scenarios. Scenario 1 is the VIGP decision had been
15 otherwise and B.C. Hydro could have proceeded with
16 VIGP. In that case there would have been no provision
17 in the first place. Hydro would have recovered in
18 future rates the value of the investment as part of
19 the VIGP project, and shareholders would have borne
20 the full burden of that cost.

21 The second scenario is the one we have,
22 which is that Hydro recovers some of the value of that
23 investment through its future use, albeit it by
24 someone else, but that that cost is less than the
25 total amount invested, which leaves in issue \$17
26 million. And the Commission has to determine who

1 bears the burden of that \$17 million investment that
2 wasn't realized through the sale.

3 The third scenario is the Commission
4 doesn't permit the EPA to proceed, the \$50 million is
5 not paid, and the \$67 million remains in a deferral
6 account. In that last case then the amount that now
7 the Commission has to determine is 67 million.

8 In each case, the deferral account is an
9 amount which can only result in additional burdens
10 being imposed through future rates. That's what, as
11 I've said earlier, it's there for. And our
12 submission, I think Ms. Hemmingsen's testimony and our
13 submission in argument is, one of the effects of
14 authorizing the payment made under the EPA or under
15 the VTA, and allowing the EPA to go ahead and that
16 payment to be made, is it's going to reduce the
17 exposure in future rates from 67 million to 17
18 million. Whether that confers a realizable benefit in
19 the long run on the ratepayer will depend on the
20 outcome of the application to allocate the money in
21 the deferral account. But there's no question that
22 the risk has been reduced by that \$50 million. The
23 amount that, at worst, can be imposed on the ratepayer
24 has been reduced by \$50 million.

25 THE CHAIRPERSON: Thank you, Mr. Sanderson. I'll open
26 the floor now to any comments anyone wishes to make

1 with respect to the issues that I've just raised with
2 Mr. Sanderson.

3 **Proceeding Time 12:00 p.m. T31**

4 MR. WALLACE: Thank you, Mr. Chairman. My response is
5 short. The first question you put, and I apologize if
6 I don't get them quite right, but I hope I've got the
7 essence, was "Does acceptance of the EPA mean
8 acceptance of the Appendix 3 costs?" And I think
9 probably Mr. Sanderson and I are common ground there.
10 Realistically, it seems to me it would be very
11 difficult to challenge prudence in a future rate
12 hearing before this Commission of those costs.

13 There's a possibility, I guess an outside
14 one, of challenging the prudence of dispatch, and how
15 they operate, or the EPA down the road, but if the
16 secrecy imposed in this hearing continues, then I
17 would suggest there'd be no meaningful way that you
18 could review dispatch and argue against it. But
19 principally, it would be very difficult to challenge
20 prudence.

21 The second question was, "Do gas costs go
22 into the NHDA?" And Mr. Sanderson, I think, said
23 "yes," and it seems to us that would be the route they
24 would follow also.

25 Third was greenhouse gases, do they -- and
26 again, it was a situation that we did address in our

1 argument, that the -- it could be a carbon tax on the
2 gas price, and if so, it would go through to
3 ratepayers. Mr. Sanderson postulates that while it
4 goes into the NHDA, and therefore there's a chance of
5 review on it, but I think again if this Commission
6 accepts this contract, with its current wording, where
7 that -- and with its identified risk, and people have
8 already spoken to that -- I have an absolute certainty
9 that I would be met with arguments about -- that it
10 was already approved for prudence, unless the
11 Commission were to make a clear decision exempting
12 that carbon tax or putting that carbon tax on the
13 shareholder.

14 THE CHAIRPERSON: And one might -- excuse me. When might
15 we do that?

16 MR. WALLACE: Well, I'm going to suggest that you can do
17 that now. That you can, in approving this, say, "We
18 approve it provided this risk is taken by the
19 shareholder." There's certain risks that are, by
20 implication, going to be taken by the ratepayers, I
21 think, and I've mentioned those already. But I think
22 if you have a reservation, and you say, "Wait a sec,
23 the ratepayer shouldn't be on for that risk," and now
24 is the time to say it, because if you say it now, the
25 shareholder can look at it and can say, "In this
26 agreement we, under the review provisions, we have

1 found a term of the Commission's approval that is not
2 acceptable to us." And they have an opportunity to
3 back away from it. And if you do it seven years from
4 now or something when we have a greenhouse carbon tax,
5 that's too late. That's not an option.

6 So I say you can do it now and you should
7 do it now, so that the parties know the risks they're
8 undertaking. It clearly is a risk the ratepayers
9 don't want to take, they've made it very clear. There
10 are a whole pile of risks they don't want to take, and
11 that's one of them.

12 The next question I think you had was with
13 respect to the VIGP development costs. In our
14 submission, that 50 million dollars comes from the
15 ratepayer committing to pay rates high enough that
16 Duke Point was prepared to pay the 50 million dollars
17 with respect to those assets, so they're already --
18 it's sort of 50 million dollars on one side, or the
19 other, commitment to them. So it's not a big benefit
20 to them to see this come, particularly when, as you
21 point out, the benefit principally takes the
22 shareholder off the hook for those costs, not the
23 ratepayer.

24 And I think that's all I have to say.

25 Thank you.

26 MR. QUAIL: My friend Mr. Wallace has said what I was

1 going to say, and probably a few other things as well.
2 One specific issue I'd like to address in relation to
3 the greenhouse gas, in connection with one of the
4 points my friend Mr. Sanderson made, and that is that
5 if you follow the course -- assuming that you approve
6 the EPA, and that's not our position, but if you do
7 that, if you were to attach a condition having to do
8 with the attribution of the risk from greenhouse gas
9 in principle to the shareholder, in my submission that
10 does not require reliance on Part 3. That's within
11 your powers under Part 5. That is, to say as a
12 condition. In principle, this is a risk which would,
13 if B.C. Hydro decides to proceed with this, that it's
14 that risk will be borne in principle by the
15 shareholder and exactly how that plays out in the
16 course of time, among other things, will be reflected
17 in Part 3.

18 THE CHAIRPERSON: Thank you.

19 MR. CRAIG: Mr. Chairman, with regard to the first point,
20 with respect to acceptance of the EPA, and whether or
21 not Appendix 3 costs would be challengeable, I'd agree
22 with Mr. Wallace's perception that that would become
23 very difficult in a future hearing, and there would
24 effectively be a prejudice attached to it that the
25 original approval makes it very difficult to challenge
26 in the subsequent hearing process.

Proceeding Time 12:05 p.m. T32

I'd agree that the gas costs would flow through the NHDA, and I'd agree that it would be appropriate to deal with the greenhouse gases in terms of a condition if there was a decision to proceed with the EPA, that a condition should be attached with respect to how it might be treated if those costs appeared in the cost of gas in the future.

I want to spend more of the time in responding, as you might guess, to this last point, which I think is appropriately raised. I think there is a big discontinuity. And Mr. Sanderson's assertion that this relieves the ratepayers and that they are the beneficiary of this \$50 million receipt, could be nothing but further from the truth.

Once you applied the credit -- and this is right out of the evidence on the record -- to the evaluation process, you have committed the customers to pay that in their costs. It's in effect giving those assets to DPP at no cost in the evaluation but at full cost to DPP. DPP must include that in their costs. They will have to finance it. They will have to earn a return on it for their investors and charge that through in their capacity charge. Their capacity charge contains that cost coming through to the ratepayers. As soon as you approve the EPA, you have

1 endorsed that charge to the ratepayers. And my
2 contention is that that's in violation of your order
3 that those costs need to be reserved until a future
4 decision. And Hydro has already committed that in
5 signing the EPA, and it would be inappropriate to
6 endorse that by approving the EPA.

7 It is not the case that only the 17 million
8 should be left, and the Commission's own order
9 requires that the 67 million should be available for
10 discussion with regard to how it's handled, and any
11 payments with respect to that, I think, should also be
12 there.

13 But the fact that the credit has been
14 applied is the critical factor here, and throughout
15 the discussions and all of the evidence that I've put
16 forward on this, that hasn't been contested. And when
17 it's come to argument, it's left as a discontinuity,
18 and I think it's very important that the Commission
19 catch this, that that credit is effectively allocating
20 those costs to the customer. And Hydro at this point
21 cannot get away from it. They have signed the EPA.
22 Only the Commission can now redress that and undo it,
23 and I think it's a part of the material set of items
24 that add up to a DPP project that is not most cost-
25 effective for the ratepayer, and it's a series of
26 problems that have been introduced and one that I

1 think the Commission needs seriously to address. And
2 obviously you are doing that.

3 THE CHAIRPERSON: Mr. Craig, it would be helpful for
4 me -- you don't go here in your argument, but it would
5 be helpful for me for you to comment specifically on
6 one option that may be available to the Commission
7 panel, and that is for the Commission panel to
8 determine that the reduction to the amount in the
9 deferral account is the step that's inappropriate.
10 You don't go there in your argument for your own
11 purposes, I assume, but does that provide the
12 solution, if you will, to the concerns that you have
13 been raising?

14 MR. CRAIG: My answer to that, Mr. Chairman, is no, it
15 doesn't quite, and it's a part of the solution. And
16 the reason that I say it's only part and it doesn't
17 quite resolve the problem is that upon approval of the
18 EPA, if you were to do that, customers would then be
19 being charged.

20 THE CHAIRPERSON: Under the DPP, I appreciate that.

21 MR. CRAIG: And once that has occurred, we now have a
22 violation of the order. Through the back door, those
23 costs have now become a legal commitment of the
24 ratepayers. So the fact that we've left the 50
25 million still open for question is helpful, but it
26 still has not undone what has been done, and it has

1 put the Commission in the position of prejudicing
2 already the decisions before it has heard the evidence
3 on the 67 million. While I think it would be helpful,
4 I don't think it resolves most of the problems that
5 I've raised, and it certainly doesn't resolve the fact
6 that the ratepayers have been put at risk to start
7 with, which they should not have been.

8 **Proceeding Time 12:10 p.m. T33**

9 THE CHAIRPERSON: Right. And if we were to ignore that
10 for the moment --

11 MR. CRAIG: Okay.

12 THE CHAIRPERSON: -- you also have said that the full
13 amount of the \$67 million ought to be included in the
14 deferral account, because I understand you to say that
15 that's what the order directs.

16 MR. CRAIG: Yeah. I believe that's what the order does
17 direct, and it provides ratepayers the opportunity to
18 put evidence forward to contest the full 67 million.

19 THE CHAIRPERSON: Right. And as I say, aside from your
20 point with respect to the credit that's in the DPP,
21 does that address your concerns?

22 MR. CRAIG: It would depend, I think, at that point on a
23 future decision of the Commission. So long as the 67
24 million is left entirely open for question, then it
25 would remain potentially available to the Commission
26 to decide that the 67 million was a responsibility of

1 the shareholder. You would then also have to deal
2 with the 50 million receipt, and if that was -- if
3 those two parts were disaggregated, and you returned
4 the 50 million to the benefit of the customers, at
5 that point, then you would have partially solved the
6 problem created. You still would have left some of it
7 that is created through the charge to the customer.

8 THE CHAIRPERSON: In the DPP contract.

9 MR. CRAIG: Right. But my point would be that, having
10 endorsed the EPA, you would have already prejudiced
11 those decisions by virtue of the earlier decision. So
12 you would then make it very difficult for intervenors
13 to do what's been promised to them by the earlier
14 order to address the whole question of those items.
15 So I think it is a set of events that has wound itself
16 up to create a serious problem, and I think, in the
17 end, materiality is important, as I mentioned in my
18 evidence, and I think this issue in combination with
19 others adds up to the central question that you're
20 facing, which is, what's the most cost-effective? And
21 once you make the appropriate adjustments, I think it
22 leads to non-approval of the EPA, in which case this
23 is not a problem.

24 But I think this is one of the serious
25 problems that's embedded here, and I don't see any way
26 that Hydro can get out from under the evidence that's

1 on the record.

2 THE CHAIRPERSON: Thank you.

3 MR. CRAIG: Thank you, Mr. Chair.

4 THE CHAIRPERSON: Is there anyone else who wishes to
5 comment?

6 **Proceeding Time 12:15 p.m. T34**

7 MR. ANDREWS: My comments will be relatively brief. I
8 have basically two points. One is to echo the
9 importance of the point made by Mr. Wallace that if
10 the Commission panel does decide that, as GSX CCC has
11 urged you to do, that there is a greenhouse gas
12 liability risk at the upstream stage, that the panel
13 ought to say that specifically, and if it's the
14 panel's decision to allocate that liability to the
15 shareholder as opposed to the ratepayer -- which is
16 not a point on which GSX CCC has taken a position --
17 but if the panel chooses to do that, we would
18 respectfully suggest that you ought to make that
19 finding explicit so that Hydro and its shareholder are
20 in a position to decide whether they want to exercise
21 their right under Section 3.1(b) of the EPA to decide
22 not to pursue the contract.

23 My second point concerns this whole \$50
24 million issue, and the main point that I would make is
25 not directly to do with how it should be treated --
26 others have addressed that -- but what that \$50

1 million does to the role of the CFT in comparing
2 various portfolios. And in my submission, what it
3 does is make the CFT, other words notwithstanding, an
4 apples to apples comparison of bids that use the VIGP
5 assets. But it is not an apples to apples comparison
6 of bids that use the VIGP assets compared to bids that
7 do not, by a factor of \$50 million.

8 So, to the extent that Hydro argues that
9 you should be comforted that the results of the CFT
10 mean that DPP is the most cost-effective because it's
11 an even-playing-field comparison with alternatives, I
12 say that argument is incorrect to the tune of \$50
13 million. And those are my submissions.

14 THE CHAIRPERSON: Is there anyone else who wishes to
15 comment? Mr. Lewis.

16 MR. LEWIS: Thank you. I just have one quick question
17 for clarification, and I should probably apologize
18 before asking it because I'm embarrassed, it seems so
19 simple. But could I just get an explanation for
20 clarification, the difference between the shareholder
21 and the public of B.C.?

22 THE CHAIRPERSON: That's not an answer that I'm going to
23 provide to you, Mr. Lewis.

24 MR. LEWIS: Okay. Thank you then.

25 THE CHAIRPERSON: Since you're asking -- I can't answer
26 that question for you. Is there anyone else who

1 wishes to comment? Mr. Keough and then Mr. Sanderson.

2 MR. KEOUGH: No, thank you, Mr. Chairman.

3 THE CHAIRPERSON: Okay.

4 MR. SANDERSON: Mr. Chairman, if it were the wish of the
5 Commission and the intervenors, B.C. Hydro certainly
6 will not stand in the way of maintaining \$67 million
7 in the deferral account. And if that's part of what
8 Mr. Craig wants for his solution, we'll leave the \$67
9 million in the deferral account. I find that a
10 surprising position, but nevertheless it ought not to
11 get in the way of a solution.

12 More generally, in terms of the cash flow,
13 the difference between the with and without the \$50
14 million payment, that is, solutions that do use the
15 VIGP -- well, sorry, the difference in the situation
16 that exists before and after the payment is that the
17 payment will only be made in a circumstance where the
18 energy that those assets make possible is ultimately
19 delivered to the ratepayer. And so, yes, the
20 ratepayer will pay for the use of those assets because
21 it's getting the use of those assets. It's getting
22 the benefit from the energy. In the circumstance
23 where the money is sitting in the deferral account and
24 those assets are not put in use, then the Commission
25 has a very different decision to make. But in the
26 case where the EPA goes ahead, the ratepayer gets the

1 full benefit of the assets, so yes, the ratepayer pays
2 for them.

3 In terms of the cash flow analysis, it's
4 really pretty simple. Duke's bid reflects their cost
5 of completing the project, plus \$50 million that they
6 pay to Hydro for the VGA assets, leading to a total
7 cost. The \$50 million that has been received has been
8 received by Hydro and thus goes to the benefit of
9 Hydro and its ratepayers, reducing then the net cost
10 that has to be recovered for the energy payments.

11 **Proceeding Time 12:20 p.m. T35**

12 More than that I won't say. It's, I think
13 of all of the issues in this proceeding, the one that
14 probably has been the most exhaustively mined in the
15 transcript, and so I'll leave you to the transcript if
16 that's not enough.

17 THE CHAIRPERSON: Thank you.

18 That brings us to the end of our
19 proceedings today. Mr. Fulton, are there any issues
20 that I need to deal with before I close?

21 MR. FULTON: I don't believe so, Mr. Chairman.

22 THE CHAIRPERSON: The proceeding is closed.

23 **(PROCEEDINGS ADJOURNED AT 12:20 P.M.)**

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