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CAARS

VANCOUVER, B.C.

July 28, 2003

(PROCEEDINGS RESUMED AT 8:31 A.M.)

THE CHAIRPERSON: The Commission Panel has now reviewed your written submissions, and today is the panel's opportunity to ask questions on aspects of the submissions on which we would like to receive further clarification to better our understanding of those areas. We also wish to test some of those submissions in light of the evidence as we understand it.

In addition, we want to explore the impacts of potential outcomes of some of the decision alternatives that we may consider.

We do not have questions on every parties' submission, but we do intend to provide all parties present with an opportunity to respond to matters where they believe our questions suggest we may have misunderstood the evidence or they disagree with another parties' characterization of the evidence before us.

We will also provide everyone with an opportunity to comment on the impact of a potential outcome where they disagree with that stated by another party.

Before we begin our questions, I believe there are -- there is one procedural matter from the

1 floor, and I have two procedural matters.

2 MR. FULTON: Thank you, Mr. Chairman. The one procedural
3 matter I have relates to CBTE and Columbia Basin Trust,
4 and I had a discussion with Mr. Duncan of Columbia Basin
5 Trust last week, and I understand that a letter was sent
6 to the Commission Friday afternoon from CBTE's counsel,
7 Mr. Landry. I have not seen that letter. I understand
8 from canvassing the floor that others may not have seen
9 the letter yet. So I have asked Mr. Landry to come
10 forward and advise the parties present what the context
11 of the letter is.

12 So Mr. Landry, if you'd like to come forward,
13 please.

14 MR. LANDRY: Thank you, Mr. Fulton. The letter was sent
15 out to all intervenors and parties and perhaps it just
16 didn't arrive at certain e-mails. But basically, Mr.
17 Chairman, there was a bit of confusion as to who I was
18 representing and who CBTE was representing in their
19 intervention before this proceeding, and the letter just
20 clarified that and indicated that CBTE was acting on its
21 behalf and not on behalf of Columbia Power Corporation.
22 And I guess the confusion is somewhat obvious because
23 even Mr. Fulton, no criticism, indicated Mr. Duncan on
24 behalf of Columbia Basin Trust, and Mr. Duncan is with
25 Columbia Power Corporation. And so we just wanted to
26 make it clear on the record that CBT Energy was

1 arises from Appendix A to the final argument of
2 Hillsborough. And I don't think you need to -- well,
3 Mr. B.J. Wallace is going to need to turn to Appendix A.
4 It's referenced in the Reply Argument of VIEC at page 15
5 but I don't think you need to turn to that. If you turn
6 to the appendix to the Hillsborough Final Argument, and
7 I guess I should canvass the audience -- is there
8 someone from Hillsborough here this morning?

9 Let me ask my question anyway and it's this,
10 Mr. B.J. Wallace.

11 You draw a distinction in your reply argument
12 between argument and expert evidence, and you've
13 characterized Appendix 1 as expert evidence. I would be
14 interested to know what your position is with respect to
15 one paragraph of Appendix A, whether or not you would
16 characterize it as argument or expert evidence, and it's
17 the third paragraph of Appendix 1.

18 MR. B.J. WALLACE: To the extent, Mr. Chairman, this
19 paragraph relates to sunk costs, that point has been
20 argued and evidence has been required, and we say in our
21 argument that with the exception of the reference to
22 sunk costs, this is, in our submission, new evidence
23 that should not be accepted.

24 THE CHAIRPERSON: Thank you.

25 Now Commissioner Nicholls and I would like
26 you, for the purposes of the questions this morning, to

1 assume that the Commission Panel makes the following
2 findings in its final decision. These assumptions are
3 stated because you may find them helpful in providing
4 context for your answers this morning. They may or they
5 may not be findings that are in the final decision. I
6 will now read them, and I'll read them rather slowly,
7 and then I'll repeat them more quickly.

8 The first one: Appropriate to zero rate HVDC
9 system in 2007 for planning purposes. The Vancouver
10 Island capacity shortfall for 2007 is 100 to 150
11 megawatts. Urgency is established but delay to 2008
12 acceptable risk.

13 **Proceeding Time 8:40 a.m. T3**

14 On-Island Generation Options are more certain in cost
15 and timing than 230 kV option. Long term mix of on-
16 Island generation and transmission accepted as best
17 reliability for Vancouver Island. Evidence not
18 sufficient to conclude that VIGP with GSX is the least
19 cost alternative. A CFT is an appropriate next step.

20 Those are seven assumptions that we would
21 like you to make for the purposes of answering the
22 questions this morning, and I'll read them again a
23 little bit more rapidly this time.

24 First one, appropriate to zero rate HVDC
25 system in 2007 for planning purposes. Number 2, the
26 Vancouver Island capacity shortfall for 2007 is 100 to

1 150 megawatts. Number 3, urgency is established, but
2 delay to 2008 acceptable risk. Number 4, on-Island
3 Generation Options, are more certain in cost and timing
4 than 230 kV option. Number 5, long term mix of on-
5 Island generation and transmission accepted as best
6 alternative for Vancouver Island. Number 6, evidence
7 not sufficient to conclude that VIGP with GSX is the
8 least cost alternative. Number 7, a CFT is the
9 appropriate next step.

10 I would like to begin my questions by turning
11 to the VIEC reply argument, page 33, paragraph 99. VIEC
12 reply argument, page 33, paragraph 99. I'll turn to the
13 paragraph in a little bit more detail in a minute, but I
14 would like to endeavour to establish some principles as
15 they relate to bypass tolling. I'd like to do that with
16 you, Mr. B.J. Wallace.

17 Very simply would you agree with me that
18 economic bypass is where an industrial customer has the
19 option of building its own extension or having the
20 utility provide the extension, but that the rate is
21 determined by the cost of the extension, physically
22 building the extension? Are you in agreement that the
23 concept of economic bypass, if you will, is as I've
24 stated it?

25 MR. B.J. WALLACE: Mr. Chairman, I'm a bit uncomfortable
26 with this responding off the top on that. I apologize

1 for that, but perhaps if I could have a moment.

2 THE CHAIRPERSON: Yes.

3 MR. B.J. WALLACE: I accept that.

4 THE CHAIRPERSON: Okay, thank you. Now, let me raise a
5 principle that I'll refer to as physical bypass. In
6 this case the industrial customer actually builds the
7 extension itself, and I don't think I need confirm with
8 him, unless you'd like, to accept that notion of
9 physical bypass.

10 **Proceeding Time 8:45 a.m. T4**

11 With respect to the application that your
12 client has filed, I draw analogies between the concepts
13 of economic bypass and physical bypass as follows: I
14 think of TGVI as the industrial customer -- pardon me,
15 VIGP as the industrial customer, if you will, in that
16 sense that I just described it, and VIGP has the choice
17 of building a pipeline, or alternatively using the TGVI
18 system.

19 The notion that concerns me, that I'd like
20 you to comment on, is the notion that in the context of
21 physical bypass the VIGP or the industrial customer
22 would somehow get the benefit of avoided costs of
23 expansion on the incumbent utility's system. So in this
24 case you're asking us to consider the benefits of
25 avoiding the CTS upgrades, and I think of that as a VIGP
26 with again the option of economic or physical bypass,

1 VIGP, or VIEC, has elected the physical bypass
2 alternative, but then wants to take the benefit of
3 avoiding the expansion costs that are required.

4 And I would have thought that in the usual
5 context of an industrial customer, that the industrial
6 customer wouldn't expect to get some credit against its
7 costs of building the extension for avoided costs of the
8 incumbent utility. So I welcome your comments in that
9 regard, to help me with this one.

10 MR. B.J. WALLACE: Mr. Chairman, the concept, as my client
11 looks at it, is that we have two utilities here, both
12 providing services to Vancouver Island, and it seemed
13 appropriate for the analysis on the best course to look
14 at what the cheapest cost alternative is overall. The
15 combination of GSX and VIGP produces a result, my client
16 says, that gas is provided to the Island, avoiding the
17 CTS and TVGI upgrades, and that you look at the overall
18 costs of what the best way to provide Vancouver Island
19 is with gas and with electricity and it's not a question
20 of how you allocate the benefit amongst the parties at
21 this stage, but rather our concern here is only the
22 economic best result.

23 And that's the basis of the analysis that
24 VIEC has put before this panel.

25 THE CHAIRPERSON: Does that suggest then that from VIGP's
26 perspective, or VIEC, that we need to consider the

1 benefits to another utility in our deliberations.

2 **Proceeding Time 8:50 a.m. T5**

3 MR. B.J. WALLACE: The benefit that the Commission should
4 be considering, in our submission, Mr. Chairman, is the
5 benefit to the ratepayers of B.C. Hydro in this case, so
6 that how it impacts another utility is not of concern.

7 THE CHAIRPERSON: But how do you then incorporate the
8 benefits of Terasen Gas for the CTS upgrades in your
9 economic analysis.

10 MR. B.J. WALLACE: I think that if I understand the
11 question correctly, Mr. Chairman, the question is: What
12 are the extent of the upgrades that are required and
13 what is the cost of those.

14 THE CHAIRPERSON: No.

15 MR. B.J. WALLACE: No, okay.

16 THE CHAIRPERSON: I really just want to be at the principle
17 level now. I appreciate that there are different views
18 with respect to the CTS upgrades and their cost --

19 MR. B.J. WALLACE: Yes.

20 THE CHAIRPERSON: -- but I'm just thinking about this from
21 the principle perspective at this stage. I think you
22 said the only relevant -- let me establish this with you
23 first. Is it your position that the only relevant
24 consideration is that as it relates to the customers of
25 B.C. Hydro?

26 MR. B.J. WALLACE: That's correct.

1 THE CHAIRPERSON: Okay. I'm having some difficulty then
2 going from that principle to the principle of
3 considering the costs that might be avoided on the CTS
4 upgrades.

5 MR. B.J. WALLACE: Yeah, let me back up. Indeed, in this
6 case there's sort of two principles going on at one
7 time, but I think the most important one is that we're
8 looking at the lowest cost way of providing all of the
9 services to Vancouver Island, and indeed in this
10 analysis, both gas and electricity. And then the idea
11 is, as I would submit, that if you find the least cost
12 way to most effectively provide these services, then the
13 allocation between the two economic actors will be
14 determined in an appropriate commercial way. But you
15 start with the lowest cost, and therefore the result
16 should be the lowest cost for everybody.

17 THE CHAIRPERSON: Well, let me look to incremental cost
18 principles as they relate to NPV analysis. And I
19 understood your client's position to be that one should
20 look only to the incremental costs. And now I'll ask
21 you, are you suggesting that one should look to the
22 incremental costs of B.C. Hydro only, or should one look
23 to the incremental costs as they relate to B.C. Hydro
24 and any other utility that happens to be affected by the
25 project?

26 MR. B.J. WALLACE: It seems to me that it would be the

1 same. You'd look at the incremental costs overall. So
2 whether they're incurred by TGVI, if that's the example,
3 or B.C. Hydro, it's the incremental costs that we're
4 interested in.

5 THE CHAIRPERSON: Okay, so in the NPV analysis, the
6 principle is, if you will, as you're stating it, that
7 you look to the incremental costs whether they are the
8 incremental costs of B.C. Hydro or another utility.

9 MR. B.J. WALLACE: Yes.

10 THE CHAIRPERSON: Okay. Now, I'd like to reconcile that
11 notion with your earlier comments that we should only
12 look to the impacts on B.C. Hydro ratepayers. Can you
13 reconcile those two things for me?

14 **Proceeding Time 8:55 a.m. T6**

15 MR. B.J. WALLACE: I think I should have said, in that,
16 that it's the ratepayers of both utilities. As you say,
17 that's the second principle, is you're only looking to
18 the ratepayers' interest. In this case if you end up
19 with the lowest economic cost, then the impact should be
20 to the benefit of the ratepayers of both utilities.

21 THE CHAIRPERSON: Okay, so when we're examining the
22 application, it's your position that we need to look at
23 the implications for the ratepayers of three utilities,
24 if you will. B.C. Hydro, TGVI and then Terasen Gas?

25 MR. B.J. WALLACE: Mr. Chairman, I think that you get to
26 the result if you simply focus on the economic costs,

1 what is the lowest cost overall for everything that's
2 going to be achieved.

3 THE CHAIRPERSON: Right.

4 MR. B.J. WALLACE: Rather than looking at whose ratepayers,
5 because that seems to me to be a consequence of getting
6 the lowest economic result. The allocation, then, I
7 say, is not a matter for the CPCN hearing.

8 THE CHAIRPERSON: Yes. My challenge is doing that and
9 being consistent with the principle that I'm looking at
10 in application, one looks only to the impacts on the
11 ratepayers of the utility making the application.

12 MR. B.J. WALLACE: What I'm trying to avoid here is to have
13 a pre-determination of a, basically a cost allocation or
14 a tolling question, and it seems to me that we're
15 dealing with two different steps here. And you know,
16 we're trying to get the most cost effective result.
17 That's what the standard is, that applies to the CPCN.
18 As to whether or not costs are recoverable, whether or
19 not costs are attributable how you toll, are questions
20 for both negotiations or for a subsequent Commission
21 Order, depending on the circumstances.

22 THE CHAIRPERSON: Okay. In the paragraph that I referred
23 to, paragraph 99, you provide in reply to Terasen's
24 argument a proposed mechanism for how the revenues, if
25 you will, might flow here, and they call for Terasen Gas
26 buying the wheeling capacity from TGVI. Presumably

1 THE CHAIRPERSON: The second step is TGVI -- I'm trying to
2 do this in two steps.

3 MR. B.J. WALLACE: I'm sorry, I understand. Is there is an
4 outstanding question at this point?

5 THE CHAIRPERSON: Yes. I want to trace the dollars if you
6 will. Terasen Gas makes a payment to TGVI, who in turn
7 makes a payment to VIEC.

8 MR. B.J. WALLACE: To GSX.

9 THE CHAIRPERSON: To GSX.

10 MR. B.J. WALLACE: Yes.

11 THE CHAIRPERSON: All right.

12 MR. B.J. WALLACE: Yes.

13 THE CHAIRPERSON: Now, that's the mechanism that's being
14 proposed, I assume, to get the benefit of the CTS
15 expansions that arguably may be avoided, to GSX, is that
16 correct?

17 MR. B.J. WALLACE: That's the proposal.

18 THE CHAIRPERSON: All right. Now, does that influence --
19 assuming that we would issue a conditional CPCN, does
20 that require us to include conditions in the CPCN to
21 effect that?

22 MR. B.J. WALLACE: In my submission it does not, Mr.
23 Chairman. It's simply a suggested resolution. In my
24 submission, it doesn't affect the CPCN and it would not
25 be a condition, in my submission, of the CPCN.

26 THE CHAIRPERSON: Okay, so the CPCN, if one was granted,

1 would be silent with respect to this mechanism, and does
2 it then follow that it's part of your, if you will, your
3 tolling thoughts that this would be dealt with in a
4 later proceeding?

5 MR. B.J. WALLACE: That's my submission, yes.

6 THE CHAIRPERSON: Okay. With that, Mr. B.J. Wallace, I
7 will ask Mr. Johnson if he wishes to make any comments
8 that arise from my questions.

9 MR. JOHNSON: Thank you. Mr. Chairman, it appears to me
10 that these questions in some way, some manner, relate to
11 sort of the heart of the B.C. Hydro VIEC analysis, that
12 VIEC has put forward quite a theoretical analysis. They
13 look at incremental costs and in some manner assume that
14 the world will all fall into alignment perfectly with
15 the way they assume it will. And in many cases that
16 doesn't necessarily happen.

17 **Proceeding Time 9:05 a.m. T8**

18 We, in our argument or in the TGVI argument,
19 we proposed a condition relating to on-Island
20 transportation and put forward the submission that VIEC
21 should be required to have in place all of the
22 contractual arrangements that would solidify, if I can
23 put it that way, the costs that VIEC will bear, and as
24 we saw it, the issue of on-Island tolls isn't a tolling
25 issue, per se, not for this hearing. What it is for
26 this hearing is a cost issue for the proposed facility

1 at Duke Point. What are going to be the overall costs
2 of that facility? And to, as B.C. Hydro or VIEC has
3 portrayed it, simply to say, well it's a tolling issue
4 and at some date in the future the Commission can look
5 at that as part of a revenue requirement hearing, to my
6 mind misses the whole point of this application.

7 This application is to look at the costs that
8 will be experienced to operate this facility, and what
9 has occurred with regard to the on-Island tolls is that
10 VIEC hasn't addressed that, and the issue you now have
11 raised with regard to CTS is quite similar. That in my
12 submission B.C. Hydro or VIEC has put forward a very
13 theoretical analysis of how this all might work. We're
14 dealing with actually four, at least four entities.
15 There's Terasen Gas, there's Terasen Gas Vancouver
16 Island, there is GSX, which B.C. Hydro, VIEC, I think
17 it's fair to say in all of its analyses assumes that GSX
18 is the same thing as B.C. Hydro. It sort of assumes
19 that if B.C. Hydro puts forward these proposals, that
20 GSX will accept a toll that's equivalent to the so-
21 called saved costs.

22 But there's no assurance that that's so. I
23 mean, GSX isn't just B.C. Hydro. GSX is also Williams,
24 which has certain commercial interests, and there's no
25 evidence to say that GSX would accept this proposal. So
26 we have at this point, in terms of what evidence is

1 before you, there's no evidence that Terasen Gas would
2 accept this proposal. There's no evidence that Terasen
3 Gas Vancouver Island would accept this proposal.
4 There's no evidence that GSX itself would accept this
5 proposal, and at the end of the day there's no evidence
6 that the Commission would, in looking at the tolling
7 arrangements for the utilities under its jurisdiction,
8 accept this proposal.

9 So you're being asked, in my submission, by
10 VIEC to assume a very theoretical result, and assume
11 that for the purposes of issuing your CPCN. And I
12 submit that just as we, TGVI put in its argument, that
13 the CPCN should be conditional on sorting out the on-
14 Island toll, so should any CPCN be conditional on
15 sorting this out.

16 But this one's somewhat different -- I'm sort
17 of thinking on the go here -- in that this only arises
18 if GSX is the transmission alternative. I suppose
19 that's true of on-Island tolls as well. And what we
20 said for on-Island tolls is that VIEC should make sure
21 that -- or should bring forward to the Commission a sort
22 of evidence of the full transportation path and all of
23 the costs associated with that transportation path. So
24 in that regard this is similar. If VIEC is saying we --
25 is saying that the transportation option that will
26 finally be sorted out or settled for the facility at

1 Duke Point is via GSX, then I submit that it should be
2 -- any CPCN should be conditional on saying you have to
3 sort out on-Island transportation costs, and as well you
4 have to sort out this theoretical means of dealing with
5 the CTS costs. That it's not good enough to sort of put
6 forward a theory saying, "We'll get all of this
7 benefit," just as it's not good enough to put forward a
8 theory saying, "We won't have to pay any costs for on-
9 island transportation." You have to solidify that with
10 contracts, or in the argument, TGVI argument, we didn't
11 say that it was required that there be contracts, but
12 what was required is either contracts or a means of
13 settling that issue.

14 **Proceeding Time 9:10 p.m. T9**

15 THE CHAIRPERSON: Yes, we'll get to that. Tell me, Mr.
16 Johnson, what your view is with respect to the VIEC
17 position that from, if you will, a provincial
18 perspective, the appropriate approach is to look at the
19 total costs, whether they be borne by VIEC or TGVI or TG
20 or GSX, to determine the optimal outcome here, again
21 from a provincial perspective?

22 MR. JOHNSON: I think from a provincial perspective that
23 may be the appropriate means of looking at it. But as I
24 said a moment ago, the approach is a very theoretical
25 one. That's not necessarily how the costs will at the
26 end of the day be borne.

1 THE CHAIRPERSON: But that suggests that we might arrive at
2 a suboptimal economic outcome because of regulatory or
3 contractual parameters.

4 MR. JOHNSON: Yes, I think it does. You'd have to say
5 that.

6 THE CHAIRPERSON: I'd like to raise with you a few of the
7 principles that I raised with Mr. B.J. Wallace. You
8 heard my characterization of economic bypass and
9 physical bypass. In the context of physical bypass, in
10 your view is it appropriate to look at the avoided costs
11 of the utility that's being physically bypassed, and
12 credit those in some way, if you will, to VIGP or an
13 industrial customer?

14 MR. JOHNSON: Perhaps I can answer in a slightly different
15 question, or a different manner, answer a slightly
16 different question. My understanding is that that has
17 never been a consideration in any of the -- in
18 establishing any bypass rates to date, that the
19 Commission has never taken that into account. And I'm
20 not aware of -- in any other jurisdiction where bypass
21 rates have been established, that such a principle has
22 been applied.

23 THE CHAIRPERSON: Do you think that the principle is
24 applicable in these circumstances?

25 MR. JOHNSON: Again I think it goes back to what I said a
26 moment ago. That's a theoretical, a very theoretical

1 analysis, and it can't -- in my submission, it can't be
2 accepted at this stage because whether or not this would
3 come to pass is very open to debate.

4 THE CHAIRPERSON: Let me ask you a different question of
5 principle then. What is your view of the principle I'll
6 state as follows, that for the purposes of this
7 application, we should only look to the impacts on B.C.
8 Hydro ratepayers as a matter of -- I said principle, but
9 is it a matter of law that we are constrained to looking
10 at the impacts on B.C. Hydro ratepayers?

11 MR. JOHNSON: That's a very difficult question. Perhaps I
12 can start an answer by dealing with a somewhat different
13 issue, and it perhaps points to the problem. One of the
14 costs that's involved in supplying gas to VIEC is the
15 cost of expansion of the Duke system, the Westcoast
16 system, upstream of Huntington. There will be a
17 requirement for more natural gas to move down the Duke
18 pipeline to serve this additional facility or any other
19 additional gas-fired facility.

20 **Proceeding Time 9:15 a.m. T10**

21 B.C. Hydro in its analysis has not included
22 the capital costs associated with the expansion of the
23 Duke pipeline. They instead look at gas costs at
24 Huntington. Those gas costs will implicitly include
25 costs upstream of Huntington, costs for the Duke
26 expansion. But those costs are treated on a rolled-in

1 basis on the Duke pipeline. They're not treated as an
2 incremental cost simply.

3 The analysis, B.C. Hydro's analysis might be
4 quite different if it included incremental costs on the
5 Duke pipeline. But it doesn't -- B.C. Hydro doesn't
6 actually experience incremental costs on the Duke
7 pipeline if it sources its gas from the north. It will
8 experience rolled-in costs. And that's what it will pay
9 by way of a toll.

10 So when you're looking at the cost to B.C.
11 Hydro's customers, I submit it's quite appropriate to
12 consider the rolled-in costs, the rolled-in toll that
13 those customers will pay implicitly, or the company will
14 pay, because that's how the costs will be levied on
15 them.

16 Now, I raise the Duke situation because
17 you're dealing with different jurisdictions there.
18 There's, in the case of Duke, National Energy Board.
19 There's -- the only way you can actually look at the
20 costs is to look at the rolled-in costs because that's
21 what will be actually experienced. But that might
22 result in, to use your comments of a few minutes ago, a
23 sub-optimal societal decision, because you're comparing
24 on one hand rolled-in costs to incremental costs. But
25 the problem is that's how the world works.

26 And so going back to your original question,

1 there, and there are other users, other users of B.C.
2 Hydro's transmission facilities. There are people that
3 use it for exports. Aquila uses it to some extent and
4 gets charged a toll. IPPs will use it and get charged a
5 toll. So it becomes a question of where do you draw the
6 line? What other benefits do you look at?

7 I'm aware that in the TGVI argument we did
8 put forward the idea that there were some ancillary
9 benefits to gas customers if you took service on TGVI.
10 And I'll have to say that depending on how you did the
11 tolling mechanism for service via GSX, you could also
12 end up with some benefits to gas customers. So I'm
13 conscious that we've said to the Commission, "That's
14 something you should take into account," but we haven't
15 tried to quantify that and said, "You should attach X
16 dollars of the benefits to this benefit, to this fact."
17 But it's something you do take into account in sort of a
18 qualitative manner.

19 THE CHAIRPERSON: Where do you draw the line with respect
20 to CTS upgrades?

21 MR. JOHNSON: In my submission, the CTS upgrades are --
22 there's a factual dispute as to the extent of them,
23 firstly, as you're aware.

24 THE CHAIRPERSON: Yes, but let's ignore the quantification.

25 MR. JOHNSON: Ignore the quantification. I have to say
26 that I personally can't see how this would ever work,

1 and so I would -- my submission is you should ignore
2 them. They shouldn't be taken into account in a
3 quantitative manner. Perhaps you can take them into
4 account in a qualitative manner. There may be some
5 long-term benefit from avoided costs, but exactly what
6 those are, that's the quantification. But how this
7 theoretical buying out of capacity and giving the money
8 to GSX, et cetera, how that would actually ever work in
9 practice is I think so theoretical that I don't believe
10 you can apply a quantitative number to it.

11 THE CHAIRPERSON: I want to understand why you take the
12 position that they should be ignored. I'd like to
13 understand if you think they should be ignored because
14 it's looking at impacts on ratepayers other than those
15 of B.C. Hydro, or is it because of the challenges that
16 will later be addressed in reaching tolling
17 arrangements. It's that theoretical argument if you --

18 MR. JOHNSON: The latter.

19 THE CHAIRPERSON: Okay, and only the latter.

20 MR. JOHNSON: Yes.

21 THE CHAIRPERSON: Thank you. Thank you, Mr. Johnson.

22 I'm going to open the floor now for anyone
23 else who wishes to address the issues that have arisen
24 from my questions to Mr. B.J. Wallace and to Mr.
25 Johnson. And I remind everyone and I would like to --
26 and I may do this from time to time this morning, I

1 remind everyone that this is not an opportunity to
2 review your arguments. This is an opportunity to
3 address issues that in this case I have raised with Mr.
4 B.J. Wallace and Mr. Johnson. Mr. R.B. Wallace.
5 MR. R.B. WALLACE: Thank you, Mr. Chairman. Just briefly,
6 I was somewhat surprised to see B.C. Hydro take a full
7 integrated view this morning, although obviously there
8 have been some hints of it through the calculations that
9 they've done before.

10 You raised with Mr. Johnson whether, as a
11 matter of law, the Commission could take into account
12 circumstances on utilities beyond B.C. Hydro, and I
13 think probably the answer is yes without having
14 researched it. Public interest is your test.

15 **Proceeding Time 9:25 a.m. T12**

16 But I would urge extreme caution in doing so,
17 because the evidence becomes much more difficult, and
18 you don't have a full integrated view before you of the
19 impacts on Terasen, and for example, while B.C. Hydro
20 seems to be quite keen to have you take into account
21 avoided compression, my recollection is that during
22 cross-examination they were not in favour of you taking
23 into account the loss of revenue from ICP on Terasen
24 Vancouver Island. And my argument would be that that's
25 equally appropriate and important, that the ratepayers
26 of Terasen are going to lose that revenue source as part

1 of this, and if you're going to take into account
2 avoided capital costs, you should also take into account
3 lost revenues in the shift that would occur.

4 One of the later questions you also put, and
5 I don't recall whether it was to Mr. B.J. Wallace or to
6 Mr. Johnson, was that if you issue a conditional CPCN to
7 B.C. Hydro based on the considerations set out in the
8 hypothetical of the possibility that contractual
9 arrangements would be entered into later, then I would
10 say that you are fundamentally altering the negotiation
11 -- or stance or positions of the parties, and that if
12 you are issuing a permanent or a conditional CPCN that
13 assumes that there will be certain behaviour,
14 particularly where that behaviour was urged on you by
15 B.C. Hydro, that the CPCN should contain terms and
16 conditions that make sure that behaviour is followed
17 through on, not that it's simply an assumption that dies
18 with the issuance of the CPCN, and that parties
19 subsequently argue about whether it was intended or not
20 later.

21 THE CHAIRPERSON: Thank you. Is there any one else who
22 wishes to -- Mr. Andrews?

23 MR. ANDREWS: Thank you. You asked the question whether --
24 you said, "Is it a matter of law that we the Commission
25 are constrained to look at impacts on Hydro ratepayers?"
26 My answer to that question would be no, and the reason

1 is that Section 45 of the *Utilities Commission*, as Mr.
2 R.B. Wallace averted to, specifies that the public
3 convenience and necessity is the touchstone for the
4 Commission's decision. Obviously the impact on
5 ratepayers of B.C. Hydro and other utilities are one
6 major component, but certainly not the only component of
7 the public interest. And I won't go farther than that,
8 but that would be my submission as to the legal
9 question.

10 THE CHAIRPERSON: Thank you. Mr. Landry?

11 MR. LANDRY: Mr. Chairman, I'd just like to comment on the
12 legal issue that was raised by both Mr. Wallace and Mr.
13 Andrews.

14 I would say this, that it is likely that
15 given the terminology that is used within the Act, and
16 that is the public interest, that you can go beyond, but
17 I would urge, as Mr. Wallace did, that you exercise
18 extreme caution, because if you go to an area outside
19 what has been debated, in effect, before us in this
20 hearing, you know, I raise the question, well do you
21 really have the evidence before you to go there. And so
22 again, I've not researched the point. I think I would
23 probably agree with Mr. Wallace, but I would exercise
24 even more caution than Mr. Wallace did.

25 THE CHAIRPERSON: Thank you. Is there anyone else who
26 wishes to speak to the issues that I've raised with Mr.

1 B.J. Wallace or Mr. Johnson?

2 I have, in a very cursory way so far, looked
3 to case law with respect to the issue that I raised with
4 respect to what the Commission's jurisdiction is as it
5 relates to consideration of impacts on ratepayers,
6 whether or not our jurisdiction is limited to the
7 consideration of impacts on, in this case B.C. Hydro's
8 ratepayers.

9 **Proceeding Time 9:30 a.m. T13**

10 Mr. Fulton has copies of the two cases that I
11 have looked at. I'm going to ask Mr. Fulton to provide
12 copies to you. I think it's an important issue, and I'd
13 welcome comments from counsel in the room as to whether
14 or not they should be considered as relevant and what
15 are the implications of those decisions on this question
16 of law.

17 I want counsel to have an opportunity to
18 review those. They were not provided to you before this
19 morning so I'll make sure that there's an adequate break
20 in our proceedings today to review them. So I think
21 we're likely to go until after the morning break. At
22 the commencement of the morning break I'll ask Mr.
23 Fulton to give you a copy of them, and then I'll invite
24 comments with respect to them.

25 Before I close on the issues, at least at
26 this time; before I close on the issues as they relate

1 to Terasen and GSX, I would like to ask Mr. B.J. Wallace
2 if Exhibit 13K, which has been included -- it's in -- at
3 least the conditions are included in the argument of Mr.
4 Johnson, whether those conditions are, in his view,
5 characterized as directions to negotiate or do they go
6 beyond directions to negotiate.

7 And I'm looking at the argument of Mr.
8 Johnson on page 22. Mr. B.J. Wallace, you have provided
9 authorities on the point of whether or not it's within
10 the Commission's jurisdiction to direct parties to
11 negotiate. That gives rise to my question as to whether
12 or not in your view the conditions sought by Terasen are
13 characterized as directions to negotiate or do they go
14 beyond that.

15 MR. B.J. WALLACE: Mr. Chairman, I do take these as a
16 submission that there should be conditions requiring
17 negotiations. Is that your question?

18 THE CHAIRPERSON: So in that case your arguments with
19 respect to the jurisdiction as it relates to the
20 Commission giving directions to negotiate, apply to the
21 two conditions sought by Mr. Johnson.

22 MR. B.J. WALLACE: That's correct.

23 THE CHAIRPERSON: So you reject his argument that -- what
24 he is suggesting is that there has been inadequate
25 evidence with respect to gas supply costs and that in
26 the absence of that evidence we should make the

1 conditions that are set out here, that in fact that's a
2 mischaracterization in your view and that they're
3 properly characterized in --

4 **Proceeding Time 9:35 a.m. T14**

5 MR. B.J. WALLACE: Yes.

6 THE CHAIRPERSON: Okay.

7 MR. B.J. WALLACE: That's my position.

8 THE CHAIRPERSON: Okay. Mr. Johnson?

9 MR. JOHNSON: Mr. Chairman, we're on the opposite side of
10 B.C. Hydro on this one. My submission is that there is
11 no direction in what we suggested, in the conditions we
12 suggested, there is no direction to negotiate.

13 As I mentioned earlier, the conditions that
14 we suggested recognize that there are two alternative
15 gas transportation routes, and simply say that before
16 the Commission issues an unconditional CPCN, it should
17 be aware of the costs of gas transportation. And the
18 conditions recognize that -- the conditions as proposed
19 recognize that the transportation could be via either
20 route and the evidence could consist of a contract,
21 which obviously wouldn't require negotiation, or it
22 could consist of some mechanism to set the toll. In
23 other words, VIEC can bring a complaint to this
24 Commission at any point saying, "We want an on-Island
25 toll set so we will know what the costs are." And that
26 was part of what was in those conditions. It allowed

1 VIEC to come forward and file a complaint if it wished,
2 and set the toll. So it didn't require negotiation. I
3 mean, obviously negotiation would be wise. But in my
4 submission, it didn't require VIEC to negotiate it. It
5 required VIEC to bring forward evidence of all of the
6 costs associated with gas transportation.

7 THE CHAIRPERSON: Do you accept VIEC's position that the
8 Commission does not have jurisdiction to make directions
9 to negotiate?

10 MR. JOHNSON: I'll accept that it's not clear that you
11 could include a condition in a CPCN that says "go and
12 negotiate". But on the other hand, you can come to the
13 same result in a different manner, and VIEC referred to
14 the Southern Crossing Pipeline decision where in that
15 case the Commission didn't make -- didn't grant a
16 conditional CPCN. It refused to grant the CPCN and in
17 effect said, "Go away and sort out these matters." And
18 so if you don't have the jurisdiction to include it as a
19 condition, you can certainly refuse the CPCN and in your
20 decision set out the reasons why and invite the parties
21 to -- or invite the applicant to go away and sort those
22 matters out.

23 THE CHAIRPERSON: Right. And in the context of what you
24 set out as conditions on page 22, they are conditions
25 that in your view we have the jurisdiction to make as
26 part of a conditional CPCN.

1 MR. B.J. WALLACE: Yes, we submit you do, or as I say,
2 alternatively you could refuse and set those out as
3 reasons.

4 THE CHAIRPERSON: Thank you.

5 COMMISSIONER NICHOLLS: Mr. B.J. Wallace, I'd like to ask
6 you a clarification question on curtailment. At the
7 hearing I believe the B.C. Hydro witnesses indicated
8 that WECC requirements prevent the utility from using
9 curtailment for planning purposes for the N minus 1
10 scenario. And more recently, in response to an
11 undertaking, you said that it would be possible,
12 although difficult, to design a long-term curtailment
13 contract that meets planning criteria. So would the
14 arrangements referred to in the undertaking meet WECC
15 requirements?

16 MR. B.J. WALLACE: Thank you. The position of B.C. Hydro
17 is that it may be possible to design a load curtailment
18 that meets the standards of WECC. It hasn't suggested
19 what that might look like, but it has left it open that
20 under a CFT for example, a proposal might be forthcoming
21 which does meet those standards. So B.C. Hydro is
22 willing to consider such an alternative, but obviously
23 it's the ability to meet the WECC standard is a
24 touchstone, as to whether or not it would be acceptable.
25 We're not ruling out the possibility.

26

Proceeding Time 9:40 a.m. T15

CAARS

1 COMMISSIONER NICHOLLS: Okay. And the problems you
2 referred to in the possible arrangement, were they
3 mainly related to the unknown cost of the arrangement or
4 to WECC's --

5 MR. B.J. WALLACE: I think it's both of those. As I
6 understand it, one of the flexibilities in the standard
7 is that if you find you're in an N minus 2 situation,
8 for example, curtailment becomes acceptable. If you're
9 already curtailed at stage 1, where do you go from
10 there? So that's a consideration, and the costs of
11 doing so is another issue.

12 COMMISSIONER NICHOLLS: Thank you. Does anybody else want
13 to comment on that, or shall I move on? Mr. Campbell.

14 MR. CAMPBELL: Good morning. I just received the B.C.
15 Hydro argument this morning, and on page 18 -- sorry,
16 page 21, VIEC indicates that NorskeCanada expressed a
17 willingness to accept load curtailment as a short-term
18 solution for Vancouver Island's capacity needs, but it
19 does not commit to the cost of that solution. And my
20 question is in line with yours. If this becomes a very
21 viable tool to look at load curtailment, in light of
22 Vancouver Island's demand, is it possible that the
23 Commission could oversee the negotiations between VIEC
24 and Norske to provide something that would be acceptable
25 to the B.C. Hydro ratepayers? And I just wondered if
26 you'd consider that, or if VIEC could consider that.

1 COMMISSIONER NICHOLLS: Thank you, Mr. Campbell. I'll let
2 Mr. Hobbs respond to that.

3 THE CHAIRPERSON: It is going to come up, Mr. Campbell, in
4 the context of questions that I have with respect to
5 CFT. We're not going to answer your question for you.

6 MR. CAMPBELL: Okay. Thank you very much.

7 COMMISSIONER NICHOLLS: Mr. B.J. Wallace, I'd like to turn
8 to a bigger issue now, and I'll want everybody else to
9 add their piece on this. Can we issue a CPCN,
10 conditional or otherwise, if we assume that B.C. Hydro
11 has not shown that VIGP is the least cost alternative?

12 MR. B.J. WALLACE: I think it's open -- my submission is
13 it's open to the Commission to issue a conditional CPCN
14 only if it is satisfied that, you know, that VIGP is the
15 least cost alternative to reliably provide supply to
16 Vancouver Island. If the Commission is of the view that
17 other alternatives may emerge from the CFT, that, in my
18 submission, is why you would do a -- make a conditional
19 CPCN. If the Commission is not satisfied that the CFT
20 is likely to provide alternatives that develop as being
21 more cost effective, then in my submission the CPCN
22 should be unconditional.

23 The words "least cost" have been used, but
24 the words in the Energy Plan are in fact "cost
25 effective", and we've -- those are the words I would
26 prefer to use, because clearly this has to be in the

1 context of reliability and all of the issues that we've
2 spent so much time dealing with.

3 **Proceeding Time 9:45 a.m. T16**

4 COMMISSIONER NICHOLLS: I agree.

5 MR. B.J. WALLACE: Thank you.

6 COMMISSIONER NICHOLLS: So you think that if we find that
7 you have not shown, this is the least-cost option --

8 MR. B.J. WALLACE: Most cost- --

9 COMMISSIONER NICHOLLS: -- the most cost-effective option,
10 we could still issue a conditional --

11 MR. B.J. WALLACE: No, no.

12 COMMISSIONER NICHOLLS: We can't.

13 MR. B.J. WALLACE: No. The touchstone is to issue a CPCN,
14 the Commission must be satisfied that this is the most
15 cost-effective way to reliably meet the needs.

16 COMMISSIONER NICHOLLS: To issue a conditional one?

17 MR. B.J. WALLACE: Yes, conditional or unconditional. But
18 the difference between the two is, as I would
19 characterize it, the Commission could conclude that
20 there is no other most cost-effective way of doing so
21 that's been established or that you can look to and say,
22 "Here it is." But you may be of the view that one might
23 develop through a CFT. And the difficulty, the
24 difference is you have feasibility of a project which is
25 beyond the control of B.C. Hydro. You can't say that
26 that is more cost-effective than VIGP if you don't know

1 what that will -- what the terms of that electricity
2 will be, its availability to B.C. Hydro and its
3 ratepayers.

4 So although you may be satisfied that there's
5 another project out there that has merit, until you see
6 it in terms of the tender to B.C. Hydro, it's not cost-
7 effective to B.C. Hydro and its ratepayers, it's just a
8 theoretical possibility. And in my submission, having
9 the theoretical possibility out there doesn't allow the
10 Commission to say that B.C. Hydro, that it's a more
11 cost-effective way of doing it for B.C. Hydro.

12 So that's why I say it's consistent to submit
13 that this is the most cost-effective solution available
14 to B.C. Hydro, but that commercial terms could be
15 established through another project which appears to
16 have the physical characteristics which will do it, and
17 that that's what the CFT is for.

18 THE CHAIRPERSON: Mr. B.J. Wallace, I may not have heard
19 everything that you said, so at the risk of being
20 redundant I want to review it with you.

21 Let's speak to the jurisdiction as it relates
22 to a conditional CPCN first. Did I hear you correctly
23 to say that if we find that as a result of the CFT
24 process there may be another project -- no, let me ask
25 the question differently. If we find that there is
26 insufficient evidence now to conclude that VIGP is the

1 least-cost alternative, and that we find that it's
2 reasonable to expect as a result of the CFT process that
3 we will be able to conclude which of the projects is the
4 least-cost alternative, in those circumstances do we
5 have the jurisdiction to grant a conditional CPCN?

6 MR. B.J. WALLACE: Mr. Chairman, to grant a CPCN you
7 need -- conditional or unconditional -- the first
8 conclusion is that, well, as we find, there's a need for
9 the project. The second conclusion is that the VIGP is
10 the most cost-effective way to reliably meet the needs.
11 You could, in my submission, consistently with that
12 finding, conclude that there may be another project
13 which physically has characteristics that could do so.
14 It's not available to B.C. Hydro until there are
15 economic terms established for the provision of that
16 electricity to B.C. Hydro to provide to its customers.
17 That's the test.

18 **Proceeding Time 9:50 a.m. T17**

19 So in my submission you -- it is consistent
20 to conclude that this is the most cost effective way of
21 doing so, but that there are other projects which could
22 be offered to B.C. Hydro which might do so, and that's
23 the purpose of the CFT.

24 Alternatively, in my submission, you could
25 conclude this is the most cost effective way of doing
26 so, and it's not sufficiently likely that one of the

1 others could develop in time either for its physical
2 characteristics, timing or whatever, in which case the
3 CPCN would be unconditional.

4 If the Commission's not satisfied that this
5 is the most cost effective, and it seems to me that the
6 only other project that's within the control of B.C.
7 Hydro on which B.C. Hydro can assess its ability to cost
8 effectively meet the needs, is the 230 kV line. None of
9 the other projects are projects that are available to
10 B.C. Hydro. They're other peoples' projects. They've
11 been put out, but we don't have terms on which they're
12 available to B.C. Hydro.

13 THE CHAIRPERSON: So on the assumption that we cannot find
14 that VIGP is the least cost alternative, it's your
15 position that we have the jurisdiction to grant a
16 conditional CPCN at that point, depending on other
17 findings that we might make.

18 MR. B.J. WALLACE: If I heard the question correctly, Mr.
19 Chairman, you say if the Commission could not find that
20 it was satisfied that VIGP was the least cost
21 alternative, then you could have conditional CPCN; no.
22 In my submission the Commission must first decide that
23 the most cost effective available to B.C. Hydro, today,
24 is the VIGP. And then, then, you can say "However, in
25 my submission, it may be that these one or other of
26 these other projects that have been put forth by third

1 parties, over which B.C. Hydro has no control, may be
2 able to provide." Those are not cost effective projects
3 to B.C. Hydro until terms have been established, and
4 that's the purpose of the VIGP.

5 So they may physically -- it may be
6 physically possible, but in terms of determining its
7 cost effectiveness, it's cost effectiveness to B.C.
8 Hydro and its reliability to B.C. Hydro that are the
9 important points. So, to -- I don't think I need to
10 repeat that.

11 THE CHAIRPERSON: Okay.

12 COMMISSIONER NICHOLLS: So Mr. Wallace, if we, according to
13 the assumptions that the Chairman read out at the
14 beginning, if we are assuming at this point that we have
15 -- that you have not shown this is the most cost
16 effective project, in your submission, we are to deny
17 the CPCN and --

18 MR. B.J. WALLACE: That's correct, Commissioner Nicholls.

19 COMMISSIONER NICHOLLS: Okay, and if --

20 MR. B.J. WALLACE: But here, I'm being careful to say that
21 it's cost effective to B.C. Hydro.

22 COMMISSIONER NICHOLLS: I understand that.

23 MR. B.J. WALLACE: Its availability.

24 COMMISSIONER NICHOLLS: If we deny the CPCN what authority
25 do you think we have as a Commission to direct B.C.
26 Hydro's next steps in addressing the Vancouver Island

1 capacity shortfall? If we deny the CPCN, will you
2 accept any direction in a decision, or is it all over to
3 you at that point?

4 MR. B.J. WALLACE: I think it's certainly open to the
5 Commission in giving reasons to explain why, which are
6 in effect directional, in my submission, suggestions as
7 to what B.C. Hydro ought to do as the next step.

8 COMMISSIONER NICHOLLS: And we could give you suggestions
9 as to a CFT, but it would be up to Hydro to decide how--

10 MR. B.J. WALLACE: That's my submission, yes.

11 COMMISSIONER NICHOLLS: Thank you. Would anybody else like
12 to comment on this?

13 MR. R.B. WALLACE: Commissioner Nicholls, I'm much more in
14 agreement with B.J. Wallace than I anticipated I would
15 be. Our position is very clearly that you cannot issue
16 a CPCN unless you are satisfied that it is the least
17 cost or most effective project. That is the key element
18 you have to decide in a proceeding like this, and while
19 conditions are often used for ancillary matters,
20 environmental approvals, whatever, should not be ever
21 applied to the prime element.

22 **Proceeding Time 9:55 a.m. T18**

23 Also what I would like to address though in
24 Mr. Wallace's comments is this sort of suggestion in
25 control of B.C. Hydro in differentiating projects. And
26 I think the test is much bigger than that. The onus is

1 on the applicant in a case like this to demonstrate that
2 it is the most cost-effective project. It is not on the
3 intervenors to demonstrate there is another more cost-
4 effective project.

5 And B.C. Hydro in this case has failed, I
6 would suggest to you, in establishing that right from
7 the very start in this application. There's no up-to-
8 date integrated resource plan which you could go out and
9 in a rational way compare to alternatives which would
10 include market power, which might be out of the control
11 of B.C. Hydro, purchases from IPPs, et cetera. B.C.
12 Hydro admitted it has not conducted a relevant request
13 for proposals. Customer-Based Generation and Green
14 Power had limitations on them which do not -- or which
15 rule them out for demonstrating whether or not VIGP is
16 the least-cost alternative.

17 And I would suggest it's gone even further.
18 They have not really looked. They went to -- they
19 admitted they had not gone to Norske and said, "Look,
20 we've got this short-term problem, can you help us
21 bridge the gap?" They simply are leaving it while
22 others come to us.

23 I think one could go so far as to say that
24 this application should have been rejected outright or
25 put on hold in the first case, without this sort of
26 evidence to show the least-cost alternatives have been

1 fully reviewed; could argue that the hearing shouldn't
2 have even been heard till that evidence was there, but
3 B.C. Hydro pleaded urgency and the Commission responded.
4 But a CPCN should definitely not be issued unless you
5 are satisfied it is the least-cost alternative.

6 With respect to next steps, I think you
7 clearly have the ability to say in your decision, and
8 should, I think a responsibility to say what it would
9 take in order for you to be convinced that it was a
10 least-cost alternative in a meaningful way. And that
11 might be an integrated resource plan, it might be a CFT.
12 That would be dependent on your view of the evidence.

13 And I think Mr. Johnson raised with you
14 earlier a very good example in Southern Crossing where
15 the Commission outright rejected the CPCN request but
16 said that had we found this or had this sort of evidence
17 been produced, then we would make a different decision,
18 and it's then up to the applicant to go out and do what
19 is nec- -- or we believe we'd make a different decision,
20 go out and do what is necessary and bring the case back.

21 By rejecting a CPCN application, you're not
22 rejecting it for all time, you're rejecting it on the
23 basis on which it was submitted, and it would be open to
24 you to review again.

25 COMMISSIONER NICHOLLS: Thank you, Mr. Wallace.

26 THE CHAIRPERSON: Let me, if I may, as ask you a question,

1 Mr. R.B. Wallace, that arises from what you've just
2 said. As it relates to directions that we might give in
3 the context of a denied CPCN versus conditions that we
4 might include in a CPCN, do you -- you're proposing
5 significant involvement of the Commission in CFT if
6 that's the next step.

7 MR. R.B. WALLACE: Yes.

8 THE CHAIRPERSON: Are you concerned that if we provide
9 directions only, that Mr. B.J. Wallace's comments with
10 respect to the jurisdiction that we have then, is
11 considerably different than it might be if it was a
12 conditional CPCN. And therefore the significant
13 involvement that you're requesting of the Commission is
14 not as easily addressed if we deny the CPCN.

15 MR. R.B. WALLACE: No, I think it would be equally well
16 addressed in either event. I would expect that if you
17 issued a decision that said -- this is obviously
18 hypothetical, but that the intervenors indicated a
19 concern about participating in a CFT that was left
20 simply in Hydro's hands because Hydro is a bidder, is
21 setting the rules and judging the outcome, and the
22 Commission considers that those concerns are reasonable
23 concerns for bidders to have and that might result in a
24 less than optimal CFT, and therefore we would urge B.C.
25 Hydro to seek the involvement of the Commission in this
26 process and to get the Commission involved as it went

1 along, I don't have any doubt that Hydro would respond
2 to that as directly as it would respond to an
3 instruction in a conditional CPCN.

4 THE CHAIRPERSON: Thank you.

5 COMMISSIONER NICHOLLS: Thank you. Mr. Landry.

6 MR. LANDRY: I'll try not to repeat what Mr. R.B. Wallace
7 has indicated, but I would say this from our
8 perspective. We also do not believe that you have the
9 jurisdiction to issue a CPCN if you have not concluded
10 that there is sufficient evidence that it is the most
11 cost-effective or least-cost alternative. And in that
12 context, again I'd like to go back to a comment that Mr.
13 R.B. Wallace mentioned, and that is that the onus is on
14 B.C. Hydro to come forward and effectively show this.

15 **Proceeding Time 10:00 a.m. T19**

16 The difficulty with that is that they also
17 have to show that there are no other possible
18 alternatives and they have to analyze each one of those
19 alternatives in that context. And if one looks at, for
20 example, load curtailment, it's obvious in the evidence
21 that they indicate, in a response to a question from the
22 panel, that load curtailment is a possibility, and yet
23 that was not something that they canvassed, nor do we
24 have sufficient evidence on the record to determine
25 whether or not that alternative is most cost effective
26 or least cost alternative.

1 Now, our position is that it would be, but
2 the point is that there is not sufficient evidence on
3 which you could conclude that VIGP is the least cost
4 alternative relative to that one option.

5 In terms of the panel's, the Commission's
6 capability to give directions, it would seem to me to be
7 an odd situation, given the regulatory jurisdiction that
8 the Commission has over B.C. Hydro, keeping in mind the
9 best interests of the ratepayers, that they would not
10 have jurisdiction to provide appropriate directions to
11 B.C. Hydro on matters in which that we are dealing with
12 today. In sort of response to Chairman Hobbs point, it
13 would seem to me to be odd that you have to effectively
14 get some jurisdiction in a conditional CPCN that you
15 couldn't get otherwise by rejecting the application and
16 then providing some other direction to B.C. Hydro.

17 It seems to me that you have general
18 regulatory jurisdiction over B.C. Hydro, and as part of
19 that you have the ability to give directions to B.C.
20 Hydro of the nature that we're talking here. And I
21 don't think B.C. Hydro has indicated otherwise. And
22 those are my comments.

23 COMMISSIONER NICHOLLS: Thank you.

24 THE CHAIRPERSON: Mr. Landry, I thought I heard Mr. B.J.
25 Wallace in fact say something different than what you
26 just said that he said, and I think his position is that

1 with respect to directions in the context of a denied
2 CPCN, that we may make suggestions, but that the
3 obligation to serve is that of B.C. Hydro and that
4 responsibility is that of the board of directors of B.C.
5 Hydro. Did I misunderstand you, Mr. B.J. Wallace?

6 MR. B.J. WALLACE: Mr. Chairman, that is what I said
7 indeed. Mr. Wallace stood up and said he was going to
8 agree with me and went on at some length in agreeing
9 with me -- and I appreciate that -- but seeking a
10 different solution, obviously, than B.C. Hydro is.

11 Your characterization of what I said is
12 correct, Mr. Chairman.

13 THE CHAIRPERSON: Thank you. Well, in that case, Mr.
14 Landry, it's back to you.

15 MR. LANDRY: Well, Mr. Chairman, I would say this, that
16 again I go back to your general, overall regulatory
17 jurisdiction over B.C. Hydro, and in the context of what
18 we're talking about here, appropriate directions is in
19 our submission the appropriate way to go. I would use,
20 as an example, one that my friend mentioned in his
21 argument, which was the STP application of West Kootenay
22 at the time, for the transmission issue in the
23 Kootenays.

24 **Proceeding Time 10:05 a.m. T20**

25 At that point in time there was a number of
26 different debates before the Commission on a number of

1 different issues, but in actual fact -- sorry, it was
2 the SCP application by West Kootenay. For example, with
3 my client, CBT Energy and CPC, there was some issue of
4 whether or not there was going to be a direction from
5 the Commission regarding negotiations. Well, in fact
6 the Commission did, in my submission, have an
7 appropriate direction in their reasons, and in fact
8 that's exactly what happened. The parties went back to
9 negotiations, were able to negotiate agreement on issues
10 relating to the BTS at the time.

11 So in my view, based on your general, overall
12 regulatory jurisdiction, you have the ability, the
13 Commission has the ability to make appropriate
14 directions in this type of circumstance.

15 THE CHAIRPERSON: Well, may I ask you to comment on the
16 decision of Justice Goldie?

17 MR. LANDRY: Of who, sorry?

18 THE CHAIRPERSON: Of His Lordship Goldie, with respect to
19 the Commission's jurisdiction as it relates to the
20 encroaching, if you will, on the responsibilities of the
21 board of directors and the management of B.C. Hydro.

22 MR. LANDRY: It's been some time since I've looked at that
23 decision, Mr. Chairman, but I would say this, that
24 you're in the context here of a CPCN, which is an
25 attempt to sort out a problem, which I believe we all
26 agree exists on Vancouver Island. In that context, and

1 in your general regulatory context in terms of revenue
2 requirements, for example, in my submission you have the
3 appropriate jurisdiction to make appropriate directions
4 in this case.

5 THE CHAIRPERSON: Okay.

6 MR. LANDRY: I'll take a look at the judgment again of Mr.
7 Justice Goldie, which I haven't read for some time, but
8 that was in the context of a much different issue, in my
9 submission.

10 THE CHAIRPERSON: Yes, I would appreciate if you could
11 distinguish it, and I think it's in the authorities of
12 Mr. B.J. Wallace. You can read it.

13 MR. LANDRY: I'll take a look. If I can have a moment, I
14 will take a look at that. Perhaps if I have further
15 comment I'll make it after the break, Mr. Chairman.

16 THE CHAIRPERSON: Please.

17 COMMISSIONER NICHOLLS: Mr. Andrews?

18 MR. ANDREWS: The question, as I understand it, is whether
19 the Commission, if it were to determine that it lacks
20 sufficient evidence to find that VIGP is the least cost
21 alternative has jurisdiction nonetheless to issue a
22 conditional CPCN. My answer to that is, no, the
23 Commission does not have such jurisdiction.

24 I want to emphasize that as I understand the
25 jurisdictional analysis, it should not matter, does not
26 matter whether the test is worded as the least cost

1 alternative or the most cost effective alternative, and
2 the way the initial hypothetical findings were
3 articulated, the term least cost, as I understood it,
4 was used later. Commissioner Nicholls used the term
5 "most cost effective". In my submission it -- that's an
6 important distinction for other purposes, but is not
7 material to the jurisdictional issue.

8 And that the simple jurisdictional issue is
9 that the Commission has to make a finding that the
10 project applied for is in the public convenience and
11 necessity, or as it's worded, "public convenience and
12 necessity require or will require the construction or
13 operation of the proposed facility," and I would tie
14 that to Section 46(3), which describes the Commission's
15 power to attach terms to a CPCN, which in my submission
16 supports the view that the terms are only ancillary to
17 the CPCN and cannot take the place of a finding that the
18 facility meets the public convenience and necessity.

19 As to the authority of the Commission to make
20 directions, I would certainly take the starting point
21 that the Commission in its reasons for decision has
22 plenty of scope to articulate the things that it feels
23 were lacking in this application, that it would find
24 important in a subsequent application.

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

26 I think perhaps the term "directions" has

1 been used in two subtly different senses, one of them
2 being what might be called a legally binding direction
3 as such, and the second being an indication that is a
4 communication of information which is not intended to be
5 a legally binding directive. And in my submission, the
6 use of the Commission's Reasons for Decision is likely
7 to be all that is necessary; that is, there is plenty of
8 scope within the Reasons for Decision to indicate, to
9 communicate to B.C. Hydro what the Commission feels is
10 necessary, without having to go to the step of issuing a
11 binding direction.

12 And therefore -- and I would say at this
13 point, I'm not able to comment specifically on whether
14 there may be legal authority somewhere else in the Act
15 to allow this panel to make a legally binding direction
16 on B.C. Hydro. My point here would be that it's
17 unnecessary to go that far and that you have ample
18 authority to achieve the purpose through the reasons for
19 rejecting a CPCN on the hypothetical that is the basis
20 for this whole discussion. Thank you.

21 MR. GATHERCOLE: Good morning, Mr. Chairman, Commissioner
22 Nicholls. I finally get an opportunity to participate
23 in this proceeding. And it would be my submission that
24 there are two aspects to what we're looking at with this
25 particular project and the Commission's approach to it.
26 One of course is your jurisdiction under the Act to

1 determine that a Certificate of Public Convenience and
2 Necessity should issue. The second aspect, of course,
3 is in the Energy Plan where the term "the most cost-
4 effective project" is used.

5 And I believe under your jurisdiction to
6 determine whether this is in the public convenience or
7 necessity, what has to -- primarily whether it's the
8 most cost-effective. I would point out that in the
9 second Southern Crossing decision, the Commission did
10 take into account certain issues that they considered to
11 be beneficial to the customers of the then B.C. Gas
12 which could not be quantified. I don't believe the same
13 situation exists here. So I think if you are not
14 satisfied that it's either the least cost or the most
15 cost-effective, and I think the latter term is probably
16 the better one, then you should refuse to issue the
17 CPCN.

18 Now with respect to directions, I do believe
19 that the simple situation would be to reject the CPCN
20 and then leave it up to B.C. Hydro to respond. It would
21 be open to the Commission, in my submission, to clearly
22 indicate that it believes there is a capacity problem on
23 Vancouver Island. Therefore the utility, because of its
24 obligation to serve, is under an obligation to respond
25 to that. And as a matter of fact, the way Southern
26 Crossing got started was the Commission did make a

1 finding that there was a natural gas capacity problem in
2 the Lower Mainland, and then left it to B.C. Gas to then
3 come forward with the proposal to meet that lack of
4 capacity. And in my submission, that would be the
5 appropriate way to go. I think the simple matter is, if
6 this is not in the public convenience and necessity, and
7 it's our submission very clearly it is not, then it is
8 really open to the Commission to refuse to grant the
9 CPCN and make whatever findings of fact that it
10 considers appropriate. Thank you.

11 THE CHAIRPERSON: Mr. Gathercole, I have a question for you
12 but I'd invite comments with respect to this from others
13 if they disagree with -- particularly if they disagree
14 with your answer.

15 Policy action number 6 of Energy Plan speaks
16 to Commission review of VIGP. In your view, does a
17 policy action of that nature change in any way our
18 jurisdiction or the tests that we might apply from the
19 Act itself?

20 **Proceeding Time 10:15 a.m. T22**

21 MR. GATHERCOLE: No it does not, Mr. Chairman. I just
22 mention it because it is there and that's where the
23 terminology came up about most cost effective, and it
24 seemed to me what was happening there, where the
25 Minister in essence did not allow an exemption, CPCN
26 exemption, was saying it will be reviewed by the

1 Commission in accordance with the Commission's
2 jurisdiction under the *Act*.

3 THE CHAIRPERSON: Right, thank you.

4 MR. BOIS: Mr. Chair, Commissioner Nicholls, it's my view
5 that the -- if there's insufficient evidence before the
6 Commission to justify the application and the building
7 of it, it shouldn't be granted a CPCN. However, I think
8 that I share and echo the sentiments of Mr. R.B. Wallace
9 that you do have some scope to provide directions in
10 that regard within your reasons for the decision.

11 I found it somewhat interesting to hear Mr.
12 B.J. Wallace's comments with respect to the alternative
13 applications, or proposals that might be out there. He
14 was saying, since -- and I'm going to paraphrase, but if
15 I'm wrong I hope he will stand up and correct me.
16 Essentially because we don't have a contract in hand we
17 don't have a project, so therefore we really don't have
18 an alternative. Well, as was pointed out in the
19 discussions earlier this morning between Mr. B.J.
20 Wallace and Mr. Cal Johnson, there are no gas supply
21 contracts before this Commission to show the gas costs
22 and the gas prices; there are no on-Island toll
23 transportation agreements in place before this
24 Commission, so there are certainly scopes that are -- in
25 evidence that even using Mr. Wallace's arguments, fail
26 to meet the test that this Commission can find that

1 there is adequate evidence to support the CPCN.
2 It's incumbent, and I think this has been
3 said by several parties before, but I think we're losing
4 sight of the fact that it is incumbent upon the
5 applicant to provide the best evidence in an
6 application. It is not incumbent on the Intervenors to
7 show that that application is faulty or that it's
8 inadequate. We can ask questions and we can challenge
9 the application, but it's incumbent upon the applicant,
10 and I think by the scope of interventions and the number
11 of IRs that are being asked of applicants in recent
12 proceedings, we seem to be losing sight of that premise
13 that it's up to the applicant to bring forward their
14 best case. It's not up to the intervenors to challenge
15 that application and show, demonstrate that there's
16 another alternative. It's only up to us to challenge
17 that.

18 And I think the applicant has failed to do
19 that. And those are my submissions.

20 THE CHAIRPERSON: Mr. Bois, before you sit down, let me
21 read to you a portion of your argument.

22 MR. BOIS: Always comes back and haunts you, doesn't it? I
23 should get my argument then.

24 Go ahead, please, Mr. Chair.

25 THE CHAIRPERSON: At page 22, the bottom of the page --

26 MR. BOIS: Can I just grab my argument, Mr. Chair?

1 THE CHAIRPERSON: Yes, not very much turns on it.

2 MR. BOIS: Thanks. On page, I'm sorry?

3 THE CHAIRPERSON: Twenty-two, the bottom of the page, after
4 you list the four alternatives. You say,

5 "The recommendation of the JIESC is that the
6 BCUC deny the requested CPCN. Preferably this
7 should be done in a fashion that will force
8 B.C. Hydro to immediately and aggressively
9 explore all other options and select the
10 project and/or management approaches that will
11 provide a Vancouver Island and the B.C. Hydro
12 system as a whole a considered and well
13 reasoned solution at much less cost than
14 VIGP."

15 MR. BOIS: Yes.

16 THE CHAIRPERSON: You, more than others, have used language
17 that is assertive, and it strikes me that the contrast
18 between your view and Mr. B.J. Wallace's view with
19 respect to the scope that we have as it relates to
20 directions is most stark.

21 MR. BOIS: I'm sure that's probably true.

22 THE CHAIRPERSON: You want us to be very forceful in our
23 directions, in the context of a denied CPCN, and you
24 haven't provided any authority for jurisdiction to do
25 that, or the force, using your words, the force that
26 might bring to bear on B.C. Hydro in the context of such

1 directions. And I'd like you to be of assistance here
2 if you can.

3 And also I have a question that
4 falls out of it. Because, you know, you're so --

5 **Proceeding Time 10:20 a.m. T23**

6 MR. BOIS: Blunt?

7 THE CHAIRPERSON: -- assertive here, if we felt that we
8 didn't have the jurisdiction to do what you want us to
9 force B.C. Hydro to do in the context of a denied CPCN,
10 would you then prefer that we issue a CPCN that would
11 have the conditions that would force B.C. Hydro to
12 immediately and aggressively explore all other options?

13 MR. BOIS: Can I just have a moment to confer for one
14 second?

15 THE CHAIRPERSON: Sure.

16 MR. BOIS: Mr. Chairman, first of all, our view was that
17 you should deny the CPCN on its merits. Having said
18 that, if you deny the CPCN then you really don't have
19 the jurisdiction to give directions.

20 If you find that there's an option for you to
21 grant a conditional CPCN, then that perspective was that
22 that conditional CPCN should direct B.C. Hydro to do
23 certain tasks. You have the authority, I believe, under
24 the *Utilities Act* and the test of public convenience and
25 necessity and the merits of the application, to do those
26 things. You have a broad discretion. Now, B.C. Hydro

1 may disagree with my interpretation of that, but the
2 question is, what is in the interests of the public
3 convenience and necessity, not what is in the interests
4 of B.C. Hydro.

5 In terms of B.C. Hydro's evidence already to
6 date, it says that there's an issue to be dealt with on
7 the Island. If VIGP and VIEC's application is not the
8 way to deal with that application or that issue, then I
9 think you have a responsibility as the Commission to
10 provide some direction. It doesn't mean that it's a
11 legally binding direction in the sense that you're
12 running into the management issues of the board of
13 directors, but I think you can demonstrate to B.C.
14 Hydro, who has been relatively exempt from Commission
15 oversight for a long time, that this is what you expect
16 B.C. Hydro to do now that they're back in this arena.

17 It doesn't mean that you have to say thou
18 shalt do this and if you don't do that, we're going to
19 interfere with management of the company. But I think
20 it means that you have to set -- if you're going to
21 adopt a standard of giving directions or guidelines,
22 that those guidelines should be meaningful. They
23 shouldn't be subtle guidelines that allow interpretation
24 by everybody. They should directly set out what the
25 Commission expects of B.C. Hydro. That's what is meant
26 by "forcefully" and "aggressively".

1 The arguments that have been made to you
2 about least cost and most cost effective, I submit, are
3 attempting to change the wording in the Act. Section 45
4 of the Act discusses public convenience and necessity.
5 It doesn't say "least cost" and it doesn't say "most
6 cost effective". What you're required to find is
7 whether or not a project meets the public convenience
8 and necessity, and that's the test. And I submit it is
9 incorrect to say it's least cost, and it's incorrect to
10 say it's most cost effective.

11 There may be projects that do meet a test of
12 what -- of being in the public convenience and necessity
13 that are not the least cost or not the most cost
14 effective.

15 Mr. Gathercole referred to some benefits that
16 couldn't be quantified in the Southern Crossing case.
17 That sort of thing can be taken into account. As well,
18 items such as timing have to be taken into account, and
19 timing can't be quantified in terms of dollars. There
20 may be circumstances where a project must go ahead even
21 though it's not the most cost effective project, because
22 there's a requirement that something be put in place.

23 And I say that, you know, I'm not trying to
24 argue whether or not this project fits into that
25 category, but I'm just going to the issue of what your
26 jurisdiction is.

1 And I think another factor that must be kept
2 in mind, and I'll admit I'm here representing a utility,
3 that that flavours my views. But you can't study things
4 forever. It's always easy for Intervenors to come
5 forward and say, "Well if you did something else, if you
6 did some more studies or you did this or you did that
7 you might find something that works better." Well,
8 that's true, you might. But the public convenience and
9 necessity could very well require getting on, making a
10 decision today and getting on with the project, and
11 leaving aside theoretical discussions of what might
12 happen.

13 Those are my submissions.

14 COMMISSIONER NICHOLLS: Just before we take a break I want
15 to see if anybody has any comments if the basic question
16 changes to "Can we issue a CPCN if B.C. Hydro has not
17 shown VIGP is in the public convenience and necessity."
18 rather than most cost effective or least cost. Does
19 that change what anybody has said?

20 Thank you.

21 THE CHAIRPERSON: Mr. B.J. Wallace?

22 MR. B.J. WALLACE: Yes, Commissioner Nicholls, in my -- I
23 don't think it changes anything, and we indeed have used
24 the word "cost effective" in a general sense, in the
25 context of the jurisdiction in the Act, and the way it
26 was addressed by Mr. Johnson I think is very effective

1 one, because it helps to refocus this on a more global
2 look at what it is that's required, the issue of timing
3 and reliability and other non-quantifiable amounts.
4 Perhaps "cost effective" covers that. I had read it
5 that way in as much as the terms are in the statute.

6 In terms of the issue of whether or not you
7 have to have perfect knowledge before you can go ahead
8 is also a matter which we've discussed at the opening of
9 our initial argument.

10 COMMISSIONER NICHOLLS: Thank you. I meant "cost
11 effective" as being the whole thing. I was using it as
12 shorthand, and I took it that you would understand it in
13 that context. I just wanted to be sure.

14 Mr. Landry?

15 MR. LANDRY: Sorry, I just wondered whether or not I could
16 respond to a question that Chairman Hobbs asked
17 regarding the Energy Policy. I didn't know whether we'd
18 do it now or later. Do you want to -- it'll only take
19 one second if you want me to --

20 THE CHAIRPERSON: My suggestion is we do it afterwards.

21 MR. LANDRY: Okay, that's fine.

22 THE CHAIRPERSON: The only issue is really how long we
23 should take for a break now, and I'm thinking we should
24 take a half an hour break, unless there are any
25 objections.

26 Okay, let's take a 30 minute break.

1 So it doesn't necessarily change the
2 jurisdiction you have, but you have to take it into
3 account, as you have to take into account all other
4 relevant issues in making your determination.

5 THE CHAIRPERSON: Yes, as I understood it, though,
6 jurisdiction is a question of law and the Energy Plan is
7 not law that we would bring into consideration in
8 answering that question of law as to what our
9 jurisdiction is, is that correct?

10 MR. LANDRY: Yeah, I think the best way to put it is this,
11 that I would say that the way you have to take into
12 account the Energy Plan is like a piece of evidence, a
13 question of fact, as opposed to a question of law
14 directing you to do something.

15 THE CHAIRPERSON: Thank you.

16 MR. LANDRY: That has to be taken into the overall context
17 of the application.

18 THE CHAIRPERSON: Thank you, Mr. Landry.

19 MR. LANDRY: And when we have a moment I do have a comment
20 on Mr. Justice Goldie's decision.

21 THE CHAIRPERSON: Why don't you take that opportunity now?

22 MR. LANDRY: Mr. Chairman, again I read this very quickly,
23 but I would like to respond to the question that you did
24 ask because it was my recollection that this case is
25 quite distinguishable from the case that we have here.
26 And the way I would put it is this, that as you know in

1 that case the issue was an order from the Commission
2 relating to an IRP process into the future, and
3 effectively what Mr. Justice Goldie said was that that
4 was -- that went beyond, and it was effectively getting
5 into the way in which management which B.C. Hydro was to
6 carry out its obligations under the Act.

7 But in my submission it did not specifically
8 deal with the very issue that we're talking about here,
9 which is where your jurisdiction relates to the
10 application for a Certificate of CPCN, that's a rate
11 where there's an application for a CPCN. That's quite
12 different. You actually have jurisdiction there and you
13 are required to exercise that jurisdiction.

14 **Proceeding Time 11:07 a.m. T26**

15 And in that context, in my submission, the
16 *B.C. Hydro* case and Mr. Justice Goldie does not deal
17 with that. If anything, in my submission, Mr. Justice
18 Goldie would suggest in that case you do have
19 jurisdiction under the section that was being debated in
20 that case, which was formerly Section 28, now Section
21 23, which relates to the general supervision of public
22 utilities and the ability of the Commission to make
23 orders under that section.

24 So in a context of a direction as to how
25 management should plan in the future is one thing. But
26 when management comes to you with effectively a resource

1 plan, i.e. a supply option, to deal with specifically a
2 problem that relates to the equipment that it does then
3 have in service, in other words what its response is
4 under the Act, in my submission the jurisdiction that
5 you have then under Section 23 is quite different than
6 the type of thing that they were dealing with in the
7 B.C. Hydro case and what Mr. Justice Goldie was dealing
8 with.

9 And I would refer you, Mr. Chairman, to
10 paragraph 55 as in that --

11 THE CHAIRPERSON: Can you give me the tab number for the --

12 MR. LANDRY: It's tab 2 in B.C. Hydro's authorities.

13 THE CHAIRPERSON: Thank you. Paragraph 55?

14 MR. LANDRY: Paragraph 55, yes, I believe it's on page 119.
15 And again, this doesn't specifically answer the question
16 because that wasn't the question before Mr. Justice
17 Goldie. But you can see in that, in the way that he
18 characterizes the issue, that he wasn't dealing with the
19 Commission's jurisdiction as part of a certification
20 process which would be a CPCN. And in my submission, if
21 you read the section, Sections 45 and 46 and you go back
22 to Section 23, especially in the context where what
23 we're really dealing with here is a problem relating to
24 the HVDC line, and management's response to that brought
25 forward to the Commission, in that context I would say,
26 Mr. Chairman, that you have a very broad discretion and

1 that you can provide directions to B.C. Hydro in that
2 context.

3 And the only other thing I would say, Mr.
4 Chairman, is that obviously -- it's my recollection that
5 B.C. Hydro do not cite this case in relation to this
6 issue of directions. In fact, I think what B.C. Hydro's
7 -- if I remember correctly, the argument was that they
8 couldn't find any specific authority on the point, and
9 whether or not as part of a certification process there
10 could be directions in this respect. And they used a
11 couple of older cases which aren't directly on point,
12 which they admitted. But in my submission, if you look
13 at this case carefully, it does not deal with the
14 specific issue that we're dealing with here, and in my
15 submission, given what we're trying to do which is solve
16 a problem on Vancouver Island, I don't think it would be
17 appropriate to interpret the *Act* in such a way as to
18 limit your jurisdiction in that respect.

19 THE CHAIRPERSON: Mr. B.J. Wallace, it's your position that
20 if we deny the CPCN, the directions that we might give
21 are characterized as suggestions to the board of
22 directors.

23 MR. B.J. WALLACE: That's correct, Mr. Chairman. Perhaps
24 if I might just address that in the context of Mr.
25 Landry's comments --

26 THE CHAIRPERSON: Yes.

1 MR. B.J. WALLACE: -- and Mr. Justice Goldie's decision, if
2 we could go to tab 2 at paragraph 51.

3 "The *Utilities Act* runs to over 140 sections.
4 The administration of the jurisdiction
5 conferred upon the Commission is amply
6 delineated by express terms. There is no need
7 to imply terms for this purpose."

8 And then if you go to paragraph 55, this was the
9 suggestion that the general purpose oversight from
10 Section 28 prevailed and Mr. Justice Goldie said:

11 "I'm unable to agree with that
12 characterization, as in my opinion the IRP
13 process, specifically the planning phase of
14 the utility's response to its statutory
15 obligations and its enforcement by order, is
16 an exercise of management as it relates
17 neither to the certification process as such,
18 nor to the supervision of the utility's use of
19 its property devoted to provision of service."

20 And then if you go to paragraph 58:

21 "Taken as a whole, the *Utilities Act* viewed in
22 the purposive sense required does not reflect
23 any intention on the part of the legislature
24 to confer upon the Commission the jurisdiction
25 so to determine punishable on default by
26 sanctions in the manner in which the directors

1 of a public utility manage its affairs."

2 My friend Mr. Landry says: Well, you can ignore those
3 comments here because that was in the context of a
4 planning prerogative, not in the context of a CPCN.

5 **Proceeding Time 11:12 a.m. T27**

6 In my submission, if the Commission were to
7 deny the CPCN, then we're back into a planning purpose
8 if you like. That's why in the context of -- where
9 there'd be an exception to this is where there were
10 conditions to a CPCN that is in the context of the CPCN.
11 But having rejected one, in my submission, the
12 Commission's views obviously persuade, they're very
13 important, but they can't be made in terms of an order.

14 So in my view, you don't go back to Section
15 23 and somehow garner all that sort of general
16 authority. And indeed, the 1994 *PEI* case, Court of
17 Appeal, the full court of *PEI*, the Supreme Court says
18 essentially the same thing: You don't look at the
19 general power.

20 So I would disagree with Mr. Landry that this
21 gets you back into the general power. If the CPCN is
22 denied, you're back into, as I say, making an important
23 suggestion.

24 THE CHAIRPERSON: Mr. Landry.

25 MR. LANDRY: Well, it will come as no surprise that I
26 disagree with my friend. First of all, I ask you to

1 take into context the specific paragraphs that my friend
2 has mentioned, and I would only say this: It's in the
3 exercise of management's discretion. They've now come
4 forward to you with a proposal, a resource option to
5 resolve a problem with a piece of equipment that is
6 within the jurisdiction of this Commission and therefore
7 in that context you have to look at Section 23.

8 And in my submission, when you read this
9 case, basically what Mr. Justice Goldie is saying, that
10 outside a certification process -- okay, outside of that
11 process -- you can't effectively direct the management
12 of the utility how to manage its own affairs. But as
13 part of the certification process you have a broad
14 jurisdiction, in my mind, to ensure that public
15 convergence and necessity is met. And in that respect I
16 think Section 23 clearly -- if you read Section 23
17 you'll see that it does give the Commission a very broad
18 mandate.

19 And I might say just for your own reference,
20 Mr. Chairman, that the section that was referred to in
21 the B.C. Hydro case, a decision of Mr. Justice Goldie,
22 Section 28, it's now Section 23, and although it's
23 somewhat changed in terms of the format, it's basically
24 the same section.

25 THE CHAIRPERSON: So are you suggesting, Mr. Landry, that
26 the directions that we would give after denying a CPCN

1 would be supported jurisdictionally by Section 23?

2 MR. LANDRY: Absolutely, Mr. Chairman. If you look at the
3 breadth of the section, it says:

4 "The Commission has general supervision over
5 all public utilities and may make orders,"

6 which is what this would be,

7 by way of direction, about equipment..."

8 go down further,

9 "...extension of works of systems;..."

10 down further,

11 "...other matters it considers

12 necessary/advisable for the safety,

13 convenience or service of the public."

14 Well it seems to me, Mr. Chairman, that's essentially
15 what was debated at this hearing.

16 THE CHAIRPERSON: Do you have any other foundation to offer
17 with respect to the jurisdiction of directions in the
18 context of a denied CPCN?

19 MR. LANDRY: No, and I would specifically say, Mr.
20 Chairman, that I'm not relying on Section 25 of the Act
21 there, but I'm relying on Section 23 simply.

22 THE CHAIRPERSON: Thank you. Is there anyone else that
23 wishes to speak to this issue?

24 MR. R.B. WALLACE: Mr. Chairman, just some very limited
25 comments and that is that it sounds like Mr. Landry and
26 Mr. B.J. Wallace both have good points, and what I would

1 be concerned is that the Commission word its decision in
2 a way that gets us into the courts for two years because
3 Hydro decides that it wants to fight about whether the
4 Commission has the jurisdiction or not.

5 Again, I would suggest to you that if your
6 reasons provide strong suggestions to B.C. Hydro, that
7 that will probably be followed in the end because
8 they've got to come back to you, and when they come back
9 to you with their next application, if they haven't
10 dealt with what you told them in the last one, they know
11 they're going to have a problem.

12 With respect to the over -- and that avoids
13 going to the Court of Appeal and I think gets the right
14 result.

15 From an IPP perspective, NorskeCanada at
16 least would be happier with a no to the CPCN and
17 suggestions for future behaviour than a yes to the CPCN
18 with directions for future behaviour. The weight of the
19 CPCN is so contrary to IPP beliefs of where it's going,
20 and particular with Mr. Wallace's acknowledgement that
21 you have to make a finding that it is a least cost
22 alternative first. With that finding against IPPs, I
23 can't imagine that any order directing a CFT would be
24 useful.

25 **Proceeding Time 11:17 a.m. T28**

26 THE CHAIRPERSON: Let me ask you a question then, Mr. R.B.

1 Wallace. You've made it very, very clear that if B.C.
2 Hydro proceeds with a CFT that doesn't meet -- well,
3 let's do this more methodically.

4 Let me take you to your argument, the last
5 page, page 20, and it says -- sorry, I'll wait until
6 you're there.

7 Page 20 of the Norske argument, the last full
8 paragraph, second sentence:

9 "As started in opening this argument, an
10 acceptable process requires that someone other
11 than B.C. Hydro gives the final approval for
12 the CFT benchmark level, the CFT rules of
13 selection of the independent reviewer and what
14 really is the best alternative."

15 And I'll focus on the last two bullets.

16 Is it your view that we can give directions
17 in the context of a denied CPCN that the Commission
18 select the independent reviewer?

19 MR. R.B. WALLACE: Well, we did carefully say "final
20 approval for the selection of the independent reviewer",
21 and I think that's consistent with the position that
22 Hydro has taken, that it would find an independent
23 reviewer but it would put the name before the Commission
24 for approval. So it's not necessarily that the
25 Commission has to go out and find the person, but simply
26 in the end that at least the Commission endorse, yes,

1 this persona appears qualified to carry out the role.
2 And I think it's in the interests of B.C. Hydro and any
3 applicant that it be done in that way, in order that
4 there not be an allegation at the end that the
5 independent reviewer was not independent or qualified,
6 because it does have to come back to the Commission in
7 the end for the decision on what is the least cost
8 project. You cannot delegate that to somebody else.

9 THE CHAIRPERSON: No, but your -- if we make directions
10 that, as you have indicated, to avoid the potential for
11 there to be a jurisdictional challenge, that they be
12 framed as suggestions, do we then satisfy your
13 conditions of participating in the CFT?

14 MR. R.B. WALLACE: Yes, I think -- if I can put it another
15 way, if you put it in your decision that said, "At this
16 point it appears to us an acceptable process to resolve
17 these issues would require and independent reviewer
18 coming before us," and Hydro turned around and said yes,
19 that's what they were going to do, then we'd be
20 perfectly happy; and if we weren't, we'd be, whenever
21 Hydro came for that final approval, saying, "Wait a sec,
22 this just isn't an acceptable way of going ahead."

23 THE CHAIRPERSON: Let me turn now to the last bullet, which
24 may be more problematic, and the distinction between
25 your position and Mr. B.J. Wallace's position in this
26 context I think is more stark. You're insisting that

1 the Commission make the selection of the project that
2 proceeds. Am I correct?

3 **Proceeding Time 11:22 a.m. T29**

4 MR. R.B. WALLACE: No, again I think the key words are
5 "final approval". So again, if B.C. Hydro makes the
6 selection and then comes to you and says, okay, we want
7 it now confirmed our conditional CPCN is a permanent
8 one, that the Commission reserves to itself the right to
9 make that decision, yes, we've looked at it and we
10 agree, rather than it came out of the process and now we
11 must stamp that as approved.

12 So as long as the Commission again makes that
13 decision of what is the least cost, most cost effective
14 alternative that we've been talking about earlier today,
15 which I suggest is your statutory obligation to do. So
16 it's simply not that the process gets set up in some way
17 that that doesn't happen. That's our concern.

18 THE CHAIRPERSON: So that I ensure that I understand your
19 position, let me switch topics with you, to the
20 portfolio methodology. And let me do that in the
21 context of the first bullet on page 17, and the fourth
22 bullet on page 16. I'll start with the fourth bullet
23 on page 16:

24 "If a portfolio methodology model will be used
25 to assess bids it must be available to bidders
26 in advance in order to give all bidders a

1 proper opportunity to design their project to
2 best meet B.C. Hydro's requirements."

3 If we give directions that one might
4 characterize as suggestions, can we be, in your view, as
5 specific as making suggestions about the portfolio
6 methodology?

7 MR. R.B. WALLACE: I believe so, yes, and I would take it
8 further. For example the benchmark, because I think it
9 may be even clearer there, that the Commission could
10 say, "Having reviewed this project we find that its
11 costs would be approximately X dollars per megawatt hour
12 based on these assumptions." So that you're sending to
13 Hydro a fairly clear message of what benchmark it should
14 set up to prove that it is the lowest cost alternative.

15 Similarly with the portfolio methodology.
16 It's a little more complex, but to say to Hydro, in
17 coming back to us we don't think that an all combined
18 cycle gas turbine alternative is the appropriate
19 portfolio methodology, that you should take into account
20 some other factors, then is helpful guidance. And I
21 would take it as guidance rather than suggestions,
22 because I think it is giving them a -- it's something
23 more than a suggestion, it may be less than an order.
24 But with clear guidance I think all parties benefit.

25 THE CHAIRPERSON: Thank you. I'm ready to change topics to
26 the two cases that were circulated at the break. Is

1 there anyone that wishes to speak to the issues that we
2 have just discussed?

3 MR. B.J. WALLACE: Mr. Chairman, I think the issue is
4 probably joined, but just on the point of your question
5 to Mr. R.B. Wallace as to the final approval of a
6 project, let me be absolutely clear, that that's a
7 substantive step that in my submission is not
8 appropriate for the Commission in the context either of
9 a conditional CPCN or otherwise.

10 In the circumstances of a conditional CPCN,
11 as I have conveyed my views of how this would work, the
12 Commission will have found that the VIGP is in the
13 public convenience and necessity, subject to testing it
14 for these alternative possibilities from others.

15 If at the end of the CFT process the
16 conclusion is there isn't another project which can
17 replace VIGP, then with the protections built into the
18 process for its fairness and the evaluation itself, then
19 that's what the Commission requires, in my submission,
20 to be satisfied and the Commission's approval of the
21 VIGP will then stand, the conditions having been met.

22 **Proceeding Time 11:27 a.m. T30**

23 In the event that the process produces an
24 alternative IPP project, one not being produced by B.C.
25 Hydro whether it's an IPP operating VIGP or whether it's
26 an alternative project such as NorskeCanada's, then in

1 my submission, again there's nothing to bring back to
2 the Commission other than to be sure that the process
3 was undertaken according to the standards set out, and
4 that it is transparent and fair and that the evaluation
5 has been done appropriately.

6 So I doubt that I had to say that, but I just
7 wanted to close the loop on that point.

8 THE CHAIRPERSON: Thank you. Mr. R.B. Wallace.

9 MR. R.B. WALLACE: Just because of the way Mr. B.J. Wallace
10 opened, I want to make it very clear, that is not what
11 we are proposing. What we are proposing is that the
12 Commission gets the results back and says, yes, it is
13 the lowest cost; no, it isn't. But it makes that
14 decision itself.

15 THE CHAIRPERSON: Yes.

16 MR. LANDRY: Mr. Chairman, if I could just make one comment
17 in regard to the exchange, I would say this, that if
18 you're going down and if I can call it the suggestion or
19 guidance route, for whatever reason, if it's the reason
20 that Mr. R.B. Wallace indicated or otherwise, I would
21 say this, that you should not feel constrained in your
22 ability to do that by the belief that there is no
23 jurisdiction under the Act. So that if you're going to
24 go down that route, I think that -- or my submission
25 would be that it would go down with the conclusion that
26 you do have jurisdiction under the Act so that you're

1 not constrained in the guidance that you would give to
2 the parties.

3 THE CHAIRPERSON: Right, thank you. Any other comments?

4 Then let me turn to the two cases that were
5 distributed at the break and I'm going to refer to them
6 as the 1984 decision and the 1994 decision. What I want
7 to do is return to the issue that a number of you
8 addressed, and that is whether or not the Commission can
9 consider the impacts of the application beyond the
10 impacts on the ratepayers of B.C. Hydro. And I will
11 read from the two decisions, the portions of the
12 decisions that I think may be contrary to the views that
13 were expressed by some of you. If they are, then I'll
14 give you a chance to speak to them. If they are not,
15 then I don't think you really need to speak to them.

16 So I will read you -- I will read into the
17 record those portions of those decisions that I think
18 are germane.

19 First, the 1984 decision, page 554, the
20 second full paragraph:

21 "In our opinion, the public interest as it
22 relates to Section 8 of the *Electric Power and*
23 *Telephone Act* is confined to the public who
24 are being served by the public utility.

25 Subsection (1) of Section 8 is concerned with
26 one public utility requesting to use the

1 'conduits, poles, wires or other equipment' of
2 another public utility. The subsection
3 provides, among other things, that such an
4 arrangement may be entered into where public
5 convenience and necessity requires the use.
6 It is difficult to see why a person who is not
7 being served by a public utility, as in the
8 present case, the inside customers, should be
9 dealt with when consideration has to be given
10 to public convenience and necessity."

11 Then skipping a paragraph, so the last paragraph on the
12 page:

13 "In ascertaining the meaning to be placed on
14 the words 'public interest' in Section 8(2),
15 the question may be asked, why should the
16 Commission be concerned with the interest of
17 the public that is not served by the public
18 utility in the context of Section 8. Section
19 8 is not a section that empowers the
20 Commission to be the watchdog for the general
21 public or all citizens of Prince Edward
22 Island, but only those who are being served by
23 the public utilities in question."

24 And then to the 1994 decision, page 309. The 1994
25 decision, page 309, the first full paragraph. So the
26 paragraph at the top of the page:

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Proceeding Time 11:32 a.m. T31

"Upon reading the *Electric Power and Telephone Act* in its entire context, considering it does not purport to regulate electric utilities operated by cities or towns unless so declared by the Lieutenant-Governor in Council, considering the social context in which the *Act* was enacted, as well as its evolution over the years, it is my opinion that the purpose and object of the *Act* is to provide for the regulation of each public utility only to the extent that each utility's decisions have an impact on its customers and not on the customers of other public utilities of similar nature. Therefore, I am unable to conclude that the Commission has been delegated the jurisdiction to consider the interests of all consumers of electricity in the province or the members of the public generally when considering the merits of Summerside's application made pursuant to Section 6."

Then turning to page 314, this last -- or the penultimate paragraph on that page. Page 314, the penultimate paragraph:

"In response to Q.1, I have determined that

1 the object and purpose of the *Electric Power*
2 *and Telephone Act* is to delegate to the
3 Commission the power to regulate each utility
4 within its jurisdiction only with respect to
5 the impact of each utility's actions on its
6 own customers. It is my opinion Section 26
7 gives the Commission supervisory control over
8 each utility that it regulates separately.
9 Accordingly, the public referred to in Section
10 26(1) is the public served by each utility."

11 And I won't continue reading from that.

12 Those are the paragraphs in those two
13 decisions that I find that may be germane to this
14 proceeding, and I invite comments now with respect to
15 whether or not those paragraphs create concerns or if
16 you wish to distinguish the decisions from the
17 proceeding or the application before us.

18 MR. B.J. WALLACE: Mr. Chairman, the point made in those
19 two cases is the same point, I submit, that we make in
20 paragraph 12 of our original application.

21 THE CHAIRPERSON: Thank you.

22 MR. ANDREWS: Mr. Chairman, Madam Commissioner, in my
23 respectful submission these cases both essentially stand
24 for the same proposition and both are distinguishable on
25 the basis of the fact that they are predicated on the
26 unique Prince Edward Island Legislative scheme, which

1 does not pertain in British Columbia, and what I would
2 propose to do is illustrate why I come to that
3 conclusion.

4 I think it's easiest to start with the 1994
5 decision, because the reasoning is set out in more
6 detail.

7 The first few pages set out the background,
8 and if I could refer you to page 304, at the bottom of
9 the page, approximately around the guide "h", states --
10 this is where the court begins its analysis, and it sets
11 out that the -- what the court is doing is determining
12 what factors the Commission is empowered to take into
13 account. It notes that the P.E.I. Act in question is
14 silent as to the factors the Commission may consider.
15 It therefore turns to the -- over the page now to page
16 305, it turns to determining the purpose and object of
17 the P.E.I. *Electric Power and Telephone Act*, and I don't
18 at all disagree that this is the appropriate approach.
19 What I'm getting at is that what follows is an analysis
20 of the P.E.I. Act, which indicates, in my submission,
21 how different that Act is from the B.C. *Utilities*
22 *Commission Act*.

23 **Proceeding Time 11:37 a.m. T32**

24 The analysis then goes into the definition of
25 a public utility in Prince Edward Island under that
26 statute, and this is at the bottom of page 305, and it

1 defines public utility which I won't lead but I
2 emphasize the top of the following page, 306, where it
3 is stated that Summerside's electric utility has never
4 been declared a public utility by the Lieutenant-
5 Governor in Council. And so you have a structure there
6 in which what would otherwise be a utility operated by a
7 municipality is not considered a public utility because
8 it's not designated as such.

9 And the Court continues in the second
10 sentence:

11 "To the extent it provides services to its
12 residents, Summerside's electric utility is
13 not regulated by the Commission while, to the
14 extent that it provides service to its
15 customers who are non-residents, Summerside's
16 electric utility is regulated by the
17 Commission."

18 And there's later discussion of how the court views
19 Summerside as being essentially two different
20 operations, one of which provides power to non-residents
21 and is subject to the jurisdiction of the Commission.
22 The other aspect of Summerside is that it provides power
23 to its residents and in that capacity is not subject to
24 the jurisdiction of the Commission.

25 And continuing on page 307, the court in
26 examining the term "public interest" under the PEI

1 legislation, in the beginning of the second full
2 paragraph, refers to the legislative intent and the
3 social and legislative history of the legislation, again
4 which is an analytical process with which I'm not taking
5 issue. But the conclusion is that -- and here's the
6 important part. In the last full paragraph on 307 the
7 court describes the history of the PEI Act saying that
8 in 1937 the existing Act was repealed and replaced with
9 a new Act that provided that before any utility
10 commenced servicing the public, it first had to obtain a
11 permit for the construction of its facilities or to
12 commence its operations. And then it said:

13 "The board had the power to assess the
14 necessity of the service in the community or
15 territory intended to be served."

16 So as far back as amendments in 1937, the focus of the
17 board, the regulatory board, was determination of the
18 public convenience, or in this case "public necessity"
19 was the term used, in the area to be served as opposed
20 to in the province as a whole. And then it later uses
21 the term "public convenience and necessity", again
22 referring to the specific community proposed to be
23 served.

24 And then at the bottom of page 308, the last
25 paragraph confirms that approach, says:

26 "It is clear the legislation contemplated a

1 number of different utilities serving a number
2 of different areas, which up to the 1950s was
3 the precise situation. The legislation was
4 enacted to regulate the service of each
5 utility in its own area from the perspective
6 of adequacy and safety."

7 And it's with that background that we then come to the
8 court's comment at the top of page 309 that the Chairman
9 quoted, which is upon reading the *Electric Power and*
10 *Telephone Act* in its entirety and so on, which I won't
11 read. But the predicate for that is that this is an Act
12 that regulates small utilities with respect to the area
13 served by each one.

14 And this is highlight by the Court itself in
15 its analysis of a report by the National Energy Board,
16 which I submit has the type of broader notion of public
17 that the *B.C. Utilities Commission Act* does. The court
18 distinguishes the NEB's analysis precisely on these
19 grounds.

20 **Proceeding Time 11:42 a.m. T33**

21 The court quotes from this N.E.B. report, and
22 notes in the bottom of the first paragraph of the quote
23 that the N.E.B. is saying:

24 "Today all provinces, with the exceptions of
25 Alberta and Prince Edward Island, are
26 primarily served by provincially owned

1 electric utilities..."

2 And so on. So it then goes through the N.E.B.'s
3 approach to public convenience and necessity, which
4 certainly does include the broad public interest.

5 And then on page 310 the court recites the
6 argument made by Maritime Electric, which wanted to --
7 which urged the court to follow the N.E.B. approach, but
8 the court distinguished it. It says:

9 "As a general statement I agree. However,
10 with respect to the question posed, it is
11 necessary to consider whether the legislature,
12 by virtue of the *Electric Power and Telephone*
13 *Act* [in P.E.I.] has delegated to the
14 Commission the mandate to regulate electricity
15 in the broad provincial interest. In my view
16 it has not."

17 And if I may direct your attention to page
18 312, the court addresses again in the bottom paragraph,
19 the wording of the particular P.E.I. statute in
20 question. The key words of Section 6(8) are:

21 "When any public utility makes an application
22 to the Commission to operate in any area which
23 is already being served by another utility,
24 the Commission must first consider whether the
25 present or future public convenience and
26 necessity of the area requires or will require

1 the additional service..."
2 and so on. And I'm emphasizing "of the area" and the
3 court does as well. It says:

4 "In my opinion the section applies to a
5 situation where a public utility which is not
6 providing service to an area already being
7 served by another public utility files
8 application proposing to operate or provide
9 service to the area..."

10 And then the final quote on page 314, approximately line
11 "f", which was quoted by the Chair, in my submission
12 when the court there says that:

13 "It's my opinion that Section 26 gives the
14 Commission supervisory control over each
15 utility that it regulates separately..."

16 The emphasis is on that that is the nature of the P.E.I.
17 legislation, that the Commission's power is to regulate
18 utilities separately, defined in terms of the area with
19 which the utility serves.

20 In terms of the 1983 case, the reasoning
21 there I submit is parallel to that of the '94 case, and
22 perhaps in a sense this '83 case is clearer as to why
23 the court reached the outcome it did, which is that
24 essentially the applicant there was attempting to obtain
25 the benefit of a power that was applicable to a public
26 utility and it was hoping to be able to obtain that

1 benefit not only for its customers in its public utility
2 capacity, but also for its customers that were
3 residents, which under that peculiar legislation, were
4 not considered being served by a public utility. And in
5 a sense the court found that the Summerside was
6 overreaching, that it was one thing for it to say it
7 could use that statute for its non-resident public
8 utility customers, but that it couldn't use -- it
9 couldn't call itself a public utility when it was trying
10 to obtain a benefit for its non-public utility resident
11 customers.

12 So those are my submissions as to why these
13 particular cases don't apply in B.C.

14 THE CHAIRPERSON: Thank you, Mr. Andrews. Is there any one
15 else who wishes to comment?

16 **Proceeding Time 11:47 a.m. T34**

17 MR. R.B. WALLACE: Mr. Chairman, I hesitate to having made
18 comments on the basis of no research to now make
19 comments on the basis of limited directed research. But
20 I will in any event. And it's simply that where I
21 suggested that you exercise extreme caution in looking
22 at impacts on other utilities, that I would make it even
23 more towards Mr. Landry's more extreme caution.

24 While there are some distinguishing features,
25 there are also an awful lot of similarities between the
26 Prince Edward Island situation and the British Columbia

1 legislation, where a similar outcome could well be
2 envisaged, I suspect.

3 THE CHAIRPERSON: Thank you. Anyone else?

4 MR. JOHNSON: My submission is that you can't take much
5 guidance from the Prince Edward Island cases. Both
6 cases are complicated by the fact that Summerside is
7 involved in each, and it's a municipal utility similar
8 to, say, the City of Nelson in British Columbia, that
9 the Commission regulates with respect to service outside
10 the municipality but not service inside the
11 municipality.

12 The 1983 case involved Section 8 of the *Act*,
13 and that is a section that allowed one public utility to
14 seek to use the poles of another public utility. And
15 the issue in that case was whether, in looking at the
16 public convenience and necessity, the Commission could
17 consider the interests of the customers within the
18 municipality. And all that was found in that case was
19 that those customers inside the municipality are not
20 customers of a public utility because the Commission
21 didn't regulate the internal -- municipal internal
22 service, and therefore the interests of those inside
23 customers couldn't be taken into account in the
24 determination of the public interest because you were
25 supposed to be -- the Commission was supposed to be
26 looking at the interests of public utilities.

1 But I submit that, in fact, if you actually
2 read the case and try to figure out -- it's a very
3 confusing case trying to follow it, or at least I found
4 it very confusing. But what the court implicitly was
5 ruling was that on this application the interests of
6 both public utilities should be taken into account.
7 They were saying that the public interest did involve
8 considering both public utilities, because while they
9 denied consideration of the customers inside the
10 municipality, they did take into account the interests
11 of the outside customers, because Summerside, to the
12 extent that it was serving outside the municipality, was
13 a public utility, and therefore they took into account
14 the interests of those customers outside the
15 municipality and the interests of the customers of
16 Maritime Electric because it owned the poles.

17 So in fact I think in sort of stepping away
18 from this issue of inside versus outside, that what the
19 court actually allowed was consideration of the
20 interests of both public utilities. And I think on the
21 legislation that was in place, it would in effect be
22 nonsensical not to do that because they were saying,
23 when you look at whether or not a second utility should
24 be allowed to string its wires on the poles, you are to
25 take into account the public convenience and necessity
26 of both utilities. And if you only looked at one,

1 obviously in that case, the Commission wouldn't be
2 looking at the broader public interest.

3 **Proceeding Time 11:52 a.m. T35**

4 So I think the first case, the 1983 decision
5 actually stands for the concept that you should look at
6 both public utilities.

7 The 1994 case, I'll agree with Mr. Andrews
8 that it does very much turn on the unique legislation.
9 The first point to note is that the 1994 case is not a
10 case involving an application for a certificate of
11 public convenience and necessity. And so the words
12 public convenience and necessity aren't considered. In
13 that case there was -- the Commission was to consider
14 certain interests, the interests that it thought
15 appropriate, but it wasn't to consider the public
16 convenience and necessity. And as Mr. Andrews pointed
17 out, the court in that case specifically states that the
18 Commission's role was not to look at the broad
19 provincial electric interest. And that is, I submit,
20 quite different than your role, which has no such
21 express limitations and no court ordered limitations to
22 that effect.

23 The other comment I would make with respect
24 to the 1994 case is you read a passage at page 314 which
25 had to do with section 26 of the P.E.I. legislation.
26 There's actually -- as I'm sure you're aware, there's

1 four questions that are posed in that case. The passage
2 at page 314 is the fourth question, which dealt with
3 Section 26 of the legislation. Section 26 is quite
4 similar to our Section 23, which is a general
5 supervisory power.

6 And I would agree with the court with respect
7 to that general supervisory power. That in exercising
8 the general supervisory power you should be exercising
9 your jurisdiction with respect to the customers or with
10 respect to that utility only. But that, I would submit,
11 is quite different than exercising your jurisdiction
12 under Section 45, where you are empowered to consider
13 the broader public convenience and necessity.

14 Those are my comments.

15 THE CHAIRPERSON: Thank you. Mr. Landry?

16 MR. LANDRY: Mr. Chairman, again it's hard to comment in
17 terms of what the legal result is when you haven't had a
18 change to look at all the cases, but I would say this:
19 The difficult I have with the concept that you have to
20 or can take into account the interests of another
21 utility and its ratepayers is it gets right down to an
22 issue of fairness too, because if that is the case, then
23 why weren't, for example, the ratepayers of the other
24 utility given notice of this application in order to
25 make any point that they would want, that may somehow
26 affect them.

1 So I think that it goes right back to my very
2 point, that I think it's the essence of the question
3 goes right down to, in my submission, to an element of
4 fairness. And I just have great difficulty in thinking
5 that based on the evidence that you have before you, you
6 can be making some determination as to what might be in
7 the best interests of some other ratepayers or some
8 other interested party that wasn't effectively given
9 notice of this application.

10 So again I just emphasize what I said earlier
11 and what Mr. R.B. Wallace said, I would go there with
12 extreme caution.

13 THE CHAIRPERSON: Thank you. Any other comments? That's
14 been helpful.

15 COMMISSIONER NICHOLLS: I've got some questions on a topic
16 that you probably hoped you'd heard the end of, sunk
17 costs. So Mr. B.J. Wallace, I'll start with you.

18 Setting aside the discussion we've had over
19 the last half hour about impacts on multiple utilities,
20 if we're just looking at B.C. Hydro, the corporation,
21 versus B.C. Hydro's ratepayers, do you agree that the
22 group or the entity for which we are to be looking for
23 the most cost effective option is the ratepayers?

24 MR. B.J. WALLACE: Yes I do.

25 COMMISSIONER NICHOLLS: Can we assume --

26 MR. B.J. WALLACE: Although, having said that --

1 **Proceeding Time 11:57 a.m. T36**

2 COMMISSIONER NICHOLLS: It was too easy.

3 MR. B.J. WALLACE: I think at this stage the issue is that
4 the two are synonymous, and that's why I keep coming
5 back to the economic analysis. Whether or not money has
6 been appropriately expended at the end of the day and
7 whether the costs can be passed on to ratepayers, is a
8 matter for another day, another hearing, and in my
9 submission, not anything that can be decided in the
10 context of this hearing or this project, until the dust
11 has settled, the money has been spent, and then an
12 application has been made to put whatever it is, pass
13 whatever the expense is on to ratepayers.

14 So in my submission at this stage, there is
15 no difference between B.C. Hydro and its ratepayers for
16 the purposes of the CPCN.

17 COMMISSIONER NICHOLLS: Possibly not, but there is a
18 difference if we take the CPCN hearing plus the revenue
19 requirement hearing, because I assume you're going to
20 try and recover as many sunk costs as possible from your
21 ratepayers.

22 MR. B.J. WALLACE: Absolutely. The submission will be in,
23 and I think there has been discussion of this here as to
24 how those came to be incurred and why they were prudent
25 at the time. But that's, in my submission, not a
26 question for this hearing.

1 COMMISSIONER NICHOLLS: But we're looking at the likely
2 costs to the ratepayer of VIGP, so I'm just -- do you
3 not think it would be more likely that if we gave you a
4 CPCN, that a greater portion of the sunk costs would be
5 deemed to be prudent and therefore paid for by the
6 ratepayer than if we rejected it at this point and found
7 that you had for the last several years been pursuing
8 the non-optimal project?

9 MR. B.J. WALLACE: The conclusion as to whether that VIGP
10 is in the public convenience and necessity, in my
11 submission, is a fundamentally different question than
12 whether or not the costs that have been incurred towards
13 completing it have been prudently incurred. And in my
14 submission, the argument would be the same, and the
15 issuance of the CPCN or not would have no impact on the
16 argument subsequently.

17 COMMISSIONER NICHOLLS: Thank you. So would the issuance
18 of a CPCN however be likely to have an impact on the
19 allowable -- on the prudency determination in a revenue
20 requirement hearing, so that if, as you argued, B.C.
21 Hydro has created such an unlevel playing field, that no
22 other option can compete with VIGP, then would the next
23 least cost option that came out of a CFT process be a
24 guideline for a future panel to use in deciding what
25 level of cost was prudent? Is that how you would deal
26 with it?

1 MR. B.J. WALLACE: I would expect in that event that
2 somebody might well wish to argue that. I don't, again,
3 want to get into the argument for a revenue requirements
4 hearing, but in my submission the question as to whether
5 or not an amount has been prudently expended is a
6 question that has to be tested, given the information
7 that was available at the time.

8 The fact that in hindsight something turns
9 out not to have had value, in my submission, doesn't
10 mean it wasn't prudently expended in the first place.
11 And the example obviously here is the gas turbine which
12 there will be evidence at a revenue requirements hearing
13 as to how those expenditures came to be made. The
14 market unfolded in a different way and the conclusion
15 was made that it was better to terminate that and take a
16 loss with respect to it, and then on the basis that, at
17 the end of the day, we had some certainty by doing that
18 it and it would cost us no more to proceed from today.

19 But obviously the corollary to that is if the
20 decision were made today to purchase a gas turbine, it
21 would have been less expensive than at the time the
22 decision was made. But whether it was prudent at the
23 time it was made, I think you have to analyze in the
24 context of all the information that was available at
25 that time.

26 COMMISSIONER NICHOLLS: Certainly. So you don't think the

1 denial or approval of this project has an impact on the
2 probable revenue requirement determined later.

3 If we deny the CPCN and find that you've been
4 on the wrong track for a few years, you still think the
5 probability of recovering the sunk costs is just as
6 likely as if we grant the CPCN?

7 **Proceeding Time 12:03 a.m. T37**

8 MR. B.J. WALLACE: Commissioner Nicholls, I'm uncomfortable
9 arguing what the likely probability is but the
10 principle, in my submission, is unchanged. The question
11 is: At the time the expenditures were committed was it
12 a prudent decision to make? And in my submission, it
13 shouldn't make a difference as to what decision is made
14 as a result of this hearing on the CPCN.

15 COMMISSIONER NICHOLLS: Thank you. Does anybody else have
16 any comments on sunk costs?

17 MR. GATHERCOLE: I'm glad my friend and I are on the same
18 side of this for now, in his submission.

19 I guess my only concern, you know, with this
20 approach is I can see it on the basis of if you turn
21 down the CPCN I believe it's still open to B.C. Hydro to
22 come before the Commission in its revenue requirement
23 proceedings and say, even though you turned it down on
24 the basis it wasn't in the public convenience or
25 necessity or wasn't the most cost effective option, or
26 specifically they hadn't established in this proceeding

1 that it -- you know, that it met the requirements of the
2 *Act*. I am concerned, however, if you did approve the
3 CPCN, because if you approved the CPCN you'd be doing
4 that, basically saying it's in the public convenience
5 and necessity and is the most cost effective
6 alternative. And I would be very surprised if in the
7 revenue requirements hearing the utility, the applicant,
8 would not come forward and cite the CPCN as at least
9 some evidence that the costs were prudently incurred.
10 In fact, I would think they would almost have to do
11 that.

12 So I think if there is some concern as a
13 result of the allocation of sunk costs to ratepayers,
14 then in my submission it's just another reason for
15 refusing the CPCN. Those are my submissions.

16 COMMISSIONER NICHOLLS: Thank you.

17 THE CHAIRPERSON: Mr. Gathercole, just before you sit down,
18 and I appreciate this is Mr. Doherty's argument, but if
19 -- you might want to get it.

20 Looking on page 8, the second paragraph under
21 Section D is VIGP, the least cost alternative. The last
22 sentence in that paragraph is as follows:

23 "We submit that the sunk costs were
24 imprudently incurred by B.C. Hydro and should
25 not be borne either by competing proposals or
26 B.C. Hydro's ratepayers."

1 And my question is this: Would you be willing -- could
2 this sentence be rewritten as follows:

3 "We submit that the sunk costs incurred by
4 B.C. Hydro should not be borne either by
5 competing proposals or by B.C. Hydro's
6 ratepayers for the purposes of project
7 selection."

8 MR. GATHERCOLE: Yes, I think that's an appropriate
9 alternative.

10 THE CHAIRPERSON: Okay, thank you.

11 I want to turn now to Mr. R.B. Wallace's
12 argument at page 13. I simply want to confirm with you,
13 Mr. R.B. Wallace, that in your view the analysis should
14 be done on the basis of incremental costs whether or not
15 there's a finding with respect to the prudence or
16 imprudence of those costs.

17 MR. R.B. WALLACE: Yes, Mr. Chairman. Well, that decision
18 was reached after much soul searching, because of the
19 feeling that it encourages spending by utilities in
20 advance of a project and in advance of coming to the
21 Commission, hopefully the circumstances are unique here,
22 and it is going forward that allows Hydro to capture the
23 economic value of the work that been done, if any. And
24 so it is going forward from this point that is relevant.

25 **Proceeding Time 12:08 p.m. T38**

26 THE CHAIRPERSON: Thank you. Let me ask you in that case

1 to comment on -- one moment please. You may need to get
2 it. It's B.C. Hydro's argument, reply argument, page
3 44.

4 MR. R.B. WALLACE: Yes, I have that.

5 THE CHAIRPERSON: You mentioned some soul searching. I was
6 thinking that B.C. Hydro may be moving on you in a
7 direction that surprised you in their reply when I think
8 they suggest, and I'll get Mr. B.J. Wallace to confirm
9 this in a moment, that in fact the project should not be
10 assessed based on incremental costs but they should be
11 assessed on incremental costs using, in your language,
12 go-forward costs plus the sunk costs minus any value
13 placed on the sunk costs by a proponent.

14 So where I see in the second paragraph of
15 page 44 on the fifth line, "Net of recovered VIGP pre-
16 development costs," when I see that it looks to me that
17 that's a different position than you're taking in the
18 paragraph that you and I just looked at.

19 MR. R.B. WALLACE: Well, and that may depend on whether
20 they would still be adding sunk costs on to competing
21 proposals, whereas we do not put sunk costs on any
22 proposal.

23 THE CHAIRPERSON: Right. Let me ask Mr. B.J. Wallace now
24 to speak to this issue.

25 MR. B.J. WALLACE: I think the only situation in which that
26 would apply is where there is an IPP bidder for the

1 VIGP, and the terms of the tender are that an amount
2 will be paid to B.C. Hydro for the assets that would be
3 acquired, the site, the pre-engineering, the approvals
4 and the various things that have happened to this date,
5 the steam turbine, for example, in which case there
6 would be presumably a payment to B.C. Hydro for those
7 amounts, which would then have to be adjusted in the
8 amount of the Energy Purchase Agreement evaluation to
9 see what the net cost to B.C. Hydro is of that
10 agreement.

11 THE CHAIRPERSON: Mr. Elton, in his evidence, I took to say
12 that one should make the project selection on the basis
13 of incremental costs. And this issue came up under
14 cross-examination by Mr. R.B. Wallace, and you have now
15 in this Schedule A asked proponents in Section 2.6 --
16 this is the VIGP option, this is page 40 -- to include
17 the value they place on the predevelopment assets. And
18 I assume that that's how you get to the net of recovered
19 VIGP pre-development costs that you've referred to on
20 page 44.

21 **Proceeding Time 12:13 a.m. T39**

22 MR. B.J. WALLACE: That's correct.

23 THE CHAIRPERSON: And I'm having a difficult time
24 reconciling that from the evidence that I understood Mr.
25 Elton to give, that you should do it on the basis of
26 incremental cost. And at this point Mr. R.B. Wallace on

1 behalf of Norske has said it should be on the basis of
2 incremental costs. So we have Mr. Elton saying it
3 should be on the basis of incremental costs, we have Mr.
4 R.B. Wallace on behalf of Norske saying it should be
5 based on incremental costs; and yet in Schedule A you're
6 not proposing that it be based on incremental costs.

7 MR. B.J. WALLACE: Mr. Chairman, I would -- the intention
8 is that it should be based on incremental costs. That
9 is, the cost of the energy and capacity to B.C. Hydro.
10 The adjustment for value that a bidder on the VIGP would
11 make to pay for the costs that have already been
12 expended, the value that they've seen there, affects the
13 net incremental cost to B.C. Hydro of the energy and
14 capacity.

15 For example, there are three ways in which
16 B.C. Hydro will obtain this energy and capacity.
17 They'll either produce it itself, in which case the
18 proper measure is what it costs to have that project
19 completed by B.C. Hydro now and what that translates
20 into, in terms of costs to B.C. Hydro and its ratepayers
21 for the capacity and energy. That's one possibility.

22 Another possibility is that a completely
23 independent IPP, with nothing to do with VIGP is shown
24 to be the best alternative, and that will translate
25 itself into a cost for energy and capacity to B.C. Hydro
26 under an EPA.

1 The third alternative is where the IPP is
2 selling power to Hydro under an EPA, but has already
3 paid Hydro an amount to reflect the value that it puts
4 on the assets its acquired.

5 So these two sections that you've just
6 referred to are the offset. It's getting to net
7 incremental costs. The EPA itself won't tell you, in
8 the case of a VIGP IPP, won't tell you the cost of the
9 energy and capacity because B.C. Hydro in that
10 circumstance may already have obtained some money up
11 front for the assets that were acquired by the IPP.

12 So it's not intended to be anything different
13 than incremental. It's intended to make it specific how
14 incremental applies to that particular circumstance.

15 THE CHAIRPERSON: So in paragraph -- on page 44, second
16 paragraph, where it says:

17 "Will be selected on the basis of incremental
18 cost to B.C. Hydro net of recovered VIGP pre-
19 development costs..."

20 it's intended to be just the go-forward costs as Mr.
21 R.B. Wallace has indicated in his argument?

22 MR. B.J. WALLACE: Yes. Yes, we just wanted to make it
23 clear that there may be some benefit to B.C. Hydro which
24 isn't reflected in a reduced cost, for example. But
25 rather they receive it another way, a payment for these
26 assets up front. It's intended -- it's an application

1 of the principle of incremental costs, where you have
2 the -- if you have an IPP acquiring VIGP as the
3 preferred option.

4 THE CHAIRPERSON: So you would disagree with me if I was to
5 characterize the determination or the derivation of the
6 net of recovered VIGP pre-development costs as the
7 amount that would be -- the difference between the sunk
8 costs and the value received by B.C. Hydro for the costs
9 incurred to date?

10 MR. B.J. WALLACE: The amount expended by B.C. Hydro is not
11 the measure here at all. It's the amount received by
12 B.C. Hydro from those assets, if any. The amount that
13 it receives by payment by an IPP.

14 THE CHAIRPERSON: Mr. R.B. Wallace, I don't want to put you
15 on the spot here, but if the Commission panel was to
16 make the following amendments to Schedule A, would it be
17 consistent with your view with respect to go-forward
18 costs? And I'll go through them for you. And we are
19 approaching lunch, so if you want an opportunity to
20 think about this, that'll be fine.

21 **Proceeding Time 12:18 p.m. T40**

22 MR. R.B. WALLACE: Thank you.

23 THE CHAIRPERSON: In 2.6, the fifth line down where it
24 says: "Bidders will be asked to include the value they
25 place on the pre-development assets," if we were to
26 delete that, and then on page 44, second full paragraph

1 where it says, "Net of recovered VIGP pre-development
2 costs," if we were to delete that, would that then be
3 consistent with the argument that you've made with
4 respect to incremental costs and go-forward costs?

5 MR. R.B. WALLACE: I would like to consider that one over
6 the lunch break and come back to you.

7 THE CHAIRPERSON: Okay. It is twenty after twelve. I have
8 some questions with respect to Schedule A that I think
9 it would be helpful if I asked them now before lunch.
10 So if it's fine, I'll proceed and that may -- and
11 there'll be questions to you, Mr. B.J. Wallace, and that
12 will give everyone an opportunity over lunch to consider
13 them.

14 I would first like to ask you if instead of
15 Schedule A, which is, if you will, a relatively detailed
16 list of parameters for the call for tenders, if we were
17 to in our decision elevate that to principles, so being
18 less definitive, and I'm thinking that in the context of
19 the discussions that we've had this morning with respect
20 to directions, if that would be your preference and that
21 we think of Schedule A as it is now only in the context
22 of conditions to a conditional CPCN.

23 I'll ask my question again for you. If we
24 deny the CPCN, is it your position that Schedule A as it
25 is now should not be attached, and is it your position
26 that only in the context of a conditional CPCN should we

1 attach Schedule A to our decision? Do you want to think
2 about that?

3 MR. B.J. WALLACE: Yes.

4 THE CHAIRPERSON: Okay. B.C. Hydro has retained with
5 respect to the selection of the independent reviewer,
6 and this is set out in page 44, section 7.1, it says: A
7 qualified and experienced independent reviewer will be
8 selected by B.C. Hydro and then the selection will be
9 subject to BCUC approval. And with respect to the issue
10 of -- my question with respect to them is the same.

11 **Proceeding Time 12:23 a.m. T41**

12 With respect to the issue of the selection of
13 the preferred project, I think what's intended by
14 Schedule A is that B.C. Hydro will make the selection,
15 but then one turns to your argument, page 76 of your
16 argument, where it says:

17 "...the Commission has satisfied itself this is
18 a condition to a conditional CPCN, that none
19 of the tenders received is preferable to the
20 construction of VIGP."

21 It looks to me when I read that, Mr. B.J.
22 Wallace, that B.C. Hydro is making the selection of the
23 preferred project as a result of the CFT, and that's
24 probably undisputed. I think you've made that clear
25 enough. Mr. R.B. Wallace has said that if the CFT is
26 like that they're not going to participate.

1 Again, I think my question with respect to
2 the selection of the independent reviewer and the
3 selection of the project are the same. In the context
4 of directions, is it your position that we cannot order
5 that B.C. Hydro bring the selection of the independent
6 reviewer and the selection of the project to the
7 Commission for the selection of the preferred -- no,
8 you're going to have to ultimately bring it to us as
9 part of a Section 71 application. So it's the
10 Commission's introduction into that CFT process that I'm
11 thinking of, not the subsequent process with respect to
12 Section 71.

13 So my question is, if we were somehow to
14 introduce ourselves into the CFT, as is not contemplated
15 by B.C. Hydro at this point in time, can we do that
16 pursuant to directions? And then the second question
17 is, can we do it pursuant to conditions in your
18 position?

19 So I'll leave those two questions for you,
20 and we'll take a break. And my suggestion for the break
21 is, we're longer than I had thought we were going to be.
22 My suggestion with respect to the break is we take a one
23 hour break, unless anyone has a preference. I'm quite
24 willing to take an hour and a half break if that's
25 preferred.

26 MR. B.J. WALLACE: Mr. Chairman, I would prefer the hour

1 and a half, if that's possible.

2 THE CHAIRPERSON: Yes, that's fine then. So we will return
3 at 2:00. Mr. Johnson?

4 MR. JOHNSON: I was just wondering if the Commission had
5 any sense of how long we might be after 2:00?

6 THE CHAIRPERSON: I think I indicated when we first spoke
7 to this part of the proceeding that we would be, you
8 know, the morning at most, and I suspect that some of
9 you have arranged your schedules in that manner, and
10 that this is going to be quite inconvenient for some of
11 you. So I'm quite willing to entertain comments with
12 respect to that now. I would like very much to
13 accommodate you if you've made other arrangements for
14 the afternoon.

15 So I'll answer your question, and then asking
16 for some accommodations here, if they're necessary. My
17 sense is we will be about 45 minutes longer.

18 MR. B.J. WALLACE: In that case, Mr. Chairman, I would
19 suggest we do it now.

20 THE CHAIRPERSON: Okay.

21 MR. JOHNSON: I'm pleased to continue on.

22 THE CHAIRPERSON: Okay. Should we then take a ten minute
23 break now and we'll return? Okay, let's take a ten
24 minute break now.

25 **(PROCEEDINGS ADJOURNED AT 12:27 P.M.)**

26 **(PROCEEDINGS RESUMED AT 12:40 P.M.)**

T42

1 THE CHAIRPERSON: Please be seated. Mr. R.B. Wallace.

2 MR. R.B. WALLACE: Thank you, Mr. Chairman.

3 Before the break you left me with a question
4 with respect to changes to Schedule A, Section 2.6, and
5 also 6.2. And I've had a look at those changes, and
6 tempting as it is because I think it would improve
7 Norske's competitive position, I don't think that the
8 deletions you proposed are necessary as I understand it,
9 and so maybe I'd just like to put my understanding on
10 the record.

11 Norske is a ratepayer, and it appears from
12 what we see here that B.C. Hydro is simply asking to be
13 able to, in selecting a bid, take into account any sum
14 that they might get paid for the assets as part of that
15 bid and not as generally. And as I see it, that would
16 mean that the IPP who was bidding for those assets in
17 order to make its bid, would take into account, say, the
18 10 or 15 million that it paid for those assets -- well,
19 whatever sum it is -- and would build that into its bid
20 so that the net cost of going forward for B.C. Hydro
21 would be the present value of the cost of the bid in
22 capacity and energy terms, less the 10 or 15 million
23 dollars in my example that it happened to get.

24 And so that seems to us appropriate, that it
25 is recapturing that value. But that is in the
26 circumstances for that specific bidder. If this is

1 recaptured revenue that could be -- or recaptured costs
2 that could be recaptured by selling it to anybody, not
3 tied specifically to a bidder using those assets to go
4 forward, then it should not be in the process.

5 THE CHAIRPERSON: Thank you. Just before you step from the
6 mike, Mr. R.B. Wallace, I, as it turns out, only have a
7 limited number of questions, so we're not going to be 45
8 minutes subject to the discussion I need to have with
9 Mr. B.J. Wallace. But in your argument at page 18,
10 Section 8.5, at the top of the page you say:

11 "If the BCUC decides generation is the right
12 solution for Vancouver Island, NorskeCanada is
13 confident there are better solutions and
14 recommends a CFT."

15 And it seems to me that the subordinate clause, "If the
16 BCUC decides generation is the right solution for
17 Vancouver Island," is a prerequisite, if you will, to
18 whether or not there should be a CFT. Am I reading that
19 correctly?

20 MR. R.B. WALLACE: Well, Mr. Chairman, I think it in part
21 goes to your assumptions. You are reading it correctly
22 but it is in the context -- if the BCUC decided that
23 transmission was the necessary option at this time, then
24 there wouldn't be urgency around a CFT. I think
25 ultimately Norske agrees very strongly with what you've
26 -- or as it was put by Mr. Mansour and I think has come

1 out otherwise, that the long run requires generation and
2 transmission for Vancouver Island. The question is just
3 the urgency and priority.

4 So we would still see a CFT happening but
5 maybe not directed immediately, because after VIGP is
6 out the way then Hydro will be acquiring by CFTs, and
7 many of the points that we've raised of them bidding
8 against themselves and judging their own projects may be
9 moot points that today are all-encompassing and very
10 important.

11 THE CHAIRPERSON: Let me ask you, I won't find it but in
12 your argument and you probably can get to it very
13 quickly, you make the point that it's very very
14 important that the Commission deal with the issue
15 involving B.C. Hydro acting as a buyer and a proponent
16 in this proceeding.

17 I asked Mr. Elton, and he thought it was a
18 suggestion that was okay, whether or not -- if we
19 granted a CPCN that was only available to an IPP, if
20 that would deal with the issue of B.C. Hydro being a
21 proponent and a buyer; i.e. as a proponent they would no
22 longer be involved in the CFT process. Do you see any
23 merit in the Commission Panel endeavouring in its order
24 to deal with that issue of a proponent and a buyer
25 position in the way we might structure the order?

26 **Proceeding Time 12:45 a.m. T43**

1 MR. R.B. WALLACE: I do deal with this, I think, in
2 Sections 2.1 and 2.2. We have a grave concern with any
3 issuance of a CPCN because of the discussion we've had
4 today, that that amounts to a finding effectively that
5 this is the least cost alternative, and that, of course,
6 I think has just a devastating impact on any IPP who was
7 going to bid for it.

8 With respect to getting Hydro out by having
9 it just -- they back out right now and somebody either
10 buys their assets and carries it forward or doesn't,
11 then I don't -- then we do get out of that situation,
12 hopefully, although there's still the problem of are
13 they getting bought out to get the licence to do it, and
14 then have a bid price that's much higher. So the bid
15 prices still have to be compared net of any recovery, I
16 think.

17 With respect to issuing a CPCN to an IPP,
18 that just, to us, does not make sense because there is
19 no authority -- only utilities require a CPCN. IPPs do
20 not, and so if -- we would go further and say that if
21 there's a high probability that it's going to be sold,
22 then it should be questionable whether a CPCN should be
23 issued at all to B.C. Hydro.

24 Hydro seemed to infer in its initial argument
25 that you should do it and that would almost negate the
26 necessity for a Section 71 review, and we disagree with

1 that completely, because Section 71 will depend on the
2 characteristics of the contract, which may have nothing
3 to do with the characteristics that led to the issuance
4 of the CPCN itself in the first place.

5 THE CHAIRPERSON: Yes, I read that into your argument.

6 MR. R.B. WALLACE: Okay. Is that of assistance?

7 THE CHAIRPERSON: Yes, thank you.

8 Mr. Bois, given Mr. R.B. Wallace's
9 qualification of whether or not a finding that Vancouver
10 Island is the next -- Vancouver Island Project is the
11 next project and that that be a pre-requisite to a CFT,
12 my concerns with respect to your comment on page 23 of
13 your argument are not as important, but I understood you
14 to say, in the first full paragraph on page 23 of your
15 argument, that the CFT should include within it the
16 transmission option.

17 Do I understand you correctly? And is your
18 position different than was just stated by Mr. R.B.
19 Wallace?

20 MR. BOIS: No, I think it should include the transmission
21 option as well. The reason being is that it's -- I
22 mean, we've approached this from the point of view that
23 the applicant has said this is the least cost
24 alternative despite no evidence of any reviews or any
25 other options being explored. Then we talked about the
26 transmission alternative in the net present value

1 analysis as being a requirement, but not today, but at
2 some point in the future. So if we're looking at doing
3 the transmission anyway, and all we're talking about is
4 a period of delay of time, then yes, it should be
5 included in the process.

6 THE CHAIRPERSON: Okay. So at least with respect to --
7 what happens is the next step, assuming that the CFT is
8 proceeding, using your language, immediately and
9 aggressively, then it should include transmission. In
10 that regard you're different, your position is different
11 than Mr. R.B. Wallace's.

12 MR. BOIS: Well, my position -- yes, it is different in
13 that regard, but to the extent that the CFT process goes
14 ahead, I do echo Mr. R.B. Wallace's concerns with regard
15 to B.C. Hydro being both a proponent and a bidder.

16 THE CHAIRPERSON: Sure.

17 MR. BOIS: And I do have similar concerns with regard to
18 other parties that have raised with the CFT process that
19 it be a transparent process. And I'm a little bit
20 concerned that if you issue a CPCN which implies with it
21 that it is a valuable project, subject to B.C. Hydro
22 following these conditions, that the process might
23 become skewed, and that any potential bidder would say,
24 there's no point. Regardless of how transparent this
25 process is, I mean we've heard in the discussions this
26 morning that B.C. Hydro still maintains that this is the

1 least cost alternative and that they have a bias, if you
2 will, to this project. And I mean, I can understand
3 that bias and why they're saying that, but at the same
4 time it's that same bias and that same perception
5 combined with the weight of its conditional CPCN that
6 would encourage an IPP to say it's not worth it.

7 **Proceeding Time 12:50 p.m. T44**

8 THE CHAIRPERSON: Thank you.

9 MR. BOIS: Thank you.

10 THE CHAIRPERSON: Mr. B.J. Wallace, the only questions
11 remain with you.

12 MR. B.J. WALLACE: Mr. Chairman, as I understood the
13 questions you put before the break, they relate to the
14 terms of the CFT and how they might be reflected in a
15 Commission decision. And I won't answer that quite the
16 way you put it, but at the end of it you can tell me
17 whether I've covered all the ground.

18 As I take it, if a conditional CPCN were
19 granted conditional upon the CFT, then the character of
20 the terms of Schedule A are that those are conditions.
21 They're not directions of the Commission. Those are
22 conditions where you say, if you do this and if you get
23 the result that no better alternative than VIGP is
24 found, then you at that point can construct the VIGP.
25 That's the tenor of it. So they're not directions in
26 that sense.

1 Where the Commission, in that context of a
2 conditional CPCN, if you would prefer to elevate those
3 to principles rather than have the level of detail
4 that's in Schedule A, that would be acceptable to B.C.
5 Hydro. The purpose of doing this in the way we did was
6 to demonstrate that we're moving along this and to try
7 and give people as much in the way of specifics as we
8 could at this stage. So, clearly if the Commission felt
9 more comfortable with something a little more general,
10 that would be acceptable to B.C. Hydro, and here is
11 where our thinking has gone to this point on that
12 notion.

13 So that's how I would see the character of
14 the terms of the CFT or something like that, perhaps
15 more general, in the context of a conditional CPCN.

16 If there were no CPCN or if the CPCN were
17 denied, then B.C. Hydro's in a much more difficult
18 situation. It would not, I expect, proceed with a CFT
19 that looks like this. The issues facing it would be
20 different in those circumstances. It wouldn't have the
21 fallback if you like, the assurance that it can build a
22 project if the CFT doesn't produce an attractive
23 alternative. That, I take it from the evidence that's
24 been before the Commission to date, would put B.C. Hydro
25 in a position which it couldn't accept, and it would
26 look for something, I suspect, that's a little bit

1 different. It would look for a way to get as much
2 reliability as quickly as it can in the short term to
3 give itself the room to do something more expansive,
4 whether it's the transmission option or whether it's a
5 full-fledged IEP. But the stimulus would be different.
6 It would be what can we do on a short term to keep
7 everybody whole and as risk free as possible.

8 So I would suspect -- so in my submission, it
9 would not be appropriate in the absence of a CPCN to put
10 a suggestion even that a CFT like this one would take
11 place in any event, because the circumstances would be
12 different.

13 There's a third part of what you asked before
14 where you were equating, as I understood it, the
15 Commission's role in approving an independent reviewer
16 and the Commission's role in approving a project. And
17 I'm not sure what more I can say about that, and I think
18 I am just reiterating it, unfortunately. B.C. Hydro
19 accepts the role of the Commission in making -- in
20 approving an independent reviewer. And I've already
21 said this morning how I see the Commission's role with
22 respect to the final decision as to the project. It's
23 to be made now on the basis of this application, and
24 it's then whether or not the process is carried out in a
25 way that passes muster, that is, what's left for the
26 Commission to consider, not at the end of the day having

1 to come before the Commission again to have a project
2 approved. Either it's an IPP which doesn't require a
3 CPCN, or it's a VIGP constructed by B.C. Hydro, which at
4 that stage would already have one.

5 So have I answered the question?

6 **Proceeding Time 12:55 a.m. T45**

7 THE CHAIRPERSON: In fact you have, yes.

8 MR. B.J. WALLACE: Thank you.

9 THE CHAIRPERSON: Yes, thank you. Mr. Landry?

10 MR. LANDRY: Mr. Chairman, just before we break, if that's
11 where we're intending to go, there was one comment I
12 wanted to make on the CFT, which relates to the
13 assumptions that you gave at the beginning, and I just
14 didn't have an opportunity in the questions that came
15 up. I wonder if I could just make a comment on that?

16 THE CHAIRPERSON: Sure.

17 MR. LANDRY: From our perspective, as you can see from the
18 argument, in our view the transmission option is the way
19 to go. In other words, it's not a generation option
20 that should be taken at this point in time. The
21 difficulty with the CFT, at least as presently drafted,
22 assumes in effect, in my submission, that the generation
23 is in fact the way in which the problem on Vancouver
24 Island should be sorted out. And of course, from our
25 perspective we believe that there is an alternative out
26 there that has not been explored yet to any great

1 degree, and we believe is a solution to the problems
2 identified in the application, and that is the
3 transmission option with a curtailment agreement with
4 Norske.

5 And it would seem to me that if the
6 Commission was inclined to say that the CFT is an
7 appropriate next step, that almost -- assuming it's on
8 the terms relatively speaking and conditions as put out
9 by B.C. Hydro, we miss that possibility, which is an
10 analysis of what, our submission is, the best option.
11 We go immediately to the generation option.

12 So, you know, in my submission I would be
13 inclined to go with what Mr. R.B. Wallace said, which is
14 I think that the application should be dismissed, and
15 then we should go to whatever step we go to. But that
16 option has to be analyzed, and if there is a CFT,
17 perhaps a CFT would have to take into account that
18 option to allow for that as a possibility, so that you
19 could determine, the Commission could determine
20 ultimately whether or not that indeed is the least cost
21 option.

22 THE CHAIRPERSON: Thank you.

23 MR. LANDRY: And I might make one point, because I believe
24 it is a valid point by B.C. Hydro in response to our
25 argument, that, you know, if it's denied and there's a
26 direction that you go out and enter into a curtailment

1 agreement, it's sort of like putting B.C. Hydro at
2 ransom. That's my word, not theirs. But the point is a
3 point to be made, and I would only say to that, firstly
4 it's a difficulty that all of us have been put in,
5 however we got here. And in my submission,
6 appropriately guided by the Commission, we will come out
7 to an appropriate curtailment agreement that would allow
8 the difficulties on Vancouver Island to be sorted out.

9 THE CHAIRPERSON: Okay. Mr. R.B. Wallace?

10 MR. R.B. WALLACE: Mr. Chairman, just addressing the
11 question first of should Schedule A be more principled
12 in the case of the rejection of CPCN. Mr. B.J. Wallace
13 indicated that you almost wouldn't need a CFT format if
14 the CPCN was rejected because B.C. Hydro wouldn't have
15 the fallback of VIGP, and I think that's quite wrong.
16 In the same sense that Southern Crossing didn't
17 disappear when it didn't get a CPCN the first try, VIGP
18 may well not disappear. If it's still felt that
19 generation is a preferred solution, then VIGP is out
20 there. It's simply doesn't start out with a CPCN
21 because it didn't qualify for one.

22 And in that case, Schedule A is going to
23 remain important and details under Schedule A are going
24 to remain important, although I would accept that it
25 could be lifted to a higher level of principle possibly,
26 but I would reject completely getting rid of the levels

1 -- getting rid of the details completely.
2 THE CHAIRPERSON: But you acknowledge that there's going to
3 be suggestions only in that context.
4 MR. R.B. WALLACE: It would be what I have -- yes. Whether
5 I would use it as a direction of what you would want to
6 see for the future rather than simply a suggestion, but
7 it would not be an order. And we accept that. I think
8 I indicated earlier that it would be preferable to have
9 direction and a rejection of the CPCN than to have a
10 directed order with respect to Schedule A, but a
11 conditional CPCN. That simply is not a desirable
12 alternative.

13 With respect to selection of the reviewer and
14 the project, with selection of the reviewer B.C. Hydro
15 noted at page 44, Section 7.1, that that would be
16 subject to approval by the BCUC and that's satisfactory
17 to Norske. And similarly, the provisions that you
18 pointed out to Mr. B.J. Wallace on page 76 of their
19 argument with the Commission satisfying itself that VIGP
20 was the least cost option, is the type of approval that
21 we are looking for at the end of the day with respect to
22 whatever comes out of the CFT. So whichever -- I'm
23 sorry, not of VIGP, but that the outcome is one that the
24 Commission satisfies itself is satisfactory to us.

25 **Proceeding Time 1:00 p.m. T46**

26 Obviously not the outcome that it's B.C.

1 Hydro that's the lowest cost, but that the Commission
2 retains responsibility for determining what is the
3 lowest cost.

4 THE CHAIRPERSON: Thank you.

5 MR. R.B. WALLACE: Or whatever it's giving approval to.

6 THE CHAIRPERSON: Mr. R.B. Wallace, since you've raised the
7 issue, on page 76 if you look to Condition C I'll call
8 it, in the first line where it says: "That B.C. Hydro
9 is fairly determined..."

10 MR. R.B. WALLACE: "...that none of the tenders received
11 in the process is preferable to the
12 construction of the Vancouver Island
13 Generation Project."

14 And I guess we take it, the determination, you are
15 looking at the determination in the same way you would
16 on any other matter. B.C. Hydro brings to you an
17 application for a CPCN, they have made a determination
18 that that is the appropriate project, and you then look
19 at it and see whether they have properly determined it's
20 preferable.

21 THE CHAIRPERSON: Okay.

22 MR. R.B. WALLACE: In the end it has to be your decision
23 that it's a proper determination. And maybe I didn't
24 put enough emphasis, maybe I should have liked to see
25 "fairly" removed and put in "properly" or something.
26 But the concept is that in the end the Commission looks

1 at the applicant's decision and decides whether it
2 agrees that it's a correct decision.

3 THE CHAIRPERSON: Thank you.

4 MR. B.J. WALLACE: Just so there's no misunderstanding, I
5 agreed with my friend, Mr. Wallace, up until the last
6 four words of what he said. There we have a
7 difference.

8 THE CHAIRPERSON: Okay. Is there anyone else who wishes to
9 speak now?

10 Well, thank you. With that I'll close the
11 argument phase of this proceeding. Thank you.

12 **(PROCEEDINGS ADJOURNED AT 1:02 P.M.)**

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