

BRITISH COLUMBIA UTILITIES COMMISSION

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

And

**An Application by British Columbia Hydro and Power
Authority (“BC Hydro”) for the Review of the F2007 and
F2008 Revenue Requirements Application (“RRA”) and
for the Review of the 2006 Integrated Electricity Plan
(“2006 IEP”) and the Approval of the 2006 Long-Term
Acquisition Plan (“LTAP”)**

**Vancouver, B.C.
November 8, 2006**

PROCEDURAL CONFERENCE

BEFORE:

R. Hobbs,	Chairperson
N. Nicholls,	Commissioner
A. J. Pullman,	Commissioner

VOLUME 4

APPEARANCES

G.A. FULTON	Commission Counsel
C. GODSOE J. CHRISTIAN	British Columbia Hydro and Power Authority
M. GHIKAS	British Columbia Transmission Corporation
F. WEISBERG	Columbia Power Corporation
D. PERTTULA	Terasen Gas Inc., Terasen Gas Vancouver island Inc., Terasen Gas Whistler, Terasen Gas Squamish
R.B. WALLACE	Joint Industry Electricity Steering Committee
D. NEWLANDS	Elk Valley Coal Corporation
K. DUKE	Alcan Primary Metal Group
D. AUSTIN	Independent Power Producers of British Columbia
C. WEAVER	Commercial Energy Consumers' Association of British Columbia
P. COCHRANE	City of New Westminster
M. OULTON T. HALL	District of Kitimat
J. QUAIL L. WORTH	B.C. Old Age Pensioners' Organization, the Active Support Against Poverty, B.C. Coalition of People with Disabilities, Council of Seniors' Organizations of B.C., End Legislated Poverty, Federated Anti-Poverty Groups of B.C., and the Tenants' Rights Action Coalition
W. ANDREWS	Sierra Club Of Canada, B.C. Chapter; B.C. Sustainable Energy Association; and Peace Valley Environmental Association
J. THAYER	Lone Prairie Community Association
L. BERTSCH	Energy Solutions for Vancouver Island

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CAARS

VANCOUVER, B.C.

November 8, 2006

(PROCEEDINGS RESUMED AT 1:00 P.M.)

THE CHAIRPERSON: Please be seated.

I have a few preliminary comments. My name is Robert Hobbs, and with me are Commissioner Nicholls and Commissioner Pullman.

This procedural conference was established by Order G-96-06 and an agenda has been circulated by the Commission. It was circulated on Monday and has been marked Exhibit A-29.

There have been a number of recent filings, so I'm going to identify the documents that you might find helpful as we move through the agenda. And I understand some of them were recently filed documents, can be found at the back of the room.

The settlement document was circulated under cover of a letter from Bill Grant dated November the 6th, 2006. There are two other documents that may also be relevant to those first two agenda items, first, a letter from B.C. Hydro with yesterday's date, November the 7th, 2006, regarding the Aberfeldie project and a case that Mr. Fulton has circulated on my request, the *Enbridge v. O.E.B.* decision.

In response to the Commission's request in

1 Exhibit A-29, yesterday B.C. Hydro and the District of
2 Kitimat filed written submissions that are the subject
3 of agenda items three and four. And by an e-mail this
4 morning, Mr. Quail has circulated the Court of Appeal
5 decision, *J.I.E.S.C. v. B.C.U.C.*.

6 This morning, the Commission circulated a
7 copy of Information Requests that are relevant to
8 agenda item number five. And I think those are the --
9 as I say, the recently-filed documents with respect to
10 the agenda items. As we move through the agenda, I'll
11 provide further explanation of the agenda. There are
12 two items, the third and the fourth item, that I'm
13 going to speak to in more detail now than is indicated
14 on the agenda, and I'm doing that so that you'll have
15 an opportunity when you're making your appearances to
16 express any concerns that this proposal may have for
17 you.

18 With respect to the third agenda item, I
19 propose to hear from those who support the District of
20 Kitimat first. Then all those who oppose, except for
21 B.C. Hydro, and I'll hear from B.C. Hydro last of
22 those that oppose, and then I'll hear from the
23 District of Kitimat in reply.

24 With respect to item number four, if there
25 is a representative from Alcan here today I will first
26 hear from Alcan, then those in support of B.C. Hydro's

1 submissions, then those who oppose B.C. Hydro's
2 submissions, and then B.C. Hydro in reply.

3 I don't think the agenda requires any
4 further comment at this time.

5 **Proceeding Time 1:05 p.m. T2**

6 The staff have been introduced in previous
7 procedural conferences. Eileen Cheng is here as the
8 lead staff on the IEP proceeding, and Werner Krampfl is
9 here as the lead staff on the RRA proceeding.
10 Commission Counsel is Gordon Fulton, and the Hearing
11 Officer is Hal Bemister. Mr. Bemister is providing an
12 audio online broadcasting service for the balance of
13 this proceeding.

14 I will now ask for appearances and I'll
15 have Mr. Fulton call appearances. If you have any
16 revisions that you wish to identify or request with
17 respect to the agenda, I'd like you to do those when
18 you're entering your appearance. Mr. Fulton.

19 MR. FULTON: Thank you, Mr. Chairman. Good afternoon,
20 Mr. Chairman, Commissioners.

21 As I call the order of appearances, I will
22 ask those parties who come forward to indicate whether
23 or not they are appearing on both the RRA and the LTAP
24 proceedings or just one of them.

25 British Columbia Hydro and Power Authority.
26 MR. GODSOE: Good afternoon, Mr. Chairman, members of the

1 Commission. Craig Godsoe for B.C. Hydro with respect
2 to its 2006 IEP/LTAP filing. And with me today is Mr.
3 Jeff Christian of Lawson Lundell, who is B.C. Hydro's
4 lead counsel with respect to its F07/F08 revenue
5 requirement application.

6 With respect to additions to the agenda
7 circulated by the Commission as Exhibit A-29, B.C.
8 Hydro does have three procedural issues it would like
9 to address. First is a proposal to address the
10 Commission's direction in IEP Exhibit A-15, that the
11 evidence in each of the two proceedings will include
12 the evidence of both proceedings.

13 THE CHAIRPERSON: Just so I'm sure I understand that, you
14 want to include as an agenda item the issue that's
15 raised in A-15 with respect to the evidence in each
16 respective proceeding being evidence in the other
17 proceeding.

18 MR. GODSOE: Correct.

19 THE CHAIRPERSON: Okay.

20 MR. GODSOE: Second are two issues with respect to 2006
21 IEP Information Request responses.

22 THE CHAIRPERSON: Thank you.

23 MR. GODSOE: And third are communication with witnesses.
24 And perhaps, Mr. Chairman, this can be included as
25 part of agenda item number 7, but I'm in your hands as
26 to when you'd like me to address this and the order.

1 THE CHAIRPERSON: Can you repeat that one for me, please?

2 MR. GODSOE: The last one?

3 THE CHAIRPERSON: Yes.

4 MR. GODSOE: Communication with witnesses.

5 THE CHAIRPERSON: Okay. There is a letter that speaks to
6 that issue that the Commission --

7 MR. GODSOE: Precisely. I just wanted to ensure that
8 that letter is still Commission policy.

9 THE CHAIRPERSON: Okay. We'll include that as an agenda
10 item. I would ask that -- because I didn't come
11 prepared with that letter, if somebody --

12 MR. GODSOE: I can circulate copies of it. I have that
13 letter with me.

14 THE CHAIRPERSON: Thank you.

15 MR. GODSOE: With respect to item number 4, Mr. Chairman,
16 I think I can short-circuit the entire discussion by
17 saying that after discussions with Alcan, we are
18 prepared to disclose the LTEPA amending agreement and
19 the amended and restated LTEPA. And those, as you
20 know, are two out of the three documents.

21 The third document is a letter from Alcan
22 addressed to both B.C. Hydro and the province. And as
23 set out in our submission, Exhibit B-27, on the last
24 page, page 6, we stated that we have not had time to
25 discuss that issue with the province. We will have
26 those discussions with the province and advise on the

1 status of that letter next week.

2 THE CHAIRPERSON: Right.

3 MR. GODSOE: I do want to say that the disclosure of
4 these two documents is without prejudice to B.C.
5 Hydro's treatment of future documents filed as a
6 result of the 2007 call, 2009 call, or other
7 acquisition processes.

8 THE CHAIRPERSON: Thank you, Mr. Godsoe. I'll ask, when
9 you give or make your appearance, if you will indicate
10 whether or not you think item number 4 needs to
11 continue to be on the agenda or not. Like, I probably
12 can simplify that. If you believe that item number 4
13 needs to remain on the agenda, please identify or
14 mention that when you're making your appearance.
15 Thank you.

16 **Proceeding Time 1:10 p.m. T03**

17 MR. FULTON: British Columbia Transmission Corporation.

18 MR. GHIKAS: Mr. Chairman, my name is Matthew Ghikas for
19 British Columbia Transmission Corporation. And we
20 have no submissions to make on the agenda. Thank you.

21 MR. FULTON: FortisBC Inc.

22 No response. Columbia Power Corporation.

23 MR. WEISBERG: Good afternoon, Mr. Chairman and
24 Commissioners. Fred J. Weisberg appearing for
25 Columbia Power Corporation. CPC appears in both
26 proceedings, the IAP LTAP and the RRA, and we take no

1 position regarding agenda item four, whether it's
2 required or not.

3 THE CHAIRPERSON: Thank you.

4 MR. FULTON: Terasen Gas, Inc.

5 MR. PERTTULA: David Perttula for Terasen Gas, Inc. My
6 last name is spelled P-E-R-T-T-U-L-A. I'm here for
7 both applications and don't have any agenda items, or
8 any changes to the agenda to suggest, or a position on
9 the item number four.

10 THE CHAIRPERSON: Thank you.

11 MR. FULTON: EPCOR Utilities Inc.

12 No response. Joint Industry Electricity
13 Steering Committee.

14 MR. WALLACE: R. B. Wallace appearing on behalf of the
15 Joint Industry Electricity Steering Committee in both
16 matters. We accept that item four can be dropped from
17 these proceedings, and we have no other agenda items.

18 MR. FULTON: Catalyst Paper Corporation. No response.

19 West Fraser Timber Company Limited. No
20 response.

21 Howe Sound Pulp and Paper Limited
22 Partnership. No response.

23 Elk Valley Coal Corporation.

24 MR. NEWLANDS: David Newlands on behalf of Elk Valley
25 Coal Corporation, Commissioner Hobbs, Pullman and
26 Nicholls. I am here on both the RRA and the Long-Term

1 Acquisition Plan. We have no interest in items three,
2 four and five on your agenda, it's merely item one and
3 two at this time. Thank you.

4 MR. FULTON: Alcan Primary Metal Group.

5 MR. DUKE: Mr. Chairperson, members of the panel, Ken
6 Duke, D-U-K-E, appearing for Alcan. Our only matters
7 of interest are items three, four and five. We have
8 no additional agenda items and with respect to item
9 four, we believe the matter can be dropped from the
10 agenda.

11 MR. FULTON: Independent Power Producers of British
12 Columbia.

13 MR. AUSTIN: Good afternoon. David Austin on behalf of
14 the Independent Power Producers of B.C. We're here on
15 the revenue requirement negotiated settlement
16 agreement and the Integrated Electricity Plan, and the
17 Long-term Acquisition Plan. And we have no objection
18 to item number four being, I guess, dropped or put
19 over till the next pre-hearing conference. And we
20 have nothing to add to the agenda. Thank you.

21 MR. FULTON: Sea Breeze Pacific Regional Transmission
22 System, Inc., Sea Breeze Energy Inc., and Sea Breeze
23 Power Corp. No response.

24 Comstock Energy Inc. No response.

25 Dokie Wind Energies Inc. No response.

26 Cloudworks Energy Inc. No response.

1 With respect to item 4, the District is satisfied that
2 it be disposed of in the manner proposed by B.C. Hydro
3 subject to confirmation that what will be disclosed is
4 the entire agreement, unredacted, of both the amending
5 agreement and the amended and restated LTEPA. If
6 either my friend Mr. Godsoe or Mr. Duke can confirm
7 that, the District is satisfied with having it removed
8 from the agenda.

9 THE CHAIRPERSON: That's what I heard Mr. Godsoe to say
10 this morning. For the record I'll note that Mr.
11 Godsoe confirmed that.

12 MR. FULTON: Haisla First Nation. No response.
13 British Columbia Old Pensioners'
14 Organization *et al.*

15 MR. QUAIL: Good afternoon, Jim Quail appearing, and with
16 me is Ms. Leigha Worth, Leigha spelled L-E-I-G-H-A,
17 Worth W-O-R-T-H. Appearing on both matters, Just to
18 comment briefly on the items that have been raised in
19 the Chair's opening comments, we're content with the
20 Chair's suggested process for the agenda item 3.
21 Agenda item 4, it sounds like it's not going to need
22 to be dealt with. We have been involved in useful
23 discussions with counsel for Alcan and B.C. Hydro and
24 are content with the proposal that's been made.
25 Simply for the record want to register a couple of
26 points.

1 We agree that disposition of the issue is
2 without prejudice to the question of confidentiality
3 of treatment of any evidence in future proceedings,
4 including the proposed 2007 call.

5 Second, the issue of the letter that
6 requires instructions concerning the position of
7 government, just simply want to register the point
8 that if that matter is going to remain on the record
9 or proposed to remain on the record of the Commission
10 on B.C. Hydro's part, and they intend to argue for its
11 confidentiality, that we will require an opportunity
12 to be heard on that issue.

13 Finally, the other documents that we had
14 intended to fold into the mix but are content will not
15 need to be today is the potential responses to the
16 information requests directed by the Commission Staff
17 to B.C. Hydro today. In particular, the final page of
18 that document with Information Requests 9, 10 and 11
19 marked "confidential", we had intended to argue that
20 there should also be disclosure of those documents.
21 We're content to hold that in abeyance. It may be
22 that the outcome of that, upon reflection, will flow
23 from the resolution of the disclosure of the key
24 documents themselves, and so we are content also to
25 postpone any discussion regarding the disclosure of
26 those responses on the ground that it may well be

1 academic in due course.

2 And those are all of my submissions.

3 THE CHAIRPERSON: Mr. Quail, if we haven't returned to
4 your last comments when we get to agenda item number
5 5, then make sure that we do.

6 MR. QUAIL: I'm sorry?

7 THE CHAIRPERSON: I'd like you to remind me of your last
8 comments --

9 MR. QUAIL: Oh, okay, yes.

10 THE CHAIRPERSON: -- with respect to IRs 9, 10 and 11 --

11 MR. QUAIL: Yes.

12 THE CHAIRPERSON: -- when we get to agenda item number 5.

13 MR. QUAIL: Very good.

14 THE CHAIRPERSON: Thank you.

15 MR. QUAIL: Thank you.

16 MR. FULTON: Sierra Club of Canada, British Columbia and
17 the Peace Valley Environmental Association.

18 MR. ANDREWS: William Andrews representing Sierra Club of
19 Canada, B.C. Chapter; the B.C. Sustainable Energy
20 Association; and Peace Valley Environment Association.
21 I appear and these clients appear on both of the two
22 proceedings. We have nothing to add regarding agenda
23 item number 4, no additional items to add to the
24 agenda, and we're dying to find out what agenda item
25 number 6 is all about. Thank you.

26

Proceeding Time 1:20 p.m. T05

1 MR. FULTON: World Federalists of Canada, Victoria
2 Branch. No response.
3 Burke Mountain Naturalists. No response.
4 Lone Prairie Community Association.
5 MS. THAYER: Joyce Thayer, T-H-A-Y-E-R, appearing on
6 behalf of the Lone Prairie Community Association on
7 both proceedings. We have no position with respect to
8 any of the agenda items.
9 MR. FULTON: Canadian Office and Professional Employees
10 Union Local 378. No response.
11 ZE Power Group. No response.
12 Willis Energy Services Limited. No
13 response.
14 Brookfield Energy Marketing Inc. No
15 response.
16 Ecoanalysis Consulting Services. No
17 response.
18 Corex Multi Utility Services Inc. No
19 response.
20 Geza Vamos. No response.
21 Alan Wait. No response.
22 Ludo Bertsch.
23 MR. BERTSCH: Hi. Good afternoon. It's Ludo Bertsch,
24 representing Energy Solutions for Vancouver Island.
25 And we're interested in the RRA and the IEP
26 proceedings. And we do not have any comments for item

1 number four or any other agenda items. Thank you.

2 MR. FULTON: Richard Tennant. No response.

3 Is there anyone present here this morning
4 whose name I have not called who has intervened in
5 these proceedings?

6 No response, Mr. Chairman.

7 THE CHAIRPERSON: Thank you. Item four of the agenda
8 will be deleted from the agenda.

9 I will, so that you can anticipate this, I
10 will indicate that if the Alcan letter is not filed by
11 B.C. Hydro next week, as Mr. Godsoe anticipates, then
12 I would ask B.C. Hydro to file a letter with us by the
13 end of next week indicating that you are unable to
14 file it. And then the Commission will establish a
15 process, a written process, for submissions with
16 respect to whether or not B.C. Hydro should be
17 directed to release that letter.

18 I am going to make a comment with respect
19 to agenda item number six, given the comments that I
20 have heard. It requires further clarification. I'm
21 not -- we will deal with this issue when we get to it
22 on the agenda. I'm going to speak to it now, though,
23 so that if we do take a break, participants may want
24 to discuss it amongst themselves.

25 There has been no evidence from customer
26 groups on DSM, and no expert evidence has been filed

1 by IPPBC. Without in any way commenting on whether or
2 not B.C. Hydro's proposed expenditures on DSM should
3 be higher or lower than they have filed for, it would
4 appear that the evidence that we do have is requesting
5 an increase to the expenditures, and there is no
6 evidence other than that of IPPBC, which they
7 characterize as policy evidence, requesting that their
8 expenditures be reduced. It may be that that's the
9 appropriate evidence to have before this panel in this
10 proceeding, but I am going to invite those who may
11 view that evidence as being insufficient, I'm going to
12 invite those people to request an opportunity for a
13 revision to the regulatory timetable to file that
14 evidence, if they choose to. And that's, in essence,
15 the nature of item number six that's on the agenda.
16 So we will return to that.

17 **Proceeding Time 1:25 p.m. T06**

18 I think the items that -- unless Mr. Godsoe
19 has a preference, that the items that Mr. Godsoe has
20 identified as additions to the agenda can be included
21 -- we'll delete item seven that's there now and item
22 number seven will become his comments with respect to
23 A-15, item number eight will be the 2006 IEP
24 Information Request responses, and number nine will be
25 communication with witness panels.

26 So that will be your agenda for this

1 afternoon. And that's without renumbering, of course,
2 for agenda item number four.

3 So now let's turn to agenda item number
4 one, which is the settlement agreement. And as
5 indicated on that agenda item, the Commission Panel
6 has some questions. My proposal here is to ask our
7 questions of B.C. Hydro and ask them in their entirety
8 of B.C. Hydro, and then give others who wish to make
9 comments with respect to the questions that we have of
10 B.C. Hydro, give those -- give other signatories to
11 the settlement agreement an opportunity to comment if
12 they wish to on any questions or responses that we
13 have had with B.C. Hydro. I didn't say that very
14 eloquently, but I do intend, in agenda item number
15 one, to give everyone an opportunity who is a
16 signatory to the agreement to comment.

17 Before I begin with item number five, which
18 is with respect to the Aberfeldie project, and I think
19 my first question really is a fairly simple one, and
20 that's whether or not the proposals in your letter
21 dated November the 7th, 2006 with respect to Aberfeldie
22 are in any way linked to your support of this
23 settlement agreement. What I'm really asking you is,
24 are you proposing that there be an NSP process with
25 respect to Aberfeldie. I assume that that is
26 independent of this settlement agreement.

1 MR. CHRISTIAN: That's correct, Mr. Chairman.

2 THE CHAIRPERSON: Thank you. This is the only time, I
3 think, that we will deal with this on the agenda this
4 afternoon, so Mr. Christian, you might be more
5 specific for the Commission Panel with respect to the
6 NSP process that you're -- that you propose, and if
7 you have contemplated this, make a suggestion with
8 respect to dates for the NSP and any other details
9 that you've considered that you'd like to provide to
10 us, may be helpful in terms of an Order that we issue
11 after this procedural conference.

12 MR. CHRISTIAN: Well, the starting observation, Mr.
13 Chairman, is that an NSP only works if a sufficient
14 number of interested parties believe it can work, and
15 are able to make the time available to make it work.
16 You know, for any NSP the key, particularly in a
17 proceeding like this, the key ones are the utility and
18 the customer intervenors. They all have to agree that
19 it's a good idea, and that there is time available to
20 make it happen. So when we file the Aberfeldie
21 information next week, we'll -- as the letter says, we
22 expect to propose that the matter can be resolved
23 through a further NSP process. We expect intervenors
24 will respond and would invite them to respond, and
25 maybe even that's a required outcome of this
26 procedural conference, that they do respond to that

1 proposal. And in that proposal, they say when it
2 could be done.

3 We believe, B.C. Hydro believes that it's
4 in everybody interest, both B.C. Hydro's and all the
5 intervenors, and indeed the Commission, to get a
6 determination one way or another with respect to
7 Aberfeldie as soon as possible. So we would be
8 seeking to have an NSP as soon as that can reasonably
9 be managed. Obviously, with the imminent commencement
10 of the IEP hearing, that's going to be challenging to
11 do so, and that's why we're endeavouring to get the
12 Aberfeldie evidence filed as soon as we can, if
13 possible. It's conceivable to B.C. Hydro that we
14 could set aside half a day before the commencement of
15 the IEP hearing to do it. But again, that depends
16 really on the intervenors and their ability and
17 willingness to find that time. And of course,
18 Commission staff to be available.

19 THE CHAIRPERSON: Right. And if there isn't an NSP
20 process for a variety of the reasons that you've
21 mentioned, do you see extending the IEP proceeding to
22 deal with the Aberfeldie application?

23 MR. CHRISTIAN: Well, in a sense the default position is
24 that there should be an NSP for Aberfeldie insofar as
25 the Commission allowed an NSP to attempt to resolve
26 all the issues from the revenue requirement.

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Proceeding Time 1:30 p.m. T7

We acknowledge of course that once the final evidence in Aberfeldie is put in place, people may change their mind on that. But the default is kind of -- in first instance is an NSP.

Secondly, in the absence of an NSP to deal with revenue requirement issues, the Commission has already set aside January 8th as the commencement of an oral hearing. And so in the absence of any other order, January 8th is when an oral proceeding would commence with respect to Aberfeldie. But B.C. Hydro observes that probably unnecessarily delays the resolution of all the Aberfeldie evidence. B.C. Hydro says that because the witnesses who would speak to Aberfeldie in an oral proceeding are all going to be here in the IEP proceeding. So if it's impossible to resolve the Aberfeldie determination issue through an NSP, we would propose that B.C. Hydro witnesses speak to the Aberfeldie issues in the course of the IEP hearing, and that a day or two or whatever is necessary in the course of the IEP hearing is set aside for that purpose. That, we believe, is consistent with the Commission's order making the two proceedings joined together, as it were, for the purposes of evidence, but remaining as separate proceedings.

1 THE CHAIRPERSON: Right. Thank you.

2 COMMISSIONER PULLMAN: Mr. Christian, the letter from
3 B.C. Hydro speaks of the B.C. Hydro board having
4 approved this. Has it approved it subject to BCUC
5 approval, or have you just gone ahead and are you in
6 the process of executing a major contract?

7 MR. CHRISTIAN: My understanding is the board has
8 approved it without condition. And I will seek
9 instructions at the break and if I am incorrect in
10 that understanding, I'll let the Commission know.

11 COMMISSIONER PULLMAN: You might also find out if you've
12 executed a major contract.

13 MR. CHRISTIAN: My understanding is -- I shouldn't go
14 because it depends on what major is. I'll get some
15 clarification on what contracts if any have been
16 executed.

17 COMMISSIONER PULLMAN: Okay. Thank you.

18 THE CHAIRPERSON: On page 8 of the settlement agreement,
19 Mr. Christian, this is I think just a housekeeping
20 matter. But IPPBC identified what may be a simple
21 error to correct. Is that a correction that you noted
22 as being one that should be made? It's in paragraph
23 20. Simply a matter of moving the words "without
24 limitation to" after "including" in the fifth line of
25 paragraph 20, "including without limitation
26 contributions in aid of construction"?

1 MR. CHRISTIAN: Yes. No, generally speaking I think the
2 process that the Commission has established in the NSP
3 guidelines and in the order of August 3rd is that if
4 the Commission wants to suggest any changes to the
5 settlement agreement, it should seek submissions from
6 parties on it. And I think normally that would
7 proceed by way of written submissions. I think what
8 you're talking about is a housekeeping matter, and so
9 I don't have any hesitation saying I think that is an
10 appropriate amendment.

11 THE CHAIRPERSON: Right. Yes, it's my impression -- tell
12 me if you disagree, but it's my impression that
13 because of the nature of that one, this afternoon
14 might be ample opportunity for the participants to
15 comment if they have any concerns about that change.

16 MR. CHRISTIAN: I think that would be appropriate.

17 THE CHAIRPERSON: Okay. With respect to that process
18 that's being described in paragraphs 19, 20 and 21
19 with respect to capital, can I assume that's with
20 respect to your capital for F09 and F10?

21 MR. CHRISTIAN: That's correct. The gist of it is that
22 B.C. Hydro doesn't have an expectation now, in light
23 of the settlement, to be filing a comprehensive
24 capital plan in fiscal '08 of the type that are filed
25 with the revenue requirements application, and that
26 the next one it would be filing would be F09-F10.

1 THE CHAIRPERSON: Right, thank you.

2 Turning to paragraph 25, I'll provide for
3 the record but I don't expect you to turn here, but
4 BCUC 1.175.1 and BCUC 1.175.2 provide numbers for Site
5 C and they are -- and I'll round them for you. They
6 are of this magnitude. For Stage 1, in the October
7 29th, 2004 decision, we approved \$2 million. My
8 understanding is you have spent approximately \$14
9 million.

10 **Proceeding Time 1:35 p.m. T08**

11 And for Stage 2, we denied approval for
12 \$5.5 million, and you're proposing to spend \$20
13 million.

14 First with respect --

15 MR. CHRISTIAN: I was going to say, I'm not sure that
16 we're proposing to spend \$20 million in Stage 2. My
17 understanding is that that's contingent on a
18 government response to the Stage 1 efforts, so I'm not
19 sure that we're proposing it. It's the numbers that
20 are established for what we expect we would spend if
21 we did go to Stage 2.

22 THE CHAIRPERSON: Yes. Thank you. With that
23 clarification, turning to Stage 1, my question to you
24 is this. When I look at paragraph 2, it might be
25 interpreted to mean that you have approval for \$14
26 million and that the expenditure of \$14 million, which

1 has already occurred, as I understand it, is subject
2 only to a prudency review, and nothing further. Is
3 that your understanding of paragraph 25?

4 MR. CHRISTIAN: No, I don't think that's how I see that,
5 or how B.C. Hydro sees that, more precisely. I'm
6 going to focus on the word "prudency" here. I mean,
7 that's the one, I think, that is causing the issue
8 here.

9 In B.C. Hydro's submission, there's two
10 elements to prudency with respect to a project. One
11 is the need for the project, and the other is the
12 execution, the prudent execution of the project. In
13 B.C. Hydro's submission, having received a favourable
14 determination with respect to the first \$2 million of
15 Site C expenditures, the need for those expenditures
16 has been established, and it's still subject to later
17 prudency review with respect to those \$2 million that
18 were spent well, as opposed to whether it was a good
19 idea to spend it. Any other expenditures beyond those
20 that have been subject to a favourable determination
21 have neither been deemed prudent on a need basis, nor
22 on an execution basis. And the fact that they have
23 been carried forward in that deferral account allows
24 those amounts that haven't been subject to a
25 favourable determination to be subject to an overall
26 prudency review, if you will. Again, prudency in that

1 sense referring to both elements.

2 THE CHAIRPERSON: I think you have provided some
3 clarification, but at the risk of being redundant on
4 this, Mr. Christian, if you had approval for \$14
5 million for Stage 1, would you anticipate being in a
6 different situation than if you had approval for \$2
7 million and you spent \$14 million dollars? With
8 respect to the prudence review.

9 MR. CHRISTIAN: If I understand your question, when it
10 came to bringing the cost of Site C into service, or
11 if B.C. Hydro's writing off the costs and nevertheless
12 seeking recovery of those costs in rates, the issue of
13 prudence would apply in -- for all costs to ensure
14 that they were prudently incurred. That is, that they
15 were spent well. But the Stage 1 costs, say they were
16 \$14 million as you hypothesize, or put to me, or --
17 the need for those would not be subject to prudence
18 review. Whether it was a good idea or not to spend
19 the money would no longer be subject to review.

20 THE CHAIRPERSON: Let me take you to the *Enbridge* OEB
21 decision. On page three of the decision, there are
22 bullets at the bottom of the decision.

23 MR. CHRISTIAN: I see those.

24 THE CHAIRPERSON: I'll give you a chance to read those
25 bullets.

26 MR. CHRISTIAN: Yes, I've read them.

1 THE CHAIRPERSON: Again, at the risk of being redundant
2 here, is it your position that our future review of
3 Stage 1 costs is limited in scope to the nature of
4 what is set out in the *Enbridge* OEB decision.

5 **Proceeding Time 1:40 p.m. T9**

6 MR. CHRISTIAN: Well, I think the *Enbridge* OEB decision
7 provides the framework by which prudence can be
8 assessed. So yes, I think the Commission and
9 intervenors' issues with respect to prudence must be
10 limited or guided by -- I don't actually say it's a
11 limitation, but guided by the methodology in effect,
12 the legal mechanism by which the prudence is tested.

13 THE CHAIRPERSON: So let me, looking at the first bullet
14 then:

15 "Decisions made by the utilities management
16 should generally be presumed to be prudent
17 unless challenged on reasonable grounds."

18 Now, you have approval for \$2 million. You've spent
19 \$14 million. Is the same presumption attached to that
20 as if you had spent the 14 million and had approval
21 for 14 million?

22 MR. CHRISTIAN: In my submission, Mr. Chairman, yes.

23 THE CHAIRPERSON: Thank you.

24 Turning now to page 10, paragraph 27, I
25 really don't need to take you to paragraph 27 for
26 this. Out of an abundance of caution I simply want to

1 confirm that it's your understanding that the
2 settlement agreement does not change the B.C. Hydro
3 deferral accounts, and namely the Heritage deferral
4 account and the non-Heritage deferral account, from
5 what was approved and established by the Commission in
6 the October the 29th, 2004 decision.

7 MR. CHRISTIAN: That's correct with one exception that
8 isn't actually set out in paragraph 27, and that is
9 the load curtailment costs are now to be included in
10 the Heritage payment obligation to the extent B.C.
11 Hydro incurs any. So that is a change. But the item
12 that you've referred to here in paragraph 27, that is
13 something that was in B.C. Hydro's application. It
14 sought to include the effects of load variation in the
15 balances, and this agreement reflects that that part
16 of the application was not accepted by intervenors and
17 presumably not by Commission order.

18 THE CHAIRPERSON: Right, thank you.

19 When I turn to paragraph 34 which is on
20 page 12, you have listed issues that may be raised by
21 parties at the IEP/LTAP hearing, and it does say this
22 is not a comprehensive list of all possible issues.
23 When I look at 34(3), you've specifically mentioned
24 development costs but you didn't mention Site C
25 development costs. Is it your position that Site C
26 development costs are issues for the IEP/LTAP

1 proceeding?

2 MR. CHRISTIAN: I'll have to take instructions on that.

3 Not something we turned our mind to is reflected in
4 this agreement, and I'll have to get back to you on
5 that.

6 THE CHAIRPERSON: Okay. Can you do that this afternoon?

7 MR. CHRISTIAN: Yes.

8 THE CHAIRPERSON: There are numerous directions, and this
9 you may need to get instructions on as well, in fact
10 it may call for a letter from you. But there are
11 numerous directions in the October 29th, 2004 decision
12 to B.C. Hydro. My question is really whether or not
13 this settlement agreement extinguishes any of those
14 directions, and it may be that some of them are simply
15 no longer applicable. But it would be helpful if you
16 were able to identify those that had been extinguished
17 by the agreement or no longer, in your view,
18 applicable, and you can do that either now or in
19 writing after this procedural conference.

20 MR. CHRISTIAN: It'll have to be in writing, Mr.
21 Chairman.

22 THE CHAIRPERSON: Thank you.

23 **Proceeding Time 1:45 p.m. T10**

24 COMMISSIONER PULLMAN: Mr. Christie, I see that you have
25 -- or the settlement agreement proposes that the
26 deficiency accounts be amortized on a -- by a two

1 percent rider on a go-forward basis.

2 MR. CHRISTIAN: That's correct.

3 COMMISSIONER PULLMAN: So, I ran the numbers on a sort
4 of quick and dirty basis this morning. That means
5 that by March 31st, 2011, assuming no further "ins",
6 the accounts will be drawn down.

7 MR. CHRISTIAN: Well, the two percent applies for the
8 duration of this settlement agreement, which would be
9 '07 and '08. And I don't think it -- I don't think
10 the two percent rider applies beyond that. It may
11 continue as the result of a following proceeding, but
12 it's not intended to be the percent, and indeed one of
13 the commitments B.C. Hydro made in this settlement
14 agreement was that it would address, in the next
15 revenue requirement application, a structured approach
16 and a formulaic approach to amortizing deferral
17 account balances. Whether the two percent is --
18 continues on as the result of such discussions, I
19 can't say. But it's certainly not -- this agreement
20 certainly doesn't establish that two percent beyond
21 '07 and '08.

22 COMMISSIONER PULLMAN: No, I understand that, I think.
23 But basically, if nothing else happens, by the end of
24 -- by March 31st, 2011, the costs which B.C. Hydro
25 incurred in F2005 and F2006 will be off their books,
26 off its books.

1 MR. CHRISTIAN: Well, subject to checking your math, and
2 I'm sure it's correct --

3 COMMISSIONER PULLMAN: It's not incorrect, yeah. And
4 I'm just wondering what obligations the government
5 might have put on B.C. Hydro to manage the deferral
6 accounts in what I'll describe as a systematic and
7 rational manner.

8 MR. CHRISTIAN: The only government response that I'm
9 familiar with with respect to deferral account
10 amortization arises from the government's response to
11 the Commission's recommendations to the government in
12 the Heritage Contract enquiry. In that enquiry, B.C.
13 Hydro put forward that deferral account balances ought
14 to be amortized in a way that -- with a primary
15 overarching objective of minimizing rate disruption,
16 so you didn't have rates bouncing up and down. And
17 that was the overarching goal of the amortization.
18 That was the recommendation that the Commission
19 accepted, and the government generally accepted the
20 Commission's recommendations, subject to some
21 exceptions and subject to implementing legislation to
22 enact things that needed to be enacted.

23 So, if I had to point to a government view
24 on how deferral account balances ought to be
25 amortized, I think that's the only thing I can point
26 to that I'm familiar with.

1 COMMISSIONER PULLMAN: I don't have a reference. I do
2 remember, amongst the sort of vast amounts I've been
3 obliged to read in this matter, that the words "zeroed
4 out on a timely basis" somewhere appear in the
5 literature. And --

6 MR. CHRISTIAN: I don't have any basis to dispute that --
7 I'm sure they appear somewhere.

8 COMMISSIONER PULLMAN: I'm just wondering whether costs
9 which get incurred in F2005 and don't get fully
10 recovered until F2011 really constitute being "zeroed
11 out on a timely basis".

12 MR. CHRISTIAN: Well, in that regard, you know, I can
13 only point to the settlement agreement and the parties
14 came together on it, and agreed the basis for
15 amortizing the deferral accounts in the short term,
16 given the financial situation Hydro faced when it
17 filed its evidentiary update, how the amortization
18 gets -- and those balances get cleared after '07 and
19 '08 is obviously going to be the subject of the next
20 revenue requirements application.

21 COMMISSIONER PULLMAN: Right. Two more things. I
22 noticed that the settlement proposes a refund of 49.6
23 million, and it strikes me as being intellectually
24 somewhat difficult to get my head around the concept
25 of why somebody would pay me back 49 million when I
26 owe them 239.9 million. And I'm speaking as the

1 customer, if I was the customer.

2 MR. CHRISTIAN: Well --

3 COMMISSIONER PULLMAN: I wouldn't say that the Bank of
4 Montreal, for instance, would do that, necessarily.

5 MR. CHRISTIAN: Once again, maybe what I can do here is
6 allude to the dynamic of the negotiated settlement
7 process in which, you know, different parties come to
8 the table with a number of different interests, and
9 resolving those interests often requires trade-offs
10 that parties would not otherwise make in front of the
11 Commission, or indeed that the Commission may not be
12 persuaded are right or appropriate in the
13 circumstances of the application before it. That,
14 frankly, is one of the reasons that negotiated
15 settlement are, and can be, successful. They're able
16 to pull together from a broader scope of interests a
17 solution that works.

18 COMMISSIONER PULLMAN: Well, going to Appendix B, and
19 I'm taking you back to your desire not to have rates
20 bouncing up and down, I'm still -- be interested in
21 your views as to whether Appendix B constitutes
22 stability in rates.

23 **Proceeding Time 1:50 p.m. T11**

24 MR. CHRISTIAN: Well, it's a one percent decrease
25 effective February 1st, from what would otherwise have
26 been a different rate increase. Rate stability is a

1 relative thing, primarily assessed by the views of the
2 customers who pay them. The customer groups of B.C.
3 Hydro who are represented in this proceeding agreed
4 that that rate solution, as it were, that's described
5 in Appendix B was appropriate at this time.

6 So you know, I can't say what the parties
7 said in the negotiated settlement, of course, and I
8 can't speak -- even if I could do that, I can't speak
9 to what the customers think. But the agreement speaks
10 for itself in that regard.

11 COMMISSIONER PULLMAN: Okay, thank you.

12 THE CHAIRPERSON: That's the extent of our questions, Mr.
13 Christian.

14 As I said, I'll give others an opportunity
15 now to comment on the discussion that we have had with
16 Mr. Christie, and I'll take those in any order. So I
17 don't think we need to call for appearances here, so
18 if you find your way to the mike if you have any
19 comments, that would be welcome.

20 MR. WALLACE: Mr. Chairman, just a few comments. The
21 first is with respect to Site C costs and the *Enbridge*
22 decision, and you put some quotations from page 3 of
23 that decision to Mr. Christian.

24 With respect to the decision and the
25 specific facts of Site C, I would disagree with Mr.
26 Christian's interpretation that management should

1 generally be presumed to be prudent unless challenged
2 on reasonable grounds in the fact pattern that you put
3 out where there was an approval for 2 million and
4 costs of 14 million. I think that very rapidly takes
5 one into the next paragraph, and that is:

6 "To be prudent, a decision must have been
7 reasonable under the circumstances that were
8 known or ought to have been known to the
9 utility at the time the decision was made."

10 And there was a \$2 million approval, and that's what
11 they knew when they went out and spent 14 million.
12 And I would be arguing when the prudence review
13 occurs, which isn't now but will be at some time in
14 the future, that under those circumstances the onus of
15 prudence, if it does lie on those challenging, is
16 clearly reversed. Otherwise what does having approval
17 mean? It just makes it a very meaningless process. I
18 think that's my submission on that point.

19 THE CHAIRPERSON: Mr. Wallace, you know, I'm hesitant to
20 ask this next question, so I'm going to give you ample
21 opportunity not to answer it, and you can simply say
22 you have no comment. But the import of your comment
23 suggests that it's reasonable for the Panel to
24 interpret 25 of the settlement agreement to in fact
25 mean that the review of Stage 1 Site C expenditures is
26 in fact a prudency review. With your comments with

1 respect to the scope of the prudency review.

2 MR. WALLACE: Yes, I think this says:

3 "The creation of the regulatory asset will
4 not preclude the parties from raising
5 prudency issues under the UCA with respect
6 to the Site C expenditures incurred..."

7 and I take that to be the past,

8 "...or to be incurred."

9 So when that does happen, that -- you know, I think
10 that's just left open for the parties. I don't think
11 I should add anything to the language that's there.
12 That's what the parties have agreed to.

13 THE CHAIRPERSON: Thank you.

14 MR. WALLACE: My next point I'd like to address is the
15 two percent rate rider for the reduction of the
16 deferral accounts. Commissioner Pullman, I think
17 you're right, that is a five-year amortization
18 approximately and I think that was the intent.

19 That smoothes -- you talk about that as a
20 two-year expenditure, and that's correct, but that
21 expenditure is very much influenced by water in-flows,
22 water levels. And water in-flows and water levels
23 vary over a much longer period than five years. In
24 spite of that, the parties have agreed to a five-year
25 amortization. But that again is open to review in two
26 years.

1 **Proceeding Time 1:55 p.m. T12**

2 And if that account is a lot larger, or maybe even a
3 lot smaller -- if, you know, the north was to get the
4 rain we got earlier this week, then obviously it will
5 be up for review again. So, it clearly is the view of
6 the Joint Industry Electricity Steering Committee that
7 the period that has been chosen, and the rate, and the
8 rider, are appropriate.

9 COMMISSIONER PULLMAN: Mr. Wallace, I still find it
10 bizarre, maybe coming as I do from a while spent in
11 the private sector, that costs that I incur in 2004 to
12 deliver energy to my customers is still on my balance
13 sheet in 2010.

14 MR. WALLACE: Yeah, no, and I --

15 COMMISSIONER PULLMAN: I'm sure none of your customers
16 who sell wood products, paper, or anything else like
17 that, could make that claim.

18 MR. WALLACE: Well, they don't try and do them level over
19 a period of time with rate stability. And with a high
20 water hydro system that we have, water stability can
21 vary things by hundreds of millions very quickly, and
22 we could easily have rates that are jumping up and
23 down four or five percent more a year. Going to
24 Alberta, which I know you're familiar with, there were
25 deferral accounts that were amortized over quite a
26 period of the 2000/2001 electricity shock that

1 happened at that period.

2 So we believe in the circumstances of this
3 situation that it is an appropriate amount and that it
4 is being taken care of.

5 COMMISSIONER PULLMAN: Do you believe that the deferral
6 accounts, by their nature, have an equal chance of
7 going up or going down, in the year?

8 MR. WALLACE: No, unfortunately, they have not been
9 designed that way. We argued in the last hearing that
10 they should be designed that way. They are designed
11 based on where you are and what the probability of the
12 revenue requirement during the year is. So, you could
13 get caught on either side of it. If you end up with
14 very high reservoirs, you could be going down. If you
15 end up the other way, you could be going higher. This
16 amount represents the best appraisal we have of where
17 you stand at the moment, and the amount that is in the
18 account.

19 COMMISSIONER PULLMAN: Thank you.

20 MR. WALLACE: That completes my --

21 COMMISSIONER PULLMAN: May I ask you one unrelated
22 question? How would you like to see the Aberfeldie
23 application resolved?

24 MR. WALLACE: Not having seen the application, it's
25 almost impossible for me to answer. We understand
26 we'll have that documentation shortly, and we will be

1 prepared to respond when we do see it.

2 COMMISSIONER PULLMAN: Spoken like a true politician.

3 Thank you.

4 MR. WALLACE: Well, I'm sorry, but it could be self-
5 evident or it could be absurd. I just don't know
6 what's there, and I just don't see how I can comment.
7 I think the suggestion that we look at an NSP -- that
8 they circulate the material, the parties respond on
9 whether they're -- an NSP is appropriate or whether it
10 becomes part of an oral hearing -- is appropriate at
11 this stage. But I can't be any more specific beyond
12 that.

13 COMMISSIONER PULLMAN: Thank you.

14 MR. WALLACE: Thanks.

15 MR. QUAIL: First of all, I'd like to say that we agree
16 with the characterizations that have been offered by
17 my friend, Mr. Wallace, regarding the issues he
18 addressed, Site C and two percent rider in particular.

19 I'd like to emphasize that the package
20 that's before you is not what we would have argued
21 for, had this matter proceeded to an oral public
22 hearing. Simply, in the nature of the way that a
23 negotiation process happens, there's other -- as
24 others have emphasized, I believe, there is a very
25 substantial process of give, take and compromise to
26 attempt to find a best-fit outcome that everyone can

1 walk away from and feel they can live with. And we
2 are content, and we are instructed by our clients,
3 they are prepared to agree with this particular set of
4 outcomes. Whether every element is something that we
5 would have argued for is another matter. And to some
6 extent, is sort of buried in the negotiation process,
7 and is cloaked in the confidentiality that surrounds
8 that.

9 Regarding the Aberfeldie process, I'll
10 simply say we're not keen on the suggestion that it
11 somehow be dealt with between now and the beginning of
12 the public hearing into the IEP LTAP. That's two
13 weeks away. There's an intervening process of opening
14 oral submissions, an awful lot of work between now and
15 then just to get underway with the hearing, and I
16 don't see how we could possibly slam on the brakes to
17 deal with the Aberfeldie issue.

18 So in my submission, the best opportunity
19 to deal with it will be after the conclusion of the
20 hearing into the LTAP. It might seem tempting to
21 slide it in somehow as a little episode in the middle
22 of the LTAP process, but that is going to be a very
23 large hearing, there's a very large number of panels
24 will be heard, a wide range of issues, very large
25 number of parties with meters running, and a very
26 smaller number of parties, I expect, who will have any

1 real stake in the Aberfeldie matter or feel that they
2 will be engaged in that, and in my submission it would
3 not be an economic use of the Commission's or
4 participants' time to interrupt that process to try to
5 slide this in. And if it means that B.C. Hydro has to
6 reassemble a few people, in my submission that's still
7 a much more economic use of resources than to try to
8 somehow fit it into the very large hearing process
9 that we're going to be engaged in.

10 **Proceeding Time 2:00 p.m. T13**

11 If it appears that there is a reasonable
12 basis for conclusion, of course, we would be
13 interested in participating in a negotiation. But
14 again, it's hard to say until we've actually seen the
15 application, and again, I don't know how we even
16 really assess that given the burden of preparatory
17 work between now and the opening of the LTAP hearing.

18 I really have nothing else to say.

19 COMMISSIONER PULLMAN: Well, given the fact that B.C.
20 Hydro's board has approved it, and B.C. Hydro is
21 probably moving ahead to execute the major contracts,
22 would you agree that time is of the essence?

23 MR. QUAIL: I would certainly agree that time is of the
24 essence, and I would urge B.C. Hydro to maybe let
25 their wheels spin for a little while until the matter
26 can be given proper consideration. There's been a

1 certain amount of controversy about this project.
2 It's no secret there have been significant shifts in
3 the projected capital cost. And it would be a very
4 unhelpful thing for B.C. Hydro to commit itself to the
5 extent where we're dealing with an after-the-fact
6 prudency analysis, which is always a very difficult
7 one. It puts the Commission, puts everyone at a very
8 difficult position when the money is already spent.
9 So the reality of resources and time available may
10 simply dictate what the prudent way to proceed would
11 be, in my submission.

12 If they built a few more hours into the
13 day, frankly, Commissioner Pullman, then our problem
14 would go away. Sometimes I have difficult remaining
15 alert for the number of hours already built into the
16 day.

17 COMMISSIONER PULLMAN: Thank you.

18 THE CHAIRPERSON: Thank you, Mr. Quail.

19 MR. AUSTIN: I just have a few submissions. In relation
20 to Aberfeldie, it's unlikely the IPPBC is going to
21 agree to a negotiated settlement process, especially
22 any one that would go between now and the start of the
23 Integrated Electricity Plan LTAP hearing. The reality
24 is that the cost of that project is -- well, it's gone
25 up in the nature of at least 60, 70, maybe 80 percent
26 since we've been tracking it since the last revenue

1 requirements hearing, and this should be of serious
2 concern to everybody. And they may have signed
3 electricity equipping contracts, they may have signed
4 construction contracts, but so be it. They were well
5 aware of some of the risks related to executing
6 contracts, and if they've done it, well then, they're
7 just going to have to somehow deal with it.

8 With respect to paragraph 20, we can't
9 disagree with our suggestion that what we think is a
10 typing mistake be corrected. Nothing is really going
11 to fall or rise on the basis of that, but it would be
12 nice to at least clean that up.

13 With respect to paragraph 25 in Site C, our
14 view is that the words "incurred or to be incurred"
15 are there for a reason, and that expenditures above
16 the \$2 million level certainly are subject to review,
17 and by approving the creation of a deferral account
18 there should be no way, at least taken from the
19 IPPBC's perspective, that those additional 12 million
20 were properly incurred.

21 I don't have any further submissions.

22 THE CHAIRPERSON: Thank you, Mr. Austin.

23 MR. ANDREWS: SCCBC *et al* supports the negotiated
24 settlement agreement. I just want to comment quickly
25 on Site C. It's not our role at this point to
26 interpret the wording of section 25, but I can say

1 thought you were representing the IPPBC, and I
2 apologize, I've got you mistaken with Mr. Austin.

3 MR. ANDREWS: We're very similar in many respects.

4 COMMISSIONER PULLMAN: One question. Do you have any
5 views on the process for Aberfeldie?

6 MR. ANDREWS: I think, at this time, we don't have strong
7 views to state. Naturally, we'll want to see what the
8 evocation says. But I think I'd have to say at this
9 stage, we're going to have to wait and see what the
10 other parties propose, and what the nature of the
11 application is.

12 One point, just by the by, is that I'm not
13 entirely clear whether what is proposed in regulatory
14 terms for Aberfeldie, that is whether it would be a
15 CPCN application or an ASE -- or some aspect of the
16 revenue requirements application, or a third type of
17 application. I don't think the answer to that
18 affects, ultimately, whether there would be an NSP or
19 the timing of how it's dealt with, but that would be
20 something to get clarified.

21 COMMISSIONER PULLMAN: Well, surely it would make a
22 difference as to whether Hydro required a CPCN to
23 construct it or not. Otherwise, you might consider
24 the process to be something of an exercise in
25 futility. If they're going to build it, whatever.
26 Would you not agree?

1 MR. ANDREWS: Yes, I think probably B.C. Hydro's in a
2 better position to answer that.

3 COMMISSIONER PULLMAN: Well, I'm glad you're -- I'm glad
4 you're as much in the dark there as I am.

5 MR. ANDREWS: Thank you.

6 THE CHAIRPERSON: Thank you, Mr. Andrews. Is there
7 anyone else who wishes to speak to -- Mr. Bertsch,
8 proceed, please.

9 MR. BERTSCH: Ludo Bertsch from Energy Solutions for
10 Vancouver Island. We did make comment on accepting
11 the NSA, about the extended time for paying down the
12 deferral accounts. We do have an issue with that.
13 But as you've heard, in the NSP there certainly is a
14 wide range of views on deferral accounts, and even
15 though we did have issue, we do accept the agreement
16 that has come together. And so we do endorse that.

17 As far as Aberfeldie, we have no comment on
18 that.

19 THE CHAIRPERSON: Thank you. Is there anyone else who
20 wishes to make a comment at this point, before we move
21 on to the next agenda item?

22 That, then, brings us to agenda item number
23 two. And this is an opportunity for those who are not
24 -- who did not participate in the NSP proceeding to
25 express any concerns that they have, or other comments
26 that they wish to make with respect to the NSA. Is

1 to bring them forward, and parties challenge them and
2 argue accordingly at the conclusion of the process.

3 That's really all I have to say on this
4 agenda item.

5 THE CHAIRPERSON: Well, I think I do have at least one
6 question for you, Mr. Quail, and that is with respect
7 to your characterization of the issue that B.C. Hydro
8 initially raised with respect to the District of
9 Kitimat's evidence. It may be that its focus, and
10 we'll hear from B.C. Hydro on this, was on
11 admissibility, but it may very well be that it was on
12 scope of the proceeding.

13 MR. QUAIL: Yes.

14 THE CHAIRPERSON: Are your views the same with respect to
15 scope of the proceeding?

16 MR. QUAIL: What I would say, and this is perhaps coming
17 at it from a somewhat different aspect, but in my
18 submission they are -- Kitimat should be entitled to
19 advance these arguments. And the reasons for that
20 include the following -- that is in terms of the legal
21 contextual material they put forward; and that is that
22 it's the duty of the Commission to determine whether
23 the application is in the public interest. Statutory
24 context is necessarily an element of the public
25 interest. A statute of the legislature must be deemed
26 to be made for the public good and in the public

1 interest, and the Commission needs to evaluate that.

2 Further, if as a matter of fact there is
3 some risk that the agreement could be subject to being
4 struck down by the courts, that is a fact that the
5 Commission needs to be cognizant of. And in my
6 submission, I don't know that the materials purport to
7 more, other than bring that within the awareness of
8 the Commission. If it does I'll leave that to Kitimat
9 to advance those arguments. But these matters are, in
10 my submission, within the realm of matters that the
11 Commission should be aware of in considering the
12 application under Section 71.

13 THE CHAIRPERSON: Thank you. Is there anyone else who
14 wishes to speak in support of the District of
15 Kitimat's submission?

16 MR. ANDREWS: I'm rising at this point but the first item
17 I want to raise is that I'm not specifically desiring
18 to speak in support of the District of Kitimat's
19 position, but I'm not sure that it could be said that
20 what I'm going to say is supporting Hydro's motion
21 either. And so in a sense I'm in your hands as to
22 when and where I should speak, but I note that since
23 neither Kitimat nor Hydro has spoken yet, it might be
24 just as well that I make my comments at this point.

25 THE CHAIRPERSON: Proceed.

26 MR. ANDREWS: I think that the -- there are potentially

1 very important legal issues involved here, and we need
2 to keep in mind exactly what B.C. Hydro's motion is.
3 And of course it would be up to B.C. Hydro to
4 emphasize to you what exactly that is. My
5 understanding is that it relates to specifically
6 Kitimat's allegation that the LTEPA Plus, if I can use
7 that acronym, contract is legally invalid and that
8 Hydro's motion relates to a request that the
9 Commission make a determination regarding the legality
10 of the LTEPA Plus agreement. And so if that is the
11 case, then that is different than various evidentiary
12 topics.

13 **Proceeding Time 2:15 p.m. T16**

14 I would start with the observation that the
15 legality of the LTEPA Plus agreement would appear to
16 be, at face value, clearly relevant to the long-term
17 acquisition plan, and clearly material. In my
18 respectful submission the issue, however, is whether
19 determination of the legality of that contract ought
20 to be made by the Commission or by the B.C. Supreme
21 Court. And the evidence that we have is that there is
22 petition that has been heard, and a decision is
23 reserved on the very question of the legal validity of
24 the LTEPA Plus agreement, though I'm not in a position
25 to say whether that petition necessarily addresses all
26 of the aspects of the LTEPA agreement, that either

1 Kitimat asks the panel to rule on or that Hydro's
2 motion addresses. But the fundamental issue is
3 whether there would be a -- both jurisdictions, the
4 Supreme Court jurisdiction and the B.C. Utilities
5 Commission jurisdiction under the Act in play at the
6 same time, and that is an issue that has been dealt
7 with by the courts regarding other administrative
8 tribunal areas, such as labour law and human rights
9 law and so on and so forth, with different outcomes in
10 different regulatory areas.

11 It's a complicated and important area, and
12 I think at this stage I would just leave my comments
13 at that.

14 THE CHAIRPERSON: Thank you. Is there anyone who is
15 either in support of the District of Kitimat's
16 submissions or takes no position?

17 That, then, brings us to anyone who
18 opposes, other than B.C. Hydro, and then I'll hear
19 from B.C. Hydro after I hear from others. Mr.
20 Wallace.

21 MR. WALLACE: Mr. Chairman, the JIESC's position on this
22 matter is that the legal validity of the contract is
23 not an issue that should be decided by the B.C.
24 Utilities Commission. It is an issue that should be
25 determined in the courts. It simply makes more sense
26 to us, and we believe this Commission has a long

1 history of leaving contractual disputes to the Courts
2 in -- with respect to tariff matters, where the
3 Commission might have be seen to have a particular
4 expertise. Even there, where the contract is -- or
5 the tariff has been in place, my understanding is the
6 Commission's practice has not been to interpret the
7 contract but to leave that to the courts. If a party
8 wanted to change a tariff going forward, of course,
9 that was a different matter and they could apply to
10 the Commission.

11 In this case, I would suggest to you, even
12 more so that the issues raised by Kitimat with respect
13 to legislation and with respect to the contract and
14 the validity are more complex. They belong in the
15 courts and, furthermore, it's my understanding that
16 very similar issues, if not the exact same issues, are
17 before the courts now. And we see no reason that this
18 proceeding should get bogged down in lengthy arguments
19 about history and validity of agreements. It simply
20 is something that should -- does not belong in this
21 proceeding, and the scope of this proceeding should
22 exclude it. Thank you.

23 THE CHAIRPERSON: Is there anyone else who opposes --

24 MR. WEAVER: Mr. Chairman, without commenting on the
25 merits of the District of Kitimat's position, we would
26 -- the CEC would support the submissions of Mr.

1 Wallace on behalf of the JIESC. We do not need to see
2 what will be a potentially lengthy and complicated
3 regulatory process dealing with legal issues which are
4 presently being considered by the courts.

5 THE CHAIRPERSON: Right. Thank you. I'm surprised to
6 see you on your feet, Mr. Duke.

7 MR. DUKE: Am I out of order?

8 THE CHAIRPERSON: Yes. Unless you really surprise me
9 with what you're about to say next, I think you
10 probably are out of order. My intention is -- is to
11 hear from all those who oppose your application, then
12 B.C. Hydro, and then you'll have a right of reply.

13 Is there anyone else, other than B.C. --

14 MR. GODSOE: I'm sorry, Mr. Chairman. Mr. Duke is
15 representing Alcan, not Kitimat.

16 THE CHAIRPERSON: Oh, I'm sorry. I'm sorry.

17 MR. DUKE: I was thinking that was a good start.

18 THE CHAIRPERSON: Sooner or later it would have come to
19 my attention, who you were representing.

20 MR. DUKE: Thank you, Mr. Godsoe.

21 I'm going to -- I've got some documents
22 here that I might put before the Commission, but we'll
23 play it by ear and see if we need to do that or not,
24 so I don't clutter the record up.

25 I thought it might be useful to begin by --
26 I mean, stating the obvious, which is of course that

1 we support B.C. Hydro's proposition. And giving a
2 little context to the Commission, because frankly,
3 other than the District of Kitimat, we are the ones
4 most familiar with what has gone on in the court
5 proceedings over the last three years or so.

6 **Proceeding Time 2:20 p.m. T17**

7 If I may, I'll just get a little context to
8 the LTEPA, much of which is either in the public
9 record or even in some old BCUC documents. The LTEPA
10 dates back to 1990. It was originally signed in the
11 context of the Kemano Completion Project, and in 1993
12 this Commission ordered the original LTEPA disclosed
13 in its entirety, not as an energy supply contract but
14 rather in the context of the BCUC KCP review, and it
15 has since then been on the public record. Of course
16 KCP was cancelled in 1995 and Alcan subsequently sued
17 the province, and then in 1997 there was a settlement.
18 And as part of that settlement, Alcan and the province
19 agreed to amend the LTEPA, which -- and affirm it.
20 Basically the amendment reduced the amount of power
21 Alcan had to deliver to 140 megawatts.

22 Importantly in the LTEPA, there was a -- in
23 the original LTEPA there is because it's still in
24 effect, a clause that said that Alcan could recall
25 part or all of the power if it required the power for
26 its own industrial purposes. And indeed in December

1 of 2004, we did just that.

2 The Kitimat smelter is an old smelter.
3 It's the smelter that was built in the '50s and '60s
4 and it's using very outdated technology. And as
5 you've undoubtedly heard, and I have a press release
6 if necessary to put in the public record, but there
7 was an announcement this past August that Alcan is
8 intending to modernize and expand the Kitimat smelter
9 from its current capacity of 275,000 tonnes to 400,000
10 tonnes. That's approximately a \$2 billion investment.

11 In the context of preparing for that
12 announcement, Alcan negotiated what now is known as
13 the amended and restated LTEPA, because of course we'd
14 issued the recall notice. And as you'll know because
15 it's been filed, both the term sheet and the LTEPA,
16 there's a slight bump up in the amount of Tier 1 or
17 firm power, and then over time it falls as the project
18 comes online because the project will use more and
19 more power. And indeed in our press release we
20 referred to it using virtually all of our firm power
21 by the end, by the time modernization is complete.

22 The term sheet was signed this past summer
23 and was filed by B.C. Hydro with the LTAP, as you're
24 aware, and this was done, for amongst other reasons,
25 to give the Commission and other interested parties
26 some forewarning that it was coming, that we were

1 negotiating this contract. And indeed, as will become
2 apparent to all parties when they actually get a copy
3 of the LTEPA, the amended LTEPA, it largely reflects
4 the commercial terms which are in the term sheet and
5 have been on the public record now for two or three
6 months. The amended LTEPA was in fact signed on
7 October 27th and filed, I believe, on November 1st.

8 That's just a very brief background. The
9 bottom line is this contract is not new, and when we
10 were negotiating the contract we of course used the
11 2006 form of contract as the new form. If you've
12 compared the old LTEPA into the new or amended one,
13 they are quite different in form, because we were
14 trying to reflect as much as possible what has become
15 the practice as approved by the Commission, in terms
16 of energy supply contracts.

17 **Proceeding Time 2:25 p.m. T18**

18 Price has been disclosed via the filing of
19 the term sheet and, in fact, now all the prices will
20 be disclosed when the full contract is made available
21 shortly.

22 Turning, then, to the issue that the
23 District has raised, it's important for the court to
24 know that there has in fact been two petitions in --
25 or for the Commission to know, there's been two
26 petitions in B.C. Supreme Court. The first petition

1 was actually dismissed on a standing issue. That is
2 -- that decision is available on the Court website,
3 and an appeal was -- by the District was unsuccessful.

4 The second petition, which I have copies
5 of, and again I could tender as an exhibit if the
6 Commission would find it helpful, is substantially the
7 same as the first. The District reformulated, shall
8 we say, their petition and challenged certain things
9 the government had done in the context of Alcan power
10 sales.

11 But the important thing is that that
12 petition has actually been heard. The Chief Justice,
13 Justice Brenner, heard that case on October 16th to
14 20th, five days of hearings. The Chief Justice
15 reserved judgment and, at this time, we don't know
16 when an issue -- when a decision will be issued.

17 In our submission, what the District is now
18 seeking to do is to reargue the case, and here before
19 the Commission, in the context of the review of the
20 2006 IEP and LTAP. And of course, the section -- now
21 Section 71 proceedings with respect to the amended
22 LTEPA. And it's our submission that they -- that the
23 Commission should determine that that's outside the
24 scope of these proceedings.

25 I should mention, I agree with the
26 submissions on the issue of it properly being before

1 the Court, that Mr. Wallace raised on behalf of his
2 client.

3 I also would like to put some context --
4 and I think it's fair to do this, because the District
5 of Kitimat is here. I think it's fair to say, and I'm
6 sure the District will correct me if they don't agree
7 with my assessment, that there is no issue as to
8 whether Alcan may sell power. The issue is whether or
9 not Alcan is limited in its right to sell power. That
10 is, ultimately, the debate before the Court. Alcan
11 and, for their part, the province of B.C. have said
12 that there is no limit, and the District said that
13 there is. And the Chief Justice is dealing with that
14 issue right now.

15 But even in arguing that Alcan's right to
16 sell power was limited, the District accepted in their
17 argument that certain historical sales by Alcan were
18 perfectly appropriate, and they referenced -- and
19 again, I'm sure the District will correct me if they
20 don't agree, but they referenced sales to support the
21 Prince Rupert/Terrace/Kitimat region. And of course,
22 our submission is, is that's exactly what the amended
23 LTEPA will do. And I don't make that -- I'm getting,
24 obviously, into the substance a bit there, but my
25 point is just to make it clear that this is not a
26 question that the Court -- necessarily the Court's

1 saying, "Thou shalt not sell any power." Even if the
2 District is successful, the question is, in what way
3 -- where will the dividing line be? Where will the
4 limits be?

5 So, there's a lot of "ifs" and there's a
6 lot of ambiguity that we just don't know until the
7 Chief Justice issues his decision. And as I
8 mentioned, it did take a week of hearing, and it's
9 quite reasonable to conclude that it will take at
10 least that long if we appear before the Commission and
11 dealt with that issue.

12 And indeed, in view of the District's
13 positions in the Court proceedings, it's not at all
14 clear that they're actually going to even take the
15 position that the amended LTEPA is -- you know, we
16 don't know. Obviously they're going to review it and
17 make those -- their own assessment.

18 The key point as made by Mr. Wallace is
19 that the very issues that the District wants to argue
20 now, in the context of either Section 45 or 71
21 proceedings, are in fact before the B.C. Supreme
22 Court, and we argue that's where they properly belong.

23 The District chose that forum. They took
24 the matter to Court. And Chief Justice Brenner has
25 now heard five full days of hearing, and he is
26 expected to render a decision some time in the near

1 future. There was a careful review during that
2 hearing of many affidavits, of written submissions and
3 case law, all by Alcan, the District, even the Haisla
4 Nation, and the Province of B.C.

5 **Proceeding Time 2:30 p.m. T19**

6 And in our submission, if the Commission was to
7 determine that this issue of the legality of the
8 amended LTEPA is within the scope of any of these
9 proceedings, then all of those materials would have to
10 be submitted before the Commission and reargued.

11 This debate is at issue of interpretation
12 of legislation agreements and licences, and they
13 relate to some 50 years of history that Alcan has had
14 in B.C. And again in our submission, the appropriate
15 place for this is the court.

16 I also want to raise one issue and that is
17 that the District is arguing, amongst other things,
18 that Alcan's power sales contravene the provisions or
19 the spirit of the *Industrial Development Act*, which is
20 the enabling legislation related to Alcan's
21 Kitimat/Kemano development. And in terms of
22 determining the jurisdiction or the scope of this
23 hearing, the Commission should think about some of the
24 precedents that might be set. For example, would the
25 door be open for someone to argue that a particular
26 project ought not to be approved or a contract ought

1 not to be approved because in someone's opinion it
2 violated the *Fisheries Act*? In other words, it's
3 completely different legislation than the *Utilities*
4 *Commission Act*.

5 And in our submission, the Commission
6 should resist being dragged into debates or
7 assessments of whether or not other legislation,
8 permits, agreements, et cetera, authorize a party to
9 sell power. Our submission is the Commission should
10 focus on -- that the purpose of the Commission, of
11 course, is to ensure that public utilities provide
12 safe, reliable and reasonably priced services to the
13 customers.

14 Turning then to Sections 45 and 71, and
15 I'll go quickly, the District argues that the matter
16 of the legality, and indeed my friend Mr. Quail argued
17 that the argued legality of LTEPA is relevant to the
18 IEP and the LTAP, and we disagree. In any event,
19 given that the B.C. Supreme Court is currently
20 considering the matter, if there is a decision that's
21 adverse or affects the amended LTEPA, there will be
22 plenty of time for B.C. Hydro to adjust its plans and
23 its acquisition plans accordingly.

24 With respect to Section 71, which is of
25 course the -- we'll argue which is the appropriate
26 forum for assessing the amended LTEPA, the District

1 has enlarged, we would argue, the definition of public
2 interest. They have asked that the Commission
3 consider the effects on the community, and they have
4 argued that the legality of the contract -- if an
5 illegal contract is approved by the Commission, is not
6 in the public interest. Quite apart from the fact
7 that those matters are best left before the court, we
8 don't agree with those assessments.

9 There is the decision of the Supreme Court
10 of Canada in *ATCO* where they say that the words
11 "public interest" or "public interest jurisdiction"
12 should be assessed in the context of the statute. In
13 other words it's not intended to be blanket authority
14 to do what the Commission wishes. It has to be
15 interested in the context of the general jurisdiction
16 and purpose of the statute. As for the -- and I have
17 a copy of the *ATCO* decision, which I could hand out to
18 the parties and leave with the Commission if required.

19 The last point I will make and then I'll
20 sit down on this issue, is what would happen if a
21 court determined whether or not the -- determined the
22 contract was illegal or issued a decision, the effect
23 of which may be to affect the legality of the
24 contract. There would be a *force majeure*, clearly.

25 **Proceeding Time 2:35 p.m. T20**

26 And at that time, the parties would go back and they

1 would either amend the LTEPA to ensure it's in
2 compliance with the Court decision, or they would
3 ultimately, if they couldn't correct the problem, they
4 would terminate the contract.

5 So, from a practical perspective, the
6 effect on B.C. Hydro, in our submission, would be
7 minimal, particularly in a circumstance where the
8 matter is actually before the Court and it's actually
9 been heard. This is not a situation where there might
10 be a Court hearing in a year, two years or never.
11 There has been one.

12 So with those submissions, I will say, we
13 also adopt the position taken by B.C. Hydro and the
14 submissions of B.C. Hydro. And with those
15 submissions, again, Alcan's view is that this matter
16 should be left to the Court, and in the event that the
17 Court issues a decision that in any way affects the
18 legality of the amended LTEPA, we will deal with that
19 at the time. Thank you.

20 THE CHAIRPERSON: The Commission has recently had reason
21 to review the *ATCO* decision, so you need not
22 distribute it, and similarly for the press release.

23 MR. DUKE: Yes. Very well.

24 THE CHAIRPERSON: We're familiar with the context. Thank
25 you.

26 MR. DUKE: Thank you.

1 MR. GODSOE: Mr. Chairman, it's always enjoyable when
2 somebody endorses my comments before I've opened my
3 mouth. Thank you, Mr. Duke.

4 THE CHAIRPERSON: Some anticipation. You know, out of an
5 abundance of caution, Mr. Godsoe, just before you
6 proceed, I should make sure, because I want to make
7 sure that you and Mr. Oulton are the last to speak.
8 Is there anyone else who wishes to speak to this
9 issue?

10 Okay. Proceed, Mr. Godsoe.

11 MR. GODSOE: Mr. Chairman and Commissioners, before I
12 proceed in my submissions, I would ask the Panel to
13 have the following exhibits close by, because I will
14 be asking the Panel to turn to them. First, Exhibit
15 C37-3, and that's the District of Kitimat's evidence.
16 Second is Exhibit C37-6, which is the District of
17 Kitimat's submission of yesterday. Third is Appendix
18 N to Exhibit B-1E, and that's the redacted version of
19 the Alcan term sheet. And lastly, Exhibit B-17-8, and
20 in particular, B.C. Hydro's response to the District
21 of Kitimat IR 3.1.7.

22 THE CHAIRPERSON: Thank you, that was helpful.

23 MR. GODSOE: I'll also, Mr. Chairman, be distributing a
24 B.C. Supreme Court case, and an extract from a
25 decision you're quite familiar with, which is the *VITR*
26 decision. And I'll do that in the course of my

1 submissions.

2 In terms of framework, I'm going to break
3 my submission down into the following parts. First,
4 by way of introduction, I'm going to set out what the
5 District of Kitimat is seeking, and B.C. Hydro's
6 position with respect to that relief. Second, I'm
7 going to address the Commission's jurisdiction to
8 decide on the legality of the amended and restated
9 LTEPA. Third, and in the alternative, I'm going to
10 address why the Commission should decline to exercise
11 such jurisdiction. And finally, I'm going to address
12 certain assertions made by the District of Kitimat in
13 its submission of yesterday.

14 So, by way of introduction, if I could ask
15 the Commission to turn to Exhibit C37-3.

16 THE CHAIRPERSON: Yes. And it may be that -- right. The
17 Panel has one copy of C37-3. I think what we will do
18 is, we will take our afternoon break now. Thank you
19 for those references. We'll obtain copies of those,
20 and I think, Mr. Fulton, at the break, if you can make
21 two copies available to the Panel, that will be
22 helpful, and I think that's going to be true also for
23 Appendix N, the redacted -- or the unredacted term
24 sheet, and 17-A3.1.7, and the Supreme Court of
25 Canada's *VITR* decision. We're going to need --

26 MR. GODSOE: Mr. Chairman, I have copies of both the B.C.

1 Supreme Court case I'm going to rely on and the
2 extracts from *VITR*, so I don't think you need to take
3 care of that.

4 THE CHAIRPERSON: Okay. So, if you could make two copies
5 of the first four documents, then, I think, on your
6 list, that will be all we will need. If you could do
7 that at the break, that would be helpful, thank you.

8 We'll take fifteen minutes.

9 **(PROCEEDINGS ADJOURNED AT 2:40 P.M.)**

10 **(PROCEEDINGS RESUMED AT 2:57 P.M.)** T21

11 THE CHAIRPERSON: Please be seated.

12 MR. CHRISTIAN: Mr. Chairman, Commission Panel, two
13 matters outstanding from agenda item 1 earlier today.

14 The first was with respect to Site C
15 questions in the LTAP, and B.C. Hydro will not object
16 to questions being put to witnesses with respect to
17 Site C expenditures.

18 The second one is that with respect to the
19 contracts for the Aberfeldie project, there's two
20 major contracts that have not yet been executed. One
21 is the generating equipment contract and the other is
22 the civil infrastructure works contract. Those have
23 not, as I said, been executed at this time. But as
24 Mr. Pullman asked me and I needed to confirm too, the
25 board approval with respect to proceeding on
26 Aberfeldie was not conditional upon getting a

1 determination in respect of that project from this
2 Commission.

3 THE CHAIRPERSON: Thank you.

4 Mr. Godsoe, you may proceed.

5 MR. GODSOE: So, Mr. Chairman, I was in the process of
6 asking you to turn to Exhibit C37-3, which is
7 Kitimat's evidence, and in particular I'm interested
8 in page 3, paragraph 8, which states:

9 "The amended LTAP ought not to be improved
10 as requested by B.C. Hydro, to the extent
11 that it authorizes or otherwise sanctions,
12 either expressly or implicitly, these
13 unauthorized power sales under the amended
14 and restated LTEPA."

15 In B.C. Hydro's submission, in order to
16 grant the relief sought by the District of Kitimat,
17 the Commission would have to decide on the legality of
18 the amended and restated LTEPA. And B.C. Hydro
19 respectfully submits that in respect of both the LTAP
20 and the Section 71 filing, the Commission does not
21 have the jurisdiction to decide on the legality of the
22 amended and restated LTEPA, or alternatively, should
23 decline to exercise such jurisdiction.

24 B.C. Hydro further submits that
25 consideration of the District of Kitimat's litigation
26 with respect to Alcan's capacity to enter the amended

1 and restated LTEPA, is relevant only insofar as it may
2 constitute a material risk to one potential resource.
3 In other words, Mr. Chairman, B.C. Hydro accepts that
4 as part of its review of the LTAP, the Commission can
5 take note of the existing B.C. Supreme Court action
6 commenced by the District of Kitimat. This is a risk,
7 and as I will detail later in my submissions, all of
8 the resource options considered in the LTAP have
9 risks. However, consideration of such a risk should
10 come through a consideration of whether the underlying
11 plan is robust enough to manage such a risk and does
12 not require the Commission to make any determination
13 regarding the legality of the amended and restated
14 LTEPA. As stated by Mr. Wallace and Mr. Duke, this is
15 a task best left to the courts.

16 I'd like to turn first to the issue of
17 jurisdiction, and what I'm going to be distributing is
18 a case, a B.C. Supreme Court case.

19 THE CHAIRPERSON: You can approach the bench. Thank you.

20 MR. GODSOE: That case is entitled *Owners Strata Plan*
21 *LMS1816 (Owners) v. British Columbia Hydro and Power*
22 *Authority* and it is a 2002 B.C. Supreme Court case,
23 which I'll refer to as the *Strata* case. And if I
24 could ask the Commission to turn to paragraph 72.

25 **Proceeding Time 3:02 p.m. T22**

26 The *Strata* case outlines the process to be

1 employed when determining the jurisdiction of the
2 Commission over a specific subject matter. As
3 outlined in paragraph 72, the task is first to define
4 the essential character of the dispute, and second to
5 consider whether the *Utilities Commission Act* sets out
6 a means of resolving that particular dispute.

7 What, then, is the essential character of
8 this dispute? The District of Kitimat's fundamental
9 challenge is to the legality of the amended and
10 restated LTEPA, based on the *Industrial Development*
11 *Act*, which I'll refer to as the IDA, and the
12 agreements entered into thereunder between Alcan and
13 the province. Kitimat is not asserting that the
14 amended and restated LTEPA is not cost-effective or is
15 not necessary. It is simply challenging whether Alcan
16 has the legal right, the legal capacity, to enter into
17 and perform the obligations under the arrangement.

18 And if I could ask the Commission Panel to
19 turn back to Exhibit C37-3, and in particular I'm
20 interested in paragraph two. And the bottom part of
21 that reads:

22 "The District says and will argue at the
23 hearing of this matter that the IDA and the
24 agreements entered into thereunder between
25 Alcan and the province place certain
26 limitation on Alcan's right to sell power,

1 and the power deliveries contemplated under
2 the amended and restated LTEPA are directly
3 contrary to these limitations."

4 This argument is clearly based on an interpretation of
5 the *IDA* and the 1950 or the 1997 agreements referenced
6 by the District of Kitimat and filed in this
7 proceeding as part of Exhibit C37-3.

8 B.C. Hydro submits that consideration of
9 the rights and obligations between a private
10 corporation of the government of British Columbia
11 under the *IDA* fall outside the established regulatory
12 regime and cannot be considered to be included as a
13 regulatory function of this Commission.

14 B.C. Hydro further submits an assessment of
15 Alcan's ability to enter into such a contract is a
16 private law matter for the courts. And here I'm
17 echoing the comments of Mr. Wallace. In fact, this
18 Commission has adopted this approach in its reasons
19 for decision in respect of the *VITR* project, an
20 extract of which I'm about to distribute.

21 Mr. Chairman and Commissioner Nicholls, as
22 you are aware, one of the issues in that case was
23 whether a set of right-of-way agreements provided BCTC
24 with the right to build transmission infrastructure on
25 the Option 1 route. And if I could refer you to page
26 105 of the *VITR* decision under the hearing "ROW

1 Agreements," the Commission concluded that this issue
2 was a "contractual matter for the courts". In the
3 VITR circumstances, unlike here, no legal action had
4 yet been commenced in the courts at the time of that
5 decision. B.C. Hydro submits that a similar approach
6 is even more warranted in this case.

7 I want to turn now to the issue of
8 declining the exercise of jurisdiction, and in
9 particular if the Commission considers that it does
10 have jurisdiction to interpret the contractual
11 provisions of agreements made under the IDA, then the
12 Commission should decline to exercise that
13 jurisdiction for the following five reasons.

14 First relates to expertise, and Mr. Duke
15 touched upon this. The District of Kitimat's argument
16 relies on an interpretation of the IDA and various
17 agreements between a private company and the province,
18 to which B.C. Hydro is not a party. Statutory and
19 contractual interpretation falls within the
20 specialized expertise of the courts. And with all due
21 respect to this Commission, the considerable expertise
22 of this Commission does not extend to an expertise in
23 general statutory and contractual interpretation,
24 particularly with respect to agreements entered into
25 pursuant to a statute, the *IDA*, which the Commission
26 doesn't deal with on a regular basis, if at all.

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Proceeding Time 3:07 p.m. T23

The second reason why the Commission should decline to exercise jurisdiction in this matter is the risk of conflicting determinations. And again, Mr. Duke touched on this. For the Commission to consider and decide on matters raised by the District of Kitimat, could lead to duplicative and potentially conflicting determinations on this issue. An irreconcilable conflict would arise, for example, if the Commission determined that Alcan lacked the capacity to enter into the amended and restated LTEPA, and subsequently the B.C. Supreme Court concluded the agreement was in fact not illegal. B.C. Hydro submits that such potential for conflicting judgments is undesirable and should be avoided.

The third reason relates to choice of form, and Mr. Wallace and Mr. Duke again addressed this issue. The District of Kitimat chose to initiate proceedings before the B.C. Supreme Court in relation to this matter, and this is confirmed by the District of Kitimat response to BCUC IR 1.1 found in Exhibit C37-4. It is uncontested that the District of Kitimat, along with the mayor of Kitimat, is the petitioner in those proceedings. Having made that choice, this Commission should be loath to allow the District of Kitimat to pursue similar arguments and

1 the same issues before this Commission. It is, in
2 B.C. Hydro's submission, blatant forum shopping.

3 The fourth reason relates to best evidence.
4 As Mr. Duke has outlined, an examination of and a
5 decision with respect to the alleged limitation on
6 Alcan's right to sell power requires detailed
7 consideration of extensive factual record, only a very
8 small portion of which is currently before the
9 Commission. In fact, as Mr. Quail has characterized,
10 the only material before the Commission is essentially
11 the legal material, the *IDA* and several agreements
12 entered into thereunder. And while I don't want to be
13 accused of giving evidence, I think Mr. Duke has
14 stated and I think Mr. Oulton can confirm or concede
15 this point, it is a matter of public record that
16 numerous affidavits and other material were filed in
17 the proceeding before the B.C. Supreme Court, and
18 these have not been filed with the Commission and are
19 therefore not available to the Commission to assist in
20 any consideration of this issue. Consideration of the
21 matter should be left to the decision maker with the
22 best, most complete evidence, and clearly in this case
23 that entity is the B.C. Supreme Court.

24 The fifth and final reason why B.C. Hydro
25 submits the Commission should decline to exercise
26 jurisdiction was again touched on by Mr. Duke and it

1 relates to preexisting circumstances. B.C. Hydro and
2 Alcan are parties to an existing agreement which is
3 still in effect. And if I could ask the Commission to
4 turn to the term sheet, Appendix N to Exhibit B-1E,
5 and in particular page 2, and I'm interested in bullet
6 2, and there, that confirms that the Kemano generating
7 facility electricity has been and is currently sold to
8 Alcan -- sorry, sold by Alcan to B.C. Hydro, under the
9 existing LTEPA dated 17 February 1990. The existing
10 LTEPA provides for long-term sale approximately 20
11 years. And as stated by Mr. Duke, and I can give you
12 a reference for what he said, currently Alcan is
13 delivering 140 average megawatts, or 1,226 gigawatt
14 hours per year, and those numbers are found in the
15 response to BCOAPO IR 3.12.2 found at Exhibit B-17-2.

16 **Proceeding Time 3:12 p.m. T24**

17 The punch line on this? The arguments now
18 raised by the District of Kitimat in respect of the
19 amended and restated LTEPA do not arise as a result of
20 any new legal developments, but are based on the IDA
21 and the 1950 or the 1997 agreements referenced by the
22 District.

23 I want to now turn to some specific
24 comments on yesterday's District of Kitimat
25 submission. And the Commission might find it helpful
26 to have Exhibit C37-6 in front of it as I move through

1 that submission.

2 At paragraph 5 of that submission, the
3 District of Kitimat asserts that the legality of the
4 amended and restated LTEPA is "material" to both the
5 LTAP and Section 71 filing. And I want to take each
6 of those processes in turn. With respect to the
7 Section 71 filing, on 1 November 2006 B.C. Hydro did
8 request that the amended and restated LTEPA be
9 accepted by the Commission for filing as an energy
10 supply contract pursuant to Section 71 of the
11 *Utilities Commission Act*. This, Mr. Chairman, as you
12 well know, is not the same as seeking an approval as
13 asserted by the District of Kitimat at paragraph 11 of
14 yesterday's submission.

15 If the Commission accepts the amended and
16 restated LTEPA for filing under Section 71, and if the
17 District of Kitimat's court challenge to the amended
18 and restated LTEPA is ultimately successful, then the
19 LTEPA will simply be amended and re-filed, or will
20 simply be rendered null and void. No further
21 determination would be required from the Commission as
22 a result, unless that agreement was amended and re-
23 filed, in which case it can be revisited. B.C. Hydro
24 does not see how the District of Kitimat, or indeed
25 anyone else, could be prejudiced by the Commission's
26 acceptance of the amended and restated LTEPA as filed

1 and awaiting the outcome of the court challenge, and
2 the exhaustion of any appeals taken.

3 Secondly, I want to turn to the District of
4 Kitimat's assertion with respect to the LTAP. And as
5 you are aware, B.C. Hydro has proposed to add the
6 amended and restated LTEPA to its available resources
7 to meet the forecasted load resource gap. Now, should
8 the amended and restated LTEPA be subsequently
9 determined by the courts to be beyond the capacity of
10 Alcan, it would clearly no longer be available to B.C.
11 Hydro as a potential resource. However, in B.C.
12 Hydro's submission, this simply constitutes a form of
13 attrition, not dissimilar to the permitting, financing
14 and other risks faced by successful IPP bidders in the
15 F2006 call. And I note that this Commission accepted
16 those EPAs even though those risks did exist, and
17 continue to exist.

18 The fact is, every resource option has
19 risks. And this is precisely why the LTAP provides
20 for a staged and flexible approach. It's because it
21 cannot be anticipated that every resource is going to
22 show up on time or at all. B.C. Hydro submits that
23 such risks can be tested by examining the LTAP, and in
24 particular the contingencies, as opposed to ruling on
25 the legality of the amended and restated LTEPA at this
26 time, or in the course of the proceedings.

1 I want to now turn to paragraph 6, and
2 there the District of Kitimat asserts that the
3 legality of the amended and restated LTEPA is "clearly
4 material" to the Commission's determinations regarding
5 the upcoming 2007 and 2009 calls. Frankly, in my
6 submission, the District of Kitimat's argument is
7 disconnected. B.C. Hydro's requests for Commission
8 determinations under Section 45(6)(ii)(b) of the
9 *Utilities Commission Act* with respect to the '07 and
10 '09 calls are related to the definition phase
11 expenditures. And certainly, with respect to the 2009
12 call, and arguably in respect of the 2007 call, the
13 request for expenditures is relatively independent of
14 the amount of energy that would ultimately be
15 acquired.

16 The District of Kitimat argument also
17 ignores B.C. Hydro's response to DOKIR 3.1.7, and
18 that's found at Exhibit B-17-8, and I'd ask the
19 Commission Panel to turn to that now.

20 **Proceeding Time 3:17 p.m. T25**

21 In the second paragraph, that IR response
22 confirms that in the short term the only realistic
23 alternative to the amended and restated LTEPA is the
24 spot market, not the 2007 call, not the 2009 call. In
25 fact, one of the benefits of the Alcan product
26 identified in the response to BCUC IR 4.445.2 found at

1 Exhibit B-17-3, is precisely this. It's a bridging
2 product. There is no litigation risk analysis to be
3 done with respect to the amended and restated LTEPA
4 for the period spanning from the present to fiscal
5 2013, precisely because B.C. Hydro has no other choice
6 except the spot market, and this is a choice it would
7 have faced in any event.

8 So the period of time, I think what the
9 District of Kitimat is really talking about is the
10 earliest the energy can be expected from the '07 call,
11 and that's fiscal 2013 and beyond.

12 Now, I don't want to confuse things with
13 too many numbers, but I think I do need to take you
14 through a few to make my point. In fiscal 2013, the
15 firm energy from the amended and restated LTEPA will
16 have declined to 700 gigawatt hours, and that's
17 approximately one percent of B.C. Hydro's energy
18 requirements. The numbers for that are found in the
19 response to BCUC IR 4.442.2 found at Exhibit B-17-3.
20 Now, given the planned size of the 2007 call, which is
21 5,000 gigawatt hours, neither the design nor the
22 schedule nor the definition phase costs would be
23 materially impacted by whether or not 700 gigawatt
24 hours are there.

25 I'll undertake a similar exercise with the
26 2009 call. The earliest that energy is expected is in

1 fiscal 2015. By that time, the firm energy from the
2 amended and restated LTEPA will have declined to 482
3 gigawatt hours. Frankly, B.C. Hydro is not proposing
4 in any way in this LTEPA hearing to fix the size of
5 the 2009 call at this time. And in fact, as set out
6 in Table 8-1 of the amended LTAP found at Exhibit B-
7 13, it has presented a range for the 2009 call, and
8 that range is 2500 to 5,000. And the 482 gigawatt
9 hours we're talking about falls well within the band
10 of uncertainty, which band B.C. Hydro will defend in
11 the LTAP hearing that it's well prepared to manage.

12 And with that, Mr. Chairman, and Panel
13 members, if there are no questions, those conclude my
14 submissions.

15 THE CHAIRPERSON: I do have one question. The direct
16 testimony of Mr. Simpson was provided to us during the
17 break as well, and it may be a good source for the
18 response to the question.

19 My question is this: Are you proposing
20 that the Section 71 review of the Alcan agreements be
21 part of the IEP proceeding?

22 MR. GODSOE: That is precisely the issue I'm going to
23 address as agenda item number 5, Mr. Chairman, and
24 that's why I distributed the direct testimony of Mr.
25 Simpson, to make sure you had it when I refer to it
26 when we turn to agenda item number 5.

1 THE CHAIRPERSON: Okay. Correctly so. That's great,
2 thank you.

3 MR. GODSOE: Thank you.

4 THE CHAIRPERSON: Mr. Oulton.

5 **Proceeding Time 3:22 p.m. T26**

6 MR. OULTON: Thank you, Mr. Chairman, Panel members.

7 With the exception of my friend Mr. Godsoe,
8 I didn't hear anyone directly challenging the
9 relevance of the District's assertion that the LTEPA
10 Plus may be illegal to the broader proceeding at issue
11 here. And I'll deal with my friend Mr. Godsoe's
12 positions later. But what was common among all the
13 submissions in opposition to the District's
14 participation was an assertion that this question is
15 presently before the Court. And I think I should
16 elaborate a bit on what precisely was before the
17 Court, and it is true we have not filed a copy of the
18 petition at this time. We would be more than happy to
19 do so, but we weren't aware until this issue was
20 raised that it would be in any way material to the
21 hearing.

22 But what was and remains before the Court
23 is a judicial review application of two specific
24 Orders of the government. A 1997 Order-in-Council and
25 a 2002 Ministerial Order. The 1997 Order-in-Council
26 was the Order approving the 1997 settlement agreement

1 that, as you heard earlier, resolved the litigation
2 that Alcan commenced following the cancellation of
3 KCP. The 2002 Order is a broad exemption Order
4 granted by the Minister exempting parties selling
5 power to either B.C. Hydro or Powerex from regulation.

6 And they were not challenged at large.
7 They were challenged to the specific extent that they
8 authorized power sales, which the District said were
9 precluded by the *Industrial Development Act* and the
10 legal regime under there. The amended and restated
11 LTEPA was not before the Court, and it is not before
12 the Court. There is no challenge to that presently
13 pending before the Court. There may well be. Until
14 today, we weren't aware that we were going to get to
15 see a copy of LTEPA Plus, and we would have to review
16 that document in order to assess the District's
17 position on whether or not there is, in fact, an
18 issue.

19 One of the difficulties in the District's
20 participation in this process is, when LTEPA Plus was
21 announced, the District became aware of this
22 proceeding at large, and knew that LTEPA Plus would
23 ultimately become a part of it. But its participation
24 has been governed, as matters have been disclosed. A
25 term sheet which on its face was non-binding was the
26 first piece of information the District had regarding

1 what LTEPA Plus would look like. We're now told that
2 the final agreement looks the same, but unless it's
3 ten pages long and with signatures at the bottom and
4 looks exactly the same, we need to review the terms,
5 because there are things in the term sheet -- for
6 example, an assertion that power will be used on a
7 smelter-first basis, which is of key interest to the
8 District of Kitimat and the surrounding area; what is
9 the mechanism whereby that is achieved? We need to
10 see the agreement to do that, I now understand that we
11 will. But that particular agreement was not before
12 the Court, it doesn't remain before the Court. And
13 that being said, it is very true that, in the petition
14 ancillary declaratory relief has been sought and may
15 well be granted or may not, depending on His
16 Lordship's decision. But that declaratory relief may
17 have an impact on the question of whether or not LTEPA
18 Plus, the amended and restated LTEPA, is legal.

19 It's the District's position that this
20 Commission does have the jurisdiction to determine the
21 legality of LTEPA Plus, but we're not proposing to re-
22 argue at this stage the -- which is the fear I heard
23 from many of the people opposed, that we would spend
24 five days before the Commission repeating the
25 arguments that were advanced before the Court. That
26 is not what the District is seeking to do here. What

1 the District says is that this Commission, both in the
2 context of the Section 45 hearing, which deals with
3 the LTAP and the IEP, and the Section 71 submission of
4 LTEPA Plus, the Commission has duties and obligations
5 to consider under Section 45 what is in the interests
6 of persons receiving service from B.C. Hydro, and more
7 broadly under Section 71 whether or not the energy
8 supply contract, in this case the LTEPA Plus, is in
9 the public interest.

10 And I didn't hear anyone say that whether
11 or not a contract is -- that the approval of an
12 illegal contract would be in the public interest. I
13 say this, having not yet heard my friend on what the
14 proposal is for how to deal with LTEPA Plus. I
15 recognize that under -- or the District recognizes
16 that under Section 71, a hearing is not mandated. On
17 the contrary, the Commission has issued Rules which
18 state that, typically, when an energy supply contract,
19 as you well know, is submitted, the Commission tries
20 to approve it expeditiously, usually without a
21 hearing.

22 **Proceeding Time 3:27 p.m. T27**

23 There are some significant exceptions to
24 that, which are identified expressly in the rules, one
25 of which is where there's a third party complaint.
26 The District, in essence, by taking the position that

1 it has in the IEP and the LTAP proceeding, which until
2 November 1st there was no Section 71 review or
3 potential review, we had to wait to see what happened
4 there, is lodging its complaint that LTEPA Plus may
5 not be in the public interest. And that submission,
6 if there is going to be a public hearing, will not be
7 restricted to simply a question of the legality.
8 There are other considerations, as you well know,
9 under Section 71, and the District has positions on
10 some of those. But the legality of LTEPA Plus clearly
11 falls within the scope of Section 71, in my
12 submission, which provides that the Commission has to
13 consider any other factor it considers relevant to the
14 public interest. And that's Section 71(2)(e) of the
15 Act.

16 It's the District's position, and you have
17 our written submissions on this and I don't want to
18 reformulate this, that the question of the legal of
19 LTEPA is clearly a matter that's relevant and material
20 to not only the LTAP proceeding but also Section 71.
21 I've said that we're not seeking to reargue the
22 submissions we made before the court, but it's the
23 District's submission that this process and any
24 Section 71 review that may happen, has to account for
25 the ongoing litigation and the potential ramifications
26 thereof. I understand my friend has made some points,

1 and I'll have some specific responses in a moment, but
2 it must be remembered that LTEPA Plus is but one small
3 part of LTAP, and I understand that may be the source
4 of many people's concern that we spend five days or
5 four days or three days talking about it in the
6 broader course of this proceeding. But it's one small
7 issue. There is no reason, in my submission, that the
8 LTAP and the IEP hearing could progress as scheduled,
9 with that one issue being held in abeyance pending the
10 court ruling. To use my friend's language, there's no
11 prejudice to B.C. Hydro that would come from that, nor
12 to Alcan. In their submission, they have an existing
13 LTEPA, which contemplates power sales ongoing right
14 now. All that would be held in abeyance is the LTEPA
15 Plus. And that parties then could be given an
16 opportunity to make submissions on the effect of the
17 court's ruling at that time, once it was known. Those
18 submissions would clearly be material and relevant to
19 a determination of whether or not LTEPA Plus was in
20 the public interest.

21 It's my submission --

22 THE CHAIRPERSON: Just before you proceed, Mr. Oulton,
23 this might be a good time for me to gain a better
24 understanding of the distinction you're drawing
25 between what's before the courts and what you see
26 before -- that should be part of the Section 71

1 filing. And I'm struggling with the consequences.
2 Are you suggesting that if the courts accept your
3 submissions, that that's not necessarily going to lead
4 to conclusions with respect to the legality of the
5 LTEPA?

6 **Proceeding Time 3:32 p.m. T28**

7 MR. OULTON: That would depend on what the LTEPA actually
8 says, and until we see that I can't state definitively
9 one way or the other. And it depends on what
10 declaratory relief the court ultimately grants. If
11 the court grants the relief in the precise terms that
12 the District has sought, it may well impact on the
13 legality of LTEPA Plus. But until I've had an
14 opportunity and the District has had an opportunity to
15 review what LTEPA Plus actually says, what the
16 mechanisms in the agreement that are set up to give
17 force and structure to what was in the term sheet,
18 what those things actually say and what ramification
19 that has, I can't comment on whether or not it would
20 be determinative.

21 THE CHAIRPERSON: Do your comments with respect to a
22 distinction between what's before the courts and what
23 you would like to bring to this Panel suggest that if
24 in fact the matters that are before the courts are the
25 same as what's before this Panel, it's better left to
26 the courts?

1 MR. OULTON: The District's position is, as my friend
2 points out, multiplicity of proceedings is to be
3 avoided. But that should not bar the District from
4 preserving its rights to make its arguments here.
5 What the District would suggest is that that issue
6 wait for a determination of the court, and then
7 proceed, such that the declaratory relief that is
8 sought -- because no relief has been sought with
9 respect to LTEPA Plus because it didn't exist when the
10 court hearing happened. It was signed a week after
11 the court hearing concluded.

12 What in my submission ought to occur is the
13 question of LTEPA Plus and its validity ought to wait
14 for the court's determination on the matters that are
15 presently before the court, and at that time the
16 effect of the court's decision on LTEPA Plus can
17 properly be considered by this Commission.

18 THE CHAIRPERSON: So your suggestion is that we delay the
19 Section 71 review until we've heard from the courts.

20 MR. OULTON: That's one -- that in my submission is one
21 way of addressing this concern. Absent that, what my
22 friend from B.C. Hydro's position, the result of it
23 would be, is that the District of Kitimat, who is here
24 representing part of the public, part of the
25 ratepayers of this province, an interested party and
26 an intervenor, they would be precluded from making the

1 submissions which they say ought to be properly
2 considered by this Commission. It is true that they
3 have made submissions on a related matter before the
4 court, but it is not the same matter because LTEPA
5 Plus did not exist at the time. And that being said,
6 once the District has an opportunity to review it, if
7 LTEPA Plus does everything that the District hopes it
8 does, which, to be blunt, I don't think it will, but
9 if it does, then the District may remove its
10 objection. But until we've seen it, that's pure
11 speculation.

12 One of the difficulties is, in the material
13 that both the press releases and the term sheet, what
14 appears to flow from that is a change in what
15 originally was occurring with LTEPA, which is the
16 agreement from 1990 that my friends have referred to.
17 As Mr. Duke quite rightly pointed out, LTEPA arose out
18 of considerations surrounding KCP. It was intended,
19 and this was one of the submissions made to the court.
20 And my friend Mr. Duke can stand up and correct me if
21 I'm wrong, but I don't think great issue was taken
22 with this evidence, that the 1990 LTEPA was an
23 economic motivator for Alcan to engage in KCP, because
24 it gave them a market for the power that they would
25 have that was excess to their needs for smelting,
26 until such time as they completed the new smelter that

1 was also contemplated once KCP was expanded. There
2 was a link between the power sales and industrial
3 development, to use the language of the *IDA*. There
4 was a fundamental link there. The power sales were to
5 further more industrial development.

6 What LTEPA Plus seeks to do is sever that
7 link. Now it's power sales for the sake of power
8 sales.

9 THE CHAIRPERSON: If a judicial review decision is -- and
10 my question may be so vague that it may be difficult
11 for you to answer, but if a judicial review decision
12 is contrary to your position, is that because there's
13 a distinction between what is before the courts and
14 what you propose to bring to us, does that -- do the
15 matters that you propose to bring to us still reside
16 with the courts in view or are they still questions
17 that can be brought within the courts or -- if your
18 only remedy at that stage before us?

19 **Proceeding Time 3:37 p.m. T29**

20 MR. OULTON: Are you asking if we would have further
21 remedy before the Court?

22 THE CHAIRPERSON: Could you -- yes, are there more --
23 could you then pursue the matter in the courts instead
24 of bringing it to us? Those matters that may arise
25 from -- what I'm trying to draw here is, it would seem
26 that Mr. Godsoe says that the matters that are before

1 the courts should stay there. And I think you're
2 drawing a distinction, or endeavouring to draw a
3 distinction, between the matters that are before the
4 Courts and the matters that are going to be -- that
5 you propose to bring to this panel. And my question
6 is, are the matters that you propose to bring to this
7 panel matters that you could also bring to the courts?
8 MR. OULTON: I don't believe as a result of -- and I'm
9 saying this without prejudice; but I don't believe,
10 based on the earlier standing decision in the first
11 petition that my friend Mr. Duke referred to, that was
12 brought against Alcan itself, I would have to analyze
13 this more fully, but that decision may have
14 ramifications for the District's ability to seek
15 relief in respect of LTEPA Plus absent some Order or
16 decision by the government. I say that purely without
17 prejudice, because I haven't thought about that, but
18 if you're asking if the decision of the Court is
19 adverse to the District, whether there are further
20 opportunities, that would depend entirely on what the
21 Court's decision ultimately is. There were competing
22 submissions made on which order the Court should
23 address the questions that were put to it. Alcan took
24 one view, and I believe the province took a similar
25 view. The District took a different one. If the
26 District's position comes through, there is -- or

1 prevails, there is a -- the Court could rule against
2 the District on the validity of the two Orders that
3 are challenged, but still issue the declaratory relief
4 that it sought. That declaratory relief would be
5 relevant to a consideration of LTEPA Plus, which the
6 District wishes to raise before this Commission,
7 either under Section 45 or Section 71 or both.

8 THE CHAIRPERSON: Does it follow from that that the
9 matters that you wish to bring to this panel are
10 matters that you could also bring to the courts?

11 MR. OULTON: I don't believe it does. The question that
12 would be brought before the panel on the Section 71
13 review is whether LTEPA Plus is in the public
14 interest. One component of that, and one only, is the
15 legality of the agreement. And that, in my
16 submission, falls under the -- for lack of a better
17 way, the catch-all that's in 72(1)(ii)(e). There are
18 the other criteria set out in 72(2)(a) through (d) as
19 well as any other factor that could fall within sub
20 (e). The Section 71 hearing, and the consideration of
21 LTEPA Plus, in my submission, is much broader than the
22 specific issue that's been brought before the Court.

23 THE CHAIRPERSON: Is the principal import of your Section
24 -- Exhibit C37-3 the legality of the agreements with
25 Alcan? You say that they're issues with respect to
26 the legality of the agreements, and then there are

1 other issues.

2 MR. OULTON: Yes. It's my submission that those other
3 issues are relevant to Section 71. I believe the
4 exhibit that you're referring to is our exhibit in the
5 Section 45, the LTAP proceeding.

6 **Proceeding Time 3:42 p.m. T30**

7 THE CHAIRPERSON: Right.

8 MR. OULTON: And it's my submission that this
9 Commission's jurisdiction under Section 71, the
10 factors that must be considered with respect to LTEPA
11 Plus, are broader than the specific issues that are
12 being raised with respect to LTEPA Plus in this
13 Section 45 hearing. Section 45 hearing, I
14 acknowledge, is a broad -- there are a multitude of
15 issues as evidenced by the number of parties here.

16 THE CHAIRPERSON: It is your intention, though, to pursue
17 the issues with respect to the legality of LTEPA in
18 the Section 45 proceeding.

19 MR. OULTON: When our evidence was put together and our
20 submissions were drafted, and even today, we don't
21 know what form, if any, the Section 71 review is. And
22 so, yes, at this stage it is the District's intention
23 to advance its arguments at the LTAP hearing and
24 limited to the discrete question of LTEPA Plus and how
25 it fits within the LTAP. That being said, I have not
26 yet heard from my friend, Mr. Godsoe, on what B.C.

1 Hydro is proposing take place with respect to the
2 Section 71 review. It's my submission that there
3 ought to be a hearing under Section 71 on whether or
4 not the LTEPA Plus is in the public interest, and the
5 structure of that hearing, I would like to hear from
6 my friend before I comment on that.

7 THE CHAIRPERSON: Is it possible that the Section 71
8 hearing could provide you with an adequate forum to
9 pursue the issues that you currently plan to pursue in
10 the Section 45 proceeding?

11 MR. OULTON: If there is a Section 71 public hearing, I
12 would expect -- and I don't want to commit the
13 District at this stage until we find out that hearing,
14 and what the scope of it is; but my expectation would
15 be that any issue that we would propose to bring in
16 the Section 45 hearing would be subsumed in the
17 Section 71 hearing. In other words, we'd be arguing
18 regarding the legality of LTEPA, that's one of the
19 points we would wish to make on the Section 71
20 hearing. If the Commission decided in accordance with
21 the District's submission that LTEPA Plus wasn't in
22 the public interest, that eliminates the need for
23 consideration in the LTAP because it has now been
24 dealt with under Section 71.

25 THE CHAIRPERSON: Thank you.

26 MR. OULTON: I just wish to raise a couple of specific

1 responses to my friend, Mr. Godsoe. And actually,
2 before I do that, I have two points with respect to
3 Mr. Duke's submissions. The first being, he spoke
4 about how the Commission should consider the fact that
5 the arguments that the District was raising occur
6 under different legislation. There is an interplay
7 between the *Industrial Development Act* and the
8 *Utilities Commission Act*. In a decision relating to
9 KCP, and I can provide the decision to the Commission
10 when I get back to my office this afternoon, if it
11 would be of assistance, but it dealt with a specific
12 question of whether or not the *Utilities Commission*
13 *Act* applied to the permit requirements under -- or the
14 permits that were being sought for KCP and the Court
15 held that the *IDA* and its regime over-rode the
16 *Utilities Commission Act*. It's one of the decisions
17 that was relied on in the Court hearing.

18 THE CHAIRPERSON: Yes. Please make that available
19 through Commission counsel. You can make that
20 available through Commission counsel?

21 MR. OULTON: Yes, I can. I would have brought it today,
22 but I wasn't entirely sure of the position that my
23 friend would be taking.

24 And on a similar point, he points to the
25 *ATCO* decision and talks about how you must assess it
26 within the context of the statute in which it arises.

1 submission that the District has produced the material
2 elements of its evidence that was put before the
3 court. The parts that it has left out are the parts
4 that specifically relate to the orders that were
5 challenged and the arguments that were made. The bulk
6 of the evidence that was before the court was filed by
7 Alcan. They are a participant in this proceeding and
8 I would expect to be given every opportunity to put
9 that record before the Commission if they thought it
10 was relevant to the issues that the District was
11 raising.

12 The last point has to do with the existing
13 LTEPA. I've already addressed that. My friend also
14 noted that he could not see how the District would be
15 prejudiced by accepting the LTEPA as filed and then
16 dealing with it after all appeals had been exhausted,
17 if any, from the court decision. With respect, that's
18 not the test that this Commission is asked to provide.
19 It's whether or not that contract is in the public
20 interest.

21 Lastly, my friend says that the amount of
22 power available under LTEPA Plus would not have a
23 material impact on the 2007 call or the 2009 call, and
24 he points to the fact that the 2007 call is for 5,000
25 gigawatt hours per year. Using the numbers that LTEPA
26 will produce in 2013, there's 700 gigawatt hours per

1 year of firm power, plus another 500 of non-firm but
2 expected power. So we're talking 1200 gigawatt hours,
3 which by my math and it may be incorrect, is 24
4 percent of -- an additional 24 percent of the
5 magnitude of the call. To say that that wouldn't have
6 a material impact on the needs of Hydro and the size
7 of the call, I'm not sure I understand my friend's
8 submission.

9 And subject to any further questions from
10 the Panel, those are my submissions.

11 THE CHAIRPERSON: Thank you, Mr. Oulton.

12 I think that concludes this matter of the
13 agenda and brings us to agenda item number 5, which is
14 the review process for the agreements with Alcan. And
15 I'd ask, I think, Mr. Godsoe, for you to speak to this
16 issue first, and then ask for comments from other
17 participants.

18 MR. GODSOE: Thank you, Mr. Chairman. Again, just a list
19 of exhibits I'm going to be asking the Commission
20 Panel to turn to. The first is the direct testimony
21 of Graham Simpson, Exhibit B-25, and I believe you
22 have that. I'm just going to ask Ms. Hughes to
23 distribute that to the rest of the room.

24 And the second I believe you already have
25 in front of you as well, which is the redacted version
26 of the Alcan term sheet found at Appendix N, Exhibit

1 B-1-E. I'm also going to be distributing a list of
2 Alcan-related exhibits filed in the 2006 IEP LTAP
3 proceeding to date, and I'll distribute that in a
4 moment, in the midst of my submissions.

5 **Proceeding Time 3:52 p.m. T32**

6 So, by way of background, on November -- on
7 1 November 2006, B.C. Hydro filed with the Commission
8 the amended and restated LTEPA. And on 6 November
9 2006, B.C. Hydro filed its direct testimony, including
10 the direct testimony of Graham Simpson, and I would
11 ask the Commission Panel to turn to that direct
12 testimony now. In particular, I want to draw the
13 Commission Panel's attention to page three, first
14 lines 22 to 23. And there, Mr. Simpson's evidence is
15 that the amended and restated LTEPA conforms in all
16 material respects to the term sheet, with one
17 exception, and that exception is outlined at lines 26
18 to 31. And as you can see, the amended and restated
19 LTEPA provides that the time for regulatory approval
20 is 31 December 2006, approximately 60 days after
21 filing, rather than the 90-day time fuse after signing
22 that was set out in the term sheet. And this is
23 getting to the prejudice issue, Mr. Chairman.

24 It's noteworthy that the amended and
25 restated LTEPA terminates automatically with a 60-day
26 cooling-off period if the 31 December 2000 [sic] date

1 is not met. In other words, termination does not
2 require the act of one party or the other, and the
3 only way to avert termination and the loss of the
4 benefit of the agreement to B.C. Hydro would be for
5 Alcan and B.C. Hydro to agree otherwise and extend
6 that deadline.

7 THE CHAIRPERSON: Is it your submission that that's in
8 doubt?

9 MR. GODSOE: Well, let me just come to that, Mr.
10 Chairman. I think without casting aspersions on
11 Alcan's good faith or commitment to the agreement,
12 failure to meet the 31 December 2000 [sic] date does
13 expose B.C. Hydro to the risk of further demands from
14 Alcan which, if met, could erode some of the value of
15 the agreement we have now, and if not met, could
16 result in the complete loss of the agreement. So I
17 think that does meet Mr. Oulton's assertion that there
18 is no prejudice to either B.C. Hydro or its ratepayers
19 if the Commission were to entertain Mr. Oulton's
20 submission that we await the B.C. Supreme Court
21 decision and in fact exhaustion of appeals which,
22 frankly, could be years.

23 I think the other side of the issue is to
24 ask this question. What is gained by not proceeding
25 to process a Section 71 application by the 31 December
26 2006 date? And on that point, I think it's relevant

1 that first, the term sheet was filed some time ago.
2 In fact, on 31 August 2006, and available to the
3 Commission and the intervenors. And second, as set
4 out in the direct testimony of Graham Simpson, the
5 term sheet contains the essential terms, and the
6 amended and restated LTEPA is consistent with the term
7 sheet in all material respects. And indeed, as stated
8 by Mr. Duke, and it's clear from a reading of the term
9 sheet that this is the case, the final form of
10 agreement which we're going to be filing is -- or,
11 sorry, circulating to intervenors is comparable in all
12 material terms and conditions to the F2006 call,
13 electricity purchase agreements for large projects,
14 except for some variations required to accommodate the
15 unique aspects of the Alcan transaction. And again,
16 those variations are disclosed in the term sheet.

17 Number four, the Commission has endorsed
18 the fiscal 2006 call EPA terms and conditions, first
19 by way of the 2005 REAP NSP and second, through its
20 acceptance of the Section 71 filing. Finally, as set
21 out in the response to BCUC IR 4.444.1, found at
22 Exhibit B-17-3, the Alcan pricing is in the mid-range,
23 or perhaps a bit lower, of the fiscal 2006 call
24 prices. And the product offers compares favourably
25 with that offered by the successful fiscal 2006 call
26 EPAs, which again have been accepted by the

1 Commission.

2 Finally, before I get to the actual
3 proposal for regulatory review process, I'd ask the
4 Commission to turn to the term sheet, and in
5 particular page 2.

6 **Proceeding Time 3:57 p.m. T33**

7 On that page in the last bullet, as you can
8 see, the amended and restated LTEPA is tied to the
9 smelter modernization project. Now, I will leave it
10 to counsel for Alcan to speak to how lead times for
11 permitting and equipment and construction price
12 escalation risks and the like, support the sense of
13 urgency in securing a Commission decision by 31
14 December 2006.

15 So now that I've landed that problem on
16 your lap, here are my proposals for how to address it.
17 B.C. Hydro has two proposals for regulatory review
18 aimed at meeting this 31 December 2006 date. Both of
19 them start with a B.C. Hydro request that the
20 Commission direct that the Section 71 record include
21 the evidence filed to date in the 2006 IEP/LTAP
22 proceeding with respect to the Alcan-related
23 materials. And I'm going to just distribute a list of
24 where those materials are found. And I think it would
25 actually be of assistance to mark that as an exhibit,
26 and I think that would be Exhibit B-28.

1 THE CHAIRPERSON: Thank you, Mr. Godsoe.
2 (B.C. HYDRO "2006 IEP/LTAP ALCAN - RELATED MATERIALS,
3 MARKED AS EXHIBIT B-28)

4 MR. GODSOE: That does contain a list of all the Alcan-
5 related materials, with the exception of the District
6 of Kitimat evidence and responses to IRs, and those
7 are found in Exhibits C37-3 and C37-4.

8 Panel, the first option was an option that
9 was discussed with intervenors between 25 and 26
10 October 2006, and that option entails affording
11 intervenors, Commission Counsel and the Commission
12 itself the opportunity to test the Alcan-related
13 materials filed in the 2005 IEP and LTAP proceeding
14 through cross-examination of B.C. Hydro witnesses in
15 that hearing, and having that cross-examination then
16 form part of the record for both the IEP/LTAP and the
17 Section 71 filing.

18 At the close of the evidentiary portion of
19 the IEP/LTAP hearing, if necessary a half day or so of
20 oral argument could then be set aside to deal with all
21 of the Alcan issues. The Commission would then issue
22 its order with respect to the amended restated LTEPA
23 by 31 December 2006, and on that point, should it
24 prove necessary, we could in fact shift our panels
25 around to ensure that Alcan is dealt with at the
26 beginning of the hearing rather than at the end.

1 Option 2 is something we haven't discussed
2 with intervenors, but as I'm going to -- I will say
3 that we have no preference as far as which process
4 gets utilized, as long as the 31 December 2000 [sic]
5 date is met. And that option entails proceeding to
6 written argument -- on the written argument process
7 without further testing of the Alcan-related materials
8 filed in either the IEP/LTAP or the Section 71 filing.
9 And for that process, B.C. Hydro would submit its
10 argument on 22 November 2006, intervenors would submit
11 their arguments on 8 December 2006, and B.C. Hydro
12 would file its reply on 15 December 2006, and then the
13 Commission could then issue its order with respect to
14 the amended and restated LTEPA by 31 December 2006.

15 COMMISSIONER PULLMAN: You're not planning on going to
16 Maui over Christmas, Mr. Godsoe.

17 MR. GODSOE: I don't think B.C. Hydro is ever going to
18 let me take a holiday.

19 As I stated, B.C. Hydro has no preference
20 as far as process goes and is interested in intervenor
21 input on this issue, but I must stress that we do
22 think that it's very important the Commission make a
23 decision by 31 December 2006 for the reasons I've
24 outlined.

25 And if there are no questions, those
26 complete my submissions on item 5.

1 deliverability of the Kemano generation facility. So
2 I'm struggling, I think, with the relevance of the IR
3 2 series.

4 I think B.C. Hydro also has concerns with
5 respect to IR 3.1 and 3.2, because my initial view is
6 it's getting at how you negotiated to a price. It's
7 getting at negotiation strategy, the "how," and I
8 think in B.C. Hydro's submission, that frankly isn't
9 relevant.

10 And lastly, I think IR 9.1 raises the same
11 issue about negotiation strategy, that B.C. Hydro
12 would have concerns about.

13 With respect to the rest, Mr. Chairman, I
14 think we would be in a position to be able to file
15 responses by 22 November 2006. And perhaps earlier,
16 but I don't want to commit to that at this point in
17 time. I think I need instructions on that. And as I
18 say, I think what we'll do is file more fulsome
19 written response to this by the end of the week.

20 THE CHAIRPERSON: In that response, particularly with
21 respect to 3.1 and 3.2, you need to give some thought
22 to the fact that the intention of the question may be
23 beyond what your comments just now suggested. And it
24 may go to the issue of pricing, and whether or not the
25 F2006 reference price is the appropriate price for you
26 to have priced the Alcan agreement at.

1 There are some distinctions between the F06
2 awards and the Alcan facility that are identified in
3 3.1 that may be relevant to whether or not the F06
4 reference price is the appropriate price for you to
5 have used for pricing Alcan. And I'd encourage you,
6 if you're going to suggest in your letter that that's
7 not relevant, to explain to us why that's not
8 relevant.

9 And I do note as well, Mr. Godsoe, that you
10 did just receive this this morning at 11 and you've
11 made some high-level comments, and when you have time
12 to further consider this with B.C. Hydro, you may in
13 fact accept that question.

14 MR. GODSOE: Quite, Mr. Chairman.

15 THE CHAIRPERSON: But my comments may be helpful to you
16 in that regard.

17 With respect to 2, again you raise the
18 issue of relevance. And you say that it was a
19 commercial transaction. If we were to conclude that
20 the nature of that -- that the commercial context for
21 that was such that these items ought to have been
22 relevant to you as a negotiator at the table, then
23 they again might be relevant to pricing, and so in
24 your letter you may give some thought to that
25 relevance, to those questions. Do they in fact go to
26 the pricing of Alcan in the commercial context for the

1 negotiations?

2 **Proceeding Time 4:07 p.m. T35**

3 And then on -- and 9 is similar. I don't
4 think I need to say anything further with respect to
5 9.

6 So I do think, you know, given that you've
7 just seen this, that you're going to need time, and
8 that's fair. You should be given that time. I wanted
9 to make this available to you as soon as possible,
10 given, if we accept them, the time constraints that we
11 have with respect to doing this. I'm surprised that
12 -- I mean this is late Wednesday, but I'm nevertheless
13 surprised that you can't turn your letter around by
14 the end of the day tomorrow so we can give you
15 direction by the end of the day on Friday with respect
16 to answering these. That may be to your interest with
17 respect to the amount of time that you have to answer
18 these, but I'll -- if it's the end of the day Friday,
19 that may be the best we can do.

20 Thank you with respect to your two options.
21 You do not have a preference with respect to either of
22 them. There's advantages and disadvantages with
23 respect to them, and you've canvassed the intervenors
24 with respect to Option 1. Can you tell me whether or
25 not in your view Option 1 has been receptively
26 received by the intervenors?

1 MR. GODSOE: I think I'd let intervenors speak to that.
2 That's my preference.

3 THE CHAIRPERSON: Okay. Thank you.

4 MR. GODSOE: Thank you.

5 THE CHAIRPERSON: I suppose one last comment I have or
6 one last question I have, Mr. Godsoe. Your
7 submissions with respect to the District of Kitimat's
8 submissions, are they likely to apply equally to
9 Section 71 as they did to Section 45?

10 MR. GODSOE: Yes, in fact I said that expressly in my
11 submissions. They do.

12 THE CHAIRPERSON: Thank you.

13 That then brings us to anyone else who
14 wishes to speak to item number 5 on the agenda. Is
15 there anyone else who wishes to speak to item number 5
16 on the agenda? Mr. Quail seems to have beat you, Mr.
17 Duke, to the --

18 MR. QUAIL: Old decorum.

19 My submission, first of all our view is
20 that the LTEPA is a deeply flawed concept, especially
21 pegging the price to the 2006 call reference price.
22 We're deeply concerned and anxious to probe into the
23 agreement in the Section 71 process. And what we see
24 is B.C. Hydro rates being used as a tax to fund a
25 provincial government project, which is an attempted
26 industrial development. We strongly urge the

1 Commission to disregard the December 31st, 2006
2 supposed deadline which has been concocted by the
3 parties to the agreement, and apparently concocted as
4 almost an afterthought. We're advised and this is
5 confirmed in the filed testimony that has been
6 provided to us, the Appendix N, the term sheet, had a
7 90-day period, three months, and the one final change
8 that was put in to tweak it was to shorten that period
9 by lopping off a month. And I think that the reason
10 for doing that should be fairly transparent, and in my
11 submission it's not a proper motivation, should not be
12 countenanced by the Commission, and the Commission
13 should not encourage proponents to place a shotgun
14 next to its head and all the parties and saying,
15 "You've got to jump because we've agreed that you need
16 to jump by this date," and draw a line in the sand and
17 say, "That's the deadline. Design a process that
18 meets the line in the sand that we have decided to
19 draw.

20 In my submission, the Commission should
21 design a process that takes the time it takes to do it
22 properly. Should move efficiently but move with an
23 adequate process. This is a significant agreement,
24 and there's a great deal of public interest in it, and
25 the public has a right to probe it and to have input
26 into it.

1 **Proceeding Time 4:12 p.m. T36**

2 In my submission, the proper process will
3 involve -- we've already crossed, I believe, the first
4 hump, which is disclosure. There must be an
5 opportunity for parties to direct Information
6 Requests. It's not adequate that we had an
7 opportunity to address Appendix N, which was at that
8 point just a draft term sheet. We had no notion to
9 what extent it would be captured in a final agreement,
10 and it is no answer for B.C. Hydro to say, "Well, you
11 had a chance to go at it," which we did, in the form
12 of Appendix N, but there's specific issues, including
13 the undisclosed to date price, which was obviously
14 central to the question of cost-effectiveness, which
15 is the core issue in Section 71 itself.

16 So we say there has to be an opportunity
17 for intervenors to file Information Requests and that
18 there should be an oral public hearing into this
19 matter.

20 We also say that by designing a proper
21 process there can be a rational marshalling of the
22 issues between the LTAP and the Section 71, which have
23 tended to be conflated, to a large extent, including
24 in much of the discussion this afternoon. Each one of
25 my submissions should have a distinct perspective on
26 the issue. In terms of the LTAP, the question should

1 be what the potential impact is of the arrangement on
2 the stack of supply resources that B.C. Hydro is
3 planning to use to meet its projected demand for
4 power. Under Section 71, there's a very different
5 question, which is an examination of the particular
6 agreement to determine whether it is in the public
7 interest, according to its terms and conditions. Is
8 it prudent? Is it cost-effective? It's a different
9 question.

10 So in my submission, that is the nature of
11 the process that should be developed. Neither of the
12 options that has been presented by B.C. Hydro is
13 anywhere near satisfactory. Both far too truncated to
14 give any proper consideration, and they give no proper
15 opportunity to the public to have input. And in view
16 of everything else that's on the Commission's agenda
17 between now and late December, in my submission, it's
18 simply not realistic, if we're going to have a proper
19 considered examination of this agreement.

20 Those are my submissions.

21 THE CHAIRPERSON: It doesn't --

22 MR. QUAIL: Pardon me, there's one point that I meant to
23 make, which in my submission is an important one.

24 THE CHAIRPERSON: Yes.

25 MR. QUAIL: This is in the context of the December 31st
26 line in the sand. The existing agreement continues

1 for three more years beyond that point. You know,
2 nothing is going to happen -- Alcan is not going to
3 reduce the dam to rubble and sell it as gravel. It
4 will remain there, generating electricity. They'll
5 have electricity surplus to their needs. They have no
6 one else they can sell it to, because of transmission
7 constraints in the province. They can't export it
8 south of the line, of their own volition. But in any
9 event, there's an existing agreement in place that
10 would continue and that will be in effect on January
11 1st.

12 I'd also submit that the question that the
13 Chair addressed to my friend Mr. Godsoe, about the
14 prospect of the deal coming unhinged on January 1st, is
15 a very pertinent one. That is, that the parties have
16 decided to shorten -- to foreshorten the period for
17 regulatory approval. Is there any real expectation
18 their intention is to walk away from this deal after
19 the stroke of midnight on December 31st? And if
20 there's not sufficient good will on the part of the
21 proponents of this agreement to carry forward with it,
22 in good faith, then I submit it is even more deeply
23 flawed than we might have supposed. And further to my
24 submissions on this matter.

25 THE CHAIRPERSON: Mr. Godsoe's response to that, as I
26 understood it, was they may have an agreement but not

1 as on favourable terms as the agreement that they
2 currently have.

3 MR. QUAIL: Well, with respect, we're told now that the
4 agreement looks very much like Appendix N. That one
5 had three months for approval. Apparently they closed
6 in on the deal with a longer envelope for regulatory
7 approval and, as an afterthought, they foreshortened
8 the period, increased the pressure on everyone to jump
9 at their command.

10 THE CHAIRPERSON: Thank you, Mr. Quail. I didn't outline
11 the procedure for this item, in part because I didn't
12 appreciate that it might be as contentious as it is,
13 given Mr. Quail's comments. So let me firmly
14 establish that now.

15 **Proceeding Time 4:17 p.m. T37**

16 What I propose to do is hear from everyone
17 but Mr. Duke, then Mr. Duke, and then Mr. Godsoe in
18 reply. Is there anyone who objects to that approach?
19 Fine.

20 Then is there anyone else other than Mr.
21 Duke and Mr. Godsoe who wishes to speak to this? Mr.
22 Austin.

23 MR. AUSTIN: The IPPBC is concerned about how this Alcan
24 agreement with B.C. Hydro is going to be approved or
25 not approved. It's also concerned about the December
26 31st deadline.

1 First of all, the IPPBC has not seen the
2 agreement. All it's seem is a term sheet. On
3 previous occasions I've stood up here and said a term
4 sheet is precisely that; it's not the final agreement.
5 It's the nuances in the agreement that have to be
6 looked at.

7 The second point I'd like to make is that
8 the F2006 call was a competitive call and it was
9 preceded by an opportunity for anybody who wanted to,
10 to comment upon the agreement that was to be used, and
11 also the criteria for evaluation. And what the IPPBC
12 is now concerned about is B.C. Hydro using the prices
13 or the terms from that call to enter into subsequent
14 agreements with whomever it wishes, and then somehow
15 referencing the prices and/or the terms and
16 conditions, or even evaluation criteria, to something
17 that was not a competitive call. That's the primary
18 concern of the IPPBC in this matter, is it wants to
19 see a fair and level playing field for the purposes of
20 whatever B.C. Hydro does in terms of acquisition, its
21 own resources or demand-side management programs.
22 That's nothing new. I've stood here and said this
23 many times before.

24 If the IPPBC has a reasonable opportunity
25 to look at the agreement, then it might not have any
26 concerns about it. Its concerns may be addressed.

1 And the reason I say that is if you look at the F2006
2 contract, it's got a lot of provisions in there that
3 affect the price. Performance bonds or performance
4 deposits, whatever you want to call them, periods when
5 delivery is not encouraged, and so on and so forth.
6 And those affect the price that IPPs bid. The other
7 thing is that there is a range of prices. And now
8 what may be happening is Alcan may be entering into a
9 totally different type of contract that may not even
10 have one or two key provisions in it that affected the
11 IPPBC price, the price in the 2006 call, but somehow
12 the reference price is being used. So that's the
13 primary concern.

14 The concept of December 31st as a deadline,
15 that's completely artificial. If everyone had been
16 given an opportunity to comment on the terms and
17 conditions of the contract, like there was prior to
18 the F2006 call, and if it was competitive, the IPPBC
19 certainly is in favour of short regulatory deadlines
20 for approval, because in a sense it's what's always
21 been saying, do everything up front. In this
22 particular case, nothing has been done up front, and
23 now all of a sudden there is this compressed time
24 period between now and December 31st.

25 There was a suggestion that perhaps what
26 could happen is we could have some sort of written

1 proceeding between now and December 31st. Well, most
2 of us are going to be involved in the IEP/LTAP
3 process, so it's going to be very difficult if not
4 impossible for us to properly look at the contract.

5 I think what has to happen here is, people
6 should be given an opportunity to look at the
7 contract, which apparently they're going to be given
8 on November the 10th, and then maybe then we can
9 consider what issues have to be dealt with and how
10 they're going to be dealt with. Right now it's
11 totally premature because we don't know what's in the
12 contract.

13 And those are my submissions.

14 MR. WALLACE: Mr. Chairman, Commissioners. The JIESC
15 supported a very -- well, no further process for the
16 call for tenders as appropriate at that time in that
17 context. And as Mr. Austin says, a lot was done in
18 advance.

19 This agreement appears, at least with
20 respect to pricing -- or not the agreement, but at the
21 term sheet, appears consistent with the call for
22 tenders, and accordingly in the submission of the
23 JIESC does not raise the type of concerns that lead to
24 a very major process, and in fact, should lead to a
25 minimal process.

26

Proceeding Time 4:22 p.m. T38

1 We would suggest that it may be that some
2 process is required because it didn't have the
3 complete lead-in that the call for tenders did, but
4 that process should be simple, it should be expedited
5 and it should try and meet the deadline of December
6 30th, if that's possible.

7 Thank you.

8 MR. OULTON: I'll be very brief, Mr. Chairman, and fellow
9 Panel members. I don't think I can put it much more
10 -- with much greater precision that Mr. Quail did and
11 the District adopts his submissions and notes that
12 until we all see the contract, it may be premature to
13 decide on the precise form of the process. But the
14 District reiterates that it feels that a public
15 hearing will be necessary.

16 And the only other comment that I wish to
17 make is with respect to the effect of simply going
18 with regular LTAPA [sic] after December 31, 2006. The
19 distinction between the power deliveries is 30
20 megawatts. It's a relatively modest difference in the
21 immediate period following, and that goes to the
22 prejudice issue.

23 MR. ANDREWS: SCCBC simply want to express a concern
24 about the general undesirability of the Commission's
25 proceedings being artificially constrained in terms of
26 the amount of time available by the applicant itself.

1 And this is a concern that's arisen with a number of
2 other applications as well. I mean, here we have two
3 parties to an agreement agreeing between themselves as
4 to when they want to have the Commission make a
5 decision, knowing that the Commission has to consider
6 the issue.

7 In SCCBC's submission, at the very least
8 there would need to be evidence as to what in
9 particular could cause the Commission to adjust its
10 consideration to the parties conclusion as to a
11 reasonable date by which the Commission should make a
12 decision. In other words, it's one thing for the
13 parties to say that issues such as price were
14 commercial outcomes, but the time by which the
15 Commission should make a decision would not normally
16 -- unless they argue to the contrary, be a commercial
17 term.

18 Those are my submissions.

19 MR. WEAVER: Mr. Chairman, on behalf of the CEC, I rise
20 in support of Mr. Andrews' comments just made. And
21 clearly there's a material dispute between a
22 significant party, the Municipality of Kitimat, and
23 B.C. Hydro. And when I look at the testimony Mr.
24 Simpson filed this morning in dealing with this
25 amendment, and I quote at page 3 at line 24:

26 "In settling the final form of the amended

1 and restated LTPA, certain refinements under
2 modifications were made which are not
3 considered material in the context of the
4 overall transaction."

5 Well, clearly, given the litigation going on between
6 those two parties, it would be reasonable to expect
7 that this was a matter that could come before the
8 Commission as it has today, and there would be a
9 significant question around the appropriate regulatory
10 process.

11 So I think there's a certain level of
12 cynicism that arises with respect to this deadline and
13 absent serious commercial risk being suggested by the
14 parties, the deadline should be ignored.

15 Thank you.

16 THE CHAIRPERSON: I think that brings us to you, Mr.
17 Duke.

18 MR. DUKE: I have to say it's a pleasure to be involved
19 in Commission proceedings again. I've been away for a
20 while, but I just want to touch on a few matters and
21 then I'll hand it over to Mr. Godsoe to speak in
22 reply.

23 We, of course, accept that it's up to the
24 Commission to determine whether or not December 31st is
25 acceptable or not. We've never suggested otherwise.
26 But what we did include in the contract is a deadline,

1 granted, as between the parties. The Commission may
2 choose to ignore that if it wishes, and our request is
3 that you do not.

4 **Proceeding Time 4:27 p.m. T39**

5 Alcan is being asked to be dealt with the
6 same way as other independent power producers in the
7 sense of the review process for the energy supply
8 contracts as set out in the Commission's Rules. In
9 that regard, that is why we use the form of contract
10 that was used in the 2006 call, admittedly, amended to
11 deal with specific issues related to Alcan.

12 This December 31st date, I hope, there is no
13 -- notwithstanding some comments that have been made,
14 the date has meaning. By way of background, Alcan had
15 an option to call power called the replacement
16 electricity supply agreement. Copies of the agreement
17 I have with me, if the Commission wishes to see it,
18 but there is a date in the agreement, being January 1,
19 2007, by which Alcan had to exercise that option. So
20 December 31st was always a date in the mind of the
21 parties. What of course happened, if you review the
22 term sheet, is that the 90 days was based on an
23 assumption that we would have the contract signed and
24 filed by late September. And obviously we have not.
25 And that's why the date was changed. So it wasn't any
26 attempt to shorten the regulatory process, it was just

1 an unfortunate result of a month delay in the contract
2 negotiation process.

3 THE CHAIRPERSON: Can you explain to me again the
4 significance of the January the 1st, '07, date? And I
5 think I will get you to file that contract if you have
6 it with you.

7 MR. DUKE: Yes, I have copies and I will do that.

8 Under the replacement electricity supply
9 agreement, Alcan had an option to call up to 175
10 megawatts of power. The agreement is with the
11 Province of British Columbia, and it was signed as
12 part of the 1997 settlement of the KCP action that I
13 referred to earlier. That option required Alcan to
14 exercise the option, give notice by January 1, 2007.

15 Now, the B.C. Hydro would not start
16 delivering the power until 2010, but the option had to
17 be exercised by that date. And that is why Alcan has
18 been working -- it's obviously a significant block of
19 power, and that is why we've been working towards the
20 December 31st date.

21 THE CHAIRPERSON: So you haven't exercised that option
22 yet.

23 MR. DUKE: We have not.

24 THE CHAIRPERSON: Your intention is to do so following
25 our Order, if we approve -- or if we accept the
26 agreement.

1 MR. DUKE: No, no, I'm sorry, actually Alcan will not
2 exercise the option if --

3 THE CHAIRPERSON: Or not exercise -- okay. But you lose
4 the opportunity to exercise the option --

5 MR. DUKE: That's correct.

6 THE CHAIRPERSON: -- if you --

7 MR. DUKE: Yes. That is really why the December 31st date
8 has always been key. It's unfortunate that we didn't
9 simply put the December 31st date in the term sheet,
10 because now it looks like we are attempting to abridge
11 the regulatory process, and that's not the case.

12 THE CHAIRPERSON: Right. I will get you to file that
13 agreement.

14 MR. DUKE: I will do so.

15 I haven't seen all the Information Requests
16 that you referred to earlier, but I will say that the
17 -- during the negotiations we used the competitive
18 process as a proxy for what the prices were on the
19 market, and that's -- but I will reserve comment on
20 that further until we see the IRs, and Alcan may
21 provide some responses as well.

22 The last point I want to make, and then
23 I'll ask -- I'm sure Mr. Godsoe has some reply
24 comments, and that is related to the modernization
25 project. We're not, you know, fooling anyone here and
26 saying that obviously the new and amended -- the

1 amended, pardon me, and restated LTEPA is directly
2 linked to the modernization project that Alcan's
3 announced. I mean, it's throughout the agreement.
4 It's quite evident. And there's good reason for that.

5 **Proceeding Time 4:32 p.m. T40**

6 We'll be selling power to Hydro and that declines as
7 we use more for the smelter, and we've got recall
8 provisions, we've got all sorts of things that are
9 somewhat unique to Alcan.

10 One of the conditions of moving forward
11 with the modernization project is getting this
12 contract finalized and accepted by the Commission.
13 Alcan is moving forward with that aggressively on many
14 fronts, but we've got a lot of -- as Mr. Godsoe
15 referred to, there's a lot of issues regarding
16 procurement and project management that we --
17 apparently the RESA agreement is already an exhibit?

18 THE HEARING OFFICER: That's what it's going to be.

19 MR. DUKE: Oh, that's what it's going to be. I
20 apologize, okay, thank you. Thanks.

21 So there are some real concerns that any
22 delay in the approval of the contract will have
23 implications for the modernization project from the
24 project team perspective and the fact that Alcan has
25 publicly stated that there are certain conditions on
26 moving forward, and one of them is the acceptance of

1 the contract. So the RESA issue and the effects on
2 the modernization project are the two reasons why we
3 wanted a decision by the end of 2006.

4 Having said all of that, there's obviously
5 a great deal of concern. People feel pressured and we
6 understand that, and we understand that it's
7 ultimately up to the Commission. But contractually
8 we've agreed with Hydro that if the contract is not
9 approved by December 31, then there's a cooling-off
10 period and then ultimately the agreement could be
11 terminated.

12 THE CHAIRPERSON: Thank you, Mr. Duke.

13 MR. GODSOE: Mr. Chairman, I can be brief.

14 First of all, as I've stated, the 60-day
15 period from the filing to 31 December 2006 is not
16 unusual in a Section 71 context. So this talk about
17 abridgement I think isn't warranted.

18 And secondly, as I hear Mr. Quail talking
19 about information requests and lack of process, as I
20 point out, in Option 1 we would have a witness
21 designated to Alcan, Graham Simpson. We also have
22 some policy witnesses from B.C. Hydro's executive to
23 answer questions. And so therefore in my submission,
24 information requests are not necessary. And I do not
25 believe that the Section 71 and Section 45 questions
26 are so different that they cannot be accommodated in

1 this hearing. In fact, because of the term sheet, we
2 knew there would be questions around the terms and
3 conditions, and that's why we have Mr. Simpson on a
4 panel to speak to those. So I believe the issues are
5 in fact quite similar.

6 And those conclude my submissions.

7 COMMISSIONER PULLMAN: Just one observation if I may, Mr.
8 Godsoe. Am I not right in thinking that the EPAs you
9 signed on the 2006 call, you signed on August 31st?
10 And I think you gave the Commission 120 days to
11 approve them before they --

12 MR. GODSOE: That is correct. They were signed on 31
13 August 2006 and there was a 120-day period, that's
14 correct.

15 COMMISSIONER PULLMAN: Thank you.

16 THE CHAIRPERSON: I'm having a difficult time recalling
17 any other circumstance similar to this in terms of the
18 time that you've left the Commission to approve or to
19 accept an agreement or not.

20 MR. GODSOE: Well, dare I raise its name, but Duke Point
21 Power comes to mind.

22 THE CHAIRPERSON: But even Duke Point Power was longer,
23 Mr. Godsoe.

24 MR. GODSOE: Well, I can also point to the 2002/2003
25 green call, which was approved in relatively short
26 order, Mr. Chairman.

1 I guess the other point really is most EPAs
2 that B.C. Hydro has filed has had no process around
3 them at all. And I would include the 2002/03 green
4 call in that category.

5 **Proceeding Time 4:37 p.m. T41**

6 THE CHAIRPERSON: It's too big of a question for me to
7 ask, but I'll make it as an observation rather than a
8 question. It would seem that many of those are of a
9 different nature than this contract. You know, we've
10 heard from the intervenors now on this one. Would it
11 not have been reasonable for you to expect the
12 response that we've heard this afternoon from the
13 intervenors with respect to this, and now you're
14 requesting that for us to overlook those concerns and
15 get you to a decision really in less than 60 days.

16 MR. GODSOE: Well, Mr. Chair, with all due respect, I'm
17 not asking you to overlook their concerns. I'm
18 offering you a process which is option 1, to allow
19 everybody to test Alcan and including the
20 amended/restated LTEPA, which we are going to
21 circulate on 10 November. We will have the hearing.
22 All I'm asking for is some flexibility with respect to
23 oral argument in the end of that, and a relatively
24 expedited order issuing by 31, December 2006. I think
25 that the testing it does meet the concerns.

26 THE CHAIRPERSON: Will you acknowledge that it would be

1 easier for the Commission to deal with this if you had
2 filed it earlier than you did?

3 MR. GODSOE: I would acknowledge that, but as Mr. Digs,
4 pointed out, neither I nor B.C. Hydro nor Alcan can
5 control the way negotiations proceed. And
6 negotiations unfold they way they did, and we filed it
7 in very short order after it was executed. I can tell
8 you within days of it being executed. Well, not even
9 days. Within the very day that our CEO executed it.

10 THE CHAIRPERSON: I'm tempted to ask you when you knew of
11 Alcan's option, but I'm not expecting you to be able
12 to answer that question, so I won't.

13 I think that then brings us to the next
14 item on the agenda. I have endeavoured to provide
15 some clarification with respect to this agenda item,
16 and as I mentioned, I will entertain any motions that
17 anyone wishes to make and I may not receive any, but
18 if you're contemplating the possibility of filing
19 evidence with respect to DSM and you are concerned
20 that you are unable to do that because we've passed
21 that point on the regulatory timetable, you may very
22 well be given latitude to do that.

23 Is there anyone in that situation?

24 Okay. I think that then brings us to your
25 last three agenda item items, Mr. Godsoe, and the
26 first one is the record of the two proceedings, and

1 perhaps you can provide some further clarification
2 with respect to what that item is.

3 MR. GODSOE: I can, Mr. Chairman. The problem with
4 Exhibit A-50 as it stands is it potentially leads to
5 the doubling of the record for B.C. Hydro witnesses.
6 So some 10,000 pages have been filed in respect to the
7 IP/LTAP and to give Mr. Christian his bragging rights,
8 13,000 pages have been filed in respect of the F07/F08
9 revenue requirement.

10 So B.C. Hydro's suggestion is this: To
11 provide for an efficient and effective proceeding, we
12 would request advanced notice of intervenors,
13 Commission counsel, and indeed the Panel itself if
14 they intend to rely on F07/F08 revenue requirement
15 exhibits, materials, IR responses, et cetera, to
16 cross-examine, IEP, B.C. Hydro IEP and LTAP witnesses.

17 I think the realistic alternative is going
18 to be a series of undertakings, because the witnesses
19 simply can't be expected to know the record of both
20 proceedings.

21 B.C. Hydro, in turn, would give advanced to
22 notice to any intervenors if we intended to rely on
23 any F07/F08 revenue requirement materials when we come
24 to cross-examine their witnesses.

25 THE CHAIRPERSON: Can you be specific as to how much
26 advance notice you believe would be necessary?

1 MR. GODSOE: I think two nights would be sufficient.

2 THE CHAIRPERSON: Okay. Are there any objections to that
3 request from Mr. Godsoe?

4 **Proceeding Time 4:42 p.m. T42**

5 MR. QUAIL: Yes, Mr. Chairman, we object. In my
6 submission, it's just logistically not do-able. Just
7 in the normal course of things during an oral public
8 hearing, issues arise, cross-examination to some
9 extent gets constructed in advance, but to a certain
10 extent gets modified and developed on the go, and the
11 record is enormous. That's a problem for everyone,
12 but it would really not be possible, logistically, for
13 intervenors to operate in that fashion.

14 One procedure that we adopted and other
15 parties joined in, which turned out to be very useful
16 in the recent ICBC revenue requirement, was to the
17 extent possible, to pre-assemble -- pre-assemble might
18 mean an hour in advance, but at least to pull together
19 the various assorted documents that we knew we were
20 going to be putting to witnesses before cross-
21 examining them. That helped a great deal in terms of
22 simply marshalling the paper, and we'll try to do
23 that, but as the flow of events during a hearing
24 sometimes makes that possible, sometimes not. But
25 it's an approach that we would encourage participants
26 generally to attempt to do. But in my submission,

1 participants' hands would just be so severely tied if
2 they had to figure out two days in advance -- normally
3 that's before they've heard a word from a panel, what
4 questions they were going to put to a panel, is simply
5 not a fair process.

6 MR. WALLACE: Mr. Chairman, I think I understand both
7 sides I heard, and I guess what I would suggest is
8 that it not be made mandatory. That two days in
9 advance, parties endeavour to do. I think we would,
10 in most cases. There may be cases where, because we
11 can't do it, we have to accept an undertaking, as Mr.
12 Godsoe says, that's fine. In other cases, they may be
13 able to resolve it. I think the suggestion that
14 counsel attempt to do that should be sufficient.

15 THE CHAIRPERSON: Anyone else?

16 MR. ANDREWS: SCCBC would support the notion of the
17 intention being that advance notice be given on a
18 best-efforts basis, but that -- with some implicit
19 recognition that matters don't always arise until the
20 evidence is actually given, and that may easily not be
21 more than two days before the cross-examination.

22 MR. AUSTIN: The IPPBC supports the concept of non-
23 mandatory notice, because the way things flow out,
24 it's not always possible to provide advance notice of
25 what's going to be referred to. And in particular,
26 you have to appreciate that if you're the second in

1 line or third in line, in terms of cross-examination,
2 the cross-examination can be greatly affected by what
3 precedes you. So this idea of being able to pick out
4 exactly what you might be referring to in cross-
5 examination two nights before just -- it's not
6 workable.

7 MR. WEISBERG: Mr. Chairman, CPC would support -- I think
8 Mr. Wallace put forward a compromise proposal of not
9 having a mandatory notice, but certainly encouraging
10 that, and there is, of course, the assurance that if
11 there were materials that weren't readily available,
12 it could be dealt with through an undertaking. And I
13 think all of the parties that will be cross-examining
14 will be aware of the fact that it will probably be in
15 their interest to provide notice to the extent that
16 they can, and that will, you know, impose a sort of
17 discipline on the process in any event.

18 THE CHAIRPERSON: I don't think I need to hear it from
19 anyone else. I think that's the way to go on this
20 one, Mr. Godsoe, a non-mandatory -- I wouldn't
21 necessarily go as far as Mr. Andrews suggested, on a
22 best-efforts basis, but certainly endeavour to provide
23 two business days' notice of materials that you expect
24 to put to panels in cross-examination from the F07/F08
25 RRA.

26 That, then, I think, brings us to the next

1 agenda item, and that's with respect to two
2 Information Requests, Mr. Godsoe, with respect to the
3 2006 IEP.

4 MR. GODSOE: Thank you, Mr. Chairman. I think this next
5 one, at least, is not controversial. And I wanted to
6 speak to the BCTC IR responses. There were 20 IR
7 responses that BCTC -- or B.C. Hydro forwarded to BCTC
8 for its direct response. And those are found in
9 Exhibit C7-2, C7-4 and C7-6. And I just wanted to
10 reiterate, these are IR responses that are BCTC's
11 evidence, and consequently B.C. Hydro is not putting
12 forward any panel witnesses to speak to these IRs.

13 **Proceeding Time 4:47 p.m. T43**

14 THE CHAIRPERSON: I see, so you're putting us on notice
15 that you're not going to speak to those?

16 MR. GODSOE: Correct.

17 THE CHAIRPERSON: Those IRs. All right. Is there anyone
18 from BCTC here? Oh yes, of course. Are you expecting
19 to call a panel?

20 MR. GHIKAS: Pardon me, Mr. Chairman?

21 THE CHAIRPERSON: Are you expecting to call a panel?

22 MR. GHIKAS: We are anticipating, yes, we've submitted
23 evidence, yes.

24 THE CHAIRPERSON: So Mr. Godsoe's concerns are
25 unnecessary on his part?

26 MR. GHIKAS: I suspect they'll be adequately addressed

1 through that panel, yes.

2 THE CHAIRPERSON: Right, thank you.

3 MR. GHIKAS: Thank you.

4 THE CHAIRPERSON: Mr. Godsoe.

5 MR. GODSOE: The next set of IRs I wanted to speak to are
6 the ten IRs that B.C. Hydro objected to answering.

7 One of them was an SCCBC IR 1.46.1, which the
8 Commission has already dealt with and I won't go into
9 further.

10 The remaining nine are one Commission IR
11 and it was 1.26.1 found at Exhibit B-6-1, and six
12 IPPBC IRs, 1.1.1 through 1.1.3, 1.15.1 through 1.15.3,
13 and 1.26.1, all found at Exhibit B-10. And these nine
14 IRs all date either 18 May 2006 or 30 June 2006.

15 Now, Mr. Chairman, at the second procedural
16 conference of 1 August 2006, a process was laid out
17 pursuant to which IR responses, including those
18 objected to, could be pursued with B.C. Hydro and then
19 the Commission. And for the record, that process is
20 laid out at Transcript Volume 3, page 295, lines 11
21 through 25. And in fact, one of the IRs I mentioned,
22 SCCBC IR 1.46.1, Mr. Andrews did pursue that process,
23 and that ultimately resulted in the Commission
24 decision denying SCCBC's request -- SCCBC's -- let me
25 start again. Denying SCCBC's request that the IR be
26 answered, and that decision is found in Exhibit A-19.

1 In B.C. Hydro's submission, that was the appropriate
2 thing to do in respect of a B.C. Hydro objection to
3 answering an IR.

4 At this stage, none of the nine IRs I have
5 listed have been followed up, and accordingly in B.C.
6 Hydro's submission the record ought to sit where it is
7 with respect to those IRs. In other words, they
8 should not be pursued in cross-examination and they
9 should not form the basis for undertaking requests.

10 I do want to be clear I'm limiting those
11 comments to those nine IRs we specifically object, and
12 I'm not speaking in any way to IRs that intervenors
13 might think are inadequate responses and that they
14 want to follow up in cross-examination. Certainly
15 those are in a different category. It's simply the
16 nine IRs that I've listed that B.C. Hydro objected to
17 that were not followed up.

18 So those are my submissions on that.

19 THE CHAIRPERSON: Thank you.

20 COMMISSIONER PULLMAN: I only counted eight. Did I miss
21 one?

22 MR. GODSOE: Yeah, you missed one. So let me list them
23 again. BCUC IR 1.26.1.

24 COMMISSIONER PULLMAN: All right.

25 MR. GODSOE: That's number one. Then a group of three
26 IPPBC IRs, 1.1.1, 1.1.2 and 1.1.3.

1 COMMISSIONER PULLMAN: Yeah.

2 MR. GODSOE: Another group of IPPBC IRs, 1.15.1, 1.15.2
3 and 1.15.3.

4 COMMISSIONER PULLMAN: Right.

5 MR. GODSOE: And last, another IPPBC IR, 1.26.1. My
6 count is nine.

7 COMMISSIONER PULLMAN: I understood eight.

8 MR. GODSOE: Is that eight? It's late in the afternoon.
9 Actually, you know what? You are correct. I was
10 counting the SCCBC IR, which I said I wouldn't address
11 further, so it's in fact eight.

12 COMMISSIONER PULLMAN: Very good.

13 MR. GODSOE: I stand corrected.

14 THE CHAIRPERSON: I am going to make a suggestion with
15 respect to this, Mr. Godsoe, see if this first meets
16 with your approval and then I'll see if there are any
17 objections to it.

18 As you've identified, a process was
19 established at Transcript 3, page 295, with respect to
20 how to deal with IRs that B.C. Hydro objected to.

21 **Proceeding Time 4:52 p.m. T44**

22 My suggestion is that if anyone wishes to
23 follow that process, that we give them what you may
24 consider to be unfair, but until the end of the day on
25 Friday to follow that process. And if we haven't
26 heard from them by the end of the day on Friday, then

1 in fact it will be as you suggest.

2 But for your comment with respect to not
3 being pursued during cross-examination, and we'll have
4 to deal with that issue when we get to it during the
5 hearing. Is that a satisfactory proposal to you?

6 MR. GODSOE: Mr. Chairman, that's acceptable to B.C.
7 Hydro.

8 THE CHAIRPERSON: Are there any objections to that?
9 Fine.

10 Mr. Austin, you're objecting to that?

11 MR. AUSTIN: No, not objecting, but I just want some
12 clarification in terms of procedure on cross-
13 examination. Because the reason we don't follow up on
14 RRAs if an answer is denied because of the amount of
15 time and trouble it is, whereas it takes to try and
16 force or compel somebody to answer an Information
17 Request versus on cross-examination, sometimes being
18 able to work around the problem in a more expeditious
19 and timely fashion. So that's the point I'd like to
20 make. It's not a question of black and white -- well,
21 you can't do this because you haven't started off.
22 There's just -- lots of times there's a lot easier way
23 to go at it, and I don't want to be precluded on
24 cross-examination from doing that.

25 THE CHAIRPERSON: I've left you with that opportunity
26 with my proposal, Mr. Austin.

1 MR. AUSTIN: Thank you.

2 THE CHAIRPERSON: Are there any objections? Fine, thank
3 you.

4 That, then, unless there are any other
5 matters, that brings us to the end of our agenda.

6 MR. GODSOE: Sorry, Mr. Chairman, there was one last
7 issue on consultation with witnesses during cross-
8 examination.

9 THE CHAIRPERSON: Oh, yes. Of course.

10 MR. GODSOE: Mr. Chairman, what's just been distributed
11 to you is a letter dated 4 November 2004 from
12 Commission addressing the issue of counsel
13 communication with witnesses under cross-examination.
14 And I just wanted to draw your attention to the bottom
15 of page one. And there, the letter states that:

16 "The Commission permits counsel to discuss
17 matters with witnesses who are under cross-
18 examination with the very important
19 limitation that counsel not coach the
20 witness on answers."

21 And I just wanted to ensure that this letter remains
22 the Commission practice, and that it also extends to
23 support teams and not just counsel.

24 THE CHAIRPERSON: That was the intention when the letter
25 was written, and I have had no reason to change that
26 practice since this letter was written.

1 Is there anyone who wishes to make a
2 submission now that this practice should be changed?
3 Mr. Fulton?

4 MR. FULTON: It's not that the practice should be
5 changed, Mr. Chairman, but the letter is a November,
6 2004 letter, and in the last sentence of the second
7 paragraph on the first page, there's a reference to
8 Section 781 of the Act. That Section has been
9 repealed since November the 4th, 2004. So that's the
10 only qualification that I would make to the letter.

11 THE CHAIRPERSON: Are you proposing that we re-issue the
12 letter with references to the ATA?

13 MR. FULTON: That's certainly something that we could do,
14 Mr. Chairman. The spirit of the new letter would be
15 the same as the -- as what was intended in this
16 letter.

17 THE CHAIRPERSON: Right. Is there anyone who believes
18 that our practices should change in this regard?

19 Hearing none, then, that's the
20 confirmation. I can provide you with that
21 confirmation, Mr. Godsoe, that for the purposes of
22 this proceeding, this letter should govern the
23 practices of counsel and witnesses.

24 Is there -- Mr. Weisberg?

25 **Proceeding Time 4:57 p.m. T45**

26 MR. WEISBERG: I had a comment, Mr. Chairman, on another

1 matter.

2 THE CHAIRPERSON: Yes.

3 MR. WEISBERG: Exhibit A-2-3 gives all parties notice
4 that opening statements will be presented on November
5 14th at 9 a.m. My concern is that the Commission staff
6 issues list is going to be issued this Friday and
7 because of the intervening statutory holiday, it's a
8 very tight window there. So I just wanted to make a
9 request to staff. I meant to mention it to Ms. Cheng
10 in the break and I didn't have a chance. But if it's
11 at all possible to release that earlier in the day on
12 Friday, it would certainly assist, I know myself, in
13 obtaining instructions and hopefully make for a better
14 quality of opening statement on Tuesday.

15 THE CHAIRPERSON: Staff will endeavour to do that.

16 MR. WEISBERG: Thank you.

17 THE CHAIRPERSON: Mr. Fulton?

18 MR. FULTON: Yes, one housekeeping matter, Mr. Chairman.
19 Mr. Duke provided a copy of the replacement
20 electricity supply agreement made the 5th of August,
21 1997. That document should be marked an exhibit, and
22 I would ask that it take Exhibit C-38-2.

23 (REPLACEMENT ELECTRICITY SUPPLY AGREEMENT, DATED
24 AUGUST 5, 1997, MARKED AS EXHIBIT C-38-2)

25 MR. OULTON: Mr. Chairman, I am well aware of the time
26 and I will be very brief. This is an issue that arose

1 as a result of what happened today, and it relates in
2 part to what my friend just spoke about on opening
3 submissions. As I'm sure the Panel is aware, the
4 District's interest in this proceeding surrounds LTEPA
5 Plus. My understanding from Mr. Godsoe is that we
6 will be receiving that on Friday.

7 My concern is, as already noted, with the
8 intervening holiday, it may be difficult to obtain
9 instructions and be in a position to make a fulsome
10 submission on Tuesday, and I'm not sure how to do deal
11 with that other than perhaps to request that my friend
12 provide it as early as possible on Friday.

13 MR. GODSOE: I think, Mr. Chairman, now that we are not
14 going to be in an a redaction exercise, we can in fact
15 circulate those two agreements tomorrow.

16 MR. OULTON: That will address the concern, thank you.

17 THE CHAIRPERSON: Thank you.

18 MR. FULTON: And keeping with the theme of moving matters
19 ahead expeditiously, Mr. Chairman, I'm advised by
20 staff that the staff issues list can be circulated on
21 Thursday as well.

22 THE CHAIRPERSON: Thank you, Mr. Fulton, and thank you,
23 staff. Are there any other matters that we need to
24 deal with before we adjourn?

25 Thank you, we are adjourned.

26 (PROCEEDINGS ADJOURNED AT 5:00 P.M.)