

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

and

British Columbia Hydro and Power Authority 2004/05 and
2005/06 Revenue Requirements Application

and

An Application by British Columbia Transmission
Corporation for Approval of an Application for Deferral
Accounts

Vancouver, B.C.
August 17, 2004

ORAL ARGUMENT

BEFORE:

R. Hobbs,	Chairman
L. Boychuk,	Commissioner
M. Birch,	Commissioner

VOLUME 22

APPEARANCES

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D. PERTULLA	TERASEN GAS INC.
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R.B. WALLACE	JOINT INDUSTRY ELECTRICITY STEERING COMMITTEE
D. NEWLANDS	ELK VALLEY COAL CORPORATION
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C. P. WEAVER	COMMERCIAL ENERGY CONSUMERS OF BRITISH COLUMBIA
M. VEERKAMP	B.C. CITIZENS FOR PUBLIC POWER. CONSUMERS ASSOCIATION OF CANADA
R.J. GATHERCOLE P. MacDONALD	B.C. OLD AGE PENSIONERS' ORGANIZATION, COUNCIL OF SENIOR CITIZENS' ORGANIZATIONS, SENIOR CITIZENS ASSOCIATION OF BRITISH COLUMBIA, WEST END SENIORS NETWORK, FEDERATED ANTI-POVERTY GROUPS, END LEGISLATED POVERTY, TENANTS RIGHTS ACTION COALITION
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CAARS

VANCOUVER, B.C.

August 17, 2004

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

THE CHAIRPERSON: Please be seated.

The Commission Panel has now reviewed your written arguments. This oral phase is the panel's opportunity to raise issues arising from your arguments. I expect that we will address the following five topic areas. First, the IEP REAP, or we might refer to that as the Section 45 filings. Number two, deferral accounts. Number three, other issues arising from the Special Directions. And number four, PowerSmart. And number five, you can think of it as a miscellaneous section for matters that don't easily fall into the first four areas. On most issues, we are early in our deliberations, and will benefit from further explanations on your arguments. On one issue, we are further advanced in your deliberations, and intend to describe for you the conclusions we are moving towards, so that we can better structure our decision. That issue is the first issue, the IEP REAP.

In the absence of Mr. Fulton, Mr. Miller will be Commission counsel this morning, and I expect will assist me from time to time to ensure that the

1 process is fair to all participants. We do not have
2 questions on every party's submission, but we do
3 intend to provide all parties present with an
4 opportunity to respond to matters that are raised by
5 the panel, where they believe our questions suggest we
6 may have misunderstood the evidence, or they disagree
7 with another party's characterization of the evidence
8 before us.

9 I find it difficult to predict how long
10 oral phases are going to be, but will be surprised if
11 we do not conclude the oral phase this morning.
12 Perhaps with the exception of the discussion we may
13 have regarding the IEP and REAP.

14 Before we begin our questions, are there
15 any procedural matters that anyone wishes to raise?

16 I have one, and it arises from your
17 evidence, Mr. Wallace. Your argument. That's a good
18 start to the morning. If we turn to page 61 of your
19 argument, it referred to evidentiary rulings, and you
20 made comments that I think are speaking to future
21 processes, or at least principally speaking to future
22 processes. And my intention is to address those
23 issues in the context of the BCTC proceeding that is
24 going to the first pre-hearing conference this
25 afternoon.

26

Proceeding Time 8:35 a.m. T2

1 If there are participants in that
2 proceeding who have not participated in this
3 proceeding, they'll be at somewhat of a disadvantage,
4 but they'll be at more of a disadvantage, I think, if
5 we deal with the issues that arise from your comments
6 as part of this proceeding.

7 So my intention is to defer issues that
8 might arise from that until this afternoon's pre-
9 hearing conference on BCTC's application, unless there
10 are objections to that.

11 MR. WALLACE: Mr. Chairman, my comments were very much
12 directed at future proceedings, not at this
13 proceeding. It is, I think, opportunity often taken
14 in a hearing to say what have we learned procedurally
15 from this that might be useful? There were comments
16 also on the electronic record.

17 With respect to that issue, it is one that
18 I was intending to raise in the context of this
19 afternoon's proceeding with respect to BCTC, and that
20 seems perfectly appropriate to me. And I'm not
21 expecting any ruling on that comment with respect to
22 the B.C. Hydro revenue requirement hearing.

23 Thank you.

24 Mr. Feldberg.

25 MR. FELDBERG: Mr. Chairman, if I could just add an
26 observation, and that is that the application that was

1 filed with respect to BCTC does not include the
2 revenue requirements application. That is the subject
3 of a further BCTC filing, and I took Mr. Wallace's
4 observations at paragraph 61 to relate more to that
5 then to the open access transmission tariff filing
6 that'll be this afternoon. But perhaps we can deal
7 with that, but we may still be one hearing premature,
8 is all I'm saying.

9 **Proceeding Time 8:37 A.M. T03**

10 THE CHAIRPERSON: And Mr. Wallace and I are of one mind
11 and you and I are not, and I think it's going to have
12 some applicability to the BCTC OATT application. But
13 in any case, we'll defer until this afternoon, we can
14 deal with that then.

15 Given that you have not objected to Mr.
16 Sanderson, my assumption is you will be there this
17 afternoon.

18 MR. JOHNSON: Yes, or my brother Mr. Webb will be there,
19 but certainly on this issue we have notice, and it's
20 appropriate to go with it this afternoon.

21 THE CHAIRPERSON: Thank you.

22 For the record, I should ask for
23 appearances, and I'll ask that you ask that you enter
24 your appearances in whatever order you reach the mike
25 in.

26 MR. SANDERSON: Mr. Chairman, C. W. Sanderson for B.C.

1 Hydro. With me, and addressing some of your
2 questions, and this is probably as good a point as any
3 to divide it up, is Mr. Christian. I will be dealing
4 with, I think, at least, your issues one, two and
5 four. There may be exceptions to that on points of
6 detail that arose from some of Mr. Christian's panel,
7 but, generally speaking, I've got responsibility for
8 one, two and four. Issues three and five are less
9 precise with respect to your description, and Mr.
10 Christian and I will handle those depending on the
11 precise nature of your – the issues you raise.

12 THE CHAIRPERSON: Thank you.

13 MR. SANDERSON: Also at counsel table is Mr. Webb.

14 THE CHAIRPERSON: Any other appearances?

15 MR. FELDBERG: Peter Feldberg for BCTC, Mr. Chairman, and
16 with me is Mr. Bystrom, B-Y-S-T-R-O-M.

17 MR. WALLACE: R. B. Wallace, on behalf of the Joint
18 Industry Electricity Steering Committee.

19 MR. WEAFER: Chris Weafer, on behalf of the Commercial
20 Energy Consumers, Mr. Chairman.

21 MR. AUSTIN: David Austin, IPPBC.

22 MR. GATHERCOLE: Richard Gathercole, BCOAPO et al.

23 MR. JONES: C. Jones, Sierra Club of Canada, B.C.
24 chapter.

25 MR. PERTTULA: David Perttula for Terasen Gas, Inc.

26 MR. WAIT: Allan Wait, for self.

1 THE CHAIRPERSON: Any other appearances?

2 Thank you. Let me now turn to the first
3 issue. On behalf of the panel, I can say that we are
4 currently having difficulty concluding that the filing
5 of an IEP and a REAP as proposed by B.C. Hydro is
6 going to satisfy the requirements of Section 45. I am
7 now going to give you what you should consider to be
8 my early reasons, not necessarily Commissioner
9 Boychuk's or Commissioner Birch's reasons, for why I
10 am having difficulty concluding that Section 45
11 requirements will be met.

12 **Proceeding Time 8:40 A.M. T04**

13 And I'll be reviewing the argument in some
14 detail, and I have organized my comments around seven
15 topics, and I'll first list those for you.

16 (a), the obligation to serve and resource
17 planning. (b), intervener interests in resource
18 planning. (c), legislation, legislative intent, and
19 the Energy Plan. (d), resource planning and
20 flexibility. (e), regulatory efficiency and
21 effectiveness. (f), proposed options, and (g),
22 procedural alternatives. And they're procedural
23 alternatives for this morning.

24 At the outset, I should say, Mr. Sanderson,
25 I intend to give you an election at the end of
26 providing you with my early reasons, and I will be – I

1 expect I'm going to be, because I'm going to review
2 some of the arguments in detail, I expect I will be
3 about twenty minutes to a half-hour. One of the
4 reasons for dealing with this issue at the top of the
5 agenda this morning is so that a copy of the
6 transcript will be as – will be available as soon as
7 possible, and I've spoken to the Hearing Officer about
8 doing that if that turns out to be helpful.

9 So let me begin by turning to page 84 of
10 the B.C. Hydro argument. And this is under my first
11 topic heading, the obligation to serve and resource
12 planning. In the middle of the page,

13 "It is B.C. Hydro's central contention
14 that the recent revisions to the *Act* provide
15 for a flexible iterative process that is
16 intended to keep the Commission fully
17 informed of B.C. Hydro's plans as they
18 develop, thereby permitting the Commission
19 to signal its preferences and allow B.C.
20 Hydro to adapt its plans accordingly."

21 I'm going to return to the issue of
22 flexibility later in my comments. And I'll also
23 return to the issue of the intention that I presume to
24 be in that comment, and that is with respect to
25 keeping the Commission fully informed. It strikes me
26 that the design criteria for whatever regulatory

1 process we arrive at to deal with Section 45 plans
2 needs to be done in the context of the flexibility
3 referred to there, and goes beyond simply keeping the
4 Commission fully informed.

5 Over on the next page. I prepared my
6 comments by copying sections of your argument, Mr.
7 Sanderson, into my comments, and I'm trying to follow
8 my references, so that I can give them to you and it
9 doesn't leap off the page for me, so I would read the
10 comment and you may be able to, as challenging as it
11 might be, to find my reference.

12 **Proceeding Time 8:45 a.m. T5**

13 "Thus the IEP is a central management tool that
14 provides essential background to B.C. Hydro's board
15 to determine whether specific decisions that B.C.
16 Hydro is called upon to make from time to time, are
17 in keeping with the coherent and long run vision,"
18 is my quote.

19 MR. CRAIG: It's the bottom of page 84, top of page 85.

20 THE CHAIRPERSON: Thank you. I'll try not to do that
21 more often than just that once.

22 I think whatever we arrive at in terms of a
23 regulatory process needs to be consistent with, or at
24 least complement, the theme that's established there,
25 and that is that the IEP is a central management tool.
26 It would concern me if there wasn't alignment between

1 B.C. Hydro's planning process and the regulatory
2 process. And so I think, quite appropriately, the IEP
3 is a central management tool, and this reminds me of
4 comments that were made by Ms. Farrell with respect to
5 establishing deferral accounts and the forecasts for
6 deferral accounts, would add significant confusion, I
7 think, for B.C. Hydro if there wasn't a close
8 alignment between the regulatory process and the use
9 of the IEP as a central management tool. And so I
10 think, as I say, we need to be consistent with that.

11 Now, in the second full paragraph on page
12 85,

13 "B.C. Hydro plans to make the IEP public, and most
14 importantly, file it with the Commission every
15 other year upon completion."

16 to make the IEP public to make the IEP
17 public I'd also like the timing of the regulatory
18 process to complement B.C. Hydro's own planning
19 process cycle.

20 Now let me turn to the next topic which is
21 intervenor interest in resource planning. And I want
22 to begin with the Sierra Club argument, page 20,
23 paragraph 47. And I'll read that paragraph in its
24 entirety because it did strike me as quite germane to
25 the issues.

26 "Under its proposed approach, B.C. Hydro

1 would prevent the Commission and other
2 stakeholders from meaningfully participating
3 in the IEP process. It would preclude those
4 parties from the critical process of
5 determining which demand-side and supply-
6 side resource options are to be investigated
7 by B.C. Hydro. In other words, rather than
8 having an opportunity to review and
9 participate in the selection of resources
10 required to meet B.C. Hydro's obligation to
11 serve, the Commission and stakeholders are
12 left only to consider and debate only those
13 options which B.C. Hydro has deemed, through
14 its own internal processes, as worthy of
15 inclusion in a REAP."

16 From your perspective, Mr. Sanderson, I
17 think you can assume that I believe it's important
18 that we, if you will, intrude more into B.C. Hydro's
19 planning process than your proposal permits. And I
20 also think that the interests of the intervenors in
21 this regard are particularly significant, in part
22 because we're dealing with a process issue, but in
23 part because we're dealing with a process issue that
24 is, I think, core to some of the decisions that B.C.
25 Hydro needs to make over the next few years.

26 **Proceeding Time 8:50 A.M. T06**

1 I want to now turn to the Terasen argument,
2 page 2. The seventh line on page 2, and I'll read it
3 in its entirety. That sentence that starts,

4 "Terasen Gas appreciates B.C. Hydro's
5 desire to control the planning process and
6 to avoid cumbersome regulatory processes in
7 the review of its IEP, but also understands
8 the concerns of stakeholders that meaningful
9 input into the IEP may be eliminated if
10 there is no public forum under the auspices
11 of the Commission in which the differing
12 interests of various parties may be
13 pursued."

14 I'll return to that theme of differing
15 interests of various parties in reference to your
16 argument and reply argument, Mr. Sanderson, but I
17 think again, Terasen in that context has made some
18 comments that I find significant and germane to the
19 issues before us.

20 Now, turning to the JIESC argument, page
21 55, it is easy to identify, right at the top of the
22 page.

23 "The JIESC members are concerned that
24 B.C. Hydro is not providing the Commission
25 and stakeholders with an adequate view of
26 the future, and coherent strategy upon which

1 to base judgments of B.C. Hydro's current
2 operating maintenance and capital
3 expenditures, and to assess their effects on
4 revenue requirements and rates."

5 I noted your comments with respect to the
6 JIESC argument in your reply argument, Mr. Sanderson,
7 and although I didn't reach a conclusion that was
8 different than yours, I might have put the emphasis on
9 the JIESC argument differently, and that is the
10 significance of an adequate view of the future and
11 coherent strategy. I do think that from their
12 perspective, it would appear that issues involving
13 certainty as it relates to rates are important, but I
14 think it's broader than that.

15 Now I'd like to turn to CECBC, page 54.
16 And this one's easy for me to find, right at the
17 bottom of the page.

18 "In bringing B.C. Hydro back into
19 Commission regulation, clearly the province
20 intended there to be a strong role for the
21 Commission in protecting the customers and
22 the shareholder from a lack of discipline
23 or, worse yet, confidence in where B.C.
24 Hydro is going with its capital plan."

25 And, over to BCOAPO, page 14. "As B.C.
26 Hydro" – oh, this is the third paragraph, first full

1 sentence.

2 "As B.C. Hydro embarks on a new era of
3 Commission regulation, the Commission needs
4 to establish an ongoing regulatory framework
5 that enables it to effectively regulate the
6 utility and allow stakeholders to have
7 meaningful input into the regulatory
8 process."

9 **Proceeding Time 8:55 A.M. T07**

10 Let me conclude the first topic areas, the
11 obligation to serve and resource planning, and
12 investor -- or, intervenor interests in resource
13 planning, by making this comment. I think the
14 comments made by B.C. Hydro in their argument, and the
15 comments made by the intervenors in their argument,
16 point to a different regulatory process. I think
17 there needs to be a balance, but I don't think that
18 the balance has yet been struck, and when I get to
19 this review of the options, I'll speak to that in more
20 detail.

21 Now, let me turn to my third topic area,
22 and that is the legislation -- legislative intent and
23 the Energy Plan. And I'll do this in the context of
24 the B.C. Hydro argument, page 42. Pardon me. B.C.
25 Hydro's reply argument, at page 42. At the top of the
26 page.

1 "It is common ground among all parties,
2 including B.C. Hydro, that the recently-
3 enacted Section 45, sub 6.1 of the *Utilities*
4 *Commission Act* gives the Commission
5 jurisdiction to require B.C. Hydro to file
6 an intended expenditure plan covering a term
7 that the Commission believes is
8 appropriate."

9 I appreciated the comment, and I don't want
10 to draw conclusions from that comment beyond what was
11 intended, with respect to the Commission jurisdiction,
12 and so we may need to return to the parameters around
13 that reference, at a -- later this morning. But let
14 me leave that for now, and turn to the Sierra Club,
15 page 18, paragraph 41. And I'm going to read into the
16 record Minister Neufeld's comments that Sierra Club
17 has quoted.

18 "To enhance the effectiveness of the
19 Utilities Commission, all public utilities
20 will be required to file resource plans.
21 Resource plans give the Commission the
22 ability to review utilities resource
23 acquisition in advance of capital
24 expenditures. The intent of the resource
25 planning requirement is to protect
26 ratepayers from poor utility expenditure

1 is interesting to note the level of resource
2 identification that's referred to there.

3 "The distribution arms of other B.C.
4 electric utilities are encouraged to adopt a
5 similar resource acquisition process, if
6 they have not already done so. The B.C.
7 Utilities Commission will oversee the
8 acquisition process to ensure that least
9 cost options are chosen consistent with a
10 new clean energy goal."

11 Those are the end of my comments with
12 respect to my third area.

13 Now let me move to resource planning and
14 flexibility. I do think that the advantages of
15 establishing a process for Section 45 plans that is
16 reflective of the unique circumstances of each
17 utility, is important. So I am rejecting the notion
18 that has been suggested, I think in part by Terasen,
19 maybe in large part by Terasen, that the Commission
20 establish a uniform approach with respect to resource
21 planning. I think it necessarily needs to be flexible
22 and adaptive to the circumstances of the utility.

23 In that context, I would like to turn to
24 B.C. Hydro's reply argument, page 38, the first full
25 sentence at the beginning of the second paragraph:

26 "It is the wish to maintain that flexibility

1 that lies at the heart of the difference
2 between B.C. Hydro's position and those
3 intervenors."

4 Flexibility has a lot of meanings and a lot
5 of applications. Two of them strike me here, Mr.
6 Sanderson. One is related to planning or resource
7 flexibility, and another one is process flexibility.
8 And if I turn to the IEP, Part 5, page 6, second
9 paragraph and fifth line:

10 "Taking this long-term view, however, does
11 not mean that B.C. Hydro is locked into each
12 of the resource options identified over the
13 planning horizon. In fact, the IEP must be
14 sufficiently flexible to respond to changing
15 market conditions and future uncertainties.
16 In other words, the IEP must meet planning
17 objectives against a range of possible
18 futures, as these futures cannot be
19 predicted with certainty."

20 **Proceeding Time 9:05 A.M. T09**

21 I think that that sense of the use of the
22 term "flexibility," or that sense of "flexibility," is
23 one that we need to ensure that we are consistent
24 with, or at least that the regulatory process is
25 informed by, the need for that flexibility. And when
26 you say in your reply argument, at page 38 that I've

1 quoted, it is the wish to maintain that flexibility
2 that lies at the heart of the difference between B.C.
3 Hydro's position and those intervenors. It's not my
4 impression that that sense of flexibility is the
5 difference between B.C. Hydro's position and the
6 intervenors'. It may be with respect to some of the
7 intervenors, as they're driven by commercial interests
8 and what advantage they might have, but generally I
9 would not expect that that sense of flexibility would
10 be challenged by the intervenors. It's where we get
11 to process flexibility that I think the differences
12 are evidenced.

13 And in that regard, I find myself in that
14 awkward spot that I was in earlier, that I have made
15 reference to your reply, perhaps inaccurately. Pardon
16 me. Page 38. At the end of the paragraph that I just
17 referred to.

18 "The balanced and flexible portfolio
19 approach put forth by Panel 4 leads, in B.C.
20 Hydro's submission, to the regulatory review
21 process laid out in B.C. Hydro's arguments."

22 You there have drawn some conclusions from
23 what I've referred to as planning flexibility and
24 resource flexibility and process flexibility, and the
25 conclusion that I'm really struggling in accepting. I
26 don't think that that's true, that one follows the

1 other, that we, I think, can establish a regulatory
2 process that doesn't impinge upon planning and
3 resource flexibility and so when you say, "the
4 flexible portfolio approach leads to the regulatory
5 review process laid out in B.C. Hydro's arguments,"
6 I'm not with you.

7 Now, I want to refer to -- in a rather
8 awkward way -- but I want to refer to the Resource
9 Planning Guidelines of the Commission. Page 4,
10 section 6, and I'll read these, for the benefit of
11 those of you who may not have them handy. In section
12 6, the second sentence and beyond, it says:

13 "Analysis of the trade-offs between
14 portfolios and how they perform under
15 uncertainty will facilitate determining
16 which portfolio performs best relative to
17 the stated objectives. This process will
18 lead to the selection of a set of preferred
19 resource portfolios, each portfolio matching
20 one of the gross demand forecasts."

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

22 I say I return to this somewhat awkwardly
23 because I have some reservations about that comment.
24 I don't think it provides the level of flexibility
25 that is necessary. And I also, in moving towards the
26 conclusion that I am reaching, rejected the notion of

1 comparing the 2004 IEP to the Resource Planning
2 Guidelines, to conclude that the 2004 IEP is
3 inconsistent with the Resource Planning Guidelines and
4 that in fact it needs to be consistent with the 2004
5 Resource Planning Guidelines. I do not think that
6 that's a necessary exercise, nor one that is
7 particularly helpful.

8 Now let me turn to the issue, regulatory
9 efficiency and effectiveness, and in this regard I'd
10 like to turn to B.C. Hydro's Reply Argument, page 43.
11 Well, once again you have stated that B.C. Hydro does
12 not believe that the adversarial process, for all its
13 strengths in testing disputed facts, is the best
14 process for developing new ideas. And I thought my
15 reference was page 43 of your Reply Argument.

16 MR. SANDERSON: That's correct, it is. It's the first
17 sentence in the first full paragraph on 43.

18 THE CHAIRPERSON: Thank you. I share some of your
19 sentiments that are expressed there. I think there is
20 real risk that difficulties of accommodating the
21 planning process to a regulatory forum, and the
22 difficulties of accommodating the regulatory forum to
23 the planning process, may make the accommodation
24 unworkable. However, because of the legislative
25 purpose and the views of intervenors, I have concluded
26 that we need to make that accommodation as best we

1 can.

2 In concluding, I acknowledge that there is
3 merit in the concern expressed in B.C. Hydro's Reply
4 Argument, again at page 43. This is the essence of
5 the proposed iterative process and it's preferable to
6 trying to force long-term planning debates
7 artificially into the adversarial process. This
8 approach has been employed in the past, but in B.C.
9 Hydro's submission, not with great success.

10 **Proceeding Time 9:15 A.M. T11**

11 Although there is some risk that forcing
12 long-term planning debates artificially into the
13 adversarial process runs the risk of not being
14 successful, I think it can be successful, and I think
15 B.C. Hydro has an obligation to do everything it can
16 to make it a success.

17 Now I'm going to turn to my second-last
18 topic area, and that is proposed options, which brings
19 me to the reason for raising this issue today. I
20 think further comments from B.C. Hydro and the
21 Commission will be helpful to the panel. However, I
22 also acknowledge that it may be difficult to add more
23 to the debate than has already been said in the
24 arguments and reply argument. For that reason, I
25 think leaving this issue to the panel to address in
26 its decision without further comments is a reasonable

1 alternative. However, let me identify the options, at
2 least as I see them now, for the directions to B.C.
3 Hydro in the final decision.

4 Several of the options were identified by
5 intervenors, and I will comment on the merits of those
6 as I list them. I have identified seven, and then I
7 have number eight for "other".

8 First, there is IPPBC's proposal, at page
9 45 of their argument. After quoting the reference to
10 the Energy Plan that I did at the bottom of page 45,
11 at the top of page -- pardon me, at the bottom of page
12 44, at the top of page 45, the IPPBC continues.

13 "The IPPBC request that the BCUC order
14 B.C. Hydro to come up with a workable plan,
15 complete with measurable milestones and
16 deliverables, within three months of its
17 review decision, that meets the above
18 element of the Energy Plan, as described in
19 more detail under the heading "Full Public
20 Review of IP," the IPPBC requests that the
21 BCUC order a full public review of this
22 document. These two measures will not
23 create a level playing field, but they will
24 be welcomed first steps."

25 I think the objective, the key objective of
26 the regulatory process as it involves the B.C. Hydro

1 planning process, may very well be as set out in the
2 Energy Plan at page 28, that IPPBC quotes. But
3 IPPBC's comments suggest a broader review than I am
4 currently thinking is necessary.

5 Let's turn now to the Sierra Club's
6 argument at page 20, paragraph 48.

7 "Thus B.C. Hydro has, in effect,
8 without direction from the Commission or
9 legislative authority, cut the resource
10 planning process in two. B.C. Hydro will
11 decide which options will be selected for
12 consideration through preparation of the
13 IEP. We submit that this is not what the
14 legislature intended in enacting Section
15 45.6.1 and 45.6.2. In the Sierra Club's
16 view, nothing in the Amendments to the Act
17 suggest a bifurcated process. Rather, they
18 contemplate a single process for review of
19 B.C. Hydro's Resource Plan."

20 I am concerned that a single process, as
21 suggested by the Sierra Club, is not sufficiently
22 consistent with B.C. Hydro's planning process to be
23 the preferred option.

24 **Proceeding Time 9:20 a.m. T12**

25 Now let me turn to the JIESC argument
26 at page 56. By the way, this is the third option. At

1 line 6:

2 "In all future proceedings the Commission
3 should require B.C. Hydro to file at minimum
4 a ten-year plan setting out anticipated
5 capital expenditures and showing clearly the
6 impacts on revenue requirements and rates."

7 At page 38 of your reply argument, Mr.
8 Sanderson, you say that the ten years is too long and
9 it requires B.C. Hydro to make too many choices and in
10 the absence of necessary facts. And I have -- I think
11 there's merit in your comment in that regard in the
12 reply argument, and although you have proposed an
13 extension of the REAP to four years and have mentioned
14 that it wouldn't do fundamental violence to your
15 proposal, I don't think that that gets us there
16 either. It doesn't really get to -- I don't think the
17 extension of a capital plan gets to the strategic
18 issues that we need to get to, or to those issues that
19 I've referenced on page 28 of the Energy Plan, and I
20 do think it has the disadvantages that you've
21 identified in your reply argument. So it provides the
22 certainty perhaps that JIESC is looking for. It's too
23 much of an impingement on resource planning,
24 flexibility, to be, I think, the preferred option, at
25 least in my current thinking in this regard.

26 Now let's turn to BCOAPO, page 10, the

1 fourth full paragraph, last sentence:

2 "What is required is a long-term electricity
3 plan which, while it would obviously undergo
4 revision from year to year, would give the
5 Commission stakeholders a clear indication
6 of how the utility is proposing to meet
7 future load growth and to give them an
8 opportunity for meaningful input into the
9 process."

10 There may be merits to that as an option,
11 subject to, I think, B.C. Hydro's views of that as an
12 option, but it may again be broader in scope than is
13 necessary for there to be an effective regulatory
14 review of B.C. Hydro's resource choices.

15 **Proceeding Time 9:25 a.m. T13**

16 Now, that was Option 4.

17 Option 5 would simply be a full review of
18 the 2004 IEP, as is -- this is very close to BCOAPO, I
19 think, with the exception of some changes that I think
20 the BCOAPO would ideally want to be made to the 2004
21 IEP.

22 The sixth option is -- I think in order to
23 effectively describe this, I need to turn to the 2004
24 IEP and Part 3 of the 2004 IEP, page 70. And this may
25 be worth taking the time to get a copy of, and I have
26 made copies available to staff in advance of this

1 morning, so they can make a copy available to you if
2 you do not have a copy.

3 My impression is that the description on
4 page 28 of the Energy Plan is close to the level of
5 identification of resources as indicated at Table 7.2.
6 I would, I think, add to Table 7.2 for the purposes of
7 this option, the capacity, so the megawatts. And I
8 think projects in excess of 50 megawatts should also
9 be identified, but it may be satisfactory in terms of
10 Section 45 requirements that the Commission comment on
11 or give direction to B.C. Hydro at the level of
12 resource identification shown on this table. That to
13 some degree would need to deal with issues that are
14 raised later in the 2004 IEP in terms of portfolio
15 identification, portfolio valuation, and results. But
16 it may be satisfactory from a regulatory review
17 context.

18 It depends in large part on whether or not
19 B.C. Hydro particularly would consider that of value,
20 whether or not B.C. Hydro's planning people would
21 consider regulatory input at that level of value to
22 them. It goes beyond, I think, because we're looking
23 longer term and for other reasons it goes beyond B.C.
24 Hydro's proposal, maybe not as far as some of the
25 intervenors would wish for, but it may be
26 complementary to B.C. Hydro's planning process. And

1 as I mentioned earlier and for the reasons I mentioned
2 earlier, I think being consistent as best we can, or
3 complementary at the very least, with B.C. Hydro's
4 planning process, has some merits.

5 The seventh option would be to seek further
6 input regarding issues for review from the
7 intervenors, and then ask B.C. Hydro to prepare a
8 document analogous to the terms of reference provided
9 by the government for Commission reviews of policy
10 issues.

11 **Proceeding Time 9:30 A.M. T14**

12 And the terms of reference, of course, then
13 would, after preparation by B.C. Hydro, would be for
14 the Commission to approve or otherwise revise, before
15 they established the scope of a proceeding. That may
16 have some merits, maybe not.

17 And then my eighth category is just
18 "other". Just looking for options that are consistent
19 with the things that I have earlier said, with respect
20 to the regulatory process and resource planning at
21 B.C. Hydro.

22 That brings me to my last topic area, and
23 that is procedural alternatives. I will now identify
24 the procedural alternatives that are available and, as
25 I mentioned at the outset, Mr. Sanderson, it will be
26 your choice as to how you wish us to proceed.

1 I think we can simply move on to the next
2 topic for this oral phase without further comment.
3 That's your choice. We can adjourn this issue until
4 tomorrow, or later this week, for comment from B.C.
5 Hydro, to be followed by the intervenors and, if we
6 adjourned, the first alternative would still be
7 available to B.C. Hydro. So you could appear before
8 us later in the week, and simply say, "We don't wish
9 to make further comment," and that would be the end of
10 the oral phrase.

11 Or, third, we can proceed now to discuss
12 the options that I have identified.

13 MR. SANDERSON: Mr. Chairman, I don't think it will come
14 as a surprise to the Commission that the second of
15 your three options has a great deal of appeal, with
16 great respect. That was a lengthy recitation of the
17 Commission's thinking, which is most useful, I'm
18 sure, not just to Hydro but to all parties. So I'm
19 very appreciative of it, but it's a lot to take in.
20 If I can propose a very slight modification to your
21 three procedural options. Having very clearly fixed
22 on adjournment at the end of the process for today,
23 there are a couple of things you've said which I
24 think a brief discussion around might provide more
25 clarity in Hydro's thinking, might make the adjourned
26 time more useful, in terms of obtaining instructions

1 and honing in on the kind of solutions that you're
2 looking for.

3 So what I guess I would propose is, is a
4 brief discussion to get clarity on some of the
5 proposals that you discussed towards the end of your
6 remarks, and then adjourn this issue, and proceed
7 with the other issues that are on your list for the
8 morning.

9 THE CHAIRPERSON: My only hesitation, Mr. Sanderson, is
10 this. I have carefully structured this so I can be
11 consistent with procedural fairness and not give the
12 intervenors an opportunity to comment, if you elect
13 not to comment yourself.

14 MR. SANDERSON: Right.

15 THE CHAIRPERSON: If I deal with your clarity questions,
16 I think procedural fairness will require me to give
17 the intervenors an opportunity to at least comment on
18 those issues you raise.

19 MR. SANDERSON: Yes.

20 THE CHAIRPERSON: And so, with that, I am willing to
21 adopt your proposal.

22 MR. SANDERSON: Well, I think, acknowledging that
23 difficulty, and the challenge of not getting into the
24 debate in an anticipatory way, maybe I'll try and
25 restrict my comment to one. And that is your
26 reference to Table 7.2 from the IEP. And your

1 expression of sympathy, I think, for submissions, I
2 believe, of the Sierra Club, with respect to the
3 extent to which all parties should have input into the
4 options that are potentially considered as part of the
5 solution. And is it your proposal -- I listed it as
6 article -- as number six, that is, the one based on
7 Table 7.2 -- that the Commission, through regulatory
8 process, ensure, before further steps are taken the
9 completeness of the options identified in something
10 equivalent to Table 7.2, and confirm or express its
11 views with respect to the accuracy or validity of the
12 identification of the annual resource available -- and
13 I think you mentioned capacity as well -- and the cost
14 thereof.

15 **Proceeding Time 9:35 a.m. T15**

16 Is that what you would see happening
17 with respect to Option 6, and the purpose of it being
18 to test the veracity and completeness of something
19 along the line of Table 7.2?

20 THE CHAIRPERSON: Yes. The short answer is yes. Now
21 Table 7.2, I think provides you with the resource
22 planning flexibility that you have throughout this
23 proceeding I think identified as being important to
24 B.C. Hydro. And it concerns me from time to time when
25 I hear B.C. Hydro being pushed to provide more
26 certainty than is appropriate given the point in time

1 on the resource planning cycle.

2 And so when you ask me if one of the issues
3 is going to be the completeness of Table 7.2, that may
4 be, but it also needs to be informed by what is a
5 reasonable expectation of B.C. Hydro with respect to
6 that.

7 MR. SANDERSON: Right.

8 THE CHAIRPERSON: I might also add -- it doesn't fall
9 from your comments, but I'll add it in any case.
10 There are some resource types identified there for
11 which there may be more certainty at a certain level
12 than others. So for example, if we're looking at
13 small hydro, there may be some certainty with respect
14 to the amount of resource from that resource type, but
15 very little certainty with respect to the resources
16 that might meet that amount of energy, or capacity for
17 that matter. Did I answer your question?

18 MR. SANDERSON: Yes, I think you did, Mr. Chairman, thank
19 you. And I think I will leave it there. That was
20 very helpful, and maybe after the morning break I can
21 indicate what sort of adjournment that I'm seeking, in
22 other words whether it's possible to address it at the
23 end of today or first thing tomorrow morning or
24 whatever. If I could get back to you on that at the
25 break, that would be helpful.

26 THE CHAIRPERSON: That's fine. I think, given the

1 exchange that we just had, I do not need to open the
2 floor.

3 I will make this comment just in terms of
4 the logistics, and I ought to have done it earlier.
5 Thursday and Friday are not available to the panel,
6 but this is an issue that is not -- it's very
7 important to our deliberations but it's an issue that
8 is not linked to the other issues that we need to
9 deliberate on. So we could, if it was helpful,
10 adjourn to sometime later this week too. So I think
11 the days that are available to you are tomorrow or
12 sometime next week. That's not true either. Tomorrow
13 or the week after next.

14 MR. SANDERSON: Again, Mr. Chairman, maybe with Mr.
15 Miller we can explore that at the break as well and
16 get clear on dates.

17 THE CHAIRPERSON: Yes, that's a good idea.

18 I intend to take three breaks this morning.
19 Let's get started on the second issue, and we will
20 then take a break I think about quarter after ten.
21 And the second issue of course is on deferral
22 accounts.

23 **Proceeding Time 9:40 A.M. T16**

24 I want to talk to -- or speak to this issue
25 again in the context of your argument, Mr. Sanderson,
26 at page 69. Right at the bottom of the page:

1 "B.C. Hydro is not seeking to try to
2 beat that return through the use of deferral
3 accounts. Instead, its overriding --
4 and I'll put emphasis on "overriding" --

5 "-- principles for deferral accounts
6 are to use them as a mechanism to provide
7 smooth and stable rates for customers and to
8 avoid the need to build amounts into budgets
9 for unplanned and unexpected events."

10 And that was a theme throughout the
11 proceeding, and one that was picked up -- I won't
12 refer to them, because I don't think I need to, but
13 picked up by a number of the intervenors, and
14 attributed with significant support by a number of the
15 intervenors, and it concerns me somewhat that they
16 don't in fact do that, and so I want to have a
17 discussion with respect to deferral accounts. And so
18 I'd like to turn to page 80, the first full paragraph,
19 last sentence, you stated:

20 "... the objectives in determining the
21 appropriate amount to dispose at any one
22 time, and the period of time to take that
23 amount into rates, would be smooth and
24 stable rates for ratepayers."

25 I'm with you as you've referenced smooth
26 and stable rates, on page 80, but I'm concerned about

1 your comment on page 69, and I think what's probably
2 most useful is for me to take us to Mr. Morris's
3 evidence at transcript Volume 20, page 3595. And
4 starting on page 3594, because in order to understand
5 what Mr. Morris, I think, told me, we need to capture
6 my question to him.

7 "Mr. Morris, you spoke to the deferral accounts
8 providing an opportunity to smooth the rates,
9 and I'd like to just confirm with you. I was
10 surprised that you said that, because it struck
11 me that that was an unusual use of the deferral
12 accounts. What we're talking about is
13 maintaining, if you will, the linkage between
14 the operating plan, the resource mix, and the
15 deferral account for the reasons that Ms.
16 Farrell spoke to, so that the additional run
17 you're going to do is in an effort to keep the
18 deferral account and the operating plan linked.
19 But you talked about using the deferral account
20 being available to smooth rates. And smooth and
21 stable rate mechanisms. And that struck me as a
22 little bit -- well, I guess, it just surprised
23 me, because a deferral account will capture
24 variances, of course, and if we have a big
25 variance, for whatever reason, because they're -
26 - I'm not as articulate as I might be -- because

1 there's, you know, we're not at 89 percent,
2 we're at 75 percent, or whatever, of that
3 average water. That's going to have a big
4 impact on the following year. We might use it
5 in terms of the amortization line, if there was
6 a big balance in the deferral account. We might
7 at that stage, but only after we're dealing with
8 the variance. You might think about those kinds
9 of considerations with respect to the
10 amortization, but I don't see that as a design
11 element of the deferral accounts. Do you see it
12 as a design consideration?

13 A: No. I think what I was referring to was the
14 use of deferral accounts once monies had been
15 put into them. And that's why we're talking
16 about that, it wouldn't necessarily be coming
17 back at the end of year, one to use the deferral
18 account."

19 And, maybe the easiest way for me to
20 express this, is that whenever there is a greater
21 volatility in the actual than in the forecast, a
22 deferral account is going to create more volatility.
23 It's not going to result in smooth and stable rates at
24 that stage. One can think of it as this way, I think,
25 if we have a forecast that -- load is a good example.
26 If we have a forecast of load, one would expect that

1 the volatility of the actual is going to be greater
2 than the volatility of the forecast. And whenever
3 there's a greater volatility in the actual than the
4 forecast, the deferral account is going to pick up
5 that volatility, we're going to have an amount in the
6 deferral account we're going to need to deal with.
7 The deferral account -- in the absence of the deferral
8 account, now that volatility would be picked up by the
9 shareholder, and so in the absence of the deferral
10 account, there would, if you will, be greater
11 stability to rates. It's in fact the deferral account
12 that creates the instability in the rates.

13 **Proceeding Time 9:45 a.m. T17**

14 And so as a general proposition it seems to
15 me that where there is greater volatility in actual
16 than in forecast amounts, creating a deferral account
17 will increase rate volatility if the amount in the
18 deferral account is recovered or refunded in the
19 following year, and that amortizing balances beyond
20 one year will reduce, but only reduce, the volatility
21 created by the deferral account.

22 And that's what I think Mr. Morris told me,
23 and I'm concerned that the many references to the
24 benefits of deferral accounts for smoothing rates
25 misses the point that in fact if you transfer the risk
26 to the customers, in most circumstances where the

1 forecast is more stable than the actual, which is in
2 most cases you are really creating more volatility in
3 rates than there otherwise would be by creating the
4 deferral account. And maybe that's just plainly
5 correct. Maybe it's plainly wrong. It strikes me
6 that it's plainly correct.

7 There's a second, if you will, proposition
8 that falls from that, and I think this becomes
9 relevant in the context of what JIESC is looking for,
10 and that is, if you use forecast based on an amount
11 other than the best available forecast, you increase
12 the probability of a larger balance in the deferral
13 account. And the larger balance in the deferral
14 account will create greater volatility in rates. You
15 can, as I say, you can mitigate that by establishing
16 amortization periods, but nevertheless you have
17 increased the probability of greater volatility in
18 rates going forward.

19 And I wanted to return to that as, if you
20 will, the opening point of discussion with respect to
21 deferral accounts. There's much more discussion that
22 we need to have in this regard, but if that premise is
23 accepted, then I'm going to as a second topic area I
24 want to talk about deferral accounts in terms of risk
25 allocation, and I'll then get to your controllable
26 characteristics for the purposes of determining where

1 a deferral account should be created and where one
2 shouldn't be created.

3 But my current thinking, subject to the
4 discussion we're going to have this morning, is that
5 in fact the risk allocation issue is the more
6 important issue with respect to the establishment of
7 deferral accounts.

8 So with that, I'll open the floor if
9 anybody wishes to comment.

10 MR. SANDERSON: Mr. Chairman, I do wish to comment on
11 that one, and I think with great respect that the
12 plainly correct plainly wrong characterization
13 oversimplifies a complex situation. I don't think we
14 accept your premise at all, and I don't think it's a
15 fair reading of Mr. Morris that you've given that
16 passage.

17 Mr. Morris, I think, really is after quite
18 a long question, simply clarifying what he was
19 referring to in a previous place. And I think it's,
20 with great respect, overreading that exchange to
21 extract from it a concession that deferral accounts in
22 the case of Hydro aren't available and don't have the
23 effect of smoothing rates. So that's my submission on
24 the testimony, but probably more important is his
25 submission on the substance of what you're suggesting.

26 There is no doubt that the relationship is

1 complicated, and it's an oversimplification to say
2 that merely by having it in a deferral account you
3 somehow have a fund available to smooth rates, because
4 precisely, as you say, at least in the years which
5 have gone by, you wouldn't have to worry about rates.
6 That's all water under the bridge if you didn't have
7 the deferral account.

8 **Proceeding Time 9:50 a.m. T18**

9 So the effect that you describe, up to the
10 point you took it, is entirely correct. However, if a
11 utility knows that and is faced with extremely
12 volatile situations, its response is to make its best
13 possible forecast in the test years of what's going to
14 happen, and then ask for rates to be set in response
15 to that. To see the volatility that that could
16 produce, all you have to do is think about the trade
17 income account or the trade income issue over the last
18 five years.

19 If B.C. Hydro had been here each of the
20 last five years saying, "We need to set our revenue
21 requirement for next year to meet the Special
22 Direction based on today's forecast of what's going to
23 happen in trade income," rates would have been leaping
24 all over the place.

25 A deferral account as proposed here would
26 have greatly moderated that because there would have

1 been available in it, at least once it's up and
2 running, money from the good years to deal with the
3 bad years. You don't need the rates to reflect the
4 volatility that is foreseeable at that stage, year to
5 year, in the export market. And similarly, if other
6 major variables jump around, if you've got a deferral
7 account to deal with that, you don't need each year to
8 have the revenue requirement adjusted to reflect the
9 volatility or change in expectation with respect to
10 those volatile variables.

11 So there's going to be lots of
12 circumstances, I would respectfully submit, where in
13 fact deferral accounts will greatly assist in
14 smoothing rates. And I think that was the burden of a
15 lot of deferral account testimony. If it wasn't as
16 clear as that, I think that's the response to the
17 points you've been making.

18 THE CHAIRPERSON: It seems to me that you can use amounts
19 in deferral accounts for the purposes that you have
20 mentioned. And in regard to the example that you've
21 used where there are significant amounts in those
22 deferral accounts, that can be used, as you have
23 suggested, to smooth rates by using the amounts, the
24 deficiency or the amounts for the balances in the
25 deferral account, to offset what might otherwise be
26 creating volatility in the rates. And so you can use

1 balances in deferral accounts to offset volatility
2 that might otherwise be there.

3 It concerns me when we don't qualify that
4 benefit that you've identified, because if we don't
5 qualify it we tend to assume that transferring the
6 risk of a forecast to the customers is going to
7 produce stable rates for customers. And so one of the
8 benefits of transferring the risk is stable rates. In
9 some circumstances as the ones you've mentioned,
10 that's true. But there are a number of forecasts that
11 we might create a deferral account around, where in
12 fact you're creating more volatility because again, if
13 the actual has more volatility than in the forecast,
14 then the customers are going to be burdened by that
15 volatility because they're going to be picking up the
16 difference between the forecast and the actual.

17 So it's not that I disagree with the
18 benefits that you referred to, but if they're almost
19 incidental, if you will, to significantly --
20 significant benefits, but incidental to the premise
21 that where there's volatility in -- where there's more
22 volatility in the actual than in the forecast, you're
23 going to create at least more risk of volatility in
24 the rates than you otherwise would have.

25 So I think we're not very far apart in
26 terms of our comments, but it's when we -- my concern

1 is losing sight of that general proposition as we
2 begin to apply some principles to deferral accounts
3 and quickly will get to CECBC and their general
4 thinking with respect to deferral accounts, which I
5 think is a significant departure from what we have
6 just said.

7 **Proceeding Time 9:55 A.M. T19**

8 MR. SANDERSON: I agree, Mr. Chairman, I think that the
9 difference is very narrow, and I think -- I accept the
10 point that, both sides of the propositions as we put
11 them need to be qualified, because the effect is not
12 black and white. I think what your comments really
13 suggest is that in looking at a proposal for deferral
14 accounts, two things need to be kept in mind. One is
15 the variable of being -- driving a deferral account,
16 and whether it needs some of the -- or has some of the
17 characteristics that I was identifying. And then
18 second, underlying it, whether in fact the creation of
19 the deferral account would put an upward or downward
20 pressure on rates. That is, the other justification
21 for the deferral account throughout, but not part of
22 the discussion we've just been having, is that where
23 the risk is more appropriately borne by the customer,
24 "appropriate" in the sense that they can assume that
25 risk at less cost than the utility, then it makes
26 sense for the customer to put it there. And so the

1 fact that there is volatility, the fact that there is
2 risk being passed to the customer, is an efficient
3 solution, because for the utility to take the risk
4 would push rates up more than moving the risk onto the
5 ratepayer.

6 And that is -- I do accept the point, that
7 that's really the classic reason for deferral
8 accounts, is to assign the risk properly, as between
9 the shareholder and the ratepayer.

10 THE CHAIRPERSON: All right. So let's have a discussion
11 with respect to that, and then I'll open the floor.
12 Let's turn to page 66 of your argument. The last full
13 paragraph on the page, that starts "... in reviewing the
14 proposed HDA." Carrying on:

15 "To the extent the Commission has
16 discretion to approve the cost components of
17 the HPO, that B.C. Hydro's proposal
18 allocates risk appropriately amongst B.C.
19 Hydro and current and future customers."

20 And then on page 70, the first full paragraph, you
21 say:

22 "B.C. Hydro wishes to limit the cost
23 components included in the HDA to those that
24 are non-controllable by B.C. Hydro, because
25 of B.C. Hydro's conviction that it should
26 assume financial responsibility for

1 controllable risks, and create deferral
2 accounts for non-controllable risks."
3 And it's in this regard that I want to have this
4 discussion. It seems to me there's an alternative
5 here to your test with respect to the allocation of
6 risk. Your test with respect to the allocation of
7 risk is whether or not it's controllable. And the
8 controllability characteristics that are listed there.
9 But as an alternative, and I'd like you to comment on
10 the merits of this, as an alternative, one might look
11 at the risk reward balance that is often
12 characteristic of these discussions.

13 In the context of a utility that doesn't
14 have a Special Direction with respect to establishing
15 rates, there is often a linkage between the risk and
16 the reward. Now, because of the challenges with
17 respect to evidence with respect to the appropriate
18 return given a certain business risk, it's not often -
19 - not always a one-for-one linkage, it can't be an
20 algorithm, but nevertheless the principle, I think, is
21 true, that as the business risk increases, the return
22 should increase.

23 In the context of B.C. Hydro, the return is
24 fixed. The return is fixed, but the risk assignment
25 is not fixed, but for the HDA. And, in fact, when we
26 established -- or when we made recommendations to the

1 government with respect to the HDA, reward
2 considerations were in fact relevant considerations at
3 that time. But it was established, there it was
4 established, we shouldn't have added the "but," was
5 established that an appropriate risk/return balance
6 was, in fact, further to be an HDA with the return set
7 at the comparable investor-owned utility returns.

8 **Proceeding Time 10:00 A.M. T20**

9 And in the context of a number of elements
10 of your proposals with respect to deferral accounts, I
11 think in part because the criteria you propose is
12 controllability, we've lost, if you will, sight of the
13 risk/return balance. And the customers have surprised
14 me in this regard because they seem to be calling for
15 more deferral accounts for a utility that has a fixed
16 return, and so there's going to be no adjustment on
17 the return side, but significant transfer of risk to
18 customers, and so it, you know, I've got to have a
19 discussion with the intervenors in this regard, to
20 make sure that I understand their proposal. But it
21 strikes me that we're not giving enough emphasis in
22 this review to the proper allocation of risk, in the
23 context of the risk/reward balance, as opposed to the
24 controllability characteristics that you've referred
25 to.

26 Commissioner Birch?

1 COMMISSIONER BIRCH: I just might add to that, that that
2 flies in the face of the direction in which regulatory
3 proceedings seem to be going for utilities today, as
4 we get more and more rate-based -- you know,
5 incentive-based regulation, that sort of thing. The
6 comparable utilities that Hydro will be judging -- or
7 we will judge its equity return on, are moving more
8 towards higher risk acceptance for higher reward. At
9 the time when, if Hydro is offloading those risks to
10 the customer, they're going to get a higher reward for
11 less risk taken, so it's going -- we're going in
12 opposite directions here, I think.

13 MR. SANDERSON: The distinction, I think, Mr. Birch and
14 Mr. Chairman, is that is found in Ms. Farrell's
15 testimony, and I grant you that it makes the situation
16 regrettably complicated, but because of the manner in
17 which the province's books are kept, none of this
18 really transfers the risk off the shareholder anyway,
19 as we've heard in testimony. That is, if you want to
20 draw comparisons in terms of the level of risk from
21 the shareholder's perspective, which is how it would
22 be analyzed in a traditional utilities perspective, I
23 think this record is crystal-clear, that that risk is
24 fully with the shareholder, because they can't look at
25 the deferral accounts, if you want. And so they're
26 receiving their rewards from the Hydro operation, that

1 is the province is, as they fall, and none of this has
2 the effect of taking that risk off their balance
3 sheet. And so if the concern that Commissioner Birch
4 puts the finest point on, I think, is that other
5 utilities against which Hydro is benchmarked are
6 assuming more risk, well, Hydro's already got that
7 risk. So it's entirely appropriate if those other
8 utilities are assuming more of it, because it makes
9 the comparison, at least in that limited respect, more
10 comparable.

11 Having said that, I don't want to go there
12 in terms of the ability to compare with, say, Terasen,
13 because that's a fraught path. There's just an awful
14 lot of differences, and I don't think we can usefully
15 start down that a little way without getting far
16 afield and outside the evidence. But that is a key
17 distinction, I think, in response to what we both
18 said.

19 THE CHAIRPERSON: But it takes me to this conclusion,
20 which is a different conclusion than you've taken it
21 to. We're in that unusual situation, for the reasons
22 that you just mentioned, that we might transfer the
23 risk to the customers and yet the shareholder is going
24 to continue to be burdened by the risk.

25 MR. SANDERSON: Yes.

26 THE CHAIRPERSON: And so why, in that situation, transfer

1 risk to customers by -- not only isn't there an
2 adjustment to the return, but there's no adjustment to
3 the risk either, for the --

4 **Proceeding Time 10:05 a.m. T21**

5 MR. SANDERSON: Because if you don't, then the response
6 from Hydro will be to forecast, taking into account
7 uncertainty, the values that go into its revenue
8 requirement in a way differently than they have in
9 this application. And the simplest example of that, I
10 think, is some of the unplanned maintenance.

11 And there was much discussion on the record
12 about, well, why for such a small number, unplanned
13 maintenance over a million dollars, would you want to
14 put that in a deferral account when it's not
15 significant in the context of the overall revenue
16 requirement?

17 And the answer was, as I understood it,
18 well, for those things we don't put in an allowance
19 for that now. It's not planned and we don't put it in
20 an allowance. But if we didn't have a deferral
21 account, we know there's going to be something. We
22 have no idea what it is, we have no way to affect what
23 it is because we don't know whether there's going to
24 be forest fires or what's going to happen. But we'd
25 have to stick in an allowance and we'd have to be
26 conservative because of the level of uncertainty

1 that's associated with it, and the things we have no
2 control over at all. We don't know whether it's going
3 to be hot or dry in the summer or not. We don't know
4 if there's going to be forest fires or not.

5 If you're going to make us responsible to
6 government for the accuracy of that forecast, well,
7 we'll forecast high, as any utility would. And that's
8 the right thing for the utility to do in that
9 circumstances because you deal with uncertainty by
10 adding an allowance. That's what the basic
11 forecasting calls for. It might be, and we submit,
12 would be, much cheaper over time for customers if we
13 didn't do that, if rather we forecast zero unplanned
14 maintenance expenditures, but then took them as they
15 occurred, put them in a deferral account, ultimately
16 recover them. Over time, the ratepayer will pay less
17 to B.C. Hydro than if we went the other way.

18 THE CHAIRPERSON: Well, Mr. Sanderson, just as
19 regulatory prices are a poor substitute for
20 competitive prices, doesn't it follow that deferral
21 accounts are a poor substitute for good forecasts?
22 And I think in this context, what your comments
23 suggest is that the regulatory rigour that we're going
24 to bring to it is not going to ensure that we have
25 good forecasts, and that's a step that --

26 MR. SANDERSON: I must have misspoke, Mr. Chairman.

1 That's not at all, I think, what I intended to say.
2 Really the best example may be, and I use the
3 maintenance, but where we canvassed this most fully, I
4 think, was in the debate between the plan put forward
5 by Dr. El-Ramly and Mr. Epp with respect to
6 variability in the output from the Heritage Resources
7 and that put forward by Hydro. And I took the
8 Commission to accept Hydro's position on that, that
9 rather than trying, as Dr. El-Ramly would have had us
10 do, to forecast with a model and build in a risk
11 premium to the model, to take account of water risk,
12 it was much more sensible to let the actual inflows to
13 the Heritage system fall to the benefit, as it does,
14 of the customers, and that that would yield lower
15 rates more beneficial to customers over time. And I
16 thought that the Commission's decision in the Heritage
17 contract case clearly sided, if you want, with that
18 perspective.

19 And that's really the submission I'm making
20 here, is that there are circumstances where allowing
21 the customer to take the risks allows or eliminates
22 the need to forecast the unforecastable, and thus
23 eliminates the need to build in a risk premium that
24 would otherwise be there necessarily to take care of
25 uncertainty.

26 THE CHAIRPERSON: And when we deal with the Heritage

1 Contract issues, we were dealing with, I think, the
2 classic risk reward tradeoff and whether or not there
3 was going to need to be a premium for the assumption
4 of that risk by, in that case, the shareholder, and it
5 was determined by the Commission that, no, that wasn't
6 a good regulatory model. The more appropriate
7 regulatory model was for there to be a variable priced
8 contract with the burden of the risk borne by the
9 customers, and no consideration therefore of a
10 premium.

11 But I had thought that your comments were
12 to suggest that in this case where we now have a fixed
13 return beyond, if you will, in that sense, the
14 opportunity for there to be an adjustment to the
15 returns, wherein this proceeding we're looking at a
16 variable that's not within our jurisdiction. Why then
17 should we transfer risk to customers?

18 Now, I thought you were suggesting, well,
19 the reason for doing that is because B.C. Hydro would
20 otherwise forecast differently, and that's what took
21 me to my comment, well, you know, deferral accounts
22 are a poor substitute for good forecasts, and can we
23 not get you to good forecasts?

24 **Proceeding Time 10:10 a.m. T22**

25 MR. SANDERSON: No, but again, good forecasting has
26 nothing -- how do I put this? It's no comment on a

1 forecast to foresee or not foresee forest fires.
2 There's simply no connection between the art of the
3 forecast and whether or not we have an intensive fire
4 season in a particular year. There's just no
5 connection. And that being the case, you face the
6 choice of guessing basing, you know, using statistics
7 or whatever, that average and build in a risk premium
8 to deal with volatility, the costs of forest fires
9 that might occur, or you wait and see what happens and
10 allow for whatever happens to be recovered in costs.

11 And all I'm saying is I think standard
12 economic theory, and certainly the testimony in this
13 proceeding, suggests it's cheaper for those sorts of
14 variables to allow them to accumulate as incurred, as
15 distinct from forecasting them dead accurately using
16 proper technique, knowing that no forecasts can be
17 right and having to build in a premium to reflect the
18 fact of that uncertainty.

19 THE CHAIRPERSON: I was not thinking of the example that
20 you were thinking of when we had that discussion.
21 Let's speak to the example that you're speaking to
22 now, and that is with respect to significant unplanned
23 expenditures. So those are the nature that you just
24 described, those related to rather or whatever. You
25 -- appreciate your comments with respect to
26 forecasting them. But doesn't that turn on the issue

1 of risk as acceptance? Shouldn't in those
2 circumstances where the return is fixed, shouldn't in
3 those circumstances -- wouldn't it be in the
4 customers' interests in those circumstances for the
5 risk to be borne by the shareholder? And would that
6 in some way frustrate the purposes of the Special
7 Direction?

8 MR. SANDERSON: Well, again, for those things like
9 unplanned maintenance where Hydro doesn't include that
10 in the forecast, no, it doesn't follow that it would
11 be in the ratepayers' interest, because told that it
12 needed to, Hydro would forecast an amount for those,
13 and my submission has been that amount would be
14 greater over time than the customer assuming them.
15 And so I think the short answer is no.

16 THE CHAIRPERSON: I want to go to page 63 of your
17 argument. Now for items 2 and 3 there is no forecast,
18 as you have said, or if you will, the forecast is
19 zero, but --

20 MR. SANDERSON: Right.

21 THE CHAIRPERSON: But let's -- your comment's germane
22 there, and I think in that context for items 2 and 3
23 you're suggesting that there would be a forecast if
24 that risk was going to be borne by the shareholder.

25 MR. SANDERSON: Correct.

26 THE CHAIRPERSON: Now if we look to item 4 where there is

1 a forecast, again I think this one is for variances of
2 the nature that you just described. But because we're
3 talking about distribution, there has been a
4 sufficient database for there to be a forecast because
5 we're talking about a series of small events. Do your
6 comments equally apply to item 4?

7 **Proceeding Time 10:15 A.M. T23**

8 MR. SANDERSON: Now, I think the discussion we've just
9 had focuses primarily on those things, where Hydro has
10 on evidence adjusted its forecast because of the
11 expectation that they'll be gotten in the deferral
12 account, and that's items 2 and 3. And I think -- So
13 I -- I'm just confirming with Mr. Webb that it's
14 correct on the evidence to say, and I believe it to
15 be, that there is an amount in the forecast for those
16 costs which -- because, just as you say, there is a
17 historical record and it's predictable -- and in
18 consequence, I don't think the discussion we just had
19 justifies that element.

20 THE CHAIRPERSON: Number four.

21 MR. SANDERSON: Right.

22 THE CHAIRPERSON: Right. Fair enough.

23 I think we will -- unless you wanted to add
24 something, Mr. Sanderson -- I think --

25 MR. SANDERSON: No.

26 THE CHAIRPERSON: No.

1 COMMISSIONER BIRCH: Mr. Sanderson, can I just ask one
2 question on that? Am I right in concluding that what
3 you're saying is, the customer's going to pay either
4 way? The customer can either pay by taking on the
5 risk through the deferral accounts, or the customer
6 can pay because Hydro will add a contingency on its
7 forecast. But he's going to pay either way. And so,
8 is the shareholder really taking that risk?

9 Let me just give you an example of the
10 second part. If, in Hydro's forecasts, they say, "Our
11 best guess is there'll be ten fires next year, and it
12 costs so much per fire, therefore we'll put in a
13 dollar figure as to what our spending will be. If
14 there's no deferral account, well, we'd better say
15 there's going to be twelve fires, even though our best
16 guess is ten, just as a contingency, so that we cover
17 ourselves." In essence, have you not just shoved the
18 risk back onto the customer?

19 MR. SANDERSON: Again, I'd make the distinction between
20 the risk and the cost. You certainly are passing the
21 cost, in that latter circumstance, back to the
22 customer. No question. And so I think in response to
23 your first question, the customer pays one way or
24 another, I think that's also true. I think that's
25 right. And my proposition is, it's cheaper for the
26 customer, in these certain circumstances, to pay what

1 actually occurs than to ask Hydro to come up with a
2 number and pass that on. The risk is reduced to the
3 customer, they know what they're going to have to pay,
4 but it's more. And so they pay additional cost in
5 return for reducing the uncertainty, if you want, with
6 respect to what ultimately it will cost them. And for
7 the variables we've identified here, we're saying
8 that's not a good deal for the customer.

9 COMMISSIONER BIRCH: So from the cost point of view, it's
10 just a timing impact, you can -- you're paying -- this
11 is the cheapest way to make it, make the customer's
12 bills -- make -- it's a way to keep the customer's
13 bill the lowest.

14 MR. SANDERSON: Yes.

15 COMMISSIONER BIRCH: But my question, I guess, is, has
16 the shareholder then really taken that risk?

17 MR. SANDERSON: Well, again, with the deferral account
18 proposal, the shareholder in this unique case has,
19 because it can't take -- it has to book it as if the
20 deferral accounts weren't there. So it's only in that
21 sense that the shareholder has still taken the risk.

22 COMMISSIONER BIRCH: Okay. Thanks.

23 THE CHAIRPERSON: Let's take a 20-minute break.

24 **(PROCEEDINGS ADJOURNED AT 10:18 A.M.)**

25 **(PROCEEDINGS RESUMED AT 10:40 A.M.)**

26 THE CHAIRPERSON: I think we should continue with our

1 discussion with regard to deferral accounts, and I
2 rather obliquely introduced an additional issue in the
3 discussion, Mr. Sanderson, that I would like your
4 comments on, and that's with respect to this notion,
5 if we decide that an additional consideration with
6 respect to the assessment of deferral accounts is the
7 risk/reward balance, and we do that in the context of
8 the Special Directions, that is, the return is fixed,
9 and as a result oversimplify it, allocate the risk in
10 the context of a fixed return, is that somehow in your
11 view a frustration of the Special Direction?

12 MR. SANDERSON: Mr. Chairman, with respect to the
13 Heritage deferral account and the Heritage payment
14 obligation, the Special Direction is prescriptive.
15 And so both the risk, if you want, and the reward are
16 fixed by the terms of the Special Direction, and my
17 submission would be the Commission can't seek to
18 frustrate that intent.

19 With respect to the other elements of the
20 deferral account, the combined effect of the Special
21 Direction in the legislation, it seems to me, is to
22 give the Commission a discretion to determine the
23 deferral accounts in light of all the surrounding
24 circumstances.

25 And so I think it follows from that that
26 the Special Direction doesn't place limitations on the

1 answer. I mean, the answer is one you'll arrive at
2 based on the knowledge that the return is set and the
3 various other unique characteristics involved with
4 Hydro, and then the Commission is expected to, in
5 light of all that, decide what are and what are not
6 appropriate deferral accounts. So this is a
7 circumstance where I think for most of the argument,
8 we're not urging on you limitations. We're simply
9 saying you have a discretion; here's why you should
10 exercise it in a particular way.

11 **Proceeding Time 10:43 a.m. T25**

12 THE CHAIRPERSON: Thank you.

13 I now want to give the intervenors an
14 opportunity to comment on the discussion that Mr.
15 Sanderson and I had prior to the break. I do have
16 some specific issues I want to raise with the
17 intervenors as it relates to deferral accounts in
18 their arguments, but I think it's probably best if I
19 simply give you an opportunity to comment on the
20 discussion that Mr. Sanderson and I had, and if you
21 don't cover off the issues that I want to raise with
22 you, then I'll return to those issues after you've
23 made your comments.

24 So, Mr. Wallace, I think it's probably best
25 to give you the opportunity first.

26 MR. WALLACE: Thank you, Mr. chairman.

1 THE CHAIRPERSON: If you may, Mr. Feldberg, you were on
2 your feet as if --

3 MR. FELDBERG: I'm sorry, Mr. Chairman, I don't quite fit
4 into the category of intervenors.

5 THE CHAIRPERSON: Yes.

6 MR. FELDBERG: But the deferral accounts is a topic upon
7 which I have some interest, and I didn't know when in
8 the process of dealing with these issues you expected
9 or anticipated to hear from me.

10 THE CHAIRPERSON: Yes, Mr. Wallace, sorry, that was an
11 oversight on my part. I should have given Mr.
12 Feldberg the opportunity, and let's do that. Why
13 don't you be given the first opportunity to comment,
14 Mr. Feldberg, and then we'll get to Mr. Wallace.

15 MR. FELDBERG: Thank you, Mr. Chairman, and on the
16 specific questions that you pose to Mr. Sanderson, I
17 don't have too much to add. I generally support what
18 Mr. Sanderson said in terms of the purposes of the
19 deferral accounts, with one observation that I would
20 make, and that was when he gave his analysis of, I
21 suppose, a matter that you don't forecast at all,
22 which he said would be appropriate for a deferral
23 account if it's an unexpected expense, and contrasted
24 that with a matter that you do forecast.

25 And I'd only make the observation, Mr.
26 Chairman, that even in cases of particularly

1 uncontrollable expenditures -- and the example I'm
2 thinking of is the emergency maintenance expenditure
3 deferral account that we've sought, where there are
4 potentials -- there is some history, so you do your
5 best job at forecasting what you think it's going to
6 be in the next year. There could be very substantial
7 swings up and down from that, which would also require
8 you, if you were not to have a deferral account, to
9 build in some sense of risk premium for that
10 volatility; and that it is better, in my submission,
11 for customers in that case that you do your best job
12 at a forecast, and you establish a deferral account
13 that can go up and down, it varies around that
14 forecast, and that it's better for customers in that
15 sense to debate after the fact whether or not the
16 expenses that were actually made in response to an
17 event that actually happened. It's easier for them to
18 have that debate, and more sound in a sense, than for
19 them to engage in the debate in advance about what
20 might happen and what it might cost, and whether or
21 not your forecast is appropriate or not.

22 **Proceeding Time 10:46 A.M. T26**

23 And so, in that sense, there's a benefit
24 even in the regulatory process to the deferral
25 accounts around uncontrollable expenses, such as an
26 emergency maintenance expenditure deferral accounts.

1 THE CHAIRPERSON: By your comments, are you suggesting
2 that the forecast might in fact be a different
3 forecast if there's a deferral account than if there
4 isn't a deferral account?

5 MR. FELDBERG: Yes. In a sense -- in the sense of, if
6 you were to assess the risk that you were going to be
7 taking, in a sense of what the likelihood of the
8 expense might be, there would be, as Mr. Sanderson
9 indicated, there is often a risk premium attached to
10 that. It's not that you artificially forecast high,
11 or artificially forecast low, but the debate becomes
12 over whether or not your forecast of what might occur
13 that fall will be appropriate, as opposed to whether
14 or not what you spent last fall was right, on
15 emergency types of things.

16 THE CHAIRPERSON: Are you not then confusing the
17 risk/reward balance -- effectively, you're making an
18 adjustment to the forecast for some sense of the risk
19 that's in that forecast, and I would have thought
20 traditionally that that would have been done through
21 the return and perhaps more appropriately through the
22 return, than kind of making some adjustment to the
23 forecast, because there's a deferral account. And I
24 actually think that there's -- I'm not going to be
25 able to identify the evidence readily, but I thought
26 B.C. Hydro's evidence, at least, was that a deferral

1 account would not change the forecast.

2 MR. FELDBERG: I think that all I'm saying is, you have to
3 look at the specific expenditures, the specific types
4 of expenditures, the controllability is one factor,
5 the type of expenditure that you're seeking to
6 establish a forecast for, and determine, on that
7 basis, whether it is more appropriate, perhaps, that
8 it be forecast and a risk taken, or whether it be
9 something that is purely uncontrollable and in the
10 customer's interest that it be looked at in a deferral
11 account. I'm not sure there's a rule that is
12 applicable across the board in that sense. I mean, we
13 would -- what BCTC has is in its deferral accounts, I
14 looked at pretty carefully expenses that it views as
15 relatively uncontrollable, it does its best job at
16 forecasting what it can -- what it thinks those are
17 going to be. But in terms of building into that
18 forecast contingencies that it is wrong, and that it
19 has to absorb some risk there, it hasn't done that.
20 And in that sense, the customer's better off to not be
21 debating in advance whether or not the utility has
22 done that, but is better off at the end of the day
23 saying, look at what occurred, what you spent, and was
24 that prudent. And it's in those types of accounts
25 that I think that analysis applies.

26 THE CHAIRPERSON: It concerns me that it presents a

1 different discipline for the utility, if it has the
2 benefit of a deferral account. BCTC's circumstances
3 are somewhat unusual in that --

4 MR. FELDBERG: They are, Mr. Chairman, and --

5 THE CHAIRPERSON: -- your ability to withstand risk, or
6 to -- your risk tolerance, if you will, is different
7 than B.C. Hydro's.

8 MR. FELDBERG: It's very low level of equity, and yet
9 there's a rate of return that is set by the Special
10 Direction, which is the same as Hydro's. It's --
11 there's a different risk profile there, and a
12 different risk/reward profile. Clearly.

13 THE CHAIRPERSON: Thank you.

14 MR. WALLACE: Mr. Chairman, before I talk about deferral
15 accounts, I would like to raise one procedural issue
16 with the manner in which you're proceeding with
17 respect to the IEP discussion. And that is, you have,
18 quite candidly, and we appreciate that, put out your
19 ideas with respect to proposals put forward by a
20 number of the parties, including B.C. Hydro. However,
21 you have then said to B.C. Hydro, if you want to
22 comment on my thoughts on all of these things, then
23 everyone gets to comment. However, if you don't want
24 to comment on my thoughts with respect to all of these
25 things, including your proposal and other people's
26 proposal, then no one gets to comment. And, quite

1 may be mischaracterizations or misunderstandings of
2 positions there that they have an opportunity, at the
3 invitation of the Commission, to go with, and others
4 don't, even though there may be a mischaracterization.
5 They get an election; we don't.

6 Had you put simply their position to them
7 and asked a question, I don't think I'd have any
8 concern at all.

9 THE CHAIRPERSON: No, I do want to restrict comments
10 during the oral phases to those matters that we raise.
11 If there is a mischaracterization that I gave to the
12 reasons, you're going to have to leave it to the panel
13 to sort those out during its future deliberations.

14 MR. WALLACE: Yes, sir. I'll leave it at that for now.
15 Thank you.

16 I'd like to then turn to deferral accounts,
17 and there are three main points I want to discuss:
18 the volatility issues you've raised, whether the
19 shareholder is at risk, and the use of deferral
20 accounts versus risk/reward returns. So simply deal
21 with it at the same very high generic level you have
22 so far.

23 I find myself in the unusual position of
24 agreeing with Mr. Sanderson in some of these cases,
25 particularly in argument. That very rarely happens,
26 but it has here. It would be our submissions that

1 deferral accounts, depending on the account, and I
2 think that point's been made by Mr. Sanderson and Mr.
3 Feldberg, can reduce volatility and can do it very
4 usefully. And the two areas where that is most
5 apparent, I think, are on trade revenues and with
6 respect to water inflows, where I think the very
7 concept of the Heritage -- or the Energy Plan, the
8 Heritage Agreement, the Commission's decision, was
9 that there would be volatility, that these would
10 circle around in the case of water flows, I would say,
11 around a norm, and that that volatility was not to be
12 reflected in rates but was to be carried through,
13 through the use of the Heritage deferral account. And
14 I've dealt with that fairly extensively in my argument
15 at pages 47, 48, and going on to 49.

16 THE CHAIRPERSON: Let me interrupt you then. At page 49,
17 lines 25 to 26, you say -- what I think you've just
18 said, that unless we use normal water inflows for the
19 costs, for the forecasts of the revenue requirements,
20 that we're not going to have rate stability going
21 forward. This absolutely must be done if we are to
22 have rate stability going forward.

23 MR. WALLACE: That's right.

24 THE CHAIRPERSON: We accept the premise that if we do
25 that, that the balance in the deferral account at the
26 end of the year is more likely to be larger, and

1 refer to them briefly, right to the Heritage decision,
2 was -- or starting, I guess, page 47, line 14:

3 "... the quantity of energy producible
4 from the resources shall be determined
5 assuming average water conditions for the
6 duration of the Heritage Contract."

7 Below that, at line 18, right from the heritage
8 decision:

9 "... when short-term fluctuations and the
10 actual cost of delivering energy from the
11 heritage resources occur due to a particular
12 water or market conditions, the heritage
13 deferral account can smooth out the impact
14 on customers by offsetting them against
15 fluctuations in trade income by bringing
16 them into rates when it is convenient to do
17 so, bring in that dry period when it's wet."

18 The -- I suggest to you that the description in the
19 heritage proposal covered it. B.C. Hydro has
20 therefore proposed the introduction of the HDA for the
21 dual purpose of mitigating expected annual volatility
22 in revenue requirement as a replacement for the RSA.
23 Benefits of the arrangement are that it can mitigate
24 forecasting error, and by mitigating volatility,
25 reduce risk premiums. And they go on, with other
26 points. But the essential one is wet and dry, and the

1 changes are going to come. It's more than a
2 forecasting error that's been offset, whether you're
3 right you're in dry, or right you're in wet. And we
4 submit that that volatility is important. And trade
5 revenues have similar volatility in that trade sales
6 will be much more valuable in different periods,
7 different times, and it's simply impossible to
8 forecast -- and, although it's not as clear, that
9 would go around a norm as wet and dry will go around a
10 norm.

11 THE CHAIRPERSON: The section that you've quoted of the
12 Heritage Decision, by my read of it, is not
13 inconsistent with the notion that when you have a
14 deferral account, you can use balances in the deferral
15 account to offset other drivers of the rates, and
16 perhaps wind up with more stable rates as a result of
17 that.

18 MR. WALLACE: I agree you could do that. And that may be
19 appropriate in some cases. I would, I think, argue
20 that the water inflows is more distinct, because it
21 goes around a norm, but no, I quite agree that that
22 would be appropriate, and you may find a one-time
23 windfall, or a one-time cost, that you have to deal
24 with in that type of way.

25 THE CHAIRPERSON: Can you comment on the notion that if
26 you have a greater volatility in the actual than in

1 the forecast, you're going to increase the volatility
2 in rates going forward, unless you have the
3 opportunities that you just referred to -- that if you
4 have a deficiency in the rule, that you might be able
5 to use it -- almost incidental to it, but you might be
6 able to use it to offset other drivers of rate.

7 MR. WALLACE: I don't think it necessarily follows. You
8 know, obviously, the one I've raised, with a norm, is
9 a particular case. But no, I think rate
10 stabilizations that have been used around trade
11 revenues or export income, I think it was called in
12 the past, have worked beneficially without putting the
13 utility at risk. So, no, it can reduce volatility,
14 that would otherwise be coming through almost
15 automatically, or very quickly.

16 THE CHAIRPERSON: Will you at least go this far, that the
17 creation of the forecast does not necessarily result
18 in stable rates?

19 MR. WALLACE: Yes, I think I can accept that, in certain
20 circumstances, that can happen.

21 **Proceeding Time 11:00 a.m. T29**

22 THE CHAIRPERSON: And in those circumstances, you might
23 refer to other design considerations than a deferral
24 account producing stable rates.

25 MR. WALLACE: Right. And I think that's -- actually if I
26 can just quote one other quote in support of the

1 regulatory deferral account, and that's line 21 of
2 page 48 I would like to emphasize, and that is with
3 the implementation -- and this is from B.C. Hydro's
4 own service plan:

5 "With the implementation of the Heritage
6 Contract for 2004-5, B.C. Hydro will be able
7 to use regulatory deferral account to offset
8 higher costs of energy and in low water years
9 against higher revenues in above normal
10 water years, smoothing the impact on rates."

11 And again that goes to the volatility of wet and dry.

12 I'd like to then turn to the risk
13 consideration, which I think is one of those other
14 considerations you raised, and one I would like to
15 take issue with Mr. Sanderson on for sure is that the
16 deferral account does not transfer the risk from the
17 shareholder to the ratepayer. There's no question in
18 my mind the financial risk is transferred.

19 What may not be transferred is the risk of
20 short-term expectations not being met, because they
21 are consolidated. But the financial risk in the end,
22 and Ms. Farrell agreed, still stays with the
23 ratepayer, that B.C. Hydro is better off knowing it
24 will recover that money out of the ratepayer, and the
25 province is better knowing that that goes into rates
26 and they get it than if it's foregone. And to that

1 extent the deferral accounts definitely -- and I think
2 that's the real issue -- take the financial risk from
3 B.C. Hydro and the government and put it on the
4 ratepayer. That is not a foregone recovery when it
5 occurs.

6 THE CHAIRPERSON: Yes, and I'll give Mr. Sanderson an
7 opportunity to comment on this, but in B.C. Hydro's
8 argument they refer to the implications for
9 management, and my impression is that those are of the
10 nature that you just described, the short-term issues,
11 but in the long term it seems to me that subject to
12 what Mr. Sanderson might say, there's some merit to
13 what you've just said.

14 MR. WALLACE: And those deferral accounts bear interest,
15 so it is recovered -- the expense is recovered with
16 interest.

17 THE CHAIRPERSON: That qualification may not have much
18 applicability, but nevertheless it's an important
19 point to note.

20 MR. WALLACE: Yes, I think Hydro has raised a point with
21 respect to what expectations might be in the financial
22 picture short-term of the province. But the money's
23 coming back, and expectation may not be made.

24 The third point I'd like to address with
25 respect to deferral accounts is the use of deferral
26 accounts versus risk/reward returns, and recognizing

1 already that we don't have the chance to change ROE
2 here. And Commissioner Birch, you referred to a trend
3 in other utilities toward incentive mechanisms, and
4 that unquestionably has been a trend. But those
5 incentives, in my experience, have been with respect
6 to controllable items, that I think if you look at
7 almost any of the utility's incentive agreements, you
8 will find that, for example, property taxes may well
9 be a flow-through, that there is an adjustment for,
10 there is a deferral account for.

11 **Proceeding Time 11:05 A.M. T30**

12 And so they have not done away with
13 deferral accounts, I think they have encouraged
14 incentives in controllable areas, and that has been
15 useful. And one of the reasons, having represented
16 intervenors for a long time, I've seen these develop,
17 and incentives in controllable areas are useful.
18 Incentives in uncontrollable areas simply don't
19 necessarily do much, and, in fact, the real
20 incentives, I think, are some of those that were
21 mentioned by Mr. Sanderson, and that is to pad your
22 estimates. That if you don't have a deferral account,
23 our experience, and why customers have often agreed to
24 deferral accounts in the past, is that what happens is
25 you get padded forecasts, which are very hard to
26 challenge, as Mr. Feldberg mentioned, I mean, it's

1 hard enough to say whether a cost is a reasonable
2 forecast or not, to get a degree of padding can be
3 even more difficult. You get a higher risk premium,
4 because the utility can come and say, oh, we're at
5 more risk now, even though the forecast might have
6 eliminated it. And then, on numerous occasions, we --
7 at least in our perception -- have seen the utility,
8 when the risk occurs, back off somewhere else, divert
9 the funds, do the job, and bring in the old project
10 the next year and get it approved in its revenue
11 requirement. So a deferral account can have a useful
12 role, both from a regulatory point of view and a cost
13 containment point of view.

14 THE CHAIRPERSON: I want to pursue this with you a little
15 bit, Mr. Wallace. Can you -- if you've got it handy,
16 can you dig out Volume 7 of the transcript?

17 MR. WALLACE: Maybe Hydro could loan me one. For obvious
18 reasons, I did not bring all my material today.

19 THE CHAIRPERSON: Yes. I appreciate that.

20 And it's actually not necessary that you
21 have it, if it's handy --

22 MR. WALLACE: Thank you. I have it. Page number --

23 THE CHAIRPERSON: Page 977. This is a comment that Ms.
24 Farrell -- and I found it candid. She would argue
25 that it's not applicable to B.C. Hydro, but I found it
26 candid. She's talking about her own experience with

1 deferral accounts. At line 11.

2 "We don't have an obligation to try to beat
3 that return which I think other utilities
4 do, which makes the deferral account
5 sometimes a bit of a game. You know, in
6 terms of -- I can beat the deferral account,
7 I can increase the return to the
8 shareholder. We just have to return to
9 that."

10 And I -- you know, your comments about deferral
11 accounts are interesting from a regulatory policy
12 perspective, because I would have thought, subject to
13 your comments with respect to the difficulties of
14 getting to a good forecast, but I would have thought
15 that in circumstances where you're comfortable with
16 the forecast, you would prefer that there not be a
17 deferral account than there not be a deferral account,
18 because of the opportunities that Ms. Ferrell alludes
19 to, and you've just alluded to, for management to game
20 it a little bit.

21 MR. WALLACE: If you're -- and I think the key one you're
22 saying is, if you're comfortable with the forecast,
23 and deferral accounts, I think as Mr. Sanderson very
24 candidly pointed out, can stop putting in
25 contingencies for low risk items. And I think that's
26 very important. By the way, just on the comment, I

1 don't accept that B.C. Hydro has no incentive to lead
2 anything, I think they like to look good, like any
3 management does.

4 THE CHAIRPERSON: But you do accept the notion that if
5 you're -- in circumstances where you are comfortable
6 with the forecast, that in fact it's a good forecast,
7 I'm not looking -- I'm not suggesting to you that you
8 have a cost -- a forecast that's loaded in favour of
9 the customer, I'm just talking about if you're
10 comfortable that this is in fact a good forecast, do
11 you not see some benefits of there not being a
12 deferral account because of the gaming issues?

13 MR. WALLACE: Again, I mean, there are items where
14 clearly we agree. But if they're controllable, then
15 setting a cost limit is good. If they're not
16 controllable, and that's usually where deferral
17 accounts are used, then it usually means the forecast
18 is not with a high degree of certainty. And so we
19 would say, trade revenues, water levels, foreign
20 exchange, interest, they're all outside the utility
21 and very hard to control, and therefore the -- I guess
22 offsetting adjustments, that can happen in terms of
23 forecasts, in terms of other things, or the fact the
24 forecast just can't be that precise, come into play.

25 **Proceeding Time 11:10 a.m. T31**

26 THE CHAIRPERSON: Do you accept the notion that in the

1 case of B.C. Hydro where the return is fixed, that
2 that's another consideration with respect to whether
3 or not we should approve deferral accounts?

4 MR. WALLACE: Yes, I do, I mean, although we have the
5 Special Directions which also require you to set rates
6 at a level that they're expected to be recovered. So
7 I'm not sure again that that helps very much. I do
8 think that the controllable versus non-controllable
9 distinction that Hydro has made in setting up deferral
10 accounts is an appropriate distinction. That doesn't
11 mean I agree, as is obvious from my argument, with
12 each of the deferral accounts they've set up. But it
13 is a useful distinction.

14 THE CHAIRPERSON: I found it interesting, Mr. Wallace,
15 that when we started to talk about the interest rate
16 and foreign exchange rate deferral account, B.C. Hydro
17 parted in its argument from its controllable versus
18 non-controllable criteria, and in that particular case
19 looked to risk allocation as the important determiner
20 of whether or not there should be a deferral account.
21 But what was interesting about that was that in that
22 context, they were of the view that the shareholder
23 should bear the risk. And you're of the view that the
24 customer should bear the risk, which is the opposite
25 position that I would have anticipated from the two of
26 you other than issues arising from whether or not it's

1 a good forecast.

2 MR. WALLACE: And I think our basis on it is
3 consistency. We have seen those accounts go into
4 deferral accounts everywhere else with good reason,
5 and we believe that the same factors apply here of
6 controllability versus uncontrollability. Quite
7 frankly, one simply gets a little suspicious when one
8 uncontrollable expense is separated out, that there
9 are ways it can be controlled that aren't taken into
10 account and that it's going to turn out beneficial.

11 We think that if in the long run it isn't
12 beneficial it'll end up on the ratepayer, and
13 therefore if it is going to, there's an opportunity
14 for it to be beneficially managed, it should be done
15 so with the risk on the ratepayer.

16 THE CHAIRPERSON: Your concerns with respect to
17 controllability in that regard relate, I thought when
18 I read your argument, primarily to the volume issue;
19 that B.C. Hydro could benefit from bearing that risk
20 by reducing the amount of -- pardon me, increasing the
21 amount of short-term debt; that the one that was
22 uncontrollable was risks. Did you give some
23 consideration to bifurcating your position with
24 respect to that deferral account, and calling for B.C.
25 Hydro to bear the volume risk, arrive at a good target
26 for them to endeavour to achieve, and having the

1 interest rate, which is arguably beyond their control,
2 left with them as well?

3 MR. WALLACE: Well, I think in light of our position that
4 they should be moving the volume, the short-term debt,
5 up. That would not have been leaving them, I guess,
6 very much control with it. And with respect to both
7 the interest rate and the foreign exchange, that is
8 uncontrollable.

9 THE CHAIRPERSON: So move up the volume and customers
10 could get the risk, if you will, because of that.

11 MR. WALLACE: And just going to that, Ms. Lambert was
12 very clear and I can give the reference later if you
13 wish, but that the assessment of the volume risk was a
14 risk tolerance issue, not a professional judgment
15 issue. And I guess we think for the customers that
16 that is a beneficial risk to be taken by the
17 customers. Thank you.

18 THE CHAIRPERSON: Thank you. Mr. Weafer. I won't take
19 these in any particular order, and please if I miss
20 someone, make sure you get to the mike.

21 MR. WEAFER: Thank you, Mr. Chairman. Much of what Mr.
22 Wallace has said I agree with, and in fact I won't
23 point out any differences. I also took from Mr.
24 Sanderson's comments, statements that were rebutting
25 what seems to be your thinking on deferral accounts a
26 bit. His comments were more consistent with our

1 position.

2 **Proceeding Time 11:15 A.M. T32**

3 So just to deal with this from three
4 points, firstly just a few contextual comments in
5 terms of where we're at with B.C. Hydro, and why
6 deferral accounts are a useful tool for this point in
7 time with respect to B.C. Hydro. Secondly, just
8 touching on the issue of the risk to the shareholder.
9 And thirdly, talking about, and most importantly, what
10 the preference is, of this customer group, the group
11 that I represent, and I believe other customer groups
12 will speak as well. Which is, in support of more use
13 of deferral accounts to mitigate the cost impact of
14 B.C. Hydro on its customers.

15 Firstly, with respect to the context of
16 this proceeding, everybody has pointed out in their
17 argument that it's been ten years since B.C. Hydro was
18 before the BCUC. Indeed, it's been ten years since
19 there's been a look at whether deferral accounts are
20 appropriate for B.C. Hydro, and what are the other
21 regulatory tools the Commission should use in looking
22 at B.C. Hydro. It's been ten years since management
23 of B.C. Hydro has had to look at how it's going to
24 manage itself in accordance with the oversight of the
25 regulator and the tools that the regulator may use.
26 We have, in this proceeding, have some concerns with

1 respect to the track record of evidence that's
2 available, the length of forecast being provided by
3 B.C. Hydro, the term of years that they've provided
4 evidence on their accuracy of forecasts. Not
5 something we've been able to do anything about,
6 because in many cases the evidence isn't available,
7 and so we've not pursued it any further. We've
8 stepped back, and said that's -- we're prepared to
9 accept your best efforts in this proceeding, we're
10 still not comfortable. And in many areas, deferral
11 accounts remedy that discomfort, and give us some
12 ability to look back at what the record is of B.C.
13 Hydro in the past year.

14 The second point, in terms of the
15 contextual nature of this proceeding is, we are, in
16 the Energy Plan, looking at moving towards PBR with
17 B.C. Hydro. There's no doubt in my mind as we move
18 towards assessing the use of PBR with B.C. Hydro, that
19 there will be more demand for the use of deferral
20 accounts for expenses that may be unpredictable, or
21 unforeseen events, or highly variable but
22 unpredictable costs. We will be looking at those in
23 the future as we move towards PBR with B.C. Hydro.
24 And so, it is not a bad precedent to be looking at how
25 they use them, and how they work, and the context of
26 the decision in this proceeding. So just contextual

1 comments that have -- some of the reasons that have
2 led us towards broad support for the use of deferral
3 accounts in areas. We've --

4 THE CHAIRPERSON: So you don't see PBR at the opposite
5 end of the spectrum from deferral accounts?

6 MR. WEAFFER: There will certainly be cost categories
7 where there is uncontrollable expenses for B.C. Hydro,
8 or unpredictable costs that they are certainly going
9 to be asking for deferral accounts, in the PBR
10 context, and we will likely be looking to be
11 accommodating in that respect, because it's unfair to
12 factor those into PBR. The X-factor. So, that's --

13 THE CHAIRPERSON: Thank you.

14 MR. WEAFFER: With respect to the second point, that the
15 risk to the shareholder, we're on all fours with the
16 comments of Commissioner Birch in terms of the
17 customer is in effect going to pay anyway. Whether
18 you use deferral accounts or whether you use the
19 forecast, the customer is going to pay. There's no
20 higher risk to the shareholder necessarily by use of
21 deferral accounts, depending on how the recovery for
22 unperformance occurs through the use of deferral
23 accounts. And I've wrestled a bit with some of your
24 comments this morning, Mr. Chairman, with respect to
25 trying to understand the position that you've clearly
26 put out to us, to rebut --

1 THE CHAIRPERSON: I'd prefer you to think of it as a
2 proposition.

3 MR. WEAVER: Well, the propositions. And we do
4 appreciate hearing some of your thinking on it. But
5 from where we sit, with respect to the risk to the
6 shareholder, the return to the shareholder is not
7 fixed, with respect. If B.C. Hydro has underforecast
8 its revenues, or overforecast its costs in this
9 proceeding, at the end of the day, any overrecovery is
10 going to flow to the shareholder. In excess of --
11 that is going to be an -- and panels of B.C. Hydro
12 agreed with that, on cross-examination. If the
13 productivity factor of the next two years is six
14 percent, seven percent, as opposed to talking around
15 two or three, that benefit is going to go to the
16 shareholder, effectively shared with the customer. So
17 there is -- there's not an effective fixed return. If
18 they do better than they've said they're going to do,
19 there's no necessary benefit to the customer in that
20 respect, and there is to the shareholder. And in
21 certain cost categories, that's -- that may be
22 appropriate.

23 But where they are categories that should
24 follow within the context of deferral accounts, as we
25 set out in our argument through pages 43 through 55,
26 where they are through the result of potentially

1 don't know what the results will be. And that is in
2 the categories we set out in our evidence, in our
3 argument, risks we're prepared to take and we think
4 are appropriate in the --

5 THE CHAIRPERSON: Because your view with respect of the
6 forecast -- I'll put the same proposition to you that
7 I put to Mr. Wallace. If you were satisfied that it
8 was a good forecast, would you then be proposing a
9 deferral account? And I believe the question vague in
10 terms of its applicability, but as a general
11 proposition, where you are satisfied that it's a good
12 forecast, would your preference be to have a deferral
13 account or not?

14 MR. WEAVER: Mr. Chairman, it depends on the category of
15 the nature of the forecast in the sense of -- and
16 we've set out in our evidence a bit of a broader
17 position on it. You opened your comments talking
18 about smoothing of rates as the primary reference on a
19 number of occasions around --

20 THE CHAIRPERSON: Yes. Well, let's talk about a specific
21 then. Let's talk about load variances and load
22 forecast. I understood your argument to say that you
23 wanted to establish a deferral account around the load
24 forecast. Is that correct?

25 MR. WEAVER: Yes.

26 THE CHAIRPERSON: I think with respect to the load

1 forecast, isn't it fair to say that the volatility of
2 the actual is going to be greater than the forecast?

3 MR. WEAFFER: That may be, but at the end of the day the
4 volatility is going to be plus or minus, and we're
5 truing it up against actual at the end of the
6 assessment. The customers will properly pay what they
7 should properly pay based on actual results.

8 THE CHAIRPERSON: But because you're not satisfied with
9 the forecast. If you're satisfied with the forecast,
10 in the context of the load deferral account that
11 you're proposing, would you not then prefer for the
12 risk to be borne by the shareholder than the customer?

13 MR. WEAFFER: Assuming we're satisfied with the forecast.

14 THE CHAIRPERSON: Okay. So again with respect to the
15 load forecast, your position turns on whether or not
16 you're satisfied with the forecast.

17 MR. WEAFFER: It does. However, to the primary point, why
18 bear a risk at all, and why pay a potential premium,
19 if the forecast is a conservative forecast which --
20 even if you're satisfied with it, you may still think
21 it's conservative and may believe that over time
22 you're better off being trued up against actual
23 through the deferral account over time.

24 THE CHAIRPERSON: Proceed please.

25 **Proceeding Time 11:25 A.M. T34**

26 \MR. WEAFFER: Mr. Chairman, those are really the

1 comments. I think the -- we stand by our position,
2 notwithstanding your propositions this morning, that
3 the customer's better off through the use of deferral
4 accounts.

5 THE CHAIRPERSON: One moment, please.

6 MR. WEAVER: Mr. Chairman, just as a general comment.

7 The primary concern, and nobody is alleging any gaming
8 of forecasts by B.C. Hydro, but the challenge we face
9 is, there's certainly a higher propensity for gaming
10 with forecasts versus gaming against normal. It -- if
11 you're being true to that point, and this with respect
12 to the water flow discussion you had this morning with
13 Mr. Wallace, I mean, there the -- we would rather take
14 nominalized forecasts as opposed to the approach that
15 B.C. Hydro has put with respect to actual this year.

16 THE CHAIRPERSON: Especially in the short term.

17 MR. WEAVER: Yes. Yes.

18 But over the longer term as well, Mr.
19 Chairman, in the sense that the deferral account, such
20 as that one, which may have huge variances, in fact,
21 since the filing of the initial evidence, there's a
22 significant variance, clearly there's going to have to
23 be a longer period of time to clear that deferral
24 account.

25 THE CHAIRPERSON: I have one question before you sit
26 down, with respect to your argument. And I think this

1 almost goes without saying, but let me raise it
2 anyway. At page 43, the second full paragraph on the
3 page, the one that starts "Evidence on the purpose of
4 ...".

5 MR. WEAVER: Yes.

6 THE CHAIRPERSON: The last sentence, when I read that
7 sentence, it occurred to me that what you're saying
8 is, and I just want to really confirm this with you,
9 that the risk is being transferred to the customer if
10 there's a deferral account, but of course the amounts
11 that go into the deferral account are subject to a
12 prudency review. But the prudency review doesn't
13 change the transference of the risk in the deferral
14 account, all it is -- all it does, really, is ensure
15 that the amounts in the deferral account are
16 appropriate. And where they're not appropriate, I
17 mean, that is one of the burdens that the utility has
18 with respect to a deferral account, is there is the
19 potential for a retroactive review, if you will, of
20 their expenditures that you wouldn't see if there was
21 no deferral account. Am I correct, do you agree with
22 my comment --

23 MR. WEAVER: Yes, that's correct.

24 THE CHAIRPERSON: Yes. Okay.

25 Thank you.

26 MR. WEAVER: I had no intentions of going through our

1 argument, Mr. Chairman --

2 THE CHAIRPERSON: No.

3 MR. WEAVER: -- it's set out.

4 THE CHAIRPERSON: And I -- you'll have another
5 opportunity to comment. But thank you.

6 MR. WEAVER: Thank you, Mr. Chairman.

7 COMMISSIONER BIRCH: Mr. Weaver, could I just -- one --
8 is it an oversimplification to say that your fear of
9 the cost to your client of gaming forecasts is really
10 higher than your fear of how far the forecast could be
11 out? And therefore, deferral accounts are your
12 solution to that problem? Is that --

13 MR. WEAVER: The gaming comment is strong, and again,
14 we're not alleging gaming of forecast by B.C. Hydro at
15 all. What we are -- it's -- B.C. Hydro's done a very
16 effective job in this proceeding protecting the
17 interests of the shareholder. There are other topics
18 we may talk about later on, which deal with that.
19 We're not saying there's gaming around forecasts.
20 What we are saying is, the nature of the operation of
21 B.C. Hydro will lead them to more conservative
22 forecasts wherever they can support a conservative
23 forecast, and that is not necessarily to the interest
24 of the customer.

25 COMMISSIONER BIRCH: Okay. Thank you.

26 MR. GATHERCOLE: Mr. Chairman, I'll be brief, and it

1 won't surprise you given the position we took in our
2 argument, that I would be siding with Mr. Sanderson,
3 to a great extent. And we spent some time looking at
4 it, and there always is this question is, what is best
5 for customers, with respect to deferral accounts, and
6 -- or not deferral accounts, and we have in the past
7 taken the position that there might be an over-use of
8 deferral accounts, but on this one we felt that, on
9 balance, B.C. Hydro got it right.

10 I'd like to make a couple of comments,
11 briefly with respect particularly to your question
12 that you posed before, saying, well, if you are
13 satisfied that the forecast was a good forecast, would
14 that mean you would not want to have a deferral
15 account. It would depend very much, for example, in
16 some of the uncontrollable things, such as the water
17 levels, or trade revenue. It may well be that you
18 would look at the forecast and say, well, on balance,
19 we think it's a fairly decent forecast, given the
20 situation. But we still are really concerned that the
21 forecast, while it's the best that can be made,
22 there's going to be a lot of volatility and we'd
23 prefer a deferral account.

24 **Proceeding Time 11:30 a.m. T35**

25 Particularly in areas like this, if
26 you're trying to rely on a forecast -- and I

1 appreciate your comment that shouldn't we really be
2 trying to get good forecasting? There are some areas
3 where it's very difficult, and I think also from a
4 process point of view, you can get into areas where,
5 in effect, you're concerned about the forecast that
6 the utility is putting forward, and you then say,
7 "Well, maybe I need to get somebody to, you know, at
8 least provide me the expertise to be able to cross-
9 examine properly, and possibly, you know, call
10 evidence." And I think that could lead to a lot of
11 time in a hearing which probably would not be really
12 profitable, because in the end you have differing
13 forecasts that you would have to make a decision on,
14 and probably not on the basis of a lot of concrete
15 evidence.

16 Even in something like load forecasting,
17 and the comment that was made earlier in response to
18 Commissioner Birch by Mr. Wallace, even if you have an
19 opportunity to really look at the forecast and you
20 think it's a reasonable one, things can happen. And I
21 think that's one of the reasons why, and even with
22 utilities that have, you know, PBR, there still are
23 deferral accounts.

24 So those would be my comments, Mr.
25 Chairman.

26 THE CHAIRPERSON: Thank you. Mr. Austin, you're about to

1 enter this debate regarding deferral accounts?
2 MR. AUSTIN: Yes, I am. Although the IPPBC didn't
3 comment on it directly, it certainly commented on the
4 supply of energy that's available from B.C. Hydro's
5 resources, and it has a direct bearing on the
6 discussion in terms of deferral accounts. People have
7 come up to the mike and said, "Look, we can't control
8 inflows into the B.C. Hydro system from the snowpack
9 and precipitation." That's certainly true, but is the
10 discussion about the deferral account in relation to
11 energy costs? You can't control inflows but you can
12 control your use of storage, you can control the use
13 of the thermal facilities that back that storage and
14 back up those inflows, and you can control maintenance
15 expenses.

16 So the assumption here is that under normal
17 conditions, you are going to have a set amount of
18 energy available from those B.C. Hydro resources.
19 Under the current system as it's operated by B.C.
20 Hydro and Plant, that's simply not true. So that
21 really has to be taken into account in terms of the
22 use of deferral accounts, at least on energy costs,
23 because what you really have to think in terms of
24 deferral accounts is a reasonable expectation that
25 that deferral account is going to be balanced off
26 between good news and bad news. As IPPBC sees it

1 right now, there's a lot of prospects for bad news in
2 terms of energy costs, and very limited prospects for
3 good news.

4 THE CHAIRPERSON: Thank you. Is there anyone else who
5 wishes to speak to the issues that have been raised so
6 far this morning? Thank you.

7 I have a narrow point to raise now, and
8 it's one, I think, Mr. Sanderson, you're going to need
9 to reserve on, but let me raise it.

10 **Proceeding Time 11:35 a.m. T36**

11 I'm concerned about ensuring that we avoid
12 the consistency issues and the perversity issues that
13 Ms. Farrell raised and you've captured in your
14 argument. And so I would like to ask you if we would
15 be trading inconsistencies or perversities, if we were
16 to approve the HPO with items 1, 2, 5, 6 and 7, and
17 then over on page 63 for the NHDA 1 and 5. I think if
18 you're unable to comment on that, that's fine, you can
19 simply leave that with the panel. If you are able to
20 comment on that, if there was something that occurred
21 to you that might be relevant, I'd be delighted to
22 hear it. If not, in the circumstances I sure would
23 understand.

24 MR. SANDERSON: Mr. Chairman, I think all I should say in
25 response to that is that Hydro supports, as the
26 argument, I think, makes clear, and Ms. Farrell, as

1 you say, testified, the need for consistency of
2 approach between the HDA and the NHDA. And Hydro
3 would support any effort of the Commission to true up
4 whatever conclusions it reaches as between the two,
5 and not reach inconsistent results.

6 Now as to whether or not you've
7 accomplished that with your breakdown that you just
8 gave, I think I'll let the record speak for itself on
9 that rather than try and react quickly.

10 THE CHAIRPERSON: Yes.

11 MR. SANDERSON: I suspect in the testimony there is a
12 full discussion of that, from which the Commission is
13 quite able to decide what Hydro's position was.

14 THE CHAIRPERSON: Yes. Thank you.

15 I want to turn to the HPO definition and
16 the jurisdiction that we have pursuant to the HPO, and
17 that's set out on the -- the Special Direction is set
18 out, you've quoted, on page 68 of your argument. And
19 I want to make -- I think what I'll do, Mr. Christian,
20 is make a number of comments because I think they are
21 linked together and I can't easily separate them into
22 specific questions, and then I give you an opportunity
23 to comment as you wish.

24 My first comment is this. I think what you
25 have done in your analysis has concluded where it
26 refers to that the Commission orders may be included;

1 that that gives us jurisdiction to, on a prospective
2 basis, if you will, for costs only to determine what
3 deferral account ought to be approved for B.C. Hydro.
4 And because those words, that the Commission orders
5 may be included, are not included in reference to
6 revenue, so in subparagraph (b) you have amended your
7 application, so we now have a new HDA, and as you say
8 in your argument, no one is prejudiced by it, it's not
9 a significant amount anyway. But my impression was
10 that you in fact did that because you accepted as it
11 related to least revenues, we didn't have jurisdiction
12 to change what was set out in the Special Direction.

13 **Proceeding Time 11:40 A.M. T37**

14 And so we have, if that's true, we have a
15 Special Direction that gives us some discretion with
16 respect to cost, but not revenues. It begs the
17 question, for me, why would the legislature do that?
18 Perhaps not very much turns on that and maybe that
19 enquiry doesn't take us very far, but it -- as it
20 relates to the costs, you say in the first paragraph
21 following the excerpt of the Special Direction that
22 you have there, you say in the last sentence, "... that
23 is, all of the costs listed there do not need to be
24 included in the HPO if the Commission so determines."
25 And it occurred to me when I read that, well, what
26 does that mean in terms of the parameters for our

1 jurisdiction? Presumably, your argument is, that as
2 it relates to the proposal that you have, we have
3 jurisdiction, but I would have also thought that there
4 would be limits to the breadth of that jurisdiction,
5 because, after all, the HDA is mandatory. And so, for
6 us to go into the extent of saying, well, none of
7 those items need to be included in the HPO would
8 frustrate the mandatory aspects of this HPO. So
9 there's presumably, there's some limits with respect
10 to this.

11 The intervenors have not made this an
12 issue. And I did, at the outset of the evidentiary
13 phase, because I was concerned about the breadth of
14 our jurisdiction, and although the intervenors have
15 not commented on it, I think it continues to be an
16 area that we should be concerned about, whether or not
17 the intervenors have commented, I think we should not
18 -- I think we should ensure that we're conservative
19 with respect to interpretation of our jurisdiction,
20 and you have provided helpful argument with respect to
21 that jurisdiction, and I think I'll finish my comments
22 there, and one alternative may very well be for you to
23 just rest on your argument and leave it. If you want
24 to add anything to my comments, then you're welcome
25 to.

26 MR. CHRISTIAN: I'll avail myself of the opportunity

1 afforded and make no comment.

2 THE CHAIRPERSON: Okay. I thought that might be what you
3 would do.

4 Let me turn now to a narrow -- and prove to
5 you that I read this -- a narrow technical point, you
6 will need -- it's on page 63 with respect to what
7 you've set out for the HPO. You will need BCUC IR
8 3.221.7.

9 You have -- my impression is that what you
10 did on page 63 and you carried this through, although
11 my question relates to the NHDA, you did the similar
12 re-write of the HPO that appears on page 61 and 62, so
13 we now have -- which we didn't have earlier in the
14 proceeding -- we now have parallel language with
15 respect to those items that are similar, and you've
16 made some changes that I think we're seeing for the
17 first time in your argument, all of which doesn't give
18 rise to concern. But, as I said, just to prove to you
19 that in fact I took note of that, I also took note of
20 paragraph (e) of 3.221.7, at the bottom of the page,
21 the sentence that carries through to the top of the
22 next page, it says:

23 "... items 3 and 4 under the HDA include
24 the impact of weather other events, whereas
25 under the NHDA, these types of events are
26 covered under item 4."

1 Now, item 4 has been substantially re-written, so I'm
2 not sure of the answer to this question,
3 "... therefore the words 'or weather related events" can
4 be removed from the end of item 3. In item 3, you in
5 fact did not remove those words. Should we in fact
6 assume that those words should be deleted in item 3,
7 or for other reasons am I incorrect? And you can
8 reserve on this and get back to me.

9 MR. CHRISTIAN: We'll have to do that, thank you.

10 **Proceeding Time 11:45 a.m. T38**

11 THE CHAIRPERSON: Thank you.

12 Mr. Wallace, I want to return to your issue
13 involving the use of normal water, from this
14 perspective. I would like to know how much of a
15 departure it is from past practices to in fact use a
16 forecast, use a number and use an amount other than,
17 if you will, the forecasted amount for the purposes of
18 the deferral account. And B.C. Hydro referred to the
19 -- I may not find it right away, but B.C. Hydro
20 referred to the *Atco* case, the Court of Appeal in
21 Alberta, in their reply argument. And I want to give
22 you an opportunity, because this may be helpful to the
23 panel -- it's at page 32 of B.C. Hydro's reply
24 argument. I want to give you an opportunity to
25 provide some comments, or for that matter, authority,
26 that would help us in our deliberations with respect

1 to whether or not your proposal with respect to the
2 use of normal water is a departure from the usual
3 regulatory practices with respect to establishing the
4 forecast for deferral accounts.

5 MR. WALLACE: Thank you, Mr. Chairman, I'd be pleased to
6 do that. They have -- B.C. Hydro, as you point out,
7 has referred to *Atco* at page 31-32. Unquestionably,
8 normally a deferral account catches variations between
9 the forecast approved and the forecast -- or in the
10 actual result. However, it would be my submission
11 that the court doesn't -- the court here is not
12 defining what a deferral account can or can't do.
13 That would be decided, I think, by the Utilities
14 Commission. No question that in this case it did what
15 it is purported to do there -- I'm not challenging
16 that, or in the *Atco* case -- and that may be perfectly
17 appropriate there.

18 I think that the Commission, I would argue
19 and I don't believe there's any authority one way or
20 the other, that the Commission can dictate the
21 parameters of the deferral account and what it should
22 do, and as long as it catches actual and the utility
23 is kept whole. We have a forecast here. The forecast
24 that came with the application was based on normal
25 water inflows, and you have that forecast.

26 So what I'm urging you is that the deferral

1 account should catch the differences between actual
2 and that forecast, and I suggest that that is not in
3 any way different than B.C. Hydro arguing with you
4 that you should use the updated -- the revised updated
5 forecasts versus the June 30th updated forecast.

6 **Proceeding Time 11:50 A.M. T39**

7 There are forecasts that are
8 appropriate. What becomes critical, then, in deciding
9 what forecast to use, is what is the purpose of the
10 deferral account? And as I put in my argument, and
11 I've already cited to you this morning, I believe that
12 there is strong reason to believe that when this whole
13 thing, scheme, or regulation that we're setting up
14 right now was being considered, that as far as water
15 inflows go, the purpose was to catch the difference
16 between normal and actual over a period of time, so
17 that those inflows in dry periods and wet periods
18 offset each other, and rates remain stable.

19 THE CHAIRPERSON: So your premise is, use the forecast,
20 but use the forecast as of January.

21 MR. WALLACE: Yes.

22 THE CHAIRPERSON: Which was normal.

23 MR. WALLACE: Yes.

24 THE CHAIRPERSON: Okay. Thank you.

25 MR. WALLACE: Thank you.

26 THE CHAIRPERSON: That was helpful.

1 I think we will take a 20-minute break.
2 Those are all of our questions on deferral accounts,
3 we'll be moving on to the next topic after our break.
4 **(PROCEEDINGS ADJOURNED AT 11:52 A.M.)**
5 **(PROCEEDINGS RESUMED AT 12:13 P.M.)**
6 THE CHAIRPERSON: I want to now move on to this third
7 agenda item, other issues arising from the Special
8 Directions. And in this regard, I would like to turn
9 to page 18 of B.C. Hydro's argument. I have another
10 one of those questions, Mr. Sanderson, that may be
11 difficult for you to respond to. But in any case, the
12 top of page 18, it says "... that is, the government
13 knowingly re-enacted a Special Direction on November
14 the 20th, 2003 that had the effect of including in
15 equity the amounts that had previously been recorded
16 as FRSRs but were not properly AROs under the new
17 regime." And I guess, not to put too fine of a point
18 on it, but -- does "knowingly" in that sentence mean
19 that on special -- on November the 20th, the government
20 enacted the Special Direction, and that they also knew
21 that the effect of doing that was that the FRSRs were
22 going to be recorded as retained earnings? Or is your
23 reference there just that they did so on November the
24 20th, and the effect of the discussion between Mr.
25 Elton and the government with respect to knowledge
26 only went as far as bringing to their attention the

1 change in GAAP. And I guess I've rambled a little
2 bit, but in part I'm trying to understand from that
3 sentence what it is you're saying that the government
4 knew on November the 20th, and do we have any evidence
5 before us with respect to when the discussion occurred
6 between Mr. Elton and the government, I guess is the
7 most succinct way to ask the question.

8 MR. SANDERSON: Mr. Chairman, two responses. The
9 exchange that you're referring to, with Mr. Elton,
10 commences at the bottom of page 697 of volume 6 of the
11 transcript, and is mainly found on 698. And the
12 information with respect to timing is inferential as
13 opposed to explicit. That is, Mr. Elton doesn't give
14 a date as to when he spoke with government, he says
15 that he -- he lays out the sequence. He says, in line
16 1, 698, "... when we became aware, the first thing that
17 happened, we became aware, of course, of the GAAP
18 requirement, the Generally Accepted Accounting
19 Principles requirement. Our people did some work and
20 talked to the auditors, and you'll hear about more of
21 this in Panel 2."

22 **Proceeding Time 12:16 p.m. T41**

23 So once the GAAP change was known, and
24 that had been sometime earlier in the year, my
25 recollection of the evidence is, and Ms. Hardy's
26 testimony probably spoke to that.

1 THE CHAIRPERSON: I can help you on that. The date of
2 the CICHH 3110 is March 2003.

3 MR. SANDERSON: Right. So in the spring of 2003, as I
4 read this testimony and I agree it's not express, it's
5 more inferential, Mr. Elton seems to be saying, "The
6 first thing we did is talk to our auditors and say,
7 well, what does this mean? How does this affect us?"
8 They talked about it internally and concluded at line
9 8 through 10 -- "We talked about this internally and
10 thought, well, one thing we should do is check with
11 Victoria. Are they aware of this? And given that
12 they're aware of it, do they have anything to say?"
13 And then at line 15:

14 "So I had a discussion with someone from
15 government who I believe checked with other
16 people in government, and the answer came:
17 Thank you, we're aware of it. And as you
18 know, and you know, you should do whatever
19 is appropriate for generally accepted
20 accounting principles and we don't have
21 anything to say to you about possible
22 variance."

23 As between March of '03 and November, we don't know
24 when that occurred. We do know it would have been in
25 that time frame. We know that Hydro moved first to
26 resolve things internally and then early on identified

1 the need to go to government.

2 And so I would ask the Commission to take
3 the inference that it appears that happened, and there
4 was lots of time for it to happen before November, but
5 I can't tell you that that statement is made
6 categorically by Mr. Elton. I think it's a reasonable
7 inference to take, but not a categorical statement.

8 THE CHAIRPERSON: And the inference is that that
9 discussion occurred sometime between March and
10 November 2003.

11 MR. SANDERSON: Correct.

12 THE CHAIRPERSON: Okay.

13 MR. SANDERSON: The second point I would make is this,
14 and I think we make it, and I won't take you there
15 precisely but I think it's made in reply generally and
16 I'll make it specifically, which is, generally with
17 respect to legislation, government is intended to know
18 the law, if you will, and know the plain and ordinary
19 meaning of the words they use. And as we've argued in
20 reply, the plain and ordinary meaning of the
21 accounting terms within the Special Direction, we've
22 submitted, is plain and ordinary meaning in the
23 context of GAAP.

24 And so from a statutory interpretation
25 point of view, quite apart from the conversations Mr.
26 Elton may have to Victoria, with Victoria Cabinet as a

1 matter of presumptive law should be taken to have
2 known what the plain and ordinary accounting meaning
3 of the words it was using was. And that's really --
4 that proposition is all we need in order to make the
5 interpretative arguments we've made here and
6 elaborated in reply.

7 THE CHAIRPERSON: Is there a leading case with respect to
8 your comments with respect to presumptive law that you
9 can refer us to?

10 **Proceeding Time 12:20 P.M. T42**

11 MR. SANDERSON: Mr. Chairman, what I can do is provide
12 you with authority for that. It may well be from my
13 recollection from Driedger or Maxwell, but -- that's a
14 statutory interpretation text, but -- and I could try
15 it from there down any relevant case authority they
16 rely on for that proposition.

17 The proposition being that the legislature
18 is presumed to know -- well, it's two things, I guess.
19 It's presumed to know the law, one, and two, it's
20 presumed to intend the plain and ordinary meaning of
21 its language. The lead case on statutory
22 interpretation overall now, which gets us into a much
23 more complicated discussion, *is Rizzo Shoes*, which is
24 a Supreme Court of Canada decision of a few years ago,
25 and I can get you that cite. *Rizzo* elaborates the
26 "plain and" language rule, and puts it in the context

1 of a purposive interpretative approach, and so that
2 the overall governing principle in statutory
3 interpretation now is, is to enquire as to the overall
4 purpose of the legislation in question. What is it
5 trying to do?

6 And then apply the subsidiary rules, like
7 plain and ordinary language, within that overall
8 purposive approach. That sort of formalistic analysis
9 wasn't contained in argument primarily because it
10 didn't really much seem to be an issue. The bigger
11 picture in that respect didn't seem to be much of an
12 issue.

13 COMMISSIONER BOYCHUK: Mr. Sanderson, I'm sorry, I may
14 have missed something, but when you were saying that
15 the government is deemed to know the law, what
16 precisely are you referring to in terms of the law?
17 Is that the Special Direction, its import or its --

18 MR. SANDERSON: I guess what I was doing was perhaps
19 extending the law to GAAP, that is, I guess,
20 Commissioner Boychuk, you are right in calling me up
21 short, because really what I'm saying is I think the
22 government can be presumed to know --

23 COMMISSIONER BOYCHUK: GAAP.

24 MR. SANDERSON: Yeah, the CICA changes or GAAP. And
25 that really is, they can be presumed to know the plain
26 ordinary meaning of the words they are using. They

1 are using accounting words, they should be taken to
2 know what those words mean. And to say, well, they
3 didn't know -- you know, they were in ignorance of the
4 changes to GAAP is to make a presumption which I'm
5 saying is incompatible with the authorities.

6 But you are right, it's more to my first
7 point, the plain and ordinary language that supports
8 that than it is the general proposition that the
9 government should be taken to know the law.

10 COMMISSIONER BOYCHUK: Okay, thank you.

11 THE CHAIRPERSON: Any comments?

12 MR. WALLACE: Yes, Mr. Chairman, there are a couple of
13 things I'd like to emphasize. And first the time
14 sequence you laid out, the CICA change in March 2003
15 and the later change -- the other timing I guess, or
16 the November 20th, 2003 discussion of the effect of
17 including it in inequity, and a third date that I
18 think is important, and that's the filing of B.C.
19 Hydro's fiscal 2004 Annual Report in which FRSR, as I
20 understand it, are a liability, not equity. And
21 that's afterwards.

22 Mr. Sanderson, I think said something to
23 the effect of the government didn't have anything to
24 say about possible variance, and I think I want to
25 emphasize that. And I'd like to emphasize that there
26 was evidence, and I don't have the specific reference,

1 but I think it's probably common ground they did not
2 request any change to recover this amount.

3 I think this assumption that they are
4 presumed to know the law and presumed to know GAAP,
5 then they are presumed to know that the Commission can
6 make changes and that that will be accepted for
7 financial purposes. They should definitely know it
8 because they asked -- or B.C. Hydro asked them for
9 foreign exchange. Foreign exchange is a component of
10 equity and there was a treatment and the Commission
11 made an order, and that was done in the past. So the
12 government should be presumed that that can be done
13 for appropriate regulatory purposes.

14 **Proceeding Time 12:25 a.m. T43**

15 The government has also made it very clear
16 in the Energy Plan, and I quote on page 2 that with
17 electricity costs rising, the rate freeze must end and
18 B.C. Hydro rates must be independently regulated by
19 the B.C. Utilities Commission to keep rate changes to
20 a minimum and remove political interference. And I
21 suggest to you that their behaviour in this manner is
22 consistent with removing political interference and
23 leaving you to do your job and what is appropriate in
24 a regulatory way.

25 The Commission determines the treatment of
26 this issue. I think that's common ground normally.

1 And that treatment, I would suggest to you, is GAAP
2 and is perfectly acceptable in the accounting
3 profession once a Commission order is made. Thank
4 you.

5 THE CHAIRPERSON: Any other comments on the issues that I
6 raised with Mr. Sanderson?

7 MR. SANDERSON: Mr. Chairman, just one point of
8 clarification in response to Mr. Wallace, and that is
9 he made an issue of the fact that Hydro's financial
10 statements for '04 didn't use the new treatment. That
11 was the only thing that came out after March. The
12 reason for that is the precise terms of Section 31(10)
13 of the asset retirement obligation requirements in
14 CICA, and that's described in the application at page
15 2-17, lines 15 through 19.

16 THE CHAIRPERSON: Any other comments? Thank you.

17 I want to turn now to page 19 of your
18 argument, Mr. Sanderson, the full paragraph at the
19 middle of the page:

20 "As Mr. Elton conceded in a less
21 prescriptive environment, the entire
22 accounting debate might have been different.
23 However, that is not the world in which B.C.
24 Hydro had to apply CICA Handbook, Section
25 3110."

26 And I want to test this proposition with

1 you, Mr. Sanderson, and that is, what conclusions can
2 be drawn from Mr. Elton's comments in this regard?
3 And I'm wondering if one of those might be that if it
4 were not for the Special Direction, the regulatory
5 practice as he would apply it to this issue would be
6 for the FRSR not to be booked as retained earnings.
7 And so if we follow that proposition from Mr. Elton,
8 from what Mr. Elton said, we might have a world where
9 we have one approach for B.C. Hydro because of the
10 Special Direction, and another approach for the other
11 utilities in the province with respect to this. And
12 clearly that goes beyond what you may wish to comment
13 on, but it strikes me that that may be a conclusion to
14 be drawn from what Mr. Elton said in this regard.

15 And I think that means -- that might mean
16 an acceptance of the distinction between -- and this
17 is a different proposition if you will, but an
18 acceptance of the distinction that JIESC draws between
19 the applicability of 3110 to regulated and non-
20 regulated entities, and that Mr. Elton, but for the
21 Special Direction, would have accepted that
22 distinction and taken the argument that for a
23 regulated entity 3110 should not be applied.

24 So I said a lot, and as I said, I'm
25 struggling with what conclusions can be drawn from
26 that. But I think -- they might be broader than what

1 I think he was at pains to say that a bunch of times.
2 What we've said in argument, consistent
3 with what Mr. Elton says here, I think, is that we're
4 not in that world, that we're in a prescriptive world
5 where that's all laid out so the Commission isn't
6 required to undertake that debate, that therefore you
7 do have to apply the rules in recognition of that.
8 And if, as you're suggesting, that leads to Hydro
9 being treated differently in this respect from other
10 utilities -- and I have no comment on how other
11 utilities should be treated -- but if it were to lead
12 to a difference, that would be but one amongst many
13 differences between the way Hydro is regulated and
14 those other utilities are. That's just a fact of the
15 Special Direction.

16 So I wouldn't retreat from that conclusion
17 if that's where your consideration of other utilities
18 take you. It's yet another respect in which Hydro is
19 distinctive.

20 THE CHAIRPERSON: Right. Yes, it's in that broader
21 context with respect to his comments, as you say, on
22 page 982, that we need to get consideration from your
23 point of view to what Mr. Elton has said, as opposed
24 to the narrower issue of hey, if we didn't have a
25 Special Direction we would treat FRSR differently.

26 Anybody wish to make further comments here?

1 MR. WALLACE: Mr. Chairman, just briefly, that broader
2 perspective may well apply to the definition used for
3 equity under the Special Direction. Our submission,
4 however, would be, had the government wished to do
5 that, had that been a consideration, FRSR could have
6 been defined as equity at any time. It hasn't been.
7 They haven't made that decision, and we suggest that
8 simply isn't applicable. It's very simple to make
9 that same declaration they made for all the other
10 items in equity.

11 THE CHAIRPERSON: Thank you. Anyone else wish to
12 comment?

13 MR. WEAVER: Mr. Chairman, we would adopt of the
14 submissions of Mr. Wallace, but with a further
15 comment. It would appear from the CEC's perspective
16 that B.C. Hydro, in terms of the establishment of the
17 non-Heritage deferral account, for which there is no
18 Special Direction granting the right to be created,
19 does in itself affect retained earnings categories,
20 and therefore they can't suck and blow. You either
21 accept that regulatory orders can affect the Special
22 Directions, particularly through the ability to create
23 other deferral accounts for other purposes, or you
24 don't. And that's consistent with the position we've
25 taken.

26 MR. WAIT: Mr. Chairman, my concern on this treatment is

1 stand on their own as the only legally enforceable
2 charge a utility may make for its services. And your
3 authority is based on the *Utilities Commission Act*
4 there. And you go on to say that there's no ongoing
5 linkage between any particular cost component and
6 particular rate levels. In short, it is not possible
7 to say customers paid for any elements of costs. And
8 that's all at page 16 of your argument.

9 Now, that sounds like a fairly general
10 proposition that I'd like to talk to you about, but
11 you do go on in your argument to, if I may term it,
12 limit it to the circumstances somewhat of B.C. Hydro
13 with the rate freeze for the last ten years and what-
14 have-you. And in your reply argument, page 9, you
15 simply suggest that it's not possible to draw a direct
16 line between costs and rates during the period of the
17 rate freeze. Rates were frozen and not determined by
18 the Commission.

19 So my question for you is, I'm not sure
20 whether the statement that you made was sort of a
21 general proposition, concerning the relationship
22 between rates underlying costs, or whether you meant
23 that as a general proposition or are you trying to
24 limit it to the specific circumstances of B.C. Hydro's
25 case? And I'd like your comments on that.

26 MR. SANDERSON: I think, Commissioner Boychuk, that it is

1 an accurate statement when generalized as it is at
2 page 16, in principle, but it is a hard one to
3 reconcile with the way people normally think about
4 costs and rates, and also a number of decisions and
5 the way they talk about these things. I think it's
6 right that once a rate's set, it is the only legally
7 enforceable thing and it really doesn't matter what
8 happens to the costs that underlay it. Until somebody
9 complains and says that rate no longer reflects a just
10 and reasonable rate, it is what's in effect. It's the
11 only thing that's in effect. The costs can have
12 changed dramatically, but as long as everybody thinks
13 other costs have changed to offset it, the basis on
14 which that rate was set may no longer have any
15 application to reality, but the rate remains even
16 though it's completely broken loose from costs. So I
17 don't retreat from the general statement there.

18 Having said that, though, I think in the
19 context of Hydro over the last ten years, that lack of
20 connection is completely transparent because there was
21 no pretense for much of that period that that
22 connection continued, and indeed it was known that in
23 some of the years, Hydro was significantly going to
24 overearn because of the trade income situation that
25 prevailed, but the government in its wisdom had
26 decided there were other ways to deal with that, and

1 At that point, it will not lie with Hydro
2 or anyone else to challenge the application of the
3 rate up to that point, just because during the interim
4 period, costs have changed. It isn't until somebody
5 files a complaint and says the rate is no longer just
6 and reasonable, that that can happen. And so, during
7 the period when the rate's in effect, after it's been
8 set, before it's complained about, during that period,
9 technically what this sentence is intended to say is
10 there doesn't exist a linkage directly between a
11 specific rate and specific costs.

12 COMMISSIONER BOYCHUK: Okay, thank you, Mr. Sanderson,
13 I'll leave it at that.

14 COMMISSIONER BIRCH: Mr. Sanderson, can I just follow up
15 on that? Is it not true though that in establishing
16 that rate, that whatever commission of the day set
17 that rate was relying upon certain representations
18 about cost? So Hydro does not have the ability to say
19 because costs went down \$5 on tree removal, use that
20 \$5 to go buy lottery tickets or something like that.

21 Now there's a presumption that those costs
22 are matched to those revenues that produce that rate.

23 MR. SANDERSON: In setting the rate, Commissioner Birch,
24 absolutely true, absolutely no doubt. All I'm saying
25 is after you've done it and you've made your decision,
26 and you've been persuaded or not about what linkages

1 exist, from that day until somebody complains, that
2 linkage isn't formally speaking there.

3 COMMISSIONER BIRCH: But any underage in cost does not
4 create a pot of money that can be used for some other
5 purpose. In other words --

6 MR. SANDERSON: Well, during the period when the rates
7 are fixed by the Commission, if the costs turn out to
8 be less than anticipated, B.C. Hydro can do anything
9 it wants with, as can any utility, that money. In
10 other words, that's increased return. Conversely, if
11 costs are higher, it's decreased return. The actual
12 results are what they are. And the Commission doesn't
13 make within its jurisdiction any orders directly aimed
14 at the actual consequence.

15 COMMISSIONER BIRCH: Okay.

16 THE CHAIRPERSON: Mr. Wallace.

17 MR. WALLACE: Thank you, Mr. Chairman, Commissioners. I
18 said it was outrageous in my argument and I stand with
19 that position. First I think it's a red herring, and
20 second it's irrelevant. Why it's a red herring is I
21 would suggest that at the time -- if you take a look
22 back at the history, you'll find that there was a cap
23 on rates, customers were pushing for rate reductions,
24 and rates were frozen, I would suggest, to prevent
25 rate reductions. And they weren't legally frozen the
26 whole time.

1 To the extent rates were frozen, they were
2 frozen by the shareholder, and that's no different
3 than Terasen not coming in for a rate increase at a
4 particular time if it thought its return was adequate.
5 And some of that period even though they were frozen,
6 the rate stabilization account allowed B.C. Hydro to
7 earn its return.

8 I would suggest that they are --
9 furthermore it's irrelevant. The recovery, as has
10 just been pointed out by Commissioner Birch, was
11 approved by the BCUC. As we indicate in our argument,
12 B.C. Hydro recovered the costs, and I'd suggest to you
13 there is no precedent for what B.C. Hydro's
14 suggesting. And I gave the example and I'd like to
15 leave you with it now.

16 On Mr. Sanderson's theory, it would seem
17 that B.C. Hydro could come in, say that the
18 accumulated book depreciation during this ten-year
19 period was not recovered from ratepayers because there
20 was no direct linkage, and therefore they have some
21 reason that they need to now recover it by way of
22 special rate rider or by an increase in the future.
23 And I think that's preposterous. When the Commission
24 puts aside in part of a revenue requirement, money for
25 a purpose, or the utility books it through those
26 years, it is booked and it should be assumed to have

1 passing Special Direction number 2, references the
2 Commission's report in recommendations 8 through 15,
3 in paragraph three sub 1 of the Special Direction.
4 So, I'm not sure whether your question is aimed at our
5 interpretation of recommendations 8 through 15, or
6 some other stuff in the process, but we had read steps
7 8 to 15 to be consistent with the proposal put forward
8 in -- ultimately in argument in that hearing, as
9 distinct from the shopping credit structure.

10 THE CHAIRPERSON: Maybe not very much turns on this, but
11 I was surprised because the shopping credit was not
12 put to the Commission panel for consideration, at
13 least that's my recollection of what was -- what
14 transpired in that proceeding, and when you filed your
15 submission to us on -- and I don't expect you to have
16 it, I've got copies and I'll take you to it in a
17 minute -- but when you filed your submission on June
18 the 27th, 2003, which was the event that occurred
19 following negotiations and prior to the proceeding on
20 through the hearing, you withdrew your shopping credit
21 proposal and it struck me as being a significant leap
22 in terms of the conclusions that you drew, for you to
23 withdraw a proposal from us and then suggest later
24 that we didn't find favour with --

25 MR. SANDERSON: Right.

26 THE CHAIRPERSON: -- that proposal, even though, sure

1 enough, we accepted a proposal in the Heritage
2 Contract report that was different than the shopping
3 credit, we did so in part because the -- B.C. Hydro,
4 in fact, put the shopping -- or the two-tiered stepped
5 rate before us. I mean, it's --

6 MR. SANDERSON: Mr. Chairman, I take your point. I think
7 the top of -- the first sentence at the top of 107 is
8 an overstatement. The participants in the process of
9 which it can fairly be said the shopping credit did
10 not find favour were the intervenors, B.C. Hydro and
11 Commission staff. That was the process that rejected,
12 effectively, the shopping credit proposal. And I
13 think the statement at the top of 107 is a fair
14 characterization of that process. I take your point,
15 and regret if this has suggested inappropriately that
16 the Commission itself, or a government derivative of
17 the Commission, had an opportunity to properly
18 consider the shopping credit and to find one way or
19 the other. Clearly you're right, you haven't, and the
20 government hasn't.

21 **Proceeding Time 12:50 P.M. T48**

22 THE CHAIRPERSON: Thank you. I make that point because I
23 think it's an important point for those involved in
24 matters before the Commission.

25 MR. SANDERSON: Mm-hmm.

26 THE CHAIRPERSON: Thank you.

1 I do, in my review of that matter, to
2 endeavour to determine on what basis you made that
3 statement. I did refer to your filing, and I have
4 copies of that filing, and so the Hearing Officer can
5 circulate these, that will be helpful. And, as I say,
6 I'm not sure that very much turns on it, but I do want
7 to raise one issue with you, in part because you've
8 referenced it in your argument.

9 You will see -- I'll wait for a minute.
10 And for the record, we'll have to mark this as an
11 exhibit. But it's page 3 of B.C. Hydro's submission
12 to the Commission dated June the 27th, 2003, and
13 unfortunately I do not have the exhibit number that
14 this was in that proceeding. But I don't think that's
15 necessary, we'll mark it as an exhibit in this
16 proceeding.

17 (PAGE 3 OF B.C. HYDRO'S SUBMISSION TO THE COMMISSION
18 DATED JUNE THE 27TH, 2003 MARKED AS EXHIBIT A-54)

19 THE CHAIRPERSON: You will see, Mr. Sanderson, the last
20 sentence in section 1.3, where you say "... there may be
21 reason to revisit the merits of the shopping credit,
22 when retail access is introduced." And it struck me
23 that I ought to ask you if you knew what B.C. Hydro's
24 current position is. Is it your intention to return
25 to the shopping credit at some stage? And if you
26 prefer not to comment on it, that's fine too.

1 MR. SANDERSON: Mr. Chairman, the shopping credit
2 proposal has received a fair bit of comment on the
3 record of this proceeding, and as well, the process
4 intended to refine what form of retail access
5 ultimately developed has continued, and is continuing.
6 And I think that Hydro has no reason now to really say
7 anything much different than that is here at page 3,
8 is that that is -- there may be, and may not be,
9 reasons to revisit the merits of the shopping credit
10 as that process continues to unfold, but there's
11 nothing today which is -- makes it possible to be any
12 more definitive than Hydro was then.

13 THE CHAIRPERSON: Thank you. My impression is that there
14 is no need for the intervenors to comment any further
15 on the issues that I've just raised with Mr.
16 Sanderson. If somebody thinks that that's unfair,
17 then please speak, step forward, but otherwise I'm
18 planning on moving on. Thank you.

19 On a more substantive point, Mr. Sanderson,
20 I guess first I should confirm with you that it's B.C.
21 Hydro's intention to limit PowerSmart programs for the
22 industrial class to those that have a RIM that exceeds
23 one, and then if so, does that somehow result in
24 discriminatory rates? That the means of establishing,
25 if you assume that PowerSmart programs are terraced,
26 does that distinction raise concerns with respect to

1 discriminatory rates?

2 MR. SANDERSON: Dealing with in the two parts that
3 you've put it, not to quibble, but the proposal, I
4 think, in the evidence -- and I was looking for it in
5 argument and I can't quickly find it -- but I think
6 you'll find in the argument and/or reply, is not that
7 industrial programs be limited to a RIM of one, but
8 rather that programs in excess of, I think it's a
9 million dollars, in -- involving incentives in excess
10 of a million dollars, in any sector, would require a
11 RIM of one. So, specific grants to individual
12 customers in excess of a million dollars, I think the
13 evidence was, would require the RIM of one. So
14 there's two quibbles. One is, industrial programs
15 less than that would not attract that commitment and,
16 say, large commercial programs or large general
17 programs that were in excess of that would.

18 THE CHAIRPERSON: Okay. That answers the second
19 question, almost.

20 MR. SANDERSON: That's why I'm --

21 THE CHAIRPERSON: You're treating all sectors the same.

22 **Proceeding Time 12:55 p.m. T49**

23 MR. SANDERSON: Well, yes, unless -- yes, I suppose in a
24 sense it does, it does. That is, we would argue the
25 principle is being applied to all rate classes
26 equally, the principle being that where there are a

1 very limited number of beneficiaries, or a single
2 beneficiary of a significant amount of money, then
3 there should be a positive RIM. And that, if you
4 want, is the general rate design principle is applied
5 equally across all classes. It happens it's only in
6 the industrial and larger commercial that that's
7 likely to actually have any practical application.
8 But yes, that probably is in answer to the
9 discriminatory argument, and maybe I'll leave it
10 there.

11 THE CHAIRPERSON: Thank you. Are there any comments?

12 Let me then turn to page 101 of your
13 argument, and at the top of page 100 -- this is B.C.
14 Hydro's argument -- the second sentence, third
15 sentence on that page:

16 "But even where they do not participate in
17 and benefit from a particular program, they
18 may be treated fairly if there are other
19 programs available to them that are
20 efficient in the sense of passing the total
21 resource cost test despite increasing rates
22 for non-participants."

23 And I had a look at the *IPL* case that you referred to
24 at the bottom of that page, and can you take me
25 through the *IPL* case and tell me what proposition you
26 think that case is helpful for in terms of this

1 proceeding? You've quoted it at the top of page 101,
2 but I think it's helpful for you, if you can, to --
3 because I'd prefer not to -- to speak to the facts
4 that were before the panel in that proceeding, and
5 then tell me what proposition that case stands for.

6 MR. SANDERSON: I'm struggling for a moment just because
7 the reference in the footnote I'm having trouble
8 reconciling with the copy of the case I brought with
9 me. Bear with me for a moment. My photocopy seems to
10 have cut off the paragraphs.

11 The passage that we've quoted at the top of
12 101 was intended, and I think speaks for itself in a
13 narrow sense, to simply indicate support for the
14 proposition that in considering the impact of what was
15 argued there to be a significant rate increase. So
16 there was an element in this case of -- or an issue
17 that had developed around what I'd characterize as a
18 rate shock issue. And the question that the
19 Commission in this case was grappling with was, well,
20 is there any merit to the notion that whether or not
21 it's demonstrated, the rate increase either shouldn't
22 be allowed or should be ameliorated or phased in some
23 way to deal with the rate shock concern.

24 **Proceeding Time 1:00 P.M. T50**

25 And what this passage quoted here was
26 intended to reflect or recognize was the Commission's

1 conclusion that in responding to that, you've got to
2 look at what IPL customers can do to mitigate the
3 impacts of the rate increase. So in other words, in
4 assessing whether or not fairness dictated taking some
5 step to ameliorate the impact of the rate increase, it
6 was appropriate for the Commission in that case to
7 look at whether or not there was anything the customer
8 could do to escape those rate increases, and the
9 Commission had reference to the fact that there were a
10 number of demand-side management programs of which a
11 customer could avail themselves. All I think we rely
12 on it for here is by analogy, saying if that's a
13 relevant consideration to that Commission with respect
14 to whether or not there should be steps taken to
15 ameliorate the rate increase generally, it's surely
16 relevant in determining whether or not as between
17 customers it's fair to offer incentives to -- or
18 actually pay incentives to one person and not another,
19 to have regard to whether that other person is not
20 getting the incentives by their own choice, or whether
21 they have an option. So, it's an argument by analogy,
22 saying it is an important feature, to make sure that
23 in support of the overall fairness of the structure,
24 all customers have an opportunity to avail themselves
25 of demand-side management initiatives. And PowerSmart
26 has taken that into account, and made that a

1 fundamental design parameter in their programs.

2 THE CHAIRPERSON: Thank you. I guess I should just

3 confirm a couple of things with you, with respect to

4 the facts, if you will, on that IPL case. One, the

5 rate shock that you referred to is -- my impression

6 was is that it's -- and not very much turns on this,

7 but just two facts, I think, worth considering. The

8 rate shock referred to is a rate shock as a result of

9 four entities being merged by one utility and those

10 four entities had different rate levels, and as the

11 service was being provided by the single entity, it

12 was becoming difficult to distinguish between the

13 costs and so the panel was struggling with, how do we

14 establish level rates, and we're concerned about, as

15 you say, rate shock and as a result of that, they said

16 almost in closing, I think, Mr. Sanderson, they said,

17 as you have quoted, that, hey, unfortunately we're

18 going to have to increase the rates for one or two of

19 the former utilities' areas, but by the way, as it

20 turns out, there is, before us, I think in another

21 proceeding, a comprehensive set of energy efficiency

22 measures and those customers that are going to be

23 looking at an increase in rates because of the need to

24 move to postage-stamp pricing across the four

25 entities, we're going to have to do that, but hey, you

26 do have the benefit of an energy efficiency program

1 accomplished that in their total program design and
2 made stuff available to everybody, then they felt that
3 fairness issue was adequately dealt with. And that
4 line of thinking, by analogy we do seek support from
5 the Iowa case.

6 THE CHAIRPERSON: Okay. Are there any comments anybody
7 wishes to make?

8 MR. WALLACE: Again with respect to this fairness issue,
9 I would like to refer you to a comment by Dr. Shaffer
10 who was testifying on behalf of the classes that these
11 very programs are intended to benefit. At page 36-37,
12 and it's not necessary that you turn to it, but he was
13 discussing with me the issue of a RIM less than one,
14 RIM ratio, and he stated in the answer:

15 "A Well, I see it as an equity issue
16 certainly. It's a business issue as well.
17 From a utilities point of view, if you
18 undertake a project with a RIM benefit/cost
19 ratio less than one, you're putting the
20 utility in a negative financial position
21 which it then has to recover from its
22 remaining customer load.

23 So whether you look at it from a
24 business point of view or from a cost
25 recovery point of view, it's not a
26 particularly attractive investment.

1 Q Now, B.C. Hydro seems to think if you
2 have enough programs with a RIM of less than
3 one, and enough inequities, that will even
4 out. Do you have any response to that?"
5 And I suggest that's the very issue you're dealing
6 with.

7 "A Well, it doesn't seem to be a good
8 business practice that if you have one bad
9 program, you can make up for it by having
10 many bad programs.

11 Q Is the result then that you simply raise
12 everybody's rate?

13 A Well, I suppose they would argue that,
14 you know, the cross-subsidies are going in
15 so many different directions and they cancel
16 out, but you don't have any idea if they
17 do."

18 And I suggest to you at the conclusion of the hearing,
19 we're in that same position now, that there are
20 inequities and we have no evidence as to whether they
21 ever balance out, just to hope that they might with a
22 broad, diverse program.

23 THE CHAIRPERSON: I'm going to give you an opportunity to
24 comment, Mr. Sanderson, on this one, but just not yet.
25 I'll give you an opportunity to comment on comments
26 that are made by anyone else who wishes to make any.

1 MR. GATHERCOLE: Given that Mr. Wallace was quoting from
2 a lay witness, I thought he should at least clarify
3 his position.

4 Our concern as generally set out in our
5 argument is that we really look at Power Smart in the
6 same ways we look at other programs. Is the money
7 being spent appropriately? And in our submission,
8 that really hasn't been done, and consequently, while
9 we don't take a position that says it has to be one or
10 -- I think we say first of all, if a program looks
11 like it might make sense from various aspects, and it
12 has a RIM of slightly less than one, that shouldn't be
13 grounds to simply reject it. At the same time, if the
14 only way that a program gets to have a RIM of more
15 than one simply by trying to assess non- -- you know,
16 aspects of the program that are very difficult to put
17 an amount on, you know, that should be taken into
18 account as well.

19 So essentially, you know, Dr. Shaffer's
20 evidence was clearly aimed at the industrial sector,
21 and he indicated that he had not done a lot of
22 assessment, or any assessment to speak in, in respect
23 of the other sectors. But I think the underlying
24 thing is, based on his evidence and other evidence
25 that's before you, that we need to be looking at Power
26 Smart in a -- I think there's a tendency, as we said

1 in the argument, to think that Power Smart intuitively
2 is a good thing and therefore it should someone be
3 treated differently than other sources of supply, and
4 we say that isn't the case.

5 THE CHAIRPERSON: Thank you. Mr. Jones.

6 **Proceeding Time 1:10 P.M. T02A**

7 MR. JONES: Mr. Chair, just very briefly, I don't want to
8 repeat any aspects of our argument which you've
9 obviously reviewed with some care. As stated in our
10 argument, Sierra Club's position is that the RIM is
11 neither -- is not the important, if -- it's not
12 certainly the important means of evaluating DSM
13 programs, and perhaps not important at all in this
14 context, especially where programs have been
15 demonstrated to be clearly cost-effective. If rate
16 impacts are going to be evaluated at all, then they
17 have to be properly calculated, and it should be truly
18 on the basis of rate impacts and not RIM ratios.
19 Thank you.

20 THE CHAIRPERSON: Any further comments? Mr. Sanderson?

21 MR. SANDERSON: Mr. Chairman, I think the only thing I
22 was going to specifically was Mr. Wallace's comment
23 with respect to Dr. Schaefer's testimony. I'd like to
24 return, as we do a little bit in reply, but maybe with
25 a bit more emphasis, to the distinction between bill
26 and rates. Bills and rates. And I think the most

1 useful transcript reference is the discussion I have
2 with Mr. Belland at pages 3859 through 3861. The
3 essential difference between the position of JEISC, I
4 think, and maybe some others, and -- on the one hand,
5 and Hydro, and I think the Sierra Club, on the other,
6 is that if you look at this as an equity issue, then
7 the mere -- the real question you're asking around
8 availability, is one we were addressing earlier, that
9 is, does everybody have a chance to participate?
10 Because that's a fairness issue, and even though you
11 might get desirable results if they were desirable
12 only when looking at one individual, who gained
13 hugely, at the expense of everybody losing a little
14 bit, that might be an undesirable result. So, you
15 need to look at RIM to get a sense of that issue.
16 Having said that, what you care about, if you're a
17 customer, is not RIM at all. You don't care what your
18 rates are, your rates you could care less. What you
19 care about is what it costs to get energy. And that
20 is a bill impact, that's not a rate impact. And the
21 example of that, I think, Mr. Belland -- somewhat
22 reluctantly, perhaps, but ultimately -- conceded that
23 you can have a program which pushes rates up, but
24 significantly diminishes everybody in the utility's
25 bills. And the simplest example is, if for some
26 reason you had a market failure that led to widespread

1 were, and you were able to recollect that in fact
2 there was an established procedure before the
3 Commission with respect to the approval of programs.
4 And I think you also said that almost by default, this
5 was your proposal with respect to Power Smart too.

6 And I subsequently read the proposal, and
7 there are references to it that I'm not familiar with.
8 And assuming that we accept your proposal with respect
9 to how Power Smart programs are going to be brought to
10 the Commission in the future, this exhibit is, as I
11 understand it, what we're to rely on in developing
12 that process.

13 If that's not true, then your help would be
14 very welcome, and if -- well, I'll stop there.

15 MR. SANDERSON: Mr. Chairman, while I had a recollection
16 of this letter when I rose to speak to it and identify
17 its existence the first time, I certainly didn't have
18 all of its elements clear in my mind, it having been
19 -- I think I said the early '90s and it turns out it
20 was just barely into 1990. Time does fly.

21 Having said that, I think I can say now
22 that you have to qualify what's here with what's
23 proposed in the REAP. Now, I don't want to stray into
24 the IEP/REAP comments you had this morning, but
25 certainly Hydro's proposal includes a proposal
26 relating to demand-side management expenses as

1 required by Section 45.6. And so that has to be
2 layered on top of this because there was no REAP
3 process, there was no ability for the Commission to
4 know what the programs were at all when this letter
5 was written, and this letter was really designed to
6 fill that void.

7 I think I'd start from the position now
8 that that void is filled by the ongoing IEP/REAP
9 process, which includes review by the Commission on an
10 annual basis of the proposed expenditures with respect
11 to Power Smart. And as we've seen in this hearing,
12 from that stems a fairly full identification of what
13 those programs are, and a review of their particulars.

14 So if I did say earlier, and I don't,
15 frankly, remember saying this, that this is the model
16 by default for the future, I don't think that's
17 accurate. I think that the model for the future
18 really is, in Hydro's submission, that which is
19 identified in its REAP proposal and elaborated in
20 argument.

21 THE CHAIRPERSON: Okay, I'm glad I raised this issue with
22 you.

23 I am, for reasons that I stated to Mr.
24 Wallace, I am not going to open the floor in response
25 to what Mr. Sanderson has just said, unless I'm
26 strongly encouraged to do so by Mr. Miller. And the

1 reason for doing that is if I do that, I'm afraid that
2 they'll get into the IEP/REAP discussion, and I don't
3 want to do that.

4 So I am going to move on, unless I hear
5 otherwise.

6 **Proceeding Time 1:20 P.M. T04A**

7 MR. SANDERSON: And Mr. Chairman, just before my friends
8 rise on that one, I think I can make maybe the
9 appropriateness of that course more transparent, if I
10 make a commitment now, which I was going to save till
11 the end of the day, but B.C. Hydro would like to
12 respond to what you said this morning, and so there
13 will be another opportunity to address the IEP issues,
14 which I think makes what you've said undeniably the
15 appropriate course of action.

16 THE CHAIRPERSON: Thank you. That's helpful.

17 I have in the miscellaneous category a very
18 narrow question to raise with respect to your
19 argument, Mr. Sanderson, at page 59. I just didn't
20 understand your reference to research capacity in the
21 third-last line on that sentence. So, page 59, third-
22 last line, there's a reference to research capacity.

23 MR. SANDERSON: You have me at a bit of a loss. The only
24 -- I mean, it's -- clearly, Mr. Chairman, the word
25 "research" is an error. I think it must be "reserve,"
26 but then you're going to ask me what that means -- and

1 right at this moment, I don't think I'd have a very
2 quick answer for you, or a satisfactory one. So I'm
3 virtually certain it must be "reserve" but maybe you
4 can bear with me while I try and figure out exactly
5 what that meant, because I've got to get my head back
6 around the '98 WTS decision to --

7 THE CHAIRPERSON: I'll leave it with you, then, because
8 we're going to be adjourning in any case, so I'll
9 leave that with you unless -- and move to on to --
10 there is one -- I have one -- Commissioner Boychuk and
11 Commissioner Birch may have some questions, but I have
12 only one question remaining, and again, it's in the
13 miscellaneous category. It arises from your argument,
14 Mr. Wallace, at page 39.

15 I would like to know if there's any way
16 that we can reconcile your description of the
17 Accenture leading practices review document without
18 concluding that Mr. -- that B.C. Hydro's witness was
19 not telling the truth.

20 MR. WALLACE: Yes. I think Mr. -- was it Reilly, or
21 Morris? I'm not sure -- oh, Maniago. I'm sorry. I
22 think he has a point of view on what was done, but I
23 do think where if Hydro had that differing point of
24 view, and he may have a point of view that things are
25 left out. But Accenture, which is a very professional
26 organization, chosen by B.C. Hydro, carries out a

1 report and comes to a very strong conclusion, that I
2 think the onus then, if you want to correct that
3 report, if that -- which is what Hydro appears to be
4 doing, or to change -- completely reverse the
5 conclusion, or nullify it -- then I think there is an
6 onus not to bring somebody who has an interpretation
7 and thinks what has happened, but to bring the authors
8 of that report.

9 **Proceeding Time 1:25 p.m. T5A**

10 And B.C. Hydro had that power to do, no
11 question, and they could have brought the authors of
12 the Accenture report and did a *mea culpa* and said, "We
13 blew it." But to bring somebody else who says, "Hey,
14 these professional guys left something out," I just
15 don't think is plausible. That may be his opinion but
16 he could be completely wrong. Accenture could come in
17 and say, "No, these are net figures." How stupid do
18 you think we are? I mean, we put our professional
19 reputations on the line on this report. All you have
20 from Mr. Maniago is some third party's suppositions,
21 and I just say that they are not -- you don't have to
22 accept them. You don't have to find he's lying.
23 People have differences of opinions and they have
24 misunderstandings.

25 THE CHAIRPERSON: And so it may be that he simply was in
26 error.

1 MR. WALLACE: He can simply be in error, perfectly
2 legitimately misunderstood. He has a different
3 viewpoint. But I think you have a very strong, very
4 clear report, and that's what you should give effect
5 to.

6 THE CHAIRPERSON: But for the first topic, the IEP/REAP,
7 the panel has no further questions, and so I think
8 there are logistics issues to deal with, Mr. Miller,
9 or Mr. Sanderson for that matter.

10 MR. MILLER: Maybe just one housekeeping matter first.
11 The transcript from June 27, 2003 is Exhibit A-54 for
12 the record.

13 THE HEARING OFFICER: Exhibit A-54.

14 (TRANSCRIPT FROM JUNE 27, 2003 MARKED AS EXHIBIT A-54)

15 MR. SANDERSON: Mr. Chairman, before we get to the
16 scheduling issue with respect to the IEP, which I
17 think Mr. Miller and I chatted about and I believe
18 he's canvassed off the record and I'll defer to him
19 on, there were a number of items that came up today
20 that you said you wanted our feedback on, and a number
21 of them I can now give, I think.

22 THE CHAIRPERSON: Good.

23 MR. SANDERSON: And I have just sort of scrawled some
24 quick notes. The first where I think you asked for a
25 response and I never gave it, was on the shareholder
26 earning deferral issue, the proposition that you put

1 to Mr. Wallace or that Mr. Wallace put to you that the
2 shareholder in fact here does get the benefit of
3 deferral accounts because -- and I think Mr. Wallace
4 is emphasizing half the equation, and I was
5 emphasizing the other half, and the truth lies
6 squarely in the middle, which is, a deferral account
7 has two effects on the shareholder.

8 One is it gives him a chance to win or lose
9 amounts of money which have gone into the deferral
10 account, which absent the deferral account would
11 simply be water under the bridge. That is, the rates
12 would have been set. There's no ability in the
13 Commission to go back and look at what actually
14 happened after the fact, absent the deferral account,
15 and thus the deferral account gives the shareholder a
16 second kick at either gaining or losing by virtue of
17 the opportunity to revisit. That was Mr. Wallace's
18 point. We concede that it's true.

19 What is although true, though, is that the
20 existence of the deferral account normally smooths
21 earnings for the shareholder, but it doesn't do that
22 for this particular shareholder. And that's where
23 this shareholder has a different position than other
24 shareholders. So you've got to look at both elements
25 and it's in the second element that this shareholder
26 is distinctive.

1 of the IEP election issue, and, as I say, we would
2 like to address that. We're not able to address it
3 tomorrow, and the result of that is that we'll have to
4 take you up on your offer to do it later, and I'm
5 comfortable with any of the dates that have been
6 suggested, but Mr. Miller has a broader canvassing of
7 the intervenors to report on.

8 MR. MILLER: Thank you. Mr. Chairman, I canvassed all
9 the intervenors that appeared this morning. There's
10 only one intervenor that can't make any of the days,
11 that being the 30th, 31st, or the 1st of September.
12 That's the Sierra Club. Only one other intervenor
13 asked, at least to my recollection, asked for a date
14 other than the 30th, and that was Terasen. So
15 everyone, or the majority, appears to be on side, and
16 you may wish to hear from those two intervenors as to
17 their position.

18 THE CHAIRPERSON: Well, I think we solved Terasen's
19 problem with the 31st or the 1st, if I understood you
20 correctly, and --

21 **Proceeding Time 1:33 P.M. T07A**

22 MR. MILLER: The 30th, I believe it was. The 31st, sorry.

23 THE CHAIRPERSON: So we solve their problem if we choose
24 the 31st or the 1st, and Mr. Jones, you're just not
25 available that week, is that --

26 MR. JONES: I'm sorry to be the difficult one, amongst

1 everyone. But if I wasn't difficult, I'd have my wife
2 and two children to answer for. Answer to. So it's
3 very important I rise. It's simply that I'll be on
4 holidays for the next two weeks, the holiday's been
5 planned for some time, and if it's at all possible, I
6 would propose the following week, which I guess is the
7 week after Labour Day, unless that poses difficulty
8 for other counsel. I guess there isn't, from what I
9 can tell, really anything turning specifically on us
10 discussing the issue of the IEP or the REAP on those
11 dates which have been discussed. The following week,
12 I'm happy to make myself available, and I would ask
13 the Commission's indulgence in that regard.

14 THE CHAIRPERSON: Is the 3rd close to the end of your two
15 weeks?

16 MR. JONES: The -- which, sir?

17 THE CHAIRPERSON: September the 3rd.

18 MR. JONES: I thought that would be on a weekend. But
19 hold on one second. That's the Friday. Yes.

20 THE CHAIRPERSON: That's the end of your two weeks?

21 MR. JONES: Yes.

22 THE CHAIRPERSON: Does the 3rd work for anyone? Are there
23 -- does the 3rd not work for anyone, I guess is the
24 question best put to you.

25 MR. JONES: Other than me, of course. Sorry.

26 THE CHAIRPERSON: You're going to have to accommodate to

1 a certain degree.

2 MR.MILLER: Mr. Chairman, I believe BCIPP wishes to make
3 a comment.

4 MR. AUSTIN Mr. Chairman, I have a problem with the 3rd, I
5 was available for the 30th, but not the --

6 THE CHAIRPERSON: Mr. Jones, unfortunately, we're going
7 to adjourn -- for you, anyway, we're going to adjourn
8 until the 31st. We will start in the morning at 8:30
9 on the 31st.

10 MR. SANDERSON: Here?

11 THE CHAIRPERSON: I think we're going to have to announce
12 that. Oh. Mr. -- August the 31st. It will be here,
13 on August the 31st.

14 Thank you. With that, we're adjourned.

15 (PROCEEDINGS ADJOURNED AT 1:35 P.M.)

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