

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

and

**Re: British Columbia Transmission Corporation ("BCTC")
Project No. 3698395 /Order No. G-70-05
Certificate of Public Convenience and Necessity ("CPCN")
Application Vancouver Island Transmission
Reinforcement Project ("VITR")**

and

**Sea Breeze Pacific Regional Transmission System, Inc.
for a Certificate of Public Convenience and Necessity for
Vancouver Island Cable Project**

October 21st, 2005
Vancouver, B.C.

PROCEDURAL CONFERENCE

BEFORE:

MR. R. HOBBS	Chairperson
MS. N. NICHOLLS	Commissioner
MS. L. O'HARA	Commissioner

VOLUME 2

APPEARANCES

G.A. FULTON	Commission Counsel
S. CARPENTER	British Columbia Transmission Corporation
C.W. SANDERSON	British Columbia Hydro and Power Authority
J. LANDRY J. HERBERT	Sea Breeze Pacific Regional Transmission System Inc Sea Breeze Victoria Converter Corporation
R.B.WALLACE	Joint Industry Steering Committee
R. GATHERCOLE	B.C. Old Age Pensioners' Organization, Council Of Senior Citizens' Organizations, Federated Anti-Poverty Groups of British Columbia, End Legislated Poverty, West-End Seniors Network, Tenants Rights Action Coalition And B.C. Coalition Of People With Disabilities.
K. JOHNNIE C. HUNCHITT	Hul'qumi'num Treaty Group
V. RODDICK	On Her Own Behalf
J. YARDLEY	Corporation of Delta
L. ADAMS	Islands Trust
C. BAZZARD	Owners of Strata Plan 905 and Shareholders of Maracaibo Estates Limited
K. HOLMSEN	On His Own Behalf
J. ARVAY M. UNDERHILL	Tsawwassen Residents Against Higher Voltage Overhead Lines and Mr. N. Atchison
A. CALDICOTT	GSX Concerned Citizens Coalition
J. CROSS	Tsawwassen Homeowners Association and His Own Behalf
J. BERKS	On Her Own Behalf
D. AUSTIN	Island Residents Against Higher Voltage Overhead Lines
J. WINFIELD	On His Own Behalf
P. SUTHERLAND	On Her Own Behalf
B. KUDZIN	South Delta Secondary High School Parent Advisory Council
R. BEHN	Senco'ten Alliance
M. McLENNAN	On Her Own Behalf

APPEARANCES

E. McCUSKER

Town of View Royal

M. BROADFOOT

On Her Own Behalf

CAARS

Vancouver, B.C.

October 21, 2005

Proceeding Time 9:05 a.m. T1

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5 THE CHAIRPERSON: For the record, my name is Robert
6 Hobbs. With me are Commissioner O'Hara and
7 Commissioner Nicholls. This is a procedural
8 conference that was established by order G-96-05,
9 which has been filed as Exhibit A-16. For those of
10 you who participated in the first procedural
11 conference you note that we were able to find another
12 venue and I am hoping that this venue is more
13 satisfactory than the hearing room in our offices on
14 900 Howe Street. I expect also that the hearing will
15 be in this room as well.

16 The staff were introduced to you by name at
17 the last procedural conference. There is one addition
18 to those staff members that I noted at the last
19 procedural conference and that is Trent Berry, who
20 will be helping us with respect to the economic
21 analysis and he is with us in his capacity as contract
22 staff. Commission Counsel for this proceeding will be
23 Mr. Gordon Fulton, who many of you know well. And the
24 Hearing Officer will be Mr. Hal Bemister.

25 The agenda was circulated on Wednesday. It
26 has been filed as Exhibit A-19. If you do not have a

1 copy of that agenda you probably will want to get one
2 and we can make arrangements to get that. So, if you
3 indicate to the hearing officer if you don't have one
4 -- that exhibit number we will get it for you.

5 **Proceeding Time 9:07 a.m. T2**

6 When you -- there is one person that needs
7 -- well, there's a few people that need copies of the
8 agenda. I'm going to ask for you to enter your
9 appearances. Mr. Fulton will call your name to enter
10 your appearance and then you can approach the podiums
11 and do that. I'd ask you, if you are entering
12 appearances in both applications, that is the BCTC
13 application and the Sea Breeze application to note
14 your appearances in both of those proceedings, and I'd
15 also ask that you would speak to any revisions or
16 additions to the agenda that you may wish to make when
17 you're entering your appearance.

18 So with that, Mr. Fulton, you can call for
19 appearances.

20 MR. FULTON: Thank you, Mr. Chairman, and I will have
21 available at my microphone copies of the agenda so
22 people can pick them up as they come by while the
23 hearing officer is working on making further copies.
24 British Columbia Transmission Corporation.

25 MR. CARPENTER: Good morning, Mr. Chair, Commissioners,
26 my name is Carpenter, initial S. I appear for British

1 Columbia Transmission Corporation on both the BCTC
2 VITR application and the Sea Breeze application and we
3 do not have any changes to the hearing agenda.

4 THE CHAIRPERSON: Thank you.

5 MR. FULTON: British Columbia Hydro and Power Authority.

6 MR. SANDERSON: Good morning, Mr. Chairman, Chris W.
7 Sanderson appearing for B.C. Hydro with respect to
8 both proceedings and, similarly, we have no
9 suggestions to change the agenda.

10 MR. FULTON: Sea Breeze Pacific Regional Transmission
11 System Inc. and Sea Breeze Victoria Converter
12 Corporation.

13 MR. LANDRY: Mr. Chairman, John Landry appearing on
14 behalf of both Sea Breeze companies and with me is
15 Jason Herbert, that's H-E-R-B-E-R-T, for the record.
16 We also have -- on both applications and we have no
17 additions to the agenda.

18 MR. FULTON: Joint Industry Electricity Steering
19 Committee.

20 MR. WALLACE: Mr. Chairman, R.B. Wallace appearing on
21 behalf of the Joint Industry Electricity Steering
22 Committee on both applications. We have no
23 suggestions for change to the agenda.

24 **Proceeding Time 9:10 a.m. T3**

25 MR. FULTON: B.C. Old Age Pensioners Organization et al.

26 MR. GATHERCOLE: Good morning, Mr. Chair, Commissioners.

1 Richard Gathercole appearing for the B.C. Old Age
2 Pensioners Organization, Council of Senior Citizens
3 Organization, Federated Anti-Poverty Groups of British
4 Columbia, End Legislated Poverty, West-End Seniors
5 Network, Tenants Rights Action Coalition and the B.C.
6 Coalition of People with Disabilities, on both
7 applications.

8 I have one item that I think could probably
9 be dealt with under, you know, 7, and that has to do
10 with the fact that if Sea Breeze's application is
11 accepted and the two are heard together it would
12 suggest to me that the hearing might take longer than
13 was originally considered, and I'd note that the
14 Commission has placed a cap on cost awards. I would
15 like to be able to address that at some point.

16 THE CHAIRPERSON: Thank you, Mr. Gathercole. The panel
17 has in fact anticipated that and will be reviewing the
18 cap.

19 MR. GATHERCOLE: Thank you, Mr. Chairman.

20 I did note that, I think, that I'm
21 appearing on both applications.

22 MR. FULTON: Hul'qumi'num Treaty Group.

23 MS. JOHNNY: Good morning, panel. My name is Kathleen
24 Johnny, appearing for the Hul'qumi'num Treaty Group.
25 With me today is Carrie Hunchitt, H-U-N-C-H-I-T-T,
26 articling at the Hul'qumi'num Treaty Group. We have

1 no additions nor deletions to the agenda. We look
2 forward to presenting.

3 I'm sorry, I'm appearing on both
4 applications.

5 MR. FULTON: Sencot'en Alliance. No response.

6 Valerie Roddick, MLA.

7 MS. RODDICK: I have no additions to the agenda for
8 today, thank you.

9 MR. FULTON: You're entering appearances on both
10 applications?

11 MS. RODDICK: I beg your pardon?

12 MR. FULTON: Are you entering an appearance on both
13 applications?

14 MS. RODDICK: I'm here to listen. It was my
15 understanding that I could make an appearance and
16 presentation in November. That's my understanding.
17 Is that something new and different?

18 THE CHAIRPERSON: No, we will get to the issue of town
19 hall meetings later on the agenda this morning, yes.

20 MS. RODDICK: Okay. Thank you very much.

21 MR. FULTON: Corporation of Delta.

22 MR. YARDLEY: Good morning. Yardley, initial J.,
23 appearing on behalf of Corporation of Delta. I'm here
24 on both applications and we have no additions to the
25 agenda.

26 MR. FULTON: Karsten Holmsen.

1 MR. HOLMSEN: Good morning. I'm Karsten Holmsen. I'm
2 appearing on behalf myself, my family, and neighbours
3 in Tsawwassen. I have no further comments at this
4 time. Thank you.

5 MR. FULTON: Tsawwassen Residents Against Higher Voltage
6 Overhead Lines.

7 MR. ARVAY: Mr. Chairman, members of the panel, my name
8 is Joseph Arvay. With me is Mark Underhill. We act
9 on behalf of TRAHVOL. We are also here -- well, first
10 of all, we act on behalf of TRAHVOL with respect to
11 both applications. We have nothing to add to the
12 agenda.

13 While I'm at the microphone perhaps it
14 would be appropriate to say I'm here also on behalf of
15 Mr. Neil Atchison in his own personal capacity.

16 MR. FULTON: Island Residents Against High Voltage
17 Overhead Lines.

18 MR. AUSTIN: Good morning, panel. David Austin,
19 appearing on behalf of the Island Residents. Island
20 Residents are appearing in both applications and
21 there's nothing to add to the agenda.

22 MR. FULTON: GSX Concerned Citizens Coalition.

23 MR. CALDICOTT: Good morning. Arthur Caldicott for the
24 GSX Concerned Citizens Coalition, here on both
25 proposals, and we have no additions or changes to the
26 agenda.

1 && Can you spell your last name for me, please?

2 MR. CALDICOTT: C-A-L-D-I-C-O-T-T. Thank you.

3 **Proceeding Time 9:15 a.m. T4**

4 MR. FULTON: Bradley W. Campbell. John Cross.

5 MR. CROSS: Good morning, my name is John Cross,
6 C-R-O-S-S. Initial J. representing myself, my wife
7 and the Tsawwassen Home Owner's Association. And I am
8 interested in both applications.

9 And just a small matter and I do not know
10 whether this is too detailed to add but in any of the
11 matters I would like to raise the distribution of
12 documentation as to who is responsible for issuing
13 hard copies, e-mails and the process of issuing
14 documents from here on.

15 THE CHAIRPERSON: Thank you.

16 MR. CROSS: If that could be added, thanks.

17 THE CHAIRPERSON: Mr. Cross, if we do take a break before
18 we get to that item I would ask that you speak to
19 staff at the break and then we will get to that item.

20 MR. CROSS: Thanks, I will speak to staff but it is a
21 general issue that I would like everyone else to hear
22 the discussion.

23 THE CHAIRPERSON: Okay.

24 MR. CROSS: Thanks.

25 MR. FULTON: Julie Berks.

26 MS. BERKS: Good morning, Julie Berks on behalf of myself

1 and my family.

2 THE CHAIRPERSON: Thank you.

3 MR. FULTON: And according to my list of those who have
4 intervened on the Vancouver Island Cable Project, Mr.
5 Chairman, Ms. Berks has intervened only on the VITR
6 proceeding.

7 Mairi McLennan.

8 MS. McLENNAN: Good morning, panel. I too am also at
9 this moment only a VITR intervener. I may be making a
10 late application to change that but it seems to me
11 that I have somehow become embroiled in the Sea Breeze
12 process already. So, I was waiting to see how today
13 panned out and I believe any concerns I have can be
14 dealt with under item 7. I do not have any
15 suggestions for the agenda. Thank you.

16 MR. FULTON: Town of View Royal.

17 MR. McCUSKER: Good morning, Emmitt McCusker, M-C-C-U-S-K-
18 E-R for the town of View Royal speaking to the Sea
19 Breeze application and no changes.

20 MR. FULTON: Mr. Chairman, while there are a number of
21 additional interveners on the website, when I
22 canvassed the room this morning no one else responded
23 when their name was called. Now, there were some
24 people who came in after I did my intervenor call so
25 at this point I would invite anyone who has intervened
26 on either or both proceedings who has not appeared at

1 this point to come forward and enter an appearance.

2 MS. KUDZIN: Good morning, panel. I am Bernadette Kudzin
3 and I actually -- I did put my hand up for South Delta
4 Secondary. It is South Delta Secondary Senior High
5 School and I am the vice chair of the PAC, which is
6 the parent advisory committee. I am here in that
7 capacity as well as a TRAHVOL supporter.

8 And we are intervening just on the BCTC
9 VITR proposal

10 And I would just like to support the
11 concern that Mr. Cross brought up with regard to the
12 distribution of materials to all of the interveners.
13 And I was asked to bring that up on behalf of the
14 chair of the PAC as they have -- we have submitted a
15 substantial amount of evidence and to make copies of
16 that is a concern so we would like -- if we could
17 address that that would be great.

18 THE CHAIRPERSON: Thank you.

19 MS. KUDZIN: Okay.

20 MR. FULTON: Could you spell your last name for the
21 record?

22 MS. KUDZIN: It is K-U-D-Z-I-N.

23 THE CHAIRPERSON: Thank you.

24 MR. BEHN: Good morning, Mr. Chairman. Richard Behn, B-
25 E-H-N. I am here standing in for my wife Susan
26 Anderson-Behn who is the agent for the Sencot'en

1 Alliance. The South Island tribal group that is an
2 intervener.

3 MR. FULTON: And the Alliance has intervened on both
4 applications, Mr. Chairman.

5 THE CHAIRPERSON: Thank you.

6 MR. BAZZARD: Good morning, my name is Charles Bazzard.
7 I am here on behalf of Maracaibo Estates Limited and
8 the owners of strata plan 905. We are interested in
9 both applications and no change to the agenda. Thank
10 you.

11 THE CHAIRPERSON: And can you spell your last name for me
12 please?

13 MR. BAZZARD: It is B-A-Z-Z-A-R-D.

14 THE CHAIRPERSON: Thank you.

15 MR. WINFIELD: Good morning, panel. John Winfield,
16 W-I-N-F-I-E-L-D. Representing myself and my family
17 from Delta.

18 THE CHAIRPERSON: Thank you.

19 MR. FULTON: And again, Mr. Winfield has only intervened
20 on the VITR application, Mr. Chairman.

21 MS. BROADFOOT: Hi, Maureen Broadfoot. M-A-U-R-E-E-N, B-
22 R-O-A-D-F-O-O-T. I am here with TRAHVOL and also as a
23 separate intervener.

24 THE CHAIRPERSON: Are there any other appearances?

25 MR. FULTON: Mr. Chairman, the Commission did receive a
26 letter, which has been marked Exhibit C46-6 from Hans

1 Karow, K-A-R-O-W on behalf of the Coalition to Reduce
2 Electro-pollution. And indicating that due to the far
3 travel distance and harvest season he was not able to
4 attend the pre-hearing conference today. But he did
5 have some submissions to make this morning and the
6 submissions cover some six pages including an
7 enclosure.

8 And in terms of the most efficient of way
9 of dealing with this document, rather than read the
10 entire document into the record what I am going to
11 propose is that I ask the hearing officer to make
12 copies and we make it available to everyone here so
13 that the Commission will have it as it works through
14 the various items on the agenda.

15 THE CHAIRPERSON: I am hesitant to agree with that Mr.
16 Fulton only because for those parts of this proceeding
17 that are to be done orally I think they need to be
18 kept that way and dealt with orally. And it is
19 somewhat unfair, too, to those who may not have a
20 reasonable opportunity to review that when they are
21 making their submissions for that to be entered. So,
22 I may take submissions that suggest that it should be
23 introduced. But my immediate response is no.

24 MR. FULTON: Okay, well it is marked as an exhibit to the
25 proceedings.

26 THE CHAIRPERSON: Yes, it can be marked as an exhibit to

1 the proceeding. We will do that. As per whether or
2 not it should be considered as part of the record for
3 the matters before us in this procedural conference is
4 a different issue, I think.

5 MR. FULTON: That concludes the appearances then, Mr.
6 Chairman.

7 THE CHAIRPERSON: Yes.

8 MR. FULTON: Oh, sorry, it doesn't.

9 THE CHAIRPERSON: One more.

10 MS. ADAMS: Good morning, just one more. Linda Adams on
11 behalf of the Islands Trust regarding the BCTC
12 application and we have no suggestions for additions
13 to the agenda. Thank you.

14 MS. SUTHERLAND: I am Pam Sutherland. I am an intervener
15 and I am late. Thanks.

16 THE CHAIRPERSON: Thank you. I will take appearances
17 later as well if people come in late. But if --
18 before we move off of appearances, are there any more?

19 Okay, thank you.

20 MR. FULTON: Ms. Sutherland has only intervened on the
21 VITR application, Mr. Chairman.

22 **Proceeding Time 9:25 a.m. T5**

23 THE CHAIRPERSON: Thank you. I think that means that we
24 will add two items onto the agenda and they will both
25 be under item number seven. One of them is the item
26 raised by Mr. Cross. I'll give Mr. Cross an

1 opportunity to address that later this morning or
2 maybe this afternoon, depending how long we are here,
3 and then Ms. McLennan, if she wishes, may speak to her
4 issue with respect to interventions. And if you wish,
5 Ms. McLennan, you may wish to speak to staff with
6 respect to that if we take a break. They may be
7 helpful in that regard as well.

8 So I think that brings us to the
9 application that has been filed by Sea Breeze with
10 respect to consolidation of their application into the
11 VITR proceeding.

12 I'm going to begin this agenda item by
13 hearing from Mr. Carpenter.

14 MR. CARPENTER: Well, with respect, Mr. Chair, I believe
15 it's Mr. Landry's application on behalf of Sea Breeze
16 to consolidate the two applications.

17 THE CHAIRPERSON: I understand that. Mr. Landry has
18 filed extensive materials. I would like to know what
19 your position is with respect to them.

20 MR. CARPENTER: Well, in that case I think I can be
21 relatively short. We have reviewed the Sea Breeze
22 application, we have reviewed Mr. Landry's
23 application; we do not oppose the application for
24 consolidation. I do have some comments that I can
25 make either at this point or after you hear from other
26 parties because I think that they provide some context

1 for that position, but we do not oppose the
2 application.

3 THE CHAIRPERSON: Thank you. Is there anyone that does
4 oppose the Sea Breeze application? Please come
5 forward, Ms. McLennan.

6 MS. McLENNAN: My opposition is philosophical rather than
7 legal. I reviewed the document dated 18th of October
8 and I only have a few comments on the 12 pages filed.
9 The first quarter of the document, Sections A and B,
10 appear to be devoted to the BCUC's jurisdiction and
11 authority to consolidate the proceedings and I'm not
12 aware that either is, in fact, in dispute, so
13 dispensing with that issue and moving on, I note that
14 at the bottom of page 3 some United States case law is
15 cited and not being a lawyer I don't know but I don't
16 feel that that's particularly pertinent to where we
17 are here in B.C.

18 The primary argument advanced in favour of
19 consolidation, from what I've read from supporting
20 intervenors appears to be premised on one of fairness
21 and ensuring that Sea Breeze's proposal does, in fact,
22 receive a fair hearing with yourselves at the BCUC. I
23 looked at the examples brought forward in the case law
24 and I don't see anything that explicitly supports a
25 requirement to consolidate. That is Sea Breeze's
26 interpretation and others of what they consider would

1 be a fair hearing of that proposal and presumably the
2 situation that would give them the best competitive
3 edge.

4 The instance cited on line 18 of page 5
5 makes reference to case law which says something about
6 without a hearing of the other and I don't feel that
7 that is something that is proposed in this case. No
8 one has suggested, to my knowledge, that the Sea
9 Breeze proposal be simply ignored and that a CPCN for
10 VITR be granted. In fact, Sea Breeze, I believe, is
11 guaranteed its own CPCN proceeding if you do not
12 consolidate. This point is acknowledged, in fact, at
13 the bottom of page 7 and the beginning of page 8 of
14 their submission.

15 I don't feel that any evidence has been
16 brought forward in support of the premise that this
17 would not be a comparative and fair hearing if you do
18 not consolidate.

19 My personal concern with consolidation is
20 that I take the opposite view to most as to what it
21 would achieve. Having participated in three
22 regulatory hearings I know that they involve an
23 incredible amount of time and effort, not to mention
24 paper, and I consider them a logistical and procedural
25 nightmare which can be a great challenge to deal with.
26 Therefore I feel that the consolidation would diminish

1 the chances of either project receiving adequate
2 review and consideration, particularly if the time for
3 review is not significant lengthened.

4 I contest the viewpoint that consolidation
5 would sometimes simplify, streamline or enhance the
6 quality of work that needs to be done by the
7 Commission or intervenors or make for an inherently
8 fairer process. I feel that two separate reviews,
9 with each applicant an intervenor in the others
10 process would make for a better process over all. It
11 would allow all intervenors to have, in effect, two
12 chances to consider the projects from whatever
13 perspective they have, with the focus being on the
14 merits or otherwise of the one for which a CPCN is
15 being considered, rather than having one more
16 complicated process with competing voices. Examining
17 two projects concurrently would require more time in
18 order to ensure thoroughness and so I don't feel that
19 it would be any more efficient than two separate
20 reviews and possibly less so due to the added
21 complexity of -- I'm sorry -- the added complexity of
22 examining more than one primary project against
23 alternatives.

24 In leaving this point I would like to say
25 that I have seen a great deal about ensuring a fair
26 hearing for the VIC project. I have heard very little

1 about ensuring a fair hearing for the VITR project. I
2 would ask that the Commission not be unduly swayed by
3 the perception that without a consolidated hearing Sea
4 Breeze would somehow be hard done by. They have, in
5 effect, intruded on a process applied for by another
6 applicant and on being told to make their own
7 application are now using that application as a
8 justification for claiming they are now entitled to a
9 joint review. I don't believe that they necessarily
10 are because the issue of considering VIC as a
11 competing project to VITR would have to be undertaken
12 by the Commission whether or not you consolidate the
13 proceedings and presumably prior to either CPCN being
14 granted.

15 To my mind Sea Breeze's argument is similar
16 to claiming that a panel of interviewers would have to
17 meet with all their candidates simultaneously in order
18 to ensure equality of treatment and a fair assessment
19 of individual performance.

20 BCTC came to the table first and their
21 responsibilities are a matter of record. They deserve
22 not to be concerned that their application process
23 will be somehow highjacked by an intervenor with a
24 vested interest in seeing that the VITR project does
25 not proceed.

26 Now, that's all I have written down. I

1 feel that you are the best judges of how this could
2 play out in either instances and if, in fact, you can
3 guarantee that the public interest is fairly served by
4 a consolidated process in an adequate manner that
5 ensures that all concerns are heard and investigated,
6 then I might revise my view. But at this moment I
7 haven't seen any supporting evidence for the view that
8 we simply have to glue the two processes together. I
9 think it makes it harder to follow and harder to come
10 to a view when you're reading, in effect, twice as
11 much material and trying to compare them.

12 That's all my comments. Thank you.

13 THE CHAIRPERSON: Thank you. Mr. Sanderson.

14 MR. SANDERSON: Mr. Chairman, I'm not sure that I oppose
15 the application to consolidate but I think it's
16 probably useful if I clarify my position now because
17 some may see it that way.

18 In essence, B.C. Hydro's position is that
19 it's essential that a final and determinative outcome
20 from the process that we're in here issue as soon as
21 possible. It's also essential that that outcome
22 provide for the most cost effective solution to the
23 transmission constraints to the Island. And so there
24 is a necessary tension here. There's a need for
25 expedition. There's a need to get on with a proposal
26 that does provide a viable solution. At the same time

1 there is a need to make sure that that is the final
2 solution and the correct solution.

3 At this stage B.C. Hydro is not in a
4 position to say whether there exists a genuine and
5 credible alternative as introduced by Sea Breeze that
6 should give rise to significant delay and the
7 significant additional complexity that's associated
8 with a dual process. We shouldn't underestimate the
9 significance of a dual process. Those processes,
10 contested applications, do have a way of becoming both
11 highly contentious and lengthy.

12 And it's our submission that the
13 Commission, before it makes the determination that
14 consolidation is appropriate and that it's necessary
15 to do that should follow its own guidelines as
16 provided in the CPCN guidelines issued by the
17 Commission on March 31st, 2005, letter number L18-04.

18 **Proceeding Time 9:35 a.m. T6**

19 In that, the Commission at page 3 says that
20 the filed application, and here I am in context
21 speaking of Sea Breeze's application, is initially
22 reviewed by the Commission for possible deficiencies,
23 and this will normally generate an information request
24 for response by the applicant. Once the additional
25 information is received, the process carries on. And
26 it's our respectful submission that that's exactly

1 what's happened here. Sea Breeze has put in an
2 application. The Commission has quite properly issued
3 an initial information request. The extensiveness of
4 that request makes clear that there are many
5 uncertainties and many unknowns associated with the
6 Sea Breeze application, and it's our submission that
7 the Commission should make a determination upon
8 receipt of the response to its IR as to whether or not
9 the threshold that's contemplated in the CPCN
10 Guidelines has been met. If it is and if the
11 Commission concludes therefore it should carry on with
12 the process with respect to Sea Breeze, then we agree
13 it should be consolidated with BCTC.

14 The implications of that submission is that
15 the currently scheduled -- and I know I'm jumping to
16 Agenda 2 but I can't really complete the submission
17 without it. The implication is that we can't proceed
18 with the BCTC application in November because you
19 won't know whether it's to be consolidated with Sea
20 Breeze and you won't know whether you need more
21 process with respect to Sea Breeze, until early
22 November when they've responded to the IR. So I
23 accept that there needs to be an adjournment of the
24 BCTC proceeding that may be a short one, because if
25 Sea Breeze doesn't meet the threshold we should be
26 able to carry on quite quickly with the BCTC

1 application. Alternatively if Sea Breeze does meet
2 it, then the Commission at that time can issue an
3 order consolidating and establishing a schedule that
4 will permit orderly hearing of both applications
5 together.

6 Those are my submissions, thank you.

7 THE CHAIRPERSON: Is there anyone else who wishes to
8 oppose the application?

9 MR. WALLACE: Mr. Chairman, I think I fall into the same
10 category as Mr. Sanderson, not necessarily opposing
11 but concerned about the timing.

12 The JIESC has one goal and that is to see
13 the most cost-effective, reliable transmission that
14 can be built to Vancouver Island in time to meet the
15 needs there. The JIESC accepts Mr. Landry's
16 suggestion that in principle the Commission should
17 consider all credible and genuine alternatives to
18 satisfy Vancouver Island's identified transmission
19 need. And we agree with Mr. Sanderson that in our
20 view it simply -- you simply cannot make that decision
21 at this time.

22 The problem that we have in looking at the
23 application is that it is impossible to tell if the
24 Sea Breeze proposal for Vancouver Island Cable is in
25 fact a credible alternative at this time. When you
26 look at that application and when you strip out the

1 aerial photographs and the boiler-like material that
2 would be found in any basic description of HVDC light,
3 one finds very little material that relates to the
4 specifics of the Vancouver Island situation. What
5 information one does find raises as many questions as
6 it provides answers, or I think pretty clearly even
7 more questions than answers, as is clearly indicated
8 by the Commission's own Information Request No. 1,
9 which is 28 pages long and as you know has many sub-
10 questions.

11 Very important questions remain outstanding
12 at this time, including: What is the statute of the
13 applicants? Are they really capable of doing what is
14 proposed? Are they capable of absorbing cost overruns
15 if those occur? What confidence can one have in the
16 cost estimates? How do cost estimates become charges
17 to BCTC? What's the nature of the tolls and tariffs?
18 What stage are the necessary environmental and other
19 studies at? What is the basis for the alleged
20 benefits over the Vancouver Island Transmission
21 Reinforcement Project of BCTC? How is Sea Breeze
22 going to acquire necessary right of way? How does
23 power move to Vancouver Island through the United
24 States and the Juan de Fuca alternative, and what are
25 the costs of that? And the questions go on as set out
26 there and I'm sure there are many more.

1 Sanderson's. I think Mr. Sanderson, and you as well,
2 suggested that the time to consider consolidation is
3 after the response to the Commission's IRs. You also
4 have raised additional questions, some of which I
5 don't think actually have been addressed in the IRs
6 and so I put the question to you.

7 Are you satisfied that if there are
8 responses to the full set of IRs that the Commission
9 has issued, that at that point in time there will be
10 sufficient information to make the decision with
11 respect to that threshold issue as to whether or not
12 it should be consolidated?

13 MR. WALLACE: Yes, I believe there will be. I think that
14 the questions that I have raised are raised by
15 implication in many of the questions that have been
16 asked by the Commission staff. I think at that stage
17 the applicants had the chance to its application,
18 it's had a chance to respond to the concerns of
19 others, and if it still at that point does not meet
20 that basic threshold of credible, and I'm not talking
21 about most credible, but credible, and that there is
22 something there that you actually could look at, and
23 presumably approve, because if there's nothing there
24 that you could approve at that stage then there is no
25 point in going further with that application.

26 THE CHAIRPERSON: All right. I'm going to speak to the

1 second agenda item too, and we'll return to it in more
2 detail, but on that balance that Mr. Sanderson said
3 that we need to strike between ensuring that we pick
4 the most cost-effective alternative and an expedited
5 process so that we get there in a timely way, given
6 what Mr. Carpenter said at the first procedural
7 conference with respect to the importance of a
8 decision mid-February, it would seem that that mid-
9 February day is looking pretty much at risk. And
10 maybe that is an appropriate balance to strike between
11 those two competing, if you will, considerations in
12 this. And really, I guess my question is a simple
13 one. In your view is a delay of the mid-February date
14 a reasonable balance struck, additional risk
15 presumably to VITR if that was the project that was
16 selected, but a more rigorous process to get to that
17 decision.

18 MR. WALLACE: I think so. Obviously I'd like to hear
19 from Mr. Carpenter first on what the implications
20 would be of a delay to mid-February. I believe
21 inevitably we have a delay because of this late
22 application. I think that puts a special onus on the
23 applicant, Sea Breeze, to make sure that their
24 application is complete, and to the extent it isn't,
25 that at least in the IR from the Commission they
26 respond in a full and very quick manner.

1 I would say we inevitably are facing delay.
2 If we consolidate, we're still facing delay. There
3 have to be information requests by intervenors, I
4 think we'll come back to that, on timing. There has
5 to be a chance for people to examine this new evidence
6 and to respond to it. BCTC I would hope will be
7 responding with respect at least to the savings that
8 are alleged to come on their system by this.

9 Accordingly, I just don't see how we can
10 avoid delay. And if we do proceed -- so if we proceed
11 on a consolidated basis, we've got a delay; if we wait
12 till the information request is responded to and that
13 response shows we don't have a credible application,
14 then we can at least minimize the delay in going
15 forward by dealing only with one application and not
16 with two.

17 **Proceeding Time 9:45 a.m. T8**

18 THE CHAIRPERSON: Thank you, Mr. Wallace.

19 I am going to raise a proposal with respect
20 to how we're going to proceed after we get through
21 those participants who oppose, so I really continue.
22 I just want to hear from those people who oppose the
23 consolidation of the Sea Breeze application and to the
24 VITR proceeding. Is there anyone else who opposes?

25 All right, I'm now going to propose a
26 proposal with respect to how I hear from the rest of

1 the participants here, and I'll take any objections to
2 that, and that is that I hear from all those in
3 support next, I hear from all those who oppose
4 following that, so that's Ms. McLennan, Mr. Sanderson
5 and Mr. Wallace. And then I hear from Mr. Landry. Is
6 there anyone who objects to that proposal with respect
7 to how we proceed?

8 MR. CARPENTER: Only that I'm not sure that there's a
9 category for those that do not oppose but do not
10 support and -- so if perhaps we can be fit after those
11 that support but before hearing from those who oppose
12 again, that would be helpful, Mr. Chair.

13 THE CHAIRPERSON: So if we're -- okay, I would resist
14 using the expression that's frequently used for those,
15 and I will do that, Mr. Carpenter. So I'll hear from
16 those who support, then I'll hear from those who
17 neither support or oppose if that's the way to express
18 it, then I will hear from those who oppose, and then I
19 will hear from Mr. Landry. Is there anyone who
20 objects to that for this agenda item? Thank you.

21 For those of you who are in support, I'd
22 encourage you as you're speaking to limit yourself to
23 those issues that have not been raised by those who
24 have spoken prior to you, and indicating simply
25 support for their submissions it will be more than
26 adequate. Mr. Fulton, I think, will call for

1 appearances. It's really that it's just three that
2 ware before, including Mr. Landry, that we're going to
3 wait for, so I think you can follow the order of
4 appearances and -- except for, pardon me, except for
5 Mr. Carpenter's category. I'll take submissions from
6 those in support in whatever order you can approach
7 the mike in.

8 MR. FULTON: Then I'll start on the list then, Mr. Chair?

9 THE CHAIRPERSON: No, I don't think so because some
10 categorization still needs to occur here and I'll let
11 people do it. So Mr. Austin, if you're going to speak
12 in support of the consolidation, then I'd like to hear
13 from you.

14 MR. AUSTIN: Thank you, Mr. Chairman. I'll keep my
15 comments very brief.

16 First of all, IRAHVOL is definitely in
17 support of consolidation. It's a matter of
18 practicality.

19 In relation to the point that's raised
20 about a credible application test, I've never heard of
21 any such thing. It doesn't make any sense. If it's
22 credible or not, we'll quickly find that out during
23 the hearing process and that should be the end of that
24 one.

25 In relation to procedural matters, one was
26 raised. This credible application test has no merit.

1 However, I think it's realistic and logical that there
2 be a bit more time for information requests.

3 And the final point that I'd like to make
4 is that this whole concept about the urgency of supply
5 of electricity to Vancouver Island is nothing more
6 than a red herring. I've got a document in front of
7 me called Appendix H, Transmission Analysis of the
8 1995 Integrated Electricity Plan dated October 1995.
9 I can file it in evidence but the only very small
10 portion I'd like to read into the record says:

11 "Security of supply to Vancouver Island..."
12 and this is in 1995,

13 "Security of supply to Vancouver Island is
14 becoming critical. The 138 kV submarine
15 cable circuits are about 40 years old and
16 the HVDC submarine cable bipole ties is
17 about 15 and 25 years old, a total of 1,050
18 megawatts of capacity and are approaching
19 the end of their useful lives."

20 Ten years later we're talking about the
21 urgency of supply to Vancouver Island. I think that
22 we can safely put that one to rest. Thank you.

23 **Proceeding Time 9:50 a.m. T9**

24 THE CHAIRPERSON: Thank you, Mr. Austin. Is there anyone
25 else who wishes to speak in support of consolidation?

26 MS. ADAMS: Yes, Linda Adams with the Islands Trust. We

1 are definitely in support of consolidation. In our
2 view, these are two applications aimed at achieving a
3 similar objective and we are looking to the Commission
4 to determine the best means to achieve that objective
5 considering a number of criteria that we believe are
6 relevant to the project.

7 We think the comparison of these two
8 applications is inevitable and we suggest that the
9 best course of action is that the comparison takes
10 place according to some agreed upon criteria with the
11 rigour that a full consolidation would bring. Thank
12 you.

13 MR. BAZZARD: Charles Bazzard. I appreciate the need to
14 meet the needs of Vancouver Island quickly but I am
15 not sure of the need about quickly. But I am
16 concerned about the communities affected along the way
17 so I think it very important to have these two
18 applications looked at -- consolidated and looked at
19 together so that the communities can judge which is
20 the best option. Thank you.

21 MR. YARDLEY: James Yardley for Corporation of Delta.
22 The Island Corporation of Delta supports the
23 consolidation of the two hearings and we just wish to
24 echo the comments made on behalf of Islands Trust.

25 MR. ARVAY: Mr. Chairman, members of the panel -- do I
26 have power here. Hello? TRAHVOL supports the

1 application. I would like also to, I think, endorse
2 the view of Mr. Austin. Perhaps I did not understand
3 Mr. Wallace's submissions as well as I should but it
4 struck me as a suggestion to you or a submission to
5 you that the Commission would somehow make some
6 determination about whether or not the Sea Breeze
7 application was credible without a hearing. If that's
8 his suggestion then, in my submission, that would not
9 be a fair or proper procedure.

10 In terms of the issue of urgency, I suppose
11 I can say only that I come from Vancouver Island and
12 the last time I checked, all the lights were on.

13 THE CHAIRPERSON: Is there anyone else who wishes to
14 speak in support of the application?

15 MR. McCUSKER: Town of View Royal is in support of the
16 application for the same reasons. We echo the Islands
17 Trust. Thank you.

18 THE CHAIRPERSON: Is there anyone else who wishes to
19 support the application? I think, then that will
20 bring us to Mr. Carpenter's category whatever that
21 might be. And I will hear from you, Mr. Carpenter.

22 MR. CARPENTER: Anybody who is interested in joining our
23 category is welcome. It is always a bit of a more the
24 merrier when you make submissions on points, Mr.
25 Chair.

26 Let me start by saying BCTC had and has

1 some of the very same concerns that Mr. Sanderson and
2 Mr. Wallace have expressed with respect to the Sea
3 Breeze application. We are concerned with the content
4 of that application, with the completeness of it,
5 seriously concerned with respect to the timing of it
6 given all that has happened with respect to this issue
7 but the fact of the matter is that it is there.

8 In terms of the point that both Mr. Austin
9 and Mr. Arvay spoke to they are not aware of any tests
10 that would allow the Commission to effectively rule on
11 an application early. I don't think you have to go
12 any further than looking at the Commission CPCN
13 guidelines as Mr. Sanderson referenced. And those
14 guidelines clearly indicate that the Commission,
15 whether it be on receiving an application or whether
16 it be after, it file its initial Information Request
17 to the applicant to try to flesh that out, if you
18 will, and ask some of the initial questions that it
19 has. I think it specifically identified in those
20 guidelines that it may deny the application at that
21 point. And I think that that's effectively what Mr.
22 Sanderson and Mr. Wallace are saying.

23 **Proceeding Time 9:55 a.m. T10**

24 As I said, we had and have serious concerns
25 about the application and its completeness. One of
26 the reasons -- and I think I'll turn to the

1 application for this. One of the reasons for that is
2 in fact what's said in Sea Breeze's application, I
3 think that's Exhibit B-1 in the Sea Breeze
4 proceedings. I'm looking at the September 30th, 2005
5 cover letter. It's actually behind a tab in my
6 materials.

7 In the first paragraph of that cover letter
8 they say that they're applying for a Certificate of
9 Public Convenience and Necessity, but it's the second
10 paragraph that really caused us quite serious concerns
11 even before we had the opportunity to review the
12 application itself.

13 "Prior to the hearing of this application
14 Sea Breeze Pacific RTS will file any
15 relevant and necessary supplemental material
16 concerning this application in response to
17 Information Requests from the Commission and
18 intervenors, *or as Sea Breeze Pacific RTS*
19 *may otherwise consider necessary.*"

20 And when it comes to commenting on familiarity with
21 procedures, that's not a procedure that I'm certainly
22 familiar with in terms of CPCN applications. You make
23 your application. There's clearly an onus on you to
24 establish a *prima facie* case when you make that
25 application and then that case is tested through the
26 IR process and potentially through a hearing process.

1 The idea that, as an applicant, you would
2 say, two weeks after you file your application, a
3 month later, maybe two months as the hearing process
4 goes forward, "Oh, I think there might be some things
5 that I missed out and are necessary here and so
6 therefore I'm going to file those at this point in
7 time," clearly that would be something that does not
8 happen usually in these proceedings.

9 So we were very concerned about that. We
10 took some comfort, we've taken a significant amount of
11 comfort, from Mr. Landry's letters and Mr. Landry's
12 application with respect to the consolidation motion.
13 In that letter Mr. Landry says, and I'm sorry, for
14 some reason the copy that I have doesn't have the
15 exhibit number marked on it --

16 THE CHAIRPERSON: It's Exhibit B-5, I think.

17 MR. CARPENTER: Thank you. On the second page of that
18 letter, under "Argument in Support of Consolidation",
19 the first bullet:

20 "The VIC application was filed by the
21 September 30th, 2005 deadline established by
22 the Commission, has no material deficiencies
23 and proposes a genuine alternative."

24 That point is repeated more than once through those
25 materials. So we took it that Sea Breeze said,
26 listen, these are going to be consolidated, we need to

1 say to the Commission that there are no material
2 deficiencies here, we are ready to go with this
3 application based on the materials that we have
4 provided the Commission, and there will not be any
5 supplementary materials filed. Based on that position
6 they said that we took, quite frankly, Mr. Landry at
7 his word. We moved down the road to saying, okay,
8 maybe we should have these matters heard together.

9 **Proceeding Time 10:00 a.m. T11**

10 But there was another point that also was
11 reflected in our thinking and I think is the one that
12 perhaps separates us just that little bit from Mr.
13 Sanderson and Mr. Wallace, and that is unfortunately
14 the proceedings that have preceded this one with
15 respect to supply to Vancouver Island have been
16 contentious proceedings and as the Commission knows,
17 in some cases those proceedings have given rise to
18 court challenges.

19 And I'm not going to suggest that some of
20 my friends in this room are actually wearing their
21 court robes under their suits but I can assure you
22 that they have them close by and they are watching the
23 proceeding. They are watching the procedural steps
24 that are taken here. They do not, obviously -- some
25 have stated very strongly -- want the VITR project to
26 proceed and we look at this from the point of view of

1 is there a likelihood that somebody will bring a
2 challenge? And I appreciate that may not be a fair
3 perspective but it's a realistic one I believe. And
4 when Mr. Austin stands up and he says, "I'm not aware
5 of any test that would allow you to do that," and Mr.
6 Arvay says, "I'm not aware of any test," what they're
7 saying is if you take that step then in all likelihood
8 we'll just put that on our checklist of where we go
9 off to the Court of Appeal either before or after this
10 proceeding. And in that context we don't think that
11 the benefits of going through the process that Mr.
12 Sanderson and Mr. Wallace have suggested, quite
13 frankly, outweigh the risks.

14 If we take Mr. Landry at his word that this
15 application is complete, in their minds, that it
16 satisfies the requirements under Section 45, and that
17 they are prepared to move forward on it, then let's
18 move forward on it and let's have both of these
19 applications go forward. Let's set a realistic timing
20 schedule and let's get this hearing underway and, as
21 Mr. Sanderson says, have a decision for once and for
22 all with respect to which project should be put in
23 place here. We've heard that that's what the
24 communities want as well. Let's see both of these
25 projects held up against each other.

26 If you take the step that Mr. Sanderson and

1 Mr. Wallace state, and I really don't want to argue
2 strongly against them because, as I said, for the most
3 part I think I share their position, but if you take
4 that step I can guarantee Sea Breeze is not going to
5 go away. So you've denied that application. They
6 say, "What's the material deficiencies? We'll file
7 another application." We'll be in a hearing on the
8 VITR process, we'll still have to deal with their
9 intervenor evidence. We may see another CPCN
10 application from them at that point in time. Why not
11 just deal with the applications that are there at this
12 point, all of which, again, assumes we can set an
13 appropriate regulatory timetable.

14 Let me quickly address -- and this is
15 simply a matter of information, I don't think it goes
16 directly to the submission. Mr. Wallace raised the
17 issue of timing. Timing is, obviously, a concern. We
18 did address that at the earlier pre-hearing
19 conference. We have talked to Mr. Landry about a
20 schedule. We think that that schedule is doable.
21 That schedule would start middle of January. I won't
22 say anything more about that at this point in time
23 because I know that's another agenda item. That
24 clearly pushes a decision past the mid-February date.
25 That means from our perspective that in all likelihood
26 we would have to file an application for an

1 environmental approval certificate prior to receiving
2 a CPCN from the Commission. If the VITR project is
3 not approved then that is not a significant step.
4 We'd be preparing for that in any event. If it is,
5 that provides some assistance in terms of timing and
6 given what appears there might be a relatively short
7 overlap between those processes, this Commission's
8 process and the environmental assessment process, we
9 don't see that causing great confusion.

10 We would, however, as we indicated in the
11 earlier pre-hearing conference -- the order for the
12 submarine cables, we would continue to defer and, as I
13 believe I indicated at that time, effectively from --
14 our expectation is February forward, any deferral of
15 that increases the risk that either the cabling ships
16 or the cable manufacturing facilities will not be
17 available to have the cable in place for the October
18 2008 in-service date, or alternatively, may be
19 available but may be available at a significant
20 premium to what they otherwise would have been.

21 **Proceeding Time 10:05 a.m. T12**

22 So for now we would continue -- back up one
23 step. However, the alternative is to place an order
24 for that, secure your place in line. Unfortunately
25 that means that the cable manufacturers do have to
26 lock in to certain commitments at that point in time.

1 They will have provided bids that are based on the
2 price of steel, other things of that nature, the
3 availability of cable-laying ships, et cetera. And
4 our expectation is that were that order subsequently
5 to be cancelled, that would probably come at a cost of
6 in the neighbourhood of \$15 million. So we would not
7 take that decision lightly and at this point in time
8 do not anticipate if we're able to set a reasonable
9 schedule here, that we would take that decision still
10 before a CPCN application is granted. So hopefully
11 that provides some useful information around the
12 question of timing.

13 And just as a final note, in terms of
14 process, Mr. Wallace I think, suggested that he
15 expected the BCTC may be responding in terms of
16 evidence with respect to the asserted benefits that
17 are laid out in the Sea Breeze proposal, and I can
18 tell you that that would be the case.

19 THE CHAIRPERSON: Mr. Carpenter, with respect to your
20 concerns regarding the threshold and this application
21 to consolidate. If the decision with respect to the
22 consolidation was deferred until after the responses
23 to the Commission information requests, and one was to
24 categorize that procedural step in that fashion, i.e.
25 instead of the decision being made following this
26 procedural conference, the decision is made following

1 a procedural conference that was established after the
2 responses to that round of information requests were
3 in, does that, in your view, reduce the risk related
4 to the concerns of procedural fairness that you spoke
5 to?

6 MR. CARPENTER: No, I believe the concern that I have is
7 more related to the Commission taking that decision at
8 that point in time rather than -- and you can
9 basically say we'll make a decision to consolidate now
10 but leave open that decision, and in fact we may say
11 no need anymore to have a consolidated process because
12 we don't have a Sea Breeze application around anymore,
13 or you can say we'll set a consolidated schedule now
14 but defer the actual decision to consolidate until
15 after those IRs are responded to. From that
16 perspective I don't think that I have a great
17 preference between one of those or another. They're
18 just procedures that clearly we are talking about them
19 now and can be readdressed as we move forward.

20 My concern is really around the risks
21 associated with taking a decision on the Sea Breeze
22 application, and Sea Breeze complaining at that point
23 in time that it has not had a fair opportunity to be
24 heard, and some of my other friends complaining about
25 that as well, when, as I indicated, I fully expect
26 that they would pop up still in the proceeding.

1 And so again, I just don't know that the
2 risks associated with taking that step outweigh any
3 benefits that you gain from it. As Mr. Sanderson has
4 indicated, I think effectively we're probably already
5 delayed in any event and that we can get this hearing
6 on in a timely fashion and that we should simply have
7 the two projects held up against each other and have a
8 decision once and for all.

9 **Proceeding Time 10:10 a.m. T13**

10 THE CHAIRPERSON: Thank you. Mr. Gathercole, are you in
11 Mr. Carpenter's category or are you --

12 MR. GATHERCOLE: I'm not sure Mr. Carpenter is in Mr.
13 Carpenter's category. But the answer is yes. I think
14 one of the problems -- I think it's inevitable that
15 there's going to be some comparison. There already
16 has been in the earlier pre-hearing conference. The
17 problem I have is trying to properly, you know, assess
18 the application.

19 I tend to agree with Mr. Wallace and Mr.
20 Sanderson that if the two are not heard together we'd
21 be going on quite a bit longer, it would seem to me,
22 on the Sea Breeze application for the CPCN because
23 there'd have to be opportunities for extensive
24 Information Requests and what-have-you.

25 I think the suggestion that Mr. Sanderson
26 and Mr. Wallace have made really helps the process. I

1 don't share Mr. Carpenter's concern, and I think it's
2 something that, you know, not something that the
3 Commission should put a great deal of weight on
4 because there's always -- any decision you make,
5 there's always the possibility that somebody is going
6 to apply for leave to appeal to the Court of Appeal.

7 It seems to me the suggestion that's made,
8 that I think you made, Mr. Chair, that we get the
9 Information Responses, we then have a second pre-
10 hearing conference where we can make submissions
11 either, you know, for or against consolidation
12 depending on what we see is in the application, and it
13 may turn out that we will say clearly there's
14 sufficient evidence here, let's hear them together and
15 let's work out a process that's most efficient.

16 I do share to some extent, you know, the
17 view that's been expressed as to how important is a,
18 you know, November date in 2008. It's sort of like
19 saying, at 11:15 on November 7th, 2008 the lights on
20 Vancouver Island are going to go out. It seems to me
21 there are ways that if that had to happen things could
22 be put off a bit. But I think it's important, as Mr.
23 Sanderson says, that we have a decision that's a final
24 decision and in order to do that properly I think we
25 have to make sure that we have an efficient and
26 effective process.

1 I guess we'll be dealing with that in the
2 next agenda item with respect to timing.

3 THE CHAIRPERSON: Thank you. I'd like to hear, I think
4 -- yes, Ms. Johnny.

5 MS. JOHNNY: Well, I don't like sitting on the fence but
6 the Hul'qumi'num Treaty Group does have to submit that
7 they are not either for or against the consolidation
8 request. We do have some concerns, and most of them
9 have been expressed here. One has been expressed in
10 the opposition comments by the sole person who stood
11 up and opposed this. In regards to the, we do --
12 Hul'qumi'num Treaty Group is severely limited in
13 financial, human and technical resources to respond to
14 the original application submitted by the B.C.
15 Transmission Corporation.

16 Due to the limited availability of
17 technical expertise in the subject area and the
18 shortness of time, HTG has to date not been able to
19 acquire technical expertise to assist in the review of
20 the technical documentation presented. We note that
21 you have Trent Berry here working for you and he's the
22 one person we knew that could be able to help us
23 through this process, so it kind of caused a bit of
24 conflict for his ability to work for us as well as
25 you.

26 The consolidated and specifically the time

1 frames proposed by Sea Breeze pose a further hardship
2 on the Hul'qumi'num Mustimuhw. The consolidation
3 presents concerns relating to the development of
4 intervenor evidence for the Sea Breeze proposal due to
5 these limitations. The geographic area would pose a
6 substantively different use and occupancy report. The
7 area is within the Marine Resource Title and Rights
8 areas *s'aalh timuhw* and potentially represents impacts
9 and infringements to our marine title and rights.

10 The geographic area does enter within the
11 core of *s'aalh timuhw* for approximately 40 kilometres,
12 largely along the straight sections of the
13 international border. "*S'aalh timuhw*" means "our
14 lands". Further, the area is subject to the
15 *snuw'uy'ulh* that guides all Salishan and Hul'qumi'num
16 Mustimuhw *S'aalh timuhw* and resource access
17 relationships.

18 *Snuw'uy'ulh* would require meetings between
19 the Hul'qumi'num and the Sencot'en Mustimuhw to
20 discuss and make interests known as they relate to
21 this project. The Sea Breeze proponent although has
22 provided information has not at yet engaged all
23 affected First Nations in a consultation process.

24 Therefore, and due to the above-noted
25 reasons, the consolidation and the Sea Breeze proposed
26 time frame would place the Hul'qumi'num Mustimuhw in a

1 compromise position, both under Canadian common law
2 and *Snuw'uy'ulh*.

3 According to the courts, our laws must be
4 accounted for alongside common and legislated laws.
5 However, the issue before the Commission is clearly
6 understood to be the identification of the highest
7 public interest in the delivery of power to Vancouver
8 Island. This process necessitates and includes the
9 review of alternatives to any given proposal presented
10 to the Commission.

11 **Proceeding Time 10:15 a.m. T14**

12 In this context, HTG agrees it would make
13 sense to review alternatives in a consolidated manner.
14 If the Commission rules and confirms up front that the
15 cost for HTGs participation and the expertise needed
16 would be covered by the proponent's respectively in
17 addition to time sufficient to afford the affected
18 First Nations the opportunity to properly formulate,
19 comment and to attend to the imperatives of
20 *Snuw'uy'ulh* then HTG will not be opposed to the
21 consolidation.

22 That is the substance of a letter that we
23 intend to submit to the Commission and we will
24 definitely provide it to the persons recording so that
25 the Hul'qumi'num language terms can be spelled
26 correctly. Thank you.

1 THE CHAIRPERSON: Is there anyone else who neither
2 supports nor opposes the application that I should
3 hear from?

4 Then I will hear from Ms. McLennan, Mr.
5 Sanderson and Mr. Wallace in that order if they wish
6 to speak now.

7 MS. McLENNAN: I am feeling very lonely this morning. I
8 guess I am not really in a good position to argue with
9 a room full of lawyers and if BCTC feel that it is a
10 manageable process to consolidate, they should have
11 input. However, I do not feel that anything that has
12 been expressed since I spoke earlier has really
13 addressed my fundamental procedural concerns.

14 I was thinking back to the VIGP proceeding
15 during which a number of other proposals were put
16 forward. And as I recall, one of those was the
17 generation proposal sort of under development or being
18 looked at as an indication that VIGP was not the most
19 cost effective way to resolve the issues on Vancouver
20 Island. And Norske Canada, as I recall, were told:
21 Well, great idea. Go and talk to B.C. Hydro about how
22 to take it forward. It could be great in the future.
23 But it is not very well developed and you are too
24 late. They were not invited to hurry up and apply for
25 a CPCN in mid-process.

26 And I feel that my concern is a sort of a

1 fundamental one as to what best serves the public
2 interest in terms of how you deal with the next
3 application and the next application and the one after
4 that. Because I feel that you are setting a precedent
5 here that any latecomer to one application can come
6 along and say: Well, I have a better idea. You need
7 to put that on hold while you look at our idea.

8 Now, I do not know the legal basis for
9 having that view. There may be none but I did not see
10 anything in the filing from Sea Breeze that addresses
11 that concern. I think there is an issue of having to
12 prove some kind of threshold in order to, if you like,
13 piggy back on someone else's application. I think
14 it's possibly uncharted territory for the future.
15 If you do move forward with consolidation on the
16 premise that you are somehow disadvantaging Sea Breeze
17 by not doing so, I am not clear why that would be the
18 case when they are guaranteed their own process. And
19 I feel that at the end of the day whether you do
20 consolidate or you do not consolidate you still have
21 to view the projects against each other in order to
22 decide on a CPCN for one or the other.

23 So, far be it from me to impede BCTC or
24 anyone else on the legal side when I do not really
25 know the legalities of these issues. And if they have
26 concerns about winding up in court then that is

1 something for you to look at of course.

2 I do not mean to be frivolous in opposing
3 the consolidation but I feel that it is telling that a
4 lot of the people who have come forward to support it
5 are, in effect, on the other side of the fence on Sea
6 Breeze's side in terms of the technological
7 possibilities of their proposal. And I am all in
8 favour of looking at that. I am not, in any way,
9 suggesting that it should not be or that we would make
10 any presumption that just because BCTC got here first
11 theirs has more merit. But I feel that to take the
12 position this early that they should be consolidated
13 is to assume that Sea Breeze's project has at least
14 equal merit. And I don't know if that has been shown
15 at this point.

16 So, if I can move a little bit towards
17 sitting on the fence I think what Mr. Wallace said, is
18 a good compromise. I feel that he said we really
19 don't know enough yet to make an informed decision.
20 And my fear really is that it will just degenerate
21 into some kind of shambles.

22 **Proceeding Time 10:20 a.m. T15**

23 It is telling that I wasn't sure whether I
24 was supposed to register as a Sea Breeze intervenor
25 this morning in order to turn up, because I was
26 receiving the materials anyway and I'm already

1 confused about whose process this is. So in a sense,
2 I feel the Panel has already partially consolidated,
3 and in doing so you've kind of made a riddle for
4 yourselves to resolve. I think there has to be a way
5 of making sure that things don't get into more of a
6 tangle. And if that can be guaranteed under a
7 consolidated process, then I would withdraw my
8 opposition. But I don't feel that anything has been
9 said that demonstrates why a consolidated process
10 would be enhanced.

11 And I was going to make some comments under
12 the item on regulatory process, but just to endorse
13 what Ms. Johnnie said, it is very difficult for
14 individual intervenors. We don't have the resources
15 of the applicant. We don't have the resources of
16 those who can pay for lawyers. And I think you are in
17 danger of creating a nightmare for the very people
18 that you are supposed to be representing, the
19 individuals out there who want to know enough to know
20 that the right decision is being made in their name.
21 Thank you.

22 THE CHAIRPERSON: Mr. Sanderson.

23 MR. SANDERSON: Mr. Chairman, I don't have a lot to add
24 to what I said and Mr. Wallace elaborated on this
25 morning. Just a couple of points really.

26 By way of preface, though, I have to say

1 that the disagreement between Mr. Carpenter on behalf
2 of BCTC and I is really very very narrow indeed now, I
3 think. I think B.C. Hydro, as all parties here
4 should, be every bit as concerned as BCTC that the
5 process be fair and be seen to be fair, and that there
6 not be any of us urging upon the Commission decisions
7 which would cause anyone to question that fairness.

8 I think, however, that doesn't permit, as
9 Mr. Gathercole says, the Commission to dodge the tough
10 decisions that it will ultimately have to make, and I
11 think it beyond argument that one of the decisions the
12 Commission ultimately has to make is whether or not
13 the requirements of Section 45(6.1) are met by any
14 application for a CPCN for it. That section is
15 mandatory in its terms, and at some point the
16 Commission needs to determine that the filing
17 requirements that that imposes on an applicant for a
18 CPCN have been met.

19 The only difference between the position
20 taken by BCTC and the position taken by B.C. Hydro is
21 when that should happen. And our concern is that by
22 consolidating now, you will have implicitly made that
23 decision; that the consequence of making that decision
24 now will be that any future inadequacies in the Sea
25 Breeze materials which lead to delay of consideration
26 of the Sea Breeze proceeding or application, will

1 inevitably delay the BCTC consideration. And we're
2 concerned that if in the end Sea Breeze isn't able to
3 meet the low -- and I admit they're low -- initial
4 threshold requirements, then it ought not to be able
5 to hold the BCTC process hostage.

6 Since we don't know at this stage whether
7 Sea Breeze will or will not be able to meet that
8 standard, we say put off your decision, as you've
9 suggested yourself, I think, in the question you posed
10 to Mr. Carpenter, until after you've got the
11 information. And I fully endorse the suggestion there
12 be a pre-hearing or written submissions or whatever
13 the Commission prefers, immediately after the filing
14 has been made by Sea Breeze in response to the IR.

15 In making those general comments I just
16 want to refer to this final item, to three specifics
17 in the BCUC IR which I think illustrate our concerns
18 most effectively, and why we're sticking on a point of
19 process. In that respect I want to refer the
20 Commission to its own staff's questions. First of all
21 question number 6. Question number 6 asks some very
22 fundamental questions which go to the heart of --

23 THE CHAIRPERSON: Can you give me an exhibit number
24 please?

25 MR. SANDERSON: Yes. It's Exhibit A-3, I believe. I'm
26 sorry, it's A-2. A-2. My mistake. A-2 and page 4 of

1 For us that's just too much uncertainty to
2 countenance significant delay while we wait for those
3 things to get clarified unless they can be clarified
4 quickly, unless it's just a matter of, you know, the
5 writing isn't clear enough, and that's easily fixed,
6 and that's not a criticism of anybody, that often
7 happens, and the IR process illuminates things. But
8 until we know that that's the case and it can be
9 properly answered, we're concerned.

10 We have similar concerns arising with
11 respect to question 12 which is at page 8 of the
12 material. Just to reference:

13 "12.1 How is this all to be structured and
14 what really is the proposal?"

15 The question there is, in 12.1:

16 "Does this mean that BCTC will be the only
17 customer of Sea Breeze? What other
18 customers would Sea Breeze intend to serve
19 using the VIC line?"

20 And then, in 12.4:

21 "If Sea Breeze has not yet completed a long-
22 term service agreement with BCTC or other
23 customers, please file a *pro forma* service
24 agreement that defines the relationship
25 between the parties and sets out the terms
26 and conditions of service and the rates for

1 service."

2 So that there's a basic lack of
3 understanding evidenced here, and quite properly so in
4 my submission, that is you can't find it in the
5 application, in terms of how this project is to be
6 structured. A project with that level of lack of
7 clarity, in my submission, just isn't ready for the
8 rigours of the hearing process.

9 And a final reference that I wanted to make
10 was to question 80 from Commission staff. That's page
11 26. And this goes really to the heart of B.C. Hydro's
12 concern. Question 80.1 is pretty fundamental. The
13 question is:

14 "Please provide any study Sea Breeze has
15 performed to assess the adequacy,
16 reliability and stability of this project to
17 supply load on Vancouver Island."

18 In other words, have you got anything that
19 provides evidence that the project will actually do
20 what has to be done in respect of providing adequate
21 transmission to B.C. Hydro's customers.

22 So it's the fundamentalness, if I can put
23 it that way, of these questions, which leads to the
24 position we take. We don't in any way prejudge what
25 the answer is going to be. We may be here before you
26 saying there is no question, Sea Breeze has met the

1 threshold, it's answered the questions and it should
2 be proceed to be heard, but we just think it premature
3 to make that call.

4 Procedurally, and I realize I'm straying
5 into 2 again, but just to complete the submission,
6 procedurally what that means to us is I think the
7 Commission should set down a schedule for Sea Breeze
8 if it wishes. I think that it should be understood by
9 the parties that if the threshold is met when the IRs
10 are responded to, that schedule will be the schedule
11 for the consolidated proceeding ultimately.

12 In other words, the outstanding steps are
13 going to take longer for Sea Breeze than they are with
14 BCTC and if you lay out a schedule that works for Sea
15 Breeze and lays out a time when a hearing would be
16 held if Sea Breeze meets the threshold requirements,
17 then the parties will know that when you do determine,
18 if you determine, that they've met the threshold
19 requirements, a consolidated hearing will start at
20 that time. Meanwhile the rest of BCTCs schedule can
21 be completed as it's currently laid out with the
22 exception of the hearing date. And as I said earlier
23 I would recommend that the hearing date be adjourned
24 generally at the moment and reset once you know the
25 outcome of the Sea Breeze situation.

26 Those are my submissions.

Proceeding Time 10:30 a.m. T17

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THE CHAIRPERSON: Mr. Sanderson, you've raised issues arising from 12.1 and 12.4 that I wonder whether or not they can be issues that remain outstanding until a decision is made with respect to which project is in the public interest, and then deal with those issues; or are they so integrated with the issue of which project is the preferred project that they can't be delayed until after the decision is made?

MR. SANDERSON: Mr. Chairman, I don't want to prejudge the answer. You know, 12.4 for instance talks about completed long-term service agreements with BCTC, and if not then file a pro forma service agreement. It may or may not be necessary to do precisely that in order to get over the threshold of having an application that can be heard. But I think that Sea Breeze has to come forward and define the basis relationship. It said in its application, as I understand it, that it anticipates BCTC operating these facilities. At least that's how I read it at the moment. Is the full capacity of that line dedicated then to the coordinated operation of BCTC for the benefit of the entire transmission grid of the province? Is there a merchant aspect to the line that somehow is going to be used for other purposes? Without knowing that, you don't know whether or not

1 you've got something which might meet the reliability
2 needs of the Island because you don't know how it's
3 going to be used.

4 And all I'm saying is we need clarity
5 around those issues. Whether we need the precise
6 certainty that's sought in those specific questions, I
7 think that it's up to Sea Breeze to clarify that. But
8 they have to come forward and at least give the
9 Commission confidence that they know what they're
10 getting if they say yes to this proposal. They know
11 how much reliability and how much capacity we're
12 getting for the Island system out of this proposal.
13 That's all I say.

14 THE CHAIRPERSON: Thank you. Mr. Wallace.

15 MR. WALLACE: Thank you, Mr. Chairman. I think I can be
16 very quick again. I find myself in the unusual
17 position of supporting Mr. Sanderson's comments and
18 agreeing with them.

19 In response to Mr. Arvay and Mr. Austin
20 that they didn't know where the credible test came
21 from, I picked it up from Mr. Landry's submissions to
22 you and I thought I was doing everybody a favour by
23 reducing the controversy and agreeing with Mr. Landry
24 that the tests should be credible and genuine
25 alternatives that you consider. And that to me makes
26 sense. It's in accordance with the Act, it's in

1 accordance with your rules, and it would be absurd if
2 a party could come in to you on the eve of a hearing
3 of the nature we have here with VITR, put in 15 pages
4 and say, "I want to be heard and I want to be treated
5 the same as the applicant that has been out there."
6 So I don't want to spend any more time on it than
7 that.

8 I do want to, I guess, just elaborate on
9 one thing, and that is what does that amount to? And
10 in my submission it would amount to an application
11 that was clear enough that on its face there was a
12 *prima facie* case that said: Commission, if you
13 approve this, you will know what you're getting and
14 what it is going to cost, with any qualifications that
15 might come into that. And I think with the
16 information requests that the Commission has put out,
17 when that comes back if it's appropriately answered
18 we'll have a pretty good idea of where we stand on
19 that. Right now, I've pointed to a number of gaps I
20 think Mr. Sanderson has and I simply say that it is
21 premature to consolidate them with the costs, the time
22 delays and everything that will be built into that.
23 Do not say that we won't support it at some point but
24 we urge the Commission to make sure that the record is
25 at least complete, that you are at appropriate
26 starting points as your own rules, I suggest to you,

1 require. Thank you.

2 **Proceeding Time 10:35 a.m. T18**

3 THE CHAIRPERSON: Thank you. We will take a fifteen
4 minute break and then we will hear from Mr. Landry
5 **(PROCEEDINGS ADJOURNED AT 10:36 A.M.)**

6 **(PROCEEDINGS RESUMED AT 10:50 A.M.) T19**

7 THE CHAIRPERSON: Please be seated. I am hoping to hear
8 from Mr. Landry, now.

9 I do, for those of you who have not
10 appeared before me before, I do endeavour to hold our
11 breaks to 15 minutes and I expect people to be on time
12 immediately following the break. There is too many of
13 us for it to be a random time. It needs to be a set
14 time when we return. Dr. El-Ramly, do you know where
15 Mr. Landry is?

16 You need to read the transcript, Mr.
17 Landry. Mr. Landry, you may proceed.

18 MR. LANDRY: Thank you, Mr. Chair. Can I assume, Mr.
19 Chairman, that this is a bit of a different process
20 and I can understand why it was done this way -- that
21 this is the final word that is going to be made.

22 I have heard B.C. Hydro and Mr. Wallace on
23 two occasions and I -- are we going through another
24 process?

25 THE CHAIRPERSON: No.

26 MR. LANDRY: Thank you.

1 THE CHAIRPERSON: For the purposes of this morning you
2 are the last to speak to the issue of consolidation.

3 MR. LANDRY: Thank you, sir.

4 Now, Mr. Chairman, I do not intend to go
5 over all of the arguments that were presented in the
6 extensive written argument that I filed on Tuesday.
7 Those arguments will speak to themselves. But I would
8 like to give some context within which this
9 application for consolidation has been made. And
10 before I review, in some detail the reasons why Sea
11 Breeze believes that consolidation must be ordered
12 what I would like to do is go back to what occurred at
13 the August pre-hearing conference for a moment and
14 bring us forward to today.

15 **Proceeding Time 10:22 a.m. T20**

16 Now, the issue of the need to ensure that
17 all possible alternatives to resolve the Vancouver
18 Island situation was a key issue that was debated at
19 some length at that pre-hearing conference. Now, I
20 was not there but I have read the transcript fully.
21 And that issue was raised by a number of intervenors
22 and it was raised in the context of intervenors'
23 concerns that BCTC had not thoroughly or properly
24 considered all of the alternatives to the VITR
25 proposal that it was bringing forward.

26 Now, it was in that context that Dr. El-

1 Ramly on behalf of Sea Breeze informed BCUC that Sea
2 Breeze in fact wanted to bring forward an alternative
3 proposal which it believed was superior to the VITR
4 application. Dr. El-Ramly raised with the Commission
5 the issue of how best to do that, whether to bring
6 forward a CPCN application or whether to bring forward
7 the alternative or alternatives as intervenor
8 evidence. As a result of statements made by you, Mr.
9 Chair, Sea Breeze considered that issue and ultimately
10 decided it would bring forward its own CPCN.

11 In my submission, although there was
12 skepticism expressed by a number of parties as to Sea
13 Breeze's ability to bring forward such an application,
14 no one objected specifically to that approach. As a
15 result of that pre-hearing conference, the Commission,
16 in its August 9th letter, set a deadline for Sea Breeze
17 of September 30th to file a CPCN if it wanted its CPCN
18 to be heard at the same time as the VITR CPCN.

19 **Proceeding Time 10:55 a.m. T21**

20 And I can say today to you, sir, that Sea
21 Breeze took that direction very, very seriously. It
22 spent considerable time and resources in putting
23 together a CPCN which, with all due respect to my
24 friends and I will come back to this in a moment,
25 meets the board's general CPCN guidelines. And it did
26 so by the deadline set by the board. This, I can

1 attest to, sir, was an enormous undertaking. That
2 application as you've heard has been subjected to
3 extensive questions by BCUC Staff. Those questions
4 are thorough, they're detailed, and they're very
5 thoughtful. Sea Breeze, at this time, is in the
6 process of devoting once again, considerable resources
7 to answering those questions, and it believes it will
8 be able to meet the deadline set by the BCUC with
9 equally thorough and thoughtful answers.

10 Sea Breeze didn't stop there, Mr. Chairman.
11 It has also filed extensive intervenor evidence in
12 BCTC's VITR CPCN, which evidence is focused on two
13 main topics: firstly, setting out in detail why it
14 says that the BCUC, the Commission, should not approve
15 the VITR CPCN. That's the first basis of the
16 intervenor evidence. The second basis of the
17 intervenor evidence, which will be heard by the
18 Commission, is it placed before the Commission two
19 alternatives, both of which it says are superior
20 solutions to the VITR CPCN; that is, the VIC proposal
21 and the Juan de Fuca transmission line proposal. That
22 evidence incorporates by reference all of the evidence
23 in the VIC CPCN. It augments the evidence from the
24 VIC application in relation to the Juan de Fuca
25 alternative.

26 So, Mr. Chairman, unlike the situation the

1 Commission was faced with in August at the pre-hearing
2 conference, it now has substantial evidence filed in
3 both proceedings, outlining in detail two credible
4 alternatives to BCTC's Vancouver Island solution.

5 In my submission, Mr. Chairman, Sea Breeze
6 has acted responsibly in bringing forward the HVDC
7 light alternative to the Commission. This will now
8 allow the Commission and all parties the opportunity
9 to determine for themselves, in a very transparent
10 manner, what alternative is the best alternative for
11 Vancouver Island.

12 And I think it's worth mentioning at this
13 time, Mr. Chairman, that Sea Breeze has actively
14 promoted this solution. It's promoted it to B.C.
15 Hydro. It's promoted it to BCTC. And in various
16 interventions before this Commission, in the various
17 processes that we've all undergone, or have gone
18 through over the last several years in relation to
19 Vancouver Island, it has brought forward this
20 technology for consideration. It actively intervened
21 in the VIG proceeding. It actively intervened in the
22 CFT proceeding. It actively intervened in the BCTC's
23 2004 capital plan proceeding. It actively intervened
24 in BCTC's 2005 capital plan proceeding. And now it is
25 actively intervening in the VITR application.

26 Its position has been consistent

1 throughout. The best solution to the Vancouver Island
2 issues is a solution that involves HVDC light
3 technology. Mr. Chairman, you have been through those
4 processes. You can review the record. Those
5 processes, throughout this processes, it has been told
6 that the proper form to canvass the various issues
7 relating to the HVDC light option was the BCTC CPCN
8 application in relation to a transmission option to
9 Vancouver Island.

10 **Proceeding Time 11:00 a.m. T22**

11 Sea Breeze has brought forward the CPCN
12 because it has been frustrated in its efforts and
13 attempts to have B.C. Hydro and BCTC look in a
14 credible and open minded manner at the HVDC light
15 option. Sea Breeze has actively attempted to meet
16 both B.C. Hydro and BCTC and to date, Sea Breeze
17 strongly believes that both B.C. Hydro and BCTC have
18 demonstrated little interest in the HVDC light option.

19 And in Sea Breeze's view, as you can see
20 from the application in the intervenor evidence, they
21 believe that B.C. Hydro and BCTC have rejected that
22 option without doing a thorough and comprehensive
23 review of it. And if they had done that review. it is
24 Sea Breeze's position that it would demonstrate that
25 the HVDC light is clearly the preferred option in
26 these circumstances.

1 Mr. Chairman, Sea Breeze and all
2 stakeholders are entitled to have a thorough review of
3 the DC option prior to any decision being made on a
4 solution to the Vancouver Island situation. The DC
5 option itself, as you will recall in the pre-hearing
6 conference, is an option that many intervenors wanted
7 to ensure was on the table in discussing this issue.

8 Now, we have come a long way since August 9
9 -- since the August pre-hearing conference. That
10 option is now squarely on the table. Sea Breeze is
11 not only ready to defend that option but to advocate
12 in the strongest of terms the significant attributes
13 that the VIC option would provide to all stakeholders.

14 Mr. Chairman, there is no question there is
15 a need for new transmission on Vancouver Island. And
16 I agree with my friends when they effectively say
17 this, that the time has finally come for the
18 commission to make a final decision on the issues
19 facing Vancouver Island. This is a very important
20 decision and it is extremely important that once and
21 for all the right decision is made. And that is
22 especially so, Mr. Chairman, given the very
23 unfortunate way -- and I use my words carefully, the
24 very unfortunate way in which the whole Vancouver
25 Island situation has been handled over the last
26 several years.

1 Sea Breeze's position is the only way that
2 the Commission can truly come to the correct
3 determination. The right decision is to ensure that
4 all transmission alternatives are carefully and
5 thoroughly analyzed. And it is also important, given
6 the high profile nature in the public, that this be
7 done in a very transparent manner.

8 From that perspective, Mr. Chairman, Sea
9 Breeze submits that one cannot truly evaluate BCTC's
10 AC option without evaluating on an equal footing the
11 HVDC light option. As I have said, the alternatives
12 are squarely before you and both alternatives should
13 be, in Sea Breeze's submission, heard together and
14 reviewed together.

15 As I have said, this would allow both the
16 Commission and all stakeholders the opportunity to
17 compare each alternative in the same proceeding. It
18 is the most efficient and effective way to determine
19 what is the correct solution.

20 It's also, Mr. Chairman, the only way, in
21 our submission, to ensure that Sea Breeze's rights to
22 be treated fairly are fully protected. Sea Breeze is
23 entitled to have its CPCN application heard fully and
24 it should be heard fully before the VITR application
25 -- decision on the VITR application is made.

26 Now, Sea Breeze wants to make one thing

1 very clear. It is not here to delay the hearing of
2 the VITR CPCN application or to in any way provide a
3 procedure which would be unfair to BCTC and B.C.
4 Hydro. It is anxious as anyone to have these
5 applications dealt with expeditiously so that the
6 decision, and I say, the correct decision, is made.
7 It is willing to continue to work hard to getting the
8 Commission and all parties, all of the relevant
9 information necessary to convince everyone, including
10 BCTC, that the HVDC Light is the best alternative.

11 **Proceeding Time 11:05 a.m. T23**

12 Mr. Chairman, Sea Breeze has not put the
13 time, the extraordinary effort, and resources into
14 this application to stop now.

15 Now, Sea Breeze believes strongly there is
16 no credible reason why in these circumstances the two
17 applications should not be heard together.

18 Now, Mr. Chairman, I'd like to deal
19 specifically with some of the issues raised by my
20 friends.

21 My friends would like you to believe that
22 there is a test that they say must be met before you
23 can agree to consolidation. With all due respect to
24 my friends, their arguments are all arguments on the
25 merits, all of which will be actively debated in this
26 proceeding if consolidated. This is simply a

1 procedural issue that we're talking about here.

2 If my friends -- if B.C. Hydro and the
3 industrials are so concerned that on the merits it
4 does not meet whatever tests they say exist, which I
5 might add they've not been available to provide you
6 with any legal authority as to what that test is, then
7 they should bring on an application to dismiss Sea
8 Breeze's CPCN. That is the appropriate way to do it.

9 Because on that application, Mr. Chairman,
10 they would have the onus to demonstrate that Sea
11 Breeze did not meet the, and I'm quoting from them,
12 the low threshold that they indicate must be met. To
13 use generalities and speculative comments without
14 putting before you the proper material to prove that
15 they met that onus, that is not only unfair, it cannot
16 be under any principles of natural justice be accepted
17 by this Commission.

18 If the industrials and B.C. Hydro do not
19 want to stand up and bring forward an application on
20 that basis at this time now, they can do it at
21 whatever other time they want. But in the absence of
22 such an application in our submission the Commission
23 has a legal duty under the *Utilities Commission Act*
24 and under the principles of procedural fairness and
25 natural justice, to give full and fair consideration
26 to Sea Breeze's consolidation application.

1 Phantom allegations of deficiencies,
2 unsupported by proper material, in a full application
3 to dismiss the CPCN can play, in my submission, no
4 role in this type of an application.

5 Mr. Carpenter -- I'm not sure where he
6 stands on this application -- raises the issue,
7 various issues about Sea Breeze's application, and I
8 quote, content, completeness and timing. Let me be
9 very clear. Sea Breeze and many other intervenors in
10 this room have the exact same complaints about the
11 VITR application. Sea Breeze, as they are entitled to
12 in the process established by this Commission, will
13 bring forward its arguments to make those points.
14 That is the proper process.

15 **Proceeding Time 11:10 a.m. T24**

16 I pause to wonder if in the circumstances
17 that we have seen over the last three years facing
18 Vancouver Island whether Mr. Sanderson would have been
19 up here advocating the test that he wants to make for
20 the Sea Breeze application now in the context of B.C.
21 Hydro's VIGP application. A rhetorical question but
22 it puts the point in focus.

23 I only comment, Mr. Chairman, on Mr.
24 Carpenter's points about filing materials and he's
25 worried about Sea Breeze filing materials after the
26 fact. If he's got a complaint when Sea Breeze

1 attempts to file materials after the fact, he can
2 bring it forward to you.

3 And I must say, Mr. Chairman, I'm very
4 surprised at Mr. Carpenter's statement in that regard
5 because one only has to look at the record of the VITR
6 and the various amendments that were filed by BCTC to
7 its application already. The point, sir, is this:
8 legal niceties are one thing but at the end of the day
9 what you're here to do, in my submission, is look at
10 these various alternatives and come to the correct
11 decision. The correct decision means within the
12 guidelines set by the Commission which, as you know,
13 Mr. Chairman, I've been here before in the past, they
14 will be followed, but you want to see, in my
15 submission, all relevant evidence that will help you
16 come to that decision. If people have got complaints
17 bring forward applications.

18 I would only ask, Mr. Chairman, that you
19 look very carefully at the written argument that has
20 been filed by Sea Breeze in relation to the whole
21 concept of procedural fairness and legitimate
22 expectation. It's well set out in a written argument.
23 I do not intend to go through it now. But the bottom
24 line is Sea Breeze like BCTC, like B.C. Hydro, when it
25 brings forward an application is entitled to the same
26 fairness, the same procedural fairness that they are

1 and it's very clear, I would submit, on very good
2 authority, all the way to the U.S. Supreme Court that
3 when you're looking at applications, when you're
4 looking at competing proposals, which effectively is
5 dealing with the same need, the procedural fairness
6 requires you, I would submit, to make sure that those
7 applications are, in effect, heard together, debated
8 together, so that at the end of the day not only are
9 the parties treated fairly, but the right decision is
10 made.

11 Finally, Mr. Chairman, Sea Breeze is here
12 before you and has been here before you since 2004
13 trying to help the Commission and the parties
14 determine what is the best solution for Vancouver
15 Island. Everyone will have their chance to be heard.
16 Everyone will have their chance to bring forward
17 information requests on the Sea Breeze proposal.

18 So finally, Mr. Chairman, it is for all
19 those reasons that in my submission the only
20 conclusion that the Commission can fairly come to is
21 that these two applications should be consolidated and
22 heard together in the circumstances.

23 Those are my submissions, Mr. Chairman.

24 THE CHAIRPERSON: Mr. Landry, it may be helpful for you
25 to have a look at the Commission information requests
26 to Sea Breeze, particularly the ones that Mr.

1 Sanderson identified, 12.1 and 12.4.

2 MR. LANDRY: If I could have a moment, Mr. Chairman.

3 THE CHAIRPERSON: Yes.

4 **Proceeding Time 11:15 a.m. T25**

5 MR. LANDRY: Sorry, Mr. Chairman, the numbers?

6 THE CHAIRPERSON: 12.1 and 12.4 on page 8. I'm not
7 looking for answers to these questions, of course.
8 You will be providing answers. So my questions to you
9 in this regard are not to solicit answers to the
10 questions but to consider an element of your project
11 that may distinguish it from BCTC's, that may also
12 have procedural consequences. And those relate to how
13 the Sea Breeze project, if it was approved, was going
14 to be used and what the terms of service were going to
15 be and what the rates were going to be for the use of
16 that service. And I'd like your comments with respect
17 to whether or not you see advantages in dealing with a
18 comparison of the projects, which you're urging us to
19 do, as one step in this proceeding, and then, should a
20 determination be made that the Sea Breeze project is
21 the preferred project, that those issues be dealt with
22 after that decision is made. Is there merit in that
23 approach from your perspective, or are those issues,
24 as Mr. Sanderson suggests, so integrated with the
25 project selection step that they ought to be dealt
26 with in this proceeding, if your application for

1 consolidation was successful?
2 MR. LANDRY: I think, Mr. Chairman, that a quick answer
3 to that and thinking on my feet would be basically
4 this, that either alternative is possible. And the
5 difficulty that obviously is faced -- these questions
6 by the way, and you've raised a couple of them that I
7 myself have looked at and there are a number of others
8 that relate to that issue, will be dealt with fully
9 and comprehensively in the answers that are going to
10 be provided to Sea Breeze, by Sea Breeze. But at a
11 certain level the difficulty obviously exists in a
12 situation where the present transmission operator,
13 which is BCTC, is effectively and without being overly
14 critical, which I don't intend to be at this point,
15 has been disinterested in an option that's been put
16 forward -- two options that have been put forward by
17 Sea Breeze. In that context it's very difficult to
18 negotiate with somebody that doesn't want to
19 negotiate.

20 Now having said that, that doesn't mean
21 that a proposal for the purposes of your review will
22 not be presented by Sea Breeze as to how that could
23 work, and it's in that context that I give the answer
24 to the question. If you would like more on that
25 point, I think it would probably be better that I
26 canvass that with Sea Breeze specifically and provide

1 you with an answer.

2 THE CHAIRPERSON: Let me make some comments that, of
3 course, are subject to consideration by others. But
4 if I may be so bold as to assume at this point that if
5 VITR was approved, it would be rolled into rate base
6 and the issues with respect to determination of rates
7 would follow what are well established regulatory
8 principles by the Commission.

9 Your project may present very unique issues
10 with respect to establishing terms of service and
11 rates for service. And a rate hearing in and of
12 itself is a very different proceeding than a project
13 selection proceeding.

14 Now, they may -- positions may be so
15 intertwined that they cannot be reasonable separated,
16 but assume for the moment that your project does
17 present unique circumstances and unique issues in that
18 regard. I wonder if it's -- for two reasons: if it's
19 in the best interests of your clients that -- or your
20 client that the issue with respect to consolidation
21 wait until your answers have been provided. And one
22 is I'm thinking that it's not simply a matter of
23 consolidation with respect to your application, but
24 because of those unique issues it's a -- it raises
25 interesting issues with respect to the scope and a
26 change in scope. The Commission in the last pre-

1 hearing conference, prior to the last pre-hearing
2 conference, said that scope issues would be determined
3 by the legislation and we might need to make, as we
4 may, following this procedural conference, make
5 certain scope issues but otherwise they were going to
6 remain open.

7 **Proceeding Time 11:20 a.m. T26**

8 Your application may present unique issues
9 that may very well be more efficiently and effectively
10 dealt with after we get your responses to those
11 questions. So that's one aspect of the delay, until
12 after your responses are in, and the other aspect of
13 it is, if the panel concludes that there is fact a
14 threshold, I would have thought with your answers
15 you're in a better position with respect to meeting
16 that threshold than you are today, simply because
17 there's more information filed at that point and
18 you've responded then to Commission Information
19 Requests.

20 So in those two regards I'm wondering if
21 there is in fact some advantage to your client in
22 having a pre-hearing conference to deal with both of
23 those issues following the response to your
24 Information Requests.

25 MR. LANDRY: Mr. Chairman, Sea Breeze's position is that
26 there is no need to do that, that they will fully and

1 comprehensively answer the questions that have been
2 asked by the BCUC staff, and even my friends, if they
3 have some sort of threshold, undefined really, other
4 than words, which are very difficult to, from a legal
5 perspective, get a handle on, they appear to say that
6 that threshold is only after BCUC -- sorry, Sea Breeze
7 answers questions of BCUC.

8 If at that point, Mr. Chairman, somebody
9 believes that in fact Sea Breeze does not meet the
10 CPCN guidelines, and we strongly take the view that we
11 do at this point in time, then they can bring on that
12 application. To do it in a back-handed manner now in
13 relation to a procedural question is just, in my
14 submission, inappropriate.

15 So in responding to your question, these
16 questions will be answered and they will be answered
17 fully by Sea Breeze. At that point in time, if for
18 some reason the Commission or intervenors believe that
19 the scope of the application to consolidate is not
20 appropriate, that can be dealt with at that time.

21 THE CHAIRPERSON: Are you anticipating that you're going
22 to be filing your responses by November 7th?

23 MR. LANDRY: At this point in time we are, Mr. Chairman.
24 We're doing everything we can, and I know that
25 considerable resources and effort is being put to that
26 issue as we speak. And presumably the questions that

1 are asked on that and will have to be asked on the
2 intervenor evidence, Sea Breeze will be responding to
3 those questions equally comprehensively.

4 THE CHAIRPERSON: Thank you, Mr. Landry.

5 MR. LANDRY: Mr. Chairman, I would say this, that as Mr.
6 Carpenter indicated, and I don't mean to start off the
7 second topic too quickly but we did work with Mr.
8 Carpenter last night to try to come up with a
9 reasonable schedule that would accommodate the
10 concerns that BCTC had in terms of getting this matter
11 on expeditiously. And we have come up very close to a
12 proposal, a day or two here or there, that would
13 accommodate, I understand, both BCTC and Sea Breeze.

14 I'm more than willing -- I have a
15 substantial number of copies that I can hand out but
16 I'm more than willing to do that, but I'm in your
17 hands.

18 THE CHAIRPERSON: I think that's an excellent idea and
19 I'd encourage you to proceed.

20 So we're moving off of agenda item 1, we'll
21 move to agenda item 2, and we will hear from Mr.
22 Landry, then Mr. Carpenter, if he wishes to add
23 anything to Mr. Landry's comments, and then we will
24 move through the appearances in the order of
25 appearances that were made this morning.

26 I should also add for those of you who

1 have an interest in the town hall meetings and wish to
2 make comments with respect to the town hall meetings
3 that those issues are also within this agenda item so
4 I'll take submissions with respect to or comments with
5 respect to the town hall meetings as well.

6 **Proceeding Time 11:25 a.m. T27**

7 MR. LANDRY: While this is waited to be distributed
8 throughout the room, Mr. Chairman, would you like me
9 to sort of take you through it and that way we can use
10 it as at leased a starting point for our discussions?

11 THE CHAIRPERSON: Wait until it's fully distributed and
12 then do that.

13 MR. LANDRY: They have now been handed out, Mr. Chairman,
14 and there are extra copies if anybody doesn't have
15 one, so.

16 THE CHAIRPERSON: Let me, to ensure that the process for
17 this step on the agenda is clear, I'll hear from Mr.
18 Landry and Mr. Carpenter, then those in the order of
19 appearance that were made this morning, with the right
20 of reply by Mr. Landry and Mr. Carpenter. One should
21 not make any assumptions with respect to whether or
22 not the application for consolidation has been
23 approved or not in your comments.

24 MR. LANDRY: I assumed that, Mr. Chairman. I'm sure you
25 are aware of that.

26 THE CHAIRPERSON: Right.

1 MR. LANDRY: I was trying to bring forward to you
2 something that BCTC and Sea Breeze has now discussed
3 from that perspective.

4 THE CHAIRPERSON: Yes, and I wasn't intending to imply
5 that you would do that.

6 MR. LANDRY: Mr. Chairman, if I may, if we could sort of
7 start from the back so that you can see where we're
8 heading to, if I can put it that way.

9 The concept would be that the hearing would
10 commence in the middle of January, on Monday the 16th,
11 subject to the Commission's schedule obviously. The
12 only other point I would make on this, that the town
13 hall meetings that would be required for the two
14 applications would presumably have to be after all of
15 the Information Request process went through and
16 therefore would be set at some point in time and they
17 would presumably be during the first two weeks of
18 January. And we haven't specifically set dates for
19 the town hall meetings. Those are the two sort of
20 preliminary comments I would make.

21 The other comment I would make is that Mr.
22 Carpenter and I are still, I guess, debating because
23 we didn't have a lot of time last night to discuss
24 nuances on this but just for your information and for
25 the people in the room, the dates that Mr. Carpenter
26 would like to have changed on this document, and you

1 can probably put them to the side a little bit, is if
2 you go down to the Monday, December 5th date, on the
3 front, Mr. Carpenter would like that changed to
4 Friday, December 2nd. So that is his proposal.

5 The next one, Monday December 12th, do you
6 see that, Mr. Chairman?

7 THE CHAIRPERSON: I do.

8 MR. LANDRY: That would change to Friday December 9th.

9 Then the next one, which is Monday December 19th, do
10 you see that?

11 THE CHAIRPERSON: Yes.

12 MR. LANDRY: That would change to Friday December 16th.

13 Those are the revisions that are suggested by Mr.
14 Carpenter and the only comment I would make to those
15 revisions, and it's not material, is that the thought
16 was that given the importance obviously of the
17 intervenor questions to Sea Breeze, that perhaps it
18 was, not allowing that extra weekend, if I can put it
19 that way, to respond to the IR's in the Monday
20 December -- sorry, Mr. Carpenter's proposal for Friday
21 December 2nd versus Monday December 5th.

22 So that's the only minor one, because the
23 other dates just follow along on a weekly basis, so.
24 But this is the proposal. It is realistically as I
25 see it, the only tightening of timeframes outside of
26 what was effectively ultimately agreed to in the VITR

1 application is that Sea Breeze has less time to
2 respond to IR's in the process leading to either
3 Monday December 5th or Friday December 2nd. And I have
4 spoken to Sea Breeze about that and, given the need to
5 proceed with this matter, they're willing to do and
6 put whatever resources are necessary in order to
7 accomplish that.

8 So I don't know if you wanted to ask any
9 further questions, but at least it's on paper, what
10 we're proposing.

11 THE CHAIRPERSON: I appreciate that, thank you. Mr.
12 Carpenter.

13 **Proceeding Time 11:30 a.m. T28**

14 MR. CARPENTER: Mr. Chair, I don't have much to say. I
15 will say, in response to one of your questions to my
16 friend at the end of his submission arising out of the
17 BCUC information request to Sea Breeze -- and
18 specifically I think those requests that are found in
19 IR 12. BCTC certainly sees the rates and terms and
20 conditions of service as being a fundamental aspect
21 that needs to be explored in a hearing when the
22 Commission, at the end of that hearing, is going to
23 effectively pick a winner.

24 Without having that issue explored, if in
25 the Commission's judgment it was to pick the VIC
26 project and then find out later on that the rates and

1 terms and conditions of service and other aspects with
2 respect to the operations of those facilities, et
3 cetera, were not appropriate and could not be
4 negotiated that would leave us in a very difficult
5 position, I believe. And I won't say anything more
6 than that.

7 THE CHAIRPERSON: No, you shouldn't. Mr. Landry, do you
8 want to respond to Mr. Carpenter? That issue was
9 closed, Mr. Carpenter.

10 MR. CARPENTER: I was merely addressing it because I
11 thought that it was important for the Commission to
12 appreciate that in terms of the schedule, which is
13 moving forward and that you had specifically raised it
14 after I had closed my comments.

15 THE CHAIRPERSON: But I made it clear Mr. Landry was
16 going to have the final word on that issue. I will
17 give Mr. Landry an opportunity to respond. He may not
18 see it is necessary but I will give Mr. Landry an
19 opportunity to respond to your comments now, if you
20 wish to, Mr. Landry.

21 MR. LANDRY: Sir, may I only say that this is the very
22 reason why I asked the question when I started my
23 submissions.

24 THE CHAIRPERSON: Right.

25 MR. LANDRY: So, I think I have answered a question to
26 you, Mr. Chairman. This is again, once again part of

1 the problem with a company like Sea Breeze bringing
2 forward what is obviously a novel application, a novel
3 idea to the Commission, and effectively it is just
4 another hurdle that BCTC is attempting to put in front
5 of it. Those issues will be dealt with either between
6 Sea Breeze and BCTC or through the Commission process.

7 THE CHAIRPERSON: Right. Mr. Carpenter, please resist
8 taking the opportunity of using the mike to speak to
9 issues under -- that we have dealt with under item
10 number 1 on the agenda.

11 MR. CARPENTER: Thank you, Mr. Chair. I don't have much
12 to add to Mr. Landry's comments. We did take the
13 opportunity to try to put this together because we had
14 hoped that that would be of some assistance. It is
15 always nice, I think, to have something for people to
16 speak directly to.

17 Mr. Landry has made his comments about our
18 preference in terms of dates. Those stem primarily
19 from the date that Sea Breeze had proposed and the
20 necessary requirement then that BCTC and other
21 intervenors, quite frankly, who would file evidence
22 here would be placed in the unenviable position of
23 answering IRs over the Christmas period, which is
24 tight regardless, but there are at least three
25 statutory holidays in that period of time for the
26 intervenor responses to information requests.

1 might come out of that that staff wants to pursue,
2 that either of the applicants may want to attempt to
3 address, for that to be addressed during the hearing
4 process as opposed to those being left late in the
5 hearing process and sometimes unanswered questions
6 being left on the record.

7 So I'll just leave my comments on those and
8 the schedule as a whole at that.

9 THE CHAIRPERSON: Thank you, Mr. Carpenter. Mr. Fulton,
10 if you can call people in the order of appearance this
11 morning.

12 MR. FULTON: B.C. Hydro.

13 MR. SANDERSON: Mr. Chairman, just let me say that this
14 proposed schedule is helpful and it helps focus my
15 comments. I'm not probably going to revisit item one.
16 I am going to, though, insert some dates here on the
17 assumption that the procedures that I proposed were
18 adopted so that, without commenting on whether it will
19 be or should be, if it were the case that the
20 Commission determined to have a pre-hearing after
21 November 7th, when the IRs from Sea Breeze are to be
22 filed, then that does have some implications, I think,
23 for the rest of the schedule. So if I can just
24 elaborate that first.

25 THE CHAIRPERSON: Please. And for those of you who are
26 going to speak after Mr. Sanderson, Mr. Sanderson just

1 handled that distinction very well. I encourage you
2 to do that. There is no need to turn to the substance
3 of the issues that we dealt with in item number one
4 and item number two and I don't want to do that for
5 the purposes of fairness. You simply need to make
6 assumptions with respect to what we might do and then
7 speak to those. Mr. Sanderson, please proceed.

8 MR. SANDERSON: Thank you. I think in the week, towards
9 the end of that first week after November 7th, it would
10 presumably be possible to have that pre-hearing, that
11 is the determination by the Commission, with respect,
12 is one that I think the Commission would want and
13 would be able to make quickly, and a pre-hearing
14 shortly thereafter, I might suggest that Friday, the
15 11th or Thursday, the 10th, whichever, would seem to me
16 to be plausible.

17 I think that were that the case the Monday,
18 November 14th for IRs to Sea Breeze is probably
19 ambitious simply because the status of the application
20 wouldn't be known until the Friday. And if the
21 Commission reserved, I supposed not even till the
22 Monday or Tuesday so, in essence, I think that leads
23 to a slippage of a week probably.

24 I'm suggesting, Mr. Landry, that it would
25 lead to a slippage of a week in order to accommodate
26 determination with respect to the Sea Breeze issue,

1 suggested for the week of November the 7th, a further
2 week may be necessary in the schedule, in other words
3 a hearing commencing January 23rd instead of 16th might
4 be more realistic.

5 THE CHAIRPERSON: Thank you.

6 MR. FULTON: Joint Industry Electricity Steering
7 Committee.

8 MR. WALLACE: Mr. Chairman, I think we would support Mr.
9 Sanderson's comments. I would only point out that
10 Friday, November 11th is Remembrance Day and therefore
11 it would probably have to Thursday the 10th, or over to
12 the following week.

13 THE CHAIRPERSON: Right, thank you.

14 MR. FULTON: B.C. Old Age Pensioners' Organization *et al.*

15 MR. GATHERCOLE: I would agree with Mr. Sanderson's
16 comments as well, Mr. Chairman, on either alternative
17 of the pre-hearing conference or not. We can meet the
18 schedule for this proposal.

19 THE CHAIRPERSON: Do you also -- this may be a question,
20 Mr. Gathercole, that you don't wish to speak to, but
21 I'm going to ask you anyway and then you can tell me
22 that you wish -- you could answer it if you wish, and
23 that is: Do you agree with Mr. Landry and Mr.
24 Carpenter that the town hall meetings are better held
25 after the responses to information requests are in.

26 MR. GATHERCOLE: I think in principle, but we won't be

1 participating in the town hall meeting, so I think
2 it's probably, you know, something that would depend
3 on those who intend to participate in the town hall
4 meetings.

5 THE CHAIRPERSON: Yes. Thank you.

6 MR. FULTON: Hul'qumi'num Treaty Group.

7 MS. JOHNNIE: The Hul'qumi'num Treaty Group is a little
8 concerned about the energy in this proposed timetable.
9 We are closed over the Christmas holidays for two
10 weeks, so all of the e-mails will have to be forwarded
11 to another e-mail address for me.

12 The other concern that I have -- and I
13 would agree that the town hall meeting should be after
14 all information requests are received. We are
15 entitled to receive all information in a clear and
16 understandable format, so I would agree that the town
17 hall meetings should be after. I think that is the
18 substance of my comment based on the proposed
19 timetable that was presented to us.

20 Are we going to be offered the opportunity
21 to provide a more substantive comment in written
22 format? That's one of the questions I'd like to ask
23 the Panel.

24 THE CHAIRPERSON: With respect to --

25 MS. JOHNNIE: Respect to the proposed scheduling.

26 THE CHAIRPERSON: No. We're going to make a decision

1 with respect to scheduling, subject of course to our
2 decision with respect to consolidation, but we're
3 going to be making a decision with respect to
4 scheduling immediately following this process.

5 Your issues with respect to consultation
6 and accommodation will be spoken to later this morning
7 in the agenda, so if that's what's prompting that
8 request, we will deal with those issues.

9 MS. JOHNNIE: Okay.

10 THE CHAIRPERSON: So we'll get to that.

11 MS. JOHNNIE: Thank you.

12 THE CHAIRPERSON: That's item number 6 on the agenda.

13 MS. JOHNNIE: Yes.

14 THE CHAIRPERSON: Okay.

15 MS. JOHNNIE: Thank you.

16 MR. FULTON: Sencot'en Alliance. No comment. Valerie
17 Roddick. No comment. Corporation of Delta.

18 MR. YARDLEY: I think we can add our general support to
19 the process and timetable as it's slowly evolving. I
20 don't think we're going to have a huge issue with
21 respect to a few days here or a few days there. We
22 definitely agree that the town hall meetings should
23 occur when as complete a record as possible is
24 available, and so therefore that the town hall
25 meetings occur after the closing of responses to
26 information requests.

1 instructions on the point. I think what we probably
2 would want to is to try and straddle that. My
3 experience with this generally is that someone is
4 always inconvenienced by whether it is a weekend or an
5 evening. And I think perhaps what might make more
6 sense is if we just do it late afternoon into the
7 evening during the week that might make more sense.

8 Recognizing your response to the previous
9 speaker what I can do to undertake to write to the
10 Commission very soon, perhaps today or else Monday
11 with a more specific proposal in that regard. With
12 leave.

13 THE CHAIRPERSON: I think with respect to the location
14 and -- no, I think with respect to venue and I
15 distinguish that from locations, so, the panel is
16 going to need to pick, you know, whether it is in the
17 city of Delta or Surrey or a combination. I refer to
18 that as location. With respect to venue that is, you
19 know, whether it is in a school or some other place.
20 I think I can grant you leave to do that in writing
21 and continue to be fair to everyone. And I also think
22 that is true with respect to time. So I will grant
23 you leave to make submissions in writing with respect
24 to venue as I have defined it and with respect to time
25 unless there are any objections to that. And I will
26 do that for everyone. I think that is just going to

1 expedite the process for us.

2 Are there any objections to that?

3 Thank you. Thank you, Mr. Yardley.

4 MR. YARDLEY: Thank you.

5 MR. FULTON: Islands Trust.

6 MS. ADAMS: Thank you. I think we would generally
7 support the proposed revised schedule for consolidated
8 review. We appreciate that the panel is intending to
9 hold a town hall session on Salt Spring Island and we
10 would agree with having this after all the responses
11 to the IRs are in.

12 We would like to reiterate our requests in
13 our letter of October 12th that as the town hall
14 meeting on Salt Spring Island is intended to
15 accommodate people from both Galiano and Salt Spring
16 Island, that the rescheduling be taken with a view to
17 the ferry schedules so that people traveling from
18 Galiano Island can do so and return to Galiano Island
19 in one day without having to have an overnight stay.

20 And just lastly we would request that the
21 revised schedule be released in sufficient time to
22 give community members notice before the distractions
23 of the holiday seasons so that people are well aware
24 that it will be taking place in the first part of
25 January if that is to be the case. Thank you.

26 THE CHAIRPERSON: Just one comment, and maybe I should

1 12th meeting. A lot of people on Salt Spring have
2 already been notified. So I think there has been a
3 public meeting on Salt Spring by Sea Breeze so people
4 are aware of that application. So I don't see why it
5 couldn't proceed on the date already registered.

6 THE CHAIRPERSON: In fact that's your preference.

7 MR. BAZZARD: My personal preference, yes.

8 THE CHAIRPERSON: Thank you.

9 MR. FULTON: Karsten Holmsen.

10 MR. HOLMSEN: Mr. Chairman, I have no comment at this
11 time.

12 MR. FULTON: Tsawwassen Residents Against Higher Voltage
13 Overhead Line.

14 MR. ARVAY: Mr. Chairman, members of the Panel, we
15 support the change in schedule from the present
16 schedule to allow the process to proceed in a more
17 orderly fashion. And we would also take the view that
18 the town hall meeting should be put off until January
19 and would like the same opportunities to make
20 submissions with respect to venue and timing as other
21 parties, if you are going to grant that.

22 The only issue that I have, and I have to
23 say that I make this submission with some trepidation
24 because I don't know how it's going to be received,
25 not having been before you in the past, and I suspect
26 you aren't going to be particularly sympathetic to the

1 submission but nevertheless -- my biggest problem is
2 personal not professional. I appreciate you cannot
3 accommodate everybody's schedule in this room setting
4 a schedule, but if this hearing is going to -- first
5 of all I can tell you that we came into this -- my
6 firm came into this hearing somewhat late in the day
7 and had to move heaven and earth pretty well to make
8 ourselves available for the schedule that was and is
9 presently before you. If the matter is going -- if
10 the hearing is going to be moved, I think it's almost
11 certain Mr. Underhill will not be here with me. I
12 will be conducting the hearing by myself and that's
13 fine. But I have one week in February, and there's a
14 lot of things I'm going to have to move in January but
15 there is one week in February that I cannot move. I
16 have to be in the Supreme Court of Canada that week.

17 And so I don't know whether I'm asking you
18 accommodate me in an extremely accommodating and
19 generous way to have the hearing commence the week of
20 February 13th. Or if you can't do that, then to
21 somehow accommodate me and my client so that things of
22 significance to my client are not dealt with in the
23 week of February 6th. I don't know if that's possible
24 but that is a real problem for me and I'd ask you to
25 take that into consideration.

26 THE CHAIRPERSON: Right, and I'll respond now and it'll

1 be a response that those who have appeared before me
2 will have heard before. Except in small proceedings,
3 Mr. Arvay, where I can accommodate people, I do not
4 accommodate anyone and I will not hear. However, Mr.
5 Fulton, from time to time, is able to, subject to
6 there being no down time, because it's just too costly
7 in our proceedings, is able to accommodate requests of
8 that nature, and so I'd encourage you to speak to Mr.
9 Fulton with respect to what he can do to accommodate
10 you, and you may find that other lawyers in the room
11 are accommodating as well. I can't tell you that with
12 any certainty but they may be.

13 **Proceeding Time 11:55 a.m. T33**

14 So it's not a matter for me to provide you
15 accommodation with, and I won't, but Mr. Fulton and
16 others may.

17 MR. FULTON: Island Residents Against High Voltage
18 Overhead Lines.

19 MR. AUSTIN: There's one minor problem with the change in
20 schedule in the sense that the Island Residents have
21 spent time and funds to set up the meeting for
22 November 12th, so they may be trying to recover those
23 in their intervenor hearing costs. That's a very
24 minor point.

25 In relation to any hearings that, town hall
26 meetings, it's very important that they be settled

1 fairly quickly so that people know when they are and
2 so that they can get their advertising out.

3 And for the purposes of the Gulf Islands,
4 the comment has been made about the Galiano ferries
5 and that's why 9:00 a.m. on Saturday morning seemed to
6 be acceptable for the 12th, so there's no reason why
7 there shouldn't be -- couldn't be some sort of similar
8 town hall meeting on a weekend.

9 With respect to what I consider to be a
10 week's slippage as proposed by Mr. Sanderson, I'm not
11 exactly sure what the reasons for that were. It seems
12 to be me that every effort should be made to start
13 this thing as soon as possible in January. So if
14 there's any way to, say for example, compress the
15 schedule in terms of staff issues, hearings lists,
16 opening oral submissions, proponent consolidations of
17 hearing lists and all those procedural things that are
18 taking up a full week, I think we can save some time
19 by doing some compression in there because we used to
20 be able to manage very complex hearings without a lot
21 of that and somehow find our way through it all.

22 So if time is important to the Commission
23 in relation to other proceedings it has to attend to,
24 then I don't see why a lot of that can't be
25 compressed. Thank you.

26 MR. FULTON: GSX Concerned Citizens Coalition.

1 MR. CALDICOTT: We have no comment, thank you.

2 MR. FULTON: South Delta Secondary School Advisory
3 Council.

4 MS. KUDZIN: I just have two quick comments and one would
5 be with regard to, I know you gave some scope with
6 regard to the venue, to us writing a submission, but
7 if there were a decision made to have it at the high
8 school that decision would need to be made relatively
9 quickly because I understand teachers may be back very
10 quickly and there may be plays, the theatre has a lot
11 happening in it, it would need to be booked in the
12 very near future.

13 My other comment is just in support with
14 what a lot of the other people have said with regard
15 to the town hall meetings. It's my, respectfully I
16 would say it's my humble opinion that to not have
17 those town hall hearings after all of the participants
18 have had the opportunity to listen or to read all of
19 the information that's come in is somewhat dismissive
20 of their opinion.

21 I think that they deserve to be able to
22 take everything into account. Thank you.

23 MR. FULTON: Mr. Cross.

24 MR. CROSS: In the same vein as the previous speaker, the
25 schedule leaves little time for individuals such as
26 myself to basically get the hard copies of the

1 information, and there might be volumes of stuff that
2 comes through in this process and it does take time to
3 actually get that information delivered, to read it,
4 to discuss it with other people. Some of us don't
5 just represent ourselves. The Tsawwassen Home Owners'
6 Association has more than 300 members. There's an
7 interest. It's not a legal interest, it's not maybe
8 taking as much time as the others are, but certainly
9 there is a certain amount of time that we have to
10 spend on this information and I'm not sure that this
11 timetable allows for that. We don't want to be
12 obstructive and you know, I think we should try and
13 move along as fast as we can, but I do have a concern
14 that we get information one day and then we're
15 expected to make an information request on it or
16 whatever by the following week, and we don't have the
17 time to even formulate an information request should
18 we wish to do so to Sea Breeze. So that is a concern.

19 **Proceeding Time 12:00 p.m. T34**

20 My other point, and I made it before in the
21 previous conference, is a concern that the overall
22 timing has been driven by this sort of almost what
23 BCTC would like to take as a given, that the lights
24 are going to go out in December 2008 because this has
25 to be in service by 2008. And I think that's a key
26 point in those whole application is the question of

1 the timing determined by that date, and I really feel
2 that's going to be a very important part of this whole
3 process going forward and I don't know quite where or
4 how that's going to be decided. But my suggestion is,
5 as I had decided before, is that certainly that should
6 be a key element in all of these discussions. At some
7 point in time we should establish the need for this
8 in-service date of 2008 prior to formulating other
9 opinions on some other aspects of Sea Breeze and
10 everything else. In other words, is there a rush and
11 what's the rush? If there's not, I would personally
12 defer this whole thing for six months. Thanks.

13 MR. FULTON: Julie Berks. Mairi McLennan.

14 MS. McLENNAN: I was really hoping to hold on to my
15 inactive intervenor status, so this is rather
16 conceptual in terms of feedback.

17 The one thing I notice as a deficiency
18 which I feel would disadvantage intervenors is the
19 timeframe between the Sea Breeze response to
20 information requests from intervenors and the evidence
21 deadline with respect to the application, because that
22 is a very short timeframe. In my sad and unfortunate
23 experience of past applications, I have never been
24 satisfied with the first round of IRs as an
25 intervenor, and there is no provision made for follow-
26 up questions or any consideration shown here for

1 supplementary questions or any time allowed to even
2 apply to the Commission for adjustment of the
3 schedule, if the first round of IRs caused some
4 concerns.

5 THE CHAIRPERSON: Ms. McLennan, let me speak to that. At
6 the first procedural conference I said that we would
7 hear at any time through the proceeding, in writing,
8 comments with respect to adequacy of responses to
9 information requests. So that opportunity is
10 available to you.

11 MS. McLENNAN: It would be available during that week, at
12 which time any intervenor would also be preparing
13 their own evidence filing. And what I'm trying to
14 point out to you, it's my rather tired theme of the
15 obligations that ordinary intervenors have during the
16 working week. This is a Monday to Friday schedule,
17 and in fact I'm not really clear whether I'm
18 commenting on 2nd of December or 5th of December and the
19 9th or 12th. But that one week interval I think is
20 insufficient from an intervenor perspective. They get
21 handed the responses at the beginning of the week and
22 they're supposed to be filing evidence at the end of
23 the week, and I just -- I don't think that's
24 satisfactory.

25 I was really hoping earlier to stand up and
26 be able to say that I agreed with Mr. Sanderson

1 comment that was made earlier that your schedule, as
2 usual, seems to be driven in reverse by your
3 perspective as to when a decision date is needed.

4 THE CHAIRPERSON: Fair enough, thank you.

5 MR. FULTON: John Winfield.

6 MR. WINFIELD: No comment.

7 MR. FULTON: Maureen Broadfoot.

8 MS. BROADFOOT: I would like to start off by saying that
9 TRAHVOL, as mentioned before, completely supports a
10 consolidated hearing process. We believe that the Sea
11 Breeze application should be looked at at the same
12 time. And therefore, we understand that the hearing
13 process has to be delayed to accommodate that request.
14 However, we are concerned that TRAHVOL and residents
15 in Tsawwassen have spent a significant amount of money
16 and time on legal fees. And the fact that one of our
17 lawyers is not going to be available in January and
18 Joseph Arvay has some conflicts in February, that is
19 of deep concern to us, that we could be compromising
20 our legal strategy and the funds that have come out of
21 people's pockets for this.

22 So, I would like to suggest, as John Cross
23 has mentioned, that this seems to be driven by this in
24 service date of 2008 and, you know, this is a project
25 that has been on B.C. Hydro's books for 12 years.
26 TRAHVOL has been concerned that this process has been

1 rushed from the beginning and we feel that we need the
2 time to speak to our lawyers and come up with a
3 schedule that is going to allow them both to fully
4 participate in this process. And if that means
5 bumping the hearings until perhaps mid-February, we
6 should be able to do that.

7 Otherwise, we have, as I said, sunk in a
8 lot of money and time which could really compromise
9 TRAHVOL's position in these hearings. Nothing
10 further.

11 THE CHAIRPERSON: Thank you.

12 MR. FULTON: Pam Sutherland.

13 MS. SUTHERLAND: I would support the previous speaker in
14 what she had to say.

15 MR. FULTON: Okay, Mr. Chairman, I know sometimes it is a
16 little distance to come to the mike but from the court
17 reporting purposes it is best that everyone uses the
18 mike so I just make that request to everyone that they
19 come forward and use the mike rather than speak from
20 the back of the room so that we have as accurate a
21 record as we can.

22 THE CHAIRPERSON: Well, let the record show that Ms.
23 Sutherland supported Ms. Broadfoot's comments.

24 MR. FULTON: Thank you, Mr. Chairman.

25 Town of View Royal.

26 MR. McCUSKER: It is rather a long way to come to say a

1 few words but we believe that it should be done right
2 and not hurried. Whatever it takes to do it right.

3 Thank you.

4 MR. FULTON: And I believe, Mr. Chairman, that that
5 concludes my list.

6 THE CHAIRPERSON: Thank you. That will, I think then,
7 bring us to Mr. Landry and Mr. Carpenter, if there are
8 any comments that you wish to make with respect to
9 what has been said, with respect to schedule or agenda
10 item number 2.

11 MR. LANDRY: Mr. Chairman, I have no specific comments in
12 terms of the general things that were said. I guess
13 we will leave it in the Commission's hands. But I do
14 want to comment on one concept that Mr. Sanderson had
15 raised. And this is on this, as we are doing, on the
16 assumption that this type of proposal is accepted.

17 I would only note that, I think, I didn't
18 write down the note and I apologize but I think he
19 mentioned that a pre-hearing conference during the
20 week of Monday, November 7th. And I would only say
21 that regardless of whatever happens, Mr. Chairman, Sea
22 Breeze has filed intervener evidence in the VITR
23 application and the intervener evidence includes both
24 of the proposals and they will be information requests
25 to Sea Breeze that have to be answered by Thursday,
26 November 10th. And I would only suggest to you, Mr.

1 Chairman, just because I know how onerous a task this
2 is going to be, that it's just a minor change to what
3 Mr. Sanderson has suggested and move it to November
4 15th or 16th, the pre-hearing conference.

5 **Proceeding Time 12:10 p.m. T36**

6 THE CHAIRPERSON: Thank you.

7 MR. LANDRY: And I just wanted to make sure and my client
8 wanted to make sure that again, based on all of these
9 assumptions we are making, but that in the town hall
10 meetings the contemplation would be, assuming a
11 consolidated proceeding, that both projects would be
12 presented at those town hall meetings.

13 THE CHAIRPERSON: We will speak to that in an order or in
14 a letter if there's a consolidation.

15 MR. LANDRY: I understand, I just wanted to make sure
16 that the Sea Breeze position was on the record in that
17 respect.

18 THE CHAIRPERSON: Thank you. Mr. Carpenter.

19 MR. CARPENTER: Mr. Chair, I have no comments about dates
20 themselves. I would like to address one issue that
21 Ms. McLennan raised very briefly and that's the filing
22 of evidence, and I don't think that she intended to
23 say this. But just in case there's any confusion, the
24 filing of evidence is a process that can start -- I
25 mean, people now have the Sea Breeze application, for
26 instance, and if they have evidence that they wish to

1 bring with respect to that, that preparation can start
2 now. I can assure you that BCTC's preparation for
3 that is starting now. Yes, that evidence will be
4 refined by answers to the Commission's information
5 responses. Yes, it will be refined from answers to
6 people's own information requests and others. But
7 that last week, if you will, and I appreciate the
8 difficulties around this -- everybody has them --
9 should really be for fine-tuning as opposed to
10 preparation of it as a whole.

11 One of the other issues that we have
12 struggled with, and I think it goes to this point but
13 I'll address as a broader topic, and that is the
14 distinction between evidence and argument. And with
15 all due respect, a lot of what we saw filed this week
16 in intervenor evidence was not evidence, it was
17 argument.

18 Evidence is what you know or what you are
19 an expert in and therefore are qualified to opine on.
20 And if that helps people meet the evidentiary
21 schedule, I think that that would be of benefit.

22 Argument comes at the end of the hearing,
23 after all of the facts are on the table. And again, I
24 mean, I think that that might reduce the burden on
25 people that they're feeling in terms of what they need
26 to do when they file their evidence. Thank you.

1 THE CHAIRPERSON: Not necessarily to agree with your
2 comments, Mr. Carpenter, but I will make this general
3 comment for the purposes of this proceeding, is that I
4 look for argument in argument. If you've filed
5 argument before us in an effort to persuade us in
6 materials that are other than argument, it may not be
7 read very well. So I'd encourage you to do that. It
8 is -- although it's sometimes difficult to distinguish
9 the two in the nature of our proceedings, but I do
10 encourage you -- it's in your interest to file your
11 argument with argument.

12 That then brings us to a point in time at
13 which I need to make a decision with respect to how
14 long we're going to be, and I'm thinking that, unless
15 anyone dares to step forward and disagree, that we're
16 going to be long enough for us to take a lunch break.
17 So unless there are any objections, we'll take an hour
18 now and return at quarter after one.

19 Are there any objections? We'll return --
20 we're adjourned until quarter after one.

21 **(PROCEEDINGS ADJOURNED AT 12:15 P.M.)**

22 **(PROCEEDINGS RESUMED AT 1:18 P.M.)** **T37**

23 THE CHAIRPERSON: Please be seated. Before we move on to
24 the next agenda item, I do want to make one comment
25 about the proposed schedule and it's really in a
26 context of my desire to ensure at least certainty with

1 respect to the schedule once it's established, and the
2 benefit of having this venue, and it's this: that
3 there is a proceeding, it's the ICBC proceeding, that
4 I understand is scheduled to commence on the 6th, and I
5 believe it's to conclude by the 13th. If we do both
6 hold to this venue, which I am led to believe is the
7 preference of everyone, and the Panel, following this
8 proceeding, agrees to the January 16th start date, it
9 does mean that the certainties at risk, that is if the
10 ICBC panel continues beyond the 13th, I think we would
11 need to delay the commencement of this proceeding.

12 And I'm thinking that that is a reasonable
13 risk to take. But I wanted to put it before you so
14 that if others saw it differently, that is you felt
15 that that's an unreasonable risk and that the
16 certainty with respect to the commencement is more
17 important, and you don't want to assume the risk, then
18 I welcome comments on that.

19 So that is one issue that wasn't raised
20 this morning and on that very narrow issue with
21 respect to agenda item number two, I'll take comments
22 if there are any.

23 **Proceeding Time 1:20 p.m. T38**

24 Okay, hearing none, then that brings us to
25 agenda item number 3. We did not receive, to my
26 knowledge, any requests with respect to agenda item

1 number 3, that is the inclusion within the scope of
2 this proceeding any issues that were addressed in
3 prior Commission decisions, except for one and that is
4 the request by TRAHVOL which is Exhibit C3-12. And I
5 think on this one I will first hear from Mr. Arvay,
6 then from everyone except Mr. Carpenter, then Mr.
7 Carpenter and then Mr. Arvay.

8 MR. ARVAY: Mr. Chairman, I'm in your hands, but this is
9 not TRAHVOL's application. This is IRAHVOL's
10 application.

11 THE CHAIRPERSON: Oh, my apologies.

12 MR. ARVAY: No, sorry, I -- oh, I am sorry. I'm sorry.
13 I'm confusing the two different scoping issues and Mr.
14 Underhill is going to speak to this one.

15 THE CHAIRPERSON: Okay.

16 MR. ARVAY: Okay, thank you.

17 MR. UNDERHILL: Thank you, Mr. Chair, Commissioners.
18 I'll be relatively brief. I've had a chance to at
19 least look at the Vancouver Island decision, and of
20 course we weren't involved in the proceedings, and I
21 understand in that proceeding that a determination was
22 made that there would be a shortfall in 2007-2008.

23 What was not clear to TRAHVOL was the
24 extent to which there was examination of the zero
25 rating of these lines as of 2007. To be clear,
26 TRAHVOL doesn't propose to adduce any evidence on the

1 issue but rather to conduct cross-examination based on
2 the responses to the information requests and on the
3 application, and that's the extent to which TRAHVOL
4 wishes to visit the issue. Again the basis that we
5 weren't clear, to what extent there was a thorough
6 examination of the foundation for the 2007 zero
7 rating. Thank you.

8 **Proceeding Time 1:22 p.m. T39**

9 THE CHAIRPERSON: Thank you. You will have an
10 opportunity to reply, Mr. Underhill, and I'll hear
11 from Mr. Carpenter after everyone else. Is there
12 anyone else who wishes to speak to TRAHVOL's request?
13 Mr. Sanderson?

14 MR. SANDERSON: Mr. Chairman, I think I'm just going to
15 make a general point here and it'll apply to each of
16 the requests to reconsider things that are from
17 previous decisions.

18 It's my submission that on the specifics of
19 this one, there was an examination of that issue made
20 and a Commission determination made with respect to
21 the de-rating issue. And it follows from that, in my
22 submission, that the Commission not only reopened that
23 issue if it believes circumstances that would
24 otherwise justify reconsideration are present, and the
25 most significant of those in the context of this is
26 new evidence.

1 There has been passage of time, and if that
2 passage of time leads to there being available
3 evidence which simply wasn't available previously,
4 then in my submission it should be heard. But we
5 should not revisit people's interpretation of evidence
6 that was available when the last decision was made.

7 THE CHAIRPERSON: Thank you. Is there anyone else before
8 Mr. Carpenter speaks to this issue that wishes to
9 speak to it?

10 Mr. Carpenter.

11 MR. CARPENTER: Mr. Chair, Commissioners, given the
12 brevity of my friend's comments, I will not be as
13 detailed in my response as I had anticipated that I
14 might have to be, but I still want to cover a number
15 of points.

16 First of all, my friend has pointed out
17 that the Commission made a decision in the VIGP
18 decision. Does the Commission have copies of that?
19 I'm going to make a couple of references and I do have
20 copies but I don't know that we need to pass it out.

21 **Proceeding Time 1:25 p.m. T40**

22 THE CHAIRPERSON: I think we need two copies.

23 MR. CARPENTER: And I think they simply highlight that
24 this wasn't just an incidental issue, if you will, to
25 the VIGP proceeding. This was at the very core of
26 that proceeding and the first reference I'd like to

1 make is at the top of page 4 right under the heading
2 "Introduction":

3 "B.C. Hydro states that it needs to invest
4 in new system infrastructure to meet the
5 reliability needs of Vancouver Island and
6 that those needs are dictated primarily by
7 the requirement to meet peak demand. It
8 further states that the compelling factor in
9 meeting this demand is the expected
10 retirement, zero rating, of the high voltage
11 direct current transmission system in 2007."

12 So as I said, at the very core of the
13 decision and in B.C. Hydro's submission the compelling
14 factor.

15 If you go over to page 9 of the decision,
16 again you'll see a discussion there with respect to
17 expected demand and in the very first line:

18 "The application identifies the main driver
19 for new infrastructure to serve Vancouver
20 Island as a supply issue. It's the expected
21 retirement zero rating of the HVDC
22 transmission system."

23 So that issue was at the core of that
24 application. It was the subject of extensive
25 evidence, and I won't go through that, information
26 responses, testimony, cross-examination and argument,

1 and at the end of that proceeding, and I won't go
2 there, but this is found on page 27, the Commission
3 concluded that that zero rating was appropriate and
4 that there was going to be a supply deficit on
5 Vancouver Island although given the other side of the
6 issue, the demand forecast at that point in time, the
7 Commission did not accept that the deficit was as
8 great as B.C. Hydro had forecast it to be. There was
9 no application for reconsideration of that decision.

10 And this, I think, is echoing perhaps Mr.
11 Sanderson's very brief comments. Given that and given
12 what's gone on since then I'd submit that the test for
13 reopening shouldn't simply be has there been something
14 new that's taken place since then, which I submit
15 there hasn't, but should be strict, much stricter than
16 what you'd consider normally on a reconsider
17 application which is has there been a *prima facie* case
18 that's been made. Has it been established that this
19 would cause the Commission to seriously rethink that
20 decision?

21 **Proceeding Time 1:28 p.m. T41**

22 And I say what has gone on since then
23 because, on the basis of the Commission's decision in
24 the VIGP hearing, first of all, B.C. Hydro went out
25 and did its call for tenders. Obviously a process
26 that was the subject of some controversy but still an

1 expensive one in terms of B.C. Hydro and its rate
2 payers and the province. Parties who participated in
3 the call for tenders invested significant amount of
4 dollars and resources in that.

5 The whole CFT process and the CFT decision
6 was based on the zero rating and that supply deficit
7 being in place. And I won't refer to it but that is
8 discussed at pages 3 and 4 of the CFT decision. And
9 quite frankly, BCTC wouldn't be here had that decision
10 not been made. And BCTC wouldn't have spent close to
11 \$5 million, I think is the number now, on the
12 definition phase of the VITR project had it not been
13 that the Commission accepted that the zero rating date
14 was appropriate and that that supply deficit was going
15 to exist.

16 So, there has been a significant amount of
17 dollars that have been invested following that
18 decision. And given that, I believe that that matter
19 should not be reopened lightly. People do place their
20 faith in the Commission and its decisions. I
21 appreciate that the Commission always has the
22 jurisdiction to reopen past decisions, but at the same
23 time there has to be some balance and some level at
24 which people can rely on those decisions. So, as I
25 alluded to before, I don't think then the test is
26 simply whether somebody wishes to reopen it, I don't

1 think that the test is simply whether they have
2 established some *prima facie* case to potentially
3 reopen it but has it established that there has been a
4 truly fundamental change that has taken place?

5 You have given broad, broad latitude in the
6 process that has gone on up to now for parties to
7 examine that issue and the Commission specifically
8 said it was not going to restrict the scope of the
9 hearing up to this point in time, that it was not
10 going to restrict the scope of IRs that people could
11 ask so they had full latitude to ask all questions on
12 this and it would not restrict the scope of intervenor
13 evidence that could be filed on it.

14 And, if you remember from Exhibit A-11 you
15 even went beyond that and said,

16 "And if somebody thinks that there might be
17 some other necessary step that needs to take
18 place here, the Commission is open to people
19 making submissions on that if you think that
20 there is further evidence that needs to be
21 required on it for us to have in making this
22 scope decision."

23 My friend has not alleged any error in
24 terms of the original decision, and interestingly, he
25 has not alleged any change in terms of material
26 evidence coming out of the IR process. I went

1 through, in anticipation of preparing for what I
2 thought would be some pointed examples of why it was
3 some of the IRs might have brought new evidence to
4 bear here, I went through the IRs that were
5 specifically focused on the HVDC system.
6 Interestingly, very few of those focused on the
7 current state of that system. A lot more focused on
8 what if you were to make some changes to it and how
9 available is it as a bridging measure? Very few
10 focused on that core issue of what its current state
11 is.

12 And, of those that did, certainly in my
13 submission, none of them showed any indication of a
14 change let alone a material change to the type of the
15 information that was in front of this Commission in
16 the VIGP decision. And I will only point you to one
17 of them. I don't think you need to go there at this
18 point but BCUC 1.30.1 attaches a report that was
19 prepared early in 2004 which addresses the probability
20 of failure of HVDC Pole 1 and Pole 2 both before and
21 potentially after some remediation steps are taken to
22 it. I'm sure the Commission is familiar with it.

23 **Proceeding Time 1:33 p.m. T42**

24 The core decision that B.C. Hydro at the
25 time put forward in terms of whether the HVDC system
26 should be zero rated was whether it would be available

1 95 percent of the time. BCUC 1.30.1 addresses that
2 question square on. It shows the availability factors
3 and it shows, even with a combined availability of the
4 two poles, they don't reach 95 percent now, let alone
5 in 2007. So again, no change in the evidence from the
6 previous hearing.

7 And as my friend has just conceded and I
8 was going to point out, TRAHVOL hasn't led any
9 evidence on this point, something that was obviously
10 perfectly open to them. They could have had an expert
11 come, they could have had an expert look at the
12 previous information which has been filed, which is
13 voluminous, and they could have had that expert opine
14 on what they felt was appropriate; and they've chosen
15 not to do so. So a mere interest in testing a limited
16 amount of information under cross-examination, with no
17 competing evidence whatsoever, I'd simply submit
18 doesn't meet the test that should be in place for this
19 issue to be reopened. Thank you.

20 THE CHAIRPERSON: Thank you. Mr. Underhill.

21 MR. UNDERHILL: Thank you, Mr. Chair. The only response
22 I am able to offer is of course TRAHVOL did not
23 participate in the hearing, and the extent to which
24 evidence was led or not led is not immediately
25 apparent from the reading of the decision. As I said,
26 we feel this issue is important of course to the issue

1 of alternatives and the timing of those alternatives,
2 and we would like to explore it on cross. But we're
3 in the Commission's hands to the extent that we just
4 simply were not apprised of what transpired in the
5 previous decision and what evidence was led and
6 whether it was subjected to cross-examination. Thank
7 you.

8 THE CHAIRPERSON: Thank you, Mr. Underhill.

9 That then brings us to the next agenda
10 item, which is -- I'm hoping I pronounce this
11 correctly -- IRAHVOL's request which is Exhibit C34-5.

12 MR. AUSTIN: By letter dated October 7th, 2005, IRAHVOL
13 wrote to the Commission and it's been identified, I
14 believe, as C34-5. And in that letter IRAHVOL sets
15 out its concerns about the BCTC's position with
16 respect to environmental and socioeconomic issues, and
17 for people who live over in the Gulf Islands this is
18 not a trivial matter. And BCTC's position is set out
19 in its application and it's set out in its letter, and
20 essentially what it's saying is there shouldn't be any
21 detailed review of socioeconomic and environmental
22 issues during the course of this proceeding by the
23 B.C. Utilities Commission.

24 In IRAHVOL's view, that's a judgment
25 decision on the basis made by BCTC. It has decided
26 that it is going to file for its CPCN first and then

1 file for environmental approvals. It is IRAHVOL's
2 view that that is BCTC's decision and that is probably
3 a very risky decision in terms of potential outcomes
4 as will be demonstrated as I go through the material.

5 It has a practical effect on IRAHVOL
6 because of the BCUC's intervenor funding guidelines.
7 The practical effect is IRAHVOL decided to hire an
8 expert witness in any socioeconomic or environmental
9 matter, there is always the risk that it would be
10 outside -- that person's evidence would be outside the
11 scope of these proceedings, and therefore IRAHVOL
12 would be financially at risk.

13 **Proceeding Time 1:38 p.m. T43**

14 For the purposes of filing its evidence,
15 IRAHVOL did not hire any experts for that very reason.
16 It prepared its evidence on its own. It's not expert
17 evidence. Ideally it should be expert evidence, but
18 BCTC's position essentially froze it.

19 What is the impact of BCTC's decision in
20 terms of what it's saying to the Commission in terms
21 of the scope of the proceedings on environmental and
22 socioeconomic issues? Well, the Commission has dealt
23 with this type of issue before and it dealt with it in
24 the Vancouver Island Generation Project decision, and
25 this was of September 8th, 2003. And I've got extracts
26 from that that I can hand out if the Commission

1 doesn't have the decision before it right now.

2 THE CHAIRPERSON: We have it now.

3 MR. AUSTIN: I'd like to refer you to page 47 of this
4 decision, and three-quarters of the way down the page
5 it says:

6 "In a ruling during the hearing, the
7 Commission Panel Chair reiterated that the
8 Commission Panel is not prevented from
9 considering environmental issues, but that
10 its jurisdiction is limited to a
11 consideration of costs that are likely to
12 emerge as an unavoidable cost for B.C.
13 Hydro's ratepayers."

14 Well, there was a little bit of dispute with respect
15 to that ruling as I understand it, because BCOAPO,
16 which is referred to almost at the bottom of the page,
17 pointed out to the Commission that Mr. Justice Goldie
18 had made comments about the scope of CPCN applications
19 in the integrated resource planning decision. And Mr.
20 Justice Goldie said, and this is set out on page 47 of
21 this:

22 "It has been evident for some years now that
23 the environmental considerations are
24 important in the formulation of the opinion
25 represented by the phrase 'public
26 convenience and necessity'."

1 And although this is the Commission's decision in the
2 Vancouver Island project, I think it could be readily
3 distinguished because the terms of reference in that
4 proceeding are very much different than the terms of
5 reference for the CPCN now.

6 What happened in the Vancouver Island
7 decision was it was a decision of the government that
8 this project that was proposed by B.C. Hydro by Duke
9 Point should be reviewed by the Utilities Commission.
10 So it's somewhat different than the applicant coming
11 forward and saying: Here's my application for a CPCN.

12 However, that's not the prime reason for
13 IRAHVOL saying that the scope of these proceedings
14 should include a broad range of socioeconomic and
15 environmental issues.

16 And the Commission has reviewed
17 transmission line applications before. It reviewed
18 one by West Kootenay Power Limited in June 2000, and
19 in this particular decision there was a fairly
20 significant amount of environmental and socioeconomic
21 evidence that was presented and accepted by the
22 Utilities Commission. I haven't got the extracts from
23 the decision because I'm just referring to it in
24 general terms. But throughout that decision, there
25 are references to safety benefits, aesthetic
26 improvements, and some reliability improvements.

1 There's also references to wildlife and wildlife
2 habitat. There's reference to other land uses
3 including agriculture and recreation which should show
4 a similar beneficial impact to the extent the right of
5 way is reduced. So there is ample evidence in that
6 decision that socioeconomic and environmental issues
7 were considered in terms of the Utilities Commission's
8 final decision.

9 So at least in terms of this decision,
10 there is a precedent and it is a strong precedent for
11 allowing intervenors to file socio-economic and
12 environmental evidence.

13 **Proceeding Time 1:43 p.m. T44**

14 Once West Kootenay got its CPCN then there
15 was additional work to do. And this is the point that
16 is probably more important than what was considered in
17 the decision. Now, if you just excuse me for a moment
18 I just want to get copies of the decision I will hand
19 out.

20 What happened in this particular instance
21 was the application had been started off by West
22 Kootenay Power and Light but Aquila came forward with
23 a request for an approval for the final routing of the
24 230KV system development. And what I have passed up
25 to the Commission is the reasons for decision with
26 respect to the final routing schedule and budget

1 estimates report. In other words, there was the
2 original application but things had changed to the
3 extent that Aquila now had to come before the
4 Utilities Commission for final approval.

5 And what I would like to refer the
6 Commission to is page 4 of 19. And essentially, what
7 happened is that the cost of the project had gone up
8 significantly. And on page 5 of 19 the estimates of
9 the increase in costs by the B.C. PIAC were around
10 22.7 percent.

11 If you go back to page 4 of 19 there is a
12 bit of a break out in terms of where these costs
13 increased. And about five-eighths of the way down the
14 page, and that is not exactly precise if you pull out
15 your tape measure, it says:

16 "Phase 2, costs. Environmental permitting
17 and land use, increase of 4.7 million or 295
18 percent.

19 Phase 3, implementation. Increase of
20 8.96 million or 13 percent."

21 And over on page 5 of 19:

22 "Decommissioning. 5.42 million or 111
23 percent."

24 Now, in this particular instance there were not
25 competing companies that had proposals for the same
26 routing. So, in terms of cost precision, although the

1 estimates and the actuals were now way over budget,
2 the project proceeded. However, in the instance
3 before you it appears we have two competing proposals.
4 And it will be very important that the costs of these
5 competing proposals be established with a fair amount
6 of precision because if it is plus or minus 20 on the
7 winner's side then the winner might not, in the end,
8 be the real winner. And by the time all that happens
9 the loser may have decided they don't want anything to
10 do with all of this having incurred all the costs to
11 date.

12 And it's a very important point because the
13 cost of the VITR project as proposed by BCTC is
14 estimated at this point in time to be \$245 million.
15 If the cost of that project is off by 20 percent, say,
16 for example, because of environmental issues that are
17 uncovered subsequent to this CPCN application. Then
18 two things could happen. First of all, the wrong
19 winner could have been chosen. And second of all,
20 despite what we have heard today or despite

21 **Proceeding Time 1:48 p.m. T45**

22 MR. AUSTIN: Despite what we've heard today or despite
23 the impression today, BCTC is not a very strong
24 company from a balance sheet perspective.

25 And I'd like to introduce an extract from
26 the B.C. Hydro Revenue Requirements hearing from last

1 year. It was also an application by BCTC with respect
2 to deferral accounts. And I'd like to refer the
3 Commission to page 2972 of the transcript starting at
4 line number five, and the Commission can read this at
5 its convenience, but this was my cross-examination of
6 Jane Peverett who is now the president of BCTC. And
7 the cross-examination was essentially in relation to
8 write-off of deferral accounts. And in that cross-
9 examination I said, "Well, if you had a deferral
10 account and it was \$100 million balance in the account
11 and it had to be written off, well, what would happen?

12 Well, the response at line 15 was, "But we
13 would be a bankrupt corporation at that time." That's
14 at the \$100 million level.

15 I then rephrased the question to say:

16 "Let's assume that the figure was \$25
17 million and it's within your capitalization,
18 your equity capitalization, what happens?"

19 And that's when the answer came back:

20 "Well, if it were \$25 million, we couldn't
21 absorb that until after fiscal 2006. So if
22 we take a capital cost of this project of
23 245 million, multiply it by an overage of 20
24 percent then BCTC will be bankrupt."

25 So here is a company that's standing up and
26 making an application to the Utilities Commission and

1 saying, essentially, "The environmental side, well,
2 we're going to deal with that after the CPCN has been
3 concluded," even though it doesn't have the balance
4 sheet muscle to even contemplate something like that.

5 From IRAVHOL's perspective that's BCTC's
6 decision. IRAVHOL should be free to enter evidence on
7 socio-economic issues and environmental issues
8 because, first of all, those are important in terms of
9 the people who live in the Gulf Islands and it's also
10 important from the Commission's perspective, to get
11 some idea whether environmental and socioeconomic
12 issues that BCTC wants to avoid might ultimately tip
13 the balance in favour of the project to perhaps Sea
14 Breeze. It also, at a later date, might tip BCTC into
15 bankruptcy if it doesn't get it right.

16 And my final point on this, and I will
17 leave it to the First Nations to argue, is that in
18 terms of the submission by the Hul'Qumi'num Treaty
19 Group, they do talk about certain environmental and
20 socioeconomic issues at page 18 of their submission.

21 So to conclude this, IRAVHOL's position is
22 environmental and socioeconomic issues are clearly
23 within the scope of this. There should be no
24 restriction in terms of what is in evidence and what
25 is not. It should be clearly a question of weight by
26 the Utilities Commission and that BCTC is

1 unnecessarily and unwisely exposing itself to a lot of
2 risk by taking the position that it is.

3 Thank you.

4 THE CHAIRPERSON: Where are the restrictions, Mr. Austin?

5 **Proceeding Time 1:53 p.m. T46**

6 MR. AUSTIN: Well, the restrictions of BCTC is --

7 THE CHAIRPERSON: No, the restrictions from this Panel.

8 MR. AUSTIN: Well, there haven't been any so far.

9 However, the applicant has made its decision. There's
10 the Vancouver Island decision that's out there
11 already, and that's what certainly IRAHVOL is
12 concerned about. In that particular instance the
13 Commission said if you don't put a dollar value on it
14 essentially, we're not interested in it. And that is
15 not the proper way to proceed on these things. If you
16 can put a dollar value on it, it is important. But
17 there are certain things that were referred to in the
18 West Kootenay decision where it's freely admitted in
19 the decision that, no, there is not a particular
20 dollar value that can be put on something, say for
21 example aesthetics. What's the dollar value for
22 safety? So those are the types of issues that should
23 still be within scope but a question of weight at the
24 end of the day.

25 THE CHAIRPERSON: At the end of the day.

26 MR. AUSTIN: At the end of the proceedings. Not in

1 advance.

2 THE CHAIRPERSON: Right, and you're seeking a decision
3 now with respect to scope. Why not leave this open to
4 argument at the end of the proceeding?

5 MR. AUSTIN: For the simple reason in terms of what I
6 said in the first instance, if you don't have the
7 money to go out and hire experts, and you're not sure
8 what's then in scope, do you go and hire those experts
9 and say, yes, we'd really like to do this work but at
10 the end of the day if it's outside scope you don't pay
11 them?

12 THE CHAIRPERSON: So your submission is if it were not
13 for participant funding issues, you would leave this
14 until the end of the proceeding and file evidence on
15 it.

16 MR. AUSTIN: Precisely.

17 THE CHAIRPERSON: Right. Thank you.

18 Is there anyone who -- and I think I'll
19 take whatever submissions there are in the order of
20 appearance, then give Mr. Carpenter an opportunity to
21 comment and then Mr. Austin to comment. So we'll go
22 through -- actually I'll just ask. Is there anyone
23 who wishes to speak to this issue?

24 Mr. Arvay, you may proceed.

25 MR. ARVAY: If I could just sit here at the table. Thank
26 you.

1 Well, first of all, Mr. Chairman and
2 members of the Panel, TRAHVOL isn't anxious for you to
3 resolve the issue of scoping now. Indeed, our
4 understanding of the process -- we weren't here at the
5 first hearing, but as I understand at the first
6 hearing the Commission declined to make a scoping
7 order and essentially the message that I took from
8 that was that -- leaving it to the parties to
9 determine in their judgment, based on their
10 understanding of the issues and the law, what is the
11 appropriate and relevant evidence? And on the basis
12 of that, TRAHVOL actually has gone, at considerable
13 expense and energy and time, and gathered up evidence
14 which might be described broadly as socioeconomic and
15 environmental. And we considered it entirely
16 appropriate, an entirely appropriate thing to do, and
17 I don't think we received anything from Commission
18 Staff when we made our proposal with respect to
19 participant funding to suggest that that would be
20 offside.

21 And so long as our assumptions are correct,
22 then we don't need a ruling from the Commission with
23 respect to scope. We intend to proceed on the basis
24 that it is entirely appropriate to adduce evidence
25 either directly or through the cross-examination
26 process that pertains to socioeconomic and

1 environmental issues.

2 Having said that, now that IRAHVOL has sort
3 of put the issue on the table, we feel compelled to
4 support IRAHVOL insofar as the Commission is in any
5 way sending out any sort of equivocal message as to
6 what would be appropriate evidence, and insofar as it
7 would impact on participant funding.

8 Clearly the decision that my friend
9 referred you to, that is your decision, Mr. Hobbs, of
10 the Vancouver Island Generation Project, when I read
11 it I had two possible ways of reading it and
12 interpreting it. When you said in that decision that,
13 and I quote:

14 **Proceeding Time 1:58 p.m. T1A**

15 "While the Commission can consider
16 environmental and social impacts, its
17 authority to do is limited to costs that are
18 likely to emerge as unavoidable costs for
19 utilities and their customers. Therefore
20 the discussion of environmental and social
21 costs and benefits in this hearing will
22 concentrate on the financial impacts on B.C.
23 Hydro and its ratepayers."

24 When I read that, I thought one might
25 interpret the word "costs" there quite narrowly, or
26 one might interpret the "costs" phrase there more

1 broadly. And I chose to interpret it broadly when
2 certainly advising my clients, because the
3 implications of the BCTC application is from my
4 clients' point of view going to have very significant
5 cost implications that, if not in a necessarily direct
6 way, that in an indirect way will impact on all
7 British Columbians, whether it's in terms of increased
8 health care costs or costs associated with diminution
9 in property values.

10 And so long as the term "costs" in that
11 decision is approached in that broad sense, then I
12 don't think this application by IRAHVOL is even
13 necessary. I think you've given your ruling and it's
14 fine.

15 To the extent, though, that this Commission
16 had intended the word "costs" or its words in its
17 decision to be construed more narrowly, then with the
18 greatest respect we would urge you to reconsider that
19 decision and its correctness. In my respectful
20 submission, the Commission, if it is limiting the
21 issue of socioeconomic environmental matters to those
22 very strict issue of costs, has unduly fettered its
23 jurisdiction and its discretion, has unduly fettered
24 its jurisdiction and discretion. Your jurisdiction is
25 to consider the public interest and convenience, and
26 those are very broad terms, and there is no warrant

1 for constraining them by reference to cost to B.C.
2 Hydro, or in this case BCTC, and its ratepayers.
3 Indeed the jurisprudence that I have examined on the
4 subject would suggest that those terms -- that phrase
5 which is common to most utilities legislation in this
6 country, is deserving of the widest import and has to
7 take into account the context of the hearing.

8 We didn't make copies for everybody in the
9 room, but I do have enough copies of some judicial
10 decisions for the Panel and perhaps for Mr. Carpenter
11 and Mr. Sanderson, or perhaps one of the others -- Mr.
12 Clerk, could I have you pass this up, please?

13 There is just a few cases here but I'd like
14 to walk you through them quickly if I may.

15 THE CHAIRPERSON: Just so I understand, Mr. Arvay, if one
16 were to split this agenda item as we did in A-17 into
17 two issues -- the appropriateness of the scope
18 decision, and if it was a scope decision, what it
19 should look like. On the first issue as to whether
20 this is the appropriate time for a scope decision,
21 you're saying no. But you're concerned that if we do
22 make a decision with respect to scope, you want to
23 speak to the substance of what that might look like.

24 MR. ARVAY: Yes. I mean, obviously, I mean, I share to
25 some extent Mr. Austin's concern that, you know, we
26 have already gone to a great deal of trouble and

1 expense adducing evidence, but there is still much
2 more to be done. And it would a source of great
3 disappointment to our clients only to show up at the
4 hearing and start asking cross-examining questions --
5 asking questions by way of cross-examination, only to
6 be then faced with a ruling by the Commission that
7 those questions are somewhat out of line.

8 Likewise we would be very concerned if at
9 the very end of the day, since TRAHVOL's main focus,
10 to be very candid, is the health concerns related to
11 this project and the property concerns related to this
12 project. That is essentially why we are here, and it
13 would be a great disappointment and I could probably
14 use stronger language, if at the end of the day the
15 Commission not only said, "Your questions are out of
16 line, your evidence is irrelevant, and by the way
17 we're not going to pay you participant funding." So
18 to the extent that there is any risk of that, then we
19 would like to remove that risk so I can allay my
20 clients' concerns that what we are doing is entirely
21 appropriate and helpful to this Commission.

22 So now that the issue is out there, I'm not
23 sure we can put the genie back in the bottle and say,
24 "Just wait." Now that the issue is out there, insofar
25 as -- particularly insofar as there's going to be some
26 opposition from BCTC and I suspect I'm going to hear

1 opposition from BCTC. Certainly in their answers to
2 information requests there's been a suggestion, if not
3 stronger than that, that these issues are not germane.

4 **Proceeding Time 2:03 p.m. T2a**

5 And my position is simply this.
6 Notwithstanding the environmental assessment and other
7 environmental legislation that applies in this
8 province, it cannot be the case when the Commission is
9 being asked to consider alternate proposals and
10 alternate routes under a -- even as a single proposal,
11 it cannot be the case that the Commission can exclude
12 from its consideration socioeconomic environmental
13 concerns.

14 In order to pick whether it's option (a)
15 though to (e) or (f), the Commission must, when it's
16 considering the public interest, convenience and
17 necessity, have regard to everything that pertains to
18 these various routes.

19 Now, that doesn't mean there's nothing left
20 for the environmental assessment bodies or commissions
21 to do at the end of the day but certainly if you're
22 considering options sort of (a) through to (e) the
23 Commission must, in deciding which option is the best
24 of the say five options, has to consider the
25 socioeconomic and environmental factors that apply to
26 each option.

1 Once you pick an option, if you pick an
2 option, that doesn't mean that the project has a green
3 light because it still has to run the gauntlet of the
4 environmental process. And in that process even -- it
5 may be that it will not, it will not meet any of the
6 demands of the environmental process or it may mean
7 that further mitigating or other conditions have to be
8 imposed in order for the project to go through.

9 But it would be, in my respectful
10 submission, an extremely, not just erroneous
11 interpretation of your legislation to exclude the
12 socioeconomic environmental considerations at this
13 stage, it would be one that would be manifestly unfair
14 and I'd like to take a page out of Mr. Carpenter's
15 book today of "that justice must not only be done but
16 be seen to be done."

17 And I can tell you, Mr. Chairman and
18 members of the Panel, that from my client's
19 perspective this process is incredibly important and
20 it will only have legitimacy, in my respectful view,
21 in their eyes and in the public's eyes, if it is
22 completely open and receptive to all relevant
23 evidence. And this evidence must be considered to be
24 relevant because this evidence is very important
25 evidence going to whether it is in the public
26 interest, convenience or necessity for this project to

1 go through, and in the case of my clients, their very
2 backyards.

3 THE CHAIRPERSON: I don't mean to, Mr. Arvay, be
4 redundant, I suppose is the expression, but your first
5 position is that the earlier decision from the Panel
6 that we weren't going to speak to scope issues at this
7 stage other than perhaps those related to prior
8 Commission decisions is your preference, and leave
9 those issues just as you say socioeconomic effects are
10 very broad, it's a very broad term, and leave those
11 issues, including the issues that you've just spoken
12 to to argument and then applying precedent to the
13 facts that are before us after you've had an
14 opportunity to bring those facts to us. That, as I
15 understand it, is your first choice, is it?

16 MR. ARVAY: I think that's correct and the only reason I
17 say I think as opposed to I'm certain is I'm only
18 nervous about the issue of participant funding on
19 behalf of my clients. Now that Mr. Austin has sort of
20 put that front and centre, if this Commission at least
21 can allay that concern by saying that our participant
22 funding will not be in jeopardy by the Commission's
23 decision not to rule on scope then I prefer that you
24 not rule on scope on this issue now.

25 THE CHAIRPERSON: Well, let me make some comments with
26 respect to participate funding. With the exception of

1 -- and I'll ask Mr. Fulton to confirm this because I
2 don't have the guidelines before me, but with the
3 exception of whether or not there's a cap and I've
4 already spoken to that in a response to Mr.
5 Gathercole, the Commission panel does not speak to
6 participant funding until after the proceeding is
7 closed. And those are -- that's a well-established
8 practice before us and one that I believe will be
9 borne out in the guidelines and so -- But what occurs
10 is what you have experienced is budgets are submitted
11 to staff. Staff respond to those for very -- for this
12 very reason that a comment from the Commission Panel
13 with respect to participant funding except after the
14 closure of the proceeding is not what is contemplated
15 in the guidelines and not our practice.

16 **Proceeding Time 2:08 p.m. T03A**

17 So, if that helps you at all in your
18 comments, Mr. Arvay, then I would encourage you to,
19 subject to Mr. Fulton confirming what I have just
20 said, I would encourage you to be thinking about that
21 in -- and if your preference is, is to leave this
22 issue open because you are not going to get from the
23 Panel with respect to participant funding then you may
24 want to return to your earlier position. The genie,
25 as you say, is not necessarily out of the bottle.

26 MR. ARVAY: Pull it back in and I will stay with my first

1 submission.

2 THE CHAIRPERSON: Thank you. Is there anyone else who
3 wishes to speak to this issue?

4 MR. FULTON: Mr. Chairman, the only addition I would like
5 to make to what you said is that there is a provision
6 in the guidelines for an award of --

7 THE CHAIRPERSON: Oh, yes.

8 MR. FULTON: An interim award in exceptional
9 circumstances.

10 THE CHAIRPERSON: Yes, section 3 of the guidelines speak
11 to that and Mr. Fulton is correct. But that is -- I
12 would -- far from me to make pronouncements on the
13 guidelines from the bench but I will in this case
14 because we are talking about participant funding after
15 all. I don't think that changes the discussion you
16 and I just had, Mr. Arvay. It is not an exception in
17 the sense that I have described. The panel does not
18 make decisions with respect to participant funding
19 except in the context of caps and in exceptional
20 circumstances, Mr. Fulton has just mentioned under
21 Section 3. Is it Section 3, Mr. --

22 MR. FULTON: Yes, it is.

23 THE CHAIRPERSON: Section 3 of the guidelines.

24 MR. ARVAY: Perhaps I will stop speaking now, Mr.
25 Chairman, but I would like to have the opportunity
26 even though this is not my application, to perhaps

1 have an opportunity to reply after we hear from Mr.
2 Carpenter or those that opposed.

3 THE CHAIRPERSON: No, I can't do that Mr. Arvay. This is
4 your opportunity. I will not embark upon that
5 approach, which gives you effectively a right of reply
6 to others on this. Mr. Austin -- it is Mr. Austin's
7 motion. Mr. Austin has it. Mr. Carpenter will speak
8 immediately before Mr. Austin but you won't have an
9 opportunity. So, this is your chance if --

10 MR. ARVAY: All right. If you could just give me one
11 second.

12 THE CHAIRPERSON: Okay.

13 MR. ARVAY: Perhaps, if I may ask a question and that may
14 resolve this issue in my mind. So long as the
15 Commission's decision at the end of the day on
16 participant funding turns only on, I suppose, the --
17 how helpful the interveners have -- were in the
18 process to the Commission and I -- and perhaps that is
19 rather vague term, helpful, but maybe I can put it in
20 another way. So long as the Commission decision on
21 participant funding at the end of the day will not
22 somehow turn on scoping then I don't have any concern.

23 In other words, if the Commission at the
24 end of the day is not going to deny TRAHVOL its
25 participant funding because it persisted in adducing
26 evidence relating to EMF and property values, et

1 the hearing insofar as socioeconomic and environmental
2 concern are pertinent at this time. However, if you
3 do decide to make a scoping decision, then we urge you
4 to recognize that socioeconomic and environmental
5 concerns are indeed very relevant in deciding in the
6 BCTC application itself which of the various
7 alternatives, alternative routes if you will, have the
8 least impact from a socioeconomic and environmental
9 point of view. And clearly, as well, in the context
10 of the Sea Breeze application as between the two
11 applications, which has the least impact from a
12 socioeconomic and environmental point of view. Again,
13 that's not to usurp the function of the other bodies
14 in this province that are charged with a more detailed
15 environmental assessment, but the existence of those
16 bodies in no way relieves this Commission of its duty
17 to consider those issues as well under the broad
18 rubric of public convenience and necessity.

19 And those are my submissions.

20 THE CHAIRPERSON: Thank you, Mr. Arvay. Mr. Yardley?

21 MR. YARDLEY: Mr. Chairman, members of the Commission,
22 the Corporation of Delta is sort of in a similar boat
23 to TRAHVOL here. I think we're also sort of in a
24 similar position to B.C. Hydro this morning in the
25 sense of not being sure exactly where on the
26 application we stand.

1 I think to cut to the chase, our preference
2 would be that there be no ruling on this matter,
3 rather that it be left open, it be left for evidence
4 and argument at the end of the day. And obviously the
5 socioeconomic and environmental issues are of varying
6 degrees of important to varying intervenors including
7 Corporation of Delta. We have filed evidence which,
8 at least in part touches if not is completely immersed
9 in a socioeconomic issue, that is dealing with
10 property values, although we have other issues which
11 we say clearly fall out of that. But we do have some
12 specific issues in that regard.

13 **Proceeding Time 2:18 p.m. T5A**

14 I think ultimately what would be the more
15 appropriate way of dealing with this is proceed with
16 the application as it normally would occur. BCTC
17 bears the risk of it having adduced sufficient
18 evidence, whether in the application or otherwise, and
19 to the extent it has provided either no or inadequate
20 evidence with respect to environmental and
21 socioeconomic issues, it bears the risk, at least with
22 the application before this Commission, and that's for
23 BCTC to determine.

24 Generally speaking I would agree with Mr.
25 Arvay's comments on at least the appropriateness of
26 how to proceed here. I would also agree with Mr.

1 Arvay's comments concerning the definition. I think
2 his understanding of the word "costs" in the VIGP
3 decision is similar to mine, and I wasn't involved in
4 that proceeding so I'm just trying to get what I can
5 from the reasons. But in the context in which they
6 arose and what I took to be largely a discussion about
7 greenhouse gases and things of that nature and how you
8 account for that, I think an analogous argument could
9 be made with respect to the socioeconomic issues that
10 seem to be front and centre here, which relate to
11 health and property value issues. So again I think
12 that's a matter for argument and probably should be
13 left for another day. But otherwise I would agree
14 with Mr. Arvay's comments generally on that point.

15 I have a short submission, and I'm sort of
16 in your hands. My preference is to press on with it.
17 It's basically an alternative submission and that is,
18 should the Commission determine that it wishes to make
19 a ruling as sought by IRAHVOL, my submission would be
20 essentially that the Commission does have jurisdiction
21 to consider these matters, and should in this case,
22 and that it would be an error for it to not to do.
23 And I think that perhaps for the record, it would be
24 appropriate if I at least put this in so that down the
25 road no one can say, "You had your chance, you didn't
26 take it." So I'll ask for the Commission and the

1 parties just to bear with me for a few moments.

2 I think Mr. Arvay certainly anticipated
3 some of the comments, and I will try and be brief on
4 them.

5 There's basically three points and I've
6 just touched upon them. First is that you do have
7 jurisdiction to consider a very broad range of
8 factors.

9 Secondly, that the Commission should not
10 rely upon the -- that BCTC's suggestions or proposal
11 -- I'm not sure what the correct term would be, but
12 that the Commission rely upon the environmental
13 assessment review process in British Columbia, at
14 least not in this case.

15 And third, I'm essentially saying that it's
16 the appropriate and I'll call it the pragmatic route
17 to take in any event for a variety of reasons, some of
18 which have been suggested already.

19 **Proceeding Time 2:20 p.m. T6a**

20 Just briefly with the first point, Mr.
21 Arvay, again, has indicated that, and also Mr. Austin,
22 that prior decisions have interpreted public
23 convenience and necessity in a very broad manner.

24 Mr. Austin referred to the *West Kootenay*
25 decision. Mr. Arvay I think handed up some cases. I
26 didn't see what they were actually because I never got

1 a copy. I am certainly familiar with some cases and I
2 brought my own. At the risk of redundancy because I
3 don't know what Mr. Arvay handed up --

4 THE CHAIRPERSON: For the record they should be -- Mr.
5 Arvay -- so this is transparent, Mr. Arvay's filings
6 with us do need to be filed as exhibits and so, Mr.
7 Arvay, maybe at the break you can make sure that that
8 happens through Mr. Fulton.

9 MR. YARDLEY: Mr. Arvay scooped me with *Nakina*.
10 Essentially, the *Utilities Commission Act* does make
11 reference to public convenience and necessity and I
12 notice that Mr. Arvay's cases, he refers to *Memorial*
13 *Gardens*, there's *Union Gas*, there are several cases.
14 I don't know if *Union Gas* was in there. They've been
15 considered by the Supreme Court of Canada. And
16 generally the language that's used, and I'm
17 paraphrasing here, but is that public convenience and
18 necessity is usually equated to the public interest.

19 The reason I handed up the *Nakina* case is,
20 well, first, it's very short, but I think it also
21 summarizes a couple of aspects which I think are quite
22 germane to what we're dealing with today.

23 This was a decision of the Federal Court of
24 Appeal dealing with admittedly a different Act, it's
25 the *Federal Railway Act*, and dealt with a proposal by
26 CN Rail to abandon a train station. And there was an

1 application under Section 120 of the *Railway Act* and
2 the Canadian Transport Commission was considering what
3 it's -- or a committee of the Commission was
4 considering the application and you'll see on the
5 second page that I've handed up, on page 2 there's a
6 -- the first quote and references Section 120 of the
7 *Railway Act* says:

8 "Merely provides that a railway company
9 shall not remove, close or abandon any
10 station, et cetera, without leave of the
11 Commission."

12 Then states that in the committee's opinion:

13 "It is an accepted principle that where no
14 limits of guidelines are placed on the
15 discretion of the committee, the committee
16 may consider the public interest in deciding
17 whether or not to grant leave."

18 Just stopping there for a moment, I would observe that
19 it appears to be similar to what the Utility
20 Commission's authority would be in this case. So to
21 that extent I think I'd agree with what the committee
22 says.

23 If we then skip down. After the quote
24 there's a reference to the next quote that the
25 committee said which was on balance and:

26 "The committee is of the opinion that it is

1 not entitled by words of Section 120 of the
2 *Railway Act* to take into consideration the
3 effects of a run-through on the township of
4 Nakina."

5 And then the court states:

6 "I find this conclusion startling. The
7 committee concedes that it must have regard
8 to the public interest. I would have
9 thought that, by definition, the term
10 'public interest' includes the interests of
11 all the affected members of the public. The
12 determination of what is in the public
13 interest involves the weighing and balancing
14 of competing considerations. Some may be
15 given little or no weight, others much. But
16 surely a body charged with deciding in the
17 public interest is 'entitled to consider the
18 effects of what is proposed on all members
19 of the public'. To exclude from
20 consideration any class or category of
21 interests which form part of the totality of
22 general public interests is accordingly in
23 my view an error of law justifying the
24 intervention of this court."

25 Now, that last sentence is echoing what my
26 third point is going to be which I'll get to in a few

1 moments but just have a foreshadowing at that point.

2 Now, there's a couple of points that come
3 out of this. One is first that the courts recognize
4 that public convenience and necessity, and that public
5 interest, generally, is a concept that is very broad
6 and clearly involves the affected members of the
7 public. And I think it's quite clear just by the
8 nature and number of intervenors and members of the
9 public that are involved in this proceeding that
10 clearly the community generally, and certainly the
11 community in Tsawwassen and Delta believe that their
12 interests are affected. And that would bring the
13 interplay in that place.

14 **Proceeding Time 2:25 p.m. T07A**

15 Secondly though, I think the interest or
16 the discussion in *Nakina* on weighing and balancing is
17 important. And I will just read this sentence again.
18 It is in the last complete paragraph starting on the
19 third line:

20 "The determination of what is in the public
21 interest involves the weighing and balancing
22 of competing considerations."

23 Now, that is the Commission's job in this case, is to
24 weigh and balance. And to accede or to give weight to
25 the notion that certain issues are going to be
26 excluded but would be considered by another body, I

1 would submit essentially makes the weighing and
2 balancing process, well, either impossible or
3 certainly not appropriate. Because what you will be
4 doing is this Commission will be looking at certain
5 aspects of the application -- and quite frankly I am
6 not sure which ones they are, not considering other
7 applications, giving that jurisdiction over whether
8 explicitly or not to another body and then somehow
9 trying to incorporate the conclusions of that other
10 body, which would be the environmental assessment
11 office, and incorporate them into what the Commission
12 has to do. And when we get to weighing and the issue
13 of -- or balancing rather and different weights
14 admittedly, some of these concepts are going to be
15 very difficult to quantify and address, I would submit
16 that you get into a situation where you simply cannot
17 appropriately do a balancing type situation here. And
18 that, like it or not, I think that the reality is, the
19 hard reality is that this Commission must deal with
20 all the issues that have been brought forward with it
21 except for those which are clearly outside of its
22 jurisdiction. And I would submit that this is not the
23 case with environmental and socio-economic issues.

24 So, as a practical matter I would submit
25 that you are required and have the authority of law to
26 do that. So, that's on that first point. And again,

1 just to repeat, I believe the Commission has, in the
2 past, and certainly other tribunals of which I am
3 familiar with including those that have other
4 authority, authority with respect to similar matters,
5 do deal with these issues as a whole and don't
6 delegate them out.

7 And Mr. Arvay also made the comment, which
8 I do not want to dwell upon too much but just, again,
9 there is a question to what extent you would be
10 fettering your jurisdiction. And maybe just leave
11 that point there.

12 The second general theme or point that I
13 want to make is with respect to what appears to me
14 language by BCTC that essentially is saying the
15 Commission should defer or otherwise allow the issue
16 of environmental and socio-economic issues to be dealt
17 with by the environmental assessment office. And I
18 have a number of submissions on that.

19 The first is somewhat technical in nature
20 and I don't want to go into it in detail but otherwise
21 first just to note as a preliminary matter that there
22 are provisions in the *Environmental Assessment Acts*,
23 specifically Sections 23 and 50 that allow current
24 approvals between different enactments. And there is
25 also concurrent approval regulation. And BCTC will
26 correct me if I am wrong on this but my examination of

1 the materials does not -- from my examination of
2 materials I have been unable to determine whether BCTC
3 has sought to trigger any concurrent approval between
4 the *Utilities Commission Act* and the Environmental
5 Assessment office.

6 Now, clearly and obviously there is
7 correspondence and there is a body of material that
8 has gone to both offices. BCTC's materials reference
9 concurrent review with the Federal Environmental
10 office, for example, and U.S. authorities but I have
11 not seen that actual link. And if it is there then
12 obviously this submission on this point, I will either
13 resile from that or withdraw it but I just have not
14 been able to identify it. So, I will leave that as a
15 point for BCTC to -- I understand that they are not
16 seeking. Okay, so perhaps that is an issue that I do
17 not resolve from it.

18 **Proceeding Time 2:30 p.m. T8A**

19 But in any event, it then goes to a
20 question of the weight and the -- perhaps I'll call it
21 the seriousness by which BCTC is seeking to rely upon
22 the process. And I submit that if there was a clear
23 intent to do so, that they should be seeking some form
24 of concurrent review.

25 The second point is a matter of definition.
26 The next couple of points are sort of interrelated,

1 and that is simply, I recognize that this is not
2 BCTC's application and so I'm not going to try and
3 beat them too hard on this one. But the question is,
4 what will we be talking about? And again this is
5 something I think Mr. Arvay mentioned. How is it that
6 we're going to know what is and is not fair game up to
7 and including the hearing process? It seems to me
8 that it'll be very difficult to identify what issues
9 are that clearly come within environmental and -- or,
10 sorry, environmental and socioeconomic issues. I
11 think there are some issues that clearly straddle it
12 and some issues which are very difficult to define.
13 And just in the case of the Corporation of Delta's
14 evidence, for example, we have evidence that deals
15 with impacts related to property values. That, I
16 think we would concede, is more likely than not,
17 socioeconomic.

18 But we also have issues dealing with
19 impacts on Delta's municipal works in terms of
20 infrastructure and all the rest of it, and I don't
21 know whether or not BCTC, when the time came, would
22 characterize it as socioeconomic or not. As I review
23 the draft terms of reference that have gone to the
24 environmental assessment office, I think that I could
25 see how BCTC might make that argument. I think the
26 argument would be wrong if they chose to make it, but

1 I could see that it might fall within the language.

2 A related matter and it's probably sort of
3 sub-point (3) under this, is that to my knowledge at
4 least, the terms of reference with the Environmental
5 Assessment Office are not yet complete. My
6 understanding and I believe it was in the application,
7 it was originally anticipated by BCTC that the terms
8 of reference would be completed by -- I believe it was
9 the end of July. And here we are in mid-October and I
10 don't know when they will complete. But it creates
11 some uncertainty, at least at this stage, in terms of
12 identifying what we're actually talking about.

13 A fourth point and it's fairly minor but --
14 well, I shouldn't say it's fairly minor. I just want
15 to make sure I have it correct on this point. As I
16 read BCTC's Table 3.4 from their application, which is
17 what they describe as the framework for the draft
18 terms of reference, well, I see a number of things
19 which seem to dance around land and things of that
20 nature. I don't see any actual discussion of property
21 impacts and property values, and so I don't know
22 whether or not BCTC anticipates that that something
23 the Environmental Assessment Office will deal with it
24 or not but it doesn't seem to be apparent there.

25 Maybe Mr. Carpenter will deal with that one
26 in response.

1 The fifth or the next point really -- again
2 I think it's also been made to some extent, but that
3 is, I think that the language of the *Utilities*
4 *Commission Act* more or less mandates that there be a
5 broad consideration of issues. And in part that's
6 because its broad language is used and there's no
7 exclusionary language which is used. Essentially
8 you'd have to find something to read out environmental
9 and socioeconomic issues, and I don't think you have
10 that there.

11 A further point and I think Corporation of
12 Delta is in a slightly different boat, although while
13 Corporation of Delta is desirous of participant
14 funding, I recognize that we probably have a bit of an
15 uphill battle on that but not that we're going to give
16 up on it. But Delta already has spent time and money
17 on this. Delta has already committed funds and we
18 would submitted it would be inappropriate at this time
19 to now prejudice parties who have spent time and
20 basically aligned their cases in a particular
21 direction. And again I go back to the point I made at
22 the start, that this is something that I think really
23 should be dealt with at the end in terms of argument.

24 Coming back to what is more or less my
25 third theme, so remembering the first one is that you
26 have jurisdiction, and the second is that you

1 shouldn't accede to fettering your discretion with the
2 Environmental Assessment Office. And the third is
3 simply that it would be probably a legal error to do
4 so. And I don't want to go through this point where
5 -- more or less threaten a tribunal with appeals, but
6 I think that the issue is -- this is one genie that's
7 clearly out of the bottle. I think Mr. Carpenter has
8 referred to it and we all have, I think, to varying
9 degrees.

10 Mr. Carpenter noted this morning that some
11 of us are wearing our robes under our suits or
12 something like that. And I think that while some
13 points are -- parties always look for error if they're
14 unhappy with how a proceeding is going, and some
15 arguments are better than others, and sometimes you
16 pursue a leave to appeal and sometimes you don't. And
17 I think that to accede to a scoping at this stage that
18 would remove socioeconomic and environmental
19 considerations, I think would be really inviting
20 appeal, which would be, I think, undesirable for
21 everyone including BCTC in this case. I think all
22 parties, especially BCTC and I think

23 **Proceeding Time 2:35 p.m. T09A**

24 MR. YARDLEY: I think all parties, especially BCTC and I
25 think B.C. Hydro are looking for certainty and I don't
26 think we need to create anymore uncertainty than is

1 necessary.

2 And I think that the final comment, and it
3 is again echoing Mr. Carpenter in his comments this
4 morning and I am sure he will tell me that I have
5 taken them out of context and twisted them around but
6 I think that is what lawyers are sometimes here to do
7 but --. I think the point was is that -- that he was
8 making is that -- and this arose in the context of Sea
9 Breeze's application and whether or not there should
10 be some summary type preceding to knock it out as
11 being insufficient. And I think, as I understood him,
12 Mr. Carpenter indicated that in the grand scheme of
13 things it is probably a waste of time and we might as
14 well just deal with it on the merits and I think other
15 parties have mentioned this on other occasions today,
16 that let's us deal with it, do it right, get it over
17 with and then once everything is on the table I think
18 it is the best for everyone.

19 And I think that ultimately that is the
20 best way to proceed in this case, is that
21 environmental and socio-economic matters are clearly
22 of concern to parties. I think there is concern
23 amongst some parties about what is the most
24 appropriate process. I would submit that the
25 procedure before this Commission in which there is
26 evidence, there is opportunity for cross-examination,

1 evidence to be challenged and an open forum is
2 certainly more transparent and gives greater certainty
3 to the public and greater, I think, reassurance to the
4 public regardless of the outcome than the somewhat
5 less transparent process within the environmental
6 review process in British Columbia, which deals more
7 with consultation and where you don't have clear
8 mechanisms for challenged cross-examination and things
9 of that nature.

10 I think this procedure, this Commission,
11 its procedures are clearly set and designed to allow
12 that thorough review and that is what should occur in
13 this case. And that will give, I think, the comfort
14 to parties that regardless of the outcome at least the
15 procedure was fair. And subject to any questions
16 those are my submissions.

17 THE CHAIRPERSON: Thank you, Mr. Yardley. I will hear
18 Mr. Sanderson.

19 MR. SANDERSON: Mr. Chairman, we seem to have had a
20 series of applications today where on the one hand
21 this and the other hand that. And that is each
22 individual talking is one the hand this and the one
23 hand that, and I regret to say that includes me.

24 Listening to the debate this morning I am
25 reminded of a general nervousness that I have with
26 respect to blanket rulings, particularly blanket

1 rulings made in the abstract without real issues that
2 are closely defined to deal with. And in many
3 respects that is what you are being asked to do with
4 this scoping decision, is to make a very broad
5 potential determination of what your jurisdiction is
6 or is not. Or how, if you have got jurisdiction, you
7 should exercise it here.

8 And I think you should resist that
9 temptation. I think that the procedures that are laid
10 out by this Commission generally and specifically in
11 this case probably afford you a way out of the dilemma
12 that you might otherwise have. The intervenors in
13 this case unlike in a court case, for instance, are
14 required to pre-file evidence and they have done that.
15 That was earlier this week. And so we know, with, I
16 think, the exception of all intervenors except perhaps
17 IRAHVOL -- what issues and what evidence they say they
18 wish to adduce. If any party, the applicant obviously
19 in particular, but if any party thinks that the
20 evidence they have led is outside the scope of what
21 should be proper in this hearing then it seems to me
22 they should be encouraged to bring an application to
23 say so. And that will bring individual pieces of
24 evidence and their relevance to this proceeding, the
25 issues around that to a head.

26 And with respect to the evidence filed so

1 far there is no reason that can't happen. It hasn't
2 happened today because that isn't the nature of the
3 applications before us but it could if anyone objects
4 to any of that evidence. As we move on, there will be
5 additional opportunities to do that. As information
6 requests are asked and if they expand the boundaries
7 beyond what the party being asked the question can
8 bear, that party can object to responding to the
9 question on the grounds of relevancy. And that will
10 call for still another decision from this Commission,
11 again on a narrow point focused on the particular
12 question.

13 Once that process is complete, this
14 Commission typically tries to crystallize what has
15 happened to that point in the week before the hearing
16 by defining the issues list. And that then serves as
17 a guide to participants once we get to oral questions
18 in the hearing and you typically, Mr. Chairman, have
19 adopted the practice, I think, of holding people to
20 that list as it has now got crystallized. And that is
21 an approach, which I think, with great respect, is
22 entirely appropriate.

23 **Proceeding Time 2:40 p.m. T10A**

24 And so it gives you a basis then to get
25 still more refined in your determination of what is
26 and isn't relevant, in determining whether it's within

1 the issues that have been developed based on the
2 evidence and the IRs prior to the oral phase of the
3 hearing commencing.

4 So I think in summary that that incremental
5 approach is the right one to take, and I think it
6 avoids making an overly broad determination which has
7 the disadvantages we've heard various speakers speak
8 to. But the encouragement that I would suggest to
9 people to take issue early with the written evidence
10 helps out those parties, like Mr. Arvay, who want to
11 know at least that they're not barking up a tree that
12 they'll eventually be told is the wrong one. And I
13 think that's a sensible thing to be able to do for all
14 parties' benefit, on a case-by-case basis as it
15 becomes possible.

16 THE CHAIRPERSON: Is there anyone else who wishes to
17 speak to this before Mr. Landry?

18 MR. LANDRY: Mr. Chairman, just a general comment. First
19 of all, I'm on the side of the fence that says that I
20 think it is premature to deal with the issue of
21 scoping. To make a scoping decision when you have --
22 at a certain sense, unidentified environmental
23 socioeconomic issues, I think would be first of all
24 very difficult if not impossible to do. However, if
25 the Panel is intending to go anywhere near that
26 concept, from Sea Breeze's perspective at the very

1 least, to the extent that there are material
2 differences between, say, the VIC and/or Juan de Fuca
3 projects and the VITR project in terms of their
4 environmental and/or socioeconomic impact, which I
5 guess represent relative benefits or advantages of one
6 project over the other, or others, from the
7 perspective as we've heard of local residents or other
8 stakeholders for that matter, Sea Breeze submits that
9 the Commission can and should consider the effects of
10 those material differences and take them into account
11 in effectively globally assessing the relative merits
12 of the competing proposals.

13 So those are all our comments.

14 THE CHAIRPERSON: Thank you, Mr. Landry.

15 You may proceed.

16 MR. KUDZIN: Mr. Chair and Panel members, I actually
17 wrote something down this time.

18 I represent the parents and the guardians
19 of close to 1,300 students at South Delta Secondary,
20 not to mention thousands of students that will be at
21 that school in the future. Unlike some of the
22 esteemed people in the front of this room, we don't
23 have the financial resources to have a lawyer, and so
24 I'm speaking on behalf of those people.

25 All of the evidence that we've put forward
26 to this point would certainly be of what you would

1 call the socioeconomic nature, and there's extensive
2 work that's been done in that area. And we have deep
3 concerns that are all health-related, which again
4 would fall in this area.

5 There are costs and then there are costs,
6 and some costs cannot be reflected in the dollars and
7 cents of burying cables and erecting towers. We are
8 putting our faith in you, the Commission, to hear this
9 evidence and then to make -- and the arguments that we
10 have, and then to make a judgment on if they are
11 relevant or not. If we can't do that, I'm not sure
12 why we're even here. Thank you.

13 THE CHAIRPERSON: Thank you.

14 MS. BROADFOOT: Commissioner, Panel members, I also want
15 to reflect the fact that I think there's a strong
16 expectation throughout the entire community of
17 Tsawwassen that this process and these hearings will
18 look at socioeconomic impacts. And part of that
19 understanding is because of comments that have been
20 publicly by BCTC, which have been quoted in the media,
21 which were submitted yesterday as part of our
22 evidence, in which they stated that it was up to the
23 Commission to make social policy decisions. So in
24 order to make social policy decisions we obviously
25 feel that the socio and economic impacts have to be
26 addressed through this process. Thank you.

Proceeding Time 2:45 p.m. T11A

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THE CHAIRPERSON: Thank you.

MS. ADAMS: Linda Adams, Islands Trust. I'm a little confused at this point whether that genie is in or out of the bottle. On the off chance that it seems to be hovering around the room, which seems to be apparent to others with more experience than me, I do want to go on record as saying that we definitely do believe that socioeconomic and environmental issues should be part of the scope and I think that Mr. Arvay, Mr. Yardley and Mr. Landry made those arguments in a way that we would agree with. Thank you.

THE CHAIRPERSON: Thank you.

MR. CROSS: Just to add further weight to that, on behalf of the Tsawwassen Homeowners Association, as I said, is a separate group of people and interested in schoolchildren and everyone else, but just in the general homeowner sense we certainly would be extremely disappointed if the socioeconomic situation was not to be thoroughly addressed in these proceedings. Thanks.

THE CHAIRPERSON: Thank you. Is there anyone else?
There's one more, Mr. Fulton. Ms. Johnnie.

MS. JOHNNIE: I share Ms. Adam's confusion. I'm a little confused about the topic here, the agenda item here actually. But I would say the Hul'qumi'num Treaty

1 Group definitely does support that socioeconomic
2 issues and environmental issues be thoroughly
3 reviewed. Whether it is by the Commission or other
4 legislative reviews, I am not very sure that I can say
5 it should be one or the other.

6 I think that because you are looking at an
7 issue in the public interest I think that it
8 definitely would benefit you to take a look at that.
9 It sounds like there's a lot of robes floating around
10 this room. I'm not saying that I'm sharing one of
11 those robes because the only robe that I ever wear, I
12 only wear curlers and you never see me in public in
13 it. But the Hul'qumi'num Treaty Group is submitting
14 their evidence based on aboriginal title and rights
15 and potential impacts and infringements of that title
16 and rights and that is a socioeconomic issue. And the
17 environmental potential, the potential environmental
18 impacts are also an impact of that aboriginal title
19 and rights.

20 So I think that whether or not we state
21 that we are in favour of the Panel reviewing
22 socioeconomic and environmental issues, we are in fact
23 basically saying those are issues that the Panel is
24 going to have to consider at least through the
25 aboriginal lens.

26 So I'm not sure if that helped you at all

1 but hopefully it's given you something else to
2 consider. Thank you.

3 THE CHAIRPERSON: Yes, and we are going to specifically
4 return to your submissions in that regard. Thank you.

5 Is there anyone else who wishes to speak to
6 this before Mr. Fulton does?

7 MR. FULTON: And I just have a point of legal
8 clarification, Mr. Chairman, arising out of Mr.
9 Yardley's submissions on the concurrent approval
10 regulation and unless he has a more recent concurrent
11 approval regulation than I do, the application process
12 for a CPCN under the *Utilities Commission Act* is
13 expressly excluded from the concurrent review.

14 THE CHAIRPERSON: That may be helpful to Mr. Yardley.

15 MR. FULTON: I have circulated the copy of the regulation
16 to everyone, Mr. Chairman.

17 THE CHAIRPERSON: Thank you. I think that brings us to
18 you, Mr. Carpenter. You may proceed.

19 **Proceeding Time 2:50 p.m. T12A**

20 MR. CARPENTER: Mr. Chair, I think I am as confused as
21 the last few speakers are with respect to what is on
22 the agenda now.

23 THE CHAIRPERSON: Let me -- I suppose for your help and
24 maybe I should have done this earlier but I did refer
25 to it. If you look to Exhibit A-17 it sets it out
26 fairly clearly.

1 MR. CARPENTER: I am --

2 THE CHAIRPERSON: There are two issues before us and that
3 is the appropriateness of a scope decision now and if
4 so, what should that scope decision say? And that has
5 been clearly laid out in Exhibit A-17. So, if there
6 is some confusion it is -- part of it is the substance
7 of the issue. Hopefully not very much of it is the
8 procedure itself.

9 MR. CARPENTER: And I didn't mean to suggest that. I
10 think that it was very clearly laid out in terms of
11 what the parties were to address. The confusion has
12 arisen since that time.

13 I will tell you very short -- we are not in
14 favour of a determination at this point in time. And
15 I support Mr. Sanderson's comments on that and I think
16 to echo and to add some substance potentially to those
17 comments, BCTC has not objected to any of the roughly
18 1,150 information requests that it received on the
19 basis that those were beyond the scope of the hearing.
20 I do think we might have said to one of them that
21 said, "Tell us what things would be like now if the
22 transmission line had never been built." we struggled
23 with that one a little bit. But certainly in terms of
24 scope we did not object to anything. And we also have
25 not objected to any of the evidence that has been
26 filed and do not intend to object to any of the

1 evidence that has been presently been filed. I cannot
2 obviously make a blanket statement with respect to
3 something that might come from here-on out.

4 But we appreciate that there are concerns
5 and we think that we can have a hearing that lets
6 people speak to those concerns. That does not mean,
7 at the end of the day, we may be -- we may not be *ad*
8 *item* with some of my friends on the precise weight to
9 be given to certain considerations. And, I think, Mr.
10 Chair, you already alluded to that. But I think that
11 that is a matter for argument and a matter for
12 decision at that point in time.

13 So, we are not in favour of a determination
14 on scope at this point. If you are going to make one
15 and I feel -- I really feel unfortunate in having to
16 argue both sides, but it has been raised. If you are
17 going to make one quite frankly, I think you have
18 heard my friends on this issue. They take the matter
19 seriously. I would strongly prefer, BCTC would
20 strongly prefer that that not be characterized as a
21 matter of Commission jurisdiction, it be characterized
22 as a determination of what is appropriate in terms of
23 Commission practice and procedure in this particular
24 instance given that there will be a detailed review of
25 a full range of socio-economic and environmental
26 issues under the BC CEA process.

1 I had brought copies of the draft terms of
2 reference that are on the BCAO website. I am not
3 going to distribute those. I don't think we need to
4 clutter this reference. The issue of property values
5 is addressed there. The issue of EMF is addressed
6 there but as I said, we are not objecting to the
7 evidence that has been brought forward in this
8 proceeding on those issues and expect that that
9 evidence will be fully explored during the hearing
10 process.

11 THE CHAIRPERSON: And are you accepting of Mr.
12 Sanderson's notion that if you were concerned about
13 scope as opposed to weight as you've drawn the
14 distinction, that doing that earlier rather than later
15 might be more efficient?

16 MR. CARPENTER: We think that if you are going to address
17 the question of scope, clearly it should be in the
18 context of a specific piece of evidence.

19 THE CHAIRPERSON: Right.

20 MR. CARPENTER: The comments that have been made have
21 been completely in the abstract and I don't -- that is
22 one of the reasons why I say I find it hard to get
23 ahold of what we are dealing with at this point in
24 time, because we are not talking in specifics anymore.
25 The specifics that I can provide is that, as I said,
26 we have not objected to questions we have been asked,

1 nor have we objected to evidence that has been filed
2 to this point in time and do not intend to do so.

3 THE CHAIRPERSON: Thank you. Mr. Austin?

4 **Proceeding Time 2:55 p.m. T13A**

5 MR. AUSTIN: I'll be very brief on these points. First
6 of all I'd like to correct what Mr. Carpenter said in
7 terms of BCTC's responses to information requests and
8 no objections.

9 In our letter of October the 7th, which is
10 Exhibit C35-5, it says -- and this is in relation to
11 IRAHVOL's information request 1.7.4. BCTC's response
12 was:

13 "BCTC considers any impacts on property
14 values from the project to be a
15 socioeconomic effect. BCTC has not
16 completed any studies with respect to the
17 impact on property values on the proposed
18 project. As indicated in..."

19 and this was Spell Check on the word processing
20 changing BCTC to BATCH, so we'll get it right this
21 time,

22 "As indicated in BCTC's response to BCUC IR
23 199.4, any impacts on property values will
24 be considered as part of the environmental
25 assessment and approval process."

26 Now, that's as clear as it can get that

1 property values are considered by BCTC to be part of
2 the environmental and socioeconomic approval process,
3 which is clearly not what this window is all about.
4 In relation to a lot of the other comments that were
5 made, it all really depends on what your perspective
6 is and where you sit in relation to resources to
7 participate in these hearings. It's one thing for
8 people to stand up with resources and say, "We can
9 have ambiguity, we can have uncertainty," and that's
10 just fine because they can afford the ambiguity and
11 uncertainty.

12 When you're representing people who do not
13 have those resources, certainty is very very important
14 because the limited resources you have have to be
15 applied in the right places. You cannot apply them
16 globally because you don't have them. You cannot
17 apply them in every instance because you can't afford
18 to. And this is the reason why we brought this
19 application on. We saw what was in BCTC's
20 application. We saw this response to IRAHVOL
21 information request, and it was pretty clear to us
22 that the scope of the hearings were going to be very
23 limited, at least as far as BCTC would like them to be
24 limited.

25 And then we've heard, well, just bring on
26 an application if you think something should be in or

1 outside scope. Well, that's precisely what we have
2 done. And we had to do all this prior -- we were
3 doing this after having filed our evidence. We had to
4 make a decision prior to filing our evidence in terms
5 of our resources and our finances, what we should do
6 in terms of expert evidence. And the decision was
7 made, there is too much uncertainty, we can't take the
8 financial risk, so we'll do it ourselves.

9 So what's been filed by IRAHVOL is a
10 multiple account valuation. Clearly it would have been
11 preferable to have an expert do that, but there's the
12 uncertainty involved. So now is, according to Mr.
13 Sanderson, well, if there's any uncertainty about
14 that, just bring on an application. No, that's not
15 the answer to this. The answer is for everybody in
16 the room to be on the same footing, and that means
17 there should be certainty for those who do not have
18 the financial resources that some of the other people
19 in this room do have. Thank you.

20 THE CHAIRPERSON: Thank you, Mr. Austin.

21 That then brings us to the next agenda
22 item, and that's the panel inspection of the
23 transmission line corridor, and I think I first want
24 to hear from Ms. Berks on this. Ms. Berks if she's
25 still here -- she's gone.

26 I'll raise the issue because some of you

1 Berks wanted a specific tour of her house, which was
2 -- and thank you, Mr. Commission Counsel, for handing
3 this to me. I'm not clear from this letter -- Ms.
4 Berks is saying in this letter, for the benefit of
5 those who don't have Exhibit C21-3 in front of them,
6 that she would like her house to viewed, and that not
7 viewing her house in particular would unfairly
8 prejudice the Commission. And unfortunately Ms. Berks
9 is not here to say whether she would --

10 VOICE: Excuse me. [inaudible].

11 MR. FULTON: Mr. Chairman, probably I should say
12 something at this point as well because I did speak to
13 Ms. Berks this morning, not knowing that she was one
14 of Mr. Underhill's clients because she's separately
15 identified as an intervenor, and that wasn't one of
16 the individuals who Mr. Arvay indicated was a client
17 this morning. But I asked her whether or not her
18 position remained as set forth in the letter, and she
19 said that it did.

20 THE CHAIRPERSON: All right, thank you.

21 MR. UNDERHILL: It does help. I think what Ms. Berks is
22 trying to say is exactly what I submitted on behalf of
23 TRAHVOL in my letter of September 14th, which is, and
24 I'll reiterate it here, to the extent there's going to
25 be an inspection, and we strongly encourage the
26 Commission to do an inspection, we think it is of

1 fundamental importance that the Commission view, not
2 only what is commonly known as Routes 1 and 2, that
3 is, through my clients' back yards -- but also the
4 alternate routes. We think all the routes should be
5 viewed by the Panel.

6 I think Ms. Berks, as I understand it,
7 speaking with Ms. Kudzin, is that she was saying, "We
8 would like the tour to include a visit of a backyard,
9 and you can go in my back yard if you wish to do
10 that." And that's one of the points that I wanted to
11 make on behalf of TRAHVOL. We really do believe it is
12 fundamentally important that the Panel go into the
13 backyards of these folks where these lines are
14 proposed to go, to escape for a moment all the numbers
15 and the stats that you've heard passionately from
16 people here today that what really matters to them is
17 they're going to have substantially more powerful
18 transmission lines through their backyards, and they
19 believe it's important the Panel see that.

20 And what I suggested in my letter was,
21 appreciating there are fairness concerns, if the
22 homeowner is there, that maybe it be facilitated
23 through a third party, and I'm sure Ms. Berks would
24 agree that that could be done such that there'd be no
25 suggestion of undue influence by her or any other
26 member of TRAHVOL or any other homeowner.

1 is is there prejudice to a party who is opposing?
2 It's not just a mere objection but is there a risk of
3 prejudice to that party? And I'm not clear of the
4 parties who have opposed an inspection, what prejudice
5 would arise to them by virtue of the inspection, but
6 I'll leave it at that comment and I take you up on
7 your offer to adjourn the matter over, particular in
8 the absence of Ms. Burks, and we can perhaps, through
9 Commission counsel, develop a process to visit this
10 issue later.

11 THE CHAIRPERSON: Yes, and, in fact, do you represent Ms.
12 Burks?

13 MR. UNDERHILL: Not in her personal capacity here today.

14 THE CHAIRMAN: Okay.

15 MR. UNDERHILL: We're representing TRAVHOL. When I said
16 she's one of my clients, in the sense that she's a
17 member of TRAVHOL but she is representing herself in
18 her personal capacity as a separate intervenor.

19 THE CHAIRPERSON: All right.

20 MR. UNDERHILL: Thank you.

21 THE CHAIRPERSON: Just before Mr. Underhill sits down,
22 because I'm not going to want to hear from him again,
23 Mr. Underhill, if you, as you suggested, have further
24 discussions with Mr. Fulton, then I would encourage
25 you if you have further submissions on this to in fact
26 make those further submissions. I will then, in order

1 to ensure that others have a chance to comment, I'll
2 need to circulate those for comment and that may take
3 us to a point where we can make a decision with
4 respect to the transmission line corridor inspection.
5 But see it also seems to me there are other
6 alternatives that are available to you and that may be
7 if Ms. Burks were to withdraw her objection, that may
8 also -- because that, of course, then will get us to
9 the point where the record stands now.

10 We've said what it is that we're going to
11 inspect. We've circulated that. There was only one
12 objection. If the objection is withdrawn then it
13 fairly easily can be dealt with. If it's more
14 involved than that then at that stage I encourage you
15 to provide more to us.

16 MR. UNDERHILL: Yes.

17 THE CHAIRPERSON: Okay.

18 MR. UNDERHILL: Yes, thank you.

19 THE CHAIRPERSON: Mr. Cross.

20 MR. CROSS: Maybe I'm not totally conversant with all of
21 the submissions that have been made on the inspection
22 but you didn't mention inspecting the route and I, as
23 a separate intervenor, have actually suggested an
24 alternate route, option 8. I know Delta Corporation
25 is looking at Highway 17. There are more than one
26 route, there are alternate routes, and at the very

1 least you should be aware physically what they look
2 like, where they are, and I don't see how you could do
3 that unless you visit and look at it, even on a macro
4 scale.

5 So when we talk about inspection of the
6 properties or whatever, you certainly have to inspect
7 all options from a certain level by at least coming to
8 Delta and looking at that, helicopter, on land, or
9 whatever else. I believe Ms. Burks, who I happen to
10 know, is talking specifically about her property, and
11 others have talked about specifically their property.
12 And I understand that Mr. Gathercole's concerns that
13 there could be an element of the Commission being
14 influenced by people that they meet with and whatever,
15 and I certainly support that concern. But I certainly
16 believe that this whole process would be laughable if
17 you were to be looking at making any decisions,
18 recommendations or whatever else without actually
19 being familiar as you can be with all of the routes.

20 THE CHAIRPERSON: Right. I prefer not to take an further
21 submissions with respect to this. There is an
22 established record. There is only one objection.
23 Let's, unless there is anyone who wishes to speak to
24 the issue with respect to my discussion with Mr.
25 Underhill that closed with it being left with Mr.
26 Underhill or Ms. Berks for that matter to get back to

1 us, the record will stand as it is.

2 **Proceeding Time 3:10 p.m. T16A**

3 I think that then takes us, unless there
4 are any objections to that, that then takes us to Ms.
5 Johnnie and Ms. Johnnie has made two submissions. I
6 have only noted one of them on the agenda and that is
7 Exhibit C27-3. There is also C27-5, which is a
8 replacement, I believe, of C27-4. This is on the
9 agenda, as it says, solely for the purposes of
10 establishing the process for consideration of her
11 submissions to us. And I have a proposal with respect
12 to that and I am going to seek comments with respect
13 to that proposal. And that is just on the process
14 issue. And that is if Ms. Johnnie has any -- is Ms.
15 Johnnie in the room? Oh yes, sorry I just didn't see
16 you. If Ms. Johnnie has any supplemental submissions
17 to make to those that she has already made then we
18 would accept those by November the 2nd if they are
19 filed. So, by November the 2nd. Then those who wish
20 to reply to that, by November the 10th, with a right of
21 reply to Ms. Johnnie by November the 18th.

22 So, a written process, supplemental
23 submissions from Ms. Johnnie by November the 2nd, by
24 all other participants by November the 10th with a
25 right of reply to Ms. Johnnie by November the 18th. Is
26 there anyone who objects to that proposal?

1 MR. CARPENTER: I am just seeking, and maybe it is from
2 Ms. Johnnie, a point of clarification. I had
3 understood and this was just my reading that C27-3 was
4 the application if you will that the Hul'qumi'num are
5 seeking some clarification on. I had understood that
6 C27-5 was their evidence and submission with respect
7 to the proceeding as a whole. So it is a purely a
8 point of clarification, Mr. Chair.

9 THE CHAIRPERSON: Yes, Ms. Johnnie, if you can -- I think
10 I can take you to your submission. What I was -- the
11 reason why I included that in my comments, Ms.
12 Johnnie, were with respect to the orders requested
13 that are set out on page 21 of Exhibit C27-5. I
14 thought those would be the subject of this written
15 process that I have just identified. Thank you, Mr.
16 Carpenter, you have been quite helpful in raising
17 this.

18 From your perspective, is that an
19 appropriate process? And should it include
20 consideration of the orders requested that are set out
21 on Exhibit C27-5, page 21?

22 MS. JOHNNIE: I am not quite sure I understand your
23 question.

24 THE CHAIRPERSON: Okay, well then let's see if we can get
25 there.

26 MS. JOHNNIE: Okay. In C27-3, Mr. Carpenter is correct,

1 we wanted to -- the original, one of the original
2 schedules suggested that on October the 12th that
3 intervenors should present their intent to submit on
4 scope, on previous hearing orders. And I understood
5 that to mean, at that time, that it actually was
6 relevant to the previous discussion we had earlier in
7 the day about the -- that Mr. Carpenter referenced
8 regarding the VIGP decisions and what was included in
9 that decision. However, the Snuw'uy'ylh First Nation
10 who I was representing at that time in the VIGP
11 intervention did indicate to the Commission that we
12 sought that there were aboriginal interests affected
13 by the decision that should be considered in that
14 process. So, in that event, although we didn't follow
15 through with that because that -- subsequently we had
16 come to a benefits agreement with B.C. Hydro, we did
17 still submit that information.

18 So, what I was trying to do in C27-3 was
19 just to follow up on that, that there are aboriginal
20 interests that are potentially affected by the
21 decision of the Commission, and notifying you that
22 that is part of what we consider to be a valid scope
23 issue. Did I describe that correctly?

24 **Proceeding Time 3:15 p.m. T17A**

25 THE CHAIRPERSON: It was helpful to me, Ms. Johnnie. Can
26 you then speak to the C27-5 and the orders requested.

1 When would you like those considered?

2 MS. JOHNNIE: Well, some of those orders if I recall them
3 correctly, and I guess I could just pull that out here
4 -- I may have left it back at the table. But some of
5 those orders, you're right, would appear to be issues
6 that we would like to have considered up front.
7 However, we are -- it's going more to what I was
8 speaking to in terms -- and possibly what you're
9 speaking to in terms of process.

10 The courts and the decisions that they've
11 made have been very clear that what they are trying to
12 do is encourage the establish of relationships and the
13 reconciliation of aboriginal interests when decisions
14 are being made. So the Hul'qumi'num Treaty Group's
15 intention to participate in this process was in
16 recognition of those court decisions and trying to
17 participate in the opportunities given us, and this is
18 one of the opportunities given us. So the orders we
19 sought, we attempted to lay them out in a way that was
20 consistent with what the courts considered
21 appropriate.

22 Thank you.

23 And you're right. Item definitely number 1
24 would look to be an order that we're requesting pre-
25 close of hearing or even pre-hearing. Item number 2
26 would be the same sort of direction.

1 Item number 3, "ensure full consultation
2 and accommodation is completed", is potentially
3 something that has to be done throughout the process,
4 because quite often that is how it works. And for an
5 example -- and you are not the National Energy Board
6 but is a commission or a board, a regulatory board as
7 well -- they required B.C. Hydro engage the proponent
8 or engage the affected First Nations prior to them
9 making a decision, and fully walk through a
10 consultation and accommodation process. So item
11 number 3, we're asking for not necessarily that exact
12 same process but we are asking for that same sort of
13 consideration.

14 Item number 4, it is our understanding of
15 the *B.C. Utilities Commission Act* that the B.C.
16 Utilities Commission can work with the intervenors and
17 potentially the proponent to assist or facilitate
18 negotiated agreements or negotiated outcomes.

19 And item number 5, I believe that is in
20 reference to Section 54 of the *B.C. Utilities*
21 *Commission Act*, which states that you can insert
22 conditions into the certificate to order BCTC to
23 implement the results of consultation and
24 accommodation discussions, and where necessary, as I
25 said before, we're not sure if the environmental
26 assessment, if a full environmental assessment could

1 be conducted by the B.C. Utilities Commission.
2 However, it would be something that would be required
3 afterwards. And as I noted to you, in regards to the
4 VIGP review, the environmental assessment review was
5 conducted prior to the CPCN review for that particular
6 project, and when we achieved a benefits agreement, we
7 effectively stopped participating in the CPCN review
8 in that particular review. We want to be sure that if
9 a certificate is issued, that just because we have
10 reached whatever accommodation and consultation that
11 may be required in the Commission's review, doesn't
12 preclude us being able to complete our consultation
13 accommodation processes in any other review that's
14 required of the proponent. And in this case now it's
15 both proponents because there were two.

16 **Proceeding Time 3:20 p.m. T18A**

17 And respectfully, number 6, because I've
18 heard you already comment on this, but I'm going to
19 bring it up again because that's my job. We believe
20 that Section 118 does allow you the authority to award
21 or direct costs, and although we recognize and we
22 respect the guidelines that you've laid out and the
23 processes that you've been engaged in previously, we
24 still believe that Section 118 allows you the latitude
25 to ensure that those costs are covered.

26 THE CHAIRPERSON: When I read that list of requests, Ms.

1 Johnnie, I had the impression that you wished to have
2 this issue dealt with earlier rather than later in
3 this proceeding. Maybe that assumption was incorrect.

4 Is it your view that this request for
5 certain orders should be dealt with earlier rather
6 than later?

7 MS. JOHNNIE: As I tried to say, I think that item number
8 3 and 4 is probably throughout the process itself and
9 items 1, 2, 5, and 6, if I'm looking at this -- I'm
10 looking at it sideways. Items 1, 2, 5 and 6 could
11 potentially -- well, item number 5 would clearly be at
12 the end of the review process because you don't know
13 at this time if you're going to issue a certificate to
14 BCTC or not, and when we did draft this we were more
15 looking at the VITR process. But in terms of item
16 number 5 it would definitely be an end of the review
17 request.

18 THE CHAIRPERSON: Right.

19 MS. JOHNNIE: Item number 6, we would appreciate that as
20 soon as possible.. Like many of the other intervenors
21 we're seriously compromised in our ability to
22 participate in a review of this nature. Item number 1
23 and 2, I believe those would be rulings we'd be
24 comfortable if you could rule on them sooner.

25 THE CHAIRPERSON: That's items numbers 1 and 2?

26 MS. JOHNNIE: One and two.

1 THE CHAIRPERSON: Right.

2 MS. JOHNNIE: And item number 3 and 4 I think is an
3 ongoing process. I believe the courts suggest that
4 that's an ongoing process.

5 THE CHAIRPERSON: So that would require a ruling earlier
6 rather than later if that's true, is that not correct?

7 MS. JOHNNIE: Well, it says in the -- in item number 3 it
8 says:

9 "Ensure full consultation and accommodation
10 is completed with the HTGN, the respective
11 First Nations, prior to making any final
12 ruling. So it would be definitely before
13 you finally rule on the certificate for
14 public convenience and necessity."

15 But that doesn't necessarily mean it would have to be
16 by November 2nd. I don't think that it's possible to
17 do that by November 2nd because the consultation and
18 accommodation process, as I understand it, and I'm
19 sure B.C. Hydro has a very clear understanding of
20 consultation with First Nations can be a very long and
21 onerous process. It's time consuming, it's detailed
22 and it's very in depth work.

23 Item number 4, "Facilitate consultation and
24 accommodation discussions between BCTC," I believe
25 that would be -- I'm guessing because I'm not positive
26 about how that works because I've never seen that

1 before, but I'm guessing that that's a staff related
2 directive that you would direct your staff to ensure
3 that consultation and accommodation discussions are
4 facilitated by the B.C. Utilities Commission and the
5 affected First Nations. And where possible use -- and
6 they've -- and our legal counsel has capitalized this
7 "a negotiated settlement process or other processes to
8 assist the parties in reaching agreements," and I
9 believe they've used that capitalization because they
10 have contacted the B.C. Utilities Commission staff to
11 ask whether or not that's a possibility.

12 So I think that is more something that --
13 item number 4 is more something that occurs throughout
14 the process rather than as an early ruling. That
15 could be my mistaken identification but that's my
16 understanding.

17 THE CHAIRPERSON: Well, it suggests a certain process.
18 It hasn't been established pursuant to a Commission
19 order, and if it's a process that you're requesting to
20 be part of this proceeding then it would need to be
21 subject to a Commission order I think, and so it would
22 follow that that's an item for consideration earlier
23 rather than later.

24 Maybe I made an assumption that wasn't
25 correct when I suggested a process to consider your
26 request of us and I was thinking that you would file

1 supplemental materials perhaps to state, maybe after
2 you consult with your counsel, state what it is that
3 you would like us to do during the proceeding and then
4 there would need to be, I think, a ruling from the
5 panel with respect to whether or not we determined
6 that it was appropriate or not for us to establish
7 that as part of this proceeding.

8 **Proceeding Time 3:25 p.m. T19A**

9 And so the opportunity November 2nd was only
10 an opportunity for you to provide any supplemental
11 submissions to us with respect to what is already
12 before us for consideration and it may be that some of
13 those items, given the comments you have just made
14 now, particularly items 5 and 6 are not ones that you
15 are seeking ruling on now, and so that would change,
16 of course, what participants were making submissions
17 with respect to.

18 But otherwise I was thinking participants
19 were going to be making submissions with respect to
20 exactly what you have set out here. So, would you
21 prefer to consult with counsel before we establish a
22 process for consideration of what you have filed? Or
23 what is your preference Ms. Johnnie?

24 MS. JOHNNIE: I would prefer to consult with counsel in
25 respect to what you have offered us. I know that we
26 are seeking a process but I believe item number 4 and

1 item number 5 are what encapsulate that, that request.

2 The other items support that request. So,
3 it would -- I would feel more comfortable if I could
4 consult with my legal counsel.

5 THE CHAIRPERSON: Okay, well that is fine and if you
6 then, after doing that, make a written submission to
7 us. If you choose to pursue it -- you may choose not
8 to pursue it. But if you choose to pursue it, if you
9 will make a written submission to us then that may
10 very well trigger a response from the Panel that
11 establishes a process for consideration of that
12 submission. Does that sound reasonable?

13 MS. JOHNNIE: Yes, sir.

14 THE CHAIRPERSON: Okay, thanks, Ms. Johnnie.

15 MR. FULTON: Mr. Chairman, could I just add a request to
16 the one that you have? Because I did provide Ms.
17 Johnnie with a copy of the case from the Supreme Court
18 of Canada called *Quebec Attorney General v. Canada*
19 *and National Energy Board*. And that case touches on
20 the -- what duty a quasi-judicial tribunal has towards
21 First Nations in the context of a public hearing
22 process, where there is a full right to lead evidence,
23 to cross-examine, to make final argument. And in that
24 case the court, the Supreme Court of Canada found that
25 there was no duty beyond the duty to permit the First
26 Nations to do those sorts of things.

1 Commission ensuring rights, title,
2 consultation and accommodation or address,
3 then HTG would appreciate that argument in
4 writing that we might respond in like
5 manner."

6 So in that sense the process that you suggested
7 earlier, Mr. Hobbs, would definitely benefit the
8 Hul'qumi'num Treaty Group in that sense.

9 HTG, however -- and the case that Mr.
10 Fulton resented to me is based on a fiduciary
11 relationship and it was based in 1994. The case that
12 the Hul'qumi'num Treaty Group presented to the
13 Commission for consideration, the *Paul* case, is a much
14 later case, a much more recent case.

15 HTG is not seeking to trigger the fiduciary
16 relationship. Indeed if the word "fiduciary" is in
17 our submission, I would be standing before you twice
18 abashed, first for permitting a draft to be released
19 to you before it was finalized, and again give an
20 opportunity to correct the errors in the draft for
21 allowing it to be submitted with the word "fiduciary"
22 in it, because that is not what we asked our legal
23 counsel to submit. So in that regard HTG would bring
24 to your attention that, one, the date of this decision
25 was 1994, and that further Supreme Court decisions
26 have refined and added to this decision and namely the

1 *Paul* decision which we again reference in our
2 submission.

3 One of the issues that the decision of the
4 Supreme Court of Canada revolved around in the *Quebec*
5 *v. The National Energy Board* case was that the First
6 Nation that intervened in that case did not bring
7 forward the *James Bay Act*, which was a fairly
8 fundamental agreement laying out their aboriginal
9 title and rights. So the First Nation would not rely
10 on that *Act* for whatever reason. And although the
11 decision from 1994 is an older decision, it still
12 upheld at that time the same principle that HTG cites
13 in *Paul* in our submission, which is that the board
14 must exercise its decision-making authority in
15 accordance with the Constitution, including Section
16 35. And then it goes on to state later on in it:

17 "However, it was not possible to determine
18 the impact of the board's decision on the
19 First Nation, due to the fact that the First
20 Nation did not bring forward the *James Bay*
21 *Act* and they would not rely on it in that
22 court case."

23 So I would say that we have brought forward
24 one of the most recent Supreme Court decisions for the
25 Commission's consideration, that although the court
26 case, the *Quebec Attorney General v. The Canada*

1 *National Energy Board*, has some relevance, it's
2 limited in its scope and relevance due to the age of
3 it and due to the fact that further aboriginal common
4 law has been established since 1994 that refines the
5 duty of the Crown and the duty of decision makers.

6 So that's about all I've got to say about
7 that.

8 THE CHAIRPERSON: My suggestion is for us to return to
9 the exchange that you and I had, and where we left it
10 with you, if you wish to establish a process for
11 consideration of any requests you might have,
12 including supplemental evidence, to do that. And your
13 submission to us will trigger that. In the meantime
14 we won't be pursuing those issues.

15 So I think it's clearly with you now, if
16 you wish to pursue this, to file something further
17 with us in writing. Thank you, Ms. Johnnie,

18 MS. JOHNNIE: Thank you.

19 THE CHAIRPERSON: Thank you.

20 MS. ANDERSON-BEHN: [in audible] talking a lot. I'd just
21 like to comment.

22 THE CHAIRPERSON: Yes, you may proceed.

23 MS. ANDERSON-BEHN: I'm Susan Anderson-Behn from the
24 Sencot'en Alliance and I wasn't here this morning but
25 I did notify people that I had arrived.

26 I'd like to support what the Hul'qumi'num

1 Treaty Group is proposing. As another First Nations
2 group with an interest in both of this applications,
3 we're very interested in this process and we're
4 working quite closely with Hul'qumi'num on it at the
5 moment.

6 And I just wanted to make a comment that
7 the National Energy Board had to wrestle with this
8 problem as well, and they have done some work and they
9 have made some changes in how they do business around
10 it. Currently under review because of *Taku v. Haida*,
11 but I think that there's a useful sort of discussion
12 around exactly how one deals with these First Nations
13 issues in this kind of a tribunal situation. And I'm
14 pleased to hear what you said to Kathleen in response.
15 So thank you very much.

16 **Proceeding Time 3:35 p.m. T21A**

17 THE CHAIRPERSON: Thank you. I think that brings us to
18 Mr. Cross with respect to the distribution of
19 materials.

20 MR. CROSS: Thanks. I did have a discussion, I think
21 with Mr. Wilson over the break this morning on the
22 distribution of documents and I understand the answer
23 basically is that it's the intervenor's responsibility
24 to send copies out of anything they produce to all of
25 the other interested parties. That isn't being done
26 and I don't think it's practical.

1 One of the responses is, "Well, it's all e-
2 mailed and you can see it on the screen." I work for
3 myself in other businesses, I get hundreds of e-mails
4 literally every day. The e-mails that we're seeing on
5 this, Sea Breeze, et cetera, it's not possible to
6 quickly absorb that information from scanning through
7 hundreds of pages of stuff on the front of the
8 computer screen. Neither is it comfortable or
9 practical or anything else.

10 The only sensible way of looking at this
11 stuff quickly and being about to see what's relevant
12 and what's not is to look at hard copies. Now, I
13 fully recognize that if you send, you know, hundreds
14 of pages of hard copies to everyone, that's an
15 expensive process. But I have to stand here and
16 object to the fact that I know that Karsten Holmsen
17 for example, has submitted some very interesting
18 evidence to me and I have not looked at it on the
19 screen of a computer and I don't propose to print it
20 all out. It'll cost me a fortune in colour copying,
21 et cetera. So we have to find a way. You have to
22 find a way of making this process fair in terms of the
23 hard copies that I need and other intervenors need and
24 you also have to make it fair in terms of the process
25 that allows enough time to do that.

26 I'm not here to make a specific request.

1 I'm not here to makes any specific suggestions. But
2 I'm here to say that it's presently a problem. We
3 talk about evidence having been submitted a couple of
4 days ago. There's no way I can read that and make any
5 sense out of it. You know in a short space of time I
6 need time to look at it.

7 There's something I've heard about in terms
8 of scoping being based on evidence submitted, which I
9 don't think that's entirely appropriate. I think as
10 we go down the road there's a lot of cross-examination
11 and so I've not previously submitted a lot of evidence
12 -- well, I haven't submitted any evidence, but in
13 terms of going forward, the amount of -- volume of
14 information that we all need to read, probably
15 thoroughly, I certainly need hard copies of that and I
16 need, when I ask BCUC or whoever to give me copies of
17 that I expect to get it.

18 I don't expect to have to ask Karsten
19 Holmsen to send me a coloured copy of his submission.
20 I don't expect that he would have to send BCTC, you
21 know, lots of copies of that.

22 So I think that's an issue that needs to be
23 dealt with. I'm not here to supply the answer to it
24 but I know it's a concern to me.

25 THE CHAIRPERSON: Thank you, Mr. Cross. This may not --
26 Mr. Gathercole.

1 MR. GATHERCOLE: If I might, I don't think it's something
2 that's going to be easily resolvable in this case but
3 I have some concerns and I find it difficult, maybe
4 it's just my age, to read things off the screen, and I
5 always request, in fact all of us in BCPIAC request
6 the applicant to supply a hard copy.

7 Obviously we don't expect that from
8 individual intervenors and -- but it is difficult to
9 take -- to print things out, particularly when
10 there's, you know, lengthy evidence or lengthy IRs,
11 and I think one of the problems that we have, and I
12 think we need to look at, is very often there's
13 serious time constraints that come about because of,
14 you know, the time considerations we have, both with
15 respect to particular applications and the number of
16 applications that are presently or about to come
17 before the Commission. And I guess all I'm saying is
18 that it isn't a concern simply of individual
19 intervenors in this case. I think it's a concern that
20 we share and somewhere down the line I think we need
21 to keep that in mind.

22 I'm thinking, for example, in fact
23 intervenor evidence came in yesterday. We had this
24 whole hearing today. IRs are due on Wednesday and
25 just the time to print everything out puts some
26 limitations which I would have anyways on asking IRs

1 of the number of the intervenors.

2 **Proceeding Time 3:40 p.m. T22A**

3 THE CHAIRPERSON: As you know, Mr. Gathercole, the
4 Commission has document filing protocols that have
5 evolved considerably, particularly I think over the
6 last year or two, and our document filing process has
7 evolved. So it changed quite dramatically over the
8 last year or two as well. The volume of materials, I
9 think creates many of the concerns. I am not sure
10 that the concerns relate to what we've now established
11 as our document filing protocols. And so from a Panel
12 perspective my impression is that all the participants
13 need to follow the document filing protocols, and as
14 long as they're following the document filing
15 protocols then they're meeting their obligations as
16 participating in the process.

17 MR. GATHERCOLE: I agree. I'm just saying that when you
18 get into large hearings like this, that for those of
19 us who request from the utility to get hard copies and
20 also to get copies to our consultants, it does take a
21 little extra time. And that therefore can make a
22 difference in terms of our ability to respond as
23 quickly as we normally would like to respond to the
24 various deadlines. And all I'm saying, I think, is as
25 we proceed with a number of fairly major cases with a
26 number of intervenors that will be involved, and

1 hopefully where there isn't the same time constraints,
2 you know, in terms of when the decision has to be made
3 as there is in this particular case, that that be
4 something we take into account and we actually sit
5 down and work out the schedule.

6 THE CHAIRPERSON: Right. I think that's correct. At the
7 time that we establish the schedule, that may be a
8 relevant consideration.

9 With that then, I think that leave us only
10 with Ms. McLennan's concerns with respect to her
11 particular intervention. Do you continue to have
12 concerns, Ms. McLennan, that you wish to raise, or are
13 you satisfied now that they need not be dealt with
14 immediately?

15 MS. McLENNAN: I think when I spoke this morning I was
16 maybe unclear. I've spoken to a staff member and we
17 agree there was a lack of clarity. My understanding
18 now is that I remain an intervenor, and in the event
19 that the processes are not consolidated at that time,
20 I can apply to become a Sea Breeze intervenor.

21 THE CHAIRPERSON: Okay.

22 MS. McLENNAN: Thank you.

23 THE CHAIRPERSON: Thank you.

24 Are there any other matters before we close
25 this procedural conference, this pre-hearing
26 conference?

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Hearing none, this pre-hearing conference
is closed.

(PROCEEDINGS ADJOURNED AT 3:45 P.M.)