

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

and

**An Inquiry into British Columbia's Electricity
Transmission Infrastructure and Capacity Needs for the
Next 30 Years**

Vancouver, B.C.
June 24, 2009

PRE-HEARING CONFERENCE

BEFORE:

L. A, O'Hara,	Chairperson
A.W.K. Anderson ,	Commissioner
D.A. Cote,	Commissioner
M. Harle,	Commissioner
R.K. Ravelli,	Commissioner

VOLUME 2

APPEARANCES

G.A. FULTON, Q.C. P. MILLER	Commission Counsel
P. FELDBERG	British Columbia Transmission Corporation
C. GODSOE K. DUKE	British Columbia Hydro and Power Authority
R.J. McDONELL D. WATSON	FortisBC Inc.
P. DIMITROV J. LAWSON	First Nations Energy and Mining Council
R. B. WALLACE	Joint Industry Electricity Steering Committee (JIESC)
J. SKOSNIK	Line Contractors Association of B.C.
T. FOGARASSY	NaiKun Wind Energy Group Inc.
W. J. ANDREWS	B.C. Sustainable Energy Association (BCSEA), Sierra Club of British Columbia Chapter (SCBC), Forest Ethics, West Coast Law Environmental Law Association, Pembina Institute, Dogwood Institute and David Suzuki Foundation
B. STADFELD B. GAERTNER	Shishalh First Nation, Tahltan Central Council, Nlaka'pamux Nation Tribal Council and Okanagan Nation Alliance
F.J. WEISBERG G. MacINTYRE	Columbia Power Corporation
L. WORTH S., KHAN J. QUAIL	B.C. Old Age Pensioners' Organization, Council Of Senior Citizens' Organizations, Federated Anti-Poverty Groups Of B.C., West End Seniors' Network (BCOAPO)
C. BEST F. KARABETSOS	TransCanada Energy
B. JOE	Syntaris Power
C. WEAVER	Commercial Energy Consumers of British Columbia (CEC)
T. VULCANO	On his own behalf
D. PERTTULA	Terasen Gas Distribution Companies - Terasen Utilities
L. BERTSCH J. LEWIS	Energy Solutions for Vancouver Island Society (ESVI), Okanagan Environments Industry Alliance (OEIA), Island Transformation Org (ITO) and rental Owners and Managers Society of BC (ROMS BC)
D. AUSTIN	Independent Power Producers Association of British Columbia (IPPBC)
J. GRIFFITH	Haisla Nation and Weiweikei Nation (Cape Mudge Indian Band)

APPEARANCES

M.A.K. MUIR R. WILSON	Hwlitsum First Nation
G. McDADE	Squamish Nation, Carrier Sekani Tribal Council and Lakwolams Indian Band
K. CHRISTIAN	Shuswap Arrow Lakes Division of Secwepemc Nation
E. DOHERTY	Wilderness Committee
R. HEASLIP	Sto:lo Tribal Council
D. HUGGILL	Canadian Wind Energy Association
C. CAMPBELL	Ocean Renewable Energy Group
S. VAN UYTVEN	Andritz Automation
D. RAFAEL	Sunshine Coast Regional District
P. COCHRANE	City of New Westminster - Electric Utility Commission
K.E. GUSTAFSON	City of Nelson
S. LEE	Splats'In First Nation
N. HEAP	David Suzuki Foundation
N. MANUEL	Neskonlith Indian Band
S. LEBOURDAIS	Secwepemc Nation

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CAARS

VANCOUVER, B.C.

June 24, 2009

(PROCEEDINGS RESUMED AT 9:02 A.M.)

THE CHAIRPERSON: Please be seated.

Good morning, ladies and gentlemen. My name is Liisa O'Hara. With me as my fellow members of the Transmission Inquiry Panel are Commissioners Keith Anderson, Dennis Cote, Michael Harle and Ross Ravelli. Is the sound okay there? There seems to be some echo, but I hope it's all right.

Welcome to this second procedural conference, which has been convened pursuant to Commission Order G-47-09 to address issues and scoping regarding the long-term electricity transmission inquiry. As agreed in our first procedural conference, Commission staff circulated a discussion draft document on issues and scope of the inquiry on May 21st, 2009.

Furthermore, also in accordance with our preliminary schedule, many of you provided written comments on that staff scoping document by June 11th, 2009. All Panel members have reviewed those submissions prior to today.

Proceeding Time 9:04 a.m. T02

Last Thursday, June 18th, 2009, the workshop

1 on inquiry issues and scoping provided for in Order G-
2 47-09 took place. As you know, this entire five-
3 member Panel attended the workshop in an observer
4 role. We very much appreciated the opportunity to be
5 present there. The official list of attendees for
6 that day includes some 65 names of participants.
7 However, judging by the number of individuals in the
8 room that day, I believe the turn-out may have been
9 even larger than that.

10 In addition, in response to several
11 requests, the workshop was webcast to accommodate
12 those individuals who could not attend the workshop in
13 person.

14 In the workshop, participants had an
15 opportunity to address six different issues, one at a
16 time. These issues, in accordance with terms of
17 reference, were generation, demand, exports,
18 transmission, First Nations and inappropriate areas
19 for development. A staff document entitled "Long-term
20 electricity transmission inquiry workshop" highlighted
21 some key observations from your earlier written
22 submissions. Our Commission counsel will shortly file
23 this as an A-series exhibit. Furthermore, copies of
24 that two-page document are also available at the back
25 of the room, so if somebody doesn't have a copy,
26 please help yourself.

1 **Proceeding Time 9:06 a.m. T3**

2 Also, please note once again that your
3 comments at the workshop do not bind you to a
4 position. And I recognize that your views on any of
5 the issues may have changed as a result of the
6 discussion at that workshop.

7 Before moving into today's agenda, to avoid
8 any confusion, I would like to remind all participants
9 of B.C. Hydro's Exhibit B2-4 which was filed on June
10 17, 2009. By way of that exhibit, B.C. Hydro
11 submitted a letter dated March 25, 2009, from the
12 Deputy Minister, B.C. Ministry of Energy, Mines and
13 Petroleum Resources, to B.C. Hydro and BCTC regarding
14 B.C. Hydro's responsibility for First Nations
15 consultation with respect to the evidence and
16 submissions to be presented to the Commission by BCTC
17 and B.C. Hydro regarding this inquiry.

18 Now it's my pleasure to introduce a number
19 of key individuals who will continue to play important
20 roles throughout this inquiry. We have Jim Fraser,
21 Director Section 5 Inquiry. He's the lead staff
22 guiding us through the process. He's assisted by Bill
23 Grant, who facilitated last week's workshop quite
24 efficiently, I would think, as well as by Peter
25 Ostergaard and Elroy Switlishoff, who are not present
26 today.

1 particular reference to what was said by the British
2 Columbia Court of Appeal in the *Carrier Sekani Tribal*
3 *Council* case at paragraph 56 and the *Kwikwetlem First*
4 *Nation* case at paragraph 14.

5 Two, having regard to paragraph 70 of the
6 *Kwikwetlem* decision, the need for any Commission
7 assessment of the adequacy of First Nations
8 consultation, in the context of this inquiry, and the
9 stage in the process at which the Commission must make
10 determinations if it concludes that such a
11 determination is necessary.

12 Three, the effect of Sections 5(5) and 75
13 of the *Utilities Commission Act* on B.C. Hydro's
14 concern about the potential impact of Section 79 of
15 the *Act* on any determinations the Commission may make.

16 After you have entered your appearances
17 this morning, we will begin with submissions from the
18 three utilities according to their B-series numbers,
19 followed by the remaining participants in the order of
20 their appearance. Mr. Fulton will manage the roll
21 call for that purpose.

22 Please note that the Commission Panel
23 expects to issue an Order finalizing the issues and
24 scope for this inquiry before mid-July. Also after
25 this conference today, the Panel will review the
26 requests for interim funding up to June 24, 2009 and

1 address the second phase of interim funding. In
2 letter dated May 5th, 2009, which was marked as Exhibit
3 A-8, the Commission made the following statement:

4 **Proceeding Time 9:12 a.m. T5**

5 "The Commission Panel will entertain
6 requests for interim awards, and requests
7 that budget estimates be submitted by May
8 22nd, 2009, to cover the period up to June
9 24, 2009."

10 Which is today.

11 "These estimates should include costs
12 related to preparation and participation in
13 the Inquiry to date, including the workshop
14 on April 17, 2009 and the Pre-Hearing
15 Conference on April 27, 2009. Interim
16 awards will be made as deemed appropriate by
17 this Commission Panel upon application by
18 the participant after June 24, 2009."

19 As it turns out, not all of the
20 applications for interim funding to this stage are
21 final or complete, and therefore I'm suggesting that
22 we follow the following schedule for reviewing the
23 interim cost award request. So please take note and
24 listen carefully.

25 First, submissions of final requests for
26 funding by parties up to the June 24 procedural

1 conference, including all appropriate documentation
2 such as receipts for expenditures, are due at the
3 Commission by July 3rd, 2009. The Commission will then
4 forward those requests to the three named utilities
5 for comment by July 6th, and finally then the comments
6 from the utilities on these funding requests are due
7 by July 20. Following the receipt of comments by the
8 utilities, the Commission will then issue its funding
9 orders in as timely a manner as possible.

10 I would also ask that parties file
11 participant assistant budgets for the remainder of the
12 proceeding by August 14th, 2009. If you have any
13 comments on the schedule for participant assistance
14 deadlines, please comment on those at the end of your
15 submissions on scope.

16 I'm now going to ask Mr. Fulton to call for
17 appearances. As you enter your appearance, please
18 indicate whether you plan to make a submission this
19 morning, and any new item you may wish to address
20 besides the issues and scope.

21 Please proceed, Mr. Fulton.

22 MR. FULTON: Thank you, Madam Chair. Before we commence
23 this morning, I did canvass the room to see who was
24 here, and so it's my intention only to call out the
25 names of those parties who acknowledged their presence
26 prior to the commencement this morning. I will,

1 however, at the end of the list ask, as I normally do,
2 if there is anyone whose name I have not called who
3 has intervened in the proceedings and wishes to appear
4 today.

5 That being said, I'll begin with the
6 appearances. British Columbia Transmission
7 Corporation.

8 MR. FELDBERG: Madam Chair and members of the Panel,
9 Peter Feldberg appearing for British Columbia
10 Transmission Corporation.

11 Madam Chair, I will be making submissions
12 this morning, and one matter I wanted to address and
13 I've spoken to Mr. Fulton before, was that we
14 discussed -- there are an awful lot of parties, and I
15 assume we will be called upon in the order of
16 appearances, and there are many things that will be
17 said to which we may want to respond. And when I had
18 spoken to Mr. Fulton earlier in the week, we'd
19 discussed the possibility that what we would do is go
20 down the list and then go back up the list in reverse
21 order, allowing people to respond to what they'd heard
22 before them. And I'm hoping that's the procedure that
23 we're going to adopt.

24 THE CHAIRPERSON: Yes, thank you, Mr. Feldberg. Mr.
25 Fulton was listening, so I will have further advice on
26 that, and that's exactly how we are going to proceed.

1 MR. FELDBERG: Thank you.

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

3 MR. GODSOE: Good morning, Madam Chair, Commission Panel.
4 Craig Godsoe, G-O-D-S-O-E, of and for B.C. Hydro.

5 THE CHAIRPERSON: Thank you, Mr. Godsoe.

6 MR. FULTON: FortisBC Inc.

7 MR. McDONELL: Good morning, Madam Chair, Commissioners.
8 My name is Rob McDonell. I am counsel for FortisBC
9 inc.

10 I'll have nothing to add in terms of issues
11 and scoping to the written submission filed on June
12 11th. Thank you.

13 THE CHAIRPERSON: Thank you, Mr. McDonell.

14 MR. FULTON: First Nations Energy and Mining Council.

15 **Proceeding Time 9:17 a.m. T06**

16 MR. DIMITROV: Good morning, panel. Peter Dimitrov for
17 the B.C. First Nations Energy Mining Council. Also we
18 have John Lawson, who would like to speak to some
19 technical matters as well. Thank you.

20 THE CHAIRPERSON: Thank you, Mr. Dimitrov.

21 MR. FULTON: Joint Industry Electricity Steering
22 Committee.

23 MR. WALLACE: Good morning. R.B. Wallace appearing on
24 behalf of the Joint Industry Electricity Steering
25 Committee.

26 THE CHAIRPERSON: Thank you, Mr. Wallace.

1 MR. FULTON: Line Contractors Association of B.C.

2 MR. SKOSNIK: Good morning. Jeff Skosnik, S-K-O-S-N-I-K.

3 I don't anticipate a need to make a presentation and I

4 have nothing to add to our comments.

5 THE CHAIRPERSON: Thanks, Mr. Skosnik.

6 MR. FULTON: NaiKun Wind Energy Group Inc.

7 MR. FOGARASSY: Good morning. My name is Tony

8 Fogarassey, surname spelled F-O-G-A-R-A-S-S-Y, on

9 behalf of NaiKun Wind Energy Group Inc., and I'll have

10 no submissions. Thank you.

11 THE CHAIRPERSON: Thank you very much.

12 MR. FULTON: British Columbia Sustainable Energy

13 Association, the Sierra Club of British Columbia, West

14 Coast Environmental Law Association, and the David

15 Suzuki Foundation.

16 MR. ANDREWS: Thank you. William Andrews appearing and,

17 just for the record, I'm representing the B.C.

18 Sustainable Energy Association, Sierra Club of British

19 Columbia, Forest Ethics, West Coast Environmental Law,

20 the Pembina Institute, the Dogwood Institute, and the

21 David Suzuki Foundation. I will be adopting my filed

22 comments on scope and I don't have anything to add to

23 the agenda.

24 THE CHAIRPERSON: Thanks, Mr. Andrews.

25 MR. FULTON: Shishalh Nation.

26 MR. STADFELD: Good morning, Chair and panel. It's Dr.

1 Bruce Stadfeld, S-T-A-D-F-E-L-D, and I'm appearing on
2 behalf of four First Nations. That is the Shishalt
3 First Nation, the Tahltan Central Council, the
4 Nlaka'pamux Nation Tribal Council, and also the
5 Okanagan Nation Alliance. And we do have further
6 submissions.

7 THE CHAIRPERSON: Thank you, Dr. Stadfeld.

8 MR. FULTON: British Columbia Old Age Pensioners'
9 Organization.

10 MS. WORTH: Good morning, Madam Chair, members of the
11 panel. My name is Leigha Worth, W-O-R-T-H, here as
12 counsel with my co-counsel, Ms. Sarah Khan, that's
13 spelled K-H-A-N. We're here on behalf of the B.C. Old
14 Age Pensioners' Association, a group of low- and
15 fixed-income consumers, and we will be adopting our
16 comments, and we have nothing to add to the agenda.
17 Thank you.

18 THE CHAIRPERSON: Thanks, Ms. Worth.

19 MR. FABER: TransCanada Energy.

20 MR. BEST: Chris Best, B-E-S-T, of TransCanada Energy,
21 Adopting our comments, a brief presentation on the
22 same, but nothing further to add to the agenda.

23 THE CHAIRPERSON: Thank you.

24 MR. FULTON: Syntaris Power.

25 MR. JOE: Panel, Brendan Joe, J-O-E, on behalf of
26 Syntaris Power. We plan -- we do not plan on making a

1 submission today. Thanks.

2 THE CHAIRPERSON: Thank you, Mr. Joe.

3 MR. FULTON: Commercial Energy Consumers Association of
4 British Columbia.

5 MR. WEAFFER: Good morning, Madam Chair, members of the
6 panel. Chris Weaffer appearing for the Commercial
7 Energy Consumers Association of British Columbia.
8 Last name is spelled W-E-A-F-E-R. We will be adopting
9 our written submission this morning, and I have
10 nothing to add to the agenda. Thank you.

11 THE CHAIRPERSON: Thanks, Mr. Weaffer.

12 MR. FULTON: Terry Vulcano.

13 MR. VULCANO: Good morning, Madam Chair, panel members.
14 Yes, I have comments on the submissions that were
15 made. Thank you.

16 THE CHAIRPERSON: Thanks, Mr. Vulcano.

17 **Proceeding Time 9:22 a.m. T7**

18 MR. FULTON: Terasen Utilities.

19 MR. PERTTULA: Good morning, Madam Chair and Commission
20 Panel. My name is Dave Perttula spelled -- last name
21 is P-E-R-T-T-U-L-A, for the Terasen Utilities. And we
22 will have very brief submissions. Thank you.

23 THE CHAIRPERSON: Thanks, Mr. Perttula.

24 MR. FULTON: Energy Solutions for Vancouver Island
25 Society, Okanagan Environments Industry Alliance,
26 Island Transformation Org, and Rental Owners and

1 Managers Society of British Columbia.

2 MR. BERTSCH: Good morning. My name is Ludo Bertsch,
3 last name spelled B-E-R-T-S-C-H, and we will be
4 adopted our document as well as adding further
5 discussion. Thank you.

6 THE CHAIRPERSON: Thank you, Mr. Bertsch.

7 MR. FULTON: Independent Power Producers Association of
8 British Columbia.

9 MR. AUSTIN: Good morning, Panel. David Austin appearing
10 for the Independent Panel [*sic*] Producers of British
11 Columbia. We will have submissions this morning, and
12 there's one issue that I believe is in scope and
13 that's in terms of the engagement of a consultant to
14 do the export review, but the IPPBC would like to
15 raise the issue of Powerex's participation with
16 respect to exports in relation to the export question.
17 Thank you very much.

18 THE CHAIRPERSON: Noted. Thank you, Mr. Austin.

19 MR. FULTON: Haisla Nation, Cape Mudge Indian Band.

20 MS. GRIFFITH: Good morning, Madam Chair, Commission
21 Panel. Jennifer Griffith appearing on behalf of the
22 Haisla Nation and the Weiweikei Nation, also known as
23 the Cape Mudge Indian Band. And I will be adopting
24 previous submissions but also making some comments on
25 consultation. Thank you.

26 THE CHAIRPERSON: Thanks, Ms. Griffith.

1 MR. FULTON: Hwlitsum First Nation.

2 MS. MUIR: Good morning, my name is Magdalena A.K. Muir,
3 M-U-I-R. I'll be appearing on behalf of Hwlitsum
4 First Nation. Also present in the room is Chief
5 Raymond Wilson and the technician Alan Grove. We will
6 be making further submissions.

7 THE CHAIRPERSON: Can you please spell your name for me
8 again, please?

9 MS. MUIR: The last name is Muir, M-U-I-R. The first
10 name is Magdalena, M-A-G-D-A-L-E-N-A.

11 THE CHAIRPERSON: Thank you very much, Ms. Muir.

12 MR. FULTON: Squamish Nation.

13 MR. McDADE: Madam Chair, my name is Graham** Graeme**
14 McDade, M-C-D-A-D-E. I appear on behalf of the
15 Squamish Nation, but I'm also -- I have instructions
16 to apply to intervene on behalf of the Carrier Sekani
17 Tribal Council who filed a registration yesterday but
18 it doesn't seem to have made it into the system yet,
19 and the Lakwolams Indian Band, which is the Coast
20 Tsimshian Band in the Prince Rupert area, whose
21 application for registration is on its way but isn't
22 here. All three have agreed to share legal counsel,
23 and I'll have a very brief position. I haven't filed
24 any written material, so I'll just tell you what our
25 position is on the matter of consultation, if that is
26 acceptable.

1 THE CHAIRPERSON: So they have not registered yet?

2 MR. McDADE: The Carrier Sekani have registered
3 electronically. The Lakwolams have not but should be
4 doing so today. I recognize that this matter is late,
5 but it won't add to the submission in any way.
6 They've asked -- they've taken some time to make the
7 decision but have asked to come in and be part of our
8 submissions.

9 THE CHAIRPERSON: Mr. Fulton, I'm seeking your advice
10 here.

11 MR. FULTON: Yes, Madam Chair. There should be no
12 difficulty with the Lakwolams being added as an
13 intervenor. The Squamish Nation was added just
14 recently as I understand it, but the Carrier Sekani,
15 that Tribal Council according to Mr. McDade filed
16 yesterday electronically, probably just hasn't shown
17 up on the website yet.

18 So that the Commission Panel hasn't placed
19 any restrictions on -- at this point at least, on
20 people intervening as of now. So in my view, both the
21 Carrier Sekani and the Lakwolams should be granted
22 intervenor status in these proceedings.

23 **Proceeding Time 9:27 a.m. T08**

24 THE CHAIRPERSON: Yes. Thank you. We'll proceed in that
25 fashion.

26 MR. FULTON: And before Mr. McDade leaves the mike, if he

1 might either now or later provide the Hearing Officer
2 with the spelling of the Lakwolams so we get it right
3 on the transcript.

4 MR. McDADE: I'll do it later.

5 THE CHAIRPERSON: Okay. Thank you.

6 MR. FULTON: Madam Chair, that concludes the appearances
7 of those parties or participants who identified
8 themselves before we started this morning. I'll now
9 invite anyone who has intervened in the proceedings
10 who was not present before nine o'clock this morning
11 to come forward and indicate that they are here and
12 that they either adopt their submissions previously
13 filed or wish to make further submissions, and whether
14 they have any further issues.

15 So I see Mr. Weisberg here, and so if you
16 can come forward first.

17 MR. WEISBERG: Good morning, Madam Chair and panel
18 members. Weisberg, W-E-I-S-B-E-R-G, Fred J.,
19 appearing for Columbia Power Corporation. We'll adopt
20 our written submissions with very brief comments. We
21 have nothing to add to the agenda. Thank you.

22 THE CHAIRPERSON: Welcome, Mr. Weisberg.

23 CHIEF CHRISTIAN: Good morning, Madam Chair. Kukpi7
24 Christian of the Shuswap Arrow Lakes Division of the
25 Secwepemc Nation. The submission, I think, is number
26 79. I'll make comments related to the consultation

1 issue.

2 THE CHAIRPERSON: Thank you. Could you please spell your
3 name again for the --

4 CHIEF CHRISTIAN: Well, Kukpit7 is "chief" in our
5 language. It's K-U-K-P-I-7. Christian, as in Christ.

6 THE CHAIRPERSON: Thank you.

7 CHIEF CHRISTIAN: I'm a good Christian boy.

8 THE CHAIRPERSON: Thank you very much.

9 MR. DOHERTY: Eric Doherty, D-O-H-E-R-T-Y, appearing for
10 the Wilderness Committee. We'll be adopting our
11 comments, and I'll be making a brief oral presentation
12 on that. Thank you.

13 THE CHAIRPERSON: Thanks, Mr. Doherty.

14 MR. FULTON: That, then, Madam Chair, concludes the
15 appearances for this morning. Oh, pardon me, we have
16 --

17 THE CHAIRPERSON: One more.

18 MR. FULTON: -- one more. Sorry.

19 MS. HEASLIP: Hi. Robin Heaslip, H-E-A-S-L-I-P, with the
20 Sto:lo Tribal Council. And we'll be adopting the
21 comments we submitted earlier, with a few amendments
22 which were submitted electronically this morning. So
23 just a few amendments.

24 THE CHAIRPERSON: Thank you, Ms. Heaslip. And one more.

25 MR. HUGGILL: David Huggill, H-U-G-G-I-L-L, with the
26 Canadian Wind Energy Association, and nothing to add

1 at this time.

2 THE CHAIRPERSON: Thank you, Mr. Huggill.

3 MR. CAMPBELL: Chris Campbell, like the soup, from the
4 Ocean Renewable Energy Group. We will adopt our brief
5 submission and have no further comments today.

6 THE CHAIRPERSON: Thank you, Mr. Campbell. If we all
7 continue to be this helpful on a go-forward basis, we
8 are going to do very well.

9 MR. FULTON: So, one final call, then. Is there anyone
10 else present this morning who has intervened in these
11 proceedings, or wishes to intervene in the
12 proceedings, and has not yet appeared formally this
13 morning?

14 No respondents, Madam Chair.

15 THE CHAIRPERSON: And I think one more thing, Mr. Fulton.
16 You were going to file that 1-A series exhibit, I
17 believe.

18 MR. FULTON: Yes, Madam Chair. If the long -- document
19 titled "Long-term electricity transmission inquiry
20 workshop", which was a document that was spoken to at
21 the workshop, could be marked the next exhibit. That
22 would be Exhibit A-14.

23 THE HEARING OFFICER: Marked A-14.

24 (DOCUMENT TITLED "LONG-TERM ELECTRICITY TRANSMISSION
25 INQUIRY WORKSHOP" MARKED EXHIBIT A-14)

26 MR. FULTON: Thank you.

1 **Proceeding Time 9:32 a.m. T09**

2 THE CHAIRPERSON: Thank you very much, Mr. Fulton.

3 MR. FULTON: Oh, and I should say one other thing, Madam
4 Chair. The Hearing Officer was in the process of
5 copying the order of appearances that I scrolled
6 through, so people will be able to -- and I am advised
7 that they are now at the back of the room, so people
8 will be able to pick up copies of the order of
9 appearances and follow that as we proceed through the
10 course of today.

11 THE CHAIRPERSON: Thank you. Now, then, let's continue.

12 To ensure an efficient flow for today, and
13 that's in response to your earlier comment, Mr.
14 Feldberg, I'm asking each participant to come to the
15 microphone only twice. And the second time for any
16 reply you may have. And I will then shortly come to
17 these limitations to the reply.

18 During your first time at the microphone,
19 if you have any changes you wish to make to your filed
20 comments, I ask you to advise the Panel of those
21 changes at the outset. Otherwise, I ask you to adopt
22 the written comments that you have filed already. You
23 may highlight, if you wish, any aspects of those
24 comments you want to bring to the particular attention
25 of the panel.

26 If you have submissions on the six issues

1 raised by staff at the workshop that are not covered
2 by your filed comments, you should make those
3 submissions during your time at the microphone. At
4 that time, you should also provide any comments you
5 may have on any issues raised by others in their filed
6 comments, or which have been made orally today and
7 comment on the legal issues raised by Mr. Fulton at
8 the workshop.

9 On that note, as an example, I would like
10 to refer to Exhibit C58-2, a submission by Mr. Bertsch
11 on behalf of ESVI *et al.*, concerning an integrated
12 approach. I quote from that document as follows:

13 "We believe that this transmission inquiry
14 should be developed as an integrated
15 process, one in which generation, demand and
16 transmission are considered in an integrated
17 approach."

18 The Commission Panel would welcome additional comments
19 on this matter.

20 Participants will be given the opportunity
21 to reply to new matters raised after their turn at the
22 microphone, but only to the extent that they are
23 replying to new matters raised after they have had
24 their turn at the microphone. The order of reply will
25 be in reverse to the order of original submissions.

26 With that, then, I think we are ready to

1 start. Mr. Fulton, would you now call for
2 submissions, please?

3 MR. FULTON: Thank you, Madam Chair. British Columbia
4 Transmission Corporation.

5 **SUBMISSIONS BY MR. FELDBERG:**

6 MR. FELDBERG: Thank you, Madam Chair. I intend to --
7 first of all, I should say that BCTC does adopt its
8 written comments, and I do have some additional
9 submissions to make based on the comments of others,
10 and on what we heard at the workshop. And on the
11 specific issues that have been raised by Mr. Fulton at
12 the workshop.

13 But before I turn to the specific comments,
14 though, I think it would be useful to put a number of
15 matters in context, and the first is that, as
16 Commission staff pointed out in the draft scoping
17 paper, this inquiry has essentially been scoped
18 already. It's been scoped by the terms of reference
19 which form the framework for the Commission's
20 jurisdiction under Section 5 of the *Utilities*
21 *Commission Act* and the scope of the Commission's
22 jurisdiction is already scoped by Section 5 of the
23 *Utilities Commission Act* itself. So we already have a
24 lot of guidance on scoping in those two documents, and
25 those both are legally valid, or legally binding
26 documents on you.

1 generally reflect that we're supposed to look at this
2 exercise. And that's -- you look at the planning
3 objectives, which are typically to serve firm load,
4 connect generation, meet your transmission
5 obligations, and manage the uncertainty over the
6 future. And the uncertainties that we're looking at
7 over the long-term planning are timing, location and
8 size of generation additions, and timing, location and
9 size of demand. And then those are integrated, and
10 I'll come to this in a second, but I think what we're
11 actually advocating and the approach that the inquiry
12 is ultimately going to take is an integrated process.

13 You take those various scenarios of the way
14 the world is going to unfold, you take a look at how
15 the various projections of demand -- how the
16 generation is likely to develop, and then you build
17 scenarios around that and figure out the transmission
18 solutions that will fit each one. And that's the
19 integrated approach that I think you're looking at.

20 In that exhibit, and I won't make you go to
21 it because I don't think everybody has got it today,
22 but at Slide 9 it describes how the transmission
23 planning process works, and it works by modelling the
24 various scenarios with the transmission system and
25 evaluating then the transmission system's performance,
26 and determining then what upgrades are necessary to

1 bring generation from various regions to another
2 region and on a broad perspective. That's a technical
3 exercise and it's based on the inputs that are
4 received by the transmission planners.

5 And Slide 14 of that presentation, which --
6 and just putting these on the record in case you want
7 to look at them later, just provides how the inquiry
8 outcomes will be incorporated. And they'll go into a
9 30-year plan. The determinations of need will
10 obviously be used and relied upon in future project
11 definition phases. But the 30-year plan is a high-
12 level plan which looks at the location, volume and
13 timing of the bulk system additions, 230, 500 kV
14 additions. And that's generally the order of
15 magnitude of what we're looking at in this inquiry.

16 That practice, in my submission, is
17 mirrored in the terms of reference, which basically
18 describe again a high-level planning, a transmission
19 planning modelling process where you're asked to make
20 an assessment of generation resources grouped by
21 geographic location, and you're to consider various
22 criteria in the way that those generation resources
23 are to be built up. You're also to consider the
24 domestic demand for energy and capacity and export
25 demand for capacity. So it lays out, in essence, what
26 is a pretty traditional and practical, pragmatic

1 transmission planning exercise. And from that, you're
2 to make determinations of need over a 30-year period.

3 The analysis is necessarily broad-based, of
4 necessity. The terms of reference indicate that
5 you're to look at generation potential by area or zone
6 and not at specific generation or transmission
7 projects. It's at the macro level, not the micro
8 level, in my submission, that the whole inquiry is
9 directed. That you can see from section 5 of the
10 terms of reference.

11 Staff concluded in the draft scoping paper,
12 and BCTC agrees, that practically speaking, this means
13 the inquiry is to look at the needs of the bulk
14 transmission system, 230 kV and above, and perhaps
15 some consideration of regional transmission
16 development. This focus on the bulk system is
17 consistent with the purpose of the inquiry, in my
18 submission, which is to ensure rational build-out of
19 the transmission system and to address the mismatch
20 between the level -- sorry, between the lead times
21 that are required between generation and transmission,
22 which is most extreme, obviously, on the larger
23 transmission projects.

24 Section 5 is not meant to supplant, in my
25 submission, the other planning processes which the Act
26 -- under the Act, such as the regular long-term

1 With that, I think I'll turn to my -- to
2 the submissions on specific issues. And the first one
3 I want to address is really two together, generation
4 and demand. Generation, we have indicated in our
5 written submissions that generally we look at this in
6 a broad brush sort of way, and have generally agreed
7 with the submissions that B.C. Hydro has made, and I
8 don't anticipate to get any further into that. And
9 similarly on demand, a fairly broad brush in terms of
10 the scenario development. Again, generally agreeing
11 with the way B.C. Hydro has looked at it. And I have
12 some comments on export demand.

13 But ultimately, and this goes to your
14 point, Madam Chair, about integrated development, what
15 we seek to develop is a set of scenarios, and I'd like
16 to talk a little bit about that scenario development
17 process, if I might, because I think that it's
18 probably important for people in the room.

19 As BCTC noted in its written submissions,
20 BCTC sees a distinction between forecasts and
21 scenarios, and we understand a scenario to provide a
22 broad view of the future that can be influenced by a
23 variety of factors, both controllable and
24 uncontrollable, including the economy, technology,
25 policy decisions and environmental developments. A
26 particular scenario doesn't necessarily represent the

1 most likely case or the only case, but with a range of
2 scenarios, you should get a pretty good idea of what's
3 needed.

4 In preparation for the September 18th
5 filing, and some mention was made of this at the
6 workshop, BCTC plans to work with B.C. Hydro and
7 Fortis to prepare a set of initial scenarios which
8 represent a range of possible futures. And those
9 scenarios incorporate the load, the demand, the
10 transmission solutions, and give you a picture of both
11 the inputs and the outputs, and allow you to evaluate
12 that world and the results that it achieves. BCTC
13 also plans to engage with inquiry participants. We
14 currently anticipate during the July time frame to
15 solicit their input. We anticipate that engagement to
16 be in the form of a workshop, and we are currently
17 targeting after B.C. Hydro's generation resource
18 option engagement session, and currently targeting
19 July 29th for that workshop.

20 Following the workshop, the expected loads
21 and potential generation resources associated with
22 each of these initial scenarios will be estimated and
23 the corresponding transmission plans will be
24 developed. And BCTC intends to work closely with B.C.
25 Hydro and Fortis, with respect to the load forecasts
26 and potential generation resources associated with

1 each of the initial scenarios. So a scenario, an
2 initial scenario, is a total package, in the form of
3 an integrated approach, if I might put it that way.
4 There are components to how you develop the
5 transmission plan, clearly. It comes in components.
6 But they are integrated as a whole.

7 It's BCTC's intention that the initial
8 scenarios will represent a broad range of possible
9 futures and a corresponding range of load forecasts
10 and potential generation resources, which will then
11 provide some variation in the resulting transmission
12 plans. This approach will provide participants with
13 some understanding of the relationship between
14 scenarios and the resulting transmission plans. BCTC
15 expects that the engagement with participants during
16 July will assist in creating a useful set of initial
17 scenarios which will then lead into the fall workshops
18 and the regional sessions.

19 **Proceeding Time 9:47 a.m. T12**

20 I submit that this approach is consistent
21 with the process that was outlined in Appendix A to
22 Order G-47-09, which calls for BCTC, B.C. Hydro and
23 Fortis to supply initial scenarios and transmission
24 implications of those scenarios in the September 18
25 filings. Subsequently, through workshops and regional
26 sessions, participants will be provided with

1 opportunities for further scenario development in the
2 September-October time frame.

3 Accordingly, with respect to the initial
4 scenario, BCTC believes that there's no need for a
5 consensus process or approval process for the initial
6 scenarios. We fully expect that a useful set of
7 initial scenarios using the process outlined above
8 will emerge, and that those initial scenarios will
9 then provide a starting point for the September-
10 October workshops and regional sessions.

11 And then some issues were raised about what
12 should be the Commission's role in defining the
13 scenarios initially, and in my submission there will
14 be a process whereby the initial scenarios will be
15 developed and they'll be put in front of the
16 participants. There is a workshop and then the
17 schedule contemplates procedural conference to discuss
18 the issues arising with those scenarios later, and
19 that's probably more the time to address the
20 Commission's role in defining scenarios.

21 The next issue on demand that I want to
22 address is exports. And I've got two issues. One is
23 to deal with a comment made by one of the participants
24 at the workshop that cost allocation of export
25 transmission should be factored into the export study
26 that we'd like to retain E3 for, and I want to address

1 the issue of cost allocation and exports. And then
2 second is the timing of getting going on that export
3 study work, particularly given your comments, Madam
4 Chair, about an order emerging sometime in the middle
5 of July with respect to scope, et cetera.

6 The first issue is that one of the
7 participants asked if the scope of the export study
8 work could include a survey from other jurisdictions
9 regarding cost allocation principles for transmission
10 projects that are built for export. In my submission,
11 cost allocation issues are not part of the scope of
12 the inquiry, whether it's for exports or whether it's
13 for domestic transmission and however you manage to
14 separate the two. Cost allocation generally is not
15 addressed in the terms of reference. There's no
16 direction to the Commission at all, either in Section
17 5 of the *Utilities Commission Act* or in the terms of
18 reference that were issued to the Commission to
19 provide guidance on or to make determinations about
20 cost allocation, nor does Section 5 itself provide the
21 Commission with any authority to do so.

22 In my submission, this is hardly
23 accidental. Cost allocation is an issue that comes up
24 whenever you're building projects, whenever you're
25 determining whether something is in the public
26 interest at the project stage, and it could hardly be

1 accidental that cost allocation is specifically
2 omitted from the terms of reference, in terms of what
3 it is that you are to do. There's a logic to that.
4 There are other processes for cost allocation, as I've
5 mentioned on other occasions. For the transmission we
6 have tariff proceedings. We have CPCN proceedings
7 where cost allocation can be looked at at a specific
8 level and at a project level, and to try to do
9 something on a 30-year time frame making cost
10 allocation policy, in my submission, is not something
11 which was contemplated by the terms of reference and
12 is not something on which the Commission should
13 embark.

14 This isn't a rate design proceeding.
15 Issues of cost contribution and cost allocation are,
16 as I've submitted before, better suited to the OATT
17 proceedings and the CPCN proceedings, where they can
18 be addressed in the context of concrete proposals on
19 appropriate evidence and adjusted over time to meet,
20 as circumstances require.

21 And just to give you an illustration, for
22 example, my recollection goes back a little ways. The
23 B.C.-Alberta Intertie, for example, was primarily
24 initially developed for reliability between the two
25 provinces. So, you know, very much a domestic
26 purpose. Latterly it's been used much more for trade,

1 and our tariff provides that the costs are paid for by
2 the people that use that for trade. But if it was --
3 if the cost allocation principles were determined from
4 day one, you might have reached a very different
5 result than we achieve over time. It's just an
6 illustration and I don't mean to go any further with
7 it, but simply one of the reasons why you don't define
8 cost allocation principles for a long period of time
9 at one time.

10 **Proceeding Time 9:52 a.m. T13**

11 Given this, that, in my submission, cost
12 allocation is not a proper subject for the inquiry,
13 and is not necessary to determine whether or not
14 facilities are going to be necessary, and given that
15 we need to get on with the export study as soon as
16 possible, given the timing that we have, it would be
17 my submission that that addition to the scope of the
18 work that we're going to ask the consultants to do
19 should not be accepted.

20 Turn to timing of the export study, and
21 just briefly. We have a September 18 timeline. We
22 need to develop scenarios in the July timeframe and
23 the August timeframe to get our materials prepared for
24 September 18th. We need to engage other participants,
25 and we need to get along -- on with the work as soon
26 as we can.

1 I noted that, at least at the workshop,
2 with the exception of that -- the comment with respect
3 to the scope of the study to be embarked on, no
4 concerns were raised at the workshop with respect to
5 the selection of E3, or the scope of the export study
6 that we are about to embark on as described in Exhibit
7 B1-4. The Commission also noted in Exhibit A-10,
8 which told us to submit -- to make a submission on who
9 was going to be retained and what it was that they
10 were going to do, the Commission noted that there was
11 a need to start this work immediately in order to
12 provide input into the materials to be filed in
13 September, and to meet the inquiry timelines.

14 So accordingly, and subject to any concerns
15 expressed by participants today, which I'll deal with
16 at the end if I have to, BCTC and B.C. Hydro propose
17 to engage E3 immediately following the procedural
18 conference, to commence the scope of work that's
19 contemplated in Exhibit B1-4. And I would ask that we
20 not have to wait until the Commission issues an Order
21 on this proceeding. The work needs to start.

22 My next comments are on the assessment of
23 transmission, the next section. And I've really got
24 two comments there. First of all, when one comment
25 was raised at the workshop about whether -- and
26 perhaps this actually goes into demand, whether the

1 demand for wheeling services should be taken into
2 account as we design scenarios and determine need for
3 the inquiry, and BCTC is of the view that wheeling
4 demand is also a relevant consideration that should be
5 taken into demand -- into account.

6 The second issue is that a number of issues
7 were raised, again, about the -- what I would call the
8 granularity of the analysis that the Commission should
9 embark upon here. And two issues specifically, I
10 think, whether or not clusters of -- small clusters of
11 generation resources within a particular area, within
12 a particular zone ought to become the focus of the
13 inquiry, or whether, in my submission, the Commission
14 should be left at the higher level, which is to
15 determine what's needed between areas, and to focus on
16 bulk transmission needs alone. And in my submission,
17 BCTC agrees with the draft scoping paper, that the
18 inquiry should focus on the bulk system and identify
19 needs for transfer capacity from one zone or region to
20 another. And with some acknowledgement that some
21 regionally significant transmission should also be
22 looked at on a case-by-case basis.

23 Accordingly, as zones are identified, each
24 zone represents a load and generation potential. When
25 we look at a zone, we're not looking at specific
26 projects, we're looking at overall how much do you

1 expect to develop from that particular zone. We
2 understand that, within a zone, generation potential
3 will often exist as several smaller clusters within
4 that zone, and that some participants have raised the
5 concern that in the absence of proper planning,
6 multiple transmission lines serving one cluster may
7 result. BCTC -- in my submission, the issue of
8 rationalizing small clusters of generation development
9 within a zone is not and should not be part of this
10 inquiry, and I just want to explain that very briefly.

11 In the context of the inquiry, combining
12 several clusters into a zone resource, which is what
13 you do when you're looking at area-to-area, won't
14 impede the identification of needs for bulk system
15 transmission reinforcements. The issue of serving --
16 whether within a zone you serve a particular cluster
17 efficiently is one that can be made -- it's more of a
18 local or regional transmission consideration that can
19 be made when the particular generation resources are
20 defined more appropriately. We already have, in my
21 submission, processes that, within the 10-year time
22 frame and shorter time frames, that address that more
23 defined and granular process. And we expect that the
24 Section 5 inquiry will address the larger bulk system
25 needs.

26

Proceeding Time 9:57 a.m. T14

1 Just a couple more -- a couple of comments
2 on areas inappropriate for -- well, I guess the next
3 one on Mr. Fulton's list was First Nations, and I
4 guess we've got a couple of comments briefly. The
5 first question that we were asked to think about was
6 the -- which party as a consultant particularly as
7 understood Mr. Fulton's question at the workshop, it
8 was really directed as to whether or not the
9 Commission itself had a duty to consult. What was the
10 role of the Commission, effectively, was the way I
11 understood that.

12 Mr. Fulton raised the question regarding the Commission's
13 role, and he specifically asked participants to
14 address paragraphs 14 and 70 of the *Kwikwetlam*
15 decision and paragraph 56 of the *Carrier Sekani*
16 decision. Paragraph 56 of the *Carrier Sekani* decision
17 concludes that the Commission itself does not have a
18 duty to consult, and it relied on the Supreme Court of
19 Canada's decision in what's commonly referred to as
20 the *National Energy Board* case. It's *Quebec Attorney*
21 *General v. Canada National Energy Board*.

22 Paragraph 56 does go on to conclude that in
23 the circumstances of the *Carrier Sekani* case, the
24 Commission did have an obligation to decide a
25 consultation dispute, adequacy of consultation.

26 COMMISSIONER ANDERSON: Excuse me, sir. We're having a

1 little bit of trouble hearing you sometimes. I wonder
2 if you could just attempt to project your voice a
3 little further.

4 MR. FELDBERG: I was relying on the microphone but it's
5 apparently not that close.

6 COMMISSIONER ANDERSON: Thank you.

7 MR. FELDBERG: Does that help?

8 COMMISSIONER ANDERSON: Oh, yes.

9 MR. FELDBERG: We'll try to find a happy medium.

10 COMMISSIONER ANDERSON: Thank you.

11 MR. FELDBERG: Okay. But I was just addressing the issue
12 of whether or not the Commission itself had a duty to
13 consult, and I just referred to the *National Energy*
14 *Board* case where the Supreme Court of Canada concluded
15 that the National Energy Board did not in the
16 circumstances of that case have a duty to consult,
17 relying on the role of the National Energy Board as a
18 quasi-judicial tribunal and that in the context of
19 that role it was not consistent with that role to
20 impose a duty to consult. That case was relied upon
21 in *Carrier Sekani* in reference to the specific
22 paragraphs referenced by Mr. Fulton, to conclude in
23 that case that the Commission did not have a duty to
24 consult, rather it went on to conclude that the
25 Commission's role was to assess, if asked, the
26 adequacy of consultation of an applicant before it.

1 And paragraphs 14 and 70 of the *Kwikwetlem* decision
2 expressed the parallel conclusion in the circumstances
3 of that case, that on the facts the Commission had the
4 responsibility to assess the adequacy of the
5 consultation and accommodation efforts relevant to the
6 ILM CPCN proceeding, and I think the Commission is
7 pretty familiar with those.

8 With respect to who else has a duty to
9 consult in this, I just noted that the -- Madam Chair,
10 you noted the letter that has been filed by B.C.
11 Hydro, and I don't propose to say anything more than
12 that that letter is there and that B.C. Hydro is
13 embarking on a consultation process.

14 In my submission, the Court of Appeal's
15 conclusion in the two cases that Mr. Fulton referred
16 to, that the Commission itself does not have a duty to
17 consult, applies equally to this inquiry. The Supreme
18 Court of Canada's conclusion in the *National Energy*
19 *Board* case and the Court of Appeal's conclusion in the
20 *Carrier Sekani* case, were each based on the NEB and
21 the Commission status as quasi-judicial tribunals, and
22 their responsibilities to behave fairly and equally to
23 all the parties. BCTC submits that there is nothing
24 in Section 5 of the *Utilities Commission Act* or the
25 Section 5 terms of reference which alter the
26 Commission's quasi-judicial status, and accordingly,

1 in my submission, these conclusions apply with equal
2 force here.

3 I'd refer specifically to the terms of
4 reference, paragraphs 7 to 10, and specifically 10(a),
5 and what the government has laid out in the terms of
6 reference for the Commission, what you are to do is
7 you are directed to hear from parties, you're directed
8 to hear evidence, you're directed to hear and consider
9 evidence. And in my submission, your role in doing
10 that is to perform in a fair and quasi-judicial
11 manner, in the same manner you would if there were an
12 application before you. And in my submission, your
13 status has not changed in that respect merely because
14 this is an inquiry.

15 **Proceeding Time 10:02 a.m. T15**

16 There are a couple of other issues raised
17 with -- what's the scope, then, of your -- if there is
18 -- is there an obligation on you to assess the
19 adequacy of the consultation that is to be undertaken,
20 and what role should the Commission take in
21 supervising, if you will, that consultative process.
22 And in my submission, it's too early, at this stage,
23 to be able to define clearly, precisely and finally
24 what your role or your obligations or your
25 responsibilities are with respect to those two things.
26 We're just embarking on this process. The process of

1 consultation that B.C. Hydro is embarking on is just
2 starting as well. The *Kwikwetlem* case and the *Carrier*
3 *Sekani* case were both done -- were both cases where
4 the Court of Appeal could look at a record, could look
5 at a set of facts, could look at the nature of the
6 proceeding, and determine then what role there is for
7 the Commission.

8 In my submission, and this also comes from
9 paragraph 61 and 62 of the *Carrier Sekani* decision,
10 there is a danger in defining roles, responsibilities,
11 too early in a process and laying them down in too
12 clear and precise a way. You can go -- you can make a
13 decision that ultimately shows that you took on less
14 responsibility than you should ultimately, or a
15 decision where you take on more than is necessary. In
16 my submission, we should address the issue as to how
17 you will deal with a concern or a complaint about the
18 adequacy of consultation, what your role is, what the
19 scope of the duty is, what processes should have been
20 or ought to have undertaken when the issue is ripe --
21 when the issue arises, when the facts are there, and
22 when the complaint is lodged. And in my submission,
23 to try to do so in a vacuum is fraught with
24 difficulty.

25 Second from last, and I'm almost done, and
26 I appreciate I've taken a long time, the areas

1 inappropriate for generation development, one of the
2 issues that was raised was whether or not areas
3 inappropriate for transmission development should be
4 considered within the scope of the inquiry. In my
5 submission, there is no need to include an examination
6 of areas inappropriate for transmission development to
7 fulfill the terms of reference, and that it would be,
8 in fact, in my submission, inconsistent with the terms
9 of reference to do so.

10 The areas inappropriate for generation
11 development are referred to specifically in Section
12 3(a)(3) of the terms of reference. And the context of
13 that is that you're trying to find how much generation
14 potential there will be in a certain area, so that you
15 can get a number of how much potential, and you might
16 eliminate some areas so that you can -- so you reduce
17 the amount of generation potential in an area to
18 determine what the number is going to be that you then
19 feed into the transmission plan to determine how much
20 transmission is going to go from one zone to another.
21 We're not, in this inquiry, looking at a specific
22 transmission development. We're not defining where
23 it's going to go. We're not looking at routes and
24 we're not looking at corridors. There is simply no
25 need to take a look at the areas that would be
26 inappropriate for transmission development in order to

1 determine how much generation from one region has to
2 be moved into another. There is no need to do so, and
3 the terms of reference didn't contemplate that you
4 would have to do that. Had it been thought necessary
5 to do so, it would have been specifically included as
6 it was with respect to generation development.

7 In my submission, the omission of
8 transmission facilities is consistent with the purpose
9 of the inquiry, which is to provide a high-level
10 assessment of the need for bulk transmission
11 facilities to facilitate the flow of energy between
12 regions of the province. It won't determine the
13 location of transmission facilities either by specific
14 routing or broader corridors. And as such, I don't
15 think that, in my submission, an enquiry into areas
16 that are inappropriate for transmission development is
17 not necessary.

18 The last issue that Mr. Fulton asked us to
19 talk about was, I guess, the impact of Sections 5 and
20 75 on Section 79 of the *Utilities Commission Act*. And
21 Section 79 of the *Utilities Commission Act* is -- I
22 won't read it out and I'll paraphrase it, probably do
23 it terribly, but it basically says that a finding of
24 fact by the Commission is conclusive and binding on
25 the courts. What that section has been interpreted to
26 mean is, it's effectively a privative clause. It

1 precludes an appeal on a question of fact from the
2 Commission to the courts above. It doesn't mean that
3 that finding of fact cannot be reviewed or looked at
4 on different evidence in a different proceeding. All
5 it says is that -- all it means, and in my submission
6 there are two cases that are relevant, *Plateau*
7 *Pipelines v. BCUC*, 2002, BCCA 246, and *Sierra Club of*
8 *Canada v. BCUC*, 2008, BCCA 98.

9 **Proceeding Time 10:07 a.m. T16**

10 And what those cases have relied on that --
11 on Section 79 for is to say that the facts found by
12 the Commission are binding on a court in that
13 proceeding. That means that on an appeal the court
14 can't revisit a finding of fact. It doesn't mean, as
15 I said, that in a different proceeding on different
16 evidence the Commission is bound by a fact that it
17 found previously, or that a court is bound by the
18 Commission's finding of fact in a proceeding where a
19 court has the jurisdiction to find the facts.

20 What does it mean for this proceeding? In
21 my submission it means the same thing it means in
22 every proceeding in front of the Commission. It means
23 that the Commission has to be careful when finding
24 facts, because those facts will bind the Court of
25 Appeal on an appeal in this proceeding. And the
26 Commission should be sure before it does find a fact

1 that it has the proper evidence to do so, and ensure
2 that it has all the evidence before it that it needs
3 to fairly make that finding of fact.

4 Those are my submissions on that. I have
5 nothing else to say.

6 THE CHAIRPERSON: Thank you, Mr. Feldberg. My fellow
7 Panel members may also have questions, but I just want
8 you to clarify something for me and that's regarding
9 the export study and the Exhibit B1-4. I know Mr.
10 Austin will still make comments on that, but you press
11 the importance of the timing.

12 MR. FELDBERG: Yes.

13 THE CHAIRPERSON: You have to proceed immediately, and I
14 think we all understand that pressing need. But in
15 terms of process, how do you see that happening
16 process-wise? Because earlier, like I indicate, it
17 most likely will be mid-July before our complete order
18 is out on the scope, and clearly you need something
19 out earlier. But how do you see us going about it?

20 MR. FELDBERG: Let me just say that in order to prepare
21 the various scenarios that we need to prepare to look
22 at the transmission solutions that we need to look at
23 and get those done over the summer, the export study
24 obviously is an integral part of that work and so it
25 must begin immediately. In my submission, I would
26 simply ask at the end of today -- and I don't think I

1 actually need to ask you for a ruling on it. We've
2 told you what we intend to do, and what we've been
3 listening for is suggestions -- we've been transparent
4 about the process about what we intend to do. But
5 subject to concerns which cause us to rethink what it
6 is that we intend to do, we would propose, and I'm
7 just letting the room know, we would propose to retain
8 E3 at our earliest convenience, which would be perhaps
9 tomorrow.

10 THE CHAIRPERSON: Okay, let's wait for what Mr. Austin
11 has to say.

12 COMMISSIONER ANDERSON: Can I just follow up on that to
13 some extent.

14 MR. FELDBERG: Certainly.

15 COMMISSIONER ANDERSON: You discussed briefly wheeling
16 demand, and if I heard you correctly you said that
17 that was irrelevant in your view?

18 MR. FELDBERG: No, it was relevant.

19 COMMISSIONER ANDERSON: It was relevant.

20 MR. FELDBERG: Yes.

21 COMMISSIONER ANDERSON: Yes, okay, I misheard you then.

22 MR. FELDBERG: No, it's an important distinction, so
23 thank you for that.

24 COMMISSIONER ANDERSON: That's why I asked the question.

25 COMMISSIONER COTE: In your comments you talk quite a bit
26 about the process for outlining scenario development

1 and the importance of them. I wonder if you could
2 tell me, how many total scenarios do you see being
3 developed? That's question one. And related, could
4 you clarify what you see as being the key elements in
5 these scenarios?

6 MR. FELDBERG: Okay. The number of scenarios I'm not
7 certain about, and I think that's still something we
8 have to think about. But the number I'm usually given
9 is a manageable number.

10 COMMISSIONER COTE: A breadbox of --

11 MR. FELDBERG: Working with models means that every
12 scenario takes a while to develop and it takes a while
13 to put in, and I think you have to actually do the
14 work through and see the ranges. And I'm probably the
15 most unqualified person in the room to be discussing
16 this topic right now, but you need to have -- it's
17 going to be useful if we have a range, and as they
18 incorporate the various elements of it they'll see. I
19 think what I've been told before by the planners is
20 you may find that there are a number of variables that
21 you put in that frankly don't make a difference, and
22 so you can compress the number, but -- I'm told I can
23 say five to six, if that's of assistance.

24 And the important elements, too, are the
25 elements are going to be various -- the load
26 forecasts, the generation resource potential in

1 particular areas, the location of the load that's
2 likely to emerge. And within those scenarios we know
3 all of the factors of what world do we see. You know,
4 when you start developing the scenarios outside of the
5 load forecasts, you start looking at what scenarios
6 can you see in the future and how will they drive
7 those various variables, is I think what really you
8 end up looking at. I don't know if that helps. We
9 can probably get a planner to tell us that.

10 **Proceeding Time 10:12 a.m. T17**

11 COMMISSIONER COTE: Thank you.

12 COMMISSIONER RAVELLI: I just have one more question, and
13 it's on the issue of scenarios. Are they regional
14 scenarios that are five or six within the region?
15 Because there could be different --

16 MR. FELDBERG: What I understand them to be is it would
17 be five or six provincial, but they will show -- what
18 they will tend to show is what flows need to go from
19 region to region under various scenarios. What you'll
20 see is, at the end of the day, you know, outputs will
21 be how many megawatts do I need to get from, say, the
22 Peace Region to the Lower Mainland. You know, will be
23 -- and a different scenario would say -- and I'm
24 making this up, so -- no, just these -- the variable,
25 but say everybody switched to electric cars, that may
26 have an impact on how much generation you need in the

1 Peace, and how much load you have in the Lower
2 Mainland. So that may show you, you know, under that
3 scenario or under a scenario which includes a whole
4 bunch of factors like that, that there is a different
5 amount of megawatts that has to flow from the Peace to
6 the Lower Mainland.

7 But what we'd be looking at typically is
8 how much is going to go from the Peace to the Lower
9 Mainland, how much is going to go from the east into
10 the Lower Mainland, how much is going to go -- you
11 know, between the various regions is typically what we
12 look at at the bulk system, from what I understand.

13 THE CHAIRPERSON: Okay, thank you, Mr. Feldberg.

14 MR. FELDBERG: Am I down now?

15 THE CHAIRPERSON: I believe you are. Yes, just looking
16 at the clock here. How long will B.C. Hydro's
17 presentation be?

18 MR. GODSOE: I think anywhere from 15 to 20 minutes, but
19 maybe less than that.

20 THE CHAIRPERSON: Oh, okay. Because we don't want to
21 interrupt you in the middle, Mr. Godsoe, so I think we
22 still proceed, yes.

23 **SUBMISSIONS BY MR. GODSOE:**

24 MR. GODSOE: Thank you, Madam Chair.

25 With one possible exception, B.C. Hydro
26 adopts its scoping submissions dated 11 June 2009,

1 found at Exhibit B2-3. And that possible exception
2 concerns what's been called Category 2 of areas
3 inappropriate for generation development. And I'd
4 like to come back to that towards the end of my
5 submission. And you'll understand why I'm saying
6 possible or potential exception.

7 I have very little to add to B.C. Hydro's
8 assessment of generation submissions, which are found
9 at pages 1 to 3 of Exhibit B2-3. With respect to the
10 proposed B.C. Hydro engagement process concerning
11 resource option potential, the date for holding the
12 workshop will be Thursday, 23 July. B.C. Hydro will
13 shortly send out invitations to all Section 5 inquiry
14 participants and to First Nations. In addition,
15 generation resource option potential will also be one
16 of the topics addressed as part of the second phase of
17 what I've called the B.C. Hydro/BCTC parallel
18 consultation process.

19 I also have very little to add to B.C.
20 Hydro's assessment of domestic demand, which is found
21 at pages 4 to 7 of Exhibit B2-3. For clarification,
22 because this arose at the workshop, B.C. Hydro views
23 Special Direction NO. 10's self-sufficiency and
24 insurance requirements as part of its domestic demand
25 scenarios. Accordingly it follows that's what been
26 called export opportunities, and I prefer that as

1 opposed to export demand, because really there is no
2 export demand, are above and beyond self-sufficiency
3 and insurance.

4 I agree with and adopt the comments of my
5 friend, Mr. Feldberg, with respect to Commission
6 direction on scenarios at this time. In addition to
7 the process he has laid out, I do want to emphasize
8 these are initial scenarios. They are not cast in
9 concrete and, as Mr. Feldberg has outlined, they will
10 be subject to Commission staff workshops in
11 September/October and to regional sessions in
12 October/November. In addition, they will form part of
13 the Phase 2 of the B.C. Hydro/BCTC parallel
14 consultation process. So it's too early for the
15 Commission to be issuing directions in our submission.

16 Also specific to B.C. Hydro is the 2008
17 long-term acquisition plan, which as you know is still
18 before the LTAP panel. It contains three domestic
19 demand scenarios, and we urge that the Commission
20 Panel -- this Commission Panel, wait to see what, if
21 anything, the 2008 LTAP Commission Panel has to say
22 with respect to these three demand scenarios. I was
23 counsel on the LTAP, and I can tell you there was a
24 lot of cross-examination on these three demand
25 scenarios, so I do think we need to wait for that
26 decision.

1 **Proceeding Time 10:17 a.m. T18**

2 That course could complicate our
3 participation at the targeted 29 July workshop. We
4 will do our best, but I think it does turn on the
5 issuance of the 2008 LTAP decision, the extent to
6 which we can actually participate.

7 Turning to the export study, in addition to
8 adopting Appendix 1 to Exhibit B2-3, I agree with and
9 adopt the submissions of counsel for BCTC with respect
10 to this issue. I have two additions. At the 18 June
11 workshop, counsel for IPPBC raised a good point with
12 respect to whether the export study should look at the
13 market for ancillary benefits. B.C. Hydro is going to
14 seriously consider this, but would say that that
15 evidence would come from it and not from E3. So it
16 would not form part of the export study. And by
17 ancillary benefits I mean spinning reserves and
18 capacity. Feel free to ask me what spinning reserves
19 are. It took me a while to learn what they are.

20 In addition, I'll wait to hear some
21 comments from Mr. Austin, counsel for IPPBC, but we
22 submit it's early days to say whether Powerex Corp.
23 should be directly engaged or not. I can certainly
24 give everybody comfort in the room that B.C. Hydro
25 will be drawing on Powerex's considerable expertise to
26 ensure that the export scenarios drawn up by E3 are

1 reasonable and plausible. So we will be bringing our
2 experience to bear with respect to E3. As I say, in
3 our view it's early days as to whether in fact we
4 would be calling Powerex on a more formal basis. Our
5 position is right now we would not be.

6 Turning to what Commission Staff call
7 "First Nation issues", B.C. Hydro's submissions are
8 found at pages 8 and 9 of Exhibit B2-3. I'm only
9 going to address one of the two issues in more detail,
10 which is the parallel process. To repeat what we've
11 said at the workshop, the parallel B.C. Hydro/BCTC
12 consultation process is not a substitute for the
13 inquiry itself. It is not meant to constrain or
14 restrict the consideration of First Nation issues in
15 the inquiry itself. And in this regard, we agree
16 completely with the submissions of the Haisla Nation
17 at section 1.3 of Exhibit C83-2, and the submissions
18 of the Weiweikei Nation at Section 1.3 of Exhibit C84-
19 2.

20 In our submission, the Commission has also
21 been clear on this issue in Exhibit A-3, which is a
22 letter dated 1 April 2009 sent to Chiefs, Tribal
23 Councils and provincial First Nations organizations.
24 As we said at the workshop, B.C. Hydro views the
25 parallel process as an opportunity for First Nations
26 to provide input into and inform the submissions of

1 both B.C. Hydro and BCTC.

2 While I'm on the issue of the parallel
3 process, I thought it would be timely to lay out the
4 dates for the Phase 2 nine regional workshops. Those
5 dates are as follows: 29 September, Lower Mainland.
6 It will either be Surrey or some area to be
7 determined. 30 September, Abbotsford. 2 October,
8 Kamloops. 7 October, Campbell River. 8 October,
9 Nanaimo. 14 October, Cranbrook. 20 October, Prince
10 George. 23 October, Fort St. John. And 29 October,
11 Prince Rupert. In choosing these dates, B.C. Hydro
12 has been careful not to book over meetings that are
13 being scheduled by the provincial First Nations
14 organizations, such as the Union of B.C. Indian Chiefs
15 and the First Nations Summit.

16 Turning now to the questions Commission
17 Counsel asked us to address, I agree with and adopt
18 the comments of council for BCTC with respect to the
19 question of whether the Commission has a duty to
20 consult. In our view, the answer is clearly no in the
21 traditional sense of direct bilateral engagement with
22 First Nations. The Commission is a quasi-judicial
23 body and cannot engage in bilateral communications
24 with any party. It is bound by principles of natural
25 justice. Therefore, in our respectful submission, it
26 must receive information through its public hearing

1 processes.

2 **Proceeding Time 10:22 a.m. T19**

3 In this regard, like BCTC, we rely on the
4 Supreme Court of Canada decision of *Quebec (Attorney-*
5 *General) v. Canada (National Energy Board)*, which I'll
6 refer to as the *National Energy Board* case. And I
7 would like the Commission to turn to that case for a
8 moment. I did attach it to Exhibit B2-5. I
9 understand your copy's got paragraphs. My copy has
10 pages, so I'll refer to the paragraph numbers.

11 If I could ask the Commission Panel to turn
12 to paragraph 39. I won't read the entire paragraph.
13 I will emphasize this.

14 "It is inherently inconsistent with the
15 imposition of a relationship of utmost good
16 faith between the board and a party
17 appearing before it to be engaging in
18 bilateral direct contact with any party."

19 Turning also to paragraph 41:

20 "Therefore, I conclude that the fiduciary
21 relationship between the Crown and the
22 appellant does not impose a duty on the
23 board to make its decisions in the best
24 interests of the appellants, or to change
25 its hearing process so as to impose super-
26 added requirements of disclosure. When the

1 duty is defined in this manner, such
2 tribunals no more owe this sort of fiduciary
3 duty than do the courts."

4 Turning to the obligation to assess
5 adequacy of consultation, again, I agree with and
6 adopt the comments and submissions of my friend, Mr.
7 Feldberg. We agree it is too early to determine
8 whether, in the circumstances of this inquiry, the
9 Commission has an obligation to assess the adequacy of
10 consultation. What I would like to draw your
11 attention to is the two mechanisms that will permit
12 the Commission to consider First Nation concerns in
13 rendering its report. And we're going to submit that
14 these two mechanisms, when combined, will prove to be
15 adequate to fulfill any duty to consult that may arise
16 from the Section 5 inquiry.

17 First, of course, is the Commission process
18 itself. That can supplement and/or fulfill many
19 aspects of the consultation process by providing
20 information, and importantly allowing for concerns to
21 be brought forward and presented to the decision-maker
22 directly for serious consideration.

23 Second is the B.C. Hydro/BCTC parallel
24 process, which will provide the Commission with
25 additional information.

26 As I stated at the first procedural

1 conference, B.C. Hydro proposes to file two
2 consultation reports with the Commission reporting on
3 this parallel process. The first would be filed in
4 mid-December, 2009 and the second would be filed in
5 late May, 2010.

6 B.C. Hydro filed a letter dated 25 March
7 2009 from the Deputy Minister of Energy, Mines and
8 Petroleum Resources to B.C. Hydro and BCTC, and that
9 is found at Exhibit B2-4. At page 3 of the letter,
10 the Ministry requests that B.C. Hydro file "written
11 updates" with Ministry staff "every two weeks
12 regarding the progress on consultation on key issues".
13 B.C. Hydro is prepared to file these written updates
14 with the Commission Panel.

15 I'll turn now to the last area I want to
16 address, which is the areas inappropriate for
17 generation development. And B.C. Hydro's submissions
18 on this topic are found at pages 10 to 12 of Exhibit
19 B2-3.

20 Category 1, as proposed by Commission
21 staff, consists, in our view, of two sub-categories;
22 lands subject to statutory exclusions and lands
23 subject to statutory limitations. I point out these
24 same two categories were used in the Western Renewable
25 Energy Zone initiative. And we agree they are clearly
26 within scope.

1 comments of my friend Mr. Feldberg with respect to
2 Section 79. It speaks to findings of fact with
3 respect to that matter. In other words, it's binding
4 on the B.C. Court of Appeal. In our view it is a
5 former privative clause and can be revisited in
6 subsequent Commission proceedings.

7 Section 75, in contrast, speaks to the
8 conclusions that can be drawn from findings of fact,
9 and that clearly states that the Commission is not
10 bound to follow such conclusions, except in this case
11 if the Minister issues a regulation pursuant to
12 subsection 5(8) of the *Utilities Commission Act*.

13 Notwithstanding all of these concerns, B.C.
14 Hydro is interested in exploring the idea offered by
15 Commission Staff on conducting its sensitivity
16 analysis as a way of addressing Category 2. Let me
17 clearly state what our understanding of this
18 sensitivity analysis would entail. It would only be
19 for purposes of understanding the range of potential
20 energy or capacity presented by cluster, and not for
21 determining yellow zones or no-go zones or whatever
22 term might be used. Frankly, B.C. Hydro requires more
23 time to investigate what type of information could be
24 used to conduct the sensitivity analysis. B.C. Hydro
25 also must assess whether the information is suitable
26 for use in this inquiry, and by that I mean whether it

1 is currently available and objective. B.C. Hydro is
2 prepared to put forward its position on the
3 workability of sensitivity analysis at the 23 July
4 workshop.

5 And if there are no questions, those
6 conclude my submissions.

7 THE CHAIRPERSON: I have one questions regarding these
8 dates you just indicated for your consultation
9 sessions, which started late September and pretty much
10 run until end of October, because we have yet to set
11 the dates for the regional sessions of these
12 Commission proceedings. Is it your expectation that
13 we would not even start our sessions then until these
14 had been concluded, just in case some First Nations
15 might want to participate in both? Or has that been
16 discussed?

17 MR. GODSOE: We're clearly not saying that the Commission
18 Staff workshops can't go ahead or should wait for
19 these regional sessions, but we wanted to hopefully
20 lay out the dates so that everybody knew what B.C.
21 Hydro and BCTC was proposing for the parallel process,
22 and that hopefully the Commission could then work
23 around that for its workshops.

24 THE CHAIRPERSON: Okay, thank you. Okay, thank you, Mr.
25 Godsoe.

26 Now, it is time for a break so we'll take a

1 15-minute break.

2 **(PROCEEDINGS ADJOURNED AT 10:31 A.M.)**

3 **(PROCEEDINGS RESUMED AT 10:47 A.M.) T21**

4 THE CHAIRPERSON: Please be seated.

5 Mr. McDonnell?

6 **SUBMISSIONS BY MR. McDONELL:**

7 MR. McDONELL: Thank you, Madam Chair, Commissioners. I
8 am here for FortisBC to adopt the submission of
9 FortisBC June 11th, which is Exhibit B3-3.

10 I found the workshop productive in the
11 sense of listening to the discussion and, in
12 particular, what I would call a general consensus as
13 to the broad scope of the terms of reference and the
14 issues contained therein.

15 I agree with Mr. Feldberg in terms of the
16 terms of reference doing a lot of your work in terms
17 of scoping of issues, for the work you're going to
18 undertake. Integration would be an example of that,
19 in terms of -- I would read the terms of reference as
20 including integration and considerations of
21 integration would already be, in my view, within the
22 broad terms -- the terms of reference that you have.
23 So, as I say, the terms of reference, I think, already
24 do a great deal of the work of scoping for you.

25 In terms of duty to consult, in my
26 submission it's clear that the Court of Appeal has

1 held that you do not have a duty to consult. The
2 Commission doesn't -- but does have a jurisdiction to
3 assess a consultation. And you are hearing from BCTC
4 and B.C. Hydro that they will be engaging in
5 consultation. So I think that your jurisdiction as we
6 move forward is to review and assess the reports that
7 are going to be made to you and to monitor that
8 consultation as it is ongoing over the next eight to
9 twelve months, I suppose.

10 FortisBC agrees with the manner in which
11 B.C. Hydro proposes to engage in consultation.

12 Those are the only submissions I have to
13 add to the June 11 written submission. In regard to
14 Section 79 of the *Utilities Commission Act*, in my
15 submission you have the terms of reference before you.
16 Your job, with respect, is to do the best you can with
17 those terms of reference. And I would say not worry
18 about Section 79 in any binding findings of fact that
19 may arise in subsequent proceedings. Subsequent --
20 colloquially, let subsequent proceedings worry about
21 themselves. The best job you can be done on these
22 terms of reference is what's before you. And so I say
23 Section 79 is simply not a concern at this juncture.

24 Those are my submissions. Thank you.

25 THE CHAIRPERSON: Thank you, Mr. McDonell.

26 **Proceeding Time 10:50 a.m. T22**

1 MR. FULTON: First Nations Energy and Mining Council.

2 **SUBMISSIONS BY MR. DIMITROV:**

3 MR. DIMITROV: Good morning, Panel. First off, we adopt
4 our June 10th and June 23rd submissions that have been
5 posted, but I'd like to begin to address some of the
6 questions. Can you hear me? The questions that were
7 raised by Commission Counsel.

8 First off, we certainly take note of the
9 *NEB* decision of 1994, which was relied upon by the
10 *Carrier* decision in 2009, which states essentially
11 that it did not view that the Commission itself has a
12 duty to consult. That seems to be the current law
13 with respect to the Commission as a quasi-judicial
14 tribunal.

15 Nonetheless, given the terms of reference,
16 particularly section 4 and section 79, which is a
17 privative clause as the counsel for B.C. Hydro
18 indicated, that is binding on all persons and all
19 courts, we do submit that the determinations that
20 could conceivably flow from this inquiry could have a
21 large impact on First Nation territories, their title
22 and their rights. And furthermore, we think that the
23 Commission perhaps may be wearing two hats. In this
24 particular process of an inquiry, we don't see you in
25 a sense adjudicating on the merits of an application
26 for certificate of public convenience and necessity,

1 that as you don't have an adjudication role, you
2 essentially have a policy-making role to determine
3 needs of the transmission system.

4 So on one hand, if you have the quasi-
5 judicial role, then certainly the matters pertaining
6 to natural justice, et cetera, would apply and you
7 would therefore yourselves not have a duty to -- not
8 be able to or have duty to consult directly with First
9 Nations. On the other hand, there is a potentiality
10 of another possibility here, which is that you wear
11 potentially another hat, which is that you are
12 directly an agent of the Crown. That is -- and I put
13 that forward because, number one, the terms of
14 reference direct you not to adjudicate an application
15 for a licence or anything like that, but here in a
16 sense to make sense that will have a broad perspective
17 on the entire province. And I'm not at this point in
18 time prepared to say whether you're an agent of the
19 Crown or you're a quasi-judicial tribunal, but that is
20 open for you to think about.

21 If you are an agent of the Crown, then I
22 would say to you that indeed you yourselves do have a
23 duty to consult directly with First Nations. And I
24 don't base that on the *NEB* decision. I base that on
25 subsequent decisions that have come down that enlarge
26 upon the scope of the honour of the Crown. The

1 *Vanderpeet* decision, the *Delgamuukw* decision, and in
2 particular the principles enunciated in *Haida Nation*.
3 So it's a fairly complicated question, I think, that
4 counsel for the Commission posed.

5 Nonetheless, if we adopt the position of
6 B.C. Hydro and Fortis and BCTC that the scope of your
7 duty to consult is only as a quasi-judicial tribunal,
8 is essentially only to assess the adequacy of the
9 consultation process, then we have some further things
10 to say. In our paper that -- well, number one, we
11 would say that that duty then would apply ASAP, the
12 duty to assess, the adequacy of consultation applies
13 as soon as possible, and that we need to think about
14 how it is that you could do that.

15 And in our latter letter of June 23rd, we
16 bring a range of topics that we think at minimum ought
17 to be looked at by B.C. Hydro -- or the tribunal, in
18 its assessment of adequacy. And for example, we're
19 still concerned with capacity funding, not just for
20 the Energy Council but for other B.C. First Nations
21 that have expressed a desire to get more actively
22 involved in the inquiry. I'm not sure, but as of this
23 time I don't know if any capacity funds for these
24 First Nations or ourselves have been released to
25 facilitate the retention of consultants or legal
26 counsel or whatever they may need to perhaps update

1 and it affects the transmission system. For example,
2 the matter of interlinkages between the bulk system
3 and generation, new generation that comes from IPPs,
4 whether they be wind or run-of-river. We've been at a
5 meeting with BCTC and we understand that they are
6 perhaps inclined or intending to levelize or average
7 out the costs of interlinkaging, which then changes
8 the way the scenario will unfold, because it makes
9 possible, then, generation and transmission systems in
10 areas that would not be possible unless they averaged
11 out those costs.

12 So I -- while I appreciate the cast for
13 B.C. Hydro saying that cost allocation is not within
14 scope, I think cost per se is within scope, and in
15 particular, you need to be alert to this whole matter
16 of scenario-building, the values and assumptions
17 included and excluded.

18 Now, the other things that we would like to
19 bring to your attention, which is the kind of matters
20 that are coming up to us from communities that
21 telephone us or e-mail us, or who have made
22 submissions in the parallel process, there is a range
23 of topics that have come up that somehow we believe
24 must be dealt with by the Commission and/or this
25 inquiry. And they are such topics as past
26 infringements, their acknowledgement and compensation;

1 title, rights and self-government issues over First
2 Nation territories; and thirdly sustainability of
3 development.

4 Now the terms of reference include the B.C.
5 Energy Plan, 2007, and if you go through it carefully
6 there are multiple times that it makes mention of the
7 word "sustainability". So, we need to talk about --
8 and begin to have some kind of understanding of what
9 that means, and I think the literature poses that it
10 means -- it has meanings in three kind of areas.
11 Sustainability with respect to the environment,
12 economic sustainability, and sustainability in terms
13 of equity, and that would touch on matters to do with
14 First Nations.

15 Other concerns that come up from First
16 Nations which we want to bring to your attention are
17 the nature of the relationship between the Crown, this
18 inquiry and B.C. First Nations. And we asked in our
19 first submission to you that we believe it's within
20 scope, given that the B.C. Energy Plan talks about
21 this new relationship, and it's mentioned in the ToR
22 that we believe it's within your scope to give some
23 judicial notice to the new relationship document, and
24 that -- so we confirm that submission there.

25 Other matters that have come up in the
26 field from -- that have come to our attention, which

1 we want to bring to your attention, are cultural and
2 environmental impacts including cumulative impacts
3 from this inquiry process and its determinations.
4 Also, raises a concern where how is it that there
5 could be mechanisms scoped out, or determined to
6 resolve conflicts and disputes. Matters of who shall
7 benefit and who shall pay from the expansion of
8 infrastructure, both to meet domestic demand and
9 export opportunities. And I'm grateful for counsel
10 for B.C. Hydro noting that there really is no export
11 demand, there is only export opportunities. And it's
12 really up to the province to seize whether or not they
13 wish to capture those opportunities.

14 **Proceeding Time 11:00 a.m. T24**

15 Essentially those are our comments, and as
16 to the questions asked by counsel and other matters,
17 and we adopt our submissions that were previously
18 made. And certainly I'm willing to take questions.

19 THE CHAIRPERSON: Thank you, Mr. Dimitrov.

20 MR. DIMITROV: Thank you. Any other -- no questions?

21 COMMISSIONER ANDERSON: One question, sir. I wonder if
22 you could just expand on your comments of the
23 Commission as an agent of the Crown. You sort of lost
24 me on that one.

25 MR. DIMITROV: Well, other counsel here are going to
26 elaborate on that, no doubt, but I'll give you my take

1 on it. I think there's one take on this that you are,
2 as you've always been, a quasi-judicial tribunal
3 making decisions, CPCN decisions or other decisions,
4 adjudicating matters and adhering to principles of
5 natural justice in doing so. But in this instance
6 here, you are the recipients of terms of reference
7 directly from the province, provincial Crown, to
8 yourself, directing that you carry out not an
9 adjudication but in sense involve yourself in a
10 process that will make determinations that really are
11 broad policy planning kind of things. And in that
12 sense, there is a perspective that you are directly,
13 or perhaps even indirectly -- but more directly or
14 strongly an agent of the Crown directed to, in a
15 sense, fulfill the terms of reference by the
16 provincial Crown.

17 And if that indeed is the case, then if
18 you're wearing that hat, then principles of natural
19 justice don't apply to you as an agent for the Crown,
20 but rather the principles of *Haida Nation* would apply
21 and therefore we would say that you yourselves as
22 agent of the Crown would have a direct duty to consult
23 with First Nations regarding the terms of reference of
24 this inquiry.

25 But if it turns out otherwise, that you
26 deem yourself to be still a quasi-judicial tribunal,

1 well then indeed we would concur with counsel for
2 Hydro and BCTC, et cetera, that you yourselves don't
3 have that responsibility but only the responsibility
4 to assess adequacy.

5 So those really are the two perspectives
6 there, as I see them.

7 COMMISSIONER ANDERSON: Thank you for that clarification.

8 MR. DIMITROV: Thank you.

9 **SUBMISSIONS BY MR. LAWSON:**

10 MR. LAWSON: Good morning. My name is John Lawson. As
11 Mr. Dimitrov noted, I'm also with the B.C. First
12 Nation Energy and Mining Council. I'll be very brief
13 in my comments. I want to just touch on a couple of
14 the points that were raised in the supplementary
15 comments that were filed June 23rd. I think they're
16 dated June 22nd, but the filing was June 23rd.

17 THE CHAIRPERSON: C1-7. Is that how it was marked?

18 MR. LAWSON: I'm sorry, I don't have the exhibit number.
19 Yeah. Yes.

20 THE CHAIRPERSON: Thank you, Mr. Lawson.

21 MR. LAWSON: Just to touch on a couple of the points
22 raised in that, the first one being the scoping of
23 initial scenarios. We had made the point in there,
24 and this was one of the issues that was not
25 specifically addressed in the early staff paper on
26 scoping, but in light of comments from the Chair as

1 well as the comments from B.C. Hydro and BCTC, we had
2 stated here that we certainly support and would ask
3 for an endorsement by the BCUC of that early
4 engagement process. In light of the comments that
5 were made, we are not necessarily saying that there
6 needs to be a decision on that by the BCUC. If the
7 commitments made by BCTC and B.C. Hydro are clear and
8 firm in that regard, we are content to proceed on that
9 basis.

10 The second point relates to the general
11 question of integration, and if I can connect that to
12 the areas inappropriate for development. Again we
13 take the comments or note the comments made by BCTC in
14 that respect. But I can say that it is a concern, we
15 can all say integration quite easily. How we do it is
16 another task or another exercise.

17 **Proceeding Time 11:05 a.m. T25**

18 And if I can take the example of areas
19 inappropriate for development, in our view, certainly
20 from a First Nations' perspective, but also I suspect
21 from the perspective of others in this, just as
22 generation location will largely drive the need for
23 transmission, the possibility of transmission may lead
24 us to very different considerations on generation.
25 And in that respect, we think that to say that -- or
26 to recognize that there may be, or there are areas

1 inappropriate for generation, but not to acknowledge
2 that those same principles, or those same sort of
3 restrictions, may apply to transmission is not an
4 entirely logical approach. We're not pre-judging what
5 the result of including both will be, but suspect
6 that, just as there are areas inappropriate for
7 generation, so too are they for transmission.

8 The final point I would make, and it
9 addresses a number of these things, particularly with
10 respect to scenarios, and Mr. Dimitrov spoke to that,
11 and others have, we note that there is a second
12 scoping conference on the schedule for October. We
13 would certainly support the observation, I believe
14 that was made by Mr. Feldberg, that it is
15 inappropriate at this point, or unnecessary, for the
16 board to rule too specifically on some of these
17 issues. There are very different views on how
18 scenarios may be constructed, on what the key drivers,
19 the principles and the design of those scenarios will
20 be, and in our view those should be allowed to work
21 through the engagement process and move forward and
22 evolve in a way that makes most sense to most people,
23 rather than pushing for premature decisions in either
24 direction at this point.

25 The final comment I would make, if I could,
26 counsel for B.C. Hydro usefully noted the proposed

1 dates for the second round of the parallel process
2 consultations. I have had the opportunity to attend a
3 number of the first-round meetings. Some of the
4 comments that Mr. Dimitrov made, and I'm sure that
5 other First Nation representatives here will address
6 the adequacy of consultation issues, that while it is
7 useful to have the dates laid out in advance, I would
8 suggest that in the spirit of consultation, we might
9 -- in its true meaning, we might engage a bit more in
10 a collaborative process to determine what schedule
11 would be -- work best for others. And I appreciate
12 that's a very difficult task. I appreciate that
13 everyone in this room is under time constraints.

14 That said, if we end up in the second round
15 of the regional parallel consultations at the same
16 time that BCUC is engaged in the regional meetings
17 that it has constructed, I think we are inevitably
18 going to cause confusion, and I know that we are
19 inevitably going to cause real resource constraints
20 for the First Nations. It is an issue now at the
21 first stage. They have been notified, they have
22 received information. They are looking forward to the
23 second round, for the most part, but it has to be done
24 -- we have to find a way collectively to separate
25 those two, or schedule them in some kind of logical
26 sequence.

1 So I thank you. That's all of my comments
2 at this time. Thank you.

3 THE CHAIRPERSON: Thank you, Mr. Lawson. You really
4 highlighted it, just the basic scheduling challenge,
5 because I see in fact we have, like, three processes.
6 We have the staff facilitated workshop on all these
7 topics for further scenario development. They have
8 been scheduled for September and October. So, for
9 that time frame. Now we have the second phase of the
10 B.C. Hydro parallel consultation process with First
11 Nations, and then our challenge is also then to fit in
12 the regional sessions for these Panel proceedings, and
13 we have indicated between October and November period.
14 So, that's quite a challenge.

15 So do you have any ideas, like how could we
16 then collaborate on trying to make the dates work?
17 And we are -- when we have all these processes that
18 are in the picture.

19 **Proceeding Time 11:11 a.m. T26**

20 MR. LAWSON: It might be said that I have ideas. I don't
21 necessarily suggest they are good ones or well
22 developed at this point. But, since you ask.

23 The first round of the B.C. Hydro/BCTC
24 consultations will finish on July 17th. We have had
25 informal discussions about some sort of review of
26 those, and then decisions being made going forward

1 into the second round. There is an expectation, I
2 believe, from some of the First Nations attending, and
3 will be from others, that the topic of those
4 discussions will largely focus around the scenarios
5 and what are the key variables and what are the key
6 perspectives that go into those.

7 So I do wonder if it is not possible to
8 move that second round to very early September or
9 before the actual submission is made. I don't think
10 I'm surprising anyone by pointing out that one of the
11 concerns that we hear, and you hear, I'm sure, in
12 other forums is that the consultation is coming after
13 a lot of the decisions are made or the plans are
14 there. And First Nations are saying if we're going to
15 have input into the scenario building, if we're going
16 to have input into the process in a way that might
17 actually affect its outcome, it needs to be sooner
18 rather than later.

19 So, you know, I don't know if that's
20 possible and I appreciate the comments of B.C. Hydro
21 counsel, that they are trying to be sensitive to a lot
22 of other dates as well, in terms of First Nation
23 commitments and so on.

24 But all I can say beyond that is that we
25 would certainly be willing to sit down and engage with
26 them and with counsel, staff or whatever -- or

1 Commission Staff rather, if that's useful in trying to
2 find a way to satisfy everyone's needs in that.

3 THE CHAIRPERSON: Thank you. That's helpful, Mr. Lawson.
4 Perhaps I already put B.C. Hydro on notice, Mr.
5 Godsoe, when you would be second time at the
6 microphone, perhaps you will comment on how fixed
7 these B.C. Hydro dates are now that already seem to be
8 occupying most of October, when we had other plans as
9 well. So perhaps we'll hear more from that when you
10 come back to the microphone a second time.

11 COMMISSIONER RAVELL: I have a question.

12 MR. LAWSON: Yes.

13 COMMISSIONER RAVELL: You talked about you went to a
14 certain number of the first round consultations.

15 MR. LAWSON: Yes.

16 COMMISSIONER RAVELL: Just your general comments on that.

17 MR. LAWSON: I have attended three of the five that have
18 occurred to date. They have been not -- they haven't
19 been large crowds. I believe we had about 12 to 14 at
20 the first one I went to, which was the North Island; 9
21 or 10 at the second; a smaller number, I believe only
22 4 yesterday in Cranbrook for the East Kootenays. But
23 in all cases -- a lot of common issues arising.
24 Obviously capacity, timing, the extent to which the
25 process is information sharing or provision rather
26 than consultation and where it takes us.

1 of the language in the scoping paper. There was a
2 reference to "tidal", which colloquially may mean to
3 some people all marine energy, but we'd like the
4 Commission to note that in fact we are looking at
5 three entirely different resources. One being tidal
6 stream, one being wave energy and one being in-stream
7 kinetic energy in rivers and fresh water situations.

8 So, that legalistic issue, hopefully, we
9 can make sure that the definitions are seen as being
10 inclusive, and the bigger issue in terms of scope is
11 the challenge of looking at the resources in which we,
12 in 2009, have very little experience in harvesting
13 those resources, but we would expect that certainly
14 within the 30-year time frame the technologies and the
15 project development experience will actually come over
16 the horizon and potentially turn some areas of the
17 province which right now are the extremes of energy
18 supply into potentially very large energy resource
19 areas. So the sources of generation we're talking
20 about, from some of these new resources, may
21 dramatically shift the picture of B.C.'s energy
22 generation capacity.

23 So, that's it. Thank you very much.

24 THE CHAIRPERSON: Thank you, Mr. Campbell.

25 MR. FULTON: Joint Industry Electricity Steering
26 Committee.

1 **SUBMISSIONS BY MR. WALLACE:**

2 MR. WALLACE: Thank you, Madam Chairman, Commissioners.
3 JIESC adopts its written comments contained in Exhibit
4 C6-2, and I will be simply emphasizing a couple of
5 points from that submission, and from JIESC member
6 comments at the workshop this morning.

7 I'd like to start out by saying, and I've
8 very rarely ever said this, I think with one possible
9 exception, I agree with and adopt the comments of BCTC
10 and B.C. Hydro in this proceeding. I believe that
11 those comments are an appropriate approach at this
12 stage of this process.

13 Turning to the various topics, load
14 forecasting, as JIESC has indicated in the workshop,
15 the transmission load forecast must consider the
16 ability of major customers to manage and reduce peak
17 loads. JIESC has taken the position that this is an
18 overlooked resource and one that needs to be
19 considered here.

20 The transmission system is designed to meet
21 peak load. Peak load occurs during a time period of
22 four to eight p.m., during cold winter periods, which
23 means that relatively few hours per year are really
24 hit with it. In our submission, providing incentives
25 to customers to manage and reduce load during peak
26 hours should be considered as an option when designing

1 the transmission system. JIESC believes that the
2 potential for load reduction during the peak hours is
3 substantial and can possibly be used to delay
4 additional transmission for a number of -- investment
5 for a number of years and, accordingly, must be
6 considered in the work that BCTC and B.C. Hydro are
7 doing.

8 Beyond that comment, JIESC generally
9 supports B.C. Hydro and BCTC's position that the
10 forecast methodology should not become the focus of
11 this hearing. Scenarios undoubtedly are key and are
12 what will -- where our effort in this proceeding
13 should go.

14 **Proceeding Time 11:21 a.m. T28**

15 With respect to cost allocations, and
16 that's the one exception I alluded to, I'd like to
17 emphasize from our submission that JIESC accepts
18 formal cost applications for rate design purposes of
19 the type we normally encounter, should be out of
20 scope. However, estimated transmission upgrade costs
21 and the drivers behind the need for transmission
22 projects or connections, should be clearly defined.

23 What a connection or line -- and I realize
24 you're not dealing with specific projects, but what a
25 connection will cost and whether it is being proposed
26 all or in part for domestic use, sale of domestic

1 surplus or pure export purposes, must be in scope, so
2 that the costs and benefits of proposing that
3 transmission can be properly understood.

4 With respect to export markets, JIESC
5 understands that -- and again I'm emphasizing from the
6 previous -- or from the workshop, that the surplus
7 electricity available due to the requirement for self-
8 sufficiency at critical water plus insurance can only
9 be sold in the spot market if it is to remain
10 available for supplying customers and for insurance.
11 Given the volatility in spot markets, obtaining the
12 best price for electric power will require more
13 transmission capacity than might otherwise be the case
14 if such electricity could be sold under firm contract
15 for an extended period of time. Again, we would urge
16 that the studies that are being undertaken take that
17 into account.

18 We also emphasize that any study of export
19 markets must include all transmission from the
20 generator to the market, not what was located -- just
21 what is located in British Columbia or the traditional
22 tieline connections to the United States and to
23 Alberta. And also the likely timing of the
24 construction of such transmission. JIESC submits that
25 connecting transmission is a much uncertainty than the
26 desire of customers to buy electricity from British

1 Columbia, and accordingly deserves the same or more
2 attention. And clearly it is -- while everybody talks
3 about California as being a great market, one has to
4 wonder how long it will take and how amenable
5 Washington State and Oregon State will be to have
6 lines constructed through them for the purpose of us
7 to deliver transmission there. So it is something
8 that we hope will be addressed.

9 JIESC accepts BCTC and B.C. Hydro's
10 preference for E3 as an expert to carry out this work,
11 and supports that decision.

12 With respect to the legal issues and I'll
13 only address two of them, JIESC agrees with the
14 submissions of BCTC and B.C. Hydro that the Commission
15 does not have a duty to consult in this matter, for
16 the reasons they've put forward and the decisions
17 they've cited to you.

18 With respect to adequacy of consultations,
19 I think it's clear or submit it's clear from the
20 recent Court of Appeal decisions, that if there is a
21 requirement to consult in a long-term planning
22 process, the adequacy of those consultations is
23 clearly within scope and that it is not a matter that
24 you should determine at this time. I think that's one
25 lesson we've learned from the Court of Appeal
26 decisions is jumping to a conclusion on that is not

1 helpful.

2 And with respect to Section 79, we agree
3 with the submissions of BCTC.

4 That concludes my submissions unless there
5 are any questions.

6 THE CHAIRPERSON: Mr. Wallace, could you still elaborate
7 a bit further your statement in the beginning that you
8 feel that this area, the option of use, the industrial
9 user's capacity to reduce peak load seems to be
10 overlooked? Why do you say that?

11 MR. WALLACE: Maybe overlooked was -- well, I think -- my
12 submission would be that in previous proceedings, it's
13 something that B.C. Hydro is getting into and is
14 looking at more. I think we've seen more of that in
15 the LTAP than we have in previous proceedings. I
16 think we've been pushing at JIESC for a long time. We
17 welcome the advances that have been made. We just
18 believe that there's more that can be done and that
19 that is something that should be taken into account in
20 the future studies, and that the consultants looking
21 at them should give it a careful look.

22 **Proceeding Time 11:25 a.m. T29**

23 THE CHAIRPERSON: Thank you. I'm just being advised here
24 by Commissioner Harle that that obviously got a fair
25 bit of attention within the LTAP.

26 MR. WALLACE: Thank you.

1 THE CHAIRPERSON: So we shall wait for that decision to
2 be issued as well. Thank you.

3 MR. WALLACE: Thank you.

4 MR. FULTON: Line Contractors Association of B.C.

5 **SUBMISSIONS BY MR. SKOSNIK:**

6 MR. SKOSNIK: Jeff Skosnik. Madam Chair, Commissioners,
7 the LCA adopts its written submission. I have nothing
8 to add to it nor anything to take away from it. Thank
9 you.

10 THE CHAIRPERSON: Thank you, Mr. Skosnik.

11 MR. FULTON: NaiKun Wind Energy Group Inc. And I
12 understand that they had no submissions, Madam Chair.

13 British Columbia Sustainable Energy
14 Association, the Sierra Club of British Columbia, et
15 al.. As was indicated when Mr. Andrews appeared, he
16 represents a number of groups in addition to that
17 group, and I've asked Mr. Andrews in his submissions
18 to speak one time at the mike on behalf of all of
19 those groups, and I'll do the same for all the other
20 counsel who are representing multiple groups.

21 **SUBMISSIONS BY MR. ANDREWS:**

22 MR. ANDREWS: Thank you. Madam Chairman, members of the
23 Panel. I adopt the final comments on behalf of the
24 clients that I currently represent that I won't
25 reiterate, even though the comments themselves were
26 filed on a shorter list, on behalf of a shorter list

1 of clients at the time. The reference is to Exhibit
2 C10-3.

3 I won't, of course, go through all the
4 points in that written submission. I'd like to
5 briefly highlight a few points, one being that I think
6 it's important that the scoping decision clearly
7 recite that the terms of reference are legally
8 binding, and that the Commission's scoping decision
9 provides additional detail, or however you want to
10 phrase it, within the context of the terms of
11 reference.

12 Secondly, I would draw attention to the
13 distinction that I say exists in the terms of
14 reference between determinations by this Panel and
15 assessments. And I -- my comment here is mainly to
16 the effect that it's important to keep that
17 distinction in mind as we go forward, because there
18 are different -- they are different, they have
19 different procedural requirements for them and
20 different consequences going forward.

21 Regarding the assessment of generation, one
22 point to emphasize is that, in my clients' view, it's
23 important to include in the assessment of areas for
24 renewable generation all of the areas and not limit
25 the review to those areas that are currently either in
26 use or under development. And this was a critique

1 that was made with respect to the WREZ process and I
2 just want to emphasize that we're looking to this
3 inquiry to ensure that we take a blue-sky approach to
4 what generation areas that may exist in the province.

5 And as a follow-up sort of comment along
6 the same lines, we believe it's important to ensure
7 that off-shore renewable generation opportunities are
8 included within the scope of the proceeding.

9 In terms of the types of generation
10 technologies, I think the intention from the staff
11 document was to be inclusive and, if so, that that's
12 very much supported by my clients. There has been a
13 lot of feedback about the terminology. In a sense, a
14 fear that certain types of technology may have been
15 deliberately omitted and I don't think that was the
16 case, but in any event it should not be the case.
17 Presumably the issue is one of evidence. That is
18 whether a particular type of technology -- whether
19 enough is known about it and how it will develop in
20 the future that would allow decisions and
21 determinations regarding transmission over the next 30
22 years by June of 2010.

23 **Proceeding Time 11:30 a.m. T30**

24 And last on the generation assessment
25 topic, we believe that it's also important to look at
26 the potential effect of climate change on areas for

1 renewable generation. That could be both positive and
2 negative in terms of the ability of areas to support
3 renewable generation. So I'm thinking there, for
4 example, if an ice field disappears, then creeks that
5 are fed from it may have less potential for run-of-
6 river electrical generation, or if the wind patterns
7 change, that may affect the amount of generation
8 that's available at a certain location.

9 In terms of the areas inappropriate for
10 generation, my clients are strongly of the view that
11 the inquiry scope should include areas inappropriate
12 for transmission, but at a high level, similar to the
13 high level at which areas inappropriate for generation
14 will be examined. I note that the section of the
15 terms of reference that refers to areas inappropriate,
16 if I can use that term without expanding the whole
17 phrase, is a section that only addresses generation.
18 So in my submission it's not -- nothing can be drawn
19 from the fact that areas inappropriate for
20 transmission were not included in that section, since
21 that whole section didn't deal with transmission at
22 all. And while I acknowledge that areas inappropriate
23 for transmission is not explicitly referred to in the
24 terms of reference, as I've outlined in my written
25 submission, I think the support can be found in the
26 terms of reference as a whole for the concept that the

1 Commission certainly has jurisdiction within the scope
2 of the terms of reference to look at that.

3 I would also, in response to counsel for
4 BCTC, who argued that there's no need to address areas
5 inappropriate for transmission since the inquiry will
6 not be looking at specific routes, I have two
7 comments. One is that the restriction on
8 consideration of specific routes, I would add specific
9 technologies and specific projects, applies to
10 determinations. It doesn't apply to assessments. And
11 this is one example of how it's important to keep in
12 mind the distinction between determinations and
13 assessments.

14 And secondly, I would point out that it is
15 not known yet whether areas inappropriate for
16 transmission would, if looked at, make any difference
17 to your determinations as required under the terms of
18 reference. In other words, we just don't know whether
19 there may be, like hypothetically, a situation where
20 you have generation resources in a certain area, load
21 in another area, and that a straight line transmission
22 or a straight line path between the two unavoidably
23 crosses some area which is inappropriate for
24 transmission, even excluded. A provincial park, for
25 example.

26 Now, you could say that the path between

1 develop in this inquiry, so that we clearly understand
2 the distinction between the ongoing policy status quo,
3 in which there is economic trade, imports and exports
4 of power, and there is -- and that is -- that power is
5 available because of the reliance and SD10 obligations
6 on B.C. Hydro.

7 And then a second scenario in which there
8 are additional exports, and just to be clear, my
9 clients support inclusion of addressing additional
10 exports in this inquiry. But it's understood that
11 that's without prejudice to whether policy decisions
12 should eventually be made as to whether such export
13 opportunities should be pursued.

14 And I'd also like to second, in a sense,
15 the clarification that -- when we talk about export
16 opportunities, they are just that, opportunities.
17 It's not a matter of need or demand for export sales.

18 Regarding Section 79 of the Act, I adopt
19 the submissions on that topic by counsel for BCTC. I
20 view it as a privative clause and of course the
21 Commission needs no reminder that it needs to be
22 careful in making findings of fact, but that
23 ultimately those findings of fact are linked to the
24 determinations that are made in the same proceeding,
25 and that is the primary focus of Section 79.

26 Regarding the concept of an integrated

1 approach by the inquiry, my clients certainly support
2 the concept. At the same time, there is a need to, in
3 a sense, examine the pieces separately. That is to
4 examine areas that are -- that have potential for
5 renewable generation and to examine areas that are
6 properly -- that are inappropriate for generation, and
7 to examine domestic demand and export opportunities.
8 The integration comes with bringing all those pieces
9 together, and one thing we do want to ensure that --
10 essentially that there's no jumping to conclusions.

11 That is, for example, it would be cause in
12 a transmission inquiry like this to jump to the
13 conclusion that renewable generation is most likely
14 going to happen near the existing transmission. And
15 we wouldn't want to see that conclusion be jumped at
16 -- jumped to, if indeed it were to turn out on
17 analysis that there is renewable generation
18 possibilities that are distant from the existing
19 transmission system, but that could be cost-effective
20 if there was a recommendation to make an addition to
21 the existing transmission system.

22 Regarding the First Nations issues, my
23 clients that the position that the Commission Panel,
24 in exercising its jurisdiction to undertake this
25 inquiry under Section 5 of the Act is acting as a
26 quasi-judicial tribunal and that informs the question

1 of whether the Commission Panel has an obligation to
2 consult and, if necessary, accommodate first national
3 regarding possible infringement of aboriginal rights
4 and total.

5 Secondly, that if and when the Commission
6 is asked to make a determination regarding the
7 adequacy or inadequacy of the efforts that have been
8 made to meet the Crown's obligation in this regard,
9 then the Commission ought to deal with its
10 jurisdiction to do that at the time, and to deal with
11 the substance of the matter at the time. Of course,
12 it appears prospectively that the Court of Appeal has
13 established that the Commission does have that
14 jurisdiction, but I endorse the sentiments of previous
15 counsel along the lines that the Commission should
16 avoid making decisions on matters that it doesn't have
17 to in this complicated area.

18 But I would also emphasize that it's
19 important that the Commission very clearly make
20 decisions where it is asked to, with a view to
21 creating a record that will be of assistance if these
22 matters are later reviewed by the courts.

23 **Proceeding Time 11:40 a.m. T32**

24 Regarding the public -- the participant
25 assistance cost award process, PACA, I would comment
26 that the process established by the Panel for an

1 interim PACA decision-making process went well. From
2 my clients' point of view, that works.

3 In terms of the proposed schedule for
4 interim PACA applications and comments by the
5 utilities, I would suggest that there should be an
6 opportunity for PACA applicants to reply to the
7 comments made by utilities regarding their individual
8 respective PACA applications. That that is a matter
9 of procedural fairness. Naturally we don't anticipate
10 that any utility would oppose our own application, but
11 in the event that that should happen, the record would
12 be -- that the procedure would be fairer if there was
13 an opportunity for the PACA applicant to reply to the
14 comments from the utility adverse to a PACA award
15 request.

16 And last but not least on PACA, the
17 Commission's order, I believe it's A-8 -- the letter,
18 rather, contemplated the possibility of an amended or
19 revised PACA guidelines for the purpose of PACA
20 funding going forward. My suggestion is that it might
21 be helpful to have input from prospective PACA
22 applicants regarding that process. Whether that's
23 formally to the Panel itself or via Commission Staff,
24 I leave open. But I think it would be useful to have
25 some exchange of sort of information about how the
26 mutual needs can be best met in that respect.

1 Subject to questions, those are my
2 comments.

3 THE CHAIRPERSON: First, Mr. Andrews, thank you for your
4 offer to come back, perhaps some suggestions regarding
5 the next steps with the PACA funding, and I think
6 Staff is -- we are considering that and we'll
7 consider, both the Panel and Staff, whether we should
8 deviate from the current process or not, so you will
9 hear from us.

10 With regard to your earlier comment where
11 you suggested that perhaps there should be an
12 opportunity for participants to reply to the comments
13 made by utilities, I don't think that's our normal
14 PACA funding practice. So I would just like to hear
15 from the utilities later on when they come back to the
16 microphone as well.

17 MR. ANDREWS: Just on that point, I agree that it is not
18 the normal practice. However, it has arisen as an
19 issue and regarding clients that I have represented,
20 and my clients now routinely ask in their budget -- in
21 their application, for an opportunity to see and
22 respond to any utility comments that are adverse in an
23 attempt to prevent any denial of fairness before it
24 has a chance to happen. So I'm essentially asking for
25 a change in the practice in that regard.

26 COMMISSIONER ANDERSON: I just have a question, maybe

1 it's clarification with respect to your comments on
2 exports that I wasn't quite clear on what I was
3 hearing there. And my question really is in context
4 of the terms of reference in section 6, which to
5 greatly paraphrase here, as I read it, states that the
6 Commission must recognize and take into account -- and
7 then jumping over -- that's under 6(b), and then over
8 to roman number (vi) amongst other things, helping
9 other jurisdictions meet their goals with respect to
10 greenhouse gas emissions et cetera, and create
11 economic opportunities in British Columbia.

12 How do you view that in a scoping sense
13 vis-à-vis export?

14 MR. ANDREWS: I think that from a scoping point of view,
15 as I read the intention, it is to examine the
16 transmission implications of exports that are in
17 addition to meeting B.C.'s self-sufficiency and with
18 insurance requirements.

19 **Proceeding Time 11:45 a.m. T33**

20 But I don't see that as a commitment on the
21 part of the government to necessarily do that, but
22 that it wants to be in a position to contemplate doing
23 that, in that particular clause, for the purpose of
24 implementing decisions that come out of B.C.'s
25 discussions with other jurisdictions regarding climate
26 change.

1 COMMISSIONER ANDERSON: Okay.

2 MR. ANDREWS: So, in other words, I interpret the terms
3 of reference in this regard to be requiring the
4 Commission to consider these possibilities, but I
5 don't interpret that as saying that the government has
6 necessarily decided how it's going to implement
7 whatever it may in the future agree to with the other
8 jurisdictions about the exchange of renewable energy.

9 COMMISSIONER ANDERSON: Thank you. That's helpful, and
10 for those of you who may be so inclined, I'd be
11 interested in any other comments as we go down and
12 then back up the list on that particular part of the
13 terms of reference. Thank you.

14 MR. ANDREWS: Thanks.

15 THE CHAIRPERSON: Thank you, Mr. Andrews.

16 MR. FULTON: Columbia Power Corporation.

17 **SUBMISSIONS BY MR. WEISBERG:**

18 MR. WEISBERG: Madam Chair, Columbia Power Corporation
19 adopts the written comments that are set out in
20 Exhibit C17-2, and in addition to that, I have only
21 two very brief further comments.

22 The first is that Columbia Power
23 Corporation would support an integrated approach
24 throughout the inquiry. That's something you spoke
25 to. Perhaps our position can be best described by
26 adopting the comments of Mr. Feldberg before me, who

1 laid it out nicely.

2 The only other comment I'd like to make now
3 arises within the comments we have already filed. It
4 was at page 4 of that document, if you wish to turn to
5 it, under "Assessment of Transmission/Transmission
6 Corridors". And in that section, we noted at page 4
7 that Alberta recently announced plans for a 14.5
8 billion dollar transmission system upgrade. That
9 number alone certainly merits attention, to see what's
10 going on there. And that was the point we were trying
11 to make in our submission.

12 We're cognizant, I guess, of a need to
13 avoid the risk of reinventing a wheel, or perhaps
14 mismatching wheels in adjacent jurisdictions. We are
15 in no way suggesting that this Commission or
16 intervenors before you need to simply copy Alberta's
17 approach. That's clearly not what we're proposing.
18 But at the same time, we believe it would be folly to
19 disregard both the available information and
20 developments that may take place in an adjacent
21 jurisdiction.

22 To address that, we suggested that perhaps
23 at some point other Alberta participants -- I'm aware,
24 I think, that there are at least a few that have
25 intervened here, but perhaps Alberta participants
26 might be invited to attend one or more of the

1 workshops. It seems to me, looking at the proposed
2 schedule, that the workshop to identify information
3 gaps, which is currently set for -- or expected for
4 early December, might be a fine time to look at that,
5 both to bring information into this inquiry, or at the
6 very minimum to make intervenors aware of what work
7 has already been done, and make sure that they're
8 aware of it for their consideration before they make
9 submissions to this panel.

10 Subject to any questions, those are my only
11 comments.

12 **Proceeding Time 11:00 a.m. T34**

13 THE CHAIRPERSON: I have one question that relates to
14 item (b) in your submission C17-2 which links to the
15 transmission line technology.

16 MR. WEISBERG: Yes.

17 THE CHAIRPERSON: There your statement is:

18 "CPC encourages the Commission to consider
19 transmission line technology as a part of
20 its deliberations."

21 Now, I recall from the staff document,
22 which was sort of trying to look at the terms of
23 reference and try to draw conclusions what's in scope
24 and what's out of scope, I recall from that document
25 that technology was out of scope.

26 So if you relate to your statement the

1 recommendation to the terms of reference, how do you
2 connect the two points, the two documents?

3 MR. WEISBERG: Thank you, Madam Chair. Clarification is
4 required there, I agree.

5 In terms of the transmission line
6 technology, CPC's position would certainly be to look
7 to BCTC as the experts on that to address it to the
8 extent that they felt appropriate. We're certainly
9 not putting it out as a primary consideration, but to
10 the extent that it informs other decisions about
11 possibly the timing or the size of a transmission
12 project, we would like BCTC, to the extent that
13 they're able to do so, to indicate that and have that
14 inform their other submissions.

15 So I think I would look at it as a -- I
16 don't want to say a secondary consideration, but
17 something in the background that perhaps informs
18 what's considered within this inquiry. So I hope that
19 helps.

20 THE CHAIRPERSON: Thank you, Mr. Weisberg.

21 COMMISSIONER HARLE: Just a quick question. In your
22 submission 2, your earlier submission, you talked
23 about electricity storage and in particular pump
24 storage.

25 MR. WEISBERG: Yes.

26 COMMISSIONER HARLE: And I'd be interested in your

1 comments in respect to how you see that potentially
2 unfolding as an efficiency tool within the overall
3 electrical system.

4 MR. WEISBERG: Thank you for your question. I don't
5 today have any additional comments to offer with
6 regard to that. I wish I could be more helpful, but I
7 just don't have those details right now.

8 COMMISSIONER HARLE: Okay.

9 MR. WEISBERG: Thank you.

10 THE CHAIRPERSON: Thank you, Mr. Weisberg.

11 MR. WEISBERG: Thank you.

12 MR. FULTON: Madam Chair, the next party who appeared
13 this morning was the Canadian Wind Energy Association.
14 I understood that they had no comments. And so that
15 then takes us to the Shishalt First Nation and the
16 other First Nations that Dr. Stadfeld represents. He
17 has advised me that he will be longer than the five
18 minutes that we've got left before lunch.

19 So I'm going to suggest that we take the
20 luncheon break now, but also ask those who haven't
21 spoken yet or who are intending to speak, if they
22 could come forward off the record and provide me with
23 the estimates they have in terms of how long they
24 think they'll be, at least for the duration of the
25 first round.

26 THE CHAIRPERSON: Thank you, Mr. Fulton. The Panel

1 accepts your recommendation. So we shall adjourn
2 until 1:00 when we'll be back in. Thank you.

3 **(PROCEEDINGS ADJOURNED AT 11:54 A.M.)**

4 **(PROCEEDINGS RESUMED AT 1:01 P.M.)**

T35

5 THE CHAIRPERSON: Please be seated.

6 Mr. Fulton.

7 MR. FULTON: Madam Chair, thank you. Before I turn the
8 mike over to Dr. Stadfeld, I wanted to report on the
9 issue of the tape from the workshop, and I've
10 canvassed with parties before we started this
11 afternoon and there is an agreement that the tape can
12 be made available for five days and then it will be
13 erased. And I will deal with counsel in the future in
14 advance of proceedings where we're not having a
15 transcript in terms of what process we're going to
16 take for dealing with tapes from webcasts.

17 So having said that then, Madam Chair, I'll
18 turn the mike over to Dr. Stadfeld.

19 THE CHAIRPERSON: Thank you very much.

20 **SUBMISSIONS BY MR. STADFELD:**

21 MR. STADFELD: Just before I begin, as a preliminary
22 matter, I neglected to introduce my co-counsel here
23 today, Brenda Gaertner, G-A-E-R-T-N-E-R.

24 THE CHAIRPERSON: Welcome.

25 MR. STADFELD: And we adopt the submissions that we made
26 on June 11th, 2009.

1 exactly the same, and I think that's a very important
2 point to be made here, and should be carried through,
3 I would suggest, is that these are clients and all
4 First Nations, of course, have very distinct concerns
5 that are relative to their territory and how both
6 generation and transmission of electricity affects
7 them now, and may affect them in the future.

8 So, the four that we represent are, first,
9 the Nlaka'pamux Nation Tribal Council. And that's --
10 they were referred to in the 19th century as the so-
11 called Thompson Indians. So their territory, just in
12 a very general sense, is -- includes the Fraser River
13 Canyon above Yale, up to Lytton, the Lower Thompson,
14 and going east out towards Merritt, B.C.

15 **Proceeding Time 1:06 p.m. T37**

16 Now, for them, this issue of transmission
17 lines is vital, because they've been one of the First
18 Nations that have been most affected by transmission
19 lines. The main high voltage lines, several of them
20 in B.C., of course, go up through the Fraser Canyon,
21 and they've lived with that for 30-40 years. And it's
22 a real important issue for them because of course the
23 heart of their territory is the river, and the lines
24 go up alongside of it. It cuts them off from it.
25 There's very little agricultural land. So when a
26 transmission line goes through, takes up part of their

1 territory, it has very significant effects and they've
2 been living with that for a long, long time.

3 Now, we also represent the Okanagan Nation
4 Alliance. Now, they're to the east, and the centre of
5 territory of course is the Okanagan Valley. And for
6 them, they're both the issue of transmission lines,
7 but of course also the issue of generation, because
8 some of the most important generation sites are on the
9 Columbia. Mica, Revelstoke, Kootenay Canal and so
10 forth. So both transmission established generation,
11 and of course IPPs. So they're all claims.

12 We also represent the Tahltan Central
13 Council. Now, the Tahltan are up in the northwest.
14 That's where their territory is. And for them, and
15 this is -- I'll come back to this as I go along. The
16 issue of new transmission lines possibility is central
17 to them, and what the effect may have on them in the
18 future. I'll come back to that, but I'll just
19 bookmark right now, as the Commission may be aware
20 there's the proposal for the Northwest Transmission
21 Line. It is specifically referred to in the terms of
22 reference. So for the Tahltan this is a central
23 issue.

24 And then we also represent the Shishalh
25 Nation, which of course on the coast north of
26 Vancouver. And the Shishalh are involved, and for

1 represent, the Nlaka'pamux and the Okanagan, were
2 appellants in the *Kwikkwetlem* case at the Court of
3 Appeal. That's how important this has been for them.
4 And they continue to be involved now at the Commission
5 as part of the reconsideration of the ILM decision.

6 So, we welcome the chance -- we expect that
7 there will be an opportunity for some free flow of
8 ideas and information and we expect, of course, that a
9 suitable process will be come to here to ensure the
10 fulfillment of the Crown's obligations and to move
11 towards what the Supreme Court of Canada has always
12 said is the central purpose of this kind of work, is
13 reconciliation. And that's what this is about. And
14 we're grateful for the chance to contribute.

15 **Proceeding Time 1:12 p.m. T39**

16 First, I want to go to the question of --
17 just in a general sense, based on the submissions, the
18 duty to consult. Now, we think and we think it's
19 clear now based on the court's decision in *Kwikkwetlem*
20 and *Carrier Sekani*, that yes, the Commission has to
21 ensure that the duty to consult and accommodate is
22 fulfilled before there are any determinations made by
23 it. If it's entrusted to make a decision which has
24 the potential to adversely impact First Nation title
25 and rights, it has to ensure that the Crown's
26 obligation is fulfilled before that determination is

1 made. We think that's clear from those two cases.

2 Now, the question comes up at times, and
3 I'll get into this a bit more as I go along, about
4 whether or not there's other forums where this can be
5 done. And we suggest that the Commission pay
6 particular attention to the Court of Appeal on this
7 issue, is that the duty to ensure the consultation and
8 accommodation is fulfilled cannot be deferred. The
9 court is clear on that. If you're engaged to decide,
10 then you must decide. There's an obligation to
11 decide, and the obligation to decide entails an
12 obligation to ensure that the Crown's constitutional
13 obligations are fulfilled. I'll come back to that a
14 bit more as I go along.

15 So from that, the issue becomes if that's
16 the case, how? How will you do this? And of course
17 we do have some suggestions on how it should be done.
18 First of all, I think it's important to highlight that
19 this is a relatively new issue for the Commission. Up
20 until the B.C. Court of Appeal decision in *Kwikwetlem*
21 and *Carrier Sekani* in February of this year, my
22 understanding is that the Commission has been
23 operating on the assumption that in fact it did not
24 have the responsibility to ensure that the Crown's
25 obligations were fulfilled. Of course that's changed.
26 Now the Commission is tasked with developing

1 procedures which will ensure that that's done. This
2 is going on, of course, here as part of the Section 5.
3 I also know that it's going on as part of the
4 Commission's reconsideration of the ILM decision.

5 So the first point on that is that you have
6 to proceed carefully. And I'll reiterate this as we
7 go along. You know, this involves the honour of the
8 Crown. It involves a solemn obligation. It involves
9 the protection of constitutional rights. And so the
10 import of this inquiry, the importance of it to our
11 clients and other First Nations, and that it's the
12 Commission's first time doing this as part of a
13 Section 5, I think we'd all be well advised to take
14 the time, proceed carefully, and try to make sure that
15 we did it right the first time.

16 So what we've suggested here is that it's
17 important to first understand that First Nations are
18 entitled to a separate process. And as we suggest in
19 our submissions, we think that there will be a
20 requirement for further investigations, work and
21 submissions on a number of issues in relation to First
22 Nations. I highlight that as one of the possible
23 issues that the Commission may want further
24 submissions on, if it thinks it's required. But our
25 clients are of the view that they are entitled to a
26 separate process, that the law is clear on that fact,

1 for this? And of course, our clients would welcome
2 the opportunity to make further submissions on that.

3 Our reading of the terms of reference is
4 that, yes, you must decide, you must make
5 determinations. That's clear. But we think the terms
6 of reference are drafted in such a way that the
7 Commission is also expected to make recommendations.
8 And so that would be important for as much clarity on
9 that as possible too. In what areas does the
10 Commission envision making recommendations? And I'll
11 pause there, because recommendations have long-term
12 impact and influence. That's what strategic-level
13 planning is about. And so those recommendations will
14 carry weight, and on their own could have effect.

15 Now, one other issue here that we'd like to
16 highlight, and we think it's very important, is that
17 we get to clarification on what the relationship will
18 be between these determinations that the Commission
19 will make, recommendations, and other government
20 decision-making and policies. Because there's
21 obviously a connection here. We think, to begin with,
22 it's not clear what that connection is. And I'll take
23 you to one example of that right now. I'll take you
24 to -- go to the Act. Section 5(7). I think this will
25 come up a bit, both in my own submissions and as we go
26 along. But of course (7) says that:

1 address and in what order.

2 I'll begin with this question of B.C.
3 Hydro's consultation process, and I'll go from that to
4 the issue of whether the Commission itself has a duty
5 to consult and accommodate. I'll go from that to how
6 do you fulfill the duty to consult, and then I'll come
7 back to the scope itself of the duty to consult. And
8 an issue that we didn't specifically raise in our
9 submissions but has come up from other submissions and
10 referred to by B.C. Hydro and BCTC, and that's this
11 question of existing historical infringements.

12 So first the question of B.C. Hydro's
13 process, and if I can take the Commission to Exhibit
14 B2-4, which is the letter from government to B.C.
15 Hydro on March 25th, 2009. And I think this is very
16 instructive of what B.C. Hydro is tasked with in this
17 process, and most importantly, what it's not doing.
18 So I'd like to start with the last paragraph on that
19 letter, where I believe it's Assistant Deputy Minister
20 Reimer states what the government wants Hydro to do.

21 COMMISSIONER ANDERSON: Sorry.

22 MR. STADFELD: Sorry?

23 COMMISSIONER ANDERSON: This is the letter from --

24 MR. STADFELD: This is the March 25th, 2009.

25 COMMISSIONER ANDERSON: Okay, and which paragraph was it?

26 MR. STADFELD: I'm on the last paragraph, the last

1 sentence, which begins with "In order". That's on the
2 bottom of the first page. Sorry. Are we all there?

3 I think I said last paragraph and that of
4 course you would assume would be the last page, but
5 it's the bottom of the first page.

6 COMMISSIONER ANDERSON: Bottom of the first page --

7 MR. STADFELD: Yeah.

8 COMMISSIONER ANDERSON: -- of the letter addressed to --

9 MR. STADFELD: Bob Elton.

10 COMMISSIONER ANDERSON: Yes. I've got, "Under the terms
11 of reference, the Minister has directed BCUC..."

12 MR. STADFELD: Right.

13 COMMISSIONER ANDERSON: Okay.

14 MR. STADFELD: Yeah. So, and then just after that, it
15 begins:

16 "In order to inform the Minister's decision
17 whether to order a regulation under Section
18 5(7) of the *UC Act*, the Minister will
19 require..."

20 and then goes on what it's asking, what he's asking
21 B.C. Hydro to do. And I think this is a very
22 important point.

23 B.C. Hydro is involved, has been directed
24 by government to do certain consultations in relation
25 to an anticipated decision by the Minister under
26 Section 5(7). So that's the one that I took you to to

1 begin with, where cannot vary, rescinded. So it's not
2 consultation under 5(4), which is what you've been
3 tasked to do. You've been tasked to make
4 determinations under 5(4). So I think it's clear
5 right there, this is about possible future decisions
6 by the Minister, not by the Commission, under 5(7).

7 And then if you turn the page, the end of
8 that paragraph begins -- right at the end it starts,
9 "I ask that B.C. Hydro ..."

10 **Proceeding Time 1:27 p.m. T42**

11 So that's the last half of the last sentence at the
12 top of page 2.

13 "So I ask that B.C. Hydro undertake
14 consultation with First Nations on the
15 evidence and submissions presented to the
16 BCUC by BCTC and B.C. Hydro."

17 So it's on that. It's on their
18 submissions. It's not on the inquiry as a whole, and
19 if there was any doubt about that, if you turn to the
20 last page, page 3, again, the top paragraph, the
21 second-last sentence starts:

22 "The MEMPR is not requesting B.C. Hydro to
23 undertake consultation on the impact of the
24 BCUC's determination at this time."

25 So it's clear that's not what's being asked to do.

26 Now, on this point, I think it's important,

1 though, that our clients recognize B.C. Hydro has an
2 important role to play in this, and they look forward
3 to collaborating with B.C. Hydro on information
4 gathering and so forth. That's an important role.
5 But it's not going to fulfill the Crown's duty in this
6 case to ensure the consultation and accommodation are
7 reached in relation to Section 5(4).

8 So, from that we go to, okay, if Hydro's
9 not going to be doing it, who is? And what you've
10 heard from B.C. Hydro, BCTC and some other parties is
11 that you can't, because you're a quasi-judicial panel.
12 And so, going to the *Quebec Hydro* case, they say it's
13 clear here that the quasi-judicial tribunal doesn't
14 have the duty itself to consult and accommodate. We
15 disagree with that. We disagree with that as it
16 applies to Section 5, and I'll explain why.

17 And the important thing here is to
18 understand, first of all, the *Quebec Hydro* case. That
19 was decided in 1994. That was 10 years before *Haida*
20 *Nation*. And that was on the issue of the fiduciary
21 duty. That's what that was about, to begin with. Did
22 the NEB have the fiduciary duty to consult and
23 accommodate? The court there decided first of all --
24 and this came up in *Kwikwetlem* and *Carrier Sekani*.
25 It's obvious based on the *Quebec Hydro* decision that
26 the panel, the tribunal, must ensure that Section 35

1 obligations are fulfilled. So that's clear. But the
2 court went on to say, but in this situation, when it's
3 operating as a quasi-judicial, it can't get involved
4 in those things. It can't do the consultation and
5 accommodation itself.

6 And our clients, the NNTC and the ONA,
7 agreed with that as part of a Section 45, Certificate
8 of Public Convenience and Necessity inquiry. As part
9 of that, yes, that's correct, because the panel there
10 is operating in a quasi-judicial fashion. There is an
11 applicant, there is a proponent. They come forward
12 with a proposal. Other parties can intervene and they
13 may disagree with that proposal. The panel then under
14 Section 45 has to adjudicate. That's what it's doing
15 there. It's adjudicating on an application from a
16 proponent.

17 **Proceeding Time 1:32 p.m. T43**

18 Now, that's very different from what
19 happens under Section 5. And I'll take you to, if I
20 can find it, just to Section 5. I think it's
21 important first to refer to 5(3) that says the
22 Commission may carry out a function or perform a duty
23 delegated to it under an enactment of B.C. So, you
24 know, there's the possibility there that there is
25 delegation. And then we go to sub (4), which is the
26 most important point here. It says that "the

1 Commission, in accordance with subsection (5), must
2 conduct an inquiry to make determinations." So you're
3 doing something completely different here under
4 Section 5. You're conducting an inquiry. You're not
5 operating under Section 45, and similarly you're not
6 operating under Section 71, which is the long-term
7 energy purchase, and that was the issue in *Carrier*
8 *Sekani*. Those are you're operating quasi-judicially
9 in adjudicative fashion.

10 Here under Section 5, you're conducting an
11 inquiry. So you've been tasked by the Crown to decide
12 on policy. They've sent this to you to decide on
13 this. You've decided on wide-ranging, as my friend
14 from BCTC phrased it during his oral submissions --
15 just give me a sec, I'll go back and find it here.
16 You're undertaking "a long-term planning exercise".
17 So that's very different from making a determination
18 on a CPCN, very different from making a Section 71
19 decision on a long-term energy purchase. You're doing
20 strategic high-level planning. That's what the
21 government has asked you to do, and it has
22 specifically asked you to make determinations based on
23 that. By making those you have to ensure that the
24 duty is fulfilled.

25 Now, on the point of how applicable is
26 *Quebec Hydro* to this situation, I think it's important

1 to look at what the court said in *Haida Nation* ten
2 years after *Quebec Hydro*. So if I can take you to
3 paragraph 54 of -- I don't know if you have all the
4 case law. Some of my friends have included these.
5 I'll refer to it. If need be, I can provide you with
6 the full decision after this, but just for your own
7 notes right now, at paragraph 54 of *Haida* the court,
8 about halfway or so down the paragraph, says:

9 "As discussed above, while the Crown's
10 fiduciary obligations and its duty to
11 consult and accommodate share roots in the
12 principle that the Crown's honour is engaged
13 in its relationship with aboriginal peoples,
14 the duty to consult is distinct from the
15 fiduciary duty that is owed in relation to
16 particular cognizable aboriginal interest."

17 So this is ten years after *Quebec Hydro*,
18 which came out of a question of fiduciary duty. The
19 court here is saying, "Don't conflate them." A
20 fiduciary duty gives rise to different obligations
21 than the duty to consult, though of course they come
22 from the same roots, so they're distinguishable on
23 that.

24 **Proceeding Time 1:37 p.m. T44**

25 And then if I could also take you -- I'll
26 take you to paragraph 65 of the *Kwikwetlam* decision,

1 because it picks up on this point. And right at the
2 top of 65, of course the court here was dealing with a
3 Section 45 and a CPCN. It says, the court said:

4 "Where a decision-maker is called upon to
5 approve a Crown activity ..."

6 I want to stop right there. That's what was occurring
7 in both the *Kwikwetlam* case under Section 45 and in
8 *Carrier Sekani* under Section 71. The Commission here
9 was called on to approve a Crown activity. But that's
10 not what's occurring here under Section 5. Here, as I
11 point out, the Commission has deleted the task to
12 conduct an inquiry.

13 Now, move on to my next point, which is
14 about if the task is on the Commission to ensure that
15 it's fulfilled, what should it do? It can't -- it's
16 not being done by B.C. Hydro. We say that, in fact,
17 it would be inappropriate and couldn't be fulfilled by
18 Hydro because they're not making the decision.
19 They've got an interest, of course. They're in the
20 Commission's decisions. They're appearing here before
21 you, just like so many other interested parties are.
22 And so, it would be inappropriate for it to be tasked
23 solely to B.C. Hydro and it's not been done, and it's
24 the Commission that is going to be making this
25 decision.

26 So, I think it's important to have a bit of

1 an idea of what it means to consult, then. And it's
2 not as has been identified in the staff paper, that
3 it's a good opportunity to share information and find
4 out what the First Nations concerns are. In our
5 respectful submission, that would fall far short of
6 what the Commission's constitutional obligations are
7 in this case.

8 So at paragraph 62 of *Kwikwetlem*, the Court
9 of Appeal recently goes to this issue, and I think
10 offers some important direction on this. At the very
11 top of paragraph 62, the court says:

12 "The Crown's obligation to First Nations
13 requires interactive consultation ..."

14 I want to pause there. "Interactive consultation".
15 It's not simply receiving information.

16 "... and where necessary, accommodation at
17 every stage of a Crown activity that has the
18 potential to affect their aboriginal
19 interest."

20 And that's a very important point. It's at every
21 stage as we go along -- has to ensure there is
22 consultation. It can't be put off to the end, can't
23 be deferred to someone else.

24 And the Supreme Court of Canada, I think,
25 had some useful indicia of what consultation looks
26 like. And that can be found at paragraph 44 of the

1 court's reasons. And just to pause here for a sec,
2 what will be required is, there will have to be a
3 decision on where on the spectrum of consultation does
4 this fall? And we would appreciate an opportunity to
5 make further submissions on that in the future, but
6 this is a central issue. Right here at paragraph 44,
7 going to the section where the court says, "where
8 there's deep consultation". And our position on that
9 is that that would be the appropriate way for the
10 Commission Panel to proceed. It is on the basis of
11 deep consultation.

12 **Proceeding Time 1:42 p.m. T45**

13 So the court says about halfway through
14 that paragraph:

15 "While precise requirements will vary with
16 the circumstances, the consultation required
17 at this stage may entail the opportunity to
18 make submissions for consideration, formal
19 participation in the decision-making
20 process, and written reasons to show that
21 aboriginal concerns were considered and to
22 reveal the impact they had on the decision."

23 I can just advise the Panel, that's been
24 picked up on in several cases since the court decided
25 this in 2004, and so the courts below, of course, have
26 been adding some flesh to the bones on that. What

1 does deep consultation mean? What would have to be
2 done in this particular situation? And I think it
3 might be helpful for the Panel to seek further
4 submissions on that. What's the outline, what's the
5 road map of what you might be held to down the road?

6 And then finally on that issue, of course,
7 the Court of Appeal in *Carrier Sekani* had more to say
8 on that issue too. And here on that paragraph 42 of
9 *Carrier Sekani*, about halfway down the paragraph, the
10 sentence begins, "But there". And the court here, of
11 course, this was a Section 71 and the court says:

12 "But there is no other forum more
13 appropriate to decide consultations in a
14 timely and effective manner."

15 And this is the court speaking directly to
16 the Commission on this, and these are central
17 principles in consultation. It has to be timely and
18 it has to be effective. Can't be "We'll get to that
19 at some time and we think this will do." Has to be
20 timely and effective, and here in *Carrier Sekani* the
21 court was directing the Commission that this is what
22 the requirements are.

23 And then just to carry on, the court says:
24 "As I will develop later, the rationale for
25 the duty to consult explained in *Haida*
26 discourages resort to the ordinary courts

1 for injunctive relief, and encourages less
2 contentious measures while consultation is
3 pursued."

4 So this is an important point because in
5 some of the submissions you've heard, I think from
6 BCTC and B.C. Hydro, there's the possibility, "well
7 there's other forums for this." You can resolve some
8 of these issues elsewhere. Well, that's not what the
9 Court of Appeal said, and with respect, we think that
10 the Panel here would be getting off on the wrong foot
11 if that's how it approached it. The responsibility is
12 here. It would be inappropriate to conclude that
13 First Nations can go somewhere else to get these
14 things resolved, if it be in the courts or treaty or
15 somewhere else.

16 So that's on what consultation should be.
17 Of course we think it's important that there's further
18 submissions on this, on what the scope of the duty to
19 consult will be. And I'll just pause on that point.
20 There was a very important decision from the B.C.
21 Supreme Court last summer. The colloquial name for
22 the case is *Gitinow*, but I'll give you the citation
23 right now. It's *Wil'litswx v. B.C. Minister of*
24 *Forests*, (2008) BCSC 1139. Now, that was a decision
25 rendered by Madam Justice Neilson, who subsequent to
26 that was promoted to the B.C. Court of Appeal.

Proceeding Time 1:47 p.m. T46

1
2 And in that case, the court went into what's required
3 to ensure that consultation takes place. It
4 identified the steps that are required. One of the
5 important things the court identified there was, there
6 has to be a preliminary assessment of the scope of the
7 duty to consult and accommodate. And that was the
8 error that the decision-maker made. The fundamental
9 error, not the only one, but fundamentally that didn't
10 occur. And the court said, without a doubt, that has
11 to happen first. You do a preliminary assessment of
12 the scope of the duty to consult and accommodate. And
13 then from that, you set out what the process will be
14 based on that. If you don't do it first, you're very
15 likely going to get off on the wrong foot.

16 So, we would submit that that's one of the
17 first things that this panel would have to do. It
18 would have to not just scope out what it must
19 determine and what it may make recommendations on, but
20 it also at the same time have to scope out based on
21 that what's the scope of the duty to consult here?
22 And then it can set up a process to ensure that it's
23 done properly.

24 So, I'll just in passing, I'll make some
25 remarks to this final issue here, which is about
26 historical infringements. As I say, we didn't raise

1 it ourselves, but it would come up from our clients'
2 view as part of the scoping exercise on the scope of
3 the duty to consult and accommodate. And so, it would
4 be premature for this Panel to decide now, at this
5 juncture, that it's out of scope. We submit that that
6 will come down the road. It should come soon, as part
7 of the Panel's inquiry into what's the scope of the
8 duty to consult.

9 But on that point, because it's been raised
10 by a few of the parties here, I think it would be
11 instructive to take the court to a few of the comments
12 in the Court of Appeal's decisions in *Kwikwetlem* and
13 *Carrier Sekani* on this issue. Because I think they're
14 instructive for how the Panel might find that it needs
15 to proceed on this. So the first would be *Carrier*
16 *Sekani* at paragraph 13.

17 And here, of course, this is an EPA under
18 Section 71, Crown agent is involved, it's going to be
19 purchasing power on a long-term basis from a third
20 party -- from Alcan. Based on generation through the
21 Kemano development. And in issue there was, the Crown
22 would be capitalizing on this underlying infringement.
23 I think at one point it's referred to as a "massive
24 underlying infringement". And the court at the end of
25 paragraph 13 here says:

26 "The fact that B.C. Hydro as a Crown

1 corporation was taking commercial advantage
2 of an assumed infringement on a massive
3 scale without consultation, in my view, this
4 is sufficient to put the Commission on
5 inquiry whether the honour of the Crown was
6 upheld in making the EPA."

7 So, the court there, I would suggest, is pointing to
8 this as a relevant central issue that the Commission
9 would have to inquire into.

10 **Proceeding Time 1:52 p.m. T47**

11 Similarly, at paragraph 62, halfway down,
12 the court says:

13 "I refer to the assumed facts, namely, that
14 there is an infringement without
15 consultation and the unquestioned fact that
16 B.C. Hydro, a Crown agent, takes advantage
17 of the power produced by that infringement
18 by signing the EPA. In my opinion, this is
19 enough to clear any reasonable hurdle."

20 And then goes on to cite the court -- the Supreme
21 Court of Canada in *Mikisew*, about how that's enough to
22 trigger.

23 So, it was a central issue, not decided by
24 the court, but I think the court made some very useful
25 comments for it, and that it would be an error here to
26 just dismiss this out of hand.

1 On the final point that I'd like to make on
2 that is to the -- because this is particularly
3 relevant here is the issue came up also in the
4 *Kwikwetlem* case. And that, of course, was to deal
5 with a transmission line, a fact issue central to this
6 inquiry. An existing line, a proposed new line --
7 this is the Interior to the Lower Mainland, from at
8 approximately Coquitlam up into the interior at
9 Merritt, the application is to build a third line.
10 And about 70 percent is on the existing right-of-way
11 for the existing lines.

12 And so here, at paragraph 67, about halfway
13 down the paragraph, the court refers to this. It
14 says:

15 "The decision to certify a new line as
16 necessary in the public interest has the
17 potential to profoundly affect the
18 appellant's aboriginal interest. Like the
19 existing line, installed without consent or
20 consultation, the new line will pass over
21 land to which the appellants claim
22 stewardship rights and aboriginal title."

23 So there's an intertwining there of the new line and
24 the old line. That wasn't the central issue before
25 the court, but it was a fact that the court was aware
26 of, and the possibility that this interconnection may

1 be an important issue for the Commission. So I think
2 both those cases stand for -- you can't just dismiss
3 out of hand that there will be no need to inquire into
4 historical infringements. I think that will have to
5 be the subject of further submissions.

6 So, you'll be glad to know that I'm into
7 the final parts of my submission on this point.
8 You've asked a few questions, I'll do my best to
9 answer them at this time.

10 Whether or not there should be an
11 integrated approach with generation and transmission,
12 our clients' position on that is yes. There
13 definitely should be. They can't be
14 compartmentalized. They're part of interrelated
15 effects that will affect their territory, and their
16 title and rights.

17 There's been discussion of, is this simply
18 a macro-level inquiry? Or is there some point where
19 it touches the ground? And what I would like to bring
20 to the Commission's attention, as I said in my opening
21 remarks, there is one specific line or proposed line
22 that is mentioned in the terms of reference, and so
23 that's on page 5. It's at Section 6(8).

24 **Proceeding Time 1:56 p.m. T48**

25 So that says the government has committed
26 to transmission capacity north of Skeena, extending at

1 least to Bob Quinn Lake. Now, this is what's referred
2 to as the proposed Northwest Transmission Line. So
3 it's specifically mentioned here and it says at the
4 beginning of that 6(b), the Commission must recognize
5 and take account of that. So I would say at least in
6 this situation, yes, there is a specific line, and
7 this line of course, as I've said, has the potential
8 to affect the Tohltans' title and rights.

9 Now, this question of zones, the carving up
10 the province into zones. Our submission on that is
11 that there would have to be some sensitivity, we
12 suggest, and we think it's an opportunity for First
13 Nations to present further information to the
14 Commission on how this would relate to their own
15 traditional territories.

16 As a preliminary matter, we think there
17 would be importance in understanding where those
18 boundaries are, and then how those zones would relate
19 and perhaps how the zones should be adjusted as best
20 as possible to take into account the rough
21 geographical fact of existing First Nations with
22 existing territories in B.C.

23 Now, this is a point in reply to some of
24 the comments by my friends earlier. It goes back to
25 the point of how is the Commission going to proceed
26 here? How is it going to do this? And we welcome the

1 chance to give you our two bits on how we think you
2 should proceed, and we think it's useful to see if
3 there's a way to mesh the terms of reference that
4 you've received with the case law on the duty to
5 consult. So if we -- I'm not sure I have the right --
6 yes, if we go to the terms of reference at Section
7 10(a), my first point on this and I believe it was my
8 friend from BCTC, though it could have been B.C. Hydro
9 referred to this before. This is of course where the
10 terms of reference says that the Commission must
11 invite and consider submissions from and so forth, and
12 it includes First Nations.

13 Well, that's fine, but that on its own
14 wouldn't be enough to discharge the Crown's duty to
15 consult. That as I've referred to the case law, it's
16 more than just inviting submissions and hearing
17 concerns. So that's fine but that's not enough, and
18 that on its own we would say cannot limit the
19 requirement to consult and accommodate when it's the
20 fulfillment of a constitutional obligation.

21 But just to go down here to Section (c),
22 and we think there could be some possibility for the
23 Commission to consider further how it may be able to
24 rely on Section (c) to resolve some of these very
25 important but of course complex issues. So Section
26 (c) refers to the Commission may make use of

1 procedures to resolve specific issues within these
2 terms of reference, including as it considers
3 appropriate, workshops, mediation, dispute resolution
4 and so forth. So there's opportunity there for the
5 Commission to look to what some different procedures
6 are.

7 And I think what's interesting on that
8 point is it matches well with what the Supreme Court
9 of Canada said in *Haida*.

10 **Proceeding Time 2:01 p.m. T49**

11 We go to paragraph 44 in *Haida*, and this is
12 the same one that I pointed to before, where the court
13 was explaining just the rough nature of what it would
14 be required to do to consult. At the very end of that
15 paragraph, the court went on to say:

16 "The government may wish to adopt dispute
17 resolution procedures like mediations or
18 administrative regimes with impartial
19 decision-makers in complex or difficult
20 cases."

21 So that, there seems to be some correlation there
22 between that, what the court said, and what is in your
23 terms of reference. So there's possibilities. If
24 there's a concern that how far the Commission can go,
25 these can be resolved, we suggest, in various ways.

26 Almost done. I want to touch on this point

1 of areas inappropriate for development. And our
2 clients' position on that is, "Yes, definitely, that's
3 before the Commission. That's a very important issue.
4 We look forward to making submissions on it." It's
5 important because it goes to the issue of
6 infringement, and that's where -- that's the central
7 aspect that gives rise to the duty to consult, is the
8 potential action which may lead to an infringement of
9 their title and rights. And so, you would have to
10 look at no-go zones -- the possibility of no-go zones.
11 Both for generation and just as importantly for
12 transmission. They can't be separated out, we submit.
13 There's no logic in separating them.

14 And subject to any questions that you might
15 have, those are our submissions at this time.

16 COMMISSIONER HARLE: I welcome any advice or insights or
17 guidance that you might offer on some practical
18 issues, as I see it. We've got a reporting deadline a
19 year from now, essentially. I think you've talked in
20 terms of a potential parallel process for dealing with
21 First Nations' issues, in addition to some of the
22 other assessment issues around generation,
23 transmission, blah blah blah.

24 You've also talked in terms -- or we've
25 heard this morning of limited capacity for engagement
26 of some First Nations.

1 So I'd welcome any practical insights that
2 you might offer in terms of running a parallel
3 process, engaging First Nations and ensuring there's
4 adequate capacity, and still reporting in terms of
5 meeting our reporting deadline a year from now.

6 MR. STADFELD: Thanks for that, because that also goes
7 back to one point that I wanted to make, and I've
8 missed, so, yes, I do welcome that chance. And ought
9 to begin first on the point of capacity funding. We
10 think this is central, and the courts have gone to
11 this before, is that if there's no capacity there for
12 First Nations to reasonably engage and not just with
13 receiving information but being involved in the
14 development of their own evidence and information, and
15 having the experts there to understand and evaluate
16 what all the potential impacts are. From our
17 perspective, that's crucial. It has to be there,
18 because there has to be an informed decision that the
19 First Nations can make themselves.

20 So, we take the position that serious
21 thought has to be taken to ensure that there's
22 adequate capacity funding for the First Nations, and
23 that it's to ensure, not just the appearance of legal
24 counsel such as myself before you, but it's the
25 capacity of the First Nations internally to develop
26 their own positions and understandings of what the

1 effects might be.

2 Now, on that point, I could be corrected on
3 this, but my understanding so far is that the
4 Commission intends to proceed in the capacity funding
5 path similar to what's done under, say, a CPCN
6 application.

7 **Proceeding Time 2:07 p.m. T50**

8 The potential concern we'd like to
9 highlight there now is the idea that the First Nations
10 would be submitting a budget, and that budget would be
11 sent out for review by BCTC and B.C. Hydro and Fortis,
12 and for their opportunity to make comments on that.
13 We question whether that's appropriate in a Section 5
14 inquiry, when it's the Commission itself that has to
15 ensure that the duty is fulfilled. It's a public
16 inquiry. The Commission is not operating as a court.
17 It's operating as an inquiry.

18 So that we take the position that there has
19 to be adequate capacity funding there, and that the
20 Commission has a responsibility to ensure that it's
21 provided to the First Nations and that it should not
22 be, at least at this time, we say, subject to
23 questioning or changes, suggested changes by some of
24 the participating parties that have an interest in the
25 outcome of the decision.

26 Now, on the issue of timing, our position

1 on that is that this can be done. You have the
2 parties before you that are engaged on this. I can
3 say from our clients, the -- they've been engaged in
4 these issues for decades. They come with a wealth of
5 knowledge, both about what the proper procedure would
6 look like and what their expectations are, and how to
7 ensure that it's done in a timely fashion.

8 So I would suggest that there's an
9 opportunity for the Commission to receive those
10 submissions. There's of course good faith intentions
11 on our clients and I would expect all First Nations,
12 to proceed as timely as possible, and I'm sure the
13 same is from BCTC and B.C. Hydro. So, and so that's
14 what our submission is, that there is the possibility
15 to get it done. And most importantly, if there is a
16 requirement for adjustment of schedules, we say this
17 issue of consultation and accommodation is so pivotal,
18 is so crucial, you're being asked to decide a long-
19 term plan for 30 years. We don't think it's
20 unreasonable to say we need an extra 30 days.

21 Thank you.

22 COMMISSIONER ANDERSON: I wonder if I could refer you
23 back to Exhibit B2-4, and that's the letter which
24 Hydro submitted from the province.

25 MR. STADFELD: Yeah.

26 COMMISSIONER ANDERSON: And it includes at the top of the

1 second page, second paragraph down, a comment that "As
2 part of B.C. Hydro undertaking responsibility for
3 consultation", et cetera, et cetera, --

4 MR. STADFELD: Yeah.

5 COMMISSIONER ANDERSON: It lays out some requirements as
6 part of --

7 MR. STADFELD: Sure.

8 COMMISSIONER ANDERSON: And you referred earlier to a
9 couple of other paragraphs. And my question is, is
10 this. Are you suggesting that B.C. Hydro was somehow
11 constrained in the scope of its consultation because
12 of this letter? I see it as enabling, but maybe you
13 can help me with it.

14 MR. STADFELD: Oh, well, I see this as the government
15 giving specific directions to B.C. Hydro on what it
16 wants Hydro to do.

17 COMMISSIONER ANDERSON: Consult.

18 MR. STADFELD: Yeah. To consult, but consult
19 specifically for certain purposes. That it's to
20 consult because -- and as I say at the bottom of page
21 2, "in order to inform the Minister's decision". And
22 that goes back to this important issue of Section
23 5(7), because I think --

24 COMMISSIONER ANDERSON: Yeah, I understand that.

25 MR. STADFELD: Yeah.

26 COMMISSIONER ANDERSON: I just didn't see that being

1 limiting, particularly. When you go on to the rest of
2 it, saying as part of the responsibility --

3 MR. STADFELD: Right.

4 COMMISSIONER ANDERSON: -- which I think in my view, for
5 whatever it's worth, maybe gives them a little more
6 scope.

7 MR. STADFELD: Right. There's a possibility that Hydro
8 might do more than that, but the obligation to ensure
9 the consultation rests here, and importantly on this
10 point there's also an expectation that the First
11 Nation will have access to the decision maker. That
12 you're the decision-makers. The panel. Not B.C.
13 Hydro.

14 **Proceeding Time 2:12 p.m. T51**

15 B.C. Hydro, as with so many of these other
16 parties appearing before you, or making submissions,
17 have advice to give, have important information. But
18 they're -- they've not made a decision. They won't be
19 making one. That was a real difference between this
20 Section 5 and, say, the *Kwikkwetlem* case under Section
21 45. Because there Hydro, as an agent, had decided
22 that there is a requirement to meet expected demand,
23 load demand in the Lower Mainland. And once that was
24 done, then that triggered the duty to consult, and
25 Hydro would have to go out and consult, and they did
26 or they didn't adequately. And then what the court

1 said, "Now, the Commission, operating as a court,
2 operating in a quasi-judicial fashion, will decide if
3 they've made the right choice or not."

4 COMMISSIONER ANDERSON: Fair enough.

5 MR. STADFELD: And that's not the situation here.

6 And then just as a final point, we think it
7 would be difficult for First Nations to be going off
8 in two paths. Do we talk to Hydro? Do we talk to the
9 Commission about this? You know, who's going to be
10 making this decision? It's the Commission. But of
11 course that doesn't preclude an important avenue and
12 collaborative effort with Hydro.

13 COMMISSIONER ANDERSON: Thank you.

14 THE CHAIRPERSON: Okay, thank you, Dr. Stadfeld.

15 MR. STADFELD: Am I good? Thank you.

16 THE CHAIRPERSON: Thank you.

17 MR. FULTON: Madam Chair, I am going to ask that we
18 change the order of submissions, with one exception,
19 at this point, and that is Mr. McDade has a medical
20 appointment this afternoon, and he needs to be there
21 at two -- at 3:15. So he's asked if he could follow
22 Dr. Stadfeld, and I've said that is fine with me,
23 subject to your approval, Madam Chair. And Mr.
24 McDade, as you know, represents the Squamish Nation,
25 the Carrier Sekani Tribal Council, and the third First
26 Nation that he asked to intervene of behalf of earlier

1 today.

2 So, if Mr. McDade might make his
3 submissions at this point?

4 THE CHAIRPERSON: Please proceed.

5 **SUBMISSIONS BY MR. McDADE:**

6 MR. McDADE: Thank you, Madam Chair and Mr.
7 Commissioners. First, let me express my clients'
8 appreciation for you hearing us at all on such short
9 notice, and again my personal appreciation that you're
10 hearing me out of order.

11 I'll be quite brief. It is the
12 consultation matter that brings my clients before you,
13 and upon which I want to be heard. I won't repeat
14 very much of what Mr. Stadfeld had to say.

15 The constitutional obligation to deal with
16 this question of First Nations consultation is, as you
17 know, upstream of the statute. So it's not easy to
18 look to your statute -- unlike almost everything else
19 you do, you can't really look to your statute for the
20 four corners of what your obligations are. You have a
21 constitutional obligation that's -- that exceeds that.

22 I do want to say -- my first point is to
23 agree with the submissions of Dr. Stadfeld to say
24 under Section 5 it is my view that you are undertaking
25 a different inquiry than you would in your quasi-
26 judicial role as an impartial decision-maker where you

1 Court of Appeal is saying in that paragraph, is that
2 question wasn't before them. In standard appellate
3 law, that's sometimes called *obiter dicta*.

4 But here, what the court is really saying
5 is, this wasn't a question upon which they
6 deliberated. It wasn't the subject of argument before
7 them. It was simply accepted by all parties,
8 including the Carrier Sekani at that point, that they
9 didn't need to go that far in the circumstances of
10 that case. But here, in my submission, the Commission
11 does have, as a policymaker making determinations, the
12 direct duty to consult and consider accommodation if
13 necessary.

14 The next point I want to make is the
15 Minister's letter, Exhibit B2-4, is, in my submission,
16 to answer the Commission's question, a very directive
17 and limiting document in this sense. It directs B.C.
18 Hydro to consult in order to put forward their
19 submissions and their evidence. That's fine as far as
20 it goes. That's a good idea presumably, that you'd
21 have something of that, but it's quite clear that it
22 is specifically clear that they are not being directed
23 to undertake consultation on the impacts of your
24 determination.

25 Well, when one looks at the law of
26 consultation, that's a kind of a bizarre dilemma,

1 because the point of consultation is supposed to be
2 about the impacts. If you're consulting not about
3 impacts, then what are you doing? You're simply
4 gathering information. That is the first step in
5 consultation. It's half -- it's the box half full.

6 Similarly, it's quite clear here that B.C.
7 Hydro is not the decision maker. In the *Kwikwetlem*
8 case, if you look at the whole of the case, what that
9 turned on -- and the same in *Carrier Sekani*, is the
10 Court of Appeal said there, B.C. Hydro as a Crown
11 agent was the one making the determination to proceed
12 either with the electricity purchase agreement in the
13 Alcan situation, or with the ILM option in the
14 Kwikwetlem's situation. So that they had made the
15 decision and it was them that was required to consult,
16 and your job or the Commission's job in that situation
17 is appropriately to assess whether they did that
18 adequately.

19 But here, they are not making the decision.
20 You are. They can't consult about the decision. They
21 don't have the power of decision.

22 So what is there left to consult on? If
23 you can't consult on the impacts and you can't consult
24 on the decision, well, that's not consultation at all.
25 It's simply cooperation or it's a sloppy use of the
26 term.

1 -- consultation is a means to an end. The end is the
2 reconciliation of First Nations' objectives with the
3 Crown's objectives. In a higher-level policy approach
4 that you're -- like you're taking, I think that should
5 be your focus. Finding a way to reconcile First
6 Nations' objectives with the Crown's objectives.

7 And that should mean looking at First
8 Nations' objectives in an equal way, and including
9 them in the decision-making process in some fashion.
10 That's not the way this is structured to happen. What
11 -- the way it's structured to happen is they are
12 stakeholders who make submissions and they get to have
13 their words heard. That won't lead to reconciliation.

14 The test -- the biggest problem with
15 consultation law, I've said in many occasions, is that
16 people tend to take the duty of consultation and
17 accommodation and conflate it down to a duty of
18 consultation, and then forget that that's an
19 interactive process and turn it into an information-
20 gathering process. The duty of accommodation, as Dr.
21 Stadfeld read to you from *Haida*, is about integrating
22 the objectives into the decision-making process. It
23 is about formal participation in the decision-making
24 process.

25 So, consultation that can't lead to that is
26 useless. It is about another phrase that's been used

1 by our Court of Appeal is, "You need to be able to
2 show that you've demonstrably integrated First
3 Nations' concerns into your ultimate plan of action.
4 It's the end result that we're have, that it be a mix
5 of the two objectives. But how can you get there if
6 you don't have a process for you to interact with
7 First Nations, because you've allocated that to B.C.
8 Hydro?

9 Now, my friend for BCTC says it's too early
10 to decide the ultimate question of consultation. I
11 know to paraphrase that. To a certain extent I agree
12 with him, that you don't want to artificially limit
13 your approach to consultation at this stage of the
14 proceedings. But on the other hand, if you don't
15 decide this question appropriately, about whether this
16 is simply a duty to hear, as the staff said in their
17 paper, the choice between the duty to consult and
18 accommodate as a direct duty, versus the duty to
19 receive submissions or the duty to assess consultation
20 rather than the duty to consult. Those are the -- if
21 you don't get that right at this early stage, you are
22 going to end up in a path at the end where there is no
23 way that you can deal with that. You have to have
24 established a process, in my submission, where First
25 Nations' participation is more demonstrably integrated
26 into this matter than your current structure.

1 the Alcan matter complaining about the fact that there
2 has been this massive infringement on the Nechako
3 River that has never been considered by this
4 Commission in any fashion, and yet it goes on. Those
5 transactional costs are not being considered.

6 My client the Lakwolams, which is from the
7 northwest, which has the NaiKun power project within
8 it, half a dozen other IPPs and wind power projects
9 which is part of the Northwest Transmission Line
10 corridor, all of those other IPPs have potential
11 transmission lines associated with it. It's got to
12 deal with those issues in a more futuristic-looking
13 place. Each of those nations has a very different set
14 of objectives.

15 So to deal with First Nations, in my
16 submission, you're going to have to look at this
17 regionally and you're going to find different
18 approaches in different places. First Nations raise
19 different issues than others.

20 The IPP situation, there's some pros and
21 cons for First Nations, but it's a very different
22 approach than dealing with it from the demand -- the
23 people who are going to be using the power. Ownership
24 of transmission lines. Many people don't know that
25 the Squamish Nation, for instance, has adopted a
26 formal policy by their legislative process, where any

1 future transmission lines from IPPs in their territory
2 will be owned by them. Now, how does that affect --
3 if other First Nations adopt that approach, how is
4 that going to affect the ultimate future of
5 transmission lines?

6 Revenue sharing from the transmission going
7 through their territory, revenue sharing from exports,
8 these are factors that have a different flavour to
9 them when dealt with by First Nations than looked at
10 as a province as a whole.

11 My last point is, and this is also going
12 forward, is even to the extent of scenario building
13 that my friend Mr. Feldberg was telling you about, how
14 can you build scenarios that are going to take into
15 account costs and benefits without looking at the
16 various objectives of First Nations? When you build a
17 power project in the northeast to bring power down to
18 the Lower Mainland, and you have a transmission line
19 that goes through the territory of 30 or 40 First
20 Nations along the way, that's a very different project
21 than demand-side management down in the -- or
22 conservation down in the Lower Mainland. And yet for
23 every scenario that I've seen in my experience with
24 these matters before the Commission, I have not seen
25 First Nations' costs factored into that analysis. We
26 factor in the dollars and cents, but we don't factor

1 in the other matters. And unless you find a scenario
2 that effectively considers those matters, I think
3 they're going to be flawed.

4 The costs of these things have a different
5 meaning to First Nations than they do to the public at
6 large. And as yet, with respect, the Commission
7 hasn't found a way to grapple with that cost analysis.
8 First Nations are asking to help you with that, but
9 they need a process that isn't dependent on simply
10 making submissions to B.C. Hydro.

11 Those are my --

12 THE CHAIRPERSON: Thank you very much, Mr. McDade.

13 MR. McDADE: Thank you very much.

14 MR. FULTON: British Columbia Old Age Pensioners'
15 Organization.

16 **SUBMISSIONS BY MS. WORTH:**

17 MS. WORTH: Good afternoon, Madam Chair, members of the
18 Panel. I'd like to reiterate as I commented earlier,
19 that we are adopting our comments currently marked as
20 Exhibit C26-2, I believe, in this process, regarding
21 the staff discussion draft document.

22 I have the following comments to make on a
23 few of the other issues that have come up.

24 **Proceeding Time 2:32 p.m. T55**

25 Now, BCTC and B.C. Hydro have talked today
26 about their joint retainer of E3 and their wish to

1 proceed as soon as possible on that action, and BCOAPO
2 wishes to put on the record that we have no objection
3 to this, either to the retaining of E3 specifically or
4 to the timing, especially in light, we say, of the
5 timing constraints that you mentioned earlier in
6 producing a report at this time next year. And also,
7 if we are going to keep this to be a relatively
8 manageable process, because that way we won't have any
9 duplication by the various utilities.

10 We would like to adopt the submissions made
11 earlier today by Mr. Wallace regarding the cost
12 allocation issue. BCOAPO is not proposing that this
13 inquiry be turned into a rate design process,
14 examining inter-class rate design issues, but we do
15 see the need to pursue cost allocation as counsel for
16 JIESC has suggested, in regards to exports only.

17 BCOAPO does not view this inquiry as the
18 proper venue to revisit issues regarding B.C. Hydro's
19 forecast methodology, and we submit that this
20 particular issue is, from our perspective, out of
21 scope.

22 Now, in regards to the legal issues, we
23 agree with BCTC and B.C. Hydro's submissions, and I
24 haven't broken out into hives saying that yet, that
25 the Commission does not have a duty to consult. And
26 we have formed the same opinion as Mr. Wallace

1 regarding the timing of any possible determination
2 regarding the adequacy of consultation as well. Quite
3 simply, based on the recent Court of Appeal decisions,
4 we do not believe that now is the time to determine
5 whether the actions taken thus far are adequate.

6 In regards to the Section 79 issue, BCOAPO
7 agrees that this is a privative clause, and likewise
8 adopts the submissions of counsel for BCTC and B.C.
9 Hydro on this subject.

10 Subject to any questions, those are my
11 submissions.

12 THE CHAIRPERSON: Thank you, Ms. Worth.

13 MS. WORTH: Thank you.

14 THE CHAIRPERSON: We have no further questions.

15 MR. FULTON: TransCanada Energy.

16 **SUBMISSIONS BY MR. BEST:**

17 MR. BEST: Thank you, Madam Chair and Panel members. I'd
18 like to adopt our submission of June 11, 2009, as well
19 as our comments made at the workshop on June 18th,
20 2009, and add further, TransCanada believes that the
21 scope of this proceeding should expressly refer to
22 interjurisdictional trade rather than just exports.
23 This is based on the rationale that the terms of
24 reference and government policy speak to maximizing
25 net benefits from trade and utilizing inter-tie
26 capacity to optimize B.C.'s electricity system.

1 Energy and capacity self-sufficiency does
2 not exclude imports. Maximizing the net benefits from
3 trade will include importing electricity during some
4 periods in order to conserve resources for other
5 periods. Also, the capability to wheel power through
6 B.C. from Alberta to the U.S., and from the U.S. to
7 Alberta, must be maintained.

8 Neighbouring jurisdictions may face
9 difficulty developing transmission capacity to align
10 with B.C.'s transmission development, if such
11 development is based only on exports.

12 In summary, TransCanada believes that both
13 imports and exports should be considered within the
14 scope of this proceeding, including the export study
15 to be commissioned by BCTC or B.C. Hydro, and be
16 expressly referred to as interjurisdictional trade in
17 the final scoping documents.

18 I am open to any questions from the panel.

19 THE CHAIRPERSON: Not at the moment, so thank you, Mr.
20 Best.

21 MR. BEST: Thank you.

22 MR. FULTON: The next party that appeared this morning
23 was Syntaris Power, and I understand that Syntaris
24 Power has no submissions.

25 I'll now call upon the Consumer Energy
26 Consumer's Association of British Columbia.

1 **Proceeding Time 2:36 p.m. T56**

2 **SUBMISSIONS BY MR. WEAVER:**

3 MR. WEAVER: Madam Chair, Chris Weaver for the Commercial
4 Energy Consumers Association of British Columbia.

5 The CEC also adopts its filing of June 11,
6 2004 filed as Exhibit C-44-2 where we set out fairly
7 extensive comments on the scoping document which was
8 Exhibit A-12, the document prepared by Staff. And we
9 would comment that we appreciate the work of staff and
10 we're in general agreement with a large portion of
11 that document, although we will take issue with one
12 point which I'll get to in a moment.

13 We would also reiterate the comments of
14 BCTC, that the scoping document is the terms of
15 reference that is before the Commission, and that
16 really does set the parameters for the inquiry. And
17 I'll refer to certain sections of the terms of
18 reference shortly.

19 And lastly just at a general level, we
20 would also reiterate the comments of the BCTC counsel,
21 that we would encourage the Commission to take a
22 landscape view of the issues in this proceeding in
23 terms of setting out the scope as opposed to a
24 granular view, to take a broad perspective,
25 particularly at the early stages of the inquiry, where
26 we have a subsequent scoping procedural conference in

1 the fall. So at this point we would encourage the
2 Commission to issue an order resulting from this
3 conference, which broadens inputs to the scenarios
4 that will be developed over the coming months.

5 So just moving to, I think, what is the
6 area of disagreement and it was raised by BCTC's
7 counsel this morning, and here he was dealing
8 specifically with the scope of the retainer for the
9 expert on export. And I want to broaden the
10 discussion because I think we've focused on the topic
11 of the retainer when really the issue is cost
12 causation. And the problem for the CEC was dealt with
13 at pages 13 and 14 of our written submission, where in
14 the staff scoping document it's indicated that cost
15 causation was out of scope. And I think there may be
16 a clarity issue that needs to be resolved, and we, as
17 the JIESC and BCOAPO who spoke before us, we're not
18 talking about cost causation from a rate class
19 standpoint or rate design perspective, we're talking
20 about cost causation as it relates to the export
21 market and as it relates to the build-up of the BCTC
22 system.

23 And we think it's fairly clear from the
24 terms of the reference that cost causation is a
25 relevant topic within the scope of the proceeding.
26 And if we look to -- if you have the terms of

1 reference, if we look to the recitals, and I'm on page
2 2 of 7, which provides that "whereas trade of electric
3 power with other jurisdictions helps generate revenue
4 to B.C. Hydro, and this revenue reduces total revenues
5 required to be collected from domestic customers", we
6 would say that it's clear in order to understand what
7 revenues are to be generated, we need to have an
8 underpinning as to what costs are being allocated for
9 the purpose of export versus to domestic customers.

10 And there is the recital, if I could turn
11 you to section 4 of the terms of reference, and here
12 it provides "the Commission must make determinations
13 respecting the need for" -- and if we go down to
14 subparagraph (b), "to support the export of surplus
15 electricity as assessed under paragraph 3". And
16 again, from a practical common sense standpoint, in
17 order to understand how you're going to support export
18 of surplus electricity, you need to have an
19 understanding of what are the cost assumptions that
20 went into the transmission infrastructure.

21 Now, to be clear, we're not asking to look
22 to detailed cost allocation studies, but this Panel
23 needs to have at least the base assumptions as to what
24 has gone into cost allocation in the infrastructure,
25 in order to test the scenarios that we put forward.
26 And I submit that we also need to be able to adjust

1 Simply put, our request to have them look
2 at the cost allocation issue was, it's a common
3 witness that everybody is going to rely on. They have
4 the ability, we suggest, to look into that matter and
5 provide some general evidence to this Commission and
6 participants, in order to have a better body of
7 evidence on the record, and that's -- we're not going
8 to die on our sword on the question, but we think it's
9 a useful utilization of that expert testimony, and if
10 it could be added to the terms, we think that would
11 benefit all participants in terms of how cost
12 allocation is dealt with in other jurisdictions, which
13 are export jurisdictions.

14 Turning to the legal questions discussed,
15 and firstly the Section 79 question, we think Mr.
16 Godsoe most clearly put forward the description of
17 Section 79 as a privative clause common in legislation
18 of regulatory bodies, and we think that his
19 submissions are correct, and we have nothing further
20 to add.

21 With respect to the more substantive legal
22 issue which a fair bit of time has been spent on in
23 the last couple of hours, we are not going to take a
24 position on the duty to consult. It is clearly a
25 material issue. The advocacy on both sides has been
26 effective and persuasive, and it's quite clear this

1 Panel has a material legal issue to deal with.

2 The pragmatic response is, as ratepayers
3 who at the end of the day cover the costs of these
4 proceedings, we look to an efficient and effective
5 resolve, and we did hear some suggestions from counsel
6 to First Nations that there is a desire to come up
7 with an effective and efficient consultation process.
8 What we don't -- and I note that in our submission, we
9 actually did point out in reflecting on the legal
10 environment we operate in, we had a suggestion in our
11 written comments that First Nations be invited in
12 through the process to address the Commission as to
13 whether consultation had been adequate. And so we've
14 been live to the issue for a while.

15 I think that there is still an opportunity
16 to make a scoping decision from this proceeding which
17 seeks further comment on just exactly what First
18 Nations would expect or desire in consultation, so
19 that if a duty does exist the Commission would be able
20 to meet it. Because absent doing that, the likelihood
21 of completing this inquiry by the stated deadline date
22 is pretty slim. And so, the suggestion that we would
23 have is that the Commission make a preliminary
24 decision about whether it has a duty to consult, and
25 if so, move to seeking submissions in short order on
26 how to incorporate that duty to consult within Section

1 10 of the terms of reference.

2 We don't support the Commission making a
3 final decision on the topic based on today's
4 submissions. We think you do need more information in
5 terms of what First Nations are actually looking for
6 in order to meet the objectives of this inquiry.

7 And subject to any questions, those are my
8 submissions.

9 THE CHAIRPERSON: Thank you, Mr. Weafer.

10 MR. WEAFER: Thank you.

11 THE CHAIRPERSON: And I believe this would be a good time
12 for our afternoon coffee break, so let's be back in 15
13 minutes. Thank you.

14 **(PROCEEDINGS ADJOURNED AT 2:48 P.M.)**

15 **(PROCEEDINGS RESUMED AT 3:03 P.M.)** **T58**

16 THE CHAIRPERSON: Please be seated.

17 MR. FULTON: Madam Chair, the next speaker is Guy Van
18 Uytven on behalf of Andritz Automation. Mr. Van
19 Uytven wasn't here this morning when I originally
20 called for the appearances, but he's here now.

21 THE CHAIRPERSON: Which is his --

22 MR. FULTON: 49. C-49.

23 THE CHAIRPERSON: Thank you.

24 **SUBMISSIONS BY MR. VAN UYTVEN:**

25 MR. VAN UYTVEN: Thank you, Madam Chair and
26 Commissioners. My name is Sigge Van Uytven, spelled

1 V-A-N U-Y-T-V-E-N. I am an independent consultant and
2 I'm associated with Andritz Automation, in a group of
3 interested persons entitled the BC HVDC Initiative.

4 We adopt our submission, C49-2.

5 After the last workshop, BCUC indicated
6 that HVDC technology was not to be considered as part
7 of the scope of this inquiry, but cost and routing
8 certainly area. I would like to comment briefly on
9 two issues that could lead the Panel to reconsider
10 that statement.

11 The first item is that your terms of
12 reference dictate that we want to be self-sufficient
13 by 2016, with the possibility of exporting power
14 thereafter. Also, we want to develop northern B.C.
15 Assuming Site C will be developed by 2016, a new 500
16 kV AC transmission line with series compensation and
17 additional series compensation in the existing
18 stations will have to be constructed, at a cost of
19 \$750 million, as noted in BCTC's 2010 capital plan.
20 This fourth line presumably will require enlargement
21 of the existing 500 kV corridor.

22 Looking at potential renewable energy
23 sites, it appears that BCTC's transmission expansion
24 policy has identified wind power potential in the
25 South Peace region as the least expensive of the wind
26 generation sites, and it has classified this

1 rightfully as a Tier 1 project, worthy of further
2 investigation. The combination of energy from wind
3 and hydro is a win/win situation, since dynamic
4 dispatching cannot relate hydro generation to
5 compensate for variations in wind energy output.

6 The 2,000 megawatt wind power potential,
7 plus the 900 megawatts from Site C, represents a total
8 capacity of 2,900 megawatts, which can easily be
9 transmitted by HVDC over 800 kilometres to a point
10 near the U.S. border, allowing the surplus power to
11 B.C.'s immediate needs to be exported to the U.S.

12 There is no doubt that the HVDC is the
13 least expensive way to transmit power, with all the
14 additional benefits that were outlined in our
15 submitted contribution, C49-2. This HVDC line would
16 make it unnecessary to build the fourth 500 kV AC line
17 and associated compensation equipment, using the saved
18 \$750 million to contribute to the \$1,200 million
19 estimated cost of the HVDC option. By using HVDC to
20 link the South Peace region to our southern border, we
21 achieve the government's objective of, (1) self-
22 sufficiency; (2) export capability and opportunity to
23 the U.S.; (3) development of northern B.C.; (4) a
24 possible second tie to Alberta, already proposed by
25 the Alberta Utility Commission; (5) minimize the land
26 use.

1 Looking at increasing the transmission
2 system to just meet the immediate demand is like
3 looking at the trees without being able to see the
4 forest. It is important we look at the goal of self-
5 sufficiency by 2016 and take those steps which will be
6 the most economical, considering a 30-year planning
7 horizon.

8 **Proceeding Time 3:08 p.m. T59**

9 The second issue I would like to comment on
10 is the issue of route selection. In BCTC's earlier
11 presentation it was noted that design approval and
12 construction of high voltage transmission line may
13 take seven to ten years. If our goal is self-
14 sufficiency by 2016, that leaves only seven years
15 before its in-service date. Removing two years for
16 construction means that the new line corridor needs to
17 be finalized and approved by 2014. That's only five
18 years from now. The transmission inquiry process will
19 not be completed till the middle of next year. By
20 focusing on our main goal, self-sufficiency by 2016,
21 we would enhance the possibility of meeting that date
22 if the process of identifying and assessing suitable
23 corridor options would commence immediately rather
24 than wait another year till the final Commission
25 report is issued.

26 Those are my comments, thank you, and if

1 you have any questions.

2 THE CHAIRPERSON: Mr. Van Uytven, I have one question.

3 Should the Panel be persuaded that -- contrary to what
4 we have heard otherwise, that perhaps this technology
5 should be in scope, do you have then any practical
6 ideas how BCTC could or should work this technology
7 option into those scenarios? We heard there may be
8 five or six provincial scenarios they would be looking
9 at. Do you have any suggestions?

10 MR. VAN UYTVEN: Well, it can be looked at within their
11 optimization model that they're using. As long as you
12 put in all the options of the AC transmission line,
13 the DC transmission lines and all the generating
14 stations. The problem is, of course, that the model
15 does not account for qualitative factors such as the
16 people's concern about electromagnetic radiation or
17 some aspects of DC which are preferable. Like DC will
18 be able to control the power flows in the system, DC
19 will improve the stability of the system.

20 There's a variety of factors which make --
21 which really are in the benefit of DC.

22 THE CHAIRPERSON: Okay, thank you, Mr. Van Uytven.

23 MR. VAN UYTVEN: Thank you.

24 MR. FULTON: Terry Vulcano.

25 **SUBMISSIONS BY MR. VULCANO:**

26 MR. VULCANO: I'd like to acknowledge the traditional

1 welcome you made last week, Chief. Thank you for the
2 opportunity to respond and comment.

3 I have five pages of comments but I've been
4 directed to keep it short so I'll be strategic in the
5 feedback.

6 I've read nine submissions, and first of
7 all I'd like to start by commenting on the Horizon
8 Technology submission regarding alternate
9 technologies, in that it's not going to be free. Page
10 3 of 9, they talk about --

11 THE CHAIRPERSON: Excuse me. Could you give me the
12 reference for that Horizon Technology --

13 MR. VULCANO: It's page 3 of 9.

14 THE CHAIRPERSON: But what's the exhibit number?

15 MR. VULCANO: I don't know.

16 MR. FULTON: Exhibit C58-2.

17 THE CHAIRPERSON: Thank you, thank you.

18 MR. VULCANO: They talk about the energy from tidal
19 motions. I think there's a need to take into account
20 that it may affect sea life. There may be certain
21 levels of energy in tidal motions that powers life
22 cycles, that affect nutrients. They might affect
23 limiting oxygen accumulation in coastal waters that we
24 don't know about.

25 Regarding the BCOAPO submission, and again
26 I'm sorry, I don't have the reference numbers, under

1 page 3 they make a comment on First Nation issues,
2 say:

3 "There may be suitable avenues for dealing
4 with past infringements such as treaty
5 negotiations and court actions..."

6 I think court actions are not suitable avenues. I
7 think that was covered earlier by the fellow that
8 spoke after lunch.

9 **Proceeding Time 3:13 p.m. T60**

10 If First Nations wish to have past
11 infringements addressed in this venue, then their
12 wishes deserve being respected. It is difficult to
13 see how future development and trust can be expected
14 without resolving outstanding matters.

15 Regarding the Sustainable Energy
16 Association's submission, my comment is focusing on
17 page 10 of 12. Think can concur that the discussion
18 paper appears not to respond to the request that the
19 inquiry address historical infringements.

20 Regarding British Columbia Power
21 Corporation's submission, on their page 4 of 5, they
22 use the example of Bill 19 in Alberta, and they
23 suggest inviting participants from Alberta. If the
24 Commission thinks to doing so, would they also
25 consider inviting opponents to Bill 19 to participate
26 as well?

1 Regarding B.C. Hydro's submission. I
2 suggest that an engagement session in July would not
3 be sufficient time for participants to prepare. They
4 have asked for two months after that to prepare their
5 summary. In page 5, line 17, B.C. Hydro believes that
6 a detailed review of the load forecast is not
7 required. Having such forecasts being scrutinized and
8 revised makes sense when economic forecast and climate
9 changes are constantly changing.

10 Page 8, lines 16 to 22, the first stage of
11 development, B.C. Hydro intends to share its thinking.
12 This is in reference -- in regards to their
13 consultation. It seems B.C. Hydro intends to tell
14 what they think is good for the province rather than
15 try to find out what may be beneficial from the First
16 Nations perspective. This is a type 2 participation,
17 as noted in the presentation given last week.

18 Page 9, line 5, attempts to restrict the
19 Commission's prerogative to address issues, e.g., past
20 infringements, that may inhibit developing good long-
21 term solutions. Page 9 also, lines 22 to 23, First
22 Nations will have an opportunity to pursue their
23 grievances with the Crown in other forums. Just what
24 are these forums? Why haven't these grievances been
25 addressed now, or before now? If we can't fix what is
26 broken already, how can we move along?

1 The B.C. Hydro submission comes across as
2 patronizing and condescending. I don't think they're
3 qualified or have the skills to do a consultation. If
4 they wish to farm out doing the export study, then I
5 think that they should also be looked at doing that
6 with the consultation. You could start by consulting
7 with First Nations on how they'd like to be consulted,
8 rather than just having meetings to present
9 information.

10 B.C. Hydro would like to have time to
11 consider the LTAP thing. Well, then, why can't First
12 Nations have time to be properly consulted?

13 Thank you.

14 THE CHAIRPERSON: Thank you, Mr. Vulcano.

15 MR. FULTON: Terasen Utilities.

16 **SUBMISSIONS BY MR. PERTTULA:**

17 MR. PERTTULA: Thank you, Commission Panel. First of
18 all, I should adopt our submission on the staff
19 discussion paper, and that's Exhibit C57-2. Also, to
20 be fair, we didn't say very much in that submission.

21 We do have interests in all elements of the
22 inquiry. And that was highlighted in Commission
23 staff's Exhibit A-14, where they summarized in bullet
24 point format some of the submissions of parties coming
25 up into the workshop. I'm going to just focus my
26 comments in a few areas, but that shouldn't be taken

1 as an indication that we don't have interests in other
2 areas as well.

3 And we would like to say at the outset that
4 it's very important for the inquiry process to allow
5 appropriate stakeholder input in the development of
6 scenarios to be evaluated, and so on. It appears that
7 the proposed stakeholder and First Nations workshops
8 proposed by B.C. Hydro and BCTC in July and the
9 Commission staff workshops in September/October, on
10 the preliminary inquiry schedule, will provide the
11 opportunities for the input that Terasen Utilities
12 would like to have in this inquiry.

13 **Proceeding Time 3:18 p.m. T61**

14 Now, I'd like to highlight a couple of
15 issues in the scenario development process that we
16 would like to add our support for, and the first of
17 these was an item that appeared on Exhibit A-14 in a
18 couple of places and that was on the issue of
19 distributed generation. And the matter of distributed
20 generation is stated very well in the Columbia Power
21 Corporation's submission, and that's Exhibit C17-2,
22 and this is under item (a). I'll just read it quickly
23 here:

24 "Distributed generation systems utilize
25 power generation technologies located near
26 an electrical load. DG contrasts with

1 generation from large facilities that must
2 be transmitted over long distances, and DG
3 minimizes transmission and distribution
4 losses, minimizes transmission congestion
5 and thereby improves the overall efficiency
6 of the system with technological advances in
7 photovoltaics, micro, wind generation, and
8 highly efficient small combined heat and
9 power plants, and further DG innovation
10 likely to arise within the determination
11 period. CPC believes that distributed
12 generation or DG will play an important role
13 in British Columbia's electricity system."

14 And they go on to talk about it being a 30-
15 year evaluation period, and I think much of the focus
16 has been in other areas, but in a 30-year evaluation
17 period the possibility of distributed generation
18 having an increased prominence is clearly there.

19 The second issue that I'd like to address
20 is arguably in a similar vein to the distributed
21 generation issue, but this falls more into the demand
22 part of the picture. The demand scenarios should
23 consider the possibility, indeed the likelihood, that
24 there will be expanded use of alternative energies in
25 the future. And then this particular point was put
26 quite well in the Commercial Energy Consumers'

1 submission, and that's Exhibit C44-2 at page 3, and
2 I'll just read a brief section there:

3 "The CEC believes that developing
4 technologies such as solar, photovoltaic
5 energy, solar thermal energy, municipal
6 waste to energy, geothermal heat pump
7 energy, industrial and other waste energy
8 use, need to be singled out and assessed in
9 a separate scenario set, because these
10 sources of energy may be close to the loads
11 and could have dramatic impacts on
12 transmission scenarios within the province.
13 All these scenarios are critical to
14 assessing certain of the risks relating to
15 opening up a clean and renewable export
16 scenario."

17 And so given the policy direction in
18 British Columbia and the many recent legislation
19 changes, including putting the government's energy
20 objectives into the *Utilities Commission Act*, there is
21 a strong likelihood that alternative energies will
22 grow in prominence over the period of the inquiry, and
23 quite possibly in ways that are not captured in load
24 forecasts, and therefore I think it bears being
25 included in the scenarios that are evaluated.

26 And the last issue that I'd like to address

1 is the export study. The Terasen Utilities support
2 proceeding with the export study as proposed by BCTC
3 and B.C. Hydro in Exhibit B1-4, and the selection of
4 E3 as the independent expert consultant to conduct the
5 study. And we note that the proposed scope of work
6 for the expert in Exhibit B1-4 includes participation
7 in a series of First Nations and stakeholder
8 workshops, to present and receive feedback on
9 scenarios and assumptions, and we intend to
10 participate in those opportunities to provide feedback
11 in the export study.

12 **Proceeding Time 3:23 p.m. T62**

13 Lastly, I think it was Commissioner
14 Anderson, just before lunch, asked for comments on --
15 I believe it was Section 6(vi), or 6-6, where it talks
16 about other jurisdictions will continue to pursue the
17 reduction of greenhouse gas emissions and increase the
18 use of renewable energy and development and use of
19 British Columbia's clean or renewable electricity
20 resources, may help other jurisdictions meet their
21 goals and create economic opportunities in British
22 Columbia. I'd also like to add to that that the next
23 bullet point is, it's desirable to maximize the net
24 benefit from trade in electric power with neighbouring
25 jurisdictions in the United States and Alberta.

26 And as I look at the scope of work in

1 Appendix B-1 -- or sorry, in Exhibit B1-4, Appendix 1,
2 I see -- at least the way I read it, and perhaps I've
3 missed something here in the process, I see that scope
4 of work as clearly addressing the -- under paragraph
5 3(v) of the terms of reference, potential future
6 market opportunities to export clean or renewable or
7 low-carbon electricity to other jurisdictions that is
8 surplus to the requirements of load serving entities
9 in British Columbia. And this is an element that the
10 Commission must assess.

11 So, I see that clearly covered in the scope
12 of work in the export study, but I don't see items 6
13 and 7 so clearly covered in that -- in the scope of
14 work there. And perhaps it's expected that those
15 issues will be addressed in other ways. But anyway --
16 so those are my comments, unless there are any
17 questions.

18 THE CHAIRPERSON: No further questions, thank you, Mr.
19 Perttula.

20 MR. PERTTULA: Thank you.

21 MR. FULTON: Energy Solutions for Vancouver Island
22 Society, *et al.*

23 **SUBMISSIONS BY MR. BERTSCH:**

24 MR. BERTSCH: Good afternoon, panel. My name is Ludo
25 Bertsch, and I represent Energy Solutions for
26 Vancouver Island Society, the Okanagan Environmental

1 Industry Alliances, Island Transformations.org, and
2 the Rental Owners and Managers Society of B.C.

3 We submitted a document, C58-2, outlining
4 our comments in regards to the scope of the inquiry.
5 We wish to adopt that document, subject to the
6 discussion today.

7 In reviewing the other intervenors'
8 comments and the workshop last week, and a number of
9 discussions consequently, we realized that we needed
10 to build upon our approach, although we felt that the
11 kernels of the ideas in that comment document are
12 sound.

13 If you could refer to Exhibit C58-2, this
14 document, as I mentioned, contains our comments
15 regarding the staff's scoping document. Our primary
16 goal was to discuss the areas in which we found the
17 staff's document lacking. The document discusses a
18 number of separate items, distributed generation and
19 feed-in tariffs, the definition of developing
20 technologies for generation, regional generation on
21 Vancouver Island, SmartGrid, electric vehicles, and as
22 quoted in the entering comments by Madam Chair, the
23 integrated approach.

24 We wish to emphasize at this point that our
25 discussion with the integrated approach, we feel,
26 should be carried through as we had indicated in that

1 document, and that is that a separate topic should be
2 added to Exhibit A-14 called "integrated approach".

3 **Proceeding Time 3:28 p.m. T63**

4 If you look at A-14, you will see demand,
5 generation, exports, transmission, First Nations, and
6 inappropriate areas, and we believe there should be
7 another category called integrated approach.

8 If you could refer to page 4 and 5, section
9 1.4 in that document. Page 4 -- it's called "Regional
10 Generation". In this section we tackled the question:
11 What generation and demand-side management levels
12 would be needed to be implemented such that no more
13 transmission lines would be needed to Vancouver
14 Island? As discussed, there are high costs and
15 challenges of new transmission lines to Vancouver
16 Island, and there is the potential of self-sufficiency
17 of the region. An integrated approach, as we
18 suggested, would combine generation demand and
19 transmission so that they're developed together rather
20 than split up into each area. We note that the B.C.
21 First Nations Energy and Mining Council has mentioned
22 integrated approach in their comments as well.

23 Perhaps another way to say this is to set
24 the challenge: What does it take for Vancouver Island
25 to reduce or eliminate its energy reliance from the
26 mainland, and how do we do this in an integrated

1 approach? Interestingly, if one focuses on answering
2 just that question, it pools together all the various
3 separate items that we discussed in our comment
4 document, and at the same time develops into a
5 reasonable, achievable scenario, and we believe a
6 meaningfully different scenario which the Commission
7 Staff felt was vital to useful determinations.

8 For example, even more aggressive DSM
9 programs will need to be analyzed, including how do we
10 tackle the rental DSM programs in such a way that it
11 works for both the landlords and the tenants? The
12 Rocky Mountain Institute held a workshop for B.C.
13 Hydro and generated a report full of ideas,
14 specifically on the long-term needs for Vancouver
15 Island from which we can draw upon in this inquiry.
16 The conservation potential review does have Vancouver
17 Island statistics. Through this inquiry we can look
18 at how realistic are they?

19 And what can we expect from capacity-driven
20 DSM? What are the requirements for these programs
21 from a regional point of view? How can innovative
22 rate structures be helpful to meet the challenge,
23 whether that be time of use or critical peak rate
24 structures? As we know, Campbell River was
25 particularly responsive to B.C. Hydro's time of use
26 and critical peak pilot a couple of years ago. As we

1 know, electric heating and hot water heating is the
2 highest penetration in B.C. and actually among the
3 highest in North America. What can be done in such a
4 way that we don't have to keep drawing upon the
5 umbilical cord to the mainland? Relying on submarine
6 cables is not only expensive and challenging, but also
7 is prone to breaks and are difficult to repair should
8 breaks occur, as we have found out over the years,
9 whether natural disasters or manmade circumstances.

10 How can Vancouver Island be more self-
11 sufficient? Can we have a more reliable grid system
12 and fewer transmission requirements with distributed
13 customer generation? While B.C. Hydro has net
14 metering and FortisBC on its way, how can feed-in
15 tariffs, advanced renewable tariffs, encourage early
16 adoption of distributed generation? What programs
17 will work for the industrial and commercial sector to
18 meet the challenge? What more focused curtailment to
19 reduce the peak when it is really needed on Vancouver
20 Island? And what type of conservation rates will be
21 needed to accomplish our goal?

22 While demand-side management programs can
23 be actively pursued, what about when more power is
24 needed? What areas should it come from, and how do we
25 do this in an integrated approach?

26 THE CHAIRPERSON: Excuse me, Mr. Bertsch.

1 MR. BERTSCH: Yes.

2 THE CHAIRPERSON: Are you now highlighting the ideas you
3 are adopting, you are adopting or --

4 MR. BERTSCH: Yes, we're adopting our document and we
5 have further expanding on it, and we'll be getting
6 down to the process as well, which will be a change in
7 process. And I can -- okay, I can go quicker through
8 it.

9 **Proceeding Time 3:33 p.m. T64**

10 THE CHAIRPERSON: Because I just started getting the
11 feeling that you are repeating a bit too much of your
12 written submission.

13 MR. BERTSCH: Sure. Yeah. So, if we look at generation,
14 there are many types of generation on the Island. And
15 including the unreliable runs to the remote areas.
16 Instead of assuming that we have an umbilical cord,
17 what if we have generation on Vancouver Island in a
18 significant way?

19 One of these areas that we look at,
20 obviously, is tidal, and greenhouse gas emissions are
21 obviously important from the 2007 Energy Plan. And
22 what about if we had electric buses and trains? If we
23 look at a maximization of the system, obviously we
24 have to also look at the SmartGrid. If we have
25 electric vehicles, SmartGrids will be an important
26 part of it.

1 In summary, we believe this all should be
2 done in an integrated fashion, looking at how
3 generation demand-side management and transmission
4 will work together. While we don't have the perfect
5 crystal ball, and no one does, we believe that this
6 can be done in a focused manner. This scenario is not
7 a P-50 level, but we submit is reasonable and
8 achievable. However, by including this into this
9 inquiry, we believe that it should be one of the
10 initial scenarios, and that is, how can Vancouver
11 Island reduce or eliminate its energy reliance on
12 Vancouver Island? If we were to take that task as the
13 scope -- as an appropriate initial scenario in the
14 scope, how would we do it? What would the process be?

15 As we have all discovered, this
16 transmission inquiry is without an applicant, with all
17 parties considered participants, including B.C. Hydro
18 and BCTC. We recognize that B.C. Hydro and Fortis and
19 BCTC will be tasked with certain activities. And
20 they're, for instance, doing initiation process of
21 generation. However, we believe that in dealing with
22 the integrated approach, that to success in this, that
23 we need local participation and a buy-in by Vancouver
24 Island.

25 A natural fit would be a group of companies
26 based on the Island. We could take on the challenge

1 and that is to put together a working group to develop
2 a scenario which reduces and eliminates the energy
3 reliance from the mainland. If we look at the terms
4 of reference, Section 10(c), it suggests that working
5 groups are appropriate procedure to accomplish our
6 task. We would feed this scenario to B.C. Hydro as
7 they have envisioned, to produce the load forecast
8 using their methodology. BCTC would also develop
9 their projections building upon this scenario.

10 The variation is in the development and
11 building of the scenario itself, by the working group.
12 The working group would consist of groups such as
13 Energy Solutions for Vancouver Island and Island
14 Transformation. We would also involve the First
15 Nations. The group would have a wide range of
16 expertise and intimate knowledge of Vancouver Island.
17 Obviously we would invite B.C. Hydro and BCTC and
18 Fortis as well. With local meetings up and down the
19 Island, they would help provide information for the
20 working group. Obviously funding would be required
21 for this group.

22 We understand that the analysis can be
23 quite time-consuming -- involved for the utilities.
24 However, in taking into account the integrated
25 approach, we recognize that the working group may need
26 more forecasts on the outcomes. Therefore, we may

1 Island as being one of the areas to be covered as part
2 of the broader work that B.C. Hydro and BCTC were
3 contemplating?

4 MR. BERTSCH: Yeah, we see Vancouver Island as being a
5 very bite-sizable component and very representative of
6 a lot of the issues that come forward. So that would
7 be a specific scenario. Out of one of the five
8 scenarios that are put together, one scenario would be
9 this working group working on the Vancouver. And the
10 outcome of that could be afterwards appropriate for
11 other regions, but it makes it very concrete and I
12 think it would bring out a lot of the factors that
13 we're looking for. And I think it would also be
14 representative of the integrated approach. It would
15 give us early indication before September, because I
16 think that's one of the issues that we have is that if
17 we wait till September, the idea of the integrated
18 approach, you know, we won't have time to really work
19 that out. So it'll give us a good indication of
20 whether or not that works.

21 COMMISSIONER HARLE: Thank you.

22 THE CHAIRPERSON: Thank you very much, Mr. Bertsch.

23 MR. BERTSCH: Thank you.

24 MR. FULTON: Independent Power Producers Association of
25 British Columbia.

26 **SUBMISSIONS BY MR. AUSTIN:**

1 MR. AUSTIN: Good afternoon, Panel. The IPPBC has made
2 some modifications to its letter of June the 11th,
3 2009, and I'd like to file as Exhibit C59-3 a revised
4 version of that if I might. And while I'm at it, I'd
5 like to file a copy of the shareholder's letter
6 between B.C. Hydro and BCTC, which I'd like -- B.C.
7 Hydro and the government, which I'd like to refer to
8 with respect to Powerex's participation in these
9 proceedings.

10 If I might do that now, and that would be
11 Exhibit C59-4.

12 THE CHAIRPERSON: Thank you.

13 (REVISED VERSION OF JUNE 11 LETTER, DATED JUNE 23,
14 2009, MARKED EXHIBIT C59-3)

15 (COPY OF SHAREHOLDER'S LETTER BETWEEN B.C. HYDRO AND
16 B.C. GOVERNMENT, MARKED EXHIBIT C59-4)

17 MR. AUSTIN: I'd like to first draw your attention to
18 Exhibit C-59-3 [*sic*] which is the letter dated June
19 23rd, 2009. There aren't substantial revisions, but I
20 will refer them to you in areas where the revisions
21 have been made.

22 The first proposal that the IPPBC has is
23 that it would like the Commission to consider the
24 draft scope of inquiry as guidelines and not as a
25 definitive set of scoping parameters. And the reason
26 the IPPBC is putting that forward as a proposal is

1 maybe at most a day or two of hearing time. And this
2 is exactly where we're headed right now.

3 It's not worth the exercise going into the
4 level of detail that we're going into right now, in
5 order to perhaps at best save one or two days' worth
6 of hearing time. It's premature. We don't know what
7 the issues really are at this point in time, so why
8 are we going through this scoping exercise?

9 And I'll just use one example, and it's not
10 singling out any group or anything like that at all,
11 it's just an example. The David Suzuki Foundation has
12 made reference to what's going on with respect to the
13 Western Renewable Energy Zone process. It's an
14 excellent document referred to, it's an excellent
15 point. But we don't have it in evidence. And I
16 listened as best I could to what the David Suzuki
17 foundation was trying to describe with the Western --
18 with respect to this Western Renewable Energy Zone
19 process. And yet when I looked at the process, there
20 seemed to be a variance between what was, in a sense,
21 given in evidence, although we haven't even got any
22 evidence filed, and what was my understanding of the
23 WREZ process.

24 So, I can't stand up and honestly say that
25 I object to what the David Suzuki Foundation was doing
26 in terms of its characterization of the Western

1 Renewable Energy Zone process, because there's no
2 evidence on the record. And my own examination of
3 this WREZ process was not consistent with whatever the
4 presentation made by the David Suzuki Foundation is
5 the date. So, what is the point of saying that what
6 the David Suzuki Foundation was saying was out of
7 scope, when I don't even understand what it is that
8 they were truly saying, and whether it was consistent
9 with actually what's happening? It's too early to do
10 that.

11 The only exception that I think that the
12 IPPBC would like to make is perhaps in terms of
13 consultation with respect to First Nations. That
14 seems to be a very complex area. The IPPBC is not
15 taking any position on that. But if it's helpful, it
16 would like to note that the draft Commission decision
17 will be circulated to all parties for comment before
18 the Commission makes its final determinations. That
19 is very unusual. In all my years of appearing before
20 the Commission, it's never happened before. So that's
21 something that perhaps you should note in terms of any
22 duty that you may or may not have with respect to
23 consultation. And I would like to make it abundantly
24 clear that the IPPBC is not taking any position with
25 respect to consultation.

26 Having said that the IPPBC's primary

1 position is that the draft of scope should be a
2 guideline and not definitive, the IPPBC has set out
3 its comments in its letter with respect to issues of
4 scoping should the scope of the inquiry become
5 definitive, and I would just like to draw your
6 attention to some issues that have been added. And
7 before I get there, I believe Commissioner Anderson
8 was engaged in a discussion with Mr. Andrews about
9 certain climate issue matters.

10 **Proceeding Time 3:48 p.m. T67**

11 And under the heading "Generation" in the
12 IPPBC letter, Exhibit C-59-3, the IPPBC addressed that
13 at point number 7 and as well under the heading of
14 "Assessment of Demand", point number 1, and the only
15 thing that the IPPBC would like to add is that it
16 would be helpful if the Commission Panel, if it wants
17 to look at those issues in more detail, look at the
18 terms of reference and in particular section 6B-6,
19 because there is provision in the terms of reference
20 for greenhouse gas impacts, especially in relation to
21 export.

22 I'd like to draw the Panel's attention now
23 to the heading "Other", which is additional matters
24 that the IPPBC would like considered in relation to
25 the scoping exercise. And BCTC has taken the position
26 that essentially anything under 230 kV is outside the

1 scope of these proceedings, and the IPPBC does not
2 agree with BCTC's position and draws the Commission's
3 attention to sections 6(a)(ii) of the terms of
4 reference and 6(b)(iii) of the terms of reference.
5 And given the lateness of the hour, the IPPBC doesn't
6 propose to go through those, but generally the terms
7 of reference do contemplate the issue clusters.

8 And the IPPBC would also like to note for
9 the record that the distinction between generation and
10 transmission between B.C. Hydro and BCTC and many of
11 the agreements that have been filed before the
12 Commission in previous proceedings, is 60 kV. It's
13 not 230 kV. So when the terms of reference speak in
14 terms of transmission, it's the IPPBC's position that
15 the distinction that has been clearly drawn in the
16 past between 60 kV below, meaning that's B.C. Hydro
17 distribution, and 60 kV and above, meaning BCTC
18 transmission, should be respected.

19 One thing I'd like to draw to the
20 Commission's attention is -- in the terms of
21 reference, the concept of multiple transmission lines
22 into an area. And the IPPBC can't think of a
23 situation where the issue of multiple transmission
24 lines of a 230 kV level has ever been a problem. So
25 when the terms of reference speak to multiple
26 transmission lines, on a practical basis that is going

1 to mean something below 230 kV.

2 Point number 2 and "Other", and this is
3 respect to consideration of technologies, the IPPBC
4 doesn't believe that there should be a direct
5 examination of the differences between HVDC and AC.
6 However, for the purposes of section 6 of the terms of
7 reference and in particular the concept of what things
8 might cost, indirectly there should be an examination
9 of HVDC. If you can provide the transmission in a
10 more cost-effective basis using HVDC, then it's
11 certainly something that should be considered. And
12 it's the IPPBC's understanding that the BCTC model
13 could take that into account in terms of the
14 differentials in prices.

15 It may not be able to go to all the system
16 benefits such as the type that we were talking about
17 in the Vancouver Island Transmission Reinforcement
18 proceedings, but certainly the difference is that
19 costs at a certain level should and could be taken
20 into account in this exercise. So there's no real
21 point in saying that a certain type of technology is
22 not on the table. It certainly has to be on the
23 table. It's just a question of how far it should go.

24 And again, that's why -- another reason why
25 the IPPBC is saying that the scope of the inquiry
26 should be a guideline, not a definitive statement,

1 stakeholder workshops to present and receive
2 feedback on scenarios and assumptions."

3 And that should be expanded to include "and receive
4 input on import or export supply and demand resources
5 and opportunities," so that it's made clear that there
6 will be a more transparent and open process of
7 collecting import and export data, should people,
8 interested stakeholders, want to present that type of
9 information.

10 And that leads to a broader issue of
11 Powerex's participation in these proceedings. And,
12 with respect to that, I'd like to draw your attention
13 to Exhibit C-59-4 [*sic*], which is the shareholder's
14 letter between B.C. Hydro and the B.C. government.
15 This shareholder's letter was part of the evidence of
16 the LTAP record, and it was discussed at Volume 6,
17 pages 838 to 839 of the transcript. And also, Volume
18 16, pages 2961 through 2962. And this was in relation
19 to its impact or, for lack of a better word, its
20 binding nature on B.C. Hydro. And for the purposes of
21 oral argument, the IPPBC characterized it as binding
22 on B.C. Hydro based on the exchange between
23 Commissioner Pullman and --

24 MR. GODSOE: Sorry, I'm going to object to this. This
25 was part of the 2008 LTAP record, and as you know,
26 there's a Commissioner common to both. So, I would

1 proceeding and deal with this letter in the context of
2 the points that he wishes to make in this proceeding,
3 but without reference to what his submissions were in
4 the LTAP proceeding.

5 THE CHAIRPERSON: Thank you. I'm asking you, Mr. Austin,
6 to proceed.

7 MR. AUSTIN: Yeah, but the point that I'm getting to is
8 that for the purpose of the LTAP and the mandate
9 direction, the IPPBC was arguing that it was binding
10 -- just, just --

11 MR. FULTON: It doesn't matter, Mr. Austin.

12 MR. AUSTIN: Yeah, but there's a --

13 MR. FULTON: Let's just move away from that hearing,
14 please, and deal with this issue in the context of the
15 point that you want to make for the inquiry.

16 MR. AUSTIN: With respect, the point I want to make with
17 respect to this inquiry is there's a specific
18 direction to B.C. Hydro. The IPPBC cannot argue that
19 it's binding because it's different than a mandate
20 direction. However, it is something the Commission
21 should consider in terms of Powerex's participation in
22 these proceedings.

23 So there is a specific direction to B.C.
24 Hydro under the shareholder's letter, to have Powerex
25 "actively pursue extraprovincial energy trading
26 markets and explore and identify opportunities to

1 facilitate access for independent power producers to
2 western North American markets". On this basis, it's
3 the IPPBC's position that Powerex should be involved
4 in these proceedings and it should not just be left up
5 to E3 to consult with Powerex and come back with "This
6 is what we think the market is or isn't." It would be
7 very important to have Powerex in here to get the
8 information that it has with respect to its specific
9 direction pursuant to the shareholder's letter, so
10 that we can all hear it from Powerex and not through
11 the conduit of E3.

12 And moving on to the next area, the IPPBC
13 adopts BCTC's submission with respect to its
14 characterization of section 79. It agrees that --
15 with Fortis' characterization of it, and paraphrasing,
16 if a finding of fact is made that later needs to be
17 adjusted to suit the circumstances, we'll deal with
18 when that time comes. It's incumbent on the BCUC
19 Commission Panel to act prudently in this area, but
20 there's always an opportunity to change things as
21 matters proceed in other proceedings.

22 With respect to participant assistant cost
23 award funding, the IPPBC would like clarification with
24 respect to interim requests for funding to date. The
25 IPPBC hasn't made an interim funding request to date
26 because it's early in the process and it would just

1 Do you have the time estimates there, Mr.
2 Fulton?

3 MR. FULTON: I do, and I'm just doing some totting up,
4 Madam Chair. Probably about another hour on this
5 round.

6 THE CHAIRPERSON: Would this be a good time for a brief
7 break? Or do you have the stamina to continue?

8 MR. FULTON: Why don't we continue to 4:30, and then the
9 court reporter would probably appreciate a break in
10 any event.

11 THE CHAIRPERSON: Let's do that.

12 MR. FULTON: So, the next party is the Sto:lo Nation
13 Tribal Council.

14 **SUBMISSIONS BY MS. HEASLIP:**

15 MS. HEASLIP: Hi, good afternoon. I'd just like to
16 clarify that it's the Sto:lo Tribal Council, not
17 Sto:lo Nation Tribal Council.

18 And to start, I'd just like to adopt the
19 comments that were submitted in Exhibit C72-2, with a
20 few additions based on the discussions heard at the
21 workshop last week.

22 So, first I'd like to re-emphasize the
23 importance of including First Nations land use
24 planning information in this inquiry, and the need for
25 capacity funds to both mobilize this existing
26 information and to work towards a more comprehensive

1 understanding of Sto:lo land values and environmental
2 values, which may have an impact on the areas
3 inappropriate for generation and transmission.

4 So, as an example, currently there are over
5 70 proposed independent power projects in Salstamuk,
6 Sto:lo homeland. And if even a third of these are
7 considered inappropriate, or off-limits, based on use
8 of the creeks for spiritual purposes or for
9 environmental values, then that will definitely change
10 the generation estimate for the region. So we feel
11 this information is very important and we'd like the
12 inquiry to take that into consideration in the scope.

13 Secondly, our submission emphasizes the
14 importance of bringing forward the assumptions that
15 are built into the scenario models. In general, there
16 are significant concern among Sto:lo community members
17 regarding the extent to which transmission development
18 is a pre-condition for new generation development and
19 other resource exploitation and growth. And we
20 suggest that our contribution to regional scenario
21 modeling and perhaps other First Nations'
22 contributions will be more effective if workshops were
23 held in local communities to build capacity and
24 knowledge on the topic of scenario modeling. So to
25 get to the stage of more meaningful consultation and
26 engagement in this process, there needs to be a lot

1 more energy put into understanding the assumptions and
2 the models and how this modeling will take place.

3 Third, we'd just like to take this
4 opportunity to express formal support for the
5 submission prepared by the First Nations Energy and
6 Mining Council, and their comments on duty to consult
7 earlier.

8 And finally, we would like the Commission
9 to note that a lack of funding and capacity has
10 impacted the quality and completeness of this
11 submission today. The process for interim cost awards
12 did not provide assurance to us that there would be
13 funding to cover the costs of additional expertise,
14 legal and otherwise, and by the time we heard back
15 from the Commission staff that it was possible, or
16 likely, that our costs would be covered, there was a
17 time restraint in securing this legal expertise. So,
18 we are in the position today of not having that
19 capacity with us. And we just want to make note of
20 that and hope that going into this next phase we can
21 look for a different process that will allow us to
22 have the capacity that we need, and not take on this
23 kind of liability for costs.

24 Those are my comments, unless there are any
25 questions.

26 THE CHAIRPERSON: No questions, thank you, Ms. Heaslip.

1 MR. FULTON: Chief Christian.

2 **Proceeding Time 4:08 p.m. T71**

3 **SUBMISSIONS BY CHIEF CHRISTIAN:**

4 CHIEF CHRISTIAN: Madam Chair, Commissioners, as in our
5 tradition I'm first going to acknowledge the ancestors
6 of this territory, the Coast Salish people. As it is
7 our tradition, we acknowledge those have gone before
8 us, so I'd like to acknowledge the Coast Salish people
9 and the present-day descendants.

10 What I'm going to do is first start and
11 talk about who I am and where I'm from. I think it's
12 really important when we talk of this issue. First of
13 all, I'm not a lawyer. Get that straight. I'm not
14 here -- I don't have -- we don't have legal
15 representation in this issue. I'm here introducing
16 myself. My traditional name is Kukpi7. It's Chief in
17 our language. I'm chief of the Spallumcheen. I'm
18 here representing Spalacheen Neskonlith and Adams
19 Lakes, the Lakes Division of the Secwcpemc Nation.

20 The Shuswap Nation has a land base that's
21 about 150,000 square kilometres north to Quesnel, east
22 to the Rockies and to Alberta, west to the Fraser
23 River, south right to the U.S. border. Our part of
24 the Secwcpemc Nation is called the Lakes Division,
25 primarily around the Shuswap Lakes, Mara Lake, Mabel
26 Lake, the whole area that Revelstoke, it's the heart

1 of our territory. And I think it's really important
2 that you understand that as I present today I come
3 from that perspective, in terms of who we are as a
4 nation of people, and specifically the Lakes Division
5 of the Secwcpemc Nation.

6 We are in the process of re-establishing
7 the Lakes Division under Section 35 governance under
8 the *Constitution*, and I think it's really important
9 that today when I'm presenting to you, it's really
10 about that perspective. When we talk of this issue of
11 transmission, our submission is called Spider's Web
12 and the Coyote, and I think it was referenced earlier
13 talking about transmission lines and a 30-year sort of
14 long-term planning process. So I really want you to
15 understand from our perspective, first of all, in our
16 language it's called Yumenouuluwx, it means caretakers
17 of the land. That's what we do. And it's from that
18 perspective that I'm going to be presenting to you
19 this afternoon.

20 First and foremost --

21 THE CHAIRPERSON: Excuse me, Chief Christian.

22 CHIEF CHRISTIAN: Yes.

23 THE CHAIRPERSON: Just to clarify, so you have your
24 submission which is the Exhibit C79-2?

25 CHIEF CHRISTIAN: Correct.

26 THE CHAIRPERSON: And you are going to adopt that?

1 CHIEF CHRISTIAN: Yes, I am.

2 THE CHAIRPERSON: And then you will make additional
3 comments.

4 CHIEF CHRISTIAN: Yes, I'll make some comments,
5 additional comments, that's correct.

6 THE CHAIRPERSON: Thank you, Chief.

7 CHIEF CHRISTIAN: I think the very initial process for
8 ourselves is the issue of reconciliation and
9 recognition, and we believe really strongly that there
10 is no true reconciliation or recognition until past
11 infringements are dealt with. And when we talk about
12 past infringements, we're talking about it in the
13 context of loss of salmon, the loss of our medicines,
14 the loss of our food, the loss of residential areas,
15 and the loss of burial grounds. And specifically in
16 this area we are talking of the BCTC and B.C. Hydro,
17 we specifically point to the Columbia River Treaty
18 that is up for negotiation in 2014. We speak about
19 the Mica project, the Revelstoke project, the Arrow
20 Lakes, and all the IPPs within our territory.

21 So it's really important when we speak of
22 the issue of reconciliation and recognition that those
23 past infringements start a long ways back and they
24 have to be dealt with. Because with the loss of
25 salmon, a number of our communities basically moved
26 away from that because they were no longer there on

1 the Columbia River system, specifically the community
2 of Shuswap and Invermere and how that had an impact on
3 our people.

4 And the second part, and this is something
5 that's really critical, I think, in terms of the
6 constitutional cases that have come forward, the issue
7 that British Columbia has no jurisdiction over our
8 unseated lands, waters, resources, and ourselves.
9 There's numerous cases that have come forward. The
10 most recent one related to the farmed salmon. British
11 Columbia has no jurisdiction in this area. It was
12 very clear in the *Xeni Gwt'in* decision that British
13 Columbia had no jurisdiction or authority under the
14 *B.C. Forests Act* over unseated lands.

15 So for us, it boils right down to the very
16 fact that British Columbia in this process, they have
17 no jurisdiction over our lands, our water or our
18 resources. Specifically the issuing of the water
19 licences initially. That's what begat this whole
20 process. The water licences are fundamental to this
21 whole process and has not been spoken about at all.
22 And we're really clear that British Columbia, in terms
23 of title, the question of title, and this is something
24 I think needs to be looked at really seriously,
25 British Columbia has flawed title to the lands in
26 terms of process, the Crown title. And it's very

1 clear from the *Delgamuukw* decision in 1997 that the
2 British Columbia auditor for the first time showed a
3 contingent liability around aboriginal title, that
4 there is in fact a legal sort of contingent liability
5 to this province around the title issue and it has to
6 be reconciled.

7 **Proceeding Time 4:13 p.m. T72**

8 The most recent case was the *Xeni Gwt'in*
9 case, in terms of Sokoteen Nation in 2007. It talked
10 about that that there is no -- British Columbia had no
11 title. The only place that British Columbia has
12 actual title is those areas where they've signed off
13 on treaties and people have ceded and surrendered
14 through the treaty process, and that's really
15 important to understand. That British Columbia is on
16 -- sitting on flawed title and it's important.

17 Currently, the provincial government is
18 looking at recognition legislation. Premier Campbell
19 is looking for economic certainty. And I think this
20 is really an important sort of concept, and we're
21 talking of the upcoming Olympics in 2010. And for our
22 people, I think it's really important to understand
23 that in our lands, you know, we live in poverty. We
24 have -- we're landless. You know, we're always
25 targeted as the burden on Canadian society. And I
26 think if the Premier wants economic certainty, then we

1 need economic certainty. We need to be true owners of
2 our lands and have true revenue sharing, not the sort
3 of impact benefit agreements that are sort of thrown
4 out there, but true revenue sharing is really an
5 important concept.

6 And the process that this has to be based
7 on is the United Nations declaration on the Rights of
8 Indigenous People. It was adopted by the United
9 Nations on September 13th, 2007. It's actually a great
10 date because it's the date of my oldest son's
11 birthday, actually, September 13th, so I'll always
12 remember this date. And it's important, I think, that
13 you understand that these are minimum standards, and
14 that 144 countries in the world have adopted this.
15 You know, back then, four countries voted against it,
16 and now there's only three against it. Australia
17 actually overturned. And so we're talking of a long-
18 term strategic process here for transmission, sort of
19 lines in the province, and 30 years this declaration
20 will be in fact law, I believe, in this country.
21 We've started looking forward in terms of what it
22 means.

23 And I think specifically when we talk of,
24 you know, the whole concept of consultation, you know,
25 who do you consult with? Who does the government
26 consult with? And I think this comes very clearly --

1 it talks about it in the *Xeni Gwt'in* decision, that
2 the proper title and rights-holders are people that
3 have a shared language, shared customs, shared
4 traditions, historical experience, and territory.
5 It's very clear, and I want the Commission here to
6 understand, and the provincial government to
7 understand, that we, as the Secwcpemc, the Lakes
8 Division people, the Secwcpemc Nation as a whole, do
9 not delegate our authority to the B.C. First Nations
10 Energy Council, the Union of B.C. Indian Chiefs, the
11 BCFN or the First Nations Summit. These organizations
12 are just that, organizations. They have no authority
13 to deal with the issue of title and rights. It comes
14 back to us as the people, and not even the band
15 councils have that authority as dictated by the
16 courts. It's a process outside of it under Section
17 35.

18 And specifically in the declaration it
19 speaks of it in this concept, Article 18.

20 "Indigenous people have the right to
21 participate in decision-making in matters
22 which would affect their rights, their
23 representation chosen by themselves in
24 accordance with their own procedures, as
25 well as to maintain and develop their own
26 indigenous decision-making institutions."

1 Article 19.

2 "States shall consult and cooperate in good
3 faith with the indigenous people concerned
4 through their own representative
5 institutions in order to obtain the free,
6 prior informed consent before adopting,
7 implementing legislative or administrative
8 measures that may affect them."

9 These two principles are really important
10 when you speak of consultation. You know, in a
11 process that we're talking about in terms of how you
12 engage us as the Lakes Division, and how you may
13 engage -- and I would call them First Nations -- I
14 call them indigenous nations. First Nations is a
15 European term that talks about Band Councils. And
16 that model, as you know, is a model that is really the
17 Band Council is an extension of federal government,
18 much similar like you're an extension of the
19 provincial government as a Crown corporation and B.C.
20 Hydro is, and BCTC is. Your masters are the Crown.

21 And I think it's really important in terms
22 of the band council structure, their master is the
23 Minister of Indian Affairs, unfortunately. You know,
24 the *Indian Act* and that whole process as we see it is
25 very much the most racist piece of legislation in the
26 world.

1 think that's really an important part of the process.

2 And I again point to, you know, the --
3 there's Articles 24 and Article 26 of the U.N.
4 Declaration. I won't read them out, but I think that
5 it's important that those principles again are guiding
6 principles as minimum standards for the U.N.
7 Declaration on the Rights of Indigenous People.

8 I guess, you know, in thinking about and
9 sitting back all day listening to this process, the --
10 as I understand it, that, you know, the whole area of
11 consultation and the debate in this province now is
12 around recognition and reconciliation. The Premier
13 has tried to introduce a new Act, and it's gone
14 sideways a little on him. But one of the things
15 that's important, everything seems to be based on the
16 Premier's new relationship principles, or his document
17 he issued with the First Nations Leadership Council.
18 And if you take the time to read that document, it's
19 really, I think, a document truly that if they
20 implemented it as fully as a new relationship
21 implementation act, then I think what you're talking
22 about here would dissipate in terms of the
23 consultation issues and how we would actually engage
24 with the government on a government-to-government
25 level. So I think it's really important.

26 I guess in concluding, you know, I really

1 want to emphasize, I really appreciate the time to
2 present to yourselves today. 2010 marks a significant
3 time for our people, and I mean that not because of
4 the Olympics, even though it's going to be
5 interesting. I mark it because it's a time -- in
6 1910, our ancestral leaders presented a petition and a
7 memorial to the Premier, the Prime Minister of the
8 country, Sir Wilfrid Laurier. And in that memorial we
9 outlined really clearly that what we talked about is
10 our relationship with Canada on a nation-to-nation
11 basis, that we viewed that British Columbia had stolen
12 our lands, that British Columbia had no title to our
13 lands, and we wanted to enter into meaningful
14 discussions with the federal government to resolve
15 these issues, which were called the land question,
16 which has evolved into a whole process called land
17 claims, which has evolved into a process called
18 treaty. But the end of the story is that in 2010
19 we're coming marking a hundred years. And we want
20 resolution to this. And we're viewing the Olympic
21 venue as a venue to make sure that the world knows
22 that we are still here, and we're not going anywhere.

23 And one of the principles that our
24 ancestors talked about in the memorial was about
25 standing each other up as societies, that we would
26 stand up our non-First Nations brothers and sisters to

1 be great and good. We would work together to make
2 this world great and good. And the question is, I
3 think we've lived up to our side of it. We ask now
4 the government to live up to their side of it. We
5 need to stand each other up. You know, we as a people
6 are landless and living in poverty in our own land.
7 You know, the whole concept, I think, is really
8 important that we are in our own country but we're
9 still living in poverty. And this has to change.

10 This whole issue around energy and the
11 actual transmission lines and that whole process, the
12 spider web, is laced through our territories, and
13 there has been no compensation. It's all past
14 infringement issues. Those issues have to be dealt
15 with if we're going to move on. And so I think it's
16 really important -- you're speaking of a 30-year
17 infrastructure planning process here. And if we're
18 not involved on the ground floor, and you make some
19 fundamental errors here, I know we'll be in court.
20 One reason or other, because that's just what happens.
21 The bottom line is if we cannot get justice and
22 meaningful processes, that's what happens, we end up
23 in court. And that's what -- we've got legal rights,
24 we've got constitutional rights, and we'll do whatever
25 it takes.

26 And I guess the other thing that's

1 important, and I think we have to understand this as
2 people on this earth -- there is only one earth. You
3 know. We live here together, you know, the water,
4 when we speak of our aboriginal rights, we speak of it
5 in the concept of the drop of rain. That's where our
6 rights start from. Because that water feeds
7 everything. It feeds all our plants. It feeds all
8 our animals. It feeds us. So our rights start from
9 that process. What we're beginning to see is, when
10 you talk of transmission and hydroelectric power, is
11 that the water is disappearing rapidly.

12 **Proceeding Time 4:23 p.m. T74**

13 And we have to really examine this whole issue really
14 carefully together, because we see 20 - 40 years from
15 now the water that we have is not going to be here any
16 more. We see it disappearing in the land, for
17 numerous reasons. Mainly because of the environment
18 and how the environment is being impacted.

19 So for us it's a critical issue. How do we
20 work together, in a meaningful way that we're actually
21 treated as owners of our own country, owners of our
22 own land, and it's really important.

23 I guess the final comment I would like to
24 make to the Commission, because you really don't know
25 who we are, Secwcpemc or the Lakes Division, is we are
26 holding a public event on June 30th in Schickamoos or

1 Sicamous. You may know where it is. You may have a
2 houseboat on the lake there, I don't know. But if you
3 know where it is, we invite you to attend that event.
4 As the chiefs, we're having a celebration. We invite
5 you to come see who we are in our country, and it
6 really be important I think, if you did even
7 informally, if you could show I'd really appreciate
8 that and our people would really as well.

9 But I'd just like to leave my comments
10 there, and I think it's -- the process we're
11 undertaking around consultation is really critical,
12 and if we speak about consultation as the proper title
13 and rights' holder and we get it right the first time,
14 we won't have to repeat it again and again. So again,
15 I'd just like to thank you for your time this
16 afternoon. Kukstemc, thank you in my language.

17 Any questions?

18 THE CHAIRPERSON: No further questions, and thank you
19 very much, Chief Christian.

20 MR. FULTON: I think now would be an appropriate time to
21 take a ten minute break, Madam Chair.

22 THE CHAIRPERSON: Ten minutes would be fine. Thank
23 you.

24 **(PROCEEDINGS ADJOURNED AT 4:24 P.M.)**

25 **(PROCEEDINGS RESUMED AT 4:38 P.M.)**

T75

26 THE CHAIRPERSON: Please be seated.

1 **SUBMISSIONS BY MS. GRIFFITH:**

2 MS. GRIFFITH: Good afternoon, Madam Chair and Commission
3 Panel. My name is Jennifer Griffith and I'm
4 representing the Weiweikei Nation, also known as the
5 Cape Mudge Indian Band and the Haisla Nation. Now,
6 the Cape Mudge Indian Band is situated in and around
7 Campbell River, Quadra Island, with a territory that
8 stretches up into Bute Inlet. And the Haisla Nation
9 is situated in and around the Kitimat area, just to
10 give you an idea of geographically where my clients'
11 territories are.

12 I'd like to start out by adopting the
13 submissions in Exhibits C83-2 and C84-2. And I don't
14 intend to repeat the very able submissions made by Dr.
15 Stadfeld here today. But I would like to just make a
16 couple of points along those same lines. And I think
17 sort of the question of whether the Commission has the
18 duty to consult in this context, really -- or the
19 answer to that question lies in looking closely at
20 what this inquiry is about. The nature of the inquiry
21 comes from the *Utilities Commission Act* and the terms
22 of reference, and the terms of reference -- or the *Act*
23 dictates that the Commission must conduct an inquiry
24 and make determinations with respect to B.C.'s
25 infrastructure and capacity needs.

26 The terms of reference set out are a number

1 of requirements, but specifically ask the Commission
2 to make determinations respecting the need for and
3 timing of an additional transmission infrastructure
4 capacity that would allow for the supply of
5 electricity as assessed and improve the electricity
6 interties. Now, the terms of reference also direct
7 the Commission to invite and consider submissions from
8 a number of parties, including First Nations. And
9 then to prepare a report containing determinations and
10 reasons for determinations.

11 In my view, what this does, it takes this
12 inquiry sort of out of the realm of the considerations
13 that were before the Commission in the *Kwekwetlem* and
14 *Carrier Sekani* decisions, and moves it more into the
15 realm of a public debate on transmission requirements
16 in the province. And in the context of that public
17 debate, there's a specific direction to invite
18 submissions and evidence from First Nations.

19 So the Commission is therefore stepping
20 away from, I would say, from its quasi-judicial role
21 into a different role, and I think Mr. Dimitrov
22 referred to it as wearing two hats.

23 So put simply, the Commission will be
24 assessing a number of matters, and has subject to the
25 terms of reference a discretion to reach any range of
26 determinations as a result of that assessment. It's

1 not adjudicating on a particular application. It's
2 doing something much broader.

3 So what is it doing? It's been asked to
4 make a determination, and it's been asked to
5 specifically invite and consider submissions from
6 First Nations. It's highly likely, I would say, that
7 those submissions will refer to Section 35 rights, and
8 Section 35 rights are constitutionally protected. And
9 my submission is that when Section 35 rights are
10 invoked, the honour of the Crown is triggered.

11 In this instance, I would say that honour
12 requires meaningful consultation on the part of the
13 Commission with respect to the potential impacts of
14 its determinations on First Nations. I would say this
15 inquiry is the necessary and proper forum for a
16 fulsome consideration of First Nations concerns with
17 respect to the transmission infrastructure.

18 **Proceeding Time 4:42 p.m. T76**

19 The MEMPR's direction to invite and consider does not
20 mean merely listening. It means engaging and
21 addressing and integrating concerns in a way that
22 reconcile Section 35 rights with Crown sovereignty.

23 It may be premature at this stage to
24 assess, or to say with any certainty that
25 determinations made by the Commission will have the
26 potential to impact First Nations rights, but I think

1 it's highly likely that they will. And I think
2 therefore the Commission should be very alive to that
3 possibility and should ensure that it has engaged
4 First Nations at the appropriate time, at the
5 appropriate level, and that it is in a position to
6 meaningfully discharge its obligations. It's only
7 through full engagement that the Commission will be able
8 to determine whether or how its determinations may
9 impact on First Nations rights.

10 Put simply, I would submit that the
11 Commission has an obligation to inform itself of the
12 potential impacts of its determination, and to
13 substantially address any concerns raised by First
14 Nations with respect to those impacts, and to
15 demonstrably integrate responses to those concerns in
16 its determinations. I would submit that circulating a
17 draft report for comment wouldn't go far enough in
18 this instance. I also would like to say that
19 practical challenges shouldn't preclude engaging in
20 the process.

21 Now, the Panel has asked for input on what
22 the process might look like, but I have to agree to
23 some extent with what Dr. Stadfeld said, and that is
24 that it's difficult to anticipate what a determination
25 might look like. And there's been a couple of
26 requests earlier today for the Panel to consider what

1 the product of this inquiry might look like, and I
2 think that would be very useful in helping a debate
3 about what the consultation process should look like,
4 given what that end product might look like.

5 I just wanted to make one point about
6 potential impacts, and I think that there was a
7 discussion about the scoping and the potential impacts
8 or the outcome of these determinations and a
9 discussion of macroness or granularity. But there was
10 also a discussion about the types of information that
11 is considered in the development and in modelling of
12 scenarios, and in listening to the types of
13 information that's fed in, into a scenario for
14 instance where there might be generation in one
15 section of the province and need in another section of
16 the province, and then looking at whether there's
17 transmission requirement, we were told at the workshop
18 that BCTC would have to input hard information about
19 transmission line length, that the terrain, possibly
20 the type of infrastructure or technology that it would
21 use. And although the outcome may be some sort of
22 higher-level planning concept, I think we also need to
23 consider that outcome would be presupposed on an
24 initial set of inputs that may to some extent dictate
25 routing already. I don't know if that makes sense,
26 but feel free to ask me questions later.

1 those practical challenges as best we can.

2 COMMISSIONER HARLE: Thank you.

3 THE CHAIRPERSON: Well, I just have perhaps one further
4 question, Ms. Griffith, since you are sort of
5 outlining the challenges we have ahead of us. And you
6 sort of stated that -- and you understand that it is
7 difficult today, where we are today to project what
8 the end project of this whole inquiry might look like.
9 But if you are looking at your own crystal ball from
10 your clients' perspective, what would you like to see?

11 MS. GRIFFITH: Do I have to answer that question? I'd
12 have to seek -- you know, counsel with my client
13 before I answer that.

14 But I think it's appropriate to say that
15 really the ball is in your court, in terms of
16 determinations. There's no definition of
17 determination in the *Utilities Commission Act*. A
18 decision under the administrative tribunal is defined
19 to include a determination. The determinations are to
20 be with respect to infrastructure needs -- excuse me
21 while I just turn to the terms of reference.

22 There was some particular language in the
23 terms of reference that I'm trying to find that jumped
24 out to me. And I realize the clock is ticking.

25 THE CHAIRPERSON: Well, if you can't find it, that's
26 fine. That's fine.

1 MS. GRIFFITH: Well, there was a reference to -- it's in
2 the "whereas", actually. There's a reference to a
3 planned and rational expansion of electricity -- the
4 electricity transmission system that considers current
5 requirements, needs that will likely arise, the
6 desirability of minimizing impacts in supplying these
7 needs, in the best interests of British Columbians
8 from a social, environmental and economic perspective.
9 And, you know, in my view, that requires
10 reconciliation of First Nations' rights with Crown
11 sovereignty. So I would like the determinations to
12 maybe not determine, but to some extent or in some way
13 address the need for that reconciliation.

14 THE CHAIRPERSON: Thank you, Ms. Griffith.

15 MR. FULTON: Hwiltsum First Nation.

16 **SUBMISSIONS BY CHIEF WILSON:**

17 CHIEF WILSON: Thank you, Madam Chair, and Commissioner
18 Panel. Chief Rocky Wilson, the Hwiltsum First Nation,
19 Hul'qumi'num descent, that's part of a larger Coast
20 Salish network. I would just like to take this time
21 to welcome everybody to Coast Salish territory, our
22 ancestors' territory. In particular I'd like to thank
23 the Squamish and the Tsleil-Wauthuth and the Musqueam
24 for allowing us to use their territory here today.

25 With that, I'd just -- there's not too many
26 comments that we can make. I'm certainly not a lawyer

1 and I'll leave that up to Ms. Muir to comment, but we
2 do concur with Dr. Stadfeld, with what he said, all
3 his issues, laid them out very well.

4 **Proceeding Time 4:52 p.m. T78**

5 Kukpi7, Chief Wayne Christian laid it out
6 very well about the historical injustices, past
7 infringements really have to be dealt with. And I
8 think at the end of the day Mr. McDade said
9 reconciliation is what we're looking for, and that's
10 also what we concur with through the new relationship
11 initiative, the proposed recognition and
12 reconciliation legislation and treaty-related
13 measures. So all happen to conform to case law, as we
14 all know.

15 So, but I'd just like to say that we're
16 honoured to be here before you and we're willing to
17 work with you on all these issues. So with that,
18 *haichka*, I'll pass it on to Ms. Muir. Thank you.

19 THE CHAIRPERSON: Thank you.

20 **SUBMISSIONS BY MS. MUIR:**

21 MS. MUIR: Thank you very much.

22 What I'd like to begin with is just
23 referring to a couple of exhibits. We forwarded an
24 exhibit yesterday by e-mail which contained a cover
25 letter and two of the decisions that we referred to,
26 that we're relying on today. There was a third

1 decision but it's 35 megabytes, so it's almost
2 impossible to send it to anybody, so I just provided
3 the web link. That's Exhibit C-89-2. And what you're
4 receiving now is the written submission, and I'm going
5 to touch on this. It'll actually make my comments a
6 bit shorter, and this is now Exhibit C-89-3.

7 So as Chief Wilson mentioned, we support
8 the different submissions that have been made today.
9 I'll refer to some of them in the course of my
10 remarks, but just generally, directionally, we support
11 this different submissions.

12 The very beginning of our written remarks,
13 and I'm not going to go through it all, so don't
14 please worry that, but it refers really and it's an
15 excerpt from and an extract from The New Relationship,
16 so it's interesting because it deals with a lot of the
17 issues that are really being raised today by First
18 Nations.

19 The Hwlitsum would respectfully submit that
20 the BCUC has an independent duty to consult with First
21 Nations in the inquiry into British Columbia's long-
22 term transmission infrastructure. The views we're
23 going to express now are the views of the Hwlitsum
24 First Nation, and we're not speaking for any other
25 First Nation. We would like to encourage, and this is
26 something I think that's been raised in, I'm assuming,

1 Dave's presentation, that each commissioner ask all
2 counsel here the question: If not now, when will the
3 duty to consult in a meaningful way occur with First
4 Nations and be triggered?

5 I think I'd like to just -- I'll just give
6 you a bit of the emphasis where I'm going to. I'm
7 going to go on page 6 of the actual argument and just
8 go through the different triggers for consultation,
9 again in summary because many of these issues have
10 been dealt with before. And Chief Justice McLachlin
11 articulated what was the trigger for the Crown's
12 duties to consult in *Haida Nation*, which is one of the
13 decisions we've provided, and that the duty arises
14 when the Crown has knowledge, real or constructive, of
15 the potential existence of an aboriginal right and
16 title, and contemplates conduct that might adversely
17 affect it.

18 Two aspects again to this test. One, that
19 there be an existing or potential aboriginal right or
20 title that might be affected by the contemplated
21 conduct; and the Crown having knowledge, subjective or
22 objective, of the potentially existing right and title
23 and contemplating the conduct.

24 Going to page 7 and 8, we really start
25 looking at some of the ways that this inquiry's
26 determinations to the Minister might potentially

1 impact First Nation Section 35 rights. And they're
2 important to enumerate because this was one thing that
3 hasn't been dealt with in so much detail so far at
4 this meeting.

5 First there's the major impacts on the
6 terrestrial environment and altering the landscape and
7 waterways and compromising natural resources such as
8 wildlife, habitat and water. They can have a very
9 distinct negative impact on Section 35 harvesting
10 rights, reducing the land base for harvesting and
11 causing disruption to wildlife, wildlife habitat, and
12 fish and fish habitat. They also influence and can
13 reduce important plant areas and reduce opportunities
14 for plant gathering.

15 There's an interesting -- and this is in
16 the *Chilcotin* case that we provided the web link to.
17 Interesting impact potentially on interfering with
18 First Nations' constitutional right to earn a moderate
19 livelihood from the commercial harvesting or
20 exploiting of resources within their traditional
21 territories. And this was being referred to as a very
22 important impact on aboriginal rights and titles.

23 **Proceeding Time 4:57 p.m. T79**

24 And within that *Chilcotin* case, there was a
25 recognition of the aboriginal rights to hunt, trap and
26 trade in furs to sustain a moderate livelihood

1 throughout their claimed area.

2 Lastly, and this was referred to also by
3 the Sto:lo Tribal Council, with the independent power
4 projects expect -- having spiritual impacts on the
5 people, these generation and transmission projects
6 that are being considered here can have impacts on the
7 spiritual and cultural values of the First Nations.
8 While these are less tangible and may be a bit more
9 difficult to quantify infringements, they are just as
10 real to the First Nation and constitute an
11 infringement of the Section 35 rights.

12 All these different impacts and
13 infringements together go to the nature of the need
14 for an integrated approach, and we would support
15 different comments that have been made here today
16 about an integrated approach, particularly for
17 generation and transmission, and for consideration of
18 impacts on First Nations.

19 I'd like now just to deal with the nature
20 of the duty of early engagement by the Crown, whether
21 in the right of British Columbia or the BCUC. We've
22 had comments today at the very beginning about the
23 BCTC dealing with the nature of the strategic high-
24 level decisions and planning exercise that is
25 occurring here. And there are different legal
26 decisions that support this as a basis for early

1 engagement and consideration of First Nations.

2 In considering who owns the duty to
3 consult, this can be held by the Crown in different --
4 nature of part -- a different range of parties. *Dene*
5 *Tha*, which is one of the decisions we've provided,
6 held that in that case, a Federal Court ruled that
7 there was a breach of consultation obligations because
8 no entity had a clear mandate to consult and, if
9 necessary, accommodate the First Nation with respect
10 to the Mackenzie Gas Project.

11 It's been established, and it was discussed
12 by different parties, of the need to -- the
13 consultation beginning very early in the decision-
14 making process, starting again when the Crown
15 contemplates the conduct that might adversely affect
16 it. So when that means there's a series of decision-
17 makers, it must begin early and cannot occur at the
18 final decision-making process.

19 Now, we considered when this might have
20 been triggered in this case. Arguably it was
21 triggered when the British Columbia government
22 announced its energy plan on February 27th, 2007. If
23 it wasn't triggered at that point, then it certainly
24 could have been, arguably was, on December 11th, 2008,
25 when the Minister signed the terms of reference,
26 thereby creating the Section 5 long-term transmission

1 inquiry.

2 And the primary role of the BCUC in this
3 inquiry, as we submit, is to develop a plan for the
4 future generation and transmission facilities. And
5 thus -- and also the plan has an impact on the Section
6 35 rights of First Nations. Therefore, the inquiry
7 itself has an independent duty to directly consult
8 with First Nations, because its determinations, which
9 have been discussed earlier, and the draft report,
10 have the potential to impact areas where First Nations
11 have asserted the Section 35 rights. And again, just
12 to quote directly, BCTC:

13 "The BCUC is embarking on a long-term
14 transmission planning exercise and for a
15 long period of time for the entire
16 province."

17 And what we're achieving for the end of the day, which
18 is a long-term plan. So very much falling within the
19 different decisions.

20 And there's some different things which
21 suggest why this was the case. That the Section 5
22 enquiry derives its authority from the provincial
23 Crown, that the Commissioners are appointed, and there
24 is very much the terms of reference that define the
25 role of the BCUC in this inquiry. Therefore we
26 respectfully submit that the BCUC role in this Section

1 5 inquiry is that of an agent of the Crown and, like
2 the Crown, the inquiry is encumbered with the duty to
3 consult with First Nations whenever it contemplates
4 conduct that has the potential to impact on the
5 constitutionally protected rights that are asserted
6 here.

7 Arguably the BCUC should already have begun
8 to engage First Nations in a meaningful consultation
9 for the Section 5 Inquiry, and not just provided them
10 with an invitation to attend and to participate in the
11 inquiry. We would suggest they have continued to
12 proceed without meaningful consultation for the First
13 Nations, that the BCUC would be taking a risky gamble.

14 I'd like to briefly address -- and I have
15 indirectly -- whether or not the BCTC and B.C. Hydro
16 have asserted that the BCUC's function here is the
17 quasi-judicial body. And we've submitted instead that
18 it's acting as an agent of the Crown.

19 **Proceeding Time 5:02 p.m. T80**

20 An interesting comment, we've had a real
21 range of comments today, and one I'd like to just
22 highlight is the Commercial Energy Consumers
23 Association talking about the need for involvement in
24 consultation between the parties and a very positive
25 approach. And then the question comes: Has the BCUC
26 at this point complied with the duty to engage in

1 meaningful consultation? There's been comments made,
2 particularly by Dr. Stadfeld, about the need for a
3 deep consultation. The Hwlitsum First Nation is
4 prepared to make further submissions on this or to
5 participate in further processes that deal with this
6 issue.

7 One comment that's been raised by some
8 parties already is that the failure to advance
9 capacity funding has disadvantaged some parties and
10 even participating so far, and I'm referring to some
11 of the remarks of the Sto:lo Tribal Council, and we'd
12 support advance funding being available to allow
13 parties to adequately and meaningfully participate.

14 We'll briefly refer to the *Kwikwetlem* and
15 the *Carrier Sekani* decisions, but more to distinguish
16 them. While they may have some -- they have relevance
17 in the context of where the BCUC acts in a quasi-
18 judicial role, where it's adjudicating on matters that
19 deal with the BCTC and B.C. Hydro's proponents, we
20 would suggest that it's not relevant in this case.
21 Similarly we would distinguish the *Quebec* decision,
22 the *Quebec Attorney General v. Canada*, the *National*
23 *Energy Board*, on the basis again that we have the
24 Section 5 Inquiry duties, and also that this decision
25 was based on the fiduciary relationships between the
26 Crown and First Nation peoples and not the *Haida* duty

1 to consult.

2 So to conclude, and there's one question
3 that the Commission and all parties have to ask: If
4 the BCUC has a duty to consult with the First Nations,
5 how can these First Nation interests be accommodated?
6 And the Hwlitsum First Nation suggests that the
7 Section 5 Inquiry should explore the issue of revenue
8 sharing to compensate First Nations for adverse
9 impacts on their Section 35 interests. We've had some
10 references to revenue sharing already in the written
11 comments, and the oral remarks at the workshop, and
12 further ones here by gentlemen such as Mr. McDade and
13 Chief Christian.

14 Therefore in conclusion I'd submit that the
15 BCUC has an independent duty to consult with First
16 Nations in this inquiry into the long distance
17 transmission infrastructure.

18 COMMISSIONER RAVELLI: I have a question.

19 MS. MUIR: Yes.

20 COMMISSIONER RAVELLI: You talk to everybody has made
21 comments that you only speak for yourself and you
22 don't speak for any other of the First Nations. That
23 causes problems for us. How do we look out and see,
24 how do we engage 203 different bands or groups? Do
25 you have any idea how that process could look from
26 your standpoint?

1 MS. MUIR: I'm going to actually ask Chief Wilson. We're
2 very fortunate to have a decision maker with us,
3 before us now. Chief Wilson.

4 CHIEF WILSON: Thank you. I think I heard you correctly.
5 Yeah, no, I understand the problem. It is an issue
6 and it's just the -- it is the nature of the beast.
7 You know, we're different peoples, we're not --
8 there's no pan-Indianism I would say with other
9 province. It's just something that the way it is and
10 you know, we speak for ourselves. And I don't know
11 what -- you know, how to get around that or whatever
12 and I'm sure that the Sto:lo may say the same. I'm
13 not sure, I can't speak for them, right? So that's
14 just how it goes. We speak for our own ancestors. I
15 speak -- I'm honoured that my ancestors are allowing
16 me to speak and that's just how we operate. And so I
17 really -- I can't shed any more light on it than that.
18 Thank you.

19 MS. MUIR: Just as a procedural matter and it's been
20 raised about the need maybe to have further and
21 additional meeting addressing some of these issues,
22 and maybe this can be some of the topics that can be
23 raised and parties to discuss. But we would be
24 willing to participate fully in it.

25 THE CHAIRPERSON: Thank you very much, Ms. Muir.

26 **Proceeding Time 5:08 p.m. T81**

1 MR. FULTON: Wilderness Committee.

2 **SUBMISSIONS BY MR. DOHERTY:**

3 MR. DOHERTY: My name is Eric Doherty, speaking for the
4 Wilderness Committee. First of all, I'd like to adopt
5 our written comments, which I believe are C92-2.

6 I'm only going to address a couple of
7 points from our submission to further elaborate them.
8 First of all, with regard to point 7, the terms of
9 reference for this inquiry specifically refer to the
10 *Greenhouse Gas Reduction Targets Act* and the Western
11 Climate Initiative. It seems that greenhouse gas
12 emissions are therefore within scope, both in B.C. and
13 outside of B.C.

14 Page 6 of the terms of reference, point
15 7(c)(1), refers to an increase in electricity use as a
16 means of reducing greenhouse gas emissions. Referred
17 thereto as substitution. However, there are other
18 forms of substitutions that are going to be dealt
19 with, or should properly be on the table. Inverse
20 form of substitution, where by increasing electricity,
21 so-called demand, by creating new electricity supply
22 corridors, by supplying things -- such things as coal
23 mines, actually increase greenhouse gas emissions.

24 Generally that is the pattern within
25 economies. Electricity consumption goes up, so do
26 greenhouse gas emissions, particularly greenhouse gas

1 footprints, which includes emissions from the full
2 life cycle analysis of the economy. Including
3 emissions, for instance, in China for the manufactured
4 goods that a province like B.C. uses.

5 Therefore, the conditions -- therefore,
6 this question of whether projects increase or decrease
7 greenhouse gas emissions should be in scope, and they
8 should be carefully looked at by the Commission. As
9 well, the conditions required to verify and enforce
10 purported greenhouse gas reductions must also be in
11 scope. There are many cases where claims are made
12 that a certain measure reduces greenhouse gas
13 emissions. Very often these claims turn out to be
14 false on further examination.

15 And I just want to flag, with regard to
16 that, major resource extraction, particularly coal
17 mining, coal bed methane, and natural gas
18 developments.

19 My second point I'd like to address is with
20 regard to point 5 of our submission. With regard to
21 economic growth and therefore the forecast for
22 electricity use, and overall energy use in our
23 economy. I want to quote from a report that is cited
24 there, from the U.K. Sustainable Development
25 Commission.

26 "Global carbon emissions have risen by 40

1 of the environment, particularly greenhouse gas
2 emissions.

3 The scenarios considered should include
4 deliberately constrained growth as outlined in the
5 U.K. Sustainable Development Commissioner's report.
6 And overall lower energy consumption in the province
7 over this period with limited electricity trade may
8 be, in fact, the only scenario that can meet our
9 legislated greenhouse gas reduction targets. This
10 must be considered in the scenarios.

11 Thank you very much. Any questions?

12 THE CHAIRPERSON: Thank you very much, Mr. Doherty.

13 MR. FULTON: Madam Chair, that then concludes the first
14 round of submissions, and we now move to the reply
15 round which, as you indicated at the outset, is in
16 reverse order.

17 Mr. Doherty being the last person who
18 spoke, and who has heard everybody, I'm assuming has
19 no reply.

20 Hwiltsum First Nation has no reply.

21 THE CHAIRPERSON: Yes, Mr. Fulton, we require you to keep
22 us on track of this process.

23 MR. FULTON: The Haisla Nation and Cape Mudge Indian
24 Band, no reply. Arrow Lakes Division -- Chief
25 Christian doesn't appear to be here any more, so I'll
26 take that as no reply.

1 Sto:lo Tribal Council, no reply.
2 Independent Power Producers of B.C. I understand have
3 no reply. Energy Solutions for Vancouver Island, no
4 reply. Terasen Utilities, no reply. Terry Vulcano, I
5 don't see him here any longer, so I'll take that as no
6 reply. Andritz Automation -- Mr. Van Uytven isn't
7 here any longer, so no reply.
8 Commercial Energy Consumers Association, no
9 reply. TransCanada Energy, Mr. Best I don't see, so
10 I'll take that as a no reply. BCOAPO *et al*, no reply.
11 Shishalh First Nation, and Dr. Stadfeld.

12 **REPLY BY MR. STADFELD:**

13 MR. STADFELD: On behalf of my clients, I appreciate that
14 the Commission indulged me earlier this afternoon, so
15 I will definitely keep this very short. Just follow
16 up on a couple of points.

17 The first one being the suggestion by the
18 IPPBC group that perhaps there is something to be said
19 that there will be a draft report done at the end, and
20 I've gone to the case law on that, that consultation
21 has to be timely, it has to begin at the very moment
22 that the duty is triggered, and follow through, of
23 course, and be interactive. Just one final point on
24 that. Just for your notes, at paragraph 70 of the
25 *Kwikwetlem* decision, the first sentence, the court
26 refers there to:

1 And those are all very legitimate questions. And I
2 think that because of the importance of this, it would
3 be the proper approach to allow the First Nations to
4 make further submissions on those issues, and that
5 could be part of this possible procedural conference.

6 So unless there are any further questions,
7 those are our submissions at this time.

8 THE CHAIRPERSON: Thank you, Dr. Stadfeld.

9 MR. FULTON: Columbia Power Corporation.

10 MR. WEISBERG: No, thank you.

11 MR. FULTON: British Columbia Sustainable Energy
12 Association *et al.*

13 MR. ANDREWS: No reply.

14 MR. FULTON: No reply. Line Contractors Association of
15 B.C. No reply. Joint Industry Electricity Steering
16 Committee.

17 MR. WALLACE: No reply, thank you.

18 MR. FULTON: Ocean Renewable Energy Group, no reply.
19 First Nations Energy and Mining Council.

20 **REPLY BY MR. DIMITROV:**

21 MR. DIMITROV: Good afternoon. Essentially we support
22 the submissions of counsel that have spoken on behalf
23 of other First Nations, and in particular Dr.
24 Stedfeld's idea of a further procedural session on
25 scoping, on the duty to consult and accommodate, and
26 how to proceed procedurally thereafter. I think that

1 the BCFNEMC has some good ideas on that, but I'm not
2 ready to share them today, but if there was a special
3 session I think it would come out.

4 On a matter that's not related to First
5 Nations' issues, I note that with respect to
6 technology, you used the word "efficiency tool" a
7 couple of times and you refrain the word "technology"
8 as "efficiency tool". It was interesting and I think
9 you might want to consider that as you deliberate,
10 whether to rule in or out technology, because they're
11 all efficiency tools. And the terms of reference in
12 several sections talk about cost-effectiveness,
13 efficiency, efficient use et cetera, and that can't
14 but lead you to consider efficiency tools such as
15 technology.

16 Those are my submissions, thank you.

17 THE CHAIRPERSON: Thank you very much.

18 MR. FULTON: FortisBC Inc.

19 **REPLY BY MR. McDONELL:**

20 MR. McDONELL: Thank you. Madam Chair, I understood you
21 this morning to make a request of the utilities that
22 they make a submission in regard to participant
23 funding, perhaps particularly in reply to Mr. Andrews,
24 I think.

25 It's my submission that the guidelines the
26 Commission has were developed with an eye to various

1 kinds of proceedings before this Commission, and the
2 guidelines in my submission should be followed and
3 applied in this inquiry itself. If there is some
4 extraordinary issue or some extraordinary circumstance
5 that may arise, that may require or necessitate some
6 reply, as Mr. Andrews -- I believe it was Mr. Andrews
7 submitted, then it's always open to the applicant for
8 the funding to make that request for the application.
9 But I'm advocating at this moment against any *ad hoc*
10 or blanket exception to the guidelines as they now
11 stand, and I'd say the guidelines should be applied
12 for participant funding in this inquiry.

13 **Proceeding Time 5:21 p.m. T84**

14 And then the only other point I have is to
15 reply to a number of submissions of parties. It deals
16 with the subject of areas inappropriate for
17 generation. I submit that the terms of reference
18 contemplate assessment of areas inappropriate for
19 generation only, and the terms of reference do not
20 contemplate either an assessment or a determination in
21 regard to areas inappropriate for transmission. And
22 in making that submission, I rely simply on the plain
23 language of the terms of reference. I think the
24 design of the terms of reference -- indeed, it's only,
25 I think, a consideration of inappropriate areas as
26 part of the assessment of generation, but the terms of

1 reference themselves don't add that consideration to
2 your determinations in regard to transmission. And
3 those are my submissions.

4 THE CHAIRPERSON: Thank you.

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

6 **REPLY BY MR. GODSOE:**

7 MR. GODSOE: I do wish I was Mr. -- Columbia Power
8 Corporation's counsel and just saying "No, thank you,"
9 but that's not going to be helpful.

10 Let me start with the -- what I'll call
11 miscellaneous items. Regarding the PACA guidelines in
12 affording participants a chance to reply to utility
13 submissions, B.C. Hydro takes no real position on
14 that, but does note these guidelines are guidelines
15 only.

16 The second item under miscellaneous deals
17 with the notion that the scoping decision should be --
18 there should be some built-in flexibility. IPPBC's
19 counsel referred to them as guidelines. I think I
20 prefer my friend Mr. Feldberg's description of them as
21 affording some flexibility. We do need some certainty
22 on some issues. I'm worried that, once we come to
23 filing evidence, that I'll be surprised by an issue
24 being said to be in scope. And the example I use is
25 load forecasting methodology. That has been the
26 subject of extensive -- extensive proceedings, both in

1 the 2006 integrated electricity plan/LTAP proceeding,
2 and the 2008 LTAP. And we strongly urge the
3 Commission to make a ruling on that by saying it is
4 out of scope. And in that regard, I will refer you to
5 page 5 of Exhibit B2-3, lines 9 to 20.

6 Moving to the assessment of generation, I
7 think I can return counsel to JIESC -- well, I can
8 give him the same benefit he's given me, which is I
9 can endorse virtually every word coming out of his
10 mouth, with the exception of "transmission south of
11 the border", which I'll leave to my friend Mr.
12 Feldberg. In particular, I agree that the ability of
13 customers to manage peak load should be considered as
14 a resource option, and B.C. Hydro commits to further
15 dialogue with JIESC, both at the 23 July workshop and
16 otherwise.

17 In addition, I agree with his assessment of
18 Special Direction 10. It would be modeled as the
19 surplus moving to the spot market if we were to fix
20 long-term contracts. Of course it would come out of a
21 resource stack, and therefore be inconsistent with
22 Special Direction No. 10.

23 What we're proposing is that the surplus
24 generated as a result of self-sufficiency and
25 insurance would be B.C. Hydro's work, not E3's. So we
26 would give to BCTC the surplus ranges on an average

1 water year versus a critical water year. We would
2 give them information of heavy load hours versus light
3 load hours, and the benefits of shaping that into a
4 heavy load hour period. And then BCTC would estimate
5 the transmission costs of moving the surplus into the
6 heavy load hours and then we would be able to see on a
7 cost/benefit analysis whether transmission build made
8 sense to move the SD10 surplus out.

9 So, to repeat, it would not be part of E3's
10 mandate.

11 Also in the assessment of generation, I
12 want to draw a distinction on greenhouse gases, which
13 we've heard from counsel for BCSEA, IPPBC and now the
14 Wilderness Committee. I agree that what is in scope
15 is the impacts of greenhouse gas legislation. For
16 example, the *B.C. Greenhouse Gas Targets Reduction*
17 *Act*. And we would work backwards in scenarios from
18 those targets. I think there's two things that are
19 definitely out of scope. First, verification, in my
20 submission is out of scope. The government has issued
21 an offset regulation pursuant to the *Greenhouse Gas*
22 *Targets Reduction Act*. It is, in my respectful
23 submission, the government's purview to deal with
24 verification and not this panel's.

25 **Proceeding Time 5:26 p.m. T85**

26 Secondly, I do not agree that the effects

1 of climate change on generation, whether existing or
2 new, can be in scope. On existing within our system,
3 as you may know, in the 2006 IEP/LTAP decision, this
4 Commission directed us to look at that issue as part
5 of the 2011 LTAP, which we will do. We have no
6 ability within the current timeline to model something
7 like climate change impacts on our existing system.
8 It's very complicated. For example, in the Peace
9 region we could have heavier rain and less snow melt.
10 That might be different in the Lower Mainland. It
11 simply isn't possible within the time frame, and I
12 would urge you to rule that out of scope.

13 Very briefly in the assessment of domestic
14 demand, I just want to clarify TransCanada Energy's
15 comments that imports are not excluded by Special
16 Direction 10. I agree that's the case with respect to
17 trading and wheeling. It is not the case with respect
18 to planning to rely on imports. As you know, B.C.
19 Hydro after 2016 is precluded from doing that. And
20 therefore imports, I submit, are in to the extent they
21 are consistent with Special Direction No. 10.

22 Let me now move to exports. IPPBC stated
23 that "Powerex should be involved" in the proceedings,
24 and offered up his shareholder's letter, now Exhibit
25 C59-4, as a basis for that. I'll repeat my
26 submissions that it is far too early for the

1 Commission to wade in on how B.C. Hydro structures its
2 evidence. We have presented E3 as an independent
3 arm's length party to assess exports because we know
4 it will be contentious. We think that's the proper
5 course. As I said before, we will use Powerex to
6 assess the scenarios to ensure they are plausible and
7 reasonable, but at this time we do not anticipate
8 calling Powerex, and the shareholder's letter does not
9 change my view on that.

10 Quickly on areas inappropriate for
11 generation, I hear the Sto:lo Tribal Council's
12 submission. We will engage with the First Nations in
13 terms of how to input First Nations' land use planning
14 information into what I have called the sensitivities
15 around Category 2. I think it is one of the
16 complications but it's something that must be
17 explored, so we will do so hopefully before, but
18 certainly at the 23 July workshop.

19 That brings me to First Nation issues, and
20 before I get into the duty to consult, let me see if I
21 can address some other issues first. I agree with the
22 First Nations Energy Mining and -- Council that the
23 new relationship document the Commission can take
24 judicial notice of. Of course parties in final
25 argument can interpret that differently, but I agree
26 it should be subject to judicial notice.

1 With respect to capacity funding, we've
2 heard the concerns raised by First Nations, and B.C.
3 Hydro is committed to looking at, as part of Phase 2,
4 a different level of funding as compared to Phase 1.
5 Phase 1 was an introduction as to what the Section 5
6 transmission inquiry is all about. Phase 2 will be
7 very significant because we will be consulting on our
8 actual evidence, including the scenarios.

9 Now, with respect to the dates to Phase 2,
10 firstly we did put it out there to be helpful, to
11 propose those dates in a public form and forum for
12 comment. We're not wedded to them, but our concern
13 was that if we didn't start to book those, there would
14 be conflicts with the Commission's workshops and
15 regional sessions. So we are open to submissions from
16 First Nations and others on those dates. We just
17 wanted to propose them to be helpful.

18 I think what is problematic is moving the
19 second phase into early September. What we did want
20 to do was to allow for the development of initial
21 scenarios with enough detail that we could really
22 gather First Nation input into it. And in our
23 submission, we won't be ready in the beginning of
24 September to do that.

25 We are committed to sending out our 18
26 September, what I'll call our draft filing or our

1 initial scenario filing, out immediately to First
2 Nations upon this filing. Our experience, and here I
3 don't want to speak for First Nations, but our
4 experience is that August and the first part of
5 September, First Nations are often unavailable due to
6 hunting and fishing schedules, so that's a further
7 reason why moving Phase 2 into early September might
8 be problematic.

9 **Proceeding Time 5:31 p.m. T86**

10 I think that brings me to the duty of
11 consultation. And first off, I do agree a procedural
12 conference is necessary on this issue. I think,
13 however, I must urge that written submissions be made
14 prior to that procedural conference, both on the basis
15 of fairness and for an effective and efficient
16 process.

17 So I think Dr. Stadfeld, CECBC's counsel,
18 Ms. Muir, were right that a procedural conference
19 should be held. And I do think the issues are what,
20 if any, is the duty to consult and accommodate with
21 respect to the Section 5 determinations and, secondly,
22 if there is a duty to consult, how would that duty be
23 fulfilled?

24 I don't want to get into too much detail
25 about responding to Dr. Stadfeld, but I do feel I have
26 to do something to balance these comments out, and of

1 course I think they'll be -- it might help for me to
2 be transparent to everybody where B.C. Hydro's
3 thinking is on this, but we will flesh it out further
4 in written submissions prior to this procedural
5 conference.

6 So, first off, B.C. Hydro doesn't agree
7 that simply because the *National Energy Board* decision
8 dealt with a fiduciary duty, and the *Haida* decision
9 dealt with a duty to consult and the honour of the
10 Crown, that that makes any difference whatsoever to
11 whether the Commission has a quasi-judicial function
12 or not.

13 While we are asking the question "Who is
14 responsible for consultation?", and you've heard our
15 submissions that this is a quasi-judicial function,
16 the Commission has both an inquisitorial function and
17 an adversarial function, and just because this is
18 inquisitorial doesn't mean there isn't going to be
19 some adversarial, and my submission, you still are
20 going to be determining some rights at the end of the
21 day, so it very much is a quasi-judicial function. I
22 think we also have to focus on what is required to
23 maintain the honour of the Crown, and how will the
24 Crown's duties be fulfilled beyond just who is going
25 to fulfill them.

26 Some preliminary comments. I don't agree

1 that the case law states that a separate process is
2 always required. And I need to look no further than
3 the *Haida* decision at paragraph 51. In *Haida*, the
4 Supreme Court stated:

5 "It is open to governments to set up
6 regulatory schemes to address the procedural
7 requirements appropriate to different
8 problems at different stages, thereby
9 strengthening the reconciliation process and
10 reducing recourse to the courts."

11 In addition, *Takla River*, which we'll be referring to
12 in our written submissions, stands for that proposal.

13 We submit that the province, through the
14 Section 5 of the *Utilities Commission Act*, which was
15 amended in May, 2008, and through the terms of
16 reference, and through the request of B.C. Hydro to
17 consult directly with First Nations, has set up a
18 regulatory scheme to consider and address any
19 potential First Nation concerns relevant to the
20 Section 5 Inquiry.

21 I think also for consideration, what was
22 raised by Ms. Muir is interesting. Where in strategic
23 planning is the duty to consult triggered? I would
24 urge caution in adopting *Haida*. *Haida* concerned a
25 tree-farm licence. A tree-farm licence clearly
26 defines a specific area in which some trees will be

1 cut, subject to the claims of identifiable First
2 Nations. Similarly, the electricity purchase
3 agreement in the *Carrier Sekani* decision was specific
4 to known facilities in areas subject to identifiable
5 First Nation claims. In contrast, the Section 5
6 Inquiry is a strategic planning exercise, and I would
7 refer the Commission Panel to page 9 of Exhibit B2-3
8 in this regard.

9 So it may be that the need and timing for
10 transmission infrastructure are contemplated in a
11 general way, such that it is not possible to identify
12 with any particularity the geographic area in which
13 the facilities would ultimately fall.

14 I think also *Haida* and the other B.C.
15 Supreme Court decision referred to by Dr. Stadfeld
16 deal with the Ministry of Forests issuing forest
17 tenures, which we submit is not a quasi-judicial
18 function. So again, we would want to distinguish
19 those cases. I'm just raising this to show you how
20 complicated this is, and that's why I'm urging a
21 written process followed by a procedural conference.

22 And subject to any questions, those
23 conclude my reply.

24 **Proceeding Time 5:36 p.m. T87**

25 COMMISSIONER ANDERSON: Just before I put my question,
26 the complexity of all of this, I think, has become

1 abundantly clear to us.

2 I would just be curious to know whether, in
3 the course of what you heard today from the First
4 Nations, whether you see any particular significant
5 disconnect between what sounds like their expectations
6 with respect to adequacy and the nature of
7 consultation, and what B.C. Hydro has in its plans
8 with respect to fulfilling that need?

9 MR. GODSOE: I think frankly, one of the things I'm
10 struggling with is I'm not sure what First Nations
11 want, and I think the procedural conference will help
12 educate me and B.C. Hydro on that.

13 I think there's a bit of a disconnect on
14 how we see the Commission process unfolding, and we
15 say the existing process is adequate. It's provided
16 adequate notice. It's provided all necessary
17 information in a timely way. It's provided the
18 opportunity to engage in direct consultation through
19 the B.C. Hydro process and through the Commission
20 hearing proceedings. We're hearing First Nations
21 think otherwise.

22 So I think, certainly personally but also
23 on behalf of B.C. Hydro, the procedural conference
24 might be helpful that way.

25 COMMISSIONER ANDERSON: Thank you.

26 THE CHAIRPERSON: I just, Mr. Godsoe, would briefly still

1 like to clarify B.C. Hydro's view regarding Powerex's
2 role throughout this whole process, so I --

3 MR. GODSOE: Regarding Powerex?

4 THE CHAIRPERSON: Powerex, yes. Sorry, I'm losing my
5 voice. Because right now you explained that you will
6 be receiving input from Powerex when you are doing
7 your work towards the September 18th submissions, but
8 right now you have -- you don't visualize Powerex
9 becoming actively involved directly as Powerex.

10 MR. GODSOE: Correct.

11 THE CHAIRPERSON: But I just want to clarify that you are
12 not precluding that option. Again this is still a
13 pretty dynamic process and things are unfolding, and
14 especially when we get to the oral hearing phase. And
15 I know we will have then panels from B.C. Hydro
16 testifying, and it might be -- I'm just again, we are
17 just trying to visualize where we are at that time,
18 but it might be quite valuable for the Commission
19 Panel, as well as to other participants, have somebody
20 from Powerex directly to testify as opposed to B.C.
21 Hydro witnesses. Or do you see that this expert
22 witness from E3 will be the only person speaking to
23 exports?

24 MR. GODSOE: So right now I envision that in fact E3
25 would be the only person speaking to exports.

26 THE CHAIRPERSON: So nobody from B.C. Hydro or BCTC would

1 speak --

2 MR. GODSOE: With the exception of the SD10 surplus,
3 which I have said, I have categorized as domestic
4 demand. In my view E3 would be the expert and would
5 be the witness on this issue at this time.

6 THE CHAIRPERSON: At this time. But again, things may
7 change.

8 MR. GODSOE: Like a good lawyer I never shut the door to
9 anything.

10 THE CHAIRPERSON: All right.

11 MR. GODSOE: But I think our strong view is right now we
12 have no intention of calling Powerex, and we prefer
13 that E3 be the witness and the expert in this area.

14 THE CHAIRPERSON: Okay. Thank you, Mr. Godsoe.
15 Mr. Feldberg.

16 **REPLY BY MR. FELDBERG:**

17 MR. FELDBERG: I think I'm the last man standing, as Mr.
18 Fulton would say.

19 Let me deal with the last issue first, not
20 the Powerex one but the First Nations issue. I have a
21 number of notes for reply to what we heard earlier
22 this afternoon, but I think Mr. Godsoe's approach is
23 probably the best one to proceed with at this point.

24 The issues are complex There is a --
25 you've heard a different -- a variety of different
26 submissions today on what the Commission must do, and

1 in my submission it's such an important issue for the
2 Commission given this process and given what we're
3 about to embark on and the importance of not making
4 wrong steps early in the process, that in my
5 submission it would be appropriate for the Commission
6 to make that decision based on written material
7 provided by the participants, and frankly, not me
8 winging it off the case law as I know it this
9 afternoon. And you know, we can do that but I don't
10 -- I think I'd prefer to adopt Mr. Godsoe's approach,
11 and I think the approach suggested by the First
12 Nations make sense.

13 **Proceeding Time 5:41 p.m. T88**

14 We really have to do two things right. We
15 have to make sure that the Commission makes its
16 decision with respect to what it must do, on
17 appropriate material, and it needs to do that
18 thoughtfully and deliberately. And the second thing I
19 think we must do, and I think I've taken my friends
20 who have represented all the other participants at
21 good faith, everybody that has come before you have
22 said they want this process to work. And everybody
23 has said they want to work within the process. So I
24 think it would be incumbent on everybody when they
25 provide you with their submissions, both legally as to
26 what you must do to also provide you with submissions

1 on how we can accomplish the task that's before you.
2 And I'd invite everybody to do that, frankly. I think
3 that would be part of the question that needs to be
4 answered.

5 Having said that, there are some -- if I
6 can just go through my notes, I'll give you some
7 observations in reply on some of the other issues that
8 have come up. And the first one is my friend Mr.
9 Wallace, representing JIESC. And I think, like Mr.
10 Godsoe, I agreed with just about everything he said,
11 with the exception of one thing, and only perhaps -- I
12 just look at it slightly differently.

13 Mr. Wallace submitted that all -- that on
14 the export question, the export expert should look at
15 the -- I guess the risk or the opportunities for
16 upgrades in other jurisdictions, and needs to assess
17 the risks and whether and how and what must be built.
18 And what I can say is, my understanding of what the
19 experts will do is they will make an assessment of
20 what transmission is available on the other side of
21 the borders, and then they'll build in a cost
22 attributable to B.C. export opportunities for making
23 that happen. In other words, charge the cost of
24 upgrades on other systems onto the export opportunity
25 from British Columbia.

26 We will not be modeling, you know, the

1 systems all the way to California or through Alberta
2 in order to assess what transmission upgrades might be
3 needed. Nobody has the capability to do that. But we
4 will certainly take it into account in assessing the
5 costs that go with the export opportunities.

6 The second thing that Mr. Wallace said that
7 I should respond to is he thought that costs and
8 drivers of export opportunities should be clearly laid
9 out, so that you know what is driving transmission
10 expansion from a cost causation perspective. And
11 again, in my understanding of the modeling exercise,
12 the costs will be built into the modeling, and the
13 assumptions will be there, and presumably can be
14 explored and made transparent. You know, what cost
15 assumptions are you making with respect to the
16 transmission upgrades that are going to occur, what
17 level of demand, or load, or opportunity drives those
18 costs, and where does it come from, should be
19 derivable from the model. And I think that's probably
20 fair game, and I don't think that would be problematic
21 at all.

22 What I distinguish that from was the cost
23 allocation exercise of then, you know, developing
24 principles upon which you would allocate the costs to
25 various rate groups, and that's not something that I
26 think is useful to embark upon.

1 think, is the answer to about four different parties
2 who raised technology, and I think the answer applies
3 to all. So I think that's done.

4 Last I think is the -- or almost last, on
5 E-, it seems to me we didn't hear opposition to the
6 retention of the consultant throughout this. There
7 are little tweaks here and there that he suggested,
8 but I didn't hear any opposition to getting along with
9 the hiring and retaining of the consultant and we
10 propose to do just that.

11 And just check to see if there's anything
12 I've missed.

13 Again, subject to making further
14 submissions in writing on the First Nations' issues, I
15 think that's all I have to say in reply.

16 THE CHAIRPERSON: Okay, thank you, Mr. Feldberg, and I
17 guess with regard to E3, you pretty much make it quite
18 clear already earlier to me that you don't really need
19 Commission approval in any event, and I think you have
20 had enough input and feedback from the participants
21 today, so that BCTC can be on the phone tomorrow
22 morning to --

23 MR. FELDBERG: I just want to be clear, I didn't mean to
24 be disrespectful about that, Madam Chair.

25 THE CHAIRPERSON: That's all right.

26 MR. FELDBERG: But it's a matter of preparing our

1 evidence and so I generally think that's a matter in
2 our ball park. But we'd promised a transparent
3 process and so I wanted to hear what the parties had
4 to say.

5 THE CHAIRPERSON: We appreciate that, thank you.

6 MR. FULTON: Madam Chair, that concludes the reply. And
7 the only comment that I would like to make in
8 reference to a potential procedural conference on
9 First Nations' issues is that Mr. Godsoe in his reply
10 identified as two issues. What if any is the duty to
11 consult with respect to the Section 5 determinations;
12 and secondly, if there is a duty, how would that duty
13 be fulfilled? And it seems to me that there may be
14 some sub-categories of that. I don't know any at the
15 moment. But you may wish to consider providing the
16 other parties who haven't spoken yet to the issues
17 that would be the subject matter of that procedural
18 conference, and any written submissions, if they
19 consider that there should be any further sub-
20 categories of those questions to answer in the written
21 submissions and then at the procedural conference, so
22 everyone will have had input into the questions that
23 are to be asked and answered.

24 **Proceeding Time 5:49 p.m. T90**

25 THE CHAIRPERSON: And do you mean part is today, Mr.
26 Fulton --

1 MR. FULTON: Not at this moment.

2 THE CHAIRPERSON: -- or not the process, it may be
3 written comments?

4 MR. FULTON: Right. So when you go away today and you
5 consider what -- everything that you've heard today,
6 and in particular you consider what seems to be a
7 common theme in the submissions, that it would be
8 helpful to have a procedural conference relating to
9 First Nations' issues, that to give the other parties
10 input into any other issue other than the two issues
11 -- the two First Nations' issues that Mr. Godsoe
12 identified -- and I'm talking solely about the duty to
13 consult, whether they have any sub-categories of that
14 or additional questions that they think it would be
15 helpful for the Commission to consider and answer, in
16 arriving at an outcome that we are all hoping to
17 arrive at. That is, that the inquiry proceed to the
18 conclusion that's contemplated next June 30th.

19 THE CHAIRPERSON: Thank you, Mr. Fulton. And anything
20 else? Nothing?

21 That sounds like it's -- we are done. It's
22 ten -- almost five to six. It has been a long day,
23 but we completed this second procedural conference in
24 one day after all.

25 So, as I indicated earlier, the Panel
26 intends to issue the scoping order before mid-July,

1 and then on behalf of this Panel, I just would like to
2 thank you, all of you, for attending today, and making
3 your submissions, and your participation as well as
4 your contribution today has been very much
5 appreciated.

6 So, thank you, and have a good evening,
7 whatever is left of it.

8 **(PROCEEDINGS ADJOURNED AT 5:52 P.M.)**

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