

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

and

British Columbia Hydro and Power Authority
Application for Reconsideration and Variance of Directives Regarding
Powerex Net Income in the BC Hydro Fiscal 2020 to Fiscal 2021
Revenue Requirements Application Decision

Vancouver, B.C.
January 11th, 2021

WEB-BASED ORAL SUBMISSIONS

BEFORE:

D.M. Morton, Panel Chair/Commission Chair

R.I. Mason, Commissioner

T.A. Loski, Commissioner

VOLUME 1

APPEARANCES

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| Lino Bussoli, | Commission Counsel |
| Matthew Ghikas, Fred James, | Appearing for British Columbia Hydro and Power Authority |
| Alex Baer | Appearing for Association of Major Power Customers of British Columbia |
| William Andrews Thomas Hackney | Appearing for BC Sustainable Energy Association and Sierra Club |
| Christopher Weafer David Craig Janet Rhodes | Appearing for Commercial Energy Consumers Association of British Columbia |
| Leigha Worth Irina Mis | Appearing for British Columbia Old Age Pensioners' Organization, Disability Alliance B.C., Council of Senior Citizens' Organization of B.C. and Tenant Resources and Advisory Centre |
| David Austin James Weimer | Appearing for Clean Energy Association of B.C. |
| Jim Quail | Appearing for Movement of United Professionals |

VANCOUVER, B.C.

January 11th, 2021

(PROCEEDINGS COMMENCED AT 9:00 A.M.)

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4 THE CHAIRPERSON: Good morning and welcome everyone,
5 and Happy New Year to all. My name is Dave Morton, I
6 am the Chair and CEO of the British Columbia Utilities
7 Commission. I'm also the Chair of this Panel. And
8 with me on the Panel are Commissioners Richard Mason
9 and Tom Loski.

10 I'd also like to introduce the rest of the
11 BCUC team. We have Yolanda Domingo and Tanya Lai.
12 Lino Bussoli, yes, I see you there, is our counsel,
13 and you all know Keith and Hal Bemister, our hearing
14 officers.

15 The purpose of this hearing is to hear
16 argument on BC Hydro's application for reconsideration
17 on the Powerex net income directives in the 2020-2021
18 RRA. And before we begin, I'd like to go over a few
19 areas in which the Panel would particularly like to
20 hear your views. And before I go over these areas, I
21 do apologize that I was unable to provide this
22 material to you with more notice. And so I apologize
23 for asking so many questions so early on a Monday
24 morning.

25 I do understand that some parties may
26 require some preparation to answer some of these

1 questions, I acknowledge that. And what I am going to
2 propose that we do is, as soon as I finish my opening
3 remarks I will be turning things over to Mr. Bussoli,
4 presumably for appearances, to begin with appearances.
5 I will leave it up to Mr. Bussoli how he wants to
6 handle this, but I am prepared to hear submissions on
7 what we should do this morning, whether parties need a
8 little bit of time to prepare comments this morning,
9 or whether you require more time than that and would
10 like to reconvene the entire morning for another date
11 and time.

12 **Proceeding Time 9:02 a.m. T2**

13 As I say, we're happy to do that depending on the
14 degree of preparation that's required.

15 So, Mr. Bussoli, if people need even some
16 time to prepare that submission, we can stand down for
17 15 - 20 minutes if that's required and then we can
18 hear submissions on how we should proceed.

19 So, the directives under reconsideration in
20 this application are from section 4.2.7 of the RRA
21 decision. I'm not going to read out the directives or
22 go through the particular directives, but I would like
23 to read some of the original decision that gave rise
24 to those directives. And in the determination in
25 section 4.2.7 the BCUC stated, I'm going to quote from
26 the decision here for a few paragraphs:

1 "Given BC Hydro's proposal to continue with the
2 definition of trade income from Direction Number
3 7, in a circumstance where there is a net loss
4 on all..."

5 and they use the term,

6 "...other Powerex transactions, the benefits
7 ratepayers receive from any positive Powerex net
8 income arising from transactions involving BC
9 Hydro electricity are at risk of erosion. The
10 Panel finds that BC Hydro ratepayers should
11 assume no risk whatsoever for..."

12 again, that term,

13 "...other Powerex transactions. There's no
14 regulator justification to find otherwise.
15 There is no regulator impediment to the
16 inclusion of positive income from Powerex
17 transactions that don't involve BC Hydro
18 electricity and the Panel has no objection to
19 their inclusion in BC Hydro's trade income
20 deferral account.

21 However, in light of the concerns raised
22 above, only the proceeds, less associated
23 overhead costs, for transactions involving BC
24 Hydro electricity and associated with the
25 acquisition of natural gas for BC Hydro should
26 be included in the trade income deferral

1 account. Therefore, the Panel directs that no
2 actual Powerex net income be captured in the
3 deferral account absent further review and
4 approval by the BCUC."

5 So that ends the quote from the decision.

6 In making these findings and issuing these
7 directions it appears that the BCUC was focused on
8 protecting BC Hydro ratepayers from the potential
9 risks of, again that term, other Powerex transactions,
10 i.e. other transactions made by Powerex involving
11 commodities that are not produced or consumed by BC
12 Hydro's Heritage assets.

13 **Proceeding Time 9:05 a.m. T3**

14 The Panel in the RRA does not appear to have used the
15 term "Heritage assets," they used the term "BC Hydro
16 electricity". But it does appear that they were
17 saying that the economic costs and benefits of
18 transactions related to the Heritage assets are not
19 included in the directions issued in the RRA decision.
20 The directions were focused on these other
21 transactions which are, again, transactions not
22 involving BC Hydro's assets, which would include their
23 Heritage assets.

24 BC Hydro's reconsideration application
25 states that the BCUC erred in law in issuing the
26 directives and making the underlying findings in a

1 procedurally unfair manner and that the procedural
2 shortcomings resulted in facts material to the
3 decision not being placed in evidence.

4 Thirdly, that there's just cause to allow
5 the issues and findings underlying the directives to
6 instead be considered *de novo* in the Fiscal 2023 RRA,
7 and fourth, that there is in any event just cause to
8 rescind Directive 17 to avoid an unintended
9 consequence flowing from an inconsistency between the
10 wording and how the trade income deferral account
11 works.

12 Now, this is an application made under the
13 Reconsideration Rules and I'll just quote from section
14 26.05 of the rules and procedure, and that states
15 that, "An application for reconsideration must contain
16 a concise statement of the grounds for
17 reconsideration, and it must include one of more of
18 the following: an error" -- I'll paraphrase a little
19 bit, an error of fact, law, or jurisdiction which has
20 a material bearing on the decision; facts material to
21 the decision that existed prior to the issuance of the
22 decision that weren't in evidence in the original
23 proceeding and couldn't have been discovered by
24 reasonable diligence at the time of the original
25 proceeding; any new facts that have arisen since the
26 decision; a change in circumstances material to the

1 decision, again, that's occurred since the issuance of
2 the decision; and where there is otherwise just cause.

3 Now, BC Hydro also states in its
4 reconsideration application that in addressing the
5 directives -- that the reconsideration is addressing
6 the directives rather than the underlying findings,
7 revisiting the underlying findings in the context of
8 the reconsideration application would compound the
9 identified procedural fairness issues. The
10 substantive issues should be addressed *de novo*
11 unencumbered by issues around the standard of review,
12 grounds of review, and scope of evidence on
13 reconsideration.

14 Now, the Panel agrees with this later
15 point. The purpose of this hearing is to determine
16 whether there is sufficient grounds for revisiting the
17 underlying findings. Specifically whether the BCUC
18 erred in issuing the directives in question on the
19 procedural grounds outlined by BC Hydro in its
20 application.

21 **Proceeding Time 9:08 a.m. T4**

22 Therefore, we ask that all parties restrict
23 their arguments to this issue and only to those
24 aspects of substantive issues that are necessary to
25 support their procedural arguments.

26 Now, I am going to go on then into the

1 specific requests I am going to make the parties
2 address in their argument, please. And the first is
3 what regulatory process is necessary.

4 Regarding the treatment of the trade income
5 and the trade income regulatory account, BC Hydro
6 argues that the BCUC erred in an procedurally unfair
7 manner in making the underlying findings, and that the
8 procedural shortcomings resulted in facts material to
9 the decision not being placed in evidence during the
10 original RRA hearing. BC Hydro suggests that BCUC
11 exercising its jurisdiction in the manner it did was
12 inappropriate because neither ring fencing generally,
13 whether by that nomenclature or otherwise, nor the
14 specific determinations and assumptions that gave rise
15 to the directives were identified as issues.

16 However, in the RRA application, BC Hydro
17 submits that the BCUC's oversight of its regulatory
18 accounts has been enhanced due to the repeal of
19 government Directions 3, 6 and 7. And it also submits
20 that the underlying rationale for its regulatory
21 accounts remains sound, despite the repeal of these
22 government directions regarding some of the regulatory
23 accounts. And they express the view that the evidence
24 in the proceeding demonstrates that its current use of
25 the regulatory accounts are just and reasonable. And
26 as BC Hydro points out, the issue of Powerex net

1 income was canvassed in a number of IRs in the RRA
2 proceeding.

3 In these IRs, BC Hydro acknowledged that,
4 and here I am quoting from the response to IR 3.295.3,

5 "The BCUC has the authority to define trade
6 income for the purpose of setting BC Hydro
7 rates."

8 In the RRA application, BC Hydro also
9 submits,

10 "That although Direction 7 has been rescinded,
11 it continues..."

12 and I'm quoting,

13 "...continues to include the net income of BC
14 Hydro subsidiaries in its revenue requirements,
15 and continues to define trade income on the same
16 basis as previously defined in Direction 7."

17 And justification for this, BC Hydro
18 states, and again I quote,

19 "The inclusion of subsidiary net income in BC
20 Hydro's revenue requirements reduces the overall
21 revenue requirement."

22 And that presumably is BC Hydro's
23 regulatory justification for continuing to act -- or
24 continuing with the treatment of Direction 7, even
25 though it had been rescinded.

26 We ask parties in your submissions to

1 please specifically address the issue of applying
2 regulatory principles to proposed allocation of
3 utility cost to ratepayers. Is the onus on the
4 utility to not only demonstrate that it has reduced
5 the overall revenue requirement, but to ensure that
6 all costs so allocated are not unjust and
7 unreasonable?

8 The second issue is the regulatory process
9 required with respect to precedent. In its
10 reconsideration application, BC Hydro states, and I'm
11 quoting,

12 "BC Hydro respectfully submits that the BCUC's
13 reasoning in determinations were flawed and
14 inconsistent with prior determinations in the
15 2003 Heritage Contract Inquiry Report. A full
16 and fair hearing of the issues which did not
17 occur would have made that clear..."

18 **Proceeding Time 9:11 a.m. T5**

19 And BC Hydro further states, again I quote,

20 "The BCUC did not reconcile the inconsistency
21 between the BCUC's underlying determinations and
22 its prior determination in the Heritage Contract
23 Inquiry as principles of administrative law
24 governing consistency in decision making
25 require."

26 As I just referenced above, in the RRA

1 application BC Hydro submits that although Direction 7
2 has been rescinded it continues to include the net
3 income of its subsidiaries in its revenue requirements
4 and continues to define trade income on the same basis
5 as previously defined in Direction 7. And as
6 justification for this BC Hydro states only that the
7 inclusion of subsidiary net income in BC Hydro's
8 revenue requires reduces the overall revenue
9 requirement. There's no mention of the 2003 Heritage
10 Contract Inquiry report. There is no articulation of
11 any previous BCUC directive concerning the treatment
12 of Powerex net income. Nothing in BC Hydro's material
13 suggests that the reason it continues the treatment
14 that was mandated as part of Direction 7 is to retain
15 consistency with that legislation or as a regulatory
16 justification as to why this method is just and
17 reasonable, aside from the commentary that it, quote,
18 "reduces the overall revenue requirement."

19 BC Hydro also states that an important
20 basis for the reconsideration application is that it
21 requires more time to, (a) develop evidence, including
22 evidence about the Heritage contract, so as to
23 demonstrate the reasonableness -- sorry, the
24 unreasonableness of BCUC's determinations and
25 directives; and, (b) consult with the government of
26 B.C. on a topic of significance.

1 There's three issues for the Panel, for
2 this Panel, to consider when we're looking at this
3 issue of allegedly breaking with historical
4 precedence. The first is did the BCUC make a
5 determination inconstant with past determinations? In
6 other words, was there in fact a break with precedent.
7 Secondly, if there was, then what do the principles of
8 administrative law require? And, thirdly, did the
9 BCUC satisfy those requirements?

10 Regarding consistency with respect to
11 previous decisions, specifically with regard to the
12 2003 Heritage Contract Inquiry, we invite BC Hydro to
13 clarify the following. First is, with the repeal of
14 Direction 7 which contained within in the Heritage
15 contract, what is the status of the Heritage contract
16 at this time? And, secondly, at pages 18 and 19 of
17 the BCUC 2003 inquiry into the Heritage contract, BC
18 Hydro states that -- sorry, that Powerex trading
19 activities are supported by Heritage resources and
20 they include several specific types of trades,
21 including trade between different locations and
22 markets using transmission, trade between time periods
23 within the day and across seasons and market timing of
24 forward purchases and sales and forward marketing.
25 Powerex activities also include the purchase and sale
26 of natural gas, and I emphasize this, to accommodate

1 BC Hydro's involvement with domestic thermal
2 generation. Powerex acquires gas through a mix of
3 spot and forward transactions and then supplies it to
4 BC Hydro in specified quantities at designated hubs in
5 return for an index based price.

6 Trade income is defined by Special
7 Direction 8, as the audited net income of Powerex and
8 as described by BC Hydro, trade income will include
9 the revenues Powerex receives from sales to third
10 parties and to BC Hydro reduced by its cost of
11 purchasing electricity from third parties and BC
12 Hydro, its cost for the use of BC Hydro facilities,
13 including transmission, its payments to other
14 utilities for transmission and other services and its
15 own operating costs.

16 Further, the terms of the Heritage contract
17 that was recommended by the BCUC in the Heritage
18 Contract Inquiry in 2003 include the following benefit
19 to BC Hydro ratepayers. And I'm quoting from the
20 recommendations in the 2003 inquiry report.

21 "Any revenues BC Hydro generation receives from
22 other services provided from the Heritage
23 resources, including revenues related to Skagit
24 value treaty obligations, revenues from
25 provision of ancillary services to the
26 transmission operator in respect of third-party

1 use of the transmission system, revenues from
2 sales of surplus hydro energy pursuant to
3 section 5 of the transfer pricing agreement and
4 other miscellaneous revenues."

5 **Proceeding Time 9:16 a.m. T6**

6 So the focus of the Heritage contract
7 remains, or was established, or was recommended as
8 activities related to trading electricity that was
9 related to BC Hydro's Heritage assets and natural gas
10 that was also required for those Heritage assets.
11 There was no discussion of other Powerex trading
12 activities in that Heritage contract. There is a term
13 "other miscellaneous revenues."

14 So, in order for the Panel to understand
15 the tie-in that BC Hydro is making between the
16 determinations in the RRA and the recommendations of
17 the 2003 Heritage Inquiry, we would like BC Hydro and
18 any other parties to address what, if any, further
19 clarification is available on this issue, specifically
20 regarding what the term "Miscellaneous revenues"
21 means, meant at the time, or how it has subsequently
22 been interpreted.

23 Now, with respect to the principles of
24 administrative law, given that the BCUC is not bound
25 by precedent, we would request that the parties please
26 address what, in the words of BC Hydro, what

1 principles of administrative law that govern
2 consistency in decision-making apply in this
3 circumstance. And what, in addition to the reasons
4 articulated in the RRA decision, is required in order
5 to ensure that there is consistency with precedent.

6 Finally, we would like BC Hydro and other
7 parties, if BC Hydro should have presented this
8 evidence regarding the 2003 Heritage Contract Inquiry
9 in its application, and if it "requires more time to
10 develop," does this evidence satisfy section 26.05(b)
11 of the Reconsideration Guidelines that there is
12 evidence "material to the decision that existed prior
13 to the issuance of that decision that was not placed
14 in evidence in the original proceeding, and could not
15 have been discovered by reasonable diligence at the
16 time of the original proceeding."

17 So, to summarize, first of all, what is the
18 tie-in with the Heritage contract, and secondly who
19 should have put that evidence on the table? Should BC
20 Hydro have put that evidence on the table in the
21 original proceeding if there is a tie-in, and if in
22 fact that is the reason for BC Hydro continuing the
23 treatment of Powerex Revenues, even though Direction 7
24 was not in force, if the reason for continuing was
25 because it was required by the Heritage contract,
26 should Hydro not have stated that as its reason.

1 The fourth issue is jurisdiction over
2 Powerex net income. In an IR response to 1.143.5 in
3 the original RRA, BC Hydro states, and I am quoting
4 here,

5 "The *Energy Statutes Amendment Act* of 2019
6 amended the *Utilities Commission Act* so that it
7 does not apply to Powerex. While this means
8 that the BCUC cannot review the income or losses
9 of Powerex, it can disallow the deferral of
10 variances between forecasts and actual trade
11 income."

12 It is not exactly clear what BC Hydro means
13 by their word "review" in this case, when it says that
14 the BCUC cannot review the income or losses of
15 Powerex. Notwithstanding, it's not clear from a plain
16 reading of the *Energy Statutes Amendment Act* that it
17 supports the opinion stated, that the BCUC cannot
18 review the income and losses. Those words don't
19 appear in that Act.

20 Further, if the BCUC cannot review
21 Powerex's income or losses, how can it conduct the
22 review that BC Hydro requests in its reconsideration
23 application? We would like BC Hydro to please provide
24 clarity on that statement.

25 And the final issue we'd like parties to
26 specifically address, please, is the nature and timing

1 of a *de novo* hearing. The parties are requested to
2 provide submissions on whether in the event that the
3 panel does direct a *de novo* hearing on the issues
4 outlined in the reconsideration application, that the
5 *de novo* hearing be held not as a part of the 2023 RRA,
6 but instead as either a separate standalone proceeding
7 to commence as soon as practicable or in the
8 alternative that this panel conduct the *de novo*
9 hearing as part of this proceeding.

10 **Proceeding Time 9:21 a.m. T7**

11 And when making submissions on this item we'd like you
12 to consider a number of issues, including in
13 particular the fact that there's a transfer pricing
14 agreement hearing that is currently on hold,
15 presumably pending the outcome of this decision and
16 that's for a transfer pricing agreement that's -- I
17 believe it's been in effect for approximately a year
18 now. So this would signif- -- if that hearing remains
19 on hold it would significant -- and pending the 2023
20 RRA, that would be a significant amount of time to
21 have a transfer pricing agreement that has not had the
22 benefit of a BCUC review.

23 So thank you for that, and again I would
24 repeat that please -- as far as the Panel is
25 concerned, take what time you need to consider these
26 requests and if you're preprepared to proceed this

1 morning, we are also. But if not, we're absolutely
2 prepared to reconvene at a time and date that's more
3 convenient for all.

4 Mr. Bussoli, I'll turn it over to you now.

5 MR. BUSSOLI: Thank you, Mr. Chair. I think given the
6 sort of unusual proceeding on Teams, what I'll do
7 first is I'm going to call an order for appearances
8 from all parties, and then once that's done, just for
9 the benefit of the Hearing Officers, so we know who's
10 here and what other parties are here with their
11 representatives, then we'll ask each of the parties to
12 sort of -- maybe we'll stand down for about ten or
13 fifteen minutes so parties can consider how they wish
14 to proceed before they make submissions on how they
15 wish to proceed. And if you think you need more than
16 15 minutes, just let us know as we're going through
17 the order of appearances that you would need more than
18 15 minutes such that we can take a longer break.

19 But that's what I propose to do, and so
20 with that I'll call the first party in the order of
21 appearances, which is British Columbia Hydro and Power
22 Authority. Also please, when you introduce yourself,
23 could you also introduce each of the parties that are
24 -- or each of the people that are with you in this
25 Teams meeting such that we can account for every
26 single person who is logged in. Thank you.

1 MR. GHIKAS: Good morning Mr. Chairman, Commissioners.
2 My name is Matthew Ghikas, G-H-I-K-A-S. With me this
3 morning on Teams is Fred James, the chief regulatory
4 officer of BC Hydro, and offline we have a number of
5 parties listening in, including David Wong, the
6 executive vice president of finance, technology,
7 supply chain and chief financial officer. And Janet
8 Fraser, the executive vice president of people,
9 customer and corporate affairs. And there are others
10 as well.

11 Mr. Chairman, I think the -- I mean the
12 nature of the questions that you've put forward are
13 obviously significant and you realize that as well.

14 **Proceeding Time 9:25 a.m. T8**

15 One of the -- we would like the ability to
16 have additional time to deal with these, but I did
17 want to note that one of the challenges of this is
18 that a lot of these issues are really getting to the
19 substance of the Heritage contract and other matters
20 that really ought to be part and parcel of a *de novo*
21 hearing as opposed to being addressed in a summary
22 format of reconsideration application. We made the
23 point that, you know, dealing with the substance of
24 the issues in an expedited format in a reconsideration
25 application is compounding the issues that we are --
26 that BC Hydro say arise as a result of the notice

1 issues and the shortcomings in the evidentiary record.

2 So, you know, I wanted to make that clear
3 at the outset, that we certainly can deal with those
4 but they are bringing forward to a summary scenario,
5 up front, issues which we say ought to have been
6 addressed in a broader format, either previously in
7 the RRA or ought to be the subject of a full hearing.
8 You are raising good questions on the merits which BC
9 Hydro would be happy to address on the merits and put
10 forward that evidence if it has the time to do it and
11 the parties, you know, are able to understand the full
12 significance of the issue.

13 But the point is that it should be in a
14 full hearing and not in the context of a video
15 conference hearing that's essentially -- you know, as
16 we understood it, this was set up to deal with whether
17 or not the application should be granted on a summary
18 basis, with the expectation that -- you know, the
19 implications of that being that coming out of this
20 there would only be two options. Either that the
21 application is granted so that we have a full hearing
22 on it or that there would be subsequent procedural
23 steps that we would deal with. That was the way the
24 directive was written in item 2 of the order.

25 And so, you know, having to deal with all
26 of this, I recognize that you're posing the questions

1 and it's good to have the advanced warning if we have
2 to deal with those in the future, but the reality of
3 the matter is I think we're putting the cart before
4 the horse here, in my respectful submission. And that
5 the question really should be if we need to have a *de*
6 *novo* hearing on it, let's have the *de novo* hearing and
7 let's set out a process that works in terms of the
8 timetable.

9 So those are my initial comments, but I
10 will need to get instructions on it but I can tell you
11 these issues, because of their substantive nature and
12 because that wasn't what we were anticipating today to
13 be about, we will need additional time to deal with
14 those.

15 **Proceeding Time 9:28 a.m. T9**

16 Whether it's, you know, in a future proceeding like
17 this or whether it's in written submissions or what
18 have you. We will need more time if we're to deal
19 with those. And, in my respectful submission, the
20 time line should be more consistent with what we had
21 proposed in the fiscal 23 RRA as opposed to doing it
22 in an expedited format prior to that.

23 THE CHAIRPERSON: Mr. Ghikas?

24 MR. GHIKAS: Mm-hmm?

25 THE CHAIRPERSON: So, thank you for those submissions,
26 I appreciate it and I don't disagree with many of your

1 points. I do though wonder how we can have a *de novo*
2 hearing unless -- can we only have a *de novo* hearing
3 if we find merit in your reconsideration application?
4 In other words, presumably we would have to make the
5 findings of procedural unfairness in order to have a
6 *de novo* hearing. And in order to make those findings
7 then we would need to address the questions that were
8 in my opening remarks.

9 So can you help me with that?

10 MR. GHIKAS: Certainly. And one of the points that BC
11 Hydro raised in its reconsideration application was,
12 and it was in the section dealing with proposed
13 process at the end, was that if you were to decide
14 this issue based on just cause as opposed to
15 procedural fairness grounds, that this issue could be
16 addressed summarily. Because it is obvious on its
17 objective facts that the treatment of Powerex net
18 income, which is hundreds of millions of dollars
19 towards the revenue requirements, is a very big issue
20 and deserves submissions from all parties. And
21 whether or not the Commission would ultimately accept
22 that there was adequate notice or not, the reality of
23 the matter is no parties made submissions on the point
24 and the Commission would benefit from that.

25 And so the suggestion that BC Hydro is
26 putting forward is that if you were determine this

1 issue summarily on a just cause basis that we need
2 additional time. That it would benefit from
3 submissions from the parties. That we can
4 collectively look forward, as opposed to looking
5 backwards, picking apart whether or not the procedural
6 requirements were met or not and that that would be a
7 more productive use of time and a fair approach given
8 that the application is really seeking a procedural
9 solution as opposed to a substantive one. It's just
10 seeking a further hearing on an issue of importance.

11 And so, you know, my -- these issues that
12 you've articulated really do come down to a
13 significant degree to that procedural fairness issue.
14 And so I would urge you to simply acknowledge that the
15 issue is significant, that the Commission would
16 benefit from full submissions of the parties. That
17 those parties need time to be able to put those
18 submissions together, give thought to the substantive
19 issues that are arising and that parties would benefit
20 from having fulsome submissions from BC Hydro on these
21 issues as to why, from BC Hydro as to provincial
22 policy and the substance of the issue.

23 **Proceeding Time 9:32 a.m. T10**

24 There is also this issue, the forth ground,
25 the final ground of reconsideration, is one that the
26 directive actually has to be rescinded in order to

1 even give effect to the intent that you were trying to
2 achieve, in my submission. So, you know, there is
3 that issue as well, where the directive just doesn't
4 make sense as written, and it ought to be rescinded
5 for that reason.

6 So that would be my submission to you, is
7 that you can take these issues and park them, have the
8 *de novo* hearing recognizing that there is just cause
9 for an issue of this materiality and importance, to be
10 heard in a *de novo* format.

11 THE CHAIRPERSON: Thank you, Mr. Ghikas, that's very
12 helpful and very constructive suggestion, I appreciate
13 it. I would, however, like to just go back to a
14 comment you just made, when you talked about it being
15 an issue of importance, and I don't disagree with
16 that, but the way that you characterized it as being
17 "hundreds of millions of dollars," I'd just like to
18 ensure that we are on the same page frankly. And as I
19 said in my opening remarks, certainly the way my
20 reading of the RRA decision is that these directives,
21 they involve only -- and I don't want to get into an
22 issue about evidence that is before us or not before
23 us. But speaking I suppose colloquially, let's say, a
24 relatively small proportion of Powerex's income, which
25 are trades that don't involve -- that have nothing to
26 do with BC Hydro's Heritage assets, or any of BC

1 Hydro's assets, that's the only thing that is on the
2 table in my reading of the revenue requirement. You
3 know, it's a purchase of natural gas made in
4 California and sold in New York as an example.

5 The directives in the RRA didn't touch any
6 of Powerex's transactions that involve anything --
7 that have anything to do with BC Hydro's assets. And
8 would you still characterize this as an issue of great
9 importance and worth hundreds of millions of dollars
10 given that?

11 MR. GHIKAS: I would, Mr. Chairman.

12 THE CHAIRPERSON: Okay.

13 MR. GHIKAS: And I don't want, just like you, there is
14 no evidence, and part of the issue here is there is no
15 evidence on the point of the magnitude of it. And you
16 have imbedded in your statement an assumption with
17 respect to how much of money is actually involved in
18 that, and I would urge you to not reach that
19 conclusion without the evidence --

20 THE CHAIRPERSON: Fair enough.

21 MR. GHIKAS: -- because you may be surprised. But
22 let's park that for a moment. I think the bigger
23 issue is that it's not just that amount. The way that
24 Powerex operates makes the segmentation for regulatory
25 purposes necessarily impacting the way they do
26 business.

1 to trying to do it in the 60-day limit after the order
2 when the compliance filing and other matters were
3 going on as well.

4 So it's that type of thing that is going to
5 be fleshed out in the evidence and it will discuss the
6 risks and rewards that come with the decision that the
7 Commission's made and other -- you know, and the
8 existing, the status quo as well.

9 THE CHAIRPERSON: Thank you, Mr. Ghikas, thanks.

10 Sorry, Mr. Bussoli, we took up rather a lot
11 of your time there.

12 MR. BUSSOLI: No, not at all. It's important that you
13 guys are clear on what we're discussing and how we
14 wish to proceed.

15 So I'm going to continue on with the order
16 of appearances and, again, I'm going to ask each party
17 to identify themselves and any other guests that are
18 with them on the Teams app, such that the Hearing
19 Officer can identify everyone.

20 So next on -- and then subsequent to the
21 order of appearances we'll take about a 15 minute
22 break, after which we will ask each of the parties to
23 make submissions on how we should proceed. And if you
24 require more than 15 minutes of a break, please let us
25 know as we go through the order of appearances. Mr.
26 Ghikas, was 15 minutes adequate? I didn't hear you

1 address that.

2 MR. GHIKAS: I'm going to check with my clients offline
3 here and I will come back and let you know afterwards.

4 MR. BUSSOLI: Thank you. All right, then next in the
5 order of appearances is the Association of Major Power
6 Customers of British Columbia.

7 MR. BAER: Thank you. Good morning. My name is Alex
8 Baer, last name is spelled B-A-E-R. And I'm appearing
9 on behalf of the Association of Major Power Customers
10 of British Columbia or AMPC. I expect that we will
11 have further submissions to make further to what was
12 just discussed. I think that subject to hearing from
13 the other interveners and BC Hydro, 15 minutes -- I
14 will take the 15 minutes and may request more time
15 after that. But for now I think that will suffice and
16 I expect to have more submissions later. Thank you
17 very much.

18 MR. BUSSOLI: Thank you, Mr. Baer. Next is B.C.
19 Sustainable Energy Association and Sierra Club.

20 MR. ANDREWS: Bill Andrews. Can you hear me?

21 THE CHAIRPERSON: Yes. Thank you, Bill. Yeah, thank
22 you.

23 MR. ANDREWS: Yeah. Bill Andrews, I represent B.C.
24 Sustainable Energy Association. And on the call today
25 as well is Thomas Hackney from BCSEA. BCSEA was an
26 intervener in the Fiscal '20-Fiscal '21 Revenue

1 Requirements Application and I'm taking it that BCSEA
2 is an intervener in this reconsideration proceeding.
3 If the panel wants some more submissions on that
4 particular point, I'd be happy to elaborate, but I
5 think for present purposes (audio drops) on the basis
6 that BCSEA is an intervener.

7 And I think like the two previous speakers,
8 I may want to revisit whether 15 will be enough when
9 we come back.

10 **Proceeding Time 9:41 a.m. T12**

11 My sense, in a nutshell, is that the
12 Chair's opening remarks have raised quite a number of
13 substantive issues that go to the merits of the
14 decision, which is totally fine, but it wasn't what I
15 was prepared for in the proceeding today. And I'll
16 leave it at that.

17 THE CHAIRPERSON: Thank you, Mr. Andrews. Just, if I
18 could just interject here. I just want to make it
19 clear that in 15 minutes we're not expecting parties
20 to come back with an argument, a substantive argument
21 on the reconsideration application. We're just asking
22 you to come back with a time estimate of how long you
23 would need to make one and whether it's possible to
24 make one today or whether we should just reconvene on
25 another day. That's what we're asking you to come in
26 15, is that correct, Mr. Bussoli?

1 MR. BUSSOLI: Correct, that's what I understood, was 15
2 minutes to determine submissions on further process
3 for today.

4 THE CHAIRPERSON: Yes, yes. So I just want to make
5 sure we're on the same page.

6 MR. ANDREWS: Thank you.

7 MR. BUSSOLI: Thank you, Mr. Andrews and Mr. Chair.

8 So next in the order of appearance is the
9 Commercial Energy Consumers Association of British
10 Columbia.

11 MR. C. WEAFFER: Good morning, Mr. Chair and members of
12 the Panel. Happy New Year. Chris Weafer, W-E-A-F-E-
13 R, appearing for the Commercial Energy Consumers. On
14 the line is David Craig of the Commercial Energy
15 Consumers. I don't believe Janet Rhodes is on the
16 call, I don't see her.

17 MR. CRAIG: Yes, she's on the call, Chris.

18 MR. C. WEAFFER: Okay, thank you. Janet Rhodes is also
19 on the call.

20 The CEC participated in the 2020 RRA, it
21 will actively participate in this reconsideration.
22 And I should note, we also participated, and David
23 Craig and I participated, in the 2003 Heritage
24 Contract Inquiry and recall the depth of time and
25 effort that went into that proceeding. And so I think
26 this morning we've probably had as much in depth

1 discussion on that trade income topic as there's been
2 almost since that proceeding. So clearly some
3 substantive issues are being raised by the Panel and
4 there clearly are some evidentiary concerns that BC
5 Hydro has.

6 And as a ratepayer group we're a bit of a
7 piece of the meat in the sandwich in terms of both
8 Hydro and the Commission looking out of the
9 ratepayers' perspective. Our concern will be making
10 sure there are no unintended consequences as a result
11 of the directives and that we can get a better
12 understanding of what the concerns may be. So we will
13 certainly come back in 15 minutes, be speaking to
14 further process because it is a substantive issue.

15 Whether we can quantify it as the revenues
16 entirely of Powerex or whether the discrete non-
17 Heritage assets related income -- you know, it's still
18 material and so we appreciate the Commission
19 identifying it in its decision. We did not spend --
20 we filed a fairly substantive argument but we didn't
21 spend a great deal of time on the trade income topic
22 because there were so many topics in an RRA sometimes
23 some that you don't think are a priority get parked a
24 bit and perhaps this one shouldn't have been parked as
25 firmly as it was.

26 So we will take the 15 minutes. I expect

1 we'll be coming back looking for more process. At a
2 minimum I'd like to see the transcripts of today just
3 to make sure I've got your questions right, Mr. Chair,
4 or if you'd care to put those in writing so that we're
5 quite clear on what you're looking for, that'll be
6 helpful but you covered some good and helpful ground.
7 I'm not sure my notetaking was as quick as it could
8 have been.

9 So, that said, we can certainly come back
10 in 15 minutes on process and we appreciate the
11 attention the Commission has put to this, but we also
12 appreciate the attention Hydro's put to this. This is
13 an important issue and it clearly needs more process
14 than this morning. So, thank you.

15 THE CHAIRPERSON: Thank you, Mr. Weafer.

16 MR. BUSSOLI: Next is British Columbia Old Age
17 Pensioners' Organization, Disability Alliance B.C.,
18 Council of Senior Citizens' Organization of B.C. and
19 Tenant Resources and Advisory Centre.

20 MS. WORTH: Good morning, Mr. Chair, members of the
21 panel and fellow participants, BC Hydro and
22 interveners. My name is Leigha Worth, counsel for the
23 groups that Mr. Bussoli has just outlined. I actually
24 account for two of the participants who are listed
25 here because I had to call in.

26 **Proceeding Time 9:46 a.m. T13**

1 So I have both the internet present and also a phone
2 call. And I am accompanied today by my co-counsel
3 Irina Mis, and we too are going to be coming back as
4 Mr. Weafer is, to make submissions on further process,
5 because we have sort of exchanged preliminary messages
6 on this, and we expect to be helping each other
7 further on this. But the issues that you identify
8 today, Chairperson Morton, are substantive as Mr.
9 Andrews and Mr. Weafer have both noted. And we think
10 that they would require further preparation. We came
11 prepared for what we envisioned today might be, and
12 this is far more substantive and I think complicated
13 than we would be able to address in just this morning.

14 Subject to any questions, that is sort of
15 our preliminary position, and we will be coming back
16 in 15 minutes with further input on that, thank you.

17 THE CHAIRPERSON: Thank you, Ms. Worth.

18 MR. BUSSOLI: Next is Clean Energy Association of B.C.?

19 MR. AUSTIN: Good morning, it is David Austin on behalf
20 of the Clean Energy Association of B.C. Good morning
21 Chair Morton and members of the Panel.

22 THE CHAIRPERSON: Good morning.

23 MR. AUSTIN: Jim Weimer is on the call with me this
24 morning, and before making submissions in terms of
25 what we might accomplish with the 15-minute break, I
26 would just like to make the comment that so far all

1 we've heard about is the first part of Directive
2 Number 17, and I'd like to read into the record the
3 second half of Directive 17, and it says,

4 "Therefore, in its next RRA..."

5 And BC Hydro's next RRA was F2020-2022,

6 "...BC Hydro is required to file in confidence if
7 necessary a summary of Powerex's net income in
8 sufficient detail to enable the BCUC to
9 determine whether any amount of actual Powerex
10 net income is appropriate for inclusion in the
11 trade income deferral account."

12 And the Clean Energy Association of B.C.
13 interpreted that as the BCUC looking for information,
14 not making a decision. So BC Hydro's response to
15 Directive 17 appears to be that the BCUC has made a
16 decision, and the Clean Energy Association of B.C.
17 doesn't agree with that. What the Clean Energy
18 Association of B.C.'s interpretation of Direction 17
19 is that the BCUC was looking for information upon
20 which to make a decision. And that decision would
21 have been part of the 2022 RRA process, and as a
22 result of that, there would have been ample
23 opportunity for everybody to make whatever comments or
24 arguments that they thought necessary.

25 In relation to what is going to happen
26 after the 15-minute break, given the comments that

1 Chair Morton made in terms of points 1 through 4,
2 clearly there will have to be more process, and it's
3 not something that we could accomplish today. So
4 those are my opening comments. If there is any
5 questions, I'd be pleased to take them.

6 **Proceeding Time 9:50 a.m. T14**

7 THE CHAIRPERSON: Thank you, Mr. Austin. I have no
8 questions, thank you.

9 MR. BUSSOLI: And finally, I have Movement of United
10 Professionals, as next up?

11 MR. QUAIL: Yes, Jim Quail appearing. I want to say
12 right off the bat, I agree with Mr. Ghikas' comments,
13 and would just like to comment that the exchange
14 between him and the Chair in my submission is a clear
15 illustration of what's wrong with the process so far
16 and the treatment of this issue. That there is a lot
17 of complexity that was not available to the
18 participants or to the Panel, and a decision was made.

19 And I disagree with Mr. Austin. What
20 apparently is mainly left under the directive is a
21 matter of quantifying the consequences of substantive
22 decisions about what is and what is not appropriate in
23 terms of both benefit and risk for ratepayers. So, in
24 my submission that is sort of missing the point.

25 Fifteen minutes will be sufficient. I
26 would like to say that the procedural issues, purely

1 procedural questions raised in this, I will be arguing
2 are actually quite straightforward, the law is well
3 defined. And I've circulated the latest sort of
4 overwhelming authority that tells us how these issues
5 are to be dealt with.

6 The substantive issues, I agree with Hydro,
7 that is what needs to be gone into. There is a lot of
8 complexity here, and not only is it a matter of
9 fairness to the parties, but having a proper and full
10 hearing is obviously beneficial to the Commission in
11 ensuring that the decision is on the correct footing.
12 It may well be that the Commission will confirm,
13 basically come to a similar conclusion after going
14 through all of the evidence, and ins and outs of this.
15 But in my submission that should not be taken for
16 granted. And it's not a risk that the Commission
17 should take given the significance of the issues.

18 So those are my submissions at this point,
19 15 minutes is enough at this stage.

20 MR. BUSSOLI: Thank you, Mr. Quail.

21 I'm just going to ask, I think that is all
22 of the parties that I had at least. Is there anybody
23 else on this call or on the Teams webcast that I have
24 not introduced, or has not been accounted for?

25 Okay, with that I will turn that back to
26 you, Mr. Chair.

1 THE CHAIRPERSON: Thank you, Mr. Bussoli. So, it's
2 9:52, if we come back at say 10 past 10:00, is that
3 enough time? 10:05? Okay, we will reconvene at 10:05
4 then, thank you.

5 **(PROCEEDINGS ADJOURNED AT 9:52 A.M.)**

6 **(PROCEEDINGS RESUMED AT 10:05 A.M.)** **T15/16**

7 THE CHAIRPERSON: Okay, I see that it's 10:05. Mr.
8 Bussoli?

9 MR. BUSSOLI: Yes.

10 THE CHAIRPERSON: Are we ready to continue, do you
11 think? I guess we would need BC Hydro, wouldn't we?
12 It probably would be helpful.

13 MR. GHIKAS: Sorry, I'm here. Just hiding.

14 THE CHAIRPERSON: Okay, good. All right.

15 MR. BUSSOLI: I just have a list of participants. I
16 believe everybody is here but they're just muted.

17 THE CHAIRPERSON: Okay. It doesn't look as if there's
18 as many people here now as there was before. I don't
19 have firm evidence of that but it just seems that way
20 to me.

21 MR. BUSSOLI: We may have lost one or two who --

22 THE CHAIRPERSON: Yeah.

23 MR. BUSSOLI: -- (inaudible) leave the meeting rather
24 than just muting.

25 THE CHAIRPERSON: Well, why don't we get started, in
26 any event.

1 Mr. Ghikas, are you prepared to continue,
2 please?

3 MR. GHIKAS: I am, yes. We didn't arrive at dates and
4 things like that, but conceptually we were able to
5 discuss, perhaps, what might be an efficient path
6 forward. I raised at the outset, Mr. Chairman, the
7 possibility of dealing with this as an issue of just
8 cause. And you heard from my friends, there's
9 generally a recognition in the room, the virtual room,
10 that this is an issue of significance that people
11 would like to explore further and there may be
12 different views on how to treat the issue at the end
13 of the day. There may be views on what regulatory
14 policy suggests, whether it's what the just and
15 reasonable result is, what the specifics of how much
16 Powerex's business is affected, how much net income
17 are we talking about. Those types of issues, there's
18 a general feeling in the room that I took away from it
19 that there's a real rationale for having a full
20 hearing of this issue.

21 And I would urge the Commission to deal
22 first with the issue of just cause because I think
23 that that is an issue, given the materiality of the
24 issue, as a threshold matter coming back or filing
25 written submissions on the issue of just cause, having
26 interveners speak to the issue of just cause based on

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I'm optimistic that the Commission can decide this based on just cause, and I really do think the materiality of the issue and just simply the change in regulatory policy over -- you know, after 17 years, you know, it merits a broader discussion and I think that that alone is sufficient basis for the Commission to say let's rescind the directives, let's hear the issue fulsome.

So that's what I would put forward, is deal with just cause and the appropriate forum for the hearing *de novo* first, and then if necessary deal with the procedural fairness if you're not convinced on just cause and take it from there.

THE CHAIRPERSON: Thank you, Mr. Ghikas. Very helpful. Just curious if, if the Commission did proceed on just cause and we had a hearing, however that hearing may transpire, is it BC Hydro's view that then you would want to go back and hear the procedural matters or regardless of the outcome it would make no difference? (inaudible) the outcome of the *de novo* hearing?

MR. GHIKAS: Well, I think if the Commission was to reject -- was to allow the arguments based on just cause, allow -- if the Commission was to decide there was just cause to rescind the directives --

THE CHAIRPERSON: Right, yeah.

1 MR? GHIKAS: -- there would be no need to deal with the
2 procedural issues. If the Commission was to find that
3 just cause was an insufficient ground for rescinding
4 the directives, BC Hydro would expect to have to
5 address the other grounds for reconsideration.

6 THE CHAIRPERSON: Okay. Thank you, Mr. Ghikas. Thank
7 you. All right, we'll -- thank you for that.

8 Do my other panel members have any
9 questions at this point?

10 COMMISSIONER MASON: No questions for me, thanks.

11 THE CHAIRPERSON: Okay.

12 COMMISSIONER LOSKI: Yes, I have no questions either,
13 Mr. Chair.

14 THE CHAIRPERSON: Okay, thank you.

15 Sorry, I didn't copy the order of
16 appearances. Mr. Andrews, I think you were next, were
17 you not?

18 MR. BUSSOLI: Mr. Chair, it's actually Association of
19 Major Power Customers of BC.

20 THE CHAIRPERSON: Oh, my apologies. Mr. Baer?

21 MR. BAER: Thank you very much. Yes, thank you. Good
22 morning again, Mr. Chairman, Commissioners.

23 THE CHAIRPERSON: Good morning.

24 MR. BAER: At the outset I would just like to say that
25 AMPC certainly agrees with Mr. Ghikas that these are
26 significant issues that I think customers have

1 interest in exploring properly, and also wanted to
2 echo what I believe Mr. Weafer said earlier this
3 morning, which is that to that end it would be very
4 helpful, among other things, if we just have an
5 opportunity to go and consider perhaps a written form
6 of the questions that the panel posed, either from the
7 transcript or some other form.

8 With respect to Mr. Ghikas's proposal, I
9 think AMPC can certainly support that. Going away
10 after today and taking the opportunity to make
11 submissions on the just cause ground raised by BC
12 Hydro and the form that a subsequent hearing should
13 take, I think that makes sense and is probably a very
14 practical way forward. Again, this is a significant
15 issue that I think -- it sounds like more interveners
16 want the chance to explore properly and it sounds like
17 that's a good path to allow that to happen.

18 So subject to any questions, those are
19 AMPC's submissions for now.

20 THE CHAIRPERSON: Thank you, Mr. Baer. I have no
21 questions. Do my panel -- does my panel have any
22 questions? No? Okay. Thank you.

23 MR. ANDREWS: So Bill Andrews for the B.C. Sustainable
24 Energy Association. And I should point out for the
25 record that the Sierra Club is not part of BCSEA's
26 intervention here.

1 negatively impact ratepayers, not to say that it is
2 correct but it could, if it was what the evidence
3 supported.

4 From BCSEA's point of view, we were
5 prepared to put our emphasis on the procedural
6 fairness aspect that BCSEA didn't have an opportunity
7 to know that this was going to be an issue on which to
8 make submissions in the RRA. But I think, as has been
9 pointed out, it doesn't make any sense to spend our
10 time going back over whether -- you know, who's to
11 blame for why that didn't happen. The point at this
12 stage is to get the issue resolved. The Chair has
13 listed many important questions and, you know, those
14 are very amenable to evidence and submissions and a
15 Commission decision.

16 My hope would be that the Commission would
17 be able to tell us today, either during the call or
18 shortly after, that the idea was to move toward -- was
19 to adopt a just cause approach and then take
20 submissions on the details of what kind of proceeding.
21 That could even be done today, but I'm totally -- from
22 BCSEA's perspective, those are issues that could be
23 dealt with today but they may be -- Hydro (audio
24 drops) may need to consider the logistics more
25 carefully.

26 So, circling back, what BCSEA supports is

1 the idea of allowing the reconsideration on the basis
2 of just cause, which doesn't point fingers (audio
3 drops) specific errors and that in terms of the remedy
4 that would yet to be decided what kind of -- like,
5 whether it should be a separate proceeding or (audio
6 drops) one. So those are my submissions.

7 THE CHAIRPERSON: Thank you, Mr. Andrews. Thank you,
8 any questions? Okay.

9 Mr. Weafer?

10 MR. C. WEAFER: Thank you, Mr. Chairman. We would
11 also, the CEC would also support the proposal of Mr.
12 Ghikas in support of the speakers ahead of me with
13 respect to finding on the reconsideration on the just
14 cause submissions. The exchange this morning with the
15 Chair and BC Hydro shows that there are some gaps in
16 communication that impact on a fairly material topic,
17 with respect to trade income and Powerex. And agree
18 that getting into the procedural fairness arguments,
19 which we also came prepared to make but I don't think
20 they really get us anywhere. I think the bottom line
21 is there's somewhat a gap of understanding that BC
22 Hydro should be able to try and fill.

23 And in terms of how we could deal with
24 that, the CEC's proposal is sooner rather than later,
25 notwithstanding Hydro's desire to communicate with the
26 government, this evidence should be all fairly readily

1 available and largely in the hands of BC Hydro to move
2 to a procedure of a technical workshop and then a
3 streamlined review process with Commissioners
4 involved.

5 **Proceeding Time 10:19 a.m. T19**

6 And I don't think we can say this is a
7 really important topic but then let's delay it for
8 three years, in terms moving it over the 2003 revenue
9 requirement and how long that process may take. The
10 problem that arose here is a very material topic got
11 scant attention in the last RRA, which was fairly
12 thorough and complete, and we are not hearing, and
13 agree, this topic is important, and therefore should
14 be dealt with in a fairly timely manner.

15 I am mindful of what is on BC Hydro's
16 plate, and what is on others' plates, but I think we
17 need to clear this up as you pointed out earlier, Mr.
18 Chair, the transfer pricing process is in abeyance.
19 It may impact on other aspects of BC Hydro planning.
20 So we would urge a finding on the just cause basis
21 that the reconsideration should be allowed, and
22 process should be commenced to fill the gap in
23 information and get us back on track with the trade
24 income topic.

25 Those are my submissions, I am happy to
26 take any questions.

1 THE CHAIRPERSON: Thank you, Mr. Weafer. Questions?

2 No? Thank you Mr. Weafer.

3 Ms. Worth?

4 MS. WORTH: Good morning, Mr. Chair, members of the
5 Panel. I am in a similar position as Mr. Andrews, Mr.
6 Bear and Mr. Weafer, in that I am supportive of
7 further process on this. It is not -- given the
8 complexity of the issues and the number of issues that
9 we've been presented with this morning, I think that
10 there is definitely reason to look at sort of not
11 necessarily dealing with these now.

12 I have listened to Mr. Ghikas and I think
13 that his proposal is actually something that we would
14 support, and that's the position we are going to be
15 taking. And we are amenable to whatever process the
16 Commission finds is appropriate in these
17 circumstances, whether it be written, or whether it be
18 streamlined review process kind of following a
19 workshop. So we would participate in whatever process
20 was set for this particular review, and we would ask
21 the Commission serious to consider and to approve
22 going forward on the basis that Mr. Ghikas has
23 suggested in order to actually address this issue
24 sooner rather than later.

25 Subject to any questions, those are my
26 submissions.

1 THE CHAIRPERSON: Ms. Worth, do you have any
2 submissions on, or any suggestions or comments at
3 least on timing of a *de novo* hearing?

4 MS. WORTH: I, like a number of the interveners here,
5 and participants, have a busy schedule with regulatory
6 commitments, but I am mindful of the concern that you
7 articulated earlier, Chairperson Morton, that you were
8 concerned that there is this transfer pricing
9 agreement that has not been subject to Commission
10 review, and I think that a hearing *de novo* rather than
11 waiting for the revenue requirement is probably the
12 best way to go in order to address that. And we are
13 prepared to do what is necessary to make ourselves
14 available on an expedited basis. But aside from that,
15 I'm not sure that there is anything further that I can
16 submit.

17 THE CHAIRPERSON: Appreciate it. That is fine, thanks
18 Ms. Worth. Any further questions? No? Thank you.

19 Mr. Austin.

20 MR. AUSTIN: Thank you, Mr. Chair. BC Hydro has an
21 application for reconsideration before the Commission,
22 and the Commission has asked a number of questions, or
23 have a number of questions on (inaudible). Before the
24 Commission decides whether there should be a hearing
25 *de novo* based on just cause, I think it is imperative
26 that the Commission have answers to its four questions

1 or five questions, and then make a decision on
2 reconsideration.

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

4 I'm thinking in terms of fairness to other
5 participants in BCUC processes, it's not beyond the
6 realm of possibility that if someone else came forward
7 with an application for reconsideration and on the
8 basis of the paucity of evidence before the Panel, its
9 chances of getting a hearing *de novo* would be
10 extremely remote. So at least on that basis alone
11 what should happen is the Commission should circulate
12 its questions and the parties should have ten days to
13 respond, and then the Commission should make its
14 decision.

15 In relation to the transfer pricing
16 agreement, the CEABC submits that there's no reason in
17 the world that that should be held in abeyance subject
18 to the outcome of BC Hydro's reconsideration
19 application whether or not it consists of a process *de*
20 *nov*. The transfer pricing agreement is clearly about
21 electricity, it's clearly about purely domestic
22 matters in terms of BC Hydro's system. It's not about
23 gas being bought in Los Angeles – as you described it
24 – and sold someplace else in the United States, so
25 there is no reason in the world why that transfer
26 pricing agreement process should not be continuing as

1 of this day. There's just no reason for it

2 And the suggestion in BC Hydro's
3 application for reconsideration that this would be
4 held up essentially until the 2023 Revenue
5 Requirements Application makes no sense whatsoever.

6 So the Clean Energy Association of B.C.
7 urges the Utilities Commission to get on with the
8 transfer pricing agreement. And as you have noted,
9 Mr. Chair, it's been in operation for a year and when
10 you have a situation like that, essentially it becomes
11 entrenched and anybody who disagrees with it will be
12 probably met with the response that, "Well, see, it's
13 working so far. What's your problem?" And, again,
14 that's not fair in relation to interveners such as the
15 Clean Energy Association of B.C. to have to be arguing
16 from a position of, "It's been in operation, so what's
17 the problem?"

18 Those are the Clean Energy Association of
19 B.C.'s submissions, subject to any questions that the
20 Panel might have.

21 THE CHAIRPERSON: Thank you, Mr. Austin. So I just
22 would like to clarify, of the five questions that I
23 posed, the first two, at least in my opinion -- the
24 first three speak to the issue of procedural fairness.
25 However, the fourth -- the issue about jurisdiction
26 over Powerex net income and the nature and timing of a

1 circulated, or whatever questions you think are
2 relevant after this call. But there were some
3 questions that were posed, they can be edited, they
4 can be -- you can decide that they're not relevant in
5 relation to just cause, that they were really relevant
6 in relation to procedural fairness. That's in your
7 hands and that's within your decision making
8 capability but I do think it's important that before
9 any decision is made, in terms of the *de novo*
10 proceedings, that there is an opportunity to at least
11 have a complete record of why the decision was made.

12 THE CHAIRPERSON: Thank you, Mr. Austin, I appreciate
13 that. On that note then, focusing on the last two
14 questions that I asked, the one about jurisdiction
15 over Powerex net income and I'll go back to that in a
16 moment, and the timing of a hearing *de novo*, as we go
17 back up the list I would ask parties to address that,
18 please.

19 Now, the issue of jurisdiction over Powerex
20 net income, to the extent that we can or could address
21 that now, or if you have comments on how it could or
22 should be addressed, I'd appreciate that.

23 And this was IR 1.143.5 in the RRA and
24 essentially BC Hydro made the comment, or made the
25 assertion, let's say, that BCUC cannot review the
26 income or losses of Powerex. It said little about it

1 other than that, so it's not clear what the term
2 "review" means in this context. But my question was,
3 well, first of all, when I read the Energy Statutes
4 Amendment Act I certainly didn't -- that didn't jump
5 out at me. And, secondly, what does "review" mean?
6 And, thirdly, if we can't review the income of Powerex
7 then why are we here? Essentially, was my question.

8 So, again, I'll hand it over to Mr. Quail
9 here and if anyone would care to comment on either
10 that directly or how we should deal with that issue,
11 please do so.

12 MR. QUAIL: Just on the final point, I think it's
13 pretty clear that the question of how to deal with
14 revenues derived from Powerex in the hands of BC Hydro
15 is clearly a matter within the jurisdiction of the
16 Commission. I don't think there's any question of
17 that. That isn't the regulation of Powerex, it's an
18 accounting -- you know, it's a revenue matter for BC
19 Hydro purely as a regulated utility.

20 I agree with Mr. Ghikas' comments and much
21 of what's been said. Regarding the questions that
22 were posed this morning, I think that various
23 questions maybe call for different treatment, perhaps
24 as the Chair sort of suggested a moment ago.

25 Questions purely about procedural fairness,
26 in my submission, if the reconsideration is resolved

1 in the form of a rescission of the decision, then how
2 to conduct a fair hearing, you know, it's sort of an
3 interesting question but it's moot in relation to
4 these proceedings. And, in my submission, not useful
5 and this should not be spun out to sort of have a
6 little exercise in talking about how to conduct fair
7 hearings. That should arise when the necessity arises
8 to do that.

9 **Proceeding Time 10:33 a.m. T22**

10 Regarding questions of the characteristics
11 and dimensions of the Commission's jurisdiction with
12 respect to the net income of Powerex, and also the
13 question of how to deal with a change in the policies
14 of the Commission, in my submission that is best
15 rolled into -- if there is going to be some kind of *de*
16 *novo* process, that is where that belongs, because that
17 is fundamentally how the Commission should construct
18 its resolution of those issues. I think it is best
19 dealt with and in that real context and not as
20 abstractions. It's much more useful and belongs as a
21 part, sort of the how do we deal with this part of a
22 *de novo* proceeding. So I think that that's the way to
23 deal with it. But the purely procedural questions
24 about fairness in my submission.

25 If the Commission decides that it will
26 rescind the original directives on a just cause basis,

1 there is really no need to go further in that regard,
2 and it is not useful to do that in my submission.

3 As to the timing of whatever process would
4 occur, this is way more an issue for BC Hydro, so I
5 will leave it to my friend Mr. Ghikas, but I think
6 that the Commission does need to be sensitive to the
7 logistical demands on Hydro that has filed revenue
8 requirements that we are all sort of nipping at their
9 heels to get their long term resource plan filed and
10 dealt with and various other matters, I just would be
11 interested in hearing what Mr. Ghikas has to say about
12 that. In terms of our interest, we can accommodate
13 ourselves to whatever process the Commission decides
14 is appropriate. I think that covers everything.

15 THE CHAIRPERSON: Thank you, Mr. Quail. Panel,
16 questions? No?

17 Okay, back to Mr. Austin then.

18 MR. AUSTIN: I don't have any additional comments other
19 than in relation to if there is going to be a *de novo*
20 hearing, lets get on with it. The application for
21 reconsideration itself was not what should have
22 happened. BC Hydro should have complied with the
23 second part of Directive 17. We are past that point,
24 so lets move on with it, and at the same time, I'd
25 just like to repeat, lets get on with the transfer
26 pricing agreement hearing, there is no reason to hold

1 it abeyance while we are looking at the issues that
2 are coming out of this application for
3 reconsideration.

4 THE CHAIRPERSON: Thank you, Mr. Austin.
5 Ms. Worth?

6 MS. WORTH: Thank you, Mr. Chair, members of the Panel.
7 I think that Mr. Quail has actually enunciated quite
8 well what our position is on the first issue, and I
9 made my position clear on what we would do to
10 accommodate timing sooner rather than later. But I do
11 note that BC Hydro and the rest -- I did note that BC
12 Hydro and the rest of us are stretched thin,
13 particularly because there is that revenue requirement
14 that is now on the schedule. But we will do whatever
15 we can to accommodate timing that the Commission
16 determines is appropriate for this.

17 Subject to questions, I have nothing more
18 to add, thank you.

19 THE CHAIRPERSON: Thank you, Ms. Worth. Panel? No?
20 Mr. Weafer?

21 MR. C. WEAFER: Thank you, yes. I am just trying to
22 reconcile Mr. Austin's views of let's get on with
23 things and then let's have more process around
24 procedural fairness, when we look like we are leaning
25 towards making a decision on the reconsideration based
26 on just cause. And so I think the procedural fairness

1 issues, if the Commission makes a decision on a just
2 cause determination that we need to move to a process
3 *de novo* on the substance of the matters. I don't
4 understand necessarily who would be stepping up and
5 saying "I want to raise a procedural fairness
6 concern," unless it possibly is Mr. Austin. But there
7 was notice of this reconsideration, and anybody who is
8 interested in it is registered as an intervenor, so
9 with respect to the -- we agree, let's move on, and
10 let's not get caught up in the weeds of process in
11 terms of this matter.

12 In terms of the jurisdictional overview of
13 Powerex's net income, I'd align with Mr. Quail. I
14 think that is part and parcel of this process *de novo*
15 that is being discussed.

16 **Proceeding Time 10:38 a.m. T23**

17 The submission, I'm sure, will come from Hydro on the
18 topic and then others will be able to respond.

19 And, lastly, in terms of timing and the
20 nature of this process and the context of what else is
21 going on, I think a lot of the work for this process
22 has already been done. Clearly, Hydro has been
23 digging in in terms of its positions. It mentions it
24 needs to speak with the government. I imagine that
25 could happen fairly expeditiously because I think
26 largely they're asking for a status quo approach. And

1 so I don't see this being a major proceeding, I see it
2 being fairly focused. As I said in my earlier
3 submissions, there was hundreds of issues in the RRA
4 and this was one and it didn't get a lot of attention
5 and now we're saying we need to give it more attention
6 because it's material. So if it's material, let's
7 give it attention sooner rather than later and CEC
8 will make itself available for whatever process the
9 Commission determines appropriate and whatever timing
10 it deems appropriate.

11 So those are my submissions, subject to any
12 questions.

13 THE CHAIRPERSON: Thank you, Mr. Weafer. Any
14 questions, panel? No. Thank you.

15 Mr. C. WEAFER: Thank you.

16 THE CHAIRPERSON: Mr. Andrews?

17 MR. ANDREWS: BCSEA does not agree with Clean Energy
18 Association's suggestion that the Panel requires
19 necessarily answers to its questions before it decides
20 on the outcome of the reconsideration. It could but
21 in my (audio drops) I think the merits of going ahead
22 with --

23 THE CHAIRPERSON: Mr. Andrews, I'm sorry to interrupt.
24 You're not completely mute at this point but you're
25 significantly broken up. Can you do what you did
26 before again, please?

1 MR. ANDREWS: I'll try again. I'm not sure what the
2 problem was there but --

3 THE CHAIRPERSON: That seems better now, thank you.

4 MR. ANDREWS: All right. So my submission is I don't
5 agree that the Panel necessarily has to have answers
6 to the questions that the Panel raised at the
7 beginning of the session and that's because the
8 questions that involve procedure, if the Panel accepts
9 the idea of a just cause resolution, those procedural
10 questions can be avoided entirely. And in terms of
11 the ones that touch on the substance, my submissions
12 is that those would be dealt with in the proceeding
13 that would be the outcome of proposed just cause basis
14 for a reconsideration.

15 So turning to the two points that the Chair
16 made, jurisdiction over Powerex. In my submission
17 that would be best dealt with in the proceeding that
18 comes out of this consideration application. I don't
19 think it's ever desirable to approach questions of
20 jurisdiction without a factual matrix, that there has
21 to be some specific questions that have been
22 identified before it really helps, I think, to make
23 decisions about a jurisdiction.

24 In terms of the timing of the hearing,
25 BCSEA takes the approach (audio drops) sooner (audio
26 drops) back again, in terms of timing, BCSEA defers

1 logistical basis to BC Hydro that it would have the
2 biggest challenges in making the application and so
3 on, but on the other hand that sooner the better, if
4 that -- you know, to the extent that that could be
5 accommodated. Those are my submissions.

6 THE CHAIRPERSON: Thank you, Mr. Andrews. I just want
7 to make sure everyone heard Mr. Andrews, at least
8 heard him sufficiently and perhaps more importantly
9 that Hal and Keith, were you able to get that on the
10 record?

11 MR. K. BEMISTER: The audio was breaking up, but I
12 believe Mr. Andrews has repeated what he had said.

13 THE CHAIRPERSON: Thank you. Mr. Andrews, perhaps when
14 the record comes out if you could take a look and if
15 there's anything that got missed there you could let,
16 well, more importantly, let Allwest know. Thank you.

17 MR. ANDREWS: Thank you, Mr. Chairman.

18 THE CHAIRPERSON: Okay, not hearing any questions from
19 the panel, we'll go to Mr. Baer, please.

20 MR. BAER: Thank you very much, Mr. Chairman. So,
21 first, to address the question of this just cause
22 approach being addressed first. We agree with many of
23 the other interveners that once the -- if the just
24 cause basis for a reconsideration can be used by the
25 Commission to determine this matter, then we see no
26 need to revisit the procedural fairness questions that

1 have been raised.

2 **Proceeding Time 10:44 a.m. T24**

3 With respect to the two specific questions
4 that were raised by the Panel, on the jurisdictional
5 question we agree that this is a question that makes
6 the most sense to address in the context of whatever
7 proceeding ultimately follows this reconsideration
8 application and not at this time. And with respect to
9 the timing of any ultimate hearing coming out of this,
10 I think that submissions on that might best be made in
11 the context of the submissions on the just cause basis
12 for reconsideration.

13 I note, for example, that timing
14 constraints and scheduling concerns appear to form
15 part of BC Hydro's basis for a reconsideration on a
16 just cause basis, although of course I'll defer to Mr.
17 Ghikas to explore that further, and in any event
18 submit that the timing would better be explored in the
19 context of that next stage considering just cause.

20 Subject to any questions, those are AMPC's
21 submissions.

22 THE CHAIRPERSON: Thank you, Mr. Baer. No questions
23 from the panel?

24 Okay, Mr. Ghikas.

25 MR. GHIKAS: Thank you, Mr. Chairman. So I think
26 people are rowing in the same direction generally and

1 let me just rearticulate where BC Hydro stands, which
2 I believe is aligned with most of what's been said
3 already.

4 Determine the just cause issue first, which
5 would take place following today, there would be
6 submissions on the just cause ground of a
7 reconsideration process, whether that be BC Hydro
8 first followed by interveners, followed by reply from
9 BC Hydro or simply interveners followed by BC Hydro
10 reply, that would take place first. There are two
11 issues among the five which I believe, as Mr. Chairman
12 you indicated, could form a part of that and I would
13 tend to agree with that. I think the issue of the
14 Powerex jurisdiction and the format and timing of any
15 hearing *de novo* on the issue or issues that could be
16 addressed in that context. I think, you know, rather
17 than deal with the issue of the Powerex's jurisdiction
18 today, I think it should -- it does warrant dealing
19 with it later on when parties have a bit more time to
20 deal with that, so that's why I'm suggesting it be
21 done in the context of subsequent submissions on just
22 cause, which would follow today a few weeks from now
23 or two weeks from now, something along those lines.

24 But I will say on the Powerex issue, I
25 don't think we're as far apart as you might be
26 inferring, Mr. Chairman, from that IR response. So,

1 attributable to the efforts of Powerex and then forms
2 part of Powerex net income, which finds its way into
3 rate through another format.

4 The Commission's decision was premised on
5 findings -- the directives were premised on underlying
6 findings, which seemed to be suggesting a view of the
7 world where the transfer price alone did not represent
8 the standalone value of BC Hydro electricity, rather
9 the standalone value of electricity was that amount
10 plus whatever Powerex earned over and above that
11 transfer price. And those are two fundamentally
12 different things and that was articulated in a letter
13 in the context of that proceeding, but I think it's
14 worth, given that Mr. Austin has raised it, making
15 that clear as to why these things are fundamentally
16 incompatible such that it was requested to have it on
17 hold in that proceeding.

18 So I'll park that issue, move on to the
19 issue of timing. We will speak to this further if
20 given the opportunity to do so in the context of
21 addressing any just cause grounds, Mr. Chairman, but
22 what I did want to say at this juncture is that my
23 friend, Mr. Weafer, alluded to not wanting to put it
24 off for three years and the reality is -- if I
25 understood him correctly, that's what I took from
26 that. But I think that it's important in this context

1 to appreciate that that application is actually only
2 months away, that F23 application.

3 So if the idea of advancing the
4 determination of this issue before that filing or, you
5 know, having another proceeding to advance the timing
6 before that proceeding, if that is intended to allow
7 the results to be incorporated into the F23
8 application, that is a logistical challenge. And as
9 you're no doubt aware, the F22 revenue requirements
10 application that was put on a timeframe in order to
11 allow that to occur, those findings to be incorporated
12 in the next one. And in order to do that that
13 timeline has been compressed to the extent where,
14 essentially, the evidentiary record has to be done at
15 the end of -- well, a couple of months from now
16 really, a few months from now. And that will allow
17 the results to then be incorporated in the next
18 application.

19 So achieving what we're trying to achieve
20 in this issue, have this issue addressed fairly and
21 comprehensively, it undercuts that objective if we're
22 now turning a hearing *de novo* into a very, very
23 streamlined and rushed process. And if we are not
24 going to rush that process and give it a proper
25 hearing, it does make sense to include it in the
26 context of a revenue requirements, that is the next

1 logical proceeding to deal with it. It is happening
2 in a matter of months and these issues really do
3 affect the rates of -- are fundamentally rates issues
4 and that's why they were suggested to be addressed
5 there. We can speak to that in further detail if
6 given the opportunity to do so, Mr. Chairman and
7 Commissioners.

8 One final point that I wanted to flag,
9 there was an allusion to or a reference made to the
10 potential for a workshop and streamline proceedings as
11 part of any hearing *de novo*.

12 **Proceeding Time 10:52 a.m. T26**

13 I did want to flag that there are
14 confidentiality issues that will need to be addressed
15 whenever the structure of the ultimate hearing *de novo*
16 is to be set up. And specifically we are dealing with
17 Powerex information in the context of a competitive
18 marketplace, and so there will be limits on the amount
19 of information that can be presented to interveners
20 given the nature of the information.

21 There will also, in particular, be certain
22 information that there will be an extreme reluctance
23 on BC Hydro's part to make available to -- not to put
24 too fine a point on it, Clean Energy B.C. And part of
25 the challenge in that is that one of Powerex's main
26 competitors is Morgan Stanley, and a member of Morgan

1 Stanley is on the board of that intervener, and in
2 fact is, as we understand it, actively involved in the
3 shaping of regulatory proceedings and submissions and
4 involvement in BCUC Proceedings on their behalf. So,
5 there is a real challenge with that.

6 So what I wanted to do is just put the
7 marker down now, and make sure that the Commission is
8 leaving an opportunity for further submissions with
9 respect to confidentiality when it comes time to
10 actually make the substantive submissions in a hearing
11 *de novo*. So, those are my points.

12 But just on the just cause one, I wanted to
13 make sure that it's clear that BC Hydro is not asking
14 the Commission to deal with -- find that there is just
15 cause after today's hearing. We are suggesting that
16 there be further process in the form of submissions or
17 another hearing of this nature within the next few
18 weeks to address those issues.

19 THE CHAIRPERSON: Thank you, Mr. Ghikas.

20 Well, first of all let me assure you on the
21 confidentiality, we will, as always, adhere with our
22 rules of procedure on confidentiality. But we will
23 leave that if, as and when that issue arises.

24 Secondly, I appreciate what you said, that
25 you are not requesting us to make a ruling on a "just
26 cause" solution or finding on this matter today, but

1 are you saying -- and that you are happy if it goes to
2 further submissions. Are you requiring or suggesting
3 we should go to further submissions? If the Panel
4 chose to, based on what its heard today, if the Panel
5 chose to move directly to a just cause hearing *de*
6 *novo*, or a hearing *de novo* on just cause, reasons,
7 would you have an objection to that? I'm not quite
8 sure I understand.

9 Is there something else that you want to
10 say in a submission a couple of weeks from now?

11 MR. GHIKAS: I was actually more intending to -- from
12 BC Hydro's perspective, the case on that point is set
13 out quite well in the reconsideration application
14 itself. So I was more just wanting to make sure that
15 if others were considering that they need. I wasn't
16 sure 100 percent whether that's what others were
17 saying, whether we should just proceed now and they
18 are content with it, or whether they wanted the
19 opportunity to make further submissions on that. So
20 there was a little uncertainty on my part.

21 I just want to make sure that all parties
22 would consider or -- you know, that the Commission is
23 satisfied that the approach that it's taking is
24 sufficient to get the input it needs from the other
25 parties.

26 THE CHAIRPERSON: Okay. Mr. Ghikas, I'm just going to

1 stop for a moment.

2 Mr. Andrews, I assume you had your hand up
3 because you have something to say?

4 MR. ANDREWS: If I may jump in, one suggestion would be
5 for the Commission to determine whether it's inclined
6 to go in a direction of a just cause resolution of the
7 reconsideration application, and if so, invite
8 submissions on the further topics that arise after
9 that.

10 **Proceeding Time 10:57 a.m. T27/T28**

11 If the Commission determines that it's not inclined to
12 go on a just cause basis based on the information it
13 has at this point, then the Commission could invite
14 submissions on all of the reconsideration grounds that
15 are already laid out on the record. That's my
16 suggestion.

17 THE CHAIRPERSON: Okay. I'll invite -- I'll open the
18 floor. Does anyone else have any comment on just this
19 specific issue of further submissions on just cause?

20 MR. QUAIL: We would be content with the Commission
21 proceeding. Our position would simply be to adopt BC
22 Hydro's submissions in any point, in any matter.

23 MR. AUSTIN: David Austin speaking on behalf of the
24 Clean Energy Association of B.C. I was referencing
25 the concept of having the BCUC circulate the questions
26 it thought relevant in relation to just cause before

1 it makes a decision on just cause. Because I couldn't
2 get the questions down that were originally posed, I
3 couldn't really distinguish those relating to just
4 cause and those that might relate to procedural
5 fairness.

6 The other point that I was trying to make
7 is in terms of applications for reconsideration,
8 everybody who makes an application for reconsideration
9 should receive the same treatment. And I'm not
10 suggesting that BC Hydro is getting special treatment,
11 but at least in terms of the record, the record would
12 show that if the Utilities Commission has questions
13 about just cause, they should be on the record,
14 interveners should have an opportunity to respond to
15 them if they want to, and then the Commission should
16 make its decision in relation to just cause.

17 The second point that I'd like to make is
18 there is no member of Morgan Stanley on the board of
19 the Clean Energy Association of B.C. and there hasn't
20 been for quite some time, and second of all, there is
21 nobody from Morgan Stanley participating in BC Hydro
22 -- CEABC regulatory affairs in relation to BC Hydro.
23 So I've been hearing that refrain for a number of
24 years when in fact it hasn't been correct.

25 THE CHAIRPERSON: Thank you, Mr. Austin. As I said to
26 Mr. Ghikas, let's leave the confidentially issues

1 until we deal with them if in fact there is a further
2 hearing on this.

3 MR. AUSTIN: I agree with that. And I also agree that
4 the probability of having a workshop in relation to
5 activity relating to Powerex is close to zero.

6 THE CHAIRPERSON: Thank you. Mr. Weafer?

7 MR. C. WEAFER: Thank you, Mr. Chair. Just to the
8 process to be followed in light of discussion around
9 more input and feedback on procedural fairness topics,
10 the CEC's position will be the time and resources to
11 be spent on those submissions would be far better
12 spent on process around the substantive issues that
13 everybody has identified that needs to be addressed.
14 And so if I could finish with a question, I'm still a
15 bit unclear from Mr. Ghikas what timing BC Hydro is
16 putting forward. If it's part of the 2023
17 application, well, I understand that may come in
18 within the year or within a few months, the decision
19 may be some time away. And so if he could either in
20 writing or now just address what do they see as the
21 timing of the *de novo* process, because ultimately we
22 want to get a conclusion on this topic.

23 THE CHAIRPERSON: Yes, if I could perhaps add to that,
24 Mr. Ghikas. I have the same observation that Mr.
25 Weafer does. You know, it's fine to say that the 2023
26 RRA is coming in a few months and, you know, maybe

1 that's as good as it can get over the timing of
2 kicking off a hearing *de novo*, but it's more an issue
3 of – I don't know what you'd call – the cadence of the
4 proceeding. If it's attached to the RRA, it's going
5 to be a fairly prolonged period of process that's
6 going to be associated with it.

7 **Proceeding Time 11:02 a.m. T29**

8 Whereas if the hearing *de novo* started at
9 the same time that it otherwise would if it was part
10 of the RRA, proceeded as a separate proceeding, it
11 would probably be done a lot more quickly.

12 So what is it that's constraining BC Hydro?
13 Is it the start time or is it the -- or do you need
14 for the hearing *de novo* to be a long and protracted
15 process? Or could you start it at roughly the same
16 time you're going to start the next RRA and we'll just
17 get it finished a lot more quickly.

18 MR. GHIKAS: It's the latter. I mean, the limiting
19 factor from BC Hydro's perspective is when it starts
20 rather than when it ends.

21 THE CHAIRPERSON: Okay.

22 MR. GHIKAS: So the timing challenges, a few others have
23 alluded to the other proceedings that are ongoing now
24 and there's also the issue of, you know, if you're
25 going to -- if you're trying to accelerate it with the
26 hope of getting the results included in the '23 RRA,

1 that's going to be a logistical challenge just given
2 the realities of how far in advance Hydro needs the
3 information to incorporate it. But in terms of after
4 filing how long the process takes, that's less of a
5 concern.

6 I think the reason that BC Hydro had
7 suggested including in the F23 issue is that the issue
8 arose from a revenue requirements decision, it's a
9 rates issue and so -- and it accorded with the type of
10 timeline that was manageable from BC Hydro's
11 perspective. So the driving factor here is the start
12 -- the time at which BC Hydro would have to put
13 forward its case in a hearing *de novo*.

14 THE CHAIRPERSON: But, as Mr. Weafer has pointed out
15 though, you've put forward a lot of your case already.
16 And as you've characterized it in the reconsideration
17 application, a large part of this is to inform the
18 Commission of things that Powerex and BC Hydro are
19 aware of that the Commission isn't aware of. So, you
20 know, could that not be done now? I mean, if this is
21 information that you guys have in your back pocket and
22 it's just, you know, it's a transfer of information
23 that's a large part of this, it's not clear to me why
24 we need to wait even six months to -- would need to
25 wait that long to do this.

26 MR. GHIKAS: I mean, the grounds for requiring the

1 additional time include the time to prepare
2 information but it's not limited to that. BC Hydro
3 also indicated a need to talk to government on the
4 issue. That's important when it comes to issues of
5 government policy.

6 And, you know, actually putting together
7 the implications of what the Commission's decision is
8 is not an easy matter either, and BC Hydro wants to be
9 able to ensure that the Commission has an accurate
10 record of what specifically the business requirements
11 are of Powerex, how it operates its business and how
12 this affects it. That's not -- as people have come to
13 I think appreciate, it's these issues around the trade
14 income and Powerex are not simple and easy to describe
15 and it took a significant amount of effort to put the
16 compliance filing together to try to articulate some
17 of the energies type of stuff. It's significant
18 resources.

19 THE CHAIRPERSON: Right, fair enough. The other
20 proceeding, of course, that we've talked about here is
21 the transfer price agreement. And I do have a comment
22 or a question on a comment that you've just made about
23 the transfer price agreement, and that is about the
24 transfer price itself. And, as I understand it,
25 you're saying that, obviously, the transfer price
26 itself is a key part of a transfer pricing agreement

1 and now these directives and there is discussion in
2 the RRA, has put the transfer price in play or in
3 jeopardy or had put it in question, let's say.

4 I don't -- again, my reading of the RRA was
5 not that the transfer price was wrong or should be
6 changed. It was simply an acknowledgement that a part
7 of the transaction takes place on the BC Hydro side up
8 to the transfer price and the other part takes place
9 on the Powerex side on the other side of the transfer
10 price as it were, and that logically all of that
11 income is associated with the electricity from BC
12 Hydro assets and arguably should go to the ratepayer.

13 **Proceeding Time 11:07 a.m. T30**

14 I don't read in any of these directives or
15 any of this decision that the transfer price was
16 wrong, or is incorrectly set, or should be changed.

17 So, I realize this is not the TPA
18 proceeding, and we -- it's not our job today to set
19 that, to make determinations about anything to do with
20 that proceeding process or otherwise, but I do observe
21 that there was no discussions -- there's no directive
22 involving the transfer price in the RRA.

23 MR. GHIKAS: I understand that, and BC Hydro
24 understands that, Mr. Chairman. The directives
25 themselves were not dealing with the transfer price in
26 any way. However, the determinations that the

1 Commission made that the -- that ratepayers are
2 entitled to the entirety of the returns from BC Hydro
3 electricity is a -- conceptually a different point.

4 I am going to give you a very simple
5 analogy here though, is if you have a person who is
6 selling to a distributor and the distributor resells,
7 the person who is selling to a distributor is getting
8 that price, not the mark up of it, and there is --
9 Powerex is putting its own energy and acquiring
10 resources to facilitate that premium above the
11 transfer price. So it's not -- so there are nuances.
12 That's the concern, is that there are nuances about --
13 and the mechanism by which that was given back to
14 ratepayers was through Powerex net income. And so --

15 THE CHAIRPERSON: And there is no change suggested to
16 that in the RRA, in my reading of the RRA.

17 MR. GHIKAS: Well, I mean you're right. Today is not
18 the day to do this, but I do want to say -- that is
19 part of the challenge that BC Hydro is having is that
20 BC Hydro doesn't think it's that simple. That there
21 is a greater complexity to the implications of what
22 the Commission has ordered that may not be fully
23 appreciated, and wants the opportunity to articulate
24 that clearly, and needs time to do it. And so it's
25 not -- I mean I appreciate what the Commission
26 ordered. BC Hydro is trying to say that it should be

1 given an opportunity to explain that it's not that
2 simple.

3 THE CHAIRPERSON: Fair enough, and fair enough, Mr.
4 Ghikas. I appreciate that and again, this is not the
5 place to argue it, but it's within the context of a
6 discussion about timing, and if it is impacting the
7 TPA, then I do agree with, I think it was Mr. Weafer's
8 comments earlier on, or perhaps it was -- I'm sorry, I
9 don't -- if it wasn't yours, I apologize, I don't
10 recall exactly whose comments it was.

11 But that if we are two to three years into
12 a transfer price agreement and we've made no
13 determination on it, then just inertia sets in at that
14 point and the argument is, well this transfer pricing
15 agreement has been around for three years, so it must
16 be all right. And as a Commission we don't want to be
17 in that position.

18 So we do have to balance. We do have to
19 balance the need to try to resolve this sooner, rather
20 than later, against BC Hydro's obvious need for time
21 in order to prepare its case. So the Commission does
22 consider that holding the transfer price agreement in
23 abeyance is not a desirable situation right now. And
24 we would like to proceed as quickly as possible to
25 resolve this.

26 MR. GHIKAS: Understood.

1 **Proceeding Time 11:12 a.m. T31**

2 THE CHAIRPERSON: I would also like to go back to your
3 comments on the jurisdiction. And as I understood it,
4 you're also suggesting there should be further
5 argument or submissions on jurisdiction prior to
6 making a determination on whether there should be a
7 hearing *de novo*. Yet, I've heard from many other
8 parties that say, or that suggest that the
9 jurisdictional argument could be dealt with as part of
10 that hearing.

11 Would you agree with that or are you firm
12 that we should resolve the jurisdictional issues
13 first?

14 MR. GHIKAS: No, I'm not firm on it. I was more
15 expressing a willingness to deal with the issue. If
16 you were to give me a little bit of extra time, we
17 could articulate the position on that clearly. But I
18 do take the point that it could equally be articulated
19 in a *de novo* hearing and BC Hydro could do it at that
20 time as well. So I think my main point was I don't
21 want to deal with it today, was my main point.

22 THE CHAIRPERSON: Okay, fair enough. Okay, thank you.
23 Panel, do we have any further questions of
24 Mr. Ghikas?

25 COMMISSIONER MASON: I had one question for
26 clarification, if I may, and I think it goes right

1 back to one of the first things you said in this most
2 recent submission, Mr. Ghikas. I just want to be
3 clear whether BC Hydro is seeking to make a further
4 submission on the question of whether to determine
5 this reconsideration application on the basis of just
6 cause or whether BC Hydro is satisfied that the
7 interveners should make such a submission and BC Hydro
8 would have the right of reply?

9 MR. GHIKAS: The latter is sufficient from our
10 perspective. The basis upon which we are seeking the
11 just cause is set out in the reconsideration
12 application and is sufficient as our case in chief.

13 COMMISSIONER MASON: Thank you for that clarification.

14 THE CHAIRPERSON: Thanks, okay. It's 11:15, I'd like
15 to --

16 MR. QUAIL: Excuse me, Mr. Chairman. Sorry to
17 interrupt but it isn't clear to me that any
18 interveners would actually have very much to say on
19 that question. As Mr. Ghikas said, everybody seems to
20 be rowing in the same, pretty much in the same,
21 direction and it seems to me that that may reflect
22 agreement as to what the disposition ought to be on
23 the question. So is it -- I want to make it clear
24 that we would be content if the Commission is disposed
25 to grant the reconsideration on those grounds, for
26 that to happen without further process. I don't know

1 if other interveners are of the same view but we could
2 save ourselves some time and get on with things by
3 dispensing with what may be simply a formality on this
4 particular question.

5 MR. AUSTIN: It's David Austin on behalf of the Clean
6 Energy Association of B.C. If I haven't made it
7 clear, my concern is whether the panel has any
8 questions it wants to have interveners respond to in
9 relation to just cause before making its decision.
10 That's my concern and the concern relates to fairness
11 of treatment for all interveners who bring on
12 reconsideration applications.

13 THE CHAIRPERSON: Thank you, Mr. Austin.

14 Are there any other comments from anyone?
15 Before you speak up, what I propose to do is break for
16 10, 15 minutes. I'd like to caucus with my colleagues
17 and then I'd like to come back and reconvene for a few
18 minutes after that. But if there's anyone else that
19 has any comments before? Okay, yes?

20 MR. C. WEAFFER: More a question that when we come back
21 after 10 minutes is there anything you want us
22 specifically to address? Or is it really just to chat
23 amongst yourselves and make sure you're on the same
24 page?

25 THE CHAIRPERSON: Correct, that's correct. The latter.
26 You can just stand down, have some coffee, some lunch.

1 further action on the issues of procedural fairness
2 that have been raised in the reconsideration
3 application.

4 We would like the new hearing to take place
5 as soon as possible. We do not want it coupled with
6 the 2023 Revenue Requirement. And we will be going
7 out for some further submissions or consultation on
8 what is a reasonable start date. We've had a fairly
9 fulsome discussion about that today and we're hopeful
10 that we will be able to come up with a start date that
11 satisfies all parties at least reasonably, and then we
12 will proceed on that matter from that date once we've
13 been able to establish it. But we will be issuing an
14 order to reflect what I've just said and likely in
15 that order we will include a request for submissions
16 on timing of this upcoming proceeding.

17 So I'm happy to answer any questions if
18 there are any at this point. So hearing none, then
19 I'd like to once again thank everyone very much for
20 your participation. I think it's been a very fruitful
21 morning. I'm glad to see we got to where we did and I
22 look forward to further submissions on this issue.

23 Thank you.

24 **(PROCEEDINGS ADJOURNED AT 11:37 A.M.)**

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I HEREBY CERTIFY THAT THE FORGOING
is a true and accurate transcript
of the proceedings herein, to the
best of my skill and ability.



A.B. Lanigan, Court Reporter

January 11th, 2021