

BRITISH COLUMBIA UTILITIES COMMISSION

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

and

**In the matter of FortisBC
and
An Application for a Certificate of Public Convenience and
Necessity (CPCN)
for the Okanagan Transmission Reinforcement Project
("OTR Project")**

**Kelowna, B.C.
February 27, 2008**

PRE-HEARING CONFERENCE

BEFORE:

Mr. A.W. K. Anderson	Chairperson
Ms. N.F. Nicholls	Commissioner

VOLUME 1

APPEARANCES

P. MILLER	Commission Counsel
G. MACINTOSH QC	FortisBC
R. ADVOCAT	South Okanagan for Alternate Route
T. STYFFE	Regional District Okanagan Similkameen
T. WILTSE	Wiltse Holdings Ltd.
B. GOODMAN	On Her Own Behalf
R. ARMSTRONG	Golden Hills Strata Plan K268
C. DANINGER	On His Own Behalf
A. WAIT	On His Own Behalf
T. McMANAMAN	On His Own Behalf

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CAARS

PENTICTON, B.C.

February 27, 2008

(PROCEEDINGS RESUMED AT 10:30 A.M.)

THE CHAIRPERSON: Good morning, ladies and gentlemen. My name is Keith Anderson, and I am the Chair of this particular proceeding, and with me today is Commissioner Nadine Nicholls. This, as you're all aware, is a pre-hearing conference to consider certain procedural issues arising from the December 14th, 2007 application of FortisBC for a certificate of public convenience and necessity, or CPCN as it gets referred to, for the Okanagan Transmission Reinforcement Project, or OTR, as it's come to be known. And this application is made pursuant to Sections 45 and 46 of the *Utilities Commission Act*.

We certainly welcome you to this proceeding today. We're very pleased to see such an interested turn-out. We're pleased to have your participation in this process. It's an important one. And we look forward to your constructive contribution to assist the Commission Panel in reaching its decision over the course of the next few weeks or months, however long it ends up taking.

Also with us today are some individuals who play an important role in this, and the subsequent

1 proceedings, relating to the application. Commission
2 counsel for this proceeding is Mr. Paul Miller from
3 Boughton Law Corporation. Thank you. And we'll be
4 relying on him, Mr. Miller, to keep us on track today
5 and throughout the proceeding, both from a legal and
6 procedural point of view. Mr. Miller, we do welcome
7 your comments and interjections at any time.

8 Also with us today are Mr. Brian Williston,
9 lead staff member for the Commission, and our Hearing
10 Officer, Mr. Hal Bemister, and his staff -- his son
11 Keith, actually. Today's proceedings are being
12 recorded, as you can see, and a transcript will be
13 available I believe within the next week,
14 approximately. And these gentlemen, Messrs. Miller,
15 Williston, Bemister, are available to assist you with
16 any procedural matters that you may encounter, and I
17 would certainly encourage you to contact them if you
18 have any questions with respect to procedural matters.

19 Before we proceed, it might be useful just
20 to review in summary form some of the key events that
21 have taken place to date in this application since it
22 was filed last December.

23 Following the receipt of the application,
24 the Commission issued Order number G-160-07,
25 establishing this procedural conference, and a
26 preliminary regulatory timetable to get us to this

1 point in the proceedings. On January 9th, the
2 Commission issued a letter clarifying the procedures
3 for the filing of evidence, and I hope you've had a
4 chance to review that. On the 22nd of January, the
5 Commission issued its first Information Request, IR
6 number 1.

7 **Proceeding Time 10:33 a.m. T02**

8 On February 12th, the Commission issued a
9 letter revising the starting time for this procedural
10 conference, and obviously you've all received that.
11 We didn't know how long this might take today, so we
12 thought an earlier start might be better.

13 On February 18th, Fortis filed its
14 Information Request responses, or IRRs, to the B.C.
15 Utility Commission's first Information Request, and
16 then on February 21st, the Commission issued a letter
17 with respect to the procedural conference format and
18 preliminary issues list. We had invited people to
19 respond by February 25th with respect to certain
20 matters spelled out in the February 21st letter, and we
21 did not receive any responses to this point.

22 The objective in holding this procedural
23 conference is to receive participant input to assist
24 the Commission panel in determining the issues,
25 format, timetable and other related matters for the
26 regulatory agenda that will be established following

1 this particular meeting today with respect to the
2 Fortis application.

3 For those of you who might be new to this
4 process, and perhaps as reminder to others, a word or
5 two about the protocol and discipline involved in the
6 regulatory process. All participants in the process
7 have responsibilities, and particularly with respect
8 to certain protocols, information distribution and
9 timeline requirements, and these matters are very
10 important in ensuring that the application is able to
11 be conducted in a timely, fair, efficient and
12 transparent manner for all concerned. These protocols
13 and related requirements and provisions are set out in
14 considerable detail on the Commission's website, which
15 is simply bcuc.com, preceded by the usual W's, and we
16 encourage you to become familiar with those
17 requirements if you haven't yet had an opportunity to
18 take a look at them.

19 In particular, we do emphasize the
20 adherence to the timetable requirements, save only
21 very exceptional and unusual circumstances. It's
22 important for all concerned that we stay on schedule
23 once we've got that process in place. It's a complex
24 logistical matter, and so we would appreciate your
25 cooperation there.

26 Commission staff and legal counsel are

1 available to assist with any procedural questions you
2 may have, as I mentioned earlier. The Commission's
3 February 21st letter that I mentioned a moment or two
4 ago identified a number of topics that are to be
5 included in today's agenda. We don't necessarily need
6 to address those matters in the order in which they
7 were listed in the letter, and your comments with
8 respect to that order are invited when you have the
9 opportunity.

10 When we get into the agenda, in a few
11 minutes, we'll be asking Fortis, first of all, to
12 address the topic at hand, and then followed by any
13 intervenors who wish to speak, and in turn followed by
14 Fortis with any comments they may have with respect to
15 new topics which might have been raised.

16 **Proceeding Time 10:36 a.m. T03**

17 In the course of the process, Commissioner
18 Nicholls and myself may also have some questions to
19 ask, or interjections to make.

20 Just on a couple of -- two or three
21 housekeeping items. You will have noticed, I hope,
22 that there is some coffee and water available at the
23 back of the room. Feel free to move about at any
24 time. We just ask that you tiptoe and be as quiet as
25 possible for the sake of the reporters and others.

26 And I would just like to enquire whether

1 there's anyone present from the news media here. Not
2 that anyone's acknowledging, so we'll assume that's a
3 negative.

4 Mr. Miller will now be calling on
5 individuals to come forward to the microphone, I
6 believe in the order in which he's established for
7 them to speak to the agenda items, and we'll be asking
8 you to introduce yourselves as appropriate, and as
9 appropriate to indicate what organization you might be
10 representing. When those introductions are complete,
11 the individuals will be called on to address the
12 agenda items as we move forward. So, Mr. Miller.

13 MR. MILLER: Thank you, Mr. Chair. The first in the
14 order of appearances is the applicant, FortisBC Inc.

15 MR. MACINTOSH: Commissioners, good morning. My name is
16 George Macintosh and I'm appearing for FortisBC Inc.

17 THE CHAIRPERSON: Thank you.

18 MR. MILLER: South Okanagan for Alternate Route.

19 MR. ADVOCAAT: Sir, my name is Robert Advocaat.

20 THE CHAIRPERSON: I'm sorry. If we could invite you to
21 take the time to come forward and speak into the mike,
22 so that the reporters, to say nothing of the
23 Commissioners, have a chance to hear you clearly.

24 MR. ADVOCAAT: My name is Robert Advocaat, and I
25 represent the communities of Okanagan Falls as well as
26 the outlying areas on the east side of Skaha Lake

1 concerning this matter.

2 THE CHAIRPERSON: Thank you, Mr. Advocaat.

3 MR. MILLER: Regional District, Okanagan Similkameen.

4 MR. STYFFE: Thank you, Mr. Chairman. My name is Tom

5 Styffe, S-T-Y-F-F-E. My position is as Alternate

6 Director in Electoral Area D within the Regional

7 District. Thank you.

8 THE CHAIRPERSON: Thank you.

9 MR. MILLER: The Corporation of the City of Penticton.

10 No appearance, Mr. Chairman.

11 Braeside Farm. No appearance.

12 Wiltse Holdings, Ltd.

13 MR. WILTSE: Thank you, Mr. Chairman. Ted Wiltse, Wiltse

14 Holdings Ltd. Thank you.

15 THE CHAIRPERSON: Thank you.

16 MR. MILLER: Ms. Goodman.

17 MS. GOODMAN: Beryl Goodman, independent intervenor for a

18 long time.

19 THE CHAIRPERSON: Thank you, Ms. Goodman.

20 MR. MILLER: Golden Hills Strata Plan K268.

21 MR. ARMSTRONG: Rocky K. Armstrong, I'm the president of

22 Golden Hills Strata.

23 THE CHAIRPERSON: Thank you.

24 MR. MILLER: Mr. Daninger.

25 MR. DANINGER: Chris Daninger, land-owner in the Skaha

26 Estates area.

1 THE CHAIRPERSON: I'm sorry, I didn't hear you.

2 MR. DANINGER: Land owner, orchardist, in the Skaha
3 Estates area.

4 THE CHAIRPERSON: Thank you.

5 MR. DANINGER: Thank you.

6 MR. MILLER: Mr. Jost. No appearance.
7 Mr. Wait.

8 MR. WAIT: Alan Wait, from Grand Forks. I'm a ratepayer
9 from Fortis, and I've been intervening for a number of
10 years. My concern is how it affects the entire
11 system, rather than just the local area.

12 THE CHAIRPERSON: Thank you.

13 MR. MILLER: Is there any intervenor who wishes to appear
14 that is not a member of so far that I have failed to
15 call so far?

16 MR. McMANAMAN: Terry McManaman. I own an orchard along
17 the line. My last name is spelled M-C-M-A-N-A-M-A-N.

18 MR. MILLER: And that completes the order of appearances,
19 Mr. Chairman.

20 And if I may have just a moment to identify
21 some further exhibits which have been produced this
22 morning. There was two letters from Mr. Karow, C4-11
23 is a letter advising that he won't be in attendance at
24 the hearing today, and C4-12 is a letter dated
25 February 26, 2008, and if I can just take a moment to
26 summarize in brief Mr. Karow's comments.

1 **Proceeding Time 10:41 a.m. T04**

2 MR. MILLER: Mr. Karow prefers an oral hearing. He
3 prefers two rounds of IRs for intervenors. He would
4 prefer no restriction on EMF issues. He would also
5 prefer an extension of time for registration of
6 intervenors to March 28. He would also like to have
7 the deadline for intervenor evidence to be September
8 19th, with an oral hearing date of September 30.

9 In addition, Mr. Chairman, there was a
10 letter from the B.C. Old Age Pensioners' Organization
11 *et al*, Exhibit C21-2, wherein they advise they
12 wouldn't be appearing today, but they do not oppose a
13 written hearing process if there are two rounds of
14 Information Requests, and they would also like a date
15 after March 20 to file both participant assistant
16 budget estimates and for their first round of IRs.
17 Thank you.

18 THE CHAIRPERSON: Thank you. Just before I ask Mr.
19 Macintosh to come forward, I perhaps should have
20 mentioned in my opening remarks that a reminder that
21 this process is quite simply to deal with the process
22 and the procedure. We're not here today to debate the
23 issues, we're here to identify them and set the
24 timetable and the schedule for how this whole matter
25 will go forward. Following this process today, the
26 Commission will be issuing -- after hearing from you

1 with respect to all these matters -- a further letter
2 and Order setting out the procedural timetable for the
3 balance of this hearing, which as I think I referred
4 to at least, we anticipate that will take place over
5 the next few weeks or months, as the case may be. I
6 neglected to mention that in my opening remarks, so I
7 think, are we --

8 MR. MILLER: One more house-cleaning matter that Mr.
9 Bemister reminded me of. There are copies of the
10 exhibits I just referred to at the back of the room
11 for the intervenors, if they wish to review them.

12 THE CHAIRPERSON: Thank you. Mr. Macintosh.

13 MR. MACINTOSH: Commissioners, thank you. There's a
14 housekeeping matter to begin. There is a two-page
15 document which is an errata sheet, and I understand
16 from Mr. Bemister it's been assigned Exhibit number B-
17 4, and it's a sheet, or two sheets, making small
18 corrections, clerical in nature, in Fortis' filings
19 thus far. And copies of it are at the back of the
20 room.

21 THE CHAIRPERSON: Thank you. We'll accept that as
22 Exhibit B-4. B for Bravo-four.

23 (FORTIS ERRATA SHEET MARKED EXHIBIT B-4)

24 MR. MACINTOSH: Thank you. Now, Commissioners, obviously
25 I'm in your hands as to how we would proceed. The
26 first submission that I would intend to speak to would

1 be the question of whether there's an oral hearing or
2 a written hearing, but as I say, I'm obviously
3 entirely under your direction in that regard.

4 THE CHAIRPERSON: I think that's probably an appropriate
5 place to start off. It may also extend into trying to
6 get some indication from other participants in terms
7 of what they might have in mind for filing evidence,
8 and how that might be dealt with as we proceed.

9 MR. MACINTOSH: Yes. Thank you. And obviously at a
10 later stage, when it may be more helpful, I would have
11 a proposed schedule for IRs and things like that.

12 So, then, if I may -- Fortis' position is
13 that a written process is suitable for this
14 application, and perhaps the first reason for
15 submitting that is that there have been very extensive
16 public consultation processes thus far, and there are
17 processes I will speak to that would also support the
18 fact that the application is very well known, and so
19 it's not a case where significant data needs to be
20 unfolded in a public hearing process, which is
21 sometimes the case, of course.

22 **Proceeding Time 10:46 a.m. T05**

23 So, in my submission, the extent of public
24 consultation thus far speaks to the support of having
25 a written process, and I would note that the BCOAPO,
26 which is probably the longest-standing intervenor in

1 the province -- I was trying to think of that this
2 morning. I think that's correct. And certainly with
3 regard to Fortis and its predecessors, BCOAPO has been
4 the longest-standing intervenor. And as you may well
5 know, the applicant and BCOAPO are not always on the
6 same side on things. They are often making
7 substantive submissions.

8 THE CHAIRPERSON: That does not come as a surprise.

9 MR. MACINTOSH: Right. Right. And today, on the other
10 hand, I'm just happy to note that the BCOAPO supports
11 a written process instead of an oral hearing process.
12 And when they --

13 THE CHAIRPERSON: I'm sorry, I thought I heard you say a
14 witness process. A "written"?

15 MR. MACINTOSH: A written process. I'm sorry if I mis-
16 spoke.

17 THE CHAIRPERSON: Thank you.

18 MR. MACINTOSH: A written process instead of an oral
19 hearing process. And what they would suggest to be
20 linked to that is that there be two rounds of IRs for
21 intervenors, and Fortis would support that, and as I
22 said a moment ago, would speak to a proposed schedule
23 in that regard.

24 And another point I would touch on is that,
25 although the capital costs of the project are
26 significant for Fortis and for its customers, the

1 hearing costs nonetheless are not insignificant when
2 they're looked at in isolation, and run at least into
3 the tens of thousands of dollars. And when the
4 cost/benefit analysis is done for whether you incur
5 those substantial extra costs, I would repeat that
6 this is not a case where there is significant unknown
7 information which an oral hearing would better bring
8 out. The tension in the case is really with SOFAR and
9 other groups, if I can use the acronym, SOFAR and
10 other groups who don't want to continue using this
11 corridor and would prefer that the line was elsewhere,
12 basically speaking, on the one hand, and the utility,
13 the applicant, who wishes to use an existing corridor
14 which is in place on the other hand. And that's not
15 an insignificant issue, obviously, but it is not one
16 where there is a great deal of knowledge to be
17 unfolded further on the point, given the IR process
18 which can be thoroughly employed. And as you will
19 hear today, there will be speakers who will come to
20 the podium in their own name, some of whom are members
21 of SOFAR and some of whom are not, and many of them
22 would be in Heritage Hills, one of the subdivisions,
23 and they bought their houses long after the existing
24 right-of-way was in place and in use. And as I say,
25 they would seek to utilize the application process to
26 contend that the line should be put elsewhere, further

1 up the hillside, I would expect.

2 And my point, perhaps to repeat slightly,
3 and I'll certainly try not to, but my point is that
4 any piece of information which is germane to that
5 important decision, which is line location, can be
6 fully mined and utilized and understood and presented
7 in a written process, is my point. And I don't think
8 -- and I don't submit that it would be helpful for the
9 Commission's decision to -- or particularly fair, from
10 the viewpoint of those who want the line to go where
11 it's designed to go now in the application, to have
12 member after member of SOFAR to come and speak, under
13 different flags, as it were, to make the same
14 submission, essentially.

15 And I repeat that it is not an unimportant
16 submission at all. It's an important, legitimate
17 discussion, obviously, as to where the line is
18 located.

19 **Proceeding Time 10:51 a.m. T06**

20 My point of course is just that it's an
21 issue where the Commission can be fully equipped to
22 make its decision without the costs and timing of a
23 significant oral process. So those are my submissions
24 on that point.

25 THE CHAIRPERSON: Thank you. Mr. Advocaat.

26 And just while you're coming up to the

1 podium, sir, I wonder if I just might get some
2 clarification from you. We have a significant number
3 of interventions registered from people who I believe
4 are part of your group, and am I correct in
5 understanding that you speaking for virtually all of
6 them? We would have a preference not to hear the same
7 story a dozen or so times.

8 MR. ADVOCAT: Oh yes, sir. In fact it is our intention
9 to do exactly that. However, based on the broad scope
10 of concerns that involve this particular application,
11 our intent always was to divide certain aspects so
12 that we could concentrate on different topics rather
13 than one individual trying to glean knowledge on all
14 of the topics. And it is with that intent involved
15 that I ask your permission when the time comes to
16 defer to other individuals that are on our panel for
17 our community, to comment on these particular topics,
18 where quite honestly, that I am not necessarily
19 familiar with.

20 THE CHAIRPERSON: Fair enough, so it's one person per
21 topic is fundamentally what you're saying, is that --

22 MR. ADVOCAT: Yes.

23 THE CHAIRPERSON: Yes, fair enough.

24 MR. ADVOCAT: With respect to an oral hearing, we feel
25 that it is imperative that there is an oral hearing,
26 primarily due to the fact that we are dealing with

1 ratepayers here and we feel that, based on the fact
2 that they are paying for this along the road, that
3 they should be entitled to speak rather than to
4 provide in writing their feelings concerning this
5 matter. A written hearing lacks emotion as far as
6 we're concerned.

7 We also feel that -- I'm just trying to
8 think here on the next topic.

9 THE CHAIRPERSON: Take your time.

10 MR. ADVOCAT: Okay. We found that, you know, contrary
11 to Mr. Macintosh's comment that this application was
12 well known, we found that in fact it was not. We
13 found that there was a number of people that were
14 unaware of this application, and if it wasn't for the
15 organization -- our organization, our group,
16 attempting to find them and let them know about it,
17 they would never know about this, this particular
18 application. And they should be entitled to speak to
19 this.

20 Mr. Macintosh mentioned that we represent
21 the area of Heritage Hills. That is incorrect. We
22 represent the area of McLean Creek Lowlands, the
23 Parsons Road Agricultural Bench Heritage Hills,
24 Lakeshore Highlands. So there's a number of
25 communities that are involved here where this
26 particular existing right of way runs right through

1 the community.

2 Yes, there is no question that this
3 particular right of way was in place when a lot of the
4 homes were built in this particular area, and most
5 people recognize that the existing line is there.
6 What we were not aware of and we did not recognize is
7 that there will be a substantial change in the
8 existing line that is there for existing -- for
9 example, you know, the existing structures that are in
10 place at this particular time are approximately 55 to
11 60 feet tall, whereas the towers that they are
12 proposing are 100 feet tall, and that the number of
13 lines that will be increased on this particular line
14 will double and that the amount of power that will be
15 provided along these lines will basically go up 500
16 percent. So these are dramatic issues to us and we
17 need to address them with an oral hearing.

18 And as far as the number of IRs that are
19 involved, again I find personally, or we find that by
20 restricting the number of rounds of information
21 requests that might respect our opportunity to get
22 certain questions clarified, whereas in an oral
23 hearing we can get to the point of that immediately
24 rather in waiting, or missing the opportunity. So, I
25 submit on behalf of our group that we would prefer an
26 oral hearing.

1 **Proceeding Time 10:56 a.m. T07**

2 THE CHAIRPERSON: Thank you. Just before you leave, I've
3 been wondering whether you and others might consider
4 if we established a process of, maybe, a combined
5 process, where there's a whole host of issues that
6 perhaps don't need to be addressed orally, and we can
7 maybe confine any oral hearing, if we did decide to go
8 on that route, to certain specific issues. Or are you
9 thinking about the whole broad-brush complete hearing?

10 MR. ADVOCAT: The whole broad spectrum --

11 THE CHAIRPERSON: The whole process.

12 MR. ADVOCAT: -- of the hearing should be oral, yes.

13 THE CHAIRPERSON: Thank you.

14 MR. ADVOCAT: Thank you.

15 THE CHAIRPERSON: Mr. Styffe.

16 MR. STYFFE: Thank you, Mr. Chairman. By way of -- first
17 of all, thank you very much for allowing me a little
18 bit of latitude. I'm brand new at utility hearings
19 and things of that ilk, but I'm here primarily to act
20 in support of the SOFAR group, but through the elected
21 body of the Regional District of Okanagan-Similkameen.

22 By way of background, the Regional District
23 was approached by the SOFAR group with a petition and
24 the petition was presented to the Board of Directors
25 of the RDOS and a motion was moved and passed, and it
26 carried. I'm sure that that document, as I'm new to

1 the process here, I'm sure the document is in evidence
2 some place, but if I may, I'll just briefly read to
3 you the position of the RDOS.

4 It was that the RDOS acknowledges and
5 supports the need for upgrade and power service for
6 the Okanagan Valley, that's the opening statement.
7 I'm here partially, probably surprisingly, in that we
8 are not in opposition to Fortis' application *per se*.
9 We are here in opposition to the location. And if I
10 may, I can tell you that not unlike local governments
11 across the province of B.C. and throughout Canada,
12 infrastructure is the kind of thing these days that we
13 are very, very interested in seeing refurbished and
14 upgraded, and wherever possible promoted, particularly
15 in valleys such as the Okanagan, where development is
16 going to require upgraded services.

17 The second part of that motion was that --
18 and that the Regional District of Okanagan-Similkameen
19 does not support upgrading of the existing corridor,
20 and urges FortisBC to relocate the line east of the
21 existing site, avoiding developed settlements. That
22 was passed and carried. And at this point, I'm here
23 to let the Commission know that the Regional District
24 -- that is exactly its position, that we are in
25 support of SOFAR's position with respect to any
26 presentations that they may have regarding

1 environmental issues, or other matters of evidence
2 that would be presented to you. So I would like to
3 stress that we don't want to duplicate in that regard.
4 The RDOS is here simply as an umbrella group in
5 support of SOFAR.

6 THE CHAIRPERSON: So can we take it, then, that anything
7 we hear from the SOFAR group, you support, unless we
8 hear otherwise? Is that --

9 MR. STYFFE: May I say that it can include but is not
10 limited to. We support in general their position.

11 THE CHAIRPERSON: Including the topic we're trying to
12 deal with right now, which is an oral versus a written
13 hearing.

14 MR. STYFFE: I will deal with that one promptly. I
15 absolutely agree with the request that this be dealt
16 with in an oral fashion. However, I also -- if I can
17 hit both sides of the fence here -- I also agree with
18 you that there could be some sort of protocol in
19 determining what that -- what should be addressed
20 orally, and I would be happy to participate in that.
21 I think that there's no lack of paperwork in this
22 application, I've noticed, and I think that probably a
23 lot of the concerns that my constituents have are very
24 passionate ones, and they're ones that are best
25 expressed, you know, in person.

26

Proceeding Time 11:01 a.m. T08

1 We come at this -- if I may, my soon-to-be
2 friend from Fortis sort of alluded to the NIMBY
3 process, the NIMBY proposition of what's going to
4 happen if we get too many oral presentations. And I
5 can tell you that I've spent a good deal of my life in
6 local government and my family has. My father-in-law
7 was a Canadian senator and we often sit around the
8 dining room table and discuss, sort of chuckle at
9 things like NIMBY problems because typically what
10 happens when sort of Uncle Fred buys a piece of
11 property underneath the end of the runway and then
12 discovers that it's too noisy, he then approaches
13 every level of government and complains about it, and
14 we find that pretty funny.

15 That's not the case here. What's happened
16 here is that we've got an application that's in place
17 for people that were fully well aware of right of ways
18 and transmission lines, and that has substantially
19 changed so that dear old Uncle Fred is now living
20 underneath the equivalent of an air force base with
21 F16s flying over and it is quite a lot different from
22 that which he originally intended. So what I'm in a
23 roundabout way of saying is that we don't think it's a
24 NIMBY process. We think that it's a process that
25 these people have a right to be heard in a passionate
26 way because it affects each of their properties in

1 different ways.

2 I could add to that, if I may, that the
3 Regional District's point of view is that the whole
4 Okanagan corridor has changed dramatically since the
5 original transmission line --

6 THE CHAIRPERSON: Excuse me, sir.

7 MR. STYFFE: Yes.

8 THE CHAIRPERSON: Rather than advancing your full
9 position here, we are just trying to establish a
10 procedure. So --

11 MR. STYFFE: Okay, so I'll limit it to saying --

12 THE CHAIRPERSON: You will have plenty of opportunity as
13 we go forward to --

14 MR. STYFFE: Excellent, and I would limit it to say that
15 the RDOS is in favour of having oral hearings, but I
16 would appreciate that if we had a timetable set up as
17 to who was to make those and that they weren't
18 duplicated, that would be great.

19 THE CHAIRPERSON: Thank you.

20 MR. STYFFE: I think that's about all I had to say other
21 than that we have a couple of other concerns which I
22 haven't seen noted in the paperwork so far, and one of
23 our major ones is the question of right of ways and
24 how many there are and whether that evidence has been
25 put forward. I just learned recently that there may
26 well be in excess of 80 different right of ways

1 affected. If that is the case, I have only seen a
2 couple submitted by Fortis, and it is very much a
3 regional district concern if there are 80 different
4 right of ways that have to be renegotiated, we would
5 prefer that. I don't know whether that's part of the
6 Commission's responsibilities.

7 THE CHAIRPERSON: Well, those are the sorts of things
8 that can come forward and be explored as part of the
9 information request process that I'll be establishing
10 and so on.

11 MR. STYFFE: Okay.

12 THE CHAIRPERSON: It's really a question of getting that
13 evidence on the record in the fullness of time.

14 MR. STYFFE: Very good. Okay, well, I think that does it
15 for me. Thank you very much for your time.

16 THE CHAIRPERSON: Thank you. We are down to, I think,
17 Mr. Wiltse with respect to oral or written hearing.

18 MR. WILTSE: Thank you, Mr. Chairman. I'm rather new to
19 this process and I'm here more or less just to gather
20 information.

21 Our company probably would prefer an oral
22 hearing so that family members could be well aware of
23 the proceedings. We're probably in the process of
24 hiring legal counsel and we would probably prefer our
25 legal counsel have the ability to discuss the matter
26 with the Commission. I think that's all I have to say

1 at the present time. Thank you.

2 THE CHAIRPERSON: Thank you. Ms. Goodman.

3 MS. GOODMAN: Mr. Chair and all others in attendance, I
4 have read the materials, I support the project and on
5 the existing right of way, except where Fortis deems
6 it necessary to adjust it if Fortis should so decide.

7 **Proceeding Time 11:06 a.m. T09**

8 It seems the bands and the majority think
9 it environmentally, safety-wise, also cost-wise,
10 better to leave it on the existing as well as for
11 accessibility and I had noted that the process,
12 partially written, if possible -- that would be up to
13 the BCUC. I endorse BCOAP's. I oppose Mr. Karow's
14 request for longer and longer process. It's a pattern
15 of his, I'm sorry. And it is very important to the
16 whole provincial grid that this project get underway
17 as soon as possible, for cost and for necessity.
18 Thank you.

19 THE CHAIRPERSON: Thank you. Mr. Armstrong. Golden
20 Hills. This is again with regard to oral versus
21 written hearing and related --

22 MR. ARMSTRONG: Yeah, we'd like oral versus a written, I
23 would say, the oral process is probably most
24 proficient but also for those that do not want to have
25 the oral processes have that, and be able to submit in
26 writing as well to get their points across, because

1 they're either not able to attend or don't have the
2 ability to express themselves in the oral fashion, and
3 that's our stance on that, so. That's it.

4 THE CHAIRPERSON: Thank you. I'm just wondering, I'm
5 going back to the comments that were made earlier by
6 Mr. Styffe and Mr. Advocaat, and I'd just maybe give
7 you another chance. I wasn't clear, now that I'm
8 finally thinking of it, whether you were really asking
9 for an opportunity for oral submissions or whether
10 you're asking for a full oral hearing in the sense of
11 having a panel of witnesses available for cross-
12 examination from Fortis, and whoever else, and going
13 through that whole information examination process, or
14 whether it was primarily with respect to an
15 opportunity to make your argument or submission
16 orally. Can you help me with that?

17 MR. ADVOCAT: I believe that we've always been working
18 under the premise that it would give us the
19 opportunity to cross-examine FortisBC's witnesses.

20 THE CHAIRPERSON: Fair enough.

21 MR. ADVOCAT: And in that view, we'd prefer to have an
22 oral hearing.

23 THE CHAIRPERSON: Thank you.

24 MR. STYFFE: Thank you, Mr. Chair. I believe that the
25 RDOS's position is that there's no need for a
26 duplication of it. Really, we are here to ensure that

1 SOFAR can be represented orally through their
2 particular group. So I think if we just sort of
3 assume that the RDOS would like to be involved as an
4 umbrella to make sure that their group is heard.
5 THE CHAIRPERSON: Thank you.
6 MR. STYFFE: Thank you.
7 THE CHAIRPERSON: Mr. Daninger.
8 MR. DANINGER: Mr. Chairman, I personally would prefer an
9 oral hearing. It offers more flexibility in
10 expressing their opinions to those people, especially
11 to those people who are not professionals in the
12 field, who are not lawyers or administrators or who
13 have not dealt with similar issues like that, to whom
14 it is often hard to, as I found, to voice their
15 opinion adequately in written form, and it would give
16 you or in -- or Fortis representatives the ability to
17 cross-examine them as well, and to ask additional
18 questions if it is found that some arguments are not
19 clear enough to be relevant to the issue at hand.
20 THE CHAIRPERSON: Thank you. I think I've covered the
21 people who are here. Mr. Miller, anything from you?
22 Or do we need to do that?
23 MR. MILLER: I believe we have Mr. Wait and Mr. McManaman
24 next.
25 THE CHAIRPERSON: Oh, I'm sorry. My list is incorrect.
26 Mr. Wait. My apologies, sir.

1 MR. WAIT: Okay. I don't really care which way it goes.
2 I think your oral hearing will be mainly on the route
3 which is a very important part for the local people
4 here, and it's probably best handled orally. But for
5 myself, the things that I've got don't affect route
6 that much, but a lot of the other things that the
7 local people are not that concerned with.

8 **Proceeding Time 11:11 a.m. T10**

9 THE CHAIRPERSON: Thank you. Mr. McManan? Did I get
10 your name right?

11 MR. McMANAMAN: Pretty close.

12 THE CHAIRPERSON: Thank you.

13 MR. McMANAMAN: That's actually McManaman. But from my
14 perspective as well, having an oral presentation and
15 reexamination of the issues are the best approach so
16 that everybody can fully understand rather than
17 getting buried underneath binders and binders of
18 information, which very often are difficult to
19 understand for those who are not in the field itself.
20 And so I would recommend the oral approach.

21 THE CHAIRPERSON: Thank you. Mr. Macintosh, anything
22 arising out of all that?

23 MR. MACINTOSH: I believe so, Mr. Commissioner, thank
24 you. When I speak now, could I ask you if you could
25 access the document that the Commission distributed
26 recently, and my --

1 THE CHAIRPERSON: Which one is that, sir?

2 MR. MACINTOSH: Well, it would help you if I could tell
3 you that. Thank you. It's A-6.

4 THE CHAIRPERSON: I'm sorry? A-6?

5 MR. MACINTOSH: A-6.

6 THE CHAIRPERSON: Yes, we have that in front of us.

7 MR. MACINTOSH: And it's the issues list. And is that
8 what you have there?

9 THE CHAIRPERSON: It is, yes.

10 MR. MACINTOSH: Thank you.

11 THE CHAIRPERSON: Which is the appendix to the letter.

12 MR. MACINTOSH: Yes, thank you, thank you. Because what
13 I'm thinking of, what I'm submitting and suggesting is
14 something of a hybrid process, and just let me explain
15 that if I may.

16 The key question for the Commission really,
17 as I was touching on earlier, is what in fact is
18 likely to get added to the knowledge base that the
19 Commission has to work with on the issue. But then
20 I'm obviously hearing, as you are, the wish of people
21 to speak orally for various reasons, which I respect,
22 of course. And what I was thinking was this, is that
23 there be a written hearing, a written application,
24 written process, but added to that would be a day when
25 submissions could be made orally by those who wish to
26 come and oppose all or part of the application. And

1 if that process occurred, then it would probably have
2 to be worked out with Mr. Miller's supervision before
3 that day, before that hearing day, the mechanics of
4 that, because probably some people would want to come
5 to the microphone and just speak, and others might be
6 a bit more substantive in their presentation and so
7 they would want to be at the witness table. But
8 that's relatively mechanical. The point is that there
9 would be an oral opportunity, if I can put it that
10 way.

11 And another thing that Mr. Miller would
12 need to direct would be some harnessing of or
13 coordinating of submissions, oral submissions, so that
14 there were not ten people saying the same thing and
15 they could work among themselves and numbers could be
16 selected. But those are -- for today's purposes
17 that's relatively mechanical and that would take work,
18 which Mr. Miller could direct with people who would
19 wish to speak.

20 So what I'm suggesting is that there be a
21 written process with an oral hearing day for those who
22 wish to make submissions in opposition to all or part
23 of the application.

24 And I would add on two things to that if I
25 might, and I think now is the right time but I'm in
26 Mr. Miller's hands and of course I'm in your hands.

1 The two things I would speak to as well would be which
2 issues would be appropriate to speak to in that
3 process, and I've got in mind the Commission issues
4 list and I would like to make submissions on which of
5 those issues would be the right ones to have addressed
6 in that oral process. That's one thing I would like
7 to speak to. And the other thing I'd like to speak to
8 is a proposed timetable with the two sets of IRs that
9 we talked about earlier and things like that.

10 So subject obviously to your direction and
11 Mr. Miller's direction, I'll speak to those now.

12 THE CHAIRPERSON: Sure.

13 MR. MACINTOSH: All right, all right, thank you.

14 So when I looked, Commissioners, at the
15 Commission issues list and I don't know if everyone
16 here has it. Perhaps some do not, and they'll have to
17 just note some of my submissions.

18 **Proceeding Time 11:16 a.m. T11**

19 Mr. Miller is pointing out to me there's
20 copies at the back, if people wish to access it.

21 And in that issues list, it would be my
22 respectful submission that the right things to speak
23 to in that oral part would be item 3, which is the
24 route, which I think is the key issue that people wish
25 to speak to. And linked to that is item 4, which is
26 community contributions in aid of construction, toward

1 the costs of alternative routes or options. And in
2 item 6, which is called "Engineering Design," there
3 are two items which, in my respectful view, would best
4 be -- or could best be addressed orally if there is an
5 oral component. And that would be the second one,
6 which is double circuit between Vaseau and Anderson.
7 And the third one, which is pole structure selection,
8 which was spoken to this morning in the context of
9 Uncle Fred's house at the Air Force base, with the F-
10 16s. And I think that's where that metaphor was
11 linked to, and that could be spoken to.

12 And then in item 7, under cost estimates,
13 again in my respectful submission there is two points
14 that could be in that oral process. Escalation of
15 cost, because there was a lower number and then there
16 was a higher number, people obviously may want to
17 speak about that. And the last one, which is cost
18 control mechanism, which may or may not be a subject
19 of public interest. That may be a Commission staff
20 and Commission issue.

21 And then just two more, if I may, Mr.
22 Commissioner -- or Commissioners. Item 10, which is
23 obvious, because that's private property impacts,
24 people would want to speak to that. On EMF, item 11,
25 Mr. Commissioner -- Commissioners, I'm sorry. There
26 has been a great deal done on EMF and there's been a

1 great deal done by this Commission on EMF, and so the
2 caveat I would like to place on what ought to be
3 addressed on EMF is that there be an avoidance of the
4 wheel being re-invented, and that EMF submissions be
5 confined to any developments or evidence since a case
6 which the Commission addressed EMF in some detail, and
7 that was called the VITR case, and that's the
8 Vancouver Island Transmission Reinforcement
9 application. And the Commission Order which addressed
10 that was Commission Order C-4-06, and it was dated
11 July 7, 2006.

12 And so, I would ask that anything on EMF be
13 confined to what developments, if any, there are in
14 that field since then, because the Commission looked
15 hard at that, at that time.

16 So those are my submissions on what would
17 be the right things to have opponents be able to speak
18 to in an oral process, because I repeat that, with the
19 staff's work on this case thus far, the BCUC staff and
20 the company's responses, there is an enormous amount
21 of technical data that's been addressed and, in my
22 respectful submission, is more than fully adequate to
23 deal with the more technical issues. Now, and those
24 are my submissions on that, Commissioners.

25 And then the final thing I'd like to speak
26 to is a proposed timetable if an oral component like

1 this were to be considered. And if I may, I'll toss
2 that out. And so, as has been noted already, there
3 has been one round of Information Requests between the
4 Commission and the company, which has been completed
5 February 18. There was the filing by the company on
6 the first round of the staff Commission IRs. What I
7 would propose is the following dates and sequences.

8 March 27 would be the time for the BCUC
9 staff to present -- the deadline for the BCUC staff to
10 send out IR number two, the second round of
11 information requests. And for intervenors, that would
12 be the deadline for submitting Information Request
13 number one.

14 And then the company, Fortis, would have
15 three weeks to reply to both. And that would be April
16 17. And then the next round and final round of IRs,
17 the date I would attach to that would be April 24, and
18 so that would be, for the BCUC staff that would be IRs
19 number 3, the third round if they had them, and for
20 intervenors that would be the second round of IRs
21 going out, information requests going out April 24
22 with the Fortis responses by May 15.

23 **Proceeding Time 11:21 a.m. T12**

24 And then if there was any intervenor
25 evidence that was to be submitted, Commissioners, I
26 would ask that that be in by May 22nd and then Fortis

1 would have the right to submit IRs, its own
2 information requests, to the intervenor evidence. And
3 the date I would attach to that would be about a week
4 later, be May 28, and intervenors responding to the
5 Fortis information request of June 18. And then,
6 depending on scheduling, somewhere in the time of
7 June, from June 19 to June 25, somewhere in there, for
8 the oral day of submissions that I was discussing
9 earlier. And then final argument from Fortis would be
10 handed in by July 2nd, and final argument by
11 intervenors would come in by July 17, and finally the
12 Fortis reply by July 24.

13 Now, I know some people listening who are
14 unfamiliar with the process will say, "Well, where did
15 those dates come from?" And to be honest, there's
16 never a complete magic in that. I mean it's just a
17 matter of sitting down with calendars and trying to
18 figure out what's viable. But that's what I would
19 respectfully place on the table.

20 THE CHAIRPERSON: Mr. Miller.

21 MR. MILLER: Yes, if I could seek a point of
22 clarification from Mr. Macintosh. When he refers to
23 the oral day that may be held if the Commission so
24 wishes, is Fortis contemplating calling witness panels
25 that may be cross-examined on that day or not?

26 MR. MACINTOSH: No, and we're not, Mr. Chair, and I thank

1 my friend Mr. Miller for raising that because my main
2 submission remains as it was when I started off this
3 morning, that the whole process could and should be a
4 written process entirely. And then obviously
5 listening to people come to the podium and making the
6 point that some people want to speak to the issue and
7 be heard, and I heard words like "emotion" and so on
8 and I understand that. And so what I was saying, what
9 I'm doing is submitting what I call a hybrid process
10 which is basically written, with an opportunity,
11 whether it's a day or not I don't know, but an
12 opportunity for people who are opposing all or part of
13 the application to come and explain why.

14 THE CHAIRPERSON: Commissioner Nicholls.

15 COMMISSIONER NICHOLLS: Mr. Macintosh, would you be
16 planning to cross-examine those people that make
17 submissions?

18 MR. MACINTOSH: Commissioner, it would depend. If you'll
19 recall, what I was suggesting was that Mr. Miller
20 would be burdened with a bit of a shepherding process
21 among all of us. In other words, he would be hearing
22 from those who wish to speak and coordinating and
23 rationalizing to some extent working with these
24 people, you know, the number of speakers and
25 ascertaining from them whether they wish to just make
26 a submission at the microphone.

1 Some people, I don't know but some person
2 or some people may say, "Well, I have evidence that I
3 need to speak to with a filing," and then Mr. Miller
4 in his coordination with those people may determine
5 that someone like that, or two people like that, I
6 don't know, wished to take the witness stand and swear
7 an oath, and roll up their sleeves, if you will, a
8 little more. And if that occurred, I would ask to
9 cross-examine them, I expect. And on the other hand,
10 and I realize I'm generalizing, because it's -- we're
11 not at that level of management yet on the issue from
12 anyone's viewpoint, but if people were generally
13 wanting to be heard by coming to the microphone and
14 speaking to you about the matter, generally speaking,
15 I would not be expecting to cross-examine them.

16 **Proceeding Time 11:26 a.m. T13**

17 COMMISSIONER NICHOLLS: So that would be more like our
18 community input sessions.

19 MR. MACINTOSH: It would be more like that, I would
20 believe. And then it would -- yes, is the shortest
21 answer. And so, it may be, as I say, that that's what
22 people who oppose all or part of it may wish to
23 address. But others, they may say, "Well, no, we want
24 to really get into more detail and present more data,"
25 or whatever. And then I may wish to cross-examine
26 them. So it's hard for me to answer the question

1 except in that general way, because I don't know yet
2 the extent to which people would prefer the one
3 approach or the more detailed approach.

4 COMMISSIONER NICHOLLS: No, and we don't yet know from
5 other parties about their intent to call evidence.

6 MR. MACINTOSH: Of course. Of course. That's right.

7 COMMISSIONER NICHOLLS: Yes.

8 THE CHAIRPERSON: Thank you. We will be, I guess, coming
9 back to this, in a sense, when we talk about the
10 hearing issues list, and just to give you a bit of a
11 heads-up, when we get to that point in a bit here, I
12 would again be interested in a response from
13 intervenors in terms of the degree of completeness of
14 Mr. Macintosh's recitation of those topics that he
15 thought would be perhaps of most interest in terms of
16 any submissions or oral process that we might
17 ultimately decide upon.

18 I think we're now at the Information
19 Request stage in the list of matters we were going to
20 address today, and Mr. Macintosh has given us a good
21 -- I think that the word these days is "segue" into
22 that. He has suggested, and others have suggested, a
23 dual round -- two rounds, further rounds of
24 Information Requests, two more by the Commission as
25 well as an opportunity on two different occasions for
26 intervenors to submit Information Requests and receive

1 responses from Fortis.

2 I guess I would try and deal with this by
3 way of exception. If anyone has any other views as to
4 how we might proceed with that, please let us hear
5 from them now, in that order. Mr. Advocaat?

6 MR. ADVOCAAT: Mr. Chairman, our panel agrees that two
7 Information Requests would be sufficient, unless they
8 may require some clarification on some of the answers
9 that are received.

10 THE CHAIRPERSON: Thank you. "Me too," Mr. Styffe? Mr.
11 Wiltse?

12 MR. WILTSE: The same, thank you.

13 THE CHAIRPERSON: Well, anyone else wish to speak to
14 this? Two rounds fine? Ms. Goodman?

15 MS. GOODMAN: I'll surprise George and agree with him.

16 THE CHAIRPERSON: On his behalf, I thank you. Mr. Wait?

17 MR. WAIT: We were just discussing how many rounds.

18 THE CHAIRPERSON: Yes.

19 MR. WAIT: Yeah, two rounds.

20 THE CHAIRPERSON: Two rounds is fine. Is there anything
21 else anyone would wish to discuss with respect to
22 Information Requests, or can we put a tick mark by
23 that one? Sorry, Mr. Macintosh.

24 MR. MACINTOSH: Commissioners, thank you. The only
25 withdrawal that I would make would be this, is that if
26 the process reverted to a conventional or a

1 traditional or whatever we call it, full oral hearing,
2 I would -- then I would withdraw the invitation for a
3 second round of IRs for intervenors, and a third round
4 for the Commission.

5 That's an unusual process, to have two
6 rounds of intervenor IRs and three rounds of
7 Commission IRs, and the idea of that originated with
8 the BCOAPO when they were saying, "Let's have
9 everything in writing on the case," and to do that,
10 they said, "Let's have these extra rounds of IRs."
11 And so, just, I guess, to repeat, I would withdraw
12 that process if there was a full oral hearing with
13 panels from the company testifying and so on, because,
14 well, just because of the workload, frankly, on the
15 company if both routes were employed.

16 **Proceeding Time 11:31 a.m. T14**

17 THE CHAIRPERSON: Thank you. I think that deals with
18 information requests unless, Mr. Miller, you had
19 anything further to add?

20 MR. MILLER: No, Mr. Chair.

21 THE CHAIRPERSON: Thank you.

22 Next let's address intervenor evidence, and
23 again I would emphasize that this has to do with
24 evidence or information that the intervenor groups or
25 individuals may wish to bring forward for the purpose
26 of assisting the Commission in its deliberations, as

1 distinct from taking a position with respect to
2 particular matters by way of argument or submissions.
3 Can I invite folks to indicate whether they are
4 indicating, or intending I should say, to submit
5 evidence and possibly bring forward witnesses to speak
6 to that evidence? Mr. Advocaat?

7 MR. ADVOCAAT: Yes, we are, Mr. Chairman.

8 THE CHAIRPERSON: Thank you. I'm sorry, I'd just like to
9 explore that a little bit further. You surprised me
10 with such a succinct answer. If you could give us a
11 little guidance in terms of timing or whatever else
12 might be --

13 MR. ADVOCAAT: With some of it, it is very difficult at
14 this particular stage. We're still seeking financing
15 for legal counsel. We have no idea how long that
16 might take to do that. Based on that, if we do have
17 the opportunity to do that and secure counsel, we are
18 hoping to secure evidence both in property appraisals,
19 environmental issues. We will be presenting evidence
20 with respect to easement agreements as well as with
21 respect to health and EMF.

22 THE CHAIRPERSON: Thank you. Mr. Styffe, anything to add
23 other than the usual?

24 MR. STYFFE: I don't think so, other than the
25 requirements of the Regional District with respect to
26 development permits. If Fortis goes ahead with one or

1 the other of the particular routes, then would the
2 Commission require us to provide evidence as to what
3 sort of development permits would be required? I ask
4 this only because I don't think that there's anything
5 that we would be offering into evidence other than
6 perhaps sort of the bureaucratic requirements within
7 the Regional District. More of a question.

8 MR. MILLER: Mr. Chair, the Commission doesn't require
9 intervenors to provide any evidence. If they think
10 it's beneficial to advance their cause, then it's at
11 their option they provide the evidence.

12 THE CHAIRPERSON: Fair enough, thank you.

13 MR. STYFFE: Thank you.

14 THE CHAIRPERSON: Mr. Wiltse, anything?

15 MR. WILTSE: Thank you, Mr. Chairman. The only thing I
16 could say is when we engage legal counsel, if the
17 legal counsel intends to present evidence, so be it.
18 But that will be up to our legal counsel.

19 THE CHAIRPERSON: Thank you.

20 MR. WILTSE: Thank you.

21 THE CHAIRPERSON: Mr. Daninger.

22 MR. DANINGER: At this point in time it's hard for me,
23 due to the complexities of the whole issue, whether I
24 will provide additional evidence. But I would
25 certainly like to keep that option available.

26 THE CHAIRPERSON: So nothing that you're planning on

1 right at the moment then.

2 MR. DANINGER: Not at the moment.

3 THE CHAIRPERSON: Thank you. Mr. McManaman.

4 MR. MCMANAMAN: I think it is already noted from my
5 perspective.

6 THE CHAIRPERSON: Thank you. Mr. Armstrong, sorry I
7 missed you. I'm not paying attention to my own notes
8 here.

9 MR. ARMSTRONG: That's all right. My mother missed me as
10 well, so.

11 I actually have nothing other than some
12 evidence on some watersheds up the upper area that
13 runs through our property, and that would be
14 everything in that regard.

15 THE CHAIRPERSON: Thank you. Ms. Goodman, I missed you
16 as well.

17 MS. GOODMAN: Thank you. I would just be giving my own
18 evidence based on the past history and the need for
19 the line and the materials presented by the company.

20 THE CHAIRPERSON: Thank you. Mr. Wait.

21 **Proceeding Time 11:36 a.m. T15**

22 MR. WAIT: No, I won't be presenting any evidence as
23 such. But just one question while I'm up here. Are
24 we going to discuss the possibility that Mr. Macintosh
25 raised about just an oral presentation at some point?
26 Could I get comment from the other intervenors on

1 that?

2 THE CHAIRPERSON: We'll be touching on that again as we
3 go back through the issues list, but the Commission --
4 well, in following this whole proceeding and having
5 heard points of view, we will be -- we'll have the
6 unenviable task of having to make a decision as to
7 which way we're going to proceed, and that will be
8 following this proceeding.

9 MR. WAIT: Okay.

10 THE CHAIRPERSON: Did I cover everybody on that topic so
11 far?

12 Scheduling. Mr. Macintosh set forward a --
13 I guess I'll call it a straw model schedule, based on
14 the assumption of his hybrid style of hearing.
15 Anything further to add to that?

16 MR. MACINTOSH: Well, I apologize somewhat,
17 Commissioners, for not handing that out in writing
18 beforehand. I was just working with the client group
19 this morning to work that up. If anyone wants me to
20 re-state it, I could. I don't know it's easiest to do
21 that. If they do, they could just perhaps put a hand
22 up and then I can run through the dates again.

23 THE CHAIRPERSON: I don't know that we need -- we do have
24 notes and we've got the transcript coming, in terms of
25 the dates. I should also comment that the Commission
26 has got its own set of logistical issues that we have

1 to deal with, with conflicts with other hearings and
2 other applications. So, it's a rather complex matter
3 that we'll have to address when we get back to the
4 office and handicap ourselves with all the facts.

5 Did anyone else care to speak? We'll just
6 go through the list again, if I can do that properly,
7 with respect to scheduling. And let's just take that
8 as sort of the straw model that Mr. Macintosh put out,
9 and I'd be interested in hearing comments whether that
10 generally makes sense to people, or whether there's
11 some immediate conflicts. Mr. Advocaat?

12 MR. ADVOCAAT: Yes, Mr. Commissioner. The difficulty
13 that we have with Mr. Macintosh's timetable is that,
14 again, we are attempting to require legal counsel, and
15 we estimate that will take at least a month for us to
16 do that. We have to go back to the community in order
17 to raise funds in order to do that. At this
18 particular time, that the legal counsel that we were
19 seeking requires a retainer up front before he will
20 assist, due to the lengthy delay before -- he may be
21 applying to the Commission at the end of the hearing
22 for reimbursement.

23 From that point, once he is retained, he
24 has estimated that it will take at least three to four
25 months, in order to obtain and identify experts,
26 obtain funds for them, and then have them provide

1 their research. The other difficulty, as well, is
2 that the hearings as far as Mr. Macintosh has
3 indicated would be in July, which is right in the
4 middle of the summer months. Most of the people are
5 on vacation at this point in time. To give you an
6 example, we are having this hearing in the middle of
7 the day, and a lot of the people who are interested in
8 this hearing have to work for a living. In the
9 summer, obviously, they have vacation, they have
10 children. We would prefer that any of the actual
11 hearings take place possibly in September once the
12 summer vacation has been cleared away. That would
13 also provide us with the opportunity of hopefully
14 securing those experts that we wish to secure, and
15 have them provide the research that they need.

16 Just for an example, we were advised that
17 to secure an expert on property appraisals would take
18 approximately three months for that expert to
19 formulate his assessment.

20 So we would prefer that the actual hearings
21 take place in September.

22 THE CHAIRPERSON: I wonder if we could just invite you,
23 as you go forward with your process, to stay in touch
24 with Mr. Williston, for example, Commission staff, and
25 Mr. Miller, as to how you're progressing? That's a
26 fairly significant delay in the project -- or

1 potential delay in the project, I guess. And I'm sure
2 Mr. Macintosh and his clients might have some views on
3 that rather extended length of time as well. So, it's
4 going to be a bit of a challenge to balance all this.

5 MR. ADVOCAT: Oh, we understand that. Absolutely, sir.
6 But that's based on the estimate that we received from
7 legal counsel. Unfortunately, the reality of it is
8 that the funds involved here are substantial, and we
9 must find a way in all fairness to raise those funds.

10 THE CHAIRPERSON: Yes.

11 MR. ADVOCAT: Unless the Commission can find a way to
12 provide an initial grant to cover those funds, and
13 then once the actual decision is final with regards to
14 this application, provide legal counsel with either a
15 means to reimburse if they find that the amounts that
16 are being spent are not sufficient?

17 **Proceeding Time 11:42 a.m. T16**

18 THE CHAIRPERSON: Well, I just would again encourage you
19 to stay in touch with our staff and we'll see how we
20 can take it forward.

21 MR. ADVOCAT: Thank you.

22 THE CHAIRPERSON: Mr. Styffe, anything?

23 MR. STYFFE: No, not at this time, Mr. Chair.

24 THE CHAIRPERSON: Mr. Wiltse?

25 MR. WILTSE: Nothing more to add.

26 THE CHAIRPERSON: Ms. Goodman.

1 MS. GOODMAN: I experienced, and you'll find it in the
2 transcripts in Osooyoos hearing a few years back is
3 that somebody else was searching for funds for counsel
4 and in the end they never found the search for
5 counsel. Don't put this too far into the future and
6 the endanger the cost and the establishment of the
7 works.

8 THE CHAIRPERSON: Thank you. Mr. Armstrong. I think I'm
9 back on track here, maybe.

10 MR. ARMSTRONG: The information that I have received
11 through the information sessions and documentation
12 that have been provided as far as information in all
13 the binders has, given sufficient knowledge in the
14 process, that the schedule that has been put forth I
15 would say is acceptable on our behalf. I mean there
16 is -- is there a good timeline? I mean I generally
17 take holidays in September, so I mean it's really no
18 real accepted timeline for everybody so we'll just try
19 and provide a process, a due process that would allow
20 everybody to attend whether oral and/or in written, to
21 expedite the whole process to not elongate it more
22 than it has to. I mean there is no right timeline.

23 THE CHAIRPERSON: Thank you. Mr. Daninger?

24 MR. DANINGER: Overall I support what Mr. Advocaat said
25 for so far. It might be very hard to get experts
26 providing their expertise in a very tight scheduled

1 meeting or hearing schedule.

2 But one issue I find really important for
3 discussing and that will come up, in whatever we talk
4 about is the question of delay or causing delay
5 through a hearing process one way or the other. And I
6 really want to point out that to me it is hard to
7 accept to make the homemade by FortisBC's issue of
8 time constraint a major factor in the decision process
9 for implementing this transmission reinforcement.

10 The property, and I want to give you and I
11 want to tell you why. When I purchased the property
12 which I'm farming now in '92, it was in the summer of
13 '92, a few months after that, I received a letter from
14 West Kootenay Power and it mentioned in the letter
15 that it's necessary, it will be necessary to upgrade
16 the voltage of the line to increase transmission
17 capacity in the very near future, and there were
18 hearings or presentation sessions scheduled for -- I
19 think it was early 2000 -- 1993. So at least since
20 then it was clear that the issue, the bottleneck,
21 transmission bottleneck between Vaseau and Penticton
22 should be addressed. And now it is only since a year
23 ago that this issue, for the public at least, came
24 back on the radar screen. And to me it looks more and
25 more as if this is a deliberate tactic on behalf of
26 FortisBC to get their preferred option, and not

1 seriously look at alternate routes, which would take
2 more time to implement, and would be less convenient
3 to them. So, to opt for a very tight time schedule in
4 the decision-making process for the project at hand, I
5 think, does not pay due respect to the significance
6 this will have, this project will have, for the next
7 60-plus years on the citizens and the landscape of the
8 east side of Skaha Lake.

9 **Proceeding Time 11:46 a.m. T17**

10 THE CHAIRPERSON: Thank you. Mr. Wait?

11 MR. WAIT: I think the schedule by Mr. Macintosh is
12 reasonable, according to the way things normally go,
13 provided we go with what he is proposing. If we go
14 with a full hearing, then that would come in somewhere
15 probably a week or two after the April 24th, I would
16 imagine. If you're cutting off that extra round of
17 IRs.

18 THE CHAIRPERSON: Thank you. Mr. McManaman?

19 MR. MCMANAMAN: Nothing, Your Honour.

20 THE CHAIRPERSON: Thank you. Next on the list -- I'm
21 sorry, Mr. Macintosh, did you have a response there?

22 MR. MACINTOSH: Yes, thank you, Commissioners. I need to
23 respectfully oppose the SOFAR request for a
24 prolongation of the timetable, and from looking at
25 SOFAR's website, it is clear that last summer they
26 were discussing the retaining of counsel on this

1 matter, in July of 2007, and were meeting with Fortis
2 people about the project in I think it was July, 2007.
3 And from their website, there was activity at least in
4 June of 2007. And as Ms. Goodman, formerly Beryl
5 Slack, Beryl Slack Goodman pointed out, from her own
6 experience on another application with Fortis'
7 predecessor, which she fought, both valiantly and
8 successfully, she observed when people come and say,
9 "Well, I'm retaining counsel," one can just never know
10 if that's ever going to happen, and if not, why not,
11 and so on. And because SOFAR was completely alive to
12 this issue last summer, I respectfully submit that the
13 process cannot accommodate the potential consideration
14 of retaining counsel down the road.

15 THE CHAIRPERSON: Thank you. Just give me a moment, if
16 you would.

17 The next item on our agenda is hearing
18 location, and in the event that we ended up at a --
19 sorry, did you have something?

20 MR. ADVOCAT: Mr. Commissioner, may I respond to Mr.
21 Macintosh regarding his remarks about the amount of
22 time that we've had to deal with this? Our decision
23 for counsel is --

24 THE CHAIRPERSON: Sorry, can you come to the mike?

25 MR. ADVOCAT: I'm sorry. Concerning the comments that
26 Mr. Macintosh has made about having plenty of time to

1 seek out legal counsel, our intention, in fact, all
2 the way along is that we -- our decision to obtain
3 legal counsel was contingent on when FortisBC
4 submitted their application. In the beginning, they
5 were going to submit it in September. However, it was
6 delayed until November. Then they finally submitted
7 it in December.

8 **Proceeding Time 11:51 a.m. T18**

9 And based on that application we would make
10 a decision whether we required legal counsel and
11 whether we did not. For example, had they chosen the
12 ultimate route as a preferred option, very likely
13 chance we wouldn't need counsel. However, they put
14 forward the application that they had, which has
15 forced us to make the decision to seek counsel. Thank
16 you.

17 THE CHAIRPERSON: Thank you.

18 MR. MACINTOSH: Mr. Chair, I really don't intend to be
19 adversarial too much about this. The website says
20 that on July 24 so far resolved that a vote would take
21 place at the next meeting to hire a lawyer, and the
22 particulars with respect to it were set out at the
23 July 24 meeting. Now, that precedes even a September
24 filing by the company, and as I say, I don't really
25 want to -- it's not helpful to become unduly
26 adversarial and I don't intend to, but it's just the

1 reality that the potential of hiring counsel has been
2 around for too long to permit it to be a factor in the
3 scheduling at this stage, in my respectful submission.

4 THE CHAIRPERSON: Mr. Wiltse.

5 MR. WILTSE: Thank you, Mr. Chairman. If we provide
6 evidence that we have obtained legal counsel within
7 the next three weeks, how would that affect the
8 dating?

9 THE CHAIRPERSON: Well, we would be hopeful to get our
10 procedural order out certainly no later than three
11 weeks from now and hopefully beforehand. So we would
12 encourage you to get on with it, if I may, and we'd
13 certainly appreciate hearing from it. But it clearly
14 may have some influence on our decision to proceed and
15 when.

16 MR. WILTSE: Okay, because we will have a decision within
17 the next three whether we have engaged legal counsel.

18 THE CHAIRPERSON: Thank you.

19 The next item I have on the agenda for
20 today is hearing location, and I guess I would just
21 start by commenting that in the event that there is an
22 oral process of some sort, it seems clear to the panel
23 that that would take place in or somewhere near
24 Penticton, whether it be this particular venue or not
25 we would obviously have to address depending on time
26 and availability. But unless there's any other

1 comments anyone would make, we would certainly intend
2 to appear back in the Okanagan again. And unless
3 someone raises a hand, we'll just keep going on past
4 that issue.

5 So I take it that no hands popping up, that
6 it is consent.

7 The scope of the hearing issues, and we've
8 touched on that a little earlier, Mr. Macintosh, when
9 you were addressing oral versus written. Do you have
10 anything more to add to that issues list discussion?

11 MR. MACINTOSH: No, I don't, Mr. Chair. Again with the
12 exception that if people wanted me restate it, I
13 would. But I have nothing substantive to add.

14 THE CHAIRPERSON: Okay. Mr. Advocaat, with respect to
15 the scope of hearing issues, potential hearing issues
16 at least. And I guess I would invite you to address
17 Mr. Macintosh's list and whether there's any other
18 issues that you would particularly add to that, in the
19 event of some oral process, whatever form that may be.

20 MR. ADVOCAAT: I have had indications from the Panel, Mr.
21 Commissioner, that I do agree that some of the issues
22 could be handled in writing. However, if I may take
23 some time to go through the actual issues list and
24 provide possibly an agreement with them as to which
25 issues they prefer or believe could be handled in
26 writing rather than orally.

1 THE CHAIRPERSON: Sure, and I think that would be
2 acceptable. I would encourage you to get that
3 information back to us ASAP.

4 MR. ADVOCAT: We'll try to get that to you today, by the
5 end of this day.

6 THE CHAIRPERSON: Oh, that would be great, thank you.
7 Mr. Styffe, anything to add? Mr. Styffe
8 indicates not.

9 Mr. Wiltse?

10 MR. WILTSE: Nothing at this point.

11 THE CHAIRPERSON: Ms. Goodman?

12 MS. GOODMAN: Nothing at this time, Mr. Chair.

13 THE CHAIRPERSON: Mr. Armstrong?

14 MR. ARMSTRONG: Nothing this time.

15 THE CHAIRPERSON: Mr. Daninger?

16 MR. DANINGER: Not at this time.

17 THE CHAIRPERSON: Mr. Wait?

18 MR. WAIT: Yes. I would like to include the whole part
19 of section 6, the engineering design. Mr. Macintosh
20 had noted two items in that.

21 THE CHAIRPERSON: I'm sorry, you would like to --

22 MR. WAIT: Include the entire part of 6, Engineering
23 Design.

24 THE CHAIRPERSON: As part of any oral process?

25 MR. WAIT: As part of any oral hearing should it go
26 ahead. I think that's the only addition I would have.

1 THE CHAIRPERSON: Okay, thank you. Mr. McManaman.

2 MR. MCMANAMAN: Nothing further.

3 THE CHAIRPERSON: Nothing further. Thank you.

4 The last item I have on the agenda is
5 intervenor group participation, and I think we've
6 effectively dealt with that unless there's something
7 that someone would like to add. And that really was
8 aimed at the matter we discussed earlier particularly
9 with respect to the SOFAR group, and discussing that
10 with Mr. Advocaat, and indicating that he may have
11 different people speaking to different issues, but
12 effectively it would be one person speaking on behalf
13 of the entire group, with respect to a particular
14 issue. Is that a fair characterization of --

15 **Proceeding Time 11:57 a.m. T19**

16 MR. ADVOCAAT: Yes, I think what you've seen already this
17 morning would be a fair characterization of that.
18 Chris Daninger is a member of our committee, and he
19 has spoken as both an individual and on behalf of us,
20 so --

21 THE CHAIRPERSON: Mr. Miller, I'm not aware of any other
22 groups or group potentials. Can you help me with
23 that?

24 MR. MILLER: I'm not aware of any either at this point,
25 Mr. Chairman, but I do have one other comment,
26 following up on Mr. Advocaat's comments about reaching

1 an agreement with Fortis. I briefly had a
2 conversation with Mr. Macintosh and Mr. Advocaat.
3 They anticipate it would take approximately a half an
4 hour to an hour to review the items on which they
5 agree for the oral hearing, and so one possibility is
6 if you wanted to adjourn for a short time, you may
7 have their position before the end of the day, or we
8 could just wait and get it in writing later.

9 THE CHAIRPERSON: We are sensitive that people have, I
10 think, taken time away from whatever else they might
11 have been doing today, including earning an income, so
12 I think it would certainly be acceptable from our
13 perspective if you took that time, but then submitted
14 it to us in writing. It's unlikely we're going to be
15 leaping to a conclusion between now and the end of
16 tomorrow, let's say. So if you can deal with it that
17 way, I think that would be the most effective way of
18 addressing that.

19 MR. MACINTOSH: Anything like that works from my
20 perspective, Mr. Commissioner, thank you. But just so
21 I've got it right, I think what we would do is, I
22 would meet with Mr. Advocaat and work something
23 through as best we could, and then each or one of us
24 make a submission in writing at the end of the day or
25 tomorrow. Thank you.

26 THE CHAIRPERSON: And we recognize that you might not

1 necessarily be totally in agreement.

2 MR. MACINTOSH: Right.

3 THE CHAIRPERSON: And we'll hear from one or the other or
4 both of you, depending on the results of your
5 conversation.

6 MR. MACINTOSH: Right. And if I may, rather than burden
7 the Commission with a submission from one and then a
8 reply, and then a rebuttal, if we don't have complete
9 agreement we can each just send in one letter, and
10 I'll send in one tomorrow morning, or this afternoon,
11 thank you.

12 THE CHAIRPERSON: I think that's a practical approach and
13 acceptable to us, so --

14 MR. MACINTOSH: Thank you.

15 THE CHAIRPERSON: Commissioner Nicholls has a matter
16 related to what we just talked about to put to you.

17 COMMISSIONER NICHOLLS: Mr. Macintosh, I'll start with
18 you. Another way we sometimes do a hybrid hearing is
19 to have the Information Request process, and decide
20 partway through that, or just before the oral hearing,
21 which issues have adequately been dealt with with an
22 oral hearing with the written rather, and we need to
23 go to oral.

24 But in this case the oral part of the
25 hybrid is more of a traditional oral. It would be
26 much shorter because some issues would have been dealt

1 with adequately in written. But you would put forward
2 a panel so that we would -- so that you could be --
3 your witnesses could be crossed on the oral. So I'm
4 just saying this is another hybrid possibility which
5 would involve --

6 **Proceeding Time 12:01 a.m. T20**

7 MR. MACINTOSH: Which is? I'm sorry, I'm not following
8 properly. I apologize. What's the alternative?

9 COMMISSIONER NICHOLLS: Well, the alternative that I
10 understand you're proposing is that you would deal
11 with most issues through written, you would not call a
12 panel, but other parties could make submissions, which
13 you may choose to cross them on.

14 MR. MACINTOSH: Let me summarize. My first position
15 would be that everything be done in writing. My
16 alternative position would be very much along the
17 lines you were just describing where people who were
18 opposed to part or all of the application could speak.
19 As I was saying earlier, I thought it might be
20 premature to conclude whether I would be able to
21 cross-examine him because Mr. Miller would be really
22 determining later on whether the evidentiary position
23 of these people was sufficiently substantive, that
24 they would be taking the stand. So it might not be
25 cross-examination for me or it might be.

26 COMMISSIONER NICHOLLS: I understand that but I'm just

1 suggesting there's another possibility.

2 MR. MACINTOSH: Oh, I see, yes.

3 COMMISSIONER NICHOLLS: And that is that a lot of the
4 issues would be resolved through written.

5 MR. MACINTOSH: Right.

6 COMMISSIONER NICHOLLS: Through an IR process. And then
7 some of the issues that people felt more strongly
8 about dealing with orally would be dealt with with an
9 oral phase of hearing, similar to what we did with the
10 2007 Alcan Hydro decision recently.

11 MR. MACINTOSH: Yes.

12 COMMISSIONER NICHOLLS: You may be familiar with that.

13 MR. MACINTOSH: Yes.

14 COMMISSIONER NICHOLLS: Where the scope of the oral
15 hearing was different than the scope of the entire
16 proceeding.

17 MR. MACINTOSH: I understand.

18 COMMISSIONER NICHOLLS: So we could then have the issues
19 that you were proposing people make presentations on,
20 be the subject of a regular oral phase, in which case
21 Fortis would have a panel put forward and the parties
22 could cross your client.

23 MR. MACINTOSH: Well, of course. I mean if you're saying
24 that that's what the Commission wishes to do, of
25 course we'll show up. We'll be ready.

26 COMMISSIONER NICHOLLS: Yes, yeah. Really.

1 MR. MACINTOSH: But, so if that's the way it is, that's
2 the way it is. That's not our position, that's all.

3 COMMISSIONER NICHOLLS: No. No, I was just wondering if
4 you had a -- would that be a compromise and what would
5 your comments be on that? That would get some of the
6 issues off the table through the written.

7 MR. MACINTOSH: Well, my shortest position is I would
8 respectfully oppose that, and then if you told us to
9 do it we'd be here. And of course we would have
10 panels that fully participate.

11 My submission, as you know from earlier,
12 was that given the data that's gone in and is going to
13 come in, that that wouldn't be necessary. But
14 obviously the Commission may have a different
15 viewpoint, and obviously the Commission may direct
16 that the company address issues X, Y and Z at the
17 witness table. And of course we would be there.

18 COMMISSIONER NICHOLLS: And would that be better for you
19 if it was just issues X, Y and Z rather than the
20 entire list?

21 MR. MACINTOSH: Oh yes. I mean the shorter the list the
22 better.

23 COMMISSIONER NICHOLLS: Okay.

24 **Proceeding Time 12:04 p.m. T21**

25 MR. MACINTOSH: For sure. Thank you.

26 COMMISSIONER NICHOLLS: Thank you.

1 MR. MACINTOSH: Thank you.

2 COMMISSIONER NICHOLLS: Would Mr. Advocaat or anyone else
3 like to comment on that?

4 MR. ADVOCAAT: I'm okay with that.

5 COMMISSIONER NICHOLLS: Okay, thank you.

6 MR. ADVOCAAT: Fair enough.

7 THE CHAIRPERSON: Mr. Miller, do we have anything else?

8 MR. MILLER: There is nothing else, to my knowledge, Mr.
9 Chairman.

10 THE CHAIRPERSON: Fair enough. We will then bring this
11 procedural conference to a conclusion, in a timely
12 basis, and I thank you all for that. We're all going
13 to get -- I'm sorry, we have a -- sir. Please come
14 forward.

15 MR. ADVOCAAT: My apologies. I apologize. Based on the
16 conversation that Mr. Miller and I had yesterday, I
17 believed that there was going to be an issue of
18 process that would be addressed as well.

19 MR. MILLER: I believe that Mr. Advocaat wishes to raise
20 the issue of letters previously filed with the
21 Commission prior to the actual application being
22 filed.

23 THE CHAIRPERSON: Fair enough. Yes.

24 MR. ADVOCAAT: And would we also have the opportunity
25 here to add an issue or issues to the issues list?

26 THE CHAIRPERSON: You certainly can do that, but if you

1 have some additional issues to raise, you may well
2 just wish to do that following a conversation with Mr.
3 Macintosh, and submit those to us as well. This
4 doesn't necessarily close the door on procedural
5 issues.

6 MR. ADVOCAT: I see.

7 THE CHAIRPERSON: We will always reserve the right to
8 change our minds, so --

9 MR. ADVOCAT: Well, it may very well be that the topics
10 that we wish to be included are included. For
11 example, rights of way agreements. They're already
12 included in -- as a sub-text to one of the issues that
13 has already been stated. And if that's the case --

14 THE CHAIRPERSON: Fair enough. And as we go forward, the
15 issues list will evolve as well, because some matters
16 may come off the table just through the Information
17 Request process. People may say, "Well, that's fine,
18 we now have the information we need to make our point,
19 and.."

20 MR. ADVOCAT: I see.

21 THE CHAIRPERSON: So, it will be a dynamic process.

22 MR. ADVOCAT: Well, that clarifies that. Thank you very
23 much.

24 The process issue that I wish to address
25 has to do with communications that were submitted to
26 the Commission concerning this application prior to

1 the application actually being submitted. As you are
2 more than likely aware, I submitted a letter
3 concerning the issue, and the Commission has obviously
4 responded back citing the *Freedom of Information Act*
5 as to why these communications had not been posted. I
6 guess my major concern is not necessarily "Do these
7 communications need to be posted to the public?" but
8 that these communications are recognized by the
9 Commission and are addressed accordingly. In other
10 words, they were -- as of my understanding, a number
11 of letters of comment that were sent in. Our group
12 also sent in a 500-name petition prior to the
13 application and it was our understanding that, based
14 on your letter restricting submissions prior to this
15 proceeding, that that information would be
16 disregarded.

17 Now, I could be totally incorrect, so if I
18 could get some clarification on that. In other words,
19 my issue is that those communications should stand as
20 part of the record. They don't necessarily have to be
21 made public, but form part of the record.

22 **Proceeding Time 12:08 p.m. T22**

23 THE CHAIRPERSON: Thank you. I'm going to have to ask
24 Mr. Miller to help us with that, and potentially
25 comments from Mr. Macintosh, if he has a view on it.

26 MR. MILLER: There are some potential legal difficulties

1 with the suggestion from Mr. Advocaat. As
2 Commissioners, you're required to make your decisions
3 solely on the evidence presented during the hearing,
4 which the Commission has generally interpreted from
5 the -- being the date the application is filed
6 forward. So, previous communications before an
7 application are filed generally do not form part of
8 the record, and would have to be re-filed to form part
9 of the record if they were probative and relevant.
10 And I guess one of the difficulties, and Mr. Macintosh
11 may expand on this, is I'm not sure how relevant a
12 petition is that's filed prior to an application,
13 prior to people actually knowing what they're either
14 voting for or against by signing a petition.

15 MR. ADVOCAT: Well, for example, the petition addresses
16 the opposition of using the existing right of way, and
17 that's clearly an issue here. Again, if this was the
18 case, and the Commission was well aware of the *Freedom*
19 *of Information Act* and the legal restrictions placed
20 on it, then the individuals that communicated should
21 have been notified immediately of the process, so that
22 they would have the opportunity in the future to
23 either re-submit their evidence or not. Or to re-
24 submit their comments or not.

25 To give you an example, and again, in my
26 view, this strictly becomes an issue of timing. Just

1 recently, a letter placed -- a letter of comment
2 placed in by Mrs. Phildiner was placed on the website.
3 It was a letter of comment no different than a lot of
4 the comments that were submitted prior to this
5 application. Was Ms. Phildiner informed of the
6 privacy issues involved here, about posting her
7 information publicly on the public record?

8 MR. MILLER: There's a distinction, Mr. Chair, with
9 regard to evidence that is filed before and after an
10 application is started. Evidence that is filed after
11 an application is started, subject to a
12 confidentiality ruling from the Commission, is public
13 information, and the letter of comment submitted is
14 now public and available to all. The difficulty is
15 before the application there is no public hearing
16 process, and no presumption at all correspondence with
17 the Commission is public, and nor does it form part of
18 the record because the record has not yet been opened.

19 THE CHAIRPERSON: Thank you. Mr. Macintosh, can you help
20 us with this at all?

21 MR. MACINTOSH: There may be a way through this, Mr.
22 Commissioner. The point I know Mr. Miller is making
23 is the last thing the Commission wants to do is lose
24 jurisdiction in the matter by -- which would be
25 completely contrary to the public interest. So that
26 the Commission goes through a lengthy process and in

1 the course of doing so, makes reference to some
2 document which came in prior to the application. And
3 then the applicant or some other party has the right
4 of appeal to say the Commission acted without
5 jurisdiction because it considered certain evidence it
6 shouldn't have considered, and the whole process gets
7 sort of sidetracked and that would be pretty
8 unproductive, obviously.

9 **Proceeding Time 12:11 a.m. T23**

10 And perhaps the way around it is that Mr.
11 Advocaat's group could look at the material that it is
12 interested in now, which was filed prior to the
13 application, and pick from that anything which it
14 regards as still being meaningful and germane to the
15 application and then it can put that evidence in as
16 part of its evidentiary submission in the case later
17 on. And that way jurisdiction is guaranteed. The
18 preservation of jurisdiction is guaranteed. And
19 hopefully so far we'll be able to filter a little bit
20 and edit a little bit of what went in before the
21 application was filed, because the application
22 hopefully will circumscribe some of what the -- the
23 relevance of some of what they put in. So then they
24 can refile within the process and preserve
25 jurisdiction.

26 THE CHAIRPERSON: If I understand you, you're suggesting

1 that they go through and decide which of the documents
2 that they would like to resubmit.

3 MR. MACINTOSH: That's right.

4 THE CHAIRPERSON: And in some practical way, whatever
5 that might be, that then would be sent in, proposed to
6 be evidence, and you then would have an opportunity to
7 speak to that should you so choose.

8 MR. MACINTOSH: That's right and -- it's exactly right.
9 And the main thing is it just guarantees a
10 preservation of jurisdiction, which helps so far as
11 much as it helps anybody else. You just don't want to
12 risk with those legalities that would jeopardize the
13 process.

14 THE CHAIRPERSON: Well, I think we understand the issue
15 and appreciate the guidance and it's one more item on
16 our things to decide list, so.

17 MR. MACINTOSH: All right, and when Mr. Advocaat and I
18 are discussing hopefully common issues, I'll give him
19 my two cents' worth on that besides, and maybe we can
20 -- maybe that'll assist, I don't know.

21 THE CHAIRPERSON: He's seeking legal counsel. I'm sure
22 two cents would be just about --

23 MR. MACINTOSH: Well, as my client here would say, I'll
24 get paid what I'm worth. That's what happens.

25 THE CHAIRPERSON: Sorry, I had my tongue in my cheek
26 there.

1 MR. MACINTOSH: I know, I'm afraid they're fully
2 supportive sometimes, thank you.

3 MR. ADVOCAT: In fact, sir, that was one of our
4 suggestions in the letter that I submitted.

5 THE CHAIRPERSON: Fair enough. I'm afraid to ask, but
6 anything else? One more time.

7 Thank you very much, appreciate your taking
8 the time and effort to come. We obviously have some
9 work to do to go away and chew on all this that's been
10 laid at our feet, and you'll be hearing from us in the
11 course of the next little while. This proceeding is
12 concluded.

13 **(PROCEEDINGS ADJOURNED AT 12:14 P.M.)**

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