

1 New Brunswick Board of Commissioners of Public Utilities

2

3 In the Matter of an application by the NBP Distribution &

4 Customer Service Corporation (DISCO) for changes to its

5 Charges, Rates and Tolls

6

7 Algonquin Hotel, St. Andrews, N.B.

8 October 27th 2005

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- CHAIRMAN: David C. Nicholson, Q.C.
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- BOARD STAFF: Doug Goss
John Lawton
John Murphy
Arthur Adelberg
Steve Garwood
- BOARD SECRETARY: Lorraine Légère

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35 CHAIRMAN: Good morning, ladies and gentlemen. Mr. Hashey,
36 this is a typical day in Charlotte County.
37 MR. HASHEY: We can't see because the sun is out.
38 CHAIRMAN: Well even with the sun out, Mr. Hashey, you are
39 kind of vague. Okay. Do we have any preliminary matters
40 this morning?

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MR. MORRISON: Yes, Mr. Chairman. Copies have been given to the secretary and it's the response to the last outstanding undertaking which is undertaking number 4 from October 6th, and this is the undertaking with respect to the National Energy Board data. Again I would just like to point out that none of the information that is referred to has been used in any way in any of the -- in any way in this proceeding.

CHAIRMAN: That will be A-47. Any other preliminary, Mr. Morrison?

MR. MORRISON: No, Mr. Chairman.

CHAIRMAN: Thank you. Any other parties have anything preliminary. Go ahead. Well I should -- suddenly recognizing some strange faces in the audience, I should call for appearances. The cast has changed, as it were. Mr. Morrison, the appearances for the applicant, please?

MR. MORRISON: Sure. Yes, Mr. Chairman. Terry Morrison, David Hashey, joined by Lori Clark and our Panel witnesses Neil Larlee and Malcolm Ketchum.

CHAIRMAN: Thank you, sir. And for Canadian Manufacturers and Exporters?

MR. LAWSON: It's the strange face in the midst. Gary Lawson for Canadian Manufacturers and Exporters, and I'm here with David Plante, staff member, as well as Al Walker

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2 of McCains and Michelle LeClair of Bowater as well as some
3 other members who are also here as Informal Intervenors.

4 CHAIRMAN: Thank you, Mr. Lawson. Indeed you are the
5 strange face. And Enbridge Gas New Brunswick?

6 MR. MACDOUGALL: David MacDougall, Mr. Chair, on behalf of
7 Enbridge Gas New Brunswick, and I'm joined today by Shelly
8 Black of EGNB and John Thompson, a consultant to EGNB, and
9 again the witness today, Dr. Alan Rosenberg.

10 CHAIRMAN: Great. Thank you, Mr. MacDougall. The Irving
11 Group?

12 MR. BOOKER: Mr. Chair, Andrew Booker for the Irving Group.

13 CHAIRMAN: Great. Thanks, Mr. Booker. And Rogers Cable?

14 MS. MILTON: Leslie Milton for Rogers Cable.

15 CHAIRMAN: That was Leslie Milton raising her hand in the
16 back of the room without a microphone, for the sake of the
17 record. Okay. And with you is Mr. Armstrong, is it? No.
18 No.

19 MS. MILTON: No. I am alone.

20 CHAIRMAN: You are alone today. Okay. Thank you. And any
21 self-represented individuals? And for the Municipal
22 Utilities.

23 MR. GORMAN: Good morning, Mr. Chairman. Raymond Gorman for
24 the Municipal Utilities. This morning I am joined by Eric
25 Marr, Dana Young and Jeff Garrett.

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CHAIRMAN: Thanks, Mr. Gorman. And I did skip over a couple of Intervenors and if I -- if you are here please raise your hand and I will put you on the record. Otherwise I will carry on. And it will be Mr. -- the Public Intervenor?

MR. HYSLOP: Good morning, Mr. Chairman. Peter Hyslop with Mr. Barnett, Mr. O'Rourke, Ms. Young and Ms. Power. Thank you.

CHAIRMAN: Good. Thanks, Mr. Hyslop. Mr. MacNutt, who is with you today?

MR. MACNUTT: I have with me today, Mr. Chairman, Doug Goss, Senior Advisor, John Lawton, Advisor, John Murphy, Consultant and Arthur Adelberg, Consultant.

CHAIRMAN: Thanks, Mr. MacNutt. Okay. Go ahead, sir.

CROSS EXAMINATION BY MR. MACNUTT:

Q.383 - Good morning, Mr. Chairman, Commissioners and Dr. Rosenberg.

A. Good morning.

Q.384 - I am going to ask you to turn up your evidence, exhibit EGNB-1, and we are going to have you keep it open for some time because we are going to refer to your evidence from that. EGNB-1.

Now I'm going to start by asking you to -- at page 10 of your direct evidence, at lines 3 and 4 you imply that

1
2 you have a basic disagreement with Disco as to the proper
3 method of allocating generation costs, is that correct?

4 A. That's correct.

5 Q.385 - And at lines 6 to 7 on that page you state that Disco
6 fails to fully recognize the implications of the Peaker
7 Credit Theory, and it's also as you advised yesterday the
8 equivalent Peaker Credit Method, is that correct?

9 A. That is correct?

10 Q.386 - Now if I might try to summarize your argument. Is it
11 your position the cost of service study could do a better
12 job of matching the allocation of fixed generation cost
13 with the allocation of fuel costs.

14 A. That's a fair statement.

15 Q.387 - To be more specific, if a class pays a large share of
16 the capital cost of an expensive nuclear plant, it should
17 be allocated a similar share of that plant's relatively
18 low cost energy?

19 A. I would say commensurate instead of similar, but that's
20 the general idea, yes.

21 Q.388 - And conversely would you say that a class that bears a
22 small share of the capital cost of an inexpensive peaking
23 plant should be allocated similarly smaller share of that
24 relatively high cost energy?

25 A. That is correct. The essence of the equivalent Peaker

1
2 Method is that different classes are most economically served
3 by different mixes of plants.

4 Q.389 - Now adopting your recommendation on this issue would
5 reduce the share of overall costs borne by large
6 industrial class -- excuse me, I will restate that.
7 Adopting your recommendation on this issue would reduce
8 the share of overall costs borne by the large industrial
9 class on the theory that they are entitled to more of the
10 lower cost energy on the system than Disco proposes to
11 allocate to them. Is that a correct statement?

12 A. That's a correct statement.

13 Q.390 - Conversely that translates into higher costs for
14 residential customers since they will receive
15 proportionately more high cost energy and less low cost
16 energy, is that correct?

17 A. And that's because they receive less cost -- less of the
18 fixed costs, yes.

19 Q.391 - Now let us look at your application of the Equivalent
20 Peaker Method. You state that you accept Disco's choice
21 of the Equivalent Peaker method of cost classification, is
22 that correct? And that's found -- it's a statement made
23 by you in your evidence at page 2, line 20.

24 A. You say page 2, line 20?

25 Q.392 - Correct.

1 - 1612 - Cross by Mr. MacNutt -

2 A. That is correct.

3 Q.393 - And your recommendation is that approach should be
4 applied in an internally consistent manner. And that's at
5 the bottom of page 2, over onto page 3 of your evidence.

6 A. Yes, sir. I see that.

7 Q.394 - And as a part of your approach you begin by separating
8 generation into four categories and classify the fixed
9 costs for each between demand and duration in accordance
10 with the Equivalent Peaker Method, is that not correct?

11 A. That is --

12 Q.395 - I point you to -- for the benefit of the Board -- to
13 appendix B of your evidence, step 1. That is broken down
14 in that step, is it not?

15 A. That is correct.

16 Q.396 - Thank you. Now you were present, were you not, when
17 the Disco witnesses testified that their approach is not
18 based on the Equivalent Peaker Method?

19 A. Yes, I was present.

20 Q.397 - And you heard them say that?

21 A. I did hear Mr. Ketchum try to distance himself from that,
22 yes. But as I believe he said, this may be a distinction
23 without a difference.

24 Q.398 - Now are you aware that the Board specifically ruled in
25 its April 23, 1993 decision, at pages 21 and 22, that the

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approved 40/60 demand energy classification was not based solely on the Peaker Credit Method?

A. I --

Q.399 - If you are not familiar with that --

A. I'm not familiar. The only decision that I have reviewed in my preparation for this case was the 1992 decision. I don't recall reviewing any other decision.

Q.400 - I'm going to provide you with a copy of pages 21 and 22 of the April 23, 1993 decision. I don't know whether you -- and I have copies for the Commissioners, Mr. Chairman, and the participants. I don't know whether you wanted to mark it as an exhibit because it is a previous decision of the Board.

CHAIRMAN: Yes. I don't think that's necessary, Mr. MacNutt.

MR. MACNUTT: But I will circulate it and ask the witness to read it.

Q.401 - Now, Dr. Rosenberg --

A. Yes.

Q.402 - -- now that you have had a chance to read pages 21 and 22 --

A. Yes.

Q.403 - -- do you now remember having read it or are you now reading it for the first -

2 A. No. This is the first time I have seen this.

3 Q.404 - Your counsel didn't obviously provide it to you?

4 A. This is the first time I recall seeing this.

5 Q.405 - Okay.

6 A. I don't want to blame Mr. MacDougall for anything he may
7 have provided, but -- so -- but I can tell you this is the
8 first time that I recall seeing this.

9 Q.406 - Yes. I direct your attention to the last paragraph on
10 page 21 in particular and at the top of page 22. And
11 would you tell us when you have finished reading that?

12 A. Well the -- this -- the two pages that you have given me in
13 no way changes my view of the Board's philosophy. It said
14 that the Board cannot accept as assumption that the 40/60
15 split was based solely on the Peaker Credit Method. And my
16 recollection is that the 1993 Reed decision was subsequent
17 to the 1992 decision. So the 1992 decision accepted a
18 40/60 split based upon the theory of capital substitution.

19 That much is evident from the 1992 decision. There are
20 other applications of the capital substitution method, the
21 Peaker Credit being one of them. And of course the 1993
22 Reed Analysis was subsequent to the 1992 decision, and that
23 analysis said that based upon the characteristics and the
24 economics of the NB Power system, the Peaker Credit Method
25 was the most appropriate and

1
2 apparently that is still their position.

3 And finally I would note your attention to the last
4 paragraph of the two pages that you showed to me that says
5 the Board will welcome proposals which can be shown to
6 enhance the accuracy of the cost of service study results.

7 So based upon that I'm hoping that the Board will welcome
8 what I have tried to provide here.

9 Q.407 - Just for the purpose of the record, would you read the
10 last sentence in that paragraph beginning however?

11 A. Yes. However will expect NB Power to apply the methods as
12 approved by the Board from time to time and to do so in a
13 consistent manner.

14 Q.408 - And now the 1993 Reed decision was never ruled on by
15 the Board, was it?

16 A. That calls for a legal conclusion. I'm not qualified to
17 give a legal conclusion.

18 Q.409 - No, but wasn't the Reed --

19 A. I don't think I'm qualified --

20 Q.410 - You don't know the status of the Reed report?

21 A. I can't answer that question, no, sir.

22 Q.411 - Now have you examined what the effect would be of
23 using the Board approved 40/60 demand energy split for all
24 types of generation in your approach rather than deriving
25 a separate classification ratio for each type of
26

1 generation?

2
3 A. No, for the simple reason that would be less accurate than
4 the method that I have proposed. So I don't see any
5 purpose in examining a method that is less accurate than
6 the one --

7 Q.412 - I'm going to ask you for the benefit of the
8 Commissioners, the Board, would you please run your model
9 on that basis and provide the results on or before Friday,
10 October 28th? It's my understanding it's a fairly simple
11 process.

12 A. I can try and call my office and see if that can be done.
13 If it's a fairly simple process then I'm sure Mr.
14 Adelberg could do it as well, but --

15 Q.413 - But he is not the witness at the moment.

16 A. Okay.

17 MR. MACDOUGALL: Mr. Chair, if I may, October 28th is very
18 quick. We will take undertakings but I have never heard
19 of a process where you are told a date by an undertaking.

20 There was an IR process. Dr. Rosenberg is here, he is
21 not in St. Louis, and I do know he has other commitments.

22 So if there is something magic about October 28th we will
23 certainly do our best, but I'm surprised to be told two
24 days before that we have to do it by a date certain.

25 CHAIRMAN: Mr. MacDougall, why don't we give the witness the

1
2 opportunity to call his office and find out what a reasonable
3 time for him to file that with the Board.

4 MR. MACNUTT: I can be flexible on that from our point of
5 view, Mr. Chairman.

6 CHAIRMAN: Okay. Thank you.

7 Q.414 - Now under the Equivalent Peaker Method as applied by
8 Disco, you say at page 15 of your evidence at lines 15 to
9 18, that Disco "simply took the totality of capacity
10 related costs whether owned plant or purchased capacity
11 and considered all costs in excess of that of a Peaker
12 (CT) to be "energy" related and allocated those excess
13 costs simply on the basis of total kilowatt hours." Is
14 that a correct statement?

15 A. That's correct.

16 Q.415 - And where you used the CT there, you are referring to
17 a combustion turbine, is that correct?

18 A. That is correct.

19 Q.416 - Now would you agree that a fundamental difference
20 between your approach and Disco's is that under your
21 approach all costs in excess of a Peaker you called
22 duration related rather than energy related?

23 A. I think that's a fair statement, yes.

24 Q.417 - Now could you please describe in more detail what you
25 mean by "duration related" and how that differs from

1 energy related?

3 A. I would be pleased to do that. Duration related refers to
4 the fact that when a system planner considers which type
5 of technology to put in, it looks at the breakeven point
6 between one technology and another technology. In other
7 words, if I'm going to put in a more expensive plant that
8 costs more to build, costs more per kw, but it's going to
9 save me fuel, how long does the plant have to run before
10 the fuel savings outweigh the extra capital cost that I
11 put in? And as long as all energy up to that point --
12 let's say that point is 5,000 hours -- all energy up
13 through 5,000 hours, what the planner does is he looks at
14 a load duration curve, and a load duration curve is a
15 mapping of the load at each hour, okay, but instead of
16 putting it in chronological order he puts it from highest
17 to lowest. So I know it's difficult for transcribers to
18 follow my fingers, but if you can picture the load curve
19 as it goes from hour one through hour 8760, you know, from
20 January 1, hour one, up to December 31st, midnight. You
21 take that curve and you rearrange the points from highest
22 to lowest. That's called a load duration curve.
23 A planner looks at that load duration curve and he looks
24 at the breakeven point, and he says all energy up to

25

2 that breakeven point is relevant to my decision to put in this
3 more expensive plant. But once the plant runs more than
4 5,000 hours, all energy after that 5,000 hours has
5 absolutely no bearing on the planner's decision to instal
6 that more expensive plant. So it's totally irrelevant to
7 the decision making process. So all energy that is used
8 after that 5,000 hours on the load duration curve is not
9 causing any more capital cost. And that's what I mean by
10 duration instead of energy.

11 In energy you are looking at all 8760 hours, whereas
12 duration you are only looking at those hours that are
13 relevant to the decision making process.

14 Q.418 - And you have just been referring to 8760 hours. What
15 is the source of that figure?

16 A. The source of 8760?

17 Q.419 - Yes.

18 A. It's the number of hours in a year.

19 Q.420 - Thank you. Now I'm going to ask you --

20 A. Except for a leap year.

21 Q.421 - Thank you. Now I'm going to ask you to turn to page
22 34 of your evidence and lines 21 and 22.

23 A. 34?

24 Q.422 - Yes. Page 34.

25 A. I have that, sir. Yes.

2 Q.423 - Lines 21, 22, and I'm going to quote. "Because of the
3 unique nature of hydro plants, these plants are not
4 usually subjected to the sort of breakeven analysis that
5 is used for thermal plants." Is that statement correct?

6 A. Yes.

7 Q.424 - I'm going to ask you to consider a hypothetical.

8 A. Okay.

9 Q.425 - To assist in this I earlier provided two documents to
10 your counsel and advised him that I would be asking you
11 questions in respect of them, and I'm going to name the
12 two documents, Mr. Chairman, and then I'm going to ask to
13 have them introduced as exhibits.

14 The first document is entitled "Breakeven Analysis Between
15 Base Load and Peaking Plant Demonstrative Example Number
16 1" and the second document is entitled "Breakeven Analysis
17 between Base Load and Peaking Plant Example Number 2".

18 And have you had an opportunity to review those two
19 documents?

20 A. Yes, sir.

21 MR. MACNUTT: Could I move to have those documents
22 introduced as an exhibit, Mr. Chairman?

23 CHAIRMAN: Okay. Breakeven Analysis Between Base Load and
24 Peaking Plant Demonstrative Example Number 1 is PUB-6.
25 And Breakeven Analysis Example Number 2 is PUB-7.

2 Q.426 - Now you will see that there are two plants, one, 100
3 megawatt peaking unit with annual fixed costs of 6,000,000
4 and variable costs of \$10,000 per megawatt hour, and, two,
5 100 megawatt base load plant with annual fixed costs of
6 \$30,000,000 and variable costs of \$5,000 per megawatt
7 hour.

8 A. That's incorrect.

9 Q.427 - Okay. The second plant should be 100 megawatt base
10 load plant with annual fixed costs of \$30,000,000 and
11 variable costs of \$5,000 per hour.

12 A. Per hour. It's \$50 per megawatt hour.

13 Q.428 - Yes.

14 A. And the peaking plant is \$100 per megawatt hour.

15 Q.429 - Thank you. Now in example number 1 which is PUB
16 exhibit 6 would you agree that the breakeven point for the
17 base load plant is 4,800 hours since that is the point at
18 which the total fixed and variable cost of the base load
19 plant is exactly the same as the total fixed and variable
20 cost of the peaking plant, that is, \$54,000,000?

21 A. Did you say 4,800?

22 Q.430 - Correct.

23 A. Yes, that is correct. That is the breakeven point between
24 this oil plant and this combustion turbine.

25 Q.431 - Thank you. Now when we talk about the variable cost

2 of the generating plant the principal variable cost would
3 generally be fuel, is that not correct?

4 A. The variable cost is fuel, yes. I mean it could be a
5 little bit of O&M, but it's predominantly fuel.

6 Q.432 - Yes. Thank you. Now I want to ask you to consider
7 the same hypothetical as we just discussed only with a
8 slight variation, and this is PUB exhibit 7, example
9 number 2. Here the base load plant has only fixed costs
10 and no variable costs, is that -- would you agree with
11 that statement?

12 A. Yes. A hydro plant is -- a hydro plant doesn't burn fuel,
13 so it has basically zero variable cost. It's all fixed.

14 Q.433 - Now looking at that example number 2 the breakeven
15 point for the base load plant is 5,400 hours, at which
16 point the total fixed and variable cost of the two plants
17 is \$60,000,000, is that correct?

18 A. Well the arithmetic is right. If my only choice were a
19 combustion turbine or -- my only choice were a combustion
20 turbine or the hydro plant, 5,400 hours would be the
21 breakeven point. But that's not necessarily what the
22 planner would look at, because he has got a choice now of
23 three different technologies. He has got a combustion
24 turbine, he has got an oil plant and he has got a hydro

2 plant. And so he would really look at the breakeven point
3 between the hydro plant and the oil plant which is not
4 shown on any of your exhibits.

5 Q.434 - Okay. Now other than the fact that the variable costs
6 are reduced to zero, example number 2, is there any
7 difference in how the analysis in these two hypotheticals
8 is performed?

9 A. No. The arithmetic is exactly the same. But the reason I
10 put in my testimony that this type of analysis is normally
11 not considered for hydro plants is because you can't
12 always put in a hydro plant. You need the river to run a
13 hydro plant.

14 And so in my review of generation planning I can't recall
15 seeing this type of analysis. I'm not saying the analysis
16 is incorrect. It's certainly correct. But I certainly
17 agree with your arithmetic here, yes.

18 Q.435 - Thank you. Now I'm going to focus on another issue
19 relating to the way you treat hydro facilities in your
20 proposal.

21 A. Yes.

22 Q.436 - I'm going to ask you to turn to page 35 of your
23 evidence and lines 1 and 2.

24 A. Page 35, line what?

25 Q.437 - Lines 1 and 2 right at the top --

1 - 1624 - Cross by Mr. MacNutt -

2 A. 22?

3 Q.438 - No. 1 --

4 A. Right.

5 Q.439 - -- and 2. Right at the top of the page. And you say
6 at that point that you took 8,760 hours as a proxy for the
7 breakeven point for hydro facilities, is that not correct?

8 A. Yes. So in other words, the duration part of a hydro
9 plant I did allocate entirely on energy. All energy.

10 Q.440 - In other words, you considered hydro facilities as
11 base load plant throughout the entire year?

12 A. That is correct. For purposes of allocating the -- for
13 purposes of allocating the fixed cost I considered it as
14 base load plant, yes.

15 Q.441 - Now isn't it a fact that the capacity factor for hydro
16 facilities is less than 20 percent for several months of
17 the year?

18 A. It could be, depending on the run of the river, yes.

19 Q.442 - Well I believe it was mentioned and it appears in the
20 transcript of the examination of the Disco Panel at the
21 October 6th transcript, page 1454, where it was confirmed
22 by the Disco Panel that it was 20 percent for several
23 months of the year. Do you remember that?

24 A. I don't recall that but I will accept that subject to
25 check.

2 Q.443 - Thank you. Now we covered earlier your method --
3 excuse me -- as we covered earlier, your method will
4 allocate more of the low cost energy benefits of a base
5 load plant to large industrial customers, is that not
6 correct?

7 A. That is correct.

8 Q.444 - Now since the NB Power hydro plants are not truly base
9 load facilities for much of the year, would it not be
10 appropriate to allocate more of the low cost energy to the
11 low load factor classes?

12 A. If you -- well you have to be consistent. What you are
13 suggesting, sir, is not an unreasonable modification to my
14 study, but you would have to do it for both the capital
15 and the fuel. In other words, if you change the
16 allocation of the capital then you would also change the
17 allocation of the fuel.

18 So it would tend to even out. So while I certainly can't
19 argue that this modification that you are suggesting as to
20 the treatment of the hydro plants is not an unreasonable
21 one, what I'm suggesting to you, sir, is that it would not
22 have a dramatic change in the impact of the study if you
23 did it consistently for both the capital part and the fuel
24 part.

25 Q.445 - Yes. Now I'm going to look at another issue related

2 to your use of the breakeven analysis. As we established
3 earlier, one of the differences between your approach and
4 Disco's approach is that you consider capital cost of a
5 generating facility in excess of the capital cost of the
6 peaking duration related, whereas Disco considers them
7 energy related, is that correct?

8 A. That's correct. I believe we just went over that matter a
9 few minutes ago.

10 Q.446 - Yes. Now to make this clearer, if the capital cost of
11 100 megawatt peaker was \$60,000,000 and the capital cost
12 of say 100 megawatt coal plant was \$300,000,000, under
13 your approach 240,000,000 of the capital cost of the coal
14 plant would be considered duration related, is that not
15 correct?

16 A. I didn't catch the figures. The peaker was --

17 Q.447 - If the capital cost of 100 megawatt peaker was
18 \$60,000,000 --

19 A. 60,000,000 for the peaker.

20 Q.448 - Yes. And the capital cost of 100 megawatt coal plant
21 was 300,000,000 --

22 A. 300,000,000?

23 Q.449 - Yes.

24 A. Okay.

25 Q.450 - Under your approach, the \$240,000,000 difference in

1 capital cost would be considered duration related?

2 A. That is correct.

3 Q.451 - Now once you have defined the portion of a generating
4 plant's capital costs that are duration related under your
5 approach, the annual share of those costs is allocated to
6 the output of the plant over the number of hours it takes
7 to reach the breakeven point for that plant, is that
8 correct?
9

10 A. That is correct.

11 Q.452 - So that for example if the breakeven point is 5,000
12 hours you would allocate all of the \$240,000,000 in our
13 example in duration related costs to the energy generated
14 by the plant in those 5,000 hours even though -- even if
15 the plant was expected to operate for a total of 6,000
16 hours in the year in question?

17 A. That is correct. You only look at the first five -- you
18 look at each class's share of the energy of the top 5,000
19 hours because any energy past that is irrelevant to your
20 expending that \$240,000,000, and if it's irrelevant to
21 your decision to spend that \$240,000,000 then it should be
22 irrelevant to the allocation process. So that's correct.

23 Q.453 - Now in contrast to that, under Disco's approach the
24 breakeven point would be ignored and the \$240,000,000 we
25

2 have been discussing of capital costs in excess of the cost of
3 the peaker, would be allocated to the energy generated in
4 the full 6,000 hours of operation, is that not correct?

5 A. It's based on annual energy, total energy. If it's 6,000
6 hours -- it's not based on the 6,000 hours, it's based on
7 each class's share of total energy, not just 6,000 hours.

8 Q.454 - Yes. But in our example we have used 6,000 hours.

9 A. Well in your example you said the plant ran 6,000 hours,
10 but what I'm telling you, sir, is that Disco doesn't --
11 Disco ignores that 6,000 hours. They not only ignore the
12 5,000 hours, they ignore the 6,000 hours. They allocated
13 on all energy 8,760 hours.

14 Q.455 - Okay. Now under your approach, assuming the cost of
15 fuel doesn't vary over the course of the year, the cost of
16 energy from the plant would drop after the first 5,000
17 hours of operation. Since you had already -- since you
18 would have already allocated all of the duration related
19 capital cost and the energy generated on the remaining
20 1,000 hours would be allocated on the same unit cost of
21 fuel but none of those capital costs, correct?

22 A. That's correct.

23 Q.456 - Now would you agree that the generation plant used to
24
25

2 produce electric electricity is essentially the same in the
3 first 5,000 hours of the year as it is in the next 1,000
4 hours of the year?

5 A. Could you repeat that question?

6 Q.457 - Would you agree that the generation plant used to
7 produce electricity is essentially the same in the first
8 5,000 hours of the year as it is in the next 1,000 hours
9 of the year?

10 A. Yes. A plant doesn't change.

11 Q.458 - And doesn't it follow that the same capital investment
12 allows the production of energy -- excuse me -- production
13 of electricity with lower fuel costs than a peaker in any
14 hour of the year?

15 A. That has nothing to do with cost causation. We are trying
16 to allocate these costs, the capital costs and the fuel
17 costs, based upon the actions and the customers that cause
18 those costs. And what you said has nothing to do with
19 who's causing those costs to be incurred. It's like
20 saying a meter -- my meter measures electricity and it
21 measures it all hours of the year. So I should allocate
22 my meter cost based on energy. It makes no sense. It's
23 not -- energy is not what causes those costs.

24 Q.459 - Now if the Board wanted to match every kilowatt hour
25 produced by this coal plant to the capital investment

1
2 associated with lowering the fuel cost, wouldn't it need to
3 reject your approach and adopt Disco's approach instead?

4 A. If the Board wants to allocate costs based on cost
5 causation it would reject Disco's approach, it would
6 accept my approach.

7 Q.460 - But that's not what I asked you. I will repeat the
8 question, if you like.

9 A. Yes.

10 Q.461 - If the Board wanted to match every kilowatt hour
11 produced by this coal plant to the capital investment
12 associated with lowering the fuel cost, wouldn't it need
13 to reject your approach and adopt Disco's approach
14 instead?

15 A. I'm not sure I understand what you mean by the predicate
16 of your question. I don't understand the purpose of that.

17 Q.462 - Well I'm not -- would you answer the question.

18 A. I don't understand -- I don't understand --

19 Q.463 - Where I'm going with it I would like you to answer it.

20 A. Sir, I don't understand what it means, to match. I only
21 know how to allocate costs based on cost causation. I
22 don't understand what that phrase means.

23 MR. MACDOUGALL: Maybe Mr. MacNutt can rephrase the question

24

25

2 so that the witness can understand it. I'm sure Dr. Rosenberg
3 will answer the question if he can understand the
4 question.

5 MR. MACNUTT: No, we will just leave it there, Mr. Chairman.

6 Q.464 - Now I'm going to ask you to turn to the -- some of the
7 data problems with respect to the application of your
8 symmetrical fuel theory, and I'm going to ask you to turn
9 to page 35 which I believe you already have open, and go
10 to line 13.

11 A. Yes.

12 Q.465 - At page 35, line 13, and following, you discussed the
13 need for class data on an hourly basis, is that not
14 correct?

15 A. Yes. That would be the ideal situation.

16 Q.466 - And the reason is that ideally you would like to match
17 each class's proper share of hour by hour fuel cost to
18 that class's responsibility for the capital cost of plants
19 generating in each hour.

20 A. That's correct. As I said before, if the breakeven point
21 is 668 hours, then to do an absolute precise job you
22 should know each class's share of each class's load in
23 those 668 hours. That would be the ideal situation.

24 Q.467 - Thank you. Now looking at the -- lacking the hourly
25 data as you noted still at page 35, at lines 13 to 15 --

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A. Right.

Q.468 - -- you proposed to allocate the fixed costs of oil and gas by generation and purchases on the basis of each class's firm equity and for the month of January, is that not correct?

A. The duration portion, yes. Not the demand portion. I should have said that really -- I thought it was implicit that we are talking about the duration piece.

Q.469 - Now still on the same page at lines 19 to 23 of your evidence, you say that you allocated the duration related portion of the capital costs of the Belledune and Dalhousie plants in proportion to the total energy usage of each class in the months of October through June, is that correct?

A. That's correct. Those were the nine highest intensive energy usage months, and so I took those nine months as a surrogate for the usage in the 6,552 hours which I didn't have.

Q.470 - Right. And essentially you did that because -- in part because the total hours in those months, which are 6,552, is roughly the same as the breakeven point between a combined cycle plant and a coal plant, is that not correct?

A. That's correct.

2 Q.471 - But isn't it true that the number of hours in any nine
3 months of the year would have totalled approximately the
4 same figure as the total hours in those nine months?

5 A. May I have that question repeated?

6 Q.472 - Isn't it true that the same -- that the number of
7 hours in any nine months of the year would have totalled
8 approximately the same figure as the total hours in those
9 nine months?

10 A. In any nine months?

11 Q.473 - Correct.

12 A. Right. But you don't -- you are not using any 6,500 --
13 let me get the right number. You are not using any 6,428
14 hours. You are using the top 6,428 hours.

15 Q.474 - I think we were using 6,552 hours.

16 A. Well whatever it is. But you are using the top 6,500
17 hours. It's not any 6,500 hours. It's the top. As I
18 said, when you draw your load duration curve from highest
19 to lowest you are starting at the highest hour and going
20 through the top 6,550 hours. So I'm trying to get a proxy
21 for the top 6,500 hours, or whatever that figure is.

22 Q.475 - Thank you.

23 A. That's why I used the nine months which had the most
24 energy. If you used any nine months you wouldn't be doing
25 the right job.

2 Q.476 - I'm going to ask you to turn to page 1 of the
3 attachment to EGNB Disco IR-1, and that's in exhibit EGNB-
4 2.

5 CHAIRMAN: Wait. Let me get it up.

6 MR. MACNUTT: I'm waiting.

7 CHAIRMAN: Okay. The rest of it.

8 MR. MACNUTT: And it's EGNB Disco IR-1.

9 MR. MACDOUGALL: Could I have the IR number again, please.

10 MR. MACNUTT: Yes. The full reference is EGNB Disco IR-1,
11 and we are going to the attachment. Actually it's page 1
12 of the attachment.

13 Q.477 - Now we just want to look at the energy usage in
14 September which is one of the months you excluded, and it
15 is shown to be 598,800 megawatt hours --

16 A. Yes.

17 Q.478 - -- which is in fact higher than the usage figure of
18 583,800 megawatt hours in June, which is one of the months
19 you included, is that not correct?

20 A. That is correct.

21 Q.479 - So in actuality the nine highest intensive energy
22 usage months were not October through June as you stated
23 but September through May, is that not correct?

24 A. I guess I was trying to get a contiguous set of months,
25 and when I looked at the contiguous set of months

2 I was trying to throw out the three contiguous months with the
3 lowest usage -- and June, July, August -- that's correct.

4 That's correct.

5 Q.480 - Thank you. Now if hourly load data for each customer
6 class had been available for each customer class how would
7 you have gone about selecting the periods in which to
8 examine the relative energy use of each class?

9 A. May I have the question read again?

10 Q.481 - Yes. If hourly load data for each customer class -

11 A. Yes.

12 Q.482 - -- had been available for each customer class --

13 A. Yes.

14 Q.483 - -- how would you have gone about selecting the periods
15 in which to examine the relative energy use of each class?

16 A. Well as I said, let's say the breakeven point that I'm
17 looking at is 6,500 hours, then I look at the top 6,500
18 hours and I look at each class's usage for those -- for
19 each of those hours.

20 Q.484 - Now would you agree that doing it that way would have
21 produced different factors for allocating capital costs
22 and energy costs to each class?

23 A. It would have been somewhat different, but this is a
24 pretty robust method and I -- based on doing many, many of
25 these studies, I doubt if it would give significantly

2 different results. I mean, if you go out enough decimal
3 places, yes, you might get a different revenue to cost
4 ratio, but it would be -- what you are suggesting I'm
5 saying may give a different result but it would not be
6 significantly different.

7 Q.485 - Have such studies been submitted in any other cases in
8 which you have been involved?

9 A. What studies?

10 Q.486 - You just referred to a series of studies.

11 A. I have done capital substitution studies before, yes.

12 Q.487 - You say you have done those studies. Have those
13 studies been based on or included the fuel symmetry
14 approach you have been describing?

15 A. I believe so, yes.

16 Q.488 - And what are those? Can you identify those for us?

17 A. I think I submitted a fuel capital substitution approach
18 as I recall in Central Hudson Gas and Electric in New York
19 State.

20 Q.489 - Could you give us roughly the year or any citation for
21 that?

22 A. Mid '80s. I did a capital substitution study -- I think
23 it was -- not Central Hudson -- Green Mountain Power in
24 Vermont. I don't remember the year. Early '90s. I can't
25 -- as I sit here I can't recall any others.

1 - 1637 - Cross by Mr. MacNutt -

2 MR. MACNUTT: Just a moment, Mr. Chairman.

3 Q.490 - Now is there anything in the record here that
4 indicates what the extent of the difference would have
5 been?

6 A. If I had used the top 6,550 hours instead of the nine
7 months?

8 Q.491 - Yes.

9 A. The data is not available. We don't have class data for
10 that.

11 Q.492 - So there is nothing on the record in the present
12 hearing?

13 A. That's correct.

14 Q.493 - Thank you. Now I'm going to ask you to turn to the
15 NARUC manual.

16 A. Yes.

17 Q.494 - And for reference --

18 CHAIRMAN: Give us the citation, Mr. MacNutt.

19 MR. MACNUTT: It's exhibit A-14, Mr. Chairman, and appendix
20 7. A-14, appendix 7.

21 Q.495 - Now on page 25 of your evidence, lines 1 to 4, you say
22 that the NARUC manual supports your fuel symmetry
23 argument. And you go on to say that --

24 A. Can you give me the reference to my testimony?

25 Q.496 - Page 25, lines 1 to 4.

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A. Wait just one minute while I turn to that. Yes. And I quote from the section of the NARUC manual that has that.

Q.497 - Yes. And you state in your evidence at page 25 that the manual is an example of the fact that cost analysis and -- I misspoke myself -- cost analysts and/or regulators recognize "fuel cost analogue of allocating a portion of fixed costs on the basis of energy." Do you recall that?

A. Yes.

Q.498 - Thank you. Now the language you quote from the NARUC manual actually appears in a discussion of the Equivalent Peaker Method at the top of page 55 of that manual, am I correct?

A. That is correct.

Q.499 - Thank you. And if you would now scan down page 55 of the NARUC manual you will see the discussion at the bottom of the page entitled Base and Peak Method?

A. Yes, I see that.

Q.500 - Thank you. Now that section begins by stating, "the objective of the Base and Peak Method is to reflect in cost allocation the argument that an on peak kilowatt hour costs more than an off peak kilowatt hour and that extra cost should be borne by customers imposing it."

2 A. Yes, I see that.

3 Q.501 - Thank you. And you testified yesterday that is
4 similar to your recommended approach, is that not correct?

5 A. That is -- that concept is what I was trying to
6 accomplish, yes.

7 Q.502 - Thank you. Now next the manual says, "This approach
8 first identifies the same production plant components as
9 the Equivalent Peaker Cost Method and allocates demand
10 related production costs in the same way." That is true -
11 - also true of your approach, is that not correct?

12 A. Yes.

13 Q.503 - Thank you. Now continuing on, the manual says that
14 "the difference is that using the base and peak method the
15 energy related excess capital costs are allocated on the
16 basis of the class's proportions of on peak energy use
17 instead of being allocated according to the class's shares
18 of total energy use. The logic of this approach is that
19 the extra capital costs would be incurred once the system
20 was expected to run for a certain minimum number of hours,
21 i.e., once the breakeven point and unit run time between
22 Peaker and a base load (or intermediate) unit was
23 reached." That's a pretty accurate description of the
24 breakeven point concept which you also used as the basis
25 for allocation of "energy related excess capital costs",

1
2 is that not correct?

3 A. The concept is the same, except I didn't use on peak
4 hours, I tried to actually get a proxy for those top
5 hours. But the concept is certainly correct, yes.

6 Q.504 - Now would you please read into the record the last two
7 sentences of that paragraph on page 55 of the manual?

8 A. The last two sentences?

9 Q.505 - Yes. Beginning with However.

10 A. However system planners generally recognize no difference
11 between on peak hours and off peak energy loads on the
12 decision to build a base load power plant. Instead the
13 belief is that system planners consider the total annual
14 energy loads that determine the type of plant to build.
15 To allocate any (inaudible) costs on the basis of only on
16 peak energy use implies a differential impact on on peak
17 kwh as compared to off peak kwh that may or may not exist.

18 CHAIRMAN: Mr. MacNutt, that's on page 56.

19 MR. MACNUTT: Sorry. Yes.

20 Q.506 - Now that statement does not appear to be a ringing
21 endorsement of the approach of allocating energy related
22 excess capital cost --

23 A. Well I didn't use on peak.

24 Q.507 - -- using the breakeven point methodology, does it?

25

2 A. I didn't use on peak and off peak. I used breakeven
3 hours. So maybe they are saying that on peak hours is not
4 a good proxy for breakeven point. Certainly the break
5 even point is -- I don't think anybody can argue with the
6 notion of a breakeven point. It's -- I mean the manual
7 even describes breakeven points on the previous page --
8 sorry -- describes breakeven points on page 53.

9 So I don't see how you could say they don't use breakeven
10 point because when they have a digression on system
11 planning they specifically refer to breakeven points.

12 Q.508 - I am going to move on to a slightly different point.
13 Now in response to EGNB PUB IR-3 -- and it's in exhibit
14 EGNB-2 and we will be referring to this exhibit a couple
15 more times, Mr. Chairman.

16 CHAIRMAN: We can put away the NARUC manual, Mr. MacNutt?

17 MR. MACNUTT: No. He is going to come back to it in a
18 couple of minutes, so keep it open, please.

19 Q.509 - And we are now going to refer to exhibit EGNB-2 and I
20 have a couple of questions with respect to it, and
21 specifically EGNB PUB IR-3.

22 A. IR-3 to which party, sir? The PUB?

23 Q.510 - PUB IR-3.

24 A. The PUB IR-3. Yes, sir. I have that.

1 - 1642 - Cross by Mr. MacNutt -

2 Q.511 - Now in response to that IR -- or in the question you
3 were asked, whether a seasonal rate structure would
4 accomplish your objectives, and in the response you
5 answered, "A seasonal rate structure is a very useful tool
6 for addressing customer behaviour and intra-class equity.
7 It cannot address interclass equity and appropriate
8 revenue targets." You then go on to describe two schools
9 of cost analysis, the traditional fixed variable cost
10 approach and the Equivalent Peaker Method, is that not
11 correct?

12 A. Yes.

13 Q.512 - Are you saying that applying either of these
14 approaches can be used to develop a seasonal rate
15 structure that addresses interclass equity and appropriate
16 revenue targets?

17 A. The fixed variable approach or the capital substitution
18 approach, if applied correctly and if faithful to the
19 underlying characteristics of the system that imposes the
20 cost, can give you class revenue targets -- appropriate
21 class revenue targets. It's a lot more difficult to
22 actually come up with seasonal costs. You have to do a
23 lot more work than just the class cost of service study,
24 because the class cost of service study says, this class
25 is responsible for X number of dollars,

1 - 1643 - Cross by Mr. MacNutt -

2 but it doesn't tell you how to allocate that X numbers of
3 dollars between the winter usage and the non-winter usage.

4 So I'm not saying you couldn't do it with a class cost of
5 service study but it requires a lot more work than is
6 usually performed. And that's why you have to use some
7 judgment when you go into the rate design aspect of it.

8 Q.513 - Thank you. Now going onto a slightly different point.

9 In addition to the NARUC manual when asked about other
10 authorities that have acknowledged the fuel symmetry
11 argument at pages 25, lines 14 to 17 of your evidence, you
12 also cited decisions of the Public Utilities Commission of
13 Texas, is that not correct?

14 A. That's correct.

15 Q.514 - Now you state at page 1, lines 7 and 8 of your direct
16 evidence, that you have testified in 19 states, three
17 provinces and before FERC, that's right?

18 A. That's correct.

19 Q.515 - Now are you aware if any of those jurisdictions have
20 adopted your approach?

21 A. Adopted which approach.

22 Q.516 - The fuel symmetry approach that we have been
23 discussing.

24 A. Well most of those states don't use capital substitution.

25 So they obviously wouldn't adopt the fuel

1 - 1644 - Cross by Mr. MacNutt -

2 symmetry approach because the fuel symmetry approach is only
3 apropos to a capital substitution method.

4 Q.517 - Did you propose this methodology in any of those
5 jurisdictions?

6 A. As I said, I did raise the subject in the New York case
7 that I could recall and a Vermont case that I could
8 recall. I don't think it was adopted.

9 Q.518 - You also don't know any utility whatsoever that has
10 endorsed your approach, is that not correct?

11 A. That has endorsed my approach, no, I don't. I do not.

12 Q.519 - Now at page 18 of your evidence, lines 14 to 15, you
13 also claim that in recommending your fuel symmetry
14 approach you are applying the logic of this Board in its
15 1992 CARD decision, is that correct?

16 A. That is correct.

17 Q.520 - In fact, however, the 1992 CARD decision did not
18 address the allocation of fuel costs, did it?

19 A. It did not. Well only in so far as this quote is
20 concerned. It did not address the allocation of fuel
21 costs in a class cost of service study.

22 Q.521 - Thank you. So while you say that the method you were
23 recommending was supported by the CARD decision, in fact
24 the Board did not examine in that proceeding whether your
25 method was a valid application of its principles, is

1 that --

2 A. Well the principle is exactly the same. It's just the
3 application of the principle.

4 Q.522 - Yes. But they in fact didn't address it.

5 A. The principle is the same.

6 Q.523 - But they didn't address it.

7 A. I don't believe it was brought to their attention.

8 Q.524 - Thank you. Now what significance should the Board
9 attribute to the fact that your fuel symmetry approach has
10 only been used in one jurisdiction of which -- or two
11 jurisdictions -- one jurisdiction you are aware of, sorry?

12 A. I think the Board is going to have to make a decision as
13 to which allocation methods make the most sense to them,
14 which have been best supported by the realities of system
15 planning.

16 Q.525 - Now how does that number, i.e., one jurisdiction
17 compare to the number of jurisdictions where marginal
18 costs are used for setting electric utility rates? I
19 believe you said yesterday there were six.

20 A. I'm going to disconnect here, like we just jumped subjects
21 here. So I didn't get the import of your question. You
22 are talking about marginal costs now. I'm trying to
23 follow your --

24 Q.526 - Okay. Well I'm going to ask you the question again.

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How does that number, that is, one jurisdiction, compare to the number of jurisdictions where marginal costs are used for setting electric utility rates --

A. Which is -- which number is that?

Q.527 - Six.

A. Six.

Q.528 - You mentioned it yesterday yourself.

A. Six is bigger than one.

Q.529 - So that now in your opinion how should that number influence the Board's consideration of whether marginal costs should be used for designing rates for NB Power?

A. I think the Board should consider all things. They should consider other jurisdictions, they should consider the evidence of the record. I think the Board should consider whatever facts they deem relevant to the case at hand and make their deliberation based upon what makes the most sense to them.

CHAIRMAN: I think this is an excellent time to take our morning break.

(Recess)

CHAIRMAN: EGNB-2, Mr. MacNutt.

MR. MACNUTT: Yes. Exhibit EGNB-2 and specifically IR EGNB PUB IR-1.

Q.530 - And Dr. Rosenberg, you were asked in that question

1 whether the prices that one would expect to prevail if

2 authentic competition were present would reflect marginal
3 rather than embedded costs.

4 You responded that in theory they would gravitate towards
5 the short run marginal cost but, and I quote, "There are a
6 number of pragmatic considerations why this will not
7 happen."
8

9 Is that a correct statement?

10 A. Correct.

11 Q.531 - Now the question -- and I'm going to ask you to turn
12 to the same exhibit, PUB IR-3?

13 A. PUB IR-3?

14 Q.532 - Correct.

15 A. Yes, sir.

16 Q.533 - And in that question you were asked whether prices
17 would reflect marginal cost.

18 And I believe you answered by referring to reasons why
19 they would not reflect short run marginal cost, is that
20 correct?

21 MR. MACDOUGALL: That is not the question I have for PUB IR
22 3, Mr. MacNutt. IR-3 has to do with a seasonal rate
23 structure.

24 MR. MACNUTT: I'm sorry. Yes. I misspoke.

25 Q.534 - Still on PUB IR-1 -

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2 A. Yes, sir. I have that.

3 Q.535 - -- and I will just start from scratch. The question
4 in EGNB PUB IR-1 asks whether prices would reflect
5 marginal cost.

6 And you answered by referring to reasons why they would
7 not reflect short run marginal cost, is that correct?

8 A. Yes. The theory says that prices would gravitate to short
9 run marginal cost. But then I cite a section of Professor
10 Kahn's book to show why there are a number of pragmatic
11 reasons why this won't happen.

12 And there is a strong tendency in the industry to price at
13 a full cost basis which is usually computed at average
14 variable cost plus some percentage of markup to recover
15 total cost, which is in the words of Mr. Kahn, a far cry
16 indeed from marginal cost pricing.

17 Q.536 - Now what is your opinion as to whether they would
18 reflect long run marginal cost?

19 A. Well, the long run marginal cost and short run marginal
20 cost, they converge. So the answer would be the same.

21 Q.537 - Now in your response to -- in point 2 of EGNB PUB IR-1
22 you state that under authentic competition NB Power's
23 total rates would likely be higher than the costs

24

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1 - 1649 - Cross by Mr. MacNutt -

2 reflected in the cost of service study, is that --

3 A. Yes.

4 Q.538 - And would you please explain how you reached that
5 conclusion?

6 A. I reached that conclusion because NB's -- the results --
7 the costs of the cost of service study reflect a number of
8 heritage assets that under authentic competition would be
9 priced at all the market would bear.

10 And it is my view that if you were just to have market
11 rates here in New Brunswick the costs would probably be
12 quite a bit above the average costs. That is my view.

13 Q.539 - Now down further still in the same IR on point 3 you
14 state, and I quote "Under authentic competition fixed
15 costs would likely be recovered with fixed charges and
16 variable costs with variable charges as suppliers seek to
17 stabilize their cash flows and profits."

18 Is that correct?

19 A. That is correct.

20 Q.540 - Do you believe there is authentic competition in the
21 market for air travel?

22 A. For?

23 Q.541 - Air travel?

24 A. For air travel? It depends what route you are taking.

25 Q.542 - We are going into the abstract.

2 A. It depends what route you are taking. Yes. I mean, in
3 some places you do have a choice of a number of carriers.

4 Q.543 - Yes. Now do airlines typically cover their fixed
5 costs with fixed charges?

6 A. The airlines of course are all going bankrupt. So I'm not
7 sure that is a very good thing. I would -- I would -- if
8 you want to look at the industry, I think a better example
9 is car rental agencies.

10 You rent a car from Hertz, they don't charge you by the
11 mile. They charge you so many dollars per day. And you
12 have unlimited mileage.

13 If they charge you by the mile -- you know, I might take a
14 car, keep it for a year and only drive a hundred miles.

15 And they would go broke.

16 Q.544 - Now let's use an example of hotels?

17 A. Right.

18 Q.545 - Is there authentic competition in the market for hotel
19 rooms?

20 A. In most places, yes.

21 Q.546 - Now do hotels typically recover the fixed costs of
22 their hotel buildings through fixed charges?

23 A. To the extent that they can, they do that. Sometimes you
24 are limited in your pricing ability by the nature of

2 the service that you are selling.

3 Certainly when you rent a hotel room they don't charge you
4 by the hour. They charge you by the day. Some hotels
5 might charge you by the hour. But I don't frequent such
6 places.

7 Q.547 - In your experience do any hotels charge the same for
8 three days as for one day?

9 A. No, sir. They do not, no.

10 Q.548 - Now turning to pages 10 and 11 of your evidence, which
11 is exhibit EGNB-1, I'm going to -- on those pages you
12 quote a statement in the September 2004 White Paper on
13 Energy Efficiency Systems in New Brunswick?

14 A. Yes.

15 Q.549 - Which for purposes of reference I don't have to turn
16 it up. It is exhibit A-26. And I will quote. "New
17 Brunswick and the region generally face growing demand for
18 electricity with the need for new supplies within the next
19 four to five years."

20 Is that a fair statement?

21 A. That's the citation that I took from the 2004 White Paper,
22 yes.

23 Q.550 - Thank you. Now you go on to say that "New Brunswick's
24 cost study masks true consequences of this peak in
25 behavior"?

2 A. That is correct.

3 Q.551 - Now can we conclude from your evidence that you
4 believe that New Brunswick Power's rate design should
5 reflect the fact that the region generally faces growing
6 demand for electricity with a need for new supplies within
7 the next four to five years?

8 A. Ultimately that will drive the need for new capacity, yes.

9 Q.552 - Now isn't that typically the difference between
10 embedded and marginal cost rate design in that only the
11 latter would reflect future cost beyond the test year?

12 A. No.

13 Q.553 - Why not?

14 A. Because the rates have to reflect the cost of a test year.
15 And the revenue requirement of a utility is based upon
16 the total revenue requirement calculated in a test year.
17 And that is how rates are made all across North America.
18 So I mean, you know, I could set average rates based upon
19 2007 costs. Marginal and embedded has nothing to do with
20 forward-looking or backward-looking. They are two
21 separate concepts.

22 Q.554 - Now you testified yesterday that one of the reasons
23 why you favored using cost causation principles to

24

25

2 allocate generation cost was because of competition between
3 electricity and gas?

4 A. Yes.

5 Q.555 - Would you not agree that electricity rates based on
6 marginal cost would produce more efficient price signals
7 for that competition than would rates based on embedded
8 costs?

9 A. It's a difficult question to answer. There are really two
10 distinct phases in a rate case -- actually three. (1) is
11 setting the total revenue requirement. (2) is allocating
12 that revenue requirement among the classes. And then (3)
13 is the rate design.

14 And there are some jurisdictions which like to give
15 marginal cost signals on the last block of usage. I mean,
16 I think Massachusetts is a state like that.

17 But to actually allocate the revenue requirement, as I
18 indicated in my opening statements, most jurisdictions use
19 the embedded study for the reason that if you use marginal
20 study, they won't -- the marginal costs won't equal your
21 revenue requirement.

22 So you have to -- you can't price at marginal cost and
23 equal your revenue requirement. You have to make -- you
24 have to make some adjustment so that the rates recover the
25 total revenue requirement.

1
2 And so then the question is well, where do you diverge
3 from those marginal costs? And there are various theories
4 about that, most notably the Ramsey Pricing or Inverse
5 Elasticity.

6 But that is a very difficult rule to apply. And I'm not
7 quite sure what the results would be. So I guess I would
8 have to -- to really answer your question fairly, I would
9 have to see what those indications would be before I could
10 answer that.

11 Q.556 - Now you mentioned earlier heritage assets. I just
12 wanted to ask you what relevance does the cost of heritage
13 assets have to sending efficient price signals for
14 competition with gas?

15 A. I think those are two separate questions.

16 Q.557 - In what sense? Would you explain yourself?

17 A. In the sense that the Heritage assets have to be reflected
18 in the rates. But all the assets have to be reflected in
19 the rates.

20 I mean, my philosophy is that you set the rates based upon
21 NB Power's actual costs and based upon cost causation.

22 And then you let the market determine whether or not there
23 will be gas on electric competition.

24 So all -- regulation has to be a proxy for competition.

25 Because we don't have competition on the

1 - 1655 - Cross by Mr. MacNutt -

2 electric side. So the job of the regulator is to set prices
3 as closely as possible to what it thinks would prevail if
4 we did have competition.

5 And -- but there are various constraints. And the
6 constraint is you have to recover the total cost of the
7 utility as determined by the regulator. But that is the
8 concept.

9 So -- and that is the approach that I have taken in my
10 evidence here. I have tried to set the rates based as
11 close as I could determine them based on cost causation.

12 Q.558 - Now I'm going on to a different topic altogether. And
13 what we are going to deal with here is the response to
14 PUB-IR 110 in exhibit A-17.

15 And in that you will find a figure 1 called 2005-2006
16 available capacity Disco and firm export load. I repeat
17 it is exhibit A-17.

18 CHAIRMAN: Wait, Mr. MacNutt. Do we still need to have the
19 NARUC?

20 MR. MACNUTT: I think all other documents can be put away at
21 this stage.

22 CHAIRMAN: All right. Give us a minute to put them away.
23 We will clear our desk.

24 A. Mr. MacNutt, just so I can follow, I have A-17. And what
25 am I turning to?

2 Q.559 - PUB IR-110.

3 A. PUB IR-110.

4 CHAIRMAN: All right. We have A-17, Mr. MacNutt, PUB IR --

5 MR. MACNUTT: 110.

6 CHAIRMAN: Good. Thanks.

7 WITNESS: Yes, I have that.

8 MR. MACNUTT: Just waiting for the Commissioners to get
9 settled.

10 Q.560 - Now figure 1 in that response shows a dark shaded area
11 which represents capacity that is unavailable due to
12 planned outages and D rates, is that not correct?

13 A. That is correct.

14 Q.561 - Now you would agree that the capacity of generation
15 units which are unavailable during planned outages do a
16 remarkable job of filling in the valleys so that during
17 any time of the year there is not a great deal of capacity
18 available beyond what is required to meet the approximate
19 20 percent reserve requirement, is that not correct?

20 A. I'm not quite sure, Mr. MacNutt, what remarkable means.

21 Q.562 - A reasonable job, let's say?

22 A. Certainly, as I look at the reserve margin, it appears to
23 me, just looking at the graph, eyeballing the graph, the
24 smallest reserve margin is in February.

1 - 1657 - Cross by Mr. MacNutt -

2 Q.563 - Yes.

3 A. And there is quite a bit more reserve margin in the summer
4 months. There are no numbers on the graph. But looking
5 at the graph, reserve margin is what percentage of extra
6 capacity you have beyond your peak load.

7 Q.564 - Correct.

8 A. And it seems to me there is a much smaller reserve margin
9 in February for example than there is in August and
10 September, even accounting for the planned maintenance.

11 Q.565 - Yes. Well, I'm not looking at the particular
12 contrasting one month with the other. I'm looking at
13 generally across the year --

14 A. Yes. And --

15 Q.566 - -- conceptually?

16 A. And generally across the year, what are you saying?

17 Q.567 - That the capacity of generation units which are
18 unavailable during the planned outages do a reasonable job
19 of filling in the valley so that during any time of the
20 year there is not a great deal of capacity available
21 beyond what is required to meet the approximate 20 percent
22 reserve requirement?

23 A. I don't think I quite agree with that. I think you still
24 have quite a bit of capacity available, extra capacity
25 available in August and September. -

1 1658 - Cross by Mr. MacNutt -

2 Q.568 - Now you would agree that if all load were constant
3 throughout the year, as is the case with large industrial
4 load, and there was no system peak, Genco would have to
5 build generation plants just to allow for system
6 maintenance?

7 A. Trying to get my mind around a utility that just has
8 industrial load. Most utilities that I'm aware of, Mr.
9 MacNutt -- of course there are all sorts of customers.
10 And they build their utility to take advantage of the
11 diversity and economies of scale serving all of their
12 customers.
13 Most utilities that I'm aware of try to encourage high
14 load factor load. And they like high load factor load
15 because that enables them to optimize the utilization of
16 their plants.

17 So I'm not quite sure I could agree with that.

18 Q.569 - No. But what I'm looking at is -- looking at the
19 large industrial load and the fact that it is fairly
20 constant throughout the year --

21 A. Yes.

22 Q.570 - -- in that circumstance, with respect to that load,
23 and there was no system peak, Genco would have to build
24 generation plants just to allow for system maintenance?

25 A. I'm not sure. See, you always need a reserve margin.

1
2 You can't -- you can't just -- if you had a load of 1000
3 megawatts, you can't just build a system for 1000
4 megawatts.

5 Q.571 - But you also have to allow for the fact that
6 periodically the generators are going to be down for
7 maintenance?

8 A. That is correct.

9 Q.572 - Right. Otherwise you wouldn't be able to carry out
10 maintenance --

11 A. That is correct.

12 Q.573 - -- unless you took into account maintenance, downtime
13 plus reserve?

14 A. That is correct. You know, baseload plants have capacity
15 factors 90 percent or greater.

16 Q.574 - Yes. Thank you.

17 Now you would agree that in the real world you cannot
18 serve load with an annual demand that is constant with
19 production plant that is perfectly sized for that load
20 without taking into account capacity requirements related
21 to the annual maintenance outages?

22 A. That is certainly a valid consideration, yes.

23 Q.575 - Now in the Genco system -- we are talking about Genco
24 here -- shown in figure 1 in the response to PUB IR-110 --
25 that is the diagram we were just referring to -- it is

1
2 evident that on an annual basis that a substantial amount of,
3 and in fact the majority of the valley created by the
4 annual system peak is filled in by the requirement for
5 planned maintenance of all generation units, is that not
6 correct?

7 A. No. As I said, I disagree. It seems to me from looking
8 at this graph that there is quite a bit of the reserve
9 margin. And this doesn't show reserve margin.

10 But if we showed reserve margin I think you would see
11 quite a bit of difference in the reserve margin from month
12 to month, even accounting for the planned maintenance.

13 Q.576 - Well, based on the diagram it would appear that the
14 maintenance is spread out by the planner so as to best
15 accommodate that objective.

16 Is that -- would you not agree with that?

17 A. Well, it appears that the planners certainly plan their
18 maintenance in periods of low load. I mean, that is
19 common sense, that you would plan your maintenance when
20 you don't need as many plants. But the costs are still
21 properly attributable for the capacity to the months when
22 you need them.

23 I mean, that is like saying, you know, when you fill your
24 car up you are only using gas when you fill it up at the
25 station. You are using gas when you drive.

1 - 1661 - Cross by Mr. MacNutt -

2 The maintenance is so you have the plants to meet the
3 peak. The planner still has to meet the peak. And that
4 is the needs that are driving the need for capacity. And
5 I think that Disco or Genco would certainly accede to
6 that.

7 Every utility I have ever come across said they have to
8 build a plant to meet the peak load.

9 Q.577 - Okay. Now we discussed a bit earlier about the
10 additional generation units that would have to be
11 constructed to allow for maintenance if there were only
12 high load factor customers on the system and the costs
13 associated with such units, is that correct?

14 A. I don't think I agreed to that, Mr. MacNutt.

15 Q.578 - Okay.

16 A. I said, you know, you might rotate the plants so that -- I
17 mean, I'm not quite sure how it would work. I don't think
18 I agreed that you would build plants just to have
19 maintenance.

20 Maintenance, planned maintenance is certainly a
21 consideration when you design your system. But I don't
22 think that we have ever come to an agreement that you
23 would have to build extra plants just for the maintenance.

24 Q.579 - Okay. Now looking at the situation at hand, and
25 assuming it is one where the high load factor customers

1
2 see the units that serve them during the winter months being
3 substituted with other units that are available only
4 because there are seasonal customers who make such
5 capacity available in the off peak times of the year?

6 A. That was a long question.

7 Q.580 - Now I'm just asking to look at it from the point of
8 view of assuming the situation is one where the high load
9 factor customers see the units that serve them during the
10 winter months being substituted with other units that are
11 available only because they are seasonal customers who
12 make such capacity available in the off peak times of the
13 year?

14 A. I'm afraid I really can't follow that logic.

15 Q.581 - We will leave that there for the moment.

16 Now to what extent does your methodology ensure that the
17 full cost of capacity required for planned maintenance
18 gets allocated correctly to the large industrial class so
19 that there is no cross-subsidy from low load factor
20 customers?

21 A. I examine the cost studies for everybody who submitted a
22 cost study. And it seems to me that all -- everybody
23 submitted a cost study in this case, Disco, myself,
24 Mr. Knecht, Mr. Adelberg and Garwood. All of them allocated
25 the capacity portion of the fixed generation

2 costs in a similar manner.

3 So that is not an area where I differed from anybody else.

4 So I don't see where the controversy is or where the
5 cross-subsidization arises. Because I have not made any
6 change to the allocation of the demand-related fixed costs
7 from anybody else in this study. So if there is a problem
8 with my study it is a problem with everybody's study.

9 MR. MACNUTT: Thank you very much. I have no further
10 questions for this witness, Mr. Chairman.

11 CHAIRMAN: Thank you, Mr. MacNutt. We will have our
12 questions first and move on and come back to you.

13 BY MR. SOLLOWS:

14 Q.582 - I guess I have a few questions. And to start with I
15 would like to direct your attention to exhibit A-44 that
16 was delivered to us this morning, A-44?

17 A. A-44.

18 Q.583 - And it is a table of the annual average load factors
19 and the monthly average load factors for the large
20 industrial customers of NB Power?

21 A. I'm not sure I have that.

22 MR. MACNUTT: Was that an undertaking response?

23 MR. SOLLOWS: Yes. It was an undertaking response that we
24 marked this morning.

2 MR. MACNUTT: Dr. Rosenberg wouldn't have had that. He does
3 now I understand.

4 WITNESS: I was just handed that. Thank you.

5 Q.584 - Now we have got this which represents I guess the
6 industrial transmission customers. And I'm looking at
7 load factors. We typically think of the industrial load
8 class as being a high load factors load.

9 But I'm looking at load factors that are what I think
10 would characterize as high, 90 percent monthly, average
11 monthly, 87, 88 percent average annually. That is what we
12 are calling a high load factor?

13 A. I would say 85 percent or higher is a high load factor,
14 yes.

15 Q.585 - These are -- also in this group is -- I see one with
16 load factors under 30 percent?

17 A. That is what this statement shows.

18 Q.586 - Some even smaller?

19 A. Yes.

20 Q.587 - I guess my question is -- I have a number of questions
21 relating to this. But the first one is is there anything
22 in the evidence that you are aware of that would give us
23 some confidence that the rate design, as opposed to the
24 cost allocation, but the rate design is such that there is
25 no intraclass inequity in the rates for the large

2 industrial or the transmission service customer classes
3 generally?

4 I see the wholesale customers aren't on in this. But
5 there are three additional wholesale customers presumably
6 with different or similar average annual and average
7 monthly load factors?

8 A. Right. I would be glad to speak to that. I did not put
9 any evidence in my study on industrial rate design. But
10 you are absolutely correct that while the cost of service
11 study addresses intraclass subsidization, it is the rate
12 design, proper rate design that has to address intraclass
13 subsidization. And that is because there are -- within
14 the class there are customers with different load factors.

15
16 That is one reason why rate designers try and have the
17 appropriate demand and energy charges, so that within the
18 class you don't have high load factor customers
19 subsidizing low load factor customers or vice versa.
20 And you try and get your demand charges recovered with --
21 your demand costs recovered with demand charges. You try
22 and get your energy cost -- your variable cost recovered
23 with your energy charges, and of course your customers
24 cost recovered with your customer charges so that you
25 don't have subsidization between large customers

2 and small customers.

3 Q.588 - Right. And so in your survey of the evidence that is
4 filed by the applicant and any of the other Intervenors,
5 is there evidence that would address this and give us some
6 confidence that for example the industrial customer that
7 has a 90 percent load factor isn't subsidizing the
8 industrial customer with under a 30 percent load factor?

9 A. Commissioner, to be perfectly honest I was not asked to
10 look at the industrial.

11 Q.589 - Okay. So you didn't examine?

12 A. I did not do that.

13 Q.590 - The other question I have that would arise from this
14 table is -- and I think it probably follows on in a sense
15 from what counsel for the Board was attempting to address.
16 I look at a customer with a very high load factor really
17 is efficiently utilizing both their own assets and the
18 utility's assets. And therefore it is something that is
19 generally thought to be desirable. Is that fair?

20 A. I couldn't agree with you more.

21 Q.591 - Okay. Now one of the things that I'm not sure it is
22 unique but it certainly is something that has been a
23 matter of some interest for this Board, and it has been
24 certainly a matter of sufficient interest to the utility,
25 that it appears frequently in their annual reports, is the

1

- 1667 - By the Board -

2 value of export sales during off peak periods.

3 Now how -- are you familiar with how the revenue from

4 those export sales is allocated between the classes?

5 A. Yes. That was an issue that I addressed in my testimony.

6 Q.592 - And how did you do it?

7 A. I looked at the nature of the sales.

8 Q.593 - Right.

9 A. And I mean, to me there are two logical ways to do it.

10 One is to say that these sales are used as offsets to our

11 fixed production costs, okay. Because we had excess

12 capacity. So we can make these sales. And we recover the

13 revenue that we get from it.

14 Q.594 - Why do we have excess capacity?

15 A. Why do you have excess capacity?

16 Q.595 - Yes.

17 A. Because capacity is built in lumpy things. You can't --

18 you know --

19 Q.596 - We don't have excess capacity because we have a

20 peaking system?

21 A. Because we have a what?

22 Q.597 - A winter peaking system that gives us excess capacity?

23 A. Well, that too, that gives you excess capacity, an off

24 peak system. But even if it -- even without a peaking

25

2 system you sometimes have excess capacity. Because it's a
3 lumpy investment, you know. You build a new 200-megawatt
4 plant. You can't exactly match your load.

5 Q.598 - Right.

6 A. But again -- of course if you have a peaking system you
7 have excess capacity as well. In any case, so you have
8 this excess capacity.

9 And you obviously want to utilize it in as most efficient
10 manner possible. So if there is an opportunity to sell
11 off that excess capacity and make a profit, you do that.

12 Q.599 - Okay.

13 A. Which brings me back to that there are two different --
14 to me there are two logical ways to approach allocating
15 this benefit, the export benefit.

16 One is to say well, my capacity is classified 60 percent
17 energy, 40 percent demand. So I will classify the export
18 benefit in a similar fashion. So that makes -- there is a
19 certain inherent logic in that.

20 The other way is to look at the nature of the sales, that
21 when I make these export sales, some of it are capacity
22 sales and some of it are energy sales. And so I will look
23 to the inherent nature of the sale itself to classify it.

24

25

2 And that is the approach that I took. And I believe it is
3 the approach that Mr. Adelberg and Mr. Garwood took as
4 well.

5 Q.600 - That is a fairly detailed approach to it then?

6 A. I don't know how detailed it is. I mean, Disco was able
7 to provide that information.

8 Q.601 - You would have to look at each contract that --

9 A. Yes. You would have to look at each contract. That is
10 correct.

11 Q.602 - I guess when I look at it from a fairly high level --

12 I would like you to react to this -- I'm looking at it
13 from the perspective that a high load factor customer,
14 while it is very desirable from the point of view of
15 utilizing the resources of the utility to meet that load,
16 it doesn't provide much opportunity for export sales.
17 Because the thing is running at full load all of the time.

18
19 Where a low load factor customer with a low annual load
20 factor may actually have a low load at a time when
21 substantial surplus revenue could be gained from export
22 sales, because we are winter-peaking and New England
23 experiences a fairly substantial summer peak.

24 And so my first instinct would be to really allocate that
25 revenue that we are getting from export sales really

1
2 in inverse proportion to the load factor of the various
3 classes.

4 Would that -- what is wrong with that thinking?

5 A. I certainly see the logic of your argument there. If I
6 say what is wrong with it -- first of all, I have never
7 seen it done. But I don't like to say just because
8 nothing has been done you shouldn't do it. I don't like
9 that.

10 So to me that is not a reason not to do it. But then you
11 are sort of penalizing the high load factor customers.

12 And I don't think that is a good signal to send, to
13 penalize high load factor customers.

14 But the other thing is, following that argument, I recall
15 doing an analysis in this particular case of trying to get
16 a correlation between the exports and the demand. And I
17 think the R squared was very close to zero, as I recall.

18 So I couldn't see any correlation, inverse or direct
19 between the two.

20 Q.603 - So you found that when you looked at the current
21 system that their exports were no more likely to be in the
22 summer than they were in the winter?

23 A. That was the outcome of my analysis.

24 Q.604 - Interesting. Thank you.

25 I want to go on. I just have a few questions that --

1
2 and I want to give -- these are questions that arose in my
3 mind as you were being led through your direct evidence
4 and might have arisen from cross examination.

5 And I just want to pose them to you to give you a chance
6 to address them. Because sometimes the questions that
7 were asked by the Intervenor really didn't trigger the
8 response that I expected.

9 So I guess my first question is how does your approach to
10 the cost allocation incorporate the energy-limited nature
11 of the hydro available to the daily peak loads?

12 A. Well, as I indicated in my response to Mr. MacNutt, hydro
13 is a tricky thing. Because hydro is normally not
14 dispatched. You can't dispatch it the way you can a
15 thermal plant.

16 I know hydro plant gives problems to not just cost
17 analysis. They also -- hydro plants usually give problems
18 to production simulation models as well. Although they
19 have gotten better at accommodating it.

20 And the short answer, Commissioner, is that I -- the way I
21 treated the hydro was I basically accepted the Peaker
22 Credit Method to classify it. And then for the duration
23 part I used 8760 hours. And then I treated it just as any
24 other plant.

25 Q.605 - Okay.

2 A. If you want to make an argument that I could have treated
3 the hydro differently --

4 Q.606 - Chairman tells me I'm not allowed to make arguments
5 with witnesses. Although I must say it hasn't stopped me.

6 CHAIRMAN: This would be the first time that he didn't
7 though.

8 A. Making arguments to me is a compliment. But in any case
9 you could certainly make an argument for that. But my
10 point is if you do allocate or treat the hydro plant
11 differently than I have done it, you have to do it on a
12 consistent basis.

13 Q.607 - Both energy and capital?

14 A. Right.

15 Q.608 - Yes.

16 A. In other words, if you are going to make a change to the
17 allocation of the capital cost, then you have got to make
18 an allocation to the variable cost as well.

19 Q.609 - To be logically consistent --

20 A. To be logically --

21 Q.610 - -- in the way you are dealing --

22 A. They are two sides of the same coin. And you have to be
23 consistent to both sides of the same coin.

24 Q.611 - Okay. On that note I would like to come back to --

25 and I know this is an area that I'm sure you reviewed, but

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as you said, you didn't focus on. And that is the allocation of the wires and transformers and those sorts of things.

Do you have any experience or expertise in that?

A. Yes.

Q.612 - I would pose these questions to Disco's panel witness.

But since I have had time to review in the last two weeks, I have been trying to make some -- you know, get a good picture of it in my mind as to how things --

A. I can certainly answer any questions of a general nature.

Q.613 - Okay. I think that will suffice. We heard direct evidence and cross relating to different methods of determining what a minimum system is?

A. Yes.

Q.614 - And we saw in the case of the poles and wires, Disco assumes that there will be a single circuit serving each customer, single phase circuit serving each customer, and estimates a minimum size wire and runs it out and takes the cost of that and assigns it to the customer classification?

A. That is the classical way of doing it, yes.

Q.615 - And then in the -- to allocate the cost of transformers that are used to serve the load, they

2 conducted a regression analysis of transformer size against

3 nominal price I guess and got a certain amount of money.

4 I can't recall what it is right now, something in the 700,

5 \$800 per transformer range. That they then multiplied by

6 the number of transformers they owned, estimate the

7 customer cost associated with sort of the fixed cost

8 associated with that. Is that fair?

9 A. Yes.

10 Q.616 - Okay. Now one of the issues that arose was how the

11 regression was done. And when I, after hearing

12 everything, went back and looked at the data, my approach

13 to it was simply to do a multiple linear regression of the

14 cost against the number of units and the total capacity in

15 each group and get the numbers in that way.

16 Would that be -- is something wrong with that approach?

17 A. No. As long as -- if I were doing that type of analysis,

18 I would try to make sure that my cost of my different

19 sizes are the same vintage, so that --

20 Q.617 - They had brought them all forward into a constant

21 dollar.

22 A. Well, good. Well, that is good. That is appropriate.

23 Q.618 - So when I got numbers that said it was about \$750 a

24 unit and \$14.50 a kilovolt amp, would that be roughly in

1
2 accord with your experience for other utilities?

3 A. I would have to look it up.

4 Q.619 - You wouldn't know?

5 A. I couldn't give that off the top of my head.

6 Q.620 - Anyway I will just leave that at that point. But then
7 the next stage of taking the number and whether it is 750
8 or 820 or whatever it is, and multiplying it by the number
9 of transformers, this is where I'm having a problem with
10 the consistency, in that if I think about the notion of a
11 minimal system where only single phase hours in front of
12 each customer and I drive through my own community and see
13 a number of three phase customers with three transformers
14 on the poles, I know that I can't use all of the
15 transformers.

16 So I'm wondering how do you estimate the number of
17 transformers that should be multiplied by that fixed
18 amount in order to configure the minimums system? How in
19 your experience has it been done?

20 A. I can only give you what the theory is. The theory is
21 that -- for the minimum system -- is that even if the
22 customers didn't use any demand or just a negligent --
23 just enough to keep a pilot light on, okay, we would still
24 have to build all this plant. But of course it couldn't
25 really accommodate any load.

2 And so that's the cost that we allocate on the basis of
3 customer. And then any cost that we incur to augment that
4 system to accommodate that demand, that's the *demand
5 related. That's the concept. Now you are getting into a
6 fine point as to, you know, how do I figure that minimum
7 system, and that takes an engineer to look at it and say
8 this is what we would do.

9 Q.621 - Okay. Because I mean it seems to make a big
10 difference --

11 A. Yes.

12 Q.622 - -- because if you are fully consistent with the theory
13 you would say there is only one transformer necessary --

14 A. Yes.

15 Q.623 - -- to run -- that would be the theory. So you would
16 allocate it all to demand --

17 A. Right.

18 Q.624 - -- and the other extreme is to just take all of the
19 transformers and there you are allocating I think -- I
20 forget -- something like 50, 60 percent to customer.

21 A. Right.

22 Q.625 - So somewhere in between is probably what we would all
23 agree would be the correct answer. Would that be the way
24 to approach a detailed analysis to determine it?

25 A. Something like that.

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Q.626 - Okay. Thanks. Then I want to go on now to -- I guess I covered that one. This question arises -- or arose in my mind at least when you were being cross examined by the Public Intervenor. And I guess the question that arises is -- I think we were looking at a table of the different generation resources.

How should we allocate the costs between customers when supply resources or generators are designated must run either for public policy reasons as they are for combined heat and power or cogenerators in this province, or for some other reason. How do we allocate those costs?

A. I would consider a must run unit as a base load unit.

Q.627 - Okay. So we would allocate any must run unit as if it were base load.

A. Yes.

Q.628 - Okay. Now one of the things, if I understand your evidence clearly, or understand it well, is you want to make sure that customers that tend to use their energy during the time of peak costs have that reflected in the price they pay, is that fair?

A. That's a fair statement, yes.

Q.629 - I guess my question -- and it comes back to that exhibit A-44, that table of load factors, and looking down at -- take the example of the large industrial

2 transmission customer number 2 who has an average monthly load
3 factor of under 30 percent and an average annual load
4 factor of exactly the same thing --

5 A. Yes.

6 Q.630 - -- or customer 18 with a 24 percent load factor
7 monthly and a 13 percent annually. How do we know those
8 customers aren't using their energy dominantly during the
9 high price time of the year?

10 A. Well I mean ideally you would have time of use meters and
11 you charge them -- I mean that's the best way to make sure
12 that customers that are using it when energy is costly are
13 paying their cost is to do a time of use thing or have
14 some type of real time pricing a rate.

15 Q.631 - And so in terms of the pricing of the tariff that you
16 would think would be appropriate then for the large
17 industrial customers would be a time of use tariff?

18 A. A time of use tariff is in general -- in general is a more
19 accurate way of doing it than non time of use is.

20 Q.632 - I know one of the objections that is often raised to
21 time of use metering is -- time of use tariffs -- is the
22 cost of -- the transaction cost is higher because of the
23 meter costs. If we have these load factors I think we can
24 presume that the metering would be in place for all of
25 these, would that be correct?

1
2 A. My experience is that most industrial customers have
3 interval metering in that they -- so the utility does know
4 what their loads are ever 15 minutes or 30 -- whatever the
5 interval they are using.

6 Q.633 - So there is not likely in your experience to be any
7 great impediment to introduce time of use metering for
8 that class at least?

9 A. Well as far as the metering is concerned, you might change
10 your billing system.

11 Q.634 - Okay. Thank you. I think these questions arose in
12 the discussion you had from the cross examination with the
13 representative of the Municipal Utilities. There was
14 reference made to a tolerance bandwidth on the -- I guess
15 it's the revenue cost ratio of 95 to 105 percent.

16 And the -- there seems to be -- if I am characterizing it
17 correctly, there seems to be a fundamental disagreement
18 between the people in front of us. Some people look at
19 that -- I speak as a mechanical engineer, someone might be
20 thinking about production control and that sort of thing.

21 People think of that as either a bilateral tolerance
22 where the central estimate is 100 percent and you could be
23 -- anywhere within the band would be a pass, or there is
24 more of a unilateral nature to it where you can go one way
25 and if you are somewhere within the band you might make

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2 deliberate moves to take it further out towards the boundary,
3 which is quite frankly quite confounding to me because the
4 way I normally think of tolerance and tolerance bandwidths
5 is something that's trying to keep the variable or
6 whatever we are controlling near the design value, which I
7 think in this case is acknowledged to be 100 percent
8 recovery.

9 So my question is, you know, how do I -- how should I
10 interpret this what we have referred to as a tolerance
11 bandwidth I think if not as a set of limits about the
12 nominal value that we want, which is 100 percent revenue
13 cost ratios?

14 A. As I indicated the -- you could say you wanted to
15 gravitate to unity, but that may be imputing too great a
16 precision to the cost of service study than it deserves.
17 And so you might say, well look, let's see what happens if
18 I give everybody a uniform increase. Let's say I have got
19 a ten percent increase, let's try giving everybody a ten
20 percent increase. And if everybody still falls within the
21 bandwidth you might say, well gee, nobody could complain
22 because everybody is getting the same percent increase and
23 we are still in the bandwidth, so we are satisfied that
24 they are close to cost of service study. So that's one
25 philosophy.

2 The other philosophy is that, well I could try to move
3 everybody a little bit closer to where they are in case --
4 so they shouldn't fall out. So it's a matter of judgment,
5 how you do it. But all I can tell you is that in the
6 Canadian provinces where I have testified, the Board has
7 always used a bandwidth of 95 to 105. I have seen that in
8 British Columbia, in Alberta, Nova Scotia, here.

9 And generally the way it's viewed is that as long as the
10 class is within that 95 to 105 we are satisfied that it's
11 not being subsidized or not paying a subsidy.

12 Q.635 - Okay. So following that, if we -- or that line of
13 thought -- one reason we might choose to accept a lower
14 than 100 percent cost -- or a 100 percent revenue cost
15 ratio might be a public policy issue, saying, well
16 irrespective of the fact that these people don't have to -
17 - aren't paying the full cost of their energy, we might
18 want to put them at the low end because we think there are
19 some external benefits or externalities associated with
20 their use of electricity that would provide compensation.

21 Is that kind of one of the contributing factors?

22 A. It could be, yes.

23 Q.636 - Okay. What about the public policy issue in this
24 province that has already provided, for example, any of
25 the large industrial transmission customers, any of the

2 transmission customers, with an opportunity to avoid these
3 kinds of rates by simply going into the wholesale market
4 and contracting for energy themselves? Unlike the other
5 rate classes they have an option that is well spelled out
6 in terms of public policy in the legislation and
7 regulations.

8 And I'm wondering in that case how much accord should we
9 or how much deference should we show to that in terms of
10 augmenting it or by also setting out -- or keeping them
11 from doing that by setting a low revenue cost ratio for
12 large industrial customers, or should we bring large
13 industrial customers right to a value of one? And in
14 doing so show deference to the legislature that has
15 established this public policy that would have them leave
16 the regulated system and go out into the market?

17 A. I will try to answer your question as best I can. First
18 of all, before you decide what revenue to cost ratio you
19 want to target, I think you should try to assure
20 yourselves that the cost of service study that you are
21 using as your benchmark is as accurate as you could
22 possibly make it, to the best of the analyst's ability to
23 do that. That's number one. I think that's the most
24 important thing. Otherwise the one is meaningless.
25 Secondly I think there has to be more than a

1 - 1683 - By the Board -

2 theoretical ability to go out into the marketplace. There has

3 to be authentic competition out there. In other words,

4 there has to be lots of buyers and lots of sellers.

5 I mean right now you -- as far as I know you don't even

6 have unbundled rates. In other words, you haven't

7 unbundled the production from the wires. And unless you

8 push the wire they are still going to -- even if they use

9 another supplier they are still going to have to use

10 Disco's wires.

11 Q.637 - We don't have retail competition. We have only

12 wholesale transmission.

13 A. See, that's -- you don't have that situation.

14 Q.638 - Well we do for one class being any of the customers

15 that are connected to the transmission system. The

16 transmission system customers apparently have the right to

17 go --

18 A. Okay. But then they have to use the transmission system.

19 Q.639 - Which we have set a rate for.

20 A. Which you have the OATT for.

21 Q.640 - Yes.

22 A. Okay. So I guess is -- then the question is they would

23 avoid the total rate but use the OATT rate for the

24 transmission.

25

2 Q.641 - Mmmm.

3 A. But then you have to have -- and there is no exit fee or
4 stranded cost charges?

5 Q.642 - At the discretion of Mr. Morrison.

6 A. See, that's another issue. If there are stranded cost
7 charges that alone might be an impediment to going out to
8 competition. So before you factor competition in the
9 equation you have to be sure that there is an honest --
10 not just a legal ability to do it, it has to be a real
11 economic ability to get a supplier.

12 Q.643 - Thank you. And I think most of the other questions we
13 have already covered off except on -- I think in response
14 to a cross examination by the Applicant. There was some
15 discussion about going behind the power purchase
16 agreements in your view that this is not in fact an
17 unbundled system and therefore because the power purchase
18 agreements don't arise from a market mechanism where you
19 could go out and have various bidders, we should probably
20 go behind them to the actual cost attributes of the load,
21 is that fair?

22 A. That's a fair statement.

23 Q.644 - How do you factor in the notion that the structure of
24 the PPA, particularly in the case of the nuclear company
25 PPA, may make -- represent some policy -- public policy

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determinations about who should bear risk for what? You said
it was essentially a fixed price take or pay contract.

A. For almost all of it, yes.

Q.645 - Yes. If the thing runs. Assuming if the thing does
not run then presumably you still don't have to pay, is
that correct?

A. The thing does not run? I really haven't got into that,
what would happen if it doesn't run.

Q.646 - My understanding of a 100 percent energy charge was
that if the energy is not delivered you don't pay. And
doesn't that represent a decision in terms of who shall
bear the risk for ensuring that it run?

A. Well that would put the risk on Genco.

Q.647 - Right. The shareholder as opposed to the ratepayer.

A. That's correct.

Q.648 - And how in your analysis does that attribution or
sharing of risks get factored into the decision as to how
we allocate costs?

A. I think if the Genco -- I mean in theory what would happen
if the Genco bears the risk, it would put that into its
required return on equity, because a risky entity requires
a higher return on equity. So it would then factor that
into its price. So ultimately it gets

1 - 1686 - By the Board -

2 factored into the price and ultimately it's reflected in the
3 total revenue requirement.

4 Q.649 - And so we might want to assume then that that --

5 presuming they are competent in terms of the way they have
6 organized these things -- it would have been factored into
7 that energy price.

8 A. Correct.

9 Q.650 - So it's taken care of essentially by the 100 percent
10 energy?

11 A. Correct.

12 MR. SOLLOWS: Okay. Thank you very much. That's all I
13 have.

14 CHAIRMAN: Just one quick follow-up to the subject matter
15 Dr. Sollows was covering until we get into the public
16 policy issues. But basically I'm referring to EGNB-1 on
17 schedule 2. You don't need to turn it up. It's just that
18 I look at that schedule and it deals with cost ratios
19 current to proposed and it seems -- number one I agree
20 completely with what my mindset was when we did the CARD
21 hearing back in '92 is that you set a range, it's not a
22 scientific endeavour, you do the best you can and we all
23 know that as soon as it's put on paper it's probably going
24 to be wrong.

25 However, I look at this and what disturbs me is that I

1
2 look and I find those two classes that have been the subject
3 matter of a good deal of questioning here, large
4 industrial and wholesale are both within that range to
5 begin with and they stay within that range after.

6 I look at it and I say there are a lot of classes of
7 customers that are outside that range, whether they be
8 residential or whether they be general service II. My
9 common sense approach would be, okay, on the next one you
10 target those that are outside and bring them within. And
11 even it runs in a more counterintuitive when I find those
12 two classes are in fact being pushed out to the edge of
13 the range rather than just being left alone. I will -- I
14 would like your comments on that.

15 A. I agree with your common sense concept.

16 CHAIRMAN: Okay. Thank you, sir. Mr. MacDougall?

17 MR. MACDOUGALL: Thank you, Mr. Chair. I have about nine or
18 ten questions.

19 REDIRECT EXAMINATION BY MR. MACDOUGALL:

20 Q.651 - I will just have to flip through my notes as I go, so
21 if you will just bear with me as I do that. Dr.
22 Rosenberg, the first item if we could go -- and I think
23 where the Chair had just had you -- in EGNB-1, your direct
24 evidence, schedule 1 now, just the schedule before the one
25 the Chair was talking about.

2 A. Yes. Schedule 1?

3 Q.652 - Yes. Schedule 1.

4 A. Yes.

5 Q.653 - And I just want to make some clarifications here with
6 respect to -- the question on which I am following up on
7 was one from Mr. Gorman where he was taking you through
8 the residential class and saying that the difference in
9 the CCS's was an increase of some \$13,000,000 or so in the
10 residential class.

11 A. Yes.

12 Q.654 - I would like you -- could you go through lines 2 and 3
13 and explain to us how that is broken down, that increase
14 between the electric heat and non-electric heat classes?

15 A. It's almost entirely on the electric heat side.

16 Q.655 - Thank you. Now my second question again derives out
17 of a question posed by Mr. Gorman but it was also followed
18 up today by Mr. MacNutt on behalf of Board staff. And you
19 were asked some questions about the Texas situation of
20 fuel symmetry and other jurisdictions that used that, and
21 in reply to Mr. Gorman you did bring him back to EGNB
22 exhibit 2, these are your information responses, and
23 particularly your response to PUB IR number 2. And if you
24 could pull that up.

25 A. Yes, I have that.

2 Q.656 - And I believe you said to Mr. Gorman yesterday this
3 response gives a fuller answer, and I know it is in the
4 record but I thought I would give you the opportunity to
5 explain a little more in detail what was in this IR number
6 2.

7 A. Well besides the Texas response, it also notes that the
8 majority of regulators have not adopted the Equivalent
9 Peaker Method or even any capital substitution method, but
10 instead rely on some version of a fixed variable method.
11 And I cited a little excerpt from a Michigan commission
12 response that it is not persuaded that the Equivalent
13 Peaker Methodology is valid.

14 Then of course there was the Board's own decision in the
15 CARD decision in 1992 where it did recognize fuel
16 symmetry, at least the concept of the fuel symmetry, that
17 they are really both sides of the same coin.

18 And finally I have three bullet points that it's
19 frequently -- first of all, it's frequently difficult to
20 tell just from looking at a Board decision what thinking
21 went behind it. Frequently Boards will say, well we
22 approve this cost of service study but they won't
23 elaborate as to why they did it or what was behind it.

24 And the second point is that doing a capital substitution
25 method, as I have done it, is -- it's a more

1 - 1690 - Redirect by Mr. MacDougall -

2 laborious task and it is detail oriented and it does require a
3 certain level of sophistication in the analysis to try and
4 get this additional accuracy. And frequently that is not
5 gone into for just simple expedience reasons.

6 And finally it is my observation over the years that
7 sometimes cost analysts will put in a cost of service
8 study that only reflects one side of the coin because very
9 frankly, they are trying to reach a desired end result.

10 And in my view you can look at end results but you should
11 only look at end results after you have tried to get your
12 cost study as accurately as possible. Then after you have
13 tried to do that, then you could say, well I really don't
14 want to go down that road that much because of this
15 consideration or that consideration. At least you know
16 what your actual costs are and who is causing them.

17 Q.657 - Thank you, Dr. Rosenberg. Now if I could have you go
18 to exhibit A-15 --

19 A. A-15?

20 Q.658 - A-15.

21 A. I have that.

22 Q.659 - And if you could go to Appendix 14 --

23 A. I have that.

24 Q.660 - And I'm just following up on a question --

25 CHAIRMAN: Sorry, Mr. MacDougall.

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2 MR. MACDOUGALL: Certainly. Exhibit A-15 and then it's
3 appendix 14 within exhibit A-15.

4 Q.661 - And I believe yesterday -- just for clarification, Dr.
5 Rosenberg, I believe the Public Intervenor asked you a
6 question with respect to your use of this plan. I
7 unfortunately didn't see the transcript but my notes
8 indicate that he indicated to you that you used the IRP in
9 doing your study from 1992. I just want to confirm, is it
10 this -- this appendix 14, is this the IRP from which you
11 pulled the data you were using in your study?

12 A. Yes, it is.

13 Q.662 - And the date on that is?

14 A. February 2002.

15 Q.663 - Thank you very much.

16 A. Are we finished with A-15?

17 Q.664 - We are, Dr. Rosenberg. And, Dr. Rosenberg, now I'm
18 going to the cross examination of Mr. Morrison on behalf
19 of Disco. And one point I believe Mr. Morrison says, it
20 really comes down to sort of competing interest whether
21 one sends the appropriate price signal vis-a-vis the use
22 of gradualism, and I think you concurred that there were
23 those two competing interests.
24 Could you give your comments on how the Board may approach
25 gradualism in this proceeding with respect to

2 rate design issues?

3 A. Yes. I think if gradualism is a consideration and that
4 raises a concern with the Board, then in my view the best
5 way to approach that is not to do nothing but to phase in
6 certain aspects, say okay, this is where we want to reach.

7 We want to -- let's say your revenue to cost ratios.

8 Well we want you to do it in a measured and deliberate
9 method, so that, you know, maybe you won't do it in one
10 year, but we want you to reach it in two years or three
11 years at the most.

12 So that there has to be some specific benchmarks and
13 guidelines that tells the Board or the Board can look at
14 and knows that the rates are moving in the right direction
15 at a measured approach.

16 Q.665 - Thank you, Dr. Rosenberg. Further on in Mr.

17 Morrison's cross examination, he indicated at one point
18 were you aware that Disco was providing interruptible
19 rates to cogenerators when you were preparing your standby
20 rates evidence, and you said you were not aware of that,
21 correct?

22 A. That is correct.

23 Q.666 - Now that you are aware of that, does that change
24 anything in your testimony or your view?

25 A. No, sir.

1 - 1693 - Redirect by Mr. MacDougall -

2 Q.667 - Thank you. Dr. Rosenberg, if I could have you pull up
3 now A-14. And if I could direct you to both appendix 2
4 and appendix 3. And I'm just going to go to the first
5 page of both of those. Just to get this clear on the
6 record, appendix 2 is volume 1 of the Reed Report, and
7 this is the Reed Report you have been talking about
8 throughout this proceeding, correct?

9 A. Yes, it is.

10 Q.668 - And appendix 3 is volume 2 of that report?

11 A. Yes, I see that.

12 Q.669 - Okay. And it was put to you today a decision from the
13 Board of April 23rd 1993, and it wasn't marked as an
14 exhibit because we were told it was part of the public
15 record and didn't need to be marked as an exhibit.

16 A. I have the two pages, page 21 and 22, that Mr. MacNutt
17 gave me of the April 1993 decision, yes.

18 Q.670 - Right. And again the date April 23rd 1993?

19 A. April 23rd 1993, that's correct.

20 Q.671 - Could you go to appendix 2, the first page, and
21 indicate the date of volume 1 of the Reed Report?

22 A. June 1993.

23 Q.672 - Could you likewise do that for appendix 3, the second
24 volume?

25 A. June 1993.

2 Q.673 - And I guess apropos one of your earlier questions --
3 responses, June would be after April?

4 A. In my calendar, yes. I say that under oath that June is
5 after April.

6 Q.674 - So the Board received the Reed Report after April 23rd
7 1993 decision.

8 A. That is correct.

9 Q.675 - And your understanding the Reed Report was in response
10 to the 1992 order?

11 A. I'm sorry?

12 Q.676 - Your understanding is that the Reed Report was in
13 response to the 1992 decision?

14 A. Yes, it was.

15 Q.677 - Thank you, Dr. Rosenberg. And, Dr. Rosenberg, I don't
16 think you have to pull this up but I'm just going to
17 mention just so that we have the basis for the question is
18 from -- I'm now into Mr. MacNutt's questions of earlier
19 today, and he had made a reference -- and again we don't
20 have to pull it up -- on page 10 of your testimony where
21 you cited from the White Paper on energy efficiency where
22 it's stated that New Brunswick and the region generally
23 face growing demand for electricity with the need for new
24 supplies within the next four to five years. Do you
25 remember that discussion earlier this morning?

2 A. Yes, I do.

3 Q.678 - If you could pull up exhibit A-7, and this is the
4 Disco business plan. It should be a very small document,
5 Dr. Rosenberg. I'm not sure if it's there. If not I can
6 give you my copy.

7 A. There seems to be a gap.

8 Q.679 - Exhibit A-7. It's the Disco business plan. If you
9 could go to page 15 of that, Dr. Rosenberg.

10 A. Yes, I have that.

11 Q.680 - And under the heading Regional Electricity Requirement

12 --

13 A. Yes.

14 Q.681 - -- could you read in the second paragraph?

15 A. The second paragraph?

16 Q.682 - Yes.

17 A. New Brunswick is forecasting capacity deficiency in
18 2014/2015.

19 Q.683 - And do you remember our cross examination of Mr.

20 Larlee from Disco confirming that that is Disco's current
21 position?

22 A. Yes.

23 Q.684 - Than you. And earlier today, Dr. Rosenberg, and I
24 apologize, I don't have the exhibit, but you were brought
25 to a graph or a chart as one of the IR responses and you

2 were asked some questions with respect to the reserve margin
3 and the like. Do you remember that discussion?

4 A. Yes, I do.

5 Q.685 - Could you indicate how that discussion may be any
6 different vis-a-vis reserve margin and capacity if large
7 industrial customers are supply interruptible?

8 A. Well the -- obviously the interruptible portion of the
9 load would not be factored into the load -- the firm load
10 that is used to calculate reserve market. The reserve
11 market is only calculated based upon firm load.
12 Interruptible load is not allocated any capacity in the
13 cost of *service study because it does not impose any firm
14 capacity requirements on a utility.

15 Q.686 - Is it your understanding that many large industrial
16 customers in New Brunswick avail themselves of both
17 interruptible and curtailable rates?

18 A. That is correct. And the cost of service study
19 appropriately recognizes that.

20 Q.687 - And if there was plant outages and those outages were
21 going to go down and cause a supply interruption, what
22 would occur with the load for large industrial
23 interruptible customers.

24 A. It would be interrupted. It would be curtailed.

25 Q.688 - Thank you, Dr. Rosenberg. I had one last question. I

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2 thought I would follow-up on Commissioner Sollows' question on
3 multiple linear regression analysis, but then I thought
4 that I wouldn't be fully competent to do so. So I will
5 leave that to the -- in fact there is no way I could
6 follow-up on that. I have a hard time remembering it to
7 get it out as a joke let alone deal with it. Although one
8 of my clients did try to explain LaPlace Transforms to me.
9 I have to admit I wasn't successful in that endeavour
10 either. Mr. Chair, thank you very much. That's all of my
11 redirect.

12 CHAIRMAN: Thank you, Mr. MacDougall. And thank you, Dr.
13 Rosenberg. I appreciate your testimony. You are excused
14 and we wish you a safe journey home.

15 DR. ROSENBERG: Thank you.

16 CHAIRMAN: Now, Mr. Lawson, you have a witness this
17 afternoon. How long do you anticipate direct will take?

18 MR. LAWSON: Maybe 15, 20 minutes.

19 CHAIRMAN: Thank you. Now any questions of that witness by
20 any of the Intervenors and/or Disco.

21 MR. MORRISON: We don't intend to do any cross examination,
22 Mr. Chairman.

23 CHAIRMAN: Okay. Anybody intend to do cross examination?

24 MR. GORMAN: The Municipal Utilities does have some cross
25 examination. I would not expect that it would exceed an

1
2 hour. In fact it may well be less than that.

3 CHAIRMAN: I am tempted to read our ruling in reference to
4 Rogers before you get to cross, Mr. Gorman. Mr. Hyslop?

5 MR. HYSLOP: I anticipate a cross. I don't anticipate it
6 being more than half an hour. I have spoken briefly -- I
7 think Mr. Gorman is going to steal a lot of my thunder
8 anyhow. So I may not even be that.

9 CHAIRMAN: We all have to check out -- Mr. MacNutt?

10 MR. MACNUTT: The Board counsel and staff has no cross.

11 CHAIRMAN: I was aware of that. You told me that this
12 morning. Thank you, sir. If you haven't checked out you
13 should have at 11. Some of us got a late check out. I am
14 going to suggest we come back here at quarter-to-two.

15 (Recess - 12:10 p.m. - 1:45 p.m.)

16 CHAIRMAN: Good afternoon, ladies and gentlemen. Any
17 preliminary matters?

18 MR. MORRISON: No, Mr. Chairman.

19 CHAIRMAN: Okay. Mr. Lawson, you have a witness?

20 MR. LAWSON: Thank you, Mr. Chairman. Call Jayson Myers.

21 JAYSON MYERS, having been duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MR. LAWSON:

23 CHAIRMAN: A housekeeping item, Mr. Myers. You have to
24 press the button, okay.

25 Go ahead, Mr. Lawson.

2 MR. LAWSON: Thank you, Mr. Chairman.

3 Q.1 - Your name is Jayson Myers?

4 A. Yes. That's correct.

5 Q.2 - And Mr. Myers, there is before you a binder, and before
6 the Members of the Board a binder identified I think as
7 CME-1 and CME-2. 1 being questions and answers and a
8 Power Point presentation and 2 being your interrogatories
9 answers.

10 Is that evidence that has been prepared by you or under
11 your direction?

12 A. Yes, it is.

13 Q.3 - Now before I ask you if you adopt that, is there any
14 clarification required with respect to that evidence?

15 A. I would like to clarify one part of the evidence on the
16 fourth page.

17 CHAIRMAN: Which number is that? CME-1 or 2?

18 MR. LAWSON: Sorry. CME-1. And the pages aren't numbered.

19 So it is the fourth page of questions and answers.

20 CHAIRMAN: Just a sec'. We are having trouble finding that.

21 I'm sorry, Mr. Lawson. Go ahead.

22 Q.4 - So you are referring to the fourth page of the questions
23 and answers in CME-1?

24 A. On the fourth page, lines 9 to 11, the statement is the
25 closure of Smurfit Stone here in New Brunswick, a

2 container board mill, was attributed to the company's
3 inability to pass higher energy costs onto customers in an
4 increasingly competitive marketplace.

5 That may give the impression that higher energy cost was
6 the only factor. I don't want to leave that impression.

7 And I suggest that be amended to read, at least in part,
8 attributed at least in part to the company's inability to
9 pass higher energy costs onto customer.

10 Q.5 - So with that amendment you adopt this as your evidence,
11 CME-1 and CME-2 as your evidence?

12 A. Yes, I do.

13 MR. LAWSON: And in addition to that, Mr. Chairman, I do
14 have a more detailed curriculum vitae for the witness
15 which has not been supplied to the Board. I have
16 spoken --

17 CHAIRMAN: What are you hiding, Mr. Lawson?

18 MR. LAWSON: I'm sorry, Mr. Chairman?

19 CHAIRMAN: What are you hiding?

20 MR. LAWSON: Well, I'm hoping you won't even get to see it,
21 so you won't see what is happening.

22 I do have copies of the c.v. for the Board, if they want
23 to have it marked. I have spoken with all. And I don't
24 think there is any objection to having him declared

1 - 1701 - Mr. Myers - Direct -

2 as --

3 CHAIRMAN: We would like to see it, Mr. Lawson.

4 MR. LAWSON: -- a witness, as an economist expert.

5 CHAIRMAN: I will mark it as CME-3. Okay. Go ahead.

6 MR. LAWSON: Mr. Chairman, we would ask the Board to declare
7 him as an expert economist.

8 CHAIRMAN: No objection to that. I wonder what that means,
9 Mr. Lawson?

10 MR. LAWSON: You might ask the witness.

11 CHAIRMAN: All right. The Board will recognize him as an
12 expert in economics.

13 MR. LAWSON: I guess so. An expert economist.

14 CHAIRMAN: Okay. Go ahead.

15 MR. LAWSON: Thank you, Mr. Chairman.

16 Q.6 - Now just for the information of the Board, as your
17 evidence already discloses, you work for the CME as well
18 as being an economist independently, is that right?

19 A. That's right. I'm the Senior Vice-president for CME.

20 Q.7 - Could you tell me then what -- perhaps give the Board a
21 bit of an overview as to what it is that the CME's
22 position is with respect to the application of the matters
23 before the Board?

24 A. Well, really three main points. First of all to outline
25 the importance of manufacturing for the New

2 Brunswick economy. It states in my evidence that over 50

3 percent of economic activity in New Brunswick is dependent
4 on manufacturing. That's because manufacturing directly
5 contributes 15 percent to overall economic growth or
6 economic activity in New Brunswick.

7 But on top of that there are all of the natural resources,
8 the agricultural produce, the services, the
9 telecommunications, the energy consumed by manufacturing,
10 the business services that are all dependent on the
11 business manufacturing and the successful business of
12 manufacturing in the province.

13 On top of that there are the communities that are
14 dependent on investments and the taxes paid by
15 manufacturers. And a lot of small businesses, education,
16 social services, hospitals that also depend on the
17 revenues generated by the manufacturing sector.

18 In fact if you look at in New Brunswick, the province has
19 the highest -- what economists refer to as the economic
20 multiplier, looks at not only the direct contribution, but
21 the spinoff effects of manufacturing. New Brunswick has
22 the highest economic multiplier for manufacturing of any
23 province in the country. For every dollar of value
24 generated by manufacturing, there is a total of \$3.78 in
25 total economic activity generated around

2 that.

3 Now some of that economic activity is generated by
4 companies that export into New Brunswick or imports coming
5 into the province. But in total if you net that out, for
6 every dollar of value generated by manufacturers in New
7 Brunswick, it is about \$3.30 in terms of the total
8 economic contribution that makes to the New Brunswick
9 economy.

10 To put it slightly differently, any cost that's borne by
11 manufacturers and any diminution or reduction of that
12 value also has a 3.3 multiplier. So that the overall --
13 any dollar of reduced value from the manufacturing sector
14 has an overall impact of reducing economic activity in
15 this province by approximately \$3.30.

16 The second point that I would like to make is that higher
17 energy costs are having a major impact on investment and
18 operating decisions for companies, not only here in New
19 Brunswick, but clearly across the country.

20 My evidence comes from two sources in that respect, the
21 direct evidence. One is from the surveys that we carry
22 out annually, asking companies what are the most important
23 factors they take into consideration when making an
24 investment.

25 According to the latest surveys, 30 percent of

2 companies across the country identify the reliability of --
3 reliable supply of cost-competitive energy as a major
4 factor in their investment decision.

5 Here in New Brunswick the figure is 55 percent of the New
6 Brunswick companies that participated in our survey last
7 year identified reliable supply of cost-competitive energy
8 as a very important factor in making investment decisions.

9 The second though, second type of evidence comes from the
10 notices provided by companies that have closed production,
11 not only here in New Brunswick but across the country,
12 where we have seen closures in the paper industry and
13 chemicals and industries like the fertilizer industry,
14 where those closures are attributed, at least in part, to
15 the fact that energy costs are rising and that these
16 companies find it very difficult and in some cases
17 impossible to pass those costs along to their customers in
18 terms of higher prices.

19 The evidence -- the third point I would like to make, in
20 terms of how energy, higher energy costs are likely to
21 have an impact on operating decisions, the analysis that
22 we have provided in this evidence looks at an estimated
23 \$14 million increase in energy costs that would have to be
24 paid by large industrial customers here in New Brunswick.

1
2 And that estimate was based on taking the revenue cost ratio
3 to unity.

4 The estimate here is that that would lead to a \$14,000,000
5 increase in energy costs, representing a 3 percent
6 increase in total energy bills and a 0.6 percent reduction
7 in total cash flow.

8 In my opinion that analysis understates the impact that
9 higher electricity rates are likely to have on the
10 operating decisions of particular sectors or operating
11 decisions of particular companies. And for two reasons.
12 Any economic analysis is based on the assumption that all
13 other factors remain equal, that there is no change in any
14 other variable. Of course in today's business
15 environment, any company would be lucky if that were the
16 case.

17 The fact is today that many manufacturers cannot pass
18 higher costs along to their customers in the form of
19 higher prices. That's because for many sectors prices are
20 falling.

21 Latest numbers from Statistics Canada that have come out
22 only over the last couple of weeks show that the average
23 selling price for manufacturing companies across Canada
24 has fallen by 0.4 percent over the past year.

25 In the paper industry average prices have fallen by

2 3.8 percent over the past year. In the food processing
3 industry average selling prices have fallen by 3 percent
4 over the past year. In the wood products industry average
5 prices have fallen by 17.8 percent over the past year. In
6 the primary metals sector average prices have fallen by
7 3.3 percent over the past year.

8 These are prices that are determined today in
9 international markets. And it is in that context that
10 higher energy costs in line with other cost increases is
11 almost right across the board higher, higher wage rates,
12 higher cost of regulatory approvals, higher tax rates,
13 higher cost for materials, higher transportation costs all
14 have to be factored in.

15 In fact today many companies are operating on the mandate
16 that they must reduce their costs of production by a
17 factor of somewhere between 5 to 10 percent. That's not
18 out of the ordinary for many larger industrial companies
19 across -- or industrial operations across Canada.

20 So it's in that context that we are looking at even a
21 slight increase in energy costs has a significant impact -
22 - that marginal increase will have a significant impact on
23 operating decisions. This is a cost that is not in
24 control of -- or companies don't have control over those
25 rates and have to adjust their operations accordingly.

1
2 The other reason that I think this is an understatement is
3 that we are dealing with averages here. The evidence
4 states or the evidence shows that energy costs represent
5 about say 15 percent for instance of the total operating
6 cost in the paper sector. This is an average across the
7 sector. It's an average that covers not only pulp and
8 paper but also the packaging industry.

9 There are many operations where energy costs are much
10 higher than that. And in fact in some major pulp and
11 paper operations in New Brunswick, electricity costs alone
12 represent between 26 to 28 percent of total cost. Those
13 are among the companies that would be most affected by an
14 increase in industrial electricity costs.

15 So it is not really fair to look at the average here in
16 trying to assess the impact of particular corporate
17 operations. It is important to look at those operations
18 that are most energy intensive, which tend to be those
19 companies that are most capital intensive in the resource
20 processing sector.

21 So in short it's my opinion that higher energy costs will
22 be a contributing factor in this province and in the rest
23 of the country. It will be a very negative or have a very
24 negative impact on the ability of companies to basically
25 make the money that goes into employing people

2 and investing in their further operations, investing and
3 making the investments in the technology and the capital
4 that is required to remain competitive in a very fast-
5 paced global economy today.

6 That's the concern that we would like to register as
7 Canadian Manufacturers and Exporters.

8 Q.8 - Now should there be an adverse effect on operations of
9 large industrial operations as a result of partly or in
10 whole energy cost increases, what kind of an economic
11 consequence do you see for others as a result of that?

12 You have talked about the multiplier. How do you see that
13 happening?

14 A. Well, there are other -- a lot of other sectors that
15 depend on manufacturers either as a customer for their
16 products or services or that are -- whose revenue, whose
17 funding depends on the money that is spent by people
18 employed in manufacturing or investments by manufacturing
19 in the local community.

20 If we see an increase in energy costs that have to be
21 wholly absorbed by a manufacturing operation, which would
22 be the case if they can't pass these costs along in terms
23 of higher prices, then that money has to be reallocated
24 somewhere, either in terms of lost employment income, lost
25 investment or lost demand for the goods and services

1 provided by other sector of the community.

2
3 As I said in my previous statement, that you are looking
4 at a factor here for every dollar lost out of the value
5 generated by manufacturers, the multiplier would suggest
6 that over a period of time there is going to be \$3.30 lost
7 to the entire New Brunswick economy, either on the part of
8 suppliers in this economy or on the part of communities or
9 other types of businesses that depend on the money being
10 spent by employees of manufacturers or the taxes paid by
11 manufacturers or the investments that manufacturers make
12 in the New Brunswick economy.

13 MR. LAWSON: Those are all the questions I have on direct.
14 Thank you.

15 CHAIRMAN: Mr. Gorman, do you want to come up to the front,
16 sir?

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

18 CROSS EXAMINATION BY MR. GORMAN:

19 MR. GORMAN: Good afternoon, Mr. Myers. My name is Raymond
20 Gorman. I guess I introduced myself to you through the
21 lunch break and I will be questioning you on behalf of the
22 Municipal Utilities.

23 Q.9 - First of all, I just want to briefly go through the
24 evidence that you have given here this afternoon before I
25 deal with your pre-filed evidence.

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You mentioned early on a \$3.30 multiplier and I wasn't sure where you got that figure. Could you explain that to me, please?

A. That's calculated from Statistics Canada. The statistics come from Statistics Canada for New Brunswick. And it's simply the ratio of total sales -- total shipments divided by value added, which is the amount of money actually raised by -- or by companies. It goes into labour costs - or labour paying -- labour compensation and the money available for cash flow.

So the multiplier is -- again statistics are from Statistics Canada. And --

Q.10 - Is it -- I am sorry.

A. Sorry. Go ahead.

Q.11 - Is that a number that I would find if I went to StatsCanada, because there is no filed evidence to that effect? So would I find that number -- did you have to compute it from a number of different reports from StatsCan?

A. The statistics are available in the annual survey of manufacturing from Statistics Canada and it's simply the value of shipments divided by value added.

Q.12 - In your evidence here this afternoon, you referred to surveys with some of your members and I believe you said

2 that 30 percent -- and this was Canada-wide -- listed energy
3 as an important factor in determining where to locate, is
4 that correct?

5 A. Oh, it's somewhere in here.

6 Q.13 - And I am just referring to the oral evidence that you
7 gave just a few minutes ago.

8 A. That's right. 30 percent across Canada.

9 Q.14 - And I understood your evidence to be that it was higher
10 in New Brunswick?

11 A. That's right.

12 Q.15 - So let's start with the Canada-wide, if it were 30
13 percent that listed energy as an important factor, would
14 it not stand to reason that 70 percent did not list it?

15 A. Yes, as an important location factor. We asked companies
16 to list the top three factors that were determining their
17 investment location decisions. So 70 percent would not
18 have listed it among the top three.

19 Q.16 - It may have been on their list somewhere, for example,
20 if you had given them a list of 18 or 20 items, they would
21 have ranked it, but you said what are your top three?

22 A. That's right.

23 Q.17 - And across the country 70 percent didn't list it at
24 all?

25 A. That's right.

2 Q.18 - And New Brunswick I think that number would be more
3 like 45 percent that did not list it?

4 A. That's right. Particularly those companies in which
5 energy cost would not be a major component or cost
6 structure.

7 Q.19 - Now how many companies in New Brunswick participated in
8 your surveys?

9 A. Sorry. There are 42 manufacturers in New Brunswick who
10 participated in the survey.

11 Q.20 - And that would be out of a total number of how many
12 manufacturers that would have been sent out a request to
13 participate?

14 A. I think the response rate across Canada was 15 percent of
15 the people who were asked to participate.

16 Q.21 - And do you have any reason to believe the response rate
17 was any different in New Brunswick?

18 A. No. No, I have no evidence to show what the response rate
19 was particularly in New Brunswick.

20 Q.22 - Now one of your comments or your concerns was that
21 manufacturers would have -- cannot pass on increases to
22 their customers?

23 A. That's right.

24 Q.23 - Would that not be true for all customer classes, that
25 they wouldn't have any where to pass it on to?

2 A. No. In fact what we see in many businesses is higher
3 costs are being passed on to customers just as part of the
4 price increases there it's not true. In many of the
5 services industries, for instance, I don't have the -- I
6 don't have the price change numbers available now, but the
7 fact that consumer prices are up by 3.6 percent on a year-
8 over-year basis suggest that there are businesses that are
9 passing higher costs onto customers.

10 Q.24 - And there are other businesses however that certainly
11 could not pass it on. It would depend on the level of
12 competitiveness of the industry?

13 A. Yes, that's true.

14 Q.25 - And if we were to take residential customers, for
15 example, and particularly let's say residential customers
16 on fixed income, they wouldn't have any way to absorb this
17 other than to dig deeper, would they?

18 A. No, that's right.

19 Q.26 - Well then do you agree with the general proposition
20 that I guess as a starting point that everyone should pay
21 their own way?

22 A. What do you mean by pay your own way?

23 Q.27 - Well, the cost or your share, or the cost of producing
24 energy for any particular class or group of customers?

25 A. I am -- I am really not sure what the -- what you are

1
2 asking me to respond to here. I am certainly not an expert in
3 terms of setting -- setting rates here. I am just -- my
4 evidence is mainly what the impact of higher costs would
5 be on the manufacturing sector.

6 Q.28 - Then would it be fair to say you have no opinion as to
7 whether or not everybody should pay their own way?

8 A. I probably do have an opinion. Although I am not --
9 certainly not an expert on that. And I find it difficult
10 to -- I really find it difficult to understand what you
11 mean by pay your own way.

12 Q.29 - Well a hundred percent of the costs of providing the
13 product to you?

14 A. I heard earlier on that there may be policy objectives or
15 policy interests served in not having certain classes pay
16 their own way. I would defer that -- it's not in my --
17 not my arena to make those decisions based on policy.

18 Q.30 - So you are not suggesting then that any particular
19 class here should be subsidized by another class?

20 A. I am not -- no, I am not -- I am not suggesting that in my
21 evidence.

22 Q.31 - And I guess if I took your evidence as a whole, you are
23 suggesting that perhaps -- maybe you are suggesting a bit
24 of a hardship case for the manufacturing sector, but if in
25 fact things were to turn around say the middle of next

1
2 year, all other things being equal, the dollar goes down and
3 things turn around and there were periods of very high
4 income, would your sector pay any more for their energy
5 under those circumstances?

6 A. Then the increases in energy cost would be -- the
7 manufacturers would be able to absorb those more readily
8 under those circumstances.

9 Q.32 - It would always be dealing with historical figures in
10 that sense, wouldn't they?

11 A. Well, yes, in terms of looking at -- if you are trying to
12 project ahead here in terms of what -- what is likely to
13 happen in terms of prices and overall costs. But if you
14 look at -- if you look back over the last 15 years, I
15 don't think you will see even with the higher dollar and
16 higher prices on average manufacturing business costs have
17 out -- continued to outstrip pricing over the past 15
18 years and energy costs have -- over that period of time
19 have been increasing significantly, more rapidly than
20 selling prices across manufacturing.

21 Q.33 - Could I refer you to exhibit A-3. Do you have that in
22 front of you? I am looking at the direct evidence of Neil
23 Larlee.

24 A. What --

25 Q.34 - Under exhibit A-3, there is a tab says, Direct Evidence

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of Neil Larlee.

A. Okay.

Q.35 - And attached to -- sorry, at the back of Mr. Larlee's evidence at page 4, there is a table there entitled, Table 1, 2005-'06 Class Cost Allocation Study Results?

A. Right.

Q.36 - You see that. Can you tell me, the group that you represent with the CME, which of the different items that are listed under rate class, which of the different classes would be members of your group, which for example residential would not be members of your group?

A. No. Our members would fall in the small industrial, the large industrial and I believe the general service I.

Q.37 - And would you agree that some of your customers would take service from the municipal utilities, and therefore, could also fall into the wholesale rate?

A. I -- I -- that may be true. I am not an expert in how that -- what categories -- who would fit into each.

Q.38 - Sure. Would you agree that some of the people or members of your organization would be situate within the cities of Saint John and Edmundston?

A. Yes.

Q.39 - And if you had a customer who was taking under a wholesale rate and the wholesale were charged more than

1
2 the industrial rate, do you not agree that those particular
3 members of your organization would have to have a higher
4 rate increase passed onto them?

5 A. I, again, am not an expert in rate setting. I am just
6 reporting what the impact of a higher -- or a higher
7 energy costs or higher electricity costs would be. They
8 would certainly have negative impacts on small
9 manufacturers, as well as large manufacturers.

10 Q.40 - So I guess effectively you don't know the answer to
11 that then?

12 A. No.

13 Q.41 - Could I refer you to within the same exhibit A-3, I
14 want to refer you to schedule 6.1. Do you have that in
15 front of you?

16 A. Yes, I do.

17 Q.42 - I am going to refer you to column 5 entitled, Total
18 Costs. Do you see that?

19 A. Yes.

20 Q.43 - And if you go down to line 7, that deals with large
21 industrial?

22 A. Yes.

23 Q.44 - And if you see where the two lines intersect, do you
24 agree that Disco's CCAS allocates to large industrial
25 class, 315,299,000?

2 A. Yes, I see that.

3 Q.45 - Now if you look at column 1 under Fully Allocated
4 Revenue, do you see that?

5 A. Yes.

6 Q.46 - And if you go down to line 7, Large Industrial, would
7 you agree that the numbers 300,571,000?

8 A. Yes.

9 Q.47 - So do you agree based on those numbers that it would
10 cost Disco \$14,728,000 more to produce electricity for the
11 large industrial class, than it will recover from it?

12 A. Yes.

13 Q.48 - Mr. Myers, I have reviewed your report I guess which
14 has been marked as exhibit CME-1. And I have listened to
15 your evidence. I don't see anything in your evidence
16 challenging the allocation of 315,299,000 as to the total
17 cost to produce energy used by the large industrial class.
18 And just to be clear, I want to be sure on this issue.
19 Are you bringing forward any issue about the
20 appropriateness of that allocation of 300,299,000 in costs
21 to the large industrial class in your evidence?

22 A. No, I am not. My evidence doesn't deal with that rate
23 allocation.

24 Q.49 - So I guess in terms of your evidence then would you
25 agree that maybe the issue we are talking about here is

1
2 the appropriateness of setting a target revenue for the large
3 industrial class that's approximately 300,000,000 where
4 costs are approximately 315,000,000, would you say that's
5 correct?

6 A. Well, I am using that as an example. The estimate here of
7 the additional cost of bringing that -- bringing the
8 revenue cost ratio to unity is the basic estimate that we
9 are using here to look at the impact on manufacturing or
10 economic activity. So that is the -- that's the number we
11 are using as an estimate for the example.

12 My evidence though is basically one that focuses on what
13 the potential impact of any increase in electricity or
14 energy costs are on the manufacturing and on the economic
15 sector in New Brunswick.

16 Q.50 - But we have no disagreement that it would cost
17 \$15,000,000 to bring it to unity, give or take?

18 A. Yes, that's our estimate.

19 Q.51 - So would you agree subject to check then that the fully
20 allocated revenue from large industrial proposed in the
21 CCAS is approximately 5 percent less than the total cost?

22 A. Yes.

23 Q.52 - So would you agree then that we are not talking about
24 any cost base issues here? Really the issue we are
25 dealing with relates to reduction in rates for the large

1
2 industrial class that's based on some other factors, other
3 than allocated costs?

4 A. Well, I think the issue is that the design of that
5 allocation and the formula then is going to have -- will
6 have an impact on -- on rate increases that may be coming
7 in the future, as well as, the -- whatever the immediate
8 impact would be of a change in the ratio.

9 Q.53 - Sure. But I guess the point of my question was as to
10 whether or not there is any cost base issues here. You
11 don't disagree with the numbers set forth in schedule 6.1,
12 for example?

13 A. No.

14 Q.54 - So what we are talking about then if you are -- if the
15 first of your evidence is that there should be a break, if
16 you will, to the group of people that you represent, it's
17 based on a hardship case, as I understand it, or some
18 policy issue. Can you point me to any policy issue that
19 should be taken into consideration?

20 A. Well, I think the key policy issue is in -- particularly
21 in respect to the large -- larger industrial customer, is
22 the issue that if that -- any increase in -- or increases
23 in electricity costs will not only affect their operating
24 decisions, but those of their customers and those of the -
25 - those of the communities in which they

1 - 1721 - Cross by Mr. Gorman -

2 are operating.

3 We were saying before that costs are not being passed onto
4 consumers in terms of higher prices, but costs are
5 certainly paid by consumers in the form of lost jobs if
6 operations are shut down, costs can also be passed on in
7 terms of lost investment and lost funding for communities.

8 So I think the key policy decision here -- or key
9 policy issue is the importance of the multiplier of the
10 manufacturing sector and the implication that a negative
11 impact on the operations of large industrial facilities
12 would have not only on their facilities, but on the entire
13 New Brunswick economy. Again, this is the largest
14 multiplier of any single business sector in the province.

15 Q.55 - Now this sounds to me -- or your response sounds to me
16 quite frankly more like a statement or an argument, rather
17 than a policy. And I am wondering -- and I guess the
18 thrust of my question was can you point me to any policies
19 that would support a reduced rate for the industrial
20 class?

21 A. I -- well, I mean -- I would hope that policies are based
22 on some degree of economic analysis and economic -- the
23 economic impacts here of what the potential effect of a
24 change in economic activity actually would be. I don't
25 understand in terms of pointing you toward a policy

2 objective other than good economic -- a good understanding of
3 economic fundamentals --

4 Q.56 - You can't --

5 A. -- generating growth.

6 Q.57 - -- but you can't show me or point to me -- I guess what
7 I am asking is to point to any government or public policy
8 that would support what you are saying?

9 A. Well, I think governments make policies in many respects
10 that are --

11 CHAIRMAN: Mr. Myers, would you try and just answer the
12 question. If you are not familiar with any government
13 policies, et cetera, that would support what you are
14 asking for, then just say no, I am not.

15 WITNESS: Well, there are many tax -- tax provisions that --

16 CHAIRMAN: But that's not -- sorry, I am getting into this,
17 and I don't mean to, but that's not government policy.
18 There may be a policy that drives the introduction of that
19 taxing provision, but that's not policy. That's not what
20 this counsel is asking you. So please try and answer the
21 question.

22 WITNESS: Okay. Well, I -- sorry, I misunderstood what you
23 were asking. I am not aware of any particular policy
24 statement.

25 Q.58 - Thank you. I am going to refer you to your evidence

1
2 CME-1. And attached to that is a Power Point presentation, a
3 number of slides. And if I can take you to slide number
4 10 of 19. And I don't believe that they are numbered. So
5 I guess when everybody gets the exhibit up, I will tell
6 you what the title of it is.

7 So if everybody has that CME-1 available, slide 10 of 19
8 is entitled, Factors Affecting Investment Location. Do
9 you have that in front of you?

10 A. Yes.

11 Q.59 - Would you agree that there are 18 factors listed in
12 your chart affecting investment location?

13 A. Yes.

14 Q.60 - And do you agree that energy cost is one of those
15 factors, but certainly not the top factor?

16 A. Yes, that's correct.

17 Q.61 - So would you agree that many considerations are
18 involved when a manufacturer or in fact any employer
19 chooses a location for its facilities?

20 A. Yes.

21 Q.62 - And would it be fair to say that any company making a
22 decision as to where to locate its business would have to
23 consider some trade-offs?

24 A. Yes.

25 Q.63 - And as an example of what I mean, a location, for

1
2 example, that offered the best tax treatment might not
3 necessarily also be the best location in terms of
4 proximity to suppliers or access to skilled labour?

5 A. That's right.

6 Q.64 - Would it be a fair assumption to say that in making a
7 determination to locate in New Brunswick, Disco's
8 transmission, large industrials will probably consider
9 many factors other than energy price?

10 A. Yes.

11 Q.65 - I now refer you to - within the same document, this
12 would be slide -- sorry, I am back to your pre-filed
13 evidence. And this would be the last page of your pre-
14 filed evidence.

15 At lines 18 to 20 of your pre-filed evidence you say, I
16 estimate that \$14,000,000 of that additional revenue is
17 associated with manufacturing industries causing a 3
18 percent rise in total energy bills and a 0.6 percent
19 decrease in cash flow?

20 A. Yes.

21 Q.66 - So if I refer you back to slide 10 of 19, would it be
22 fair to say that a favorable change in some other factors
23 might offset a negative effect associated with electricity
24 price?

25 A. Yes.

2 Q.67 - For example, a change in tax treatment or exchange
3 rates or labour costs?

4 A. Yes.

5 Q.68 - So would it be fair to say that the viability of any
6 industry generally ending in a particular location results
7 in a combination of many factors, such as those set out in
8 your slide 10, many of which are changing over time?

9 A. Yes, that's true. Although at the current time, most of
10 them are changing negatively.

11 Q.69 - But you would agree that they do change?

12 A. Yes.

13 Q.70 - CME received a number of interrogatories from the
14 various parties participating in this proceeding. And
15 would you agree that CME was asked by more than one
16 intervenor, in one form or another, whether or not you
17 have specific information indicating hardship
18 circumstances for some of Disco's transmission large
19 industrials?

20 A. Yes, we were.

21 Q.71 - And would you agree that the reason you did not provide
22 any specific information in the response to those
23 questions?

24 A. That's right. We don't collect specific information from
25 companies along those lines.

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Q.72 - So you are unable to provide us with any examples of that?

A. That's right. Other than anecdotal.

Q.73 - Just a moment. I would now refer you to exhibit CME-2, which is the responses to the interrogatories. And in particular, CME UM IR-5, which states, has any New Brunswick member advised the CME that it is actively considering reduction or termination of its operations in New Brunswick in the near future? If so, has the member indicated that electricity costs are a significant factor in that decision? Approximately what percentage of total industrial load on Disco's system would the customer or customers represent? And do you agree that your response was that no member of CME has advised of any plans to reduce or terminate operations in the near future?

A. That's right. That's information that we wouldn't normally get.

Q.74 - So you don't have any specific information on that issue?

A. No.

Q.75 - Mr. Myers, would you agree that if the Board approves a 95 percent revenue cost ratio for the industrial class out of concern for the general competitiveness of industry in the province of New Brunswick, the benefits would be

1 realized by all members of the class, whether or not they are
2 encountering actual problems in their competitiveness or
3 actual financial problems at the present time?
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5 A. Yes, I think that's -- in terms of the benefit being that
6 there wouldn't be an additional increase in cost here, so
7 yes.

8 Q.76 - So the impact on different members of a class would be
9 different?

10 A. It would be. Depending, of course, on their -- on their
11 electricities and their -- and the overall impact on the
12 total cost structure.

13 Q.77 - So if I can refer you again back to your exhibit CME-1,
14 and this is the last page of your filed evidence, where
15 you state that revenue increase of 15 million for the
16 large industrials would be required for transmission large
17 industrials to bring the revenue cost to unity, do you see
18 that?

19 A. Yes.

20 Q.78 - Do you understand that the idea of class cost
21 allocations is effectively to get to unity or a zero sum
22 gain?

23 A. Again, I am not an expert in defining rate.

24 Q.79 - Oh, okay. Well then do you understand that costs and
25 revenues essentially should equal unity, and therefore,

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2 costs that aren't recovered from one class would be recovered
3 from another?

4 A. I appreciate that costs would be -- would have to be
5 recovered from some other class. Whether or not the ratio
6 should be aimed at unity or not, that's not my expertise.

7 Q.80 - Well, okay. Then do you agree that in supporting a
8 revenue to cost ratio of 5 percent below unity or in fact
9 any amount below unity for transmission, large
10 industrials, you are in effect supporting higher ratios
11 for other customers in New Brunswick?

12 A. Yes. Some.

13 Q.81 - And in this case, the amount involved is \$15,000,000?

14 A. That's correct.

15 Q.82 - And that would have to be paid by other customers?

16 A. Yes.

17 MR. GORMAN: I have no further questions. Thank you, Mr.
18 Chairman.

19 CHAIRMAN: Thank you. Mr. Hyslop, do you have any?

20 MR. HYSLOP: Mr. Chair, we have no cross examination.

21 CHAIRMAN: Thank you.

22 MR. SOLLOWS: Thank you, Mr. Chair. Mr. Myers, as I look
23 through your Power Point presentation, I see a variety of
24 plots of indices, but I don't see any references as to
25 where -- from whence they come. Like if they are

2 StatsCanada data, normally I would expect to see the data
3 vector number or something. Have you provided that in
4 terms of working papers?

5 WITNESS: Most of the reference to the sources of the data
6 have been provided in the response to the interrogatories.
7 They are all from Statistics Canada.

8 MR. SOLLOWS: But they are specific references. So I can go
9 into the CANSIM database and pull down stuff that I
10 require -- as required?

11 WITNESS: Yes, as a response to the interrogatories. Sir,
12 in some of the instances, the factors affecting investment
13 location is taken from our CME Management Issue Survey.
14 In other areas, these are calculated as a result of ratios
15 or calculations that are based on Statistics Canada data.

16 MR. SOLLOWS: Thank you. I think it was identified as page
17 4 of your direct evidence, lines -- question and answer
18 starting at line 17 and ending on line 26.

19 WITNESS: Yes.

20 MR. SOLLOWS: When I look at the answer, you are indicating
21 -- the last sentence says -- or in the paragraph it says,
22 paper manufacturing alone consumes 30 percent of the
23 province's electricity, including mining, oil and gas. 45
24 percent of the province's electricity is used for
25 manufacturing.

2 Now, so that says 15 percent goes in mining, oil and gas.

3 Are you aware of the users here? And, you know, in terms
4 of mining, where the big requirement for electricity is in
5 mining in New Brunswick?

6 WITNESS: I am just going to refer to this chart here
7 showing the electricity consumption for New Brunswick by
8 sector. The mining, oil and gas sector are those -- these
9 are statistics again from Statistics Canada broken down
10 into various components of economic activity. Mining, oil
11 and gas, according to Statistics Canada represents about 3
12 percent of the 55,000 terajoule consumption of electricity
13 in New Brunswick. Paper for 30 percent. And other
14 manufacturing activity for 12 percent.

15 MR. SOLLOWS: So you say it's 3 percent and not 15 percent?

16 WITNESS: Well, paper for 30 percent. Mining, oil and gas
17 and other manufacturing for the remaining 15 percent.

18 MR. SOLLOWS: Oh, you are missing the word, other
19 manufacturing, in that sentence, are we? I guess what I
20 am getting at is we have heard in this hearing that one of
21 the things that's driving electricity costs up seems to be
22 the cost of natural gas fire purchase power, and the best
23 of my ability I think the contracts are with the members
24 of your own association. And so really aren't we going
25 around something of a circle here, because the

2 distribution company has signed contracts, or the power

3 company has signed contracts to buy natural gas fired

4 electricity from some of your members passing those costs

5 on. Don't they really have to pass them back? Would it

6 not be fair to pass them back also to your members?

7 WITNESS: Well if you are referring to the oil and gas

8 sector here in particular, this is the sector that

9 produces the gas, the natural gas. It's not the

10 distributor of the gas. This is the production of natural

11 gas or oil and gas --

12 MR. SOLLOWS: As far as I am aware there is really only one

13 producer of natural gas and a big consumer within the

14 province of that gas and I wouldn't they be able to in the

15 market that exists develop their own cogeneration at the

16 mining and power facility under the public policy that is

17 clearly enunciated?

18 WITNESS: I am sorry. I can't -- I don't have the expertise

19 to answer that particular question about what particular

20 companies are doing in response to a policy.

21 MR. SOLLOWS: Thank you.

22 CHAIRMAN: Mr. Myers, I have just one question. Are you

23 aware of what percentage of New Brunswick income tax would

24 be paid by the group that you represent?

25 WITNESS: I am not aware of that specific statistic for New

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Brunswick. I do know, however, that manufacturing across the country pays 30 percent of the total income tax and employees pay 30 percent of taxes collected in the form of corporate capital and income -- personal income tax.

CHAIRMAN: Would you -- not personal. I am talking about income taxes -- sorry, maybe I misunderstood what you are saying. Would you -- do you have at your disposal or at your fingertips the ability to find that out?

WITNESS: I am not sure I do. I would have to go to the Department of Finance in New Brunswick to find that information. I don't have that with me.

CHAIRMAN: Right. That's fine, if you don't have it. It's all right. Thank you.

MR. DUMONT: Would you know what the rate of return on investment -- the average rate of return on investment of those obvious manufacturers in New Brunswick, the shareholders, what the average rate or return?

WITNESS: I don't know what the average return is in New Brunswick. The average after tax rate of return across the country right now is about 6 percent on cost of capital.

DR. DUMONT: And you wouldn't know what it is in New Brunswick?

WITNESS: No, the numbers are not available from Statistics

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2 Canada at the New Brunswick level.

3 MR. DUMONT: Thank you.

4 CHAIRMAN: Mr. Lawson, do you have any redirect?

5 MR. LAWSON: Yes. Mr. Chairman, just very brief.

6 REDIRECT EXAMINATION BY MR. LAWSON:

7 Q.83 - Just on the chart that was alluded to earlier, I don't

8 know what the page number is identifying the mining, oil

9 and gas, is that more likely the oil refinery, for

10 example, in New Brunswick, is that what this refers as an

11 energy consumer, do you know?

12 A. The mining, oil and gas sector is -- would include the

13 refining capacity here as well.

14 Q.84 - Now in the cross examination from Mr. Gorman, the

15 question referred to CME-2, the interrogatory response to

16 the Utilities, Inquiry Number, IR-5, which is in the book.

17 The question was has any New Brunswick members advised

18 CME that it is actively considering reduction or

19 termination of its operation in New Brunswick in the near

20 future? And the answer was no.

21 Does the fact that the answer is no mean in fact that

22 there are not any people considering that?

23 A. No.

24 CHAIRMAN: Mr. Lawson, with frankness, we are -- you know,

25 we are hearsay like crazy here, let's face it, aren't we?

2 You know, I mean I heard a lot of these on the street, too.

3 MR. LAWSON: I am just -- I am not asking -- oh, no, I am
4 not asking hearsay. I am not asking for anything. I am
5 just asking is it a logical conclusion that because they
6 haven't been told that there is nobody considering it.

7 CHAIRMAN: Oh --

8 MR. LAWSON: Only that conclusion. I am not going to ask
9 him --

10 CHAIRMAN: Is Mr. Lawson's answer correct? Thank you very
11 much. Any more questions, Mr. Lawson?

12 Q.85 - And just finally reference was made to the \$15,000,000
13 dollars and you referred to the exhibit -- I had forgotten
14 who it was, Mr. Little, I believe it was, Disco with
15 respect to the \$15,000,000. Do you have any knowledge
16 specific to that \$15,000,000 amount required to take the
17 unit -- to bring it to unity, or did you assume that that
18 number was correct for your evidence?

19 A. I assume that was correct, yes.

20 MR. LAWSON: That's fine. That's all the questions. Thank
21 you.

22 CHAIRMAN: Thank you, Mr. Lawson. Mr. Myers and Mr. Lawson,
23 I don't want you to leave here thinking that the very
24 thing you have given testimony about today is not of great

2 concern to this Board, but we do have to set just and

3 equitable rates and that includes all the customers of NB
4 Disco.

5 Anyway thank you for your testimony. You are excused. We
6 will take a 10 minute recess.

7 (Recess)

8 CHAIRMAN: There are at least two parties who have been

9 waiting for this for sometime. I have distributed a few
10 hard copies to folks who are leaving, airplanes to catch
11 and whatnot.

12 This is in reference to a matter of a motion by Rogers
13 Cable Communication requesting the New Brunswick Board of
14 Commissioners of Public Utilities establish a rate for
15 cable attachments to the electric power poles of New
16 Brunswick Power Distribution and Customer Service
17 Corporation.

18 Background. The New Brunswick Power Distribution and
19 Customer Service Corporation ("Disco") applied to the New
20 Brunswick Board of commissioners of Public Utilities
21 ("Board") pursuant to section 101 of the Electricity Act
22 ("Act") on March 21, 2005 for approval of a change in its
23 charges, rates and tolls for the test year of 2005-2006
24 ("Application"). The increase in rates is sought in the
25 Application -- excuse me -- correction.

2 By the way the written text prevails here.

3 The increase in rates sought in the Application exceed the
4 amounts described in section 99 of the Act.

5 In a letter to the Board dated May 5, 2005 Rogers Cable
6 Communications Inc. ("Rogers") requested that the Board
7 grant it formal intervenor status in respect of the
8 Application and requested the Board establish a rate for
9 cable attachments to the electric power poles of Disco
10 ("Pole Attachment Rate").

11 In a letter to the Board dated May 13, 2005 Disco opposed
12 the granting of formal intervenor status to Rogers on the
13 grounds that the Board lacked jurisdiction to establish a
14 Pole Attachment Rate.

15 During the Pre-Hearing Conference in respect to the
16 Application the Board heard substantial arguments from
17 Disco and Rogers on the mater of granting Rogers status as
18 a formal intervenor. The Board subsequently granted
19 Rogers formal intervenor status and stated that it would,
20 in due course, set a date for consideration of Disco's
21 assertion that the Board lacked jurisdiction to establish
22 the Pole Attachment Rate. That argument occurred on
23 October 6, 2005.

24 The Board heard from Disco, Rogers, the Municipal
25 Utilities, and the Public Intervenor. Disco and Rogers

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submitted written briefs in support of their respective

submissions that reiterated and expanded on the arguments and submissions made at the Pre-hearing Conference which also addressed the jurisdictional issue.

Relevant to matters in issue in the present motion is a decision of the Supreme Court of Canada in *Barrie Public Utilities v. Canadian Cable Television Assoc.* 2003 SCC 28.

In that decision the Court determined that the CRTC did not have jurisdiction to provide access to or set rates for telecommunications company use of electric power poles owned by electricity utilities. As a result jurisdiction over such matters is a purely provincial matter.

Facts relevant to this motion. As a part of the March 21, 2005 Application Disco filed a new schedule of charges, rates and tolls for which it was seeking Board approval.

On June 6, 2005 Disco requested and received approval from the Board to amend the Application to seek approval for a new schedule of charges, rates and tolls for the fiscal year 2006-2007 to be filed with the Board on or before October 1, 2005 ("Amended Application"). The revised new rate schedules were filed with the Board on October 1, 2005 ("Schedules"). Subsequently, Disco filed with the Board, on October 11, 2005, a binder containing evidence in support of its revenue requirements entitled

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2 "Evidence - Revenue Requirement, 17 October, 2005, Volume 1 of
3 1, Board Reference: 2005-002 ("Evidence").

4 Disco advised the Board in its submission on October 6,
5 2005 that it and the New Brunswick telephone service
6 provider Aliant had entered into a Joint Use Agreement in
7 the 1990s governing matters related to the use by each of
8 them of the others poles. In addition, Disco advised that
9 late in 1996 the parties entered into a sub-agreement
10 regarding third party use of the poles and advised that
11 Rogers had, pursuant to such sub-agreement, reached
12 agreement with Aliant on the use of Rogers of the Disco
13 and Aliant poles. Finally, Disco advised that it
14 terminated the sub-agreement on third party attachments
15 with Aliant and was now requiring Rogers to negotiate the
16 use of Disco's poles directly with Disco. Both Disco and
17 Rogers agreed that the termination of the third party sub-
18 agreement by Disco was not in issue in this Application or
19 in the present motion. However, it is the termination of
20 the third party sub-agreement and the need for Rogers to
21 negotiate directly with Disco, that prompted Rogers to
22 seek intervenor status in the present Application and to
23 request the Board establish the Pole Attachment Rate. An
24 additional aspect of Rogers request is that it has been
25 unable to negotiate a Pole Attachment Rate satisfactory to

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it with Disco.

Disco, in response to Board information request number 2 (Exhibit A-12), provided a "Class Cost Allocation Study Review of Distribution Allocations, December 2004". That study states that Disco owns 343,000 poles and Aliant owns 200,000 poles. In its submission Rogers states that 108,904 of the Disco poles are in issue between Disco and Rogers.

Disco's primary revenue source is in the charges, rates and tolls it imposes for the sale of electricity to retail customers, large industrial customers and distribution electric utilities. In addition Disco receives revenues from other sources.

In the direct evidence of Lori Clark, at page 9 of the Evidence, Table 5E is provided. It is entitled "NB Power Distribution and Customer Service Corp. Forecast Miscellaneous Revenue, Fiscal Year Ending March 31 (2006-2007) ("Miscellaneous Revenues)". Table 5E provides a list of six miscellaneous revenue items, their dollar value and is followed by an explanation of each item. Included in the list is an item referred to as "Other". That item covers revenues from (1) miscellaneous third party arrangements, (2) tree trimming services, (3) gain on the sale of fixed assets, and (4) "services provided

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under a Joint Use Agreement with a telecommunication utility".

The Schedules were filed as a part of the Amended Application and appear in the Evidence as Attachment 2A, RSP N-23 is found at page 23 and, under the heading "Rental Facility Rate Schedule", rates are provided for: (1) Water Heaters, (2), Area Lighting (3) Street Lighting and (4) Pole. The pole category is described as: "That category os Customers renting poles from NB Power. "(R F Rate Schedule)".

Disco holds a license issued by the Board pursuant to Part V, Division A of the Act authorizing it to conduct activities described in paragraph 86(c) thereof.

Issues. The Board considers there are three substantial areas it should address in determining its jurisdiction in this mater:

(1) The interpretation that is to be placed on section 97 of the Act in respect of the use of the term "services" as used in that section.

(2) The inclusion by Disco in its Amended Application a request for approval, in its Schedules, of a rate relating to pole rentals.

(3) As Disco is licensed by the Board pursuant to Part V, Division A of the Act, it may be in the public

2 interest that the Board amend Disco's license to add a
3 condition requiring Disco to provide Rogers with access to
4 electricity power poles and that the Board approve rates
5 to be charged for such access.

6 First, the Interpretation of section 97 of the Act.

7 The provisions of the Act relevant to the submissions of
8 Disco and Rogers in respect of the interpretation to be
9 placed on section 97 of the Act read as follows:

10 Definitions.

11 1. In this Act

12 "distribution system" means a system distributing
13 electricity to consumers at voltages of less than 69
14 kilovolts, and includes any structures, equipment or other
15 things used for that purpose;

16 "standard service" means the electricity provided by the
17 standard service supplier to a distribution electric
18 utility or industrial customer directly connected to the
19 SO-controlled grid at the charges, rates, toll and tariffs
20 authorized under Part V;

21 Subsidiaries of Corporation.

22 Section -- I guess Mr. MacNutt would ask me to say
23 paragraph 4(1). The Lieutenant-Governor in Council may
24 cause the Corporation to incorporate the following
25 subsidiaries of the Corporation under the Business

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Corporations Act.

(d) a corporation under the name New Brunswick Power Distribution and Customer Service Corporation, whose purposes include, in addition to any other purposes owning and operating distribution systems and providing customer services in relation to the provision of electricity through those systems.

Part V, Division B, Distribution Services.

Application. Section 97. This Division applies to the Distribution Corporation in respect to the services provided by it to customers through its distribution system and in respect of electricity provided to distribution electric utilities and industrial customers in its capacity as standard service provider, but does not apply in respect of electricity supplied under paragraph 77(3)(b).

Application for change in charges, rates and tolls.

101(1) If a change in the charges, rates or tolls for its services would exceed the amount authorized under section 99, the Distribution Corporation shall make application to the Board for approval of the change, and shall not make any change until it receives the Board's approval.

101(3) The Board shall, when considering an

2 application under this section, base its order or decision

3 respecting the charges, rates and tolls to be charged by

4 the Distribution Corporation on all of the projected

5 revenue requirements for the provision of the services

6 referred to in section 97.

7 101(5) The Board as the conclusion of the hearing shall

8 (a) approve the charges, rates and tolls, if satisfied

9 that they are just and reasonable or, if not so satisfied,

10 fix such other charges, rates or tolls as it finds it to

11 be just and reasonable, and

12 Collection of charges, rates and tolls.

13 102(1) The Distribution Corporation shall not charge,

14 demand, collect or receive a greater or less compensation

15 for any service that is prescribed in the schedules than

16 are at the time established, or demand, collect or receive

17 any charges, rates or tolls not specified in such

18 schedules.

19 The terms "services", "customers" and "electricity" are

20 not defined. In Part V, Division B no mention is made of

21 "tariff" as is found in Division C, Transmission and

22 Ancillary Services in sections 107, 108, 110 and 111 of

23 the Act.

24 Disco's submission is that the Board is a creature of

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statute and absent express authority in the Act cloaking the Board with jurisdiction to deal with the Pole Attachment Rate, the Board does not have jurisdiction. Disco says that there is no provision in the Act providing that jurisdiction to the Board.

In support of its position Disco says that Part V, Division B of the Act governs the Amended Application and that Division of the Act is the sole authority for the Board to approve the charges, rates and tolls sought by Disco. Disco says the words of the statute must be interpreted in their grammatical and ordinary sense as stated by E.A. Driedger in his text Construction of Statutes, (2nd Edition 1983) at page 87. When applying those rules of statutory interpretation, the word, "services" as used in section 97 must apply solely to electricity services. That is the only interpretation that can be placed on the term "services " when the term is interpreted in the context of the entire Act.

Disco says the crucial -- or critical, rather, portion of section 97 is the phrase "in respect of the services provided by it ot customers through its distribution system. To analyze that phrase Disco says you must look at the definition of "distribution system". That definition describes such a system as one that is for

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2 "distributing electricity to customers". Disco also says
3 that the definition of "consumer" supports its
4 interpretation as it speaks in terms of consumption of
5 "electricity that the person did not generate".

6 Based on this analysis Disco says section 97 must be read
7 to say:

8 This Division applies to the Distribution Corporation in
9 respect of the services provided by it to customers
10 through its system for distributing electricity to a
11 person who uses, for the person's own consumption,
12 electricity that the person did not generate..and includes
13 any structures, equipment or other things used for the
14 purpose of distributing electricity.

15 Finally, Disco says that when section 97 is read in that
16 manner that Division B limits the Board to approving rates
17 for the distribution of electricity only. As Rogers
18 proposes to use the poles for the purposes of distribution
19 of cable services and as cable services do not fall within
20 section 97 the Board has no jurisdiction to set a Pole
21 Attachment Rate. That is, a Pole Attachment Rate is not
22 an electricity service rate and therefore the Board lacks
23 jurisdiction to set such a rate.

24 Rogers submits that the Supreme Court of Canada has
25 affirmed "..that words contained in a statute are to be

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given their ordinary meaning. Other principles of statutory interpretation only come into play where the words sought are to be defined as ambiguous." Rogers cites R v. McCraw, (1991) 3 S.C.R. 72, 128 N.R. 299 at paragraph 18 for that statement and relies on the Barrie Case (supra) in support of this contention.

It submits that the word "services" as used in 97 includes all services provided by Disco pursuant to the Act and not just the provision of electricity services. Rogers notes that the services to be provided by Disco pursuant to section 97 are to be provided pursuant to its "distribution system". It refers to the definition of "distribution system". That definition says that a system for distributing electricity includes "structures, equipment and other things used for that purpose". Rogers says electric power poles are clearly and unambiguously a part of the Disco distribution system referred to in section 97 and are an integral part of Disco's provision of the services addressed in that section.

In turn Rogers says that the provision by Disco of space on its poles to a cable company is a service provided by Disco to customers through its distribution system.

Finally, that there is nothing in the Act which suggests that the plain and ordinary meaning of section 97

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2 should be read down to exclude the provision by Disco of space
3 on its poles to cable companies. Accordingly, the Board
4 has jurisdiction to set the Pole Attachment Rate.
5 The New Brunswick Court of Appeal in the case of
6 Charlebois v. the City of Saint John, 2004 NBCA 49 (on
7 appeal at the present time to the Supreme Court of Canada)
8 addressed the current state of the law in New Brunswick
9 with respect to the interpretation of statutes. The issue
10 in that case was the interpretation to be placed on the
11 word "institutions" as used in sections 1 and 22 of New
12 Brunswick Official Languages Act. While dealing with the
13 application of that Act to pleadings and evidence in court
14 proceedings the case did not involve a Charter challenge.

15 The specific question involved a determination of whether
16 the term "institution" in those sections included a
17 municipality. The Court concluded it did not. While the
18 Supreme Court of Canada may disagree with the Court of
19 Appeal's interpretation of the legislative provision the
20 following from paragraph (17) and (18) and paragraph (43)
21 of the Charlebois decision will remain as the expression
22 of the current state of the law in New Brunswick with
23 respect to the interpretation of statutes:

24 A. Principles of Statutory Interpretation:

25 (17) The case law on statutory interpretation

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2 indicates that the Supreme Court of Canada has repeatedly
3 articulated general principles for judicial guidance in
4 the interpretation of legislation. In short, the Supreme
5 Court has long adopted the modern approach to statutory
6 interpretation and completely abandoned the literal
7 approach which was often limited to considering the
8 wording of a statute in its ordinary sense. In contrast,
9 the modern approach to statutory interpretation involves a
10 purposive analysis both of the impugned provision and the
11 statute itself, the history of the specific provision, the
12 overall scheme of the act and, finally, the intention of
13 the Legislature both in enacting the specific provision
14 and the act as a whole.

15 (18) The articulation of this method of statutory
16 interpretation which has been cited by the Supreme Court
17 of Canada as the preferred approach in these recent
18 decisions is stated by E. A. Driedger in his work entitled
19 Construction of Statutes (2nd ed. 1983) at page 87:
20 Today, there is only one principle or approach, namely the
21 words of an Act are to be read in their entire context and
22 in their grammatical and ordinary sense harmoniously with
23 the scheme of the Act, the object of the Act, and the
24 intention of Parliament.

25 ** and

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2 (43) The principle of internal statutory coherence is
3 clearly established and recognized in Canadian
4 jurisprudence. Briefly stated, according to this
5 principle of interpretation, there is a presumption that a
6 statute is coherent and that it is to be construed, if at
7 all possible, in such a way that there may be no
8 incoherence or inconsistency between its provisions and
9 portions. In Driedger on the Construction of Statutes
10 (3rd ed..1994), at page 176, Professor R. Sullivan
11 expressed the presumption of coherence in the following
12 terms:

13 It is presumed that the provisions of legislation are
14 meant to work together, both logically and teleologically,
15 as parts of a functioning whole. The parts are presumed
16 to fit together logically to form a rational, internally,
17 consistent framework. The presumption of coherence is
18 virtually irrebutable.

19 The Board has approached the interpretation of section 97
20 of the Act from a slightly different perspective than that
21 used by Disco and Rogers in light of these rules of
22 statutory interpretation as expressed by the New Brunswick
23 Court of Appeal.

24 Subsection 102(1) of the Act states that Disco is not
25 entitled to collect or receive greater or lesser

2 compensation "for any service" than that which is prescribed
3 in an approved rate schedule. Subsection 101(5)
4 authorizes the Board to approve the applied for charges,
5 rates and tolls if it finds that they are just and
6 reasonable. If the Board does not find the applied for
7 charges, rates and tolls to be reasonable it may set those
8 it considers to be just and reasonable.

9 The Board is directed by subsection 101(3) of the Act to
10 base its order under subsection 101(5) on "..all of the
11 projected revenue requirements for the provision of the
12 services referred to in section 97."

13 Paragraph 4(1)(d) of the Act states, inter alia, that
14 Disco is to be incorporated for purposes "..which include,
15 in addition to any other purposes, owning and operating
16 distribution systems and providing customer services in
17 relation to the provision of electricity through those
18 systems".

19 If the provisions of section 97 are to be read as limited
20 to the provision of electricity services only there will
21 be lack of coherence and an inconsistency between
22 paragraph 4(1)(d), section 97, and subsections 101(3),
23 101(5) and 102(1). That is, when the provisions of
24 section 97 are examined in light of all the provisions of
25 the Act the term "services" as used in section 97 must

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2 be interpreted as applying to more than simply the supply of
3 electricity. If otherwise, Disco should not charge and
4 receive revenues for the services described in
5 Miscellaneous Revenues. Subsection 102(1) limits Disco to
6 receiving compensation only for those services identified
7 in an approved rate schedule. Unless Miscellaneous
8 Revenues are included in charges, rates and tolls for
9 which approval is sought the Board would not be taking
10 into account all of the projected revenue requirements for
11 the provision of section 97 services contrary to
12 subsection 101(3). If the Board were to ignore such
13 revenues it would result in the Board approving charges,
14 rates and tolls which are not just and reasonable contrary
15 to the requirements of subsection 101(5).
16 Accordingly, the Board considers that section 97 includes
17 authority for the Board to establish the Pole Attachment
18 Rate.

19 (2) Inclusion in the rate schedules for which approval is
20 sought of a "Rental Facility Rate Schedule".

21 Disco was incorporated pursuant to the Business
22 Corporations Act of New Brunswick and as such has, as
23 provided in that statute, all the powers of an ordinary
24 corporation and person. Paragraph 4(1)(d) of the
25 Electricity Act, as just described, identifies several

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2 purposes for the incorporation of Disco. Section 76 of the
3 Act designates Disco as the exclusive standard service
4 supplier for the Province. Section 77 requires the
5 standard service supplier to provide standard service to
6 all distribution electric utilities and industrial
7 customers. However, those provisions do not limit Disco's
8 business to those activities.

9 If Disco, as an ordinary business corporation, engaged in
10 business, charged for services and received revenue in
11 respect of activities not covered in the Schedules for
12 which approval is sought, it could maintain that such
13 activities would not be subject to Board review pursuant
14 to the Amended Application because they would not fall
15 within section 97 of the Act.

16 As describe above Disco objects to Rogers' request that
17 the Board establish a Pole Attachment Rate on the ground
18 that it is not based on the provision of "electricity
19 services" as required by section 97 of the Act.

20 Notwithstanding that objection, Disco has elected to
21 include in the Evidence the Miscellaneous Revenues. A
22 review of the revenue sources described in Miscellaneous
23 Revenues indicates that not all are directly related to
24 the provisions of "electricity services" and relate more
25 to corporate operations and other business arrangements.

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2 Included under "Other" is a revenue item described as:

3 "services provided under a Joint Use Agreement with a
4 telecommunications utility". That is, rental fees, not
5 the provision of electricity services.

6 In addition, Disco has, in the Schedules forming a part of
7 the Evidence (page 23 of Attachment 2A) included the RF
8 Rate Schedule as described above. Included is a rate for
9 pole rentals. The Schedules describe the rates for which
10 Disco seeks the Board's approval in the Amended
11 Application.

12 The Board notes the pole rental rate category in the RF
13 Rates Schedule provides for the rental of whole poles. It
14 considers it to be unduly restrictive to suggest that this
15 category must be limited to the rental of whole poles and
16 not to the rental of portion of a pole. Accordingly, the
17 Board considers that this category includes rental of a
18 portion of a pole.

19 The Board has reached the conclusion that Disco's claim
20 that the Board lacks jurisdiction to set the Pole
21 Attachment Rate is in direct conflict with its request
22 that the Board approve a rate included in the Schedules
23 for pole rental and the inclusion in its requested
24 revenues those received from Aliant pursuant to their own
25 joint pole use agreement.

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2 The Board has determined that Disco has, for all practical
3 purposes, applied to the Board for approval of a rate of
4 the very kind that it objects to the Board setting. Based
5 on this inconsistency the Board finds that Disco's
6 submission that the Board does not have jurisdiction to
7 set the Pole Attachment Rate fails. Accordingly, the
8 Board considers Disco to have included in its rates for
9 which the Board approval is requested a rate for services
10 which is broad enough to include the Pole Attachment Rate.
11 Based on the analysis of the forgoing two issues the Board
12 concludes that it has jurisdiction to establish a Pole
13 Attachment Rate and directs Disco forthwith file
14 additional evidence as to what it believes to be the
15 appropriate rate.

16 Because of the conclusion reached on the first two issues
17 it is not necessary for the Board to address the third
18 issue. However, the Board did invite Disco and Rogers to
19 address the third issue as part of their submissions. The
20 Board therefore believes it appropriate at this time to
21 include its analysis of that issue.

22 (3) Amendment of Disco's license to add a condition to
23 provide access to its poles by cable companies and to set
24 rates for such access

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2 As mentioned the Board expressly requested Disco and
3 Rogers to comment on the idea that the Board might act
4 pursuant to its licensing authority in Part V, Division A
5 of the Act to find jurisdiction to set the Pole Attachment
6 Rate.

7 The relevant portions of the Act in respect of the Board's
8 powers of licensing are as follows:

9 Prohibitions

10 86 No person shall, unless licenses to do so under this
11 Division.

12 (c) provide or convey, or cause to be provided or conveyed,
13 electricity or ancillary services into, through or out of
14 the SO-controlled grid, or --

15 Application for licence.

16 89(1) A person may apply to the Board for the issuance,
17 amendment or renewal of a license authorizing one or more
18 of the activities referred to in section 86 as specified
19 in the application and shall, with the application pay
20 such fee as is determined by the Board under subsection
21 (2).

22 Condition of licence.

23 90(1) The Board, when issuing, amending or renewing a
24 licence, may specify the conditions under which a person
25 may engage in an activity described in section 86 and may

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specify such other conditions as the Board considers

appropriate, having regard to the purposes of this Act.

90(2) Without limiting the generality of subsection (1),
a licence may contain conditions to address the abuse and
potential abuse of market power.

Amendment of licence.

91 The Board may, on the application of any person or on
its own initiative, amend a licence if it considers the
amendment

(a) to be in the public interest, having regard to the
purposes of this Act, or

(b) necessary to address abuse or potential abuse of
market power.

Disco, in its response to the Board's request for comments
argued that the licensing provisions of the Electricity
Act deal exclusively with transmission matters. The Board
would be exceeding its jurisdiction to invoke the
licensing provisions of the Act to take jurisdiction over
electric pole attachments and rates absent express
authority elsewhere in the Act to do so. It said, contra
to the suggestion made by Rogers, there is no public
interest issue with respect to pole attachments. It says
it is not exercising any market power or monopoly power in
respect of pole attachments or pole rates. Disco

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2 further says that it is not abusing the "market" for
3 electricity or exercising monopoly power in respect of the
4 "market" for electricity. Finally, Disco says that the
5 provision of cable television ("CCTV") services is not an
6 essential service.

7 Rogers said that Disco control sufficient electric power
8 poles in New Brunswick that it is exercising monopoly
9 power in respect of access to them. Access to electricity
10 power poles by CCTV is essential. It is in the public
11 interest that every enterprise who wishes to provide
12 services to the public which logically require access to
13 electricity poles and telephone poles not have to obtain
14 easements and erect its own poles when there are readily
15 available poles to which the services can be attached with
16 no technical interference with or harm to the owner of the
17 poles. It is in the public interest to avoid the
18 proliferation of poles. Accordingly Rogers suggested that
19 the Board could find authority in its licensing powers to
20 address the Pole Attachment Rate.

21 The Board notes that the New Brunswick Electricity Act is
22 patterned on and to some degree drawn from the Ontario
23 Energy Board Act, 1998, S.O. 1998, c.15, (Schedule B)
24 ("OEB Act"). That's referred to as the ("OEB Act")
25 hereinafter. The Board is aware that there is no express

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2 provision in the OEB Act cloaking the OEB with jurisdiction to
3 deal with pole attachment issues. The Board has
4 determined the OEB dealt with virtually the same issue, as
5 is raised in the present matter, in an Order and Decision
6 dated March 7, 2005 (RP-2003-0249). That decision was
7 rendered in respect of an application made pursuant to
8 section 74 of the OEB Act by the Canadian Cable Television
9 Association ("CCTA") for an order to amend the licenses of
10 electricity distributors to provide its members with
11 access to electric poles and establish a rate therefore
12 ("OEB Pole Decision").

13 The Board has reviewed the OEB Pole Decision and finds the
14 reasoning of the OEB on all fours with this Board's
15 appreciation of the situation in New Brunswick.

16 As noted above Disco is licensed by the Board pursuant to
17 Part V, Division A of the Act. Section 90 of the Act
18 provides the Board with authority to impose conditions on
19 a license the Board considers appropriate having regard to
20 the purposes of the Act and to address abuse of or
21 potential abuse of market power. Section 91 provides the
22 Board with authority to act to amend a license on its own
23 initiative if it considers it in the public interest to do
24 so having regard to the purposes of the Act or it if
25 considers it necessary to address abuse or potential abuse

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of market power.

It is clear that one of the overall purposes of the Act is to ensure the provision of electricity to residents of New Brunswick in a safe, reliable and economic manner. It is essential to these objectives that Disco utilize electric power poles. However, it would be uneconomic and wasteful if all utilities and persons seeking to provide services in New Brunswick were required to acquire their own easements and poles in areas already served by electric power poles. It would be appropriate to allow access to electric power poles to provide services provided it can be done without interference with the distribution system.

In New Brunswick Disco and Aliant own virtually all the poles in the Disco operating area and they have a joint use agreement with respect to poles. The Disco power poles are an essential service provided by Disco in delivering services pursuant to the Act. It is not in the public interest that there be a proliferation of poles. The arrangement between Disco and Aliant to share poles for attachment of their respective services it to be encouraged as being prudent and economical. The exclusion of Rogers from that equivalent access to Disco's electric power poles is not in keeping with the provisions of the Act or in the public interest.

2 The Board could amend Disco's license by attaching a new
3 condition. This condition would provide that all cable
4 television companies that operate in the Province shall
5 have access to the poles of Disco at rates to be set by
6 the Board. However, in the present instance it is not
7 necessary to do so because of the findings on the first
8 two issues.

9 That's the end of the Board's ruling. Are there any
10 matters before we adjourn to reconvene I guess it's Monday
11 morning in the Beaverbrook in Fredericton?

12 MR. HASHEY: Mr. Chairman, thank you for your ruling. Is
13 the copy available to us?

14 CHAIRMAN: Certainly is. I am sorry, Mr. Hashey. Certainly
15 is.

16 MR. HASHEY: Thank you for that. And the questions -- I
17 don't believe this impacts CARD? And I have spoken to Ms.
18 Milton earlier today on I guess presumption this could
19 happen and that I would like to have -- maybe come back
20 and make sort of a time table that seems reasonable on the
21 filing of evidence. We have talked about it. And I
22 presume that this would really become then part of the
23 revenue aspect of the hearing?

24 CHAIRMAN: Well, certainly that's the way I looked at it,
25 Mr. Hashey. And that's an excellent suggestion and maybe

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if you just come back sometime next week with that, I think
that would be most appropriate.

MR. HASHEY: We shall do that. Thank you.

CHAIRMAN: Thank you very much. Thank you all. See you on
Monday next at 9:15 a.m.

(Adjourned)

Certified to be a true transcript
of the proceedings of this
examination as recorded by me,
to the best of my ability.

Reporter