

New Brunswick Board of Commissioners of Public Utilities

Pre-Hearing Conference

In the Matter of an application by the NBP Distribution &
Customer Service Corporation (DISCO) for changes to its
Charges, Rates and Tolls

Delta Hotel, Fredericton, N.B.
June 24th 2005, 10:00 a.m.

Henneberry Reporting Service

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CHAIRMAN: David C. Nicholson, Q.C.

VICE-CHAIRMAN: David S. Nelson

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Randy Bell
Jacques A. Dumont
Diana Ferguson Sonier
H. Brian Tingley

BOARD COUNSEL: Peter MacNutt, Q.C.

BOARD STAFF: Doug Goss
John Murphy
John Lawton

BOARD SECRETARY: Lorraine Légère

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CHAIRMAN: A different microphone setup here. You are supposed to wave your hand so that they can identify which mike has to be turned on.

And this is the continuation of the prehearing conference in reference to the application by NB Power Distribution and Customer Service Corporation for changes to its charges, rates and tolls.

Could I have the appearances for Disco please?

MR. HASHEY: For Disco, Mr. Chairman, myself, David Hashey, Terry Morrison as counsel, at the front table Rock Marois, Gaeten Thomas. And behind at the second table is Marg Tracy, Lillian Gilbert, Lori Clark and Navin Bhutani.

CHAIRMAN: Thank you. Canadian Manufacturers and Exporters, New Brunswick Division?

MR. PLANTE: David Plante appearing on behalf of Canadian Manufacturers and Exporters. And also have Al Walker from McCain Foods here.

And as well also note that other members of the CME Energy Committee are also here that are represented either as Formal or Informal Intervenors.

CHAIRMAN: Thank you, Mr. Plante. Conservation Council of New Brunswick? Mr. Coon is not here. Eastern Wind Power Inc.? Not represented. Enbridge Gas New Brunswick Inc.?

MR. MACDOUGALL: Mr. Chair, David MacDougall representing Enbridge Gas New Brunswick Inc. And I'm joined today by Ms. Ruth York of Enbridge.

CHAIRMAN: Thanks, Mr. MacDougall. Energy Probe? Not here. The Irving Group?

MR. BOOKER: Andrew Booker and Mr. Thomas Storrington representing the Irving Group.

CHAIRMAN: Thanks, Mr. Booker. And is the Jolly Farmer with

us today? Not here today. N. B. System Operator. Not one of the hats is present, I guess. Okay. They are not represented today. And Rogers?

MS. VAILLANCOURT: Christianne Vaillancourt representing Rogers Cable.

CHAIRMAN: Thanks, Ms. Vaillancourt. We have some self-represented individuals. Normally it is Mr. Rowinski. Who is here today? Hand up please. Thank you.

MR. ROWINKSI: All by myself, Mr. Chair.

CHAIRMAN: Okay. Great. Thanks. Municipal Utilities?

MR. GORMAN: Good morning, Mr. Chairman, members of the Board. Raymond Gorman appearing on behalf of the Municipal Utilities. I'm joined this morning by Dana Young, Jeff Garrett and Eric Marr.

CHAIRMAN: Thanks, Mr. Gorman. Vibrant Communities Saint John? Not here today. Public Intervenor? How come you get right in the back of the room every time? Do you come late, Mr. Hyslop? Is that it?

MR. HYSLOP: No. We usually try to be early. But found the back of the class was always easier to skip out.

With me this morning, Mr. Chair, is Mr. O'Rourke, Mr. Barnett, Mr. Hegler and Ms. Power.

CHAIRMAN: Thanks, Mr. Hyslop. I used to sit there myself. The professor to my left recognized that I would probably

do that.

Agriculture -- just the Informal Intervenors, to see if we have any of them with us today, the Agriculture Procurer Association of New Brunswick, Canadian Council of Grocery Distributors, City of Miramichi, Flakeboard, NB Genco. Flakeboard is here today? Good. Okay. And do you want to put your name on the record?

MR. GALLANT: Yes. Good morning, Mr. Chair. It is Barry Gallant with Flakeboard. And I'm joined this morning by Pat Burke.

CHAIRMAN: Good. Thanks, Mr. Gallant. Noranda Inc.? Potash Corporation of Saskatchewan? UPM-Kymmene Miramichi?

And Noranda I understand is back there. Do you want to put your name on the record, sir?

MR. PAULIN: Yes. It is Jean-Guy Paulin from Noranda.

CHAIRMAN: Thank you, sir. And Board Counsel? Hand, Mr. MacNutt.

MR. MACNUTT: Peter MacNutt representing the Board, Mr. Chairman. I have with me today Doug Goss, Senior Adviser, John Lawton, Adviser and John Murphy, Consultant.

CHAIRMAN: Good. Thank you. Just a couple of household items to begin with. And then I will go and ask if the

Intervenors have any matters that they wish to bring up.

First of all, Board Staff noted when the questions that were going to be objected to or some restrictions put upon the information being filed therein were supplied to us to begin with, they were simply in the form of the responses. The normal way in the past that the Board has required such matters to be filed, and they were filed that way subsequently, is that the question is repeated on the response sheet itself so that it will -- for instance in the past the applicant would supply the Board and the parties with a binder which would include all the questions and the answers.

And I bring that up just to say that although our procedures document may not be absolutely complete as to how these matters are to go from an administrative point of view, we would ask that all of the parties, if they are not familiar with how things have gone in the past, then please phone the Board Secretary and she will be glad to share that information with you. Or if you have the opportunity, speak with another member of Board Staff and they will do so.

If in fact any of the parties including the applicant wish to change the way in which things are handled

administratively from the way in which they have been in the past, please bring it to the attention of the Board to get our input.

And we have developed over the six or seven hearings in the early '90's and then the three or four of recent vintage, what we up here anyway, consider to be an efficient way of handling it and convenience. So we would appreciate that from all the parties.

There is another thing that I wanted to speak concerning.

This comes as a result of having met with the Board panel yesterday. And that is just to bring a little clarification to the request for confidentiality that may be attached to some of the information which has been recited in the matters we are going to deal with today. Section 133 of the Electricity Act does not exactly track the older sections of statutes that the Board is familiar with. But it is pretty similar. And we interpret and have established our procedure as follows.

First of all, any party that wishes and has any semblance of compliance with section 133 as to the information they want to have held as confidential, simply it says we are going to file this but we are filing on a confidential basis. It is supplied therefore to the Board only at that time and held in a separate filing system.

Then we have discussed on two previous occasions how we decide whether or not something is to remain confidential or some portion of it, et cetera. That is done in reference to the procedure that you have all had an opportunity to look at up until this point in time. And we schedule a separate day or portion of a day just to deal with those matters.

And I hope, as all parties agreed to today, us proceeding with not the complete panel that will hear all of the evidence, that we are able in the future to have the cooperation of the parties who will agree that for instance on a day which would deal with confidentiality matters that they would -- that everyone would agree that not the entire panel need be present. I think that will speed up our process. And we are all trying to do that. And yet certainly four or five of the panel will be ruling on that. So I'm looking forward to that. At that time of that hearing dealing with confidentiality we will deal with any preliminary matters that the parties may bring up.

For instance, it is my understanding that in reference to certain of the interrogatories that claim confidentiality, the applicant may well be perfectly willing to share that with most but not all of the parties

-- I know that occurred in the Nova Scotia precedents that we looked at, et cetera -- and say look, we are quite prepared to divulge all of this information to all of the parties except for A and B.

So on that particular day we will deal with any questions of that nature and proceed from there to an in-camera session whereby if parties are prepared to agree to comply with the rules that we have in our confidentiality policy, all of the parties to the proceeding can look at all of the information that will have been filed with the Board.

And then the Board will ultimately, as a result of that, and argument back and forth as to whether or not the claim for confidentiality sticks. Then we will make a ruling on it and release as much as is possible and put it on the public record.

There are a number of different methods that can be handled to deal with confidentiality issues. And one of them and the most common is to aggregate certain information. Even though in the in-camera hearing we look at all of the information, we don't want to put out customer-specific information.

So we simply aggregate certain costs, et cetera so that no individual customer could possibly be identified.

And yet it will serve our purposes to be able to attribute certain costs to certain classes of customers, et cetera.

But that is all dealt with in the hearing.

There is a good deal of common law that deals with matters of confidentiality and proprietary interest in subject matter. The Board has to be of course guided by that.

And we have to interpret the particular circumstances that we are dealing with and apply the law to that.

And I just note one thing that we are requiring of anyone who does in fact require or ask for confidentiality that it be treated much the same as a request for information under the Freedom of Information Act in front of a Queen's Bench Judge, whereby the party requesting that confidentiality must be terribly specific and not just say this whole document is to remain confidential.

Paragraph 5, the second sentence, the last four words we say are confidential in nature. So the rest of the document can be immediately put in the public forum. And the argument is honed in on that very particular portion of it.

Having said all of the above, this Board is involved in an open public and transparent process. Therefore if we can reasonably do so in light of the individual

circumstances and the applicable law, we will put it on the public record.

And I just draw your attention to the matter of approximately two years ago when we were still blessed with auto insurance. The Board was put in a situation where the insurers said that their statistical evidence justifying their rates was confidential. We heard the motions. We dealt with the matter.

We heard from one at least witness and made our ruling and said even though there might be a small damage done to the applicant, why the public interest outweighed that. And we therefore put it fully on the record.

I only mention that to say then the procedure is that the applicant, if the company or he or she objects, they can appeal that to the court system. And the court system reviews what the Board has done and makes the final ruling on the matter.

Okay. Just a couple of other quick ones. And then I will go around the room. There are two draft schedules that were initiated between Board Staff and Disco staff. On Tuesday of this week I understand is when they came up. And the first one deals with the timing and procedure leading up to both the cost allocation and rate design hearing and the load forecast hearing.

It is my understanding, Mr. Hashey, that that one has been revised a couple of times and was handed out just before we came in here. Then the second one -- you can confirm if my understanding is correct -- the second one dealt with the general revenue requirement hearing which would be off later in the fall.

Go ahead, Mr. Hashey.

MR. HASHEY: That is correct, Mr. Chairman. The earlier schedule there were two dates that were felt that they needed some extra time. And those have been removed from the schedule that was initially sent around.

CHAIRMAN: Yes.

MR. HASHEY: So I think that the last one is the one that we would like to work from. And when we get to that point in the discussion this morning I would have a number of things I would like to say about it.

CHAIRMAN: Okay. And my last couple of points deal just with that. First of all, before we leave here today we will attempt to not set in stone but certainly make firm the dates that are set forth in the process leading up to the CARD and the load forecast hearings.

We can have a general discussion on the second one, that is the revenue requirement hearing. But with frankness I think we can wait until -- let's say the -- my

suggestion would be the commencement of the cost allocation study which is presently tentatively stated to start on the 19th of September.

We can wait till then until we set down in a firm form the procedure and timing for that second hearing. Anyhow we will cover both of those later after we have dealt with the contested interrogatories.

And as well, before we break, and I ask everybody in the room to remind me of it, but we should also set a date when the interrogatories that have gone out, including the ones we are dealing with today, but the others, as to when they will be answered.

Okay. Having said all that, Mr. Hashey, do you have any preliminary matters you wish to bring before the Board?

MR. HASHEY: The only -- possibly on the confidentiality issue that you raised, Mr. Chairman, it seems to me that when you hear Mr. Morrison in relation to the very few objections that we have and the few issues that we are raising as being confidential, that it might well be possible that we could get agreement from the various parties that they could be agreeable to signing a confidentiality agreement and not have to go through the procedure, that there is a possibility there -- and also

of not saying that there is anybody and a number of them that we have any objection to having seen them. That seems to be the direction we are heading in.

CHAIRMAN: Yes.

MR. HASHEY: And I'm hoping that we can save the Board a lot of time if we can get an agreement and say look, we have no problem. We will sign a confidentiality agreement. We are only going to use it for this hearing.

And then the only issue on those would be the in-camera session, presumably as part of the ultimate hearing.

So that is my only comment on that.

CHAIRMAN: I gather, Mr. Hashey, from what you are saying, that Mr. Morrison is going to address that whole subject matter?

MR. HASHEY: Yes. That is absolutely right.

CHAIRMAN: Okay. Perhaps the easy way is then bearing that in mind are there any other preliminary matters that any of the parties might want to bring to our attention now? Or perhaps we would just simply turn it over to

Mr. Morrison.

So if anybody has any other preliminary matters, wave your hand. Mr. Morrison, go ahead, sir.

MR. MORRISON: Thank you, Mr. Chairman, Commissioners. Good

morning.

I think we can probably deal with -- and I will address the confidentiality issues if you will this morning. And I think -- I haven't canvassed everybody in the room. But I think among the Intervenors I have spoken to, we may be able to resolve the confidentiality issue today without having to have, as Mr. Hashey said, come back and have a separate confidentiality hearing.

So I will address that in the course of my comments if that is what the Chairman wishes me to do.

CHAIRMAN: I don't understand that. Frankly there are -- and I speak for myself only. But I think I have a consensus of my Commissioners with me on that. We have read through some of the objections that were given, and which is of course Disco's right to do. And we are really scratching our head as to why that would form a request for confidentiality.

Having said that, from what I hear you saying, is that as long as the parties treated it confidentially, then we might not have to go into a confidentiality hearing. I simply want to caution this, is that we are an open public transparent process.

And if there are in fact matters that, albeit we would have to deal with them with our procedures that are on the

public record, I think my fellow Commissioners and I would rather err on the side of getting more on the record and not taking a blanket approach.

So if I'm understanding you correctly, I think we want to go through that to make sure that everything that can be will be put on the public record.

MR. MORRISON: Well, in light of those comments,

Mr. Chairman, I guess I don't want to turn this into a confidentiality hearing this morning, if that is what you are ultimately going to do.

So I will -- obviously I was prepared to make the points on confidentiality. What I guess I will do this morning is identify those interrogatories which Disco says it should not answer period, and identify -- merely identify those which we would seek to file in confidence and then proceed with the procedure as you outlined.

CHAIRMAN: Give me just a second. I will have to confer with one wing here and then the other one. But I just want to make sure -- all right.

My fellow Commissioners agree completely with what I think I said, which is that if some matter is to be -- the general rule is anything comes before this Board is an open -- it is an open public process.

It will be on the public record. If there is

confidentiality claimed then we are going to have to go through that in-camera process in accordance with our procedure.

And it will be upon the party that is claiming confidentiality to prove to us that it is -- well, the choice between it being confidential and being on the public record is ours to make. And we will make it and see if the public interest is best served by putting it on when you weigh that against the detrimental harm to the applicant.

Okay. Do you want to break to rearrange your -- I do this to you all the time, Mr. Morrison.

MR. MORRISON: I know, Mr. Chairman. I think you take great delight in it. But that is -- I'm waiting for the floor show to start. I think we have a lot of room in between.

Now I thought me and the Intervenors were getting closer together, but apparently not.

No, Mr. Chairman. That is fine. It would certainly simplify what I have to say, that is for sure. I guess I would like to start by saying, you know, if you look at all of the IR's that came out and the various parts of them, there were 379 individual questions. And we have really come down to three IR's of the 379 which we believe Disco ought not to answer.

Now there are a number that we would seek to file with the Board on a confidential basis in accordance with the policy that you have outlined and of course as Board invited that in the June 9th decision.

And I think it is important for everyone to realize that when we file something in confidence, that doesn't mean that it doesn't get scrutinized. And indeed it does get scrutinized by the Intervenors and by the Board, granted with some nondisclosure restrictions.

So I guess I could start with identifying the three interrogatories I guess that we resist answering.

MR. MACNUTT: Mr. Chairman --

CHAIRMAN: Mr. MacNutt?

MR. MACNUTT: -- before Mr. Morrison goes into his identification of the specific IR's, perhaps it would be appropriate to have the binder which is entitled "Objections to Interrogatories of all Parties" dated June 17th 2005 which was filed on June 22 to be marked as an exhibit so that it is on the record and can be referred to as by an exhibit number.

CHAIRMAN: Thank you very much, Mr. MacNutt, in performing your duties extremely well, as you always do. I think I will resist it though.

Because it may be when Mr. Morrison finishes there

will be quite a number that can simply come out of that

binder. So I don't want to impinge upon that process.

You may turn out to be absolutely right. So bear with me.

Go ahead, Mr. Morrison.

MR. MORRISON: Thank you, Mr. Chairman. The first IR that -

- the first of the three IR's that Disco resists producing at all is Public Intervenor IR-17.

And that essentially is a request by the Public Intervenor for Disco to provide third party contracts, power purchase contracts with Fraser Inc., Bayside, Natural Resources and Energy, St. George Pulp and Paper and Grandview Cogeneration Corporation.

In essence what the Public Intervenor is asking Disco to provide are contracts not between Disco but between Genco and third parties. Disco isn't a party to those contracts.

I believe I'm correct in saying that in most jurisdictions where you have third party contracts, a generator has contracts with third parties, those are never required to be filed with the regulator. And indeed it isn't really fair to those third parties. They are not part of this process.

Further, and I think what is most important, is that the third party contracts, the costs that are reflected in

those, or those third party contract costs, are reflected in the PPA's. And it is the PPA pricing to Disco that is relevant to this hearing.

So for those reasons we see no reason why this Board or anyone has to go behind Genco's contracts with third parties. And we object to producing those documents.

CHAIRMAN: All right. I thought you were going to go through them all but not --

MR. MORRISON: Oh, no. I'm at your disposal, Mr. Chairman.

CHAIRMAN: No, no. I will deal with them one at a time.

That is fine. I had one question off the top of my head, is that that is a similar kind of matter that went through the Nova Scotia Board the last time around, as I understand it.

And it was subject to the confidentiality hearing process that they established. And that was the case where one or two Intervenors were excluded from looking at it. That was my understanding.

MR. MORRISON: I'm not intimately familiar with how that was dealt with in Nova Scotia. But after a brief conversation with Mr. Marois I understand -- well, it is a different situation.

That is an integrated facility for one thing. So those costs would be relevant. And the contracts would be

with the party that is before the Board. In this case those contracts are not with Disco.

CHAIRMAN: Okay. And I probably shouldn't do this, Mr. Morrison. But that immediately tweaks me to -- in the initial information that has been filed with us, one of the reasons for the fuel adjustment clause dealt with the increase in price for natural gas.

And frankly, none of Genco's units are fired by natural gas. The only -- to the Board's knowledge the only units that are fired would be subject to these particular five Heritage PPA's that are listed in PI's -- Interrogatory number 17.

Anyhow I'm going to call on the Public Intervenor to -- anything that he or his people might want to say.

MR. HYSLOP: Thank you, Mr. Chair.

CHAIRMAN: Put your hand up.

MR. HYSLOP: Thank you, Mr. Chair. We submit that the objection is not valid. And in particular we would like to make the following comments.

The five contracts in question, according to the evidence, would represent approximately 16 1/2 percent of the 2445 megawatt base assets that are included in Coleson Cove. They are therefore the significant part of the vesting agreement. That is the first point.

But the second point is that apparently the price that is in the agreement, the purchase power agreement, relates to an adjustment or could relate to adjustment to the use of the natural gas. And two of these facilities are the natural gas facilities. And if that is going to be part of the issue, then the point to the Chair is made, is reinforced. That was one of the points that we intended to make.

The next point again is that, you know, these contracts relate to the revenue requirement of Disco. And although we can't change that, they also may well go to the allocation between energy and capacities charges in the allocation itself.

So we think there are some pretty material reasons why some of the details of these contracts should be before the Board. As to the other issues that were raised by Mr. Morrison, he takes the position that Disco is not a party to them.

And the case in Nova Scotia was the case of an integrated utility. Our position on that is -- I thought that that issue had been well covered on the June 9th decision of this Board.

And in particular the statement of the Board in its decision where it was stated that we do strongly believe

that if the NB Power group of companies has information that will assist this Board in establishing fair and equitable rates to the customers of Disco, then that information should be available to this hearing process.

I took the view that the decision was quite clear that the corporate structure, the corporate shell game was -- we didn't have to go back and revisit that. It had been dealt with. And if this is a Genco contract it is material and relevant. It should be one that comes before the Board.

I would however with regard to these contracts, I can sense and see that they may well be the type of contracts that should be subject to a confidentiality hearing. And if NB Disco wishes to make that application that may be fair ball.

But we believe certainly that the issue is material information to the allocation of costs. It is material information to the issue of the revenue requirement. And it is certainly, I think in view of the Board's earlier decision, shouldn't be hidden behind because it is a different company than Disco.

Those are the submission of the Public Intervenor,
Mr. Chair.

CHAIRMAN: Thank you, Mr. Hyslop. Any other Intervenor

anything to say before I go back to Mr. Morrison?

Mr. Morrison?

MR. MORRISON: Thank you, Mr. Chairman.

First I would like to comment on Mr. Hyslop's characterization of the June 9th decision. As I understand the June 9th decision, it is quite clear. It has said that this Board has no jurisdiction over Genco, that the PPA costs really can't be second-guessed. However, if there is information, underlying cost information which is relevant and germane to customer class allocation of costs, that information would be provided to the Board regardless of which member of the New Brunswick group of companies had that information. I have no problem with that, agree with that completely. But Mr. Hyslop says that these costs go to basically cost of service or rate design issues. They don't. The cost of service study or the customer class allocation study relies on aggregate information, aggregate nuclear, aggregate fossil fuel, aggregate hydro. The underlying specific costs are not relied upon in doing the cost of service and rate design study. They are just not relied upon. In addition the whole purpose of having LaCapra come in and review is to provide assurance that those numbers are correct. That is what the LaCapra

study is for.

So it is my submission that Mr. Hyslop is incorrect when he says that the information is required for cost of service. It isn't. And if that is the case then the Board's ruling of June 9th with respect to section 156 applies. And the information ought not to be produced. Those are my submissions on that point.

CHAIRMAN: Thank you. We are not going to go back and forth every time, Mr. Hyslop. But go ahead this time. I will cut you off the next time. Go ahead.

MR. HYSLOP: Well, just as an additional point. And I won't rebut anything that Mr. Morrison just said. One of the issues that is still unknown is the question of the fuel surcharge that is still hanging. But my review or thinking about the fuel surcharge, one of the elements of the fuel surcharge would be the change in the price that has to be paid for natural gas. And as I recall, these are the natural gas combustion turbines that we are dealing with. Thank you.

CHAIRMAN: Thank you, Mr. Hyslop. The Board is going to of course consider that amongst -- Mr. MacDougall, where were you in the first runaround? Go ahead, sir.

MR. MACDOUGALL: Sorry, Mr. Chair. I just had one thought that may be useful. And the reason I wasn't there the

first time around, you may understand some of the entities being listed here have been in the news as potentially having change in ownership. But you will be aware at one point in time we did represent certain of these parties. And may continue to do so.

The only point I wanted to raise was I was wondering if the other parties to these agreements are aware of this discussion about their agreements. Certainly they would have to be notified if there was going to be a discussion made I think about the confidentiality process.

But I'm just bringing to the Board's attention that it may be appropriate that these parties be given an opportunity to comment on their own agreements. And I certainly know some of them are not in the room. Maybe they all are.

And I'm not here representing any of them on this specific point.

I just thought I would bring that to the Board's attention, Mr. Chair.

CHAIRMAN: Thanks, Mr MacDougall. I just want to read from that decision that we did make in reference to 156. And I haven't got the date here. But I think it was the 6th of June, was it, or June 9th.

And I just quote. "We do believe strongly that if the NB Power group of companies has information that will

assist this Board in establishing fair and equitable rates for the customers of Disco, then that information should be made available to this hearing process."

That is not just saying CARD or anything else. It is saying just and equitable rates. And I just point that out at that time.

Okay. Next interrogatory, sir, that you want to --

MR. MORRISON: Yes, Mr. Chairman. It is EGNB 39. And that is a request to provide total generation and total fuel cost for fiscal year ended March 31st 2005 by individual fuel type which is pepcoke, coal, gas, oil, orimulsion, nuclear and hydro or wind. Disco objects to providing that information.

First, as the Board knows, the Orimulsion price is confidential and subject to a binding confidentiality agreement. And I'm advised that similar agreements exist with supplies of the other fuel. However that could probably be dealt with in a confidentiality setting.

More importantly though is the effect this information will have on Genco's ability to effectively and most appropriately negotiate with fuel suppliers.

For example if coal company A is negotiating with Genco and bidding to sell coal to Genco, if they know what Genco paid for coal last year, they would simply bid a

dollar lower than last year's price.

However if they don't know -- let's say last year's price was -- I'm going to say \$55 a ton, but that is probably not very realistic. Let's say a price of \$55 a ton, and they know what Genco paid for that. This year they would probably bid \$54 a ton.

If they didn't know what Genco paid last year then they would probably sharpen their pencils. They might bid much lower. So it is a competitive issue.

CHAIRMAN: Sorry. I don't follow. If that information is shared with the parties here in a in-camera session, the suppliers of coal are not going to have any idea about that information, only the folks in this room will. And if my idea of that in-camera session is that any information that might be made public as a result thereof, will have been tested in its individual bits and pieces and aggregated to be put on the public record, so that it may then be used in the open public forum.

I mean, there would be no disclosure of the actual price paid by NB Power's price for Orimulsion at Dalhousie or its coal for Belledune or for Coleson Cove necessarily as a result of that.

You know, it sounds to me as you are talking about why it shouldn't be made public in a in-camera session.

Sorry. Go ahead.

MR. MORRISON: That is correct, Mr. Chairman. But I think there is a piece of evidence that perhaps -- and I can understand why it may have been overlooked by the Intervenors. We believe that this may be overkill. If you look at the LaCapra report that was filed, it is the May 18th report, an attachment to -- there is a table, table 1 that is available. And really it is a breakdown of fuel costs. It doesn't go into the specific detail that EGNB has requested.

CHAIRMAN: If I might interrupt you there. Let's go into the LaCapra report. Because I don't know necessarily if all of the parties here are familiar with it. And I have -- I'm dealing from a vague recollection of what we spoke about before this hearing process even started and what was put on the public record. But my understanding was, and then you correct me on this one, is that LaCapra was looking at the input into PROMOD which were then followed through by LaCapra and tested. And then LaCapra says yes, these -- the results that have been put on the public record are the ones that were -- they truly represent these inputs which were put in.

Then you have got the tie-in back from the inputs. And are those inputs in fact correct as to exactly what is being paid out by Genco, and looking at the mix of all that. And there you get into the CARD information. But that is as far as LaCapra went.

Now correct me if I'm wrong there.

MR. MORRISON: You are absolutely correct, Mr. Chairman.

And I'm not referring to the LaCapra report with respect to the content of the analysis it did.

I'm only referring to the LaCapra report because as part of that report there is a table that outlines fuel costs.

CHAIRMAN: The fuel costs that are the input into PROMOD, not necessarily -- there is no proof by the LaCapra report independent audit that these have in fact -- the inputs are in fact exactly what is being paid by Genco or otherwise. That is my recollection.

MR. MORRISON: Well, I mean -- and again I don't want to get into a long discussion about the LaCapra report. Because I don't think it is the time for it.

CHAIRMAN: Okay. And that is fine.

MR. MORRISON: It is really an irrelevant issue. But it does tie into the compliance with the PPA and how the pricing is developed.

CHAIRMAN: Oh, I don't dispute that. However let's go back to what this interrogatory and the subject matter of the interrogatory which is the actual prices. And so there I just simply put it to you.

And I'm being a real devil's advocate here. But it is because the Board in toto** wants to see whatever can be reviewed by this group, be it in camera and if possible to put it in the public record.

So what is wrong with the Intervenors and the Board looking at the actual cost figures as requested by IR-39, as I read it, and comparing it with what is in the LaCapra report?

MR. MORRISON: Not to put too fine a point on it, Mr.

Chairman. But I think it is fair for me to say that the sensitivity with respect to this information arises in two regards.

And without calling into question the confidence level in the confidentiality procedure, but with this information, if you know the amount of energy generated and the cost of fuel, individual fuel, it is a very easy calculation to determine the heat rate for a given plant. If you have the heat rate you can usually determine the incremental cost.

For example, if you know what orimulsion is and you

know how much energy is generated by orimulsion, I don't think it takes too much to calculate what the heat rate would be for Dalhousie, for example.

So there is a great sensitivity to the information.

Perhaps it can be dealt with appropriately in a

confidential situation. But I think that is the issue.

CHAIRMAN: Good. Thanks, Mr. Morrison. Anything further?

MR. MORRISON: Not with respect to that one, Mr. Chairman.

CHAIRMAN: Not with respect to that one?

Commissioner Sollows has confirmed that you don't have any problem with releasing -- or you don't have the same problem with releasing the total generation. But it is just the total fuel cost.

MR. MORRISON: As I understand the interrogatory, it is not the total fuel cost. It is the individual fuel cost by fuel.

MR. SOLLOWS: Okay. But not generation. Generation is a matter of public record. You are not --

MR. MORRISON: That is right. No, no. We have no issue with that. But the two pieces together --

MR. SOLLOWS: Right.

MR. MORRISON: So that is the issue.

CHAIRMAN: Okay. I will ask Mr. MacDougall if he has any comments on that. And then I will ask anybody else in the

room. Mr. MacDougall?

MR. MACDOUGALL: Yes. Thank you, Mr. Chair. To start with, Mr. Chair, we, EGNB fully accept that this information should be held in confidence.

So we will have no issue with appropriate confidentiality stipulations for this information. We actually believe that would be totally appropriate in the circumstances.

With respect to the LaCapra independent review, that document does not give Intervenors access to the information or data that they require for the purposes that EGNB requires the information, Mr. Chair.

So that the aggregation or the use of the LaCapra independent review is useful for its purposes but not for the purposes in which EGNB is seeking the information.

I think it would be useful to first off explain why the information is important for a class cost allocation and rate design hearing, so that everyone will know why we want the information. Although we do understand this would be subject to some confidence.

And Mr. Morrison is certainly correct. The information we are seeking is total generation and fuel cost by fuel type. And that is what is in fact particularly important to us.

Since base load plant is being classified in Disco's current model as part energy related, we need to know whether base load plant is being driven more by coal for example than by oil.

Because for the same reason that high load factor customers should have more base load and less peaker cost associated with them, likewise they should have more lower-priced fuels but less higher-priced fuels such as oil or possibly natural gas costs if they are not driving the use of the more expensive fuel.

This information is intimately tied to the capital substitution methodology, the Peaker Credit methodology which is essentially a capital substitution methodology that Disco is using in its class cost allocation study. And it is necessary that there is symmetric and appropriate treatment of fuel types used in the various plants.

So it is very important, from our perspective, if one is to look at a cost allocation study, to be able to ensure who is driving and what rate classes and what customers are driving what use of which fuels, particularly if you are using a Peaker Credit methodology where there is certain fuel types, where you have already decided to classify some of your cost as demand and

energy.

So it is very important then that you get symmetry on the fuel side, so that you know which fuel costs to be able to classify to the various customer classes.

That is the purpose we are seeking the information, Mr. Chair. And that will certainly be the sole and only purpose that Enbridge Gas New Brunswick will use the information for, and will not seek to go any farther in any backwards analysis of the information to determine information that would be inappropriate. And certainly it wouldn't go any further than the in-camera session that might be used to deal with that issue.

But from our expert's perspective this is information that is intimately tied to be able to doing a proper analysis both of the existing class cost of service methodology and determining whether there is a more appropriate cost of service methodology for Disco in its current circumstances as opposed to 15 years ago.

Mr. Morrison hasn't raised any issues with respect to Disco's access to this information. So I'm assuming that isn't an issue.

But just in case it is I will quickly point out to the Board that again in your June 9 decision, as Mr. Hyslop had indicated, you did state that it would require Disco

to provide answers to information requests on costs that underlie the PPA's and any other documents that the Board considered relevant for the purpose of setting just and reasonable rates.

And we believe these are exactly the costs that underline the PPA's as they would tie into a cost of service methodology and rate design hearing.

We also note if there is any concern with access to information from Genco, the statements you did make with respect to the NB Power group of companies, again as Mr. Hyslop had referred to earlier.

And we also reference section 116 of the Electricity Act which gives you the powers and privileges under the Inquiries Act, one of which is your right to require people to attend before you, whose evidence may be material and to bring such materials as you consider appropriate.

And we also reference section 128(2)(b) of the Electricity Act that provides that when inquiring into hearing or determining any matter the Board may request from anyone and require anyone to gather evidence or prepare studies relevant and incidental to the matters over which it has jurisdiction under the Electricity Act.

So we certainly believe the Board has the proper

authority to require the information to be disclosed if in

fact there is any issue raised by Disco in that regard.

CHAIRMAN: Thank you.

MR. MACDOUGALL: Sorry, Mr. Chair, if you have a question.

I just have one final point.

CHAIRMAN: No. Well, I just had a remark. You go ahead.

MR. MACDOUGALL: The one final point I had, Mr. Chair, is with respect to the competitive concerns, you are correct that this is, in this instance, for this question, unlike the earlier question, this is exactly the instance that occurred recently in Nova Scotia with both coal contracts and the natural gas contract.

There was particular sensitivity by the utility about those contracts, particularly their natural gas contract.

And because of that, the Nova Scotia Board did in fact institute the in-camera session process and otherwise to deal with that, a similar process to which this Board has proposed for this hearing through your confidentiality process. I believe it worked.

And the whole purpose of doing it was because the Intervenors did need access to the information while at the same time it was understood that the information shouldn't be put widely into the hands of competitors in the provision of fuels or electricity to that utility.

But that was a situation that was where there was -- the parties themselves I think all understood that the fuel information had to be used by intervenors, but there was some sensitivity to how it may be used.

CHAIRMAN: Thanks, Mr. MacDougall. I was just going to remark, did I hear a hint of EGNB assisting the Board by perhaps providing some technical expertise in this hearing process?

MR. MACDOUGALL: Mr. Chair, it is our -- at the moment we do have an expert retained who is providing us some advice. And that expert may be giving evidence in this proceeding.

CHAIRMAN: Good. Thank you, sir. Anybody from the Intervenor, any further comments on this particular question? Or it is back to Mr. Morrison. Mr. Morrison?

MR. MORRISON: Thank you, Mr. Chairman.

Just to make sure that we are clear, there would be no requirement for this Board to issue any orders or exercise any powers under the Inquiries Act in order to gain access to information.

Of course if this Board issues a ruling, Disco would provide the information and would access the information to provide to the Board. I just want -- there is no question about that.

And that is really the only comment I have in response

to Mr. MacDougall.

CHAIRMAN: Good. Thanks. Next interrogatory?

MR. MORRISON: The last one, Mr. Chairman, is --

unfortunately for me, PUB Interrogatory, it is IR-93. And that is -- it is a calculation of the 6760 Nuclearco price. And the 6760, as you know, is the price that comes into effect under the PPA in March --

CHAIRMAN: Mr. Morrison, I'm going to interrupt you. The

Board has had an opportunity to look at your objection.

We have no problem in withdrawing that question.

We may in the next stage, now that we have an appreciation of why you don't want to provide it, we may ask something on a go-forward basis for later for marginal cost pricing.

But we will certainly withdraw that.

MR. MORRISON: Okay. Thank you, Mr. Chairman.

CHAIRMAN: All right.

MR. MORRISON: At this point, since I have dealt with the three that -- the only three that we were resisting any disclosure on, I would like a few minutes, because of the way we proceeded this morning, to identify those which we are prepared to file in confidence, just so that there is -- this gives me a chance to put my notes together.

CHAIRMAN: Well, absolutely. And I have no problem with us just flipping through the other ones that are here, and be

making a brief comment.

And if any of the Intervenors want to do so as well, doing it and getting it on the record. And we will go from there.

So we will take a 15-minute break now.

MR. MORRISON: Thank you, Mr. Chairman.

(Recess - 11:05 a.m. - 11:40 a.m.)

CHAIRMAN: We took time during our recess to deal with the two IR's that Disco had difficulty with. And the first one I'm referring to is the Public Intervenor's IR-17. And taking into consideration the excellent comment made by Mr. MacDougall, we will require Disco or request Disco to get those contracts that are set forth there, hold them.

We will schedule a day for confidentiality issues, et cetera, that sort of thing. And we will set a date for that and at which time we will provide notice to all of the NUGS or non-utility generators that are listed in that Interrogatory and give them the opportunity to attend at that hearing if they so desire.

And as well, even prior to going into the in-camera session we will give an opportunity for Disco or perhaps Genco, if they so desire, and the named companies to have an opportunity to address the Board to see if in fact

there are compelling reasons why we should not require them to be filed with us, and then go into the hearing.

But I think Mr. MacDougall's suggestion is sound. And we would like to give him the opportunity to address the Board.

In that regard I wonder if Disco could assist us by giving us the coordinates, i.e. the individuals and their e-mail and postal addresses, et cetera of the companies that are not parties to this particular proceeding so we could deliver that notice.

MR. MORRISON: Certainly.

CHAIRMAN: Okay. Thank you.

The next one I return to is Enbridge Gas New Brunswick 39.

And on this one the Board as well will set that same day and require that the information be provided to the Board in confidence now. And it will be made the subject of a confidentiality hearing on that particular date.

Now Mr. Morrison, as we had left it, it was my understanding we had sort of flipped through the ones that you did do. You can give us any comments you might have.

And we will do it that way, if that is okay with the parties.

MR. MORRISON: Yes, Mr. Chairman. I was able to consolidate my notes. I guess first to identify the ones that Disco

has indicated we would like to file in confidence.

And there are a couple of others that we moved from the resisting to answer to the confidential bucket, if you will.

CHAIRMAN: Okay. And might I ask you to -- let's start with EGNB's, go on to the Public Intervenor. And then I have some comments dealing with some of the questions that were objected to for the PUB's interrogs that may clear some things up, Mr. Morrison.

MR. MORRISON: Dealing first with EGNB, Mr. Chairman, we would provide information in confidence to EGNB 1, EGNB IR-16, EGNB 37 and 38. Moving on to PUB --

CHAIRMAN: Sorry. Can you do the PI first?

MR. MORRISON: PI, yes. There is only three. It is PI 9, 10 and 11. And again that relates to the electronic models, Mr Chairman.

And I would just like to state at this point in time that we would be prepared to apply those electronic models as soon as possible, so the Intervenors can have their experts get to work as early as possible.

CHAIRMAN: Okay. I will just ask the Public Intervenor, in the responses do you see any difficulty with the matter being handled in that fashion?

MR. HYSLOP: We don't see any problems of it being handled

in that manner, Mr. Chair. I think maybe a point of clarification as to confidence.

As I understand the issue, the providing of the electronic models is in confidence and restriction of use, so that we don't go beyond what we need them for.

But I don't -- I may be wrong. And this is where I need the clarification. But does that confidence extend to the use of the electronic models during the actual hearings? And if it doesn't, I think maybe we are dealing only with the concept of restriction of use while we have them. Maybe Mr. Morrison can clarify for the record on that point.

MR. MORRISON: Mr. Hyslop is correct. It is not the information that we are seeking confidentiality on. It is just the restriction on use, to nondisclosure, non-use restriction.

The actual data itself could be dealt with in a public forum, not in an in-camera hearing. So it is not the data so much as the use of the proprietary models for purposes other than this hearing.

CHAIRMAN: So you are protecting the proprietary --

MR. MORRISON: That is correct.

CHAIRMAN: -- interest in those models. Mr. Hyslop?

MR. HYSLOP: Yes. Thank you, Mr. Chairman. Certainly on that basis that the request of the applicant as to the way we use it would seem fair and reasonable.

CHAIRMAN: Good. Thanks, Mr. Hyslop. Mr. MacDougall?

MR. MACDOUGALL: Yes, Mr. Chair. I just want to indicate that the IR EGNB 16 that Mr. Morrison indicated also had the similar restrictions that you just referred to in the PI's 9 through 11 referencing that question and that model. And EGNB is fine with those restrictions in the same manner that the PI is.

CHAIRMAN: Good. Thanks, Mr. MacDougall. I will do my best here, Mr. Morrison, on --

MR. MORRISON: There are a couple more, Mr. Chairman.

CHAIRMAN: Sorry. I beg your pardon. Carry on.

MR. MORRISON: And they are PUB IR's.

CHAIRMAN: I wanted to make some comments on some of them which may give you some assistance --

MR. MORRISON: Okay. That is fine.

CHAIRMAN: -- before I ask you to do it. Here we are. I will provide you with this hand scribbled document just as soon as I'm through reading it. I'm referring now to IR-106 PUB. And after having read your response, realized that it was a rather broad net. And therefore we have restricted it as follows. And as I say, I will give you a

copy of this. And I will just read it and put it on the record.

Reference Statistics Canada Reports. "Question: Please file a copy of the following Statistics Canada Reports:

(1) Electric Power Thermal Generating Station Fuel Consumption Annual Report for the past five years."

And that report is number 5-3100-1040. I presume that is a StatsCan number.

Number (2) Electricity Monthly Report Number 5-3100-1021 for the past 15 years. Number (3) Electricity Utility Financial Annual Report Number 5-3100-1024 for the past 15 years. (4) Annual Electricity Power Statistics Capability and Load Survey Report Number 5-3100-1043 for the past 15 years. (5) Electricity Supply Disposition Quarterly Report Number 5-3100-1022 for the past 15 years.

Now my recollection is that -- all right. So I will provide that to you, Mr. Morrison, after. That certainly narrows down precisely what we want hopefully to get.

Now I'm referring to our IR's. And I'm going to let you consider this one over lunchtime, if you would, IR number 97, Question 4 which reads "Please provide a complete uncertainty/error propagation analysis for the algorithm that produced the residential energy sales forecast (before adjustments for natural gas and price

elasticity) and report the 95 percent confidence interval on the estimated growth rate."

That is the original question. And it goes on with a similar request in IR-98 which was Question 7 and in IR-99 which was Question 4. And then IR number 102, Question 1, which is a little different but says "Please compare and contract the results of the sensitivity analysis with the results of the uncertainty error analysis requested above." In other words, in those previous IR's.

If you look at those all together, the PUB was attempting to ask Disco to estimate the likely error or uncertainty in their estimates for future low growth rates and compare these estimates to the values used in this sensitivity analysis.

Disco objected on the grounds that its consultant in this matter has the opinion that (1) the resources required to complete the analysis outweigh the benefits. I'm out of order here. Just a moment.

Here we are. Okay. Secondly, their staff has never been called upon to perform this analysis. And they are not aware of it being performed by others in their field. The Board is of the view that numerical estimates are just that. They are estimates. As such are of limited probative value unless they are accompanied by a probable

error or uncertainty interval surrounding the estimate.

The Board appreciates that Disco's consultants might require additional resources to complete such an analysis.

But it would be appreciated by the Board if they could support in some fashion whereby the Board can develop confidence if they would supply, in whatever fashion they wish, support to show that what has been done in the analysis of the evidence will give the Board greater confidence in that estimate itself. So we are asking you to look at that and get back to us.

So that deals I think with those particular ones. All right. I go now to 103.

MR. MORRISON: Mr. Chairman --

CHAIRMAN: Yes.

MR. MORRISON: -- on 103, in our response to you, we said that we would provide that information on -- it was requested monthly. And we indicated that we would provide it only on an annual basis.

CHAIRMAN: Yes.

MR. MORRISON: I was advised this morning that -- and the reason for that response is I was -- we were under the impression a few days ago that that information wasn't available on a monthly basis. And I was advised this morning that it is. So we will provide it on a monthly

basis.

CHAIRMAN: Okay. Yes. And by all means we have no desire to receive 600,000 pages in writing. And please provide it in electronic data form.

I think I will turn it over to you, Commissioner Sollows.

MR. SOLLOWES: I understand, Mr. Morrison, that your reference to providing on a monthly basis is for the generation of export sales, items 1 and 2 --

MR. MORRISON: That is correct.

MR. SOLLOWES: -- not item 5?

MR. MORRISON: That is right.

MR. SOLLOWES: Right. When we get to item 5, I think, Chairman, you will want to go on with item 5. We were saying with items 1 and 2 that the data is available in the public forum from StatsCanada. So if you just want to download it, check it and provide it, that is fine.

MR. MORRISON: I was advised of that this morning. So no problem. We will provide it.

CHAIRMAN: All right. The answer, the response to the question IR-103, Question 5 was as to its voluminous nature. And again we don't want -- we just want it in electronic form.

Disco had objected in its response that it is

unreasonably voluminous and cites a number of pieces of data, 18,000,000 and the number of pages to produce it into paper form of 600,000. It claims that it is neither reasonable nor practical to provide such a quantity of data. That could all be put on one compact disk. And it seems reasonable and practical to file the data in such or similar format.

We are charged with setting fair and equitable rates for Disco's customers. The foundation of fair and equitable rates is a careful and thorough study of customer characteristics to ensure that groupings of individual customers into classes is done so that the members of each class are similar in respect of the loads they impose on Disco.

If class members are not reasonably similar in respect of their loads then any subsequent cost allocation and rate-setting exercise will be unlikely to result in fair and equitable treatment for class members.

The Board requires the data it has requested to satisfy itself that the customer classifications are correct. And we will need to examine more than one year's data to develop an appreciation for any trends that might be indicated by it.

MR. MORRISON: On that

CHAIRMAN: I'm sorry. I'm was looking for my next page, Mr. Morrison. It anticipates that the data will be readily available in electronic format since it is derived from Disco's automated billing system.

And we appreciate that some customers' billing records are likely to be sufficiently unique. The procedures specified to maintain the confidentiality to identify may not be effective.

The Board will consider a claim for confidentiality for such data under its normal processes.

MR. MORRISON: Our concern, Mr. Chairman, wasn't with the electronic aspect of the filing. But my understanding of the normal procedure when we file a response to an interrogatory is that if we file in electronic format we are also required to file it in paper format. And with all of the Intervenors and at 600,000 pages per pop, that would have been a little bit unnecessarily burdensome. If the Board's direction is to that we can file only electronically and provide it to the Intervenors only electronically then we have no objection whatsoever.

CHAIRMAN: But certainly, subject to an Intervenor wanting to have 600,000 pages of paper, that is what we will go with.

MR. MORRISON: There will be an issue of course --

MR. SOLLOWS: The Public Intervenor wants it.

MR. MORRISON: There will be of course, Mr. Chairman -- I think it is addressed in the IR from the PUB, there is a question of confidentiality with respect to customer information and so on. So that may be -- I'm not sure whether it will have to be dealt with on a confidentiality --

CHAIRMAN: Sure. And that is why the last sentence in our blurb here was that if you wished to we will understand it.

Now does that change the complexion -- it has certainly changed a lot of complexion -- on the comments that you had for our IR's and the responses? We tried to clarify as quickly as we could.

MR. MORRISON: No. And we appreciate the clarification, Mr. Chairman. No. You have addressed all that we were to deal with. I still have a couple more that go on the confidentiality --

CHAIRMAN: It might even be good for my being able to scribe on the top of each one if we are all set on -- for instance let's start with IR-10. And is that covered down here?

MR. MORRISON: I'm sorry, Mr. Chairman. We would propose that that be filed in a confidential basis.

CHAIRMAN: Okay. Fine. Then we will deal with it later.

How about the next one which is IR-16? Have we dealt with that?

MR. MORRISON: That would -- I would propose that again relates to the electronic models, Mr. Chairman. So the same conditions would apply.

CHAIRMAN: Great. IR-31?

MR. MORRISON: We would propose filing that on a confidential basis.

CHAIRMAN: Okay. And it will be dealt with in our hearing then. And IR-53?

MR. MORRISON: Again that deals with the electronic models. And it is just the non-use restrictions.

CHAIRMAN: Okay. Next IR-57. And frankly we agree with your --

MR. MORRISON: On that point I did have some discussions this morning with Mr. MacDougall particularly on this. And we understand that our witnesses may have to be prepared to answer questions on perhaps the most recent two years of data.

But we think it might be too burdensome for them to prepare for 12 or 15 years.

CHAIRMAN: And certainly the Board appreciates that. And if for instance if there were something then we would draw

your witnesses' attention to it prior to the actual hearing time so that for instance say look, in the '99 -- '91, '92 study NB Power Commission's approach at that time was to do such-and-such whereas in this one you are doing -- not using that methodology.

Please explain why you would move from A to B and that sort of thing. Try and give your witness all those we possibly can. No problem there. IR-75?

MR. MORRISON: We would propose filing that on a confidential basis, Mr. Chairman.

CHAIRMAN: All right. Then we will deal with it later. And we have already dealt with IR-93 by simply removing it as I recollect.

And IR-97, that forms the triumvirate, I would call it, of the three, where I have stumbled through the various -- let me see. IR-97, we have dealt with it. That was number 4, Question 4. IR-98 is number 7 -- Question 7 rather. And IR-99 is Question 4. And then we come over to IR-102. And we haven't dealt with that one yet, have we?

MR. MORRISON: No. I believe we have dealt with everything that I had on my list, Mr. Chairman.

CHAIRMAN: Yes. Good. Certainly -- what about 105? No.

That is all right. And we have certainly dealt with 106.

Good.

Now any other matters dealing with these particular Interrogatories that any of the parties have any questions with? Mr. MacDougall?

MR. MACDOUGALL: Yes, Mr. Chair. There was a document -- and I did talk to, I think it was Mr. Marois or Mr. Morrison at the break -- that was sent by Disco yesterday that had listed questions that they proposed to answer. But some of them were then broken down into whether they proposed to answer them in this proceeding or for the secondary proceeding.

I don't know if Disco proposes to raise that at all. But if they do, that document -- two of the three questions which they wanted to defer to a later date of EGNB's questions, we would actually like to have answered for the cost allocation and rate design proceeding.

And we -- I believe that they are fine with that. And I don't know if anyone else has issues in that document.

CHAIRMAN: Mr. MacDougall, I haven't seen that.

Yes, Mr. Hashey?

MR. HASHEY: Mr. Chairman, there was a document circulated, and I don't know where it was circulated or to whom at the moment, that outlined what we felt were appropriate IR's to the CARD load forecast part. And then there were

others that were shown to be revenue requirement.

I would suggest that we might have a breakout with the other Intervenors who have this. The intention is -- and I have not raised it this morning because I was waiting for the scheduling part -- to suggest that when we get to that, that the IR's that have been given, that clearly are revenue requirement rate proposal issues, that they be answered as part of that schedule, and not get involved. We have plenty to do on the CARD load forecast answers. So that we don't get -- and this I think is a matter for discussion here today -- so that we don't get a bundle of rate issues that will relate to the next hearing where we are going to file new evidence in any event.

CHAIRMAN: I appreciate that. Let me just add one comment to that, is that if you do have the answer ready in advance of the second block of our hearing provided, then we, the Board Staff and the Intervenors may be able to deal with that coincident with dealing with the CARD and the load forecast.

In other words, don't hold it back. Just mark it, that it is dealing with the other. And that would spread out the information.

Now Mr. MacNutt had raised his hand. Yes, sir?

MR. MACNUTT: Mr. Chairman, Mr. Hashey mentioned that the

document was circulated in an e-mail sent by Disco late yesterday.

Yes, I did receive the e-mail from Marg Tracy at 6:57 yesterday afternoon. There were three items included in the e-mail. One was a covering letter. Two was a document I couldn't open. And three was a prospective schedule.

I wonder if Disco could provide the second document which I couldn't open and which document I believe Mr. Hashey has just referred to, and circulate it to all the parties. Because it was in a format that my computer wouldn't recognize.

CHAIRMAN: How far away is your microphone, Mr. MacNutt?

MR. MACNUTT: Do you wish me to bellow, Mr. Chairman?

CHAIRMAN: No, not bellow. We are going to take a break for lunch. I got the gist of what you are saying. And the Board would be interested in getting a copy over the lunch hour.

I think, Mr. Hashey, an appropriate thing to do is to sit down with the parties, see if they agree that those are the ways.

Mr. MacDougall can convey to you the ones that he would prefer to have before that time. And we will go from there and deal with it after our lunch break. Okay.

So any -- now have all of the Intervenors received that notice that Mr. MacNutt was referring to? Good. Okay. Well, we were up here trying to do some work on this yesterday. So the Board Secretary didn't get an opportunity to get that, I guess, which is fair enough. Okay. Just let me check my housekeeping list here. There has been a revision. Really it is almost minor corrections to the confidentiality policy document. And Board Staff will be sending that out in electronic form sometime next week, just revising a couple of pages of it.

Nothing of any substance as I understand it at all.

So we will break for lunch. And if I might suggest that we come back about quarter to 2:00 so that you are able to chat with the parties, Mr. Hashey, about the IR's and what they are applicable to. And then at 2:00 o'clock we will reconvene and attempt to do the scheduling thing.

Mr. Hashey?

MR. HASHEY: One last comment on that, Mr. Chairman. I

believe that the document that was sent out had a column that said "Objections". If they have got that, ignore that. That has been settled this morning. That was not relevant here anymore to this document.

But if the Intervenors could check that document and do as Mr. MacDougall has done and say no, we believe the

one you have marked "Revenue" should be CARD load forecast and tell me that. That is really all we need to know. And if they could do that then we are fine.

CHAIRMAN: And that timing is all right with everybody here. Yes, Mr. Public Intervenor?

MR. HYSLOP: Thank you, Mr. Chairman. One very quick point. And I was going to raise it at the time we were talking about the 600,000 pages.

But in replies to Interrogatories it would be very useful to us, and I'm sure to other Intervenors, if we could also receive by compact disk or even by electronic e-mail the responses in electronic form, preferably by WordPerfect or Excel.

And it makes it a lot easier for us to reformulate further Interrogatories and prepare our cases as we go along. I'm all in favor of all the electronic communication that can be done. That is my point.

CHAIRMAN: Well, I think our policy is that that would be done. And the paper copy is provided for the purposes of the hearing here. And that is not due until the final date.

But Ms. Tracy would know. You are providing all those things by way of electronic format at the present time?

MS. TRACY: That is correct, Mr. Chairman.

CHAIRMAN: Good. Thanks.

MR. MORRISON: And I have been schooled very well by Ms.

Tracy. The only caution I would put on that -- and obviously we have no problem with any of that.

But when it comes to the hearing room, as the Chairman quite properly pointed out, we would use the paper copies.

Because what I know has happened in the past is that Intervenors have printed off the electronic document and brought it into the hearing.

And there were page-numbering problems and just the usual things that happen with computers that are not necessarily compatible. And it makes it very, very confusing when you refer to page 22 and it is really page 30 on our document.

That is my only caution.

CHAIRMAN: Yes. All right. Good. Fine. Thanks. Nothing else? Okay. We will reconvene. And I will share with you the scribbling on this up here. Thank you.

(Recess - 12:07 p.m. - 2:00 p.m.)

CHAIRMAN: Mr. Hashey, do you wish to address the Board on the outcome of your informal meeting?

MR. MORRISON: Well --

CHAIRMAN: Mr. Morrison will.

MR. MORRISON: -- well, no, Mr. Hashey will be dealing with the schedule. I did have a discussion with Mr. MacNutt

over the lunch hour and he suggested that I clarify on the record, we were discussing the IR's, which are going to be subject to a confidentiality ruling and the IR's that we objected to. And I think it should be made clear that all of the other IR's, NB Power will be answering to the extent that they are able to. But just so that's clear.

CHAIRMAN: Good. We can take some things for granted.

MR. MORRISON: Pardon me?

CHAIRMAN: We can take some things for granted.

MR. MORRISON: Speak to your counsel, Mr. Chairman.

CHAIRMAN: Mr. Hashey?

MR. HASHEY: Yes. Thank you, Mr. Chairman. A couple of issues here. First of all, you asked us to address over the noon hour with the various parties the issue of the list that was circulated concerning the categorization, if I could call it that, of the various IR's as between CARD Load Forecast and I think the other term was Revenue Requirement and Rate Proposal.

The only two -- there was only one Intervenor that requested that two be answered as part of his interrogatories in relation to this hearing, and that was Mr. MacDougall. And we have concurred with that and have agreed to that.

And so that we would move only -- only two of his into

that category. And we will answer them on that basis. And

they are his EGNB-10 and EGNB-12. So those would be moved into that -- the other category.

CHAIRMAN: That is the CARD category?

MR. HASHEY: CARD category.

CHAIRMAN: Right.

MR. HASHEY: Otherwise there was no addition, that our categorization seemed to be okay with people.

CHAIRMAN: Good. Great.

MR. HASHEY: That was part one. Part two is the meeting that was just held on the Rate schedule. As I understand it, it's now being typed. But there has been a consensus reached on that schedule that will require changes in all of the dates that we have seen to this moment, but will end up with a hearing on the CARD issue starting September 26th. And the Load Forecast, I believe, is October 26th. Now I have my scratch notes on these various dates. But I am wondering if it would be better to have a typed copy for the Board. It's underway this very moment.

CHAIRMAN: Yes, that's fine. We will do that. We will wait for the typed copy.

MR. HASHEY: The one thing that that -- the agreement was that we would -- we will be actually providing spreadsheets on June 30th. So to get those out quickly so

that they would have the work product. And we will be circulating an agreement amongst the parties early next week, so that we have an understanding that it will only be used for the purposes of this hearing. Call it what you like. It's really not part of the confidentiality part hearing.

And we also agreed, subject to the Board's concurrence obviously, is that there would be a confidentiality agreement circulated. And we will have the parties' understanding on confidentiality right away, hopefully I believe next week by Tuesday we would hear from people. And that we could have an early Confidentiality hearing day, if possible, July 5, to get the Board's concurrence on the dealing with that.

The reason being, as explained by a number of Intervenors who can speak to that, is that until they know where they stand on some of those documents, they wouldn't -- that it could interfere with the interrogatory schedule slightly or as they would want to wished it.

CHAIRMAN: Mr. Hashey, I won't say anything definitive until it's all here.

MR. HASHEY: Yes.

CHAIRMAN: But if you want me on July 5th, then you have eaten away at one of my first tour of the Miramichi. And

if you want to move the CARD hearing to September 26th, you have eaten away on the other one.

MR. HASHEY: That came from Doug. I didn't --

CHAIRMAN: He should know exactly what is sacrosanct around here. Anyway we will deal with that, Mr. Hashey, when the typewritten document comes in.

I do have a question for you. And that is the CARD hearing itself, is there any estimation on your part as to how long you think it will take in hearing days?

MR. HASHEY: Well, the general feeling is that it should be done in two weeks. People were sort of leaving a flex week, if we could call it that. But we generally feel it's a couple of weeks hearing. And the Load Forecast under a week.

CHAIRMAN: Okay. And I understand and I won't -- you go ahead with your next point of business.

MR. HASHEY: Well the next point of business I guess if we could say that we -- I can speak for I believe all of the lawyers in the room at least that if we could have at least a draft revenue requirement schedule, it would be helpful to all of us, as we are getting pretty stressed on scheduling various other matters, which I am sure there are a number of business people in the same boat on here. And that one has been circulated on that today. It

wasn't a matter of discussion in the --

CHAIRMAN: No. And I attempted to say in my housekeeping remarks that we were certainly prepared to have a general discussion in reference to it, Mr. Hashey. Nothing wrong with that at all.

My experience in this chair has been, however, if you start to set hearing dates this far in advance, that by the time you get close to it, all of a sudden they become impractical for reasons you hadn't even anticipated.

That's why I had suggested that we try and set them in stone sometime in September.

But I mean, for instance one could take the tentative agenda as it is on the one that I have here now, which starts of Public Notice - Re: New Intervenors, October 3.

DISCO files evidence Monday October 17. That one. And just simply say, okay, this is our tentative agenda and we will try and meet that one.

MR. HASHEY: That would be quite understandable and then we could all work to it. We all recognize that life has many quirks and changes in the road.

CHAIRMAN: Yes.

MR. HASHEY: And I respect what you say there very much. We believe that -- and I think generally people have looked at it and believe that it's pretty much workable by

dividing the hearing this way we can move ahead.

It particularly puts -- it puts a time line on an awful lot of work that has to be done between now and October 3rd to accelerate certain work within the company to get to a 2006-07 proposal really.

CHAIRMAN: Well, I don't -- you know, I am just speaking for myself on this one -- I don't know if anybody else has any input or not, but I have also in my experience in this chair, there have been occasions when the applicant has been unable to bring things together in order for a hearing to be concluded and an appropriate time for a decision to have the rates effective on the first day of the next fiscal period.

And I have been part of a panel that allowed, I believe it was NB Tel, to bring in at the end of the second month of their fiscal period rates which would be set for the final 10 months of that fiscal period, which would enable the utility to be whole at the end of the fiscal period, and those rates drop back -- by the small amount that had to be made up for the first two months, dropped back at the start of the next fiscal period unless they came in for a rate increase as well.

So that certainly is a tool that regulators do use. And I don't know if anybody has talked about that. I have

not reviewed the schedule for the Revenue Requirement, nor has this panel, on the basis of do we think that there is enough time between interrogatories, et cetera. Go ahead?

MR. HASHEY: One other comment on that. Two comments. One is on the 10 month idea, Mr. Chairman, with respect we are concerned that your ruling that you gave in October -- or sorry, the recent ruling on our request for a variance account would indicate that it should be in effect for a 12-month period. It states it in there. And I think that would be the concern we would have there. That we might run into similar arguments on variance account issues, because it would almost amount to that. But that's for another day possibly.

And secondly, on the schedule itself, the hearing commencement, I did have a request. It did require certain things to do over Christmas. So the Monday, January 9th date should be at least a week later, you know, and I would say --

CHAIRMAN: Or that DISCO files evidence a week earlier.

MR. HASHEY: No. I think the problem is, is it's a tight schedule on that October date. That it's virtually impossible from what I understand through the workings of the Commission.

CHAIRMAN: I appreciate to be able to do it on which things

are being set and whatnot.

MR. HASHEY: Exactly.

CHAIRMAN: I understand that.

MR. HASHEY: That's fair. But there was comment that there was an over Christmas thing here that just wouldn't work at the very end of that schedule. But generally the people that I spoke to, and it was mostly the Intervenors, have looked at that and didn't find that objectionable that's all.

CHAIRMAN: There also is the other tool, which the courts at times use as well, is that if we find that we are getting pinched for time at the end that we simply issue a decision or give a decision dealing with the tariff with written reasons to follow, perhaps for a goodly portion of it, or just for a small amount of it, or whatever.

MR. HASHEY: Sure.

CHAIRMAN: So that the decision in effect is an oral or a partial one with the written reasons after. And you can gain some time that way from the point of view of the utility having to change its tariff and put those rates into effect the first of the year.

MR. HASHEY: Absolutely.

CHAIRMAN: All right. Do any of the other Intervenors have any comment on Mr. Hashey's and I -- where are you going,

Mr. Gorman?

MR. GORMAN: Probably not where you think I am. I just wanted to echo Mr. Hashey's comments on establishing a schedule for the Revenue Requirement hearing. And I would concur that the proposed schedule that has been circulated, as far as we are concerned, works with -- the exception of only two dates. And those are the last two dates. The Intervenor Responses to Interrogatories, which was tentatively set for Friday, January 6th 2006, we would see that as perhaps going out by a week to the 13th, with potentially a hearing on the 16th.

In all other respects, we would submit that the proposed schedule works for us.

CHAIRMAN: Any other comments?

MR. GORMAN: No other comments.

MR. CHAIRMAN: Mr. Hyslop?

MR. HYSLOP: Yes, Mr. Chairman. I echo the schedules putting forward. But I also take into account that things change. So I think I would keep the word, tentative, in front.

The one little minor glitch I see that is our -- according to this schedule, our first set of interrogatories would be filed on the Revenue Requirement hearings on October 31st. I do note from the other one

where we have bumped everything back a week or so that the hearing commences October 26th is what is scheduled. And that's why I say let's keep it tentative. I don't expect the Load Forecast hearing to be a long drawn out affair. And if not, this is probably doable. But if we got into a two-week Load Forecast hearing, we would be pretty jammed in getting that first set of interrogatories.

So I would support Mr. Hashey, the need to move forward with a schedule. And I would like to think that this one would be workable. But if things change, then obviously the parties can address it at that time with the Board to changes if necessary.

I think there has to be -- maintain a little bit of flexibility depending on how the other hearings go.

CHAIRMAN: All right. Well look, the last two items on my tentative agenda here, that is, Responses by Intervenors and Hearing Begins, I have heard Mr. Hashey say it should be put forth to the 16th, start the hearing then and presumably giving the Intervenors, if they do have any evidence they wish to file, a little time over Christmas, so that you advance the 6th as well. I presume that that's acceptable to the applicant as well?

MR. HYSLOP: Yes.

CHAIRMAN: Yes. Now any comments from any other Intervenors

on this tentative schedule we have here? Mr. MacDougall?

MR. MACDOUGALL: Mr. Chair, with the one change you just mentioned to Mr. Hashey for the Christmas piece on the Intervenors, we would then accept this schedule as being fine with us.

CHAIRMAN: Any other Intervenors? Mr. MacNutt is at auction.

MR. MACNUTT: Mr. Chairman, I was just speaking to Mr. Goss. And this morning you identified that the Board would before today was out identify the date by which the notice would be given to the NUG's third parties, who would be involved in contracts, which would be subject matter delivery to the Board. And it's possible that the hearing schedules that are now being considered do not contain the date by which the notice is to be given to those third party contract people?

CHAIRMAN: Mr. Hashey?

MR. HASHEY: If we have a buy on the hearing -- on the confidentiality issue, we would notify them Monday.

CHAIRMAN: All right.

MR. HASHEY: Which would be 10 days approximate, a week.

CHAIRMAN: I am going to take a -- if there are no other comments on this Revenue Requirement tentative schedule, I am going to take a break until we can get the -- I want to

have an opportunity to talk with my fellow Commissioners about the dates that have been presented and suggested in our total absence.

MR. HASHEY: Try to relate the dates to you that --

CHAIRMAN: No.

MR. HASHEY: It's taking a typing --

CHAIRMAN: I want it on paper.

MR. HASHEY: I beg your pardon?

CHAIRMAN: I would like to have it on paper, Mr. Hashey.

MR. HASHEY: They will be delivered immediately.

CHAIRMAN: Yes. Thanks. We will -- and we won't be long.

As soon as it is available, we will be back in.

(Recess: 3:01 p.m. to 3:20 p.m.)

CHAIRMAN: Dealing first with the Confidentiality hearing date. Let me just throw this out to you. What if we were to set that for the 11th and 12th of July, rather than the 5th? Would that cause a problem to anybody? That gives us two days in a row in case we need it.

MR. MORRISON: Hoping we don't, Mr. Chairman. No, that's not a problem.

CHAIRMAN: Yes. Anybody else any problems with those dates? Done. All right. Listen closely. The CARD hearing, 26, 27, 28. September. October 4, 5, 6. October 26th, 27, if necessary. If not, that's then when the Load Forecast

would start. Then the 31st of October. November 1, November 2, November 3, Load Forecast. And if necessary, we can go on from there to the 7th, 8th, 9th and 10th, if we need to.

Anybody got a problem with those?

MR. MACDOUGALL: Mr. Chair, I was just wondering if you could just repeat them one more time just for certainty so that we --

CHAIRMAN: Sure will. All of them or just the two hearings?

MR. MACDOUGALL: Unfortunately, I got lost at the first one.

So it would require --

CHAIRMAN: Didn't pick that up. Okay.

MR. MACDOUGALL: Now just the hearing dates, Mr. Chair.

CHAIRMAN: Yes. July 11, and if necessary 12th dealing with confidentiality matters. And then now look -- is that an alarm clock? No.

MR. MORRISON: Time to go.

CHAIRMAN: That's right. September 26, 27, 28 for the start of the CARD Hearing. Then October 4, 5, 6 continuation of CARD Hearing. Then if necessary, 26, 27 for CARD Hearing. Or if it finishes, then the Load Forecast Hearing starts immediately thereafter. And it carries on for the 31st of October, 1st of November, 2nd of November, 3rd of November. If necessary into the next week, 7, 8, 9 and 10

of November. Silence is acquiescence. Good.

Now, where we are going to hold these hearings is -- how about the Legion Hall in Blacks Harbour? We are having --

MR. MORRISON: There are worse places.

CHAIRMAN: Oh, there certainly are. Anyway, no, we will have to let the Board Secretary do her best to locate something in Saint John. And if not, here is desperate as well, I guess. And we will just keep looking.

Can I ask, Mr. Hashey or Mr. Morrison, the La Capra Report, second part, is that -- that's still in preparation? Go ahead, Mr. Hashey?

MR. HASHEY: We anticipate that second part would be completed next week. We are virtually certain of that. Now that will be forwarded to the Board, but we don't believe that it should be part of the evidence of this case. It would have limited use. We anticipate a further La Capra Report that would deal with the '06-'07 matter. As you will remember, the second part was just a comparison of '04-'05 for the purposes of our request at that time for the fuel surcharge which, of course, has now been dropped and abandoned. But it still will be filed with the Board at the Board's request.

CHAIRMAN: All right. And we will take a look at it. And

if any of the parties or the Board wants to deal with it

further, we will tack it on to the end of the confidentiality matter. Just deal with it then.

Any other matters? Oh, thank you very much. Now this morning I generally said look if we have some rulings that have to be made and whatnot that it will speed up the process if, as was done for today, that we can excuse a member or two of the full panel and deal with it with four or five members. So that the full panel will be able to sit on the full hearings. And we have one Commissioner who is absent today. And I don't know about her ability to be here during the 11th or 12th. And likewise one of the members sitting today, who has aptly identified himself will be unavailable as well. And I just wonder for the sake of the record is that acceptable to all of the parties? How about the applicant?

MR. HASHEY: No problem.

CHAIRMAN: Any of the Intervenors have a difficulty with that at all? If you do, speak and put it on the record now? Otherwise, I read that as being that as again you will allow us to take that sort of interim ruling procedure and the members will be able to sit on the full hearing and take part in our decision.

Well, then we -- sorry, Mr. Gorman?

MR. GORMAN: I sensed you were about to adjourn.

CHAIRMAN: I was about.

MR. GORMAN: And I guess before the break we had talked a

bit about the Revenue Requirement Rate Proposal dates.

And I am not hearing anything from you about those dates.

Can we -- I guess is the Board prepared to look at the draft that was circulated this morning as a possible tentative schedule or has the Board had an opportunity to deal with it?

CHAIRMAN: Well subject to correction by any one of you, my understanding of what I said was that we will deal with that as a tentative schedule for now, subject to the comments which came from I believe the Public Intervenor, perhaps Mr. MacDougall, et cetera. But anyway that the last two dates on that tentative schedule, we all sort of agree there should be -- they should be advanced into January by a week, which would mean that hearing would commence on the -- I think it was the 16th of January. And the responses by Intervenors would be on -- a week later than the 6th, which would be the 13th I guess or something. I don't know -- somewhere around that. Other than that, then we will go with this as being a tentative thing that is subject to change, but we will try to adhere to it.

MR. GORMAN: Thank you.

CHAIRMAN: Great. All right. Well, we will adjourn to a location to be communicated to all of you for 10:00 o'clock in the morning of the 11th of July.

And as we break, I, on behalf of my fellow Commissioners and Board Staff, Ms. Tracy is retiring, and besides being able to tell an absolutely magnificent story, she has certainly done well by the Boards being able to get the information over a goodly number of hearings. And we appreciate her co-operation and wish her the best in the future.

MS. TRACY: Thank you.

CHAIRMAN: We will adjourn then.

(Adjourned)

Certified to be a true transcript

of the proceedings of this hearing as recorded by me, to the best of my ability.

Diane Haines
Reporter