

1 New Brunswick Board of Commissioners of Public Utilities

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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 - Revenue Requirement

6

7 Delta Hotel, Saint John, N.B.

8 February 7th 2006

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400,000,000 of that is due to the write-down of Point Lepreau

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CHAIRMAN: David C. Nicholson, Q.C.

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BOARD COUNSEL: Peter MacNutt, Q.C.

BOARD STAFF: Doug Goss  
John Lawton

BOARD SECRETARY: Lorraine Légère

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33 CHAIRMAN: Good morning. Could I have appearances please  
34 for the Applicant Disco?

35 MR. MORRISON: Good morning, Mr. Chairman, Commissioners.  
36 Terry Morrison and David Hashey appearing for the  
37 Applicant.

38 CHAIRMAN: Canadian Manufacturers and Exporters?

39 MR. LAWSON: Gary Lawson appearing.

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CHAIRMAN: Mr. Lawson, good morning. Conservation Council is not here. Eastern Wind? Enbridge Gas New Brunswick? The Irving Group of companies?

MR. BOOKER: Good morning. Andrew Booker for the J.D. Irving companies.

CHAIRMAN: Good morning, Mr. Booker. Jolly Farmer is not here. Mr. Gillis isn't here. Rogers not here. Self-represented individuals? I'm going to stop calling out their name. They haven't been here for -- how long has it been? Just before the summer break, I think. Municipal Utilities?

MR. GORMAN: Good morning, Mr. Chairman and Commissioners. Raymond Gorman appearing on behalf of the Municipal Utilities.

This morning I have with me from Perth-Andover Dan Dionne, from Edmundston Energy Michael Couturier and from Saint John Energy Eric Marr and Dana Young.

CHAIRMAN: Thanks, Mr. Gorman. Vibrant Communities?

Mr. Peacock will --

MR. PEACOCK: Good morning, Mr. Chair.

CHAIRMAN: He is here?

MR. PEACOCK: Yes, indeed.

CHAIRMAN: Good. Normally you drift in 15 minutes late or something.

2 MR. PEACOCK: Sorry about that.

3 CHAIRMAN: No, no. That is all right. Thank you,  
4 Mr. Peacock. And the Public Intervenor?

5 MR. HYSLOP: Good morning, Mr. Chairman. Peter Hyslop  
6 appearing with Robert O'Rourke and Carolanne Power.

7 CHAIRMAN: Thanks, Mr. Hyslop. Any Informal Intervenors? I  
8 will just read them off.

9 Agriculture Producers Association of New Brunswick.  
10 Atlantic Centre for Energy. Canadian Council of Grocery  
11 Distributors. City of Miramichi. Charles Collin. Energy  
12 Probe. Falconbridge Limited. Flakeboard. Genco. NBSO.  
13 Potash Corp. Terrence Thompson Consulting. UPM Kymmene.  
14 Mr. MacNutt?

15 MR. MACNUTT: Thank you, Mr. Chairman. I have with me today  
16 Doug Goss, Senior Adviser, John Lawton, Adviser, John  
17 Murphy and Andrew Logan, both consultants.

18 CHAIRMAN: Thank you, Mr. MacNutt. Any preliminary matters?

19 MR. MACNUTT: No, Mr. Chairman.

20 MR. HASHEY: I do have one preliminary one. I overruled my  
21 senior official here. With respect to yesterday's  
22 decision concerning the advertisement and having the  
23 public appear --

24 CHAIRMAN: Yes.

25 MR. HASHEY: -- Mr. Chairman, I spoke to our counsel on the

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2 Rogers matter. And he had scheduled himself to be here on  
3 February 28 and March 1st.

4 So I would -- and there is a problem with the March 2nd  
5 date for him. So I would request that maybe we might move  
6 the public session from the February 28th to March 2 if  
7 possible.

8 CHAIRMAN: 2 or 3?

9 MR. HASHEY: 2 or 3.

10 CHAIRMAN: Yes. That is a question.

11 MR. HASHEY: 2 would be preferable. But 3 is possible.

12 CHAIRMAN: Can you guarantee that everybody will be through  
13 in those first two days?

14 MR. HASHEY: Well, Mr. Ruby has indicated he has a matter on  
15 in Toronto on the 2nd. So I don't know. There is no  
16 reason whatsoever that --

17 CHAIRMAN: Well, my concern, Mr. Hashey, quite frankly, is  
18 that they have what, a panel of four?

19 MR. HASHEY: That is correct.

20 CHAIRMAN: Yes. And so if one of them, you know -- is this  
21 the solicitor you are talking about?

22 MR. HASHEY: Yes, it is.

23 CHAIRMAN: Yes. Well, then Ms. Milton could take over  
24 presumably.

25 MR. HASHEY: No, no. I'm talking about Mr. Ruby who is the

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- 3446 -

2 solicitor for Disco --

3 CHAIRMAN: Oh, I see.

4 MR. HASHEY: -- on this matter.

5 CHAIRMAN: That is poor planning, isn't it. Well, what  
6 happens if the record isn't closed in reference to the  
7 Rogers question on the 2nd?

8 MR. HASHEY: We will have to close it. I will be here if it  
9 needs to be to close that down. You know, we have got to  
10 close that Rogers thing off that week, there is no  
11 question.

12 But if you want to do it on the 3rd I guess that is --

13 CHAIRMAN: No, no. I mean --

14 MR. HASHEY: We were thinking --

15 CHAIRMAN: -- I'm just looking at scheduling the public day.

16 I mean, if you are not through at close of business on  
17 the 2nd. And we have put the public down for the 3rd.

18 If members of the general public want to be here they will  
19 have priority. And I just don't want to see the Rogers  
20 thing put off again. And I know you don't.

21 MR. HASHEY: No, absolutely not. But really all that is  
22 left on that is the panel, which shouldn't be long on a  
23 presentation. And then it is our cross examination. And  
24 we know that will be easily completed in a day.

25 CHAIRMAN: Well, I agree with everything except the panel.

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2 And that shouldn't take too long. I'm becoming a pessimist,  
3 Mr. Hashey. Let's do it that way. And we will schedule  
4 the public matter for the Thursday the 3rd.

5 And since you brought that up, I used an expression  
6 yesterday that a couple of my Commissioners quite properly  
7 brought to my attention. I used members of the public and  
8 the word "vent".

9 That is because I was searching in my vocabulary. And I  
10 should like to replace that with "come and express their  
11 opinions to us" and not the word "vent".

12 Any other matters? Mr. Lawson --

13 MR. LAWSON: Yes, Mr. Chairman.

14 CHAIRMAN: -- I see a coffee cup held up high back there.

15 Yes.

16 MR. LAWSON: Is it Thursday the 2nd. I thought you said --  
17 is it Thursday the 2nd? I'm sorry.

18 MR. HASHEY: Friday the 3rd.

19 CHAIRMAN: Friday the 3rd. I'm sorry. I knew we had 1, 2,  
20 3 of March.

21 MR. LAWSON: Thank you.

22 CHAIRMAN: As that ad says, the FED-EX ad says, Friday the  
23 3rd -- no, what it is -- yes, Friday. This week falls on  
24 Monday. In other words, we normally have Fridays off.  
25 But it is Monday this week.

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Okay. Anything else? Mr. Gorman?

MR. GORMAN: Mr. Chairman, I'm just wondering where that will leave closing argument. I took from the preliminary schedule the closing argument was probably before March. But it would sound from what we are talking about now that that will be into March, that first week you reserved in March.

CHAIRMAN: Oh, yes. We have reserved the 6th through the 9th. And we have also reserved the 13th through the 16th. So surely to goodness we can wrap her up then.

MR. GORMAN: I agree.

CHAIRMAN: Mr. MacNutt shared with me prior to convening this morning about a possible trying to finish business today by extending beyond 3:00 o'clock so we wouldn't have to move. The Board is reluctant to do that unless we can see we have got five minutes to go. We will rise this afternoon at 3:00. And I know we all have to move down to the Convention Centre. But so be it. Otherwise we will get trapped and be here to 7:00 o'clock or something.

Okay. Mr. Gorman, go ahead.

MR. MACNUTT: No, Mr. Chairman. One further item. Yesterday we had marked on behalf of the Board the Kennedy Report as exhibit PUB-9 and his responses to IRs as

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PUB-10.

I would like to have marked as an exhibit this morning a letter from Mr. Kennedy on the letterhead of Gannett Fleming dated February 6th 2006. A couple of minor corrections which he outlines in the letter.

And I would like to have that marked as exhibit PUB-11 if I could. And we have copies for the Board. And they have been circulated to the participants here this morning.

CHAIRMAN: Anybody have any difficulty in filing that as an exhibit?

PUB-11 then. And it is a letter from Gannett Fleming and addressed to the Secretary dated February 6th 2006.

Anything else? Mr. Lawson?

MR. LAWSON: Sorry to be the keeper of the calendar, Mr. Chairman, but you mentioned that the week of March 6th was scheduled for hearing. The schedule that I had circulated indicated there were no hearings scheduled that week but they were scheduled for the subsequent week. I just wonder for clarification?

CHAIRMAN: Let me put it this way, Mr. Lawson. We have reserved hotel space, it's so difficult to come by, not knowing when things would conclude. So we will let that go. A little later on if in fact it appears that it will

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2 not be necessary and we go to the week after.

3 MR. MACNUTT: March 6th, I believe, Mr. Chairman, is March  
4 Break.

5 CHAIRMAN: What week are you talking about, Mr. Lawson?

6 MR. LAWSON: The week of March 6th you had indicated --

7 CHAIRMAN: Sorry. I misspoke myself. Because it's March  
8 13th week, 13th through 16th. That's March Break.

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

10 CHAIRMAN: Mr. Gorman would kill me if I set anything down.

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

12 CHAIRMAN: Okay. Thank you. Mr. Gorman, go ahead.

13 MR. GORMAN: Thank you, Mr. Chairman. I'm sure everybody  
14 does appreciate the fact that there are no hearings during  
15 the March Break.

16 CROSS EXAMINATION BY MR. GORMAN:

17 Q.269 - Good morning, Mr. Marois, Ms. Clark and Ms.

18 MacFarlane. I would like to start this morning from the  
19 direct evidence that was presented yesterday. And just a  
20 point of clarification.

21 Mr. Marois, you talked about a shortfall of 125.5 million  
22 is what the Applicant is seeking to make up. I believe  
23 that was part of your opening statement?

24 MR. MAROIS: Yes, it was.

25 Q.270 - And then you went through the various components of

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2 that shortfall and you said there were two key drivers of the  
3 125.5 million. You said there was 120.2 million increase  
4 in purchase power and that represented 96 percent of the  
5 revenue shortfall. Do you recall that?

6 MR. MAROIS: Yes.

7 Q.271 - And then you -- I guess you were dealing with table 1  
8 on page 2 of Ms. Clark's evidence, part 1, in A-50, and  
9 you combined two lines, columns 1 and 3 -- sorry -- 7 and  
10 8 -- and when you combined them you found a \$15,000,000  
11 increase in that income and special payments in lieu of  
12 income taxes, and you said that variance represents 12  
13 percent of the revenue shortfall.

14 MR. MAROIS: Yes, I did.

15 Q.272 - And then later on you said there was 1.7 million in  
16 amortization representing one percent of the revenue  
17 shortfall. I'm not sure I understand because when I add  
18 them up it's 109 percent and there is something in your  
19 explanation I guess that I didn't understand.

20 MR. MAROIS: Yes. I guess when I elaborated on the 120.2  
21 million increase due to purchase power I indicated that  
22 one of the variances in that line item was 13.4 million  
23 increase for interruptible service. And then I went on to  
24 say that because that is a pass through also shows up on  
25 the forecasted revenue line on line 10 of 1.1 -- one

2 billion 182.5 million. So in other words, part of the  
3 variances don't end up in the revenue shortfall because  
4 they are picked up through additional revenue from the  
5 interruptible customers.

6 Really the revenue shortfall, line 11, is for firm service  
7 excluding interruptible service. That's the way to look  
8 at it.

9 Q.273 - Okay. So the revenue shortfall then shows up on line  
10 11 at 125.5 million. What percentage of that then would  
11 be the purchase power? Is that something less than the  
12 120 million? Is it less than 96 percent?

13 MR. MAROIS: Well it would be 120.2 million less the 13.4  
14 that is recovered in forecasted revenues, for a net of  
15 106,800,000, divided by 125,500,000. So that's 85  
16 percent.

17 Q.274 - Okay. Thank you for that clarification. Ms.  
18 MacFarlane, this is just a follow-up to some of the cross  
19 that I did yesterday. And we were talking about if Disco  
20 reduced the amount of energy that it required from Genco  
21 what happens to the excess energy? What does Genco do  
22 with that?

23 And you talked about it using it as a merchant generator  
24 and it would also lose a slice of the peaking capacity I  
25 think is the way you expressed it. Now would

2 that not be something that would be in Disco's favour? Would  
3 not the peak energy costs be higher, so would that not be  
4 something that would be in Disco's favour?

5 MS. MACFARLANE: Just to clarify. They would lose -- if  
6 they reduced their nomination of base load they would lose  
7 a slice of peaking. They also lose a slice of the export  
8 margin credit that they get from Genco as well.

9 As it goes to peaking, yes, that is more expensive energy  
10 but it is energy at a price that may well be less than if  
11 Disco had to purchase that on the open market and take the  
12 volatility that comes from that market.

13 Obviously Disco would only reduce its nomination if it  
14 needed to reduce its nomination. So the question becomes  
15 a bit moot because if it did reduce it it may not need  
16 that peaking energy.

17 Q.275 - But if you could reduce that, then that would  
18 represent a saving?

19 MS. MACFARLANE: I didn't say it would represent a saving.  
20 The peaking energy is provided now partly off hydro,  
21 partly off CTs and partly through purchase power on the  
22 market. If they lose a slice of that they would be  
23 providing their peaking requirement for that slice  
24 entirely from the market, which would likely be higher  
25 than the cost of CT and certainly be higher than the

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2 portion of peaking energy provided by hydro.

3 Q.276 - Well if you reduced your nomination say by 200

4 megawatts would that be -- would you make or lose money on  
5 that, I guess?

6 MS. MACFARLANE: It depends on whether or not you need the  
7 capacity and the energy that goes with it. If you do not  
8 need it, then perhaps -- if you do not need it in the near  
9 or certainly in the longer term, then yes, it would be a  
10 savings. But Disco does need that energy and does need  
11 that capacity. And if it reduces its nomination, it would  
12 be paying at market prices which are higher than the  
13 prices called for in the vesting agreement.

14 Q.277 - Ms. MacFarlane, you were asked some questions  
15 yesterday about generation and we talked about generation  
16 recovering its costs, and I think your evidence was  
17 generation is not recovering its cost and that this was  
18 part of information that was put out through the CARD  
19 hearing.

20 And you talked about recovering these costs over four or  
21 five years. Would it be your intention to sort of  
22 unbundle the bills to show how much of that is being paid  
23 back, how much of that is built into the cost?

24 MS. MACFARLANE: Yes, sir. I just wanted to start by  
25 clarifying that the vesting contract very clearly shows

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how the capacity payment increases in steps over a period of three to four years. And it is intentionally phased in to allow for the generators to collect their full costs, including their cost of capital over a period of time, so that Disco has the opportunity to absorb that over that same period.

As it goes to whether or not it is our intention to unbundle the bill, the answer to that is no at this time, and I believe that there was an IR on that. In any event, unbundling, if it ever were done, would be to separate the energy charges from the distribution charges from the transmission charges, and the energy charge would not be unbundled to show the distinct cost elements of Genco.

So I don't believe unbundling, which we don't intend to do -- unbundling would not get at that issue anyway.

Q.278 - Is there any way of knowing which of the NB Power companies is increasing its charges then? For example how would a customer know if an increase was being driven by Genco or Disco or any of the companies?

MS. MACFARLANE: The vesting contract lays out what portion of the charges to Disco are fuel based or are energy related and what portion is capacity related. And the capacity charges are very easy to determine in total in the vesting agreement.

2 Q.279 - Is the room to absorb these costs over the next four  
3 or five years built into the rate structure then?

4 MS. MACFARLANE: The portion of the increase, the increase  
5 in phasing in the generator's cost, is included in the  
6 revenue requirement this year. I believe in his opening  
7 statement Mr. Marois pointed out that part of the purchase  
8 power increase of 120,000,000 -- 12,000,000 of that is an  
9 increase in the capacity charge through the vesting  
10 agreement. That is part of the phase in of the full cost  
11 of the generators.

12 Q.280 - The increase then is for this year, and you talk about  
13 for four or five years this will be phased in. So will  
14 that be a component of future rate increases over the next  
15 four or five years?

16 MS. MACFARLANE: It will be a component of purchase power  
17 expense for Disco.

18 Q.281 - So does that mean it would be part of a rate increase?

19 MS. MACFARLANE: It is part of the revenue requirement.  
20 Whether or not rate increases will be required to cover  
21 that portion of the revenue requirement is yet to be  
22 determined.

23 Q.282 - Thank you.

24 MS. MACFARLANE: Mr. Gorman, if I may. When I was using the  
25 term four or five years, that was from the restructuring

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date. So remember that we have had half of one fiscal year, 04/05. We have had another fiscal year that we are currently in, 05/06. Those were part of that time period of phase in. Thank you.

Q.283 - So it should be completed by 08/09, is that effectively what you are saying?

MS. MACFARLANE: That is what the restructuring plan, the model that the bankers designed for the province, that is where Genco was recovering its full return was in that period.

Q.284 - Thank you.

MS. MACFARLANE: If I could, Mr. Marois has just reminded me to clarify that I did say yesterday that my speaking of the four to five year period is for Genco. Nuclearco is not expected to recover its full cost until post refurbishment. And again the vesting agreement -- or pardon me -- the PPA with Nuclearco very clearly shows a step up in the per megawatt hour charge post refurbishment.

Q.285 - And would that likely cause rate increases post 07/08?

MS. MACFARLANE: Again it will form part of the revenue requirement. Whether or not it will cause rate increases is yet to be determined. But I will say that we will be refurbishing that plant and making close to a billion

2 dollar investment in it. That obviously will have to be  
3 recovered over time through rates.

4 Q.286 - Thank you. Mr. Marois, yesterday in response to cross  
5 examination from Mr. Lawson -- I haven't gone to the  
6 transcript, but my recollection or what I wrote down was  
7 that you said -- and correct me if I am wrong -- it's not  
8 our role to encourage competition in New Brunswick. Did I  
9 get that right?

10 MR. MAROIS: I do not remember. I would have to see the  
11 transcripts.

12 Q.287 - Okay. And I just got the transcript this morning, so  
13 I'm really unable to go to it. But would that be  
14 something you would have said? Would that be correct or  
15 incorrect?

16 MR. MAROIS: Well it's hard to comment on that out of  
17 context. What I recall of the discussion we had yesterday  
18 was that what I believed our role was was to play by the  
19 rules. I mean the Province has set some rules in place.  
20 They have restructured the market place. And so we are  
21 playing by those rules.

22 And again what I said yesterday is what I believe we have  
23 the opportunity to do is to ensure that our rates are as  
24 reflective of costs as possible, and I saw that as being  
25 one of our key roles in helping the market to

2 develop.

3 Q.288 - And I do recall your testimony with respect to playing  
4 by the rules, but I think in that context you were asked  
5 whether or not you were encouraging competition in New  
6 Brunswick. And whether you said that yesterday or not,  
7 would you agree that it is or is not your role to  
8 encourage competition -- Disco's role?

9 MR. MAROIS: I don't think that it is Disco's role to  
10 promote competition.

11 Q.289 - And I understand from the White Paper that competition  
12 in the electricity market is something that was to be  
13 promoted. So whose role would it be?

14 MR. MAROIS: Well again, as I mentioned yesterday there are  
15 numerous parties involved into this market. The system  
16 operator is one, and the system operator must have rules  
17 that are not hindering development of the market place.  
18 So there is a market advisory committee. Disco is  
19 represented on that committee. The PUB has a role to play  
20 in monitoring the market. So there are various parties  
21 involved in ensuring that there are no stumbling blocks to  
22 the development of the market place. So I don't think  
23 that anybody per se has the overriding role of promoting  
24 the markets or ensuring that the framework is adequate.

25 Q.290 - Would you agree that Disco would have a role in that?

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MR. MAROIS: Yes. And I believe we are playing our role.

Q.291 - I believe, Mr. Marois, yesterday in response to a question from Mr. Lawson you said something along the lines that it was in Disco's best interest that their business customers remain competitive. Do you recall that?

MR. MAROIS: I don't recall specifically those words but I would agree with that principle.

Q.292 - And again I can't show you it without taking a few minutes to find the transcript reference to those precise words, but you say that you would agree with that concept. And when you say that it would be in the best interests of your business customers to remain competitive you would in a sense I guess think that it's in everybody's best interest to remain competitive, in other words, not to the detriment of other customers. That's not what you meant, is it?

MR. MAROIS: Again, you are asking me questions that unfortunately are not in the proper context, but what I recall of the discussion yesterday was Disco really -- did Disco have an incentive of not encouraging their customers or not supporting their customers that want to leave. And my response to that is first of all there is already a provision in the Act that if a customer leaves,

2 not just commercial but also wholesale, there is a provision  
3 for an exit fee. So everything else being equal it should  
4 leave Disco's remaining customers equal.

5 And if by the fact that these customers are leaving also  
6 makes these customers more financially sound, more  
7 competitive, and at the end of the day help the province  
8 be more competitive, that's a positive thing.

9 Q.293 - Thank you. If I can refer to exhibit A-50, the direct  
10 evidence of Sharon MacFarlane, which would appear under  
11 tab 2, and it's the direct evidence of Sharon MacFarlane,  
12 part 1.

13 I'm referring to on page 1 of your evidence, Ms.  
14 MacFarlane, starting at line 26, "The Province's key  
15 objectives regarding restructuring were."

16 And number 1 was to structure the utility to operate on a  
17 level playing field so as to facilitate a managed  
18 transition to a competitive market for energy in New  
19 Brunswick.

20 And of course you have read the CARD ruling. And you  
21 would agree that the Board does not believe there is a  
22 competitive market at the present time. That was the  
23 finding and the ruling?

24 MS. MACFARLANE: That is correct. I agree that that is the  
25 finding and the ruling. I also would point out that it

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does say to facilitate a managed transition to a competitive market.

Q.294 - Okay. But my question to you then is the CARD ruling -- and I'm going to quote from the rulings -- "as a competitive market does not exist in New Brunswick today nor does the Board believe one will develop in 2006/2007." Do you believe one will develop in 2006/2007? Or do you agree with that comment?

MS. MACFARLANE: I believe many of the elements of the framework required for a competitive market are in place.

I also believe that in line with what Mr. Marois said, we are doing our part in contributing to that managed transition to move to a competitive market.

And it may well be that customer in 06/07 may choose to leave NB Power for another supplier. Will it be a fully active market in 06/07? No. This is a managed transition.

Q.295 - And at the present time then there is no competitive market. Because I think as we talked about yesterday there is no exit fees established for example?

MS. MACFARLANE: The exit fees can be established with some degree of expediency. In fact the Act allows for any customer wishing an exit fee to approach NB Power directly or to approach the PUB. I don't see that as an impediment

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to creation of a competitive market.

Q.296 - Okay. But none have been established yet, no exit fees?

MS. MACFARLANE: The exit fee is not established yet. Again I don't see that as a barrier to a customer leaving NB Power's supply.

Q.297 - But would it not be a prerequisite to the commencement of a competitive market?

MS. MACFARLANE: There are many, many elements to ensuring that there is a competitive market. And many of them are in place. That one is not in place. But it is something that, as I say, can be done with expediency if a customer wants to leave NB Power, Disco's supply.

Q.298 - I would refer you, Ms. MacFarlane, now to page 4 of your pre-filed evidence. And under question 5 it talked about the second objective of the signing risk that the NB Power group of companies, over a period of time, would be placed on a level playing field with potential private sector competitors.

When you talk about the NB Power group of companies you also -- one of the companies of course you are talking about is Disco?

You have to say yes or no.

MS. MACFARLANE: Yes.

2 Q.299 - You can't shake your head. It doesn't work well in  
3 the transcript. Thank you.

4 And therefore since Disco services the -- and I think in  
5 your evidence it did state several times about 300,000  
6 customers in New Brunswick and another 40,000 through the  
7 Municipals. Then would one of the objectives be to place  
8 the Municipals on a level playing field with Disco?

9 MS. MACFARLANE: Mr. Gorman, could I ask you to repeat the  
10 question again?

11 Q.300 - I will try to make it as similar as it was the first  
12 time around. I'm referring to question 5 on page 4 of  
13 your prefiled evidence.

14 And your evidence is "Under the second objective of the  
15 signing risk, the NB Power group of companies will be  
16 placed over time on a level playing field with potential  
17 private sector competitors."

18 And it is that statement that I'm referring to. And I'm  
19 referring specifically to this concept of a level playing  
20 field.

21 And you talk about the NB Power companies which of course  
22 would include Disco?

23 MS. MACFARLANE: Yes.

24 Q.301 - And what I'm asking is whether or not Disco and the  
25 Municipal Utilities who take on the wholesale rate, would

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that be included in your objective to put people on a level playing field?

MS. MACFARLANE: There was an interrogatory response specific to that issue. It doesn't appear that the Electricity Act intends Disco and the Municipalities to be on the same level playing field. Disco is required to do things that private sector companies are required to do like pay taxes, like have a positive level of earnings from which to declare dividends. It is also regulated under the Act. And yet the Act does not impose any of those things on the Municipal Utilities. So it appears that the Municipal Utilities are not intended to be on that same level playing field.

Q.302 - But I would put to you that if Disco pays taxes or makes payments in lieu of taxes, that that is built into the rate that is charged to the Municipals. So in a sense they are paying taxes based on their share?

MS. MACFARLANE: At the same time, Municipalities are one of the parties that are able to leave the standard service supply of Disco and go into the competitive market.

Q.303 - But I think we have talked about competitive market. And I don't want to beat that to death. So I think that the evidence to this point, it seems

2 to me that at the present time there is no competitive market.

3 If I can go back though to my question about --

4 MS. MACFARLANE: Before you go back to your question, the  
5 Municipalities certainly could purchase from Hydro Quebec,  
6 certainly could purchase from Nova Scotia Power.

7 There is nothing that impedes that. And those suppliers  
8 are ready and willing to provide supply to wholesale and  
9 industrial customers.

10 Q.304 - Can I go back to the question with respect to taxes.

11 Because you raise that as an example of how Disco is  
12 different than the Municipals.

13 And I don't think you answered my question, which  
14 essentially was would you agree that the Municipals pay a  
15 share of those taxes because that is part of what is built  
16 into their rate?

17 MS. MACFARLANE: They do in the sense that every customer  
18 does. And yet if the Municipalities were to be on a level  
19 playing field with Disco, they would then pay incoming  
20 capital taxes on their own earnings and on their own  
21 capital structure. And they are not required to do that.

22 Q.305 - Sure. And under those circumstances wouldn't that be  
23 what we sometimes call double-dipping or perhaps in this  
24 case double taxation in the sense that currently they are  
25 paying their share?

2 MS. MACFARLANE: There would not be double-dipping. Because  
3 the taxes that Disco pays that would be included in the  
4 energy charge are an expense deduction and therefore a tax  
5 deduction for the Municipalities were they to pay income  
6 tax.

7 So they would not be double-dipping. They would simply be  
8 paying on the earnings from their own rates that are over  
9 and above the purchase power expense that they would have  
10 from Disco.

11 Q.306 - You also mentioned in your example about I guess  
12 regulation, the cost of regulation. And we had quite a  
13 bit of evidence on the CARD hearing with respect to the  
14 wholesale class paying a share of the regulatory expenses.  
15 You agree that they are also assessed a share of those  
16 expenses?

17 MS. MACFARLANE: The Revenue Requirement for Disco does  
18 include those expenses. So those expenses would be  
19 included in the cost allocation to all customers.

20 Q.307 - In the same paragraph under question 5 you talk about  
21 special payments in lieu of taxes, emulating federal and  
22 provincial income tax.

23 There is no obligation to pay taxes. These are payments  
24 that imitate if you will what you would pay for taxes.  
25 These are not actually taxes?

2 MS. MACFARLANE: These are payments in lieu of taxes. They  
3 do emulate taxes under the Income Tax Act. But they are  
4 paid to Electric Finance.

5 And as I indicated yesterday, Section 33 of the  
6 Electricity Act directs that Electric Finance must use  
7 those monies to pay down legacy NB Power debt, which is an  
8 important objective of the restructuring.

9 It's an important objective to get NB Power's debt off of  
10 the guarantee of the Province of New Brunswick and to make  
11 the utility financially viable.

12 Q.308 - Thank you. The next section of your evidence deals  
13 with the overall ownership structure of the NB Power group  
14 of companies.

15 And in reviewing it -- and it may well be it is there and  
16 I'm just not seeing it -- I didn't see who owned the  
17 shares in the New Brunswick Electric Finance Corporation.  
18 I'm assuming it is the government. But I just didn't see  
19 how the shares of that were held.

20 MS. MACFARLANE: New Brunswick Electric Finance Corporation  
21 is a Crown Corporation. It is not incorporated under the  
22 Business Corporations Act.

23 So it has no share capital. It is a creature of the  
24 Electricity Act. It is a creature of legislation. So it  
25 is reporting to the Minister of Finance. But it does not

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have any shares.

Q.309 - So as a Crown Corporation then is it an agent of the Crown?

MS. MACFARLANE: It is an agent of the Crown. I just wanted to clarify that those two are not necessarily tied. The New Brunswick Power group of companies are Crown Corporations.

But save Nuclearco, they are not agents of the Crown. The New Brunswick Electric Finance Corporation is an agent of the Crown.

Q.310 - So Nuclearco and Electric Finance are both agents of the Crown. All of the other companies are not?

MS. MACFARLANE: That's correct.

Q.311 - What is the significance of that?

MR. MORRISON: Mr. Chairman, I don't think this witness should answer that question. Having spent a good deal of my life in the last couple of years trying to interpret what an agent of the Crown is, it is not a simple question. It is a very technical, legal question.

CHAIRMAN: Some of my Commissioners are suggesting then that you answer the question.

MR. MORRISON: The answer is it depends. It depends on a lot of circumstances. The Act will say an agent of the Crown will bind the Crown.

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But there are circumstances -- and I have read so many Supreme Court of Canada decisions on this issue, and there is one pending, that it is not as cut and dried as one would think.

CHAIRMAN: Will you adopt that as your answer,

Ms. MacFarlane?

MS. MACFARLANE: Yes, I will.

Q.312 - Maybe I should have asked a different question with respect to that.

Was there a specific reason why two of the companies are agents of the Crown and the others aren't, why that decision was made?

MS. MACFARLANE: I believe we answered an interrogatory on why Nuclearco was an agent of the Crown. And we simply were able to answer that the Electricity Act specifies that it has that status.

Q.313 - Under the prior corporate structure was NB Power an agent of the Crown?

MS. MACFARLANE: Under the former ownership structure NB Power was an agent of the Crown. It is no longer. And when I say it, I mean that New Brunswick Power Corporation was continued under the Business Corporations Act as NB Power Holding Corporation.

It is no longer an agent of the Crown. And as I said

2 before, neither are any of the other companies save Nuclearco.

3 Q.314 - I would now like to go to -- under tab 2, exhibit A-

4 50, to the direct evidence of Rock Marois, part 2. Mr.

5 Marois, I take you to line 18 of your evidence.

6 There is a paragraph which talks about Disco owning,

7 operating and maintaining a distribution system, providing

8 customer service in relation to provision of electricity

9 through these systems. It says that Disco delivers

10 electricity in New Brunswick directly to over 325,000

11 customers and indirectly to an additional 42,000 customers

12 through two municipal utilities, Saint John Energy and the

13 City of Edmundston. Do you see that?

14 MR. MAROIS: Yes, I do.

15 Q.315 - And so these three distribution entities, being Saint

16 John Energy, City of Edmundston and Disco, effectively

17 when you add I guess Perth-Andover, would be the local

18 distribution companies in the Province of New Brunswick

19 collectively?

20 MR. MAROIS: Yes. I guess technically Disco has a specific

21 statute under the Act being the standard service provider.

22 Q.316 - I understand that, but the people or companies in New

23 Brunswick looking from energy services would get it either

24 from Disco or from one of the Municipals?

25

2 MR. MAROIS: That is correct.

3 Q.317 - And I understand that the territory covered by the  
4 Municipals is governed by legislation as to defining it  
5 geographically, is that correct?

6 MR. MAROIS: That's my understanding, yes.

7 Q.318 - And I understand that since that legislation --  
8 perhaps it wasn't since that legislation was passed, so I  
9 will take that back. But I do understand that the  
10 boundaries of the City of Edmundston have expanded and a  
11 portion of the City of Edmundston takes their power from  
12 Disco and not from Edmundston Energy, is that correct?

13 MR. MAROIS: That's possible, yes.

14 Q.319 - Does Disco believe that Edmundston Energy should  
15 expand its territory to take in all of its residents in  
16 the newly amalgamated community?

17 MR. MAROIS: I believe that's a policy matter not left to  
18 me.

19 Q.320 - A policy of Disco or a policy of government?

20 MR. MAROIS: Of government.

21 Q.321 - And do you know what steps would be necessary -- I  
22 know there was an IR on this. It was actually Disco UM  
23 IR-6 in the November 14th 2005 interrogatories.

24 MR. MAROIS: Could you repeat that reference, please?

25 Q.322 - Sure. It's exhibit A-54, I believe. A-54, and it's

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Disco UM IR-6, and it's the November 14th 2005

interrogatories. Do you have that IR which I referred you to?

MR. MAROIS: Yes, I do.

Q.323 - And question (b) asked to list the steps required for Edmundston Energy to purchase Disco assets within its legal municipal boundaries, and the response, the first bullet, talks about approval of the Board of Directors of Disco. So Disco does have a role to play. And you say it would be a matter of policy but would it not be partly an issue for Disco to deal with as one of the steps?

MR. MAROIS: I guess the way I would answer that question is really when you look at the response and there are four bullets listed there, I think we would have to start with the fourth bullet.

I mean if there was a legislative change and if there was a desire by the government for us to transfer part of the territory to the municipalities, then you would go to that first three steps. But until the first step is done there is -- I mean this was meant to respond to the question in a more mechanical matter saying these would be the types of approvals required.

Q.324 - Sure. Well let me just follow up and ask you with respect to the first bullet, and whether it should come

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first or last I guess is immaterial. But would approval of the Board of Directors of Disco be required?

MR. MAROIS: As stated in the response, yes.

Q.325 - And I take it that the fourth bullet talks about the territorial limitations set out in the Act. So what you are really saying is it would require a legislative amendment?

MR. MAROIS: Yes.

Q.326 - Mr. Marois, if I can now take you to page 8 of your evidence, and specifically I'm referring to questions 12 and 13. Do you have that?

MR. MAROIS: Yes, I do.

Q.327 - And question 12 deals with the strategic objectives from a financial perspective and question 13 deals with strategic objectives from a customer's perspective. In 12 you talk about achieving commercial rates and in 13 you talk about meeting customer expectations with competitive rates. Can I use those terms interchangeably or do you mean something different by each one of them?

MR. MAROIS: We mean something different.

Q.328 - Could you explain that for me, please?

MR. MAROIS: What is meant by commercial rates are rates that allow us to cover our costs including a commercial return. So in other words, we are able to generate a

2 profit to help pay down the debt. And that's a key component  
3 of achieving commercial viability and it's consistent  
4 with the overriding objective of restructuring which was  
5 to improve or reduce the financial risk to tax payers. So  
6 that's the commercial rates.

7 The competitive rates is having rates that are competitive  
8 with our -- mainly our neighbouring utilities. So from a  
9 customer's perspective, the commercial rates is from a  
10 financial perspective and the competitive rate is from the  
11 commercial -- the customer's perspective.

12 Q.329 - Okay. If I can just go to the competitive rates. Who  
13 is it that you would be looking to be competitive with,  
14 for an example?

15 MR. MAROIS: Well competitive -- there is numerous  
16 components in determining if you have got competitive  
17 rates. I guess one of the first things we have to look at  
18 is rates are a function of costs. So one of the ways of  
19 ensuring we have competitive rates is to ensure that we  
20 have a good control on our costs, and that's part of our  
21 strategic objective. So that's one component.

22 The other component of competitive rates is the rate  
23 structure itself. Are the rates sending the proper price  
24 signals? The issue of cost subsidization. So there is  
25 the ultimate level of the rates but also the structure of

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the rate itself.

And in terms of competitiveness, what we do is we monitor neighbouring utilities to ensure that we are definitely -- that we are in the ballpark. And the other thing that we do is we also as part of surveying our customers, we have been surveying our customers on a quarterly basis since 1997, and that's one of the questions we ask them, what is their perception of our -- the competitiveness of our rates.

Q.330 - Who do you mean by neighbouring utilities? That's really what I am asking you.

MR. MAROIS: Well you have got Nova Scotia, Hydro Quebec, Newfoundland, New England utilities. So we monitor these utilities on a regular basis. And what we are seeing is other than for Newfoundland and Hydro Quebec, we are very competitive. Maybe just to that point, when you compare yourself with other utilities you always -- you almost have to really -- there are two classes of utilities. There are utilities that are more fossil fuel based like us, and that are -- utilities that are fortunate enough to have access to a lot of hydro, like Hydro Quebec and Newfoundland. And really in these circumstances where fossil fuels are very expensive it's unfair to compare

1  
2 yourself with a hydro based utility.

3 Q.331 - Fair enough. But I understand in trying to remain  
4 competitive, you are talking about comparing yourself to  
5 these neighbouring utilities, and in fact your pricing  
6 though is really just a function of cost, isn't it?

7 MR. MAROIS: Yes. Our pricing is a function of cost and I  
8 believe I started my response with that comment.

9 Q.332 - If I could move to perhaps a new topic, and I take you  
10 in --

11 CHAIRMAN: Maybe that's a good spot, Mr. Gorman, for us to  
12 take our mid morning break.

13 (Recess)

14 CHAIRMAN: Go ahead, Mr. Gorman.

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

16 Q.333 - I want to just for a moment revisit exit fees, if I  
17 could. And I will be brief on this. I appreciate that I  
18 did cover it yesterday.

19 But in reviewing the transcript I had posed a question to  
20 you, Mr. Marois, as to whether if an entity such as a  
21 Municipal Utility decided that they wanted to stop taking  
22 service from Disco, how would they know in advance in  
23 order to plan and whether or not it was an appropriate  
24 decision.

25 And I asked how they would know in advance with

2 respect to the exit fee. And then I went on and unfortunately

3 asked a second question before I let you answer that and

4 asked if you were going to make a proposal for exit fees.

5 And you said that was in your planning.

6 But I want to go back to the first part of my question.

7 Because it seems to me the way the system is set up, in  
8 order for, for example a municipality to go off standard  
9 service, they would have to apply -- they would have to  
10 give notice that they were doing so without knowing in  
11 advance what that exit fee was.

12 In other words they would be going in blind in terms of  
13 what that cost would be. Is that the case? Do you agree?

14 MR. MAROIS: Well, I think it's important that I be clear.

15 The intention is to -- if an exit fee is required we will  
16 generate one.

17 So I agree with your question that if a customer is  
18 contemplating leaving the system, knowing the exit fee is  
19 an important component. And we will be able to provide a  
20 component in due time.

21 Q.334 - No, I understand your response. But I don't think  
22 that it is really responsive to the question that I have  
23 put to you.

24 And that is -- for example, let's say that one of the

2 Municipal Utilities wanted to cease taking service. And one  
3 of the considerations would be, what are we going to pay  
4 for an exit fee? My understanding is that Disco can make  
5 an application to the Board to establish that fee or a  
6 municipality can make that application.

7 But my understanding is that a municipality could only  
8 make that application after having given their notice. So  
9 in a sense they would be going in blind, if you will. Do  
10 you agree that is the way that it is?

11 MR. MAROIS: No. Section 79(7) of the Act for example  
12 provides that --

13 CHAIRMAN: Would you wait just a moment?

14 MR. MAROIS: Yes, I can.

15 CHAIRMAN: We want to follow this. Go ahead, Mr. Marois.

16 MR. MAROIS: I guess yesterday I referred back to Section  
17 79(1) which is kind of the general section of that section  
18 of the Act dealing with exit fees.

19 And Section 79(2) indicates that the standard service  
20 supplier or Municipal distribution utility or industrial  
21 customer may apply to the Board to determine the fee  
22 payable under subsection (1).

23 But then if you go on to Section 79(7) there is an  
24 alternative here which says, if no fee has been set by the  
25 Board under this section that would apply to a Municipal

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distribution utility or industrial customer, the standard service supplier or a Municipal distribution utility or an industrial customer may agree as to the fee to be paid under this section.

And then 79(8) indicates that would be subject to Board approval. So there is a way for -- or the Act provides for the scenario where the standard service provider Disco can agree on a rate with the Municipal utility or industrial customer, that being subject to Board review.

But if -- so I mean, I think by agreeing on the fee at least it will give an indication to the Municipality, in a case like that, of what would be the fee.

Q.335 - Let me set out for you then what I see as the Catch-22 here. And that is set out in Section 79(1) of the Act. And it is in Section 79 that you are referring to. And it starts out by saying "A Municipal distribution utility or industrial customer that decreases its consumption of standard service as a result of purchasing electricity from another supplier."

Doesn't that become a condition precedent in a sense? In other words, does not the Municipal utility or the industrial customer have to take that step before we trigger these other provisions with respect to exit fees?

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MR. MAROIS: Well, I'm not a lawyer, so -- but I'm certain that there must be a way. Again if you go back to Section 79(7), if somebody wants to leave, an industrial customer or a municipality, that we can agree on the rate subject to the PUB review.

So if the customer desires to leave we will be able to get a really good indication of what would be the potential fee.

Q.336 - I appreciate that you are not a lawyer. And I'm not going to try and elicit a legal opinion out of you. But what I do want to know or need to know is from Disco's perspective how this mechanism would work.

Because if I go to Section 79(7), you will agree that in the last line it talks about the parties may agree. So it is not compulsory. An agreement would have to take place for that section to work.

The parties would have to meet and come to some consensus on what the fee would be?

MR. MORRISON: I don't know if there is a question there, Mr. Chairman.

MR. GORMAN: I think the question was --

CHAIRMAN: Something is being considered.

MR. MORRISON: That is my point.

MR. MAROIS: Could you please repeat the question? I want

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to make sure I answer the right question.

Q.337 - I wish I had the transcript now.

MR. MAROIS: Yes. Now you know how I feel.

Q.338 - I guess I was referring you to Section 79 generally and specifically in response to your comment that under 79(7) the parties may agree to a fee payable under this section.

I think I put to you first of all that it would be -- it is not something that would happen automatically or that the Municipal utility for example could make happen.

It would need the agreement or concurrence of Disco and the Municipal utility or industrial customer?

MR. MAROIS: Yes. But I guess what I'm saying is we are more than willing to work with these customers to make it happen if this is something that is required. So I think we have never said that we are not willing to work with --

Q.339 - No. And I appreciate your comments with respect to good faith in terms of working with the parties. But the parties need to know for certainty how this process would work.

And I'm going to take you back to Section 79(1) and ask you if you agree that in order to trigger this whole section it is necessary, from Disco's -- at least in Disco's opinion, necessary to either decrease your

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2 consumption of standard service or eliminate it altogether?

3 MR. MORRISON: Mr. Chairman, we really are getting into an  
4 area of statutory interpretation and --

5 CHAIRMAN: Well, I agree, Mr. Morrison. So I will ask you  
6 not to pursue that any further. But I will say this, that  
7 I think it is time that -- let's say tomorrow and Thursday  
8 may have some open time. And I may ask counsel to argue  
9 so that the Board can rule.

10 Because with frankness I personally, in my review of the  
11 legislation, have felt that the interpretation that Mr.  
12 Gorman has been putting on the section is appropriate.  
13 But that is just the way we have been proceeding.  
14 And I would like to hear argument about it. That will  
15 then give guidance to Disco in the future as to whether or  
16 not they have to initiate or if there is another fashion  
17 of doing it.

18 Go ahead, Mr. Gorman.

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

20 Q.340 - I will move to another topic. And I'm in exhibit A-  
21 50, tab 3, direct evidence of Lori Clark, Part 1.

22 And we were taking -- I guess initially in your direct  
23 evidence, Mr. Marois, you took us to this table 1 which  
24 appears on page 2 of that evidence. And we have actually

2 had a question or two on it already this morning.

3 But on table 1, if I take you down to line 7, which are  
4 special payments in lieu of income tax --

5 CHAIRMAN: I'm sorry, Mr. Gorman. Would you direct us to  
6 the appropriate place in this binder?

7 MR. GORMAN: Sure. It is A-50. And then it is tab number 3  
8 in -- I guess it would be a gold-colored tab 3.

9 CHAIRMAN: Okay.

10 MR. GORMAN: And then direct evidence of Lori Clark, Part 1  
11 would be the first evidence following that. And I'm on  
12 page 2 of --

13 CHAIRMAN: We have got you now. Thank you.

14 Q.341 - And I'm referring to table 1 which has been referred  
15 to earlier during this phase of the hearing. And I'm  
16 directing your attention to -- under component number 7  
17 which is special payments in lieu of income tax.  
18 And I'm just wondering if you can explain to me the  
19 difference between the 3.9 million for 2005/2006 estimated  
20 and the 8.8 million for the 2006/2007 estimated?

21 MS. MACFARLANE: Your question is, as I understand it, is  
22 why the special payments on lieu of income tax are lower  
23 in 05/06 than they are in 06/07?

24 Q.342 - That's correct. That seems to be next to purchase  
25 power and one of the areas that there seems to be greatest

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increase?

MS. MACFARLANE: Yes. Could I direct you to -- under that same tab, Lori Clark's evidence, tab 4, page 8. And page 8 is a table indicating forecasted earnings before special payments and they formed the basis of the calculation of special payments.

You can see in column 2 that the earnings on which those taxes are payable are lower in 05/06 than they are in 06/07. And it's a straight calculation 35.12 percent of that number that leads to the amount of special payments.

Now there is small portion in there for federal capital tax and that's on a subsequent page. But the large part of the difference is because the earnings before taxes is different year over year.

Q.343 - So 05/06, the earnings are 8.2 million. And the estimated earnings in 06/07 are 23.2 million?

MS. MACFARLANE: That's right. That's the 05/06 budget and the 06/07 budget, yes.

Q.344 - And why would the earnings be so much greater in 06/07 than 05/06, is that something that's been targeted by Disco?

MS. MACFARLANE: Yes, it is. Again it's part of this managed transition to commerciality. There is a step up

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2 in -- there is a step up in the amount of earnings that Disco  
3 is requesting in the 06/07 application. We are requesting  
4 a level of net income that is representative of an  
5 appropriate return on an equivalent equity amount. And  
6 that would allow us to facilitate repayment of debt.  
7 And secondly in 06/07, there is a further step up in the  
8 capacity payments coming from the generator, which again  
9 gets passed on to Disco and is increasing the call on the  
10 revenue requirement from that respect. That actually  
11 doesn't affect net income because that's a flow through.  
12 The largest reason for it is because in this year Disco in  
13 this revenue application is asking for a net income  
14 commensurate with an equity level that would let it make a  
15 contribution through dividends to reduction of its debt.  
16 And we didn't ask -- we didn't expect to earn that in 04 -  
17 - or pardon me, in 05/06. Again it's part of the  
18 deliberate and controlled transition.

19 Q.345 - Well with respect to the return on equity, are we a  
20 little ahead of ourselves, is that part of what we are  
21 going to be talking about next week?

22 MS. MACFARLANE: We are going to be talking about it, but  
23 you asked why is net income forecasted in 06/07 -- pardon  
24 me, earnings before taxes, why is it higher than in the

2 previous year?

3 In 05/06, Disco did not earn a return that would allow it  
4 to declare dividends or to reduce its tax -- its debt.

5 And in 06/07 we are requesting that.

6 Q.346 - And without getting into the return on equity evidence

7 --

8 MS. MACFARLANE: Yes.

9 Q.347 - -- but just generally speaking, my understanding is  
10 you are looking for about 10 percent?

11 MS. MACFARLANE: If we had a deemed capital structure, it  
12 would equate to about 10 percent, yes.

13 Q.348 - And that's how you end up with the net income of 23.2  
14 million?

15 MS. MACFARLANE: It's not net income. It's earnings before  
16 taxes.

17 Q.349 - And that's what the -- if I go back to table 1, the  
18 special payments in lieu of income tax then are based on  
19 this number that is derived from table 4?

20 MS. MACFARLANE: That's correct.

21 Q.350 - So if net income goes up, then payments in lieu of  
22 taxes also go up?

23 MS. MACFARLANE: If earnings before taxes go up, taxes go up  
24 as well, yes.

25 Q.351 - But they are not taxes. They are payments in lieu of

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taxes?

MS. MACFARLANE: That's correct. They are required under the Electricity Act, Section 37.

Q.352 - No, I understand the statutory requirement. I am really -- in a sense what I am really getting at is the amount. Is this not unlike an example for price of gasoline goes up from 80 cents a litre to \$1 and there is HST on it, there is an additional amount because you get one number up, the other number increases?

MS. MACFARLANE: That's correct.

Q.353 - Ms. MacFarlane, you also mentioned the large corporation tax. Again that's an emulated or imitated amount, is it?

MS. MACFARLANE: That's correct. The calculation of that amount is on -- in that same tab 4. It's on page 9, table 4(f). And at the bottom of the page, line 20, you can see special payments in lieu of federal large corporate tax, .6 million.

Q.354 - And is that also used to pay off debt?

MS. MACFARLANE: Any amounts that are paid by Disco to Electric Finance under Section 33 of the Act, Electric Finance must use it to reduce the legacy debt of NB Power.

MR. GORMAN: I have no further questions for this Panel, Mr. Chairman.

2 CHAIRMAN: Thank you, Mr. Gorman. Mr. Hyslop, would you  
3 like to trade places?

4 MR. HYSLOP: I believe Mr. Peacock has some questions.

5 CHAIRMAN: Oh, does he. I beg your pardon, Mr. Peacock.  
6 Mr. Peacock, will you trade places?

7 CROSS EXAMINATION BY MR. PEACOCK:

8 Q.355 - Thank you, Mr. Chair. As with last time I pledge to  
9 stumble along as efficiently as possible. For the Panel I  
10 guess I will highlight the evidence I'm questioning are  
11 specifically the evidence of Ms. Lori Clark concerning the  
12 revenue forecast as well as your response to our revenue  
13 IRs.

14 According to documents the 2006/'7 forecasted revenue is  
15 1.18 billion. From this the residential class accounts  
16 for roughly 456,000,000. Would it be fair to say then  
17 that the residential class accounts for roughly 40 percent  
18 of total revenue for 2006/07? I got those numbers from  
19 table 5(d).

20 CHAIRMAN: It is helpful, Mr. Peacock, if you know where you  
21 got those figures if you refer us --

22 MR. PEACOCK: Right. I apologize.

23 CHAIRMAN: No, no. No problem.

24 MS. CLARK: Could you repeat your numbers?

25 Q.356 - The forecasted revenue was 1.18 billion and the

2 residential class accounted for 456,000,000. So we understood  
3 that that meant roughly 40 percent of total revenue came  
4 from the residential class.

5 CHAIRMAN: We are having trouble, Mr. Peacock. Is it 5(d)  
6 as in David?

7 MR. PEACOCK: Yes. Let me just see if I can find the  
8 reference myself.

9 CHAIRMAN: We have it. Thank you very much.

10 Q.357 - I guess perhaps one of the challenges is that  
11 forecasted revenue I received from 5(a), and that included  
12 miscellaneous revenue on top of the 1.14 forecasted, so  
13 that may have been part of the cause for confusion.

14 MS. CLARK: I have 40 percent and the calculation I used is  
15 in table 5(d) --

16 Q.358 - Okay.

17 MS. CLARK: -- to take resident -- do you want me to explain  
18 it?

19 Q.359 - No. I think if we are on the right -- we are on the  
20 same -- just that I wanted to make sure that we understood  
21 the numbers as you do. According to the same documents,  
22 and I guess I would refer here to table 5(b) which deals  
23 with the gigawatt hours. Forecasted sales of power for  
24 2006/07 is expected to be 14,878. The residential class  
25 will account for an expected 5,008. Would it be fair to

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say then that the residential account -- class accounts for roughly 40 percent of the total power sold in 2006/07?

MS. CLARK: My calculation is 37 percent.

Q.360 - 37. Okay.

MS. CLARK: Sorry. 34 percent.

Q.361 - 34. Right. So we are on the right track there. If the NB Power group of companies desires to make a dollar in sales for every dollar in electricity it produces, regardless of rate class, would it be fair to expect that revenue from residential customers should be similar in percentage terms to the total power sold to residential customers?

MR. MAROIS: I apologize. I'm going to have to get you to repeat your question.

Q.362 - Okay. If the NB Power group of companies desires to make a dollar in sales for every dollar of electricity it produces, regardless of rate class, would it be fair to expect that revenue from residential customers should be similar in percentage terms to the total power sold to residential customers?

MR. MAROIS: What I understand from your question is if there were no rate classes and you didn't take into account costs, is that -- in other words, should the revenues be just the function of volume?

1 - 3492 - Cross by Mr. Peacock -

2 Q.363 - Well I should preface, these questions we have  
3 prepared to help us understand some of the elements of the  
4 revenue requirements and rate design. We know that there  
5 is that 1.05 to .95 target. Presumably the dollar would  
6 be the happy medium.

7 So if in fact every rate class were in fact able to  
8 achieve that happy medium, would it not make sense that  
9 the percentage of revenue from any particular rate class  
10 would be the same as the percentage of power sold to that  
11 rate class?

12 MR. MAROIS: Well if I understand your question, I guess  
13 what is missing is we have been looking at two tables,  
14 table 5(d) which shows revenues, and table 5(b) which  
15 shows gigawatt hours. What is missing are the costs.

16 Q.364 - Okay.

17 MR. MAROIS: And as we have just gone through the CARD  
18 proceeding and the costs on a unit basis is not the same  
19 to serve each rate class.

20 Q.365 - Okay.

21 MR. MAROIS: So -- and at the end of the day that's how you  
22 determine your rates is a function of cost allocated to  
23 each rate class.

24 Q.366 - Okay. Well perhaps I will just ask one more question  
25 and then I will get into the specifics of customer service

1  
2 and energy advisors. Those are really the remainder of my  
3 questioning. Would it be fair to say under the current  
4 rate design that residential customers pay more than their  
5 share of total power sales than other rate classes?

6 MR. MAROIS: Well again I guess my response would be  
7 consistent with my previous response, is that if you take  
8 into account costs and you look at the rate proposal we  
9 filed on January 21st, it shows that the residential  
10 customers are recovering 95 percent of their cost. So  
11 proportionately they are at the bottom of the targeted  
12 range of 95 to 105.

13 Q.367 - The next question I have actually is specific to  
14 connection revenue on table 5(e). There was connection  
15 revenue of 2.6 million for 2006/07. And we were curious,  
16 does Disco know how much of that revenue is from  
17 reconnections from accounts whose arrears have been  
18 removed, and how much is from new connections to the grid?

19 MS. CLARK: I don't have that breakdown with me here.

20 Q.368 - Okay. The -- perhaps maybe I might address the -- I  
21 guess the second element of that table, and that's the  
22 question of surcharges. Surcharges are described as late  
23 payment charges on overdue receivable accounts. 3.2  
24 million is forecast for 2006/07. Does Disco know how much  
25 of this 3.2 million is from the residential class?

2 MS. CLARK: It's approximately 70 percent.

3 Q.369 - Of the 3.2 million is from the residential class?

4 MS. CLARK: Yes.

5 Q.370 - Okay.

6 CHAIRMAN: Mr. Peacock, you are probably not aware but Ms.  
7 Clark answered the last -- previous to last question with  
8 I don't have that information here. If you want it then  
9 you can ask for her to give you an undertaking to provide  
10 it, if that's important from your perspective.

11 MR. PEACOCK: Actually -- thank you for providing that  
12 information. That would actually be wonderful if you  
13 could in fact provide the amount of your connection  
14 revenue that is actually from reconnections to the grid  
15 due to payment of arrears compared to new connections. I  
16 think that the global total was 2.6 million. So whenever  
17 you are able to do that that would be fantastic.

18 MS. CLARK: I can check and see if the information is  
19 collected that way and if it is we will certainly provide  
20 it.

21 Q.371 - Okay. Thank you. So 70 percent of the 3.2 million  
22 are residential. Okay. So in essence the Disco collects  
23 slightly more than 2,000,000 annually in late payment fees  
24 from residential customers.

25 MS. CLARK: Can you repeat the question?

1 - 3495 - Cross by Mr. Peacock -

2 Q.372 - Oh, I guess I was just trying to quantify that 70  
3 percent of 3.2 million. That would be slightly more than  
4 2,000,000 annually in late payment charges?

5 MS. CLARK: Yes, that's correct.

6 Q.373 - I guess now I will dive into the question of energy  
7 advisors and how they may help facilitate a reduction in  
8 late payments. The sales forecast for 2006/07 sees a  
9 reduction in demand of 82 gigawatt hours due to energy  
10 efficiency and conservation, of which 36 gigawatt hours is  
11 attributed to the residential class. I believe that's on  
12 page 15 and 16 of Lori Clark's testimony.

13 In the forecast would it be fair to say that the majority  
14 of this improvement, say 70, 80 percent, comes through  
15 better insulation only, or is there any sort of breakdown  
16 as to what efficiency measures are taken?

17 MS. CLARK: I do believe it's primarily related to better  
18 insulation and things like that, but subject to check.

19 Q.374 - Okay. This 36 gigawatt hours according to our  
20 calculations accounts for roughly one/tenth of one percent  
21 of the 5,008 gigawatt hours forecast expected to be needed  
22 by residential customers. We figure that putting one low  
23 wattage CSL bulb in all New Brunswick households can  
24 reduce demand by a total of five gigawatt hours throughout  
25 the province.

2 And so our concern is that Disco has substantially  
3 underestimated the effect in which conservation measures  
4 can reduce demand in the short term. Has Disco forecast  
5 more substantial reductions in demand in 2006/07 if  
6 residential ratepayers aggressively sign onto Energuide  
7 for homes or other efficiency measures?

8 MR. MORRISON: Mr. Chairman, and I don't mean to cut Mr.  
9 Peacock off at all in any way, but I think -- and I may be  
10 mistaken, but I believe a lot of this information would  
11 have been part of the load forecast, and we have had a one  
12 day load forecast hearing, we are going to have another  
13 further load forecast hearing later.  
14 And if they are related I'm sure Mr. Larlee would be able  
15 to probably drill down deeper into these issues than this  
16 panel would. But, you know, I'm prepared to allow Mr.  
17 Peacock to continue. It's just a question of efficiency  
18 of time, that's all.

19 CHAIRMAN: Well, Mr. Peacock, Mr. Morrison is probably right  
20 about that. But again there was an answer coming, Mr.  
21 Morrison. We will let the panel attempt to answer on the  
22 understanding that they are probably not the experts.

23 MR. MAROIS: Well I hope I will be able to shed some light.  
24 I guess first of all, the 06/07 load forecast has been  
25 set and the subsequent year forecasts are part of a ten

2 forecast that are done at one point in time. And really when  
3 we -- the way the model is made to my understanding is the  
4 assumption about energy efficiency is really based on  
5 historical practices, because we -- unless we are aware of  
6 specific energy efficiency initiatives or demand side  
7 management programs it's almost impossible to factor it in  
8 a long-term forecast.

9 So that being said and I guess consistent with what I said  
10 yesterday, as we know more about the energy efficiency  
11 agency, as we become more familiar with their programs, it  
12 is going to become easier for us to factor that in our  
13 load forecasting on a go forward basis.

14 Q.375 - Okay.

15 MR. MAROIS: So I guess in short I guess it's based on  
16 historical basis more than known programs.

17 Q.376 - Okay. And I thank you for explaining this. The  
18 reason I have been asking about energy efficiency of  
19 course is to get a better understanding of the role in  
20 which energy advisors play in terms of reducing demand.  
21 On the NB Power website energy advisors are described  
22 under the customer service contact centre operation. Do  
23 energy advisors personally visit residences with energy  
24 efficiency problems?

25 MR. MAROIS: Yes. What they do is the bulk of them visit.

2 One energy advisor on a rotating basis sits in a call centre -  
3 - in the contact centre. So you have got one energy  
4 advisor at any given time in the contact centre to help  
5 answer more technical questions, while the others are  
6 outside visiting customers.

7 Q.377 - And I apologize that I don't have the specific IR in  
8 front of me but I believe there is a staff -- provincial  
9 staff of energy advisors of around six or seven? Actually  
10 I guess it was my second IR. So you actually did in fact  
11 answer it. I apologize. It's seven -- according to your  
12 own records, seven energy advisors.

13 MR. MAROIS: That's correct, yes.

14 Q.378 - Okay. In that same response you suggested that they  
15 have established 25,230 contacts in five years. Assuming  
16 that each contact represented a separate residential  
17 customer, it appears that energy advisors have assisted  
18 less than ten percent of the residential market over five  
19 years, or less than two percent of the market annually.  
20 Given the commitment to conservation both within the NB  
21 Power group of companies and among other intervenors,  
22 could not Disco allocate more resources to this service?

23 MR. MAROIS: Well I guess maybe there is two aspects to my  
24 response. First as indicated in our response to your  
25 question, IR-2 of July 14th, the role of the energy

1  
2 advisors and the account managers -- the energy advisors are  
3 really for residential and small commercial, and the  
4 account managers are for the larger commercial. It is not  
5 primarily energy conservation. I mean their role is to  
6 answer a broader array of questions from the customers.  
7 So it could deal with -- like it could deal with metering,  
8 water heating issues. So any questions that we are not  
9 able to resolve at a contact centre are often addressed by  
10 these people. So that's the first I guess aspect.

11 The second is again like I mentioned yesterday until we  
12 know better what the Energy Efficiency Agency will do,  
13 it's hard for us to prepare a more -- a longer term plan.

14 But definitely we want to work with the agency and we  
15 definitely have a role to play, because we interface with  
16 the customer, we have the information, we have the  
17 expertise. But right now at this stage it's very  
18 difficult for us to articulate that role. And one thing  
19 we did do, and I don't know if you were here yesterday  
20 when I mentioned that, is --

21 Q.379 - You were creating a new position, yes.

22 MR. MAROIS: Yes. A senior position to really help to guide  
23 us on green energy matters and really maybe we should have  
24 called it sustainable development role, because we clearly

2 want to elaborate more policies and strategies on energy  
3 conservation but also on renewable energy, on remarketing  
4 and all that. So we have laid the ground for that.

5 Q.380 - Thank you. I thank you for your response. I find it  
6 interesting on the NB Power website under the job  
7 functions of the energy advisor the first function is to  
8 provide customers with advice on energy efficiencies and  
9 conservation. So clearly it is an important role.  
10 We were curious, whenever a residential account is  
11 disconnected, and there are roughly 5,000 disconnects in  
12 any given year -- is an energy advisor automatically  
13 assigned to look at the account and offer efficiency  
14 advice once the account is reconnected?

15 MR. MAROIS: No. The answer is no.

16 Q.381 - In an earlier phase of the hearing we introduced  
17 evidence that suggested that many of the low income  
18 ratepayers Disco serves live in buildings that are  
19 significantly older and less efficient than the residences  
20 of middle income ratepayers.  
21 Does Disco evaluate how many of the roughly 5,000  
22 disconnects in the residential sector it services annually  
23 are in fact at addresses that have faced previous  
24 disconnections? In other words, does it know how many of  
25 these disconnected units have energy issues on an annual

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basis?

MR. MAROIS: Other than potentially on very isolated cases we do not have that information.

Q.382 - Okay. There would be no possibility of in fact investigating to see if there is a correlation in terms of there are repeat disconnects?

MR. MAROIS: Nothing is impossible but currently we do not have -- our systems are not stratified in that way to be able to do that correlation.

Q.383 - Okay. Well then perhaps you won't be able to answer the next question, but I will ask it anyway. Does Disco know if any ratepaying households have signed onto Energuide for Homes as a result with contact with your energy advisors? In other words, is that specifically promoted by your energy advisors?

MR. MAROIS: It is promoted but I don't think we would know how many actually go ahead with the Energuide. Maybe just to add to my response, I have personally met with the Energy Efficiency Agency and I have shared with them that one of the key challenges in energy efficiency is low income housing for the reasons you alluded to, and they seem to share the same concerns. So I think it's encouraging that hopefully it's going to get translated into specific programs.

2 Q.384 - Thank you. Because actually this leads into my second  
3 -- into my next question. Is Disco aware of the numerous  
4 initiatives other utilities across Canada have undertaken  
5 to ensure that energy efficiency measures are introduced  
6 into low income households?

7 MR. MAROIS: I'm not sure if we are totally up to speed, but  
8 definitely to our involvement in the Canadian Electricity  
9 Association and other groups, we stay abreast of at least  
10 key programs that are available in other utilities.

11 But again because the policy has been known for a while  
12 that the government would be creating a separate agency,  
13 so as a result of that we kind of took a step back until  
14 we knew where we stood with the new agency.

15 Q.385 - Well I guess that partly answers my next question.

16 Compared to other utilities across Canada, does Disco feel  
17 that it does a good job of promoting energy efficiency in  
18 low income households?

19 MR. MORRISON: Mr. Chairman, again I want to make it clear,  
20 I'm not trying to cut Mr. Peacock off but I recall that  
21 the Board had indicated at some point in time that it  
22 would like to have a separate session dealing with  
23 customer service policies. I'm not sure whether we  
24 actually scheduled a place and a hearing for that. I'm  
25 happy to have Mr. Peacock continue if that will get it out

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2 of the way today, and --

3 CHAIRMAN: No. Mr. Morrison, the Board and your client

4 agreed that we could take the question of customer service

5 policies and remove it from the main body of this hearing,

6 and that once this hearing is concluded we will schedule,

7 as we were going to do in reference to the long-term load

8 forecast, have another separate hearing.

9 I believe Mr. Peacock is aware of that, but -- can you

10 resist the temptation to continue on this line, Mr.

11 Peacock? In other words, we are going to look into it

12 very thoroughly.

13 MR. PEACOCK: Okay. As you know, I have a habit for coming

14 in late for some of these hearings, so I was -- the reason

15 why some customer service issues were brought forward was

16 I was concerned that that pledge had been forgotten? So

17 I'm --

18 CHAIRMAN: No, no. It's very much still on the agenda.

19 MR. PEACOCK: Okay.

20 CHAIRMAN: In other words, it's another hearing that we have

21 to go through almost immediately after delivering our

22 decision on this, and we will do so, but -- and we had a

23 customer service generic hearing in the early '90s as

24 well, as you probably know. So we will be doing that

25 MR. PEACOCK: Well if that's the case, the majority of my

1  
2 remaining questions deal with the late payment charge, and I'm  
3 not sure if that would be more suitable for the next  
4 phase.

5 CHAIRMAN: Go ahead with that, because that is a rate --

6 MR. PEACOCK: A revenue.

7 CHAIRMAN: So that's something that we can do in this  
8 hearing and it affects the revenue requirement, et cetera.  
9 So go ahead with that item.

10 Q.386 - Okay. I guess before I continue I should offer -- my  
11 last question was more of a subjective one but I will  
12 offer it to the panel again, does Disco feel that it does  
13 a good job promoting energy to low income households?

14 MR. MAROIS: Well again I think I have got to answer that  
15 question in the context -- current context of the  
16 government having decided to create an energy efficiency  
17 agency. If the government had not decided that in my mind  
18 our desire would be to do more. So in light of the  
19 current context, I believe we can do as much as we can  
20 because we really don't know where we fit.

21 Q.387 - Okay. On the question of payments, would Disco agree  
22 that electricity is an essential service for New Brunswick  
23 households?

24 MR. MAROIS: Yes.

25 Q.388 - Yes. Thank you. According to the rate policies

2 manual NB Power cannot -- or Disco can disconnect service for  
3 nonpayment of accounts in arrears.

4 Does NB Power have a standard length of time before  
5 residential disconnections are put into effect?

6 Because the reason we ask is we notice, in terms of the  
7 monthly breakdown, in response to an earlier IR, there is  
8 quite a variance. Obviously part of that variance is  
9 seasonal. The disconnections, I guess, the monthly  
10 variance are provided in table 2 of IR-4.

11 MS. CLARK: If I can refer you to Disco PUB IR-194 from  
12 November 14th, I think you can find the matrix there.

13 Q.389 - And IR-194, it tells you specifically the standard  
14 length of time before residential disconnects?

15 MS. CLARK: This is in exhibit 54, A-54, Disco PUB IR-194.

16 MR. MAROIS: PUB-194.

17 MS. CLARK: I'm looking specifically at page 2. At the top  
18 of the page it would say that, if you follow the matrix,  
19 an account would have to be a minimum of 51 days in  
20 arrears before it would be disconnected.

21 And during that time there would be several attempts to  
22 speak with a customer, at least two phone calls and  
23 oftentimes visits made to the location if you can't get  
24 the customer by phone before a disconnect is made.

25 Q.390 - Thank you. I guess as a follow-up there is no

2 difference in terms of the application of that policy in the  
3 winter months as opposed to the rest of the year, given  
4 that electricity is perhaps more essential in the winter  
5 than it is in the summer?

6 MS. CLARK: We are certainly more sensitive to that  
7 situation during extreme winter conditions.

8 Q.391 - But there is no specific policy though for winter  
9 disconnections?

10 MS. CLARK: During the winter months we often make payment  
11 arrangements more frequently with customers. But in the  
12 RSP manual you wouldn't find anything specific to that.

13 Q.392 - Okay. Thank you. Upon disconnection there is the  
14 service charge of 38 -- I think roughly \$38 billed for  
15 reconnecting the service on top of an average security  
16 deposit of two months.

17 Does Disco have an estimate of what that security deposit  
18 would be? Would it be \$300, 400 at an average -- for an  
19 average reconnection?

20 MS. CLARK: I don't have that information with me. But I  
21 could find it out for you.

22 Q.393 - Okay. That would be grand.

23 Our concern with this two month security deposit is that  
24 given that your two months of utility bills is in fact  
25 influenced greatly by the rate increases over the

2 last 20 months, we are concerned that it has increased, that  
3 security deposit has potentially increased at a rate much  
4 higher than increases to minimum wage or social  
5 assistance.

6 And we were wondering would you agree with this  
7 observation, that increases in minimum wage and social  
8 assistance rates have been far outstripped by the  
9 potential increase in a two months security deposit?

10 MR. MAROIS: Well, I guess I will start by saying we don't  
11 know yet the amount of the average security deposit. But  
12 what has been driving our rates, as you know, are  
13 different drivers than what has been driving social  
14 payments.

15 So I take it is quite probable that both are not evolving  
16 at the same pace. Our rate increases are driven mainly by  
17 fuel, the last increases.

18 Q.394 - The final -- I think I have three or four questions  
19 left. And they deal specifically with the payment  
20 arrangement service. And I'm not sure if you would be  
21 agreeable to answering those today or perhaps at a later  
22 date.

23 MR. MAROIS: We will try.

24 Q.395 - Okay. The actual number of late payment notices has  
25 increased by 67 percent over five years, according to the

2 data that you have provided.

3 And we were curious to find out has there been a similar  
4 increase in terms of customers taking advantage of the  
5 payment arrangement service or a comparable increase?

6 MS. CLARK: Can you tell me which IR you are referring to?

7 Q.396 - The IR for late payment notices I believe was in IR-4,  
8 your response. It is table 1 is where we determined the  
9 67 percent increase.

10 CHAIRMAN: Mr. Peacock, we are looking for that  
11 interrogatory.

12 MR. PEACOCK: Oh, it was filed -- their response, I guess  
13 IR-4 was July 14th 2005.

14 CHAIRMAN: Okay. So that would be in our volumes dealing  
15 with the cost allocation.

16 MR. MORRISON: I believe it is A-56, Mr. Chairman.

17 CHAIRMAN: A-56. We are now on the right page, Mr. Peacock.  
18 Go ahead.

19 MR. PEACOCK: Thank you.

20 MS. CLARK: The title of that table says "Late Payment  
21 Disconnect Notices". But I just wanted you to be aware  
22 that it also includes dunning notices and financial  
23 arrangements sent to customers.

24 So it includes any arrangements that we would send a  
25 letter to customer with a follow-up notice of the

2 arrangement.

3 Q.397 - Okay.

4 MS. CLARK: So it's included in that total.

5 Q.398 - Okay. So presumably customers that are part of the

6 payment arrangement service -- okay, that is their

7 mailouts as well.

8 So I guess just to finish the line of thinking, as late

9 payment notices have increased substantially over the last

10 five years, so has presumably participation in this

11 service?

12 MS. CLARK: I don't have the statistics here with me on the

13 number of arrangements that have been made with customers.

14 Q.399 - Okay.

15 MS. CLARK: But I could certainly find that out.

16 Q.400 - That would be wonderful.

17 This I guess is more of a policy question. If a customer

18 is committed to the payment arrangement service, in other

19 words, if they have set a firm set of dates to pay their

20 arrears, are they still subject to a 19.98 interest rate

21 on outstanding balances?

22 MS. CLARK: It's not actually interest. It's a late payment

23 charge that we add to the bill. And when we are making an

24 arrangement with a customer, we include the interest that

25 has been accumulated on the account or the late payment

1  
2 charge that has been accumulated on the account to that  
3 period. But we don't add any additional interest or late  
4 payment charge to it.

5 Q.401 - So once they commit to a specific time line, then  
6 there is no late payment charge added onto that?

7 MS. CLARK: That's correct.

8 Q.402 - Okay. Down to my final two questions. So we are  
9 almost at lunch. Given that NB Power recognizes  
10 electricity as an essential service, given that most New  
11 Brunswick households have a better debt to equity ratio  
12 than the NB Power group of companies, do you think that  
13 19.98 percent on overdue utility accounts is a fair  
14 charge?

15 MR. MAROIS: The late payment fee is developed to recover  
16 the cost related to those customers that do not meet the -  
17 - that don't pay their account. So it's really set first  
18 of all to recover the cost, but also not to create a  
19 burden to those customers who pay their accounts on time.  
20 So I mean, at the end of the day, if you don't recover  
21 these costs, somebody else will pay it. So it's a matter  
22 of equity and fairness within the customer classes, within  
23 the customers themselves.

24 Q.403 - Okay. Finally, you know, in our research we found a  
25 lot of utilities across Canada offer specific programs to

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help alleviate the utility costs on the community's most vulnerable citizens.

Does Disco offer any such debt forgiveness program? Or if not does it intend to do so in the years ahead?

MR. MAROIS: My understanding is in New Brunswick the Province has made it clear that it is not up to us to do this. It's up to the Province.

MR. PEACOCK: Thank you.

CHAIRMAN: Thank you, Mr. Peacock. We will be canvassing all of your questions again sometime in the not-too-distant future I hope.

We will break now for lunch and return at quarter after 1:00.

(Recess - 12:00 p.m. - 1:15 p.m.)

CHAIRMAN: Any preliminary matters? If not go ahead, Mr. Hyslop.

CROSS EXAMINATION BY MR. HYSLOP:

MR. HYSLOP: Thank you, Mr. Chairman and Commissioners.

Good afternoon, panel.

Mr. Chair, I would ask perhaps a little benevolence from the Board. There were some issues from Mr. Peacock this morning on customer service. And I had three calls in the last week on one minor issue of customer service.

And if it would please the Board, I would like to ask

2 the panel if they could tell me what the policy is. Because  
3 it seems to be a common call that I'm getting. It will  
4 not take long.

5 CHAIRMAN: Please go ahead.

6 MR. HYSLOP: Thank you.

7 Q.404 - Panel, I have had three calls in the last week from  
8 members of the public. They were on an estimated billing  
9 process. And when the meter was read they all had bills  
10 that were, according to them, three to four times as big  
11 as the largest bill that they ever got.

12 What is the best way and what is the policy NB Power  
13 handling that situation if they are called to a client?

14 CHAIRMAN: Have you got their names, Mr. Hyslop? You can  
15 give them to Mr. Marois.

16 MR. HYSLOP: Yes. I would. But I don't have their  
17 permission to use their names. So I would prefer not to.

18 Q.405 - But just in case I get more calls like that, what is  
19 the proper policy? How do you handle that?

20 Something you would like to check and come back would be  
21 fine, panel.

22 MR. MAROIS: No. That is fine. I guess you will appreciate  
23 we have a lot of information here.

24 Q.406 - Yes.

25 MR. MAROIS: So I'm just trying to gather my thoughts. I

1  
2 guess your question was regarding meter estimating. First of  
3 all I guess we don't have a permanent policy. Because  
4 what we have right now is a pilot project that we started  
5 in the fall. And we are going to be reassessing that in  
6 the spring and then making a final decision.

7 But what the pilot project entails for residential  
8 customers is estimating the meter every third month. And  
9 so that's the pilot. But where we want to go or where we  
10 are considering going is really estimating every other  
11 month. So one month you read. One month you estimate.  
12 One month you read. And this is quite a common practice  
13 for utilities to do this.

14 And the reason we did decide to do this pilot is we had an  
15 opportunity, as a result of early retirement, we had 12  
16 meter readers who left either as a result of early  
17 retirement or being reallocated to other jobs.

18 So we were faced with a decision of either staffing up to  
19 continue reading every month or to try to become more  
20 efficient. So that's why we introduced this pilot  
21 project.

22 And the way we estimate is we have got an algorithm. And  
23 the algorithm takes into account previous consumption, it  
24 takes into account temperature degree days in order to  
25 come up with an estimate.

2 We have been reading on average of roughly 55,000 meters a  
3 month -- or estimating, sorry, 55,000 meters a month or 21  
4 percent of the residential meters. We have gotten  
5 approximately a thousand calls. So around 1 percent of  
6 the people who have been read have called in with concerns  
7 or questions.

8 So I guess in a nutshell -- and the challenge we have is  
9 really for customers who have changed their patterns. So  
10 somebody that either installed an alternate source of  
11 heating or removed an alternate source of heating or has  
12 been gone for awhile, that's where using an algorithm can  
13 be challenging.

14 Q.407 - Now my question more particular is would NB Power, if  
15 a person's bill came in at \$800 and they thought it was  
16 going to be 2', would you be prepared to spread that  
17 \$1,800 out over a three or four-month period without the  
18 assessment of any -- I think the phrase was late payment  
19 fee.

20 Would that be the policy during this experimental stage?

21 MR. MAROIS: Well, we are a lot more accommodating than  
22 that. The instruction we have given to the contact centre  
23 is if a customer called and believes that his estimate,  
24 his or her estimate is wrong, we offered a customer to pay

1 - 3515 - Cross by Mr. Hyslop -

2 an amount that they considered reasonable. So the customer is  
3 given that opportunity.

4 Because one of the options we had was to go, send somebody  
5 to do a read at that point in time. But that would have  
6 been more costly. So we offer the customer to pay what  
7 they believe is reasonable, either the past month, or if  
8 they were willing to do a reading.

9 And I mean, as you know, when you read -- when you  
10 estimate meters it gets corrected the other month. As  
11 soon as you read the meter again it gets corrected. So we  
12 are trying to be as flexible as we can to the customer.

13 Q.408 - Thank you very much.

14 CHAIRMAN: Mr. Hyslop, did you get an answer to your  
15 question? Who do they call?

16 Q.409 - Yes. I guess that is the first question. Who should  
17 they call?

18 MR. MAROIS: I didn't pick that up in the question.

19 Q.410 - Yes. I'm sorry.

20 MR. MAROIS: I thought the question was what was our policy?

21 Q.411 - The other question I guess --

22 CHAIRMAN: Who do you call?

23 Q.412 - Who do you call?

24 MR. MAROIS: The 1-800 number. That's our contact centre.

25 They deal with these calls.

2 Q.413 - Okay. And they have all been instructed on the  
3 policies you have just described to the Board?

4 MR. MAROIS: Yes.

5 Q.414 - Thank you.

6 MR. MAROIS: Yes.

7 Q.415 - Thank you very much for that. It helps me deal with  
8 these phone calls.

9 Just briefly, and I know we have been through this before,  
10 Mr. Marois, you are the Vice-president of Disco?

11 MR. MAROIS: That's correct.

12 Q.416 - And you hold no office or board of directors' position  
13 with any other corporation in the NB Power group of  
14 companies?

15 MR. MAROIS: That's correct.

16 Q.417 - Ms. Clarke, you are not Vice-president. But you are a  
17 Senior Planning -- I didn't get the -- Business Director  
18 for Disco?

19 MS. CLARKE: That's correct.

20 Q.418 - And you don't hold any other position with any other  
21 company?

22 MS. CLARKE: That's correct.

23 Q.419 - And Ms. MacFarlane, you are the Financial Officer of  
24 just about everything?

25 MS. MACFARLANE: I'm the Vice-president Finance and Chief

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Financial Officer for each of the companies.

Q.420 - Thank you. And on the board of directors of NB Coal?

MS. MACFARLANE: That's correct.

Q.421 - I'm sure that is one of the plums you have.

Now very briefly too, and this is perhaps most directed to

Ms. MacFarlane, as an officer of a company you have

certain duties and obligations to each of those companies.

You understand that, I'm sure?

MS. MACFARLANE: That's correct.

Q.422 - And my question is in view of the fact that you hold

such a senior position with each of these companies, how

do you reconcile yourself when different conflicts occur

between any of the companies relating to any issue that

may come along?

Do you declare a conflict and not involve yourself at all?

MS. MACFARLANE: I will start by saying that my role is

primarily related to governance and policy development and

policy management. As it goes to that issue, it's a very

common structure in corporations that are affiliated for

there to be common CFOs, in fact common CEOs dealing at

that governance compliance and policy level.

The CEO ultimately has responsibility to the Board. And I

report to the CEO. And if there were areas of

2 policy conflict, I can't imagine that any of those would not  
3 be ones that would not ultimately end up being part of our  
4 governance process, indeed part of the shareholders'  
5 agreement in the role that Electric Finance Corporation  
6 plays in that area with respect to each of the companies.

7 Q.423 - Well, that is nice. But again I would like to go back  
8 to my question.

9 If there was a conflict between say Holdco and Disco over  
10 some policy relating to a future step in competition,  
11 would you not declare a conflict of interest and remove  
12 yourself from any discussion of that issue?

13 MS. MACFARLANE: I don't believe there would ever be able to  
14 be a conflict between Holdco and Disco. Because Holdco  
15 and Disco both operate under the same owner, the same  
16 shareholders' agreement, under the same board governance  
17 policies and under the same mission statement.

18 There is one global mission statement for the group of  
19 customers. And each of the companies play a role in that  
20 mission statement. But Disco has a mission statement most  
21 closely aligned with that of the group of companies which  
22 is reliable, safe and competitively priced energy  
23 delivered to New Brunswickers.

24 Q.424 - Yes. And again I would like to go back to my  
25 question, Ms. MacFarlane. And maybe I will help you maybe

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with a hypothetical, which I'm sure you will probably tell me  
could never occur.

But let's assume, if you would, that Holdco decides that -  
- you know, let's take the Belledune plant and let's sell  
it to Peter Hyslop, okay. He wouldn't know the first  
thing about electricity, Mr. Hyslop wouldn't. But having  
said that, they decide to sell it.

And the president of Genco or the board of directors and  
the management of Genco says, no way we should be selling  
that good asset on the North Shore to Mr. Hyslop. But  
Holdco wants to do it.

How do you deal with that situation? Do you declare a  
conflict and remove yourself from the discussion? Yes or  
no?

MS. MACFARLANE: Disco and Genco are both subsidiaries of  
Holdco. There is a strategy and policy role for the  
holding company to play under the egis of its board of  
directors and the shareholder agreement, such that at the  
end of the day the right decision about something like an  
asset of that nature would get made in the interest, as  
stated in the mission statement, of ratepayers of New  
Brunswick.

All of the factors would come into consideration with the  
end objective of doing what is best for the ratepayers

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of New Brunswick.

Q.425 - Okay. So the senior management of Genco sits around and they say, selling Belledune power station to Peter Hyslop would not be in the interest of any ratepayers. And Holdco says look, that is something I just think we should do.

Tell me, would you declare a conflict of interest and remove yourself from that discussion?

MS. MACFARLANE: I would not remove myself from the discussion. I would thoroughly want to understand the point of view that the Genco management was bringing to the table. I would also want to understand the perspectives of the rest of the NB Power companies. If they felt they were affected by that decision, I would want to look at the board policies in regard to disposal of material assets. I would want to understand the Act. I would want to understand the shareholders' agreement. In fact because the shareholders' agreement calls for input from EFC on matters like what you are speaking of, I would want to consult with EFC. In taking into consideration all of the issues and reaching a balanced decision that is in the best long-term

2 interest of the utility, its owner and its ratepayers, I would  
3 be part of the Holdco management team making a  
4 recommendation to Holdco's board of directors. And then a  
5 recommendation would be made to the shareholder.

6 Q.426 - Okay. Well, maybe I will come at this just a little  
7 different. So what you are saying is any potential for  
8 conflict is ultimately removed by looking at the big  
9 picture and this big entity of NB Power within the scope  
10 of the Electricity Act and its obligations under the  
11 shareholders' agreements to EFC.

12 Would that be a fair assessment of what you have been  
13 telling me in the last five minutes?

14 MS. MACFARLANE: We have a very clear mandate from the  
15 shareholder. We have a very clear shareholders'  
16 agreement.

17 We have a board of directors that has the obligation to  
18 act under the Business Corporations Act except as limited  
19 by that shareholders' agreement. And boards and senior  
20 management teams make decisions on a basis of a number of  
21 decisions.

22 And there is due diligence done in reaching those  
23 decisions to ensure that at the end of the day,  
24 considering all the factors, an appropriate decision is  
25 made.

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2 Q.427 - So it is a corporate decision within the corporate  
3 whole, correct?

4 MS. MACFARLANE: I'm sorry. Could you repeat that?

5 Q.428 - Simply put is what you are telling me is when you get  
6 a decision like this, it is a decision that is made from  
7 the perspective of the corporate whole, correct?

8 Best interests of the corporate whole on the instructions  
9 of EFC, correct?

10 MS. MACFARLANE: I would not say it is on the instructions  
11 of EFC. It is within the context -- if the shareholders'  
12 agreement with EFC requires consultation with Electric  
13 Finance, that consultation is part of the decision.

14 Q.429 - And the consultation can have two or three different  
15 perspectives from different companies?

16 MS. MACFARLANE: The consultation would take into account  
17 the perspectives of the different entities that are  
18 affected, including the impact on ratepayers, most  
19 predominantly impact on ratepayers, the perspectives that  
20 may be taken by the regulator depending upon whether or  
21 not the situation has regulatory impacts.

22 Decisions are not taken lightly. They are a broad series  
23 of considerations.

24 Q.430 - I didn't suggest that decisions were ever made  
25 lightly, Ms. MacFarlane. However I'm having a problem

2 with these different companies acting independently.

3 But when you get a tough issue all of a sudden you consult  
4 and take effect EFC under the shareholders' agreement.

5 But look, I have gone as far as I need to with that.

6 I want to go back quite a ways. I want to go back to 1991  
7 or 1993 and look a little bit at what existed prior to the  
8 White Paper. And my understanding is that prior to  
9 October 1st 2005, at least, NB Power was what we call a  
10 totally integrated utility, correct?

11 MS. MACFARLANE: Prior to October 1, 2004, yes, that is  
12 correct.

13 Q.431 - Yes. Okay. And it was a monopoly provider of  
14 electricity in the Province of New Brunswick?

15 MS. MACFARLANE: It was the primary supplier of electricity  
16 in the Province of New Brunswick. There are other  
17 electricity suppliers in the province.

18 Q.432 - Yes. But it held at least with regard to a  
19 distribution system a monopoly position. I believe the  
20 Village of Perth-Andover may be excepted.

21 MS. MACFARLANE: And NB Power did not distribute in the  
22 municipalities of Saint John or Edmundston either.

23 Q.433 - Right. But they did provide the wholesale to the  
24 cities of Saint John and Edmundston.

2 MS. MACFARLANE: That's correct.

3 Q.434 - And prior to this reorganization, NB Power was subject  
4 to full regulation of its rates by the Public Utilities  
5 Board?

6 MS. MACFARLANE: That's correct.

7 Q.435 - Right. And I want to go back a little bit to the  
8 1991, '93 generic decisions and rate decisions. And in  
9 that regard the rates of return for the full regulation of  
10 rates was set out in those decisions, is that correct? I  
11 can refer you to specific parts of the decisions.

12 MS. MACFARLANE: That is correct.

13 Q.436 - Right. And more particularly I am referring to the  
14 accounting and financial policies decisions of May 21st,  
15 1991, and at page 73, and I would like to read a little  
16 bit of this into the record.

17 "The Board considers that the ownership of NB Power by the  
18 Province of New Brunswick should benefit the people of the  
19 province. One benefit is that NB Power can operate with a  
20 higher debt to equity ratio than would be possible for a  
21 privately owned utility. Therefore the Board is of the  
22 view that the appropriate capital structure to be used  
23 when setting rates for NB Power is the actual structure  
24 that the company projects will exist at the future test  
25 period. The Board is of the view that using a market

2 related cost of equity would not be appropriate for the  
3 purposes of setting rates for NB Power." Would you accept  
4 that as being the decision of the Board in 1991?

5 MS. MACFARLANE: I don't have the 1991 decision in front of  
6 me, but I am very familiar with it. And there are other  
7 sections of that decision that speak to specific  
8 circumstances of the day. It would be our contention that  
9 circumstances have changed, but I do believe this is the  
10 topic of next week's discussion.

11 Q.437 - No. With respect, it's not the topic of next week's  
12 decision. The discussion next week will centre very  
13 specifically on a very limited issue as to whether your  
14 cost of capital is based on your debt or whether it's  
15 based on some type of an implied system.

16 What I want to do in this hearing is set out how this  
17 stuff as it existed goes into the policy formulation with  
18 the White Paper, okay. And what I'm trying to do is set  
19 up right now what existed before the White Paper. I am  
20 going to go into the White Paper and give you a chance to  
21 explain how this changed.

22 MS. MACFARLANE: And if that's the case, Mr. Hyslop, I would  
23 request some time to get the decision. I don't have it in  
24 front of me now.

25 Q.438 - Okay. That's fair. I can make copies of the

2 appropriate sections if I had an adjournment, Mr. Chairman.

3 MS. MACFARLANE: I have it in the room. I just need to get  
4 it.

5 CHAIRMAN: Let's take a couple of minutes.

6 (Short recess)

7 MS. MACFARLANE: Yes, Mr. Hyslop. I have the document you  
8 were reading from.

9 Q.439 - Thank you, Ms. MacFarlane. I was reading at page 73  
10 and starting at the third paragraph down -- or I actually  
11 started in the paragraph above. I said the Board  
12 considers the ownership of NB Power by the Province of New  
13 Brunswick should benefit the people of the province.  
14 That's what the decision says?

15 MS. MACFARLANE: That's what it says in that section, yes.

16 Q.440 - And, you know, one of the problems we are going to  
17 have here, Ms. MacFarlane, that wasn't a hard question. I  
18 said, that's what it says on page 73, and you had to make  
19 an editorial comment.

20 I would ask, and I think it would help the Board and it  
21 would help me and it would help these proceedings, so far  
22 as possible if you could focus on my question and answer  
23 it. I would appreciate it.

24 MR. MORRISON: Mr. Chairman, I believe the witness is

2 entitled to answer a question fully.

3 MR. HYSLOP: And the answer a lot of the times doesn't  
4 exist, Mr. Morrison. I would appreciate if she would  
5 focus and answer the question. If she wants to add  
6 something after that would be fine.

7 MR. MORRISON: I completely disagree, Mr. Chairman. If  
8 there is a reference to a particular document which may or  
9 not be taken out of context, the witness has the complete  
10 right and I would say obligation to make -- to put the  
11 question into context and the answer.

12 MR. HYSLOP: Well I am going to repeat the question.

13 CHAIRMAN: Mr. Hyslop, I'm not going to restrict the witness  
14 to yes and no --

15 MR. HYSLOP: No.

16 CHAIRMAN: -- but let's proceed and try and ask a direct  
17 question and you can do your best, Ms. MacFarlane, just to  
18 answer, but if you feel an explanation is necessary either  
19 go on or indicate same to your counsel and he will do it  
20 in redirect.

21 MS. MACFARLANE: Thank you.

22 Q.441 - And the next paragraph, Ms. MacFarlane, says, one  
23 benefit is NB Power can operate with a higher debt to  
24 equity ratio than would be possible for a privately owned  
25 utility, correct?

1 - 3528 - Cross by Mr. Hyslop -

2 MS. MACFARLANE: That's what it says in that paragraph, yes.

3 Q.442 - Thank you. And then it says, therefore the Board is  
4 of the view that the appropriate capital structure to be  
5 used when setting rates for NB Power is the actual  
6 structure of the company -- that the actual structure that  
7 the company projects will exist in the future test period.  
8 That's what it says?

9 MS. MACFARLANE: I believe that quote needs to be  
10 complemented by statements on page 76 which further  
11 explain the Board's decision.

12 Q.443 - Yes. And I'm coming to page 76 as well, Ms.  
13 MacFarlane. And then it says, the Board is of the view  
14 that using a market related cost of equity would not be  
15 appropriate for the purpose of setting rates for NB Power.  
16 That's what it says on page 73?

17 MS. MACFARLANE: That's what it says on page 73, yes.

18 Q.444 - Thank you. And further a little bit here, interest  
19 coverage ratios. That essentially is a measure of the --  
20 I am going to use a layman's term, I don't intend to  
21 offend your abilities as an accountant, but that  
22 essentially is -- an interest coverage ratio is the amount  
23 of money needed to cover the interest that the utility has  
24 to pay, is that correct?

25 MS. MACFARLANE: It's a measure of the financial flexibility

2 of the corporation to meet its interest payments, yes.

3 Q.445 - That's correct. And a ratio of 1.0 means you have  
4 made enough money to pay all your interest, correct?

5 MS. MACFARLANE: To just pay your interest, yes.

6 Q.446 - Yes. And for that reason, the Board said I think on  
7 page 74, the Board is of the view that an interest  
8 coverage ratio of 1.0 times is the minimum acceptable  
9 level, correct?

10 MS. MACFARLANE: That is what the report says, yes.

11 Q.447 - Yes. And it also says at the end of the next  
12 paragraph, the Board finds that 1.25 times is the  
13 appropriate upper limit for the interest coverage ratio of  
14 NB Power.

15 MS. MACFARLANE: That's correct.

16 Q.448 - Right. So in other words, if you took .25 and took  
17 zero away, that 25 was to some extent the level of profit  
18 that NB Power would be anticipating making after the 1991  
19 decision, would that be correct, Ms. MacFarlane?

20 MS. MACFARLANE: That's the degree of flexibility allowed in  
21 NB Power's budget to handle any fluctuations, yes.

22 Q.449 - Yes. And further then at page 75, 76, at the top of  
23 page 76, the Board -- second paragraph -- the Board is of  
24 the view an appropriate rate of return on equity is the  
25 normal cost for a properly managed corporation, correct?

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MS. MACFARLANE: Yes.

Q.450 - But further it goes down at the end of page 76 and states again, the ownership of NB Power by the Province should benefit the people of New Brunswick. The Board is of the view that a market related rate of return would not be appropriate for the purpose of setting rates for NB Power, correct?

MS. MACFARLANE: It also says in that paragraph that the Board considers that the determination of a suitable rate of return must take into consideration the specific circumstances of NB Power. The circumstances of NB Power of the day under the former Electric Power Act did call for NB Power to be virtually a break-even corporation. It called for the utility to provide power to New Brunswickers at -- in a reliable fashion with concern for safety and at the lowest possible rates. It's very clearly the intention of the Province at that time that the ownership by the Province would affect -- positively affect rates in the electric utility. But the Act has changed now and the Act has created a different set of circumstances. And --

Q.451 - Ms. MacFarlane, I wish you would just trust me a little bit because I assure I am going to take you through the White Paper and get your view of how those

2 circumstances have changed and how it's intended that the  
3 whole game plan for electric power in New Brunswick may or  
4 may not have changed.

5 I guarantee you I will take you through the Act and do the  
6 same thing. We may or may not reach the same conclusion  
7 but I'm not trying to trick you. I appreciate what you  
8 are saying, consideration of the specific circumstances.

9 MS. MACFARLANE: That's correct.

10 Q.452 - You are telling me that circumstances have changed,  
11 correct?

12 MS. MACFARLANE: The Act has changed dramatically in its  
13 requirements of the utility, yes.

14 Q.453 - You are telling me the circumstances have changed  
15 because of the new Electricity Act.

16 MS. MACFARLANE: That's correct.

17 Q.454 - And what I am trying to get at is what the Board ruled  
18 in 1991 and the type of environment NB Power worked under  
19 in 1991 up until today or up until at least when the  
20 Electricity Act went into effect. So can you just bear  
21 with me a little bit where I suggest to you that at that  
22 time the Board indicated the interest cost ratio between 1  
23 and 1.25 would be appropriate for New Brunswick Power?

24 MS. MACFARLANE: For those circumstances, yes.

1 - 3532 - Cross by Mr. Hyslop -

2 Q.455 - For the circumstance -- or that's what it ruled in  
3 1991, do you agree?

4 MS. MACFARLANE: That's correct.

5 Q.456 - Right.

6 MR. MORRISON: Mr. Chairman, if I might, and I don't want to  
7 disrupt the flow of Mr. Hyslop's examination. And perhaps  
8 he is going to move off the rate of return issue. But if  
9 the thread of the cross examination is return on equity,  
10 which up to this point it has been, that clearly is to be  
11 dealt with in another section of this hearing. The Mackin  
12 report which was proffered by Mr. Hyslop deals with this  
13 issue. Quite frankly, we are in the process of getting  
14 prepared for that phase of the hearing. I will leave it  
15 at that.

16 CHAIRMAN: Mr. Morrison, in fairness, Mr. Hyslop has  
17 outlined he is trying to set some historical -- as I read  
18 it -- some historical background, and we have enough time  
19 today. So go ahead, Mr. Hyslop, and let's carry on.

20 MR. HYSLOP: Right. And thank you, Mr. Chair, and that's  
21 exactly what my response would be. I'm setting background  
22 in order to put the White Paper into the context that  
23 existed. And ultimately this is all going to go to rate  
24 of return anyhow when we deal with policy, Mr. Morrison.  
25 So I thank the Board.

2 Q.457 - So finally, and this is the last quote out of that  
3 decision, Ms. MacFarlane and panel, at page 77, "Therefore  
4 the Board considers that the appropriate rate of return on  
5 the equity component of NB Power's capital structure  
6 should be the embedded cost of NB Power's debt."

7 Would you agree, given the environment at that time, that  
8 was the standard which NB Power acted under?

9 MS. MACFARLANE: That's correct.

10 Q.458 - Thank you. I just want to refer -- and I will skip  
11 it. It is in the rate decision. I assume you don't have  
12 the 1993 rate decision with you, Ms. MacFarlane?

13 MS. MACFARLANE: No, I do not.

14 Q.459 - I will move on then. So we have this environment. We  
15 know that NB Power, being in the good service of the  
16 Province of New Brunswick, must maintain its profit levels  
17 or its equity -- or its debt management levels, trying to  
18 achieve 1 to 1.25 times of its interest payments every  
19 year.

20 That was the bottom line coming out of 1991, 1993?

21 MS. MACFARLANE: That was the guidance that came from the  
22 Board, yes.

23 Q.460 - Yes. And that was accepted by NB Power at the time as  
24 being appropriate, to use your phrase, for those  
25 circumstances?

2 MS. MACFARLANE: That's correct.

3 Q.461 - So we got a situation here by 2004, late 2000' that NB  
4 Power owes a debt, and I'm ball-parking, about \$3.5  
5 billion, Ms. MacFarlane or Ms. Clarke?

6 MS. MACFARLANE: Subject to check that is about right, yes.

7 Q.462 - Yes. And as I understood it, as part of this  
8 reorganization, that that includes \$377 million that was  
9 taken off the books of NB Power and rolled over into --  
10 EFC, is that what you call it?

11 MS. MACFARLANE: That's correct. And that's correct.

12 Q.463 - Okay. I know certainly I'm going to say KFC. But I  
13 apologize if I do.

14 And also that 377' in fact included \$140 million that was  
15 used to purchase an equity position in Transco?

16 MS. MACFARLANE: That's correct.

17 Q.464 - Right. And if I might -- and these are all rough  
18 numbers subject to check. But if we go from 1993  
19 approximately when the last rate decisions were made to  
20 the time of this reorganization, NB Power's balance sheet  
21 position had materially changed by an approximate amount  
22 of \$600 million.

23 Would that be correct, Ms. MacFarlane?

24 MS. MACFARLANE: Could you repeat those dates again please?

25 Q.465 - From 1993 through to 2004 that NB Power had lost

2 cumulatively about \$600 million? And I understand about  
3 400,000,000 of that is due to the write-down of Point  
4 Lepreau?

5 MS. MACFARLANE: I would have to -- I would have to check  
6 that. I'm sorry. I don't -- I don't have that.

7 Q.466 - Okay. Would you undertake to do that for me?

8 MS. MACFARLANE: Certainly will.

9 Q.467 - Thank you. And at the time of this reorganization NB  
10 Power had approximately \$3.5 billion of assets, correct?

11 MS. MACFARLANE: That's correct.

12 Q.468 - Right. And just one question on this \$377 million  
13 that was owed to the government. Has the government said  
14 to you we want this repaid in a certain number of years?

15 MS. MACFARLANE: The debt is with Electric Finance Company.

16 And Electric Finance Company, as part of the  
17 restructuring plan that they put together with their  
18 financial advisers, did have a time horizon by which they  
19 believed that this debt would be repaid.

20 There was never a direct order given to NB Power. Because  
21 obviously the cash stream comes from dividends. And the  
22 dividends are based on earnings. And there are a number  
23 of factors that go into earnings.

24 But they did have a plan and a time frame within which  
25 they believed, given certain assumptions, it would be

2 repaid.

3 Q.469 - Sure. Okay. Well, given this time line, you wouldn't  
4 want to share the secret and tell me what it is, would  
5 you?

6 MS. MACFARLANE: I did not -- NB Power did not have the  
7 models of EFC. But I recall it was a significant period  
8 of time.

9 Under very positive assumptions I believe it was a minimum  
10 of 12 years. And under another set of assumptions it was  
11 as long as 20 years.

12 Q.470 - That was for the \$377 million?

13 MS. MACFARLANE: That's correct.

14 Q.471 - And that was when it was the old NB Power?

15 MS. MACFARLANE: No. That was the restructured NB Power as  
16 modeled by the Province's financial advisers.

17 Q.472 - So they are expecting to repay the \$377 million  
18 somewhere between 12 and 20 years?

19 MS. MACFARLANE: That's my understanding.

20 Q.473 - You are the Chief Financial Officers of all these  
21 companies. And you don't know that for certain?

22 MS. MACFARLANE: I do not know it. Because that would be  
23 the financial model of the Electric Finance Corporation.  
24 And I'm not the Chief Financial Officer of that  
25 corporation.

2 Q.474 - I see. So you don't know what your shareholder really  
3 is expecting in terms of how fast they should be repaid?

4 MS. MACFARLANE: I was not party to that decision. As I  
5 say, I was in meetings where those discussions were  
6 shared.

7 But generally the discussions around restructuring that I  
8 was involved in would have been specific to NB Power.

9 Q.475 - Thank you.

10 CHAIRMAN: Mr. Hyslop, sorry to interrupt. I just want to  
11 clear one thing up. I heard Ms. MacFarlane say that that  
12 377,000,000 will be repaid from the dividend stream.

13 MS. MACFARLANE: The dividend stream and the payments in  
14 lieu of taxes.

15 CHAIRMAN: Okay. All right. That is what I want to clear  
16 up. Thank you.

17 Q.476 - So just briefly, if you had 20 years over 377',  
18 somewhere in the area of 14', 15,000,000 a year against  
19 that debt through the dividend stream of all these  
20 companies?

21 MS. MACFARLANE: Dividends and payments in lieu of taxes,  
22 yes, from all of the companies.

23 Q.477 - From all of the companies?

24 MS. MACFARLANE: Yes.

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2 Q.478 - Okay. Let's go on to something I hope you have a copy  
3 of. You have the White Paper with you, I assume?

4 MS. MACFARLANE: Yes. If I could just elaborate on that  
5 answer for a moment. There is a dividend policy that's  
6 outlined in the shareholders' agreement. You may be --

7 Q.479 - I'm quite familiar with it.

8 MS. MACFARLANE: Yes.

9 Q.480 - And we will be discussing that with you.

10 MS. MACFARLANE: Well, if you are saying to yourself that is  
11 a long time --

12 Q.481 - No. I haven't said that or even questioned you about  
13 it, okay.

14 MS. MACFARLANE: The EFC does take into consideration the  
15 cash requirements of the corporation and its need to  
16 service its own debt.

17 Q.482 - I appreciate you got to pay your bills, Ms.

18 MacFarlane.

19 Now going on briefly into the White Paper. And we have  
20 heard many of these phrases before. But I want to put  
21 them into some type of context. And I hope I have been  
22 able to do that a little bit.

23 Now the White Paper, that is not legislation, is it?

24 MS. MACFARLANE: No. That is a policy paper of the Province  
25 of New Brunswick.

2 Q.483 - Sure. It is kind of like -- I was in business school.

3 We talked about business plans. I don't know what you  
4 call them today.

5 But would you agree the White Paper might have been an  
6 outline of a business plan for repaying this debt?

7 MS. MACFARLANE: I don't -- I would not characterize it as  
8 that. I believe it's a much broader paper addressing the  
9 energy policy broadly across the province of New  
10 Brunswick.

11 Q.484 - Well, maybe I will rephrase it a little. It is a  
12 White Paper to deal with a business plan for restructuring  
13 the New Brunswick electricity industry, including the  
14 means of repaying this debt to the Province of New  
15 Brunswick?

16 MS. MACFARLANE: It is a paper talking about restructuring  
17 the electricity industry in New Brunswick or the  
18 electricity market. It also covers the gas market.  
19 And as I say, I don't believe, other than through indirect  
20 references to the importance of the Crown utility being  
21 financially viable, that there is anything specific to the  
22 debt paydown of the Province of New Brunswick -- or pardon  
23 me, of NB Power.

24 Q.485 - Nothing in the White Paper about that at all?

25 MS. MACFARLANE: Certainly there is no long-term series of

1  
2 numbers laid out here. There is a broad policy direction  
3 about making the public utility commercially viable,  
4 financially viable.

5 Q.486 - So if we go to page 15 in Section 3.12 -- I'm not  
6 going to read it all in because we have heard much of  
7 this. But it talks about a deliberate and controlled  
8 restructuring policy?

9 MR. MACNUTT: I'm afraid I might have to interrupt,  
10 Mr. Chairman. Various bits -- my examination of the exhibit  
11 list indicates that various bits and pieces of the White  
12 Paper have been put into -- marked as exhibits.  
13 But I have no record or I wasn't able to find, I stand to  
14 be corrected, that the whole of the White Paper has not as  
15 a document been marked as an exhibit. And it appears that  
16 we are going to canvass quite a bit of it.  
17 I think it would be appropriate if a complete copy of the  
18 White Paper was marked as an exhibit.

19 CHAIRMAN: We are going to recess, Mr. MacNutt. We can see  
20 how many copies we can scrounge up around here.

21 MR. HYSLOP: If it might please the Board, I think I'm  
22 referring to about six, seven pages at the most. I could  
23 arrange to get copies --

24 CHAIRMAN: Mr. Hyslop, you know I have to pay attention to  
25 Mr. MacNutt. We will take our break.

1 - 3541 - Cross by Mr. Hyslop -

2 MR. HYSLOP: He is senior counsel, Mr. Chair. I wouldn't  
3 dare cross with that.

4 (Recess)

5 CHAIRMAN: In order to make use of the last half hour we  
6 will go ahead. You have got some excerpts from what will  
7 be marked as MacNutt-1, the White Paper. I guess the  
8 Secretary wants me to mark it now. It will be PUB-12.

9 MR. HYSLOP: I thought MacNutt-1 was the highest sign of  
10 appreciation, Mr. Chair.

11 CHAIRMAN: That's PUB-12. Thanks. Go ahead, Mr. Hyslop.

12 MR. HYSLOP: Thank you, Mr. Chair.

13 Q.487 - Dealing with the White Paper, and I would like to try  
14 to move through this. I don't mean to make it confusing  
15 but I just want to get the White Paper in perspective.  
16 And we have indicated that --

17 CHAIRMAN: That will take a couple of years, to get the  
18 White Paper in perspective.

19 Q.488 - Thank you. And what I suggested before the interval  
20 was that we -- we had a bit of a game plan for the  
21 restructuring of the New Brunswick electricity industry,  
22 amongst other things, in the White Paper, is that correct,  
23 panel?

24 MS. MACFARLANE: That is correct, yes.

25 Q.489 - Thank you. And I want to focus particularly on the

1  
2 portion of the White Paper dealing with electricity, and a few  
3 of the thoughts in the White Paper at page 15 to 20. And  
4 at the bottom of page 15 under Section 3.1.2, The Select  
5 Committee recommended that the province pursue a  
6 deliberate and controlled restructuring policy that would  
7 allow for the gradual transition of the electric industry  
8 from its current monopoly structure. You will agree that  
9 that was part of the game plan, Ms. MacFarlane?

10 MS. MACFARLANE: I'm sorry, could you point me to that  
11 reference again. We are on page 15?

12 Q.490 - Page 15, under Section 3.1.2 --

13 MS. MACFARLANE: Yes.

14 Q.491 - -- and it's the first sentence.

15 MS. MACFARLANE: First sentence.

16 Q.492 - I have copies of the pages inserted exactly, if you  
17 need them, Ms. MacFarlane.

18 MS. MACFARLANE: No. I found the reference. My copy is  
19 pageanated differently for some reason. Yes, the report  
20 does say that.

21 Q.493 - Okay. And also part of the policy talks into the need  
22 for managed transition approach of wholesale competition  
23 and large retail access is appropriate for three  
24 particular reasons. Is that correct?

25 MS. MACFARLANE: Yes, that's correct.

1 - 3543 - Cross by Mr. Hyslop -

2 Q.494 - Right. And the report also, at the top of page 16 --

3 I am trying to find the exact quotes, I made notes of them

4 -- but it indicates that -- I apologize, Mr. Chair. I

5 have got myself confused now with the book and my notes.

6 But it refers to, "a significant amount of time is needed

7 to achieve the conditions required to realize a fully

8 competitive market."

9 MS. MACFARLANE: That's correct.

10 Q.495 - Right. And further at page 16 the recommendation and

11 the game plan was to proceed with a deliberate and

12 controlled approach by introducing wholesale competition

13 and allowing non-utility generation and retail competition

14 for large industrial customers, correct?

15 MS. MACFARLANE: That's correct.

16 Q.496 - Now the next section, Section 3.1.3 goes on to dealing

17 with wholesale competition and moving toward a wholesale

18 competition market, is that correct, Ms. MacFarlane?

19 MS. MACFARLANE: Yes.

20 Q.497 - And I want to refer particularly under Section 3.1.3.2

21 which is on page 18. And in that section the sentence

22 says, "strictly speaking, to achieve a workably

23 competitive market within New Brunswick either the Crown's

24 utility generation portfolio must be broken up or the

25 province's transmission interconnections with adjacent

1  
2 markets must be significantly increased to allow for greater  
3 access to New Brunswick." Would you agree with that, Ms.  
4 MacFarlane?

5 MS. MACFARLANE: That's correct.

6 Q.498 - Right. And it said strictly speaking, and I would  
7 suggest from an operational point of view that the  
8 occurrence of one of those two things would be one of the  
9 fundamental requirements toward moving to competition.  
10 Would you agree with that?

11 MS. MACFARLANE: There are many things fundamental to  
12 creating a competitive market.

13 Q.499 - I said operationally.

14 MS. MACFARLANE: Operations. There are many parts of the  
15 operations that are fundamental to a market, but a  
16 transmission interconnection is one of them and as you  
17 know, that's very much underway. The Act also allows for  
18 parts of the utility's generation to be sold or leased, as  
19 indicated here.

20 Q.500 - And at this stage today we do not have a further  
21 transmission interconnection, correct? Today?

22 MS. MACFARLANE: Construction is under way, scheduled for  
23 fall of 2007 connection.

24 Q.501 - And we don't have any sale of the generation assets  
25 that are owned by Genco?

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2 MS. MACFARLANE: No, we don't.

3 Q.502 - And further at -- just a very quick point here, but at  
4 Section 3.1.3.3 on page 19 it talks about, "The Crown  
5 utility undergo a structural separation into three  
6 distinct Crown Corporations to ensure that accounting  
7 safeguards are financially separated from regular  
8 businesses to prevent cross-subsidization."

9 MS. MACFARLANE: That's correct.

10 Q.503 - Right. But you know at page 20 I read a rather  
11 interesting little note. It's in the last sentence of the  
12 first full paragraph, and it said, "as such it is not  
13 necessary to form three distinct Crown Corporations." Is  
14 that correct?

15 MS. MACFARLANE: Yes, it says that.

16 Q.504 - Right. So even in this game plan the necessity,  
17 although it was discussed as something to be done, the  
18 game plan, as you would call it, or the business plan,  
19 didn't necessarily include the separation of NB Power to  
20 its various corporations at this stage of the game,  
21 correct?

22 MS. MACFARLANE: The White Paper I believe allows for either  
23 option. This sentence simply says it isn't necessary to  
24 do it.

25 Q.505 - Yes. I appreciate that. And we all understand that

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it was done.

MR. MAROIS: But that paragraph I guess specifically deals with the FERC requirements. The comment is you don't need to form distinct Crown Corporations to conform with the FERC requirements.

Q.506 - Well I would only agree that the FERC requirements may have required some devolvement of a transmission and the necessary of a System Operator, would you agree with that, Mr. Marois?

MR. MAROIS: The FERC requirements required at that time the demonstration of an open access transmission system.

Q.507 - That's right. Which would be administered by a System Operator?

MR. MAROIS: I don't think that's necessarily an obligation. In Quebec they were able to do it without a System Operator.

Q.508 - Okay. Moving on, I found this rather interesting.

Under Section 3.1.3.4, at page 20, and this gets into another issue. And it says, "If the Crown utility is free to develop new generation projects in New Brunswick, it may be able to do so at lower cost than its competitors.

Correct, Ms. MacFarlane?

MS. MACFARLANE: I'm sorry. I'm having trouble finding that reference. Could you repeat the --

1  
2 Q.509 - It's the fourth sentence starting in Section 3.1.3.4.

3       The full sentence reads, "the Crown utility has a  
4       significant competitive advantage are relative to "for-  
5       profit" and entities because it's exempt from federal and  
6       provincial -- I am sorry, corporate income taxes and -- I  
7       have the wrong sentence again. I am sorry. It's the  
8       fourth full sentence, not the fourth line. And it starts,  
9       "Therefore, if the Crown utility is free to develop new  
10      generation projects in New Brunswick.." --

11 MS. MACFARLANE: That's correct.

12 Q.510 - And I guess I just have a little bit of a question

13      here. And I appreciate your point that NB Power had a  
14      lower cost of capital because of what existed prior to  
15      this White Paper. But the suggestion in here that that  
16      isn't to be maintained just in the event we are going to  
17      do new generation projects, would you agree with that  
18      interpretation, Mrs. MacFarlane?

19 MS. MACFARLANE: I don't agree with that interpretation.

20 Q.511 - So you are saying it's an over advantage of NB Power?

21 MS. MACFARLANE: That's correct. As stated in the second  
22      sentence, the Crown utility has a significant competitive  
23      advantage related to "for-profit" entities.

24 Q.512 - Yes. Now let's put it this way, could we not have

25      taken the heritage assets out and continued to deal with

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them, but put any new construction of generation on a basis of level playing field by creating a capital structure for that new generation consistent with the market place.

Would that not have been one of the options?

MS. MACFARLANE: Part of the difficulty that the province had with NB Power was with respect to its competitiveness with new generation projects. But there is also the overriding objecting of NB Power's historical debt levels.

And even in the Minister's statement that he made in May 2002 announcing this, he said New Brunswick is at a financial crossroads, and it is essential that we take steps now to protect taxpayers and ratepayers from this risk. And he goes on to speak in some detail in his announcement about the heritage debt, the legacy debt of NB Power and that it must be brought down. And there must be a balancing, an overriding objective it says to minimize financial risk to taxpayers while maintaining affordable and fair electricity rates to ratepayers.

So I would not agree with your contention that the Heritage assets could have carried on as they were, because it's that situation that has led to unacceptable debt levels and impact on the province's credit rating. A situation the province believed it was essential to take

1 steps to change.

2 Q.513 - So if it was essential to take steps to change

3 wouldn't it have been proper, I suggest, to come before

4 this Board with say these are my costs and this is my 10-

5 year plan for the increased returns I need to bring the

6 debt back in order and this is the rates we much charge,

7 couldn't you have done it that way, Mrs. MacFarlane?

8 MS. MACFARLANE: We are here for the 06/07 rate plan. There

9 was a very clear restructuring plan laid out by the

10 province and its financial advisers. And it included --

11 it had a certain assumption in it about our operating

12 costs and our fuels costs. But the province believed that

13 with the series of 3 percent rate increases over a period

14 of seven years, that they could bring the utility to

15 commercial upgrading margins, recapitalize each one of

16 those companies in order. Transco first, then Disco, then

17 Genco and post-refurbishment if ever Nuclearco, all

18 through a series of 3 percent rate increases, get them to

19 commercial margins, then recapitalize, then get them to

20 the debt capital markets to replace the debt that is

21 currently repaid or guaranteed by the province.

22 We have had a significant glitch in the plan with fuel

23 prices. It was not anticipated by anyone that world

24 markets would take fuel prices at the unprecedented levels

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they are at now. The 10-year plan is somewhat needing to be re-examined because of that and that's why we are here today.

The plan that the financial advisers did not include having to come to the Regulator, because the legislation of the day allowed for 3 percent rate increases and based on the assumptions they were making, it all could have been accommodated within that framework.

We are here today because fuel costs have driven us to have rate increases beyond 3 percent.

Q.514 - Just go back. I apologize, I must have missed something in my question. But my question -- and again is, could you not have taken the debt that existed at that time and instead of going through this procedure and the re-organization, not come back before this Board with a plan to repay the debt and show exactly how much was needed in each year in addition to the normal rates and the normal interest recovery ratios to repay and pay down the debt. Would that not have been another option, that's all I ask?

MS. MACFARLANE: It's my understanding that the province did not --

Q.515 - No, no. Would that not have been another option -- would that not have been another way to proceed?

2 MS. MACFARLANE: The province did not believe it was  
3 necessary to proceed that way, because they believed the  
4 restructuring could take place within a series of 3  
5 percent rate increases which don't require coming to the  
6 Regulator.

7 Q.516 - Hold it. Hold it. Are you giving evidence for the  
8 province or are you giving evidence for the NB Power group  
9 of companies?

10 MS. MACFARLANE: The NB Power group of companies.

11 Q.517 - Would the NB Power group of companies not had the  
12 option to come forward with a plan much as I have just  
13 suggested to you in this question, Mrs. MacFarlane?

14 MS. MACFARLANE: The NB Power group of companies is subject  
15 to the restructuring that was accorded out of the energy  
16 policy and the Electricity Act by the Province of New  
17 Brunswick.

18 Q.518 - So if the Province of New Brunswick tells you this is  
19 the way we are going to do it that that's the end of it?

20 MS. MACFARLANE: No, because we are here today. As soon as  
21 we were in a situation where rate increases needed to meet  
22 the revenue requirement exceeded 3 percent, we brought an  
23 application to this Board.

24 Q.519 - I want to go back a little bit here. And there is the  
25 comment that competitors would be reluctant to invest in

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2 New Brunswick unless changes were made to put the Crown  
3 utility on a level playing field with other market  
4 participants. That's a statement I am sure you have made  
5 in these hearings already?

6 MS. MACFARLANE: That's correct.

7 Q.520 - Right. And I would like to have -- figure out what  
8 this means. But is this a way of saying the return on  
9 capital should be changed so that the return on capital  
10 paid to government is the FERC commercial equivalent paid  
11 to an investor-owned utility?

12 MS. MACFARLANE: Could you tell me the reference for that,  
13 please?

14 Q.521 - It's not a reference. It's a question.

15 MS. MACFARLANE: Oh, I am sorry. Could you repeat the  
16 question?

17 Q.522 - Sure. I would be pleased to. And referring to what  
18 was just answered, is this a way of saying a return on the  
19 capital structure should be changed so that the return on  
20 capital paid to the government is the commercial  
21 equivalent paid to an investor-owned utility?

22 MS. MACFARLANE: It's the level playing field argument  
23 suggests that the ownership by the province should not be  
24 taken into consideration in what is a reasonable return,  
25 what reflects the full cost of the utility to ratepayers

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in order to send the right price signals, in order to bring competition into the province.

But I again point out Section 33 of the electricity Act, an overriding objective is to reduce NB Power's legacy debt and any return paid to the province goes to EFC and must be used to pay down that legacy debt of NB Power.

Q.523 - So the short answer to my question is, you want the rate of return to the Province of New Brunswick to be increased the same as it would be to investor-owned utilities?

MS. MACFARLANE: In order to pay down the debt, yes.

Q.524 - Yes. And one of -- and also -- just so I understand it completely, in order to pay down the debt was one of the purposes. And the other purpose is that by doing so, by increasing the returns to the Province of New Brunswick, you believe that that would cause other utilities to invest in generation in the Province of New Brunswick?

MS. MACFARLANE: The Energy Policy says that, yes.

Q.525 - And as we have already discussed and next week we will get into the merits of this argument, but just for sake of clarification, the higher rate of return that is now going to be paid of being equivalent to an investor-owned

2 utility is higher than the cost of the embedded debt of the  
3 companies, correct?

4 MS. MACFARLANE: It is higher than the embedded cost of debt  
5 of the companies, yes.

6 Q.526 - Right. So what's being proposed in this White Paper  
7 is a change from the -- and I appreciate there is an  
8 environmental change so -- but it's changed in the purpose  
9 and theory from what was decided by the Board in 1991 and  
10 1993?

11 MS. MACFARLANE: It is a significant change in  
12 circumstances, yes.

13 Q.527 - Thank you. And this change in the proper return -- I  
14 know that the title of Section 3.1.3.4 is called  
15 "Levelling the Playing Field??

16 MS. MACFARLANE: Yes.

17 Q.528 - Right. So that's the explanation of that phrase  
18 levelling the playing field I guess?

19 MS. MACFARLANE: That's correct.

20 Q.529 - So one of the results of "Levelling the Playing Field"  
21 really means that it will be our intention to pay a  
22 greater amounts of money in return to the shareholder?

23 MS. MACFARLANE: It is the intent that provincial and  
24 corporate income and capital taxes be paid. And that an  
25 equivalent commercial return be paid. Both of those cash

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2 streams going to Electric Finance to pay down NB Power's  
3 legacy debt.

4 Q.530 - Yes.

5 MS. MACFARLANE: And to create a level playing field.

6 Q.531 - Yes. Those are the reasons. And I hear you on the  
7 reasons. But I am going to ask the question, the result  
8 is greater amounts of money will be getting paid through  
9 to the shareholder and the Province of New Brunswick to  
10 achieve those objectives?

11 MS. MACFARLANE: That's correct.

12 Q.532 - Can I refer you to exhibit A-50. And I'm looking at  
13 Ms. Clark's evidence I believe under tab 4, page 8, and  
14 it's table 4(e).

15 MS. MACFARLANE: Yes.

16 Q.533 - And where I am going with this line of questioning  
17 because I don't want you to think I'm trying to trick you,  
18 Ms. MacFarlane, but where I'm going with this line of  
19 questioning is I'm trying to calculate how much more money  
20 this might be. So maybe -- I'm going to walk you through  
21 some calculations and hopefully my math reasonably correct  
22 and my understanding is not too bad. So yesterday I  
23 believe under cross-examination you indicated that line 8  
24 was the earnings before interest and special payments in  
25 lieu of income tax, \$62.6 million?

2 MS. MACFARLANE: That's correct.

3 Q.534 - And you have an interest expense of \$39.4 million?

4 MS. MACFARLANE: That's correct.

5 Q.535 - So if I go back and pretend there was never a White  
6 Paper and pretend there was never an Electricity Act, the  
7 interest recovery ratio if you made 39.4 million would be  
8 1.0?

9 MS. MACFARLANE: I want to answer your question in two  
10 parts. To begin with without restructuring the interest  
11 expense would not be 39.4 million because some portion of  
12 the legacy debt that was transferred to EFC would have  
13 stayed in Disco. So there is 377 million that is no  
14 longer a burden to the ratepayers through Disco. Some  
15 portion of that would have been here without  
16 restructuring.

17 Secondly I believe, and this is obviously subject to  
18 check, your thinking about interest coverage ratios are  
19 incorrect. If we simply covered that interest our  
20 interest coverage ratio would be one and the net income  
21 would be zero.

22 Q.536 - And I'm coming to that, but what I'm getting at is can  
23 we just assume the 39.4 million is -- would have been the  
24 interest say for this calculation, Ms. MacFarlane, that I  
25 want to take you through?

1 - 3557 - Cross by Mr. Hyslop -

2 MS. MACFARLANE: Okay.

3 Q.537 - So if we took 39.4 and multiplied it by 1.25, that  
4 would by my rough calculations give you a little over \$49  
5 million -- 49.25?

6 MS. MACFARLANE: Yes.

7 Q.538 - Right. And I appreciate there would be some other  
8 add-on for Disco's part of the 377, but I'm giving you the  
9 upper limits. So if I took 49.25 off 62.6 million, that  
10 would leave 13.35 million, correct?

11 MS. MACFARLANE: Well those numbers are correct, but I'm not  
12 sure that's a meaningful number.

13 Q.539 - Well now look, I will try to suggest to you what I  
14 think what the number would be. And what I am maybe  
15 suggesting to you here is that -- you know -- I appreciate  
16 you would have to add a little bit more on to the 39.4  
17 million for the legacy debt --

18 MS. MACFARLANE: No, sir. I am sorry. You have  
19 misunderstood my comment. If we had interest coverage of  
20 1.25 the number 39.4 would not go up. The difference of  
21 10 million between 49 and 39 would fall to net income.

22 Q.540 - Yes. Okay. And I appreciate that. But if you had to  
23 cover the interest and the difference between the 39 and  
24 the 49 would fall to net income, so that would leave 10  
25 million in net income, correct?

2 MS. MACFARLANE: It would increase earnings in this  
3 structure, and this is why it's difficult to compare the  
4 old and new structure. It would add 10 million to  
5 earnings before taxes. There would then be taxes payable  
6 on that 10 million at 35 percent. So it would leave  
7 \$6,500 -- or 60.5 million.

8 Q.541 - Sure. Right. And what you have got now is 62.6  
9 million and would you agree with me that the 62.6 million  
10 is greater than the higher limits of what you would have  
11 been earning under the old structure. Would you go that  
12 far to agree with me? Perhaps I will put it this way.  
13 Would you please calculate -- I have got a better  
14 question. I was going to do it for one company, but  
15 perhaps we will --

16 CHAIRMAN: What is this a test?

17 MR. HYSLOP: No. But it is a document I was going to put to  
18 the witness. I was going to take her through a series of  
19 calculations under table 4(2). And after what I got what  
20 I thought was a successful answer, Mr. Chair, I was going  
21 to offer this document and ask that the applicant complete  
22 it as instructed. And since it's about four minutes to  
23 3:00, I would suggest it's an appropriate time for a break  
24 and that we give the applicant overnight to provide the  
25 answer.

2       CHAIRMAN: I never take blank -- I never swear anybody to an  
3       affidavit with a blank in it. And I don't think I should  
4       mark as an exhibit something with -- that's going to have  
5       matters field in. So that's your homework tonight, Ms.  
6       MacFarlane, if you so choose. Go ahead, Mr. Hyslop?

7       MR. HYSLOP: This would be an appropriate time for a break,  
8       Mr. Chairman -- or 3:00 o'clock.

9       CHAIRMAN: We reconvene tomorrow morning at the Convention  
10      Centre. And I am going to suggest that we will make it a  
11      9:30 start because there is the change of venue and  
12      everything. So I will see you tomorrow morning at 9:30.

13 (adjourned)

14

15                                   Certified to be a true transcript  
16                                   of this hearing, as recorded by  
17                                   me, to the best of my ability.

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Reporter