

1 New Brunswick Energy and Utilities Board

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5 IN THE MATTER OF an application by New Brunswick Power  
6 Distribution and Customer Service Corporation (DISCO) for  
7 approval of changes in its Charges, Rates and Tolls (Includes  
8 Interim Rate Proposal)

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10 Trade and Convention Services, Saint John, N.B., on November  
11 26th 2007.

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11 26th 2007.

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13 BEFORE: Raymond Gorman, Esq., Q.C. - Chairman  
14 Cyril Johnston, Esq. - Vice-Chairman  
15 Roger McKenzie - Member  
16 Don Barnett - Member  
17 Connie Morrison - Member  
18 Yvon Normandeau - Member

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20 N.B. Energy and Utilities  
21 Board - Counsel - Ms. Ellen Desmond

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23 Board Staff - Mr. Doug Goss  
24 - Mr. John Lawton  
25 - Mr. David Keenan

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27 Secretary to the Board - Ms. Lorraine Légère  
28 Assistant Secretary - Ms. Juliette Savoie

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30 .....

31 CHAIRMAN: Good morning, everyone. This hearing of the New  
32 Brunswick Energy and Utilities Board is being held to  
33 consider an application by the New Brunswick Power  
34 Distribution and Customer Service Corporation, also known  
35 as DISCO, for approval of a change to its charges, rates  
36 and tolls for its services. And this application is being  
37 made pursuant to Section 101 of the Electricity Act.

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The panel for the Energy and Utilities Board for these proceedings will be comprised of Roger McKenzie, Cyril Johnston, the Vice Chair, Don Barnett, Connie Morrison, Yvon Normandeau and myself as Chair.

At this time I will take the appearances starting with the applicant.

MR. MORRISON: Good morning, Mr. Chairman, members of the Board. Terrence Morrison and Edward Keyes on behalf of the applicant.

And with me today at counsel table is David Hay, President and CEO of DISCO Sharon MacFarlane, Vice-President of Finance and CFO of DISCO, and Darren Murphy, Acting Vice-President of DISCO.

CHAIRMAN: Thank you, Mr. Morrison. Canadian Manufacturers & Exporters?

MR. LAWSON: Good morning, Mr. Chairman, members of the Board. Gary Lawson. And I'm expecting to be joined shortly by David Plante.

CHAIRMAN: I can't see you. So --

MR. LAWSON: I have the books here hiding me.

CHAIRMAN: Quite a large room we have here today. Thank you. Conservation Council of New Brunswick?

MR. COON: Good morning, Mr. Chairman and Commissioners. David Coon and Scott Kidd for the Conservation Council.

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CHAIRMAN: Thank you, Mr. Coon. Enbridge Gas New Brunswick?

MR. MACDOUGALL: Good morning, Mr. Chair. David MacDougall for Enbridge Gas New Brunswick. And I'm joined today by Dave Charleson, General Manager of Enbridge Gas New Brunswick.

CHAIRMAN: Thank you, Mr. MacDougall. Irving Oil Limited?

MR. SABEAN: Good morning, Mr. Chair. Blake Sabean appearing on behalf of Irving Oil. I just want to take a moment to advise the Board that we don't anticipate participating at this time. But we will be monitoring as we remain sensitive to the use of confidential information.

CHAIRMAN: All right, Mr. Sabean. So as the proceedings unfold today then, you don't want me to call upon you for submissions?

MR. SABEAN: That is correct.

CHAIRMAN: Thank you. J. D. Irving Pulp and Paper Group?

MR. WOLFE: Mr. Chair, Wayne Wolfe.

CHAIRMAN: Thank you, Mr. Wolfe. NB Forest Products Association? Dr. Sollows?

DR. SOLLOWS: Good morning, Mr. Chair.

CHAIRMAN: Utilities Municipal?

MR. ZED: Good morning, Mr. Chair. Peter Zed representing Utilities Municipal. And I'm joined by Dana Young of



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Utilities Municipal, Eric Marr, Dale Shonoman, Marta Kelly of Saint John Energy, Dan Dionne of Perth-Andover Electric Light Commission and Charles Martin of Edmundston Energy.

CHAIRMAN: Thank you, Mr. Zed. Vibrant Communities Saint John? Mr. Peacock is not here this morning. Public Intervenor?

MR. THERIAULT: Good morning, Mr. Chair. Daniel Theriault. This morning I'm joined by Robert O'Rourke and Jayme O'Donnell.

CHAIRMAN: Thank you, Mr. Theriault. The New Brunswick Energy and Utilities Board?

MS. DESMOND: Ellen Desmond as Board Counsel. And with me is Dave Young, David King and Board Consultant Andrew Logan.

CHAIRMAN: Thank you, Ms. Desmond. Is there anybody here from Canada Shipping? We did receive some correspondence that they might want to be added as an intervenor. Anybody present here this morning? Okay. And for the record, Fraser's has filed a letter indicating that they no long wish to be considered as an intervenor in this proceeding. And therefore their name has been removed as an intervenor.

I know we have had a number of preliminary matters perhaps that need to be dealt with prior to swearing in

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the first panel. And I think that perhaps the first order of business may well be to mark exhibits.

And I think that given the correspondence that the Board has received, it appears there may be an issue with respect to some of those exhibits. But it seems to me that what we should do at this stage is to mark the exhibits that have been prefiled.

And perhaps I will leave the Applicant's exhibits till the end as I understand from the Public Intervenor's letter that there may well be some issue with respect to three of those exhibits.

So I guess the first documents that I would have relate to the Canadian Manufacturers & Exporters NB Division. And as I understand it, Mr. Lawson, there are two documents that have been filed, evidence of Drazen Consulting Group.

MR. LAWSON: Yes, Mr. Chairman. That is correct.

CHAIRMAN: And secondly responses to the CME interrogatories. And perhaps this process may go a little bit more quickly. If anybody has any objection to any of these exhibits -- and I think the list was circulated prior to today in hopes that perhaps we might expedite this process.

Does anybody have any objections to either of those

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two exhibits? I guess I would direct that mainly to the Applicant.

MR. MORRISON: No, Mr. Chairman.

CHAIRMAN: All right. So that the letter from Gary Lawson dated November 5th '07 attaching the evidence of Drazen Consulting Group Inc. on inter-class revenue allocation on behalf of Canadian Manufacturers & Exporters will become CME-1.

And the letter dated November 22nd 2007 from Gary Lawson, attaching responses to CME to interrogatories of the Applicant, the Public Intervenor and the Utilities Municipal will become CME-2.

Now the Conservation Council of New Brunswick, I don't have those in my exhibit list. But late Friday evening the Board received a letter from Mr. Coon with respect to two exhibits, is that correct?

MR. COON: Yes. That is correct, Mr. Chairman.

CHAIRMAN: Just give me a moment to find those.

The reason I couldn't find it, it was not with my materials. So I guess everybody would have received this electronically.

Does anybody have any objection having this marked as exhibits?

MR. MORRISON: Mr. Chairman, I had the opportunity to speak

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2 to Mr. Coon this morning. And as I understand it, he is  
3 submitting those documents largely to be used for purposes  
4 of cross examination.

5 Insofar as that is the case, they really don't have to be  
6 marked as exhibits. But I have no objection to them being  
7 marked as exhibits. That is my understanding. Perhaps  
8 Mr. Coon can confirm that.

9 CHAIRMAN: Mr. Coon, is it your intention to call anybody to  
10 speak to these exhibits? Or is that correct, you just  
11 intend to use it for cross examination?

12 MR. COON: That is correct, Mr. Chair. We were simply  
13 planning on cross examining on them. But we did have the  
14 discussion with Mr. Morrison. And we would like to see  
15 them marked.

16 CHAIRMAN: And Mr. Morrison, you have no objection?

17 MR. MORRISON: I have no problem with that.

18 CHAIRMAN: And does anybody else have any objection to those  
19 documents?

20 MR. LAWSON: Mr. Chairman, just as long as it is understood  
21 that they are not being put in for exhibit purposes but as  
22 evidence. And I think that is important that Mr. Coon and  
23 others recognize as such.

24 CHAIRMAN: That is understood.

25 MR. THERIAULT: I would back those sentiments too,

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Mr. Chairman, just for the record.

CHAIRMAN: And Mr. Coon, you are in agreement with that, that they are for cross examination purposes only?

MR. COON: Well, Mr. Chairman, I guess you can help me here. Because I don't quite understand the difference. If they are marked and we can cross examine the panel on them, doesn't that make them evidence?

CHAIRMAN: Well, I think the difference is that the parties -- there was a filing schedule. Parties had expert reports prepared. And the experts who prepared those reports are scheduled to give testimony before these hearings, and in that sense make themselves available for cross examination on the material that is contained in the reports.

I understand from what you are saying that you will not be calling any witnesses to speak to these exhibits. You simply want to use them as an aid to your cross examination of the DISCO panels.

MR. COON: I guess that is correct. As this panel is unable to provide intervenor funding, like other panels in Nova Scotia and Alberta -- this is a discussion we have had over the years with your predecessor -- the Conservation Council is not in a position to cover the cost of bringing in expert witnesses, for example, those involved with

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these reports, which I wish we could.

And if of course the Board felt that the information here was pertinent enough for it to examine fully, the Board I guess in its power has the ability to bring in witnesses under those kinds of circumstances to consider their -- to have them cross examined. But we don't have the capacity.

CHAIRMAN: Okay. So you are okay with the fact that these are being marked for purposes of allowing to use them as a tool in cross examination?

MR. COON: Yes.

CHAIRMAN: Okay. Thank you. The two reports then -- the Innovative Resource Plan, IRP Report Volume 1 will become CCNB-1. And the second report is the consultant's DSM report of September the 8th, 2006 prepared by Summit Blue Consulting will become CCNB-2.

And I understand that perhaps Mr. Peacock is here.

MR. PEACOCK: Sorry I was late, Mr. Chair.

CHAIRMAN: That is okay, Mr. Peacock.

The next documents are from EGNB. Mr. MacDougall, I understand that there are two documents from EGNB?

MR. MACDOUGALL: Correct, Mr. Chair. The evidence of EGNB and the information requests as posed and responded to.

CHAIRMAN: And does anybody have any objection to those

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documents?

MR. MORRISON: No objection, Mr. Chairman.

CHAIRMAN: Okay. The letter dated November 2nd 2007 from

Len Hoyt attaching evidence of David P. Charleson on behalf of Enbridge Gas New Brunswick will be EGNB-1.

And the letter dated November 22nd 2007 from Len Hoyt attaching responses of EGNB to interrogatories of the Applicant will be marked as EGNB-2.

Now the next documents come from the Public Intervenor.

Mr. Theriault, I understand there are four documents from the Public Intervenor to be marked?

MR. THERIAULT: That is correct.

CHAIRMAN: Mr. Morrison, any objection to any of those documents?

MR. MORRISON: No objection, Mr. Chairman.

CHAIRMAN: Any objection from anybody else? Those documents will be marked as follows. Letter dated November the 5th, 2007 attaching evidence of Robert Knecht, Kurt Strunk and Lawrence Booth on behalf of the Public Intervenor become PI-3.

Letter dated November 5th 2007 attaching two pages, being pages 15 and 16 of confidential information on pink paper in respect of Kurt Strunk's evidence will be PI-3(1C).

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The next document is a letter dated November 23rd 2007 from the Public Intervenor attaching the responses to Interrogatories by the Applicant, that will be PI-4.

And the final document is a letter dated November 23rd 2007 from the Public Intervenor attaching unredacted responses by Kurt Strunk. That will be PI-4(1C).

The next set of exhibits that I have are from Dr. Sollows. And I understand there are three exhibits, Dr. Sollows? I guess we don't have enough microphones to go around.

DR. SOLLOWS: There are three documents. The original prefiled evidence. We have responses to interrogatories and a revision -- complete revision of the original prefiled evidence that arose as I examined one of the questions. So one of the three was a replacement for the first one.

CHAIRMAN: Okay. Any difficulty with those, Mr. Morrison?

MR. MORRISON: None.

CHAIRMAN: Any objections from any of the other parties?

Then I will mark those as follows. Evidence of Ken Sollows dated November 5th 2007 supporting reduction in the revenue requirement and providing alternative rate designs for residential customers will be SOL-6.

The revised evidence of Ken Sollows dated November



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21st 2007 with attached e-mail dated November 22nd 2007 will become SOL-6 (1).

And the responses of Ken Sollows to Interrogatories of the applicant NBEUB and the Public Intervenor with attached e-mail dated November 22nd 2007 will become SOL-7.

The next set of documents that have been prefiled come from Vibrant Communities Saint John. Mr. Peacock, I understand that there would be two exhibits to be marked?

MR. PEACOCK: Yes, in a similar pattern to that of the other intervenors, our original evidence and our responses.

CHAIRMAN: And does anybody have any difficulty with those?

All right. They will be marked -- evidence of Vibrant Communities Saint John dated November 5th 2007 will be marked VCSJ-2.

And letter from Kurt Peacock dated November 22nd 2007 attaching responses of Vibrant Communities Saint John to Interrogatories of the Applicant and the Public Intervenor will become VCSJ-3.

And I guess that leaves the DISCO documents. And my understanding is that there may be some objection taken with respect to the last couple. The list has been circulated to the parties.

And does anybody object to marking as exhibits the

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documents that were tentatively given numbers A-30 through A-35? I assume everybody did receive this exhibit list. All right. Well, then we will proceed to mark those documents.

Letter from DISCO dated October 26th 2007 attaching the binder Volume 1 of 1 in response to CME IR 56, PI IR 42, 43, 45, 56, 47 and 56 become exhibit A-30.

Letter from DISCO dated October 26th 2007 attaching two sets of four binders, being volume 1 of 4 in response to DISCO PI IR 42, part 1 and part 2, and PI IR-43, part 1 and part 2 become exhibit A-31.

Letter from DISCO dated October 26th 2007 attaching the binder volume 1 of 1 on pink paper in response to confidential portions related to DISCO PI IR-42, part 1 and part 2 will be A-31(1C).

Letter from DISCO dated October 26th 2007 attaching two sets of four binders, being volume 2 of 4 in response to DISCO PI IR 42, part 1 and part 2, and PI IR 43, part 1 and part 2, will become exhibit A-32.

The next document is a letter from DISCO dated October 26th 2007 attaching two sets of four binders, being volume 3 of 4 in response to DISCO PI IR-42, part 1 and part 2, and PI IR-43, part 1 and part 2. That is exhibit A-33.

Now the next document is a letter from DISCO dated

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October 26th 2007 attaching two sets of four binders, being volume 4 of 4 in response to DISCO PI IR-42, part 1 and part 2, and PI IR-43, part 1 and part 2. And that is exhibit A-34.

The next document is DISCO's unaudited financial statements filed November 14th 2007 for the period ending September 30th 2007. And that will become exhibit A-35. That would leave letter dated November the 20th, 2007 from the Applicant attaching PPA amendments executed on November 20th 2007 through the tolling agreement and the vesting agreement and a letter of the same date attaching updated calculations re the Orimulsion matter and the deferral account. I understand that the Public Intervenor is going to want to speak to those exhibits. Other than those two exhibits, Mr. Morrison, would that cover all of the documents we marked at this time?

MR. KEYES: Mr. Chairman, there was a third letter sent Friday evening, November 23rd to all the parties with the -- you indicated the updated deferral account information. There was a redacted letter. So some of the information that had been previously filed on November 20th that was completely redacted on the confidentiality basis was then filed with redacted version. And that was sent out I believe Friday just

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2 after 5:00 o'clock.

3 CHAIRMAN: Would this be the information contained in A-  
4 37(C) in an unredacted form --

5 MR. KEYES: Yes.

6 CHAIRMAN: -- or partially unredacted?

7 MR. KEYES: Yes.

8 CHAIRMAN: Okay. I don't know that I have a copy of that.  
9 I guess the Secretary is just distributing that now.

10 MR. KEYES: Thank you.

11 CHAIRMAN: Just looking at that quickly it appears that most  
12 of the information for which confidentiality is claimed is  
13 now -- the confidentiality claim is now waived with the  
14 exception of the parts that are blanked out.

15 Okay. Before we deal with those documents, have I dealt  
16 with everybody's prefiled documents and had them marked as  
17 exhibits? Have I missed anything? If so let me know at  
18 this time. And we will look to marking them.

19 All right. Then I guess we are down, in terms of  
20 documents, down to documents -- to the November 20th  
21 letters and the attachments, and then the November 23rd  
22 letter with the revised attachments.

23 So I think we will now proceed with that. And perhaps I  
24 will just call upon the Applicant to explain these  
25 documents and perhaps make argument as to why they should

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be admitted as exhibits. And then I will hear from the parties. And the final word on it will go back to the Applicant.

MR. THERIAULT: Mr. Chairman, if I may -- it is Mr. Theriault back here -- I'm just concerned about the procedure. Obviously the purpose for going through this is raised on a letter that I sent.

And as I understood the letter from the Board, that it would be dealt with today, it was in essence a motion that would be dealt with today.

And since it was raised as a result of a letter that I sent, I think it would be appropriate that I would speak first, Mr. Morrison second. Then I would have the opportunity of any rebuttal.

CHAIRMAN: Mr. Morrison?

MR. MORRISON: I have no objection to that, Mr. Chairman.

CHAIRMAN: Mr. Theriault, come forward.

Anytime you are ready.

MR. THERIAULT: Thank you, Mr. Chairman. Mr. Chairman, Committee Members, the concerns I have today obviously relate to the last documents that the Chair referred to, I think A-36, 37. And then I'm not sure if the last one that was sent out Friday at 5:22 p.m. received a number. But my concerns are the same for all those documents.

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The concerns that I have with respect to those documents relate to natural justice and the duty of fairness in these proceedings.

And Mr. Chair, I submit it is clear, and I do not have to belabor the point, that natural justice is the cornerstone of this or any other regulatory proceeding.

These are nice words, Mr. Chair and panel members. But what do they mean? I submit natural justice means that the rules must be fair to all participants. They mean that the parties must be afforded an opportunity to receive, examine and question all evidence prior to its admission.

The Board must recognize this. Because that is how the schedule was organized. Parties were given the right to question all evidence well in advance of this hearing.

The duty to be fair is the underpinning of natural justice. This means not only must the procedure be fair but it must appear to be fair. The duty to be fair also includes the principle that no party will be prejudiced as a result of procedure. This new evidence is submitted, I submit, at the eleventh hour.

DISCO seems to be arguing that the evidence on the deferral account is simply supplemental to what it previously submitted. They come to in the words prima

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facie. In other words, they can submit additional evidence to bolster their case. I agree that they can do this but not at the last minute.

The Board's decision on the deferral accounts was given I believe on October 28th 2007. DISCO filed this evidence on November 20th 2007, three months later and five days before this hearing.

During these three months we have had numerous hearings and conference calls. And never once did DISCO even allude to such evidence coming forward.

By way of an example of proper procedure, Mr. Chairman, during a recent conference call, DISCO proposed a presentation on the PPAs. Board Staff properly cited concerns with such an approach because it involved introducing evidence later in the proceeding which would not have the opportunity of being tested.

This was on evidence that was informational and not substantive. But I submit the Board Staff was correct in their concerns.

The evidence DISCO now proposes to introduce is clearly substantive. The concerns raised by Board Staff on informational evidence should be heightened when this new evidence is substantive.

The prejudice in allowing this evidence will be

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irreparable. Because within the Board schedule there is absolutely no way to test and analyze it. The Board must weigh the evidence against its prejudicial effects while considering the circumstances.

Mr. Chairman, I submit that the evidence is clearly filed late. And no mention has been made by DISCO of this evidence until November 20th 2007. As it relates to the vesting and tolling agreements, surely this is not something that DISCO contrived at the last moment.

In fact, one of my IRs, IR number 45, asked about further changes to the vesting agreement. On October 26th 2007 DISCO replied that there were no other changes to the vesting agreement.

Now on November 20th 2007 DISCO files additional amendments. Based on fairness, they should have realized that the Public Intervenor was interested in amendments since we asked this very question.

To allow this evidence without even allowing us to probe into why the agreement -- why the amendments to the agreements were made, is prejudicial to the case.

Alternatively, Mr. Chairman, the documents which DISCO proposes to introduce do not comply with the evidentiary rules for admission in a hearing. In fact much of the evidence filed to date does not comply with evidentiary



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rules.

But these rules were relaxed because parties had an opportunity to fully canvass the evidence in advance.

That is not the case with the latest filing by DISCO. So I submit that strict rules of evidence should apply.

In dealing with the deferral account, the reports of Deloitte & Touche can only be admitted by the authors of the report. Since they are not scheduled as panel members, I submit the reports cannot be admitted.

With respect to the narrative in the calculations, this can only be admitted by the unknown author and as such cannot be admitted at this time.

With respect to the amendments to the vesting and tolling agreements, none of the DISCO signatories are scheduled as panel members and as such these cannot be entered as exhibits.

Mr. Chairman, I go back and I apologize not for the exact date, but during a motion in this matter, I believe it was Dr. Sollows who intended to use documents, substantial and as part of his evidence. And it was DISCO who objected to the admission of that documentation, because they hadn't seen it in advance. So Dr. Sollows was precluded from using it.

Likewise today with the Chair's comments to Mr. Coon

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of the Conservation Council, again I think, Mr. Chairman, you outlined the procedure perfectly well as to why it is necessary that these documents be filed at a given time. Finally, Mr. Chair, I'm going to refer back to some case law that I have submitted to this panel before. And again the cases are CRTC versus London Cable TV, which is a 1976. I will give the citation. It is 1976 2FC at page 621. The other case is Martineau versus Matsqui Institution which is a 1979 decision of the Supreme Court of Canada. Cardinal versus Kent Institution, again which is a 1985 decision of the Supreme Court of Canada, and Lakeside Colony Of Hutterian Bretheren which is a 1992 decision of the Supreme Court of Canada. And Mr. Chairman, these cases I submit stand for the proposition as follows. Not only is it a requirement of procedural fairness of the right to disclosure by the administrative decision-maker of sufficient information to permit meaningful participation in the hearing process. Further it is also whether the Board provided the parties with disclosure sufficient for their meaningful participation in the hearing, such as they are treated fairly in all circumstances. Mr. Chairman, I submit that the admission of this documentation -- and it is not a matter, Mr. Chairman, of

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2 forgetting to supply something. I mean, this is pretty,  
3 pretty substantial documentation. It is voluminous. It  
4 is complicated. And it is not something that can be dealt  
5 with in five days. As such I would ask the Board, as set  
6 out in my letter, to disallow the filing of this  
7 information.

8 That is all I have unless there is other questions.

9 CHAIRMAN: Well, with respect to the new evidence and its  
10 timing, having looked at the documents, they all appear to  
11 be filed at or about the time of their creation.

12 Just from your argument, I take it that you are suggesting  
13 -- or one might take from your argument that there was  
14 documentation that was in existence that wasn't filed  
15 until the last minute.

16 It appears that it came into existence at or about the  
17 time it was filed. Would you agree with that?

18 MR. THERIAULT: Based on the documents that were filed.

19 Obviously as part of the IR process, I would have asked  
20 questions that would allude to that to find out exactly  
21 when it was.

22 CHAIRMAN: Sure.

23 MR. THERIAULT: Now I'm not accusing certainly DISCO or  
24 Mr. Morrison of filing. I'm just saying when I made  
25 reference to the conference calls and what not, surely

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2 DISCO -- and there were many members of DISCO that were  
3 involved -- would have knowledge that they were working on  
4 amendments to the tolling agreement, amendments to the  
5 vesting agreement.

6 Certainly they would have knowledge of the Price  
7 Waterhouse because they would have had to ask -- or sorry,  
8 Deloitte Touche -- because they would have had to ask  
9 Deloitte Touche to provide that information. So I'm not  
10 saying that they had it and held onto it. I'm just saying  
11 that they had knowledge certainly that it was being  
12 prepared.

13 CHAIRMAN: And you suggest that it might be prejudicial to  
14 your case and perhaps to the case of other intervenors.  
15 In the event that the Board was to allow the evidence, and  
16 I'm not suggesting that we are -- we haven't heard  
17 arguments from the other intervenors nor from the  
18 Applicant.

19 But in the event that we did, what would be necessary, in  
20 your view, in order to allow for procedural fairness in  
21 terms of IRs or the ability to file new or additional  
22 evidence, things of that nature?

23 MR. THERIAULT: Mr. Chairman, it would be necessary, I would  
24 submit, that it would have to go back to the regular  
25 procedure that was used for all evidence on this.

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Unfortunately to allow that in that requires a delay. No one wants a delay. I certainly don't want a delay. But in order for that procedure and that evidence to be heard -- there is information in there that is relevant, for instance, to the Policy Panel which is expected to be heard today. Certainly with respect to amendments of the tolling and vesting agreement, these are questions that are relevant to the policy panel obviously.

CHAIRMAN: Okay. And in terms of I guess putting IRs to the Applicant with respect to these and perhaps having additional evidence filed on behalf of the Public Intervenor, is your position then that we could not -- if in fact they were going to be allowed into evidence that in fact none of the panel should proceed, that you couldn't do some sort of a parallel track?

MR. THERIAULT: No. I don't believe we could, unless the panels that are dealt with prior to all the evidence being questioned are willing to come back and do it all over again.

CHAIRMAN: Or at least that portion of it?

MR. THERIAULT: Or that portion of it.

CHAIRMAN: Thank you. Any questions? Vice Chair?

VICE CHAIRMAN: Mr. Theriault, I would like to bring you back to your comments about the prejudice with respect to

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this matter. And I would just like you to expand on that.

And a couple of points that I would like your comments on.

One, I would ask that if you could maybe distinguish with respect to the changes to the tolling and vesting agreements, the prejudice that would be suffered there, and then the prejudice you see being suffered with respect to the filing of the evidence on the deferral account and the changes to the deferral account.

And with respect to the changes to the deferral account, it is my reading of it, and I certainly stand to be corrected, and I would ask any of the parties to comment on this, that the changes to the vesting agreement -- excuse me, the changes to the deferral account do not have an impact on the revenue requirement in the test year.

It would appear from my reading, and again please correct me, anybody, if I'm wrong, that the proposed changes to the deferral account will maintain the status quo during the test year from what had previously been filed.

MR. THERIAULT: I will try, Mr. Vice Chair, to answer your questions. But I think your question probably may answer itself as to why it shouldn't be in, because it raises so many complicated issues.

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But dealing with the test year, as I understand it -- and again I don't pretend to sit here and have all the answers. I, like all the other parties here, have people and experts who I have sent this documentation to and asked them to review it.

But with respect to the deferral account, whether it affects this test year or not, it certainly affects the next 17 years, because I believe that is the time of amortization or the amortization period over which the deferral account was set up when the Board established the rate of 6.4.

With respect to the amendments to the vesting and tolling agreement, it certainly in my mind causes concern with the whole structure of the power purchase agreements, when roughly 15 days -- I believe my evidence was submitted on 15 days, on November 5th and on the 20th these changes were given.

So roughly 15 days after my evidence comes out showing that we believe that section 4.3.4 of the original vesting agreement should have given all damages to DISCO from the Orimulsion proceeds, that those sections are now deleted. I think that causes great concern. I think it should cause the Board great concern. And I would submit that we have to get to the bottom of it. We have to understand

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the reason for it.

Obviously if on October 26th they said no amendments were made, then I'm assuming none were made. I'm assuming it was after October 26th that DISCO decided to enter into these agreements. Again I don't propose to be an expert.

But I have had communications. And I would require time to submit further evidence from my experts on this point. One of the points that I have is what benefit did DISCO get as a result of these amendments? I'm being told they got nothing. So I mean, these are questions that have to be put forward. We have to consider it as part of the hearing process.

VICE CHAIRMAN: I appreciate those comments, Mr. Theriault.

Doesn't to some extent that mitigate in favor of the evidence being admitted with some ability to ask questions on it? Because it seems to me the amendments have in fact been made. They are signed and so forth. They exist. And would it not be beneficial to you and to the other parties to have the opportunity at this hearing to question people with respect to the reason behind those amendments? And you have indicated I believe a desire to be able to question the signatories on behalf of DISCO.

MR. THERIAULT: Yes. If we look at it from a strictly legal point of view, something is submitted at the last moment



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2 that would cause prejudice, then the person objecting to the  
3 submission of the documentation would be entitled to an  
4 adjournment until full answer has been given.

5 And that is why I say, unfortunately the admission by  
6 DISCO of these documents at this late stage leaves us with  
7 that alternative and that alternative only.

8 VICE CHAIRMAN: Thank you.

9 CHAIRMAN: Any other questions from the panel? Mr. Lawson?

10 MR. LAWSON: Thank you, Mr. Chairman. Just briefly. We are  
11 in full support of the Public Intervenor's position in  
12 this regard. And certainly when you do the moron's  
13 mathematics that I do in these kinds of things, I think we  
14 are looking at \$11 million a year multiplied by 17 years.

15 We are talking about a very substantial issue here for  
16 ratepayers. And to have it suddenly landing on the lap a  
17 short time before a hearing seems certainly unfair. And  
18 it is not as though there won't be another opportunity to  
19 have this dealt with in a future application when and if  
20 it should happen.

21 CHAIRMAN: Any questions from the panel? Thank you,  
22 Mr. Lawson. Mr. Coon?

23 MR. COON: No comments at this time, Mr. Chairman.

24 CHAIRMAN: Thank you. Mr. MacDougall?

25 MR. MACDOUGALL: No comments in this matter, Mr. Chair.

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CHAIRMAN: Thank you. Mr. Wolfe?

MR. WOLFE: Thank you, Mr. Chair. As I understand it, the difference is more than 30 percent difference with what Deloitte is proposing versus original accountants from NB Power.

One thing I do recall is that they were going to have an annual update of the deferral account. And I remember talking about the interest rate at that time. So I assume that it would be updated annually by the actual interest rate, which may be higher or may be lower by the time the year is over.

Other than that I'm in full agreement with the PI.

CHAIRMAN: Thank you. Any questions? Dr. Sollows?

DR. SOLLOWS: Thank you, Mr. Chair. I guess I would like to say that I certainly understand and agree with the point that the PI is making. I guess the question arises in my mind, while it is true that they may well have amendments -- and filed them just as soon as they could. But we are talking about related party contract here. If this is a publicly-owned or publicly-traded utility, a private company that has made -- the regulated side had made a sudden deal that should amount to a benefit of 100,000,000 or more say the eleventh hour before they come in before a rate hearing, would the Board in that case

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just simply acquiesce and say oh, well, that is fine, we will consider it?

It seems to me that reasonable foresight would have clearly allowed DISCO to -- and the NB Power group of companies to make these amendments well back in June, July, August, back when they knew they were getting the deferral account and everything would have been taken care of. I don't think that it is really appropriate to admit it at this time. If it comes to the use of them, I really question whether it is appropriate. Thank you.

CHAIRMAN: Dr. Sollows, you indicate that you don't think it should be admitted at this time. And I'm intrigued by that statement.

Because as I understood, they may well have come back, as you have indicated, at a later point in time with changes.

When would you see an appropriate time to deal with future years?

DR. SOLLOWS: I think that you are going to have -- I think that the process that we have gone through to date, even though it has been very much focused on limiting matters to revenue requirements and getting a rate set for now, the current year that we are almost through, I think there is no question that there is a requirement for ongoing continuity of regulation in the case of the NB Power Group

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2 of Companies, and I don't think that your decision to set it  
3 aside for this hearing means that nothing would ever be  
4 done with it.

5 I think very clearly the public interest would demand that  
6 this Board make an ongoing, if I say, project of  
7 regulating the provincial electric utility, and this is  
8 certainly a matter that could be dealt with in subsequent  
9 proceeding, not necessarily this type of proceeding but in  
10 subsequent proceedings.

11 CHAIRMAN: Thank you. Any questions from the panel? Okay.

12 I will move on. Mr. Zed?

13 MR. ZED: We don't have any comment, Mr. Chair.

14 CHAIRMAN: Thank you. Mr. Morrison?

15 MR. MORRISON: Thank you, Mr. Chairman, Members of the  
16 Board --

17 CHAIRMAN: I missed Mr. Peacock I guess because he wasn't  
18 here earlier.

19 MR. PEACOCK: I would just say, Mr. Chair, that we agree  
20 with the general thrust of the Public Intervenor's  
21 comments.

22 CHAIRMAN: Thank you. Mr. Morrison.

23 MR. MORRISON: If it pleases, Mr. Chairman, Members of the  
24 Board, I will just deal briefly before I turn to my  
25 prepared comments, but Mr. Theriault raised the question

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whether strict evidentiary rules or strict rules of evidence apply.

Well strict rules of evidence don't apply in this tribunal and the Act says so, nor do they apply in any other quasi judicial administrative tribunal. There is certainly nothing wrong with the form of the evidence that was filed. It's always done pre-filed. It's usually not done by affidavit. It takes the form that it always has and I presume will continue to take. So I would just like to make that comment.

He also mentioned about how the regulatory schedule was organized quite some time ago and times have been set out.

Well that's true. But the PDVSA settlement wasn't anticipated at the time that the regulatory schedule was set. This was something that developed, as you know, the end of July, when the settlement -- actually August 2nd I believe when the settlement was concluded.

I think it is important to put the issues here in perspective. It seems to me that there are two essential issues that the Public Intervenor is raising. The first is that the PPAs were amended to give effect to the settlement, and in particular he raises this morning that these amendments provide in part for this \$47,000,000 I believe is the issue to be applied to the write off on the

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fuel supply system. And that goes to the issue whether all the damages flow to DISCO, et cetera. The second issue is that DISCO has filed substantial new evidence at a late date, I believe is the thrust of the argument.

I want to deal with the amendments to the PPAs first because Mr. Johnston has asked some questions about it and Mr. Theriault has raised it.

This should be no surprise. When DISCO appeared before the Board on August 17th it set out clearly how the settlement was to be structured, the PDVSA settlement was to be structured, to allow the benefits of the settlement to flow to DISCO. And the key elements of the structure were placed before the Board and were discussed at that time.

And they were essentially that the benefits of the settlement would be applied to reduce the capital costs associated with the Coleson Cove generating station, resulting in reduced annual fixed charges for amortization and interest. That was the first component, what we discussed on August 17th.

The second is this would be achieved by a reduction in capacity payment from Coleson to DISCO in the tolling agreement. It was crystal clear that an amendment to the PPAs was required to reduce the capacity payment. How

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else could it be done? So to say that these PPA amendments are a surprise, I believe is a bit of a stretch. We presented prima facie evidence in support of the deferral account on August 17th that clearly anticipated amendments to the PPAs. So there should be no surprise here. And on this issue of the \$47,000,000 that was written off with respect to the fuel supply system and how that relates to our amendment to the clause that said all damages will flow to DISCO. The first -- during the hearing, the August 17th deferral account hearing, Ms. MacFarlane stated clearly that that \$47,000,000 was to be applied to the write off with respect to the fuel supply system. You will recall that she explained that the \$47,000,000 was the cost of the fuel system that was not completed, was not capitalized and was subsequently written off. And that write off was ultimately assumed by the tax payers when the New Brunswick power debt was assumed by the province on restructuring. And I can give you the transcript reference for that. After hearing arguments by all parties the Board ruled in its ruling -- said the Board considers that the application of the \$47,000,000 -- 47,000,000 as a recovery

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against the cost of fuel delivery system is appropriate based on the testimony of the CFO of DISCO.

As discussed back on August 17th, the boards of directors determined how the settlement would flow. The parties made the required changes to the PPAs to give effect to that management determination. So this is not a surprise. Now the Public Intervenor referred specifically to the clause in the vesting agreement, and I alluded to it earlier, that states that DISCO shall be responsible for all legal costs and all the damages will flow to DISCO. During the August 17th hearing Ms. MacFarlane was cross examined on this issue by intervenors.

Dr. Sollows questioned Ms. MacFarlane as to how the \$47,000,000 could be attributed to tax payers in the face of what is section 4.3.4 of the vesting agreement. So that issue was clearly before the Board at the hearing on August 17th. So the existence of this clause was known by everyone and discussed before the Board on August 17th. Indeed it was raised in the previous hearing by Mr. Hyslop and discussed at length.

Simply put, I submit that there should be no surprise that section 4.3.4 in the vesting agreement was amended, nor the other amendments to give effect to the PDVSA



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settlement.

I would like to turn a little bit and speak to the question of the late filing. I sent a letter to the Board on November 20th with the material that is in issue today.

In that letter I reminded the Board that the Board approved the deferral account on August 23rd on a prima facie basis.

I suggest that the Board recognize that the prima facie evidence filed on August 8th -- or in August 8th -- in support of the establishment of the deferral account was preliminary, and that the underlying assumptions would be examined during the full rate hearing, the one that starts today.

Immediately after the establishment of the deferral account, DISCO undertook a more rigorous review of those assumptions and the appropriate accounting treatment. No doubt it was a time consuming process, which was completed on November 19th.

DISCO filed the results as soon as they became available.

The amendments to the vesting agreement and the tolling agreement to give effect to the Orimulsion settlement could not be finalized until the appropriate accounting treatment of the settlement was determined. As I said a moment ago, DISCO received the opinion of

2 Deloitte & Touche on November 19th, the material was filed the  
3 very next day on November 20th.

4 We must remember that DISCO applied for the deferral  
5 account in August in order to pass on the benefits of the  
6 settlement to customers as soon as possible. It had no  
7 obligation to do so, as this was an inter-year variance,  
8 and as I mentioned during the August 17th hearing, this  
9 was an unprecedented event. DISCO applied on a prima  
10 facie basis knowing that the information was preliminary.

11 It was clear to everyone that more work was necessary.

12 I believe parties here are trying to characterize this as  
13 a bad thing. DISCO could have waited until its analysis  
14 was complete and the Deloitte & Touche report was  
15 finalized before applying for a reduction in the interim  
16 rate. If it had done so it would only now be applying for  
17 the reduction in the interim rate. If DISCO is guilty of  
18 anything, Mr. Chairman, it is trying to get the benefits  
19 of that PDVSA settlement to customers as soon as possible.  
20 The PDVSA settlement was an unexpected event and as I said  
21 earlier, there was no place in the regulatory schedule to  
22 accommodate the development and the filing of this  
23 additional information.

24 I will admit that the information appears daunting and  
25 mainly due to the Deloitte & Touche report, which I

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recommend for bedtime reading, but in essence it consists of two fundamental changes in what was filed in August. The first is there is an adjustment to the value of the settlement, and secondly, there is a change in the interest calculation.

And as Mr. Johnston just mentioned a moment ago, there is no impact on the rate request for 2007 and 2008. And I would submit that this is the very type of information which the Board ruled it would consider in the course of this full hearing.

There is no question that DISCO would have preferred to have this information available sooner. However, it was not from a lack of diligence on DISCO's part. The accounting treatment is complex and the analysis was very time consuming. But the information is crucial to the Board's decision.

The Public Intervenor is asking that the Board refuse to accept the information. In my submission that is completely unreasonable. If the Board is satisfied that the Public Intervenor is surprised by this information, and that it's case would be prejudiced, then the appropriate reedy is to grant an adjournment with respect to the deferral account. Exclusion of the information would in my submission be unprecedented.

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If you exclude the information then you have to exclude the entire PDVSA settlement and put the rate increase back up to 9.6 percent rather than 6.4 percent.

I believe it's appropriate for the Board to inquire of Mr. Theriault, you know, what is it that he wants to do with the information, if he has to retain an expert and so on, how long that will take, how long he needs to accomplish the review.

The deferral panel, the panel that is going to be dealing with the deferral account in a sort of best guesstimate among the parties, is scheduled to start in week three of the hearing. And I suggest that we proceed with the hearing and if the Public Intervenor requires additional time beyond that point, then the Board can adjourn the deferral panel to a later date. Clearly the appropriate remedy to address any prejudice is adjournment, not exclusion, of absolutely crucial evidence.

Those are all my comments, Mr. Chair.

CHAIRMAN: Mr. Morrison, you mentioned that the Panel will be hearing -- dealing with this matter in week three. Mr. Theriault raises the issue, however, that depending on the results of what he may get from experts or responses to IRs, he may well have questions for panels that come

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before week three, for example, the policy panel which is scheduled to give evidence today.

What do you say to that and perhaps to his suggestion in the event that we would allow the evidence and we were to proceed that those other panels be subject to recall for questions, for example, on any new information that might be forthcoming on this issue?

MR. MORRISON: With respect to the policy panel, I believe that Ms. MacFarlane will be both on the policy panel and the PPA panel. So she would be available to answer any questions. I don't think it would be necessary to recall Mr. Hay, for example.

If there is something that arises in the course of one of the panels, let's say the PPA panel, that Mr. Theriault or others believe that they require further analysis of the information that was provided on Tuesday to ask further questions, then if the Board believes it's reasonable then yes, that panel can be recalled at a later date to answer whatever question experts or others have develop.

I believe it's -- I believe there is a way to deal with the issue short of excluding the evidence. I believe that we can get through the lion's share of the information that is before the panel.

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I guess what I am suggesting to you, Mr. Chairman, is let's not throw the baby out with the bath water. We have a process in place here. We had everybody has committed to a time to a schedule between now and December 20th. I believe that the lion's share of the information with respect to the revenue requirement, OM&A rate design, those types of things, can proceed even though Mr. Theriault may not have gotten all the information he needs with respect to review of the information that was filed on Tuesday. And if there are issues that come up that Mr. Theriault needs additional time, whether it be for the policy panel or one of the other panels that arises out of the information that was filed on Tuesday, then I think the Board at that point can adjourn, have the Panel recalled at a later date, at whatever time Mr. Theriault needs. But certainly I think we can get through the lion's share of the other what I would consider non-settlement issues in the time that we have scheduled.

CHAIRMAN: Mr. Theriault also suggested that it might be appropriate to have additional witness panels or witnesses on the panel to speak to the evidence that they had created. Do you have any comments on that?

MR. MORRISON: We hadn't anticipated for example calling Deloitte & Touche, but obviously any time that an expert

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report is submitted, any party can demand, quite frankly, that that party be put on the panel as a witness. So if that request is made and the Board believes it's a reasonable thing to do, then we would add Deloitte & Touche or a representative of Deloitte & Touche to that panel.

CHAIRMAN: Any questions from the Panel?

VICE CHAIRMAN: Mr. Morrison, in the August decision dealing with the deferral account, it was anticipated that there might well be modifications to it down the road, I think largely due to values that might change based on delivery dates and so forth. Given that and given that the changes that are proposed in this most recent packet don't have any effect on the revenue requirement in the test year, why is it so important that we deal with that new material in the course of this hearing?

MR. MORRISON: Well it's important, Mr. Chairman, because I believe if we are going to -- we have basically a deferral account that has been set up on a prima facie basis. The numbers that are going in and out of that deferral account are I believe, subject to file order of the Board, will be subject to an annual true-up in any event. So it may not be necessary to deal with the deferral account on a final basis at this point. However, I have

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2 just been advised by my CFO that from an audit perspective, as  
3 you know, a deferral account is -- in order to be  
4 recognized under accounting rules has to be -- in order to  
5 be a regulatory asset has to have approval of the  
6 regulator. Otherwise it can't be dealt with -- it can't  
7 be recognized for accounting purposes.

8 VICE CHAIRMAN: The second question, the Chairman asked  
9 about other witness panels, but I think Mr. Theriault in  
10 particular raised the issue of the signatories of DISCO to  
11 the amendments or the vesting agreement and the tolling  
12 agreement, neither of those people, who I believe are Mr.  
13 Murphy and Ms. Harrison, are proposed as witnesses. Do  
14 you have any comment on that?

15 MR. MORRISON: I can see absolutely no probative value in  
16 having the actual signatories to the agreement. They  
17 signed as officers of the company. The agreements speak  
18 for themselves. Certainly they are not going to be able  
19 to add anything in terms of what the agreements say. The  
20 agreements say what they say. They just happen to be  
21 executed by a particular officer of the company. I see no  
22 probative value in having the signator appear to say, is  
23 that your signature? Yes. Thank you very much.

24 VICE CHAIRMAN: But you would anticipate witnesses on behalf  
25 of DISCO testifying as to their reasoning behind the



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amendments.

MR. MORRISON: Ms. MacFarlane is prepared to answer all those questions.

CHAIRMAN: Any other questions? Mr. Barnett?

MR. BARNETT: Yes. Mr. Morrison, you made several references to no surprise during the course of your discourse a moment ago. Do I conclude from that then following the settlement date of August 2nd that your client set about then discussing the amendments that would be required to the power purchase agreements? They were actually started at that time?

And the second question, if that is the case would there be any reference that could be made to those discussions.

I know in other evidence you have in response to IRs you have filed copies of minutes of meetings. So is there any paper trail?

MR. MORRISON: I don't know if there is a specific paper trail, Mr. Barnett. I know that the PPA amendments were submitted to legal counsel, and it wasn't me, quite some time ago for drafting. I would say at least several months ago, by my recollection. Of course I was aware of it.

The PPA amendments could not be finalized until the Deloitte & Touche report was concluded. And I know that

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2 there was an IR, for example, and I believe it was from the  
3 Public Intervenor, at some point in time where the PPA  
4 amendments were contemplated and there were PPA amendments  
5 contemplated, and our response was that they had been  
6 forwarded to legal counsel for advice and recommendation.  
7 I don't know, I can't recall whether that specific IR  
8 dealt with this PPA amendment dealing with this deferral  
9 account or not.

10 But the process -- it wasn't that DISCO sat on its hands  
11 after the deferral account hearing in August. It did  
12 start working on that deferral account and it -- it isn't  
13 a simple matter. I mean, the accounting application --  
14 application of the appropriate accounting principles  
15 themselves I understand is fairly complex. I don't know  
16 the exact date that it was sent to -- Torys in Toronto  
17 were the law firm that did the actual drafting of the  
18 amendments, but I know that I have been aware of it --  
19 that it has been in the hands of Torys for quite some  
20 time.

21 CHAIRMAN: Thank you. Mr. Theriault.

22 MR. THERIAULT: Thank you, Mr. Chairman. First of all  
23 before I forget, my friend said that Ms. MacFarlane would  
24 be available to testify, but again part of the problem is  
25 is she testifying on behalf of DISCO, GENCO, HOLDCO, which

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NB Power group of companies? That's why I think it's necessary to have the representative of DISCO present to explain why DISCO chose to enter into such an agreement. I mean I don't want to get into that now because I think that's part and parcel of the evidence, but I think that's a fundamental question.

Again my friend refers to no surprise. Now maybe I'm not the sharpest knife in the drawer, but when you look at the operating committee minutes of DISCO and of GENCO, I suggest that the evidence will show that these operating committee minutes show that the PDVSA application should be exactly as we -- as I have submitted through Mr Strunk's evidence, and the relevance of that is \$47,000,000. And that's pretty relevant for this particular test year because it goes -- it says damages go to DISCO. It doesn't say benefits. It says damages go to DISCO. That \$47,000,000, Mr. Vice Chairman, that I think that's relevant for this year.

What is also relevant, Mr. Vice Chair, in answer to your question, in response to your question, what is relevant is how these agreements operate. Obviously I think Ms. MacFarlane's pre-filed evidence says that the revenue requirement -- and I am paraphrasing here -- but the revenue requirement is made up of the underlying costs

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of generation and the PPA costs. There is not a direct match, costs -- you know, generation costs aren't passed through on a cost basis. So there is obviously costs under these PPA agreements.

The evidence also shows that it's very unusual, it's not often that you put through a PPA amendment. So why is it done now? Why is it done when DISCO is getting an advantage? These are questions that all have to be looked at. And again, it should be no surprise, and why did it take three-and-a-half months -- actually longer than three-and-a-half months to bring this evidence forward? Again, if you take Mr. Morrison's argument on the prima facie aspect, in other words, they were -- they had submitted prima facie evidence and therefore could submit anything they want, does that mean now myself, Mr. Ross and any other Intervenor here, as long as it relates to something they filed, we can keep filing and keep filing and keep filing. I mean where does it stop?

Now again I am put in the unenviable position of sitting here before this Board and because of DISCO's late filing saying, we need an adjournment. I certainly want to get this matter done with. I want it to proceed, I have always wanted it to proceed, and I want as much information as possible in order for it to proceed. But

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the issue of fairness is paramount here.

I mean for us to have to proceed because DISCO has chosen at this late date to file evidence, I was certainly surprised by it. I was certainly surprised by the volume of it and I know of no other way to cut up the process as my friend suggests, is not workable. The only way in which this can be dealt with on a fair basis is for IRs to take place and for proper responses to be put in and for myself and any other intervenor to be given the opportunity to put in supplementary evidence and for which DISCO can question the supplementary evidence that we have put in.

That is the process that the Board has established, that is the process we have been using. And, Mr. Chairman, the concern I have -- and I know of no other way to deal with it -- the concern I have with an adjournment is there is no incentive for DISCO to see this matter proceed in a timely fashion, and therefore again, I know I have mentioned it before, but I am going to raise it again, that if the Board is forced into an adjournment because of these late filings, then I would suggest that the Board consider removing the interim rate increase from this point forward until the end of the hearing.

I mean, obviously this matter can't continue to drag

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on and drag on. There has to be a resolution to it. And it has to happen now that DISCO, like myself, like every other Intervenor and every other party to this, is subject to the rules that were set by the Board and those rules have to be followed. I'm not just saying because the rule is there. I mean there is the old adage rules are made to be broken, but there comes a point in time in the issue of fairness we have to stop allowing stuff in.

I agree with the comment by the Vice Chairman or by you, Mr. Chairman, that yes, I understand this stuff has to come in, it's the most recent documents. But it has to come in not at the expense of fairness. Thank you.

CHAIRMAN: Mr. Theriault, I can tell you that the Board is concerned that this matter should move forward as quickly as possible. There has been an interim rate increase in place for quite some time and we think it is very important to test the appropriateness of that interim rate increase sooner rather than later.

In terms of filing additional evidence, what would you estimate to be the minimum amount of time that your experts might require to put together a report?

MR. THERIAULT: Well if you are talking about a report, Mr. Chairman, or are you talking about filing some questions as per the IR process and then filing a report?

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CHAIRMAN: Well I think the process you spoke to really was some IRs potentially followed by a report, which potentially would be followed by some IRs from DISCO to an expert, if in fact there was a report. What time frame are you looking at?

I guess what I would really like you to address is why that could not operate in a sort of parallel fashion so that we could be hearing evidence, making use of the time that has been set aside, and you have made some suggestions -- some productive suggestions, quite frankly -- of perhaps recalling witnesses, if in fact that is necessary.

So in that context could you give me an idea of what you feel is a minimum amount of time that you feel may be necessary. Now you have had the information for a few days now, not very many, but a few. I'm sure you have a few questions in your mind already.

MR. THERIAULT: Yes, Mr. Chairman. And I also have had other things to get ready for this.

CHAIRMAN: I appreciate that.

MR. THERIAULT: I have had the opportunity to speak to my expert who is in Spain right now working on a hearing, and he had said that he could try to have it by the 20th if -- the process and have a final report. I guess we are

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keeping in line with the dates set here for the hearing. That would then involve going into the early new year for -- but for him to have a report he felt that by the 20th, roughly three weeks, he could probably have something.

CHAIRMAN: And at this point in time of course you don't even know whether or not you will be filing a report. It may depend upon the responses you get to IRs?

MR. THERIAULT: That's correct.

CHAIRMAN: Mr. Morrison, in the event that additional evidence was filed by intervenors, would you require an opportunity for IRs on that evidence as part of the process? That would normally be your right, of course.

MR. MORRISON: Normally it is, Mr. Chairman, but of course we have a -- contrary to some comments we have a burning desire to have this rate case done as soon as possible. Well in this hearing we have traditionally been given a fairly short time frame to get IR responses back in any event. So if we had questions I would think that a week's turnaround would be more than sufficient for us. For example, if Mr. Theriault's report was filed on December 20th we could file our IRs within a week -- well I hate to say that -- over Christmas. Let's say a week from January 1st, and I don't know how long Mr. Theriault would want to



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respond. Traditionally if this hearing and the past hearing are any gauge, the Applicant usually asks very few IRs.

CHAIRMAN: Thank you.

MR. MORRISON: And in addition, Mr. Chairman, I hate to throw away any timing -- I shouldn't say advantage, but any timing benefit I have, it is possible if we handle the situation where the schedule is impossible to deal with, for example, that we may even forego our IRs and deal with any questions we have of Mr Theriault's expert on cross examination.

CHAIRMAN: Thank you, Mr. Morrison. One other issue that I would -- is there anything further, Mr. Theriault?

MR. THERIAULT: No, that's it.

CHAIRMAN: One other issue before we break to consider that motion, that is on Friday evening we received I guess a document that has much less redacted information, and I -- we didn't really canvass the parties with respect to their position on that document.

I am assuming everybody has had an opportunity to look at it, and since we are now looking at marking -- the motion has to do with marking DISCO exhibits, I guess the Board would like to have the position of the parties with respect to the amended version of the document that was

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filed on November 20th. It seems that much less of it is in redacted form.

Since, Mr. Theriault, you are there, this may be a little out of order but are you in a position to comment on that at this point in time in the event that the document were admitted as an exhibit, do you have any comments on the confidentiality issue as it relates to the report?

MR. THERIAULT: No. But again as the Chair said this came in at 5:22 on Friday. I haven't had an opportunity to go through it though. I would like to be able to reserve if an issue comes up later to make argument, not to be able to say I'm precluded from argument, but outside of the comments I have already made, no, I would have no additional comment.

CHAIRMAN: So essentially what you are suggesting is that if it ends up as an exhibit, that you would make your argument on confidentiality as you get an opportunity to look at it and determine whether or not there is something that should be made public in your view.

MR. THERIAULT: Much better said than I could have said it, sir.

CHAIRMAN: Thank you. I am going to canvass the parties on that issue as well then. Mr. Lawson?

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MR. LAWSON: We have no comment, Mr. Chairman.

CHAIRMAN: Mr. Coon?

MR. COON: No comment, Mr. Chairman.

CHAIRMAN: Mr. MacDougall?

MR. MACDOUGALL: We are satisfied with the redacted version,  
Mr. Chair.

CHAIRMAN: Mr. Wolfe?

MR. WOLFE: No comment, Mr. Chair.

CHAIRMAN: Dr. Sollows?

DR. SOLLOWS: No comment, Mr. Chair.

CHAIRMAN: Mr. Zed?

MR. ZED: We won't take issue with it.

CHAIRMAN: Mr. Peacock?

MR. PEACOCK: No comment, Mr. Chair.

CHAIRMAN: Mr. Morrison, any comments on this?

MR. KEYES: No, Mr. Chair.

CHAIRMAN: Thank you. Then I think the only other  
preliminary matter that we have set for this morning is a  
motion brought by Mr. Lawson, and I think the Board would  
like to adjourn to consider the first motion. But, Mr.  
Lawson, I'm going to ask you to put your mind to whether  
or not you believe that it's I guess important that we  
deal with that motion this morning, or is that something  
that could be deferred to later in the week or at some

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other point in time.

MR. LAWSON: I will spend some time during the break thinking on that issue, Mr. Chairman. I did think it was important to deal with it immediately because of the impact it has on other parts of the hearing, but I will certainly turn my mind to that.

CHAIRMAN: Okay. Than you. We will then take as short an adjournment as we can. We would like to try to deal with the issue of the admissibility of these documents. So our break may be a little longer than it will be throughout these hearings. So we will come back as soon as we can.

(Recess - 10:59 a.m. - 12:10 p.m.)

CHAIRMAN: I will now give the ruling of the Board with respect to the additional exhibits proposed by the Applicant.

The Board's approval of the adjustment to the interim rate increase that was necessary due to the PDVSA settlement was done on a prima facie basis. This approach was taken in order to allow the benefits from the settlement to be passed on to the customers of DISCO as quickly as possible. Such an approach was completely consistent with that taken to establish the interim rate increase in the first place. In both cases time did not permit a full review of all of the underlying details.

2   Such a review will occur in the public hearing that is  
3       commenced today.

4       In approving both the interim rate increase and the  
5       subsequent adjustment to the rate increase it was the  
6       understanding of the Board that the information presented  
7       by DISCO was their best estimate of what would actually  
8       occur. The Board made no distinction between the quality  
9       of the information provided in support of the original  
10      rate increase and that providing support of the adjustment  
11      to the interim rate increase.

12      The Board recognized that the nature of the fuel supply  
13      arrangements that are part of the PDVSA settlement could  
14      require some adjustment to the annual amount of benefits  
15      once all the fuel had been received by NB Power. The  
16      Board stated in its decision of August 23rd, 2007, and I  
17      quote, "The benefits from the settlement will be fully  
18      realized by the 2009/2010 year and thus the specific  
19      dollar amount of the benefits will be known by then. The  
20      Board considers that as necessary during the 2009/2010  
21      year an adjustment can be made to the amount of savings  
22      that DISCO would receive and consequently to the equal  
23      annual benefits to customers, so that the deferral account  
24      will achieve a zero balance by the end of the term. DISCO  
25      must apply to the Board for approval for any such

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2 adjustment." End quote.

3 The Board anticipated that any such adjustment would be  
4 due largely to changes in the dates on which the fuel  
5 would actually be delivered. DISCO made the following  
6 statement at page 3, exhibit A-13. Quote, "Until  
7 settlement was fully realized adjustments to the deferral  
8 account will be made as required to reflect actual  
9 results. Updated deferral calculations will be reflected  
10 in future revenue requirements." End quote.

11 Prior to making the application to adjust the amount of  
12 the interim rate increase it was DISCO's responsibility to  
13 take the necessary steps to properly determine the dollar  
14 amount of benefits that would be received from the fuel  
15 supply portion of the PDVSA settlement. To suggest that  
16 the information provided was merely of an illustrative  
17 nature runs contrary to the very nature of the request for  
18 interim rate relief. It was the responsibility of DISCO  
19 to ensure that the information provided was the best  
20 available and fully supported the relief sought.

21 The Board is very concerned that at this late date DISCO  
22 wants to make major revisions to the evidence provided  
23 with respect to the PDVSA settlement. It is apparent that  
24 these concerns are shared by others.

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2 The deferral account is significantly different from the  
3 other aspects of the revenue requirement for 2007/2008.

4 The PDVSA settlement has led to the creation of a deferral  
5 account whereby the benefits to DISCO and the benefits to  
6 the customers of DISCO are recorded and reconciled. This  
7 account will be in effect for many years and it is  
8 important to correctly identify the amounts that are to  
9 flow into and out of the account. Doing so will provide  
10 fairness to both DISCO and its customers.

11 DISCO now has new information with respect to the benefits  
12 that will result from the PDVSA settlement. The Board  
13 considers that this information should be reviewed as part  
14 of the current proceeding in order to determine what if  
15 any adjustments should be made to the deferral account.  
16 The Board will therefore allow DISCO to enter the new  
17 evidence concerning the benefits of the PDVSA settlement.

18 In so doing the Board wants to make it very clear that  
19 this does not imply acceptance of any of the new  
20 information. The Board still intends to review all of the  
21 details associated with the benefits that flow from the  
22 PDVSA settlement in order to determine if the customers of  
23 DISCO are receiving the appropriate benefits.

24 To permit this review to occur fairly in light of the new  
25 evidence, the Board has decided that the following

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process will take place, and in establishing the process the Board notes that the Applicant had intended to deal with the deferral account I believe during the week of December 6th, and we will move that deferral account evidence to the week of December 10th.

The intervenors will be provided an opportunity to have IRs to DISCO on the new evidence up until this Thursday, November 29th, at 4:30 p.m. The responses from DISCO are to be provided by Monday, December 3rd, at 9:00 a.m., and any new evidence by Intervenors should be filed by Friday, December 7th, at noon.

This schedule does not leave any time for IRs to the new evidence by DISCO. In the event that some new evidence is filed and DISCO requires -- or believes that they require an opportunity for IRS, then they are to notify the Board on the afternoon of Friday, December 7th, that they will require IRs, and that matter can be dealt with on Monday, December 10th.

All panel members that are sworn in are subject to recall on this issue but limited to new evidence filed after this date with respect to this issue only. So in other words, a panel member that testifies today could be subject to recall in the event that one of the parties wanted to ask questions on new evidence that comes forward



2 from today. And this process is only to deal with the matter  
3 discussed above and is not for the evidence or IRs on any  
4 other topic. So IRs have not just been reopened. It's  
5 only on this new evidence that has been filed.

6 As a result of our ruling, the documents submitted by  
7 DISCO will be marked as exhibits as follows. The letter  
8 dated November 20th, 2007, from the Applicant attaching  
9 the PPA amendments executed November 20th, 2007, re the  
10 tolling agreement and the vesting agreement will be marked  
11 as exhibit A-36. The letter dated November 20th, 2007,  
12 from the Applicant attaching updated calculations re the  
13 Orimulsion matter and the deferral account will be A-  
14 37(C). And finally the letter dated November 23rd, 2007  
15 with an updated redacted version of the calculations will  
16 be marked as exhibit A-38.

17 As I had indicated before the Board took a break, that  
18 should leave us with only one other preliminary matter.

19 But with respect to this issue I should advise the parties  
20 that should there be any difficulty in meeting any of the  
21 time limits that have been established by the Board this  
22 morning, the parties at the earliest opportunity should  
23 provide the Board with their reasons as to why these time  
24 limits cannot be met.

25 For example, there is potential for new evidence here,

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but I don't believe that any of the parties have indicated that they absolutely will be filing new evidence. It may be that after the IRs have been responded to a decision has to be made. If there are some compelling reasons to delay this thing somewhat, then the Board will consider that request at a later time. But the Board does want to proceed with this hearing today and I believe that this process will fairly allow the parties to deal with the new evidence.

The only other issue as indicated was the motion by Mr. Lawson. Where is Mr. Lawson again? There he is.

MR. LAWSON: Hiding behind the books here, Mr. Chairman.

CHAIRMAN: Well this room is so big it's hard to see way at the back of the room. I had asked you I guess before we broke to consider whether or not you believe that your motion needed to be dealt with today or whether it was something that could be dealt with a little bit later.

MR. LAWSON: Mr. Chairman, my initial reaction was I thought it would be more appropriate to deal with it now, but I think given I suspect the appetite in the room for it, perhaps if the Board is open to the idea, it would be something we could deal with before the panel -- a panel -- one of the Panels sits next week.

CHAIRMAN: Okay. No, that would be -- that would be fine.

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2 So we will recess now and we will take a one hour break. I

3 see it's 25 after 12:00. So at 1:25, and if there are no

4 other preliminary matters then the Panel will be ready to

5 go at that time, Mr. Morrison?

6 MR. MORRISON: Yes, Mr. Chairman.

7 CHAIRMAN: Okay. Thank you.

8 (Recess - 12:25 p.m. - 1:25 p.m.)

9 CHAIRMAN: I believe that looks after all of the preliminary

10 matters, at least all of the ones that I was aware of.

11 So Mr. Morrison, are you prepared to bring forward your

12 first panel?

13 MR. MORRISON: I believe there is one brief issue that

14 Mr. MacDougall would like to address, Mr. Chairman.

15 CHAIRMAN: Certainly.

16 MR. MACDOUGALL: Mr. Chair, just arising out of your ruling

17 this morning, where the deferral account panel may now be

18 moved to week 3, previously in the schedule DISCO had set

19 December 10th in week 3 as the rate design day. And most

20 parties were very happy with that.

21 And in fact if that gets moved forward, certain parties,

22 including Enbridge Gas New Brunswick, may not be able to

23 be in attendance for that panel, which is the panel in

24 which they have the most interest.

25 So I have canvassed the vast majority of counsel here

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2 and spoke with DISCO. And everybody is agreeable that the  
3 rate design panel would be on December 10th or a future  
4 date if the hearing goes forward, but that it wouldn't be  
5 pulled backward. And I was just wondering if the Board  
6 would be amenable to us having an agreement on that today.

7 CHAIRMAN: I don't think that the dates for the panels were  
8 necessarily set in stone in any event. I think it was a  
9 proposal by the Applicant as to when it would be most  
10 convenient for all of the parties.

11 So if the parties can work out dates that everybody is  
12 agreeable to, the Board will certainly bend over backwards  
13 to accommodate.

14 MR. MACDOUGALL: Thank you very much, Mr. Chair. And as I  
15 said, I have spoken to DISCO, Mr. Zed, Mr. Theriault,  
16 Mr. Lawson, Dr. Sollows. And I believe Mr. Morrison has  
17 spoken to Ms. Desmond. So I think that that date will be  
18 fine for us all.

19 CHAIRMAN: Okay. And perhaps, Mr. Morrison, you might just  
20 send us a revised schedule of what you propose. And I  
21 think it is like a moving target in a sense anyway,  
22 because it is only a guesstimate at this point in time as  
23 to how long each panel will take.

24 MR. MORRISON: That is right, Mr. Chairman. I have no  
25 problem with that. And obviously, you know, if there are

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2 some witnesses that are only available on a particular day,  
3 then we just have to accommodate that. And I'm sure the  
4 parties can work that out.

5 MR. MACDOUGALL: Thank you, Mr. Chair.

6 MR. MORRISON: At this point, Mr. Chairman, I would like to  
7 call David Hay and Sharon MacFarlane to the stand please.

8 CHAIRMAN: I can ask Board Counsel to come forward and swear  
9 the witnesses.

10 (David Hay and Sharon MacFarlane sworn)

11 DIRECT EXAMINATION BY MR. MORRISON:

12 CHAIRMAN: I note for the record that the witnesses have  
13 been duly sworn.

14 Q.1 - Mr. Hay, could you please state your name and position  
15 for the record please?

16 MR. HAY: My name is David Hay. And I'm the President and  
17 CEO of the New Brunswick Power Distribution Customer  
18 Service Corporation.

19 Q.2 - Thank you, sir. And Ms. MacFarlane, could you state  
20 your name and position for the record please?

21 MS. MACFARLANE: My name is Sharon MacFarlane. I'm the CFO  
22 and Vice-President of Finance for NB Power DISCO.

23 MR. MORRISON: Mr. Chairman, as you know, this was a  
24 proposed policy panel. I have a very brief direct  
25 examination. And it will be directed towards Mr. Hay.

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2 Q.3 - Mr. Hay, as you are aware, of course, DISCO has applied  
3 to this Board for an increase in its rates. As President  
4 and CEO of DISCO, can you explain why a rate increase is  
5 required for 2007 and 2008?

6 MR. HAY: Yes. There are in essence two principal reasons.

7 Purchased power, which is what DISCO uses to supply the  
8 people of New Brunswick. And that purchased power is  
9 essentially backed by the price of fuel.

10 And I think we have all seen what the price of fuel has  
11 done, not only in the past five years, but still  
12 increasingly in the past year. And so that price of fuel  
13 is reflected in our cost requirements in order to break  
14 even, as the government has asked us to do.

15 And effectively about a year ago we went through a very  
16 similar process with your predecessor Board. And in that  
17 process we were awarded a rate increase which subsequently  
18 was rolled back by the government. And of course those  
19 costs have not been recovered by us. So essentially those  
20 are the two reasons.

21 Q.4 - Thank you, Mr. Hay. The Board has indicated in previous  
22 rulings that it has made that in assessing the  
23 reasonableness of DISCO's rate requests, it would need to  
24 know how DISCO manages its costs.

25 And at a policy level, sir, can you tell me generally

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on this management issue?

MR. HAY: Yes. I'm very pleased to answer that. I think we have really had a great run with our DISCO business. Back in 2004, 2005 we reduced employees by about 10 percent over the whole organization, about 285 employees. But it was disproportionate to the distribution business because it was a voluntary program.

And we took out very close to 20 percent of the distribution business, the employees, through an early retirement program. And at the same time we believe we have been able to maintain the standards and the level of service that we have been known for the in the past.

And in fact when we looked at it statistically, the Canadian Electricity Association has numbers related to number of outages, length of outages, et cetera. And those numbers last year showed that the distribution business had less difficulties or had their best statistics in 14 years last year. So we think that that has all worked quite well.

From a management point of view we put in place across the whole company a balanced scorecard system which is a Harvard Business School based system, which one-half of the portion, one thousand companies used and many of you maybe in your business class have used it.

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And that system allows us to more closely align our objectives, our requirements and those tasks which we can look at and do every day and measure them on a monthly basis through our management team.

So I think all of those things have worked very well from a management perspective. And as I say, I think the proof was in the pudding with our results.

Q.5 - Thank you, Mr. Hay. And as you know, this is an application by DISCO which is the regulated entity.

However, the Board has decided that -- and has directed DISCO to file information on certain costs of GENCO and NUCLEARCO. And there has been discussion so far in this proceeding surround the structure of the NB Power group of companies.

Again from a policy perspective can you comment generally on the structure of the NB Power group of companies and DISCO's role or place in that structure?

MR. HAY: I can. I'm not sure how much time we have though.

Sorry. That was meant to be a little light.

The structure is proving to be a difficult one. It was put in place in October 1, '04. And I'm sure everyone in the room would understand and agree with that statement. And there have been various statements by the government, that the government intends to look at the



2 structure with the potential to make some modifications.

3 To date there are no changes. And the attitude that we  
4 take is the rules are the rules. And we must live by  
5 those rules. And so we have filed on that basis for the  
6 distribution company in order to obtain the revenue  
7 requirement for DISCO.

8 And management really are in quite a difficult position of  
9 trying to balance we believe the interests of both the  
10 ratepayers and the taxpayers. And these are two very  
11 different groups, although many of the people are the  
12 same.

13 But fundamentally if the ratepayers are bearing too much  
14 cost, we know that it has a terrible effect on individual  
15 homeowners. And it has a devastating effect on  
16 businesses. We understand that.

17 On the other hand, if insufficient revenue comes into the  
18 business, then it has a terrible effect on the taxpayer.

19 And we say well, what is the difference? Well, the  
20 difference is the taxpayer doesn't suffer today. The  
21 ratepayers do. The taxpayer puts it into debt. And that  
22 debt ends up being paid by our children and our  
23 grandchildren.

24 And so as management of NB Power we have this, as I say,  
25 difficult task of trying to balance both interests of

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ratepayers and taxpayers in the way that we best can with the tools that we have at hand.

MR. MORRISON: Thank you, Mr. Hay. Those are all the questions I have, Mr. Chairman. And of course the panel is available for questions by the intervenors.

CHAIRMAN: Thank you. Mr. Lawson?

MR. LAWSON: No questions, Mr. Chairman.

CHAIRMAN: Mr. Coon?

CROSS EXAMINATION BY MR. COON:

Q.6 - Good afternoon.

MR. HAY: Good afternoon.

Q.7 - A couple of questions I guess. And I guess the first one is where specifically in the evidence are the policy issues that this panel is addressing this afternoon?

MS. MACFARLANE: The evidence is organized based on what the revenue requirements are, what the costs underlying those costs transferred through the PPAs are and cost allocation and rate design. They are policy issues if you will spread throughout the evidence.

Q.8 - I just ask because there seems to be a change from past hearings where the panel's evidence has been attributed to the panel in the prefiled evidence from NB Power. And I'm just wondering why that change has been made. Because it certainly for Intervenors makes it more

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challenging to prepare for cross examination.

MR. MORRISON: Perhaps I can answer that, Mr. Chairman. I believe that discussion was held quite some time ago, before we filed the evidence. Traditionally, before the old PUB, there was a question and answer format. I think there was some dissatisfaction expressed at the conclusion of the last hearing about the flow of that evidence. Other jurisdictions, for example Nova Scotia uses a narrative approach.

We discussed this with Board Staff before we filed our evidence. There didn't appear to be any objection to having the format of the evidence changed to a narrative rather than a question and answer type format.

So there was no -- I guess it was conscious in the sense that we thought it would make for an easier presentation of the evidence. But that was the only consideration that went into it.

CHAIRMAN: Thank you.

MR. COON: I wonder, Mr. Chairman, if when there is going to be a question and answer format at the outset of each panel, as there just was, whether or not we can recall the panel following review of the transcripts of the question and answer period, since it is not part of the prefiled evidence.

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CHAIRMAN: Mr. Morrison, do you want to address that?

MR. MORRISON: Quite frankly no. For most of the panels I suspect that there will not be direct examination except in the most cursory of manners. The evidence has been filed. There have been lots of IRs answered on it. And the panel is open for cross examination, to ask questions. The whole notion of this policy panel came up as a result of a conference call with intervenors and so on. We put forward the notion of a policy panel just so that Intervenor would have the opportunity to ask some what I would call high level policy type questions. We thought it would be of benefit to the Board and the intervenors. But I don't know what more I can say about that, Mr. Chairman.

CHAIRMAN: Mr. Coon, the Board would normally only recall a panel in the event that there was additional evidence filed that would have precluded you from asking those questions at this point in time, information you didn't have and couldn't have had but might be relevant to the outcome. But at this point in time there are several volumes of prefiled evidence, many of which would go to policy. And this is an opportunity to ask those questions that you might have on policy issues.

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MR. COON: I understand that. I guess that is what I said at the outset of this, Mr. Chairman. I raised this as a potential issue. Because we have no idea as intervenors what the extent of this question and answer period with panels is going to be, with other panels. This one was brief. But it went by quickly. And there may be evidence that is basically introduced as a result of question and answers that is not in the filed evidence.

CHAIRMAN: Well, I think that there is no intention as I understand it to file any additional evidence in this hearing other than evidence which might flow from the exhibits which are marked at the end of the morning session. That would be evidence by intervenors. My understanding is that the Applicant has essentially filed all the evidence it intends to with respect to this case.

MR. MORRISON: We have filed all the evidence that we intend to. And in terms of my direct examination of panels, as you can appreciate, my examination of Mr. Hay was very brief. It was only intended to give the broadest and briefest introduction to this issue, and for no other purpose. As other panels come forward, unless there is an issue

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that has to be rebutted that has been raised by another

Intervenor, I can assure you that I probably will have no question and answer. There will be no direct examination because the evidence has all been prefiled.

CHAIRMAN: Mr. Coon, one of the difficulties I think here would be that if Mr. Morrison was to go through an extensive direct examination, I could be wrong there, but I suspect that some of the intervenors might suggest that new evidence is being introduced. And that is not what was intended.

So they may not take the same view. I don't know. We haven't heard from anybody at this point in time. Because they didn't attempt to introduce new evidence through this panel.

But I think the purpose of the panel is to look at the overriding policy considerations that would have been put into play in putting forward the application that we are now dealing with. And it is an opportunity to deal with that.

The specifics of the evidence, as I understand it, would be dealt with by the panels that will be forthcoming as we progress with this hearing.

MR. COON: Okay. Thank you, Mr. Chair. In that case I have a few sort of high level policy questions for the panel.

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2 Q.9 - Mr. Hay, you mentioned that one sort of policy in terms  
3 of reducing revenue requirements was to focus on  
4 expenditures in terms of staff salaries and so on, is that  
5 correct?

6 MR. HAY: I said we are better managing those than we ever  
7 had. And one way that we did that was making early  
8 retirement program available. So we had, yes, people take  
9 that program and therefore less expense in the business,  
10 yes.

11 Q.10 - Thank you. Are there other sort of policy items, high  
12 level polices that if implemented could help reduce  
13 revenue requirements at the utility?

14 MR. HAY: We were focused on, as I talked about, this  
15 balanced scorecard program in terms of just a general  
16 management technique, in terms of helping us do more with  
17 fewer people in terms of being more efficient in the way  
18 we use our time.

19 And it is through that balanced scorecard process that we  
20 can measure and watch ourselves as we move towards our  
21 goals.

22 Q.11 - Thank you. You mentioned fuel costs in the brief  
23 question and answer period as one of the reasons for the  
24 rate increase.

25 Is there any policy within the utility to encourage

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customers to reduce their dependence on electricity for space heating for example?

MR. HAY: We have an energy advisers program, which we have had for many years, where energy advisers will go into your home, analyze the home for leakages, lack of insulation, et cetera and make recommendations to you. So that is the primary program that we have for delivering that message.

At the same time, about two years ago, the government, as you probably know, put in place a new agency, provincial agency specifically for that reduction and more efficient use of electricity within the province, under Elizabeth Weir.

Q.12 - But is it the policy of NB Power to discourage the use of electricity for space heating, given the revenue requirements that creates?

MR. HAY: Space units are among our least efficient forms of generation, you are absolutely right. And I stood up before the New Brunswick Homebuilders Association two years ago and said let me be the first CEO to say that you are not encouraged to use electricity for home heating. You are encouraged to look at every home and make every decision based on what is the most efficient way to heat that home, absolutely.



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2 Q.13 - So then you would agree with me that that in fact  
3 constitutes a policy of NB Power?

4 MR. HAY: Well, it is not necessarily a policy. I mean,  
5 everything we do can be a policy, if you want to talk  
6 about that. I'm not quite sure where you are heading with  
7 it. Is it a statement I made? Yes.

8 And are we interested in having people use less  
9 electricity for space heating where it makes sense?

10 Absolutely. I said it in a public meeting in Fredericton  
11 about two months ago to Mr. Dave Charleson there. He was  
12 sitting in the middle. And I pointed out to everybody  
13 let's go for natural gas if it makes sense in your  
14 situation.

15 Q.14 - So then is that the case, that if fewer people use  
16 electricity for space heating, that the revenue  
17 requirements for DISCO would be reduced?

18 MR. HAY: Well, let's start first of all with if we sell  
19 less kilowatts then we are burning less fuel. And  
20 therefore we do need less revenue. Absolutely right.

21 Q.15 - So if that in fact essentially is a policy of NB Power,  
22 how is it they implemented to encourage the customers to  
23 move away from electric heating?

24 MR. HAY: Well, as I said earlier, it is being done through  
25 our energy advisers program. And it is also being done by

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a separate provincial agency which was a decision of the last government. But it was an efficient way to deliver that message all for the same purpose.

MR. COON: Thank you. Those are all the questions I have. Thank you very much.

CHAIRMAN: Thank you, Mr. Coon. Mr. MacDougall?

CROSS EXAMINATION BY MR. MACDOUGALL:

MR. MACDOUGALL: Thank you, Mr. Chair and panel members.

Good afternoon, Mr. Hay and Ms. MacFarlane.

I just have a few questions this afternoon. I think, Mr. Hay, they will be primarily if not exclusively for you.

Q.16 - Is it your view that environmental issues must be considered when New Brunswick Power is looking at its go-forward approach to generating power?

MR. HAY: Yes, absolutely. In fact our mission statement says that our mission is to provide power at the lowest possible cost, consistent with safety, reliability and respect for the environment.

Q.17 - Then you would agree that conservation and energy efficiency are important issues with respect to the overall generation and use of electricity?

MR. HAY: Absolutely.

Q.18 - And I believe you recently said in the press, and I'm

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just going to paraphrase, that NB Power's long-term approach to generating power must balance our economic realities with our responsibilities to the environment.

Do you remember saying that?

MR. HAY: Yes, I do.

Q.19 - And you agree with that?

MR. HAY: I do.

Q.20 - And you also said that by adopting strong conservation techniques, New Brunswickers would be able to maintain competitive power bills even in the face of rising global fuel costs.

Do you remember that?

MR. HAY: Yes, I did.

Q.21 - And do you agree with that?

MR. HAY: It depends on how strongly you do those type of measures. But absolutely. I pointed out that in Japan the use of energy was less than 50 percent per capita of the U. S. average. So there is a long way to go with conservation, yes.

Q.22 - So with that in mind then would you agree that it is important that we do not put impediments in place which would deter New Brunswickers from conservation or energy efficiency?

MR. HAY: I would agree with that.

2 Q.23 - And would you agree that the price signal which is sent  
3 to customers through their power rates has an impact on  
4 how they approach energy efficiency?

5 MR. HAY: I would like to think it can. It is not always a  
6 direct one to one relationship. But yes, price signals  
7 are important in the marketplace, I agree.

8 Q.24 - So the structure and the form of power rates can be  
9 used as one tool at least to encourage energy efficiency,  
10 correct?

11 MR. HAY: I agree with that.

12 Q.25 - And with the rise and concern over climate change and  
13 air emissions, there is certainly a current significant  
14 focus on the potential impact of electricity generation,  
15 correct?

16 MR. HAY: Absolutely correct.

17 Q.26 - And the environmental impacts of electricity generation  
18 cannot be divorced from the economics of electricity  
19 generation, can they?

20 MR. HAY: The economics and the environmental result,  
21 absolutely, they are both interrelated.

22 Q.27 - And does NB -- I think you might have mentioned this  
23 earlier in your responses, Mr. Coon. But does NB Power  
24 support the DSM initiatives being put forward by  
25 Efficiency New Brunswick?

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2 MR. HAY: Absolutely, yes.

3 Q.28 - And I also believe you recently said in the press that  
4 with respect to new construction in the province, it is  
5 necessary that buildings are being built as energy  
6 efficiently as possible, correct?

7 MR. HAY: I did say that. And we are actually building a  
8 house right now. My understanding from my architect is  
9 that the building code in New Brunswick is a 1995 federal  
10 building code.

11 And I would have thought that by building codes we should  
12 be doing things like putting in insulation under basement  
13 slabs, et cetera. Absolutely I believe that.

14 MR. MACDOUGALL: Those are all my questions, Mr. Hay. Those  
15 are all my questions, panel. Thank you very much,  
16 Mr. Chair.

17 CHAIRMAN: Thank you, Mr. MacDougall. Mr. Wolfe?

18 MR. WOLFE: Thank you.

19 CROSS EXAMINATION BY MR. WOLFE:

20 Q.29 - Ms. MacFarlane, on Friday I sent some data to Terry  
21 Morrison. Did he pass it on to you?

22 MS. MACFARLANE: I don't have a copy of it with me.

23 Q.30 - Okay. Did you have a chance to look at it and confirm  
24 that all the numbers come out of your annual reports?

25 MS. MACFARLANE: I'm sorry, Mr. Wolfe. If you can just give

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me a moment.

MR. MORRISON: Just give us a moment, Mr. Chairman. We are getting a copy of the document.

CHAIRMAN: The document that we are talking about, this is not an exhibit I take it?

MR. MORRISON: No. It was forwarded to me late Friday I believe. And I passed it -- forwarded it by e-mail to Ms. MacFarlane. And I'm hoping she got it.

Q.31 - His numbers are taken out of the last three annual reports?

MS. MACFARLANE: Subject to further check, yes, I agree with that.

MR. WOLFE: Mr. Chairman, can I pass these out to everybody so they can see what we are talking about?

CHAIRMAN: Is it your intention that we mark it as an exhibit? As a minimum we have to mark it for identification I guess. But if there is no objection we might just as well mark it as an exhibit.

MR. MORRISON: No objection, Mr. Chairman.

CHAIRMAN: Just before you start I'm going to stop you. I want to make sure everybody has an opportunity to have a look at it, in case anybody else has any objection to it being marked as an exhibit, since I haven't seen it yet. So we will just wait a moment.

1 - 1029 -

2 Okay. It appears that it has been distributed to  
3 everybody. Does anybody have any objection? Or does  
4 anybody need any additional time to have a look at it?  
5 Hearing nothing, I will assume there is no objection. and  
6 we will mark that document as -- I don't believe there is  
7 any JDI documents. That will become JDI-1.

8 Q.32 - You have on the front page two pie charts?

9 MS. MACFARLANE: Yes.

10 Q.33 - The one on the left is a breakdown of all the revenue  
11 by each company within NB Power. We have been now three  
12 years since deregulation. And I took the three annual  
13 reports and added them together to make those pie charts.  
14 The second pie chart on the right-hand side is data from  
15 the same annual reports showing the net income from the  
16 different parts of NB Power, again adding all three years  
17 together.

18 And just for clarification, the second page is the actual  
19 numbers that come out of the annual reports that make up  
20 the numbers in the pie charts. And the other three  
21 attachments are the actual page out of each annual report  
22 that has those numbers in them.

23 Now on the first page after the pies, to me it is very  
24 obvious that the unregulated parts of New Brunswick Power  
25 make a lot more money than the regulated part being DISCO.

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In fact over the first three years of deregulation, DISCO has a net income of \$13 million.

And all the other NB Power companies have a net income of \$138 million, more than 10 times what DISCO has made over that period of time. It shows that DISCO has the largest revenue but a much smaller part of the net income.

So my question is, is it policy of NB Power to set the PPAs in this deregulated market since that GENCO and the other companies make a lot more money than DISCO?

MS. MACFARLANE: No, Mr. Wolfe. That was not part of the design. And I did want to take a bit of exception with the way you have laid the material out. Because those revenues are not additive.

If you were to look at the table, the revenues for GENCO, the revenues for NUCLEARCO and in large measure the revenue for TRANSCO all come from DISCO. DISCO is the primary source of external revenue. Genco does have some export margins. So these are not additive numbers.

Whereas the bottom line numbers, the net incomes are additive numbers. So I'm not sure that your analysis is a relevant one. But perhaps we can just stick to the net income because it is additive.

If you were to look at the asset basis for the companies, GENCO is a much, much larger company than



2 distribution, if you were to look at its asset base and its  
3 total capital.

4 In fact the total assets in the '07 annual report which  
5 you have distributed for GENCO are over \$2 billion, \$2.1  
6 billion, where DISCO is just around 700,000,000.

7 The capital for NUCLEARCO -- and you said that you  
8 believed it was the other companies other than DISCO that  
9 were making the money. Well, you can see NUCLEARCO is not  
10 making any money. And that was part of a decision of the  
11 financial advisers who put the restructuring plan  
12 together, that NUCLEARCO would not receive a return on  
13 assets until after the refurbishment.

14 But I come back to the point that your net income should  
15 be relative to the size of your investment and your asset  
16 base. It should also be relative to the size of your  
17 risk.

18 And in the restructuring decisions that were made by the  
19 financial advisers, the generating company is obviously  
20 subject to more risk than the distribution company, and in  
21 the PPA design was awarded a higher allocation of return  
22 on equity, in the PPA design.

23 You are also though looking at -- if I could just add one  
24 more point -- you are looking at actuals as opposed to  
25 plans and budgets. And the PPAs are based on plans and

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budgets.

Over this period of time, particularly the '04, '05 year, there were anomalies where NB Power had, as a group of companies, had the benefit of weather issues in the southern United States which led to problems in their natural gas production area, which led to an opportunity for NB Power to have very, very significant gains off of export sales. We also had record level hydros.

So this representation of actuals includes a couple of extraordinary phenomena that are going on and would not be representative of the long term that was part of the restructuring design.

Q.34 - That is part of my issue, where the policy is set. I believe that the consumers in New Brunswick should be able to share in some of these gains that do come about when they come. Although, like you say, we don't. But I think we should be able to. I can't believe that when the government decides to deregulate, that they ever thought there would be more than 10 times the income on one side versus the other.

MS. MACFARLANE: Well, Mr. Wolfe, I will say that, as was dictated by the Minister at the time of restructuring, the pricing mechanism and the flow of cost and revenues across NB Power was to emulate the situation before

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2 restructuring, as it went to affecting customers.

3 And rates have always been set based on a plan, a  
4 prospective plan. And if there are anomalies, whether  
5 gains or losses, they have never fallen back to the  
6 customer.

7 I will take 2002, 2003 as an example, when we lost \$77  
8 million because of a strike in Venezuela compounded by a  
9 very, very low hydro year, that went to the shareholder.  
10 So the structure here is no different than it was before  
11 restructuring. We do our best to set a plan, set those  
12 rates based on the plan. And then in-year anomalies fall  
13 to the taxpayer.

14 CHAIRMAN: Is that all of your questions?

15 MR. WOLFE: Yes. Thank you, Mr. Wolfe.

16 CHAIRMAN: Dr. Sollows?

17 CROSS EXAMINATION BY DR. SOLLOWS:

18 Q.35 - Thank you, Mr. Chair, Panellists. Good afternoon.

19 Just two questions -- or three questions I think arising  
20 out of your comments and one perhaps more historical  
21 point. Mr. Hay, you indicated in your comments that the  
22 utility had its best performance in 14 years, according to  
23 measures that the CEA uses in terms of things like forced  
24 outage and that type of thing, is that correct?

25 MR. HAY: Sorry. Not forced outage for distribution

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2 company. That will be, you know, outages and the number of  
3 outages and length of outages.

4 Q.36 - I guess my question relates to -- my understanding is  
5 those kinds of statistics are notoriously weather  
6 sensitive and how much of that performance is because you  
7 happen to have pretty decent weather last year versus the  
8 previous years. Have those been weather corrected?

9 MR. HAY: Those have not been weather adjusted.

10 Q.37 - Okay.

11 MR. HAY: But if you look for example at the storm a month  
12 ago and you look at the performance of this utility  
13 throughout that storm compared to the performance of other  
14 utilities in neighboring jurisdictions, I don't think  
15 anyone calls into question in any way, shape or form the  
16 quality of work that we do on the line for customers in  
17 this province.

18 Q.38 - No, I certainly agree. I just wanted to clarify that.

19 That's perhaps one of the benefits of having a  
20 distribution system designed to meet a very high peak load  
21 in the winter time is it's very robust for many hours of  
22 the year.

23 I do want to pick up on your point that you from a policy  
24 perspective have to balance the concerns of the ratepayers  
25 and the taxpayers, and I just -- I understand

2 that you are the head of the utility that serves the  
3 ratepayers. The taxpayers are essentially the  
4 shareholders represented by I'm assuming the directors  
5 that are appointed and Electric Finance. So I just wonder  
6 if you could elaborate on what you see your role as, or  
7 DISCO's role as in safeguarding the taxpayer at the  
8 expense of the ratepayers.

9 MR. HAY: Well we operate like a business and I am CEO of  
10 five separate companies, as you would likely know, and in  
11 that role we have got responsibility for our customers to  
12 make sure that they are alive and well and, you know,  
13 prospering under the power that we deliver.  
14 We have also got a responsibility to our shareholder, as  
15 any private company does. And so we have a responsibility  
16 to bring in a balanced budget, we have a responsibility to  
17 give it to our Board, our Board has the responsibility to  
18 do it onto the Electric Finance Corporation. And so  
19 that's what happens in both ends of the equation. So we  
20 are trying -- as I say, it's what we refer to as a  
21 delicate balance.

22 Q.39 - So to sum it up, really that responsibility is no  
23 different than it would be if you were a privately owned  
24 public utility in the sense that you always have to  
25 balance your customers versus your owners' interests.

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2 MR. HAY: Well I think there is some difference because I  
3 think that in a -- in the regulation of a private sector  
4 company the private sector company is doing everything it  
5 can to try and bring more profit up to the shareholders  
6 because usually everyone benefits more from that, and they  
7 are usually only constrained by a utility Board.

8 Here we are trying to bring a balance to both because we  
9 are really not in one camp or the other. We are not part  
10 of a -- we are trying to sit in the middle and bring that  
11 proper balance between the two.

12 Q.40 - Would you agree with me that one of the other  
13 distinguishing features between your situation and a  
14 private utility is in that case the Public Utilities Board  
15 would have general regulatory oversight as this Board does  
16 of electric utilities in the province, but your  
17 organization is not an electric utility under the Act and  
18 therefore they no longer have that oversight.

19 MR. HAY: We are not a public utility.

20 Q.41 - Right.

21 MR. HAY: Yes.

22 Q.42 - So one of the problems that you may be grappling with  
23 is that not related to the fact the Board has no authority  
24 over you outside of a rate hearing?

25 MR. HAY: No, I don't think that's a problem for us. I

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guess the point that I'm trying to make is some people wonder about when you are taking, you know, from one side or the other who is being hurt, but what I'm saying is there is largely some overlap between ratepayers and taxpayers, and so to the extent of that intrayear someone does better because of weather, that excess money goes normally to pay down debt within the company which helps the shareholders at the same time. So it's not that it's weak as you are leaving the system and going to shareholders in New York, by way of example.

Q.43 - Fair enough. Thank you. One last question. Now correct me if I am wrong, Ms. MacFarlane may know -- because she was I think involved in the panel at that time -- in the last hearing we had evidence that the Board of NB Power, I guess HOLDCO, had issued a policy that DISCO would move to inclining block rates I think by fiscal year 2009. Has that changed?

MR. HAY: I think, you know, that was done by the Board, and you are actually recalling correctly, and no, that policy has not changed. I will say, that as I said, both -- well actually both -- government officials have indicated an intention to review the regulation and the structure of NB Power. And so we are operating within what the existing rules are and that's what they are. And so that's where

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2 people are trying to head.

3 Q.44 - Okay. I guess the motivation for my question is -- and

4 I can't really cite the place -- but I got the sense of

5 looking at the existing evidence that currently DISCO has

6 no plans to move beyond the flat rate, but you are saying

7 that that Board -- your own Board's policy is still in

8 effect, that your goal is an inclining block rate.

9 MR. HAY: The government has made statements -- public

10 statements, although not given anything in writing -- has

11 made public statements about balancing the books, NB Power

12 to bring forward a balanced budget. That's what we are

13 currently trying to do. We are about to bring forward a

14 budget to our Board now. So as the Board begins -- we

15 have a new Chairman, et cetera, and as the Board begins to

16 grapple with some of these issues together with the

17 government's plan for maybe some reorganization, I think

18 those issues will become clear. At this point we are

19 trying to balance, you are right.

20 DR. SOLLOWS: Thank you very much. That's all. Thank you,

21 Mr. Chairman.

22 CHAIRMAN: Thank you, Dr. Sollows. Mr. Zed?

23 CROSS EXAMINATION BY MR. ZED:

24 Q.45 - Thank you. I just have a couple of brief questions I

25 think for Mr. Hay. Perhaps Ms. MacFarlane the first



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question. I think you both agree that predictability in long term rates is desirable?

MR. HAY: Yes, we would like to have predictability.

Q.46 - And I guess my question then flowing from that is what policies have you adopted to try to get a handle on predictability in long term rate making?

MR. HAY: The greatest challenge that we have of course is fuel. As I said, over half of our revenue requirement relates to fuel or purchase power and as such the question is what can we do to try and control future and make more predictable future revenue or fuel requirements.

So the main tool that we have been using is to buy forward our fuel for internal consumption, that is in- province consumption, for 18 months forward on a rolling basis. Every month we are buying forward, so that we can see predictability for 18 years -- or 18 months out rather.

And at the same time we buy foreign exchange to meet those contractual obligations at that 18 month period. So that provides predictability in the short term.

When we look at the longer term we look at other techniques to try and constrain fuel costs, like some of the more value added fuel that we are hoping to put into Coleson Cove, and at the same time we look to increase the

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mix of -- and diversity of fuel that we have, and that's why we are introducing windpower. And we are trying to do all of these things which balances the environment with the economics that we are dealing with.

So contracts with NB Power by way of example are contracts that tend to have a fixed rate and no escalation, which doesn't relate to the price of hydrocarbons. Plants that run hydrocarbons, we can't get that, so we put them out 18 months to get that degree of predictability with them. So there is a variety of techniques to try and do that.

Ms. MacFarlane is just pointing out to me, the refurbishment obviously as well is a decision that we took about two years ago we compared the refurbishment of Point Lepreau with the potential for a second unit at Belledune.

And when we looked at all of the issues, including environmental and environmental costs and the costs of Lepreau, we said that we think that economically it is clearly better to refurbish Point Lepreau.

And again you are on a much more fixed price basis with nuclear power than you are with hydrocarbons. So I think the province has really benefited greatly over the years by a balance of the diversity that we have in generation sources. And any time you have got diversity

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2 something will be the best and something will be the worst.

3 That's just the way it goes. But it's that that allows

4 you to have that as close as you can get to the

5 predictability.

6 Q.47 - Is there any government policy that you would like to

7 see implemented to help you with the issue of

8 predictability?

9 MR. HAY: I can't think -- Ms. MacFarlane may, but I can't

10 think of anything off the top of my head of anything we

11 would like. We are all in favour of the removal of

12 portfolio standard which we are marching to at a fairly

13 rapid pace. And we are delighted that on the one hand the

14 bad news oil has gone way up, on the other hand the good

15 news is wind is very economical for about 90-odd dollars.

16 So we are delighted it drives a solution which is both

17 environmental and meets portfolio standards and at the

18 same time is economic.

19 Q.48 - Just one last question. Maybe you could tell us what

20 your view is generally on performance base rates and

21 whether we should expect to see something coming forward

22 from DISCO in the near future on performance based rates?

23 MR. HAY: Well I haven't -- frankly, I have not heard that

24 discussion at all, so I'm not sure that it's coming in the

25 future. I think frankly the most counter-intuitive and

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interesting thing that I have read in the past couple of weeks was in the New York Times about two weeks ago, which was an article which purported to show a comparison between the escalating power rates in regulated regimes versus non-regulated competitive regimes. And counter-intuitively the non-regulated competitive regimes have risen dramatically higher. And it showed the two different studies by the pros and the cons, and even the cons who say yes, there was a bit of a difference, acknowledged with an asterisk as I recall -- I see some people smiling who have also read the article -- but a little asterisk saying, yes, 20 percent higher. But only 20 percent higher. So I only say lines, standbys and statistics and I don't know what the right answer is, but it's not so obvious I think in the electricity world around the world that deregulation open competitive markets produced the most attractive pricing.

MR. ZED: Thank you. That's all the questions we have.

CHAIRMAN: Thank you, Mr. Zed. Vibrant Communities, Mr. Peacock?

CROSS EXAMINATION BY MR. PEACOCK:

Q.49 - Thank you, Mr. Chair. I only have a handful of questions. Mr. Hay has made reference to the challenge this utility and its government ownership faces as they

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struggle to balance the needs of the ratepayers with the needs of the taxpayer.

One of the more notable elements of NB's taxation system, or the Province of New Brunswick's taxation system, is that it is progressive in the sense that those at the highest income bracket pay more than those at the lowest.

Using that formula could the utility's rate design be described as progressive?

MR. HAY: The rate design per se is, you know, out of our hands. It's done through the government process and through their legislation, how they want to see that rate design done. And we agree entirely that there are people in this province with a great deal of difficulty with their power bills and we used last year on our no-disconnect policy and working with the new minister on this to try and improve that situation.

Ultimately though I think the government has, that we agree with, that electricity rates should not be used for difficult situations, for instance, whether they are with individuals or whether they are with, you know, our difficult forest products companies, that we should maintain a level playing field on rates and used government policies to adjust for those people at either end of the spectrum who are having difficulties, and we

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agree with that.

Q.50 - Thank you. From a policy perspective, does the utility feel it to be appropriate that the smallest, low income consumers pay more on a kilowatt hour basis than the wealthiest high usage residential consumers?

MR. HAY: Are you talking about a blended second block rate with a first block rate, is that what you are --

Q.51 - Yes. If you were in fact to determine an effective kilowatt hour comparing say a low end consumer of say 700 kilowatt hours a month, our calculations suggest that that consumer would pay more on a per kilowatt hour basis than say a homeowner consuming 2,500 kilowatt hours a month.

MR. HAY: We have agreed with the Public Utilities Board as the predecessor here that the declining block rate should be dealt with. We agree and I think that's where Mr. MacDougall was going with some of his questions, that that declining block rate should be eliminated over time, and the sooner it can be done would be the better from the point of discount to making, you know, larger homes more economic than smaller homes for example. But it is a difficult thing to do, and I think the prior Board has struggled, the government has struggled, with how does one do that quickly without adding an undue burden to those people who are budgeted in the lower block rate. Having

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said that we agree with the policy of it.

Q.52 - The policy of eliminating the lower block rate?

MR. HAY: Yes. Absolutely.

Q.53 - Related to that, another one of our concerns is that from a policy perspective, does the utility feel it appropriate for DISCO to charge its consumers more on a monthly basis for belonging to the electric grid than virtually any other utility in the country?

MR. HAY: You know, again it's a complex question and it's a good one and we struggle with it as well. I think in subsequent panels you will probably get greater detail than you will get from me.

One of the problems we have with our system is it is a relatively expensive based system to operate. You have got more poles, more kilometerage of power lines than many other jurisdictions. That's the standing charge. It's that base load wires and the wires are heavier because we use more electric heat, and therefore et cetera, et cetera, it's more expensive. So that simply is a mathematical calculation that goes into that.

Other jurisdictions have got much more urban, much more domestic, less expensive to run systems and therefore can charge less. I don't have the specifics of an answer for you and I'm sure that Neil Larlee, who will be on here

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in subsequent panels, you know, can deal with that in very specifics. But overall I'm saying it is a more expensive system to operate than many other jurisdictions.

Q.54 - Okay. Yes. We will probably address some of these question in the weeks to come. Returning just to the declining block rate which is still part of this year's rate proposal, would the Applicant agree that there is a negative socio-economic and environmental cost attached to your current rate design?

MR. HAY: I don't know again that I have got the details to tell you that it's a negative socio-economic cost. I can tell you at the level that we were talking that yes, we believe it's wrong and we can see how someone who never accesses that declining block rate doesn't get the same overall blend of cost of power and therefore is paying more for the power than those who do access it.

And whether or not -- I mean I know that one of the problems with closing out the rate is that many lower income people frankly are living in poor housing with less insulation and therefore they are actually accessing more power to heat themselves than other people and therefore have got higher total bills but maybe lower average bills.

I'm not sure. So I don't -- I'm unsure. I haven't done the analysis to agree with you on that overall statement.



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2 Q.55 - Okay. You mentioned on -- certainly on the question of  
3 DSM and deficiency that NB Power is quite supportive of  
4 Efficiency New Brunswick and the work that they are  
5 currently doing. Why -- correct me if I am wrong, but I  
6 recently was on the NB Power website. Why is there not an  
7 obvious link to Efficiency NB from NB Power's corporate  
8 website?

9 MR. HAY: I don't know. I'm not aware of that, so I won't  
10 try and say that I do know and understand why it should  
11 be. You are absolutely right if it's not there. I think  
12 the -- the only issue you have to look at historically is  
13 that the prior government took a decision that it was  
14 inconsistent for a utility, as many other governments  
15 have, to be delivering DSM programs, because here we are  
16 saying we want to make more revenue, get more business, on  
17 the other hand we are telling you not to use as much. So  
18 this government took the decision which we all know is  
19 largely based on the Vermont system, and that is to have a  
20 separate entity provide that DSM, and that is essentially  
21 what they have done here. Having said that, we work well  
22 with and continue support and our energy advisors direct  
23 people to. If there is not a hot link on the site it will  
24 be on within the day or two.

25 Q.56 - Okay. Just one last question. In recent public

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comments you suggested, and forgive me if I am paraphrasing,  
but you suggested that --

MR. HAY: You are not the only one to paraphrase, Mr.  
Peacock.

Q.57 - That's right. That the utility's power may in fact be  
too cheap. I think you were referring essentially to the  
average residential consumer. Would this statement be  
fairly applied to low income New Brunswickers, many of  
whom find themselves in essentially small apartments and  
hence really don't produce a significant load?

MR. HAY: You know, again, ability to pay and charge are two  
different things. As I have said, we try not to get  
involved in that discussion. But my comments were  
delivered at the Atlantic Provinces Economic Council  
meeting where I was asked to be provocative. I believe I  
lived up to that request, where I noted around the world  
jurisdictions which had much lower per capita energy use  
than we have here, and at the same time there seemed to be  
a strong correlation with electricity price in those  
jurisdictions. And again Mr. MacDougall said earlier that  
there probably was some correlation.

And so the question is whether you use it as a carrot or a  
stick and what I was trying to say was if you don't get  
your consumption down, you will find that you won't be

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2 able to cope with the higher cost of electricity, but if you  
3 do get your consumption down and even as prices inevitably  
4 go up, you will be able to keep treading water. And so by  
5 that I meant looking around the world the price of our  
6 energy is much lower than it is in Japan, in Europe, et  
7 cetera.

8 Q.58 - Okay. As a bit of a supplemental, and this kind of  
9 ties into some of your earlier comments, using your rate  
10 proposal that is currently before the Board on a per  
11 kilowatt hour basis, would it be more economically  
12 advantageous for a residential consumer to belong to your  
13 grid and live in a one bedroom apartment or in a four  
14 bedroom bungalow on a per kilowatt hour basis?

15 MR. HAY: Well again, I will answer it the other way. You  
16 know, it depends. Some of these larger homes are  
17 extremely well insulated these days and the electricity  
18 costs are dramatically low if they are using a heat pump  
19 or some other kind of -- or maybe they are using natural  
20 gas to heat the place.

21 Q.59 - Well assuming in both units, the one bedroom apartment  
22 or the four bedroom bungalow, it's baseboard heat.

23 MR. HAY: What I am saying -- well, you know, even if it's  
24 an R2000 home with, you know, baseboard heat -- I mean I  
25 can't talk in examples. I can certainly agree with you

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that if you do not go into the second block then your average cost of power is higher.

MR. PEACOCK: Thank you. Thank you, Mr. Chair.

CHAIRMAN: Thank you, Mr. Peacock. Public Intervenor, Mr. Theriault.

CROSS EXAMINATION BY MR. THERIAULT:

Q.60 - Good afternoon. Mr. Hay, did you just say to Mr. Peacock -- and maybe I misunderstood it -- but did you say to him that government does rate design?

MR. HAY: I said the government is involved in creating the overall policy that ends up creating rate design, yes.

Q.61 - But the actual rate design is done by --

MR. HAY: The actual rate design is done by NB Power together with its Board under the constraints of what the shareholders set forth.

Q.62 - Now, Mr. Hay and Ms. MacFarlane, I apologize if some of my questions are duplicitous. That's the problem with going last. Usually it is canvassed. But would both of you agree with me that this rate case before this Board is a DISCO rate case?

MR. HAY: I'm sorry. You didn't mean duplicitous, you meant duplicative.

Q.63 - Sorry. Yes.

MR. HAY: Yes. Thank you. Now sorry, your question was.

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2 Q.64 - Good point. Do you agree that the rate case before the  
3 Energy and Utilities Board is the DISCO rate application?

4 MR. HAY: Absolutely.

5 Q.65 - Now, Mr. Hay, and I don't mean to be flip here, but as  
6 President and CEO what do you do?

7 MR. HAY: What do I do?

8 Q.66 - Generally, your overall --

9 MR. HAY: I manage the business overall. I manage the  
10 business.

11 Q.67 - Now would it be part of your role to advise the  
12 shareholder and/or the board of directors with respect to  
13 policies relating to the New Brunswick Power group of  
14 companies?

15 MR. HAY: Yes, it would.

16 Q.68 - Now I believe you mentioned you are President and CEO  
17 of DISCO. Perhaps just for the record here, if you could  
18 list the other companies within the NB Power group that  
19 you are President and CEO of?

20 MR. HAY: The other four companies being NB Holding Company  
21 and Nuclear Company, the generation company and the  
22 transmission company. All of the companies.

23 Q.69 - And your position is President and CEO?

24 MR. HAY: President and CEO of all those companies, yes.

25 Q.70 - And, Ms. MacFarlane, you would agree that this is a

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2 DISCO rate application?

3 MS. MACFARLANE: Yes, I do.

4 Q.71 - And your position within DISCO, I believe you said you  
5 were Vice President of finance of DISCO?

6 MS. MACFARLANE: And CFO, yes.

7 Q.72 - And CFO. And do you hold any other positions in the  
8 other affiliated companies?

9 MS. MACFARLANE: Yes. I am Vice President and CFO of the  
10 other four companies in the NB Power group.

11 Q.73 - Okay. Now, Mr. Hay, I would like to ask you a few  
12 questions about what you as President and CEO believe that  
13 DISCO's responsibilities are to its ratepayers. First of  
14 all, do you believe that DISCO is responsible for  
15 delivering the lowest cost power to its customers  
16 consistent with its obligation to serve?

17 MR. HAY: We believe our mission is to deliver the lowest  
18 cost possible power consistent with safety, reliability,  
19 and with respect for the environment.

20 Q.74 - So with that in mind you would agree that DISCO must  
21 always act in the best interests of its ratepayers?

22 MR. HAY: DISCO is constrained as any company is by its  
23 customers and by its shareholder.

24 Q.75 - In dealing with affiliated companies such as GENCO and  
25 NUCLEARCO and HOLDCO, would you agree that DISCO should

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always have the best interests of the ratepayers in the  
forefront?

MR. HAY: The distribution company is a subsidiary of the  
holding company.

Q.76 - Okay. Let's set aside the holding company. Dealing  
with the affiliated companies.

MR. HAY: Well we can't set aside the holding company of  
course. I mean we have a structure. We have a structure  
that was designed and put in place in October 2004 which  
was never borne. It was a structure that was set up to  
have private level insurance and five separate companies  
and split up of revenue through power purchase agreements  
among all of those five companies. And at the time it was  
envisaged that there would be five separate CEOs, there  
would be five separate balance sheets, there would be five  
separate boards. That did not occur. There is only one  
company that got it, as you know, and that is the  
transmission company. But the board and the CEO are  
duplicated over all the companies. And frankly, that has  
been a good thing for this province because when you look  
around the experiments in North America particularly they  
have been badly handled and a lot of people have lost  
money. So the prior government had a proposal, had a  
plan, of going slow in deregulation, which they did. The

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2 current government has already indicated their intention to  
3 potentially modify the current arrangement. And so  
4 management in the meantime, as I say, is in a somewhat  
5 difficult position of trying to work with this group of  
6 five companies in a way that respects what the governments  
7 are intending to do. But there are a set of rules and  
8 that is what we are doing.

9 Q.77 - Okay. But my question -- that's nice, but my question  
10 is again in dealing with the affiliated companies such as  
11 GENCO, NUCLEARCO, should DISCO always have the best  
12 interests of ratepayers at the forefront?

13 MR. HAY: I don't think it should be one. I think as I say  
14 there is always a balance between shareholders and  
15 customers.

16 Q.78 - I would like to spend a few minutes on competitive  
17 markets if we could, Mr. Hay. As President of DISCO when  
18 do you expect that DISCO will have to start competing in  
19 your service area with other electrical distributors?

20 MR. HAY: Well it already does. It has since October 1,  
21 '04. 42 of our direct connection customers have been free  
22 to choose another supplier since October 1, '04.

23 Q.79 - And have they?

24 MR. HAY: None.

25 Q.80 - Okay. And why would that be?



2 MR. HAY: I have not had one phone call from one of those  
3 42, and my strong suspicion is no one can find power  
4 anywhere cheaper, because if they could find power cheaper  
5 they would have called and said, how do we get out of the  
6 system, and let us go.

7 Q.81 - Okay. Now when will DISCO be free to buy power from  
8 sources other than the affiliated companies, GENCO and  
9 NUCLEARCO?

10 MR. HAY: Well they will not be free under the power  
11 purchase agreement to do other than respect those power  
12 purchase agreements, the vesting agreement in particular.  
13 That's what the structure was all about. The structure  
14 was all about drawing the line in where we were with all  
15 the assets this province had and trying to look to our  
16 competitive forms of generation to that process. And that  
17 is what has happened on the wind front to date.

18 Q.82 - Again I guess the answer -- the question was specific.  
19 When will DISCO be free to buy power from other sources  
20 other than the affiliated companies?

21 MR. HAY: Well I recall that under section 80 of the  
22 Electricity Act that when DISCO determines that it  
23 requires additional supply, that it can elect through a  
24 request for proposal process together with this EUB Board  
25 to make that request. So that's when they would be

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2 buying. They never escape the responsibilities for their  
3 contract power from the past.

4 Q.83 - Now, Mr. Hay, were you involved in any way with the  
5 development of the PPAs?

6 MR. HAY: I was involved acting for the government, as an  
7 advisor to the government, at the time this process was  
8 on.

9 Q.84 - And that would have been before you became President  
10 and CEO?

11 MR. HAY: Yes, it was.

12 Q.85 - Now would you agree that the PPAs were in effect the  
13 brainchild of the government and investment bankers from  
14 Toronto?

15 MR. HAY: I would -- fairly strong way of putting it in a  
16 formal proceeding, but I would say that the power purchase  
17 agreements were designed by the investment bankers from  
18 Toronto to allocate the revenue of a single company over  
19 five companies at a level which they considered to be  
20 appropriate for the risk of each of those five companies.

21 Q.86 - And you had a role as an advisor at that point in time,  
22 I think you said? Were you one of the advisors involved  
23 in that?

24 MR. HAY: I was an advisor to the ad hoc deputy's committee  
25 on the restructuring of NB Power.

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2 Q.87 - Okay. Now this particular rate case, first of all, Mr.  
3 Hay, was this a rate application approved by the board of  
4 directors?

5 MR. HAY: This rate application?

6 Q.88 - Yes.

7 MR. HAY: Yes, it was.

8 Q.89 - And is there a resolution that provides -- or that goes  
9 to that effect?

10 MR. HAY: Is that in the materials?

11 Q.90 - I'm not sure. I'm asking you. The materials are quite  
12 voluminous, so --

13 MS. MACFARLANE: Yes. The resolutions of the board of DISCO  
14 back to October 1st 2004 have all been filed, including  
15 that one.

16 Q.91 - Thank you. Now, Mr. Hay, as President and CEO would it  
17 be your responsibility to bring this rate case application  
18 to the Board?

19 MR. HAY: I manage the business, as I have said.

20 Q.92 - And you accept as President and CEO full responsibility  
21 for the contents of the rate application?

22 MR. HAY: No. It's a corporate application. It's not a  
23 personal application.

24 Q.93 - Now, Mr. Hay, I would like to turn to another line of  
25 questioning, and I think you referred to it. Did you

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co-author a report that led to the reorganization of NB Power?

MR. HAY: I was the co-chair of the task force on the future of electricity in New Brunswick with Bernard Savoie, yes.

Q.94 - Okay. And could you just explain to the Board roughly what your conclusions were in that report?

MR. HAY: There were no conclusions in the report. We were asked to provide options, with a plural S on the end of it, to the government.

Q.95 - And what were the options that -- was there any favourite option?

MR. HAY: I think the one statement that I recall as saying, status quo is not an option but that there were changes that needed to be made.

Q.96 - And can you explain to this Board why the status quo was not an option, what had to be --

MR. MORRISON: Mr. Chairman, I am really loathe to interrupt and I'm sure Mr. Hay could answer all these questions, but what happened in the Hay-Savoie report prior to restructuring has nothing to do with this rate application in my submission. So I --

MR. THERIAULT: Well I'm trying to get with respect to the competitive aspect, who better to ask on policy as to the deregulated nature of NB Power than the President and CEO?

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2 CHAIRMAN: I think Mr. Morrison's point perhaps is that what  
3 has happened in the past has happened. I am going to let  
4 you continue but there had better be something coming from  
5 this that relates to today's application.

6 MR. THERIAULT: I hope so.

7 Q.97 - So would it be fair to say that the essence of your  
8 report was that there should be deregulation so that  
9 competition could be spurred on? Would that be fair?

10 MR. HAY: No. I think it was one of the options that was  
11 put in. I think that NB Power at the time was in a very  
12 financially difficult position. And I would say this was  
13 virtually ten years ago when this report was written in a  
14 very different world at that time, and that there were  
15 many people -- this is pre-Enron, this is pre -- all kinds  
16 of problems which have occurred, most particularly the  
17 most recent article I mentioned in the New York times  
18 about the mistakes other people have made.

19 So there is no question that people had thoughts about  
20 deregulation. It started with Margaret Thatcher in '85 in  
21 the UK and people looked at that. It went through New  
22 Zealand, Australia, Western Canada, California. And  
23 people were examining at the time -- the current liberal  
24 government of the day asked myself and Bernard Savoie to  
25 examine what the options were, what different courses they

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2 could take. They took that document and took it through a  
3 select committee of the legislature, went through that  
4 process, took it into various committees within  
5 government, and ultimately formed a couple of ad hoc  
6 committees and created legislation out of it nearly six  
7 years later.

8 Q.98 - Would you agree with me that deregulation is  
9 theoretically flawed?

10 MR. HAY: Is theoretically flawed?

11 Q.99 - Yes.

12 MR. HAY: No, I don't think deregulation per se is  
13 theoretically flawed.

14 Q.100 - Okay. Would you agree, Mr. Hay, that one of the  
15 purposes of the PPAs is to allow the affiliated companies  
16 to interact with each other?

17 MR. HAY: Not really. The purpose of the PPAs as I said  
18 before was to -- before the company was divided into five  
19 companies there was single revenue stream coming into the  
20 company, and the design was to say how do we split that  
21 revenue stream among five companies that allows them all  
22 to live properly with a debt equity balance sheet which  
23 was appropriate to their business and provide a return  
24 equal to the risk that that business has looking at the  
25 real world.

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2 Q.101 - Would you agree with me that the PPAs were designed to  
3 allow NB Power group of companies to operate in a  
4 deregulated competitive market?

5 MR. HAY: Yes, I would agree with that. Actually, you know,  
6 generally speaking I would correct my answer a little bit.  
7 People would refer to it as re-regulated rather than  
8 deregulated. That became a bit of a hackneyed word  
9 because people were concerned that it meant that people  
10 were just free to go and do what they wanted to do. They  
11 were never entitled to do that. It was just that the form  
12 of regulation was changed to provide for a competitive  
13 market.

14 Q.102 - Now would you agree -- is there competition in New  
15 Brunswick right now?

16 MR. HAY: No, there is not.

17 Q.103 - Okay. And would you agree then that if there is no  
18 competition there would be no need for deregulation and  
19 re-regulation?

20 MR. HAY: No, because I think you could create competition.  
21 It has always been very difficult. It's problematic  
22 right from the outset to think that you could create a  
23 competitive market if you only used New Brunswick. But it  
24 is possible with the right regulation that you could get  
25 much closer to it than what we have here.

2 Q.104 - Mr. Hay, there has been some discussion about do you  
3 think that the affiliate companies should they be  
4 reintegrated into a single unit? Would you believe that  
5 to be the case?

6 MR. HAY: I think it's largely irrelevant. My business  
7 experience -- I have been in a number companies that had  
8 hundreds of subsidiaries. What is important is, you know,  
9 what the relationship is between the subsidiaries. I  
10 don't think whether they sit as separate companies or  
11 whether they are affiliated or brought into a single  
12 company is that relevant. Management is the most  
13 important issue.

14 Q.105 - Mr. Hay, some questions were put to you earlier and  
15 you have been quoted and I understand the implication that  
16 you talked about with respect to suggesting higher power  
17 rates to encourage conservation.

18 MR. HAY: No, I didn't say that. I said that there was a  
19 strong correlation between higher power rates and  
20 conservation. Now which leads to which I'm not sure. I'm  
21 not sure that in Japan they set about putting in higher  
22 power rates to force conservation when they simply said,  
23 we have got to buy every ounce of energy that comes to  
24 this island, which they do, and therefore it's more  
25 expensive, and because it was more expensive, conservation



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2 was the result.

3 Q.106 - But your comments were not meant that DISCO had

4 exhausted all other measures for demand side management?

5 MR. HAY: No. There is lots of scope more for demand side

6 management, whether that's the responsibility of DISCO,

7 whether it's the responsibility of the new agency, I'm not

8 sure about that.

9 Q.107 - Okay. Can you tell us here today in the last three

10 years what demand side management measures has DISCO

11 implemented?

12 MR. HAY: Demand side management was taken away from the

13 distribution company, as I mentioned earlier. We were

14 specifically told by the prior government that they were

15 setting up a separate agency because they figured it

16 wholly unacceptable that a company that was in the

17 business of selling power would also at the same time try

18 and take it back. That was a policy of the government of

19 the day.

20 Q.108 - So the answer is none in the last three years?

21 MR. HAY: Well I said we had our energy advisors program,

22 yes.

23 Q.109 - Do your comments mean that you do not support a cost

24 based rate making?

25 MR. HAY: A which? I'm sorry.

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Q.110 - Cost based rate making.

MR. HAY: Cost based rate making?

Q.111 - Yes.

MR. HAY: No. We do support that. Sure. We have been asked to balance the books of NB Power.

MR. THERIAULT: Thank you very much.

CHAIRMAN: Thank you, Mr. Theriault. Ms. Desmond?

MS. DESMOND: Mr. Chairman, I have been advised by the adviser to the Board that we need a short recess.

CHAIRMAN: We will take a 15-minute break.

(2:45 p.m. - 3:10 p.m. - Recess)

CHAIRMAN: Ms. Desmond, are you ready to proceed?

MS. DESMOND: Thank you, Mr. Chair.

CROSS EXAMINATION BY MS. DESMOND:

Q.112 - My first question really is directed to Mr. Hay. And I believe in the evidence, Mr. Hay, it speaks to the fact that the restructuring of NB Power was, amongst other objectives, designed to make the utility behave and emulate as a privately-owned corporation, with a goal of permitting each of the operating companies to finance in the debt capital market, so that a provincial guarantee. And I believe that is in exhibit A-2. So my first question to you is how in your opinion is DISCO faring in achieving that objective?

2 MR. HAY: Well, I think we are doing a good job. And I

3 agree with all those comments about what the objective

4 was. And I think in many respects what we are trying to

5 do is to achieve the best of our worlds.

6 And the best of our worlds is to have ourselves financed

7 through the government at debt rate and run ourselves like

8 a private corporation, in terms of -- and I don't mean by

9 that extracting profits, blah-blah-blah.

10 I mean by running like a private corporation, by being

11 efficient, by bringing in measures like the balanced

12 scorecard. No one told us to do that.

13 In fact the only one who told us to do it was

14 Ms. MacFarlane, who originated the idea, to take the kind

15 of private sector measurement techniques which are used to

16 produce ice committees, overseeing our international power

17 line, overseeing our Lepreau refurbishment committees,

18 third party external reviews that private sector companies

19 do.

20 That is what our objective is. You know, I talked about

21 what our mission is. Our vision is to be among the best

22 run utilities. And we believe we are.

23 And if I look -- and I will take one moment if I may to

24 talk about what we have been doing. And that is our

25 Belledune coal plant is the number one coal plant in North

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America. I know it is a little bit outside the scope. But I'm going to mention in. Number one in North America over a five-year run period, second year in a row. Our thermal fleet is in its entirety the most efficient thermal fleet in Canada under Statistics Canada numbers. Our Point Lepreau station is -- last year ran 289 days the best run since 1999. And our distribution business, as I have mentioned, the best run that it has had in 14 years.

So I think throughout the entire corporation we are doing extremely well in achieving the objectives of the government without achieving the financial objectives, because we couldn't simply do it without having a debt for equity swap. But short of that I think we are doing a good job of achieving that.

Q.113 - And Mr. Hay, in light of that particular question then, how do you balance your objectives to become a privately owned and operating as such with the direction from government to break even, which is I think what you spoke to earlier today?

MR. HAY: Well, as I said, that is a great question. Because there is a lot of -- there is confusion about that. But again we don't seek to become privately owned. I just want to make that clear. It is just we are happy

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to be government owned.

But we are happy to operate like a private sector company.

And as I say, in doing so what we are trying to do is trying to come up with the kind of business management techniques a private sector company uses.

The financial goal, whether the bar is for break even, a 1 percent profit, a 5 percent or 10 percent, that is all within the purview of our shareholder. And we can't affect that.

What we can affect is how well we run as a business. And that is what we are trying to do. So we consider that to be purely within the government purview or the type of profits they want to have in the corporation.

Q.114 - Could I ask you though to clarify, when you said that the direction from government was to break even, what exactly did you mean by that?

MR. HAY: I'm afraid that is all the guidance I have. We have been asked through the press to break even. And I think that you are -- again it is a very good question. Does break even means zero?

It doesn't mean some level of profitability. It could take into -- some days are going to be better days or some years are going to be better than other years. That is essentially where we are.

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2 But we are at this point attempting to interpret that  
3 ourselves. And it is on that basis that we have given our  
4 budgets last year. And we will be giving our budget in  
5 about three or four weeks to the government this year.

6 Q.115 - Do I understand then that you have been given  
7 direction to break even and you have read that for the  
8 first time through the press, that you have read direction  
9 from government to break even --

10 MR. HAY: We had --

11 Q.116 - -- and you are just interpreting that yourself?

12 MR. HAY: We had a number of meetings with the new  
13 government that came in last year. And I personally  
14 briefed people in government to explain where we were,  
15 what we were trying to do.

16 At that point we were already about to file a budget. And  
17 we started talking about some of the parameters that this  
18 government could look at. Because this government had a  
19 very different view than the other government in terms of  
20 profitability.

21 We drew up a spectrum of profitability, from very  
22 profitable down to loss making with break even somewhere  
23 in the middle. And I left that with government. So we  
24 had many discussions about it. And what they chose was  
25 break even.

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I just -- like everything in this industry, maybe the devil is in the details. And the question is exactly what does break even mean? And we have had experts work on our behalf to determine that.

Q.117 - Earlier, Mr. Hay, you spoke of a presentation that you made to the Canadian Electrical Association. And we were wondering what other operational comparisons does DISCO or NB Power do? And what does it do with the data that is filed?

MR. HAY: Finding comparatives around the industry is a very difficult thing to do. It is not so difficult in the nuclear industry because the plants tend to look somewhat similar. But again it is very different to operate a single nuclear plant than it is a fleet of eight or a fleet of nine.

And we do work with organizations like the Canadian Electrical Association to compare our data. And it is most comparable at the distribution level. But there are always differences, how many poles you have, what the distances are, whether you have got a heat load, what the size of the wires that is used, what are your storms like? You can't mathematically, you know, take storms out of the equation. So we constantly search for comparatives to let us know how we are doing, not only against our own

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record from the year before, but how we are doing against other utilities.

You know, again I am NCO of all the companies. But we have benchmarked Coleson Cove against plants down in the United States, et cetera. We know where Belledune is. We know it is number one in North America. So we feel pretty good about that. As an organization we have strived for excellence. And we feel we are achieving it.

Q.118 - Earlier, Mr. Hay, you stated that the government intends to look at the structure of NB Power and the group of companies.

And specifically could you advise the Board what are the discussions you have had and what suggestions have been offered?

MR. HAY: Well, we have been discussing with this new government, which was not responsible for bringing in this new restructuring regime, what their options are, because they wanted to know what those options are. And our main concern has been to try and avoid some of the problems that occur in hearings like this, where we have got a distribution company alone, we have got other companies around and the power purchase agreements. The fact of the matter is, from the top of the tree, at the NB Power holding company level, power purchase



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agreements are completely irrelevant. And when we are breaking even, we are trying to make sure that we achieve the appropriate level of profitability that the government wants.

Having said that, the power purchase agreements are in place today. And that is the regime that we are operating under. So we have a great respect for that process. We have a great respect for this process. But the government has made it clear that it intends to make some changes.

Q.119 - Have you personally or has a representative of DISCO made any suggestions with respect to this restructuring?

MR. HAY: The restructuring of NB Power? Yes. I have made some suggestions to the government.

Q.120 - And what suggestions have you made?

MR. HAY: I have made the suggestion that they might want to consider whether or not they regulate DISCO or whether they will regulate the holding company as they used to do, if they don't have an intention to separate.

Personally, as I have said before, the corporate structure I'm not uncomfortable with. I don't mind having subsidiaries. I'm very keen to be able to see how the distribution company is performing against its targets and how the nuclear companies seem to perform and how the generation company, et cetera, the transmission company.

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2 I don't think that is the issue. The issue is the  
3 confusion which comes when a lot of time and effort has  
4 been put into, you know, who kicked Jake and what dollars  
5 went in what pocket, when we all know ultimately, as  
6 people in New Brunswick we are attempting to ensure that  
7 we pay for the electricity we use today and don't lose it  
8 for our children tomorrow.

9 Q.121 - I just wanted to chat with you again with respect to  
10 the issue of being operated like and behaving like a  
11 privately-owned corporation.

12 And one specific question we did have is with respect to  
13 your revenue requirement. And in your revenue requirement  
14 of course there is a net income figure of 9.8 million.

15 And the rationale for this figure is that it is required  
16 to generate retained earnings in order to accomplish self-  
17 sufficiency.

18 So given that the government has indicated they are  
19 considering changes to the restructuring, why do you feel  
20 it is appropriate that DISCO should include this amount in  
21 its rate application?

22 MS. MACFARLANE: I will answer that question if I may.

23 Whether DISCO is the regulated entity or Holdco is the  
24 regulated entity, the net incomes of all the individual  
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companies add up to the net income of the whole. It gets back to the definition of what is break even.

What we have put forward with the assistance of our consultant is a definition of break even that would lead to self-sufficiency, self-sufficiency being that we can service our debt, that we can pay down our debt, that we can attract debt without negatively affecting the Province's credit rating, and that we can undertake capital expenditures needed to keep the business in a reliable and sound state.

So break even doesn't necessarily mean zero. In fact in a business like ours, with a significant amount of risk outside of management's control, it can't mean zero. In fact budgeting for zero would no doubt lead to losses in many, many years.

So we have taken, as Mr. Hay has indicated, with the assistance of a consultant, our own view of a definition of break even. And it is consistent with self-sufficiency, which means you must have a net income.

MR. HAY: Just as a bit of a supplement Emera which is Nova Scotia Power's parent company, if memory serves me right, had a turnover or a sales number as somewhere around a billion, three or something like that, somewhat less than us at a billion, six or so. Their profit last year was

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2 about \$125 million. So we are a long, long way away from what  
3 one might call the profitability level that the private  
4 sector would support. We are not attempting to drive to  
5 that number. That would be a very, very significant  
6 increase. We are attempting to have enough money that at  
7 the end of the year we are getting close to breaking even  
8 and that usually means you have to have some level of  
9 contingencies Ms. MacFarlane has said.

10 Q.122 - In this filing you have referred to risk. And what  
11 risk specifically are you reflecting?

12 MS. MACFARLANE: With respect to DISCO there was a risk  
13 analysis filed in last year's rate application. DISCO has  
14 a very large revenue base and a very large cost base,  
15 largely purchase power, and yet a very, very small net  
16 income. So items like hydro flows can cause significant  
17 variability in the bottom line, levels of export margins  
18 that flow throughout the credit to the PPA can cause  
19 significant variability. Storms can cause significant  
20 variability. There are a number of times that for what is  
21 effectively a little tiny company DISCO, little tiny from  
22 the perspective of the size of its bottom line, can cause  
23 large swings in its operating income.

24 Q.123 - Mr. Hay, there was discussion on the declining block.  
25 And I believe you commented that the sooner the declining

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2 block is eliminated the better. And are there any policies in  
3 your view that would prevent getting rid of the declining  
4 block in this particular rate application?

5 MR. HAY: I don't think my memory serves me well enough.

6 But I think that there was the prior PUB a schedule of how  
7 that declining block would be eliminated. And so that's  
8 what we are attempting to follow now on that schedule.  
9 Now whether that's a policy or an actual order, I don't  
10 know. I think the main thing is not from the policy  
11 perspective, it's from an economic perspective, when 60  
12 percent of your in-province customers heat with  
13 electricity, most of that 60 percent goes into the second  
14 declining block. When you try and levelize those blocks,  
15 you find some fairly significant rate increases for that  
16 second block customer.

17 QQ.124 - Does DISCO regarding an inclining block rate?

18 MR. HAY: No. We are quite aware that Ontario did that three  
19 years ago and moved from declining block rate to an  
20 inclining block rate. It would more closely match our  
21 cost structure, because our cost structure has us  
22 producing electricity at a higher and higher cost as we  
23 get into a higher and higher load, because every unit we  
24 put on, dispatch it's a slightly higher cost to us,  
25 otherwise -- I mean dispatch the lowest first. So that's

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what's happening with our cost structure. Would it make sense to match the terms of sending the right price signal? It wouldn't make sense to do that. And again it's a question of in Ontario they did it at the snap of a finger. It went from declining block to an inclining block and that's been considered to be from a public policy perspective a difficult thing to do in our jurisdiction with 60 percent heat load.

Q.125 - With respect to the GS rate, is there a policy regarding over-recovery of revenue?

MR. HAY: Do you mean because we are outside 105 is that what you are referring to?

Q.126 - That's correct.

MR. HAY: Yes, of course. I mean we respect what, as I say the predecessor panel here has said. We agree entirely, everybody should pay a hundred cents for a hundred cents worth of electricity. There is no question about that. But it is difficult to make the rules that rapidly. The reason the GS rate is where it is is just quite simply because it represents a very, very small portion. It is a cost, but it is a small portion of the overall cost base of those operations and therefore, they don't tend to focus on it as much, because a very large cost base are the large users, like forest products companies, so they

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do -- so they tend to, you know, push down harder on it.

So, yes, we would like to see it eliminated. And yes, we are moving it down, not as rapidly as we like to, but once we determine within -- once you determine what our revenue requirement is, then it's all just a question of pushing on one side and the other side goes up. We don't get any more money out of it. We are completely neutral on it. So we are all in favour of having pricing signals sent by that direction to do that. It's only a question of the paying and that principle of gradualism.

Q.127 - I wanted to ask you a question about the provision of your regulatory services. And is it now DISCO's policy to have Holdco provided with its required regulatory services?

MR. HAY: Again, I will try. If you mean that we have people in the holding company who provide assistance to a distribution company, absolutely. And it is by far the most efficient way to do it. We do not want to have, frankly at this point, five Sharon MacFarlane's in the company and we don't want to have five Mike Gorman's in the company. We do use things whether it is court matters, or filings, whatever, and we can do it most efficiently through a head office concept in using those employees in various entities.

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Q.128 - And am I correct in understanding that a number of positions were transferred to Corporate Services from DISCO?

MS. MACFARLANE: About a year ago we under -- yes, you are correct. About a year ago, we undertook a review of the finance services that were offered throughout the company and the structure that we used for that. And like many of the technical services, we determined that it was more efficient to take transactional functions, and particularly record their report functions out of the business units and provide that out of the operating companies. Provide that from the holding company as a service using professional accountants. And leave in the holding company -- or pardon me, in the operating company's functions related to planning, management advice, analysis, et cetera. So the employees in DISCO that were transferred into Holdco, were people who were undertaking the function of record and report and certain transactional functions.

I might mention that there was no cost implication to DISCO in the sense that those employees were employees of DISCO. They got transferred to Holdco and they are now billed back to Holdco to DISCO. There is no monetary impact.



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I just want to clarify that. There was monetary impact in the sense that we are able to save money in the long term. Any of you who are in the field of finance and accounting know that the demands have grown enormously for general and our potions were either centralized for efficiencies or hire more staff. So, yes, those staffing DISCO were transferred into Holdco, as was the case with the other operating companies. But as a consequence of that centralization, we have been able to avoid future hiring and achieve more output.

Q.129 - I wanted to ask you a couple of questions around the amendment to the vesting agreement. And in particular, amendment number 1, which I believe is in A-3 of your material. And I would first of all like to confirm that as the senior level of management you would both be aware of and be expected to be involved in the discussion and approval of the amendment?

MS. MACFARLANE: Yes.

Q.130 - And to understand the magnitude of the changes, could you please advise the Board what the estimated total annual impact in dollars would be in the reduction of the capacity payment?

MR. HAY: Just while Ms. MacFarlane is looking for it, I just want to make absolutely clear that management doesn't

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2 have discretion to do these things. Management doesn't have  
3 the discretion to do anything of substance. I shouldn't  
4 say anything of substance, but anything within -- beyond  
5 our government's limitation. This issue, like many issues  
6 was brought to our Board with a management recommendation  
7 and ultimately discussion upon the Board and ultimately a  
8 yeah or nay from the Board. So I don't want to leave the  
9 impression at all that is a, you know, a management driven  
10 issue.

11 MS. MACFARLANE: Ms. Desmond, could I ask you to repeat the  
12 question?

13 Q.131 - We are looking for the estimated total annual impact  
14 in dollars of the reduction in the capacity payment?

15 MS. MACFARLANE: And this was amendment number 1 to the  
16 Coleson agreement or to the vesting agreement?

17 Q.132 - Amendment number 1 to the vesting agreement?

18 MS. MACFARLANE: To the vesting agreement. Within the  
19 vicinity of \$11 million, this was a reduction in the  
20 capacity payment.

21 Q.133 - In the IR's that have been submitted by the Board to  
22 DISCO, we had requested a copy of the calculations and  
23 related correspondence that supported that change. And  
24 the response that was received by the Board was that there  
25 was no correspondence. Also calculations showing how that

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decision was arrived at were not supplied to Board Staff.

How did management arrive at those figures that eventually resulted in the amendment?

MS. MACFARLANE: The decision was taken to make a recommendation to the Board at the executive table, as part of the budgeting process for the individual companies and the group of companies overall. Around the management table would be a vice-president solely responsible for each one of the operating companies and holding the interest of that operating company foremost in his mind. And I say his, because they happen to all be men. There are also executive members around that table being, who are officers of all of the companies. The president, myself, the vice-president, legal. And we are - they are vested with this balance between the individual interest of the operating companies, and more broadly the interests of the entity as a whole, the ratepayer and the shareholder. And collectively as a group, we came to that decision. In terms of metrics, I think we answered in the IR, there was no sophisticated calculation behind it. We looked at a number that represented in the vicinity of about 1 percent for DISCO on rate. And it represented about one-third of what the scheduled increase in capacity

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payment was. There was no more sophistication to it than that. But again it was seen as something that was reasonable in balancing the interest of the shareholder and the interest of the ratepayer.

Q.134 - I also had a question on variance accounts. And I believe in the -- in the materials, DISCO responded to various IR's indicating that the variance accounts are common regulatory tools that NB Power has employed in the past. And I believe in the Audit Committee meeting minutes, Mr. Hay, was authorized by the committee to discuss the possible establishment of hydro variance accounts with government. And also in the minutes, there is reference to the complexity of establishing these variance accounts.

So our questions are, first of all, could you identify and expand upon what complexity is related to the establishment of these accounts from the Audit Committee and by the auditors?

MS. MACFARLANE: The variance accounts that have been under discussion both at the last hearing with the predecessor Board and with NB Power's Audit Committee and Board, include a variance for hydro performance and a variance -- potentially a variance for export performance. Both of those are well outside of the control of the company.

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2 The complexity really comes down to new guidelines issued  
3 by the Canadian Institute of Chartered Accountants as to  
4 what can be represented on a corporation's balance sheet  
5 and what criteria have to be met in order to be able to  
6 present this as a legitimate asset and/or liability. And  
7 part of the complexity includes having an order from a  
8 Regulatory Board. So it would involve a hearing.

9 The discussions the president has undertaken with  
10 government and discussions management has undertaken with  
11 the Audit Committee, the auditors and the Board, there  
12 have been no objections raised on any front, simply a  
13 matter of timing. Obviously fuel costs were rising at a  
14 rate that we felt it absolutely necessary to get before  
15 this Board for a rate increase this year. As the PDVSA  
16 settlement came into play, again the priority became  
17 getting back before this Board. And it is our highest  
18 priority at this time to complete this proceeding before  
19 we move onto the variance accounts.

20 I might just mention from a ratepayer perspective, the  
21 hydro variance account has absolutely no impact, because  
22 included in rate is an estimation of average hydro flows.

23 A hydro variance account would only affect the  
24 variability of net income. It would only protect the  
25 shareholder from those increases and decreases as a result

1 of above and

- 1084 -

2 below hydro.

3 Q.135 - With respect to rebates, if the Board were to order a  
4 rebate at the conclusion of this hearing, has DISCO  
5 considered how rebates would be handled or how they would  
6 be provided to customers?

7 MS. MACFARLANE: Yes, it has. And I believe we were  
8 required to file a procedural document as to how that  
9 would be handled.

10 Q.136 - I just had one last question. And it is with respect  
11 to the testing of petroleum coke. At least to my  
12 knowledge, there has been some damage to the boilers and  
13 the attempts to test the burning of petroleum coke. And I  
14 understand that DISCO's recovering the cost from an  
15 environmental charge to make repairs. And my first  
16 question then is why is it categorized as an environmental  
17 charge? How has it been determined to recoup that cost  
18 through that particular provision?

19 MS. MACFARLANE: I wanted to start by saying that if it is  
20 reasonable this -- the PPA panel is prepared to answer  
21 that question and is expecting a similar question to that.  
22 But just at a high level, I will clarify that the damage  
23 that has happened to the Belledune boilers as a result of  
24 burning petcoke is a separate issue from the testing of  
25 the use of pet coke at Coleson Cove combined with the

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liquid fuel, heavy fuel oil. So the testing of pet coke is a project at Coleson Cove combining a liquid and a solid fuel. The use of pet coke has been ongoing for a number of years at Belledune and successfully so. It's just been recent inspections we have discovered that there has been consequent damage to the boilers.

I will also go on to say that in the charge, as I understand it, and again I will defer to the PPA panel, the charge of the cost of the repairs at Belledune for the damage caused by this pet coke is not considered an environmental charge. It's an issue that was not contemplated by the PPA's. And the committee in deciding to move forward with DISCO paying for this used the environmental clause as a proxy for how to undertake the charges. I think the Operating Committee minutes make it quite clear that Genco is not obligated to burn pet coke at Belledune. To continue burning it, and at a reduced fuel cost for DISCO, would continue to damage the boilers.

So DISCO under good utility practice has the right to stop burning pet coke at that facility. Obviously that's not in Genco's interest, because they get significant fuel savings with the blending of pet coke. So DISCO has agreed that it's in their interest to pay for that repair so that Genco can continue to burn that less expensive

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fuel. And in the business case which was filed with the Operating Committee minutes for DISCO, I believe it's a seven month payback on the investment.

Q.137 - Is pet coke a fuel that is widely used in North America?

MR. HAY: Yes. Pet coke is a fuel that is widely used. It's produced as a byproduct of the refinery process. It's two different refinery processes. And in fact the second refinery that the Irvings are talking about for here, is meant to include a coker. And so it just a means of boiling oil or heating oil to have it crack into its various levels and what's left in the bottom of the pot is as Darrell Bishop, our VP of Generation says like the scale on the bottom of your coffee pot if you let it boil dry. It contains carbon in it. And therefore it has some good b.t.u. value. We have used it, as Sharon said, for a number of years in Belledune. And it is -- the economics of pet coke are that they -- it sells for about \$2 to \$2.50 a million b.t.u.'s. And oil, heavy fuel oil sells for \$9 plus. So if you can substitute \$9 b.t.u.'s, by \$2.50 b.t.u.'s, you are way ahead of the game. And so people do this, this technology of lining the boilers as I say be like a stomach, now it can eat anything, at the Belledune boiler. It wasn't damaged. It was just some



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2 degradation that occurs. And that occurred for a number of  
3 reasons. And it wasn't just pet coke. It was reblend  
4 five different types of fuel there in order to make that  
5 plant efficient, as cost efficient as possible. And in  
6 doing so, you know, the tubes tend to wear. And so what  
7 we have done is put a stainless steel liner in it. We  
8 didn't invent that technology. That technology comes out  
9 of the United States, where they do it all over the place.

10 And it has been very successfully put into that boiler.  
11 And as Sharon says -- sorry, Ms. MacFarlane says that, you  
12 know, a seven month payback on a capital investment  
13 project, if we were all in the private sector, you  
14 wouldn't blink your eyes. You would do it in a blink to  
15 have that economics delivered to you for then the balance  
16 of the life of that boiler.

17 Q.138 - Mr. Hay, during your direct examination, you commented  
18 that the acquisition of wind power with its fixed costs  
19 would offset the variable costs associated with the fossil  
20 fuel?

21 MR. HAY: I did.

22 Q.139 - Does wind power assist -- I am sorry, will wind power  
23 assets impact the current rate application?

24 MR. HAY: No. The wind power assets won't come in within  
25 the test year. I am looking at Ms. MacFarlane.

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Q.140 - And will generation assets be retired as new wind generation comes online?

MR. HAY: No. Assets won't be retired. The problem with wind as we all know is, while it is environmentally friendly, it does not have consistency about it. And so you need to maintain plant as backup for it. And, you know, we are not putting in -- of the 400 megawatts of wind that we have -- that we not have an intention to put in, you have got to calculate that only 30 percent of that actually is there all the time on average. And therefore it is only the equivalent of 120 or 130 megawatts of wind.

So you can't retire a thousand megawatt boiler or a 600 megawatt boiler, et cetera as wind comes on.

The other thing just to make clear on wind is that putting 400 in, we are at the limit if we contract for all of that, as we hope to do, at the limit of what the System Operator designated that we should take in our system, and that is 10 percent of the system. Our system is 4,000 megawatts or 400 is 10 percent. So we have taken all we can subject to getting in there and using it and finding out that maybe we could go to 500 or maybe 550. But it will not at this point under current technology replace baseload power.

MS. DESMOND: Those are all of our questions. Thank you.

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CHAIRMAN: Thank you, Ms. Desmond. Any questions from the Board? Mr. Normandeau? Ms. Morrison? Mr. Barnett?

BY MR. BARNETT:

Q.141 - Mr. Hay, just following up on that last question from Board Counsel, as far as wind power is concerned will the PPA's, the PPA it has been signed I guess for the TransAlta, and PPA's that will be signed hopefully as a result of the RFP process. Will those be signed by DISCO?

MR. HAY: Yes. They are DISCO agreements.

Q.142 - I would just like to go back and maybe you have already answered this question. But I wrote it down at the time when you were giving direct evidence there. You said that the government intends to look at this structure, the current structure. And I think you indicated which has been difficult to quite difficult there. And then a little later on answer to Board Counsel, you indicated that a large part it was related to this process. Does that encapsulate the difficulties with the structure that you have operated under since October 1, 2004?

MR. HAY: I think largely it does, yes, largely it's a question of as Shakespeare said, much ado about nothing, when it comes to power purchase agreements in terms of left pocket, right pocket when you are looking at it from

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2 a holding company perspective. And yet a lot of time is spent  
3 doing that. To some extent, some of the inter-company  
4 reconciliations would be reduced and made easier, but it  
5 depends on how far government would go. But a lot of it  
6 relates to, a regulatory hearing like this, trying to  
7 figure out, how do we ensure that people of New Brunswick  
8 have got a visibility of what is going on in NB Power.  
9 And how can they begin to understand when a group of  
10 professionals have difficulty in terms of trying to  
11 separate and different charges into the right boxes.

12 Q.143 - Just a couple of more questions. Leading into a  
13 question I think Mr. Coon asked and it was regards to  
14 energy efficiency demand side management and you said that  
15 that had pretty well divested over to the new Energy  
16 Efficiency Agency of New Brunswick, Ms. Weir's group.  
17 However, you did say you still have your energy advisers.

18 Just a couple of questions.

19 Did those energy advisers work not only in the residential  
20 sector, but work in the commercial institution sector as  
21 well?

22 MR. HAY: I think it would be very, very largely the  
23 residential section, not the commercial.

24 Q.144 - So there is no energy advisory service offered to the  
25 commercial institution. That would again be done by Ms.

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Weir's group would it?

MR. HAY: That's correct. We did have discussions about whether or not we would undertake that. And she and her group wanted to do that themselves.

Q.145 - And from a policy perspective in this area as well has DISCO looked at -- we heard about reducing consumption and this being offered through the Energy Advisory Service residential level, but another area that I am wondering if DISCO has looked at from a policy point of view, that is of fuel switching. Has DISCO looked at that as from a policy perspective what benefits may accrue to its ratepayers as a result of encouraging fuel switching?

MR. HAY: Are you talking fuel switching by a supplier of Genco or fuel switching for the customers?

Q.146 -I am talking about fuel switching by the customer and encouraging that and there being benefits to DISCO?

MR. HAY: Well, yes, you know, one of the problems that we have had -- and I haven't been out with an energy adviser lately, but I remember about a year and a half ago when I kept exhorting him to say, you know, it's time the people should be switching. He said you know what, everytime I push my calculator and show it, you know what, electricity is cheaper. So how can I get people to switch? Now it's cheaper because of the rates, not cheaper because of the

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environment or because of our cost. And so that's one of the problems that we have when we don't send correct price signals through.

Q.147 - And just a couple of more. From a prudent policy point of view is it in DISCO's interest to look at doing sometime in the near future a integrated resource plan in regard -- my understanding is if my memory serves me right from load forecasts, the requirement for new capacity is 2016 and it may extend beyond that, would it not be timely for DISCO to be encouraging whoever does this, the holding company, to look at an integrated resource plan so that when this time comes, new capacity is required, they will be in a position to make the optimum choice?

MR. HAY: I couldn't agree more with that statement. And one of the problems with the restructuring that we had was that when the companies were pulled apart, a little bit like in Ontario, a piece of the shell fell out. In Ontario they fixed it by calling it the OPA and bringing in to play and to do just that very role, because from everybodys' perspective, the future was going to be through RFP by DISCO. And there was no planning. It was just going to be done, you know, I will need some power and I will get the private sector to supply it. And so we agree entirely and we are starting to put together a new

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2 group to do that, because it becomes apparent to us that NB  
3 Power has that responsibility as we go forward to try and  
4 figure out, and not only from a capacity point of view,  
5 because from a capacity point of view, we probably now are  
6 looking at a number that is up into the 2020's plus,  
7 because of the 400 megawatts of wind and because of the  
8 demand side management, which is occurring within the  
9 province under Elizabeth Weir's group. But we also have  
10 to think about what is the most efficient way to arrange  
11 ourselves for the future. And there is only two things we  
12 know for sure -- I shouldn't say for sure. It's not  
13 likely that oil is coming too far down, if at all. And  
14 it's probably likely that CO2 charges are going to start  
15 to bite somewhere in the future. So hydrocarbon based  
16 generation is something that we have to think about from a  
17 policy perspective -- not policy, but from a planning  
18 perspective to ensure that we have got economic power from  
19 the people, not at this decade, but of next decade.

20 Q.148 - And my last question I guess, it hasn't been raised by  
21 the Intervenors, but it is begged as a result of your  
22 comments in terms of this no competitive market in New  
23 Brunswick. Nobody is knocking on your door.

24 One aspect of developing a competitive market that is  
25 contemplated in the legislation deals with exit fees. Is

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there any position that DISCO has at present in regards to agreeing to the establishment of exit fees, because they are one part of somebody leaving the NB Power system?

MR. HAY: I agree that the difficulty that people don't know what that is. And I think the Act currently provides that, you know, if you have got a request and you want to do it, then take NB Power by the hand and come to the EUB and we will have process. We haven't been leading it, because we haven't even had a sniff or a hint that anyone is interested in that. It should be established at some point.

The whole trick to the question of exit fees is if the person leaves or if the company leaves, is it going to cause a problem to the system? In other words, are they leaving behind a black hole or you know a good business? And I would say, we have got an awful lot going on these days in our balance sheet. Debt side will go up maybe to 3.7, \$3.8 million by the time we finish Point Lepreau. And for people to say, you know what I don't think I am interested in that kind of power, I am going to get it somewhere else, there may well be fees associated with it. But we stand by the legislation. We are ready to go with it if people want to do it.

MR. BARNETT: Thank you, Mr. Hay. Those are my questions.



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CHAIRMAN: Thank you. Mr. McKenzie?

MR. MCKENZIE: No questions.

CHAIRMAN: Mr. Johnston?

MR. JOHNSTON: No.

CHAIRMAN: Any redirect, Mr. Morrison?

MR. MORRISON: No redirect, Mr. Chairman. Thank you.

CHAIRMAN: Well, I guess that concludes the evidence from this panel. So I would thank the panel for their attendance. Ms. MacFarlane, you will be back on other panels. And Mr. Hay it may well be that you will be recalled as a result of information that may be forthcoming from the evidence that was dealt with this morning.

With respect to our hearing today, I understand some parties were wondering what the schedule would be on a typical hearing day. Our intention is to start at 9:30 each morning and go to about 3:30. Well today we are at ten to 4:00. The reason to end at that time is to allow for a timely preparation of the transcript for the next day. So we will attempt to run from about 9:30 to 3:30 with a one hour break at lunch.

Are there any other matters to be dealt with today? Yes, Mr. MacDougall?

MR. MACDOUGALL: Yes, Mr. Chair. I just wanted to notify

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the Board on behalf of Enbridge Gas New Brunswick that we will probably not be here for the next few days, but we will be back for the Rate Design. You can feel free to call on us if we are not here, we won't be, but we will be back later on in the hearing.

CHAIRMAN: Thank you, Mr. MacDougall. Anything further? We will stand adjourned then till 9:30 tomorrow morning.

(Adjourned)

Certified to be a true transcript

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

Reporter