

New Brunswick Energy and Utilities Board

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

Delta Hotel, Saint John, N.B., on December 12th 2007.

Henneberry Reporting Service

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Distribution and Customer Service Corporation (DISCO) for
approval of changes in its Charges, Rates and Tolls (Includes
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Delta Hotel, Saint John, N.B., on December 12th 2007.

BEFORE: Raymond Gorman, Esq., Q.C. - Chairman
Cyril Johnston, Esq. - Vice Chairman
Mr. Roger McKenzie - Member
Mr. Don Barnett - Member
Ms. Connie Morrison - Member
Mr. Yvon Normandeau - Member

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

Board Staff - Mr. Doug Goss
- Mr. John Lawton
- Mr. David Keenan
- Mr. Dave Young
- Mr. Andrew Logan

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

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CHAIRMAN: Good morning. I will take the appearances now.

MR. KEYES: Good morning, Mr. Chairman, Members of the
Board. Edward Keyes and Terry Morrison for the Applicant
and together with me at counsel table, Lori Clark and Mike
Gorman.

CHAIRMAN: Thank you, Mr. Keyes. CME?

MR. LAWSON: Good morning, Mr. Chair, Gary Lawson and expect
to be joined by David Plante.

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CHAIRMAN: Thank you, Mr. Lawson. Conservation Council of
New Brunswick? Not present. Enbridge Gas New Brunswick?

MR. MACDOUGALL: Good morning, Mr. Chair. David MacDougall
representing Enbridge Gas New Brunswick.

CHAIRMAN: Thank you, Mr. MacDougall. Irving Oil Limited?
Not here today. JD Irving Pulp & Paper Group?

MR. WOLFE: Good morning, Mr. Chairman. Wayne Wolfe.

CHAIRMAN: Thank you, Mr. Wolfe. NB Forest Products
Association? Not here. Dr. Sollows? Not present.

Utilities Municipal?

MR. ZED: Good morning, Mr. Chair. Peter Zed and joined by
Dana Young, Paula Zarnett, Darrell Shonoman and Jeff
Garrett.

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

MR. THERIAULT: Good morning, Mr. Chairman. I am joined
this morning by Robert O'Rourke.

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

MS. DESMOND: Ellen Desmond, Mr. Chair. And here today from
Board Staff is Doug Goss, John Lawton, Dave Young, Dave
Keenan and Board Consultant, Andrew Logan.

CHAIRMAN: Thank you, Ms. Desmond. Mr. Keyes, any
preliminary matters?

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2 MR. KEYES: Nothing with the Applicant.

3 CHAIRMAN: Any preliminary matters from any of the other
4 parties? Okay. Call your witnesses please.

5 MR. KEYES: Thank you, Mr. Chairman. I am going to call
6 Sharon MacFarlane and John Dobson.

7 CHAIRMAN: I will ask Board counsel to come forward and
8 swear the witnesses. I think for Ms. MacFarlane this must
9 be about the third time to be sworn.

10 CHAIRMAN: For the record, both of the witnesses have been
11 duly sworn.

12 SHARON MACFARLANE, JONATHON DOBSON, sworn:

13 DIRECT EXAMINATION BY MR. KEYES:

14 Q.1 - Good morning, panel. I wonder if you could first state
15 your name and positions for the record.

16 MS. MACFARLANE: My name is Sharon MacFarlane. I am the CFO
17 of DISCO.

18 MR. DOBSON: My name is Jonathon Dobson and I am Manager of
19 Financial Planning at Holdco.

20 Q.2 - Thank you. Now I understand the purpose of your
21 testimony today is to deal with the revised deferral
22 account calculations which have been filed with the Board
23 as exhibits A-37(C) and A-38. Is that correct?

24 MS. MACFARLANE: That is correct.

25 Q.3 - Thank you. Mr. Chairman, I -- before I go there, I

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2 understand that those exhibits were prepared under your
3 direction or by you. Is that correct?

4 MS. MACFARLANE: That is correct.

5 MR. KEYES: Mr. Chairman, those are all the questions I have
6 and they are prepared for cross examination.

7 CHAIRMAN: Thank you, Mr. Keyes. Mr. Lawson?

8 CROSS EXAMINATION BY MR. LAWSON:

9 MR. LAWSON: Mr. Chair, I didn't bring any exhibits, so I
10 wouldn't bother if I were you getting them out.

11 CHAIRMAN: All right. Thank you.

12 MR. LAWSON: I hate being cluttered by facts, as you may
13 have noticed. Good morning, panel. I wanted to just ask
14 a few very simple questions. One, the first is if you
15 could in layman's language, and I know that's like asking
16 a lawyer to explain the Electricity Act in layman's
17 language. But if you could explain in layman's language
18 what it was that was different in your revised
19 calculations with respect to the 9.9 million dollar part
20 of the \$11,000,000 reduction. The rest of it I know is a
21 variety of things, but that's the significant one.

22 MS. MACFARLANE: The intent of the decision that the board
23 of directors made about the settlement was that the value
24 received by Holdco in having pursued the law suit with
25 PDVSA would be passed through to customers.

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The agreement, as you know, was reached on August 2nd. We did our very best to get to the Board as quickly as possible, August 8th I believe is when we filed our calculations to get that benefit to customers. And it was only after that that we pursued more rigorous analysis. And in that more rigorous analysis we discovered one of the things that we did was a net present value calculation to assure that the net present value that Holdco receives was the same as the net present value that went to Holdco -- or to DISCO -- and then to customers.

And in that net present value analysis we discovered that we had over-attributed interest. I actually have a hand-out that might help this drawn from both the -- a table drawn from the decision and from the refiled evidence -- or from the original evidence -- that would help, if that would be of interest.

Q.4 - Will it qualify for my -- the simple part of my --

A. It will. It will.

Q.5 - Okay. Because actually it's the simple parts that I'm looking for. I know I have got lots of paper that explains it but I'm looking for the simplistic approach.

A. It will. Okay.

Q.6 - If you have it, that would be great. It doesn't look so far simple and I have just looked at it.

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2 MR. KEYES: Just for the record, Mr. Chairman, that is not
3 new evidence. It's all part of the pre-filed. It's just
4 much simpler to have two pages instead of ten binders to
5 try to find it.

6 CHAIRMAN: Thank you.

7 MS. MACFARLANE: So the first page is actually from the
8 Board's decision that was issued August 23rd, and it is a
9 table prepared I believe by Andrew Logan that once the
10 Board had rendered its decision indicated how the benefits
11 were going to flow to customers.

12 And line number 4 is based on what NB Power had submitted
13 in A-13 in August of what the expected savings from the
14 tolling agreement were. And you see that in the first
15 three years it's increasing as we receive the (inaudible)
16 portion of the settlement and translate that into savings.

17 And then the savings continue at the same amount out over
18 time.

19 Q.7 - Right.

20 MS. MACFARLANE: I should have, when reviewing our
21 submission -- because that line was part of our submission
22 -- I should have realized that if we are returning
23 effectively principal to DISCO over time obviously the
24 interest savings diminish.

25 It's like a mortgage. If you are paying out your

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2 principal then over time your interest payments diminish. And

3 you can look at that line and see that there is no

4 recognition of the fact that in line 2 there is a payment

5 to customers which includes principal and interest and yet

6 the savings continue to attribute the same amount of

7 interest out over time.

8 The next table is from our refiled evidence which was part

9 of exhibit A-38, and that same line 4 -- you can see that

10 in line 4 the amount diminishes out over time as there is

11 the repayment to DISCO of the principal of the payment.

12 And in our refiled evidence we did show the net present

13 value calculation of our original filing which

14 demonstrated that we had over-attributed interest by a

15 significant amount, and this new filing which demonstrates

16 that the net present value of what goes to DISCO is the

17 same, in fact slightly more than the net present value

18 that was received by Holdco.

19 So that is the nub of the 9.9 million.

20 Q.8 - So basically it is the fact that interest -- too much

21 interest was credited to DISCO, is that the gist of it?

22 A. Too much interest was credited in our initial filing as an

23 estimate of what the interest would be, yes.

24 Q.9 - Okay. That helps a bit. But luckily there will be no

25 skill testing questions afterwards for me, so I will move

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2 on.

3 The next line of questions, again very simple, only other
4 line of questions if it is of any comfort, is first could
5 you explain to me -- and I know we have had a discussion
6 about this before, but in the claim that was made against
7 PDVSA initially, the parties to that were -- NB Power was
8 a party to that claim, I presume?

9 MS. MACFARLANE: NB Power Holdco, yes.

10 Q.10 - Yes. And was the Province of New Brunswick a party to
11 that action as well?

12 MS. MACFARLANE: Subject to check, I don't believe so,
13 because the contract was between Holdco and BITOR and
14 another counter-party was PDVSA as the parent company of
15 BITOR.

16 Q.11 - Okay. So was it just NB Power/Holdco to your knowledge
17 then that was the plaintiff?

18 MS. MACFARLANE: Yes, it was.

19 Q.12 - And the amount of that claim, as I understand it from
20 previous evidence, was in the neighbourhood of
21 \$2,000,000,000, is that right?

22 MS. MACFARLANE: That's correct.

23 Q.13 - And am I correct in assuming that included in that
24 \$2,000,000,000 claim was somewhere between 44 and
25 \$46,000,000 of money spent by the Province of New

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2 Brunswick, that's the amount that's cut off the top and paid
3 to the province out of the settlement funds?

4 MS. MACFARLANE: I actually, Mr. Lawson, can't answer that
5 question because I wasn't involved in the development of
6 the claim. So I am not sure of the exact details of what
7 went into the \$2.2 billion. My understanding though is
8 that it was to -- as you know what was asked for was for
9 PDVSA to honour the contract and deliver the fuel, or to
10 make reparation to NB Power in the absence of that. And I
11 think the bulk of the amount was future savings from fuel.
12 The tort action, which I understand was the reparation
13 piece, was the piece that would have looked at monies
14 expended that wouldn't have been expended if the
15 Orimulsion arrangement had not been made, or the
16 commitments had not been made. But again I don't have the
17 exact details of what made up that amount.

18 Q.14 - Could we have an undertaking to be advised of whether
19 or not -- before we do that, what amount is it -- I get
20 confused -- \$44,000,000 or \$46,000,000 that was paid to
21 the province out of the initial -- out of the settlement?

22 MS. MACFARLANE: The amount that will flow to the Province
23 through their consolidation of our net income -- okay --

24 Q.15 - So it didn't come off the top?

25 MS. MACFARLANE: It goes in NB Power's financial statements

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2 as a gain, a recovery of a former write-off, flows through our
3 bottom line, and they consolidate our bottom line with
4 theirs. That amount was 46.7 million. In terms of cash
5 payments to date, what has been paid is the taxes on that
6 amount.

7 Q.16 - Okay. So \$47,000,000 then, if I can do the rounding,
8 if you don't mind.

9 A. That's correct.

10 MR. LAWSON: So the \$47,000,000, can we get an undertaking
11 as to whether or not that amount was included as part of
12 the claim made by NB Power/Holdco against PDVSA in its
13 action?

14 MR. KEYES: Mr. Chairman, it's my understanding that the
15 claim was not particularized in that fashion. So I cannot
16 give you an undertaking in that regard.

17 MR. LAWSON: Mr. Chairman, I just -- surely somebody didn't
18 pluck \$2.2 billion out of the air. I'm not looking for
19 the amount, what was contained within the statement of
20 claim itself, but somebody surely had to turn their mind
21 to the idea of how much the tort action claim should have
22 been.

23 MR. KEYES: Mr. Chairman, we can look to see, but I can't
24 give you an undertaking that we will be able to provide
25 that information, but we will undertake to look to see

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what the details were and if they are related to what he has asked we will provide them.

CHAIRMAN: I understand that the statement of claim -- I believe that was asked for and I think is part of the response to one of the IRs. Is there anything in the statement of claim at all that would indicate the nature of the claim?

MR. KEYES: Not to my understanding.

MR. LAWSON: No, Mr. Chairman, I don't believe it does. And obviously the issue here is that what I will call the first \$47,000,000 is going to the Province and it's of the settlement proceeds, so surely we should be at least entitled to know whether or not it was included within the claim.

MS. MACFARLANE: I do believe though that the claim does talk about -- and certainly the negotiations were about making NB Power whole. And since NB Power had spent that money and taken that write-off, obviously that would have been part of making NB Power whole, reimbursing NB Power for that.

The issue is not whether the Province was a co-defendant or a co-claimant or whether or not there was a specific ask for that amount. The issue is did the ratepayer get charged for it. And the ratepayer did not

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2 get charged for it.

3 It was a write-off made at the end of the year. Rates are
4 set at the beginning of the year. It wasn't anticipated.

5 And it flowed through, as I say, NB Power's statement of
6 income which in that year was a statement of loss, through
7 to our accumulated deficit which the Province took over
8 prior to October 1st, 2004.

9 CHAIRMAN: Mr. Keyes, perhaps you could repeat what it is
10 you are prepared to undertake. Because this panel is
11 scheduled actually to be back next week and it may well be
12 that the answer to the undertaking you are prepared to
13 give may be satisfactory, and if not we can deal with Mr.
14 Lawson's request next week, if necessary.

15 MR. KEYES: What I said, Mr. Chairman, is that we would
16 undertake to look into the file to see if there was any
17 particularization with respect to the issue that Mr.
18 Lawson has requested.

19 CHAIRMAN: And could I assume that that information would be
20 available fairly quickly, certainly prior to next week's
21 session with this panel?

22 MR. KEYES: Yes.

23 CHAIRMAN: Is that satisfactory, Mr. Lawson?

24 MR. LAWSON: Yes. Thank you, Mr. Chairman.

25 Q.17 - So with respect to this \$47,000,000, these were costs

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incurred by Holdco, I am assuming, with respect to implementing the use of Orimulsion. Is that a fair generalization?

MS. MACFARLANE: The costs were incurred by NB Power/Holdco's predecessor, New Brunswick Power Corporation, yes.

Q.18 - And that they were some of the variety of other costs, I assume as well that were incurred, or was that the entirety of all sort of costs that were -- out-of-pocket kind of costs that were incurred by the predecessor to Holdco?

MS. MACFARLANE: There were many costs incurred. These ones were incurred specifically to build a facility at Canaport to receive Orimulsion fuel, and the facility was not completed.

When it was clear that we were not receiving fuel the project was stopped, therefore no asset was created, and generally accepted accounting principles would say where there is no asset to earn future revenues you write the amount off.

The costs included development at the Canaport site onshore. That would be site preparation, storage tanks, engineering work, surveying, et cetera, and costs offshore for the jetty itself, geotechnical work, piping, pier

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2 design, those types of items.

3 So -- and then of course there were costs to bring the
4 site, particularly the onshore site, back to its pre-
5 construction state.

6 Q.19 - So the \$47,000,000 is only part of the actual costs
7 incurred by NB Power, I will call it, in preparation for
8 the use of Orimulsion, correct?

9 MS. MACFARLANE: That's correct.

10 Q.20 - And this is the part that was in fact -- why it was
11 chosen we won't get into, but this part was in fact
12 absorbed, the debt was written off by the Province, is
13 that effectively a correct summary.

14 MS. MACFARLANE: It would be wonderful if you could write
15 off debt, but the debt stuck around.

16 Q.21 - Okay.

17 MS. MACFARLANE: The asset was written off by NB Power and
18 that loss would have been accumulated in NB Power's
19 deficit. The deficit was absorbed by the Province.

20 Q.22 - Okay. Now this happened, as you say, in the year
21 having -- the rates having been based prior to that year
22 having occurred?

23 MS. MACFARLANE: That's correct.

24 Q.23 - And it's for this reason that that wasn't factored into
25 the rate setting, is that right?

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2 MS. MACFARLANE: That's correct.

3 Q.24 - So much like anything else that has happened in this
4 test year that is occurring, nothing affects -- the
5 reality doesn't affect the projections, correct?

6 MS. MACFARLANE: One would hope that the projections would
7 reflect reality, but it is the case that unanticipated
8 expenditures occur and therefore are not directly included
9 in rates, that's correct.

10 Q.25 - And similarly unexpected revenues can occur --

11 MS. MACFARLANE: That's correct.

12 Q.26 - -- and they too do not impact the rates?

13 MS. MACFARLANE: That's correct.

14 Q.27 - Okay. So the good and the bad are a risk of Holdco
15 during the test year, if you will?

16 MS. MACFARLANE: That's correct.

17 Q.28 - And in this case the bad was absorbed by Holdco, the
18 \$47,000,000.

19 MS. MACFARLANE: If you are referring to the write-off, the
20 write-off was absorbed by Holdco, and similarly the
21 recovery of the write-off is absorbed by Holdco. It goes
22 to Holdco's bottom line which is then again consolidated
23 with the Province's as a recovery.

24 Q.29 - So you indicated there was -- \$47,000,000 was part of
25 the claim that was being made of the 2.2 billion dollar

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2 claim.

3 MS. MACFARLANE: If I could just correct you.

4 Q.30 - Sure.

5 MS. MACFARLANE: I did not say that because I'm not sure --

6 Q.31 - I apologize.

7 MS. MACFARLANE: -- but it is part of the --

8 Q.32 - Loss.

9 MS. MACFARLANE: -- the loss, and the settlement was about
10 reparation of that loss.

11 Q.33 - Now the settlement was in reparation for the loss. Was
12 there every any quantification of the actual loss incurred
13 for which the settlement was being accepted?

14 MS. MACFARLANE: I was not involved in any calculation of
15 that, and again that whole issue was handled through our
16 legal department.

17 Q.34 - So then we have a claim that -- on the face of it as we
18 understand it there was a claim of \$2.2 billion, of which
19 this \$47,000,000 may have formed a part, correct?

20 MS. MACFARLANE: That's correct.

21 Q.35 - The nature of that \$47,000,000 was part of the claim,
22 in other words, losses incurred as a result of the
23 contract?

24 MS. MACFARLANE: Expenditures that -- the nature of the
25 claim was to -- the nature of the claim was to have them

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2 honour the contract. The nature of the settlement was to at
3 least make NB Power whole for the expenditures it incurred
4 to prepare for receiving and burning Orimulsion. And
5 expenditures on the jetty were part of that.

6 Q.36 - And am I correct then to assume -- I think you had
7 indicated in your evidence previously on the subject that
8 of course claims sometimes are -- you didn't use the word
9 but I would say puffed up perhaps a little bit to make
10 sure you capture everything, and the \$2.2 billion may have
11 been generously described as a bit of an exaggeration or
12 an assurance that it captured everything, would that be a
13 fair assessment?

14 MS. MACFARLANE: I have to say again I was not involved in
15 the preparation of the claim, so I can't really answer
16 your question.

17 Q.37 - Okay. So the claim is \$2.2 billion and the settlement
18 was -- the value of the settlement was how much in total?

19 MS. MACFARLANE: 333,000,000.

20 Q.38 - And 100 percent of the \$47,000,000 was -- is the right
21 term paid back to the Province?

22 MS. MACFARLANE: 47,000,000 is being recorded as a recovery
23 of the previous write-off, and since it is a recovery in
24 the year it is something that flows through to our
25 shareholder as opposed to through to the customer.

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2 Q.39 - So the Province as the shareholder is getting 100
3 percent of its component of the loss and the ratepayers
4 are getting the balance of whatever that mathematical
5 calculation is. What is the -- 200-and-some odd million?
6 What is the mathematical amount that flows through DISCO?

7 MS. MACFARLANE: 287,000,000.

8 Q.40 - So the ratepayers are getting the benefit of
9 \$287,000,000 out of their claim, whatever it might have
10 been, but it was on its face 2.2 billion?

11 MS. MACFARLANE: The -- I think we discussed this before.
12 The 2.2 billion included potential future fuel savings,
13 and as Mr. Todd stated in his testimony from a before and
14 after perspective related to the reconstruction of Coleson
15 Cove. Ratepayers are no worse off. They are in fact
16 better off. The are no worse off from a fuel
17 perspective. We were burning heavy jet oil before in that
18 plant, we are burning heavy fuel oil now in that plant.
19 And we have the benefit of emission equipment that means
20 we can continue to burn three percent sulphur oil and not
21 a more expensive oil. So from a fuel perspective
22 ratepayers are no worse off.
23 What the claim -- the claim would have represented
24 recovery of opportunity savings, but the actual
25 expenditures made that are included in the capital cost of

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2 Coleson for which ratepayers are currently paying, the portion
3 of that that was related to Orimulsion and had no other
4 benefit but Orimulsion has been recovered.

5 Q.41 - Just to make it simple, am I correct that the claim was
6 that ultimately the ratepayers would have saved \$2.2
7 billion by virtue of the contract, and they recovered
8 \$287,000,000 themselves, is that right?

9 MS. MACFARLANE: Again, I wasn't privy to what the claim was
10 but my -- the details of it, but my understanding is it
11 was a representation of future benefits that would have
12 come to ratepayers as opposed to being entirely about
13 recovery of losses.

14 Q.42 - Right. So just again your understanding is that there
15 was a 2.2 billion dollar claim made against PDVSA saying
16 that if this contract had been fulfilled there would have
17 been savings and it may have included perhaps some of the
18 expenditures as well, but there would have been savings by
19 -- that would have flowed down to the Disco customers of
20 \$2.2 billion, is that correct?

21 MS. MACFARLANE: That's my understanding if they had
22 delivered that fuel, yes.

23 Q.43 - And that savings never materialized, correct?

24 MS. MACFARLANE: The portion of the claim that would have
25 been for recovery of expenditures made was -- did

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2 materialize. It was recovered. The savings did not
3 materialize. They were opportunities that did not come to
4 fruition.

5 Q.44 - Before we get to the settlement, the \$2.2 billion
6 anticipated savings, never materialized?

7 MS. MACFARLANE: Well as I say I think, though I don't know,
8 that the 2.2 billion was partly opportunity for savings
9 and partly reparation for expenditures.

10 Q.45 - I'm saying before we talking about the settlement
11 piece.

12 MS. MACFARLANE: I know that. But I believe that the 2.2
13 billion was not all about fuel. Again that's subject to
14 check.

15 Q.46 - Right.

16 MS. MACFARLANE: But the portion that was attributable to
17 potential future savings and fuel was not part of the
18 settlement.

19 Q.47 - Right. The settlement itself then was -- that flowed
20 through to DISCO to make up for the fuel savings that was
21 never achieved was \$287,000,000?

22 MS. MACFARLANE: No. The portion that flowed through to
23 DISCO was to pay back DISCO for the charges that they will
24 incur for the capital costs related to Orimulsion. There
25 was no payment to DISCO for opportunity savings that never

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2 materialized. They never paid for that fuel, so the
3 opportunity for saving did not materialize. No portion of
4 what is paid to DISCO is for that.

5 Q.48 - Okay. Let me just try one more time. I am obviously
6 getting my accounting terms wrong. We as ratepayers would
7 have saved close to -- because I'm allowing for the
8 capital cost component being part of that \$2.2 billion.
9 Let's expect that that's the case. Close to \$2.2 billion
10 worth of savings that would have flowed through to the
11 ratepayers, that was the nature of the claim, close to
12 that \$2.2 billion, correct?

13 MS. MACFARLANE: Some portion of that -- a large portion of
14 that was for opportunities for future fuel savings, and
15 that large portion of the 2.2 billion, and again I don't
16 know the amount, would have been to the benefit of
17 customers had the contract been honoured, yes.

18 Q.49 - Yes is the answer to that? Yes? Okay.

19 MS. MACFARLANE: I'm just making the distinction between the
20 portion of it that is fuel and the portion of it that is
21 capital. Ratepayers were, and to the extent of the write-
22 off, taxpayers were damaged by having expended money for
23 which there was no value, and that reparation was made in
24 the settlement. Ratepayers --

25 Q.50 - Excuse me. Even I get that --

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2 MS. MACFARLANE: I know.

3 Q.51 - -- so let's -- maybe if we can just move on from that.

4 MS. MACFARLANE: Yes. Okay. But the fuel savings never
5 materialized.

6 Q.52 - Right. Thank you. \$287,000,000 flowed its way down in
7 some fashion to DISCO customers, correct?

8 MS. MACFARLANE: That's correct.

9 Q.53 - Whatever its nature is, that's \$287,000,000 that
10 offsets the \$2.2 billion, in whatever fashion you want to
11 call it, lost savings, capital recovery, they got
12 \$287,000,000 worth of benefit, is that a fair assessment?

13 MS. MACFARLANE: DISCO received \$287,000,000 --

14 Q.54 - Thank you.

15 MS. MACFARLANE: -- but I'm not prepared to say it's
16 necessarily a benefit because I'm not sure getting
17 recovery of something that you are already paying for is a
18 benefit.

19 MR. LAWSON: That's fine. That's fine. Thank you. Those
20 are all the questions I have. Thank you.

21 CHAIRMAN: Thank you, Mr. Lawson. Mr. MacDougall?

22 MR. MACDOUGALL: No questions, Mr. Chair.

23 CHAIRMAN: Mr. Wolfe?

24 MR. WOLFE: No questions, Mr. Chairman.

25 CHAIRMAN: Dr. Sollows still isn't here. Mr. Zed?

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2 MR. ZED: We do not have any questions of the panel.

3 CHAIRMAN: I see that Mr. Peacock has arrived.

4 MR. PEACOCK: Yes, Mr. Chair. We have no questions for the
5 witness.

6 CHAIRMAN: Mr. Theriault?

7 CROSS EXAMINATION BY MR. THERIAULT:

8 Q.55 - Good morning, Mr. Chairman, Board members. Ms.

9 MacFarlane, the PPAs were signed on October 1st 2004?

10 MS. MACFARLANE: That's correct.

11 Q.56 - Now in the arbitration case in New York, the relief

12 claimed -- or part of the relief claimed was for specific

13 performance of the contract or damages?

14 MS. MACFARLANE: That's my understanding.

15 Q.57 - Now in the settlement agreement with PDVSA Holdco got

16 damages of \$110,000,000 US and a new fuel agreement?

17 MS. MACFARLANE: That's correct.

18 Q.58 - And on October 1st, 2004, when the PPAs were signed the

19 NB Power group of companies were aware that it may have a

20 claim against PDVSA?

21 MS. MACFARLANE: That's correct.

22 Q.59 - And again on October 1st 2004, when the PPAs were

23 signed the NB Power group of companies were aware that it

24 might receive some sort of damage award from PDVSA?

25 MS. MACFARLANE: We were certainly hopeful, yes.

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2 Q.60 - So on October 1st 2004, the NB Power group of companies
3 were aware that it -- that it might be involved in a
4 lawsuit with PDVSA?

5 MS. MACFARLANE: That's correct.

6 Q.61 - And so NB Power group of companies on October 1st 2004,
7 knew that if it filed a lawsuit it would either win, lose
8 or settle the case with PDVSA?

9 MS. MACFARLANE: That's correct. Would you mind if I go
10 back to one of my earlier statements. You asked if we
11 were hoping for a settlement I believe, but my answer was
12 that we were indeed hopeful for a settlement.
13 At that point in time I believe the strong view was that
14 we were hopeful that the contract would be honoured, which
15 is a very different thing. At October 1st 2004, though,
16 the claim was for them to either honour the contract or to
17 make reparation. I believe we were -- we were certainly
18 of the desire that the contract be fulfilled and hopeful.

19 Q.62 - But I think my question was that in October 1st 2004,
20 when the PPAs were signed NB Power group of companies was
21 aware that it may have a claim against PDVSA?

22 MS. MACFARLANE: That's correct.

23 MR. THERIAULT: That's all the questions I have, Mr.
24 Chairman. Thank you.

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

MS. DESMOND: Mr. Chair, could we have a quick recess.

CHAIRMAN: Okay. How about we take 15 minutes then.

(Recess - 9:40 a.m. - 10:15 a.m.)

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

MS. DESMOND: Yes, thank you, Mr. Chair. And thank you for that extended break.

CROSS EXAMINATION BY MS. DESMOND:

Q.63 - I am going to be referencing I believe it is A-27, Appendix 5. And I believe at Appendix 5 is the statement of claim with respect to the PDVSA settlement and at page 12 of that claim. Paragraph (c) at page 12 talks about a claim for \$2.2 billion. So I would like to have an understanding from the panel in terms of where that number came from. Who generated the number of \$2.2 billion?

MR. KEYES: Mr. Chairman, I am -- personally I don't have any information on that, but I understand that was generated obviously by legal counsel in consultation with their client in this case, but we don't have particulars of -- and I certainly don't have them here today. But my understanding is it was in the normal course of a litigation a number is arrived at and I expect the same process was followed in this case.

So I don't know where Board counsel is going with

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2 this, but I know I have been involved in many actions over the
3 last 18 years and a number is usually arrived at in
4 consultation with the client. Whether or not you are
5 going to be successful with that number at the end of the
6 day, but I -- I will wait and see where she is going with
7 this but --

8 CHAIRMAN: I appreciate that counsel may have a role to play
9 in determining what the amount of the claim is, but I
10 think the question, quite frankly, was what was the basis
11 of the 2.2 billion. And presumably some of the
12 information would have come from the client in instructing
13 counsel. I think that was the nature of the question. I
14 am not sure, but I think so.

15 MS. DESMOND: That's correct, Mr. Chair.

16 Q.64 - Essentially how was that 2.2 billion number generated?

17 On what basis was it decided that 2.2 billion was the
18 appropriate number?

19 MS. MACFARLANE: Thank you for clarifying the question.

20 I was not involved in the development of the claim and I
21 don't know. I understand it was done between the
22 President and his adviser on this particular contract and
23 our legal counsel.

24 Q.65 - Could Mr. Dobson kindly confirm if he has that
25 information?

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2 MR. DOBSON: No, I do not.

3 Q.66 - Can I understand from your comment then that as a CFO
4 you weren't involved in generating the basis for that \$2.2
5 billion number?

6 MS. MACFARLANE: That's correct.

7 Q.67 - Who in the company then would be able to provide the
8 basis for that number?

9 MS. MACFARLANE: The number at the time was -- this file was
10 handled very closely by the President of the day, Stuart
11 MacPherson and his adviser, David Reid. My group was not
12 involved. And they worked with legal counsel of the day.
13 And the file upon his leaving was turned over to our
14 current legal counsel. And as I say, beyond that I don't
15 know.

16 Q.68 - Do I understand from your response then that the
17 particulars would lie with your legal counsel at DISCO?

18 MS. MACFARLANE: If particulars exist, that's where they
19 would lie.

20 Q.69 - And could you provide an undertaking to provide us with
21 those particulars if they are in fact with the person who
22 should have them?

23 MR. KEYES: Mr. Chairman, we can undertake to look, similar
24 to the previous undertaking, to see what particulars of
25 that 2.2 billion I assume is what Board staff is looking

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2 for?

3 CHAIRMAN: Perhaps, Ms. Desmond, you can clarify precisely
4 what it is that you are looking for and then we will what
5 Mr. Keyes is prepared to give by way of an undertaking?

6 MS. DESMOND: Mr. Chair, with respect to Mr. Keyes, the
7 claim identifies that there is \$2.2 billion that is an
8 appropriate amount for settlement. And essentially Board
9 staff is looking for some substantiation as to how that
10 number was arrived at and whether it is with your in-house
11 counsel or with somebody else at the organization, if
12 somehow documentation could be provided to establish how
13 that number was essentially determined?

14 MR. KEYES: Mr. Chairman, first of all, just for
15 clarification, it wasn't a number presented for
16 settlement. It was a claim, \$2.2 billion. And I am
17 advised that we can provide the basis for which that
18 number was prepared, but that's all I am prepared to do at
19 this point, because that's all the information I believe
20 we have.

21 CHAIRMAN: So your undertaking would be to provide the basis
22 of the calculation of the 2.2 billion?

23 MR. KEYES: Yes.

24 CHAIRMAN: Is that the information that you are looking for?

25 MS. DESMOND: That's correct. Thank you.

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2 Q.70 - Ms. MacFarlane, if I understood your testimony earlier,
3 the 47 million was a return to Holdco, if I understand
4 that correctly?

5 MS. MACFARLANE: The settlement -- of the settlement amount
6 since the intent of the settlement was to make Holdco
7 whole, so to speak, the first claim against it was the --
8 from our perspective, from our Board's perspective was the
9 recovery of the amount previously written off for the fuel
10 supply system.

11 Q.71 - And if I understood correctly, that 47 million is
12 supported by the amount spent, the capital cost of that
13 fuel recovery system?

14 MS. MACFARLANE: That's correct.

15 Q.72 - And if I understood you correctly as well, the 287
16 million were essentially capital costs paid by the
17 ratepayer for capital costs?

18 A. The capital costs for the Coleson Cove refurbishment
19 project included costs directly related to the burning and
20 receiving of Orimulsion. They also extended the plant
21 life from 2017 to 2034, et cetera. The total expenditures
22 on that project were in the order of 700 million.
23 The settlement was for those costs, as I understand it,
24 that were directly related to Orimulsion and Orimulsion
25 only. And, of course, being a settlement, they

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2 were subject to negotiation and driven by the clause in the
3 Coleson FSA that refers to what happened in the event that
4 fuel was not delivered.

5 Q.73 - Assuming then that the costs are directly related to
6 what was paid out for the delivery of Orimulsion, where in
7 the record is the breakdown associated with that 287
8 million?

9 MS. MACFARLANE: If I could just clarify your question.
10 When you are saying breakdown, are you looking for what
11 particular payments it covered? Is that what you are
12 suggesting?

13 Q.74 - Well I had understood that the \$287 million related to
14 capital costs that flowed from the Orimulsion
15 refurbishment essentially. So where on the record is a
16 breakdown of the costs paid that support the \$287 million?

17 MS. MACFARLANE: To start, the 287 plus the 47 was a
18 settlement. So it is not a direct line by line coverage
19 of this invoice or that invoice incurred in the
20 refurbishment project.

21 I understand in the negotiation though the intent was
22 driven by the clause in the Coleson FSA that talks about
23 damages in the event that fuel isn't delivered. It was
24 driven by the fact that certain costs were incurred in the
25 Coleson project that were specific to Orimulsion.

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So there is no breakdown of the 287. It is a lump sum settlement for reparation of costs expended for a purpose that was not able to be met.

Q.75 - I am trying to contrast in effect the 287 with the 47 million. And is it -- am I correct in that the 47 million can be directly accounted for by way of line by line costs, whereas are you saying the 287 cannot be directly accounted for line by line?

MS. MACFARLANE: The 47 million was looked at -- when we looked at the settlement and looked at the attribution of the settlement, what our Board considered was the fact that the PPAs are intended to respect the principle of allocation of risk to taxpayers and ratepayers. And that the 47 million clearly was never capitalized and charged to ratepayers. That that would be the first call on the settlement. The balance of the settlement would go against the capital cost of Coleson, which is charged to ratepayers. So the 47 million was a specific amount that it was clear was not included in the capital costs that are being charged to ratepayers through the capacity payment. So it was the first call on the settlement. And it was the balance, which happens to be 287 million, that flows through the tolling agreement back to customers.

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2 Q.76 - Is it fair to suggest that the taxpayer recovered the
3 full 47 million, so the entire amount paid off through the
4 write-off was recovered, whereas the ratepayer did not
5 recover a hundred percent of the costs that were required
6 to refurbish Coleson Cove?

7 MS. MACFARLANE: No, I don't think that's a fair
8 characterization. As I said earlier, the refurbishment of
9 Coleson Cove was a project beyond fuel switching. It's a
10 project that was driven by the fact that environmental
11 regulations were coming into play regarding sulphur
12 emissions. And I believe it was new regulations, subject
13 to check, that were coming into play in 2005 that would
14 not have allowed us to burn 3 percent sulphur fuel oil at
15 Coleson Cove as had been the case for years because we
16 would be exceeding sulphur emission. Something had to be
17 done.

18 Alternatives were looked at. One of the alternatives was
19 burning 1 percent sulphur fuel oil, which is much more
20 expensive, as an example. Alternatives were looked at and
21 it was determined that the least cost over the long run
22 for the ratepayer, and this was subject to review in a
23 hearing before the predecessor to this Board, the least
24 cost to the ratepayer was to put in place sophisticated
25 emission equipment that would deal with the sulphur

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problem and pay for that equipment through fuel switching.

And that was the option that was pursued.

At the same time, the plant's life was extended by upgrades to various other parts of the plant and its equipment, the life was extended from 2017 to 2034. So not all of the refurbishment project expenditures were directly related to Orimulsion.

The benefit at the end of the day we are left with a plant that can burn high sulphur fuels, including Orimulsion if we had it, can continue to burn 3 percent heavy fuel oil, which is what we are burning, but there were costs that were incurred that wouldn't have been incurred if we had not had that commitment for Orimulsion. And it is those costs that the settlement was directed at. And it is our belief that we recovered 100 percent of those costs.

Whether they were charged to -- whether they were absorbed by the shareholder or whether in fact they are included in the existing capital cost and charged to ratepayers.

Q.77 - And that's the hundred percent that I am trying to establish whether or not it is on the record. And if you are suggesting that those costs were incurred strictly to accommodate Orimulsion, are you able to provide the Board,

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2 Board staff, with a breakdown of those costs?

3 MS. MACFARLANE: We do have a breakdown of the capital
4 costs of the project and the amount that was not
5 capitalized as part of the project. And we are able to
6 identify what portions of those specifically related to
7 burning Orimulsion fuel.

8 But as a I say, the settlement was driven largely by the
9 existing clause in the agreement. Perhaps I could ask you
10 to --

11 Q.78 - Perhaps before you go there, just so that we don't move
12 away from this issue, is that you indicated that you do
13 have a breakdown and that a specific portion was for the
14 refurbishment alone, the Orimulsion burning.

15 Can you provide an undertaking to give us that breakdown
16 to establish the \$287 million?

17 MS. MACFARLANE: Let me just clarify, because I am not
18 sure that I am making the point properly. We installed a
19 scrubber, as an example. And the scrubber was able to
20 deal with the sulphur emissions for Orimulsion for 3
21 percent heavy fuel oil or for any number of liquid fuels.
22 Whether that expenditure is attributable solely to the
23 burning of Orimulsion or whether one would suggest that
24 that provides benefits beyond the burning of Orimulsion,
25 because it allows us to meet our environmental regulations

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with heavy fuel oil is a question that I can't answer.

I can tell you though that we would not have installed that scrubber under the other project alternative to dealing with the sulphur emissions, which at the end of the day was a more costly alternative.

We do believe though that the ratepayer is left in a position of having a plant with an extended life with emission control equipment that is state of the art, that allows us to meet, in fact, exceed our emissions for -- not just sulphur, but other air emission requirements. We are left with that. And with a recovery of capital cost to the tune of \$287 million.

Q.79 - And I appreciate that there is long term benefits that are associated with and they may be hard to break out. But what I understood you to say is that the ratepayer has been made whole and that the 287 was an appropriate amount to pay back the capital costs and the amounts that were driven solely by the Orimulsion arrangement. So what we are looking for is a breakdown of that 287 million. Can you provide us with an undertaking to give us that breakdown?

MR. KEYES: We can certainly undertake to determine -- try and determine what those numbers are. I mean it would be through the witness. So if she thinks that she can find

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some numbers that -- that's what we can undertake to do.

CHAIRMAN: Well I understand -- the first question I think that you asked, Ms. Desmond, was where in the evidence would you find this. And I don't know that there was ever an answer to that question? Is the information that Ms. Desmond is looking for in the evidence that's been filed?

MS. MACFARLANE: No, it is not, because the settlement by its nature was a lump sum amount. And as I say, the only allocation -- the only decision and allocation of that settlement was this first call, which was to reimburse the cost that the shareholder was left with. The rest is a lump sum and was not applied to specific invoices related to the capital costs of Coleson Cove.

This hearing is not about the capital costs of Coleson Cove. So, therefore, there is nothing on the evidence that would speak to the specific costs.

If I have overstated the case by implying that somehow the 287 million was a detailed invoice by invoice statement, I am sorry, I didn't intend that. As I say, we believe that it left ratepayers and taxpayers whole and it was a very good settlement in the sense that we are left with a plant with much greater capability than we had before we started. And we are able to pass that benefit on to ratepayers.

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2 CHAIRMAN: Ms. Desmond, do I understand what you were
3 looking -- the undertaking you were looking for was
4 essentially to explain what expenditures are covered by
5 the 287 million?

6 MS. DESMOND: That's correct. If I could have that
7 undertaking?

8 MR. KEYES: I am not prepared to give that undertaking, Mr.
9 Chairman. I think I just heard the witness state that it
10 was a lump sum settlement, intended to make the ratepayer
11 whole. It was not allocated on a line by line item. So
12 for us now to try and recreate a settlement that was
13 entered into by attributing certain items to it, I don't
14 think that was what was intended at the time of the
15 settlement. And now we are trying to back into the matter
16 by attributing line items.

17 We have heard the evidence from the witness and she has
18 said it was a lump sum settlement. And so for us to now
19 to try to change what the settlement was, I don't think
20 that's appropriate.

21 CHAIRMAN: I don't think the Board is going to embark on
22 attempting to change the settlement. So I don't think you
23 need to be concerned about that.

24 It strikes me that the question arose out of what I
25 understand the evidence to be as well was that the 287

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2 million was intended to cover all of the incremental costs of
3 fuel that were there because only of Orimulsion, not of
4 the general refurbishment that would have taken place
5 anyway. And I think the question was could you break that
6 out? And I thought your answer, quite frankly, earlier on
7 was that yes, you probably could?

8 MS. MACFARLANE: And the only clarification, Mr. Chair, I
9 made to that was that as I think it through, to what
10 account shall you say -- shall I say would we attribute
11 the cost of the scrubber? Given that we have ended up
12 with the scrubber and all the benefits that come from the
13 scrubber, one would not necessarily say it was incurred
14 solely for Orimulsion.

15 So from that perspective the line by line may be
16 difficult, but I certainly will -- we will provide
17 whatever we can that would aid in your consideration of
18 this question.

19 Q.80 - And that would be helpful. Thank you for that. And
20 just to be clear, Board staff is not looking for the
21 numbers to be recreated or, you know, I guess originated
22 anew, and we have already been through the process of
23 having all the information on the record. But can I take
24 that from your evidence that this exercise has not been
25 done prior to today?

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2 MS. MACFARLANE: That's correct.

3 Q.81 - How then can you be sure that the ratepayer has been
4 made whole? How can you with confidence state that we
5 have recovered a hundred percent of that cost, the capital
6 costs?

7 MS. MACFARLANE: Because we have ended up with a plant with
8 a longer life, with state of the art emission equipment
9 and the ratepayer is no worse off from the perspective of
10 the fuel. We were burning heavy fuel oil before and we
11 are burning heavy fuel oil now.

12 I think that one thing that is on the record that might be
13 useful is in John Todd's report where he makes a
14 comparison of just continuing to burn heavy fuel oil.
15 He looked at the business cases I believe and he makes a
16 statement in his report about what the alternative to
17 ratepayers would have been if we had not had the
18 Orimulsion contract not proceeded with the refurbishment
19 and instead reduced our exports and went to burning 1
20 percent sulphur fuel oil. And at the end of the day the
21 refurbishment was the right decision.

22 So ending up with the settlement and a better plant gives
23 me confidence that in fact we have made the ratepayer
24 whole.

25 Q.82 - I had a couple questions, Ms. MacFarlane, around the

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2 legal fees that were paid to resolve the PDVSA settlement.

3 Can you confirm what amount was paid by DISCO by way of
4 legal fees?

5 MS. MACFARLANE: I don't have that with me, but I believe
6 it's in the order of \$6 million.

7 Q.83 - And the entire cost of the legal fees for the PDVSA
8 settlement was paid by DISCO?

9 MS. MACFARLANE: That's correct.

10 Q.84 - And why was it entirely paid by DISCO?

11 MS. MACFARLANE: The amount was entirely paid by DISCO
12 because frankly that was what was outlined in the PPA.

13 Q.85 - That's the original PPA?

14 MS. MACFARLANE: That's correct.

15 Q.86 - And so I can assume then that Holdco has made no
16 contribution to the legal fees?

17 MS. MACFARLANE: That's correct. I do want to distinguish
18 though between DISCO's shareholder and DISCO's customer
19 cost flowing through rates, because I believe in only one
20 of the three years was the amount anticipated in the
21 budget and therefore reflected in rates. That is subject
22 to check. I know certainly the first year's legal costs
23 were not included in the budget and consequently were to
24 the risk of the shareholder, not the ratepayer. The other
25 two years is subject to check.

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2 But in any event, DISCO did pay all of the costs and
3 Holdco paid none of the costs.

4 MS. DESMOND: If I could just have a moment, Mr. Chair.

5 CHAIRMAN: Certainly.

6 MS. DESMOND: Ms. MacFarlane, my next question refers to the
7 amended material with respect to the settlement and it's
8 Table 1, titled Orimulsion Settlement, Summary of
9 Settlement Value. And I am not sure what the exhibit
10 number is. It may be A-38 I think. And I am sorry I am
11 not clear if this is in the confidential material, so if
12 it is I will save that for an in-camera session, but I had
13 thought that this was on the public record.

14 MS. MACFARLANE: As I understand it, this table was not
15 redacted. So it is on the public record.

16 MR. KEYES: Is that Table A?

17 MS. DESMOND: Table 1. It's page 1. On the bottom it's
18 November 20th 2007.

19 CHAIRMAN: Ms. Desmond, before you proceed perhaps, it's
20 exhibit A-38. And where on A-38 would we find what you
21 are referring to?

22 MS. DESMOND: The sixth page of the report.

23 MR. KEYES: Table 1, Mr. Chairman.

24 CHAIRMAN: With the page number 1 at the bottom?

25 MS. DESMOND: That's correct. Thank you.

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CHAIRMAN: Thank you.

MS. MACFARLANE: Yes, I have it.

Q.87 - Ms. MacFarlane, I understand that the 44.4 million, which is in the second box there, Previously Written Off Costs, that write-off occurred in the '03-'04 year, is that correct?

MS. MACFARLANE: That's correct.

Q.88 - But the 2.3 million, which was written off in '05'-'06 didn't happen for a couple of years later. Why is that? Why did it happen two years later?

MS. MACFARLANE: The original write off included some estimates of costs that would be incurred to bring the site at Canaport back to a greenfield state. And it also included some estimates of what salvage value may be able to be obtained from materials that had been purchased, some estimate of what costs might be for returning certain equipment to manufacturers that had already supplied it, et cetera.

There were also based on engineering assessments, there was some equipment that was left in work in process. And there was an IR on this that perhaps I could refer you to, if I can find it. Just give me a moment to find it.

If I could ask you to turn to PI IR-60 of December 4th.

And I am not sure of the exhibit number. Perhaps

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2 counsel could assist?

3 MR. KEYES: I am told it's A-49.

4 MS. MACFARLANE: So it's A-49 PI IR-60, December 4th.

5 Included in or attached to that response you will see an
6 excerpt from the NB Power Corporation Audit Committee
7 meeting of May 17th 2004. This was the motion to approve
8 the original write-off of 42.4 million. You will notice
9 at the end of that statement, there is also approval to
10 retain in construction in progress on our books and
11 records an the amount of 2.9 million until the fuel supply
12 contract was resolved or the issues outstanding with the
13 lawsuit were resolved.

14 It was the belief of our engineers that certain fly ash
15 equipment at the Coleson site and certain pieces of
16 equipment related to the fuel delivery system may have
17 value if the resolution of the lawsuit was that the
18 contract was honoured. And so those amounts were left
19 pending final resolution.

20 At the end of the day, which was a couple of years later,
21 the conclusion was that most of that amount was not
22 subject to recovery and that made up the additional write-
23 off.

24 Q.89 - Am I correct though that the 2.3 million that was

25 written off through Genco and Colesonco would be through

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2 their OM&A

3 MS. MACFARLANE: That's correct.

4 Q.90 - And how is it then that we can confirm that that amount
5 was clearly paid by the taxpayer and not the ratepayer?

6 MS. MACFARLANE: The amount was a write-off that was done
7 at the year end, as part of a year end cleanup. It would
8 -- it did not flow through, you would not be able to see
9 where it flowed through the PPA as a specific charge. So
10 that would again establish that it did not get to -- into
11 the vesting agreement charge that would sit behind rates
12 at the beginning of the year. It was not a large enough
13 amount, the 2.3 million, to breakout on the financial
14 statements. So you would not see it separately, nor was
15 it given that the OM&A was over 300 million, it was not an
16 amount that was specifically addressed in the published
17 financial statements.

18 Q.91 - Is it correct that DISCO will be responsible for paying
19 PILS to Province with respect to the 47 million payment?

20 MS. MACFARLANE: That's correct.

21 Q.92 - Is any of this PIL payment --

22 MS. MACFARLANE: I am sorry. Could I just correct myself.
23 It wasn't DISCO. It was Holdco that was responsible for
24 paying the PILS on the 47 million.

25 Q.93 - And my follow-up question, of course, was that the PIL

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2 payment then is not in the revenue requirement?

3 MS. MACFARLANE: No, it is not.

4 Q.94 - I just want to turn to the fuel hedging for a moment if

5 I could. And I believe it's A-38 in response to question

6 4 of an IR. It's PI IR-4 -- sorry -- 77. PI IR-77,

7 question 4.

8 VICE-CHAIRMAN: Ms. Desmond, what exhibit are you referring

9 to?

10 Q.95 - I will just confirm that, Mr. Johnston. Just a moment.

11 Sorry.

12 MR. KEYES: I think that answer is confidential. I'm not

13 sure.

14 MS. DESMOND: I believe it's in the redacted version. The

15 cover letter is December 4th.

16 MR. KEYES: I think it's exhibit A-50.

17 CHAIRMAN: A-50.

18 MS. DESMOND: And it's a response to an IR, so it wouldn't

19 be in the confidential material.

20 CHAIRMAN: The Board Secretary is indicating maybe it is.

21 A-50 1(C).

22 MS. DESMOND: Perhaps, Mr. Chair, what I will do is leave

23 this question then until we are dealing with the

24 confidential material, just to be safe.

25 CHAIRMAN: Perhaps we should be sure at this point in time

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2 in the event that it actually is on the public record and some
3 people are asked to leave the room for the confidential
4 session. I think that maybe we had just better be sure
5 whether or not it is public or confidential.

6 MR. KEYES: Mr. Chairman, question 4, the answer to it is
7 not confidential.

8 CHAIRMAN: Okay then.

9 MS. DESMOND: It is A-50.

10 CHAIRMAN: Thank you. A-50 and it was PI IR --

11 MS. DESMOND: 77.

12 CHAIRMAN: And question 4 of that IR.

13 MS. DESMOND: That's correct.

14 MS. MACFARLANE: Yes, I have it.

15 Q.96 - And I believe in response to this question, this
16 particular question number 4, DISCO stated that when the
17 fuel hedges were unwound on September 25th it was because
18 as a result of the settlement that NB Power no longer had
19 an exposure to heavy fuel oil purchases from other
20 sources, is that correct?

21 MS. MACFARLANE: That's correct.

22 Q.97 - And does this mean then that all heavy fuel oil used at
23 Coleson Cove for the remainder of the test year will be
24 provided by the PDVSA settlement -- as part of the PDVSA

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2 settlement?

3 MS. MACFARLANE: No. The settlement barrels shall we say,
4 simply reduced the exposure for heavy fuel oil that would
5 be burned at Coleson Cove. Some portion of the settlement
6 barrels will be burned at Dalhousie and some portion will
7 be burned at Coleson Cove, and the PROMOD run would have
8 indicated that there were requirements beyond this that
9 would have been used and therefore exposures to those and
10 they would be hedged.

11 Q.98 - I just wanted to turn now to the transportation costs
12 arising from the PDVSA settlement. And we are looking
13 again at A-38. I just want to find the correct page. I
14 believe it's page 3 of the report.

15 MS. MACFARLANE: I have it.

16 Q.99 - And perhaps I will begin by asking, the hedges on the
17 fuel, when were those closed out as a result of the PDVSA
18 settlement?

19 MS. MACFARLANE: I believe that the hedges on the heavy fuel
20 oil exposure were unwound so to speak on the same day that
21 the new freight price exposure were put on, and that was
22 near the end of September.

23 Q.100 - Why did DISCO not hedge the transportation costs until
24 September?

25 MS. MACFARLANE: It took -- are you referring to as opposed

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2 to another time?

3 Q.101 - Clearly like the fuel hedging one would assume that

4 the transportation hedging would also be done on a forward

5 basis. So why would the transportation hedging not have

6 been done at an earlier time?

7 MS. MACFARLANE: The transportation hedging for the

8 entitlement under the new field supply agreement for

9 deliveries to Dalhousie, the normal entitlement, those

10 rate hedges would have been put in place under the normal

11 arrangement. These exposures arose because of the

12 additional quantities coming out of the settlement. So

13 the exposures were determined and once we were able to

14 make that determination we put these additional hedges on.

15 MS. DESMOND: If I could just have a moment, Mr. Chair.

16 CHAIRMAN: Certainly. Yes, Ms. Desmond.

17 MS. DESMOND: Thank you. The real concern we are trying to

18 get to, Ms. MacFarlane, is that the settlement happened in

19 early August and clearly there was a delay until

20 September, late September, before the transportation

21 hedges were put in place. Can you explain that delay?

22 MS. MACFARLANE: I can only explain it by the complexity of

23 the transaction, Ms. Desmond. We were -- this was an

24 extremely complex settlement and an extremely complex

25 undertaking to understand both how it would be -- how the

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fuel would be received, what complications there might be with respect to our ability to burn it, the wharfage issues related to it. It was very, very difficult for us to fully understand the implications of this settlement, which is why by the way the accounting valuation took so long and why it took us some period of time to finalize what we believed was the best delivery schedule and hedge accordingly. The information that we put before this Board in August was preliminary. It was based on a best estimate. Significant work was done with our plant people and with our engineers subsequent to that to refine the delivery schedule and to understand it, and in understanding that we were then able to understand the timing of the freight exposures and put hedges in place.

Q.102 - Were these hedges strictly related to the fuel from Venezuela?

MS. MACFARLANE: That's correct. They are the additional ones over and above the normal entitlement under the fuel supply agreement that otherwise would have gone to Dalhousie.

Q.103 - Can I assume from your comment that the discussions with respect to the settlement did not happen until the actual settlement occurred, so there wouldn't have been any pre-planning or effort to make some initial inquiries

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2 prior to the final settlement?

3 MS. MACFARLANE: There were -- it was a very, very difficult
4 undertaking, the settlement. It was a protracted period
5 of time. Very small number of people were involved. And
6 no, there was very little analysis done prior to the
7 settlement. I think we began looking at issues about two
8 weeks prior to it finally being signed, but even then with
9 no assurance that the agreement would actually take its
10 final form or take any form at all.

11 MS. DESMOND: Those are all my questions, Mr. Chair.

12 CHAIRMAN: Ms. Desmond, do I understand that you do have
13 some questions on the confidential information? At least
14 I thought you referred to that.

15 MS. DESMOND: Yes. Thank you. We do have questions but we
16 would ask that an in-camera session be held. I'm not sure
17 that we are going to have time today to deal with that.
18 It's now five to 11:00 and I understand Ms. MacFarlane has
19 a commitment. So there may not be sufficient time to have
20 that in-camera session today.

21 CHAIRMAN: Thank you. I'm not sure how much time we have
22 until it's necessary for the panel members to be somewhere
23 else. The Board does have a few questions. We could put
24 them off until the morning or we could start in to asking
25 our questions. Perhaps you could give us some indication

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2 as to how much time would be available.

3 MR. KEYES: I understand she has to leave in about four to
4 five minutes. So that's not a problem. What I would
5 suggest, subject to the agreement of the parties, is that
6 the panel come back tomorrow morning and Ms. Desmond can
7 finish her questions and then the Board can ask their
8 questions, unless the Board wants these public questions
9 and they can do that first before we go in-camera.

10 CHAIRMAN: Well I think that the procedure I think we should
11 follow is that we should finish up all of the public
12 questions, as I indicated, the reason being that not
13 everybody would be present in an in-camera session. So in
14 fairness I think that we will deal tomorrow morning then
15 with questions from the Board on this panel and the public
16 questions, do the re-direct as well on the public
17 questions, and then perhaps I think Deloitte & Touche will
18 be here tomorrow.

19 MR. KEYES: I would suggest we do Deloitte & Touche first,
20 because I think they are only here in the morning, and if
21 we can get them done so they don't have to come back next
22 week --

23 CHAIRMAN: I think the Board is only here in the morning as
24 well because we do have a session in Fredericton in the
25 latter part of the day as well, and then perhaps we can

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2 move to our in-camera session last.

3 MR. KEYES: I guess what I am being advised is why don't we
4 finish with this panel first before Deloitte & Touche
5 takes the stand and then we can get them done.

6 CHAIRMAN: So before we break for the day Mr. Johnston I
7 think would like to ask one question, and then we will ask
8 the balance of the Board questions tomorrow morning.

9 VICE-CHAIRMAN: I don't know whether to direct this to the
10 witnesses or to counsel, but there was an undertaking
11 given earlier today with respect to the 2.2 billion dollar
12 estimated claim, which is found at paragraph 47(c) of the
13 statement of claim. What I think we would like to have is
14 a similar undertaking given with respect to the following
15 subparagraph where there is an alternate claim provided in
16 the amount of \$559,973,000, would that be possible?

17 MR. KEYES: We will undertake to determine if we can --
18 obviously I wasn't involved in that claim and we will
19 undertake to determine if that breakdown is available and
20 we will --

21 MR. JOHNSTON: On the same basis as the other undertaking
22 was given.

23 MR. KEYES: I just note that under the undertaking that was
24 given under paragraph (c) in the statement of claim, I
25 believe -- and I am advised that some of that information

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2 would be confidential, detailing pricing, et cetera, of fuel.

3 So that information would just be filed in confidence --

4 MR. JOHNSTON: Certainly.

5 MR. KEYES: -- if what we determine is available, but I

6 think that's part of what that amount is attributable to.

7 CHAIRMAN: Thank you, Mr. Keyes. So I understand that

8 counsel is available however and that we could continue on

9 this morning and hear evidence from Vibrant Communities

10 Saint John. So we will take a short break in order to

11 allow the Panel to meet. Say ten minutes and we will be

12 back at 11:10.

13 (Recess - 11:00 a.m. to 11:10 a.m.)

14 CHAIRMAN: Mr. Theriault, I assume that you are going to

15 walk Mr. Peacock through his presentation?

16 MR. THERIAULT: I certainly am. I'm going to try anyway.

17 CHAIRMAN: Anytime you are ready.

18 MR. THERIAULT: Thank you.

19 KURT PEACOCK, sworn:

20 CHAIRMAN: Thank you, Ms. Desmond. So for the record the

21 witness has been duly sworn.

22 DIRECT EXAMINATION BY MR. THERIAULT:

23 Q.1 - Could you please give your name and occupation for the

24 record?

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2 A. Certainly. My name is Kurt Peacock. And I'm an Energy
3 Researcher for Vibrant Communities Saint John. I'm also
4 the Visiting Crabtree Scholar in New Brunswick Public
5 Policy for the University of New Brunswick, Saint John.

6 Q.2 - And Mr. Peacock, could you just give the Board a
7 background of your credentials?

8 A. Absolutely. I have a Bachelor of Arts from UNB
9 Fredericton, a Master of Arts from Carleton University.
10 And I pursue doctoral studies at the University of
11 Toronto.

12 I have -- much of my career has been in the field of
13 social policy. I worked for Lloyd Axworthy, Canada's
14 former Minister of Human Resources in the mid '90s. And I
15 helped him on some policies dealing with employment
16 insurance and other Canadian social programs.

17 From January 2005 to the fall of 2007 I have been the lead
18 researcher for Vibrant Communities Saint John, which is a
19 nonprofit, dedicated to reducing poverty in the greater
20 Saint John area.

21 We have from the very beginning felt that affordable
22 access to energy has been a key issue for low income
23 households in Saint John and throughout the province. And
24 that's one of the reasons why we have been participating
25 in the regulatory process.

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MR. THERIAULT: Okay. Mr. Chairman, at this time I would ask that Mr. Peacock be allowed to give opinion evidence in this hearing on social policy.

CHAIRMAN: Any objections from any of the parties or any questions?

MR. MORRISON: No objection, Mr. Chairman.

CHAIRMAN: On that basis then we will allow him to give opinion evidence on social policy.

MR. THERIAULT: Thank you.

Q.3 - First of all, Mr. Peacock, do you have any corrections to make to your evidence?

A. Just one minor correction. And it was in response to an undertaking by the Applicant. On page 4 of my evidence I claim that Efficiency New Brunswick is not on the Applicant's corporate website. They have since put a hotlink to Efficiency NB on their website.

Q.4 - Okay. Now could you outline the nature of the evidence that you would like to present here today please?

A. Certainly I would hope that the intervenors see the evidence as fairly easy to understand. Our organization is concerned that the rate increase proposed by the applicant will have a potentially negative effect on over 100,000 New Brunswickers who live below Statistics Canada's LICO cutoff.

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As a result we offered in our evidence some rather small proposals that may help reduce the Applicant's revenue requirement and then essentially ease rate pressures on the ratepayer.

But the bulk of our evidence essentially focuses on two elements of the rate design that we would like to see altered. One, we would like to see the monthly service charge lowered to an area more on par with those of other Canadian utilities.

And also we would like to see a more aggressive dismantling of the declining block rate. Because we feel that its continued existence, even for a few short years, has negative socioeconomic and environmental impacts.

Q.5 - Okay. Now is there anything else you would like to add?

A. No. I offer myself up to the wolves, I guess.

MR. THERIAULT: Mr. Chairman, Mr. Peacock is available for cross examination.

CHAIRMAN: Thank you, Mr. Theriault. Mr. Lawson?

MR. LAWSON: This wolf has no questions.

CHAIRMAN: Mr. MacDougall?

MR. MACDOUGALL: No questions, Mr. Chair.

CHAIRMAN: Mr. Wolfe?

MR. WOLFE: For sure no questions, Mr. Chair.

CHAIRMAN: Mr. Zed?

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MR. ZED: We likewise do not have any questions.

CHAIRMAN: Mr. Theriault, would you like to put your other hat on?

MR. THERIAULT: No questions.

CHAIRMAN: Mr. Morrison.

MR. MORRISON: I like to consider myself a puppy dog, Mr. Peacock. But I do have a few questions.

WITNESS: Okay.

CROSS EXAMINATION BY MR. MORRISON:

Q.6 - And I'm only going to deal with two exhibits. That is your report which is VCSJ-2. And if you can get exhibit A-6(1), appendix 2.

If you don't have that available I can bring a copy of the page to you. It is just a page of the cost allocation study.

At page 2 of your report, Mr. Peacock, I understand from what you just said, you take some issue with the debt portfolio management fee.

And I understand from your report that it is your position that the Order-in-Council requiring DISCO to pay the debt portfolio management fee is not prudent. Is that correct?

A. Yes. It would be correct in the sense that we see it providing too large a burden on some of the poorest

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2 residents -- poorest ratepayers of DISCO.

3 Q.7 - But that is a government decision that you feel is not
4 prudent, not a management decision by DISCO that is not
5 prudent?

6 A. I would agree with that observation in the sense that the
7 Order-in-Council is ultimately a direction brought forward
8 by the New Brunswick Cabinet.

9 Q.8 - Okay. And if I understand your report, it is your
10 position that the Board should deny DISCO recovery of the
11 debt portfolio management fee?

12 A. In a perfect world, yes. But I realize of course that the
13 regulator is bound by the statutes or by the guidance of
14 the legislature as is the Applicant.

15 That being said, we would hope that the legislature
16 recognizes that this debt portfolio management fee does in
17 fact impose a burden on the ratepayer.

18 Q.9 - So your comments are directed more towards the
19 government than towards this Board?

20 A. It would be fair to state, yes. We would certainly
21 appreciate a change in policy from Fredericton on this
22 matter.

23 Q.10 - And I'm turning to page 3 of your report, Mr. Peacock.

24 A. Yes.

25 Q.11 - And am I correct to say that you are recommending that

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the Board disallow DISCO's environmental-related expenditures?

A. Yes. And we request this in large part because while we recognize an inherent value in the Applicant meeting certain regulatory requirements, we feel that the general public of the province, including many DISCO ratepayers, desire a greater environmental action than that in which the NB Power group of companies currently is -- I think -- to rephrase, I think they expect a certain -- a higher environmental standard than that currently met by the Applicant.

Q.12 - Is it fair to say from your comments then that essentially what you are saying is that you expect more from DISCO in the environmental field?

And because they aren't doing more, they should be denied recovery of the environmental costs that they are incurring to date?

A. Yes. I think it would be fair to classify my remarks as such. I might add that coming from Fredericton there is I think a fairly ambitious climate change action plan that of course highlights that electricity generation is responsible for 42 percent of the province's current greenhouse gas emissions.

Now the Province seems to see Efficiency New Brunswick

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2 as a key actor in helping the province meet its emission
3 reduction targets.

4 We are of the opinion if Efficiency NB is in fact to take
5 the lead in these sorts of matters, then the ratepayers of
6 the province are already paying certain environmental-
7 related costs, obviously in terms of efficiency and
8 specific DSM incentives, through their tax base. We don't
9 --

10 Q.13 - What I'm getting at, Mr. Peacock, is you would agree
11 that DISCO has to meet environmental standard, emission
12 standards for example, correct?

13 A. Yes.

14 Q.14 - And you would agree that DISCO incurs a cost in meeting
15 those environmental standards?

16 A. Yes. I would agree that there are obviously certain
17 administrative costs involved with meeting the minimum
18 standard.

19 Q.15 - And if the Board takes your suggestion that DISCO
20 should not be allowed to recover those compliance costs
21 and rates, DISCO will still be required to incur those
22 costs won't they?

23 A. They would in the sense that they do have to meet certain
24 minimum requirements.

25 Q.16 - I would like to turn to page 4 of your report. And it

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2 is under the paragraph marked (d).

3 A. I beg your pardon. Did you say (e)?

4 Q.17 - No, (d), David.

5 A. Yes.

6 Q.18 - And in that paragraph you say "Regardless of clear
7 signals that the pricing of carbon emissions will be
8 introduced by the Federal Government in the near future" -
9 - do you see that paragraph?

10 A. Yes.

11 Q.19 - Do you know when the Federal Government will implement
12 these clear pricing signals? Because the DISCO witnesses
13 to date have said that they don't know.

14 A. It is I think fair to state that there hasn't been a firm
15 date set. And I think that's largely due to the fact that
16 because there is currently a minority parliament in place
17 in Ottawa, each of the parties I think has different
18 policy goals in terms of reducing carbon emissions.
19 The federal Environment Minister has made it clear that
20 Ottawa will have, I think, a fairly significant or a
21 robust policy in regards to carbon emissions. When in the
22 future it's not clear.

23 But I think, for instance, if you look at the recent book
24 by Jeffrey Simpson and Marc Jacquard called "Hot Air", I
25 think it paints a picture of an Ottawa that has in

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2 fact -- of a Federal Government that may have failed to set
3 firm targets in the past, but I think is increasingly
4 realizing that the Canadian electorate expects those firm
5 targets to be set in the very near future.

6 And I think that is why perhaps I put the near future in
7 my evidence in the sense that I think there is a fairly
8 strong public expectation that these regulations will be
9 in place.

10 Q.20 - But they are not in place now, are they?

11 A. No.

12 Q.21 - Finally, Mr. Peacock, I want to talk a little bit about
13 the service charge. Because I think that is one of the
14 main areas in which you are concentrating.

15 I understand from your evidence and what you said earlier
16 this morning, that the service charge in your view should
17 be reduced. And I believe in your evidence you say it
18 should be reduced to \$13.64, is that correct?

19 A. We would certainly welcome that reduction. However we
20 know that other intervenors -- and there has been other
21 evidence that suggests it could be in the \$15 range. We
22 see any sort of reduction as a positive thing.

23 The reason why we chose 13.64 was we had essentially
24 compared the 1992 levels set by NB Power with the rate of
25 inflation. And that's how we got the 13.64 number.

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2 Q.22 - I'm going to provide you with an excerpt. And it is
3 from exhibit A-6(1). It is appendix 2. And it is tab
4 schedule 6.2.

5 I don't think you have to turn it up. You can if you
6 wish. But I can give you a copy of it.

7 A. That would be lovely. Thank you.

8 CHAIRMAN: Mr. Morrison, I guess a couple of the Board
9 members would like a copy of that.

10 Q.23 - And you would agree, Mr. Peacock, that this is a
11 schedule from the cost allocation study filed by DISCO in
12 this proceeding?

13 A. Yes.

14 Q.24 - And if you could look at line 1. And it is column 6.
15 You will see under "Residential" under column 6. And it
16 has an amount for the customer cost per month --

17 A. Yes.

18 Q.25 - -- 22.06. Do you see that?

19 A. Yes.

20 Q.26 - And that is in DISCO's evidence. And I believe it is
21 the only cost allocation evidence on the record. That is
22 the customer cost for that class, would you agree?

23 A. Yes, according to DISCO's evidence.

24 Q.27 - And DISCO's proposed service charge in this proceeding
25 is less than that amount, isn't it?

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2 A. Yes, it is.

3 Q.28 - And the proposed rate design in this proceeding, in
4 fact DISCO is proposing a zero increase in the service
5 charge?

6 A. In this proceeding, yes.

7 MR. MORRISON: Those are all my questions. Thank you.

8 CHAIRMAN: Thank you, Mr. Morrison. Ms. Desmond?

9 MS. DESMOND: We have no questions, Mr. Chair. Just as a
10 housekeeping item, earlier today there was reference to an
11 attachment A that was circulated by the Applicant. I'm
12 not sure if the Board wishes to have that marked for
13 identification.

14 MR. MORRISON: We can probably have it marked for
15 convenience but both come from the evidence, Mr. Chairman.

16 CHAIRMAN: Yes. That was my understanding. It was an
17 excerpt from two different parts of the evidence.

18 MR. MORRISON: One is from the Board's earlier order. And
19 one is from an IR response I believe.

20 CHAIRMAN: I think I will take Ms. Desmond's suggestion and
21 mark that for identification. I believe number 8 was the
22 last for identification. But the Board Secretary can
23 confirm that for me.

24 This will be number 10 for identification. Thank you, Ms.
25 Desmond.

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Any questions from the Board?

BY MR. BARNETT:

Q.29 - Just a couple, Mr. Peacock. One is a follow-up on question from Mr. Morrison.

Just so I would be clear, in your evidence and in your testimony a moment ago, you are asking the Board to consider a denial of all the environmental costs, not just the costs associated with the Energy Advisers, is that correct?

A. Yes, that is correct. However, I will perhaps argue that on a prudency case, I think that the status of the Energy Advisers would I think be one in which you see a fair amount of overlap between DISCO's service and that provided by Efficiency New Brunswick.

In regards to the other environmental-related expenditures, including the work say of the Environmental Committee, I'm certainly sympathetic to the Applicant's view that this is very important work and is needed in order to meet certain regulatory standards.

The reason why we proposed that these be struck, that the work -- that the costs attached to this work could in fact be struck from the revenue requirement is twofold.

(1) we are looking for any sort of savings possible for the low income ratepayer. And we see reducing certain

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administrative costs as potential savings.

(2), and this I think follows up from some of my earlier comments, there is I think a very strong expectation from the New Brunswick public for really significant action in regards to addressing the climate change challenge.

Clearly if electricity generation is responsible for 42 percent of our provincial greenhouse gas emissions, then those involved with the electricity generation I think have to meaningfully respond to that challenge.

In some of the recent reports coming from the NB Power group of companies -- and I note that just recently on their website they have published an environmental report -- I think it's clear that they have made significant progress in certain areas. Obviously they have reduced sulphur emissions in a number of their thermal generating plants, for example.

But the key challenge of reducing CO2 emissions to 1990 levels by 2012, which is essentially a policy goal set by the Province, it is unclear how the utility is able to meet that challenge.

And so we proposed striking the Environmental Committee costs from the revenue requirement in part to in essence penalize the company for not responding I think to

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the desires of the ratepayers for cleaner electricity.

Q.30 - One last question, I guess. And if you could turn to page 2 of your report, Question 4. And Mr. Morrison highlighted the second part of this.

I would just like to -- you may explain so I clearly understand and the Board clearly understands. In the second sentence you say "VCSJ does not dispute that the vast majority of these expenditures" -- and that is DISCO's expenditures I believe -- "are in fact prudent." So are you saying then that you agree that all the other expenditures of DISCO are in fact prudent in this section in answer to Question 4?

A. Well, certainly in our view, you know, just in the matter -- in the fact that we have been observing the utility for over two years in front of the regulator, we recognize that they try very hard on a daily basis to provide value to ratepayers.

And unfortunately we as an intervenor have not been able to go through a fine comb and examine every specific element of their revenue requirement.

We do believe though that we can give them the benefit of the doubt on a number of their items. I assume that this view is probably not shared by all the intervenors.

But I think that there is probably a very strong

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2 likelihood that the majority of expenditures attached to their
3 revenue requirement are arguably prudent.

4 MR. BARNETT: Thank you, Mr. Peacock. Mr. Chairman, that is
5 all my questions.

6 CHAIRMAN: Any other questions? Mr. Johnston?

7 BY THE VICE CHAIRMAN:

8 Q.31 - Mr. Peacock, early in this proceeding Mr. Hay testified
9 that the New Brunswick Power group of companies had
10 received direction from the Provincial Government to
11 operate on a break-even basis, and that the company was
12 studying and analyzing exactly what that meant.
13 You have raised the issue in your evidence of the debt
14 portfolio management fee. And there are other issues
15 including payment in lieu of taxes and net earnings and
16 others I'm sure.

17 But from a policy point of view I'm just wondering if you
18 have any comments on what operating at a breakeven
19 position should be in this context?

20 A. I think from a policy point of view, I think we need to
21 ensure that each and every New Brunswick resident or each
22 and every New Brunswick consumer of electricity is
23 provided that electricity safely and with -- safely and as
24 cheaply as possible.

25 I think if we limit that as essentially the chief aim

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of the NB Power group of companies, then you have to examine all other expenditures and ask is that helping to achieve that goal.

Obviously there are policy directions there brought down from Fredericton, for instance increasing the amount of wind power, that can add to the cost of the ratepayer. But they have to be accepted.

There are other considerations however that -- and returning I guess to my response to Mr. Barnett -- there are other expenditures that may not be directly linked to either meeting certain environmental standards or providing safe reliable power that are found by -- that are in fact spent by the utility.

I can think for example on their main page of their website, in fact in a section that is displayed more prominently than their link to Efficiency New Brunswick, they have essentially a kid zone that I guess shows the children of New Brunswick the importance of electricity. I don't know whether or not that sort of expenditure, essentially operating an online kid zone that provides interactive games is really a prudent expenditure by the utility of this province.

And I think that having that sort of expenditure may diminish the ability of the utility to provide safe

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2 reliable electricity at a fair price to consumers.

3 VICE CHAIRMAN: Thank you.

4 CHAIRMAN: Anything further from the Board? Any redirect?

5 MR. THERIAULT: No, Mr. Chairman.

6 CHAIRMAN: Thank you, Mr. Peacock, for your attendance here
7 this morning as a witness.

8 Well, it appears that perhaps we may have run out of
9 witnesses for the day. I understand Deloitte & Touche
10 will be in attendance tomorrow morning?

11 MR. MORRISON: They will be. As well Ms. MacFarlane and
12 Mr. Dobson. I guess it would be my preference,
13 Mr. Chairman, to finish with Ms. MacFarlane and
14 Mr. Dobson, move on to Deloitte & Touche.

15 If we can finish them tomorrow that would be fine. And
16 then we could go into the in-camera portion if necessary.

17 If we run out of time tomorrow, Deloitte & Touche are
18 available on Monday.

19 I think it is the desire of everyone in the room, that I
20 have spoken to at least -- we know that we have
21 Mr. Strunk is available only on Monday. And I think
22 everybody is hopeful that we can get through this deferral
23 account panel tomorrow in its entirety.

24 I would certainly be open to starting at 9:00 o'clock
25 again tomorrow if that was open to the Board. But I will

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leave that obviously to you to decide.

CHAIRMAN: Well, the only other scheduling issue then would be -- I see on Tuesday we have Mr. Booth scheduled. Is there any possibility in the event that Mr. Strunk's evidence is concluded early on Monday that Mr. Booth would be available?

MR. THERIAULT: Presently, Mr. Chairman, Mr. Booth is flying in Monday afternoon. But I will try and get ahold of him this afternoon to see if there is some way he can perhaps come in a little earlier.

CHAIRMAN: And the only reason that I sort of bring that up is that perhaps the parties may benefit from having a day off, if you will, prior to final argument, if that is possible. But certainly if Mr. Booth can only be here on Tuesday that is fine as well.

I think that we will take your suggestion, Mr. Morrison, to start again tomorrow morning at 9:00 a.m., since we only do have the morning available. So we will adjourn until 9:00 a.m. 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.