

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) Motion Concerning DISCO's non response
9 tp a number of IRs

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11 Hilton Hotel, Saint John, N.B.

12 September 27, 2007

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15 CHAIRMAN: Raymond Gorman, Q.C.

16 VICE-CHAIRMAN Cyril Johnston

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18 MEMBERS: Donald Barnett

19 Yvon Normandeau

20 Roger McKenzie

21 Constance Morrison

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23 BOARD COUNSEL: Ellen Desmond

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25 BOARD STAFF: Doug Goss

26 John Lawton

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28 BOARD SECRETARY: Lorraine Légère

29 ASSISTANT SECRETARY: Juliette Savoie

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32 CHAIRMAN: Good morning, everyone. Today's hearing a

33 Motions Day which was established on the filing schedule

34 to deal with any issues arising out of DISCO's responses

35 to certain IRs.

36 The panel for today's hearing of the EUB is composed of

37 Don Barnett, Cyril Johnston, Connie Morrison, Roger

38 McKenzie, Yvon Normandeau and myself as Chair.

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Could I have the appearances please starting with the Applicant?

MR. MORRISON: Good morning, Mr. Chair and members of the Board. Terry Morrison and Ed Keyes on behalf of the Applicant. And with me at counsel table today is Lori Clark, Neil Larlee. And at the request of the Board we have made Mr. Bishop available.

CHAIRMAN: Thank you, Mr. Morrison. With the intervenors, let's start with the Canadian Manufacturers & Exporters, NB Division.

MR. LAWSON: Good morning, Mr. Chairman. Gary Lawson appearing for CME.

CHAIRMAN: I'm not used to seeing you on that side of the room, Mr. Lawson.

Conservation Council of New Brunswick Inc.? Enbridge Gas New Brunswick? FPS Canada Inc.?

MR. BAIRD: John Baird, Mr. Chairman. And Jennifer Little is with me.

CHAIRMAN: Thank you, Mr. Baird. Irving Oil Limited? J. D. Irving Pulp and Paper Group?

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

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

DR. SOLLOWS: Here, Mr. Chairman.

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CHAIRMAN: Utilities Municipal?

MR. ZED: Peter Zed representing Utilities Municipal. And I'm joined by Dana Young, Marta Kelly and Jeff Garrett.

CHAIRMAN: Thank you, Mr. Zed. Vibrant Communities Saint John?

MR. PEACOCK: Good morning, Mr. Chair. Kurt Peacock here.

CHAIRMAN: And the Public Intervenor?

MR. THERIAULT: Good morning, Mr. Chair. Daniel Theriault. And I'm joined today by Jamie O'Donnell and Robert

O'Rourke.

CHAIRMAN: Thank you. And the New Brunswick Energy and Utilities Board?

MS. DESMOND: Ellen Desmond as Board Counsel. And with me is Doug Goss and John Lawton.

CHAIRMAN: And that should be everybody. Is there anybody I missed?

Well, today there are three Notices of Motion which have been filed, one by the Public Intervenor, one on behalf of the Canadian Manufacturers & Exporters and one by Ken Sollows.

Each of these motions requests amongst other things that the Board set a date for full and complete responses by DISCO to certain interrogatories.

And I think before we move to deal with those motions

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and any opening statements or anything of that nature, there are a number of exhibits I think, a number of documents which have been filed with the Board. And likely those documents will become the subject matter of these motions.

So I think we should mark those.

And I believe in that respect that a proposed exhibits list was circulated to everybody sometime over the last couple of days. Is there anybody that did not receive that list?

Okay. And the exhibits that were submitted are all Applicant's exhibits, Mr. Morrison, we will go through those exhibits and mark them. I think this would be the appropriate time to do that.

MR. MORRISON: That is fine, Mr. Chair.

CHAIRMAN: And maybe at this time as well I will ask does anybody have any objections whatsoever to marking of these exhibits at this time or any of them, just in the interests of saving a little time.

If there are no objections I can just read them into the record. And it will save a little time. So is everybody okay with all of them?

All right. Then the exhibits that will be marked today, the first of the new exhibits is A-2(1). That is the revised evidence dated September 14th 2007 affecting

1
2 the April 19th 2007 interim rate request. It is Volume 1 of
3 3. And it is both English and French.

4 The next exhibit is A-3(1)(c). This is a confidential
5 filing. And this is a DISCO letter dated May 3rd '07
6 requesting the two pages to be removed from Volume 2 of 3
7 and be held in confidence by the Board pursuant to Section
8 34 of the EUB Act.

9 The next document is exhibit A-6(1). It is revised
10 evidence filed September 14th 2007 affecting the July 3rd
11 2007, Volume 1 of 3, English and French. And this is
12 effectively a complete binder revision as I understand it.

13 The next document is A-7(1), revised evidence filed
14 September 14th 2007 to additional evidence dated July 3rd
15 2007. That is Volume 2 of 2. And the portion concerns
16 statement of earnings, balance sheet and statement of cash
17 flows.

18 The next document is A-16, Applicant's additional
19 evidence, other costs dated August the 20th, 2007, Volume
20 1 of 1, both English and French. And the document
21 includes a number of items.

22 Exhibit A-16(1), revised evidence filed September 14th
23 2007 to Applicant's additional evidence, other costs dated
24 August 20th 2007, Volume 1 of 1, English and French.

25 And we have A-16(2)(c), confidential. This involves a

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DISCO letter dated August 20th '07 requesting the filing of all inputs and outputs of PROMOD referenced in additional evidence, other costs, August 20th 2007, Volume 1 of 1 be held in confidence by the Board pursuant to Section 34 of the EUB Act.

Exhibit A-17 will be the revised NB Power rate schedules and policies, RSP manual filed on August 28th '07 to reflect the EUB's August 23rd 2007 decision on a Notice of Motion by DISCO requesting the approval of the establishment of a deferral account and a reduction in the interim rate increase.

Exhibit A-18 is DISCO unaudited financial statements filed on August the 30th, '07 for the period April 1st to June 30th '07.

A-19, Applicant's responses dated September 10th 2007 to first IR's of CME, EGNB, JDI, NBEUB on existing July 3rd 2007 evidence. That is Volume 1 of 3.

The next exhibit is A-19(1), revised response dated September 14th 2007 to Applicant's responses dated September 10th 2007 to first IR's of CME, EGNB, JDI, NBEUB on existing July 3rd 2007 evidence, Volume 1 of 3.

Exhibit A-20, Applicant's responses dated September 10th 2007 to first IR's of PI, SOL, UM and VCSJ on existing July 3rd 2007 evidence, Volume 2 of 3.

2 Exhibit A-20(1), revised responses dated September 14th
3 2007 to Applicant's responses dated September 10th 2007 to
4 first IR's of -- sorry, first IR's on existing July 3rd
5 2007 evidence, Volume 2 of 3.

6 A-20(2)(c), confidential. This involves a DISCO letter
7 dated September 17th 2007 attaching binder, Volume 1 of 1
8 dated September 14th 2007 of unredacted September 10th '07
9 filing responses to CME, NBEUB, PI, SOL, UM, VCSJ to be
10 held in confidence by the Board pursuant to Section 34 of
11 the EUB Act.

12 Exhibit A-21, Applicant's responses dated September 10th
13 2007 to first IR's on existing July 3rd 2007 evidence,
14 Volume 3 of 3.

15 And exhibit A-22, Applicant's revised rate design evidence
16 dated September 14th '07 filed as a package. This
17 information included revisions to various exhibits already
18 marked and/or other documents that were filed.

19 And I'm going to go through those. Exhibit A-2, Volume 1
20 of 3, executive summary, section 1(a). That is a new
21 section re regulatory deferral adjustment. And section 6,
22 also referred to on the exhibit list, is A-2(1).

23 Exhibit A-6, Volume 1 of 1, complete new document,
24 additional evidence, rate design, also referred to on the

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2 exhibit list as A-6(1).

3 Exhibit A-7, Volume 2 of 2, financial statements, also
4 referred to on the exhibit list as A-7(1).

5 The next exhibit is A-23, Applicant's responses dated
6 September 18th '07 to IR's on exhibit A-13 and A-14 and to
7 additional August 20th '07 evidence, Volume 1 of 1.

8 And A-23(1)(c), confidential DISCO letter September 18th
9 2007, objecting to placing information on the record in
10 any form, for three of the responses, DISCO, JDI IR-7,
11 DISCO PI IR-40 and 41. DISCO has provided copies of the
12 minutes in redacted form for PI IR-39.

13 So that would I think bring us up to date with respect to
14 exhibits. Unless Mr. Morrison, I have missed something or
15 there is any additional.

16 MR. MORRISON: I believe there is one additional document
17 that should be marked as an exhibit, Mr. Chairman. That
18 is the affidavit of Darrell Bishop sworn to on September
19 26th that was filed with the Board and circulated to all
20 parties.

21 CHAIRMAN: And is there any objections from anybody on that
22 particular document?

23 MR. THERIAULT: Mr. Chairman, I'm assuming that Mr. Bishop
24 will be available to be cross-examined?

25 CHAIRMAN: I see Mr. Bishop in the front row here today.

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And Mr. Morrison, it would be entered as an exhibit on that basis, that Mr. Bishop would be made available.

MR. MORRISON: I know the Public Intervenor has asked that Mr. Bishop be made available for cross-examination. It is my submission it is not necessary. But I also understand that the Board has a discretion to allow cross-examination on an affidavit.

And my review of the law is that as long as that discretion is exercised judicially that it can direct that the witness be made available. And of course Mr. Bishop is here.

CHAIRMAN: Okay. That document then will become exhibit A-24, the September 26th affidavit of Darrell Bishop.

MR. MORRISON: Mr. Chair, on that point, if Mr. Bishop is to be cross-examined, we did make Mr. Bishop available first thing this morning.

He went to great lengths to rearrange his schedule. He does have discussions with Hydro Quebec that he pushed off till later in the morning. And he has a board of directors meeting at noon.

So if we can deal with that issue first and as expeditiously as possible, it would be greatly appreciated by Mr. Bishop.

CHAIRMAN: Certainly that would be fine. So is it your

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2 intention to have him sworn in then at this time or --

3 MR. MORRISON: Yes, Mr. Chair.

4 DARRELL BISHOP, having been duly sworn, testified as
5 follows:

6 DIRECT EXAMINATION BY MR. MORRISON:

7 Q.1 - Mr. Bishop, could you state your name and address, full
8 name and address please for the record?

9 A. My name is Darrell Wilfred Bishop. And I reside at 58
10 Derby Court, Fredericton, New Brunswick.

11 Q.2 - And can you state your position as it relates to these
12 proceedings?

13 A. I'm the Vice-president of the New Brunswick Power
14 Generation Corporation.

15 Q.3 - And Mr. Bishop, are you the deponent in an affidavit of
16 Darrell W. Bishop sworn to on the 26th day of September,
17 2007 which has been marked in these proceedings as A-24?

18 A. Yes, I am.

19 MR. MORRISON: Those are all my questions, Mr. Chairman.

20 CHAIRMAN: Mr. Theriault I think was the only one that had
21 indicated that he wished to cross-examine Mr. Bishop.

22 But I think I will go through the various intervenors in
23 any event just to make sure that perhaps the others don't
24 want to cross-examine. Mr. Lawson, any cross-examination

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2 MR. LAWSON: No questions, Mr. Chairman.

3 CHAIRMAN: Mr. Baird?

4 MR. BAIRD: No questions, Mr. Chairman.

5 CHAIRMAN: Mr. Wolfe?

6 MR. WOLFE: No questions.

7 CHAIRMAN: Dr. Sollows?

8 DR. SOLLOWS: I will restrain myself, Mr. Chairman.

9 CHAIRMAN: Mr. Zed?

10 MR. ZED: We don't have any questions for Mr. Bishop.

11 CHAIRMAN: Mr. Peacock?

12 MR. PEACOCK: No questions.

13 CHAIRMAN: Mr. Theriault, I don't know -- I would just ask
14 if you would come forward. Thank you.

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

16 CROSS-EXAMINATION BY MR. THERIAULT:

17 Q.4 - Good morning, Mr. Bishop.

18 A. Good morning.

19 Q.5 - I guess it is just you and I.

20 So you are the Vice-president of generation for Genco?

21 A. That's right.

22 Q.6 - And as Vice-president for Genco have you been following
23 these proceedings?

24 A. Yes, I have.

25 Q.7 - So you are familiar with Board orders and what the Board

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2 has ruled?

3 A. I am so familiar with it.

4 Q.8 - And I'm going to refer you, Mr. Bishop, to your
5 affidavit.

6 In paragraph 4 you state that through a discussion
7 referred to in paragraph 2, that PDVSA was particularly
8 sensitive to and concerned about public disclosure.

9 How were they concerned? How did you know? Or why were
10 they concerned? I guess two questions. How and why?

11 A. How I know they were concerned is that they had in fact
12 during the discussions, I wouldn't say repeatedly, but
13 often had indicated to me that they were concerned about
14 the pricing of Orimulsion. It was a price that had been
15 predicated back in 1994.

16 New Brunswick Power was the first organization that burned
17 this fuel commercially. And we have a very attractive
18 price as a result. In fact it's a price that in my
19 opinion is unprecedented by any further contracts that
20 they had when they supplied Orimulsion.

21 And they subsequently were concerned, not only then but
22 through even these discussions, and expressed it to me,
23 that pricing was an issue that they would have us not
24 divulge.

25 Q.9 - Now so obviously you are saying during the discussion

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2 period, or the settlement discussion period, they raised these
3 concerns?

4 A. They did.

5 Q.10 - And what period of time did the discussions take place?

6 A. I believe -- I may be -- I believe we started discussions.

7 I first met a representative from PDVSA in May of 2007.

8 And discussions ensued from them until the settlement
9 date.

10 Q.11 - Okay. And with respect to these concerns, did they set
11 out in letter form stating their concerns to you?

12 A. No, they did not.

13 Q.12 - Okay. Did you set out in letter form any response to
14 their concerns concerning this?

15 A. No, I did not.

16 Q.13 - Going to paragraph 5, Mr. Bishop, who was it that
17 called you?

18 MR. MORRISON: I'm going to object to that question,

19 Mr. Chair. The name of the person was not included in the
20 affidavit. I understand that the Public Intervenor is
21 entitled to cross-examine on the affidavit. That is not a
22 piece of information that is in the affidavit.

23 Quite frankly, the name of the PDVSA representative who
24 contacted Mr. Bishop is really not relevant to the matters
25 that formed the heart of his affidavit.

2 CHAIRMAN: What would be the harm, Mr. Morrison, of
3 disclosing that? I'm just wondering, you know, if you
4 would just take your argument a little bit further and --

5 MR. MORRISON: I believe that Mr. Bishop is very sensitive
6 to disclosing the names, particular names of
7 representatives of the PDVSA negotiating team, for many of
8 the same reasons why he filed the affidavit in the first
9 place.

10 It is the sensitivity to an ongoing business relationship
11 with the counter party to that settlement agreement.

12 CHAIRMAN: Mr. Theriault, do you have any comments?

13 MR. THERIAULT: Well, I do. I think it is important as part
14 of the affidavit that if we don't know the name of the
15 individual we certainly should know at least -- and my
16 next question was going to be what is the position of the
17 individual to ensure that he has ranking within the PDVSA
18 chain of operation.

19 A. I would be happy to answer that question,
20 Mr. Theriault. This individual I met back in March -- or June
21 of 2004 when negotiations began, when Mr. Hay became
22 President and Chief Executive Officer of NB Power.
23 And the individual is in fact -- I guess he refers to
24 himself as a firefighter for PDVSA. He is hired under

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contract to PDVSA. And he has been involved with many of the sales and many of the negotiations of other contracts that PDVSA has.

And he in fact had in this case been the sole negotiator, along with myself, in arriving at this settlement. He reports directly to the Deputy Minister of Energy in Venezuela.

Q.14 - So he is not an officer of PDVSA?

A. That is correct. He is not an officer.

Q.15 - He is an independent contractor?

A. Yes, he is.

Q.16 - And you say that this concern of his, as set out in your affidavit, was of paramount concern?

A. I'm -- I think you are putting words in my mouth. I don't think I said paramount. I said it is concern. And in fact, as I state in I believe paragraph 5, when this issue arose, quite frankly I was on vacation at the time.

And I received a phone call at home, which in my 30 years of dealing with counter parties is an unprecedented event.

And it was not at all threatening. The phone call simply asked for our continued honoring the nondisclosure of the price of this fuel, as we have continued to be successful in doing since 1994. And he expressed that as his expectation.

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2 Q.17 - The fuel you are referring to since 1994 would be the
3 Orimulsion?

4 A. That's correct. And now it's heavy fuel oil price as if
5 it were Orimulsion.

6 Q.18 - So it is not the same. Before it was the Orimulsion.
7 The settlement agreement is the heavy fuel?

8 A. That's correct. Yes.

9 Q.19 - Now when he phoned you was this the sole purpose of his
10 phone call?

11 A. Absolutely. And it was the sole purpose.

12 Q.20 - And what did you tell him?

13 A. I told him that I would do as I'm doing here today, that I
14 would defend the price to the extent that we could. I
15 also indicated that there is -- the clause indicates
16 confidentiality should the Board order that. I indicated
17 to him I had no choice, that we would release it.

18 And quite frankly, what I'm prepared to offer here this
19 morning is that should the Board order that I would be
20 quite pleased to offer that in confidence to any member in
21 New Brunswick, provide it to any of the public in fact,
22 provided that it's held in confidence.

23 Q.21 - Well, let's go back to that. If you are willing to
24 provide it to any member of the public, that would be
25 myself, that would be the people working the front desk,

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2 that would be the media. Are you willing to offer that?

3 A. Not so it gets disclosed to competitors.

4 Q.22 - Okay. We will get to that.

5 Now in the telephone conversation what reason did he give
6 you that PDVSA -- not Genco or Holdco or NB Power group of
7 companies -- that PDVSA did not want to have this
8 disclosed?

9 A. He did not give me any reasons.

10 Q.23 - Now again did he follow the conversation up in writing
11 with you?

12 A. No, he did not.

13 Q.24 - Is that a normal situation, when something is of
14 concern to someone, not to follow it up in writing?

15 A. In negotiations with Venezuela that is quite normal.

16 Q.25 - But this was not negotiations. Negotiations had been
17 concluded at the time of your phone call?

18 A. Would you restate the question then please?

19 Q.26 - Did he follow up his concerns to you after calling you
20 at home? And you say this is one of the few calls in 30
21 years that you have received at home. So did he follow
22 that up in writing with you?

23 A. No, he did not.

24 Q.27 - And is that normal in a situation where a party -- in
25 your experience, in a situation where a party has a

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2 concern, so that they would track you down at home, not to
3 follow it up in writing?

4 A. I think it's normal.

5 Q.28 - And has it ever happened before?

6 A. Has what ever happened before?

7 Q.29 - That a serious -- let's deal with this file. Has it
8 ever happened before that serious matters were not
9 committed to writing?

10 A. I don't recall, quite frankly, if I have had experience.
11 I think I would have to answer no.

12 Q.30 - Now you are familiar, Mr. Bishop, with the nonutility
13 generators?

14 A. Yes, I am.

15 Q.31 - And you are also familiar that in the last hearing
16 before the Public Utilities Board, the nonutility
17 generators made representations to the Board with respect
18 to confidentiality of their contracts?

19 A. I am, yes.

20 Q.32 - And did you suggest to the person from PDVSA, this
21 independent contractor, did you suggest to him that PDVSA
22 could make representations here to the Board?

23 A. No, I did not.

24 Q.33 - Did they ask if they could do this?

25 A. No, they did not.

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2 Q.34 - Again you had stated earlier that you had been
3 following the proceedings in the Board rulings.

4 During the last time this Board sat I believe in August,
5 did the NB Power group of companies make the same argument
6 with respect to the deferral account?

7 MR. MORRISON: I don't think this witness is confident to
8 answer that question. It is legal.

9 CHAIRMAN: I'm not sure that I know the relevance of that
10 question when I look at the affidavit that you are cross-
11 examining on.

12 Q.35 - Mr. Bishop, since August 16th of -- now you say this
13 was mid August this gentleman called you?

14 A. I believe in fact it may have been early August. I recall
15 the dates of 8th or 9th.

16 Q.36 - Since the Board ruling I think of August 23rd, did you
17 -- did this gentleman call you with respect to the same
18 concerns?

19 A. No, he did not.

20 Q.37 - Did he write you?

21 A. No.

22 Q.38 - Did to your knowledge PDVSA breach any aspects of the
23 settlement agreement or the fuel supply agreement?

24 A. No, sir.

25 Q.39 - Now in your affidavit you state in paragraph 7 if for

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2 any reason the settlement fuel supply agreement were
3 terminated, the financial consequences to NB Power group
4 of companies would be a loss of approximately 375,000,000?

5 A. That's my calculation, sir, yes.

6 Q.40 - And if I understand that, the settlement agreement is
7 comprised up of the \$115,000,000 in cash, roughly
8 \$223,000,000 in fuel savings?

9 A. Yes. That's correct.

10 Q.41 - But that comes to -- what would the other amount to
11 total 375,000,000 make it?

12 A. First off, may I just explain here that the \$338,000,000
13 that we have discussed as a settlement value came, as you
14 indicated, both in cash and in future fuel savings by
15 having discounted fuel price.

16 And that fuel saving is the fuel saving that amounted by
17 the quantities that we negotiated that were over and above
18 the quantities that PDVSA was obligated to supply in an
19 existing fuel agreement for the Dalhousie generating
20 station.

21 If in fact PDVSA had reason to discontinue fuel supplies today,
22 not only would that future amount that we claim value on be
23 deferred, but also the amount from today's quantity to the
24 end of the contract quantity, the old contract quantity with
25 Dalhousie, would have been or would be lost.

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2 How I arrived at the \$375,000,000 is I have taken fuel
3 quantities from today, through the area when the original
4 contract would have terminated, through the additional
5 quantity that was negotiated, with the pricing
6 differential, and came up with the 370 odd \$5 million.

7 That in fact even leaves us with \$110,000,000 that we have
8 in our bank account now.

9 Q.42 - So if I understand what you just said -- and I'm going
10 to paraphrase it, you can let me know -- is that not only
11 would the settlement negotiations be in jeopardy, but the
12 Dalhousie agreement might be in jeopardy as well?

13 A. There isn't any Dalhousie agreement today. But the
14 quantities -- if in fact delivery stopped today, the
15 \$375,000,000 is the total quantity of fuel that has been
16 negotiated in this new settlement agreement multiplied by
17 the difference in today's forward prices, forward
18 projected prices of heavy fuel oil and the price of this
19 particular fuel.

20 Q.43 - Okay. Now can you point me to any clause -- and keep
21 in mind I'm going blind here. And you are the negotiator.

22 You have been through it. And you know the
23 documentation.

24 So can you point me to anything in the fuel supply
25 agreement, in the settlement agreement, that if the Board,

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2 as part of this process, would release it, would allow them to
3 stop delivering fuel?

4 MR. MORRISON: That is a legal question on an interpretation
5 of the confidentiality provision.

6 CHAIRMAN: Would you repeat the question, Mr. Theriault?

7 MR. THERIAULT: Yes. I will try.

8 Q.44 - Can you point me to anything in the fuel supply
9 agreement or the settlement agreement that would allow the
10 fuel supply to stop if so ordered, if those clauses were
11 ordered or if the agreements were opened up by Board
12 order?

13 MR. MORRISON: Well, again, Mr. Chair, our claim for
14 confidentiality is based on the confidentiality provisions
15 that are contained in the fuel supply agreement.

16 And as we have argued in the last hearing and as we will
17 argue again I presume sometime during the course of this
18 hearing, the very existence of those confidentiality
19 provisions indicate that there is a commercial -- a
20 sensitive commercial interest.

21 I don't think Mr. Bishop is in a position to make those
22 types of legal arguments. However, I am and will later
23 today or tomorrow.

24 CHAIRMAN: And I don't think he has been asked for a legal
25 opinion, or I would agree with you. I think what he has

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been asked is if he is aware of any provisions in a contract.

And either he is or he isn't. That doesn't preclude you from making the argument. So I think he can answer that question.

MR. MORRISON: That is fair enough.

A. I can answer by saying that while there is no provision that says if you -- if I disclose price, that they stop deliveries.

I will say that the confidentiality clause that is contained in the contract, plus the phone call, gives me a belief that -- we have \$338,000,000 of value that is forthcoming to us under the terms of this contract. That means quite frankly that PDVSA has \$338,000,000 of sales below price.

I guess if I put myself in that position and find any excuse -- and I believe that an ingenious lawyer can interpret many parts of that contract very differently than I or any other member of the New Brunswick public could -- it just -- it opens up an avenue that gives additional risk that has no benefit I believe to New Brunswick.

Q.45 - So I guess the answer to the question would be -- and you tell me if I'm right or wrong -- that the fuel -- the

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2 confidentiality provisions of the fuel supply agreement is the
3 only reference in the fuel supply agreement -- I haven't
4 seen the settlement agreement -- that would prohibit
5 disclosure of the agreement?

6 A. The answer to that is yes.

7 Q.46 - And is there a similar clause in the settlement
8 agreement?

9 A. I believe there is not.

10 Q.47 - Okay.

11 A. I want to qualify that. The fuel supply agreement is in
12 fact an addendum to the settlement agreement.

13 MR. MORRISON: Just for clarity, Mr. Chairman, the fuel
14 supply agreement is an appendix to and forms part of the
15 settlement agreement.

16 CHAIRMAN: Thank you for that clarification, Mr. Morrison.

17 Q.48 - In your conversations with this gentleman from PDVSA,
18 was there any discussion about procedure before this
19 Board?

20 A. During the negotiations, and certainly negotiations of
21 this particular clause, yes, there have been discussions
22 about procedures, to the extent that PDVSA acknowledged
23 that it could not circumvent an order of law or any Board
24 order to forego this particular price disclosure or any
25 other terms of disclosure.

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I think a strict legal interpretation may in fact prove my statement correct. And again, without being a lawyer, I can't comment on that. I believe the tones and the underlying discussions perhaps makes an intent, as I perceive it, not quite so forthcoming.

As I say, I believe that if in fact information were given in confidence, should the Board order that, I believe that is a low risk probability of having anything happen with this agreement.

Q.49 - But again the risk you said is your speculation?

A. I see the future no different than anybody else. I can only take from the history of our arrangements with PDVSA. And that's correct, it is my belief.

Q.50 - And you would agree with me that is PDVSA was concerned about this, they could have had counsel or representatives here?

A. They could have had, yes.

MR. THERIAULT: Thank you very much. That is all I have.

CHAIRMAN: Thank you, Mr. Theriault. Any redirect,

Mr. Morrison?

MR. MORRISON: No, Mr. Chair. Thank you.

CHAIRMAN: Any questions from the panel? Mr. Barnett?

MR. BARNETT: Mr. Bishop, when you received the phone call in early or mid August, how did you communicate that

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2 information to the executive of Genco and of the holding
3 corporation?

4 WITNESS: I actually phoned David Hay, our President and
5 CEO, within minutes after receiving the phone call, and
6 gave him the substance of the message.

7 MR. BARNETT: So there was no follow-up in terms of writing?
8 It was just an oral report to the President and CEO?

9 WITNESS: That's correct, Mr. Barnett.

10 MR. BARNETT: Thank you.

11 CHAIRMAN: Anything further from anybody else on the panel?

12 Thank you, Mr. Bishop.

13 MR. MORRISON: I would ask that Mr. Bishop be excused,
14 Mr. Chair.

15 CHAIRMAN: Mr. Bishop, you are excused.

16 WITNESS: Thank you, Mr. Chairman.

17 CHAIRMAN: Now with respect to the evidence that was just
18 heard from Mr. Bishop, is that going to form part of the
19 argument during the latter -- I guess as we go ahead in
20 the proceedings, in terms of individual IR's?

21 Or does that focus -- I guess it focuses specifically on
22 the two IR's, being the Disco PI IR-40 and the Disco PI
23 IR-41.

24 MR. MORRISON: That is correct, Mr. Chairman.

25 CHAIRMAN: And perhaps maybe we might deal with those two

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issues now, since Mr. Bishop's evidence I guess is fresh in our minds. And then we will go back and establish a procedure for dealing with the remaining IR's.

Now I guess in terms of a general procedure here today we have three motions. And the substance of all of those motions is the same thing, parties requesting information that was not provided to them.

So what the Board is interested in is from the parties seeking information, some rationale as to why the information should be provided and put on the record. And from the Applicant, their position as to why it should not be provided and put on the record. And eventually hopefully we can group some of these questions. It may make the process go a little smoother.

But I think that perhaps since we have had Mr. Bishop give evidence, maybe we can start with the two IR's that were asked by the PI.

So perhaps I will go to you, Mr. Theriault, and ask you to I guess justify why you believe it should be on the record. We already have your request. And we have DISCO's refusal if you will to provide the information.

So in a sense we have got a bit of the rationale.

So I think in terms of process I'm going to ask you to put forward your position and then Mr. Morrison to

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2 respond.

3 MR. THERIAULT: Thank you, Mr. Chairman. With respect to
4 IR's 40 and 41, the Public Intervenor asked a series of
5 questions.

6 And on September 25th, just so I don't forget, Mr.
7 Chairman, on September 25th I circulated to the Board, at
8 the Board's request, and to all the other parties a
9 tabular format of the interrogatories that we were
10 seeking, the information requested, the response from
11 DISCO, the issues, the regulatory issues that I believe is
12 at stake and then ultimately our request to the Board.
13 So I guess what I asked the Board is that they would take
14 that as -- I mean, I can go through -- once we get beyond
15 the IR-40 and 41, I can go through each individual one and
16 read it into the record. But I have asked the Board to
17 take that as a written submission along with the
18 presentation of --

19 CHAIRMAN: Okay. We can perhaps get to that point. I just
20 want to deal with these two sort of in isolation, since
21 they are the only two that we have had any additional
22 evidence filed on by way of affidavit and cross-
23 examination. So perhaps, you know, we will treat those a
24 little differently.

25 But I guess in your submission, with respect to those

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IR's, Mr. Bishop has made an offer to make the information available certainly to everybody in this room. And I think his offer was a little broader than that, provided confidentiality agreements were signed by all. So perhaps you might address that as well.

MR. THERIAULT: Sure. I will deal with that first. The problem with Mr. Bishop's offer is that for me and anyone I choose to assist me, to go into a room and look confidentially at documentation, restricts the use of the information that I can make of it in the public hearing process. Obviously if it is confidential then it can't be used. So I have serious concerns with that.

I guess if Mr. Bishop is making an offer, I could throw out an offer. And that is I have no interest in looking at the terms of the settlement agreement if Disco were to remove from their revenue requirement any costs related to the refurbishment of Point Lepreau. Then I wouldn't need to see it. But I'm sure that is not going to happen.

The concern that I have here today -- and we have to go back to the August 16th hearing before this Board. The evidence and the argument were identical, except for

Mr. Bishop's affidavit.

So we have to look at Mr. Bishop's affidavit and say,

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is there anything in Mr. Bishop's affidavit or in his testimony today that would seriously or reasonably lead one to conclude that disclosure of this information is going to cause havoc, is going to cause this deal to fall apart?

I suggest that a mysterious unsolicited phone call to Mr. Bishop's home is not a valid reason to preclude public disclosure of this information. As through Mr. Bishop's own testimony and through reason, if PDVSA was very concerned with this, what could they have done?

They could have set it out in writing to the Board or to the utility. They could have retained lawyers. I'm sure PDVSA can afford lawyers. They could have retained lawyers here in New Brunswick to represent them and make arguments similar to what the nonutility generators have done. Instead what we have is one phone call made to Mr. Bishop either before or after the last hearing process.

If it was after the last hearing process, I would point out to the Board that information was disclosed to the public as a result of the deferral account, and the sky hasn't fallen in. The agreement is still intact.

I submit that there is no -- again I get back, if they had a legitimate competitive reason, then I would be the

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2 first to say okay, that makes sense. Obviously you don't want
3 to disclose trade secrets and things like that.

4 But there is nothing here from PDVSA. There is not one
5 iota of documentation, aside from this affidavit of Mr.
6 Bishop which refers to the phone call, that shows that
7 PDVSA has any concern here.

8 The only -- I will clarify that. The only documentation
9 that I have been able to see is the fuel supply agreement
10 which contains the confidentiality agreement, which as the
11 Board ruled previously, if required by law then that
12 information can be disclosed.

13 So I just don't see -- as I say, I don't see any reason
14 for the claim for confidentiality. Because
15 Mr. Bishop believes it might happen, that he is believing this
16 based on one phone call, no documentation, I suggest that
17 shows it is no that paramount of an issue to PDVSA.

18 The issue requested in IR-40 that we have asked -- and
19 again I won't repeat the IR -- but the documentation is
20 before the Board through my September 25th correspondence.

21 The regulatory issue is -- for instance, if you look at
22 that documentation, I have asked that the statement of
23 claim be provided.

24 They have refused to provide a statement of claim that has
25 been filed in the state of New York. I mean,

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obviously there should be no reason that this Board cannot see

-- I mean, the relevance of it can be argued at a later point.

But there is no reason why there is a document that is public in the state of New York cannot be public in Canada and in the province of New Brunswick. The same with the copies of any offers or counter offers that were filed with the court.

I'm not asking for stuff that may have exchanged between lawyers on a confidential basis. I'm asking for anything, if it exists, that were filed with the court and made public in the state of New York.

With respect to the issue of the Board's jurisdiction to examine the reasonableness of the settlement, I think what they are arguing is that we are asking the Board to go beyond and determine if the settlement is reasonable.

I'm not, and as I said in the last hearing, going to second-guess a group of very competent lawyers and a client that come to an agreement on the settlement. But what makes these series of questions important is they go back to -- you have to start and look at the refurbishment of Point Lepreau.

The refurbishment of Point Lepreau continued on, even though we maintain -- I haven't seen it -- that there was

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no signed contract. And therefore it calls into question the
prudence of whether the refurbishment should have
continued on. The settlement agreement is the
compensation to recover some of those costs.
So in order for the Board to have a full picture, because
that goes to the revenue requirement, it is necessary to
have those questions answered, in order to determine if
prudent decisions were made in order to lead to a just and
reasonable increase.
And again I stand strongly with respect to IR-41. You
know, as I read the refusal -- you know -- and I outline
here there is six grounds. DISCO wasn't a party to the --
you know -- itemizing -- how itemize the refusal to
respond. In this question it's basically they say we
weren't a party to the proceeding, the settlement benefits
and how they flow have already been determined. The
treatment of the settlement is not an issue before the
Board, the Board does not have the jurisdiction to examine
the treatment of settlement, the information is
confidential and the information requested goes behind the
settlement.
Again, I have explained what I believe to be the rationale
behind the question and the reason it's necessary in order
for the Board ultimately to determine

2 if the revenue requirement is just and reasonable and that
3 portion of the revenue requirement that relates to the
4 Coleson Cove refurbishment and ultimately the settlement
5 agreement.

6 Again, I guess basically there is three questions and I
7 will review -- I will restate them for the Board that I
8 think the Board should analyze, is how does the Board know
9 the true value of the settlement if it cannot identify
10 costs associated with taking the quantities of fuel
11 suggested in the agreement over such a short period of
12 time.

13 Secondly, how can the Board assure itself that all damages
14 associated with the settlement flow directly to DISCO as
15 it is required to do so under the PPAs?

16 One of the questions that I have concern of is I believe
17 under the tolling agreement it says that DISCO is
18 responsible for the legal costs but they receive all
19 damages as a result of any settlement. We want to ensure
20 that has happened.

21 How does -- and thirdly, how does the Board know that the
22 settlement is secure against default by PDVSA?

23 I'm going to call a spade a spade. I haven't been
24 referred to any document in any agreement, be it
25 settlement of fuel supply agreement aside from the

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confidentiality provisions which I maintain the Board has ultimate jurisdiction over, that would legally, reasonably or in any businesslike fashion cause PDVSA to stop or breach this agreement if there is Board disclosure, or disclosure ordered by this Board. There is nothing. There is not an iota of evidence that would lead a reasonable person to conclude, either legally or in a businesslike fashion. I mean I don't know what else to say. I mean, if there were something there -- I wish there was, but there isn't.

That's all the comments I have with respect to those two.

CHAIRMAN: Thank you. Mr. Theriault, I am just going to ask you to address one other issue. One of the comments that I think you made -- maybe I misinterpreted it -- was that it would be of no benefit to you to have disclosure of this information on a confidential basis because I think you said it couldn't be used.

And I would just like you to address the Board's confidentiality policy which does have provisions for an in-camera hearing with respect to confidential matters. And so I'm not sure that I understood the points you were trying to make, but it would seem to me that you were trying to say there was no benefit or no value to you, and

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I just wonder if you would address that.

MR. THERIAULT: Sure. And with that point you have to go back to -- and again I don't want to get into the argument that we raised back in early August -- but you go back to the proposition of what I would submit is regulatory law, is that hearings such as this must be open, and only in exceptional circumstances should they be closed. And in order to go into an in-camera hearing obviously that is closed.

That limits the way myself as Public Intervenor appointed to represent the public interest can convey that information to the public. It goes back to that fundamental critical question which I submit that the Board answered on August 23rd, that unless there is an exceptional circumstance that all hearings -- all aspects to this hearing should be open to the public. Every person -- every member of the public should be allowed. As I referred to before I think in my previous argument, Mr. Chair, when a gentleman tried to close the door you in turn said, no, leave the door open, this is a public hearing. That's why these doors are open. People are allowed in. There are going to be situations, I agree, but they should be exceptional, and what I am saying is that the evidence presented here does not

2 constitute an exceptional circumstance.

3 CHAIRMAN: Thank you. Just one moment there, Mr. Morrison.

4 I guess this particular matter involves the Public
5 Intervenor and the Applicant, but I think given the very
6 nature of it, I am going to canvass the room just to see
7 if anybody else has any comments they want to make, and,
8 Mr. Morrison, I'm going to let you have the last word on
9 it, if you will. So, Mr. Lawson, any comments?

10 MR. LAWSON: No comments, Mr. Chairman.

11 CHAIRMAN: Mr. Baird?

12 MR. BAIRD: I would support the position of the Public
13 Intervenor on this, Mr. Chairman?

14 CHAIRMAN: Mr. Wolfe?

15 MR. WOLFE: No comment.

16 CHAIRMAN: Dr. Sollows?

17 DR. SOLLOWS: No comment, Mr. Chair.

18 CHAIRMAN: Mr. Zed.

19 MR. ZED: We don't have any comment on the submission.

20 CHAIRMAN: Mr. Peacock?

21 MR. PEACOCK: Just that we support the Public Intervenor's
22 position that any document should in fact be made as open
23 and transparent as possible, rather than filed in a
24 confidential matter.

25 CHAIRMAN: Thank you.

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MR. THERIAULT: Mr. Chairman, just as a point of procedure, and maybe you were just referring to that, but where this is a motion and we are dealing with the motion that I brought at least with respect to these two questions --

CHAIRMAN: Yes.

MR. THERIAULT: -- I think you referred to Mr. Morrison having the last word, but I'm sure if there is anything additional I will have the right of rebuttal.

CHAIRMAN: Well we can talk about that. I guess we are going to have to set a process or a procedure that is going to work today. We have several of these IRs. In fact if one looks at it it looks almost overwhelming in terms of the numbers to deal with today. So we have got to come up with a process that works. And I was kind of hoping that what we may be able to settle on is that the parties seeking the information simply puts forward the reason that they are looking for it. If there is something new or different that is brought up, certainly the Board would never deny you the opportunity to have a comment. But if it's a situation where we have all the information and it's just a repeating of the same information, obviously that's not very productive. So we will see what Mr. Morrison has to say, and if you feel

2 that there is something you need to add to it, then I will
3 hear from you at that time.

4 MR. THERIAULT: Thank you.

5 CHAIRMAN: Mr. Morrison.

6 MR. MORRISON: Thank you, Mr. Chair. Really there is a
7 fundamental difference between PI-41 and PI-40, and I will
8 deal with PI-41 first.

9 PI-41 deals with the fuel supply agreement itself
10 essentially. And Mr. Theriault has said that there is no
11 difference between what was argued and what was disclosed,
12 what the Board ordered disclosed in our last hearing
13 during the deferral account hearing, and what is before
14 the Board today. Well that is not correct. In the last
15 hearing the details of the pricing, the Orimulsion
16 pricing, was not an issue in those documents. That's the
17 fundamental difference today.

18 So that leaves us with a document that has a
19 confidentiality provision. It has great sensitivity, as
20 we know from Mr. Bishop's evidence to the counter-party to
21 that fuel supply agreement.

22 The fundamental issue is this. The PI has said that if
23 the fuel supply agreement is provided to the Board in
24 confidence and in accordance with the confidentiality
25 policy that is in place, the Public Intervenor and every

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intervenor has an opportunity to look at that information, test it, probe it, have its experts work at it, turn it inside out, and to be debated as fully as if it were in an open hearing except in an in-camera hearing. That is the purpose of the confidentiality provision.

To say that it's only in exceptional circumstances, my goodness, confidentiality hearings, in-camera hearings, are routine in regulatory proceedings. They had two weeks in the last round in Nova Scotia on something not nearly as sensitive as this.

Now you made some comments about, well why isn't PDVSA here, why aren't they making representations? Quite frankly who knows what PDVSA is up to? I don't. I don't know what happens in Venezuela. I don't know how the Venezuelans deal with issues. Certainly there is a history that would suggest that it's somewhat different from what we expect in Canada. So I can't speak for the Venezuelans.

But from a practical point of view, why take any risk at all with \$375,000,000 to the ratepayers and taxpayers of New Brunswick? Why take any risk at all when you don't have to, when there is nothing that would prevent this information being thoroughly vetted by this Board? All that we are saying is, Board, tell us to put the fuel

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supply agreement on the record in confidence. We don't have a problem with that.

I would like to deal with IR-40 because it does relate to a different issue. When you look at what is requested in IR-40 it's a copy of the statement of claim and the statement of defence, copies of all offers and counter-offers as filed with the court, then asking questions with respect to how the settlement offers were negotiated and so forth.

Yes, it's true that we didn't provide the statement of claim -- the pleadings. We could have, but it didn't seem to make sense to answer just that part of the question and not answer the rest of it. But if he wants a -- if PI wants a copy of the statement of claim and statement of defence, that's not a problem. They are public documents and they are on file in the New York Courts, as I understand it.

But the Public Intervenor is trying to make a connection between the Orimulsion refurbishment project and the settlement. Yes, there is a connection in so far as the settlement offsets some of the costs that are embedded in generation costs as a result of that settlement. But that's as far as the connection goes. The only reason you would look at these documents, in my

2 submission, is if you were going to look at whether the
3 settlement was concluded reasonably. In other words, are
4 you going to second-guess the settlement.

5 Now the Public Intervenor says that's not the purpose of
6 his inquiry, but quite frankly, I haven't been able to
7 discern any other reason for the information. And as we
8 stated in our response certainly the courts, and there is
9 case law to this effect -- the courts are loathe to
10 interfere with settlements concluded between litigants.

11 I do have a case on this here that I can refer you to
12 later.

13 And from a practical point of view even if you did want to
14 say, well shouldn't this settlement have been \$50,000 more
15 or \$20,000 less, how could you ever possibly embark on
16 such an investigation, because of all of the intricate and
17 inter-related issues that come up in the course of a
18 negotiation. In my view, if the Board had jurisdiction to
19 do it, and I don't believe it does, it would be an
20 impossible task, in any event.

21 So I guess ultimately my position with respect to both of
22 these is with respect to the fuel supply agreement, please
23 order us to put it on the record in confidence. It
24 protects the public interest, it protects any risk to the
25 settlement and still allows everybody to have a full and

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2 thorough examination of all of the issues, including the
3 calculations, the fuel pricing, everything is available to
4 those who want to look at it, provided it's not disclosed
5 in a way that would impact the competitors of the PDVSA
6 people.

7 Those are all my comments, Mr. Chairman. Thank you.

8 CHAIRMAN: With respect to IR-40, do I take it that the
9 first question is no longer an issue?

10 MR. MORRISON: It's not an issue as far as I am concerned.

11 CHAIRMAN: That will be provided to the Public Intervenor,
12 the statement of claim and statement of defence?

13 MR. MORRISON: That's correct.

14 CHAIRMAN: Mr. Theriault, is there anything on those remarks
15 of Mr. Morrison that you feel need to be addressed?

16 MR. THERIAULT: Just briefly, Mr. Chairman. Mr. Morrison
17 has stated who knows what PDVSA is up to, and that's the
18 whole point. We don't know what they are up to with
19 respect to whether -- as I understand the argument from
20 the utility it's because of PDVSA they don't want to
21 disclose this. It's not because of the utility, because
22 of PDVSA. They are here arguing on behalf of PDVSA. Mr.
23 Morrison says he doesn't know what they are up to, so
24 there should be no problem. It should be released.
25 As to the use I want to make of the information, I

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2 said it, I don't know how clear -- any clearer I can be. I am
3 not, I will not ever question a settlement agreement
4 reached between a client and their lawyer. As a matter of
5 practice, here or in any proceeding I would never do that.
6 What I want to do is be assured that the settlement
7 agreement and the fuel supply agreement and the costing
8 are appropriate, not whether that the value of
9 \$375,000,000 was the appropriate value to get. I want to
10 make sure it's applied appropriately so that when we look
11 at hopefully the details with respect to the refurbishment
12 and any costs with respect to the refurbishment that go
13 into the revenue requirement, we make sure that they are
14 appropriately set aside.

15 As to the offer made by Mr. Bishop to let's hold this in-
16 camera, again maybe I was not clear to the Chairman, but
17 my understanding of an in-camera hearing is that if we,
18 myself or any of the other intervenors, go in and look at
19 this information, we make argument and representation, but
20 then no reference to that documentation can be made by
21 myself in argument or evidence as part of the open
22 process.

23 And I recall reading the last time that in discussion and
24 closing arguments between Mr. Hyslop and Mr. Morrison, Mr.
25 Morrison chastised Mr. Hyslop several times, oh, you

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are getting close to confidential information. I want to ensure that I'm not hamstrung in the same way.

CHAIRMAN: Thank you.

MR. MORRISON: Mr. Chairman, just a minor point. I said that I had a brief on law with respect to the confidentiality issues, the operation of section 34, reference to the Sierra Club of Canada. It was contained in a previous brief. This one is somewhat smaller. I do want to have it placed officially on the record though.

CHAIRMAN: Well I don't think that we typically would take a brief and give it an exhibit number, but certainly you can distribute it to the Board provided you can distribute copies to the other parties.

One of the things that we talked about -- that I mentioned this morning was that perhaps some of the issues here could be grouped and it may assist us somewhat, and we are I guess right into the middle of the confidentiality issue, and as I understand it -- and I want to go to Mr. Lawson first -- I don't think any of Mr. Lawson's issues here relate to confidentiality. I think they are on relevancy?

MR. LAWSON: That's correct, Mr. Chair.

CHAIRMAN: And, Dr. Sollows, would that be correct of your's as well? I don't think confidentiality was an issue in

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2 yours?

3 DR. SOLLOWS: I don't think so.

4 CHAIRMAN: I don't know that we have a listing of yours as
5 yet, but --

6 DR. SOLLOWS: No.

7 CHAIRMAN: So then the Public Intervenor is the only one
8 dealing with confidentiality. And perhaps if we could
9 agree on which of those confidentiality comes in we may be
10 able to deal with this kind of more as a group, because I
11 am going to assume that that brief that you have, Mr.
12 Morrison, applies to all of the situations in which
13 confidentiality has been raised.

14 MR. MORRISON: There is some -- it generally deals with IR-
15 40 and 41, although the general propositions of law in
16 terms of what the onus is on confidentiality issues is
17 there, but it's not filed for -- quite frankly, we may be
18 able to dispose of -- there are I think probably seven
19 confidential IRs other than 40 and 41 that come from the
20 PI's request. I am hoping that we might be able to
21 dispose of those fairly quickly.

22 And as far as the others -- the CME has three I think --
23 just my thoughts on the process for what they are worth --
24 so we can dispose of the CME IRs. I think the Sollows IRs
25 can be grouped into two or three buckets and

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2 we can dispose of those fairly quickly, and then we can return
3 to the PIs in perhaps -- it may be a little bit more time
4 consuming with the PIs because they are not as capable of
5 -- which is a word I developed yesterday -- bucketization.
6 So --

7 CHAIRMAN: Well hopefully that word won't find its way into
8 our decision. Okay. Well then I guess if we were going
9 to proceed on the basis of trying to put these in
10 groupings, in terms of confidentiality you said that you
11 believe there are seven that involve confidentiality. And
12 have you discussed this with Mr. Theriault?

13 MR. MORRISON: We had a very brief discussion this morning,
14 Mr. Chairman, but we didn't really get into the nitty-
15 gritty of it. We were primarily -- our discussions
16 centred around 40 and 41.

17 CHAIRMAN: Sure.

18 MR. MORRISON: I have seven from my notes that deal with
19 confidential and then there is a bunch that deal with
20 relevance.

21 CHAIRMAN: Could you tell us which seven deal with
22 confidentiality and perhaps the Public Intervenor can
23 verify that that would to his viewpoint be correct?

24 MR. MORRISON: Yes. PI IR-1, and I believe there is a sub-
25 question, IR-1-5. PI IR-4 -- PI IR-4, PI IR-8, PI IR-13,

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2 sub-question 3 and sub-question 4, and PI IR-39. And I

3 believe -- sorry --

4 CHAIRMAN: 39.

5 MR. MORRISON: -- PI IR-5, if I haven't mentioned it

6 already.

7 CHAIRMAN: So they would be -- the IR numbers would be 1 sub

8 5, 4, 5, 8, 13 sub 3, 13 sub 4 and 39.

9 MR. MORRISON: That's what I have from my notes, Mr.

10 Chairman.

11 CHAIRMAN: Mr. Theriault, does that match up with your

12 understanding?

13 MR. THERIAULT: Well I am hesitant to say yes because I

14 obviously am going through the tables. If we could have a

15 few minutes, I could go through my table to ensure that

16 everything is dealt with.

17 CHAIRMAN: Perhaps we will take a short break. And what I

18 would like you to do perhaps is go through your listing.

19 First of all identify the ones which deal with

20 confidentiality. We will deal with those when we come

21 back from the break.

22 We will then move to Mr. Lawson's issues, then to

23 Dr. Sollows and then we will come back to the remaining

24 IR's from you, Mr. Theriault.

25 But in terms of the remaining ones, if we could try to

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categorize them and see if it is possible -- it may be that we have got to go through them one by one. But if it is possible to group them, that might be helpful.

MR. THERIAULT: I will try.

CHAIRMAN: Thank you. So we will take a short adjournment.

(Recess - 10:55 a.m. - 11:22 a.m.)

CHAIRMAN: Okay. I guess when we broke it was for the purpose of attempting to group some of the IR's. So perhaps I will ask the Public Intervenor if you got all of the confidentiality ones grouped?

MR. THERIAULT: The only one I could find that Mr. Morrison didn't mention was IR-13(5). And Mr. Chairman, I did take the opportunity as well to come up with a grouping with respect to the IR's. I know you wanted to deal with the confidentiality ones first. And that would be one group. The other ones would be, I would argue, on the refusals based on relevance. The third one would be based -- I would group it as generation cost. And the fourth one would be nonresponsive answers.

CHAIRMAN: Okay. And have you discussed with Mr. Morrison those particular groupings?

MR. THERIAULT: No, not offhand, no.

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CHAIRMAN: Okay.

MR. THERIAULT: But I think it is general enough to cover all the IR's I can fit in my presentation all the IR's under.

MR. MORRISON: Perhaps, Mr. Chairman, we struggled with this and I know others have as well in trying to categorize them.

Perhaps after Mr. Theriault sets out his sort of categories, we might have a few minutes so that we make sure that we line up in our categories and see if there is -- you know, that all the buckets are the same, for want of a better word.

CHAIRMAN: It seems to me that the confidentiality one though probably is one we could proceed with this morning. And that is to make use of this time.

And then perhaps through the noontime break you could talk about the other categories. So if we were to add 13(5) to the confidentiality list.

So Mr. Theriault, I will ask you to proceed with respect to those items dealing with confidentiality.

MR. THERIAULT: Thank you, Mr. Chairman. What I would propose to do, Mr. Chairman, is to run through briefly each of the specific IR's and then conclude with some general comments with respect to confidentiality in

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general.

As I had submitted or stated earlier I think this morning, on September 25th at the Board's request I had provided to the Board as well as to the other parties to this hearing in tabular format a listing of the IR's that have been refused to be answered. And that is what I intend to proceed off, if that Board has that and wishes to follow along.

The first IR is IR-1(5). And basically what we are requesting there is a list of the subcommittees, the shareholders or officers of the NB Power group of companies. And secondly, the purpose of each company -- or subcommittee -- and the minutes of any meeting.

And in the response DISCO, you said is information that is confidential and is protected under the Protection of Personal Information Act which prohibits the release of that information. And I will have more to say on that particular Act here in a little bit.

As I note, I submit that this is a spurious claim to confidentiality. The public interest is served by knowing the interrelationships that exist between these committees. It obviously goes to how the utility operates in a general fashion.

And we would request that the names of the individuals

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that are currently members of the subcommittees should be provided as is requested. I mean, something as simple -- and I'm not saying it happens -- but I mean, when they provide the subcommittee reports and blank out the names -- I know there are certain representatives of Genco. I know there are certain representatives of DISCO. but there is also a cross within this organization. There is a cross of employees. I don't know if one is there wearing two hats. I don't know unless you see those names.

With respect to IR number 4, the fuel cost is what we were seeking, fuel purchase costs for all fuels except coal together with a copy of the fuel contract and the name of the counter party and the price paid.

Again the fuel contract -- and the response was that basically the fuel contract, the name of the counter party and the price paid are commercially sensitive and subject to the confidentiality provisions. Therefore DISCO claims confidentiality.

Again with respect to this particular IR, Genco buys 100 percent of its fuel purchases on forward contracts. There is no reason to believe that this fuel purchase strategy is in the best interests of DISCO's ratepayers. Without this information there is no way to identify what

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additional costs if any that exist because of this strategy.

With respect to IR number 8, we requested the salary and bonus information for each management position above that of supervisor for each entity in the NB Power group of companies. Again we see the POPIA is mentioned, the Protection of Personal Information Act. And that is the reason for not answering it.

And my response to that as set out is that the salaries and bonuses ultimately end up in the revenue requirement of DISCO. I don't think there can be any dispute of that.

DISCO's ratepayers are entitled to know what are the costs associated with senior management salaries and bonuses. Some of this information is already public although not in a current fashion. I think in the office of the Comptroller, the public accounts up to 2006 I think is available.

And as a point here I had noted that it is also worthwhile I think to note that the current government saw fit to cancel the bonuses when they took office.

Again, we are asking for this information and in a level of detail that we have requested. This information is information that will ultimately be disclosed. There

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2 is no reason that this Board should have to wait until the
3 Comptroller's office gets around to publishing if it is
4 available. It is going to be there. And again I will
5 address the concerns of POPIA here in a few minutes.
6 The next one I believe would be IR-13(3). And again we
7 have asked that DISCO provide a list of the data reviewed
8 by New Energy and a copy of all the data reviewed.
9 And their response was that the information requested
10 includes proprietary files of New Energy Associates, all
11 of Genco's facility data, fuel prices, generating unit
12 characteristic data, details of export sales, information
13 with respect to contracts with counter parties which
14 contain confidential provisions and data that relates to
15 more than just the test year.
16 The information requested is confidential and extremely
17 commercially sensitive and in some cases proprietary in
18 nature.
19 The very purpose of the New Energy technical audit was to
20 verify the accuracy of the information requested in a way
21 that would prevent its disclosure and yet provide
22 assurance to all parties as to its accuracy. All of this
23 information is summarized in the PROMOD information on
24 record. Now that is Disco's response.

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2 I submit that the issue at hand is that the claim that
3 input data originating from Genco and/or DISCO is somehow
4 proprietary to New Energy is ridiculous.

5 Further, the New Energy audit does not appear to review
6 the reasonableness of either the data inputs into the
7 model or the assumptions with respect to parameter values
8 included in the model.

9 It appears to be an audit used to confirm that the figures
10 the Applicant said were entered into the model were indeed
11 entered into the model. Well, that is nice. They
12 verified that.

13 We requested this information and the level of the detail
14 be disclosed. Again this is necessary information in
15 order to be able to test the evidence that has been
16 submitted by the Applicant.

17 With respect to IR-13(4), again please provide the PROMOD
18 input and output files for the vesting energy price case,
19 the budget case and the adjusted fuel procurement case.

20 And they referred us back to the previous one. So I'm not
21 going to read that. But that was their response.

22 Again, I submit there is nothing more than a questionable
23 claim that the requested information is proprietary to New
24 Energy. This is the same as claiming that input data to
25 the model and output from the model

2 used to set PPA prices are somehow not the property of the
3 party that supplied the information or will end up using
4 it.

5 It is interesting though. And I want to point this out
6 particularly. In the information that DISCO has filed it
7 is interesting that the Operating Committee minutes from
8 November 18th 2004 note that the PUB, and this is a quote,
9 that "The PUB will probably ask for an audible version of
10 the PROMOD run."

11 So it is clear that this committee knew at that point that
12 they would have to turn this data over. So the point
13 being it was relevant. The Operating Committee considered
14 it to be relevant for a public body to look at then. But
15 I guess today it is not.

16 With respect to IR-13(5), on page 1 New Energy states that
17 the heat rates and forced outage rates are fixed by the
18 PPA's. Please provide a citation to the PPA's where the
19 specific heat rates and forced outage rates for each unit
20 are provided.

21 Did New Energy identify any differences between the
22 performance of the units and the values prescribed by the
23 PPA's?

24 DISCO's response is in section 6.2.5 of the Genco PPA,
25 reference is made to the guaranteed heat rates and preset

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forced outage rates. The rates were not disclosed in the agreement as a result of their confidential nature.

Again our response is that the heat rates would only be confidential if the release of the information would affect the ability of Genco to compete in an open marketplace.

We know, Mr. Chairman, I think, no one kids themselves that Genco will not have to compete in New Brunswick for a number of years or decades.

Further we submit that an engineer with the type of generation and age of the plant would be able to estimate the heat rates with a reasonable degree of accuracy. So any claim for confidentiality for heat rates or forced outage rates is without merit.

In Volume 1 of 1 of DISCO's response of September 18th 2007 to the interrogatories on exhibit A-13 and A-14 and to the additional August 20th evidence, in the response to questions from JDI -- it would be IR number 11, Mr. Chairman -- it is interesting to note that DISCO appears to be tooting their own horn, when they say at the bottom of that page on page 8, they say "Some examples of the accomplishments during the last year including having Belledune generating station ranked by the electric utility cost group as the number 1 plant in North America

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for the second year in a row, based on five-year runs, after having the thermal fleet ranked number 1 for efficiency in Canada by StatsCan, having reliability ratings that were the best levels in 14 years. And finally Point Lepreau operated last year for 288 days, the best since 1999."

Well, to get these ratings they have to submit the very information that we are asking for to external bodies to give them those ratings. So it is fine to go to the external bodies. But by God, let's not produce it for a hearing on revenue requirement.

With respect to, I think it is the last one, is IR-13(5) - - oh, sorry, 39. Now in this information,

Mr. Chairman, we requested that for each of the PPA Operating Committees and the for Financial Risk Oversight Committee, the Financial Risk Operating Committee, the Unit Outage Review Committee, the Greenhouse Gas Committee and the Market Advisory Committee, please provide the following information.

And we asked for a listing of information. One, the names of all members to each committee, the affiliate company to which each member belongs, the Chair of the committee, signed copies of the minutes of meetings of the committee since April of 2005.

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2 And then secondly we asked that with respect to the
3 capacity payment adjustments, how many adjustments to
4 capacity payments have actually been made since the
5 reorganization, and to provide copies and recommendations
6 -- provide copies of recommendations by senior management
7 from the PPA Operating Committee with respect to these
8 adjustments, and to provide an indication of senior
9 management's response to this.

10 Now DISCO again claims confidentiality for the provisions
11 of the signed copies of the minutes. The claim for
12 confidentiality is evidence by a letter from
13 Mr. Bishop asserting that the said minutes contain
14 commercially sensitive information such as Genco
15 facilities data, fuel prices and generating
16 characteristics.

17 Well, Mr. Chairman, as I noted or as I will note, if you
18 refer back to commentary PI IR-13 in this submission that
19 you have, again an engineer with sufficient experience and
20 information on the type of generation and the age of the
21 boilers would be able to estimate the heat rates and the
22 other generating characteristic data with a high degree of
23 accuracy.

24 Fuel prices are a major cost component. And this
25 information must be available in nonredacted form.

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Genco's fossil fuel purchases are not large enough to influence prices despite what they might think. Nor are the details about past purchase prices of any value in negotiating future prices. Genco is dealing with an open market as a price taker, not a price maker. Fuel cost data is not and should not be confidential in this proceeding.

Now basically, Mr. Chairman, with respect to the claims for confidentiality, I submit that there is two classes of claims for confidentiality that permeate the responses from DISCO.

The first category of claims for confidentiality by DISCO to my IR's are in large part based on the Protection of Personal Information Act or what is more commonly known as POPIA.

This Act I submit is aimed at what sort of information a public body, as defined by the Act, can collect and in the normal course disclose.

This Act states that every public body is subject to a statutory code of practice which shall be interpreted in accordance with schedule B.

Principle 5 of the statutory code of practice states that personal information shall not be used or disclosed for purposes other than those for which it is collected

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except with the consent of the individual or as required or expressly authorized by law.

Schedule B of the Act states that consent is not required when a public body discloses personal information. And then they list. And (b), the listing for (b) is for purposes of an investigation related to the enforcement of an Act, an enactment. Their listing for (e) is for the purposes of legitimate research, of learning or of public policy. (f) as required or expressly authorized by law.

Or (g) for some other substantial reason in the public interest whether or not it is similar in nature to paragraphs (a) to (f).

Furthermore, this schedule states that a public body may disclose personal information in furtherance of public interest and open government.

Since Holdco is the holding company with four affiliated companies below it, since shares in Holdco and Electric Finance Company are held by the Province, since all data appears to be held by Electric Finance Company, since all decisions, according to Sharon MacFarlane's testimony at the hearings that have already been heard, I believe in August, of all boards of NB Power group of companies affect each other, all questions asked related to the structure, salaries and bonuses of NB Power group

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of companies and Electric Finance Company, including the committees, are relevant to these hearings in that they go to the revenue requirement or to understanding how the NB Power group of companies and Electric Finance Company operate in relation to one another in this new environment, such questions clearly fit into the exemptions as stated in schedule B to the Protection of Personal Information Act.

In addition I submit that DISCO's responses to questions on salaries is to say it can't be disclosed due to POPIA.

I would suggest that this is an attempt to mislead, as all the information is available through the office of the Comptroller for the Province of New Brunswick. Why wouldn't they put that as a response to say, we can't disclose it?

The second category of claims for confidentiality relates to the assertion of commercial sensitivity. DISCO, using letters from Darrell Bishop, claims confidentiality over data such as heat rates for various generating units and for fuel costs of various fuel types or for various fuel types.

With respect to the matter of heat rates, again I point out what DISCO had filed in their own evidence with respect to the responses to JDI. But with respect to the

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matter of heat rates, any competent engineer with information on the type of fuel burned and the type, size and age of the boilers would be able to calculate the heat rates with a high degree of accuracy. All of this is public information. The heat rates should be as well.

Fuel costs are another interesting issue. The implication left by DISCO is that if the information on fossil fuel costs were ever released in a public forum, Genco would be at a competitive disadvantage. This argument gives Genco too much importance. Genco is a bit player in the world market for fossil fuels. It is a price taker, not a price maker.

Further there is the assumption -- or there is assumption that the competition for generation in New Brunswick is just over the horizon. The reality is that it is decades away. And if the predilection to rewrite the PPA's continues as before, there will never be any competition for generation in New Brunswick.

Therefore I submit that neither the heat rates nor the fossil fuel costs are confidential. They should be available as public information before all parties as part of the public hearing process before a public utility tribunal.

Mr. Chairman, again it goes back to what I think --

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2 and I don't want to -- I'm sure the Board is getting sick of
3 hearing from me. But it goes back to -- I think we have
4 to determine what is the starting point in a regulatory
5 process in a hearing such as this.

6 And I submit despite -- I know Mr. Morrison and I have
7 this fundamental disagreement. But I submit that the
8 starting point has to be all information has to be
9 disclosed unless there is exceptional circumstances.
10 Again I have tried to outline in the submission that the
11 Board has from September 25th and in my comments today
12 that those exceptional circumstances don't exist.

13 Thank you.

14 CHAIRMAN: Thank you, Mr. Theriault. Are there any
15 questions from the Board on that submission?

16 Before I go to you, Mr. Morrison, I am going to canvass
17 the room. And I guess I don't want to repeatedly do that.

18 The last time I did that I think most people said they
19 either agreed with the Public Intervenor or they had no
20 comment.

21 So Mr. Lawson, I will start with you?

22 MR. LAWSON: No comment, Mr. Chairman.

23 CHAIRMAN: And do you wish to comment on any of the other
24 matters involving the Public Intervenor? Or can I, I
25 guess, skip canvassing you as we go on today?

2 MR. LAWSON: I think you can skip canvassing me unless I put
3 my hand up. How is that?

4 CHAIRMAN: That sounds good. Mr. Baird?

5 MR. BAIRD: Mr. Chairman, we would have one comment only,
6 that the data as alluded to by the PI is clearly available
7 through the Electric Utility Task Group, FERC filings,
8 various databases of the Canadian Electrical Association,
9 et cetera.

10 So I think that we have to support his position on that.

11 I'm again, like Mr. Lawson, if I don't put my hand up you
12 can consider I have nothing more to say.

13 CHAIRMAN: Thank you. Mr. Wolfe?

14 MR. WOLFE: Mr. Chairman, we would support the PI as well on
15 their arguments. But we have no further comment after
16 that.

17 CHAIRMAN: Okay. Thank you. Dr. Sollows?

18 DR. SOLLOWS: Yes, Mr. Chairman. I certainly support the
19 broad as possible disclosure for NB Power's affairs. I
20 guess I'm on record as to what I think it should be. So I
21 will leave it at that.

22 CHAIRMAN: Thank you. Mr. Zed?

23 MR. ZED: We don't have comment. And as Mr. Lawson and
24 others have noted, if we need to we will make that known.

25 CHAIRMAN: Okay. Thank you. And Mr. Peacock? Mr. Peacock

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is not here.

Okay. Then I will move to you, Mr. Morrison.

MR. MORRISON: Thank you, Mr. Chair. I guess I will deal with them in order. Dealing with the first one which is Disco PI IR-5.

I guess to begin with I was -- the PI's comments with respect to this particular IR, the comments that it's a spurious claim of confidentiality and an attempt to mislead, I will say that I was disappointed to see and read those comments and to hear them as well today. But I will have more to say on that later.

Essentially what the PI asked for was a list of subcommittees, shareholders, et cetera, and what we provided was the information that was requested with the specific names of individuals who attended the meetings redacted. This was based on DISCO's management's belief of what their obligations were with respect under the privacy legislation. Their internal governance prevents them from doing that. In fact in the last hearing, the last rate case, all names of all individuals were redacted from all documents filed, and no one took any exception to it, the Board nor the intervenors.

Quite frankly I have no reason to disagree with the Public Intervenor's interpretation of POPIA. If the Board

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is to rule it is in the public interest that this information be released, DISCO would request that the information be limited to the position of the party redacted as opposed to including the name of the individual who was at the meeting.

Quite frankly, who actually attended the meeting is really not very relevant. But we are in your hands with respect to how you want us to deal with that particular item.

With respect to PI IR-4, in that interrogatory the PI requested for all types of fuels except coal for the period 1993 to 2007, provide the following information, and that was fuel purchases, (inaudible) price paid. And we did provide a letter of Mr. Bishop and in that letter he clearly explains that the information that was redacted is commercially sensitive and subject to confidentiality provisions. Each of those -- for example the heavy fuel oil contracts contain confidentiality clauses. DISCO objects to that disclosure and it continues that objection.

Now the PI says, well Genco buys 100 percent of its fuel purchases on (inaudible) contracts. There is no reason to believe that this fuel strategy is in the best interests of DISCO's ratepayers and without this

2 information there is no way to identify what additional costs,
3 if any, exist because of this strategy.

4 Again we will repeat our position. The information
5 requested is commercially sensitive and is subject to
6 confidentiality provisions. The public disclosure of the
7 requested information, such as specific Genco facility's
8 data, fuel prices and generating characteristics would
9 allow competitors and/or counter parties to obtain a
10 competitive advantage that would negatively impact DISCO
11 and ultimately its customers. And this is the thing that
12 runs through several of these.

13 And the PI has said that Genco is a price taker and not a
14 price maker. I don't know what evidence he relies on for
15 that, but in any event it's correct, there is no market
16 for generation in New Brunswick. But that's not the only
17 market in which Genco participates. The only time, I am
18 advised, that Genco was a price taker is when it is doing
19 hourly or day ahead sales in the New England market only.

20 Of all its neighbours, only New England has an open
21 market. However, Genco also deals in markets in the
22 Maritimes, Prince Edward Island and Quebec.

23 Competitors knowing marginal costs of Genco could, and
24 probably would, affect not only Genco's ability to buy but
25 to sell in those markets, regardless whether the price --

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there might be a market price out there. If Hydro Quebec, for example, knows what Genco's marginal cost of production is on any given day or any given hour, and Genco is negotiating for the purchase of that energy, do you think Hydro Quebec is going to price it at market? No. It's going to price it about ten cents or five cents below Genco's marginal cost of production. So the fact that they know this information does put Genco at a competitive disadvantage.

In the last hearing -- and I don't want -- I know you are not bound by precedent, but in the last hearing all this information was provided in confidence. Parties can look at it, the same argument I made with respect to PI-40 and 41. Put it on the record in confidence, the parties can look at it, their experts can look at it, no harm, no foul, and yet the competitive interests of Genco are protected and the public interest is protected.

Essentially if you look at PI IR-5, again this is coal purchases, I'm not going to repeat what I just said, but essentially the same argument applies to this information as applied to the information requested in the previous IR response.

PI IR-8, this is salary information for each management position above that of supervisor for each of

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the NB Power entities. For the reasons I submitted earlier, it's NB Power's and certainly Genco's internal governance policy that this information is protected by privacy legislation.

Now the PI has said that these salaries and bonuses - in fact, there are no bonuses, but these salaries end up in DISCO's revenue requirement and ratepayers are entitled to know this. And that some of the information already exists on the public record, he is probably referring to the Blue Book.

The Blue Book information is not current, by the way. It's out of date. So to say that it's already in the public record and therefore you can't claim confidentiality on it would not be supportable.

If the Board were to rule that it is in the public interest that this information be released, DISCO would request that the information be limited to the salary for each position requested as opposed to including the actual name of the individual in the position.

In addition aggregated salary information has been provided for DISCO, Genco and Nuclearco. Aggregated salary information is already in the evidence. There are no bonuses associated with senior management salaries in DISCO's revenue requirement for the test year.

2 And one must understand that these salaries, because of
3 the way the PPAs are structured -- these salaries from
4 Genco, for example, don't flow through to DISCO on a one
5 to one cost per cost basis.

6 The PPA prices charged to DISCO, specifically the capacity
7 payment and the contribution to the fixed costs in the
8 case of the Genco vesting agreement, and the energy charge
9 under the Nuclearco PPA, they are fixed and prescribed in
10 the PPAs, and were constructed based on long-term
11 estimates of the generating company's operating capital
12 costs net of miscellaneous revenue. The costs charged to
13 DISCO through the PPAs do not have a one to one
14 relationship with the generator's costs in any specific
15 year. So the salary -- the individual salary costs for
16 Genco don't show up in DISCO's revenue requirement.

17 Now I do want to address the issue of information with
18 respect to Transco and Holdco. And I was going to address
19 this issue later, and when Mr. Theriault suggested we
20 should all start from a starting point I agreed with that,
21 because I think we have to have a clear sense of what the
22 parameters are in answering interrogatories and what
23 information has to be provided.

24 First, I would like to state for the record that DISCO has
25 acted very diligently and in good faith in responding

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to the IRs submitted. It has attempted to be responsive to the questions. It has looked at the legislation and the Board's decision of July 16th for guidance. There were no spurious attempts or attempts to mislead.

DISCO has done -- and believe me because I have been involved in the discussions -- its level best to reconcile the legislation, the Boards guidance of July 16th, to what is relevant, what is probative in this hearing.

When I say that DISCO has relied on the decision of the Board of July 16th as its guide, there were three key elements of that decision which will come up time and again I'm sure as we go through this process today, and hopefully not tomorrow.

And the key elements of that decision are as follows. The Board does not regulate Genco or Nuclearco. The Board stated that at page 3. The Board does not consider it appropriate to conduct a review of the efficiency of Genco's -- which includes Nuclearco -- Genco's operations.

That's at page 15 of your decision.

The Board orders DISCO to file detailed evidence on the underlying generation costs that it identified in its motion. That's at page 15. And DISCO's motion was -- DISCO's motion was basically it was appropriate to consider generation costs underlying the revenue

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requirement for the test year of 2007/2008. So DISCO's motion dealt with the test year.

With this guidance in looking at that decision, DISCO first of all answered all questions which sought information on Genco and Nuclearco's generation costs in the test year. DISCO answered all questions pertaining to DISCO including historical information, all questions pertaining to DISCO.

It did not answer any questions which asked for Genco information for periods prior to or subsequent to the test year. It did not answer questions with respect to Holdco or Transco, as they were not included within the Board's order regarding provision of Genco information. And it did not answer questions which tested the efficiency of Genco's operations.

In responding to the IRs, DISCO has taken great care to adhere to these guidelines, which I submit comport with the Board's order of July 16th. And I raise that issue now because with respect to PI IR-8, if the Board orders that this information be provided, that you are exempt from the provisions of POPIA or if POPIA is overruled, we would still take the position that the information would not be provided with respect to Transco or Holdco, unless this Board gives us more clear direction and guidance.

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2 I would like to move on to PI IR-13-3, and we are getting
3 into the PROMOD issue. The PI has requested a list of
4 data reviewed by New Energy and a copy of all the data
5 reviewed.

6 DISCO has no problem with putting the PROMOD information
7 on the record in confidence. That's how it was dealt with
8 the last time. The PI's expert can look at it, probe it,
9 do whatever he or she wishes to do with it. But as I
10 mentioned earlier, Mr. Bishop's letter makes it quite
11 clear that that information is commercially sensitive.

12 And again I talk about it's not only the market for
13 generation in New Brunswick, there are other markets that
14 have to be considered, and Genco operates and participates
15 in those markets. So we are prepared -- fully prepared to
16 put the PROMOD information on the record in confidence,
17 and those who wish to sign the Board's standard
18 confidentiality agreement can review it.

19 There is one aspect -- and I know the PI referred to this
20 as a spurious claim -- which dealt with the proprietary
21 interests of New Energy. I believe he called it the
22 height of absurdity that we would say that there was a
23 proprietary interest in New Energy.

24 New Energy holds an intellectual property in the
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PROMOD program. DISCO -- or Genco I guess -- Genco has access and uses that PROMOD model under a licensing agreement. The data that is in the PROMOD runs inputs and outputs is Genco's, no question about that. But if you look at those underlying files you can determine -- because the way the data is produced, one can determine the PROMOD intellectual property, their property rights. All we are saying -- and it's not an absurd argument -- is that put the data in confidence. We have already contacted New Energy. DISCO and Genco can't waive their intellectual property rights. We have already contacted New Energy. They are prepared to license anybody who signs a confidentiality agreement to look at those documents. So we are not trying to be cute here. There is confidential data and there is an intellectual property issue. It's not the intellectual property of Genco or DISCO. It belongs to New Energy. And they are prepared to license the PI's expert or anybody else to look at those documents provided by signing a confidentiality agreement. PI IR-13-4, the argument is identical to the one I just made, Mr. Chair, Board members. The only difference is that this is the underlying -- I believe it's the underlying input and output files for the vesting energy

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price. Again prepared to put it in confidence with the Board.

New Energy is prepared to license whoever wants to sign a confidentiality agreement, take a look at it.

There is one comment I would like to make on that though.

I'm sorry. I'm looking at another question. I believe the last one is -- sorry -- the heat rate. It's one that I did not have in my original bucket.

Again the PI has asked for -- well he says he asked for heat rates, but actually the question in 13-5 was New Energy states that the heat rates and forced average rates are fixed by the PPAs. Please provide a citation to the PPAs where the specific heat rates and forced average rates for each unit are provided. Did New Energy identify any differences between the performance for the units and the values prescribed by the PPAs.

Now DISCO in our assessment has provided the information requested in the interrogatory. The interrogatory did not ask for the heat rates. It asked for a reference to where the heat rates were in the PPA and we responded to that.

In any event, and not to split hairs, if the PI had asked for heat rates, DISCO would have claimed confidentiality, and if that is what the PI is asking for today, then we will assert a claim of confidentiality.

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2 Heat rate information is very sensitive. Again, it goes
3 back to the letter from Mr. Bishop, and again the argument
4 that we compete in market places other than New Brunswick,
5 I will reiterate that. And in the last hearing heat rates
6 was subject to confidentiality and accepted as such by the
7 former Public Utilities Board.

8 Mr. Theriault did say that any engineer -- qualified
9 engineer could take the information and approximate the
10 heat rates. That's not my understanding. It would be an
11 approximation at best and an approximation is not very
12 worthwhile to a competitor when they are looking at
13 identifying marginal costs within pennies. So we do take
14 exception to that comment.

15 There was also a comment that all of this information was
16 put out to some third party and dealt with -- StatsCan and
17 perhaps FERC and perhaps even the Canadian Electrical
18 Association, I'm not sure. That may be true but it was
19 put on subject to confidentiality, and I believe it was
20 reported in a way that one could not identify marginal
21 costs. It was aggregated information and it was not
22 information that was disclosed in a manner that would
23 affect Genco's competitive position. In fact I believe
24 CEA specifically prohibits that, but I'm no expert on
25 that.

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2 Finally, Mr. Chairman, we are dealing with DISCO and PI
3 IR-39, and that was copies of minutes that contain
4 commercially sensitive information including fuel prices,
5 delivery times, et cetera, over which DISCO objects.
6 Again we say the fuel prices are a major cost component --
7 sorry -- the PI says it's a major cost component and this
8 information must be disclosed. I think he made the
9 statement that Genco is a small fish, or something to that
10 effect, in the energy markets, but in any event, that is
11 immaterial.

12 The information that we redacted from the response to that
13 IR, other than the names -- and we did redact names, but
14 we can deal with that separately -- is extremely
15 commercially sensitive. It includes specific Genco
16 facilities data, fuel prices and generating
17 characteristics, the disclosure of which would allow
18 competitors and/or counter parties to obtain a competitive
19 advantage that would negatively impact DISCO and
20 ultimately its customers.

21 Again, I refer to the argument we had earlier. The only
22 time that Genco is a price taker is when it is doing
23 hourly or day ahead sales in the New England market. In
24 all of its other market dealings that is not the case.
25 Through keeping this information confidential, as I

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mentioned earlier, Genco has the ability to maximize its margins and through this DISCO's costs are reduced. The disclosure of this information would in effect disclose Genco's whole business strategy to the detriment of DISCO and ultimately its customers.

DISCO is prepared to provide the requested information in confidence to those parties who signed a non-disclosure use restriction agreement. Obviously we would not allow our competitors to view the information and would propose -- and I believe the Board has latitude in this regard -- would propose we set up an information room for the parties or their experts who sign the agreement to view the information.

I think I believe as was done in Nova Scotia there were restrictions placed on whether certain parties who were direct competitors of one of the companies would not be provided access in any event, but other than that restriction we would be prepared to provide that information in confidence.

And again for any of the New Energy proprietary information they have indicated that they are prepared to license the intellectual property rights to that party upon signing the appropriate agreement.

I believe those are all my comments, Mr. Chair, and

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Members of the Board.

CHAIRMAN: Thank you, Mr. Morrison. Any questions from the Panel with respect to Mr. Morrison's comments?

MR. BARNETT: Yes, one just for clarification, Mr. Morrison.

I think when you refer to IR-8 -- DISCO PI IR-8, I think it was 8-5, I just want to -- for clarity, when you are saying that even if the Board ruled that information could be provided on a confidential basis it would still not provide it for Transco and -- was it Holdco, I'm not sure?

MR. MORRISON: That's correct, Mr. Barnett. And for the reasons I outlined. That's why I went into discussing those reasons. Quite frankly, as I mentioned earlier, we grappled with dealing and responding to issues, trying to be responsive, trying to respect the Board's decision, trying to respect the legislation that says only DISCO is regulated, trying not to answer questions that are clearly irrelevant to the process if it wasn't necessary. You also to have to appreciate there is a lot of manpower goes into answering these questions, and if it's all for naught it's a tremendous cost. So we take the view, given the Board's direction in it's July 16th decision, that what the Board was looking for was Genco's costs for the test year, not Transco's cost, not Holdco's cost, not historical cost for Genco because they only have

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a bearing if you are testing the efficiency of the operations and it doesn't relate to the test year which is what the motion was all about. And I don't think we were being -- trying to be clever in our interpretation.

It was an honest attempt to interpret the Board's direction as we saw it from that decision. And as we read that decision and as we grapple with entering IRs and trying to -- and it's difficult at times -- to draw a line in the sand, if you will, as to what is included in the Board's order and what is excluded in the Board's order, and we have tried to err on the side of generosity.

But when we read that decision we come to the conclusion, and the only conclusion that I can come to and obviously I was consulted on this, was that it does not relate to Transco and Holdco, it relates to Genco for the test year.

It does not relate to historical perspective information with respect to Genco which includes Nuclearco, but everything with respect to DISCO is fair game. And if we are wrong in that I'm sure you will tell us.

MR. BARNETT: Just if I may a follow-up. Are there not costs of Holdco that flow through to DISCO?

MR. MORRISON: There are through the SLAs, but they are very small costs and those have been dealt with I think fairly

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extensively in our evidence. And certainly not direct salaries. Direct salaries do not flow. As I said, those are included in the capacity payment which is set. So whether Holdco or Transco overpays or underpays their staff has no impact on DISCO whatsoever -- sorry -- Genco and Nuclearco overpay or underpay their staff has no impact on DISCO whatsoever.

MR. BARNETT: Thank you.

CHAIRMAN: Anything further from the Board. Mr. Johnston?

MR. JOHNSTON: This is directed to Mr. Theriault and Mr.

Morrison both. This morning there was quite a bit of discussion on IR-40 and 41 relating to confidentiality issues. My reading of those questions makes me think that there are other issues as well, broadly speaking, the generation cost issues and so forth. And I'm wondering particularly with respect to IR-40 whether it's your intention to address those points later on in another bucket, to use Mr. Morrison's phrase, or I guess I just want to make sure that everything that ties into those IRs is going to be canvassed at some stage.

MR. MORRISON: Well from my point of view, Mr. Johnston, I hope I made all the arguments that I intended to make with respect to IR-40 because it is somewhat different from IR-41. IR-41 is straight confidentiality fuel supply

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2 agreement. IR-40 really does go to the issue of how far can
3 the Board go. And I believe my arguments on that point.
4 There are elements of confidentiality there.
5 And we will be getting into other IRs later today where
6 the issues that I have highlighted, and I'm sure my friend
7 takes a different interpretation from your decision, and
8 that's fair. But I think we need clarity if we are going
9 to move ahead in a productive fashion. And try to have
10 some harmony with the legislative scheme.

11 I know some people would like -- well just answer all the
12 questions, DISCO, you just answer everything and
13 everything would be fine. It's not a question of the
14 information. It's a question of we really can't thumb our
15 nose at the law of the land which says you are regulated,
16 you are not. You know, we can't make that decision for
17 Genco.

18 You can make that decision or the government can make that
19 decision, but we can't make that decision. So to say that
20 it has put us in a bit of a difficult position, yes, it
21 has, because we have -- and we have been criticized in the
22 media for not being forthcoming and so forth. But we
23 received in excess -- well approximately 1,100 individual
24 questions which had to be answered in a very short period
25 of time.

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And when you look at it -- and I'm not saying 55 IRs is nothing, but in the scheme of things when you have 1,100 questions and you don't even have 55 IRs, and I believe in the press Mr. Theriault said it was 87, but in any event, you are looking at a very small percentage of the questions that were asked that were not responded to. And those that we didn't respond to we looked to the guidance of the Board in doing that. So, Mr. Barnett and Mr. Johnston, those are the only comments I can make on that issue.

MR. JOHNSTON: I guess the issue will be more fully canvassed perhaps this afternoon when -- Mr. Theriault, you would agree with that, I guess, this whole topic will probably be canvassed in greater detail this afternoon, or whenever your next turn comes?

MR. THERIAULT: I'm going to say yes, but to be perfectly honest, due to the length of the answer I forgot your question.

MR. JOHNSTON: Well I was just inviting you and Mr. Morrison to ensure that you address more than simply the confidentiality issue as it relates to some of the matters that we have discussed so far today, and in particular IR-40 jumped out at me. I will leave it at that. Thank you very much.

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MR. THERIAULT: I intend to -- I think you will be fully sick of hearing from me by the end of the day.

CHAIRMAN: Any questions? Mr. Theriault, any comments you wish to make?

MR. THERIAULT: Just a couple just on some comments made by my friend. If Genco is the price-maker, then really they should not care about releasing the price of the fuel under the PDVSA agreement would be only one comment I would make.

But another one that I would make is Mr. Morrison made many references to the evidence that was presented last time and how it was dealt with the last time. But I think one crucial point here, Mr. Chairman and Board members, that has to be considered very seriously from the last time, is section 156 of the Electricity Act, and that obviously restricted the use and type of evidence that could be put forward last time. So I don't think any reference to what or how it was done the last time is appropriate in this hearing. That's all.

CHAIRMAN: Thank you. I think that we will break for lunch now. It's 20 after 12. We will reconvene at 1:30, at which time I think that we will go to Mr. Lawson's questions, a sigh of relief back there, and then Dr. Sollows and then we will go back to the Public

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Intervenor's questions.

(Recess - 12:20 p.m. - 1:30 p.m.)

CHAIRMAN: Welcome back everybody. When we broke for lunch I indicated that we would move to the motion by CME.

Mr. Lawson, do you want to come forward?

MR. LAWSON: Thank you, Mr. Chairman, members of the Board.

I guess now that we know what Mr. Morrison did with our IR's -- he threw them in a bucket -- I'm hoping that we can retrieve them from the bucket for him and allow him to have somebody work on them.

So we have but three. I guess that is not to suggest that the balance of ours were in fact, unlike might have been impression this morning, that of the 1,100 questions there are only these ones are in issue. There were other ones which we chose not to seek further information on or would seek as a result of further Interrogatories.

So in fairness I do commend the applicant for what would be a very severe workload for getting answers to those that they did provide answers to.

So the first of the ones that I would like to address -- and the issue around most of these are significantly the same. They are in, if you recall, the relevance bucket. And the issue that we are raising with respect to most

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all of these three and their sub parts is a question around the history and to some extent the future projections. And our position is that to do an analysis of Genco's costs and the reasonableness of Genco's costs in isolation, one test year of Genco's costs without a history to look back on, and see how those costs are in the test year relative to previous years, unless you happen to know a whole lot about Genco's operations, makes it very difficult to know whether or not those costs of Genco are reasonable.

And it is really for that reason that we are of the view that the history information that we have sought here should be provided, to allow us to know whether or not the costs in the test year for Genco are reasonable, given the history that has taken place up to the test year.

And in some cases, on a go-forward basis, we think there is -- and I will deal more specifically with go-forward in a minute. But we think they too have relevance.

The other component is that, as it relates to Genco, we heard the argument that DISCO, if it doesn't recover all of its revenue, would suffer a shortfall which could have an impact on the credit rating for the Province of

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New Brunswick.

And I think it is fair to say that DISCO, as sort of a part of the credit rating component, its losses would be relatively modest compared to Genco and the other operations.

And we think as a result it is important for us to be able to see what the history has been with respect to Genco and its companies and its losses or profits and how that has impacted on the credit issue, to be able to evaluate what impact there would be on the credit issue resulting from DISCO's operations if there should be a shortfall.

So that -- and I might start off by providing a mea culpa.

Because in fact one of the questions that we did ask in 17, it wasn't clear, as I went through yesterday, to even identify what it was we were looking for.

So if one looks at IR 17 (b) and (c), which are the first two of the three that we are dealing with, it provides -- it says "Please update table A and B", which were relatively easy to identify. And then it went on and said "and tables 1 to 9." And in fact that should be in each of the sections following the referred to section.

There are nine tables -- there are nine sections. And each have tables in them. So what we are actually looking

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for is an update of the tables, each of the tables that are provided in each of those nine sections. So I apologize for the lack of clarity in the question as it has been posed.

So (b) and (c) are -- actual data for other years is (b).

And (c) is the forecast data. And again the reason for the forecast data as opposed to the actual data

historically is also -- again its relevancy is we would like to know how Genco has been able to -- how successful Genco has been able to in the past to project its actual cost.

So what did it project for particular years in certain cost categories? And what were the actual results? So how did their results compare to their projections, so that we can ask the same question for the projections for the test year? How historically have they been -- how successful have they been projecting those costs? So we submit that makes those issues very relevant.

That I think essentially deals with the question of IR 17.

IR 21 is much the same issue with respect to its planned maintenance costs. It has the historical data issue, the ability to put in perspective the test year costs.

But also we sought future data, data with respect to

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the planned maintenance costs for each of the two years following the test year. And we think that is very germane, particularly where everybody knows what April brings in 2008, and that is Point Lepreau and the results from it.

We assume that there have been accelerated maintenance programs put in for this year to prepare for the fact that there is going to be Point Lepreau down. And they need to have all their other facilities operating at top speed if you will and with less maintenance required in each of the subsequent years.

And I guess our purpose in looking for that future information is to allow us to see whether or not there has been some -- if the test year is getting more heavily laden than it should be with planned maintenance.

So should some of those accelerate, if there are some, some of those accelerated costs for planned maintenance that might have gone in place in the test year in anticipation of the next couple of years in Point Lepreau, should those costs, instead of being accelerated into the test year, be spread out over the next two or three years, amortized over at least the life of the project or arguably, depending on what they are, longer than that. So that is the purpose behind looking for the data on a

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go-forward basis.

We have also sought in IR 21 comparative data for other utilities. So that as it relates to planned maintenance costs for Genco, how do those planned maintenance costs compare to other utilities in other jurisdictions? And again we are looking to get a sense of whether or not these planned maintenance costs are reasonable for the test year.

And lastly, the third is IR 39. The first -- but not chronologically. The first one I will deal with is (c). There is a large difference in Genco's interest cost, \$53 million from 05/06 to 06/07 in the interest component.

And again we think it is important to see -- look again at the history and how that relates, and whether or not that \$53 million is an anomaly. Or is there something that needs to be considered by this Board for the test year as a result of that \$53 million.

As it relates to (a) and (b) of 39, essentially it is the same question that we have -- or the same issues that we addressed in IR 17. And a lot of the information is similar except one looks for in-province only for Genco. And the other looks for in-province and out-of-province information.

So Mr. Chairman, members of the Board, those are the

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grounds on which we believe that these questions should be answered.

CHAIRMAN: Thank you, Mr. Lawson. Any of the other parties wish to make a comment before I go to Mr. Morrison? Do members of the Board here have any questions?

MR. MORRISON: Thank you, Mr. Chair.

First of all, there is no need for Mr. Lawson to apologize. We were able to understand the question. We share his interpretation of it. So it is not a lack of clarity on his part.

I will deal with CME IR 17 and 39 together. Because they basically deal with the same issue. And it is basically looking for actuals and forecast financial information for years prior to the test year, in the case of 17, and revenue and expense data prior to the test year for IR 39. Clearly and from what Mr. Lawson just said, this really is going to -- and I believe he even said it -- was testing and efficiency of Genco's operations, which the Board said it would not do.

And it is also a question of understanding how the PPA works. Those costs, because they are covered in, as I mentioned this morning, in the capacity payment which is fixed and the contribution of fixed costs which is fixed,

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and Nuclearco, the set megawatt-hour charge.

Variations in those costs don't flow through to DISCO.

they are set. So if there are variations in those costs,

Genco basically eats them in, for want of a better word.

As it relates to the question of how is this information

important to determining sort of the credit rating of the

NB Power group of companies if you will, you have to

remember that how the PPA's are structured is that DISCO

provides the revenue stream to the other companies.

So DISCO is the source of cash that flows through to the

other companies. So it is really only DISCO's revenue, if

you will, that would have an impact on the Province's

credit rating.

With respect o -- and again I don't want to reiterate too

much what I said this morning. But again it is this

question of are we only going to be dealing with costs,

Genco costs in the test year, which is how we viewed the

Board's decision. If we are not then you are really

getting into another situation, in my view of the

regulation of Genco.

IR 21 is requesting projected costs for planned

maintenance outages in '08, '09 and '09, '10. The

historical data is one thing. And I have made -- said my

piece on that. But data that affects a beyond the test

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year I think is even more significant.

Because if you look at the Board's obligations under Section 101 (3) or 103 (1) of the Electricity Act -- I think it is 101 (3) -- your obligation is to look at the projected revenue requirement for the year in which the rate is being applied for.

These costs, if in fact they actually did flow to DISCO, and they don't, these costs are for a year beyond the test year. So I don't believe you have the statutory authority to be looking at costs that have no impact on this test year. How far out do you go? Is it next year, five years from now, 10 years from now?

Now Mr. Lawson made a point that well, you know, are these front-loading maintenance costs, doing too much maintenance this year, thereby increasing the cost to DISCO in the test year, and then having a lower maintenance cost in the year after?

Well, even if that were true it has no impact on DISCO, because of the way the PPA's are structured. However much money Disco spends or doesn't spend on maintenance doesn't flow through the PPA.

If they got their capacity payment, period, if they spend X or X minus Y, that is Genco's risk. Those costs do not pass through to DISCO. DISCO pays the preset

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capacity payment. That is what DISCO's revenue requirement is based on.

So not only is it an issue with respect to your jurisdiction. But there is also the practical point that it really has no impact on the test year.

And those are all my comments.

CHAIRMAN: Any questions from the Board?

MR. BARNETT: Yes, Mr. Morrison. I understand your argument in going back several years. But in the PPA there is an escalation. There was a capacity payment year over year.

Is it not fair to look at the prior year to this test year to look at any incremental cost that flowed through to DISCO through the PPA there?

MR. MORRISON: The escalation in the capacity payment would happen regardless of what the incremental costs are, if there are incremental maintenance costs, incremental salary costs.

Any incremental costs over here on the generation side are irrelevant to DISCO. Because DISCO pays the PPA price which is essentially the capacity payment if you will, contribution of fixed costs. That doesn't change regardless of what happened.

Basically the budget variance for Genco is Genco's risk. It does not affect DISCO. Because regardless of

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what happens over here, DISCO pays a preset established amount.

It does escalate. It escalates. That is true. But it doesn't escalate as a result of escalation in actual cost.

That is a preset escalation that was set when the PPA's were established. But DISCO pays a PPA cost, fixed. What happens over here does not impact that cost to DISCO.

So if maintenance costs -- for example if you take Mr. Lawson's concern, and I understand it would be a concern in a different type of arrangement, if in fact Genco front end-loaded its maintenance costs in preparation for the Lepreau outage for example, perhaps you could make an argument that it ought not to have done, it really didn't have to do all the maintenance in this year, they are doing it because they are going to be able to recover it in rates this year, it doesn't matter. Even if that did happen it is Genco's risk. Because DISCO only pays the capacity payment, period.

MR. BARNETT: Just to follow up, you are saying then that based upon the PPA, on the capacity payment -- now I'm just dealing strictly with the capacity payment -- that Mr. Lawson and his colleagues can't actually identify what an increase in capacity payment was through the evidence that has been filed to date and how it has flowed through

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2 to DISCO's revenue requirement?

3 MR. MORRISON: Well, Ms. Clarke is much more attuned to

4 these financial intricacies that I ma. It is not just a

5 capacity payment, Mr. Barnett. It is also the

6 contribution of fixed cost. There is no one-to-one

7 relationship.

8 In other words increases in maintenance costs aren't going

9 to affect the contribution of fixed costs and the capacity

10 payment. The escalation in the capacity payment is set

11 out in the PPA. So you can open the PPA and find that

12 information.

13 MR. BARNETT: Nothing further.

14 CHAIRMAN: Anybody else on the Board have any questions?

15 Mr. Lawson, anything further?

16 MR. LAWSON: Just one final comment. And that is that the

17 reasonableness of the costs under the PPA, this

18 information would certainly stand the Board in much better

19 stead, to know whether or not those charges are

20 reasonable.

21 CHAIRMAN: Thank you. Dr. Sollows, are you in a position to

22 make your argument at this point in time?

23 DR. SOLLOWS: Such as it is, Mr. Chair. Do you mind if I

24 sit where I am so I don't have to move --

25 CHAIRMAN: You are right in the front row anyway. That will

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be fine.

DR. SOLLOWS: Thank you.

CHAIRMAN: And I don't know that we got a listing of the questions that were included in your motion. As far as I know, up to this point in time we don't have them.

DR. SOLLOWS: No. And I apologize for that, Mr. Chairman. I did not get them out to you. I did discuss the matter with Mr. Morrison and I think there is general agreement as to the nature of which, as he will say, bucket it goes in, and I can identify them here on the record as to which bucket they are and the point that I take.

CHAIRMAN: I'm afraid that term bucket is going to end up somehow finding its way --

MR. MORRISON: You know, sometimes you just wish you had never opened your mouth.

CHAIRMAN: Okay. Perhaps you could identify then which IRs that your comments will relate to.

DR. SOLLOWS: Okay. When I classify -- go through the responses to IRs identifying one general response that applies in whole or in part to 13 IRs, numbered IR number 5, number 6, number 7, number 9, number 10, number 11, number 13, number 14, number 15, number 16, number 17, number 20 and 21. All of these IRs, the response was either in whole or in part that their -- NB Power's

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methodology appeared -- was approved in the 2005 CARD hearing and therefore it's not relevant to DISCO's revenue requirement and the Board is not directed a generic hearing.

My view is that most -- the vast majority of these arose from a simple plain language review of the -- Bondbright, the source that DISCO sites, and when you read Bondbright along side DISCO's evidence the obvious question arises is this outcome consistent with that which Bondbright proposes.

I must admit I have some sympathy for NB Power's argument, or DISCO's argument in this case in that we did just go through a CARD hearing, the ruling was made, and subsequent to that a final order was made in respect of tolls and charges.

The reality is that there is an educational component to this whole process and I do know from experience that people's attitudes change and if you read the final decision of the last Board carefully you will see that it moved away from whatever -- what it had in fact ruled.

And so I am sympathetic to the view of DISCO that really answering these questions, while I don't think it's necessary to engage in an entire cost allocation and rate design hearing in order to answer the questions, I'm

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sympathetic to the fact that it may well be appropriate to have such a review done at this point, if only to bring this Board up to speed on all of the issues associated and the compromises that are incumbent in the methodology that NB Power uses.

But that being said, the whole point of these questions was not to instigate a full cost allocation and rate design hearing. It was to simply look at the outcomes of the methodology that NB Power and DISCO was using and lay them alongside the views that Bondbright suggests in rate design, and just for your own purposes so they even made a comparison.

Now that is the first major grouping. The second grouping consists of six IRs, number 14, number 15, number 16, number 17, number 20 and 21. These either in whole or in part contain the response that the question arises from an analysis that DISCO did not do and therefore they don't feel they should answer it.

Again I have some sympathy for DISCO and I don't really expect them at this stage in the process to endorse any analysis that they have not done. But the analysis was there as much as anything to give them a heads up or a warning as to where I might -- and the Board a heads up or warning as to where I might go based on the evidence that

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2 DISCO has filed.

3 Now it does happen that to answer the questions -- the
4 questions largely could be answered without endorsing the
5 analysis at all because of the way they are posed. It
6 really could be just a simple case of -- I will read one
7 of them here perhaps -- for example, one question in IR-
8 16, after looking at the residential -- the variation in
9 residential loads with temperatures. The question is, is
10 it reasonable to assume that 56.2 percent of residential
11 customers that have strongly residential -- strongly
12 temperature dependent loads are responsible for more of
13 the peak demand of the class than the remaining customers.
14 Now you can argue, and certainly I don't expect NB Power
15 to accept without review the 56.2 percent, but it would
16 certainly seem relevant to this Board given that you are -
17 - your job at this -- if I go to the Electricity Act under
18 101(4) indicates that the Board may when considering an
19 application under this section take it into consideration
20 item C, rate design matters. It seems quite apparent that
21 this -- this is directly relevant to the design of the
22 residential rate.

23 Now there are other questions that relate to commercial
24 and industrial rates, and the allocation of capital costs
25 in accordance with the method that is

2 described by Bondbright. There is also questions relating to
3 marginal costs that are really the foundation of rate
4 design as described by Bondbright, and the response there
5 is -- if I can find it here -- to the question, does this
6 -- you will agree with Bondbright that customers must rely
7 on long run anticipated rates in making rational
8 decisions, the unqualified response from DISCO is yes.
9 But then when they come to the question that we would ask,
10 well can you provide us those long run marginal cots, the
11 answer is no. So I really don't see how we can proceed to
12 set fair and equitable rates without this kind of
13 information that Bondbright clearly seems to indicate is
14 necessary.
15 Having said that, I certainly sympathize that we seem to
16 be starting all over again and I can understand and
17 appreciate the frustration involved in that. But I do,
18 based on the review that I have made, think it really
19 would be in the public interest certainly for small
20 residential and commercial customers, and perhaps for
21 industrial customers, to have a more comprehensive review
22 of the basis for the cost allocation and rate design.
23 And I think that pretty much makes my case, except to say
24 that I argue for this with some trepidation given that it
25 would be the easiest decision for you to make for me

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would be simply to say no, it's not in, because it would very much reduce my work load over the coming months. Thank you.

CHAIRMAN: I just want to clarify that you are not suggesting that we enter into a full CARD hearing this time around. That's not what you are suggesting.

DR. SOLLOWS: Well I don't believe that you have to do it.

I don't believe that answering the questions would necessitate doing that. I -- frankly, when I look at the -- when I look at the filings and the context of Bondbright, I -- and the analysis of the data that I have made based on the previous decisions, I haven't looked at the newest data for the most recent two years, I really do come to the conclusion that substantial changes may be necessary to the cost allocations in the sense that the revenue cost ratio is based on the existing cost allocation and may not fairly reflect the actual cost ratios.

So from that I think you can take that -- I think you might need to look carefully at cost allocation as -- from rate design, rate design I don't think you need to have a full hearing in order to deal with it. I think you can simply -- NB Power can answer the questions as they relate to rate design and you can apply your judgment as

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appropriate.

Thank you.

CHAIRMAN: Thank you. Any questions from the Board. Any of the intervenors want to make any comment at this point in time. Mr. Lawson?

MR. LAWSON: Thank you, Mr. Chairman. I guess specifically to that latter point Mr. Sollows raises, I guess we too from our review to date would certainly indicate that we believe that at some point there needs to be a cost allocation review because we do believe that the current cost allocation on which -- based on the decision from 2005 is not the right one. We are not encouraging that take place in the next few weeks, needless to say, but we do believe that it does have to take place.

CHAIRMAN: So you are not suggesting it be part of the current rate application?

MR. LAWSON: I guess if I had my way it would be let's get this part done but before you lose jurisdiction, let's deal with the cost allocation. In other words, maybe we can live with it -- and I speak now on my own behalf, I haven't had a chance to get instructions from clients, but perhaps the cost allocation for this year's rate increase could be considered as being acceptable subject to the Board undertaking the cost allocation as part of this

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framework, if you will, to follow after a decision.

That's sort of my off the top of my head thoughts.

CHAIRMAN: Anybody have any comments or questions? Mr.

Baird, I guess you had your hand up there next.

MR. BAIRD: Yes. Thank you, Mr. Chairman. Clearly there

are major issues with the previous CARD ruling on cost allocation and its applicability to these rate hearings.

Since the CARD ruling is not currently scheduled, it is our position these issues should be reviewed at this hearing.

Again we would -- if there is a hearing scheduled where we are going to be able to address that before you lose jurisdiction we would look at that. But we from our consultant's review to date on the cost allocation work there are major issues that we would like to address there.

CHAIRMAN: But you are not suggesting that cost allocation be reviewed for this particular hearing?

MR. BAIRD: No, sir. As long as it is scheduled we would accept that.

CHAIRMAN: Mr. Zed?

MR. ZED: Our position is relatively simple and I think somewhat consistent with the previous speakers and I think that is simply that this application was brought based

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upon the notion that the CARD ruling 2005 would be applicable,
and it's our position that it should continue on that
basis and the matter not be re-opened until the conclusion
of this hearing.

And if it is brought forward for future year's increases
then we can accept that, but we just don't think it makes
very much sense to deal with part of it and not the whole
thing, and then we will have an opportunity to have a rate
hearing perhaps in a year's time based on whatever results
from that new CARD hearing. But this hearing should
proceed based on the 2005 hearing intact.

CHAIRMAN: Thank you. Mr. Wolfe?

MR. WOLFE: We are also of the opinion that cost allocation
should be re-looked at. I'm with Mr. Lawson in that it
would be after this hearing is over and perhaps even after
the test year is over, but it's something that we have to
do in the future.

CHAIRMAN: Mr. Morrison, I guess over to you.

MR. MORRISON: Thank you, Mr. Chair.

CHAIRMAN: Sorry. Mr. Peacock.

MR. PEACOCK: Sorry, Mr. Chair. I will be very brief. Our
issues with the Applicant, as you probably can guess, are
much more related to questions regarding its residential
rate design than they are with their proposed revenue

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requirement.

And as the Board is already aware, we feel that the Applicant's rate proposals are in fact discriminatory towards low income households. And as a result of this we feel that any IRs that question the methodology behind the Applicant's proposed rate design IR's very similar to those proposed by Mr. Sollows should receive a thorough response. Thank you, Mr. Chair.

CHAIRMAN: I think the Public Intervenor is the only one we haven't heard from.

MR. THERIAULT: Mr. Chair, first time today, no comment.

CHAIRMAN: Mr. Morrison?

MR. MORRISON: Thank you, Mr. Chair. We have never said that the interrogatories submitted by Dr. Sollows were irrelevant or not germane, not important questions. Our issue with it is this. Answering those questions is a lot of work, for one thing. And they aren't relevant if the Board is only going to conduct a revenue requirement hearing.

If the Board chooses, decides that it's going to revisit cost allocation rate design, then it would be appropriate for DISCO to answer questions 5 through 21. But if we are not going down that road, then they really have no bearing on a revenue requirement hearing. And I

2 know some people -- parties here today have said, well it
3 would be interesting to have this information. But for
4 what purpose unless you are going to revisit CARD.

5 And DISCO takes no position whether you revisit Card or
6 not, but let us know, because it is a completely different
7 hearing. New evidence would have to be presented, experts
8 and so on and so forth, and anybody who has been through
9 the last Card hearing knows how fascinating it is.

10 But it is really the issue with Dr. Sollows' questions,
11 and he did say, and I thank him for being so forthright,
12 that he says that, you know, in his submission that we
13 really do have to start over again. Well if that's the
14 case then YOU had better schedule a Card hearing and we
15 will answer the interrogatories.

16 So that's that bucket and we will leave that in your
17 capable hands.

18 Mixed up with those 5 through to 21 there are also some
19 others that create some issues. IRs 14, 15, 16 and 17,
20 for example, which he related -- spoke of. Other than
21 just cost allocation rate design they actually also relate
22 to a restructuring or reclassification of the rate
23 classes. And Mr. Larlee has advised me that this
24 endeavour is wide ranging and potentially broad in scope

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and warrants a generic hearing separate and apart from a cost allocation rate design hearing.

And as with any generic hearing it should be independent from a rate application to ensure that the issues considered are not affected by the rate application. And he really believes that 14, 15, 16 and 17, actually 20 and 21, fall into that restructuring and reclassification of rate classes, which is more than just cost allocation, quite frankly.

Finally, also with respect to 20 and 21 -- 20 and 21 in particular -- in addition to being -- relating to the restructuring of the rate class they also relate -- are unrelated to a rate hearing because they really do deal with load control and load modelling, and they really provide no useful purpose for a revenue requirement hearing. Again if we were going down the other road, either a generic hearing on rate classification or a cost allocation, they may become relevant.

Finally, I guess there are several questions, 14, 15, 16, 17, 20 and 21, which really ask DISCO to either respond to analysis that Dr. Sollows has already done, or is asking DISCO to prepare analysis.

I will deal with the preparing of analysis first. I believe it's fairly clear that it's open to any party to

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ask a relevant question to the applicant and the applicant can respond with the appropriate facts. It's a question of facts, we will provide the data. I don't think the law has gone so far as to say that an applicant has to create evidence that it doesn't already have.

We can provide what we have. I believe it's up to the intervenors themselves to do their own analysis and present that as evidence. To do otherwise puts DISCO in a very difficult position because it then has produced an analysis which it may not agree with the underlying assumptions of for example, provide it to a party, it is then viewed -- it then becomes part of DISCO's evidence, not the Intervenor's evidence, and it becomes very difficult for the applicant to challenge what is in fact evidence that it has put on the record.

So there are two aspects to that. I don't think there is an obligation or should be an obligation on any party to have to go out and actually do or prepare an analysis for another party. We can provide the data, they should do their own analysis and file it as evidence, and then it can be tested in the normal course.

Perhaps not so clear is the question of a form of analysis that -- for example, in this case Dr. Sollows has prepared asking us to provide comments on which require

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2 further work an analysis when we don't agree with the

3 underlying assumptions. So that's where those questions

4 fall.

5 Those are all the comments I have, Mr. Chair.

6 CHAIRMAN: Thank you, Mr. Morrison. Any questions from the

7 Board? Thank you. Well I think that would bring us back

8 to the Public Intervenor's questions and I think that

9 there was going to be an attempt to perhaps classify these

10 various questions into -- or group them, if you will. Are

11 you prepared to proceed at this time or do you need a

12 little break in order to make sure you are clear on the

13 categories that you are going to use?

14 MR. THERIAULT: I am pretty clear on the categories, Mr.

15 Chariman. I can proceed if that's the wish.

16 CHAIRMAN: Okay. Sure. Do you want to come forward then.

17 MS. DESMOND: Mr. Chair, can we suggest that the summary

18 chart prepared by Mr. Theriault be marked as an exhibit?

19 There has been significant reference to his material and I

20 think it would be helpful to the Board to have that

21 marked.

22 CHAIRMAN: Mr. Theriault, do you want that document marked

23 as an exhibit?

24 MR. THERIAULT: Yes, please.

25 CHAIRMAN: Mr. Morrison, I will ask you for your comments on

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it, but I would simply make the comment I don't have a problem with that just to the extent that it's intended as a summary of the IR's and of the arguments that have been made on them, and to that extent it kind of fits somewhere between evidence and argument. So, you know, it would be marked on that basis. Mr. Morrison, any comments?

MR. MORRISON: I have no objection to it being marked. As indicated this morning, Mr. Chairman, we will be addressing some general comments to -- about the Notice of Motion in that document in general.

CHAIRMAN: That document then will become PI-2. Proceed.

MR. THERIAULT: Thank you, Mr. Chairman. In addition to the confidential category there are three other categories that I would suggest and I have given the list to my friend, Mr. Morrison. Those are ones dealing with relevance and the third one would be those dealing with generation and the fourth would be those responses which I consider to be non-responsive.

I will give the Board the listing and then I would like to go back and make reference to particular interrogatory responses, if I may.

Under the relevance category I would submit that it's IRs number 2, 20, 34 and 37. Under the generation category I would submit it's IRs number 9, 10 and 21

2 through to 32. Under the non-responsive category I would
3 submit that it's IRs number 6, 7, 11, 12, 13(2), 33, 35
4 and 36.

5 Now, Mr. Chairman, obviously, and I have mentioned this
6 before and the document has just been marked as exhibit P-
7 2 -- obviously contains a listing of the IRs and the
8 responses. I would like to touch on a few and obviously
9 if the Board has any questions on the one I touch on I
10 will try my best to answer them, of if there is other ones
11 that the Board may have an interest in as opposed to going
12 through all of them, although I will be going through many
13 of them.

14 With respect to the relevance category, I would point the
15 Board to IR number 20. In order -- as the Board can see,
16 this is an IR requesting the details on the Coleson Cove
17 refurbishment project, everything from the chronology of
18 events right through to the details on legal costs.

19 The Applicant, as I state then in the issue, is before the
20 Board asking that the cost associated with this
21 refurbishment be passed on to DISCO's ratepayers over the
22 next 17 years. Board approval of these costs for this
23 test year will in effect constitute approval for all
24 subsequent 16 years.

25 In order for DISCO to receive approval to pass on

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refurbishment costs to its ratepayer it must demonstrate, I suggest, that the costs are prudent and that the resulting asset investment is useful and used. In so far as the argument that the prudence of this project was approved by the Public Utilities Board I would suggest that this is incorrect.

As I read the decision of 2002 the previous Public Utilities Board is that one of the recommendations -- and I think that's how they referred to it, I believe there was three -- and one of the recommendations is that it proceed with a signed contract. Obviously that did not happen.

The general consensus under the IRs that I have categorized as relevant or the general responses have been that DISCO is maintaining that the information requested is not relevant. A general response that I would have to their response is that it is not my place and it is not DISCO's place to determine what is relevant. It's up to the Board to determine what is relevant. And I would like the Board -- I would ask the Board to keep that in mind when going through these interrogatories.

With respect to generation, the questions that I have are 9, 10 and 21 through 32. And again I echo Mr. Lawson's comments when he was up here talking about the

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2 historical data and the perspective. These questions are all
3 geared towards determining the historical -- trying to get
4 at the historical data and a comparison so that we can
5 determine -- or that the Board can determine if the costs
6 are prudent. Every one of these I would suggest are
7 necessary.

8 I would like to point out in particular IR number 9. And
9 this is where I have asked for the forecast an actual
10 hydro generation by facility, and DISCO gave their
11 response, but it's interesting to note, as I have set out
12 here, that the amount of hydro generation affects the
13 amount of fossil fuel generation. The amount of fossil
14 fuel generation affects the fuel costs that are passed on
15 through to DISCO.

16 In prior hearings I have been advised that DISCO's
17 forecasting effort has come under considerable criticism
18 for bias and forecasting errors. Therefore it is
19 necessary to validate the quality of their forecasting
20 effort and to do so is necessary both to obtain -- or to
21 obtain both forecast and actual hydro generation by
22 facility over the time period that is requested.

23 With respect to the non-responsive answers, I will deal
24 with -- I would like to draw the Board's attention to IR
25 number 6. Again, this question was -- the reference

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point for this question was schedule 6.2 of the vesting

agreement which states that all financial hedges entered into prior to the date of the agreement will be included in the calculation of the vesting energy price.

Now DISCO -- and then had some specific questions under there and DISCO's response was that the supplied weighed average monthly prices instead of specific contract prices in response to its (1) (2) and (3). But again we would submit that in order to fairly evaluate the cost impact of the fuel purchase strategy used by GENCO on behalf of DISCO, details on specific contract costs must be available for analysis.

With respect to the next one, IR number 7, simply put, the question was related to the cost of economic dispatch versus the dispatch that is mandated by the NUG contracts.

The information again I am informed was filed in the last rate case. Simply I asked for the specific cost differences between true economic dispatch and dispatch mandated by the NUG contracts. Again the costs of the non-economic dispatch is clearly borne by DISCO's ratepayers.

With respect, I would ask you to turn to IR number 11.

Again we are looking at the forecast of actual revenue by customer class. And their response is that their -- and

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this is quite prevalent in mine and I believe in the Board's responses -- DISCO's actual financial results for 2006/2007 will not be available until September 27th, 2007. After this date the results will be provided to all parties.

Well today is September 27th, 2007. I certainly haven't received it. So does that mean it's going to be another week or two before that comes? But the concern I have is -- the question that I'm asking is DISCO's actual financial results have nothing to do with it. We are requesting the information -- as I think Mr. Morrison said, you know, we are looking for data. The information relates to the billing data and the interrogatory request that this data be provided for the period up to the most recent month available, which has to be available.

Again, the revenue forecasting and the quality of it is the proper subject for an interrogatory, since revenue projections by customer class are included in the cost allocation study. Further, again this information was provided in the last hearing and it's not being provided now.

With respect to IR-12, again looking for detailed OM&A costs for DISCO. The interesting thing here is they seem to accept -- they seem to be saying, oh, we don't have it

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in the NARUC format. But we asked that it be filed in the NARUC format or in another format that they have with similar detail. Surely they must have that.

If you look in response to -- if you look at the IRs in response to my IR-16(2) DISCO admits that KPMG had access to the detailed OM&A accounts for Genco, Coleson Cove, Nuclearco, Transco and DISCO. So therefore those accounts, they exist, even if they are not in a form as recommended by NARUC. So again this is a situation where I would submit that DISCO should be filing its proper information.

13, the documentation that we are requesting here is documentation of interviews conducted by New Energy. And DISCO's response was they don't have any -- DISCO has no documentation of the interviews. Again that's not what the question asks. We asked that we be provided with the documentation of the interviews.

A proper audit, we submit, would have kept written records of the details and interviews with key Genco and DISCO personnel. Again were we expected to believe that the information from these interviews would simply be recalled from memory when New Energy decided they were going to do their work? I don't think so.

With respect to IR number 33, we were looking for

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information on a fiscal year basis for the period April 1st, 1993, to March 31st, 2007, to file performance indicator data as outlined in the attached performance indicator data table of contents, which is the IR -- if you go back and look at that particular IR, I filed with that IR the actual performance indicator data table.

Their response is that it comes from an integrated utility perspective and as such the information is not collected in the requested format. Again the performance indicator data is, we submit, a basic tool to evaluate performance and to assess trends over time. DISCO filed this data in the last rate case. Again it is available to DISCO and we suggest that they should be ordered to file it.

With respect to IR number 35, dealing with where we are starting, dealing with hydro generation for each month starting with the first month under reorganization and concluding with the latest month for which data is available, indicate the total benefit of hydro generation under the definition that we have given, and indicate the amount allocated to DISCO versus the amount allocated to Genco.

This one is kind of cute. Their response is please refer to the response to exhibit A-20, DISCO PI IR-10

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September 10th, 2007. Well I submit that that particular response that they gave is non-responsive. So how can you go to a non-responsive response to get a response? I'm not sure.

Mr. Chairman, my friend Mr. Sollows mentioned Bondbright and in his works entitled "Principles of public utility rates", Bondbright argues that one standard of reasonable rates can fairly be said to outrank all others in importance attached to it by experts and public opinion alike. The standard of cost of service often qualified by the stipulation that the relevant cost is necessary cost, or costs reasonably or prudently incurred. A cost standard of ratemaking has been most generally accepted in the regulation of the level of rates charged by private utility companies. But even more significant is the widespread adherence to costs or to some approximation of costs as the basis of rate making under public ownership. The Energy and Utilities Board, under section 101 of the Electricity Act, is charged with the responsibility of approving rates for DISCO that are just and reasonable. As Bondbright has stated, this can only be done if the Applicant can demonstrate that its costs are indeed costs reasonably or prudently incurred. It is obvious that DISCO cannot prove prudence if it

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fails to completely disclose all of the details associated with its costs. DISCO's response to most of the interrogatories submitted by myself reveal a fundamental flaw in the Applicant's perspective on this rate case. Simply put, DISCO has failed to distinguish what is relevant from what is not relevant to an investigation into the utility's costs.

It is not relevant whether there has been a corporate reorganization or not. It is not relevant whether Genco, Nuclearco, Coleson Cove are regulated or not. It is not relevant, I submit, whether the PPAs are instruments of public policy. The only relevant matter before this Board is simple. Are the costs that DISCO seeks to pass on to its ratepayers prudently incurred.

As part of the IR process, I have submitted a series of questions to DISCO aimed at getting information at the underlying generation costs and costs related to the PPAs.

In preparing these questions I was very cognizant of the Board's decision of July 16th, 2007. DISCO has refused to answer at least 87 questions that I have asked as part of this interrogatory process.

As set out in my Notice of Motion I submit that DISCO's failure to respond can be attributed to four factors. One is either a misinterpretation of the Board

2 order of July 16th, 2007, two is erroneous or spurious

3 confidentiality claims, three is a deliberate attempt to

4 delay responses in violation of the schedule, four,

5 misinterpretation of the IR itself in order to avoid

6 answering the question posed.

7 As to the Board's order of July 16th, 2007, I submit that

8 the Board was very clear on the type of evidence and

9 information that would be relevant in this hearing. The

10 Board recognized that it does not regulate Genco, Holdco

11 or Nuclearco. But the Board recognized that all of these

12 companies are affiliated with DISCO. The Board also

13 recognized that as a starting point it should inquire,

14 must inquire, into DISCO's underlying costs in as detailed

15 a manner as possible without assuming regulatory control

16 over Genco.

17 In its decision the Board recognized that in order to

18 protect the customers of the regulated monopoly, a

19 regulator may disallow recovery of costs by the monopoly

20 if the regulator determines that the disallowed costs were

21 not prudently incurred. Every one of my questions

22 submitted as part of the IR process I suggest is aimed at

23 determining if the costs incurred by DISCO which form part

24 of this revenue requirement were prudently incurred.

25 The Board stated in examining transactions between a

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regulated utility and an affiliate, it may be difficult to determine if they occurred at fair market rates. The Board went on to say that each transaction must be examined on its own merits. This is exactly what my questions are geared towards.

Mr. Chairman, the Board has set the date in the final schedule as November 26th, 2007, to commence these hearings. The schedule was put in place I assume to give all parties strict deadlines on when to file evidence or interrogatories. Obviously there are exceptional circumstances when such dates must change.

I submit the proper procedure would be for a party, upon discovery of an exceptional circumstance, to immediately give notice to the Board and the other intervenors before the date of the deadline of its request to change the schedule.

Unfortunately, Mr. Chairman, Board members, DISCO seems to think it alone controls the schedule. A case in point. The Board ordered three filings by DISCO, one September 10th, one September 14th and one September 18th. DISCO on September 13th on their own motion and without seeking approval of the Board, decided it would file confidential responses for all their filings on September 18th, 2007, without any regard to the impact on the

2 intervenors. Thankfully the Board required them to comply
3 with the schedule.

4 However, DISCO only filed the confidentiality claims with
5 the Board on September 17th, 2007, with copies to the
6 intervenors arriving on September 18th, 2007, which was
7 the date they unilaterally chose anyway despite the
8 Board's letter.

9 As to the questions I submitted as part of the IR process,
10 many of DISCO's responses state that their financial
11 results for 2006/7 will not be available until today.

12 Even though this response is non-responsive to the
13 substance of the questions asked, again we are faced with
14 DISCO unilaterally and arbitrarily changing the schedule,
15 the impact which benefits DISCO to the clear detriment of
16 the intervenors.

17 There is no provision in the schedule, Mr. Chairman, to
18 accommodate filings on September 27th, especially since
19 the second round of IRs are due tomorrow, September 28th.

20 Again, DISCO has unilaterally usurped the Board's
21 schedule to their advantage and to the detriment of the
22 intervenors.

23 There are many -- there are also -- again we went through
24 the responses that I believe are non-responsive to the
25 actual question asked. I submit the only valid reason

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for such non-responsive answers is an attempt to delay the schedule further, the impact of which is to deprive the intervenors of sufficient time to receive the evidence, review it, analyze it and present proper evidence.

We are getting down to the short strokes here. The hearing schedule is tightening up. As an example again, their response to IR number 7 was provided in the first hearing. If it was relevant then surely it must be relevant now. Also with IR-13-4, their own operating committee notes of 2004, as I stated earlier, show that the committee knew this information would be of interest to the regulatory body. Well surely they must agree that it would be now.

Their response to IR-12 clearly does not answer the question but it is equally clear that this information is available. The accounts we asked for were audited by KPMG, but DISCO implies in their response that they don't have this information. Clearly this is an attempt to either delay the schedule or mislead.

I do not intend to go through all 87 questions, although I think I have gone through a fair amount of them. This has been provided to the Board in the -- as exhibit P-2.

Mr. Chairman -- and I know I'm sure I'm going to be

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chastised by my friend as being too harsh, but this is very frustrating. It's down to a situation where we are trying to digest and deal with a lot of information. But if I were to summarize DISCO's responses to many of the interrogatories that I put forward, and indeed that others put forward, I could paraphrase the responses as follows. One, you don't have the right to ask. Two, you don't need to know. Three, the Board doesn't need to know. Four, nobody has the right to know. Five, it's confidential. Six, the Board has no jurisdiction. Seven, it is not relevant. Eight, we will provide it when we want to. If the CEO for NB Power group of companies is to be believed when he claims that the utility is interested in collaborating in an open and transparent process, it is impossible to imagine what his view of a closed process would look like. Mr. Chairman, as a result I have two requests for the Board. That DISCO be ordered to respond immediately to those IRs that I have identified as being clearly non-responsive and that we outlined here today. Two, that any repeat of the Applicant's behaviour in terms of misinterpretation of Board orders, erroneous or spurious confidentiality claims, deliberate attempt to delay

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2 responses in violation of the schedule, misinterpretation of
3 an IR in order to avoid answering the question posed,
4 result in the Board rescinding the interim rate increase
5 and ordering an immediate refund to ratepayers of monies
6 collected in excess of their approved rates prior to the
7 rate application.

8 That's all I have, unless there is any questions.

9 CHAIRMAN: We may well have some questions, but we are going
10 to take a break at this time.

11 (Recess - 2:40 p.m. to 3:00 p.m.)

12 CHAIRMAN: When we broke, Mr. Theriault, I guess you had
13 just finished your comments. And one of the comments you
14 did make along the way had to do with the commencement of
15 the hearing. I just wanted to make some comments on that.
16 The Board is committed to a commencement date for the
17 hearing of November 26th. No party has brought forward
18 any justification to move away from that date so far. In
19 order to meet the deadline, we believe the parties will
20 have to work together in a co-operative fashion to help
21 the Board come to an appropriate conclusion as to what are
22 just and reasonable rates for the test year.

23 From the Board's perspective, all parties have acted in
24 good faith, even though perhaps some deadlines up to this
25 point in time have not been met. So we are going to

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take your comments into consideration but we would suggest the parties make every effort to work in a co-operative manner to allow this matter to move forward as expeditiously as possible.

We are going to be canvassing the parties before we finish today as to what modifications in the schedule may be necessary to allow for additional information if it's ordered and IRs on that information, if necessary. But again I will reiterate that as at this point in time we are committed to a commencement date of the 26th.

Any questions for Mr. Theriault from the Board? Any comments from any of the parties? Mr. Morrison?

MR. MORRISON: Thank you, Mr. Chair. I guess I will start where Mr. Theriault finished. In the course of his closing remarks, he indicated that -- or suggested that the restructuring of NB Power, the enactment of the Electricity Act, the fact that DISCO is now the regulated entity and the other arms of the operating companies are no longer regulated, that that has no bearing on how this Board should determine DISCO's revenue requirement or the reasonableness of costs.

Quite frankly, I just don't find that argument credible. The upheavals in the NB Power group of companies over the last several years have been

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significant. And the ramifications of that permeated not only this hearing, but the last hearing. So it does have a very direct and very important impact on how this Board determines the reasonableness of costs.

There is a lot of contention surrounding the responses to IRs. And it is my submission that this results from what I believe are several fundamental misunderstandings of this process. The first such misunderstanding is found in the PI'S Notice of Motion. And he contends that DISCO is a "public utility" appearing before a public utility tribunal and then asks for some the sanctions that he just mentioned a few moments ago.

The contention that DISCO is a public utility is simply not correct. DISCO is not now, nor has NB Power ever been a public utility. It just never has been that way.

A little history may be instructive. New Brunswick Power was formed in 1921. The Public Utilities Act was enacted in the middle of the last century. I believe it was in the 1940s, but it could have easily been earlier.

NB Power was not included in the definition of a public utility under that Act. Indeed NB Power was not regulated in any way until 1990.

In 1990, the Public Utilities Board was given

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circumscribed authority and jurisdiction over NB Power. The Public Utilities Board was given authority to approve increases in rates when such were applied for by NB Power.

Unlike the other "public utilities" governed by the Public Utilities Act, the PUB was not given general regulatory oversight over NB Power. And to underscore that point, the Electric Power Act, which was the Act that previously governed NB Power before the Electricity Act was enacted, specifically excluded NB Power from the definition of public utility.

So there is no history of comprehensive regulatory oversight of NB Power. There is limited jurisdiction of the Board over DISCO. And that is currently found in the Electricity Act that regulation over rates that is in the Electricity Act is not new. It has always been that way. And you can like it or not like it, but that is the fact. The second misconception, and I dealt with this this morning, deals with what I believe has been characterized as DISCO's arrogance in determining what is relevant and not relevant. And as I said this morning, as every party's right and indeed their obligation to make a determination when responding to questions, whether something is relevant or not relevant. You put that

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2 before the Board, the Board makes the determination, yes. But
3 certainly the parties have the right and indeed the
4 obligation to do so.

5 And I don't think I or DISCO should be taken to task for
6 exercising not only its rights, but I believe obligations
7 in a quasi-judicial process to bring those matters before
8 the Board.

9 In many of the IRs there is an undercurrent of what I
10 would characterize as micro-management. And I think it is
11 important to note that it is not the job of a regulator to
12 manage. It is management's job to manage and a
13 regulator's job to regulate.

14 And I believe -- and I don't have the references right at
15 hand, but in Rate Design by Goldman, there is references
16 to the fact that management decisions are deemed to be
17 prudent. Regulators look at global issues as they relate
18 to rates and costs. They don't get into micro-management
19 of the utility.

20 And finally, Mr. Chairman, Members of the Board, this
21 afternoon, and in the submission earlier this week and in
22 his Notice of Motion, the Public Intervenor has made some
23 very serious allegations. These allegations impugn the
24 motives of DISCO and include allegations of spurious
25 claims for confidentiality, attempting to delay responses,

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deliberate misinterpretation of questions to avoid responding
and breaches of the filing schedule.

I will say that DISCO categorically denies each and every
one of these damning and inflammatory allegations.

I appreciate the Board's opening comments that it believes
that all parties have acted in good faith.

There was one item that the Public Intervenor raised or
that he made an issue of. Unilaterally filing
confidentiality binders contrary to the Board's schedule
of October 13th. Well there was no schedule for filing of
a confidentiality binder on October 13th. And we had
consultations with Board Staff with respect to that
matter. And I can tell you that DISCO personnel worked
extremely hard to get that material ready. There are
people in this room that worked for days on less than two
and three hours sleep.

As I stated earlier, DISCO has acted diligently and in
good faith throughout this entire interrogatory process.

I believe the Board has a role to play in ensuring that
these proceedings are conducted with probity and decorum.

I would like to address specifically the IRs which the
Intervenor raised. And I will deal with the ones he dealt
with last, which were the ones he alleges DISCO was
nonresponsive.

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2 The first is IR-6(4), questions 1, 2 and 3. And that
3 dealt with the hedging contracts. And the Public
4 Intervenor, I admit, did ask for specific counterparties
5 and specific contract details.

6 In an effort to be responsive in the time period allotted
7 information was provided in a format thought to be useful
8 to the intervenors' purposes while maintaining
9 confidentiality over counterparties to these hedge
10 contracts.

11 The response was provided on a weighted average basis to
12 protect the trading and pricing strategies of individual
13 counterparties and to be responsive in the time period
14 allotted.

15 DISCO can provide the information in the format requested,
16 provided it is held in confidence. And in retrospect we
17 ought to have filed that and claimed confidentiality on
18 it.

19 The second one that falls under the non-responsive
20 category is PI IR-7, and in that the IR is requesting
21 costs of economic dispatch versus the dispatch that is
22 mandated by the NUG contract. And the PI said that this
23 same information was provided in the last hearing.

24 That is not quite correct. There was information that was
25 provided in the last hearing that dealt with if you

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ignored -- it was an unavoidable cost question which is different from what was posed in this particular hearing. By looking at economic dispatch of the NUGs, first of DISCO believes that the NUGS are being dispatched economically. But to go behind that and second guess NUG dispatch, we believe it's really looking at the prudence, or prudence actually, of GENCO's decision. And the Board has ruled that that is not appropriate and that it is not appropriate to review the efficiency of GENCO's operations.

What we are really talking about here is Bayside. There are other NUGS, as you know. These are all -- the other NUGS are Cogen operations, and Cogen is not dispatchable because a cogeneration facility is the manufacturers producing steam and it has to be taken when the steam is produced. So cogens cannot be dispatched in any other order than when the steam is generated and has to come off the system. So what we are really talking about here is the Bayside contract.

And GENCO entered into this agreement with Bayside because it needed the capacity during the five winter months. It does not need, nor does it pay for the capacity in the other seven months.

If NB Power had not signed the contract with Bayside

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the alternative may have been for NB Power at that time to build its own facility because it needed the capacity at the time, and pay the mortgage on that plant for 12 months. Seven more months than it is needed.

If the modelling is done as the PI suggests, you would have to put some kind of an assumption for a proxy for the seven month plant -- sorry -- the five month plant that would have been constructed on the system at that time.

In addition it's not just a simple matter of saying, okay, run a scenario where this facility is dispatched at this point in the stacking order and then run it where it would -- in another point in the stacking order, and the delta between that is the savings. It's much more complicated than that.

You have to look at the impact on dispatch for in-province firm customers. There is also an impact on DISCO's interruptible customers, the pricing of that and on DISCO's share of the export margin benefit. You would have to do a number of PROMOD runs to do that.

So to answer a simple question what the delta is won't get you to where you want to go.

Right now because of the current price of gas Bayside would be dispatched before oil fired generation. So it probably wouldn't move in the dispatch order in any event

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for the test year. As I said, the cogen facilities are not dispatchable.

The next IR which is said to be non-responsive is IR-11, and that is requesting a forecast in actual revenue by customer class. Now the Public Intervenor says we didn't respond to that. No, we didn't. We told everybody it would be responded to on September 28th, because they were looking for actual revenue up to and including the 2006/2007 fiscal year.

That -- I mentioned this morning there is a board of directors meeting today. Those financial statements are being approved today. So we couldn't release that information before they are approved. Obviously you can't release that type of information until there is Board approval. The PI says that it has something to do with the rate case and the annual reports. It has nothing to do with the annual reports. The financial statements and the annual reports are two entirely different things.

In some cases when I talk about these IRs that could have been answered on the -- which are being answered tomorrow effectively, there are a number of -- some questions, there weren't that many, but there were several that had several parts. Some asking for history, some asking for actuals up to a certain point. We didn't think

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it was helpful to anybody to answer part of the question and then have to wait until the financial statements were finished to answer the other part of the question.

We could have done it that way. We chose not to because we thought it would be confusing and not very helpful. It certainly wasn't a deliberate attempt to delay the response.

PI IR-12. This IR is requesting detail OM&A costs for DISCO in the uniform system of accounts format on a level of detail similar to that used by NARUC. We got quite harsh criticism from the PI a few moments ago on this one.

He looked at some information that was filed and said that KPMG has looked at -- surely you must have it in this format and to this level of detail.

Well the KPMG study reflects there is some disaggregation referred to. But the study reflects different functional areas of DISCO, such as finance, region, the contact centre. However, this information is captured in the same cost categories as identified in the evidence. It is in no way reflective of the detail structure provided as an example from the Public Intervenor. We can't provide what we do not have and we don't have that information disaggregated, to the level or in the categories that the Intervenor asks. You can't

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give what you don't have.

PI IR-13(2). This IR is requesting documentation of interviews conducted by New Energy. Of course you know, New Energy was the auditor looking into audit the PROMOD inputs and outputs. And they conducted interviews with the PROMOD staff people and the PIs asked for documentation of that interview.

First it is most unusual, I would submit, for a company to -- for a party to ask for the working papers of an expert witness. More importantly, the working papers aren't the property of DISCO or Genco. They are the property of the expert. They belong to the expert. What is really important here is the report itself. The expert's report and findings have been filed and they are on the public record, and the New Energy report, and presumably a witness on behalf of New Energy will be here and subject to cross-examination.

If there are notes of the interviews, and I don't know whether there are, and if the Board orders them to be provided, that's fine. But we would ask that those notes be held in confidence, just as we made our arguments with respect to the PROMOD issues this morning for the same reasons.

IR-36. The IR is requesting for each month starting

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with the first month under reorganization and concluding with the latest month for which data is available the total value of export sales as defined above.

In Mr. Theriault's grounds in his document he says DISCO needs to understand that it doesn't set regulatory hearing schedules, the Board does.

DISCO intends to file the requested information tomorrow.

The requested information covers DISCO's actual financial results for the '06/'07 fiscal year. This information, as I mentioned earlier, could not be released until it was approved by the board of directors, which I assume is happening as we speak.

The last two which the Public Intervenor says we were non-responsive on was PI IR-33, and that IR is requesting on a fiscal year basis for the period April 1st, 1993, to March 31st, 2007, the performance indicator data.

And in his grounds for the claim basic tool for evaluating performance, the data was filed in the last rate case and is available and should be required to be filed again.

Well it was filed in the last rate case, but there is no additional performance indicator data beyond that. In addition, the response requires information from an integrated utility perspective. As such that information

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is not collected in the format in which the PI requested it.

In the last hearing DISCO did provide the requested information for the period 1996 to September 30th, 2004. This was all of the data that was available. And it can be filed again if required. It will not enable the Board to determine efficiency, however. There is no argument in my submission to go back and look at this information in this hearing.

In the last rate case this information was requested and provided. I guess we could go back and -- it's really a policy decision that the Board would have to make, but it seems to me that we are not going to gain any efficiencies as we go forward in the rate making process if we re-visit everything that was done in the previous rate case and the previous rate case before that. That information was filed, it was put on the record. It has been dealt with.

There is no further information, certainly no further information that has been accumulated in the fashion in which the PI requested it. I don't believe we were being non-responsive.

Finally in the non-responsive category is PI IR-35. And Mr. Theriault said we were being kind of cute here in referring back to the response to PI IR-10(2). I would

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2 recommend that the Board go back to that response. In fact,
3 all of the information that is requested is found in PI
4 IR-10(2). Unfortunately, as Mr. Theriault was making his
5 comments, there is a typographical error. We did refer
6 them to PI IR-10(2)(iv). The real response is PI IR-
7 10(2)(iii).

8 And if they understand the data, they would know that the
9 credit to the parties is found in column IV of that table.

10 It's in that IR response. It's either a credit to DISCO
11 or it's a credit to Genco. All the information with
12 respect to the hydro is found in that response. And we
13 apologize for putting Roman Numeral (iv) there instead of
14 Roman Number (iii). It certainly wasn't deliberate.
15 Generation issue. I will deal first with PI IR-9. IR
16 requesting forecast and actual hydro generation by
17 facility for years back to 1993. In this one, the PI said
18 that the hydro generating -- generation forecasting
19 received considerable criticism for bias in the last rate
20 hearing. That is not the case. There was some criticism
21 of statistical bias in the load forecast but not in the
22 hydro generating forecast. And that's my recollection.
23 Hydro generation for in-province use is prescribed in the
24 Genco PPA. DISCO does not forecast hydro generation.
25 They are now prescribed in the Genco PPA as based on

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long-term average hydro flows. We have provided information as it relates to the test year. We did respond to that. But we are getting back -- we did not respond for information going beyond the test year for Genco. And it's for the same reasons as I outlined in my argument this morning, which is what I have called the Generation Cost Guidelines, which we gleaned from your July 16th decision.

On generation costs, PI IR-10(2)(iv), the IR is requesting the allocation of monthly benefit of hydro generation among the affiliated companies. The response required the names of the affiliates. The amounts credited to each and the calculations to support the amount. The PI says the response does not provide the calculations requested in the interrogatory. DISCO believes it has provided the requested information. We reviewed that response and we believe it has been responsive.

Hydro risk after all does reside with DISCO. And for rate setting purposes customers always receive the benefit of long term average hydro flows, regardless of inter year variances. Hydro variances for long term average are borne by DISCO shareholder, not the customers. This can either be a charge for below average hydro or a credit for

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2 above average hydro.

3 In that response there is an explanation of the
4 incremental cost calculation. And that was also provided in
5 the response. We believe the answer was completely
6 responsive.

7 PI IR-21, this is requesting the provision of detailed
8 financial statements in electric plant accounts for the
9 integrated NB Power utility. And there are four questions
10 that are related here. They are looking for accounts for
11 the integrated NB Power as at the end of fiscal years
12 2001/'02. '02/'03 and '03/'04. And please provide
13 detailed financial statements and electric plant accounts
14 for NB Power on the day prior to the implementation of the
15 reorganization. The level of detail needs to be
16 sufficient to track transfers, assets, liabilities, et
17 cetera.

18 The next question, which is IR-22, is requesting the same
19 information as the previous IR, except it wants it
20 immediately following reorganization.

21 IR-23 is requesting a reconciliation of the detailed
22 financial statements and electric plant accounts as an
23 integrated utility on the day prior to the implementation
24 of reorganization in the NB group of companies immediately
25 following reorganisation.

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2 And IR-24 is requesting fiscal years '05/'06, '06/'07,
3 '07/'08 and provide a calculation of the amortization
4 costs for the generation of assets of Genco, Nuclearco and
5 Colesonco.

6 Again there is four questions. They all relate to the
7 same issue. And again the issue is what I had explained
8 this morning. It's historical, other than the test year
9 for generation. We believe the Board did not require us
10 to provide that information and we responded accordingly.

11 And also the PPA prices charged to DISCO, as I mentioned
12 earlier, are set in a capacity payment.

13 The cost charged to DISCO so the PPAs do not have a one-
14 to-one relationship with the generator's cost in any
15 specific year for the purpose of setting rates for the
16 test year -- if they are going to based on, as I presume
17 the are, DISCO's PPA costs. This information is not
18 particularly useful.

19 There may have been a greater level of detail provided in
20 an earlier hearing. However, it would not have been -- it
21 would have in no way been close to the structure of the
22 accounts requested by the IR. We did provide information
23 in the last hearing, wanted it in a particular format.

24 This information is captured in the cost categories, as we
25 identified in the evidence. We haven't got any other

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2 breakdown. Certainly not the breakdown that the Public
3 Intervenor requested for this information. And again it's
4 a situation where we can't provide what we do not have.
5 And for the reasons I mentioned this morning, we did not
6 file -- provide any information for either Transco or
7 Holdco. Just on the point, because I think he raised it
8 in his document, we have not said the information isn't
9 available. It could be gotten. Perhaps not in the format
10 that the PI wants. But what we are really saying is that
11 for the purposes of this rate case, it's just not
12 relevant.

13 I should also point out that a lot of -- many of the
14 things that they are talking about were transferred by
15 transfer order. And if you look at the Electricity Act,
16 transfer orders are binding. I would hope that we would
17 be able to do this in a more efficacious manner, but I
18 fear that it is not going to work out that way.

19 PI IR-25, and that IR is requesting actual annual cost for
20 each year of the salaried categories below the management
21 levels -- below management level for the fiscal year
22 '05/'06, '06/'07 for Genco, Nuclearco and Colesonco.

23 IR-26 requesting actual annual costs for hourly wages for
24 '05/'06, '06/'07 for Genco, Nuclearco and Colesonco. And
25 please divide these wage costs into operations and

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2 management. Provide the forecast annual costs for hourly
3 wages for fiscal year '07/'08 for Genco, Nuclearco and
4 Colesonco. And again divide these wage costs into
5 operations and management -- operations and maintenance.
6 Again, historical data, we are relying on the same
7 interpretation that we had discussed this morning. Test
8 year information has been provided in the format
9 available. But we cannot provide it in the form -- in any
10 other form yet. Again, we can't provide that which we do
11 not have. There is no operations and maintenance
12 breakdown that would be consistent or close to the uniform
13 system of accounts. Those costs just aren't tracked in
14 that fashion.

15 And on that point, the PI indicated in his document that
16 if we -- if for some reason we don't break it down by
17 operations and maintenance that somehow NB Power is unique
18 in this regard. It is my understanding that utilities do
19 not track information in this way unless they are subject
20 to some type of uniform system of accounts. As you know,
21 there is no uniform system of accounts regime in this
22 province yet. Canadian Electrical Association is still
23 working on the issue. There are difficulties with it. We
24 will see with happens.

25 And again, salaries, if they are looking to look at

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trending and salaries from the generators for the reasons we discussed this morning and my discussion with Mr. Barnett, salaries do not flow through to DISCO and the PPA. It forms part of the fixed costs and the capacity payment. It doesn't vary. So salaries in the generation companies has no impact on DISCO's revenue requirement for the test year.

PI IR-27, again this is another IR which is requesting a level of detail consistent with the NARUC system of accounts associated with the generator utility's OM&A accounts and it is looking for '05/'06, '06/'07 and '07/'08. Test year information has been provided in the format that we have available. Again we don't have anything close to the NARUC type system, broken out that way, and we can't provide it in that fashion.

There is no operation and maintenance breakdown that would be consistent or close to NARUC, as I mentioned earlier. However, a distinction between union and non-union costs has been identified in the Genco and Nuclearco evidence. Hired service costs are based on management's best estimate of forecasted expenses for the test year. It would not be possible to provide specific contractor information. Information on these hired services has been provided in the Genco and Nuclearco evidence but it can't

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be broken down any finer than that.

PI IR-28 is requesting long-term debt information at the time of reorganization for all the companies in the NB Power group. The IR os also looking for the short-term debt for all entities. In his submission the Public Intervenor is suggesting that there may have been a scheme to allocate DISCO with the most expensive debt.

He goes on to say that the only way to disprove this theory is for the applicant to provide the information he is requesting. I would suggest to you that he has the onus of proof completely reversed. DISCO has explained how the debt was allocated and there is a presumption that this evidence is truthful. DISCO has answered the question. The debt was allocated on a weighted average and you can go back to the IR response for more details on that.

The debt would have been assigned by transfer order, and as I said, the transfer orders are binding on all parties pursuant to the Electricity Act. Financial restructuring was done by way of financial advisors. The Board did not direct DISCO to file information on Transco and Holdco and we haven't done so.

Again in the last rate case DISCO's debt for the test year was extensively reviewed and again it's up to you of

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course whether you want to revisit that, but I see no argument to have that retested again in this hearing.

PI IR-29 is requesting information on the balance of retained earnings of the integrated utility at the time of restructuring, how was the account allocated, provide an explanation of the allocation. The retained earnings -- the PI claims the retained earnings should have been allocated entirely to DISCO. The ratepayers would then have been able to receive the benefits of this accumulation.

First of all, the requested information is not relevant as it relates to DISCO. In the last rate case DISCO's costs for the test year '06/'07 were reviewed, tested and accepted by the Board. And again there is no argument I think to go back and revisit that.

In any event at the time of restructuring there were no retained earnings as the evidence in the last rate case quite clearly said, there was only a retained deficit and this was transferred to Electric Finance Corporation. In any event, the retained earning or deficit would not pass to ratepayers but only to the shareholder.

There are only a couple more and then I think we can wrap up fairly quickly after that.

PI IR-30 is requesting the balance of each of the

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2 shareholder's equity accounts for each of the companies
3 immediately after restructuring, and after the fiscal
4 years '05/'06, '06/'07, and the forecast year of '07/'08.

5 As I said, DISCO intends -- that's one that we held off
6 until tomorrow -- DISCO intends to file the information on
7 September 28th, and it would be DISCO '05/'06, '06/'07,
8 and Genco and Nuclearco and DISCO for '07/'08 only.

9 The requested information covers DISCO's actual financial
10 results for the '06/'07 fiscal year and could not be
11 released until after those financial statements were
12 approved today. Again shareholder's equity would have
13 been transferred by transfer order and the access of those
14 are binding. Again we have not provided information on
15 Transco and Holdco and that's because our interpretation
16 of the Board order the Board did not direct us to do so.
17 IR-31 is essentially the same argument for IR-30.

18 IR-32, that's requesting generation costs and asked us to
19 complete tables for fiscal years '05/'06, '06/'07, '07/'08.

20 We did provide the annual information in the Genco and
21 Nuclearco evidence for the test year. We didn't provide -
22 - I do have this now -- we did not provide a monthly
23 breakdown apparently, and upon further review of the
24 information request DISCO can provide a monthly

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breakdown of the requested information for '07/'08, but again we have not provided for anything historical for Genco.

Mr. Chairman, I believe there is only a few left. These deal with the relevance issue.

I believe the first one is IR-2, list of every management position above that of supervisor for each of the NB Power group of companies. The IR requested information for Transco and Holdco. We did provide information for Genco and Nuclearco. And we did that -- I mean, the PI said something to the effect that we provided it despite the fact that the generating companies are not regulated.

We did provide the information as directed by the Board in its July 16th decision despite the fact that the generating companies are not regulated. We understand that Genco isn't regulated. The Board asked us to provide information for the test year and we did that. It did not direct us to provide information on Transco and Holdco.

Again if the IR is looking to the cost of salaries and structures or the governance structure of the generating companies, again these costs don't flow through to DISCO because of the way the PPAs are set up.

And although it's an interesting question to know what

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the management structure of Transco and Holdco are, quite frankly, I struggle to see how it has any impact on DISCO's revenue requirement. Transco as you know is regulated separately by the Board and is subject to regular regulatory review.

I do want to deal -- there are only three more but I do want to deal with IR-20. And that is a significant IR. It's an IR that the PI spent a fair amount of time on this afternoon. And what the IR is asking for is requesting information on the Coleson Cove refurbishment. Contracts, who was involved, the names of the parties, how the decisions were made, and so on and so forth.

First of all the Coleson Cove generating station is an asset of Coleson Cove and it's a subsidiary of Genco. Any costs associated with the plant flow to DISCO through the Genco PPA. What in fact the PI is asking for is basically he wants a public inquiry into the Coleson Cove issue, the Orimulsion issue if you will from a few years back. He is asking for a used and usefulness review or a prudence review.

A prudence review by its very nature is an exercise in second guessing the reasonableness or efficiency of Genco's operations. As I mentioned this morning, the Board clearly stated in its July 16th decision that it

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would not look into the efficiency of Genco's operations.

Genco is not regulated. I can think of no inquiry that is more in the nature of regulatory oversight than a prudence review. As I mentioned earlier regulators normally don't get into management decisions. Management manages, regulators regulate. So a prudence or used and useful review is in my submission the most intrusive role a regulator can assume.

The Board has made it clear that it does not regulate Genco. A prudence review of the Coleson Cove refurbishment would in my submission lay a clear and unequivocal exercise of regulatory jurisdiction over Genco.

In my submission, it simply does not give the Board jurisdiction to conduct such a review. From a practical point of view, prudence reviews are normally separate hearings onto themselves due to the magnitude of the undertaking. If such an inquiry were to be ordered, Genco would have to be given the opportunity to assemble the appropriate evidence, identify witnesses, which would be no easy task given the passage of time, and present its case to the Board.

It would be a facility sharing much like the Coleson Cove and Point Lepreau refurbishment hearings that were

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2 held a few years ago. It's not something that the Board can
3 embark on and make a decision on and which can be
4 determined on the basis of the response to a single
5 interrogatory.

6 Finally, the prudence of the Coleson Cove refurbishment
7 was a subject of a separate hearing by the PUB which
8 approved the project. The issue, I would submit, has been
9 decided.

10 The PI says that the approval is irrelevant because it was
11 subject to there being a signed contract with BITOR. I
12 read the Coleson Cove refurbishment decision three times
13 last night and I don't see where the Board made any -- put
14 any condition that it be subject to a signed agreement
15 with BITOR. The PI can -- if I missed it, fine, if the PI
16 can identify it, I will stand corrected, but I couldn't
17 find it after three reviews of that decision.

18 In any event, even if that were the case, the issue which
19 the PI would then want the Board to determine is whether
20 there was such a contract. That is the very issue which
21 was at the heart of the PDVSA law suit. With all due
22 respect to this Board, and I say that with sincerity, this
23 Board neither has the jurisdiction, nor is it equipped to
24 engage in that legal determination, one which occupied the
25 courts of New York for a considerable period

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of time.

And PI IR-34, requests information on the Point Lepreau refurbishment project. And many of the comments I just made with respect to reviewing the Coleson Cove refurbishment project apply in this case as well.

However, clearly in this case the Board has no jurisdiction to engage in that inquiry. The cost of the Point Lepreau refurbishment do not form part of DISCO's revenue requirement in the test year.

The Board's jurisdiction, I think I raised this earlier under Section 101(3), its prospective -- projected -- sorry, projected revenue requirement for the test year.

Finally -- and I believe that is finally, Mr. Chairman, it is IR-37, which is requesting the following information. And this goes to restructuring. Wants DISCO to provide a complete list of the names of all individuals that were involved in the design, development and implementation of the PPAs. This list should also identify the organization to which each individual is associated.

If the PPAs were modelled after PPAs in other jurisdictions, identify those and provide copies of those PPAs. If the PPAs were not modelled after other jurisdictions, please identify the individual or

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individuals that had the requisite expertise to develop the PPA's. Provide a copy of the section of the legislation or Order-in-Council that supports the statement that the PPA's were imposed on DISCO in 2004 by government.

This is stretching back into history. The development of the PPA's was thoroughly canvassed and discussed in the last hearing. It occupied a tremendous portion of the last hearing. The requested information is not relevant to DISCO's revenue requirement for the test year. The PPA's are what the PPA's are.

Those are all my comments, Mr. Chairman. I know I have taken a fair amount of time and I apologize for that.

CHAIRMAN: Thank you, Mr. Morrison. I understood from comments you made earlier that you did have a written submission perhaps that you --

MR. MORRISON: I believe -- I have a written submission that dealt with strictly law on the confidentiality thing.

CHAIRMAN: Yes.

MR. MORRISON: However, having -- that since the Public Intervenor has put in his comments with respect to the IR comments, if you will, and to assist the Board I will file mine as well. Actually they are just being copied and typed, cleaned up a little bit now and I would propose

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2 filing those as soon as they are ready.

3 CHAIRMAN: Sure. Are you looking to have those marked as an
4 exhibit as well?

5 MR. MORRISON: It should be. If the PI's are marked, then
6 mine should be as well.

7 CHAIRMAN: Sure. And I will make the same comment that it
8 is argument. But we will --

9 MR. MORRISON: Certainly.

10 CHAIRMAN: The next exhibit number is -- Madam Secretary,
11 perhaps you could help me out now?

12 SECRETARY: A-25.

13 CHAIRMAN: This will become exhibit A-25. Mr. Theriault do
14 you have some remarks arising out of Mr. Morrison's
15 remarks?

16 MR. THERIAULT: I do, Mr. Chairman. Just by way of
17 reference to what was ordered on July 16th 2007. And it's
18 just quickly, the Board orders DISCO to file evidence that
19 will explain why its costs under the PPAs and SLAs are
20 reasonable and should be recovered from the customers of
21 DISCO. Also the Board therefore orders DISCO to file
22 detailed evidence on the underlying generation costs and
23 the certain other costs that are identified in this
24 motion. And back at the beginning in the introductory
25 section, the decision of the Board outlines what those

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certain other costs were.

They were (1), the assets transferred by transfer order, (2) nonfuel costs of the generators supplying to DISCO, which include generators, operations, maintenance, administration costs, amortization and decommissioning, finance charges, taxes and special payment in lieu of taxes. And (3), costs with respect to inner-company contractual agreements.

So again, I just want to bring the Board back to the breadth or the realm of information that I believe the Board was getting at with respect to its decision.

At the end of the day, Mr. Chairman, I would submit that the Board cannot approve costs that are not prudently incurred. And I believe the Board said that in its own decision. With respect to the -- my friend's comments with respect to the January 28th 2002 decision of the Board of Commissioners of Public Utilities, again, I will just point the Board to that decision.

Page 13, the Province proposed that the Board make recommendations which are summarized below. And item (3), which appears on page 15, the 20 year BITOR contract should be negotiated so as to have an initial term of five years with the option to renew for three consecutive five year periods. Alternatively, the contract should be

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negotiated with exit clauses. Pretty hard to have a renewal period, pretty hard to have an exit clause with no signed contract.

As to my friend's comments as to IR-20, as to what the Board has jurisdiction over, Mr. Chairman, I would submit that the Board has authority to disallow the pass through of costs on the refurbishment as it relates to the revenue requirement.

And finally, Mr. Chairman, I accept as a general -- as to the comments you made prior to Mr. Morrison, at the beginning, I accept as a general principle the proposal to go forward in the way suggested by yourself. But I must admit, I fear that if the status quo continues, the schedule will be unmeetable.

And a good example, I understand what my friend said about the financial statements being available. Again, I go back to my argument and my submission is that for many of the questions, we did not need -- they must have the actual data that was available. By the time it gets into my hand, when will that be? Now hopefully it's tomorrow and answered all those IRs. I don't know. But is it going to be a situation again where we have to come before the Board saying we need this information, here is why and go through this process.

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And I understand what the Chair said about co-operation.
And I am fully -- fully prepared to co-operate. But I
would just ask that the time lines be adhered to. That's
all. Thank you.

CHAIRMAN: Thank you, Mr. Theriault. I may have skipped
through a step here along the way. Any Board questions of
Mr. Morrison? Mr. Johnston?

MR. JOHNSTON: Mr. Morrison, these questions are going to
be perhaps a little bit elementary. But I would like your
viewpoint on them. And Mr. Theriault's or anybody else's
who care to comment.

In civil litigation, we talk about a document being
relevant if it sheds light on a matter in issue. Is that
the test here or is there a different test? And can you
comment on that very basic sort of type of test?

MR. MORRISON: Well, Mr. Johnston, I think there is two
tests actually in the civil litigation. First is, does it
shed light on the matter in issue. So that's the first
test. And second is does it have any probative value,
even if it falls within that ambit.

I think we are talking about the first test which is does
the question relate to a matter in issue in this
proceeding? And it's the grappling, what we grappled with
is what is the issue in the proceeding? And we -- I can

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2 assure you that we did not take this task very lightly in

3 terms of looking at the Board's decision of July and

4 determining exactly what it is the Board envisaged this

5 hearing to be.

6 Is it to be a full blown revenue requirement hearing for

7 the generating companies? We concluded that it was not.

8 Was it to be a test of the efficiency of Genco's

9 operations? We concluded that it was not.

10 So once we made those conclusions, then we looked at the

11 questions and said okay, do they relate to one of those

12 things that this hearing is not? And if they do, then we

13 did not respond. We responded to the question given the

14 parameters of the matters in issue.

15 And I don't know how else we could have dealt with the

16 interrogatories, other than to answer everything and say

17 forget about the legislation, forget about the Board's

18 Order. This is going to be a full blown integrated

19 utility revenue requirement hearing. And quite frankly,

20 it's -- if the powers that be say that that's the way it's

21 to be, it would make my job one heck of a lot easier.

22 MR. JOHNSTON: My next question, Mr. Morrison, is the Public

23 Intervenor has requested a lot of documentation in several

24 different diars, as it relates to the cost of

25 refurbishment of Coleson Cove. What I would like you to

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do is, you know, forget about this process for a second. Just explain from the Applicant's point of view, how the cost of Coleson Cove were borne within the NB Power group of companies? And how that structure works either through the PPAs or otherwise, if that's possible?

MR. MORRISON: I will do my level best. The Genco PPA is made of let's say three components, three fundamental components. There is the capacity payment. There is a contribution of fixed costs. And then there is the vesting energy price.

The vesting energy price probably isn't an issue for purposes of a discussion about the Coleson Cove refurbishment. But the capacity payment and the contribution to fixed costs is.

The costs of the Coleson Cove refurbishment are captured.

They are not -- you won't find a line for line cost item that says so much of the capacity payment is related to Coleson Cove refurbishment, so much of the capacity payment is related to the Belledune plant, so much capacity payment is related to Dalhousie. You won't see that kind of breakdown.

But Genco's overall mortgage costs, being the costs under which the mortgage, the amortization -- the mortgage on the plants, generally speaking, was to be recovered

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over the life of the PPA, not on a dollar per dollar pass-through.

But it was designed, as I understand it, to recover those costs. One of those costs that is being recovered is the cost of the Coleson Cove refurbishment. It is somewhere in those costs.

And I may have lost my train of thought in terms of the thrust of your question. So if I understand the Public Intervenor's argument, if the Coleson Cove plant should have been \$300 million less than presumably Genco's global mortgage costs, amortization costs would have been \$300 million less. And therefore one would anticipate that the capacity payment would have been adjusted in some fashion over a 25-year period to take in that debt.

So it shows up -- Ms. Clarke who is an accountant -- it shows up in Genco's books as amortization and gets passed through to DISCO through the PPA in the capacity charge.

MR. JOHNSTON: With respect to IR 41 I'm just wondering whether -- the Public Intervenor has stated that based on the tolling agreement the full benefits of any Orimulsion settlement should flow through to DISCO.

Do you agree with that assertion that the Public Intervenor makes in his submission?

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MR. MORRISON: As I understand it the benefits of the PDVSA settlement are flowing through DISCO, yes.

MR. JOHNSTON: All right. And the IR 41, if I understand correctly, your position is that the information requested will be provided under a confidentiality agreement?

MR. MORRISON: Yes.

MR. JOHNSTON: Does that -- is that essentially the totality of what is requested there? Or there are exceptions that the applicant is not willing to provide?

MR. MORRISON: I haven't -- I would have to refresh my memory, Mr. Johnston.

MR. JOHNSTON: If you would. I just want to be clear on your position on this particular one, Mr. Morrison.

MR. MORRISON: As I talked about the fact even a few moments ago, in my probably very inarticulate way, but the benefits of the PDVSA settlement are being passed through to DISCO by reduction in a capacity payment.

MR. JOHNSTON: Yes.

MR. MORRISON: Okay. So I'm looking in PI IR 41. Is there any particular --

MR. JOHNSTON: No. Just -- you know, I have read the response to the IR. I have read the IR. I have looked at Mr. Theriault's summary here.

And I just wanted, for my own purposes, understand the

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2 applicant's position that, provided that it is done under a
3 confidentiality agreement, the applicant is prepared to
4 respond to the various matters that have been brought
5 forward.

6 MR. MORRISON: I don't know because I haven't gone through
7 it in that type of detail. But my quick look is that if
8 it was provided in confidence, it would be -- provided the
9 information is available --

10 MR. JOHNSTON: Yes.

11 MR. MORRISON: I mean, the reason for not responding to the
12 questions was that we did not want to reveal the details
13 of the fuel supply agreement which is subject to a
14 confidentiality agreement.
15 So if all of these issues are dealt with in confidence,
16 such that the details of the fuel supply agreement are not
17 made public, then I don't think there is anything,
18 provided the information is available, that can't be
19 answered.

20 MR. JOHNSTON: Let me say this. I understood your response
21 to also include sort of a that ship has sailed argument,
22 the Board has already ruled on a deferral account and we
23 are not going back there.

24 Do I misunderstand?

25 MR. MORRISON: Well, the settlement -- I think you have to

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2 make a distinction. The deferral account is going to be

3 thoroughly vetted I assume. And I assume --

4 MR. JOHNSTON: Through a confidential process is what you

5 are asking for?

6 MR. MORRISON: Of course. And I assume that that is the

7 very purpose for which the Public Intervenor has asked for

8 this information, so that he can have the confidence how

9 the deferral account works and the numbers that are in the

10 settlement and what goes into the deferral account and

11 what goes out, that they can be substantiated and tested.

12 And that is fair.

13 MR. JOHNSTON: And that is a process that you would have

14 expected to take place?

15 MR. MORRISON: That is the process I expected to take place

16 provide dit was done in confidence.

17 MR. JOHNSTON: Thank you. I may have just misunderstood

18 part of your submission.

19 CHAIRMAN: Mr. Theriault?

20 MR. THERIAULT: Yes. Thank you.

21 I just have a few responses, Mr. Vice-chair, to some of

22 your questions.

23 With respect to the question to my friend about Coleson

24 Cove, I think a way that we might better understand that -

25 - and I mentioned it this morning -- but

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if you were to back out costs of Coleson Cove refurbishment
would it reduce the revenue requirement?

So I mean, that is an easier way to understand it. Forget
the blender that we will call the PPA's or the spitting
out machine or whatever you want to call it.

The clause with respect to the benefits that flow through
to DISCO, I believe it is 4.3.4 of the tolling agreement,
I believe the wording in there they use is not benefits.

They use the words "damages from the settlement will flow
to." And I think that is a crucial distinction between
whether the damages flow to DISCO or the benefits.

Because the benefits arise -- or the argument that I will
be making -- the benefits arise as a result of the
blending through the PPA process.

But the damages are clearly that, the damages, i.e. the
\$47 million that was used, you know. Should that have
gone to DISCO directly? Or should it have been used the
way that was decided?

I guess the only other comment that I have is there is a
lot of -- as I mentioned, there is 87 questions at least
that haven't been answered. And my friend is asking that,
you know, they all be held in-camera and confidential.

If that is the case then I got a feeling I'm going to

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2 spending a lot of time in the month of December in in-camera
3 hearings. And I just find that particularly odd for a
4 Public Intervenor.

5 That is all. Thank you.

6 CHAIRMAN: Thank you, Mr. Theriault.

7 I think that from this point forward I'm going to ask if
8 anybody has anything else to bring up. We certainly do
9 have to have a discussion, I think before we break today,
10 with respect to what I will call follow-up steps.

11 In the event that any additional information has to be
12 filed as a result of our ruling following today's hearing,
13 then I think I would like some input from the parties as
14 to sort of the timing for all of that.

15 I will reiterate that the hearing will commence on
16 November the 26th. So I guess in a sense we have to sort
17 of move backwards from that date.

18 I note in looking at the filing schedule that as it
19 currently stands that there is a Motions Day scheduled for
20 October 22nd. It says Monday noon. Let me assure you it
21 doesn't mean noon. That must be a typo, that would be. I
22 think below it it says 9:30 a.m.

23 And it seems to me that any issues that may flow from
24 responses that might be ordered as the result of today's
25 hearing could be dealt with on that Motions Day.

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And so I guess what I would like to do is work with a schedule that has us dealing with any additional information by the 22nd of October.

And I think in terms of asking the parties what dates they can live with, part of the problems is you don't know when our decision is going to come out. And so obviously everything is based on that.

Let me assure you you won't get our decision today. We will however endeavor I think to do everything we can to respond to the motions, the three motions before us by early next week.

And in the event we were able to I guess render a decision on this, let's say on Monday -- and I'm not promising that is what will happen -- but let's say that we did that -- I know it depends on the amount of work --but I was going to suggest that perhaps we might start with additional information being filed.

It sounds to me like some of it may be available in any event. Because some of the issues here have to do with whether or not it should be confidential. So the information in a lot of these situations quite frankly in my view might be available.

So let's say that we went with additional information for October the 5th. And maybe if you just want to write

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these dates down. And I will invite comments from everybody.

But additional information if necessary by Friday,
October 5th.

I understand that that is predicated on the Board
rendering a decision in a timely fashion, that IR's would
then be done by the following Thursday, the 11th of
October, that DISCO would respond by the 17th of October.
And as already in our filing schedule, notification for
need of a Motions Day, Friday, October 19th. As I said,
that already exists for other sets of IR's with a Motions
Day on Monday, October 22nd.

And I will start perhaps with the applicant. Do you need
time to kind of consider those dates or --

MR. MORRISON: No. We have been consulting those that
produce the information. I can tell you that October 5th
is no doable.

It will take -- we had hoped, depending what the Board
ordered, that we could get most of the information filed.

Again it depends on what the Board orders. But --

CHAIRMAN: I understand that.

MR. MORRISON: -- assuming that worst case scenario that all
of this information had to be prepared, October 10th would
be the date for most of it.

And some of the cost allocation material, rate design

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material if required to be produced, would take about two weeks. So you are looking at two weeks which would be whatever -- you know, October 15th.

So we really beat people up on this in terms of -- you know, give us a realistic expedited schedule to do this. Now having said that, it depends of course entirely on your decision.

The other thing I would like to raise, Mr. Chairman, though, it is not just the timing of the decision that may have an impact on the schedule or the timing of our additional evidence.

It also relates to -- again I don't want to second-guess your decision. But if this is going to turn into a full-scale examination of Generation, there must be Generation witnesses. There will be panels.

I'm thinking more about the time set aside for the hearing itself, whether that is going to expand as well. But I don't know. I just raise it as something that we may have to consider depending on what you order.

CHAIRMAN: Okay. Well, basically if I can just go back to the first comment you made on scheduling, what you are telling me is October the 10th realistically is the earliest date that you could respond to the majority of what has been asked, or if in the event that the Board

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orders that it be filed.

MR. MORRISON: I think you have to understand, and I want everybody to understand that we are answering IR's that have come in today. So it is sort of a leapfrogging of workload.

And just so the Board understands, that it is a Herculean effort to get this done in the time that we are looking at. It is not like this is only thing that is on everybody's plate.

Because we have IR's that have come in today that have to be responded to. And there are additional IR's coming in on October 12th.

CHAIRMAN: Okay. Well, perhaps I will canvass the other parties with respect to their view on these follow-up steps. And I will start with Mr. Lawson.

MR. LAWSON: We shall leave it to the good judgment of the Board.

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

MR. BAIRD: The same answer, Mr. Chairman.

CHAIRMAN: Mr. Wolfe?

MR. WOLFE: I can't go against those guys.

CHAIRMAN: Dr. Sollows?

DR. SOLLOWS: I'm going to make that unanimous.

CHAIRMAN: I don't think we are at unanimous quite yet.

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2 Mr. Zed?

3 MR. ZED: They are closer with me. Ditto.

4 CHAIRMAN: Mr. Peacock?

5 MR. PEACOCK: I fear the peer pressure. So I will go with
6 the rabble here.

7 CHAIRMAN: Mr. Theriault?

8 MR. THERIAULT: Surprise, surprise. I won't go with the --
9 the concern, Mr. Chairman, I have -- and again I say this.

10 And I say this keeping in mind that I understand what

11 Mr. Morrison is saying about DISCO and how they are under
12 pressure.

13 But they are a company. I mean, I'm here as Public
14 Intervenor. I have basically four people assisting me in
15 this. They have got, as the schedule sits right now, once
16 we get all the additional evidence, everything has to be
17 filed, our evidence by November 2nd.

18 I mean, it is a matter of fairness. And that is all I'm
19 asking, the Board to keep that in mind. Every delay so
20 far has crunched down the Intervenor's time to deal, to
21 analyze, to digest the evidence.

22 Because DISCO -- and I understand they are busy. But I
23 mean, this is the process. This is their application.

24 They brought the application. If they are not ready to
25 proceed with it, they can take back the application.

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CHAIRMAN: Mr. Theriault, do you have any specific dates in mind that would be important to you?

MR. THERIAULT: Well, I think the suggestion by the Chairman, by you, Mr. Chairman, of the additional information by October 5th and the IR's by October 11th with DISCO's responses on the 17th is about as far as we could go without moving the November 2nd date for Intervenor evidence.

CHAIRMAN: Mr. Morrison, I'm going to ask you that if some of the information -- for example we don't know what our decision is going to be.

But if we were to presume that there were a number of pieces of information that needed to be filed, if some were available immediately, I take it there would be no need to wait till the deadline to file?

MR. MORRISON: No. Obviously there is some information that could be readily assembled and filed. But other information just, depending on what you tell us to do, requires considerable effort.

CHAIRMAN: Thank you. Ms. Desmond, do you have any comments on this subject?

MS. DESMOND: No comments, Mr. Chair.

CHAIRMAN: And I don't know that we have anything else to deal with. Is there anything else, Ms. Desmond, that we

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2 should be dealing with before we adjourn?

3 MS. DESMOND: Nothing further, Mr. Chair.

4 CHAIRMAN: And nobody else has anything further? Sorry.

5 Mr. Zed does.

6 MR. ZED: Yes. I have something that is totally removed

7 from what we have been discussing today, just a matter of

8 -- I was curious as to whether or not the applicant had,

9 as they have in previous times, intending to schedule an

10 Exhibit Day where they do a Power Point presentation of

11 the evidence and do an outline. And I didn't notice

12 anything on the schedule. And I don't recall discussing

13 that.

14 So I'm just putting it out there that if there is to be

15 such a day, that before we get too far along, maybe we

16 should think about scheduling that in terms of what we

17 have already scheduled.

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

19 MR. MORRISON: We have really turned our minds to it, Mr.

20 Chairman. I do recall having some remarks from the

21 previous Board that they were disinclined to that type of

22 a presentation.

23 And I don't know. This Board may be of a different

24 mindset. It has its advantages in terms of framing the

25 issues and so on. But it also can be unwieldy.

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So it is really -- we will look to the Board's guidance on that. But we hadn't turned our minds to it, no.

CHAIRMAN: My recollection from the last time is that there were some presentations that were outside of the scope of the hearings themselves. They were informal. And people attended or didn't as they saw fit.

But there were also Power Point type presentations at the hearing as well. So I will leave that for the parties I guess at this point in time to deal with.

All right. Well, then we will adjourn. And we will provide a decision just as soon as possible. Thank you.

(Adjourned 4:25 p.m.)

Certified to be a true transcript of the proceedings of this hearing as recorded by me, to the best of my ability.

Reporter