

New Brunswick Board of Commissioners of Public Utilities

Pre-hearing April 17th 2001
Delta Hotel, Saint John, N.B.

IN THE MATTER OF a generic hearing to establish the need for
and the evidence to be provided in connection with any
specific hearing held to review the maintenance or upgrading
of a generating facility of New Brunswick Power Corporation

Henneberry Reporting Service

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CHAIRMAN: David C. Nicholson, Q.C.

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BOARD ADVISORS: M. Douglas Goss
Todd McQuinn

BOARD CONSULTANTS: Jim Easson
John Butler
John Murphy

BOARD SECRETARY Lorraine Legere

APPEARANCES: David T. Hashey, Q.C., for
New Brunswick Power Corporation

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CHAIRMAN: Good morning, ladies and gentlemen. Can
everybody hear me? A couple of housekeeping items to
begin with.

And you will notice that I pushed the red button
before I spoke. The shorthand reporter will stand up and
scream at you if you don't do the same yourself.

In other words, the mike is operated with the button.

And when you are not speaking you should disengage the button. When you do speak would you identify the party that you represent and your name please.

Everybody should have by this time a tentative hearing agenda and then a schedule of proposed dates. There is also what is headed "Policy Statement". But it really is an explanation of the different types of intervenors, that is formal intervenor or informal intervenor.

And from an old hearing information and procedures sheet that just has some things noted on it as to how procedures should operate. These are all given to you in advance so that when we hit that place in the agenda which calls motions, if you have any difficulty with any part of that, then we will discuss it at that time.

What I would ask you to do is that I will call now for appearances. And at the time that you give your appearance indicate to us what the form of intervention that you wish to pursue, that is whether you are a formal intervenor or an informal intervenor.

And if you can share with us, if you are thinking about bringing witnesses yourself or as an intervenor, that will give us a sense of timing and length of hearing, et cetera.

So I will start off with the applicant, the New

Brunswick Power Corporation. Stay seated if you want to, especially with those mikes.

MR. HASHEY: I think it is a little easier. That's fine.

I'm David Hashey. I'm counsel to NB Power, the applicant. With me today on my left is Ken Little, the Vice-President of Regulatory Affairs. Behind me is Marg Tracy, the Coordinator of Regulatory Affairs, that many of you would know anyway, Wanda Harrison, counsel and Navin Bhutani who is the senior advisor for Regulatory Affairs at NB Power.

Thank you, Mr. Chairman.

CHAIRMAN: Thank you. Again of course the Power Commission has already prefiled its evidence and its witnesses. And they are all listed there.

MR. HASHEY: Mr. Chairman, I do have though copies for you of the proof of publication, if you would like to have those now?

CHAIRMAN: All right. That is probably a good thing to do.

MR. HASHEY: A logical time. I don't think we need to read them. I will just --

CHAIRMAN: No.

MR. HASHEY: -- present them to you?

CHAIRMAN: No. Just file them with the Secretary of the Board, Mr. Hashey, over here. That will do it. I will mark them during our break.

All right. The first registered intervenor I have here is Canadian Manufacturers & Exporters. And if the representative can't get to a mike easily, I would ask somebody to give up their mike so that individual should.

Mr. Lewis has written a letter to us. Is he here today?

MR. LEWIS: Yes, Mr. Chairman. Blaine Lewis, Vice-President of the Canadian Manufacturers & Exporters, New Brunswick Division. At this time our intention is to be formal intervenors.

Although where we represent a group of people being an association, we do have to confer with those individuals.

And we will be making a decision shortly as to whether we continue with that status or go to informal status.

CHAIRMAN: Okay. Any idea when you would be able to tell the Board that? Is a week sufficient time for you to be in touch with your membership?

MR. LEWIS: We are meeting on April 26th to determine that.

CHAIRMAN: Okay. At this time any indication of whether or not you might want to call witnesses at the time of the hearing?

MR. LEWIS: Possibly one. But again that will be determined on April 26th.

CHAIRMAN: Okay. Thank you, Mr. Lewis. Conservation Council of New Brunswick?

MR. COON: Good morning. David Coon with the Conservation

Council of New Brunswick. And to my right here is David Thompson, our Area Director for the Conservation Council.

And as we indicated, our intention is to be a formal intervenor.

CHAIRMAN: Okay. Any idea about witnesses at this time, Mr. Coon?

MR. COON: It is our intent.

CHAIRMAN: Okay. Not to push, but are we talking about one or two or three or a panel or --

MR. COON: I would expect we would be thinking of three or four witnesses overall.

CHAIRMAN: Overall. So you are not talking about one panel. You are talking --

MR. COON: No.

CHAIRMAN: -- about two or three individuals. Okay.

MR. COON: Yes.

CHAIRMAN: Department of Natural Resources and Energy?

MR. BARNETT: Good morning, Mr. Chairman, members of the Board. My name is Don Barnett. I'm the Assistant Deputy Minister for Natural Resources and Energy. And I'm joined here this morning with Marion Rigby, Senior Policy Advisor with the Energy Secretariat.

The Department plans to be a formal intervenor. But at this time it will reserve the right to cross examine and to make final argument. We have no plans at this time

to lead evidence, Mr. Chairman.

CHAIRMAN: Okay. Thank you, Mr. Barnett. Emera Incorporated?

MR. WOODACRE: Good morning, Mr. Chairman, fellow Board members. My name is Kendall Woodacre. I represent Emera at this hearing.

We are a formal intervenor at this time. And we have not decided to the extent of the witness involvement. We expect within a week we will have that decision to the Board.

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

MR. MAROIS: Good morning, Mr. Chairman. Rock Marois here representing Enbridge Gas New Brunswick. We intend to be a formal intervenor but we are not planning on having any witnesses.

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

MR. STEWART: Good morning, Mr. Chairman. Christopher Stewart for Irving Oil Limited. I'm joined this morning by Mr. Brian Earle of Irving Oil.

It is Irving Oil's intention to be a formal intervenor in these proceedings. It is not clear yet whether we will be calling witnesses. I would expect that if we do it would only be one witness or one panel. But we will advise the Board in due course.

CHAIRMAN: Any idea when you will make that decision, Mr. Stewart?

MR. STEWART: Likely when we receive the response to the interrogatories.

CHAIRMAN: J.D. Irving, Limited?

MR. DEVER: Good morning. My name is Bill Dever, representing J.D. Irving, Limited. J.D. Irving, Limited intends to be a formal intervenor at the hearings. And I expect that we will be calling witnesses but no more than one or two.

CHAIRMAN: Nova Scotia Power Incorporated?

MR. WALLACE: Good morning, Mr. Chairman and Board members. My name is William Wallace, representing Nova Scotia Power.

It is our intention to be a formal intervenor. We will know within one week before we will be calling any witnesses.

CHAIRMAN: Thank you, Mr. Wallace. Saint John Citizens Coalition for Clean Air?

MR. DALZELL: Yes. My name is Gordon Dalzell, Mr. Chairman.

CHAIRMAN: Mr. Dalzell, just hold up your hand.

MR. DALZELL: Oh, yes.

CHAIRMAN: There is a big sea of people out there. I can't -- good. Go ahead, Mr. Dalzell.

MR. DALZELL: Yes. Thank you. Well, we -- at this time we

have not decided whether we could call any witnesses. One of the issues that we wanted to raise this morning was the inability or the limitations on a community --

CHAIRMAN: Okay. I'm anticipating, and that should probably be under number 2?

MR. DALZELL: Number 2.

CHAIRMAN: We will come back around to that.

MR. DALZELL: Okay then.

CHAIRMAN: Good. Thanks. So you want to be a formal intervenor?

MR. DALZELL: Yes. We would like to, and like to monitor and be present and be informed of the issues and participate at that level at least. We may call a witness depending on the circumstances. Thank you.

CHAIRMAN: And again I'm pushing everybody this morning. But any indication of when we might know whether or not you would make that decision as to whether you want a witness or not?

MR. DALZELL: It is very difficult to say. It just may depend on some of the outcome of some of the recommendations that we may make, whether or not --

CHAIRMAN: Okay.

MR. DALZELL: -- we will have the resources to be able to have a witness present.

CHAIRMAN: It sounds to me as you are echoing Mr. Stewart.

And that is after the questions of the interrogatories are answered. By then you would be in a better position to know?

MR. DALZELL: Yes.

CHAIRMAN: Saint John Energy?

MS. COUGHLAN: Jennifer Coughlan with Saint John Energy. We would like to register as a formal intervenor but do not intend to ask any -- or call any witnesses at this time.

CHAIRMAN: Thank you. Now here it says University of New Brunswick. But I would have to say it is the engineering faculty?

MR. SOLLOWS: Well, in fact it would be Ken Sollows, not the University of New Brunswick. And I would like that corrected. Thank you.

CHAIRMAN: Okay.

MR. SOLLOWS: I don't intend to call witnesses. I probably will file evidence as before.

CHAIRMAN: Okay. Thank you. Westcoast Power Inc.?

MR. COLVEY: Kevin Colvey, Westcoast Power. We are registering as a formal intervenor. But we do not plan to bring any witnesses at this time.

CHAIRMAN: Good. Thank you, Mr. Colvey.

And the Board received a letter delivered to the Commissionaire at the office building sometime after close of business on Friday last from Rodney J. Gillis. Is he

here today? Yes, he is. He just walked through the door.

Mr. Gillis, come on up and grab a mike up here. I'm just calling for appearances, et cetera. You can go back after. That is the easy mike to get to, Mr. Gillis, that is all. Press the button before you speak.

MR. GILLIS: Press the button?

CHAIRMAN: Yes, on the --

MR. GILLIS: I did.

CHAIRMAN: Okay. I was calling for appearances. And are you appearing on behalf of yourself or a party?

MR. GILLIS: On behalf of myself at this time.

CHAIRMAN: Okay. And you are familiar with the Board having formal and informal intervenor status?

MR. GILLIS: Yes.

CHAIRMAN: Which do you propose to be?

MR. GILLIS: Formal.

CHAIRMAN: Formal. And do you have any idea at this time if at the time of the hearing whether or not you would likely call witnesses?

And if you don't at this time, when would you be making that decision, do you think?

MR. GILLIS: It is difficult to say. The decision would probably be made at least four weeks in advance of the hearing itself, if that is sufficient, depending upon the evidence adduced by others.

CHAIRMAN: Okay. Did you just arrive? I'm wondering, because we had a number of handouts.

MR. GILLIS: Yes, I just arrived.

CHAIRMAN: Okay. Perhaps the Board Secretary --

MR. GILLIS: I do have a set.

CHAIRMAN: Okay. You have got a set?

MR. GILLIS: I have got a set.

CHAIRMAN: Well, the agenda shows that the next thing we are going to do will be any motions as to procedural questions, et cetera, Mr. Gillis. And I just wanted to make sure you had that so you could look it over while I was going around the room.

I have been presumptuous in that technically Mr. Gillis didn't file his intervention till after the date called for in the -- or the time called for in the public notice.

But does anybody have any objections if the Board extends full intervenor status to Mr. Gillis?

Since I hear no objections then the Board will accept Mr. Gillis. You will be on the end of the docket though, Mr. Gillis.

MR. GILLIS: Thank you.

CHAIRMAN: Okay. Board counsel?

MR. MACNUTT: No comments, Mr. Chairman.

CHAIRMAN: Okay. I'm sorry. Mr. MacNutt appearing on

behalf of the Board.

MR. MACNUTT: Yes. I have no comments at this time, Mr. Chairman.

CHAIRMAN: Okay. I will go to number 2 which are motions. And if you have any questions or clarifications you want from the Board on anything that is set forth in the documents that we have given to you, why by all means bring it up as a question.

One thing that I would like to -- there are two things that I would like to bring to your attention right now, is that normally in a hearing process if there are interrogatories that are delivered to either the applicant NB Power or subsequently to an intervenor on evidence filed, and the filer of the evidence objects to answering the question on the basis that it is irrelevant, then normally what we do is we set up a Motions Day which we establish on today's date, the prehearing conference, so that with sufficient time for the provider of the evidence to say look, I object.

And the poser of the question say Board, I don't think that is good grounds to object and we would like to have the Board rule on it.

Normally that would all be done by paper. And then it would be an open public hearing. I just want the parties' comments.

The Board would propose that depending -- in this process what we do is that two days from the receipt of a question, then the party questioned would have to indicate to the questioner and the Board that they object to the question as it is put and that they would not -- they intend not to answer it or that a certain portion of it they will answer but the other portion they won't.

We then suggest and look for your comments that -- we will give the asker of the question 24 hours to get back to the provider of the evidence who has objected to the question and say look, I don't think that is an appropriate line to take, I think you should answer the question, and I ask the Board to rule.

Then at that time we will do one of two or three -- or one of two different procedures. The first one is we will arrange a telephone conference call with the asker of the question and the responder and the Board will have a motion over the telephone. We can join in any other formal intervenor who wishes to join in and get it over and done very quickly.

Now -- otherwise we may well go the route, and the Board is going to make that choice, of convening a hearing at the Board's premises within two or three days.

And we have got some tentative dates that I will share with you later. But we want to deal with this in a

quicker manner than would normally be the case. So I leave that for your comments when you rise on motions.

The other thing is is that -- and this is more for the hearing itself. But in the past what we have done is when parties do call a witness they will circulate the c.v. of the witness in advance of the hearing itself.

So that when they call that witness at the time of the hearing there is no necessity to go through all of the educational qualifications, et cetera, et cetera unless somebody objects.

So that very quickly we can have somebody found to be an expert in a certain field and therefore able to give opinion evidence.

That is just very much a housekeeping matter. But it probably will save a couple of hours with all the panels, et cetera that NB Power will be calling and more time too if the intervenors call evidence.

So those are the things that I wanted to comment on. And I will ask each of you to comment if you would like to in reference to them. After that, if there are any motions the Board will retire and consider the motion and come back in and take up item 3.

So having said all of that, Mr. Hashey?

MR. HASHEY: Thank you, Mr. Chairman. There is one item.

On your information and procedures. Is this something you

would like us to address now?

CHAIRMAN: Yes.

MR. HASHEY: The delivery of documents and the practicality of what has to be done here and the number of people and the number of interrogatories. Would it be possible to have that changed so that -- and we are not going to try to play with your dates at the moment. That seems to be fine, tight but fine. The question is if we would file the documents with the Board at that time and then possibly deliver either electronically or to a courier on that day to be sent to the individuals.

I mean, to actually effect delivery to some here may be quite difficult physically within that very tight time restraint. A courier normally is sent from Fredericton I believe around 3:00 o'clock. And if these things were posted by courier or delivered to the courier, would that be satisfactory? That is the only real change that we would request at this time.

CHAIRMAN: Okay. I will ask the other parties to comment on that as I call upon the parties. So that is all from NB Power.

Mr. Lewis, Canadian Manufacturers & Exporters, any comments, motions?

MR. LEWIS: No comment at this time on that specific request.

CHAIRMAN: Okay. Are there any other matters that I have talked about or are in the documentation we handed out to begin with?

MR. LEWIS: In terms of the schedule, I guess interrogatories to NB Power on April 25th, where we are scheduled to meet and determine the total extent of our involvement on the 26th, it is problematic for myself.

I guess I would request a couple of days delay on that particular date, if the Board would so consider.

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

MR. THOMPSON: David Thompson for the Conservation Council. We have a concern regarding the timing of the hearings, and we would like to see that time shifted.

And do we proceed in the form of a motion here? I'm not familiar with just how we --

CHAIRMAN: I'm not going to stand on the formalities from a legal point of view. You tell us what your difficulty is and what you would like to see done. And I will treat that as a motion, Mr. Thompson.

MR. THOMPSON: Well there are a number of things in flux now which are going to take place over the next few months. And as well there is the matter of citizens' groups, public interest groups preparing and having the resources to participate.

And I think Mr. Coon will elaborate on that. And I

will give you a copy of a submission we brought along.

MR. COON: Yes. We are concerned about the timing on the generic hearings. And I guess we were under the impression -- anyways part of today's purpose is to discuss that very matter.

CHAIRMAN: I'm going to stop you for a second, Mr. Coon.

Did you bring copies for the other intervenors of this?

MR. THOMPSON: We have a limited number of copies. Now I can -- if there is a particular intervenor, I do have some extra copies.

And you know, maybe someone -- if there is someone here that can run out and get some other copies made off of these.

CHAIRMAN: All right. Well, let me -- we will do that. The Board Secretary will make arrangements to go and have copies made.

But as you see on the procedure sheet that we gave, we handed out to begin with, there have to be sufficient copies for every intervenor and then 15 copies for the Board, okay.

Now that 15 copies for the Board we may in fact cut back. But there have to be sufficient so the Commissioners can have them too, all right.

But is Mr. Coon going to talk about what is in this document you just filed with me now?

MR. COON: Just with respect to the timing issues, the timing of the generic hearing.

CHAIRMAN: Is that part of it in here?

MR. COON: That is part of that, yes.

CHAIRMAN: Okay. I'm going to suggest that what we do is that we give this document to the Board Secretary and see if she is able to get copies made.

Then I will put you down to the back of -- or at the end of the intervenor's motions, so that hopefully she can get that sheet copied and back and distributed to everybody in the room before you make your presentation, if that is okay.

MR. COON: That will be fine. We realize there is a steep learning curve for us here. We don't have legal counsel.

CHAIRMAN: I appreciate that. And it is no problem. Okay.

So we will pass on -- we will come back to Conservation Council again. Department of Natural Resources.

You might as well however, Mr. Coon, give a comment in reference to what Mr. Hashey brought up about the service of documents. That would be -- you could do that at this time. And then the other parties would have an opportunity to hear what you have to say.

I guess what -- I don't want to paraphrase Mr. Hashey. He is quite capable of saying what he wants to himself. But basically is serve the Board in accordance with that

sheet and then serve anybody who can be served electronically within the time period, and then for the others delivered to a courier on that day.

Is that fair, Mr. Hashey? Is that what you said?

MR. HASHEY: Yes, I think so.

CHAIRMAN: Yes. In other words, if you can fax it -- if somebody has a fax you would fax on that day.

MR. HASHEY: Yes. I was thinking when I said electronically, E-mail as well, would be better.

CHAIRMAN: Okay. Any comments on that?

MR. COON: Just to clarify, it will be either by E-mail or fax. You are not saying one or the other, but electronically depending on the technological capabilities of the recipient?

MR. HASHEY: Correct.

MR. COON: And then the same day the documents will be couriered to those who aren't connected as well as some?

CHAIRMAN: That is my understanding, right, Mr. Hashey?

MR. HASHEY: That's correct.

CHAIRMAN: Yes. And I should note that -- and I know, Mr. Coon, this is particularly applicable to the Conservation Council. But the time periods that the Board sets up, et cetera have to be adhered to in all cases in reference to the primary contact, which in the Conservation Council's situation is yourself.

If Mr. Thompson is in Musquash, and it is more difficult to get communication to him, as long as you, Mr. Coon, are served that day and NB Power gives the courier company on that same day what has to be served on Mr. Thompson, because he is a secondary party, in other words, you are the primary party for the Conservation Council, that has got to be acceptable as well.

MR. HASHEY: Mr. Chairman, it would seem to me that if we would serve one party for each intervenor, that would be fair. And they could make arrangements for their own inter-delivery of this.

I think it would get pretty onerous if we get listing a whole group of people that have to be served. We would certainly prefer that.

CHAIRMAN: Okay. What are your comments on that, Mr. Coon?

MR. COON: Well, first to the former issue, we are okay with the proposal for delivery as laid out there.

With respect to the latter, this has to do with resources. And at this point we don't have the necessary resources to get these things out, if they are of any bulk, in a timely matter to the three people involved for the Conservation Council.

So we would appreciate the practice that was set in distributing the evidence to be maintained to our three participants.

CHAIRMAN: Okay. Thank you, Mr. Coon. Mr. Barnett?

MR. BARNETT: Mr. Chairman, we have no problem with the difficulty -- no difficulty with the proposed method of effecting delivery as has been proposed by the counsel for NB Power.

in terms of the timetable, we stand for the moment in terms to be educated by other parties' views in regards to this. But first looking at it, we don't have any difficulty with the timetable either.

But we do recognize there may be other parties that may have some concerns. If we can be educated by what they have to say we may have a different view at that time.

And one last point I would like to make is that for some reason we had intervened as a Department. And I don't see that on the list. And I would like the Secretary through you, Mr. Chairman, to change the intervention, still the Department but it would be under my name. And I would be the principal contact for any information that is being filed or being moved through the -- the way that we have decided to effect delivery.

CHAIRMAN: I think you were on vacation when it had to be done, weren't you, Mr. Barnett?

MR. BARNETT: No. I think I was back by the time of the deadline for formal interventions. And I don't wish to

take up the time of the meeting here this morning.

But just as long as the address list can be changed such that it reflects my name. And we can do this with the Secretary after.

CHAIRMAN: Okay. Fine, Mr. Barnett.

Emera Incorporated? Mr. Woodacre?

MR. WOODACRE: Emera also supports the speed of the process, and we would support electronic data transfer with a courier backup system.

On the motion procedures you covered earlier, Mr. Chair, is that documented? And could we have a copy of this procedures you spoke of in hard copy?

CHAIRMAN: I don't know what you are referring to, sorry.

MR. WOODACRE: You spoke about the procedures around motion filings and conference calling and two days and 24 hours.

Could I perhaps --

CHAIRMAN: Well, I spoke about things that weren't on the sheets that were left for you. And you have just covered them admirably.

I wanted -- the sheet that you had for instance indicated that a party had to object I think it is within three business days. And the Board suggests in this proceeding that that be two business days.

And then notice of motion is to be provided to all parties at least one day in advance. And we just want to

know if what I attempted to outline to you as to the two different ways that we could go, and it is really compacting the time period here, plus getting everybody to agree that we are doing it by telephone conference call rather than trying to come into a hearing room and work it that way, or just simply do it by paper, is all right with the parties that are represented here.

If it is, we can set our own procedure and that is what we will do. Otherwise -- do you have any comments on those particular things that you would like to bring before the hearing now?

MR. WOODACRE: Just to comment that once again we support the speed of the process. And conference call with us is fine.

CHAIRMAN: Okay. Enbridge Gas?

MR. MAROIS: No comment, Mr. Chairman.

CHAIRMAN: Thank you, Mr. Marois.

Mr. Stewart for Irving Oil?

MR. STEWART: No concerns with any of the issues you have raised, Mr. Chairman, the timetable or the proposal on how to deal with, you know, the information and procedure sheet that has been submitted.

With respect to the issue of service of documents, I think we have sort of talked around a little bit. I would just make a suggestion that perhaps the Board could direct

all formal intervenors within the next day or two to confirm with the Board exactly to whom they wish copies of documents to be served, like information requests, what have you, including fax numbers and E-mail addresses and that sort of thing.

And then the Secretary could prepare sort of a master list that all of us could work off. And then if that is faxed out to us then Mr. Hashey and myself and everyone will know, you know, that I need to send two copies to this person and one to that person and what have you.

CHAIRMAN: Well, first of all the Board Secretary informed me this morning that that would be all the parties with their coordinates. I guess that is the way addresses, et cetera are referred to now.

And she is as normal one step ahead of all of us and she has actually got that. And it is in our binder. And certainly I think that again during the break she might attempt to make copies of that and give it to the intervenors, the one that -- oh, she tells me you have it.

MR. STEWART: I guess, Mr. Chairman, I just raise two issues about that. One is there are no E-mail addresses on here.

CHAIRMAN: Okay.

MR. STEWART: And there may be -- like I noticed Mr.

Barnett, he seems to indicate that he is to be the service contact. And there are four other names here from the

Department. So I suspect this list is going to change.

CHAIRMAN: Yes.

MR. STEWART: So I guess really all I'm suggesting is we -- each of the formal intervenors reconfirm exactly who they want and give the full particulars to the extent that they are not here. And then that way everybody will know this list can be finalized.

CHAIRMAN: Good. That's fair. Thank you. Anything further, Mr. Stewart?

MR. STEWART: No, Mr. Chairman.

CHAIRMAN: J.D. Irving, Limited?

MR. DEVER: We have no comments or concerns with anything that has been discussed to this point.

CHAIRMAN: Okay. Nova Scotia Power?

MR. WALLACE: We support the proposed process, Mr. Chairman.

CHAIRMAN: Okay. And Mr. Dalzell, are you and the Conservation Council combining your presentation?

MR. DALZELL: No, no. The -- basically we think the timetable is rather accelerated to be adequately prepared and also time to acquire the kind of resources.

And there was one of the issues -- I'm not sure if it is appropriate to mention it now. But one of the relevant issues in the public notice -- I understand we can -- can we raise an issue related to that, a relevant issue?

CHAIRMAN: Well, this is your --

MR. DALZELL: Okay.

CHAIRMAN: This is your opportunity.

MR. DALZELL: Yes. Okay. Well one of the issues that we have identified -- keeping in mind that this is a community-based public interest environmental advocacy group with very limited resources in the neighborhood areas.

One of the problems that we have is that there is no resources available for groups like this if we wish to bring forth a witness.

Now our only experience in these types of matters had to do with the National Energy Board panel hearings of which we were an intervenor. And we applied to the Canadian Environmental Assessment Act and were able to get some funding to hire our own expert and able to present evidence at that time.

I'm just -- I guess the question and perhaps the request to the Board, will you be making available resources so that community-based groups, public interest groups could have some funding to acquire witnesses to come forward?

The reason we mention it, in reviewing the binder during the weekend, there are a number of examples of course where intervenors have consultants and specialized experts to come forward with evidence. This is a real

disadvantage of course for our community-based group interested in these issues.

And I guess the question, and if it is a motion or formal request, will the Board or other structures make some funding available we could apply, bring forward some witnesses from our perspective and present the evidence?

I guess that is really the big question for a community-based environmental group like ours which is not as, you know, sophisticated as the New Brunswick Conservation Council with -- you know, even with its resources. We are separate.

I will leave that with you for clarification.

CHAIRMAN: Well, Mr. Dalzell, all I can tell you is that -- and it was not this Board -- it wasn't constituted with the same individuals at the time. But back in the early 90s -- and Mr. Coon was the one who made a similar motion at that time -- the Board considered it.

And we are the creature of our statute. And we have to have specific statutorily-given powers to be able to do that. At that time the Board reviewed the Public Utilities Act and came to the conclusion that we did not have that statutory power.

I can tell you that the legislation has not change since then except to be a bit more restrictive in our powers in reference to NB Power. Those are the only

amendments since then. But none dealing with the sections that were considered at the time.

This Board is a new panel. And administrative tribunals are not necessarily bound by their previous decisions. And you and/or Conservation Council can make a motion again. And this panel will consider it. That is a bit of history on that.

I will certainly during our break take what you and my fellow Commissioners will as well say and review it. But I understand your position.

MR. DALZELL: Thank you.

CHAIRMAN: You're welcome. Saint John Energy?

MS. COUGHLAN: No comment, Mr. Chairman.

CHAIRMAN: Okay. Mr. Sollows?

MR. SOLLOWS: No concern regarding the delivery of documents. Some concern regarding the fairly accelerated pace, looking forward to the generic hearings.

I'm just wondering is there any explanation as to why we are trying to compress the schedule? As you say, it cuts from three days down to two. And is there a clear reason why we are doing that?

CHAIRMAN: Well, there are a multitude of reasons. One is the three-week summer we are going to have. But no, this hearing will be too large for the Board to hold it in its own premises. Available hotel space like this is one

consideration.

The other is that this is a generic, to deal with those three questions that are in the public notice. And only as a result of that, being those questions being answered and the Board ruling on them, can NB Power then start the process of coming to us with a refurbishment request.

And we therefore looked at it with all those things and a few more in mind and said, you know, it is not quite the same as the kind of testimony that would be coming forth in a normal let's say rate application or otherwise, and let's try and streamline this process so that the Board -- you know, we have tentatively put that week at the 4th of June.

But then the Board has to make a decision. And we had some other matters on our agenda. So that -- and the Power Corp. wanted to proceed in as reasonably quick a fashion as we could with the generic.

MR. SOLLOWS: Fair enough.

CHAIRMAN: Those are the reasons, Mr. Sollows.

MR. SOLLOWS: Thank you.

CHAIRMAN: Westcoast Power Inc.? Mr. Colvey?

MR. COLVEY: Mr. Chairman, we don't have any problems with Mr. Hashey's suggestion on documents nor do we raise any motions at this time.

CHAIRMAN: Good. Thank you. Mr. Gillis?

MR. GILLIS: Just one point, Mr. Chairman. I note there is no provision for supplemental interrogatories to NB Power. And based upon previous hearings, in view of the responses given by NB Power to interrogatories, supplemental interrogatories seem to be the course that one would have to follow.

You could structure supplemental interrogatories and not interfere with your schedule, if you would indicate that the supplemental interrogatories would have to be delivered by the 14th of May and NB Power would have perhaps to the 18th of May or shortly thereafter to deliver responses to the supplemental interrogatories.

CHAIRMAN: Okay. Anything else, Mr. Gillis?

MR. GILLIS: No.

CHAIRMAN: How is the copying going, Madam Secretary? Okay.

So they are not available yet?

I'm going to suggest that we take a break now. And when those are delivered we will give everybody five or 10 minutes to read through the presentation. And then we will come back in and ask Mr. Coon to address the Board.

So we will wait and -- yes, Mr. MacNutt? I'm sorry.

I forgot Board counsel.

MR. MACNUTT: No. Just one point. You asked Mr. Dalzell if he was -- on the matter of funding if he was -- that you

would entertain a motion.

I don't have it clearly in my mind that a motion was made requesting funding.

CHAIRMAN: Well, I said I would treat his presentation as a motion that we rule on whether or not we can get intervenor funding, okay.

MR. MACNUTT: So as long as we have it clarified.

CHAIRMAN: I appreciate you saying that, Mr. MacNutt.

All right. We will take a break now so that we can get that back. And we will come back in and we will let you know. So thank you.

(Recess - 11:00 a.m. - 11:15 a.m.)

CHAIRMAN: Sorry we took so long. Mr. Coon, we took time to read through your written presentation. And it is to say the least very interesting, no question about that.

I see two matters in it. The one matter is again the Conservation Council is taking the position in reference to intervenor funding as Mr. Dalzell does.

And the second one is that the generic hearing should -- the actual hearing should not commence until January 1, 2002. And then you go on to list reason after reason after reason.

Is that a fair capsulization of what is in that?

MR. COON: Yes, Mr. Chairman.

CHAIRMAN: Yes. The generic hearing is already commenced.

Today is the first step in this hearing process. And frankly most of what is in your document are matters that from -- I can be convinced otherwise -- but they are matters that should be discussed at the generic hearing.

And I give you by way of example that if any of the decisions that are possible in reference to the energy policy that would have implications for the applicant, then presumably we will argue about the kind of evidence that they must provide, taking into consideration those scenarios. And they must provide that when they in fact do come with a refurbishment application.

And those are questions that should be argued. And that is why this generic hearing is being held, so that we say NB Power, when you come you have got to cover this and this and this and this. And that is what we discuss in the generic hearing.

And you have brought up some excellent matters that should be discussed in that generic hearing as to the various scenarios that NB Power should cover.

But those are questions, in the Board's opinion as we sit now, remain -- you can try and convince us differently. But those are things that we have called the generic hearing for.

So the only question is, having all those things in mind, why should we postpone the actual generic hearing

date until January 1, 2002? Okay.

Now I don't mean to preempt any of what you are saying except I don't think it will serve our purposes today to go into all of the various arguments of the different scenarios that are possible in your presentation.

So with all that, please feel free to address the Board on anything that you want to.

MR. COON: Thank you, Mr. Chairman. I guess there are a couple of things. It is sometimes a little difficult to sort out, at this point anyways, what is appropriate to be argued in the generic hearing versus what is appropriate to be argued in the specific hearing.

And even preparing for today, what is appropriate to bring to a pre' meeting, for the prehearing meeting, whatever -- however you described it, the prehearing meeting.

But let me say a couple of things. First of all, because there are so many balls in play with respect to the future of NB Power -- and when we saw the evidence filed by NB Power -- and much of what they argued flows from their legislative mandate. So that is the context for the evidence they are providing.

And as that mandate could change -- we don't know -- but could change in any manner of directions depending on what sorts of legislative changes are made as committed to

by the Province in implementing its energy policy, changes to the Electric Power Act and so on this fall, and also the decision that the Minister -- the announcement the Minister of Natural Resources and Energy made last week, that before the end of the year a decision will be made on the future structure, ownership and status of NB Power, which again speaks to its mandate.

And it seems to us that the kind of information that would be relevant and evidence that should be provided would be different depending on the nature and mandate and structure and ownership of NB Power.

And without knowing that in the generic hearing period, we can't possibly account for all the various combinations and permutations of that.

So essentially I guess we are concerned that the rule book for the specific hearings could be written without the benefit of knowing what kind of institution we are actually going to be dealing with and what its mandate will be by the time next year rolls around. So that is one.

The other is directly related to the question of intervenor funding. And that is that the Minister of Natural Resources and Energy had told us in a meeting that this issue of intervenor funding will be addressed this fall in the context of implementing energy policy, and

that it is very much on their agenda.

As you have pointed out, we brought this forward the last time around some years ago. And of course rightly you said that it was up to the Province ultimately to make those decisions. And of course we have been talking to them about this since then.

And now the issue will be discussed and debated within the context of the government and the implementation of the new energy policy.

Unfortunately if we adhere to the current schedule, any decision in favor of making the possibility of intervenor funding available will come too late for this purpose.

As you may recall from the generic hearings regarding price hikes some eight years ago, we were unable to continue to participate because we just didn't have the resources and essentially had to drop off the intervention process. And we are concerned that that not happen this time.

So there are a lot of decisions being made this fall that have bearing on the outcome of -- and the discussion, the substance of the discussion and who participates in the generic hearing, which is why we are arguing that in fact the hearing -- the hearing part of it should commence the beginning of the new year rather than now.

CHAIRMAN: Thank you, Mr. Coon. The Board appreciates where you are coming from in reference to intervenor funding. And as I say, after all parties have had an opportunity to discuss it, we will make a decision as to -- again this new panel will address that.

Now what I propose to do is a little -- is to ask any of the other intervenors, having heard Mr. Coon's presentation and/or read his written presentation, which I compliment him on, do they have anything further they wish to add to that before I turn back to NB Power for their response to both these motions that are before us? Any other intervenor want to add anything to what Mr. Coon has said?

Mr. Dalzell?

MR. DALZELL: Yes. We would just like to go on the record as to support the motion of the New Brunswick Conservation Council as presented by Mr. Coon and that agency, in terms of the intervenor funding and the timing and general recommendations they have made before the Board.

CHAIRMAN: Okay. Thank you, Mr. Dalzell. Any other intervenors? If not, Mr. Hashey?

MR. HASHEY: Thank you, Mr. Nicholson. Just briefly, Mr. Chairman, on the funding, I think that is outside the scope of anything that we can deal with here. That is -- I think as you indicated, that is a Province matter. And

I don't think that that is anything that has been provided for.

Secondly on the hearing date, NB Power of course has a proposed timetable. I mean, this company must continue to do business, notwithstanding what is in the press and all the interests that are being expressed about what may be the future.

We have a current company that has to operate and we suggest has to upgrade its facilities if it is to be economically feasible and will benefit our provincial people. And that I think is important, that we don't adjourn and wait for decisions. I don't really see any reason for that.

The hearing date of course won't be till later on. The generic hearing in June will establish what are the issues that have to be addressed at that. And I don't see any downside on that.

On the environmental side of course this is something that is a bit outside of the scope here possibly, that there are boards federally and provincially that will be reviewing environmental sides of both proposals, Coleson Cove, provincial and certainly the Point Lepreau, we all know about. But that is not on the first line anyhow.

So those would be my only comments on that. We would like to see the timetable adhered to and this matter move

ahead as scheduled.

Thank you, Mr. Chairman.

CHAIRMAN: Thank you, Mr. Hashey.

All right. I think the Board will retire for 10 minutes to discuss both those questions, motions and reconvene. And I will adhere to that 10 minutes.

(Recess - 11:41 a.m. - 12:00 p.m.)

CHAIRMAN: That is not bad for a 10 minute recess.

Now there were a number of matters that the Board was going to look at and has heard from counsel and parties here today. And I will save the two official motions that are on the floor and deal with the other housekeeping or scheduling matters first.

First of all the Board agrees with Mr. Stewart's suggestion in reference to giving all of your information and checking with the sheet that is in front of you and talking to your fellow intervenors in the company, if there are people or names or addresses or anything that should be changed.

And I guess, Mr. Stewart, your suggestion was that each intervenor convey that to the Secretary of the Board and then she compiles a new list and gets it out in a couple of days. So we will ask all the parties to do that please.

The CME asked that we change things because they can't

get -- they are having their meeting two days after things are going on. I wish I could help you out on that, but I'm sorry, we have got to stick with what we have suggested as a schedule.

The Power Corp. brought up a suggestion that they would serve in accordance with the draft information and procedure as it's stated there, to be delivered to all parties by 12:00 p.m. or 3:00 p.m. if it is inter-city.

But they wanted if -- and they were to be allowed to do that by electronic form, either E-mail or fax. If they couldn't do it by E-mail or fax and they couldn't arrange the personal service, then being able to serve a party by putting it in the hands of a courier on the service date would be sufficient.

And the Board's ruling on that is that -- you know, first of all, and I'm sure NB Power will do that, please talk to the recipient, see which is their preferred method of receiving documentation.

Now for instance the Board's preferred way is by fax rather than by E-mail. It may be that someone else has no problem with E-mail. But you have indicated you will deliver to the Board their 12 copies by 3:00 p.m. on the date of service. That is my understanding of it. So I suggest that you do that.

If there are difficulties with any of the parties on

your proposed arrangement, the Board's order is that you will have to arrange service on the principal person, either electronically or in person, in accordance with that information and procedure.

If it is a secondary individual, and in the case of the Conservation Council, which is a perfect one, Mr. Coon would have to be served in accordance with the schedule that we set out. But Mr. Thompson could be served by putting it in the hands of a courier for overnight service to him.

But because our schedule is as tight as it is, hopefully we can work something out so everybody will get the documentation on the date that we have set in the schedule.

Mr. Gillis' suggestion in reference to a second round of interrogatories, the Board agrees that that would be a good way to proceed. But we are going to set different dates than he had suggested.

He suggested May 14 for the second set with responses on the 18. We are suggesting that you get your answers and you will have a weekend to review them, and you will put the second interrogatory out on May 7 which is a Monday.

And the Power Corp. will have or -- yes, the Power Corp. I guess will have until May 11th which is the Friday

to respond to that second set of interrogatories.

Now the other -- the two motions that are in front of us -- first of all I will deal with intervenor funding -- is that again we have taken a look at the Public Utilities Act.

And as I said initially, unfortunately the Board has no discretion at all. We are a creature of the statute. And the Legislative Assembly has not seen fit to change that statute. So there is nothing that we can do.

I can't remember if back in '90 or '91, Mr. Coon, if I mentioned to you, that there is in the Public Utilities Act, there is a statutory provision that the Attorney General can appoint an agent, the Public Intervenor.

And Mr. Gillis of course was a Public Intervenor for some time before this Board in reference to certain matters, and the Power Corp. was one.

And the Public Intervenor has been in the past a conduit through whom parties who either did not have the resources or for some other reason didn't want to be a formal intervenor and active that way, they could provide that Public Intervenor with information.

And he or she would carry it forth and ask the questions and include it in witnesses' testimony that they might choose to call, et cetera.

Now that is there. There has been no Public

Intervenor appointed to this date in reference to this generic hearing. But that is in the statute. I just point that out to you.

But previously what I did was -- you asked that we write directly to the Minister through whom we report to the House. And that time it was the Minister of Transportation, asked him to take it to Cabinet.

And on this occasion you are now in conversation with the government, Mr. Coon, as I understand it. So again there is nothing the Board can do in reference to that first motion except simply say we just don't have any jurisdiction to do it. There is nothing that we can.

Now in reference to the second one which is your motion that this generic hearing, the actual hearing itself not commence until January 1, 2002, the Board has asked me to compliment you on your brief that you have -- well, a brief and arguments that you have put before us. Because there are many different matters there that need to be discussed when the Board does have its hearing.

However the whole energy question is extremely fluid.

And things change every day. And there is no guarantee that what we think is going to be decided tomorrow won't be put off until 10 days later or that other factors will come to bear.

The Board has decided that we will have a generic

hearing so that we can try and lay down some ground rules.

And if the landscape changes between the time we lay down the ground rules and the hearing or a refurbishment hearing goes ahead, then we are just going to have to do two things, (a) try and cover it in the evidence outlines that we give as a result of the generic hearing, or alternatively require supplemental information or approach at the time of the refurbishment hearing.

That is the best we can do. But we can't stop the process until all of the decisions that might affect the energy industry are made.

So the Board will turn down the second motion made by Conservation Council and the Clean Air Coalition. And we will proceed in accordance with our schedule.

My notes were hasty, but I will just ask Board Council have I covered the waterfront?

MR. MACNUTT: Yes, Mr. Chairman. I have no objection, sir.

CHAIRMAN: Okay. So it is 12:00 noon. And I think everybody's preference here would be just to proceed with the last three items now. And anybody any comment on the place of hearing?

I stuck that on the hearing agenda draft that you have in front of you last week. Because I had thought that perhaps with the number of intervenors who had registered at that time, we might be able to have them in our

boardroom on our premises. But by the size of the turnout today it obviously will have to be in a larger facility like this hotel.

Anybody have any questions or preference or anything they would like to say about item 4 on the list?

All right. Well, the hearing will adjourn today later and be reconvened here for 10:00 o'clock in the morning of Monday, June the 4th. Am I right on that? Yes. And it will be one of the ballrooms here.

A number of intervenors have indicated that their language of hearing, they would like to have the hearing proceed in the English language. Is there any contrary wishes from any of the intervenors in reference to that, or the applicant for that matter?

Okay. We will proceed with the use of the English language only. Therefore simultaneous translation will not be necessary.

Are there any other matters that any of the parties would like to bring up now? Mr. Coon had his hand up. And Mr. Barnett, I will get you in a minute.

MR. COON: Thank you, Mr. Chairman. With respect to other matters, I just wonder if it might not be possible for the Board to organize an information session in a fairly timely manner on procedural matters for intervenors who could benefit from a bit of a primer on procedural matters

around the operation of the Board as a tribunal.

I realize that some written information has been provided. And perhaps there is more. But I think a number of us, at least speaking for the Conservation Council, we would certainly appreciate the opportunity to have a little bit of time to be briefed on the procedural matters and functioning of the Board prior to the hearings of June and hopefully before that.

CHAIRMAN: Okay. Mr. Coon, I would welcome doing that for any intervenor who wishes to have it done. Normally procedure of an administrative tribunal is not a dinnertime conversation.

But what I would ask you to do is that when we break today is you speak to Mr. MacNutt, Board counsel and just briefly outline what you have in mind, and any other intervenor who wanted to join in on that discussion.

And we will be glad to accommodate that and get something going at a time that is convenient from the Board's point of view and from the parties' point of view.

Okay. Mr. Barnett?

MR. BARNETT: Mr. Chairman, I would like to raise the question in terms of transcripts, the availability, the timing. It is perhaps less important at today's prehearing conference, but to my mind would be important during generic conference.

I would also, if you could, just provide some advice in regards to exhibits and how those would be handled through the course of the generic hearing.

CHAIRMAN: Transcripts, I presume that the reporting service can have them available the following morning, am I correct? The nod indicates yes. So that is what will happen during the week of the hearing.

Exhibits. Well, the normal practice of the Board is that you provide them. You come with sufficient copies of the exhibits to provide them for all the intervenors, et cetera.

And if you have them in advance then, as is always the case before this Board, please provide them to the parties opposite as soon as you are able to do so, so they have a chance to review them, and not have it sprung upon them.

Now is that the kind of advice you wanted, Mr. Barnett? Or do you want to go as to whether or not I prepare a list of exhibits in advance like some parties do, the NEB? And the answer is no. That is too cumbersome. We just haven't got the staff to do that.

MR. BARNETT: I wasn't going there with that one, Mr.

Chairman. I have already been there with that.

CHAIRMAN: Yes.

MR. BARNETT: What I was thinking though was a numbering system for the exhibits. Will there be a sequential

numbering system, where in fact the Secretary could just give a number to the exhibits?

CHAIRMAN: Well, I will go round the parties and see what they have to say in reference to that. I'm open to the numbering system on them.

MR. BARNETT: Mr. Chairman, if I may just add, not wishing to interrupt, I just think that when you get to final argument, when you can reference exhibit numbers, it makes it a very simple matter. And that is one of the reasons I would suggest a numbering system.

CHAIRMAN: The shorthand reporter system, do you give a list of exhibits? I'm just trying to remember. You do, don't you, and also undertakings? Yes. Okay.

Anybody any comments on the numbering system for exhibits? Mr. Hashey?

MR. HASHEY: Yes. I think there should probably be a numbering system so we can keep a sequence and a record and make an easy reference.

CHAIRMAN: Yes.

MR. HASHEY: Sometimes it is pretty hard to refer to an exhibit without the number.

CHAIRMAN: Yes. Well, I certainly -- we have always had a numbering system.

MR. HASHEY: Yes.

CHAIRMAN: My suggestion is Mr. Barnett and any other party

wants to -- again I will keep Mr. MacNutt busy. And you might just chat with Mr. MacNutt about what you believe to be a good numbering system after this hearing adjourns. And then the Board will let the parties know how we are going to number exhibits.

MR. HASHEY: It might be an idea to prenumber if there are a lot of exhibits. I can see that to be a real problem if there ever is a major hearing. Not so much the generic hearing where I'm sure there won't be as many exhibits as you would expect and would receive --

CHAIRMAN: No. That's right.

MR. HASHEY: -- at a later time.

CHAIRMAN: Yes.

MR. HASHEY: We will work with Mr. MacNutt on that.

CHAIRMAN: Okay. Any other matters? Yes, Mr. Hashey?

MR. HASHEY: One other, Mr. Chairman. You mentioned something early on about setting a motion date that you had in mind. I don't believe I heard that. Maybe that is something that we don't need now, but --

CHAIRMAN: Well, that is correct. What I wanted to do is to say if you are not going to answer an interrogatory because you think it is inappropriate -- and this applies to both the applicant and the intervenor if they have filed evidence -- is that within two business days you have to inform the parties, including the Board and all

other, that you object to answering it or part of it.

And then because we are on the tight schedule that we are, the poser of the question who has just been rejected has to say within 24 hours, again by notice to the rejecting party and the Board, give that one day to do it and tell the Board and the party opposite that they want to have the Board make a decision as to whether or not it has to be answered.

And then the Board will probably set up a telephone conference call with all of the -- any parties who want to be involved in it and the refuser and the motion-maker. We would do it by telephone.

Okay. Any other matters? If not, thank you for attending. And I look forward to seeing you all at 10:00 a.m. on Monday, June the 4th.

(Adjourned 12:20 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