

1 New Brunswick Energy & Utilities Board

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3 IN THE MATTER OF a hearing to Review the New Brunswick System
4 Operator's (NBSO_ 2009-10 Revenue Requirement held at the
5 Energy and Utilities Board, Saint John, N.B. on February 12th
6 2009.

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A-1 - application dated January 26th 2009 entitled In The Matter of a Review of the New Brunswick System Operator's 2009 and 2010 Revenue Requirement - page 18

A-2 - evidence of the New Brunswick System Operator dated January 26th 2009, Volume 1 of 1, both English and French, provided under cover letter from Kevin Roherty dated January 26th 2009. And this document also includes an erratum provided under letter dated February 6th 2009 from Kevin Roherty to revise pages 1, 5, 8, 9, 16, 17, and 18 of the January 26th 2009 evidence - page 19

A-3 - Responses of the New Brunswick System Operator to interrogatories of NB Power Distribution & Customer Service, NB Power Generation Corporation, Hydro-Quebec, Integrys Energy Services Inc., New Brunswick Energy & Utilities Board and the Public Intervenor, provided under cover letter from Kevin Roherty dated February 9th 2009 - page 19

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1 New Brunswick Energy & Utilities Board

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3 IN THE MATTER OF a hearing to Review the New Brunswick System

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8 February 12th 2009.

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11 BEFORE: Raymond Gorman, Q.C. - Chairman

12 Cyril Johnston - Vice-Chairman

13 Constance Morrison - Member

14 Yvon Normandeau - Member

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16 NB Energy and Utilities Board - Counsel - Ms. Ellen Desmond

17 - Staff - John Lawton

18 - David Young

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20 Secretary of the Board - Ms. Lorraine Légère

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23 CHAIRMAN: Good morning, everyone. This is a Motions Day

24 hearing to deal with three matters raised by the Public

25 Intervenor, Mr. Theriault and one matter brought forward

26 by Mr. Furey on behalf of New Brunswick Distribution and

27 Customer Service Corporation and New Brunswick Power

28 Generation Corporation. I will take the appearances at

29 this time and I will start with the New Brunswick System

30 Operator?

31 MR. ROHERTY: Good morning, Mr. Chair, Members. Kevin

32 Roherty for the Applicant, New Brunswick System Operator,

33 with me today are Lynne West and Margaret Tracy.

34 CHAIRMAN: Thank you, Mr. Roherty. For the registered

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parties, anybody from Hydro-Quebec?

MS. COSSETTE: I am H el ene Cossette for HQ Energy,
Marketing.

CHAIRMAN: Thank you, Ms. Cossette. Integrys Energy
Services?

MR. MACDOUGALL: Yes, good morning, Mr. Chair. David
MacDougall for Integrys Energy Services and I am joined by
Mr. Howard today.

CHAIRMAN: Thank you, Mr. MacDougall. Mr. Furey, are you
representing all of the NB Power companies today?

MR. FUREY: That's correct, Mr. Chairman. I am also joined
by Dale Morehouse, Stephen Russell and Lillian Gilbert.

CHAIRMAN: And that's NB Power Holding Corporation, NB DISCO
Corporation and NB Power GENCO Corporation?

MR. FUREY: Correct.

CHAIRMAN: Thank you. Public Intervenor?

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

CHAIRMAN: Thank you, Mr. Theriault. Department of Energy?
Is Mr. Waycott here this morning?

MR. SIMMONS: I am here for him, Michael Simmons.

CHAIRMAN: Thank you. And the NB Energy & Utilities Board?

MS. DESMOND: Ellen Desmond, Mr. Chair, and with me is John
Lawton and David Young.

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2 CHAIRMAN: Is there anybody that I have missed? I think I
3 have got everybody. Before we get going with the motions,
4 a number of documents have been filed as exhibits and it
5 may make some sense to mark them at this point at time. I
6 don't know whether a draft exhibits list has been
7 circulated or not? So the parties have not seen it.
8 The first document was the application dated January 26th
9 2009 entitled In The Matter of a Review of the New
10 Brunswick System Operator's 2009 and 2010 Revenue
11 Requirement. Anybody have any objection to having that
12 marked as an exhibit at this time? Any comments? That's
13 going to become exhibit A-1 then.

14 The second document that the Board received was the
15 evidence of the New Brunswick System Operator dated
16 January 26th 2009, Volume 1 of 1, both English and French,
17 provided under cover letter from Kevin Roherty dated
18 January 26th 2009. And this document also includes an
19 erratum provided under letter dated February 6th 2009 from
20 Kevin Roherty to revise pages 1, 5, 8, 9, 16, 17, and 18
21 of the January 26th 2009 evidence.

22 I know that one of the aspects of the motion from the
23 Public Intervenor does deal with that erratum.

24 MR. THERIAULT: I have no objection to -- I think we will be
25 able to hopefully deal with that quite simply.

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CHAIRMAN: All right. Then that documentation will be marked as exhibit A-2. And the other documentation that the Board has at this time are the responses of the New Brunswick System Operator to interrogatories of NB Power Distribution & Customer Service, NB Power Generation Corporation, Hydro-Quebec, Integrys Energy Services Inc., New Brunswick Energy & Utilities Board and the Public Intervenor, provided under cover letter from Kevin Roherty dated February 9th 2009, that would become if there is no objection, exhibit A-3.

Any other preliminary matters before we get to the two notices of motion?

MR. ROHERTY: None from our point of view, sir.

CHAIRMAN: Any of the Intervenors have any preliminary matters to raise?

I am going to go to Mr. Furey's motion first, simply because it is the shortest. It has only one aspect to it rather than three. So Mr. Furey, it is your motion, so I will ask you to make your argument at this point in time.

MR. FUREY: Thank you, Mr. Chairman. And the argument will be brief because Mr. Roherty and I have had an opportunity this morning to discuss the three or the two questions. One of them has two sub-parts. And we have reached an agreement that there will be some further information

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provided. I don't think we need to go into the specifics of it here. But my understanding is that there will be some further information on each of the questions provided before the 17th.

CHAIRMAN: Is there a deadline for filing of that information?

MR. FUREY: The 17th is fine with me, Mr. Chairman.

CHAIRMAN: Oh, sorry. 17th. Mr. Roherty?

MR. ROHERTY: I would confirm that understanding, Mr. Chair.

CHAIRMAN: Do any of the other parties here have any comments? All right. Then that appears that that matter then is resolved on the basis that further information will be provided on or before February 17th.

MS. DESMOND: Mr. Chairman, can I simply ask that that information be circulated to all parties? I suspect --

MR. ROHERTY: That was my understanding that we would make it available as we responded to all the interrogatories and make it available to every one.

CHAIRMAN: That takes us to the notice of motion filed by the Public Intervenor. And I think that perhaps we will go to item number 2 as the first item. Item number 2 was a request that the Board -- that the parties be afforded the opportunity if so required to requests interrogatories based on the erratum filed by the NBSO by virtue of a

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letter from Kevin Roherty dated February 6th 2009.

MR. THERIAULT: Yes, Mr. Chairman. I guess, if I may, the reason for that is to allow parties to have the opportunity since these were revisions to the evidence. There may be some parties, including myself, who may want to submit interrogatories with respect to the filed erratum.

I spoke to Mr. Roherty earlier and he suggested that he seemed amenable to that, as long as it was done by tomorrow at noon. And I have no problem having my IRs submitted, if any, by tomorrow at noon.

CHAIRMAN: Mr. Roherty?

MR. ROHERTY: That's true, Mr. Chairman. And also that the -- obviously the new interrogatories be confined to issues related directly to the erratum. And that any questions be as specific as possible so that we could properly answer them.

CHAIRMAN: With respect to the erratum, my understanding is that it was a very small amount of information was changed, perhaps one position was left out or something?

MR. ROHERTY: That's correct. It affects any information related to salaries and benefits in the '09-'10 year.

CHAIRMAN: Yes.

MR. ROHERTY: So I guess that's my concern that the

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questions be related directly to that and as specific as possible to where in the evidence or in an interrogatory we are looking for extra information.

CHAIRMAN: And although the other parties haven't made the request I presume that you would entertain questions from other parties with respect to the new information, as long as they were submitted by noon tomorrow?

MR. ROHERTY: That's correct. I think a short timeline is appropriate.

CHAIRMAN: Any comments from any of the other parties with respect to the second item in the notice of motion?

MS. DESMOND: Mr. Chairman, I am not sure when the response would be filed?

MR. ROHERTY: We would make every effort to respond to those by the current deadline of Tuesday the 17th for additional information that might arise out of this hearing. So the Board has already set that schedule.

CHAIRMAN: Thank you. Any other parties wish to comment on that? All right. Then the parties will have an opportunity to file additional interrogatories on the new information contained in the erratum provided they are filed by Friday, February 13th at noon and the responses will be filed no later than Tuesday, February 17th. On our schedule is that also noon?

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MR. ROHERTY: I believe so.

CHAIRMAN: So, Tuesday, February 17th at noon. At think that deals with issue number #2 in the Public Intervenor's notice of motion. I will then go to issue #1, which is that the NBSO be ordered to specify who within their organization has answered each interrogatory. Mr. Theriault?

MR. THERIAULT: Yes. Thank you, Mr. Chairman. The purpose behind this is to be able to identify who supervised the IR compilation so that when the panels are presented, we know who on the panel to question. Now, I would submit that this will allow myself and other parties to make a more efficient and time effective presentation. I would also point out, Mr. Chairman, that I am informed that this is not an unusual request and that it is done in other jurisdictions, such as I believe Pennsylvania and the Tennessee Regulatory Authority, as well as others. And that's the sole purpose behind it is to make it a more timely, efficient presentation from my perspective anyway. It is very difficult, I think I have learned here in the past when you have got three or four people on a panel of asking a general question and then you get gosh knows how many answers coming at you all at once. So if you knew who to focus on, I think it would be

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a lot more efficient.

CHAIRMAN: Do you have any I guess examples of this having been ordered in a Canadian jurisdiction? I know you have Tennessee and Pennslyvania.

MR. THERIAULT: I believe it is done in Ontario. I had reference to it, but I tried to find it this morning on-line and I couldn't. So I don't want to say for a fact, that it is done, but I do believe it was done in Ontario.

CHAIRMAN: And your specific request is that you are not looking for a list of people who worked on the interrogatories. You want a list --

MR. THERIAULT: The supervisory, the person who -- under whose direction, you know, these were -- and basically who is taking responsibility for the interrogatory.

CHAIRMAN: Okay. That seems maybe just slightly different than what is in your notice of motion.

MR. THERIAULT: Yes, it is. And I agree the wording was -- again because of the tight timeframes --

CHAIRMAN: Sure. No, I appreciate that.

MR. THERIAULT: -- the wording may not be --

CHAIRMAN: Do you want to give me that specific wording then, so your request would be that the NBSO be ordered to specify who within the organization supervised -- is that the --

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MR. THERIAULT: Yes. Who supervised or the preparation of the response.

CHAIRMAN: So what you are asking for is that the NBSO be ordered to specify who within the organization supervised the preparation of each interrogatory response?

MR. THERIAULT: Yes.

CHAIRMAN: That is essentially the way you -- what it is you are now seeking?

MR. THERIAULT: That is correct.

CHAIRMAN: Anything further to add on that issue, Mr. Theriault?

MR. THERIAULT: No, I don't.

CHAIRMAN: Before I go to the applicant, any other parties want to comment on this issue? Ms. Cossette? No. Mr. Furey?

MR. FUREY: Yes, Mr. Chairman. Thank you. And I guess my comments are perhaps a little somewhat reduced because of the change in the wording that Mr. Theriault has suggested this morning.

But the general concerns that my clients have are this.

The process followed by this Board is one that I will

generally describe as applicant based evidence in the

sense that the prefiled evidence does not identify who

specifically was responsible for specific facts set forth

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2 in that evidence. And to this point that has been the
3 case with interrogatories. And at the hearing itself, of
4 course this jurisdiction permits a panel approach, which
5 not all jurisdictions do by my understanding. And so
6 there has been, I would suggest, somewhat of a relaxation
7 of the rules of admissibility, particularly relating to
8 hearsay.

9 And so there has never been any objection, by my
10 understanding, that a panel member might not have personal
11 knowledge of the evidence that is in the prefiled evidence
12 or the interrogatories or indeed in the evidence they give
13 at the hearing.

14 I think it has always been well understood that of course
15 each panel member has a duty to inform themselves, but
16 that they may be relying on others within their
17 organization to have supplied them with the information.
18 They may not have direct knowledge but that have certainly
19 an imputed knowledge through that process.

20 And the concern that my clients have is that where is this
21 going? Where is this request going? And one of the
22 potentials that I can see and I thought initially the
23 obvious purpose of this would be to cross-examine panel
24 members at the hearing on precisely those issues. What do
25 you know personally?

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2 And it could lead, and I'm not saying Mr. Theriault has
3 that in his mind today, but who knows where it will go in
4 the future. My concern is that this is a departure from
5 the usual process that has been followed before this Board
6 and that it could lead to a circumstance where there are
7 challenges brought to the evidence of a witness because of
8 a lack of personal and challenges to the prefiled evidence
9 on the same basis.

10 And the concern that my clients would have is that
11 potentially that takes carriage of the applicant's case
12 out of the applicant's hands. And so the applicant is
13 perhaps -- feels compelled to put forward a great many
14 more witnesses than are necessary and from a procedure
15 perspective, my clients are not entirely convinced that
16 that would be a good thing in the sense that we could end
17 up with a circumstance where we have a great many more
18 witnesses, greater length of hearings and I'm not sure
19 that would lead to any additional probative evidence for
20 this Board.

21 So while I don't have any -- I am concerned about where
22 this may go and that could be viewed as a hypothetical, I
23 suppose. I guess from my client's perspective, we are not
24 in favour of this move but I -- there will be
25 opportunities, of course, for this Board to
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address the concerns that I have raised at the stage that they might arise. I just wanted to put our concerns on the record at this point.

CHAIRMAN: Thank you, Mr. Furey. Mr. MacDougall, I think I passed by you. Did you have any comments on this issue?

MR. MACDOUGALL: No, I am fine to be passed by on this one, Mr. Chairman. Thank you.

CHAIRMAN: Thank you. I'm sure you would have let me know if you had something to say. Ms. Desmond, any comments on this issue?

MS. DESMOND: No, thank you.

CHAIRMAN: Thank you. Mr. Theriault?

MR. THERIAULT: I guess the only other thing I would add is since you asked the question about Canadian jurisdictions outside of the Ontario answer, I'm not sure. But I have since been advised that the -- in FERC, The Connecticut State Commission and the Nevada State Commission all take this approach. As well as others, but these are the ones I know for a fact.

CHAIRMAN: Thank you. Mr. Roherty?

MR. ROHERTY: Mr. Chair, Mr. Furey stole most of my thunder here on this particular matter.

CHAIRMAN: Furey and thunder. I don't know where you are going with that.

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2 MR. ROHERTY: I would say first of all, in respect of this
3 particular hearing, we object to this matter even being
4 considered in respect to this particular hearing. Because
5 it seems to me it should have been dealt with at the
6 prehearing conference, when we spoke about all matters
7 procedural. And that has come and gone.

8 Now more importantly, on the merits, again I support the
9 points made by Mr. Furey and as I explained when we were
10 informally trying to sort this out, of course it is a
11 collaborative effort and in a sense that I am counsel for
12 this organization, they were all prepared under my
13 direction, if one wants to go there.

14 But at the end of the day, I do come down to the same
15 point that Mr. Furey made, is that it is the applicant's
16 case to make and we will be putting forward, and as we are
17 very close to determining that panel, we will advise all
18 parties in advance of the hearing as to who will be on the
19 panel. And the members of that panel will -- I can tell
20 you, will have participated in the preparation of the
21 interrogatories. It has been a collaborative effort. And
22 they will inform themselves about the answers to all the
23 interrogatories and the background that went behind each
24 response.

25 And so it is the applicant's case to present and we
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2 would object to any notion that we would be restricted as
3 to who can answer a particular question. Historically
4 NBSO and other applicants before this and the predecessor
5 board have presented panels and generally it becomes a bit
6 obvious perhaps who the best person is to answer a
7 particular question and they answer the question, let
8 others join in and elaborate on it.

9 So we maintain our position initially that shouldn't be
10 dealt with at all in this instance but in a broader scale,
11 it is the applicant's case to present and if there is a
12 question, and it happens from time to time, that no one is
13 100 percent sure of the answer, there may or may not be an
14 undertaking in relation to that.

15 It has been my experience that that has not been a
16 particularly cumbersome process before this Board. So I'm
17 not sure if there is any burning need that the system need
18 change in order to become more efficient. I know of no
19 examples where it has been a huge problem.

20 So in summary, we disagree with this in its entirety.

21 CHAIRMAN: Mr. Roherty, you of course, have indicated that
22 the panel members, the names and identities of the panel
23 members will of course be made -- everybody will be aware
24 of that prior to the hearing. Can you give me some
25 indication as to when the parties might know who would be
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on the panel or panels?

MR. ROHERTY: I would think we could identify that next week. And I would actually undertake to advise all parties before the end of next week as to who -- what panel we expect to put forward at this point.

I would be interested in a ruling as to whether -- as applies to this particular objection in this hearing given the fact that we have already had a pre-hearing conference and set out the process already.

CHAIRMAN: Thank you. Mr. Theriault, anything further that you want to add?

MR. THERIAULT: I guess the only question or comment I have with respect to Mr. Roherty's mention of process, with all honesty what I had intended to do was to submit that as an IR. Again but with a tight time frame I had forgot. That is why I submitted it as a letter after the fact within two hours of my IR's coming out. I meant to put that as an IR. It is not a process issue at all. I look at it as an interrogatory, that is all.

CHAIRMAN: You have indicated in your -- I guess in your argument that, if I have got this correctly, that essentially it would be for efficiency purposes, that it would help you in your cross examination to organize your cross examination a little bit better and that perhaps the

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hearing might go a little more efficiently.

That is essentially the reason that --

MR. THERIAULT: That is the reasons I gave earlier, yes.

CHAIRMAN: Would it be of some assistance to you, as Mr.

Roherty has indicated, he could provide the makeup of the panels by next week?

Would that be of some assistance, to have that information on a relatively early stage in terms of your efficiency?

MR. THERIAULT: If I knew of the general areas of their involvement in participation with the interrogatories, yes. Because I mean, I understand that it is the applicant's case to present.

But it is also my prerogative to cross examine. And they submit a panel. I can direct questions to any panel member and request that panel member.

Now another panel member can answer the question as well on top of that. But I should have the right, if there is a particular person who has a particular knowledge of a particular area, to ask that particular person a particular question.

MR. ROHERTY: And I particularly would object to that.

CHAIRMAN: Anything further, Mr. Theriault?

MR. THERIAULT: No, Mr. Chairman.

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CHAIRMAN: I will reserve our decision on that. And we will move to the third item, Mr. Theriault, in your notice of motion.

MR. THERIAULT: Yes. Okay, Mr. Chairman. I guess I would ask the Board members to first of all turn to PI IR-1, Question 1.

And at line -- and the IR states as follows. At page 1, line 15 there is reference to "Environmental Initiatives".

And what environmental initiatives are being referred to?

And who initiated them?

So it is a two-part question. And the response that was received from the NBSO is Environmental initiatives would include such items as (1) renewable portfolio standards; (2) the NB Climate Change Action Plan and (3) CO2 emission reduction programs by governments.

The problem, Mr. Chairman, with this response is it does not indicate whether this is all of the environmental initiatives or precisely who initiated them.

I asked the Board to order NBSO to provide a complete list of environmental initiatives, and for each initiative who -- identify who initiated it.

And I don't believe -- because they use the term, the word "such as" -- I'm sorry, "would include items such as."

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2 And the point being is if a question comes up during cross
3 examination, I want to know if there is a complete list
4 out there and who it was initiated by.

5 With respect -- if I could ask the panel to turn to PI IR-
6 1, Question 4. Again the IR is at page 1, line 31. There
7 is reference to the independent and transparent role of
8 the NBSO.

9 And I asked to list the efforts made to implement this
10 independent and transparent role of the NBSO in the
11 operation of the electricity system and the market in New
12 Brunswick.

13 And the response was, examples of measures/efforts to
14 implement the independent and transparent role of the NBSO
15 include -- and then follows a list of activities.

16 Again the problem, it does not indicate whether this list
17 is complete. And all I ask is the Board to order NBSO to
18 clarify whether this list is complete, or if not, identify
19 the additional measures/efforts that are not on the list.

20 With respect, I would ask the Board to turn to PI IR- 1,
21 Question 6. Again with reference to page 3, line 26, when
22 did NBSO first become aware of the fact that it would need
23 to staff new positions? Provide a copy of the minutes of
24 the Board of Directors meeting at which

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2 approval to proceed to staff these new positions was made?
3 Now the response states that upon the arrival of a new
4 President and CEO in October 2008, management and the NBSO
5 board undertook the strategic planning and budget process.

6 During the November, December period, plans to undertake
7 the initiatives noted in the 09/10 budget were developed
8 along with staffing needs related to succession.

9 Then it goes on and it says, the relevant excerpts from
10 the minutes read as follows. And then they provide the
11 excerpt which states on motion duly moved by Mrs. Anne
12 Hickey and seconded by Mr. Brian Currie, a budget of
13 10.874 million was approved for the fiscal year 09/10.

14 And they then go on to say that this is a draft excerpt.

15 Now the problem I would suggest is this response refers
16 only to an excerpt related to a dollar budget approval,
17 not minutes of a meeting which additional staffing
18 requirements were discussed, which was the question.

19 There are two issues here. First an excerpt I would
20 suggest is not a substitute for minutes of a meeting. And
21 it is important to know what information the Board of
22 Directors had when it made its decision. Second a dollar
23 budget approval is not synonymous with approval to staff
24 up certain positions.

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2 So I would ask the Board to order NBSO to file the
3 complete minutes, in draft form if necessary, of the
4 meeting at which the staffing of the additional positions
5 was discussed by the Board of Directors.

6 If the NBSO cannot provide these minutes I would ask the
7 Board to order NBSO to confirm that additional staff
8 positions were not discussed at any Board of Director
9 meeting.

10 I would ask you now to turn to PI IR-3, Question 8.

11 CHAIRMAN: Maybe we will just deal with these I think one at
12 a time. Otherwise I'm sure that we will get lost along
13 the way. There seem to be quite a number of them, so --

14 MR. ROHERTY: In respect, Mr. Chairman, I -- maybe I'm new
15 to this process. But surely we were entitled to have more
16 specificity as to what the issues are before we came here
17 today.

18 There was a time -- you know, we -- there were 300
19 questions asked throughout the interrogatory process, when
20 you break them down into individual parts. 174 of those
21 are attributable to the Public Intervenor. The letter we
22 got yesterday that listed off 6, 7, 8 or 9 questions with
23 no specificity at all includes 130 of those 174.

24 Now surely we were entitled to more specificity as to what
25 the issues are, as we received from other Intervenors

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2 and as we have seen from the Public Intervenor at an
3 earlier hearing. I have a problem with this particular
4 question. And here it is. Is the Board really going to
5 entertain going through 130 potential questions here
6 today?

7 The timelines were set for this process. And I'm not sure
8 of the reason that there were not more specific objections
9 made to the answers that were given. And we would have
10 been in a position to respond to them. I can't deal with
11 these one at a time here as we go through it in this form.

12 CHAIRMAN: Mr. Roherty, what are you suggesting then that
13 the Board should do with respect to this request?

14 MR. ROHERTY: I'm suggesting the Board should reject the
15 request in total for lack of specificity. There was time
16 in this process to object or to raise questions about the
17 responses provided by the System Operator. We are
18 entitled to some specificity in that.

19 I tried to obtain that specificity yesterday
20 unsuccessfully. And what I didn't expect was the
21 potential for 130 more questions that the answers were
22 apparently not satisfactory.

23 I object in total to the Board's consideration of item 3
24 of the Public Intervenor's notice of motion for lack of
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specificity. I don't know how we are supposed to deal with it.

CHAIRMAN: Well, with respect -- first of all, let's just start with the three items that were brought forward in the IR-1.

You are suggesting to me that you are not in a position to specifically respond to any of those three issues that were raised by the Public Intervenor today because you didn't know in advance which questions you needed to respond to?

MR. ROHERTY: That is correct. And we may -- you know, that might be the answer. That might be the only answer that we have. If we had been told ahead of time, here is the problem with this answer, we could have responded.

CHAIRMAN: Well, is this a timing issue? Is it a question of adjourning today's hearing to a later time so that you would have some details with respect to what it is that the Public Intervenor is looking for?

MR. ROHERTY: Well, that at the end of the day will be up to the Board, but --

CHAIRMAN: I'm just asking for your input on that. I'm not --

MR. ROHERTY: Well, obviously if the Board directs us to -- I would assume they will direct the Public Intervenor to

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provide more specific reasons as to which of the 130 potential problems there are here, which ones and what is the problem with them.

CHAIRMAN: So if I understand your argument it is essentially you don't know the case you have to meet here today. You don't --

MR. ROHERTY: That is right.

CHAIRMAN: -- really know precisely what it is that is being alleged. And you are not in a position to answer sort of as you go without having the time to consider what the issues may be?

MR. ROHERTY: That is right. And the ones that we did respond to we gave the reasons. They are not relevant to the Revenue Requirement which is the subject of this hearing.

I mean, there is a question in there about why is the date on the tariff May 5th 2005 -- or May 1st 2005? What has that got to do -- and I'm getting into substance here of course.

But that is what we are faced with, 130 questions coming out of nowhere, a shotgun approach to see what -- shoot up into the spine and see what falls out. To me it seems totally inappropriate to this process.

CHAIRMAN: Mr. Theriault?

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2 MR. THERIAULT: Thank you, Mr. Chairman. First of all, this
3 is no different, I don't believe, than any other previous
4 motions that I have been involved in with respect to
5 Disco, I believe EGNB and others, you know, I listed.
6 With respect to my notice of motion, the original letter -
7 - today is the 12th. The original letter went out a day
8 early because Board staff requested that I do that so
9 certain Board members would have an opportunity to know
10 that there would in fact be a hearing. And here I
11 complied with that.

12 Yesterday upon being contacted by Board Counsel, I was in
13 the Court of Appeal, but I arranged to get the list out
14 because they wanted that.

15 Now my friend talks about, you know, being indulged. I
16 understand that this is a short time frame. I did not
17 create the schedule. I did not choose when to bring this
18 application forward. The schedule was -- the timing was I
19 guess brought forward by the Applicant. And then the
20 Board created the schedule.

21 The information -- and here it is, there is the
22 interrogatories. These came out February 9, which was
23 Monday. We did everything we possibly could to be in a
24 position to present argument here today.

25 I understand what my friend is talking about. But the
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2 request would not be to dismiss it out of hand. It would
3 be to provide an adjournment. And I can provide him, you
4 know, with the specificity that he needs. But to ask that
5 it be -- these are legitimate concerns.

6 And I take issue with the fact that, you know, he says we
7 are just throwing questions up in the air and saying see
8 what falls. Every question I submit is very legitimate to
9 this particular application.

10 CHAIRMAN: I'm just wondering what time frame you think you
11 would need to provide that specificity?

12 MR. THERIAULT: Yes. I could probably do it by, I would say
13 -- to be safe I will say by noon tomorrow, at the same
14 time I file the other documentation.

15 MR. ROHERTY: Mr. Chairman, if I may, just on the schedule.

16 The Public Intervenor was here at the pre-hearing
17 conference and agreed upon the schedule. We have tight
18 timelines. Everybody has tight timelines. Everybody is
19 busy. I understand that.

20 We made preparations to answer questions last week. And
21 we answered 300 of them by working day and night and
22 through the weekend. And I even missed my daughter's
23 volleyball game. And anybody who knows me knows how
24 important that is. So timelines are a tough one to
25 everybody.

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I renew my objection to consider this at all.

CHAIRMAN: Well, I appreciate that the timelines are quite tight. And it is really to accommodate all concerned quite frankly to get this process done in a timely fashion. I appreciate that at the pre-hearing timelines were discussed and everybody did have input into it.

It doesn't take away from the fact that the amount of time left to sort of get in the specifics of something like this is a relatively short period of time, you know. I think that timelines speak for themselves.

It seems to me that there is two or three points here, firstly that Mr. Theriault must be in a position to give the specifics of this right now. It is just a question of whether it is in a written form. Because he is here ready to argue today.

So it seems to me that the specifics of it could be just as quickly as somebody could type it quite frankly, it seems to me.

MR. THERIAULT: If I may, Mr. Chairman, I have my presentation here. But I may want to edit it if it is going out. Because there may be some word product I have in there obviously I don't want -- but even by the end of the day, or even earlier -- I mean, if I can go back to my room and turn my computer on.

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MS. DESMOND: Mr. Chairman, I'm just wondering if this is ultimately going to impact on the date of the hearing, perhaps other parties may also want to comment on whether or not the schedule has to be adjusted.

CHAIRMAN: Well, obviously the Board hasn't determined how we should proceed. But I'm going to ask the Public Intervenor that in the event that we -- that the Board did decide to deal with this at another time, would the delay in getting the responses to certain questions have any impact whatsoever on the Public Intervenor's decision to -

MR. THERIAULT: Call evidence.

CHAIRMAN: -- give expert evidence?

MR. THERIAULT: Yes, it would. Mr. Chairman, if I had maybe 45 minutes to go back and print some stuff off, I could probably do it, just by deleting a few comments.

CHAIRMAN: Well, it also strikes me that there may be -- some of these questions -- I appreciate, Mr. Roherty, your comment about not wanting to deal with them at all, you know.

It seems to me that by the very comments you made here this morning that there are a couple of questions that you may be prepared to respond to, such as -- I think you already talked about I think around Questions 22 and 23

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2 where you just quite frankly didn't think the subject
3 matter was appropriate for questions at this hearing.

4 So it seems to me that there may be some here that we
5 could actually deal with.

6 MR. ROHERTY: Perhaps if the Public Intervenor has his --
7 can provide his list in a fairly short time frame. And
8 I'm kind of thinking out loud here now. Is there an
9 ability for us to respond again within the same time frame
10 that we agreed to respond?

11 Well, certainly the ones on relevance I think we probably
12 can deal with today. Other ones where there is a lack of
13 specificity --

14 CHAIRMAN: Mr. Theriault, you suggest that you could go back
15 to your hotel within 45 minutes. What if somebody here in
16 the office was to assist you. And we would get computers
17 here obviously if you have --

18 MR. THERIAULT: But it is all set up on mine. I can go
19 through and delete what I need to delete. It is not that
20 much. I can just click.

21 CHAIRMAN: Well, it seems to me -- do any of the other
22 parties want to speak on this issue at this point in time?

23 MR. MACDOUGALL: Mr. Chair, the only comment I would have is
24 that there are -- there was one question in particular
25 that we thought it would be appropriate for us to make

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some comments on.

And it is parts of section -- Question 23 which are the out of scope response by the NBSO. And we would probably not want to have to come back on another day to go through the other questions.

So we would like to deal with that one question today.

And we do think the NBSO would be able to respond. And we could make our comment.

CHAIRMAN: Anybody else have any comments to make?

MR. FUREY: Nothing, Mr. Chairman.

CHAIRMAN: The Board is going to adjourn till 1:00 o'clock.

In that period of time, Mr. Theriault, I will ask you to, as quickly as you possibly can, provide the specifics to Mr. Roherty and I guess to all of the parties.

And I guess I don't want to really give you a specific time. But maybe you can exchange cell phone numbers or something like that so that you will know where to find each other. We will come back at 1:00 o'clock. Parties can use that information to see what can or what cannot be dealt with today.

But it does seem to me that the question that Mr. MacDougall has suggested could be dealt with today. I would suspect that all of the parties could be in a position to make whatever argument they want to make on

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those questions today.

If some of the others need to -- we need some adjournment or something, we will consider that at the time. So we will adjourn now till 1:00 o'clock.

MR. THERIAULT: If I may, Mr. Chairman?

CHAIRMAN: Yes, Mr. Theriault.

MR. THERIAULT: Mr. O'Rourke has advised me that he has it on his machine so that we can do it here and have the Board print it off. So it should be even quicker.

CHAIRMAN: Great. Thank you.

(Recess - 11:00 a.m. to 1:00 p.m.)

CHAIRMAN: Good afternoon, everyone. When we adjourned the Public Intervenor was going to provide the specifics of the information or additional information he was seeking on the interrogatories. And a document has been circulated six pages in length.

Has there been any inability to eliminate any of those matters as a result of having supplied the specifics?

MR. THERIAULT: I think so, Mr. Chairman. Mr. Roherty and I had a chance to talk. And there are some that I think we can at least provide some responses to.

Now I don't know if Mr. Roherty wants to go or if he wants me to.

MR. ROHERTY: I will start, Mr. Chair, if that helps --

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CHAIRMAN: Okay. Sure.

MR. ROHERTY: -- in a particular order.

Number 1, I can't provide an answer to that today because I'm not 100 percent sure of the answer. I will come back to that.

MR. THERIAULT: If I may, just so we are correct, because he did mention that to me. But also there is a second part to the question, who initiated those? So I just want to make sure that is --

MR. ROHERTY: Understood.

MR. THERIAULT: Okay. Thank you.

MR. ROHERTY: Number 2, notwithstanding the use of the word "include", we believe that to be the complete list sent to the Public Intervenor.

CHAIRMAN: On that basis, Mr. Theriault, is number 2 --

MR. THERIAULT: That is fine.

CHAIRMAN: Are you satisfied with what is there?

MR. THERIAULT: That is fine.

CHAIRMAN: So that one is not an issue anymore?

MR. THERIAULT: No.

MR. ROHERTY: Number 3 relates to minutes of meetings. And that same issue comes up in Questions 3 and 9 and 11 and 12 and 13. I would like to come back to those after we run through the list perhaps.

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Number 4, with respect to the \$21,000 I explained to the Public Intervenor that that is not related to a specific item. It is a net number. And that was the response that I provided.

CHAIRMAN: Sure. Mr. Theriault, is that sufficient for your purposes or --

MR. THERIAULT: Well, I'm wondering if maybe he could put a response to that. I'm not sure I follow what he is referring to.

CHAIRMAN: Are you prepared to give that response --

MR. ROHERTY: Yes.

CHAIRMAN: -- in a written form and of course, as with everything else, distribute it to all of the registered parties?

MR. ROHERTY: Yes, Mr. Chair.

CHAIRMAN: So 4 is looked after then based on that undertaking.

MR. ROHERTY: 5, there is no such report.

MR. THERIAULT: And that satisfies that one, Mr. Chairman.

CHAIRMAN: So 5 is satisfied?

MR. THERIAULT: Correct.

MR. ROHERTY: Now 6, 7 and 8, the answers to those questions are actually -- were actually provided in the response. There was a numbering error. In your books you would see

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that Questions 1, 2, 3, 4, 5 and 6, I believe, are answered with 1, 2, 3, 3, 4, 5.

So the information is all there. It was simply a numbering situation. I have explained that to the Public Intervenor.

CHAIRMAN: Okay. So Mr. Theriault, then you are satisfied with --

MR. THERIAULT: Well, no, not totally. I understand. But with respect to Question 4, the question that I asked was for each impact study what are the average resource requirements in terms of time to complete the study? And the answer is an overall average. It doesn't deal with each --

MR. ROHERTY: How do you get an average for each?

CHAIRMAN: Sorry. I just want to go back to it. Which question are we on now?

MR. THERIAULT: It would be PI IR-6 --

CHAIRMAN: Question 4.

MR. THERIAULT: -- Question 4.

CHAIRMAN: Okay.

MR. THERIAULT: Sorry. Question 3. No, 4.

CHAIRMAN: Question 4. So PI IR-6, Question 4. Yes. Okay.

I just want to make sure we are all on the same page.

MR. THERIAULT: Yes. And the question was for each System

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Impact Study what are the average resource requirements in time to complete the study?"

Yes. Including the breakdown between the internal and external resource time. And that is not provided.

CHAIRMAN: But was it Mr. Roherty's point that if you were dealing with one specific study, and you are talking about the average, you have an average of one based on -- is that the point you are --

MR. ROHERTY: Yes.

CHAIRMAN: -- making?

MR. THERIAULT: Again I don't believe it answers the question. But if the Board is going to say that --

CHAIRMAN: Well, it may well be that -- perhaps there is some communication issue as to specifically what you are looking at -- or looking for.

It is not a question of the Board being satisfied, you know, Mr. Theriault. You are the one that hasn't got a sufficient answer.

So if there is something that Mr. Roherty is not understanding in the way this is phrased, maybe you can try it some other way.

MR. THERIAULT: Well, I'm wondering what other resource is committed for each System Impact Study, both internal and external.

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2 CHAIRMAN: So the word "average" I think is what has got

3 Mr. Roherty --

4 MR. ROHERTY: I don't know if we can answer that question.

5 We attempted to answer the question as we understood it.

6 CHAIRMAN: Yes.

7 MR. ROHERTY: I can't at this point say whether the

8 rephrased question is possible to answer or not.

9 MR. THERIAULT: Again I would submit it is not a rephrasing.

10 It is what I asked, if you read the question in its

11 totality.

12 CHAIRMAN: Well, maybe just to help us move on, you are

13 prepared to take the word "average" out of the question.

14 And we can set that one aside.

15 Is that what you are suggesting, Mr. Theriault, that you

16 were just asking for the resource requirements as opposed

17 --

18 MR. THERIAULT: In terms of time to complete the study, both

19 internal and external, each study, sorry.

20 MR. ROHERTY: I guess I'm not sure what the question is

21 anymore, but --

22 CHAIRMAN: Is this one that --

23 MR. ROHERTY: What are the averages? Is that how we do it

24 on a go-forward basis, what are the averages, what we did

25 last year?

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VICE CHAIRMAN: Mr. Theriault, are you looking for a description of the resource requirements of each System Impact Study undertaken?

MR. THERIAULT: Yes.

VICE CHAIRMAN: So you want every System Impact Study to have -- for them to describe the resource requirements, times to complete the study and the breakdown between internal and external?

MR. THERIAULT: That is correct.

VICE CHAIRMAN: Okay. So understanding that, Mr. Roherty, is that what we would have a position?

MR. ROHERTY: After we get a chance to consider the precise question and look at what that might involve, certainly we would have a position.

CHAIRMAN: Okay. But that is the rephrased question. The word "average" comes out. Is that fair, Mr. Theriault?

MR. THERIAULT: That is fine.

CHAIRMAN: Okay. And Mr. Roherty, you will consider that and --

MR. ROHERTY: Yes.

CHAIRMAN: -- give us a response as we proceed forward?

Okay.

MR. THERIAULT: Then I believe 5, as Question -- IR-6, Question 5 is now satisfactory with the explanation

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provided by my friend.

CHAIRMAN: All right. That one is out of the way.

MR. THERIAULT: And the same with PI IR, Question 6.

Question 6 is satisfactory.

CHAIRMAN: So items 7 and 8 then are out of the way. They are no longer issues?

MR. THERIAULT: Pardon me?

CHAIRMAN: The items numbered 7 and 8 are resolved then?

MR. THERIAULT: No. You are looking at a separate PI. If you look at the list of -- oh, sorry. Item 7 is on the list.

CHAIRMAN: I'm just looking at the numbering that you have got on the page.

MR. THERIAULT: Okay. Yes. You are correct.

CHAIRMAN: Okay. All right.

MR. ROHERTY: 9 had to do with minutes I believe, as does 10 and 11 and 12 and 13.

Now 14 is a brand-new question which IR 18 was not included in the list in the notice of motion.

Nevertheless in speaking to my friend we can -- it was answered in the previous hearing. And we would be happy to provide him with the information that was provided in the last hearing.

It has to do with a services contract which was

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included in the last hearing. It is simple to resolve.

But it in fact is not part of the -- it is not part of the request.

CHAIRMAN: No. I appreciate your point that it is not in the -- it is not one of the enumerated interrogatories in the Notice of Motion.

MR. ROHERTY: I believe it will be resolved.

CHAIRMAN: But you are suggesting that you are prepared to respond to it in any event?

MR. ROHERTY: Right.

MR. THERIAULT: And that is satisfactory.

CHAIRMAN: Okay. So that is out of the way.

MR. ROHERTY: So now we are going to 15. And in fact Appendix K does provide the EA study. It was in our responses. I think the line that said "Please refer to Appendix K" was omitted. But it is a fact that it is there in the appendices.

CHAIRMAN: So this is the IR-19 --

MR. ROHERTY: 19.

CHAIRMAN: -- Question 1 Roman Numeral (v)?

MR. ROHERTY: Right.

CHAIRMAN: So Mr. Theriault, that one is --

MR. THERIAULT: Yes. My -- in the copy I had there was no answer given at all. But he did point it out to me that

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it is in the appendix. So that is satisfied.

CHAIRMAN: But you are now satisfied with it.

MR. ROHERTY: And 16. We don't believe that the statements are contradictory as the Public Intervenor has expressed it.

We do not record those travel expenditures by event. Air travel requests are separate from expense accounts that are sent in relation to a particular travel event. And the air travel could have been booked months ago because -
- to save money.

So the response was that that information, to compile it this way, is certainly not readily available. It would be a very labour-intensive exercise, complicated by the fact that seconded employees remain certain things through their home-based employer, and they use an SAP system and we use Simply Accounting. And it would be a highly, highly, highly labour-intensive exercise to try and do.

CHAIRMAN: Mr. Theriault, any comment on that?

MR. THERIAULT: Except that I would suggest that the information is relevant specifically to this Revenue Requirement. And I guess I stand by the IR for the reasons as cited in the document before the Board.

MR. ROHERTY: It is last year's information. That kind of detail is relevant to the approval of the Revenue

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Requirement on a go-forward basis.

MR. THERIAULT: Again it would go to a benchmarking. It would allow us to take a look at the previous year and benchmark it towards this year, see what sort of costs there are out there.

MR. ROHERTY: The fact is our systems do not accommodate this kind of analysis without having individuals start going through records and inquiring.

CHAIRMAN: So basically with respect to number 16, Mr. Roherty, you are telling me that the resources that you would need to put to respond to this are considerable and it would take -- is it information that you could compile in the fashion that it is being asked for but it would take a lot of resources?

I just want to get a sense of what it is you are telling me, that you can't compile it in that format, or that it would take a lot of resources?

MR. ROHERTY: It would take a lot of resources.

CHAIRMAN: And would it take -- how about time? How much time would be involved? Any idea?

MR. ROHERTY: Yes. I would think we would need at least a week to try and pull this together, together with the other information that we are needing to provide that may rise -- and I'm not sure of the benefit frankly, Mr.

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Chair, of that level of analysis.

CHAIRMAN: Mr. Johnston?

VICE CHAIRMAN: Mr. Roherty, would it be possible to provide a partial answer to this question, for example the number of employees who attended these meetings, without providing necessarily the specifics of their expenses? Would that be something that would be more easily done?

MR. ROHERTY: Yes. We believe that can be done with much less labour-intensivity. It would be a lot easier.

CHAIRMAN: Mr. Theriault, do you have any comments on that suggestion?

MR. THERIAULT: Not outside of what I have already stated on. Oh, to the suggestion?

CHAIRMAN: To the suggestion.

MR. THERIAULT: Again I do believe the costs are as important as the number of employees.

CHAIRMAN: I think -- maybe I misunderstand the question. I understand that the -- do you have the total cost, since you can't put it by employee? I'm not sure. Perhaps somebody could explain precisely what is available and what isn't.

MR. ROHERTY: We wouldn't compile these costs by particular event. Like I said, there is air travel associated with

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2 it. There is expense accounts. The timing of those is
3 different. The systems used to account for those are
4 different because of the secondment arrangement.

5 It's doing that and checking it and making sure it's
6 right. But looking for it is highly labour-intensive. We
7 have totals I mean for comparing --

8 CHAIRMAN: Well, that is really what I was getting at was
9 the details about cost of number of employees. So you can
10 provide number of employees fairly simply, your number of
11 -- persons, we might even use the word "employees" loosely
12 in the sense if they are seconded people there may be
13 Board members.

14 But the number of individuals who attended these meetings.

15 And you have total costs. I guess that's -- are those
16 two pieces of information available?

17 MR. ROHERTY: We don't have totals for MPCC meetings. We
18 have totals in the year that were expended on travel.

19 CHAIRMAN: Mr. Theriault, anything further you want to say
20 on that issue?

21 MR. THERIAULT: Well, it is just that I believe the initial
22 question related because of the increase in the MPCC
23 number of meetings. And that is what I was trying to get
24 at.

25 Again all I can say, Mr. Chairman, is I stand by

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saying that it is relevant to the Revenue Requirement. It is a cost. It is a cost that is in, as I have stated, in the document. It is one of its major repetitive travel and training initiatives. It is a relevant cost.

CHAIRMAN: Mr. Theriault, obviously the Board will have to consider this one. But if the cost, the number of employees, the Board did order that to be disclosed, it took some time, it doesn't strike me this would be the kind of information that would impact on your decision to have an expert --

MR. THERIAULT: That is correct.

CHAIRMAN: Let's move on to the next one.

MR. ROHERTY: 22 and 23 I think from the information here. 22 the response was we don't believe any of those questions are relevant.

MR. THERIAULT: If I may, Mr. Chairman. Because I have quite an exhaustive argument on that. And maybe we could deal with the minute ones first. And then I could deal with 22 and 23 and give my justification for it as part of the motion.

CHAIRMAN: Sure. And I'm sure Mr. MacDougall would be happy to move up to those sooner rather than later as well. Okay. So perhaps do you want to go to the --

MR. ROHERTY: The questions related to the minutes of the

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2 board of directors, the questions relate to demonstrating
3 in the minutes where particular approval was given for a
4 particular hiring or retention of the six new individuals.

5 And there is question by question that relates to those.

6 I can tell you there is no minute that says the board
7 approves the hiring of the two operators in training. The
8 process was simply that a bunch of presentations were made
9 by our president. Included in that were all the
10 initiatives and all the costs associated with the
11 initiatives including the realization that we need six
12 people. And that was all information provided.

13 And at the end of the day it is rolled up into a total
14 budget figure based on the discussions that took place by
15 the board. And the only minute that relates to this is
16 the one that says the board approves a budget for 09/10 of
17 10 point -- whatever the number is in the response.

18 Of course there was all kinds of discussion. But there is
19 no particular minute that is going to say, on this date
20 the Board passed a motion that said, let's hire another
21 person in the accounting firm.

22 CHAIRMAN: Is your position then that you effectively
23 provided whatever minutes exist that would pertain to that
24 matter then?

25 MR. ROHERTY: That relate to the approval of the hiring of
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those positions, that is correct, the last portion of minutes.

CHAIRMAN: And I guess -- is your answer that there are no other minutes that would pertain to that item?

MR. ROHERTY: To the approval?

CHAIRMAN: To the approval?

MR. ROHERTY: That is right.

MR. THERIAULT: I guess, you know -- and all we asked for, Mr. Chairman, was to be provided with a copy of the minutes, not an excerpt of the minutes, you know. If there is other information that is not relevant here it can be X'd out, it can be drafted out, just so that we can see the flavor of how it goes.

MR. ROHERTY: If the issue is -- is the issue that we come up with this on our own, that we want -- we decide to hire six people without any approval from our board? I think that question is answered.

CHAIRMAN: So I go back to Mr. Theriault's comment about providing minutes with -- sort of a redacted form of minutes I think is what you are suggesting. If what Mr. Roherty is saying is that the redacted form of minutes, all that you would be left with is precisely what is here, I don't know if we would be any further ahead.

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2 MR. THERIAULT: Okay. If that is -- if very clearly that is
3 the only evidence of a discussion --

4 MR. ROHERTY: It wasn't about a discussion. It was about
5 approval of those deficiencies.

6 MR. THERIAULT: I guess if the answer is clear that there is
7 no other board minutes relating to the approval of those
8 positions, outside of that specific wording in those
9 specific excerpts, then fine.

10 CHAIRMAN: Mr. Roherty, any response to that?

11 MR. ROHERTY: No. I think he repeated what I just said.

12 CHAIRMAN: So your position is you have provided all of the
13 minutes relative to the approval to proceed to staff these
14 new positions?

15 MR. ROHERTY: That is correct.

16 CHAIRMAN: Based on that information do you still,
17 Mr. Theriault, believe that it is necessary to have the full
18 minutes?

19 MR. THERIAULT: Just bear with me one second.

20 CHAIRMAN: Sure.

21 MR. THERIAULT: No. That is satisfactory, Mr. Chairman.

22 CHAIRMAN: So number 3, PI IR-1, Question 6 then is
23 resolved?

24 MR. THERIAULT: Yes.

25 CHAIRMAN: Now what about number 9, 11, 12 and 13? I think

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they also dealt with minutes.

MR. ROHERTY: I thought we were discussing --

CHAIRMAN: I just want to make sure that --

MR. THERIAULT: Well, if that is the answer -- the same answer is for the entire group then that is satisfactory.

CHAIRMAN: Then you are satisfied? So 9, 11, 12 and 13 are off the table then, Mr. Theriault?

MR. THERIAULT: Yes.

MR. THERIAULT: Mr. Chairman, I'm just wondering if we could maybe mark that document for identification so that the record will be complete, as we are referring to it.

CHAIRMAN: Certainly.

We will mark this A for identification.

MS. DESMOND: I believe that covers number 10 too as well, Mr. Chairman.

CHAIRMAN: Do you confirm that number 10 is also covered by that?

MR. THERIAULT: Yes.

CHAIRMAN: So that would take us to numbers 22 and 23?

MR. THERIAULT: That is correct.

Now before I get into the specific interrogatories and my submission as to why I believe they are relevant to this proceeding, I would just like to make some initial comments, Mr. Chairman.

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2 And that is restricting the scope of the review to items
3 that are strictly related to the NBSO Revenue Requirement
4 without any concern as to the broader contextual
5 background, such as the role the NBSO plays in the
6 industry and how that role shapes its Revenue Requirement
7 will lead parties, and I would suggest potentially the
8 Board, to miss important contextual facts related to the
9 reasonableness of the Schedule 1 and Schedule 2 OATT
10 rates.

11 In fact I submit this is evident in NB EUB IR-1, when
12 Board Staff asked the NBSO to describe its role within the
13 industry and which IR was answered by the NBSO even though
14 it did not relate specifically to Schedule 1 and 2 rates.
15 The NBSO's operations must be put in the context of the
16 NBSO's mandate under the Electricity Act, its obligations
17 to coordinate with and to seek OATT changes on behalf of
18 Transco, its role in ensuring a level playing field for
19 all generators and potential purchasers of electricity.
20 Even the NBSO itself has attempted to provide some context
21 in this regard in its direct evidence. But I submit that
22 evidence requires further clarification.

23 I would also draw the Board's attention to Section 127 (1)
24 of the Electricity Act, its obligations to coordinate
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2 with and to seek OATT changes on behalf of Transco, its
3 role in ensuring a level playing field for all generators
4 and potential purchasers of electricity.

5 Even the NBSO itself has attempted to provide some context
6 in this regard in its direct evidence. But I submit that
7 evidence requires further clarification.

8 I would also draw the Board's attention to Section 127 (1)
9 of the Electricity Act which reads as follows. "The Board
10 shall monitor the electricity sector and may report to the
11 Minister on the state of the electricity sector, including
12 the efficiency, fairness, transparency and competitiveness
13 of markets in the electricity sector and of the market
14 rules, the conduct of the SO in relations to its
15 activities and responsibilities and the conduct of the SO,
16 transmitters and market participants under the market
17 rules."

18 Because of this hearing, Mr. Chairman, into the NBSO's
19 Revenue Requirement is the only opportunity to investigate
20 the conduct of the SO, it is essential, I submit, that
21 these IR's 22 and 23 -- and under IR-23 it is Questions 4
22 to 8 -- be fully answered.

23 The development of a full record through the interrogatory
24 process will allow all parties to present evidence to
25 guide the Board in its decision on whether the

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2 proposed Schedule 1 and 2 rates meet the statutory
3 requirements that they are just and reasonable.

4 If the Board denies reasonable requests for
5 interrogatories that merely seek to clarify the scope of
6 the NBSO operations and the current market development
7 priorities of the NBSO, I submit it will not have a full
8 record upon which to base its conclusions that the
9 applicant's proposed changes to its rates, tolls and
10 charges are just and reasonable and that the conduct of
11 the NBSO is consistent with the goal of transparent and
12 competitive markets, as is so clearly articulated in the
13 legislation.

14 Moving on, Mr. Chairman, dealing with IR-22, Question
15 22.1, the IR is simple. In the Board's decision from
16 November 26, 2008 it required that the NBSO post on its
17 website historical price information for ancillary
18 services that will provide an indication to Transmission
19 customers as to what the monthly charge will be in the
20 future. When and how does the NBSO expect to comply with
21 this requirement?

22 Now I would suggest, Mr. Chairman, that this is relevant
23 first because this IR follows up on a compliance issue
24 with respect to a prior Board order. It is in the public
25 interest that the NBSO be transparent about when
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2 and how it expects to comply with Board orders.

3 Secondly the answer directly relates to the Revenue

4 Requirement as compliance with the Board order should be

5 expected to require the NBSO to utilize resources and

6 therefore has the potential to impact the Revenue

7 Requirement. There should be no reason why the NBSO does

8 not respond to this question. Finally, no regulatory

9 process apart from this rate hearing exists in which this

10 information may be sought.

11 And as such I would ask the Board to order the NBSO to

12 answer this question. And if you want to deal with -- we

13 can continue on and give it -- or I could --

14 CHAIRMAN: Well, I guess you have given your -- it would be

15 correct to say you have given sort of your general

16 argument, that you say that from this point forward each

17 one is particularized?

18 MR. THERIAULT: Yes. That is correct.

19 CHAIRMAN: Well, perhaps we might deal with at least sort of

20 the general argument, as I took Mr. Roherty's comment this

21 morning that perhaps it wasn't a question by question

22 defence that he was looking at. It may well be. But that

23 you had some principles that you wished to rely upon in

24 terms of whether or not this should be answered at all.

25 But before I get to it, Mr. Roherty, I know the other

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parties may want to comment on this issue. I know
Mr. MacDougall indicated this morning he did.

But I will just go down the list. Ms. Cossette, any
comments --

MS. COSSETTE: No comments.

CHAIRMAN: -- on this issue? Okay. Mr. MacDougall?

MR. MACDOUGALL: Thank you, Mr. Chair. In my comments,
Mr. Chair, are particularized to IR 23, items 4 (iii) through
(ix). So that is the NBSO's response on page 61.

I could give my comments now. Or if we are going to deal
with that particular point later. Or I could give my
comments in the general sense if Mr. Roherty is going to
respond both to 22 and 23 at the moment. However you want
to do it.

CHAIRMAN: Well, I think that since we haven't dealt
specifically with 23 yet, then perhaps we will just have
you reserve your comments until that time.

If you want to make any comments on the general principles
at this stage though, please feel free to go ahead.

MR. MACDOUGALL: I can hold all my comments and do the ones
for 23 I guess, Mr. Chair.

CHAIRMAN: Okay. Sure. Thank you. Mr. Furey?

MR. FUREY: I find myself in a similar position to Mr.

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2 MacDougall, Mr. Chairman. I may have comments related to
3 4 (iii) through (ix) of 23. But there is no point in
4 dealing with those right now.

5 CHAIRMAN: Ms. Desmond, any comments?

6 MS. DESMOND: Nothing from Board Staff.

7 CHAIRMAN: Mr. Roherty?

8 MR. ROHERTY: Thank you, Mr. Chair. The Public Intervenor
9 talked about the very first IR in 22. And he mentioned
10 about a prior Board order. Well, there is all kinds of
11 ways to deal with prior Board orders. But this is not the
12 forum for it.

13 If there is a Board order out there that NBSO is not
14 complying with or anybody else is not complying with a
15 particular Board order, there is any number of ways for
16 this Board to deal with it. So in that sense this is not
17 the only forum where those kinds of items can be dealt
18 with.

19 And my general comment is simply this. This hearing is to
20 approve a Revenue Requirement for Schedules 1 and 2. And
21 as I look through these as individuals I have a hard time
22 drawing a line between the answer to that question, and
23 what went into the Revenue Requirement that we -- in
24 preparation of our budget and the Revenue Requirement as
25 before this Board.

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2 Number 2 for instance is about the basis for using non-
3 coincident peak load as opposed to megawatt hours for
4 Schedules 1 and 2. Well, I thought we did that last year.

5 I thought that was all settled.

6 So you know, there is lots of questions we can answer. I
7 mean, the question about why is the tariff dated May the
8 1st 2000, we can answer that question, of course we can.
9 But you know, we are going to be here every year having
10 our Revenue Requirement reviewed. And I just think it is
11 helpful and efficient for the Board and for everyone else
12 to let's focus on what this application is about. There
13 will be other opportunities at a point in time. If there
14 is changes to the tariff that are needed then we can get
15 into broader issues depending on the nature of that
16 application. And so my general comment is -- and I don't
17 want to take up a lot of time here. But you know, I have
18 asked for some indication from the Public Intervenor. And
19 he is wondering what it has to do with the Revenue
20 Requirement, and be specific. I mean, it is nice to say
21 the more information you have the better. Fine. These
22 questions relate in large part to how we do things at the
23 System Operator. We would be happy to meet with the
24 Public Intervenor, as we have done with new Board members,
25 to describe how we do things at the System Operator. We
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2 are happy to do that. But this is not the forum to go on
3 a journey to find out about -- and references to NB
4 Power's Annual Report and how that impact us. I don't
5 understand the relevance of that at all to the other
6 requirement for line 2. It is as simple as that.

7 CHAIRMAN: What do you say though is the argument related to
8 Section 127 of the Electricity Act, which I don't have in
9 front of me, but --

10 MR. ROHERTY: I would say it is for the Board, it has pretty
11 wide discretion, without having it right in front of me.
12 The Board has powers of inquiry to anything they see fit
13 to inquire into.

14 And so if the Board feels it doesn't have information or
15 it requires the System Operator to provide certain
16 information, there is a section in the Act that says we
17 will do that.

18 And the Board has broad powers. And if they need
19 particular information, and we are advised to provide it,
20 I expect we would, so that the Board can properly advise
21 the government as it sees the need. There are other
22 processes.

23 This is about a Revenue Requirement, Schedule 1 and 2.

24 And we are going to be in here next year and the year
25 after that and the year after that. And the first time
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through there is going to be some bumps and grinds going.

Oh, here, look, we got to make this an efficient process. And so I would ask the Board that questions related or interrogatories be tied to a Schedule 1 or 2 Revenue Requirement specifically.

CHAIRMAN: So your objection basically is one of relevance?

MR. ROHERTY: Exactly.

VICE CHAIRMAN: Mr. Theriault, I have tried to -- and I lump 22 and 23 together. Maybe I shouldn't. But I look at these questions.

Is what you are trying to do to assess the scope of the mandate of the NBSO? Is this the purpose of these questions, either in comparison with its legislated mandate or something else?

MR. THERIAULT: Mr. Vice Chairman, maybe it would be helpful -- and I think I can go through each and every one of them and tie the relevance to Schedules 1 and 2 to each question.

And maybe that would be appropriate to assist the Board in what we are trying to attempt here. Again I'm getting -- sorry, go ahead.

VICE CHAIRMAN: Mr. Theriault, you made some broad points in your original comments about why you felt this was important. You indicated that this was the only

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opportunity for this review. Mr. Roherty suggested there are other means to make that review.

But what I interpreted your questions and your statement as being is that you felt that the Revenue Requirement review here was the opportunity to look at the broad operation of the NBSO, and I guess to have the Board consider its appropriateness, and that that would therefore relate to expenses.

Am I off track altogether?

MR. THERIAULT: I think -- yes. I think you are on track.

VICE CHAIRMAN: So that is the point that you are trying to make, at least in part, that --

MR. THERIAULT: Yes, correct.

VICE CHAIRMAN: -- look, we want to look at the operation of the NBSO. Are they doing what they are supposed to be doing? And that reflects upon their spending?

MR. THERIAULT: Yes, with respect to Schedule 1 and 2.

VICE CHAIRMAN: So that -- so in your original comments that is -- I'm understanding you correctly?

MR. THERIAULT: Yes, you are.

VICE CHAIRMAN: Okay.

CHAIRMAN: Mr. Theriault, perhaps it might be useful to go through them one at a time. And I will try to move it along, Mr. Chairman. We have already gone through

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2 Question 22 or IR-22.1. I will move on -- and the
3 response by I guess it's a global response by the NBSO, so
4 I won't deal so much with their responses. I will try and
5 just deal with the relevance to each particular IR.

6 And I would suggest that IR-22.2, the relevance of this
7 IR goes to the justness and reasonableness of the proposed
8 Schedule 1 and 2 rates. The allocation of a given level of
9 revenue requirement will impact how much each transmission
10 customer pays. Understanding the allocation mechanism
11 used and the rationale for that allocation mechanism will
12 help to create a complete record upon which the Board can
13 take a determination as to the just and reasonableness of
14 the rates that flow from the proposed revenue requirement.
15 With respect to Question 22.3 -- again I am not going to
16 read the question is there before the Board. But I
17 suggest that the relevance to this question is that this
18 is merely clarifying question that seeks to understand the
19 scope of Schedules 1 and 2 rates in the context of the
20 full NBSO Tariff. A response to this question is
21 necessary to understand the full NBSO Tariff, which is
22 subject to the jurisdiction of the Board. Absent a
23 response, it will be difficult if not impossible for me as
24 Public Intervenor (and hence ultimately the Board) to

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2 assess the reasonableness of the split between the NBSO's
3 various categories of cost into the various tariff
4 schedules. In order for the Schedule 1 and 2 rates to be
5 just and reasonable, the mechanisms that split costs
6 across schedules must be reasonable and prudent.

7 Transparency and the public interest I submit call for a
8 response to the question.

9 With respect to Question 22.4, again, I submit the
10 relevance is that this IR seeks to clarify the scope of
11 Schedule 1 and 2 rates in the context of the full Tariff.

12 And again transparency and the public interest call for a
13 response to this question.

14 With respect to 22.5, this IR I submit is important with
15 respect to the determination of the reasonableness of the
16 NBSO revenue requirement because the answer relates to the
17 number of market participants with whom the NBSO must deal
18 on a day-to-day basis. If each new power plant owner
19 dedicates its own staff to the interaction with the NBSO
20 with respect to plant dispatch, then we would expect that
21 the NBSO budget would commit resources and make
22 investments in training those new power plant staff
23 members with respect to the market rules and NBSO tariff
24 provisions. It is important to know whether this is the
25 case to evaluate the reasonableness of the proposed NBSO
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2 budget, and hence the reasonableness of the revenue
3 requirement and the resulting rates.

4 Further, as a policy matter, I would expect the Board to
5 be very interested in the answer to this question as the
6 structure of the Genco contracts may further entrench
7 Genco's dominant position in the generation market. The
8 NBSO has an obligation to ensure open access to the market
9 and has a market monitoring function. To the extent that
10 the NBSO is not dedicating sufficient resources to
11 understanding the implications of Genco behaviour and is
12 not taking action to prevent activities that will
13 discourage the development of a transparent competitive
14 market, then it is not performing its mandate under the
15 Electricity Act and its revenue requirement and the
16 resulting rates may not be just and reasonable.

17 The NBSO, Mr. Chairman -- the NBSO itself states in its
18 most recent State of the Market report that:

19 "While the ability to exercise market power to affect
20 prices is low, the ability to prevent market entry does
21 exist. This effectively lessens competition. A dominant
22 player with broad interests in distribution, transmission
23 and generation could undertake practices to prevent entry
24 of new players. Examples of such practices include cross
25 subsidization of rates for contestable customers, locking
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2 customers into long term contracts, buying existing non-
3 utility plants, not procuring new supply on a competitive
4 basis, and hoarding transmission."

5 Clearly, I submit the NBSO considers within its remit to
6 monitor the prevention of the market entry by a dominant
7 player. If this is an area where the NBSO has
8 responsibilities, then the scope of their operations that
9 relate to fulfilling those responsibilities should be an
10 open book.

11 With respect to Question 22.6. The Relevance -- it's a
12 simple question and the relevance to this proceeding
13 addressed whether the proposed Schedule 1 and 2 rates are
14 just and reasonable. Schedules 1 and 2 rates are part of
15 the OATT. Hence, a question that merely confirms where
16 the current OATT resides on the NBSO's website, I would
17 suggest is relevant to this proceeding.

18 With respect to 22.7. Again the relevance to this
19 proceeding I suggest addressees whether the proposed
20 Schedule 1 -- this question addresses whether the proposed
21 Schedule 1 and 2 rates are just and reasonable. Again,
22 Schedule 1 and 2 rates are part of the OATT as I said in
23 the previous answer. If the NBSO mandate is to promote
24 open access to the market, then having an outdated OATT on
25 its website does not help. An adjustment to the budget
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2 may be needed to allow for the updating of the OATT and
3 publication on the NBSO website. Making a current OATT
4 available to market participants and interested parties is
5 a requirement of the Electricity Act. If NBSO cannot
6 identify where one is, it is not in compliance with the
7 Electricity Act. And I would submit that this is
8 certainly of relevance to the NBSO's rate proposal.

9 With respect to Question 22.8. This IR I submit is
10 important to the determination of the reasonableness of
11 NBSO's revenue requirement because the answer relates to
12 the number of transmission customers with whom the NBSO
13 must deal with on a day-to-day basis. Further, the
14 evidence of an increase in Network and Point-to-Point
15 transmission customers would help to confirm that the NBSO
16 is fulfilling its mandate of facilitating the development
17 of a competitive market. If we do not see more Network
18 and Point-to-Point transmission customers, then we may
19 have questions about whether the NBSO's market development
20 efforts are focused in the right place and whether their
21 proposed Schedule 1 revenue requirement, which reflects
22 the NBSO's states priorities, is just and reasonable.

23 Question 22.9. The relevant to this IR is that it is
24 important to determination of the reasonableness of the
25 revenue requirement, because the answer relates to the
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2 number of market participants with whom NBSO must deal
3 with on a day-to-day basis. Again, further, the evidence
4 of additional signatories to the Network Operating
5 Agreement would help to confirm that the NBSO is
6 fulfilling its mandate of facilitating the development of
7 a competitive market. If we do not see additional
8 signatories, then we may have questions about whether
9 NBSO's market development efforts are focused in the right
10 place and whether their proposed Schedule 1 revenue
11 requirement, which reflects the NBSO's stated priorities,
12 is just and reasonable.

13 With respect to Question 22.10, this IR is important to
14 the determination of the reasonableness of the NBSO
15 revenue requirement because the answer relates to the
16 number of market participants with whom NBSO again deals
17 with on a day-to-day basis. Further, evidence of a
18 additional signatories to the Generator Interconnector
19 Agreement would help to confirm that the NBSO is
20 fulfilling its mandate again in facilitating the
21 development of a competitive market. And if we do not see
22 additional signatories, then we may have questions about
23 whether the NBSO's market development efforts are focused
24 in the right place and whether the proposed Schedule 1
25 revenue requirement, which reflects the NBSO's stated
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2 priorities, is again just and reasonable.

3 Section 22.11. Again that document refers to a quote from
4 -- or that question refers to a quote from the NB Power
5 annual report. And I don't intend to read it, but
6 subsection or Roman Numeral (i) is relevant, I would
7 suggest, because this IR is important to the determination
8 of the reasonableness of the OATT as a whole, of which
9 Schedules 1 and 2 are a part. Again transparency and the
10 public interest I suggest call for an answer to this IR.

11 With respect to Roman Numeral (ii), the relevant, Mr.
12 Chairman, of this IR is that it is important to provide
13 parties who review Schedules 1 and 2 the context as to how
14 they fit into the overall OATT and what other charges are
15 imposed on market participants by the NBSO. Again
16 transparency and the public interest call for an answer to
17 this question.

18 Roman numeral (iii), this IR I suggest -- or I submit is
19 important to provide parties who review Schedules 1 and 2
20 the context as to what rate design principles the NBSO
21 uses in the context of the other charges in the OATT. The
22 answer, taken together with other IR responses, will allow
23 parties to confirm the consistency of rate design
24 principles across different parts of the OATT. Again,
25 transparency and public interest call for an answer to
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2 this question.

3 Roman numeral (iv). Again, this is a simple factual
4 question related to the OATT, of which Schedules 1 and 2
5 are a part. The answer is relevant to understanding the
6 OATT as a whole that is administered by the NBSO. There
7 is evidence in the public domain that these elements of
8 the NBSO administered tariff are below the cost of
9 service. The NBSO has an obligation to set just and
10 reasonable rates and would be the entity who makes a rate
11 proposal to the Board. If those of the aspects of the
12 OATT need to be updated, then it is worth discussing in
13 this proceeding whether the NBSO should allocate time and
14 staff during this Test Year to regulatory proceedings on
15 other OATT schedules. This will directly impact the
16 Schedule 1 rate. Again, transparency and public interest
17 suggest that this response should be answered -- sorry,
18 that this question should be answered.

19 Roman numeral (v). Again the answer is relevant to the
20 understanding of the OATT as a whole as administered by
21 the NBSO. Again there is evidence in the public domain
22 that these schedules of the NBSO administered tariff are
23 below the cost of service. The NBSO has an obligation to
24 set just and reasonable rates and is the entity who must
25 make a rate proposal to the Board. If those aspects of
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2 the OATT need to be updated, then it is worth discussing
3 in this proceeding year for the same reasons as I
4 discussed before.

5 With respect to Roman Numeral ((vi). Again, the answer is
6 relevant to understanding which areas the NBSO uses its
7 resources, and whether it is spending its money on this
8 issue. It is certainly I would suggest fair game in the
9 analysis of whether the NBSO Schedule 1 revenue
10 requirement is just and reasonable to query whether the
11 NBSO should be spending money analyzing upcoming rate
12 changes to the OATT and determining the size of expected
13 changes and whether this will trigger rate shock.

14 Transparency and the public interest I suggest call for a
15 response to this question.

16 Roman numeral (vii). Again, it is certainly fair game in
17 the analysis of whether the NBSO Schedule 1 revenue
18 requirement is just and reasonable to query whether the
19 NBSO is analyzing upcoming rate changes to the OATT and
20 determining the size of the expected changes and whether
21 this will trigger rate shock. Transparency and the public
22 interest, I again suggest call for this.

23 With respect to Roman Numeral (viii). The answer I
24 submit, Mr. Chairman, to this question will provide the
25 proper context for the NBSO's operations and Schedule 1
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2 rate proposal.

3 With respect to Roman Numeral (ix). The answer to this
4 question provides necessary context for the NBSO's
5 operations and Schedule 1 rate proposal. The publication
6 of Transco's bills to NBSO enhances the transparency of
7 the NBSO-administered OATT of which Schedules 1 and 2 are
8 a part, and is in the public interest.

9 With respect to Roman Numeral (x), the relevance of this
10 particular IR goes to understanding which part of
11 Transco's revenue requirement are collected from NBSO and
12 which parts are collected from other parties and is
13 necessary to put the NBSO's resource requirements and
14 proposed Schedule 1 rate in context. Again, transparency
15 and the public interest I suggest call for a response.

16 With respect to Roman Numeral (xii). Understanding what
17 role the NBSO performs, what role Transco performs and how
18 these two entities interact is necessary to put the NBSO
19 resource requirements and proposed Schedule 1 rate in
20 context.

21 With respect to Roman Numeral (xii). Again understanding
22 what role the NBSO performs with respect to transmission
23 expansion is necessary to put the NBSO's resource
24 requirements and proposed Schedule 1 rate in context. In
25 addition, if the NBSO is not at all involved
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2 in oversight of transmission expansion, this would suggest
3 that it may not be fulfilling its mandate under the
4 Electricity Act to assure that no entity receives any
5 preference in the development of the electric system --
6 electricity system and the requirement that it monitor the
7 exercise of the market power. Again, transparency and the
8 public interest I submit calls for a response.

9 Roman numeral (xiii). Understanding what role the NBSO
10 performs with respect to transmission expansion again is
11 necessary to put their resource requirements and proposed
12 Schedule 1 rate in context. In addition, if NBSO is not
13 at all involved in the transmission expansion, then there
14 may be -- again reason to believe that it is not
15 fulfilling its mandate under the Electricity Act to assure
16 that no entity receives any preference in the development
17 of the electric system and monitor the exercise of market
18 power. Again, transparency and public interest call for a
19 response to this question.

20 Roman number (xiv). The Electricity Act appears to place
21 this responsibility on the NBSO. The question has bene
22 posed to confirm that the NBSO does believe it has this
23 responsibility. If it does have the responsibility, then
24 this needs to be taken into consideration when reviewing
25 the resource requirements proposed in the
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Schedule 1 rate.

Now that's my comments with respect to Questions 22. And I can move on and do the -- provide briefly the Board my arguments for relevancy with respect to 23 or do you wish to --

CHAIRMAN: Well I think some of the parties here want to make comments on Question 23. I am not sure anybody other than Mr. Roherty wants to make comments on Question 22. So perhaps Mr. Roherty, I will give you the opportunity to --

MR. FUREY: Mr. Chairman, I am sorry to interrupt. I think I do have some general comments. And if you would prefer I would go in advance of Mr. Roherty --

CHAIRMAN: No, this is fine. Go right ahead.

MR. FUREY: Thanks, Mr. Chairman. Mr. Chairman, I guess the NB Power group of companies made interventions based on its understanding that this was -- the scope of this hearing was determination of the propriety of the revenue requirement for Schedule 1 and 2 services being put forward by the NBSO. And so I mean to borrow the term from the way the courts in this province deal with relevance, what are the matters in issue here? And we see the matters in issue as being the determination of the revenue requirement.

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2 My learned friend, Mr. Theriault, in his remarks with
3 respect to IR-22, is talking about issues such as the
4 reasonableness of the OATT as a whole and principles of
5 rate design. And issues, for example, of whether or not
6 Transco is somehow exercising its powers in terms of
7 developing new transmission facilities to the benefit of
8 its affiliated corporations.

9 Now I would suggest that by any definition relevance to
10 the matters in issue here, those issues are irrelevant. I
11 mean it is worth pointing out that Transco has not
12 intervened in this proceeding based on its understanding
13 of what this proceeding was about. But hearing my learned
14 friend speak about why he wants these questions answered,
15 I would be remiss if I didn't request of the Board that
16 should these questions be ordered to be answered and
17 should the Public Intervenor be permitted to turn this
18 hearing into something beyond the revenue requirement and
19 into this broader scope, then Transco as a party that
20 would be affected by the decisions that could come out of
21 that, would be entitled to be heard and I would at this
22 point simply ask for leave should the Board go in this
23 direction, leave for Transco to apply to intervene and to
24 lead evidence. And should that become an issue, should
25 that come to pass, I guess our -- my current view, and I
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am not entirely sure of this, but it seems to me that what the Public Intervenor is suggesting is the scope of the hearing may well put Transco and the Public Intervenor maybe an adversarial position is too strong a term, but having different points of view. And in that case, what we would be asking is that if the Public Intervenor were to file any evidence that Transco would be interested in having an opportunity review that evidence and then make its own decision as to whether or not it required evidence to be led in opposition.

I guess what I am saying to you, I feel I need to put this on the record, because if we go beyond the scope, I think there are things that are impacted particularly from Transco's point of view. Also from Genco. But particularly from Transco from what I have heard to this point, and I simply wanted to alert the Board to the potential that Transco would feel the need to intervene.

CHAIRMAN: Thank you, Mr. Furey. You don't represent Transco at today's hearing, but I see from our parties list that you do represent NB Power Holding Corporation.

MR. FUREY: That's correct.

CHAIRMAN: In an indirect sense one might say. Perhaps you might have some I guess basis to make those comments.

MR. FUREY: And, Mr. Chairman, I am simply pointing out

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2 as -- while I do not represent them today, I have
3 represented them on other matters. And I can identify
4 them as a party whom may be affected should the scope of
5 this hearing go beyond what the NB Power group of
6 companies thought it was.

7 CHAIRMAN: Thank you, Mr. Furey. Before we get to Mr.
8 Roherty, anybody else want to jump in on this one? Mr.
9 Roherty?

10 MR. ROHERTY: Thank you, Mr. Chairman. I echo Mr. Furey's
11 comments to the greatest extent that I can do that here
12 today. And the main point being that these questions seem
13 to go way beyond the scope of what was intended when we
14 reviewed that -- we put proposals forward last year as to
15 how -- on a go forward basis, how to deal with these
16 revenue requirements. And there was no discussion at that
17 time about -- beyond -- beyond that -- those questions and
18 getting into the redesign of the entire tariff, which
19 seems to be suggesting and going back to re-inventing the
20 entire scheme of things here and how it is supposed to
21 work.

22 There is a few particular things I could say. Number 5
23 about the PPAs, to my knowledge, we don't even have those
24 PPAs. So I don't know how we could be expected to comment
25 on them. We are not parties to it.

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2 There are many references here to -- in a generic way to
3 open and transparency. And while I would suggest you
4 can derive that string from anything that's going on to
5 make it relevant to our revenue requirement. These
6 strings are very tenuous -- tenuous at best.

7 There have been many questions again about an
8 understanding of the tariff. An understanding of how it
9 works. Well with respect the tariff explains how it
10 works. The market rules explain how things work. Past
11 decisions as to when was a particular part of the tariff
12 approved are available on the website of the Board. One
13 can easily go to those things and find out the answers to
14 those questions.

15 I would hope it is not our job as the Applicant here to go
16 back and do research that is available to those who want
17 to do it. And again the general objection to all of this
18 is that it is not relevant to the issue at hand and it
19 takes it way, way beyond the scope that was intended here.

20 CHAIRMAN: Mr. Roherty, are there any particular questions
21 at all that you would see as being relevant? I appreciate
22 your argument on relevancy. Is your position that a
23 hundred percent of the questions that would fall under
24 question number 22 are not relevant?

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MR. ROHERTY: Yes, it is. Because some of them are easy to answer. I don't argue they are easy to answer, but they don't relate directly to the revenue requirement that we have put forward here for approval.

MR. THERIAULT: Mr. Chairman, may I make a comment in reply?

CHAIRMAN: Yes, Mr. Theriault.

MR. THERIAULT: I just want to point out that -- and I find it interesting that when cost allocation and rate design questions are asked by other parties, such as Hydro-Quebec did in their interrogatories, they are answered. But when they are asked by the Public Intervenor, they are suddenly not relevant. The same with questions about the role in the electricity industry, when they are asked by Board Staff, they become relevant and they get an answer. But when they are asked by the Public Intervenor, they are suddenly not relevant. And I have a serious concern with that.

CHAIRMAN: Well, I guess with those remarks, I want to know specifically which questions do you think that would fall in the same category that could have been objected to on the same basis?

MR. THERIAULT: Well if you look at the interrogatories, the interrogatories of Hydro-Quebec, IR 1, is a general interrogatory that I go to cost allocation and rate

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2 design. They do answer the question. If you look at the
3 -- and I referred earlier in my opening remark to the
4 Board interrogatory IR 1, which respect to the role of the
5 NBSO in the electricity industry, which is what my
6 questions are trying to get at as well, into the overall
7 OATT and with their objectives as stated in the Act. So
8 they seem to pick and choose who they want to respond to.

9 VICE-CHAIRMAN: Perhaps Board Staff could just bring up a
10 binder with the interrogatories that Mr. Theriault is
11 referring to, because we -- our binders that we have at
12 the dias with us are limited to the ones were at issue.
13 Thank you very much, Mr. Lawton.

14 CHAIRMAN: Just give us a moment. Before we move on to IR
15 23, Mr. Roherty, any comments that you would like to --

16 MR. ROHERTY: I would point out that we are not picking and
17 choosing here. You will see in our responses to IES, I
18 don't remember the number, Integrys Energy Services, we
19 also objected to answering certain questions in there.
20 Again, as not being on point for this hearing.

21 CHAIRMAN: Well I think we will move on to IR-23. I will
22 ask the Public Intervenor to address the issue with
23 respect to that interrogatory?

24 MR. THERIAULT: Thank you, Mr. Chairman. With respect to
25 IR-23, I guess the first IR that I have is Question 4,
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2 Roman Numeral (iii). And I would submit that the
3 relevance for the question -- the reason the question as
4 been posed is to confirm the goals of the NBSO in its role
5 as a facilitator of an open-access market. If it does
6 have these goals, then they need to be taken into
7 consideration when assessing the reasonableness of the
8 proposed resource requirements and proposed Schedule 1
9 rate. And again the issues I think of transparency and
10 public interest are relevant here.

11 With respect to IR -- Question 4, IR-4 -- Roman Numeral
12 (iv), sorry -- the IR itself asks, is it the NBSO's goal
13 to facilitate competitive development of new generations
14 facilities? The question has been posed to confirm the
15 goals of the NBSO in its role as a facilitator of an open-
16 access market. If it does have these goals, then again
17 they need to be taken into consideration when assessing
18 the reasonableness of the proposed resource requirements
19 and proposed Schedule 1 rates.

20 With respect to IR-23, Question 4, Roman Numeral (v). The
21 IR is, is it the NBSO's position that the current market
22 rules "facilitate a market"? If not, what areas does the
23 NBSO believe are lacking in the facilitation of the
24 market?"

25 The relevance I submit is that the question has been
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2 posed to confirm the NBSO's position with respect to the
3 adequacy of the market rules. If it does not believe it
4 is adequately facilitating a market, then this needs to be
5 taken into consideration when assessing the reasonableness
6 of the proposed resource requirements and proposed
7 Schedule 1 rate.

8 With respect to the same IR, Roman Numeral (vi), the IR is
9 as follows: Is it the NBSO's position that a competitive
10 market can indeed be facilitated in New Brunswick despite
11 the dominant position of the incumbent NB Power?

12 The question has been posed to confirm the NBSO's position
13 with respect to whether its mandate under the Electricity
14 Act is being achieved. In its State of Market Report, the
15 NBSO appears not to be concerned about the dominant
16 position of the incumbent NB Power. Rather, the NBSO
17 suggests that the exercise of the market power is somehow
18 okay if it results in efficiencies. And again I would
19 cite -- if you are looking for a cite for that, it would
20 be at page 4 of the Market Report. If the NBSO is not
21 putting adequate resources into assuring that there are no
22 abuses by the dominant player, then it is not fulfilling I
23 suggest its mandate under the Electricity Act. This
24 should certainly be taken into consideration

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2 when assessing the reasonableness of the proposed resource
3 commitments and proposed Schedule 1 rate.

4 With respect to the same question IR number (vii), the IR
5 asks, has the NBSO considered running competitive
6 solicitations for new generation? Why or why not?

7 Several ISOs in North America I suggest run competitive
8 solicitation for new generation. This would be one way
9 fro the NBSO to assure that it fulfils it's open access
10 mandate under the Electricity Act. Whether the NBSO
11 should be committing resources to developing competitive
12 solicitations for new generation is certainly an
13 appropriate topic when evaluating NBSO's proposed resource
14 commitments and whether the proposed Schedule 1 rate is
15 just and reasonable.

16 The next one is Roman Numeral (viii). And the IR is, what
17 steps does the NBSO plan to take to enhance the
18 effectiveness of the market and over what time frame?

19 Mr. Chairman, it is important to understand that the scope
20 of NBSO planned market development efforts in order to
21 provide context for NBSO's proposed resource commitments
22 and for the evaluation of whether the proposes Schedule 1
23 rate is just and reasonable. Transparency and public
24 interest call for a response to this question.

25 I am sorry, Mr. Chairman, I ran out of water. The

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2 next IR that I have concern with is Question IR-5 -- 23,
3 part 5. This IR asks, Does the NBSO's Open-Access
4 Transmission Tariff comply with the US Federal Energy
5 Regulatory Commission requirements for Open-Access
6 Transmission Tariffs?

7 Now, Mr. Chairman, whether the OATT is FERC-compliant is
8 relevant to the development of the energy hub and
9 increased exports to ISO-New England. This question
10 clarifies a factual issue and provides context for NBSO's
11 proposed resource commitments.

12 IR-23, part 6. The IR is, what are the benefits to New
13 Brunswick customers of having a FERC-compliant OATT?

14 Again this question I submit provided context for any NBSO
15 efforts to maintain a FERC-compliant OATT. Whether the
16 NBSO is actually expending resources or should be
17 expending resources on maintaining a FERC-compliant tariff
18 is important to the evaluation of its proposed revenue
19 requirement.

20 IR-23, part 7. The IR asks, is the NBSO aware of any
21 recent changes by FERC to the OATT requirements?

22 Again, I submit this goes to whether more resources should
23 be devoted to FERC OATT compliance issues.

24 With respect to the same IR, part 8. The IR asks, what
25 steps has the NBSO taken or will the NBSO take to

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assure that OATT is FERC compliant in the future?

Again, this goes to whether or not more resources should be devoted to FERC OATT compliance issues.

With respect to IR-23, part 9. The IR asks, under what conditions can generators that connect to the NBSO-administered grid sell into the US markets?

This question I submit provides context to understand the feasibility of the Energy Hub and the relative ease or difficulty that new entrant generators will face in marketing their power outside New Brunswick. This is important context for understanding the NBSO's efforts with respect to the Energy Hub and evaluating the proposed resource commitments in this regard.

And, Mr. Chairman, with respect to IR-23, those are my comments. Thank you.

CHAIRMAN: Thank you, Mr. Theriault. Again, I will go through the parties then. Ms. Cossette, anything with respect to those?

MS. COSSETTE: No comments.

CHAIRMAN: Mr. MacDougall?

MR. MACDOUGALL: Yes, thank you, Mr. Chair. Mr. Chair, just to start with I think the point of departure from us would be to look first at the response that the NBSO did give to Public Intervenor, Q-23.4,(ii), which is on page 61.

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2 That's just before the section where they did not respond
3 to 4, (iii) through (ix). And the question there was,
4 what does the NBSO mean by facilitate a market? The NBSO
5 did respond to that question and stated that the NBSO's
6 reference to facilitate a market means fulfilling the
7 mandate as prescribed by the Electricity Act. The
8 relevant section of the Act is provided for convenience as
9 follows, and then the NBSO sets out Section 42 of the
10 Electricity Act. The object of the SO, sub part (j), to
11 facilitate the operation of a competitive electricity
12 market.

13 So in fact the NBSO clearly states in response to that IR
14 that what it was referring to was the facilitation of the
15 operation of a competitive electricity market.

16 We submit that the following questions, 4, (iii) through
17 to (ix), as discussed in detail by Mr. Theriault to go
18 exactly a follow-up on questions dealing with facilitation
19 of a competitive electricity market.

20 In fact some of the questions actually refer to those
21 words, presumably assuming that the NBSO would answer sub
22 4(ii) the way they did. So having stated that they
23 understand that their object is to facilitate the
24 operation of a competitive electricity market, we then
25 think this series of questions about how they may go about
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2 that, what they have done to do that and what they may do
3 or should do to do that, is appropriate for this
4 proceeding in the context of what they may be doing vis-a-
5 vis the revenue requirement.

6 The reason that is important and how it ties back to the
7 questions posed by Integrys, if we look at Integrys' IR-7,
8 and that is at page 12, we noted particularly in that
9 question that at page 22 to 23 of the evidence of the
10 NBSO, they set out a large laundry lists of consulting
11 costs and consulting items. And Integrys asked about --
12 asked questions about what they propose with many of these
13 in the questions we posed in IR-7. And in particular we
14 asked in 7(b), explain why the NBSO is proposing a \$90,000
15 for study for review and redesign of the tariff and
16 market rules? And we submit that it may well be that
17 certain of the studies -- certain of the work, certain of
18 the activities that should be carried out in the context
19 of such a review and design or in the context of the
20 separate item, 42(j) of the Electricity Act, may be items
21 the parties would suggest should be carried out either
22 together with a review like that or instead of a review
23 like that, and certainly a part of this hearing will be to
24 consider whether or not these consulting costs, these
25 reviews, these studies should be carried out. And
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2 certainly it is important that the Board be aware of other
3 matters that may be germane and may be more timely to
4 undertake than those matters.

5 So we certainly believe the items of a competitive market,
6 particularly the Board's comments in some of its recent
7 rulings, I think particularly a ruling on the last request
8 for an increase by DISCO, the one that they did not have
9 to seek the Board's authority for, but which they asked,
10 clearly there were statements made there about concerns
11 about competitive nature of the market. These questions
12 merely go to the role of the SO in that regard. And there
13 is no specific other proceeding like to deal with that. I
14 think the revenue requirement request, the request
15 consulting costs, the requests for studies, I think this
16 is an appropriate hearing to deal with these items. They
17 are not Transco-related items like IR-22. That's why we
18 didn't have comments on that. But we certainly believe
19 these items for the reasons Mr. Theriault stated, the
20 reasons I am stating are ones that we should at a minimum
21 be entitled to see responses to.

22 That goes not only for the remainder of Question 23, (iv),
23 but also items (v) through (ix), the issue of FERC-
24 compliance is particularly germane to the question of
25 competitive market, because there is reciprocity and other
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2 requirements, and we do think it is appropriate for the
3 NBSO to comment from time to time on FERC-compliance
4 status of its OATT, if in fact it is seeing to recover
5 costs under such an OATT. And we do not think any of
6 these questions, unlike some of the earlier questions, Mr.
7 Roherty spoke to are ones that are time consuming or
8 difficult to respond to.

9 So we believe they are within the scope of the proceeding.

10 Possibly slightly tangentially, but certainly clear
11 enough in the scope from the context that these are not
12 issues that should be difficult to respond to. That they
13 should be responded to and that they might assist the
14 parties in bringing forward comments to the Board or might
15 assist the Board in its adjudications.

16 And those are all of our comments, Mr. Chair. Thank you
17 very much.

18 CHAIRMAN: Thank you, Mr. MacDougall. Mr. Furey?

19 MR. FUREY: Thank you, Mr. Chair. I would reiterate the
20 comments I made with respect to IR-22. But this time more
21 from the perspective of Genco.

22 This -- the term that the Public Intervenor used is these
23 are questions designed to determine is the mandate of the
24 NBSO being achieved? And so I think that puts the
25 question squarely in front of the Board is that the issue

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2 before the Board on this hearing? And I would suggest
3 that it is clearly not. But whether the Board orders
4 these particular interrogatories in 23 to be answered, is
5 not particularly germane to Genco. What is germane though
6 is that if the Board does so, our concern is that
7 implicitly the Board is saying that the mandate or the
8 scope of this hearing is considerably broader than we
9 thought it to be. And so I guess I would be seeking the
10 same relief that if that is the effect of any order that
11 comes out -- that comes forth to the Board on this issue
12 and the Public Intervenor were to then lead expert
13 evidence directed at the issue of what the appropriate
14 mandate, what the NBSO should be doing, then on behalf of
15 my clients, those currently who are Intervenors and those
16 who perhaps may not be yet, we would be seeking an
17 opportunity potentially to lead expert or other evidence
18 in response to that. And again I simply wanted to advise
19 the Board that if the scope of the hearing is broadened,
20 we see the nature of the hearing potentially changing or
21 we would be asking the Board to change the nature of the
22 hearing considerably.

23 Those are all our comments.

24 CHAIRMAN: Thank you, Mr. Furey. Ms. Desmond, any comments
25 on this issue?

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MS. DESMOND: Nothing from Board Staff. Thank you.

CHAIRMAN: Mr. Roherty?

MR. ROHERTY: Thank you, Mr. Chair. Perhaps under the heading of no good deed goes unpunished, we should not have answered parts 1 and 2 of the question I guess -- other questions some have said tie into it.

In summary I can simply reiterate my earlier position that this seems to again be taking us beyond the scope of the hearing as we understood it and which was to review the costs proposed by the System Operator for next year's revenue requirement. Which means these questions go beyond the scope of that and are not relevant to that discussion.

CHAIRMAN: Mr. Theriault?

MR. THERIAULT: I guess the only thing I have to say in closing, and I just want to refer back since it is still part of the motion to the earlier -- to the early one with respect to jurisdictions that use authored IRs, I was informed by Mr. Howard at noon hour that Maine does it. Every IR is submitted by and responded by. So I just bring that to the Board's attention that's the practice that goes on in Maine. Aside from that, Mr. Chairman, I have for all the parties a written version of my final summation here

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today. So I can hand that out to the parties, to the Board at this time.

CHAIRMAN: Thank you. Just before we break, I just want to review what is outstanding to make sure that my list is synchronized sort of with your list.

The first -- item number 1, PI IR-1, Question 1 is still outstanding, that was not resolved. PI IR-6 Question 4 is not resolved?

MR. ROHERTY: Correct.

CHAIRMAN: Number 16 on the list, PI IR-20 Question 4 is unresolved?

MR. ROHERTY: On the -- yes.

CHAIRMAN: PI IR-22 and PI IR-23?

MR. THERIAULT: That's correct.

MR. ROHERTY: That's my understanding, sir.

MR. THERIAULT: That's my understanding as well.

CHAIRMAN: And it's my understanding that all other matters have been resolved, so you can -- you would be looking for a decision from the Board with respect to those five outstanding IRs and the other motion that you brought forward with respect to the identify of the person who supervised the answering of the IRs?

MR. THERIAULT: Yes. And I will have my IR with respect to the erratum to Mr. Roherty by tomorrow at noon.

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CHAIRMAN: Well the Board will take a brief recess here and we will let you know whether or not we are able to give a response to this today or whether or not it will be a written decision. Thank you.

(Recess: 2:30 p.m. to 3:44 p.m.)

CHAIRMAN: It is our intention to give an oral ruling at this time. Any of the parties have anything further this would be the time?

All right. There are two matters left to determine on the Public Intervenor's notice of motion and that would be item number 1 that the NBSO be ordered to specify who within their organization supervised the preparation of each interrogatory. And item number 3 in the notice of motion which the Public Intervenor asked that the NBSO to complete the answer on interrogatories filed by the Public Intervenor and a number of IRs were set out.

I will deal first with the issue of specifying who supervised the preparation of the responses to the interrogatories. The Public Intervenor brought a motion requesting the Board to order the NBSO to specify who within the organization supervised the preparation of each interrogatory response. The principal reason for this motion asserted by the PI was to facilitate a more orderly and effective cross examination of witnesses at the

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hearing.

The Board has considered the request and has decided to deny the motion. In the Board's view, the appropriate time for such a request was at the pre-hearing conference on January 6th, prior to the IRs having been asked and answered. If the Board were to allow the motion at this stage, it would have the effect of altering the hearing process after it is well underway.

In addition, the Board is not convinced that the requested information would have any material affect on the ability of the Public Intervenor to conduct his cross examination, particularly in a hearing process that typically sees witness panels rather than individual witnesses.

The remaining part of the motion, item number 3 deals with the specific IRs. The following IRs are relevant and the New Brunswick System Operator is ordered to answer them as follows: PI IR-1, Question 1, and that is to be answered by February 17th at noon. The next one is PI IR-6, Question 4. And that is to be answered by February 17th at noon. The next one is PI IR-20, Question 4, and that is to be answered by February 24th at noon. I believe that was the one that Mr. Roherty indicated it would take about a week to answer. And the Public

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2 Intervenor agreed that that information was not necessary
3 to be filed on the 17th.

4 The remaining two IRs, are PI IR-22 and PI IR-23. The
5 Board cannot -- the Board is not convinced I guess that
6 the issues covered by these IRs are relevant to the 2009-
7 2010 revenue requirement. If a party can establish a link
8 to the 2009-2010 revenue requirement at the hearing, then
9 these matters may well be incorporated for cross
10 examination. The NBSO will not be required to answer
11 these interrogatories.

12 I believe that covers all of the issues which were raised
13 in the two motions. Is there any further matters to be
14 dealt with today? Then we will adjourn at this time.

15 (Adjourned)

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17 Certified to be a true transcript of
18 the proceedings of this hearing,
19 as recorded by me, to the best of
20 my ability.

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24 Reporter
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