

New Brunswick Board of Commissioners of Public Utilities

In the Matter of an application by the New Brunswick System Operator for changes to the Open Access Transmission Tariff (OATT) as approved by the Board for the New Brunswick Power Corporation

Delta Hotel, Saint John, N.B.
March 22nd 2005 10:00 a.m.

CHAIRMAN: David C. Nicholson, Q.C.

VICE CHAIRMAN David S. Nelson

COMMISSIONERS: Diana Ferguson Sonier
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BOARD COUNSEL: Peter MacNutt, Q.C.

BOARD SECRETARY: Lorraine Légère

BOARD STAFF Doug Goss
Gay Drescher

..... CHAIRMAN: Good morning, ladies and

gentlemen. This is the hearing for the New Brunswick System Operator for changes to the Open Access Transmission Tariff which was previously approved by the Board for the New Brunswick Power Corporation.

First of all could I have appearances please?

MR. WHELLY: Charles Whelly appearing for the applicant, New Brunswick System Operator. I'm also appearing for NB Power Transmission Company.

CHAIRMAN: And with you today?

MR. WHELLY: Yes. I apologize. And Kevin Roherty also appearing for the New Brunswick System Operator.

CHAIRMAN: Good. Thanks, Mr. Whelly.

MR. WHELLY: Thank you.

CHAIRMAN: Mr. Whelly knew the housekeeping rule that you always engage the red light by pushing the button, so that the shorthand reporter can record what you have to say.

And WPS Canada Generation Inc.?

MR. MACDOUGALL: Yes, Mr. Chair. David MacDougall. And I'm joined with my colleague today Matthew Hayes. And we are here with Mr. Ed Howard, Energy Marketing Executive of WPS.

CHAIRMAN: Thanks, Mr. MacDougall. Formal Intervenors. Canadian Manufacturers and Exporters, New Brunswick Division?

MR. PLANTE: Dave Plante appearing on behalf of the CME.

CHAIRMAN: We have got such a full room, Mr. Plante, you probably should raise your hand. There we are. Thanks. And Mr. Daly?

MR. DALY: Gerard Daly, Mr. Chairman.

CHAIRMAN: All right, Mr. Daly. The Board has received correspondence from Eastern Wind Power Inc. through its solicitor Mr. Hoyt that they will be not participating in

this hearing process.

Then the Irving Group of companies, that is Irving Paper Limited, Irving Pulp and Paper Limited and J.D. Irving?

MR. PAPPAS: Yes, Mr. Chairman. John Pappas. And with me is Andrew Booker.

CHAIRMAN: Thank you, Mr. Pappas. NB Power Disco?

MR. MORRISON: Yes, Mr. Chairman. Terrence Morrison. And with me is Blair Kennedy, Director of Energy Procurement and Contract Management.

CHAIRMAN: Thank you, Mr. Morrison. And Mr. Belcher is with us, Northern Maine Independent System Operator?

MR. BELCHER: Yes, sir.

CHAIRMAN: You are really in the back of the room today. Welcome, Mr. Belcher. And Nova Scotia Power Inc.?

MR. ZED: Peter Zed, Mr. Chair.

CHAIRMAN: Oh, there you are, okay. Thanks, Mr. Zed. And the Municipal Utilities?

MR. YOUNG: Dana Young, Mr. Chair.

CHAIRMAN: Thank you, Mr. Young. We have got a couple of Informal Intervenors, Hydro Quebec Trans Energie. Anyone representing them? No. And NB Power Generation Corp.? Okay.

Now as you are well aware by the recent press reports

there is also someone else in the room who would probably like to address the Chair at this time.

MR. HYSLOP: Thank you, Mr. Chair. My name is Peter Hyslop. I have been appointed under Section 123 of the Electricity Act to intervene as a Public Interest Intervenor by the Attorney General.

I would ask the Board to recognize that and to permit me to be an Intervenor at this hearing and be given formal status.

CHAIRMAN: Mr. Hyslop, it almost would be -- well, it would be extraordinarily unusual if the agent of the Attorney General were not recognized. Now any of the parties have any objection to Mr. Hyslop becoming a Formal Intervenor in this matter?

MR. WHELLY: No objection, Mr. Chairman.

CHAIRMAN: Good. All right. Silence is acquiescence then.

MR. HYSLOP: Thank you, Mr. Chair.

CHAIRMAN: Thank you, Mr. Hyslop.

MR. MACNUTT: Mr. Chairman, I might just mention that Peter MacNutt is here representing the Board. And I have with me Doug Goss, Senior Advisor and Gay Drescher, Advisor with the Board.

CHAIRMAN: Thank you, Mr. MacNutt. I can't forget you. In accordance with our normal procedure the Board has

premarked certain exhibits. And I would ask the counsel and witnesses when they are referring to any of the documentation that is contained in any of these exhibits that they refer first to the exhibit number, because we Commissioners have to find the right volume. And they are all keyed in on the basis of the exhibit number.

So we have marked exhibit A-1 which is a red line version of the Open Access Transmission Tariff dated February 16, 2005. A-2 is the prefiled evidence of the applicant dated January 24th 2005 including erratum to evidence dated February 10, 2005.

A-3, response of the applicant to Intervenor IR's dated February 28th 2005 and amended by responses of the applicant dated March 18, 2005 to the Board's Supplemental IR's as well as responses of the applicant to IR's of the Public Intervenor. And A-4 which is a copy of applicant's slide presentation dated March 22, 2005.

At this time I think I should put on the record as a Board exhibit the letter that was written on March the 14th, 2005 to Mr. Roherty for further Information Requests from the Board itself. And that is a four-page document. And it will be marked as exhibit PUB-1.

Does everyone have a copy of the applicant's slide presentation? Again you are agreeing that you do if you

don't say anything. Okay.

Board Counsel's recommendation to me in reference to the second thing on my list here is to explain why the letter of March 14 went out.

It is just that upon review of the answers to the IR's and the panel being able to review all of those responses, we felt that rather than trying to ask the questions which were set forth in the letter of March 14 by way of cross examination, we would speed up the process by simply giving a heads-up to the applicant in asking them if they could to attempt to answer prior to the hearing. Hopefully that has cut down on hearing time.

On my list normally appears rebuttal evidence. But since there will be no evidence of Intervenors we don't have to worry about rebuttal.

Now Mr. Hyslop, having just said that, is there an intention on the part of the Public Intervenor to call any witnesses?

MR. HYSLOP: No, there is not, Mr. Chairman.

CHAIRMAN: Thank you. There are three parties involved in this application of course. It is the SO, Transco and WPS Transmission.

I would suggest, unless the parties disagree with that, that for cross-examination of any of those three

parties during this hearing be done in that order, that is first of all the SO to be crossed, then Transco's witness and WPS.

Just to remind the three different Intervenors from the Irving Group of companies, we have given you all Intervenor and Formal Intervenor status. But for the purposes of proceeding, and it is cross-examination, there will only be one cross by the companies.

MR. MACDOUGALL: Mr. Chair, on your comment on the order of cross-examination, if I could just mention to you, Mr. Howard is here today and has a commitment tomorrow that may be very difficult for him to break.

If it is possible, depending on where we are later today, I might just speak with the SO and the transmitter and asked to be moved, possibly in front of the transmitter.

CHAIRMAN: That is fine, Mr. MacDougall. And I ask the parties to give that appropriate consideration.

MR. MACDOUGALL: Thank you, Mr. Chair.

CHAIRMAN: Thank you. I note by Mr. Whelley's appearance on behalf of both New Brunswick System Operator and Transmission Corporation that the Board's having brought to your attention the possibility of a conflict, you have dealt with it and have decided that there is none?

MR. WHELLEY: We have.

CHAIRMAN: Thank you, Mr. Whelley. And we do have -- or at least I think we have translation services. I know there is someone in the box back there. So I want to thank NB Power Disco and its staff for somehow having arranged that on such a short notice. Any other preliminary matters?

MR. WHELLEY: Mr. Chair, I was speaking to Mr. MacNutt yesterday about some issues that were of interest to the Board, and as a result have some additional documents.

And if it is your pleasure we can get them out of the way and perhaps have them marked as exhibits now before we move forward.

The first of these are contracts that exist between the System Operator and Transco for the provision of services and employees regarding employees who have been seconded.

CHAIRMAN: Okay. A little background to this. In the panel's final preparation yesterday we identified certain documentation that we had Mr. MacNutt communicate to Mr. Whelley to ask him to produce it for the purposes of the hearing.

Again we did that as soon as we identified that we probably would want to look at that in an attempt to give a little bit of time for the applicant to find it.

And I don't -- have you had an opportunity to share those with any of the parties, Mr. Whelly?

MR. WHELLY: Thus far, no. The only person who has copies is Mr. MacNutt himself.

CHAIRMAN: Well, as is normal it is shared with the parties in order that if they have an objection to its admission why that they will have an opportunity to speak to it before we mark it as an exhibit. I don't know how many copies you have there.

MR. WHELLY: We have sufficient for all the parties. And we will circulate to the parties now.

CHAIRMAN: Okay. Thank you very much. And while those are being circulated, there was a possibility that there might be some confidential material or material of a confidential nature requested in what the Board asked for.

And I had Mr. MacNutt speak with Mr. Whelly about what we have in fact shared with Disco's counsel, that if we do run into a question of ascertaining whether or not any document or a portion thereof is confidential, then the model we will start from is that which is presently in use in most other jurisdictions in Canada in front of tribunals such as this.

And we have provided in particular the documentation which has been in use for awhile by the Nova Scotia Board,

just as a starting point.

And pretty basically all it means is if a party calls for something to be held in confidence then the Board will go into an in-camera session. And any party to the application can take part in that and review the confidential documents provided that they will adhere to the rules that are set up governing that particular confidential hearing, which includes such things as returning all the documentation at the conclusion of the hearing and undertaking not to divulge it to anyone outside of those who took part in the hearing itself -- in the confidential portion of the hearing.

And to the applicant that hearing should be, if it has to happen, should be very -- similar to what happens when there is a Right To Information Act application to a Queen's Bench Judge, in that you can't just say this entire document is considered to be confidential, but rather the particular portions of it will be highlighted.

And the exact reasons why that sentence or two or three sentences is confidential or the schedule is confidential will be set out in writing so that we can focus on the confidential portion of that document.

Now the documents have been handed out to all the parties. And I know that there is -- would you describe

the first document, Mr. Whelley?

MR. WHELLY: Yes. There are two contracts that have been handed out. One is entitled a Services Agreement. And the second is entitled a Agreement for the Secondment of Employees.

CHAIRMAN: Would you give a high-level indication of what they purport to do?

MR. WHELLY: Yes. The Services Agreement describes how certain services are provided to the System Operator by Transco and how the System Operator reimburses Transco for the cost of those services.

CHAIRMAN: I know this is rather rushed. But do any of the parties have any objection to those being introduced in evidence? I wouldn't expect so.

The Services Agreement will therefore be marked as

A-5. And the agreement for the secondment of employees will be A-6. Are there any other preliminary matters, Mr. Whelley?

MR. WHELLY: Yes, Mr. Chair. In addition to these two agreements we have some budget numbers for Transco OM&A for 2004/2005 and for 2005/2006. They are presently being circulated. The budget numbers for 2004/2005 also include the actual incurred expenses to the end of February, 2005, with the comparison to the budget numbers to that date.

CHAIRMAN: Well I certainly don't anticipate that anybody is going to object to those being introduced. So the OM&A figures for the period ended February 28th 2005, will be A-7.

MR. MACNUTT: Mr. Chairman, can I just -- could I ask a question with regard to clarification, and perhaps it could -- provide -- the answer could be provided right now?

CHAIRMAN: I can't hear you, MacNutt.

MR. MACNUTT: Perhaps the answer could be provided right now and it would clarify the exhibit right from the start. The exhibit, what is now A-7, shows actuals, then it shows 2004/05 budget and then a variance. Is the '05 budget to the end of 31 March '05?

MR. WHELLY: Mr. Chair, if I may, it's my understanding that the budget figures are the budgeted figures to the end of February 2005 and not to the end of March. So that you are comparing apples and apples when you compare the actuals and the budget.

MR. MACNUTT: What the Board would like -- would request is that the SO provide that table showing budget to March 31, '05, if it would, as an additional document later in the day. And the estimated actuals to March 31, '05. This would be something that could be provided later in the

day.

MR. WHELLY: I have made note of that. I was just flipping through the interrogatories. I thought we may have provided that in some of the other material, but I will confirm that before the end of the day.

CHAIRMAN: Good. Thanks, Mr. Whelley. The document which is headed N.B. Power Transmission OM&A, period ending March 31, 2006, will be A-8. Anything further, Mr. Whelley?

MR. WHELLY: Yes. This is really more notice as to what will be coming later in the day. In response to the Board's additional interrogatories number 5, our answer had indicated we would provide additional information. Unfortunately that information is not yet finished. We expect it will be finished by noon hour and we will provide it at that time. So I want to apologize for the delay in that, but it will be coming.

CHAIRMAN: No need to apologize. We didn't expect that everything would get ready in time. And I appreciate that update. Anything else?

MR. WHELLY: The one other item is there was a request or an issue raised surrounding a service contract that may have existed between Holdco and Transco. We are still trying to get our hands on that contract and that is one I will have to address later on.

I do know that Mr. Lavigne is familiar with details of that contract and in fact has some statements on allocations as to how it plays out. But I still don't have a copy of the contract.

CHAIRMAN: Any idea when you will?

MR. WHELLY: I'm hopeful that by noon hour we will be able to find out where we are on that. We have people looking.

CHAIRMAN: Let's be perfectly frank. Has there been a contract signed that you are aware of?

MR. WHELLY: My understanding is that there is a contract between Holdco and all of the N.B. Power related companies, one of which is Transco. In addition that there is a specific appendix that relates to Transco. So there is a contract. I just haven't seen it. It has been described to me.

CHAIRMAN: Well the Board as you can appreciate likes to see the contract. Sometimes things are not described as they are or embellished or whatever. And there are certainly budget figures in the materials that are in the evidence that are dependent upon that agreement. Anyway, you can provide it as soon as you can, and if you would, Mr. Whelly, just let the Board know when you have a more certain fix on when we will all see it.

MR. WHELLY: And finally the other related contract I was

asked about was whether there was a contract between Holdco and the SO. There is none.

CHAIRMAN: Okay. And does that conclude your preliminary matters?

MR. WHELLY: That does.

CHAIRMAN: Any of the Intervenors have any preliminary matters that -- yes, Mr.

MacDougall?

MR. MACDOUGALL: Mr. Chair, WPS Canada Generation, even though we are listed as an applicant here, will have a few questions to pose to the system operator arising out of the system operator's responses to a couple of the information requests from the Northern Maine Independent System Operator. So I just wanted to mention to you that we should be called for purposes of cross-examination for the SO's. There will only be a few questions on one issue that arose during the response to IR process.

CHAIRMAN: Okay. I will ask the system operator to think about that, if he is not already aware of it.

MR. MACDOUGALL: They are aware of it, Mr. Chair.

CHAIRMAN: They are?

MR. MACDOUGALL: They are.

CHAIRMAN: Okay. And I presume you have no objection?

MR. WHELLY: No. We have no objection.

CHAIRMAN: And, Mr. MacDougall, I will depend upon you to

remind me to allow you time to cross.

MR. MACDOUGALL: Thank you very much, Mr. Chair.

CHAIRMAN: Okay. Any other matters? If not, then call your Panel, Mr. Whelly.

MR. WHELLY: Thank you, Mr. Chair. We are ready for our first Panel, Mr. Marshall, Mr. Porter, Mr. Lavigne.

Messrs. Porter, Marshall, Lavigne, sworn

CHAIRMAN: Mr. Marshall, I understand -- or my recollection is the last time that you were in front of the Board sitting up there we had to pretend you were the president. Is that correct, is my memory with me, and now we no longer have to pretend?

MR. MARSHALL: I believe Mr. Hyslop made me the president for 15 seconds at a previous hearing.

CHAIRMAN: Okay. Well I don't know, I guess I should congratulate you. Okay. Go ahead, Mr. Whelly.

DIRECT EXAMINATION BY MR. WHELLY:

Q.1 - Thank you, Mr. Chair. Mr. Marshall, for the purposes of the record then, could you confirm your name and present position?

MR. MARSHALL: My name is William K. Marshall. I am president and CEO of New Brunswick System Operator.

Q.2 - And are you familiar with the evidence that has been filed and marked as exhibit A-2 as the applicant's

evidence in this matter?

MR. MARSHALL: I am.

Q.3 - And in exhibit A-2 there are appendices A and B. Do you adopt those as part of your evidence?

MR. MARSHALL: I do.

Q.4 - And I am assuming the affidavit is already part of your evidence. Mr. Porter, could you state your name and present position, please?

MR. PORTER: My name is George Porter. I am the director of market development.

Q.5 - And with what employer?

MR. PORTER: With New Brunswick System Operator.

Q.6 - Thank you. And you are familiar with the evidence filed and marked as exhibit A-2 as the applicant's evidence in this matter?

MR. PORTER: Yes, I am.

Q.7 - And that includes an affidavit -- your affidavit?

MR. PORTER: Yes.

Q.8 - And you refer in your affidavit to appendices A and B and I wish to be sure that you have adopted them as part of your evidence.

MR. PORTER: Yes, I do.

Q.9 - Mr. Lavigne, could you state your name and present position, please?

MR. LAVIGNE: My name is David Lavigne. I am with the -- I am the controller with the New Brunswick Power Transmission Corporation.

Q.10 - Are you familiar with the evidence that has been filed as exhibit A-2 as the applicant's evidence in this matter?

MR. LAVIGNE: Yes, I am.

Q.11 - Did you analyze the calculations in appendix B?

MR. LAVIGNE: Yes, I did.

Q.12 - And do you adopt those as part of your evidence?

A. Yes, I do.

Q.13 - All right. Now, Mr. Marshall, we have marked exhibit A-4 which is an applicant's slide presentation. Are you prepared to introduce that and take us through the slide presentation?

MR. MARSHALL: Yes, I am.

Q.14 - Please go ahead.

MR. MARSHALL: Yes. We would like to take this time, Mr. Chairman, to overview our application as laid out in this presentation. So I will give an overview and some background and we will go through the proposed changes to the terms and conditions of the tariff, and then we will go through and look at the proposed changes to rate schedules.

Just a little bit of background. This current tariff

that we have in place today was as a result of an application by N.B. Power in June of 2002. The Board reviewed it over that next year and came to a decision on March 13th, 2003. There were some minor adjustments to the revenue requirement and some changes and the Board finally approved the tariff on June 19th. It went into effect on September 30th and was subject to an additional point about the treatment of reservations at the MEPCO Interface and was revised again in June 2004.

Now on October 1st, 2004, with the proclamation of the Electricity Act, the New Brunswick System Operator was created. The transmission tariff was transferred from NB Power to the System Operator. Market Rules were issued by the Minister of Energy and the New Brunswick System Operator has now become the market operator and the transmission provider.

And we have in this application proposed changes to the terms and conditions. The rationale for those changes are to align the tariff with the Market Rules, to update wording throughout the tariff and various places to be more consistent with FERC Orders 888A pro forma tariff. These are mainly clarification items.

In addition there are some proposed changes to address concerns that were raised by wind developers during the

previous tariff hearing and since.

There are proposed changes to the rate schedules, the key change being to align the schedule 1 rate with the cost of service of the New Brunswick System Operator to provide that service, and inherent in that there is a corresponding adjustment to schedule 7.

In the previous hearing the costs associated with the System Operator today were actually in schedule 7 and 8 in the previous tariff. They were in as Transco's costs and have been transferred to System Operator. So this is a realignment of cost between the System Operator and Transco.

And I would like to point out that the sum of those two services which are compulsory result in no change in costs to transmission customers for point to point services.

In addition to that we want to implement a self-generator rate proposal that came as a result of the previous tariff hearing as an order from the Board to review and look at the potential for rate shock related to self-generators. We developed a proposal, it was sent back to this Board in 2003, and we now incorporate it as part of this application.

Also included in the application in terms of rates is

the inclusion of WPS revenue requirement that this Board approved separately on an application of WPS in the fall of 2004, and effective January 1st of this year WPS Transmission has been part of the operation of New Brunswick System Operator.

So we want to formalize that process and include it clearly in the tariff.

In background to this application I think it's very important that everyone understand that there has been a significant stakeholder consultation process. The market advisory committee was appointed by the Minister of Energy on an interim basis in July last summer. They had two meetings prior to becoming officially the market advisory committee on October 1st and a number of meetings since that time. In addition -- and through those meetings there was very detailed discussion of the terms and conditions proposals as laid down in this application.

In addition to that we held a technical conference on December 13th, 2004. At that conference and prior to that conference the appendix A in the tariff, the document appendix A, was essentially circulated to all parties at that technical conference and then we discussed it through the conference and based on information that we got, that document was revised and updated and then submitted as

evidence before this Board.

And through that the stakeholders were advised then of all the detailed terms and conditions in document appendix A. They went through all the details of the self-generator rate proposal. And at that time we were still in the process of finalizing budgets. We did not have detailed schedules of the rates but that group were informed of the intention clearly that schedule 1 and 7 would be readjusted with the intent there would be no increase in cost of transmission service.

The evidence presented here, as Mr. Whelly has just laid out, I will be involved with policy and budget issues, Mr. Porter basically prepared that appendix A, we jointly prepared appendix B, and Mr. Lavigne had significant input into appendix B as well related to all of the Transco revenue requirement and cost shifting between the Transco and the System Operator.

The documents filed, appendix A, lays out the terms and conditions, appendix B were part of the evidence. Exhibit A-1 that has been marked as a Redline version of the tariff showing all the actual wording changes to the tariff document. We have responses to interrogatories.

Now we will look at some of the actual proposed changes. In the appendix A, the numbering -- and I must

apologize for this, Mr. Chairman. It may be confusing to some people to look at at this point in time, but the numbering in appendix A is identical to the original numbering in the draft that was prepared last November and circulated to the stakeholder review process and the technical conference.

So these first two items were really information items to say that the decision of the market advisory committee was not to make these rule changes and go forward with them in the tariff. These were changes in the market rules issued by the Minister and the market advisory said we don't want to make those changes to the rules, we want to leave the tariff the way it is.

So as far as this Board is concerned items, 1 and 2 are not issues at this point in time. They were information items to the market participants and others so that they are aware of what they were.

We have broken out the other items into two categories. We think that there are a number of items that there has been very little or no controversy behind them and that's based on -- again this is a judgment on our part, Mr. Chairman -- based on the stakeholder consultation and based on the kinds of questions we got through the information interrogatory process.

So we will list those with a brief explanation, and then the items that we see with a little more potential for controversy we will describe in a little more detail.

Item 3, that wheeling customers must be market participants. This is standard practice in many markets and it essentially aligns the tariff with the market rules.

Now when we prepared this presentation we thought that there really was little controversy behind this. We did get a few questions from different parties related to this where it is standard practice or where it is not, but again I think from the market advisory committee and all of the participants in the market, this is really not an issue.

Item 6, to settle energy imbalance at market prices. This is consistent with other markets and there is very strong support from the market advisory committee and stakeholders for this change. And I would like to note at this particular point in time that item number 6 is a key change to the tariff that we would like operational for April 1st. This is the one that removes energy imbalance as a penalty mechanism and brings energy imbalance down to market prices. And it's a key change that allows the New Brunswick market to operate and to develop and go forward

to encourage participation without barriers.

Item 7 essentially removes the cumulative limits for energy imbalance. Again it's consistent with other markets and it aligns the tariff with the market rules. It actually goes hand in hand with item 6. If the market is going to be subtle based on market prices there is no longer any need for cumulative consideration, because you actually can settle it based on the value in that hour and there is no need to carry balances forward. So it makes the market cleaner operation.

So item 6 and 7 go hand in hand in terms of enhancing the ability of the market to operate in its future development.

Item 8 is a service for sharing of non-dispatchable generator variances. This is actually an option in the tariff to help alleviate wind developers' concerns. And we had questions on this to say, is this standard practice in any other market? And we are not aware of any place where it exists. It was essentially developed by Mr. Porter as a means -- essentially as an option available to wind developers under which they could help manage some of their risks. And it's a free choice whether they want to take it. So we are asking that it be included in the tariff. We are not sure whether a party will actually use

it or not, but at least it gives an opportunity for wind developers to try to mitigate some of their risks.

And to the fact that Eastern Wind are not here today, you know, asking questions, I think shows the fact that they accept a lot of the changes that we have put forward.

Item 9, the Self-generator Rate Proposal I addressed before, it addresses the March 13th decision of the Board where we were asked and ordered to meet with the self-generators and come to some mutual resolution to avoid potential rate shock for those types of customers.

And it was developed with those parties in the summer -- spring of 2003. The discounting of point of delivery. Now this is applicable to point to point transmission.

Currently today in the tariff, in order to discount the cost of transmission service the tariff requires that we discount the cost at all points of delivery of the transmission system.

This is in actual fact a restriction which inhibits efficient operation of the transmission system. Because it means there would be basically free riders and lost revenues at points where there is usage in order to try to encourage usage at some other point where there is no usage.

By being able to discount at the point of delivery, it will enable for more efficient utilization of the transmission system and more efficient development of the marketplace. And it is also consistent with FERC Order 888, Proforma Tariff Standards.

Item 11, Revision of Timing Rules. Again this is a minor change in the tariff in order to change the timing as to when market participants can input and book transmission. It makes the tariff consistent with Hydro Quebec.

It is really an issue again for market efficiency. It allows parties that are exporting through New Brunswick or out of New Brunswick into other markets to be able to get in and be assured of the transmission and put the requests in and line them up with their E tags and other things that are required in the other markets.

So that it minimizes their administration barrier and costs so that they can do their business more efficiently into other markets.

Item 12, the Generator Obligation for Special Protection Systems and to -- a requirement for generators to provide that if necessary, depending on their connection to the system and to do so without compensation. It aligns the tariff with the market rules.

We had a number of questions on that through the interrogatory process. I think we have explained that. This is really an issue of reliability of operation of the power system and providing for reliability of all users of the system at lowest cost.

Item 13, the Long Term Firm Reservation Notice Period. Again we currently have a business practice today where a party that wants to renew a long-term reservation has to do so with 60 days notice.

And this request is simply to formalize that process and put it into the tariff. And this is pretty much standard industry practice, that all parties use a 60-day notice period.

And I apologize again, Mr. Chairman, that the title on this slide says items with little controversy. It is supposed to be little or no controversy, as with the others. And I just point that out because it is not intended that there is some controversy with these items. But there is still little or no controversy.

Item 14, Credit Support Extended to Two Months. Currently in the tariff credit support is required for one month. The issue is it aligns the tariff with the market rules. And it actually addresses our real nonpayment exposure.

We only have one month of payment in advance. We get to the end of that month and they don't pay. By the time we process and go for -- another month goes by. So we really have two months risk. It lines up the requirement with our level of risk.

Item 15, Parties To Connection Agreements. This is really a clarification to -- because there has been a lot of confusion in discussing with different parties between what was previously in the tariff called a Generator Interconnection Agreement, and the confusion of a Generator Interconnection Agreement to the transmission system, and a System To System Interconnection Agreement between New Brunswick for instance and Nova Scotia.

So we would request this change that these connection agreements relate to the connection between a facility owner and the transmitter, and to change the wording in those that they relate to the transmitter, not with the transmission provider. And it aligns the tariff and the market roles.

Item 17 is a clarification issue as well to define clearly that the New Brunswick System Operator is the transmission provider and that the transmission systems that we utilize to provide transmission service are the transmission systems of the transmitters.

So we ask for addition of an attachment end to the tariff which lists the two transmitters, being NB Power Transmission Corporation and WPS Generation Canada Inc. And that also distinguishes a transmitter from the transmission provider.

Item 19, again to reflect more recent FERC Order 888A, Proforma Standard Wording. Now just a little bit of background on this. Because there have been a number of questions that have been asked through the interrogatory process related to which FERC Proforma are we talking about? Where did it come from? What is required of FERC compliance? What is the issue of -- is it consistent? Is it compliant? What are the requirements with FERC? I think it is important we give a little bit of background here.

The current transmission tariff that this Board approved back in 2003 is based on the Proforma wording of FERC Order 888. Now subsequent to that FERC issued Order 888A, Order 888B, Order 2000, the more recent standard market design orders. So there have been a number of other decisions of FERC since that point in time.

But the changes in Order 888A essentially were clarification items related to Order 888. And at this point in time it is felt that those wording changes are --

make the tariff more clear, they make it more understandable and that they were worthwhile adding to the tariff.

So we have asked for that. So there is no one specific change. There are wording changes at many different places through the tariff. And they are provided in the red line version of the tariff.

One other point. There have been questions asked related to this issue of consistency or compliance. And we were also asked whether we had ever met with FERC staff or parties.

I think it is very important that everyone here understand that the jurisdiction over this tariff is with this Board. It is not with FERC. FERC has an issue over reciprocity and provision of reciprocity to access this in the United States.

The intent here is that our tariff meet that reciprocity requirement. And we use FERC Order 888A as a guide in terms of the requirement of a tariff. It is not required that our tariff be compliant with FERC.

It is required that the Board agree and approve a tariff that meets the needs of New Brunswick while at the same time providing that level of reciprocity. And I think that is a point that needs to be understood.

Item 20, the Revision To Attachment J. Again attachment J is the Generation Interconnection Agreement. And again back to the point I just talked about, about the idea of connection.

The Interconnection Agreement is changed to a Connection Agreement because it does a connection between facility owner facilities and the transmitter's facilities. And the System Operator is not a party to that agreement.

And so there was a change of wording in the agreement to distinguish the roles of the transmitter from the transmission provider from the System Operator. Whereas there was some confusion as to what those roles were before.

Now with NB Power as an integrated utility, having an Open Access Transmission Tariff, being the System Operator, the transmission provider and the transmitter, that agreement was fine up until October 1st.

But with the New Brunswick System Operator as an independent entity, being the transmission provider, requires some minor adjustments to that agreement, to recognize the different independent entities involved.

Now the items that we think have some potential controversy -- and maybe they do or maybe they don't.

This is our judgment based on discussions with some parties and based on the interrogatory process.

They would be to look at the -- initiate residual monthly cost settlement, and I know the Board had some questions related to that; the mechanism to limit self-supply ancillaries, and I will talk about that; the issue of intra-hour behavior and the question of standards conduct. We could look at those.

The residual monthly cost issue -- and this is one to look at. The System Operator is a not for profit corporation. And we need to recover our cost through schedule 1 in the tariff in order to recover our costs of operation.

But if there are any costs that could occur in the market because of market activity or market inactivity or inappropriate activity or various things that occur in the marketplace for market participants that are beyond our control, we need to have a means of being able to recover those costs.

Or if there -- on the other hand if there are benefits in the market through utilization of the market and their actual benefits, and there are monies that are accrued -- we are not for profit. We don't want to keep that money. We need a mechanism by which we can hand that money back

to all the parties in the market.

And examples of that, in terms of the cost side, we could incur costs for emergency energy purchases. Well, we have schedules from generators and loads. And if we need to go purchase emergency energy somewhere, there is no provision for us to collect the additional money for that emergency through the contracts of the different parties.

So we have to -- we are doing it for the greater good of the whole market for reliable service to all participants. We need to be able to charge it back to all participants. If there is congestion re dispatch, there is provision in the tariff today if there is congestion re dispatch, that we can actually charge it out today in the tariff.

This is not a new change. This is an inclusion of that in this particular point in the market. If there are net imbalance costs of various things we need to recover those.

Now there are also significant benefits. And the history of the market to this point in time -- and the item that is still coming, will be coming here at noon hour, we hope, Mr. Whelly, in response to one of the Board's questions from last week, to say how much has

actually gone on in the last six months.

Well, what has actually occurred is that they have all been on the benefit side, that we have included -- we have incurred some penalty revenues where the difference between the imbalance charges which have a penalty mechanism today and the actual costs of providing that energy are money that we collect.

The emergency energy sales, we sold some energy to Hydro Quebec at an emergency energy cost. And the difference, the profit of that above the actual cost to dispatching the energy is profit that we collect.

And residual economic dispatch and generation, where generators were redispatched for economic reasons and gained benefits is money that we collect.

So those are three items that have occurred over the market. But we have to turn around and we have to give all that money back to all of the participants. So this is a mechanism to do that.

And the proposal is the RMC to their transmission billing determinates. And I want to point out again that part of this is not new. Part of this is already approved in the current tariff. We have just expanded the current tariff to include other things in the Market Rules. The issue of energy imbalance for instance and the difference

between the penalty rates and the actual costs of providing that, that is money that has been collected since September 30th of 2003. And that money has been paid out to all of the transmission customers proportional to their use.

So we are trying to add some of the other items to this category is essentially what this item is.

And one last point to say that if this is a concern to the Board to look at, this Board has every opportunity under the Act with its powers to come and audit the settlements every month and to look at exactly where this money goes in detail.

Another item we think that has some potential controversy, item 5, and that's the mechanism to limit ancillaries self-supply. Now I think this has some controversy for two different reasons. Number 1, I think there is a question of -- there have been a number of Interrogatories asked on it to try to understand what it is. I think there is some misunderstandings of what the intention really is, so there is some controversy over understanding what it really does. And then for those parties who really do understand what it does, there are some of them that are concerned about it.

And I know that this is an item that I believe that

Mr. Morrison and Disco may have a few questions on, we anticipate, because currently today they self-supply 100 percent of their capacity based ancillary services through the contracts that they have with all the heritage assets. And by reducing that 100 percent limit down to say 90 percent and requiring them to buy 10 percent of their ancillary services from the System Operator after we procure it in the market place through an RFP process, I think they may argue potentially could cause some stranded costs with Disco. So it's an issue I think that Disco has.

Our concern with it is that this Board ordered NB Power to go out with a process to procure ancillary services in the market place and this proposal in the tariff goes hand in hand with that proposal that we have submitted back to the Board as to how we would do that. And the rationale for it that we see is that if we are going to create a market in the province and a market for ancillary services, we have to do it in an orderly controlled fashion that this we believe is the best mechanism by which to do it.

So there is some controversy over this item as to whether or not it potentially could cause some cost shifting to Disco on one hand and on the other hand is it

required in order to have actual market procurement mechanisms in the market place to cause the market to work.

So I believe both of those are in the public interest and I leave it to this Board to make the final decision.

Next item. Another one, the intra-hour behaviour issue. The current tariff addresses only hourly imbalances for energy. And the issue here is that load following and frequency control service in the tariff utilizes capacity that provides that service. All of the generators that are on automatic generation control, AGC, have to be tracking and following the load. And there are operational problems that can happen, there are cost shifting issues to other players that can result of this. There are parties today that are not contracting for capacity provided under this service that should be paying for it in our view.

And so to deal with that we have put together a proposal to how to handle it.

Now we have asked in the application to simply put a note at the bottom of the schedule for load following and frequency control to be able to sanction parties who do not operate appropriately relative to that service.

And in the number of Interrogatories that have been

asked it has come out in pretty clear detail that the party that we are really concerned about is the Nova Scotia Power Interface and the fact that Nova Scotia is utilizing capacity in New Brunswick to do the frequency control service. And we don't have a problem with that. The problem we have is that they are not paying for it.

Next slide. So what we have proposed is a mechanism where we could offer -- we could sanction that behaviour. We are not asking for a rate here. We are not asking for the Board to say this is exactly what you should do. We are saying, here is a mechanism by which we can measure this, here is a rate that we could charge. So as far as we are concerned this is a maximum sanction that we think the Board could put on it but that whether or not we need to apply it is a sanction, a decision to be made in the market place dependent on the behaviour.

And to do that we have taken the hour and broken it up into 10 minute intervals and we allocate a share of the dead band -- and here is the issue is that today the Maritime area operates to control the interface between New Brunswick and ISO New England. And at that interface we have a dead band of about 35 megawatts that we can move.

Now that dead band is dependent on what is actually

happening not just in the Maritime area but what is happening in the Maritime area, ISO New England, New York and all of the eastern interconnection west of New York. And the New York System Operator takes the three, the Maritime, New England and New York, and looks at those relative to what is going on and then changes what our requirement is in real time and adjusts it. So we have to track. Usually it's about 35 megawatts. But it can be reduced and it could change.

Our proposal and the way we are currently settling energy imbalance with Nova Scotia is that we have allocated to them their load ratio share of that 35 megawatts. So they have a 14 megawatt dead band and inside that 14 megawatts it is inadvertent energy. Outside that 14 megawatts it's energy imbalance.

And that was a discussion that we came to with Nova Scotia. From the previous hearing it was an issue and we were ordered by the Board to meet and discuss Nova Scotia, come to a settlement. That's the proposal and it has been operational since October 1st.

Now our concern is -- and we have seen that Nova Scotia had improved their behaviour after that went into effect on October 1st. With the change in energy imbalance going from penalty prices down to market based

prices, the economic incentive for Nova Scotia Power to continue that good behaviour goes away. And we need to have some incentive mechanism here for sanction under this rate should they not continue to behave well.

And the sanction that we proposed again is based on the approved rate of this Board for frequency control regulation capacity that was approved in the previous hearing. So the \$81.99 is the proxy cost that was approved to actually calculate the rate for this service. We have just broken it up into the 10 minute periods.

We have a slide here that illustrates what we are talking about. The -- and I say this slide was not submitted in the evidence but it describes all of the words that were submitted in the evidence.

So you can see that in any hour there is a scheduled flow across the interconnection, and then there is a dead band associated with that and inside the dead band there would be no variation. So we have the actual flow coming along this way and down. That's the actual flow on the interconnection.

We have allocated a dead band which would be plus or minus 14 megawatts across this hour. We are proposing that there would be sanctions applied within these 10 minute intervals, only the five, 10 minute intervals from

five after the hour to five before. We are not proposing any sanctions in this 10 minute period when you are allowed to do schedule changes from one hour to the next.

Now we have said in our evidence that that is consistent with standard NERC policy. In actual fact you have 10 minutes to do your ramp changes, scheduled changes in NERC, but we, the System Operator at the MEPCO interface -- actually the errors in this 10 minutes are also actually calculated in our measure of performance against providing the balancing services.

On this chart you would see that in this first 10 minute period there is a portion of it that is inside the dead band and a portion outside. You would average across that, so in that 10 minute interval there is likely no -- there is no sanction. The sanction would occur in this period where it's all above the dead band. This period -- some of this would cancel off, it would be a lower number. There would be no sanction in here at all. There would be a sanction down here. That is what is proposed. So we understand the -- what the proposal is.

And the last item from the tariff, attachment 18 on Standards of Conduct, the issue here is that currently -- the current standards are written by FERC under this tariff for an integrated utility or for a utility with

merchant affiliates. And it is to separate the market functions from the transmission functions.

Now the New Brunswick System Operator, as the transmission provider, has no merchant function. And we are independent from all of the market participants. We are also subject to NERC and NPCC codes of conduct and standards of confidentiality of information and operation of the market.

Our proposal was that the NBSO would not be required to sign standards of conduct. Although if this Board says that we should, we have no problem with signing standards of conduct. The standards of conduct that we proposed in the tariff are really aimed for the transmitters. Because the transmitters do have merchant affiliates. And they do have access to some information through our operation that we think is confidential and they shouldn't be sharing with their merchant affiliates. So there is a need for the standards of conduct for those parties.

Now related to the proposal, the NB Power Transmission Corporation does not have any issue with the standards of conduct that are there. And all of the employees at the Control Centre today, including the System Operator employees, have all signed that standards of conduct by the way, okay. We are all subject to it today. And they

have no problem with it going forward.

However there is an issue for WPS. Because of the relative size of the transmission portion of WPS Generation Canada's business, it is extremely difficult if not impossible for them to separate the small transmission function from the rest of their business.

And so on that basis we proposed in response to PUB IR-13 that WPS would be exempt from that merchant function, and that the issue is that they would still sign a code of conduct, but it would be a modified code of conduct removing certain portions from the one that we had proposed.

Now those are all of the terms and conditions changes. Also Appendix B provides proposed changes to rate schedules. And I'm not going to go through all these in detail other than to summarize them.

Schedule 1, as I said before, essentially -- there is a proposed rate increase in schedule 1. It is laid out in table 1-1 of Appendix B. The rate increase is required to make schedule 1 sufficient to bring in revenues so that the New Brunswick System Operator budget can be independently funded from schedule 1 in the tariff.

So that we then are a completely independent operation. We take revenues out of schedule 1. We use

those revenues. We control our own costs. And we operate. That is the reason for the change here in schedule 1.

But along with that, as we had talked to the stakeholders, there are costs that are currently in schedule 7, 8 -- and it is not on this slide -- but they are in schedule 7, 8 and attachment H, Network Service -- where there is \$2,040,000 of costs that were approved by this Board in the revenue requirement of Transco. And those costs have since been transferred from Transco to the New Brunswick System Operator.

So we need to increase the schedule 1 rates to recover that \$2 million. And we wanted to decrease schedule 7, 8 and attachment H to give back credits for that \$2 million.

So the result being that because schedule 1 is a compulsory service, and then the transmission service under schedule 7, 8 or attachment H, without any other changes, the total cost to transmission customers would not change.

This is simply taking a little bit of money out of one pocket and putting it in the other. But the whole body would still have the same amount of money. And it is still the same cost of service, total cost to customers.

So this is really an administrative change to align

budgets. But because it requires a change to rates, this Board has the jurisdiction and authority over it. So we ask that you approve it.

Now in addition to that there are changes to attachment H. And there are three things that happen in attachment H. And attachment H relates to Network Integration Transmission Service. It is the kind of transmission service that load customers inside the market essentially would utilize.

Today we have only two customers that use attachment H service. They are NB Power Distribution Corporation, who serve all of the load in the province except for Perth-Andover. And then we have WPS Generation Canada that serves Perth-Andover. So we have those two parties that are network service customers.

Inherent in that there are self-generators today are customers of NB Power Distribution. We have the proposal to make available the self-generator rates to the parties in the marketplace, for those types of customers.

Inherent with that there is a cost shifting that occurs because of the self-generator rates. There is a reduction in cost to the self-generators. But in order to still recover the same amount of money, you need to increase the cost slightly for standard network service.

But the bill that we send to NB Power Distribution and Customer Service will be no different if you make this approval, this change approved, than what it is today. The total cost, the total bill to NB Power Distribution does not change.

There will be two classes of network service, a subclass for self-generators and another class for standard service customers. When you put them all together, the total bill to NB Power Distribution doesn't change, in terms of the total cost of transmission service that they are buying.

The other point here is that WPS Canada have been included into the tariff effective January 1st based on the revenue requirement approved by this Board last fall. And those numbers are shown to come into the tariff and essentially do not change the tariff rates.

And again, along with the new self-generator rates, there is a revision to standard network service rate in order to keep the cost whole for the whole network service class.

The last proposal is one where there were a number of questions. And that relates to our request to have schedule 1 escalated at 50 percent of CPI.

And the reason for that, Mr. Chairman, is that the

cost structure of the System Operator is 96 percent variable cost subject to inflation. It is staffing costs. It is materials. It is consulting. It is costs that are subject to inflation. And the costs of going through -- it is not that we don't like to come down here and discuss this with you people. However the costs of this type of a process to do an annual adjustment to our budget of \$7 million when you need maybe a 2 percent or 1 percent increase, we are talking, you know, \$100,000.

The cost of running this hearing could easily be more than \$100,000. So this is really a proposal for efficiency of costs in the interests of customers in the market. It is not opposed to having this Board review those costs.

And the Public Intervenor, in one of his questions said, are we prepared to have this review done periodically, say for instance, every three years? And we would be prepared to do that. It is just that we are looking for some mechanism where we are not required to do it every year.

Now this table is provided in the presentation simply to summarize it. It is in the evidence. It summarizes all the rates. I don't want to go through it here. Just to say that the rates that are proposed are the ones that

are laid out without brackets. The numbers in the brackets are the current rates that exist under the current tariff. So in this one sheet you can see what the proposed and old rates are. And it is provided in the presentation, Mr. Chairman. Because from past experience we find that many parties utilize the presentation to look at everything rather than getting into all the details of the evidence. So it is just a convenience factor.

And that concludes my presentation. But in conclusion again I just ask, Mr. Chairman, that we are here requesting that the Board approve the terms and conditions and the changes that we have proposed. Because we believe they provide open, nondiscriminatory access to the services. And they will enhance the efficiency and the development of the electricity market which is our mandate as laid down in the Electricity Act.

And we request that the Board approve the rate schedules as proposed because they represent just and reasonable rates for the services provided. And they reflect the revenue requirements of all three of the parties independently, the System Operator, Transco and WPS.

I thank you for your time.

CHAIRMAN: Thank you, Mr. Marshall We will take a 10-minute

break.

(Recess)

MR. WHELLY: We now have received the additional information related to interrogatory

5. This is the additional interrogatory sent by PUB. And as I mentioned earlier we had promised additional information but wasn't ready when we started this morning.

What I suggest -- it has been circulated to the parties and what I suggest is that this information be inserted behind page 6 of the additional interrogatories. I have been presumptuous. You will see the page is numbered 6A and I think in this way we may avoid marking as a separate exhibit and it will keep the information in context. So as a result --

CHAIRMAN: You have just been overruled. I have got it all marked. So it will be marked as exhibit A-9. Your suggestion was very good. I wish we had gotten that before I did that. Anything else, Mr. Whelly?

MR. WHELLY: That's the only additional information I have at this time. Thank you.

CHAIRMAN: Okay. And refresh my memory. Have these witnesses testified that they -- yes, I think they have -- sorry, that they adopt part of A-1 as being their testimony?

MR. WHELLY: Yes, they have. Mr. Porter and Mr. Marshall identified their evidence and adopted the appendices. I don't know if they have adopted A-1 and I think that's probably a good question, I should have asked.

Gentlemen on the Panel, we had marked at the last hearing as exhibit A-1 the redline version of the proposed revisions of the tariff. Do you adopt this redline version as part of your testimony showing the additional changes?

MR. PORTER: Yes, I do.

MR. MARSHALL: Yes, I do.

CHAIRMAN: Good.

MR. WHELLY: Thank you, Mr. Chair.

CHAIRMAN: Thank you, Mr. Whelly. Now the first formal Intervenor is Canadian Manufacturers & Exporters New Brunswick Division. My understanding is that Mr. Plant has no cross of this Panel?

MR. PLANTE: That's correct, Mr. Chairman.

CHAIRMAN: Thank you. Mr. Daly?

MR. DALY: No questions, Mr. Chairman.

CHAIRMAN: Thank you. And of course Eastern Wind Power Inc. has withdrawn. And Mr. Pappas, the three companies that you represent have no questions either I understand?

MR. PAPPAS: That's correct, Mr. Chairman.

CHAIRMAN: Thank you. So it's NB Power Distribution Customer Service, Mr. Morrison.

MR. MORRISON: Thank you, Mr. Chairman.

CROSS EXAMINATION BY MR. MORRISON:

Q.15 - I'm going to explore two areas. The first is the ancillary services cap. And perhaps for ease of reference I am going to be referring to two interrogatory responses which would be in exhibit A-3. The first would be NBSO PUB IR-4. That's PUB IR-4.

CHAIRMAN: I would suggest that you give us the exhibit number and then when you hear the movement noise from up here --

Q.16 - I will repeat it again, thank you.

CHAIRMAN: If you wouldn't mind repeating the --

Q.17 - It's NBSO PUB IR-4 which appears at page 4 under the tab Public Utilities Board. And the other, you can just have this handy, it's the additional Interrogatory NBSO PUB IR-6.

And I believe my questions are for Mr. Marshall, which will be kind of a unique experience for me, but I'm going to plough ahead anyway.

Mr. Marshall, I understand that the ancillary services cap will be established by determining the amount of ancillary capacity in the market place and then

determining the amount by which this capacity is in excess of the ancillary capacity which has historically been purchased by parties in the market? That's how I understand the response to IR-4, is that correct?

MR. MARSHALL: That's correct.

Q.18 - Now when you refer to capacity that has been historically purchased by parties in the market place are you referring to all of the ancillary service capacity that has been purchased by all of the parties, or is it specific to a particular party?

MR. MARSHALL: We are talking about the amount of capacity purchased by all parties from the New Brunswick System Operator.

Q.19 - Okay. And I understand that you are in an RFP process and that you have not yet determined the amount of capacity in the market place. That hasn't been determined yet?

MR. MARSHALL: That's correct.

Q.20 - And I understand that that won't -- you won't even have any preliminary information on that until what, the end of April some time?

MR. MARSHALL: The current process that we have made an application or filed a document with the Board, the proposed ancillary services RFP particulars, that is open

for comment from interested parties I believe closed yesterday. We haven't seen what any comments are on that. We would then make responses to those comments I believe it's by April 4th or 5th, and then the Board -- the schedule is the Board would then make a determination and a ruling by I think it's the 25th of April. Following that process we would then go out with an RFP notice to commence by May 19th is our current schedule.

Q.21 - But I guess my question is one of the key criteria in determining how this ancillary cap reduction is to work won't be available, in other words the amount of ancillary service capacity in the market place, won't be available for several months, is that correct?

MR. MARSHALL: We have already initiated a survey and sent a survey out to all the participants in the market and interested parties who potentially could supply the ancillary services. And when we get that information back that information as to how much is actually available would then go through the market advisory committee and look at that in terms of defining what quantity we would then go out for the RFP process for.

Q.22 - But at this point today you don't know what the ancillary service capacity is out there in the market place, is that correct?

MR. MARSHALL: That's correct. That's correct.

Q.23 - And when you do get that information my understanding is that the process is going to be that this information will be sent to the market advisory committee, it will then consider it and make a recommendation to the NBSO Board, is that correct?

MR. MARSHALL: No. I guess that information isn't going to be necessarily approved by the Board -- or by the market advisory committee. The setting of the cap for ancillary services and the tariff you are limited to 90 percent self-supply. The setting of that cap would be done in consultation with the market advisory committee and recommendation to the Board. Then that cap will be determined based on information of what is available in the market in terms of going out with the RFP. So the two go together.

Q.24 - But the market advisory committee won't be able to make a recommendation until it has one of the key criteria, correct, being the amount of ancillary service capacity in the market place?

MR. MARSHALL: The survey is -- we are soliciting information on a confidential basis. We are going to aggregate it. The MAC would get aggregated information by services but not from providers or who they are in any way

because it's simply to determine how much would we go out for in RFP.

Q.25 - No, I understand that, Mr. Marshall. My question is the market advisory committee will not be able to make a recommendation with respect to the reduction in the cap until it has aggregated or unaggregated -- until it has the data that will -- as to what is out there in the market place in terms of capacity, is that fair?

MR. MARSHALL: Yes.

Q.26 - So as it stands today if a transmission customer wanted to get some idea of what this proposed reduction in the ancillary services cap might be, it could not even get a benchmark on that today because the data isn't available, is that fair?

MR. MARSHALL: That's correct.

Q.27 - In -- and I'm referring to that additional Interrogatory IR-6. In that response you say that the establishment of any specific cap may be subject to Board approval. Now can you enlighten me, Mr. Marshall, on what circumstances would require that cap to come back for Board approval?

MR. MARSHALL: If this Board doesn't accept the proposal that we have before it in the tariff and requires us to come back for Board approval, then that would be the

condition.

Q.28 - Okay. So then when you say it may require Board approval, it's only if the Board doesn't pre-approve the process today?

MR. MARSHALL: Yes.

Q.29 - Okay. Now you alluded to this in your presentation, Mr. Marshall, but I just want to make sure that we are all on the same page and we are clear. Under the current tariff as amended, or the proposed amendment, the transmission customer currently has the option of either purchasing ancillary services from NBSO or acquiring ancillary services from a generator and supplying its own, is that correct?

MR. MARSHALL: That's correct.

Q.30 - Okay. And if the NBSO supplies the ancillary services I would assume that you would go out to the market for an RFP, you would get a price, purchase the necessary capacity, and then bill that back to the transmission customer, correct?

MR. MARSHALL: We bill it back to transmission customers based on rates approved in the tariff.

Q.31 - Correct. But the transmission customer ends up paying for the ancillary services whether it self-supplies or you supply, correct?

MR. MARSHALL: Yes. We would expect that they wouldn't be able to get it free from a generator, so I assume they have to pay for it, but that's outside our control.

Q.32 - Now under the current tariff as you said a transmission customer can self-supply 100 percent of its ancillary services requirements, correct?

MR. MARSHALL: That's correct.

Q.33 - Now I'm going to put a hypothetical situation to you, Mr. Marshall. Assume that a transmission customer relying on the tariff as it is and assuming that it had -- you know, relying on the notion that it had the right to self-supply 100 percent of its ancillary services, it went out and entered into a power supply agreement with a generator. And that power supply agreement included ancillary service capacity. And it decided for whatever reason that that power supply agreement would be a long-term agreement.

If there is a reduction in the self-supply cap and that customer has to purchase ancillary services from NBSO, would you agree with me that given its power supply agreement with the generator it would end up paying twice for the ancillary service capacity?

MR. MARSHALL: Not necessarily. That's a question of the terms and conditions of the contract it had negotiated

with the generator.

Q.34 - Well assuming that it has with the generator a long-term contract which includes capacity for 100 percent of its ancillary service requirements?

MR. MARSHALL: If it's paying for the capacity to the generator under a long-term contract and has no provisions to not have to pay or to share that they have to pay that money and they are required to buy some services under the tariff, then for that portion it's possible that under those conditions they would be paying twice.

Q.35 - Paying twice for the ancillary service capacity.

MR. MARSHALL: However, I would assume that in negotiating the contract with the generator they would be well aware of the fact that the market design committee recommended an RFP processes for ancillary services, recommended that this is -- would be policy in terms of moving forward, so that they would put provisions into that long-term contract to protect themselves and to be able to not have to pay twice.

Q.36 - But we are speaking hypothetical here?

MR. MARSHALL: Hypothetically again, but --

Q.37 - Mr. Marshall, I want to move on to a second area which is energy imbalance. And now you spoke earlier in your presentation about the plus or minus 2 percent dead band.

And I understand that to mean that if the transmission customer is out of schedule by plus or minus 2 percent within the dead band that that imbalance is treated as inadvertent presently, is that correct?

MR. MARSHALL: Today under the current tariff it's treated as inadvertent, yes.

Q.38 - And I understand that inadvertent can be repaid in kind, is that correct?

MR. MARSHALL: That's correct.

Q.39 - And any imbalance outside that plus or minus 2 percent dead band is considered energy imbalance and has a payment penalty, is that correct?

MR. MARSHALL: That's correct. If they are using energy above the schedule outside the 2 percent the payment is roughly \$150 today, depending upon what is running in the system. And if they are -- if they are injecting energy into the system they get paid around \$18 for it.

Q.40 - Okay. Now these energy imbalance payments, I think you mentioned this morning that these will go into the residual monthly costs, the pot if you will?

MR. MARSHALL: The difference between the \$150 -- let's assume energy is dispatched from generators at \$50. The difference between the 150 and the 50, that goes into the residual monthly cost as a benefit to be shared out --

Q.41 - It's kind of the profit part of the penalty, right?

A. The profit part of the penalty, yes.

Q.42 - So that goes into the pot, the RMC?

MR. MARSHALL: Yes.

Q.43 - Now I understand from this proposal that wheeling customers are going to be treated in the same fashion as other transmission customers, correct?

MR. MARSHALL: Yes.

Q.44 - That's the proposal. So that means that a wheeling customer like NSPI, Nova Scotia Power Inc., would be treated under this proposal on the same basis as the other transmission customers, correct?

MR. MARSHALL: As a wheeling transmission customer, yes.

Q.45 - So it would be a market participant and it would be able to share in the pot, the residual monthly cost, on the same basis as other transmission customers, correct?

MR. MARSHALL: Yes. Based on its transmission usage.

Q.46 - Now I understand from your presentation this morning that the dead band with respect to Nova Scotia Power Inc. is about 14 -- is 14 megawatts, is that correct?

MR. MARSHALL: The dead band at the interface with Nova Scotia is the load ratio share of the Maritime area dead band.

Q.47 - And that's 14 megawatts, right?

MR. MARSHALL: That's correct.

Q.48 - So if they are within the 14 megawatts that is considered inadvertent and can be paid back in kind presently, correct?

MR. MARSHALL: Yes.

Q.49 - And only if they exceed the 14 megawatts out of schedule by in excess of 14 megawatts would they be required to pay an energy imbalance penalty payment, correct?

MR. MARSHALL: That's correct, since October 1st, last fall.

Q.50 - Now would you agree with me, Mr. Marshall, that it's very unlikely that NSPI would ever exceed the 14 megawatt dead band?

MR. MARSHALL: No, it's not unlikely at all. History shows that there are imbalance charges to Nova Scotia for not being inside the 14 megawatts.

Q.51 - But you would agree with me that the 14 megawatt dead band is different from the dead band that is applied to other transmission customers, correct?

MR. MARSHALL: It's not applied to Nova Scotia Power as a transmission customer.

Q.52 - But they will be a transmission customer as a wheeling customer, correct?

MR. MARSHALL: If they are a wheeling customer across the

system, yes, they would get paid their share back based on imbalance penalties based on that transmission usage as a customer.

Q.53 - Okay. The point I'm trying to make --

MR. MARSHALL: The imbalance at the interface is an imbalance from them as a transmission operator to operate the Nova Scotia power system. So it's a system operated -- a system operator issue of settling with the 14 megawatts, not a transmission customer issue.

Q.54 - Okay. And maybe I'm misunderstanding how the interface with Nova Scotia works.

But when I read the proposal and I look at the dead band that is applied for energy imbalance to Nova Scotia and I look at the dead band that is applied to other transmission customers, it seems to me -- and you can correct me if I am wrong on this -- but it seems to me that NSPI contributes to the pot, the energy imbalance pot, or the energy imbalance payments, on a different criteria from other transmission customers, but can take out of the pot on the same basis as other transmission customers, am I correct in that or have I missed the point somewhere?

MR. MARSHALL: No, not quite. There are circumstances where Nova Scotia Power would be scheduling no transmission across the New Brunswick system, and if they are

scheduling no transmission they are not a transmission customer at all, they are entitled to none of the payment -- the RMC payment benefits going back to them, yet they still may be charged imbalance because they do -- even though there is zero energy scheduled across the intertie they are not operating their system and keeping the tie schedule at zero.

So they can be subject to imbalance penalties even when they are not a transmission customer because it relates to the operation of their system.

Q.55 - Are they subject to the same dead band for energy imbalance while they are wheeling through as other transmission customers?

Lets say they had a point to point contract and they are wheeling through New Brunswick and they are out of schedule by more than 2 percent. Are they subject to the 2 percent dead band like every other Transmission customer on that transaction? Or do they get to take advantage of the larger 14-megawatt dead band?

MR. PORTER: As Mr. Marshall had mentioned in his presentation, that wider dead band is there as a result of a request by this Board to go back and negotiate with Nova Scotia Power to address how energy imbalances will be calculated on that interface.

Q.56 - No. I understand --

MR. PORTER: So 14 megawatts is a different number than 2 megawatts. But there is a purpose behind that. And it is as a result of the discussions that took place before this Board at the previous hearing.

Q.57 - Well, I understand that, Mr. Porter. But what I'm getting to really is a question of fairness. And that is is NSPI taking out of the pot on the same basis as everybody else but contributing to the pot on what I would argue are more favorable terms?

MR. MARSHALL: If the proposal that we have laid out before this Board is accepted, I would say that Nova Scotia Power will be treated on an equitable basis with the other Transmission customers in the system.

And the reason for that is that it is not an issue of inadvertent and the band would have been inadvertent. If this proposal is accepted there will be no inadvertent in the New Brunswick system. NB Power Distribution will not have its 2 percent range. Everything will be settled at the market clearing price.

So everything will be settled hour to hour based on the market prices. The only difference would be that from operator to operator, Nova Scotia could pay back inadvertent inside the 14-megawatt band in kind.

Well, if you settle everything hour by hour at the market prices or you pay it back a little later in kind in the same time of day with similar energy, it is at essentially the same value. You are in an equivalent relationship.

Q.58 - I understand what the rationale is in terms of that is clearing market prices. That goes a long way to prevent people from leaning on the tie or gaming the system.

But will the clearing at market prices get rid of this what I would perceive to be fundamental unfairness in the way that NSPI could take out of the pot?

In other words are they being treated more favorably than other Transmission customers when it comes to contributing to the pot and taking out of the pot?

MR. MARSHALL: Again I would say if the Board accepts the energy imbalance at market clearing prices, at the final hourly marginal cost, and accepts our proposal for intra-hour behavior, then I would say Nova Scotia will be treated on an equitable basis.

If the Board accepts only one and does not accept the intra-hour behavior, then I would say yes, Nova Scotia are benefiting.

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

Mr. Chairman.

CHAIRMAN: Thank you, Mr. Morrison. We will break for lunch now and come back at 1:30.

(Recess - 12:10 p.m. - 1:30 p.m.)

CHAIRMAN: Any preliminary matters? Mr. Whelly?

MR. WHELLY: Yes, Mr. Chair. Arising out of a request from Mr. MacNutt this morning, we now have the 2004, 2005 budget figures. And they have been circulated around the room. So I tender this as another exhibit.

I should also explain that the first column, which shows actual figures, includes 11 months of actuals and one month of a projection, to bring a total up to match what is intended to be shown by the budget.

CHAIRMAN: Good. Thanks, Mr. Whelly. No objections? This will be exhibit A-10.

CHAIRMAN: Any other matters?

MR. WHELLY: Sorry. None for me.

CHAIRMAN: Mr. Belcher, do you have any questions, sir?

MR. BELCHER: Yes. I have a couple.

CHAIRMAN: Well, how would you like to move up to the front then.

MR. BELCHER: I will.

CHAIRMAN: Thank you. Whenever you are ready.

MR. BELCHER: Thank you, Mr. Chairman.

CROSS EXAMINATION BY MR. BELCHER:

Q.59 - Good afternoon. I'm looking at your presentation this morning, Mr. Marshall, page 13, "Items With Potential Controversy."

MR. MARSHALL: Yes.

Q.60 - Since you brought it up, I will make your prediction true. The first one, under the additional IR-6 from the staff on page 23 --

CHAIRMAN: I'm sorry. Mr. Belcher, the presentation you are referring to is A-4?

MR. BELCHER: A-4. I'm sorry.

CHAIRMAN: And then you are going to volume --

MR. BELCHER: A-3.

CHAIRMAN: Thank you.

MR. BELCHER: Yes.

CHAIRMAN: And which interrog' in there?

MR. BELCHER: Additional IR-6, page 23.

CHAIRMAN: And that is the staff, the Board?

MR. BELCHER: Yes. A-3.

CHAIRMAN: Thank you.

Q.61 - If you look at those five products the intent is to limit 90 percent of all of those for any self-supplying customer?

MR. MARSHALL: There is no decision on what the limit would be for any of the products. And at this point in time we

do not believe it would be one percentage across the board.

It would be based on the ability of the market to provide each specific product.

So there could be different limit numbers for each ancillary service.

Q.62 - So that you could supply like all of 10 and all of 30-minute and still buy the remaining three and meet that 90 percent?

MR. MARSHALL: There is no -- there is nothing hard and fast about 90 percent, okay.

We do not have a number as yet, as I said to Mr. Morrison this morning. That is going to depend on our survey of the market, what is available, how much are currently bought. And it is going to be done by service, not across the board.

Q.63 - Thank you. Back to exhibit A-4, item 16, "Intra-hour Behavior", page 13.

MR. MARSHALL: Yes.

Q.64 - It is my understanding that if a customer purchases regulation and load following, they won't be subject to the intra-hour behavior sanctions?

MR. MARSHALL: That is correct. If we charged them for it, we would be double charging them for the service. They are paying for it. They wouldn't be charged for the sanction.

Q.65 - You also propose to have a 50 percent CPI annually to make up for your budget differences from year to year. You would still have a budget for each year though, right?

MR. MARSHALL: Yes.

Q.66 - And then back to A-4, page 13. On the residual monthly cost the evidence states that you would be paying that back based on the transmission billing determinants?

MR. MARSHALL: That is correct.

Q.67 - Those transmission billing determinants, would those be the schedule or your reservations?

MR. MARSHALL: It is based on transmission reservation quantities for point to point.

And you take the short-term daily or hourly readjusted to an equivalent yearly or monthly quantity, and network services based on the billing determinants for network adjusted.

Q.68 - And so in the case of the ISA, we settle with you monthly, the ISA doesn't have a reservation?

MR. MARSHALL: That is correct. There is no -- there would be no payout to the Northern Maine System Administrator at this point in time.

Q.69 - Although we do pay significant amounts of balance in energy under schedule 4?

MR. MARSHALL: Currently at this point in time the transmission customer that delivers into the Northern

Maine market, those transmission reservations are held by NB Power Generation Corporation. And the payout goes to NB Power Generation Corporation related to those reservations.

The energy within the band right now is settled directly with the Northern Maine ISA.

Q.70 - And the SO?

MR. MARSHALL: Yes.

Q.71 - So that would be subject to payback? Or there wouldn't be because we don't have a reservation?

MR. MARSHALL: If it is -- if that is all settled at marginal cost there will be no profit or cost to settle.

Q.72 - Okay. Then my last question is regarding A-3, Additional IR number 2. And this question might not be for you.

The last paragraph it says "WPS has indicated that it takes exception to the possible use of the alternate 12 CP method."

Do you know what -- is it just because they haven't had an opportunity to review the process?

MR. MARSHALL: No. I think it is because they -- it has not gone through a full review process. But I don't want to speak for them other than that we are aware they had an issue. We have put it in here to make the Board aware of

it. And it is up to WPS to state their case.

MR. BELCHER: That is all the questions I have. Thank you.

CHAIRMAN: Thank you, Mr. Belcher. Mr. Zed?

MR. ZED: I do not have any questions for this panel.

CHAIRMAN: Mr. Young?

MR. YOUNG: Yes, Mr. Chair.

CHAIRMAN: Would you like to come forward, sir.

CROSS EXAMINATION BY MR. YOUNG:

Q.73 - I think I have just three lines of questioning. One would be does NBSO need to have a standard of conduct, the other is will schedule 1 and 7 changes affect rates, and the third being will ancillary cap implementation put pressure on our rates.

For item 1, could we turn in A-3 to NBSO's response to UM IR-9, page 10.

Everyone there?

Mr. Marshall, since you are applying for transmission tariff revisions as the NB System Operator, an independent Crown corporation that expects transmission companies to implement and sign a standard of conduct, can you appreciate that others from the electricity sector would have some concern about having a system overseer not require the same level of professional conduct?

MR. MARSHALL: We are required to have the same level of professional conduct. As we responded in your

interrogatory, if it's an issue, the Board sees it as an issue, we are prepared to do a standards of conduct. We would have to alter the standards of conduct currently in the tariff to deal with NBSO and its nature, but we are prepared to do that, if that's an issue with participants.

Q.74 - And you already altered that standard of conduct right now for WPS?

MR. MARSHALL: Yes. We said this morning there is a need to alter it for WPS.

Q.75 - Okay. The other issue I would have would be schedule 1 and 7 changes, would they affect rates, and the purpose of asking this line of questioning would be to get a little clarification on if these changes will or will not affect our rate structures indirectly. If you go to exhibit A-3, NBSO's response to Public Intervenor, IR-5, page 6.

CHAIRMAN: Did you say IR-5, page 6?

Q.76 - That's correct. Am I correct in that or do I have an older version?

MR. MARSHALL: Page 5.

CHAIRMAN: Page 5.

Q.77 - Page 5 it is. I just want to start out by reading the response for B. It says, "Initially the network service subclass for industrial self-generators should have no direct impact on commercial and residential rates.

However, because of the cost shift between the network service class there will be a cost increase to Disco for standard network service of 2.8 percent as detailed in response to NBSO PI IR-14. Because transmission service makes up only about 4.5 percent of the cost for Disco to supply commercial and residential customers, the potential indirect rate increase and the future for these customers is about .13 percent."

I just want to ask you will the creation of the energy self-generator class that results in decreased rates for this class cause increased rates to the standard network service class?

MR. MARSHALL: I can't answer that question. That's an issue for Disco in setting its rates and for this Board in the application Disco has before it for rates of Disco. All I can say is that Disco takes transmission service from us today and will continue to take transmission service on April 1st under this proposal if it goes forward, the bill that we will send to Disco for the sum of self-generation service and standard network service will add up to the same amount of money that they will pay us.

How they take that money and allocate it into their rate classes and set rates in an application before this

Board is beyond my control, and I would be surely speculating as to what it would be.

What it intended to indicate here is this is potentially an indirect impact that could indirectly impact those rates if Disco applied it directly that way into those rate classes and came with an application.

Q.78 - Okay. If it could and did go that way, Disco would have two options, one would be to absorb it and the other would be to float it through or pass it on, right?

MR. MARSHALL: I guess they have got to do one or the other.

Q.79 - Correct. Since this cost increase has not been approved by the Board yet then --

MR. MARSHALL: Just a minute --

Q.80 - -- just a comment from you, then would you think it would be reasonable to state that it is doubtful that NB Disco would have accounted for this in their current 9.7 percent increase that they just announced.

MR. MARSHALL: I have no idea.

Q.81 - Okay. Thank you. Just asked if you wanted to comment on it. The other item was will the ancillary cap put upward pressure on rates, and the purpose of this one was to clarify that ancillary cap methodology and if the implementation will put upward pressure on our rates, and exhibit A-3, response to interrogatories from NBSO to

Public Intervenor IR-8.

Mr. Marshall, I just want to ask a question before I get into this, on self-supply. Originally when we were discussing the RFP request by the Board it was to address the punitive cost of ancillary services. Is that originally why the RFP request was put in by the Board to the NBSO, and was self-supply not taken into consideration when this direction was given?

MR. MARSHALL: As I recall, it was an issue in the previous tariff hearing, the original tariff hearing, in approving at that time I think the budget was \$38 million for capacity based ancillary services, and the Board had some issues with that. They brought NB Power Generation in to justify those costs against what they were, and then the Board ordered that we should look at how we can do a request for proposal to go out and procure them in the market rather than procure them directly from NB Power Generation.

We put together the document that was filed on February 28th to lay out a process for the RFP process, and we put together in discussion -- I say we -- the Minister through the consultant that the Minister hired to set the Market Rules, and in discussion with NB Power Distribution at that time, and NB Power Generation, and NB

Power Transmission and parties that were -- ourselves that were going to go to the System Operator, the consultant wrote the Rules to put a cap on ancillaries to be able to go forward to a market to implement that type of a proposal.

That's the history that gets us to this point. We are applying to this Board now to make that change in the tariff so that we can go forward in order to have some type of market for procurement of ancillary services.

Q.82 - Did the Board give direction to put that ancillary cap methodology in place immediately or did they give you any direction to do it after there was an actual market there and after the heritage load will call for it.

MR. MARSHALL: This is subject to recall. I think it was simply an order of the Board to lay out a proposal for how you would do a request for proposal for ancillary services. They put no cap, no minimum. Could have been zero instead of a hundred.

Q.83 - Okay. Is it your understanding that the agreements between NB Disco and NB Genco specify energy and ancillary costs from the heritage generation to heritage customers?

MR. MARSHALL: I'm not aware of the details of what are in those contracts. We have contracts with NB Power Generation because all of NB Power Generation assets are

Heritage assets. There are ancillary service contracts from NB Power Generation to the System Operator and they are evergreen contracts, so that we have the right to use their assets for provision of ancillary services for the benefit of all customers. That's all -- the only contracts I'm really aware of what rights there are for ancillary services.

Q.84 - Is it your understanding that NB Disco currently have an agreement or contract in place for 100 percent of their current need for ancillaries?

MR. MARSHALL: My understanding is that Disco have a contract with Genco for all of the Heritage assets and Disco had the call rights on all of those assets to meet their needs first, whatever those needs are, and then Genco takes the rest and goes to market. That's the sum total of what I know about that contract.

Q.85 - Okay. Do you believe that the ancillaries purchased by NB Disco under a cap system and limitation system will be equal or less than what NB Disco pays now? Do you think that by going to RFP they will actually get a better price for ancillaries than what they are paying now, or is it going to be an increase that will flow through to their customers?

MR. MARSHALL: I don't know specifically. I would be

speculating if I say I think they would go one way or the other. I think there are provisions or there should be provisions in that contract so they in essence are kept whole, given that Genco compete and win the bid for the ancillary services.

Q.86 - Okay. Would it be possible to wait until the need for additional ancillaries grows beyond the ability of Heritage assets currently before going to RFP and therefore you don't need a cap methodology or system whatsoever?

MR. MARSHALL: Of course it's possible to wait. That's up to this Board. They have asked us to lay out a proposal for how we would do an RFP. We have done that. We are in the middle of a process. It's up to this Board to decide, you know, when we go forward to do it.

MR. YOUNG: That's all for me. Thank you.

CHAIRMAN: Thank you, Mr. Young. Public Intervenor. You are next I think, are you not, Public Intervenor?

MR. HYSLOP: Thank you, Mr. Chairman.

CROSS EXAMINATION BY MR. HYSLOP:

Q.87 - A few questions first on the intra-hour behavior problem. And as I understand the situation is that once you are outside a certain bandwidth, that would be considered misbehavior by one of the customers of NBSO, is

that correct, Mr. Marshall?

MR. MARSHALL: I don't know if it is necessarily misbehavior. You can get outside the bandwidth for a number of different reasons.

You can get outside because of poor behavior. You can also get outside because of a fault or a contingency or some reason. We have said that we would not charge for faults or contingencies, only for behavior.

Q.88 - Right. And in situations where we are dealing with misbehavior for going outside of the bandwidth, it is my understanding that you are removing the penalties that formerly had been assessed for this type of event, is that correct?

MR. MARSHALL: Currently the energy imbalance charges in the tariff are a penalty based charge.

Q.89 - Yes.

MR. MARSHALL: They are at a cost plus iou are using energy. And they are at a cost minus if you are supplying energy. Under the current proposal they would all -- that would be changed to be at market cost.

So they would pay based on the market value of the energy at that point in time.

So the penalty portion of that is being removed.

Q.90 - Correct. And it would generally be expected by moving

to the market price as opposed to the penalty price, one of the results would most likely be that the party who has caused the misbehavior would not have to pay as much.

Would that be a fair assumption?

MR. MARSHALL: That is correct.

Q.91 - Okay. And this is again to reflect the basis of a market applying to any additional or any loss of electricity by one of the transmitters into the system?

MR. MARSHALL: Would you repeat that please?

Q.92 - Well, you are allowing market prices to govern any misbehavior that results in a loss of a load into the system or taking too much electricity out, is that correct?

MR. MARSHALL: We want to use market prices in order to settle all of the imbalances between loads and generators in the market. I hesitate to call it all misbehavior. It is not misbehavior.

It is impossible to always balance perfectly in an electrical system. There are going to be imbalances one way or the other. It is a means of settling it with a fair, you know, financial value.

Q.93 - Okay. And what you are really trying to do is avoid a situation where one of the transmitters wouldn't be supplying when -- or wouldn't be supplying in a situation

where the price was low or would be supplying a lot more when it was high, is that correct?

MR. MARSHALL: Yes, that is correct.

Q.94 - Right. And what you are trying to do is make them live up to their obligations as they go forward on the basis they have contracted with NBSO --

MR. MARSHALL: Yes.

Q.95 - -- and scheduled with the NBSO?

MR. MARSHALL: Yes, as they scheduled. We want them -- we want the parties to behave according to the schedules that they submit.

Q.96 - That is right. Now, you know, I couldn't help but hearing in the interrogatories it was Nova Scotia Power Corporation that seemed to have some issues with this.

And then my question in relation to that is has this been an ongoing problem with Nova Scotia Power Corporation?

MR. MARSHALL: Has it been an ongoing problem? All right. Define -- has imbalance at the interface been an ongoing situation? Is that the question? Because I don't want to characterize this in a negative way, say it is a problem or it is an issue.

It is an issue that there has been imbalance at the Nova Scotia interface, and that that imbalance was an

issue in the previous hearing. We were here before this Board at that time. And there wasn't a resolution in that decision.

We were asked to go and negotiate with Nova Scotia Power and come to a resolution to be able to settle that interface, to separate inadvertent energy from imbalance energy.

Q.97 - Okay. So has it been an issue with Nova Scotia Power that there has been imbalance which you would consider misbehavior?

MR. MARSHALL: It was up until October 1st last year until we actually got the settlement mechanism in place to charge for imbalance.

Q.98 - So rather than replacing electricity now with Nova Scotia Power, you are invoicing and making them pay anytime that there is an imbalance that occurs?

MR. MARSHALL: Currently we are charging them for imbalance when they are outside the 14 megawatt band.

Q.99 - Okay. And if for some reason -- what I understand to be taking place here is if that that type of imbalance wasn't billed back, that would be a cost that would have to be absorbed by the other users of the system. Would that be correct, Mr. Marshall?

If instead -- I will rephrase to the question. If

instead of sending the bill to Nova Scotia Power you allowed them to replace the energy at a later date at a different price, any difference in the cost would have to be absorbed by the users of the system, is that correct, Mr. Marshall?

MR. MARSHALL: Yes.

Q.100 - Yes. Okay. Thank you. I understand -- and I may be incorrect and if so please correct me. But I understand that presently there is an application before the Nova Scotia Public Utilities Board with respect to an Open Access Transmission Tariff. Is that correct, Mr. Marshall?

MR. MARSHALL: That is correct.

Q.101 - And do you have any understanding of what rules are being proposed for intra-hour balances within that jurisdiction at this time?

MR. MARSHALL: My understanding of the tariff is they don't have any specific proposal for intra-hour other than they have schedule 4 in the tariff which is Regulation and Frequency Controlled Service, that they would charge to all loads in Nova Scotia.

And that service is for Nova Scotia Power to provide the generating capacity with automatic generation control in order to balance loads and generation in Nova Scotia.

So Nova Scotia load customers would be paying for that service inside Nova Scotia.

The concern that we have is that a portion of the regulation in New Brunswick is required in order to overcome the imbalances that are still left after they provide that service in Nova Scotia. And they are not paying for that service in New Brunswick. Yet they are utilizing it.

Q.102 - I want to move on and look if I could at the concept of our wheeling customers and the monthly residential cost -- or residual cost.

And just to background, I understand, coming into this pretty late, that the New Brunswick transmission system is a pretty robust system. Is that correct, Mr. Marshall?

MR. MARSHALL: Yes.

Q.103 - And what I mean by robust is it is -- not only does it have the transmission capacity to service the needs of New Brunswickers, it has the ability to allow users of electricity on either side of New Brunswick to use our system to transmit electricity through to customers on the other side of New Brunswick, is that correct?

MR. MARSHALL: Yes.

Q.104 - Yes. And that is where we get into this idea of a wheeling customer. And that is a customer that would send

electricity into New Brunswick at one end and the same amount of load would come out at the other end.

Is my understanding correct there?

MR. MARSHALL: Yes.

Q.105 - And as I understand, the proposal that is in your item 5 in exhibit A -- item 4 -- that what you are proposing in this is that the wheeling customers also would be required to participate in the recovery of the residual monthly cost. Is that correct, Mr. Marshall?

MR. MARSHALL: Yes.

Q.106 - Yes. Now my concern is, when I look at the market rules, and I'm referring to page 9, is how many -- I will let you find it.

MR. MARSHALL: Is that page 9 of A-2 --

Q.107 - A-2?

A. -- at appendix A?

Q.108 - Yes.

MR. MARSHALL: Yes. I have it.

Q.109 - I think the Board members all have it. My concern, Mr. Marshall, if I look at A which is capacity obligation deficiencies of load serving market participants for a given capability period. Now the phrase load serving market participant, that wouldn't be a wheeling customer, would it?

MR. MARSHALL: No. It could be, but if the customer is wheeling straight through --

Q.110 - Yes.

MR. MARSHALL: -- it wouldn't be supplying -- being load serving.

Q.111 - Right. And if I look at B, transmission provider cost of supplying replacement capacity when a load serving market participant is deficient in meeting its capacity obligation. Again we are dealing with a load server serving market participant. I don't think that would be within the concept of a wheeling customer, would it, Mr. Marshall?

MR. MARSHALL: No.

Q.112 - Again C, penalties to market participants for a generator as a result of a deficiency in the performance of a generator that has been committed to the market by a load serving market participant other than a forced outage, again we are not dealing with -- in C with what we understand to be wheeling customers?

MR. MARSHALL: No.

Q.113 - No. D. And perhaps rather than state the whole issue, but is it possible for a wheeling customer to fall under D, and, if so, how?

MR. MARSHALL: A wheeling customer if it's just wheeling

across the system and nothing else, the answer for that one would be no. The wheeling customer could also be bidding generation into the market and having generation as a resource being bid into the market then it would fall under that. So it's a yes and a no.

Q.114 - Okay. But in the purest sense of wheeling electricity through the province the answer would be no?

MR. MARSHALL: That's correct.

Q.115 - Thank you. And with respect to E, penalties supplied to generators for being deficient with respect to an obligation to be ready to bring generator on line other than in the case of a forced outage. I don't expect that that would normally apply to a customer who wanted to wheel electricity through New Brunswick?

MR. MARSHALL: No, unless it was again a generation bid from from that customer outside, external of the market.

Q.116 - With respect to F, penalties applied to generators for being deficient in the performance of their obligation to respond to a transmission provider request to synchronize to the transmission system to address an operational capacity deficiency. You are matching load and supply within the province, and would that apply to a wheeling customer?

MR. MARSHALL: Not a strict wheeling customer but it would

apply to that external generator if they bid a price into the market.

Q.117 - Okay. Let's just go at that a little bit. If they bid a price into the market. In other words to supply within the Province of New Brunswick for consumption in New Brunswick, is that what you are referring to?

MR. MARSHALL: No. It's more than that. The -- let's understand the market place. A wheeling customer -- let's do an example. If Hydro-Quebec has a wheeling contract from the Quebec interface to Nova Scotia, they have an obligation to match the load -- they are wheeling 100 megawatts, they have to inject 103.3 megawatts to cover the load plus the losses. They can choose to put prices -- they can choose to say this is just wheeling or they can choose to put prices that have generation behind it in Quebec and put price quantity pairs associated with that transaction. And if they do they are then subject to all the Market Rules as if they were a generator in the market, and every one of these points would then apply to that transaction.

If they choose to self-schedule it and say, no, there is zero price on it, it's just going this much against that, then they are not a strict wheeling customer.

So you have to be -- you have to be careful to

differentiate.

Q.118 - Okay. Well I am prepared to differentiate, but I think what you are telling me is there is a pretty blurred line then between somebody who is a generator or a provider into the system and being a strict wheeling customer. It depends on the function that they are performing at the time?

MR. MARSHALL: Yes, that's correct. The design of the market is to provide the flexibility to the market participants to choose how they want to participate. So that external party can choose to just wheel directly in and they can put prices on their contract which allows them to just be a straight wheeling customer. They also have every opportunity to then put prices on it, to participate in the market and it could be advantageous to them. The issue here is depending on their behaviour and the behaviour of everybody else in the market we could incur costs, we need to recover those costs, and we charge them out to all transmission customers in the market, because they have that opportunity. Whether they choose to exercise the opportunity is their decision. We want to charge the cost on the non-discriminatory basis to all people who have that opportunity.

MR. PORTER: I just might add to Mr. Marshall's comment, the

additional component that would blur the definition as to the level of participation would be the provision of ancillary services. These parties that would otherwise potentially be strictly wheeling customers might choose to participate in the RFP process for ancillary services if there was a level of interruptibility on the delivery end of their transaction. So it's another area where they have an opportunity by virtue of this new market to participate and have the gains.

And also I think it's important to keep in mind if you look down these items of the ones that you noted half would be costs that we would incur that we had to pass on, the other half are financial gains that we would achieve and we would pass those on as a credit to all transmission customers on a non-discriminatory basis. So there is really plusses and minuses into this calculation of the residual monthly cost.

Q.119 - And you would be proposing that the plusses and minuses of those monthly residual costs would be passed on to someone doing strict wheeling through the province?

MR. PORTER: The proposal as Mr. Marshall described is to pass that on to all transmission customers, because those transmission customers are investing, making payment for the use of the transmission system which puts them in my

mind as players in the market, and subject to both the positives and the negatives.

Q.120 - Okay. And my concern, Mr. Porter, and maybe to cut to

the chase on this, it doesn't appear that the things that -- to use your phrase -- the various components of the residual monthly costs are described below, and we have been going through them. My issue is it doesn't appear to me that the strict wheeling customer is the person who is causing any of those costs to the system operator. And if that's so why should they be burdened with having to pay part of these costs or gain any part of the profit that may come back out of it?

Now I'm just asking that question and after I'm going to ask you what is the significance of what we are dealing with in terms of money?

MR. MARSHALL: The -- just to go back. When this was put together this comes out of the Market Rules and as I said before it was developed essentially by the government's consultant for the market place. And we had discussions at that time as to do we do a two-tier market and treat load customers inside the province different than you treat wheeling customers going through the province? And the decision was no, we want to treat non-discriminatory treatment, everybody on the same basis, the same Rules,

and they have the same opportunities. So therefore they should bear some of the same potential costs and some of the same potential benefits.

Now these items that we have just gone through, Mr. Porter has just pointed out to me, really are pretty small cost issues and to administer them individually and then bill them out to individual parties that cause it, and then where do we credit it, all right, cause a lot of administrative issues, that it was a simpler matter to put them together into one account and settle them across the market place. And that was the recommendations of the consultant and accepted by the Minister in the Market Rules.

Q.121 - Okay. And just to go back to my original line of questioning, that we have a robust transmission system, this would work potentially as a deterrent to someone wanting to wheel through knowing that they would have to absorb some of these costs that they did not cause, would it not, Mr. Marshall, or do you see that as insignificant?

MR. MARSHALL: I do not see any deterrent here in any way, shape or form that will stop any party from wheeling across the system if there is an opportunity for an economic transaction.

MR. PORTER: And I would add to that that the discussion we

had at the market advisory committee last summer and fall that certainly there are representatives on that committee representing wheeling only customers. And there was to my mind no hesitation particularly from the representative for that sector, which is the wheeling only customers, no hesitation whatsoever on that issue.

Q.122 - Okay. Than you, Mr. Porter. I want to move on if I could to the issue of the auxiliary services which has been brought up but -- ancillary services -- and in that regard as I understand what is being proposed is some as yet unspecified cap on the quantity of electricity -- nothing to do with rates -- cap on the quantity of electricity for ancillary services would be put in place so that participants would have to go to the system operator to buy and sell some part of the ancillary services, is that it in a nutshell?

MR. MARSHALL: Yes. A cap on the amount of ancillary services that a party can self-provide.

Q.123 - Yes. And my further understanding is if this goes forward that the System Operator is going to do a request for proposals in order to have the supply of electricity available to partially meet the market that you are hoping to develop, is that correct, Mr. Marshall?

MR. MARSHALL: Yes.

Q.124 - Yes. So you are going to go out into the market and acquire for your use in developing this market a supply of electricity that you would then sell to other parties, is that correct?

MR. MARSHALL: We are not going to acquire electricity. We will -- these are capacity based services. We will acquire contracts from the market place based on bid prices to be able to put that capacity under our control, so we can use it to provide those services for the reliable operation of the market. And we will then sell -- the cost of that will be rolled in with our cost in the tariff. Parties can then buy so much of it under the rates approved by this Board.

Q.125 - Okay. So to some extent then if there was somebody else out there willing to supply the ancillary services you could theoretically be in competition with them?

MR. MARSHALL: No.

Q.126 - You wouldn't be?

MR. MARSHALL: Let's understand what self-provision of ancillary services is. Parties -- by self-providing it means that they have under contract, under bilateral contract with generators, those services. And then they turn them over to the System Operator to meet their requirement and there are no dollars change hands. We

have control of those resources to operate them for the reliable operation of the system.

It's just that we don't pay for them and we don't charge the customer for them.

The dollars transact between the customer and the generator they have contracted with.

And there is nothing stopping anybody in the market today from going out and carrying on that type of a bilateral contract.

Q.127 - And so your -- but wouldn't you be competing with somebody wanting to seek out a bilateral contract to meet their ancillary requirements by having your own supply available?

MR. MARSHALL: Well the intent here is to -- and this was recommended by the market design committee -- the intent is to actually create a market -- a portion of a market. It's similar to the arrangement in the Electricity Act that NB Power Distribution when they go forward in time as the standard service provider, they run out of capacity and need new capacity resources to supply electricity, they are required to go for a request for proposal that is to be administered by this Board for the new resources.

Well what this is is a sliver of that that would be providing ancillary services. So this is simply a portion of the ancillary service supply procured through an RFP process consistent with the market design committee

recommendations, consistent with the intent of the act of going forward to create a market.

Q.128 - Okay. So you are becoming an active participant by providing this ancillary service, or making it available, your purpose in doing that is to help create this market, that's your evidence, Mr. Marshall?

MR. MARSHALL: Ancillary services under the rates that are supplied, approved by this Board, are based on the costs of NB Power Generation resources to provide the total requirement that is in the order of \$38 million.

The reason for the RFP is to go out to the market and give other parties, other than NB Power Generation, the opportunity to supply those services.

And if they can bid a price lower than NB Power Generation in the competitive process, that would lower the rates that we would then charge for all customers in the marketplace.

Q.129 - And I do understand that. I understand what you are trying to achieve. But I'm going to go right to what my problem is.

And what I want to do is refer you to exhibit 2, item 18, Standards of Conduct, and in particular to page 47. It is item 18, exhibit A -- or appendix A, page 47, 48.

MR. MARSHALL: Yes. We have it.

Q.130 - Okay. And I'm referring to the last sentence at line 28. And it reads, The New Brunswick Market Design Committee identified independence of the System Operator as an important principle. You would concur in that recommendation, Mr. Marshall?

MR. MARSHALL: Absolutely.

Q.131 - And in fact the first resolution of the Market Design Committee, which is at page 48, reads, The Market Design Committee agrees that the primary consideration in the implementation of the market is the assurance of total independence of the transmission system and market operations from Generation.

You would agree with that as being almost a fundamental principle of the System Operator's independence?

MR. MARSHALL: Absolutely.

Q.132 - Okay. And I guess my concern is -- and this morning when you did your slide presentation -- and again looking at page 19 --

CHAIRMAN: Exhibit A-4.

MR. HYSLOP: Exhibit A-4.

MR. MARSHALL: Yes.

Q.133 - And I'm looking at the second -- there is two points. But New Brunswick System Operator, it's the second bullet,

is an independent transmission provider with no merchant function and subject to NERC and NPCC standards.

You would agree that that is one of the principles of your conduct is to maintain that independence and not to have any merchant functions, Mr. Marshall?

MR. MARSHALL: That is correct.

Q.134 - And again the only exception that was apparently going to be made was with respect to WPS to be exempt from the merchant function isolation because of the very small amount of transmission service they provide?

MR. MARSHALL: Yes.

Q.135 - And I guess where I'm coming at with all this -- and I mean, I'm not sure what position I'm going to take at the end of the day.

But if you are in the business of buying and supplying or being an active market - and I'm not quite sure if you are a merchant, but it sure sounds like you are a merchant in providing these ancillary services -- how can you be doing that on one hand and at the same time maintaining this critical role of independence that seems to be fundamental to your position as a System Operator?

MR. MARSHALL: Okay. Well, I have an answer. But I think Mr. Porter's answers stands for that one. So I will let him go.

MR. PORTER: I would just answer we would be doing it in the same way really as the market operator in Ontario would be doing so, I assume New England, New York ISO, PJM, California ISO and other entities that are entirely independent, have been recognized as independent by -- certainly by FERC and hopefully by the marketplace as well to take on that role of purchasing services and running it as a market.

Basically it is administering a marketplace, not participating as a direct market participant in competition with market players.

Q.136 - You would agree with me though, Mr. Porter, that there becomes an appearance at least that -- of in trying as this independent System Operator and in your endeavors to open up the market for ancillary services, the possibility or the appearance of the possibility of being in competition with some of your customers is very real?

MR. PORTER: I don't see it as being in competition. Because the purchases are being made on behalf of the load customers. So there is a certain amount of requirement. And that would be purchased either directly by the customer or by us. But I don't see -- I don't see where you are describing it would be competition between us and our customers.

MR. MARSHALL: I would like to add to that too. Today we are 100 percent regulated entity. The services that we provide are 100 percent regulated by this Board.

The issue here is simply how we procure those ancillary services. They are under the auspices of this Board. We could have a strictly bilateral market by leaving the tariff as it is and allowing 100 percent self-supply. That is a -- that is back where FERC was in 1996 to 1998.

As Mr. Porter just said, markets have evolved well beyond that. And where it is possible to provide these services competitively in a market and administer a market to be able to provide them, that is where regions are going. That is where ISO New England is, New York, PJM, Ontario, Alberta, Texas, California. And that is where we want to go as well.

And that is what our mandate is in the Electricity Act. And we have been directed there by the government in terms of doing this. And it is consistent with the Market Design Committee recommendations.

So this is not a merchant function in any way. This is administration of a process by which the market can respond and then provide that service to customers in a regulated fashion using competitive processes to get the

regulated rate.

Q.137 - Well, again I guess the question is -- and I will go back to Mr. Porter's response to this, since I might have had a little better understanding of it.

But again just looking at this, you are in the market of doing an RFP so that you can have the product to supply and ancillary services available through the System Operator. And you had said that you did not see there was any competition.

But can you understand my point, at least in my mind at least there is an appearance that you might be competing with some of your customers, Mr. Porter?

MR. MARSHALL: No, I don't.

CHAIRMAN: Mr. Hyslop, is this a good spot to take a 10-minute recess?

MR. HYSLOP: Sure. Thank you, Mr. Chairman.

(Recess)

CHAIRMAN: Mr. Hyslop, my understanding from Board Counsel, you have got probably 10 minutes of questioning left?

MR. HYSLOP: I would hope not much more than 10 minutes, Mr. Chairman.

CHAIRMAN: Depends upon the answers, too, doesn't it, Mr. Hyslop.

MR. HYSLOP: It seems that way at times.

CHAIRMAN: Maybe this is a good opportunity, Mr. Howard does have to leave tonight.

And I just -- it's really -- there is no direct, Mr. MacDougall, that Mr. Howard wishes to give.

Do any of the parties have any questions they wish to put to WPS? Well that settles that, which is just fine.

The Board -- Board Counsel has informed me that Board Staff has no questions either. So he is free to leave whenever -- whenever he must.

MR. MACDOUGALL: That's greatly appreciated, Mr. Chair.

CHAIRMAN: Fine. Now any preliminary matters?

MR. WHELLY: No. I may be able to address something a little bit later, but not right now.

CHAIRMAN: Fine. Thanks. Go ahead, Mr. Hyslop.

MR. HYSLOP: Thank you, Mr. Chairman.

Q.138 - Just going back to this ancillary services cap again, Mr. Marshall, as I understand it, you are going to put out an RPF to -- RFP for suppliers of some type of capacity right to have available to the system operator, correct?

MR. MARSHALL: That's our intent.

Q.139 - Yes. Okay.

MR. MARSHALL: Subject to the proposal that we put to the Board.

Q.140 - Yes. And subject to the Board's approval?

MR. MARSHALL: Yes.

Q.141 - But that's what you are proposing is to -- is to purchase something that will be available to help facilitate the development of your market?

MR. MARSHALL: Yes. And hopefully maybe lower the price of ancillary services for all the customers we market.

Q.142 - Yes. And I appreciate that. Now after you have made this purchase, my question is if at the end of the day, any of this capacity you have available isn't remarketed by the System Operator, where does that cost go?

MR. MARSHALL: The RFP in the description of the process is that we are not going to buy capacity for a month or a year and be at the risk of not using it. We will pay -- it will be bid as capacity on a basis. And then as it is scheduled and used, we will pay for it on an hour by hour basis, so we will not have residual cost associated with that capacity.

Q.143 - So the design of the RFP is going to create a backstop on any unforeseen loss or risk to the System Operator as a result of going into this type of marketing, is that correct?

MR. MARSHALL: The means by which we would pay for the capacity would mitigate that risk.

Q.144 - Thank you.

MR. PORTER: If I might just add to Mr. Marshall's comment that that detail is included in the RFP particulars document that we submitted to the Board on February 28th that talks about those details, lays out for the potential bidders -- although the specific quantities aren't in there right now, but the template is of the specific quantities that we think we would typically require would be included in there, but their bid would be based on the understanding that we would only pay as we require those services.

Q.145 - Thank you, Mr. Porter. Leaving that, I have a few questions on the CPI and the -- I guess according to your evidence, 96 percent of your expenses are variable and are subject to inflation, is that correct, Mr. Marshall? Or maybe Mr. Lavigne, whoever is best qualified?

MR. LAVIGNE: A big portion of the budgets related to the System Operator are related to labour. And the escalations that go along with that.

Q.146 - And I understand that you are proposing that the rates would automatically increase by one-half of the CPI over the next -- until you had to come back before this Board for further review at some point in time?

MR. MARSHALL: That's our proposal, yes. I might add one other piece of that proposal is that we would -- we would

escalate the rates at half CPI, but that in terms of any residual money we would get -- we would cap it at \$300,000. And so we would be giving back any excess if there was above that to customers based on their transmission usage, similar to the residual monthly costs.

The reason for the \$300,000 being we need a war chest built up to in -- to have in order to incur the costs associated with a major hearing on a go forward basis.

Q.147 - I understood that from your interrogatory evidence. Now my question is I would like to if I could make it -- make that return to your customers even better. And I couldn't help when I read the evidence on the CPI think well, you know, everybody is taking today's status quo and adding something to it and that's next year's budget.

And my comment and which is leading to a question, what type of review is done annually with respect to your costs? Do we go back to a zero base every year and say what do we need to provide this service? Or is there just an assumption that what's here today is what we are going to have to pay for next year? I would ask the Board to comment on that?

MR. MARSHALL: Our budget for this year is laid out in the evidence.

Q.148 - Yes.

MR. MARSHALL: I think the review of that budget is under the jurisdiction of this Board at this point in time. I mean Mr. MacNutt hasn't started to ask questions yet. So I am expecting we are going to have to answer a few related to the budget at that point in time.

Q.149 - Sure. And I am not going there, because I know Mr. MacNutt will cover it. But my point is simple. Let's just do a little math. Your budget is approximately \$7 million?

MR. MARSHALL: That's correct.

Q.150 - And 2 percent of \$7 million would be \$140,000?

MR. MARSHALL: Yes.

Q.151 - And half of that would be \$70,000. Correct?

MR. MARSHALL: Yes.

Q.152 - So next year you would have to by your rates increase sufficiently to 1 percent to cover another \$70,000, correct?

MR. MARSHALL: Not quite. Because some of our revenue we get from other services.

The tariff rate schedule 1 recovers about 6.3 million. So we would recover \$63 million under that basis --

Q.153 - Sure. Now if I was to put forward a scenario that you sit down next February and do your budgets for 2006-2007, and you decided that you could provide the same service

and eliminate a \$70,000 job, you wouldn't need that 1 percent in theory, would you, Mr. Marshall?

MR. MARSHALL: No.

Q.154 - And I suggested to you -- look, I like to see incentive. I like to see you make an extra 70,000, distribute it back. My question goes to what do you do every year to really assess what costs you have to incur? Is there a cheaper way to build the widget is what I am asking?

MR. MARSHALL: I don't think so. We would go through a budgeting process in the fall. Our time line is that we would have the budget done by the end of December, so we know exactly what is required on the next year basis.

The reason for that being is if the half of CPI is not enough money to cover the cost of the budget, we would need to come back before this Board with an application. And considering the timeline to go through an application process, we would have to file that application in January to get it completed in time for April.

So that is the process we would go through. We go through a detailed scrutiny in front of our Board of Directors prior to December.

Q.155 - And as the Chief Executive Officer of this company and President, do you foresee any way of eliminating certain

costs or certain expenses in the providing of service or do you see basically -- what you see today is what you got and that's probably what you are going to get for the next few years?

MR. MARSHALL: I think the current operation at the control centre and the -- that we have under secondment from N.B. Power Transmission with the five employees directly for the System Operator, we are a very lean machine at this point in time in order take on all the responsibilities laid upon us under the Electricity Act. And I do not foresee any significant savings in the cost at this point in time.

Q.156 - However, it is fair to suggest that it's something that you will review annually?

MR. MARSHALL: We would review it annually. Now against the cost, I see no -- no significant change in the costs of us reducing costs to provide the services that we do.

The opportunity for us to provide benefits to customers and lower the rate would be if we could actually provide more services to the market or expand the footprint of the market and being able to then charge it out to a larger load that would then reduce the rate and we would come back to the Board with that reduction if and when we get to that point in time.

MR. HYSLOP: Thank you, Mr. Marshall. Those are all my questions on that area. And those are all my questions, Mr. Chairman.

CHAIRMAN: Thank you, Mr. Hyslop. We are going to give Mr. MacNutt 15 minutes or so. Mr. MacDougall, I am sorry. I beg your pardon, yes.

MR. MACDOUGALL: Mr. Chair --

MR. MACNUTT: I believe --

CHAIRMAN: Mr. MacNutt, just a sec'. Mr. MacDougall had his hand up first.

MR. MACNUTT: Well, I think I was going to speak for Mr. MacDougall that he has four questions --

CHAIRMAN: Mr. MacDougall can speak for himself, Mr. MacNutt. But go ahead.

MR. MACDOUGALL: All right. Mr. Chair, I was just going to say I had indicated earlier that we did have some questions for this panel. So it's probably appropriate for me to ask those questions before Board Counsel, as Board Counsel usually follows up.

CHAIRMAN: It certainly is. So if you would come up to the front, Mr. MacDougall.

MR. MACDOUGALL: Thank you very much, Mr. Chair.

CHAIRMAN: All right.

CROSS EXAMINATION BY MR. MACDOUGALL:

MR. MACDOUGALL: Good afternoon, Mr. Chair and Commissioners. Good afternoon panel. I think it may be useful, Mr. Chair, I think I will only be referring to the Information Request Responses, which is exhibit number A-3. So I believe that's the only document you will need to have in front of you.

Q.157 - Mr. Marshall, I think these questions are primarily for you or Mr. Porter. I will just direct them to you and we can go from there.

All of the questions that I am going to be asking are around the issue of ancillary services. A few questions on the ancillary services cap, which I will ask towards the end. The first set of questions are going to be around some of your Information Request Responses to the Northern Maine ISA.

Just as some background, as I understand it, currently the NBSO uses the same method to allocate the megawatt requirement of capacity-based ancillary services to loads external New Brunswick, i.e., Northern Maine and P.E.I. as it does to allocate the megawatt requirements to loads that are internal to New Brunswick, is that correct?

MR. PORTER: Yes, that is correct.

Q.158 - And as I further understand it, there is a revenue sharing arrangement for the Maritimes control area between

New Brunswick and Nova Scotia, whereby Nova Scotia is responsible for a specific portion of the reserves in the Maritime controlled area?

MR. PORTER: There is a reserve sharing arrangement, yes.

Q.159 - And New Brunswick, Northern Maine and P.E.I. are collectively responsible for the remainder of the reserves for the Maritime control area that are not off in the revenue sharing agreement with Nova Scotia?

MR. PORTER: Yes, that is correct.

MR. MARSHALL: It's reserve sharing agreement. He said --

MR. PORTER: Sorry. Mr. MacDougall, you were saying revenue. It's reserve sharing.

MR. MACDOUGALL: Reserve.

MR. PORTER: Reserve, yes.

MR. MACDOUGALL: It is reserves that I was meaning to say. Now let's go back in time.

Prior to the New Brunswick OATT going into force, my understanding is that the responsibility for capacity-based ancillary services, including reserves, as between New Brunswick, Northern Maine and P.E.I. was determined based on each jurisdictions' load ratio share on a 12 CP or 12 points in a peak basis, is that correct.

MR. PORTER: Either 12 CP or 1 CP. I believe at different times, and perhaps with the different timing of Northern

Maine market opening versus when the policy was applied to Prince Edward Island, it would be either have been 1 CP or 12 CP. I would have to check on the details as to the exact timing.

Q.160 - Okay. And maybe I could help you a little bit there. But it was always a coincident peak basis?

MR. PORTER: Yes.

Q.161 - And in your transmission tariff filing before this Board, my understanding is that with respect to the period of 2001 and 2002, it was a 12 CP basis?

MR. PORTER: I am not so sure I would say it that way. In our evidence, we -- in terms of coming up with the rates for a New Brunswick OATT, the Open Access Transmission Tariff, we did do an allocation for the 2001-2002 fiscal year using 12 CP indicators. So that was in designing the tariff. I wouldn't necessarily say that that reflected how we were doing the allocation in 2001-2002.

Q.162 - That's understood. But you did use that in designing the tariff?

MR. PORTER: Yes, we did.

Q.163 - And you always used a coincident peak basis between Northern Maine, New Brunswick, and P.E.I., prior to the tariff?

MR. PORTER: I couldn't say always. But in the period prior

to October 2003, we did, yes.

Q.164 - Great. Thank you. Now then coming back to today, the current position, I understand that the responsibility of Northern Maine, New Brunswick and P.E.I. for reserves is based on the estimated average monthly net non-coincident peak demand, is that correct?

MR. PORTER: The methodology that is used today for those loads, as well as for loads in New Brunswick, going into the month, there is an estimate of what the obligation would be based on as you say the net non-coincident demands. And I would just add that at the end of the month, we determine what the actual loads were and do a true-up.

Otherwise, what you have said, is exact -- is correct.

Q.165 - Yes. And I totally understand that you do true it up at the end of the month, because you take an estimate of the NCP at the beginning of the month, but it's done on a non-coincident peak basis?

MR. PORTER: Yes.

Q.166 - For all loads in both New Brunswick and with respect to Northern Maine and P.E.I. under currently approved OATT?

MR. PORTER: Yes, that is correct.

Q.167 - Now if you could turn to your response to NMISA IR-3??

MR. PORTER: Yes, I have that.

Q.168 - And in that IR if you look at the question, essentially the Northern Maine

Independent System Operator asked if the purchase of capacity-based ancillary services for external loads could be based on a supply side option, rather than the current NCP demand side billing determinant method without cost shifting, correct? That was the question they posed to you?

MR. PORTER: Yes, that is correct.

Q.169 - And your response was that in your opinion that could occur, but that you would

need some further analysis before you could further comment on it, correct?

MR. PORTER: Yes, that's correct.

Q.170 - And then you provided an additional response on March 8th, which should be in

everybody's binder. I understand the following page. And it should be intitled

"Additional Response -- Additional Information in Response to NM, NBSO and

NMISA IR-3, page 4A. Do you have that in front of you?

MR. PORTER: Yes, I do.

Q.171 - And in that response I understood that you set out a -- you set out an approach that

you felt could accomplish what the NMISA had discussed in their question?

MR. PORTER: Yes, that's correct.

Q.172 - And now if could go to paragraph 4 of that document. And I just want to read that into the record. In part of your additional response you stated as follows: "At the start of each calendar year, NBSO would determine percentage obligations for each external load, i.e., P.E.I. and Northern Maine, as a pro rata share of the total load in New Brunswick, Prince Edward Island and Northern Maine. The percentage obligations would be calculated using the respective system net loads at the time of the 12 monthly Maritimes' area peaks. Those percentages would be used for the duration of the subsequent fiscal year to allocate ancillary service obligations to the aforementioned external loads." Correct?

MR. PORTER: Yes, that is correct.

Q.173 - And this proposal or this document, if it was to go into effect, would have the basis of using a 12 CP allocation for Northern Maine and Prince Edward Island, correct?

MR. PORTER: Yes, that's correct. And just to clarify just in case there is any ambiguity in that wording. It would refer to -- for each of the loads for the 12 month period, it would calculate an average of the 12 values. It's not an issue of applying individual monthly percentages. It's

the -- a load ratio share would be calculated based on the average of the 12 monthly values.

Q.174 - That's correct. And my --

MR. PORTER: And that single ratio would be applied for the subsequent fiscal year.

Q.175 - Throughout all months of the year?

MR. PORTER: Throughout all months of the year. That's correct.

Q.176 - And that single ratio would be determined I understand at the beginning of the year based on the 12 monthly coincident peaks?

MR. PORTER: That's right. In the time frame of January, maybe going into February. We look back at the previous calendar year, take the 12 -- the values for the 12 months and use that to calculate the ratios that we applied starting in April of that upcoming fiscal year.

Q.177 - Terrific. And now if we could turn to NMISA IR-4, which should be the next page.

And again in that IR response there is additional information that was filed on March 8th, which should be the second page of that IR response, now numbered page 5A?

MR. PORTER: Yes, I have that.

Q.178 - And I understand what you are doing there was you set out possible tariff wording changes that could implement

the change that was referenced in NMISA IR-3, if in fact that proposal was to be adopted?

MR. PORTER: Yes, that is correct.

Q.179 - Now to be very clear on this, this would be a change in your methodology for determining Northern Maine's and P.E.I.'s allocation for load requirements for capacity-based ancillary services, correct?

MR. PORTER: That's a change from the practice that's been in effect -- that would represent a change from the practice that has been in effect since October 2003 when this tariff went into effect. And it would also be a change from what's in the current -- currently filed tariff.

Q.180 - And it would be a change in the methodology?

MR. PORTER: Yes.

Q.181 - It's not a change in numbers. It's a change in the methodology to determine their share of capacity-based ancillary services?

MR. PORTER: Yes, that is correct.

Q.182 - Thank you. And if this change was made, the determination of allocation for loads in New Brunswick would, however, continue to be done on an NCP basis, correct?

MR. PORTER: Yes.

Q.183 - Now if we could turn to your response to PUB Additional IR Number 2?

MR. PORTER: Yes, I have that.

Q.184 - Thank you.

MR. MORRISON: Sorry, Mr. MacDougall. Could you please repeat that reference? Is it IR-15?

MR. MACDOUGALL: No. It was PUB Additional Interrogatory IR-2.

MR. MORRISON: Thank you.

MR. MACDOUGALL: And under the second set of the PUB's interrogatories.

Q.185 - And, Mr. Porter, in that IR response in the middle you have a chart?

MR. PORTER: Yes, that's correct.

Q.186 - And my understanding is that this chart shows Northern Maine and P.E.I.'s

obligations for capacity-based ancillary services in 2004 or what those obligations would have been in 2004 using the current Board-approved NCP method or using the method that is set out in your earlier NMISA IR responses if that had been in effect in 2004 and it contrasts the two?

MR. PORTER: Yes, that is correct. The left column there, the current method, I went back to the actual spread sheets in which the obligations and billings were

determined and took -- calculated the average values for the 12 months in calendar 2004.

Q.187 - So you went back just to show an example you have used 2004, because you had 2004 data available?

MR. PORTER: That is correct.

Q.188 - And that this shows is that there would be an increase in capacity-based ancillary services on a megawatt basis for Prince Edward Island, if my lawyer's math is correct, of 2.1 megawatts if you were using the 12 CP method?

MR. PORTER: Yes, that is correct.

Q.189 - And a decrease in the Northern Maine requirement of 1.1 megawatts?

MR. PORTER: Yes, that is correct.

Q.190 - And although it's not shown here, there would also be a change in New Brunswick's share, because at the end of the day it has to sum to a hundred, correct?

MR. PORTER: Just go back to your previous statements. You had said this would -- this would have represented a difference of these values, the 2.1 and the 1.1?

Q.191 - Yes, that's correct.

MR. PORTER: Going forward, it really depends on what the relation is between the NCP data and the 12 CP data.

Q.192 - Sure. But even for 2004, this would have had a change to what New Brunswick would have done if you had of put

that next to it?

MR. PORTER: Would have. Yes, that's correct.

Q.193 - Yes. Okay. And you haven't shown that, because you were just showing the impact on the external loads in this chart here?

MR. PORTER: Sorry? Could you -- sorry?

Q.194 - There is no change proposed for New Brunswick. So you didn't show any of the impacts that may occur on the New Brunswick loads. You were just showing here what the impact would be and the cost shift for the two external loads in which -- if there was a change to 12 CP what those numbers would show?

MR. PORTER: Yes. Because then we will need to just elaborate on your comment or your question about the NB loads. I think it would -- because of the methodology that is used for the NB loads, because it is not a 12 CP allocation, we take the individual loads, NCP data, and apply that to the total load forecast figures that were used to calculate the tariff back in 2002-2003. So there wouldn't -- there wouldn't -- in the short term there would not be an impact on the obligation for New Brunswick load. It would be at the time that we went back and -- at some time -- point in the future had recalculated the methodology that applies to in-province loads.

Q.195 - Certainly. And if you --

MR. PORTER: Just to clarify that it might be a longer term effect, rather than immediate effect.

Q.196 - Understood. And you note in the paragraph below the chart that you only have one year's data. And I think your language is you only have a single sample on which you have measured what this really shows, which is essentially a cost shift or a megawatt shift, which would eventually turn into a cost shift, correct?

MR. PORTER: Yes, that's correct.

Q.197 - And these numbers again going forward could change, for example, just for a sample, if a significant load was to materialize in Northern Maine, for example, that could have an impact on what the cost shift may be depending on whether your load calculation was done a CP or an NCP basis?

MR. PORTER: Is there anything that came long, such as a load or a change in the nature of consumption of a particular load, could change that relationship between the NCP data and the 12 CP data, thereby changing what the results would under each of the two methods.

Q.198 - Great. Now if we could go to PUB Additional IR-3, which is just the next page?

MR. PORTER: Yes, I have it.

Q.199 - And in the second paragraph, the second sentence, I'm just going to read from there on. You say, Even under this alternative method, which I understand is the 12CP approach, if a wholesale or retail customer connected to the transmission system in Northern Maine or Prince Edward Island were to purchase ancillary services directly from NBSO, the methodology for determining the obligation and charges would be identical for that which is used for loads in New Brunswick. The word only which was the question posed by Board staff is intended to restrict the possible change to external System Operators that purchase capacity based ancillary services from NBSO on behalf of loads that are outside of New Brunswick, but not to implement this change for New Brunswick loads.

So if I can try and rephrase that and see if I have this correct, loads in New Brunswick and loads in Northern Maine and/or P.E.I. who purchase directly from the -- ancillary services directly from the NBSO would have those ancillary services determined based on an NCP allocator.

But the external System Operators that purchase ancillary services from you under the same tariff on behalf of loads in their service territory would be treated differently, is that correct?

MR. PORTER: That is correct. That proposal as we -- that

hypothetical methodology which we have discussed here, that would be the case.

Q.200 - I guess maybe I will just follow up on that, just so that we are all very clear. That is just a hypothetical methodology. It is not a proposal by the NBSO.

It was just a methodology put forward in response to an information request posed by the NMISA, correct?

MR. PORTER: Yes. That is correct. We received the Interrogatory and responded accordingly.

Q.201 - Thank you. And if this hypothetical proposal went into place you would also have to track this separately, wouldn't you?

You would have to determine the 12CP allocator at the beginning of the year. You would have to determine what the 12 coincident peak, average coincident peaks were. And you would have to determine that at the beginning of the year and then carry that through for your calculations for the external System Operators during the year.

And then you would have to track on an NCP basis the New Brunswick loads and/or the external loads who purchased directly from the NBSO, correct?

MR. PORTER: In terms of the data, the 12CP data, we capture that data and maintain that today. That would not be an additional requirement.

But it is true that doing the calculation and -- with that data and sending that out to the parties and administering it on a month by month basis, this distinct methodology would be -- that would be new work that we do not do today.

Q.202 - Thank you very much, Mr. Porter. And again, just to get clear how this came about, before you responded with the methodology in NMISA IR-3 and the sample tariff language in NMISA IR-4, was this issue notified to market participants of the OATT as a matter for determination in this proceeding?

MR. PORTER: I believe -- just -- I just want to go back a little bit further in history.

Certainly it was an issue that was raised by Mr. Belcher in the proceedings here back in our initial tariff application. And it had some discussion.

And I believe at that time I would characterize it -- the outcome was that we said we would, outside of the hearing process, try and accommodate Mr. Belcher's request but within the confines of the tariff.

And several points since that time, Mr. Belcher has indicated that he was not fully content with the methodology we did put in place. And also early on when we implemented that tariff, Maritime Electric had

expressed concerns about the fact that it had changed from the previous methodology which had used coincident peak data. So we were aware of those concerns.

But to your specific question, at the Market Advisory Committee, I don't recall it being raised. On the other hand those two parties were not directly represented on the Market Advisory Committee.

They have no sector representatives, but -- or certainly Maritime Electric would have a sector representative and many of the market participants in the Northern Maine market would have representatives for their sector on our Market Advisory Committee.

But no one on the Market Advisory Committee, to my recollection, raised that specific issue when we discussed these proposed changes -- the other proposed changes to the tariff.

So it did not become an issue. It did not get on the radar screen in terms of us proposing a change to the tariff on this go-around, you know, until we received this Interrogatory.

Q.203 - And just because you mentioned some of the parties there, I was looking back quickly over the Intervenor list. Maritime Electric isn't a party to this proceeding, correct?

MR. PORTER: No. No, they are not.

Q.204 - Are you aware if Maritime Electric has seen your response to PUB Additional IR-2 that would have shown for the 2004 hypothetical a shift of 2.1 megawatts more capacity based ancillary services to them under the 12CP basis?

MR. PORTER: I don't know whether they have or have not. Certainly -- no, I don't know.

Q.205 - And this morning, in the NBSO opening statement --

MR. PORTER: Could you hold? I just want to add a little bit of additional information, that both the Northern Maine ISA and Maritime Electric did participate in the technical conference in which we reviewed the proposed changes to the tariff that took place on December 13th 2004.

But I don't know of any opportunity that existed for -- nothing that would have definitely gotten that information out about the response to these Interrogatories to Maritime Electric, no.

Q.206 - And this item itself, that wasn't part of that technical conference, was it?

MR. PORTER: No, it was not. It was not on our agenda nor was it raised by any of the participants.

Q.207 - And this morning in NBSO's opening statement, where

what you are asking for the Board to approve, this is not an item that you are asking for the Board to approve.

This is a hypothetical response to an Information Request response from the Northern Maine ISA?

MR. MARSHALL: That is correct. This is not part of our application to the Board for changes to the tariff. It has arisen through the Information Request, the Interrogatory process as a means by which we could accommodate that interest and desire in Northern Maine.

And we put it forward as a potential proposal for consideration by the Board.

We are essentially ambivalent to it.

MR. PORTER: Ambivalent to it. I agree with Mr. Marshall. Other than in the spirit of cooperation with Mr. Belcher as our counterpart in Northern Maine, we certainly attempt to try and work out any issues that do arise that would cause any challenges to him in administering his marketplace.

Q.208 - And you understand though other parties have an interest in this issue and are concerned about potential costs shifting to other nondiscriminatory treatment that they may feel may occur through that process?

MR. PORTER: Yes. As we noted in our response, we certainly are aware that WPS has a concern. As far as others we

don't know one way or the other.

Q.209 - Now earlier today, Mr. Marshall, in response to a question from Mr. Hyslop -- and I can't remember the exact question -- but I think you had said that in general you want full nondiscriminatory treatment in your tariff, is that correct?

MR. PORTER: Yes. That is correct. And I will go beyond. I mean, does the principle of nondiscriminatory access -- and in my mind, one of the best ways to do that is to use consistent methodologies. And there are some cases where for some particular reason different parties need to be treated differently.

But in terms of administering a tariff it does make it very difficult to at the same time ensure that it is a nondiscriminatory implementation of the tariff, if you used different methodologies.

Q.210 - Thank you, Mr. Porter. That is very helpful. Those are my questions on that issue. I would like to now go to the ancillary services cap, since it seems to be a general theme of a few parties' questions today.

I just want to try and get a few things clear here, particularly arising out of my colleagues questions, both from Disco and the Public Intervenor earlier today.

Would it be fair to say that one of the SO's concerns

here in bringing forward this proposal and one of the reasons the Board had, as I understood it, approved that there be an RP for ancillary services, was a concern about the market power of Genco going forward, not allowing a competitive marketplace to develop in New Brunswick?

MR. MARSHALL: In the decision -- the Board's decision of March 13th, there is no specific reference to market power. It was more of provisions of services based on actual costs, and then it went on to say the Board will require Transco to conduct a request for proposal process in 2003, 2004, to solicit bids for the provision of the capacity based services required by Transco in 2004, '5. The Board will discuss the particulars of this process with Transco and other interested parties to ensure that services are obtained at the lowest possible cost.

It's in response to that order that we submitted the proposal, and when the market was delayed a year, the Board subsequently delayed the requirement. We received a letter I believe last summer some time -- a letter from the Board saying the market is going in in October, you are to submit a proposal for how this process would go forward by February 28th, which we did.

Q.211 - I guess, Mr. Marshall, maybe I should just reiterate my question. I know I did refer to the Board's order

there, but on the question of market power, that question I am posing just to you in the capacity of the NBSO. Does the NBSO have a concern here that you would like to try and create a market and in order to be able to do that you have a concern with the market power of Genco being a party who for example has bilateral contracts with Disco and could provide 100 percent self-supply?

MR. MARSHALL: I don't think it's so much a concern about Genco having market power over ancillary services. Genco's market power has already been limited by this Board by setting the prices for those services at costs that have been approved by the Board. So Genco cannot bid in this RFP at whatever price it wants. It doesn't have the market power to do that. It's going to be restricted to bid no higher than the regulated rates that the Board allows them to do so.

So the intent here is not to mitigate the market power of Genco, but the intent is to provide a level playing field opportunity for other parties who potentially can provide those services to be able to provide them through an open competitive process.

Q.212 - Okay. And I can accept that, Mr. Marshall. I think to me they are somewhat related, but let's just accept your scenario there. As you said, the Board has set a

price in the tariff for these ancillary based services, correct?

MR. MARSHALL: Yes.

Q.213 - So would it be your view that if one creates a market the outcome would only be that you could hopefully get lower prices for customers in the market because you are not going to have people bidding into the RFP at a higher price than the now approved tariff rate and expect anyone to buy their services from anyone but the -- but under the tariff, correct?

MR. MARSHALL: That's correct. Because we have -- in the heritage contracts we already have all of NB Power Generation's resources under contract to us at the tariff rates. So we will only buy resources from other parties at a lower cost.

Q.214 - And that's what you mean by trying to create a market --

MR. MARSHALL: Yes.

Q.215 - -- create a market where parties will be able to bid in at a lower cost that can then be passed on to load at a lower cost than what is currently the situation today?

MR. MARSHALL: That's correct.

MR. MACDOUGALL: Thank you, gentlemen. That's all my questions. Go ahead, Mr.

Porter.

MR. PORTER: It crossed my mind earlier when we talked about the goal to create a market for the ancillaries. I think one of the spin-offs of this is if we drive down the cost for ancillaries it does lower the barrier to someone who might consider leaving standard service, because they may be able to go out and buy energy at a lower cost than what their standard service rates are from NB Disco, but the ancillary costs -- the lower the ancillary services costs the lower the barrier for them to do so. So it's not just an issue of market -- driving the market for ancillary services. It's also allowing a market with respect to energy and generation capacity for the end use customer, for the load customers.

MR. MACDOUGALL: And I totally agree with that, Mr. Porter. That goes to my comment on market power. You don't use that term and maybe we needn't use that term in this market but I think it goes to the same point. And what you are trying to do by creating a cap on -- or not allowing 100 percent self-supply is to allow that market to get going and hopefully get people to start to bid into it for the purpose of trying to bring prices for ancillary services down from where they are if one party, be it Genco or anyone else, was able to supply 100 percent, correct?

MR. PORTER: Yes, making that a competitive environment.

MR. MACDOUGALL: Great. Thank you very much.

CHAIRMAN: Thank you, Mr. MacDougall. I was about to say when I realized I had forgotten your cross, is that we will give Mr. MacNutt 20 minutes because his responsibility is rather difficult. He is here to complete the record. So he has got to check and see what is left over. So we will take 20 minutes.

(Recess)

CHAIRMAN: Mr. Whelly, do you have anything that you would like to share with us??

MR. WHELLY: We are still copying unfortunately. The agreements are over 70 pages long. Perhaps we can address a procedure. We have an agreement that -- I have two agreements relating to services provided to Transco from Holdco. One is a memorandum of understanding and the other is an agreement.

There is in the agreement a number of schedules that include some unit pricing.

CHAIRMAN: Would you describe to me what you mean by unit pricing?

MR. WHELLY: For example, a particular service being provided might be provided at a cost of 20 cents a file or a service may be provided at a cost of so many dollars

per hour for a particular type of service that is being provided.

For example, computer aided design services at a certain price per hour. And there is a concern -- there is a possibility under these agreements that for example Transco could go outside to get competing bids. And they don't want the unit prices floating around in the public milieu and then if they get to the process where there is unit bidding, that these prices are already out.

CHAIRMAN: I understand where you are coming from and I will say nothing more than go to another of the Board's jurisdictions with EGNB and some of those similar concerns are there. But we have the Board's auditor who checks them and the Board's rule in the EGNB case is that in this case the services that are required pursuant to the agreement cannot be billed at any greater than one could find those same services in the open New Brunswick marketplace.

But we can deal with that and my suggestion on it is that Mr. MacNutt's cross -- I have asked him if he can find a break -- a logical break somewhere between 4:30 and quarter to 5:00, to take that and we can deal with that tomorrow. Because the questioning that Board counsel will have of these witnesses concerning budgets and

expenditures will take a fair length of time and I feel duty-bound to indicate why we are doing it. This is the first time that we have had an opportunity to review certainly the SO's budget but really also Transco's. They were all basically estimates before. And a good regulator always wants to establish a base from which you measure year over year on financial results and budgeting, to assist in the regulator's being able to pinpoint where costs or expenses are changing and take a closer look at them.

So that is our intention. Certainly this Panel's basic intention of going into some detail on those figures.

So Mr. Whelly, I appreciate what you have just said. We will deal with that in the morning, I think.

MR. WHELLY: I had hoped to have before the end of the day, copies of the agreements with unit prices redacted so that at least the agreements, the text of the agreements and the concept would be before all the parties and the Board.

And I could certainly undertake to file an unredacted copy with the Board.

CHAIRMAN: That certainly is the normal.

MR. WHELLY: Yes.

CHAIRMAN: It is filed in confidence with us and then if any

of the parties, including Board staff, say it is in the public interest that we take a look at unredacting some of this, then we go into our confidential hearing and the Board has to rule. So we will deal with that in the morning. Thank you.

MR. WHELLY: And I can see, as a matter of fact, if it is of assistance, I could file the unredacted portion on that basis today so that Mr. MacNutt would have it during the evening. And that may assist him for tomorrow.

CHAIRMAN: All right. I think that is a good idea.

MR. WHELLY: I should have those copies in a few minutes.

CHAIRMAN: I will check with you and if not you remind me before we break. Thank you. Go ahead Mr. MacNutt.

MR. WHELLY: Thank you, Mr. Chairman.

MR. MACNUTT: Thank you, Mr. Chairman. Just give me a second here to switch from one mode to another.

CROSS EXAMINATION BY MR. MACNUTT:

Q.216 - The first question will deal with exhibit A-2, Appendix A, table 3, table of contents, believe it or not. So --

CHAIRMAN: I got A-2. What was the rest of it? Take your time.

MR. MACNUTT: Appendix A, table 3, Table of Contents, perhaps really not necessary to get out, it's a numerical

thing. It's the Table of Contents. I'm sorry. You will find by reference to the Table of Contents there is 20 items listed there and in the application you are proposing 20 revisions to the OATT which are those which we just identified in the Table of Contents. Will any of these create seams between the New Brunswick market and the New England market?

MR. MARSHALL: No. To the contrary. They would eliminate some seams.

Q.217 - The intro on this one is a little long. Let me read it through. It may not be necessary to get the document out, Mr. Chairman. The reference is the pre-filed evidence, exhibit A-1, schedule B, item 07 at pages 20 and 21. In that item the SO requests the Board approve a proposal that the rates for schedule 1 be subject to an annual escalation of 50 percent of the change in the All Canada Consumer Price Index.

The reasoning for the request states, "It is proposed that the implementation of this item 07 include a mechanism to prevent substantial transmission provider profits. Retained earnings in excess of \$300,000 would be paid back to transmission customers through credits on their bills." You agree with that statement is there?

MR. MARSHALL: Yes. On page 21?

Q.218 - Yes. The sentence I quoted is on page 21. Now assume for the moment the Board approved the purpose of this concept, would a lower cap in the amount of -- a lower cap than 300,000 be acceptable?

MR. MARSHALL: The reason we picked \$300,000 is we judged that that would be the cost of a major hearing to redo the transmission tariff or rates. We were looking at the cost of additional assessment fees from the Board, the costs of running the full hearing, the cost of lawyers fees, the cost of consultants, all the costs associated with running a major hearing that may be required at some point in the future. And we wanted to have that money available to be able to pay for the hearing then if we need a rate increase or whatever, so that we would have it rather than fall behind and have to try to recover and be behind.

Q.219 - Now we will be coming to your budget items in due course, but aren't a great number of those items included in the budget now?

MR. MARSHALL: Not a major hearing.

CHAIRMAN: I will just interrupt. That sounds very much like the way we assess you, because we never know when you are going to come, and so we just keep rolling over, but we have a figure of 35,000, Mr. Marshall.

Q.220 - Would a lower sum than \$300,000 be acceptable and if

so, what lower number could you really live with, if pressed?

MR. MARSHALL: Are we bargaining here?

Q.221 - I'm trying to get the --

MR. MARSHALL: We have requested \$300,000. We think that's a reasonable number.

And just to give you a little bit of background, we are aware that in Ontario there is accumulated money from the IMO in Ontario to the range of 12 to \$15 million that they have accumulated and keep in an account. We think \$300,000 is reasonable.

Q.222 - Okay. Now in one of the sentences I read, and I will read it again, it is proposed that implementation of this item 07 include a mechanism to prevent substantial transmission provider profits. How exactly would this mechanism work?

MR. MARSHALL: Give me that reference again?

Q.223 - It is proposed that the implementation of this item 07 include a mechanism to prevent substantial transmission provider profits.

MR. MARSHALL: Yes. The mechanism is that we will only retain up to \$300,000 and we will give whatever other money back to all transmission customers. So we will not be making any profit. We will be accumulating monies up to \$300,000. That's a cap on what we would have available

to incur future costs for a hearing.

Q.224 - But what you are saying to the Board is please approve rates for us that will include that \$300,000 retained earnings which means that revenues will exceed costs?

MR. MARSHALL: No, not so at all. We are asking for the Board to approve our budget and our budget I believe has a line item in it of \$50,000 for hearing costs. So under our current budget it would take us six years to accumulate to the \$300,000.

Q.225 - Now you are seeking approval for a budget item of \$300,000 retained earnings that you may achieve in the first year?

MR. MARSHALL: No.

Q.226 - You are going to achieve the \$300,000 over how many years?

MR. MARSHALL: Based on the current budget if the costs and actual operation match the budget over the next -- it would take us six years to accumulate the \$300,000. And assuming there is no hearing in that period of time.

Q.227 - Yes, that it's not expended.

MR. MARSHALL: No, even a regular hearing, okay. There is no hearing in that period of time in order to accumulate \$300,000.

CHAIRMAN: I will just interrupt, Mr. Marshall. Does that

mean that if the Board were to accept your 50 percent of the CPI, that you figure it will be six years before you are back?

MR. MARSHALL: Based on -- no, I didn't say that. I will clarify. In order to accumulate -
- based on the budget to accumulate a \$300,000 retained earnings, it would take six years, and over that period we would not have a hearing.

CHAIRMAN: I must say that's one of the better questions I have ever put to you.

Q.228 - Now we go to another item. In response to PUB IR-17 which is in exhibit A-3, the SO provided a table at page 27 entitled New Brunswick System Operator statement of income six months ending March 31, 2005. And I will give you the reference again. PUB IR-17, exhibit A-3, at page 27.

CHAIRMAN: Sorry, Mr. MacNutt. Lost you on the last part of it. I'm in exhibit A-3.

MR. MACNUTT: Correct.

CHAIRMAN: Whose Interrog.

MR. MACNUTT: PUB IR-17.

CHAIRMAN: Thank you.

MR. MACNUTT: Table at page 27. And the table is entitled New Brunswick System Operator statement of income six months ending March 31, 2005. I am correct in my

reference, am I, Mr. Marshall?

MR. MARSHALL: Yes, I have it. Page 27, IR-17.

Q.229 - And that table I described appears there?

MR. MARSHALL: New Brunswick System Operator statement of income six months ending March 31st, 2005. Millions of dollars unaudited.

Q.230 - That table is there, is that correct?

MR. MARSHALL: Yes.

Q.231 - Thank you. On numbered line 3 of the table, miscellaneous revenue is given for 2004, '05, forecast, and 2004, '05 budget with variance and variance percentage, is that correct?

MR. MARSHALL: Yes.

Q.232 - At the bottom of page 27 where the table appears there is a variance explanation for line 3, is that not correct?

MR. MARSHALL: Yes.

Q.233 - Would you please explain the footnote by first describing what falls within miscellaneous revenue and then going on from there?

MR. MARSHALL: The -- that miscellaneous revenue mainly is the amount of energy and balance differences. When we had talked before about energy and balance, if they are leaning on the system the charge is \$150 but the actual generation cost of supplying it might be 50 or \$60. We

are collecting that difference. But the revenue is actually for the total cost of all of those services of that energy imbalance.

And I might note that it shows up as miscellaneous revenue but it's not revenue for the system operator in terms as a business of running against our costs. It's revenue we collect in the market for energy imbalance and we turn around and that money is to be given back out to the transmission users based on their transmission use. So it ends up going back out again.

MR. LAVIGNE: If you look under line 5 in the same table, the offset is under ancillary services, expenses.

Q.234 - This is a general question. It doesn't involve a reference to an existing exhibit.

Would you tell us -- reference has been made to the market advisory committee several times, particularly by you, Mr. Marshall. Would you tell us what the market advisory committee is, or was?

MR. MARSHALL: It's a committee that is -- we have been instructed in the legislation, in the Electricity Act, there is a committee to be deemed a market advisory committee to be set up under the Act. The rules and the details as to how it's structured and what it does are written in the Market Rules that were issued by the Minister of Energy. And I believe we have answered a few

interrogatories on it that -- I think the Municipal Utilities asked some interrogatories. It would be IR-4 -- Municipal Utilities IR-4, on page 4, and under the tab for Municipal Utilities it lists the members of the MAC. They represent various sectors of the market place and that table there lists the -- essentially the sector that they represent plus the individual names of the parties that are members of the committee.

Q.235 - Thank you. Yes. I mischaracterized it. It is a current committee. It's the market design committee that no longer operates, is that correct?

MR. MARSHALL: That is correct.

Q.236 - And I do wish to deal with the market advisory committee. What is the role of the MAC relative to the NBSO?

MR. PORTER: A couple of primary functions would be to review any proposed changes to either the transmission tariff or the Market Rules. We have an obligation to give the market advisory committee an explanation as to what those proposals would be and to receive their comments and their comments are to be available to the New Brunswick System Operator Board before they can make a decision as to whether or not we would proceed with either a Market Rule change or the submission of an application for a

tariff change.

MR. MARSHALL: As an example of that this application before this Board, the document appendix B, went through the whole review process. That went out and we actually had a resolution from the market advisory committee that this was acceptable in its general form and a recommendation to our Board of Directors, and they wanted to see that before they agreed for us to make this application to the Board.

So they are an advisory group to the Board of Directors of the System Operator on the basis of policy related issues to the marketplace.

Q.237 - Did in fact they review Appendix B and approve it?

MR. MARSHALL: No, not appendix B. They were given information on the nature of the rate changes and details. They did not go through the details of Appendix B.

Q.238 - Okay. Now was Appendix B presented to the MAC and reviewed and approved by them before being submitted to the SO? A, excuse me.

MR. MARSHALL: Could you repeat that please?

Q.239 - Was Appendix A presented to the MAC and reviewed by it before you as the SO submitted it as a part of this application?

MR. MARSHALL: It was reviewed as part of the stakeholder review process, the technical conference on December 13th.

On that particular day the version of that document at that point in time had been circulated and was discussed. It was discussed in detail in the morning prior to the open meeting by the MAC. And then following comments of parties through the open meeting, the Mac reconvened late on that day, reviewed it and passed a resolution to recommend it to the System Operator Board.

MR. PORTER: I would just like to add to that, in addition to that formal review towards the end prior to the finalization of the application, and Mr. Marshall mentioned this earlier. Way back as early as last summer, in the early market advisory committee meetings, I had open discussions with that committee in terms of what should be in any application to this Board for tariff revisions.

So there was some issues that were brought up by committee members. Others we discussed what was priority, what should go into the application and we had roughly monthly meetings from that point on, September, October, November. And at each of those meetings, I provided update on what if any new items were proposed for inclusion in this application.

So that committee was involved at all the stages along the way in developing what led up to the Appendices A and B

MR. MACNUTT: Mr. Chairman, I am at the point now, it is 4:35, where I am going to go into exhibit IR-15, which is the budget items at page 23 in the response to PUB IR-15. Do you wish me to stop now or to go for a while longer?

CHAIRMAN: I suggest this is a good time to break. And we will reconvene tomorrow morning at 10:00 a.m. Thank you.

(Adjourned)

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

Reporter