

NEW BRUNSWICK ENERGY & UTILITIES BOARD

IN THE MATTER OF an Application dated May 1, 2008 by New  
Brunswick System Operator (NBSO) for the approval of changes  
to the Open Access Transmission Tariff

held at the Delta Hotel, Saint John, New Brunswick on October  
29th 2008.

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

10 Cyril Johnston - Vice-Chairman

11 Yvon Normandeau - Member

12 Donald Barnett - Member

13 Roger McKenzie - Member

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

15 - Staff - Doug Goss

16 - John Lawton

17 Secretary of the Board: Ms. Lorraine Légère

18 .....

19 CHAIRMAN: Good morning, everyone. I will take the

20 appearances at this time starting with Mr. Kenny.

21 MR. KENNY: Yes. Robert Kenny, Mr. Chairman, with Kevin

22 Roherty.

23 CHAIRMAN: Thank you, Mr. Kenny. Integrys Energy Services

24 Inc.?

25 MR. MACDOUGALL: Yes. Good morning, Mr. Chair, Board

26 members. David MacDougall for Integrys. And Mr. Howard

27 apologizes as he can't be with us today.

28 CHAIRMAN: Thank you, Mr. MacDougall. NB Power Distribution

29 and Customer Service Corporation?

30 MR. MORRISON: Good morning, Mr. Chairman, members of the

31 Board. Terrence Morrison, John Furey, Nicole Poirier and

32 Stephen Russell on behalf of NB GENCO and DISCO.

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CHAIRMAN: Thank you, Mr. Morrison. Northern Maine Independent System Administrator?

MR. BELCHER: Good morning, Mr. Chairman, members of the Board. Ken Belcher, Northern Maine ISA.

CHAIRMAN: Thank you, Mr. Belcher. Public Intervenor?

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

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

MS. DESMOND: Ellen Desmond, Mr. Chair. And from Board Staff, Douglas Goss and John Lawton.

CHAIRMAN: Thank you, Ms. Desmond. I guess this morning we are on to final argument. So Mr. Kenny, I guess you get to proceed first.

MR. KENNY: Thank you, Mr. Chairman, Members of the Board. We have had two full days of testimony here in relation to this application. And I think we can all agree that all aspects of the NBSO's application have been fully canvassed in great detail.

Now in my opening remarks, I listed the items the NBSO seeks approval of from this Board. The simplest way to deliver my summation, therefore, would be to speak to each of those same items.

1  
2 The first matter I want to deal with is the Settlement  
3 Agreement. As I noted earlier, there have been a series  
4 of technical sessions, meetings and negotiation sessions  
5 which in the end resulted in the filing of the Settlement  
6 Agreement by Mr. MacDougall on June 19, 2008. This  
7 agreement was filed on behalf of Integrys Energy Services,  
8 Inc. and Northern Maine Independent System Administrator,  
9 two organizations heavily involved in the NB Electricity  
10 market, and both of which are represented here today. In  
11 filing the Settlement Agreement, Mr. MacDougall indicated  
12 the full support of Integrys and NMISA for the settlement  
13 as filed.

14 Additionally, Mr. Morrison, on behalf of the NB Power  
15 Group of Companies submitted a letter dated June 19, 2008  
16 to the Board, indicating full support for the Settlement  
17 Agreement as filed. And then on June 20, 2008, the NBSO  
18 itself submitted a letter of support for the settlement as  
19 filed. And so we see, Mr. Chairman and Members of the  
20 Board, that of the parties that chose to attend this  
21 hearing and participate in it, all but the Public  
22 Intervenor are on record as fully supporting the  
23 Settlement Agreement as filed. Now while the Public  
24 Intervenor has not indicated support for the Settlement  
25 Agreement, neither has he filed any evidence in opposition

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to it. The Public Intervenor has been fully involved in the process under 2008-003 which led to the agreement and has certainly asked a number of questions about it, but he has not filed any evidence in opposition to it. The other important point to make as well is that the parties that support the agreement, that is Integry's, NMISA, NB Power DISCO, and NB Power GENCO are market participants, and they participated in the design, the actual design of the methodology. They are parties, Mr. Chairman, that are directly affected by the Settlement Agreement and they support it. As was stated under cross-examination of the NBSO witness panel, all market participants had ample opportunity to raise questions or oppose the Settlement Agreement. They were either part of the distribution list for 2008-03, could have participated in these proceedings, or have representation on the Market Advisory Committee. Safe to say that the entities directly affected by the Settlement Agreement have either actively participated and supported it, or had the opportunity to oppose it and have chosen not to.

Another important point, Mr. Chairman, is that this Settlement Agreement arose out of a direction from the Board itself to the NBSO in its decision of January 29, 2008 to attempt to achieve a consensus to deal with the

1  
2 surplus issue not just in the current year, but on an ongoing  
3 basis.

4 Let me read an excerpt from that decision. And this is at  
5 the bottom of the decision. And I quote "The Board is not  
6 at this time approving a methodology for use in rebating  
7 any future operating surplus that the NBSO may have." And  
8 this is the key. "It is the Board's understanding that  
9 such surpluses may well arise and the Board therefore  
10 encourages the parties to discuss this issue with the hope  
11 of developing a method that can be submitted to the Board  
12 for its review."

13 The NBSO has done this in cooperation with market  
14 participants. Agreement has been achieved as the Board  
15 requested in that decision, and in the clear absence of  
16 any filed evidence in opposition to it, it is the  
17 submission of the NBSO that the Settlement Agreement  
18 should be approved as filed.

19 The result of the Board's approval would be (a) Approval  
20 of the disposition of surplus funds for fiscal 2007/08;  
21 (b) Approval of a methodology to deal with the surplus for  
22 2008/09, a transition year; and (c) Approval of a  
23 methodology which will effectively eliminate the CBAS  
24 surplus issue which, combined with a revenue shortfall in  
25 Schedule 1, led to a cross-subsidization among and between

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various ancillary services.

Now some components of the Settlement Agreement and the so-called Strawman Model on which it is based relate directly to the NBSO application of May 1, 2008 (2008-07).

These have been well discussed and explored over these two days and throughout the Interrogatory process. So in conjunction with the Settlement Agreement, the NBSO sought approval of the following changes to the Open Access Transmission Tariff.

(1) Approval of revised charges for Schedule 1 effective April 1, 2009; moving away from fixed rates to an annual approval of a Schedule 1 Revenue Requirement consistent with the Settlement Agreement;

(2) Approval of revised charges for Schedule 2 effective April 1, 2009; moving away from fixed rates to an annual approval of a Schedule 2 Revenue Requirement;

(3) Approval of revised charges for Capacity Based Ancillary Services (Schedules 3, 5 and 6) effective December 1, 2008; moving away from fixed rates to a methodology whereby customers' monthly charges are based on the actual monthly expenditures for these services consistent with the Settlement Agreement; and number

(4) Approval of rates for Regulation and Frequency Response Services to be charged to Wind Generators



1  
2 effective April 1, 2009 (Schedule 3 (c)).

3 Now with respect to ancillary charges for Schedules 1, 2,  
4 3, 5 & 6, the NBSO notes once again that there has been no  
5 evidence filed by any intervenor, no evidence filed by any  
6 intervenor, including the Public Intervenor, in opposition  
7 to these changes. Indeed, the market participants noted  
8 earlier have indicated their support for this new  
9 methodology through their support for the Settlement  
10 Agreement. Questions have been asked as to how the  
11 methodology will work, and the witness panel has answered  
12 them all. In particular, there were a number of questions  
13 about the process for approval of the Schedule 1 Revenue  
14 Requirement. I want to reiterate the evidence of the  
15 panel on this point -- the NBSO is committed to working  
16 with Board staff and interested parties to develop filing  
17 requirements for this process. The NBSO believes that  
18 over a very short time, the process will become  
19 streamlined and very efficient. Board Counsel distributed  
20 a document outlining an alternative process related to  
21 handling Schedule 1 surpluses or deficits. The NBSO is  
22 appreciative of this, however, submits that the process  
23 agreed upon by all parties to the Settlement Agreement  
24 should be maintained. There may well be opportunity,  
25 however, during the annual review of the Schedule 1

1  
2 Revenue Requirement, to revisit this matter and explore  
3 potentially more efficient methods of dealing with  
4 surpluses or deficits.

5 Mr. Chairman, Members of the Board, before turning to the  
6 proposed new rate for wind generators and the two policy  
7 changes, I want to stay with Schedule 1 and deal with a  
8 vital point of our application. As I've said, the  
9 Settlement Agreement proposes a methodology for  
10 determining and recovering Schedule 1 rates starting on  
11 April 1, 2009. That's fine for the future, but we must  
12 deal with the current year as well. Again as noted in my  
13 opening statement, our application of May 1 called for an  
14 increase in the Schedule 1 rate in order to meet the  
15 projected shortfall of revenue for 2008/09. This matter  
16 was so important in terms of timing that the NBSO sought  
17 and received interim rate relief effective July 1, 2008.  
18 Now throughout these two days and throughout the  
19 interrogatory process, the NBSO has answered chapter and  
20 verse with respect to its costs to be recovered under  
21 Schedule 1, especially in respect of staffing and  
22 salaries. We have explained increases in the cost of  
23 wages and salaries over these four years in great detail.

24 The evidence of the witness panel was clear in explaining  
25 why additional staff has been hired. It is clearly

1  
2 additional work load as the NBSO has grown in its duties and  
3 responsibilities under the Electricity Act.

4 The reality is that an organization that had to hit the  
5 ground running on October 1, 2004 in an industry that has  
6 grown in leaps and bounds over our short history has  
7 increased its regular complement from 43 to 47 -- only  
8 four people in four years. There has not been one shred  
9 of evidence presented that the work being done by new  
10 staff is not necessary and important or, that it could  
11 have been done at a lower cost.

12 Other questions have been asked and answered about  
13 consulting services and travel, but once again, all  
14 questions have been answered satisfactorily. It seems  
15 abundantly clear, therefore, that the interim rate  
16 increase in Schedule 1 granted on July 1, 2008 was  
17 justified and should be confirmed for the balance of the  
18 year.

19 If the Board needed any further proof that the rate  
20 increase is necessary, we have the evidence of

21 Mr. Marshall that the NBSO is faced with an unplanned  
22 expenditure of some \$200,000 related to pension  
23 assessments with respect to seconded employees. It is the  
24 submission of the NBSO therefore, that it has demonstrated  
25 throughout its filed evidence and the evidence of the

1  
2 witness panel that its costs for 2008/09 are reasonable and  
3 justified. No contrary evidence on this matter was  
4 submitted. On this basis, therefore, the NBSO submits  
5 that the interim rate increase granted by this Board  
6 should be confirmed.

7 Still with Schedule 1, Mr. Chairman and Members of the  
8 Board, there were a great number of questions about the  
9 \$300,000 contingency proposed for inclusion in the annual  
10 Revenue Requirement under Schedule 1 starting in 2009/10.

11 I want to emphasize, Mr. Chairman, that these funds are  
12 intended to deal with unforeseen circumstances, including  
13 budgeting error. We can give lots of examples of these  
14 types of unexpected expenditures but you can't spell out  
15 every situation. Now the point made by the witness panel,  
16 however, is extremely important. That point is that the  
17 \$300,000 is only 3 percent of the Revenue Requirement.  
18 This is 3 percent of flexibility to deal with matters and  
19 costs not contemplated at budget time. By any standard 3  
20 percent of budget seems entirely reasonable and some might  
21 argue that 3 percent might not even be enough.

22 Mr. Chairman and Members of the Board, the NBSO has also  
23 asked the Board to approve rates from Regulation and  
24 Frequency Response services to be charged to Wind  
25 Generators as of April 1, 2009. This would become

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Schedule 3 (c).

Here again, the interrogatory process and the cross-examination of the witness panel fully canvassed this proposal. As noted by Mr. Porter, the parties directly affected by this proposal, wind developers, are represented on the Market Advisory Committee and have been fully apprised of this proposal. No wind developer chose to intervene in this process in order to oppose or even question this proposal.

Further, as Mr. Porter noted, fixing these rates provides a measure of certainty to potential wind developers, while at the same time ensuring that costs directly attributable to the addition of wind generators to the system are borne by wind developers and not other market participants. It is the submission of the NBSO therefore, that the evidence supports the establishing of Schedule 3 (c) in the tariff as proposed and that this Board should approve its inclusion to the tariff.

I would like to turn now to the two policy issues noted in the NBSO's application. The first of these is the proposal to eliminate the retained surplus account. As we are all aware, the Board's predecessor in an earlier decision allowed the NBSO to retain an accumulated surplus of up to \$300,000. As the witness panel have explained,

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with approval of the proposed methodologies for properly matching expenses and revenues for Schedules 1, 2, 3, 5 & 6, there is no need for such a fund. Consistent with the terms of the Settlement Agreement, this surplus account will be eliminated. Once again, no party has indicated any opposition to this change and that is not surprising as its elimination falls naturally from the implementation of the Settlement Agreement.

The last specific item to deal with then, Mr. Chairman, is the replacement of the fixed cap on CBAS self-supply with an allowable range of 85 percent to 100 percent. This was the subject of an earlier hearing before this Board's predecessor, the result of which was the establishment of a 90 percent cap.

As stated by the witnesses, NBSO seeks the flexibility to be able to respond more rapidly to changing needs for a competitive market for these services than is currently the case. And again, Mr. Chairman, no evidence to oppose this change has been submitted by any party and they have had ample opportunity to do so. This item is explained in the Strawman and has been approved by the Market Advisory Committee and the supporters of the Settlement Agreement. And so, Mr. Chairman, Members of the Board, that is the case for the NBSO. I have outlined each of the items

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for which we seek approval and I will not list them once again. The last thought I would like to leave with the Board is this. I suspect it is highly unusual for this Board or any other Board to have before it a case where the applicant and every intervenor directly affected by the application, ie the market participants are in full agreement that the changes proposed are appropriate and should be approved by the Board. The NBSO and the market participants are the parties that deal with these issues every day. They came to an agreement, as encouraged by the Board decision, whereby costs and revenues for the various ancillary services will be properly matched, thereby eliminating any cross-subsidization.

No better evidence that the changes requested by the NBSO should be approved could be submitted. The Applicant has met its onus as set out under Section 125 (2) of the Electricity Act.

Thank you, Mr. Chair. And I would like to reserve the right for rebuttal if there are any new items by the other parties.

CHAIRMAN: Thank you, Mr. Kenny. I will just see if there are any questions from the panel. Mr. Normandeau?

Mr. McKenzie? Mr. Barnett? Mr. Johnston?

VICE-CHAIRMAN: Yes. Mr. Kenny, I would just like to talk a

1  
2 bit about the authority -- I'm just getting used to these  
3 glasses; if I could only read with them.

4 I would just like to talk for a minute about the authority  
5 of the Board with respect to approving tariffs for the SO.  
6 And the section which seems to be most important is  
7 Section 111 of the Electricity Act. And if you have that  
8 just before you perhaps we could talk a bit about it.

9 I think in general there has been an underlying discussion  
10 about what a tariff is and whether the mechanism that is  
11 being proposed falls within a tariff. We have Section 111  
12 (5) which gives the Board really I think two options in  
13 how to proceed when the SO applies for approval of a  
14 tariff for ancillary services.

15 And the options, and I will read them, are it can allow in  
16 its order or decision for mechanisms to recover the  
17 reasonable costs incurred by the SO in the acquisition and  
18 provision of ancillary services; that is number (2); or  
19 base its order or decisions respecting the tariff on all  
20 of the projected revenues from the sale of ancillary  
21 services and all of the projected costs to be incurred by  
22 the SO in the acquisition or provision of ancillary  
23 services.

24 Now it seems to me that the proposal that is being put



1  
2 forward here is relying on the Board's ability to proceed  
3 under the first of those two options.

4 Would you agree with that? Take your time. This is  
5 important I think.

6 MR. KENNY: I -- first of all, I want to point out just an  
7 overall principle in interpreting the Electricity Act.  
8 First of all the Electricity Act is an enabling statute.  
9 Interpretation would be broad.

10 And when you deal with, as you have read, 111 (5) order or  
11 decision for mechanisms to recover the reasonable costs,  
12 we are clearly within that mechanism in the approach, Mr.  
13 Vice-Chair.

14 And the jurisdictional issue wasn't raised at the interim  
15 matter. But it is clearly within 111 (5), or decision for  
16 mechanisms to recover the reasonable cost. And that is  
17 where the Board gets its jurisdiction, no question about  
18 that.

19 VICE-CHAIRMAN: The issue I want to focus in on is the use  
20 of the word "reasonable" in the statute. One concern that  
21 someone might have with the approach that is being  
22 proposed here is that there is, I don't think included in  
23 the proposal, any oversight in the acquisition of the  
24 ancillary services by the System Operator. And the  
25 statute seems to direct the Board in this section to

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perhaps have a role to ensure that those costs are reasonable.

And I guess what I'm wondering is if this approach is taken, if the Board accepts the approach that is being proposed here with respect to the billing for ancillary services, does the Board have an obligation to ensure that there is some oversight in the reasonableness of the acquisition of those services?

MR. ROHERTY: Mr. Vice-Chair, the current system whereby

NBSO procures ancillary services are based on rates that were approved by the previous Board. And so there has been some look at those rates already.

Additionally there is a pretty broad, under Section 128, ability for the Board to inquire into any matter over which it has jurisdiction.

So if there were concerns about the rates under which the NBSO is procuring ancillary services, we are certainly happy to have those examined.

VICE-CHAIRMAN: Thank you, Mr. Roherty. My second question -- and this is an area that I would have explored yesterday evening had the time not been so late. So feel free to consult with the people on the side.

With respect to the changes to the cap of self-supply, as I understand it the proposal is that at least some

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2 people would be able to self-supply all of their ancillary  
3 services.

4 And my question is whether that will to a large extent  
5 take the SO out of the business of supplying ancillary  
6 services and whether -- and I don't know whether this is a  
7 concern or not, if the large majority of the ancillary  
8 services are self-supplied and the SO is left only  
9 supplying a small amount, whether that is going to pose  
10 any difficulties going forward, either in having the  
11 contracts in place or the staff knowledgeable in that  
12 acquisition?

13 MR. ROHERTY: I'm advised that that does not cause any  
14 difficulty.

15 VICE-CHAIRMAN: So because there would continue to be a  
16 substantial role in the acquisition of ancillary services  
17 or because -- even if you were only getting a small  
18 amount, it wouldn't be a problem?

19 MR. ROHERTY: With the Board's permission I believe I will  
20 let Mr. Marshall answer that question.

21 VICE-CHAIRMAN: That is fine with me if the Chairman doesn't  
22 object.

23 CHAIRMAN: No. That is fine.

24 VICE-CHAIRMAN: Remember this is just a submission, Mr.  
25 Marshall. You are not under oath anymore. But I would

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still like you to give me the right answer.

MR. MARSHALL: The primary party that procures the ancillary services, the largest quantity, is NB DISCO. They have contracts and the ability to self-supply. NBSO has contracts to be able to supply all of the services required of parties in the market today.

So what would happen is that it would reduce the amount that NBSO would procure under a contract. But the need to procure services under a contract would not go away.

There are still services that are required to be supplied to Northern Maine, to Maritime Electric and to Summerside and others. So that there still would be the participation in the market for the supply of those services.

But having DISCO self-supply would not cause any issue and would not take away resources available to NBSO for others. As a matter of fact that was the mechanism and that actually operated that way for the first year or so of the market. So we don't see an issue with it.

VICE-CHAIRMAN: Thank you very much, Mr. Marshall. I'm just going to state my concern in another way. And hopefully your answer will be the same.

My concern was if the SO ceases to be a major player

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in the acquisition of ancillary services, because its major customer is now self-supplying, going forward for new entrants into the marketplace, for example is the SO still going to have in place that ability to provide ancillary services?

And your answer I gather is that that is not a problem?

MR. MARSHALL: I don't see it as a problem. Even today the self-supply in some hours today is not sufficient. And we have to go out and buy more than what they scheduled. So there still is a role for us to, you know, hour by hour to say here is the requirement and to go out and purchase it.

VICE-CHAIRMAN: Thank you.

CHAIRMAN: Mr. Kenny, I only have a question in one area.

And that is in relation to the alternative method that was put to you by Ms. Desmond yesterday.

In your submission you indicate that although you appreciate that alternative process being put forward, it is not the one that is preferred. And I think you referred to perhaps the fact that parties had -- it was part of an agreement it was the other process.

But what I don't think you addressed is the question of whether or not the alternative process, is that a workable process?

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And again I will let you call a friend or poll the audience as Mr. Johnston did.

MR. THERIAULT: Mr. Chairman --

CHAIRMAN: Yes.

MR. THERIAULT: -- I guess on a point of order, or I would object. I'm loathe to obviously interrupt the Vice Chairman or the Chairman in their questioning.

But the questioning is taking the form of more of evidence when it comes from Mr. Marshall than of a submission. And the applicant was very clear yesterday that they closed their case.

CHAIRMAN: No. I appreciate that. And I think as Mr.

Johnston said in commenting to Mr. Marshall, he should remember if he is going to make any comments it is in relation to argument. It is not sworn evidence at this point in time.

And really what I meant was that the party certainly could -- he could confer with his client before he answers the question, is really where I was going.

MR. THERIAULT: Okay. Sorry.

MR. ROHERTY: Mr. Chairman, we think there are possibilities for alternative solutions. And certainly the issue around rebating the surplus I think was explained yesterday, that it would be rebated back to the people, to the parties who

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contributed to the surplus.

The issue on the deficit is one that is not quite as clear. And I think the real issue around that is that all the parties to the settlement agreement have agreed on a certain process.

And there really hasn't been any opportunity to really canvass the folks to that agreement to see what impact that might have on the settlement at this time.

CHAIRMAN: I appreciate your comments. But I guess the intent of my question quite frankly was to understand the comments. Mr. Kenny did make comments that it was based on a settlement agreement with the parties.

But is there anything about the alternative proposal? I guess I'm saying that you can see that just plain simply isn't workable other than the fact that the participants may not favor it.

MR. ROHERTY: Well, we think it has possibilities. But we really haven't had the opportunity to fully examine it in detail to see that it would cover every situation that might come up in discussion.

It may well work. But we simply haven't had the time to fully examine it.

CHAIRMAN: Okay. Thank you. Mr. MacDougall?

MR. MACDOUGALL: Thank you, Mr. Chair.

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2 Integrys Energy Service Inc. has been a participant in the  
3 New Brunswick and the Northern Maine electricity  
4 marketplace for many years, and it has been actively  
5 engaged in various processes before this Board since the  
6 development of the Open Access Transmission Tariff,  
7 through the restructuring of NB Power and through the  
8 creation of the New Brunswick System Operator.

9 Integrys would like to comment today briefly on two items,  
10 the proposed Settlement Agreement and NBSO's 2008/2009  
11 revenue requirement.

12 Starting with the Settlement Agreement. On January 19,  
13 2008, Integrys wrote to the Board in accordance with the  
14 Board's schedule to provide its comments on the proposed  
15 allocation of the NBSO operating surplus for 2007 and '08.

16 This accordance had attached to it a Settlement Agreement  
17 which was subsequently filed in this proceeding.

18 The issue of NBSO surpluses has been a contentious issue  
19 over the past number of years and it derives out of  
20 various technical workings of the electricity marketplace.

21 Due to the technical nature of these issues, the Board  
22 provided for a process, including a technical conference  
23 on May 22nd, 2008. Based on discussions at that technical  
24 conference and subsequent discussions as a direct follow-  
25 up to that technical conference, the NBSO, Integrys and



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the NB Power group of companies were able to reach a consensus with respect to three items, the 2007/2008 surplus, the continuing accruing surplus and the institution of the Strawman Model proposed by the NBSO.

The Settlement Agreement that was reached has the support of the NBSO, the support of the Market Advisory Committee and the support of those parties primarily affected by the capacity based ancillary services surplus allocation. And as Mr. Kenny has noted repeatedly, no evidence has been filed in this proceeding contrary to the Settlement Agreement. Rather, the totality of the evidence in this proceeding is that the Settlement Agreement is widely supported by market participants and is appropriate.

The Settlement Agreement provides a mechanism to not only deal with the existing surplus, but to ensure that on a go forward basis surpluses do not continue to accrue, and that the cross-subsidization that was occurring between rate schedules is eliminated. As the NBSO Panel noted in cross-examination, the new formula based approach and the monthly settlement approach addresses the risks that the NBSO's initial proposals were intended to mitigate and negates the need for any of these other risk mitigation options.

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2 Integrys commends the NBSO and the other market  
3 participants impacted by these matters for the efforts  
4 that they took to reach a negotiated resolution, and it  
5 commends that resolution to the Board for its approval.  
6 With respect to the go forward approach of utilizing  
7 actual costs and actual usage, as Mr. Porter noted in  
8 respect to Mr. Belcher, this is a much simpler approach  
9 than what is currently carried out. There will be no  
10 unknowns in that both the actual costs and the customer  
11 obligations will be known and the charges billed to a  
12 customer will be calculated in one iteration. This from  
13 Integrys' perspective is a significant step forward in the  
14 marketplace.

15 With respect to the Schedule 1 Revenue Requirement, the  
16 approach proposed as part of the Settlement Agreement is  
17 not only consistent with the definition of a tariff as  
18 defined in the Electricity Act to include rules for  
19 calculation of tolls, but it also provides for annual  
20 Board oversight of the Schedule 1 Revenue Requirement.

21 With respect to Board member Barnett's query regarding the  
22 Board's right to revisit the formula methodology proposed,  
23 Integrys submits that if the Board has any concern over  
24 its authority in this regard it could order as part of its  
25 decision in this proceeding that approval

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2 of the approach is made subject to the Board's entitlement  
3 from time to time to request a review of the continued  
4 applicability of the methodology.

5 The NBSO has confirmed that the process for oversight by  
6 the Board and Intervenors is to be determined by the  
7 Board, and this oversight will continue on an annual  
8 basis.

9 The NBSO also confirm that with respect to the CBAS  
10 schedules 3, 5 and 6 historical information will be  
11 available on the NBSO website and information on  
12 indicative forecast usage and costs will also be  
13 accessible by market participants.

14 This approach has been put forward to ensure that  
15 significant expense and revenue mismatch issues that have  
16 arisen in the past do not continue to arise in the future,  
17 and that full regulatory oversight, including rights of  
18 Intervenor participation, are maintained. Mr. Marshall  
19 could not have said it better when he responded to Mr.  
20 Theriault that what is being proposed here is a system  
21 that will, I quote, "better allow the NBSO to carry out  
22 its functions and objects". As Mr. Marshall noted, the  
23 purchase of services from the NBSO are sophisticated  
24 participants in the electricity marketplace. These  
25 parties are able to look at historic and forecast

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information and determine their potential obligations on a monthly basis, depending on their known proposed usage. With respect to the issue of the \$100,000 contribution to the Settlement Agreement from its retained surplus, the NBSO confirmed under cross-examination that this allowed them to obtain a firm commitment from market participants to support for the go forward Strawman principles as modified by the Settlement Agreement, and that this payment was an advance upon the distribution of the surplus which would occur by fiscal year end in any event. As is abundantly clear from the NBSO's response to EUB IR-10 in exhibit A-4, the CBAS surplus to be rebated has already been reduced by several hundreds of thousands of dollars on account of cross-subsidization in 2007 and 2008 of the Schedule 1 and Schedule 2 deficits. As the Board may be aware, there would have been significant, and was significant, negotiation around these payment figures, considering this cross-examination issue -- cross-subsidization issue. And the advancement of the \$100,000 was a necessary component to all parties signing off on the Settlement Agreement. This is money that the purchasers of CBAS services are clearly entitled to have rebated, and it is an appropriate utilization of the NBSO's retained surplus which is

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2 currently to be utilized for unforeseen events. As the NBSO  
3 noted in response to EUB IR-11, the most significant  
4 unanticipated surplus was the higher than budgeted surplus  
5 for CBAS.

6 Further, on a go forward basis, CBAS costs and revenues  
7 will exactly match, and as Mr. Marshall noted in response  
8 to Board counsel, there will thus be no need for a  
9 retained surplus, and the Schedule 1 Revenue Requirement  
10 will include its own contingency of \$300,000 each year.

11 As such, the NBSO will be in a much more stable financial  
12 position and will not have to be constantly concerned  
13 about a mismatch in revenues and expenses on account of  
14 the various services it provides.

15 Mr. Chair, Commissioners, there were many issues of  
16 disagreement between parties with respect to how the  
17 2007/2008 surplus should be distributed. There were many  
18 issues of how the Strawman Model should be applied on a go  
19 forward basis. There were issues about whether the risk  
20 mitigation proposals initially put forward by the NBSO  
21 should be implemented. And there were issues with a host  
22 of related items. The NBSO and market participants worked  
23 vigorously to reach an agreed resolution to the numerous  
24 technical issues which have culminated in the past couple  
25 of days of hearing.

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2 Rarely, I agree with Mr. Kenny in this case, in such a  
3 situation is a common position among the affected parties  
4 able to be brought forward by way of Settlement Agreement  
5 on all of the outstanding issues. In light of this, and  
6 in light of the fact that no evidence whatsoever has been  
7 led by any party that the Settlement Agreement is  
8 inappropriate, Integrys submits that the Settlement  
9 Agreement warrants approval by the Board.

10 Yesterday Board counsel put to the NBSO witnesses a  
11 potential alternative approach to the collection of  
12 surpluses or deficits on account of Schedule 1. This was  
13 marked document 6 for identification. Integrys notes that  
14 the intent of the Settlement Agreement was to ensure that  
15 surpluses which accrued were rebated back to the customers  
16 who paid the surpluses on account of the usage in that  
17 year.

18 The approach put forward by Board counsel provides for an  
19 estimate of the surplus which would then apparently from  
20 our reading of the document be a reduction to the charges  
21 for transmission customers in the subsequent year, and to  
22 answer the Board Chair's comment earlier from the  
23 perspective of Integrys, this would simply not have the  
24 intended effect, as there would be a mismatch with respect  
25 to the rebate of the surplus if it was credited towards

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2 the next year's usage. So from Integrys' perspective, it does  
3 not achieve the intended effect which of course is to  
4 rebate monies paid by parties to the parties who paid  
5 those monies on account of the usage in a respective year.

6 That is why the Settlement Agreement is structured as it  
7 is.

8 Furthermore, such an approach again on our read of the  
9 document adds a series of unnecessary steps which would be  
10 significantly more complex than what was sought to be  
11 achieved through the Settlement Agreement, i.e., a simple  
12 tracking of actual costs and revenues with a one step  
13 return of the surplus to those parties from whom it was  
14 generated. Simplicity was a significant goal of the  
15 negotiations in the Settlement Agreement. The technical  
16 issues we faced over the past number of years have led to  
17 serious issues of interpretation and methodology, and  
18 Integrys' position is that the simple approaches that are  
19 clear and understandable to the parties and put forward in  
20 the Settlement Agreement are appropriate and a significant  
21 step forward.

22 I would like just to, since I have the mic', briefly  
23 respond to Vice-Chair Johnston's comment about the  
24 reasonableness of the acquisition of the CBAS services,  
25 and I can say, Mr. Vice-Chair, that if Integrys is of the

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view that the services are not being reasonably procured you will likely see us back here under section 128 in order to keep the NBSO honest, but to date it has not been the acquisition cost of the CBAS services, it has been how the mechanisms for acquiring them that has been the problem, but certainly parties will be continuing to monitor these costs throughout.

I would like now to just briefly discuss the revenue requirement. Integrys has a couple of comments on revenue requirement.

Mr. Marshall confirmed that the NBSO compensation review was in the budget to be completed in 2008. Integrys submits that the results of this compensation review should be made available as part of the NBSO's annual Schedule 1 Revenue Requirement filing for the 2009/2010 fiscal year.

With respect to capital leases and in particular the new SCADA system, Ms. West confirmed that in regard to the amortization and finance charges which the NBSO pays to Transco, these are based on Transco's weighted average cost of capital. In response to Board counsel, Mr. Marshall indicated that he believed the million dollar letter of credit that the NBSO has with the Electricity Finance Corporation is at a lower rate than Transco's



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2 weighted average cost of capital, but he went on to note that  
3 the NBSO had no other right to borrow and so could not  
4 borrow to fully fund the SCADA system.

5 Given that the NBSO was relying on leases from Transco for  
6 significant items of its cost, such as the Energy Control  
7 Centre and the new SCADA upgrade, Integrys believes that  
8 with respect to go forward capital requirements the NBSO  
9 should be directed to carefully consider if other more  
10 cost effective finance approaches are available to it, and  
11 be required to fully document its efforts to minimize its  
12 capital and leased costs as part of its future revenue  
13 requirement filings.

14 Integrys believes that the annual revenue requirement  
15 review process will go a long way to allowing the Board  
16 and interested parties a regular opportunity to review and  
17 provide input into the NBSO's ongoing revenue requirement.

18 And Integrys encourages the NBSO to consider all  
19 competitive options available for it to reduce its  
20 operational and funding requirements going forward.

21 Mr. Chair, Mr. Vice-Chair, Board Members, thank you for  
22 the opportunity to make those comments on behalf of  
23 Integrys.

24 CHAIRMAN: Thank you, Mr. MacDougall. Any questions from  
25 the Panel? Mr. Johnston?

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VICE-CHAIRMAN: Mr. MacDougall, I just have one question and that relates to the Settlement Agreement. Am I correct that the Settlement Agreement is essentially an agreement as to the allocation of surpluses over two years and then an agreement by the parties that they will take a joint position before this Board with respect to changes that are necessary?

MR. MACDOUGALL: That is correct.

VICE-CHAIRMAN: And subject to Mr. Morrison going rogue on us here or something and changing his position, would it be fair to say that the second portion of the settlement, that is the joint submission with respect to the tariff changes, has been met?

MR. MACDOUGALL: Yes.

VICE-CHAIRMAN: So with respect to the approval of the settlement, is it now -- in order to give effect to the settlement, is it now only necessary for this Board to approve or not the allocation of the surplus funds?

MR. MACDOUGALL: I don't want to get off side with my friends at the NBSO. I think what is being sought is the approval of the Settlement Agreement. The two became intertwined. As you know, we had argued at different times to deal with the settlement separately, but because of the intertwined nature it is now before the Board in

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this hearing.

I think what all parties to the settlement are asking for is the approval of the Settlement Agreement, not just elements of it. Our commitment was not only to come to the Board and support what the NBSO put forward but we maintain that what the NBSO put forward is appropriate and is what the Board should approve.

There are significant technical issues throughout the Strawman Model. There is modifications to some of them presented through the settlement and the settlement specifically indicates those. Those technical issues have been significantly vetted by Integrys, by the NB Power group of companies, by the market participants and the SO.

There were many discussions. And the parties believe that the Settlement Agreement in all of its aspects is by far the best approach going forward.

For example, issues of risk mitigation. The NBSO I think had put forward five separate options. The way the Settlement Agreement has been structured is as a holus-bolus let me say document that tries to capture all of the issues that the NBSO and parties had and address them all.

So I guess we are here fully supporting the settlement in all of its manifestations. Whether the Board would approach some aspect in one way and others in another,

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that's to the Board, but we are here to support the settlement in its totality.

VICE-CHAIRMAN: The specific question I am working towards is if certain aspects of the settlement as they are reflected in the changes to the tariff and so forth, were not adopted by the Board, would that have the effect of no longer having an agreement with respect to the surpluses for the given years.

MR. MACDOUGALL: No, I don't believe it would. I think you are correct in that the parties have by the end of its day fulfilled their commitment to put this settlement to the Board, and then the Board has its right to make its decision on those aspects.

VICE-CHAIRMAN: So it would be in keeping with the desires of the parties to the settlement to approve the allocation of the surplus funds even if the Board made some changes with respect to the other aspects of the tariff? I'm not pre-judging anything but I just want to be clear on this.

MR. MACDOUGALL: Correct. I agree with you, but just to make sure that my friends don't think I'm offside, we are supporting the totality of the settlement.

VICE-CHAIRMAN: I understand that. Thank you, Mr. MacDougall. Those are all my questions.

MR. MACDOUGALL: Thank you.

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CHAIRMAN: Thank you, Mr. MacDougall. Mr. Morrison.

MR. MORRISON: Good morning, Mr. Chairman, Members of the Board. I don't think you have to be concerned that I am going to go rogue, but I am announcing my candidacy for President of the United States in 2012.

Obviously I am here to support the Settlement Agreement and I want to begin by saying that my clients do unequivocally and wholeheartedly support the agreement, as was mentioned both by Mr. Kenny and Mr. MacDougall.

This came about through fairly tough negotiation between market participants, who are sophisticated parties and who do understand the electricity market.

The CBAS surplus is a significant and serious problem. And it will only get worse if it isn't corrected. I think everybody agrees with that. There are several factors which contribute to that ongoing problem. There is the question of the supply cap -- self-supply cap, particularly as it affects DISCO's contribution to that surplus.

In our view there is under-compensation to GENCO because of their not being compensated for the capacity commitments they make. This deals with a long-term capacity commitment with an hourly settlement. There is reduced obligations because of the NPCC reserve sharing.

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And there are many other factors that contribute to the surplus. The result of which is there is a disconnect or a mismatch between the rates and the costs. And this must be addressed.

The surplus issue became what I will call a separate issue, and I'm sure you are aware of it. It's dealing with the historical surplus. There was a surplus, we had to deal with how it was going to be allocated back to the parties. And it became a separate matter or procedure before this Board as a result of a complaint by Integry's under the complaint provisions of the Electricity Act. And as you know, there were two technical conferences sponsored by the Board and Board staff. And it became apparent during those technical conferences that litigating the surplus issue before this Board was going to be very complex and very contentious. And probably from the participants' point of view the outcome was far from certain.

So the parties, faced with this complexity and uncertainty of outcome, decided to enter into negotiations to try to settle the issues. I think it's important to note -- and the result of that of course is the Settlement Agreement that is before you today.

I think it is important to note that none of the

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market participants that were involved in that negotiation got exactly what they wanted. We all had to put a little bit of water in our wine so to speak. And those of you who are familiar with litigation, I would suggest to you that's the mark of a pretty good settlement.

So in the course of dealing with the historical settlement, the issue of dealing or formulating a methodology to resolve this surplus issue on a go forward basis -- in other words, get to the root problems and settle this problem once and for all -- raised itself during the course of those technical conferences. And of course what came out of that was the methodology which is the Strawman Model which was filed in the evidence that is before you.

The Strawman Model requires certain changes to the open access transmission tariff and some previous decisions with respect to Board policy particularly on the cap on self-supply. And those are the changes that are really forming part of the separate OATT application. So we have had two parallel processes going on before the Board. But those issues were largely if not entirely resolved by the Settlement Agreement. And there is nothing nefarious or inappropriate about the Settlement Agreement,

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and quite the contrary, I would suggest to you that the Settlement Agreement here is, to quote Martha Stewart, a good thing. And of course settlement agreements are not only condoned but actively encouraged by regulators in other jurisdictions.

But without the Settlement Agreement there would have been some other things that could have happened here. Without the Settlement Agreement the surplus issue would have had to come before this Board in a separate proceeding and, as I mentioned earlier and as I am sure Board staff who were involved in the technical conference can attest, it would have been a very complex and contentious proceeding. Without the Settlement Agreement I would suggest to you that this hearing would have been significantly more complex and lengthy. I suspect that NB Power and Integrys at a minimum would have filed evidence in this proceeding dealing with the appropriate methodology to address the ongoing CBAS surplus problem. And the Settlement Agreement has avoided all of that.

And courts, as some of you will know, have long recognized that settlements are in the interest of justice, and ought to be not only respected but encouraged. And as a result courts are reluctant to



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2 interfere or modify agreements once they are settled unless  
3 they are palpably unjust, provided they are concluded  
4 between parties who were properly represented and properly  
5 informed.

6 And it's in that regard that I would like to speak briefly  
7 -- or comment briefly on the alternative disposition  
8 methodology that was proposed by Ms. Desmond yesterday  
9 afternoon.

10 In short, I just don't fully understand it. It wasn't  
11 supported by any evidence and there wasn't what I would  
12 consider a detailed explanation that came up in the course  
13 of cross-examination. So I don't fully understand it. I  
14 do have some concerns and they were raised in questions  
15 briefly yesterday about what happens if it is not a  
16 surplus but a deficit, does that require a modification in  
17 rates in the following year? I don't know whether the  
18 Board can do that. It does create some uncertainty for  
19 the parties. But quite frankly, I don't understand the  
20 proposal well enough to say to you that I will accept it  
21 or adopt it. And for those reasons I am urging the Board  
22 to reject it.

23 Settlement Agreements -- and this goes in part to some of  
24 the comments that Mr. Johnston just made. Settlement  
25 Agreements are generally a set piece. They hang together.

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If you start modifying one piece of the settlement you run the risk of unravelling other aspects of the settlement. And because I don't know what the possible ramifications are of this alternative methodology I am loathe to accept it and start fiddling with something which at this point all the parties believe hangs together quite well.

Now I appreciate that this Board has the ultimate jurisdiction to say yay or nay to a Settlement Agreement, and that is as it should be. However, for the reasons I have just mentioned, I would submit to the Board that you should exercise that discretion very judiciously. And there is another reason for this. And that is if the Board were to reject the Settlement Agreement I think it would send entirely the wrong signal, because it would put a chill on, and likely discourage parties to enter into negotiation settlements in the future, and I don't think that's in anybody's interest.

So for all those reasons, Mr. Chairman and Members of the Board, I would urge you to ratify the Settlement Agreement that has been proposed, that has been adopted by the parties, and we believe that it is the best possible mechanism to eliminate this very serious surplus problem on a go forward basis.

And those are all of my submissions.

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CHAIRMAN: Thank you, Mr. Morrison. I can't believe you worked in a quote from Martha Stewart, but --

MR. MORRISON: One never knows what is going to come out of my mouth.

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

MR. BARNETT: Mr. Morrison, I want to know have you spent all the \$150,000 clothing allowance and who do you donate your clothes to afterwards?

MR. MORRISON: Hilary Clinton.

CHAIRMAN: I guess there are no further questions, so thank you, Mr. Morrison. Mr. Belcher.

MR. BELCHER: Good morning. Thank you, Chairman, rest of the Board. To begin with I do have an MBS, so -- but I'm not an MBS.

To begin with, my comments are brief. In general the Northern Maine ISA does support the Settlement. We do have some concerns.

To begin with some comments on Schedule 1. I feel the budget that has been presented by the SO is reasonable and responsible. One benchmark for that is Northern Maine ISA, we are about -- when it gets to the customer -- around seven cents a megawatt hour for cost, but the rest of Maine as you know is -- participates to the ISO New England and that load is around 1,800 megawatts and they

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2 pay around 13-and-a-half million dollars for the ISO services.

3 So clearly what the MBSO has provided for a higher load  
4 seems to be more efficient and cheaper.

5 For schedule 1 the ability for the SO to collect its  
6 revenue requirement each year is critical, not only for  
7 the operation but mainly for the reliability. And that I  
8 feel that the process needs to be streamlined and fully  
9 reconcilable because they, like us, just pass their costs  
10 through. The methodology that they proposed is very  
11 similar to how the ISA does it, and what we do is we have  
12 a stakeholder board. So essentially our customers or  
13 ratepayers set our revenue requirement. And each year  
14 after we have been audited and finalized, we will have  
15 either a revenue credit or a revenue debit. If we over-  
16 collect we give the money back as a line item. If we  
17 under-collect then we will recover those costs.

18 This, as I said, again is through our stakeholder board.

19 It's not an independent board. And the process is  
20 streamlined and it gives us the ability to do our job. If  
21 there are -- if it could never be agreed then the ability  
22 to go to FERC to set those would be -- but that has never  
23 happened.

24 I do see there has been some concern about the \$300,000  
25 which Mr. Kenny pointed out was one percent. In

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our revenue requirement we have what we call a cash working capital, and it's approximately 12-and-a-half percent of our variable cost. This is an accepted methodology for rate making principles and it's developed by taking 45 days, dividing by 365 and apply it to the variable cost. This gives not only us but any revenue requirement set on cost of service under rate making principles the ability for the organization to collect their costs between providing the service and receiving the money for it.

One way that could mitigate this too is that in our Market Rules we have the ability to go to our board for extraordinary items that may come up during the year. That gives us the ability -- and the reason that's in there is if we cannot pay or have the money to pay for that we are going to go to our line of credit, incur interest charges and just raise the cost to everyone. So the ability to go to the stakeholder board is there in case we need extra money.

I feel one way to streamline the process is in light of not having a stakeholder board is that they could use the MAC for that, because that is essentially their customer, so the customers.

Moving on to Schedule 2, I feel there is not much risk

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here at all. The billing determinates are fairly consistent from year. So over or under collections, I really don't see much of a problem there.

CBAS, this is where the ISA has its major concerns.

However, we do support the settlement, the spirit of settlement. We reluctantly support the black box allocation of the over-collection, or in the (inaudible) collection. The reason being the black box is a hybrid.

We split the baby, 50 percent on sales, 50 percent on obligation.

Typically obligation and sales should equal. However, because of the ability to sell supply they do not. The ISA feels, and this is how we do it in our jurisdiction, that any over-collections or under-collections are passed back based on how they were paid in. This is done -- and been argued many times, in many cases. This is done so the price signal is not distorted. In the case here, because these services are self-supply, can be self-supply, the market participant has to make a decision whether he is going to purchase from the default provider, which is the SO, or provide those services themselves.

When they provide those services themselves they are using that capacity that they could otherwise sell or use to provide for their capacity obligation. So by not giving

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the money back or under or over-collecting based on what you paid in, distorts the price. Again, however, in the support of settlement we agree.

In the future I believe that any over or under-collections should be based on how they are paid in. I feel that is very critical to the efficient price signal sent to the market.

Regarding price signals, I feel it is very important that there be published rates or price signals for the services, especially the ancillary services concerning operating reserves. The reason for this is to reduce market variants it's important that market participants, especially in our area where we can have multiple, be able to go and estimate their cost to provide the service. And I feel the prices ought to be published in industry standard, not as they are today, based on monthly demand, but based on peak load. For instance, the cost of a gas turbine is around \$80 per kilowatt year. That's how the price of the service should be provided. My final comment is on reserve sharing. It's my understanding that the 100 megawatts of reserve sharing will be allocated to the participants going into the period, not after the fact. That is important I feel because that way the 100 megawatts can not only be used to

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2 reduce your operating reserves, it will also carry through to  
3 reduce your capacity obligation.

4 Those are the ISA concerns. Again in general we support  
5 the Settlement. We feel that the SO has done a very good  
6 job and had they not done such a good job we would not  
7 have been arguing over the over-collection. They  
8 substantially lowered the cost in the region to provide  
9 these ancillary services. I feel they ought to be  
10 commended.

11 Thank you for giving us the opportunity to come up and  
12 raise our concerns.

13 CHAIRMAN: Thank you, Mr. Belcher. Any questions from the  
14 Panel?

15 MR. BARNETT: Mr. Belcher, I just want to be clear. You  
16 raise two or three concerns, but notwithstanding those you  
17 fully support the Settlement Agreement.

18 MR. BELCHER: Yes, sir.

19 MR. BARNETT: Thank you.

20 CHAIRMAN: Mr. Johnston?

21 VICE-CHAIRMAN: Mr. Belcher, I just want to follow up on one  
22 of your last comments which if I -- if my notes are  
23 correct here you talked about published rates for  
24 ancillary services?

25 MR. BELCHER: Yes.



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VICE-CHAIRMAN: My understanding of some of the evidence was that under the new proposal they will not be able to publish rates for ancillary services but they would be providing historical data that would enable market participants or potential market participants to estimate or predict what the rates would be. Is that consistent with what -- first of all perhaps I am wrong in my understanding of the evidence, but is that consistent with what you see as being important here?

MR. BELCHER: Yes, it is. They can calculate based on historical numbers implied rates that should be -- I feel should be published by service, ten minute spinning, ten minute non, 30, you know, right on their website, that's easily attainable and to get to, or that we can refer to. In Maine we have standard offer bids that go out for the four utilities every two years. So we have participants that are looking to get into the market that call and want to be able to estimate their costs. And just having the ability to give a rough estimate -- and I feel that implied rates could be calculated by the NBSO that proxy the service.

VICE-CHAIRMAN: Is what you are proposing different from what Mr. Porter was talking about?

MR. BELCHER: No. I think it's just an extra step.

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VICE-CHAIRMAN: Thank you.

CHAIRMAN: Thanks again, Mr. Belcher. We will take a 15 minute break at this time.

(Recess - 10:55 a.m. to 11:15 a.m.)

CHAIRMAN: Mr. Theriault, any time you are ready.

MR. THERIAULT: Thank you, Mr. Chairman, Board Members. I can assure the Board that my closing argument will be nowhere as lengthy as my cross-examination.

Before discussing the issues that are before the Board, I think it useful to review the evolution of tariff applications for transmission service and Open Access Transmission Service in this jurisdiction.

In March of 2003, the Public Utilities Board issued a decision in an application by NB Power for a transmission tariff. The decision of the Board affirmed that a fixed tariff would be implemented for network integration transmission service, point-to-point transmission service, and ancillary services.

In April 2005, the Public Utilities Board issued its decision on a NBSO proposal for OATT changes. The NBSO applied for the equivalent of an automatic adjustment clause for tariff adjustments to cover cost escalations. The Board rejected this proposal. Additionally, the Board determined that the NBSO could only use the \$300,000

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retained surplus for unforeseen events and not to recover any overruns for normal budget items. And, finally, rates for Schedule 1, 7 and 8 and Attachment H were set out as fixed tariffs.

In August of 2006, the PUB considered, among other issues, whether there should be a cap on self-supply of capacity-based ancillary services and, if so, what should be the limit. The Board rules that there should be a cap, and that the cap should be set at 90 percent.

This brings us now to the present. On May 1st 2008, the NBSO made an application for a fixed tariff for Schedules 1, 2 3, 5 and 6. Schedule 1 covers scheduling, system control, and dispatch services, which are both a primary cost centre and a primary revenue source for the NBSO. Schedule 2 covers reactive supply and voltage control. Schedules 3, 5 and 6 are CBAS services, which over the past few years have generated surpluses.

In addition to the application for fixed tariffs for these various services, the NBSO submitted, as part of its May 1st application the Straw Man Model. This model, developed out of a series of technical conferences and approved by the Market Advisory Committee, was submitted to the Energy and Utilities Board as a mechanism for sharply reducing future CBAS surpluses.

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2 We now come to the final chapter in this saga of OATT  
3 applications. On July 29th 2008, the NBSO submitted a  
4 Clarification of Tariff Changes document. Rather than  
5 clarify the tariff changes, this document proposed to  
6 alter the basic concept of a fixed tariff by substituting  
7 a variable rate charge for fixed tariffs in Schedules 1,  
8 2, 3, 5 and 6. The Straw Man Model morphed into a  
9 Settlement Agreement, and the Settlement Agreement brought  
10 together market participants and the Applicant in a united  
11 front to support this new rate regime.

12 Mr. Chairman and Board Members, I would submit that there  
13 are five issues before the Board today. First, does the  
14 new rate setting regime for Schedules 1, 2, 3, 5 and 6,  
15 proposed under the so-called Clarification of Tariff  
16 Changes document, meet the legislative requirements under  
17 the Electricity Act.

18 Secondly, is the Settlement Agreement necessary in order  
19 to deal with CBAS surpluses, or would the Straw Man Model,  
20 as proposed in the May 1st application, be sufficient to  
21 address the size of the surplus and its impact on market  
22 participants.

23 Third, is the revenue requirement for Schedule 1 a prudent  
24 revenue requirement, and does it result in just and  
25 reasonable rates for the services under this Schedule.

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2 Fourth, should the hard cap on self-supply of CBAS  
3 services be replaced with a range. The value of which at  
4 any point in time would be left up to the judgment of the  
5 NBSO?

6 Fifth, and finally, the Board should comment on its  
7 perception of the NBSO as an independent entity, and  
8 whether or not the NBSO has made reasonable strides toward  
9 independence from the NB Power Group of Companies.

10 Now the Electricity Act has a number of important sections  
11 that are relevant to this application. And I intend to go  
12 through in detail the relevant sections. So if the Board  
13 could -- I apologize to the Board for reviewing that or  
14 reciting the language of the legislation.

15 First of all, the interpretation section or the definition  
16 of the Act provides for a definition of a tariff as  
17 follows: "A schedule of all charges, rates and tolls,  
18 terms and conditions, and classifications, including rules  
19 for calculation of tolls, established for the provision of  
20 either and both of the following: (a) a transmission  
21 service; (b) an ancillary service."

22 Section 53(1) of the Act reads: "The SO shall provide the  
23 financing of its operations in its application to the  
24 Board for approval of a tariff in relation to transmission

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and ancillary services."

The application by the NBSO was made under Section 111 of the Act. I submit that a review of this Section is instructive. (1) "The SO may make an application to the Board for approval of a tariff pertaining to transmission services or ancillary services, or both." Section (2) The Board shall, on receipt of an application from the SO for approval of a tariff pertaining to transmission services or ancillary services or both, proceed under Section 123.

Subsection (4) The Board shall when considering an application by the SO in respect of an approval of a tariff pertaining to a transmission services, base its order or decision respecting the tariff on all of the projected revenue requirements of the SO and the transmitters for transmission services and the allocation of such revenue requirements between the SO and the transmitters, Subsection (5) The Board shall, when considering an application by the SO in respect of an approval of a tariff pertaining to ancillary services, allow in its order or decision for mechanisms to recover the reasonable costs incurred by the SO in the acquisition and provision of ancillary services, or base its order or decision respecting the tariff on all of the projected revenues from the sale of ancillary services and all of

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2 the projected costs to be incurred by the SO in the  
3 acquisition or provision of ancillary services.

4 Subsection (6) The Board at the conclusion of the hearing  
5 shall (a) approve the tariff, if it is satisfied that the  
6 tariff applied for is just and reasonable or, if not so  
7 satisfied, fix such other tariff as it finds to be just  
8 and reasonable, and (b) set the time at which any change  
9 in the tariff is to take effect.

10 Now I would also point the Board -- and I understand there  
11 were some, you know, questions this morning from the Vice-  
12 Chairman with respect to that section or one of the  
13 subsections there, but I would also ask the Board to look  
14 at -- sorry, at Section 112 of the Act which states? "The  
15 SO shall not charge, demand, collect, or receive greater  
16 or less compensation for transmission services or  
17 ancillary services than is prescribed in the tariff  
18 approved by the Board.

19 And, finally, Section 114 of the Act states, subsection  
20 (1) the Lieutenant-Governor-in-Council may request the  
21 Board to review all or any portion of a tariff approved by  
22 the Board in respect of the provision of transmission  
23 services or ancillary services.

24 Subsection (2) The Board shall, on receipt of a request  
25 under subsection (1), (a) direct the SO to file an

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2 application for confirmation of any portion or all of the  
3 tariff. Subsection (b) give notice to the SO and all  
4 transmitters of the date of the hearing of the  
5 application, and (c) proceed under Section 123.

6 Now I submit there are several points that are  
7 indisputable from a reading of the definition of tariff  
8 and a review of the Sections that I just read, that is,  
9 Section 111, 112 and 114.

10 1. First, the NBSO is obliged to apply for a tariff.

11 2. Second, the Board in response to an application by the  
12 NBSO has to set a tariff.

13 3. Third, any changes to charges, rates and tolls  
14 requires an application before the Energy and Utilities  
15 Board.

16 4. Fourth, any rules for the calculation of a tariff may  
17 be included as part of a schedule of charges, rates, and  
18 tolls, but they do not replace a charge, rate or toll.

19 5. Fifth, any change in any part of a tariff, be it  
20 changes to charges, rates, or tolls, changes to terms or  
21 conditions, or changes to classifications must be brought  
22 to this Board for approval.

23 6. Sixth, the SO is explicitly prohibited from charging,  
24 demanding, collecting, or receiving greater or lesser  
25 compensation for its services than is described in



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the tariff.

7. Seventh, the intent of the Lieutenant-Governor-in-Council would clearly be frustrated if a methodology is substituted for a fixed tariff. There is no provision in the legislation for the Lieutenant-Governor-in-Council to order a review of a methodology.

In summary, the Applicant must apply for fixed tariffs, and the Board can only approve fixed tariffs. The document, creatively labelled as a Clarification of Tariff Changes document, is proposing to implement a variable rate regime, which I would submit is neither contemplated nor permitted under the legislation.

Now let us consider the consequences of what the NBSO is attempting to do with this variable rate regime proposal.

When I was questioning the Panel I posed the following statement: "Now, let's see if we can summarize what the NBSO is attempting to do here under the guise of clarifying tariff changes. The NBSO does not want a fixed tariff. It wants a review if its prospective revenue requirement. It wants to be able to vary rates as its costs vary. And it does not want any Board oversight on the variability of its costs. And it does not want any Board oversight on the variability of its rates. Is that correct?"

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2 When we parse the response provided, and set aside the  
3 excess verbiage, what we find is that the statement is  
4 correct in all of its aspects. And I would point the  
5 Board to pages 238 and 239 of the transcript for that  
6 reference, Ultimately, what the Applicant is looking for  
7 in its Clarification of Tariff Changes document is not  
8 economic regulation. It is not light-handed regulation.  
9 It is certainly not light-hearted regulation. What this  
10 Applicant wants I submit is non-existent regulation.

11 Now some may think that's an exaggeration. But I would  
12 submit that it is not an exaggeration. I would ask the  
13 Board to consider two scenarios. In the first scenario,  
14 the actual expenses for providing Schedule 1 services  
15 exceed the forecast of expenses given as the Applicant's  
16 revenue requirement. What is the consequence? The NBSO  
17 changes its rates for each of the services it provides  
18 under Schedule 1.

19 Well, before it changed its rates, would it not attempt to  
20 exercise some financial discipline by cutting costs? Not  
21 necessarily I would suggest. Witness Porter made it very  
22 clear that the NBSO would not be held to its budget  
23 forecast of expenses for Schedule 1 services. And again I  
24 point the Board to page 241 of the transcript. This point  
25 was further emphasized in the Applicant's

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2 responses to certain questions concerning the Contingency  
3 account posed to the witness panel by Board Counsel.

4 Well, before it changed its rates, would the Applicant not  
5 apply to the Energy and Utilities Board for permission to  
6 do so? I would submit, no, it would not. Under the  
7 proposal before the Board, the Applicant is under no  
8 obligation to seek approval from the Board before changing  
9 a rate, toll, or charge. In fact, the Board need not even  
10 be informed of this change.

11 The second scenario has the situation where the actual  
12 usage of Schedule 1 services falls below forecast. What  
13 is the consequences? The NBSO changes its rates for each  
14 of the services it provides under Schedule 1.

15 Well, before it changed its rates, would it not attempt to  
16 exercise some financial discipline by cutting costs? I  
17 submit it is the same answer as before and for the same  
18 reason. The NBSO appears to treat all of its Schedule 1  
19 costs as fixed costs, with no variable cost component in  
20 them. Therefore, there is no need to make any effort to  
21 constrain these costs when usage falls below expectations.

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23 Well, before it changed its rates, would the Applicant not  
24 apply to the Energy and Utilities Board for permission to  
25 do so? Again, I would submit it is the same as before

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and for the same reason. To quote Witness Marshall: "We don't see any need for it." And that is at page 239 of the transcript.

There is another scenario that the Board should consider when weighing the consequences of the Applicant's proposal to move some the OATT tariff to unregulated variable rates. Transco's tariff sits inside the OATT as Schedules 7 and 8 and Attachment H. If the NBSO were to be given the right to move to variable rates, why would Transco be denied the same right? Particularly since Transco's tariff is part of OATT and that the NBSO is responsible for making an application on behalf of Transco for changes to its charges, rates, and tolls, in other words, its tariff. For the Board, in its deliberations, I would submit that this is something to contemplate.

Now, what can we say about the Applicant's case with respect to the revenue requirement for Schedule 1. Well, as it turns out, I submit we can say quite a bit. Let's take a look at the major items in the revenue requirement. First let's start with Labour and Benefits. What do we know about this expense? Well, we know that the NBSO does not find it necessary to engage in competitive searches for full-time hires. We know that it still relies on secondments from Transco for almost 80 percent

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2 of its total employment. We know that many of the management  
3 positions had significant salary increases without the  
4 benefit of benchmarking. We know that the total salary  
5 and benefit budget has increased by 28 percent from  
6 '05/'06 to proposed '08/'09, an average annual increase of  
7 8.75 percent. We know that seconded Transco employees are  
8 in a conflicted situation and, ultimately, must meet the  
9 requirements of Transco, even if that conflicts with NBSO  
10 objectives. And finally, we know that the NBSO has  
11 absolutely no intention of doing anything different with  
12 respect to direct hires and secondments, unless it is made  
13 to do so.

14 Now I would like to look at the IT and infrastructure.  
15 From this cost item, we know several things. First, we  
16 know that the NBSO pays Transco the equivalent of rent in  
17 the form of ECC costs, plus O&M. We know that there is no  
18 lease agreement that justifies these payments. We know  
19 that the NBSO has not yet negotiated a rental agreement,  
20 despite the fact it has occupied a portion of the building  
21 for four years. And we know that it is highly unlikely  
22 that the NBSO will actually negotiate and execute a rental  
23 agreement unless it is forced to do so.

24 Now let's look at Consulting. From this expense, we know  
25 several things. We know that, by and large, the NBSO

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does not tender for consulting work. We know that, for the majority of consulting work, the amount is determined on the basis of a quote. Since these quotes result in untendered contracts, we know that it is impossible for NBSO to establish whether the quote is reasonable and whether it receives value for money spent.

Now, let's continue on with Travel and Training. We know that the travel and training budget has increased substantially over the past several years. We know that the justification for this is for increased participation in various committees and coordination and reliability working groups, among other activities. We know that the NBSO claims to have a policy on Travel and Training, although, there is no evidence before the Board that such policy exists. And finally, we know that the NBSO has not indicated that it does any benefit-cost analysis to determine that if there were budget constraints, which travel and training activities should be reduced or eliminated.

And lastly, let's take a look at the Contingency expense.

We know that the contingency amount is exactly the same as the maximum retained surplus. We know that the retained surplus has a Board-ordered constraint on its use; namely, that it could not be used for cost overruns

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2 on normal budget items. We know that the Contingency will not  
3 be subject to the same constraint. We know that the NBSO  
4 does not believe that it should be held to any forecast of  
5 expenses for the provision of Schedule 1 services. We  
6 also know that absent to any access to significant CBAS  
7 surpluses to offset deficits in Schedule 1 and 2 services,  
8 there are risks to the NBSO that it needs to manage.

9 Now, what are we to make from all this knowledge? I

10 suggest that in general, we can sum it up as follows:

11 1. The NBSO has not, neither in its operations nor its  
12 management moved far enough along to be considered  
13 independent from the NB Power Group of Companies.

14 2. The NBSO does not have appropriate hiring policies in  
15 place.

16 3. The NBSO has poor or nonexistent controls in place for  
17 cost containment.

18 4. The NBSO fails to appreciate the fact that it is a  
19 regulated entity, subject to the jurisdiction of the Energy  
20 and Utilities Board with respect to its tariffs.

21 The consequence I submit of this latter point is that the  
22 NBSO spends a good deal of time and effort in attempts to  
23 avoid Board regulation by posing a series of schemes that  
24 are designed to circumvent such regulation. There

1  
2 were schemes for automatic adjustment clauses in 2005. And  
3 now we have the proposal to do away with Board oversight by  
4 suggesting variable rates for Schedules 1, 2 3, 5 and 6.

5 Before I make my position know with respect to the issues  
6 that I identified earlier in this final argument, I do  
7 note that the Board has approved an interim rate  
8 application that put fixed tariffs in place until a  
9 complete application could be heard. I note that the  
10 interim application was filed with the May 1st  
11 application, which was for approval of fixed tariffs. I  
12 also note that the NBSO is now seven months into the  
13 fiscal year 2008/2009. Consequently, there are some  
14 significant constraints in place that would limit any  
15 proposal to unravel the interim rate decision.

16 Accordingly, some of the points I wish to make are  
17 applicable about the issues on a go-forward basis that it  
18 will pertain to the next NBSO rate application.

19 However, my first point deals with the issue of whether  
20 variable rates meet the legislative requirements of the  
21 Electricity Act. I submit my position is very simple.  
22 Variable rates are not legal under the Act, the Board  
23 cannot approve them, and the NBSO cannot apply them.  
24 This position is consistent with a reading of



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2 Sections 111, 112 and 114 of the Act, as well -- and more

3 importantly the definition of tariff that is contained in  
4 the definition section of the Act.

5 My second point speaks to the necessity of having a  
6 Settlement Agreement in order to deal with CBAS surpluses.

7 Again, I submit my position here is also simple. The  
8 Applicant saw fit to put the Straw Man Model into the May  
9 1st application. This model met the requirements of the  
10 market participants, as well as the Market Advisory  
11 Committee. There is no reason why the Straw Man Model  
12 could and should not be implemented as part of a Board  
13 decision on this rate application.

14 My third point addresses the prudence of the revenue  
15 requirement of Schedule 1 services. The points I made  
16 earlier would suggest that some of these expenditures lack  
17 sufficient proof that they are in fact prudent.

18 Nonetheless, given the earlier approval of the interim  
19 rate application and the fact that the NBSO is seven  
20 months into the test year, there is little opportunity to  
21 challenge the prudence of these expenditures. Therefore,  
22 there is little prospect that the Board could reduce any  
23 portion of them.

24 My fourth point speaks to the hard cap on self-supply.

25 There is no evidence I submit on the record to support the

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NBSO's request to remove this hard cap and to replace it with a range in which the value at any given time is subject to the judgment of the NBSO. Rather what the Board has in front of it is the judgment of the PUB in its August 2nd 2006 decision. At page 4 of this decision, the Board made the following statement: "The Board considers that it is essential for the development of a competitive electricity market in New Brunswick that opportunities for suppliers to compete should be created whenever it is reasonable to do so. A competitive market will never develop if initiatives are not taken. The Board considers that this particular opportunity is a reasonable and appropriate initiative. The Board therefore orders that a cap on self-supply of capacity-based ancillary services be established."

The Board then went on to discuss and rule on the size of the cap. In part, the Board stated: "...The Board believes that it is appropriate that the initial cap be set at a fixed amount and that the cap may be changed over time. The Board therefore orders that the limit on self-supply of capacity-based ancillary services be set at 90 percent. This limit is take effect on November 1, 2006.

The limit may be changed upon application to the Board should circumstances warrant an adjustment."

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2 On this issue, I would restate my position. The Applicant  
3 has brought no evidence to this hearing that would support  
4 a contention that circumstances warrant an adjustment to  
5 the cap on self-supply of CBAS services.

6 The final issue I have raised deals with the perception of  
7 the independence of the NBSO. While it is unusual to ask  
8 a Board to comment on whether the Applicant has made  
9 reasonable strides towards independence, I would draw the  
10 Board's attention to the fact that the legislation  
11 requires the NBSO to be independent, not merely to state  
12 that it is independent. I would ask the Board to comment  
13 on whether a heavy reliance on the NB Power Group of  
14 companies for personnel requirements, office space, and  
15 consulting and computer services is appropriate given the  
16 need for the NBSO to be both independent and to be seen to  
17 be independent.

18 Mr. Chairman, as Public Intervenor, I make a request for  
19 the following ruling from the Board: That the application  
20 by the NBSO contained in the Clarification of Tariff  
21 Changes document to move to variable rates for Schedule 1,  
22 2, 3, 5 and 6 rates is not permitted under the Electricity  
23 Act.

24 As Public Intervenor, I ask for the following decisions  
25 and orders from the Board:

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2 1. That the Board accept and order the fixed tariffs for  
3 Schedules 1, 2, 3, 5 and 6, as set out in the May 1st  
4 application of the NBSO.

5 2. Secondly, that the Board accept the Straw Man Model  
6 proposed for the CBAS surplus which is contained in the  
7 May 1st application.

8 3. Third, that the interim Order of the Board be  
9 confirmed as per the May 1st application.

10 4. Fourth, that the retained surplus account and its  
11 maximum amount of #300,000 be removed.

12 5. Fifth, that the request for the Contingency amount of  
13 \$300,000, contained in the revenue requirement for  
14 Schedule 1 and in the list of risk management measures in  
15 the May 1st application be approved.

16 6. That all other risk management measures proposed in  
17 the May 1st application be denied.

18 7. That the Applicant be required, on or about the next  
19 rate application, to provide supporting documentation that  
20 would justify the amount of the contingency.

21 8. That the cap on self-supply remain as per the Public  
22 Utilities Board decision of August 2nd 2006.

23 Mr. Chairman, that concludes my final arguments. I do  
24 have prepared copies that I will distribute to the Board  
25 and the parties of my closing remarks. Thank you.

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CHAIRMAN: Thank you, Mr. Theriault. Any questions by the Panel? Mr. Johnston.

VICE-CHAIRMAN: Mr. Theriault, I would just like to discuss with you for a while this concept of variable tariffs and whether or not they are permitted under the legislation because I think it is important.

MR. THERIAULT: I saw that one coming.

VICE-CHAIRMAN: In my looking at this issue I make a distinction between the tariffs for ancillary services and for other schedules, particularly schedules 1 and 2, and I base that on the wording of section 111(5) And I guess my direct question to you is based on the wording of 111(5) does the Act not contemplate what is being proposed by the applicant here with respect to ancillary services?

MR. THERIAULT: I would suggest not, Mr. Vice-Chairman, and the reason why -- and I think what you are referring to is the word mechanism --

VICE-CHAIRMAN: That's right.

MR. THERIAULT: -- in that particular section. And I would suggest mechanism refers to the way in which the NBSO can recover its costs when setting fixed rates. This is what I would suggest the Board must consider when setting a tariff which is defined as rates, charges, and includes a methodology. It does not override the definition of the

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2 tariff though that is set out in the definition section. So I

3 think you have to look at the legislation as a whole. I

4 don't think a mechanism is put in there to say that a

5 methodology or even a calculation -- a rule for

6 calculation of a toll overrides the fact that a toll rate

7 or charge is still part and parcel of the tariff.

8 VICE-CHAIRMAN: What is the importance of that phrase though

9 in the definition of tariff, including rules for

10 calculation of tolls? You just made mention of that.

11 Does that not apply here.

12 MR. THERIAULT: I think it does, but I think it applies

13 with. I don't think -- I don't think it goes against the

14 argument I am making. My argument is that tariff

15 certainly includes the methodology in which to calculate -

16 - you know -- on which you use to calculate the toll rate

17 or charge, but it's also the toll rate or charge that is

18 included in that, and I think that's what this section is

19 geared towards.

20 VICE-CHAIRMAN: You know, Mr. Theriault, I don't want you to

21 think I am prejudging this because it is a very difficult

22 issue, but you seem to start from a base point that tariff

23 means fixed, and I'm just wondering where that starting

24 point comes from?

25 MR. THERIAULT: It comes from the definition of tariff under

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the Act, and I think I have read it so much I could probably  
recite it by heart if you wanted me to. But --

VICE-CHAIRMAN: That definition includes the phrase  
including rules for calculation of toll.

MR. THERIAULT: Includes. It means a schedule of rates,  
charges and tolls, terms and conditions, I think there is  
some other wording, then includes calculation for rates or  
rules for tolls as you say. So it doesn't say or. It  
says includes. So I think it's all inclusive. I don't  
think you can have the tariff without the fixed rates.  
Again I fully admit that the methodology -- and if you  
look at the tariff document, you know, that the NBSO has,  
it's very thick, and I think Mr. Marshall referred to  
that, it's huge, but it also includes the schedules and it  
also includes those fixed rates and tolls. And I believe  
when one reads the legislation -- I guess an example -- if  
you have a methodology and if you look at section 114 of  
the Act which is the Lieutenant-Governor's right -- if the  
Lieutenant-Governor-in-Council doesn't like a charge rate  
or toll that is contained as a result of the methodology  
they have no right to come back and ask this Board to deal  
with that issue, because it's methodology. You know, for  
instance the usage may be up or down that creates that  
rate. But they have no right to come back and ask the

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Board to look at that. And so I think when you read the entire Act it falls in line with my argument.

VICE-CHAIRMAN: I want to make sure I understand your argument with respect to Schedule 1 for example. And in Schedule 1 the total revenue requirement for the year will be determined by the Board, and then one/twelfth of that will be the monthly revenue requirement. So those are amounts that are being determined by the Board. What is variable is the usage among the different customers. So despite the fact that the total amounts on an annual monthly basis are being determined by the Board, you would suggest that that is a variable toll because a given user knowing his precise amount of usage would not be able to say with certainty what their rate was going to be.

MR. THERIAULT: That's correct. And I think that's clear based on -- as I understand the evidence and as I understood the testimony of the witnesses yesterday -- that once the -- first of all I'm vehemently opposed to the light-handed regulation that this proposes by submitting simply, you know, a revenue requirement, we will have a little get together and, you know, deal with the issue. I think it requires more than that. That's why despite my legislative arguments, despite that, I have no -- and how can I say this. I don't necessarily



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disagree with the way in which the Settlement Agreement deals with Schedules 3, 5 and 6. However, I do believe that is also in violation of the Act. I do disagree with the way in which the Settlement agrees -- deals with Schedules 1 and 2, and I don't think it's necessary, assuming this Board decides that I am incorrect on that legislative argument, I don't think it's necessary for the Settlement Agreement to go so far, although I have heard party after party get up here this morning and say, well we agree in totality with it. I think to accomplish what they are trying to accomplish with Schedules 3,5 and 6 doesn't need to go to Schedules 1 and 2.

VICE-CHAIRMAN: The last point I wanted to make is that during your submission you talked about the system operator not agreeing to stay within their revenue requirement, and you talked about Mr. Porter's evidence with respect to the possibility of running a deficit. As I understand the proposal, once the revenue requirement is fixed by the Board that would determine with certainty what the annual monthly charges was going to be, and if they ran a deficit, well that would be a problem that the system operator would have to deal with perhaps in some sort of application before the Board, but that it would not change the monthly revenue requirement. Do you

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understand it differently?

MR. THERIAULT: Well I do, and I would just refer the Board to the page that I gave in the quotation. But to deal with that example, if a deficit is run and they come in a subsequent application, it's pretty -- and I think Commissioner Barnett may have raised this point, or someone did yesterday, how do you deal with it after the fact? You know, it's easy to say, oh, we are going to put cost cutting measures in place or we are going to lay off staff, but let's be realistic here. How do you deal with that deficit situation after it has occurred if you don't deal with it up front.

VICE-CHAIRMAN: But that point doesn't really relate to the fixing of tariffs, does it? I mean that relates to the operation of the system operator, because no matter what form you have for the recovery of revenue this Board is going to determine a revenue requirement for the year upon which the tariffs, however they are calculated, are going to be based.

MR. THERIAULT: Again I don't have that particular provision of the transcript in front of me, but that's why I gave the quote. It came in late last night and I haven't had a chance to make a hard copy of it. But again I would ask the Board to go back and look at that. There was a series

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of questions that were put to the witness and I certainly don't want to paraphrase it from my memory reading it last night at 11:30. So --

VICE-CHAIRMAN: Thank you very much, Mr. Theriault. Those are all my questions.

MR. THERIAULT: You're welcome.

CHAIRMAN: Thank you, Mr. Theriault. At this time I will give the parties an opportunity to make comments in rebuttal to any new arguments that were raised by parties that argued after they did. So, Mr. Belcher, anything in rebuttal?

MR. BELCHER: No, sir.

CHAIRMAN: Mr. Morrison?

MR. MORRISON: Just one matter, Mr. Chairman. Mr. Theriault raised -- I think his argument was that the PUB set the self-supply cap at 90 percent, and would revisit it only if there were changed circumstances. And he did -- I don't have that decision in front of me, but paraphrasing from what Mr. Theriault said, when that cap was set the PUB did so on the basis that by allowing 10 percent self-supply for example, that would create conditions which may create a competitive market and ancillary services. Well circumstances did change. As a result of that it's my understanding, and Mr. Porter talked about it yesterday,

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the NBSO issued an RFP asking generators to put bids in for the supply of ancillary services. And I think Mr. Porter's evidence was that there was only one qualified bid that came in and that was from GENCO which was already supplying the services in the first place. So the circumstances have changed. The purpose of the self-supply cap was to encourage the development of a market in ancillary services. The SO tested the market, found there was no market. So I think it is time to revisit that self-supply cap.

In addition when that matter came before the PUB, and I was at that hearing, no one anticipated, the PUB could not have known, certainly the parties did not know, what the impact of that self-supply cap would have on this issue of CBAS surpluses and deficits. It just wasn't anticipated.

And although -- because of a number of factors and we talked about all of the factors that contributed to the surplus. I suggest to you that had the PUB known or could reasonably have known the problems that that self-supply cap would have on surpluses and deficits, it may very well have come to a different conclusion.

And those are all the comments I want to make, Mr. Chairman.

MR. THERIAULT: Mr. Chairman, if I may, just on a point of

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procedure.

CHAIRMAN: Yes, Mr. Theriault.

MR. THERIAULT: I'm just wondering why we are going through again. Normally I would say after I am done, after all the other parties had the chance to make their closing argument, it would fall to the Applicant for rebuttal, but I have never in the previous hearings before this Board seen it go to the other parties again to make further comments.

CHAIRMAN: In the previous hearings what we have done is given an opportunity in reverse order for people to make rebuttal arguments to matters or issues or arguments that were raised by parties that had argued subsequent, because they couldn't anticipate what somebody speaking behind them was going to say. So this isn't a second opportunity to restate their argument but simply to rebut anything that was said by a party who argued after they did. This is the process that we followed in the DISCO hearing I believe. If I am wrong somebody can point that out to me.

MR. THERIAULT: I may have been -- maybe I was asleep through most of the DISCO hearing. I don't recall this process. I recall, Mr. Chairman, after I was done in the DISCO process that Mr. Morrison had the opportunity to rebut as the Applicant. But I don't recall it going to

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2 all the other Intervenors, because then do I have an  
3 opportunity after Mr. Kenny rebuts to go on and make  
4 comments.

5 CHAIRMAN: Well, Mr. Theriault, the reasoning behind this  
6 process, and I can assure you unless my memory is failing  
7 me now, that this is the fashion in which we have  
8 proceeded in the past. This is the way the Public  
9 Utilities Board proceeded. This is the way that the EUB  
10 has proceeded. And the reasoning is that parties can't  
11 anticipate new arguments that would be raised by somebody  
12 who speaks after they do. So it wouldn't be an  
13 opportunity -- for example when Mr. Belcher's turn came up  
14 he could only speak really to new issues raised by you  
15 because he would have an opportunity to speak to everybody  
16 else. He would have heard them prior to his opportunity  
17 to sum up.

18 MR. THERIAULT: Okay. Thank you.

19 CHAIRMAN: I think that brings us to Mr. MacDougall. Sorry,  
20 Mr. Morrison, you are finished I take it?

21 MR. MORRISON: I'm finished.

22 CHAIRMAN: Mr. MacDougall.

23 MR. MACDOUGALL: Thank you, Mr. Chair, I have three points.

24 Before I get to them I can confirm in all of my years  
25 before this Board that has always been the process, the

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process that is being conducted today.

The first point I want to make is just on the definition of tariff. I do want to reiterate, and I think the Vice-Chairman has said that, in the definition of tariff the word fixed is not there. Mr. Theriault may have put the word fixed throughout his argument, but it is simply not in the definition of tariff. In fact the definition of tariff explicitly provides for rules for calculation of tolls. Our interpretation is the reason it's there is to allow for tariffs to include rules for the calculation of tolls rather than just setting a fixed toll. That's the flexibility that is required from time to time. I believe Mr. Porter has indicated that in fact Schedule 10 of the current set of schedules does not have a fixed toll. That is not unusual whatsoever. And our interpretation is clearly that the Board has the authority to approve the tariff as put forward by the NBSO.

The next point I want to raise, and I think because Integrys was part of the settlement agreement, it behooves us to make some comments here although I am sure Mr. Kenny may make some as well. From my notes here Mr. Theriault made reference such as NBSO schemes doing away with Board oversight, and having a little get together with respect to approval of revenue requirements going forward. I

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2 would just like on Integrys' behalf to let the Board know this  
3 settlement agreement was vigorously negotiated.

4 Integrys has been an extraordinarily active participant  
5 in the New Brunswick and the Northern Maine market. We  
6 have appeared at I believe every hearing dealing with the  
7 NBSO and the OATT. We have caused some hearings to occur.

8 We are vigorous in protecting our rights. And the NBSO  
9 had significant negotiations with us and with other  
10 parties in coming to the settlement agreement. And we  
11 believe if anything the settlement agreement strengthens  
12 oversight going forward. So from the perspective of a  
13 market participant we believe this methodology provides  
14 for continued annual oversight which we believe is a step  
15 forward, a significant step forward. It was something  
16 that we were looking for in the settlement agreement and  
17 the NBSO felt was appropriate. And we also believe that  
18 the mechanisms of the monthly settlements and the way the  
19 rates are set up will ensure that we get rid of the cross-  
20 subsidization. What Mr. Theriault failed to do is deal  
21 with the various issues that have led us to these  
22 hearings. The serious significant issue was cross-  
23 subsidization between rate schedules. The methodology put  
24 forward will essentially eliminate that, which we think is  
25 -- behooves everybody,



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and we do not see this proposal except anything as an extremely, just, reasonable and acceptable approach to regulatory oversight of the NBSO. We certainly would not be supporting it if it was anything less than that. And number three, just on the issue of Mr. Theriault's statement that the Board could just adopt the Strawman Model. Well in the face of the clarification document which was filed with all the parties, which everyone has had significant time to see, of which there was a period to file evidence on, the Public Intervenor did not file evidence subsequent to the receipt of this information. There was no evidence filed by any party who was aware of this process, and that is the market participants and all of the affected parties. In the face of all that parties did not raise evidence on the Strawman Model. They supported the settlement. If we were here to discuss the Strawman Model we would have a significantly different hearing, and I would just like in that regard to point the Board to the settlement agreement. I don't think you have to pull it up, but it is at A-5. It's the first tab. And section 3(a),(b) and (c) of the settlement agreement specifically says that the NBSO an parties are supporting the Strawman Model to be implemented as soon as possible with the exception of items 6(a) and (b) as they are dealt

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with in items 3 and (b) in the settlement agreement. Items 3 and (b) of the settlement agreement deal with the monthly settlement of CBAS based on service with the monthly settlements of Schedules 1 and 2 by transmission usage. The monthly settlement of those two items is probably the most significant element of the go forward application of the Strawman Model, and it has been revised by the settlement agreement because the market participants did not agree with the Strawman Model on those items, and in fact they are coming up with a proposal that will eliminate all the cross-subsidies and that all the market participants and the NBSO are in agreement with. We cannot simply go back to the Strawman Model in the face of no evidence, and in fact those elements of the Strawman Model, if they were imposed in the way that the NBSO had initially put forward, it would certainly not have the support of Integrys and I assume not the support of many of the market participants. So what we have come is to support the settlement but the settlement modifies the Strawman Model in very fundamental ways which all the parties who can be affected by these rates believe are better.

And those are my comments, Mr. Chair.

CHAIRMAN: Thank you, Mr. MacDougall. Mr. Kenny?

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MR. KENNY: If we could have maybe 10 or 15 minutes just to review our notes, or whenever you want to take a Board break.

CHAIRMAN: Sure. Would 15 minutes be sufficient?

MR. KENNY: Should do it.

CHAIRMAN: We will adjourn for 15 minutes.

(Recess - 12:05 p.m. - 12:20 p.m.)

CHAIRMAN: Mr. Kenny.

MR. KENNY: Mr. Chairman, Board Members, Mr. Roherty is going to address some items and I would just like to finish with the issue of jurisdiction.

CHAIRMAN: Okay.

MR. ROHERTY: Thank you, Mr. Chair. Regarding Mr. MacDougall's summation, he mentioned that -- or he asked that the NBSO file is compensation study, and so just to be clear, that study will be undertaken in the current budget year, but it is unlikely that if this settlement agreement goes through and we are back before the Board in January with our next year's revenue requirement, it's unlikely that will be done in that time frame. But when it is completed we are certainly prepared to provide the results of the study and the compensation system that we will use on a go forward basis. So I just wanted to be clear with the Board on that.

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2 Secondly, Mr. Belcher raised the issue about posted rates  
3 and I think the Board canvassed as well. And the NBSO is  
4 prepared to go that extra step, as Mr. Belcher described  
5 it in his answer to the Vice-Chair.

6 And lastly for me, there has been some discussion again  
7 about the EUB Board staff proposal in respect of the  
8 methodology around -- dealing with surpluses and deficits,  
9 and we indicated that there may be a possibility for  
10 looking at that at a point in time, but I guess in summary  
11 we agree with Mr. MacDougall's comment in his summation  
12 that that methodology may present some problems, and while  
13 we think it may be revisited at a point in time we would  
14 encourage the Board to adopt the methodology that is in  
15 the Settlement Agreement as presented.

16 MR. KENNY: Mr. Chair, on the issue of jurisdiction that has  
17 been raised, again as I pointed out the Act is specific.  
18 You don't have to infer anything from the definition of  
19 tariff. It has been pointed out that it has been defined  
20 and as has been pointed out, and I have got to re-  
21 emphasize this, including rules for calculation of tolls.  
22 Including rules for calculation of tolls. It's specific.  
23 It's there. You don't have to infer it, that  
24 jurisdiction, that power. And then again as pointed out  
25 by the Vice-Chair, he has pointed out that 111(5). Again

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not inferring any powers or not exercising any inherent

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powers. Specific powers in the statute for mechanisms to

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recover the reasonable costs incurred by the SO in the

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acquisition, et cetera, et cetera.

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So the specifics are there in the statute. You don't have

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to -- I know I am repeating myself -- infer anything as to

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the power of the Board of what it can do in this

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particular application.

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So with that, Mr. Chair, I think that's everything in

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rebuttal.

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My understanding with talking to my co-counsel that

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Schedule 10 is not a fixed rate. And if that's the case

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then NBSO would be in violation at this stage of the game

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anyway.

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Nothing further.

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CHAIRMAN: Thank you, Mr. Kenny. At this point I would like

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to thank all of the parties and their counsel for their

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co-operation and professionalism throughout. We have been

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able to conclude this hearing in about two-and-a-half days

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and quite frankly it was four or five days worth of work.

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So I do thank the parties for their co-operation.

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As always we have lots of support as well from our court

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reporter, translators, our sound technician, Board

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secretary. And so we thank them for their assistance.

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The Board will commence their deliberations as soon as possible and we will issue a decision just as quickly as we can.

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