

New Brunswick Board of Commissioners of Public Utilities

In the Matter of a Hearing to review Section 2.1 of the Open Access Transmission Tariff (OATT) approved by the Board on June 19, 2003 and to Review the Board's "Open Season" direction contained in its March 13, 2003 Decision with respect to the said Tariff

Delta Hotel, Saint John, N.B.
February 4th 2004, 9:30 a.m.

CHAIRMAN: David C. Nicholson, Q.C.

COMMISSIONERS: J. Cowan-McGuigan
Ken F. Sollows
Robert Richardson
Leon C. Bremner

BOARD COUNSEL: Peter MacNutt, Q.C.

BOARD SECRETARY: Lorraine Légère

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CHAIRMAN: Good morning, ladies and gentlemen.

Yesterday we spoke to the representatives of the CMA as an informal intervenor. And they will be submitting a written presentation to us. And I have indicated by Monday. So counsel will all be aware -- parties will all be aware of what it is they have to say if they want to make a comment in summation.

There are no other informal intervenors who appear to want to say anything. The only informal intervenor we have not been able to contact is Trans Energie. And they are big enough to worry about it themselves, as far as I'm

concerned. No. They have been told. And the Board Secretary has attempted to contact them.

So are there any preliminary matters?

MR. MORRISON: Yes, Mr. Chairman. Just one. I do -- we do have one of the undertakings ready. And the rest we hope, or at least most of them we hope will be ready later in the morning.

I have one. It is a response to a question by Commissioner Sollows regarding the forecast in '98 for the 02/03 year. And I have a written response to that. So provide that to the Secretary.

CHAIRMAN: All right. This document which is headed "Undertaking #3", and it is a two-page document, will be marked as exhibit A-10.

Anything else, Mr. Morrison?

MR. MORRISON: Not at this time, Mr. Chairman. Thank you.

CHAIRMAN: No other preliminary matters? Mr. Zed, would you like to escort your panel to the witness stand?

MR. ZED: Would be pleased to, sir.

(CHARLES TRABANDT, JAMES CONNORS, DON JESSOME and ERIC FERGUSON, sworn)

MR. ZED: Thank you. Although these gentlemen have been with us for the entire hearing and their c.v.'s have been filed with the Board, I would like to -- on the left just

refer Mr. Charles Trabandt, Charles River Associates, Jim Connors of Emera Inc., Don Jessome of Emera Energy and Eric Ferguson of Nova Scotia Power. And these gentlemen will be testifying on behalf of Emera Energy.

Our plan is for Mr. Connors to briefly address and summarize the evidence filed directly by Emera Energy, and then have Mr. Trabandt briefly summarize the evidence that he filed on behalf of Emera Energy, following which there is just one clarification Mr. Connors will speak to. And I have spoken to Mr. Hashey about that. And I don't think there is an issue.

CHAIRMAN: Proceed. Thank you.

MR. CONNORS: Thank you. Good morning, Mr. Chairman and Commissioners. On behalf of Emera, we would begin by expressing appreciation for the opportunity to address you on what we believe are some very important matters.

A multiyear, multiperson stakeholder consultative process has resulted in the Government of New Brunswick adopting an energy policy which as stated in the White Paper will allow the province to fully participate in a competitive energy market.

And as part of that policy statement, the government noted that there was a need to refine the regulatory process. And it promised that your Board would be, if I

may quote from the White Paper, be given the authority to monitor the competitiveness of the wholesale market and ensure that the Crown utility is unable to exercise market power.

The Government in its White Paper also noted that while the wires businesses would remain natural monopolies, "With the increased competition in the wholesale market and the prospective competition in the retail market, it is essential that the wires businesses be operated in a manner that is fair to all participants and prevents incumbents from securing any undue competitive advantage."

Now last year your Board, pursuant to these new duties that were given to you to ensure fairness to all participants, after a very full and public hearing, in which you received written evidence, IRs, oral testimony, cross examinations, closing submissions, you brought regulatory certainty to transmission for the first time in this province.

MR. HASHEY: Mr. Chairman, can I interrupt. Aren't we starting to argue our case here. I mean, there is time for argument.

Normally if there is a presentation summarizing your evidence, we have it posted and the witness explains that

we have advance notice of it, we have advance copies of it. This has not happened in this instance.

And I think that this is an attempt to argue a case in advance rather than argue at the conclusion. And I would object to the statement.

CHAIRMAN: Mr. Hashey, there is a fair amount, as I have read it, and Mr. Zed, of the evidence of this panel that one could claim was argument to begin with.

I just hope that -- Mr. Hashey, I'm going to allow this to continue. But I'm going to ask Mr. Connors that if he can do, as his counsel has indicated he would, and make that a brief overview --

MR. CONNORS: Yes, indeed, Mr. Chairman.

CHAIRMAN: -- of what has happened, sir. Thank you.

MR. CONNORS: The purpose of my very brief comments this morning is to set the contextual framework for the evidence that you will have already received from us and which you will get from us this morning through the cross examination which will ensue.

And I wanted to lay out that context in the sense that last year when you issued your decision, you made it quite clear that this was the first time that a tariff governing the transmission system had been approved by a regulatory body.

And your determination at that time was that with respect to what happened prior to your regulatory oversight, there had not been a completely fair or non-discriminatory environment for bidding on transmission.

And that while today some would come before you and say that you were wrong in your decision, from our perspective we are here with the evidence that we have filed to suggest that your decision is very supportive of the public policy enunciated in New Brunswick to move towards an open market, a more open market in a very deliberate and controlled way, and that the decision that you made in effect was right.

So that, Mr. Chairman, our decision -- our evidence goes clearly to the point of supporting your decision saying it ought to stand. And in our evidence we have done four primary things.

We indicate in our evidence that your decision to allow this open and transparent and publicly regulated process for the allocation of some of the transmission capacity, when weighed from a policy perspective in light of the reams of policy material which has been produced in the last few years around energy in this province, indicates that the decision to open a portion of that transmission capacity is rational and provides the

reasonable balance between the short-term financial interests of the utility and the longer term development of competitive markets, and that the decision in the evidence that we filed, in our view, is very consistent with the Province's restructuring initiatives.

Secondly the financial analysis which we have put forward in our evidence shows that the actual impact of the loss of all or any portion of this 188 megawatts of transmission is highly uncertain.

And equally so the assumption that underlies New Brunswick Power's case that it will lose all of this or a great portion of this even if it bids aggressively is equally suspect.

Now our calculations are based on information largely supplied by NB Power, and as we heard yesterday, confirmed by Mr. Bishop, and indicate a very small potential impact on that company's operations.

Three, our evidence goes to show that any potential for reduced margins as a result of opening up a portion of the transmission system, or any reduced margins as a result of any subsequent failure by NB Genco to cut it in the competitive marketplace, our evidence suggests that any small loss in that regard can be offset by a variety of mitigating strategies. And some of those are addressed in

our evidence.

Fourthly our evidence goes to show that the Board's decision, your decision last year, is a positive move in support of the Province's policy of developing a more competitive electric market.

And the issue that is again in play here today is one the resolution of which will either confirm that we are going to move towards the development of a more vibrant electricity sector in New Brunswick or whether we don't.

And so in short, Mr. Chairman, the evidence that we put before you today rebuts the assertions of New Brunswick Power that your decision places undue burdens on ratepayers, unduly harms the utility or creates unreasonable risks for market participants.

And our evidence also raises concern with the efforts of some to undercut your regulatory independence. As one of the reports that we cite noted, you are to "act as an independent referee amongst all of the players."

You have issued a clear decision. And our evidence shows that to overthrow that decision reached after a full and public hearing will in effect create regulatory uncertainty at the very moment that this fledgling market needs a signal that there is an independent regulator acting in the public interest who is very much in control.

Finally the evidence that we have put forward seeks to give you some perspective on the Federal Energy Regulatory Commission. And the evidence of energy industry regulatory expert and former FERC commissioner Mr. Charles Trabandt, sitting to my side, is before you.

And before I ask him to very briefly introduce his own evidence, let me say this. The opinions of persons such as Mr. Hoecker and Mr. Trabandt or others as to what FERC says or meant to say, or the statements of FERC itself, are obviously not binding on us here as Canadians.

But to the extent that we are looking at trying to model ourselves on some of their processes, we offer this evidence as to -- in the hope that their thoughts on underlying principles may be helpful in guiding you to the right decision, and that that decision is one that ought to ensure that there is fairness to all market participants and ultimately to the public for whom this is all about, the public who is to be served.

So Mr. Chairman, at that point I would suggest to you that the evidence that we have put forward goes to the point of showing that the risk of any material loss to New Brunswick Power or indeed to customers is very small.

It would certainly not outweigh the anticipated benefits of increased competition in New Brunswick. And

that plus considerations of fairness, openness, market efficiency and regulatory consistency and predictability all favor maintaining your existing decision.

I would like to ask your indulgence for just a couple of moments so that Mr. Trabandt might give you a summary of his particular portion of the testimony.

But thank you, Mr. Chairman.

MR. TRABANDT: Thank you, Mr. Connors. Good morning, Mr. Chairman and Commissioners, I am honored to have this opportunity to appear before you to share with you my thoughts on the present issue concerning Section 2.1 of the Open Access Transmission Tariff.

As I said in my evidence and I hope that you do not mind me reiterating here, I consider this a matter solely within the Board's jurisdiction. Moreover I am of the opinion that FERC would deem this subject as an internal matter for the province of New Brunswick.

There are two important issues that I am here to address. First was the Board's decision to not grandfather a portion of the transmission reservations held by New Brunswick Power with itself to be FERC compatible.

My conclusion is that the present Section 2.1 of the Open Access Transmission Tariff as approved by the Board

is FERC compliant. It poses no obstacles to realizing the goals set forth in the government White Paper and the Market Design Committee final report to having a FERC compliant tariff.

In addition, because the decision is completely in concert with the approach adopted by the FERC in similar matters, I am of the opinion that Section 2.1, as previously approved by you, would facilitate an application to obtain power marketing authority for New Brunswick Power.

Finally with regard to FERC's view of the decision to not grandfather the reservations, I believe the FERC would likely consider it to be a healthy signal because the decision shows resolve not to provide preferential treatment to the incumbent while at the same time balancing the need to respect existing contracts with third parties.

The second question I am here to address is how the FERC's approach might apply to this issue under existing policy and practice.

Again, this is not to suggest that the Board should necessarily follow the FERC. But to the degree that there is relevance for you, how the approach taken by the FERC might be helpful in revisiting your decision in this

matter.

The principles that it appears the Board applied in reaching your original decision are similar to those that are operative at the FERC. The FERC has historically concerned itself that outcomes be just and reasonable and not anti-competitive.

In the case of natural gas restructuring, the FERC allowed for generic abrogation of contracts, while in the electric power restructuring, it has allowed for a case by case review.

My review of the circumstances of this case leads me to the conclusion that not only was NB Power not in compliance with Order 888 policies and practices at the time of the bidding for transmission capacity, but I also agree with the Board that as a result, the process was not completely open and fair.

NB Power did not have standards of conduct, it was not functionally unbundled and transmission personnel were performing marketing functions, among other factors. Moreover, there was no regulatory framework in place governing the transmission tariff.

As a result of these considerations, I am of the opinion that given the same set of facts before it, FERC would likely have reached the same decision as the Board.

In addition, if having originally decided not to grandfather a portion of the reservations, the FERC would have strong reservations about changing the decision and would be unlikely to reverse it.

In order to do so under FERC practice, FERC would have to find that as a matter of fact in law the process was indeed completely open, fair and just and reasonable.

To conclude my remarks, the decision of the Board to not grandfather a portion of the transmission capacity was correct and it was in the public interest. FERC principles and practice support both that decision and any decision you make here to uphold your original decision.

Thank you, Mr. Chairman.

MR. ZED: Mr. Chair, perhaps I could ask Mr. Connors on behalf of Emera Energy to adopt the pre-filed evidence as evidence in this hearing.

MR. CONNORS: We do.

MR. ZED: And that includes the evidence of Mr. Trabandt?

MR. CONNORS: Yes, sir.

MR. ZED: Thank you. Now there is one matter of clarification. Mr. Connors, you were present for Mr. Marshall's testimony and he was asked in cross examination by Mr. Anderson, and I believe it begins at page 161 of the transcript, to comment on the Open Access Transmission

Tariff in Nova Scotia.

So perhaps I could just ask you to tell the Board the status of that matter, clarification.

MR. CONNORS: Mr. Chairman, I know that this doesn't go directly to a point in issue but some information was shared with you about the process in Nova Scotia. And I simply wanted to clarify that process.

At the transcript at page 161, after referring to the fact that the market is not yet open in Nova Scotia, there was comment about the EMGC, the Electricity Market Governance Committee process recommendations having gone to the government. And then the statement that they, the government have yet to act on them and to state a policy as to whether or not there will be a market and what characteristics it will have.

Further on in the evidence there was note that while Nova Scotia Power is proceeding to prepare an OATT application and attempt to file that within the next month, that quotes they are doing that on speculation as to whether the government in actual fact will alter legislation to allow that to be put in place.

I wanted to say quite briefly that the government in its energy strategy issued a couple of years ago, has already been very, very definitive in terms of the market.

The initial market scope will be a wholesale market for the utilities. On the retail side, producers of renewable generation will have the opportunity to market directly to all retail customers across Nova Scotia.

As part of that strategy, the government created the EMGC, on which I sat representing our company with Chris Huskilson. And the mandate of that committee was to basically make recommendations around implementation and further development of the strategy.

The report was filed last summer. We had an election in Nova Scotia so that finally when all the smoke had cleared, it was later in the year when the minister announced publicly that he had accepted the report and its recommendations in principle and spoke specifically to the OATT process that Nova Scotia Power had by then begun to publicly undertake.

And as you will be aware from our invitations to your staff and New Brunswick Power to that company, we have already begun a consultative process and have held several wide meetings with stakeholders, workshops and will be filing our tariff we hope by the end of February.

The final point is that there is no requirement to change the legislation in order to put an OATT in place. The Public Utilities Act is sufficiently broad and all

participants, including governments, seem to agree we can proceed to that without legislative change.

Obviously there may be some need in terms of actually setting up the market, but I wanted to make it very plain we were proceeding with the OATT and there is no issue of speculation around legislation.

Thank you very much.

CHAIRMAN: Mr. Connors, I just have one question concerning that. I knew that it was to be an open market for wholesale electricity but I was not aware that there were provisions in the policy that if you were an independent power producer in Nova Scotia that you could sell to any retail or wholesale customer.

Did I understand that correctly?

MR. CONNORS: Yes, you do.

CHAIRMAN: But you have to be located in the province of Nova Scotia?

MR. CONNORS: As it is presently worded, that would be correct. And the rules as to just how that would be operationalized are still to be developed, but that is certainly the policy direction that the government is taking.

CHAIRMAN: Okay. Thank you, sir. Mr. Zed, anything further?

MR. ZED: I make the panel available for cross examination, sir.

CHAIRMAN: Thank you. Mr. Hashey? My intention would be, Mr. Hashey, as it was in the reverse order, is that NB Power go first, the other intervenors, and then you would have the opportunity if there is anything you wanted to question further on that has come up, or been elaborated on by the questioning of the other intervenors, or the intervenors, that you would have the opportunity to do that.

MR. HASHEY: Thank you, Mr. Chairman. The intent here, and I have discussed that with my friend, Mr. Zed, is that Mr. Morrison has a few questions for Mr. Jessome and then I have a few questions for Mr. Connors to follow up.

MR. MORRISON: Thank you, Mr. Chairman. I believe my questions are for Mr. Jessome but I am not entirely sure.

CROSS EXAMINATION BY MR. MORRISON:

Q.1 - I would ask whoever, I am going to ask Mr. Jessome, to take out exhibit EEI-1. Under the tab "Emera Evidence" at page 19.

MR. JESSOME: Yes, I have that.

Q.2 - And if you would look, Mr. Jessome, to line 19 of that evidence. At lines 19 to 22 it is stated "In fact" -- you are talking about New Brunswick's forecast on margins --

"This is an uncertain forecast which will continue to be influenced by a myriad of interrelated factors, many of which are subject to dramatic change over the coming decade and will continue to remain substantially beyond the control of the applicant."

Do you see that? And if you would refer on the same page to line 30 -- I guess it is 31 actually -- your evidence states that "The actual impact of the loss of all or any portion of the 188 megawatts of transmission reservation in play is highly uncertain."

Now I'm assuming by that statement, Mr. Jessome, that the margins which NB Power has stated in its evidence that could be lost could be lower. Would you agree with that?

MR. CONNORS: I think Mr. Ferguson --

MR. MORRISON: Oh, it is Mr. Ferguson? Okay.

MR. CONNORS: -- who can respond to these questions,

Mr. Morrison.

MR. FERGUSON: Yes, Mr. Morrison.

Q.3 - And on the same token they could be higher as well, right?

MR. FERGUSON: Yes.

Q.4 - Mr. Ferguson, were you involved in the evidence dealing with the mitigation strategies?

MR. FERGUSON: Yes.

Q.5 - Okay. Then my questions will be directed to you I guess.

You would agree that the energy that we are talking about here in terms of export sales is surplus energy, beyond NB Power's inprovince load requirements? You would agree with that?

MR. FERGUSON: Yes.

Q.6 - And that this surplus energy is -- you would also agree that the New Brunswick Power system is a winter peaking system?

MR. FERGUSON: Yes.

Q.7 - So that the surplus energy by and large that we are talking about that is available for export is really available in the months between April and October, the summer months.

Would you agree with that?

MR. FERGUSON: Yes.

Q.8 - And you would agree that, give or take -- and I don't want to get into minutia of the numbers. But we are generally talking about one terawatt-hour, in that vicinity of export energy.

Would you agree with that?

MR. FERGUSON: Yes.

Q.9 - And I would refer you, Mr. Ferguson, to page 15 of the

same exhibit, and at line 28 of that page. Now you say that, to paraphrase, that this surplus energy could be marketed internally inside New Brunswick.

Is that -- do I understand your evidence correctly?

MR. FERGUSON: That's a proposed mitigation strategy, yes.

Q.10 - Right. Now you heard Mr. Gorman the other day say that -- I believe it was yesterday -- that one terawatt of energy is approximately what Saint John Energy requires, the City of Saint John basically.

Did you hear that evidence?

MR. FERGUSON: I did.

Q.11 - So I just want to be clear, Mr. Ferguson. Are you saying that there is a potential customer in New Brunswick that will take one terawatt of energy during the summer months that NB Power can market this energy to?

I mean, I just want to be clear as to what you are suggesting here.

MR. FERGUSON: No. Our suggestion is that there is a variety of mitigation strategies available to the utility.

I think it would be a suite of options which they would look to to address the impact should they lose access to the 188 megawatts, one of which would be marketing internally.

My thought is that there would be some load growth.

There would be perhaps some opportunities for, you know, sales off peak or encouragement of promotion of electricity in one manner or another.

Q.12 - Okay. Could I stop you --

MR. FERGUSON: So it's not the -- excuse me. It's not the total shortfall that is to be made up through this strategy. But it's one mechanism.

Q.13 - When you talk about promotional sales, are you talking about trying to promote the sale of this energy to improve load by what, reduced rates?

MR. FERGUSON: Well, I would think so. If you have surplus energy there would be some -- you would encourage economic use of that.

Q.14 - You are not suggesting, Mr. Ferguson, that NB Power could sell the surplus energy inside New Brunswick in the summertime period at U.S. market rates, are you?

MR. FERGUSON: No. I don't expect at U.S. market rates. But again I'm talking about a portion of the shortfall. And I would expect then it's a portion of the margin shortfall that they are trying to make up, and that we are encouraging or suggesting through these mechanisms.

Q.15 - But you would agree with me, Mr. Ferguson, that even if it is a portion, and it is being sold at a rate that is less than the U.S. market -- less than what NB Power can

get in the U.S. market, that they are going to suffer a loss, right?

MR. FERGUSON: Again what I'm talking about is -- we are talking about a recovery strategy. So this is the way to recover a portion of any potential shortfall.

Q.16 - Can I ask you to refer to -- it is in the same exhibit binder, Mr. Chairman. And it is EEI NBP IR-10. And that is at page 12 under that tab.

MR. CONNORS: Just give us a moment to look it up, Mr. Morrison.

Q.17 - Certainly. Do you have that, Mr. Ferguson?

MR. FERGUSON: Yes, sir.

Q.18 - Now -- and I'm assuming this is your evidence. In the filed evidence, Emera said that it is entirely possible that the applicant will suffer no deterioration in real value as a result of this change.

But in your answer to IR-10, if I read the answer correctly, you say that your suggested mitigation strategies will reduce deterioration in value, is that correct?

MR. FERGUSON: That's correct.

Q.19 - And if I can refer you back to page 20 of the evidence in the same exhibit binder. And at line 3 you say that the applicant will be able to largely offset any reduced

margins as a result of the open season.

It is a fact, would you agree, Mr. Ferguson, that nowhere in your evidence regarding the mitigation strategies is the loss ever reduced to zero, is that correct?

MR. FERGUSON: I would agree that the loss is not explicitly reduced to zero. But again we are talking about a suite of mechanisms which we would argue have the potential to greatly reduce that loss and perhaps entirely offset it.

Q.20 - Well, can you show me in your evidence where it says entirely offset?

Because I have gone through that evidence. And I don't see where the mitigation strategies completely offset the losses to NB Power.

MR. FERGUSON: Well, I accept that, sir, then, sorry. No. Then I would agree we don't entirely offset.

Q.21 - So Mr. Ferguson, even if -- and I say even if your suggested mitigation strategies work, and we are not suggesting that they do, but even if they do work, New Brunswick Power will still end up suffering a loss, won't it?

MR. FERGUSON: I guess what I would say is that our evidence uses the word "substantially". We -- in my mind certainly, for a company with \$1.4 billion in revenue,

it's difficult to say that they would not -- excuse me.

It's difficult to say that they could entirely offset it with precision. Our expectation is that they can be substantially offset.

Q.22 - But not entirely offset?

MR. FERGUSON: My expectation would be that they could be entirely offset.

Q.23 - But your evidence doesn't say that, Mr. Ferguson?

MR. FERGUSON: No. I accept that.

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

Thank you.

MR. HASHEY: Thank you, Mr. Chairman. I have just a couple of questions, if I might, of Mr. Connors.

CROSS EXAMINATION BY MR. HASHEY:

Q.24 - Mr. Connors, I have read your evidence both presented here and in The Telegraph-Journal actually this week where you talk about pigs and pokes and things of that nature.

Did you read the tariff that had been filed with this Board by NB Power in 1998?

MR. CONNORS: I have seen that document. And I have read it but quite some time ago.

Q.25 - Okay. Well, I won't question in detail on it. There has been a lot said and been a lot of discussion here about whether Nova Scotia Power -- because Emera wasn't I

believe in existence at that time -- might have bid.

And there was reasons why they didn't come in. And you have explained those reasons, correct?

MR. CONNORS: I have explained issues that we have with the process --

Q.26 - Right.

MR. CONNORS: -- back then. I think we had earlier in the last hearing had some discussion about whether or not we knew whether we had notice of that hearing. And I had indicated that would change as the personnel, we weren't in a position to say one way or the other. Although we weren't disputing anything that you might have had to say to suggest that we did have notice.

Q.27 - Well, it was opened. And it wasn't bid. But I would suggest to you whether it was Nova Scotia or whoever it might have been, that if a bid had been made, and it had been the best bid, that it would have had to have been accepted by NB Power?

MR. CONNORS: Oh, under the terms of your tariff?

Q.28 - Yes.

MR. CONNORS: Yes. But that is not the issues that we had with it.

Q.29 - No. But in fact it would have been binding, and legally binding I would suggest as a lawyer.

And if somebody had come in and bid and had asked for that and had outbid NB Power Generation unit at that time, they would have got a binding contract, wouldn't they?

MR. CONNORS: Yes. Just as we would have been bound to have accepted unregulated rate increases put into effect by New Brunswick Power. I think that was the pig in the poke reference that I was referring to.

Q.30 - Okay. And you were aware that there was an arrangement that there wouldn't be any increases. That was made. But at that time you wouldn't have been aware of it.

MR. CONNORS: No.

Q.31 - I recognize that.

MR. CONNORS: We weren't aware of that. Because I think that came subsequently to the open season. I think information may have been given to Hydro Quebec in a letter that was dated the day before the end of the open season. But we certainly were not copied with that letter.

Q.32 - No. Well, nor did you make any request for information. Now when I say "you", in fairness you weren't there. You were practicing law at that time, right?

MR. CONNORS: I understand your question to mean Nova Scotia Power, who would have been the operative company at that

time. But I think the point about this open access process is that that kind of information would have been publicly posted.

And to talk about changing the rate regime to one market participant the day before the open season closes just underscores some of our problems with the overall unfairness of the process and the uncertainty from a business perspective.

Q.33 - Now you are saying that agreements between business units and presumably affiliates of the same company would not be binding and enforceable. Is that what you are saying?

MR. CONNORS: No. And I think Mr. Trabandt can certainly talk to any of the FERC aspects of that. What we are saying is that when you look at all of the circumstances that existed before there was any regulatory oversight over that tariff, the absence of a code of conduct, the lack of real functional unbundling, the ability to raise prices without any regulatory oversight, the difference between the through tariff from the out tariff, the fact that the price itself seemed to be extraordinarily high, all of those things taken together suggested to us that the process that resulted in this transmission ending up being held by NB Power should justify in effect starting

afresh with this new process.

Q.34 - I heard your point. Now could you answer me the question specifically?

Between business units right now, if NB Power is not separated by separate companies say, which hasn't happened yet, and there was a bid made by NB Power Generation in relation to an open access, would you say they could enter into a contract that would be binding right now?

MR. CONNORS: Under the process now that the Board has approved, yes, obviously the business unit, the Genco could bid.

Because the process as approved by the Board has dealt with all of the issues that we have. So surely, yes, the business unit would be free to compete.

We are not saying at all that Genco can't enter into the fray and compete with any other independent who wishes to show up under this new Board approved process.

Q.35 - Thank you. I wanted that clarified. So therefore, as it stands now, you are not making an argument because there is not a legally enforceable contract per se, contract 101 stuff that you and I both went through at one point, that there would be a difficulty in entering into a binding obligation or agreement that would be binding on Genco if they bid under the current circumstances?

MR. CONNORS: Well, I'm not going to enter in at this point into the whole issue of whether New Brunswick Power still in its present structure can contract with itself.

But I think what we -- but there is no difficulty in my mind under a publicly regulated process that the Board has now approved for the business unit or arm of NB Power from entering into that competitive fray.

Q.36 - And they wouldn't be barred by the fact that there was the issue of whether they were separate companies per se, separate legal entities?

MR. CONNORS: They wouldn't be barred because they were separate legal entities?

Q.37 - Correct. Because they weren't separate legal entities?

MR. CONNORS: Not at this point, no. I think the distinction I'm drawing very clearly is under the old process we had a very serious problem with that.

Q.38 - And it wasn't -- okay, sorry.

MR. CONNORS: But those issues have now been resolved by the Board's decision. And so when the -- if the Board decides to uphold its original decision and says, hold an open market on some portion of the transmission capacity, we would very much expect that NB Power in some way, shape or form would be there bidding. And we would have no -- we have no basis on which to object to that.

Q.39 - But your objection relates to the earlier. And you have given me all the reasons. I don't need to follow in.

MR. CONNORS: No.

Q.40 - But it wasn't because of the fact that they weren't legal entities per se that you are arguing that they couldn't bind. It was because the process wasn't there which would properly permit them, in fairness?

MR. CONNORS: Yes. And at that time, given that there was no outside process, I certainly objected to the notion that you could characterize the arrangements that had been entered into as contracts. Clearly they were not.

MR. TRABANDT: Mr. Hashey, may I add to that answer or not?

MR. HASHEY: Yes, sir. No. You are free. I'm not cutting anybody off or trying to here.

MR. TRABANDT: I would only supplement what Mr. Connors said with at least as from my expertise, I would object to the notion of an arrangement between New Brunswick Power Generation in 1978 -- or 1998 and the Transmission unit in 1998.

Because at that point in time there was not complete functional unbundling which NB Power has acknowledged here. There was no standard of conduct. There was no normal internal process.

When you asked earlier if a higher bid had come in, I don't know that I have with confidence any opinion to believe that the higher bid would have been accepted. Because we did not have at that point in time a regular standard of conduct, functional unbundling process.

And it's quite conceivable if another competitor had come in in early January, that by the time NB Power Generation made its bid on the last day of the open season that surprisingly enough it might have been the better bid. We didn't have a process in place to know that.

So I disagree that at that point in time there wasn't a distinction to be made because the business units were not properly constituted and there was not a fair process.

Q.41 - Have you read the 1998 tariff that was actually filed with this Board that was available on OASIS?

MR. TRABANDT: I have not read that tariff.

Q.42 - Thank you. The question, next one to Mr. Connors again. Final area, Mr. Connors, I think that we are talking about here this morning.

MR. CONNORS: Final answer?

Q.43 - Well, we will wind her up with this one, okay. You are a lawyer?

MR. CONNORS: Yes.

Q.44 - And in your answer to IR-5, page 6, it says -- the

question was asked "Is it Emera's position" --

CHAIRMAN: Excuse me, Mr. Hashey. I'm sorry, Mr. Hashey --

MR. HASHEY: I'm sorry.

CHAIRMAN: -- is that NB Power's question?

MR. HASHEY: Yes.

CHAIRMAN: And that was IR-5?

MR. CONNORS: That's EEI NBP IR-5?

MR. HASHEY: Yes, it is. I'm sorry.

MR. CONNORS: That is fine. I have that now.

CHAIRMAN: Go ahead, Mr. Hashey.

Q.45 - In that it says "Is it Emera's position that a transmission agreement would only be grandfathered by FERC if a third party energy contract existed in support of that agreement?"

And your answer to that was no. And then you gave an explanation of that which I have read and which the Board can read as well.

But the general answer to that was no, correct, that you didn't need a third party energy contract to support that agreement?

MR. CONNORS: No. You have to read the no in the context of all of the other words that followed it, Mr. Hashey.

Q.46 - Right. And I read the no in the context of the other

words. Now, sir, you gave evidence before in this hearing. And at that time you were very, very specific, I would suggest to you, in answering as a witness giving a factual answer, that you stated -- to help I might quote, that you say most strenuously that what FERC was talking about in all of their orders are independent third party contracts. Now that is not the case today, correct?

MR. CONNORS: No. And I quite am prepared to indicate to the Board that my evidence at that time in that regard was not as accurate as it ought to have been.

You will recall that your colleague -- when we filed our written evidence we didn't say anything about FERC. We got into it in the cross examination, as your colleague had a series of FERC decisions he was asking me to --

Q.47 - Correct.

MR. CONNORS: -- comment on. And one of the other things I said at that point to you, is he started into those questions, is I said that one of the difficulties I think in this whole scenario in Canada is none of us are FERC lawyers. And I said I had some familiarity with it. And I have read the orders. You were talking about it.

And I said of course we do business in the U.S. But then I said one of our difficulties is we are not FERC lawyers. And I said with those qualifications in mind I

would try to answer your questions.

So I was at least trying to take some pains to say that I was not a FERC expert. And it is certainly quite clear from the evidence of Mr. Trabandt that there are portions of what I said which are not correct.

But I don't think that they detract from the overall position we took, which is when you look at and what we were arguing about which was the process in 1998 was so flawed as to require us to start again. But to the extent that that has caused any grief either to you or the Board, I certainly apologize.

Q.48 - Thank you, Mr. Connors. That is fair on your part.

Mr. Connors, one final question. I apologize. I do have another question anyway. I would suggest to you, sir, that in 1998 NB Power was obligated to provide -- I'm sorry -- well, just let me ask you a question. Of course when I get a question from someone else I stumble on it, which is normally the case with all of us.

Can you answer me a question? Was NB Power obligated to provide open access in 1998?

MR. CONNORS: I don't know the answer to that question, Mr. Hashey. All I would say is having started out on a process now, with this new tariff, this is the open access Tariff, what we have now that the Board approved this year

or last year.

We wouldn't have viewed what was approved -- or it wasn't approved. But we wouldn't have viewed what was adopted by NB Power as an Open Access Transmission Tariff as that is commonly understood in 1998.

MR. HASHEY: Thank you, sir. Could I just have a very short moment? And then I think I have concluded. Thank you, Mr. Chairman.

CHAIRMAN: Take your time, Mr. Hashey.

Q.49 - One last -- if I could just follow up on that last question please. Mr. Connors, I believe that Nova Scotia has in fact utilized the NB Transmission system under the old 1998 tariff, is that not so?

MR. CONNORS: Yes, that is correct. We have certainly moved power through New Brunswick.

MR. HASHEY: Thank you.

MR. CONNORS: If I could just have one moment to clarify if I may. Just if Mr. Jessome, who has some particular expertise in this matter, can supplement my question please?

MR. HASHEY: Sure.

MR. JESSOME: Yes. Nova Scotia Power has used the transmission tariff. But to my recollection it would have been only during -- with short-term, nonfirm transmission

reservations.

MR. HASHEY: That is fine. Thank you.

CHAIRMAN: Mr. Anderson?

MR. ANDERSON: Yes, Mr. Chairman. I have some questions.

CHAIRMAN: Would you like to come down front?

MR. ANDERSON: Yes.

CHAIRMAN: We have done that to Mr. MacDougall. We probably should do it to you too.

MR. ANDERSON: I would have been offended had you not asked.

CHAIRMAN: Thank you.

CROSS EXAMINATION BY MR. ANDERSON:

MR. ANDERSON: Mr. Chairman, for purposes of the questions I have, I would be referring to EE1 at pages 20 to 22. And EE2 I'm going to talk about the Interrogatory IR 12 from NB Power.

CHAIRMAN: What was the NB Power IR or the question?

MR. ANDERSON: 12, item 12.

CHAIRMAN: Thank you. 12 on page --

MR. ANDERSON: 14.

CHAIRMAN: Great. Thank you.

Q.50 - Perhaps it will be helpful if I can find out the person on the panel who would be answering questions on this issue, the issue being the position of Emera that the fact that more than one entity may hold reservations on

this

MEPCO line will encourage merchants or third party power generation in the province of New Brunswick. Who is the best person to answer that?

MR. CONNORS: I think Mr. Jessome would like a crack at that.

Q.51 - Mr. Jessome, I understand -- the issue about which we are going to talk is the discussion on pages 20 to 22 of your submission or your testimony and the answer to IR 12, okay. Have you had a chance to review that?

MR. JESSOME: Yes, I have.

Q.52 - The fundamental proposition, as I say, is that as I understand your view, the fact that more than one entity will hold reservations on the MEPCO line, the 188 megawatts, will encourage third party generation in the province of New Brunswick because they will have more than one person or entity from whom to sell -- or to whom to sell their product, is that correct?

MR. JESSOME: It will certainly make it more conducive for someone to build generation if they have more than one party to deal with if they do need that transmission reservation.

Q.53 - Okay. And in answer to IR 12, indeed you point out the importance of having transmission, essentially it is to the United States, because you quoted back to the

applicant its part of its submission to the National Energy Board in justification for building another 300 megawatts south into the northeast United States market, correct?

MR. JESSOME: That is correct.

Q.54 - So there is no question that by all party agreement that it is important to have additional transmission capacity to the northeast United States market because that is where the summer sales are going to go, from whoever produces electricity, correct?

MR. JESSOME: Well, I can't comment on increased capacity. But certainly the capacity on the existing time line.

MR. CONNORS: I can certainly comment and indicate that we are very much in favor of increasing the capacity, and as the Board is probably aware through Bangor Hydro, working on the second tie line project.

Q.55 - Okay. I believe that was evidence of perhaps Mr. Bishop, if I'm not mistaken. In any event there is a common agreement that all parties think additional 300-megawatt transmission capacity to northeast United States is important in developing production within New Brunswick certainly if not the Maritimes, correct?

MR. JESSOME: Correct.

Q.56 - I will take either one. Thank you. For purposes of

sale of transmission or for purposes of sale of generation, in the wintertime, for a New Brunswick producer, and on the assumption that the wholesale market is opened as anticipated, that future New Brunswick producer has the expectation of selling up to 40 percent of the wholesale market in New Brunswick, am I correct? Is that your understanding?

MR. JESSOME: That would certainly be a market that they would look at.

Q.57 - Sure. Are they going to look at the Nova Scotia market a New Brunswick producer?

MR. JESSOME: When the market opens in Nova Scotia, the wholesale customers will be available.

Q.58 - For a producer in the province of New Brunswick?

MR. JESSOME: Yes. That's correct.

Q.59 - To the limited extent as you described or was described by Mr. Connors? Okay. Fair enough. And if they -- if a new producer is going to produce power -- I'm going to go back to New Brunswick for a moment. In the wintertime with whom will they compete for sales?

MR. JESSOME: Could you repeat the question please?

Q.60 - I will phrase it differently and give the answer. And you can adopt it or otherwise. If someone is going to start a new production facility in the province of New

Brunswick for sale of power, they are going to have to compete with Genco, are they not?

MR. JESSOME: Yes, they will.

Q.61 - And Genco is the low cost producer, is that not correct?

MR. JESSOME: At this time they would be, yes.

Q.62 - Okay. And so in the wintertime, if someone is going to

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MR. JESSOME: The winter -- the MEPCO is still available in the winter. But there is a market in both Atlantic Canada and the MEPCO market in the winter.

Q.63 - You aren't suggesting there is a realistic possibility that someone is going to build a power generation facility in the province of New Brunswick in anticipation they can that sell power to the northeast United States in the wintertime?

MR. JESSOME: My expectation would be that they would look for agreements in Atlantic Canada during the winter months and in the MEPCO market in the summer months.

Q.64 - Sure. Which is the business model that NB Power has adopted for quite a few years, is that correct, in your

understanding?

MR. JESSOME: From my understanding that is correct.

MR. CONNORS: Just if I could add a couple of things to this. First of all I just wanted to draw attention to the fact that our evidence includes a number of excerpts from policy documents of the government that speak to this same issue and speak to it the same way that we address it in our evidence.

Secondly I think as we go forward there seems to be some uncertainty in New Brunswick as to how much of New Brunswick Power's generation will be available. There is obviously some questions around Lepreau. There may be issues if there has to be change of fuel because of Orimulsion.

But the bottom line is there may be other opportunities in future that are not here at the moment. And I think we need to have some regard to that as well.

Q.65 - Well, my understanding is that by about 2007 there will be a need for additional power generation to meet peak winter demand in New Brunswick. Is that your understanding?

MR. CONNORS: That there will be a need for more?

Q.66 - Yes. By about 2007?

MR. CONNORS: Yes, we have heard that, yes.

Q.67 - Sure. Is that something with which you disagree? Or you have no knowledge, I mean?

MR. CONNORS: No, no. I don't disagree with that at all.

Q.68 - Okay. So the expectation is at least between now and 2007, Genco will have sufficient power generation capacity to fill the needs of New Brunswick consumers of electricity. Do you take issue with that?

MR. CONNORS: Based on what we understand, no, we don't take issue with that. But customers, once the market is opened, will have their choice as to whether they buy it from Genco or buy it from someone else.

Q.69 - And a new power generation facility, if they want to compete with Genco for those customers, will have to be cost-competitive, correct?

MR. CONNORS: Indeed.

Q.70 - Indeed. So someone anticipating building a new power generation facility is going to have to be more cost efficient than NB Power Generation at the present time, or at least equally as efficient?

MR. CONNORS: I think one of the drivers behind this whole notion of more competitive markets is that it hopefully should cause producers, suppliers to be more efficient, more economically efficient.

Q.71 - Yes. But the premise is -- of Emera at least is that

with simply opening transmission capacity, new power generation will come on board.

But that is not the key. The key is whoever wants to build new power generation has to have a market and they have to be cost-competitive?

MR. CONNORS: No. With respect I think that slightly misstates our premise. There are a wide range of factors which would go into the decision as to whether or not to build generation and where to site it.

One of them relates to transmission. And as New Brunswick Power for example pointed out in its filing with the National Energy Board, if there is to be some further generation here in this province, which the Provincial Government in its strategy seems to want to encourage, it is more likely to occur if that generation has the ability to also access U.S. markets, because of what you have talked about in terms of just the size of this market.

So we draw together on the one hand your own government's statements that says it wants competition on the generation side, it wants customers to have choice, with the reality that if that is going to occur in a meaningful way, it likely means people will need some access at sometime to the greater marketplaces around, whether that's Prince Edward Island, Nova Scotia, Quebec

or obviously down into the biggest market, the U.S. So we are not saying transmission is going to cause it to occur.

We are saying it is a factor.

And to the extent that you reduce the opportunity to obtain transmission, that you just make it that much more difficult to locate or build new generation in this province, renewable or otherwise.

Q.72 - All of which with which I agree, sir. But the issue is will there be new power generation within the province of New Brunswick without the assurance to the producer that they will have a market in New Brunswick and a market in the northeast United States, and that they can compete effectively with Genco for those markets?

Who is now answering these questions? Is it you, sir?

Or is it Mr. Jessome?

MR. CONNORS: Mr. Jessome was answering the particular questions about the New England market. I think we are talking about it on a policy and business perspective.

And all I can do to answer your question is to say that here are a wide range of factors that a company I think would consider, including the things that you have referred to.

Q.73 - Okay. Thank you. And with the current 188-megawatt capacity going into the northeast United States presently

served by Genco, is it your opinion that a new power generation entrepreneur will undertake to build a power generation facility simply on the basis that they may have access to this 188 megawatts or some part of it?

MR. CONNORS: No. The decision to site generation obviously involves a wide range of factors.

Q.74 - Yes.

MR. CONNORS: One of them is how do I get -- you know, what market do I need in order to make my project economically viable? I think that there is a lot of opinion expressed in the policy documents of the Province of New Brunswick that suggests that access to that American market makes it more likely that generation will site here, because it makes the economics better.

Another factor in that is access to transmission. If you are facing a situation where all of the transmission is locked down in the hands of in effect a monopoly, that is one situation.

If you are facing a situation on the other hand where transmission is held by more than one party -- in fact the more parties that hold it then the better your options may be as a generator in terms of finding the way to get your power to the market.

Q.75 - If Emera were to hold that transmission capacity, Emera

would purchase its power from the least cost producer or at least at its lowest price possible, is that correct?

You would purchase power for sale into the United States -

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MR. CONNORS: Yes.

Q.76 - -- at the least cost to you?

MR. CONNORS: That would generally be the case, I would expect, yes.

Q.77 - And the least cost producer is Genco, as Mr. Jessome has said. Are you now disagreeing with that?

MR. CONNORS: Presently.

Q.78 - Presently?

MR. CONNORS: It would all depend on who is running what times. But I would accept that as a general proposition, yes.

Q.79 - And so the fact that you may have some of the transmission capacity, I'm suggesting to your, sir, itself would not induce new power generation. Because the overriding factor is if a new entrepreneur is going to develop power, they have to have some certainly that they can produce that new power cost-effectively to compete with Genco, correct, regardless of the access on transmission facilities.

As long as Genco has sufficient power generation to

fill that 188 megawatts, and they are least cost-effective, it doesn't matter who owns the transmission lines.

MR. CONNORS: But that is the question. And I think your government policy goes to that. Are there other competitive generators who may be incented to locate here in New Brunswick?

Q.80 - I appreciate the policy document. And I'm asking you is it your proposition that there are other methods to produce power within the province of New Brunswick cost-effectively to compete with Genco? And I'm saying that is not so. And that is why the 300 megawatts is important, not this 188-megawatt line.

MR. CONNORS: I don't disagree generally with what you are saying, but I think as a transmission owner, or sorry, as a transmission capacity holder, there may be a range of options. And we may very well find ourselves in the position of doing an economic deal with somebody other than Genco to move that person's power to market, depending on the circumstances of the deal that is entered into.

You know, power as we know, is bought in -- for various terms and there may be other opportunities. And that is why I don't think it is fair to just simply limit

it in the way that your question suggests.

Q.81 - But the reality is if some person, an entrepreneur, is going to invest money, convince their bankers and financial institutions and investors to put money into power generation, they had better have a solid market, not just mere opportunity, maybe we can sell through Emera to the United States?

MR. CONNORS: Oh, I quite agree that any developer putting together a business plan, one would expect would sit down and deal with exactly those sets of questions.

Q.82 - And if Genco has the capacity to fill the 188 megawatts under the least cost producer, the fact that you, Emera, or somebody else holds transmission line access is not a very important factor?

MR. CONNORS: I guess where we have taken this is we disagree with that. That that is not always true in all cases.

Q.83 - Okay. But the reality is if 300 megawatts additional capacity is made available for transmission to the United States, something which you support, the economics of a new power generation facility become much more attractive on the following conditions: That Genco doesn't have sufficient capacity to fill up all 300 megawatts, that the new power generation is going to have to be cost-effective

with others to meet that incremental demand. And so the new power generator's business plan is going to have to say I can compete with other new producers to meet the marginal increase. That becomes economically attractive.

Do you agree or disagree with that?

MR. CONNORS: I think we generally agree with that.

MR. ANDERSON: I have no more questions. Thank you.

CHAIRMAN: Thank you, Mr. Anderson. J.D.I., is it Mr. McCarthy today?

Mr. MCCARTHY: We have no questions, Mr. Chairman. Thank you.

CHAIRMAN: Thank you. Mr. Gorman, how long will your examination of this panel take?

MR. GORMAN: All of my questions have been asked, Mr. Chairman. I have no questions.

CHAIRMAN: Good. Thank you, Mr. Gorman. And I ask you the same question, Mr. MacDougall.

MR. MACDOUGALL: Mr. Chair, I had no questions. But I do have a few questions now arising from Mr. Anderson. They should only be five minutes.

CHAIRMAN: All right. Go ahead.

MR. MACDOUGALL: And I will come up to the front, Mr. Chair.

CHAIRMAN: Pardon me?

MR. MACDOUGALL: I just indicated that I will come up to the

front.

CHAIRMAN: Oh, good idea. Thank you.

CROSS EXAMINATION BY MR. MACDOUGALL:

Q.84 - Good morning, Mr. Chair, panel members. Good morning, gentlemen. As I indicated, I did not have prepared questions. So a few of these are a bit on the fly so bear with me. They come out of some of the answers that were given to Mr. Anderson.

I think the only document we need to have in front of us is EE-1, Emera Energy's evidence. And particularly the actual evidence of Emera Energy, not of Mr. Trabandt.

I am looking at page 1. I think these questions will be primarily for Mr. Jessome, but whoever is the correct individual can jump in.

On page 1 of the Emera Energy evidence, starting at line 3, and I am just going to read the first paragraph. "Emera Energy Inc. is a non-regulated, wholly owned subsidiary of Emera Inc. Emera Energy is focused on supporting Emera's growth in diversified energy investments in northeast North America. These investments range across the entire value chain, including power, natural gas, fuel oil and natural gas liquids."

Mr. Jessome, I would just like to ask with respect to power, what are the specific businesses that Emera Energy

is in or anticipates being in the near to medium term?

MR. JESSOME: We presently participate in the Atlantic Canadian power markets, the NEPOOL power markets and we will be in the New York power markets in 2004.

Q.85 - I guess my question is more are you in the -- are you in or planning to be in the generation market at all?

MR. JESSOME: We have a business development group who looks at generation opportunities through the Atlantic Canadian and northeast markets. So, yes, we do have a generation development team that does look at opportunities.

Q.86 - And if NB Power Disco was to hold an RFP at some time in the future, we have heard that is the process that might occur for extra generation in the future, would it be possible that Emera Energy would want to bid as the generator to supply Disco's demands?

MR. JESSOME: It certainly is possible, yes.

Q.87 - And we heard yesterday, and I think this may be in the evidence as well, I think it was from Mr. Marshall that if there was an open season, parties who could bid or who would likely bid for this would be NB Power Genco, Emera Energy and also possibly Hydro-Quebec, is that correct? Or do you agree with that statement, I guess?

MR. JESSOME: Certainly all three would have the capabilities to bid on an RFP, yes.

Q.88 - And just take the hypothetical that Hydro-Quebec was to obtain this transmission if it was put to an open season, how do we know, anyone in this room, that they would provide transmission access to a new generator who wanted to compete in the Province of New Brunswick?

MR. JESSOME: We wouldn't know for certain. We certainly can't speculate on what Hydro-Quebec may or may not do.

Q.89 - Thank you very much. Mr. Connors, you made a statement so you may want to respond to this one, and again I don't have the transcript in front of me, but I copied a few of the words down. And I believe your words were, if Emera Energy had the transmission, you may do a deal with others. Do you remember saying that?

MR. CONNORS: Yes.

Q.90 - So there is no certainty that you would do a deal with others for release of transmission capacities, is that correct?

MR. CONNORS: Oh, no. I think I was using "may" in that context in the sense of, you know, there is a whole range of things you could do. And is certainly that's -- that's one of them. I mean if we held the transmission, we would obviously be -- or some portion of it, we would be looking to maximize all the business opportunities.

Q.91 - There was another line of questioning, Mr. Connors,

that went on between you and Mr. Anderson that dealt with siting of the generation. And I just want to raise a few questions on that. Because I believe what Mr. Anderson was saying was that to serve the market, he was talking about building generation in New Brunswick.

But is it your understanding that the New Brunswick market, once it's open in accordance with the Electricity Act, could actually be served by generators outside of New Brunswick, as long as they were competitive and could bid into the New Brunswick market?

MR. CONNORS: Clearly, just the same as we would expect wholesale customers in Nova Scotia to be able to have access to generation outside of the province.

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

CHAIRMAN: Thank you, Mr. MacDougall. We will take a 15 minute recess.

(Recess)

CHAIRMAN: Anything preliminary?

MR. MORRISON: Yes, Mr. Chairman. We do have a response to the second undertaking. Copies have been given to the Secretary.

And I think there is one outstanding undertaking that arose from a question from the Board on staffing costs I

believe. And that is in the process.

That is all I can say. It may have to be mailed down.

Because it is going to take a little bit of time to crunch the numbers.

CHAIRMAN: Two-page document headed "Undertaking #2" will be exhibit A-11.

Anything else? Nothing? The Board has a few questions before we ask Mr. Hashey and Mr. Morrison if they have anything they want to clear up.

MR. SOLLOWS: Yes. Mr. Connors, I think I heard you say earlier that you and your company were active participants in the design of the -- the ensuing design and the ongoing design and opening of the Nova Scotia market.

I know NB Power was very much involved in the Market Design Committee in New Brunswick and was really I think quite influential in the shape and the structure that was finally adopted, and particularly the portion of the market that was opened to competitive access.

Now if I understand the difference between the two markets here and as it is being proposed to open in Nova Scotia, there is a significant difference in New Brunswick, large retail customers, retail customers connected directly to the transmission grid are also open to competition.

And my understanding is that is not the case for Nova Scotia. Given all of our understanding, how important it is for a market to have common rules, and the acknowledgement I think of all parties here that New Brunswick and Nova Scotia alone are too small as a marketplace, and we are trying to establish a working market in the Maritimes, what -- would it be reasonable for me to assume that you argued strongly that large retail customers should have been open for access, for competitive access in Nova Scotia, and the government just didn't follow Nova Scotia Power's or Emera's advice?

And if that is the case can you give us some evidence of that?

MR. CONNORS: No, Commissioner Sollows. To put the process in its proper context, the government as I understand it, and this is before my time at Emera, undertook a very widespread consultation before the energy strategy was issued.

They certainly spoke to our company. And our understanding is that they spoke to quite a wide range of interested players. They did ask the market, the energy marketplace governance committee to again revisit the issue of the scope of the market.

So I'm much more comfortable personally speaking to

them, having been there in those discussions. We were certainly open to discussing a broader opening of the market at the retail level.

There were in that body, in that room participants who represented large industry, the Canadian Manufacturers Association. In fact our largest customer was at the table.

The municipal electric co-ops had representation at the table, the Electricity Consumers Association of Nova Scotia. The Consumers Association of Canada was at the table.

There was quite a broad representation around the Board both in terms of voting members, if I could put it that way. It was chaired by Dr. Bob Fournier of Dalhousie.

And the conclusion -- I wouldn't say anybody argued strenuously. There was quite a lengthy discussion. And we went back and forth just trying to weigh the costs and benefits of the market opening.

Obviously Nova Scotia, where it is at the end of the world, there aren't -- we have only got one tie line into the province. And the large customers did not push or take the position that they wanted the market open to them at this time.

My sense, and I don't want to put words in their mouth, is that like you are doing here in New Brunswick, people want to take a fairly deliberate and cautious approach to this.

There have been a lot of stories, good and bad, in terms of restructuring elsewhere. And I think the overall sense is let's take it one step at a time.

The committee made a recommendation to the government that there should be a further discussion of the opening of the market, but that it be done in the context of a very detailed analysis of costs and benefits to doing so.

So that's I guess a long way of answering your question. But I hope I have been responsive. And if I haven't let me know.

MR. SOLLOWS: That is fine. Thank you.

MR. CONNORS: Thank you.

MR. SOLLOWS: That is all.

CHAIRMAN: Rather than my retiring after hearing summation and taking it for granted that because Emera did not question certain of the estimates that NB Power has made, that in fact Emera agrees with them, let me ask you the question.

NB Power has made predictions as to the prices that it would obtain on the sale of electricity into the northeast

of the United States. You have seen their margins as they put them in the evidence.

And my question is does that mean, since you have not commented on those margins, that you tend to agree that they are in the reasonable range? Or is there some other hidden motive for not doing that?

MR. JESSOME: Based on the information that NB Power presented to us, it certainly appears that those numbers are reasonable. But again that is qualified based on the information that was provided to us.

CHAIRMAN: In other words, you mean the information that was provided to all of us?

MR. JESSOME: That is correct.

CHAIRMAN: Yes. Thank you. Mr. Trabandt, I have no questions to ask of you, sir, but to say that I did enjoy reading your examination in chief. So because I don't doesn't mean that I didn't enjoy it, because I did.

Mr. Hashey, any follow-up questions, clarification?

MR. MORRISON: Nothing, Mr. Chairman.

MR. ZED: I just have one redirect for clarification.

CHAIRMAN: Yes. Go ahead.

REDIRECT EXAMINATION BY MR. ZED:

Q.92 - I would ask Mr. Ferguson to turn to the Emera evidence which is EEI 1. And I believe it is at page 20, line 3.

Mr. Morrison asked him a question about the phrase "largely offset" and then jumped to several examples. And I would ask you just to take a moment to read that sentence and the following bullets.

MR. FERGUSON: Yes.

Q.93 - Now having read those bullets is it fair to say that the first bullet is the reason for use of the term "largely offset"?

MR. FERGUSON: Yes. That's correct.

Q.94 - Could you explain why?

MR. FERGUSON: Our position would be that it is unlikely that NB Power will forego entirely the 188 megawatts under discussion.

They have -- they will have a strong business case supporting continued aggressive pursuit of that tie. And it is likely that they will retain a significant portion of it.

Q.95 - Then in further response to his subsequent questions then, your mitigation strategies would minimize really the difference, is that --

MR. FERGUSON: That is absolutely correct.

MR. ZED: Thank you.

CHAIRMAN: Thank you. This panel is excused. Thank you for your evidence and your participation. We will let you

take your seats. And then I will talk to counsel about when we will reconvene for summation.

MR. MACNUTT: Mr. Chairman, while the panel is returning to their seats --

CHAIRMAN: Hold the mic' in, Mr. MacNutt.

MR. MACNUTT: Mr. Chairman, the Board -- we would like -- the Board staff, through me, would like to ask some questions of Panel B with respect to exhibit A-11, which was the response to undertaking number 2, given by NB Power a few moments ago.

CHAIRMAN: Mr. Hashey, any problem with that? Or Mr. Morrison?

MR. HASHEY: No.

CHAIRMAN: Panel B, if they are here, would they like to come up?

MR. HASHEY: That would be Mr. Bishop and Mr. Marshall.

MR. MACNUTT: Correct.

MR. HASHEY: Was it A-11 or A-10? I am not just sure what he wanted to question on?

MR. MACNUTT: A-11.

MR. HASHEY: Thank you.

CHAIRMAN: Thank you gentlemen. You are still considered to be under oath from the Board's point of view. Go ahead, Mr. MacNutt.

CROSS EXAMINATION BY MR. MACNUTT:

MR. MACNUTT: Just by way of background, Mr. Chairman, A-11, which is the response to undertaking number 2 is a recast of PUB Supplemental 1, on which outlines the situation should all sales -- NB Power -- what would happen should NB Power lose the complete 188 megawatt of sales into the U.S.

Q.96 - With respect to the response given in PUB Supplemental IR-1 was we found out -- was without mitigation. During our questioning of Panel B, we asked them to recast that table to provide the situation on the basis that mitigation had occurred. And that is now before you as exhibit A-11.

Now with respect to the typed line, which is the second line from the top on A-11, would you please explain why the prices have changed in the mitigated scenario?

MR. BISHOP: If you would excuse me for a moment, I will just pull out the original to see the differential.

CHAIRMAN: Would you give us the citation for the original exhibit, Mr. MacNutt, again?

MR. MACNUTT: PUB Supplemental 1, IR-1. And that's in -- it might be simpler, Mr Chairman, if you went to PUB-5, exhibit PUB-5. The history of it is quite simply is PUB Supplemental IR-1 was given to us. The Board introduced

an exhibit based directly on PUB Supplemental 1, which became exhibit 5, PUB 5.

And what we were asking the panel to do is to compare the second line, which is the price line on PUB-5 with the price line on A-11 for the three years in question.

CHAIRMAN: Great. I think we are all on that page. So if the panel wants to answer that question.

Let me just note it, Mr. MacNutt and panel, it appears to us that the first two lines on what we have as exhibit -- PUB-5 has changed in undertaking number 2. Not just the price, but the quantity.

MR. BISHOP: That's correct. May I then with recognition of that go down through each line, please, if I may?

Q.97 - Yes, please.

MR. BISHOP: And I think it's important to note that the response that was given that constituted the first table in the PUB Supplemental IR-1 was a response to -- the request to fill in the table which said what -- we record it as what are the benefits from the sale on the upper or last, if you will, 188 megawatts of transmission.

So the numbers that we gave in fact were numbers that came from our model that demonstrated that there was 1,019 megawatts of energy that would be transmitted on 188 megawatts.

In recasting, we have had to make a change because recasting of course has to turn a question around to say what happens if you lose the 188. Not how much you have made by making the sale on the 188. So after receiving the question and thinking about it last evening, we recognize the requirement to put it in this way. So what then happens is that when the 188 megawatts is lost, the first thing that happens is let's take 2005-2006, I will take the middle -- well column. You lose 1,019 gigawatt hours of sales. But the mitigation allows us to sell the difference between the 1,019 loss and the 877, which is the net loss of gigawatt hours to Hydro Quebec. So what goes to Hydro Quebec is the difference between those numbers.

And the reason more doesn't go to Hydro Quebec is that the Hydro Quebec price is lower than the New England price, which says that some of the generation that's available some of the time is not competitive in that market. So we can't sell it all in the same time period.

The price that you see -- and most dramatically the numbers increase in 2004-2005, but the price is a composite of effective price lost. And in fact when you lose exports from the New England market, you lose that price, plus the fact on the sales that you make in New

England, effectively you lose an additional price, which is the saving -- or the price differential between what you would have got in the New England market and what you actually did get in the Hydro Quebec market.

So effectively the foregone price goes up. And more dramatically in -- like I guess I can stop there. There is not dramatic difference. There is -- and I will follow on the next -- so the combination of those suggests that there is a foregone revenue. So it's revenue that we receive -- less revenue than you would have received in the New England market. The energy that has gone to Hydro Quebec has mitigated the loss somewhat.

So, for example, in 2004, '05, '06, the foregone revenue has gone from \$53.3 million, if we had lost the whole thing without mitigation, to \$47.2 million. May I go on, please?

Q.98 - Yes, please.

MR. BISHOP: Thank you. Fuel cost savings, when you recognize that there -- even within this 188 megawatts when you go through all of the modelling hours, as you load up from -- there is a difference in fuel price in certain hours from the first of the 188 megawatts and the top. In other words, we load up progressively in fuel costs. So that when in fact you back that off, you do

subsequently lower the fuel cost savings.

But again when you load it back up, in fact you increase the fuel cost, effective fuel cost savings. So that the effective fuel cost actually becomes higher in that case. And most dramatically if you take -- if you look at the numbers and multiply or divide the total quantities by the fuel cost savings, you will find that the rate, the fuel cost rate is higher than it was in the original case. And for the same reason logically loading that back up, it will be higher, most dramatically in 2004 and 2005, because you have actually moved from an Orimulsion cost to -- from time to time into heavy fuel oil costs.

When Coleson Cove is converted to Orimulsion in 2005-2006, or it has a full year of Orimulsion there, then in fact the fuel cost differential, and if you do the math in a rate doesn't change very much. It's very close.

The loss savings are similar as are the rest of the savings. And the reason that I have indicated that the margins foregone -- or the blocked area, whether or not we lose the exports or not, the fixed O&M, within reason, the amortization, interest charges remain the same.

Q.99 - Thank you. On the line notes as "Transmission Charge Savings", and it is 5.1 million for each of the three

years listed, why would that remain constant?

Would there not be a change in view of the fact you would have transmission line --

CHAIRMAN: Sorry, Mr. MacNutt. We couldn't hear the question up here, sir.

Q.100 - The line -- the row "Transmission Charge Savings" is 5.1 million for each of the three years in question.

Would you not have a different line charge for transmission to Quebec?

MR. BISHOP: If in fact the transmission -- if in fact this resulted from a loss of transmission reservations, we would have -- and that ceased the exports -- there would indeed be a transmission cost saving amounting to 5.1 million. That is the tariff rate times the megawatts that's lost.

But if in fact we were going to sell that energy on firm reservation into Quebec, we would have to reserve the same transmission reservation in Quebec. Arguably, and I accept your point, I think it's a good point, we probably would not take firm reservation over this line.

So I probably should -- I should have changed that number to reflect the nonfirm transmission cost which is going to be a lesser value because we are not buying it for a year. And I will do that. And I will amend that

for you.

MR. MACNUTT: Thank you. That completes the Board's question on exhibit A-11, Mr. Chairman.

CHAIRMAN: Thank you, Mr. MacNutt. Do any of the other parties have any questions on this?

MR. ZED: Sir, I would like a moment or two to confer, just because we may have a question or two.

CHAIRMAN: Yes. All right. Again anything to save time.

Commissioner Sollows has suggested we take a break. And so we will. So that those of you who can rework the figures will have an opportunity to do so.

(11:45 a.m. - 12:00 p.m. - Recess)

CHAIRMAN: Yes, Mr. Morrison?

MR. MORRISON: Yes, Mr. Chairman. There was a brief technical conference with respect to A-11. NB Power is going to basically resubmit a revised version of A-11.

In addition to that it is going to prepare a second table which outlines the effect of mitigation of sales to Hydro Quebec as two separate tables, so that it would be more for ease of comparison.

It is hoped that that will be generated sometime on Friday morning, circulated to the parties, or earlier if possible. And we have scheduled a conference call for 1:00 o'clock on Friday afternoon among all interested

parties in case there are questions about the numbers and so on.

And I guess I would say at this point in time that if there is anyone who wants to participate in that conference call, they should contact Marg Tracy. And she will set up the conference call and make sure those parties are involved.

CHAIRMAN: Is there any problem if the Board asks that that conference call be at half past 1:00 rather than 1:00?

MR. MORRISON: There won't be any problem.

CHAIRMAN: Counsel -- any of the other parties have any difficulty with that way of proceeding?

The one concern that I do have is that I guess we will not close the record today. We will keep it open until Tuesday in case there are difficulties that can't be ironed out.

But I do suggest that you tend to be verbose in the response of that interrogatory, so that it is there in writing, the explanations, et cetera.

MR. MORRISON: The intention at this point -- I'm sure that there will be a detailed explanation as to each of the line items and so on --

CHAIRMAN: Now --

MR. MORRISON: -- with text.

CHAIRMAN: -- some of the Board members do have some questions of that panel concerning the present exhibit A-11. So if they could go back up there again.

Actually you don't have to go up, gentlemen. If you want to take a mike there it will all be recorded. So that is no problem.

MR. RICHARDSON: Just a couple of points. When you are having your technical conference again on Friday, if you would please include in that presentation the price you set or used in your main sales and the price that you used in your Quebec sales. I would like to see your price differential and how you justify both.

And number two, I would like to know the price of Orimulsion that you are using in your fuel costs.

MR. MORRISON: That's a confidentiality issue, Councillor Richardson.

CHAIRMAN: What about -- just by way of compromise, what about the difference in spread, so that we get some sense of that.

In other words if it is a hundred dollars a megawatt-hour for selling into Maine, and it is only \$78 for selling into Quebec, then the spread would be minus 22, I guess, yes, or something like that.

Is that a way to get around that?

MR. RICHARDSON: I guess my concern is on the fuel side of it, as you have indicated fuel costs here. But we also know that we looked at a document that is not a contract firm price at this point.

And my concern is that if you plug in low numbers that it throws your figures all out of whack really in the real world.

So I will leave it up to you how you want to handle it. But my concern is to get myself comfortable with what you are producing for us and that is realistic. I mean, if as we have seen, costs are going to escalate, then your numbers go all out of whack. And the end scenario is not what it should be.

So I will leave it up to you how you want to present it to us. But present it in such a way that it satisfies our difficulties in accepting your information.

CHAIRMAN: Mr. Zed?

MR. ZED: One suggestion, Mr. Chair, is that -- I know in Nova Scotia the practice has evolved to file this on a confidential basis. And we would be quite prepared to sign a confidentiality agreement, if that helps the situation. We filed similar information in Nova Scotia on that basis.

CHAIRMAN: I have a real aversion, Mr. Zed, to accepting

information on that -- of that nature. Because the Supreme Court of Canada has said if in fact there is information filed in confidence and not available to the parties to question it, and it forms a basis of the Board's decision, then the decision can be struck down. So I have an aversion to accepting that.

Go ahead, Mr. Zed.

MR. BISHOP: Mr. Chairman, may I respond?

MR. ZED: Sorry. But my only response was -- perhaps you misunderstood. The actual parties would receive the information. And we would sign confidentiality agreements. That is the practice in Nova Scotia.

CHAIRMAN: That is a little different then.

MR. BISHOP: Mr. Chairman, I think we have given evidence earlier, not only at this hearing but earlier, that our agreement with BITOR in fact is one that has price confidentiality in it. And we are not at liberty to give those, which puts us at a bit of a disadvantage.

I will say that the evidence I gave was that we do have a memorandum of understanding with BITOR that in fact does constitute our legal opinion and tell us binding contract with them.

As I stated, the agreement that we don't have is one that finalizes volume. And at this point in time that

actually is an optionality agreement with NB Power.

So we do have a price agreement with BITOR. And that is a legal opinion that we do have.

CHAIRMAN: All right. The Board is going to leave it at this then. Simply do your best. You know Commissioner Richardson's concerns. And if there is some way that you can allay some of those questions, why so be it. If you can't you can't.

MR. BISHOP: So acknowledged. And thank you. We will do our best.

CHAIRMAN: Thank you. Any other matters before we adjourn.

Just so the record is clear, my intention would be to keep the record open in reference to this hearing until we reconvene next week, at which time I will close the record and we will have summation, if things have progressed satisfactorily on the replacement for A-11.

There is one more undertaking I guess, Mr. Morrison?

MR. MORRISON: That is correct, Mr. Chairman. And that should be available tomorrow.

CHAIRMAN: All right. So there is -- I forget what it is. But if there is any question about it, you are going to have that conference call at 1:30 on Friday. And you can discuss that at that time.

Now I have spoken perhaps not to all the parties but

certainly to a good many who say they have a preference of adjourning over until Tuesday of next week.

Does anybody -- does that cause anybody any great consternation if we adjourn until Tuesday? Speak now or forever hold thy peace. Okay.

Then my suggestion is that we again adjourn until 10:00 in the morning next Tuesday in this room. Good. Thank you all.

Oh, Mr. Zed?

MR. ZED: Sir, just a question on terms. I assume we will be doing oral presentation. But I just want to make sure there wouldn't be any objection with us leaving our speaking notes with the evidence references with the Board at the conclusion of our presentation.

CHAIRMAN: Parties opposite any problems?

MR. MORRISON: No.

CHAIRMAN: All right. Well then we will adjourn till next Tuesday at 10:00 in the morning. And again thank you for your cooperation.

(Adjourned)

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