

New Brunswick Board of Commissioners of Public Utilities

In the Matter of an application by NB Power dated January 8, 2002 in connection with a proposal for its Load Forecast and refurbishment of its generating facility at Point Lepreau.

Hilton Hotel, Saint John, N.B.

March 12th 2002

10:00 a.m.

INDEX

A-1 - pre-filed evidence - page 26

A-2 - affidavit - page 26

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CHAIRMAN: David C. Nicholson, Q.C.

COMMISSIONERS: Robert Richardson  
Jacques Dumont  
Ken F. Sollows  
H. Brian Tingley

BOARD COUNSEL Peter MacNutt, Q.C.

BOARD SECRETARY: Lorraine Légère

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CHAIRMAN: Good morning, ladies and gentlemen. A couple of housekeeping things. You have to engage your microphone if you wish to speak.

And remember that we have simultaneous translation. And for the translators to hear this has to be engaged. And as well it is the PA system.

It may be that the Intervenors are all represented here. But the room doesn't appear to be full enough. However, I will run through how the Board intends to handle this this morning, for your knowledge.

First of all, I will go around the room and get the appearances to see who is here. We have had quite a number of letters requesting that Intervenor status be granted.

I will also find out the preferred language of the hearing and whether or not Intervenors -- excuse me. I will go around and find out who is here and who represents them.

Then I will go to each one of you in accordance with alphabetical order and ask for you to indicate to the Board why you believe you should be given Intervenor status and whether or not you wish to have formal or informal Intervenor status and also your preferred language of the hearing.

After that is done the Board will probably take a brief recess and make a ruling in reference to all of those matters.

We will then return and talk about a number of things including the adjusted date and why it was adjusted for the Load Forecast hearing, our exhibit marking system, any motions that any of you might have, if we are going to -- I think it is best if we talk about whether or not there are any matters of confidentiality that any of the parties at this time believe may come up at the hearing. And we

can talk about them, not to make any decisions, but to know that they are there.

I want to discuss the hearing timetable and a date when the informal Intervenors can address the Board and any other matters that might be of interest to the Intervenors.

So I will go around the parties now and find out who is present on the basis of those interventions that we -- or those requests for interventions that we have received in the mail.

First of all , NB Power Corporation, the applicant?

MR. MORRISON: Yes, Mr. Chairman. Terrence Morrison on behalf of the applicant NB Power. With me is Mr. Ken Little, Marg Tracy and Brent Lockhart.

CHAIRMAN: Okay. Atomic Energy of Canada Limited?

MR. MILLER: Thank you, Mr. Chairman. Bernie Miller appearing on behalf of Atomic Energy of Canada Limited. I am a solicitor based in Moncton.

CHAIRMAN: Thanks, Mr. Miller. Canadian Unitarians for Social Justice? We have a written intervention from Sharon Flatt. Okay.

City of Saint John? And the Conservation Council of New Brunswick?

MR. COON: Good morning, Mr. Chairman. David Coon for the

Conservation Council of New Brunswick.

CHAIRMAN: Thank you, Mr. Coon. And Neil Craik? Do I have that pronunciation correctly? Not here?

Energy Probe? Not here. Rodney J. Gillis?

MR. GILLIS: Mr. Chairman, John Gillis representing Rodney J. Gillis.

CHAIRMAN: Hydro Quebec? Nobody here -- no one here representing Hydro Quebec?

J. D. Irving, Limited? Daniel LeBlanc?

MR. LEBLANC: Bonjour, Mr. President. Daniel LeBlanc self represented.

CHAIRMAN: The Province of New Brunswick?

MR. HYSLOP: Yes, Mr. Chairman. Peter Hyslop appearing on behalf of the Province of New Brunswick. Mr. Robert Murray is with me today.

CHAIRMAN: Saint John Citizens Coalition for Clean Air?

MR. DALZELL: Yes. Gordon Dalzell representing the Saint John Citizens Coalition for Clean Air.

CHAIRMAN: Thank you. Saint John Energy?

MS. COUGHLAN: Jennifer Coughlan with Saint John Energy.

CHAIRMAN: Union of New Brunswick Indians? Canadian Manufacturers & Exporters, New Brunswick Branch?

MR. PLANT: Dave Plant appearing on behalf of CME.

CHAIRMAN: That is Plant?

MR. PLANT: Yes.

CHAIRMAN: Thank you. Canadian Nuclear Workers Council?

I will call it IBEW?

MR. MATHESON: Yes, Mr. Chairman. Duncan Matheson appearing on behalf of IBEW Local 37, IBEW District 1 and Professor Myron Gordon.

CHAIRMAN: Good. Thank you, Mr. Matheson. Board Council?

MR. MACNUTT: Peter MacNutt.

CHAIRMAN: Who have we got here from the Board? MacNutt?

MR. MACNUTT: We have Mr. Goss, senior adviser, Gay Drescher, an adviser with the Board and John Lawton, adviser with the Board.

CHAIRMAN: Thank you, Mr. MacNutt. I'm sorry to put you on the spot like that. You normally do that to me.

Now my intention now is to go around to those who are represented here, for each of you to give me an indication as to why you believe you should be granted Intervenor status. And secondly whether that status is formal or informal and also your preferred language of the hearing.

And frankly most of you have done a good job of putting that in your written request for intervention with us. But we will do it again.

Atomic Energy of Canada Limited. Mr. Miller?

MR. MILLER: Thank you, Mr. Chairman. As set out in our

notice, Atomic Energy of Canada seeks formal Intervenor status. It has been involved with the Point Lepreau project since its inception and has considerable technical knowledge about the generating station which would be of assistance to the Board in making its determinations.

In addition, as you will note from the prefiled evidence, Atomic Energy of Canada Limited is expected to play a significant role in the proposed refurbishment.

So for those reasons we seek formal Intervenor status.

Although at this stage the precise nature of our participation and whether evidence would be called has not yet been determined with any precision, the preferred language for AECL would be English.

CHAIRMAN: Mr. Miller, if I were in your shoes, after this question, I would hate the Chairman of this Board. But are you familiar with the AECL incorporating statute? I presume it was incorporated by an Act of the federal parliament?

MR. MILLER: I am.

CHAIRMAN: Does it have specific powers in that statute to appear before a provincial administrative tribunal?

The reason that I ask that is that this Board and the Newfoundland Board were faced with the Director under the Combines Investigations Act back in the early '80s.

And NB Tel in New Brunswick objected to the Director being allowed to appear before an administrative tribunal.

And this Board ruled that in fact that objection was correct, that the Director didn't have capacity.

The Newfoundland Board held the other way when they had the same thing. It went all the way to the Supreme Court of Canada. The Supreme Court dealt with the Newfoundland appeal and said that Newfoundland was wrong and gave the reasons.

And then the only time that any decision of this Board has ever been appealed to the Supreme Court of Canada, they just simply said for the reasons in the Newfoundland case the appeal is dismissed. So we never got really quoted.

However, back to my question. Do you know if AECL -- if there is any restriction that you as their solicitor could see on their appearance as a formal Intervenor before us?

MR. MILLER: I certainly don't see any restrictions, Mr. Chairman. AECL is a federal Crown Corporation. It has, as I understand it, all the powers of an actual person.

And there would be no restrictions that I'm aware of in its incorporating documents or legislation which would restrict it from participation in a provincial hearing.

I think it would be very distinct from the situation that may have involved the Director under the corporate -- or under the Competition Act in that in this case we are dealing with a Crown Corporation, which is given all the powers of a natural person in its incorporating legislation and documents.

CHAIRMAN: Yes. I certainly agree with you. And that I feel I had to bring that up at this time. I'm just asking you -- you are requesting formal.

When I read your notice of intervention it is almost as if you would like to be able to address the Board in reference to all issues. But there is no indication there that you want to call on the evidence, et cetera.

And frankly you are -- there is a contract as I understand it between AECL and NB Power, which will be the subject of discussion at the hearing I am sure. So that NB Power could call you or witnesses from AECL if necessary.

However, having said all of that, it is still your instructions to apply to be a formal Intervenor?

MR. MILLER: That is correct, Mr. Chairman. Those were my instructions.

CHAIRMAN: All right. Thank you, Mr. Miller.

And Canadian Unitarians for Social Justice are not

represented here today.

Mr. Dalzell, you and Ms. Flatt sometimes cooperate between you. And she has in her intervention requested that she be able to speak on behalf of the Saint John Citizens Coalition on occasion if you are not available.

Is there reciprocity there?

MR. DALZELL: Well, no. Basically the two come as separate groups. But that particular group, I have had an association with this Coalition for Clean Air among others and other citizens in the community.

So I cannot of course speak on behalf of their particular points in their request. But we have collaborated and discussed the various issues in regards to energy and air quality issues in the community.

So I am sorry, I am not able to make any kind of a clear direction to you with respect to their particular interventions.

CHAIRMAN: Okay. Thank you. Mr. Coon?

MR. COON: Yes, Mr. Chairman. We are requesting, Conservation Council, official Intervenor status in English.

We have been involved in as a public interest organization in watchdogging the Point Lepreau project since before the plant was operational, and we believe

have plenty of information to bring forward with respect to assessment of load growth, demand site management analysis and alternatives to the project being brought forward here.

CHAIRMAN: Thank you, Mr. Coon.

And Mr. Gillis, why should Mr. Rodney J. Gillis be an Intervenor?

MR. GILLIS: Mr. Chairman, Mr. Gillis, Mr. Rodney J. Gillis is requesting formal status in English. He for some time has been somewhat of an outspoken critic with respect to NB Power and particularly with respect to Point Lepreau.

He would intend in this hearing to have significant cross examinations and would also intend on calling evidence particularly with regards to past contracts with respect to NB Power and future contracts if the refurbishment was okayed by this Board.

CHAIRMAN: Now Mr. Gillis, just so I understand -- I may have missed that -- does Mr. Gillis intend to call evidence?

MR. GILLIS: Yes.

CHAIRMAN: Yes. He does? And he also was public Intervenor before this Board on some occasions.

MR. GILLIS: Yes.

CHAIRMAN: Okay. Thank you. Mr. LeBlanc?

MR. LEBLANC: Bonjour, monsieur le Président. Je me présente aujourd'hui devant la Commission en mon nom personnel. Et puis je demande le status d'intervenant officiel. Et puis je souhaite également que la langue de choix pour mes interventions le soit en français.

Mon intérêt dans le dossier remonte à plusieurs années. Présentement j'occupe la profession de directeur général d'une organisation environmental à Moncton qui se nomme Sentinel Petitcodiac. Mais je suis ici aujourd'hui en mon nom personnel.

Je travaille également sur les dossiers d'énergie de façon privée depuis une vingtaine d'années.

Mon intérêt ici c'est surtout pour faire des interventions au niveau de la preuve des charges, c'est-à-dire si effectivement nous avons besoin de refaire -- de remettre à neuf la Centrale Lepreau-- également comprendre les enjeux au niveau du prix, c'est-à-dire savoir si effectivement les coûts qui sont proposés dans -- dans la preuve vont être les coûts réels.

Je pense également qu'il est important que ce dossier soit exposé de façon très transparente. C'est quand même une des décisions énergétiques la plus importante que cette province aura à faire au cours des prochaines décennies, et je pense que c'est important que ces

informations-là soient disponibles à tous les gens du Nouveau-Brunswick y inclus la population francophone.

Alors, pour cette raison et plusieurs autres je souhaite intervenir dans ce dossier.

CHAIRMAN: Good. Thank you, Mr. LeBlanc. Mr. Dalzell?

MR. DALZELL: Mr. Chairman, we recognize that the Public Utilities Board is an economic regulator. However, in the evidence there are many references to some of the environmental aspects of the cost.

And particularly we are concerned about the high level of cost of this project insofar as how it will impact and possibly compromise the development of other strategies such as the renewable energy resource development or demand side program.

So we are interested in participating in this whole question of how the refurbishment project fits into the CO2 emission targets, et cetera.

We are a public interest group that have followed energy and these issues. And we would request consideration for formal status in English.

CHAIRMAN: Thank you, Mr. Dalzell.

MR. DALZELL: Thank you.

CHAIRMAN: Ms. Coughlan?

MS. COUGHLAN: Mr. Chairman, we are a large wholesale

customer of NB Power's. Our contract with them is based on cost of service. We are therefore concerned with how this proposed refurbishment will affect our contract and in turn our customers.

We are requesting formal Intervenor status in English language. At this time we do not anticipate introducing any evidence or cross examining any witnesses.

CHAIRMAN: Okay. Thank you, Ms. Coughlan. Canadian --

Mr. Plant, Canadian Manufacturers & Exporters Association are asking for informal Intervenor status?

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

CHAIRMAN: You have no desire or intention to call evidence or anything of that nature?

MR. PLANT: No. We think from attending the hearings and gathering the information that we will have sufficient data to make any representation we need to.

CHAIRMAN: Yes. Okay. And let me see. And Mr. Matheson, I had Board counsel call you yesterday concerning Mr. Myron Gordon --

MR. MATHESON: Yes.

CHAIRMAN: -- his participation in front of us. You have asked for informal Intervenor status, is what you have asked for?

MR. MATHESON: Yes. At this point I would like to change

that to formal status for Professor Gordon.

CHAIRMAN: Okay. I have been -- after Mr. MacNutt spoke with you and I spoke with my fellow Commissioners this morning, what I would suggest to you is as follows, is that we will give you two weeks to be able to come up with that choice. And therefore you can have -- you or some of your organization can contact Professor Gordon.

But certainly in the Board and staff's reading of your intervention, Mr. Gordon is a Professor of Finance in the University of Toronto. And we would anticipate that anything that he would put before us would be in the nature of opinion evidence, his opinion.

And it is one thing for you or I, with no expertise to appear and give our opinion, which before the administrative tribunal we handle that on the basis of simply saying we will give it, yours and my opinion, the weight that it deserves.

But if you have got somebody who is in the position of Professor Gordon, why the Board, if he wants to give opinion evidence, we feel that it should be in the context of being a witness so that the parties to the proceeding can cross examine him, et cetera.

So we will give you a couple of weeks to come back to the Board and indicate, after having spoken with the

Professor, as to how you want to handle it.

If he wants to come here and give viva voce testimony and be sworn and be subject to cross examination then fine, we will give you -- or the Board would certainly consider giving you the formal Intervenor status.

Otherwise all you really want, as we see it, is informal status.

MR. MATHESON: Yes. Your point is well taken. I guess for a point of clarification are you saying that with Professor Gordon it would either be formal or nothing?

CHAIRMAN: Well, I don't know what the nature of the intervention might be. I mean, what you have -- what Board counsel indicated to me, and this is hearsay, but anyway, he indicated that perhaps Professor Gordon would like to write a letter which --

MR. MATHESON: It's time restraints is --

CHAIRMAN: Pardon me?

MR. MATHESON: Time restraints on his side are the problem.

CHAIRMAN: Well, okay. I understand that. But if he just wanted to write a letter, and you or one of the individuals who participate on behalf of IBEW wanted to come and give copies to everybody and let the Board give it the weight that it deserves, then that's fine.

You know, we will accept that in and give -- but

frankly if it's opinion evidence from somebody of the nature of Professor Gordon, whom I understand has also written texts, then that opinion should be, to be given full weight, would have to be subject to cross examination.

So we will give you a couple of weeks. And you can let the Board know on that.

MR. MATHESON: Thank you.

CHAIRMAN: Okay.

MR. MATHESON: If I could -- I realize that the representative for the Canadian Nuclear Workers Council hasn't appeared today. So I am wondering, if I may, if I could go on record as their proxy, to leave the door open for them for an informal -- for informal status?

CHAIRMAN: Oh, with frankness, sir, they have applied upon an informal status basis. And the Board has no difficulty in giving anybody really who comes along informal status, if there is even the slightest interest in the hearing process.

MR. MATHESON: I thought maybe that if they weren't here today it would close that door.

CHAIRMAN: Quite a number of people who weren't. We are disappointed that they aren't. But the Board will deal with that in our next -- in our short break. But

certainly when it is an informal thing I can understand why they wouldn't be here.

Maybe you can speak later on behalf of both your group and them in reference to when you think informal Intervenors should address the Board. That is one of the last items we have down here this morning.

MR. MATHESON: Thank you.

CHAIRMAN: Okay. So we will take about a five-minute recess and consider all of the various Intervenors' requests and --

MR. MACNUTT: Mr. Chairman, just before you break --

CHAIRMAN: Yes, Mr. MacNutt. My conscious has caught me.

MR. MACNUTT: I don't know whether you want to mention it now. And that is are you requiring the people who propose to call evidence to file it and circulate it prior to the day in which they will actually address the evidence in the hearing? Or will you deal with that matter after you make --

CHAIRMAN: Oh, I think that in our tentative schedule there is an actual date that Intervenor evidence filed with the PUB on Tuesday -- no, sorry, that is another -- it is another tentative schedule.

This hearing schedule should have a date, Mr. MacNutt, when specifically -- yes, here for instance on Tuesday,

the 16th of April, the Intervenor evidence on Load Forecast. And then presumably a later date --

MR. MACNUTT: Yes.

CHAIRMAN: -- on Tuesday, May 7th, Intervenor evidence on Point Lepreau refurbishment.

MR. MACNUTT: And that of course would apply to Professor Gordon should he elect --

CHAIRMAN: Yes.

MR. MACNUTT: -- to become a full formal Intervenor?

CHAIRMAN: That is right. Thank you. All right. We will take a five-minute recess.

(10:47 a.m. - 11:02 a.m. - Recess)

CHAIRMAN: The Board has taken time to look at these various requests for Intervenor status. And we will grant Atomic Energy of Canada Limited formal Intervenor status, as well as, Canadian Unitarians for Social Justice, City of Saint John, Conservation Council of New Brunswick, Neil Craik, Energy Probe, Mr. Gillis.

We have -- and that is because of all of the -- for those who are not attending, all of what they wrote to us shows a definite interest in the proceedings, which would justify granting formal Intervenor status to the ones I have just mentioned.

But when we come to Hydro Quebec, with frankness, it

sounds as if there would be better to be an informal Intervenor. And since they are not represented what the Board is going to do is similar to what we are going to do with IBEW.

We are going to be in contact with them, give them two weeks to think about this, and if they wish to, to give us some reasons why they should have that formal Intervenor status rather than the informal.

And J. D. Irving will have formal Intervenor status, Mr. LeBlanc. We had a good deal of difficulty with the Province of New Brunswick. But in the end -- in the end we agreed that they should be. And Mr. Dalzell, formal Intervenor status. And Saint John Energy.

The Union of New Brunswick Indians is not represented here today. And we took a look at their reasons for requesting formal Intervenor status. And frankly everything that is in there is more an informal Intervenor rather than a formal Intervenor.

Because in any NB Power proceedings previously, why they have attended opening day and not attended again, et cetera. So we will grant them informal Intervenor status.

And they can address the Board with their concerns, et cetera.

And Canadian Manufacturers & Exporters is granted

informal Intervenor status as wished. And also we will do the same for the Canadian Nuclear Workers Council.

And Mr. Matheson, Board counsel came to me in the break and indicated that you wanted to have the two IBEW groups, i.e. the local and the district each to be separate Intervenors?

MR. MATHESON: Yes, please.

CHAIRMAN: Is there a particular reason for that?

MR. MATHESON: Yes. I spoke today that both groups would bring different perspectives to this. With the case of IBEW 37, they represent NB Power employees, the majority of NB Power employees. And they have great interest in anything that affects the power generation mix in the province.

We have followed and participated in this ongoing debate for many years and done considerable research on it. So both as representatives of NB Power employees and as citizens of the province, we would like status as informal.

In the case of IBEW District 1, District 1 is the Canadian wing of the international IBEW. A perspective that we would expect they would bring this has to do with their firsthand knowledge and experience with refurbishment elsewhere throughout Canada and throughout

the United States which we think could be valuable.

CHAIRMAN: Okay. You know, the Board has no difficulty in granting informal Intervenor status to both the local and to the District 1 group.

The only place we will run into difficulty is if you come back to us, the Board within two weeks and say look, because of Mr. Gordon who will participate here then one of the two informal Intervenors, either the Local or the National, is going to have to go formal, so that they can bring Mr. Gordon as a witness, okay.

MR. MATHESON: For clarification again, if Mr. Gordon came down on his own, that would be a third separate intervention though, would it not?

CHAIRMAN: Well, he is coming under your auspices. And you know, I suggest what you do is speak with Mr. MacNutt after this hearing to get a better appreciation of Intervenors and that sort of thing.

I mean, he on himself, he hasn't requested Intervenor status at all, okay, as we sit here today.

MR. MATHESON: Except that I'm doing it as his proxy.

CHAIRMAN: Well, all right. But what was written -- anyway,

I suggest you speak with Mr. MacNutt --

MR. MATHESON: Thank you.

CHAIRMAN: -- and get back to the Board in the next couple

of weeks.

Now the language of the hearing will be English in that the preponderance of convenience flows with that language. But, of course, Mr. LeBlanc, and if it is the case with Hydro Quebec as well, can address the Board and cross examine the witnesses in the French language.

This is the first time that the Board has been involved in a hearing where some of the parties are requesting it be in each of New Brunswick's both official languages.

Both Mr. MacNutt and I have a concept of the way in which the court system deals with this kind -- or with a situation such as this.

And rather than telling or making any rulings based upon as to how the evidence will be handled in the actual hearing itself, that is for instance exhibits and things of that nature, I think what the Board will do is that we will check with our confreres in the legal community who deal with it on a daily basis and find out how it is that the court system handles exhibits, et cetera in translation beyond simultaneous translation, et cetera.

So the Board will be issuing to all of the Intervenors a memo probably within the next two to three weeks concerning how both official languages will be handled for

the purposes of written matters in the hearing process itself.

Now those of you who appeared in the Coleson Cove Refurbishment Hearing, you will recollect that as a result of our generic hearing which we gave a decision in the spring, early summer, we had -- the Board had indicated that we would accept that the Load Forecast certainly showed us to our satisfaction that the power generated by Coleson Cove was necessary in the future.

However, we wanted to have a revised Load Forecast filed before the Point Lepreau Refurbishment. And we said file it three months prior to the filing of a Point Lepreau specific application.

Now subsequent to that NB Power approached the Board and said could they change that and file an updated Load Forecast in January of 2002 with a hearing to be in March even though it was going to file its Point Lepreau specific application in January of 2002.

And the Board responded certainly that all we were trying to do with our decision was to let you know that we didn't want to hold up the Point Lepreau process. And this was our way of, in our decision, of indicating that.

And if that were convenient that they go ahead and file both in the same month. And that was fine.

Now -- and as a result, and what happened as things slipped a month, both of those were filed in February. And at the time of the -- I believe the oral decision in the Coleson Cove matter, we again put forth the filing schedule in reference to the two hearings. And there are two separate hearings that we have here, the Load Forecast and the Point Lepreau hearings.

And the filing schedule I believe, Madam Secretary, was available are they in the back?

MS. LEGERE: It has been passed out.

CHAIRMAN: Yes. It has been passed out. So you will all have that. And that is the fashion which the Board is going to proceed.

I am going to suggest -- the Board this morning in preparation for coming in here, we were talking about the necessity of being able to give our decision in the Load Forecast before we went into the Lepreau specific.

And you know, as I say, we had a discussion concerning that. And let me find the date that I -- we realized that if we had a good deal of difficulty with the evidence that came forth in the Load Forecast hearing that we would then probably not be able to quickly give an oral decision and that we better now set aside a date when we would make arrangements to have simultaneous translation available

and the Board come back two or three weeks later and give its decision.

So I would just like you to add to your schedule that we have set aside, if we have to adjourn over for a week or so or greater, that we will reconvene on May 22nd to give our decision in reference to the Load Forecast.

If at the conclusion of the evidence in the summation of the Load Forecast we believe we can do it that day or the next, we may well say -- change that date. But anyway, add that to your schedule if you would.

MR. CHAIRMAN: As Commissioner Dumont just asked me it would be an oral decision that we would give at that time.

Now the exhibit marking system is the same as we have used in reference to the Coleson Cove matter and, Mr. MacNutt and Mr. Morrison, have you had an opportunity to talk about anything you wanted the Board to mark at this time?

MR. MORRISON: Yes, we did, Mr. Chairman. I believe Mr. MacNutt or the secretary has our comments with respect to the evidence that's been pre-filed.

I also have with me today the affidavits in proof of publication.

And as I understand it the exhibits are going to be marked separate for each hearing, so that we have two

separate sets of -- the same affidavit, but with two separate sets, so that there is no confusion in the marking process.

So if you would like me to tender those affidavits now, Mr. Chairman, I am pleased to do so.

MR. CHAIRMAN: Yes. What I think I would prefer to do is -- did you and Mr. MacNutt discuss which will be A-1 in both hearings? Is it going to be pre-file evidence or do you want to have your affidavits of publication, et cetera?

MR. MACNUTT: I think we have agreed that the pre-filed evidence will be exhibit A-1 and the affidavit will be A-2 in each of the load forecast and the Point Lepreau hearing.

MR. CHAIRMAN: Okay. A-1 in both hearing then will be the pre-filed evidence in both official languages?

MR. MORRISON: That's correct.

MR. CHAIRMAN: Okay. And --

MR. MACNUTT: Just for clarification, Mr. Chairman, there will only be one exhibit number for the two documents, one of which pre-filed French, pre-filed English, is that correct?

MR. CHAIRMAN: That's my understanding, yes.

MR. MACNUTT: Thank you.

MR. CHAIRMAN: And A-2 I will ask you to file with the Board

now, Mr. Morrison.

MR. MORRISON: Thank you, Mr. Chairman. I file with the Board the affidavit of Margaret A. Tracy. It's in both French and English. There is two sets of originals, Mr. Chairman, so that it can be marked for each of the separate hearings.

MR. CHAIRMAN: Okay.

MR. MORRISON: Mr. Chairman, I also have available the tear sheets which form the substance of the affidavit, if the Board so requires.

MR. CHAIRMAN: I don't think that's necessary, Mr. Morrison. Just keep it in your file and if any party questions the affidavit after we rise today then we can check the tear sheets. But otherwise as far as I am concerned we accept the contents of the affidavit as being correct.

And from my skimming it certainly appears to have complied with the Board's order. We will file those exhibits and mark them.

Now the next item I have mentioned is I want to go around the room and ask if anybody has any motions or matters that they wish to bring up at this time. And, Mr. Morrison, you are first.

MR. MORRISON: Mr. Chairman, it's not a motion, it's really a point of information. I notice today that there are a

number of Intervenors who were not Intervenors in the previous proceeding, the generic hearing or the Coleson Cove application. And as you quite correctly pointed out there was a generic hearing. The load forecast which was filed in that is actually the load forecast evidence for this hearing as well, updated with the updated load forecast. I just want to point out that if there are any Intervenors who weren't participants in the previous hearings, if they require copies of the what I will call the un-updated or original load forecast evidence we are more than happy to provide them with that information provided they contact NB Power, Marg Tracy. I am sure that she would be happy to provide that information to them.

MR. CHAIRMAN: Anyone any comments on that? I guess I am just thinking, I am trying to remember. Did that form just a part of the binders that came in in the generic? I am just trying to remember.

MR. MORRISON: I believe there was a separate binder for the load forecast evidence.

MR. CHAIRMAN: All right. Because it --

MR. MORRISON: Excuse me, Mr. Chairman, that may not be correct. It was part of -- it's included in as a portion of the original evidence that was filed.

MR. CHAIRMAN: Let me ask you this. How big a job would it be to reproduce that and just give a separate binder or whatever to the -- all the parties in this particular proceeding? Because I am just thinking that that means that those of us who were there in that would have to go back and pick that out.

MR. MORRISON: No, I understand. I don't think that would be a problem, Mr. Chairman. I think we can accommodate the Board and the Intervenors in that regard.

MR. CHAIRMAN: Okay. Anything else, Mr. Morrison?

MR. MORRISON: The only other matter I would like to raise, and I believe my friend, Mr. Hyslop, will be raising other matters this morning, but Intervenors may and we have an indication here today that they will be filing evidence. It has been NB Power's practice to file curriculum vitae for any expert witnesses. We would ask that if any of the Intervenors are going to be utilizing expert evidence that the curriculum vitae of the expert be filed at the same time as they file their Intervenor evidence.

MR. CHAIRMAN: I can't see any difficulty with that. Do any of you Intervenors have any problem with that at all? No. Okay. Then that's the way it should be. Anything else?

MR. MORRISON: No, Mr. Chairman. Thank you.

MR. CHAIRMAN: Thank you. Mr. Miller, do you have any

matters?

MR. MILLER: None at this time, Mr. Chairman.

MR. CHAIRMAN: Okay. Mr. Coon?

MR. COON: Just a question, Mr. Chairman. Are transcripts -  
- would transcripts still be available for the generic  
hearing? Can those be obtained?

MR. CHAIRMAN: You have some, Mr. Coon. Your Mr. Thompson  
has some of the Board's. We loaned it to him.

MR. COON: Thank you, Mr. Chairman.

MR. CHAIRMAN: No. He came in to the office and asked to  
see our copy and everything was over. So I think there  
are some. But are they still available? Now do you mean  
you wanted to ask the shorthand reporters if they still  
had some, or --

MR. COON: Yes, if there were specific transcripts that we  
were looking for from the generic hearings whether they  
would still be available. She says yes.

MR. CHAIRMAN: You can ask Mr. Thompson to bring ours back  
too.

MR. COON: I will do so, Mr. Chairman. Thank you.

MR. CHAIRMAN: Okay. Mr. Gillis?

MR. GILLIS: No matters at this time, Mr. Chairman.

MR. CHAIRMAN: Okay. Now, Mr. LeBlanc?

MR. LEBLANC: Monsieur le Président, j'aurais seulement un

point. C'est au sujet des comptes rendus des audiences, transcripts. Je me demande s'ils peuvent être fournis gratuitement à tous les intervenants. C'est simplement une question d'équité pour tous les intervenants qui sont ici, peut-être que certains non pas les mêmes moyens pour que se les procurer.

MR. CHAIRMAN: The difficulty is that the shorthand reporting service is a private enterprise and that is how they make their living. They do provide the Board with three copies and we can -- the copyright is such that we can't make Xerox copies, you would be breaking the copyright. If you want to review the Board's copies then we will attempt to make arrangements so that you can do that. Otherwise I'm afraid that that's how the shorthand reporters are paid for. And that's the same in the court system too. I appreciate where you are coming from though. So we can't accommodate that.

MR. LEBLANC: Merci. J'ai peut-être une autre remarque à faire. D'abord, je veux souligner que j'ai reçu les deux documents de preuve, le document de preuve de la charge et le document de preuve de la mise à neuf et puis j'étais très impressionné du travail fait au niveau de la traduction.

Il y a seulement quelques petits endroits dans le

document qui demanderaient une traduction. Et puis si Energie Nouveau-Brunswick est déposé à le faire ça serait apprécié de le faire dans les plus brefs délais.

Je peux leurs montrer exactement quelles sections, et en fait c'est des petits -- des petites sections qui n'ont pas encore été traduites.

MR. CHAIRMAN: Okay. Mr. LeBlanc, what I would suggest is speak to Mr. Morrison and NB Power after the hearing and I am sure they will be as co-operative as they possibly can.

Okay. Nothing else? Thank you. Mr. Hyslop?

MR. HYSLOP: Thank you, Mr. Chairman. We have a couple of small points and I have spoken to Mr. Morrison with respect to two of these.

At the generic hearing on the Load Forecast last June and at the Coleson Cove specific hearing, NB Power commenced the hearings with a half day presentation and a number of slides, and afterwards the copies of the slides were entered into evidence. And in both those hearings it was the Province of New Brunswick's view that they became an important part of the record. So I have asked Mr. Morrison if it is the intention after they answer the interrogatories if copies of those slides might be made available to Intervenors approximately seven days before the actual hearing so that we can have them and study

them. And I do understand from speaking to my colleague that NB Power feels that that's a reasonable request.

MR. MORRISON: We have no objection to that, Mr. Chairman.

MR. CHAIRMAN: Okay. Good.

MR. HYSLOP: The second point, Mr. Chairman, at the Coleson Cove hearing there was -- a few days before the hearing there was a motion brought to change the make-up of the panels. They were combined into one panel. I felt at the time that perhaps some of the Intervenors may have been put at some disadvantage because of that, and I would ask, and I have asked my colleague, I believe the answer will be in the affirmative, if there is an intention of NB Power to change the make-up of their panels this would be -- that notice of this would be given to the Intervenors at the Motions Day on this -- on the two hearings which are now before the Board.

MR. MORRISON: We also have no objection to that, Mr. Chairman.

MR. CHAIRMAN: Good. Thank you. Just for my own clarification, Mr. Morrison and Mr. Hyslop, when you are talking about slides you are not talking about them in the Load Forecast hearing are you? You are talking about them in reference to the refurbishment hearing.

MR. HYSLOP: If it would be NB Power's intention to do a

slide show at the commencement of the Load Forecast hearing, I would expect that we would receive the slides prior thereto, Mr. Chairman.

MR. MORRISON: I guess we haven't jumped off that bridge yet, Mr. Chairman, in terms of whether there is going to be a presentation at the commencement of the Load Forecast hearing. If that's the route that we take to present the evidence then we would be happy to provide Mr. Hyslop and the other Intervenors with copies of the presentation seven days prior to.

MR. CHAIRMAN: Okay. Anything else, Mr. Hyslop?

MR. HYSLOP: No, that's all. Thank you very much, Mr. Chairman.

MR. CHAIRMAN: Good. Thank you. Mr. Dalzell?

MR. DALZELL: There are no matters at this time, Mr. Chairman. Thank you.

MR. CHAIRMAN: Okay. Thank you, Mr. Dalzell. Ms. Coughlan?

MS. COUGHLAN: We have no matters at this time, Mr. Chairman.

MR. CHAIRMAN: And, Mr. Plant, anything that you would like to say now?

MR. PLANT: No matters, Mr. Chairman.

MR. CHAIRMAN: Thank you. And, Mr. Matheson, is there anything further?

MR. MATHESON: Mr. Chairman, no matters.

MR. CHAIRMAN: Mr. MacNutt, have I missed anything that you can think of?

MR. MACNUTT: It's my understanding, Mr. Chairman, you were going to address the matter of confidentiality and environmental process.

MR. CHAIRMAN: Oh, yes.

MR. MACNUTT: And dates for submissions by informal intervenors.

MR. CHAIRMAN: Yes. What was your second one?

MR. MACNUTT: Environmental hearings.

MR. CHAIRMAN: No, I wasn't going to do that, but all right. You had suggested I might want to and I don't want to.

MR. MACNUTT: Okay.

MR. CHAIRMAN: No. I appreciate that. But the other two are here, there is no question about that, we will hit those. No, I -- Mr. MacNutt and I had a conversation prior to this hearing commencing and I want to -- you know -- I just want to emphasize that this Board is an economic regulator and a number of those of you who in fact have -- your primary interest is in the environmental field have indicated your appreciation of that, and we gave you a fair amount of leeway in the last hearing and we will try and do the same again, but maybe you can realize that to

try and keep it a bit tighter this time if you possibly could.

Now as Mr. MacNutt had indicated and I did first off, it's the matter of confidentiality and for those of you who were parties in the Coleson Cove refurbishment one -- we came up with a difficulty vis-a-vis proprietary interest in certain matters covered in the contract with BITOR, between NB Power and BITOR, and let's face it, we might as well get it on the table right now, there is a contract between, or there is one in the making, between AECL and NB Power concerning guarantees and other matters.

And the Board just wanted to discuss with both AECL and NB Power, since we are all here today, do you anticipate that there are going to be any similar difficulties there or is that contract one that we can expect will be filed and form part of the public record?

MR. MORRISON: Can Mr. Little comment on that, Mr. Chairman?

MR. CHAIRMAN: Certainly. Go ahead, Mr. Little.

MR. LITTLE: Thank you, Mr. Chairman. The -- we have notified AECL of the Board's interest in the contracts and -- at whatever state they are in, and have requested that they give serious consideration to making them available.

I understand that they are reviewing internally now, that there may be certain clauses that they have a concern

with. We don't have a final decision on that yet, but we may anticipate that there might be small portions of the agreements where they may have difficulty. We are awaiting news on that and obviously time is of the essence, we will know in a few weeks, but right today it's under review.

MR. CHAIRMAN: Mr. Miller, unfair question again, but not really. Any indication to you by your client as to when they will have completed that review and could the decision be shared with the Board?

MR. MILLER: I haven't had any specific instructions on that at this stage, Mr. Chairman. I do adopt and share the comments of New Brunswick Power on this. It's a matter that may well be an issue and it's under review. There are issues of confidential business information which could affect AECL in it's competitive position both in a national and international market, but as the Board showed in the Coleson Cove decision there is flexibility in accomplishing the objectives of the Board in its mandate and also protecting corporate interests and confidential business information. And we will pursue that and be as flexible as we can be in he circumstances.

MR. CHAIRMAN: Mr. Miller, do you have anybody at AECL that

you can contact at this time of the morning and get from

them an update as to when we might know the answer to that? The only reason I am pushing this right now is that we are sitting here with this agenda, et cetera, and if in fact we are going to know by the 15th of April, then maybe we should put some tentative things in there to deal with the difficulty if it in fact comes up because AECL says we want to have these confidential, then we can -- it's there and we don't have to scramble at the last minute.

So back to my original question which is, is there someone you can contact now on a break?

MR. MILLER: Based on my understanding of the issue, I don't believe I would have productive instructions on a quick basis, but we could certainly set a time table for coming forward with a process or a suggestion for resolving this issue, you know, if the Board wanted to set a time period and ask AECL and NB Power to present something to the Board, we could certainly do that.

MR. CHAIRMAN: Okay, Mr. Miller. Subject to what other parties in the room have to say, we will take a break after I have gone through some other items here and you can sit down with Board staff, counsel and with Mr. Morrison and anybody else who wants to be involved and look at the schedule. I think it's easier for you folks

to do that in an informal setting rather than the Board -- me attempting to find out what would be acceptable to everybody here.

The last thing I have on my list is informal Intervenors address the Board, and the date for that. If you look at -- Mr. Coon, I am sorry, go ahead.

MR. COON: Yes, Mr. Chairman, there were just a couple of matters under confidentiality that perhaps I can raise right now, so we can have them aired and find out where we are going on them.

In addition to those contracts we were wondering about the field contract and what it -- for -- for Point Lepreau, whether that would be considered confidential or not. Mr. Morrison?

MR. MORRISON: I don't think we can answer that at the moment, Mr. Chairman. Quite frankly, I don't know the answer. You will have to give us some time to --

CHAIRMAN: Okay. And anything more?

MR. COON: And the other matter was the AECL study that was done for NB Power that provided much of the costing for the evidence.

MR. MORRISON: All I can say, Mr. Chairman, that will have to be added to the list of documents in the -- in the course of our discussion, which I expect that we will have

shortly.

CHAIRMAN: I can certainly -- well, I won't speculate. I can see where there might be certain matters in the contract between NB Power and AECL. It would be business implications, et cetera. But when it's a study that has been done to assist you on the cost of whatever, that is a different kettle of fish maybe, maybe not. I don't know. Mr. Little?

MR. LITTLE: I think just for clarification and maybe we do need to test this further back at the shop. But it is my understanding that the "study", the \$40 million exercise of doing the engineering review, and the cost estimating, and so on has culminated in the evidence you see and the contracts that we are talking about. That I don't think there is a study in the sense that we are talking about. There is a lot of underlying documentation and so on. But the actual results are what we see in the evidence.

So subject to final clarification of that, that's my understanding after working at it for a year, that that's pretty well where we are at.

CHAIRMAN: It sounds like it's going to be the subject of interrogatories then, or would be. Okay.

MR. COON: Thank you, Mr. Chairman.

CHAIRMAN: Thank you, Mr. Coon. I guess in looking at our

scheduling, and I am going to do that with a little more detail now as to the actual hearing.

When I do that, you will note that because of space confinements and that sort of thing, trying to get hotel space, there are some weeks in which we can only hear evidence for three days or four or something of that nature.

My suggestion is as we get closer or start the hearing, that on the first day I ask the informal Intervenors when it is that they would like to address the Board. Now if you have informal Intervenors who want to wait until just before the summation, then we will accommodate that.

If they say, no, look, we have read the evidence and we all know what we want to say right now, well then I will say, okay, fine, let's pick a convenient day when you can do it when we are not hearing evidence. Because my suggestion would be that we use the Board's premises, which is a smaller facility, but would probably accommodate all the informal Intervenors and representatives of the parties that want to hear. So we can go ahead and have it then.

So my suggestion, and I want all of you to comment on this, is that we simply hold off on setting the date for

the informal Intervenors presentation, and establish that say the first day of the start of these hearings.

Now and I don't know, Madam Secretary, have we put out to the parties the actual dates when the hotel has indicated to us that we could hear it?

MS. LEGERE: No.

CHAIRMAN: Not yet. We are going to mark these days down, I will do my best. And, Madam Secretary, you tell me if I have misinterpreted something here.

But we have two days set aside and that's going to be in the Delta, right?

MS. LEGERE: Yes.

CHAIRMAN: That's in the Delta. All of these are in the Delta in their newly refurbished ballroom area. Anyway, we have set the hearing Load Forecast for the 29th and 30th of April.

And I believe it is that we had said that if we needed to have a day set aside for the decision, and that would be the 22nd of May, but that would be on the Board's premises itself.

All right. The hearing -- the Point Lepreau specific hearing starts on Monday, the 27th, and goes to, concluding 5:00 o'clock on Thursday the 30th. So that's four days.

Then the next week we have the Monday, Tuesday, Wednesday, which is June 3, 4 and 5.

The following week is we start on Monday the 10th and have the Monday, Tuesday, Wednesday, Thursday. And so we are out at 5:00 o'clock on Thursday the 13th.

And we have the next week Monday, Tuesday and Wednesday again. That is June 17, 18, 19. And it is our anticipation that that will be sufficient. If not, we will scramble.

We will take a recess and ask Mr. MacNutt to let us know when the parties have had an opportunity to chat about some dates, et cetera, that we can reserve at this time in reference to confidentiality issues. In other words, if we have to deal with confidentiality issues I am suggesting that -- and I did previously, that you talk about it over a break and come back with what it seems to fit in the schedule.

MR. MACNUTT: Well, Mr. Chairman, you are suggesting -- don't forget that you have set in your timetable for both hearings a Motions Day. You forgot that.

CHAIRMAN: I didn't forget that, Mr. MacNutt. I just think that if -- if we can find another time when -- which would be in advance of Motions Day because we are going to have to -- it may be that we are coming up with the same things

again as with Mr. Easson, that he has got to go in, et cetera, et cetera, et cetera. I don't know. But it may well be that we are on a quicker time track than Motions Day that we have here, and we may not need it at all.

But anyway I think that you doing this informally would be certainly more productive than my trying to do it from here.

So we will take a recess. And when there is a -- you come up with some dates and whatnot, give us a shout and we will come back in.

(11:43 to 11:56 - recess)

CHAIRMAN: Mr. MacNutt and Board staff indicate to me that you have all had the opportunity to talk about the confidentiality thing. And that, as I understand it, it certainly is agreed that after the first set of interrogatories you will be able to know whether or not something is of a confidential nature and that from the Board's perspective and from your perspective to come together on the 23rd of -- 23rd of April to discuss that is an appropriate date. And it is for Board. And we will simply go from there.

I would ask Mr. Miller and Mr. Morrison that if their clients arrive at an indication in advance of the deadline for the first set of interrogatories, that they inform the

parties of what might be confidential, et cetera, if they can.

MR. MORRISON: That's fine, Mr. Chairman, except that it may not resolve any other issues of confidentiality that might come out of the interrogatories, and I am not anticipating any. And the AECL contract is obviously the one that's foremost in our minds. But Mr. Coon has raised a couple of other matters that we have to take under consideration.

CHAIRMAN: Yes.

MR. MORRISON: Obviously, if we have -- if we are able to resolve those issues, we will advise the Board.

CHAIRMAN: My recollection, and correct me if I am wrong here, Mr. Morrison, is that -- yes, that's right. Consider if -- the Board certainly, Board staff will be putting an interrog asking you to file in the public record that contract. And if you feel that you can't or whatever, and you want to argue about it, at least at that point in time I would suggest you put in an expunged version just so that what is not confidential everybody can see well in advance. And we are down to that little nitty gritty part.

MR. MORRISON: We don't have any problem with that.

CHAIRMAN: Okay. Good.

MR. MACNUTT: Mr. Chairman, revisiting the dates that you

have set when you first returned just a moment ago, it was my understanding that the arrangement reached by the parties with respect to dealing with confidentiality matters would be that they would -- if they choose to challenge the refusal of NB Power to respond on the grounds of confidentiality, they would give notice to the Board and all Intervenors by April the 18th. And if a hearing was required, it would be heard before the Board on April 23rd.

CHAIRMAN: Okay.

MR. MACNUTT: I believe you mentioned the 23rd, but you did --

CHAIRMAN: I did and that's because I didn't take in that 18th date, Mr. MacNutt.

MR. MACNUTT: Okay.

CHAIRMAN: Thank you for bringing that to my attention. And that's precisely how it should work. If somebody does, in fact, wish to question -- how will I say this properly, the applicant's refusal based upon confidentiality, then that Intervenor or party will give notice to the applicant and to the other parties that they are going to request that, by the 18th they will give that notice and that we have a hearing on the 23rd to discuss the matter.

Now I would ask if you are a party that has not been

before the Board before, then I think the Board's Secretary is interested in getting, as she claims, your coordinates or do you have them all?

MS. LEGERE: I passed out the coordinates today with a note asking people to get in touch with me if there was any misinformation printed on the document of their coordinates.

CHAIRMAN: Okay. And that goes as far as it has previously, Ms. Legere, to indicate that people will accept service by E-mail, et cetera, et cetera.

MS. LEGERE: Yes.

CHAIRMAN: Yes. Okay. Well, all right. If there is -- if there are no other matters, then we will adjourn. I appreciate your co-operation today. We will reconvene subject to the various dates that have been reserved. We will reconvene in the Load Forecast hearing on the 29th of April at 10:00 a.m. at the Delta Hotel. And the Point Lepreau specific again at 10:00 a.m. on Monday, the 27th of May in the Delta Hotel. 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