

New Brunswick Board of Commissioners of Public Utilities

Hearing

In the Matter of an application by New Brunswick Power Corporation dated June 21, 2002 in connection with an Open Access Transmission Tariff

Delta Hotel, Saint John, N.B.  
November 18th 2002, 1:30 p.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

.....

CHAIRMAN: Good afternoon, ladies and gentlemen. We apologize if our postponing the start of the hearing from this morning to this afternoon caused anybody any difficulty. But by the look of the weather in central and southern New Brunswick yesterday, why it seemed like a good idea.

Can we have appearances on behalf of the applicant?

MR. HASHEY: On behalf of the applicant, David Hashey and Terry Morrison appearing as counsel. And various witnesses of course will be appearing. And we have

support staff with us as well, Mr. Chairman.

CHAIRMAN: Thank you, Mr. Hashey. Bayside Power? I think the Board received an e-mail, did it not, saying the weather in Northern Maine was equally bad I guess. They are getting here tomorrow. Canadian Manufacturers and Exporters, New Brunswick Division?

MR. PLANTE: David Plante appearing on behalf of Canadian.

CHAIRMAN: The City of Summerside? Emera Energy Inc.?

MR. ZED: Peter Zed. And I'm joined by Ross Young of Emera Energy Inc.

CHAIRMAN: Energie Edmundston?

MR. YOUNG: Mr. Chairman, I believe that Robert Guerette was going to appear but I believe he is snowed in till Wednesday.

CHAIRMAN: When they get snow in the Republic they really get snow. Mr. Gillis? He was here giving an interview out by the door. I guess that is all he came for. J.D. Irving Limited?

MR. SMELLIE: Good afternoon, Mr. Chairman. James H. Smellie and Gordon M. Nettleton for J.D. Irving Limited.

CHAIRMAN: Thank you, Mr. Smellie. Maine Public Service? It is my understanding that Maine Electric -- Maritime Electric Company Limited from P.E.I. withdrew from the proceeding on the 13th of November, is that right, Madam

Secretary?

MS. LEGERE: Yes.

CHAIRMAN: Northern Maine Independent System Administrator?

MR. BELCHER: Ken Belcher.

CHAIRMAN: Nova Scotia Power Inc.? Mr. Zed again?

MR. ZED: Yes, Mr. Chairman. I'm joined by Clarence Penwell  
for Nova Scotia Power.

CHAIRMAN: I'm sorry? Clarence --

MR. ZED: Penwell. P-e-n-w-e-l-l.

CHAIRMAN: Perth-Andover Electric Light Commission? Did the  
snow get that far down the valley?

MR. DIONNE: Yes, it's brutal. Dan Dionne for Perth-  
Andover, Mr. Chairman.

CHAIRMAN: Right. And Province of New Brunswick, DNRE?

MR. BARNETT: Don Barnett and I'm joined by Jim Knight.

CHAIRMAN: Thank you, Mr. Barnett. Province of Nova Scotia,  
Department of Energy?

We did get an e-mail in from that government  
department indicating that they still wished to  
participate but that they would keep an eye on the  
transcripts in order to decide when it is that they would  
come and when they leave. So today is not one of their  
days to come, I guess.

Saint John Energy?

MR. YOUNG: Good afternoon, Mr. Chairman. Dana Young representing Saint John Energy. To my right is Dr. Jan Carr, Managing Director of the firm Barker Dunn Rossi representing us. And at the end is Mr. Richard Burpee, present CEO.

And I will let Mr. Gorman (inaudible)

MR. GORMAN: Good afternoon, Mr. Chair.

CHAIRMAN: Mr. Gorman.

MR. GORMAN: In addition, Ray Gorman will be appearing on behalf of Saint John Energy. To my right I have Chris Titus who is the Chair of Saint John Energy.

To his right Mr. Eric Marr who is the Vice-President of Engineering and Operations. And at the end of the table Mr. Tony Furness, the Vice-President of Finance and Administration.

CHAIRMAN: Thank you, Mr. Gorman. WPS Energy Services Inc.?

MR. MACDOUGALL: Good afternoon, Mr. Chair. David

MacDougall appearing for WPS Energy Services.

CHAIRMAN: I'm sorry. Would you hold up your hand so I can -- there you are. Right. Would you start again, sir?  
Thank you.

MR. MACDOUGALL: No problem. Good afternoon, Mr. Chairman. I'm David MacDougall for WPS Energy. I'm joined with Ed Howard, Energy Marketing Executive for WPS Energy.

And we would also like to inform the Board that for the first two panels we probably won't be asking any questions. Although we will in fact ask questions for Panel C.

CHAIRMAN: Thank you, Mr. MacDougall. You have added a beard since your last appearance before this tribunal?

MR. MACDOUGALL: Yes, I have, Mr. Chair. (Inaudible)

CHAIRMAN: Board staff?

MR. MACNUTT: Yes. Peter MacNutt. And I have with me Mr. Goss, Jim Easson and Gaye Dressler.

CHAIRMAN: Thank you, Mr. MacNutt.

Informal Intervenors, anyone representing them this afternoon? HQ Energy Marketing Inc.? Irving Oil Limited? KnAP Energy Services Inc.? Renewable Energy Services Limited? TransEnergie? And the Union of New Brunswick Indians? I believe --

MR. WOOD: My name is Ralph Wood. I'm just an ordinary pensioner, householder, electricity consumer here in the province of New Brunswick. Thank you, sir.

CHAIRMAN: Mr. Wood, that is quite a full portfolio that you represent.

MR. WOOD: It is a full-time job, sir.

CHAIRMAN: The Board Secretary spoke to me before we started. And I believe she has explained to you that what

you really want to be is an informal intervenor.

MR. WOOD: That is correct.

CHAIRMAN: And that the Board will set a date. And the Secretary will inform you when that is --

MR. WOOD: I understand, Mr. Chairman.

CHAIRMAN: -- that informal intervenors can make presentations to the Board.

MR. WOOD: I understand, sir.

CHAIRMAN: Okay. Thank you.

Now at the procedural conference we had a week or two ago, why one of the things that the Board decided would be that NB Power and Board counsel would get together with a tentative list of exhibit numbers.

And I believe that has been done. And the Board Secretary has shared that with all of the parties, as I understand.

So the Board of course reserves the right to change the listing or, excuse me, the exhibit numbers if we wanted to. But as far as I'm aware at this time, there is no reason to change that which Board counsel and NB Power has agreed to.

I understand, Mr. Hashey, you have an affidavit of publishing which you can produce now. And we will mark those exhibits.

MR. HASHEY: Thank you, Mr. Chairman.

CHAIRMAN: If any parties have any difficulty with the proposed exhibit numbers, why let me know right now.

MR. SMELLIE: Mr. Chairman --

CHAIRMAN: Yes, Mr. Smellie.

MR. SMELLIE: -- I was going to leave this until another minute, but -- and I was going to report to you or Mr. Hashey was going to report to you on the outcome of our deliberations about the Panel B presentation.

CHAIRMAN: Okay. Mr. Smellie, that is number 2 on my agenda.

MR. SMELLIE: It is just it bears on admitting exhibits, Mr. Chairman. It would be my position, and I'm not sure, the Panel B presentation ought to be formally entered into this record until that issue is resolved.

CHAIRMAN: That is certainly fair enough. Mr. Hashey, any problem with that, that we wait until Panel B is coming on before we introduce that exhibit?

MR. HASHEY: No problem.

CHAIRMAN: Okay. What tentative number was given to that?

MR. SMELLIE: I think it was exhibit 7, Mr. Chairman. It was going to be my original proposal that we mark the four presentations 7 (a) (b) (c) (d). But I'm in your hands in that regard. You could get the other ones in.

CHAIRMAN: So why don't I mark exhibit A-1 to A-6. And then we will deal with that when it is in.

It would appear to me that the appropriate way to do it is Panel A is the panel that will start today, as I understand it, that we introduce as A-7 their power point presentation as exhibit A-7.

And then as each panel comes later on during the hearing I will give it an exhibit number at that time.

Mr. Hashey, I'm not going take up the time of the hearing now looking at this affidavit. I am certain that you have checked it through and I will look at it later but it is a publication that occurred in accordance with the Board's order?

MR. HASHEY: It did, Mr. Chairman, thank you.

CHAIRMAN: Good. Thank you. Now I'm looking at exhibits A-2 now through A-6. I'm in your hands, Madam Secretary. All right. For the sake of the record I have marked exhibits A-1 through A-6 and the secretary will pull apart what was to be A-7 splitting them into four different packages. And I will mark after the hearing today A-7, which will be the Power Point Presentation from Panel A.

Now the choice of exhibit numbers for Emera Energy Inc. leaves me kind of cold. It's EIEIO. Anyhow, does the secretary have EEI-1 and EEI-2 there? Or perhaps,

Madam Secretary, what I will do is during the first break is I will sign all those. We won't take up anymore time here.

And surely Board's counsel and counsel for NB Power should have come up with a better way of marking it rather than EEI-1, 2. Anyhow.

Now my understanding, Mr. Smellie, is that -- and you have certainly confirmed that, is that JDI, as a result of the conference of a week or so ago, is going to sit down and look at the references that NB Power had given to the slide presentations. And my understanding, and I would like you to confirm it, is that JDI has only objection to Panel -- let me see. Is it B?

MR. SMELLIE: It is, Mr. Chairman.

CHAIRMAN: Yes. So we will deal with that when Panel B comes on.

MR. SMELLIE: And you should know that Mr. Hashey and I have planned to talk at some convenient time this week to see if we can't bring you a negotiated result as opposed to one that will require your assistance.

CHAIRMAN: That would be greatly appreciated, Mr. Smellie, and Mr. Hashey.

MR. HASHEY: Thank you. On that point, Mr. Chairman, possibly you could assign Board counsel to meet with us so

we can indicate our respective positions. I'm not sure that we are going to get to a negotiated position but we certainly have been working towards it.

CHAIRMAN: All right.

MR. HASHEY: And there may be at a later time, probably some time of the first two weeks of this hearing, we may have to come back to the Board on it.

CHAIRMAN: All right. And I will speak with Mr. MacNutt about it, so thank you.

Mr. Smellie, just going over some of the matters that we have covered since the original pre-hearing conference, came up with one thing is that -- my understanding is that you -- if the timing works out your evidence in reference to Panels B and C will be heard prior to the 19th of December, that is Mr. MacNutt supplying me with his --

MR. SMELLIE: Sorry, Mr. Chairman, my client's evidence or the JDI presentation? My understanding based on the pre-conference -- pre-hearing conference of a couple of weeks ago was that the JDI intervenor evidence was going to be a treat for the New Year.

CHAIRMAN: Okay. Mr. MacNutt, in your memo that you have produced you have C) intervenor evidence of JDI relevant to Panels B and C, one slide presentation by JDI witnesses, direct examination, et cetera. And that all

occurs by the 19th of December. Now that is why I bring it up, Mr. Smellie, just so if we have made a mistake then we know it now. Because of course the next thing was that you were going to provide your slide presentation on the 20th of December, which would have been after you actually presented the evidence, which even to me didn't make much sense.

MR. SMELLIE: It is not even the way we do it in Alberta, Mr. Chairman. I understood that our presentation was due the 20th and that at some early point in the New Year, the week of the 6th of January, was when my witnesses were to attend to be examined.

CHAIRMAN: Okay.

MR. MACNUTT: Mr. Chairman, I would point out that the schedule, the tentative schedule (inaudible) based on Mr. Hashey's letter to the Board and certainly to all parties as to the time that --

CHAIRMAN: I'm not placing blame.

MR. MACNUTT: No, no.

CHAIRMAN: I'm just trying to -- if there is what appears to be a difference to what it is right now.

MR. MACNUTT: No, I'm not concerned about that. I just would point out the source of the suggested time line.

CHAIRMAN: Mr. Hashey?

MR. HASHEY: No, I concur with Mr. Smellie. That is definitely what was decided at our conference.

CHAIRMAN: Okay.

MR. HASHEY: Mr. Chairman, I should add too, I have two additional exhibits that I should offer here as well that haven't been presented yet.

CHAIRMAN: All right. Mr. Hashey, I will ask you to hold those, if you could, until after we have a break when I mark A-7.

MR. HASHEY: Oh sure.

CHAIRMAN: Okay. And we will do it after that. Now again I believe it was during the procedural conference that Saint John Energy and some of the other municipal utilities indicated that they might very well do some joint questioning of witnesses. In other words, just have one designated party do the examination. And I presume that's why Mr. Gorman has been engaged.

Can you indicate to me, Mr. Gorman, or, Mr. Young, or for that matter, Mr. Dionne, if there is an agreement as to what matters will be -- cross examination will occur by just one party and what slot in the line-up of intervenors that one party is going to choose. Has that been decided yet? Go ahead, Mr. Young?

MR. YOUNG: No, Mr. Chairman, we haven't decided those fine

points yet. I have talked to Mr. Dionne and to Mr. Guerette from Edmundston. There are a few points we would like to speak together on before the Board. There are just a few. Other issues are specific to each municipality and we would like to talk to those ourselves. We haven't decided yet.

CHAIRMAN: All right. Well when you are able to share that with the Board and the other parties, we would appreciate hearing from you. Now are there any other preliminary matters that any of the parties have? Mr. Zed?

MR. ZED: Mr. Chair, at the procedural conference we undertook to attempt to make our panels available in the first two weeks and as I have indicated to the Board in correspondence, those panels are both available the 27th and 28th of November. That was certainly Mr. Hashey and I's best guess as to when they might be needed and the panels rearranged their schedules on relatively short notice to be available on both of those days, if required.

We do not wish to do a formal presentation. I think I so advised you. But that brings up the question of an opening statement of some kind. And it would be my suggestion that each panel would very briefly -- a spokesperson on each panel would very briefly at the outset just give a brief oral summary of the evidence.

CHAIRMAN: Certainly, Mr. Zed, before we got into slide presentations, presentations was the normal way in which this Board proceeded. I see nothing wrong with proceeding in that way. Just if the applicant or the intervenors do, but I certainly don't. But it is just that. It would be a brief overview of the written evidence.

MR. ZED: Yes.

MR. HASHEY: No problem.

CHAIRMAN: If there are no other preliminary matters, Mr. Hashey?

MR. HASHEY: We will be calling Panel A.

CHAIRMAN: Pardon?

MR. HASHEY: Will we be calling Panel A next. The intention of course is to have Panel A, just so you understand what direction we are aiming at. There will be an opening presentation by Mr. Snowdon. Before that, I would like to thank you for your consideration in allowing us to substitute this panel. Mr. Bartlett, of course, became ill and these two gentlemen, Mr. Snowdon and Mr. Marshall will take his place. Following that, in accordance with the Board's orders, we will be doing a brief rebuttal by these witnesses. You indicated to us that we should do our rebuttal up front and that is what we will be doing. And they will be touching on the policy issues that come

out of the rebuttal issues, that came out of the evidence of the party's filed evidence. And then cross examination if that suits you.

CHAIRMAN: Yes. Well subject to the other parties, that certainly appears to me an appropriate way to go ahead.

Mr. MacNutt, you had your hand up?

MR. MACNUTT: Yes. Mr. Hashey just said a moment ago that he had documents to be marked, is that correct, Mr. Hashey?

MR. HASHEY: That's right, Mr. MacNutt. I should say one thing, there is nothing -- well there might be in one of them, I don't know. The first one is just the c.v.'s of the transmission tariff witnesses. These were all e-mailed. They were filed with the Board and they were e-mailed to the intervenors on September 5. And the second exhibit is a portion of a book of Dr. Morin, chapter 13 and 16. That was filed on September 24th and was circulated to all interested parties. Those are the only two items that seem to be not completely in the evidence that we have already marked, Mr. Chairman.

CHAIRMAN: Why don't we mark A-9 right now then, subject to -- A-8 you indicated was to be --

MR. HASHEY: The c.v.'s of the transmission tariff witnesses.

CHAIRMAN: Yes. Any objection from any parties?

MR. HASHEY: And the other one, Mr. Chairman, was the chapters of Dr. Morin's book. Now those were requested by Maritime Electric Company that I see have withdrawn as a formal intervenor.

But they were supplied to the Board. And they were supplied to all interested parties. It seems appropriate that maybe we should mark them if somebody wants to use them.

CHAIRMAN: I have no problem. Has anybody any problem with marking Dr. Morin's two chapters from one of his books?

MR. HASHEY: That would be the same as an interrogatory (inaudible).

CHAIRMAN: Why don't we mark it, Mr. Hashey. Commissioner Sollows has pointed out to me that Mr. Gillis has arrived. The record will show his attendance today.

Okay. Go ahead, Mr. Hashey.

MR. HASHEY: Thank you, Mr. Chairman. If I could turn this over to Mr. Morrison who will deal with Panel A.

MR. ZED: Mr. Chairman, if I might before we begin, Mr. Hashey raised the issue, and you appeared to concur with him, the issue of rebuttal evidence.

And my understanding was that in the normal course rebuttal evidence was not going to be allowed. I spoke

briefly with Mr. Hashey and Mr. Morrison before the commencement of this hearing.

And as I understand, if I understand correctly, the nature of the rebuttal evidence they intend to offer, I don't have any issue with it, but provided that we are allowed similar latitude when our panel is on to respond to that evidence.

There has been no justification for rebuttal evidence offered on the record. And in the normal course, I mean, it is just not a matter of course that you are entitled to it, which the Chair I believe ruled in that manner at our last hearing.

So all we are really asking, if he is allowed to proceed, to in effect cross examine his own witnesses, to put forth rebuttal evidence, that we be allowed similar latitude when our panel is on to respond.

CHAIRMAN: The Board will take a 10-minute recess. It is getting late. And I will ask the Board counsel to come with me.

(Recess - 2:05 p.m. - 2:50 p.m.)

CHAIRMAN: Well, I do apologize for having taken so long on that break. And I understand that there were some difficulties with the sound system.

And is there anything we can do to improve the system

today, like holding up our hands when we are going to speak? Will that do it?

TECHNICIAN: That would help.

CHAIRMAN: That would help. So if you are going to speak why please hold up your hand so we know who it is.

I do apologize. Because I have taken the opportunity to read through particularly page 98 of the transcript. And what I said there -- and I can see how, looking at that, Mr. Hashey, you can certainly think that I was -- well, I misspoke myself, if you took that in isolation.

Because if you go on a few pages to page 103 in the transcript, dealing -- I said, in reference to the first matter which is set forth in Mr. Hashey's letter of November the 7th, the Board approves the calling of the panels.

And if you look at that you find that the rebuttal evidence occurs after the Emera or Nova Scotia Power panel has given its evidence.

And again I believe on -- a page or so on in that letter, Mr. Hashey, you have rebuttal evidence as a separate heading. And it says that the rebuttal evidence, if there is any, will occur after the intervenor's evidence.

And that flows directly from my understanding of the

law of evidence in the court system, is that the plaintiff must in their testimony try and speak to any subject matter that can be reasonably anticipated will be brought up by the defendant.

But if in fact the defendant brings up new and unreasonably -- or sorry, new evidence or a head of evidence that could not reasonably have been anticipated by a reasonable person, then the court will look at it and see whether or not rebuttal evidence should be allowed. That certainly is where I was coming from. That certainly is the way you had set it up.

So I do apologize for the confusion that I brought to the subject by what I had to say on page 98. But certainly by approving your letter of November the 7th and the calling of the panels, that there should not have -- you know, unfortunately there should not have been a problem with that.

Now having said all of that, do you want to address the Board? Or do any of the intervenors want to address the Board?

MR. HASHEY: Mr. Chairman, I would be happy with the ruling any way you want to make it. We do believe there are some issues that arose in the evidence of Emera and Nova Scotia Power, very short issues that we are prepared to address

at anytime. And similarly there was I believe one on JDI which dealt with policy that we felt this panel should deal with.

I'm happy anyway. I apologize if I misinterpreted it.

I think that is sort of the rule we followed before on the previous hearing. And I may have been, you know, getting my mind back to that hearing as well, when we had one bit of intervenor evidence, and we addressed it before he actually testified.

So I'm happy, whichever way you would like us to proceed on that, we are very happy to do it.

CHAIRMAN: Yes. My difficulty is that if we allow your panel to go ahead with rebuttal evidence before the intervenor evidence is called, then the temptation is for the intervenor evidence panel to comment on the rebuttal.

And there you get into a rebutting of the rebuttal.

And so --

MR. HASHEY: That is fine, Mr. Chairman. We will recall the panel.

CHAIRMAN: Yes. All right. Then that is what -- that is the way we will proceed. I mean -- and again I emphasize what I said in the transcript, that rebuttal is not an automatic thing.

You have to show that in fact you could not, when you

put in your examination in chief, that you could not have anticipated the subject matter.

Go ahead, Mr. Morrison.

MR. MORRISON: Mr. Chairman, it does raise the issue.

Because we do anticipate from having read the evidence, the intervenor evidence, there are three or four issues that we do want to address. And we can reasonably anticipate them because we have read the evidence and they have come out in the evidence.

So the question I have to you, Mr. Chairman, is do we deal with this now in direct? Or do we recall the panel?

CHAIRMAN: I think the way the Board has to approach it is that in a court setting you are talking about viva voce testimony.

MR. MORRISON: Correct.

CHAIRMAN: And that testimony you hear the first time you hear it. And so if you give your testimony before you have heard their testimony, sort of thing, then you could not have anticipated ahead of evidence that they are going to speak to, then you have a right to come after and give rebuttal.

So here, if when you put in your written prefiled evidence, you could not have reasonably anticipated what they put in their prefiled evidence later, then you have

the opportunity to come viva voce and rebut that, period.

MR. MORRISON: In direct?

CHAIRMAN: In direct.

MR. MORRISON: Thank you, Mr. Chairman.

CHAIRMAN: Yes. Any other comments? Or shall we start with the panel?

MR. MORRISON: Call Mr. Marshall and Mr. Snowdon to take their places for panel A.

(Mr. Marshall and Mr. Snowdon sworn)

MR. MORRISON: Mr. Marshall, could you state your name and position for the record, please?

MR. MARSHALL: Yes. William A. Marshall, director of strategic planning for the New Brunswick Power Corporation.

MR. MORRISON: And you are familiar with the evidence that was submitted in Exhibit A-2 as Panel A evidence?

MR. MARSHALL: Yes.

MR. MORRISON: And do you adopt that evidence as your own?

MR. MARSHALL: Yes, I do.

MR. MORRISON: Mr. Snowdon, could you give your name and position for the record, please?

MR. SNOWDON: My name is Wayne Snowdon. I have recently assumed Doug Bartlett's responsibilities as general manager transmission.

MR. MORRISON: And you as well, Mr. Snowdon, have read the evidence that is in Exhibit A-2 as the Panel A evidence?

MR. SNOWDON: Yes, I have.

MR. MORRISON: And do you adopt that evidence as your own?

MR. SNOWDON: Yes, I do.

MR. MORRISON: And at this point, Mr. Chairman, with your indulgence we would proceed to have Mr. Snowdon give a brief presentation of an overview of the Panel A evidence.

MR. SNOWDON: Mr. Chairman, members of the Board, I am here to give an overview of the evidence that was submitted under Panel A. It will be an overview and policy framework.

A brief outline of my presentation is contained here. There are five points I want to go over during the presentation, the highlights of NB Power's application, a brief overview of the power system, how energy electricity markets evolved in the northeast, NB Power's export and import history over the past 15 years and some discussion on the policy framework under which the tariff is being presented.

NB Power is seeking approval for an open access transmission tariff by this Board. The approval of this tariff is paramount in the opening of the market scheduled for April of 2003.

The tariff includes these five components, terms and conditions of the service that can be taken under the tariff, network operating agreement, an agreement for generators that want to connect or are interconnected with the system, the standards of conduct. These four components will be dealt with with Panel D and the rates for the transmission and ancillary services that are offered under the tariff will be handled by Panel C.

This slide gives you an overview of transmission. Under the definition under the tariff submission transmission starts at the output of the high side of the unit transformer associated with each generator, and it includes the poles and wires and terminal equipment that is necessary to move the energy from the generator to the distribution loads. And the other point that the transmission terminates at is the high side of the distribution transformers.

Connected to the transmission system are large industrial customers, wholesale customers and of course the interconnections that exist with our interconnected jurisdictions.

In the centre I have shown the energy control centre which performs the real time operations, the hourly dispatch of generation and the real time control of the

transmission network. And this is a 7-by-24 operation.

Operational challenges of the power system. Unlike oil or gas, electricity cannot be stored and travels at the speed of light. When you flick your switch on you want to make sure the energy is there, you don't want to wait.

One of the challenges that is faced by the system operator is to ensure that the supply side or the generator matches the load or the instantaneous demand for electricity by the customers are balanced at all times.

And in order to do this, generators are put under the control of the operator and computers at the control centre send signals to these generators to raise or lower to match this demand. While these generators are on this type of control, or automatic generator control, it's called AGC.

Contingencies by definition are the loss of significant load or generation. And the operator has to take actions to ensure that there are not black-outs resulting from this.

And in order to do this there are generators that are held in reserve that are either on-line or can be brought on-line to replace this loss of generation in a very short time frame. Or conversely, if it's a loss of load then

generators have to be armed to be removed from the system in very short order.

During this transmission phase when you have lost a generator and the reserve generation is coming on line, the operator relies on the interconnections to maintain reliability to provide this loss of generation and also to support system frequency.

In order to do this the -- there are a number of planning standards, operating procedures that are coordinated between the adjoining jurisdictions. This reliability coordination is under the -- has been developed and is monitored through an organization known as the North American Electrical Reliability Council, which is known As NERC.

NERC was established in 1968 after the black-out of 1965 in the northeast, and their primary purpose is to ensure reliability in North America.

It is made up today of voluntary organizations but there is a movement toward mandatory compliance.

There are ten regional councils that make up this council, one of which is the North East Power Coordinating Council, or NPCC, and it's comprised of five geographical areas and each of these areas are known as control areas.

A control area has two primary functions. One is that

it maintains the balance of energy and load in its jurisdictions and how it impacts its interconnections, and it's also there to help support the system frequency.

NB Power is the operator of the Maritimes Control Area. This slide shows the Maritime Control Area as comprised of Nova Scotia, Prince Edward Island, New Brunswick and two pockets of load in Northern Maine that are only interconnected with the rest of Maine through New Brunswick system.

There are two primary interconnections with our adjoining control areas, the one through Quebec, which is through a DC converter station, and these have their own operating characteristics.

The Maine interconnection that the Maritimes Control Area has is through this line known as the MEPCO line or the New England Tie Line which is an AC or a synchronized connection with the rest of North America, or at least the Eastern interconnection.

And you can see on this slide it shows that the transfer capability from the Maritimes through Maine is 700 in that direction and on a firm basis it's zero on a south to north flow. And this is the line that the operator has to keep in balance during contingencies and during real time operations.

This map gives you an overview of the 6,600-plus kilometres of transmission line that are around the province, and they operate at four voltage classes, 69,000 volts, 138,000 volts, 230,000 volts and 345,000 volts.

And you can see from this blue or purple line that the 345 kv system is a very robust system that minimizes the chances of congestion on the transmission system in New Brunswick.

The evolution of energy or electricity markets. Originally individual electrical systems were developed in isolation and generally they were developed to meet load requirements associated with local industry. As vertically integrated utilities grew, they started to do business or transactions between them and built interconnections between their systems to facilitate these transactions. The very fact that they were tied together increased reliability and provide financial benefits between the two utilities.

This -- these transactions increased and through these bilateral contracts grew over a number of years.

In 1996 the Federal Energy Regulatory Commission in the US developed a series of rules under which these transactions are governed, and this formed the basis for Order 888.

This Order 888 has been and has become and is today the industry standard in terms of templates for tariff development.

FERC's primary objective in putting this order out was to facilitate the movement of low cost energy into high priced wholesale markets. And over this time market pools have developed throughout North America, and particularly in the northeast, in New England, New York, PJM stands for Pennsylvania, Jersey, Maryland, and recently in Ontario.

This map gives you an appreciation of the larger scale market that really does impact the Maritimes. There is Quebec, Ontario, New York, New England and PJM as I spoke about are the larger market that really is impacted and can impact New Brunswick.

NB Power exports and imports. This slide provides a comparison of the importance of exports and imports to the in-province load over the last 15 years. This is a yearly average over those 15 years. And you can see that the exports has been strong into the US, throughout the Maritimes and into New England. The imports are primarily from Quebec and that's for basically two reasons. Historically Quebec has provided a lower cost energy source in comparison to the US side and the limited transfer capability south to north that exists on that

interconnection.

In support of both the provincial government and the federal government, the desire to provide cross-territory transmission access associated with the interprovincial trade agreement, NB Power introduced a Through and Out transmission tariff in January of 1998. It used the FERC proforma tariff pricing formula and methodology in the development of that tariff.

A 60-day open season period was held in January and February to allow potential or prospective transmission customers an opportunity to reserve transmission.

In support of a deliberate and controlled approach to deregulation, NB Power implemented a functional unbundling and a Standard of Conduct compliant with the FERC Order 889 in January of 2000.

Under the tariff before you, the contractual rights and obligations under that Through and Out tariff transfer to the new tariff, and this will be discussed through this Panel A.

In summary, the tariff submission before the Board provides an open non-discriminatory access tariff. It is designed to collect the transmission business unit revenue requirements. It does provide a foundation for the New Brunswick market to open in April. It is compatible with

the standard North American practice as specified by the FERC Order 888. And it is consistent with the recommendations of the Market Design Committee.

We have four panels. This Panel A which we spoke to.

Panel B will deal with the capital structure and the rate of return, is comprised of two individuals, Sharon MacFarlane and Dr. Morin. Panel C will deal with the revenue requirements and rate design and is made up of Mr. Lavigne, Ms. MacFarlane, Mr. Marshall and Mr. Porter. And Panel D which I guess is going to follow Panel A is the service delivery and operations, terms and conditions of the tariff, and Mr. Scott and myself will be on that panel.

Thank you very much.

MR. MORRISON: Mr. Chairman, as mentioned earlier I guess in our discussion of the -- what we can do and not do on direct, we have reviewed the evidence of actually three intervenors, Emera, Nova Scotia Power and JDI and there are a few issues that do come up in that evidence that I will put some questions to this panel in direct, if I may.

The first arises from evidence -- from the evidence of Emera, and it is at pages 6 and 7 of Emera's evidence.

CHAIRMAN: Now it sounds to me like rebuttal evidence.

MR. MORRISON: Well, again, Mr. Chairman, in fact it is and

I'm trying to be clear on what the Board's ruling is. As I said earlier, if you want us to defer that until after Emera has taken the stand, I have no problem with that.

CHAIRMAN: Yes, that is certainly what the Board wants.

MR. MORRISON: Okay. That's fine. Then I will have -- I have no questions of this panel at this time.

CHAIRMAN: Okay. Fine. I guess it is -- Emera is first up.

I'm sorry, Canadian Manufactures & Exporters. Mr.

Plante? Yes, Mr. Smellie?

MR. SMELLIE: I was a little slow getting off the mark earlier. I should tell you, sir, that Mr. Nettleton and I are carrying a joint brief in this hearing. And we are acting for the CME, New Brunswick Division. CME has instructed us that they may well wish to conduct cross examination of certain panels on their own. But when I cross examine I will be cross examining both for J.D. Irving and if I tell you that CME. And I apologize for interrupting with that at this point, sir, but as I say, I was just a little slow off the mark earlier today.

CHAIRMAN: Okay. Are you examining for CME now or in reference to this panel, sir?

MR. SMELLIE: I will do that, sir, but I will examine in the J.D. Irving's slot, if it is all the same to you.

CHAIRMAN: Is that all right with the representative of CME

who is here today?

MR. PLANTE: Yes, sir.

CHAIRMAN: Good. All right.

MR. SMELLIE: And I am mindful, sir, of your admonition that you only get one kick at the can, and I will respect that.

CHAIRMAN: Okay. Thank you, sir. All right. Mr. Zed, then you are up, sir.

MR. ZED: And mindful of the discussions with the Board last week, Mr. Chair, I intend to do one cross examination for both Emera Energy and Nova Scotia Power, which I will begin forthwith. Is that --

CHAIRMAN: Yes, fine. Go ahead.

CROSS EXAMINATION BY MR. ZED:

Q. - Gentlemen, I would refer you to question 11, page 10 of your evidence. You talk generally about your interconnections with other utilities in other provinces. And I would like to just focus you on your relationship with Nova Scotia Inc. That relationship, would it be fair to say that it has been ongoing for the better part of 40 odd years?

MR. SNOWDON: That's correct.

Q. - And would it be fair to say that there is currently an interconnection agreement between the parties that has been in existence for nearly 20 years?

MR. SNOWDON: That is also correct.

Q. - And would it be fair to say that that interconnection agreement has been amended from time to time to reflect operational realities between the two utilities?

MR. SNOWDON: I'm not sure if the interconnection agreement itself was amended. There have certainly been supplementals to that interconnection that have been amended or created.

Q. - That's fine. And could you please just tell the Board overall what is sort of the importance of having an interconnection agreement with a utility such as Nova Scotia Power?

MR. SNOWDON: The interconnection agreement that was -- I guess there are some generic things that are in them. For example, it talks about the metering points, the facilities that make up the interconnections. It talks about how the interconnections should be operated. What reliability standards, so on, that would be respected. Historically, they have also included commercial arrangements for different types of energy transactions and those kind of things.

With the functional unbundling that's going -- that has taken place in New Brunswick, there is a movement to redo the interconnection agreement to separate those

commercial issues from the operational issues.

Q. - Thank you. And obviously there are benefits in the agreement for both utilities in having this sort of arrangement?

MR. SNOWDON: Yes, there are.

Q. - And you refer in your evidence to reliability which you obtain from having such relationships with other utilities. Reliability of your own system, would that be one of the benefits?

MR. SNOWDON: That's correct.

Q. - Now is there an -- I believe you already said there is an operating committee that is jointly staffed by both parties?

MR. SNOWDON: That's correct.

Q. - And what type of issues would that operating committee deal with? I suppose the obvious answer is operational ones, but maybe you could just give the Board some feel for what kinds of issues. For example, energy exchange, is that one of them?

MR. SNOWDON: I -- could you be more clear?

Q. - Well perhaps I will let you put it in your own words. What are some of the issues that an operating committee such as exists would deal with on an ongoing basis?

MR. SNOWDON: Well there are several issues, I guess. Every

agenda seems to be full of things. One of the primary initiatives that we have ongoing is to establish the relationship between the two operators in the operation of the interconnection between the two organizations, specifically is an issue that is in the forefront today is that Nova Scotia or Emera Energy serves a contract in Prince Edward Island to the City of Summerside. And the issue that we deal with Nova Scotia through the operating committee is trying to separate the operational issues that exist between the two utilities and the commercial interests that go on across that interconnection. That is certainly one that is right in the forefront as we speak.

Q. - And is it fair to say that there is another issue before you today dealing with the issue of inadvertent energy and the difference between operational deviations and commercial deviations?

MR. SNOWDON: That is the issue, yes. It is how that energy that is flowing, that isn't on schedule. For example, if the schedule were 40 megawatts for the hour and there were 45 megawatts transferred across the interconnection or 35 megawatts for that hour transferred, our discussions is is that energy imbalance or is it in fact just inadvertent through normal operator to operator activity.

Q. - And how do you deal with normal operator to operator

deviations in terms of balancing the accounts?

MR. SNOWDON: It is treated as inadvertent between the two utilities and I think there is an IR that actually presents the quantities of inadvertent -- I think Nova Scotia Power was asked to provide that --

Q. - Yes.

MR. SNOWDON: -- information as on record as to what the quantities of that energy over a month has been.

Q. - But it is fair to say that the inadvertent energy is balanced by the return of an equal number of megawatt hours at agreeable times between the parties. Is that --

MR. SNOWDON: Yes, that's correct. The fundamental principle of paying back inadvertent energy if it is created during the onpeak hours, it is paid back during the -- on peak hours on a subsequent day or days.

Q. - And the -- dealing with this issue within the operating committee is a parallel process that is operating outside of this proposed tariff?

MR. SNOWDON: That's correct.

Q. - And is it your intention that the tariff really not apply to this inadvertent energy exchange?

MR. SNOWDON: What we are attempting to do is to separate the operator normal inadvertent from what might be a deficient generator. And I will give you an example, if

there were an independent generator in Nova Scotia supplying that contract to Prince Edward Island, the operator in Nova Scotia would be very concerned with the output of that generator staying on schedule throughout the -- for that hour.

And we have the same concerns that the operator of the generators in Nova Scotia maintain that energy schedule as close as possible, keeping in mind that there are system conditions that do create this inadvertent, in support of frequency, for example. That generators in Nova Scotia do provide AGC. They are on automatic generation control. They do support system frequency, so there is natural inadvertent between the two systems.

Q. - And Nova Scotia Power is working with you in an attempt to resolve that issue?

MR. SNOWDON: Yes, they are, as a sub-committee of the operating committee.

Q. - Thank you.

MR. SNOWDON: The -- yes, I wanted to add to that. What we are trying to do is to separate these two entities. And when a generator does go off -- go far outside of an accepted level of output, then that is where we see that it goes beyond the inadvertent issue. It's into energy imbalance.

Q. - But just so I'm clear, you are presently discussing the matter with Nova Scotia Power within your operating committee and are quite agreeable to attempting to resolve it at that level outside of the tariff, insofar as you can?

MR. SNOWDON: I guess I'm not sure how I should answer that question. Certainly it may -- the tariff may apply if it's deemed that the deviation is outside some band width, then the tariff would apply. if it stays within what we consider normal operations, operator to operator, certainly that would be inadvertent.

MR. MARSHALL: Could I just add to that?

Q. - Could I just have a second please? I'm just presenting you with a document entitled "Minutes of Interconnection Operating Committee Meeting."

Do you recognize that document?

MR. SNOWDON: Yes, I do.

Q. - And that was prepared by NB Power?

MR. SNOWDON: Yes, it was.

CHAIRMAN: Mr. Zed, I presume you will be asking to mark this?

MR. ZED: Yes, Mr. Chair.

CHAIRMAN: And that will be Nova Scotia Power 3, would it be?

MR. ZED: Yes.

Q. - I have just asked the panel. They have already testified that they prepared it. I assume that it accurately reflects the meeting that was held on the 16th of October last?

MR. SNOWDON: Yes.

Q. - Has anything happened since that time to change the position stated in that letter -- or sorry, those minutes?

MR. SNOWDON: No.

Q. - I would ask the panel then to please turn to Question 12, page 10 of their evidence?

MR. MACNUTT: Mr. Chairman, is it the intention of Mr. Zed to have this document marked as an exhibit?

MR. ZED: I believe it was.

CHAIRMAN: Yes. It has already been marked, Mr. MacNutt.

MR. MACNUTT: And it was marked as what?

CHAIRMAN: Nova Scotia Power 3. There are two others which involved interrogatories on evidence that we will mark in accordance with the schedule.

MR. ZED: Thank you.

Q. - In 1998 NB Power I would assume voluntarily adopted the 1998 tariff. What was the driving force behind NB Power adopting the tariff that you adopted in 1998?

MR. MARSHALL: I think Mr. Snowdon already stated that in

the presentation, that the driving force behind that was the need to meet cross territory access under negotiations between the different provinces and the Federal Government for interprovincial trade.

Q. - So just so I understand, was there an actual legal requirement that you adopted?

MR. MARSHALL: I believe the actual legal requirement did not come to fruition in the end. I believe the Province of Nova Scotia and I think Newfoundland reneged on the deal and wouldn't agree to it because of some offshore interests in gas and oil.

And so the energy chapter of the agreement never did get ratified. But this was NB Power's understanding. It had made the commitment that we would do this. We went forward with the Government of New Brunswick and fulfilled our obligations, what we sought under the agreement.

Q. - I see. So you were not compelled by law. And you were not at that time regulated by any lawful authority.

I mean, you weren't subject to the National Energy Board or the Public Utilities Board or any of those normal regulatory bodies, were you?

MR. MARSHALL: That is correct. We were not.

Q. - Okay.

MR. MARSHALL: This was a policy position through

interprovincial trade.

Q. - I wonder if you might turn to attachment to Volume 2.

And you will see some correspondence there both to and from Hydro Quebec?

MR. MARSHALL: What exhibit number?

Q. - It is attachment to Volume 2. I believe it is in your evidence.

MR. MARSHALL: Are you referring to interrogatories, responses to interrogatories --

Q. - Yes.

MR. MARSHALL: -- Volume 2?

Q. - Yes.

CHAIRMAN: Sorry. That is A-5, Mr. Zed.

MR. MARSHALL: That is tab number 2 we re talking about?

Q. - Yes.

MR. MARSHALL: Okay. We have it.

Q. - I just wonder if you would -- are you both familiar with the letter from NB Power and the letter from Hydro Quebec? Or do you want to take a minute to just familiarize yourself with it?

MR. MARSHALL: We are both generally familiar with the two letters.

Q. - Well, it strikes me, in reading the Hydro Quebec correspondence, it appears that a lack of a regulated

tariff was at issue with the Province of Quebec.

Does that appear to be correct?

MR. MARSHALL: I believe it was an issue of Hydro Quebec. I don't think the Province of Quebec was involved.

Q. - Sorry. Hydro Quebec?

MR. MARSHALL: That is correct.

Q. - So that is a yes?

MR. MARSHALL: Yes.

Q. - So in 1998 there was no legal requirement. But it made good business sense, we would assume, for you to adopt that tariff?

For example, the Province of Quebec appeared reluctant to do anything without a regulated tariff in place. Was that an attempt to mollify Hydro Quebec?

MR. SNOWDON: I would not agree with your statement that it made business sense. By introducing the Through and Out tariff it certainly put an open access tariff in place that allowed other people to use our transmission system prior to which NB Power had exclusive rights to use that transmission system for its business requirements. Therefore it put a limitation on those business interests if you would.

MR. MARSHALL: Now your second question related to Hydro Quebec, if I could answer that one?

MR. SNOWDON: Certainly.

MR. MARSHALL: It is my understanding that Hydro Quebec's initial tariff was passed as a regulation of the Government of Quebec. I believe it was Regulation 659.

And it was -- and in the Gazette in Quebec, the rationale behind that was to enable Hydro Quebec to apply for a FERC power marketer's licence in the United States, was the key driver behind it.

So that was clearly a business interest of the Province of Quebec as owner of Hydro Quebec in order to increase its export opportunity access in the United States. That would be the driver for their tariff.

Q. - But the driver for your tariff was not related to that.

And I'm a little confused. Because basically what I have just heard Mr. Snowdon testify to is that by enacting a certain number of rules and regulations, i.e. the '98 tariff, it provided a regime whereby Out and Through service could now be purchased in the province. And there were some rules surrounding that?

MR. MARSHALL: That is correct.

Q. - Okay. So surely that was a business reason of yours to generate transmission revenues?

MR. MARSHALL: The -- it was a policy decision of the government and of NB Power respecting cross-territory

access under interprovincial trade.

It then enabled third parties who use the system to then pay a fee to use transmission. In that sense it generated some transmission revenues.

Q. - And if you look at Hydro Quebec's reasoning in their correspondence, what they appear to be saying is, we would be more likely to do business with you if you were a regulated utility, if there was a Public Utilities Board, for example, if there were rules to which we could have resort to a regulatory authority.

In other words, they would be more comfortable if you were a fully regulated regime. Isn't that a fair assessment of what that correspondence says?

MR. MARSHALL: The correspondence itemized four issues that they had with the tariff. The fact that it -- there was no regulatory environment to protect the customer. Item number 2 on page 2 of their letter would be one of the four.

Q. - That is fine.

MR. SNOWDON: I might add to Bill's point there, that when some of the other issues were resolved in this letter, Quebec did start using our transmission tariff. And it was not before the regulator at that time. So it wasn't a deal breaker per se.

Q. - But they did express -- they would have expressed more interest had there been a regulated regime in place at the time. That was one of their issues at the very least?

MR. MARSHALL: That is speculation.

Q. - I don't think it is speculation. I mean, they specifically say it.

MR. MARSHALL: Could you point me to the letter where it says they would be more interested in doing business if it was a regulatory regime?

Q. - The question was, isn't it a fair inference?

MR. MARSHALL: That is speculation.

Q. - Thank you. Could you please turn to Question 13, figure 5?

MR. SNOWDON: On Mr. Bartlett's evidence?

Q. - On Mr. Bartlett's evidence, yes.

MR. MARSHALL: Did you say page 13?

Q. - Sorry. Page -- Question 13, figure 5. It is on page 12.

MR. MARSHALL: Okay.

Q. - Looking at the graph, it would appear obvious that the lion's share of the exports appear to go to the New England market. Would that be a fair statement?

MR. MARSHALL: Yes.

Q. - And these exports are transmitted through the interface where?

MR. MARSHALL: As Mr. Snowden showed on the chart, the tie line referred to as MEPCO tie line or the --

Q. - Thank you.

MR. MARSHALL: -- New England tie line.

Q. - Now isn't it fair to say that one of the reasons New England is such a good export market is the sheer size of the New England market and the interconnect with the rest of the American markets?

MR. MARSHALL: Not necessarily. New England is actually very restricted in its transmission capability through to New York.

Q. - Well, why then -- what would explain the large volume of exports to the New England market? I mean, obviously relative to your other markets it is very attractive.

MR. MARSHALL: Yes. Well, I think there are two factors. The size of the New England market, being about a 20,000 megawatt system compared to the Maritime area which would be about 5,000 megawatts. So it is a much larger area. They have a -- having that larger load there is a higher need for electricity.

And the other factor is if you can produce electricity at a lower cost here and it is lower than their cost there, then there is an economic opportunity for them to buy it and reduce costs.

Q. - And is it fair to say there is a difference in peak requirements between the Maritimes and New England in terms of timing?

MR. MARSHALL: Yes. Another factor, that they are a summer peaking system. And we are a winter peaking system. So it does free up some resources at a time when they needed more and we have surplus to sell.

Q. - So you put all of those factors together and New England is an attractive market for Maritime power producers?

MR. MARSHALL: Historically it has been.

Q. - Thank you. Could we please refer you to -- let me refer you to Question 15 on page 13, Panel A evidence. NB Power was not functionally unbundled at the time of implementing the 1998 tariff. Is that correct?

MR. MARSHALL: That's correct.

Q. - And before I forget, the MEPCO interface, what is the capacity of that?

MR. SNOWDON: As I showed on that slide, it's 700 megawatts north to south.

Q. - 700?

MR. SNOWDON: Yes.

Q. - And in 1998 I believe your testimony is that you grandfathered, to use your -- grandfathered certain contracts that through the IR's, I think, doing a quick

and dirty calculation they were 60 or 65 percent of that capacity was grandfathered. Is that a fair?

MR. SNOWDON: Yes. In accordance with the industry standard, the existing long term firm commitments of transmission that were in effect during the time the tariff was put in place, were honoured by providing them with equivalent reservation.

MR. MARSHALL: That's consistent with the FERC Order 888 policy in terms of that FERC would not abrogate existing contracts and honour those contracts so that transmission associated with them under the tariff would be provided.

Q. - Yes. I don't have any issue with the concept, Mr. Marshall. But I guess my question is all of the contracts that were grandfathered, were they third party contracts?

MR. SNOWDON: No, not all of them.

Q. - And some of them were contracts with -- the ones that weren't third party contracts, what was the nature of those contracts? Who were they with?

MR. SNOWDON: Those contracts were with NB Power Generation.

Q. - And were those contracts with NB Power Generation supported by third party contracts of any kind?

MR. SNOWDON: Yes, they were at the time the tariff went into effect they were supported by long term firm commitments.

Q. - And have any of those contracts expired or been terminated? Of all of the contracts that were grandfathered, have any been terminated or expired?

MR. SNOWDON: Yes.

Q. - And what has happened to that capacity or that reserve?

MR. SNOWDON: Again, according to the industry standard or the proforma tariff practice, the owner of those reservations were given the right for renewal. In the case of our tariff a one time right for renewal to exercise those rights provided that they did so, or put on notice of doing so, 60 days before the termination date of those reservations.

The dates that those contracts --

Q. - Excuse me. But when you are speaking about reservations were held by -- including the ones held by NB Power Generation?

MR. SNOWDON: Yes.

Q. - Thank you.

MR. SNOWDON: I might add also that those renewals are posted on our OASIS site. That's the same time -- open access same time information system. And they are available -- available to any prospective customers that wants to have those transmission rights. It then -- the owner of those rights has to match the request for service

in terms of duration or he losses those rights to renewal.

Q. - But NB Power Generation, of that roughly 60 or 65 percent of the capacity that was grandfathered, approximately how much of that is currently held by NB Power Generation?

MR. MARSHALL: I believe all of it is. They exercised those rights at that time when they were renewed. And there were no competing bids, I might add, for those rights when they -- when they did terminate -- or prior to their termination.

Q. - Let's just move on for a moment to the other approximately a third, just to use a rough calculation, of the capacity that was left in 1998. In other words, the capacity that was not grandfathered at that time.

Could you briefly explain the process by which you offered that capacity to third parties?

MR. SNOWDON: Yes. That was offered through what is known as an open season. Where there was a 60 day period between January and March during which time prospective customers could apply for those reservation rights.

Q. - And --

MR. MARSHALL: I might add to that, it's called an open season and you give 60 days, is that normally in a tariff it's first come, first serve. But because this is the starting point of the tariff you provide a 60 day window

that every application for service is deemed to be received at the same point in time. So they are all -- all received any time within the 60 days, whether it was on day 1 or day 60, they are all deemed to be received at the same time. And then an evaluation of those requests for service was done. And in our case it was done based on what request provided the largest net present value of reservation versus value over time to rank them in order and then allocate them. That was the process we went through.

Q. - How many bidders did you have? Other than NB Power or one of its divisions, how many bidders did you have for that one-third capacity? Any takers?

MR. SNOWDON: There was only one bid and that was from NB Power Generation.

MR. MARSHALL: And that's similar to what went on in Quebec. There was only one bid for Quebec transmission and their tariff went through the same process.

Q. - And of that -- so really, of that approximately one-third who now -- how much of it is held by NB Power Generation or one of the other NB Tel divisions -- sorry, NB Power divisions?

MR. SNOWDON: How much of that one third to --

Q. - Yes. The capacity that was signed out in 1998, what is

the status of that now?

MR. SNOWDON: That is under long term commitment to NB Power Generation.

Q. - So of the approximately -- again, what is that capacity on that MEPCO interconnect?

MR. MARSHALL: 700 megawatts.

Q. - How much of that is currently available that you don't seek to grandfather under this tariff application?

MR. SNOWDON: That interface is fully subscribed.

Q. - And who is it fully subscribed by?

A. By NB Power Generation.

Q. - So if anybody wanted to --

MR. MARSHALL: Just a clarification, there might -- I think there may be a small piece of that that's held by another party. We can check with that at the break.

Q. - A third party. Well perhaps if you could -- if you could confirm that amount. I don't -- I mean as long as we are talking about 2 or 3 or 5 percent, I don't think we will need to re-examine you on that issue. But really your testimony is that substantially all of it is subscribed at present by NB Power Generation?

MR. MARSHALL: I think that's correct. About 95 percent, I believe.

Q. - So if anybody wants to access the New England market

through that tie, they have to deal with NB Power Generation?

MR. MARSHALL: Yes. Well if they wanted to access the New England market through that tie, they had the opportunity to participate in the 60 day open season where the capacity was available in 1998. And they had the opportunity to compete for the grandfathered rights as they were renewed. They were posted and available to the public. And they had an opportunity to then compete by bidding a long enough term to get those rights. That's the standard FERC proforma methodology of handling transmission rights.

Q. - Well thank you for repeating the testimony. But my point remains that you, through one of your divisions, holds all of that capacity, or virtually all of that capacity?

MR. MARSHALL: That's correct.

Q. - And you are seeking to grandfather that with the implementation of this tariff?

MR. MARSHALL: No, we are not grandfathering anything. We are in the existing Out and Through tariff it says that the terms and conditions to that tariff will carry over and be replaced by a new tariff if a new tariff is approved. So we are -- we have in this new tariff the standard terms and conditions of a FERC Order 888 tariff

with respect to long term contract rights as warranted by FERC. Those are the terms and conditions of this tariff.

MR. ZED: Okay. Just give me a moment, Mr. Chair?

CHAIRMAN: Sure.

MR. ZED: Mr. Chairman, I have nothing further for this Panel.

CHAIRMAN: Thank you. All right. We will probably take a five minute recess now and it looks -- does -- let me see -- Mr. Young, do any of the municipals have joint examination of this panel that they wish to pursue at this time, or are you going on an individual basis with this panel? Why don't you check it out during the five minute recess and let us know when we come back in.

MR. YOUNG: We will be doing it jointly.

CHAIRMAN: All right. Do you want to come up to --

MR. YOUNG: Can I do it in the Saint John Energy slot, if possible, sir?

CHAIRMAN: That's the slot that you are going to choose for all joint, is it?

MR. YOUNG: Yes, Mr. Chairman.

CHAIRMAN: All right. So it looks like JDI is next. We will take a five minute recess and if you want to move up to the front table, sir, go ahead.

(Recess)

MR. ZED: Mr. Chairman, just a matter of clarification. Mr. Hashey and I spoke in the break and I think one of the answers may be a bit unclear. If I could just ask the witness to clarify with respect to something, so nobody leaves here with the wrong impression.

CHAIRMAN: Okay. Go ahead.

Q. - I just ask the panel to clarify, when I asked the question about substantially all of the reservation is held by NB generation, NB Power generation, I understand that a certain percentage of that may be committed by way of third party contracts, is that correct?

MR. MARSHALL: The nature of the contracts that that transmission is used for, some are long term contracts, some are short term, some are market opportunity. The nature of the New England market has changed and now operates essentially on weekly-monthly -- you know -- capacity in the New England market today is a monthly product. So there are continually changing monthly contracts.

Long term contracts are -- I don't know exactly. I think that long term contracts are probably in the order of 40 to -- 40 percent of that capacity is under long term contract.

Q. - Okay. And rather than prolong this line of questioning,

if you go back and check and your answer is materially different you will come back and advise us? Otherwise we will accept that answer.

MR. MARSHALL: Yes, we can do that.

MR. ZED: Thank you.

CHAIRMAN: For the sake of the record, Mr. Gillis is no longer in the room, and that's why I didn't call for him when we took the break.

All right. J.D. Irving?

CROSS EXAMINATION BY MR. SMELLIE:

MR. SMELLIE: Thank you, Mr. Chairman. I am asking questions both on behalf of J.D. Irving and CME New Brunswick Division.

Mr. Marshall, Mr. Snowdon, good afternoon.

MR. SNOWDON: Good afternoon.

MR. MARSHALL: Good afternoon.

Q. - I'm not going to ask you, Mr. Snowdon, what the commercial institution is that you serve that has palm trees outside of it, if I look at page 6 of your presentation.

You are the director of the Energy Control Centre, sir?

MR. SNOWDON: No, I am not.

Q. - I heard you say --

MR. SNOWDON: I'm sorry. Yes. Yes. Yes. I clarify. I am acting general manager transmission. My official position is Director of the Energy Control Centre.

Q. - The questions get easier from here on.

MR. SNOWDON: Thank you.

Q. - Your Panel D evidence, sir, concerns standards of conduct, network operating agreements and generation interconnection agreements, right?

MR. SNOWDON: That's correct.

Q. - Are there particular aspects of policy concerning the tariff that you are here today to discuss in your capacity as a Panel A member?

MR. SNOWDON: We are here to deal with the Panel A evidence. There is nothing specifically in their evidence concerning those agreements.

Q. - Are you prepared to tell me today, sir, briefly or explain to me briefly the policy driver behind the concept of a standard of conduct?

MR. SNOWDON: Yes, we can discuss that.

Q. - Go ahead.

MR. SNOWDON: In what context would you like me to discuss it?

Q. - In the context that was mentioned in your presentation.

MR. SNOWDON: The --

Q. - Page 5 of your presentation, Exhibit A-7, talks about including in the tariff a standard of conduct, and what I would like you to tell me is what is the policy driver behind a standard of conduct involving a stand-alone transmission company?

MR. SNOWDON: The driver is to provide open access to the transmission system, and in order to do that a standard of conduct is required that defines the restrictions on the exchange of confidential information between the system operator and the market participants. And inherent with that is the functional unbundling of -- or full separation of the system operator function from the market participants, and the market participant being either generator or load.

Q. - Would you agree with me, sir, that what a standard of conduct does is it purports to ensure that a vertically integrated utility does not secure a competitive advantage unfairly in acquiring transmission rights?

MR. SNOWDON: The standards of conduct relate to the exchange of information.

Q. - Standards of conduct ensure that information to the competitive side of a utility is on the same basis as the competitors have access to, correct?

MR. SNOWDON: That's correct.

Q. - And without the standard of conduct which ensures that will you agree with me that a vertically integrated utility may have a competitive advantage in securing transmission rights, because the information can flow differently than it does to the competitors?

MR. SNOWDON: I don't know if they have a competitive advantage in securing transmission rights. They are all done through the OASIS system. They may have a competitive advantage in the market place if they have access to information -- more information than other people in the market place.

Q. - Thank you. How long have you been the Director of Strategic Planning, Mr. Marshall? Another tough question.

MR. MARSHALL: I'm not quite sure. I think about seven years, give or take.

Q. - And you have testified many times before this Board and other regulatory boards concerning energy matters?

MR. MARSHALL: That's correct.

Q. - What was your role in the preparation of this application as the Director of Strategic Planning?

MR. MARSHALL: The structure -- rate structure and overall design of the tariff, the -- was done in my department. Essentially as Director of Strategic Planning I operate as a consultant from the corporate group to the different

business units. So in that sense was as providing a consulting service to transmission relating to rate design of the transmission. So there is that aspect.

Also I have been involved in negotiations and work with the government on energy policy, market design and movement of the market. So in that sense as a policy advisor to transmission in terms of how the tariff could fit in the market place.

Q. - Will you work for a hold co a little bit down the road from now?

MR. MARSHALL: That would be speculation at this time.

Q. - You don't know?

MR. MARSHALL: I don't know.

Q. - Who will you work for, Mr. Snowdon, when transmission is created?

MR. SNOWDON: As the director of the control centre?

Q. - Yes.

MR. SNOWDON: I will report to the ISO.

Q. - And the ISO is for the time being going to be transmission, as I understand it, is that right? New Brunswick Power Transmission will house the ISO function?

MR. MARSHALL: The -- I don't know that that has been officially decided exactly how that will be done. Our understanding is certainly from market design committee

they recommended an independence of the operation of the system, but that independence could take two forms.

Either an independent transmission company, an independent trans co or an independent system operator governess panel that would overview the operation of the market.

It is our understanding from the press release of the government released by the Department of Energy back in August that the direction they are moving in is for the independent system operator overview to do the market. Right now we are -- we do not have specific information exactly what body will report to who at this point in time.

Q. - Thank you. Mr. Marshall, under the heading of policy you tell us in your Panel C evidence -- and I simply raise it because you are here to talk policy today with us -- that specifically the white paper and the work of the New Brunswick market design committee were specific New Brunswick public policy directions considered in bringing this application forward, is that correct?

I am at Question 5, on page 2 of your Panel C evidence.

MR. MARSHALL: Yes. It says there in addition to being the foundation of the New Brunswick market as envisioned in the white paper the tariff design is consistent with

recommendations for implementation of the market by the New Brunswick market design committee, that's correct.

Q. - So am I right that the specific New Brunswick public policy directions considered were the white paper, New Brunswick energy policy, and the recommendations of the MDC?

MR. MARSHALL: That's correct.

Q. - Thank you. And is it the position of New Brunswick Power that the tariff proposed before this Board and all elements of the application are consistent with those two policy directions?

MR. MARSHALL: Not necessarily.

Q. - Which elements are not consistent and why not?

MR. MARSHALL: I think there are some inconsistencies between the white paper and the market design committee recommendations to begin with, so the tariff cannot comply with both of them at the same time.

Q. - Well I am curious to hear about that. Why don't you tell me about that?

MR. MARSHALL: You ask me a question I will answer it.

Q. - What inconsistencies are there between the white paper and the market design committee that your tariff cannot comply with both of them at the same time?

Mr. Chairman, I told Mr. Hashey or asked Mr. Hashey to

ensure that his witnesses had a copy of the white paper with them. It's not part of the application, although the MDC final report is. I have prepared a number of copies at least for you and your colleagues, sir, and since we are going that way and I do have other questions on it, maybe I could distribute it and we could mark it?

CHAIRMAN: Will this be a JDI exhibit?

MR. SMELLIE: That's fine by me, Mr. Chairman. There are a few copies at the back, Mr. Chairman.

CHAIRMAN: This will be JDI-3.

Q. - I'm sorry for the interruption, gentlemen. My original question was whether or not your tariff as proposed and the other elements of the application are consistent with the two policy directions which were specifically considered by you. And your answer to me was, as I have understood it, that there are inconsistencies between the white paper and the MDC recommendations and we can't comply with both of them at the same time. Did I hear you correctly?

MR. MARSHALL: That's correct. But let me just clarify.

The intent clearly in this tariff was to comply with the overall policy direction of the white paper and the overall recommendations of market design. But to the extent that there are some issues between the two that are

in conflict we cannot comply. But generally the tariff as applied here before this Board is compatible with the policy directions of both the white paper and the market design committee. There are a few minor discrepancies between those.

Q. - Those are the inconsistencies that you told me about?

MR. MARSHALL: There are some inconsistencies and I can't recall right off the top. I would have to go back and go through. But I know in going through market design committee there are some of the recommendations that it was agreed upon at the time that were in actual fact inconsistent with the white paper and the committee took it on to let them go. So I would have to go back and check which specific recommendations where that inconsistency occurs.

Q. - Would you do that for me, please, and put it on the record when it is convenient?

MR. MARSHALL: I can do that.

Q. - Thank you. Now you mentioned the market design committee recommendations in the white paper as specific policy directions that were considered in developing this application. Are there other policy directions that I need to be aware of and on which New Brunswick Power relies in support of this application?

MR. MARSHALL: There are none that I am aware of.

Q. - Thank you. Just let me follow-up on an exchange you had with my friend, Mr. Zed. When you were talking about the capacity of the MEPCO line and how it has been recently treated, I understood you to say that contracts had been let of varying durations with New Brunswick Power Generation for a significant portion of that capacity. Did I hear you correctly?

MR. SNOWDON: I believe I said that there were reservations made by or renewed by NB Power Generation.

Q. - Right. Who is NB Power Generation?

MR. SNOWDON: It's a business unit within NB Power.

Q. - So it's New Brunswick Power Corporation, correct?

MR. SNOWDON: That's correct.

Q. - Right.

MR. MARSHALL: That would be the legal entity. The business operating entity is NB Power Generation and Marketing.

Q. - How does one reserve capacity on a transmission line? Do you enter into a contract with the provider?

MR. SNOWDON: For firm reservation you put an application through the OASIS system and if you are successful in that process then you enter into a legal contract.

Q. - So with respect to the capacity that New Brunswick Power Generation reserved on the MEPCO line, who did they

reserve it with?

MR. SNOWDON: They reserved it with NB Power Transmission.

Q. - Which is another business unit?

MR. SNOWDON: That's correct.

MR. MARSHALL: I might add that's similar to the operation in Quebec where Hydro Quebec is one legal corporation but there are -- there is Hydro Quebec Production, Hydro Quebec Distribution and Trans Energie which is the transmission business unit. And Hydro Quebec Production Marketing enter into transmission reservations with Trans Energie.

Q. - Thank you. So the reservation having been made do I understand then that there is a contract as between New Brunswick Power Corporation and New Brunswick Power Corporation for this space?

MR. SNOWDON: The contract is between NB Power Generation Marketing and NB Power Transmission.

Q. - Is it enforceable?

MR. MORRISON: I don't think this witness can comment on the legal enforceability of the contract, Mr. Chairman.

MR. SMELLIE: That's fine, Mr. Chairman.

Q. - Gentlemen, when we talk about the competitive side of the utility known as New Brunswick Power Corporation are we talking about the generation side of its activities?

MR. MARSHALL: Yes.

Q. - And when we talk about New Brunswick Power Transmission we are referring to what I understand is going to be a wholly owned subsidiary of New Brunswick Power Holdings at some point in the near future, is that right, as best you understand it?

MR. MARSHALL: As best I understand it, that's correct, although I don't see that it's relevant for this hearing.

Q. - You don't think that New Brunswick Power Transmission is relevant for this hearing?

MR. MARSHALL: New Brunswick Power Transmission is relevant for this hearing and the terms and conditions of the tariff and the service that Transmission provides is what this hearing is about. Whether it's a wholly owned subsidiary or a completely independent company is irrelevant to the services that they provide.

Q. - Thank you for that opinion, Mr. Marshall. New Brunswick Power Transmission as I understand it will inherit certain franchises that are currently held by New Brunswick Power for the provision of transmission services?

MR. SNOWDON: I'm not sure what you mean by franchises.

Q. - I'm looking at your response to Saint John Energy Interrogatory number 12, which is part of exhibit A-4, Mr. Chairman.

I ask the question the way I did because of the last sentence of that answer which says "New Brunswick Power currently has a province-wide franchise for transmission under the Electric Power Act. And it is expected that New Brunswick Power Transmission would inherit that franchise."

Do you see that?

MR. MARSHALL: Yes.

Q. - Do you agree with it?

MR. MARSHALL: That is the opinion of NB Power at this time.

What happens through restructuring and changes to legislation, that may or may not come about.

Q. - That is the best information we have though?

MR. MARSHALL: It is the -- it is what we operate under today under the Electric Power Act. It is the current legal position of the corporation and the current law today.

Q. - And is it the case that New Brunswick Power use New Brunswick Power Transmission to be a continuation of the current monopoly transmission service that the company provides today?

MR. MARSHALL: Could you restate that question please?

Q. - No. But let me try. New Brunswick -- I'm trying to get from you gentlemen your policy view and position on this

entity that as I understand it is going to be a stand-alone entity.

And my question was really is New Brunswick Power Transmission going to be a continuation of the current monopoly transmission service that New Brunswick Power currently provides in this province?

MR. MARSHALL: We don't know. That is a policy issue of the government in changing the Electric Power Act going forward with restructuring. At this time I can't answer that.

But as I said, and this question is answered, in our opinion we think that that is what should happen. But that's not necessarily what will happen.

Q. - Look at supplementary, Bayside Power information response 21, would you please?

MR. SNOWDON: What document is that?

MR. SMELLIE: A-6.

CHAIRMAN: Which interrogatory?

MR. SMELLIE: Bayside Power supplementary 21, Mr. Chairman.

CHAIRMAN: Thank you.

Q. - The last sentence of the response to this question is "NB Power, therefore, sees transmission continuing as a monopoly service regulated by the Public Utilities Board."

See that?

MR. MARSHALL: Yes.

Q. - Do you agree with it?

MR. MARSHALL: Again I said that is our opinion that we would see until -- but whether -- and today that is the current law.

Q. - What you told me, Mr. Marshall, is that you didn't agree with me.

Now that I have taken you to the Interrogatory you are prepared to concur with me that that is what you see at the present time, correct?

MR. MARSHALL: I said it was our opinion that it should continue as monopoly rights, but that we did not have knowledge as to whether it would or would not.

But regardless of whether it is one or the other, the last statement here, that transmission is a monopoly regulated service under this Board, we believe to be the case, as under the current Public Utilities Act today.

Whether it is owned by NB Power or somebody else, this Board will have jurisdictional regulatory power over it.

Q. - Let me see -- let me switch gears here for a bit, gentlemen, and see if we can -- see if I can understand and make sure that it is clear to myself and my clients why it is that we are here.

Can we agree that the paramount purpose of the

application is to have this Board approve an open access transmission tariff?

MR. MARSHALL: That is correct.

Q. - And can we agree that an open access transmission tariff is fundamental to the operation of a bilateral market for power in this province beginning April 1 of next year?

MR. MARSHALL: That is correct.

Q. - Am I right in my understanding that the application for approval of an open access transmission tariff is not prompted by any revenue shortfall?

MR. MARSHALL: You are correct in your supposition.

Q. - Thank you. And as much as an open access transmission tariff is fundamental to the operation of a bilateral market, it is equally fundamental, as I understand it, to ensure nondiscriminatory access to the monopoly transmission system in this province, whoever may own it, correct?

A. That is correct. Yes.

Q. - And have I understood your application correctly in that it is an equally important purpose of the open access transmission tariff to ensure maximum direct access for New Brunswick Power to U. S. markets?

MR. MARSHALL: I wouldn't say that is the case.

Q. - You wouldn't say what is the case?

MR. MARSHALL: That that is not a driver behind the tariff.

There may be an incidental piece here that New Brunswick Power Marketing, generation marketing today, sells power into the U. S. markets, and all transactions occur at the border.

New Brunswick Power Marketing does not have a power marketing licence under FERC, partly because we do not qualify in terms of providing reciprocal transmission access equivalent to FERC Order 888 until this Board approves this tariff.

Now after that approval occurs, if it occurs, if New Brunswick Power Marketing chooses to go pursue a power marketing licence, they would have the opportunity to do so.

But that is not a driver for this tariff. But it does provide them with that opportunity should they want to go forward to do that.

Q. - But don't you already have an open access tariff in terms of your Out and Through tariff, Mr. Marshall?

MR. MARSHALL: We have an open access tariff for out and through --

Q. - Right.

MR. MARSHALL: -- but not in to the province. And a FERC Order 888 tariff requires access at the wholesale level to

customers inside the jurisdiction.

Q. - So am I to understand --

MR. MARSHALL: NB Power could not unilaterally put that into its tariff in 1998 because it required legislative changes to the Power Act.

Q. - And are you making this application to provide an access to the New Brunswick power market for U.S. power suppliers?

MR. MARSHALL: The effect of this application will be to provide access to the New Brunswick market for any eligible power suppliers.

Q. - And will also open the opportunity for the development of a New Brunswick Power U.S. marketing affiliate, correct?

MR. MARSHALL: It provides that opportunity.

Q. - One that you thought worthy of mentioning in your evidence, correct?

MR. MARSHALL: I believe it is mentioned in the evidence. But again the fundamental driver for this application is to provide an open access tariff as the foundation of a bilateral market in New Brunswick.

Q. - Can you tell me whether New Brunswick Power has sought a power marketing authorization from FERC?

MR. MARSHALL: I'm not aware that we have.

Q. - Are you, Mr. Snowdon?

MR. SNOWDON: No, I'm not aware.

Q. - There must be some attractiveness to the notion of a power market authorization, Mr. Marshall, because in 1998 the benefits of such an authorization didn't warrant a FERC compliant open access tariff, am I right? You didn't seek it then?

MR. MARSHALL: No. We did not seek it then. And could you repeat the first part of your question? I missed it.

Q. - The first part was -- well, let me restate it. I gather your thinking has evolved somewhat since 1998 in that at that time the benefits of a power marketing authorization into the United States didn't warrant your proceeding with a FERC compliant open access tariff?

MR. MARSHALL: The -- at that point in time we legally were not able to comply with a FERC compliant open access tariff.

And as Mr. Snowdon said earlier, and I reiterated, that was not the driver behind the opening of the transmission system in 1998.

The opening of the system in 1998 was to provide cross-territory access compatible with the targets of the interprovincial agreement on trade.

Q. - Just look at page 7 of your Panel C evidence, Mr. Marshall, on exhibit A-2 please? Where I read you as

saying, you did not pursue a power marketing authorization status in 1998 for two reasons. Firstly, it was questionable whether the benefits would justify the additional costs of setting up a US marketing company. See that?

MR. MARSHALL: What page?

Q. - Page 7, line 26.

MR. MARSHALL: That's correct.

Q. - Your thinking has evolved, correct?

MR. MARSHALL: No. We still don't know whether it -- there would be benefits of pursuing a power marketing status. That's an issue for NB Power Generation and Marketing to deal with. They may or may not apply for a status. What I said earlier was approval of this tariff will put them in a position where they have the opportunity to apply for it should they wish to.

Q. - Correct. They can't apply unless they have the FERC compliant tariff, correct?

MR. MARSHALL: That was a condition of reciprocity in FERC that you provide reciprocal access to your system under comparable terms to what the others were providing on the other side. So it required two things.

It required access to the system at the wholesale level. Meaning that municipal utilities, their loads were

available for competitive access. And you operated your system under Order 889 compliant functionally unbundled code of conduct and OASIS system. Those are the two requirements under FERC for reciprocal access.

We opened our system only for Out and Through transmissions. We did not have the ability to provide competitive access to Saint John Energy, City of Edmundston or Perth-Andover at that point in time under the Electric Power Act.

Q. - In 1998 I put it to you, Mr. Marshall, according to your evidence your company considered whether the benefits of a power marketing authorization from FERC would justify the additional costs of setting up a US marketing company, and concluded that those benefits were questionable. Have I understood your evidence correctly, sir?

MR. MARSHALL: My evidence says it was questionable whether the benefits would justify the additional costs. And secondly, the Electric Power Act would not enable provision of wholesale access in New Brunswick that would be sufficient to satisfy their FERC reciprocity requirement.

Q. - Did the company in 1998 put its mind to the question of whether the benefits of a FERC power marketing authorization would justify the additional costs of

setting up a US marketing company, yes or no?

MR. MARSHALL: I would say it was the -- every utility in Canada bordering the United States was reviewing internally whether or not -- how it would respond to FERC Order 888 and its need for reciprocity.

Q. - Were you?

MR. MARSHALL: We were reviewing it at the time.

Q. - And you concluded that it was questionable, correct?

MR. MARSHALL: I said it was questionable whether the benefits would have justified the additional costs. Plus legally we did not have the ability to provide the reciprocity required.

Q. - Why did you bother considering whether the benefits would outweigh the costs if it wasn't legal?

MR. MARSHALL: Because in this particular point I'm trying to explain what has actually gone on in the implementation of Out and Through, and what happened in other jurisdictions in Canada. That many other jurisdictions and utilities pursued open access solely to get a FERC marketing licence. And the driver behind it for them was a FERC marketing licence. That was not the driver behind NB Power. That's all I'm trying to say.

Q. - And is it New Brunswick polices -- is it New Brunswick Power's position that if this OATT is approved, New

Brunswick Power or some affiliate entity subsidiary of New Brunswick Power is going to seek a power marketing authorization?

MR. MARSHALL: I already responded to that. They will have the opportunity to do so. I am not aware of any intention of marketing as yet to do that. That's a decision they will make.

Q. - Thank you. A second principal purpose of this application, gentlemen, as I understand it is to have this Board approve changes in the methodology by which transmission rates are determined. Am I right?

MR. MARSHALL: What rates are you referring to that are being changed?

Q. - What I asked you, Mr. Marshall, as to whether or not -- is whether or not a second principal purpose of this application is to have the Board approve changes in the methodology by which transmission rates are determined. Am I right?

MR. MARSHALL: We are asking this Board to approve the methodology that we have put in the application for this tariff.

Q. - Is that the same methodology by which transmission rates are determined today?

MR. MARSHALL: Which transmission rates?

Q. - New Brunswick Power's transmission rates.

MR. MARSHALL: The transmission rates for Out and Through were not calculated and determined in the same manner that we have proposed in this tariff. If that's your question, the answer is yes.

Q. - You don't operate pursuant to a performance based rate making methodology today, do you?

MR. MARSHALL: Today? Well, the transmission rates that are Out and Through are not under performance based rates. But our -- the overall rates, integrated rates for all customers for integrated distribution transmission, generation supply today is under a quasi performance based rate in the sense that it's under a rate cap type of a legislation where we can raise rates at 3 percent or less without the need for approval of this Board.

Q. - So you wouldn't agree with me then, I take it, Mr.

Marshall, if I suggested to you that based upon my limited understanding of how you currently do business today, that if this application is approved in total, that that would amount to a reasonably significant change in the methodology by which you compute transmission rates?

MR. MARSHALL: It amounts to a change in the way that we do transmission relative to what we did in the Out and Through tariff. And the result is a 25 percent reduction

in the rate.

Q. - Do you agree with me, gentlemen, that FERC does not require that any particular rate methodology be used to establish transmission rates?

MR. MARSHALL: FERC requires that transmission rates have to meet their pricing principles.

Q. - Do the FERC pricing principles prescribe a certain rate methodology?

MR. MARSHALL: No. They are open to varying types of rates.

Q. - Thank you. And by that I mean that under the transmission pricing policy of FERC what you are telling me is that rates could be established under several methodologies. Traditional rate of return, performance based rates and so on. Is that fair?

MR. MARSHALL: The rates -- FERC pricing principles are that rates meet a revenue requirement, provide comparable service, meet the principle of comparability that you treat yourself the same way as you treat others using your system.

There are -- there is a jurisprudence in FERC as to what are legitimate costs to be included in the tariff and what are not. All of those things are to be adhered to.

The standard FERC approach is a postage stamp rate ordered in the proforma of Order 888. But there are other

rates that have been accepted by FERC. And FERC will accept other rates and tariffs if they are deemed to be superior to Order 888, but not if they are less than that.

Q. - All right, sir. Does your current rate structure pass that test, Mr. Marshall?

MR. MARSHALL: Current rate structure was based on FERC principles at that time in some ways. There are some discrepancies in it. We did at that time essentially separate charges for separate uses of the system and then they were pancaked together depending upon what -- where the service went to. So it was a different structure.

Q. - I will take that as a yes?

MR. MARSHALL: I don't know. We did not submit our tariff to FERC for approval, so I couldn't comment on it.

Q. - And this one isn't going to be submitted to FERC for approval, is it?

MR. MARSHALL: No.

Q. - Can we at least agree with this -- on this point gentlemen, that the paramount need to have a FERC compliant open access transmission tariff in place for next April is an issue that is distinct from the particular methodology that you propose to employ to establish rates for New Brunswick Power transmission?

MR. MARSHALL: I don't quite understand the question. I'm

just going to try to sort it out. You are saying that the need to have the tariff in place is distinct from the actual rates that are in the tariff. Is that your question?

Q. - No. We talked a little while ago about the need to have an open access transmission tariff compliant with FERC requirements in place for purposes of reciprocity as an example. Do you remember that?

MR. MARSHALL: You said we need to have a -- if we are going to meet reciprocity requirements with the U.S. we need to have a tariff that is compatible with FERC requirements.

Q. - And FERC doesn't require you to have a deemed capital structure to do that, do you -- does it, or do you know?

MR. MARSHALL: I don't know what FERC requires relative to that.

Q. - Do you know --

MR. MARSHALL: FERC requires that the tariff be based on a revenue requirement.

Q. - Yes.

MR. MARSHALL: And the revenue requirement requires some type of capital structure O and M costs, rate of return, interest. All of those factors.

Q. - Do you know whether a FERC compliant open access tariff requires a deemed capital structure?

MR. MARSHALL: No, I do not.

Q. - Do you know whether FERC requires in order that there be a compliant open access tariff in place a return on equity?

MR. MARSHALL: It's my understanding that that's the case, but you are getting into details that are outside my range of evidence. You should address that to Panel B.

Q. - Well why don't we look at your evidence. Why don't you look at response 13 or the response to J.D. Irving IR13.

MR. MARSHALL: Is that in the --

Q. - That is in A-4, Mr. Chairman. The question was is it possible for NB Power to file a FERC compliant OATT that does not include, one a deemed capital structure, or two, price cap regulation. And the answer is yes. And the information I was looking from -- for from you, Mr. Marshall, as a policy witness was whether or not FERC required a return on equity in order to have a FERC compliant OATT. And you tell me you don't know, correct?

MR. MARSHALL: Whether they require it? Again, I think that the situation is that if a utility was willing to go to FERC and say we don't require any return on equity, we are prepared to have the zero return just to prove these rates and they are lower than the Board -- FERC would probably approve them. The issue is what's -- a return on equity

is a reasonable cost of the money and of the piece that goes into it that make up the revenue requirement.

Q. - Let's not --

MR. MARSHALL: And FERC then approve those pieces that are in the revenue requirement just as this Board is expected -- has a jurisdiction overlooking at the revenue requirement here, determining what's acceptable and what is not. And on the basis of that revenue requirement you then come up with a tariff design.

Q. - Do you know whether in order to have a FERC compliant OATT under Order 888 whether you need to recover a payment in lieu of taxes in your rates?

MR. MARSHALL: The -- whether FERC -- again what are the component pieces that make up the revenue requirement? FERC would look at those just as this Board will look here at these issues, decide what's reasonable in the revenue requirement and then look at designing the rates to collect that.

Now whether or not FERC accept payment in lieu of taxes is irrelevant to this hearing. It's up to whether this Board will accept it or not.

Q. - Well if the tariff doesn't provide for sufficient reciprocity, it's not going to be FERC compliant, agreed? Surely?

MR. MARSHALL: FERC -- when FERC looks at reciprocity they are looking at two major -- at -- the major issue is whether you have open access to the wholesale level, whether or not you have the tariff based on a reasonable design, that the tariff it meets the principle of comparability so that you are providing for just and reasonable rates without undue discrimination. And that you charge yourself use of the system under the same terms as you charge third parties. That's what FERC wants for reciprocity.

Q. - None of that has got anything to do with rate methodology, does it, Mr. Marshall?

MR. MARSHALL: I think some of that has to do with rate methodology.

Q. - I thought you would say that. Is it the position of New Brunswick Power that recovering a payment in lieu of taxes is essential in order to make this proposed tariff FERC compliant?

MR. MARSHALL: I don't know that it's connected to FERC compliancy at all.

Q. - Thank you. From the corporation's position, gentlemen, whose idea was it to include a price cap framework, or PBR, in this application? Was it the corporation's idea to sponsor testimony and request an order of this Board

implementing a price cap framework, or do you know?

MR. MARSHALL: We put the application in with it. So yes, we decided to pursue a performance based rate.

Q. - Who originated the idea? Dr. Morin?

MR. MARSHALL: I believe the idea actually originated out of discussions that we were having early on looking at how we -- how we structure return in the tariff. Dr. Morin was present and we were discussing our current rate cap legislation and other factors in how we go forward. So I think he was party to that. Whether it was his specific idea I don't recall.

Q. - As a matter of policy, gentlemen, does New Brunswick Power consider that its ownership by the Province of New Brunswick should benefit the people of the Province of New Brunswick?

MR. MARSHALL: Under the Electric Power Act, we have a mandate to provide electricity for users in the province and to provide it at reasonable competitive rates, provide for reliability. That's our mandate. Now to the extent that reasonably priced electricity has value to citizens and customers in the province, that's our objective.

Q. - Sorry. Maybe it's just because it's getting late. Was that a yes, Mr. Marshall?

MR. MARSHALL: Would you repeat the question?

Q. - Does the province -- does New Brunswick Power consider that its ownership by the Province of New Brunswick should benefit the people of the Province of New Brunswick?

MR. MARSHALL: Yes. You seem to twist those words. Do you want to repeat that again for me, please. I'm a little slow. It's late in the day here, too.

Q. - Does New Brunswick Power consider that its ownership by the Province of New Brunswick should benefit the people of New Brunswick?

MR. MARSHALL: Again as I said, the -- our mandate is to provide electricity at reasonable competitive rates. To the extent that benefits the people we benefit the people. If you are trying to get in the point that if -- because of the fact the government owns the utility does the government come around and do something else to benefit the people, I mean I think the fact there is a Crown corporation in the province and we have provided competitive electricity rates for a long time, government ownership of the corporation I believe has benefited the people of the province.

Q. - Thank you. And has it been a benefit of the province's ownership of New Brunswick Power that the company can and in fact has operated with a higher debt to equity ration than if it were an investor-owned utility?

MR. MARSHALL: Yes.

Q. - Thank you. And New Brunswick Power's rates as I am instructed have reflected its actual capital structure over time, is that your understanding as well?

MR. MARSHALL: Up to this point in time, yes.

Q. - And those rates have not up until this time reflected a market based return on equity?

MR. MARSHALL: That's correct.

Q. - And here is one that I can ask you even at 11:00 o'clock at night, Mr. Marshall. Can we agree, you and I, that the rates of New Brunswick Power over the years have been just and reasonable?

MR. MARSHALL: I think they have been, yes.

Q. - The current application proposes transmission rates based on a price cap framework using a deemed capital structure and a market based return on equity, fair?

MR. MARSHALL: That's correct.

Q. - In that sense it reflects a structure that is much more analogous to an investor-owned utility, fair?

MR. MARSHALL: In line with that, yes. And Panel B will have much more to say about this I'm sure.

Q. - Oh, I'm just dealing with at a high level, Mr. Marshall, I can assure you.

Do you think it is appropriate or inappropriate for

this Board to consider ownership by the province as being similar in nature to private ownership?

MR. MARSHALL: In this application I think it's appropriate for the Board to consider ownership equivalent to private ownership. Otherwise we wouldn't have made the application as we did.

Q. - Thank you. And I'm at line 10, that "this", referring to the rate design procedure summarized in the first of FERC's transmission pricing policies statement, procedure was applied to develop relevant rate schedules that would be applicable within the public policy directions of New Brunswick. See that?

MR. MARSHALL: Yes.

Q. - And you have told me that are no other policy directions that I should be looking to other than those that appear in the answer to Question 5, correct?

MR. MARSHALL: Those are the -- those are the two published policy reports available that relate to a transmission tariff.

Q. - There are no other policy statements or public policy -- what is a public policy direction, Mr. Marshall, just so we are clear?

MR. MARSHALL: The -- well, the white paper is the energy policy for the Province. That is clearly one.

Q. - That's one. Market design committee.

MR. MARSHALL: Market design is another.

Q. - And you told me there were no others that I should have regard to about 20 minutes ago, do you remember that? I got the sense you wanted to --

MR. MARSHALL: Now relative to -- and I think we are trying to twist a little bit here. This evidence is for Panel C. And relevant to Panel C, what we are talking about here are what are the policy issues related to the design of the tariff.

Q. - You are here to talk about --

MR. MARSHALL: And so that's it.

Q. - You are here to talk about policy, Mr. Marshall?

MR. MARSHALL: Yes, we are. We are also dealing -- the evidence of Mr. Bartlett in Panel A. But those references on that page are specifically related to policy related to tariff design.

Q. - Who is the policy witness that I can talk to about rate methodology, you?

MR. MARSHALL: Rate methodology is related to those, yes.

Q. - Thank you.

MR. MARSHALL: That's what we are talking about. You are talking now about not rate methodology. You are talking about revenue requirement methodology. That's a different

issue. That's Panel B that will deal on rate of return and portions of that, and the other portion of Panel C in terms of O and M related costs.

Q. - Thank you for your help, sir. Can you tell me whether or not the white paper or the market design committee's report tell us that the current rate methodology is not just and reasonable and must be changed?

MR. MARSHALL: I don't think they make any statement one way or the other about rate methodology.

Q. - Thank you.

MR. MARSHALL: Other than the specific recommendations of market design in terms of what billing determinants are parameters related to a tariff.

Q. - Do you have a copy of the white paper handy?

MR. MARSHALL: Yes, I do.

MR. SMELLIE: JDI-3, Mr. Chairman.

Q. - Let's look at Roman Numeral V, page Roman Numeral V, Mr. Marshall, Mr. Snowdon. How are you doing, Mr. Snowdon? Okay?

MR. SNOWDON: Fine.

Q. - This is the first page of the executive summary. Do you have it there?

MR. MARSHALL: Yes.

Q. - And I'm looking at the first bullet at the bottom of the

page. And a key statement in the white paper and accordingly policy is that the Province will proceed with a deliberate and controlled approach to electricity restructuring. Do you see that?

MR. MARSHALL: Yes.

Q. - It's a phrase that I have come to understand is fairly de rigueur here in New Brunswick. It crops up in virtually every government statement that I have seen concerning the future of New Brunswick Power. It is a phrase that you are familiar with, I take it?

MR. MARSHALL: Yes.

Q. - What does it mean?

MR. MARSHALL: Deliberate and controlled approach.

Q. - What does that mean to New Brunswick Power as a matter of policy?

MR. MARSHALL: What it means is -- and it comes from not just the white paper, it comes from the Select Committee on Energy that was a legislative committee that had public hearings around the province, had input from industry, citizens, various parties, interested groups. Wrote a report to the government and on that said, we need a managed transition to implementation of a market.

The white paper then went on and looked -- following from that, said we are going to provide with this managed

transition in a deliberate, controlled approach.

The intent here was that we are not going to subject all the customers in New Brunswick, directly or indirectly, to the whims of the marketplace as they did in Alberta, California and Ontario.

We are going to have a slow, deliberate, controlled process which will allow a market to evolve, but we will not subject customers in New Brunswick to the volatility of the market. That's what it refers to.

Q. - Let me just get that down. Not subjecting all customers to volatility of the market.

Now is there a -- in your view is there a getting it right component to the phrase "deliberate and controlled"?

In other words I take "deliberate and controlled" to mean getting the details of restructuring right the first time, as opposed to just getting it done. Do you agree with that?

MR. MARSHALL: I would agree that that is partly the case. That is why this whole process has taken some five years to get to where we are today.

It started in January of 1998 with a government discussion paper, went through a consultant's report on structural options, went through their restructuring, the legislative committee hearings and report, went through to

this point of the white paper, went through a market design committee to make -- to have more stakeholder involvement and review, until we got up and changed the legislation of the Public Utilities Board to give them jurisdiction over a transmission tariff. We filed this tariff to get us here.

It has taken us five years from that point till we get to the basis of a market being this transmission tariff as a foundation of the market. It has been a very deliberate controlled approach to try to get it right up to this point as to what should be in that market.

Q. - And when you said that is part of it -- my question to you is, is it important in the view of New Brunswick Power to get this right the first time?

MR. MARSHALL: Yes. It is important I think for not only NB Power. It is for all of our customers and all participants in the market that we do a reasonable job of having this market work.

And I think we have done that. The process that the government has gone through to get us to where we are has given plenty of opportunity for participation in the process.

Q. - I thought we were on all fours there, Mr. Marshall. But isn't the most critical component to the success of this

restructuring getting the details right the first time?

I mean, don't you just read The Globe And Mail, and you get volatility in other jurisdictions? It is important to get the details right, critically important, isn't it?

MR. MARSHALL: The -- it is important to get the overall policy right. And then after that it is important, as you peel down and peel off the layers of the onion that you get each layer correct on the way down.

What New Brunswick has done is gone through a process, from a policy point of view, that is taking a deliberate, controlled approach to implementation of this market. That approach is as I said, went through all of the groups, hearings, parties to get us to this point.

The foundation of a market is a transmission tariff. That is why we are here. We have laid this tariff down in front of this Board in order to provide the basis on which this market can then be constructed and go forward. From a policy point of view, those are the big issues.

Now there may be details in the tariff that you have issues with. That is why we are here. Put your case before the Board and let them make a decision.

Q. - Thank you. Over the last five years when and how did PBR get into the mix?

MR. MARSHALL: PBR has always been in the mix ever since 1993 or '4 I believe when the legislation was changed and NB Power has been under a rate cap type of legislation where we could raise rates 3 percent or inflation, whichever is higher, and not have to come to this Board for approval. That is a type of performance-based rate structure.

Q. - The Province of New Brunswick, Mr. Marshall, as I understand it, depends considerably on an energy-intensive economy. Can we agree on that?

MR. MARSHALL: Yes.

Q. - And we also agree, sir, that energy costs are a significant input costs to many industrials in New Brunswick?

MR. MARSHALL: Yes, sir, we understand that.

Q. - Do you also understand that energy costs are of fundamental importance to the continuing competitiveness of New Brunswick's energy-intensive industries?

MR. MARSHALL: Yes, I agree.

Q. - And I will go for the home run here, can we agree that competitiveness is particularly important as regards the U.S. Northeast, which is a major export market for New Brunswick industry?

MR. MARSHALL: Do you want to repeat that again? Just the

home run, I don't quite understand it.

Q. - Can we agree that the competitiveness of New Brunswick industry is particularly important in relation to the U.S. Northeast, because the U.S. Northeast is a major export market --

A. Okay. Yes.

Q. - -- for New Brunswick products made by energy intensive industries?

MR. MARSHALL: I agree.

Q. - Thank you. And in fact the U.S. Northeast is a market that your company is familiar with because you do a lot of business there?

MR. MARSHALL: We sell at the border to market participants who then take the power and resell it into that marketplace, yes.

Q. - Sorry, I misspoke myself. And in doing that you try to take advantage of energy prices, power prices which are amongst the lowest in the region, right?

MR. MARSHALL: No prices don't have anything to do with it.

The -- what we hope for his high prices in New England and low costs in New Brunswick, so we sell low cost energy into a high price market to make as much margin as possible.

MR. SMELLIE: Excuse me one minute, Mr. Chairman. Mr.

Chairman, there is a particular reference that I don't have and that I need. I appreciate it's only 25 after by my watch, would it be a convenient time to rise for the day?

CHAIRMAN: Yes, it would, Mr. Smellie. We will rise until 9:30 tomorrow morning.

(Adjourned)

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

Reporter