

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 27th 2002, 9:30 a.m.

CHAIRMAN: David C. Nicholson, Q.C.

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

BOARD COUNSEL: Peter MacNutt, Q.C.

BOARD SECRETARY: Lorraine Légère

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CHAIRMAN: Good morning, ladies and gentlemen. Before we begin, I think this morning I will ask for appearances.

For the applicant NB Power?

MR. MORRISON: David Hashey and Terrence Morrison on behalf of the applicant, Mr. Chairman.

CHAIRMAN: Thank you, Mr. Morrison. Bayside Power?

Canadian Manufacturers and Exporters? City of Summerside?
Emera?

MR. ZED: Peter Zed, Mr. Chairman.

CHAIRMAN: Energie Edmundston? Mr. Gillis? Is that

Mr. Gillis junior? There was a nod. We will put that on the record as a yes.

MR. ALBERT: Thank you, Mr. Chairman.

CHAIRMAN: J.D. Irving Limited?

MR. DEVER: William Dever, Mr. Chairman.

CHAIRMAN: Thank you, Mr. Dever. Maine Public Service Company? Northern Maine Independent System Administrator? And Nova Scotia Power, Mr. Zed again. Perth-Andover Electric Light Commission? Department of Natural Resources and Energy?

MR. BARNETT: Don Barnett.

CHAIRMAN: Mr. Barnett. And Mr. Knight is there as well, I see.

Province of Nova Scotia, Department of Energy? Saint John Energy?

MR. YOUNG: Dana Young, Mr. Chairman.

CHAIRMAN: WPS Energy Services Inc.? Board counsel?

MR. MACNUTT: Yes. Peter MacNutt with Doug Goss, Gaye Dressler and Jim Easson.

CHAIRMAN: Thank you, Mr. MacNutt. Any preliminary matters?

MR. MORRISON: Yes, Mr. Chairman. You will recall that there was an issue between JDI and the applicant with regard to the Panel B presentation.

I'm pleased to announce or report to the Board that

Mr. Hashey and Mr. Smellie have come to an agreement as to the nature of that exhibit. And it will be introduced with some modifications at the time that it will be introduced as an exhibit.

And we will probably get that to the Board earlier as well.

CHAIRMAN: Yes.

MR. MORRISON: The issues have been resolved.

CHAIRMAN: That is good news. And if I remember correctly, none of the other intervenors had any difficulty with those slides, did they?

MR. MORRISON: That is correct.

CHAIRMAN: Right. Good. Well, that is very good news.

MR. MORRISON: As well, Mr. Chairman, I'm in a position to answer three undertakings on the record.

CHAIRMAN: Yes, please.

MR. MORRISON: First is -- actually it arises from a question from yourself, Mr. Chairman. It was an undertaking given on November 21st. And it is regarding the availability of a standard code of accounts for transmission.

We have searched the NARUC website. And there is no mention of a standard code of accounts. FERC has a standard code of accounts which is used by utilities for

the purpose of reporting to FERC.

But this standard is generally not used for management purposes in the U.S. There is no such standard in Canada.

In general Canadian utilities do not manage or generate reports based on the FERC standard.

Manitoba Hydro is of the opinion that if they had proceeded to join a regional transmission organization in the U.S. they would not have been required to report based on FERC standard code of accounts.

The accounting structure at NB Power permits separate sets of accounts for each business unit, thereby permitting the transmission costs to be distinguished from other costs.

At this point NB Power has no plans to implement the ability to report based on the FERC standard code of accounts. And this decision is based on the expense of doing so relative to the minimal advantages. That is the

--

CHAIRMAN: Have you reviewed the FERC system of accounts?

MR. MORRISON: I believe we have. Yes, we have.

CHAIRMAN: And so they are not -- I'm surprised. I think in the past electric utilities had a -- NARUC had a system of accounts. But that was before they were unbundled in any way, shape or form.

So they had a -- and I believe in the early '90's we were -- between NB Power and this Board, we were starting to move to that kind of thing with the minimum filing requirements that we were working on at the time that your -- I won't say price cap regulation came in. But that --

MR. MARSHALL: Legislative permission.

CHAIRMAN: Legislative permission, exactly. Anyhow. All right. Well, we will carry that on. And certainly the Board staff will make some inquiries as well.

MR. MORRISON: The next undertaking, Mr. Chairman, arises or came up on November 20th. And it arose from a question of Mr. Nettleton. And the question that we undertook to answer was "Were any of the U.S. electric utilities that you considered integrated electric utilities owned by a state government?"

And the answer is that five of the nine utilities whose standards of conduct were reviewed in detail by NB Power are integrated electric utilities. None of these companies are state-owned.

CHAIRMAN: Yes.

MR. MORRISON: And finally it is an undertaking on November 21st. And it is through cross examination by Mr. MacNutt. And the reference is to -- well, actually it is day 4 transcript at page 90. And it dealt with energy

imbalances.

And our response to that reference was "Energy imbalances within the deviation band that have not been corrected within the 30 days will be treated in the same energy manner as energy imbalance outside the deviation band. However, since energy imbalance within the deviation band is cumulative and not specific to any one hour, the price paid for emergency energy is non-applicable."

CHAIRMAN: Okay. Thank you. Any other preliminary matters?

MR. MORRISON: That is all at this time, Mr. Chairman.

CHAIRMAN: Good. Thanks, Mr. Morrison. Any other party?

Mr. Zed?

MR. ZED: Yes. I apologize and confirm to the Board that the Emera panel is unavoidably detained elsewhere, at least two-thirds of it and are unable to be here either today or tomorrow.

When we were asked to reschedule the panel a couple of weeks ago, well, we did so. And in retrospect I guess we made that commitment when perhaps we should not have. They are involved in something that is quite pressing.

I have spoken to Mr. Hashey and Mr. Morrison about it.

And with the Board's permission they have agreed that the panel could appear at the outset of the hearing on

December the 9th. I don't expect it will be lengthy.

And beyond that, Mr. Chair, really nothing to add unless the Board has any questions.

CHAIRMAN: I'm tempted to ask what is more important than coming before this Board?

MR. ZED: Well, Mr. Chairman, there was a pressing business matter that really they thought was at a stage where it would free them up on two weeks notice to come. And that matter has sort of heated up to the point where it could not be ignored.

I really have no choice but to ask the Board's indulgence in rescheduling the panel once again with regret.

CHAIRMAN: Well, all right. Some things are inevitable. But the next time, Mr. Zed, if there is the slightest possibility of doing that then don't bend over backwards to cooperate rescheduling. Because we are all here. And the hotel is booked and everything.

MR. ZED: I understand. And Mr. Chairman --

CHAIRMAN: I appreciate you can't control it.

MR. ZED: No.

CHAIRMAN: I understand that.

MR. ZED: And the other thing is on short notice it really wasn't possible to substitute a panel. It wouldn't have

done this process any service to put unprepared witnesses forward.

CHAIRMAN: Okay. Refresh my memory. Is there something else that is going to happen on December the 9th?

MR. ZED: Yes, there is.

MR. MORRISON: Mr. Chairman, Panel D is --

CHAIRMAN: Coming back again.

MR. MORRISON: -- coming back --

CHAIRMAN: Yes.

MR. MORRISON: -- to answer questions from Mr. Smellie, I understand. And if there is any redirect or rebuttal it would follow that.

CHAIRMAN: I'm just wondering with the addition of the Emera panel, then are we pushing people back out of that day?

MR. MORRISON: Well, there is a possibility of that. But it would be our hope that we would keep the schedule as it is now. And if, you know, the Panel B witnesses are a little later getting onto the stand then so be it.

CHAIRMAN: Okay. All right. Well, we will go ahead on that basis, Mr. Zed.

MR. ZED: Thank you, Mr. Chairman.

CHAIRMAN: And do you want to call your panel now?

MR. ZED: Yes. I would ask Tim Leopold and Mel Whalen to take the stand.

CHAIRMAN: While these gentlemen are settling in, just for the interest of the parties, Emera will -- sorry, Nova Scotia Power will have direct examination. And then we will go through the cross with the applicant being the last to cross examine, save and except for Mr. MacNutt concluding examination of the panel and back to you for redirect, Mr. Zed.

MEL WHALEN, TIM LEOPOLD, sworn:

MR. ZED: Just for the record, could you please state your names and confirm that you are authorized to give testimony on behalf of Nova Scotia Power Inc.?

MR. LEOPOLD: My name is Tim Leopold. I am the Director of Control Centre Operations with Nova Scotia Power and I am authorized to speak on behalf of Nova Scotia Power.

MR. WHALEN: My name is Mel Whalen. I am Director of Regulatory Affairs and Rates. I also am authorized to speak on behalf of Nova Scotia Power today.

MR. ZED: Mr. Chair, with the Board's indulgence, I think Mr. Leopold will just make a -- give a brief summary of the evidence and after that we will turn it over to questioning.

CHAIRMAN: There are no slides?

MR. ZED: There are no slides, no.

MR. LEOPOLD: Mr. Chairman, Commissioners, Nova Scotia Power

filed evidence in this hearing to address two concerns only. These concerns are the issue of inadvertent energy and the issue of reciprocity.

Before I address these concerns, let me say at the outset that we are not here because of any major disagreement with New Brunswick Power. Nova Scotia Power and New Brunswick Power and indeed utilities throughout North America have had a long history of cooperation. This cooperation is necessary for the reliable operation of interconnected power systems.

It is also financially beneficial to all parties providing benefits such as the sharing of short-term and long-term reserve capacity and the exchange of economic energy.

As stated in our pre-filed evidence, Nova Scotia Power and New Brunswick Power have been interconnected and have shared these benefits for more than 40 years. During that time we have operated in accordance with mutually agreed upon interconnection agreements. The current agreement has been in place since the mid 80s.

New Brunswick Power and Nova Scotia Power are also members of the North American Electric Reliability Council, referred to as NERC, and participate with other utilities across North America in the development of

planning and operating standards and practices to ensure the reliability of electric service to all customers.

All interconnected utilities operate in accordance with those standards. In recent years, the structure of the electric power industry in North America has changed significantly. And indeed it continues to evolve driven largely by the US Federal Energy Regulatory Commission, FERC. As this evolution continues, it necessitates appropriate adjustments within NERC, that affect both Nova Scotia Power and New Brunswick Power. Both companies are participants in this evolution at the NERC level and will continue to be influenced by the outcomes.

As stated above, Nova Scotia Power is participating in this hearing to raise only two issues. The first issue deals with the fact that the New Brunswick proposed tariff does not provide for inadvertent energy exchange. However, during last week's proceedings New Brunswick Power confirmed that this issue is being dealt with by the operating committee established through the interconnection agreement between Nova Scotia Power and New Brunswick Power.

They have also undertaken to consider the Board's counsel's proposal to clarify in their tariff that inadvertent energy is different from energy imbalance.

Nova Scotia Power is satisfied that this will address our concerns with respect to this issue.

The second issue we wish to raise in this hearing is the issue of reciprocity. Nova Scotia Power fully supports the concept of reciprocity. However, for the reasons stated in our pre-filed evidence, we believe that the requirement for reciprocity should be administered by an independent third party and that there should be an appropriate transition period.

New Brunswick Power indicated last week that they are prepared to include in their tariff a provision that deals with the question of a transition period and waiver of reciprocity, provided a standard of conduct is in place.

As indicated in our response to New Brunswick Power's IR-3, we are prepared to implement such a standard. We believe, however, that where there are issues of compliance, those should be adjudicated by an independent third party.

We would be prepared to address any questions that you or the others may have.

CHAIRMAN: I have just one question that came up during a discussion with some Commissioners, we were having yesterday, actually. And I know Board counsel might well have this on his list of questions, but I will ask it

right now.

What does reciprocity mean to you and let me put that in context. In the case of NB Power, it is moving towards an open access tariff, which will allow competitive forces to supply electricity to their wholesale customers, plus large industrials. Okay. Or large retail, whichever way you want to classify it. Therefore from your perspective, does reciprocity with NB Power mean that you too would have to allow them access to your wholesale and large industrial or is it just large wholesale?

MR. WHALEN: We support the reciprocity principle, as we have indicated. The energy policy, as it has been stated to date by the Province of Nova Scotia, does not take the opening of the market all the way to large retail customers.

At this point it is limited only to wholesale customers.

CHAIRMAN: So you are saying that reciprocity from your perspective then would be to just allow access to wholesale customers?

MR. WHALEN: That is where the Nova Scotia Energy Policy is at this point. I believe that is also consistent with FERC.

CHAIRMAN: Good. Thank you. Mr. Gillis, do you have any

questions of this panel?

MR. ALBERT: No, sir.

CHAIRMAN: Shaking his head no. Okay. JDI, Mr. Dever?

MR. DEVER: We have no questions of this panel.

CHAIRMAN: Mr. Barnett?

MR. BARNETT: Yes, Mr. CHairman.

CHAIRMAN: Would you like to come down to number 5, sir?

MR. BARNETT: Yes, sir.

CROSS EXAMINATION BY MR. BARNETT:

MR. BARNETT: Good morning, Panel. My name is Don Barnett.

I'm the ADM of Natural Resources & Energy and I just have a few questions for you here this morning. You can hear me clearly?

MR. LEOPOLD: Yes.

MR. WHALEN: Yes.

Q. - Just to start off, I would just like to understand the relationship in the Emera Inc. group of companies which I believe Nova Scotia Power is one of them?

MR. WHALEN: Yes, we are.

Q. - And the other ones being Emera Energy who will be appearing later in this hearing?

MR. WHALEN: Yes, they are another one.

Q. - And the third I believe, looking at your website, would be Bangor Hydro Electric Company, is that correct?

MR. WHALEN: Bangor Hydro is part of the Emera family, yes.

Q. - Correct. Just for the information of the Board and the Province and the Department of Natural Resources & Energy, how does it link? For example, do the -- a representative of Nova Scotia Power exec do they sit on the executive of Emera Inc. or how does the relationship between you and Emera Inc. and the sister companies --

MR. WHALEN: To answer your specific question, our chief operating officer at Nova Scotia Power is a member of the executive committee of Emera Energy. I believe that's true for other companies like Bangor Hydro but I can't confirm that.

Q. - So that being the case then, there would be an opportunity at such meeting of the board of -- or the executive of Emera Inc. for an exchange of information between Emera Energy, Bangor Hydro and Nova Scotia Power? Would that be a fair assumption to make?

MR. WHALEN: I suppose the opportunity is there, yes.

Q. - Just staying with Bangor -- and maybe this is going outside your knowledge and please stop me if in fact I am. Then I'm sure probably your counsel will as well if I do stray.

Bangor Hydro was acquired or became one -- a sister company when, about a year ago, two years ago?

MR. WHALEN: I don't have the exact date right off the top of my head, but about a year ago.

Q. - About a year ago?

MR. WHALEN: Yes.

Q. - Are you people in Nova Scotia Power, are you particularly aware -- familiar with New Brunswick's energy policy and the White Paper or some familiarity with it?

MR. WHALEN: Some familiarity with that, yes.

Q. - I think it is in evidence as JDI-3, Mr. Chairman, there an IR -- a new exhibit rather. And you are aware -- and I think the Chairman got started with this question too before I got to the mike here. You are aware of the degree of market opening that New Brunswick proposes to take effect April the 1st?

MR. WHALEN: Yes. I believe it's wholesale and large industrials, 750 kilowatts and larger, I believe it is.

Q. - And you are aware -- are you aware that the policy also amongst other thrusts speaks about developing a competitive market in the Province of New Brunswick?

MR. WHALEN: I believe that was the general thrust of the document, yes.

Q. - Yes, I think you will find that in several references in the exhibit of JDI. Would you agree that in developing a competitive market sought by New Brunswick that

transmission access is important?

MR. WHALEN: Yes, I would.

Q. - Would you also agree that developing a competitive market involves a certain element of risk for all market participants?

MR. WHALEN: I suppose in a competitive market, or in any market, I guess for that matter, there are risks. There are opportunities.

Q. - And in helping mitigate that risk and risk to competitive market development, transmission access or transmission availability is an important aspect?

MR. WHALEN: Sorry, I'm not quite sure I understood that last question. Can you repeat that question?

Q. - In developing a competitive market, transmission restrictions can play a negative effect in terms of developing a competitive market? And if you have got congestion, if you have got limited transmission capacity it can have a negative effect? And the antonym** of that would be that if in fact you have transmission access then it can aid in developing a competitive market?

MR. WHALEN: Yes.

Q. - Now are you, Nova Scotia Power, aware that NB Power has an application before another regulator, a federal regulator, to develop a second tie-line which would in

fact add additional transmission capacity?

MR. WHALEN: I was not aware that they had actually made an application, no.

Q. - Maybe -- perhaps those questions would be better directed to Emera?

MR. WHALEN: I certainly can't answer questions on that.

Q. - I think you just cut some of my questions short. Did Nova Scotia Power intervene in the Coleson Cove application before this Board? I believe the hearing -- the application was last year and the hearing was held in January of this year. Was Nova Scotia Power a party to that, either as a formal or informal intervenor, to your knowledge?

MR. WHALEN: I'm not sure of the answer to that question. I believe we had some people attend the hearings, whether -- I don't think we were a formal intervenor, but we may have registered as an informal. But I'm not sure of that. I certainly was not involved personally.

Q. - So you don't know to what level of involvement or if in fact the hearing itself was followed or the decision of the Board was noted by Nova Scotia Power?

MR. WHALEN: I have no personal knowledge of that.

Q. - And you wouldn't therefore know the basis on which the Board made its decision in regards to that hearing?

MR. WHALEN: I have not read the Board decision on that.

Q. - I would now like to talk about Nova Scotia's energy policy, I believe it is called "Seizing the Opportunity".

I think the Chairman spoke -- or reference in terms of his reciprocity question.

MR. WHALEN: Yes.

Q. - What I would like to do is to just hand you an excerpt from that if I may, Mr. Chairman?

CHAIRMAN: Show it to Mr. Zed.

Q. - It is -- perhaps I will show Mr. Zed the excerpt and --

CHAIRMAN: Yes, I think that is appropriate. Let him see it and we will go from there.

MR. BARNETT: Mr. Chairman, I would like to distribute copies of these to the Board and to the members of the panel.

CHAIRMAN: We will -- unless there is an objection we will give it an exhibit number. And it will be PNB-1.

MR. ZED: Mr. Chairman, I don't have any objection. I mean, if there is some issue that is taken out of context, we will get an opportunity to clarify it later --

CHAIRMAN: Yes.

MR. ZED: -- on cross -- or I'm sorry, redirect.

CHAIRMAN: Right. Thank you, Mr. Zed.

Q. - I would like to refer you to page 23, which I guess -- I

believe is the first page under the front cover of the excerpt that you have before you.

Mr. Chairman, this is taken from volume 1 of Nova Scotia Government's energy policy entitled "Seizing the Opportunity."

It is not the -- there are really two volumes there. But this is the smaller volume that I have just excerpted from. It is reproduced in the thick volume as well, in part 3.

What I want to direct you to is the first full para' -- the paragraph that starts "Nova Scotia's electrical industry is dominated by Nova Scotia Power."

Do you see that?

MR. WHALEN: Yes, I do.

Q. - And we go on to read that Nova Scotia Power -- it says it owns and operates most of the electrical generating capacity (97 percent).

What is the size of the Nova Scotia electricity market?

MR. LEOPOLD: The domestic load in Nova Scotia?

Q. - Pardon?

MR. LEOPOLD: The domestic load in Nova Scotia? Is that --

Q. - Yes. Domestic load in Nova Scotia, sorry?

CHAIRMAN: In order for him to get your mike on, just raise

your hand before you answer. I forgot to tell you that. I'm negligent on my housekeeping.

MR. LEOPOLD: The peak load in Nova Scotia is approximately 2,100 megawatts. That would be a peak load.

Q. - And the paragraph goes on to speak about the remaining share of the system is owned and operated by six municipalities -- and then it goes on to list those municipalities.

Of the peak load, what proportion of that would be related to those six municipalities that are listed on page 23 of the document you have before you?

MR. LEOPOLD: It would be very difficult to give you a quantified answer there. Obviously the peak load would be at a specific time of day, time of year. So I'm not sure I can answer that question specifically.

MR. WHALEN: If I could just add to that, in the "Seizing the Opportunity" document, on an energy basis those six constitute 1.6 percent. I think you will see that in the document.

On a peak load basis it may be a little different than that. But it is in the order of that.

Q. - So it is about 1.6 percent? I do believe I read that in the document.

MR. WHALEN: Yes. That number is in the "Seizing the

Opportunity" document.

Q. - And if I go to page -- line 3, page 11 of your evidence, it states -- and I will read the paragraph. "Electricity market governance committee, the EMGC has been established to recommend implementation, development, structure, economic considerations and rules to introduce limited electricity competition by 2005 in Nova Scotia." And it goes on from there.

So when Nova Scotia is speaking in this document, in this policy document -- well, first let me back up. Did Nova Scotia Power have input during the consultation process, which I believe took place leading up to this document, did Nova Scotia Power have an input into that process, that you are aware of?

MR. WHALEN: Emera Energy submitted a document to the policy development people, yes.

Q. - And in developing that position Emera I presume would have consulted with Nova Scotia Power or you would have fed into that process?

MR. WHALEN: Sure.

Q. - Okay. So if I -- I think I understand that the size of the Nova Scotia market that will open in 2005, presuming the timetable is met, that is referenced in your evidence and is in this document "Seizing the Opportunity" is about

-- is 1.6 percent of the total domestic energy market?

MR. WHALEN: That is the plan that is in the "Seizing the Opportunity" document, yes.

Q. - Yes. I have discussed with you earlier the issue about the New Brunswick market and the size of its opening on April the 1st 2003, again presuming all the timetables are met there.

Would you have any idea what that size of New Brunswick would be when we talk about opening it at the wholesale level and at the large industrial level?

If I were to suggest to you it may be 1,000 megawatts, you know, could you take that, subject to check, that that may be about the size of the market?

MR. WHALEN: Yes. I don't know what that number is. So if you are suggesting to me it is 1,000 megawatts I have no reason to doubt that that is a reasonable number.

Q. - From my point it is significantly larger than what Nova Scotia is proposing to open under its limited access in a timetable of 2005, would you agree?

MR. WHALEN: That is true. I should point out that in the "Seizing the Opportunity" document that is referred to as a Phase 1 opening.

Q. - I was going to go there. Because if you turn to page 26 of the document "Seizing the Opportunity", there is

specific reference of the first group. I will wait until you have that.

It says that the first group in Nova Scotia that will be able to purchase electricity competitively will be wholesale customers. The only wholesale customers currently in Nova Scotia are the six municipal utilities that we have spoken about.

That is what you are referring to I believe? That is under the bold - we need a champion in government to nurture, et cetera. It is the first full paragraph underneath that?

MR. WHALEN: Yes. I see what you are referring to. What I was thinking of, I believe in the complete document there is some discussion about a Phase 1 and a Phase 2, and a Phase 2 following this, depending on the outcome of this and some other factors.

But the notion is this would be a Phase 1. And the notion is there would be a Phase 2 following that.

Q. - But there is no timing on Phase 2, to your knowledge?

MR. WHALEN: I don't recall the timing on the Phase 2.

Q. - And Phase 1 is to be in effect, if all the timetables are met, 2005 sometime?

MR. WHALEN: Yes. The 2005 date is in the document, yes.

Q. - Now in the same document it refers to a electricity

marketplace governance committee, I believe. Are you familiar with that --

MR. WHALEN: Yes.

Q. - -- or familiar with that reference?

MR. WHALEN: I'm familiar with the reference, yes.

Q. - Okay. Is Nova Scotia Power a member of -- one of your sister companies or your parent, a member of that EMGC, I think the acronym comes down to?

MR. WHALEN: Yes. Nova Scotia Power is one of the people at the table, yes.

Q. - Therefore would you agree that in sitting at the table on that electricity marketplace governance committee, there is an opportunity for Nova Scotia Power to have input in and perhaps influence the development of that competitive market and the timing on it and the rules around it, of course?

MR. WHALEN: We certainly do have an input. But we are one -- we have got one tier of about eight or 10 around the table. We have one vote.

Q. - I understand. But my experience in New Brunswick is that the electric utility has quite a powerful voice at the table, so --

MR. WHALEN: Things may -- things may be different in New Brunswick.

Q. - You don't have a Bill Marshall, I gather, eh?

MR. MARSHALL: Strike that from the record, Mr. Chairman.

Q. - So there is an opportunity to have your voice on terms of what you believe is an appropriate time for the opening of the market or extending that market beyond the small wholesale market that is proposed at this point in time?

MR. WHALEN: Yes. As I said, we certainly are able to put our views forward as one member of the EMGC.

Q. - And finally, just in this line of questioning, when -- I think you agreed with me, subject to check, and obviously it is my number, but when I'm looking at 1,000 megawatts of market opening on April the 1st, and I'm looking at the 1.6 percent, whatever that would equate to on an equivalent basis to megawatts, there is a substantial difference.

And my question to you on that basis then is do you think it is fair and equitable that in fact, between these two neighboring markets, New Brunswick and Nova Scotia, that in fact New Brunswick should be prepared to open its market the way it is doing and give access to Nova Scotia Power to that market, whilst at the same time Nova Scotia is only opening its market to what really is a very small market size compared to New Brunswick?

Is that what you would call a level playing field?

MR. WHALEN: Well, I believe the requirement for open access under FERC is for wholesale. I can't comment on why New Brunswick chose to go party into the retail market or what their opportunities are or why they decided to do that.

Q. - But you did agree that the wholesale opening in Nova Scotia is Phase 1 or is the first step, and that Nova Scotia -- you know, it may go further than that at some time in the future?

MR. WHALEN: I was just suggesting that in the energy policy document that is certainly suggested, yes.

Q. - I guess where I'm coming from is fairness in terms of reciprocity between the two jurisdictions. I have some concern over that. But I will move on from there.

In your evidence -- and I think this will just about wrap up a couple of more small questions -- your reference of a transition period. And I think there was some mention during cross examination of one of the previous panels of NB Power.

So what would you consider to be an adequate transition period? And I would refer you to page 9, lines 23 to 25 of the Nova Scotia evidence, Nova Scotia Power evidence. No, I have the wrong reference there. I appear to have given you the wrong reference so I am -- but I do believe your -- you do talk about a transition period,

yes?

MR. WHALEN: Yes, we do.

Q. - So what would you consider to be an adequate transition period from NSPI's point of view?

MR. WHALEN: We would like the transition period to align with the process that's in Nova Scotia that allows the process to go to the first phase where we are able to get ourselves to a position that would be comfortable to New Brunswick.

Q. - And in your view why should this Board consider such a transition period to be appropriate?

MR. WHALEN: Well we listed some reasons in our evidence. The market design committee in New Brunswick talked about reciprocity, the need for reciprocity. We believe there are things that -- let me before I leave the market design committee just say that in their discussion of that issue, talked about how requiring reciprocity and if that were to -- that could discourage players in the New Brunswick market. I believe that's all in the market design -- sorry, yes, the market design committee in New Brunswick.

There are other aspects of the tariff. The whole tariff is under the jurisdiction of the Board. Several issues.

Q. - Yes. And your view in terms of fairness is that because

FERC only demands that reciprocity be at the wholesale level, that that's as far as one needs to go?

MR. WHALEN: That's right. And FERC also has included provisions for waiver of reciprocity, a waiver of an OASIS system, some of those things under certain circumstances, and FERC makes decisions about that. We believe that those decisions should properly be made by an independent party.

Q. - Do you know if there has been any discussion at the utility guy level between Nova Scotia Power and New Brunswick in terms of discussions of reciprocity beyond the wholesale level?

MR. WHALEN: I am not sure I understood the last part of that question.

Q. - I guess what I am asking is, as utilities talk to one another, and we heard your opening statement about cooperation, and I have heard that, too, from NB Power, what I am asking is on a sort of utility guy to utility guy, do you know if there has been any discussion between Nova Scotia utility guys and New Brunswick utility guys in terms of opening the market beyond just the small municipal level in Nova Scotia, something comparable to New Brunswick? And the issues that surround -- the discussion, I presume the issues that surround that?

MR. WHALEN: I am not sure I am following the -- where I am having a little difficulty is that even if we had discussions like that, it's in neither Nova Scotia Power's, nor New Brunswick Power's hands to deal with that. It's in the hands of the market governance committee in Nova Scotia and the government of Nova Scotia in terms of the time line and the driving of it. So even if our desires were not totally aligned, we need to follow that process.

Q. - I understand -- I think you told me that you are member of the market -- electricity marketplace governance committee, and discussions at the -- at the level that I was referring to may carry forward with it some convincing notes or ideas to members of that committee, that's really all I was asking?

MR. WHALEN: We certainly do our best to put our views forward, yes.

MR. BARNETT: Mr. Chairman, that's all the questions I have for this panel. I had more, but the response to one of my early questions, I think the questions now I will refer for -- defer them to the Emera Panel -- the Emera Energy Panel, when they are here on the 9th.

CHAIRMAN: Thank you, Mr. Barnett. Mr. Young, do you have any questions?

MR. YOUNG: Mr. Chairman, based on the panel's direction to Mr. Barnett and the Province, my questions are all focused in the area that they gave direction to him to go to Emera with. So I will hold them till the Emera Panel.

CHAIRMAN: Fine. Mr. Morrison, do you want us to take our break now or after?

MR. MORRISON: I think probably it would be appropriate to take a break now.

CHAIRMAN: We will take a 15 minute recess now then.

(Recess)

CHAIRMAN: Mr. Morrison, go ahead.

MR. ZED: Mr. Chairman, if I might --

CHAIRMAN: Sorry, Mr. Zed?

MR. ZED: For clarification -- I don't think anything turns on this but one of the questions that Mr. Barnett asked was relating to the operating -- the answer was I believe that Mr. Huskilson, the operating officer, chief operating officer of Nova Scotia Power, was either an officer on the Board of Emera Energy.

And I think the witness just wants to clarify his answer. I just don't -- that is not correct, and --

MR. WHALEN: Mr. Chair, I believe I inadvertently said he was on the executive of Emera Energy. I should have said Emera Incorporated and not Emera Energy.

CHAIRMAN: Mr. Barnett, do you have any follow-up questions to that then?

MR. BARNETT: No, sir.

CHAIRMAN: Okay. Thank you.

MR. ZED: Thank you.

CHAIRMAN: Go ahead, Mr. Morrison.

MR. MORRISON: Thank you, Mr. Chairman.

CROSS EXAMINATION BY MR. MORRISON:

Q. - Good morning, Mr. Whalen and Mr. Leopold.

MR. LEOPOLD: Good morning.

MR. WHALEN: Good morning.

Q. - I just want to be clear before this panel is stood down.

And Mr. Barnett raised it this morning. And I just want to make sure that we are going to have an opportunity to ask questions of the appropriate panel.

Obviously New Brunswick Power takes the issue of opening up the transmission reservations, which is advocated in the evidence of Emera Energy, very seriously.

And I just want to make sure, and I want this panel to confirm or perhaps counsel can confirm, that those questions will be addressed -- any questions dealing with that issue will be addressed by Emera and not by this panel.

MR. WHALEN: Just so I am clear, when you say opening up the

transmission, are you specifically talking about the New England tie --

Q. - The MEPCO interface, that is right.

MR. WHALEN: -- and those kinds of questions? Yes, those are Emera Energy questions.

Q. - Thank you. I would ask you to turn to NSPI 1 which is your evidence. And it is at page 10 of that evidence. Do you have that in front of you, Mr. Whalen?

MR. WHALEN: Yes.

Q. - And on page 10, about the middle of the page, there is a paragraph numbered (b). And in that paragraph it says In the US FERC's Order such as 888, 889 and 2000 with respect to transmission have always included an appropriate compliance time frame.

Now either, Mr. Whalen or Mr. Leopold, could you explain to the Board what this compliance time frame is that you are talking about?

MR. WHALEN: Well, when FERC has put the orders in place and put new rules in place, they have always given the advance notice of that, and through something like a NOPR, a notice of proposed rulemaking.

When they have made the rule they have generally included a time frame for compliance.

Q. - Okay.

MR. WHALEN: In the current SMD discussion for example, their press release around that and the fact that they were moving in that direction I believe was December of '99.

And they were in that press release indicating a two-year period when they expected that people would comply with that.

Q. - So what you are talking about when you are talking about this FERC compliance time frame or horizon, you are really talking about the whole notice of proposed rulemaking process where FERC sends out a NOPR and then there is a time for comment and then there is an implementation phase? Is that the compliance time frame you are talking about?

MR. WHALEN: I was just making the general comment that generally FERC gives some advance notice and sometime for compliance to whatever the new rules are.

Q. - Now you refer in your evidence specifically to FERC Orders 888, 889 and 2000. And what were you dealing with here in this application is an open access transmission tariff that is compatible with FERC Order 888.

You would agree with -- that is generally what we are here dealing with?

MR. WHALEN: Yes.

Q. - Okay. Now if I told you, Mr. Whalen -- and you can take this subject to check -- but for purposes of my questioning this morning, if I told you that the NOPR or the notice to proposed rulemaking for Order 888 was issued on March 29th 1995, would you accept that as being correct?

MR. WHALEN: Yes. That sounds about the right time.

Q. - And if I also told you, Mr. Whalen, that there was a process for comments on the NOPR and that it went to a final ruling on 24th of April, 1996, would you also agree with that, subject to check?

MR. WHALEN: Subject to check, yes.

Q. - And if I told you that after the rule there was 120 days basically from the time of the final ruling before the market participants had to actually be in the marketplace, in other words they had -- it is my understanding that they had 60 days from the date of FERC's ruling to have a transmission tariff in place and then 60 days after that to actually implement that tariff, would you agree with that?

MR. WHALEN: I have no reason to disagree with that.

Q. - Okay. So if I also told you, Mr. Whalen, for purposes of my questioning this morning, that the time from the NOPR, the initial NOPR, to the time that the actual tariff had

to be implemented was 17 months, would you have any reason to dispute that?

MR. WHALEN: No.

Q. - Okay. Is it fair to say, Mr. Whalen, that this idea of the market opening in New Brunswick doesn't come as any real surprise to Nova Scotia Power, does it?

MR. WHALEN: No. Certainly it is -- the whole opening of the market across North America drives off 888. And certainly we have been aware of that just in terms of the time frames and particularly the ones that you have referenced.

I guess one of the things we should note in that is that in the US FERC had the authority over all of the different players. So FERC was a common driver for everybody.

Q. - No. I understand that. I was just trying to understand what the time frame -- compliance time frame was that you were referring to in your evidence.

Now you are aware that NB Power had an open and through tariff in 1998, correct? You are aware of that?

MR. WHALEN: Yes.

Q. - And if I told you -- and perhaps you know this directly, Mr. Whalen, but I'm going to put it to you in any event -- that if I told you that NB Power, in a meeting which was

held in April of 1998 with Nova Scotia Power, basically had notified Nova Scotia Power of its position regarding reciprocity requirements under its open and through tariff, would you have any reason to dispute that?

MR. WHALEN: No. I have no reason to dispute that.

Q. - And in questioning earlier I think Mr. Barnett put questions to you about the New Brunswick white paper and that, as a utility in the Maritime control area, you were generally familiar with the New Brunswick Government's white paper on energy policy?

MR. WHALEN: Yes, we were.

Q. - And you are aware that that provided for an open market under an open access transmission tariff? At least that was what the recommendations were or the policy provisions?

MR. WHALEN: Yes.

Q. - And you would agree with me, Mr. Whalen, that white paper was issued in January of 2001?

MR. WHALEN: I have no reason to dispute that.

Q. - And you are also familiar I assume, Mr. Whalen, in your position as regulatory affairs at NSPI, with the market design committee report from New Brunswick?

MR. WHALEN: Generally, yes.

Q. - And that report -- the final report was issued in June of

2002?

MR. WHALEN: I will accept your date on that.

Q. - Okay. You agree that is generally the time frame?

MR. WHALEN: Yes.

Q. - And you would also be familiar that with a recommendation in that report -- I believe it is recommendation 6.57. I can get the reference for you. But basically that recommendation dealt with the opening of the market under an open access transmission tariff?

MR. WHALEN: Yes.

Q. - And that contained reciprocity requirements?

MR. WHALEN: Yes.

Q. - Okay. And if I told you that that particular recommendation, that recommendation 6.57, although it was included in the final report of the market design committee, it was also included in an interim report of the market design committee which was issued in October of 2001, would you have any reason to disagree with that?

MR. WHALEN: No.

Q. - And would you have been familiar with that interim report?

MR. WHALEN: Yes. I believe I read that report, yes.

Q. - And this process that we have here today results from an application that was filed by NB Power for an open access

transmission tariff, and that was filed in July of 2002?

MR. WHALEN: Yes.

Q. - And it is my understanding that the application itself and all of the evidence was available for parties, and I'm assuming Nova Scotia Power availed itself of that, on July 25th of 2002?

MR. WHALEN: Yes.

Q. - Okay. Now I'm going to put a couple of time frames to you, Mr. Whalen, and you can agree or disagree. But if I told you that if you took the date that you were first notified back in 1998 of NB Power's reciprocity requirements under the open and through tariff to the date of the proposed market opening in April of this year -- of next year, sorry -- if I told you that was approximately five years, would you agree with that?

MR. WHALEN: Yes.

Q. - And if we take the time frame to market opening in April of next year, from the date that the interim report -- sorry, the time that the white paper, New Brunswick white paper was released, that is approximately two years. Would you agree with that?

MR. WHALEN: Yes.

Q. - Okay. And that same time frame with respect to when the interim report of the market design committee was released

is approximately 17 months?

MR. WHALEN: I assume you have done the calculations properly, yes.

Q. - Thank you.

MR. MORRISON: I do have a document, Mr. Chairman, that I would like to put to the witness, as I shared it with my friend Mr. Zed this morning. It arises from questions that were put to Panel D by Mr. MacNutt. And essentially what it relates to is Mr. MacNutt asked Panel D whether NB Power would be prepared to add language to the tariff that would provide for -- in setting out the conditions or the terms upon which reciprocity would be waived, and that that apply to all customers, a level playing field.

We have turned our hands to that. And we have drafted wording that we propose to ask this Board to incorporate into the tariff. I have shared this with Mr. Zed. And the witnesses have had a chance to look at it earlier.

So I would ask that this be marked. And I will put the document to the witnesses.

CHAIRMAN: My records indicate it should be A-12. Go ahead, Mr. Morrison.

Q. - I don't know whether it should be you, Mr. Whalen, or Mr. Leopold, but whoever would like to answer these questions.

I understood in your evidence this morning that Nova

Scotia Power agrees that before it can take access to the New Brunswick market under this tariff that you agree that you will put a standards of conduct in place, is that -- am I correct from your evidence this morning?

MR. LEOPOLD: That is correct.

Q. - Now you have had an opportunity to review this document, gentlemen. I believe we went over it this morning and -- in some fashion at least. And it is also my understanding that you don't take exception with anything in this document except the time frame for implementation of your own transmission tariff. Is that correct?

MR. WHALEN: There are two difficulties that we see. One is the proposed time frame of January 2004. The difficulty around that is that we, as Nova Scotia Power, have no control over that date. The process in Nova Scotia is under the EMGC and the time frame that has been set by the Government of Nova Scotia for the EMGC is 2005.

The second difficulty is the notion of being able to bring something to the Board only when we have an open access tariff in place. What we were looking for in the evidence that we put forward was some waiver that would cover the period up until the time when we have that open access tariff in place.

Q. - Mr. Whalen, don't -- please don't take my questions as

being argumentative because they are not intended to be so. And I'm going to ask you a question that I rarely ask on cross examination. But what do you think is a reasonable time period for implementation of your tariff?

Or why isn't -- actually a better question is why isn't January 1st 2004 a reasonable time period to expect that Nova Scotia would be in a position to open its market to New Brunswick?

MR. WHALEN: I guess the issue is not whether or not I believe it's a reasonable time frame, it's an issue of the time frame that has been set by the Government of Nova Scotia.

Q. - Do you think it is reasonable -- I mean, are you in a position today -- I mean, if we were to be able to come to some agreement on this issue, are you in a position today to put forward a date certain that you would say that you would have an open access transmission tariff?

MR. WHALEN: No, we -- Nova Scotia Power cannot do that today. We can develop a tariff internally, but in terms of being able to put that tariff on the open market, that has to be in conjunction with the report of the market governance committee.

Q. - So I guess what you are saying, Mr. Whalen, is that really you are not in a position to put an outside time

limit on how long you want this reciprocity to go on for, or this waiver of reciprocity to be open?

MR. WHALEN: Well, the "Seizing the Opportunity" document, the Nova Scotia Energy policy has the 2005 date in it. I believe I could accept a 2005 date, given that that's already there and I believe that is consistent with the EMGC. What I would not be comfortable doing would be accepting any date that is different from that.

Q. - And again I don't want to be argumentative, I'm just trying -- I really do want to hear what you have to say on this issue. Do you really think it is reasonable and fair that Nova Scotia generators can have access to New Brunswick customers and Maine customers and P.E.I. customers, and they can't have access to your market? And there is no real time frame for when that is going to happen especially -- and that could be another -- in to 2005. I mean, do -- my question is do you think that is fair and reasonable?

MR. WHALEN: I guess I will give you the same answer I did a couple of minutes ago. And whether I believe it's fair or not is not really the issue. I just don't have any control over that time frame.

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

CHAIRMAN: Thank you, Mr. Morrison. I see Mr. Dionne has

just come in. Does he have any questions of this panel?

MR. DIONNE: No, not at this time.

BY THE BOARD:

CHAIRMAN: This is the only time you are going to get. Just before I turn to my fellow Commissioners, I had one question of the panel, one last one.

Mr. Whalen, my understanding of the legislation in your province, and you are no longer a crown corporation, if Nova Scotia Power decided that it wanted to file with the regulator in Nova Scotia an open access tariff, they could do so, could they not? They don't have to wait on the government.

MR. WHALEN: I'm not sure that's true. We can certainly file it with the Board. I'm not sure that the Board can deal with it. The Public Utilities Act contains a Section 55(A) which deals with the Board's ability to approve a tariff or wheeling out of the province.

CHAIRMAN: Oh, does it? I'm not familiar with that provision then.

MR. WHALEN: Yes. Yes, it does. But there is no provision in the Public Utilities Act for the Board to deal with a tariff that addresses wheeling into the province. I'm not sure that the UARB could deal with that under the existing Public Utilities Act.

CHAIRMAN: Do you know, Mr. Zed?

MR. ZED: My understanding is the same as the witness', Mr. Chair. Although I haven't -- you know, we have talked about it and that has been our assumption all along, that they are not authorized to deal with the same type of --

CHAIRMAN: Yes. My recollection of their legislation was very contrary to what we have in place in New Brunswick, in that they have general supervision of Nova Scotia Power and complete regulatory jurisdiction over it. So unless the legislation has been changed to restrict certain activities of the Board, that's where I was coming from.

MR. ZED: Okay.

CHAIRMAN: I would -- the Board would appreciate your finding out, Mr. Zed, what the actual situation is.

MR. ZED: Fine. We will do that.*

CHAIRMAN: I appreciate that.

MR. SOLLOWS: I just have a few questions and address them to no one in particular, whoever wants to answer it is fine.

It again relates to this issue of wholesale versus retail and large retail and large industrial. One of the criteria I think that we find in the current application is, if I understand it in interpreting it correctly, that NB Power is opening all of their customers that are served

at the 69 kv level and above, opening them up for competitive access. How many customers do you serve at that voltage level or above?

MR. LEOPOLD: Sir, I can't provide you with an exact number, but there would be -- we are estimating around 40.

MR. SOLLOWS: So in that sense if we -- some might be very small customers, but this -- the sense of the number of customers in dispute here is maybe 30 to 40 customers?

MR. LEOPOLD: That would be correct.

MR. SOLLOWS: The only other question I think is I know you have a related -- through Emera, a related company in Maine, is Bangor Hydro. And I know some of the positions here sort of swirl around what FERC requires in terms of reciprocity in these various things. I guess the question is do you have a feeling for how many wholesale customers there are in Maine and some different -- any feeling for the difference in the structure of the electricity business between Maine and Nova Scotia?

MR. WHALEN: Only in a very general way. I don't really know how many wholesale customers Bangor Hydro has. I believe in total they have something like 155,000 customers. But how many of those are wholesale, I -- I don't know if any of them are.

MR. SOLLOWS: Okay. Are there -- Bangor Hydro would in fact

be a wholesale customer in the Maine system, would it not?

MR. WHALEN: I am not sure. I believe they do buy most of their generation. But I am really not familiar with the operation of Bangor Hydro.

MR. SOLLOWS: Do you know if there are vertically integrated electric utilities in Maine?

MR. WHALEN: I am not sure of the answer. My guess would be probably not.

MR. SOLLOWS: And that would tend to increase the number of wholesale customers if there were not --

MR. WHALEN: Well I think their whole structure is different. My recollection is that the generation is completely separate. I am thinking, for example, of Central Maine Power, who sold all their generation. They were required to do that. So I think most of the distributors in Maine buy the generation in an open market.

MR. SOLLOWS: So I guess where I am coming from is it possible -- or is it reasonable to infer that the rules that FERC anticipated when setting things up in terms of access to wholesale customers, FERC -- that Board might have had the perception that they were opening up a much larger fraction of the market than one and a half or 1.6 percent?

MR. WHALEN: I really can't comment on that.

MR. SOLLOWS: Thanks. That's it.

CHAIRMAN: Yes. Do you want to come up to number 5, Mr.

MacNutt, or do you want to ask your questions from there?

MR. MACNUTT: Mr. Chairman, we have been very carefully following our list of questions as the panel has been examined this morning and we find that we do not have any questions as a result of the questioning this morning.

CHAIRMAN: Thank you. Mr. Zed, do you have any redirect.

MR. ZED: I have one question by way of clarification.

CHAIRMAN: Yes.

REDIRECT EXAMINATION BY MR. ZED:

Q. - I believe the witness testified that there were two issues with this document that was provided us this morning.

CHAIRMAN: Yes.

Q. - And I understood the first issue to be around the timing. And I am not sure of the answer around the second issue. I understood it to be around the last paragraph. But if the witness could just explain what the second objection is?

MR. WHALEN: The paragraph as written requires a customer such as Nova Scotia Power to have in place an open access tariff before we could make any appeal to the Public

Utilities Board.

What we were seeking in the evidence that we have provided and the issue for us is covering a period up to the point where we introduce that. So it kind of makes the two mutually exclusive, if I could use that. If we accepted the proposal, it means that we -- there would be no jurisdiction for the Board until our open access tariff is in place. We are looking for the Board to adjudicate before that point.

MR. ZED: Thank you.

CHAIRMAN: Good. Thanks, Mr. Zed. The Board wants to thank the witnesses for their testimony here today and you are excused, of course. But I did have to mention that I was terribly disappointed that Mr. Whalen hadn't read every decision of this Board and committed them to memory. Thank you for your testimony.

I don't think there is anything else. We simply adjourn to 9:30 on Monday the 9th, is that correct?

Thank you.

(Adjourned)

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

Reporter