DECISION

IN THE MATTER OF a hearing to Review the New Brunswick System Operator's 2011 / 2012 Revenue Requirement

May 6, 2011

NEW BRUNSWICK ENERGY AND UTILITIES BOARD

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NEW BRUNSWICK ENERGY AND UTILITIES BOARD:

CHAIRMAN:	Raymond Gorman, Q.C.
VICE-CHAIRMAN:	Cyril Johnston
MEMBERS:	Pat Darrah
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SECRETARY	Lorraine Légère
COUNSEL	Ellen Desmond, Counsel

APPLICANT:

NB System Operator	Mr. Kevin C. Roherty

INTERVENORS:

Algonquin Energy Services Inc.	Mr. Matthew Hayes
Department of Energy	Mr. Stephen Waycott
HQ Energy Marketing Inc.	Ms. Hélène Cossette
J. D. Irving Limited	Mr. Andrew Booker
New Brunswick Power Holding Corp.	Mr. John Furey
Public Intervenor	Mr. Daniel Theriault, Q.C

INTRODUCTION

The New Brunswick System Operator (NBSO or SO) is a not-for-profit independent corporation created by the Government of New Brunswick. Its primary responsibilities are to ensure the reliability of the electrical system and to facilitate the development and operation of a competitive electricity market in New Brunswick.

The NBSO provides service pursuant to the Open Access Transmission Tariff (Tariff). The services provided in Schedules 1, 2 and 3(c) of the Tariff, which are germane to this matter, are described below. The NBSO's operating costs are funded by parties using Schedule 1 service. Rates charged by the NBSO for Tariff services must be approved by the New Brunswick Energy and Utilities Board (Board or EUB).

Following a hearing in 2008, the Board directed the NBSO to apply annually for approval of its Schedule 1 and 2 Revenue Requirements. The NBSO was also directed to provide, on an annual basis, information on the actual revenues and expenses incurred for Schedule 3(c) Service and a forecast of expenses for the following year. This is the third annual review of the NBSO's Revenue Requirement.

A Pre-Hearing Conference in conjunction with this matter was held on October 13, 2010. At that time, the Board approved the Minimum Filing Requirements to be followed by the NBSO in preparing its evidence. The Board also approved a hearing schedule and various parties were granted intervenor status.

The NBSO filed its application and evidence on November 15, 2010 seeking approval of the following for the 2011/12 fiscal year:

1. A Schedule 1 Revenue Requirement of $11.471 million for Scheduling, System Control and Dispatch Service;

2. A Schedule 2 Revenue Requirement of $5.634 million for Reactive Supply and Voltage Control Service; and

3. Approval of a rate for Schedule 3(c) Service of $0.50/MWh for Automatic Generation Control and Load Following for Non-Dispatchable Wind Power Generators.

The application was filed pursuant to section 111 of the *Electricity Act,* which provides, as follows:

Application for approval of tariff

111(1) The SO may make application to the Board for approval of a tariff pertaining to the provision of transmission services or ancillary services, or both.

111(2) The Board shall, on receipt of an application from the SO for approval of a tariff pertaining to transmission services or ancillary services, or both, proceed under section 123.

111(3) When an application is made under this section for approval of a tariff pertaining to transmission services, a transmitter shall attend the hearing under section 123 for the purposes of defending its revenue requirements, and is deemed to be a party in the proceedings before the Board.

111(4) The Board shall, when considering an application by the SO in respect of an approval of a tariff pertaining to transmission services, base its order or decision respecting the tariff on all of the projected revenue requirements of the SO and the transmitters for transmission services and the allocation of such revenue requirements between the SO and the transmitters.

111(5) The Board shall, when considering an application by the SO in respect of an approval of a tariff pertaining to ancillary services, allow in its order or decision for mechanisms to recover the reasonable costs incurred by the SO in the acquisition and provision of ancillary services, or base its order or decision respecting the tariff on all of the projected revenues from the sale of ancillary services and all of the projected costs to be incurred by the SO in the acquisition or provision of ancillary services.

111(6) The Board at the conclusion of the hearing shall

(a) approve the tariff, if it is satisfied that the tariff applied for is just and reasonable or, if not so satisfied, fix such other tariff as it finds to be just and reasonable, and

(b) set the time at which any change in the tariff is to take effect.

As provided for in the hearing schedule, intervenors submitted interrogatories on the evidence and the NBSO provided responses. The Public Intervenor filed evidence on January 13, 2011 and interrogatories and responses were exchanged on that evidence. No other intervenor filed evidence in this matter.

The Public Hearing of the application was held from February 21 to 23, 2011.

Schedule 1 Service

Schedule 1 is a mandatory ancillary service that provides scheduling, system control and dispatch services within the control area. The NBSO's budget for operating costs (referred to as the Revenue Requirement) is funded through the rate charged for Schedule 1 Service. The Revenue Requirement is reduced by revenues earned by the NBSO for various Miscellaneous Services it provides. The NBSO applied for a Schedule 1 Revenue Requirement of $11.471 million.

At the commencement of the hearing the NBSO amended its Schedule 1 Revenue Requirement to account for a change in the estimated cost for the Energy Control Center (ECC), which is one of the cost categories in the Revenue Requirement. The amendment reduced the Revenue Requirement by $85 thousand to $11.386 million. No party took issue with the amendment.

The NBSO budget includes a number of cost categories. Information with respect to each of these categories was provided in the evidence, including the 2010/2011 forecast cost (being six months of actual information and six months of budget information for the 2010/2011 year) and the 2011/12 budgeted cost.

Intervenors raised various issues and interrogatories were exchanged, which allowed the Board to examine these items in detail. The Board finds as follows:

NBSO Board of Directors Costs

This category of costs includes annual stipends, per diems and travel expenses for the NBSO Board of Directors. For 2010/2011, the forecast cost is $123 thousand. This remains unchanged for 2011/2012.

The Board approves the amount of $123 thousand for NBSO Board Costs.

EUB Assessments

EUB Assessments includes the NBSO portion of EUB annual common expenses, EUB direct expenses and the cost for intervention, incurred by the Attorney General, where applicable. For 2010/11, the forecast for this expense is $400 thousand. This amount is budgeted at $370 thousand for 2011/12.

The Board approves the amount of $370 thousand for EUB Assessments.

In future the cost for intervention incurred by the Attorney General should be shown in the EUB Hearing Costs category as they are directly related to hearing costs.

Energy Control Center

This category of costs accounts for the lease costs associated with the ECC and includes the NBSO's portion of amortization and finance charges. The NBSO has forecast this cost to be $308 thousand for 2010/11, and has budgeted (given the amendment referred to above) for a reduction to $223 thousand for 2011/12.

The Board approves the amount of $223 thousand for the Energy Control Center.

The NBSO had not, as of the date of the hearing, signed a formal lease for the ECC, despite having occupied the ECC since 2004. The Board was advised that the document was almost complete and the NBSO is directed to file a copy of the lease immediately upon execution.

Building O&M

Building O&M includes the NBSO's operating and maintenance costs for the ECC (such as electricity, property tax, building maintenance, etc). Also included are the rent, operating and maintenance costs at the NBSO's second location, West Hills. For 2010/11, the NBSO has forecast a cost of $600 thousand.

In 2011/12, the cost is budgeted at $633 thousand, a variance of $33 thousand. The addition of a security service at the ECC is a new cost in 2011/12, and is the primary cause of the year over year increase.

The Board approves the amount of $633 thousand for Building O&M.

Amortization of Capital Costs

This category of costs includes amortization expense of capitalized assets. In 2010/11, the forecast cost for this item is $49 thousand. This is budgeted to increase substantially in 2011/12 to $180 thousand, a variance of $131 thousand.

The NBSO advised that the primary reason for this increase is the beginning of the amortization of the new SCADA/EMS computer system, forecast to cost $3.136 million and to be amortized over a 10-year period.

Procurement of the new SCADA/EMS computer system was discussed in previous proceedings and the increase in amortization expense was expected.

The Board approves the amount of $180 thousand for Amortization of Capital Costs.

Service Agreement Costs

Service Agreement Costs include costs related to an agreement with New Brunswick Power Holding Corporation for Information Technology services, including network, internet and email services as well as Human Resource services, including payroll and benefit administration.

In 2010/11 this cost is forecast at $256 thousand and remains unchanged in the 2011/12 budget.

The Board approves the amount of $256 thousand for Service Agreement Costs.

Computer Software

Computer Software includes the cost for license and support payments to various operational computer applications providers, such as PI and ITRON, as well as hosted services for operating applications such as OATI and MV-90.

In 2010/11, this item is forecast to cost $244 thousand and for 2011/12 is budgeted to decrease to $156 thousand.

The Board approves the amount of $156 thousand for Computer Software.

Data Communications

This cost category includes the costs of various data services “providing the NBSO with information on operating requirements including wind and other weather data and exchange with other system operating entities and electric system participants”.

In 2010/11 this item is forecast to cost $163 thousand. In 2011/12, it is budgeted to cost $190 thousand, a variance of $27 thousand. This increase from forecast to budget is primarily due to recognizing the full- year cost for wind forecast data service of $98 thousand from a part-year cost of $50 thousand (less the $15 thousand external cost of creating the wind forecasting service in 2010/11).

The Board approves the amount of $190 thousand for Data Communications.

Insurance

This cost category includes premiums for general liability and directors’ and officers’ liability insurance. The forecast amount for 2010/11 is $145 thousand and this is unchanged in the budget for 2011/12.

The Board approves the amount of $145 thousand for Insurance.

Consulting Services

Consulting services include the cost for external professional services. This includes audits, actuarial reviews, legal services and various necessary studies.

For 2010/11, this cost is forecast at $698 thousand. This cost is budgeted to decrease substantially in 2011/12 to $393 thousand due to various non-recurring events.

The Board approves the amount of $393 thousand for Consulting Services.

Travel

The NBSO's role in the electricity industry requires involvement in a number of regional and North American reliability and industry organizations. Travel costs are incurred for participation in these industry organizations including required participation in committees and task forces. This category of costs was thoroughly canvassed in previous proceedings.

For 2010/11, this cost is forecast at $339 thousand. This cost is budgeted to increase to $357 thousand in 2011/12, a variance of $18 thousand. This increase is primarily due to an increase in travel for training and certification purposes.

The Board approves the amount of $357 thousand for Travel.

Training

Training costs include course fees, professional development and continuing education requirements for power system operations, engineering and administration. In 2010/11 this cost is forecast at $90 thousand. In 2011/12, this cost is budgeted to increase substantially to $191 thousand, a variance of $101 thousand primarily as a result of compliance audit training and training for new engineering staff and Power System Operator staff.

The Board approves the amount of $191 thousand for Training.

Administration

This cost category includes professional dues, corporate memberships, translation, miscellaneous supplies, promotional items, subscriptions, printing, production of the annual report and corporate and business reports and an annual energy conference.

In 2010/11, this cost is forecast at $192 thousand. In 2011/12, this cost is budgeted to increase to $251 thousand, a variance of $59 thousand.

The variances were due to an increase of $75 thousand for the annual energy conference and a decrease of $16 thousand representing a reduction in recruitment costs.

The budgeted $75 thousand for the annual energy conference is partially offset by $35 thousand in estimated miscellaneous revenue from conference fees, resulting in a shortfall of $40 thousand. The Board notes that the NBSO did not host a conference in 2009/10 and testified that a conference would not be held in 2010/11. The NBSO as earlier stated is a not-for-profit organization. Not-for-profit status obligates the NBSO to recover its costs without earning a profit. The Board believes this obligation should extend to the annual conference and it considers that the NBSO is now sufficiently well established to host a conference as a break-even event. The Board disallows $40 thousand of the proposed cost for the energy conference.

The Board reduces the budget for Administration by $40 thousand and approves the amount of $211 thousand.

Finance Charges

This category of costs includes borrowing costs for loans to finance capital additions once they are in service and foreign exchange costs, offset by any interest earned on bank balances or short term investments. This item was not forecasted as an expense in 2010/11, but is budgeted for 2011/12 at $45 thousand, due to the in-service cost of the SCADA/EMS computer program.

The Board approves the amount of $45 thousand for Finance Charges.

EUB Hearing Costs

This category of costs includes all NBSO direct costs associated with EUB hearings, such as facility costs, legal fees, translation, printing and notice publications. The cost for 2010/11 is forecast at $212 thousand and is budgeted to decrease to $115 thousand in 2011/12.

The Board approves the amount of $115 thousand for EUB Hearing Costs.

As stated above, the NBSO is directed to include in future filings the costs for public intervention, if any, in this cost category.

Contingency

The Board approves the amount of $300 thousand for the Contingency cost category for 2011/12.

Miscellaneous Revenue

Schedule 1 includes “miscellaneous revenues” from a variety of services provided by the NBSO. Such services include automatic updating of hourly energy schedules, providing the reliability coordinator service for various areas outside of New Brunswick, and performing transmission role functions on behalf of the New Brunswick Power Transmission Corporation.

In 2010/11, the revenues are forecast as follows:

Scheduling Balance Service	$267 thousand
Reliability Coordinator Service	$ 99 thousand
Oasis and *e-tag* service	$ 80 thousand
Transmission operator services	$375 thousand
Connection Studies	$100 thousand
Conferences and workshops	$ 35 thousand

The revenue for these items is budgeted to remain the same for 2011/12.

The Board finds these budgeted revenues to be just and reasonable.

With respect to the remaining Schedule 1 expenses, the Board finds as follows:

Labour and Benefits

Labour and Benefits includes salaries and wages of union and non-union regular employees, casual and temporary employees, overtime, as well as the employer costs of employee benefits including health, dental and life insurance, pension contributions and retirement payment allowances.

Labour and Benefits represents the majority of expenses within the Schedule 1 Revenue Requirement, accounting for over 70% of the total budget. The NBSO's Labour and Benefit costs have been rising sharply in recent years. The budget for 2011/12 is proposed to be $8.413 million. The additional amount in the 2011/2012 budget represents the full year cost effect of staff that started employment in 2010/11 and 5 new positions budgeted for 2011/12. It also includes salary increases, which were fully canvassed at the hearing.

In the past three years, the NBSO has provided justification to account for the Labour and Benefits cost increases. For example, in both 2009/2010 and 2010/11 the NBSO placed a great deal of emphasis on its efforts toward becoming a self-supporting organization, providing for succession planning and at the same time adapting to and meeting its role in the evolving electricity industry, As indicated by the NBSO in its evidence, one of the most fundamental elements of its move towards becoming a self-supporting organization was its "migration strategy" and the need to have NBSO work performed by direct-hire NBSO staff. The NBSO has now successfully completed this migration strategy and has identified this as a major milestone in its history.

While the increase over the years in the Labour and Benefits category has been necessary, the core functions and objectives of the NBSO remain unchanged since inception. These objects are clearly defined in section 42 of the *Electricity Act*. Further, the electricity market has not grown substantially in the past three years. The NBSO is obligated to spend its revenues prudently.

The Board has considered the Labour and Benefit costs associated with the bargaining staff and those for the non-bargaining staff separately.

Labour and Benefit costs as it relates to the Bargaining Staff

Increases for the bargaining employees occur pursuant to a collective agreement that commenced on January 1, 2008 and will end on December 31, 2012. This collective agreement was negotiated by the New Brunswick Power Transmission Corporation prior to the finalization of the "migration strategy" and is a contract that the NBSO has inherited.

The collective agreement, which applies to some 43 unionized employees, provides for a cost of living increase in wages of 3.5% on January 1, 2011 and 4% on January 1, 2012, resulting in an average increase of approximately 3.6%. The NBSO in its evidence, at page 11, notes that this will result in costs increasing by $127 thousand.

In addition to these general salary increases, there have been job re-classifications among the bargaining staff, which the NBSO has approved. In undertaking 7 (provided during the hearing) the NBSO has indicated these "reclassifications" will result in costs increasing by $12 thousand.

The Board also notes that this collective agreement was negotiated and took effect prior to the government policy directive requiring a two-year freeze on cost of living increases for public employees. When asked about whether bargaining staff would be complying with this directive at the end of their current collective agreement, the NBSO responded as follows at pages 307-308 of the transcript:

> *…It is the intention of the NBSO to follow the government policy that was provided I believe two years ago or a year ago -- two years ago I believe, so it is in the context of a collective bargaining process and that would be our -- certainly our policy to follow government policy with respect to*

renewing that collective agreement or entering into a totally new collective agreement…

In light of this response, the Board expects the NBSO to seek a collective agreement that follows government policy.

Based on the foregoing, the Board accepts the costs attributable to the bargaining unit employees.

Labour and Benefit costs relating to Non-Bargaining Staff

Compensation Study:

Any discussion of the Labour and Benefit costs related to the non-bargaining staff (approximately 20) requires consideration of the Compensation Study that was filed as part of the NBSO's evidence on November 15, 2010.

The prospect of a Compensation Study was first brought to the Board's attention by the NBSO in an Application dated May 1, 2008 for Changes to the Tariff. The NBSO provided a copy of a proposal from K. Gordon and Associates (the Gordon study) for a Compensation Study for a stand-alone evaluation compensation system. Funding for the study was included in the budget for 2008/09 and it was to be completed over the next few months. In its decision the Board ordered the NBSO to file a copy of the Study when completed.

There is no evidence as to whether the Gordon study was ever undertaken or completed. In July 2009, the NBSO issued a Request for Proposals (RFP) for a Compensation Study and the firm of Rosson, Johnson & Gordon was retained. Work on the Study commenced in September 2009.

In its supporting evidence filed on March 15, 2010 for the 2010/11Revenue Requirement hearing, the NBSO requested approval for $200 thousand for increased salary costs as a result of a Compensation Study which was expected to be completed before the end of March. No Study was filed in evidence for that application and during the hearing on June 1 & 2 the Board was advised that the Study was not yet complete.

In its decision of July 16, 2010 the Board disallowed the amount of $200 thousand from the proposed Revenue Requirement, stating at page 6:

> *"Recommendations and costs that may result from the study cannot be reviewed until such time as the study has been filed and given due consideration".*

Despite the Board's ruling on this matter, the NBSO proceeded to grant $91 thousand in unbudgeted salary adjustments in 2010/11 (which have a full-year impact of $159 thousand in the current year) even though the Compensation Study had not been filed with the EUB.

Minutes of the NBSO's Board of Directors meetings are helpful in outlining some of the history of the Compensation Study:

- A Compensation Study was received and reviewed by the NBSO Board on May 28, 2010.
- A "draft" Compensation Report from the compensation consultant had been received and was still being reviewed as of June 6, 2010 and was to be finalized in July.
- On August 26, 2010, NBSO senior staff indicated to the NBSO Board that they felt the report should be "reformatted" before being submitted to the EUB.
- On October 1, 2010 the President of the NBSO advised the NBSO Board that a "report for submission to the regulator" was nearing completion and would be brought to the next meeting.
- As of November 5, 2010 the NBSO Board implemented the pay bands and salary ranges as set out in the Study.

On November 15, 2010, an undated Compensation Study was filed with the NBSO's evidence in this proceeding which was the basis for establishing pay bands.

The first opportunity for the EUB to consider the Compensation Study was during the hearing of the current application in February 2011. The Board notes that clear directions were provided to the consultant by the NBSO that any recommendations should be made “in the context of overall compensation trends in Canada and in particular in the electrical industry”. Further, the NBSO HR Committee determined that the consultant was to use “close to the average of the target market” to develop a pay policy for non-bargaining employees.

The Board has concerns regarding the Compensation Study. For example, the Compensation Study reviewed information for 10 nationally selected target organizations, all of which are larger than the NBSO- many of them much larger. No adjustment appears to have been made to account for the fact that the duties and responsibilities for a given position will be much different in an organization with 60 or so employees, such as the NBSO, and employers with hundreds or thousands of employees. Similarly, no adjustment appears to have been made for the different salary levels that would be expected in different parts of the country.

The Board also notes that the target organizations do not include the Government of New Brunswick. While it is appropriate to consider the wages of workers in the electricity sector, both in New Brunswick and elsewhere, it would have also been appropriate to consider the pay bands of the provincial government when adjusting salaries for a government created corporation. The non-bargaining positions at the NBSO are largely positions which have clear counterparts in government departments. They include executives, managers, accountants, lawyers, engineers and executive secretaries.

In addition to adopting the pay bands, the NBSO budgeted for a merit increase effective April 1, 2011. These merit increases are intended to be steps in the pay bands. The evidence at the hearing was that these steps had not yet been approved by the NBSO Board.

The proposed merit increases for non-bargaining staff range from $4 thousand to $10 thousand per employee and total $121 thousand. This amount would be in addition to any cost of living increase that may be awarded.

The proposed merit increases are based on the pay bands. Each of the pay bands has three levels, namely, “minimum”, “normal” and “maximum”. It was explained at the hearing that merit increases would be based on an increment of 5% of the “normal” range in the pay band and not 5% of the employee’s current salary.

At page 436 of the transcript, Mr. Finn stated as follows:

> *“..The 5 percent, the way it would work, or any percentage that would be established to date anyway, the thinking would be that it’s 5 percent of the normal maximum of the compensation band in the compensation study. Not initially 5 percent over the current salary.”*

For employees at the “minimum” of the pay band, the “5%” increase, being based on the “normal” of the pay band, would actually result in a pay increase of 6.25%. This is illustrated below.

Level	Minimum 80%	Normal 100%	Maximum 110%
6	$101,838	$127,298	$140,028

An employee at the minimum step in level 6 earns $101,838. If the increase had been 5% of the current salary it would amount to $5,100. Since the increase is actually based on the “normal”, it would represent a 6.25% increase for that employee. Such an increase would amount to $6,365.

The Board considers these to be large increases for “steps” in a pay band. In contrast, according to Mr. Finn’s testimony, at page 328 of the transcript, public service employees would normally receive a merit increase in the range of 2.4%. A provincial government employee therefore, earning the same salary as an NBSO level 6 employee, might be entitled to a merit increase of $2,444.

For all of the reasons set out above, the Board has little confidence in the process that was undertaken or the actual Compensation Study that was filed and cannot rely upon it in this proceeding.

Salary Adjustments that flow from the Compensation Study:

The salary increases for non-bargaining employees are based primarily on the Compensation Study.

In EUB-IR 4, the NBSO states:

> *"With respect to the non-bargaining positions, the increases in the various categories result, for the most part, from implementing the results of the compensation review".*

Undertaking 7 indicates that the budget for the non-bargaining staff has been increased this year by $244 thousand, which is comprised primarily of merit increases, salary adjustments and job reclassifications. This is a significant increase for some 20 staff, particularly in light of the provincial government's policy of fiscal restraint.

The Board finds that the salary adjustments that flow from the Compensation Study were not prudent and will not be allowed in the Revenue Requirement.

It is of concern to the Board that some of these salary adjustments were made on an unbudgeted basis during the 2010/11 fiscal year and effectively presented to the Board as a *fait accompli*, despite the Board's specific refusal to allow in the 2010/11 Revenue Requirement amounts for increases resulting from the then unseen Compensation Study. This approach is not acceptable.

The Board finds that implementing unbudgeted salary increases without any evidence of necessity, lacks prudency. The Board notes that salary adjustments are based on a Compensation Report that it finds to be flawed, for the reasons set out above. It is also noted that the proposed merit increases are, for the most part, excessive particularly given the current economic environment.

The Board concludes that these increases, adjustments and reclassifications are not prudent. The Board reduces the budget for labour by the amount of $244 thousand. This amount must also be adjusted for the cost of employee benefits which is stated in the evidence to be 19% of the cost of labour. The adjustment is estimated to be $46 thousand, which will also be removed from the Revenue Requirement.

The Board approves the amount of $8.123 million for Labour and Benefits.

Total Amount for Schedule 1:

The Board approves a Schedule 1 Revenue Requirement of $11.055 million for 2011/12.

Additional issues arising from Schedule 1 expenses

The Board is concerned with the NBSO's actions during 2010/11 of spending funds which were specifically disallowed in the Board's revenue requirement decision relating to that year. One such instance is unbudgeted salary increases, as discussed above.

The NBSO also requested the amount of $25 thousand for a facilities study in its 2010/11 budget. Again, this amount was specifically rejected by the Board, in a decision dated July 16, 2010. The Board noted that the initial work should be done by NBSO staff. Nonetheless, the NBSO proceeded to spend monies on this study.

In the latter example, the NBSO did not use the contingency fund to pay for this cost, but indicated, during the hearing, that it had the authority to spend the $25 thousand based on the following paragraph of the Board's July 16, 2010 decision:

> *Included in the NBSO's revenue requirement is an amount for contingencies. If the NBSO were required to undertake a study in 2010/11, for which funding was not approved in this decision, it could fund such a study from the Contingency account if funds were not available from elsewhere within the budget.*

Given that the Board disallowed the expense for the facilities study, it cannot be argued that it was something the NBSO was "required" to do. It must also be clarified that any costs paid for from the contingency fund would have to legitimately arise from an "unanticipated event" which is both required and which falls within the NBSO's responsibilities.

Another issue was the confusing manner in which the evidence for Labour and Benefits costs was presented. It lacked detail and transparency and was not convincing. Even when asked for additional detail in the interrogatory process, the NBSO initially refused and only agreed to provide the information well into the hearing, after many of the intervenors had concluded their cross-examination. The Board cannot understand the approach taken by the NBSO on this issue, given that Labour and Benefits expense represents over 70% of the NBSO's Revenue Requirement. Contrary to the view of the NBSO, this topic has great value and relevance. It was only through the persistence of participants that the necessary information was reluctantly disclosed.

While efforts were made through the IR process to seek further details on salary increases, the NBSO noted in both IR-4 and IR-10 that they questioned the "value and relevance" of a position- by-position analysis of salary adjustments. This lack of co-operation resulted in a great deal of confusion and unnecessarily complicated this review.

The Board expects full co-operation and respect for the decisions and orders made in relation to the NBSO.

Schedule 2 services

Schedule 2 service is a mandatory ancillary service provided by generators to the NBSO. These ancillary services relate to maintaining transmission voltages on the transmission facilities within acceptable limits and are obtained by the NBSO through three contracts with various NB Power companies, namely (i) New Brunswick Power Coleson Cover Corporation (ii) New Brunswick Power Generation Corporation and (iii) New Brunswick Power Nuclear Corporation.

The form for these ancillary services contracts is found in the Market Rules. All contracts for the NBSO procurement of Schedule 2 services have been filed with the Board in previous proceedings.

During the course of the hearing, an issue was raised with respect to the Point Lepreau Generating Facility (Point Lepreau) and its ability to supply the quantity of MVARs, set out in its contract due to the current shutdown.

Point Lepreau is shown to have a capability of 415 MVARs. The monthly rate per MVAR is $232 resulting in an amount payable under the contract of $1,156 million.

The Public Intervenor argued that since Point Lepreau is currently shutdown, the NBSO should not be obligated to pay this amount under the contract.

In contrast, the NBSO submits that payments only end at the "end of the life of a generation facility" and not during an outage. In PI-IR-12(4), the NBSO notes that "there is no clause(s) in the Ancillary Services contracts that states the NBSO will not continue to make payment to a generator that is on a multi-year extended outage".

The NBSO also noted, at page 190-191 of the transcript:

> *"…The practice that has been in place since these contracts were executed is that when generators are on extended outage that payments do continue. As we noted, there is no clause dictating that there would be no payment. All generators can assume to be—you assume that all generators are going to have a plan of potentially forced outages at some point. Typically planned outages come at least once a year. In the case of the Lepreau generator it was an extended outage, extended much longer than what was originally planned. But nonetheless the implementation or administration of the contract, all three of those contracts, and I would say for contracts for other facilities, for other owners, if they would exist with the same terms and conditions and the same market rules, we would do the same, that payments would continue during the outage, extended or otherwise…".*

In the course of cross-examination, NBSO confirmed that it has contracted for capacity, which is intended to provide this supply of Schedule 2 ancillary services for the entire system. In the circumstances of the outage of Point Lepreau, the NB Power group of companies has continued to provide the actual requirement of MVARs for the system.

The Board accepts that NBSO's total capacity needs are being met through the ancillary service contracts with the NB Power Group of Companies. There is no evidence that the outage at Point Lepreau will or should result in any reduction in cost to the NBSO at this time.

The Board approves a Schedule 2 Revenue Requirement of $5.634 million for 2011/12.

Schedule 3(c) Service

Schedule 3(c) service provides for Automatic Generation Control (AGC) and Load Following for Non-Dispatchable Wind Power Generators. This service was added to the Tariff in 2008.

A concern when Schedule 3(c) was introduced, was cross-subsidization.

The intent of this service was to establish a rate through which the incremental cost of AGC and Load Following would be recovered from the Market Participants requiring this service.

In 2008, the NBSO had proposed a phased-in approach to rates over a four year period. The initial rate would be $0.25 /MWh but would increase to $1.00/MWh by April 1, 2012. The NBSO indicated that it would track its revenues and costs so to deal with any potential issues of cross-subsidization.

The Board did approve the initial rate of $0.25/MWh for 2009/2010. Similarly, the Board approved the rate of 0.50/MWh for 2010/11.

The NBSO provided a table in evidence showing the actual revenues and costs for 2009/10, the forecast revenue and costs for 2010/11 and the budget for revenues and costs for 2011/12. For 2009/10, the service showed a deficit of approximately $73 thousand. A surplus of approximately $30 thousand is forecast for 2010/11 and also for 2011/12.

The NBSO has now indicates that, based on its history of revenues and costs a deviation from the original proposal is required. The NBSO is requesting that the current rate remain at 0.50/MWh for 2011/12.

The Board approves the rate for Schedule 3(c) of $0.50/MWh and encourages the NBSO to continue to track its costs and revenues closely so to ensure that cost shifting does not incur.

Other Matters:

Major Capital Expenditures

The NBSO advised the EUB that its Board of Directors has approved a capital expenditure of $2 million for the purchase of Market Management System (MMS) software to replace the current software which is over 25 years old. The NBSO noted that amortization charges with respect to this capital expenditure would likely begin in the 2012/13 fiscal year.

Counsel for the NBSO indicated that the NBSO was not seeking Board approval or a ruling on this issue, but was providing the Board with notice of this upcoming expenditure. He went on to say, at page 440 of the transcript that:

> *As was clearly indicated by both Mr. Jardine and Mr. Finn, the NBSO fully intends once a business case has been approved by the NBSO Board, to come to this Board as a matter of prudence to ensure that such capital costs will be recovered through future revenue requirements.*

Kurt Strunk, the expert witness who testified on behalf of the Public Intervenor, recommended the use of business case documentation for all new major capital and operating expenditures. The Board agrees.

The issue of major capital expenditures should be dealt with in a review process, prior to committing funds to the capital project. It is prudent for the NBSO to have the EUB review and approve capital expenditures in advance to ensure that amortization and finance costs are allowed in future Revenue Requirement hearings.

The Board directs the NBSO to file an application for approval of this major capital expenditure. The Board will establish an appropriate process to deal with the MMS matter.

Minimum Filing Requirements

Kurt Strunk proposed a modification to the minimum filing requirements to add a series of quantitative metrics. He also proposed using customer satisfaction indicators.

The Board agrees that the type of indicators and metrics that were recommended would be helpful to the NBSO and all other parties.

A comment period will be established to permit parties and other interested persons to submit their views on the appropriateness of the proposed changes. Following the comment period the Board will issue directions regarding changes to the minimum filing requirements.

Dated at the City of Saint John, New Brunswick this 6th day of May, 2011.

Raymond Gorman, Q.C., Chairman

Cyril Johnston, Vice-Chairman

Pat Darrah, Member

Constance Morrison, Member