

1 New Brunswick Board of Commissioners of Public Utilities

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3 In the Matter of an application by the NBP Distribution &

4 Customer Service Corporation (DISCO) for changes to its

5 Charges, Rates and Tolls

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7 Delta Hotel, Saint John, N.B.

8 October 6th 2005

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10 9:30 a.m. - Rogers Communications Inc. Issue

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13 11:10 a.m. - Continuation of CARD hearing

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Henneberry Reporting Service

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17 CHAIRMAN: David C. Nicholson, Q.C.

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19 VICE-CHAIRMAN: David S. Nelson

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21 COMMISSIONERS: Ken F. Sollows
22 Randy Bell
23 Jacques A. Dumont
24 Patricia LeBlanc-Bird
25 Diana Ferguson Sonier
26 H. Brian Tingley

27
28 BOARD COUNSEL: Peter MacNutt, Q.C.

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30 BOARD STAFF: Doug Goss
31 John Lawton
32 John Murphy
33 Arthur Adelberg
34 Steve Garwood

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36 BOARD SECRETARY: Lorraine Légère

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39 CHAIRMAN: Good morning, ladies and gentlemen. I'm glad
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41 to see that the fog did not deter arrivals so we can proceed.
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43 I will take appearances this morning please for the
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45 Applicant.

46 MR. HASHEY: Thank you, Mr. Chairman and members of the Board.

47 David Hashey, Terry Morrison and Lori Clarke

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2 appearing together with our panel of course which will be returning
3 following the argument on the Rogers issue.

4 CHAIRMAN: Good. Thanks, Mr. Hashey. Canadian Manufacturers &
5 Exporters? Mr. Plante is not here. Eastern Wind isn't here.
6 Enbridge Gas New Brunswick?

7 MR. MACDOUGALL: David MacDougall, Mr. Chair. And later on today
8 I will probably be joined again by Ms. Ruth York.

9 CHAIRMAN: Great. Thanks, Mr. MacDougall. The Irving Group of
10 companies are not here this morning. The Jolly Farmer isn't
11 here. And here today for Rogers?

12 MS. MILTON: Leslie Milton, John Armstrong and Christiane
13 Vaillancourt.

14 CHAIRMAN: Thank you, Ms. Milton. No self-represented
15 individuals. The Municipal Utilities?

16 MR. GORMAN: Good morning, Mr. Chairman and members of the Board.
17 Raymond Gorman appearing as counsel for the Municipal
18 Utilities. This morning I'm joined by Eric Marr, Dana Young
19 and Jeff Garrett.

20 CHAIRMAN: Thanks, Mr. Gorman. And Vibrant Communities? No.
21 Mr. Hyslop?

22 MR. HYSLOP: Peter Hyslop. I don't know what it means. But I'm
23 by myself this morning, Mr. Chair.

24 CHAIRMAN: I won't go there. Okay. Mr. MacNutt, who is with you
25 today, sir?

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2 MR. MACNUTT: Mr. Chairman, I have with me Doug Goss, Senior
3 Adviser, John Lawton, Adviser, John Murphy, Consultant. And
4 joining us at the conclusion of the hearing on Rogers matter we
5 will have Steve Garwood, Consultant and Arthur Adelberg,
6 Consultant.

7 CHAIRMAN: Thanks, Mr. MacNutt. I'm just thinking. I have seen
8 different Boards handle it in a different fashion. Mr. MacNutt
9 as Board Counsel has simply -- earlier on before we came in
10 here was focusing us on the legislation and what he was aware
11 of both sides might be arguing.

12 I want counsel by all means if they have any reservations about
13 Mr. MacNutt's advice to the Board that they can put a question
14 to Mr. MacNutt if they want to right here. This is a new one,
15 isn't it, Mr. MacNutt? However --

16 MR. MACNUTT: Yes. You never fail to surprise.

17 CHAIRMAN: In other words, he has not given any conclusions nor
18 will I let him. But he certainly does a fine job of lining up
19 the various possibilities.

20 So I just want all the parties to know that if they do -- are
21 curious as to Mr. MacNutt's position, if he has one, they can
22 put the question to him.

23 And Mr. Hashey will be arguing for Disco. And

24 Ms. Milton, you will be doing the same for Rogers. How

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about the other Intervenors? Anybody have a desire to say a few words in reference to this particular matter? Mr. Gorman?

MR. GORMAN: Perhaps, Mr. Chairman. I guess I will have to hear what Mr. Hashey has to say first.

CHAIRMAN: Oh, it doesn't matter what Ms. Milton says, eh?

MR. GORMAN: Well, I'm just -- it most certainly does. I just assumed that perhaps the batting order would be such that I might come between the two of them, that is all.

CHAIRMAN: Well, I think in this case, since the two major parties who are arguing this matter are Disco of course and Rogers, that we will go out of order, if that is okay with everybody in the room, so that Mr. Gorman and anybody else can find out where -- how the water lies, as it were.

MR. GORMAN: Thank you, Mr. Chairman.

CHAIRMAN: Okay. Mr. MacDougall, do you have anything you want to say in this question?

MR. MACDOUGALL: Very doubtful, Mr. Chair.

CHAIRMAN: Okay. And Mr. Hyslop?

MR. HYSLOP: I will watch the lay of the land. But it will be very short, if there is anything, Mr. Chair.

CHAIRMAN: Thank you. Okay. Unless there is any preliminary matters other than --

MR. MORRISON: There will be some preliminary matters

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2 relating to the panel. I thought it would be best when all the
3 intervenors are here later.

4 CHAIRMAN: Fine. Go ahead, Mr. Hashey.

5 MR. HASHEY: Thank you, Mr. Chairman. The issue we are
6 addressing here this morning is jurisdiction alone in relation
7 to Rogers and their ability to use poles and what they should
8 be charged for the use of stringing their cables for their
9 cable television, et cetera on the poles.

10 My argument I expect to be fairly brief. I will be reviewing
11 the sections of the Act which Mr. MacNutt probably has already
12 brought to the attention of the Board. I would start with a
13 bit of a brief history.

14 But I would first say that we believe that this Board of course
15 is a creature of statute. And what the statute permits it to
16 do it does. But it is not able to go beyond what is provided
17 in the Act. And that is really the summary of what we are
18 really going to be saying.

19 But let me give you a little background. Factually, in 1996 NB
20 Power entered into a joint use agreement with Aliant governing
21 matters related to split ownership of poles in New Brunswick.
22 The fact is that Aliant and NB Power both own poles in New
23 Brunswick. And they have a joint use agreement. All the poles
24 you see are not NB Power's poles. Some are

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2 Aliant. Some are NB Power poles. The majority are NB Power. But
3 there is a lot -- there is a major percentage that are Aliant
4 as well.

5 Also in late 1998 a sub-agreement was entered into regarding
6 third party usage. The parties agreed that where a proposed
7 third party agreement was for communication purposes, the third
8 party must apply to Aliant, and that except as otherwise
9 expressly agreed by the parties or provided in for the
10 administrative practices, the attachments to or use of poles or
11 conduits by a third party as provided for under this article
12 shall be treated as the attachments of or use by the party to
13 whom the requested -- or sorry, the request therefore was
14 directed, and the rights, obligations and liabilities in
15 respect thereof as between the parties shall be the same as if
16 each party were the actual owner thereof. And that is a quote
17 from --

18 CHAIRMAN: Mr. Hashey, that agreement goes back to when I was
19 Chair of this Board and we regulated NB Tel.

20 MR. HASHEY: Right.

21 CHAIRMAN: And it went back then at that time it would have been
22 Fundy and some other smaller operators around the province.
23 But that certainly has been in force, to the best of my
24 knowledge at least, from the early '80s or

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perhaps back into the '70s.

MR. HASHEY: That is correct. And that joint use agreement does continue. You will find out that there is sub-agreements, et cetera, that didn't. In fact the proposed -- the sub-agreement that was entered into, as I will indicate, was terminated. And that is -- in May -- that should give a little bit of further background. In May 2002 Rogers entered into a five-year contract with Aliant concerning pole usage. NB Power was not aware of that contract until 2004 and denies that that contract binds them.

A sub-agreement between Aliant and NB Power concerning third party use allowed for either party to terminate upon one month's notice. That is the agreement, the sub-agreement I referred to above.

In fact, in March 2004 this sub-agreement was terminated.

Disco was then arguing that Aliant went outside their scope of authority when purporting to act as agent for Disco in this matter. They had no power to bind Disco.

CHAIRMAN: And that, Mr. Hashey and Ms. Milton, will be the subject of either negotiation or litigation outside of these rooms, right?

MR. HASHEY: That is correct.

2 CHAIRMAN: Okay. Thank you.

3 MR. HASHEY: Disco then entered into negotiations with Rogers
4 concerning pole attachment fees. The parties have been unable
5 to reach an agreement. And they remain far apart on what the
6 compensation should be for pole usage.

7 As you will remember when Ms. Walsworth argued, there were
8 still negotiations going on. Those negotiations have been
9 continuing but have been unsuccessful. So that is where the
10 matter stands now.

11 Rogers, as you know, requested and was granted Formal
12 Intervenor status in the current rate hearings. And Rogers has
13 requested that as part of the hearing, the Board review the
14 relevant evidence and establish a rate for cable attachments to
15 the hydro poles belonging to Disco. And Disco of course
16 disputes that the Board has jurisdiction over the matter. And
17 that is the issue here.

18 Now there were preliminary arguments. They were made. And
19 certainly I don't need to go into those. What I intend to do
20 is to deliver to you a copy of my speaking notes which would
21 have as an appendix the summary of the argument previously
22 advanced by Ms. Walsworth, which you will remember went into
23 considerable detail concerning what exists in other provinces.

24 I have also delivered to the Board and Board's counsel.
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2 And certainly I have no objection obviously to the Board to
3 receive legal advice from Mr. MacNutt on this matter. You
4 know, that is -- I respect that he is the lawyer to the Board.

5 And he would be able to assist you in legal positions. And I
6 very much respect that.

7 So Disco's position, I will get right into it. It won't really
8 take that long. I'm dealing with the Electricity Act and how
9 we say it should be interpreted from Disco's standpoint.

10 Firstly, as the Board is well aware, its authority over matters
11 is located in its enabling statute. In this matter it is the
12 Electricity Act. Therefore to properly analyze whether the
13 Board has jurisdiction in this matter, it is necessary to
14 review and interpret the relevant sections of the Electricity
15 Act which we submit do not grant jurisdiction to the Board.

16 The preferred approach to statutory interpretation as stated by
17 E.A. Driedger, in his work on construction of statutes -- and I
18 would give one short quote -- "Today there is only one
19 principle or approach, namely the words of the Act are to be
20 read in their entire context and their grammatical and ordinary
21 sense harmoniously with the scheme of the Act, the object of
22 the Act and the intention of Parliament." A pretty basic
23 statement. I'm sure the

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Board is aware of that.

We will list -- and Mr. MacNutt has probably brought forward copies of sections of the Electricity Act. That is an appendix to my note. I have listed the sections that I think might be of some assistance to the Board that might relate to this matter. And I will principally go to obviously section 97 which establishes the rights over the Distribution Corporation.

Then our position is according to the rules of statutory interpretation, we must read the words of the Act in their entire context and in their grammatical and ordinary sense.

The Board's authority regarding the current hearing is stated in section 97 of the Electricity Act which states, and I quote, "This division applies to the Distribution Corporation in respect of the services provided by it to customers through its distribution system and in respect of electricity provided to distribution electric utilities and industrial customers in its capacity as standard service supplier, but does not apply in respect to electricity supplied under paragraph 33 (3) (b)."

Now Rogers wants the Board to accept that this section grants the Board authority over fees charged for access to poles owned by Disco. Their argument when stripped away

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2 is fairly simple. Poles are a structure used and owned by Disco
3 for the purpose of distributing electricity and when Rogers
4 uses these poles to deliver cable, they become a customer of
5 Disco.

6 Now what we are submitting is that this argument is flawed. It
7 is our submission that a more detailed analysis of the section
8 limits the Board's jurisdiction to matters relating to the
9 distribution of electricity. I think it is just that simple is
10 our argument.

11 In support of that we would relate to some other sections.

12 Section 97 is limited in application by the phrase "Services
13 provided by it to customers through its distribution system."

14 It seems that that is where Rogers were arguing from the same
15 section and giving a different interpretation.

16 Distribution system is defined -- and I think this is important
17 -- it's section 1 of the Act. And it states "Distribution
18 system means a system for distributing electricity to consumers
19 at voltages of less than 69 kilovolts and includes any
20 structures, equipment or other things used for that purpose."

21 The definition clearly limits the distribution system to the
22 parts of the system used for the purpose of distributing
23 electricity.

2 And further, evidence of this can be seen in a definition of
3 consumer in section 1 which states, "Consumer means a person
4 who uses or for the person's own consumption, electricity that
5 the person did not generate."

6 If we add these definitions to section 97, the relevant portion
7 of 97 would then read as follows and I am using and inserting,
8 would say: "This division applies to the distribution
9 corporation in respect of the services provided by it to
10 customers through its system for distributing electricity to a
11 person who uses for the person's own consumption, electricity
12 that the person did not generate, of voltages of less than 69
13 kilovolts and includes any structures, equipment or other
14 things used for the purpose of distributing electricity."

15 It is our submission that when read with the definitions
16 included, section 97 is clearly limited to when the
17 distribution system is used for the purpose of distributing
18 electricity.

19 In the case at bar, the poles are being used by Rogers not for
20 the distribution of electricity, but for the distribution of
21 cable. This is clearly outside the definition of distribution
22 system provided by the Electricity Act.

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2 Now I will then move on to a couple of points that were raised
3 in the last discussion that we had I think with Commissioner
4 Sollows and others. During the preliminary hearing, the Board
5 questioned Ms. Walsworth on the ability of the Board to find
6 jurisdiction through its licensing provisions. The issue of
7 licensing is not before the Board, but we submit that even if
8 it were, the Board could not find jurisdiction based on these
9 provisions.

10 Again, these provisions are limited to electricity, included in
11 section 91, when it states that the Board may specify such
12 other conditions as the Board considers appropriate, having
13 regard to the purpose of the Act.

14 Further we submit there is no abuse of market power. Firstly,
15 the parties are engaged in negotiations and even if market
16 power existed, which we submit it does not, Disco is not
17 abusing it. Disco continues to issue permits and allows Rogers
18 access to the poles. Further, Disco continues in its attempts
19 to negotiate a resolution.

20 Secondly, market should be restricted to electricity market.
21 Unfortunately, the term "market" is not defined, but market
22 participant and market rules are and they refer to providing
23 and conveying electricity.

24 Now in the preliminary hearing on this matter, an
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1 analogy was drawn between water heaters and pole attachments. It

2 seems that Mr. Sollows distinguished between the two based on
3 the notion of monopoly power. He had suggested, I believe,
4 when reading the transcript, that water heaters have various
5 competitors, whereby poles are virtually a monopoly. We don't
6 agree with that.
7

8 There is nothing to suggest that Rogers cannot find alternative
9 means of distributing their cables through rights-of-way to be
10 obtained by them. As an example, Enbridge has been able to
11 find rights-of-way to allow gas distribution through New
12 Brunswick.

13 Section 31 of the Public Utilities Act, in fact, contemplates
14 the placement of poles by others than Disco. Further, what is
15 the public interest Rogers is protecting? The provision of
16 cable television is not an essential service, we suggest.

17 There are alternative ways for customers to receive television
18 services, satellite. And alternative ways to convey cables, as
19 Rogers in fact does in other parts of New Brunswick.

20 This is purely a business decision on the part of Rogers to
21 establish pole attachments on already existing lines or poles,
22 sorry, owned by Disco, rather than running cable by alternative
23 means.

24 My understanding is that in fact Rogers may have its
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2 own poles and systems in parts of New Brunswick. Now I can't
3 confirm that. At the last minute somebody had indicated to me
4 that might be the case. I'm sure my friends can clarify that.
5 We submit that this interpretation also best represents the
6 intention of the legislature when drafting the section.

7 Previously Ms. Walsworth, on behalf of Disco, embarked on a
8 detailed review of the various legislative schemes regarding
9 utility regulation throughout Canada. We are attaching and
10 will supply you with a copy of these provisions, but I'm not
11 going to get into reading them. That's been there.

12 The legislatures in Canadian provinces have taken two basic
13 approaches to the regulation of poles. The first clearly
14 indicates poles under their legislative scheme and usually
15 limits such to situations where it is required for public
16 convenience or necessity. And the second where the statute is
17 silent regarding pole use. In other words, we have indicated
18 Ontario, Nova Scotia, Newfoundland and others have specifically
19 dealt with this. Quebec, Manitoba have not. As examples. And
20 I recognize that it is this Board's duty, it really is, to
21 interpret its own statute. This is merely for the purpose of
22 indicating that it can be done.

2 And if the province, in their wisdom, had wished this to be
3 governed by this Board, they could have been very specific.

4 They could have set it out and could have provided the language
5 to allow it to happen, which they haven't. Which they have in
6 other provinces. That just demonstrates that point.

7 Now on the next point. For the purposes of the Electricity
8 Act, as it pertains to Disco, is to regulate the distribution
9 of electricity. And I should refer again to section 4 of the
10 Electricity Act, which deals with the corporate restructuring
11 and states the purpose of the creation of Disco.

12 And it so states, "The Lieutenant-Governor In Council may cause
13 the corporation to incorporate the following subsidiaries of
14 the corporation under the Business Corporations Act." And d)
15 "a corporation under the name of the New Brunswick Distribution
16 & Customer Service Corporation, whose purposes include in
17 addition to any other purposes, owning and operating
18 distribution systems and providing customer services in
19 relation to the provision of electricity throughout those
20 systems."

21 Again we see that the purpose for which the Act expressly
22 states Disco was created to provide customer service in
23 relation to the provision of electricity

1 through the systems. Although Disco is, under the Business

2 Corporations Act, entitled to engage in other endeavors, the

3 Electricity Act does not concern itself, I would suggest, with

4 regulation of those other services.

5 I think the far-out example was expressed on the sale of t-

6 shirts. Also, I would suggest probably that the issue relating

7 to water heaters and some other issues such as that would also

8 fall outside the specific jurisdiction of this Board.

9 Even the Board's own website, which describes the duties of the

10 Board, it states: "The Board regulates the distribution and

11 transmission of electricity in the province."

12 Further, NB Power and now Disco have been negotiating their own

13 contracts relating to pole usage and fees for years with other

14 companies such as Aliant, and without the Board's oversight.

15 We therefore respectfully submit that the Board in this

16 instance has no jurisdiction to set the fees to be charged by

17 Disco to Rogers for pole connections. That completes my

18 submissions. I would be pleased to answer any questions. I

19 have copies of this that I can distribute to the Board at the

20 conclusion of the argument.

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22 CHAIRMAN: Yes. I think we would like to have those, Mr.

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Hashey.

MR. HASHEY: Thank you.

CHAIRMAN: Ms. Milton?

MS. MILTON: Thank you, Mr. Chairman. Mr. Chairman,

Commissioners, we also have a copy of our oral argument and the documents that I will be referring to. I have given copies to the Secretary. And we will distribute copies after completion of the submission.

It won't surprise you to hear that I will be referring to the same principles of statutory interpretation and the same sections of the Act that Mr. Hashey has just referred you to.

But for my own part also a brief background. Rogers Cable Distribution Systems in the province of New Brunswick is supported in part by Disco poles. These poles are part of Disco's monopoly distribution infrastructure. They are monopoly-controlled essential facilities.

For obvious public policy reasons, governments across Canada including municipal, provincial and federal want telephone, hydro and cable companies to share poles. It is neither possible nor efficient, publicly or for Rogers, to construct a duplicate line of poles.

Up until recently access to all of Disco poles by

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2 Rogers was administered to by Aliant. And Mr. Hashey has described
3 for you that relationship. The rate under that relationship
4 and the support structure licence agreements between Aliant and
5 Rogers is \$9.60 per pole per year.

6 Disco has indicated that it wants to take over the
7 administration of access for its own poles or at least
8 invoicing for those poles. And it wants a very different rate.
9 Notwithstanding the best intentions of both Rogers and Disco,
10 they have not been able to reach agreement on a rate. It is
11 for this reason that Rogers has asked the Board as part of this
12 proceeding and part of its review of Disco's rates to consider
13 the rate for cable use of Disco poles.

14 Disco argues that the Board does not have jurisdiction to deal
15 with this issue. Rogers respectfully disagrees.

16 Rogers' position is based solely on the terms of the New
17 Brunswick Electricity Act and more specifically the provisions
18 of part 5, division B which is the part under which this
19 proceeding is being conducted.

20 We are not interested in the legislation of other provinces.

21 We are not asking you to consider this issue under the
22 licencing provisions, because this is not a licencing
23 proceeding.

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2 So what is the application of part 5, division B of the
3 Electricity Act? The application of this part of the Act is
4 defined by section 97. And on this we agree with Mr. Hashey.
5 And that provision states, and I quote "This division applies
6 to the Distribution Corporation in respect of the services
7 provided by it to customers through its distribution system.
8 And it continues in respect of electricity" et cetera.

9 In respect of "the" services, not the electricity services,
10 "the" services provided by it to customers, not to consumers,
11 to customers, not to electricity customers, just to customers,
12 provided through its distribution system.

13 The term "distribution system" as Mr. Hashey has indicated is
14 defined in section 1 of the Electricity Act. And it is defined
15 to mean a system for distributing electricity to consumers at
16 voltages of less than 69 kilovolts and includes any structures,
17 equipment or other things used for that purpose.

18 Disco's poles are structures that are used for the purpose of
19 distributing electricity to consumers at voltages of less than
20 69 kilovolts. Therefore Disco's poles clearly form part of its
21 distribution system.

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2 The provision of space on its poles by Disco to a cable company
3 is a service provided by Disco to customers through its
4 distribution system.

5 And as Mr. Hashey has indicated -- and we have included some
6 cases on this point in the brief that we will provide to you --
7 the courts in Canada including most notably the Supreme Court
8 of Canada have repeatedly affirmed that the words of a statute
9 are to be given their plain and ordinary meaning.

10 This approach is reinforced by section 17 of the New Brunswick
11 Interpretation Act which provides that "Every Act and every
12 provision thereof shall be deemed remedial and shall receive
13 such fair, large and liberal construction and interpretation as
14 best ensures the attainment of the object of the Act,
15 regulation or provision."

16 There is no express purpose provision in the Electricity Act.
17 However, it is clear that a principal object of regulatory
18 oversight by the Board of Disco's rates is to ensure that Disco
19 is precluded from abusing the market power that results from
20 its position as the sole owner of distribution infrastructure
21 in this province.

22 The application of part 5, division B to services
23

1 provided through its distribution system reflects this concern.

2 And Board jurisdiction over the rates charged for use of its
3 poles is entirely consistent with and necessary to achieve this
4 objective.
5

6 There is nothing in section 97 of the Act, in the provisions of
7 part 5, division B or in any other part of the Act that
8 suggests that the plain and ordinary meaning of section 97
9 should be read down to exclude the provision by Disco of space
10 on its poles to cable companies.

11 Section 97 is clear. To be subject to the sections of this
12 division the services must be provided by Disco. And they must
13 be provided through meaning by means of using its distribution
14 system.

15 This conclusion is corroborated by Disco's own rate schedule
16 which includes a section called Rental Facility Rate Schedule.

17 That section of Disco's rate schedule includes pole rental
18 rates.

19 Disco has requested approval of that portion of its rate
20 schedule, and in its April filing also proposed changes to some
21 of the rates in that portion of its rate schedule.

22 The provision by Disco of access to space on its poles by cable
23 companies is no more or less a service provided through its
24 distribution system than pole rental.

1
2 Now counsel for Disco in previous argument and again today has
3 suggested that if the Board takes jurisdiction with respect to
4 pole access rates then, it would also have jurisdiction over
5 the sale of firewood or T-shirts.

6 T-shirts do not fall within the definition of distribution
7 system. There is a statutory definition. And T-shirts aren't
8 there. T-shirts are not a service provided by Disco through
9 its distribution system. So the issue of poll rates also
10 clearly falls within the jurisdiction of this Board under
11 section 101 in this proceeding. Disco is seeking by the
12 application which is the subject of this proceeding a general
13 rate increase. Disco has put in play all of its rates
14 including the rate in its rental facility category of its rate
15 schedule.

16 I'm not going to read out section 101 in detail, but just
17 quickly, section 101, sub 3, directs the Board to consider all
18 projected revenue requirements for the provision of the
19 services referred to in section 97, the provision of space by
20 Disco on its poles is a service referred to in section 97, the
21 revenues from this service must therefore be considered by this
22 Board and consistent with that the evidence of Lori Clarke of
23 April of this year refers to increased revenues from pole
24 attachment fees.

2 Section 101, sub 4, provides that the Board may take into
3 consideration issues such as rate design matters and proposed
4 allocations of costs among customers. If the Board cannot
5 consider all rates or at a minimum all rates in a rate category
6 put in issue by Disco, its ability to address cost allocation
7 and rate design issues would be severely compromised.

8 Finally section 101, sub 5, directs the Board to fix such other
9 charges, rates or tolls as it finds to be just and reasonable.

10 These provisions establish a broad jurisdiction for the Board
11 to consider the rates for all services provided by Disco to
12 customers through its distribution system, including rates for
13 the use of its poles.

14 In conclusion, it is Rogers' submission that the Board's
15 jurisdiction in this proceeding clearly extends to
16 consideration of the appropriate rate for use of Disco's poles
17 by cable companies.

18 In the circumstances we respectfully request this Board to
19 dismiss Disco's challenge to your jurisdiction and to consider
20 Rogers' evidence on pole access rates.

21 Just one final comment in response to Mr. Hashey's statements
22 on market power and monopoly and public interest.

1
2 Mr. Hashey has proposed a very narrow definition of public
3 interest. If cable services aren't an essential service, there
4 is no public interest. Apparently there is also no monopoly.
5 But there is only one set of poles out there and nobody wants
6 more than one set of poles. Clearly there is a public interest
7 in ensuring efficient use of rights-of-way and of support
8 structures. And we think that the Board's jurisdiction under
9 section 97 is properly defined to cover all services provided
10 by Disco through its distribution system.

11 Subject to any questions you might have, those are our
12 submissions.

13 CHAIRMAN: Thanks, Ms. Milton. I have some but I think we are
14 going to save it to the end. Now, Mr. MacDougall, any --

15 MR. MACDOUGALL: No comments, Mr. Chair.

16 CHAIRMAN: Thank you, sir. And I guess the UM comes next.

17 MR. GORMAN: Thank you, Mr. Chairman. The Utilities Municipal
18 would adopt the position set forth by Mr. Hashey on behalf of
19 NB Disco. We would concur with his arguments concerning the
20 appropriate interpretation of section 97 of the Electricity Act
21 which is where the Board would find its jurisdiction.

22 We would further agree that the term distribution

1
2 system in section 97 does modify the word "services" and when the
3 definition of distribution system in section 1 is considered
4 section 97 does not provide jurisdiction to this Board to deal
5 with the pole rental issue where the purpose is not related to
6 the distribution of electricity. Those would be my comments.

7 CHAIRMAN: Thanks, Mr. Gorman. Interestingly enough, if we ever
8 get the opportunity to regulate the Municipals, why it's under
9 different legislation you may be caught. Anyway, Mr. Public
10 Intervenor?

11 MR. HYSLOP: Thank you, Mr. Chair. I will be brief. I'm not
12 going to propose to add anything to the sound arguments on law
13 given by Mr. Hashey and counsel for Rogers.

14 But I get involved with this. I went back and said, you know,
15 what is Public Utilities law all about. And what I found out
16 was it originated in Britain in the sixteenth and seventeenth
17 century because people used to build bridges over rivers and
18 the only way you could get to the other side was go over the
19 bridge. And they would stand there with their hand out and a
20 fairly large grin on their face because they had the monopoly
21 type position.

22 An awful lot of New Brunswickers use cable. I don't think we
23 want more poles. And just as a practical

2 argument, if this is strictly a contractual matter that this Board
3 has no jurisdiction over, and there is not an agreement between
4 the parties, then theoretically I guess Rogers would be
5 trespassing to NB Powers' poles and I don't know what the
6 ramifications of that would be.

7 You know, NB Power doesn't have to let them use it. My view is
8 it's a situation where they are standing there a little bit
9 with their hand out. And if the reasonable interpretation of
10 the statute, given the fact that this is a Board to regulate
11 Public Utilities, our suggestion would be that the Board should
12 seize jurisdiction and determine what a fair and just rate
13 would be if the parties can't come to that conclusion.

14 That's my comments, Mr. Chair.

15 CHAIRMAN: Thank you, Mr. Hyslop.

16 MR. SOLLOWS: Yes, Ms. Milton, just for clarity, you said that we
17 have jurisdiction because we, under the current proceedings,
18 regulate charges to customers I think. But 101 4 subsection
19 (b) says proposed allocations of cost among customer classes.
20 And so from -- I'm wondering is Rogers a customer class?

21 MS. MILTON: Well I think the class would probably be as
22 determined by Disco's rate scheduling. It seems to me it has
23 got a class of rental facilities, so that might be the
24

1 class, but I may be delving into sort of very detailed costing
2 issues which we don't need to get to.

3 I think our basic point is that you have jurisdiction in this
4 proceeding to consider Disco's rates generally because this is
5 a request for a general rate increase. So that's --

6 MR. SOLLOWS: And I have one further question for you. Mr.
7 Hashey argued that cable was not an essential service and I
8 know you have disputed that. Just as a question of fact,
9 sometimes when I go home in the evening if I want to go to
10 sleep or maybe if I want to be informed of what is going on in
11 parliament or legislature, I do have cable and I will tune to
12 the channel that I can see Question Period or I can see
13 committee proceedings or something like that. I'm one of these
14 people that thinks that's not a bad thing to be able to see
15 what is going on in your legislature or in your parliament.
16 Now I have cable so I don't know the answer to this question.
17 This is just a factual question. Is -- are those channels
18 available on air?

19 MS. MILTON: CPAC is not available over the air. Some channels
20 are. CTV or ATV would be. CBC is certainly available over the
21 air. But the specialty services would not be available over
22 the air.

23

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2 MR. SOLLOWS: And are those services in the basic service package
3 for a cable system?

4 MS. MILTON: I'm not completely familiar with the structure of
5 the packages here in New Brunswick, but I believe it is part of
6 the basic tier.

7 CHAIRMAN: Don't tell me Commissioner Sollows thinks CPAC is an
8 essential service.

9 MR. DUMONT: Mr. Hashey, you mentioned that some of the poles are
10 owned by Aliant and some are owned by Disco.

11 MR. HASHEY: That's correct. That's my information. That's
12 where the joint use agreement comes into play.

13 MR. DUMONT: Okay. So just so that I understand, Rogers has to
14 negotiate with you for the use of your poles and also with
15 Aliant for the use of their poles, is that correct?

16 MS. MILTON: That is the new position that is being taken by
17 Disco. Previously we just dealt with Aliant. But that is
18 changing.

19 MR. DUMONT: Are you telling me now you are dealing only with
20 Disco for the use of the poles that are owned by Aliant and
21 Disco?

22 MS. MILTON: No. Excuse me. We would -- we are dealing or it is
23 being proposed that we deal with Disco for Disco poles and
24 Aliant for Aliant poles. In the past we dealt solely with
25 Aliant for both sets of poles. But it's not

1
2 clear exactly what is being proposed in terms of the complete
3 administration of the package. That's getting into some of the
4 details of the administration. What we do know for sure is
5 that Disco wants to establish its own rate.

6 MR. DUMONT: Okay. I have another question. Does it happen that
7 if one pole is Aliant's, the next pole is Disco's and the next
8 pole is Aliant's, or are there poles that are owned by the two?
9 I'm just trying to determine --

10 MR. HASHEY: My understanding is that in certain areas there
11 would be Aliant poles, in other areas they would be Disco
12 poles. Not alternatively or anything of that nature.

13 MR. DUMONT: Okay. I'm just trying to --

14 MR. HASHEY: There would be sections of poles.

15 MR. DUMONT: I'm just trying to look at market power and, you
16 know --

17 MS. MILTON: And I would confirm that. There is one set of poles
18 in each location. That's the purpose behind the joint use
19 arrangement and consistent with public policy that there only
20 be one set of poles out there.

21 MR. DUMONT: Thank you. To get to the Aliant poles let's say,
22 you would have to go through the Disco poles, would that be a
23 fair assumption?

24 MS. MILTON: Well in certain parts of the province -- it's
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1
2 my understanding that there would be certain parts of the province
3 where Disco would have poles and other parts of the province
4 where there would be Aliant poles. So -- and in fact in Saint
5 John of course it's Saint John Energy poles.

6 So Rogers would use the poles of Disco if it's operating in a
7 Disco area and of Aliant if it's operating in an Aliant area.
8 And because of the joint use agreement between Disco and
9 Aliant, the ownership structure is roughly 57 percent ownership
10 by Disco and 43 percent ownership of the poles by Aliant. But
11 how that shakes out region by region is not totally clear, but
12 that's the basic principle of their joint use arrangement.

13 MR. DUMONT: Okay. Thank you.

14 MR. SOLLOWS: Mr. Hashey, you said in your argument that -- or at
15 least I heard -- I think I heard you say that you had some
16 questions in your mind whether water heater rentals are within
17 the jurisdiction of the Board. They nonetheless are in all of
18 the cost allocation stuff that we are looking at and seem to be
19 on the table in our current proceedings.

20 So are you suggesting that when it comes to argument we
21 shouldn't be looking at that portion of the evidence?

22 MR. HASHEY: No. No, not at all. My understanding is if
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1 you get the pole rentals and all things like that -- you know,
2 there are other pole issues here too, you know. There is a
3 supply of poles, there is a sale of poles to people who may
4 want a light in their yard or something of that nature. That
5 is dealt with. My understanding of the cost allocation it's
6 just spread right across to all classes equally. I think
7 that's the way that's handled in our cost allocation study. We
8 are accounting for obviously all income.

9 MR. SOLLOWS: So if the Board were to decide that we thought the
10 water heater rental rate was too high or too low and order it
11 to be changed, would we have jurisdiction to do that? And if
12 we have that jurisdiction, I'm not sure why we wouldn't have it
13 over here for space on the poles.

14 MR. HASHEY: I really think that probably the Act is deficient in
15 that area as well, to be honest with you.

16 MR. SOLLOWS: So I guess then my question is if it is really --
17 it comes down to in your opinion a deficiency in the Act, it
18 really comes down to what was in the mind of the legislature
19 when they wrote the words.

20 MR. HASHEY: That's correct. That's of course hard to define.
21 You have to look at the Act and you can't look far behind it.
22 I mean, I don't think there is anything in Hansard or anything
23 that anybody has found that deals with

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1 this issue. Did they miss it? Did they intend to? Who knows.

2 MR. SOLLOWS: Yes, I know, and that is a difficulty. Thank you.

3 CHAIRMAN: That discussion ends up having CPAC as an essential
4 service.

5 Just going back on something that you just said,

6 Mr. Hashey, and I believe Ms. Clarke confirmed it to you, the pole
7 rental or attachment to poles, that would only be -- in the
8 cost allocation study, be attributable to the customers who
9 take from those poles though. And so it would not be large
10 industrial or anything over 56 kV customers. Okay.

11 We are going to take a break. And it will be about 20 minutes.

12 And I have two matters that I would like counsel to think
13 about and comment about when they come back in.

14 Again, Mr. Hashey, going back to just what you and Commissioner
15 Sollows were talking about as to what was in the mind of the
16 legislature. But if you look carefully at the Electricity Act,
17 we have jurisdiction over Transco and its tariff whereas we do
18 not have the same legislative authority granted to us over
19 Disco. It is just the rates, charges, et cetera.

20 Now part of it is -- part of it is I think rectified

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24 - 1409 -

25 by what we take into consideration when we are looking at Disco's

1 rates. It brings in customer service, policy issues, et cetera
2 there.

3 But to me, was that an obvious intention of the legislature,
4 that we not be allowed to go to the tariff? And just like to
5 have your comments on that.

6 The second things is, Mr. Hashey, in your presentation to us
7 you talked about the purposes of Disco. But under the previous
8 legislation, as I think most of us in this room are aware, the
9 purpose of NB Power Corp. was set right out in a specific
10 section. And it had to do with delivering electric power at
11 the most economically reasonable rates, et cetera, et cetera,
12 et cetera.

13 This Act is deficient in that. And that was an obvious
14 omission because the Opposition during debate was trying -- and
15 subsequently has been trying to have it come back in.

16 So I would like you to just, if you wouldn't mind just turning
17 your minds to what are the purposes of this legislation.

18 Because again I know both of you have indicated -- that is both
19 Rogers and Disco have said they don't believe it is a licencing
20 issue.

21 But if I'm going to give a large and liberal interpretation to
22 the legislation itself, I have to look

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24 - 1410 -

25 there. And in the licencing provisions it says the Board can

1 decide something in the public interest, having in mind the
2 purposes of the legislation, et cetera. And that is section 91
3 -- 90, 91 and 92 I think cover it.

4 For instance 91, the Board may on the application of any person
5 or on its own initiative amend a licence if it considers the
6 amendment a) to be in the public interest, having regard to the
7 purposes of this Act or b) necessary to address abuse or
8 potential abuse of market power.

9 So when we come back in 20 minutes I will ask all counsel if
10 they would address those two issues. Thank you.

11 (Recess - 10:24 a.m. - 10:45 a.m.)

12 CHAIRMAN: Ms. Milton, I just wonder if you would care to comment
13 on the two matters that I have brought up or anything that
14 occurred as a result of the conversations or the questioning
15 that the panel had prior to the break?

16 MS. MILTON: Yes. Thank you, Mr. Chair. I do have some very
17 brief comments on your question. The first is I think you flag
18 a very important distinction between your jurisdiction with
19 respect to Transco and your jurisdiction with respect to Disco.

20 And the Transco jurisdiction is very focused.

21 The Disco jurisdiction is -- as we have discussed

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24 - 1411 -

25 under section 97, speaks generally to the provision of services

1 through its distribution system. So I think that is important.

2
3 And I think the section 97 focus on through its distribution
4 system is consistent with the purpose of ensuring that Disco
5 can't exercise market power with respect to that monopoly
6 distribution system.

7 Your second question dealt with the licencing provisions. It
8 is certainly our position that you would have jurisdiction
9 under the licencing provisions to address this issue. And very
10 quickly I say that for two reasons. As you have indicated,
11 section 91 is a very important provision. And it says "The
12 Board may on application involve any person or on its own
13 initiative amend a licence if it considers the amendment a) to
14 be in the public interest having regard to the purposes of this
15 Act or b) necessary to address abuse or potential abuse of
16 market power."

17 And it is our submission that the issue of the rate for access
18 to Disco poles is something -- it is in the public interest to
19 address that issue. If Disco were to clip all the wires off
20 its poles, I don't think people in the province would be too
21 pleased. And I certainly don't think it is in the public
22 interest to have a duplicate set

25 of poles down every road and down every street in your cities and

1 along your highways.

2 With respect to part b) it says necessary to address an abuse
3 or potential abuse of market power. And obviously we haven't

4 been able to negotiate a rate. We have tried to negotiate.

5 And as I indicated, I think both parties have tried their very

6 best. But it just hasn't been possible. And because it is a

7 monopoly distribution infrastructure, certainly there is the

8 potential to abuse market power.

9 And just one final comment on that. The Ontario Energy Board,

10 as you know, asserted jurisdiction over pole access charges

11 last year. And it was pursuant to its licencing provisions.

12 And in making that decision it concluded that it was in the

13 public interest for it to regulate those rates.

14 And certainly its jurisdiction and its purpose when it

15 regulates hydro companies in Ontario is similar to your purpose

16 here. But with that being said, obviously you operate under

17 your legislation and they operate under theirs.

18 CHAIRMAN: Thank you, Ms. Milton. You know, we only have the --

19 we are the creatures of the statute, there is no question about

20 that. Mr. Gorman, you any comments

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24 - 1413 -

25 further?

1 MR. GORMAN: No further comments.

2 CHAIRMAN: Okay. And Mr. Hyslop?

3 MR. HYSLOP: No further comment.

4 CHAIRMAN: No further bridges across the river. Okay. Mr.
5 Hashey?

6 MR. HASHEY: Bridge Over The River Kwai. The issues that you
7 have asked us to address, Mr. Chairman. First of all on the
8 issue of the Transco, it may actually support our argument that
9 it was clear that the intention of the legislature was to
10 exercise complete -- or let you have very complete control over
11 Transco, very, very limited control over what you can do in
12 relation to Disco and nothing in relation to Genco.
13 So I think that really reinforces our argument, is that you do
14 have a very specific responsibility in relation to Disco. And
15 I won't repeat our arguments. But we say it falls outside it.
16 The change in the Act issue that you raised, what the Act is
17 attempting to do is to create market forces, and I believe that
18 is behind the legislation, which would then drive rates and
19 then make rates somewhat competitive. That is the ultimate
20 goal. But in the interim this is the way that it is
21 structured.

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25 On the licencing, absolutely in our opinion you will have no

1 authority over licencing Disco. Your role in relation to Disco
2 is rates, fees, whatever.

3 The licencing, if you go to section 86, which is the licencing
4 section, it clearly seems to us that the issue here is
5 licencing in relation to the transmission system and the
6 transmission roles. And that is where I think this licencing
7 falls. There is no licencing power in relation to Disco. In -
8 -

9 CHAIRMAN: Well, Mr. Hashey, you do have a licence. If you don't
10 we are all in trouble. And you -- that is Disco provides or
11 conveys or causes to be provided or conveyed electricity or
12 ancillary services into, through or out of the SO control grid.

13 MR. HASHEY: Right.

14 CHAIRMAN: So you do have a licence.

15 MR. HASHEY: I don't think so. Maybe I'm missing it. I think
16 so. Okay. I will back off. No.

17 CHAIRMAN: It is not so obvious --

18 MR. HASHEY: No.

19 CHAIRMAN: -- when you read that section. But certainly that is
20 Perth-Andover's downfall in that they take from -- well, I
21 won't get into that whole thing. Forget it. Anyway. But no, I
22 believe you do have --

23 - 1415 -

24 MR. HASHEY: Yes. I apologize. But I don't think that your
25 power extends to that licencing. I think that licencing

1 provision really isn't in relation to the transmission system,
2 the intention of that whole section of the Act.

3 CHAIRMAN: Okay. Thank you.

4 MR. HASHEY: It would be our position -- now on a couple of other
5 points, CPAC -- try your computer through Aliant, which I think
6 you can access it. And I believe that some of that is accessed
7 over satellite as well.

8 One thing that concerns me, and coming out of the questions
9 too, is that Rogers in fact has market power. Who is to
10 control what they pay to Aliant, what they pay to Saint John
11 Energy?

12 CHAIRMAN: Well, the CRTC does though, Mr. Hashey.

13 MR. HASHEY: Well --

14 CHAIRMAN: CRTC albeit in my opinion has never really actively
15 regulated --

16 MR. HASHEY: Yes.

17 CHAIRMAN: -- the cable industry. But they do have the
18 authority. And they regulate Aliant. So both sides of that
19 agreement are fully regulated or could be.

20 MR. HASHEY: So what we are saying is that if you set a rate that
21 is too high for Rogers and they say this isn't competitively
22 correct here in New Brunswick, that they

23 - 1416 -

24 can't walk away -- I always thought they could. I may be wrong.

25 But if you do have jurisdiction and you do set a rate, it is

1 too high, it is not competitive, it is not profitable -- let's
2 face it, Rogers is a company for profit. It is a public
3 company that sits very well financially. And I congratulate
4 them for their successes. But if they are forced to pay
5 certain fees, can they walk away or can't they? I don't know
6 the answer to that. But that would concern me.

7 CHAIRMAN: I don't know. Ms. Milton probably knows whether or
8 not the CRTC has authority to require them to provide service
9 or not.

10 MS. MILTON: The CRTC certainly has regulatory authority under
11 the Broadcasting Act over cable systems, and under Aliant under
12 the Telecommunications Act. I don't think though that is the
13 issue. That is not my understanding of market power here.
14 The market power that we are talking about is the power with
15 respect to the poles. In the cable industry it is certainly
16 Rogers' position that they don't have market power in the
17 provision of cable services. But that is a whole other issue.

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19 But we do compete with Aliant. And we compete with

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22 - 1417 -
23 satellite. But that is an issue for the cable industry. It is not
24 the issue that we are putting to the Board today.

25 CHAIRMAN: Anything more, Mr. Hashey?

1 MR. HASHEY: No, Mr. Chairman, other than to say if you rule
2 against us in this matter -- and I respect you may go one way
3 or another. We hope you will support what we are saying. But
4 we should get this in some fashion we would hope for an early
5 ruling, so that if we do have to deal with this that we can
6 file evidence and do it in a way that is ordered by the Board.
7 And we would have to come back to the Board on that.
8 Because in fairness Rogers has filed evidence in this matter.
9 We haven't because the jurisdiction argument was still
10 outstanding.

11 CHAIRMAN: I appreciate that, Mr. Hashey. And we will do it, as
12 is our won't, as quickly as we can. And yet the ruling does
13 not have to be in reference to the CARD end of this hearing.
14 It is strictly in reference to the rates later on.
15 But I appreciate your -- if we were to find in favor of Rogers
16 that you folks have got to put together some evidence on that.
17 So we appreciate that. And we appreciate the arguments this
18 morning. And if you would

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22 - 1418 -

23 file with the Secretary your speaking notes, et cetera, why we
24 would appreciate that as well.
25 What is your desire? Shall we go ahead, take a short break and

1 get the panel in here?

2 MR. MORRISON: If we can have five minutes to get the panel up,
3 Mr. Chairman, that would be fine.

4 CHAIRMAN: Good. Well, we will take 10.

5 (Recess - 11:00 a.m. - 11:10 a.m.)

6 CHAIRMAN: Mr. Morrison, you have got some --

7 MR. SOLLOWS: We are missing the panel.

8 CHAIRMAN: Oh. This was unintentional. Mr. Morrison, you have
9 got some undertakings that you want to --

10 MR. MORRISON: I do, Mr. Chairman. The first one is undertaking
11 4 from September 28th. And that goes to that issue of the
12 StatsCan and the double counting. We do have a response to
13 that. It was an error.

14 CHAIRMAN: Number 4 undertaking from Wednesday, September 28th
15 will be A-39.

16 MR. MORRISON: Mr. Chairman, the second undertaking we are going
17 to respond to today is undertaking number 2 from October 5th.
18 And that deals with the difference in the number of miles of
19 distribution lines between the two annual reports.

20 CHAIRMAN: All right. And that will be A-40.

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22 - 1419 -

23 MR. MORRISON: And I believe there is only one undertaking
24 outstanding, Mr. Chairman. And that deals with -- also deals
25 with the number of miles. The actual undertaking specifically

1 escapes me, but we are working on that and hope to have that
2 answer today.

3 CHAIRMAN: Thanks, Mr. Morrison. Any other preliminary matters?

4 MR. MORRISON: There is one other preliminary matter, Mr.

5 Chairman. And I guess I could deal with it in redirect, but it
6 seems to me that we could clarify it now. It might be a little
7 easier.

8 In questioning from Commissioner Sollows, I believe yesterday,
9 there was a question of the use of the CPI, the New Brunswick
10 CPI. And I believe Mr. Larlee may have misspoke in his
11 response and he can clarify that on the record.

12 CHAIRMAN: Okay.

13 MR. LARLEE: Yes. We were discussing the distribution costs and
14 the analysis to classify distribution costs and adjusting them
15 to 1992 dollars. I said that we used the CPI to do that
16 adjustment and that's not correct. We used the Electric
17 Utility Construction Price Index.

18 MR. SOLLOWS: Thank you.

19 CHAIRMAN: And that's it, Mr. Morrison?

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22 - 1420 - Cross by Mr. MacNutt -

23 MR. MORRISON: That's it, Mr. Chairman.

24 CHAIRMAN: Thank you, sir. Mr. MacNutt?

25 MR. MACNUTT: Thank you, Mr. Chairman.

1 CROSS EXAMINATION BY MR. MACNUTT:

2 MR. MACNUTT: Good morning, Mr. Chairman and Panel.

3 Commissioners and Panel.

4 Q.1450 - I am going to ask a few questions about Disco's use of
5 credits from third party sales of capacity and energy received
6 under the PPAs. And this goes back to the transcript from
7 Monday, September 26th at page 813. And I am going to follow
8 up on your direct testimony concerning Disco's use of credits
9 from third party sales of capacity and energy received under
10 the PPAs.

11 I understand from your testimony, Mr. Ketchum, in response to
12 questioning by Mr. Morrison on the first day of the hearing,
13 September 26th, that Disco decided to classify credits from
14 third party sales in the CCAS on an as-billed basis, is that
15 correct? If you go over to --

16 MR. KETCHUM: Yes. I see that.

17 Q.1451 - Now my question is if the Board determined that Disco
18 should continue to apply the 40/60 demand energy split to fixed
19 production costs, even though they are billed by Genco 100
20 percent to demand, would you still propose to allocate the
21 third party sales' credits as 100 percent

22 - 1421 - Cross by Mr. MacNutt -

23 demand related?

24 MR. KETCHUM: I would say that if the Board should decide to
25 revert to the 40/60 classification scheme for the Genco

1 contract, then it would make sense to do the same thing for the
2 fixed credit as well.

3 Q.1452 - Would it make sense to use the 40/60 split or would it
4 make sense to use the split in the actual sales?

5 MR. KETCHUM: Well, as far as Disco is concerned the -- what
6 Disco sees is a credit to the demand portion of the bill. So I
7 would say it would be to the fixed cost portion. And it
8 wouldn't necessarily follow from some look at what's behind
9 what Disco is billed for. I should have said credited for
10 instead of -- as opposed to billed for.

11 Q.1453 - Thank you. We are now going to pass on to some questions
12 concerning allocations of cost using noncoincident peak, which
13 is sometimes referred to as NCP allocators.

14 Now at page 10 of your evidence, which is in exhibit A-3 -- and
15 this is Mr. Ketchum's evidence, I should clarify.

16 MR. DUMONT: What page?

17 MR. MACNUTT: Page 10, Mr. Ketchum's evidence, exhibit A-3.

18 MR. KETCHUM: I have that, yes.

19 Q.1454 - Thank you. Now at line 10 of your evidence in
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22 - 1422 - Cross by Mr. MacNutt -

23 exhibit A-3, to paraphrase, you state that Disco's allocated
24 transmission costs on the basis of class contribution to the
25 sum of non-coincident peak demands, is that not correct?

1 MR. KETCHUM: Yes.

2 Q.1455 - Now the basis for doing so is that the transmission costs
3 are billed on that basis under the open access transmission
4 tariff, is that correct?

5 MR. KETCHUM: Yes, that's my understanding.

6 Q.1456 - Would you agree that Disco's approach represents a change
7 from the approach approved by the Board in the 1992 CARD
8 decision which supported allocation based on contribution to
9 coincident peak demands?

10 MR. KETCHUM: I would agree with that. And the reason is
11 obviously because the Board has subsequently approved an open
12 access tariff that is billed through on a different basis.

13 Q.1457 - Now would you not also agree that transmission system
14 investment is driven predominantly by system coincident peak
15 demand rather than non-coincident peak demands?

16 MR. KETCHUM: I could accept that as a general proposition. You
17 know, very often we do see that a coincident peak allocator is
18 used for transmission, but again this is a new basis for
19 providing transmission services and a tariff

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22 - 1423 - Cross by Mr. MacNutt -

23 that has been approved by the Board. And obviously Disco is
24 reflecting that tariff in the cost allocation and I think
25 that's not only reasonable but appropriate under the

1 circumstances.

2 Q.1458 - Thank you. Now I'm going to ask you to turn to exhibit A-
3 11, and what we are looking for is the response to CME IR-3. I
4 repeat, exhibit A-11.

5 CHAIRMAN: Exhibit A-11?

6 MR. MACNUTT: Correct. And it's response to CME IR-3.

7 Q.1459 - Now does it appear from that response that Disco has
8 coincident peak demand data that could be used for allocation
9 of costs to customer classes? And I refer you to paragraph (c)
10 in particular.

11 MR. LARLEE: We have sufficient data to do a one CP estimate and
12 indeed we did that in order to allocate -- and used it -- did
13 it and used it in order to allocate the supply costs, supply
14 demand costs. So we do have and had the capability to estimate
15 one coincident peak or the -- the single coincident peak in a
16 year.

17 Q.1460 - Thank you. Now are you aware that NB Power took the
18 position in the 2003 OATT approval proceedings that it lacked
19 the data necessary to allocate transmission costs based on
20 coincident peak demands?

21 MR. LARLEE: No, I'm not aware of that. What I am aware of

22 - 1424 - Cross by Mr. MacNutt -

23 is that there is insufficient data to bill -- to use coincident
24 peak data as the billing determinant to charge Disco for
25 transmission costs, because Disco doesn't -- or Transco rather

1 -- doesn't have sufficient metering at Disco's substations in
2 order to make that practical at this time.

3 Q.1461 - We are now going to deal with several questions on
4 marginal costs. My questions are directed to Mr. Ketchum. On
5 direct examination by Mr. Morrison you stated that you have
6 long recommended looking at marginal cost principles as an aid
7 to rate design, and that you agreed with Mr. Marois' use of
8 marginal cost thinking in his rate design proposals.
9 However, you went on to state that you did not support
10 conducting a marginal cost study in this case because the
11 prices Disco pays for capacity and energy are determined by
12 contracts rather than by resource planning. Now would you
13 agree that the prices paid under the PPAs are very similar to
14 the accounting cost Disco would have incurred in the absence of
15 restructuring?

16 MR. LARLEE: They are close, yes.

17 Q.1462 - Would you also agree that the prices Disco pays for
18 capacity and energy under the Genco PPA are renegotiated each
19 year based on Disco's expected load and Genco's

20

21

22 - 1425 - Cross by Mr. MacNutt -

23 expected costs for the coming year?

24 MR. LARLEE: The PPAs are structured such that Disco pays the
25 fuel costs required to meet its load.

1 Q.1463 - I'm sorry. I didn't quite hear you.

2 MR. LARLEE: The PPAs are structured such that Disco pays the
3 fuel costs required to meet its load as supplied by Genco.

4 It's not my understanding that they are renegotiated.

5 Q.1464 - Those are costs for the next year, the coming year?

6 MR. LARLEE: That's correct.

7 Q.1465 - Thank you. Now do the PPA prices reflect any expected
8 cost beyond the coming year?

9 MR. LARLEE: I am not familiar enough with the PPA structure or
10 the basis of them really to comment on how much future costs
11 are in the pricing.

12 Q.1466 - Do you know whether it is common in marginal cost studies
13 to look at forecasts of costs more than one year in the future?

14 MR. KETCHUM: Yes. I would say certainly there are different
15 ways of going about doing marginal cost analyses and many of
16 them look more than one year into the future. Those are
17 typically categorized as long run incremental cost studies.

18 Q.1467 - Now wouldn't you agree that -- isn't the reason they
19
20

19

20

21 - 1426 - Cross by Mr. MacNutt -

22 look at costs more than a year into the future is so that those
23 future costs trends can be reflected in current rates?

24 MR. KETCHUM: I would say that there is a -- you know, there are
25 projections of costs that are utilized in that type of marginal

1 cost analysis, long run incremental cost analysis. Whether
2 it's an alternative scenario approach or a peaker approach or
3 one of the several other approaches to doing marginal cost
4 analyses, one looks to future capital costs in the impact on
5 future capital costs of deferring or accelerating capital
6 expenditures in the future, as well as looking at projections
7 of operating costs. It usually requires the use of production
8 cost modelling or promod modeller, that sort of thing.

9 Q.1468 - But those projections are used for setting current rates,
10 would you not agree?

11 MR. KETCHUM: They could be an input into the design of current
12 rates if a marginal cost study was done, and if that was deemed
13 to be appropriate. And we are here talking about full-blown
14 marginal cost analysis focusing on the production facilities of
15 an integrated -- fully vertically integrated utility company,
16 which as I said in my testimony earlier is no longer the case
17 for Disco. So I think that that would be something that would
18 be

19
20 - 1427 - Cross by Mr. MacNutt -

21 increasingly difficult for Disco to do.

22 Q.1469 - Thank you. Now would you agree that electric rates affect
23 customer's decisions on whether to invest in energy saving
24 technologies such as high efficiency appliances and machinery?

25 MR. KETCHUM: Yes. We are familiar with the concept of price

1 elasticity.

2 Q.1470 - Now is it the goal of this proceeding to improve price
3 signals sent to customers precisely so that they can make and
4 form decisions about their energy use?

5 MR. KETCHUM: That is in fact one of the goals and Mr. Marois
6 spoke to that at some length and talked about how the rate
7 design proposals of Disco would foster those objectives.

8 Q.1471 - Thank you. Now might a marginal cost study disclose
9 information that would be useful in improving those price
10 signals?

11 MR. KETCHUM: It possibly could be something that would be
12 helpful. Again it would be moreso with respect to an
13 integrated utility. The direction here is to move toward a
14 competitive market. And in competitive markets obviously the
15 cost of energy at the marketplace is a reflection of short run
16 marginal costs. And ultimately I think the goal here, as in
17 many other jurisdictions where

18

19 - 1428 - Cross by Mr. MacNutt -

20 the competitive model is being embraced or is being looked at as a
21 future stake, is to move toward a situation where the market
22 does that determination and a study per se of heritage
23 resources is really not necessary or helpful.

24 Q.1472 - Thank you. But would you agree that at least for now PPA
25 pricing is very little different from the cost NB Power would

1 have faced absent restructuring?

2 MR. KETCHUM: It's -- you are talking pricing and costs. We
3 earlier agreed that the aggregate and cost is pretty similar.
4 The pricing from -- the pricing from a separate entity, Genco
5 entity or Nuclearco entity, is a new feature of the reorganized
6 NB Power.

7 Q.1473 - Thank you. Now I will pass on to another line of
8 questions. And in this we are going to deal with allocation of
9 miscellaneous revenue.

10 CHAIRMAN: Mr. MacNutt, can I just interrupt for a quick second
11 here. In the previous line of questioning, Mr. Larlee, you
12 talked about what I understand to be the interval metering
13 which would be required to give you an accurate measurement of
14 the coincident peak and/or the non-coincident peaks from --
15 that Transmission would have to put in?

16 MR. LARLEE: Yes.

17 CHAIRMAN: And my understanding is that it would be

18

19 - 1429 - Cross by Mr. MacNutt -

20 somewhere between 60 to 80 meters required there by Transmission?

21 MR. LARLEE: I'm not completely familiar with the numbers. We
22 have -- Disco has approximately 230 substations. Some of those
23 substations require multiple metering. So --

24 CHAIRMAN: Do any of them have the appropriate type of metering
25 now?

1 MR. LARLEE: Some of them do, yes. But the latest information I
2 had was that it is going to be quite some time before all of
3 the substations are metered.

4 CHAIRMAN: Okay. My foggy recollection of the Transmission
5 hearing is that Transco indicated that they were going to be
6 putting that metering in. That was two years ago. I guess
7 that's where I'm coming from, as to what progress has been
8 made.

9 MR. LARLEE: I believe they still have that intention but I can't
10 -- I can't give you a schedule because I'm not --

11 CHAIRMAN: Okay. Well we have an NBSO hearing coming up. We
12 will put the question to them. Two years seems like enough
13 time to make a dent in it anyway. So that it would be
14 assisting all of us here in this room if we had the information
15 from those meters. Okay. Thank you. And thank you, Mr.
16 MacNutt.

17 Q.1474 - I believe we were going to deal with allocation of

18

19 - 1430 - Cross by Mr. MacNutt -

20 miscellaneous revenue and I would ask you to turn up exhibit A-3.

21 I repeat, exhibit A-3. And what I'm looking for is the 2005 --

22 CHAIRMAN: Sorry, Mr. MacNutt. A-3 and where in A-3?

23 MR. MACNUTT: Appendix 1, immediately following Mr. Larlee's
24 evidence --

25 CHAIRMAN: Thank you.

1 MR. MACNUTT: -- and what we are going for is the 2005/2006 class
2 cost allocation study, the CCAS. And in appendix 1 I would
3 like you to turn to schedule 6.0 which is at page 22 of the
4 schedule. Are we there?

5 MR. LARLEE: Yes, I have that.

6 Q.1475 - Thank you. In column 2, when combined with line 16, Disco
7 projects miscellaneous revenue of \$15,001,000, is that not
8 correct?

9 MR. LARLEE: Yes, that's correct.

10 Q.1476 - Now I would like you to turn up the response to PI IR-1
11 and that is in exhibit A-19. A-19. The response to PI IR-1,
12 paragraph (b). You will note that paragraph (b) in that IR
13 response deals with pole costs. The question is, does the
14 \$15,001,000 miscellaneous revenue just referred to on schedule
15 6.0 include revenue from services billed to Aliant with respect
16 to maintenance of the Aliant owned poles?

17

18 - 1431 - Cross by Mr. MacNutt -

19 MR. LARLEE: Yes, I see that. Yes.

20 Q.1477 - Thank you. Now would you agree that Disco proposes to
21 allocate miscellaneous revenue to classes in the same
22 proportions as projected general class revenues?

23 MR. LARLEE: Yes. If you look at schedule 6.0 under column 6 you
24 will see how miscellaneous revenue, that \$15,000,000 is
25 allocated to the classes --

1 Q.1478 - And I believe --

2 MR. LARLEE: -- based on column 2.

3 Q.1479 - Yes. And I believe if we look at the response to PI IR-
4 1(b), it also addresses it, does it not?

5 MR. LARLEE: Yes, it does.

6 Q.1480 - Thank you. Now is that allocation figure about 60 percent
7 for residential class? You may wish to refer to the CCAS
8 previously referenced at schedule 6.0 on page 22, column 6.

9 MR. LARLEE: I calculate 59.3.

10 Q.1481 - That's close enough for our purposes. Now I am going to
11 ask you to please turn up exhibit PI-1, which is the direct
12 evidence of Mr Knecht, and that's obviously exhibit PI-1.

13 MR. LARLEE: PI-2?

14 Q.1482 - Sorry. I stand corrected. There was an earlier one put
15 in, yes. And I would like you to go to page 34 at

16

17 - 1432 - Cross by Mr. MacNutt -

18 lines 15 to 18. And is it fair to say that he states that under
19 Disco's cost of service study, about 81 percent of pole costs
20 are allocated to the residential class?

21 MR. LARLEE: Yes. I see where he states that.

22 Q.1483 - Thank you. Now would Disco agree that based on the
23 foregoing review of the evidence that there is a mismatch
24 between the allocation of pole-related costs and pole-related
25 revenues?

1 MR. LARLEE: Could you repeat the question just so I have it
2 clearly? Thank you.

3 Q.1484 - Would Disco agree that based on the foregoing review of
4 the evidence that there is a mismatch between the allocation of
5 pole-related costs and pole-related revenues?

6 MR. LARLEE: No, we wouldn't agree. There is a couple of reasons
7 why. First off is the revenue from Aliant is not solely pole-
8 related. There are other aspects of services we perform for
9 Aliant. And there is revenue associated with them that aren't
10 related to the poles.

11 Secondly, Disco performs a variety of services for third
12 parties. And they are included as miscellaneous revenue. And
13 to try to assign them to directly related to what assets are
14 being used to provide as miscellaneous revenue just really
15 isn't practical.

16

17 - 1433 - Cross by Mr. MacNutt -

18 If we for instance take one of our relay technicians to do some
19 work for one of our large industrial customers, does that mean
20 then that the revenue from that relay technician's work then
21 has to be assigned only to substation-related activities? It
22 simply isn't a practical possibility.

23 MR. MACNUTT: Thank you.

24 MR. DUMONT: Excuse me. Could you mention any other services you
25 supply to Aliant besides the poles?

1 MR. LARLEE: You would like some examples?

2 MR. DUMONT: Yes, please.

3 MR. LARLEE: We have in the past done all of the administration
4 for customer contributions for Aliant. So that is another
5 service where we -- there is an administration fee that we
6 charge Aliant for that type of work. I believe we do do some
7 engineering work as well on the design side of facilities. So
8 these are other services.

9 MR. DUMONT: Thank you.

10 Q.1485 - Now I'm going to pass on to another question. And it will
11 deal with revenue cost ratios. And I'm going to start by
12 asking you to turn up -- well, if you can or not, because I'm
13 going to cite it, Mr. Marois in his evidence at A-3 at page 1.

14

15

16

17 - 1434 - Cross by Mr. MacNutt -

18 Now Mr. Marois in his evidence at page 1 in line 20 states that
19 one of Disco's objectives is to reduce the cross-subsidization
20 of the residential class, is that correct?

21 MR. LARLEE: Yes. That's correct.

22 Q.1486 - Now he states on page 2 at lines 21 to 27 of his evidence
23 that Disco seeks to meet this objective by bringing class
24 revenue to cost ratios within the target range of .95 to 1.05,
25 is that not correct?

1 MR. LARLEE: Yes. That's correct.

2 Q.1487 - Now Mr. Larlee at page 4 of his evidence, which is his
3 evidence in exhibit A-3, presents table 1, the 2005-2006 class
4 cost allocation study results.

5 And you would confirm, Mr. Larlee, that --

6 MR. LARLEE: You are on page 4 of my evidence now?

7 Q.1488 - Yes. I'm sorry. I shifted there and didn't make a clear
8 break. Now in your evidence you present table 1 which is the
9 2005-2006 class cost allocation study results. And you would
10 agree that this shows revenue to cost ratios at the proposed
11 rates, is that correct?

12 MR. LARLEE: The table shows the revenue to cost ratios using an
13 across the board increase and at the proposed rates. There is
14 two sets of revenue to cost ratios there.

15 Q.1489 - Thank you. Now the term "cost" in those discussions

16

17 - 1435 - Cross by Mr. MacNutt -

18 and in table 1 refers to fully allocated embedded cost as measured
19 under Disco's class cost allocation study, is that correct?

20 MR. LARLEE: Yes.

21 Q.1490 - Now Energy Advisers in their direct evidence, which is in
22 exhibit PUB 1 at pages 10 to 11 contend that revenue cost
23 ratios based on full allocations of embedded costs cannot be
24 used to identify interclass cross-subsidies because joint and
25 common costs cannot be fully allocated to classes based on a

1 principle of causation.

2 They argue further that the proper measure of cross-subsidies
3 is whether classes are covering the incremental cost of
4 providing their service.

5 Now have you read those contentions by Energy Advisers? I can
6 give you the reference.

7 MR. MORRISON: Can we have the page reference again,
8 Mr. MacNutt?

9 MR. MACNUTT: Yes. I would like -- if you haven't read them I
10 would like you to read them now. And the reference is PUB 1.

11 MR. KETCHUM: Yes. We have read --

12 MR. MACNUTT: The evidence of Energy Advisers, pages 10 and 11.

13 MR. KETCHUM: Yes. We have read Energy Advisers' evidence.

14

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17 - 1436 - Cross by Mr. MacNutt -

18 Q.1491 - Thank you. Now would you agree with the proposition that
19 if a class of customers is covering its incremental costs, by
20 definition it is paying at least the full amount of the costs
21 that it imposes on the system, and therefore no other class can
22 be said to be paying the cost necessary to serve that class?

23 MR. KETCHUM: Well, I think that what Energy Advisers is trying
24 to get at here is a marginal cost analysis of cross-subsidies.

25

1 While we don't disagree with Energy Advisers that that is one
2 way to look at it, it is very common for utility companies and
3 for regulators to utilize fully-allocated embedded cost studies
4 to calculate the revenue to cost ratios and use those ratios to
5 -- as one measure of how to evaluate cross-subsidies among the
6 various classes.

7 Q.1492 - Just give me a moment, Mr. Chairman. Which measure do you
8 consider to be the more accurate for measuring a cross-subsidy?

9 MR. KETCHUM: Well, again there is judgment involved in doing any
10 kind of study of this sort. And certainly, as we have alluded
11 to several times, some judgment involved in this analysis as
12 presented by Disco.

13 Certainly in all of the marginal analyses that I have seen
14 there is also a significant amount of judgment

15 - 1437 - Cross by Mr. MacNutt -

16 involved.

17 I think that the idea of a marginal cost price signal is a good
18 one and that marginal cost studies have had in the past some
19 value for price-setting. And that is why they were advocated
20 and done in many jurisdictions in the past.

21 But again that is something that I don't feel has as great a
22 value currently when we are looking at moving toward
23 competitive markets. And again it may not be practical from
24 Disco's point of view.

25 However, that sort of marginal cost thinking has been

1 incorporated in the rate design thinking as Mr. Marois has
2 indicated as well. And of course the marginal energy cost is
3 the cost that is used to set the interruptible rate for
4 example.

5 So there are elements of both kinds of ways of looking at cost
6 that are being employed here in certain ways. And each kind of
7 analysis has its value for its intended purposes under the
8 proper circumstances.

9 Q.1493 - Thank you. Now assuming you could eliminate that
10 judgment, which approach would better define a cross-subsidy?

11 MR. KETCHUM: There is obviously an extensive body of theory with
12 respect to economics and economic theory and

13

14

15 - 1438 - Cross by Mr. MacNutt -

16 cross-subsidy and what that means.

17 Obviously in doing a marginal analysis for a utility company
18 for example, you have to deal with issues in economic theory
19 such as the issue of second best, that are all other prices set
20 based on marginal cost? No. So we do the best we can in a
21 regulated environment.

22 All of these necessary and sufficient assumptions for
23 suggesting that we can definitively say that there is no cross-
24 subsidy are simply not met in the situation we find ourselves
25 in. Because obviously there is going to be some averaging. We

1 are not setting a specific price for every single customer
2 individually at a specific point in time. And all other goods
3 and services are not priced in that way.

4 So we have a lot of underlying goo that we just can't resolve,
5 if you will, to say definitively that we have included every
6 cost, every external cost, every, you know, environmental cost
7 and so on that is of consequence of every individual's action.

8

9 So without trying to debate the economic theory, there is value
10 in looking at the marginal cost of providing the extra quantity
11 or extra kilowatt-hour or extra kilowatt of demand. That does
12 have some value and that is recognized.

13 Q.1494 - Thank you. I'm going to draw you back a bit to --

14

15 - 1439 - Cross by Mr. MacNutt -

16 more towards the embedded costs. And do you believe an
17 embedded cost study can determine the share of common or joint
18 costs caused by a class?

19 MR. KETCHUM: Joint cost is also a subsubject of economic
20 analysis that is difficult to say that you have definitively
21 properly assigned. So you can't say with certainty that you
22 can do that properly. But that doesn't negate the value of
23 doing an embedded cost analysis.

24 It assigns costs as best as the analyst can based on accepted
25 and often-used methods and procedures that are utilized widely

1 by regulators everywhere. And it does provide a measure that
2 provides one useful tool in doing rate design.

3 Q.1495 - Do you know of any economists who believe fully allocated
4 costs studies can apportion common costs on the basis of
5 causation?

6 MR. KETCHUM: I haven't done a survey of all the economists in
7 the world so I can't say that. But I would simply say that
8 there is an attempt to do that, obviously there are shared in
9 common costs. There is a lot of averaging here. We can't do
10 that specifically without getting into very sophisticated
11 methods again in looking at getting down to individual
12 customers and figuring out other ways to parse common costs.

13

14

15 - 1440 - Cross by Mr. MacNutt -

16 There is some assumptions, some judgments, some averaging. But
17 again, it's -- but what Disco is doing is commonly used and
18 widely accepted and very reasonable under the circumstances and
19 gives us a tool that we can use.

20 Q.1496 - Thank you.

21 CHAIRMAN: Mr. MacNutt, I am going to recess for lunch now. We
22 will come back at quarter after 1:00.

23 (Recess - 12:00 p.m. - 1:15 p.m.)

24 CHAIRMAN: We can still see you over there, Mr. Hashey. Anything
25 preliminary, Mr. Morrison?

1 MR. MORRISON: I might call up for a wake-up call,
2 Mr. Chairman.

3 CHAIRMAN: Okay. If there are no preliminary matters then go
4 ahead, Mr. MacNutt.

5 Q.1497 - Thank you, Mr. Chairman. Good afternoon, Chairman,
6 Commissioners and panel. Now when you left off we were dealing
7 with matters in revenue cost ratios. And I will just pick up
8 where I left off.

9 If a class is paying any amount at all above the incremental
10 cost of its service, aren't other classes benefiting from the
11 existence of that class?

12 MR. KETCHUM: Only to the extent of that contribution to, you
13 know, total fixed costs or that sort of thing, yes. I

14

15 - 1441 - Cross by Mr. MacNutt -

16 mean, there is some benefit if there is any margin above the
17 variable cost to other classes I suppose. But by the same
18 token is it a fair share? We can't tell from that.

19 Q.1498 - Thank you. Now would you agree that fully embedded cost
20 studies are not designed to measure incremental costs?

21 MR. KETCHUM: I would agree with that. They measure average
22 costs.

23 Q.1499 - Now assume for the moment that a class has a revenue to
24 cost ratio based on an embedded cost study of 1.10 but that its
25 revenue to incremental cost ratio is only 0.90.

1 Would you conclude that in that case that other classes would be
2 better off or worse off if that class were to disappear?

3 MR. KETCHUM: I don't know that we have enough information there
4 to make -- I wouldn't want to speculate on that one way or
5 another. I mean, the fact is that an embedded cost analysis is
6 the tool that the board used and has used in '92. It is the
7 reference point that Disco used based on the Board decision
8 back then. And it is the reference point for revenue to cost
9 ratios. It has been accepted here in the province.

10 And Disco was following not only Board direction but precedent
11 in applying its judgments around revenue to cost

12

13

14

15 - 1442 - Cross by Mr. MacNutt -

16 ratios on the basis of embedded cost analysis.

17 I don't -- you know, I think we could talk about marginal cost
18 studies ad nauseam. But I don't think it is appropriate,
19 necessary or necessarily terribly productive in the future when
20 really the marginal cost from a generation point of view is
21 going to be -- from Disco's point of view with respect to
22 generation it is going to be the price that Disco pays for
23 generation, so --

24 MR. SOLLOWS: May I?

25 MR. MACNUTT: Yes. Oh, by all means.

1 MR. SOLLOWS: Since we are back at marginal cost, something you
2 mentioned before lunch, my recollection is that to some extent
3 the prices, at least for generation, are really derived from
4 PROMOD which is I think I understood you this morning, is a
5 marginal cost production modelling software.

6 MR. KETCHUM: What I said I hope is that PROMOD is a model that
7 can be used to develop long-run incremental costs, yes.
8 Now as far as how the energy prices have been set, that may
9 have been a tool. I guess I could ask Mr. Larlee to comment on
10 that.

11 MR. LARLEE: The energy price paid by Disco is based on
12 production modelling run on PROMOD. But it is the

13

14

15 - 1443 - Cross by Mr. MacNutt -

16 total -- it would be the total energy price, not just the
17 incremental price with the exception of interruptible surplus
18 product which is charged to Disco from Genco based on
19 incremental cost of serving that product. And in turn Disco
20 charges its customers.

21 MR. SOLLOWS: So if I'm understanding this correctly, the total
22 energy price, not just the variable price, is determined on a
23 marginal cost basis through PROMOD?

24 MR. LARLEE: No. I think I was trying to say the opposite. The
25 total energy price is based on the total cost to supply Disco

1 for the year.

2 MR. SOLLOWS: The embedded cost?

3 MR. LARLEE: Well the total cost to supply the fuel to run the
4 unit.

5 MR. SOLLOWS: Okay. So the PROMOD I used solely to establish the
6 variable cost for the test year for fuels and such, is that
7 right?

8 MR. LARLEE: Yes. I think that is right.

9 MR. SOLLOWS: Okay. Thank you.

10 Q.1500 - Now you would agree with me didn't the Board ask -- I
11 guess it would be at that time NB Power -- to examine long-run
12 incremental cost analysis in the 1992 CARD decision?

13 MR. KETCHUM: I think that was in the CARD decision, yes.

14

15 - 1444 - Cross by Mr. MacNutt -

16 would have to refresh my memory. But that sounds correct.

17 Q.1501 - Thank you. Now I'm going to turn to this article, excerpt
18 from an article entitled "Subsidy free pricing of interruptible
19 service contracts" by Randolph Beard, George Sweeney and Daniel
20 Gropper. And this document was handed out a week ago Monday.
21 I just ask the witnesses if they have the extract in front of
22 them?

23 MR. KETCHUM: Yes. We have that.

24 MR. MACNUTT: Thank you. I move to introduce the document which
25 I have just identified as an exhibit, Mr. Chairman, that I have

1 one or two questions of the witness panel for it.

2 CHAIRMAN: Okay. That will be PUB-5. Did the Secretary take
3 your copy, Mr. MacNutt?

4 MR. MACNUTT: Yes. I gave it to her. That is the one that is
5 going to be marked as an exhibit. I have a copy here that I
6 can --

7 CHAIRMAN: Exhibit PUB 5 is an article from the Energy Economics
8 1995 Volume 17, number 1 headed "Subsidy free pricing of
9 interruptible service contracts by Messrs. Beard, Sweeney and
10 Gropper.

11 Q.1502 - Now you can look this next item up or you accept my
12 summary of it. In response to PUB IR 124, paragraphs (f) and
13 (g), which is in exhibit A-17, that response seems to

14

15 - 1445 - Cross by Mr. MacNutt -

16 make it clear that customers eligible to purchase surplus or
17 interruptible energy are required to pay only the variable cost
18 associated with its provision.

19 Are you able to agree with that? Or perhaps you would like to
20 look that up? It is PUB IR 124, paragraphs (f) and (g) in
21 exhibit A-17.

22 MR. LARLEE: Can we have that for a moment please?

23 Q.1503 - Yes.

24 MR. LARLEE: Just by way of clarification, the interruptible rate
25 covers the fuel cost, Genco's other variable costs and the

1 transmission tariff.

2 Q.1504 - Now I'm going to ask you to turn to the bottom of page 57

3 of what is now exhibit PUB 5. And at that portion of the

4 article the authors conclude that firm customers, and I quote

5 "enjoy a subsidy whenever low priority users pay an amount (in

6 excess of variable costs) that exceeds a fraction of the

7 integrated system's capacity costs determined by the relative

8 size of low priority demand, and by the difference in actual

9 service reliabilities between customers."

10 And said differently, would you accept that the article

11 concludes that nonfirm customers can pay a share of capacity

12 cost equal to their proportion of demand on the system adjusted

13 for the relative reliability they

14

15 - 1446 - Cross by Mr. MacNutt -

16 receive versus firm customers and not be considered as subsidizing

17 firm customers?

18 MR. KETCHUM: I think that conclusion was based on an analysis

19 that the authors have done here that looks at prioritizing low

20 priority loads. Certainly interruptible is a very low priority

21 load.

22 I think that the way disco treats it may be differently than

23 what the authors had in mind by -- you know, with respect to

24 setting priorities.

25 But I think as long as that is a very low priority,

1 interruptible and it is truly interruptible and the other
2 conditions are met in the tariff and so on, that the general
3 conclusions here would apply.

4 It could be shown I think that there is no subsidy to that
5 group of customers by the other groups of customers, if they
6 are making any kind of contribution to fixed costs, and
7 certainly if they are covering their incremental costs. Is
8 that responsive?

9 Q.1505 - Do you agree with the conclusion in the article?

10 MR. KETCHUM: I guess as a general proposition, yes.

11 Q.1506 - Would you consider this article to use a fully allocated
12 cost or incremental cost analysis?

13 MR. KETCHUM: Generally uses an incremental cost analysis.

14 Q.1507 - Now I will pass on to another matter. There

15 - 1447 - Cross by Mr. MacNutt -

16 shouldn't be anything to look up in this line of questions. Now is
17 there a commonly accepted definition of high load factor and
18 low load factor?

19 MR. LARLEE: So we would consider industry to operate at a high
20 load factor and they would tend -- large industries tends to
21 operate at 85 percent or higher. I would consider electric
22 heat load to be a low load factor and it would be in the order
23 of 25 to 35 percent on an annual basis. Those are sort of the
24 definitions I would put around it, and I think are commonly
25 accepted within Disco.

1 Q.1508 - Now do you agree that there is a difference in the cost
2 per kilowatt hour associated with serving a customer with a
3 high annual load factor as compared to a customer with a low
4 load annual factor?

5 MR. LARLEE: Yes, I would agree with that. Yes, I would agree
6 with that. And I think it's demonstrated in the cost
7 allocation study.

8 Q.1509 - Thank you. Would there also be a difference in the
9 average cost of serving customers within different monthly load
10 factors?

11 MR. KETCHUM: Could you try that one again, please?

12 Q.1510 - Would there be a difference in the average cost of serving
13 customers with different monthly load factors?

14 MR. KETCHUM: In other words, looking at costs on a

15 - 1448 - Cross by Mr. MacNutt -

16 month-to-month basis if the load factor for one class in that month
17 is higher or lower than another class within that month --

18 Q.1511 - Yes.

19 MR. KETCHUM: -- would there be cost differences within the
20 month?

21 Q.1512 - Yes.

22 MR. KETCHUM: On an average basis, yes.

23 Q.1513 - Thank you. Now would you accept that customers in the
24 large industrial class have a wide range of annual and monthly
25 load factors?

1 MR. LARLEE: Yes, there is a wide range. But at the same time
2 most industrial customers have a higher -- what would be
3 considered a higher load factor.

4 Q.1514 - Now does the existence of a demand charge tend to assign
5 higher average costs per kilowatt hour to low load factor
6 customers than high load factor customers?

7 MR. LARLEE: If you mean by the existence of a demand charge a
8 two part rate where the customer is charged for the maximum
9 demand in a month plus a consumption charge on a per energy
10 basis --

11 Q.1515 - Yes.

12 MR. LARLEE: -- yes. Low load factor customers under that rate
13 structure end up with a higher cents per kilowatt

14 - 1449 - Cross by Mr. MacNutt -

15 hour average cost than a high load factor customer. That's
16 correct.

17 Q.1516 - Does the demand ratchet tend to magnify this effect for
18 low load factor customers whose annual peak demand falls within
19 the winter months?

20 MR. LARLEE: Yes, it does.

21 Q.1517 - Within the large industrial class do you think that intra-
22 class equity would be improved by a rate design that reflects
23 the monthly load factor of each customer?

24 MR. KETCHUM: Would you repeat the hypothetical again, please?

25 Q.1518 - Within the large industrial class do you think that intra-

1 class equity would be improved by a rate design that reflects
2 the monthly load factor of each customer? And we are looking
3 here at intra-class equity.

4 MR. LARLEE: The way -- just by way of explanation, the way the
5 demand ratchet works is that the customer is charged 90 percent
6 of their maximum winter demand. If they fall below it -- and I
7 take it by your question is would it reduce interclass or the
8 possibility of interclass inequity if we remove the ratchet.
9 Is that a fair re-statement?

10 Q.1519 - No. I believe you are referring to interclass. We are
11 talking intra-class equity.

12

13

14 - 1450 - Cross by Mr. MacNutt -

15 MR. LARLEE: Well I tried to say intra-class, but perhaps I
16 misspoke.

17 Q.1520 - Okay. Sorry. Is it fair to say that the ratchet only
18 applies to customers who peak in the winter?

19 MR. LARLEE: Subject to check, yes, I believe that's correct.

20 Q.1521 - Now what types of analysis would you propose in order to
21 test the fairness of rates between customers at various load
22 factors?

23 MR. LARLEE: Well the type of analysis would be customer by
24 customer load profile analysis, and if you look at what each
25 customer is contributing to the peak, basically you are doing a

1 cost allocation exercise down at a finer level for each
2 customer using that data.

3 Q.1522 - Now has Disco done any such analysis?

4 MR. LARLEE: No. The cost allocation study and work that we have
5 done is all at the class level.

6 Q.1523 - Are you planning to do the detailed analysis you have just
7 described?

8 MR. LARLEE: No, we have no plans to do that analysis. I guess
9 the reason why we haven't done in the past would be because the
10 rate class is relatively homogenous when compared to other rate
11 classes. There always are outliers but it's still quite a
12 relatively homogenous rate class.

13

14 - 1451 - Cross by Mr. MacNutt -

15 Q.1524 - Thank you. Now I am going to pass on to another matter
16 and I'm going to ask you to turn up table 1 in response to PUB
17 IR-130. That's exhibit A-17.

18 CHAIRMAN: A-17.

19 Q.1525 - A-17 and the response to PIB IR-130 and table 1. It is
20 entitled "Actual Net Hydro Generation". Now table 1 appears to
21 indicate three or four characteristics of the Genco hydro
22 generation system. I would like to clarify some of these
23 characteristics.

24 Now with respect to the five years of data provided in table 1,
25 a) table 1 appears to show that the energy production is high

1 during the spring freshet which would happen -- could happen
2 during the months of March, April, May and June.

3 Is that correct?

4 MR. LARLEE: Yes.

5 Q.1526 - b), table 1 appears to show that the energy production is
6 lower during the months of January and February. Is that
7 correct?

8 MR. LARLEE: It is lower but there are several September months
9 that are quite low as well.

10 Q.1527 - Thank you. c), am I correct in assuming that the lower
11 production of energy generally in January and February, is due
12 to the majority of precipitation being in

13

14 - 1452 - Cross by Mr. MacNutt -

15 the form of snow rather than rain?

16 MR. LARLEE: I tend to agree with you, in the winter time the
17 precipitation is snow, doesn't flow terribly well through the
18 turbines. We have to wait for it to melt. And when it melts,
19 flows through the turbines, we have more energy. I think the
20 important thing here to remember is that our hydro system
21 doesn't have storage capacity capable of storing the spring
22 freshet to any other time of the year. Other hydro systems can
23 actually, what they call pond, pond the water through the
24 freshet period and save it until their next peak period.
25 Our system is essentially with a little bit of storage, run of

1 the river. So hence we are basically subject to the seasons.

2 Q.1528 - Thank you.

3 CHAIRMAN: Mr. Larlee, you don't live within 10 kilometers of the
4 Bay of Fundy or you wouldn't be so sure about the form of
5 precip in February and January.

6 Q.1529 - Question d) if you like. Table 1 shows that production
7 was at the lowest levels in September 2000, August 2001 and
8 September 2002. Is that correct? I will just repeat those.
9 Lowest in September 2000, August 2001 and September 2002?

10 MR. LARLEE: Yes, that looks correct.

11

12

13

14 - 1453 - Cross by Mr. MacNutt -

15 Q.1530 - Yes. Now question e), if you like. Using only the data
16 from the graph in table 1, one can calculate the maximum
17 demonstrated capacity by selecting April 2000, which is the
18 month with the highest energy production. And by taking the
19 550,000 megawatts of energy shown for April 2000 and dividing
20 it by the 720 hours in the month of April, it would produce a
21 maximum demonstrated capacity of 764 megawatts. Would you not
22 agree?

23 MR. LARLEE: Subject to check that sounds about right.

24 Q.1531 - Thank you. Now it is understood for this question f), if
25 you like, that the exact number of 764 megawatts will vary from

1 spring to spring depending on both winter snowfall and spring
2 rainfall. Would that not be correct?

3 MR. LARLEE: I think you would have to add to that unit
4 availability as well. If a particular unit in any one of the
5 dams isn't available for whatever reason, maintenance or so
6 forth, refurbishment, then that will affect the capacity to
7 flow through the dam and would literally increase the spillage
8 that results.

9 Q.1532 - We will take that into account. Now question g) is it
10 fair to assume that for portions of March to June each year,
11 the Genco hydro system runs full-out?

12 MR. LARLEE: Again it is my understanding, because I am not with
13 Genco, but I believe they make every effort to have

14 - 1454 - Cross by Mr. MacNutt -

15 all the units available so that they can do just that through the
16 spring freshet.

17 Q.1533 - Now based on your understanding of Genco's operation, is
18 it fair to say therefore that during that time of the year, the
19 system could be considered to be a base load plant?

20 MR. LARLEE: Well I think it is certainly fair to say that this
21 would be the lowest cost unit in their so they -- in their
22 economic dispatch so that would mean they would go first which
23 would put them in the base. No question.

24 Q.1534 - Now is it fair to say that during the part of the year we
25 have been referring to, March and June of each year, Genco

1 usually takes various base load facilities offline for annual
2 maintenance?

3 MR. LARLEE: Yes, I believe so.

4 Q.1535 - Now looking at the remainder of the year, July to
5 February, the graph in table 1 indicates that the capacity
6 factor appears to be less than 20 percent.

7 MR. LARLEE: Yes, I can accept that. That looks about right.

8 Q.1536 - Thank you. Now during the month outside the period of the
9 spring freshet and ignoring for the moment any days of
10 unusually high rainfall, do you know if there is any time of
11 day pattern to the dispatch of hydro?

12

13

14 - 1455 - Cross by Mr. MacNutt -

15 MR. LARLEE: My understanding is that in the winter time months
16 or in months -- in other months too perhaps, is that the hydro
17 system is used to shave off the peak so that other units, other
18 more expensive units aren't brought on to limit the peak so
19 that the water is basically controlled to do what is called
20 peak shaving.

21 Q.1537 - No would you agree with me that the hydro system
22 effectively acts as a spinning reserve for all hours in the day
23 to the extent that its capacity is not being utilized to say
24 serve load?

25 MR. MORRISON: Mr. Chairman, I don't know whether this panel is

1 qualified to answer a lot of these questions. I mean, it
2 really goes into the Genco operational side.

3 MR. MACNUTT: I appreciate that, Mr. --

4 MR. DUMONT: I realized that when he talked about the snow to the
5 turbines.

6 CHAIRMAN: Commissioner Sollows could answer the questions but we
7 won't ask him to do that. I think that the witness can go
8 ahead and if he wants to put a caveat on it and say that he is
9 not a Genco person, but this is his understanding, then that
10 will be fine.

11 MR. MORRISON: As long as everybody takes it for what it is
12 worth.

13 MR. MACNUTT: We are not going into any greater detail than

14 - 1456 - Cross by Mr. MacNutt -

15 we are here, Mr. Chairman.

16 MR. LARLEE: I'm afraid Mr. Morrison's timing was quite good.

17 When it comes to reserve and how reserve is used in the system,
18 I'm afraid I'm out of my depth. I'm going to have to say I
19 don't know that one.

20 Q.1538 - Do you know if there are any constraints on the operation
21 of the Point Lepreau Nuclear Generating Station that limits its
22 ability to follow load? And if yes, what are those limits?

23 MR. LARLEE: I'm afraid I can't answer that. I don't know.

24 Q.1539 - Can Mr. Ketchum enlighten us?

25 MR. KETCHUM: No, I am not familiar with operational constraints

1 with respect to Point Lepreau.

2 Q.1540 - Do you know of any nuclear plants that are used for load
3 following?

4 MR. KETCHUM: I am not sure I could give a good answer to that
5 question. There may be some sort of load following. Generally
6 speaking, I think nuclear plants are base load units.

7 Q.1541 - So in other words, generally speaking they would not be
8 used for load following?

9 MR. KETCHUM: Correct.

10 Q.1542 - I am going to ask you to turn up the transcript for
11 Tuesday, September 27th. And it is a cross examination of

12 - 1457 - Cross by Mr. MacNutt -

13 Mr. Larlee by Mr. Coon. That is Tuesday, September 27th. Ask you
14 to go to page 904 and specifically line 23.

15 Mr. Larlee advised that the way the cost allocation is done is
16 the generation supply costs are first classified as either
17 demand related and energy related, and those two separate
18 classifications are then allocated to the classes. He then
19 said, "the demand related portion is allocated based on the
20 coincident peak of each class and the energy portion is
21 allocated on the energy requirement for that class including
22 losses."

23 And my question is, what is the level of uncertainty that
24 exists relating to the coincident peak demand estimate for each
25 class?

1 MR. KETCHUM: Just the last part of that again, please?

2 Q.1543 - What is the level of uncertainty that exists relating to
3 the coincident peak demand estimate for each class?

4 MR. LARLEE: The coincident peak for the industrial class is
5 quite a good estimate because we do have metering on the vast
6 majority of those customers. We have load research on the
7 residential class. So that as well provides a very good
8 estimate. Or it then gives us a number that we can confirm our
9 estimate against. The other classes, general service and the
10 small industrial classes, we don't have interval metering that
11 would give us a good body of data

12 - 1458 - Cross by Mr. MacNutt -

13 to work from, but those classes do have monthly demand metering
14 which does allow -- gives us some billing determinate data to
15 work with. But primarily those are less fixed estimates.

16 Q.1544 - Now could you undertake to provide the answer as to the
17 uncertainty in statistical terms?

18 MR. MORRISON: Mr. Chairman, I guess I don't necessarily object
19 to the undertaking other than some consideration in the amount
20 of time and effort that would be required and whether it can be
21 completed before this CARD proceeding is finalized.

22 Obviously an undertaking is no good to anybody, the Board and
23 any of the Intervenors, if it can't be responded to before the
24 conclusion of this hearing. I mean, obviously if that type of
25 research is required the Board can order it in a decision, but

1 I don't have a good sense and I won't have a sense until I talk
2 to my people just what is involved in conducting that analysis.

3 So --

4 CHAIRMAN: Might I suggest that we ask the Panel if they have any
5 idea?

6 MR. KETCHUM: I think we would need to specify the statistical
7 parameters for assessing uncertainty for each of the classes,
8 and frankly I think, you know, what Mr. Larlee suggested would
9 say that, you know, the sampling

10

11

12 - 1459 - Cross by Mr. MacNutt -

13 with respect to the residential class in that particular sampling
14 model or procedure is designed with certain parameters with
15 respect to certainty around the estimates. It's within a five
16 percent range as I understand it. The industrial class is
17 pretty much spot on because it's 100 percent sample and so
18 there is no real uncertainty there. I guess the only real
19 uncertainty is with respect to the general service class.
20 And I guess what would be needed there would be some longer
21 term sort of measurement of the -- you know, that could
22 determine the more precise nature of -- more precisely the
23 exact peak demand contribution of that group of customers, and
24 that would be designed with some specification. But that would
25 take a considerable amount of time, a couple of years, if we

1 really want to get to that level of detail.

2 It's sort of a residual in the demand calculations. So if we
3 know the total and we know two parts, the third part we can
4 determine fairly accurately. So I don't know if we -- what
5 kind of specifications with respect to statistical analysis are
6 you thinking about?

7 Q.1545 - Just give us a moment to consult here.

8 CHAIRMAN: I'm going to suggest we take our 10 minute recess
9 right now.

10

11

12 - 1460 - Cross by Mr. MacNutt -

13 MR. MACNUTT: Now, I just might point out, Mr. Chairman, we have
14 only got one more question left and it will be relatively
15 short. I am prepared to do that after the break, but I just --
16 it's my understanding --

17 CHAIRMAN: We will do it after the break, Mr. MacNutt.

18 MR. MACNUTT: Yes. I understand that the Panel will be next
19 asking questions.

20 (Short recess)

21 CHAIRMAN: You can continue after I so rudely cut you off, Mr.
22 MacNutt. Go ahead.

23 MR. MACNUTT: I think we have it sorted out, Mr. Chairman.

24 Q.1546 - I am now going to address load duration curves. And are
25 there currently in evidence in this hearing load duration

1 curves for a) total system b) distribution voltage industrial
2 customers c) transmission voltage industrial customers, and d)
3 wholesale customers, and, if yes, where could we find them?

4 MR. LARLEE: Subject to check, I don't believe that there is
5 either load duration curves or hourly data -- load data for any
6 of those classes in evidence.

7 MR. MACNUTT: Thank you. I have no further questions for this
8 Panel, Mr. Chairman.

9 CHAIRMAN: Thank you, Mr. MacNutt.

10 MR. MORRISON: Mr. Chairman, I do have a few questions in
11

12 - 1461 - By the Board -

13 redirect, but they are very brief.

14 CHAIRMAN: I would suggest that you let the Panel ask theirs
15 first, Mr. Morrison.

16 MR. MORRISON: Fine, Mr. Chairman.

17 CHAIRMAN: There might possibly be something you want to put in.
18

19 BY THE BOARD

20 MR. SOLLOWS: Thank you, Chairman. And thank you. I guess where
21 I would like to start -- I have a bunch of notes here and I'm
22 going to sort of cancel them as I go through. But one of the
23 things that sort of jumped out at me as we were going through -
24 - I think it was in this book provided by the Public
25 Intervenor. There were tables listing the various generation

1 plants. And I'm just looking for IR-36 subsequent filing.

2 MR. KETCHUM: I'm wondering -- the update of the peaker credit --

3 MR. SOLLOWS: Generating plant cost allocation analysis, peaker
4 credit method.

5 MR. KETCHUM: Yes.

6 MR. SOLLOWS: I'm looking at the table. And as the discussion
7 was ongoing, I was looking at the table. And I just had a few
8 questions about the numbers.

9 When I look at Coleson Cove, you show it as about a

10

11 - 1462 - By the Board -

12 little under a thousand megawatts and an indexed installed cost of
13 854 million.

14 Now does that 854 million include the cost of the recent
15 installation of the scrubbers?

16 MR. LARLEE: No, it would not. This is all 2002 information.

17 MR. SOLLOWS: Okay. So given that the installation of the
18 scrubbers would presumably increase the installed cost and has
19 reduced the net output of the plant, would that be material in
20 determining your allocation here?

21 MR. LARLEE: It would depend on if there was any write-offs and
22 what the actual net book value ended up being. It could very
23 well be.

24 I know that the investment in the refurbishment of Coleson Cove
25 was significant, no question about it.

1 MR. SOLLOWS: Okay. When I came further down, and I can't claim
2 credit for this, the eagle-eyed Vice-Chair pointed out to me
3 that Grand Lake in this table is listed as a hydro unit.
4 Now that seems unlikely. Or is that one of those ones that
5 takes solid water?

6 MR. LARLEE: No. That would be a typographical error.

7 MR. SOLLOWS: Okay. The other one that arises when I looked at
8 this, I look at Courtenay Bay Oil is down from the

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10

11 - 1463 - By the Board -

12 previous one.

13 It was 250. It is down to 97 and 700 which I presume reflects
14 the development -- the leasing of one of the units to the
15 private power producer and the development of the combined
16 cycle gas plant at that site, is that correct?

17 MR. LARLEE: Yes. That is correct.

18 MR. SOLLOWS: Then can you compare the indexed installed cost you
19 have for that plant against the one that was previously used?
20 I'm just looking for the reference here. I'm not coming up
21 with the older one. Oh, right, here it is. We have it as 237
22 at 253. And we have it as 224 when its capacity had fallen
23 quite a bit.

24 So I'm guessing -- I guess my question is are there some book
25 value there that should have been written off that shouldn't be

1 included in this?

2 MR. LARLEE: I don't have the original version of this in front
3 of me. Can you just give me that number again from the
4 original version?

5 MR. SOLLOWS: The original one is labeled as schedule IV-1 table
6 to NB Power Corporation, Generating Plant Cost Allocation
7 Analysis, Peaker Credit Method, exhibit A -- I think it is 14 -
8 - 19 or 14 -- maybe 19, tab IV. Maybe the

9

10 - 1464 - By the Board -

11 Public Intervenor can help us out here?

12 MR. HYSLOP: I believe it was tab 14, Commissioner Sollows.

13 MR. SOLLOWS: Appendix 15, tab IV.

14 MR. HYSLOP: That would be correct.

15 MR. SOLLOWS: It just seems to me that such a marked reduction in
16 the output of that plant would be accompanied by a reduction in
17 its book value. Or maybe I'm missing something here.

18 MR. LARLEE: So I guess I'm a bit confused. Because in the table
19 I have it is at 237.8 million, the original table 2 out of the
20 Reed Report.

21 MR. SOLLOWS: Right.

22 MR. LARLEE: And it is down at 224.2.

23 MR. SOLLOWS: And what that seems to be implying is that the
24 write-off of 150 megawatts of capacity or so is really
25 reflected in -- what is that, a \$12 million, \$13 million

1 writedown?

2 MR. LARLEE: Well not being intimately familiar with the numbers,
3 I guess I can't give you an adequate explanation. But we can
4 take that.

5 MR. SOLLOWS: I'm wondering if you couldn't investigate these to
6 see, you know, what the circumstance is. And I would assume
7 that there is some revenue flowing for the lease of the steam
8 turbine that is used in that combined

9 - 1465 - By the Board -

10 cycle unit.

11 The question would be how does that get accounted for in all of
12 this as well?

13 MR. LARLEE: We will take that as an undertaking.

14 MR. SOLLOWS: Thank you. Now we have had a lot of discussion as
15 to whether the PPA's that exist between Genco and Disco and
16 Nuco and Disco reflect cost causation or not.

17 I know in some cases you have gone behind the PPA's because you
18 felt it better reflected the cost causation and therefore
19 allocation.

20 Given that these are contracts between your employer and a
21 separate company that supplies them, do you -- can you tell us
22 have any steps been taken to renegotiate the nature and the
23 clauses of the PPA's in order to reflect your concerns?

24 MR. LARLEE: Not that I'm aware of.

25 MR. SOLLOWS: Okay. Thank you.

1 Separate item, we were discussing -- and reference was made to
2 the CPI adjustment in one of the PPA's. It was in the Genco
3 PPA.

4 I'm wondering -- I'm familiar with CPI adjustment factors as
5 they might be used in performance-based regulation. And they
6 normally have an X factor, a

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9 - 1466 - By the Board -

10 reduction.

11 Is there such a reduction of the CPI in terms of performance in
12 those CPI adjustments?

13 MR. LARLEE: Subject to check I don't believe there is.

14 MR. SOLLOWS: So they are getting full credit for the CPI with no
15 performance incentive?

16 MR. LARLEE: As far as I know it is just the CPI that --

17 MR. SOLLOWS: Thank you. We have quite recently had some
18 discussion on average load factors for each of the large
19 industrial customers.

20 I'm wondering if you couldn't undertake to provide us -- for
21 the data you have given us, you gave us their billing
22 determinants for each of the last five years.

23 Can you put in evidence a table listing the load factors or a
24 graph or something showing the load factors of those companies?

25 Not specifically identifying the companies, but just showing

1 the variation in the load factors?

2 MR. LARLEE: Just to make sure I get it right, a graph --

3 MR. SOLLOWS: Annual average load factor.

4 MR. LARLEE: -- with the annual load factor of each --

5 MR. SOLLOWS: Of each company.

6 MR. LARLEE: Of each --

7 MR. SOLLOWS: Maybe the annual average against the monthly

8

9 - 1467 - By the Board -

10 average over the five-year interval.

11 MR. LARLEE: Yes. I think I could do that, yes.

12 MR. SOLLOWS: Thank you. Now there was some questioning, and you

13 commented about hydro and seasonal storage and such. And I'm

14 going back a long way and relying on memory.

15 But if I recall correctly, in the early '90s NB Power as the

16 integrated utility used to complete a load and resources review

17 that included in it a one-page summary of the monthly output of

18 each expected output of each of the hydro in the province.

19 And that table showed some fraction -- and I don't recall it as

20 being insignificant. I recall it as being some significant

21 fraction that was labeled the seasonal storage.

22 I'm wondering if you could undertake to provide that or an

23 amendment of it if it has substantially changed, so that we

24 would have that on the evidence record?

25 MR. LARLEE: I would have to confirm that it is still available

1 from Genco.

2 MR. SOLLOWS: Okay. Or at the very least we could maybe just put
3 in the old one with whatever comments you would make to modify
4 it?

5 MR. LARLEE: Very good. Yes.

6

7

8 - 1468 - By the Board -

9 MR. SOLLOWS: Okay. Now I'm going to go to this pile.

10 I'm looking at exhibit A-39. Now I just want to make sure that
11 this is clear. Because I think I heard an explanation for it,
12 I think from Mr. Morrison.

13 My recollection is of what Mr. Morrison had said it seems to be
14 at variance with what is said here. And I just want to make
15 sure the record is clear.

16 MR. MORRISON: That is correct, Mr. Sollows. I was under a
17 mistaken impression when I gave that.

18 MR. SOLLOWS: So that I understand this completely, the --
19 originally you early on determined that the StatsCan data
20 wouldn't meet your requirement. Because presumably it
21 represents all of New Brunswick and not just you.

22 And so you went to the NBSO. They did a quick study and then
23 subsequently found an error in it and have revised that study.

24 And that is what is filed under IR 126?

25 MR. LARLEE: Yes.

1 MR. SOLLOWS: Okay. Have you made any effort to compare that
2 with the data that is available that you filed with the
3 National Energy Board on exports?

4 MR. LARLEE: No. I haven't.

5 MR. SOLLOWS: Could you?

6 MR. LARLEE: I could ask Genco to do that.

7

8 - 1469 - By the Board -

9 MR. SOLLOWS: If you would that would be helpful. Because again
10 I made a preliminary review. And it seems to be at variance
11 with both the StatsCan and the data from IR 126. So I'm just
12 trying to resolve whatever ambiguity there remains in this.
13 Now in response to -- we had for A-40 -- this was relating to
14 the number of miles of distribution lines. If I understand the
15 response correctly, you reconciled the assets with the
16 available asset information in the GIS.
17 And if I'm interpreting this correctly, you feel the GIS has
18 the better set of data with respect to line miles, better than
19 the accounting system?

20 MR. LARLEE: Yes.

21 MR. SOLLOWS: To my mind that begins to put in question a lot of
22 the data that may be in the accounting system. And are there
23 any other discrepancies between the GIS data set in the
24 accounting system? And have they been adequately resolved?

25 MR. LARLEE: Well, the particular case of conductor, the actual

1 length of conductor, was determined using a calculation. And
2 that calculation was just the best estimate available at the
3 time.

4 The GIS system is obviously much more precise, as I explained
5 earlier. It provides for a geographical to

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8 - 1470 - By the Board -

9 scale version of the system and gives a better estimate.

10 And as is noted here, the reason for the discrepancy was
11 resolved. And it was determined to be just a mis' -- the way
12 the calculation was done didn't take into account this
13 particular type of secondary service.

14 MR. SOLLOWS: Originally -- the original calculation that was in
15 the annual.

16 MR. LARLEE: But I think the other data that is used,
17 particularly in the cost of allocation study, isn't subject to
18 this type of calculation, to estimate it.

19 MR. SOLLOWS: So have you done a comparison of the GIS data with
20 the accounting data and reconciled them for all the other
21 assets?

22 MR. LARLEE: Well, I think in the study that we did and we filed
23 as part of the distribution cost classification. And it was
24 noted that we did look at poles. And there was a difference in
25 the numbers. And we were able to explain it.

1 So I believe that as we get more and more data into the GIS
2 system and we become more and more familiar with it, we will be
3 able to improve our data.

4 MR. SOLLOWS: Thank you.

5 MR. MORRISON: Perhaps I can -- I was just advised by
6 Ms. Clark that where GIS information was available it was

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8 - 1471 - By the Board -

9 reconciled.

10 MR. SOLLOWS: Okay. Thank you. This question arose -- and the
11 reference I noted at the time was that EGNB Disco IR 1 -- and I
12 don't think we need to go to it.

13 The question is this. How is the seasonal variation in fuel
14 cost reflected in the large industrial transmission rates?

15 MR. LARLEE: It isn't. The cost allocation study is --
16 everything is done on an annual basis.

17 MR. SOLLOWS: Okay. Thank you. Now this I guess comes to the
18 rate classification issue. And Mr. Larlee, I think you have
19 stated more than once that there are a lot of -- there is a lot
20 of variability within rate classes as they are currently
21 classified by NB Power Disco. Is that fair?

22 MR. LARLEE: Yes, I think it is. Summary classes moreso than
23 others. Obviously the general service class is the class with
24 the highest degree of diversity.

25 MR. SOLLOWS: Because it is sort of the residual group?

1 MR. LARLEE: Exactly.

2 MR. SOLLOWS: I guess the problem that I have is when I hear
3 that, it -- I develop a concern that really that is a symptom
4 of having a diverse group of users within one class. And
5 therefore, the usage patterns might be very different within
6 the class and that is giving the breadth

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8 - 1472 - By the Board -

9 of variability.

10 So in an inherent sense they aren't really a class. They are
11 more of an amalgam of different groups. And that -- I guess I
12 end up with a concern that it will cause you difficulty both in
13 load forecasting and of course in cost allocation. And I am
14 wondering what you are doing in order to address that.

15 MR. LARLEE: Well I think the first thing we are doing is we are
16 eliminating the anomaly of the general service II all electric
17 rate. Beyond that we have looked in the past at sectors using
18 the standard industrial classification code. And we have
19 identified somewhere upwards of 14 different sectors within the
20 general service group, ranging from hospitals and schools and
21 hospitality sector and so on and so forth. Universities,
22 libraries.

23 So you can identify many many different sectors and the problem
24 with it in the general service class is there are many, many
25 different sectors. A hospital has a very different usage

1 pattern than a school. Even though they are both -- you could
2 classify both as being institutional. A mall, for instance,
3 would have a different classification than an office building
4 even though you could -- or a different usage pattern than an
5 office building even though you could classify them both

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7 - 1473 - By the Board -

8 as commercial establishments.

9 So without getting into many many rate classes, it is very
10 difficult to break up that group of customers into a more
11 homogenized rate class.

12 I think probably the best solution is to have a good cost based
13 rate and a rate like a two-part rate with a demand charge and
14 an energy charge, perhaps some type of capping mechanism so
15 that the average unit rate doesn't go too high, probably
16 provides the best solution.

17 MR. SOLLOWS: Thank you. This relates to -- and I apologize for
18 the order of these questions. These are just things that have
19 occurred to me over the however many days that we have been
20 going on. And I am not very organized at the best of times.
21 But at one point we were discussing the Coleson Cove tolling
22 agreement. And the question that arose in my mind was -- and
23 you have already cleared up in terms of the cost allocation
24 study the output and the costs don't seem to have been updated
25 in that. Has that tolling agreement been modified to reflect

1 the reduced output of the plant? And does that have any cost
2 implications to Disco?

3 MR. LARLEE: It is my understanding that the tolling agreement
4 covers all of those possibilities.

5 MR. SOLLOWS: Okay.

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8 MR. LARLEE: Again, I'm not 100 percent familiar with the
9 agreement. But I'm quite confident that is the case.

10 MR. SOLLOWS: I think that's most of it except for perhaps a more
11 technical question. It occurred to me as I was reading the
12 evidence through the summer, one of the responses was -- and I
13 don't know the interrogatory -- but you only had hourly loads
14 at the system level and could not therefore breakout from that
15 contributions to the various rate classes.

16 And I guess what ran through my mind is the notion of -- if the
17 classes truly do represent certain load usage patterns, then we
18 should be able to, through a statistical analysis, a multiple
19 regression analysis, begin to determine their various
20 contributions by looking at substation by substation interval
21 metering data.

22 And maybe this is something best left to discussions between
23 staff and you, but it just seemed to me that there was maybe
24 something that you could derive from -- some insight that you
25 could derive by analyzing your interval metering data on a

1 substation by substation level, in order to extract the various
2 load usage patterns of the classes that you have defined.

3 And I don't -- I guess what I would like to do is give you the
4 opportunity to say whether or not you are going in

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6 - 1475 - By the Board -

7 that direction or what you might be doing.

8 MR. LARLEE: Well as I mentioned earlier, we don't have interval
9 by interval data at the substation level for all our
10 substations. So we wouldn't be able to get a complete picture
11 of the load. What we have done and I believe it is part of the
12 load research report that was filed as part of this hearing, is
13 we can start off at the system level. We have a very good
14 picture of our large industrial transmission customers so we
15 can take them off the system, subtraction.

16 We can make a very good hourly estimate using the load research
17 analysis. And then make an estimate of the losses for each of
18 those, portion losses, and then we end up with a residual which
19 essentially is everyone else which is general service, small
20 industrial, and large industrial distribution, and street
21 lighting.

22 So that gives us a pretty good picture of what sort of that
23 amalgam of classes are doing. So we can reach that level. But
24 the next step would be to get load research data at the general
25 service and small industrial level.

1 MR. SOLLOWS: Thank you. That is all. Thank you very much.

2 CHAIRMAN: I just -- I have decided I have no questions. I have
3 two comments so that we can conclude by 3:00.

4 The first one is is that I believe it was in Mr.

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6 - 1476 - By the Board -

7 Marois' pre-filed evidence, I think it is table 1, where the table
8 showed the ratios if there were an even 4.4 percent increase in
9 rates across the board and then the second column dealt with
10 the proposed rates. For a layman such as myself, in the
11 future, I think the reference point always is where do the cost
12 ratios sit today. So that you put that column in your -- and
13 then you compare it with various scenarios. But that is the
14 most helpful thing for me personally, is to see what it is
15 today and know how it's moving by these different proposals.
16 The second thing is that I just have to comment, and regulators
17 cannot micromanage, but I was I guess flabbergasted when I
18 heard that there was one and only one rate proposal taken to
19 your Board of Directors.

20 I would have expected that it would have been very good for the
21 Board and for Disco's corporate officers who are presenting it,
22 to have two or three different rate scenarios so that your
23 Board would get a better picture of things.

24 Certainly that is why a hearing like this is helpful to this
25 Board, is that we see many different proposals we are able to

1 weigh and test and that sort of thing.

2 Anyway, those are my two comments. Mr. Morrison, any redirect?

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5 - 1477 - Redirect by Mr. Morrison -

6 MR. MORRISON: I do have some redirect, Mr. Chairman. It will be

7 brief and I don't think there is anything -- well there will be

8 one thing I will ask you to turn up.

9 REDIRECT EXAMINATION BY MR. MORRISON

10 Q.1547 - On the first day of the hearing, Mr. MacDougall was

11 questioning you, Mr. Larlee, about the change in revenue to

12 cost ratios for the residential class from 1992 up to the

13 current rate proposal. And he put to you that the revenue to

14 cost ratio in 1992 was .87 and for the residential electric

15 heat customers it would be .879 today or following this current

16 rate proposal. And I understand from the transcript that you

17 agreed with that proposition that he put to you.

18 Were the comparators he was using the same?

19 MR. LARLEE: No. Because he was comparing the revenue to cost

20 ratio from the ratios at the '92 CARD proceeding for the

21 overall class, and he was comparing those to the segment, the

22 electric heat segment.

23 So if he was compare directly to the overall class, the

24 proposed rates that we filed in this proceeding, we get a

25 revenue to cost ratio of .908.

1 Q.1548 - Thank you. Mr. Gorman got into, on Tuesday of last week,
2 got into the question of the 1.05 revenue to cost ratio for the
3 wholesale customers. And under questioning

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5 - 1478 - Redirect by Mr. Morrison -

6 from Mr. Gorman, Mr. Larlee, you indicated that there were

7 contracts in place with wholesale customers that basically

8 indicate the revenue to cost ratio is to be set at 1.05.

9 Mr. Gorman then led you to the Saint John Energy contract and

10 one particular provision in that agreement that basically said

11 that maintenance of the revenue to cost ratio would be at no

12 more than 105 percent.

13 Now is there another contract for the wholesale customer?

14 MR. LARLEE: Yes. We have a contract with the City of

15 Edmundston.

16 Q.1549 - Okay. I would ask you to turn up exhibit A-15. And it's

17 Appendix 11. And that appears to be a contract between Disco

18 and the City of Edmundston -- NB Power and the City of

19 Edmundston, I am sorry?

20 MR. LARLEE: Yes.

21 Q.1550 - And I would ask you to turn to top of page 11, Mr. Larlee?

22 MR. LARLEE: Yes. That's in the section under Rates.

23 Q.1551 - Could you read the first paragraph on page 11?

24 A. Effective April 1st for each of the years from 1998 to 2000

25 inclusive, the rate adjustments shall be based upon the

1 difference between NB Power's projected revenue to cost ratio
2 for service to the wholesale customer class for

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4 - 1479 - Redirect by Mr. Morrison -

5 the upcoming year and 105 percent, and thereafter, the revenue to
6 cost ratio shall be maintained at 105 percent until the
7 termination of the contract.

8 Q.1552 - And what is your interpretation of that provision?

9 A. That we are bound to hold the revenue to cost ratio to 105
10 to meet the terms of this contract.

11 Q.1553 - And did that have any influence on the decision to target
12 the wholesale revenue to cost ratio at 1.05?

13 A. Yes, it did.

14 MR. MORRISON: And finally, Mr. Chairman, I will ask you to turn
15 up exhibit A-36.

16 Q.1554 - And that's an undertaking that came up in the course of
17 the hearing, Mr. Larlee. This is a response to an undertaking
18 to prepare a rate design based on a 900 kilowatt hour first
19 block size in residential class that is revenue neutral.

20 Now what if anything do you have to say with respect to the
21 preparation or with respect to this rate design that you
22 prepared in response to that undertaking?

23 MR. LARLEE: I just wanted to say that the parameters that I used
24 for this rate design is that basically two of them. One was as
25 requested using the 900 kilowatt hour first block size. But I

1 also had to include another parameter in order to basically
2 solve the equation.

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4 - 1480 - Redirect by Mr. Morrison -

5 So what I did was is I increased both energy rates -- the
6 energy rates for each block by the same percentage. If you
7 look at the first page of the attachment, you can see that the
8 energy block sizes for energy block rates went up -- they both
9 went up 10.2 percent. If you turn the page, the reason why I
10 did that was to try and spread the impact -- the billing
11 impacts across the entire range of consumption.

12 Now this is just one of many possible scenarios. And it
13 depends on what you are trying to achieve. If you are trying
14 to -- if you are more concerned about flattening the rate than
15 you are about billing impacts, then you will raise the end
16 block rate more and the front block rate less.

17 So I just wanted to just clarify what my parameters were in
18 doing this.

19 MR. MORRISON: And those are all my questions, Mr. Chairman.

20 CHAIRMAN: I think Commissioner Sollows has a follow-up on what
21 the witness has just said.

22 MR. SOLLOWS: Thank you. I guess then would I be correct to
23 infer that if you had decided instead to simply assume that you
24 were going to set the two block rates the same that over here
25 on the second page, the net would have been to reduce the

1 impact on nonelectric heat customers and

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- 1481 - Redirect by Mr. Morrison -

5 increase the impact on electric heat customers and therefore bring
6 them closer to revenue cost ratio of one?

7 MR. LARLEE: I think as a general statement and knowing there is
8 a lot of variation in the class that that's true. And we would
9 have seen significant impacts at the higher --

10 MR. SOLLOWS: Oh, no question. Yes. Thank you.

11 MR. MORRISON: Mr. Chairman, just a couple of housekeeping issues
12 with respect to the evidence. The Revenue Requirement evidence
13 will be available on the NB Power website by 4:30 p.m. on
14 Friday, October 7th. Also Phase 3 of the La Capra Report,
15 which is a separate document will be available at that time as
16 well. Hard copies will be puolated out tomorrow afternoon
17 unless the Intervenors say they don't want them and they will
18 wait till Friday.

19 The Revenue Requirement evidence is one binder. It reflects
20 all of the Phase 1 and Phase 2 evidence previously filed, but
21 has been updated where necessary to reflect the '06-'07 test
22 year. It excludes any evidence that was covered in the CARD
23 hearing and Load Forecast hearing. Early IRs are welcome. And
24 IR responses will be filed on the NB Power website and sent out
25 in hard copy on the dates indicated on the filing schedule.

1 CHAIRMAN: Thank you, Mr. Morrison. Just another couple of

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3 - 1482 -

4 housekeeping items. We reconvene at the Algonquin on two gorgeous

5 Indian Summer days on the 26th and 27th -- I am really

6 stretching it -- the 26th and 27th of October.

7 I just wonder, the shorthand reporter and I were speaking

8 earlier on and there will only be two of them going to the

9 Algonquin. And you can still get the transcript from the first

10 day's proceeding, but as I understand it it will be later in

11 the evening. I would suggest that we start our hearing on the

12 26th at 9:15 as usual. And then take a look at it at

13 lunchtime, because it may be that if we finished at 2:30 then

14 the transcripts would be available that much sooner for counsel

15 for the next day's preparation. As far as the second day is

16 concerned, it doesn't matter, because we are just having a two-

17 day sitting there.

18 So this panel will be excused. And on behalf of the Board I

19 want to thank you for your cooperative and forthright answers.

20 Thank you gentlemen.

21 MR. KETCHUM: Thank you all very much.

22 MR. LARLEE: Thank you.

23 CHAIRMAN: All right. Thank you. We will adjourn until 9:15 on

24 Wednesday, October 26th.

25 (Adjourned)

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28 Certified to be a true transcript

29 of the proceedings of this hearing

30 as recorded by me to the best of

my ability.

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Reporter