

New Brunswick Board of Commissioners of Public Utilities

In the Matter of an application by the NBP Distribution &
Customer Service Corporation (DISCO) for changes to its
Charges, Rates and Tolls

Trade & Convention Centre, Saint John, N.B.
September 19th 2005

Henneberry Reporting Service

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BOARD COUNSEL: Peter MacNutt, Q.C.

BOARD STAFF: Doug Goss
John Lawton
Izabell Fagan
Dave Young

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CHAIRMAN: Good morning, ladies and gentlemen. And as you all remember, you push the button before you speak.

Can I have the appearances please for the applicant NB Disco?

MR. HASHEY: Thank you, Mr. Chairman. David Hashey, Terry Morrison, Lori Clark, supported by Lillian Gilbert.

CHAIRMAN: Thanks, Mr. Hashey. And the Formal Intervenors.

Canadian Manufacturers and Exporters, New Brunswick
Division?

MR. PLANTE: Dave Plante appearing on behalf of CME New
Brunswick.

CHAIRMAN: Thanks, Mr. Plante. Conservation Council?

Eastern Wind Power? Enbridge Gas New Brunswick Inc.?

MR. HAYES: Matthew Hayes on behalf of Enbridge Gas New
Brunswick.

CHAIRMAN: Energy Probe? We are about to scratch him. The
Irving Group?

MR. DEVER: Bill Dever here, Mr. Chairman.

CHAIRMAN: Thank you, Mr. Dever. Jolly Farmer? System
Operator? I'm about to scratch him too. Rogers?

MS. MILTON: Leslie Milton and John Armstrong and Christiane
Vaillancourt for Rogers.

CHAIRMAN: Thank you. The self-represented individuals?

MR. ROWINSKI: Yes, Mr. Chair. Jan Rowinski here.

CHAIRMAN: Thanks, Mr. Rowinski. The Municipal Utilities?

MR. GORMAN: Good morning, Mr. Chairman. Raymond Gorman for
the Municipal Utilities. And I have Dana Young with me
this morning.

CHAIRMAN: Thanks, Mr. Gorman. Vibrant Communities?

MR. PEACOCK: Good morning, Mr. Chair. Kurt Peacock here.

CHAIRMAN: Right. Thanks, Mr. Peacock. Public Intervenor?

MR. HYSLOP: Thank you, Mr. Chair. Peter Hyslop with Mr. Barnett, Ms. Power and Ms. Theresa Young. Thank you.

CHAIRMAN: Thanks, Mr. Hyslop. Just to see if there are any -- I don't think there are -- but the Informal Intervenors scream when I go over your name. Agriculture Producers Association of New Brunswick, Canadian Council of Grocery Distributors, City of Miramichi, Flakeboard.

MR. BURKE: Pat Burke with Flakeboard.

CHAIRMAN: Sorry. Where are we?

MR. BURKE: Right here.

CHAIRMAN: And the name, sir?

MR. BURKE: It is Pat Burke.

CHAIRMAN: Thanks, Mr. Burke. Okay. That is great. NB Power Genco, Noranda Inc., Potash Corporation of Saskatchewan and UPM-Kymmene.

Mr. MacNutt is appearing as Board Counsel. And whom do you have with you today, Mr. MacNutt?

\ MR. MACNUTT: I have with me today Doug Goss, Senior Advisor, John Lawton, Advisor, Izabell Fagan, Senior Administrator and Dave Young, Media Advisor.

CHAIRMAN: Okay. Thanks, Mr. MacNutt. Now I guess we are into exhibits, aren't we, Mr. Hashey?

MR. HASHEY: We are, Mr. Chairman. Try to keep this in an

organized fashion. I know we have confused Mr. MacNutt a little bit this morning. But I think I can explain the nature of exhibits.

CHAIRMAN: Go ahead.

MR. HASHEY: First of all, Mr. Chair, there was an exhibit marked at A-20 at the last hearing or last pre-hearing. And this exhibit I think brought the issue to a close. Because you indicated that you wanted the unredacted copies in a different color so that it would be easily identified.

So we have removed from A-20 the unredacted copies. And this relates to the confidentiality issue and the Board order of July 27.

So I have here first of all A-20 which has the unredacted ones in it -- I'm sorry, the redacted ones in this book. And then I have here the other book which has the two, and there are only two, IRs that remain in redacted form. But this is the unredacted information. It is for the Board to have.

CHAIRMAN: Okay. The other book has not been marked as an exhibit yet?

MR. HASHEY: It has not. What I would like to do first of all is to substitute A-20.

CHAIRMAN: I will interrupt you there, Mr. Hashey. I don't

think so. Just leave it. And I'm anticipating where you are going. But the information that remains in A-20 is going to be repeated elsewhere, I presume.

MR. HASHEY: Everybody has that. Yes.

CHAIRMAN: Yes. You see, the Board gave up its copies to staff for the applicant to have the confidential portions removed from A-20.

MR. HASHEY: Yes.

CHAIRMAN: And we never got them back. Now there are some floating around.

MR. HASHEY: There is.

CHAIRMAN: Yes. But as far as I'm concerned, if the information that is presently in A-20 is repeated elsewhere, then we will just leave it on the understanding that it is out there, but it is of no real relevance.

MR. HASHEY: It is of no real use to anybody because they have it.

CHAIRMAN: Yes, okay. We will just leave it there, Mr. Hashey. And we will go on and mark the new ones.

MR. HASHEY: Okay. But before I do that, there was an A-21 which was the list of the people that have received the unredacted information.

CHAIRMAN: That is the letter.

MR. HASHEY: That is the letter. I would like to give a

formal letter to the Board that lists that to be marked as A-

21. I don't think -- there was mention of an A-21. But I don't think it was really marked at the last --

CHAIRMAN: I did mark it, Mr. Hashey. But that is all right. I will remark that one. I know what happened. And we looked at the transcript. And you indicated you were going to give it up as an exhibit.

I said that will be A-21. And then we went on to other matters. I marked it without saying on the record what it was properly.

MR. HASHEY: Let's mark this new one --

CHAIRMAN: I will. I will date it -- my marking will be dated today's date in case again there is a duplicate.

MR. MACNUTT: Just a clarification, Mr. Chairman. Is the document being proffered by Mr. Hashey identical to the one that you marked as A-21? Or is it an updated version of A-21?

MR. MORRISON: It is an updated version, Mr. Chairman. I believe Mr. Hyslop's name is omitted from the first one in error.

MR. MACNUTT: Therefore, Mr. Chairman, I would recommend that it have a new exhibit number. Because it is not identical to the one that is presently on the record as

A-21.

CHAIRMAN: I agree, Mr. MacNutt. This will be A-22. Okay.

MR. HASHEY: Then I think the next document we should mark, Mr. Chair, is the unredacted two IRs that were removed from this earlier exhibit and are the only two arising out of the Board's order and complies with the Board order of July 27th 2005.

CHAIRMAN: For the sake of the record, A-22 is a letter that is dated September 14th, addressed to the Board secretary, from the applicant.

Now A-23 is a binder on gorgeous pink paper headed Compliance with Board Order July 27, 2005. And this is a confidential exhibit. So it's A-23 Confidential.

MR. MACNUTT: Mr. Chairman, to assist in completing the record, and Mr. Hashey I think identified that it contains responses to two IRs. Perhaps for full record the two IR responses given in the binder could be put on the record, the numbers of them.

MR. HASHEY: Mr. Chairman, they are the answers -- it's simple I think and I respect Mr. MacNutt's request. The answers to EGNB IR 37 and 38.

CHAIRMAN: That's what the tabs say for certain. Okay.

Thank you, Mr. MacNutt, Mr. Hashey. Anything more, Mr. Hashey?

MR. HASHEY: Lots. The next thing, Mr. Chair, is the issue

that I think that we put off until today. There were five requests for information by way of IRs that the applicant entered an objection to claiming confidentiality. Those five IRs I believe have to be discussed today, and they are -- if you would like, the numbers of those I could give you those. And what I propose to give to the Board as an exhibit at this point in time is the five of them with unredacted form. Everybody has the redacted ones. And the people that have signed the confidentiality agreement also have the unredacted answers to all of these IRs. But for the purpose of the record we have prepared in pink paper a book that contains the five, and maybe I could indicate what they are. Would that help?

CHAIRMAN: Yes. And that would be a helpful exhibit. Do you have enough copies for all the panel members or do you just have one or two?

MR. HASHEY: We have enough for the panel members of this document.

CHAIRMAN: Thank you. Shall we put that in then, Mr. Hashey?

MR. HASHEY: I would think maybe it's a good thing to enter at the start and then I can explain what it is and where we stand on it.

CHAIRMAN: Absolutely.

MR. HASHEY: Thank you.

CHAIRMAN: That binder will be marked A-24 Confidential.

And the title on the binder is Request Regarding
Confidentiality (Unredacted Responses) September 19, 2005.

Go ahead, Mr. Hashey.

MR. HASHEY: Mr. Chairman, would you like us to deliver the
additional volumes to the Board so they can refer to that?

CHAIRMAN: I think that would be helpful, Mr. Hashey, yes.

MR. HASHEY: We will do that right now.

CHAIRMAN: And while that's being done, I presume that all
the other parties either have the confidential ones that
Mr. Hashey is referring to or the redacted versions?

MR. HASHEY: That's correct.

MR. MACNUTT: While those are being distributed, Mr.
Chairman, I perhaps missed it, but have the IR numbers for
which the responses are included in what is now marked
exhibit A-24 Confidential been identified, just for ease
of reference?

CHAIRMAN: I think Mr. Hashey's intention is once we all
have them here he is going to go through them, Mr.
MacNutt.

MR. MACNUTT: He is going to then give us the list of the IR
responses which are contained in that volume. Thank you.
Is that correct, Mr. Hashey?

MR. HASHEY: Yes, I would be pleased to do that. I apologize, Mr. Chair. There is one additional page that didn't get in that document that we are putting in this morning which isn't a redacted document. It's a letter from Genco that will have to be referred to in relation to one of them only.

CHAIRMAN: Go ahead, Mr. Hashey.

MR. HYSLOP: Mr. Chair, the --

CHAIRMAN: Mr. Hyslop.

MR. HYSLOP: I am aware of the IR's, the redacted and unredacted ones that are in the binder, but the addition of a letter from Genco, if that's to be proffered as an exhibit I don't believe that -- I at least have not received a copy of the letter they wish to be made part of the record. I would really like the opportunity to see it.

MR. MACNUTT: Mr. Chairman, if I could suggest that Mr. Hashey go through with his explanation of exhibit A-24 Confidential before we deal with the letter that he just referred to.

CHAIRMAN: I'm going to overrule you, Mr. MacNutt. Mr. Hashey, will you deal with Mr. Hyslop's request?

MR. HASHEY: Mr. Chairman, if I could be -- just have a second to confer here. I thought that letter went out

with the redacted document that Mr. Hyslop would have had and

I just want to confirm that. If it didn't I will apologize.

CHAIRMAN: Go ahead. Take what time you need.

MR. HASHEY: I'm corrected. That letter wasn't sent out.

And I think we should have copies for the people here for that letter. And I don't -- I'm not sure that we have sufficient copies. We do. So we will distribute that letter and possibly ask that to be marked. It only refers to one IR.

But I apologize. I thought that had gone out. What had happened was that was with the book, the redacted book that I was using at the last hearing that you ordered us not to use anymore. That is where our slippage was there.

But yes, we will distribute that letter. It is a short letter.

CHAIRMAN: Good. I will give you a minute.

MR. MACNUTT: I assume it will be marked as a stand-alone exhibit, Mr. Chairman?

CHAIRMAN: Yes. Once Mr. Hyslop has had an opportunity to look at it, I would expect it will be given an exhibit number.

MR. MACNUTT: Thank you.

MR. HASHEY: Mr. Chair, you will see that letter which is

just in the face of the last IR in your book. It is in white.

It is following the tab which says, Disco PUB IR 140 (D).

CHAIRMAN: So that is a letter from Mr. Bishop, Vice-President of Genco to Mr. Marois, Vice-President of the applicant, is that correct, dated the 19th of August?

MR. HASHEY: That is correct.

CHAIRMAN: Why do we need to -- I guess we don't need to have it marked as a separate exhibit. It is already part of a confidential -- well, I suppose it is not on the public record, is it, because it is a confidential -- okay. We will --

MR. HASHEY: That could be marked as a public document.

CHAIRMAN: Yes. We will mark that. I'm afraid the Board didn't get copies. Hang on. Just let me do it. Okay. But let me explain here.

This is one exhibit with everything that was in it. And I would prefer not to remove pages from an exhibit and then give them a new marking. So I will just mark that. If you got one copy that is all I need. Okay. Thanks.

So this letter which has been referred to, dated August 19, 2005 is exhibit A-25.

MR. MACNUTT: So just to follow through on this, Mr. Chairman, A-25 is a letter that is filed in support of

the request for confidentiality with respect to an IR, PUB IR 140(D) listed in exhibit A-24?

CHAIRMAN: I'm losing you, Mr. MacNutt. I meant I couldn't hear you.

MR. MACNUTT: Oh.

CHAIRMAN: That is better. Thanks.

MR. MACNUTT: Sorry, Mr. Chairman. Perhaps Mr. Hashey could confirm for us that A-25 has been filed with the Board and marked as an exhibit as a letter in support of the request for the response to PUB IR 140(D), being maintained as a confidential document pursuant to Section 133 of the Act.

MR. HASHEY: That is correct.

CHAIRMAN: Thank you. Now will you go back to A-24, Mr. Hashey, and take us through, which is where I think you originally were?

MR. HASHEY: Thank you, Mr. Chairman. The first document which is EGNB IR 1 and the response to that, and EGNB IR 2, the reason they were marked as confidential was solely because they were answers coming from EGNB 37 and 38, which had previously been marked as a confidential document.

We have no -- and I have discussed this with Mr. Hyslop who raised the issue with me formerly, which I appreciate.

And we have no issue really with the release

of these two answers.

The reason they were dealt with this way is because they were questions coming out of confidential IR's. But by themselves they sort of don't mean anything. Or they don't give away confidential information.

So I mean, I don't have any real issue. If the Board wants those on the record they are fine. But as I say -- and they may not have a lot of meaning, unless you have signed a confidentiality agreement, unless you have seen the confidential information that was requested by

Mr. MacDougall on the EGNB.

CHAIRMAN: Well, then, Mr. Hashey, I would like us -- and we have been striving to make as small as possible the amount of information which remains confidential.

So my suggestion is that I'm going to mark in my volume that these have now gone onto the public record. And if you would, would you include those to all the parties so they can update their binders with the exhibits in it.

I forget which -- the responses to Interrogos, I forget which binder that might be. But then so all the parties will have that on the public record. Any problem with that?

MR. HASHEY: No. We will have to do that. I don't have, I

don't believe a copy.

CHAIRMAN: No. And that is fine.

MR. HASHEY: But they are very short answers. And we will supply those immediately.

CHAIRMAN: Okay. Great.

MR. HASHEY: It is not a problem.

MR. MACNUTT: Just for clarification, it is my understanding Mr. Hashey was discussing exhibit A-23(c), A-23 confidential which is the pink binder?

CHAIRMAN: No. My understanding was A-24 --

MR. HASHEY: Yes. A-24 I believe which is the binder.

CHAIRMAN: -- which is a confidential binder as well, Mr. MacNutt, but only dealing with the Interrogatories that remain in question.

MR. MACNUTT: A-24, yes. Now Mr. Hashey has just agreed that the responses to EGNB IR 1 and EGNB IR 2, which are colored pink and found in exhibit A-24 confidential may now go on the public record.

To maintain a distinction between the colored confidential documents and the white public documents, could those documents, the responses to EGNB IR 1 and EGNB IR 2 be provided to the Board on white paper?

CHAIRMAN: Yes. That certainly would be my understanding.

Because if it is, as you have termed it, terrible pink, it

is confidential. But if it is on white paper it is not.

So when Mr. Hashey distributes those answers to all the

parties it will be on white paper, right, Mr. Hashey?

MR. HASHEY: Yes, Mr. Chairman.

CHAIRMAN: Thank you.

MR. MACNUTT: And the Board would then, and all participants

who received A-24 confidential should remove the colored

version.

CHAIRMAN: Well, they can do what they want to with that,

Mr. MacNutt. I don't care. I have simply written on it.

It is now on the public record, that is all.

MR. MACNUTT: Thank you, Mr. Chair.

CHAIRMAN: Okay. Thanks. Go ahead, Mr. Hashey.

MR. HASHEY: Thank you, Mr. Chairman. The next IR, which we

request confidentiality pursuant to 133 and with reference

to the earlier document that was submitted by Genco is the

release of IR 19(D) which we respectfully submit does give

a lot of information out that could be competitively

harmful to Genco and thus passing through the ways the PPA

works, directly harmful to Disco and its ratepayers.

This document has been supplied in this unredacted form to

those that have signed the confidentiality agreement. But

it does give a lot of hourly information that could be

competitively harmful.

CHAIRMAN: I note that part of that response in Excel format is not on putrid pink paper. I just note that.

MR. HASHEY: It is piggy pink. It is simply a different color of pink.

CHAIRMAN: Oh, is that right? I can't even see that pink. I'm color blind you see. You got to have putrid pink before I see it. Anyway, carry on, Mr. Hashey.

MR. HASHEY: That is my position with respect to that one, Mr. Chairman. There are two others. The second -- the next one is PUB IR 129.

And we similarly suggest that that does give information that would be competitively sensitive as per the earlier ruling of the Board and as per the request by Genco.

There are just two graphs there in that which show marginal cost information on a monthly and hourly basis.

CHAIRMAN: It is on a monthly average, is it not, Mr. Hashey?

MR. HASHEY: The first part is, yes.

CHAIRMAN: Yes. Okay. Thanks. Next.

MR. HASHEY: The next and final request is PUB IR 140(D) which is the one that we have placed the new letter on the record. This deals with information that comes from the MEPCO tie line information.

And Mr. Bishop has requested that this information be kept confidential, and therefore for the same reasons Disco does, as it will pass through, because of the information that could provide -- or sorry, because this information if made public could provide information that would assist competitors in their bidding in relation to the supply of energy over this line.

CHAIRMAN: Okay. Thank you, Mr. Hashey. Now it is my understanding -- and Mr. MacNutt and I talked about this prior to coming in. In accordance with the Board's rules, now that you have isolated those information areas that you want to remain confidential, is that the parties will argue if in fact they believe it should be made public. And then the Board will decide on the basis of that. Again if it is found to be confidential in nature it can be during the hearing process itself be subject to an in-camera hearing. Now anybody any problems with the procedure that I have just described? Good.

What the Board would like to do is to take a recess for probably 15 or 20 minutes now, so we can look at these. You all out there who signed the confidentiality agreement have been given copies. We haven't. It disappeared with our volumes A-20. So we haven't seen those. And we would like to take a recess and go see

them. So we will take 15 or 20 minutes. Thank you.

(Recess - 11:00 a.m. - 11:20 a.m.)

CHAIRMAN: All right. The Board has had an opportunity to read through and discuss those IR responses that remain confidential.

And this is an opportunity for the Intervenors, if they believe that there is an argument as to why they should go on the public record and not remain confidential, you can do so at this time. The Canadian Manufacturers and Exporters?

MR. PLANTE: We have no comment, Mr. Chairman.

CHAIRMAN: Thanks, Mr. Plante. Enbridge Gas?

MR. HAYES: We are satisfied with the disclosure.

CHAIRMAN: Thanks. Irving Group?

MR. DEVER: We have no comments, Mr. Chair.

CHAIRMAN: Thanks, Mr. Dever. Rogers?

MS. MILTON: We have no comments, Mr. Chairman.

CHAIRMAN: Mr. Rowinski, self-represented individuals?

MR. ROWINSKI: I have no comment, Mr. Chairman.

CHAIRMAN: I'm disappointed. We don't hear from you at all.

Mr. Gorman?

MR. GORMAN: We have no submissions on this issue either, Mr. Chairman.

CHAIRMAN: And Mr. Peacock for Vibrant Communities?

MR. PEACOCK: No comments, Mr. Chair.

CHAIRMAN: Mr. Public Intervenor?

MR. HYSLOP: Not surprisingly I do have a comment or two, Mr. Chairman. And I thank you.

First of all, Mr. Chairman, I note the exhibit this morning -- and there were a couple of earlier letters -- but the argument seems to be that the issues and the information in the new IR's that are being requested be held in confidence flow from EGNB 37 and 38.

There is not a detailed argument as to exactly how this does occur. But I think from reading you might be able to be persuaded that there is some tenuous connection perhaps.

The first point we want to make though is in the absence of a full record as to why that there is commercial sensitivity is that we want to go and look at 37 and 38, EGNB 37 and 38 from the first round.

And they dealt with two issues. The first one was the hour to hour marginal fuel cost and the hour to hour average fuel cost for a full year of Genco's operations. And as I recall the evidence of Mr. Bishop, knowing these costs right to the penny would be commercially sensitive.

Because the people that sell the fuels to them would have a difficult -- would have some advantage in

negotiation.

And although I tried to persuade this Board that this was essentially a commodity, Mr. Bishop indicated that notwithstanding that it is a commodity, sometimes in negotiations you can save a dollar on a ton of coal here or you can save 50 cents on a barrel of fuel there. And these small amounts added up to a large amount of money. And I respect that the Board accepted that evidence.

So the precise figures at precise times did attract some commercial sensitivity and advantage on the basis of negotiating fuel contracts.

Well, the contracts now we are dealing with the total variable marginal cost. And I will admit and concede that that does include a component of fuel. But it deals with marginal pricing, not with the fuel.

And there is nothing in here that would show me or suggest to me on the record that these marginal pricing costs or the marginal total costs at a particular time is commercially sensitive.

I would have thought that the argument would have been made that if we know exactly what NB Power's marginal cost is at a particular time and we are Quebec Hydro, that might adjust our bidding on the 24-hour line into New England. I don't know.

But I think it is important to note we are dealing with marginal cost for purpose of pricing as opposed to marginal fuel cost for the purpose of purchasing fuel, which is the basis of EGNB 37 and 38.

So with that background -- and I guess the other general point I would make, I think the Board should be wary about taking specific fuel costs at a specific time, or even marginal costs at a specific time and saying that confidentiality should apply to what we would call aggregated information. And I think during the course of the hearing it will become an issue maybe.

But I think general references to marginal costing as a method of rate design or as a method of cost allocation will be argued beyond the public record as long as it is general, as long as we stay away from the specific cost.

So if I look at PUB IR 129, what that is is that it is the aggregated average monthly marginal cost. And in particular it doesn't show hour to hour marginal cost, but it is aggregated information. It is just general information.

Further, the reference in PUB IR 129 isn't IR's EGNB 37 and 38. Those questions flowed out of appendix 4, volume 2 of 3 at tab 3, the last page. And the point being is the question itself came from information that is

already on the public record.

Dealing with PUB IR 140(A) and (D), again this is aggregated pricing on an hour to hour basis from the MEPCO tie line. You know, you still have to figure out how many megawatt hours may have been sold and the price for them.

And I think that the information does not by itself lead one to go back to the sensitivity, the commercial sensitivity on the fuel cost.

I will concede that IR 19(D) is probably the one that perhaps the applicant has its best argument on. But again we reiterate we are dealing with the marginal costs on an hour to hour basis after the full load is served as opposed to the fuel cost in province on an hour to hour basis in 37 and 38.

Our position is that the aggregated general type of information provided in these IR's is something that can clearly be part of the public record. It will probably deal with the methodology that this Board should use in terms of how it goes about allocating costs, whether it wants to look at a marginal cost basis and general statements. But I don't think it will go to specific numbers at specific times for fuel, which was the basis of EGNB 37 and 38.

So on that basis we would submit respectfully that the

four IR's still in question should properly be made part of the public record.

CHAIRMAN: Mr. Hyslop, when you were talking about PUB IR 129 --

MR. HYSLOP: Yes.

CHAIRMAN: -- certainly figure 1 is an amalgamated figure. It is an average monthly graph that we are looking at there.

But figure 2 is the hourly marginal cost on the peak day in the winter. Do your arguments still hold true for that?

MR. HYSLOP: The submission, Mr. Chairman, is that the hourly marginal cost would include more than the fuel cost, which was the basis of EGNB 37 and 38. I am however -- would acknowledge that I would expect that the fuel cost is a large portion perhaps of the total hourly marginal cost.

But having said that, again this is going to pricing and not to the sensitivity of the fuel cost itself. The small amount of difference there is probably that small amount of difference that Mr. Bishop is perhaps thinking he can negotiate. I don't know.

CHAIRMAN: Thanks, Mr. Hyslop. Mr. Hashey?

MR. HASHEY: Mr. Chairman, I would hold our argument on

those with the possible exception of the monthly. I can see Mr. Hyslop's point on that. I don't believe the monthly may disclose as much information. That is 129(A). But the others very definitely would give some potential information.

And I don't see, now that we have the evidence before us, that there is really a major issue here. If something comes up in those areas that we need to get into that detail then I think we can go into an in-camera session. But I don't really see the potential for very much in that direction.

I mean, the mass of information that has been disclosed, we are down to a pittance really in fairness. And I believe the evidence -- and I will comment on the evidence here shortly if I might -- I think we have got an agreement on the redaction part of the evidence.

And the only evidence that has been submitted that we want any minor redaction on is some of Mr. Hyslop's expert. So I really would respect Mr. Bishop's request and ask the Board to do the same, with the possible exception of this 129(A).

But with respect to the other two -- and of course we have released the first two -- Mr. Hyslop was talking about 137, 138. But I think in a general context that

those of course have been released this morning.

I have nothing further to add unless there is a specific question.

CHAIRMAN: Good. Thanks, Mr. Hashey. Well, I want to emphasize the Board will -- probably the thing to do is to take our lunch and break now. And when we come back we will make our ruling in reference to these.

It certainly -- and I want to make the point clear, is that if during the hearing process itself any of the parties, or the Board for that matter, feels that it would be an appropriate thing to do, we can go in-camera and argue in reference to -- or discuss all of these confidential matters.

And as a result of that argument we could well make them part or all of them public at that time. This is not the end of it as to what we rule today.

So we will take a recess. And 1:00 o'clock too soon to come back?

MR. HASHEY: No, Mr. Chairman. The issues that we would like to talk about this afternoon are at your convenient time, some of the housekeeping issues as we head into this hearing. I delivered a letter.

I don't know that that is something that the Board would want to discuss over the noon hour as well. I would

like to deal with some of those issues, like timing of hearing, when we are going to have the experts.

There has been a fair bit of discussion amongst my friends here as to when they would be available and this type of thing. And I think we could sort of give a skeleton plan to the Board with some direction from you.

CHAIRMAN: No. We certainly want to discuss that. But no, again I want to keep it simple. And so we will break for lunch, come back and then -- the letter, is it possible for you to make some copies over lunch, if you don't have now, whereby you outline that?

MR. HASHEY: That is fine.

CHAIRMAN: Okay. That is great. Well, we will come back then at 1:00 o'clock. Thank you.

(Recess - 11:35 a.m. - 1:00 p.m.)

CHAIRMAN: Any preliminary matters before the Board gives its ruling in reference to A-24? If not, it's the Board's understanding during the proceeding this morning, both EGNB IR 1 and EGNB IR 2 will go on the public record and be reprinted on white paper.

In reference to the rest of the IRs they will remain confidential except for PUB IR 29, figure 1, which is the answer to question A which I believe Mr. Hashey actually agreed to during the hearing this morning.

And the answer to PUB IR 140(D), that is the table which is table 4 that shows the MEPCO revenue, the Board frankly has been interested in the exports and the MEPCO tie line, and a number of the parties here will remember that we had a hearing dealing with I believe it was 187 megawatts of capacity on that line. And the conclusion of the Board was at the end of that hearing that if there were a profit being derived it was certainly very small.

So we believe that the public interest in knowing what the revenues are being derived from that export line far outweigh any possible commercial damage that might be done to the applicant. So that will be on the record as well as a public document. And Disco will refile these on white paper, if they would.

And now -- Mr. Hashey, I just want to confirm that for the sake of the record, the responses to the following four interrogatories are the only things with this wealth of information we have that are remaining confidential. And that is EGNB IR 37, EGNB IR 38, PI IR 19(D) and PUB IR 127(B)?

MR. MACNUTT: 129, isn't it, Mr. Chairman?

CHAIRMAN: I beg your pardon. 129(B).

MR. HASHEY: I believe that's correct.

CHAIRMAN: Well you can check during the next break and if

we have missed something -- well we would like to have established now so that going forward we will all know how to deal with those four interrogatories and any others.

MR. HASHEY: No, we can confirm that. That's it.

CHAIRMAN: Okay. Great. Thank you, sir. Now, Mr. Hashey, you have a list that you put in a correspondence to the Board's secretary dated the 9th of September, and that has been handed out I believe to all the parties here, has it not?

MR. HASHEY: That's correct, Mr. Chairman.

CHAIRMAN: I don't know if my fellow Commissioners have a copy of that, but -- yes, we do. My suggestion is we have a couple of matters that are in addition to those but since everybody has those we will go along with your list, Mr. Hashey. So you go ahead, sir.

MR. HASHEY: Thank you, Mr. Chairman. The intent of the letter was just to clarify some issues so that we could save time when we headed into next week's hearing and we would know where we would stand.

The first issue I think is very important. You indicated that there was not to be any presentation. I have had some discussion with the Intervenor's counsel and the feeling is that it would not hurt to have each of the

experts or each of the panels give a brief summary of what their evidence really is and what they are intending to do for clarification of people here, because the -- and I mean brief. I don't mean an hour or two hours. I mean a brief summary, like 15 minutes or something like that. And that would not only include our fellow but it would include the other experts.

Because if anybody -- and I think a lot of people looking at that would find that expert evidence very, very detailed and confusing as to what in summary they are really saying. Just a suggestion.

CHAIRMAN: Well, Mr. Hashey, I do apologize if you got that impression that I and/or the panel didn't want to see that. Certainly we -- what I refer to as a dog and pony show that seems to go on forever and gives rise to questions about whether the evidence is new or it isn't new or whatever, then that becomes problematic. But certainly to have your witness very succinctly give an overview of what is in the pre-filed evidence, there is absolutely nothing wrong with that and I agree with you, it probably will tend to focus us.

MR. HASHEY: And the other -- and really it's just -- we are not going to have a presentation on a screen, it would be an oral presentation, a brief oral presentation, and the

one thing I would like to clarify -- and I think this was your ruling on the last hearing -- was the issue that if we see something in that evidence -- the evidence being presented concerning our evidence, that we should rebut up front and not wait until the end?

CHAIRMAN: That's correct.

MR. HASHEY: And so we would be commenting -- our fellow would be commenting on the other evidence and suggesting -

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CHAIRMAN: Absolutely.

MR. HASHEY: -- that's what we would do right up front, if that's agreeable.

CHAIRMAN: Yes. That's correct.

MR. HASHEY: That's fine. That clarifies the first point.

CHAIRMAN: And that's the normal way you would do it in civil litigation. If you have -- you will have notice of it. If when any of the Intervenor's witnesses come on if there is matters which arise either through cross-examination, prodding the witness, and other things coming up that your expert would like to be able to comment on later, that's when that expert would be called back in rebuttal.

But otherwise if you have got it and it's in writing, et cetera, then you have him comment at the first and he

can take as far as I'm concerned and I'm sure the panel -- he can take as much time as he wants to, to deal with that, because there is a good deal of critiquing of his evidence and he has got to be given the opportunity to put on the record what he has to say about that.

MR. HASHEY: Thank you for that, Mr. Chairman. And that's exactly what we will do at the commencement of the hearing on Monday. That's helpful. I think that gets rid of issue A in my subhead 1.

The next is the cross-examine. I don't think that's any big issue. It's just a matter of the order. And I thought it's good to spell it out is that I would assume we would go in the order of filing as you have identified people here today and otherwise in other times?

CHAIRMAN: Well that certainly is the normal way to proceed with Mr. MacNutt being the last to examine a witness, his rather complex duties being to complete the record if he and staff see something that hasn't been covered by the parties. So we will carry on.

There may be occasion when the Intervenors and yourself may wish to get together and change that order and the Board has -- sees no problem with that either. So that's -- we will go in alphabetical order unless counsel and parties agree that it would be more convenient to do

it to do it another way for a short part of the hearing.

MR. HASHEY: Thank you, Mr. Chairman. The only other issue, I guess that when the other experts -- when the other witnesses are testifying, Disco would be last, subject to PUB to follow, that would cross-examine the other witnesses. In other words the Intervenor's witnesses?

CHAIRMAN: Yes. That's certainly our normal way of proceeding. Any questions on that any of that from any of the Intervenors? In other words if there is -- Mr. Hyslop?

MR. HYSLOP: Not on the point Mr. Hashey is speaking to at present, but in the cross-examination of the applicant's witnesses, I think in an earlier stages of the hearing it had been discussed that the public Intervenor would be the last cross-examination but for Mr. MacNutt. Is my understanding correct on that, Mr. Chairman?

CHAIRMAN: Well I heard that but I was counting on you to bring it up again if you wanted to stick with that. Now I think you are last anyway, aren't you? Yes. P comes after B. So you are last anyway.

MR. HYSLOP: Sorry for the intervention there.

CHAIRMAN: No problem. Where were we, Mr. Hashey?

MR. HASHEY: That disposes of little issue B. The next issue has become one that has been the subject of

considerable discussion because of the time table that has been shifted around a fair bit, trying to find time -- and we worked on that with the other Intervenors who have called evidence and will have experts coming here, to try to find a time that would fit people's schedules. And it's very difficult until you really -- to me until you get a sense of how the hearing is going. And it strikes me that probably the best thing to do on that in hindsight and just last minute thought is to try to work out that schedule at the conclusion of the first week, set aside a little bit of time to say, okay, we are at this point now, we have got a sense of where this hearing is going, and we now can sort of get an idea of who can come when.

I know that my friend, Mr. Gorman, has indicated that his lady can't be here during a certain week in November. I know that there is an issue of a religious holiday during the -- that would interfere with Mr. -- the EGNB witness, and things of that nature.

And I think we can work toward that but I find it difficult to really assess until we know how long -- how long it appears that our case will be taking, because we have no idea who is going to cross-examine or how long they will be or any of that sort of thing. But I really

seek your wisdom and guidance.

CHAIRMAN: That's certainly my personal feeling about it, Mr. Hashey, and I want to assure all the Intervenors that the panel has no problem with -- you know, if you come up with the fact that your expert would be available during this time slot and, you know, it doesn't inconvenience other Intervenors to any great degree in reversing order and that sort of thing, we have no problem with that at all.

Again, Mr. Hashey, I agree with you and I think that I would like to leave it up to the Intervenors to sit down and try and work something out if they could to everybody's convenience. Anybody any -- all right, Mr. Gorman?

MR. GORMAN: Thank you, Mr. Chairman. Our expert, Paula Zarnett, is going to be in China from the 26th of October to the 6th of November. The difficulty that this presents is that of course we don't know how long the applicant's case is going to take, but if it uses up all of the first six days, effectively she wouldn't be available for the rest of the days that have been scheduled for this hearing.

And I guess we are really looking to have her accommodated in some way, either by fitting her in at the

end of the second week or by perhaps hearing her evidence in the next hearing in the second week in November, but in some manner trying to accommodate the schedule that she has.

CHAIRMAN: Well I will go back to what Mr. Hashey said. I think we will all have a better sense after that first week, Mr. Gorman. We have no problem with doing that. I will tell you that after all the Intervenors put in their evidence why I had Board staff contact Disco staff and say, please try and look for some hearing space for two more weeks after what we had originally scheduled, because nobody really knows.

But I think at the end of that first week why we can come up with some way to accommodate your witness, Mr. Gorman.

MR. GORMAN: That's really all I am looking for, some accommodation. Thank you.

CHAIRMAN: Good. Thanks. Anybody else? Mr. Hashey?

MR. HASHEY: Thank you. That settles that issue, which is (C). (D), Composition of the panel, I think it is only fair that we indicate to yourselves and the Intervenors what we intend for a panel at this point in time. That way it was there.

And it is our intention to have Mr. Larlee and our

expert Mr. Ketchum on the panel. They are the people that are dealing with methodology. If there are policy issues that arise that can't be answered, we would have Mr. Marois available. And he could come to a panel to deal with policy issues if that is necessary.

I'm convinced from discussions with Mr. Larlee that he will be in a position to answer most everything in any event, and supported by Mr. Ketchum on the methodology issues here.

CHAIRMAN: Refresh my memory. Both he and Ms. MacFarlane have prefiled evidence have they not?

MR. HASHEY: Yes. That evidence of Ms. MacFarlane was really dealing with the restructuring, which didn't seem to be necessary. And the intent would be that that evidence would be refiled as part of the revenue part. It would seem that it might suit and fit better there. And of course there would be a refiling of evidence by -- and we will come to this whole thing later as we proceed here this afternoon. But there would be -- but Mr. Marois did file some evidence vis-a-vis the revenue issue here, the distribution.

CHAIRMAN: You know, I think I'm going to ask other parties do they have any problem if Ms. MacFarlane not be put on this panel for the purposes of the CARD hearing?

Then okay, that is fine, Mr. Hashey. I think --

MR. HASHEY: She certainly would be available during the next segment. I mean, that is when the big issues are raised on the revenue requirement side of this hearing.

CHAIRMAN: Yes. Okay. Well, no. Nobody has objected. And you have indicated that she wouldn't be called. So that is fine. Now --

MR. MACNUTT: Mr. Chairman?

CHAIRMAN: Mr. MacNutt?

MR. MACNUTT: Will Mr. Marois be a part of the first panel or only available on call if a person requires him?

CHAIRMAN: You read my mind, Mr. MacNutt. That was my next --

MR. HASHEY: Well, the intent would be that he wouldn't be part of the first panel. He would be on call. He does now have a different position than he had before. He is running the Distribution company. And his time is required pretty seriously to deal with the issues that have to be dealt with.

And he will be on call. He will be available. Well, we would prefer not having him sit there through the six or eight or nine days if necessary, if we can avoid that. If we find that there is an issue as we start into this, we can always reverse that position.

CHAIRMAN: All right. It is pretty important what happens here to Mr. Marois' new job too, Mr. Hashey. But not to make light of it. I think that we will leave it that he be on call.

But I think that everybody wants to -- or at least certainly I do, wants to go back and refresh his memory of exactly what -- I read that probably three months ago -- that he did say.

And it may well be that at the start of the hearing there will be parties who say, we want to have a day when he will be here and we know he is going to be here. So we will go from there.

MR. HASHEY: We can do that. The real issue -- the main issue I can indicate to you, the only one day that is a real problem is October 27th -- September 27, I'm sorry -- which is the date of the Board meeting, at which time he must make a presentation to the Board to finalize what we are coming here for next.

CHAIRMAN: Well, that is --

MR. HASHEY: Other than that day I think we could be very flexible and be available to the Board on quick call really.

CHAIRMAN: Yes. Okay.

MR. HASHEY: Thank you.

CHAIRMAN: That is no problem. Okay. Next item?

MR. HASHEY: The next item is one that -- the fuel issue will obviously be an issue in the next hearing, whether it is fuel surcharge or what have you.

I don't have complete instructions yet. But all I want to determine, I don't think that the fuel surcharge issues are part particularly of this part, the CARD part of the hearing.

Now if there was something there, I mean, we can still delve into it I suppose as well. And we will have people here in support of a panel to answer questions. I have arranged for that. So that it shouldn't be a problem. Maybe that is something we can find out as the hearing progresses.

CHAIRMAN: Certainly, Mr. Hashey, people who know more about it than I have indicated that it would play a role in the CARD part of the hearing. Any of the parties have any comments on that at all? Mr. Hyslop?

MR. HYSLOP: Thank you, Mr. Chairman. I won't say that we have fully reviewed it. But our primary thoughts is the application or approval of the fuel surcharge and how that fuel surcharge was to be effected might very well impact or could impact in the test year on the application itself. So -- at the allocation itself.

So our thinking is that a fuel charge is going to be part of it. The sooner we know for sure, the better. Because I think it would be part of the cost allocation hearing, maybe not a major part, but it could affect it.

MR. HASHEY: We will be prepared to answer questions.

CHAIRMAN: Yes. Okay.

MR. HASHEY: We will be prepared.

CHAIRMAN: That is good. Because that is similar to the advice that I have received. And so it should be on the table. Okay. Next item?

MR. HASHEY: The next was the big one. This is not something that we made up. This is something that was discussed with the other Intervenor counsel particularly. And it follows a schedule that has been used in Nova Scotia that I understand, and other places, has been very efficient.

What we are asking is that the times of the hearing be scheduled so that at 2:00-ish we conclude with a short break, enough to have a sandwich, and a short one around noon to allow the Board to allow the parties to get earlier transcripts, to let them have the afternoon to answer -- to prepare for the next day of hearing, and particularly for a number of us, presumably Disco more importantly, to have time to properly get undertakings

resolved, as we expect there would be some as we have always encountered.

It is a little different scheduling time. But it seems that we have been advised that it has worked efficiently elsewhere. And I would respectfully request you might consider that here.

CHAIRMAN: Any other party have any comments? I will point out one difference. And that is the Nova Scotia Board is full time.

And my Commissioners -- you know, these Commissioners come in from all over the province of New Brunswick. And if we thought it was going to be more efficient, i.e. as a result thereof that the time required for the hearing would be less, then they would probably give it due consideration.

But personally I can't say that I want a half-hour lunch from 11:30 till 12:00. Maybe from 12:00 till 1:00 and leave at 3:00. The Board is going to take that under advisement.

MR. HASHEY: That latter suggestion would be fine.

CHAIRMAN: We will take that under advisement and establish that. Next item?

MR. HASHEY: Another item that may not be there --

Mr. Morrison will speak to the Rogers matter that is

coming up next. But I have just a couple of issues here that really aren't -- or one issue. And that is it struck me that it might be most efficient if we had someone with the panel solely for the purpose of accessing interrogatories. There is so much stuff here.

And one thought was that we might -- we have got it, as most people have on the computers, that we might have somebody there so they could quickly access that on the computer for the two panelists to allow them to, you know, not be shuffling books continually during the hearing. And I don't want to do that without obviously your authority to --

CHAIRMAN: Absolutely --

MR. HASHEY: -- consider that.

CHAIRMAN: -- no problem with that at all, Mr. Hashey.

And as well, I mean, for instance you have -- in a number of hearings the panelists want to confer with one of the other employees of Disco that are present. And he or she can do that.

We are not a court of law. And anything that can assist the witnesses in giving timely responses and well-founded, why we won't stand in their way.

MR. HASHEY: Thank you. That concludes the first part. I would turn over to Mr. Morrison if I might on the Rogers

Cable issue please.

CHAIRMAN: Shall we just postpone Mr. Morrison for a second.

Previously in hearings we have had the undertakings listed and Disco or NB Power had looked after them. But I'm just wondering. If my memory serves me correctly, the Shorthand Reporter in the past had made a list of undertakings. Could that be done in the future in this hearing? Good. Thank you.

MR. MACNUTT: Mr. Chairman, one of the critical elements in keeping a record of the undertakings is the response and the form of the response. I wonder if that could be recorded as well. It will be on the transcript. But the object is to have a list so that --

CHAIRMAN: Mr. MacNutt, could I suggest that we see what the Shorthand Reporters come up with. And if there is something missing in that and it provides or it doesn't make it very convenient, that we ask the Shorthand Reporter to change it. The way they did it before, to the best of my recollection, was quite good. And you could follow it. So rather than -- I'm sure that the Shorthand Reporter will have precedent for that. And we will see what comes out of it. Okay.

Mr. Hashey, somewhere in either correspondence or -- okay, no, I don't need to do that because that is down after the Rogers Cable matter.

It would be my intention, if we have here today -- we have a master copy, don't we, of all the filings?

Yes. That is all I will need. Before we break today I'm going to mark as exhibits the various Intervenors' evidence that has been filed with us.

So having said that we will postpone the timing for the rate proposal hearing until after Mr. Morrison has had an opportunity to talk about the Rogers Cable matter.

MR. MORRISON: Thank you, Mr. Chairman. We have had some discussions with Rogers over the lunch break. As you would recall, Ms. Walsworth was --

CHAIRMAN: Have you been negotiating with them?

MR. MORRISON: That is happening elsewhere. I haven't been -- there are ongoing negotiations but I'm not involved in those directly.

However, so we have a parallel process. There is negotiations which we hope will lead to some type of a resolution of the matter. But it hasn't been resolved yet.

The arguments that were presented back in the spring basically dealt with whether Rogers was to be an

Intervenor or not. And I know Ms. Walsworth and the counsel for Rogers both made jurisdictional arguments before the Board.

Although we haven't quite -- and I haven't been close to this issue until recently -- but there hasn't really been a decision whether or not this Board has jurisdiction to actually deal with the merits of the Rogers issue.

So we have had some discussions with Rogers. And I guess it has been suggested to me that we, Disco, make a motion for the Board, basically challenging the jurisdiction of the Board to deal with the merits of the Rogers issue, which we would like to have resolved, the jurisdictional issue resolved, before we would then go on to prepare and file evidence on the issue and have interrogatories and so on.

And I'm proposing -- we have had -- we have kicked around a couple of dates at lunchtime when would be a good time to have that issue dealt with by the Board. We initially thought perhaps the second day of the hearing, on the 27th.

But I understand that Rogers counsel may not be available on that date. So we are looking for some guidance from the Board, first of all to determine -- for the Board to make a decision on its jurisdiction to deal

with the merits of the Rogers case.

Depending on how that turns out, if the Board says we do have jurisdiction to deal with the matter, then of course Disco would then file evidence on the issue. And there would be a mini sort of process involving the two of us. I can't imagine that any other Intervenors are interested in the issue.

CHAIRMAN: Is there a problem with the afternoon of Thursday, October 6th? I'm just thinking that's the end of our first three days of the hearing. Is there a problem with that? Then that allows the Board to simply - - we have got a good stretch of time -- we have a break there, so that we could then work on our decision and come back after that. Is that all right with Rogers?

MS. MILTON: We can attend on the 6th.

CHAIRMAN: Okay. So I would suggest that -- what -- as far as the jurisdictional argument is concerned I -- you know, lawyers always surprise me in how long they can talk. But I can't see that going for more than say an hour, hour-and-a-half.

MR. MORRISON: I think you are right. We have already had some discussions about this. Most of the arguments have actually already been put forward, although the issue didn't come into focus because it was only a determination

of whether Rogers be granted Intervenor status. So it may be a question of just -- I know for my part highlighting the argument that has already been issued. And my friend suggested that it probably isn't going to take much more than an hour.

CHAIRMAN: My suggestion then if it is all right is that we will say that we will go -- on that Thursday we will go and take let's say a bit of a late lunch so that the other parties then don't have to come back after lunch if they are not interested in hearing eloquent legal argument concerning jurisdiction.

And we will just spend the hour, hour-and-a-half that it takes to deal with that before we break for a couple of weeks. Is that okay?

We are down to the last three items dealing with the revenue requirement rate proposal. There is one thing that doesn't come up there, Mr. Hashey, but which has been mentioned in conversations with Board counsel, and that is the concern of putting in the evidence when you are because -- sorry, when you had proposed to do so on the basis that as a result of the Board's decision in this particular hearing that we are going into that you may be changing your evidence.

A economic regulator's hearing process is a snapshot

in time and at some point you have to say we will go from

here. You can't keep amending and amending and amending.

However, in this one I think you are absolutely right.

It's very important. And if as a result of the Board's decision in the CARD portion of this that certain things should be changed in the evidence that you have had, why then not only would I expect it but probably even require that you make some changes in what you have filed. But I think the important thing is to proceed, get on the table what it is you are proposing for that future test year, and we will go from there.

MR. HASHEY: I believe that came up and I agree with what you say there completely. I don't have a problem.

CHAIRMAN: Okay.

MR. HASHEY: But one of the issues that has been discussed I think is the notice to be filed on October 3rd, and we didn't want to put that notice in in a way that it appeared to be presumptuous as to what the Board was going to be finding. And one of the thoughts is that that notice might contain an average rate and we could I suppose specify that if the Board follows the request this is what the percentage increase would be. That's the one that really gave us a little bit of trouble as to how handle that part.

CHAIRMAN: Well I suggest that you put it in and the Board will take a look at it, but pretty basically I would be very surprised, Mr. Hashey, if a group of customers of Disco would be totally left out of any proposed rate increases that would be included in after the time that our CARD decision comes down.

And to me it's to try and give a broad notice to members of the public who may well be affected by the process to give them notice and say this is what is going to happen.

And I would suggest in this one that it also be put in that this may well be amended as a result of the CARD decision, then you can check with any amendments either on the Public Utilities Board's website or on NB Power's website, or something to that effect.

But I think the rate classes are going to be given notice and that's the important thing. Anybody any comments on that? No. Okay.

MR. GORMAN: Mr. Chairman, if you could just clarify there. Are you suggesting that in the filing that he just give the average or that he do it by rate class based on assumptions as to the outcome? I'm not quite sure what your determination was.

CHAIRMAN: My determination, Mr. Gorman, is that the notice should indicate to the various rate classes that they will

be affected in this particular hearing that we are going into.

In other words I presume -- this is a presumption on my part -- all customer classes will be looking forward to a rate increase, some larger, some smaller. And that should be put in.

And then they should also be given notice that as a result of the hearing presently in process those percentage increases or decreases may well change. And if we can, hopefully we can put in and say that any changes will be posted no later than December 15.

MR. GORMAN: I understand what you are saying. I'm just wondering if what is going to be put in the notice is the average change or whether it's by class? Is that what Mr. Hashey is talking about is by class?

CHAIRMAN: I think we better go with class, so to let everybody know that they could be affected.

MR. GORMAN: Thank you.

CHAIRMAN: Okay. Anything else, Mr. Hashey, there?

MR. HASHEY: Yes. The other issue and Mr. Hyslop has raised that was a concern over the timing for the interrogatory process.

It is the intention to attempt to file evidence closer than the 17th date, if possible 11th, 12th area, where -- to give people more time, if you like. Some of this

evidence will be translated, some of it may not be but will be as quickly as possible. There may be -- we are not just certain -- there would be a couple of experts expected and anticipated in this evidence.

We have got them working on things right now, La Capra for instance, you know, to bring us up to scratch and to make sure that they can meet the time table and whatever on the general rate issues.

MR. HASHEY: I need a little time to consult before I can jump to conclusions here. The last decision I understand will have a serious impact on what we are able to do on the earlier date. You know, a lot of the evidence we can have in, but the rate proposal is causing us a little bit of grief at the moment. Maybe it's something we should take a few minutes to discuss to come back with a suggestion.

CHAIRMAN: All right. Why don't we -- that's all -- just before we do that, Mr. Hashey, I do know that I have been -- I was speaking with the representative of the Canadian Manufacturers & Exporters and I knew Mr. Plante had some difficulties concerning the evidence that he had filed and whether or not it was applicable to the cost allocation rate design portion of the hearing or perhaps more appropriate in the rate proposal portion of the

hearing.

My skimming reading of it was that it was probably more appropriate to be introduced in reference to the rate proposal itself.

Now, Mr. Plante, have you had an opportunity to talk to anybody about this, sir?

MR. PLANTE: Yes, Mr. Chairman, had the opportunity to speak with senior members. And the general consensus was that indeed we do want to provide our input to the hearings at a time that would be most value to the Board Members. However, the general consensus is as well that we do believe that the evidence that is being presented really is applicable to the CARD portion of the hearing, in so much that there is a number of reasons, but I don't have the reference right on hand, but at least some of the evidence that has been filed does make reference to the impact of electricity rate increases on the industrial class consumers.

CHAIRMAN: Okay, Mr. Plante, as the judges always said to me, it's your case. And we will deal with it. And certainly I will mark it as an exhibit after we have had this break.

So we will take a 10-minute recess and we will come back in and see what you have to say.

(Recess - 1:45 p.m. - 2:05 p.m.)

CHAIRMAN: Mr. Hashey?

MR. HASHEY: I am here in shadow. Mr. Chairman, what we

would propose to do is we will make our very best efforts to file our evidence on the 11th to give people more time to prepare their interrogatories.

Unfortunately, there is a decision process on what's being done that we are not exactly party to and nor are we -- you are familiar with the filing. And I don't think in fairness any final decision has been made on what is intended for 0607. And we will work with Board Staff to get the notice completed for the 3rd and do our very best to get our evidence together and get it in the hands of people earlier so that they have a better time to prepare their interrogatories. On the 11th, it will be in English only, but we will be following up with translation, we respect that. But every Intervenor here has requested it in English at this point in time. We respect our obligations and we will file it appropriately in both official languages.

CHAIRMAN: Well that's the best you can do, Mr. Hashey.

That's good enough.

Now is there anything else? I had -- my understanding was from Mr. MacNutt in a portion of -- sorry, in one of

the meetings that you, Mr. MacNutt, and the Public Intervenor or some other parties had, there was a concern that we reconfirm the dates on the revenue requirement and rate proposal. And certainly it's the Board's approach that the -- what we have set up now, we will adhere to unless something comes up that we can't do it.

MR. HASHEY: That's all we can ask for.

CHAIRMAN: Now do any other parties have any things they want to bring up before I give exhibit numbers to the Intervenors' evidence that has been filed? Mr. Hyslop?

MR. HYSLOP: Thank you, Mr. Chairman. I wasn't quite sure I caught all of Mr. Hashey's remarks. As I understand it, the applicant will file all of its evidence on the revenue requirement on the 11th of October. And is there a date set for the first interrogatory period to follow that? Or what is the procedure at that point in time?

CHAIRMAN: Mr. Hashey, you handle the first part of that question.

MR. HASHEY: The first part is we said we would use our best efforts. The schedule is there. And the first set of interrogatories was to be in by the 31st of October 2005 at noon.

MR. HYSLOP: Okay.

MR. HASHEY: That was based on the 17th. But we recognize

that Mr. Hyslop has been speaking to me fairly frequently saying look, you are cutting me short on time here due to this other hearing, I am a one-man show, et cetera. So that's why we are trying to accelerate it, because there is that break period of two weeks in the middle there, before we resume the hearings again.

CHAIRMAN: Okay, Mr. Hyslop?

MR. HYSLOP: That's fine for the Public Intervenor. And certainly if I have problems I will be back before the Board. But I really think that the 31st is a reasonable date if the evidence is filed on the 11th. One of the concerns I have though, Mr. Chairman, is as I understood the purpose of filing the new notice on October 3rd, it may give parties who as to this point in time have not been before the Board in this process an opportunity to intervene. And would they have -- normally what happens I think is that they come before the Board and they have their status as an Intervenor approved and the Board kind of gives them an opportunity if necessary to ask questions as well. And my main concern is if there was a new Intervenor, is there any type of prejudice that may occur to them? But as far as the Public Intervenor is concerned, Mr. Chair, the 31st is very acceptable.

CHAIRMAN: Mr. Hyslop, we will worry about it if there is a

new Intervenor that comes. We just hope that your office is inundated with questions that you have to deal with as the Public Intervenor, that's all.

Any other matters? Then the Secretary has indicated to me that although we thought we had copies of all of the Intervenor's evidence here with us today, we in fact don't. We are not complete. But this is to indicate on the record that we will -- the evidence that has been filed by the Canadian Manufacturers and Exporters as their expert testimony will be given the exhibit CME-1. That likewise the evidence that Enbridge Gas New Brunswick has filed for its expert witness will be EGNB-1. The Public Intervenor's will be PI-2. Rogers Cable Communications will be RCC-1. The Municipal Utilities will be UM-1. Vibrant Communities Saint John will be VCSJ-1. And the PUB expert, staff witness will be PUB-1.

And I would ask -- I don't know where it came from, I guess maybe it must have come out from DISCO, but there is a schedule available showing where we are certainly a travelling roadshow in reference to these two hearings. So that we are going to the -- the next hearing will convene on Monday the 26th at the Delta here in Saint John in Ballroom C. But then for October 26th, 27th, it will be at the Algonquin in St. Andrews. And then the 31st of

October through to and including the 10th of November, with a few days out in the middle there, will all be at the Beaverbrook in Fredericton.

So my suggestion is that staff of DISCO, if they have made tentative reservations of the hotel space now for the two weeks after the 10th of November, just in case we went that long, that they might update this list and send it out to the parties in the next few days if they could. Any other matters? If not, then we will adjourn until Monday the 26th of September --

MR. PEACOCK: Mr. Chair?

CHAIRMAN: -- at 9:30 in the morning at the -- in Ballroom C of the Delta Hotel in Saint John. Oh, Mr. Peacock?

MR. PEACOCK: Mr. Chair, sorry.

CHAIRMAN: Scream at me.

MR. PEACOCK: Sorry for the interruption. Just for clarification has there been an exact date set for the customer service portion? I know there was discussion that that would be towards the end of one group of rate hearings.

CHAIRMAN: I don't know that I quite follow your question.

As a professor of mine used to say, run that by me again?

MR. PEACOCK: Okay. Certainly, Mr. Chair. I believe in the last major hearings in the early '90s, there was a

specific day set aside dealing with the whole issue of customer service and all of the -- anything related to that. And I think there was a brief agreement when we are at the Hilton that there may in fact be an opportunity for a similar day sometime this fall.

CHAIRMAN: Yes. And that would be part of the rate proceeding itself, rather than the CARD proceeding. But thank you for reminding me of that and we will have to take a look at that. And there are two parts to what you are saying.

First of all, the customer service portion of the hearing, I believe -- it's coming back to me now -- is that we said that we would try and put that out after the actual rate hearing is concluded.

MR. PEACOCK: Okay.

CHAIRMAN: Along with the next nine years of the load forecast. We would put that out there. Whereas normally we will give an opportunity for Informal Intervenors at some point in a rate hearing simply to come before the Board and make a presentation to us and not really be a party that follows throughout.

Now that's a date that we will set when we convene in January.

MR. PEACOCK: Okay.

CHAIRMAN: And the other one, that will come after. DISCO has indicated that they will co-operate in giving the Board jurisdiction on those two other matters. So we will be doing that at a later date. Probably in the spring after the decision is out on the rate hearing.

MR. PEACOCK: Thank you very much.

CHAIRMAN: Okay? Good. All right. Then we will adjourn to the date and place.

MR. MACNUTT: Yes, Mr. Chairman, I believe you are about to say we are going to reconvene at the Delta Hotel on this coming Monday. I believe you said 9:30 a.m. Would you confirm that for me, please?

CHAIRMAN: I did. I said 9:30, Mr. MacNutt. I said it very clearly, sir.

MR. MACNUTT: Thank you. Everyone now knows it.

CHAIRMAN: Good. Thank you all.

(Adjourned)

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