

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

Hilton Hotel, Saint John, N.B.  
August 25th 2005

Henneberry Reporting Service

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

Hilton Hotel, Saint John, N.B.  
August 25th 2005

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BOARD COUNSEL: Peter MacNutt, Q.C.

BOARD STAFF: Doug Goss  
John Lawton  
Izabell Fagan

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CHAIRMAN: Good morning, ladies and gentlemen. The Board apologizes for not getting going at the crack of dawn this morning.

For the sake of the record could I have appearances from the applicant?

MR. HASHEY: Thank you, Mr. Chairman. The applicant, David Hashey, Terry Morrison, accompanied by Lori Clark, Neil Larlee, Blake Hunter and Lillian Gilbert.

CHAIRMAN: Thank you. Canadian Manufacturers and Exporters New Brunswick Division?

MR. PLANT: Dave Plant appearing on behalf of the CMENB.

CHAIRMAN: Thanks, Mr. Plant. Conservation Council of New Brunswick?

MR. SECORD: Andrew Secord on behalf of the Conservation Council of New Brunswick.

CHAIRMAN: Would you hold up your hand, I -- right there, Mr. Secord. Okay. Thank you. Eastern Wind Power Inc.? Enbridge Gas New Brunswick?

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

CHAIRMAN: Energy Probe? Irving Group?

MR. DEVER: Bill Dever, Mr. Chairman.

CHAIRMAN: Thank you. Jolly Farmer? System Operator? Mr. Roherty I saw, did I not? No? Rogers?

MS. VIALLANCOURT: Christianne Viallancourt on behalf of Rogers.

CHAIRMAN: Thank you. And then the self-represented individuals? They have lost interest. The municipal utilities?

MR. GORMAN: Raymond Gorman and Dana Young for the municipal utilities.

CHAIRMAN: Thanks, Mr. Gorman. Vibrant Community Saint

John?

MR. PEACOCK: Good morning, Mr. Chair. Kurt Peacock and I am joined today by Anna London, our intern. I promised her a coffee if she would accompany me.

CHAIRMAN: I'm not going there.

MR. PEACOCK: Just coffee.

CHAIRMAN: Public Intervenor?

MR. HYSLOP: Yes, Mr. Chair. Peter Hyslop with Mr. Barnett, Mr. Hegler and Ms. Power.

CHAIRMAN: Thanks, Mr. Hyslop. And appearing as Board council and with you today, Mr. MacNutt?

MR. MACNUTT: I have with me today, Mr. Chairman, Douglas Goss, senior advisor, John Lawton, advisor, and John Murphy, Consultant.

CHAIRMAN: Thank you. And the informal Intervenors, I will just go through the list and if there is any of them here, please raise your hand. Agriculture Producers Association of New Brunswick? Canadian Council of Grocery Distributors? City of Miramichi? Flakeboard Company Limited? Genco? Noranda Inc.? Potash Corporation of Saskatchewan? And UPM-Kymmene Miramichi Inc.? None of the informal Intervenors. Didn't expect them, but I wanted to do that. Well this is a motion day -- motions day which was

requested by the applicant, and so, Mr. Hashey, I will turn it over to you, sir.

MR. HASHEY: The first item I believe that we should deal with today is the marking of the exhibits. There have been nine volumes of answers to interrogatories filed in this matter and I would suggest that possibly that might be the first order of business is to assign them exhibit numbers.

CHAIRMAN: That's fine with me, Mr. Hashey. Thank you. The list which I have ends as far as the applicants at exhibit A-10. Does that correspond, Mr. Hashey? Okay. What do you want to mark as A-11?

MR. HASHEY: We have here a truckload of this stuff as you can imagine. The work of creating this was quite extensive and I certainly compliment those people that spent the time doing this.

We have responses to interrogatories, the first volume is dated July 14, 2005, and it's entitled Responses to Interrogatories 1, volume 1 of 2. And then there is a number of appendices and then there is volume 2 of 2 and three appendices.

CHAIRMAN: What is your proposal, Mr. Hashey?

MR. HASHEY: I think for the -- by the way we have had a discussion amongst some counsel and I think the real

reason for asking that they be marked today is so that people preparing cross-examination will have a document to reference by exhibit number.

CHAIRMAN: Makes good sense.

MR. HASHEY: And so it would be just a matter -- I think each volume should be assigned a separate number.

CHAIRMAN: Fine. So then Responses to Interrogatories number 1, dated July 14, 2005, volume 1 of 2 will be exhibit A-11. So presumably then A-12 will be Responses to Interrogatories number 1, July 14, 2005, volume 2 of 2.

MR. HASHEY: Correct, Mr. Chairman.

CHAIRMAN: Then we go to the appendice volumes, Mr. Hashey?

MR. HASHEY: Yes. There are three appendice volumes. They are referenced as being volume 1 of 3, volume 2 of 3 and volume 3 of 3. I suggest they be marked 13, 14 and 15 in the order that they appear there.

CHAIRMAN: Yes. Okay. Responses to Interrogatories number 1, appendices volume 1 of 3 will be A-12 -- sorry -- A-13. And A-14 will be volume 2 of 3, July 14, appendices, Responses to Interrogatories number 1. And A-15 will be volume 3 of 3, the Responses to Interrogatories number 1, appendices July 14, 2005. So A-16 would be volume 1 of 2, August -- whatever the date is --

MR. HASHEY: August 5.

CHAIRMAN: August 5.

MR. HASHEY: Yes.

CHAIRMAN: So that's A-16, Responses to Interrogatories number 2, August 5, 2005, volume 1 of 2.

MR. HASHEY: Is A-16?

CHAIRMAN: A-16.

MR. HASHEY: 1 of 1 is appendices I believe.

CHAIRMAN: A-16 just for clarity on the record is Response to Interrogatories number 2, August 5, volume 1 of 2. That's A-16. A-17 will be Responses to Interrogatories number 2, August 5, volume 2 of 2. That's A-17. And then A-18 will be appendices August 5, 2005, volume 1 of 1. Next, Mr. Hashey?

MR. HASHEY: Yes. Then there is one last volume which is arising out of the last set of supplementals or whatever, and it's referred to as Responses to Supplemental Interrogatories, dated August 19, 2005. Volume 1 of 1. There is only one volume.

CHAIRMAN: Where do you go after that one, Mr. Hashey? Once we get that and mark it A-19, what -- are there any more?

MR. HASHEY: No, that's it for the exhibits for the time being.

Now there are some other documents and potential exhibits I have here as well that we could -- we need to discuss. It gets into the confidentiality issue.

CHAIRMAN: We presume that hopefully you can -- you are able to go to colored paper, et cetera, I think that's a good idea, as to confidential responses to go to colored paper, because --

MR. HASHEY: No, we haven't done that but we could.

CHAIRMAN: No, but I think you should because, you know, for instance one could inadvertently if all the indication on a response to an interrog. is unredacted on the top, it puts a terrible onus on someone like myself to make absolutely certain that that isn't an unredacted one. But if you have got colored paper then there is just no question. You know that that's something that confidentiality has been claimed and we are treating it confidential.

MR. HASHEY: Okay. I see what you are saying. I have a volume here of documents that complies with your July 27, 2005, order, which provides -- and there is I believe only two that remained confidential, and I had redacted and unredacted, same color paper. What you are suggesting is maybe we should take that back, not put it in as an exhibit today, and put colored paper to it and deliver it to the Board?

CHAIRMAN: Look, as far as I'm concerned let's mark the white paper and then we will substitute and I will remark

it when you have it down on colored paper.

MR. HASHEY: We can send that down.

CHAIRMAN: Okay. Exhibit A-19 then is Responses to

Supplemental Interrogatories dated August 19, volume 1 of 1.

So what are the next ones that we are to mark, Mr. Hashey?

What are they --

MR. HASHEY: The next document, Mr. Chairman, is a document

that has been I believe delivered to the Board probably this

morning, which is referenced as Compliance with Board Order

July 27, 2005. And it contains a number of things, one just

for ease of reference we have put in the policy on

confidentiality, also the Board order, and then the series of

answers which were all -- you know, I believe that we decided

could be released with the exception of ENGNB number 38 and

39, if I'm correct on that. I'm sorry, 37 and 38. Do you

have that document, Mr. Chairman?

CHAIRMAN: Yes, I have got it, sir. Now this is confidential

or not?

MR. HASHEY: There are two documents that are confidential.

CHAIRMAN: In this volume?

MR. HASHEY: In that volume, which is EGNB IR 37 and EGNB

number 38.

CHAIRMAN: Well I will take your word for it. I'm looking

at a page here that says Table of Contents Compliance with Board Order July 25, 2005, and presumably both 37 and 38 for EGNB are redacted --

MR. HASHEY: Right.

CHAIRMAN: -- whereas the next EGNB was one that we ruled should not be confidential, therefore it is unredacted.

MR. HASHEY: Correct, Mr. Chair.

CHAIRMAN: So that volume will be A-20.

MR. MACNUTT: Mr. Chairman, I am a little confused by what is going on. A redacted document means that the document does not contain any confidential information.

CHAIRMAN: That's correct.

MR. MACNUTT: An unredacted document is one which contains a mixture of non-confidential and confidential information.

CHAIRMAN: Does. Right.

MR. MACNUTT: And it's my understanding Mr. Hashey just said that the binder which he is offering to be marked as an exhibit does contain confidential information?

MR. HASHEY: It does.

MR. MACNUTT: Therefore it should not go on in the public record as an exhibit. It should go --

CHAIRMAN: Well, part of it does, Mr. MacNutt.

MR. HASHEY: Part of it should, yes.

CHAIRMAN: Yes. And those that are confidential probably

should not be in this volume. They should be in a separate volume that will be marked confidential and be contained in the confidential portion of the proceedings.

MR. MACNUTT: That's where I was going, Mr. Chairman.

CHAIRMAN: Okay. Sorry, Mr. MacNutt. Well thank you for --

MR. HASHEY: Okay. Well what I would suggest, Mr, Chairman, is that we remove the two -- under two tabs only that says -- 37, 38 EGNB unredacted.

CHAIRMAN: I am going to suggest, Mr. Hashey, that we are kind of crowded up here and I would rather leave these volumes intact and then staff -- your staff can pluck out the ones that are confidential and perhaps make a suggestion as to how to handle them after that.

MR. HASHEY: Yes. What we were proposing to do actually is to file a full volume of confidential unredacted marked confidential, but obviously can't do that complete until we have dealt with I think four or five that we will be dealing with this morning, and then we could put everything in that same volume. That I think would be more effective.

CHAIRMAN: Yes. Well I certainly do think that would be better for all.

MR. HASHEY: Okay.

MR. MACNUTT: So if I have your understanding, Mr. Chairman,

everybody who has a copy of the volume to which Mr. Hashey has just referred should turn them into Mr. Hashey so that Disco can satisfy itself that the confidential information has been removed before the binder is marked as an exhibit?

MR. HASHEY: The good news is only the Board has copies.

MR. MACNUTT: Okay.

MR. HASHEY: We don't have to take them back from anybody else.

It's just a matter of changing the pages on the Board's copies at this point.

CHAIRMAN: Okay. And that binder has been marked as A-20 on the understanding that there will be a couple of Interrogatory answers that will be removed from it during the next break. Any other?

MR. HASHEY: No, Mr. Chairman. That would move us towards the issue of the confidentiality policy. Now in that regard we have prepared a letter yesterday --

MR. MACNUTT: Mr. Chairman, if I could interrupt Mr. Hashey and go back to exhibit A-20. And if you look at the tabs on exhibit A-20, Mr. Hashey has identified response to IR 30 -- EGNB 37 and EGNB 38 as being unredacted and they are to be removed. But if you go to the remaining tabs they are also marked unredacted.

MR. HASHEY: That was done because of the Board order that

they were to be unredacted. Therefore they are.

CHAIRMAN: In other words, Mr. MacNutt, we overruled the request for confidentiality, therefore we are now getting those in unredacted form.

MR. MACNUTT: Those are full answers. Okay.

CHAIRMAN: What about the volume Mr. Hashey requested confidentiality? Sorry.

MR. HASHEY: There is another volume that I'm coming to --

CHAIRMAN: Okay.

MR. HASHEY: -- which will be the request regarding confidentiality which we will be dealing with this morning. That's coming right up on the agenda. I thought prior to that we might have just a bit of discussion on what has taken place.

And I have a letter that I think would be useful to distribute to all of the -- to the Board and to the Intervenors.

Now the letter that I'm speaking of was addressed to the Board and it was sent out only yesterday when we prepared this. And what it does is it indicates what responses have been redacted effectively, you know, and there are two, as you have noted from the past and there are now a short number that we will be dealing with this morning.

Now what we have done -- the applicant has done -- is that anyone who has signed a confidentiality agreement has been provided with unredacted copies and there have been a number of people that have done that and have requested it. And I thought it would be worthwhile to file with you a list of those people that have received it, have received the unredacted information. There has been full disclosure on a confidential basis. Why did we do this? Well we were interested in having this procedure move. We didn't want anybody or any expert to be restricted in the work they were doing and not have the full information and come back and say look, we haven't had time to do that.

So we have got confidentiality agreements and we have supplied all of the answers on a -- in an unredacted form to the people that have signed a confidentiality agreement. And I thought it might be useful to file a letter with the Board that would indicate what we have supplied and who the people have received it.

And I think that will come to maybe a subsequent matter this morning where I believe according to the confidentiality policy there is a provision in there for the Board to make a decision as to who would be a designated recipient, and I think we are getting towards that list when we supply you this.

CHAIRMAN: All right. Well that's the letter dated the 24th addressed to the Board secretary and we of course have a copy of that.

MR. HASHEY: That's fine, Mr. Chairman. I don't know that that needs to be marked as an exhibit, but I have -- we do have copies and I believe that probably should be distributed to everyone here for two reasons. 1) it does show that the Interrogatories that we are dealing with this morning, defines them, and because we don't have -- we don't have volumes of -- on the argument book are submissions on these things to hand out at this time. And it gives everybody a schedule as to who has got what. If that meets your approval, Mr. Chairman?

CHAIRMAN: I think that's helpful. And the fact that Mr. Hyslop put up his hand because he wanted a copy of it, he didn't have one, and he hasn't checked his mail lately, but anyway --

MR. HASHEY: I doubt we had time to send that out.

MR. MACNUTT: Mr. Chairman, as it provides a point in the procedure which identifies who has what and is summarized in this letter, I would recommend that it be marked as an exhibit and circulated to all participants.

CHAIRMAN: Okay. I will give you that one, Mr. MacNutt.

MR. HASHEY: Can I give you the original, Mr. Chairman?

CHAIRMAN: Yes, that is probably a good idea, Mr. Hashey, if you would.

Now, Mr. Hashey, as is the prerogative of the Chair, I am going to usurp the agenda at this point. I had a number of points I wanted to make and give you an -- and the other intervenors an opportunity to comment on them after.

But the first one is is that I wanted to make it very clear that if pursuant to 133 of the Electricity Act, if you file the document and you claim confidentiality for that document or any part of it, then 133 automatically attaches to that document. And you know, the last time we dealt with matters of confidentiality we found we all struggled through, I think is the best way of putting it. But certainly the Board's proposal today will be as follows, that Mr. MacNutt has aptly called it when we rule on whether or not a document or any part of it should be confidential, that is a public interest hearing -- portion of our hearing.

An in-camera portion of our hearing is when the entire hearing adjourns from the open public process and goes in and deals with confidential information behind closed doors. And the Board's proposal today is that you will file and therefore request and therefore automatically be

given the protection of 133. That we have checked and we don't have any premises yet, but we do have the 19th of September that we could have that public interest hearing day which would give all of the parties an opportunity to look at what the information is that you are asking to be treated in confidence and then in a separate day's proceeding we will deal with those.

And I think certainly this panel's feeling is that that is a more orderly way to deal with it, is to put all of those questions over to the 19th of September. That is a week ahead of the beginning of the CARD hearing anyway.

I am going to call a break after this so that people can have an opportunity to think about this plus a couple of other things.

The second thing that we want to put in front of you is that we have been reviewing the answers to the interrogatories and we are going to propose that in the rate proceeding itself, we will have -- sorry, in the load forecast portion prior to the rate proceeding we will deal with the test year's load forecast. However, the long-term load forecast out ten years is a matter that we want to continue to have jurisdiction to deal with but we feel that that can be taken out of this hearing process that we are in right now and is not necessary in order to set

rates for the fiscal period coming up, the test year. So that we -- after we conclude the hearing on the rate matter, et cetera and get our decision out or at least be in a position to get it out, that we then reconvene to deal with the lengthy ten year load forecast.

So that is going to be our proposal. That will cut down on the amount of time that is necessary in the rate proceeding itself.

The second thing is is that Mr. MacNutt has indicated that as a result of Board counsel meeting, that a number of parties were talking about matters which could be considered to be matters of customer service policies. And again, as you are aware, sir, we had a separate generic hearing concerning customer service policies back in the early '90s. We took that out totally from everything else.

Now this is a two stager. First of all, if anybody wants to argue as to whether or not they believe we have the legal authority to look at customer service policies and to make rulings and reference to them or not, then you will be given the opportunity to do that. But if in fact Disco agrees that we do have that ability and authority, then again I know a number of parties are concerned about it, but I think for the purposes of the rate hearing,

unless it is a rate that happens to be involved in the customer service policies, is that that too be separated out from the main rate hearing as long as we have the commitment from Disco that they will remain -- the Board will remain seized of the matter. Then we can get that out of the rate proceeding as well and put that off into the future. So all of those items I would like to give you folks an opportunity to think about and so we will take a ten minute recess and we will also try and get some more air conditioning in this hotel.

MR. HASHEY: Can I just --

CHAIRMAN: Oh, yes, sure, sure.

MR. HASHEY: -- a quick question on the first one. Your intent, just so I am clear, we won't be arguing this confidentiality thing here today, but you will have a room available for anybody that wants to sign on to review the unredacted documents. There is not very many. We are not talking a lot of documentation here today on, you know, the numbers left. But that is what would happen on the 19th? I am just trying to clarify it in my own mind.

CHAIRMAN: On the 19th, people will have had an opportunity -- yes, I will get to you, Mr. Hyslop -- will have had an opportunity to review what you are asking be

confidential. And then they will have the opportunity -- Mr.

MacNutt will correct me if I am off the policy document here -- then they will have an opportunity to say on the 19th we want to challenge that document A, B, and C should remain confidential. We don't think they are. And that is the time that we will then have that public interest proceeding.

And again, I think, Mr. MacNutt, and refresh my memory if I have got the policy wrong here, but at that time those who would be in the hearing and arguing, would have signed the confidentiality agreement so that -- and the Board so that we could then look at the actual information as to whether it should remain confidential or should go on the public record.

MR. MACNUTT: I don't think it is necessary for the Board to sign a confidentiality agreement.

CHAIRMAN: No, no.

MR. MACNUTT: But the hearing on the 19th, it is my understanding, is to hear the argument -- submissions by Disco as to why the identified information should be captured and remain protected from release pursuant to 133, hear arguments from the intervenors as to why it should not, based on the description of the information contained in the submission made by Disco. The Board

would then retire and make a determination of whether or not the information is entitled to continued protection. In other words, fall within 133.

CHAIRMAN: So then the intervenors can't see it between now and then?

MR. MACNUTT: No.

CHAIRMAN: I will ask you --

MR. MACNUTT: But what has been going on is that Disco in fact has been releasing the information to those parties who are prepared and have in fact signed and submitted to Disco a confidentiality agreement. So what you can have September the 19th is two groups of intervenors. Those who have viewed the information over which confidentiality has been claimed by virtue of having signed and submitted a confidentiality agreement. And then another group of intervenors who haven't signed on to that who will not have viewed that information. Therefore, the submissions as to why the information should be confidential or not will come from two different backgrounds.

CHAIRMAN: Okay. And would you point all of this out in the policy document to me as we take our break. But the other question is, does the Board review the actual information that has been filed with it in confidence?

MR. MACNUTT: It can do so. For example, prior to the July

27th decision on confidentiality, that information had not been filed with the Board Commissioners, although it had been filed with staff. The Board made its determination based on the submissions as to confidentiality, the arguments to and - - for and against without having viewed the actual information but relying on Disco's description of it. In the present situation, the information for the most part has been filed with the Board and as I just identified, a lot of the intervenors have it pursuant to a confidentiality agreement.

CHAIRMAN: Okay. Thank you, Mr. MacNutt. Now, Mr. Hyslop, is your hand still up?

MR. HYSLOP: I'm not sure. But I was only going to comment, Mr. Chairman, and I certainly respect the Board's right to determine its own procedure. I think there are six IRs that are in dispute with regard to the claim of confidentiality. Because I have signed apparently a confidentiality agreement for at least five of them, but maybe not six, according to this letter. But I do have the unredacted all six of the IRs. I have had the opportunity to review them. I can only speak for myself but we were quite prepared today to deal with any issue of confidentiality. But I do appreciate the Board's -- I am only one intervenor. There may be others who may want the

opportunity and the time so I leave --

CHAIRMAN: The Board has never seen them.

MR. HYSLOP: Yes, okay.

CHAIRMAN: You know, and frankly, I don't like to do things on the spur of the moment because then you will always miss things. And if we make the rulings a week before the CARD hearing starts that should be sufficient time to have disposed of it.

All right. Anybody with any other -- I will come back and revisit those things but I would like to take a 15 minute recess now.

(Recess - 11:15 a.m. - 11:30 a.m.)

CHAIRMAN: Let's go back to the three matters that we were discussing before we took our break. And the first one was the date of the 19th of September to have the public interest portion of the hearing in accordance with the way that Mr. MacNutt described it from the Board's policy. Any problems with that?

MR. HASHEY: No, Mr. Chairman. May not see me, but we will have somebody here to deal with that.

CHAIRMAN: It's a good time in the fall. Is that moose week?

DR. DUMONT: Yes.

CHAIRMAN: Oh, dear.

DR. DUMONT: Starts only Thursday though.

CHAIRMAN: Oh, all right.

MR. HASHEY: How are you going to stake your animal?

CHAIRMAN: The second thing is then is the -- that we deal with the load forecast for the test year, but we put off the lengthy -- the long 10-year load forecast. We put that off until after the rate proceeding itself. Anybody any comments on that? Mr. Hashey?

MR. HASHEY: Yes, Mr. Chairman. On that and the customer service policy one that you have raised, we are right now getting instructions. And we would ask possibly for an early break so that we can clarify that. And we understand there may be a third one, which deals with the bigger issue. And that is I think your interrogatory 170, requesting a whole review of classifications, which we understand is a job that would take months for experts to do. And there has been some discussion I know between Mr. Morrison and Mr. Goss whether that might be an issue that we have -- should be addressing as well at this point in time.

It hasn't come up this morning, but it has informally. And I just wondered if that -- that is certainly also the topic of some discussion at the moment as to how and when we do that.

Obviously, we are very interested in doing everything we can to preserve the rate schedule, but as you can understand that there are powers that are above some of us here today that we need to get instructions from. And on that basis, I would request that we get an early lunch adjournment, come back early and quickly deal with these matters. Hopefully there won't be any problem.

CHAIRMAN: Yes. Mr. Hashey, I understand completely you have to get instructions from your client. There is no question.

Well then the Board has no problem with having an early lunch break.

Anybody -- any of the other Intervenors have anything they want to say at this time or do you want to wait until after Mr. Hashey has been able to get instructions. Mr. Hyslop?

MR. HYSLOP: Yes. Thank you, Mr. Chairman. On the confidentiality hearing, that's fine. On the load forecast issue, while our preference would be to deal with the whole forecast at once, we have no objection with what the Board is suggesting. And in that regard, I just want to be clear that I understand it.

You will still have a load forecast hearing dealing with the test year prior to the actual revenue hearing and then we would have a full knock down drag out over the

validity of the 10-year forecast that has been presented. Am I correct in my understanding?

CHAIRMAN: Yes, that's correct, Mr. Hyslop.

MR. HYSLOP: We would do -- be amenable to this. One of the issues that came up -- and I got off the phone with Mr. O'Rourke during the break -- is that we have been debating whether or not to file evidence on the load forecast itself.

And our suggestion would be that we -- could that be done with the reservation of a right if we thought necessary to file evidence with respect to the 10-year forecast after we see how the little one day thing goes and with the leave of the Board at that time?

CHAIRMAN: Mr. Hyslop, you have a propensity to want to get every possible decision made today that may affect things down the line.

MR. HYSLOP: Yes.

CHAIRMAN: I suggest that we wait until after lunch at least and see if in fact Disco says yes, we would like to try that or not and then we will go from there.

MR. HYSLOP: Okay.

CHAIRMAN: But enough said on that. And again, we will wait on the customer service policy matter until you have got your instructions as well, Mr. Hashey. So are there --

yes, go ahead?

MR. HASHEY: Yes. One last question. I assume the load forecast schedule would be the same. That was raised with me that the CARD would go ahead and load forecast would follow, the short load forecast hearing?

CHAIRMAN: As far as I am concerned.

MR. HASHEY: Yes. Just somebody asked me to clarify that.

CHAIRMAN: Yes.

MR. HASHEY: That's my understanding. Thank you.

CHAIRMAN: Well then why don't we take a break and come back at -- shall we try to come back at 1:00 o'clock or do you want to make it 1:30, Mr. Hashey?

MR. HASHEY: I think safely 1:30 maybe.

CHAIRMAN: We will break till 1:30. Thank you.

(Recess - 11:45 a.m. to 1:30 p.m.)

CHAIRMAN: Good afternoon, ladies and gentlemen. Mr. Hashey, we took a recess a little early for lunch so that you could get some instructions from your client. What do you have to report, sir?

MR. HASHEY: Thank you, Mr. Chairman. Your request and suggestions in relation to the load forecast which means that we would deal with the test year and put the other and we would undertake to come back after the decision in relation to the revenue requirements I guess, or the

rates, is agreeable, as is the idea of postponing the detail review on customer service policies. We certainly undertake to follow your suggestion and request on that, on both.

CHAIRMAN: Thank you, sir. Are there any Intervenors that want to comment on either of those two suggestions?

MR. PEACOCK: Thank you, Mr. Chair. Vibrant Communities of course would really be pleased if their customer service issues were a distinct day. We would be quite happy with that.

CHAIRMAN: Well we will be hearing about customer service policies, et cetera, after the actual rate hearing itself. And from what Mr. Hashey says, Disco believes that the Board does have jurisdiction and that we will all co-operate in that regard to move it out of this rate hearing so that hopefully we are able to get through the evidence that is germane to the rates and give a decision in sufficient time, so that the new rates could come into effect on the first period.

Good. Now, Mr. Hashey, anything else? Thank you.

MR. HASHEY: Don't know whether I or Mr. Morrison would like to address this, but we would hope that we could get a firm timetable on the rate schedule if possible as soon as possible for a number of reasons, I guess none of which

are more important than the personal side of things and commitments that a number of us have on other items.

I know that a tentative schedule was set. We are working towards that schedule. And we don't have any issue or problem with it.

CHAIRMAN: All right. I will ask any other Intervenors do they have any difficulty with that tentative schedule that we did set?

MR. GORMAN: On behalf of the Municipal Utilities I would just -- no, I would agree with Mr. Hashey. We think it's important that we just know for sure when the hearing is going to be and we have no difficulty whatsoever with the dates that have already been set aside.

CHAIRMAN: Okay. Well it still looks practical, Mr. Hashey, and we just said tentative -- I mean, in our process as you are aware, things arise and come out of the blue on us and sometimes we have to adjust, but certainly from the Board's perspective that looks like a very doable schedule that we have.

And I do have one comment I would like to make on it, however, and that is again we would be putting the public notice in the newspapers prior to the applicants filing their evidence.

I would ask you though that when you do come to the

Board to sign the order that you bring with us what rate changes you are going to be asking for. The reason for that is -- and what classes. The reason for that is it's our normal to put it in the notice so that people who will be affected by that particular hearing will get notice of it. Simple as that. So if you could do that for us why that -- everything else as far as I'm concerned looks doable.

MR. HASHEY: That's agreeable, Mr. Chairman. I know one other issue of course is hotel space. It's my understanding and I think we might review -- it would probably be useful for everyone here -- the locations for the CARD hearing. My understanding from Ms. Gilbert is that there may be difficulty on the 16th of January, but following that there is no difficulty with the Delta on the following weeks. This has of course been a challenge I think for the good folks that work with you and with us trying to find space. I know that everything was set out for the CARD hearing to start at the Delta, and then for the second week to move to the Hilton. Then on the dates of the 26th and 27th when there were dates set it's my understanding that there was no location yet and I happened to be with Ms. Gilbert when she was calling this week to a number of

locations, and it turned out that the Fredericton Inn was available for those dates and the Algonquin Hotel when we canvassed the province. Actually the Algonquin would be pretty good for the whole thing, but anyway. The casino would be a logical place, yes.

CHAIRMAN: Well certainly, Mr. Hashey, Ms. Gilbert and yourself are more up on those accommodations than I or the Board right now with the Board secretary being ill, but I'm sure we will be able to work something through there. Frankly I prefer the Algonquin to the Fredericton Inn too. It's an awful low ceiling as I remember it up there. It really is.

MR. HASHEY: Big room, low ceiling, yes. But the Algonquin did have space. The only thing is that I think that somebody should co-ordinate that fairly quickly because I think we -- Ms. Gilbert can speak -- we may have holds on both places at the moment, but we had to manoeuvre something in the Algonquin if that was the choice.

CHAIRMAN: So with the -- on my agenda I had the WU Centre here.

MR. HASHEY: That wasn't available for the 26th, 27th. We move to the Beaverbrook on the 31st in Fredericton. Throughout the remainder of the hearing my schedule is saying.

CHAIRMAN: I see. So the Delta is not available at all in that time slot?

MR. HASHEY: The Delta has closed us off.

CHAIRMAN: I see. Well look, I don't think any of the Intervenors are going to be quarrelling if we go to the Algonquin or if we go to the Fredericton Motor Inn. So let's just after this is done we will do it and at a future date we will have these things nailed down. Okay.

MR. HASHEY: That's fine, Mr. Chairman. I have nothing further.

MR. MACNUTT: Mr. Chairman, in view of the fact that people might wish to book rooms at these locations, is somebody -- the Board or Disco going to circulate information as to the dates and the location of the hearing?

CHAIRMAN: Certainly. But I will discuss that with Mr. Hashey after this is all over, Mr. MacNutt, as to exactly where we will be holding the various days hearings.

MR. HASHEY: Can I raise one other issue?

CHAIRMAN: Yes, of course, Mr. Hashey.

MR. HASHEY: Ms. Viallancourt spoke to us over the noon time and I think she should be given an opportunity to speak about a date or a time when the Board would be dealing with the Rogers' issue.

MS. VIALLANCOURT: Rogers just thought it might be helpful

if we discussed the pole attachment, the methodology behind reaching the pole attachment rate, apart from the hearing -- if we could have a day set aside for that.

CHAIRMAN: Well I suggest that you speak with Mr. Hashey and then you protest, because that seems to be a very, very narrow issue. And if it meets with Disco and Rogers' timing then just come ahead to us.

MR. HASHEY: It seemed to me that maybe -- it's a dual issue but it could have some impact on the cost of service issues and possibly at the end of load forecast or something we might tack that on, if there is time. If not, we will find another date.

CHAIRMAN: How much time does Rogers need?

MS. VIALLANCOURT: Half a day.

CHAIRMAN: No, no. I didn't mean to argue it. If you were going to have witnesses or anything else like that, how much lead notice do you need in order to have your folks here on the appointed day?

MS. VIALLANCOURT: Well just to give notice -- I mean, they could come within, you know, a weeks notice I would guess, but in terms of --

CHAIRMAN: If we go with Mr. Hashey's suggestion of putting it on the end of the time presently allotted for the CARD and load forecast --

MS. VIALLANCOURT: Okay.

CHAIRMAN: -- then maybe what you should do is put your folks on notice for the last day of that, of that time slot.

MS. VIALLANCOURT: So the last day of the CARD hearing?

CHAIRMAN: Yes. When would that be that we have got it reserved?

MR. HASHEY: We are off into the early part of November. There has been a -- the longest continuous segment I think was set starting the 31st of October and going for the following two weeks, four days, Monday to Thursday, which would be 31st of October until the 3rd of November and then the 7th of November until the 10th of November. There should be time in there.

CHAIRMAN: Okay. Well my suggestion is tell your people that it's going to be after the rest of those two hearings are over but why don't they look at the 10th and mark that day now in their diaries.

MS. VIALLANCOURT: Okay.

CHAIRMAN: Okay. Any other matters?

MR. PLANTE: Mr. Chairman, are we dealing with scheduling at this point, because if we are I would just like to if possible get some sense as to when Intervenors may look to present evidence or be cross-examined?

CHAIRMAN: I think this is premature. I would like to see what Intervenor do come forth with evidence and say they want to call witnesses, et cetera, that sort of thing, and then you can get a far better sense of when it is coming. And the second thing is that I think you should sit down with your confreres, the other Intervenor, and find out if anybody has any problems in scheduling, et cetera, and do that on an informal basis.

I don't think from the Board's perspective it matters that much what the order of Intervenor presenting their evidence is at all. It's to your convenience. If we have to we will make a decision, but if you can work it out on your own then that's straight.

MR. PLANTE: Okay. Well that's good. It sounds like there is some flexibility in there as well. Thank you.

CHAIRMAN: Okay. Anything else? The one thing I had neglected to do over lunch is find out what was available for the 19th of September. Can we leave it that we will do a hotel check and everybody will be informed by e-mail tomorrow as to what's available or where we will reconvene on the 19th? Okay. Well then if there is nothing further -- oh, Mr. Hyslop?

MR. HYSLOP: Thank you, Mr. Chair. I do have a comment. And I don't want it to be -- being much more than that.

But one of the issues that we looked at -- we in reviewing the interrogatories, we feel that an awful lot of the input to the answers have come from Genco people. And to be quite frank, there is little things you can hit on -- on the studies, when you hit them it seems to refer back to previous study and information has been provided by Genco.

And I am trying to get a feel for how the process is going to work. Will some of these people be available on panels or available during the hearing to assist. Otherwise, I can see quite a drag on cross examination and procedure. Having said that, I do recognize it's up to the applicant to put forward his witnesses.

CHAIRMAN: Well, don't ask me. Mr. Hashey?

MR. HASHEY: Yes, I can answer that. I would suggest that at this point in time, there would not be a Genco person on a panel. But we will do everything in our power -- and I believe we will succeed in having somebody from Genco immediately available to us to assist with any undertakings so that there won't be any delay.

CHAIRMAN: With frankness, Mr. Hyslop, the history of the Board has been is that if someone on the panel can't answer the question, they either will give an undertaking to supply the information or inform themselves so that

they are able to answer the question.

I think what we have got to do is let's see how it works. And if it does become -- well it's very much in Disco's interest to have it smoothly flowing and get on with the evidence. So I think we will see how it works and go from there. Anything else?

MR. HYSLOP: Thank you, Mr. Chair.

CHAIRMAN: Then we will rise and reconvene at 10:00 a.m. on the 19th at a location to be announced.

(Adjourned)

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

Reporter