

1 New Brunswick Board of Commissioners of Public Utilities
2
3 In the Matter of an application by the NBP Distribution &
4 Customer Service Corporation (DISCO) for changes to its
5 Charges, Rates and Tolls - Revenue Requirement
6
7 Delta Hotel, Saint John, N.B.
8 March 20th 2006
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13 CHAIRMAN: David C. Nicholson, Q.C.
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16 COMMISSIONERS: Jacques A. Dumont
17 Patricia LeBlanc-Bird
18 H. Brian Tingley
19 Diana Ferguson Sonier
20 Ken F. Sollows
21 Randy Bell
22 David S. Nelson
23

24 BOARD COUNSEL: Peter MacNutt, Q.C.
25

26 BOARD STAFF: Doug Goss
27 John Lawton
28

29
30 BOARD SECRETARY: Lorraine Légère
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33 CHAIRMAN: Good morning, ladies and gentlemen. Welcome to
34 day 54. We have to begin this morning with one public
35 participant, Mr. Bock who was unable to fit in on Friday -
36 - no, two weeks ago Friday I guess it was.
37 Anyhow, so we will hear from Mr. Bock. And then we will
38 get into the summation portion of the hearing.
39 Mr. Bock, welcome. You have been told that the Board
40 doesn't have jurisdiction over Generation. However we

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will try and give you leeway so we can hear what you have to say, okay.

MR. BOCK: I appreciate that very much.

CHAIRMAN: Yes. And press the button. And sit down. You don't need to stand. Thank you, sir. Go ahead.

MR. BOCK: Mr. Chairman, ladies and gentlemen from the Public Utilities Commission. I'm kind of nervous, you know. I didn't expect to be put right on the spot first thing here this morning. And the gentleman --

CHAIRMAN: Mr. Young?

MR. BOCK: Yes, Mr. Young. He took -- as I say, he took the wind out of my sails. I wanted to focus more on the generating aspect of NB Power. Because I consider it to be a vital part, you know. We can't separate it from the distribution.

CHAIRMAN: Well, I don't think any of them will argue with that. But this Board is the creature of the statute and what is passed by the Legislature. And it governs our jurisdiction. Now that is all we are saying.

MR. BOCK: Yes.

CHAIRMAN: And we don't -- we specifically do not have jurisdiction over Generation.

MR. BOCK: Now if I may ask one question. Who has jurisdiction over the generating aspect of NB Power?

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CHAIRMAN: Well, the Board of Directors of NB Power and one of the companies, the holding company plus I believe NB Power, Electric Finance Corporation.

Would I be correct, Mr. Morrison?

MR. MORRISON: You would, sir.

CHAIRMAN: Good. Yes. So it is in the group of companies and through them to the -- ultimately to the shareholder.

MR. BOCK: See, the public is asking more and more for transparency of government, Crown corporations and so on.

Now I ask myself where is the transparency?

I understand the power generating part of NB Power is part of a Crown corporation. So where is the transparency toward the public and the accountability to the public? This is what basically as grassroots what we are asking for.

And is there no -- like, you know, for the distribution part there is the Public Utilities Board, you know, where the public can have input and the different interest groups, you know, the consumer groups can have input in. But is this -- the other end of NB Power, the power generating part, you know, basically -- and that is the most important part in determining the price for the end consumer of the power. There is basically no public

2 control as I see here.

3 CHAIRMAN: Certainly this Board has no control. However
4 there are certain controls. And I have just talked about
5 them. They are within the existing corporate structure of
6 NB Power, the Board of Directors and the shareholder
7 ultimately.

8 MR. BOCK: This is basically NB Power investigates and
9 accounts for itself. But there should be a neutral third
10 party or third body as a representative of the public to
11 keep account what has happened to public money. As far as
12 I can -- you know, I just did some rough figuring.
13 Over the last -- especially since last year, the last two
14 big financial commitments about refurbishing of Coleson
15 Cove and Point Lepreau, the decisions -- this would put
16 the New Brunswick public in debt now to the total of
17 somewhere around in the vicinity of \$7,000 per person on
18 account of NB Power.
19 And I think this is just plain an irresponsible decision,
20 you know. And as I say, as an ordinary member of the
21 public, I would say, you know, that decisions are being
22 made out of, you know, political expedience and so. But
23 in the end it is going to backfire. This is going to
24 backfire.
25 We got resources here. Why are we relying on

2 generating electricity with nonrenewable resources, fossil
3 fuels and eventually coal that has to be shipped in, when
4 we got other renewable resources plus we got an upcoming,
5 you know, those gas deposits down in the Penobscuis area,
6 you know.

7 But instead of benefiting the people of the province it is
8 being shipped across the border to fuel the American
9 economy. Plus it endangers most of us people, puts us at
10 harm's way with those gas developments, gas pipelines and
11 everything, which in case -- you know, we basically become
12 a terrorist bull site painted on those kinds of decision.

13 Because we are a strategic energy supplier for the United
14 States economy.

15 And basically it can wipe out, you know, the lives of many
16 people in this province in case there come accidents or
17 deliberate acts of terrorism. And it can wipe out the
18 livelihood.

19 Our main industries here are forestry and farming and
20 fishery. And they basically, you know, pay the bulk of
21 the capital that is being generated here in the province.
22 And as I say, you know, many of us ordinary people, we ask
23 who is making the decisions here? We basically have lost
24 control over government and some of the Crown
25 corporations, some of the aspects of the Crown

2 corporations.

3 I don't -- you know, I'm not, you know, angry at the
4 people, you know, at the distribution part of NB Power,
5 you know. A lot of the fellows, you know, they operate in
6 the winter, you know, and there is a snowstorm and lines
7 come down. They are out in wind and snow and so.
8 But I got a beef, and I think many people in this
9 province, about the power generating aspect. And
10 especially, you know, I was being given figures about NB
11 Power there at Point Lepreau. They got nearly three times
12 the staffing there than a comparable nuclear plant in
13 Ontario, you know.

14 I'm a farmer. And look, if I can't produce competitively,
15 you know, they tell me to get out of business. And from
16 looking at the figures I got over the last couple of
17 years, I would say, you know, on the power generating part
18 of NB Power, there should have been -- either they should
19 have told to smarten up, you know, become competitive or
20 pull the plug on them.

21 But as I say, you know, we are in New Brunswick. We got a
22 great province, lots of natural resources, more natural
23 resources than anybody, than most of anybody else in the
24 world. And this refers to in regard to energy resources.

25 We got wind power that can be utilized. We

2 got tidal power. We got hydroelectric power, solar power, you
3 know. We are fairly -- fairly south in latitude, you
4 know.

5 And those industries, they could create -- you know, a lot
6 of that equipment could be built here right here in the
7 province. And you even could find the market in the rest
8 of the continent, you know. It would put a lot of people
9 to work and keep the people here in the province instead
10 of young people getting trained here and then leaving the
11 province because there are no jobs here.

12 See, what I see lacking here in this province is a
13 comprehensive economic strategy, you know. There has been
14 -- over the last few decades all I have seen is just
15 meddling from one election to the next and to the next and
16 to the next. And then, you know, give the public all
17 kinds of perception, oh, yes, everything is hunky-dorey.
18 But as I say, you know, in the end the bills have to be
19 paid. The debt has to be paid off. And I think when the
20 public becomes aware, you know, with those decisions that
21 have been made by the government in order to promote the
22 power generating part of NB Power, this -- when the
23 chicken is going to come home to roost, people are going
24 to get mighty mad, you know.

25 But we don't want to let it come to that. We should

2 try to avoid those kind of situations, you know, and take
3 precautions and remedy the situation before it goes out of
4 control.

5 Look, I just wanted to give you just, you know, a
6 perspective, you know, from the grassroots.

7 CHAIRMAN: Well, we appreciate, Mr. Bock, your coming and
8 sharing your opinion. And frankly I think everybody on
9 this panel wishes that they could go further and comment
10 themselves. But we are guided by our statute.

11 But I'm going to ask my Commissioners in particular if any
12 of them might have a question for you. Just a sec'.

13 You are from around Petitcodiac?

14 MR. BOCK: Yes.

15 CHAIRMAN: And you are a farmer?

16 MR. BOCK: I'm a farmer. Look, I'm just --

17 CHAIRMAN: And also I understand you are in woodlots
18 operations as well?

19 MR. BOCK: Yes.

20 CHAIRMAN: Yes.

21 MR. BOCK: Yes. And as I say, they are with sawmills, you
22 know, they are a major consumer of electric power. Plus
23 pulp mills -- pulp mills are going down the tube now. But
24 as I say, the economy, you know, it fits together, you
25 know. And no single glance of the economy -- an economy

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can stand on its own.

And this is what I see as lacking in New Brunswick is the coordination, you know. We could have a beautiful economic package right here in the Maritimes, no need for young people to leave the province, you know, lots of room for more people to come here. But this is what I have seen over the last few decades. It has been basically squandered.

CHAIRMAN: Well, thank you very much for coming.

MR. BOCK: You're welcome. Thank you.

CHAIRMAN: You are free to leave or free to stay in the back and watch the proceedings. Okay. I will get on with the normal part of the hearing, which is appearances, please?

MR. MORRISON: Good morning, Mr. Chairman, Commissioners. Terry Morrison on behalf of the Applicant. With me is Lori Clark, Business Director for the New Brunswick Distribution and Customer Service Corporation. Next to Ms. Clark is David Hay, President and CEO of the corporation. Next to him is Rock Marois, Vice President of the corporation.

CHAIRMAN: Sorry. I thought you had missed somebody, but I guess not. Canadian Manufacturers and Exporters?

MR. LAWSON: Good morning, Mr. Chairman and Commissioners.

2 Gary Lawson and with me this morning is David Plante.

3 CHAIRMAN: Thanks, Mr. Lawson. Mr. Coon is not here but
4 with agreement from counsel we will slot him in for
5 tomorrow. Eastern Wind? Enbridge Gas New Brunswick Inc.?

6 MR. MACDOUGALL: Good morning, Mr. Chair, Commissioners.
7 David MacDougall for Enbridge Gas New Brunswick. And I am
8 joined today by Ms. Shelly Black.

9 CHAIRMAN: Thanks, Mr. MacDougall. And, Mr. Booker, you are
10 representing the Irving Group of Companies?

11 MR. BOOKER: Yes. Good morning, Mr. Chair and
12 Commissioners. I also expect to be joined later today by
13 our executives, Wayne Wolfe and Mark Mosher.

14 CHAIRMAN: Good. Thanks, Mr. Booker. Jolly Farmer is not
15 here. Mr. Gillis is not here. Rogers is not here. Self-
16 represented individuals? I anticipated the attendance of
17 one Roly MacIntyre, but I am guess I am doomed to
18 disappointment. And the Municipal Utilities?

19 MR. GORMAN: Good morning, Mr. Chairman, Commissioners.
20 Raymond Gorman appearing as counsel for the Utilities
21 Municipal which represent Saint John Energy, Edmundston
22 Energy and Perth-Andover Light Commission. Today I have
23 with me Richard Burpee, Eric Marr, Dana Young, Marta
24 Kelly, Dan Dionne and Charles Martin, and Michael
25 Coutourier I believe will be joining us later this

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2 morning.

3 CHAIRMAN: Thanks, Mr. Gorman. Vibrant Community Saint John
4 is represented, Mr. Peacock is on time and --

5 MR. PEACOCK: Good morning, Mr. Chair. Glad to be here, on
6 time.

7 CHAIRMAN: Public Intervenor?

8 MR. HYSLOP: Peter Hyslop, and Carol Power, and Mr. O'Rourke
9 is on picket duty.

10 CHAIRMAN: He shouldn't be yet. I understand they are still
11 trying to settle it. Okay. Thanks, Mr. Hyslop. Any of
12 the informal intervenors that want to go on the record?
13 Mr. MacNutt, whom do you have with you today?

14 MR. MACNUTT: I have with me today, Mr. Chairman, Doug Goss,
15 Senior Advisor, John Lawton, Advisor, John Murphy, Jim
16 Easson and Andrew Logan, Consultants.

17 CHAIRMAN: Good. Thanks, Mr. MacNutt. Before I ask the
18 parties if they have any preliminary matters, the Board
19 does.

20 First of all, at the conclusion of this hearing -- and by
21 the conclusion I mean that when we deliver our decision,
22 the Board will be setting down hearing dates for an
23 opportunity for us to look at the customer service
24 policies of NB Power/Disco. And our jurisdiction extends
25 completely over those and I just want to assure those in

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the room and those in the public that we can go so far as if we believe it to be in the public interest to rule that Disco cannot disconnect during the winter. And I only say that so that people who make the laws of the province will understand that you don't have to pass an act of the legislature in order to have that occur.

Again we will look at it as we normally do in the interests of the public of New Brunswick and in the appropriate business runnings of the company.

Now I know counsel don't want me to do this, therefore it gives me a great deal of pleasure. But throughout the hearing I have been saying, look, I want counsel to address these matters some time during this hearing. And so since we have just got today, tomorrow and then rebuttal on Friday, why I would appreciate you addressing these three matters.

Number one, we have on the table the question of exit fees and the interpretation of Section 79 of the legislation. We also have a -- it seems to be a difference of opinion as to whether 156 will, at the time that we deliver our decision in this matter, effectively be removed from the statute, or does it live on ad infinitum. I would like you to address that.

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2 And last but not least, the question which I think I
3 brought up, Mr. Morrison, the last time we met which was
4 does this Board have any jurisdiction to order Disco, and
5 for that matter the NB Power group of companies, to set up
6 a hydro averaging account which would commence in the
7 present fiscal period. That would have to be, of course,
8 compatible with the accounting rules that are presently
9 here. It might be that it's for regulatory purposes only,
10 but I would like all counsel to address that.

11 And if you wish and are caught by surprise today, the
12 Board will hear from you on those specific matters if you
13 wish to save your comments until then, until the close of
14 summation tomorrow.

15 Having said all of that, any preliminary matters? Mr.
16 Morrison?

17 MR. MORRISON: Yes, Mr. Chairman. There are nine
18 undertaking responses that should be marked. Copies have
19 been given to the Board secretary. These were also filed
20 electronically on Friday. The first is undertaking number
21 1 from March 14th.

22 CHAIRMAN: This will be A-165.

23 MR. MORRISON: The next, Mr. Chairman, is undertaking number
24 2 from March 14th.

25 CHAIRMAN: A-166. While we are waiting on Mrs. Legere to

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- 5915 -

2 get these done, what is your estimated time, Mr. Morrison?

3 MR. MORRISON: I believe it will be between an hour and --

4 about an hour and 15 minutes, Mr. Chairman.

5 CHAIRMAN: Thank you.

6 MR. MORRISON: The next response is undertaking number 3

7 from March 14th.

8 CHAIRMAN: A-167.

9 MR. MORRISON: The next, Mr. Chairman, is undertaking number

10 4 from March 14th.

11 CHAIRMAN: A-168.

12 MR. MORRISON: The next, Mr. Chairman, is undertaking number

13 1 from March 15th.

14 CHAIRMAN: A-169.

15 MR. MORRISON: The next, Mr. Chairman, is undertaking number

16 2 from March 15th.

17 CHAIRMAN: A-170.

18 MR. MORRISON: The next is undertaking number 3 from March

19 15th.

20 CHAIRMAN: A-171.

21 MR. MORRISON: The next is undertaking number 4, also from

22 March 15th.

23 CHAIRMAN: A-172.

24 MR. MORRISON: And finally, Mr. Chairman, it is undertaking

25 number 7 from March 15th.

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CHAIRMAN: A-172. Just kidding, see if you are awake. A-173.

MR. MORRISON: That is all the undertakings save for three, Mr. Chairman, all from the last day of the hearing. There is one that deals with the organizational charts.

You have asked them to be done in more detail. And that will be ready on Wednesday I understand, or at least not before Wednesday.

And there are two undertakings that we require Mr. Larlee to do some more analysis with respect to the CCAS. And I understand they may be ready even later today, so --

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

Okay. We are going to take a five-minute recess before you start, Mr. Morrison.

(Recess)

CHAIRMAN: Go ahead when you are ready, Mr. Morrison.

MR. MORRISON: Thank you, Mr. Chairman, Commissioners.

First I would like to begin by thanking the Board for its patience and its diligence and its attention over a very long period of time.

And Mr. Chairman, you mentioned three issues that you would want all parties to address. I have prepared argument on two of the three. The question about the

1 ongoing effect of Section 156 I will address on Friday. I

2 have prepared argument on the other two.

3 And I understand that the Rogers matter is scheduled for

4 Friday afternoon. So I won't deal with any of the Rogers

5 issues.

6 CHAIRMAN: I asked Mr. MacNutt to convey to the parties,

7 because I had understood last week that there was

8 agreement that it would be a written argument. And now I

9 understand that is still up in the air.

10 And I just wanted to let you know and through the record

11 let Rogers know that we will be limiting the length of

12 time to one hour apiece. Surely they can cover it

13 admirably in that length of time.

14 Okay. So I just wanted to put that on the record.

15 MR. MORRISON: I'm sure the message will get through.

16 CHAIRMAN: Good. Thanks, Mr. Morrison.

17 MR. MORRISON: By way of introduction, Mr. Chairman, Disco

18 filed this application in March of 2005. And it was

19 subsequently amended in June.

20 Disco is requesting recovery of the full revenue

21 requirement for 2006/2007 in the amount of \$1.3 billion

22 and is requesting an average rate increase of 11.4 percent

23 in order to recover a revenue shortfall of 123.4 million.

24 As we all know, this has been a long, detailed and

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2 demanding process for everyone involved. A great deal of time
3 has been devoted to restructuring and issues such as the
4 formation and operation of the market, the PPAs,
5 discussion of exit fees and other issues. These are all
6 interesting and important issues. And I appreciate the
7 Board's need to inquire into these matters.

8 But as I have said before, let us not lose sight of the
9 fact of the issue which is before the Board. And that is
10 it is an application by Disco to determine its projected
11 revenue requirement and to set rates for the test year
12 being 2006/2007.

13 Much of the discussion in his hearing, while important,
14 educational and necessary, has no direct bearing on the
15 matter of setting rates for 2006/2007.

16 Let us also be clear on what has precipitated this rate
17 application. Rising fuel costs are the issue. Of the
18 123.4 million revenue shortfall projected for 06/07, 120.2
19 million is due to increases and purchased power costs
20 primarily driven by fuel costs of approximately \$90
21 million. These costs are driven by world markets and are
22 completely out of Disco's control.

23 The written evidence filed by Mr. Harrington and
24 Ms. Black, when they were on the panel last week, is that
25 since 2000 wholesale crude oil prices have increased 150

2 percent. And referring to GS II customers, those who heat
3 with oil have seen their energy requirement increase by
4 145 percent and gas customers by 140 percent.

5 Furthermore you will recall that Disco referred the Board
6 to the 2006 Annual Energy Outlook which is published by
7 the U. S. Federal Energy Information Administration, which
8 indicates that continued high fossil fuel prices are
9 expected over the longer term.

10 If fuel prices had remained at 2004 levels the rate
11 increase required by Disco for 06/07 would be less than 3
12 percent.

13 So while other costs and issues may be pertinent to this
14 case, they pale almost to the point of insignificance when
15 viewed in the context of what this rate application is all
16 about. And that is sharply rising fuel prices.

17 Now the law is enunciated by the Supreme Court of Canada
18 in the Bell Canada decision. And we have talked about
19 that before. It is clear that the Board has a duty not
20 only to the customers but to the utility.

21 Chairman Nicholson succinctly captured this dual
22 obligation in a statement at page 5173 of the transcript.

23 And I will quote them.

24 "A board such as ours has a dual responsibility. And the
25 law is very clear on that, and it has developed over

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2 the last hundred years, is that one hand we have to set just
3 and equitable rates for the consumer. And on the other
4 hand, we are required to look at the economics of the
5 utility itself and set those rates at an overall level
6 that will return sufficient income to the utility so that
7 it will be able to operate as a healthy enterprise, and
8 when necessary go out to the public markets and raise more
9 money to provide the services for which it has the
10 monopoly franchise. So we have that dual role." And that
11 is the end of the quote.

12 This is the first application before this Board since the
13 restructuring of NB Power. It is important therefore that
14 this application be considered in the context of, I
15 submit, the clear policy directives underlying
16 restructuring and the proclamation of the Electricity Act.
17 Both Mr. Marois and Ms. MacFarlane in their both written
18 and oral testimony explained the policy objectives of the
19 Province.

20 First objective was the mitigation of risk to taxpayers
21 posed by the large and increasing NB Power debt and the
22 impact it would have on the Province's credit rating and
23 its cost of borrowing.

24 To meet this objective the utility was to be structured to
25 operate on a level playing field to operate

2 on the same basis as other commercially-driven utilities and
3 energy companies.

4 And to achieve this stand-alone objective several things
5 happened. Disco was created as a separate legal entity, a
6 separate company governed by the Business Corporations
7 Act.

8 Secondly Disco was to earn a positive rate of return,
9 which in turn would permit a debt equity swap and which in
10 turn would enable Disco to go to the capital markets
11 without a government guarantee.

12 Disco is to make payments in lieu of taxes and dividend
13 payments to Electric Finance Corporation to over time
14 retire the legacy of debt.

15 Now there was reference to Ministers' statements and
16 policy statements. But you don't have to look at those to
17 see where these policy objectives lie. These policy
18 objectives are clearly articulated in the Electricity Act
19 itself.

20 First section 33 sets out the purpose of Electric Finance
21 Corporation which is to facilitate the assumption and
22 reduction of NB Power's legacy debt.

23 Second, section 4 created Disco as a separate legal entity
24 governed by the Business Corporations Act.

25 Third, section 8 (2) provides that Disco is not an

2 agent of the Crown for any purpose. This is a clear-cutting
3 of the apron strings.

4 Fourth, section 37 requires Disco to make dividend
5 payments and payments in lieu of taxes to EFC.

6 Fifth, the payments in lieu of taxes and dividends paid to
7 EFC must, under section 36, be used for the purposes set
8 out in section 33 (2) which is the retirement of the
9 legacy debt.

10 So one need only to look to the Electricity Act to see the
11 design objectives of restructuring. It is clear that
12 under the Electricity Act the Legislature has implemented
13 a policy that Disco over time operate on a stand-alone
14 commercial basis with the intention that over time the
15 legacy debt would be retired through payments in lieu of
16 taxes and dividend payments to EFC.

17 It has been suggested by some participants that the extent
18 of the rate increase applied for in this hearing is due to
19 a decision by government to pay down the legacy debt at an
20 accelerated pace.

21 And I refer specifically to comments of Ms. Dunn, Brenda
22 Dunn at the Public Participation Day. And at page 5284 of
23 the transcript she indicated that it took a considerable
24 time to accumulate the debt and it should take a
25 considerable time to pay it off. That is clearly

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already the case.

Ms. MacFarlane stated, and the transcript reference is at page 3536, that the restructuring plan contemplated a time frame for repayment of the legacy debt of between 12 and 20 years, and further that this time plan was impacted by rising fuel costs.

The Electricity Act has changed the regulatory landscape.

Under the Act, Genco is not regulated. And section 156 provides the costs flowing to Disco under the PPAs are not subject to regulatory scrutiny in this hearing.

In its ruling of January 11th the Board made it clear that section 156 of the Act requires the Board to accept the amounts that Disco must pay pursuant to the PPAs and that it would not examine the reasonableness of those costs. Now Disco understands the Board's sensitivity to the fact that it cannot exercise regulatory scrutiny over those costs. Nevertheless, extensive information concerning the generation costs has been provided to both the Board and the Intervenors and I would submit has been exhaustively scrutinized.

In summary, on this introductory issue, Commissioners, the issue before the Board is the revenue requirement for

2 06/07 which is overwhelmingly driven by purchased power costs.

3 Consideration of Disco's revenue requirement, and
4 particularly its net income request, must be viewed in the
5 context of the clear policy objectives set out in the
6 Electricity Act; namely that Disco operate on a stand-
7 alone commercial basis. With this background, I will now
8 turn to consideration of the revenue requirement itself.

9 The revenue requirement is made up of four components.

10 The costs that flow through under the PPAs, the net
11 income, OM&A expenses and the payments in lieu of taxes.

12 So I will deal first with the costs through the PPAs.

13 You will recall that Mr. Kennedy provided the Board with a
14 table showing each item of the revenue requirement that is
15 related to the PPAs, and a reference to the appropriate
16 PPA provision. This is marked as Exhibit A-96 and I
17 recommend it to the Board as a guide to how the costs flow
18 through the PPAs. I will not deal with it in detail here.

19 I just recommend it to the Board. I will deal with the
20 three primary PPA costs that drive the revenue
21 requirement.

22 The first is the purchased power costs flowing from Point
23 Lepreau. This is the "contract price" stipulated in the
24 Nuclearco PPA. This is a megawatt hour price and it is a
25 function of the energy generated by Point Lepreau and

2 taken by Disco. This cost is fixed in the PPA and must be
3 accepted by the Board.

4 Under the Genco vesting agreement there are two major
5 charges, the capacity charge and the vesting energy price.

6 Dealing first with the capacity charge. This covers the
7 fixed capital costs. That is to say, it is the mortgage.

8 This is fixed in the PPA and must be accepted by the
9 Board.

10 Dealing with the vesting energy price under the vesting
11 agreement. This covers the operating and ongoing capital
12 costs which are charged on a consumption or fuel related
13 basis. The vesting energy price is comprised of two
14 components, the contribution to fixed costs and a fuel
15 component. The contribution to fixed costs is set in
16 Article 6.2.6 at \$7 per megawatt hour for 2005 and
17 adjusted by a CPI factor thereafter. Again this charge is
18 fixed in the PPA and must be accepted by the Board.

19 The fuel component is determined by a mechanism set out in
20 Article 6.2.5, which sets out the PROMOD inputs which are
21 to be used in setting the fuel component. Of the PPA
22 charges this is the only one which generated any
23 controversy in this hearing.

24 It must be remembered that the Board in its January 11th,
25 2006, ruling ruled, and I won't quote extensively,

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but the Board said this. The Board has ordered Disco to provide detailed information related to PROMOD and further the Board said, the Board does not intend to review this cost information for the purpose of adjusting the amount that Disco must pay for purchased power in 2006/2007.

So the reasonableness of the PROMOD inputs in determining the fuel component is not, and never was, an issue before this Board. However, Disco undertook to ensure that the PROMOD inputs prescribed by the PPA were properly and accurately done in accordance with the contract.

To that end Disco, with input from the Board, developed terms of reference for a third party review of the accuracy of the PROMOD inputs. With those terms of reference Disco retained LaCapra Associates. LaCapra's mandate, approved by the Board, was to determine if the PROMOD run was being done in accordance with the terms of the vesting agreement and to test that the PROMOD outputs were consistent with the inputs.

But LaCapra went even further. Mr. Peaco explained in his evidence that he reviewed historical data and used his own expertise and experience to test the reasonableness of the PROMOD inputs. You will recall that in his cross-examination of Mr. Peaco Mr. Gorman suggested that Mr.

2 Peaco did not have access to certain historical information.

3 This was clarified in my redirect of Mr. Peaco. He
4 confirmed that the historical information in question was
5 provided in phases II and III of his work.

6 Now the Public Intervenor filed evidence of Mr. Strunk.

7 And you will recall that I objected to that evidence being
8 accepted by the Board for the reasons set out in my letter
9 of February 2nd. I reiterate those objections.

10 You will also recall that I did not cross-examine Mr.
11 Strunk, and I did not do so for two reasons. First, all
12 of his report questions the reasonableness of the costs
13 passing to Disco through the vesting agreement. Section
14 156 and the Board's ruling say that the reasonableness of
15 those costs cannot be reviewed. And therefore, it is
16 submitted, Mr. Strunk's evidence is of no assistance with
17 respect to setting rates for next year.

18 Secondly, all of his recommendations regarding the PPAs
19 relate to the future. He admitted as much at page 5501 of
20 the transcript. So his recommendations are not pertinent
21 to this rate hearing.

22 Having said that, Mr. Strunk said that the LaCapra review
23 was not stringent enough. It is important to note that he
24 did not criticize the work itself, only that the scope of
25 the review, a reasonableness review, in his

2 words, was not a high enough standard of regulatory review.

3 But he ignores the fundamental fact that the
4 reasonableness of the PROMOD inputs is not subject to
5 review by this Board, and that is because you said so.

6 He also ignores the fact that the scope of the LaCapra
7 review, the terms of reference, were developed in
8 conjunction with the Board. I recall that during the
9 Coleson Cove hearing the Board-appointed consultant Jim
10 Easson conducted an extensive review of PROMOD. It is
11 submitted that Mr. Peaco's review is even more exhaustive
12 than the good work done by Mr. Easson.

13 Finally on the issue of PROMOD, it must be remembered that
14 no Intervenor has put before the Board any evidence
15 whatsoever to challenge LaCapra's conclusions that the
16 PROMOD run, which set the fuel component of the vesting
17 energy price, was done in accordance with the vesting
18 agreement. And further that the inputs used were
19 reasonable. In the absence of any contrary evidence the
20 LaCapra evidence must stand.

21 Turning again briefly to Mr. Strunk's report, he contends
22 that the discretion of the Operating Committee is too
23 broad. Remember we are dealing with the test year 06/07.

24 And I asked the Board to recall the evidence of Ms.
25 MacFarlane beginning on page 4162 of the transcript.

2 In that evidence she clearly explained that those costs that
3 vary year to year are set based on clear determinants that
4 are prescribed in the PPA. Further, on cross-examination
5 by Mr. Hyslop Ms. MacFarlane outlined the due diligence
6 which the Operating Committee has undertaken.

7 And I would like to remind the Board of that. The
8 Operating Committee had Earnst & Young audit the
9 application of the billings under the PPAs, LaCapra
10 Associates audit the setting of the vesting energy price.
11 Mercer Management Consultants evaluated the prudence of
12 the fuel procurement policies and practices undertaken by
13 Genco. And you will recall the evidence that members of
14 the Operating Committee are people with a great deal of
15 experience and expertise.

16 Finally with respect to the PPAs, and I am going to
17 address I believe one of the issues -- sorry, I'm not.
18 With respect to the PPAs, Chairman Nicholson asked several
19 expert witnesses whether they were aware of any other
20 jurisdiction where there has been a stated policy to move
21 toward a competitive market that uses a form of purchase
22 power agreement similar to the Genco vesting agreement.

23 Mr. Strunk and Mr. Mackin said they were not aware of any.
24 They didn't say there weren't any, just that they weren't
25 aware of any. Mr. Peaco on the other

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2 hand identified Pennsylvania and Massachusettes as being
3 analogous, and Mr. Marois identified the Quebec situation
4 as having a lot of similarities.

5 In summary, with respect to the PPAs, all of the costs
6 flowing to Disco pursuant to the PPAs must be accepted by
7 this Board. The Board has ruled that the reasonableness
8 of the costs will not be reviewed. Other than the fuel
9 component of the vesting energy price that is set
10 annually, the major costs are fixed in the PPAs. The only
11 charge which is subject to any review is the fuel
12 component of the vesting energy price. And that review is
13 limited to whether the PROMOD run dictated by the PPA was
14 done in accordance with the agreement. LaCapra has
15 confirmed not only that the inputs were correctly done but
16 that the inputs used were reasonable. There is no
17 evidence to the contrary.

18 CHAIRMAN: Mr. Morrison, might I just stop you there for a
19 second. Refresh my memory, but I forget, was it Coleson
20 Cove that we asked Mr. Easson to go in and he checked I
21 the layman would say the mathematics of the PROMOD run.
22 In other words, knew what the inputs were, then followed
23 it through that program and said, yes, the outputs are a
24 direct result of having fed in the inputs which were fed
25 in. He did not talk about the reasonableness of the

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2 inputs. That was not his field and he didn't do that.

3 MR. MORRISON: That's right.

4 CHAIRMAN: My recollection is when the Board agreed to your
5 retaining LaCapra in advance of the commencement of the
6 hearing, it was on the same basis. The fact that LaCapra
7 went and offered its opinion as to the reasonableness of
8 the inputs was not part of what the Board agreed with at
9 the very beginning. I'm not saying that if they didn't
10 say it was reasonableness at all, but certainly that was
11 my recommendation. Do you --

12 MR. MORRISON: You are correct.

13 CHAIRMAN: Okay. Good. Carry on, sir.

14 MR. MORRISON: I would like to turn now, Commissioners, Mr.
15 Chairman, to the net income. In its application Disco is
16 requesting for 06/07 that \$14.4 million be included as net
17 income in its revenue requirement. This is a commercially
18 equivalent net income and it was tested for reasonableness
19 in two ways.

20 First, it is commensurate with a capital structure of 57.5
21 percent debt and 42.5 percent equity with a return on
22 equity of ten percent. It provides an interest coverage
23 ratio of 1.6 times.

24 I referred to this passage earlier but I would like to
25 remind the Board of the Chairman's statements that I

1 referred to earlier. Essentially what he said we are required
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3 to look at the economics of the utility itself and set
4 those rates at an overall level that will return
5 sufficient income to the utility so that it will be able
6 to operate as a healthy enterprise and when necessary go
7 out to the public markets and raise more money to provide
8 the services for which it has the monopoly franchise.

9 As I mentioned at the outset, the Province's objectives in
10 restructuring are to have Disco operate on a level playing
11 field with potential private sector competitors and to
12 have it borrow on a stand-alone basis without the aid of a
13 government guarantee. This is so as to better balance
14 risk between taxpayers and ratepayers.

15 In order to achieve these policy objectives it is
16 necessary for Disco to earn a positive return so that it
17 may make payments in lieu of taxes and cash dividends to
18 reduce the debt. As Mr. Marois stated in his testimony,
19 this Board holds the key to achieving these objectives,
20 for in the end it is this Board which will make the
21 decision on Disco's net income.

22 Now Kathleen McShane, an expert in capital structure and
23 rate of return, provided expert opinion that the assumed
24 capital structure is reasonable and that a ten percent
25 return for Disco was within a reasonable range.

2 Ms. McShane was also of the opinion that Disco's forecasted
3 interest coverage ratio of 1.6 times is low, given the
4 risks faced by Disco. Her opinion reflects the fact that
5 most distribution companies in Canada are wires only
6 companies with no supply obligation. In contrast, Disco
7 has a legislated mandate as standard service provider to
8 fully serve customers and therefore carries the risk of
9 purchased power costs. These risks are very large
10 relative to Disco's net income, making its risk inherently
11 larger than other wires only companies.

12 Ms. McShane also evaluated the reasonableness of Disco's
13 approach in the context of government policy. It was her
14 firm opinion that in determining a fair and reasonable
15 rate of return for Disco the financial principles that
16 govern privately owned utilities are equally applicable to
17 Disco. It was her opinion that in order to create a level
18 playing field within the energy sector, Disco's rates need
19 to reflect the economic cost of delivering electricity
20 service to customers, and this economic cost needs to
21 reflect a fair cost of capital.

22 While Ms. McShane clearly stated that her opinion was
23 provided in the context of the energy policy of the
24 Province of New Brunswick, Dr. Makholm stated on cross-
25 examination that he had not read the energy policy.

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2 Further, Dr. Makholm was clearly unfamiliar with the New
3 Brunswick jurisdiction and displayed, I would submit, a
4 marked unfamiliarity with the Electricity Act.
5 Dr. Makholm does not contest Ms. McShane's expert opinion
6 on the assumed capital structure or on the reasonableness
7 of the assumed rate of return for investor owned utilities
8 with Disco's risk profile. His position is that the
9 investor owned utility approach does not apply to a Crown
10 owned utility.

11 As a result, Dr. Makholm stated that the capital structure
12 should be the actual capital structure, which is 100
13 percent debt, and the costs of capital should be the
14 Province's cost of debt. On cross-examination Dr. Makholm
15 could not identify any regulatory decisions in Canada in
16 the last ten years where the rate of return was set based
17 on the owner's cost of debt, other than the Newfoundland
18 and Labrador Hydro case referred to in his direct
19 evidence.

20 However, the Newfoundland decision can be distinguished
21 from the present case in two significant respects. In
22 rendering its decision, the Newfoundland Board noted that
23 Newfoundland Hydro had no long term financial plan and the
24 utility had no defined dividend policy. In this case the
25 Province has outlined in the

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Electricity Act the clear framework under which Disco is to move forward. And Ms. MacFarlane in her testimony outlined the dividend policy which is set out in the shareholders agreement.

In his oral evidence Dr. Makhholm stated that Disco would be able to raise debt financing in the capital markets without a, as he called it, big G or formal written guarantee of the province. Yet all of Disco's current debt is in fact supported by a formal big G guarantee.

And on cross-examination Dr. Makhholm admitted that he could not identify one Canadian Crown owned utility that was able to borrow on its own without a formal guarantee.

Dr. Makhholm could provide only one example of a US State owned utility that was able to borrow without a formal guarantee. And you will recall that was the Santee Cooper company in South Carolina.

But on cross-examination he admitted that this utility, Santee Cooper, had a margin of six percent added to its revenue requirement. Little wonder it could borrow without a state guarantee. If you took that same criteria and applied it to Disco this would represent a pre-tax income of approximately \$77 million, six percent of 1.3 billion, which would be significantly more than Disco was seeking in this proceeding.

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2 In essence Dr. Makholm's view that Disco's cost of capital
3 should be the Province's cost of debt completely ignores
4 the use to which the capital is to be put. Under Dr.
5 Makholm's approach, an investor who invests in a stable
6 low risk enterprise should receive the same rate of return
7 as an investor who invests in a high risk venture capital
8 enterprise. I would submit that this clearly makes no
9 sense and encourages misplacement of scarce capital.

10 In stating that the rate of return should be no more than
11 the investor's cost of capital, then an investor borrowing
12 to invest would receive a return equal to no more than the
13 cost of debt. So if I were to go to the bank and borrow
14 money to invest in the stock market, should I only expect
15 a return on equity equal to my cost of borrowing? If my
16 rich uncle gave me money to invest, should I expect a
17 return of zero? The regulatory stand-alone principle
18 dictates that the cost of capital should reflect the risks
19 of the company on a stand-alone basis, irrespective of the
20 cost of the shareholder's financing. A close-to-home
21 example of this is EGNB. The capital structure and return
22 on equity that this Board awarded to EGNB is based on a
23 stand-alone basis and is not based on its parent company's
24 cost of capital.

2 Finally, in redirect Dr. Makholm was asked by Mr. Hyslop
3 to provide a recommendation as to how Disco could pay down
4 its debt. The solution was to set up a specific
5 amortization schedule to be included in the revenue
6 requirement. Such a solution may be valid but it is not
7 the model chosen by the Province of New Brunswick and
8 embodied in the Electricity Act which clearly envisions
9 the use of payments in lieu of taxes and dividends to
10 reduce the debt.

11 In summary on the net income issue, it is submitted that
12 Disco must receive a net income based on a commercial rate
13 of return if it is to meet the Province's objectives on
14 restructuring. Furthermore, to set the rate of return
15 based only on the cost of debt would leave Disco with an
16 interest coverage of one. Essentially this creates a
17 break-even situation with no buffer against significant
18 risks.

19 I would like to turn now to the OM&A expenses. And I will
20 be brief. None of the Intervenors rigorously questioned
21 the Panel with respect to OM&A expenses. In addition,
22 none of the Intervenors offered any evidence with respect
23 to the OM&A expenses. One must infer therefore that the
24 parties believe that the OM&A expenses are reasonable,
25 prudent and justified. In short, the OM&A

2 expenses have not been seriously challenged.

3 I would, however, like to draw the Board's attention to
4 the evidence of Mr. Marois where he explained the cost
5 reductions Disco has undertaken. The Business Excellence
6 Program, including the staff adjustment program,
7 eliminated 150 workers from Disco's payroll, which is a 20
8 percent reduction. It also generated an improved
9 operational margin of 13.4 million in 05/06 and a further
10 improvement of 3.9 million in 06/07. These improvements
11 are sustained and ongoing. Mr. Marois in his pre-filed
12 evidence, and it's at page 9, outlined the management
13 initiative that has been put into place to control costs
14 by improving internal processes, realigning the work force
15 and maintaining the cost reductions from 05/06. Ms.
16 MacFarlane also explained how restructuring has forced
17 Disco to be more focused on efficiency.

18 In summary, it is submitted that Disco is operating
19 efficiently. The OM&A costs are reasonable and prudent
20 and have not been seriously challenged.

21 I will turn now to payment in lieu of taxes. In addition
22 to the purchase power costs, net income and OM&A expenses,
23 Disco is obligated by law to make payments in lieu of
24 taxes provided for in section 37 of the Electricity Act.

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2 The payments in lieu of taxes have two components,
3 payments in lieu of large corporate tax and payments in
4 lieu of income tax.

5 There is no controversy regarding the large corporate tax
6 payment. However, in questioning by Mr. MacNutt and later
7 by Commissioner Nelson, Ms. MacFarlane explained that the
8 calculation of the payment in lieu of income tax was based
9 on the accounting value of the assets while a strict
10 interpretation of the Income Tax Act requires that it be
11 calculated on the basis of the tax value of the assets,
12 which has not been established.

13 Ms. MacFarlane explained that strict compliance with the
14 Income Tax Act would necessitate incurring significant
15 additional expenses not only by Disco but also by EFC, in
16 professional staff and systems costs.

17 When the matter was brought to the attention of EFC Disco
18 was directed by EFC to calculate the payment based on the
19 accounting value of the assets. And it must be remembered
20 that EFC is the recipient of the payment.

21 The fundamental underpinning of the payment in lieu of
22 taxes, that Disco mirror tax obligations similar to that
23 of its competitors in the developing energy market, is
24 being complied with. It is submitted that the basis of
25 the calculation is reasonable in the circumstances. It

2 must be remembered, as Ms. MacFarlane pointed out, that this
3 creates only a timing issue. It is also important to note
4 that the purpose of the payments in lieu of taxes, in
5 combination with dividends, is to allow EFC to reduce the
6 legacy debt.

7 I am going to turn now, Mr. Chairman, to the rate
8 proposal. We have spent a lot of time on it. Over the
9 course of the last year we engaged in an extensive
10 examination of the class cost allocation study. After a
11 lengthy hearing the Board issued its CARD ruling in
12 December. As a result of that CARD ruling Disco prepared
13 a new CCAS implementing the directives given by the Board.

14 It is submitted that the CCAS filed by Disco on January
15 24th and updated on February 7th is fully compliant with
16 the Board CARD ruling. Dr. Rosenberg, in the evidence
17 filed by him on February 17th, stated "Disco's CCAS
18 appears to be fully in accord with the directives issued
19 by the Board in its December 21st, 2005 ruling."

20 Similarly, with a few minor exceptions, I think it's fair
21 to say that Mr. Knecht concluded that Disco's CCAS is
22 generally in accord with the Board's CARD ruling.

23 Disco has submitted a rate proposal which can be found in
24 Table 1 of Exhibit A-121. The resulting revenue to cost
25 ratios are found in Table 2 of the same exhibit.

2 Disco submits that the rate proposal is reasonable. Mr.
3 Marois explained in his testimony that the rate proposal
4 does several things. It reduces cross-subsidization in
5 that all revenue to cost ratios are moving in the right
6 direction, that is, toward the .95 to 1.05 band. Three
7 out of the five major customer classes are within the .95
8 to 1.05 band. And no class rate increase exceeds the
9 average rate increase by more than 1.4 percent.

10 No rate design is perfect. Perfection can only be
11 achieved if there is a specific rate for each individual
12 customer. That of course is not practically possible. As
13 a result, any rate design requires the exercise of
14 judgment. There is no mathematical formula that will
15 produce a perfect rate design. In that sense, it is more
16 art than science.

17 Ultimately, it is your judgment that will determine the
18 reasonableness of the rate design. However, for the
19 reasons given by Mr. Marois, Disco submits that its rate
20 proposal is balanced and ought to be accepted by the
21 Board.

22 There is an issue that I raised and this came up a couple
23 of times during the course of the pre-hearing conference.

24 Given that it is March 20th, I think I am on

1 - 5942 - Mr. Morrison -

2 fairly solid ground to say that it is doubtful that there will
3 be a rate decision in place by April 1st.

4 CHAIRMAN: You are certainly on solid ground, Mr. Morrison.

5 MR. MORRISON: And we have discussed this a couple of times
6 during the pre-hearing conference whether there is a rate
7 mechanism which might be available to allow Disco to
8 recover its revenue requirement in a shorter timeframe
9 once the Board's decision is rendered.

10 I have prepared a detailed written brief on this issue,
11 Mr. Chairman, and I am prepared to file it with the Board.

12 It deals with a lot of case law which I think might not
13 be of interest at least in an oral medium, but I am
14 prepared to file a brief on that issue. But I will take a
15 few minutes to point out the highlights of my argument in
16 that regard.

17 Disco requests that the Board order Disco to apply a rate
18 mechanism that would have the effect of Disco recovering
19 its full revenue requirement for the fiscal year 06/07,
20 even if Disco's 06/07 rates do not start being charged to
21 ratepayers until after the beginning of the fiscal year.

22 Such a rate mechanism is in the interest of Disco and its
23 ratepayers and I submit is required under the Electricity
24 Act.

25 Disco's 06/07 fiscal year will begin in about a week

2 and a half, and as I said it is likely that the Board will not
3 make an order in respect of Disco's application before
4 that. You will also have to take into consideration that
5 there is a 30 day waiting period while your decision is
6 reviewed by the Lieutenant Governor in Council.

7 I am submitting that the Rate Mechanism should be approved
8 by the Board for four reasons. First, if rates become
9 effective before -- if rates would have become effective
10 before March 31st, it would have been on the basis that
11 the Board determined that they were just and reasonable
12 based on a specific revenue requirement for 06/07 fiscal
13 year. Consequently, the total revenue requirement
14 recoverable should be maintained by the Rate Mechanism,
15 nothing more, just the full revenue requirement for the
16 test year.

17 Second, just recently, February 9th, the Supreme Court of
18 Canada issued a new decision. It's called ATCO Gas
19 Pipelines Limited versus Alberta Energy & Utilities Board.

20 And it's a decision by Mr. Justice Bastarache. And he
21 clarified the role of rate regulation for energy
22 utilities. The Court emphasised the importance of
23 focusing on the regulatory context when interpreting an
24 energy regulator's statutory powers. The regulatory
25 obligation to approve just and reasonable rates was

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2 characterized as being part of regulatory's broad powers.

3 Third, the Rate Mechanism I am referring to is a well
4 established regulatory tool for making just and reasonable
5 rates.

6 And fourth, and probably most importantly, the Rate
7 Mechanism does not constitute an interim rate. It would
8 form part of the final rate mandated by this Board.

9 So Disco proposes that the Rate Mechanism be accomplished
10 by incorporating the full revenue requirement into monthly
11 rates for the balance of the 06/07 fiscal year.

12 The central obligation and power of the Board is to
13 approve just and reasonable rates for Disco. The Board's
14 assessment of such just and reasonable rates must be based
15 on Disco's projected revenue requirements. Section 101(3)
16 of the Act says the Board shall base its order or decision
17 respecting the charges, rates and tolls to be charged by
18 the Distribution Corporation on all of the projected
19 revenue requirements. Moreover, Disco's revenue
20 requirements are defined by the Act as the "annual amount
21 of revenue required to cover projected operation,
22 maintenance and administration expense, amortization and
23 taxes." The key there is annual.

24 Therefore, the mere fact that a decision may not be
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2 rendered until after Disco's fiscal year begins, does not
3 license the Board to change the express requirement that a
4 given decision must be based on all of the annual amount
5 of revenue required to cover Disco's operations. A rate
6 calculated to cover annual expenses that is ultimately
7 only chargeable over a nine or ten month period would
8 result in under-compensation and is tantamount to basing
9 the rate charge not on the annual projected revenue
10 requirements but on the projected revenue requirements for
11 a shortened period of time. Such a result would not only
12 contravene the language of the Electricity Act but
13 simultaneously threaten to undermine the key legislative
14 objective of allowing Disco to adequately finance its
15 operations while ensuring that the public is not over or
16 under charged over a given period.

17 The Rate Mechanism is merely a tool that can be used by
18 this Board to fulfil its mandate. It falls squarely
19 within the Board's authority to set just and reasonable
20 rates, and in the circumstances a rate that did not
21 include such a mechanism, to recover the full revenue
22 requirement for the fiscal period in my submission would
23 violate the Electricity Act.

24 CHAIRMAN: Mr. Morrison, I just read the headnote in the
25 ATCO case, I have had other things to read in the interim,

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2 but you obviously have read the full case. What happens if
3 the utility, for instance, didn't come until half way
4 through the previous fiscal period to ask for rates to be
5 set on the 1st of April when in the context of a
6 reasonable rate hearing the Regulator could not possibly
7 get a decision out in sufficient time to set rates
8 commencing the first of the year? Does Mr. Justice
9 Bastarache go so far as to say it doesn't matter, or was
10 the case silent on that?

11 MR. MORRISON: My recollection is he did not get into the
12 regulatory lag issue, Mr. Chairman. Obviously and we have
13 discussed this before during our arguments last spring,
14 that regulatory lag is normally at the risk of the
15 utility. But we have to look at this in light of the fact
16 that this application was made last March.
17 And I appreciate that it has taken a long time. But I can
18 honestly say that I don't believe any court would consider
19 that, given the timeliness of this application over a year
20 ago, that regulatory lag, if that is the right term,
21 should be visited on the utility.

22 CHAIRMAN: What do you think a court would say if it knew
23 that of course it was substantially revised, and the test
24 year basically changed in what was it, mid October, late
25 October?

2 MR. MORRISON: June 6th.

3 CHAIRMAN: But the evidence wasn't filed as I recollect
4 until October, was it?

5 MR. MORRISON: That is correct.

6 CHAIRMAN: Yes. I mean, you can file an application when
7 you want to. But it is the evidence that really matters.
8 Anyway, I look forward to receiving your brief on that.

9 MR. MORRISON: I'm going to deal with some specific issues,
10 Mr. Chairman, that came up in the course of the hearing.
11 I believe I have dealt with the revenue requirement piece.
12 But there were some specific issues that came forward.
13 And the first one that seems to have generated a fair
14 amount of confusion is the hydro adjustment credit. First
15 let it be clear that the hydro adjustment clause on the
16 PPA, which is in article 6, subsection (6-12) does not
17 affect the revenue requirement or rates in 2006/07 or in
18 any other year.
19 The revenue requirement and rates are always based
20 prospectively on long-term average hydro flows. The
21 ratepayer is protected from year-to-year fluctuations in
22 hydro levels by virtue of rate being set on long-term
23 average. The year-to-year fluctuations, whether gains or
24 losses, flow to Disco's bottom line as profits or losses
25 and therefore to the shareholder.

2 It has been suggested that the Board should take into
3 account Disco's better than expected 05/06 financial
4 performance when setting rates for 06/07. This I would
5 submit the Board cannot do.

6 First, as I mentioned earlier, it is bound to set rates
7 based on the projected revenue requirements for the test
8 year. And that is set out in section 101(3), not on
9 actual performance in a prior year.

10 Second, if the ratepayer were to take the benefit of high
11 hydro flows in good years through rate reductions, then
12 following the logic they would have to take the risk of
13 low hydro flow in poor years through rate surcharges.

14 Mr. Marois appropriately asked if the reaction of the
15 Public Intervenor would be the same if Disco were here
16 asking to put prior years' hydro losses into the revenue
17 requirement for next year. It can't -- it cuts both ways.

18 At one time NB Power used a variance account on its
19 balance sheet. And I believe this is referred to by the
20 Chairman as the rainy day fund, probably very
21 appropriately.

22 And that was used to accumulate the annual pluses and
23 minuses in hydro flows. This variance account protected
24 the company and thus the shareholder from year-to-year
25 fluctuations in its bottom line.

2 But the amounts in the variance account did not flow to
3 customers. They did not need to, since customers are
4 always protected from these fluctuations through rates
5 being set on long-term average.

6 Now there has been considerable discussion about the
7 methodology used to value the hydro adjustment between
8 Disco and Genco. I would suggest that the issue is
9 particularly topical. Because hydro flows this year 05/06
10 are extraordinarily high.

11 As stated by Ms. MacFarlane, an unprecedented 43 percent
12 above the long-term average to the end of February. Hydro
13 flows are unpredictable.

14 But the issue is not about the impact on customers. And
15 I'm going to say this many times. Because customers'
16 rates in 05/06 and in every other year are based on the
17 long-term average.

18 The methodology used for 05/06 has been explained. Disco
19 believes the correct methodology for pricing the hydro
20 adjustment is at the top of in-province load, which
21 excludes exports.

22 And why is that so? That is because that is the basis for
23 pricing the vesting energy price. And the hydro
24 adjustment is an adjustment to the vesting energy price.
25 Further the hydro adjustment is defined in article 6.

1
2 And that is the same article defining the vesting energy
3 price.

4 Now Disco has committed to resolve the matter once and for
5 all by obtaining an independent expert opinion on its
6 interpretation of the contract.

7 In any event the resolution of the methodology and the
8 outcome will affect the shareholder of Genco and the
9 shareholder of Disco, both of whom as you know are the
10 Province of New Brunswick. But again this will have no
11 impact on the 06/07 rates.

12 Now on his cross examination, you will recall last week,
13 the Public Intervenor characterized this change in
14 methodology as the parties changing the contract. It is
15 no such thing.

16 It is not a question of whether this change is legal or
17 not legal, as has been portrayed in the media, or whether
18 or not it is a change in the contract. It is an
19 interpretation issue.

20 Every lawyer in this room knows that every contract, every
21 contract is subject to interpretation. For example, in
22 large construction contracts issues of interpretation
23 arise all the time in the course of the work. Whether or
24 not something is within the scope of the contract or
25 outside the scope of the contract is a very common one.

2 While some of these interpretation issues do end up before
3 the courts, the vast majority of these interpretation
4 issues are resolved on site by the parties acting in good
5 faith. This is no different.

6 As to the use of a rainy day account, the Disco witnesses
7 have stated that it is under consideration by Disco,
8 largely because as they prepare to approach debt capital
9 markets, large fluctuations in year-to-year net earnings
10 will not be tolerated.

11 But the rainy day account would not be about protecting
12 Disco's bottom line -- I'm sorry, would be about
13 protecting Disco's bottom line, not about customers,
14 because rates are already set using average hydro.

15 I'm going to get to your question, Mr. Chairman. You
16 asked does the Board have jurisdiction now to order Disco
17 in the current fiscal period to introduce, using exactly
18 the same terms and method of dealing with it, the old
19 rainy day account?

20 Any rainy day account would have to be set prospectively
21 before the start of the fiscal year such an account would
22 be related to, rather than retroactively once the year is
23 over.

24 Therefore, if the Board were to order the use of such an
25 account, they could do so for the 06/07 year but could

2 not use any of the 05/06 positive hydro variance to offset the
3 rate increase for 06/07. The reserve then created in
4 positive hydro years could be used to offset future
5 negative hydro variances.

6 Disco believes under those terms funds in this hydro
7 account would not flow to customers but would be held by
8 Disco to offset negative hydro years.

9 Again we would reiterate our opinion that the Board may
10 make such an order for the upcoming year 06/07. But to
11 order a change in an accounting policy for the fiscal year
12 05/06, especially at this point, especially at this point,
13 is tantamount to retroactive ratemaking.

14 To adjust the revenue requirement to accommodate a
15 positive hydro flow year would not be consistent with
16 prospective ratemaking. Hydro flows are unpredictable and
17 vary from year to year.

18 In contrast the revenue requirement -- sorry, the revenue
19 requirement will act as a foundation for rates in
20 successive years and must be consistent with long-term
21 expectations.

22 To take a one-year anomaly and apply it to a long-term
23 revenue requirement would in my submission result in
24 sustained under recovery of costs.

25 I am going to deal with the NUG Contracts, because

2 that's an issue that came up in the course of this hearing.

3 Commissioner Sollows and later Chairman Nicholson, raised
4 the question of whether the NUG Contracts could be
5 economically dispatched, rather than dispatched as "take
6 or pay" or a "must run". He suggested that if that could
7 be done, then some \$90 million in fuel costs could
8 potentially be removed from Disco's revenue requirement.

9 It is very important to understand that even if the NUGs
10 could be economically dispatched, the \$90 million that
11 Commissioner Sollows alluded to would not be a saving
12 since the NUG energy would have to be replaced. That
13 replacement cost could be lower or higher than the NUG
14 costs depending on market conditions at any given time.

15 CHAIRMAN: I don't understand that. In other words, if it's
16 economic dispatch, then you would run the NUGs unless
17 there were another generation unit on NB Power's side that
18 could run more cheaply. And therefore there should be a
19 net saving. Am I way off base?

20 MR. MORRISON: Well as I understood the question, Mr.

21 Chairman, was that was it possible -- and I am reluctant
22 to get too far down into the weeds in this, for the issue
23 -- for the confidentiality issues that you are aware of --
24 that I believe the question that was put was there an
25 opportunity to make only a capacity payment, for example,

1 - 5954 - Mr. Morrison -

2 to one of the NUGs and dispatch -- and then allow for dispatch
3 or purchase power from another unit?

4 Where the issue of whether it could be higher or lower,
5 and maybe it's just a decision of whether you would ever
6 do it, but there are situations I would suggest, at least
7 once in the last two weeks, where oil was more expensive
8 than gas, for example.

9 So in that situation, obviously the decision would be
10 wouldn't -- wouldn't do that. So --

11 CHAIRMAN: It's the SO that makes that decision. And pretty
12 basically it makes it a day in advance, does it not?

13 MR. MORRISON: I believe so.

14 CHAIRMAN: That's my appreciation of it.

15 MR. MORRISON: But in any event, I mean the primary point
16 is even if they could be redispached, it doesn't
17 necessarily mean that there is going to be \$90 million
18 savings.

19 CHAIRMAN: No. I --

20 MR. MORRISON: Because that energy has to come from
21 somewhere.

22 CHAIRMAN: Yes, we will -- I will certainly buy that. And
23 Commissioner Sollows will as well. However, there could
24 be substantial savings to Disco if in fact an arrangement
25 were made through those NUG Contracts to simply pay for

2 capacity and then put it into an economic dispatch mode.

3 That's certainly our appreciation.

4 MR. MORRISON: You also have to understand I believe, Mr.

5 Kennedy stated this in his evidence that the energy from
6 those NUGs is required.

7 CHAIRMAN: But certainly not all the time. And particularly
8 in this last six months. I am sure there were occasions
9 where there were many plants in NB Power Genco's fleet
10 that were not operating simply because the demand was not
11 there.

12 MR. MORRISON: Obviously for obvious reasons, I can't get
13 into the specifics. But the other thing you have to keep
14 in mind is there is limited dispatchability of these NUGs
15 as well. And I think we have addressed that.

16 DR. SOLLOWS: Well, I guess to carry on with this point.
17 Certainly the intent was never to suggest that the plant
18 should be dispatched in a way that would violate operating
19 limits. The whole gist of the question and the point was
20 what savings would be effected by using economic dispatch
21 rather than must -- assigning must run status to the
22 plants. And I think your final information that you gave
23 us late last week when I went and checked the confidential
24 filing certainly satisfies -- addresses the point in my
25 mind. But it does confirm that there could well be

2 substantial savings, that is the point.

3 MR. MORRISON: Well, I am not going to go to that point,
4 Commissioner Sollows for obvious reasons. But it's
5 important to point out that Schedule 6.2 of the vesting
6 agreement -- and I think we looked at that a couple of
7 weeks ago -- stipulates that in setting the vesting energy
8 price, the NUGs must be modelled as take or pay. And as I
9 indicated --

10 CHAIRMAN: What does "modelled" mean? You know, that's in
11 the PROMOD?

12 MR. MORRISON: Yes.

13 CHAIRMAN: I mean modelled that way.

14 MR. MORRISON: The vesting energy price is set based on
15 there being take or pay.

16 CHAIRMAN: Yes.

17 MR. MORRISON: And I think our response last week says that
18 there were good reasons for that. It's because there is
19 limited dispatchability of those NUGs.

20 In any event, it's my submission, Mr. Chairman, that the
21 PPA requires that the NUGs be modelled as take or pay.

22 And for the purposes of this hearing, the Board must
23 accept that reality.

24 I am going to deal with the question of exit fees. And
25 this is the last issue I am going to deal with.

2 The Board has asked all parties to comment on the exit fee
3 issue. Now, Mr. Gorman put forward a scenario a few weeks
4 ago where a customer wished to leave the system. And I
5 believe he was concerned that -- or it was his contention
6 at least that the customer must first give notice of its
7 intention to leave under section 78 without knowing what
8 the exit fee will be.

9 And I have looked at the section 78 and 79 very carefully
10 and thoroughly since that time. And I have come the
11 conclusion and I submit that that is neither the intention
12 of the Act or what the Act provides.

13 As you know, the relevant provisions of the Electricity
14 Act are sections 78, 79(1), 79(2) and 79(7).

15 Sections 79(1) and (2) say that where a customer has
16 reduced its consumption, (i.e. it's given notice under
17 section 78), then it or Disco shall apply to this Board to
18 establish an exit fee.

19 However, and this is key, section 79(7) says that if no
20 fee has been set by the Board, in other words, the
21 customer has not reduced its consumption and has not
22 applied to the Board for an exit fee, then Disco and the
23 customer may agree on the fee and then submit it to the
24 Board for its approval.

25 Therefore, the Act contemplates two situations: Where

2 the customer unilaterally gives Notice to Disco that it is
3 reducing its consumption, it gives its notice under
4 Section 78, off it goes.

5 In that case, either the customer or Disco must apply to
6 the Board for approval of an exit fee.

7 The second scenario is where the customer has not yet
8 decided to reduce its consumption. It has not yet decided
9 its going to leave the system. In that case, Disco and
10 the customer can sit down and try to agree to an
11 appropriate exit fee.

12 If they agree, then they submit it -- their agreement to
13 this Board for approval. If they cannot agree, the
14 customer then has two options.

15 It can give notice under section 78 that it is leaving the
16 system -- is a loose term, but I will use it -- that it is
17 leaving the system and apply to the Board for an exit fee.

18 In other words, take its chances. Or it can stay on the
19 system.

20 That is what the Act provides. That is what the
21 Legislature intended and that is what makes most common
22 sense.

23 Section 78 is not a pre-condition to section 79. They are
24 distinct. If they were inter-related, then section 78
25 should be part of section 79. But they are not.

2 The interpretation I propose gives the customer maximum
3 flexibility and is entirely consistent with the wording of
4 the Act.

5 The customer can either unilaterally give notice under
6 section 78, not knowing what the exit fee is, if it thinks
7 it has a deal that is lucrative. Or it can negotiate an
8 exit fee with Disco and then get Board approval, and if
9 the exit fee -- they can't come to an agreement on exit
10 fee, the customer can stay on the system.

11 I guess when you are looking at this, I ask you to look at
12 which interpretation is more consistent with common sense.

13 And I submit that the Act is quite sensible and gives the
14 customer the maximum flexibility.

15 It's the only interpretation that makes sense from a
16 practical point of view, in other words.

17 And, of course, if you believe the Act is subject to two
18 interpretations, which I would submit it is not, then the
19 rules of construction dictate that you give effect to the
20 interpretation that best reflects the intention of the
21 Legislature and makes the most common sense.

22 In conclusion, Commissioners, Mr. Chairman --

23 CHAIRMAN: What about 156?

24 MR. MORRISON: I am going to deal with that on Friday, Mr.
25 Chairman, as I said earlier.

2 CHAIRMAN: All right. Sorry.

3 MR. MORRISON: Disco has applied for approval of its
4 projected revenue requirement for 06/07 and to establish
5 rates for that test year. While there may be other
6 interesting and important issues of concern to the Board,
7 and we all know what they are, let's not lose sight of the
8 fundamental fact that this is a rate application for
9 06/07.

10 Rising fuel prices are at the heart of this rate
11 application. As I said at the outset of the \$123.4
12 million revenue shortfall projected for 06/07, 120.2
13 million is due to increases in purchased power costs of
14 which 90 million -- approximately 90 million is directly
15 related to fuel. These costs are outside of Disco's
16 control.

17 The Electricity Act has established a policy framework for
18 Disco. Disco must recover a net income sufficient to
19 allow it to make payments in lieu of taxes and dividend
20 payments to EFC in order to retire the legacy debt and
21 eventually to borrow without a government guarantee. The
22 Board holds the key to meeting this objective and it is
23 submitted ought to permit Disco the net income it has
24 applied for.

25 Disco's OM&A costs have been demonstrated to be

2 reasonable and prudent and there has been no serious challenge
3 to these costs.

4 With respect to the rate proposal, while ultimately it is
5 this Board's judgment that will govern, it is submitted
6 that Disco's rate proposal is balanced and reasonable
7 because -- and I will reiterate it -- it reduces cross-
8 subsidization in that all revenue to cost ratios are going
9 in the right direction. Three of the five major customer
10 classes are within the band. And finally no class rate
11 increase exceeds an average -- of the average rate
12 increase by more than 1.4 percent.

13 Those are all of my comments with respect to this
14 application, Mr. Chairman. As you can appreciate, it has
15 been a difficult task to condense some 60 days of hearings
16 and thousands of pages of documents into a submission that
17 would be focused on the issues.

18 Again, I would like to thank each and every one of the
19 Commissioners for your attention and diligence throughout
20 this entire process.

21 CHAIRMAN: Thanks, Mr. Morrison. We will break for lunch
22 and come back at quarter after 1:00.

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

24 CHAIRMAN: Good afternoon. The representative of Rogers was
25 here. And Mr. MacNutt spoke with her. And just put on

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2 the record that we will have oral argument on Friday, give
3 each party an hour and then 10 minutes for rebuttal.

4 And now, Mr. Morrison --

5 MR. GORMAN: Mr. Chairman, just for your information, as you
6 know, the Municipals did take part in the Rogers hearing.

7 We were present throughout. And probably we will also be
8 making argument with respect to that.

9 So if you have a total amount of time involved I guess.

10 We will try to keep our remarks short. But just in case
11 you had not recalled that we were there throughout the
12 Rogers hearings.

13 CHAIRMAN: Your presence was noted, Mr. Gorman. But I would
14 appreciate a short presentation from everybody, you know.

15 I don't want to be here at 6:00 o'clock on Friday, thank
16 you very much.

17 Okay. Mr. Morrison, any further exhibits?

18 MR. MORRISON: No, sir, not at this point.

19 CHAIRMAN: Anybody else anything preliminary? All right.

20 Mr. Lawson, go ahead.

21 MR. LAWSON: Thank you, Mr. Chairman. First we would like
22 to commend the Board for their patience through what has
23 been a long series of hearings.

24 CHAIRMAN: And you haven't been here for half of it.

25 MR. LAWSON: And that was exactly my point. I would like to

2 view myself as fresh. Although it may not be so evident as I
3 go through my argument.

4 No. I have had the privilege of missing the first stage.

5 Although I will make some comments with respect to the
6 first stage even though I wasn't in attendance, except for
7 one day which I will allude to.

8 But I did want to, on behalf of CME, talk about a variety
9 of issues that have arisen out of the course of these
10 hearings which I did attend.

11 And the first one I would like to address is the issue of
12 what I will call structural issues. Mr. Morrison pointed
13 out the issue of the corporate structure is not really of
14 interest, I think he said. It is not really something
15 that is in issue before this Board.

16 But I think in reviewing your decision you have to give
17 consideration to the issues around the question of the
18 Board -- sorry, the company and its structure and what
19 impact that has had on what you are in fact reviewing.

20 I think one comment I would make is that the corporate
21 structure, this new corporate structure of NB Power could
22 be described as being complicated. And I guess perhaps
23 evidence of that is that the chart that has been requested
24 won't be available until Wednesday. And that might
25 suggest there is obviously a lot of corporate

2 reorganization -- a lot of complication that has arisen from
3 the corporate reorganization.

4 But more importantly I think from your perspective and
5 ours as consumers of Disco is that there have been costs
6 incurred by Disco because of this. Those costs incurred
7 by Disco both relate to extra costs that would be incurred
8 at the above Disco level, if you will, Genco and so on.

9 Because those costs have to be incurred -- sorry, in being
10 incurred, have to be recovered from customers of Genco.

11 And in recovering those, those costs would be passed down
12 to Disco as a customer.

13 And Disco itself also is suffering, I call it suffering,
14 extra costs as a result of it. And one -- just one
15 example of that was the evidence that was given that there
16 are two people who are employed at Disco whose jobs they
17 are, as I understood it, to review the PPAs.

18 Now the PPAs, we will agree, are very important. But
19 prior to this corporate structure going in place, you
20 didn't need two people to review the PPAs. So there have
21 been costs incurred as a result of this structure. And I
22 think that has to be kept in mind.

23 CHAIRMAN: Does your client think that it was a worthwhile
24 cost?

25 MR. LAWSON: My comment I guess would be this. It was

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2 designed for the purposes of what many people, many people
3 including people in industry, felt was the pending
4 competition that would arise in the electricity business.
5 People have been known to perhaps misjudge the future.
6 And I think in this case, at least at the moment, we don't
7 think it was money well spent. At least in regards to the
8 current situation there is no competition today. And at
9 least at the moment no anticipated competition coming down
10 the tube.

11 So was it money well spent? I would say that some of that
12 money has to be -- how it was spent has to certainly be
13 reviewed at least.

14 On the question of the PPAs, which I think is far more
15 important for the regulatory process here today, is the
16 absence of transparency. I think it has been commented on
17 by the Board. It has been commented on by many people
18 before.

19 The vast majority of the costs of Disco are outside the
20 reach of the regulatory review by this Board by virtue of
21 section 156.

22 And I guess it is our view that putting it outside the
23 regulatory reach makes it very difficult for this Board to
24 truly scrutinize what are reasonable costs that are being
25 incurred by Disco.

2 And just as a side comment on the OM&A issue,
3 Mr. Morrison said that there have been very little attack on
4 the OM&A side for example. With respect to Disco, the
5 absence of a challenge of the OM&A side can be attributed
6 to a certain extent to looking and saying it is, as a
7 significant portion of the total cost, not that large. It
8 is a very large number. But it is not that large relative
9 to the total costs of Disco.

10 Secondly, the cost of trying to drill down and do an
11 examination of whether the OM&A costs are reasonable would
12 certainly be on the scope of the budget that we have
13 available to us. It is very difficult to closely
14 scrutinize OM&A costs, as a participant in this process,
15 without a great deal of expertise to assist you in doing
16 that.

17 I think it is important that it not be read into, at least
18 the CME's position, that failing to drill down to the OM&A
19 costs, or attack them, is not to be interpreted as an
20 acceptance of those costs.

21 In addition, obviously with respect to the PPA, if you
22 move up to the PPAs, in the PPAs, embedded within those
23 costs are obviously OM&A costs of Genco and other
24 suppliers of energy, which of course are beyond the
25 scrutiny of this Board and beyond the information that is

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available to us.

So I think again the PPAs, the absence of transparency and the significant element that they form of the total revenue requirements or the total costs, it really ties the hands of this Board and the public to scrutinize the expenses of Disco.

I would like to move to deal with another issue unrelated to that one. And that is the issue of the interruptible surplus. I call it the surcharge or extra amount to be charged on the interruptible rate.

I think it is important to note that since the time of the Board's decision in December with respect to this issue or the comment made by the Board, that there has been in fact found, I call it found, further revenue that had not been attributed previously to the interruptible customers, the result of which, by virtue of Mr. Knecht's report, indicates that \$1.4 million of cost of revenue is being generated paid to Disco above and beyond the cost of generation and transmission of interruptible power.

So there is a \$1.4 million amount being contributed by the interruptible customers currently. And as I say, that was only, quote, unquote "discovered" since the December decision.

In addition to that, regardless of whether there was a

2 contribution being made or not, we think it is very important
3 that the Board give very serious consideration to the
4 consequences issue of extra costs being added to the
5 interruptible surplus power customers.

6 CHAIRMAN: What do you say about the Intervenor's witness
7 and the argument about make interruptible a long-term
8 proposition of five years?

9 MR. LAWSON: Mr. Chairman, I was going to address that.
10 Because I guess my response is quite simply this. Parties
11 have entered into a contract. Arm's length parties have
12 through bonafide negotiations entered into a contract
13 where each of them were seeking to protect their own
14 interests. Disco determined in doing that that a 12-month
15 period for switching back or forth was adequate to protect
16 their purposes.
17 The interruptible customers entered into those contracts
18 with precisely those as the ground rules. And I don't
19 know what the rest of the ground rules are, to be honest
20 with you. I haven't looked at the contract terms. But
21 there are a set of contract terms have been agreed upon by
22 the parties for what would be interruptible power.
23 And we submit that the parties having entered into those
24 to protect their own best interests, there is no need nor
25 is it appropriate to change the terms of the

2 contract to provide for a shorter notice period than the 12
3 months.

4 There is a concern, and even Mr. Knecht indicated it. He
5 had what I quoted as a very serious concern about the
6 possibilities of those interruptible customers switching
7 from their current interruptible status to firm customers.

8 Disco as well indicated they had that same concern. And
9 for obvious reasons. Interruptible does serve a purpose
10 in the system. And that purpose of course is, and I think
11 it was indicated, it fills -- Mr. Knecht used the
12 terminology -- it fills the valleys. And long-term --
13 over the long-term planning you have the ability to know
14 that you don't have to build capacity and reserves for
15 that capacity for firm customers if in fact they are
16 taking as interruptible.

17 The reason for that obviously is that you can in fact
18 interrupt those customers when it's needed without
19 consideration of the impact on those customers. That is
20 part of the risk those customers take in dealing with it
21 as interruptible.

22 So there is the long-term planning advantage for Disco and
23 its customers and there is the short-term advantage on a
24 day to day basis they can decide we will not be able to
25 supply power for any variety of reasons, we can't supply

2 power to the interruptible customers, or some part of it, so
3 it will have to be reduced in terms of the amount being
4 supplied. So it is of serious concern, as Mr. Knecht
5 says.

6 Mr. Knecht also indicated -- he described it as being a
7 small amount that he was proposing be increased or added
8 to the rate for interruptible customers. I submit two
9 things. One is it's a small amount perhaps from the
10 perspective of the total revenue in the system for Disco,
11 and I would say without question it is small, so small
12 that it is going to make little or no difference to any of
13 the other customers if an amount is assessed.

14 But look at it from the customer's point of view, the
15 interruptible customer's point of view. Add that amount
16 and they won't view a one-and-a-half million dollar, or
17 whatever it might be, extra amount as being small. And
18 what do you risk? You risk those customers saying, this
19 is enough of the straw that breaks the camel's back for us
20 to look at switching to firm power.

21 And nobody can deny the fact that in a year's time, or
22 whenever Lepreau shut down as scheduled, that there will
23 be a grave temptation to do that, and any extra amount
24 that is added to the cost will be enough perhaps to cause
25 people to say, we have to look at switching to firm power.

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The consequences to Disco and the consequences to Disco's customers can be pretty significant if in fact that happens.

We would also point out that independent of the benefits, when you look at it we don't see any harm that comes to any of the Disco customers by virtue of that being interruptible power or power being supplied on an interruptible basis.

Mr. Knecht also in the course of his evidence addressed the issue of what should happen to the \$2.2 million of found revenue, if you will, from interruptible customers.

And also he addressed the question of what he felt should be done with any extra amount that gets generated by virtue of a surcharge, I will call it, on the interruptible power, bearing in mind there is already an adder, as the Board knows, to interruptible power of three or \$9, depending if it's on or off peak.

So his position is that that \$2.2 million, as I understand it, plus any incremental amount, should be added other than to the revenue of the large industrial class for purposes of calculating the revenue to cost ratio. That presupposes that the large industrial customers are a class in and of themselves. And they aren't. They are part of -- sorry -- that the

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2 interruptible power customers are a class in and of
3 themselves. They are not. They are a member of the large
4 industrial class and the only place you can put the
5 revenue is rightfully in the large industrial class.
6 That \$2.2 million belongs to be allocated to the large
7 industrial class, those who provide the revenue, in the
8 same way that any revenue comes from any other class gets
9 attributed to their class for the purposes of revenue to
10 cost ratio. And to do otherwise in my view wouldn't make
11 any sense. Large industrials are a class, included in
12 that are the interruptible customers.

13 I would like to address now the question of the CCAS in
14 the proposed rates. Firstly I address the question of the
15 .95 to 1.05 range issue.

16 Firstly I think the revenue to cost ratio for any class is
17 obviously driven by two pieces, the revenue, which is a
18 relatively straightforward component to calculate. The
19 cost component, however, is a very significant piece to
20 determine what the revenue to cost ratio is and is not
21 nearly as simple to calculate as the revenue piece.

22 My one day of hearing in the first 36 days of
23 participation was not a comprehensive review of what the
24 Board had to consider on that in the allocation of costs,

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2 the decision, the CARD decision, in December. But reviewing
3 the CARD decision and having had an opportunity to look at
4 the issue since, I think it's fair to say that the
5 decision of the Board in December was one where there did
6 not appear to be enough evidence before the Board to do a
7 fair allocation of costs.

8 And so the Board said, look, the 60/40 split of 1991 is
9 what is going to prevail for this purpose, the 60/40 split
10 between demand and energy -- energy and demand -- in that
11 order, sorry. And given that, it is our submission that
12 obviously the cost allocation that this Board has to look
13 at for the CCAS study that we are dealing with, is not --
14 is anything other than scientific, because it has not had
15 a fully embedded cost study done of the costs of Disco.
16 And we submit this is something that can and in fact must
17 be done to get a fair assessment of what costs truly are
18 demand and what costs truly are energy, in order to be
19 able to allocate them amongst the classes. Once that is
20 done, a fair way of assessing who is contributing what by
21 way of revenue to their class cost can be done. In the
22 meantime we submit it cannot be viewed as a scientific
23 analysis, that 60/40 split, and the result of that 60/40
24 split being 85 percent -- approximately 85 percent of the

1 costs are energy costs, when you consider the export credit.

2 85 percent of costs are energy and 15 percent of costs are
3 demand.

4 A very high, we submit -- or Mr. Knecht said he would
5 agree that it was a relatively high mix of energy costs.

6 We submit that it's beyond relatively high. It's very
7 high as an energy cost component relative to total costs.

8 As large industrial customers we are the ones most
9 affected by that very high energy ratio. And as a result
10 we think it's essential that there be this embedded cost
11 study to get a true analysis of what parts of the costs
12 are truly energy and what parts are truly demand and what
13 parts should be allocated to each class.

14 I would like to just hand out to the Board -- I haven't
15 given it to the Secretary, but all the other people in the
16 -- all the other participants have received this, and if I
17 could just take a second. This is not new evidence, Mr.
18 Chairman.

19 I'm not going to take the Board and make them suffer, each
20 of you suffer through what this is. But I'm going to
21 explain what it is in a general way.

22 What we have done to try to identify sort of the degree of
23 sensitivity that this cost allocation has, this changing
24 cost allocation has, what we have done is the top
25

2 set of numbers are as noted, the application from February 7,
3 2006 and the CCAS component for each. And we have only
4 picked three classes. We didn't want the chart to become
5 too big. So we have just picked residential, large
6 industrial transmission and wholesale.

7 And we went through and said in this, how much money in
8 the total side will be required for revenue as a result of
9 this application. And we said look at, for purposes of
10 comparison, the application filed on April 18th of last
11 year. In other words, that has changed. That was for
12 2005/2006. The one on top is for 2006/2007.

13 But how much money are each of these classes going to have
14 to contribute? The difference between of course the 2000'
15 -- the middle section numbers and the top section numbers
16 is attributable to two things.

17 One, in 2006/2007 more revenue was required. Between
18 2005/2006 of course there has been the decision of
19 December on the CARD. So the allocation has changed. The
20 revenue requirement increase, everybody has to get some
21 part of that and has some part of that in the 2007
22 figures.

23 But if you look down at the bottom, you say how much has
24 each group's rate gone up from what was the allocation in
25 2005/2006 figures?

2 And you will take a look at the far right-hand side of the
3 bottom section. And you can see that the residential
4 customers' rate went up 4.7 percent from the 2005
5 increase.

6 The other hand, principally as a result of the heavy
7 weighting of the CARD decision, the large industrial
8 transmission has gone up 25.7 percent. Wholesale has gone
9 up 8.7 percent.

10 CHAIRMAN: Wouldn't you characterize that not as their rates
11 went up but rather their share of the proportion increase
12 in the revenue requirement was?

13 MR. LAWSON: Yes. I'm sorry. That is right.

14 CHAIRMAN: Okay.

15 MR. LAWSON: That is exactly how it would properly be
16 characterized, Mr. Chairman. That is exactly it.

17 The total revenue that that class is going to contribute
18 increased from the 2005 application to the 2006
19 application by these percentage amounts.

20 So that I think does display very clearly that everybody
21 had the same rate increase. The total amount of increase
22 from 2005/2006, applications to 2006/2007 is a universal
23 amount. It is one amount for everybody.

24 But that amount had to be allocated amongst a variety of
25 people. And because of the CARD decision, the change

1
2 from what it had originally been in 2005/2006 to what it is
3 now very fundamentally shifts it because of this energy
4 allocation to the large industrial.

5 So that is just by way of purpose. I don't know.

6 Mr. MacNutt suggested we perhaps should have that marked. I
7 don't know that it is necessary. I will leave that to the
8 Chairman to decide if you want to have it marked or if you
9 just --

10 CHAIRMAN: No. I think we will just leave it as
11 illustrative purposes.

12 MR. LAWSON: Okay.

13 CHAIRMAN: Otherwise all the lawyers here will want to
14 submit evidence themselves.

15 Go ahead, Mr. Lawson.

16 MR. LAWSON: And it isn't evidence, Mr. Chairman. I knew it
17 was important not to try to slip in any new evidence.
18 Now the question is why is there such a sensitivity? Why
19 is it? Well, first of all, clearly as I have indicated,
20 the 85/15 allocation suggests that energy costs are --
21 that the cost allocation is very, very sensitive to energy
22 costs. Because 85 percent of the costs are in fact energy
23 cost. Total generation costs are 85 percent energy
24 related.

25 And that because of the way the allocation is done

2 very much heavily slants the costs against -- I would say the
3 term would be against the large industrial customers, or
4 to the large industrial customers.

5 And of course energy costs, as we all know --

6 Mr. Morrison has alluded to them in his argument -- have
7 increased significantly over the last one to two years in
8 particular. I think the indication was 150 percent since
9 2000, in quoting EGNB's evidence. In any event it is
10 acknowledged it has been a very significant increase.

11 And of course when you move the 85/15 and you have such a
12 significant increase in costs, the result is heavy on the
13 burden of the large industrials.

14 As we indicated, it is our belief that more costs truly
15 are demand related than they are currently. Some of the
16 energy costs in the 60/40 split or resulting 85/15 split
17 truly are demand costs.

18 Now the only way we are going to find that out truly is
19 the embedded study which -- a full cost study that should
20 be done, we submit, of all of Disco's costs including the
21 costs up above Disco from its supplier or suppliers,
22 Genco, Point Lepreau, et cetera.

23 One of the things we would certainly just cite as an
24 example -- and it is just an example -- one of the
25 problems in the allocation of it. With the current cost

2 allocation structure there is a contribution -- and it was
3 alluded to by Mr. Morrison -- a contribution to fixed
4 costs built into the PPA by Genco, \$7 per megawatt-hour.
5 And that is part of the -- in that section 6.2.3 of the
6 Genco PPA. And this amount grows by CPI each year. So it
7 started at 7 in 2005.

8 This is most likely not substantially all energy, if any
9 of it is energy at all. Yet it appears to be factored in
10 as an energy cost. Now this is not an insubstantial
11 amount of money. But it appears as though it is allocated
12 as an energy cost.

13 That is a small example of the kinds of things that closer
14 scrutiny of the costs, knowing what the costs are and
15 closer scrutiny, might allow an allocation, a more
16 appropriate allocation.

17 Now I'm going to start next on the assumption that we
18 don't have a reallocation of that 60/40 split for the
19 purposes of this matter.

20 I think one of the things that people can't lose sight of
21 is that there is sort of an implication that has been made
22 by some or an inference that large industrial haven't been
23 carrying their load.

24 I think if you look at PI IR-34 from last August, it is
25 clear that the large industrial class from 1991/92

2 fiscal year until what was budgeted -- that chart went to
3 budgeted 2003/2004 -- that large industrial did fit within
4 the .95 to 1.05 range in every one of those years.

5 There may have been -- I'm sorry, there may have been one
6 year where it was over the 1.05. I have it here. But it
7 was no less than the .95 to 1.05 range. So --

8 CHAIRMAN: What was the exhibit number on that?

9 MR. LAWSON: Sorry. It was PI IR-34 from August of last
10 year, August 5th of last year.

11 CHAIRMAN: The volume would have a number. Do you know
12 that?

13 MR. LAWSON: No. Because I didn't have the volume. I had
14 to pick it up off the -- having been a slacker in the
15 first half of the hearing, I didn't have those. It is
16 August 5th. But I apologize for not having it.

17 CHAIRMAN: No. That is fine.

18 MR. LAWSON: My apologies, Mr. Chairman.

19 There are actually two or three years where it exceeded
20 1.05 in the early '90s, but it was very close to it.
21 So I think it's important for people to understand that
22 large industrial have not been freeloaders in the system
23 by any stretch of the imagination. But what has happened
24 is a significant change in the price of energy

2 and compounded with the allocation of the energy costs that we
3 have indicated.

4 The Board indicated obviously in its December decision
5 they are of the view that a long term target range of .95
6 to 1.05 for the revenue to cost ratio for each class is
7 reasonable. Again the emphasis there is on the long-term
8 target. And the Board said the rate impact considerations
9 will require that some classes be moved gradually within
10 this range. Large industrial only moved outside of the
11 range a short time ago and we would submit moving it back,
12 because of the extraordinary circumstances of this, should
13 also be done on a very gradual basis.

14 I would point out on Mr. Knecht's report which I think is
15 PI-18, at page 19. He says, Disco's proposed assignment
16 of the revenue requirements amongst the rate classes is
17 not unreasonable. So his view is -- and one qualifier on
18 that -- that Disco's proposed assignment of revenue
19 requirements amongst the rate classes, no comment with
20 respect to the amount of revenue required but in terms of
21 the allocation he says is reasonable. Again I am
22 operating on the basis that the 60/40 split is the ground
23 rules under which we are dealing at this point.

24 He does raise the question of course that he accepts the
25 interruptible power issue which I have already

2 addressed.

3 Now the Municipal Utilities have sort of painted large
4 industrial in a bad light I think one of the things -
5 maybe in a bad light might be strong, but I think that
6 they are getting mistreated relative to the large
7 industrial. I think one of the things we should just
8 quickly point out is that the rate increase that is being
9 sought for large industrial is a 12.1 percent increase.
10 The municipal increase is 10.6. Just the difference
11 between those, large industrial is going to be -- it's
12 being sought that they would have a 14 percent higher
13 increase than the increase being sought for the
14 municipalities.

15 Now I think -- I haven't canvassed everybody, but I think
16 other than Disco, most of the participants here would
17 agree that the increase that is being sought is too high.

18 I will jump out on a limb on that and say that. That it
19 is very significant and everybody is very concerned about
20 the rate shock issue.

21 Last year we saw -- within the last year we have seen two
22 three percent increases, so a six percent increase within
23 the last 12 months. J. Meyers' evidence to this Board
24 last year, he indicated -- J. Meyers being the expert
25 called on behalf of CME -- indicated -- he referred

2 to evidence from a survey that was carried out by the CME --
3 he said that 55 percent of the New Brunswick respondents
4 said a reliable supply of cost competitive energy was a
5 very important factor in making investment decisions, in
6 fact almost as important as overall production costs. He
7 also indicated that because in manufacturing prices are
8 dropping generally, prices are dropping rather than
9 increasing because of competition in the world market,
10 that energy increases cannot be passed along to customers.
11 It just -- there were days when that could in fact be
12 done, where you have an increase in cost you pass that
13 cost on to the customer. The customer no longer accepts
14 it. The world market doesn't permit it. There are too
15 many other people who are prepared to do it for a lower
16 cost.

17 In some pulp and paper operations in New Brunswick
18 electricity represents 26 to 28 percent of their total
19 costs. Power rate increases -- and of course you can only
20 address it in a very general way for a variety of reasons,
21 one of which of course at that point he did not have
22 knowledge about what the rate increase was going to be,
23 but he did indicate that obviously there can be a negative
24 and adverse effect on businesses, manufacturing in

2 particular, in New Brunswick as a result of the significant
3 increase in electricity rates, because manufacturing is
4 very sensitive to those issues.

5 That can have a negative effect on their business which
6 can have a negative effect on businesses generally. The
7 ripple effect, the multiplier effect of manufacturing,
8 which is put into evidence I believe was 3.6 here in New
9 Brunswick. So that any loss of manufacturing will have
10 not only a negative impact on the business, but on the
11 people who are employed in the business and other
12 businesses dependent upon those. And we submit could very
13 well have a negative effect on Disco customers because of
14 the loss of them as customers.

15 Rates must be just and equitable for all classes. We
16 would submit --

17 DR. SOLLOWS: Mr. Lawson, in that quote you indicated that a
18 reliable supply of electricity priced reasonably is
19 necessary. In what sense do you mean the word reliable?
20 Does that mean like continuous as opposed to intermittent
21 or interruptible surplus?

22 MR. LAWSON: I shouldn't speak for Mr. Meyers because it was
23 his evidence, but I think what he is referring to, because
24 it's coming from the survey, I suspect it is a place where
25 you know you can get some dependable power.

2 DR. SOLLOWS: I.e., firm power, not interruptible surplus?

3 MR. LAWSON: I don't know that we can go that far, to be
4 honest with you. I can't say, Mr. Commissioner, if that
5 is in fact the case or not because of the way the survey
6 was don. That was his evidence I suspect that it's just
7 an availability of power that you know could be coming on
8 a dependable basis.

9 So given the realities of manufacturing in the world today
10 and New Brunswick and in Canada, given Mr. Meyers'
11 evidence, and, you know, we can't -- we are not immune to
12 the fact that we read the newspapers and watch television
13 and we know that manufacturers are closing. Mr. Meyers
14 gave evidence of that and gave evidence that part or all
15 of -- a number of cited closings were taking place as a
16 result at least in part because of high energy costs.
17 We cannot now have a 12.1 percent increase in rates after
18 a six percent increase last year, then essentially cross
19 our fingers and hope that no business shuts down, that no
20 employees lose their jobs and that Disco's customers don't
21 suffer. It's a dangerous gamble. That's the concern. We
22 have not gotten any evidence about what the impact
23 specific to any customers will be. We do know though that
24 a very sensitive sector, a sector very sensitive to
25 electricity costs, in a vulnerable position

2 in the economic world, will suffer as a result of the
3 increased costs.

4 Now we would just like to point out that Disco -- and I
5 describe it as fortuitously -- has had a substantial
6 windfall this year because of the high hydro and warmer
7 weather. Now Mr. Morrison says that that's really not of
8 relevance. But one thing that the Board can't lose sight
9 of is it was described as absolutely extraordinary, the
10 nature of it. So even if you use the averaging concept
11 that, look, you need to put this away for averaging
12 considerations, it has been extraordinary. So we submit
13 that a variation -- and the variation as I understood it
14 was that there was forecast in 05/06 a \$7.1 million loss
15 budgeted for 05/06, before tax considerations. Now there
16 is forecast \$36.2 million profit. That's extraordinary.
17 And we would submit that gives some cushion for this Board
18 in consideration of what they should do. Also -- and I'm
19 going to defer to the Public Intervenor with respect to
20 numbers on this issue, but we do know that there are going
21 to be substantial payments by way of a payment in lieu of
22 taxes, property taxes, guarantee payments, all of which
23 will go to the Province of New Brunswick.
24 As well the deemed capital issue. The reality is this.
25 There is debt in Disco. There is no equity. And

2 that to now deem an equity and attribute payments to the costs
3 is inappropriate, we would submit, at this time. We are
4 talking \$14.4 million for that part alone. Now is not the
5 time to make these payments. The environment does not
6 permit -- the economic environment doesn't permit it.
7 Just in closing we would point out that we do give credit
8 to Disco for its cost cutting measures. It has cut its
9 costs. But we submit that like all businesses those cost
10 cutting measures must continue constantly. They must
11 always be diligent to manage their costs. Those cost
12 cutting measures did not or should certainly not have
13 arisen by virtue of the reorganization. That's something
14 they should be doing every day, like all businesses are,
15 to make sure their costs of delivery of service is at its
16 absolute lowest. While we commend them for what they have
17 now achieved we would strongly encourage them as customers
18 and as shareholders to cut their cost constantly, to
19 minimize whatever costs there are of delivering their
20 service so that can be passed on to their customers.
21 So in conclusion, rate shock is a big issue for all
22 customers. It's a big issue for the large industrial
23 customers and the manufacturing sector in New Brunswick.
24 As a result we would strongly urge this Board to give
25 serious consideration to the concept of gradualism, to

2 implement this increase, provide as low an increase as this
3 Board thinks it can possibly do under the circumstances,
4 and we would like you to keep the increase low for all
5 customers. So we are not asking this just for the large
6 industrial customers. We believe that rate shock will
7 have an adverse effect on all customers, so we would
8 encourage you to make sure that, particularly in light of
9 the six percent increases that were put in place last
10 year, that the cost increase this year be significantly
11 lower than that which is being sought today.

12 Thank you, Mr. Chairman. Unless there are some questions,
13 members of the Board?

14 CHAIRMAN: I think we will hold until rebuttal day for
15 further vigorous questioning, Mr. Lawson. Thank you for
16 your summation.

17 MR. LAWSON: Thank you, Mr. Chairman, members of the Board.

18 CHAIRMAN: Mr. MacDougall, you are hidden by the young lady
19 camera person out in front of me, but are you able to find
20 a place that you would not mind stopping in your summation
21 for us to take our afternoon break, or would you prefer
22 that we take it now and start afresh when we come back.

23 MR. MACDOUGALL: I think we should take our break now, Mr.
24 Chair, would be the better approach.

25 CHAIRMAN: Okay. Fine. If you would come up front. Thank

1

2 you.

3 (Recess)

4 CHAIRMAN: During the break why the normal order would be
5 next up would be Enbridge Gas New Brunswick, then the
6 Irving group of companies and then the self-represented
7 individuals. But Mr. MacNutt has just informed me that
8 those between now and the self-represented individuals
9 don't mind if Mr. MacIntyre goes ahead now with his ten
10 minutes.

11 So, Mr. MacIntyre, I have as you know a couple of
12 questions of you. First of all have you read all the
13 evidence?

14 MR. MACINTYRE: Mr. Chair, I think God read all the
15 evidence, but I can tell you that there was a lot.

16 CHAIRMAN: Okay. Secondly, are you here as a member of a
17 possible government-in-waiting or as a member of the
18 present Liberal caucus, Her Majesty's Loyal Opposition, or
19 the MLA for Saint John/Champlain, or plain old Roly
20 MacIntyre?

21 MR. MACINTYRE: This is Roly here and I'm running again, but
22 I'm representing myself today.

23 CHAIRMAN: Thank you, sir. Go ahead.

24 MR. MACINTYRE: First of all I want to thank the other
25 groups for allowing me to go and I will be less than ten

2 minutes, so I really do appreciate it.

3 Good afternoon, Mr. Chair and Board members. First and
4 foremost I want to commend you on the work that you have
5 completed to date on this file, particularly given the
6 perfect storm that NB Power has endured over the most
7 recent winter months. Issues like hurricanes in the
8 United States affecting refinery capacity, warmer than
9 average temperatures and above average hydro flows, have
10 provided us with an unlikely and yet quite profitable
11 scenario for NB Power group of companies.

12 I also want to recognize the work that the Intervenors
13 have demonstrated throughout these hearings. There is
14 substantial work and evidence that must be completed and I
15 commend the tireless work that they have accomplished.

16 I also want to thank you for the opportunity for me to
17 speak today on some of the very important issues
18 surrounding the implications of the rise in cost of
19 electricity. In my riding and in Saint John and in New
20 Brunswick I continue to hear the outcry of many diverse
21 groups saying that rising electricity costs are out of
22 control.

23 I empathize with these people and groups and fully
24 understand their message. Price shock to an essential
25 service like electricity strikes the hearts of our most

2 sensitive groups. These groups include both low and fixed
3 income residential customers, our mills, our
4 municipalities and small business. And anyone else who
5 heats with electricity.

6 Unfortunately government's recent initiative did not
7 include these critical segments when they introduced the
8 home heating oil rebate on oil. They introduced a small
9 subsidy for the smallest group and unduly delayed its
10 implementation. Someone obviously needs to protect these
11 sensitive groups I refer to. If government fails to do
12 this the responsibility ultimately falls on this Board.
13 However, I also understand that NB Power has a financial
14 obligation to increase revenue and increase costs -- with
15 increased costs. Cost management and reduction of NB
16 Power faces many challenges. These include the price
17 increases of crude oil, natural gas and even uranium over
18 the past two years.

19 Our largest power generator at Coleson Cove burning an
20 expensive heavy fuel rather than the significantly
21 discounted Orimulsion, cost challenges with staffing and
22 administration post restructuring, the cash outs.

23 However, my role as Intervenor is the same as everyone
24 else appearing here today. I seek fairness for the
25 ratepayers as presented in the rate case by NB Power. It

1
2 is our opinion that it is the role of this Board to make
3 certain that any rate increase is fair. That is the basic
4 principle of these hearings. Is the rate increase as
5 presented by NB Power fair to its ratepayers?

6 Based on the evidence presented and from what I have
7 managed to read and hear, I can honestly say that I'm not
8 sure. My first area of concern lies in the apparent and
9 recently announced profitability of NB Power.

10 I certainly do not profess to be an accountant nor do I
11 profess to completely understand exactly what kind of
12 accounting adjustment can make tens of millions of dollars
13 retroactively disappear from one company and appear to
14 transfer to another. But I can say that its timing seems
15 very questionable.

16 I'm sure that according to NB Power this transaction is
17 prudent and meets many of the criteria of the rules of
18 accounting. My only issue is the perception that
19 ratepayers have at this point in time. If a utility
20 company was making above average profitability why would
21 they claim that they are not profitable and that they need
22 to increase rates to double digit levels?

23 I'm not challenging the accounting, nor am I challenging
24 the methodology, I simply urge caution and reasonableness
25 by this Board when assessing the overall

1 - 5993 - Mr. MacIntyre -

2 health of this utility. This is an important issue for New
3 Brunswickers no matter what the accounting principles are.

4

5 This leads into my second issue. The mandate of the PUB
6 is to examine the reasonableness of the distribution
7 company's actions. There have been multiple arguments
8 surrounding issues like Section 156 of the Electricity
9 Act, whether or not the generation company can be held for
10 any level of scrutiny or inclusion, and finally what is
11 confidential and what is not confidential.

12 NB Power restructured back on October 1st 2004. With this
13 restructuring came the expectation that they would be
14 borrowing without the seal of approval by government, that
15 the electricity market would be more competitive and that
16 each company would operate at arms length to each other.
17 This is simply not the case at NB Power right now.

18 I equate the current structure of this utility to many
19 different fingers on the same hand, each separate,
20 however, all of them are connected. This is not true
21 independent borrowing. There is a mirror Board of
22 Directors and yet because of this new structure the scope
23 under which the PUB can act is severely limited.

24 I find this particularly concerning and I raise this issue
25 of mandate because I believe that this Board,

2 particularly given the issues surrounding the miscommunication
3 on the Orimulsion file, needs to have the ability and
4 scope to further examine the misspent dollars at this
5 power station and the actions or the inactions of the
6 shareholder.

7 These hearings have provided us as both ratepayers and
8 taxpayers an opportunity to improve this rate application
9 process. I believe that frequency of due diligence of
10 this Board's scrutiny as well as its mandate to be closely
11 evaluated for improvements -- needs to be closely
12 evaluated for improvements.

13 For example, rather than a fixed ceiling of three percent
14 for rate hearing scrutiny, we should consider implementing
15 a variable inflater linked to energy costs such that we as
16 taxpayers will have the opportunity to review significant
17 rate increases more frequently moving forward.

18 Due diligence is about full and complete disclosure. In
19 order for this Board to truly understand the
20 reasonableness of the rate application by NB Power they
21 need the tools to complete the job. That might mean that
22 the scope and mandate extends beyond the distribution
23 company. NB Power is still an integrated company and
24 until it truly operates its companies at arms length it

1
2 should be completely held accountable at all levels.

3 Ultimately, we need to consider the feasibility of
4 revising and expanding the scope of this Board to include
5 the generation company.

6 As I alluded to earlier, the current structure of NB Power
7 is the same as different fingers on the same hand. They
8 may look different than before, they may report
9 differently than before and they may have different vice
10 presidents and directors but ultimately they have the same
11 Board and the same shareholder.

12 NB Power is, for the lack of better definition, the same
13 company -- the same group of companies and needs to be
14 examined as such.

15 If we are truly seeking fairness and clarity why hide
16 behind acts and regulations. Open all the books, all the
17 Power Purchase Agreements, all the contracts and allow the
18 Board to make a decision based on full and complete
19 information.

20 If our principle is fairness to ratepayers, let's provide
21 all the information, however condemning to the shareholder
22 it may or may not ultimately be.

23 What I am seeking today from this Board is fairness and
24 accountability. Ratepayers in New Brunswick have already
25 faced multiple rate increases since April 2004 and

2 should not be forced to adjust to more only if the application
3 is fair, accountable and reasonable. New Brunswickers
4 need affordable, sustainable and reliable electricity for
5 now and for years to come.

6 This is the message I am presenting today. I will leave
7 the legal and financial arguments to the professionals.
8 My message is simple complete transparency and
9 accountability need to be met in the process of due
10 diligence.

11 While I commend the work you have completed to date, I
12 strongly urge you to consider the points that I have
13 raised today.

14 Thank you, Mr. Chair, for the opportunity to speak today.

15 Thank you very much.

16 DR. SOLLWS: Yes. Mr. MacIntyre, you alluded to a change
17 in the statutory provision for rate increases under three
18 percent to something that related to a provision that
19 would be variable with adjustments in the fuel price, is
20 that correct?

21 MR. MACINTYRE: That was an example actually. Rather than
22 have a fixed rate I think what we are saying is there
23 should be another way of doing it, a more -- a fair
24 variable that we could look at. That was just one of the
25 things that you could look at. But when -- like we have

2 had an eight-and-a-half percent increase in the last -- well
3 you know what it is because you have heard it here day in
4 and day out, so --

5 DR. SOLLOWS: I guess the irony that ran through my mind is
6 that we would not have had this hearing had we had such a
7 provision in place, because very clearly the evidence is
8 and all have agreed that the run-up in fuel prices has
9 precipitated the need to come to this Board.

10 MR. MACINTYRE: Well you know when we look at it, like NB
11 Power hasn't been before this Board for over a decade.
12 Three percent, three percent, 2.9, three percent. So
13 there is something wrong with a process that has a utility
14 -- a public utility appearing before a PUB every ten or 12
15 years. I would not want that to ever happen again.
16 I don't have all the solutions here today. It's just that
17 when I look at that -- and three percent of the last
18 eight-and-a-half percent was because of a name change in
19 the utility, and I always felt there was something wrong
20 with that as well.

21 So we are looking at a better process or a better way of
22 doing it. So it's a thought is what we were giving you
23 there.

24 DR. SOLLOWS: Thank you.

25 CHAIRMAN: Good. Thank you very much, Mr. MacIntyre, for

2 your presentation.

3 MR. MACINTYRE: Thank you very much, sir.

4 CHAIRMAN: And as soon as Mr. MacIntyre has packed up why
5 Mr. MacDougall can move forward.

6 MR. MACDOUGALL: Good afternoon, Mr. Chair, Commissioners.
7 Thank you for this opportunity to present the final
8 argument of Enbridge Gas New Brunswick. This has been a
9 long and complex proceeding and in this final argument I
10 will attempt to focus the Board's attention on the key
11 elements of EGNB's proposals and why we believe they are
12 appropriate both in the circumstances and in the wider
13 public interest.

14 To start, I would like to quote from Mr. Justice Jackson
15 in the seminal United States Case Federal Power Commission
16 versus Hope Natural Gas Company. Justice Jackson stated,
17 I must admit that I possess no instinct by which to know
18 the reasonable from the unreasonable in prices and must
19 seek some conscious design for a decision. EGNB believes
20 this Board should likewise seek some conscious design for
21 its decisions and I will try today to lay out what we
22 believe is the most appropriate design on which the Board
23 should base its decision making.

24 I will start with an introduction before I get into our
25 specific proposals.

2 As you are aware EGNB was integrally involved in the first
3 phase of this proceeding as it was their view that it was
4 important to provide their perspective with respect to the
5 Board's decision making regarding the class cost
6 allocation study. The CCAS creates the underpinning for
7 the subsequent revenue allocation, rate design, revenue to
8 cost ratio for the classes, and ultimately customer's
9 rates.

10 Certain fundamental aspects of rate design and its
11 interplay with respect to revenue cost ratios were left
12 open following the December ruling for further
13 consideration and determination in the Phase II revenue
14 requirement here. It is for those reasons that EGNB has
15 continued to be involved in the process throughout those
16 aspects of Phase II relating primarily to rate design and
17 rates.

18 Returning now to the conscious design with which EGNB
19 believes this phase of the hearing should be approached.

20 It is EGNB's view that one of the continuing fundamental
21 precepts that the Board must keep in mind in its decision
22 making is the necessity to send a proper price signal to
23 the market, both to encourage appropriate behaviour of
24 electricity customers and to ensure that Disco's rates do
25 not in and of themselves create a barrier

2 to demand side management initiatives and the potential use of
3 more efficient fuels by the energy consuming public in New
4 Brunswick and an artificial barrier to competition.
5 NB Power, now Disco, has not been before this Board in
6 some time, as was just alluded to by Mr. MacIntyre. And
7 their pre-existing rate design simply is no longer
8 applicable to circumstances in New Brunswick, particularly
9 a declining rate block in the residential class and the
10 existence of the all-electric rate in the GS class, i.e.,
11 the GS II rate, simply no longer serve a useful purpose,
12 and on their face are contrary to the precepts of the New
13 Brunswick Energy policy and the Province's policy on
14 energy efficiency.

15 In this regard we encourage the Board to keep in mind
16 Professor Bonbright's acknowledgement that one of the
17 three primary objectives in rate design should be the
18 optimum use or consumer rationing objective under which
19 the rates are designed to discourage the wasteful use of
20 public utility service while promoting all use that is
21 economically justified in view of the relationships
22 between cost incurred and benefits received.

23 In the current circumstances of Disco's rates and the
24 current drive to encourage conservation and energy
25 efficiency, we believe this widely accepted objective is

2 particularly germane to the current situation in New
3 Brunswick.

4 Before dealing specifically with EGNB's proposed
5 recommendations to the Board it is important to note that
6 EGNB fully concurs with the Board's statement in its
7 December ruling that as no detailed cost information on
8 the actual generating facilities was provided, the Board
9 was placed in a very difficult position, and did not have
10 all of the information that would normally be available to
11 assist in setting rates.

12 At this stage of the process what is important to bear in
13 mind, particularly as it relates to revenue to cost ratios
14 of the various classes, is that Disco's cost of service
15 study does not fully reflect full information regarding
16 the actual costs of generation, and particularly it does
17 not fully reflect the differentiation of costs throughout
18 various times of the year as incurred by Genco and
19 ultimately paid by Disco and its ratepayers.

20 It is for this reason that Dr. Rosenberg felt it useful to
21 provide Schedule 1 to his evidence, EGNB-5, which schedule
22 graphically represented the significantly monthly
23 differences in the price of fuel, which differential is
24 primarily attributable to the much higher oil and gas
25 fired generation costs during the winter

2 months that is needed to satisfy the heating load in New
3 Brunswick.

4 As Dr. Rosenberg indicated, EGNB believes that the Board
5 should consider this fact in determining the appropriate
6 revenue allocation and rate designs for the various
7 customer classes. This information is irrefutable and was
8 not challenged by any party in this phase of the
9 proceeding. And we would refer you to Disco's response to
10 EGNB IR-9 in exhibit A-80 which has the data on which Dr.
11 Rosenberg developed his graphics.

12 In particular page 3 of Dr. Rosenberg's Schedule I shows
13 the strong correlation between monthly variable production
14 costs and residential electric heating usage. We strongly
15 encourage you to look at Dr. Rosenberg's schedules and the
16 point which they dramatically highlight.

17 On this specific point, on a couple of occasions,
18 Mr. Chair, you yourself had raised concerns with respect to
19 the pricing mechanism in the PPAs and whether this in any
20 way mitigates against consideration of this issue.

21 As Dr. Rosenberg clearly noted in an undertaking response
22 to you, Mr. Chair, that is exhibit EGNB-14, the PPAs were
23 designed to, over time, recover the cost of the Genco
24 companies.

25 This was also reiterated by Ms. MacFarlane during

2 examination. And it is clear that to the extent electricity
3 consumers respond to price signals and reduce consumption
4 or convert to alternative fuels, this will bring the
5 overall costs of Disco down to the benefit of the system
6 as a whole.

7 It is also clear on the evidence that the NB Power group
8 of companies remain a winter peaking utility, with
9 significantly higher variable costs in the winter months,
10 which variable costs, if reduced, will flow through the
11 PPAs as reductions to the cost of all of Disco's
12 customers.

13 As well a failure to send a price signal which reflects
14 the underlying generation costs will continue to
15 discourage electricity customers from moving to more
16 efficient and environmentally-friendly energy forms,
17 particularly for their heating requirements.

18 I would now like to deal with EGNB's proposed
19 recommendations to the Board regarding each of the
20 residential class and the General Service classes, to
21 start with the residential class.

22 EGNB recommends that the Board approve the increase in the
23 size of the first block to 1400 kilowatt-hours as
24 recommended by Disco, keep the customer charge as
25 recommended by Disco or possibly lower the customer

1
2 charge, as I will discuss later, and recover the remainder of
3 the target revenue for the residential class in the energy
4 charge, with a 1.16 cent per kilowatt-hour differential
5 between the two blocks.

6 With respect first to the block size, Disco supports this
7 move to help mitigate the rate impact on the customers who
8 will see the largest increase by virtue of the increase in
9 the tail block energy charge, which itself is beneficial.

10
11 Dr. Rosenberg further demonstrated that virtually all of
12 the usage between 1300 and 1400 kilowatt-hours per month
13 was attributable to electric heating, and consequentially
14 extending the higher-priced first block sends an
15 appropriate cost-based price signal, totally irrespective
16 of changing the energy charges. This provides an
17 additional justification for this movement.

18 Further, EGNB is not aware of any Intervenor in this
19 hearing who challenged the increase in the first block
20 size. And it is fully supported on the evidence.

21 With respect to the customer charge, Disco's proposal is
22 consistent with the indications of the cost study
23 regarding what this charge should be. However, as noted
24 by Dr. Rosenberg, there are competing considerations. 1)
25 increases in the customer charge most impact the small

2 customers. And 2) customers cannot respond to a customer
3 charge in the way they can to a demand or energy charge.
4 Accordingly, EGNB supports Dr. Rosenberg's comments that
5 if the Board should wish to place more emphasis on the
6 issues of impact to low-income customers or to deterring
7 winter consumption, an appropriate response may be to
8 leave the customer charge unchanged from its current level
9 rather than increase the charge as proposed by Disco.
10 This is a matter of balance which is best left to the
11 Board's overall discretion.

12 With respect to the energy charge, Disco does not appear
13 to have followed the Board's December ruling. The Board
14 noted that the declining block should be eliminated as
15 soon as possible, but that it also had concern over the
16 possible rate shock that this might create if it occurred
17 too quickly.

18 You then specifically noted that you had analyzed the
19 likely impacts and felt that it was appropriate to
20 eliminate the declining block rate in three stages, each
21 stage bringing the declining block one-third of the way to
22 the rate of the first block.

23 Disco simply did not appear to us to do this. The current
24 differential is 1.74 cents, one-third of which is .58
25 cents. Disco appeared to do its own analysis of the

1 impact, as was noted by Mr. Larlee, and reduced the

2 differential on a percentage basis which was a reduction
3 of only .46 cents or 26 percent, rather than one-third of
4 the current differential.
5

6 EGNB honestly was very surprised by the approach taken by
7 Disco, and is still unclear why they did not do what
8 appeared to be simply ordered by the Board. Furthermore,
9 Mr. Marois acknowledged that the approach suggested by
10 EGNB would send a better price signal.

11 While EGNB acknowledges that the electric heat customers
12 are not a class per se, throughout the entirety of both
13 phases of the proceeding, Disco has always segmented the
14 electric heat and non-electric heat customers for the
15 purposes of providing information to the Board and all
16 parties. We note that following the recommended rate
17 design stated above, i.e. that proposed by Dr. Rosenberg
18 and supported by EGNB, the residential heating customers
19 as a group, as well as the residential class as a whole,
20 would be brought within the target range.

21 Considering the magnitude of rate increases being seen by
22 residential customers who heat with gas, oil, propane or
23 other sources, the magnitude of the rate increase which
24 would be affected by this rate design would not in our
25

2 view be seen as problematic.

3 EGNB believes that in targeting the residential class R/C
4 ration at 0.95 Disco neglected its own evidence regarding
5 where this would leave the electric heat residential
6 customers, particularly considering the pronounced
7 increased fuel costs required for winter heating, and that
8 it would be more appropriate to target the residential
9 class at 0.98 percent so as to bring the electric heat
10 customers within the range.

11 This proposal is also fair because it would lead to less
12 cross-subsidization within the residential class and be
13 more reflective of true cost causation intra-class. As
14 Mr. Marois conceded in cross-examination, the only reason
15 the residential class as a whole is able to be targeted in
16 Disco's proposal at 0.95 is because the electric heat
17 class is at 0.93 and the non-electric heat customers at
18 1.01. With the information that is known to us all, this
19 is simply inappropriate.

20 We would also note that these recommendations would
21 provide an increase to the residential class that was no
22 more than 1.5 times the system average increase, a
23 standard used by other regulatory commissions as a
24 guideline as to whether or not any class is facing rate
25 shock or inordinate rate increases.

2 As was noted by Dr. Rosenberg, and subsequently reiterated
3 by Mr. Marois, the principle of gradualism needs to be
4 looked at in light of actual underlying cost increases.
5 To the extent that the Board approves a certain level of
6 underlying costs to increase Disco's revenue requirement,
7 then a guideline as to whether any class is being treated
8 inappropriately is to see if that class is receiving an
9 increase of more than 1.5 times the system average
10 increase.

11 With respect to this issue, two further points are very
12 worthy of note.

13 First, all of the figures to date with respect to
14 percentage increases, revenue to cost ratios, et cetera,
15 are based on the premise that Disco achieves its fully
16 applied for revenue requirement. To the extent the Board
17 reduced Disco's overall revenue requirement, then
18 obviously all of the rate proposals will have a
19 correspondingly reduced impact. It is important for the
20 Board to note in reviewing the rate design proposals that
21 their impacts will be moderated to the extent the revenue
22 requirement is reduced.

23 2. EGNB's proposals, as well as those of others, also do
24 not reflect any customer reaction. And simply put, there
25 will be customer reaction by way of conservation,

1
2 energy efficiency measures or fuel switching, if one sends an
3 appropriate price signal.

4 The whole purpose of sending an appropriate price signal
5 is to encourage customers to act accordingly, and the
6 evidence is that they will. Leading to the final
7 desirable impact of lower overall system costs by reducing
8 the use of high cost, environmentally unfriendly heating
9 related electricity demand in the winter. This is why
10 Professor Bonbright states that this should be one of the
11 three primary objectives of rate design, and it is why we
12 believe the Board itself acknowledged in the December
13 ruling that the declining block should be removed as soon
14 as possible. EGNB gave very vivid examples of previous
15 reaction to price signals during their direct examination.
16 With the greatest of sincerity, EGNB believes that the
17 proposals it has put forward are more consistent with the
18 Board's December ruling, more consistent with stated
19 Government policy, fairer to low income users of
20 electricity and more appropriate from a competitiveness
21 standpoint than those of Disco. Furthermore, these
22 proposals acknowledge the requirement for moderation and
23 gradualism, and adhere to these principles in both their
24 spirit and their application.

25 One final point on this item, which is applicable to

2 EGNB's rate proposals as a whole, is EGNB's serious concern
3 that Disco has been unwilling to give any indication of
4 when it may next come before this Board. Not only has it
5 not proposed an actual one-third decrease in the declining
6 block, but it gave no indication of when it may next seek
7 to institute the next one-third reduction. EGNB is of the
8 view that the Board should seriously consider in this
9 decision whether it should tighten up the process by which
10 Disco needs to ultimately move to removal of the declining
11 block.

12 It appears from the record that leaving this open to
13 occur within five years could well have us seeing limited
14 further movement until five years from now. NB Power's
15 track record of acting without Board direction, and its
16 statements on the record in this proceeding, give EGNB,
17 and we would think all other parties, little comfort that
18 Disco will be moving any quicker than it has in the past.

19 This was acknowledged by the Board in its December ruling
20 to have been glacially slow. We encourage the Board to
21 keep this issue in mind in its decision making process,
22 and we will make specific recommendations in this regard
23 at the end of our argument today.

24 I would now like to move to the GS Classes. On this
25 topic, there are three items to keep in mind. The

2 requirement to close the GS II class to new customers, the
3 requirement to not penalize GS II customers who switch to
4 another fuel source for heating or related requirements,
5 and third the actual rate design proposals put forward by
6 EGNB and Dr. Rosenberg, starting with Closing the Rate.
7 Mr. Marois confirmed that it was still Disco's belief that
8 the GS II rate should be closed, but that Disco had read
9 into the Board's December ruling that this was somehow
10 prohibited. EGNB did not see anything in the Board's
11 ruling which suggested that the GS II rate could not be
12 closed, and again was surprised with Disco's
13 interpretation, particularly now that we have heard Mr.
14 Marois confirm once again that Disco's belief is that the
15 rate should be closed. Furthermore, no party has disputed
16 this, and it has been noted throughout both phases of the
17 Hearing that there clearly no longer exists a requirement
18 for an all electric rate at a discount to the GS I rate.
19 As Disco itself has acknowledged, there is simply no cost
20 causation basis to differentiate between the two rates.
21 EGNB believes the Board, and all parties, are of the view
22 that the GS classes should eventually be merged, and a
23 significant first step to do this would be to ensure that
24 no further customers not currently on the GS II rate take
25 the rate up. The concept of an all electric rate at

2 a discount to the remaining GS customers is an anachronism and
3 it is clearly anti-competitive. The continuation of
4 offering such a rate to new customers has no basis in the
5 Government's Energy Policy, no basis in cost causation,
6 and will only lead to a widening problem that all parties
7 appear to acknowledge needs to be addressed.

8 Finally on this point, there will be no discrimination, as
9 once the rate is closed, all new customers will be treated
10 the same as the GS I class, and existing GS II customers
11 will be merely grandfathered during the transition period
12 towards the merging of the two classes.

13 Now removing to the removal of the penalty. With respect
14 to removing the penalty aspect of the GS II rate, EGNB
15 strongly urges the Board to deal with this matter. As
16 EGNB's evidence graphically illustrated, as long as a GS
17 II customer is required to switch its remaining load to
18 the GS I rate, in a circumstance where it may move its
19 heating load for example to natural gas, it simply will
20 never undertake this action, because of the penalty nature
21 of the switch from GS II to GS I for its remaining
22 electric needs. The penalty nature of the current
23 situation simply makes it unfeasible for existing GS II
24 customers to consider energy efficient conversions, which

1
2 conversions would otherwise be both economically better for
3 the GS II customer themselves and more appropriate for the
4 system as a whole by removing high cost winter heating
5 load from Disco's system.

6 Just imagine the current situation. A GS II customer pays
7 a rate that includes high cost winter energy, switches off
8 of electricity for heating during the high cost period,
9 and then is told that they must pay more per kilowatt-hour
10 for the remaining electricity even though it is at a lower
11 cost for Disco to serve. It is hard to imagine a more
12 ridiculous situation created by a rate structure.

13 It would be in no way discriminatory to allow existing GS
14 II customers to retain the benefit of the GS II rate if
15 they switch a portion of their load during the transition
16 period toward the merging of the GS classes. If no new
17 customers could go on the GS II rate, this would cap the
18 amount of customers on the rate. And those who may switch
19 some of their load would again be merely grandfathered for
20 the transition period until the rates are merged.

21 This is in fact the exactly appropriate regulatory
22 response as it contemplates the principle of a gradual
23 elimination of what is seen by all parties as an
24 anachronistic rate, while at the same time creating

2 appropriate transition measures which will allow customers to
3 make more efficient decisions. This is certainly
4 completely consistent with Professor Bonbright's stated
5 primary consideration in rate design of discouraging the
6 wasteful use of public utility services. Furthermore this
7 measure in and of itself will actively encourage much
8 greater competition in the general service category
9 amongst various energy providers in the province and lead
10 to a significantly more efficient use of energy within
11 this class. This is completely consistent with the White
12 Paper on Energy Efficiency and would lead to the potential
13 use of more environmentally benign fuel sources.

14 Now moving to rate design on the GS class. With respect
15 to the design of the general service rates themselves
16 there is an initially very significant point to be made.
17 Dr. Rosenberg and EGNB's proposal brings each of the GS
18 classes, and in particular the GS I class much closer to
19 the R/C band. Mr. Chair, you specifically noted during
20 the proceeding your concerns with respect to the fact that
21 each of the GS classes remain above their cost of service.

22 And in particular the fact that the GS I class remains
23 substantially above its cost of service. Dr. Rosenberg's
24 proposals bring the GS I class from a revenue to cost
25 ratio of 1.23 down to a revenue to cost

2 ratio of 1.15 and the revenue to cost ratios of the GS I and
3 GS II classes come closer together.

4 EGNB believes that it is appropriate for the GS I class to
5 move closer to its cost as well as to eliminate the
6 disparities between the GS I and GS II classes. It is
7 important to deal with the GS I class to a greater extent
8 than has been proposed by Disco, although this has the
9 effect of decreasing the cost of the GS I class. Since
10 this is the appropriate price signal, EGNB supports making
11 these moves.

12 Particularly Dr. Rosenberg recommends a zero revenue
13 allocation increase for the GS I class, but accepts
14 Disco's proposed revenue allocation to the GS II class,
15 thus having the positive impacts I have spoken.

16 Now with respect to rate design for GS I. As noted above,
17 Dr. Rosenberg proposed two rate designs depending on
18 whether the Board accepted Disco's proposed revenue
19 allocation for the GS I class or whether it agreed with
20 Dr. Rosenberg's recommendation for a zero increase for the
21 GS I class.

22 Accepting Disco's proposed service charge, as the GS I
23 rate has both a demand charged and blocked energy charges,
24 EGNB recommends that if Disco's revenue allocation is
25 accepted, Disco's proposed demand charge for the GS I

1 class is appropriate.

2
3 However, if Dr. Rosenberg's and EGNB's recommendation for
4 the revenue allocation for this class is approved, a lower
5 revenue allocation, then a lower demand charge is more
6 appropriate.

7 With respect to the energy charges, Dr. Rosenberg noted
8 that with Disco's rate design the first block energy
9 charge being proposed by Disco is higher than even the
10 first block energy charge for the residential class, and
11 that class does not even have a demand charge as the GS I
12 class does. Consequently, he recommends that the first
13 block energy charge be set no higher than the residential
14 first block energy charge which he recommended be set at
15 9.53 cents. The remainder of the revenue target for the
16 class would then be collected from the second block energy
17 charge. The complete proposed rate designs for the GS I
18 class at both Disco's proposed revenue and at a zero
19 increase for the class are set out at pages 15 and 16 of
20 Dr. Rosenberg's testimony, EGNB-5. And I commend those to
21 the Board.

22 We would note that there was no significant cross
23 examination of Dr. Rosenberg on this point. The only
24 comment made during the hearing was after Dr. Rosenberg
25 had left the stand and Mr. Larlee commented to Mr. MacNutt

1
2 that the GS classes have certain customers with peak demands
3 less than 20 kilowatts. And according to Disco's rate
4 design, these customers pay no demand charge. Mr. Larlee
5 then stated that Disco feels it appropriate to recover the
6 demand charge associated with that first 20 kilowatts
7 implicitly through a higher energy charge in the first
8 block of kilowatt hours, which is the first 5,000 kilowatt
9 hours under all proposals. Unfortunately Mr. Larlee then
10 went on to say that he felt that Dr. Rosenberg did not
11 take this into consideration when designing his rate,
12 notwithstanding that this issue was not addressed in cross
13 examination by his counsel.

14 On this point we would note that Dr. Rosenberg responded
15 by way of an undertaking, EGNB-15, which indicates that
16 Mr. Larlee's assumption was incorrect and which
17 specifically shows that Dr. Rosenberg's rate design for
18 the GS II class would recover the required implicit demand
19 charge. Further, as I noted at the hearing, this would
20 also be the case with respect to Dr. Rosenberg's proposed
21 rate design for the GS I class at a zero increase which is
22 in fact Dr. Rosenberg and EGNB's proposal.

23 As such, EGNB's proposal for the GS I class accords fully
24 with the Board's December ruling, sends a more appropriate
25 price signal in the tail block, covers any

2 requirement for an implicit demand charge in the front block,
3 and most importantly brings this class, which is
4 significantly over recovering its costs much closer to its
5 actual costs. And we think, Mr. Chair, that addresses the
6 concern that you had expressed. EGNB remains surprised at
7 Disco's willingness to have the GS I class at an R/C ratio
8 of 1.23 which is significantly reduced to 1.15 under
9 EGNB's proposal.

10 With respect to the GS II rate, again accepting Disco's
11 proposed service charge, Dr. Rosenberg indicated that he
12 felt Mr. Marois' increase in the demand charge to \$5.15
13 per kW was still inadequate. This was because it did not
14 even reach Disco's proposed demand charge of \$5.88 for the
15 small industrial rate.

16 Dr. Rosenberg indicated he could see no reason why the
17 demand charge for GS II should not be at least as large
18 and therefore he utilized the level \$5.88. We would note
19 that this is still considerably less than the demand
20 charge for the GS I class under either Disco's proposal or
21 Dr. Rosenberg's proposal.

22 Disco proposed a first block energy charge for GS II that
23 is equal to GS I and Dr. Rosenberg found that reasonable,
24 however, since he is proposing a lower first block charge
25 for GS I, 9.53 cents per kilowatt hour, he

2 recommended the same charge for GS II on the same underlying
3 basis as Disco. The remainder of the revenue requirement
4 would then be calculated as the residual from the charge
5 for all energy above 5,000 kilowatt hours.

6 Dr. Rosenberg's proposed rate design for the GS II class
7 can be seen at page 17 of his evidence. And again, we
8 commend you to take a look at that rate design.

9 Again, this rate design, if adopted by the Board, sends a
10 much more appropriate price signal, while at the same time
11 moving the demand charges for the two GS classes closer
12 together, and allowing for an easier merger of the two
13 rates in future.

14 Before turning to the issue of capital structure on which
15 I have some comments, I have a few final comments
16 regarding Dr. Rosenberg's and EGNB's rate designs in
17 general.

18 As Mr. Harrington and Ms. Black's testimony makes
19 abundantly clear, and we encourage the Board to review
20 that testimony and Mr. Harrington's direct examination,
21 Disco's proposed rates do not discourage the wasteful use
22 of public utility services. In fact they appear to
23 continue to encourage such use.

24 In these days of high energy prices, available energy
25 alternatives, more efficient alternatives and growing

concerns for the environment, we would suggest that this criteria is as important as ever.

Furthermore EGNB's proposals are squarely within the Board's December ruling and aim to meet this criteria for the benefit of New Brunswickers as a whole as well as Disco's customers, while also mating the two other Bonbright primary criteria, a fair return standard to the utility and fair cost apportionment amongst the classes.

The only issue which appeared to be raised as a concern with respect to any of the elements of

Dr. Rosenberg's proposed rate design, is that he allocated a portion of the revenue collected from the residential class under his proposal to moderate the increases to the small and large industrial classes. This still kept the small industrial class within the Board approved band, but it dropped the large industrial class outside of the band. Now I won't spend a lot of time on this because the CME has done that. But three points I think are important in this regard.

1. Because of the overall increase in the revenue requirement the large industrial class would still be receiving a significant increase;

2. As noted by Disco, there is a concern with increasing costs to large industrials who are high load

2 factor, beneficial customers on the system, with motive power
3 needs, who may not be able to absorb further significant
4 increases; and --

5 3. Most importantly, this is an issue that EGNB feels is
6 totally one of judgment for the Board. As I noted in my
7 cross-examination of Mr. Knecht, if the Board does not
8 want to mitigate the increase to the large industrial
9 class, it could certainly utilize the extra revenue to
10 moderate, for example, the wholesale rate to bring it
11 closer to unity.

12 These are matters of judgment for the Board what to do
13 with that revenue.

14 What EGNB does believe is that the most important areas
15 that need redress in this proceeding are the inefficient
16 elements of Disco's rate design, i.e. the tail block of
17 both the residential and the GS II rate, and the
18 unnecessary differentiation between the GS II and GS I
19 rates. EGNB's proposal go a long way to sending a much
20 mor accurate price signal within these classes, while
21 adhering to your December ruling and the principles of
22 moderation. In fact EGNB's proposals bring the GS I
23 significantly closer to only recovering its appropriate
24 costs. EGNB then leaves it to the Board to how best to
25 set final rates for the industrial and wholesale classes.

1 Briefly I would like to comment on exhibit PI-24. This
2 was the so-called Progress Index put forward by Mr.
3 Knecht. Again, his key point seemed to be that there was
4 not as much progress with respect to the large industrial
5 class as the residential class. As I noted previously, it
6 is certainly up to the Board to address the large
7 industrial class differently in the context of other
8 classes such as wholesale. Furthermore, I refer the Board
9 to our cross examination of Mr. Knecht with respect to
10 this exhibit, where it became clear that he had split the
11 industrial class between distribution and transmission and
12 had removed the interruptible and surplus sales. Further,
13 the first column of his comparison already incorporated in
14 an average increase for all classes. Finally, one would
15 not expect a high progress metric for a class which was
16 moving a farther distance towards unity, and in fact Mr.
17 Knecht's progress metric deals only with unity and not
18 with the Board's 95 to 105 band. Although Mr. Knecht said
19 he used this as a check, we believe the record is clear
20 that this is not a very meaningful metric at all, and
21 particularly where it is modified from the rates
22 information of Disco to which it is actually being
23 compared.

24 One final note with respect to the various rate
25

2 designs is that it is important to keep in mind that the
3 actual impacts that will be seen by residential customers
4 seem to have not been fully demonstrated throughout the
5 proceeding. In fact, as you may recall, Disco often
6 referred to bill impacts, which of course would not show
7 the actual annual increase anticipated to be seen by a
8 customer. Particularly problematic is that Disco's
9 residential class has some significant outliers, such as
10 large agri-farms, the impact on whom cannot reasonably be
11 considered in determining the residential classes impacts.

12 The Board may well wish to direct Disco to treat these
13 customers separately in future proceedings, and for this
14 proceeding the Board may wish to suggest some way to
15 mitigate impacts on these customers. However, this should
16 not be a reason for not otherwise instituting an
17 appropriate rate design for the customers who should
18 legitimately be in the class.

19 In this regard we refer you to Disco's response to EGNB
20 undertaking number 1 on February 2rd which is exhibit A-
21 138 which provides a breakdown of the number of Disco
22 customers by kilowatt-hour usage per year. When you
23 review that exhibit you will note that there are a very
24 small number of customers at the extreme high end, and in
25 fact well over two-thirds of Disco's customers use below

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2 25000 kilowatt-hours per year and significantly more than one-
3 third of their customers actually use under 12000
4 kilowatt-hours per year. Appropriate rate design for the
5 residential class should in our respectful opinion be
6 aimed towards these customers. A small number of
7 extraordinarily high usage customers can obviously
8 significantly skew the average, but in fact, as is clear
9 from the record, these customers can hardly be considered
10 residential.

11 Turning now to the issue of Capital Structure and Return
12 on Equity.

13 EGNB supports Disco's recommendation that it be allowed to
14 earn a net income as if it had a commercial capital
15 structure and ROE. We would note that no party challenged
16 the proposed capital structure and return on equity
17 figures, with the exception of the Public Intervenor whose
18 view was solely that Disco should not be entitled to earn
19 a net income implied from a deemed capital structure or a
20 return on equity at all.

21 To the extent that Disco is not allowed to earn such a net
22 income, again this would be providing it a significant
23 competitive advantage against private sector competitors
24 for the provision of the supply of energy in New
25 Brunswick. The PI's expert himself conceded that private

2 sector energy suppliers could not borrow at 100 percent debt
3 and government guaranteed rates.

4 Surprising to us, Mr. Makholm's chief concern which only
5 came out on cross examination was that he felt there was a
6 need for institutional arrangements to ensure that any
7 funds deriving from Disco's capital structure and ROE
8 should have identified purposes tied to Disco's business,
9 and not become part of the government's general treasury.

10 The next part of my argument will deal with -- have some
11 deja vu. Because it is very similar to what Mr.
12 Morrison said.

13 There can be no doubt that Disco has exactly such
14 institutional arrangements. This is what was surprising
15 to us. In fact they are formalized in the Electricity
16 Act. And I will speak on that briefly.

17 Mr. Makholm had no concern with the removal of hundreds of
18 millions of dollars off of NB Power's books, and
19 accordingly off of Disco, to be placed with the Electric
20 Finance Corporation. However, his proposal provides no
21 means of access to retained earnings to assist in paying
22 off this debt, although he conceded that he was familiar
23 with the use of deemed capital structures elsewhere.

24 Under his proposal, with the exception of deemed taxes
25 which Disco may be required to pay, this debt

2 essentially becomes the debt of the taxpayers of New
3 Brunswick, rather than the ratepayers of Disco who were
4 actually responsible for the debt. This certainly is
5 unfair to New Brunswick's taxpayers, particularly those
6 who use alternative energy sources to have electricity.
7 As Ms. MacFarlane explained, both the shareholders
8 agreement and section 37 of the Act specifically allow for
9 the payment of dividends to the Electric Finance
10 Corporation. And one of the fundamental purposes of the
11 EFC as set out in section 33 of the Act is to facilitate
12 the conversion of New Brunswick Power Holding
13 Corporation's debt to appropriate levels of debt in the
14 subsidiaries of the corporation, including Disco, and to
15 assume and reduce the remaining portion of the
16 corporation's debt.

17 Section 33 states two purposes of the Finance Corporation,
18 the first I have just mentioned, and the second is
19 managing the assets, liabilities, rights and obligations
20 of the Finance Corporation received as part of the
21 restructuring of New Brunswick Power Holding Corporation
22 and disposing or otherwise dealing with those as it sees
23 fit.

24 What is most important with respect to the institutional
25 arrangements discussed by Mr. Makholm is

2 that section 36 of the Electricity Act which is actually
3 entitled "Use of Money Received" specifically states that
4 the payments received by the Finance Corporation under
5 section 37, or money received by it by virtue of any
6 securities held by it in the New Brunswick Power Holding
7 Corporation or any of its subsidiaries, shall be used by it
8 for the purpose of carrying out the purposes stated in
9 paragraphs 33 (2) (a) and (b) which are what I have just
10 mentioned.

11 Accordingly, the funds received by EFC under Section 37
12 must be used for specified purposes. And that's exactly
13 the point of this aspect of the restructuring exercise.
14 This is a clear legislative arrangement and I would
15 suggest that a legislated stipulation is the most
16 fundamental institutionalization of an arrangement
17 possible within the context of a Crown corporation.
18 Simply put the funds are to be used to reduce the debt and
19 for the related purposes of EFC and simply cannot find
20 their way into the General Treasury. This ensures that
21 customers obtaining service from Disco are those who are
22 paying for its costs.

23 Further, as Mr. Makholm acknowledged on cross examination,
24 the ability to earn a commercial return at

1 - 6028 - Mr. MacDougall -

2 this time will allow for retained earnings that can be not
3 only used to pay dividends to EFC if called upon, but to
4 otherwise be used for future capital expenditures of Disco
5 or to begin to develop equity in Disco. As Ms. MacFarlane
6 explained, this will then will allow Disco to be in a
7 position to eventually approach the capital markets on a
8 stand alone basis. This was the goal of the
9 restructuring. If Disco is not allowed to commence the
10 recovery of potential retained earnings, it will be
11 forever be in a catch-up position.

12 I would also note that Mr. Makholm suggested that Disco
13 would have no problem borrowing in the capital markets
14 without a provincial guarantee, although he was not able
15 to comment on how the capital markets would perceive the
16 language of Section 8(2) of the Electricity Act that
17 states that Disco is not an agent of the Crown for any
18 purpose. Mr. Chair, Commissioners, I would suggest that
19 lenders would look long and hard at a legislative,
20 stipulation that specifically indicates an entity is not
21 an agent of the Crown for any purpose, before it would
22 agree to lend to such an entity absent a provincial
23 guarantee, let alone at a reasonable interest rate.
24 Finally on this point, Mr Chair, I note that Ms.

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2 McShane's opinion on net income for Disco was based on what
3 appeared to be a very thorough study of the background to
4 the restructuring and the current New Brunswick Energy
5 Policy. Mr. Makholm admitted that his analysis was done
6 in complete isolation from provincial energy policy.

7 We firmly believe that the Energy Policy reviewed as a
8 whole makes it clear that the Province has not approached
9 electricity restructuring in isolation from the rest of
10 the energy marketplace.

11 In this regard I note that the very first policy goal of
12 the White Paper on Energy (PUB 12) states in part that:

13 "Providing New Brunswick consumers with energy at the
14 lowest possible cost can be accomplished by ensuring that
15 the interest of all energy consumers and the energy
16 industry as a whole are considered."

17 This sentence immediately follows the reference in the
18 first policy goal that "the addition of natural gas to the
19 region's energy mix enhances competition among energy
20 forms."

21 Consistent with: 1) the electricity restructuring, 2) the
22 transfer of hundreds of millions of dollars of debt to
23 Electric Finance Corporation for repayment, and 3) the
24 overriding provincial policy concern that the interests of
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2 all energy consumers and the energy industry as a whole be
3 considered in decision making, EGNB believes that the net
4 income derived from the implied capital structure and ROE
5 put forward by Disco is not only reasonable, but is much
6 more conducive to the creation of a competitive
7 marketplace for energy in the province. If Disco's
8 revenue requirement is based solely on government
9 guaranteed debt, this merely creates a further barrier to
10 competition, and as adequately explained by both Ms.
11 MacFarlane and Ms. McShane is not appropriate in the
12 context of how the new electricity regime has been set up
13 in New Brunswick

14 Mr. Chair, if I could now move to my Conclusion. I would
15 first like to briefly reiterate a couple of key points.
16 We can all agree that energy prices have increases
17 significantly over the past few years. These rising
18 energy prices are creating a revenue shortfall for Disco
19 resulting in their request for this increase.

20 As is clear from the data filed in this proceeding, and
21 graphically illustrated in the schedules to Dr.
22 Rosenberg's testimony, electricity generated in the winter
23 to meet New Brunswick's heating demand is very expensive,
24 and fossil fuel fired generating plant is an inefficient

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2 way to meet heating demand and is problematic from an
3 environmental perspective.

4 More efficient and environmentally benign options exist,
5 which include fuel switching, conservation and DSM
6 initiatives.

7 Disco's customers will however only choose these options
8 if Disco is sending the proper price signal through their
9 rates.

10 The significant and undisputed benefits of these options,
11 both from an efficiency and environmental perspective, as
12 well as from a competitiveness standpoint, will only occur
13 if the proper price signal is being sent. I encourage you
14 to review Mr. Harrington's evidence with respect to uptake
15 in the Ontario market when proper price signals were sent
16 by Ontario Hydro. I also note the significant conversion
17 incentives that are available, as noted by Mr. Harrington,
18 the value of which may be lost if the proper price signal
19 continues to dissuade customers from making otherwise
20 appropriate economic and environmental decisions.

21 If the proper price signals are sent, then EGNB and other
22 energy providers, and DSM initiatives, can be part of the
23 solution, and can significantly reduce the demand for
24 electricity, particularly during the winter heating
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2 season, which is good for the utility and all of its
3 customers. This will reduce Disco's costs, and be
4 beneficial to the Utility, to its customers and the
5 province as a whole.

6 To summarize, Mr. Chair, EGNB's recommendations -- and I
7 think I will just go through each of these in a bullet
8 form. EGNB requests that the Board 1) Close the GS II
9 rate to new customers; 2) Eliminate the penalty a GS II
10 customer faces if they convert a part of their energy
11 requirements to an alternate fuel source; 3) Apply a
12 larger increase to the GS II rate than the GS I rate to
13 effect as much convergence as possible, as specified in
14 Dr. Rosenberg's rate design; 4) Apply as much of the
15 requested residential increase to the tail block as
16 possible and increase the first block from 1,300 to 1,400
17 KWh, consistent with EGNB's proposed rate design; 5)
18 Approve a competitive market based net-income for Disco
19 which reflects a market based capital structure and ROE;
20 6) Formalize the time lines for the elimination of the
21 residential tail block differential and the ultimate
22 merging of the GS classes.

23 And coming back to my earlier comments on that, Mr. Chair,
24 our suggestion is that the Board order first that the
25 second one-third reduction in the block differential

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2 be instituted by no later than April 2008 with respect to the
3 residential class. And that GS rates be ultimately merged
4 (in stages or otherwise) within three years of the date of
5 the Board's decision.

6 We note with respect to the recommendations on timing that
7 they are within the parameters of the Board's December
8 ruling (merely adding a further level of specificity that
9 we believe is clear on the record is warranted). They
10 will send a much clear signal and greater certainty to
11 customers on which they can better plan their decision-
12 making regarding DSM or conversion opportunities, because
13 they will see what's coming in the future. And it ensures
14 that Disco continues to move in the correct direction even
15 if it does not return to this Board for a rate increase
16 above the legislated threshold within the next few years.
17 In this regard we also remain concerned that the Board's
18 December ruling only provided that Disco put forward a
19 proposal for seasonal rates and a standby rate by the time
20 of its next review of rates, which based on the evidence
21 in this proceeding appears now quite open-ended,
22 particularly concerning the legislative threshold. We
23 suggest that the Board enhance its ruling to provide that
24 these proposals be put forward for consideration by

2 the Board no later than two years from the date of the Board's
3 decision if Disco has not earlier put forward a new rate
4 application, including such proposals.

5 And again we believe that is fully in accord with the
6 decision and it's just an enhancement to it.

7 Mr. Chair, Commissioners, inclosing, EGNB cannot stress
8 enough how important its recommendation is regarding the
9 elimination of the penalty aspect of the GS II rate. If
10 this Board is to accept any of EGNB's recommendations, its
11 most fundamental recommendation is to allow existing GS II
12 customers who wish to convert a portion of their energy
13 requirements away from electricity to be allowed to stay
14 on the GS II rate for their remaining electricity
15 requirements. As was specifically was noted in EGNB's
16 evidence and Mr. Harrington's direct examination, unless
17 GS II customers are allowed to remain on the GS II rate
18 for the remaining portion of their electricity usage none
19 of them will ever convert, even if it is otherwise clear
20 from an economic or environmental perspective that they
21 should. This is creating a tremendous impediment from the
22 penetration of alternative energy sources in the GS II
23 class, a class of customers which could significantly
24 benefit from the use of natural gas if they did not face
25 the absurd result of having to

2 pay more for their less costly load, if they switch their more
3 costly heating load to natural gas or another fuel source.

4 EGNB strongly encourages the Board to accept this
5 recommendation, and believes that all parties will quickly
6 see very positive results as alternative energy providers
7 will be able to penetrate this segment and provide
8 significant benefits to this class of customers and to the
9 utility as a whole.

10 Mr. Chair, thank you for the opportunity to go through
11 EGNB's argument. You did raise a couple of questions at
12 the outset. And if you would like I could very briefly
13 respond to a couple of those.

14 CHAIRMAN: Please do.

15 MR. MACDOUGALL: The first question was with respect to exit
16 fees, Mr. Chair. And very briefly, we would generally
17 agree with Mr. Morrison's position on that. Section 78,
18 in our view, which sets out the notice provision is
19 disjunctive from Section 79 and is not read together with
20 that. The notice provision we believe is if a customer
21 actually is going to decrease its consumption, which is
22 not tied to the fee it may or may not have to pay under
23 the provisions of Section 79. But in those circumstances
24 where a customer does decide after having determined a fee
25 or otherwise that it's going to decrease its consumption,

2 then it must give notice to Disco, so that Disco knows that
3 that load is leaving its system. That's what the notice
4 provision is there for in our view so that Disco is given
5 a 60-day notice period of when a significant customer may
6 be leaving their load.

7 The provisions on the fees stand out separately from that
8 and the fees then have to be determined either before or
9 after the fact. The only differentiation I would make
10 with Mr. Morrison is it's doubtful that many customers
11 would want to do it after the fact, because it would be
12 hard to make that conversion decision. But in fact the
13 notice provision is just so that the customer when he is
14 leaving gives actual notice at some point in time. One
15 would assume that they would attempt either through
16 negotiation with Disco or by way of application to this
17 Board, either in a generic application with others or on
18 their own, to set an exit fee. But that appears to be
19 totally separate and apart from the requirement at such
20 point as when they are going to actually leave to have to
21 have to give 60 days notice and that's how we believe the
22 sections were meant to operate, Mr. Chair.

23 With respect to Section 156, I know that Mr. Morrison hasn't
24 yet spoke on that, but I think he said he was going to do
25 that on Friday, we do not have an opinion at this

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2 time on how this would apply to a future hearing. I guess our
3 comment would be though that it is probably a matter that
4 is left better for that time.

5 It's certainly, we understand I think -- we all understand
6 how Section 156 is going to apply to this hearing. And
7 you have made comments on that in your earlier rulings.
8 And it appears in our view to be a little early to be
9 talking about how it may or may not apply to the
10 particulars of some application in the future. So our
11 view would be that it is probably best left to see what
12 Disco does in the future and how Disco may or may not come
13 forward with an application in the future. And at the
14 time of such application, parties would certainly be free,
15 and maybe the Board could order that they do it early in
16 the process to get clarity to determine on the basis of an
17 actual application, whether or not Section 156 applies to
18 that.

19 So at this stage in time, Mr. Chair, we are not ready to
20 render an opinion, nor do we know that we should absent an
21 application that would actually trigger Section 156,
22 although for the purposes of this hearing, we concur with
23 the opinion of Mr. Morrison, which I believe is the same
24 opinion of the Board with respect to its application for
25 this hearing.

2 CHAIRMAN: Mr. MacDougall, I am going to push you on Friday
3 on that, okay. Just put you on notice.

4 MR. MACDOUGALL: Thank you, Mr. Chair. And Mr. Chair, with
5 respect to your third question, the jurisdiction to order
6 Disco to have a hydro averaging account, again on that
7 item, EGNB has no opinion, Mr. Chair.

8 CHAIRMAN: Good. Thank you very much, Mr. MacDougall. My
9 Commissioners may have some questions.

10 DR. SOLLOWS: Yes. Mr. MacDougall, you highlighted the fact
11 that Disco has within the residential rate class broken
12 out space heating and nonspace heating customers and
13 suggested or indicated very clearly that we should
14 consider the revenue to cost ratios of those two groups in
15 coming to a decision, is that correct?

16 MR. MACDOUGALL: Yes, Commissioner Sollows, that is correct.

17 DR. SOLLOWS: If my recollection is correct, the evidence
18 also includes under these little -- one of these buttons,
19 they also broke out the cost of serving energy for water
20 heating purposes, domestic hot water heating purposes.
21 Should we also give consideration to the revenue to cost
22 ratio for that?

23 MR. MACDOUGALL: Are you talking, Commissioner, with respect
24 to the actual rate for the water heaters?

25 DR. SOLLOWS: No, no. Within the residential class, in

2 addition to segregating it between residential, electric heat
3 and residential customers without electric heat, there was
4 a further subdivision if I recall correctly, electricity
5 for space heating, electricity for water heating and all
6 other electricity, and they all had their own individual
7 revenue to cost ratios. Should we be giving regard to
8 those?

9 MR. MACDOUGALL: I can certainly speak to that, Commissioner
10 Sollows. I am not familiar with the third revenue to cost
11 ratio. It may be there. It certainly wasn't in their
12 actual evidence in the initial application, nor is it in
13 their A-121.

14 DR. SOLLOWS: It's in the electronic version.

15 MR. MACDOUGALL: Okay. It may be in the electronic version.

16 And Dr. Rosenberg may have gone into the cells, but I
17 have to admit as a lawyer I did not. But on the point in
18 general, the difference between electric heat and
19 nonelectric heat is electric heat is driven primarily in
20 the winter. And the differentiation is because of the
21 fuel costs. And you can see this graphically in the
22 evidence as Dr. Rosenberg put it forward. I don't think
23 water heating is the same. Water heating load is not
24 necessarily predisposed to the winter only.

25 DR. SOLLOWS: This I understand. It's just that my

1 appreciation of your point is that the revenue cost ratio for
2 electric space heating is substantially below 1 and
3 therefore needs to be moved towards it -- towards 1?

4 MR. MACDOUGALL: Correct.

5 DR. SOLLOWS: But my recollection is that the revenue to
6 cost ratio for water heating is above 1, and should it
7 therefore be moved towards 1?

8 MR. MACDOUGALL: Again, Commissioner, I am not familiar with
9 the water heating one. But I would say the goal here is
10 all to move them within the range, not necessarily to 1,
11 but our recommendation was -- is to get the electric --
12 the electric heat at least within the range, which of
13 course then moved all of the class a little closer to one.
14 The goal wasn't necessarily though to move the class fully
15 to 1. The goal is to try and get everyone in the range
16 because we know the electric heat customers are the ones
17 who are driving the cost. And I think this comes back to
18 we had certainly not done this, but it was quite vivid in
19 the diagram put forward by counsel for the CME that the
20 changes that have occurred in the CCAS. And when we
21 understand that the CCAS is based on imperfect
22 informations, the Board itself acknowledged that, I think
23 what Dr. Rosenberg was suggesting if we do know the fuel
24 costs in the winter and we do know a subset of a class
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2 that is primarily driven by those costs, i.e., the electric
3 heating class, that is the class we should most target to
4 at least try and bring it within the range. I don't know
5 that the concerns are as important with respect to water
6 heating as they are to the electric heating.

7 DR. SOLLOWS: Thank you. And one further question in
8 respect the capital structure and the return on equity. I
9 understand the notion that the dividends that are declared
10 should go to reduce the debt, but it is my general
11 understanding of regulatory process that the entitlement
12 to the dividends is based on the acceptance of the
13 prudence by the Board that of the investments and
14 therefore the return on the investment is quite a
15 reasonable thing. Given that we have been specifically
16 denied the opportunity to judge the prudence under Section
17 156, would it not be appropriate to delay the payment of
18 dividends until we have had an opportunity to deal with
19 that?

20 MR. MACDOUGALL: My own opinion, Commissioner Sollows, is
21 no. A prudence argument is a very high standard. And I
22 have certainly argued prudence cases elsewhere. I don't
23 think one though can assume that something has been
24 imprudent, particularly where the Act specifically states
25 that the cost pursuant to the PPAs are deemed to be

2 prudent for the purpose of this hearing. I think if you then
3 said well we are not sure, so we will try to get at this
4 in a roundabout way through the ROE, that would be
5 particularly problematic when the Legislature has deemed
6 at least for this hearing whether we like it or not that
7 those costs are prudent. It would be a back door way of
8 getting around the legislation that I do not think would
9 be appropriate in the circumstances.

10 DR. SOLLOWS: Fair enough. Thank you.

11 MR. MACDOUGALL: You're welcome.

12 CHAIRMAN: Great. Thank you, Mr. MacDougall.

13 MR. MACDOUGALL: And Mr. Chair, I have copies of my written
14 -- I know sometimes it's just better to have a hard copy
15 to refer to. I will give some to the Secretary and leave
16 the rest at the back of the room. They don't have to be
17 marked, but at least the Commissioners will have a copy.

18 CHAIRMAN: Thanks again. Appreciate that. Looking at the
19 hour, Mr. Booker, I understand that JDI has some points
20 they wish to make, but I am looking at the hour now, and
21 we have from the timing that Mr. MacNutt has given me, we
22 have loads of time tomorrow. So would it be inconvenient
23 if we broke now and came back tomorrow morning?

24 MR. BOOKER: That would be fine. At your convenience, Mr.
25 Chair.

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CHAIRMAN: Thank you. Then we will reconvene tomorrow at
10:00 a.m.

(Adjourned)

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

Reporter