

NEW BRUNSWICK ENERGY & UTILITIES BOARD

IN THE MATTER OF an Application dated May 1, 2008 by New  
Brunswick System Operator (NBSO) for the approval of changes  
to the Open Access Transmission Tariff

held at the Delta Hotel, Saint John, New Brunswick on August  
18th 2008.

INDEX

- 1
- 2 A-3 - NBSO Compliance Document Outlining a Proposal for
- 3 Rebates in Response to the Board's Order of June 12th
- 4 2008, the Interim Relief decision provided under cover
- 5 letter from Kevin Roherty dated June 26th 2008 - page 80
- 6 A-4 - NBSO Responses to Interrogatories Number (1) dated July
- 7 1st 2008 provided under cover from Kevin Roherty dated
- 8 July 14th 2008 - page 81
- 9 A-5 - NBSO Compliance Document Outlines the Clarification of
- 10 Tariff Changes in Response to the Board's Order dated July
- 11 18th 2008 provided under cover letter from Kevin Roherty
- 12 dated July 29th 2008 - page 81
- 13 A-6 - NBSO Responses dated July 31st 2008 to Supplemental
- 14 Interrogatories (IR's 2) dated July 21st 2008 provided
- 15 under cover letter from Kevin Roherty dated July 30th
- 16 2008 - page 81
- 17 A-7 - Briefing Note System Operator Structure - page 81
- 18 A-8 - NBSO Independent Organization Initial Analysis of
- 19 Systems - page 82
- 20 A-9 - Independent System Operator Project Update 14/12/2005
- 21 - page 82
- 22 A-10 - Independent System Operator IT Action Plan 19/01/2006
- 23 - page 82
- 24 PI-1 - Letter from Daniel Theriault dated July 31st 2008
- 25 - page 82
- 26 PI-2 - Notice of Motion from Daniel Theriault dated August
- 27 11th 2008 - page 82

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7 18th 2008

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9 BEFORE: Raymond Gorman, Q.C. - Chairman  
10 Cyril Johnston - Vice-Chairman  
11 Yvon Normandeau - Member  
12 Donald Barnett - Member

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14 NB Energy and Utilities Board - Counsel - Ms. Ellen Desmond  
15 - Staff - Doug Goss  
16 - John Lawton

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18 Secretary of the Board: Ms. Lorraine Légère

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20 CHAIRMAN: Good morning, every one. This morning is the  
21 session of the New Brunswick Energy & Utilities Board as  
22 in connection with the motion with respect to an  
23 application dated May 1st 2008 by the New Brunswick System  
24 Operator for the approval of changes to the Open Access  
25 Transmission Tariff.

26 The Panel for today's motion is consisted of Don Barnett,  
27 Yvon Normandeau, the Vice-Chair, Cyril Johnston and  
28 myself.

29 I will take the appearances at this time.

30 MR. ROHERTY: Good morning, Mr. Chairman and Panel Members.

31 Kevin Roherty for the Applicant, New Brunswick System  
32 Operator. Mr. Kenny was unavailable today.

1 CHAIRMAN: Thank you, Mr. Roherty. Bayside Power?

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MR. FAIRWEATHER: Steve Fairweather of Bayside Power.

CHAIRMAN: Thank you. Integrys Energy Services?

MR. MACDOUGALL: Good morning, Mr. Chair. David MacDougall for Integrys Energy Services. And I am joined today by Mr. Ed Howard.

CHAIRMAN: Thank you, Mr. MacDougall. NB Power Distribution and Customer Service Corporation?

MR. FUREY: Mr. Chairman, John Furey.

CHAIRMAN: Thank you, Mr. Furey. NB Power Generation Corporation?

MR. FUREY: John Furey, Mr. Chairman.

CHAIRMAN: Northern Maine Independent System Administrator?

Nobody here from MISA. Nova Scotia Power System Operator? Oxbow-Sherman? The Public Intervenor?

MR. THERIAULT: Good morning, Mr. Chairman. Daniel Theriault. And I am joined this morning by Robert O'Rourke.

CHAIRMAN: Thank you, Mr. Theriault. New Brunswick Energy & Utilities Board?

MS. DESMOND: Ellen Desmond, Mr. Chair. And from Board Staff, Doug Goss and John Lawton.

CHAIRMAN: Thank you, Ms. Desmond. Apparently we have the name plates mixed up and that could have something to do with a little stop along the way to a certain focus group

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down the hall.

The motion this morning was filed by the Public Intervenor, who gave notice on August 11th seeking rulings from the Board as follows: (1) a ruling that the filings to certain interrogatories were non-responsive. (2) an Order from the Board setting a date specific for full and complete response in the format requested to those interrogatories for which the Board has made a determination of non-response in the first instance. The interrogatories and supplemental interrogatories in question were as follows: (1) PI IR-2 and PI Supplemental IR-2. And the second group is PI Supplemental IR-4 question 1(a). The Public Intervenor also gave notice that he would be requesting that the Board provide all parties to the application the opportunity to submit a set of interrogatories on the clarification of tariff changes filed by the NBSO on July 29th 2008.

So before we proceed with the motion are there any matters of agreement that the parties wish to discuss at this point in time?

MR. ROHERTY: Thank you, Mr Chairman. Upon further review, as the saying goes, the System Operator will release the documents related to DBR Enterprises, which were the subject of PI Supplemental Interrogatory, IR-4, question

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1(a). We have copies of those. I would take the Board's direction I guess as to how to disburse them.

CHAIRMAN: And do I take it that there is no claim for confidentiality on those documents? I understand that in the response they were noted to be confidential. That this release of documentation is not on a confidential basis?

MR. ROHERTY: That's correct.

CHAIRMAN: Perhaps they could be distributed and we could mark them as an exhibit.

And perhaps I was just a little bit ahead of myself. I have just been reminded that we were going to mark some other documents as exhibits at this point in time.

So the document that has just been -- I am going to set that aside for a moment before I mark. And I will go through the documents that have been -- as I believe the exhibit list has been circulated to all parties, the indication that they would be marked as exhibits this morning. And unless anybody has any objection to -- the Board hasn't heard any objection -- does anybody have any objections? All right.

Well then I am going to go through the list as circulated prior to today's hearing. The last document marked prior to today was A-2. So starting with A-3, it

1  
2 is NBSO Compliance Document Outlining a Proposal for Rebates  
3 in Response to the Board's Order of June 12th 2008, the  
4 Interim Relief decision provided under cover letter from  
5 Kevin Roherty dated June 26th 2008.

6 Exhibit A-4, NBSO Responses to Interrogatories Number (1),  
7 dated July 1st 2008 provided under cover from Kevin  
8 Roherty dated July 14th 2008.

9 Exhibit A-5, NBSO Compliance Document Outlining the  
10 Clarification of Tariff Changes in Response to the Board's  
11 Order dated July 18th 2008 provided under cover letter  
12 from Kevin Roherty dated July 29th 2008.

13 And exhibit A-6, NBSO Responses dated July 31st 2008 to  
14 Supplemental Interrogatories (IR's 2) dated July 21st 2008  
15 provided under cover letter from Kevin Roherty dated July  
16 30th 2008.

17 Those are the Applicant's documents that were indicated  
18 would be marked today.

19 So the document that has just been provided to the  
20 parties, which is intituled Briefing Note System Operator  
21 Structure will be exhibit A-7.

22 MR. ROHERTY: Mr. Chairman, there is actually four documents  
23 there.

24 CHAIRMAN: All right. The Briefing Note System Operator  
25 Structure will be A-7. Document entitled NBSO Independent  
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Organization Initial Analysis of Systems will be A-8.

The document intituled Independent System Operator Project Update 14/12/2005 will become Exhibit A-9. And the document intituled Independent System Operator IT Action Plan 19/01/2006 will become exhibit A-10.

And is that all of the additional documents, Mr. Roherty?

MR. ROHERTY: It is. Thank you.

CHAIRMAN: At this time I understand we also have a couple

of documents from the Public Intervenor, which we will mark. And I believe that list has also been circulated.

PI-1 is a letter from Daniel Theriault dated July 31st 2008 requesting the possibility of additional interrogatories on the NBSO clarification of tariff changes, document filed on July 29th 2008.

And PI-2 is a Notice of Motion from Daniel Theriault dated August 11th 2008, which is the matter before us today.

I believe that takes care of all of the documents to be marked as exhibits.

MR. THERIAULT: Mr. Chairman, just by clarification, there is a report that was submitted this morning. This is the actual DBR report. I guess I just wanted to have that clarified that it was the actual DBR report?

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CHAIRMAN: This is the DBR report?

MR. ROHERTY: Yes, it is a series of them.

CHAIRMAN: And does that satisfy the request with respect to the second item that was listed in your notice of motion, Mr. Theriault?

MR. THERIAULT: Yes, it does.

CHAIRMAN: So what we are left with is the motion with respect to the PI IR-2 and PI Supplemental IR-2, as well as the request for a further set of interrogatories?

MR. THERIAULT: That's correct.

CHAIRMAN: Perhaps I should ask one more time, are there any other matters of agreement?

MR. ROHERTY: Not that I am aware of.

CHAIRMAN: Thank you. Mr. Theriault, then I will ask you to proceed with your motion?

MR. THERIAULT: Thank you, Mr. Chairman, Board Members.

First of all, I would like to thank the Board and Board Staff for taking time during your summer solstice to deal with this issue here today.

I guess given the fact that we now received the report, I intend to deal with PI IR-2 and Supplemental PI IR-2.

First of all, Mr. Chairman, Board Members, Section 53(1) of the Electricity Act states: "The SO shall

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2 provide for the financing of its operations in its application  
3 to the Board for approval of a tariff in relation to  
4 transmission and ancillary services."

5 And further Section 63 of the Energy and Utilities Board  
6 Act states: "In an application regarding tariffs, the  
7 burden is on the Applicant."

8 Taken together, I submit these two sections require the  
9 New Brunswick System Operator to apply to the Board for  
10 approval of a tariff or changes to a tariff and, when  
11 making such an application, the burden of proof is on the  
12 NBSO.

13 Further, PI IR-2 and Supplemental PI IR-2 both focused on  
14 the Labor and Benefits component of Schedule 1 cost of  
15 service, also known as the revenue requirement for  
16 Schedule 1 services. It is my position that the responses  
17 by NBSO to both of these IRs were incomplete. Because of  
18 this I have submitted the motion, that the New Brunswick  
19 System Operator in its filing with respect to the  
20 interrogatories submitted by the Public Intervenor on June  
21 24th 2008 and supplemental interrogatories submitted by  
22 the Public Intervenor on July 21, 2008, was non-responsive  
23 to these interrogatories.

24 In order to understand the importance of the Labor and  
25 Benefit costs, it is useful I suggest to review both their  
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1  
2 history and their importance relative to the Schedule 1 cost  
3 of service.

4 In effect, there is a projected 28 percent increase in  
5 labour and benefit costs over a three-year period from  
6 actual 2005/06 to forecast 2008/09. This is a substantial  
7 increase in these costs, and this increase demands a  
8 reasonable explanation as to why. As well, these costs  
9 have averaged between 67 and 71 percent of total Schedule  
10 1 cost of service. This makes them a material cost that  
11 needs the kind of investigation intended by the  
12 interrogatories that I submitted.

13 Mr. Chairman, Board Members, my first interrogatory on  
14 labor and benefit costs, PI IR-2, was intended to seek an  
15 explanation for the increase in labour and benefit costs.

16 Since these costs were part of the Schedule 1 cost of  
17 service, I would suggest it was not unreasonable for me to  
18 assume that they were incurred for the provision of  
19 Schedule 1 services.

20 Accordingly, I requested that the NBSO provide details of  
21 its Schedule A billable activity over the period from  
22 start-up until the present. There was no mystery as to  
23 why I was asking the question. Quite simply, I wanted to  
24 know whether the large increase in labor and benefit costs  
25 were justified by an increase in the level of Schedule 1  
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activity of the NBSO.

In its response to PI IR-2, the NBSO, in part, referred to its answer to NBEUB IR-2, which, it claimed, answered most of the elements of my interrogatory. NBSO's response to NBEUB IR-2 provides detail on the number of employees at the SO over time, and the union increases and salary adjustments that were made. With all due respect to the NBSO, claiming that a listing of the number of employees and their payroll increases is an explanation of why the labor and benefit costs are justified is similar to an accountant saying, Yes, I have spent the money and I have accounted for the expenditure of money and here is proof that I have accounted for the expenditure of money. It is sort of a variation of spending money as justification for spending money.

Clearly, this was an inadequate and incomplete response to my interrogatory. Accordingly, I submitted Supplemental PI IR-2. This supplemental interrogatory attempted to clarify the intent of the first interrogatory by raising the point that the increases in Labor and Benefits were too large to be accounted for by cost-of-living increases and, hence, had to be attributable to the addition of staff, and that this addition of staff had to be attributable to an increase in Schedule 1 billable

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2 activities. I then restated the original interrogatory and  
3 requested that the SO answer the original question.

4 The NBSO's response to this supplemental interrogatory was  
5 two-fold. First, the SO referred me back to their answer  
6 NBEUB IR-2. Secondly, the SO chose to debate the theory  
7 of whether or not increases in Schedule 1 Labor and  
8 Benefits would necessarily be caused solely by increases  
9 in billable activity. Part of their response is  
10 instructive. They say increased work load in any area of  
11 the NBSO operations could result in the adding of staff.  
12 End of response.

13 This is exactly what I was attempting to elicit. If there  
14 has been an increased work load at the NBSO that would  
15 justify the large increases in labour and benefit costs,  
16 then the NBSO should document this and file the  
17 information with the Board and all parties to this  
18 application. I suggest it is not complicated. Either the  
19 NBSO is busier than it has been and requires more staff,  
20 or it is not, and staff additions would have to be  
21 justified on some other basis. But we cannot know which  
22 situation we are facing until the NBSO properly responds  
23 to my interrogatories.

24 The NBSO, in its responses, has made it clear that it  
25 believes that it has -- that the question has been  
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1  
2 answered. The SO has repeatedly referred to its response to  
3 NBEUB IR-2, it's responses to my IR and Supplemental IR,  
4 and its commentary on page 16 of tab 2 of the  
5 Clarification of Tariff Change document.

6 As part of this claim for full disclosure, the NBSO has  
7 argued that (1) the particular information isn't  
8 available, (2) it isn't available in that form, (3), they  
9 don't keep records that way, and (4) labor and benefit  
10 costs for Schedule 1 services include labor and benefit  
11 costs for the provision of other services and, therefore,  
12 cannot be isolated out. If any of these claims are true,  
13 then I suggest there are more serious issues before the  
14 Board, namely, does the NBSO have appropriate record  
15 keeping systems in play that would track task  
16 responsibilities and assign the costs appropriately and is  
17 there an appropriate cost allocation process in place and  
18 is it being implemented effectively?

19 The issue can be simply put, how does a market participant  
20 who has received a bill for Schedule 1 services know  
21 whether the bill reflects the true cost of providing the  
22 service?

23 Again, I refer the Board to the responsibilities that NBSO  
24 has when it makes an application to change a tariff. It  
25 must define the tariff changes, it must provide a

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2 supporting revenue requirement, and it must provide proof that  
3 the revenue requirement is justified. Without an  
4 appropriate response to PI IR-2, the NBSO has not  
5 supported its revenue requirement request insofar as the  
6 Labor and Benefit costs are concerned.

7 As a result of what I just discussed, Mr. Chairman, Board  
8 Members, I ask that the Board order NBSO to respond to PI  
9 IR-2 by providing details as to the level of Schedule 1  
10 billable activity for the period from start up to the end  
11 of the most recent actual fiscal period, and the forecast  
12 of Schedule 1 billable activity for the 2008/09 forecast  
13 year.

14 If the NBSO wishes to expand upon their comment that the  
15 increased work load in any area of NBSO operations could  
16 result in the adding of staff, they should be I suggest  
17 encouraged to do so.

18 Now with respect to the clarification of changes, I would  
19 ask the Board to provide a time period. And I believe  
20 that it can be done within the schedule that we already  
21 have without adjusting the schedule to allow parties, if  
22 they deem it necessary to provide interrogatories with  
23 respect to those clarifications.

24 Outside of that, unless there is any questions from the  
25 Panel, nothing further.

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CHAIRMAN: Thank you, Mr. Theriault. Any questions from the Panel? I guess the Panel has no questions. I will canvass the other Intervenors with respect to those issues and then hear from the Applicant. Bayside Power, any questions? Any comments?

MR. FAIRWEATHER: No, sir.

CHAIRMAN: Thank you. Integrys? Mr. MacDougall?

MR. MACDOUGALL: Yes, Mr. Chair. Particularly with respect to the Public Intervenor's second issue with respect to interrogatories on the clarification of tariff changes. We would concur that parties should have a right to ask IRs on that information. We would support the PI's position in order that this should be done within the context of the already set schedule. We believe there is certainly flexibility in that schedule in order to accommodate that.

But more particularly, we would also request that the Public Intervenor or possibly any parties, including Board Staff, who may have questions on this aspect of the hearing provide them to the SO as soon as possible with the SO responding as soon as possible.

Our concern here is that the settlement agreement that has been reached by market participants with respect to surpluses is something that if it can be done in a timely

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2 manner will be very, very helpful for the market. Every day  
3 that goes on, surpluses continue to accrue and they are  
4 not being distributed in accordance with the methodology  
5 with which all of the market participants have now agreed  
6 that they should be distributed. And as far as time  
7 continues to tick without certainty on whether or not the  
8 settlement will be approved, it leaves very uncertain  
9 conditions in the market place. And our position is that  
10 the issues of the settlement, if they can be dealt with by  
11 the Board in an expedited basis would be very helpful for  
12 the market place.

13 As a little bit of background, as the Board is aware, the  
14 settlement discussions were separate from the OATT  
15 proceeding. The problem is as the settlement discussions  
16 occurred, certain aspects of the OATT filing by the NBSO  
17 dealt with issues that were integral to the settlement and  
18 therefore the two became somewhat combined and  
19 negotiations between the parties, particularly because  
20 these are highly technical issues and the settlement of  
21 one impacts others.

22 Probably the biggest issue in that regard in this  
23 proceeding was the risk mitigation measures that were  
24 primarily tied around the settlement issues. All of the  
25 market participants, all of the participants have come to  
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2 agreement on how to deal with the settlement both for 07/08

3 for the transition year and going forward. Then decided  
4 that there were better approaches to deal with those risk  
5 mitigation matters and some of those items had to be done  
6 as a revision to the OATT filing.

7 But I think it is important for the Board to realize from  
8 our perspective that all of the market participants we  
9 understand are in agreement with this settlement or who  
10 have no -- at a minimum have no specific issues with the  
11 settlement. It is something that's been an outstanding  
12 concern for a long, long time. And the sooner it is dealt  
13 with the better.

14 All of the issues of revenue requirement certainly remain  
15 fully open within the normal OATT proceeding. But to the  
16 extent that the Board could deal with the settlement-  
17 related matters as they deal with either the settlement or  
18 the OATT on a timely basis that would be greatly  
19 appreciated, both Integrys and I believe all of the market  
20 participants.

21 And Mr. Chairman, with respect to the first portion of the  
22 Public Intervenor's motion, we like the Public Intervenor  
23 will have the same concerns raised by the Public  
24 Intervenor.

25 But from our perspective they appear to be concerns  
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2 that one would raise at the hearing, not necessarily at the IR  
3 phrase. We read the responses to the IR's including  
4 Integrys' own IR's dealing with what was happening on  
5 labour issues.

6 The NBSO responded in a certain manner to those questions.

7 Our understanding is that the NBSO has twice now said  
8 that they just don't track the activities, billable  
9 activity. And therefore I cannot answer that question.

10 To the extent that is correct, we believe that the matter  
11 is then one for debate at the hearing as to whether they  
12 should or should not be doing so. But obviously if they  
13 can respond to the questions they should do so. Thank  
14 you, Mr. Chair.

15 CHAIRMAN: Mr. MacDougall, I just want to follow up on your  
16 suggestion with respect to the settlement and make sure  
17 that I understand what you are asking.

18 Are you requesting that the Board deal with the settlement  
19 that the parties have agreed to prior to the full hearing  
20 on the OATT application?

21 MR. MACDOUGALL: Yes, we are, Mr. Chair. In your  
22 correspondence or the Board's correspondence of July 18th  
23 you indicated that once the NBSO had filed the information  
24 that consideration of the settlement may have to be

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2 coordinated with the hearing of the OATT application, I  
3 believe that can be done.

4 I don't think one needs to wait for the full OATT hearing  
5 in order to do that, particularly in the circumstances  
6 where -- as I say, our understanding is that all market  
7 participants are either in support of the settlement or do  
8 not have any issues with the settlement. And it is only  
9 the market participants who are impacted by the  
10 settlement.

11 I believe all parties who are reasonably impacted by these  
12 issues are in agreement with the approach. And because  
13 this has been an issue going on for so long, because  
14 dollars continue to accrue, very large dollars continue to  
15 accrue on a monthly basis we believe that the Board can  
16 take account of that settlement and make an early ruling  
17 on that without having to go through the entire OATT  
18 process.

19 As I indicated earlier, the settlement discussions were  
20 never actually a part of the OATT. It is just because of  
21 the nature of certain items that they have become  
22 intertwined.

23 CHAIRMAN: And correct me if I'm wrong. But I believe you  
24 did indicate that the OATT filing was revised partly  
25 because of some of the elements of this settlement.

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And so it would be necessary to -- in order for the settlement to be approved, for some of the changes requested in the OATT to be approved?

MR. MACDOUGALL: That is correct, Mr. Chair.

CHAIRMAN: I'm just wondering how you would suggest we could do that without dealing first of all with the OATT matters which would be the full hearing.

MR. MACDOUGALL: I guess, Mr. Chair, the items of the OATT hearing that require approval to effectuate the settlement are matters that we believe all of the affected parties are in agreement with.

We think the Board can take that into account, can review the settlement agreement, can review the filings to date and can make certainly an interim or an expedited order on that, in that it is an agreed settlement amongst all of the parties.

This is not something that happens often. It is a technical issue. And I think the reading of the documents make it very clear as to what is being proposed. And the NBSO certainly clarified that in their most recent filing.

CHAIRMAN: Thank you, Mr. MacDougall. Any questions?

Mr. Barnett?

BY MR. BARNETT:

Q.1 - Mr. MacDougall, are you suggesting then that other

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2 parties to this hearing who are not market participants would  
3 have no interest in this settlement agreement, and  
4 therefore it could be handled separate from the rest of  
5 the process?

6 MR. MACDOUGALL: Not completely, Mr. Barnett. But I believe  
7 the only party to this proceeding, except for the Board,  
8 that is not a market participant is the Public Intervenor.

9 Certainly when the settlement was achieved, a meeting was  
10 held with the Public Intervenor to explain issues to the  
11 Public Intervenor.

12 I certainly believe the parties would be willing to sit  
13 with the Public Intervenor again and talk through whatever  
14 issues the Public Intervenor may have.

15 But that even being said, I'm not sure that there is a  
16 large role for the Public Intervenor in this matter in  
17 that all of the market participants who are impacted by  
18 the decisions that the Board will make in this regard have  
19 agreed with the settlement.

20 I believe the revenue requirement issues are certainly  
21 something the Public Intervenor should be fully engaged  
22 in. The other matters though are primarily if not  
23 exclusively matters between market participants. And to  
24 the extent that they have fully agreed, I do think that  
25 that is telling.

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2 That being said, we would be free to meet with on an  
3 expedited basis with the Public Intervenor. To date we  
4 have not understood that there are any concerns from the  
5 Public Intervenor. It is just that they seek to  
6 understand it clearer.

7 As I say, one meeting has occurred. More could occur  
8 immediately, as far as our client is concerned.

9 Q.2 - Perhaps you may want to hear from the Public Intervenor  
10 in regards to that.

11 But just for clarification, would you see this expediting  
12 process for the settlement part of the OATT taking place  
13 subsequent to this round of IR's, if the Board were to  
14 agree a third round of IRs I guess on the revised OATT  
15 that was filed by the SO taking place after that, that we  
16 would go through that process first and then the Board  
17 would move, as you are suggesting, with a review of the  
18 settlement procedure, maybe making that decision on that  
19 ahead of any final decisions?

20 MR. MACDOUGALL: Mr. Barnett, we fully believe that the  
21 Public Intervenor or others continue to have questions  
22 because of the newer filing. Those should be answered.  
23 But again that is why we would feel that since this  
24 document has been available for some time, if parties  
25 could expedite those IR's, and if the NBSO could make a  
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commitment to respond as soon as possible, that would all be helpful to the process.

But certainly we believe everyone should have all the information they need to make a reasoned decision, including the Board.

MR. BARNETT: Thank you.

CHAIRMAN: Thank you, Mr. MacDougall.

MR. MACDOUGALL: Thank you, Mr. Chair.

CHAIRMAN: N.B. Power Distribution and Customer Service and N.B. Power Generation. Mr. Furey?

MR. FUREY: Thank you, Mr. Chairman. We support the position that Mr. MacDougall has put forward on support of Integrys, on behalf of Integrys.

CHAIRMAN: Thank you. Mr. Roherty?

MR. ROHERTY: Thank you, Mr. Chairman. On the last point I believe Commissioner Barnett summed it up nicely, that if there were going to be interrogatories on the clarification document, then as quickly as possible answer that. The settlement agreement could be reviewed by the Board.

In terms of timing, it has been noted that clarification document was distributed almost two weeks ago. So I would hope that anyone who was thinking of asking questions about it has put their minds to that.

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And so I would support a very short time frame if the Board deems it necessary for additional questions.

On the matter of our response to the two interrogatories from the Public Intervenor, it is true that the costs under Schedule 1 are of course subject to being approved by the Board, including any additional costs that increase the revenue requirement of the System Operator. We don't disagree with any of that.

These two interrogatories, as has been pointed out, are identical. And additionally we have had two conversations with the Public Intervenor and with Mr. O'Rourke in an attempt to resolve the interrogatories in question. And what we have been told is that we have not explained why these salaries have increased over the four years.

And so let's start at the beginning. In our evidence dated May 1st, tab 4, pages 7 and 8, NBSO acknowledges that labour costs have increased. And we have indicated why.

We seek cost of living increases and the evaluation of positions, which would include increases within a bracket and additional staffing. We speak about taking on a greater role in the region and increased activity in areas such as reliability audits and planning for the

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integration of renewables.

These activities have required more staff time and resources than was originally anticipated. And we made those same points again in our clarification document which was referred to earlier.

Now realize that these statements are a bit generic I guess. And we fully expected questions from all Intervenors about the salary costs. And I believe all Intervenors did submit questions on those points.

And it was for that reason that the NBSO, in response to the Board's interrogatory IR-2, from the first set of interrogatories, not only answered the specific questions asked by the Board, but we provided supplemental information in an attempt to compile all the information from all the Intervenors about salaries into one location and one response.

And consequently, in our response to the Public Intervenors, we explained why staffing couldn't be directly linked to Schedule 1 services. Schedule 1 services, I think as the Board knows, are the ancillary services that -- one doesn't come and shop for Schedule 1 services.

They are part and parcel of the transmission reservation.

They are added -- they are added on.

All of the costs of the System Operator are intended

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2 to be included in Schedule 1 under the Open Access

3 Transmission Tariff. Salaries and benefits are certainly  
4 part of that. And so it was for that reason that we  
5 referred the Public Intervenor consistently back to the  
6 comprehensive answer we gave about salaries in the Board's  
7 interrogatory.

8 And so if you look at that spreadsheet -- and I don't  
9 think the Board wants to do that now -- or I can just  
10 speak briefly to it. But I think the point has already  
11 been made. The time -- if someone isn't 100 percent  
12 satisfied that we have said why, to pursue this matter  
13 further, is probably at the hearing.

14 But I will very quickly go through our review. The  
15 spreadsheet that was provided in our response to the  
16 Board's interrogatory, we break out all the costs related  
17 to salaries under those very categories that we referred  
18 to in our evidence, cost of living increases which are the  
19 union increases and nonbargaining cost of living  
20 increases, salary evaluations and re-evaluations and of  
21 course additional hires.

22 And we provided an explanation of those new hires in part  
23 B of the supplemental information we included with the  
24 response to the Board's interrogatory.

25 We have indicated the nature of the positions added  
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and what the job duties of those people are. And when one looks at those, if one took the time, I challenge anyone to say that is not System Operator work.

So the short answer to why have we added these positions is that we need the resources to do work which otherwise is not going to get done.

What we have here is a company that hit the ground running not quite four years ago, and over the period of almost four years has added three positions. That is what we are talking about here.

Now to further assist in this matter, just to do the math, in our response we indicated, on a year over year basis, what salaries are.

And if you look at simply the salaries for regular employees, in 2005, '06 they totaled \$3,523,807. And over the three years that number increased to \$4,434,906. And that is a difference of about \$911,000 which is around 25.9 percent or 8 percent a year compounded I guess roughly.

So if you break that out a little bit further, the cost of living increases of 3 percent per year on average over that time would increase that starting salary figure of \$3.5 million to about 3.85 or about \$327,000.

Now \$327,000 is about 36 percent of that total

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2 increase. And those are simply costs that go along with union  
3 increases and cost of living increases on a 3 percent per  
4 year basis.

5 Yes. It is true we have hired -- we have created three  
6 new positions and filled them since we came into existence  
7 almost four years ago. In that document there is clear  
8 indication of what the costs are of those three new  
9 positions. And that cost is \$309,000. So there is 34  
10 percent of the \$900,000 total.

11 So that leaves about \$275,000 that would be attributable  
12 to salary increases -- or sorry, re-evaluations or  
13 increases within a band for a particular employee.

14 And so I guess I'm at a loss to know how we would respond  
15 to this question in any more detail than we already have.

16  
17 We have indicated why salaries have increased over the  
18 years. We have put them down under three categories. We  
19 have broken them out so that you can go and examine them.

20 I don't know what else we can do to further answer the  
21 question why other than to put out the information of what  
22 the positions are and what the people do. And we have  
23 done that for all parties. And I would submit that there  
24 would be all kinds of opportunity at the hearing for  
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people to question those further.

But I simply say we are at a loss to know how to better explain this question through the interrogatory process. And if the Board can provide some direction as to how we could do that, I would be happy to hear it. Thank you.

CHAIRMAN: Thank you, Mr. Roherty. Just on the issue of additional IRs, can I take it from your submission that you don't object to additional IRs. Your qualification is that they be done in a timely fashion?

MR. ROHERTY: Absolutely. That is precisely my point.

CHAIRMAN: Thank you. Any questions from the Board? Thank you. Mr. Theriault any rebuttal?

MR. THERIAULT: Thank you, Mr. Chairman. Just dealing -- I guess the only thing I have by way of rebuttal is to Mr. MacDougall's comments, which I would suggest I really can't make any substantive comment.

I have been going through my file here. But I didn't bring all the particular aspects of the file that dealt with the settlement agreement because it wasn't a subject of this motion.

So I would suggest if there is a way that Mr. MacDougall wants to deal with that it should be by -- the process should be a proper notice of motion, if he wants

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to separate that out.

Clearly by the Board's letter dated July 18th 2008 it appears that the settlement agreement was going to be rolled into this process.

As to my comments with respect to the settlement agreement, again -- and I'm going by memory -- but I recall my comments were mainly with respect to the process.

For instance one aspect recalled taking \$100,000 of the Board-ordered surplus and using it for this settlement agreement. Well, I would suggest that would require a variation of an existing Board order that would have to be done properly and by process.

As to whether or not I should be involved in the technical conferences that are sponsored by the Board, well, Mr. MacDougall can take that up with the Attorney General. But until he does he is stuck with me.

That is all.

CHAIRMAN: Thank you, Mr. Theriault.

Ms. Desmond, is there anything additional before we recess to consider this?

MS. DESMOND: Yes, Mr. Chair. There is just one additional item. And perhaps Mr. Roherty might be able to respond to this outstanding item that the PI raised, Public

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2 Intervenor raised in Supplemental IR-4.

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There is a comment in that supplemental IR where the

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Public Intervenor requested that the contracts, the

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consulting contracts that had been the subject of

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discussion between the Public Intervenor and the System

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Operator perhaps should be shared with other parties to

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the rate application, so that all of the information is

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before the Board and has been shared by all parties in the

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event they are the subject of cross examination.

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And I'm wondering if Mr. Roherty might be able to comment

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on the System Operator's position as to whether those

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contracts can be placed on the public record.

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MR. ROHERTY: We can do that. I believe the Public

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Intervenor was specific to three contracts, DBR, EA,

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Energy Analysis, and another one, Business Bridge, right.

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We can provide those.

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CHAIRMAN: Perhaps we could clarify for the record what

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those three are. I guess you can't recall the third one,

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Mr. Theriault. Do you recall the third one?

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MR. ROHERTY: It is Business Bridge.

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CHAIRMAN: Oh, yes. Okay.

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MR. ROHERTY: Yes.

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CHAIRMAN: Thank you. Anything else, Ms. Desmond?

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MS. DESMOND: Nothing further, Mr. Chair.

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MR. THERIAULT: Mr. Chairman, if I may, just before -- I do

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have -- and I meant to say this when I was at the table --

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I have prepared written comments of my presentation here

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this morning. And I would like to hand that out to the

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parties and to the Board.

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CHAIRMAN: Okay. Proceed. And as well I believe Ms.

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Desmond had put together some possible changes to the

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filing schedule based on the possibility of one of the

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outcomes here today, being that we would allow additional

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IRs.

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Do you have extra copies of that, Ms. Desmond? And

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perhaps they could be circulated. And while the Board

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takes a recess the parties could have a look at the dates

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that are proposed.

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MS. DESMOND: Mr. Chair, could I share those with the

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parties at the break? I don't know that I have got

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sufficient copies to leave with all of the parties.

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CHAIRMAN: That would be fine. So is there anything else

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then before the Board recesses to consider this motion?

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All right. We will take a brief recess.

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(Recess - 10:20 a.m. - 10:35 a.m.)

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CHAIRMAN: The Board has had an opportunity to consider the

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motion filed by the Public Intervenor. And with respect

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to that motion which was brought before the Board this

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morning, the Board rules as follows.

Number (1), all parties to the application will have an opportunity to submit a set of interrogatories on the clarification of tariff changes filed by the NBSO on July 29th 2008 in accordance with the following filing schedule changes.

So the filing schedule will have a set of IR's to the NBSO on clarification of tariff changes due August the 26th 2008. That is a Tuesday at noon. The responses of the NBSO to the IR's on clarification of tariff changes will be done by Wednesday, September the 3rd, 2008 at noon.

Notice of necessity of Motions Day will be provided to the Board no later than Thursday, September 4th 2008 at noon.

And a Motions Day if necessary will occur on Friday, September 5th 2008 at 9:30 a.m.

I don't believe there are any other changes to the filing schedule.

The second part of our ruling is with respect to PI supplemental IR 4, Question 1(a). The applicant has filed some of the requested documents and has agreed to and is order to file the contracts with I believe it is DBR Enterprises Inc., Business Bridge Inc. and EA, Energy Analysis.

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2 Number (3), with respect to PI IR-2 and PI Supplemental  
3 IR-2, the Board finds that the answers were responsive and  
4 will not order any further answers to those questions.

5 The Board believes that there is sufficient data on the  
6 record to allow the parties to further pursue this matter  
7 in cross examination and argument. And it would expect  
8 the parties to do so.

9 An issue that was not raised by way of motion was brought  
10 forward by Mr. MacDougall. He requested the Board to  
11 approve the settlement agreement with respect to the  
12 surplus.

13 This settlement is tied to changes to the OATT. And the  
14 Board will not prejudge any elements of the application.  
15 Accordingly the settlement agreement will be considered by  
16 the Board at the full hearing of the application for  
17 changes to the Open Access Transmission Tariff.

18 The Board as usual will issue a written decision with  
19 respect to this motion. And if there are any slight  
20 changes, due to the fact that you get an opportunity to  
21 edit, then the written version will govern.

22 Anything further for this morning?

23 MR. ROHERTY: Mr. Chairman, just to encourage the parties,  
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2 if they have any extra interrogatories, to get them in as soon  
3 as possible so that we can keep the process moving  
4 quickly.

5 And I would expect it goes without saying that this extra  
6 set of interrogatories is specific to the clarification  
7 document and not a revisit of other issues.

8 CHAIRMAN: Thank you, Mr. Roherty. Anybody else have  
9 anything further?

10 All right. Then we are adjourned.

11 (Adjourned)

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

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Reporter