

New Brunswick Board of Commissioners of Public Utilities

In the Matter of a Hearing to review Section 2.1 of the Open Access Transmission Tariff (OATT) approved by the Board on June 19, 2003 and to Review the Board's "Open Season" direction contained in its March 13, 2003 Decision with respect to the said Tariff

Delta Hotel, Saint John, N.B.
February 2nd 2004, 10:00 a.m.

CHAIRMAN: David C. Nicholson, Q.C.

COMMISSIONERS: J. Cowan-McGuigan
Ken F. Sollows
Robert Richardson Leon C. Bremner

BOARD COUNSEL: Peter MacNutt, Q.C.

BOARD SECRETARY: Lorraine Légère

..... CHAIRMAN: Good morning, ladies and gentlemen.

This is a hearing which is called to review Section 2.1 of the Open Access Transmission Tariff of NB Power that was approved by this Board on June the 19th 2003 and as well to review the Board's Open Season direction which was contained in its March 13, 2003 decision in respect to the tariff.

Could I have appearances please on behalf of NB Power?

MR. HASHEY: On behalf of NB Power, Mr. Chairman, myself David Hashey, Terry Morrison. And with us are the panelists Mr. MacPherson, Mr. Hoecker and Mr. Darrell

Bishop to my left.

And behind me are of course support people and the other panelists which are Mr. Marshall and Mr. Scott.

CHAIRMAN: Thank you, Mr. Hashey. I forgot the housekeeping item, to say if you are going to speak, the microphone has to be engaged. And you see your little red light. So by all means do that.

Formal Intervenors. The Attorney General?

MR. ANDERSON: Mr. William Anderson.

CHAIRMAN: Mr. Anderson.

MR. ANDERSON: Thank you.

CHAIRMAN: Bayside Power LP? Emera Energy Inc.

MR. ZED: Thank you, Mr. Chairman. Peter Zed appearing on behalf of Emera Energy Inc.

And I'm joined today by the panel, Mr. Connors, Mr. Trabandt, Mr. Jessome and Mr. Ferguson.

CHAIRMAN: Thank you, Mr. Zed. J.D. Irving Limited?

MR. MCCARTHY: Kevin McCarthy on behalf of JDI.

CHAIRMAN: Thank you. And it is the same cast for Nova Scotia Power Inc. I presume, Mr. Zed?

MR. ZED: Yes, sir.

CHAIRMAN: The Municipal Utilities?

MR. GORMAN: Good morning, Mr. Chairman and members of the Board. Raymond Gorman appearing on behalf of the

Utilities Municipal which includes Energie Edmundston, Perth-Andover, Electric Light Commission and Saint John Energy.

I'm joined today by Richard Burpee, Tony Furness and Dana Young from Saint John Energy and Dan Dionne from the Perth-Andover Electric Light Commission.

CHAIRMAN: Good. Thanks, Mr. Gorman. WPS Energy Services Inc.?

MR. MACDOUGALL: Good morning, Mr. Chair. David MacDougall representing WPS Energy. And I'm joined today by Mr. Ed Howard, an energy executive with WPS Energy.

CHAIRMAN: Thanks, Mr. MacDougall.

MR. MACDOUGALL: You are welcome.

CHAIRMAN: And, Mr. MacNutt, who does the Board have here today?

MR. MACNUTT: Thank you, Mr. Chairman. I have with me Doug Goss, Gay Drescher, Izabel Fagan and Jim Easson as well as Jim Murphy.

CHAIRMAN: Thank you, Mr. MacNutt. We have a number of Informal Intervenors. And I will ask if there are representatives of those Informal Intervenors to acknowledge their presence today.

HQ Energy Marketing Inc.? Hydro Quebec Trans Energie? Canadian Manufacturers and Exporters, New Brunswick

Division? Maritime Electric? And Prince Edward Island Energy Corporation?

Well, that -- one thing I had on my agenda was to set an Intervenor's Day. I don't think I will bother doing that since none of them are represented here today. But I will have the Board Secretary contact them and see if in fact they wish to have an informal presentation before the Board.

We intend this morning to deal with any preliminary matters, and then after those are concluded to call upon Mr. Zed on behalf of Emera to put a motion before the Board in reference to the applicant's slide show that they have prepared. And so we will wait until other things are all cleared up for that.

MR. ZED: Thank you, sir.

CHAIRMAN: Okay.

MR. HASHEY: Yes, Mr. Chair. I have a number of items here, not that many. First of all the exhibits, are these marked, or is that something that you would like to do currently?

Now I recognize one of the premarked exhibits are intended to be, as the issue of the presentation which I presume could be reserved until the issue is argued as to whether it is appropriate or not.

CHAIRMAN: You mean the slide?

MR. HASHEY: Yes.

CHAIRMAN: The slide show?

MR. HASHEY: Yes.

CHAIRMAN: That would be my intention.

MR. HASHEY: Okay.

CHAIRMAN: Now as you say there are a number of exhibits. And I think what I will do is

I will give you the markings for each of them that we have assigned here. And in the first break I will actually do the markings rather than hold up this proceeding right now.

A-6 will be NB Power, Responses to Interrogatories Number 1. It is December 2nd 2003, one binder.

A-7, NB Power Responses to Supplemental Interrogatories dated December 16, 2003. That is a separate binder.

A-8. No, sorry. That is the one that we will put off to the side. But I will reserve that number A-8.

And EEI-1 is the Emera Evidence dated January 13, 2004, includes the direct evidence of Emera and Charles Trabant together with c.v.'s of all witnesses.

Then there is EEI-2, Emera Responses to Information Requests submitted to Emera dated January 27, 2004.

And the last one that I have here is that we will give

Mr. Easson's report, which I understand you were all given an e-mail copy of last Friday. And the original signed copy the Secretary of the Board will now hand out for all of the various parties.

It is our intention before we call upon the applicant to commence -- whether it is for its panel to ask any of the parties here if they wish to have any questions of Mr. Easson, that we would offer him up as -- I hate to use that terminology, offer him up.

We will call him and have him sworn. And you can ask him questions concerning his report if you so desire.

MR. MACNUTT: Mr. Chairman, is it your intention that

Mr. Easson's report be marked PUB-4?

CHAIRMAN: I think I heard that, Mr. MacNutt. It will be PUB-4.

MR. MACNUTT: Yes. The number was missing from --

CHAIRMAN: You got to haul that mike in, Mr. MacNutt. I can't hear you.

MR. MACNUTT: Yes, Mr. Chairman.

CHAIRMAN: Thank you, sir. Okay. Mr. Hashey, did you have some other matters?

MR. HASHEY: Yes, I do, Mr. Chair. There is one issue here. It has been the first time I think in my time here that I have seen a presentation or evidence submitted by a panel

and not by individuals.

I would ask that there be some direction provided as to who is standing for Emera to be cross examined on their evidence.

It is rather unusual to see this without one individual identifying themselves, that this is my evidence, so that you can have an opportunity to review what he might otherwise have said, et cetera.

CHAIRMAN: We are always setting precedents, Mr. Hashey. Mr. Zed, would you like to address that?

MR. ZED: Yes, I would, sir. As far as I recall it is exactly the same manner in which we filed the evidence at the first hearing.

And to answer Mr. Hashey's question -- I have already spoke to Mr. Morrison about this -- we will be offering all four panelists to speak to all of Emera's evidence.

And that way everybody will be on the stand at the same time. And hopefully we will get the answer from the person who is most appropriate and who can give the best evidence.

CHAIRMAN: I might suggest, Mr. Zed, if you can give sort of a general overview of which one of the witnesses you believe at face value would be the best ones to handle various parts of the evidence, that probably would be

helpful for Mr. Hashey.

MR. ZED: We can do that.

CHAIRMAN: Okay. Thank you.

MR. HASHEY: That is good. I will follow on that one. The next issue, Mr. Chairman, I assume that the order of cross examination is as before. And it would be more or less in the order that you have set out here.

And that the cross examination of the Emera evidence, would it be your intention that NB Power would be last on that? Just so we know how to gauge ourselves.

CHAIRMAN: How did we do it before? I forget frankly. Yes. I think that is probably legitimate.

MR. HASHEY: Anyway if you could just guide us before we get to that point. I don't need that right at the moment obviously.

CHAIRMAN: Mr. Zed has something to say.

MR. ZED: Mr. Chairman, I think that is appropriate. But I also would suggest that the converse would also be appropriate, since this appears to be an issue that we have joined. It may make for less -- or more efficient hearing if we were to go last in cross examination as well.

CHAIRMAN: Any of the other Intervenors have any difficulty with that?

I must say, Mr. Zed, at face value I would expect that you have spent more time in preparation of your cross than other Intervenors. And that may not necessarily be true. But I would suggest if that is the case, you might speed things up if you were to go first.

And then if there were just a small area that the other Intervenors were interested in, they could pick up and cross on that, but not bother covering the territory that you have covered. Any comment on that?

MR. ZED: Well, I guess really the only disadvantage we would be at in that situation is if somebody were to go to an area that we hadn't covered, and it needed clarification, then that opportunity may be difficult for us to -- since it's not our witness we don't get a redirect.

CHAIRMAN: Well, if we hit -- I haven't -- we haven't made up our minds on that. But if we hit something like that, why your plea would be listened to.

Mr. MacDougall?

MR. MACDOUGALL: Yes, Mr. Chair. I think our position, WPS Energy's position would be as you laid it out. Our understanding is that we would go in the alphabetical batting order as is the normal practice.

Now we would certainly like to see what has come

before us. We understood that would be the route that we would take. And I don't think there is any reason in this hearing to change that.

Mr. Hashey should be able to come at the end as the applicant, that's the normal situation. So I see no reason to change it. And in fact I think what you have said is in fact correct. It may be much more expeditious. Because we may have little or no questions depending on what the Emera Energy folks say.

CHAIRMAN: Thanks, Mr. MacDougall. Anybody else?

MR. ZED: Mr. Chair, we don't take objection. I mean, given your comments, we certainly don't take objection going in alphabetical order.

CHAIRMAN: Okay. Well, then let's proceed in that fashion then. Anything else, Mr. Hashey?

MR. HASHEY: Yes, Mr. Chairman. The last time is the issue of rebuttal or redirect. We have received Interrogatories, as you know, answers to Interrogatories only a week ago. Don't have a chance for a second crack like the other people had to the procedures.

What I would request and suggest is that if we have redirect evidence that we put it to the witness prior to his cross examination in fairness. What I'm thinking of at this time is that I would have a few questions for

Mr. Hoecker to respond to some of Mr. Trabandt's evidence.

And I would like to do that. And I think the fair way probably is to do that before there is cross examination. I think that is the course we followed before.

Although I think we varied it on occasion.

And I believe that was the procedure that my friend Mr. Morrison tells me was followed in a recent hearing here that he attended in relation to insurance matters.

CHAIRMAN: Mr. Hashey, my understanding of the court process, the long redirect, is simply that if a reasonable party could not anticipate something that a witness gave testimony on, then that party has the opportunity to go back and redirect on it and have rebuttal of their own evidence.

And certainly what you propose is the way I would have supposed it would happen. In other words you are aware of what the witnesses for Emera will say before we start this proceeding because of the prefiled evidence.

So in your cross you can handle it however you wish to do so, as to whether or not you group your redirect questions, as you have termed it, to begin with, or sprinkled throughout, because the Emera witnesses are there to answer to their testimony.

MR. HASHEY: No. I wish to have Mr. Hoecker respond to

their testimony, to respond to the evidence that they have just given. And I believe that is the appropriate course for the expert to follow in this one.

And it is redirect of my own witness Mr. Hoecker to respond specifically to certain things that Mr. Trabandt has now stated --

CHAIRMAN: Oh, all right.

MR. HASHEY: That is all I was speaking of.

CHAIRMAN: Okay. Well, that as well. The one thing you can't do of course is to bring that into the prefiled evidence because that is physically impossible.

MR. HASHEY: Right.

CHAIRMAN: But certainly on your cross of that witness -- or not cross, but your direct, you can put questions of what Emera's witnesses have said in their prefiled evidence.

MR. HASHEY: That is exactly what I'm thinking.

CHAIRMAN: Yes. No problem.

MR. HASHEY: It was just the timing of that, Mr. Chairman, that I was concerned with particularly. And my suggestion is that we would do that before the witness was cross examined, so everything he says --

CHAIRMAN: Yes.

MR. HASHEY: -- is before you.

CHAIRMAN: Oh, absolutely, yes.

MR. HASHEY: Yes.

CHAIRMAN: Absolutely. I'm sorry. I misunderstood your --

MR. HASHEY: I'm sorry. I may not have been clear on that. Thank you very much. That is my preliminary issue.

CHAIRMAN: All right. Mr. Zed, do you have any other preliminary matters?

MR. ZED: No, sir, just the issue regarding presentation.

CHAIRMAN: Just a minute here. Mr. MacNutt has given me one of his brief memos as usual and I'm just checking to make sure we have covered things here.

Now Mr. MacNutt, one of the questions that he felt the Board should bring up at this time is whether or not summation will be by way of written submission or oral submissions, and I personally would like to save that until we conclude the evidence and then hear from each of you as to the appropriate way to proceed.

And since there are no Informal Intervenors we won't set a time for them to make a presentation.

It should be known that NB Power at the request of the Board has filed the Duke Energy and Select Energy contracts with NB Power for energy supply with the Board in confidence. And I just wanted you to know that. That has no import in reference to this particular hearing at all.

Now NB Power has given out a number of errata pages, one dated the 17th of November, 2003, another dated December 15th 2003, and one dated January 5, 2004. I just want to confirm that all of the Intervenors have received those errata pages and as far as the parties are aware, that is, Mr. Hashey and Mr. Zed, there are no further corrections that you feel should be made in your evidence? Okay. Good.

And as I said previously, you have now all received a copy of Mr. Easson's report. So before we call for the first witness panel from NB Power I will canvass you all and see whether or not you have any questions of Mr. Easson. And those are all the matters that the Board wanted to bring up.

Now, Mr. Zed, you have a motion you want to make in reference to the slide presentation, sir. Go ahead.

MR. ZED: Thank you. Sir, just to bring everybody up to date, we received the proposed slide presentation I believe on the 20th of January and that day or the next day I spoke to Mr. Hashey, Mr. Morrison, one of them or both, and raised a number of objections with them, and between then and the next week spoke several times with Mr. MacNutt. So the applicant is aware of my comments and my concerns and I believe Mr. MacNutt is as well. So

hopefully they will be in a position to respond.

Now we understand the practice of this Board is normally to allow a brief opening statement. We understand the purpose of that statement is to summarize for the Board the salient points of evidence that have been prefiled. Frankly when it's done properly we find it helpful because it helps us focus on our case and we also find it helpful to listen to the other side summarize their case. And we can only assume that the Board finds it equally helpful.

We do know that NB Power has started a practice which has been adopted by this Board of filing slide presentations at the beginning of their case. Most of these cases involve a very, very significant number of issues. There are such things as the Coleson Cove hearing or the Lepreau refurbishment. At the beginning of the original OATT hearing I mean there were a multitude of issues before this Board and I will say that it was helpful to see a summary of those issues in point form.

Here, however, we have in effect a very focused discreet issue, an issue that was thoroughly canvassed less than a year ago. It is a hallmark of this and similar Boards that evidence is prefiled. This allows for certain efficiencies but more importantly it allows for

fairness. Parties have a reasonable opportunity to examine each other's position and respond appropriately.

Now let me be clear. I recognize the need for the Board to receive the best evidence. We recognize that this Board has always been flexible and been able to set its own procedure and the rules get bent sometimes to allow evidence that should be in in. And that's fair. And we are in no way taking issue with that. We would not be objecting if this were an IR response that perhaps need be clarified or a table that need be clarified.

What we are objecting to is receiving a 35 page point form outline. This forms, we can only assume because we have been here for similar presentation, speaking notes. It is an inescapable inference that the applicant has the unfair advantage if allowed to present this to not only reviewing its evidence in minute detail but in effect they have the opportunity to restate their case orally. That is an opportunity that none of us get.

We know the Board and all parties have read the evidence. We have an opportunity and all parties had an opportunity to ask written questions and receive written answers. None of us have an opportunity to put our witness on the stand and say, please restate your case.

The length of that outline when compared to the length

of the evidence leads me to no conclusion other than that is what they wish to do.

But more objectionable than the sheer length is they have the opportunity which they are seeking to file additional evidence. They originally -- the applicant filed their evidence on September 29th. They filed additional evidence on November 3rd. They filed still more evidence on November 18th. And while we were in the process of finalizing our evidence they filed a further amendment on January the 8th, which caused us to recalculate in the midst of preparing our evidence all of the numbers that they had previously provided.

Then lo-and-behold on the 20th of January or thereabouts they filed this presentation. And a question we would have for this Board is where does it stop? When do we know the full extent of the case we have to respond to?

There is new evidence adduced in this presentation that we have not had a fair opportunity to respond to.

Still dealing with the text of the presentation it is clearly argumentative. It is clearly designed to influence the Board's perspective on the evidence prior to the hearing beginning.

This is especially objectionable when in so doing --

for example, they have taken quotes from our own expert that are not in evidence and they have taken them out of context.

Now my learned friends know that if they wish to impeach Mr. Trabandt's testimony the proper way is to put that quote to him when he is on the stand and ask him about it. The proper way isn't to introduce it under the guise of a pre-hearing presentation.

Now what I have talked about are difficulties that we submit we have and we hope the Board should have with respect to the text. We are just as concerned and perhaps even more concerned with the actual presentation for which we haven't seen the script. 33 pages of speaking notes, what one could do with that. Is there more evidence, is there more argument, or a combination of both that we need to respond to?

This hearing, although it is scheduled for two weeks, in talking to the various parties, is likely not to go more than a very few days in terms of the evidence. And we feel that we can respond to any legitimate argument the applicant can muster. But we are somewhat at a disadvantage if we hear those arguments for the first time today and we need respond tomorrow. They have had much more time to respond.

So we would ask the Board in the interest of fairness to not allow this presentation to be filed, to not allow them to make their lengthy presentation in the present form, but instead confine them to what everyone else is confined to and that is a brief opening statement from each panel outlining the salient points that each panel wishes the Board to take note of.

Thank you, sir.

CHAIRMAN: Mr. Anderson?

MR. ANDERSON: I have no submissions.

CHAIRMAN: Thank you. Mr. McCarthy for JDI?

MR. MCCARTHY: We would be happy to rely on the Board to decide this matter.

CHAIRMAN: Mr. Gorman?

MR. GORMAN: Yes, Mr. Chairman. Again we would be happy to rely on the Board. I would make the comment that these presentations have been made for the previous hearings. So I'm not sure that the harm would be as great as Mr. Zed puts forward.

CHAIRMAN: Thank you, Mr. Gorman. Mr. MacDougall?

MR. MACDOUGALL: Yes, Mr. Chair. Thank you very much. First to start I would like to echo Mr. Gorman's comments. I think this has been the practice in the past. In fact we found it quite useful that the applicant was willing to

put a summary forward of what they are going to say. I agree with Mr. Zed that they shouldn't now be allowed to say new things, but I think we should wait to hear what they say and if they stick to their script, it's certainly useful for intervenors to see a summary in advance, and this is how we took that.

We are not sure how much cross examination we will have but some of the cross examination we have prepared, if we have to use following others, has been prepared based on the points put forward in this summary as we anticipate it being part of their evidence. So I think we would be at a little bit of a disadvantage if they now were not able to speak to it and us to ask questions on it.

I'm not sure that there is anything new in there. Mr. Zed has not pointed out the new evidence. In our review we didn't really see a lot of new evidence. If there are a couple of specific items that appear to be new possibly Mr. Zed could point those out.

With respect to the quote, I believe that's fair comment. Maybe the quote attributed to Mr. Zed's client's expert could be excised. But I don't know if it was being used in any totally deleterious way to any parties here.

And I don't think that there is anything that the

applicant has put forward in this that isn't anything but helpful actually at this time. So our suggestion would be that they do be allowed to speak to the matter and that they be allowed to be subject to cross examination on it, but obviously that they can't put forward anything new at this time.

Thank you, Mr. Chair.

CHAIRMAN: Thank you, Mr. MacDougall. Mr. Hashey? Mr. Morrison?

MR. MORRISON: Thank you. I have heard Mr. Zed's comments and I would like to talk about them in I guess two categories, one procedurally and one on the question of fairness which Mr. Zed raises.

The fact is that there has been a practice that has developed over the past number of years with respect to the hearings in which I have been involved of putting forward a presentation outlining the evidence that the Board is going to hear from the applicant. We have found it helpful. I believe in my discussions with other Intervenors have also found it helpful. Mr. Zed and his clients were involved in the hearing last year in which that same process was offered up.

So I mean, basically the purpose of the presentation is to show a road map of the evidence for the Board. We

are of the view that the best information that can go before the Board is in everyone's interest.

But going back to the procedure that we followed in this case to date, you will recall that in the pre-hearing conference on October 22nd and again on I believe it was November 10th, the whole issue of the presentation was raised by me that we intended to file a presentation. And a schedule was put forward for the filing of that presentation. My friend Mr. Zed and Emera made no objection at that time.

There was a motions day scheduled for December 19th. If they had a problem with the whole notion of a presentation it ought to have at least been brought forward at that time and not wait to the day of the hearing, albeit I did have discussions with Mr. Zed last week on this issue. But this late in the game to raise it -- had he had an objection or had Emera had an objection with the notion of presentations we could have dealt with it at the pre-hearing conference back in October and saved everybody, including our witnesses, a lot of time and effort in preparing a presentation that perhaps won't see the light of day.

But I also want to talk a little bit about the unfairness that Mr. Zed alludes to. The evidence that's

filed -- I have gone through -- after Mr. Zed called me last week I took -- me and others went through the presentation and with some very minor exceptions we are able to relate that evidence to the prefiled evidence -- the presentation, the points in the presentation to the prefiled evidence. But that aside, he has had the presentation for a couple of weeks. Surely that's ample opportunity to prepare any cross examination. Goodness knows we only got the responses to Emera undertakings a week ago and had no opportunity for supplementals. And we are not crying about that.

Mr. Zed knows that if this were a trial -- and I'm not trying to make any direct comparisons -- but if this were a trial until the witness opens his mouth you don't know what they are going to say and you don't know what your cross examination is going to be. So put in context with the prefiled evidence the fact that -- you know, this presentation has been in Emera's hands for a couple of weeks now. I don't see that there is any unfairness at all in this process.

And I believe that had there been an objection to the whole concept of a presentation it ought to have been raised a lot earlier than this.

And those are my comments, Mr. Chairman.

CHAIRMAN: Thank you, Mr. Morrison. I'm sure you would use discovery thought so that you know a little bit of what that witness was going to say.

Mr. Zed, any comments on what has been said since you last spoke?

MR. ZED: Thank you. Sir, my learned friend is overstating our objection. We fully expected that there would be a presentation. It's the scope of the presentation and the content of the presentation with which we take issue. And to talk about -- for example, on page 13 there is unsupported evidence from NB Power dealing with mitigated values.

Now we have been dealing with the issue in our evidence of mitigation. We have seen nothing from them, we have seen nothing in the way of back-up, and here out of the blue we have some unsupported numbers that we are seeing for the first time. And how are we supposed to respond to a number on a page that -- they say \$5.1 million. You know, that's completely new evidence. On page 31 they overstate and misrepresent our position.

Now, you know, my stance is very simply you have three panels. Each of those panels are people with very competent individuals. It wouldn't take each of those panels very long to summarize what they are going to say

in advance of them being put on the stand for cross examination.

Now we have had this for two weeks. We have seen the contents and to a certain extent we have done what we could to deal with that. That is a fair comment. But our original comments about the presentation stand. It's not so much what is in here or not as much what is in here as what is not in here and where are we going from here that we are really concerned about.

CHAIRMAN: Thank you, Mr. Zed. The Board will take a five minute recess.

(Short recess)

CHAIRMAN: The Board has taken time to consider Mr. Zed's motion. As far as this panel is concerned, what we want from each panel of witnesses as they take the stand is an overview of their examination in chief, in other words their prefiled evidence.

That is what we want. Anything else can be reserved for examination and/or argument after the matter has been concluded. We are going to give the parties as long as it takes.

We will ask Mr. Zed to go through the slide presentation and point out what he believes is not in keeping with that overview of the prefiled evidence,

giving Mr. Hashey and/or Mr. Morrison the opportunity to look at them. If you agree, tear them out of the presentations.

If in fact you have a number that you can't agree on, that NB Power believes fits the definition and Mr. Zed says not, we will ask you to do two things. Give those particular ones to Mr. MacNutt. And we would ask Mr. Morrison to identify where in the prefiled evidence the substance of those slides came from.

Any questions as to that ruling? Good. We will give you 15 minutes. Let us know when you are -- well, Mr. MacNutt will be back and tell us. Thank you.

(Recess)

CHAIRMAN: Would either Mr. Hashey or Mr. Zed wish to -- I'm sorry, Mr. Morrison?

MR. MORRISON: That is all right, Mr. Chairman.

Mr. Zed and I met over the noon hour as per your direction, Mr. Chairman. And we have been able to resolve any differences of opinion with respect to the presentations for Panel A and Panel B.

We still have some pretty fundamental differences with respect to the presentation on Panel C, which we are going to try to work out later today.

What we have agreed, subject to your approval, is that

we would proceed with the Panel A and B presentations this afternoon. And if we are unable to come to a resolution on the Panel C presentation, then we will be bringing something forward tomorrow morning for your consideration.

CHAIRMAN: Well, the Board was forewarned about that agreement. And we certainly approve of that. We will go ahead that way.

But before you call your first panel, does anyone wish to have Mr. Easson take the stand so they can ask questions? Or are they satisfied with the report that is filed as exhibit PUB-4?

MR. MORRISON: We are satisfied, Mr. Chairman.

CHAIRMAN: Yes. If anybody isn't please say it now or we will carry right on. Okay.

Call your first panel.

MR. HASHEY: I would suggest, Mr. Chairman, that the first panel, that the way we would proceed is we will have

Mr. MacPherson come up. And also we will have Mr. Bishop and Mr. Marshall come up. And they would make presentations.

Mr. MacPherson would make his first. Then Mr. Bishop will make a presentation. Mr. Marshall isn't making any presentation. Then Mr. Marshall and Mr. Bishop would step down.

And Mr. MacPherson would be available for cross

examination as being the first panel. He would be it. Then when he is concluded, Mr. Bishop and Mr. Marshall would return for cross examination, maybe a couple of little direct questions or redirect, if that is agreeable.

CHAIRMAN: Any comments on that? Okay. Fine. Proceed in that fashion then, Mr. Hashey and Morrison.

MR. ZED: Mr. Chairman, I just wonder, are there copies of the revised presentation for everybody? Or are we waiting --

MR. MORRISON: I apologize, Mr. Chairman. We do have -- I don't know if the color -- I think they are just coming through now. We just received a couple of seconds ago the color version of the revised presentation. And they are being made available now.

CHAIRMAN: All right. I think Mr. Zed would like a copy of the revised one too. I think most of the intervenors would.

MR. MORRISON: If there are no objections, Mr. Chairman, I guess we would have this -- ask that this be marked.

CHAIRMAN: Yes. I wanted to give the parties an opportunity just to flip through it. And I would propose, if there are no difficulties with it, it has the exhibit number

A-8.

If no one has any difficulty with those exhibits, go

ahead, gentlemen.

MR. HASHEY: Would it be appropriate to swear the witnesses at this time?

CHAIRMAN: It would be appropriate. I'm always forgetting it. Thank you, Mr. Hashey.

The Secretary will swear them.

(Mr. MacPherson, Mr. Bishop and Mr. Marshall sworn)

MR. HASHEY: Mr. Chairman, I assume that it would be acceptable for the presenters to stand where they could look at the presentation and face the Board and the audience rather than sit.

Would that be acceptable to you?

CHAIRMAN: They are wired for sound. So that is okay.

MR. HASHEY: Thank you.

MR. MACPHERSON: Thank you, Mr. Chairman and the Board.

As you are aware, the presentation outline would involve three presentations, two of which will be delivered this afternoon. Initially for Panel A will be an overview and policy framework.

Panel B will deal with the financial and other adverse impacts of the loss of transmission access. And that will be Mr. Bishop and Mr. Marshall. Panel C, why the transmission contract should be honored. And that will be Mr. Hoecker or Mr. Scott.

Panel A, just to review the order-in-council of August 19th 2003, review Section 2.1 of the Open Access Transmission Tariff, determine if it is in the public interest to preserve the transmission reservations which are not subject to a firm contract involving a third party who is not affiliated with NB Power.

Tariff hearing in 2.3 -- the tariff hearing focused on the terms, conditions and rates in the tariff. Grandfathered transmission reservations were a side issue. In this hearing evidence will address the cost issues and the broader public interest issues associated with the tariff.

Our position, the validity of the transmission reservations is independent of third party contracts. The reservation should be preserved because they were entered in good faith. They constitute agreements with rights and obligations. It would be consistent with industry practice. And it is in the public interest.

Implementation of a transmission, Open Access Transmission is an evolutionary process. As rules in the marketplace change it is in the public interest to avoid regulatory uncertainty, to not place undue burdens on ratepayers, to not unduly harm to incumbent utility or utilities, to limit the business risk of market

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participants. These principles are supported in NAFTA and by FERC and other regulators throughout the industry.

The Open Access in New Brunswick, the transmission access in 1998 we consider was a forward step. It paved the way for subsequent government policy on market development and restructuring.

And over the last six years, as you are well aware, the evolution to a restructured environment has gone about. And it was culminated in the bill passed by the Legislature within the past year.

The transmission reservations obtained by NB Power were through an open and non-discriminatory process. And NB Power investments has since been made that rely on the reservations.

Any reduction in access to export benefits will increase electricity rates in New Brunswick, reduce the value of existing assets and potentially strand past investments, put at risk the investment that this Board approved for the refurbishment of Coleson Cove. This is our position.

Thank you very much.

MR. HASHEY: Next I think we would call on Mr. Bishop to give his presentation, if that would be agreeable.

CHAIRMAN: Oh, I see. Panel B.

MR. HASHEY: Yes. Panel B would give their presentation. Then Panel B will step down.

And Mr. MacPherson would be available for cross. Panel B would then return and be available for cross examination.

CHAIRMAN: Why don't we deal with Mr. MacPherson first?

MR. HASHEY: If you prefer. That is fine too. Who knows?

CHAIRMAN: Who knows, poor Mr. MacPherson may be on the stand for two days, Mr.

Hashey. And then we would have forgotten what Mr. Bishop said.

MR. HASHEY: Well, that is fine too, if the Board would prefer that. I would ask the other two panel members to step down then. Cross examination could proceed on that basis.

CHAIRMAN: Thank you, Mr. Hashey.

MR. HASHEY: Thank you.

CHAIRMAN: We will now proceed through the intervenors for cross on the evidence of this witness, and that would start off with Mr. McCarthy for JDI. Any questions, Mr. McCarthy?

MR. MCCARTHY: No, thank you.

CHAIRMAN: Mr. Gorman? I'm sorry. Did I say before that it perhaps would be Mr. Zed first and then they would fill in after that? That's exactly what I said. I retract everything I said. Mr. Zed, go ahead, sir.

MR. ZED: I was a little bit confused, Mr. Chair. I didn't know if you were going alphabetically by counsel or client, but -- I was hoping the former.

CHAIRMAN: I can't say I blame you, Mr. Zed.

MR. ZED: We don't have any questions for this witness.

CHAIRMAN: Well now I will go back to my original path here. Mr. Gorman.

CROSS EXAMINATION BY MR. GORMAN:

Q.1 - Thank you, Mr. Chairman. I have a couple of questions. Mr. MacPherson, perhaps if you could elaborate or explain on NB Power's reason for requesting that the Public Utilities Board modify its previous decision?

MR. MACPHERSON: Excuse me. As stated in the presentation, we supported opening the system to competition back in 1998 and of course the first -- the first aspect of trying to introduce competition is to give access to the transmission system. We felt we did that. We had an open season that allowed others who wished to to bid on that transmission service. And we thought it was a forward -- it was a forward step.

Once we had access to that transmission, then we started making investment in the interests of our ratepayers in order to provide them with reliable economic and environmentally acceptable energy in the future. And

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we considered that those investments were being put in jeopardy by virtue of the fact that contracts that we felt we had entered into through a legitimate process were being abrogated.

Q.2 - Sir, was the preserving of existing export capacity part of your original OATT application?

MR. MACPHERSON: No. You are talking -- if you are talking 1998, the original transmission tariff allowed for bidding on transmission capacity that was not under reservation at the time, and that is the transmission capacity NB Power bid on and acquired.

Q.3 - And you say that was in 1998?

MR. MACPHERSON: That's correct.

Q.4 - In your opinion is there a risk that the loss of the reservation capacity in question could result in increased rates for customers?

MR. MACPHERSON: That's correct.

Q.5 - Can you elaborate on what the range of possible rate increase might be for customers such as the municipal utilities?

MR. MACPHERSON: I believe that Panel B can deal with that in much greater detail. So I would ask you to reserve those questions for them.

Q.6 - Is it -- is NB Power committed to a second line to the

United States?

MR. MACPHERSON: We have been committed to that line for the last -- for a number of years. And the government has also reinforced their commitment to that line, and the rationale or some of the main aspects of the value of that line is not only to provide reliability for customers in New Brunswick but also to allow competition to develop within New Brunswick in particular and the Maritimes in general. Because we would have greater access to generation and greater options for supply within the Maritime region.

Q.7 - Who is responsible for obtaining the approval and developing the U.S. part of the line?

MR. MACPHERSON: The partner on the U.S. side is Bangor Hydro.

Q.8 - And is that part of Emera?

MR. MACPHERSON: Yes, it is.

Q.9 - I would refer to the evidence that -- filed evidence of Mr. MacPherson, to page 5, lines 9 to 10.

CHAIRMAN: What exhibit is that now?

MR. GORMAN: That would be exhibit A-2.

CHAIRMAN: Thank you.

MR. MACPHERSON: Yes.

MR. ZED: Mr. Chairman, if he could repeat the page number?

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MR. GORMAN: Certainly. It's page 5, and it's lines 9 to 10. Does everybody have the page? So at lines 9 to 10 of your evidence you state, regulators and regulated companies should ensure continuity --

CHAIRMAN: Mr. Gorman, just hang on a second. We are --

MR. GORMAN: Sure.

CHAIRMAN: -- frantically searching here. Go ahead, sir.

Q.10 - Everybody has found it? Okay. Page 5, lines 9 to 10 in your evidence you state, and I quote, "regulators and regulated companies should ensure continuity in business arrangements to avoid undue burdens on ratepayers". Sir, what do you mean by that?

MR. MACPHERSON: The -- well as we move into a restructured environment with respect to electricity, it is important that existing investments and existing operation and existing value that some of our customers have enjoyed is preserved to the extent possible and that there is a transmission mechanism that brings us to a fully restructured environment.

MR. GORMAN: I don't have any further questions.

CHAIRMAN: Mr. MacDougall?

MR. MACDOUGALL: Mr. Chair, because we are going by the two panels here, could I just have one second with Mr. Howard and we might not have any questions and Mr. Stewart can

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just go to the next question. If you just give me one minute.

CHAIRMAN: Mr. MacDougall, I'm sorry, advancing age is affecting my hearing too.

Would you repeat that? I couldn't follow all of it, sir.

MR. MACDOUGALL: Certainly, Mr. Chair. Because we just heard the one panel now rather than the two as we had anticipated hearing before, I just want to talk briefly to Mr. Howard for a second and we may not have any questions for Mr. Stewart.

CHAIRMAN: Absolutely. Go ahead, sir.

MR. MACDOUGALL: Thank you. Mr. Chair, no questions of Mr. MacPherson.

CHAIRMAN: Thank you, Mr. MacDougall. Mr. MacNutt, does the Board staff have any questions.

MR. MACNUTT: Yes, Mr. Chairman.

CHAIRMAN: Go ahead, sir.

CROSS EXAMINATION BY MR. MACNUTT:

Q.11 - Mr. MacPherson, does NB Power believe that there are any benefits to competition in the electricity market in New Brunswick?

MR. MACPHERSON: That's another question that can be -- I don't believe it's a question that can be answered by simply looking at the state of the industry at any

particular point in time.

I think any time that our customers have options it's going to bring value to them, and I think that is the real issue that we tried to deal with in conjunction with the government back in '98 when we started moving forward. And that was to ensure that if there were better options out there that our customers could take advantage of, that they would have access to that.

New Brunswick is a very electricity intensive province and it's extremely important, particularly to our major industrial customers, that they have access to whatever options are the least cost for them.

And when we started this process there were options that were lower cost than the service provided by the incumbent utility. That's not quite the same today but who is to say that in the future it may not reverse itself again.

So I think it's a matter of providing options and allowing particularly large customers to take advantage of whatever is in their best interest. So I think in the longer term, that competition will bring value to our customers, particularly those large ones.

Q.12 - Does New Brunswick Power believe the potential for competition in the electricity market in New Brunswick

would be enhanced by parties having access to that market?

MR. MACPHERSON: Could you repeat that? I couldn't quite hear it.

Q.13 - Does NB Power believe the potential for competition in the electricity market in New Brunswick would be enhanced by parties having access to that market?

MR. MACPHERSON: You are saying by parties having access to the market?

Q.14 - Correct.

MR. MACPHERSON: Yes, they do.

Q.15 - Does New Brunswick Power believe that third party access to New Brunswick electricity market would be improved by an open season being conducted?

MR. MACPHERSON: We certainly believe that and that was why we did conduct an open season in 1998.

Q.16 - Do you still believe that with respect to conducting an open season in the current circumstances?

MR. MACPHERSON: No, we do not.

Q.17 - With respect to -- I want you to turn to page 8 of exhibit A-8 which is the slide presentation we just introduced --

CHAIRMAN: Excuse me. What page, Mr. MacNutt?

MR. MACNUTT: A-8, page 8. The numbers are in the lower righthand corner.

MR. MACPHERSON: Is this A-2?

MR. MACNUTT: No. A-8, the slide presentation.

Q.18 - And if you turn to the bullet at the bottom of the page which reads, "NB Power investments have since been made that rely on the reservations". And what I would like you to do is describe for us the investments made since 1998?

MR. MACPHERSON: The -- I would speak to three in nature and they all deal with the generation side of our business.

The first was the arrangement that was entered into by NB Power with West Coast Energy and the Irving Oil group for refurbishment of our Courtenay Bay plant, and that has subsequently become known as the Bayside project, and is now owned by Duke subsequent to their acquisition of West Coast Energy.

That was a refurbishment of a 100 watt -- megawatt turbine generator by virtue of putting a gas turbine on the front end of that cycle and creating about a 280 megawatt combined cycle natural gas plant in Saint John.

The second was the refurbishment of our Coleson Cove plant. We had to refurbish the plant in order to allow it to meet emerging environmental standards. And when we analyzed the value of the project and what we were going to do in that regard, the access to those transmission into the New England States to be able to provide margins

and benefits to that project were a significant component of the economics of that project.

Third investment that we just -- that has recently been -- that is in the process of being made is 90 megawatts of cogeneration at the Irving Oil Refinery on which we have a power purchase agreement to purchase the output of that facility.

Q.19 - What investment did NB Power actually make in that particular project?

MR. MACPHERSON: Which one now, the Irving Oil --

Q.20 - The Irving Oil project.

MR. MACPHERSON: The investment in that project is being made totally by Irving Oil on the strength of a power purchase agreement with the utility.

Q.21 - And with respect to the Courtenay Bay project, what investment did NB Power actually make in that project?

MR. MACPHERSON: NB Power initially took position on transmission -- gas transmission, but did not make any direct investment in the project. We, however, helped the -- agreed to a power purchase agreement with the project for -- to purchase five months output of the project.

Q.22 - On a continuous basis or just one five month period?

MR. MACPHERSON: It's on a long-term contract, five winter months of the year.

MR. MACNUTT: No further questions, Mr. Chairman.

CHAIRMAN: I think it is appropriate to go through the Board's questions, Mr. Zed, before
we --

MR. SOLLOWS: If I may, thank you.

BY MR. SOLLOWS:

Q.23 - Just on the point that was being made, if I understood your answers correctly, then the
NB Power's investment that has relied on these contracts is really limited to Coleson
Cove Refurbishment. And the other two weren't really NB Power investments?

MR. MACPHERSON: That's correct.

Q.24 - Okay. The other question I had, when you were responding to a question I think from
the solicitor for the Municipal Utilities, I got the impression from your answer -- and I
want you to clarify it if I have got the wrong impression -- I got the impression that you
and NB Power feel that the interconnections with New England and the new
interconnection will be a benefit.

And when I look at table 1 on page 7 of your evidence, you are saying that the
interconnections make New Brunswick more vulnerable to open access and seem to
focus on the degree of interconnectiveness being a big problem for NB Power.

So I'm wondering why we are busy making the problem

worse by proposing another line and such. So could you clarify that?

MR. MACPHERSON: The objection with respect to opening up New Brunswick to competition was not one to prevent lower cost options to supply New Brunswick. It was really to provide those options. The utility is basically protected through stranded cost recovery.

So the more access you can have to this market then the more options that our large customers can take advantage of. That is really the rationale for opening up the province to greater competition.

Q.25 - So your -- again I just want to make sure it is clear, that you are saying that the one connection, the degree of interconnectedness of New Brunswick, as indicated in table 1, being the most interconnected province relative to its size, creates a problem for you in the short-term but not in the long-term? Is that what we are saying?

MR. MACPHERSON: What we are trying to say here is that we recognized, as we opened up the province to competition, that others can come in and supply this load.

And when we opened it up for competition we realized that if that happens, it is probably going to be in the best interest of the customers because -- you know, based on the fact they would be making rational decisions in

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that regard.

Our role subsequent to that is to try and mitigate any stranded costs that result from that. So in other words, if somebody comes into the province from outside and sells to our customers and leaves us with stranded generation, we are then required, as would be reasonable, to mitigate any stranded costs that result from that.

And in order to do that, the only -- the main avenue that we have to mitigating that is on our interconnections. And if that is prevented, if we are prevented from doing that, then that has the aspect that it may create additional stranded costs as a result of that. That is really the issue that was trying to be addressed here.

We realized in 1998 when we opened this up that there was going to be potential for others to supply load in New Brunswick. And particularly for our large industrial customers, we considered that along with the government to be a good thing, if it meant that they could reduce their overall costs and become more competitive. So that was the rationale for it.

MR. SOLLWS: Okay. Thank you. No further questions.

BY THE CHAIRMAN:

Q.26 - Mr. MacPherson, I have just got a couple, following

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upon what Commissioner Sollows was talking about, the investment since 1998.

The first one was -- you have indicated Bayside. And I believe you also indicated that that was not an investment by NB Power but rather by the company that leased the plant and refurbished it.

I don't know if my memory serves me correctly or not. But is that also not a contract that the transmission rights over the MEPCO tie line are backed up by a firm contract?

MR. MACPHERSON: That is one of the third party agreements, that is right, yes.

Q.27 - So that is not subject to this auction process at all?

MR. MACPHERSON: No. That's correct.

Q.28 - Okay.

MR. MACPHERSON: By the way, and I believe I'm correct in this, that statement was different. And I would ask our legal counsel to correct me if I'm wrong. The statement on page 8 of the -- was one that was changed as a result of -- and it didn't have NB Power, I don't believe, in there at the time.

So it was -- the intention there originally was not to say NB Power investments.

It was something different that --

Q.29 - Can you tell us what it was meant to be? Or Mr. Hashey, Mr. Morrison?

MR. MORRISON: Well, the statement that was in the presentation -- I'm sure Mr. Zed is going to be jumping up here in a moment. But the statement originally said "public interest investments."

Q.30 - All right.

MR. MACPHERSON: We weren't trying to mislead. I guess what I was trying to say is we weren't trying to mislead the Board that those investments were made by NB Power. That's all I was trying to say.

Q.31 - All right. I'm just trying to be simplistic here. But the auction which you had in 1998, my understanding is that any contracts that were signed between let's say NB Power Generation and NB Power Transmission or between two sections of the same corporate entity. That is correct, is it not?

MR. MACPHERSON: Correct.

Q.32 - There was one person at law. And your lawyers will comment on that, I'm sure.

And that was NB Power. So what you have is one division bidding on capacity from another division, which was NB Power Transmission.

Again my understanding is, and I don't have the dates exactly right, but in 1998 you had the first tariff for

wheeling out and wheeling across this province. That is when you initiated that tariff, is that not correct?

MR. MACPHERSON: That is correct, yes.

Q.33 - And at that time again, my understanding is that the tariff for wheeling across was double that of wheeling out, is that correct?

MR. MACPHERSON: It was higher. I'm not sure if it was that --

Q.34 - Okay. Well, maybe somebody in the subsequent panels can confirm that. Again that is my --

MR. MACPHERSON: There were three components of the tariff at that time. One was one that dealt with the interconnections at both borders. And the other was a network piece. So if you actually wheeled through, you had two interconnection pieces and one network piece.

So it was a higher tariff than if you were wheeling out, which only had a network piece and an interconnection piece. And we can get you the exact numbers if you would like.

Q.35 - I would appreciate that. There was a change made -- and again I'm speaking from a dim memory of the first tariff hearing that we had that concluded a year ago I guess.

But it resulted as an interprovincial trade issue

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really, is what was behind it. And the tariff was then amended in reference to the through portion of that tariff.

Is that a correct understanding?

MR. MACPHERSON: Initial review that we had was with respect to supplying northern Maine, when they opened up their system to retail access. Because it was a nonconstrained interface into Aroostook County basically, the tariff was reduced into northern Maine. That's right.

Q.36 - Okay. But at the same time the tariff was reduced, the -- a cross tariff was reduced applicable to any inter-tie?

MR. MACPHERSON: That's correct. Yes.

Q.37 - It was my recollection that Quebec was pressuring on an interprovincial basis to a trade barrier in reference to that. But if the impetus was the northern Maine connection, then so be it.

MR. MACPHERSON: Yes.

Q.38 - Now you did amend that tariff then to rectify the fact that it was as high a tariff across as it was?

MR. MACPHERSON: That's right.

Q.39 - I could say -- and this is closing the barn door well after the cow is out -- but that probably should have come before the Board. But I suppose it deals with export, doesn't it?

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MR. MACPHERSON: Yes, it does.

Q.40 - We have no jurisdiction.

MR. MACPHERSON: But if I may -- if I may on that regard too, in 1998 when we started to move forward, we started a process which was going to lead to greater competition in New Brunswick.

But we felt that within the mandate that we had as the utility, and we could do in government without legislation, we felt that we should do.

And that was why we actually filed the Open Access Tariff in January 1998, in order to more facilitate competition in the region.

Q.41 - The evidence before the Board has enumerated a number of different studies. And I will just enumerate them. One is Electricity in New Brunswick Beyond 2000 which was issued in February of 1998.

Then there is Electricity in New Brunswick and Options for its Future issued by a special task force which was co-chaired by Messrs. Hay and Savoie. And that came out in July of 1998.

There was the report of the Select Committee on Energy, Electricity Restructuring in New Brunswick. That again was issued -- it was in May of 1999.

Then in January of 2001 the government White Paper on

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energy policy was issued. And finally we had the New Brunswick Market Design Committee's choice of market model. And that was issued -- well, I don't know exactly when that was issued. But the final report came out in April of 2002. And it all culminated with the Electricity Act of 2003.

And my recollection, in reading of those documents, is that they all put forth the premise that competition was good for the electricity market in this province.

Is that a fair representation of what they did?

MR. MACPHERSON: That's a fair representation, yes. I would make one point, that we in '98 strove to open up the transmission system to competition. I think others have benefitted from it as a result of that.

And failing that we would have been till, you know, potentially April 2004 before -- if we had waited for all of the legislation and everything to be passed.

So you know, we thought at the time that it was important, particularly for some of our customers, that we try to move it ahead as quickly as we could. And that was really why we started with the open access transmission tariff.

We realized that it wasn't under the purview of this Board at the time. But we tried to tear the tariff and

particular provisions for open season along the lines that were the standard in the industry at that time.

CHAIRMAN: Good. Thank you, Mr. MacPherson. I have no further questions.

Mr. Zed?

MR. ZED: No further questions.

CHAIRMAN: Mr. MacPherson, before you step down -- this is probably the last time you will be in front of the Board as a witness.

And we -- on behalf of my fellow Commissioners and myself, I want to thank you for your participation in front of us today, but also in the past. And we appreciated your testimony then and today as well.

And we wish you well. And I'm sure it won't be complete retirement. Something will come up, I'm sure. Anyway, we do wish you well. And thank you very much, sir.

MR. MACPHERSON: Thank you very much. I have appreciated the relationship we have had with the Board and the different members over time.

And I think it has all been a very healthy one in terms of the public interest of the province. So I congratulate on that as well. Thank you.

CHAIRMAN: Thank you. Messrs. Marshall and Bishop are next

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I guess. It's my understanding, Mr. Hashey, that Panel B's slides were included in exhibit A-8, is that correct?

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

CHAIRMAN: Thank you.

MR. HASHEY: Maybe they could proceed with that. But is it appropriate, and we may have missed it, with Mr. MacPherson to ask the two witnesses if they adopt the evidence that they have given in this matter?

CHAIRMAN: I think it was.

MR. HASHEY: I'm sure that's understood in any event.

CHAIRMAN: Well you can ask it of these two. Mr. MacPherson has left already, has he?

MR. ZED: Mr. Chairman, we will not take objection.

CHAIRMAN: Thank you, Mr. Zed.

MR. HASHEY: Gentlemen, you have given evidence in this matter by way of written evidence and also I guess answers to interrogatories relating to your evidence. Do you adopt that evidence as true evidence?

MR. BISHOP: I do.

MR. MARSHALL: I do.

MR. HASHEY: Thank you. I would then ask that we might proceed with the presentation.

MR. BISHOP: Mr. Chairman, Members of the Board, ladies and

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gentlemen, I would like to begin this presentation by just pointing out and refreshing everybody's memory of the substantial interconnection that connects New Brunswick Power with its neighbouring utilities. And I think it's important to note how much dependence New Brunswick Power has had on its interconnections through being able to build larger than -- larger more efficient generators than otherwise available.

I think it's most important to note that depending on whether you are looking at out or into New Brunswick that the full capacity of these interconnections amount to between 22 and 2,400 megawatts in a system that this year has peaked at an all time high of course of over 3,300. But the point of fact is that the interconnection capability is greater than the load is in this province during very many of the months. So it is a very major part of our total business.

Just to put some numbers on this, and I refer you to the one interconnection in connection here and that is the simple -- the one 700 megawatt capacity interconnection into New England that New Brunswick benefits in the orders if you will look at the full 700 megawatt capacity from between 50 and \$80,000,000, or another way of putting it is that should New Brunswick lose a piece of the

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transmission -- firm transmission reservations, then in

fact there is potential for losses up to the numbers that are presented in this slide.

There has been an inference that the target number of potential reservations that could be open here is 188 megawatts. So taking the liberty to look at what that effect again can mean again on New Brunswick Power, and I want to point particularly at the beginning year and the end years that indicate that there is a decline obviously in year one and declines in year two.

And I will address that in this next slide which shows that in history and in fact it will continue up to 2004 and '5, this year, because of events in the year 2002 and '3, abnormal events that have referred to in previous evidence, orimulsion was not available, nuclear didn't operate well and we had a low hydro year, that the utilization of the transmission time question is shown by the blue line.

And this is a load duration curve and what it is really meant to say is that if you look at the access on the left, its capacity utilization and the access on the bottom is what percentage of time. So in a simple note, 500 megawatt capacity was attained on the tie only 20 percent of the time in 2002, 2003, and quite frankly

that's not very much different from this year and will be a little higher next year.

The real impact, and it's the impact of concern to us, is that when the Coleson Cove station is refurbished and refurbished to have a lower incremental cost, very much more of the time than now will that cost be competitive with the New England market prices. In other words, we had five cent energy to sell further. Right now we have energy that costs approximately one/half of that.

So the utilization rate on the line will be up much more and the impact through the years that we have looked at are in fact greater than what we have seen in the recent history years.

What does it mean to have reduced exports or reduced reservation -- firm transmission reservations? One thing can happen is that there is actually reduced exports from NB Power's Genco. Quite frankly there just isn't the transmission routes out.

The other thing that can happen is that you can simply have reduced benefits because if in fact we are not able to access a higher priced market, subsequently if there is transmission to a second market that in fact you will go to lower priced -- the second lowest price market. So obviously there is reduced benefits from the exports to

those markets.

And thirdly if in fact the transmission holder is enabled to negotiate with New Brunswick Power, and I think Emera supports this position, that New Brunswick will still generate approximately the same amount of energy but it will be in effect resold or brokered to the transmission holder who obviously won't do it for nothing. So that portion of that benefit will go to the third party transmission holder. Nothing will change in New Brunswick Power Generation and there will be a split of the benefits, the split going to the transmission holder that would otherwise today go to New Brunswick Power.

There has been some question and quite frankly some uncertainty about where the benefits of exports will go in the future as a result of New Brunswick divestitures into a transmission, generation and Disco company.

And what happens is that the generation company -- if I may I will call it Genco and the distribution company -- will sign a vesting contract and that vesting contract will have its price struck by subtracting the required revenue that New Brunswick Genco will require to make a target rate of return from the export benefits.

Now the export benefits are in fact today's view of what the export benefits will be. So we are going to

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strike a number in the future for what the export benefits will be and subsequently the rate that the distribution company pays will be enough to allow Genco to pay -- to make its rate of return less -- with the export costs.

So whatever is decided to day about certainty from exports will in fact affect the rate that the distribution company pays in the future.

Now the distribution company, quite frankly, has other risks but export market is not one risk. Projected export markets is not the risk.

The conclusion, loss of firm transmission reservations will result in lower export benefits. I don't think there is any evidence that points to other than that, loss of export benefits to New Brunswick Power.

And by virtue of the vesting contract, as I have just set out, those benefits or loss of benefits will flow right through to the New Brunswick taxpayers or at least to the Disco company and as this Board may see fit to the New Brunswick taxpayers.

Thank you very much.

MR. HASHEY: Mr. Chairman, I have a couple of questions that I would like to -- and they are very simple. I don't think there are any contentious -- that might -- that I might raise with this witness by way of redirect, and it

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really is things that were raised in the Emery evidence. First of all, the issue on mitigation raised. Could I ask just a couple of questions, and my friend if he doesn't agree he can obviously object.

MR. ZED: Well I may well object because we asked a number of questions with respect to mitigation in the IR's and got the response there were no strategies. So I'm not sure where Mr. Hashey is going with this.

CHAIRMAN: Well I think we should find out, Mr. Zed.

DIRECT EXAMINATION BY MR. HASHEY:

Q.1 - I don't believe that the latter -- I can't agree with that, but first of all on the mitigation issue. Mr. Bishop, when you looked at the impact, had you already mitigated in your model and if so could you just explain that a little bit?

MR. BISHOP: Yes. The numbers that I have presented in this presentation and are presented elsewhere in my evidence --

MR. ZED: Mr. Chairman, if I might, before he gives the evidence that I -- can I refer the Board to a response -- a question we asked and a response. Because, you know, I don't know what we are going to be treated to now, but we did present our case based on certain assumptions, I think those assumptions were well founded based on the responses we received to our -- to our IR's, and now I'm not sure

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what road we are going down and what evidence is going to be adduced.

CHAIRMAN: So what is your proposal, Mr. Zed?

MR. ZED: Well, you know, really if Mr. Hashey had spoken to

me and I knew what it was he was trying to get at or what the nature of the evidence was, perhaps we wouldn't have an objection with it. But just to ask a general question and turn it over to the floor to adduce I don't know what, and I would like to point Mr. Hashey to the particular IR that we responded to. And if this is something that we missed or did not ask a particular question, but I'm just at a loss to explain where -- or to understand where it is he is going in mitigation when we think we very clearly dealt with it in the IR process and got a negative response.

CHAIRMAN: With frankness, if the Board taking a break for ten minutes to give counsel the opportunity to look into this, it might save us argument and whatnot, then I think the Board will take a ten minute recess.

(Recess)

CHAIRMAN: Board Counsel tells me that a solution has been found, is that correct?

MR. HASHEY: Only time will tell. I think that there has been some serious discussion.

And Mr. Bishop is prepared

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to answer I think in a way that would satisfy my friends. And if it doesn't, of course they could ask for further clarification if necessary.

Do you remember the question by now?

MR. BISHOP: Yes, I do. Thank you.

MR. HASHEY: Thank you.

CHAIRMAN: Go ahead, Mr. Bishop.

MR. BISHOP: The question that was put to me by Mr. Hashey was whether or not the numbers that we have presented in our case in fact do have any form of mitigation. Which means that if in fact there is a loss of some part of transmission reservations, is there any way that we have modeled into our numbers the fact that energy that couldn't be directed to New England could be directed somewhere else at some other cost.

And the answer to that is yes. We have mitigated the numbers in the table that was presented in the presentation. And that is derived from a response to Interrogatory EE IR-14.

Now, however, there is a table that was asked for a detailed breakdown of the effect of loss of the 188 in place, so to speak, that was asked by PUB and is referred to as PUB IR-1 Supplemental.

CHAIRMAN: Yes. Could you first of all the EE I-1 -- I'm

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going to do it again, you know, EIEIO -- but what volume is that, what exhibit number?

MR. BISHOP: Let me go back to the first one first, sir. I apologize. EE IR-14 is found in exhibit A-6. Okay. And on page 55 you will find IR-14.

And the numbers here which are the U.S. export margin reductions are in fact numbers that include mitigation techniques in the modelings that we have done.

So it's assumed that energy that could not be sold on reservation portions that were lost was in fact when it is economic, I stress when it is economic, is redirected into a lower price Hydro Quebec market.

So there is a form of mitigation that has been put into these numbers already. So it's not the worst case numbers, if you will. However in table 1, and I will refer you to exhibit A-7, at page 64 --

CHAIRMAN: That is another Emera -- no, it is PUB.

MR. BISHOP: PUB Supplemental IR-1. All of the quantities, price, revenue and all of the other elements of this table are strict elements relating to the amount of energy that would be lost if 188 megawatts of capacity was not available to New Brunswick Power.

So in other words, by doing the multiplication and determining the revenue less the transmission costs and

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the fuel costs, this would result in the calculation of an unmitigated number for the loss of 188 megawatts.

I think as proceedings go on, it will become apparent of the significance of those differences here. One of the significant is that Emera, in showing how some of the impact could be mitigated, has in fact started with unmitigated numbers, so that now we have a set of numbers that New Brunswick Power has shown, and the technique is mitigated -- or its mitigation technique shows the numbers that have shown up in the other tables.

Emera in its evidence have taken this unmitigated number and used its own mitigation techniques. So we have one New Brunswick mitigation technique and a couple at least of Emera techniques here that all respond to a set of numbers.

And again the point here again that we make is that I don't think there has been any double counting or double mitigation in any of the evidence that has been put forth, in other words. I guess that's the point I want to make.

MR. HASHEY: Thank you, Mr. Chairman. That would end my questions for Mr. Bishop.

And you can proceed with cross if it suits you.

CHAIRMAN: Okay. And you have none of Mr. Marshall?

MR. HASHEY: I beg your pardon?

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CHAIRMAN: And you have none of Mr. Marshall?

MR. HASHEY: Oh, no, I don't. Thank you.

CHAIRMAN: Okay. Thank you. Mr. Zed?

MR. MACNUTT: This is cross of this panel, Mr. Chairman, would you not start with the Attorney General?

CHAIRMAN: Mr. MacNutt, will you pull that mic' in?

MR. MACNUTT: In view of the fact that this is cross of Panel B, would you not start with the first -- Attorney General as being the first intervenor on the list, and Mr. Zed the last?

CHAIRMAN: I think we wanted Mr. Zed to go first because his examination -- it may or may not be -- but the anticipation is it would be more thorough. And then when we come down the line for the other intervenors, why they only need to touch upon areas that Mr. Zed hasn't touched on, Mr. MacNutt.

Am I correct there? Or am I mixed up again?

MR. MACNUTT: Thank you for clarifying that, Mr. Chairman.

CHAIRMAN: Okay.

MR. ZED: Thank you, sir.

CROSS EXAMINATION BY MR. ZED:

Q.2 - Let's begin at the end. And dealing first with the issue of litigation. I understand your testimony to be then that some of the numbers you have circulated do not

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include any allowance for mitigation whereas others include an allowance for mitigation?

MR. BISHOP: That is correct. Where that raw number was laid out in response to the Public Utilities Board, there is no mitigation.

Q.3 - So if I could refer you then to exhibit A-7, page 3, Supplemental IR-2. If you just take a moment and read the question under A?

MR. MACNUTT: Would you repeat that reference again?

MR. ZED: Certainly. It is exhibit A-7, page 3 in the Emera Energy Supplemental IR's.

MR. BISHOP: Yes. I have your question.

Q.4 - Now the question, sir, I suggest to you, asks directly if NB Power conducted any studies or identified any alternative strategies that could protect New Brunswick customers from adverse rate impacts, other than to preserve NB Power's current reservations?

And the answer goes on to say no. And if I may read the last sentence, it said "Genco will have the actual export margin risk going forward. And it would look to Canadian markets to mitigate risk if it loses the transmission reservations."

MR. BISHOP: That is correct.

Q.5 - And how do you explain then, sir, that you are now

before this Board telling us that in fact some of your numbers do include mitigation techniques?

MR. BISHOP: Well, the mitigation technique that's involved here is in fact a Canadian market that it would look to to mitigate the risk, as I note in the last sentence of that article.

Our mitigation technique very specifically was energy that could not be delivered into the New England market would, when it is economic, be delivered into the Hydro Quebec market and other Canadian market up to a level of 300 megawatts.

Q.6 - But the last time I looked, Quebec was a Canadian market?

MR. BISHOP: And this says "Genco will have the actual margin risk going forward. And it would look to Canadian markets to mitigate risk."

Q.7 - And don't you think it is a fair inference from the question and answer that that would be prospective?

MR. BISHOP: Prospective?

Q.8 - In other words, the natural inference from that answer is that you had not looked at the market?

I mean, if you go -- I don't want to belabor the point. But if you look at sub (b) it said "If the answer to (a) is yes, please provide copies of all studies or

details of all alternatives examined."

And we got a reference to part (a). So in other words, we read this to mean that you had not explored mitigation strategies.

MR. BISHOP: I think there -- I think there is a genuine misunderstanding between us in this case. There is no question that I was taking a different reference point.

We had already built in the mitigation in our model. And we just have not looked at any other mitigation techniques.

Q.9 - Thank you, sir. Now a further question on mitigation. Then I can assume that the numbers do not in any way, shape or form reflect any other mitigation strategies, whether suggested by Emera Energy or otherwise.

Is that a fair assumption?

MR. BISHOP: That is a fair assumption. And that is correct.

Q.10 - And can I assume that if the mitigation strategies suggested by Emera were able to be fully utilized, that perhaps those losses would be significantly smaller?

MR. BISHOP: If the mitigation techniques would play out as Emera has suggested, the losses could be the numbers that are in fact shown in your evidence.

Q.11 - Thank you, sir. If I could ask you, sir, to turn to a

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copy of your annual report which was marked as an exhibit.

I'm sorry. I don't have the exhibit number in front of me, Mr. Chairman. A-5.

MR. BISHOP: I have the exhibit. Could you reference which page?

Q.12 - Let's start at page 53, please. I'm looking at the income statement summary at the top?

MR. BISHOP: I have it.

Q.13 - And, sir, these will be very easy questions. Just for the record between 1998 fiscal year and the 2002/3 -- 2003 fiscal year the inprovince revenue varied between 872 million in 1998 and '99 to \$993 million in the last fiscal year reported?

MR. BISHOP: That is correct.

Q.14 - And the out of province revenue went from a low in 2002 and '3 of 227 million and fluctuated between there and 359 million in the period in question?

MR. BISHOP: That is correct.

Q.15 - And miscellaneous expenses fluctuated between 29' and \$53 million in the year in question?

MR. BISHOP: That is miscellaneous revenue, sir.

Q.16 - Sorry. Revenue.

MR. BISHOP: And on that basis I agree, yes.

Q.17 - Your fuel and purchases fluctuated between 377' and 527

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million?

MR. BISHOP: That's correct.

Q.18 - And your operations maintenance and administration, between 279 million and 364 million?

MR. BISHOP: Yes.

Q.19 - Your finance charges between 243' and 375 million?

MR. BISHOP: That is correct.

Q.20 - Thank you. Sir, can you tell the Board when Coleson Cove was built?

MR. BISHOP: When Coleson Cove was built?

Q.21 - Yes. Just roughly.

MR. BISHOP: The first unit was commissioned in 1976, in the fall of 1976.

Q.22 - And when did the planning start for that? Sometime prior to that?

MR. BISHOP: Planning started approximately 1971 or '72.

Q.23 - And Lepreau, when was that built?

MR. BISHOP: In 1983 it was completed. Planning began for that earlier.

Q.24 - Now if I look at your evidence which is in A-2, beginning on page 6, I just refer you to the first couple of lines at the top of the page. And I am particularly interested with the phrase --

CHAIRMAN: Hang on, Mr. Zed. We are slow. Just a sec. All

right. We have Mr. Bishop's testimony. What page, Mr. Zed?

MR. ZED: Page 6. The first two sentences at the top of the page.

MR. BISHOP: I have it.

Q.25 - The evidence that you give, and it's consistent with evidence repeated elsewhere, is that you bid aggressively for a long-term firm reservation?

MR. BISHOP: That's correct.

Q.26 - And can I assume you bid aggressively -- were there any other bidders?

MR. BISHOP: No, there were not as it turns out.

Q.27 - And what do you mean by bid aggressively?

MR. BISHOP: It means we submitted -- we at that time the customer service arm with which whom generation marketing -- or with whom marketing resided, submitted a bid to the transmission business unit that was posted on OASIS for transmission up to 200 megawatts that was open for access -- was open access to any transmission customer.

Q.28 - So it was important then -- whether we characterize this as aggressively or otherwise, it was important for you to secure this capacity?

MR. BISHOP: Yes, it was.

Q.29 - And is it important for you now to secure this capacity?

MR. BISHOP: Yes, it is.

Q.30 - And can we assume you will be bidding for this capacity should it come on the market?

MR. BISHOP: Yes, I believe you can, subject to --

Q.31 - And why then, sir, do you expect us to assume you will not be successful in obtaining any of it?

MR. BISHOP: I can only speculate on what anybody else may choose to bid. It seems to me that competing parties well know the numbers that are out here and of value to NB Power, and subsequently certainly with their own investment, their own strategy, whether it's Hydro Quebec or Emera or even some third party, I can only speculate that they may choose to bid longer.

Q.32 - I will ask you this question. Isn't it reasonable to assume that you will secure a significant portion of whatever is put on the market if you choose to bid aggressively?

MR. BISHOP: I don't know that that's the case. Hydro Quebec has proven to be a wild card in some other instances. I just can't speculate that.

Q.33 - Well have you seen Hydro Quebec at these proceedings or at the predecessor proceedings?

MR. BISHOP: No, I have not.

Q.34 - I would ask you on the same page to look at line 5 where it says, and I quote, "Our dealings under the tariff have all been conducted at arms length from the transmission business unit."

MR. BISHOP: I'm sorry. Repeat the question.

Q.35 - I would ask you to look at the same page --

MR. BISHOP: Yes.

Q.36 - -- beginning at line 5 --

MR. BISHOP: Yes.

Q.37 - -- where it says, and I'm quoting, "Our dealings under the tariff have all been conducted at arms length from the transmission business unit."

MR. BISHOP: Yes, I see that.

Q.38 - When did you adopt a code of conduct?

MR. BISHOP: The code of conduct was adopted in 2000.

Q.39 - When was the last option? 1998 I would suggest?

MR. BISHOP: That is correct, yes.

Q.40 - So then is your statement true for the period 1998 to 2000?

MR. BISHOP: Yes, I believe it is.

Q.41 - Yes. And you did not have a code of conduct at that time?

MR. BISHOP: No. Even though we did not have a code of

conduct there was still arms length transactions between the business units. We did tighten up the process with the code of conduct, at least formalized it probably better stated. Nevertheless when those bids were made and all of the transactions that occurred between the transmission business unit and the generation business unit were posted on the OASIS and totally transparent.

Q.42 - Sir, was there any regulatory regime in effect at that time? Could you -- was that tariff approved by the Public Utilities Board? Was the code of conduct approved by the Public Utilities Board or indeed any other regulator?

MR. BISHOP: If I may answer the last two questions, if there was a code of conduct or tariff approved, the answer to that is no.

MR. ZED: Thank you. Would you please turn to the next page of your evidence, page 7?

No, I apologize. I think I have already dealt with those issues that I was going to raise there. If you will just bear with me for a second. Nothing further at this time. Thank you.

CHAIRMAN: Thank you, Mr. Zed. Does the agent for the Attorney General have any questions of this panel?

MR. ANDERSON: Yes. Thank you, Mr. Chairman. Before commencing, Mr. Chairman, I understood from earlier processes before this Board that the White Paper, New

Brunswick energy policy was a part of the evidence in those proceedings. And that it would be considered among other documents to be part of this process. If I am incorrect, obviously I stand to be corrected.

I have produced a portion of the White Paper and circulated I hope to the participants here and left copies with the Board Secretary, those portions of the White Paper to which I would intend to make reference in my cross. Is that acceptable?

CHAIRMAN: My understanding is that it's Emera who has referred to all of those in its evidence. Am I correct there? I read off a whole list of them.

MR. ZED: Yes, you are correct.

CHAIRMAN: And you are not planning on introducing them as evidence?

MR. ZED: Not unless requested to do so.

CHAIRMAN: No. Okay. Fine. So what you propose to do, Mr. Anderson, as far as I am concerned, is fine, straight ahead. Shall we mark that portion of the -- what was it, the White Paper?

MR. ANDERSON: Yes. The White Paper.

CHAIRMAN: Yes. The White Paper. Just if we mark that portion and go from there. Just a sec'.

MR. ANDERSON: Thank you.

CHAIRMAN: And am I correct in characterizing this as the White Paper from its beginning up to and including page 19?

MR. ANDERSON: Yes, Mr. Chairman.

CHAIRMAN: That will be given exhibit AG for Attorney General 1. Go ahead, Mr. Anderson.

CROSS EXAMINATION BY MR. ANDERSON:

Q.43 - Mr. Marshall, I understood you had a role with respect to many of the documents which have been referred to both in the submission by Emera and reviewed by the Chairman a few moments -- or before the last break, am I correct?

MR. MARSHALL: Yes. I was involved in all of them.

Q.44 - Specifically the White Paper, what role did you play in the development of the White Paper?

MR. MARSHALL: I was a member of the Energy Policy Committee of the government that wrote it.

Q.45 - And could you confirm the status of the White Paper? Did the -- what the government do with the White Paper, did they adopt the White Paper recommendations?

MR. MARSHALL: They adopted the White Paper as energy policy of the government of New Brunswick.

Q.46 - Thank you. Mr. Bishop, I understand that to the -- hoping not to be repetitive, but the
New Brunswick Power Corporation built its business plan in the past in large

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measure based upon its access to export markets to the United States, am I correct?

MR. BISHOP: That is correct.

Q.47 - And though what we are talking about is essentially a northeastern New England portion of the United States?

MR. BISHOP: That is correct as well.

Q.48 - And obviously at issue here and debate is the amount of profits made by export sales to the United States on that business plan?

MR. BISHOP: Yes, that's right.

Q.49 - Sorry, go ahead.

MR. BISHOP: That's correct. It's not only the amount of profits made, but it's the certainty with which New Brunswick feels that it continued to make those profits.

Q.50 - And one of the reasons New Brunswick was able to profit was because it could build larger energy production facilities and could take advantage of economies of scale to sell into a relatively large market in the United States?

MR. BISHOP: That has been the business plan. That's correct.

Q.51 - Is that contrasting with Nova Scotia, for example, were they able to do that same thing?

MR. BISHOP: They have chosen not to do that, that's

correct, in my opinion.

Q.52 - And you said it, but I want to be clear, it was not simply that a large market existed into which you could sell your product. What was necessary is that you had a short access to that market?

MR. BISHOP: That's correct. That's -- that's the assured access or reasonably assured access allowed us to have some confidence in making those past generation investment decisions.

Q.53 - And the transmission capacity at issue is essentially -- is it the MEPCO line is a fair representation?

MR. BISHOP: That is correct.

Q.54 - And that is the MEPCO line, it's a one way street going south, is that correct?

MR. BISHOP: For all intents and purposes that's correct. There are technical limitations on the amount of energy that can actually flow from that New England market up the MEPCO tie into New Brunswick.

Q.55 - And perhaps later, but there -- and reference has been made by others, and you as well I believe, to additional transmission capacity going to the northeast United States, about a 300 megawatt line south and I think a higher -- 400 megawatt line coming back north, isn't it?

MR. MARSHALL: I think the reference is to the second

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transmission line at the expansion of the -- building a new line from Point Lepreau to Orington, Maine, would increase the transfer south by 300 megawatts and increase the firm transfer north by 400 megawatts.

Q.56 - Thank you, Mr. Marshall. Is there another witness who can better address questions with respect to that? Would that be Mr. Scott, perhaps?

MR. MARSHALL: If you want to talk generally about the benefits of that line, I can address those. Mr. Scott is the project manager on that -- or dealing -- deals directly with the project manager and can give more specific answers as to the current status of the project exactly at this point in time.

Q.57 - Thank you. But the premise in any event of both the MEPCO line and the new line is to have a greater interconnection between New Brunswick and northeast United States, is that correct?

MR. BISHOP: That's absolutely correct, yes.

MR. MARSHALL: That's correct. And that's consistent with the direction of the White Paper to pursue transmission expansion to other markets.

Q.58 - And although the White Paper I think on -- I think it was page 14 talked about export benefits, profits of about 10 percent -- excuse me -- I refer you to page 14 of the

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White Paper, the second paragraph from the bottom, simply the last sentence of that paragraph. And I will read it for the record.

"Without these out of province sales, New Brunswick's electricity prices would be approximately 10 percent higher."

MR. MARSHALL: That's correct.

Q.59 - That's what the White Paper Committee felt. Now there would be a considerable debate here with respect to the quantum of those -- of the benefit?

MR. MARSHALL: Well, there may be. We have testified before this Board before that the total exports out of the New Brunswick constitute a 10 to 15 percent impact on rates. And I believe we explained that in the last hearing that the contribution to margin is about \$150 million. And the rate base is about a billion dollars. So that 150 over a billion is about a 15 percent rate impact.

Q.60 - I think the Market Design Committee came up with a figure closer to the 15 percent, not the 10 percent. Okay. Now the notion -- and the White Paper, Mr. Marshall, the White Paper dealt with on page 14, the heading, "Wholesale Competition and Moving Toward Wholesale Competition". And it indicated that there are two major implications of this.

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The first, as I understand it, is in moving to wholesale competition -- yes, in moving to wholesale competition, one aspect of this is preserving access by New Brunswick to the northeastern markets.

I am looking at the bottom of page 14 that final paragraph. "New Brunswick's access to the northeast markets has been limited since the crown utility does not provide wholesale access."

Is it -- am I clear -- is my understanding that one of the reasons for having wholesale access, at least from the White Paper's perspective, is to solidify and preserve access by New Brunswick to these northeast markets?

MR. MARSHALL: Yes, that was one of the -- one of the reasons outlined in the White Paper. They go on to say on page 15, and specifically reference the reciprocity issue of FERC in their Order 888.

And that without that the province would be limited to just making sales at the border as they have in the past and currently do. The situation is that until we get to April 1st and there is legitimate wholesale access in New Brunswick, NB Power Generation or any affiliate would not be eligible for a FERC marketing licence.

Q.61 - Now the White Paper also embraced the necessity to have -- to open up the wholesale market in New Brunswick. But

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do I understand that it recognized that opening up New Brunswick alone wasn't sufficient. We didn't have a big enough market. We had to look at interconnections with other areas?

MR. MARSHALL: That's correct. Actually I think there is another section of the White Paper deals specifically with that. Over on page 17 on interconnections. The first line there, clearly it says, "One of the most significant conditions of achieving a competitive market is the enhancement of New Brunswick's interconnections with adjacent markets."

Q.62 - There are two basic adjacent markets. I mean we can go east and west. We can have enhanced interconnection with Nova Scotia, for example, or Quebec. Or we could go north south to New England, is that correct?

MR. MARSHALL: That's correct.

Q.63 - And indeed on page 17, when you talk about the first sentence of the major paragraph under that heading, it goes on the second paragraph and it talks about enhancing interconnections and creates a possibility or discusses a possibility of an RTO. What's an RTO?

MR. MARSHALL: It's a Regional Transmission Organization.

Q.64 - And would that anticipate a Regional Organization with Nova Scotia, P.E.I., Quebec, that area?

MR. MARSHALL: At that point in time, yes and/or no. The Regional -- it was open. The question is -- it still is an open question.

At that point in time FERC Order 2000 was just coming out. The direction for much larger Regional Transmission Organizations was in -- was in process. And the position of the New Brunswick government through the White Paper was that they would direct the crown utility to pursue activities to develop a Regional Transmission Organization, participate in one, in order to enhance overall transmission access throughout the entire marketplace.

It was not specifically gauged to be the Maritime area. At the time the real thought was that the only real viable marketplace is really the entire northeast marketplace. And so it was to develop an RTO that could be part of the this entire northeast marketplace for an efficient electricity market. So it was directing us to move in that direction to pursue that opportunity.

Q.65 - Thank you. Now the -- indeed the White Paper on that same page, 17, says that if we don't have an RTO -- I am sorry, I am going to read the sentence. It's the second sentence of the last paragraph. "If such an RTO were not established, the New Brunswick power market would need to

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be integrated more closely with the northeast power market." My question to you is have we created an RTO, or are we moving into a more integrated market with the northeast?

MR. MARSHALL: At this point in time, we haven't done either. We did have discussions and tried to develop at the time, it was called an East Coast RTO. And that was really focusing mainly on the Maritimes. But some of the utilities in Maine as well. And Hydro Quebec were involved in the discussions. And then withdrew from them. So it essentially was a Maritime and part of Maine process.

I think what this statement is talking about is that if you don't get that RTO, and you can't get cooperation from the other Maritime provinces in order to take that type of an RTO forward, then New Brunswick unilaterally should pursue some type of integration directly with New England to be part of the northeast. I think that's what the statement is saying.

Q.66 - And that's fine.

MR. MARSHALL: And that is -- that is still the policy of New Brunswick. And that if we are concerned about that, because we believe we have to be part of a larger market in order to make an efficient operating market.

Q.67 - And so the MEPCO line and certainly the new anticipated line with 300 megawatts south and 400 north all point to integration with the northeast United States market?

MR. MARSHALL: Yes. Well construction of that line will allow the New Brunswick market to be more closely integrated with New England. Without that line, as Mr. Bishop said, is very limited to bring power north from New England into the Maritimes and into New Brunswick. So that we are really have a bi-directional connection to New England at this point in time. A uni-directional -- excuse me, yes, thank you, Mr. Bishop. A uni-directional connection to New England.

And as we exhibited through the last few weeks in January with the really cold weather, there were times we stretched that line to the limit by able to bring back 100 megawatts or so. And we would like to be able to bring back more on occasion.

CHAIRMAN: This is becoming, what do we call it, familiar cross or friendly cross. So I will ask you -- and believe me, the Board is aware of Mr. Marshall's capabilities and you don't have to put words in his mouth at all. So just try and ask your questions as if it were direct, if you are able to do that, sir.

MR. ANDERSON: Yes. Thank you, Mr. Chairman.

Q.68 - What steps to date have been taken to integrate with the Nova Scotia market?

MR. MARSHALL: The Nova Scotia market is not open yet. There has been a process in Nova Scotia through the electricity market governance committee and recommendations have gone to the Nova Scotia government. They have yet to act on them and to state a policy as yet as to whether or not there will or will not be a market and what characteristics it will have.

The -- we believe that there will be wholesale access in Nova Scotia as a minimum starting next January 1st. We are aware that Nova Scotia Power are working on a transmission tariff, have had a couple of technical conferences on that and I believe it's their intention to file that tariff with the utility review board in Nova Scotia within the next month or so.

So they are targeting wholesale access by January 1st next year, but they are doing that as speculation that the government of Nova Scotia will in actual fact alter legislation in order to put that in place.

So we are having discussions with Nova Scotia as to how they may -- whether they want to run that completely on their own or whether it may merge with New Brunswick.

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So there are some informal discussions to look at how these markets might possibly develop over time. But at that point this -- right now it's an informal discussion.

Q.69 - Then unilaterally what has New Brunswick done or intended to do with respect to opening the wholesale market in New Brunswick or into New Brunswick?

MR. MARSHALL: Well New Brunswick has passed the Electricity Act. It has announced that the Act is to be proclaimed for April 1st and there will be a wholesale operating market for not just wholesale municipal but also for large industrial customers starting on April 1st of this year.

Q.70 - Mr. Bishop, I want to ask you several questions with respect to the existing MEPCO line and the potential for additional power generation if other persons were to have access to the line. If you went through a bidding process and other persons, Emera for example, were to obtain a successful bid, can you provide any view as to whether that would encourage generation of electric power, new investment in New Brunswick?

MR. BISHOP: My opinion is that if -- my opinion first off is that probably the three bidders would be Emera, Nova -- Emera or Nova Scotia Power, Hydro Quebec and NB Power. We have already stated that the interconnects are important and we were quite candid in noting that should we have to

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bid on that again we will bid for it with the importance indicated.

And I think it's important to note that if in fact the transmission firm reservations are put out to open bid again that there is enough importance even by ourselves that all or substantially all of that transmission will be taken up rather quickly.

So that it really suggests that there is still -- if it is open access that is important to generators to locate in New Brunswick, and I submit that the New Brunswick market should be what is important to generators in New Brunswick where there is a regulated rate of return or more certainty.

I submit that whether there is one transmission holder or whether there is two transmission holders doesn't give a generator much leverage to negotiate better arrangements.

The short answer is no, I think it doesn't give any further competitive advantage to new generation in New Brunswick.

Q.71 - Can you make any comment with respect to the construction of the additional 300 megawatts capacity?

MR. BISHOP: Well certainly that's quite another item, that there is not generation constructed in New Brunswick that

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might utilize that additional transmission certainly not with the importance that we have projected for the existing transmission, and there certainly is an area if in fact Generator New Brunswick feels that a source of its revenue must come from outside, then in fact it does open additional gateways that it's enable to market energy.

MR. ANDERSON: Thank you, Mr. Chairman. I have no more questions.

CHAIRMAN: Pardon?

MR. ANDERSON: I'm simply saying I have no more questions. Thank you.

CHAIRMAN: Are those all your questions, Mr. Anderson?

MR. ANDERSON: I'm sorry. I thought the Chair had heard. Yes, I have no more questions. Thank you.

CHAIRMAN: Thank you. Mr. McCarthy, does JDI have any questions?

MR. MCCARTHY: JD Irving has no questions, Mr. Chairman. Thank you.

CHAIRMAN: Thank you. Mr. Gorman?

CROSS EXAMINATION BY MR. GORMAN:

Q.72 - Thank you, Mr. Chairman. Good afternoon, Mr. Bishop and Mr. Marshall. I have a number of questions and I guess the first area that I would like to canvass is the impact on ratepayers, in order to perhaps get a better

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understanding of your view of perhaps the worst case financial impact on customers.

Could you explain the possible financial impact on customers if NB Power loses the export capacity that is in question? Mr. Marshall, I guess maybe I would address that to you, or it doesn't matter, whatever member of the Panel feels they could best answer that.

MR. BISHOP: Well, I will take the question. The evidence that we have submitted indicates that there is an impact to NB Power, let's start there, and for the 188 megawatt numbers, those numbers are in the 17', 18', \$20 million. And those numbers remember are numbers that are dependent on how well we see the future. They are dependent on many things, fuel prices, generation availability, export market prices and all the rest of the things that go into our models.

So there is an impact to NB Power. Now how does that impact -- where does that impact finally land? As I pointed out earlier and in evidence the vesting contract is a contract between the generation corporation and the distribution corporation recognizing that the generation corporation is directed to have a rate of return, a target rate of return. And as I pointed out in the presentation that the sources of revenue are two, from the distribution

group and from the export margin.

So that there is a base today for the distribution revenue flow to Genco there is a projected number, and it changes year by year, but from where we see today we can tell each year what the projected number of exports is.

So the way that the distribution rate is set is that we quite frankly take the required revenue or the required rate of return, less the export projections, and require that to be the rate that will flow from Disco to Genco.

Now quite frankly that rate as I pointed out does get adjusted if fuel prices go up or down for the inprovince portion, but Genco takes the total risk of anything that happens vis-a-vis a target number that is set out for export markets.

So the base case has a base impact on the distribution rate that is paid to Genco.

Now if in fact the export projections today as we see them go down, then in fact the charge to distribution will be increased. And of course it is up to this Board if it's a requirement of Disco to pass that through to the customers with rate increases of course this Board will rule on that in the future. But it certainly does have the potential of passing through rate increases to New Brunswick Disco's customers.

MR. MARSHALL: I would like to add to that. In terms of the regulation of this Board, I think the Board is well aware but for everyone else to understand, the current legislation and in the new Electricity Act Disco will have to come to this Board to regulate its electricity rates. But dare I say rate cap again, Mr. Chairman? I think there is still this point that Disco can raise rates up to three percent of inflation without coming to this Board. And if you take Mr. Bishop's number of 18 to \$20 million, that's about a two percent rate increase. So if Disco can accommodate that increase within its legislated capability it wouldn't have come to this Board and be subject to this Board's approval, but it still would increase rates by that amount.

CHAIRMAN: Mr. Gorman, can I interrupt? I have a question. The vesting contract between Genco and Disco, that contract is approved by the Minister, is it not?

MR. BISHOP: Yes, it is.

CHAIRMAN: So it is not Genco that necessarily sets the price?

MR. BISHOP: I think that's correct. However, in discussions with the Minister, with the government, in fact the philosophy that I have stated is in fact a philosophy that is essentially agreed upon for -- and

agreed by the Minister for the determination of the vesting contract parameters.

CHAIRMAN: Okay. There is no argument here. It has been one of the concerns that this Board has had ever since the Electricity Act was brought into being is that there is no guarantee that in fact if there is a profit that flows from export sales that they in fact are guaranteed to flow through to Disco's customers because of the nature of that vesting contract, and this Board can't go behind that.

MR. BISHOP: Just to clarify, Mr. Chairman. If in fact in the future the export benefits exceed that which is laid -- that which was projected to be now, in our view of the future those benefits in fact will and may stay with Genco as well as if in fact those benefits in the future are less than what we project today, then Generation takes the full risk of loss of that.

What I'm trying to provide here is an explanation that says that the roadmap is set on exports today based on a projection of exports. In other words if the total revenue of NB Genco is \$500 million and the export benefits if you will are projected to be 100 for every day for every year from now on, then the requirement from Disco would be 400. If Genco's exports actually fall to 50, Disco still pays 400 and Genco bears that risk.

CHAIRMAN: Okay. Thank you. I -- we are not privy to that vesting contract and I don't think will be in the future, but you gentlemen -- some of you are, I know that. So --

MR. BISHOP: I will just clarify that that contract in fact is not finalized. So what I am providing in testimony here today is simply my understanding and to the point of where that contract is at the moment.

CHAIRMAN: Thank you, Mr. Bishop. And excuse me, Mr. Gorman. Go ahead, sir.

MR. GORMAN: Thank you. My understanding then from your response with respect to the financial impact with the example that was given by Mr. Marshall is that for example it could be somewhere in the range of a two percent impact on customers, is that essentially what you were saying?

MR. BISHOP: Following through the logic that I have just presented that's correct. The impact that we have shown is roughly 18' to \$20 million for the, if I may quote, the 188 megawatts that is in play. So that translates roughly through to \$20 million in a billion dollar revenue, or two percent.

Q.73 - Will this impact -- is it a transitional impact or a permanent one? And if it is a transitional one, how can the impact be reduced to ensure that negative public reaction in the initial phases of electricity

restructuring does not prevent progress towards the longer term phases?

MR. BISHOP: I'm really going to have to ask you to repeat the question please. I'm sorry.

Q.74 - Well, perhaps I could break it down into two parts. Is this -- the impact that we are talking about, is it a transitional impact or a permanent one?

MR. BISHOP: As long as there is inability to have firm transmission reservations, it is a permanent one.

Q.75 - Thank you. I want to talk about the impact on reliability. And I would ask if you could advise me as to would the loss of the MEPCO tie affect system reliability?

MR. BISHOP: If you are talking about the loss of firm transmission reservations on the MEPCO tie?

Q.76 - Yes.

MR. BISHOP: The loss of firm transmission reservations on the MEPCO tie quite frankly are more economic than they are reliability. We have shown that the impact of the lost energy sales is one number.

Another number that is difficult to quantify, and it keeps changing as the New England market rules change, is the fact that we have been able to use sales on the MEPCO tie to actually reduce -- I'm going to say it another way -- to actually lessen the amount of reserves that we

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must carry on the New Brunswick system.

Now the further that you cut into the existing reservations, of course the more probability is that you can't use that portion of the tie for reservations. That's a number that's difficult to quantify again because of changing rules in the New England system.

MR. MARSHALL: But in specific answer to your question, will the loss of the reservations affect the reliability of supply in New Brunswick, the answer is no.

Q.77 - Perhaps -- and I'm not sure if you have already answered this. Could you explain the sort of wealth transfer that would occur if NB Power did lose the 188 megawatts to another bidder at 18,000,000 a year?

MR. BISHOP: There is one -- there is a couple of ways that this may occur. Nova Scotia has submitted evidence that indicates that NB Power, as one alternative mitigation strategy, would be to sell energy to Nova Scotia that it otherwise could sell with surety were it to retain the transmission reservations on the MEPCO tie.

And in that event what would happen is that New Brunswick could sell energy to Nova Scotia. And if you use the Nova Scotia numbers -- and perhaps the way to answer this, if I could refer you to -- excuse me a moment -- it is exhibit EE1-1. If I use the numbers, I hope that

I can make this a little more clear.

MR. MACNUTT: Perhaps we could have clarification of that reference.

MR. MARSHALL: EEI-1.

MR. BISHOP: I'm sorry. EEI-1. Page 17.

MR. SOLLOWS: This is Emera's evidence?

MR. BISHOP: This is Emera's evidence. That's correct. Yes.

I will start with -- on page 17 with the table that begins table 3. And just to clarify and set the stage for how I will present this is that Emera has presented a strategy that says if NB Power Generation is unable to deliver through the 188-megawatt in play portion of transmission, then in fact it can sell that energy to Nova Scotia.

And what happens in that case is that if you look -- let's use the 2005-2006 year, because I can call it a terawatt hour or a thousand gigawatt hours. It's 1019. So I will round it off.

And what NB Power can in fact make in that whole transaction is a margin of \$14.1 million. It has an energy quantity, a price. So it receives a revenue. And I'm just going down each column.

And from the revenue of \$48.8 million is subtracted

the fuel cost of 28.7, the transmission losses that it avoids of .9 and 5.1 for the transmission charges, because it no longer incurs those charges. It doesn't have that firm transmission reservation. Or I'm sorry, it has that. It is a cost. So that there is a margin of \$14.1 million.

Nova Scotia suggests that -- or I'm sorry. These are numbers for Nova Scotia's price. It's \$48 million if I sold it into Nova Scotia.

In the previous page, page 16, NB Power has actually noted that it has a margin of -- maybe back one more further than that. I'm sorry. 18.6. Okay. Let me be more simple. May I take you back to page 17 again? I'm sorry.

In table 4 the forecasted net margin associated with the 188-megawatt in play in 2005-2006 is \$18.6 million. That is what New Brunswick Power had projected.

Nova Scotia says if in fact -- and this is in table 3 just above it -- if in fact you sell to Nova Scotia, there the margin would be 14.1. But Nova Scotia furthermore in -- or Emera furthermore says in note 23, at the very bottom of that page, that they would only pay New Brunswick Power 75 percent of that volume.

And that's quite so. If in fact the market bore that kind of competition, they are going to keep 25 percent of

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the value. So that's \$3 1/2 million that New Brunswick Power has lost.

Now Nova Scotia, to do that, would back down its generation and make that saving. The fact of the matter is what Nova Scotia would do is in fact they would not back that generation down, but in fact they would actually ask New Brunswick Power to redirect that energy into the New England market where the price was still the \$54 price.

And in fact then Nova Scotia would make a profit on the difference between its cost, its 47, \$48 and the \$54 New England market. So \$4 1/2 dollars a megawatt-hour and a terawatt-hour is another \$4 1/2 million.

So let's just look at what happened here. Nothing changed in New Brunswick's generation at all. Nova Scotia, through the leverage of having the firm transmission, has in fact saved \$3 1/2 million, made \$4 1/2 million on its transfer of New Brunswick's energy to New England at its cost. So it has benefitted by \$8 million.

And quite frankly New Brunswick has lost the difference between 14.1 and the \$10.6 million for -- I'm sorry, the 18.6 and the 10.6 million. So the \$8 million that has gone from New Brunswick Power has gone directly

to Nova Scotia Power.

So that's one, only one of the effects of the leverage that can be had by having firm transmission with nothing else, no other efficiencies happening on the system at all. In fact it simply provides a windfall to Nova Scotia if that were the case, at New Brunswick Power's expense.

Q.78 - Mr. Bishop, you have referred to the tables on page 17. And I note below table 3 in the text it indicates these calculations combined with the worst case impacts presented in table 1 illustrate that the applicant should have substantial confidence, et cetera.

Do you agree that this is a characterization of worst case scenario? Do you agree with that?

MR. BISHOP: I think to the extent -- well, worst case to the extent that we all have our numbers right here, that all of the assumptions that we have made in here, that's correct.

I will say that it's worst case from the point of view that these numbers that Emera has generated are generated from a baseline loss of margin from NB Power. In other words, we don't have an impact in here for mitigation.

So there is not double mitigation. I would suggest that if all of the things -- and I agree with Emera, that if all of the assumptions are aligned and subject to

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really doing more detailed study, that the on peak prices and the availability of energy matches all of this.

I suspect this is overmitigation because it's an averaging of numbers. But at least to the extent that these numbers are presented, I agree that that method of mitigation will produce some results maybe something like this.

We certainly haven't modeled this mitigation technique in detail. Nor do we know, for example, that Nova Scotia Power will pay 75 percent of their price. If the market suggests that they would only pay 50 percent, I suspect if they are good marketers they will only pay 50 percent, if they know the leverage, which means that there is a larger impact on NB Power.

Q.79 - Sir, are all of the current in-province loads supplied with energy from NB Power?

MR. BISHOP: Yes, with small exceptions, that's correct.

Q.80 - And to sort of put into perspective the energy associated with the 188 megawatts, would that be one terawatt-hour effectively?

MR. BISHOP: I'm sorry. Would you repeat the question?

Q.81 - I want you really to put in perspective what energy would be associated with the 188-megawatt capacity?

MR. BISHOP: Yes. If I take the table 3 again, in Emera's

evidence that we have just looked at, one terawatt-hour is a fair representation.

I might add that we serve the municipals at the wholesale level. So they actually, as you well know, serve your customers. So I have probably qualified the answer to the first question.

Q.81 - So would you agree that that would be approximately the quantity of energy that might be consumed by Saint John Energy for example?

MR. BISHOP: Yes. My quick calculation would suggest that's very close, maybe a little high.

Q.82 - We think that that is fairly close. Do you see the creation of a new load in New Brunswick of that magnitude in the near future?

MR. BISHOP: Not in the time frame that I can foresee.

Q.83 - Do you foresee any possibility of marketing any surplus energy into Nova Scotia?

MR. BISHOP: We do, yes. I do see -- foresee marketing some surplus into Nova Scotia. We do sell, have historically sold 100 gigawatt-hours a year into Nova Scotia that generally is replacing Nova Scotia generation, when we have cheaper generation or when Nova Scotia has had outages.

I guess if I look at the opening of the wholesale

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market in Nova Scotia, rejected by the UARB, I don't think that there is much potential for much of that terawatt-hour into that wholesale market, unless there is some real growth.

Q.84 - Thank you. Mr. Marshall, there was some discussion here earlier about the Coleson Cove project.

And what assumptions if any would you have made relative to interconnections when you decided to go ahead with that refurbishment?

MR. MARSHALL: In the analysis of the economics of the Coleson case that this Board heard, we assumed that the transmission reservations that Genco held from 1988 and held at the time of that hearing were valid reservations and that they continued long term.

So they were assumed to be utilizing all 700 megawatts of the intertie in the modeling evaluations done for Coleson Cove.

Q.85 - And you are including the 188 megawatts that we have talked about here today?

MR. MARSHALL: Including the 188 megawatts in question, yes.

MR. GORMAN: I don't have any further questions.

CHAIRMAN: Thank you, Mr. Gorman.

I'm tempted to adjourn now. Mr. MacDougall, how many questions do you have, sir?

MR. MACDOUGALL: Mr. Chair, I will be less than 10 minutes, if that is helpful.

CHAIRMAN: I have heard that before.

MR. MACDOUGALL: I will be very short, Mr. Chair.

CHAIRMAN: Well, I know that Board Counsel want to adjourn over the evening. Because that will unquestionably shorten down his cross tomorrow.

And I'm going to suggest that we will give

Mr. Morrison and Mr. Zed further time by adjourning now.

Is it going to inconvenience you or your client if you wait till tomorrow morning,

Mr. MacDougall.

MR. MACDOUGALL: Not at all, Mr. Chair, or at your pleasure.

CHAIRMAN: All right. We will adjourn then till 9:30 tomorrow morning.

(Adjourned)

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

Reporter