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New Brunswick Board of Commissioners of Public Utilities

In the Matter of an application by NB Power dated January 8, 2002 in connection with a proposal for its Load Forecast and refurbishment of its generating facility at Point Lepreau.

Delta Hotel, Saint John, N.B.
April 30th 2002, 10:00 a.m.

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CHAIRMAN: David C. Nicholson, Q.C.

COMMISSIONERS: Robert Richardson
Ken F. Sollows
H. Brian Tingley
Jacques Dumont

BOARD COUNSEL Peter MacNutt, Q.C.

BOARD SECRETARY: Lorraine Légère

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CHAIRMAN: And now we will go over to the Point Lepreau refurbishment hearing. And Mr. Hashey is going to address the Board.

MR. HASHEY: Thank you, Mr. Chairman. Just give me a very brief moment to get out my notes here.

Mr. Chairman, an issue arose. And as you know, we are on a very fine time line. The interrogatories were only delivered to my friends yesterday morning I believe. And in fairness to these intervenors it gave them very little time to review them.

We did review them and found that there appeared to be

only one outstanding issue that might be raised. And the hearing of course was set for Thursday.

Discussions were held with Mr. Coon and also with Mr. Hyslop concerning the request and our refusal. And again it relates to a contract issue. And I hope that we have a solution for you on that today.

CHAIRMAN: Mr. Hashey, can you indicate what the nature of that issue is?

MR. HASHEY: Yes, I can.

CHAIRMAN: And have you -- sorry to interrupt. But have you spoken with the other intervenors who are present here today about it?

MR. HASHEY: Yes, I have, Mr. Chairman.

CHAIRMAN: Okay. Thank you. Sorry to interrupt.

MR. HASHEY: I think we do have a solution here.

And I should also point out that we have done a check.

And there has been no formal request for a motion day on any other issue, really on any issue. But this one has been raised during the hearing.

CHAIRMAN: Yes. Well, I -- our staff has not informed the Board either. And we are proceeding on the basis that there are no other parties who are not represented here today who might wish to have a motions day. So we won't have one if we can carry on with this.

MR. HASHEY: Thank you. The issue arose, Mr. Chairman, members of the Board, to evidence which was contained in Mr. Bill Pilkington's evidence. Question 17 the question was asked "Are fuel costs included in the costs shown in figure number 1?"

Then there was a detailed answer provided to that which indicated that there were some contracts that dealt with fuel costs.

Then as part of the interrogatories the Conservation Council of New Brunswick, interrogatory number 54, this was referenced. And a request was made by CCNB, the Conservation Council and my friend Mr. Coon, that indicates that he would request that he be supplied with longterm contracts.

It was then told to him in the answer there that the longterm contracts really don't exist for the supply of uranium concentrates and refining, fabrication of fuel bundles, related services and heavy water. And it is those contracts we will be discussing here today.

And there was -- in fairness there was mention of long term and the fact that there -- and I think we can explain that in the evidence.

However, as a result of that request and the indication that this didn't exist, there was a subsequent

interrogatory which is in the supplemental interrogatories, Conservation Council of New Brunswick number 11.

And it was requested that -- and the question was "Please provide copies of current contracts for the supply of uranium concentrates and refining, fabrication of fuel bundles, related services and heavy water."

And the answer to that was "The contracts for supply of uranium concentrate and refining have confidentiality provisions which prevent NB Power from providing these agreements. Other contracts requested here do not have specific confidentiality clauses. However, disclosure of terms of these contracts would hinder NB Power's ability to procure best prices for these services in the future."

And then "All of the pricing information of these contracts is included in the fuel prices provided in the evidence."

Now we are here again looking at the contract issue. And I don't think that you could compare this issue to the one that we dealt with earlier where you wish the Board to guarantee provisions, which was ordered as a result of the decision, which I don't think really varies anything here that we are talking about.

As a result of that I have consulted with Mr. Bishop

who was the deponent before in respect -- or in dealing with the contracts. He is the Director of Energy Marketing and Fuels with Generation Business Unit.

And we are again faced with a significant problem with respect to disclosure of information publicly that will affect the commercial ability to negotiate.

Now again I should point out that these issues are not huge issues within this whole matter. This isn't like Orimulsion contract, pretty serious, you know. I mean, it was a huge supply contract which made up a big component of costs.

These items aren't a big component of costs. As you will see in the evidence, it is 10 percent or less of just the O & M part of this. So it is not, I would suggest, a really big issue in this hearing.

On the other hand I respect the request of the Council to want to confirm that we have -- that the evidence that has been presented does correspond with whatever contractual information may be out there today.

And remember, one of these contracts, one of the big ones has been discussed. And evidence will be given as to what certainty is attached to the future with respect to it. That can happen at the hearing.

So what I would like to do is deliver an affidavit of

Mr. Bishop which indicates to you his concern over the harm, and make a proposal that we deal with this in a similar manner to which the BITOR matter was handled, with one exception. I don't see any reason to deliver a lot of contracts with a lot of blacked-out.

I mean, some of these contracts have some highly technical stuff in them. It doesn't relate to costs per se. And you know, one is 2 inches thick. And I don't think anybody wants to see that or have time to black it out.

However, I would respect and request that you do make an order similar to the last one, that Mr. Easson be given full access to these contracts, that he enter into a similar confidentiality agreement as was done in the BITOR example. We have a good precedent there.

Then I have drafted something that I have discussed with counsel, Mr. MacNutt and have delivered a copy to Mr. Easson. I'm maybe a little presumptuous, but -- so if there is any problem there.

And that he then be given access to all NB Power personnel as may be necessary for him to confirm the accuracy of the evidence, similarly file a report with this Board indicating that he has done that, and that it is either right or wrong, whichever he says I guess, as a

result of his review.

CHAIRMAN: Mr. Hashey, there are some parties in the room that I don't think were involved in the Coleson Cove hearing.

And so if you could just describe -- and you have done a pretty good job as of now -- but just describe what it is that Mr. Easson in fact does and how he reports back.

MR. HASHEY: Yes. Thank you, Mr. Chairman. I don't have the order unfortunately in front of me today as to what was done at the -- your previous order. And I think a similar one with the exception of the redacted contract part might be sensible.

But Mr. Easson would then meet with the parties who are involved with these contracts, have full explanation of what these contracts are, what they mean, and have it explained to him where the cost issues are, then be taken to the portions of evidence where these have been used and may have relevance, and have him check and confirm that.

Now I should say as far as the prices go. And I think really that is the only issue here. You know, I think the evidence will show, when the hearing takes place, and I think probably even has already, is that these are not contractual matters where there is a lot of difficulty. There is not a whole lot of demand for uranium unless

things heat up in Iraq or somewhere.

And some of these other issues as well are ones that there is a solid supply, you know, which would I think go to some of the substance of the final evidence.

But principally it is looking at the terms. He can also check the terms of the contract and confirm that the evidence that has been given on the length of the contracts, et cetera is accurate, and any other aspect that somebody may wish him to check.

But he is very familiar with the workings of this evidentiary matter as a result of his involvement in the earlier one, and is obviously a very logical person to do this work and obviously has the confidence of the Board.

CHAIRMAN: All right. I will just interrupt again, Mr. Hashey, for a second. Now I will ask Board counsel to confer with Mr. Easson if he hasn't already done so. If he has, fine. But the description that has been given by Mr. Hashey, is that an accurate one from Mr. Easson's point of view?

And the only reason I bring that up is that I do remember the last time that we did something like this, which is in reference to BITOR, is that the Board had a concern that we wanted to make certain that Mr. Easson's duties that he was to perform and how he was to discharge

them were very clear to all of the parties, okay.

So that is my concern here.

MR. MACNUTT: Yes, Mr. Chairman. I have a copy of the Coleson Cove order that was used. And we can use that as the basis for today's order.

I have reviewed the draft contract between NB Power and Mr. Easson. And it is in the same wording as the previous, the Coleson Cove one, and therefore it would be appropriate.

The only requirement would be to come up with the exact wording of what information is to be made available to Mr. Easson and what verification he is to make and that he is to report.

There are additional provisions with respect to -- any of the parties may ask supplemental questions arising out of the report. But he is not to be cross-examined on the data he has gathered on a confidential basis to verify. But he can be cross-examined on his -- examined, excuse me, on his report.

But the detailed wording we can go into here shortly, after I talk to Mr. Hashey further, with respect to the actual wording of the order.

CHAIRMAN: Good. Thank you, Mr. MacNutt.

Now Mr. Hashey, you have an affidavit that you wish to

file?

I don't have -- does the Secretary have the exhibit, next exhibit number in the Point Lepreau hearing? Or shall I just mark it and give it an exhibit number the next time we have a hearing?

MR. HASHEY: Mr. Chairman, yes, I have the affidavit. It is a short one. I apologize that I don't have a great number of copies of these.

CHAIRMAN: Why don't you -- with all respect, I will mark it. But why don't you just paraphrase it in your own words, Mr. Hashey?

MR. HASHEY: Well, I could read it. It would take me all of about two minutes or less.

CHAIRMAN: All right. Don't bother with the style or cause.

MR. HASHEY: Okay. The affidavit of Mr. Darrell W. Bishop, of 58 Derby Court, in the City of Fredericton, in the County of York and the Province of New Brunswick.

"Make oath and say that: 1. I am Director, Energy Marketing and Fuels of the Generation Business Unit of NB Power and as such have personal knowledge of the facts deposed to herein.

"2. I have read the objection to a question posed by way of Supplement Interrogatories to NB Power and concur with the response.

"3. If the information requested in this question related to nuclear fuel contracts is publicly disclosed, considerable harm would result to NB Power. In that, disclosure of fuel contract information would negatively impact NB Power's ability to procure fuel at competitive prices, thereby increasing its generation cost.

"4. The element of confidentiality is essential to the full and satisfactory maintenance of the relation between the parties to the confidence.

"5. The relation is one which ought to be sedulously fostered."

So we have come up with a good word there.

"6. The disclosure of this information would cause financial loss to NB Power and possibly gain to its competitors, and would jeopardize further negotiations leading to further agreements or contracts on fuel supply."

I could say that if we had had more time, if necessary we could provide an example where in fact NB Power did have a good deal, a better deal than others were getting, and it was disclosed not through this process and not through the right of information but through other means.

And it did cause them very significant increase in prices when they went back to negotiate.

So that really is the thrust of this. And that is the affidavit sworn today in front of me by Mr. Bishop.

CHAIRMAN: Okay, Mr. Hashey. Subject to any objections from the intervenors, why the Board will accept that and give it -- and we do in fact have the exhibit, last exhibit number. So this will be exhibit A-12 in reference to the Point Lepreau Refurbishment Hearing.

CHAIRMAN: Now you mentioned the two parties that had similar affidavits, if I remember -- excuse me, similar objections. And I will just turn to them both first and then go around the room, if there is anyone else who wishes to address the issue.

But Mr. Coon, you have been present while Mr. Hashey has addressed the Board. Could you give us your comments, sir?

MR. COON: Yes, Mr. Chairman. Our view is that in dealing with a particular price of the fuel, the approach that is being suggested is acceptable to us. But in dealing with the terms and conditions of the contracts, we would like to see those as requested, other than the price.

There are issues around simple things like termination, period of the contract, how long it lasts, when it starts and when it finished, issues around liability for defective fuel rods and fuel bundles and

implications of who pays for what and when in that eventuality, and those kinds of details.

So we would, as in the BITOR/Coleson Cove case, expect redacted contracts to be filed with references to price or anything within the contracts would allow and to infer price to be blacked-out or what have you.

With respect to the heavy water contract, it is our understanding there is only a single supplier of heavy water in Canada. So there is not a competitive issue there. So we are not clear why the heavy water contract is problematic at all.

As they point out, there is no confidentiality clause associated with it. Presumably that is because only AECL supplies heavy water to CANDU reactors.

CHAIRMAN: I'm now quite unclear as to where we stand. You are saying you want a redacted contract -- or the contracts to be filed but in redacted form as to price. How about technical detail?

MR. COON: As far as the technical detail that has no bearing on price. We like to see that.

CHAIRMAN: All right. So really you are looking for the same kind of detail as came forth in the BITOR?

MR. COON: Indeed. And in that hearing with the redacted contracts we actually were able to use them for some --

what we thought was important cross-examination.

CHAIRMAN: All right. And pardon me, the heavy water is one of -- I gather there are a number of contracts involved in this interrogatory?

MR. COON: Yes.

MR. HASHEY: Yes, there are. And one is very thick. And there are technical specifications. Obviously in the time available I saw -- just had a very quick observation of these contracts this morning, because this request just came, as far as the current contracts, you know, through this interrogatory process.

So it would be a matter, if it isn't solved this way, I would suggest that we would have to revisit this matter on Thursday.

MR. COON: Mr. Chairman, can I just ask if the technical details -- are we talking about an appendix, an appendix -- a large appendix that deals with technical details? Because if that is the case we don't want the appendix.

MR. HASHEY: Part of it is. But I couldn't -- I couldn't really say for certain on the uranium contract just what is and what isn't. But I do know that there is a large appendix that deals with technical things. And it has marked confidential. And it does come with that. And we obviously have to consult the contract -- the other

contracting parties, which we have not had time to do.

MR. COON: Mr. Chairman, we are not interested in any of the technical appendixes associated with these contracts.

CHAIRMAN: Okay. Province of New Brunswick?

MR. HYSLOP: I have instructions with respect to price, Mr. Chairman. And we agree with the issue of price being dealt with in the same manner as was done with the BITOR contract and as outlined by Mr. Hashey.

Unfortunately I do not have instructions with regard to no contract or a redacted contract. And I would ask if the matter could be resolved on Thursday or Friday when this decision is given, it might be preferable.

I would also -- and I make this only as an observation. I know there are parties not present here today that may or may not have been aware this was coming up.

And I just raise an issue, for example Mr. Gillis isn't here, whether he may have concerns or not as to what is being considered right now by the Board. I leave that with you.

CHAIRMAN: Well, with all fairness, Mr. Hyslop, on that one, Mr. Gillis chose not to be here. He knows that he has to give notice by 4:30 that he objects, et cetera. And there has been none of that.

We can't keep going around and trying to get parties who choose not to attend the proceedings to make certain that they are okay with things as they are going.

But I think I will end it right here and say obviously we have to go ahead on Thursday morning with this matter.

The Board will put out a notice first thing tomorrow morning to say that we will go ahead.

We will not be able to have translation services available at that time. But I have -- the Board Secretary has spoken with the party that is addressing the Board in the French language and that was acceptable to him.

So we will proceed. And it will be at 10:00 a.m. in the Board's premises. At that time we will tell you whether or not we can deliver a decision on the load forecast matter.

My suggestion is -- the parties are here in the room.

Perhaps they can get down to a more detailed discussion of what is going on and so you can come up with a compromise that is acceptable to all.

And yes, it was a good try. And I appreciate it. But we will adjourn this over until 10:00 on Thursday morning at the Board's premises.

Thank you.

(Adjourned)

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

Reporter

