

New Brunswick Board of Commissioners of Public Utilities

Hearing

In the Matter of an application by New Brunswick Power Corporation dated June 21, 2002 in connection with an Open Access Transmission Tariff

Delta Hotel, Saint John, N.B.
November 20th 2002, 9:30 a.m.

CHAIRMAN: David C. Nicholson, Q.C.

COMMISSIONERS: J. Cowan-McGuigan
Ken F. Sollows
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BOARD COUNSEL: Peter MacNutt, Q.C.

BOARD SECRETARY: Lorraine Légère

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CHAIRMAN: Good morning. Before we start with the panel, are there any preliminary matters?

MR. MORRISON: No, Mr. Chairman.

CHAIRMAN: We are back at the start of the roll call again.

Bayside Power? Yes. Do you have any questions, sir?

MR. DIMOU: No. Just that I'm here.

CHAIRMAN: Okay. And Canadian Manufacturers and Exporters?

MR. SMELLIE: Mr. Nettleton is going to examine this morning both for JDI and CME in the JDI slot.

CHAIRMAN: Great. Okay. Thank you. City of Summerside?

Well, Mr. Zed, we are back to you, sir.

MR. ZED: Thank you. All set?

CHAIRMAN: Yes. Go ahead, Mr. Zed.

CROSS EXAMINATION BY MR. ZED:

Q. - Looking at exhibit A-3, Mr. Scott, your direct evidence, in particular page 6, I think it is Question 11, lines 22 to 26. Do you have that in front of you, sir?

MR. SCOTT: Yes, I do.

Q. - And I'm reading that -- it says "Real power transmission losses will now be charged on a system average basis." And that is I understand distinct from the present system whereby point-to-point losses are charged actual losses, is that correct?

MR. SCOTT: No, that is not quite correct.

Q. - Well, maybe you could explain to me how they are charged presently?

MR. SCOTT: Presently the transmission losses are charged on a path basis. The approach that is used is that there is an estimate of the usage that is done on a month-by-month basis and of what those -- what the usage of the transmission system would be for point-to-point service.

And then based on that we do a calculation of the losses. These losses I might add are done on an incremental basis. And the reason that we did that was

because of the nature of the tariff that we implemented in 1998.

This tariff was -- as has already been said, was to meet the requirements of interprovincial trade. And one of the principles that we wanted to accomplish as a result of that was to ensure that there was no harm to in-province customers who at that time did not have the option.

So we charged losses for both exports and wheeling transactions on an incremental basis. And we tried to come up with an estimate on a month-by-month basis as to what those losses would be.

Q. - So you charged -- I'm a little bit confused. You charged the losses on a path-by-path basis?

A. That is correct.

Q. - And maybe I misunderstood the testimony of the panel yesterday. When Mr. Belcher was cross examining them I believe Mr. Snowdon responded that metering on point-to-point service was far superior to that that would be offered on network service and as a result losses could be identified much more readily from point to point?

MR. SNOWDON: That's correct.

Q. - So you say -- let's just go back to lines 22 through 26.

And I think the second sentence in that paragraph says

"The number of transactions was limited."

I take it you are talking about now. "And it was feasible and practical to consider losses on a point-to-point basis."

After April 1st -- now this presumably is testimony that relates to March 31st 2003 and backward, in other words now, right?

MR. SCOTT: Yes, it does.

Q. - Okay. Now how many more paths will there be through this province on April 1st?

MR. SCOTT: The number of paths through the province will probably not change. However there --

Q. - I'm sorry. What was that? The through and out will not change?

MR. SCOTT: The number of paths through the province would not change.

Q. - And the number of paths out of the province?

MR. SCOTT: And the number of paths out of the province would not change. However there will be a lot more customers that will have the opportunity to have service.

Q. - To have the opportunity to have service?

MR. SCOTT: Yes.

Q. - And so are you saying then that there will be such an increase in the number of customers on April 1st or

sometime in the near future that the calculations you presently do will not be able to be done?

MR. SCOTT: No, I'm not saying that at all.

Q. - So after April 1st and for the foreseeable future, the current method of assessing these losses for through and out service is still practically available as a method of charging customers?

MR. SCOTT: There --

Q. - I'm not talking about from a policy perspective, Mr. Scott. I'm talking about from a purely mechanical -- as a purely mechanical exercise, are you saying to this Board that it is impossible or nearly so to continue doing the type of calculation you are doing?

MR. SCOTT: It is not impossible to do the calculation.

However --

Q. - Thank you.

MR. SCOTT: -- in putting forward a tariff we do need to have a nondiscriminatory treatment of all customers.

Q. - And nondiscriminatory. So what you are saying is you want to treat network customers the same as through and out customers?

MR. SCOTT: Feel that we should treat all customers the same.

Q. - And the bandwidth on energy imbalances, how does that

relate to your nondiscrimination?

Are you offering the same bandwidth to network for energy imbalance to network customers as you are to point-to-point customers?

The answer is no, isn't it?

MR. SCOTT: No.

Q. - So you are treating these two classes -- and I use the term classes of customers differently. And I'm not going to debate the reasons for doing so on the bandwidth. You have given your testimony. And that is up to the Board to decide whether or not that is appropriate.

But I would suggest to you that you are treating two classes differently because they are different classes. And there is nothing discriminatory about treating different classes differently if the economics dictate.

Do you have any argument with that? I mean, otherwise how can you justify the differences in bandwidth? Isn't the issue really that you must treat customers within a class the same?

MR. SCOTT: I'm not sure how we would treat the different classes the same or treat different classes differently and offer -- be able to offer network service to customers outside the province. Are you suggesting -- well, I guess I --

Q. - Well, let me put it to you differently, sir. What you are doing, and I understand your testimony to be, is that for through and out service there is essentially not a big difference in your ability to calculate losses in the manner you presently calculate them.

There is not going to be a big difference after April 1st. You will still have that ability. But because you will be offering -- you will in addition be offering network service.

And I understand that there are some practical difficulties with doing calculations for network service, because of the different nature of it, the different receipt points and a whole host of factors, is that correct?

MR. SCOTT: There are certainly differences in the methodologies for calculating losses.

Q. - Yes. But I guess, just to come back to my point, is there is no operational reason for you to change from your current assessment of losses on through and out service, other than the policy reason that you appear to wish to subsidize network service?

MR. SNOWDON: It is not a policy -- it is not a policy decision that we have chosen to treat or give favor to network customers. We have chosen to have a policy

decision to treat all loss calculations on the same basis.

Q. - But you do recognize that there are two separate classes of customers that you are lumping into that calculation?

Network customers --

MR. SNOWDON: We prefer to call them types of customers as opposed to class of customers.

Q. - Well, there are different parts in the tariff dealing with each. So let's not argue over whether they are types or classes.

There are different groupings of customers with different needs for whom -- for which there will be different considerations that go into your rates, is that correct, based on the type of service you offer?

MR. SNOWDON: That's correct.

Q. - And those different considerations are being blurred by doing a system average and treating both the same for transmission losses?

MR. SNOWDON: Blurred in what sense?

Q. - Well, you are lumping them all together and just doing a system average and assessing everybody, based on system average. Is that not what you are doing, taking an average loss?

MR. SCOTT: Yes. We are taking average losses. And I might add, when we were looking at this particular tariff, we

did look at what the practice is in North America.

And in fact most utilities were using standard -- or average losses. And if you do use path losses then you -- it is advantageous to certain paths and not to others.

Q. - But isn't really the issue, if you do actual calculations on paths, then the loss falls where it should, in other words with the company that is causing the loss?

And the company that is operating more efficiently gets the benefit of operating more efficiently?

I think that is obvious, isn't it?

MR. SCOTT: That would be -- that certainly would be true in an ideal situation. But you also have to remember that the existing methodology is using an estimate of what the usage of the transmission system would be in the coming month.

If the through service is quite different than that then the losses will not in fact be a true representation of the -- of what the actual losses are any moreso than the average losses would be over the run of a year.

Q. - So you are saying the present system is no more accurate than an average loss --

MR. SCOTT: I --

Q. - -- for through and out customers?

MR. SCOTT: I would say the present system is our best

estimate of losses under today's conditions.

Q. - And you will acknowledge that by using a system average, some point-to-point customers will suffer in that they will have to pay a higher charge?

MR. SCOTT: Would you repeat that please?

Q. - Under your proposal, through -- some parties who use through and out service will end up paying a higher charge than they do now because of the nature of the charge, being a system average?

MR. SCOTT: Some customers would have a higher loss factor for some paths. I would suggest though that any customer -- and if you are looking at Nova Scotia Power, Emera, some of the paths from Nova Scotia are less than the average losses, some of them are not.

MR. SNOWDON: I would just like to add one point.

Q. - Well, look --

MR. SNOWDON: And that relates to your comment on that we are penalizing -- if I could paraphrase your statement --

Q. - Yes.

MR. SNOWDON: -- stating that you are penalizing customers for their efficiency. The losses are based on where they are located on the system. It has no bearing on their efficiency in terms of our operation.

Q. - Okay.

MR. SNOWDON: Could you clarify your point there perhaps?

Q. - The only real point is this, that you presently have a system in place. You are seeking to change the method of assessing losses on through and out service. And there does not appear to be an operational reason for doing so.

Is that a true statement?

MR. SNOWDON: The operational reason is for consistency for all customers.

Q. - So it is just this discrim' -- idea of no discrimination.

That is the only reason? I'm not --

MR. SNOWDON: I don't --

Q. - I'm not taking that lightly. But I just want to -- I just really want to ascertain whether or not that is the only reason?

MR. SNOWDON: The reason is to treat all customers the same in terms of their losses.

Q. - Thank you. Could I ask you to turn to exhibit A-5. I believe it is tab 8. It is the market design committee report, page 28.

If you look at recommendation 3-32?

MR. SNOWDON: Sorry. That is not tab 5.

Q. - A-5. I believe it is tab 8.

MR. SNOWDON: Sorry. We had tab 5.

Q. - Page 28. Do you agree with that recommendation?

MR. SNOWDON: Yes, I do.

Q. - "The system operator", it says, "shall have the authority to invoke any reciprocity provisions."

Is there currently an independent system operator?

There isn't?

MR. SNOWDON: There is an independent system operator in the sense that we are operating under a standard of conduct and are functionally bundled in that sense.

Q. - What is your intention with respect to adopting a truly independent system operator?

MR. SNOWDON: I was listening, Mr. Zed.

Q. - That's okay.

MR. SNOWDON: Could you ask the question again please?

Q. - Well, what are NB Power's plans with respect to the recommendations regarding an independent system operator? Have you finalized those plans?

MR. SNOWDON: No. Those plans have not been finalized.

Certainly the recommendations coming out of the market design committee are to do such. And those decisions have not been finalized as to the exact structure.

Q. - So there has been a decision taken to implement some type of independent system operator, that type of operation?

MR. SNOWDON: That is a recommendation from the market design.

Q. - Yes. I understand that. But is it -- are you quibbling -- you are not quibbling with the adoption of an independent system operator.

It is just the form that organization or that entity will take, is that the idea?

MR. SNOWDON: That plus the legislation to support that happening.

Q. - Okay. Now in the absence of an independent system operator, do you object to the Public Utilities Board making any decisions that the market design committee has recommended should be decisions made by the independent system operator?

MR. SNOWDON: It would depend on what those decisions were.

Q. - Well, let's say a decision on reciprocity?

MR. SNOWDON: Reciprocity is part of the tariff application, and the Board, this Board is the approver of that tariff.

Q. - But to the extent that the tariff may require or may give the transmission company the ability to determine whether or not a party is in a reciprocating jurisdiction, do you have any difficulty with the Public Utilities Board being involved in that decision before there is an independent system operator in place?

MR. SNOWDON: It would be our position that the Board would rely on the transmission provider or the system operator

today to make that decision.

Q. - I will ask the question again. Do you have any objection to the Board making that decision in the absence of there being a truly independent system operator?

MR. SNOWDON: I think -- my position on that is the fact that they are approving the tariff. And part of the provisions in the tariff is the reciprocity clause, that they are in fact approving that provision.

Q. - And do you have any objection to the Board approving for example that clause with the qualification that absent an independent system operator the Board will exercise the discretion under that particular provision?

MR. SNOWDON: That would be the discretion of the Board.

Q. - Thank you. Just talking generally about the FERC tariff, and this may be going over some of the testimony that others elicited in the preceding couple of days.

But my understanding of the FERC tariff is that it is -- in order to be FERC compliant, the provisions are not carved in stone, there is some flexibility allowed?

MR. SNOWDON: That's correct.

Q. - And are you familiar with FERC Orders 888, 889 and 2000 in a general way?

MR. SNOWDON: Yes, certainly in general terms.

Q. - And you are familiar with the fact and you would be aware

of the fact that those orders all allowed for time for compliance?

MR. SNOWDON: Yes, I am aware of that.

Q. - And for periods up to a couple of years, is that a reasonable -- are you aware of that?

MR. SNOWDON: I am not aware of that specific time frame, no.

Q. - But you are aware that they allowed time for compliance?

MR. SNOWDON: Yes.

Q. - And do you object to allowing other jurisdictions time to comply with the reciprocity provisions?

MR. SNOWDON: No, we don't object to that. In fact, there was an interrogatory from Nova Scotia on that particular issue. And we answered that that we would entertain a waiver on the reciprocity clause provided they -- two conditions were met.

And one condition was that they have a defined path and a timeline that is acceptable to not only NB Power but the Nova Scotia regulator. And the second provision is that they put a standard of conduct in place.

MR. ZED: Thank you. Could I just have a -- thank you, gentlemen, that's all.

CHAIRMAN: Mr. Gillis? He stood us up again. J.D. Irving Ltd.?

CROSS EXAMINATION BY MR. NETTLETON:

Q. - Thank you, Mr. Chairman, Panel members. Good morning, gentlemen. My name is Gordon Nettleton. I will be cross examining you this morning.

Mr. Snowdon, I believe the first area of my cross will be directed to you as it relates to the code of conduct. And what I would like to do is start out with hopefully some easy questions. Perhaps not as easy as Mr. Smellie's first question --

MR. SNOWDON: Thank you.

Q. - -- but we will see. As I understand so far in this hearing, New Brunswick Power Transmission will remain as an operating division or business unit of New Brunswick Power Corporation. Is that right?

MR. SNOWDON: Yes, that's under the application before this Board.

Q. - And that is also the case then with New Brunswick Power Generation and Distribution, correct?

MR. SNOWDON: That is correct.

Q. - Okay. And the merchant function will take place in a division outside of the Transmission business unit, is that true?

MR. SNOWDON: Yes, that is true.

Q. - And it is the merchant function that will be

participating in the power market, is that right?

MR. SNOWDON: Yes.

Q. - And as I understand it, you are intending to implement the applied for code of conduct to address abuses, real or potential, that might occur between divisions, is that right?

MR. SNOWDON: You would have to expand on abuses. The standard of conduct is to put restrictions on the exchange of confidential information between the system operator and the market participants.

Q. - Okay. Well let's talk about market abuses. Would you consider that the code of conduct that you are proposing is intended to protect against shall we say inhibiting competition in the wholesale marketplace?

MR. SNOWDON: Could you repeat that? I was looking for the standards of conduct.

Q. - Sure. If I can help you first to your question. It is attachment L to appendix -- sorry, exhibit A-3.

MR. SNOWDON: Thank you. Could you repeat the question now please?

Q. - Sure. Just to go back a step. We were talking about market abuses. And we were talking about what market abuses might this code of conduct be protecting against.

And my question was would one of those market abuses

be protecting against, if you will, inhibiting competition in the wholesale marketplace?

MR. SNOWDON: Yes.

Q. - Thank you. And is another market abuse -- without the code of conduct in place would another market abuse potentially be discriminatory practices or preferences between transmission owners and the operations and their business units over the use of the transmission grid?

MR. SNOWDON: I lost you in that question.

Q. - Okay, I will go back. Would another potential market abuse be discrimination or discriminatory preferences being given to the other market parties or the other divisions of New Brunswick Power over the use of the transmission grid?

MR. SNOWDON: I am having difficulty trying to sort out.

The standards of conduct are there to prevent information exchanged that would give the other business units within NB Power some advantage that others wouldn't have to them in terms of information about the transmission system. That is what the code of conduct is intended.

I am getting a little mixed up in your abuse term and it is to restrict the flow of information, not to mitigate abuse as such. So I'm sorry about that, but I am having difficulty with that.

Q. - You indicated to my friend Mr. Zed that you are generally familiar with FERC Order 888, right?

MR. SNOWDON: That's correct.

Q. - The term market abuse is one which is found in that order, albeit it is a very large order, but it is a term that is found in that order.

MR. SNOWDON: Yes, I am familiar with that.

Q. - So the advantage that you just alluded to that might be provided to another business unit would be potentially a discriminatory preference, right?

MR. SNOWDON: If that information would be provided by the transmission provider, that would be in violation of the standards of conduct, yes.

Q. - And, sir, without the code of conduct is it generally the objective that barriers are not created to allow new sellers from entering the market to provide lower cost power?

MR. SNOWDON: Yes, I would say that was a fair statement.

The Order 889 was certainly FERC's approach to deal with vertically integrated utilities in demonstrating that there is functional separation between the operating side of their business and their market participants. And that is to encourage others to use their system to promote business.

Q. - And Mr. Snowdon, is it then the benefit that this code of conduct that you are applying for, is it to benefit or is it intended to benefit existing and potentially new customers of the transmission grid?

MR. SNOWDON: It is intended to demonstrate that there is a functional separation between the operator of that system and potential customers.

Q. - And to whose benefit is that for?

MR. SNOWDON: The benefit of all.

Q. - Including customers?

MR. SNOWDON: Absolutely.

Q. - Thank you. I would like to turn now, Mr. Snowdon, to the reliance that you are placing upon FERC 889 as the standard for the code of conduct. That is what your intent is, right?

MR. SNOWDON: That's correct.

Q. - Now to determine the compatibility with the FERC Order 889, my understanding from information request -- an information request to the Province of New Brunswick, was that you looked at other U.S. based electric utilities. Is that right?

MR. SNOWDON: That's correct.

Q. - Were any of the U.S. electric utilities that you considered integrated electric utilities owned by a state

government?

MR. SNOWDON: I would have to take that as an undertaking.

I can't recall. It has been some time since we did that review.

Q. - Okay.

MR. SNOWDON: We did that review when we implemented our original standards of conduct in January of 2000.

Q. - Could I ask you to take that as an undertaking then, sire?

MR. SNOWDON: Yes.

Q. - Thank you. Perhaps part of that undertaking you are going to -- we will see where this question goes, but maybe as part of that undertaking you will need to include this information too.

The question is did you consider whether these companies had similar state regulatory regimes to the legislation that is in place in New Brunswick today?

MR. SNOWDON: The answer to that is no, we did not take that into consideration.

Q. - Thank you. I am just curious why you did not consider something closer to home such as other Canadian jurisdictions in your inquiry?

MR. SNOWDON: For example?

Q. - Well for example, Quebec? Quebec is an interconnecting

jurisdiction to your grid, is it not?

MR. SNOWDON: Yes, it is.

Q. - Did you take into account Quebec in that inquiry?

MR. SNOWDON: No, we did not. We were interested in trying to accept a standard of conduct that was FERC compliant. So we used the template of utilities that had provided their standards of conduct to the regulatory commission.

And when we found the one in Colorado, it seemed to fit the situation that we were dealing with and had the parameters that we were looking for and that is why we accepted and used theirs.

Q. - All right, sir. Now once you went through that review process, you sought an opinion, as I understand it, about the compatibility from R.J. Rudden. Is that right?

MR. SNOWDON: That's correct.

Q. - And who is R.J. Rudden?

MR. SNOWDON: A U.S. Consulting firm.

Q. - And this is the easy question, I hope. You don't work for R.J. Rudden, do you, Mr. Snowdon?

MR. SNOWDON: No.

Q. - And do you, Mr. Scott?

MR. SCOTT: No, I don't.

Q. - Thank you. And it is the report of R.J. Rudden and their opinion that the standard of conduct is consistent with

FERC 889, is that right?

MR. SNOWDON: I believe that to be correct.

Q. - All right. Have they provided you with an opinion that the tariff would be approved today by the FERC?

MR. SNOWDON: Yes, they did provide us an opinion on that.

Q. - Where is that opinion, sir, in your evidence?

MR. SCOTT: I draw your attention to appendix D, the Rudden report, of A-3. And on page 16. Under conclusions and recommendations in the first paragraph, beginning at line 18, it states, "Its pricing proposals are consistent with pricing methodologies used and approved in the U.S. and in many respects NB Power's OATT is superior to the FERC pro forma tariff by way of adding specificity and clarity to certain terms that could otherwise be interpreted as ambiguous or open to multiple interpretations."

I guess the only thing I would add to that is that to know whether or not it is totally FERC compliant, we would actually have to file it with FERC and get their approval.

So we have a consultant's assessment that the consultant feels that it is superior in many ways to the FERC Order 888 tariff.

Q. - Mr. Scott, thank you for that reference to page 16. And let's stay there for a second. You can see from the paragraph above the one that you have just referenced the

last sentence reads, that as such Rudden asserts that NB Power's standard of conduct satisfy, and he uses the term, the spirit and intent of FERC Order 889.

Do you see that?

MR. SCOTT: Yes.

Q. - And as part of your reliance upon this report, is it this comment -- or sorry, this assertion that the spirit and intent of 889 is satisfied?

MR. SCOTT: Yes.

Q. - Thank you. But that is not an opinion, is it, that this tariff, and in particular the standard of conduct, is in the opinion of R.J. Rudden one which complies with FERC Order 889, is it?

MR. SNOWDON: It doesn't specifically say that, no.

Q. - Thank you. Now Mr. Snowdon, have you consulted with or sought the advice of anyone else with respect to whether the standard of conduct is FERC 889 compliant?

MR. SNOWDON: Other than R.J. Rudden, no, we have not.

Q. - Thank you. You haven't, for example, contacted FERC staff?

MR. SCOTT: It has never really been our intent to file the tariff or the standards of conduct with FERC.

Our intention was to have a tariff and standards of conduct that met industry standards and we saw that FERC

Orders 888 and 889 were the industry standards. We did use a consultant that is in the industry and well known in the industry to give us some advice as to where our tariff would meet those standards.

But in essence we are bringing this tariff and the standards of conduct to this Board for their approval.

Q. - So you have no reason to, at this time, believe that the FERC would turn down this tariff based on the manner in which the standard of conduct is intended to apply to New Brunswick Power?

MR. SCOTT: We are not aware of any.

Q. - All right. Mr. Snowdon, are you aware of whether the FERC has recently raised concerns with respect to the ongoing appropriateness of codes of conduct approved under FERC 889?

MR. SNOWDON: No, I am not specifically aware of that.

Q. - Well let's take a look at a document. I am going to ask my friend, Mr. Smellie, to pass out a current -- a very recent notice of proposed rule making issued by the FERC on July 31st 2002.

MR. NETTLETON: Mr. Chairman, since I am going to be referring to this document extensively, I am wondering if we might have it marked as an exhibit?

CHAIRMAN: Any objections?

MR. MORRISON: No, no objections, Mr. Chairman. But since he is going to be asking questions quite extensively on it, I would ask that the witnesses have an opportunity to read it in some detail.

CHAIRMAN: What I think I will do is that I will mark it and then we will take our 15 minute recess and that will give the panel an opportunity to look at it.

My notes indicate this should be JDI-4.

MR. NETTLETON: JDI-4, thank you, Mr. Chairman.

Mr. Chairman, just to be clear, what I have provided you with, in light of the size of the document, is an excerpt from the NOPR. And the excerpt that I have provided you with are the areas which I intend to discuss with these witnesses.

CHAIRMAN: Okay. Thank you. Mr. Hashey?

MR. HASHEY: Mr. Chairman, I would like to make a note here.

I don't think any of us have seen this obviously before, but I think there is an indication that there is an 800 page document. I think it all should be filed. I don't think somebody should be filing something out of context as it may well be.

If we are going to deal with a document that we have had no notice of, no expert witness indicating they are going to comment on it, I think we should have the whole

document.

CHAIRMAN: I think that is fair, Mr. Hashey. When I saw something from a notice of proposed rule making from the FERC I knew it couldn't possibly be that short.

But is it possible, Mr. Nettleton, that you could make at least one copy of that 800 page document available?

MR. NETTLETON: I can in time, Mr. Chairman. What I am wondering if it makes sense so that the regulatory process might be -- remain expedient, is if we could ask -- if I could continue my cross examination with the panel on this topic area.

I think you will see that with the questions that I have I am going to be essentially just asking the witnesses for their views or comments on what the FERC has said on these particular topics and provide them with the opportunity to comment on that.

If you think at the end of my cross examination on this area there is need for the full 800 page document to be filed on the record, I would be happy to do that.

CHAIRMAN: All right. I will take the break and give NB Power the 15 minutes to look at the document before they comment on that. So we will rise for 15 minutes.

(Recess)

CHAIRMAN: Before we broke I indicated that you could

respond, Mr. Hashey?

MR. HASHEY: Thank you, Mr. Chairman. The document that has been produced, as my friend Mr. Smellie has pointed out to me, was referenced, and it might be worth reviewing the Emera IR-32, an answer that referenced this, that stated that it was premature to react to changes that are not known at the time that the -- there is going to be a process. My understanding is there is a review and there is an appeal process on a document.

I --my immediate reaction, of course, and still is, that a document that is provided to the Board that has page 1, page 21, page 22, page 33, page 62 and 63 is a bit incomplete and a bit unfair to a witness. This was not included in the evidence before and I don't take great objection to that.

What I would suggest is that the appropriate way to handle this would be to allow the panel the opportunity to review it in complete, not to cause Mr. Smellie to file one.

It seems to me that we are well ahead of time on our hearing schedule and that it -- we would have no problem with recalling this panel say next Tuesday to answer that.

As I would see it we are close to finishing today or tomorrow on this panel at any event, the way that it seems

to be shaping up with cross examination.

That it -- and give people an opportunity to properly refer to this document and be able to respond to it, as it is a FERC document and it may have some relevance and it may have some importance to the Board. And I think we should be able to deal with the complete document. If necessary we would file it.

CHAIRMAN: You have a copy of the document, Mr. Hashey?

MR. HASHEY: Not with us but in NB Power's offices in Fredericton, it is there.

CHAIRMAN: But NB Power has, yes.

MR. HASHEY: And it is under review. My understanding is that this is a document that the Canadian utility industry is making comments upon and suggestions, so that it's really a discussion paper more than a final paper is my understanding of it. But I will bring evidence on that.

CHAIRMAN: Mr. Nettleton?

MR. SMELLIE: Mr. Chairman, if I may?

CHAIRMAN: Yes.

MR. SMELLIE: I hear what my friend says. And let me just offer these comments.

The assertion is made by the applicant that its tariff is FERC compatible. Indeed that is at the core of that aspect of its case. The applicant offers in support of

that proposition the report of R.J. Rudden, dated the 15th of June of this year, authored by Mr. Garwood.

Mr. Nettleton properly asked the witnesses in reference to that report whether New Brunswick Power had obtained any other reports. Any other reports would include a supplementary report from R.J. Rudden. And the answer was there are none.

If Mr. Garwood were here so that we could test the assertions upon which the applicant relies, we would have gladly have done so.

This document, exhibit JDI-4 has been in the public realm since the 31st of July of this year. This document is as my friend noted referred to in the evidence of the applicant, that is to say at least in response to information request 32 of Emera Energy. At least in its response to NSPI's supplementary interrogatory number 1. It may be referred to elsewhere.

In my respectful submission, it was quite proper for Mr. Nettleton to have brought this document to the attention of the witnesses. It is quite proper for Mr. Nettleton to ask them questions about aspects of these excerpts from admittedly a much larger document. And as I understand the process, my friend Mr. Hashey at some point has the opportunity to adduce rebuttal evidence if he

wishes.

So in my respectful submission, the Board ought to permit Mr. Nettleton to proceed with his questions. If Mr. Hashey has a particular objection to any of those questions in cross examination, he can say so.

There is no debate about the relevance of the document, if only because the applicants refer to it in its evidence.

And so for all of those reasons -- and if in fact my friend wishes to have the witness panel come back in rebuttal and rebut some aspect of it, so be it.

So in all of the circumstances, Mr. Chairman, we thought we were following common practice. If we haven't, we apologize, but nevertheless the line of cross examination, in my view, is proper and should proceed.

CHAIRMAN: Okay. The Board will take two minutes.

(Recess)

CHAIRMAN: The Board concurs with the proposal that

Mr. Hashey has made. It does appear that we are going to have some time between the conclusion of this panel and the Emera panel. And so that will give the panel the opportunity to read the 800-page report.

And then, Mr. Nettleton, you can do your cross examination on this line at that time. And before we rise

today or tomorrow, whenever we are concluded, we will figure out when it is this panel will come back for that.

Mr. Nettleton?

MR. NETTLETON: Thank you, Mr. Chairman. My line of cross examination then may be quite significantly shorter for that purpose, Mr. Chairman.

Q. - Mr. Snowdon, in panel A I believe you informed this Board that the code of conduct that is in place today was one developed in response to concerns by Hydro Quebec, is that correct?

MR. SNOWDON: They raised the issue of the need for functional separation between the system operator and the market participants. And inherent with that was the standards of conduct.

And that is consistent with what you told us in your response to the Board's -- the Public Utilities Board's IR number 2, I believe?

MR. SNOWDON: That's correct.

Q. - Okay. Now subsequent to that time, Mr. Snowdon, are you aware whether New Brunswick Power intervened and participated in a recent Hydro Quebec proceeding before the Regie where rates and tariff issues, including codes of conduct, were considered?

MR. SNOWDON: I'm aware that we intervened. I'm not aware

of the actual issues. I didn't participate in it myself.

I have no detailed knowledge of what the arguments were.

Q. - Have you had a chance to read that decision or at least the English summary of that decision?

MR. SNOWDON: Unfortunately I haven't. I have been preparing for this hearing.

MR. NETTLETON: Well, perhaps, Mr. Chairman, since I was about to ask this witness about that decision as well, in preparation for his cross examination next week, maybe I could ask him to also have a chance to read that decision. And I will not pursue this line of questioning in respect to that decision.

CHAIRMAN: Mr. Hashey?

MR. HASHEY: Mr. Chairman, if it would help Mr. Nettleton, and it is at his discretion, there is a witness here that was involved in Quebec, namely Mr. Marshall, who was the witness that testified there and is familiar with that.

And if you would like Mr. Marshall to join the panel for that line of questioning, I would have no problem. He would have more firsthand knowledge than otherwise.

CHAIRMAN: Mr. Nettleton?

MR. NETTLETON: That would be very helpful. Thank you, Mr. Hashey.

CHAIRMAN: Mr. Marshall, you are still under oath from

yesterday. You are going to need a chair. This is three panels.

(Mr. Marshall retakes witness stand)

Q. - Mr. Marshall, my questions really are I hope quite simple.

In the Regie's proceeding have you had a chance to -- you testified on behalf of New Brunswick Power in that proceeding, is that correct?

MR. MARSHALL: Yes, I did.

Q. - Okay. And have you had a chance to read the decision?

MR. MARSHALL: Yes, I have read the decision, reviewed it in French, and have gone through the English summary. Certainly I went through.

I can't say I read every word of the decision. I have read most of the decision and all of the areas related to the points that we intervened on.

Q. - Are you aware that the Regie has required Hydro Quebec as part of its code of conduct to provide descriptions of the nature of the transactions and business relations between Hydro Quebec and affiliates as part of -- again as part of the code of conduct?

MR. MARSHALL: I'm aware that there were some recommendations or some points in that order related to the code of conduct. We did not specifically intervene in

that particular area.

But Ontario Power Generation and Pacific Gas and Electric, National Energy Group did. And we basically piggybacked. So they took some areas and we took others.

So there were issues related to code of conduct. And we agreed that there should be proper function and code of conduct in Quebec.

Q. - Does your proposed code of conduct, Mr. Snowdon, include a requirement to provide descriptions of the nature of the transactions and business relationships and business relations as between New Brunswick Power Transmission and the other affiliates of New Brunswick Power Corporation?

MR. SNOWDON: No, it does not.

Q. - Thank you. And Mr. Marshall, as part of the Hydro Quebec decision, are you aware of the Regie's requirement that Hydro Quebec must include as part of its code of conduct a description of its transfer pricing policy?

MR. MARSHALL: I'm not specifically aware of the details. I do know that there were issues raised by the Regie related to pay benefits, performance pay benefits that crossed lines and wanted everything clearly, independently accounted for between the operating business units of Hydro Quebec.

Q. - Mr. Snowdon, does your code of conduct include a

requirement to set out the transfer pricing policies as between New Brunswick Power Transmission and its other affiliated units?

MR. SNOWDON: No, it does not.

Q. - Thank you. Mr. Marshall, in the Hydro Quebec decision are you aware whether the Regie has required Hydro Quebec to conduct compliance audits in respect of its code of conduct?

MR. MARSHALL: I'm aware that in the decision there are procedures to be followed where the Regie again can enforce and monitor that the code of conduct is being followed. And that is no different than what we would expect here.

Our application before this board is for acceptance of the tariff including the code of conduct. The Board has the power to regulate the tariff.

And if the Board deems it necessary to put in audits or procedures as the Regie did in Quebec, we are fully respectful of the Board and what is required in order to implement the tariff as applied.

Q. - Mr. Snowdon, does your code of conduct include a requirement that third party compliance audits are conducted in respect of the code of conduct?

MR. SNOWDON: No, it does not specifically say that.

Q. - Thank you.

MR. SNOWDON: It does not preclude, as Mr. Marshall said, the Board requesting that those audits be done.

Q. - But you are not applying for that right now, correct?

MR. MARSHALL: At this time I might explain for the Board the timing of the process. The Hydro Quebec decision came out --

Q. - Mr. Marshall, I asked --

MR. MARSHALL: -- on the 30th of April. And this application came in in July.

So the question of timing to readjust all of our codes and all of our preparation to take account of all of the decisions that transpire in that short period of time.

But it is certainly within the prerogatory of the Board to require that we do that should they deem it necessary.

Q. - Do you remember my question, Mr. Marshall?

MR. MARSHALL: No. Could you repeat it?

Q. - Have you applied for a code of conduct that includes a requirement that third party compliance audits are conducted by New Brunswick Transmission?

MR. MARSHALL: It is not in the application as filed.

Q. - Thank you. Now Mr. Snowdon or Mr. Marshall, are there other proposed mechanisms that are intended or are

contemplated outside of the parameters of this application that are intended to deal with market abuse, such as the market advisory committee?

MR. MARSHALL: As we stated yesterday, this application is an application of NB Power Corporation, currently an integrated utility, for a tariff. And that tariff meets all of the requirements of Order 888 and 889.

And it is the jurisdiction of this Board to determine the implementation of that tariff, whether additional measures are required, as were done in Hydro Quebec. It is a very similar process.

Hydro Quebec is an integrated utility, one corporate entity, Hydro Quebec Corporation, with separate business units.

The issue of the monitoring is one of a policy issue of market design committee that have been recommendations of market design to the government.

And the government is acting upon that to determine whether or not it will change the legislation in order to implement a monitoring function either through the independent system operator or give additional power to the Board.

Currently we are here for this hearing under the Public Utilities Act, as the Board is empowered today, to

hear a tariff of an integrated utility.

Q. - This is a simple question, Mr. Marshall. I don't think it is going to require much in terms of an answer, perhaps yes or no.

But to date there has not yet been finalization of what or how the market oversight objective will look like in New Brunswick, right?

MR. MARSHALL: That's correct.

Q. - Thank you.

MR. MARSHALL: And it's irrelevant to this hearing.

Q. - Thank you. Now I'm really struggling in asking this question, Mr. Marshall, because I thought it was properly directed towards Mr. Snowdon.

But I will ask it to the panel. Until there is finalization, how do you expect this Board to be able to determine if the proposed standard of conduct satisfies all market abuse concerns?

MR. MARSHALL: I think the Board will hear the evidence before it in this hearing as you have -- your client has presented evidence.

The Board, on that basis of the evidence, will make a decision on the tariff documents as filed and will then make a ruling similar to the Regie rule in Quebec whether or not it deems under its powers it is necessary to put in

additional monitoring requirements to address those abuses.

Q. - You are expecting this Board then, Mr. Marshall, to take into account legislation that has not yet been proclaimed or even seen in bill form to determine whether or not this standard of conduct, combined with that fictional, at this stage, legislation, is satisfactory to meet the citizens of this province in respect of electric transmission issues, is that right?

MR. MARSHALL: No, that's not correct at all. What I'm saying is this application is legal, is required under the Public Utilities Act. This Board is empowered to hear it. We have made that application.

And the Board has all the power and jurisdiction to accept the tariff or to order changes in the tariff that it deems necessary to protect the public interest.

Q. - How can it to do that though, Mr. Marshall, without having considered the legislation?

MR. MARSHALL: Well, how could the Regie do it in Quebec, given that there was no independent market operator? There is no restructuring of Hydro Quebec. It was an integrated utility with a tariff application.

And the Regie was empowered to regulate the tariff. How did they come up with all of their recommendations and

changes to the tariff in their order?

I expect this Board is as intelligent, as capable and as well-informed as the Regie, and that they will be capable of dealing with this case as presented to them.

Q. - And what was the date of the Regie's decision, Mr. Marshall?

MR. MARSHALL: I believe it was April the 30th.

Q. - Do you have a copy of the NOPR document that is circulated?

MR. MARSHALL: JDI-4?

Q. - Yes.

MR. MARSHALL: Yes.

Q. - Can you see the date that is stated on that, Mr. Marshall?

MR. MARSHALL: July 31st 2002.

Q. - Thank you.

MR. MARSHALL: And this application, the filing of evidence here, was made July 24th I believe, prior to this document.

Q. - Thank you.

MR. NETTLETON: Mr. Chairman, that is all I have in respect of Quebec matters and I need not have Mr. Marshall for the remainder of this cross. I do appreciate Mr. Marshall being here. Thank you.

CHAIRMAN: Thank you, Mr. Marshall.

MR. NETTLETON: Mr. Scott, are you still around here?

MR. SCOTT: I'm still here.

MR. NETTLETON: Fantastic. I will get go you but not quite yet.

Q. - Mr. Snowdon, the next area that I am going to be asking a few questions on is in respect of attachment L, appendix A-3 to the -- sorry, exhibit A-3. And it's under the tariff tab attachment L.

What I would like to do is just walk you through this document, and as we go through it page by page ask you a few questions if I could.

Mr. Snowdon, my first area of questions relates to page 329 at line 20 under the heading, transmission operations and reliability functions. Have you got it there, Mr. Snowdon?

MR. SNOWDON: Yes.

Q. - Now as I understand the description that's provided there, in particular the phrase that reads "Reliably accept energy from generators within New Brunswick and from merchant providers at their respective receipt points, and to reliably deliver such energy for consumption by native load customers and for scheduled external merchant obligations at the respected delivery

points."

That's all in relation to the function that's described later in the next sentence. Is that right?

MR. SNOWDON: Yes, that's correct.

Q. - And that function is described in number 1, optimizing dispatchable energy supplies in order to balance all resources.

And the second one reads, "On a nondiscriminatory basis maximize transmission revenues for hourly transmission use by processing requests of all merchant providers." Right?

MR. SNOWDON: That's correct.

Q. - Is there some -- is there something I should take or should I read anything into the fact that you have included in point 2 express reference to nondiscriminatory basis and yet you have excluded that language from the first point?

MR. SNOWDON: I don't -- I don't think you should be reading anything into that.

Q. - So you could include if you wanted to nondiscriminatory basis in front of number 1, could you? You could live with that?

MR. SNOWDON: Yes, I agree with that.

Q. - Thank you. My next comment, Mr. -- or my next question,

Mr. Snowdon, is on page 331. These are relatively easy questions, sir, so they won't take long, I hope.

MR. SNOWDON: I appreciate it.

Q. - On page 331, sir, under the heading, information disclosure --

MR. SNOWDON: Right.

Q. - -- you will see in both points A and B the reference that reliability functions may not disclose to employees of the transmission provider, and also further down, reliability functions may not share any market information.

Do you see that?

MR. SNOWDON: Yes, I do.

Q. - Should I take anything or read anything into the fact that you have used the word may as opposed to shall?

MR. SNOWDON: No.

Q. - You are not intending to use any type of discretion to allow some information at your discretion to pass between those functions, are you?

MR. SNOWDON: Could you repeat that?

Q. - Sure. The problem I'm having is that may implies some form of discretion. I'm just wanting to make sure that you aren't intending to exercise any discretion?

MR. SNOWDON: That's correct.

Q. - Thank you.

MR. SNOWDON: That's correct. I should -- I have attended enough NERC meetings that I should know that must or should or may is not the correct word there.

Q. - I sure hope we are not going down that road. But you would be glad to know that we are almost at the end here.

On page 332, item 4 (c), I'm curious with respect to the language that you have used to describe what you are prohibiting the transmission provider from doing.

In respect of the clause, it suggests that you are not giving any preference over the interests of any other wholesale or large industrial customer.

Am I reading that right?

MR. SNOWDON: Yes.

Q. - Is it your intention that the procurement of things other than -- let me restate it.

What if the interest is not specifically a customer, wholesale or large industrial customer, for example a generator?

MR. SNOWDON: A generator providing export or --

Q. - Let's say redispatch energy?

MR. SNOWDON: To serve a bilateral contract? Or what -- in what context?

Q. - I guess it would be in the context say of constraint management, that there is some form of requirement for

redispatch energy.

Are you saying here that the only restriction is that you would not give preferences to the sale or resale of redispatch energy to your affiliates over the interests of an industrial or wholesale customer?

Maybe to put it another way, is redispatch energy always going to be provided by wholesale or industrial customers?

MR. SNOWDON: Redispatch is provided by generators.

Q. - Okay. So why doesn't this provision speak to that type of customer?

MR. SNOWDON: I'm just trying to get familiar with the context in which this is written. It's really to deal with supply to the load side and it doesn't really deal specifically with the generator side.

Q. - Well maybe then to put this into context, this provision would apply to say a third party marketer, would it not? That's on the load side, right?

MR. SNOWDON: Yes.

Q. - And I'm just curious why this provision seems to be limited to wholesale or large industrial customers? Isn't it any customer?

MR. SNOWDON: I guess any customer would fall into one of those two categories, either wholesale or large

industrial.

Q. - So if the intent is for it to apply to any customer, the language could be adjusted accordingly, could it?

MR. SNOWDON: Are you suggesting some wording?

Q. - I'm just -- no, I put that to you in form of a question of are you -- could you amend this language so that it would reflect all customers? You wouldn't have a concern with that, would you?

MR. SNOWDON: No, because really all customers are included in this wholesale or large industrial customer sectors.

Q. - Thank you. Let's move on to page 333. The paragraphs that I'm interested in you looking at is the one which -- it starts at line 13. Mine is marked (a).

MR. SNOWDON: Okay.

Q. - And then the next one is at line 26, and that's marked (c). Do you see those?

MR. SNOWDON: Yes.

Q. - In both of those paragraphs you will see on line 14 that there is reference to regulator audit?

MR. SNOWDON: Mmmm.

Q. - And then further down on line 28 it indicates regulator inspection. Now is it my understanding that line 13 is dealing with specifically audits of a log?

MR. SNOWDON: Yes, that's correct. It would be a log.

Q. - Can you describe for me what that log, what that document is?

MR. SNOWDON: The intent of that clause is to deal with issues where the system operator during emergency situations would exercise his rights to the transmission system to secure emergency supply.

And that log would describe in detail what the circumstances were that he used that discretion to secure those emergency supplies.

Q. - All right. And now down to (c). The requirement is that separate books of account records would be maintained by the transmission provider, right?

MR. SNOWDON: That's correct.

Q. - And those books and records, would they be following a form, a standard form of accounts? Would they follow some form of industry standard?

MR. SNOWDON: These books or records are related to the application of the standards of conduct not as the total books and accounts of the transmission provider.

Q. - Oh, okay. So what books and accounts are you specifically referring to then, sir?

MR. SNOWDON: The books would be how the -- the reservations on the transmission system, the costing associated with those reservations. The long-term firm. The short-term

firm. Any transactions that go on the transmission system where those revenues are coming from.

There is a whole host of records that would be kept relative to the operation of -- under this tariff that would apply there, and they would be subject to these standards of conduct.

Q. - I'm sorry, I thought you indicated that the books and records were specific to things associated with this standard of conduct, not things related to the application as a whole. Am I wrong?

MR. SNOWDON: I guess what I was saying is that it is not the total transmission provider or the total Transco organization's books that would be related to the -- well, no. Let me rephrase that. I guess the tariff does cover all of those costs, so I stand corrected on that.

Q. - Would one of those books of account or records be the scheduling of maintenance?

MR. SNOWDON: Yes.

Q. - Now further on at line 28 you indicate that those books and records will only be made available for regulatory -- or regulator inspection.

Is it your position, Mr. Snowdon, that this is not going to be subject to regulator audit?

MR. SNOWDON: Again that's up to the discretion of this

Board.

Q. - But you are not applying for that then, regulator audit?

MR. SNOWDON: Inspection is an audit, I guess.

Q. - Well I'm curious then why you chose the word inspection as opposed to audit like you did at line 14? What were you intending to have happen with respect to the log that you weren't intending to have happen with respect to the books of account and record?

MR. SNOWDON: Under the standards of conduct, the audit process in the first was to ensure that the system operator used proper discretion in exercising those rights.

The tariff itself and the books and records of the transmission provider are going to be subject to review and audit by this Board.

Under the standards of conduct it was felt that that was redundant and that this would be strictly inspection.

But there was no specific intent to preclude that from happening.

Q. - Are you saying you would be comfortable changing the word inspection to audit?

MR. SNOWDON: Yes, I would feel comfortable with that.

Q. - How often would you expect the regulator to conduct those audits? That provision isn't found in your standard of

conduct, is it?

MR. SNOWDON: No, that provision isn't there. That would be up to the discretion of the Board.

Q. - Thank you. The next area, Mr. Snowdon, is in respect of page 337, and the topic I would like to talk to you about is entitled, enforcement. Now starting at line 19, you outline the complaint procedure. Do you see that?

MR. SNOWDON: Yes.

Q. - And as I understand what you have got here is that the intent is for the complaint to be handled internally by the Director of Energy Control, is that right?

MR. SNOWDON: The initial investigation would be carried out by the Director of the Energy Control Centre, yes.

Q. - And who is employed -- who employs the Director of Energy Control Centre?

MR. SNOWDON: NB Power.

Q. - NB Power Holdco? NB Power Transmission? You are the director, aren't you, sir?

MR. SNOWDON: Yes, there is only one. I work for NB Power.

Q. - And are --

MR. SNOWDON: I am in the Transmission business unit, but the employer is NB Power.

Q. - And as Director, sir, is it fair to say then that your pay cheque is written by NB Power Corporation, the legal

entity?

MR. SNOWDON: That's true.

Q. - Now with respect to the complaint that someone might have, is it your understanding then that the complaint can only be directed to yourself as Director. It's not intended to be an action or a complaint filed with anyone else, such as the PUB?

MR. SNOWDON: That would be the intent. The initial process would be that the complaint would go to the Director and they would investigate, and then if that complainant is not satisfied, they would carry on through a dispute resolution process.

Q. - Where is that dispute resolution process found in your standard of conduct, sir?

MR. SNOWDON: The dispute resolution process I was talking about was on page 338.

Q. - All right. And specifically what you are referring to is the appointment of an independent arbitrator, is that right?

MR. SNOWDON: Yes, that's correct.

Q. - And so there is no specific or express provision in the standard of conduct that would direct the complaint party or complaining party to the PUB, right?

MR. SNOWDON: Not specifically in the standards of conduct.

It was always our intent by having the standards of conduct approved by this Board, that they would have the legal backstop to hear and entertain any complaint that was not -- the complaint was not satisfied with.

Q. - What would happen if they didn't have that legal backstop that you are speaking of? What if they could only hear complaints that were made by you, NB Power Transmission? Would you think that that's --

MR. SNOWDON: To me that's a hypothetical question. Is --

Q. - All right. Let's -- let's just before we leave that hypothetical situation, that hypothetical would not in your view be the intent of New Brunswick Power Transmission in respect of this application, would it?

MR. SNOWDON: What would not be?

Q. - That the only types of complaints that would be made under this standard of conduct, if it were a party other than New Brunswick Power Transmission, that that party would have available access to the Public Utility Board to have that complaint resolved?

MR. SNOWDON: That's correct.

Q. - Thank you. And at the time -- at this -- at the time that you have written this application and written this standard of conduct, you will agree with me that that express right to access the PUB is missing from the

standard of conduct? There is no reference to the PUB here?

MR. SNOWDON: No. We did not amend our standard of conduct because the application was going before this Board and it implicitly gives the Board the right to deal with issues related to the standard of conduct, and including the complaint process.

Q. - Thank you. Now, I am turning to a new area, Mr. Chairman. It's -- I would like to have the witnesses turn up attachment K, which is entitled the Transmission Expansion Policy. I believe it simply follows -- no, it comes before --

MR. SNOWDON: K, L.

Q. - Have you got that there?

MR. SNOWDON: Yes.

Q. - Now, Mr. Scott, will you be speaking to this or will it be Mr. Snowdon?

MR. SNOWDON: It could be either one of us.

Q. - All right. Just a general question with respect to the transmission expansion policy. Who determines whether additional revenues will be greater than the increase in the revenue requirement? Who is the party determining those numbers?

MR. SCOTT: The transmission provider would be responsible

for doing that.

Q. - Okay. So it's the transmission provider, not the system operator?

MR. SNOWDON: In this application they are one and the same.

Q. - Okay. But in this application, is there some form of intent to divide system operations from the transmission provider service?

MR. SNOWDON: No, there is not.

Q. - There isn't?

MR. SNOWDON: Well -- answer it.

MR. SCOTT: There is a separation of system operator functions from transmission functions certainly in a number of areas.

Q. - Would this be one area?

MR. SCOTT: It's not specifically designated here as a separation.

Q. - So does the standard of conduct apply to matters respecting the transmission expansion policy?

MR. SNOWDON: The employees that would be doing that analysis would be operating under standards of conduct.

Q. - On which side of the fence?

MR. SNOWDON: Within the Transco business unit.

Q. - So not part of the system operation itself?

MR. SCOTT: Well at this point in time, the system operator

and the transmission provider are one and the same. And that's the way that this tariff was presented.

Q. - Well let's talk a little bit then about the separation. I thought we were going to be able to get through this a little quicker.

But with respect to the unit, NB Transmission, that is, the transmission provider, what degree of separation will there be between operation and the transmission provider function? Will there be physical separation as between the employees of those two groups?

MR. SNOWDON: I am not sure how to answer that question.

Q. - Will there be separate offices, separate buildings?

MR. SNOWDON: Are you -- are you talking about the -- today any employees that are in the Transco unit, business unit, that are dealing with issues related to transmission expansion, system planning, system studies? Some of them are located at the control centre, some are not located at the control centre, however, they all operate under the standards of conduct, which prevent them from access to commercially -- or the market participant side of our business.

Q. - Okay.

MR. SNOWDON: There is --

Q. - That's helpful.

MR. SNOWDON: -- there is separation -- physical separation in that regard. They are not all located at the control centre. But they are all within the transmission business unit that have access to transmission-related information that -- or confidential generator information, or any information of how the transmission system is being accessed from third parties.

So there is this standards of conduct around that group in terms of their physical access to different parts of the business. And that's I guess where I was having the difficulty.

Q. - No, I can appreciate that. Thank you for that clarification.

Maybe another clarification though is needed. Is it possible that a system operator personnel, someone that is employed for that function, is physically seated beside someone who is not in the system operation role?

MR. SNOWDON: No. There is physical separation of where those employees are located. Some of them are in head office. They are not on the same floor. They are secured areas under which they are not permitted to go. So those that operating under the standard of conduct are in a specific area.

Q. - And those that operate under the standard of conduct

then, are those employees that are performing the system operation function, right?

MR. SNOWDON: Actually under the standard of conduct, both groups are signatory to a standard of conduct.

The merchant side of our business has to sign a code of conduct -- or a standard of conduct as well so that they do not put themselves in the position or the Transmission employee in the position of requesting information or accessing areas of the building where they should not be.

So it's a two way standard of conduct in that sense of putting an obligation on both the operation side and on the merchant side, if you will, or the commercial side.

Q. - All right.

MR. SCOTT: And I might add that there are a number of Transmission business unit employees who have signed the standards of conduct who are not directly related to the system operator function. But they may through the course of their work require that confidential information. So they would be under standards of conduct even though they wouldn't be performing a system operator function.

Q. - All right. So back to the transmission expansion policy.

My original question related to who determines whether additional revenues will be greater than the increase in

the revenue requirement.

And I thought I heard that determination could be made by both system operational personnel as well as people outside of that function. Is that right?

MR. SCOTT: It would certainly only be made by those who are governed by the standards of conduct.

Q. - And so since both people outside of the system operation function and inside that function are governed by the standard of conduct, it could be both types of personnel?

MR. SCOTT: I am not sure what -- who you mean by people outside the -- are you referring to generation marketing people, or are you referring to just those involved in transmission?

Q. - Those involved in transmission?

MR. SNOWDON: They may do the studies that are required to determine what is required in terms of a system upgrade. That information would be provided to the system operator side and they would determine whether or not the revenue requirements were covered under the tariff or not.

Q. - Right. Part of your application, Mr. Snowdon, includes a PBR type methodology, correct?

MR. SNOWDON: Yes.

Q. - Can you help me understand how that proposed methodology, and in particular the cost savings and reductions, how

that gets factored into your revenue determination as per the transmission expansion policy?

Is that a question best saved for Panel C?

MR. SNOWDON: Yes.

Q. - Okay. I will defer it to them.

On page 325 at line 6 there is reference to a net present value of the system benefits calculation. Do you see that?

MR. SNOWDON: Yes.

Q. - Can you help me understand the nature of that calculation? For example, what discount rate are you going to use in that net present value calculation?

MR. SCOTT: I don't -- I don't have the details of what that net present value would be.

Q. - Do you have details of what is meant by system benefits?

Am I wrong in thinking, Mr. Scott, that it is the transmission provider who identifies the system benefits?

MR. SCOTT: I think in general the intent of this whole expansion policy is to treat expansions on a nondiscriminatory basis.

And to the extent that the tariff can cover the expansion either through the increased load or in the case of a generator through the additional transmission capacity that's reserved, then that would be covered by

the tariff.

To the extent that it is not covered, then the transmission provider would be looking for additional revenues from that customer in order to make up the difference.

Q. - I understand that. My question though was who determines the system benefits?

MR. SCOTT: Well, I'm sure that in any discussion with a transmission customer that it would -- that that customer would certainly make NB Power aware of any transmission benefits, system benefits that they are aware of. And we would certainly take that into consideration in the evaluation of those benefits.

Q. - But this transmission expansion policy doesn't reference system benefits being determined by the customer, does it?

Am I missing something there? It is ultimately the transmission provider that determines the system benefits, right?

MR. SNOWDON: That's correct.

MR. SCOTT: It is -- the ultimate responsibility is the transmission provider. But I would expect that, as I said before, that the customer would have a say in that and would try to make their case before -- before transmission provider.

Q. - But under the policy there is no reference to that, that goodwill if you will? Excuse the pun.

MR. SCOTT: No.

Q. - Thank you. With respect to the net present value calculation, I understand that you may not be aware of the individual components.

We will have that discussion with Panel C I guess, is that right?

MR. SCOTT: Panel C would be the appropriate panel --

Q. - Thank you.

MR. SCOTT: -- to discuss.

Q. - One question though that arises with respect to the calculation itself and the analysis. Is that analysis, that is, the manner in which you arrive at your calculation, one that you are prepared to share with customers?

MR. SNOWDON: Yes.

Q. - Thank you. Further down at line 10, line 9 and 10, there is reference to a load flow study. Do you see that?

MR. SNOWDON: Yes.

Q. - Who will conduct the load flow study?

MR. SNOWDON: Those studies would be completed by the transmission provider, the engineering group within Transmission business unit that has the responsibility for

those studies. And that group would be operating under a standard of conduct.

Q. - So the transmission provider gets to calculate -- sorry, gets to determine the system benefits. The transmission provider gets to calculate the net present value calculation. And the transmission provider determines the load flow study, right?

MR. SNOWDON: That's correct. But at the same time the customer that is interested in making the expansion of facilities is certainly involved in the process all along the way.

And these studies are discussed with them in great detail. And the whole process is open between the transmission provider and the customer.

Q. - In that process of discussing things with the customer is there opportunity for third parties to conduct the studies, that is, the load flow studies, a third party agreeable by both the customer and the transmission provider?

MR. SNOWDON: Are you suggesting that to get an unbiased view? Or the fact that in this particular example you are speaking of the transmission provider doesn't have the -- you know, the opportunity to do it in terms of his work commitment? Or just under what context?

Q. - It is the former, sir, to obtain an unbiased view?

MR. SNOWDON: We would certainly entertain that. I don't appreciate the need to do that. But we would certainly be willing to entertain that.

Q. - All right. And since we are going down the road towards disputes, if there were disputes arising in respect of the calculation, the determination of the additional amount that would be required from a customer or the load flow study, or frankly any other matter under this transmission expansion policy, how do you contemplate those types of disputes being resolved?

MR. SNOWDON: Through discussion between ourselves and the customer.

Q. - All right. And if reasonable parties reach reasonable positions that are not ad idem, what then?

MR. SNOWDON: It would fall back into the dispute resolution process under the tariff.

Q. - All right. And ultimately, Mr. Snowdon, would you expect the opportunity for a party, instead of taking their issue to an independent arbitrator, to have the matter heard and decided by this Board?

MR. SNOWDON: Again at the discretion of this Board, we would hope that issues get resolved through the dispute resolution that is outlined under the tariff and not

burden the Board with these matters.

Q. - Right. But if one of the parties to the dispute required or found it more appropriate to have this Board hear and decide the matter of the dispute, are you saying that you would be prepared, New Brunswick Power Transmission would be prepared to make application to have this Board consider it, even if it is an issue which you don't believe is one that is worthy of the Board to consider it?

MR. SCOTT: I think the normal process for dispute resolution, since this is an attachment to the tariff, would be through the dispute resolution process that is identified in section 12 of the tariff.

And certainly the complainant always has the right to appeal to this Board.

Q. - But back to my fiction, Mr. Scott. Let's assume this Board does not have an opportunity to hear a complaint from a party other than New Brunswick Power Transmission, all right.

Let's assume in my hypothetical world a complaint cannot be heard by a customer, that the customer is only able to resolve a dispute through the tariff document which indicates arbitration as being the only means, right?

MR. SCOTT: Yes.

Q. - How is this Board going to get to hear the complaint under my fictional circumstance?

MR. SCOTT: I am not a legal expert, but when I read section 12.5 of the tariff, it seems to me that it does provide a complainant with the opportunity to file a complaint with the Board. And I wouldn't presume to understand exactly how that would be done.

Q. - Right. So your intention though would not be to preclude complaints from being made to this Board, right?

MR. SCOTT: That would be my understanding.

Q. - And if it was necessary to have complaints made to this Board, and the only avenue for that to happen would be applications being made by New Brunswick Power Transmission, are you prepared to make those applications even though you aren't necessarily wanting that matter to be considered by this Board?

You would be willing to be the vehicle by which the matter can get to the Board?

MR. SCOTT: I guess I am still unclear as to why it is necessary for NB Power Transmission to make the application to the Board.

Q. - Well let's say the legislation restricts complaints or applications to only those being made by New Brunswick Power Transmission.

MR. SCOTT: That is hypothetical, I think, at this point in time, is it not?

Q. - Well I don't want to take you through the legislation, because you have already indicated you are not a legal expert and I don't propose to do that.

But I want you -- I want your answer about whether in that hypothetical, would you be prepared, you New Brunswick Power Transmission, as the only vehicle by which matters of dispute can be heard by this Board, are you prepared to have those matters put to this Board by way of an application even if New Brunswick Power Transmission does not find the complaint one that should go before the Board?

MR. SNOWDON: Are you suggesting they are bypassing the dispute resolution in the tariff?

Q. - Yes.

MR. SNOWDON: Or they have gone through that and do not feel --

Q. - I am suggesting it as an alternative to the dispute resolution process outlined in the tariff.

MR. SNOWDON: Our position would be that we would want them to go through the dispute resolution through the tariff.

Q. - And not this Board?

MR. SNOWDON: We would hope that we would be able to resolve

it through this process.

Q. - And the dispute then would not be put to this Board, right?

MR. SNOWDON: This hypothetical non-jurisdictional Board that you are speaking of?

Q. - Gee, you are talking like a lawyer now. Mr. Snowdon, the point is quite easy -- the question is easy. You are intending to have matters of dispute decided by way of the tariff and what is outlined in the tariff, right? That is what you have applied for?

MR. SNOWDON: That's correct, yes.

Q. - And that does not include express reference to having disputes heard and decided by this Board, right?

MR. SNOWDON: Not explicitly, no.

Q. - So the preference then is to have these matters resolved by way of arbitration as set out in the tariff document?

MR. SNOWDON: That's correct.

Q. - And sir, are you aware under FERC legislation that any party at any time can make a complaint to the FERC in respect of matters concerning tariffs?

MR. SNOWDON: Yes, I am aware of that.

Q. - But that is not what you are proposing here, right?

MR. SNOWDON: We would expect that this Board by approving this tariff would have the right to hear disputes.

Q. - Back to the transmission expansion policy, sir. As I understand it, you are not intending to make application in the event -- application to this Board in the event transmission facilities are in fact required, right? There is no requirement to do that?

MR. SCOTT: There would not be a requirement to come back to this Board if the transmission facilities could be built in such a way that they could be covered by the tariff.

I presume if there was sufficient expansion and the cost was sufficient that it would have a material impact on the rates, then we would be back before this Board for a rate hearing of some sort.

Q. - So there is no requirement for this Board to make a determination about whether those facilities are in the public interest?

MR. SCOTT: The -- is that in relation to transmission expansion?

Q. - Yes.

MR. SCOTT: I guess as I said before, if the transmission expansion is significant enough that it would impact the rates, then this Board would have jurisdiction over it.

Q. - And those rate matters would be matters that would be determined when, after construction or well before construction?

MR. SNOWDON: They would be determined before construction.

Q. - Thank you. Now when there are cost overruns associated with a new project, who under the transmission expansion policy is responsible for cost overruns if they are in fact -- if in fact they occur?

MR. SNOWDON: I guess we would -- sorry, a determination would be made as to what the cause of the cost overruns was. If it was directly attributed to the transmission provider, then they would be absorbed by that transmission provider.

Q. - Mr. Snowdon, who would make that determination?

MR. SCOTT: Anytime when there would be a requirement for a transmission system expansion, the customer would be making an application to NB Power.

And as part of that application there would be a requirement probably for a system impact study followed by a facilities study. And then the customer would agree to those costs in terms of the expansion before any expansion ever proceeded.

And I would expect that the terms and conditions under which that expansion would be done would be included in that initial service application.

And presumably if the customer -- if there were terms related to cost overruns or things like that, that those

could be included in there as well.

Q. - I guess it is the latter part. I got it all up to that last part. And that is where I have asked you before about the incurrence of cost overruns.

And what I heard Mr. Snowden indicate, that there would be some form of determination about the prudence of those cost overruns.

And my question was who makes that decision?

MR. SNOWDON: What I was referring to there, if for some reason the customer caused the delay because of equipment not being there, site not being -- access or whatever reason they were the cause of those, then they would be responsible to cover those costs.

If the cause were strictly within the transmission providers, they would honor the commitment that was in the agreement that was made.

Q. - Who makes that determination, Mr. Snowden?

MR. SNOWDON: I would suggest to you that it would be after great discussion between the customer and the transmission provider.

Q. - And if they can't agree, who makes that decision?

MR. SNOWDON: Then you revert back I guess to the dispute resolution process.

Q. - And is that a dispute then that could go before this

Board or intended to be placed before this Board?

MR. SNOWDON: I think we have dealt with that issue.

Q. - And the answer is no then?

MR. SNOWDON: The issue is that our application before this Board is that they are approving not only the tariff itself but the attachments, the schedules associated with this tariff.

And they would have implicit rights to deal with issues related to those documents.

MR. NETTLETON: Mr. Chairman, I'm moving on to another area.

I see that it is five after 12:00. Would this be a convenient time to stop for lunch?

CHAIRMAN: All right. We will adjourn until 1:30 then.

MR. NETTLETON: Thank you.

(Recess - 12:05 p.m. - 1:30 p.m.)

CHAIRMAN: Board counsel has indicated to me that in fact the representative of Bayside Power had some questions for this particular panel. So after JDI has concluded we will give you the opportunity, sir.

Any preliminary matters?

MR. MORRISON: No, Mr. Chairman.

CHAIRMAN: All right. Mr. Nettleton, do you want to carry on with your cross?

MR. NETTLETON: Thank you, Mr. Chairman. Good afternoon,

gentlemen.

Q. - Mr. Snowdon, could I have you turn to page 6 of your written direct evidence, that is appendix A-3 -- or sorry, exhibit A-3? Do you have that there?

MR. SNOWDON: Yes.

Q. - What I would like you to do is turn to page 6 of that document?

MR. SNOWDON: Yes.

Q. - Sorry. Why don't we start with page 5. That is where actually the question starts.

The question that you have been asked to answer deals with performance measures, Question 15. Do you see that?

MR. SNOWDON: Yes.

Q. - And in the response you refer to the North American Electric Reliability Council. Do you see that?

MR. SNOWDON: Yes.

Q. - Does NERC publish performance measures?

MR. SNOWDON: Yes, they do.

Q. - All right. And then carrying over the page you indicate that NB Power is intending to use CEA statistics.

What is your intent? Are you planning to publish the CEA statistics that are found in table 1 on a regular basis?

MR. SNOWDON: No. Our proposal is that we would not use

CEA's provided statistics, that we would use comparator to our own performance. If you will refer to -- I would refer you to table 1 --

Q. - Yes.

MR. SNOWDON: -- where the description of the characteristic -- the first one is the SAIDI or the duration of the interruptions. And the second one is the frequency of interruptions.

We would use those descriptions as terms of defining what the measurement is. And the objective though would be that we would strive to meet the five-year average of NB Power.

Q. - And you indicate, as I understand in your answer, that the reason why CEA metrics are not appropriate is because there is a wide range of performance?

MR. SNOWDON: Not a wide range of performance. It is a wide variation in the reporting practice. I could elaborate on that. There are no industry standards per se in terms of reliability specific to transmission or loss of supply.

The information that is provided by CEA or inputted to CEA is mostly driven by distribution. There are loss of supply statistics in there, but they tend to be related to more at the substation level.

And we felt that with their wide variety of reporting

that -- and we have been involved with reporting to CEA for several years. And we have tried to even look at it from the distribution side, that there is no consistency in how those numbers are presented.

I will give you an example. People record interruption data differently. And they -- their ability to take interruption information during significant storms is greatly impeded by their ability to take the calls from customers.

And oftentimes they will exclude major storms from their statistics. And there is no consistency on whether those types of data are included in those statistics or not.

So we could just -- we felt that we just could not rely on those statistics to give us a good sense of our performance relative to other Canadian utilities.

We introduced a service restoration system a number of years ago where we have -- I would go on record to say one of the best at recording these types of -- this type of information coming from customers. And it is a similar system that Nova Scotia Power has recently implemented as well.

So the accuracy of what you are receiving is very good. And when we started reporting this information, our

statistics went up drastically. And it really just came down to the quality of the information being presented or captured inputting into these reports. So that is why we never went to the CEA statistics in terms of establishing this performance standard.

We did attend a conference in the U.S. where there were 17 different transmission utilities there represented. And it was a reliability conference where information relative to interruptions was discussed. And there was a wide range of reporting methodologies used at that. And there was no consistency among those.

So as a third element in our investigation as to what standards we could use, we had Ernst & Young involved with another study with us on work progress and efficiency.

And when they were out looking for best practices on that, we asked them to come back to us with some standard, if you will, performance targets or measurements relative to reliability on transmission.

And they came back to us and stated that there were no standards out there, that they could not come back with a prescribed formula, if you will, to use for transmission outages.

So based on that we felt that we would look internally to see where we should be relative to our own performance.

And to tell you the truth, our performance over the last couple of years has not been good. Our reliability statistics are down. And we feel that it is a challenge just to get back to where our five-year average is.

And then of course once you achieve that target, by using a rolling five-year average, you are continually looking to improve your performance over time. And that is basically why we chose to look at the five-year NB Power average.

Q. - That is very helpful, Mr. Snowdon. Why I was asking the question about the five-year average is, I believe in your evidence, namely the Stone & Webster report -- tell me, why -- what purpose does the Stone & Webster report have in respect of this proceeding?

MR. SNOWDON: The Stone & Webster study basically gives an overview of the reliability, from their perspective, that we have in New Brunswick. And we engaged them to help us look at where improvements might be.

Q. - All right.

MR. SNOWDON: And they are basically forming the template for our reliability initiatives that form part of the budget and therefore part of the cost that you are seeing represented in this tariff.

Q. - All right. And the Stone & Webster report is a 1999

document, is that right?

MR. SNOWDON: Yes.

Q. - All right. And does the Stone & Webster report report on the five-year rolling average of the statistics that are found in table 1?

MR. SNOWDON: No, they do not.

Q. - And which metrics does the Stone & Webster report rely on? Is it the metrics of the Canadian Electrical Association?

MR. SNOWDON: I would have to check that. I'm not sure of that.

Q. - You are not sure. Now could I get you as an undertaking to do that, sir?

MR. SNOWDON: I certainly will.

Q. - Now with the metrics that you have proposed in table 1, is my understanding correct, Mr. Snowdon, that these statistics will be reported on an ongoing basis, on a go-forward basis?

MR. SNOWDON: That's correct.

Q. - And who will these statistics be reported to?

A. They would be reported to this Board.

Q. - But again on a prospective basis?

MR. SNOWDON: No. They would be reported on a historic or actual basis.

Q. - The outage statistics that you refer to at line 2 -- I guess the more relevant performance measurements are in table 1.

But can you confirm with me, Mr. Snowdon, that none of the performance measurements that you have listed in table 1 are in any way related to the performance-based mechanism that forms part of your tariff?

MR. SNOWDON: I provided a partial answer to that on page 6 which relates to how these performance measures would be implemented.

Q. - You are referring to lines 19 and 20?

MR. SNOWDON: Yes.

Q. - What review are you speaking of when you say reviewed by the PUB?

MR. SNOWDON: We would anticipate that the Board would review these performance measurements on a routine basis.

I would suggest to the Board that they would do that yearly.

And during that year it would be determined by the Board which indices -- well, I guess the statistics provided would show which indices were met and which were not met. And then the Board would take a decision, depending on which and to what degree these metrics were not met.

For an example, if one of the metrics on there is environmental spills and we did not meet the 20 -- the objective of 20 spills, and we were at 22 spills or 25 spills, that they would perhaps suggest or determine that warrants different actions if we were not meeting our reliability statistics.

And that is why we did not suggest a formula. Because I think in working with the Board, that over time and through gaining experience, that there would be some methodology instilled there so that the punitive damage if you will or -- of their decisions would be sorted out over time.

Q. - All right. So you are contemplating some form of review, as I understand it, and the review would allow this Board to make determinations where metrics are not met.

Are you expecting this Board to make determinations that if metrics are not met would change the rates that you are proposing?

MR. SNOWDON: As I said before, that would be subject to the Board determination.

Q. - But you are not applying for that here today, correct?

MR. SNOWDON: We are not applying for what?

Q. - Your application is not seeking this Board's approval of a mechanism where, if these metrics are not met, the Board

would alter the rates that would otherwise be approved pursuant to what you have applied for?

MR. SNOWDON: We are proposing a PBR cost of service which is in addition to that these performance measurements under this application.

And it would then be up to the Board to determine what the relationship is or should be between the performance measurements and the rate of return we are requesting, based on our performance.

Q. - All right. Let me try it this way, Mr. Snowdon. What do you mean by the word "performance" when you use the phrase "performance-based rates"?

MR. SNOWDON: Performance is -- performance-based rates are that if you meet these performance measurements then you are entitled to the rate of return that you have been granted by the Board to achieve.

Q. - So if that is in fact the case, Mr. Snowdon, you would expect then that the rates that you have applied for to have some form of tentacle or link to the metrics that you have included on table 1, right?

MR. SNOWDON: That's correct. And as I explained, I would anticipate that this Board would determine and work with us in determining what those metrics are.

Q. - But that -- I think we understand what the metrics are,

don't we?

MR. SNOWDON: Yes. I'm sorry. It is not the metrics. It is how the formula that would be determined as to what actions are taken with not meeting those performance targets.

Q. - And so you have not in this application proposed a formula --

MR. SNOWDON: No.

Q. - -- for this Board to apply or approve?

MR. SNOWDON: No, we have not.

Q. - Thank you. So how -- back to the word "performance", how is it that you believe this application to be a performance-based rate application, if there is no formula that you are applying for that determines rates based on the performance out of these metrics?

MR. SNOWDON: Again it would be up to the Board to determine what those metrics or those linkages would be.

Q. - All right. Let's move on to line 8. You indicate that another important performance index relates to ISO 14001. Do you see that?

MR. SNOWDON: Yes.

Q. - Has NB Transmission received ISO 14001 status?

MR. SNOWDON: No, we have not. We are anticipating that we would achieve that status as of December the 31st, 2002 of

which we have made a commitment to the Canadian Electrical Association in that regard.

Q. - So if you achieve that objective are you expecting your rates to increase?

MR. SNOWDON: No.

Q. - But that could be something that you would be happy with if this Board so decided?

MR. SNOWDON: When you refer to rates you mean what rates?

Q. - The rates that you have applied for?

MR. SNOWDON: Under the tariff?

Q. - Yes.

MR. SNOWDON: I'm not following your line of thought.

Q. - Well, I thought you just told me that you were allowing this Board the discretion to determine what should happen in the event metrics are met or achieved or exceeded, right?

MR. SNOWDON: That's true.

Q. - And that would have some form of benefit to you, right?

MR. SNOWDON: Potentially, yes.

Q. - But you haven't told us what you are looking for, right?

You are leaving it up to the Board to decide?

MR. SNOWDON: In terms of the performance measurement?

Q. - No. In terms of what you get, what your quid is for meeting your performance metrics?

MR. SNOWDON: I would like Mr. Scott to answer that question please.

MR. SCOTT: The details of the performance-based regulation will be provided by Dr. Morin in Panel B, I believe.

However, as they relate to these performance measures, these are minimum requirements that NB Power expects to meet in order to ensure the overall reliability and environmental requirements and safety requirements are continued to be met while we have a performance-based PBR system in place.

The financial returns are not related to these targets. These targets represent if we do not meet them then there is a possibility that the Board, through their review, would invoke some sort of penalty.

Q. - So you are anticipating some form of penalty? Would that be a financial penalty?

MR. SCOTT: I would leave that up to the Board to decide.

Q. - I have heard that. I am not asking you for what you are leaving up to the Board. What I am asking you is what you expect.

What would be satisfactory to you? Do you think it should be some form of financial penalty?

MR. SCOTT: Again, I think that there is a number of options available. It could be a financial penalty. It could be

a request from the Board to make additional investments in the area where we are deficient. It could be additional auditing process or -- I am not sure what direction it will take. But there are a number of options available.

Q. - Well let me maybe try it this way, Mr. Scott. As I understand it from your answer, these performance metrics are not related to the performance metrics which Dr. Morin uses in his methodology by which rates will be calculated.

These are metrics separate and apart from the performance-based rate making methodology that you have proposed. Is that fair?

MR. SCOTT: Not exactly. The performance-based regulation in fact does require some type of performance metrics to be met. The way it is presented here is that these are minimum requirements.

The -- if you are talking financial returns, the financial returns are based on whether or not NB Power operates efficiently as a business, does appropriate cost cutting measures where we can, those types of things. And that would impact the overall financial returns.

These are performance metrics that ensure that while we are trying to operate effectively as a business, we continue to operate as a reliable supplier and have a safety record and environmental stewardship that continues

to match what we are doing today or better.

Q. - Okay. I might be getting this very slowly. But Mr. Scott, am I to understand then that if, for example, NB Transmission were to cut all of its cost, cut it down to -
- pared all costs such that your performance metrics stated here are not met.

If for example, you were to let go all of your environmental staff, to the point where your ISO 14001 objective wasn't met and there was some form of cost saving associated with that, you would expect this Board to review that situation because your performance metric had not been met. Is that right?

MR. SCOTT: If our performance metric has not been met, then we expect the Board to review it, yes.

Q. - Would you make application to the Board in that case?

MR. SCOTT: I don't think it would be necessary for us to make application to the Board. We would be -- we plan on submitting reports on all of these metrics on a periodic basis.

MR. SNOWDON: I would further suggest that we would not have to call that meeting, that this Board would insist that there be that meeting.

Q. - All right. I am moving to a new area. Mr. Scott, maybe you could turn up your evidence please.

On page 2, sir, at line 7 and 8, you indicate that schedules 2 and 6 represent ancillary services that are required from generators and are cost based. Just for the record, is that an accurate statement?

MR. SCOTT: The -- our expectation or understanding -- my understanding of how the ancillary services for generators would be acquired is based on a proxy unit which is cost based.

Q. - So we need to insert the words "that are based on proxy units that are cost based"?

MR. SCOTT: I am not sure it is necessary to say that. We have said it in other places in the evidence in terms of how the ancillary services are priced. We said they are based on proxy units.

Q. - All right. Thank you for that clarification. Can I take you then, sir, to page 6 of your evidence under question 11? Sorry, question 12 on page 7. Have you got that, sir?

MR. SCOTT: Yes, I do.

Q. - Now as I understand the question, we are talking about constraint management and the need for transmission constraint management. Is that right?

MR. SCOTT: Yes.

Q. - Is constraint management the same as congestion

management?

MR. SCOTT: Yes.

Q. - Okay. And the need to establish procedures, as I understand lines 10 and 12, arise out of the functional separation that you are proposing?

MR. SCOTT: I think it is more than that. I think that customers in general need to understand if there is going to be constraint management, how that is going to be done.

Q. - It is more than that, meaning it is more than just simply the functional unbundling that gives rise to the need for the service?

MR. SCOTT: Yes.

Q. - If I take you, Mr. Scott, to sort of a now versus then discussion, under the now discussion of bundled rates, is it fair to say that congestion management services are effectively part of that bundled rate?

MR. SCOTT: The -- I think that in terms of supply to in-province customers, that that is true. The congestion management is part of the overall bundled service that is provided.

This particular section deals with constraints on the transmission system in general and it also deals with when constraints occur on point-to-point service outside of the -- outside of NB Power.

And in those cases there are some very specific rules that apply that are in the tariff for interruption of service or for curtailment of service to transmission customers. And there is no other way to deal with those except operator to operator. And so to that extent the rules of the tariff apply.

But certainly for in-province load the bundled service provides the congestion type of management.

Q. - All right. So with respect to in-province load, congestion management is effectively part of the bundled rate, right?

MR. SCOTT: Yes, that's fair to say.

Q. - And as we understand from Mr. Marshall's testimony before, the bundled rate is based on a price cap methodology. Is that your understanding?

MR. SCOTT: That is my understanding.

Q. - And so one would expect that the congestion management service that is included in the bundled rate today is not priced using market-based principles but cost-based principles, right?

MR. SCOTT: That's correct.

Q. - All right. Now can I have you turn to Information Response, Saint John Energy, IR-66 please. It is in exhibit A-4.

MR. SOLLOWS: What page?

MR. NETTLETON: It is page 544.

Q. - Now the area that I want to just focus on with you, Mr. Scott, is the last paragraph found on page 544.

And while I realize that this relates to ancillary services, do I understand or would I expect that the information regarding NB Generation's cost figures that would be included in the bundled rate associated with congestion management would have the same sorts of concerns and sensitivities relating to confidentiality for congestion management service? Is that information publicly available?

MR. SCOTT: Cost information on NB Power Generation would not be publicly available.

Q. - And that is not just limited to ancillary services, right?

MR. SCOTT: No.

Q. - Okay. Thank you.

Now with respect to the now situation, and by that I mean -- I'm getting my metaphors mixed -- the proposed world that you have in respect of your application, is it your expectation that NB Generation will be providing the lion's share of the congestion management service?

MR. SCOTT: As I think is pointed out in this response to

the interrogatory, all ancillary services will be dominated by NB Power Generation in the short-term due to the limited number of alternatives.

Q. - All right. So am I to now understand that congestion management service is a ancillary service?

MR. SCOTT: I'm sorry. Generation redispatch is not a specific ancillary service.

Q. - All right. Now could I have you turn to exhibit A-3 which is -- sorry, just before we go, I don't want to -- sorry, can we just go back to the Saint John Energy response in the area that I showed you.

You will see that the response indicates that the reason for not disclosing this information is that it would cause financial loss to NB Power and financial gain to its competitors.

Do you see that?

MR. SCOTT: Yes.

Q. - Mr. Scott and Mr. Snowdon, do you think that that is a reasonable justification for the nondisclosure of information?

MR. SNOWDON: Yes.

Q. - Thank you. Now let's turn to your tariff in section 29.2 which is found in exhibit A-3?

MR. SCOTT: What section please?

Q. - It is section 29.2 entitled "Application Procedures."

Have you got that, sir?

MR. SCOTT: Yes.

Q. - Great. If I could have you turn to page 66. And the particular reference that I'm interested in your views on is found in the lines 17 through 24. It is within the Roman numeral V category.

MR. SCOTT: I have it.

Q. - Now as I understand part V what you are asking parties to provide as part of their application is a description of network resources, right?

MR. SCOTT: Yes.

Q. - And including in that description -- and this is what I would like you to focus on -- it is on line 17, "Approximate variable generating cost for redispatch computations."

Do you see that?

MR. SCOTT: Mmmm.

Q. - Does that mean that at all times redispatch costs will be made available at NB Genco's variable cost?

MR. SCOTT: I don't think this necessarily means that at all. This is a -- the part of the transmission tariff that deals with network service. It applies to those customers who are taking network service under the tariff.

So presumably they have chosen to go out into the market to procure a supplier. And so in that sense I don't see why it necessarily has to apply to NB Power Generation providing their variable cost.

Q. - I didn't ask you if it necessarily. But what I understand again is that this description -- what you are asking for from your customers is a description of your network or their network resources, right?

MR. SCOTT: Mmmm.

Q. - And that includes, as part of those network resources, a description of the approximate variable generating cost, right?

MR. SCOTT: Yes.

Q. - And does that and will that apply to NB Generation when NB Generation is the network resource?

MR. SCOTT: Yes.

Q. - So we can expect that when NB Generation is providing redispatch services, congestion management services, that they will be provided at the variable generating cost?

MR. SCOTT: At the approximate variable generating cost.

Q. - And you make that clarification because the word "approximate" appears in section 29.2, right?

MR. SCOTT: I'm reading it from section 29.2, yes.

Q. - Well, we wouldn't expect then that the variable cost

amount for congestion management service to be priced at a market price, would we?

MR. SCOTT: I guess -- well, in terms of this, if I were to take the example outside of NB Genco again, when a customer submits their application form and indicates these are the costs of redispatch for the generation supply, that's information that is provided to the -- is provided to the transmission provider, the operator, so that the operator can use that information when a congestion or constraint occurs on the power system and there is a need for redispatch.

Those costs are put forward as a reasonable estimate.

If you -- if the operator or the transmission provider is required to change it, that's what the generator expects to be paid in terms of redispatch. And so it should be a reasonable cost.

And I think that that is -- the same would apply to NB Power Generation as it would to any other supplier, what those costs are.

Q. - Right.

MR. SCOTT: And it is not up to the transmission provider to go out and verify that those are indeed fully cost-based or what they are.

Q. - Or variable cost?

MR. SCOTT: What the variable cost is, we are expecting --

Q. - You are not going to be verifying that they are actually providing you with variable cost information?

MR. SCOTT: We would -- I guess our first assumption would be that that is the variable cost information. It is not a market-based rate. If it is reasonable cost then yes, we would accept that.

Q. - So Mr. Scott, when an application is made, are you telling this Board that you don't perform any type of verification process in respect of the information that is provided to you?

MR. SCOTT: I didn't say that. I said in respect to the generation cost information that we would not be going out and necessarily challenging a supplier and saying these are not your costs, we need to do a complete review of your costs in order to provide that information.

If the costs were reasonable then I think that we would accept that as an approximate variable generating cost.

Q. - All right. Let's go over then -- if that is what I understand your understanding is of variable generating cost, let's go over then to article 33.2 if we could please?

Q. - Have you got that, Mr. Scott?

MR. SCOTT: Yes.

Q. - This is the section of your tariff that deals with transmission constraints, right?

MR. SCOTT: Yes.

Q. - At line 28 it indicates that your obligation to customers is to obtain redispatch on a least-cost basis without regard to the ownership of such resources. Do you see that?

MR. SCOTT: Yes, I do.

Q. - My question, sir, is when you say least cost, least cost amongst whom?

MR. SCOTT: The -- as we just got done discussing, as part of the application for network service the transmission customer would be providing the information on the generating resources and the transmission provider would have that for all the network resources. And so in terms of dealing with it on a least-cost basis without regard to ownership, we would select from all of those resources.

Q. - All of those resources?

MR. SCOTT: Yes.

Q. - I thought you just told me, Mr. Scott, that the lion's share of congestion management service is going to be provided by NB Generation?

MR. SCOTT: Yes, I did.

Q. - So all of those resources is all of those resources owned by one company?

MR. SCOTT: No, it isn't. If somebody was providing for a network resource and they identified that resource as a network resource and redispatch charges associated with that resources, then we would redispatch according to those -- that information that we have.

Q. - I understand what your intentions are. But I think now you are putting a hypothetical to me of "if" , if there were other providers of the redispatch service.

Is it the case that NB Generation is going to be the only provider of this service?

MR. SCOTT: I don't know if NB Generation will be the only supplier. I presume that any customer that chooses to go out and procure transmission service through this tariff and they are a network customer, then there is -- in all likelihood they are doing it to choose a supplier other than NB Power Generation, and in that case there will be an alternate supplier.

Q. - Mr. Scott, is there going to be an opportunity for network resources to provide updates or changes to their approximate variable cost of redispatch?

MR. SCOTT: I would think that there should be, yes, and --

Q. - Is that going to be posted on OASIS?

MR. SCOTT: Is what going to be posted on the OASIS?

Q. - That update.

MR. SCOTT: Well it's certainly not going to be made available to all the customers, no. We would treat that as confidential information in terms of how we would redispatch.

But we may make a mechanism within the OASIS whereby customers could in fact go in and update their costs on a regular basis or whenever they choose to do so. And then the --

Q. - But that is not in your tariff today, is it?

MR. SCOTT: The details of that are not in the tariff, but there is a number of things related to our OASIS system that are not detailed out in this as well.

Q. - Thank you. And just -- two last questions for you, Mr. Scott. Just to confirm, NB Transco is not purporting to have any control over the price which NB Generation provides congestion management service to you at, is that right? You are not going to be able to go and say that's too high, give it to me for something less?

MR. SNOWDON: Are you suggesting we could not challenge those costs?

Q. - Well can you?

MR. SNOWDON: Yes.

Q. - How would you do that?

MR. SNOWDON: By asking them to demonstrate where their costs came from, what their variable costs are if we suspected that -- as Mr. Scott said, that the costs were abnormally high and didn't reflect what the variable cost should be for that type of unit.

Q. - Well I thought from the answer provided to Saint John Energy 66 that information is all confidential?

MR. SNOWDON: It is between the generator and the transmission provider.

Q. - Oh, between yourselves?

MR. SNOWDON: Or any other network resource provider.

Q. - I see. Back to the now situation.

MR. SCOTT: We would treat all information that we receive about generators as confidential information. And that's contained in our standards of conduct.

Q. - Under the now situation, Mr. Scott -- I have another hypothetical for you. And this is one of my very last questions on this area, so my hypothetical is this.

Imagine, if you will, congestion management services being so inordinately high that it caused your overall rate to increase by more than 3 percent, all right. Would that trigger a review of that rate by this Board?

MR. SCOTT: I'm not sure I could answer that question. I

don't --

Q. - Well let's try --

MR. SCOTT: -- understand all the parameters of it for one thing.

Q. - Okay. Let's try the proposed world. Is there any opportunity for this Board to challenge rate increases resulting from increases in congestion management services?

MR. SCOTT: This Board has jurisdiction over the rates of NB Power so I presume they would have the right to challenge that.

MR. NETTLETON: I have one other matter to discuss with you and it requires -- what I did, Mr. Chairman, is I have produced a table to discuss with the witnesses. It's a simple document. But I thought in light of the somewhat cumbersome language that one can get involved with a table, a picture says a thousand words.

So I will ask my friend, Mr. Morrison, if he has any objection with me proceeding with this table as an aid in cross?

MR. MORRISON: Give us a chance to review it for a moment.

We have no objection, Mr. Chairman.

MR. NETTLETON: Thank you. Might that be marked as an exhibit, Mr. Chairman?

CHAIRMAN: There are no objections? That will be JDI-5 then.

Q. - What I want to understand, Mr. Scott, is I want to try and gain a better understanding of energy imbalance service. And what I wanted to do with this chart is I want to suppose there is a firm taking network service with two facilities, each with a scheduled load of 10 megawatts and scheduled generation of 20 megawatts. And the firm takes network service. And so this scheduled load of 20 megawatts equals the generation of 20 megawatts. Right?

MR. SCOTT: Mmmm.

Q. - That was a yes?

MR. SCOTT: Yes.

Q. - Thank you.

MR. SCOTT: Are you assuming in this case that there are -- that losses have been covered?

Q. - Yes.

MR. SCOTT: Thank you.

Q. - And the assumption also is that the generation obtained is from a third party. Okay.

MR. SCOTT: Okay.

Q. - Now --

MR. SNOWDON: You are saying both facilities are third

party?

Q. - Both -- sorry?

MR. SNOWDON: Facility A and -- or 1 and 2 are third party?

Q. - Both facility 1 and facility 2 represent loads and they are both owned by the same company.

MR. SNOWDON: Okay.

Q. - The same transmission customer, for example. Okay. Now despite the deviation, total load is 20 megawatts and actual load equals actual generation. Right?

MR. SCOTT: Yes.

Q. - Is there an energy imbalance for this customer?

MR. SCOTT: This customer is a network service customer?

Q. - That is correct.

MR. SCOTT: And they have submitted a schedule of 20 megawatts. Am I correct -- I just want to make sure that I am correct in what you are --

Q. - Yes.

MR. SCOTT: And they have said that that 20 megawatts is composed of two loads. One at facility 1 of 10 megawatts and the other facility 2 of 10 megawatts?

Q. - Yes.

MR. SCOTT: And your question now?

Q. - Is there an energy imbalance for this customer?

MR. SCOTT: Assuming this is an hourly instance of --

assuming that there is -- this represents one hour, there would be no energy imbalance because the requirement really is to submit a total energy schedule for that load.

I would point out, however, at the end of the month the transmission tariff charges are not based on the aggregate load, but on the individual sub-station loads. So whatever the peak was for the month at each facility would determine the transmission charges.

But in terms of energy imbalance there would be none for this hour.

Q. - Okay. Now let's go to my second question using the same table. Let's change the assumptions a bit.

Second example, let's assume that instead of network service, we are in point to point service. And we have facilities at two different locations, so two point to point paths. Is there an energy imbalance for this customer?

MR. SCOTT: Where is the generation in this example?

Q. - The generation is at a third point.

MR. SCOTT: And so as a result of that, you would have two paths, one to each load?

Q. - That is correct.

MR. SCOTT: Then yes, in this case there would be energy imbalance for each of those paths.

Q. - And how would that be calculated, sir?

MR. SCOTT: The determination would be done at those loads.

There would be -- facility 1 would have an energy imbalance of 10 megawatts. Excuse me, it would be an energy imbalance of 8 megawatts in this case because there is plus and minus two megawatts of deadband. And then an additional 8 megawatts would be -- would be energy imbalance and that particular load would have taken more energy than what they scheduled for. And the opposite would be true for facility 2.

Q. - So in that second example, Mr. Scott, are you saying that NBP Transmission would have to buy load to cover that imbalance? I'm sorry, buy power.

MR. SCOTT: The way energy imbalance is done is we would not be able to isolate it to just two loads. We would look at the total -- the total sum, net sum of all of the imbalances. And certainly there would have to be generation service purchased in order to supply that.

So I guess in answer to your question, for this particular case there is no net energy that is required. But there is an energy imbalance for this -- for these two customers.

Q. - Thank you. Id I can have just one minute please. Mr. Scott, if I understand your last response, there is no

requirement for NBP Transmission to acquire load but there would still be charges levied with respect to the owners of facilities 1 and 2 then, right?

MR. SCOTT: I think you meant generation.

Q. - Sorry, correct. Thank you.

MR. SCOTT: Assuming everything else balanced out, then there would not be a requirement for NB Power Transmission to acquire additional resources to cover energy imbalance in this particular hour.

However, you have to appreciate that energy imbalance is a -- is a mechanism or an incentive to have transmission customers schedule their requirements close to what they are required to take.

And this hypothetical example works out so that there is no energy imbalance, but it could be just as easily the situation where they are both in the same direction in which case we would have to purchase this ancillary service.

So it really is an incentive and there is a penalty mechanism in place for us to provide this service. It is our intent as a transmission provider that it would be a flow through and that we are not looking at this energy imbalance as a means of making a profit.

Q. - All right. But can we agree, Mr. Scott, that in this

hypothetical situation you have a scenario where there is no obligation on the transmission provider to provide additional service, but there would still be charges levied to customers -- to the customers of facility 1 and 2, right?

MR. SCOTT: That is correct.

MR. NETTLETON: One last minute. Thank you, gentlemen. I have completed my cross examination. I appreciate your time.

CHAIRMAN: Thank you, Mr. Nettleton. The Board is going to take a fifteen minute recess. And when we come back, Bayside Power, if you would like to come up to mike number 5.

(Recess)

CHAIRMAN: Any preliminary matters? Go ahead, Mr. Nettleton.

MR. NETTLETON: Thank you, Mr. Chairman. I misspoke myself and just for the record, while I was and am through with this panel today, I just want to be clear that as it relates to the NOPR materials that I will be back to discuss that with this panel.

CHAIRMAN: Yes. NOCPR being JDI-4, I presume?

MR. NETTLETON: That's correct.

CHAIRMAN: Yes. No, that's understood. The question is

when and I guess we will decide that later on this afternoon. Okay. If there are no other preliminary matters, then Bayside Power, who is going to be very short and is back by the pillar. Would you identify yourself for the --

CROSS EXAMINATION BY MR. DIMOU:

MR. DIMOU: Stacy Dimou, and I will be very short and very simple. This is for Mr. Snowdon. The tariff as is here is the basically FERC 888 pro forma. The attachment J which is, I think, page 152 or 153 is the generator interconnection. That is not part of the FERC pro forma. And I'm simply asking not where it came from, because I know that, but if it is firm as it is on the page or if it's a work in progress, so to speak.

MR. SNOWDON: The generation interconnection agreement that is in our submission to the Board is a template that we would wish to follow with a generator coming on our system. And indeed one that we would ask our own generators to comply with.

There is a lot of boilerplate information in that document. It's a very complete document. However, we would expect as the generator we are interested in building in the area or coming into our system, that there would be extensive discussion and at times negotiations.

And certainly there would be changes to that document.

MR. DIMOU: Thank you. And that's it.

CHAIRMAN: I would request that you give Mr. MacNutt some assistance in estimating time henceforth. Thank you, sir.

Maine Public Service Company. Mr. Belcher, do you have any questions of this panel, sir.

MR. BELCHER: Yes.

CHAIRMAN: Would you like to come up to 5. Thank you.

CROSS EXAMINATION BY MR. BELCHER:

Q. - Thank you, Chairman. You can hear me okay? My questions are going to be from exhibit A-5 and exhibit NMISA-1. And I had asked some questions yesterday about how the PSA relates to schedule 4, and that's where I'm going to start.

So to begin with, we can in A-5 turn to schedule 4 in the red line tariff which is page 94.

MR. SNOWDON: You are working off the pro forma, red line version?

Q. - Yes, the red line version. That's exhibit A-5.

MR. SNOWDON: Page 90, was it?

Q. - 94.

MR. SNOWDON: 94.

Q. - What I would like for is Mr. Snowdon or Mr. Scott just to go down through schedule 4 and explain how it's going to

work. I do have some confusion on the -- on the first band A general overview of schedule 4.

MR. SCOTT: Could you be more specific on --

Q. - Yes, I can.

MR. SCOTT: -- what in general that you are looking for?

Q. - Why don't I just go through and ask you questions. It's my understanding that the transmission provider will apply a deviation band of plus or minus 1 and a half percent from point to point and -- or plus or minus 10 percent for network customers? Is that correct?

MR. SCOTT: Yes, that's correct.

Q. - Okay. In the case of both point to point and network service --

MR. SNOWDON: Excuse me. There is a point of clarification there. That plus or minus 10 percent is actually a second deviation band, if you look on page 91. Or, I'm sorry, that's in -- yes, on page 96, I guess, in your copy.

Q. - Yes.

MR. SNOWDON: It says that the deviation band and the second deviation band called network service band. So the first band applies.

Q. - So the band on network service that has to be corrected is plus or minus 1 and a half percent or 2 megawatts.

MR. SCOTT: Plus or minus 1 and a half percent or 2

megawatts for point to point service.

Q. - That's the first band?

MR. SCOTT: Yes.

Q. - Now on network services the first band is?

MR. SNOWDON: It's the greater of the deviation band or plus or minus 10 percent.

Q. - Okay. And in each case you have 30 days to correct that or give it back in kind?

MR. SNOWDON: That's correct, yes.

Q. - And for imbalances within the deviation that have not been eliminated the energy shortfall will be priced at the higher of 110 percent of 1.85 times the monthly average price of number 2 fuel oil per barrel and the price paid by the transmission provider for any emergency energy purchased during that hour?

MR. SCOTT: That is correct.

Q. - I guess this 110 percent of 185 times monthly average price for number 2 fuel oil. On the number 2 fuel when and where are those prices derived from. You said it's the average -- monthly average price of number 2?

MR. SCOTT: Yes. There is a price index for fuel oil. And the price index escapes my mind right now. But that's what it would be based on. There is a standard industry price index. I could -- I could get that for you.

Q. - Okay. But it is safe to say that it being the monthly average price for energy imbalance that wasn't given back in kind, you would not know what the price for that energy -- or the cost for that energy imbalance was until the end of the month?

MR. SNOWDON: That's right.

Q. - And then for any imbalances in excess of the scheduled delivery will be compensated at the lesser of \$18 per megawatt hour and 80 percent of the marginal cost of energy. Is it and or or in that case?

MR. SCOTT: Normally it would be \$18 per megawatt hour.

There may be cases where the marginal cost of supply in the -- is actually less than that. This would be a case - a bit of an unusual case where in order to absorb the excess energy, NB Power would have a choice of backing down nuclear energy or spilling hydro. In which case the cost would be 80 percent of the marginal cost of the energy.

Q. - So, for instance, in the spring?

MR. SCOTT: Yes.

Q. - Yes.

MR. SCOTT: Provided -- and not necessarily in the spring either. There may be some other marginal units that could be backed down. And so it only would occur when the only

option is to spill hydro or to -- or to back down nuclear.

There are no other options for absorbing that energy.

Q. - So the sentence the lesser of \$18 per megawatt hour and 80 percent of the marginal cost of energy, it probably could be written a little better or different. To me that implies that you are going to get this cumulative of this adding.

MR. SCOTT: Well, it may not be phrased quite right, but that's the intent.

Q. - Okay. I would just like to go back again to what we -- on the 1.85 times, where does that come from? What is that?

MR. SCOTT: That's representative of combustion turbine price. For example, the Millbank unit in New Brunswick.

Q. - Okay. So is this equivalent to the heat rate or the conversion factor for dollars per barrel to get you to dollars per megawatt hour?

MR. SCOTT: It's my understanding if you take the 1.85 times the fuel price index that's quoted, and it is available on -- I don't know if it's New York or where. But then that price will give you a dollars per megawatt hour. And that price represents the average cost of a CT unit.

Q. - This isn't a proxy unit then?

MR. SCOTT: No, I don't -- no, it's not intended to be a

proxy unit.

Q. - Are either of you familiar with the Northern Maine Independent System Administrators' market roles?

MR. SCOTT: Yes. I'm generally familiar with those roles.

Q. - And our market is a bilateral market with a balance in energy?

MR. SCOTT: That is my understanding.

Q. - And it calculates an hourly clearing price?

MR. SCOTT: Yes.

Q. - Okay. And our market rules, they are published market rules and approved by FERC, is that correct, your understanding?

MR. SCOTT: It's my understanding that --

Q. - Yes.

MR. SCOTT: -- yes, they are.

Q. - Pardon me while I struggle through here. And you are familiar with the Products and Services Agreement?

MR. SCOTT: Yes, I am.

Q. - And I believe, Mr. Scott, you were actually on part of the process of establishing these market rules or involved in the process?

MR. SNOWDON: Not in the market rules.

MR. SCOTT: Yes, I was actually involved in some of the -- in some of the discussions related to those market rules.

Q. - Okay. Are you aware that based on this schedule 4 that the Northern Maine ISA -- if the Products and Services Agreement was to go away, that the Northern Maine ISA would have to change its market rules and file with FERC for those changes?

They specifically mention bands 1, 2 and 3 which would no longer exist, is that right?

MR. SCOTT: The bands 1, 2 and 3 as it pertains to the Products and Services Agreement, band 1 represented an energy imbalance of plus and minus 1 megawatt hour, which at the time that NB Power put their transmission tariff in place, that was the FERC standard.

Subsequent to our implementing our tariff FERC extended that bandwidth to plus and minus 2 megawatt hours. And so as a result of that there was a discrepancy between what was available in Maine and what NB Power had.

So to accommodate that market we implemented a second band which was band 2, which was another plus and minus 1 megawatt bandwidth. And that represented band 2. And we treated that as inadvertent to accommodate that, with the provision that the participants pay for the capacity associated with that. There was a charge for that.

Then thirdly there was an optional band to accommodate additional fluctuations in the market, that was a way of

accommodating regulation and frequency control ancillary service. And that optional band was a further 2 megawatts, so that in total the Northern Maine ISA could get a plus and minus 4-megawatt bandwidth.

And I guess if the question was related to how this new tariff would affect that, certainly the tariff as it is proposed today would in fact accommodate band 1 and 2 just by the tariff itself.

The remaining band, band 3, which is an additional 2 megawatts of capacity, our proposal would be that that would be eliminated, because we do have an ancillary service that can be provided, which is regulation and frequency control.

Q. - Thank you. Could you turn to schedule 1 of the Products and Services Agreement, exhibit NMISA-1 please? And these are these bands that you just explained.

On band 1, on the second --

MR. SOLLOWS: What page?

MR. SNOWDON: Page 1.

Q. - It is page 1. But it is schedule 1 in the very -- second to last page.

MR. SNOWDON: Second to last page of the --

Q. - I refer you to band 1, bullet 2, "Energy inside this band would be treated as inadvertent." And you say the way

schedule 4 of your proposed tariff is written that this would be similar?

MR. SCOTT: That is correct, yes.

Q. - Okay. Are you aware that currently that band under this Products and Services Agreement, Northern Maine ISA actually pays a dollar per megawatt hour for that service, if there is a plus or minus 1?

MR. SCOTT: Would you repeat that please?

Q. - Yes. Currently the way we settle with New Brunswick Power under this PSA is, assume that a schedule was 10 megawatts and the actual was 11. That would create a 1 megawatt band --

MR. SCOTT: Yes.

Q. - -- or difference?

MR. SCOTT: Right.

Q. - We do not give that back in kind. We actually pay you the marginal cost for that. The reason we do that is so that we can establish a clearing price in that hour that we can charge back to our market participants.

Because one of those participants might have scheduled right on -- had a scheduled difference of zero but the other one would have had a scheduled difference of 1.

So we have to have some way to allocate that beyond the participants in Maine. And by having an inadvertent

or giving back in kind, we can no longer calculate a clearing price for that hour in real time.

MR. SCOTT: Yes, I am aware of that. I thought you said the price was \$1. And that is what confused me --

Q. - Oh, I'm sorry.

MR. SCOTT: -- a dollar per megawatt.

Q. - No. It is the difference in one.

MR. SCOTT: It threw me off.

Q. - Okay.

MR. SCOTT: But there is -- yes. In order to accommodate the market, and as Mr. Belcher has just stated, rather than receiving the energy and paying back the energy in kind in order to make the market work, a request was made subsequent to this Products and Services Agreement as to whether or not NB Power would be prepared to put a price on that.

And we did agree to do that provided that it was an operator-to-operator indication of the price and that that information was kept confidential. And the -- and we did have an agreement with the generation marketing division of NB Power as to what a reasonable price would be.

And so we have established an hourly rate that is treated within the inadvertent band as a means of clearing this inadvertent on an hourly basis.

And certainly NB Power would be willing to continue this process with them in an operator-to-operator basis in order to continue to allow that market in Northern Maine to function properly.

We see that the treatment of it as a price for that hour is similar to paying back inadvertent though an in-kind payment in terms of energy.

Q. - Thank you. Just going down to band 2 --

MR. SCOTT: Yes.

Q. - -- the 1 megawatt of annual generation capacity at NB Power's actual cost according to this agreement, would that be the same as schedule 3 that is proposed in your tariff, regulation and frequency control?

MR. SCOTT: No. In actual fact with the -- with the new tariff in place the -- sorry, just give me a moment please.

Q. - I would like to in exhibit A-5 go to section 28.5, page 69. The system average loss factor here you have stated as 3.3 percent?

MR. SCOTT: That's correct.

Q. - What voltage level does this cover?

MR. SCOTT: This average loss factor covers the complete transmission system.

Q. - And that includes all of the facilities that you have

included in your revenue requirement?

MR. SCOTT: Yes, it does.

Q. - Okay. Turning to page 84, section 34.2, a determination of network customer's monthly network load. What is this section for?

MR. SCOTT: My understanding that this is the description of the customer's monthly network load.

Q. - Would this be the billing determinant?

MR. SCOTT: No. The billing determinant is -- the billing -- excuse me, the billing determinant is attachment H of the tariff, which is in document A-3.

Q. - So 34.2 is inconsistent with attachment H?

MR. SCOTT: I am not sure that it is inconsistent.

Q. - Maybe they have no relationship?

MR. SCOTT: This is -- yes, I am not sure what the network load is used for. The 34.1, which is just above it, is where it directs you to the billing determinant.

Q. - Are you aware that typically in the utilities in the US that have approved tariffs with FERC use 34.2 to determine the billing determinant for network load?

MR. SCOTT: I am not aware of that.

Q. - The next question is on section 34.6, power factor. If you were a network customer --

MR. SCOTT: Could I just come back to that previous

response? When I look at what the calculation is relative to how it's determined here, this is talking about a coincident peak load, and if this was what was used as a billing determinant in the US or if it was used here, then the rates for the network service would be higher, because we did initially take what the coincident peak load was, used the identical rate as what is used for point-to-point service, and then in order to bill customers, we took it out to being a net non-coincident peak.

If you look at the total that -- or that is the way that we do it. The total revenue that we recover from those customers would be the same under either billing method. The difference being is that that is the way that we collect information on our customers today is through determination of what their peak demand is for the month.

We don't have to tie it into any particular hour of the month in order to determine when the coincident peak was.

And quite frankly, we think that it is an improvement over coincident peak billing, because it avoids the opportunity for someone who could guess when the overall system peak is going to occur from taking steps to reduce their peak demand during that coincident peak. And so we think that it's probably a fairer way of actually billing the customers.

Q. - You didn't consider using load ratio share to determine customers network responsibility?

MR. SCOTT: I am getting out of my element here a little bit.

Q. - Panel C?

MR. SCOTT: I will have to defer that to the rate design people.

Q. - Back to power factor. This section here is all underlined, so I assume that it wasn't in the FERC proforma?

MR. SNOWDON: That's correct.

Q. - Wouldn't NB Power give the customer the opportunity to make -- to get their power factor corrected prior to charge them four times network rate? Give them some type of warning?

MR. SCOTT: Are you saying on a monthly basis, or you are --

Q. - At any time when you are going to implement this penalty.

MR. SCOTT: Well the -- a poor power factor does in fact represent a burden on the transmission system. It does require more transmission capacity in order to supply that load. To the extent that the customer could install power factor correction at its own load, that option is certainly available for them to do.

Q. - What about another transmission system purchasing the

network service? That would be an operational --

MR. SNOWDON: Yes, that would be up to that operator to --
it's a requirement in terms of power factor.

Q. - Attachment E?

MR. SCOTT: What attachment?

Q. - Attachment E, page 138 of the red line. This is a list
of point-to-point transmission customers. Does this
include firm and non-firm customers?

MR. SCOTT: These -- this includes a list of all customers
that have applied for service on the transmission -- the
NB Power -- under the NB Power transmission.

MR. SNOWDON: Firm and non-firm.

MR. SCOTT: Firm and non-firm. Whether or not they have
actually taken service, I can't comment on that right now.

Q. - On page 147. This is your network operating agreement,
and this is the terms and conditions that spell out what
the customer would be responsible for in taking network
service, is that correct?

MR. SCOTT: Yes, it is.

Q. - Will this have any relationship to any existing
interconnection agreements with the transmission customer?

MR. SCOTT: Do you want to repeat that? I am not sure I
understand what you are referring to here.

Q. - Could this network operating agreement take precedent

over any existing interconnection agreements for the transmission customer?

MR. SCOTT: When you refer to "interconnection agreements", are you saying between two utilities, or are you referring to an interconnection agreement?

Q. - Two utilities.

MR. SCOTT: No. The interconnection agreement between the two utilities would still be in existence. This really represents an agreement between a load customer and NB Power. We would expect that all customers within the NB Power transmission service territory, all load customers, would be required to sign one of these agreements.

I guess it would be my -- or it would my understanding that a customer in say the Maine Public Service territory would have a similar type of agreement with Maine Public Service, if that's the answer that you are --

Q. - Well my concern was there may be some common terms between an interconnection agreement they already have and this?

MR. SCOTT: No. The interconnection agreement that we would have between say NB Power and Maine Public Service would continue to exist. This represents an operating agreement between a load customer specifically within New Brunswick and NB Power.

Q. - So a utility like Eastern Maine Electric Co-op, if they wanted to take network service, you wouldn't require them to sign this?

MR. SCOTT: No, we would -- we have an interconnection agreement with them.

Q. - My final questions regarding the expansion -- transmission expansion policy. Could you explain to me the difference between the expansion -- transmission expansion policy for point-to-point service and for network service?

MR. SCOTT: I think for both network service and for point-to-point service the same principles would apply.

Q. - And point-to-point, typically you would pay -- if there was an expansion required, you would pay the higher of -- the high out test they call, meaning that if your cost to expand the system from point-to-point was greater than the existing point-to-point rate, then you would pay the higher rate, that way none of the other network customers would be subsidizing that expansion. Do you agree with that?

MR. SCOTT: Yes, I do.

Q. - And typically in network service, if there is an expansion it's rolled in. In other words, the cost for the upgrade would just be rolled in. Basically because

your billing determinant is much higher. You are paying for your peak demand?

MR. SCOTT: Generally speaking, I think that network service would be rolled into the tariff, yes.

Q. - Now in attachment K, which begins on page 324 of your exhibit A-5, the red line version.

MR. SNOWDON: Sorry?

Q. - Attachment K, which begins on page 324 of the red line version.

MR. SNOWDON: Yes.

Q. - Is this attachment K for both point-to-point and network service?

MR. SNOWDON: Yes. Line 14 of attachment K says both transmission network expansion policy for point-to-point and network service.

Q. - Then on page 325 line 20, treatment of costs for facilities for new load. Does this pertain to a network customer, this paragraph?

MR. SCOTT: This particular section would be -- apply to both. A customer has the option of choosing whether they want point-to-point or network service.

Q. - Right. But as a network customer if I have an increase in load, usually the cost for expanding our network upgrades are rolled in?

MR. SCOTT: And I say generally that would be the case, yes.

Q. - So --

MR. SCOTT: However, if -- the way this expansion policy is written, is that if there are additional costs then the transmission customer would be making a contribution to capital.

Q. - So there would be no advantage for point-to-point or network for expansion of new load under the proposed policy?

MR. SCOTT: No, there should not be.

MR. BELCHER: Thank you. I am done.

CHAIRMAN: Mr. Dionne, Perth-Andover?

MR. DIONNE: We will be asking our questions with Saint John Energy, Mr. Chairman.

CHAIRMAN: Thank you, sir.

Just a comment that I would like to make. And it seems to me or it just sort of appears to me that some of the questions that the wholesale customers are asking are because they just simply don't know the answers to those questions.

And I wonder if approaches have been made to officials at NB Power to get a greater appreciation of how things are going to come to pass on the 1st of April has occurred.

Rather than -- I guess what I'm trying to say, rather than taking up the time of all the parties to the hearing, if you just approach some of NB Power's witnesses, et cetera before they take the stand or during breaks or whatever and ask some of those questions.

Now I have no criticism at all for questions that are leading up to a point in reference to the tariff. But some are just generally trying to figure out how it is all going to work.

And now with that in mind I will know that Mr. Young of course won't say anything like -- I'm sorry. I better go first with Mr. Knight of the Department of Natural Resources and Energy.

MR. KNIGHT: We have no questions for this panel.

MR. SNOWDON: Just a comment.

CHAIRMAN: Yes.

MR. SNOWDON: We certainly support that direction from the Chair to entertain such questions.

CHAIRMAN: Okay. Well, don't worry about the rules applicable to witnesses when it comes to something like that, as to conversing while they are on the stand.

Just check with your counsel or what not before you start talking. But I think we can cut out a fair amount of questions if we were to do that.

Mr. Knight?

MR. KNIGHT: No questions.

CHAIRMAN: Thank you. And Nova Scotia is not here.

So Mr. Young?

MR. YOUNG: Mr. Chairman, further to your comments, I guess between the municipal utilities and NB Power, we are involved in that process right now.

CHAIRMAN: Good.

MR. YOUNG: And we will hopefully come to a good ending here and reduce the questions very quickly.

CROSS EXAMINATION BY MR. YOUNG:

Q. - Mr. Snowdon and Mr. Scott, good afternoon. Most of our prepared questions have been asked by fellow Intervenors.

I will ask the remaining questions as a follow-up to previous municipal utility interrogatories and issues raised from the earlier Intervenors.

I will reference a few exhibits in my cross examination. But my intentions are not to use these exhibits page by page, just a reference where we are coming from.

Mr. Snowdon, how is NB Power progressing on the program to install revenue quality KVA meters in the remaining third of its distribution substations?

MR. SNOWDON: We have assigned a Project Manager to look

after that. And I'm scheduled to sit down with him and to review the progress of that actually next week or actually the following week.

And we have every intention to have KVA metering installed before April 1st of 2003 in all those substations.

Q. - Thank you. Next question, the focus is on partial SOS supply. Could you please confirm that municipal electrical utilities that choose to take only a portion of its supply from competitive sources needs to make arrangements for the transmission only for that portion?

Do you want an example for that, just to clarify it?

MR. SNOWDON: That would help certainly.

Q. - Municipal electrical utility wanting to supply SOS for the default customers that don't wish to choose, along with other products for customers that do want to choose, i.e. green power, time of use?

MR. SNOWDON: I'm still not clear what you are asking. Are you saying you have 100-megawatt load and you have got 95 percent want to take SOS and 5 megawatts does not want to take SOS?

Q. - That is correct.

MR. SNOWDON: And would you --

Q. - Will only be charged the 5 percent that don't want to

take SOS, that are going to be hooked up to the transmission system?

MR. SNOWDON: This 5 percent is being supplied by a bilateral or --

Q. - Sure.

MR. SCOTT: Was your question relating to how much transmission capacity is required?

Q. - Correct.

MR. SCOTT: The transmission capacity is determined at a point of delivery, in other words that each substation -- if a municipal utility has customers -- and I assume at that level those customers are residential customers, within their system, that want to somehow take service, that would be -- have to be managed by the municipality.

We would continue to require transmission service to be determined at the point of delivery, and that charges would be a charge based on that.

Q. - So that would mean that the municipal utility would only have to arrange for the transportation for the 5 megawatts or the 5 percent. If it is something involved in that SOS it is already a bundled system being looked after?

MR. SCOTT: The -- I guess the answer to that would be -- would be yes in terms of the amount that is being purchased by the third party.

But there would have to be some type of coordination done with the SOS supplier to determine how much usage falls under SOS and how much falls under the separated load requirements.

From a transmission perspective we would have a total -- total transmission charge. If the customer is taking network service, we would come up with a bill and ask who we send it to.

Presumably if we were to send it to the wholesale customer they could identify how much of that was factored under SOS supply and get a credit for that or some other method.

But from a transmission provider perspective, we only have one point to determine what the cost is.

Q. - I was just looking for a yes. That was a good explanation. Thank you.

Next area would be the OASIS system. Please explain who is eligible to have full access to OASIS?

MR. SNOWDON: All transmission customers.

Q. - What are the costs involved with the system or getting the system?

MR. SNOWDON: There is a very nominal charge. There is a some security-tight software that needs to be installed. I'm not sure of the charge, 50, hundred dollars, something

in that order of magnitude would buy the software, to install the security.

You would make application to NB Power Transmission to become a transmission customer, go through appropriate credit requirements, those types of things and then -- to become a customer or have access, full access to the OASIS system.

Q. - Could only a transmission customer have access to that OASIS system?

MR. SCOTT: As opposed to?

CHAIRMAN: The regulator?

MR. YOUNG: That's one.

MR. SCOTT: Can you give me --

Q. - Part 2 of that question, besides the regulator, how about if we being an SOS supplier and as NB Power has told us that it might be through their NB Disco, we would not be a direct customer of the transmission system, yet we may want to monitor.

Would that be possible or appropriate?

MR. SCOTT: Our OASIS system has two types of accesses. One is the view only. And I presume that would be what we would offer to the regulator.

The other is a full access where the customer can go

in and actually purchase and reserve transmission capacity and schedule energy on the transmission system.

Q. - Is that the only difference between the two versions?

MR. SCOTT: Yes. It is my understanding, yes.

Q. - Thank you.

MR. SCOTT: Sorry. There are some additional things associated with the particular customer. We have areas within the OASIS system that each specific customer can access. And that is the information that is confidential to that customer.

MR. SNOWDON: So it is partitioned in other words. The secure site is partitioned so that the customer only sees the information related to their transactions and their business. They can't see what other customers are doing.

The reservations themselves are open to everybody. So there is common areas in this. And then there are partitioned areas.

Q. - Do the Public Utilities Board have access to only the partitioned areas or the whole system?

MR. SCOTT: I'm sure we could have one that was available so that the Public Utilities Board could see the complete system.

Q. - Next issue, just a follow-up on the cross examination of Bayside Power earlier.

Could you please outline which parts of the tariff document, i.e. the body, schedules, attachments are direct copies of FERC 888 pro forma document and which are made in New Brunswick?

What is -- I'm just trying to get a handle on what version is obtained from FERC 888 and what came out of NB Power.

MR. SNOWDON: There is a red line version in A-5 I believe that shows the differences. That was a request of an IR, I believe.

MR. SCOTT: So if the text is I believe a double underlined then that is inserted.

Q. - Okay. FERC is in the process of putting in place a standard market design that will supersede FERC 888 and in particular does not include point to point service. Does NB Power believe it has to revise the tariff to continue to meet FERC's idea of reciprocity?

MR. SNOWDON: No. We are filing this tariff as part of the recommendation coming out of the market design committee, which is to follow FERC 888, 889 pro forma tariff.

Q. - Thank you. Do you agree that setting up the losses, the same for both point to point and network is in line with the direction FERC is heading currently?

MR. SNOWDON: Yes, it is the --

Q. - That's all I'm looking for, thank you.

MR. SNOWDON: Yes. All I was going to say is it's standard FERC policy according to 888, 889.

Q. - The next question. For network integration service, please confirm that billing and billing determinate is on a per delivery point basis even if there are multiple meters at a sub-station.

MR. SNOWDON: Yes, that's true.

Q. - Does this apply -- does this also apply to sub-stations that have several meters that should be aggregated, such that the billing determinate is to coincident peak?

MR. SNOWDON: There are all at one point of delivery?

Q. - Yes.

MR. SNOWDON: Yes, that's true.

Q. - Thank you. We are getting along. The next item would be aggregating delivery points. What is the billing determinate when multiple delivery points are aggregated under network integration service?

MR. SCOTT: The energy can be aggregated in terms of a schedule. But the transmission charges are by delivery point. They are not aggregated.

Q. - Is the billing on the basis of its peak demand regardless of it being part of the aggregated group?

MR. SCOTT: The transmission billing is on peak demand at

each individual delivery point.

Q. - Will each distribution substation of NB Power Disco be treated in this manner?

MR. SCOTT: Yes, it will.

Q. - Thank you. Has NB Power made application to the Public Utility Board for residential interval metering as a lead up to providing a time of use tariff for residential customers?

MR. SCOTT: I'm not aware of what is being done relative to the time of use. There is a policy out there. But I'm not sure what progress has been made or where things are at.

Q. - Just a question in reference to a previous cross from JDI to this panel. How do the costs of ancillary services which you have developed on the basis of a proxy generator compare to actual costs of ancillary services in surrounding transmission systems? Just equal to, lower than, higher than?

MR. SNOWDON: I believe there is an IR on that. If you could just give me a second I think I can find it.

MR. MORRISON: Mr. Chairman, maybe if this is going to take long, we could take five minutes, unless it hinges on further questioning from Mr. --

CHAIRMAN: Does anybody here know where it is? Your

suggestion has not been taken, Mr. Morrison.

MR. MORRISON: Thank you, Mr. Chairman.

Q. - Mr. Snowdon, I don't think it's an overly urgent issue.

If you want to get back to me in the morning, that's fine.

Just with -- you know, my perspective is just making sure NB Genco doesn't -- you know, they are not giving value away outside the province.

MR. SNOWDON: My recollection is that they are comparable.

Q. - It sounds good.

MR. SNOWDON: I can confirm that on break or --

Q. - I would appreciate that.

MR. SNOWDON: Yes.

Q. - My last two questions are actually quite easy ones, I

hope. Mr. Snowdon, is the point-to-point service in any way subsidizing the network service?

MR. SNOWDON: That is not my understanding.

Q. - Thank you. Does the OATT system, Mr. Scott, treat the losses for all the transmission customers, industrial and wholesale, in the same manner?

MR. SCOTT: Absolutely.

MR. YOUNG: Thank you, Mr. Scott. Mr. Chairman, that's the end of my cross.

CHAIRMAN: Thank you, Mr. Young. WPS Energy Services? Mr. MacDougall has gone home.

That leaves Board Counsel, and we all know how inaccurate he is in estimating. And he told me during the break that he would be about an hour. Is that right, Mr. MacNutt?

MR. MACNUTT: That's getting shorter as I get more questions as the afternoon has progressed. I hate to say it, but it might be appropriate to go over until the morning. I have been suggested that it might take me less time than I would otherwise.

CHAIRMAN: I concur, Mr. MacNutt. We will rise then and reconvene at 9:30 in the morning.

MR. MACNUTT: Mr. Chairman, a number of counsel and persons have addressed me on the matter of scheduling. Is there any consideration been given to what will happen?

CHAIRMAN: Mr. MacNutt, if you will pull the mike a little closer I might be able to engage you in this.

MR. MACNUTT: I could do bellow or I could do this, yes. Some questions have been addressed to me with respect to scheduling, should we include this panel tomorrow?

CHAIRMAN: Well who wants to put some suggestions on the table? Mr. Smellie?

MR. SMELLIE: I have one, Mr. Chairman. And I will tell you at the outset it's purely selfish on our part. My understanding is that next week you have scheduled the

Emera and SPI witnesses beginning on the 27th. We have no questions for that panel. And so the first thing I'm going to do is ask that we be excused.

CHAIRMAN: Certainly.

MR. SMELLIE: The second matter of course concerns the -- I was going to say hang over, but I won't say that. The outstanding cross-examination of Panel D in respect of exhibit JDI-4. If that was to be scheduled for next week, that would mean that Mr. Nettleton would have to come not just from away, but from far away at some considerable cost for what promises to be a reasonably short cross-examination.

My suggestion to your counsel was with your leave, perhaps we could schedule, if it's convenient to the witnesses, that short stub at the opening of the second segment of the hearing on December the 9th, such that we wouldn't have to come back for that specific purpose.

CHAIRMAN: Well, certainly from the Board's perspective that makes good sense, Mr. Smellie. I just ask Counsel or the parties, does anybody have any problem with doing it in that fashion?

MR. MORRISON: We have no problem, Mr. Chairman. And of course any redirect that we would have would follow immediately after that.

CHAIRMAN: Yes.

MR. SMELLIE: And the only other thing I was going to say, Mr. Chairman, is that in the midst of everything else, Mr. Hashey and I have not yet had a chance to sit down and talk about the Panel B presentation.

But we are going to try and do that in a minute. And if it is appropriate to report to you on that tomorrow, we will.

Otherwise if we are going to have a tiff about it, there will be some written submissions coming to you, so that you can get a flavor for what the nature of the issue is, at least from my side. Thank you, sir.

CHAIRMAN: Good. Thank you, Mr. Smellie. If there are no other matters we will --

MR. HASHEY: Mr. Chairman --

CHAIRMAN: Yes, Mr. Hashey.

MR. HASHEY: -- on the point that Mr. Smellie just made, I tend to agree. There has been some discussion.

Mr. Smellie has objected to my Panel B presentation. I don't think we are going to really reach a solution on that.

I think it is -- I will certainly talk to him. I'm happy to talk to my friend on this issue. But we have exchanged correspondence. I still believe that this

presentation is necessary. And I will explain that to Mr. Smellie and to the Board if necessary as well.

Maybe what we should do is submit our positions to Mr. MacNutt or meet with Mr. MacNutt and then submit them to him so he can then advise the Board and the Board has a heads-up.

Obviously that is something that should be decided not necessarily tomorrow but obviously has to be by next week during our hearings, so that we can advise if there is to be any changes in the presentation.

Obviously we will need some time to correct that which of course the following week would be adequate.

CHAIRMAN: The Board certainly feels confident in leaving it with you three gentlemen to work out the best that you can either tonight or tomorrow morning.

All right. Then we will reconvene at 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