

1 New Brunswick Board of Commissioners of Public Utilities

2

3 In the Matter of an application by the NBP Distribution &

4 Customer Service Corporation (DISCO) for changes to its

5 Charges, Rates and Tolls - Revenue Requirement

6

7 Delta Hotel, Saint John, N.B.

8 December 2nd 2005

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

Henneberry Reporting Service

27

1

INDEX

2 PI-13 - Meehan Report - page 2743

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

1 New Brunswick Board of Commissioners of Public Utilities

2

3 In the Matter of an application by the NBP Distribution &
4 Customer Service Corporation (DISCO) for changes to its
5 Charges, Rates and Tolls - Revenue Requirement

6

7 Delta Hotel, Saint John, N.B.

8 December 2nd 2005

9

10

11

12

13 CHAIRMAN: David C. Nicholson, Q.C.

14

15 VICE-CHAIRMAN: David S. Nelson

16

17 COMMISSIONERS: Jacques A. Dumont
18 Patricia LeBlanc-Bird
19 H. Brian Tingley

20

21 BOARD COUNSEL: Peter MacNutt, Q.C.

22

23 BOARD STAFF: Doug Goss
24 John Lawton

25

26

27 BOARD SECRETARY: Lorraine Légère

28

29

30

31 CHAIRMAN: Good morning, ladies and gentlemen. Could I have
32 appearances for the record to begin for the Distribution
33 and Customer Service Corporation?

34 MR. HASHEY: Thank you, Mr. Chairman. Terry Morrison, Lori
35 Clark, Lillian Gilbert are here with us this morning.

36 CHAIRMAN: Thanks, Mr. Hashey. Mr. Gillis is not here. And
37 for the Municipal Utilities?

38 MR. GORMAN: Good morning, Mr. Chairman. Raymond Gorman
39 appearing as counsel for the Municipal Utilities with Eric
40 Marr and Dana Young this morning.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CHAIRMAN: Thanks, Mr. Gorman. Public Intervenor?

MR. HYSLOP: Good morning, Mr. Chairman. Peter Hyslop,
Mr. Barnett, Ms. Young and Ms. Power.

CHAIRMAN: Thanks, Mr. Hyslop. Mr. MacNutt, who is with you
today?

MR. MACNUTT: I have with me Doug Goss, Senior Adviser and
John Lawton, Adviser.

CHAIRMAN: Thank you, Mr. MacNutt. Now if there is anybody
who is present and I haven't called them out, please go on
the record now.

And Mr. Hashey, I understand that you have something you
want to share with the Board?

MR. HASHEY: Yes, Mr. Chairman. First of all I thank the
Board for its indulgence this morning in allowing us to
have some further discussions, ongoing discussions with
the -- Board staff have been very helpful I think in
finding some solutions to most if not all of these
remaining IRs.
If it would please the Board I would go through the IRs
that are entitled in the in the bucket "not relevant"
which now most have become of some relevance. And we are
certainly going to try to provide the answers in a way and
in a manner that they can be provided. And I think -- I
don't think there is very much contentious. And I think

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

the idea was that I would proceed through these. And if Mr. Hyslop finds that I have gone off track in some direction, he can bring me right back on it.

CHAIRMAN: That is very encouraging, Mr. Hashey. Now that most of -- some of the difficulties have overcome, perhaps you better find a new term rather than bucket.

MR. HASHEY: Pail?

CHAIRMAN: Could I suggest "category". Pail. Please go ahead, Mr. Hashey.

MR. HASHEY: Thank you. First one, Mr. Chairman and members, is IR 104. This was the one we debated yesterday which is the request from the PUB staff for information going back a number of years.

It has been agreed -- and this would be an overlap and would be the same as 112. Our answer would really be to both of them effectively, which was the PI 112.

And what has been agreed is that we will provide five years of information which was suggested yesterday or discussed with the Board. And prior -- of course part of that information needs to be integrated. How it will be used, that is up of course to the people that are involved, the Intervenors.

But that will be -- that documentation will be urgently pulled together. I might say that the date for

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

delivery of all IRs was sort of -- or answers to IRs was tentatively set on the schedule December 8th. There will be a number that we will be answering. And we will meet that date. There is a couple of Mr. Gorman's. And there are a number of the PIs that are outstanding that we can -- that we have agreed to answer now. We can easily meet that date. And this one, we may need a little bit more time. But we are certainly working to have that well, well in advance of December 20th.

CHAIRMAN: Well, as far as the Board is concerned that is perfectly understandable, Mr. Hashey. And simply do your best.

MR. HASHEY: We will assure you that we will. And I think we can meet this.

The next one is IR 4 which was a request for information, really guarantee fee information. And our answer was in the annual reports -- it is in the annual reports, you know. The question of what uses may still be there. But we will provide that answer.

CHAIRMAN: Good. Okay.

MR. HASHEY: IR 9 was still in some people's books. This was the transfer orders. This -- by previous meeting it was agreed that this wouldn't be necessary anymore. That has been withdrawn by PI.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IR number 12, Question 4, we will provide an answer to that. Effectively there are things haven't been referenced by the EFC. But we will outline that all in the answer that will be provided.

CHAIRMAN: And I guess the other questions have been answered in that Interrogatory itself?

MR. HASHEY: That is correct, Mr. Chairman.

CHAIRMAN: Okay. Great.

MR. HASHEY: PI 16, again it is useful to have meetings. We did have a meeting with the Public Intervenor and his adviser last evening, and got a little bit of understanding of what was being looked for here. It is Question 2. And that is the -- of that part. And what we will be doing will be providing information indicating what is going from the Transco tariff into the '06, '07 rate proposal.

This is really, I believe -- and if Mr. Barnett and Mr. Hyslop want to change that -- that is what my understanding is that they want. And we will provide that answer.

CHAIRMAN: And the other two questions, there are --

MR. HASHEY: They have been answered.

CHAIRMAN: -- answers in the --

MR. HASHEY: The next one we run into is 34, IR 34 from the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Public Intervenor. Question 2 has been answered in -- PI IR 9 of November 28th, it's the latest round. So that one is answered. And we will provide an answer to Question number 1.

CHAIRMAN: Okay. Great.

MR. HASHEY: PI 101, Question 3, we will be -- there is no answer to '06, '07. This is not available at this time because there has been no approval.

But we will provide the answer for the year '05, '06. And that has been discussed. And I believe that is what we agreed that we would do in solution to that one.

CHAIRMAN: Yes. Okay.

MR. HASHEY: Thank you, Mr. Chairman. PI-112, this is the long and tedious one that we started into yesterday which combines with 104.

CHAIRMAN: Yes.

MR. HASHEY: This will be answered in conjunction with the answer to 104.

CHAIRMAN: Right.

MR. HASHEY: Thank you. Question 113, this is extremely complex and it was agreed with Mr. Hyslop that he and Mr. O'Rourke would meet further with us to try to define exactly what they are looking for and what we can provide. There are some major problems in this one in relation to

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

the availability of information and the lack of formulas and things of this nature that don't exist. I mean it's the beginning of the benchmarking world I think. We will address that and be back on the 20th of December if there are issues, if we could, and hopefully we will find solutions.

CHAIRMAN: Great. Thank you.

MR. HASHEY: Only one remains and this is the 114 which is the PROMOD issue. The debate, of course, involves the fact that there is a La Capra audit done which was done in accordance with the terms of reference of the PUB and Disco working together on that. But what my friend is looking for is the inputs that have gone into the PROMOD issue. There are some very significant confidentiality issues here. We obviously haven't been able to get ahold of Genco or Mr. Bishop this morning, but subject to some type of unexpected problem we would intend that -- and it was agreed that Mr. Hyslop would send his expert to review the inputs and that we would do this under a confidentiality agreement, because I can list the inputs and they are all the highly confidential Genco contractual purchasing things that go into that, heat rates, many things of that nature. The intent would be, subject to your approval, Mr. Chairman and the Board, that Mr. Hyslop

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

would have an expert come and review those documents --

CHAIRMAN: Is that Mr. Meehan?

MR. HASHEY: We didn't really discuss that. Mr. Hyslop can answer that.

MR. HYSLOP: Number 10. I'm not sure if it will be Mr.

Meehan or one of the staff, but that's the people we are going to get in touch with, Mr. Chairman.

CHAIRMAN: Thank you.

MR. HASHEY: Yes. And he would review the inputs that -- we would be doing this under a confidentiality agreement, and if it turned out that some of this information is going to be used in the hearing we, of course, would then have to have an in camera hearing in relation to it.

CHAIRMAN: Would it be the intention, Mr. Hyslop, that if in fact your expert were to find differences of opinion in reference to those input that that would form part of a confidential report to be filed in advance of his being brought to testify in a confidential session?

MR. HYSLOP: Yes, Mr. Chair. The whole purpose of the process we have gone through is to be in a position to determine whether the pricing in the PPAs are reasonable, and if at the end of our audit we felt there were some real problems there that would be part of the evidence of the Public Intervenor in this case.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CHAIRMAN: Just wanted that to be clear on the --

MR. HASHEY: We had also agreed on that, that we would receive a confidential report --

MR. HYSLOP: Yes.

MR. HASHEY: -- and then we would be able to debate that here before you.

CHAIRMAN: All right. Well that certainly falls -- I mean La Capra from the Board's perspective was performing the same functions as our Mr. Easson did some time ago in going in and looking at the mechanics of PROMOD, but not looking at the validity of the inputs that went in.

MR. HASHEY: Right.

CHAIRMAN: So that's fine. Yes, Mr. Hyslop.

MR. HYSLOP: Yes, Mr. Chair. And with that in mind I'm not sure what the status of the motion is now that most of the issues are resolved, but I would move that the NERA report that we presented yesterday be entered and made part of the record on the actual revenue requirement case.

CHAIRMAN: Can I come back to that, Mr. Hyslop?

MR. HYSLOP: Sure. You are in charge.

CHAIRMAN: Sometimes yesterday I wondered. That's all the interogs. Mr. Hashey, I just wanted to check on a couple of interogs. that we did deal with yesterday. And they are under the categorization of -- not relevant I guess --

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

not available -- sorry. My notes indicate that IR-69 is still in play for parts 2 and 3, i.e., the Board will have to make a decision on it.

MR. HASHEY: No, we didn't discuss that this morning. No, that's correct.

CHAIRMAN: And then what about IR-72, the next one?

MR. HASHEY: That's the decommissioning report that we had a problem presenting. We don't have it, of course.

CHAIRMAN: Well I mean that's the answer. Look, if I might suggest is that you have achieved such remarkable results this morning that perhaps after we deal with anything else that's here that you might -- we might take a break and you can sit down and talk about IR-69 and if necessary IR-72, but if you don't have it you don't have it and that's the answer, just to see if we can clear that up today and the Board won't have to rule on it or anything else. From your perspective, Mr. Hashey, is there anything further?

MR. HASHEY: No, I don't believe there is, Mr. Chairman, other than to say that we will try to comply with the dates and move things ahead quickly. It's important to us.

I should also just add though that we have filed our Rogers' evidence and I have asked Ms. Milton to give me

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

dates and at this point she says she is unable to and I won't discuss or ask for any dates here, but we try to work with her in the very near future to get that settled, because as you can see there are experts now involved there.

CHAIRMAN: I understand that and I will undertake to facilitate matters right after New Year's in regard to setting those dates. I want to get a little closer to it to see how things are coming down to do it.

Now back to you, Mr. Hyslop, and dealing with --

MR. HASHEY: One other thing, Mr. Chair. Just for the Board's information, the intent here is to file the public policy answers by December 15 --

CHAIRMAN: Fine.

MR. HASHEY: -- to give some advance time just so that, you know, you just don't come and look at it the first time on the 20th. That's the goal to get that done.

CHAIRMAN: That would be appreciated.

MR. HASHEY: Yes. That's our intent, just so people are aware what we are working toward.

CHAIRMAN: Okay.

MR. HASHEY: On the report, if you want to come back to that at some point, the evidence -- I know Mr. Hyslop is free to file whatever evidence he may wish on the 16th. There

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

are some issues there, of course, that we will be arguing as part of the reports, La Capra and whatever, that we now -- and on fuel issues, et cetera, that will be very relevant probably to the matter. But there are still issues that we would have with the parts of the report that may not be necessary.

CHAIRMAN: This is the report that he wishes to introduce?

MR. HASHEY: Yes. And I'm wondering if we shouldn't deal with that on the 20th after the answers have been seen and the decision is made as to whether or not we haven't completed what all that is really required and that there is no re-visiting or review of the issues that involve the restructuring and whether it should have been done or not.

CHAIRMAN: All right. May I suggest this, that the Board will take a break. Mr. Hyslop, I want you to have an opportunity to talk to Mr. Hashey about what he has suggested or do you want to barrel on with this?

MR. HYSLOP: No, I don't want to barrel on with that. I will talk to Mr. Hashey and then -- you know -- I have got the right to file it on the 16th as evidence in my case in chief and I will do it then. I was just saying that today is the 1st. If it was the 16th I would file that report as part of my case on the revenue requirement, Mr. Chair. The one point -- this is a very minor point but Mr.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Barnett tells me we had better be correct, and it deals with interrogatory Disco PI IR-9, and Mr. Hashey is correct, but just for the record it's only the question 9 -- question -- IR-9, question 2 that is withdrawn. Questions 1 and 3 will remain on the record.

CHAIRMAN: Hang on. Is this -- this is the one from July or August, not November?

MR. HYSLOP: November 14th, 2005. It's under the tab, Not Relevant. It's the ones we just looked at. Mr. Hashey indicated on the record that we had agreed to withdraw it. Just for the record I wanted to say it's only question 2 that's withdrawn.

MR. HASHEY: That's correct. I apologize. The others are answered I believe.

MR. HYSLOP: Yes. The other two answers that they have made stand.

CHAIRMAN: Okay. Mr. MacNutt?

MR. MACNUTT: Just so we can keep up with what is going on, that was PI IR-what?

MR. HYSLOP: 9.

MR. MACNUTT: Thank you.

CHAIRMAN: Well, we will take a break. Let us know when you have had an opportunity to talk and we will come back in then.

2 (Recess - 10:30 a.m. to 10:50 a.m.)

3 CHAIRMAN: Is it Mr. Hashey or Mr. Hyslop who is --

4 MR. HASHEY: On 69 the decision has been made that
5 Mr. Hyslop will attempt to redraft the question so we can
6 understand it a little better. And we will attempt to
7 give an answer. If there is still an issue we will deal
8 with it on the 20th.

9 CHAIRMAN: Good.

10 MR. HASHEY: On 72 which is the decommissioning study we
11 will make an attempt to have that available. We are not
12 certain that we can. We are going to do everything we can
13 to have that available.

14 And when Mr. Hyslop comes to review the contracts, if
15 there is still an issue there -- or sorry, not the
16 contracts, the monthly reports -- that he would have an
17 opportunity to review that just to confirm the numbers
18 that we have provided. Because we have provided numbers.

19 And this is a confirmation effort. So we will make that
20 effort, that he can see that. It will be a confidential
21 document.

22 Really I think those are the answers to the two,
23 Mr. Chairman.

24 CHAIRMAN: I think the only one -- the only other thing left
25 was the Meehan Report as to whether or not it went on the
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

record now or if we waited until the 16th. Is that the date for filing Intervenor evidence?

MR. HYSLOP: I believe so, Mr. Chair. And we will file it on that date as part of our evidence.

CHAIRMAN: Well, okay. All I wanted you gentlemen to discuss was, if it is available now, that is a piece of paper we can read between now and then. Because there is going to be a lot on.

MR. HYSLOP: Yes.

CHAIRMAN: But if Mr. Hashey has any problem with doing that then we will wait until then.

MR. HASHEY: What I would suggest is that -- I have no problem with you reading it. It is filed for the purposes. And then you will have read it.

And then we can make the arguments on the 20th as to whether it should be marked as an exhibit or parts of it should.

MR. HYSLOP: It is my case, Mr. Chair. I have got a right to present my case.

CHAIRMAN: I could have anticipated you saying that. Shall I suggest that we mark it for identification today. And then we will deal with it on the 20th. How is that?

MR. HASHEY: That is fine with us.

CHAIRMAN: Or sorry, on the 16th you can try to file it.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

And then you can have an argument on the 20th.

MR. HYSLOP: That is satisfactory, Mr. Chair.

CHAIRMAN: Okay. Will you have -- or does -- yes, okay, good.

In the 22 years I have been sitting up here -- I hate to say something like this -- but it has been a long time since I ever marked anything for identification. How is it handled in the court system?

MR. HASHEY: Just that very way. They just mark it number 1 or put an initial to it and a number to it for identification.

CHAIRMAN: Okay. So in other words I could say, marked for identification PI 13.

MR. HASHEY: Yes.

CHAIRMAN: And then if it does in fact become an exhibit you assign the same number?

MR. HASHEY: Correct.

CHAIRMAN: Okay. We will do it that way then.

MR. MACNUTT: Or you could create a separate category. And that is marked for --

CHAIRMAN: Start again, Mr. MacNutt. I missed the first part there.

MR. MACNUTT: Alternatively you could start a separate category.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CHAIRMAN: Oh, I see.

MR. MACNUTT: Simply mark for identification number 1.

CHAIRMAN: I think what Mr. Hashey and I suggested is simple enough for me to follow. I will go that route. So it is marked for identification PI 13. And I will refer to it as the Meehan Report.

MR. HYSLOP: That would be fine.

CHAIRMAN: Great. All right. Any other matters? Mr. Hyslop?

MR. HYSLOP: Yes. Thank you, Mr. Chair. I have spent the better part of two days preparing an absolutely wonderful argument on section 156. It doesn't appear the settlement is very relevant.

But I was wondering if the Board might want to indulge me for an hour and a half just to hear me out. No?

CHAIRMAN: I think you can anticipate -- yes, we will be glad to do that at 3:00 this afternoon, Mr. Hyslop.

MR. HYSLOP: Touche.

CHAIRMAN: Put it in a file folder. You may have to drag it out again.

MR. HYSLOP: That is what Mr. Morrison indicated to me.

CHAIRMAN: Yes. Okay. Well, thank you very much. And thank you especially for the effort that was made last evening and this morning to come to some compromises.

1
2
3
4
5
6
7
8
9
10
11

And I hope we can continue to have the parties cooperate
in that fashion. It will certainly speed the matter up.
So we will adjourn now and reconvene on the 20th. I think
-- well, it is in this hotel if not this room. And we
will make it 9:15. Great. Thank you very much.

(Adjourned)

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

Reporter