

New Brunswick Board of Commissioners of Public Utilities

Pre-Hearing Conference

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

Delta Hotel, Saint John, N.B.  
May 30th 2005, 1:30 p.m.

Henneberry Reporting Service

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Delta Hotel, Saint John, N.B.  
May 30th 2005, 1:30 p.m.

CHAIRMAN: David C. Nicholson, Q.C.

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BOARD COUNSEL: Peter MacNutt, Q.C.

BOARD STAFF: Doug Goss  
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John Lawton

BOARD SECRETARY: Lorraine Légère

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CHAIRMAN: Good afternoon, ladies and gentlemen. The first order of business is to get appearances for today. The applicant, that is, NB Power Distribution and Customer Service Corporation?

MR. HASHEY: Thank you, Mr. Chairman. Pretty much the same group that were here with you before. Myself, Terry Morrison along with Rock Marois and Sharon MacFarlane at

the front table, Gaetan Thomas at the far end, and behind us are sitting Marg Tracy and Lillian Gilbert of regulatory affairs at Disco, and with them Blake Hunter, Lori Clark and Neil Larlee.

CHAIRMAN: Thank you, Mr. Hashey. Canadian Manufacturers and Exporters, New Brunswick Division?

MR. PLANTE: Mr. Chairman, Dave Plante on behalf of CME New Brunswick.

CHAIRMAN: Okay. That's Mr. Plante. Conservation Council of New Brunswick? Not represented. Eastern Wind Power Inc.?

MR. MACPHAIL: Peter MacPhail on behalf of Eastern Wind Power.

CHAIRMAN: Thank you, Mr. MacPhail. Enbridge Gas New Brunswick Inc.?

MR. MACDOUGALL: David MacDougall representing EGNB and I am joined today by Shelly Black of Enbridge.

CHAIRMAN: Thank you, Mr. MacDougall. Energy Probe? Not here. Irving Paper, Irving Pulp & Paper Limited and J.D. Irving Limited?

MR. BOOKER: Mr. Chairman, Andrew Booker and Thomas Storrington for the Irving Group.

CHAIRMAN: Thanks, Mr. Booker. And the Jolly Farmer? I guess he is not here today. New Brunswick System

Operator.

MR. ROHERTY: Thank you, Mr. Chairman. Kevin Roherty for  
New Brunswick System Operator.

CHAIRMAN: Thanks, Mr. Roherty. Rogers Cable Communications  
Inc.?

MS. MILTON: Leslie Milton for Rogers Cable, Mr. Chairman.

CHAIRMAN: Thank you, Ms. Milton. And then the self-  
represented individuals who have a position in the  
Legislative Assembly and -- or some of them do anyway? Is  
there someone here representing either Mr. Allaby, Mr.  
Graham, Mr. Jamieson or Mr. MacIntyre?

MR. ROWINSKI: Yes, Mr. Chair. Jan Rowinski. I am joined  
today with Erik Denis.

CHAIRMAN: Thank you, Mr. Rowinski. And that is Mr. Denis  
with you now?

MR. ROWINSKI: Yes, it is.

CHAIRMAN: Thank you. The Municipal Utilities?

MR. GORMAN: Good afternoon, Mr. Chairman and Members of the  
Board. Raymond Gorman appearing on behalf of the  
Utilities Municipal. I am joined today by Tony Furness,  
Eric Marr, Dana Young, Charles Martin, Pierre Roy and Jeff  
Garrett.

CHAIRMAN: Who is back at the shop, Mr. Gorman?

MR. GORMAN: Good question.

CHAIRMAN: And Vibrant Community Saint John?

MR. MACNUTT: Mr. Chairman, staff have been advised that Mr. Peacock is here but had to step outside. So he will be attending the balance of the hearing.

CHAIRMAN: That's Mr. Peacock, Mr. MacNutt?

MR. MACNUTT: Correct.

CHAIRMAN: Public Intervenor?

MR. HYSLOP: Thank you, Mr. Chairman. Peter Hyslop with Mr. O'Rourke, Mr. Barnett, Mr. Hegler and Ms. Power.

CHAIRMAN: Thank you, Mr. Hyslop. There are a number of informal Intervenors and just for the sake of the record again, stop me if there is someone representing. The Agricultural Producers Association of New Brunswick, the Jolly Farmer represented them at the last start of the pre-hearing, Canadian Council of Grocery Distributors, City of Miramichi, Flakeboard Company Limited --

MR. BOURQUE: Pat Bourque here, Mr. Chairman, for Flakeboard.

CHAIRMAN: And New Brunswick Power Generation, Noranda Inc., Potash Corporation of Saskatchewan Inc., UPM-Kymmene Miramichi Inc.. And, Mr. MacNutt, you are here as Board Counsel. Who is with you today?

MR. MACNUTT: Yes, Mr. Chairman. I have with me today Doug Goss, senior advisor, John Murphy, consultant, and John

Lawton, advisor.

CHAIRMAN: Thank you. Ladies and gentlemen, over lunch hour we were talking with -- or attempting to speak with most of the representatives of the parties and -- I'm sorry -- of the applicant and the formal Intervenors, and to see how we would start today's session going. When I got the briefs in I was surprised to learn that Mr. Morrison indicated that he would be addressing what I had considered the second matter that we were going to be discussing which was the fuel surcharge at a future time, and I had expected that all those had been covered in the arguments and the briefs that were filed with us. Anyway, the Board looked at that and said, well certainly on the adjourned dated why we had better give anybody who does in fact wish to address the Board further in reference to that, give them an opportunity to do so, even though we had said that we would have a decision ready for this afternoon's session to deal with the two things in addition to the fuel surcharge, also to what I call a deferral account which is called a variable fuel surcharge variance account by the applicant. And we went back and forth on that but just prior to our coming in we were approached by Mr. Hashey on behalf of the applicant, the Public Intervenor and Mr. Gorman for

the Municipal Utilities, suggesting that we proceed by way of simply giving our decision in reference to the deferral account now. Then take a brief recess for the parties to be able to assemble their arguments and positions as to how we go from here.

Anybody have any problems in proceeding in that fashion?

And I see Mr. Coon has arrived so he will be on the record as having appeared today.

And silence is acquiescence. So the Board will give its decision concerning the --

MR. HASHEY: Mr. Chairman, maybe before you get to that point, would it be worthwhile to put in as exhibits the other documents that were forwarded out?

CHAIRMAN: No, Mr. Hashey. No.

MR. HASHEY: Okay. Thank you very much.

CHAIRMAN: That ruins my procedure here. I am going to proceed before we do that. I left my paper concerning that outside, Mr. Hashey. That's the whole reason behind that. All right.

The Board has reviewed all the submissions and thanks the parties for the guidance that has been provided.

The Board is of the opinion that what it can and cannot do and what it should do must ultimately be decided by reference to its governing legislation, in this case



the Electricity Act.

In considering a variable fuel surcharge variance account, which I will refer to as deferral account, the most relevant section of the Act in our opinion is subsection 101(3).

That section reads: "The Board shall, when considering an application under this section, base its order or decision respecting the charges, rates and tolls to be charged by the Distribution Corporation on all of the projected revenue requirements for the provision of the services referred to in section 97."

This section requires the Board to base its decision on rates on all of the projected revenue requirements.

Revenue requirements is defined in the Act as follows:

"Revenue requirements" means the annual amount of revenue required to cover projected operation, maintenance and administration expenses, amortization expenses, taxes and payments in lieu of taxes, interest and other financing expenses and a reasonable return on equity."

The items to be included are well defined and would clearly include the cost of fuel necessary to produce purchased power. However, the word projected is not defined. The time period to be used in considering revenue requirements and setting rates could therefore be

a matter of some debate.

Projected implies a future period and the Board must decide what is the appropriate future period for the purpose of setting rates.

The Board believes that the new rates should be set so that the company would recover its annual revenue requirements if the new rates were in effect for a full 12 months. For a given accounting year, the company must accept any shortfall in the recovery of its costs that is due to the new rates only taking effect part way through the year. The company must anticipate cost increases and apply for new rates in a timely fashion.

In the current case the New Brunswick Power Distribution and Customer Service Corporation, commonly called Disco, has stated that the cost of fuel necessary to produce the power that it must purchase to serve its customers will increase substantially in 2005/2006 due to factors beyond its control. Disco also states that this increase in cost cannot be recovered from the currently approved rates and that it has applied for relief in an expeditious manner. The relief that Disco has applied for is twofold, a fuel surcharge to be effective on a go-forward basis and a deferral account to capture the additional fuel costs

incurred in 2005 and 2006 prior to the effective date of the fuel surcharge.

The deferral account, if approved, would permit Disco to recover from future rates costs that had been incurred prior to the Board's final decision on rates.

The Board considers that to allow the recovery of costs incurred prior to the effective date of its final decision would be tantamount to the approval of interim rates. The Board is of the opinion that it does not have authority under the Electricity Act to approve interim rates.

Therefore, the Board will not approve a deferral account for the purpose of accruing any costs incurred prior to the effective date of its final decision.

We will now take a 15 minute recess and we will come back in and go from there.

(Recess)

CHAIRMAN: I apologize. That was a long 10 minutes.

Mr. Hashey?

MR. HASHEY: Yes, Mr. Chairman.

CHAIRMAN: Or Mr. Morrison?

MR. MORRISON: Thank you, Mr. Chairman, Commissioners. As you know, the variance account is a fundamental component of Disco's rate application. As indicated in the application itself it was the mechanism proposed that was

essential to avert continuing and serious financial hardship to Disco.

Given the Board's decision on this crucial issue of the deferral or variance account, I'm requesting an adjournment in order to consult with my client with respect to the options available to it in connection with this application.

This will require some internal consultation and decision-making which I expect will take a minimum of several days. In light of that I'm requesting an adjournment and suggesting that an adjournment of approximately a week or perhaps a little more would be appropriate in the circumstances.

CHAIRMAN: Mr. Morrison, does that mean that your client never considered that the Board might not grant this remedy that they asked for? That is what it sounds like.

MR. MORRISON: There is some internal decision-making that has to be made, Mr. Chairman.

CHAIRMAN: Okay. All right. Formal Intervenors.

Mr. Plante, do you have anything you want to say about this request for an adjournment?

MR. PLANTE: No, Mr. Chairman.

CHAIRMAN: Okay. Mr. Coon?

MR. COON: I think it is perfectly acceptable, Mr. Chairman.

CHAIRMAN: I'm sorry. I didn't hear you, sir.

MR. COON: I think it is acceptable to us. Thank you.

CHAIRMAN: Mr. MacPhail?

MR. MACPHAIL: No submissions, Mr. Chairman.

CHAIRMAN: This is beginning to sound like an EGNB hearing  
or something here. Speaking of that, Mr. MacDougall?

MR. MACDOUGALL: No issues, Mr. Chair.

CHAIRMAN: Irving Group?

MR. BOOKER: No issues, Mr. Chairman.

CHAIRMAN: Mr. Roherty, surely you do.

MR. ROHERTY: No issue, Mr. Chairman.

CHAIRMAN: Ms. Milton?

MS. MILTON: No submissions, Mr. Chair.

CHAIRMAN: Mr. Rowinski?

MR. ROWINKSI: No submissions.

CHAIRMAN: Mr. Gorman?

MR. GORMAN: We take no issue with the request for an  
adjournment. But I would advise the Board that next  
Monday and Tuesday would be very difficult days for both  
myself and my client.  
So we would ask the Board in granting an adjournment to  
set it over to a date other than Monday or Tuesday of next  
week.

CHAIRMAN: Well, we certainly will take into consideration availability of the solicitors and the parties themselves if we in fact do grant an adjournment.

MR. GORMAN: Thank you.

CHAIRMAN: Mr. Peacock?

MR. PEACOCK: No issue.

CHAIRMAN: Mr. Hyslop?

MR. HYSLOP: Thank you, Mr. Chairman. We don't object to the applicant's request for adjournment. But we would like to make a couple of comments, the first being that if they are intending to come back with some type of -- I'm going to use the word proposal or amendment or some type of legal procedure, I would rather not have it announced at the recommencement of the next hearing. I would like at least to have it a couple of days before the Board reconvenes, if it is their intention to make some proposal to change the application in some way. I would like to have that prior to the hearing. I think that would be fair to all Intervenors.

Second, most parties filed on Friday requests or outline of issues, most of which centered around issues relating to evidence or evidentiary requirements.

And without asking for order, I would ask to go on the record as stating if it would be possible to continue

conversations with Board staff, the applicant and other interested Intervenors to try to move that issue forward as to what evidence would be there.

So with those two minor reservations about the future applications or intentions of NB Power being put in writing and the evidence thing, we have no objection to the motion for an adjournment.

CHAIRMAN: Mr. MacNutt, you personally, do you have any objections?

MR. MACNUTT: No, Mr. Chair.

CHAIRMAN: Okay. The Board is going to go out in the hall here for a second.

(Recess)

CHAIRMAN: The Board has just taken a few minutes to consider the matter. And my fellow Commissioners have asked me to reiterate again what I said to Mr. Morrison, is that we find it very disappointing that the applicant had not at least a Plan B that if this Board turned down the request for a deferral account that they didn't know what they were going to be doing then.

We sincerely hope that there is no contemplation on withdrawing the particular application that we are dealing with now. We will grant you an adjournment as you requested.

I want to point out to you, Mr. Hashey, and you, Mr. Morrison, that our process will allow you to file amendments to the existing information that you have presently filed, to update it or combine it into one for this particular fiscal period.

We also see absolutely nothing wrong with you filing supplemental information and asking this Board, after considering the information for the current fiscal period, that further information in reference to your next fiscal period be considered too for perhaps rate changes in that fiscal period.

But our biggest concern is that now we have all gotten together. The parties are ascertained. The addressed parties are ascertained.

We believe that there is a lot that can be accomplished while the personnel were combining information and filing new exhibits on behalf of NB Disco, be it in a generic sense, cost of service rate design, that sort of thing. And certainly it is this Board's desire to keep on moving. And Mr. Hyslop, I want to -- from what you requested of the Board, I want to point out that all we are doing today is agreeing and giving the applicant an adjournment. But our process carries on.



And if any of the Intervenors wish to put Information Requests to NB Power, hopefully they will attempt to deal with them in this adjourned time. And they just count as part of the first set of Interrogatories. In other words we don't want this process to grind to a halt either. So I will look at some dates.

And Mr. Gorman, you were -- it's the 6th and 7th of June, that is your problem?

MR. GORMAN: That's correct.

CHAIRMAN: Okay. How about 9 and 10 of June? That's Thursday and Friday of next week. Anybody any difficulties.

MR. MACDOUGALL: I have difficulties with those days, Mr. Chair.

CHAIRMAN: Oh, Mr. MacDougall, you have lots of partners. You do, sir, on both days?

MR. MACDOUGALL: Particular difficulty on the 10th. I could make the 9th, Mr. Chairman.

CHAIRMAN: I'm sorry. I didn't hear you.

MR. MACDOUGALL: I have particular difficulty on the 10th but I could make the 9th, Mr. Chairman.

MR. MORRISON: I have difficulty on the 10th as well, Mr. Chairman.

CHAIRMAN: I will ask the secretary. You have here Ballroom

C only to 4:00 p.m. on the 8th. Does that mean if we actually physically left the room at 4:00 o'clock that would be okay.

MS. LEGERE: That's what I understand.

CHAIRMAN: Okay. How are the parties for the 8th and the 9th? Anybody any problem for the 8th and the 9th, Wednesday and Thursday of next week? Okay. Well when we rise here today, then we will adjourn until 9:30 on the 8th and I will ask you all to save the 9th as well in case we go over to that.

Are there any other matters that we can cover right now that -- you want to get those in, do you, Mr. Hashey?

Okay. I haven't turned my mind to them. As a matter of fact I think I left them all out in the break-out room.

Have you got some copies there that I can look at and get an exhibit number on them?

MR. HASHEY: There is no exhibit number on them.

CHAIRMAN: No. We will give them an exhibit number.

MR. HASHEY: Maybe I could do them one at a time and so we can have them marked and clear off the table here. The first one is the Technical Audit, Purchased Power Budget, April 2005 - March 2006, of New Brunswick Power Distribution and Customer Service Corporation, prepared by La Capra Associates, dated May 18th, 2005. I should point

out, Mr. Chairman, that this is being updated as well. This is the first report only. There will be another one hopefully that will be with us around or about the time we have the adjourned hearing.

CHAIRMAN: Madam Secretary, do we have tentative numbers for these?

MS. LEGERE: A-5 is the next one.

CHAIRMAN: Okay. All right. That Technical Audit which Mr. Hashey just referred to from La Capra Associates dated May 18 will be A-5. The next exhibit, Mr. Hashey?

MR. HASHEY: Thank you, Mr. Chairman. The next exhibit is what has been requested I believe by a number of people, which is the Load Forecast 2005 to 2015, which was issued in May of 2005.

CHAIRMAN: Okay. Load Forecast 2005 to 2015 will be A-6. Next document, Mr. Hashey?

MR. HASHEY: The next document, Mr. Chairman, is the final one today. It's the Disco Business Plan and Financial Forecast 2005 2006 to 2007 2008, which was issued on January 17, 2005. That concludes that part of the matter. Those are all of the exhibits we have today, Mr. Chairman.

CHAIRMAN: Thank you. That will be A-7. Any other matters that we can handle this afternoon?

MR. MACDOUGALL: Mr. Chair

CHAIRMAN: Mr. MacDougall?

MR. MACDOUGALL: Yes, Mr. Chair. I just thought -- I'm sorry, Mr. Chair. There appears to be something going on in my mike. Just to reiterate Mr. Hyslop's comment earlier, it would be useful to parties to know in advance of the 8th I guess what it is we are coming to discuss on the 8th. I don't want to put any pressure on the applicant whatsoever because I understand the situation they are in, but we would like to have some idea maybe about what we are going to do when we come on the 8th. Is there any -- do we have any intention of knowing what we are here to discuss at that time if the matter does proceed?

CHAIRMAN: Mr. Hashey?

MR. HASHEY: I would say, Mr. Chairman, we will do our very, very best to give people advance notice of what our intentions may be and as far as continue to communicate with Mr. Hyslop and the other Intervenors on evidence and this type of thing. We are quite happy to keep that process moving as well. And we have had some movement on that. Mr. Hyslop did send us a list of documents and I am prepared to discuss some of those things with him. No hesitation on our part to continue this process. That's

what we are intending to do.

CHAIRMAN: Okay. Try at least to give a couple of days notice if you can. Any other matters? If not --

MR. MACPHAIL: One issue, Mr. Chairman. Eastern Wind Power made submissions with respect to the draft policy on confidentiality, and I understand that Enbridge also did. And I was just wondering what the Board's plans were with respect to -- there are mike problems. I will blame that on Mr. MacDougall. The submissions were made with respect to the draft policy on confidentiality, and I was wondering what the Board's intentions were with respect to setting that procedure?

CHAIRMAN: Well I think we are going to handle that later, once we find out what is going on.

MR. MACPHAIL: Okay.

CHAIRMAN: Okay. Anything else? We will adjourn --

MR. MACNUTT: Mr. Chairman, just -- you mentioned in your comments to Mr. Hyslop, the Public Intervenor, that in the meantime IRs could be --

CHAIRMAN: Mr. MacNutt, I can't hear you.

MR. MACNUTT: Mr. Chairman, you mentioned in reply to the Public Intervenor, Mr. Hyslop, that in the meantime while awaiting the adjourn dates that we could proceed with IRs. I wonder if you would just clarify that in light of the

fact that no timetable for submission and response has been identified.

CHAIRMAN: With frankness, the applicant will not have to answer until the date we say, but anybody can put any questions now they want to in the form of an interrogatory.

MR. MACNUTT: And Disco would only be obligated to respond at a date to be set.

CHAIRMAN: Certainly. That's right.

MR. MACNUTT: June 8th or later. Yes. Thank you, Mr. Chairman.

CHAIRMAN: Okay. We will adjourn until Wednesday, the 8th of June, at 9:30 in this room.

(Adjourned)

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

Reporter