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New Brunswick Energy and Utilities Board

IN THE MATTER OF an application by New Brunswick Power
Distribution and Customer Service Corporation (DISCO) for an
Order with respect to certain studies and Information Requests
previously ordered by the Board of Commissioners of Public
Utilities

Trade and Convention Centre, Saint John, N.B.
May 15, 2007

CHAIRMAN: Raymond Gorman, Q.C.

VICE-CHAIRMAN Cyril Johnston

MEMBERS: Edward McLean

Roger McKenzie

BOARD COUNSEL: Ellen Desmond

BOARD STAFF: John Lawton

Doug Goss

David Young

BOARD SECRETARY: Lorraine Légère

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21 CHAIRMAN: Good morning, everyone. This is a hearing of the

22 New Brunswick Energy and Utilities Board in relation to a

23 motion by New Brunswick Distribution and Customer Service

24 Corporation, I guess known as DISCO, for an order with

25 respect to certain studies and information requests

26 previously ordered by the Board of Commissioners of Public

27 Utilities.

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I guess before we get going I should remind everybody to turn off their cell phones. I think I made that request at one time not so long ago. And then mine was the one that was left on. So I would ask you to look after that. Today the panel is made up of myself. For anybody who doesn't know me, Raymond Gorman. Cyril Johnston, our Vice-Chair. Roger McKenzie to my right. And Edward McLean to my left.

So at this time I will take the appearances starting with the Applicant.

MR. MORRISON: Good morning, Mr. Chair and Commissioners. Terry Morrison on behalf of the Applicant. And with me at Council table is Nicole Poirier. She is the new Director of Regulatory Affairs. And next to her is Neil Larlee and Sharon MacFarlane.

CHAIRMAN: Thank you. And we have some formal intervenors that have preregistered. So I'm going to take those in order. Canadian Manufacturers and Exporters, N. B. Division.

MR. LAWSON: Good morning, Mr. Chairman, Members of the Board. Gary Lawson appearing with David Plante.

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

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MR. MACDOUGALL: Good morning, Mr. Chair. David MacDougall for Enbridge Gas New Brunswick. And I'm joined today by Dave Charlton, General Manager of Enbridge Gas New Brunswick.

CHAIRMAN: Thank you, Mr. MacDougall. Fraser Papers.

MR. BAIRD: Good morning. Chuck Baird and Ron Beaulieu from Fraser Papers. We are joined by Jennifer Little and Ross Gilliland from Bongal Ventures.

CHAIRMAN: I wonder if we could ask you to pull the microphone a little bit closer. I had difficulty hearing that.

MR. BAIRD: Yes. Chuck Baird and Ron Beaulieu from Fraser Papers. And we are accompanied by Jennifer Little and Ross Gilliland of Bongal Ventures.

CHAIRMAN: Thank you. The Irving Group.

MR. BOOKER: Good morning, Mr. Chair. Andrew Booker and Wayne Wolfe for the J. D. Irving Company.

CHAIRMAN: Thank you. The Utilities Municipal.

MR. ZED: Yes, sir. Peter Zed appearing on behalf of the Utilities Municipal. And with me is Mr. Dana Young of Utilities Municipal and Eric Marr from Saint John Energy.

CHAIRMAN: Thank you, Mr. Zed. Vibrant Communities Saint John. Could I ask you to pull the microphone up and put -
- just so that when this is being transcribed it will be

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2 on the record.

3 MR. PEACOCK: Good morning, Mr. Chair. Kurt Peacock here.

4 CHAIRMAN: Thank you. Now is there anybody else in the room

5 -- that is the list of formal intervenors that I have been

6 provided with. Is there anybody else in the room that

7 should have been on the record?

8 MR. THERIAULT: Good morning, Mr. Chair. My name is Daniel

9 Theriault. I'm the Public Intervenor appointed through

10 the Energy and Utilities Act as well as the Electricity

11 Act. And with me is Mr. Robert O'Rourke.

12 CHAIRMAN: Thank you. And of course N. B. Energy and

13 Utilities Board.

14 MS. DESMOND: Good morning, Mr. Chair. Ellen Desmond as

15 Board Counsel. And with me is Doug Goss, John Lawton and

16 David Young.

17 CHAIRMAN: Thank you. There also were some individuals who

18 had registered as informal intervenors. Are any of those

19 present? Yes.

20 MR. GALLANT: Good morning, Mr. Chair. It is Barry Gallant

21 with Flakeboard Company Limited in St. Stephen.

22 CHAIRMAN: Thank you, Mr. Gallant. And anybody else? Okay.

23 I guess at this time we should look at marking a couple

24 of exhibits.

25 Mr. Morrison, perhaps you could provide proof of

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service or publication with respect to this matter?

MR. MORRISON: Yes, Mr. Chair. I will hand it to the Board Secretary.

CHAIRMAN: Thank you. And that will become exhibit A-1.

And we have the motion filed by DISCO. And we are going to mark that as exhibit A-2. And I trust everybody here has a copy.

Mr. Morrison, I noted in reading the schedule A to your letter which forms part of this motion that reference was made on two or three of the items to an Order-in-Council.

And I wonder if it might not be appropriate to also mark that as an exhibit, since the Applicant appears to be relying on that with respect to some of these items.

MR. MORRISON: Certainly, Mr. Chair.

CHAIRMAN: I don't know if that is available for general distribution. Do the parties here have a copy of that Order-in-Council?

Well, let's put it this way. Would it be helpful to the parties if at a break a copy was made? So if the Applicant then would provide copies sometime throughout the morning to the various parties.

MR. MACDOUGALL: Mr. Chair, I actually have copies here that I will be using. And I could distribute them now if that

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would be helpful to everybody.

CHAIRMAN: Yes. That would be helpful, Mr. MacDougall.

Thank you.

And if I didn't indicate, that will be A-3.

MR. MORRISON: Mr. Chair, there were also two other letters that were provided to the Board subsequent to our April 4th letter. One was dealing with one of the studies, matters.

It was a letter from Nicole Poirier which included a briefing note on the matter of the uniform system of accounts. I believe that should probably be marked as well.

CHAIRMAN: Okay. That will become exhibit A-4. And do you have copies of that letter for the intervenors?

MR. MORRISON: We do.

CHAIRMAN: Thank you. Okay. And then you had one other letter as well?

MR. MORRISON: There is one other, Mr. Chairman. And I will speak to this after we get through the preliminary matters.

It was a letter from Tony O'Hara, also to the Board, dated May 10th, dealing with the question of a proposal for a study with respect to pole attachments, basically the Rogers issue.

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CHAIRMAN: And that will become exhibit A-5.

Now are there any other documents that you have to file at this point in time relating to this motion?

MR. MORRISON: No, Mr. Chair.

CHAIRMAN: Thank you, Mr. Morrison.

Now before we proceed with the motion, the Board has had an opportunity obviously to review the motion. And we believe that the order in which we should deal with these items isn't necessarily the same order as appears in your schedule A. So I hope that doesn't particularly throw you.

MR. MORRISON: I have some notes prepared, Mr. Chair. I may have to jump around a bit. But that is fine.

CHAIRMAN: Okay. And then quite frankly, the reason for that is that it struck us that many of the items, it seemed that the issues may be very similar.

And it would facilitate discussion and argument if the parties were able to stay focused in the sense on issues that had some similar characteristics.

The order in which we would propose that you proceed with these, the first item would be item 14. And then it would be items 1 through 8 and 16, and then items 11, 13, 15 and 17 and then items 19 and 21 and then items 22 through 24.

And then the remaining items would be 9, 10,

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2 12, 18 and 20.

3 MR. MORRISON: Actually, I think that pretty much coincides
4 with the way I was going to deal with it anyway,
5 Mr. Chair. But that is fine.

6 CHAIRMAN: Okay. Thank you.

7 Are there any preliminary issues relating to this motion
8 before Mr. Morrison proceeds with the motion? Okay. Mr.
9 Morrison?

10 MR. MORRISON: I guess dealing with item 14, I did have some
11 comments that I would like to make with respect to
12 background, Mr. Chairman. But I don't know whether you
13 want to hear from me on that or not.

14 CHAIRMAN: That is with respect to which?

15 MR. MORRISON: Some background information as to -- some
16 comments as to why we are here and where we are.

17 CHAIRMAN: Sure. I think that might be useful. Proceed.

18 MR. MORRISON: Mr. Chair, this studies issue basically came
19 on my plate early in this year. As you know, it basically
20 arises from both the CARD decision in December of 2005 and
21 the PUB's rate decision in March of last year.

22 In both of those decisions the previous Board had ordered
23 DISCO to undertake certain studies and make some
24 information requirements and filing requirements.

25 By Order-in-Council which has been marked here this

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morning as A-3, which was dated June 23rd 2006, the PUB's rate decision was reversed pursuant to Section 105(1) of the Electricity Act.

Subsequent to that, by letter dated July 10th 2006, the then Minister of Justice advised DISCO that the Lieutenant-Governor-in-Council, the Cabinet if you will, reversed the PUB's order with respect to the various studies and referred to Section 105 as well in that letter, and directed DISCO, and I'm quoting here, to take no action on the PUB's directives and orders until such time as it receives direction to proceed from the new Energy and Utilities Board. And this letter was copied to the previous Board, the PUB.

On the same day, by letter dated July 10th 2006, the Board Secretary wrote to David Hay, President and CEO of the New Brunswick Power group of companies, asking him to confirm that DISCO intends to comply with the Board's directives and reporting requirements from the June 19th decision.

On July 28th, approximately two weeks later, Mr. Hay, and I would say quite reasonably, wrote back to Ms. Légère and the Board, pointing out the apparent conflict in the two letters that he had received and the conflict in the positions taken in those letters, and concluded his letter

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by saying he looked forward to working with the Board to resolve this matter.

There was no further response or other communication from the Board subsequent to that letter.

Now there will be some, I'm sure, who will raise the issue well, you should have done something. I guess my point that I would like to make here, Mr. Chairman, that when Mr. Hay wrote that letter back to the Board, he put the ball clearly in the Board's court.

And there was nothing further coming from the Board on the issue. I can only assume that he concluded that the matter was at an end.

Now the Board did have, if it disagreed with the position taken by Mr. Hay, or the position taken by the then Minister of Energy, the Board did have authority to deal with it. The Board had the power under Section 128 (1) of the Electricity Act, to call DISCO before it, where it appeared that DISCO had failed to do anything ordered by the Board or was acting contrary to any rule, order or direction of the Board.

The PUB also had the power under Section 129 of the Act to order and require DISCO to do any act that DISCO was required to do under any rule, order or direction of the Board. The previous Board chose to take neither of

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those actions.

I think that it is also important to note, and this is a very important point, Mr. Chair and Commissioners, that DISCO didn't ignore the Board's rulings. In fact, consultants had been retained and had started work with respect to many of the studies, largely relating from the CARD hearing, and had completed approximately 20 percent of their work when DISCO was directed to take no further action on the studies.

I would also like to point out, and I believe this is another important point to make, Mr. Chair, that shortly after this Board was created on February 1st of this year, I contacted Board staff to discuss how to deal with this studies issue.

We met Board staff. I think I contacted the Board, I think it was the third week in February by phone, Board counsel. And we met with Board staff on March 7th. So we did move very quickly to try to get ahead of this issue. In short, DISCO didn't sit on its hands waiting for the Board to issue directions on this matter. We took -- DISCO took the initiative to deal with this issue. This matter was and is important to DISCO and particularly in maintaining its relationship with its regulator. DISCO then proceeded to report to the Board on the

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2 status of the various studies and asked the Board's direction
3 with respect to same. And of course that gave rise to my
4 March 23rd letter and then my subsequent motion on April
5 4th.

6 So I'm just trying to put where we are in context,
7 Mr. Chairman, and emphasize that this wasn't a case where my
8 client flagrantly disrespected or disregarded an order of
9 the previous Board.

10 CHAIRMAN: Well, it is noted we are all here as a result of
11 your motion.

12 MR. MORRISON: Now Mr. Chairman, I will turn to the first
13 item that you raised which is item 14. And in the -- what
14 I'm going to refer to as the rate decision, the March
15 decision of last year 2006 -- I guess the years seem to
16 move together -- the Board directed DISCO to complete a
17 study on DISCO's amortization practices.

18 That amortization study was completed and was filed with
19 the Board on April 12th of this year. And I really don't
20 have anything further to add on that item,

21 Mr. Chair.

22 CHAIRMAN: I think our records indicate it was actually
23 filed on April 16th.

24 MR. MORRISON: My notes could be incorrect.

25 CHAIRMAN: Sure. But in any event, it is filed -- so with

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respect to that matter, do any of the -- because it is already
filed, do any of the intervenors have any comments with
respect to that item?

Okay. Well, then we will consider that item to have been
completed.

MR. MORRISON: Mr. Chair, I think you also wanted to deal
with items 1 to 8 and items 11, 13 -- sorry, items 1 to 8
and 16 together.

CHAIRMAN: That is correct. And Mr. Morrison, I didn't mean
necessarily that you would just lump -- but I think for
the benefit of everybody that is here, we may need to go
through them study by study.

MR. MORRISON: Certainly.

CHAIRMAN: The intention really was just to suggest that
that particular order made sense because the circumstances
surrounding those items all seemed to be very similar.

MR. MORRISON: And I agree. Well, items 1 to 8 I guess can
be lumped generally together as really dealing with cost
allocation and rate design issues.

Item number 1 was an order that DISCO is directed to file
detailed information on the results of using various
methods to classify its distribution costs.

Item number 2 dealt with residential usage profiles and
classification, basically ordering DISCO to provide

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research on its residential class to identify those issues.

Item number 3 was an order that DISCO do a study on the usage profiles of the GS1 and GS2 customers.

Item number 4 was an order that DISCO submit a study on the costs and issues associated with providing an option on interruptible rates.

Item number 5 was the Board directed DISCO to do a study on the maximum amount of energy -- sorry, interruptible and surplus energy that could be available to customers, made available to customers.

Item number 6, DISCO was to determine whether it had struck the right balance in the demand and energy charges between industrial customers.

Number 7, item 7, the Board directed DISCO to file a study which provides an analysis of whether peak demand or energy is the most appropriate method to use in allocating costs. And I believe this dealt specifically with respect to the methodology of TT's and emergency power purchases.

And number 8 dealt with interruptible and surplus products. DISCO was to review provisions of its tariffs relating to surplus and interruptible service to ensure that they provide adequate and appropriate benefits and protection to firm, service and customers.

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Now all of those items, number 1 to 8, are in progress. Consultants have been retained and have been working on those. And we believe that they will be -- we are told that they are deliverable mid June for review and filing by certainly -- we are targeting July 1st, but certainly no later than July 3rd, Mr. Chairman.

CHAIRMAN: Thank you, Mr. Morrison. I guess I will canvass the intervenors with respect then to items 1 through 8 either individually or as a group with respect to all of those studies, starting I guess with the CME.

MR. LAWSON: Thank you, Mr. Chairman. I guess CME's position is quite simply, as it related to the fulfilling of the obligations, we have no problem with the filing by July 3rd.

It becomes a question of what is going to happen as a result of those filings, if the Board is going to give consideration to them, and if there is going to be any deliberations by the Board and an opportunity by Intervenor to deal with the results of those.

CHAIRMAN: Well, I think today's hearing is just simply to deal with the motion with respect to the outstanding orders.

As you know, we have a pre-hearing conference scheduled for Friday. And so what become of for example

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these studies is maybe more appropriate for the pre-hearing conference in terms of where we would go with them.

I think today, the purpose of the motion today is essentially to determine what will become of the 24 orders if you will that our outstanding.

MR. LAWSON: As long as there is an opportunity to address the issue of the role that these studies will have in the rate application, then we will reserve our comments until Friday.

CHAIRMAN: And I would suggest that Friday may be the appropriate time to identify that as an issue. Because what we would be looking for on Friday is identification from the various parties as to what preliminary issues need to be dealt with prior to the onset of the upcoming general rate hearing.

MR. LAWSON: That is fine. Thank you.

CHAIRMAN: Thank you, Mr. Lawson. Enbridge?

MR. MACDOUGALL: Yes, Mr. Chair. A couple of comments. I might come to the front, if I may.

Good morning, Mr. Chair, Commissioners. Being somewhat diminutive, as they say, it might be better for me to be at the front rather than in the back.

Mr. Chair, I think your comments to Mr. Lawson are

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probably going to cover our issues on this part of the motion and they may have to be moved to Friday. But I do want to make a couple of preliminary comments, if I may, and deal with the points in this piece of the motion just because we had set out our argument in such a way that we will be dealing with some of the other issues coming up.

But I thought it would be useful to give some of the background on Enbridge Gas New Brunswick's positions on all of the items at the first stage of the comments that we are going to make.

As some of you may be aware from your previous involvement in NB Power proceedings, Enbridge Gas New Brunswick was a formal intervenor in last year's rate case and provided significant evidence to the Board on various matters.

Some of the matters before you today derive directly out of issues that were brought forward by EGNB in the last rate case and as such, EGNB has a very particular interest in today's motion.

EGNB maintained throughout the prior DISCO rate case proceeding and will note again today, that its involvement in these proceedings is to ensure two things. One, that there is a proper price signal being sent to the energy consuming marketplace in New Brunswick.

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2 And two, to ensure that DISCO's rates do not in and of
3 themselves create a barrier to demand side management
4 initiatives or to the potential use of more efficient
5 fuels by the energy consuming public in New Brunswick.
6 And do not create an artificial barrier to competition.
7 As most of you are aware, EGNB is still in its development
8 phase and billed out of its gas distribution system in the
9 province and it's utilizing its Board approved market
10 based rate approach currently.

11 With this background in mind, EGNB would like to comment
12 on a couple of the studies. The two in particular for
13 EGNB are the residential usage profiles and classification
14 and two, the characteristics of GS1 and GS2 customers. We
15 will also comment on other points later on today.

16 With respect to items 2 and 3, EGNB's concerns is that in
17 the application that was filed on April 19th 2007 by
18 DISCO, they talked about including rate realignment
19 proposals, which together with addition evidence in
20 support thereof shall be filed with the Board on July 2,
21 2007.

22 EGNB has a couple of issues in this regard. We are
23 unclear when these two specific reports will be finalized
24 and whether they will be evaluated and utilized by DISCO
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in preparing its rate realignment proposals which are anticipated to be filed on approximately the same date. So our concern is, as Mr. Morrison said, that they will certainly be filed by July 3rd, but with respect to today's motion, our concern is how do we know if these will be dealt with and determined and utilized in the filing of evidence that is supposed to occur on July 1 if we don't know whether these studies will actually be filed or even completed by July 3rd.

As such we would request that DISCO advise whether these two particular studies, residential usage profiles and characteristics of GS1 and GS2 have yet been completed and whether DISCO intends on utilizing the findings of these studies in developing its 2007 and 2008 rate evidence. Furthermore, as the results of these studies could be of importance to intervenors in the context of the evaluating any rate realignment proposals put forward by DISCO, we request that the studies be made available to all intervenors by no later than July 3.

I was unsure of Mr. Morrison's comments if they were only to be filed with the Board or if they were going to be filed as part of the evidence of the rate realignment proposals. And we ask that it be the latter.

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2 We believe that this will make for an efficient use of the
3 hearing process and will ensure that all interested
4 parties are able to provide the Board with their views on
5 how the results of the studies should be best utilized
6 going forward, while also providing an opportunity to
7 raise any concerns with the studies, which could arise
8 depending on what DISCO eventually files, both as the
9 studies and as its rate realignment evidence.

10 With respect to the two studies in particular, just to
11 give some more flavor to the concerns, with respect to the
12 study concerning residential usage profiles and
13 classification, it became evident during the last rate
14 case that there were customers such as large commercial
15 farms who were clear outliers in the residential class.
16 And this skewed various analyses of that class when
17 looking at the impacts of rate realignment.

18 Accordingly, it is important that this study be made
19 available so that all parties can understand the true
20 impact of any rate realignment proposals that DISCO may
21 bring forward on the actual residential class.

22 With respect to the GS1 and GS2 customer study, although
23 some of the issues dealing in particular with the GS2 rate
24 have been accommodated by the closing of this class and
25 changes in the language of the tariff made

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pursuant to the Order-in-Council 2006-242 that was marked this morning, the results of the study on the usage profiles of the two GS customer classes will be important to further understand how to best send an appropriate price signal to such customers and to further realign these rates as may be appropriate.

In summary then, on these specific items, Mr. Chair, Commissioners, we would ask that DISCO advise all intervenors to the 2007/8 rate case if the studies on residential usage profiles and classification and characteristics of GS1 and GS2 customers have yet been completed and whether it intends on utilizing the findings of these studies in developing its rate realignment proposals.

And two, that both of these studies be filed not only with the Board, but with all intervenors by no later than July 3, 2007 as part of DISCO's evidentiary filing in the rate case.

Thank you very much.

CHAIRMAN: Thank you, Mr. MacDougall. Mr. Morrison, perhaps you could clarify what your intention was with respect to sharing of these reports with the intervenors.

MR. MORRISON: Well I guess I will start with the first question. No, the reports haven't been completed yet and

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2 it is our intention that as the reports are completed, they
3 will be filed with the Board. I have absolutely no
4 problem with their being provided to the other
5 intervenors. I suspect we will have a discussion on
6 Friday as to what -- and I have some questions in my own
7 mind whether they have to be marked as exhibits as part of
8 the rate case evidence or so on.

9 Clearly, whether they are marked as exhibits or not, they
10 are going to become matters in issue in the rate
11 application so I don't think there is too much concern
12 there.

13 Whether, with respect to Mr. MacDougall's last question,
14 whether those documents will be considered by DISCO in
15 preparing its rate realignment proposal, I'm not in a
16 position to answer that, Mr. Chairman. I guess that
17 depends on when they are produced and when they are made
18 available. But they certainly will be available for all
19 intervenors to question DISCO witnesses in the course of
20 the rate application.

21 CHAIRMAN: Thank you.

22 MR. MACDOUGALL: Thank you, Mr. Chair. I guess our
23 position on the rate design proposal, whether that is a
24 topic for another day or whether the Board will make some
25 comments on it at the end of the day, I leave that with

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Thank you very much.

CHAIRMAN: Thank you. Fraser Papers?

MR. BAIRD: Mr. Chairman, we have exactly the same concerns that Enbridge has, only with regards to items 4, 5, 6 and 8 with regard to their being included in the future rate hearing and being available to the intervenors.

CHAIRMAN: Do you have any issue with respect to the proposal by DISCO that they be filed by the 3rd of July?

MR. BAIRD: No. Whatever time they need to get it done is fine with us, Mr. Chairman and Commissioners.

CHAIRMAN: Thank you. The Irving Group?

MR. BOOKER: Thank you, Mr. Chair. I believe our concerns are pretty well in line with those of the CME and Fraser Papers and have been answered so far.

CHAIRMAN: Thank you. Utilities Municipal?

MR. ZED: Sir, we are fine with the July 3rd filing. And the assumption being that the first round of IR's in the parallel proceeding will follow July 3rd.

So our concern is that all documentation be available before the first or any round of IR's commences.

CHAIRMAN: And certainly the schedule for IR's and things of that nature is all part of what will take place as a result of Friday's pre-hearing conference.

Thank you, Mr. Zed. Mr. Peacock?

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MR. PEACOCK: Mr. Chair, I have no opinion on items 1 through 8.

CHAIRMAN: Mr. Theriault?

MR. THERIAULT: Mr. Chairman, I have some comments, general comments to make on all of them. So if I could reserve my remarks till after Mr. Morrison is done, if that would meet with the Board.

CHAIRMAN: General comments with respect to all 24 of the --

MR. THERIAULT: Yes. With respect to the jurisdiction of the Board. As I understand the motion by Mr. Morrison, he is proceeding to get direction from the Board as to -- I will call it the status of the outstanding orders. It is the position of the Public Intervenor that this Board has jurisdiction to deal with each and all of those orders. And those orders should be complied with. Now I understand from speaking with Mr. Morrison and from his preliminary comments here that that is his intention. So I would like to hear his entire presentation, if I may, and then --

CHAIRMAN: Well, I guess what we can do is we can hear from you after all of the items, all 24 items have been dealt with. But I guess it is Mr. Morrison's motion. And ultimately he will get the last word, I guess.

MR. THERIAULT: That is fine. But I guess it is after his

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2 full presentation. As to what he has said so far, we take no
3 issue with as long as it is filed in a timely manner on
4 July 3rd.

5 And as my friend Mr. Zed said, I would have the same
6 concerns with respect to the IR's.

7 CHAIRMAN: Thank you. Ms. Desmond, anything on behalf of
8 the Board?

9 MS. DESMOND: No. Thank you, Mr. Chair.

10 CHAIRMAN: Thank you. Mr. Morrison, do you want to make any
11 comments with respect to items 1 through 8 at this time?

12 MR. MORRISON: Not in addition to what I have already said,
13 Mr. Chairman. I will move on to item 16.

14 CHAIRMAN: Thank you.

15 MR. MORRISON: Item 16 was a direction to DISCO to undertake
16 basically a DSM review of DSM measures in other
17 jurisdictions.

18 An independent consultant has been retained to prepare
19 that study. And it will be filed on July 1st. I'm sorry.

20 That is being done in-house by DISCO. That study is
21 under way.

22 CHAIRMAN: And the filing date is the same as 1 through 8.
23 That would be by July 3rd, I believe?

24 MR. MORRISON: Yes. And again our intention is as we
25 complete them and they are done, we will file them with
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2 the Board. But we may be able to get some of these done
3 earlier. And if so they will be filed earlier.

4 CHAIRMAN: Thank you, Mr. Morrison. I will go through the
5 list again then. CME, any comments on item 16?

6 MR. LAWSON: No, Mr. Chairman.

7 CHAIRMAN: Mr. MacDougall, for Enbridge?

8 MR. MACDOUGALL: No, Mr. Chair.

9 CHAIRMAN: Mr. Baird?

10 MR. BAIRD: No, Mr. Chairman.

11 CHAIRMAN: Mr. Booker?

12 MR. BOOKER: No, Mr. Chair.

13 CHAIRMAN: Mr. Zed?

14 MR. ZED: Same position as before, sir.

15 CHAIRMAN: Mr. Peacock?

16 MR. PEACOCK: Thank you, Mr. Chair. As you may know from
17 last year, Vibrant Communities is particularly interested
18 in the DSM question. And obviously we look forward to the
19 report.

20 One thing that I may offer to the Applicant is if a
21 section of the report offers some insight as to the exact
22 relationship between Efficiency New Brunswick and the
23 Applicant in the years ahead in terms of what plans they
24 might have, I don't know whether or not that could be
25 included in the report. But certainly that would be the

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sort of information that we would find to be quite valuable.

CHAIRMAN: Thank you. Mr. Theriault?

MR. THERIAULT: No comment.

CHAIRMAN: Ms. Desmond?

MS. DESMOND: Nothing. Thank you.

CHAIRMAN: Mr. Morrison, anything further on that item?

MR. MORRISON: Other than I will take Mr. Peacock's suggestions in hand.

CHAIRMAN: And I probably should have at the outset to indicate to all present that the matters here today we will take under advisement. And we will issue a written decision by the way.

So if -- I guess if everybody is looking for a response today we will get one out very quickly. But it will be a written decision.

Okay. Moving along then, I guess the next series started at number 11?

MR. MORRISON: Yes, Mr. Chairman. Item 11, DISCO was directed to, at the time of filing on the next review of the cost allocation methodology, to provide whatever information is available concerning costs caused by providing it to the various miscellaneous services. Now the Board's ruling in this regard dealt with

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whenever there is going to be another CARD hearing

essentially. However, number 11 is in progress. A

consultant has been retained and is working on that. And

again that will be filed by July 1st.

Number 13 --

CHAIRMAN: If I could just stop you there. Your response

under "Status" indicated that it would be available on the

next rate application.

By "next rate application" do I understand you mean the

one that has now been filed? Or are we talking about a

future rate application? I just want to clarify what was

meant by that.

MR. MORRISON: No. What I meant there, Mr. Chair, was if

you read the Board's ruling, in the CARD -- I'm

paraphrasing here -- the Applicant was directed at the

time of the next review of cost allocation methodology --

CHAIRMAN: Yes.

MR. MORRISON: -- to provide this information. This Board

hasn't ruled whether there is going to be a cost

allocation methodology hearing and generic hearing in

connection with the upcoming rate case, rate application.

So there is really nothing turns on it. Because we are

going to file it by July 1st in any event. Just making

the point that it really isn't due until there

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would be another CARD hearing. But it is going to be filed by July 1st in any event.

CHAIRMAN: Thank you.

MR. MORRISON: Number 13 orders DISCO to compile a comprehensive capital justification criteria model.

Actually "model" is the wrong word. It is a manual.

And with respect to number 13, that is in process. It is being compiled. I'm not sure if it is near completion.

But again that will be filed by July 1st.

Item 15, DISCO is directed to provide the information on capital expenditures, its capital expenditures and those of GENCO's proposed capital expenditures that would have an impact on DISCO through the PPA. Essentially I'm again paraphrasing.

That as well is in progress and will be -- sorry, number 15. Oh, that information was filed as part of the initial evidence filed, Mr. Chairman. All the capital expenditure information is included in the information that was filed in support of the rate application.

And I believe the next item you want to deal with is number 17?

CHAIRMAN: That is correct.

MR. MORRISON: Number 17 was a credit and collections report, essentially asking DISCO to -- there were some

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2 issues that came up, whether the new collection system was
3 cost-effective, that type of thing, a number of letters
4 sent out on return on investment -- collections I guess
5 was the main issue.

6 That report is being done by Ernst & Young, an independent
7 consulting firm. And again we expect that the will be
8 filed by July 1st.

9 CHAIRMAN: Thank you, Mr. Morrison. Mr. Lawson?

10 MR. LAWSON: Thank you, Mr. Chairman. No further comment.

11 CHAIRMAN: Mr. MacDougall?

12 MR. LAWSON: No comment, Mr. Chair.

13 CHAIRMAN: Mr. Baird?

14 MR. BAIRD: No comment, Mr. Chairman.

15 CHAIRMAN: Mr. Booker?

16 MR. BOOKER: No issues, Mr. Chair.

17 CHAIRMAN: Mr. Zed?

18 MR. ZED: No further comment.

19 CHAIRMAN: Mr. Peacock?

20 MR. PEACOCK: No opinion, Mr. Chair.

21 CHAIRMAN: Thank you. Mr. Theriault?

22 MR. THERIAULT: No further comment.

23 CHAIRMAN: And Ms. Desmond.

24 MS. DESMOND: Nothing. Thank you.

25 CHAIRMAN: And I have skipped by Mr. Gallant from

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Flakeboard. Because he indicated that it was an informal status that he was seeking.

Okay. Mr. Morrison, then we will proceed to the next group?

MR. MORRISON: Yes. Moving along, Mr. Chair, to items 19 and 21. Item 19 was ask DISCO to look into the question of a universal system of accounts in order for DISCO to work with Board staff to propose an appropriate USOA, uniform system of accounts, and a time period for implementation.

Lori Clark has undertaken that task. There have been discussions with Board staff on the issue as well. And exhibit A-4 which was filed on May 10th, which is a letter from Nicole Poirier, which has attached to it a briefing note on uniform system of accounts, essentially satisfies in our view that requirement.

The bottom line, if you look at that briefing note, is that a uniform system of accounts on a national basis is essentially in its infancy. The Canadian Electrical Association has not moved along very far in establishing parameters for it. And our recommendation is to the Board that this is not the appropriate time to move forward with the uniform system of accounts.

But the briefing note speaks for itself. And of

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course the Board is open to -- and Board staff are open to come back with other proposals as they think fit. But I believe that briefing note does satisfy the requirements of the Board's order from last year.

Item 21 -- and I do want to speak to this just briefly.

Item 21 arises out of what I will call the Rogers hearing, the Rogers issue. It is on pole attachment rates.

And DISCO was ordered to consult with Board staff, Rogers and the Municipals to determine the scope of a study. And the study was to undertake a study of poles, equipment and related costs that will be used to review attachment rates at any future hearing involving pole attachment rates.

Mr. O'Hara wrote a letter to the Board on May 10th requesting that the Board -- requesting a meeting with Board staff to discuss the parameters and scope of this study.

Through inadvertence Mr. O'Hara did not include, which was clearly the intention, requesting a meeting with Board staff, Rogers and the Municipals to discuss the parameters of this study.

And I spoke briefly to Board counsel on this. And we are both aware of the omission. But the clear intent is

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2 for Board staff -- to set a meeting with Board staff and to
3 invite both Municipals and Rogers to provide whatever
4 input they want to bring with respect to what the scope of
5 this cost study should be.

6 So I believe that matter has been dealt with,

7 Mr. Chair.

8 CHAIRMAN: Do you have a time frame with respect to that
9 pole attachment matter?

10 MR. MORRISON: Well, it certainly isn't a pressing issue as
11 far as the upcoming rate application is concerned.

12 Because the pole attachment rate isn't -- there is no
13 proposal to change that.

14 Essentially this letter has left it with Board staff to
15 make whatever recommendations. And of course we will be
16 guided by Board staff on that. So we are really in the
17 hands of Board staff in terms of scheduling it.

18 There may have to be some consultation with Rogers and the
19 Municipals to find a suitable day or days and perhaps
20 sufficient notice so those parties can give some thought
21 to the issues and come to the meeting prepared to discuss
22 the scope of the study.

23 CHAIRMAN: Thank you. We will hear from the intervenors on
24 these two issues, items 19 and 21. Mr. Lawson?

25 MR. LAWSON: No comment, Mr. Chair.

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CHAIRMAN: Mr. MacDougall?

MR. MACDOUGALL: No comment, Mr. Chair.

CHAIRMAN: Mr. Baird?

MR. BAIRD: No comment, Mr. Chair.

CHAIRMAN: Mr. Booker?

MR. BOOKER: No comment, Mr. Chair.

CHAIRMAN: Mr. Zed?

MR. ZED: Yes. I think our concern, really, is that the

process move along at a reasonable rate and we would be

anxious to participate. You know, without setting a day

and a time, just that it proceed with dispatch.

CHAIRMAN: And you are referring specifically to which, 19

or?

MR. ZED: Sorry, to 20.

CHAIRMAN: 21?

MR. ZED: 21, I'm sorry, pole attachments.

CHAIRMAN: Sure. Thank you. Mr. Peacock?

MR. PEACOCK: No comment, Mr. Chair.

CHAIRMAN: Mr. Theriault?

MR. THERIAULT: No comment, Mr. Chair.

CHAIRMAN: Ms. Desmond?

MS. DESMOND: No comment, Mr. Chair.

CHAIRMAN: Thank you. Mr. Morrison?

MR. MORRISON: Mr. Chairman, moving on to the next two

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items, which are items 22 and 24. 22 was basically updating the RSP manual. DISCO was criticized for being tardy in updating its RSP manual. The Board directed that the RSP manual be updated. That has been done and the Board was advised of this on March 16th of this year.

So that matter -- all the updates, as far as I am aware, have been completed.

With respect to item number 24, this dealt with the interruptible adder. In the rate decision of June 19th 2006, the PUB ordered that DISCO's surplus and interruptible rates be modified to include an additional contribution to fixed costs. I think we commonly referred to it as an interruptible adder.

The Order-in-Council that has been marked here today reversed that decision. So in our view it is now moot.

There is really nothing for DISCO to do as a result of that order because it was reversed by Order-in-Council.

CHAIRMAN: And I think item 23 probably fits in here as well because I think the status that you indicated that both 23 and 24 had the same status.

MR. MORRISON: 23 is exactly the same situation. DISCO was to inform everybody about the option to switch from GS1 to GS2, but of course, the Order-in-Council closed the GS2 to new customers. So there is nothing for us to do

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2 essentially.

3 CHAIRMAN: Thank you, Mr. Morrison. CME, Mr. Lawson?

4 MR. LAWSON: Thank you, Mr. Chairman. We would just say we
5 would agree with DISCO's position on this matter,
6 particularly with respect to item number 24.

7 CHAIRMAN: Thank you. Enbridge, Mr. MacDougall?

8 MR. MACDOUGALL: Yes, Mr. Chair. I guess our comments would
9 be that we would agree, particularly with respect to item
10 23, that the OIC did override that point and it has been
11 dealt with. We will in the next tranche talk about what
12 we think the OIC didn't do. But we do agree with DISCO
13 with respect to item 23.

14 CHAIRMAN: Thank you. Fraser Papers, Mr. Baird?

15 MR. BAIRD: We agree with the CME.

16 CHAIRMAN: Thank you. The Irving Group, Mr. Booker?

17 MR. BOOKER: Thank you, Mr. Chair. We agree with the
18 preceding intervenors with particular emphasis on item 24.

19 CHAIRMAN: Thank you. Utilities Municipal, Mr. Zed?

20 MR. ZED: I have no additional comment.

21 CHAIRMAN: Have you got your microphone on?

22 MR. ZED: No additional comment. Sorry, I may have been too
23 far.

24 CHAIRMAN: Thank you. Vibrant Communities, Mr. Peacock?

25 MR. PEACOCK: We have no comment, Mr. Chair.

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2 CHAIRMAN: Public Intervenor, Mr. Theriault?

3 MR. THERIAULT: No comment, Mr. Chair.

4 CHAIRMAN: And the Board, Ms. Desmond?

5 MS. DESMOND: No comment.

6 CHAIRMAN: Thank you. Mr. Morrison?

7 MR. MORRISON: Moving along, Mr. Chairman. You wanted us to
8 deal with items 9, 10, 12, 18 and 20. I'll deal with item
9 9. I expect that Mr. MacDougall will have some comments
10 with respect to items 9 and 10 for sure, so I will deal
11 with them individually at first at least.

12 Item 9 deals with seasonal rate. In the rate decision of
13 last year, the Board directed DISCO to provide a proposal
14 for seasonal rates at the time of the next review of
15 rates.

16 DISCO is asking that a seasonal rate proposal be deferred
17 until the first rate application after the present one.

18 In other words, not for this pending rate application but
19 for the rate application after that.

20 DISCO requests this deferral for two reasons. First, in
21 the PUB's rate decision, if it had been followed progress
22 would have been made with respect to eliminating the
23 difference between the first and second block. The Order-
24 in-Council, however, reversed this progress essentially.

25 Applying a seasonal rate without further

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2 progress in an eventual elimination of the declining block or
3 the second block would, in DISCO's view, have unacceptable
4 rate impacts on those residential customers in the second
5 block. Because not only would you have to catch up from
6 what didn't happen as a result of the OIC, but you would
7 be putting a seasonal rate on top of that.

8 On that point, if you look at a seasonal rate in essence
9 in the final outcome, a seasonal rate is no different than
10 a rising block rate structure in the New Brunswick system.

11 So it is DISCO's view that it is only logical to flatten
12 the two blocks, eliminate the second block, before you
13 implement a seasonal rate structure. In other words,
14 until the declining block is eliminated.

15 And that is our position and I am certain that Mr.
16 MacDougall will have some comments on that.

17 CHAIRMAN: I do have a question for you with respect to this
18 issue, however, before we get to comments from the various
19 parties.

20 If the Board were to agree with what you are requesting,
21 would that preclude, in your opinion, would that preclude
22 any of the parties from raising the issue of seasonal rate
23 during the next hearing?

24 MR. MORRISON: No. I would suspect that all those issues --
25 that many of the same issues that we dealt with in the

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previous rate application will come to the fore again on this rate application. And I fully expect that a seasonal rate will again be raised by one or more parties.

CHAIRMAN: So would it be fair to say maybe, that how you would see the order that you are seeking from the Board with respect to this matter, is it simply would take away the requirement for DISCO to propose a seasonal rate, but it would be something that the parties could raise and ultimately -- I guess what I am trying to determine here is whether or not the outcome that you are seeking, at this point in time would you see that as precluding this Board from then dealing with the possibility of a seasonal rate?

MR. MORRISON: No, not at all. Essentially, Mr. Chairman, when it comes down to it, and this is not to try to reargue the case that we didn't win with respect to the seasonal rate the last time, the Board, in fairness, asked DISCO to put forward a proposal for a seasonal rate. In consultations with Mr. Larlee and his staff, quite frankly, they believe honestly or to the best of their judgment, that it just doesn't make sense to propose a seasonal rate until the declining block is eliminated. And we have all agreed that within a reasonable period of time the declining block should be eliminated.

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But that having been said, the Board did order us to file a proposal for the seasonal rate but the Order-in-Council reversed that. That is our position on that particular item.

CHAIRMAN: Thank you, Mr. Morrison. Mr. Lawson?

MR. LAWSON: No comment, Mr. Chairman.

CHAIRMAN: Mr. MacDougall?

MR. MACDOUGALL: Substantive comments, Mr. Chair. I'll be up in a second.

Mr. Morrison was correct, Mr. Chair. We have a few comments on this item. My written notes, Mr. Chair, sort of overlap with the -- with the next item, which is number 10. I will try and sway through them, but if not, we have generally the same position with item 10, although I am sure we will back with --

MR. MORRISON: If I can make my comments with respect to item 10 and Mr. MacDougall can deal with both of them at once, Mr. Chair, because they are related.

CHAIRMAN: Certainly. I think that might be appropriate, Mr. Morrison. Maybe you can proceed with item 10.

MR. MORRISON: And I would just like to correct something I said just before Mr. MacDougall started. I had indicated that the Order-in-Council reversed the PUB's decision. It did not. We take the -- that was a misstatement on my

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part. We take the view that the Order-in-Council made it difficult to make progress on eliminating the declining block, which reinforces our argument that it's illogical to proceed at this point.

I will move on with item number 10. And item number 10 was the standby rate. And again the Board directed DISCO to develop a proposal for its standby rate, this is for cogeneration by the time of the next rate application. And DISCO is requesting the deferral of this Order until the next rate application after the present one.

And quite frankly, the primarily reason for this request, Mr. Chair, is a manpower and resources issue. There really isn't any other reason for it. The same people needed to assemble the information and provide guidance to outside consultants on the standby rate are the same people who are deeply involved in many of these other studies that we talked about and are also deeply involved in preparation for the rate application. So it's strictly a manpower issue.

CHAIRMAN: Thank you. Mr. Lawson, now that we are dealing with 9 and 10?

MR. LAWSON: No comment, Mr. Chairman.

CHAIRMAN: Mr. MacDougall?

MR. MACDOUGALL: Thank you, Mr. Chair. Before I get to my

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written remarks, I think I would just like to make a couple of comments on Mr. Morrison's opening statement, which will be somewhat repeated in my written notes and also on your comments, Mr. Chair, to Mr. Morrison.

Some of the things Mr. Morrison has said this morning are reasons why DISCO may believe seasonal rates are not appropriate. Well, we had that debate in the last rate case. And the Board ordered that NB Power bring forward a proposal for seasonal rates. We did that after extensive evidence, much of which was led by Enbridge Gas New Brunswick, cross-examined these experts and otherwise. Today statements by Mr. Morrison on behalf of NB Power of what Mr. Larlee or others may or may not think are irrelevant for the purposes of today's motion. There is no evidence before us today on seasonal rates. We are talking about what was directed and how it was impacted by the Order-in-Council. We certainly do not believe we have to go back and fight the battle on seasonal rates. It was had with all the correct parties and the Board made an Order in that regard. So that's our starting comment.

Mr. Chair, you had asked about the question of whether other parties may be able to bring forward seasonal rates. Certainly we would be hopeful that nothing would preclude another party from doing anything in the upcoming rate

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case. However, the issue here was the utility has the resources, they have the data, they have the information. They are generally the party that brings forward rates. And people can analyze those, modify them. They can bring forward competing rate proposals, but we don't believe it would be an acceptable or particularly worthwhile exercise of only having to put the intervenors to the exercise and not the utility without having any sense of what the utility may actually be thinking by way of those rates. So I just want to put those forward as some initial comments.

And my final point, I do agree, and I am pleased to see that Mr. Morrison indicated that the OIC did not reverse this point. We certainly agree with him. But now we don't have to argue as vociferously. It may have done something, but it certainly did not reverse this in our view.

With respect to items 9, seasonal rates, and 10 the standby rates, DISCO is requesting that its requirement to bring forward its proposal to these be deferred to the next review of rates. And we will come back to that terminology shortly.

Simply put in Enbridge Gas New Brunswick's view, this is inappropriate. The Board specifically directed DISCO

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to provide a proposal for seasonal rates and a proposal for a standby rate for cogenerators and to include it in its next rate application. DISCO is asking that the Board now revise its decision.

If DISCO had any issue with the Board's decision in this regard, it should have had the decision judicially reviewed last year. It raised no such concern. And now proposes to revise the Board's Order.

EGNB would note that it was the party who recommended the introduction of seasonal rates for both the residential and general service customer classes and the standby rate for cogeneration. We do not intend to revisit the very complete record on these points or the substantive arguments made by EGNB and its experts.

Simply put, the Board agreed with EGNB's rationale. And although it did not order that these rates be put in place at the time of the decision, it specifically ordered based on the arguments that had been presented to it, including those of DISCO, that DISCO provide a proposal for seasonal rates and a standby rate at the time of the next review of rates, which is soon to occur.

If I could briefly now talk specifically about seasonal rates. The Board nicely summed up EGNB's position on seasonal rates when it stated at page 34 of

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its December 21, 2005 ruling that, EGNB submitted that seasonal rates can be a complement to demand side management measurements and will send the appropriate price signals. EGNB continues to contend that this is in fact the case. And for all the numerous reasons it espoused in the 2006-07 rate case, these are appropriate goals in both the context of the regulatory environment in New Brunswick and the energy policy of the Province.

Noting has changed.

With respect to the standby rate for cogenerators, again we note the words of the actual Board decision regarding standby rates, where at page 35 the Board stated, "The Board considers that a standby rate well may promote the development of cogeneration consistent with the goals of the White Paper. We, therefore, order DISCO to develop a proposal for a standby rate for cogenerators and to include it in the evidence for its next rate application."

Again, this proposal was meant to be complementary with the provincial energy policy. And will hopefully have the anticipated impact of encouraging the development of cogeneration in the province of New Brunswick. EGNB does not believe it is appropriate to defer these items.

On the issue of timing, particularly troubling is the

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2 fact that DISCO states that it wishes to defer bringing
3 forward such rates until "next review of rates after the
4 2007-2008 fiscal year". But gives no indication of when
5 this may be.

6 EGNB raised this very point on numerous occasions during
7 the '06-'07 rate case. DISCO never provides any certainty
8 as to when it will make these proposals, rather it always
9 refers to the next rate case.

10 At this point, Mr. Chair, if I could, I would like to put
11 into the record a press release that accompanied the
12 current rate filing.

13 CHAIRMAN: Give Mr. Morrison a copy. And if you have copies
14 for everybody?

15 MR. MACDOUGALL: I do, Mr Chair. I would ask if Mr.
16 Morrison could hand them around and Ms. Légère as well.
17 Thank you.

18 Mr. Chair, in its April 19, 2007 press release, announcing
19 that '07-'08, rate application, Mr. Hay, NB Power's
20 president, specifically noted that If NB Power is
21 successful in getting its rate increase in this year's
22 hearing, it does not expect to apply for for a rate review
23 in either of the next two subsequent fiscal years.

24 CHAIRMAN: Mr. MacDougall, maybe at this point in time, we
25 should mark that I guess if we are going to refer to it.

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Mr. Morrison, do you have any comments on that?

MR. MORRISON: I have no problem with it being marked, Mr. Chair.

CHAIRMAN: And anybody else have any difficulty? That will become EGNB-1.

MR. MACDOUGALL: Thank you, Mr. Chair. The point of the press release, I was referring to is in the bottom paragraph on the first page.

Because of DISCO's ability to raise rates within the legislated cap, DISCO could well stay out much longer than this three year period. As the Board is aware, the last rate case was the first rate case in some 13 years. In current market circumstances, it is certainly time to end NB Power's glacially slow pace of change.

As the Board specifically stated at page 38 of December 21 ruling, the ruling that we are talking about with respect to these rates, we note that certain customer classes have revenue to cost ratios that remain outside the .95 to 1.05 range and are disappointed that NB Power did not make more progress in this area in the time since 1992.

Although some modifications have occurred, the issue of sending the appropriate price signals has not been dealt with in any significant way. That's why these

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matters were decided upon by the Board and requested that they come forward in a timely matter for the next rate case.

Now let's look at DISCO's position. DISCO's March 21 2007 document that sets out the various requests contends that given the decision of the New Brunswick government regarding the Board's decision in the '06-'07 rate case, DISCO needs an opportunity to adjust the residential block structure and the general service rates in order to limit customer impacts and free ridership of seasonal rates.

And Mr. Morrison had summarized that same point this morning.

However, DISCO has not brought forward any evidence whatsoever, zero, that there will be inappropriate customer impacts or free ridership created by seasonal rates. They have just made this statement. That's all it is.

As discussed in the '06-'07 rate case by EGNB and others, there are many ways to deal with customer impacts. But as EGNB argued in that rate case, one should not delay carrying out appropriate rate realignment because of a concern over customer impacts. Rather, if the rate realignment does cause customer impacts, which is certainly not clear, with which the Board is concerned,

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those should be dealt with by the appropriate regulatory mechanism at the time when one is aware of what the rate impacts may or may not be.

In fact, parties are not even going to see DISCO's proposed rate realignment proposals or the specific customer impacts until July 3rd of this year. Yet you are being asked to rule today that these rates be deferred indefinitely. That simply is incorrect. DISCO has not made out a case to change the Board's ruling, if in fact it is even entitled to do so. And I will come to that shortly.

DISCO's two other points for its position can be simply summed up as the financial and the human resource burden.

And Mr. Morrison said that specifically with the standby rate for cogeneration that it was a manpower issue. But this is the actual job of the utility. And they have been aware of these requirements since December 1, 2005.

Remember, these requirements came out of the December 2005 ruling, not the June 2006. 17 months ago.

Accordingly, EGNB asks the Board to simply reconfirm to DISCO that its prior decision stands. And that DISCO should bring forward proposals for seasonal rates and a standby rate for cogenerators as part of its July 3, 2007 filing.

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2 If the Board is not inclined to do so, although we believe
3 you should, EGNB respectfully requests that the Board
4 order that DISCO bring forward such proposals in time for
5 implementation by no later than April 1, 2008 to be
6 effective for the 2008-2009 rate year, regardless of
7 whether it brings forward a full rate case.

8 We do believe, however, that this delay is not appropriate
9 in the circumstances and for the facts noted above. But
10 in any event, the issue cannot be left so open-ended as to
11 merely reference the next rate review after the current
12 one, which is the next rate review after the Board's
13 ruling, at some indefinite time in the future. And I
14 recall to you again comments of Mr. Hay in the press
15 release.

16 Mr. Chair, Commissioners, I would like to now talk a bit
17 about the legal issue. This will come back when we talk
18 about the residential declining block as well, but it
19 overlaps these two points. And I think this is an
20 important consideration for the Board when they are
21 deciding on these matters today.

22 Mr. Morrison talked a bit about why we are here. We would
23 like to give you our spin on why the parties are here
24 today and what we think are some of the serious issues
25 with how we ended up here today.

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2 In Mr. Morrison's letter to the Board of March 23rd, he
3 states -- and I would just like to go through this quote,
4 because it's important. In its CARD ruling of December
5 21, 2005, and its rate decision of June 19, 2006, the PUB
6 ordered DISCO to undertake various studies and information
7 requests and file them with the PUB. By Order-in-Council
8 dated June 23rd 2006, the PUB's rate decision was reversed
9 pursuant to Section 105(1) of the Electricity Act. And
10 that's the quoted word used by Mr. Morrison reversed.

11 Subsequently by letter dated July 10, 2006, the Minister
12 of Energy advised DISCO that the Cabinet reversed the
13 PUB's Order with respect to the various studies pursuant
14 to Section 105 of the Electricity Act and directed DISCO
15 to take no action on the PUB's directives and orders until
16 such time as it receives direction to proceed from the new
17 Energy and Utilities Board.

18 Now that the Energy and Utilities Board is in place, DISCO
19 is now seeking direction from the Board with respect to
20 the above-mentioned orders and directives.

21 Mr. Chair, Commissioners, EGNB believes there are serious
22 legal issues with this. The only relevant Order-in-
23 Council we are aware of is Order-in-Council 2006-242 dated
24 June 23rd 2006, which was marked as an exhibit this
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morning. I believe it's A-3.

Mr. Chair, I don't know if all the Commissioners have a copy now?

CHAIRMAN: Yes, a copy of the Order-in-Council was distributed this morning.

MR. MACDOUGALL: Great. Thank you. If one takes a look at that Order-in-Council, it specifically states that the Lieutenant-Governor-in-Council modifies and reverses. And I think it's using that language, because that's the language of the Act. The decisions made by the Board respecting the charges, rates and tolls to be charged by the Distribution Corporation, and here is the key words, by substituting the charges, rates and tolls set out in Schedule A attached to the Order-in-Council. So the modifications and revisions are those set out in Schedule A.

If one looks at Schedule A, the specific modifications are listed. These deal only with specific rate charges and some associated tariff language. And there is no reference anywhere in the Order-in-Council or the schedule to the various studies or the requirements to bring forward new rates at a future time. This we believe is presumably why the Minister felt it necessary to send the July 10, 2006 letter referred to by Mr. Morrison.

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2 And Mr. Chair at this point, I would note that that
3 letter, as far as I understand, has never been filed with
4 the parties. And I believe Mr. Morrison referred to
5 correspondence this morning of July 28th and maybe another
6 piece of correspondence. It may be at the end of my
7 argument here we might ask that those pieces of
8 correspondence possibly be provided to all parties. But
9 absent having those at the moment, I still can make the
10 points I want.

11 The key is that Section 105(1) of the Electricity Act
12 specifically provides that the Lieutenant-Governor-in-
13 Council may within 30 days after the filing of an order or
14 a decision of the Board with the Clerk of the Executive
15 Council modify or reverse an order or decision made by the
16 Board respecting the charges, rates and tolls to be
17 charged by the Distribution Corporation.

18 The New Brunswick Interpretation Act specifically defines
19 the Lieutenant-Governor-in-Council to mean the Lieutenant-
20 Governor acting by and with the advice of the Executive
21 Council of the Province. The Lieutenant-Governor-in-
22 Council expresses its decisions through Orders-in-Council.
23 The letter of July 10, 2006 contains statements from the
24 Minister. A statement in a letter by the then
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Minister of Energy advising DISCO that the Cabinet reversed the Board's Order with respect to the various studies pursuant to Section 105 of the Electricity Act, and then directed DISCO to take no action on the PUB's directives and orders, simply has no force of law and should not have been followed by DISCO.

A letter advising DISCO that the Cabinet did something with no supporting Order-in-Council from the Lieutenant-Governor has no force or effect under the Electricity Act. The Act simply does not vest such authority in Cabinet alone, even if the Minister's letter could be considered appropriate evidence of Cabinet action.

Furthermore, all of the issues that EGNB has raised are matters that derived out of the Board's December 21, 2005 ruling. Although that document is referred to as a ruling, it certainly in all respects is coached in the terms of an order or decision. In fact, Mr. Morrison's letter of March 23rd states that the Minister advised DISCO that Cabinet reversed the PUB's Order with respect to the various studies. Well the various studies were dealt with in the December document.

If this is in fact the case, and the ruling was filed with the Clerk of the Executive Council, then the time even for Lieutenant Governor-in-Council action was well

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past by July 10, 2006.

Interestingly, the June 23rd 2006, OIC, exhibit A-3, refers only to the decisions made by the Board dated June 19, 2006 and does not refer to the December ruling where the seasonal rates, cogeneration rates and studies are dealt with.

Regardless of the timing issue, as we noted, absent appropriate Lieutenant-Governor-in-Council authorization, the Minister's letter is of no force and effect in any event and the Board's ruling should stand. And for the various reasons we noted previously, we believe the Board should confirm that in any event.

In all these circumstances, EGNB believes it would be particularly inappropriate for the Board's findings regarding the various studies, the new rate forms, et cetera, to be in any way impacted by DISCO's submissions in today's motion.

On the specific two items we are talking about now, we would ask that DISCO file with the Board, as part of its July 3 evidence, proposals for seasonal, residential and GS rates and a standby rate for cogenerators.

In the alternative that DISCO be required to bring forward such proposals in time for implementation by April 1, 2008.

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And Mr. Chairman, my only following comments would be that it may be appropriate that the various correspondence that's referred to is provided to parties so that all parties do have a fullness of the record. Although, I don't think it will change any of my comments. But I will leave it at that.

CHAIRMAN: Thank you, Mr. MacDougall. Mr. Morrison, with respect to the correspondence issue is that a problem?

MR. MORRISON: Well, I will just speak to it briefly. The reason it wasn't provided as part of the package that was produced, because both letters were in the hands of the Board, the previous Board.

When I filed the information, it was referred to in the affidavit of Ms. Poirier, we didn't know what the process was going to be with respect to -- there is no reason to -- we didn't deliberately try to keep the letters out. I have no problem with them going in, subject to any comments that my client may have. And I would like to speak to them before I state so definitively.

But I would like to move on and discuss some of the issues that Mr. MacDougall has raised.

CHAIRMAN: Sure. And maybe we should hear from the other intervenors first with respect to these issues and then

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you can address all of the comments at the same time.

MR. MORRISON: Okay.

CHAIRMAN: And in fact I think this would be a pretty appropriate time for us to take a break of 15 minutes. So about quarter after 11:00 we will reconvene. Thank you.

(Recess - 11:00 a.m. - 11:15 a.m.)

CHAIRMAN: Okay. On items 9 and 10 we have heard from Mr. MacDougall. So going forward, Mr. Baird.

MR. BAIRD: Mr. Chairman, our only concern would be that if the item regarding standby power was in any way prohibited from bringing in evidence regarding cogeneration or standard offers and things during the hearing.

CHAIRMAN: I think Mr. Morrison has already spoke to that issue in terms of bringing evidence on any of these issues. Thank you. Mr. Booker?

MR. BOOKER: No comments, Mr. Chair.

CHAIRMAN: Thank you. Mr. Zed?

MR. ZED: No comment, Mr. Chair.

CHAIRMAN: Mr. Peacock? Mr. Theriault?

MR. THERIAULT: Yes, Mr. Chair. With respect to items 9 and 10, it's my understanding that Mr. Morrison or the Applicant is asking for a deferral. The bottom line is we would submit that the Order is an Order. It was made by the Public Utilities Board and we would suggest that the

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Board should take jurisdiction with these orders.

As to the interpretation of the Order-in-Council, I would agree with EGNB that the Order-in-Council just affected the rates and the level of rate increases.

The letter referred to by Mr. Morrison, if I understand it correctly, although I haven't seen it, simply is a letter from the then Minister of Energy. It's not an Order-in-Council pursuant to Section 105 of the Act. So I would suggest it has no bearing.

So at the end of the day our submission is that it's an order and it should be complied with. The Applicant should not be allowed to pick and choose which orders that it chooses to comply with.

Thank you.

CHAIRMAN: Thank you, Mr. Theriault. Ms. Desmond?

MS. DESMOND: No comment.

CHAIRMAN: Thank you. With respect to the letters that Mr. Theriault has referred to and Mr. MacDougall also referred to, I believe you were going to discuss that with your client as to whether or not you had any difficulty with having those available to everybody.

MR. MORRISON: No objection, Mr. Chairman. Copies have been given to the Board Secretary for photocopying.

CHAIRMAN: Are they available or are they -- okay. They

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will be distributed then before we conclude today and marked appropriately.

MR. JOHNSTON: Mr. Morrison, I just have some questions with respect to items 9 and 10, and, Mr. MacDougall, if you want to come back up front and address my points as well. It's a very simple question. I'm not exactly sure what is referred here to -- in the decision as a proposal. And I just invite comments from yourself and from Mr. MacDougall and from anybody else as to exactly what is meant by proposal here.

And I will read you the paragraph from the decision that deals with the seasonal rates issue. It says, "The Board considers that seasonal rates may be an appropriate concept for New Brunswick, but that implementation is not desirable at this time because of the possible customer impacts together with the other changes that are occurring. We direct DISCO to provide a proposal for seasonal rates at the time of the next review of rates." The point that I would emphasize is that it seems to me that the Board in its decision was undecided about the merits of seasonal rates by use of the word may be appropriate in New Brunswick, and then it directs DISCO to provide a proposal.

I wasn't at the hearings, I didn't participate in this

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decision, so perhaps I don't have the background information, but it is not entirely clear to me what is meant by a proposal for something that may be appropriate. I think there are some very serious issues surrounding 9 and 10 and how it should be handled and I would just invite your input as to how you see it, and I would invite Mr. MacDougall's input as well and input from anybody else. Is my question clear, Mr. Morrison?

MR. MORRISON: It's crystal clear, Vice-Chair. I was going to bring the Board to that passage. I have it here with me.

You are correct. At the last hearing the Board basically came to the conclusion that seasonal rates weren't appropriate at this time and asked DISCO to provide a proposal. But you have to read that in context. If you go back a few pages, the whole discussion centred around - it was of one piece, if you will, the elimination of the declining block, the whole issue of seasonal rates. And I guess my point is this. You can't take the Board's direction for DISCO to provide a seasonal rate proposal in isolation from its decision to make progress in eliminating the declining block. They are of one

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2 piece.

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When the Order-in-Council reversed that progress in eliminating the declining block, the question I have is would the Board have still ordered -- the Board couldn't have anticipated -- I don't believe it anticipated that they would be reversed on that issue by Cabinet, although the possibility always existed. Would they have also said file a proposal for seasonal rates had that portion of their decision with eliminating the declining block or making progress toward it had been -- had they known it was going to be changed. That's my first point.

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My second point is, we direct DISCO to provide a proposal for seasonal rates at the time of the next review of rates. I could make the argument, and I think I could make it convincingly, that what we put in our schedule is our proposal that there be no seasonal rate until the declining block is eliminated. That is DISCO's proposal. I would say, and my submission is, that we are in compliance with the Board's Order.

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MR. MACDOUGALL: Yes, Vice-Chair. Coming to the -- if I will, I will deal with Mr. Morrison's latter point first.

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I just believe that that is an absolutely untenable reading of the decision. DISCO was asked to provide a proposal for seasonal rates. That is to bring forward an

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appropriate seasonal rate form and a rate design. It's not a proposal to say that there shouldn't be seasonal rates. Particularly how can they make that decision? They have no evidence. They haven't brought anything forward. We were fully engaged -- EGNB was totally engaged in this process in the last hearing and it was EGNB who brought forward the vast amount, if not the totality of the evidence on seasonal rates, certainly the vast majority of it.

Our reading of the decision is that the Board meant exactly what it said. The felt that seasonal rates may be appropriate in New Brunswick. As you know, we have a winter peaking season here and this was the sort of evidence that was brought forward last time, the ability of gas to compete against electric in the winter time, there was a whole series of evidence on the difference between the winter load, the summer load and the shoulder season.

What the Board found was it may be appropriate for New Brunswick to have seasonal rates. However, because there was a rate change at the time that the Board thought was of such a magnitude, they didn't want to do seasonal rates then. They had no idea what the rate changes would be in

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the future though. So they told DISCO to bring forward a proposal for seasonal rates. So what we have to recall is there has already been an eight percent increase. It wasn't the full increase that the Board asked for, but there was already an eight percent increase. That was the concern they had at that time there was that rate increase. They didn't want seasonal rates to be dealt with then.

But this was back in December of '05. They wanted DISCO to start thinking about this to bring forward an actual proposal for seasonal rates. There is no doubt in my mind that a proposal for seasonal rates means coming forward and saying, these are the seasonal rate forms, the type of seasonal rate structures that we as DISCO would put forward.

If DISCO comes forward, I guess, and says they have done all of their work, all of their studies, everything, and their proposal is none, I guess we could argue at that time. But that certainly isn't what the Board intended. What they wanted was to see a seasonal rate form, a rate design that would segregate rates between winter, summer and shoulder seasons. That's what a proposal for seasonal rates is. And if you go through the totality of the evidence, and I certainly refer you to Dr. Rosenberg's

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evidence, you will understand exactly what was being discussed in the actual factual part of the hearing and you will see what seasonal rates are. Dr. Rosenberg had actually put forward rate design concepts for seasonal rates. There is no doubt that that's what the Board was talking about in its shorthand in my view, and to delay it at this time is just outside the scope of the Board's order.

MR. JOHNSTON: In some sense I take your comments to be that the Board is -- the Board Order -- previous Board Order -- at the very least obligated DISCO to do a thorough study of what would be appropriate, is that fair, Mr. MacDougall?

MR. MACDOUGALL: And to bring forward a seasonal rate proposal, a rate design based on seasonality. Right now the rate design has no seasonal component to it. You pay the same no matter what time of the year. It has residential declining block, we will come to that shortly, but it doesn't have a seasonal component to it. And in a winter peaking utility, seasonal rates are perfectly legitimate for a whole host of reasons that tie into the energy policy.

So it goes beyond studies. The studies that the Board

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wanted that would help inform this would have been the studies on residential and GS2, that was some information, but this was a proposal to bring forward a rate form, in my view.

MR. JOHNSTON: The difficulty I have is that the decision clearly talked about such rates -- that such rates may be appropriate, and there seems to be at least in my mind a slight contradiction between saying they may be appropriate and then at the same time a direction that you bring forward a proposal for such rates. That's the contradiction that I'm having some difficulty with.

MR. MACDOUGALL: Well in that specific contradiction I think what you have to do is look there in two separate sentences. The may be appropriate is qualified by but we shouldn't do it at this time. So it's not appropriate to do it now because we the Board, you know, may be putting forward a big rate increase, and again I can't remember if it was ten-and-a-half or 11, or whatever the Board number that got struck down to eight.

I think what you do is you read the first sentence that says it may be appropriate to have seasonal rates but we shouldn't do it at this time. Because seasonal rates will change the structures people pay, so there could be a rate impact so some customer could be paying another one

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or two percent because of the seasonal rate. Then the second sentence is very clear that they direct DISCO to bring forward a proposal for seasonal rates, and I think that is very clear that their finding was that they bring forward a proposal.

MR. JOHNSTON: Do any of the other intervenors have any comments on this subject? Mr. Morrison, do you have anything further you would like to add?

MR. MORRISON: I don't want to beat a dead horse here, but if you look at the passage that you referred to, Vice-Chair, in the paragraph directly above it it says, DISCO stated that it was not necessarily opposed in principle to seasonal rates, but because of the customer impacts believes they should not be implemented until after the residential declining rate block is eliminated and the GS1 and GS2 classes emerge.

The next paragraph deals with the Boards ruling in this matter, and it says that implementation is not desirable at this time because of the possible customer impacts together with the other changes. Clearly the Board was referring to the customer impacts arising from the move to eliminate the declining block.

And when that was frozen in time by the Order-in-Council, my question is was the Board -- nothing has

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changed essentially because those customer impacts because of the Order-in-Council are still the same today as they were when the Board made this decision.

So that's all the comments I have on that. I would like to have an opportunity to address some of the legal issues that Mr. MacDougall raised this morning.

MR. MACDOUGALL: Mr. Vice-Chair, if I could just make one brief comment to that. I feel I have to.

This decision was in December '05. The Board had made no finding on eliminating the residential declining block. They said it would be eliminated in three phases. They didn't have the rate impact of that though at that time. They didn't have the numbers. They didn't have any of that.

MR. MORRISON: Excuse me, Mr. Chair. Mr. MacDougall is not correct on that, I don't believe.

MR. MACDOUGALL: They didn't have the rates. The residential declining block was said to be eliminated in three steps going forward. But the numbers weren't in front of them in this, I understand.

CHAIRMAN: Anything further, Mr. MacDougall?

MR. MACDOUGALL: No, Mr. Chair. Sorry for that.

CHAIRMAN: Mr. Morrison, you believe he is not correct on the assertion that he has made.

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MR. MORRISON: No, I don't know whether he is correct, Mr. Chair, and I don't want to say that he isn't. Nothing turns on it in any event and I think maybe I misspoke a moment ago. Nothing turns on it.

CHAIRMAN: Okay. Do you have any other comments arising out of the comments from the remaining intervenors --

MR. MORRISON: No.

CHAIRMAN: -- with respect to items 9 and 10?

MR. MORRISON: Other than, Mr. Chairman, I do have some comments with respect to some of the legal issues on Section 105 that Mr. MacDougall raised.

CHAIRMAN: Okay. Proceed.

MR. MORRISON: There is -- it has been said that okay, a letter from the Minister of Energy, when DISCO received this letter from the Minister of Energy, which of course was copied to the Public Utilities Board at the time, that it should then have run off and said, well gee, the Minister is wrong, it does not have the authority under Section 105 to reverse the studies and orders. Realistically I don't think that's the appropriate response. The appropriate response was the one that Mr. Hay made. He realized when he got the letter from the Minister and then got a letter from the Board -- he realized that there is an issue here.

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2 And what did he do? He did what any reasonable person
3 would do. He sent the letter to the Board. He said,
4 look, there is an issue here you had better resolve it and
5 we look forward to working with you to resolve. Nothing
6 happened. As I said before, the Board had ample authority
7 to call DISCO in, issue an order saying comply with our
8 order. They did nothing.

9 And I can tell you that had they issued an order saying
10 comply with the December -- the June 19th order, that that
11 would have been the trigger and I had recommended to my
12 client that had such an order been issued that would have
13 been the trigger to go to the court to determine what
14 authority there was under section 105 for the Lieutenant-
15 Governor-in-Council to do what it did. Quite frankly,
16 we can talk about this until we are blue in the face, Mr.
17 Chair, whether we ought to have done this or ought not to
18 have done that, whether we should have gone on to judicial
19 review or not, the fact of the matter is we are where we
20 are today. DISCO has made I would say every effort to try
21 to deal with this issue. We have been proactive in trying
22 to deal with it. When this new Board came into place we
23 were the ones that contacted the Board and wanted to get
24 on.

25 I think we have to put the past behind us and move
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forward and essentially getting into a long discussion as to what Cabinet's authority is under Section 105 I don't think does us any good whatsoever.

CHAIRMAN: Okay, Mr. Morrison. Does that conclude your comments on items 9 and 10?

MR. MORRISON: It does, Mr. Chairman.

CHAIRMAN: Thank you. Perhaps we could proceed then to --

MR. MORRISON: Item 12, I believe?

CHAIRMAN: That's correct.

MR. MORRISON: Item 12 was the residential declining block which we have talked about at some length, and that is the order of the PUB to eliminate the residential declining block over a five year period.

Mr. Chair, the Board was obviously concerned with rate impacts, as we just discussed a few moments ago, and the two paragraphs I referred to. Should this process be accelerated over more than a five year period -- the Board basically said a five year period is reasonable time taking into account these rate impacts to eliminate the declining block.

The Order-in-Council reversed the Board on that and prevented any progress in eliminating the declining block.

So essentially DISCO has lost a year as a result of the reversal by the Order-in-Council. DISCO believes and it

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is our submission that the Board's five year timeframe was appropriate and asks that the deadline be extended from 2010 to 2011 to avoid the rate impacts that were obviously foremost in the Board's mind when it made its rule.

CHAIRMAN: Thank you, Mr. Morrison. Mr. Lawson?

MR. LAWSON: We have no comment.

CHAIRMAN: Mr. MacDougall?

MR. MACDOUGALL: Yes, Mr. Chair, we have a few comments on this item as well.

I think, Mr. Chair, Vice-Chair, Board members, it's very important to look at what the Board's language really said rather than parse it. So I'm just going to quote from the Board's decision.

The Board stated that the declining block should be eliminated as soon as possible. That's the wording of the decision. Then they went on to say to be fair, we are concerned over the possible rate shock that this might create for certain customers if the change occurs too quickly.

The Board has analyzed the likely impacts and believes that it is appropriate to eliminate the declining rate block in three stages. Each stage should bring the declining rate block one-third of the way to the rate for the first block. The first adjustment should occur as

1
2 part of the rate changes for the 06-07 year. The remaining
3 two adjustments can occur at the time of future general
4 rate changes, but the Board orders -- and again this is
5 very important -- that the process must be completed
6 within five years of this date. It didn't set five years
7 as the date to do it. It said it must be completed within
8 five years of the date, and earlier on the decision said
9 it should be done as soon as possible.

10 So DISCO now contends that in their view this directive
11 was presumably somehow superseded by the June 23rd Order-
12 in-Council, or the letters, and in order to mitigate the
13 impact to its customers and to implement the changes
14 required to its rate structure within a five year period,
15 DISCO requested a one year extension to the year 2011
16 rather than 2010.

17 Again, DISCO has not brought forward any evidence as part
18 of this motion that there will be unwarranted customer
19 impacts over the period to December 2010 if the declining
20 rate block is eliminated within the time period ordered by
21 the Board. No evidence whatsoever.

22 As the Board specifically stated, the process must be
23 completed within five years of December 21, 2005. This
24 was an outside date. The Board did not say that it could
25 not occur, for example, within a three year period,

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one-third each year. There is still a substantial time remaining in the five year period to eliminate the declining block and not create any unwarranted customer impacts.

Once again, we have not yet even seen DISCO's evidence on its rate realignment proposals for this year. There appears to be a continued unwillingness by DISCO to make changes that will send the appropriate price signals in a timely fashion. DISCO has not made a case that the Board's decision should be changed again even if it can do so at this time.

Particularly troubling for EGNB, however, is that EGNB itself made application in October of 2006 following the Board's decision on DISCO's 06-07 filing to institute its own new gas on electric residential rate, and it made that application to the predecessor Board which also governs DISCO.

In making its own rate proposal EGNB was aware of the decisions of the Board and assumed DISCO would be obligated to follow through on them. We will not reiterate EGNB's evidence in its rate proceeding in this regard with the exception of the few following statements from Mr. Harrington's direct testimony of October 26th, 2006, which is part of the record of that proceeding.

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2 Mr. Harrington stated, "In all of its recent evidence,
3 whether for its own applications or through its
4 intervention into NB Power's applications for rate
5 changes, EGNB has been clear that it has been unable
6 through its existing SGS rate to offer sufficient savings
7 against NB Power's below cost residential rate. EGNB
8 believes that the Board is well aware of this evidence and
9 that the Board recognizes this as is evidenced through the
10 approval of EGNB's current rider in effect in the SGS
11 class, that's the small general service class, as this
12 rider was approved solely to preserve nominal
13 competitiveness against DISCO's residential rate to allow
14 EGNB to continue to make headway into the residential new
15 construction market.

16 Further, the Board's decisions with respect to DISCO's
17 applications recognize the ongoing deficiency of DISCO's
18 residential rate. For this reason EGNB will not restate
19 this evidence. EGNB needs to offer greater end user
20 savings opposite NB Power's residential rate in order to
21 grow its market share.

22 The effective delivery rate proposed for SGS RE -- that
23 was EGNB's gas and electric residential rate -- will
24 provide a sufficient level of savings for EGNB to achieve
25 this." That was Mr. Harrington.

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2 He went on to say world energy prices have increased
3 dramatically and while NB Power incur these costs to
4 generate electricity it maintains relatively stagnant
5 rates. And finally it must also be recognized that the
6 real inequity already exists in NB Power's rates. Through
7 its proposal EGNB is simply trying to meet its objectives
8 given this existing inequity.

9 Now that was evidence before the predecessor Board. And
10 then on November 24, 2006, the Board approved EGNB's
11 request for a small general service residential rate and
12 approved the revenue adjustment rider to be used for that
13 rate. Those changes became effective January 1, 2007.

14 As the Board is I think aware at this stage, although I
15 know the Board is new, but I believe they have looked
16 through some of this in their preparations over the first
17 couple of months of this Board's existence -- EGNB's plan
18 is to eventually move from market based rates to cost of
19 service based rates when this is appropriate. A continued
20 delay in implementation of the already Board ordered
21 adjustments to DISCO's rates will continue to impact the
22 requirement for and magnitude of the market based rate
23 necessary to compete for the residential electric customer
24 in New Brunswick.

25 We will not get into the various benefits that EGNB
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has previously identified in testimony in the DISCO rate case and in its own filings with respect to the use of gas as opposed to electricity for space and water heating, but merely note this fact to the Board, and we for your information suggest you look at Mr. Harrington's comments at page 11 of his October 26th, 2006, testimony.

EGNB believes it would be prejudicial for the Board to now allow for a change to its ruling regarding the time period in which the declining rate block should be eliminated.

As the Board -- the prior Board would recall -- it was EGNB of all parties that most specifically requested that this issue be addressed in a timely manner.

As the Board stated in the December 21, 2005, ruling at page 28, EGNB is of the opinion that it is important to send the right price signals to customers. It submitted that if the Board has issues with respect to possible customer impacts that the changes could be phased in over a period of time not to exceed three years. The Public Intervenor recommended the declining rate block be removed within a three to four year period. The Board then having heard all this evidence explicitly ruled that this matter be completed within five years of the date of the ruling.

DISCO has not made a case that this should be changed

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and for the reasons noted above EGNB contends that it would be inappropriate to do so.

CHAIRMAN: Thank you, Mr. MacDougall.

MR. MACDOUGALL: Thank you, Mr. Chair.

CHAIRMAN: Mr. Baird?

MR. BAIRD: No comments, Mr. Chairman.

CHAIRMAN: Thank you. Mr. Booker?

MR. BOOKER: No comments, Mr. Chair.

CHAIRMAN: Mr. Zed?

MR. ZED: No comments, sir.

CHAIRMAN: Thank you. Mr. Peacock? Come forward.

MR. PEACOCK: Thank you, Mr. Chair. As you may remember from our intervention last year, we are quite opposed to the continued presence of the declining block rate. And as of this new hearing we are currently opposed to the one year extension, since we are of the opinion that the existing rate structure presents inequities within the residential class. As a result we have always supported the prompt removal of the declining block rate. We have two other thoughts on the matter, and one is that as the NB Power news release filed as evidence this morning indicates, the current utility executive is of the assumption that future year increases will be within the three percent a year for the foreseeable future.

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2 With such a relatively low increase we are concerned that
3 there is no requirement for a full regulatory process in
4 the years ahead. And without this process we are worried
5 that the utility will not be held sufficiently accountable
6 to the previous Board order on the elimination of the
7 declining block rate.

8 As second thought, Mr. Chair -- as a second thought, we
9 direct your attention to the new government's charter for
10 change platform, which I was looking at on line this
11 morning. And unfortunately I don't have paper copies of
12 the platform but I will try and get those copies to the
13 Board and other intervenors as soon as possible.

14 There is of course an energy section within that platform
15 and one of the items of note that we were intrigued on was
16 on page 16, in which the platform stated, a Liberal
17 government will introduce demand side efficiency programs
18 for residential customers, such as net metering and time
19 of day savings.

20 Given that the traditional government mandate extends for
21 four years and the Applicant has highlighted in their
22 discussion concerning seasonal rate structure that before
23 you -- now I don't want to put words in the Applicant's
24 mouth, but to paraphrase their argument, I guess, they are
25 of the opinion that before you tweak the structure or
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change it towards seasonal rate or time of day rate, you have to get to a flat rate first.

Well if we are to accept that logic, then if the new government is able -- for the new government to fulfil their platform requirement or their platform pledge of installing time of day savings within this mandate, obviously we have to remove the declining block rate as aggressively as possible. So I just thought I would throw that out as the second thought, Mr. Chair.

Thank you.

CHAIRMAN: Thank you, Mr. Peacock. Mr. Theriault?

MR. THERIAULT: Thank you, Mr. Chair. As I understand the applicant's argument on this issue, is they are saying that the Order-in-Council superseded the directive. So I would submit that the question that the Board has to consider is does the Order-in-Council supersede the previous order?

I have quickly reviewed it here this morning. I don't see where it does. And if it does not then I would submit to the Board that the order should stand as is.

CHAIRMAN: Thank you. Ms. Desmond?

MS. DESMOND: No comments, Mr. Chair.

CHAIRMAN: Thank you. Mr. Morrison?

MR. MORRISON: Very briefly, Mr. Chairman, it is not our

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position that the Order-in-Council reverse the Board's directive.

What the Order-in-Council did was freeze the rate structure as it was so that the Board's concerns with rate impacts are the same now as they were when it made its decision.

The only other comment I wish to make is in response to Mr. Peacock. I have had discussions with my client on this question. And I'm advised and believe that progress in eliminating the declining block can be made whether or not it falls within the 3 percent or above the 3 percent, whether or not there is a rate application or not.

CHAIRMAN: Thank you. So then I guess we move on to item number 18.

MR. MORRISON: Number 18, yes, Mr. Chairman. Item number 18 deals with the payments in lieu of taxes issue, PIL's.

The Board ordered DISCO to formulate a strategy that would utilize all aspects of the applicable Income Tax Act in order to minimize the payment in lieu of taxes.

Now it is important to note that the Board did not order that this be done at any particular time. So there is no time line on it.

However, that being said, DISCO has done considerably work with respect to this issue and has retained an

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outside consultant to review that work.

Essentially the work consists of establishing a baseline value for all of the Generation assets -- sorry, for all of the assets, and realigning amortization schedules and so on to determine if the difference between the way that DISCO presently calculates the PIL'S and the method that is more in line with the Income Tax Act will produce any material differences.

Once those differences if any are identified, then one care properly consider whether it is cost-effective to move from the present methodology to a different methodology.

In short whether the cost of implementing a new methodology is greater than the benefits of retaining the present methodology. It is anticipated this work will be completed in approximately three months.

CHAIRMAN: Thank you. Mr. Lawson?

MR. LAWSON: Mr. Chairman, we would certainly encourage NB Power to proceed on an expeditious basis to deal with this. Because we think it is something that the Board should consider, and if at all possible consider in this rate application.

CHAIRMAN: Thank you. Mr. MacDougall?

MR. MACDOUGALL: No comments, Mr. Chair.

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2 CHAIRMAN: Thank you. Mr. Baird?

3 MR. BAIRD: No comment, Mr. Chairman.

4 CHAIRMAN: Mr. Booker?

5 MR. BOOKER: We agree with the CME on this matter,
6 Mr. Chair.

7 CHAIRMAN: Thank you. Mr. Zed?

8 MR. ZED: No comment.

9 CHAIRMAN: Mr. Peacock?

10 MR. PEACOCK: No comment, Mr. Chair.

11 CHAIRMAN: Mr. Theriault?

12 MR. THERIAULT: Again, Mr. Chairman, I submit that it is an
13 order of the previous Board and should be complied with.

14 CHAIRMAN: Ms. Desmond?

15 MS. DESMOND: No comment.

16 CHAIRMAN: I assume you have no -- nothing further to add on
17 that, Mr. Morrison?

18 MR. MORRISON: Nothing further.

19 CHAIRMAN: Thank you.

20 MR. MORRISON: Moving on to the last item, Mr. Chair, which
21 is item 20. And that deals with the hydro adjustment
22 account or deferral.

23 The Board ordered DISCO to file a proposal outlining how a
24 hydro adjustment or deferral account could be established.

25 And that was to be done by the time of the

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next rate application.

This is -- it is a complex issue. And DISCO has done considerable work on this issue and has retained the services of an independent consultant.

It is DISCO's intention, and I can say that here today, that upon conclusion of the present rate application, that DISCO will apply to the Board for approval of a hydro adjustment account. That application will of course contain DISCO's proposal.

DISCO is asking that the Board defer this matter until the conclusion of the present rate application.

CHAIRMAN: Thank you. Mr. Lawson? Do you need a moment?

MR. LAWSON: Again, Mr. Chairman, our view would be that this is something that needs to be dealt with quickly. Our only difficulty is that having it dealt with immediately after the decision of this Board doesn't -- or this hearing won't allow it to be considered for this rate increase.

Recognizing its complexity we would obviously prefer to see it dealt with as soon as possible, and have an opportunity to deal with it in this rate application.

CHAIRMAN: Thank you. Mr. MacDougall?

MR. MACDOUGALL: No comments, Mr. Chair.

CHAIRMAN: Thank you. Mr. Baird?

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2 MR. BAIRD: No comment, Mr. Chairman.

3 CHAIRMAN: Thank you. Mr. Booker?

4 MR. BOOKER: Again, Mr. Chair, you can consider our comments
5 in with those of the CME.

6 CHAIRMAN: Thank you. Mr. Zed?

7 MR. ZED: No comment.

8 CHAIRMAN: Mr. Peacock?

9 MR. PEACOCK: No comment.

10 CHAIRMAN: Mr. Theriault?

11 MR. THERIAULT: Yes, Mr. Chair. We strongly encourage the
12 Board to, on this particular item, to encourage the
13 applicant to comply with the previous order.

14 It may be, and I'm sure we will probably get into it more
15 on Friday, but it may be some of the data with respect to
16 this may be relevant with respect to the interim
17 application. So therefore we would agree that the quicker
18 that this is done the better.

19 \ CHAIRMAN: Thank you. Ms. Desmond?

20 MS. DESMOND: No comment, Mr. Chair.

21 CHAIRMAN: Thank you. Mr. Morrison, any --

22 MR. MORRISON: Yes. Actually I do, Mr. Chairman. Because
23 it does relate to the timing issue. You have to
24 appreciate first of all DISCO wants this hydro adjustment
25 account for a lot of reasons, one of them being to

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minimize volatility and risk.

But you have to recall, and it should be understood, that the hydro adjustment has absolutely no impact on rates, because the ratepayer is immune from the volatility in hydro flows. The ratepayer always pays based on average hydro flows.

So while we, from a utility point of view there may be some urgency in having the hydro adjustment deferral account or variance account, it has absolutely no impact on the ratepayer.

So I just say that to put our request for a slight deferral in context. Thank you.

CHAIRMAN: That seems to cover off all of the items that were in your letter, unless I have missed one. I don't think so.

MR. MORRISON: No, you haven't, Mr. Chairman. The only thing that I neglected to say, and others can comment if you will at the break, I did have a chance to speak to Mr. Larlee on the question of a seasonal rate.

The Board is going to make its decision on that. It will be I'm told virtually impossible to have a seasonal rate put together by July 1st. But I just give that for information purposes.

CHAIRMAN: Thank you. We had three letters I think that we

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were going to mark. Are they available, Mrs. Légère? Thank you.

I believe the last exhibit number that we used was A-5, is that correct? The letter of July the 10th, 2006 from Brenda A. Fowlie will become exhibit A-6.

And the letter of July 20th 2006 signed by Lorraine Légère will become exhibit A-7.

And the letter of July 28th 2006 signed by David Hay will become exhibit A-8.

Is there any other documentation that we should have before us with respect to today's motions -- or to this motion I should say?

MR. MORRISON: Not that I'm aware of, Mr. Chair.

CHAIRMAN: I guess we should give the parties an opportunity for sort of a general summation, if they feel that something hasn't been covered.

Particularly the Public Intervenor indicated earlier on that it was his desire to make comments in a general sense with respect to virtually all 24 items rather than perhaps dealing with each of them specifically.

So, first of all, Mr. Morrison, I will start with you.

And I'm going to give you the last word. Do you want to wait till you have heard what everybody has to say?

MR. MORRISON: I don't think I have a whole lot more to

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offer, Mr. Chair.

CHAIRMAN: Thank you. Well then I will just go down through the list again then. Mr. Lawson, anything additional you want to add?

MR. LAWSON: Not at this time, Mr. Chairman.

CHAIRMAN: Thank you. Mr. MacDougall, anything additional that you wish to add?

MR. MACDOUGALL: Mr. Chair, just very quickly, we have looked at these letters. And we don't think that changes the position as we argued it is on the legal issues. And so we are satisfied with the argument we had made by that. But my only other comment is even though the process followed a little differently than my notes, I generally followed those and had a written copy of those. I had made some comments to Board decisions and everything, citations. They are all in my written notes. And so it may be useful if I just provide a copy of that to Mrs. Légère for the Board members and parties here assistance going forward.

CHAIRMAN: Thank you. Mr. Baird?

MR. BAIRD: No additional comments, Mr. Chairman.

CHAIRMAN: Mr. Booker?

MR. BOOKER: No. Thank you, Mr. Chair. No additional comments.

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CHAIRMAN: Mr. Zed?

MR. ZED: I have nothing further. Thank you.

CHAIRMAN: Thank you. Mr. Peacock?

MR. PEACOCK: No further comments, Mr. Chair.

CHAIRMAN: Thank you. Mr. Theriault?

MR. THERIAULT: Thank you, Mr. Chair. And I think based on some of the comments that I have made this morning, the Board will probably have a general idea of where I'm going to go.

But I would just like to state that the applicant filed a motion with the Board to get direction from the Board with respect to the previous orders that were made by the Public Utilities Board.

And I would submit that it is well established in administrative law that orders issued by a regulatory Board are lawful orders insofar as they support the basic functions and responsibility of that Board.

As Public Intervenor I would submit that all of the outstanding orders issued by the Public Utilities Board were lawful orders of that regulatory tribunal at the time that they were made.

I submit that it is incumbent upon the applicant to respond to these orders according to the dates committed. Furthermore Section 3 of the Energy and Utilities

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2 Board Act states that the Board, known as the Board of

3 Commissioners of Public Utilities, is continued as the New

4 Brunswick Energy and Utilities Board.

5 As such I submit that the orders of the PUB are now orders

6 of the Energy and Utilities Board. And this Board should

7 take jurisdiction of these orders.

8 Upon review of the orders I would suggest that they can be

9 broken down into two classifications, first those that are

10 required as part of the filing for the Revenue

11 Requirement, and second those that are required as part of

12 the CARD proceedings.

13 I have prepared and wish to submit at this time what I

14 would ask the Board to consider as part of their order

15 relating to these outstanding orders.

16 Perhaps you --

17 CHAIRMAN: We will wait a moment until that is distributed.

18 And I think that has been distributed to everybody. And

19 I am not going to mark that as an exhibit.

20 MR. THERIAULT: Yes.

21 CHAIRMAN: This is a submission to my understanding.

22 MR. THERIAULT: That's correct.

23 CHAIRMAN: Yes.

24 MR. THERIAULT: And basically, Mr. Chairman, just by way of

25 a brief explanation, as you can see we are requesting the

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following ruling. (1) that the Board has jurisdiction over the outstanding orders that were made by the previous Board. (2) that the Board confirm the attached list is the true list of outstanding orders. And I have attached a list of what I believe is inclusive of all the orders that were discussed here this morning. And (3) that as part of its jurisdiction over the orders the Board make the following determinations, that those outstanding orders -- some orders are deemed relevant as part of the evidence for one phase of the case, the rate application and one for the CARD phase of the case.

And you will see on the attachment that I have submitted from our point of view anyway, I have attached a status or what I believe to be the status of each outstanding order, and also have attached the applicability or what I believe would submit is the applicability to this particular rate case. And I would ask the Board to consider that in its determination. Thank you.

CHAIRMAN: Mr. Theriault is the list that you have attached does it match up with the list that was submitted by the applicant?

MR. THERIAULT: I believe it does.

CHAIRMAN: Thank you. Ms. Desmond, anything?

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MS. DESMOND: No additional comments, Mr. Chair.

CHAIRMAN: Mr. Morrison, anything further?

MR. MORRISON: I guess the only comment I had, Mr. Chairman, I haven't had a chance to compare this list, but assuming that it's the same as what we have discussed here today, surely the Board can make whatever determination -- what evidence is going to be relevant to its own proceedings. So I have no objection to it.

I do have a concern though that if Mr. Theriault says that the orders as written by the PUB are set in stone and you have to adopt them as is, then I do have a problem with that. That they are orders of this -- or become orders of this Board, I have no problem with the Board assuming jurisdiction over those issues. However, if the orders with respect to these studies coming out of the PUB decision in June cannot be reconsidered by this Board in any fashion, then quite frankly we are already -- DISCO is already in contempt. So I think we have to be pragmatic about this. Look at the arguments made by all parties and say, is this study appropriate? Can it be filed in an appropriate time? We certainly have done our best to meet all of the requirements of the previous order in time so they would be subject to IR's and so on in the upcoming rate process.

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So those are all my comments, Mr. Chair, and thank you. And
thank you, Commissioners.

CHAIRMAN: I am going to ask Ms. Desmond if there is
anything additional that the Board needs to do before I
adjourn?

MS. DESMOND: I think we are all finished. Thank you, Mr.
Chair.

CHAIRMAN: Thank you, Ms. Desmond. This matter is adjourned
then. And the Board will issue a written decision just as
soon as possible. Thank you.

(Adjourned)

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

Reporter

