

1 New Brunswick Board of Commissioners of Public Utilities

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

4 Customer Service Corporation (DISCO) for changes to its

5 Charges, Rates and Tolls - Revenue Requirement

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7 Hilton Hotel, Saint John, N.B.

8 February 8th 2006

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policies, how compare yours to theirs, and if  
have any other pole replacement policies that  
are familiar with, what they might be

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New Brunswick Board of Commissioners of Public Utilities  
In the Matter of an application by the NBP Distribution &  
Customer Service Corporation (DISCO) for changes to its  
Charges, Rates and Tolls - Revenue Requirement  
Hilton Hotel, Saint John, N.B.  
February 8th 2006

CHAIRMAN: David C. Nicholson, Q.C.

COMMISSIONERS: Jacques A. Dumont  
Patricia LeBlanc-Bird  
H. Brian Tingley  
Diana Ferguson Sonier  
Ken F. Sollows  
Randy Bell  
David S. Nelson

BOARD COUNSEL: Peter MacNutt, Q.C.

BOARD STAFF: Doug Goss  
John Lawton

BOARD SECRETARY: Lorraine Légère

.....

CHAIRMAN: Good morning, ladies and gentlemen. Appearances  
please. The Applicant?

MR. MORRISON: Yes, Mr. Chairman. Terry Morrison and David  
Hashey. We are joined by Mr. Hyslop and Mr. O'Rourke.

CHAIRMAN: Exactly. What are you trying to do, Mr. Hyslop?

MR. HYSLOP: If he said I was with him, Mr. Chair, we are in  
for a real long day. If it please the Board we have moved  
simply so we have better sight lines with the panel. We

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had to look through their counsel to see them.

CHAIRMAN: In deference to the panel you should probably  
move back. It is all right. I will reorientate myself.  
Thank you, Mr. Morrison.  
Canadian Manufacturers and Exporters?

MR. LAWSON: Gary Lawson. I'm appearing with Mark Grayson,  
although he hasn't quite shown up yet, and David Plante.

CHAIRMAN: Thanks, Mr. Lawson. Conservation Council?  
Eastern Wind Power? Enbridge Gas New Brunswick? The  
Irving Group of companies?

MR. BOOKER: Good morning, Mr. Chair and Commissioners.  
Andrew Booker from J.D. Irving. And with me today is  
Bruce Nicholson also of J.D. Irving.

CHAIRMAN: Welcome, Mr. Nicholson. That is my nephew. He  
is from the handsome side of the family. What can I say.  
And Jolly Farmer is not here. Mr. Gillis? Rogers Cable?  
Self-represented individuals, one of whom I spoke with  
last night. And it doesn't sound like they are ever  
coming back. So I will just skip reading them off. They  
will remain on the record though.  
And the Municipal Utilities?

MR. GORMAN: Good morning, Mr. Chairman. Good morning,  
Commissioners. Raymond Gorman appearing as counsel for  
the Municipal Utilities. Today I have Eric Marr and Dana

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Young with me.

CHAIRMAN: Thank you, Mr. Gorman. Vibrant Communities?

Mr. Peacock will be here later, I presume. And Mr. Hyslop?

MR. HYSLOP: With Mr. O'Rourke and Ms. Power, Mr. Chairman.

CHAIRMAN: Thank you, Mr. Hyslop. I want to go through the Informal Intervenors. If any of them are present why perhaps they could just let us know so they will go on the record.

Agricultural Producers Association of New Brunswick, Atlantic Centre for Energy, Canadian Council of Grocery Distributors, City of Miramichi, Charles Collin, Energy Probe, Falconbridge, Flakeboard, Genco, System Operator, Potash Corp., Terrence Thompson Consulting and UPM Kymmene.

Mr. MacNutt, where are you? There you are.

MR. MACNUTT: Thank you, Mr. Chairman.

CHAIRMAN: You are on the right side, Mr. MacNutt.

MR. MACNUTT: Correct. We haven't moved. I have with me this morning Doug Goss, Senior Adviser, John Lawton, Adviser, John Murphy, Consultant and Andrew Logan, Consultant.

CHAIRMAN: Thanks, Mr. MacNutt. Now any preliminary matters? Mr. Morrison?

2 MR. MORRISON: Yes, Mr. Chairman. These documents have been  
3 given to the Board Secretary to be marked. The first is  
4 the updated class cost allocation study for 06/07.

5 DR. SOLLOWS: Mr. Morrison, is this different from the study  
6 that is on the website that was put up on I think the 25th  
7 of January?

8 MR. MORRISON: Actually this is the one that was filed on  
9 January 17th. There is two of them. The next one is the  
10 one that I believe is up on the website. Oh, they may  
11 both be up on the website. There is one change in it.

12 DR. SOLLOWS: Okay. Because I was trying to compare what we  
13 have electronically last night to the previous one. And  
14 there are some discrepancies. So this is revised?

15 MR. MORRISON: The schedule -- we noted actually a minor  
16 error in one of the numbers that flowed through all those  
17 schedules.

18 DR. SOLLOWS: Okay.

19 MR. MORRISON: It was brought to our attention by  
20 Mr. Knecht. It has been changed. And that schedule has been  
21 revised.

22 DR. SOLLOWS: Have you provided the Board with spreadsheet  
23 copies as well as PDFs?

24 MR. MORRISON: I'm advised, yes.

25 DR. SOLLOWS: Okay. Thank you.

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CHAIRMAN: The 2006/2007 class cost allocation study that proposed rates and rate proposal dated 24 January 2006 is A-76.

MR. GORMAN: Mr. Chairman, with respect to A-76 which was just marked, I understand there is only minor changes. And it is quite a comprehensive document. I wonder if the Applicant could point out where those changes are, make it simpler for the parties to review them?

CHAIRMAN: Wouldn't you want to read the whole thing again, Mr. Gorman?

MR. GORMAN: Undoubtedly I will. But it would be much simpler if we had had that pointed out or a red line version or something like that electronically. That would be fine.

CHAIRMAN: Okay.

MR. MORRISON: The changes are all in appendix 1. Because it was a calculation that flows through all of appendix 1, I would probably have to sit down with Mr. Gorman and explain it to him, Mr. Chairman. And actually I would have to have someone explain it to me before I explain it to Mr. Gorman. So I would be happy to do that at break.

CHAIRMAN: Okay. Fine, Mr. Morrison. I'm sure you will



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take him up on that, Mr. Gorman.

MR. GORMAN: Thank you, Mr. Chairman.

CHAIRMAN: Okay. Mr. Hyslop?

MR. HYSLOP: Two points. One, if the Applicant would supply in electronic spreadsheet format as well as PDF the exhibit A-76 for ease of use.

And I don't know. When I looked at it last night I noted that all the changes apparently showed up on my computer in a different color font than -- the changes appeared to be easily viewed in the document.

But it probably depends on the version of Acrobat or whatever you are using at the time.

CHAIRMAN: Well, I will let you sort that out. I will personally let Dr. Sollows do it. Anything else, Mr. Morrison?

MR. MORRISON: The second document, Mr. Chairman, is entitled "Evidence Updated Class Cost Allocation Study for 2006, '07 at July 7th 2005 Rates." And that was supposed to be filed on January 16th. And it was --

CHAIRMAN: We may have a slight glitch. Just give us a minute.

All right. The updated Class Cost Allocation Study for 2006/07 at July 7th 2005 Rates dated 17 of January 2006 is A-77.

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MR. MORRISON: That is it for preliminary matters,

Mr. Chairman. Thank you.

MR. MACNUTT: To assist us, Mr. Chairman, in understanding

what has just happened, it was my understanding that the

A-77, what is it, marked January 17th, I believe it is,

was never going to be marked. But it is my understanding

it has now been marked as A-77.

Could Mr. Morrison please explain the difference between

A-76 and A-77? And which of the two documents he proposes

to refer to on a consistent basis.

CHAIRMAN: We are having a little difficulty, Mr. MacNutt,

in hearing you up here, just a little. It's not bad.

MR. MORRISON: As I understand it, Mr. Chairman, the A-77

document was filed at the request of the Board. For all

intents and purposes, it is my understanding that A-76

updates A-77.

So that A-77 really is -- I hate to use the word

"irrelevant" but it is irrelevant, quite frankly. It was

filed because we were required to file that document. And

then we updated it later. So I think the Intervenors can

safely ignore A-77.

CHAIRMAN: Thank you. And I'm sure that is the only

irrelevant piece of paper that has been marked in this

entire hearing.

2 MR. MORRISON: I'm sure you are correct.

3 CHAIRMAN: Anybody else? Mr. Lawson?

4 MR. LAWSON: Just for clarification then, is it correct to  
5 say that the only change is that change, in A-76 from A-  
6 77, is that change in appendix 1 then that was referred to  
7 earlier?

8 MR. MORRISON: That is correct.

9 MR. LAWSON: Thank you.

10 CHAIRMAN: Mr. MacNutt, you are poised? Anybody else any  
11 preliminary matters? Mr. Hyslop?

12 MR. HYSLOP: Thank you, Mr. Chair. We regrettably are  
13 asking the Board again to look at the scheduling for this  
14 hearing. And I also would preface my remarks -- I would  
15 note that Mr. MacDougall is not present and he may have  
16 some effect, but on the 17th -- first of all, I will go  
17 back.

18 I think it has always been understood and agreed amongst  
19 the parties that this was a template, it was go forward  
20 and subject to change when we felt matters changed. As I  
21 understand the issue, we are going to receive on February  
22 17th evidence from other Intervenors which is directly  
23 related to the customer class allocation study and the  
24 rate proposal.

25 I do not know of course exactly what the nature of

1  
2 that evidence is going to be, but I am getting a somewhat  
3 sinking feeling that it may be very complex. We are  
4 supposed to start hearings on that document on the 21st.  
5 I have -- as you are aware, I have retained Mr. Robert  
6 Knecht who advised me on how customer class allocation  
7 studies work. He has advised me, amongst other things,  
8 that he is not available on the 21st and 22nd. He is  
9 committed to being in Chicago apparently.

10 But in addition to that, we made some assumptions and I  
11 had him look over the first customer class allocation  
12 studies that we received from Mr. Larlee. And without  
13 going into too much detail, we were reasonably satisfied  
14 that the Board's directions had been complied with. And  
15 for that reason we said, yes, look, let's plug along and  
16 we will see what happens.

17 I now have a feeling -- I could be dead wrong, but I am  
18 anticipating I am going to receive some very complex  
19 evidence be filed by other Intervenors on the 17th of  
20 February that is going to, A, necessitate a thorough  
21 review by somebody that we retain to advise me as to what  
22 it means because I'm not able to figure it out.

23 And second of all I'm almost anticipating that during the  
24 actual hearings I'm going to need ongoing advice from Mr.  
25 Knecht to properly raise the issues that may be

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relevant and in the public interest.

So I am asking the Board to consider moving from the 21st, 22nd. At one time we talked about the week of the 6th of March but I know that's off the table. And I do regret to advise that I believe the dates we would be looking at doing that part of the hearing would be on the 13th of March.

Now I will -- everything I have said here is based on further anticipation about the future. At one time I anticipated we would be talking about things like gradualism, we would be talking about things like rate shock, we would be talking about things like hardship to different classes of Intervenors. And, you know, with a little bit of over the phone advice I felt -- and with Mr. O'Rourke -- I felt sure we would be able to handle that on the 21st, 22nd. I hope not but it may well be that matters will be more complex. And I am asking the Board to consider moving the matter out to the 13th, 14th, for that reason.

CHAIRMAN: Have you talked to counsel opposite and the other parties about this, Mr. Hyslop?

MR. HYSLOP: I have spoken to the parties here. I have not spoken directly to Mr. MacDougall, Mr. Chair, and I would do so. I have spoken to Mr. Hashey and the Applicant. I

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briefly informed Mr. Gorman. And I don't know how everybody feels on this but that's where I'm coming from.

CHAIRMAN: Okay. Rather than entering into a discussion here right now, I'm going to suggest that counsel over the lunch hour please get together and talk about these. I know I'm speaking for my fellow Commissioners when I say we have come this far and we are at day 39. We know that the Applicant wants to get this matter concluded as quickly as possible but we want to hear the best evidence that we can.

And if you the Public Intervenor require time to do that then I personally am quite prepared to give it to you. But having said all of that, I think if you are going to look for changes, anticipating that it may be very complex what you are getting in, then I think we should look at it and agree or the Board rule on the changes, and then again set them in stone. Let's not be waiting until the eleventh hour to change it again.

So I will leave that with you and maybe after lunch we can revisit this and possibly get in touch with Mr. MacDougall, if you could as well.

MR. HYSLOP: I would agree Mr. MacDougall certainly should be contacted for comment, and your point is well taken, Mr. Chair.

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CHAIRMAN: Why don't you have his local partner track him down or something like that. Okay. Any other matters?

MR. HYSLOP: I believe that's all I have, Mr. Chair. Thank you.

CHAIRMAN: Okay. Then go ahead, sir.

MR. HYSLOP: Good morning, Panel.

MR. MORRISON: I believe Ms. MacFarlane wanted to clarify something that was on the record yesterday. I'm not -- yes, that's correct.

MS. MACFARLANE: If I may. Yesterday we were discussing the -- on October 1st the amount of debt that was transferred to Electric Finance Company, 377,000,000. And I also pointed out that there was a plan that over a period of years each of the companies would be recapitalized. And then the final piece of information that I gave was that I understand that the financial advisors' intent or modelling for when the total debt would be paid off from EFC's books would be in the vicinity of 20 years. What I wasn't sure that I was clear about is that the amount to be paid off in the 20 years is not just the 377,000,000. It also includes as each of the companies is recapitalized, there would be a debt equity swap for each one of them, and some portion of their debt would go to EFC. And that amount would climb over time as each of the

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companies was given equity in exchange for debt being taken off their books and moving to EFC.

Remember the purposes of EFC in the Act are to ensure appropriate levels of debt in each of the companies and then to pay down the remaining debt. So if we assume for example, that on average all of the companies, if you were to combine them, it's about 50 percent of the debt that would be swapped for equity over time. EFC would at some point have about two billion dollars in NB Power legacy debt that would need to be paid down, and it would be paid through those PILS and dividend streams in the longer term plan.

So I wasn't sure that I had properly tied those three concepts together, so I just wanted to clarify that.

Too, Mr. Chair, I'm not sure we actually had an undertaking from yesterday but we did have an exercise. And, Mr. Hyslop, did you want me to address that now or did you want to wait?

Q.542 - We will get to grading your homework in a moment --

MS. MACFARLANE: Okay.

Q.543 - -- but I have a few questions coming out of that explanation. First I would point out that it was 377 I figured at 14,000,000. So you are saying it's -- over the next 20 years we are looking at really recapitalizing



2 closer to \$2,000,000,000?

3 MS. MACFARLANE: Approximately half of the debt of NB Power.

4 The companies have different capital structures, some  
5 more, some less, but on aggregate it's about half of the  
6 debt will end up with EFC in exchange for equity being put  
7 into the operating companies.

8 Q.544 - In other words, we would take debt off the company's  
9 balance sheet and replace it with an equity position,  
10 correct?

11 MS. MACFARLANE: That's correct.

12 Q.545 - Correct. Just the same way we did with Transco?

13 MS. MACFARLANE: That's correct.

14 Q.546 - And the debt would then be transferred to EFC?

15 MS. MACFARLANE: Yes.

16 Q.547 - And this debt is then repaid by the flow of dividends?

17 MS. MACFARLANE: And PILS.

18 Q.548 - Yes. Do you continue to pay the interest on the debt  
19 that is transferred off the books of the operating  
20 companies?

21 MS. MACFARLANE: No. EFC will pay the debt -- or the  
22 interest and service costs on the debt that's on their  
23 books. They will pay for that through the cash streams  
24 they get from the companies in PILS and dividends, but NB  
25 Power continues to pay the interest on the debt that

1  
2 remains on its books.

3 The intent would be that that debt would be structured in  
4 terms of its term such that once an equity position is put  
5 into the companies a credit rating can be achieved and  
6 then the companies can go to the capital markets to  
7 replace that debt with unguaranteed debt.

8 Q.549 - Now I understand a little bit of what you say. I have  
9 got a couple of questions, Ms. MacFarlane. I can't refer  
10 to specific IRs but we asked you about your direct  
11 involvement in this reorganization and you indicated that  
12 you and the NB Power companies were not significantly  
13 involved in this reorganization plan, is that correct?

14 MS. MACFARLANE: We indicated that we provided data,  
15 information, modelling support, and that our direction  
16 from our CEO throughout the process was to ensure that the  
17 financial advisors and the provincial members of the  
18 working committee had the information that they needed to  
19 make appropriate decisions, and further that they  
20 understood the implications of the decisions that they  
21 were making.

22 The advisors came out of the Ontario market and came,  
23 shall we say, full of bear, wanting to duplicate what they  
24 had done in New Brunswick. New Brunswick is a very  
25 different place. The government intent was a very

2 different market, a bilateral market. The system here is very  
3 different than it is -- when I say system I mean the  
4 Operating System and the Transmission System here is very  
5 different than it is in Ontario, and the president wanted  
6 to make sure that it is their decisions, it is the  
7 decision of the Province what happens here, but they need  
8 to understand the consequences of their decision. And  
9 that's the role that we played.

10 Q.550 - Again I asked you -- I understand the role you played  
11 from your explanation, but -- so in other words, whatever  
12 the financial advisors gave you it was bounced off NB  
13 Power and you people were able to comment on the  
14 implications of it so that they were understood?

15 MS. MACFARLANE: That's correct.

16 Q.551 - Yes. So in actual fact, NB Power had quite a bit of  
17 say on how this reorganization was going to take place at  
18 the end of the day, correct?

19 MS. MACFARLANE: We made sure that if they wanted to head in  
20 the direction that we believed was not in the best  
21 interests of the utility, the ratepayer and the  
22 shareholder, that at least they were aware but there were  
23 many situations -- and I'm not being bitter here -- many  
24 situations where they did not accept our advice or did not  
25 -- did not see the consequences of some of their decisions

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as gravely as we did. But nonetheless they did take our advice into consideration.

Q.552 - So in actual fact you had a significant role to play in the development of the policies and the Electricity Act and the restructuring of the industry?

MS. MACFARLANE: I think I have explained the role that we played.

Q.553 - And would you agree with me it was significant?

MS. MACFARLANE: I would agree that it was -- what I would say is that it was a protective role. We were doing our best to ensure that as this structure was changed that there were no inadvertent impacts that were underlined with the electricity policy or the energy policy simply because the advisors were from other jurisdictions and wouldn't understand some of the unique issues related to New Brunswick.

Q.554 - With that in mind, I have got a question. It wasn't one I thought I would be asking. But as you are aware, Section 156 of this Act has resulted in the underlying costs of 78 percent of the charges and rates for electricity in New Brunswick was not to be on the table at this hearing.

How can you say you were protecting the best interests of the ratepayers of New Brunswick when part of the design

2 of this was to effectively remove 78 percent of the costs from  
3 regulatory supervision?

4 MS. MACFARLANE: My comments as to our role and trying to  
5 protect from inadvertent consequences was specific to the  
6 information that we were shown. And --

7 Q.555 - So this was an advertent consequence to remove 78  
8 percent of the costs from the supervision of this Board?

9 MS. MACFARLANE: That is how I would read the Act, yes. And  
10 I will say that NB Power was not -- we did not see the Act  
11 before it was tabled in the House.

12 Q.556 - So would it be NB Power's position that it would be  
13 better for the ratepayers of New Brunswick if they did  
14 have full access to 78 percent of the costs of producing  
15 electric --

16 MR. MORRISON: I'm going to object to that question, Mr.  
17 Chairman.

18 MR. HYSLOP: The witness clearly said that this was one of  
19 the inadvertent consequences and then she suggested in her  
20 testimony I believe that in fact this might not have been  
21 NB Power's position. That was part of the last answer,  
22 Mr. Morrison. I'm following up on it. I think it's a  
23 fair question.

24 MR. MORRISON: What NB Power's position is in light of the  
25 legislation is completely irrelevant.

1 - 3578 - Cross by Mr. Hyslop -

2 MR. HYSLOP: No, it isn't, Mr. Chair, because NB Power  
3 doesn't have to accept the protection of the legislation.

4 If NB Power felt it was in the best interests of the  
5 ratepayers of New Brunswick, which seems to be the  
6 suggestion of Ms. MacFarlane's answer, they have every  
7 right in the world to say, notwithstanding we have this  
8 protection, we think it's in the best interests of New  
9 Brunswickers to put these costs on the table.

10 MR. MORRISON: I disagree vehemently with Mr. Hyslop's  
11 position.

12 CHAIRMAN: I will let Mr. Hyslop continue for a bit. Try  
13 and conclude this line if you could, sir.

14 MR. HYSLOP: Thank you very much, Mr. Chair.

15 Q.557 - Ms. MacFarlane, the suggestion from you was that this  
16 was an advertent result to avoid having 78 percent of the  
17 costs on the table. And you also I think in your answer  
18 might have suggested this may have not have been NB  
19 Power's position.

20 Am I in fact correct in my understanding, it was the  
21 intention of NB Power to continue to have clear and open  
22 transparent process and put 100 percent of its costs on  
23 its books before the regulator? And you thought that was  
24 in the best interests of New Brunswickers?

25 MS. MACFARLANE: No, I did not say that. And I don't

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believe that it is NB Power's position that the Legislature of the Province of New Brunswick laid out a framework.

They put forward an Act. We are following the rules as laid out in the Act.

Q.558 - So you are willing to accept the protection of Section 156 even though you don't think it is in the best interests of New Brunswickers that they don't know the cost of their electricity?

MR. MORRISON: Mr. Chairman, I'm going to object again.

That is not what the witness said. And it is not a question of accepting the protection of Section 156. Section 156 is the law.

CHAIRMAN: Okay. Mr. Hyslop, go to something else, sir.

MR. HYSLOP: Okay.

Q.559 - Homework. I left an exercise with the utility at the end of yesterday afternoon.

CHAIRMAN: Thought you were going to quote Homer.

MR. HYSLOP: I'm barred.

Q.560 - And I was wondering. I guess to follow up on that, the next question, you have had an opportunity to review the document.

And Ms. MacFarlane, can you provide us with answers for our review and marking?

2 MS. MACFARLANE: The homework assignment, as it has been  
3 dubbed, we spent a lot of time on it, had a great deal of  
4 difficulty in determining what we were able to answer and  
5 what the objectives of the PI were in answering it.

6 So let me start --

7 Q.561 - Well, don't worry about the objective of the PI at  
8 anytime, Ms. MacFarlane. Part of the problem here is I  
9 think you are always worrying about where I'm coming from.

10 And we would ask that you don't worry about that. Just  
11 answer our questions.

12 MS. MACFARLANE: The only reason I say that is because we  
13 had difficulty answering the question as it was posed.  
14 But we said to ourselves is there information that might  
15 satisfy him in a different form. So that's the context in  
16 which I make that comment.

17 I would like to read into the record the 2006/2007  
18 budgeted payments to Electric Finance Corporation from  
19 Disco. And they are payments in lieu of provincial large  
20 corporate tax 1.7 million; interest on long-term debt 33.6  
21 million; interest on short-term debt 3.7 million; debt  
22 portfolio management fee 3.7 million; payment in lieu of  
23 federal large corporate tax .6 million; payment in lieu of  
24 income taxes 8.2 million, for a total of 50.1 million.

25 So I believe on the sheet as presented by the PI in



1  
2 the homework assignment, on the left-hand side, after  
3 restructuring the first column is Disco. And I believe  
4 that that number would be 50.1 million.

5 We were unable in the form as laid out by the Public  
6 Intervenor to answer the rest of the questions. And I  
7 would like to take a moment and explain why. The  
8 requested calculations require numerous estimates to be  
9 made to recalculate what NB Power's financial position  
10 would have or could have been, assuming there was no  
11 restructuring.

12 And let me give you some examples. We would have to, as  
13 an example, estimate the costs associated with the  
14 implementation of restructuring and remove those from the  
15 financial results.

16 An estimate of additional ongoing costs resulting from  
17 restructuring, for example, additional Finance and  
18 Treasury personnel, additional audit fees, system costs,  
19 et cetera would also have to be estimated and removed.

20 At the same time we would have to estimate and add back  
21 the value of cost savings achieved through restructuring  
22 through improved management and government systems that  
23 have arisen from restructuring.

24 The corporations have clearer mandates and objectives  
25 under the new Act. They have well-articulated strategies.

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There is greater focus and alignment among the management teams towards achieving those strategies. And we have much better management reporting. And from those come efficiencies and effectiveness.

A primary example of this would be that initiatives, the Business Excellence initiatives, which might not have been achieved to the same extent if restructuring hadn't occurred.

We would also have to make adjustments to debt levels and balances. They would have to be recalculated with assumptions for results that have already occurred or are planned to occur for the period from October 2004 through to March 31st 2007.

And finally, the old NB Power debt that was transferred to EFC would have to be brought back into the recreation of NB Power records in an unstructured environment and interest and foreign exchange costs added accordingly.

There are a number of assumptions behind those things which make the calculation very difficult to do.

A similar request was made in the CARD hearing, PI IR-3, August 19th 2005 which requested that the CCAS, the Cost Allocation Study be done under the same methodology as was approved by the Board in 1992, which would assume

1  
2 restructuring did not occur.

3 It was noted then that this could not be completed as the  
4 accounting and financial records kept under the vertically  
5 integrated utility no longer exist.

6 Secondly, this is a Disco hearing. And the PI is asking  
7 for information from companies that are not a subject of  
8 this hearing.

9 However, in an effort to be helpful what we can provide is  
10 the following. Electric Finance Corporation's cash  
11 requirements in 2006/2007 to service the legacy debt of NB  
12 Power that was transferred to them on October 1st, the  
13 377,000,000 is approximately 32,000,000. This assumes no  
14 reduction of debt, simply service of the debt.

15 The total from all the companies in the NB Power group  
16 budgeted to be paid to EFC in 06/07 through PILS and  
17 dividends totals roughly 36,000,000. It totals roughly  
18 36,000,000.

19 Okay. The cash requirements to service the debt in the  
20 EFC are 32,000,000. The cash paid from or planned to be  
21 paid from the NB Power companies in 06/07 through PILS and  
22 dividends is 36,000,000.

23 Q.562 - Is that answer something you have written and prepared  
24 for this hearing?

25 MS. MACFARLANE: Most of it. I have some handwritten notes

2 on it.

3 Q.563 - I will get it off the transcript. I have some

4 questions coming out of that, Mr. Chairman.

5 Could you indicate the last full financial year that the  
6 old NB Power Corporation was in existence, would you  
7 complete the block opposite NB Power in the second column,  
8 "No Reorganization" for the full corporation of that year,  
9 that is all payments made to Her Majesty The Queen, the  
10 actual payments made. If you want to put in budgeted  
11 payments that were intended, I don't have a problem with  
12 that of any source or through any agent of the Crown.

13 Is that something you can calculate?

14 MS. MACFARLANE: Yes. Just to clarify, the last full year  
15 before integration was 2003/2004.

16 Q.564 - I understand that. We will use that for the best  
17 proxy. It is one of the things --

18 MS. MACFARLANE: And again to clarify, did you also want the  
19 payments for things like property taxes and utility taxes  
20 that are paid under other --

21 Q.565 - Look, it gets too complicated figuring out which ones  
22 are taxes and which ones are profit and which ones are  
23 interest. Interest would be fair. I wouldn't mind  
24 knowing interest.

25 MS. MACFARLANE: Okay.

2 Q.566 - Now I appreciate that this isn't --

3 CHAIRMAN: In fairness to the witness, I think we should try  
4 and be explicit as to what you are asking her to do.

5 MR. HYSLOP: Yes. Okay.

6 CHAIRMAN: I was left a little bit fuzzy as to what you are  
7 asking her.

8 Q.567 - I'm asking for -- you had indicated the total amounts  
9 of money that were paid by the old NB Corporation in the  
10 last complete fiscal year prior to reorganization which  
11 would be March 31st 2004.

12 And if you want -- it is up to you -- I'm looking for  
13 actual numbers. But if you want to give me actual and  
14 budgeted, I will leave that to your discretion. And if  
15 you would only identify what would have been paid out as  
16 interest on debt as a portion of that, I would appreciate  
17 it.

18 MS. MACFARLANE: Thank you.

19 Q.568 - Now let's go down through Transco, Nuclearco, Genco.

20 I anticipate from your answer it appeared you directed  
21 your thoughts almost exclusively to the NB Power, the old  
22 corporation.

23 In Transco, Nuclearco, Genco, Coleson Coveco, the issue is  
24 as a result of this reorganization is how much money is  
25 anticipated being paid to the government or its

2 agents. It comes out of some of the line of questioning I had  
3 yesterday on the results of this reorganization and the  
4 new return on investment.

5 Is it your objection you cannot provide that information  
6 to me for these companies? Or you don't feel it is  
7 relevant for purposes of these hearings?

8 \ MS. MACFARLANE: I did give you the numbers in aggregate.

9 Q.569 - You gave me PILS and dividends in total for 36,000,000  
10 from all the companies to EFC?

11 MS. MACFARLANE: That's correct.

12 Q.570 - Right. I'm asking -- and what I asked for is the  
13 total amounts of money of any section of the Act or any  
14 application of a Tax Act or Property Tax Act, the total  
15 amounts of money that are being paid by Transco,  
16 Nuclearco, Genco to Her Majesty The Queen in Right of New  
17 Brunswick in the budgeted year 2006/2007, what those  
18 payments would be to Her Majesty The Queen or any agent of  
19 Her Majesty The Queen.

20 Is that something you are saying you cannot provide? Or  
21 are you saying it is something that you don't feel is  
22 relevant at this hearing?

23 MS. MACFARLANE: Can I break your question, Mr. Hyslop, down  
24 into two parts? Because I had earlier asked -- what we  
25 have done is provide you with the payments from all the

2 companies budgeted in 06/07 to be paid to Electric Finance.

3 Because that is the amount that will service the legacy  
4 debt taken off NB Power's books.

5 When I was trying to clarify your earlier request I asked  
6 you if you also wanted payments made to the Province for  
7 things like property taxes, utility taxes. And you said  
8 no at that time.

9 In your statement now you seem to be including them. So  
10 could you just clarify that for me?

11 Q.571 - Well what I am asking for is in paragraph 1 of the  
12 table I presented says, for each company please calculate  
13 the total amounts based on 2006/2007 fiscal year budgets  
14 that would be paid to the Province of New Brunswick or an  
15 agent of the Province of New Brunswick. I said for each  
16 company, Disco, Transco, Nuclearco, Genco. From what you  
17 have briefly described --

18 CHAIRMAN: Sorry. Mr. Hyslop, I'm not taking over Mr.  
19 Morrison's job but I sit here and I say, is the Public  
20 Utilities Board an agent of the Province of New Brunswick,  
21 because then the witness would have to include our annual  
22 assessment. You know, I think in fairness you have got to  
23 be very precise, and --

24 MR. HYSLOP: Well what I will do then with that in mind is I  
25 will withdraw the table. I wanted to get global numbers.

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Or I will let this table stand to the extent we have some answer. And we will reconfigure it and perhaps present it again.

CHAIRMAN: Okay. If I could suggest go back to the financial statements for that last year and look and see what was reported there and perhaps work those into the question, Mr. Hyslop. Sorry. Go ahead, sir.

Q.572 - Thank you. I would like to move on, not to say I'm abandoning the last line, Mr. Chair, but moving on to the implementation of the policy in the White Paper. First of all, just a general question to the panel. Would you agree in theory that NB Power could be owned by anybody as a shareholder?

MS. MACFARLANE: Could you repeat the question.

Q.573 - Could anybody be the shareholder and owner of the NB Power assets?

MS. MACFARLANE: I don't believe that that's so under the existing Electricity Act.

Q.574 - The government couldn't sell the shares to or sell the business of NB Power as assets to another party?

MS. MACFARLANE: The Act allows the Lieutenant Governor in Council to sell Coleson Cove and to enter into a third party partnership or lease for Point Lepreau, but there is no provision in the Act for sale of shares or the



2 companies themselves. There is no provision for that in the  
3 Act.

4 Q.575 - Well maybe not under the current Electricity Act but  
5 suitable amendments we could always arrange to sell the  
6 assets in the business of NB Power.

7 MS. MACFARLANE: The legislature has the right to change  
8 legislation.

9 Q.576 - And I guess the -- at least in theory at the present  
10 time, the shares of NB Power Holdco and the nature of NB  
11 Power Electric Finance is such that the government of New  
12 Brunswick functions as its shareholder?

13 MS. MACFARLANE: Electric Finance Corporation functions as  
14 an active shareholder.

15 Q.577 - Yes. And the shares of NB Power Holdco are owned by -  
16 - directly by the Minister of Finance, I understand?

17 MS. MACFARLANE: They are owned by the Minister of Energy.

18 Q.578 - Minister of Energy. Okay. And as I understand, NB  
19 Power Electric Finance the -- one of the IRs -- the board  
20 of directors consists of the Ministers of Finance and  
21 Energy, their deputy ministers their and assistant deputy  
22 ministers, correct?

23 MS. MACFARLANE: That's correct. And there is one further  
24 officer.

25 Q.579 - Risk management?

2 MS. MACFARLANE: Yes.

3 Q.580 - Is that an officer or employee of the government of  
4 New Brunswick or an employee of NB Power?

5 MS. MACFARLANE: It's an employee of the Department of  
6 Finance in the Province of New Brunswick.

7 Q.581 - Okay. So the governing board of directors of this  
8 corporation then has no officers or directors that are  
9 shall we say on a hands-on basis, on a day to day basis,  
10 working for the holding company or any of the operating  
11 companies?

12 MS. MACFARLANE: That's correct.

13 Q.582 - Thank you. And I guess one of the difference between  
14 anybody else owning NB Power and the government owning it  
15 is that -- and I think you have already indicated to me  
16 the government has the right through legislation to make  
17 laws and rules which may affect the electric industry at  
18 any time.

19 MS. MACFARLANE: That's correct.

20 Q.583 - So if I was the shareholder -- hopefully that will  
21 never happen as a result of this hearing -- the -- I  
22 wouldn't be able to change the rules the same way the  
23 current owner of the company could, correct?

24 MS. MACFARLANE: I'm not sure I understand your question.

25 Q.584 - I will pass on that. It's not that important. Now we

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2 did talk yesterday about the White Paper being a business plan  
3 of some sort, you recall that?

4 MS. MACFARLANE: Yes.

5 Q.585 - But when we get down to it what the rules actually are  
6 are the rules that are put in the legislation, would you  
7 agree with that, Ms. MacFarlane?

8 MS. MACFARLANE: Yes.

9 Q.586 - So all that time that you and I wasted yesterday on  
10 the White Paper really doesn't matter that much when we  
11 start looking at the legislation itself, correct?

12 MS. MACFARLANE: I believe it helps interpret the  
13 legislation.

14 Q.587 - It gives you some idea of what they might have been  
15 trying to achieve --

16 MS. MACFARLANE: That's correct.

17 Q.588 - -- but not everything that's indicated in the White  
18 Paper necessarily makes its way fully into the legislation  
19 --

20 MS. MACFARLANE: That's correct.

21 Q.589 - -- you would agree with that?

22 MS. MACFARLANE: Yes.

23 Q.590 - In fact you indicated to me a few moments ago there  
24 were times some of the way this legislation was put  
25 together by the industry advisors you might have taken

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2 quite a strong position at times against some of their  
3 suggestions.

4 MS. MACFARLANE: I take strong positions against things all  
5 the time.

6 Q.591 - Well I have noted that, Ms. MacFarlane. And I would  
7 like you to -- we are going to focus a little bit on your  
8 evidence, exhibit A-50, page 15, and I will read it to you  
9 and if you want to check it -- but you said, "The working  
10 group from the Department of Energy and the Department of  
11 Finance with advice from financial advisors and energy  
12 experts developed the power purchase agreements. NB Power  
13 provided the financial data and modelling support." And  
14 we are going to try to find out all about this next  
15 sentence in the next little while. "These power purchase  
16 agreements were approved by the Minister of Energy." For  
17 your reference it's at page 15 of your evidence, if you  
18 want to verify it.

19 MS. MACFARLANE: Yes, I see it.

20 Q.592 - Okay. Now I would like to look at the Electricity  
21 Act. And I would like to start if I could with looking at  
22 Section 4 of the Act, Ms. MacFarlane. And for reference  
23 of the Board, we are going to be spending a little time  
24 with the Electricity Act, if you want to bring it out.  
25 This is quite a long section, if you are thinking of

1  
2 timing, Mr. Chair.

3 CHAIRMAN: Mr. Hyslop, some of the Commissioners don't have  
4 their Acts and they are desirous of following along your  
5 questioning. So what I am going to do is take our mid  
6 morning break now and let them get them.

7 MR. HYSLOP: Thank you, Mr. Chair.

8 (Recess)

9 CHAIRMAN: If you, Mr. Hyslop, and Mr. Morrison continue to  
10 tussle I'm going to make you go over there. It's pretty  
11 hard to rule on objections when it's over one guy's  
12 shoulder or the other.

13 MR. HYSLOP: Given our relative heights it's a good thing  
14 I'm not behind Mr. Morrison.

15 MR. MORRISON: What Mr. Hyslop doesn't appreciate is I have  
16 a pitcher of cold water here.

17 MR. HYSLOP: I understand the point and I think after lunch  
18 if Mr. Morrison will move to that side that will be fine,  
19 or alternatively we will caddy-corner the tables a little  
20 bit.

21 CHAIRMAN: Okay. That would be appreciated from here.

22 MR. HYSLOP: Yes. I'm sure it's a little -- it would help  
23 me too. I mean that water thing is not all in humour.

24 MR. MORRISON: Mr. Chairman, there is one preliminary matter  
25 that Mr. Hyslop just raised with me. He asked me whether

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the witnesses had anything on the table that wasn't on the record in their binders and so on.

And a very unusual request, but there were -- there are a couple of matters -- pieces of paper that they had in their binders that aren't officially on the record and I would be happy to have them put on the record and then give them back to the witnesses.

One was the Minister's statement on the future of NB Power which I believe Ms. MacFarlane referred to yesterday, and the other one was the speech by the Energy Minister in the introduction to the Electricity Act. The other is the Market Design Committee final report.

And if Mr. Hyslop insists that they be marked as an exhibit, I will have them marked as an exhibit, whether or not they get referred to.

MR. HYSLOP: I'm not insisting they be marked as exhibits, Mr. Chair, but I in asking my questions, I think the materials, it's quite common in my experience if witnesses are going to use materials other than what is on the record, that they be made part of it. If they want to put those other materials in the corner and not have direct reference to them, use their memory, I'm happy with that.

If they want to put them on the record at some point in time I'm happy with that.

2 Just if they are sitting there with materials that aren't  
3 part of this record and using those and quotes from them  
4 for the answers, then it should be part of the record.  
5 That's all.

6 CHAIRMAN: Well this is a quasi-judicial tribunal. What I  
7 am going to suggest is Mr. Morrison give them back their  
8 papers and if you need to quote from any of them, well say  
9 I would like to quote from this, and we will put it on the  
10 record.

11 MR. HYSLOP: That would be fine.

12 CHAIRMAN: Simple as that.

13 Q.593 - Thank you, Mr. Chair. To start I wanted to look at a  
14 few sections of the Electricity Act, if I might, and ask  
15 the panel to refer to Section 4 of the Electricity Act.  
16 And look in particular at Section 4, subsection 1, and  
17 that provides for the incorporation of the four different  
18 companies commonly referred to as Nuclearco, Genco,  
19 Transco and Disco, is that correct, Panel?

20 MS. MACFARLANE: Yes.

21 Q.594 - Right. And I'm particularly interested a little bit  
22 in both D and I will pull out B as an example. But  
23 dealing with B we have New Brunswick Power Generation  
24 Corporation whose purposes include in addition to any  
25 other purposes owning and operating generation facilities

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other than nuclear generating stations, is that correct, Ms. MacFarlane?

MS. MACFARLANE: That's correct.

Q.595 - And if I was going to run a generation company now that I have been handed one by legislation, that generation company would have to acquire generation facilities, or have them?

MS. MACFARLANE: I'm not sure I understand your question.

Q.596 - Well we have said we have got a generation company and I'm just going into business running a generation company.

MS. MACFARLANE: Yes.

Q.597 - So you are going to need some assets, including generation stations?

MS. MACFARLANE: That's correct.

Q.598 - You are probably going to need to hire some people to run the company.

MS. MACFARLANE: That's correct.

Q.599 - Right. You are going to have contracts to buy the fuels or whatever you need to generate the electricity?

MS. MACFARLANE: That's correct.

Q.600 - Right. You are going to have to have a place to sell the electricity?

MS. MACFARLANE: Yes.

Q.601 - Some type of a market or some type of a customer base?



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MS. MACFARLANE: Yes.

Q.602 - Right. And I suggest that under the Business Corporations Act, my general knowledge of corporate law is that you try to do this so that it generates profits?

MS. MACFARLANE: Yes.

Q.603 - Yes. And in an ideal world, a generation company is going to minimize its costs to generate those profits?

MS. MACFARLANE: That's correct.

Q.604 - And in an ideal world it does its best to sell its product at the best price it can get as to a means of generating those profits, would you agree with that?

MS. MACFARLANE: In the normal course.

Q.605 - Yes. Okay. And also one of the reasons for breaking these companies out is of course to -- as one of the steps towards creating competitive markets in New Brunswick to separate the generation function from the other electricity functions, as opposed to transmission or distribution?

MS. MACFARLANE: Right. I would agree with that.

Q.606 - Thank you. And also I guess Section 4(1)(d), we have got a distribution company whose purposes include in addition to any other purposes owning and operating distribution systems and providing customer services in relation to the provision of electricity through those

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systems. That's Section 4(1)(d)

MS. MACFARLANE: That's correct.

Q.607 - Right. So I'm sitting back, I have just been handed a distribution company. So I have got to get some distribution assets, substations, poles, conductors, transformers, trucks, service trucks, all that type of thing?

MS. MACFARLANE: That's correct. And I assume you are going to take me soon to the trans --.

Q.608 - Look, you -- I'm not going to tell you where I'm going to take you. I'm going to ask you please not to assume anything.

MS. MACFARLANE: All right.

Q.609 - Okay. If you focus on my questions and stop assuming what I'm trying to do, then this cross examination will go much easier, Ms. MacFarlane.

MS. MACFARLANE: All right. I just wanted to point out that there was provision for all of those companies to get all of those assets and it was raised later in the Act.

Q.610 - Look, I will tell you now I guarantee you I'm going to take you to Section 12, okay.

MS. MACFARLANE: Thank you.

Q.611 - Thank you. So you have got assets. You are going to need people to run a distribution company.

2 MS. MACFARLANE: That's correct.

3 Q.612 - You are going to have to hire them. Be nice to have a  
4 customer base.

5 MS. MACFARLANE: That's correct.

6 Q.613 - Right. And you have to acquire a supply of  
7 electricity.

8 MS. MACFARLANE: That's correct.

9 Q.614 - So if, you know, it wasn't for problems like the time  
10 to build facilities in theory on day one the distribution  
11 company could have snapped its fingers and created its own  
12 generation facilities, that would have in some magical  
13 world been one option open to it, correct?

14 MS. MACFARLANE: That's correct.

15 Q.615 - Right. Or in some parts of the world if there was  
16 true competition, which doesn't -- I think we all  
17 recognize -- didn't exist on the date the Electricity Act  
18 came into place, but there was true competition, this new  
19 distribution company could have went to all the generators  
20 that would have been interested and said, give me your  
21 best price or give me your proposal to supply my needs.  
22 In theory that could have been possible.

23 MS. MACFARLANE: In theory. And that would have left a huge  
24 stranded asset.

25 Q.616 - Oh no, look, Mr. Bishop is from Queens County and Mr.

2 Hashey took great pains to explain how smart people from  
3 Queens County is. I'm sure Mr. Bishop would have found  
4 another way to sell that electricity. So I'm not worried  
5 about Genco at all here. I'm just worried about Disco  
6 running its business.

7 So to move on also a little further with the distribution  
8 company, in the total scheme of things and the theory of  
9 things, assuming a perfect world, a distribution company  
10 would like to buy its electricity at the best price it  
11 could get. The purpose of the distribution company is to  
12 make a profit?

13 MS. MACFARLANE: Yes.

14 Q.617 - To do that it likes to sell its product for a better  
15 price than it has to buy it for?

16 MS. MACFARLANE: That's correct.

17 Q.618 - Right. So you minimize the cost you pay for  
18 electricity and cover your other costs and sell it at the  
19 best price to make your most profit. That's the way a  
20 business runs?

21 MS. MACFARLANE: In theory, yes.

22 Q.619 - In theory, yes. Now --

23 MR. MAROIS: Maybe just a slight comment. Typically for  
24 utilities the way they make a profit is not a mark-up,  
25 it's a return on their investment.

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2 Q.620 - Oh look, I appreciate that, and especially in one of  
3 those nasty regulated environments where they control how  
4 much you make I understand that to be true, Mr. Marois.  
5 Now moving on. So I said, well look, this is going to be  
6 great. I'm going to have a chance to examine all the way  
7 Disco acquired these assets and challenge the costs and  
8 why they bought this and bought that. But I ran across  
9 this section, a thing called a transfer order, and there  
10 is a definition for transfer order in the Electricity Act,  
11 Ms. MacFarlane.

12 MS. MACFARLANE: Yes.

13 Q.621 - It says, Transfer Order means an order made under  
14 Section 12.

15 MS. MACFARLANE: Yes.

16 Q.622 - Right. So I looked over at Section 12. First of all  
17 before going to Section 12 I looked at the table of  
18 contents in the act and it said, Division B Transfer  
19 Orders.

20 MS. MACFARLANE: Correct.

21 Q.623 - And it went from Section 12 through 32 and all those  
22 sections dealt with transfer orders.

23 MS. MACFARLANE: That's correct.

24 Q.624 - And the idea of this section I understand is to give  
25 assets and contracts to each to these companies that had

1

2 been formed under Section 4?

3 MS. MACFARLANE: That's correct.

4 Q.625 - Right. And so I went to Section 12. And Section 12

5 stated, 12 (1) stated -- said the Lieutenant Governor in

6 Council may make orders transferring officers, employees,

7 assets, liabilities, rights and obligation of the

8 corporation to each of these different companies that was

9 incorporated?

10 MS. MACFARLANE: That's correct.

11 Q.626 - Right. And you would certainly agree with me, Ms.

12 MacFarlane, that this statute essentially took away my

13 right to challenge any of the costs of transferring these

14 assets and whether the Distribution company got a good

15 deal or a bad deal on the assets it picked up.

16 This was done by legislation. That would be your

17 position?

18 MS. MACFARLANE: It is my position it was done by

19 legislation in order to effect a deliberate and controlled

20 transition.

21 Q.627 - Yes. And in other words, for example I think one of

22 the assets you got was 515 King Street, the Distribution

23 company?

24 MS. MACFARLANE: That's correct.

25 Q.628 - Right. So you know, I can't go in and look at the

2 transfer cost or value of 515 King Street as part of this  
3 proceeding because the legislation did it?

4 MS. MACFARLANE: You can certainly look at the transfer  
5 order, if you like. And the transfer order indicated that  
6 it was transferred at the net book value on the books and  
7 records of NB Power at September 30th 2004.

8 Q.629 - Yes. And even if they wanted to do it at completely  
9 different prices they could have. And I couldn't have  
10 done anything about it because of Section 12?

11 MS. MACFARLANE: Yes. Fortunately you are protected by the  
12 CICA which insists that transfers between related parties  
13 be done at net book value.

14 Q.630 - Well, I mean, the government could put any value on it  
15 at all. And they are not bound by CICA standards, are  
16 they?

17 MS. MACFARLANE: I'm afraid they are, sir.

18 Q.631 - Oh, it might be under the Financial Purposes Act. But  
19 anyhow, I'm not getting into that. But my point is all  
20 these transfers occurred because of these transfer orders?

21 MS. MACFARLANE: That's correct.

22 Q.632 - Right. And they went to all the companies on the  
23 basis of book value. I think you have entered that in  
24 your IRs. Because I was wondering how you did that.  
25 And you kept the same amortization rules in place for

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2 them?

3 MS. MACFARLANE: That's correct.

4 Q.633 - Right. Okay. Going along a little it says Section

5 12(2). See Section 12(2) --

6 MS. MACFARLANE: Yes.

7 Q.634 - -- "Transfer order is binding on the corporation, the

8 transferee and all other persons"?

9 MS. MACFARLANE: Yes.

10 Q.635 - It would be your position that would probably include

11 this regulatory Board and the Public Intervenor?

12 MS. MACFARLANE: That's correct.

13 Q.636 - Right. And I appreciate I have to live with that,

14 okay.

15 And also Section 12(4) says "Transfer order does not

16 require the consent of any corporation, the transferee or

17 any other person"?

18 MS. MACFARLANE: That's correct.

19 Q.637 - Right. Okay. So we know all about transfer orders.

20 So as a result of the transfer orders you got your

21 employees?

22 MS. MACFARLANE: Yes.

23 Q.638 - And you got the assets that you felt should go to each

24 of the companies?

25 MS. MACFARLANE: That's correct.



2 Q.639 - Right. Just by way of curiosity, was there some  
3 analysis made as to what assets should go with what  
4 companies?

5 MS. MACFARLANE: Yes, there was.

6 Q.640 - And I know I can't do anything about it. But how did  
7 you end up with 515 King Street?

8 MS. MACFARLANE: Ms. Clark has reminded me that there were  
9 two reasons behind Disco receiving the head office  
10 building. One is that they had the largest number of  
11 employees occupying floor space in that building.  
12 But more importantly it's because the building would be  
13 seen as the face of NB Power. And it is Disco that is  
14 also seen as the face of NB Power and are the front line  
15 contact with customers. And so the building seemed to  
16 align with the role of Disco.

17 Q.641 - That is good. It does help satisfy some curiosity.

18 But I want to move on a little more here.

19 Now this whole Section B, also Section 12(4) says  
20 "Transfer order does not require the consent of the  
21 corporation, the transferee or any other person." I think  
22 I asked that maybe?

23 MS. MACFARLANE: Yes.

24 Q.642 - So -- and this whole Division B goes on for 20  
25 sections. And I'm not going to belabor the point any

2 further. But its clear purpose seems to be to effectively  
3 transfer the assets in law and to deal with any concerns  
4 of law that normally come about for a transfer of assets.

5 MS. MACFARLANE: And a transfer of employees and officers.

6 Q.643 - Yes. That is right. They couldn't sue because they  
7 were working for another company and stuff like that.

8 Okay.

9 So I understand the transfer orders. And I understand the  
10 diligence that went into that part of it.

11 So now I would like to talk about acquiring -- Disco's  
12 acquiring a supply of power. And we have talked about a  
13 couple of concepts.

14 But as part of this reorganization I think we all knew  
15 that the best bet would be to -- that you were going to  
16 purchase your power needs from Genco and Nuclearco.

17 Would that be correct, Ms. MacFarlane?

18 MS. MACFARLANE: In the first instance yes.

19 Q.644 - Yes. And when you say "in the first instance",  
20 waiting for the magical day when competition might develop  
21 or people go to other resources, correct?

22 MS. MACFARLANE: Actually I was referring to two things.

23 One is that Section 142 of the Act, which deals with  
24 renewable portfolio standards, does cause Disco to acquire  
25 from sources other than Generation or Nuclearco.

2 And secondly, I was referring to the day when the vesting  
3 agreement over time, as Disco reduces its nomination,  
4 because its load is reduced or otherwise, or as the  
5 Generation assets retire, Disco will be buying from other  
6 sources.

7 MR. MAROIS: And the other component is if Disco ever needs  
8 new long-term power it has to issue a proposal as per  
9 Section 80 of the Act.

10 Q.645 - Yes. And we understand that might be around the  
11 middle of the next decade, Mr. Marois, based on present  
12 requirements, correct?

13 MR. MAROIS: Yes.

14 Q.646 - Thank you. Now so in other words, with that idea it  
15 was obvious to everybody that you would be, at least in  
16 the initial stages, buying your power from Genco and  
17 Nuclearco?

18 MS. MACFARLANE: That's correct.

19 Q.647 - Right. And in order to figure out the best way to do  
20 that, from what you tell me -- and I don't want to go  
21 through what we went through an hour ago -- but the  
22 departments of Energy and Finance brought in experts. And  
23 they put together some power purchase agreements?

24 MS. MACFARLANE: That's correct.

25 Q.648 - And at the end of the day they were approved by the

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Minister of Energy?

MS. MACFARLANE: That's correct.

Q.649 - Right. And I guess from all the fuss that has been made, you would agree that PPAs, from your point of view, are pretty important to the implementation of the White Paper policy?

MS. MACFARLANE: I'm sorry. Can you repeat that?

Q.650 - I just said from what has been going on you would view the power purchase agreements as an important part of the implementation of the White Paper policy?

MS. MACFARLANE: Very much so, yes.

Q.651 - Right. Okay. And as I understand it, over the life of these contracts, you want to get rates of return equal to what an investor-owned company would get in a commercial market?

MS. MACFARLANE: Over the term of the contract --

Q.652 - Yes.

MS. MACFARLANE: -- on average, yes.

Q.653 - And this is so the investor-owned utility would have a level playing field when it came to compete with the Generation company in future generation or in the sale to outside -- to heavy industry or to wholesale customers?

MS. MACFARLANE: That is one reason. The second reason is to generate cash flow to EFC to facilitate the reduction

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of the debt that gets transferred to EFC as they undertake their mandate to ensure appropriate levels of debt in the operating companies.

Q.654 - And exactly the point, this is to create cash flows for the government, as we discussed yesterday, probably higher than what it would be under the old regime when we were a fully regulated utility prior to the Electricity Act, over the life of the contract?

MS. MACFARLANE: Over the life of the contract. The rates and costs, the structure of those two things in the old NB Power, did not allow, for whatever reason did not allow for appropriate reduction of debt. And this structure forces that.

MR. MAROIS: The other thing too that is missing here, and it's not something that's easy to quantify, but one of the concerns of the Province that was stated as part of restructuring, and one of the reasons they wanted to bring down the debt, was they were concerned that over time, as the NB Power debt grows, it may have an impact on its own credit rating.

And if its own credit rating gets diminished because of our debt, then that will result in a higher cost of debt for everybody including us.

So that's -- I guess I just want to comment on your

2 statement that it's going to result in more money being paid.

3 We don't really know that. Because if the debt rating  
4 would have gone down, the cost of debt would have gone up.

5 And as a result that would have resulted in more money  
6 being paid to finance the utility.

7 So it's all consistent with the desire to make the utility  
8 more financially sound. It's to reduce the risk to New  
9 Brunswickers, both the customers and the taxpayers.

10 Q.655 - Your point is well taken, Mr. Marois. But I think

11 what you just told me is in order to ensure a continued  
12 solid footing, it is important that the ratepayers pay  
13 higher rates so that we can pay down debt and look after  
14 debt in a better business manner.

15 Would that be a summary of your answer?

16 MR. MAROIS: Yes. And to leave a better legacy for our  
17 children.

18 Q.656 - I appreciate that, Mr. Marois. So you are giving me

19 the justification -- you think you are justified.

20 But I want to go back to the point I can't get a straight  
21 yes on. One of the results of this is that the ratepayers  
22 will be paying more, correct? A straight yes or no.

23 MR. MAROIS: I don't agree with a straight yes.

24 Q.657 - I will leave it at that.

25

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2 MR. MAROIS: It depends.

3 Q.658 - I will leave it at that.

4 Q.659 - So what we did, Ms. MacFarlane, continuing on with the  
5 line of questioning, the investor owned utility would have  
6 a level playing field and as a result we decided that we  
7 would create some deemed capital structures for each of  
8 these companies?

9 MS. MACFARLANE: I think the word deemed has a specific  
10 meaning that perhaps isn't in the context that the company  
11 contracts were developed.

12 The company contracts were developed on the basis of a  
13 capital structure that the financial advisors told the  
14 provinces would, upon recapitalization, guarantee them a  
15 certain credit rating, and would allow the companies to go  
16 to the debt capital markets.

17 It isn't that they are deemed. It is that this is what  
18 the intent of the government would be once rates are at a  
19 level where they can sustain a certain level of earnings  
20 that would support that credit rating.

21 Q.660 - So just to go back, as a result of what all of these  
22 advisors told you --

23 MS. MACFARLANE: Told the Province.

24 Q.661 - -- I won't use the word deemed, but created these  
25 companies with capital structures that was felt would be

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necessary for purposes of entering into the capital market?

MS. MACFARLANE: That's correct.

Q.662 - Okay. So whether I used the word deemed or created, they didn't reflect the actual capital structures of the corporations, correct?

MS. MACFARLANE: That's correct.

Q.663 - Thank you. And in fairness, you went out and did a study to find out what would be about right for Disco and I think you have Mrs. McShane's report in exhibit 55, I think it's appendix 1, but you had someone analyze that for Disco?

MS. MACFARLANE: That's correct.

Q.664 - You didn't have anyone analyze that for Genco or Nuclearco though?

MS. MACFARLANE: That's correct.

Q.665 - Thank you. Now I took you through some pretty straightforward stuff in the Electricity Act dealing with transfer orders, Ms. MacFarlane.

MS. MACFARLANE: Yes.

Q.666 - Right. And quite frankly, they were so well done I don't really have much of a bone to pick with Disco's asset base. Now can you tell me if there is a definition for power purchase agreements in the Act? I don't want to



1 - 3613 - Cross by Mr. Hyslop -

2 make you chase around. Unless you can correct me, I suggest  
3 there is no definition of power purchase agreements in the  
4 Act.

5 MS. MACFARLANE: I don't see one.

6 Q.667 - No. And you will recall a minute ago we looked at  
7 Division B transfer orders that went on for 20 sections?

8 MS. MACFARLANE: Yes.

9 Q.668 - Right. I looked through this Act very carefully. I  
10 looked for a Division B(1) or Division C that -- you know  
11 -- half a dozen sections that dealt with purchase power  
12 agreements. And you would agree with me no such division  
13 exists in the Act with respect to the power purchase  
14 agreements, Ms. MacFarlane?

15 MS. MACFARLANE: There isn't a division but they are  
16 certainly referenced in the Act.

17 Q.669 - There are two references in the Act --

18 MS. MACFARLANE: Yes.

19 Q.670 - -- and we will get to those, but I just want to make  
20 sure that we understand all the attention paid to the  
21 transfer orders and also understand the full amount of  
22 attention paid to purchase power agreements in this  
23 legislation.

24 And I looked all over for a section where it might have  
25 read something like this, the Lieutenant Governor in

1  
2 Council may approve purchase power agreements for the supply  
3 of electricity by the generation companies to the  
4 distribution company. And you agree with me no section  
5 like 12(1) exists in the Act for power purchase  
6 agreements, Ms. MacFarlane?

7 MS. MACFARLANE: I'm not an expert on the Act, but I don't  
8 see one.

9 Q.671 - Thank you. Look, if you want to talk to your lawyers  
10 as to whether that section -- I'm not tricking you. I'm  
11 just trying to get it on the record. Okay. And there is  
12 no section in the Act like Section 12(2) that deals with  
13 power purchase agreements that might have read something  
14 like this, the power purchase agreements once approved by  
15 the Minister of Energy are binding on the corporation, the  
16 parties to them and all other persons. Is there any  
17 section in the Act that would have that impact, Ms.  
18 MacFarlane?

19 MS. MACFARLANE: Again I'm not an expert on the Act but I'm  
20 not familiar with a section that reads that way.

21 Q.672 - Okay. So, Ms. MacFarlane, to go back, the transfer  
22 orders were put into force and effect by virtue of Section  
23 12 of the Act.

24 MS. MACFARLANE: Yes.

25 Q.673 - Right. It does not appear to me on the face of this

2 legislation that the -- there is any section of the Act which  
3 creates by legislation power purchase agreements. Do you  
4 agree with that, Ms. MacFarlane?

5 MS. MACFARLANE: I can't comment on that. I don't  
6 understand legislation well enough to interpret it.

7 Q.674 - Okay.

8 MR. MAROIS: I do have one comment though, is what is  
9 important to realize here is that the transfer orders and  
10 the PPAs are intrinsically linked, because what drives the  
11 cost of the PPAs are the assets that were transferred to  
12 the generation companies, the employees that were  
13 transferred to generation companies. So if the transfer  
14 orders are legally binding, then the costs that result and  
15 get reflected in the PPAs are by extension.

16 Q.675 - Well I am going to go back. Maybe what you are trying  
17 to say is these PPAs fit in under Section 12, but I just  
18 want to take you through that. It says, the Lieutenant  
19 Governor in Council may make orders transferring officers,  
20 employees, assets, liabilities, rights and obligations of  
21 the corporation. The corporation by definition was the  
22 old NB Power Corporation. So the power purchase  
23 agreements had nothing to do with the old NB Power  
24 Corporation, did they, Mr. Marois?

25 MR. MAROIS: My point is that the assets of the old NB Power

2 were transferred to different companies using transfer orders.

3 So these legally binding transfer orders assign costs --  
4 assets and costs -- to the different companies, and as  
5 part of restructuring Disco got access to the rights and  
6 obligations of the different companies.

7 So through these transfer orders the costs that were  
8 assigned to the generation companies are just coming back  
9 to Disco in the form of PPAs. So that's my point is that  
10 there is a direct link between transfer orders and the  
11 costs reflected in the PPAs.

12 MS. MACFARLANE: It's also the case that purchase orders --  
13 pardon me -- power purchase agreements are mentioned in  
14 Section 80 of the Act under sources of supply for standard  
15 service. And it says there that Genco -- pardon me --  
16 Disco, once those power purchase agreements no longer meet  
17 their needs, can go out to the market, and, too, power  
18 purchase agreements are mentioned in Section 156 in a  
19 manner that we are all quite familiar with. So it's  
20 pretty --

21 Q.676 - No. Section 156 doesn't say anything about power  
22 purchase agreements. It talks about power purchase  
23 contracts.

24 MS. MACFARLANE: Yes.

25 Q.677 - Okay. Just be clear on that.

2 MS. MACFARLANE: Okay.

3 Q.678 - And we are going to get to Section 80 and Section 156  
4 for a minute, but my point here is in the absence of  
5 legislation like Section 12 -- I want to go back to your  
6 evidence on page 15 where you said purchase power  
7 Agreements were approved by the Minister.

8 MS. MACFARLANE: I have just been reminded that they in fact  
9 were approved by the Executive Council of which the  
10 Minister is a member. So in that regard my evidence could  
11 have been --

12 Q.679 - They didn't make a regulation, did they?

13 MS. MACFARLANE: I believe it would be an MEC, wouldn't it,  
14 Memorandum of Executive Council?

15 Q.680 - I'm not sure. But there is not a regulation, is  
16 there?

17 MS. MACFARLANE: Okay.

18 MR. MORRISON: I don't know if this witness knows the  
19 difference between a regulation or --

20 Q.681 - Maybe you will clarify, Mr. --

21 MR. MORRISON: On this point, Mr. Chairman, I'm sure Mr.  
22 Hyslop is going somewhere, but these witnesses can't  
23 really interpret the legislation. It seems to me that Mr.  
24 Hyslop's line of questioning is more in the line of  
25 argument. I'm prepared to let it go if it's going to

2 develop into something and it's not argument. I just make  
3 that observation, Mr. Chairman.

4 MR. HYSLOP: Well I only had one more question. I suggest  
5 to you when you look at the little sentence you had the  
6 Minister -- I'm going to leave that. I'm quite happy with  
7 it here.

8 MS. MACFARLANE: Okay.

9 Q.682 - So -- just a moment, Mr. Chair.

10 Ms. MacFarlane, I would refer you to, if I could, exhibit  
11 A-55, appendix 2. I apologize. Panel, I would refer you  
12 to exhibit A-55, appendix 2.

13 MS. MACFARLANE: I have that, Mr. Hyslop.

14 Q.683 - And the document referred to in exhibit A-55, appendix  
15 2 is the shareholders' agreement between NB Power Holding  
16 Corporation, New Brunswick Electric Finance Corporation  
17 and New Brunswick Power Distribution and Customer Service  
18 Corporation?

19 MS. MACFARLANE: That's correct.

20 Q.684 - Right. And this document also I expect was one of the  
21 integral parts of the restructuring of NB Power in  
22 implementation of the game plan under the White Paper?

23 MS. MACFARLANE: That's correct.

24 Q.685 - Pardon me?

25 MS. MACFARLANE: That's correct.

1 - 3619 - Cross by Mr. Hyslop -

2 Q.686 - Thank you. And I expect the other corporations have  
3 entered into similar agreements that Disco did with NB  
4 Power, Holdco and EFC?

5 MS. MACFARLANE: That's correct.

6 Q.687 - Thank you. I'm particularly interested at page 6 of  
7 the shareholders' agreement and Section 5, subsection (1)?

8 MS. MACFARLANE: Yes.

9 Q.688 - You have that?

10 MS. MACFARLANE: Yes.

11 Q.689 - And not to read it all into the record. But the first  
12 sentences says "The board of directors shall declare and  
13 the corporation shall pay as a regular dividend at the end  
14 of each fiscal quarter of the corporation one-quarter of  
15 the designated percentage of the regular profit"?

16 MS. MACFARLANE: That's correct.

17 Q.690 - Okay. And I want to go back now and look at the  
18 definition of regular profits. And that would be on page  
19 3?

20 MS. MACFARLANE: That's correct.

21 Q.691 - You have it. "Regular profit means the amount that is  
22 equal to the profit projected in the budget in respect of  
23 the fiscal year of the corporation, excluding impact of  
24 profit or loss on the sale of material assets out of the  
25 ordinary course of business."

1  
2 Now my question is are the dividends that are paid by  
3 Disco under this shareholder agreement based on the budget  
4 and not the actual results?

5 MS. MACFARLANE: The wording of this section would suggest  
6 that the dividends are based on the budget. However in  
7 the article 4, review of plans and budgets, I would start  
8 by saying that in our budget we proposed to EFC a dividend  
9 level that we think is appropriate for the company.

10 And again the dividend policy speaks about balancing EFC's  
11 requirements for cash with the corporation's requirements  
12 for capital. So Disco would propose a dividend based on  
13 its budget. And in 06/07 Disco has proposed no dividend.

14  
15 If in fact the earnings are different than the budgeted  
16 earnings, which are referred to here as regular profit,  
17 under article 4, NB Power Disco has the right to apply to  
18 EFC to alter the dividend.

19 If the earnings don't happen as budgeted for reason of  
20 storms or low hydro or whatever the situation is, and  
21 paying the budgeted dividends, if there were any, were  
22 going to cause the company difficulty, we would apply  
23 under article 4 for an amendment to the business plan.

24 Likewise I suppose if we had extraordinary profits in one  
25 year because of high exports or high hydro, we could



1  
2 propose to pay more dividends if we believed that that was in  
3 the best interest of the corporation.

4 Q.692 - Now is that done on an ongoing basis? Or is it done  
5 after the fact?

6 MS. MACFARLANE: It is done through the year based on our  
7 forecast.

8 Q.693 - So it is not a case where the regular dividend gets  
9 paid every quarter, then you stand back and the end of the  
10 year and make adjustments?

11 MS. MACFARLANE: No.

12 Q.694 - Move on to the purchase power agreements, if we could.

13 And I'm not asking them to be pulled out. But we are  
14 going to talk about the administration of the purchase  
15 power agreements on a general basis.

16 And I guess my first question is have any of the industry  
17 experts and financial advisers figured out, given these  
18 purchase power agreements, how Disco was expected to  
19 function in a regulated environment?

20 I will be more specific. Do these -- did the industry  
21 experts and financial advisers tell Disco the onus that  
22 they would have to meet in a regulated environment with  
23 respect to the purchase power agreements?

24 MS. MACFARLANE: I don't -- I honestly don't know that.

25 Because I wasn't party to all the discussions. But I do

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know that the Province's advisers were very aware that Disco was to be a regulated entity.

Q.695 - Okay. And in terms of the -- and just a little seriousness here, again because -- i will wait on that. So they wouldn't have said that Disco would have certain obligations in terms of what it has to show a regulator concerning the prices it is paying under these purchase power agreements.

Did you receive any advice from the advisers in that nature, Ms. MacFarlane, or panel?

MS. MACFARLANE: As I say, the advice would have been to the Province. And I think frankly it would have been the people crafting the Act that would have had that in mind. I'm referring specifically to why and how they crafted 156. It was clearly crafted with an intent as to what would be subject to regulation and what wasn't.

Q.696 - And Section 156 deals with the first hearing?

MS. MACFARLANE: Well, I would contend that it sets a benchmark at the first hearing beyond which only changes are looked at. But I understand that will be a discussion for a later day.

Q.697 - It surely will be discussed if that is your position, Ms. MacFarlane.

Now backing up, did they give you any idea of who this

2 might play out down the road? When I say "they" I'm talking  
3 about the industry experts and financial advisers.

4 MS. MACFARLANE: In what sense are you asking me?

5 Q.698 - In the sense of what you might have to show a  
6 regulator down the road. You didn't get any information  
7 from anybody on that?

8 MS. MACFARLANE: We certainly were aware that the largest  
9 portion of the driver behind the PPAs is fuel costs, and  
10 that that fuel costs and performance would be subject to  
11 review by Disco and by its regulator.

12 Q.699 - If I could refer you perhaps to evidence we placed on  
13 the record yesterday, the exhibit PI-14.

14 MR. MORRISON: Mr. Chairman, I am going to restate my  
15 objection that I stated at the outset of the hearing on  
16 Monday. And this is with respect to the Meehan/Strunk  
17 report. As you know, I placed objections with respect to  
18 what portions of that report should be in evidence and  
19 what portion should be removed. The Board decided to  
20 defer that debate to another time and I am prepared to  
21 make the argument.

22 But I take serious objection to having this witness being  
23 cross-examined on a report, the contents of which this  
24 Board hasn't ruled are admissible or not.

25 And furthermore, I believe that if we are going to

1  
2 have that debate now, Mr. MacDougall or his partner will  
3 definitely want to be present because I believe it's Mr.  
4 MacDougall's position that the entirety of the report  
5 should not be admitted into evidence.

6 CHAIRMAN: Well, Mr. Hyslop, is it your intention to ask  
7 questions of this Panel concerning any of the areas that  
8 the solicitors for Disco put forth in their correspondence  
9 that they objected to?

10 MR. HYSLOP: In fairness, I have not reviewed fully the  
11 objections against the areas that I intend to take the  
12 witness. I can say that I think the bulk of it deals with  
13 sections that were not put in dispute, but I haven't gone  
14 through it section by section. So I can't say  
15 unequivocally yes to that. I would have to review the  
16 objections.

17 CHAIRMAN: Can you postpone this until after lunch and do  
18 that over the lunch hour. You are going to be -- I hope  
19 you have time to eat.

20 MR. HYSLOP: I have got to move desks, too. But the -- if  
21 it may assist the Board, my line of questioning is  
22 directed not to challenging of any costs, but simply on a  
23 broad perspective of the nature of these contracts, the  
24 nature of the regulation that they would appear to be  
25 under in other jurisdictions. And question this Panel as

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to whether or not they would accept the -- some of the suggestions and some of the statements in these reports as to how these PPAs would work in a regulated environment for purposes of future regulation. That's where the line of questioning is going, Mr. Chairman.

MR. MORRISON: Look, Mr. Chairman -- and I understand where Mr. Hyslop is coming from and I understand that that's the thrust of his experts' opinions, but quite frankly, and with all due respect to Mr. Hyslop, eliciting comments from these witnesses with respect to whether, for example, the PPA was crafted in a manner that was appropriate for regulatory review or not regulatory review, these witnesses have nothing to offer with respect to that issue. It's really -- certainly, Mr. Meehan or Mr. Strunk may offer opinion on that. Certainly I will be cross-examining them on that issue if in fact the report goes into evidence and will be arguing the point. But it's a legal issue, Mr. Chairman. And it's not a question of fact, especially when we are in what is now the revenue requirement portion of this hearing, the OM&A aspect. Basically it's a legal issue.

MR. HYSLOP: It's not a legal issue at all. They seem to know an awful lot about the PPAs and how they work. But no one can tell me how it impacts with regulation and no

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one wants to discuss that from the applicant's point of view.

However, Mr. Chair, I think I should review the sections.

If there are sections that are opposed to, I submit those questions can be put forward. Or alternatively perhaps we can discuss how to handle this part of the direct examination more effectively perhaps during part of next week or something after we have had a discussion with them, if there is going to be this much of an objection.

CHAIRMAN: I think what we will do is that we will break now because you do have a number of things that you have on your plate, if you pardon the pun, in addition to lunch. So we will come back at quarter after 1:00.

MR. HYSLOP: Thank you.

(Recess - 11:45 a.m. - 1:15 p.m.)

CHAIRMAN: Good afternoon, ladies and gentlemen. Do I have in front of me the definitive schedule?

MR. HASHEY: We have had a lot of problem with definitions. What do you mean by definitive? This list I hope is a very real and workable schedule as a result of meeting of counsel today.

CHAIRMAN: Yes.

MR. HASHEY: The one issue that varies a little from the

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norm, if you like, is that Mr. Strunk can be her on the 16th.

And it may be a matter of having him testify, setting the other panel down and having him testify and bringing the panel back the following day or the following week actually to finish cross examination.

And that arose really from the fact that Mr. MacNutt really does want to go last. And we respect that. And I think it is workable, very workable.

CHAIRMAN: Well, that is -- and all parties have agreed with this schedule. So that is fine.

Any preliminary matters from the Applicant or the other Intervenors?

MR. HYSLOP: Mr. Chair, with respect to the schedule, I don't think Mr. Hashey meant anything other than what he said. But that February 21st, 22nd is still up in the air with the CCAS, taking into account my remarks this morning.

What we are doing, we will receive the filed reports of evidence from Intervenors on the 17th. And you will note on the 20th there is a section for arguments on any new CCAS expert reports of any legal counsel.

And that does leave open my pending remarks from this morning. And if I'm mistaken, Mr. Hashey, please correct me.

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MR. HASHEY: No. That is absolutely right. I apologize.  
That is why that section is in there. If there is an  
issue over new reports it will be dealt with on the 20th.  
And we will have to see where we go from there.  
But I think to say now that we should put things off would  
be wrong. Because I think we are speculating as to (a)  
what would be a report, what will be in it, whether it has  
any material difference here. But I respect Mr. Hyslop in  
his comments on that.

CHAIRMAN: Well, of course the only problem is that if we do  
have to cancel out the 21st and 22nd and move to another  
date, we pay for the room and all of the support services.  
That is why I'm saying that if you feel that the schedule  
is too tight, let's move it now and we can save those  
costs.

MR. HYSLOP: On the balance of probabilities I think the  
schedule is going to be too tight on that issue,  
Mr. Chair.

CHAIRMAN: Okay. Well, I will ask you during the break then  
to chat with counsel opposite.

MR. HYSLOP: I was asked to at least see the report before I  
made a definitive statement. I think I agreed with  
counsel that that might be reasonable.  
But based on what my gut instincts are telling me



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2 here, I'm probably going to be here on the 20th asking to push  
3 that out to the 13th. I just -- that is all I'm going on  
4 is my instincts. And I could be wrong.

5 MR. MORRISON: As far as costs are concerned, Mr. Chairman,  
6 I think, as you know, they ultimately land in the pocket  
7 of my client.

8 And I think we are prepared to take the risk on the costs  
9 in order to keep the schedule if indeed the schedule can  
10 be kept.

11 CHAIRMAN: I'm going to quote that back at some distant time  
12 in the future I think, Mr. Morrison.

13 MR. HYSLOP: I move that expense be not permitted as part of  
14 the Revenue Requirement, Mr. Chair.

15 CHAIRMAN: Mr. Hyslop, you are now in position I see. Go  
16 ahead, sir.

17 MR. HYSLOP: Thank you very much, Mr. Chair.

18 MS. MACFARLANE: Mr. Hyslop, I wonder if you would give me a  
19 moment to address something that I said this morning.

20 Just to correct the record, Mr. Chair, it was brought to  
21 my attention over the lunch hour that this morning I may  
22 have said or implied something to the effect that I or NB  
23 Power disagreed with sections of the Electricity Act.

24 I would have to check the record, the transcript on that  
25 when it comes out. But if I said or implied such a

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2 statement, I did so unintentionally. And I just wanted to  
3 make it clear that NB Power recognizes the authority of  
4 the Electricity Act and we are complying with it.

5 To clarify my comments of this morning further, there were  
6 two sections of the Act as tabled that caused NB Power  
7 concern. And that was largely from a timing perspective.  
8 The first was Section 80 of the Act which calls for Disco  
9 to issue request for proposals for supply when the PPAs  
10 under the Act, including the Nuclearco PPA, would be  
11 insufficient to meet Disco's supply obligations.

12 It was felt that in the absence of a decision on the  
13 refurbishment of Point Lepreau, proclamation of this  
14 section would put a full one-third of the province's  
15 supply out to a market that was at a very early stage of  
16 development and that this would leave Disco vulnerable to  
17 inordinate supply and price risk.

18 Through consultation with government and in line with  
19 their concept of a deliberate and controlled transition,  
20 the proclamation of this section of the Act was delayed  
21 until a refurbishment decision was made.

22 The other section was Section 5 calling for the  
23 Transmission Corporation to leave the group of companies.

24 NB Power expressed concern to government about timing of  
25

2 this action. And the proclamation of this section was delayed  
3 as well.

4 So I just wanted to put that in context so there wasn't  
5 something on the record that would indicate that somehow  
6 NB Power disagreed with the Act. Thank you.

7 CHAIRMAN: Well, just because one doesn't agree with certain  
8 sections or their import doesn't mean that you are not  
9 bound by the legislation.

10 MS. MACFARLANE: Absolutely.

11 CHAIRMAN: Certainly this Board is on the record as having  
12 said on a number of occasions that we disagree with the  
13 way it is or something may be. But we are bound by the  
14 law. And we abide by it.

15 Anyway, thank you for that. Mr. Hyslop?

16 MR. HYSLOP: I have no cross examination of that,  
17 Mr. Chair. The first preliminary point -- that deals with the  
18 first preliminary point we dealt with this morning, where  
19 we had given some homework overnight and it come back  
20 partially answered. We are proposing to retry the quiz.  
21 And I do have a more specific series of questions where we  
22 would ask the blanks to be filled in along with the one  
23 answer that you undertook to give us on the fiscal year  
24 2003/04 on NB Power, the original corporation.

2 MR. MORRISON: Mr. Chairman, I'm just looking at this  
3 closely and I will probably have to consult with my client  
4 as to the details of it. But I do note that it appears to  
5 ask for specific information from Genco, Colesonco,  
6 Transco and Nuclearco, their specific costs, which first  
7 they are not parties to this application, secondly I  
8 believe the Board's ruling with respect to Section 156 on  
9 January 11th would put the completion of those -- this  
10 table basically out of play in this proceeding, Mr.  
11 Chairman. And that's my first blush look at this table.

12 CHAIRMAN: I'm not going to make a ruling on that sitting up  
13 here. You have given me your comments and we will take  
14 them during the break and I will confer with my fellow  
15 Commissioners on it.

16 MR. HYSLOP: Thank you very much, Mr. Chair. The issue,  
17 amongst other issues, is not to challenge the returns to  
18 these other companies. But one of the things that has  
19 been clearly in issue since the cross examination started  
20 was the restructuring of the New Brunswick electricity  
21 industry.

22 And in your decision of January 11th you indicated,  
23 amongst other things, evidence that went to help explain  
24 the structure of the electricity industry would be  
25 evidence that this Board would be prepared to consider.

2 During my cross examination I have been attempting to  
3 elicit a couple of things, the purposes of the  
4 reorganization which appear to be to create competitive  
5 markets, and also to create specific cash flows back to  
6 the government as part of the financial reorganization.

7 It's our view that this means fairly significant amounts  
8 of money going back through to the government and the  
9 shareholder, and more than would have been before. And  
10 indeed I think that has been at least partially conceded  
11 on the record.

12 This Board is going to be asked to comment on the nature  
13 of the restructuring within the context of the Electricity  
14 Act. And one of the important things is how bona fide is  
15 the attempt to go to a competitive market and weighing  
16 that off against the financial implications of the  
17 restructuring.

18 I think New Brunswickers have a right to know how much  
19 more money is going to the Province of New Brunswick as a  
20 result of the restructuring. I think that's well within  
21 your jurisdiction as the supervisors of the electricity  
22 market and the Electricity Act. I think the comparison of  
23 what was paid, ideally it would have been on the  
24 hypothetical we provided, but using the last base year for  
25 the old NB Power, and what is coming out of it now is a

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very important indicator of some of the integrity of the "move to a competitive market", or is this just a question of dollars for the government.

It is my submission that this is a very material document that this Board would want to have the information off of if it was going to make comments of that nature as part of this rate hearing and as part of dealing with the future of the electricity industry under the Electricity Act.

MR. MORRISON: Mr. Chairman, first I guess just from a factual point of view, I believe the aggregate numbers were put in evidence by Ms. MacFarlane this morning. So as far as breaking them down by the individual corporations is concerned, I don't think that's an issue if the Board really wants to look at those returns. But I think we have to put this in the context of what this hearing is all about, and it is not the Gomery Inquiry into restructuring, it is a rate application. It is a revenue requirement rate application. The Board has said that the reasonableness of the costs coming through the PPAs is not an issue. The costs have clearly been set out. To go in as far as whether we have a competitive market or not, again, with all due respect, it has nothing to do with an application for a

2 revenue requirement.

3           What we are here to determine is whether the revenue  
4           requirement that Disco has put forward in its application  
5           is valid. And you make the inquiries into OM&A costs, are  
6           those costs reasonable, the PPA costs, we are going to be  
7           dealing with the variable components of the PPAs next  
8           week.

9           Again, it's not -- in my respectful submission this is not  
10          an inquiry into whether restructuring is a good thing, a  
11          bad thing, whether the Electricity Act is something we  
12          like or don't like, agree with or disagree with. And as  
13          far as I'm concerned, the completion of this table does  
14          nothing to further -- has no probative value with respect  
15          to the issue that is before the Commission.

16       CHAIRMAN: Thank you, gentlemen. Any of the other parties  
17          have any comments they wish to make on this? Can we give  
18          you a ruling after the break this afternoon?

19       MR. HYSLOP: I don't try to pretend to tell Premiers or  
20          Chairmen of the Board how to do their job, Mr. Chair.

21       CHAIRMAN: I'll not go there. Okay. That's fine. We'll  
22          rule on it after the break then.

23       MR. HYSLOP: Thank you, Mr. Chair.

24       CHAIRMAN: Go ahead, Mr. Hyslop.

25       MR. HYSLOP: Thank you. About two hours of my cross

2 examination is being deferred to next week, part of what we  
3 decided in the schedule, but to continue perhaps would be  
4 a good time --

5 CHAIRMAN: Did we save that for the 23rd of February, was  
6 it?

7 MR. HYSLOP: Yes, that's right.

8 Q.700 - However, I want to go back to this whole idea of a  
9 competitive market place as being developed and I have  
10 another hypothetical situation I would like to put before  
11 the Board, or before the witnesses.

12 CHAIRMAN: I have a feeling there is too much academia  
13 involved here somehow.

14 MR. HYSLOP: Thank you, Mr. Chair. I have got a  
15 hypothetical, I will read it into the record and we will  
16 ask some questions on it.

17 Q.701 - Panel, it's March 31st. You have just completed your  
18 revenue requirement portion of the case and you are  
19 pleased with your job and anticipating a favourable  
20 ruling. A large generator, its president in New England  
21 has contacted you and he has been following with some  
22 interest the development of the competitive market for  
23 electricity in New Brunswick.

24 While he does not pretend to understand all the  
25 intricacies of our Electricity Act, Market Rules and



2 existing PPAs, he believes that there is an opportunity for  
3 his company in this New Brunswick market.

4 He has noted the current pricing of the PPAs for both  
5 capacity and energy. He believes his company can make a  
6 competitive offer that would prove advantageous to the  
7 ratepayers of New Brunswick, while affording his company  
8 an opportunity to make a profit on some export sales.

9 So he proposes to Disco for the next three years to offer  
10 to supply 1,000 megawatts of capacity and 7,000 gigawatt  
11 hours of energy at prices that are five percent below  
12 those currently in effect for the PPAs. Assume there is  
13 no interconnection or transmission constraints.

14 In view of the mandate of Disco to provide lowest possible  
15 cost service to its clients, what would happen when this  
16 offer is received? And as this is really a Disco issue,  
17 Mr. Marois is the senior officer -- I appreciate there is  
18 a panel, but what would happen, Mr. Marois? What would  
19 you do when this came on your table?

20 MR. MAROIS: I guess there would be three aspects to my  
21 response.

22 First of all at this stage of the game we do not need  
23 additional long-term supply either in terms of energy or  
24 capacity. And the way the market was restructured is if  
25 and when Disco needs new capacity and supply, then we

2 would go for an RFP under Section 80 of the Act. So that's  
3 the first aspect is if we don't need it then -- and if we  
4 do need it, we have to follow the open process in the Act.  
5 Where we could potentially need it is if an existing  
6 generation plant would go out of service. Then we would  
7 have less energy and capacity and then we could look at an  
8 offer like this.

9 I guess the second aspect of my response which is related  
10 to this is -- and it's consistent with this -- is the PP  
11 would not allow us to reduce our nominations with Genco  
12 just to try to get a lower price. And that's consistent  
13 with the issue of stranded costs.

14 Clearly the restructuring the way it was set up is that if  
15 -- since Disco has access to all the generation capacity,  
16 it also has the obligations. And if Disco was allowed to  
17 reduced its nomination to seek a better price, then Genco  
18 would potentially be stuck with stranded costs.

19 But a third component of my response which is probably  
20 maybe the most relevant here is I would refer them to our  
21 customers that can leave the system.

22 Q.702 - Pardon me.

23 MR. MAROIS: I would refer them to the customers that can  
24 leave our system which represents at least 40 percent of

2 our load. So these people could go talk to these customers  
3 and if they could offer them a better price, then that's -  
4 - so in the short term really that's where there is an  
5 opportunity for those customers that can leave the system,  
6 they could look at an offer like this. For Disco to be  
7 active in the market place the rules are set. If and when  
8 Disco needs new capacity, it will go through an RFP  
9 process.

10 So those are the rules that are in place right now and we  
11 would look at an offer like this based on those rules.

12 Q.703 - Now before you made a final decision would you go to  
13 Genco and say, can you meet the market price by lowering  
14 your prices by five percent?

15 MR. MAROIS: No. That's not part of the --

16 Q.704 - It's not part of the way it's supposed to work?

17 MR. MAROIS: No. We have got a long-term contract with the  
18 generation companies that's parallel the cost of  
19 generation. These costs -- as you indicated yourself,  
20 these costs come from the transfer of assets to these  
21 companies and these assets were transferred at cost base.  
22 So Genco over the long run is simply recovering its cost.  
23 Any profit Genco is making is returned to the Province to  
24 pay down the overall debt.

25 I think one thing we must not lose track of here is

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2 all the NB Power group of companies are still owned by the  
3 province, and any profit that these companies make go to  
4 help reduce the debt. We must not lose track of that.

5 Q.705 - Sure. So one of the other consequences of the power  
6 purchase agreements then is to potentially lock you into a  
7 higher cost provider of electricity?

8 MR. MAROIS: It's a broader issue than that. As part of  
9 restructuring the heritage assets were transferred to  
10 generation companies. Disco was given access to those  
11 assets, all the rights and all the privileges, and the  
12 terms and conditions were confined in the PPAs. So these  
13 assets are the same assets that were there to provide --  
14 continue providing benefits to New Brunswickers.

15 If somebody else is able to come in with lower costs, the  
16 rules are already there. The rules are that. The  
17 wholesale customers of a large industry are able to leave  
18 to take advantage of these lower prices right away, while  
19 the existing customers of the utility, the standard  
20 service provider, will be able to benefit from this when  
21 assets are retired or where we go out for new supply.

22 That's crystal clear in how the market was structured.

23 Q.706 - If you would, panel and Mr. Marois, could you identify  
24 for me a time or a year in which Disco would be able to  
25 consider accepting this proposal, assuming that its

1  
2 analysis led to a conclusion the proposal was certainly in the  
3 best interest of the utility's ratepayers?

4 MR. MAROIS: I can't give you a specific year. It would  
5 depend on when we need new long-term supply. And like I  
6 mentioned earlier, we wouldn't even look at this proposal  
7 in isolation. Under Section 80 of the Act we would have  
8 to go for an RFP.

9 Q.707 - And as I understand it, you are forecasting a need for  
10 further long-term supply in the middle of the next decade?

11 MR. MAROIS: With the current conditions and assuming all  
12 existing facilities continue to operate.

13 Q.708 - Now, Ms. MacFarlane, I wasn't going to leave you out.

14 Seeing how Disco is going to handle this, how would the  
15 global companies, the global NB Power, the Genco and the  
16 Holdco -- would they look at this offer any differently  
17 than the way that was just explained by Mr. Marois?

18 MS. MACFARLANE: All of the companies are bound by the Act  
19 and the purposes for each of the companies is outlined in  
20 the Act. There I suppose is provision such that Genco  
21 could look at entering into this type of arrangement for  
22 export. That would be allowed under the Act.

23 Q.709 - I'm not -- I'm going to say something. I practised  
24 law in Carleton County where I had two truck dealers for  
25 clients. So I understand a little bit about competition

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from that. You want a competitive environment. Right now is it not correct that NB Power has a fairly significant price advantage in parts of New England for its electricity?

MS. MACFARLANE: Depends on the day. Right now we do not have a competitive advantage. Three weeks ago we did.

Q.710 - Could Genco sharpen its pencil and go out and find other customers if Disco could get this good a deal in a competitive market?

MS. MACFARLANE: Genco's costs are entirely driven by fuel, the costs they can control, and those are set by world markets. As I say, three weeks ago we were doing very well in the export markets because natural gas prices were still following the post-Katrina effect. They have dropped dramatically. Oil prices are -- oil which is what we generate off of for export is no longer competitive with natural gas. It doesn't matter how well Genco manages or doesn't manage, those are the realities of the market place. We are a price taker and our costs are driven by world markets.

Q.711 - Would you consider bringing these industry experts and financial advisors back in and say, gee, this is a great opportunity for Disco's customers to get a better price, and can we restructure this a little bit again to give New

2 Brunswickers an advantage of this. Is that something that  
3 anybody at NB Power would consider a way to proceed with  
4 this rather magnanimous offer from a supplier.

5 MS. MACFARLANE: I think Mr. Marois pointed out that there  
6 is both the right and the obligation that goes with  
7 heritage assets. And I might point out it was the market  
8 design committee that recommended that the heritage assets  
9 that are owned by the generators Nuclearco and Genco be  
10 made available to Disco, and that Disco have both the  
11 right to them and the obligation to service and pay for  
12 them over time, to avoid a large stranded cost issue in  
13 the Province of New Brunswick. There was also a belief by  
14 the market design committee that those were economic  
15 assets and have, as they have in the past, provided  
16 economic supply.

17 Q.712 - Perhaps just to go a little further with this  
18 scenario, Mr. Marois. Let's assume that as the VP of  
19 Disco you have looked this over and you think that this is  
20 really a great thing, I would really like to do it.  
21 You know, who at Disco would build the case of it? How  
22 would you make the argument to the other companies?

23 MR. MAROIS: What you seem to be missing is that there are  
24 some pretty clear rules that are set out, rules in the  
25 legislation, rules on how we were structured, what we are

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able and not able to do.

Disco is not able, under their market rules, under the current legislation, to just go out and buy additional power if it doesn't need new power. And when it does it has to fall on our feet. That is crystal-clear.

The way the market was restructured here is to allow wholesale customers and large industrial customers to take advantage of offers like these. That's how the market was structured, so these customers could take advantage of these offers.

Q.713 - And the customers that aren't able to take advantage of that wouldn't get the advantage of offers like this?

MR. MAROIS: The customers that remain with the standard service provider Disco continue to benefit from the Heritage assets.

Q.714 - At 5 percent higher rates. Anyhow I will pass along with that. I thank the panel --

MR. MAROIS: It is funny, Mr. Hyslop. Because a lot of your questions were to the point that there was no market. And now you are criticizing us for not taking advantage of any particular offer, so --

Q.715 - Move on. I have got a few questions relating to amortization. Refer you to -- I guess it is Exhibit A-50 under tab 3, and then tab 3 again and then page 2. And I



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hope I will find table 3(a).

CHAIRMAN: Would you give us those coordinates again?

MR. HYSLOP: Sure I will. Exhibit A-50, section 3, Direct Evidence of Lori Clark -- tab 3, Direct Evidence of Lori Clark, page 2. And I'm looking at table 3(a).

Q.716 - Now looking at this, Mrs. Clark, are we to understand that the first category, Distribution assets which represents 77 percent of the total forecast of fixed assets, are actually planned asset investments and not actual Distribution assets at this time?

MS. CLARK: Those assets are a specific category of assets.

They are our poles, our new services, our insulators, that type of thing, easements, clearing.

They are a particular type of assets and investments that we make in any particular year. They are just categorized as what we call Distribution assets.

Q.717 - Now you use the phrase I believe on page 4 that the Distribution assets relate to planned system improvements and customer-requested work. It represents almost 75 percent of Disco's capital spending.

Now that is again looking at -- and your reference is to table 3(a), line 1?

MS. CLARK: That's right. They are planned improvements to Disco systems. But they are also customer demand work.

2 Q.718 - My question is these assets exist now? Or are they  
3 planned assets during the course of 2006/2007?

4 MS. CLARK: I'm sorry. Can you repeat the question?

5 Q.719 - Yes. I'm asking are these assets are they assets that  
6 actually exist at the present time? Or are they  
7 forecasted assets that you are planning on acquiring  
8 during 2006/2007?

9 Because the phrase you use are planned assets and asset  
10 investments. Planned asset investments. You use that  
11 phrase. And I was confused. Is that something you have  
12 or something you don't have and you are going to get?

13 MS. CLARK: It's both. It is something that we have. And  
14 if I can take you to table 3(a) on page 2, which is where  
15 you started, you can see at April 1st 2006 we had \$793  
16 million in investment and Distribution assets. And in  
17 addition we have got \$30 million planned for 06/07 in that  
18 category.

19 Q.720 - Okay. Now I want to refer you to table 3(b) on page 3  
20 of the same section.

21 And in that you refer to the Revenue Requirement. How did  
22 you arrive at a materiality level for \$250,000 for  
23 software?

24 MS. CLARK: Those materiality limits are set and reviewed by  
25 our external auditors and our Amortization Review

2 Committee.

3 Q.721 - Okay. How many software programs do you have that  
4 cost \$250,000 or more?

5 MS. CLARK: I don't have that number with me. But I do know  
6 workforce management system replacement, our CCS, customer  
7 information system, our financial system, SAP would all  
8 qualify for capital, additional software greater than  
9 \$250,000.

10 Q.722 - And so would you undertake to file the information  
11 with regard to any software that costs over \$250,000 and  
12 the basic one which is being amortized?

13 MS. CLARK: On table 3(a) under Information Systems, line 7,  
14 column 2 there has been an investment of \$44.1 million in  
15 information systems which would be our computer software  
16 and hardware.

17 Q.723 - Yes. I understand that. But I have asked you if you  
18 could list and provide the cost of any computer system  
19 software that you have paid in excess of \$250,000 for?

20 MS. CLARK: We have that for what's on our books today. And  
21 I can certainly provide that.

22 Q.724 - Thank you. Were there any assets transferred to Disco  
23 at the time of the reorganization that were transferred  
24 outside of the transfer orders?

25 MS. CLARK: No.

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Q.725 - I want you to consider a number of questions. With respect to the process of transferring assets from an integrated utility to a series of operating entities and with particular reference to Disco, please answer the following.

In the process of classifying assets of Generation, Transmission, Distribution, what outside expertise was used in this classification?

MS. CLARK: We have assets that are very easily attributable to different business units. Like Generation plants would go with Generation and Distribution assets with Distribution. We have very detailed fixed asset records that would allow us to differentiate assets by company. In addition we had -- there were some Transmission and Distribution assets where we had engineering folks involved who could actually tell the differentiation between companies and where the assets were being used. And in the business unit structure we began looking at the different assets by company at that time, and by business unit rather than by company. And then when we actually had the company separated it was very easy to differentiate the assets.

Q.726 - So the answer to my question would be that you did not have any outside expertise with regard to assisting in the

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classification of assets?

My question is a simple one. Did you hire anybody outside to assist you?

MS. CLARK: Disco did not have any outside expertise. But it was relatively clear which assets were used in the Distribution business.

Now Transmission may have had some involved in preparation for the OATT. But I'm not -- I don't know those specifically.

Q.727 - So if this reclassification was handled internally, was anybody assigned to represent or look out in particular for Disco's interests so that it didn't get assets it really didn't need or want?

Or to be more precise, was this something that was just decided amongst NB Power itself?

MS. CLARK: Disco didn't exist at the time. There were officers of NB Power involved. But as I said, there were engineers who were very familiar with our infrastructure.

And they were able to differentiate which assets were used in which company.

Q.728 - Was a distribution amortization study prepared as part of this process of transferring assets?

MS. CLARK: No. There wasn't anything completed at that time.

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2 Q.729 - Or plans to complete such an amortization study?

3 MS. CLARK: We have committed to complete an amortization  
4 study in the next 12 months and file it with the Board.

5 Q.730 - I didn't catch the last part of your answer, I'm  
6 sorry, Ms. Clark?

7 MS. CLARK: And file it with the Board in 12 months.

8 Q.731 - And you agreed to do that obviously?

9 MS. CLARK: Yes, we did.

10 Q.732 - It takes away my next question.

11 Now I don't want to push this. And I keep in mind my  
12 concessions under Section 12 to Ms. MacFarlane this  
13 morning.

14 But if you were called upon today to prove to this Board,  
15 and in the absence of a distribution amortization study,  
16 how would you prove or what evidence would you put before  
17 the Board to satisfy them that the assets transferred are  
18 properly classified as Distribution assets? What evidence  
19 would you have internally?

20 Or would it just simply be the thoughts of the people that  
21 were running NB Power at the time the companies were  
22 formed?

23 MS. CLARK: As I said before, we do have detailed books and  
24 records where we can identify which assets belong to which  
25 company and which area of the business they are being used

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2 in.

3 In addition we have an amortization review committee that  
4 would look at the particular assets of each company. And  
5 our external auditors have also reviewed the assets of  
6 each company.

7 Q.733 - So again I go back. You would be introducing those  
8 records of acquisition and use as your proof?

9 MR. MORRISON: I don't believe she made that undertaking.

10 MR. HYSLOP: Pardon me?

11 MR. MORRISON: I don't believe the witness gave that  
12 undertaking.

13 MR. HYSLOP: I didn't catch it. I'm sorry.

14 MR. MORRISON: I said I don't believe the witness gave that  
15 undertaking.

16 MR. HYSLOP: No. I didn't -- I'm going back to again -- and  
17 I may not ask for one.

18 Q.734 - My question again is so the records you would use  
19 would be the records of how the assets were classified and  
20 acquired prior to the breakup of the company. Would that  
21 be correct, Ms. Clark?

22 MS. CLARK: I would show the detailed fixed asset records by  
23 company.

24 Q.735 - And if they didn't match up with the original records  
25 I assume you would have some explanation as to why assets

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were transferred?

MS. CLARK: I'm quite certain they would line up.

Q.736 - Were those type of analyses done? Or were the assets just transferred based on the basis of their current classifications?

MS. CLARK: There were engineers involved in the breakup of the assets by company. And they were able to identify which assets belonged with which company.

Q.737 - So it didn't depend on the current classification of the assets. It was based on that plus the information from various engineers?

MS. CLARK: The assets themselves, as I said, when we were business units, were separated at that point in time. Any controversial areas where it was -- whether we were using the high side or the low side of a transformer or where the building would fit were areas where we got other people involved.

Q.738 - So there may have been some adjustments to the preorganization classification?

MS. CLARK: When we were business units we began the process of separating the assets at that point in time by company. And at restructuring -- before restructuring took place the asset list was finalized.

Q.739 - So there were adjustments in the leadup period to the



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reorganization?

MS. CLARK: At least on minor items in the separation of Transmission and Distribution items and also the building. The building was a Holdco asset. And there were still a few assets sitting in Holdco at the time.

Q.740 - How would you prove to the Board that the amortization rates that were applied to the distribution assets prior to the transfer are the same amortization rates in effect after the transfer?

MS. CLARK: There haven't been any changes to our amortization policies as a result of restructuring.

Q.741 - Yes. I appreciate that's your evidence, but how would you prove that, Mrs. Clark?

MS. CLARK: Our audited financial statements would prove that there haven't been any changes to our accounting policies or our amortization policies.

Q.742 - But again if there would have been reclassification of the assets or the type of asset, would that not affect the amortization rates to the assets themselves, with inconsistent accounting principles?

MS. CLARK: The movement of assets would not have changed the amortization rate.

Q.743 - And finally, Mrs. Clark, a question here, how would you prove to the Board that the amortization expense that

2 is claimed as part of the revenue requirement for Disco is  
3 properly calculated on the appropriate assets, the right  
4 asset balances and with the right amortization rates?

5 What evidence would you bring before this Board to give us  
6 all the satisfaction that that number is correct?

7 MS. CLARK: I think there is at least two different ways  
8 that I could prove that.

9 Q.744 - Yes.

10 MS. CLARK: One is the continuity of our amortization  
11 expense year over year. It hasn't changed significantly  
12 year over year. And it's being calculated consistently.  
13 As a result -- or as well we have an audit committee that  
14 reviews all of the financial records of the company and  
15 would determine any -- would be aware of any significant  
16 change in amortization. And also our audited financial  
17 statements would ensure that the calculation of the  
18 amortization was correct.

19 Q.745 - You mentioned the audit committee. I take it that's  
20 an internal audit committee, Mrs. Clark?

21 MS. CLARK: That's the audit committee of our board of  
22 directors.

23 Q.746 - Yes. And again dealing specifically with this concept  
24 of distribution assets, would it not seem reasonable if  
25 you really wanted to prove your case that you might have

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some type of outside expert confirm that the transfer of assets is valid assets that you need and that they have been transferred at proper book values net of -- I keep wanting to say depreciation -- but amortization, and that the rates on them are current. Would that not be a way to fully satisfy this Board that your fixed asset base is in line?

MS. CLARK: The assets were all transferred as part of transfer orders. So they are legitimate expenses in Disco's 06/07 revenue requirement. As well -- sorry. I just lost my train of thought on that. Could you repeat the question?

Q.747 - Yes. If you really wanted to put evidence before this Board that the amortization expense is properly calculated on appropriate assets for the distribution company, that the balances which you received them at were proper, and the right amortization rates are being applied in the future, my question was would it not be considered appropriate by Disco to provide an expert independent report to that effect?

MS. CLARK: We have undertaken to do that report and it will be filed within 12 months. There will be -- we don't anticipate any material change in our distribution asset category as a result. But as I indicated those assets

2 were transferred at net book value and they were transferred  
3 as part of the transfer orders. And the related  
4 amortization expense and policies haven't changed.

5 Q.748 - I do appreciate the latter point. This report is  
6 being prepared by whom, Ms. Clark?

7 MS. CLARK: We haven't contracted anyone to do the report  
8 yet, but we will be.

9 Q.749 - Will you be issuing a request for proposals for the  
10 completion of it?

11 MS. CLARK: We haven't talked about that yet.

12 Q.750 - So this report is really just in its concept stage at  
13 present, but it will be done within the year?

14 MS. CLARK: Absolutely.

15 Q.751 - Thank you.

16 CHAIRMAN: Mr. Hyslop, maybe this would be a good spot to  
17 take the afternoon break?

18 MR. HYSLOP: I'm always at the Board's direction in that  
19 regard, Mr. Chair.

20 (Recess)

21 CHAIRMAN: The Board has a couple of rulings to make. The  
22 first one was brought to our attention by Mr. Young. And  
23 that is that some members of the press are desirous of the  
24 Board changing its ruling of last July wherein we said at  
25 the public day, we could see that as being an exception as

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to when taping, both audio and video, could occur in our hearings because we wanted members of the general public to feel comfortable -- as comfortable as they could in this what tends to be formal hearing setting.

And I have had an opportunity to speak with my Commissioners and we are unanimous in saying that is our general rule. However, if as we get closer to the public day, we find that there is interest in some of the people who are going to present to the Board, to have the cameras, et cetera, present in the room, that we will consider at that time grouping them so that those who want the cameras and audio in the room can give their presentations at one time and then those who don't want it can come say later.

All right. That is -- and again, thank you, Mr. Young, for bringing that to our attention.

And this is in reference to homework 2, shall I term it?

MR. HYSLOP: Snap quiz 2, Mr. Chairman.

CHAIRMAN: Snap quiz 2, all right.

Mr. Morrison, while you may be correct and this may not be terribly relevant to this proceeding, we do have some curiosity about it and we feel that the witness has already answered it in a combined kind of form so that we

2 will request you to complete this to the best of your ability  
3 and return it to the hearing room.

4 MR. MORRISON: Just on that point, Mr. Chairman, and I  
5 consulted with Mr. Hyslop on this, the second paragraph on  
6 the homework assignment is in there by an error and we  
7 have agreed to the parameters as to what had to be done in  
8 the even that you ruled as you did.  
9 So just as a point of clarification. Thank you.

10 MR. HYSLOP: For the record, that is correct, Mr. Chairman.

11 CHAIRMAN: I see you didn't pay any attention to my agent of  
12 the Province so you can use that. Okay, carry on, sir.

13 MR. HYSLOP: Just by way of assisting the Board, parties and  
14 members of the public, we have got about 20 minutes left  
15 this afternoon and I have got a line of questioning that  
16 will slot into that. I have some questions on OM&A and  
17 keeping with the education of this, I have a bunch of  
18 short snappers that flow out of some of the IR responses.  
19 I would anticipate together with the 20 minutes today,  
20 probably if not before the break, very shortly after the  
21 break tomorrow, I would be finishing my cross examination,  
22 Mr. Chair.

23 CHAIRMAN: Thank you.

24 Q.752 - Just finalizing --

25 CHAIRMAN: Start with the snappers, I like that.

2 Q.753 - Have to always do your mental math at the end of  
3 class, Mr. Chair. Just finishing up on the amortization  
4 issue and this goes to the Gannett Fleming report, which  
5 was the report that was filed with Board by the PUB. I  
6 don't specifically recall the exhibit number it was given,  
7 but I do want to confirm a few things on the record and  
8 some of it might already be there.

9 The first question is does Disco accept the findings of  
10 this depreciation review?

11 MS. CLARK: There is one place in the report that we are  
12 going to have the review done obviously. But there is one  
13 place in the report where they talk about -- I don't have  
14 the report. I would like to have the report in front of  
15 me before I -- so there is one area in the report where  
16 they talk about distribution assets. And distribution  
17 assets to Disco mean something a little bit different than  
18 I think was implied in the report.

19 Distribution assets are a particular category of assets in  
20 the distribution company. And the report I think spoke to  
21 distribution assets as the whole group of assets in the  
22 distribution company, not just a particular category. In  
23 any event, we have written a letter to the Board and we  
24 are going to have the study completed and the results  
25 filed within the year.

2 Q.754 - And will that be on just the distribution assets as in  
3 the sense -- your sense of distribution assets or in the  
4 sense of the report sense of distribution assets?

5 MS. CLARK: It will be on all of our assets in the company.

6 Q.755 - So you are taking the broader view then?

7 MS. CLARK: That's correct.

8 Q.756 - Thank you.

9 MR. MACNUTT: Mr. Chairman, perhaps for the record, what  
10 report are we talking about?

11 MR. HYSLOP: Yes. For the record, Mr. Chair, this is the  
12 evidence of Larry Edwin Kennedy before the New Brunswick  
13 Board of Commissioners of Public Utilities, the Gannett  
14 Fleming report, which was dated December 12th. I believe  
15 it was entered as an exhibit, although I do apologize, I  
16 don't have the exhibit number with me at this time. It  
17 was PUB --

18 MR. MORRISON; 12, I believe.

19 MR. HYSLOP: Yes. PUB 12.

20 MR. MACNUTT: Thank you.

21 MR. HYSLOP: Thank you.

22 CHAIRMAN: Well, I have it as PUB 9. Evidence of Larry  
23 Edwin Kennedy related to depreciation.

24 MR. HYSLOP: PUB 9?

25 CHAIRMAN: Yes. 11 is a letter to correct portions of that



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evidence.  
Q.757 - I have a few questions on capital spending. I am looking at exhibit A-50. I am looking under tab -- or section 3, direct evidence of Lori Clark, part 1, page 2.

Oh, I am sorry. I am sorry. That's under the evidence of Lori Clark. And it's section 3, tab 3, table 1. And in particular I am looking at page 1. And Ms. Clark if you would be good enough to show me where I would find table 1, line 4? I am looking at your evidence. I am looking at page 1. It says, of course the evidence supports capital additions, table 1, line 4.

MS. CLARK: That reference speaks to the amortization expense related to capital additions. And it's table 1 that's under tab 1. So I think it's an error. It doesn't actually explain the capital additions. It explains the amortization expense related to those capital additions.

Q.758 - So, Ms. Clark, could you help me by telling me where we would find information on Disco's capital spending program for the test year in your evidence?

MS. CLARK: Disco's capital additions are explained in table 3(a) under column 3. And then the details of that are on the following pages. Specifically, pages 4, 5 and 6.

Q.759 - And I was wondering, Ms. Clark, can you perhaps undertake to provide me a little bit of information with

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2 regard to the capital spending program. Can you tell me the  
3 amount and percentage change in each category of  
4 distribution assets for the past five years exceeding the  
5 test year? Is that something you would be able to  
6 provide?

7 MS. CLARK: Yes, I can.

8 Q.760 - Would you undertake to do so?

9 MS. CLARK: Yes.

10 Q.761 - Thank you very much. Would you please explain the  
11 process that Disco goes through to identify capital  
12 investment needs in each of the categories in table 3(a)?  
13 Under tab 3?

14 MS. CLARK: I am just looking there are two related IRs on  
15 this.

16 Q.762 - Yes.

17 MS. CLARK: One is Disco PUB IR-235, November 28th. And  
18 it's exhibit A-62.

19 Q.763 - Could you repeat that again, I didn't get the exhibit  
20 number, Ms. Clark?

21 MS. CLARK: A-62.

22 Q.764 - Yes.

23 MS. CLARK: PUB IR-253. November 28th.

24 Q.765 - Yes. If you want to just check and provide it since  
25 we are coming back in the morning, we could deal with it

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then, Ms. Clark. I don't mean to put you through a paper chase?

MS. CLARK: In general I can tell you the process that we go through.

Q.766 - Sure. That would be great. I would like to know a little about it?

MS. CLARK: Specifically the distribution asset category and the substation category, those are identified through the engineering group in the regional locations. So they are identified and prioritized in the regions. Then they are brought into the central engineering group and reviewed based on the requirements of the system based on load growth, safety reliability issues. They are then forwarded on to the Vice-President of Disco, who looks at those projects and ensures that they are appropriate projects for the fiscal year and then further reviewed by the President and Board of Directors.

Q.767 - Thank you. Move on to -- I am just conferring, Mr. O'Rourke helped me with this and I didn't sit through all the Rogers stuff, so I have a few questions about distribution poles. And very briefly, Ms. Clark, could you briefly outline the pole replacement policy used at Disco?

MS. CLARK: From an accounting perspective or from an

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2 engineering perspective?

3 Q.768 - No, an engineering/business perspective, what do you  
4 go through and what type of analysis and process takes  
5 place in terms of replacing hydro poles? It's one of your  
6 biggest expenses I understand.

7 MS. CLARK: I can really only speak to that from an  
8 accounting perspective and very generally from an  
9 operational perspective. But those poles are a group of  
10 assets that would qualify for our group asset -- group  
11 depreciation methodology. And as a result, it's very  
12 difficult to -- when you are installing a pole or  
13 replacing a pole, it's very difficult to identify in all  
14 cases which pole it is on our fixed asset record. So it  
15 qualifies for the group depreciation methodology. And  
16 every individual pole isn't identified as a -- when it's  
17 taken out of service, it isn't necessarily identified as a  
18 retired pole. But every new pole that is put on the  
19 system is identified as a new installation.

20 Q.769 - So do we -- is the policy on replacing poles simply to  
21 wait till they fall down or how do we avoid that happening  
22 and how long do we keep them for? If you can't answer it  
23 and you would like to confer with some of your engineering  
24 people -- I am not -- I am not trying to be funny. I  
25 apologize a little bit for the way I phrased that. You

2 know, I want to know, you know, from an engineering point of  
3 view, what goes into an ongoing pole replacement program?

4 And if you need to get assistance, Ms. Clark, it's not my  
5 intention to try to brow beat you into something that you  
6 feel you would be better off answering after assistance.

7 MS. CLARK: I will have to get more assistance on that one.

8 Q.770 - Thank you very much. And while you are talking to  
9 them, I have got a couple more questions you might ask  
10 them. When was -- if you have a pole replacement policy  
11 from an engineering and ongoing business point of view,  
12 well when was this policy developed? When was the policy  
13 last reviewed, both at the engineering level and at a  
14 senior management level? And if you have any comparable  
15 information as to other distribution services in say  
16 Atlantic Canada with regard to their policies, how you  
17 compare yours to theirs? And if you have any other pole  
18 replacement policies that you may be familiar with, other  
19 than one you are using, what they might be? So I will be  
20 happy to give you a list of these questions after so you  
21 can chat with those folks overnight.

22 I want to go on to the replacement of vehicles. And again  
23 I guess what are your procedures to identify the timing  
24 and specific vehicles available for replacement?

2 How do you make those decisions?

3 MS. CLARK: We have a fleet management group that exists in  
4 the holding company. And that group does what we call a  
5 vehicle life cycle criteria evaluation on each vehicle  
6 before it is replaced. And during that review, they look  
7 at things like the age of the vehicle, the kilometers of  
8 the vehicle, where it is being used in the business and  
9 operations. There is a visual, mechanical, hydraulic  
10 inspection completed of all the vehicles before a  
11 replacement is done. And then they identify whether or  
12 not the vehicle can continue to be used in the operations  
13 or whether a new vehicle is required.

14 Q.771 - So does this proceed almost on a vehicle-by-vehicle  
15 basis?

16 MS. CLARK: That's correct.

17 Q.772 - Were you referring to some written document in your  
18 answer as you spoke to me? Notes?

19 MS. CLARK: Yes. That's Disco PUB IR-44, July 14th,  
20 exhibit A-56.

21 Q.773 - Thank you. So with respect to vehicles, does NB Power  
22 use discounted cash flow techniques such as optimal  
23 replacement interval for replacement of vehicles, Ms.  
24 Clark?

25 MS. CLARK: I am not familiar with those terms. But we do

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go through the vehicle life cycle criteria. And we also look at whether or not the vehicle -- where the vehicle is being used and what the lost productivity cost is if the vehicle is going to be in the shop for any particular period of time. We could have a two or three-man crew sitting idle while the vehicle is being repaired.

MR. HYSLOP: Mr. Chair, that's the end of the line of questioning in the area. If I start another one, we are probably going to go to about 3:30.

CHAIRMAN: We will reconvene tomorrow morning at quarter after 9:00.

MR. HYSLOP: Thank you, Mr. Chair.

(Adjourned)

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

Reporter