

1 New Brunswick Board of Commissioners of Public Utilities
2
3 In the Matter of an application by the NBP Distribution &
4 Customer Service Corporation (DISCO) for changes to its
5 Charges, Rates and Tolls - Revenue Requirement
6
7 Delta Hotel, Saint John, N.B.
8 March 21st 2006

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

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17 Patricia LeBlanc-Bird
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23

24 BOARD COUNSEL: Peter MacNutt, Q.C.

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26 BOARD STAFF: Doug Goss
27 John Lawton

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30 BOARD SECRETARY: Lorraine Légère

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33 CHAIRMAN: Good morning, ladies and gentlemen. Could I have
34 appearances please?

35 MR. MORRISON: Mr. Chairman, Terry Morrison for the
36 applicant. And with me at counsel table is Mike Gorman,
37 Rock Marois and Lori Clark.

38 CHAIRMAN: Thanks, Mr. Morrison. Canadian Manufacturers and
39 Exporters?

40 MR. LAWSON: Gary Lawson, Mr. Chairman and Commissioners.

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CHAIRMAN: Conservation Council?

MR. COON: Good morning, Mr. Chairman and Commissioners.
David Coon.

CHAIRMAN: Good morning, Mr. Coon. Eastern Wind is not
here. Enbridge Gas New Brunswick?

MR. MACDOUGALL: Good morning, Mr. Chair and Commissioners.
David MacDougall for Enbridge Gas New Brunswick.

CHAIRMAN: The Irving Group of companies?

MR. BOOKER: Good morning. Andrew Booker for JDI.

CHAIRMAN: Thank you, Mr. Booker. And Jolly Farmer is not
here. Mr. Gillis isn't here. Rogers Cable isn't here.

The self-represented individuals are not here. Municipal
Utilities?

MR. GORMAN: Good morning, Mr. Chairman. Raymond Gorman
appearing for the Municipal Utilities. Today I have
Richard Burpee, Eric Marr, Dana Young, Jeff Garrett, Marta
Kelly, Dan Dionne and Michael Couturier with me.

CHAIRMAN: That is just about record attendance, isn't it,
Mr. Gorman?

MR. GORMAN: If numbers count we should do well.

CHAIRMAN: Thank you. Vibrant Communities Saint John?

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

CHAIRMAN: Good morning, Mr. Peacock. And the Public
Intervenor.

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MR. HYSLOP: Thank you, Mr. Chair. Peter Hyslop, Carol Power and Mr. O'Rourke. And I would note Mr. Burpee is at our table this morning.

CHAIRMAN: We couldn't miss that. And Mr. MacNutt, whom do you have with you today?

MR. MACNUTT: I have with me today, Mr. Chairman, Doug Goss, Senior Adviser, John Lawton, Adviser, Andrew Logan, Jim Easson and Sean Murphy, Consultant.

CHAIRMAN: Thanks, Mr. MacNutt. The order of presentation is Mr. Coon will lead off. Coming second JDI. Then Mr. Gorman on behalf of the Municipal Utilities. And then Mr. Peacock. And the cleanup batter is Mr. Hyslop. So we will proceed in that fashion today.

Any preliminary matters before we do that?

MR. MORRISON: Yes, Mr. Chairman. Two undertakings to be marked. The first is undertaking number 1 from March 16th.

CHAIRMAN: That is A-174.

MR. MORRISON: And the second, Mr. Chairman, is undertaking number 2, also from March 16th.

CHAIRMAN: That is A-175. Those are your two preliminary matters, Mr. Morrison?

MR. MORRISON: That's it, Mr. Chairman. Thank you.

CHAIRMAN: Anybody else have any? Okay. Well we will have

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you go ahead in a second, Mr. Coon. Just wait until these have all been handed out. Okay. Very good. Go ahead, Mr. Coon.

MR. COON: Good morning. My daughter made this name plate for me, so I thought I had better use it. She is seven. She is kind of excited about all of this final argument and so on, but curiously she said it had to go this way, so I would remember who I was. So that's the way it goes.

CHAIRMAN: When you are through with it I could use it.

MR. COON: You are welcome to it, Mr. Chairman.

Well Disco has given evidence over these many months that they must raise their rates according to the schedule given in the evidence they filed January 24th and supplemented later, that to offset an expected revenue shortfall of about \$123 million. Much of this expected shortfall in revenue, they argue, results from significant increases in the price of oil and fuel. Thus Disco argues they must raise rates accordingly.

Of course Disco doesn't own any generating assets themselves on its own. So what they are really referring to is the increased costs flowing through their power purchase agreements with Genco and ColesonCoveCo. They would have us believe that they are hapless victims of these power purchase agreements designed by high power

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consultants at the request of some high level working committee of government and NB Power Holdco. Disco argues forcefully that they have in fact no control over these costs and therefore they effectively dictate the size of the power rate increases or at least most of it that they are seeking.

However, I would submit Disco does have the ability to exercise some control over their costs by making modest investments in reducing their customers' demand for the most expensive power they supply, the electricity which powers electric space heating. By reducing demand for this electricity they could reduce the nominated capacity provided for in their power purchase agreements with Genco as provided for in the vesting agreements. This would blunt the impact of high oil prices on power rates, dampening the impact on their customers and delivering savings on their customer's power bills.

Demand for the most costly electricity they must purchase on behalf of their customers can be reduced if Disco invests directly in upgrading the energy efficiency of their customer's buildings, or in helping their customers switch away from electric space heating. This in effect would be replacing the purchase of their most expensive megawatt hours from Genco with less costly

2 negawatt hours purchased from their customers with financial
3 incentives administered either by themselves or through
4 Efficiency New Brunswick. The enthusiasm with which
5 customers would welcome the return of some of the hard-
6 earned money they pay to NB Power every month in the form
7 of direct incentives to help them cut their power costs
8 cannot be overstated.

9 Just like financing a new power plant, the cost of this
10 energy efficiency through incentives would be amortized
11 over say 20 years by the utility in terms of how it would
12 be financed.

13 When I cross-examined Mr. Marois on September 26th about
14 his direct evidence in Exhibit A-3 concerning the
15 objectives of Disco, he said, well one of their objectives
16 is to provide customers with the best rate possible for
17 electricity. The best rate possible. And the way for us
18 to do that, he said, is first and foremost to manage their
19 costs properly, but also to ensure that their customers
20 are using electricity as efficiently as possible.

21 By ensuring their customers use electricity as efficiently
22 as possible, Mr. Marois is saying they can provide their
23 customers with the best possible power rates. He went on
24 to say, well it is part of our responsibility to try to
25 get as much value from the power

2 as we can, because if the power is not used efficiently we
3 will have to seek new power sources sooner, incur more
4 costs which will potentially increase our rates at the end
5 of the day, reducing the competitiveness of our product,
6 he said.

7 So essentially he is saying it makes good business sense
8 to ensure Disco's customers are using electricity as
9 efficiently as possible, and this includes helping their
10 customers to avoid the use of electric heat altogether,
11 according to his response to my cross-examination.

12 What percentage of their annual revenue do they devote to
13 pursuing this avenue to reduce pressure on the power rates
14 for their customers? Well that percentage would hardly
15 register on a calculator if you did the math. Perhaps
16 half a million dollars, he said, for the salaries of their
17 energy advisors.

18 In New England the norm has been for utilities to take
19 about one percent of their revenue and expend it on demand
20 side management programs, and that's now rising to two or
21 three percent. One percent in Disco's case would amount
22 to about \$13 million a year. Two to three percent would
23 get to 26 to \$39 million respectively, based on the
24 overall revenues Disco is projecting. And this would of
25 course be available to provide the customers as incentives

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2 to reduce their use of electricity for heating.

3 With the creation of Efficiency New Brunswick Disco
4 wouldn't even have to incur many administrative costs as
5 they simply could transfer the money to the new agency to
6 achieve their objectives. This is certainly what was
7 contemplated by New Brunswick government in policy as
8 articulated in its Energy Efficiency White Paper which you
9 have as Exhibit A-26, which sings the praises of how
10 demand side management reduces pressure on power rates,
11 contributes to the reliability of the electricity system
12 overall and delivers savings to customers.

13 Rather than making meaningful investments to manage the
14 electrical demand of their customers, like most electrical
15 utilities do in New England and many throughout Canada in
16 fact, Disco, according to Mr. Marois, takes the position
17 that they will simply exact discipline from their
18 customers by sufficiently hiking power rates. Never mind
19 the long list of market and non-market barriers to their
20 customers making investments in energy efficiency. Raise
21 power rates enough and they will respond somehow.

22 This I would submit is wholly inadequate to achieve the
23 effective use -- the efficient use of electricity that he
24 says Disco seeks.

25 Mr. Marois took a similar position with regard to his

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evidence which suggested proper price signals for electric heating would encourage customers to choose other fuels to supply their heat, something that appears to be another objective of Disco. His position was that this would have similar benefits to those he cited for increased energy efficiency, that is, it would delay the need for new power sources which would reduce future costs, dampening future increases in power rates.

Does Disco plan to offer financial incentives to their customers for fuel switching away from electricity? No. Same answer. Hike the rates enough and people will avoid electric heat. You may recall that in the early 1980s NB Power actually paid people as much as \$800 to switch away from oil heating to electric heat. That \$800 in today's money would be about \$2000. Now that they have a problem with excessive demand for electric heat that they have identified, rather than offering financial assistance for fuel switching they simply and solely want to rely on price signals provided by increases in power rates.

Now, Mr. Chairman and Commissioners, had the provincial government in its wisdom provided Intervenor funding for this hearing, the Conservation Council would have been pleased to have hired an expert witness to provide the Board with expert evidence on the ability of

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investments by Disco to upgrade the efficiency of their customer's equipment and buildings, to encourage their customers to switch away from electric heat, that would have shown how this would temper the impact of high oil prices on power rates and reduce the pressure on future power rate increases. But this was not to be, unfortunately.

Still, I urge the Board to examine its mandate to determine how it might require Disco to look at actively managing the demand of its customers for electric heat or contracting with Efficiency New Brunswick to do so on their behalf.

I believe it's within the Board's mandate to challenge Disco to demonstrate to the Board's satisfaction how over the long run what role demand side management could play to reduce pressure on power rates versus simply pursuing supply options through their power purchase agreements and in the future through requests for proposals for new supplies.

On March 9th of this year Nova Scotia's Utility and Review Board ruled on Nova Scotia's power rate application, but they went further in their decision and decided that they would hold separate hearings following their approval of power rate increases that were sought on

2 demand side management later this year. They made this order
3 despite the fact that Nova Scotia Power had in fact
4 proposed a \$5 million demand side management plan which
5 New Brunswick Power, Disco, is not. However, the Nova
6 Scotia Board found that Nova Scotia Power's demand side
7 management plan -- or at least felt it appeared under-
8 funded and inadequately designed. So the Board itself has
9 hired a consultant to design and propose a more acceptable
10 demand side management plan, which I understand will be
11 the subject of the upcoming hearings in Nova Scotia to be
12 held by its Utility and Review Board.

13 If there are lower cost options on the demand side, then
14 meeting all of Disco's customer's needs for electricity
15 for space heating, which of course as we know is their
16 most expensive power, if there are alternatives to
17 purchasing it from Genco on the supply side then it would
18 only make sense for the Board to find a way to ensure that
19 this is pursued by Disco on behalf of its customers.

20 You know, the distribution and customer service company's
21 mission is articulated in its business plan that was
22 submitted, I don't remember the exhibit number right now,
23 but it was also read out into evidence by Mr. Marois
24 during my cross-examination. Their mission is to supply

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safe and reliable electricity and to competitively price products and services with respect for the environment, while providing a commercial return to the shareholder. We submit that Energy Efficiency should be considered every bit as much a product to be supplied by Disco as the electricity it ships over its distribution system, and therefore subject to regulatory oversight by the Board in the event that Disco pursues it as a source of supply.

Clearly we don't want them to be purchasing energy efficiency at rates that are more expensive than the costs of new supply, any more than we want them to be buying new supply when energy efficiency may come in at a lower cost. The objective here is to ensure Disco is pursuing a least cost approach to its business on behalf of its customers.

As long as supply options are pursued to the exclusion of options on the demand side, this just can't be the case.

Thank you very much.

CHAIRMAN: Thank you, Mr. Coon. I am just going to check with my fellow Commissioners to see if they have any questions.

DR. SOLLOWS: Yes, Mr. Coon. If my recollection of the Act is correct, we are -- in this proposed rate increase we are able and directed to consider the utility's demand

2 side or conservation programs in setting the rates. What
3 would you direct us to consider and how to consider what
4 we have heard in evidence and seen in evidence in setting
5 the rates?

6 MR. COON: Well I guess you would have to consider whether
7 NB Power/Disco has demonstrated that their demand side or
8 conservation programs are adequately -- developed
9 sufficiently to exploit the cost effective energy
10 efficiency that is available from their customer base to
11 minimize any required rate increase.

12 DR. SOLLOWS: And am I correct to infer your opinion is that
13 they have not?

14 MR. COON: Well clearly under cross-examination Mr. Marois
15 has indicated that all they have got is their energy
16 advisors and the salaries they pay them, and that in their
17 opinion the responsibility for conservation demand side
18 management rests solely with Energy Efficiency New
19 Brunswick, and they should -- that new agency should
20 finance itself however it can without NB Power's help.

21 DR. SOLLOWS: Thank you.

22 CHAIRMAN: Personally, and this is just personally, to me
23 the PPAs stand in the way of one of the most effective
24 methods of shaving the peak and I'm talking as well about
25 electric space heating, because Disco can't set their

1 rates in accordance with the time of day, which of course it's
2 much cheaper to produce the power late at night because
3 there is not the demand on the system and you are down to
4 less expensive units. But I'm sure the Board will have
5 some comments in its decision on that. Thank you, Mr.
6 Coon.

7 MR. COON: Thank you.

8 CHAIRMAN: And next is JDI.

9 MR. BOOKER: Thank you, Mr. Chair and Commissioners.

10 In our preparation for this hearing J.D. Irving has worked
11 closely with the executive and membership of the Canadian
12 Manufacturers and Exporters. Therefore we have had few
13 separate and distinct comments to make up until this
14 point. However, we do believe that it is important to
15 focus on a few issues which are very important to our
16 organization. Please note that we have deliberately
17 avoided the zero-sum game of pitting rate class versus
18 rate class, instead focusing our evidence on the economic
19 impact of large rate increases on manufacturing industries
20 and the resulting effect on the New Brunswick economy. We
21 will try not to repeat what was already summarized by
22 Mr. Lawson, but do offer the following comments which we
23 believe are key and specific to our position:
24 Structure. One common theme throughout the hearing
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has been the manner in which the structure of the NB Power group of companies has been developed in response to the Electricity Act. We share the frustrations of many in the room at the inability to look at what we see as the bulk of the cost elements which are driving the proposed increase. From the beginning, JDI supported a competitive electricity market. We participated actively in the Market Design Committee and continue to the participate in the Market Advisory Committee.

NB Power was structured to compete in an open marketplace, and clearly this market has not developed. Originally, it was anticipated that the New Brunswick electricity market would develop to the point that transmission customers could contract with one of a number of distributors. These distributors in turn would source their electricity from amongst several generating companies.

In fact, the situation has clearly unfolded much differently than anyone who was involved could have anticipated. In fact, our understanding of where the market was going to be and its current configuration could not be further apart. During market design, it was emphasized that in a bilateral contract market, to avoid market power no single participant should control greater

2 than 25 percent market share. Today, however, we effectively
3 have a situation where a single generation company
4 effectively controls almost all generation assets and a
5 single distribution company purchases almost all of this
6 energy, and sells to all eligible customers. Thus, while
7 in theory a competitive market can exist in New Brunswick,
8 the reality is much different. As a result we have an
9 extraordinary situation whereby power purchase agreements
10 are utilized to flow costs through what is, in effect,
11 still essentially a vertically integrated utility.

12 As a result of these concerns, we recommend that the Board
13 suggest modifications to the Electricity Act to allow the
14 market to be restructured to allow full disclosure until
15 the market truly opens.

16 Revenue to cost Ratios. Numerous representations have
17 been made through this hearing that the large industrial
18 rate class is being subsidized by other rate classes.

19 These representations are based upon a characterization of
20 the revenue to cost ratio for the large industrial class
21 that, in the study following the CARD decision, is less
22 than 1.0.

23 Since the demand/energy classification methodology was
24 approved in 1991/92, industrial revenue to cost ratios
25 have been well within the reasonableness band of 0.95 to

2 1.05, hovering at or even above 1.0. This is in evidence in
3 CME IR-5 dated July 14th 2005, exhibit A-11. The current
4 filing suggests that the large industrial ratio has since
5 decreased dramatically.

6 The extent to which you can rely on the revenue to cost
7 ratios to reflect the degree to which any rate class is
8 paying its true share of costs depends, of course, on the
9 degree to which the cost study reflects true costs. The
10 cost of service study is an allocation of costs among
11 customers with differing usage patterns.

12 Generation costs are allocated between customers with high
13 energy use relative to their peak demand, like industrial
14 customers and customers with low energy use relative to
15 their peak, such as residential customers. How the
16 generation costs are classified between energy and demand
17 is therefore the most significant determinant of the
18 differences in costs allocated between different types of
19 customers.

20 NB Power proposed changing the 1991/92 classification
21 percentages in their initial filing. As we read the CARD
22 decision it appears that the commission was frustrated
23 with the lack of current cost data relating to generation
24 facilities and resorted to a fall back position of
25 maintaining previously approved classification factors.

2 JDI shares this frustration regarding the lack of current cost
3 data but we are also frustrated that the fall back
4 position necessarily does not recognize numerous
5 significant changes in costs since 1991/92.

6 As Mr. Marois testified, industrial customers operate with
7 a higher load factor relative to other customer groups,
8 and are therefore disproportionately impacted by any
9 changes that increase energy costs. In the forecast
10 period, energy costs increase considerably faster than
11 demand costs, in turn causing a larger increase in costs
12 to anyone with a high load factor, as Mr. Lawson presented
13 yesterday.

14 In addition operational strategies have altered the role
15 of various facilities within the NB Power dispatch. For
16 example, Coleson Cove is operated in a much different
17 manner today than it was 15 years ago when it was a base
18 load plant. Some of these changes are the result of
19 changes in plant characteristics resulting from
20 investments since 1991/92. This may suggest that it would
21 be appropriate to alter the classification of costs from
22 what was approved in 1991/92. Therefore a full review of
23 all costs is required.

24 We struggle to understand how 85 percent of costs can be
25 classified as energy and still reflect the true costs

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2 of service. Recognizing these comments, we suggest that the
3 Commission exercise discretion in implementing the results
4 of the most recent cost study.

5 Furthermore, we suggest that all the NB Power companies
6 undertake a full, cross company study of embedded costs,
7 with full transparency of all flow through costs.

8 Interruptible and Surplus Energy. J.D. Irving supports
9 the position of Disco that any additional contribution to
10 fixed generation costs be considered following the
11 completion of the two interruptible-related studies
12 ordered by the PUB in December 2005. We offer the
13 following comments to support this:

14 First, evidence has already been introduced showing that
15 the existing 3 and \$9 adders result in approximately a
16 \$1.50 per megawatt-hour contribution from this type of
17 rate. In addition, the ability to interrupt load provides
18 Disco with advantages in avoiding additional long-term
19 firm service and ancillary services, as well as
20 operational advantages during times of system upsets.

21 Second, cogeneration has been suggested as a potential
22 solution to allow industrial customers to mitigate the
23 effect of increasing power costs; i.e. an industrial
24 customer could become Interruptible, capital I

2 Interruptible, if they were able to backstop with their own
3 generation. During Public Participation day many
4 questions were raised regarding cogeneration potential of
5 large industrials. However, this is not a simple
6 solution. Cogeneration requires large amounts of capital
7 during a time when many manufacturers are struggling to
8 reinvest in their core businesses. As well, cogeneration
9 requires both a high pressure steam generator and a lower
10 pressure steam load to make it feasible from an
11 operational point of view. By way of example, for Irving
12 Paper, a cogeneration facility meeting 100 percent of
13 steam supply demands would result in generation of only 15
14 percent of power requirements for a capital investment of
15 around \$150 million.

16 Therefore, we ask the Board to understand that technical
17 and cost reasons will prevent many manufacturers from
18 implementing any form of cogeneration, let alone the large
19 scale cogeneration which would be required by most large
20 industrial customers.

21 Finally, we ask that the Board consider the very real
22 possibility that large industrial customers will switch to
23 firm demand. It has been commented that several
24 customers, including Irving Paper, have already initiated
25 such discussions with Disco. It is clear that these

2 changes will have both financial and operational impacts on
3 Disco, Genco and the NB Power group. Until these impacts
4 are fully understood, we suggest that it is inappropriate
5 to make any adjustments to these rates. This is
6 particularly true in light of the complete lack of a
7 wholesale market in which customers can source viable
8 alternatives.

9 In addition, the evidence in exhibit 50, table 5C, column
10 1 line 5 shows that for 2006/07 the anticipated
11 interruptible surplus power rate will be \$63.19 per
12 megawatt-hour. Assuming a typical 20-megawatt load
13 customer at 80 percent load factor, the math shows that at
14 filed rates the effective firm rate will be \$59.69 per
15 megawatt-hour. Therefore any further "adder" to the
16 interruptible rate will further reduce the small gap
17 between the two and make the business decision to switch
18 to firm demand that much more likely.

19 Rainy Day or Deferral Account. Operating in cyclical
20 commodity industries, we recognize that revenue will
21 fluctuate from year to year around an expected mean. One
22 example is the manner in which paper prices cycle over
23 time. Another example, discussed during this hearing, is
24 the manner in which high rainfall in one winter will
25 result in the availability of extra hydro capacity in the

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2 short term, which will likely be offset by lack of a spring
3 freshet shortly thereafter.

4 Recognizing this, we believe that it is appropriate that
5 Disco set aside revenue during good years to offset losses
6 during lean years. Our concern is that during high
7 revenue years extra cash flow will either flow to the
8 government as profits or used to rapidly pay down debt.

9 However, during lean years of reduced revenue or increased
10 costs we are concerned that a revenue shortfall will be
11 passed along to customers in the form of a rate increase.

12 Thus we suggest that the Board consider the establishment
13 of a rate stabilization reserve whereby excess revenue may
14 be used to offset periods of lower than budgeted revenue.

15
16 Impact on the New Brunswick Economy. Manufacturing across
17 Canada and within New Brunswick currently face a perfect
18 storm. We fact increased foreign competition with lower
19 cost structures, a high Canadian dollar, the inability to
20 effect generally declining commodity pricing and across-
21 the-board increasing energy costs. Since 1988, market
22 pricing of the three largest electricity users in this
23 province has been declining while costs of operation are
24 increasing, much as Disco's costs are increasing as a
25 result of fuel pricing. However, most manufacturers have

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2 the inability to pass cost increases on to their customers.

3 Instead, we must decrease payments to owners, defer
4 capital investments in plant equipment replacement or
5 improvement, and at the same time learn to operate much
6 more efficiently to offset these increasing costs. Any
7 company unable to adapt to these changes faces closure.

8 These threats are real. By way of example, the four J.D.
9 Irving paper mills in the Saint John area manufacture
10 approximately 1,000,000 metric tonnes of paper and pulp
11 products annually. In the last three years, approximately
12 10,000,000 metric tons of capacity has closed across North
13 America. Put another way, approximately 10 pulp and paper
14 operations the size of JDI have closed their doors.

15 1,000,000 tonness of this capacity was in New Brunswick
16 alone. Our owners have made it clear that the priority
17 mission of all of our employees is to ensure that we do
18 not make this list.

19 Obviously, factors in addition to energy costs have
20 contributed to these closures, including high costs, and
21 lack of reinvestment. However, as evidenced by Mr. Myers
22 of the CME, New Brunswick manufacturing is very energy
23 intensive, and therefore greatly increasing energy rates
24 have a major effect on investment strategies and
25 manufacturing profitability. It therefore flows that a

2 decline in New Brunswick manufacturing will have major
3 negative effects on the New Brunswick economy, as is
4 currently evidenced in the media.

5 In light of this perfect storm we believe that now is not
6 the time for NB Power to make great strides to pay down
7 their legacy debt while at the same time providing
8 generous guaranteed rates of return to their owner. The
9 evidence has shown that in 2005/06 and 2006/07 the NB
10 Power group will pass over 90,000,000 in payments to the
11 government. Keep in mind that all the while NB Power will
12 effectively be passing costs and any embedded operational
13 inefficiencies on to their customers. If the objective is
14 to gradually phase in a competitive market, we believe
15 that repayment of debt should also be slowly phased in.
16 Therefore, we would urge that the Board review a much more
17 gradual repayment of debt and a phase in of any rate
18 increases.

19 Additional Comments. Mr. Chair, in response to your
20 request on Monday, we offer the following additional
21 comments:

22 1. Exit Fees. JDI participated extensively during exit
23 fee discussions at the Market Design Committee.

24 We support the Market Design recommendation 9-93 which
25 states "To provide transparency and some measure of

1
2 certainty a stranded cost should be established for customer
3 migration up to a specific level and the customer should
4 have the right to an explicit calculation of its exit fees
5 at the customer's expense."

6 We understand this to mean that exit fees should be known
7 up front, and form part of the business case analysis for
8 a customer seeking to leave Disco supply prior to
9 announcing their intentions.

10 Furthermore, we recently participated in the development
11 of the submission by the Market Advisory Committee to the
12 PUB requesting that a hearing be held to discuss and
13 develop methodology for the generic development of an exit
14 fee.

15 2. Section 156. Our opinion is that the language used
16 restricts the application of section 156 to this, the
17 first hearing. Therefore, we see no reason to remove this
18 section as it becomes redundant.

19 In closing, we would ask that the Board consider the
20 following when making their decision:

21 Deregulation and the resultant NB Power structure should
22 be reviewed in light of the current and expected lack of
23 development of a competitive marketplace.

24 A full embedded cost study of all NB Power operations
25 should be performed.

2 Changes should not be made to Interruptible/Surplus rates
3 until the impact studies are completed and understood.

4 The creation of a rate stabilization reserve or surplus
5 revenue account should be investigated.

6 We ask that the Board consider gradual repayment of legacy
7 debt in light of current economic conditions.

8 And that the Board adopt a gradual phase in of any
9 required rate increases to allow any customers to adapt
10 and avoid any rate shock.

11 Thank you, Mr. Chair and Commissioners. This concludes my
12 remarks. I will leave copies of this summation with the
13 Board Secretary for distribution as required.

14 CHAIRMAN: Thank you, Mr. Booker. Just a second. We will
15 see if any of my fellow Commissioners have any questions.

16 DR. SOLLWS: Just following up on that last point, Mr.
17 Booker, gradual phase in. There are a number of
18 techniques that can be used to phase in rates, one of them
19 being the notion of essentially financing the change for
20 each customer class at the embedded cost of the utility as
21 we gradually plan to bring things closer to a revenue cost
22 ratio of 1.

23 Ultimately that results in higher costs for the
24 customers in the group, but it does allow us to phase the

2 changes in.

3 In that context would you still support a phase in of the
4 changes in the rates to being closer to a revenue cost
5 ratio of 1?

6 MR. BOOKER: Mr. Commissioner, I don't think that for topics
7 like this there are any really easy solutions. J.D.
8 Irving supports the reasonableness band of .95 to 1.05, at
9 the same time realizing that Disco does need to meet their
10 revenue requirements.

11 We would ask that the Board consider some of the other
12 comments made by all the Intervenors in light of the
13 revenue requirements and adopt a gradual phase in
14 accordingly.

15 DR. SOLLOWS: Thank you.

16 MR. BOOKER: Thank you.

17 CHAIRMAN: Mr. Booker, I am interested in a good deal of
18 what you have had to say, but in particular, you indicated
19 that the Board should in its decision suggest to
20 government changes to the Electricity Act, which will
21 allow the market to develop better than it has to this
22 point in time.

23 My reading, and it was quite awhile ago, I have been doing
24 a lot of other reading, but my reading is that there

2 is very little in the actual Electricity Act that needs to be
3 changed. I mean 156 talks about the PPAs, but I don't
4 think it's anywhere else. So really it's the mechanics of
5 setting up the marketplace that need to be changed. And
6 certainly the Market Design Committee was supposed to be
7 part of that. And as you have said, there are many
8 recommendations that that Committee made that have not
9 come into force. So we will certainly take note of your
10 thoughtful brief.

11 Thank you, Mr. Booker. And we are going to take our break
12 now, because Municipal Utilities are next up and they will
13 go for three-quarters of an hour, I know.

14 (Recess)

15 CHAIRMAN: Whenever you are ready, Mr. Gorman.

16 MR. GORMAN: Thank you. Good morning, Mr. Chairman and
17 Commissioners. As you know, I represent the New Brunswick
18 Municipal Electric Utilities, namely, Energie Edmundston,
19 Perth Andover Electric Light Commission and Saint John
20 Energy.

21 I have been in attendance, together with several
22 representatives of the three Municipal Utilities,
23 throughout this entire hearing and would like to begin our
24 presentation by thanking the Chairman and Commissioners
25 for the opportunity to participate in this process as an

2 Intervenor and to present our position on various issues

3 arising out of the revenue requirement portion of this

4 rate application by NB Disco. Your patience and attention

5 to the many witnesses was appreciated throughout the

6 numerous days of these hearings.

7 Energie Edmundston, Perth Andover, Electric Light

8 Commission and Saint John Energy became formal intervenors

9 in this proceeding for the purpose of addressing the

10 implications of this application to their customers, the

11 taxpayers and ratepayers of our communities. The

12 implications of your decision will, of course, affect all

13 taxpayers and all electricity ratepayers in New Brunswick.

14 The governing principle for the Board in determining the

15 outcome of the proceeding is set out in Section 58 of the

16 Public Utilities Act, and I guess that is superseded by

17 the section in the Electricity Act which says, "All

18 tariffs shall be just and reasonable."

19 The Municipal Utilities fully support that ideal and are

20 greatly concerned about the negative impact that an

21 unreasonable or unjust rate might have on their customers.

22 Numerous issues arose out of these proceedings. It would

23 be impossible to thoroughly address all issues and

24 therefore the Municipal Utilities will focus on the issues

25 which we believe would have the greatest significance to

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them.

Those issues, which include matters that the Board requested each party to comment on, are as follows: the Wholesale Rate Schedule, the Rates and Revenue to Cost Ratio for the various classes, including the wholesale class. Fair Rate of Return, the Debt Repayment Plan, Energy Conservation Initiatives, Exit Fees, Regulatory Reserve or Deferral Account, Section 156 of the Electricity Act. And we will also make a comment on any further increases that might be proposed during the test year.

One of the issues of concern to the Municipal Utilities was the wording of the Rate Schedule pertaining to the Wholesale Class. The issue had two components. 1, the deletion of the note referring to the revenue to cost ratio. And 2) the deletion of the short term contract rate.

The Municipal Utilities are satisfied this has been accomplished with the re-filed RSP N-17, which has been filed as exhibit A-166. The only other changes to RSP N-17 being recommended by the Municipal Utilities are changes in the rates themselves, which would reflect a fair and reasonable revenue to cost ratio.

And this brings me to the next issue, which is the

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rates and revenue to cost ratio for the wholesale class.

Disco's decision to set a target revenue to cost ratio of 1.05 for the wholesale class, and the resulting rate, is the issue of greatest concern to the Municipal Utilities. The costs incurred by Disco in serving its customers must be recovered from those who receive service. The purpose of this hearing is to review how Disco proposes to recover those costs.

The Municipal Utilities accept the principle that costs should be shared amongst customers on the basis of cost causation. This means that the actual cost of serving each customer class should be recovered from that customer class. In other words, Disco should neither under-recover nor over-recover its costs of serving a particular customer class.

Disco has grouped its customers into rate classes with similar characteristics of electricity use in order to establish rates for each class. A class cost allocation study was prepared by Mr. Larlee which established eight rate classes. And as you are aware those are residential, the two general service classes, streetlights and unmetered, waterheaters, small industrial, large industrial and wholesale.

2 We note that wholesale is the only class that has embedded
3 retail customer classes.

4 Now this customer grouping set forth by Disco does not
5 point out the fact that of the industrial classes, both
6 small and large, some are served from Disco's distribution
7 system and some from the transmission system. Those
8 industrial customers served directly from the transmission
9 system -- and from the evidence we determine that to be 37
10 large and 6 small, that's according to Schedule 6 in the
11 CCAS found in exhibit A-76 -- and the two wholesale
12 customers, are the transmission customers of Disco. And a
13 note that the industrial class appears to have grown this
14 year, because when the original CCAS was filed as exhibit
15 A-3, there were only 33 large and 5 small industrial
16 transmission customers.

17 The Public Utilities Board in its ruling on December 21st
18 last year stated: "The Board considers it appropriate
19 that specific decisions on adjustments to the revenue to
20 cost ratios for individual customer classes be deferred
21 until the revenue requirement review at which time the
22 current and proposed ratios, using the methodology
23 approved in this ruling, will be available."

24 Disco has proposed that the wholesale customer class
25 contribute based on a ratio of revenue to cost of 1.05.

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The other transmission class, large industrial transmission, has a target revenue to cost ratio of 91 according to Disco, and this is as calculated in in exhibit 168. And you will note that that's one point below what was in the CCAS. Or .88 for large industrial firm loads according to the evidence of Mr. Knecht. The interruptible/surplus power was appropriately not included in Mr. Knecht's calculations.

During the CARD hearing, Disco relied on the 1996 contract language between NB Power and Energie Edmundston as the only justification for arbitrarily setting the revenue to cost ratio for the wholesale class at 5 percent above cost. In interrogatories and in cross-examination, Disco's witnesses were asked what policy provisions they relied on, and the consistent answer was that it was a matter of contract.

This issue was thoroughly canvassed during the CARD hearing. You may recall the jurisprudence from Nova Scotia and the Milltown case, which upheld the principle that the Board has the power and the duty to deal with the rates, tolls, charges or schedules charged by a utility to their customers, regardless of any provisions in existing contracts.

I just want to refer the board to paragraph 17 of that

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2 argument. I am not going to repeat the whole argument that I
3 made during the CARD hearing, but paragraph 17 of the
4 argument presented during the CARD argument stated: "It
5 is submitted that the existence of contract language that
6 differs between the contracts with two Municipal Utilities
7 can hardly be used as justification for establishing a
8 revenue to cost ratio above unity for the entire wholesale
9 class. If this were allowed, it would effectively usurp
10 the function of the Board, which is set out Section 101(5)
11 of the Electricity ACT as follows: 101(5) The Board at
12 the conclusion of this hearing shall: (a) approve the
13 charges, rates and tolls, if satisfied that they are just
14 and reasonable or, if not so satisfied, fix such other
15 charges, rates or tolls as it finds to be just and
16 reasonable..".

17 In this proceeding, during cross-examination, Mr. Marois again
18 relied on the same contract language when questioned as to
19 the reason for setting the wholesale class at the extreme
20 upper limit of the Board's approved range.

21 And I'm not going quote very much here. But I would like
22 to quote a little bit of Mr. Marois' evidence. And this
23 is at page 5528 of the transcript.

24 He said "but you yourself raised at the beginning of
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2 this questioning the fact that the wholesale customers have
3 long-term contracts and I'm certain you know that in at
4 least one of those contracts it's clear that the target
5 range is 1.05. So just from that contractual arrangement
6 the wholesale customer should not be surprised that they
7 are at anything else but 1.05."

8 The same cross-examination continued as follows: And this
9 was a question put to Mr. Marois. "Well, I thought that
10 the issue was conceded by your counsel during final
11 summation on the CARD ruling, but perhaps not and perhaps
12 it will be something that will be revisited, but I
13 understood that your counsel had conceded that in fact
14 this is a function of the Public Utilities Board to set
15 the revenue to cost ratio."

16 Mr. Marois responded by stating: "I'm not arguing that"
17 and then went on to make other comments.

18 So in our view that issue is settled. But we thought that
19 because it was the only justification really brought
20 forward that it should be revisited.

21 In view of the fact that Disco has failed once again to
22 offer any reasonable support for its proposal of the 1.05
23 revenue to cost ratio to the wholesale class, it is our
24 recommendation that the Board establish an appropriate
25 contribution of revenue from the wholesale class based on

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2 the principles of cost causation.

3 Now for Disco's policy interpretation of cost causation,
4 we would refer the Board to exhibit A-57, appendix 7,
5 Board Policies at page 49. The policy title is
6 "Acceptable Electric Power Rates for New Brunswick."

7 After committing -- and I'm quoting here -- "to provides
8 rates that are just and reasonable for customers", the
9 policy, which is dated September 2005, specifically
10 states: "Establish a rate structure that is cost related
11 and eliminate cross-subsidization of residential customers
12 by achieving a residential cost recovery of 100 percent by
13 2010."

14 It is apparent that Disco's Board of Directors recognizes
15 the principles of cost causation and accepts the concept
16 of each class paying its own way, i.e. a revenue to cost
17 ratio of unity for each class. Given that the residential
18 class represents approximately 40 percent of Disco's
19 revenues based on the July 2005 rates, and that Disco's
20 Board endorses a revenue to cost ratio of unity for that
21 class, it is difficult to escape the conclusion that
22 Disco's Board endorses the goal of cost related rates, by
23 this same definition, for every customer class.

24 With respect to all classes of customers, it is our
25 recommendation that no subsidy should be implemented

1 unless either: justified on the basis of policy

2 considerations which are set out in legislation or proof

3 that a benefit accrues to the system as a whole.

4 No credible evidence to the effect that these just and

5 reasonable criteria have been met for the subsidies being

6 proposed by Disco were provided during these hearings.

7 On this issue, there is no question that a subsidy is

8 being given to the large industrial class because the

9 target revenue to cost ratio falls well outside the

10 prescribed bandwidth of .95 to 1.05. The 2001 White Paper

11 under the heading of Cross-Subsidization in the Current

12 Rate Structure states: The Province will direct the Crown

13 utility to eliminate, over time, cross-subsidization

14 between customer classes.

15 Setting a target revenue to cost ratio of either .88 as

16 calculated by Mr. Knecht or .91 as calculated by Disco

17 results in a clear and significant subsidy. The

18 uncontradicted evidence at this hearing demonstrates that

19 the industrial class at the proposed rates will underpay

20 the cost of its electricity by approximately \$30.5 million

21 if Disco's proposal is approved. This has doubled from

22 the amount of subsidy that was originally proposed in

23 exhibit A-3.

24 The end users served by the Municipal Utilities in New

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1 Brunswick have contributed through rates to the system over
2 the years in the same manner as the retail customers of
3 Disco. In fact, evidence was presented during the CARD
4 hearing -- I would refer you to Ms. Zarnett's evidence
5 UM-1 -- it demonstrated that the wholesale customers
6 have consistently over contributed for many years, and in
7 some years, very significantly. Therefore, any revenue to
8 cost ratio over unity represents unfair treatment of our
9 customers. It should not be forgotten that cost in the
10 regulatory sense includes not only the expenses incurred
11 to produce and deliver the electricity, but also whatever
12 profits, that is return on equity, payments in lieu of
13 taxes, et cetera that are allowed by the Board. I would
14 like to emphasize that at no time during these hearings
15 have the Municipal Utilities suggested that their
16 customers should not pay the full cost of the service that
17 they receive from Disco.

18 Experts at the hearing testified that cost allocation and
19 rate design studies are not 100 percent accurate. In our
20 view, this provides more reason to move towards unity and
21 not intentionally set rates at the extremes just because
22 they exist. In such a situation it would be very easy for
23 the rates to fall outside the range and the goal should
24 always be to move towards unity.
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2 As stated in the NARUC manual at page 12 "few analysts
3 seriously question the standard that service should be
4 provided at cost."

5 The expert witnesses who testified during the course of
6 this hearing all agreed that the elimination of cross-
7 subsidies among rate classes is a desirable objective.

8 We have reviewed exhibit A-167 -- and this was just marked
9 as an exhibit on Monday morning -- which compares the cost
10 of electricity in cents per kilowatt-hour as between the
11 large industrial and wholesale classes. The large
12 industrials at 6.18 cents per kilowatt-hour are able to
13 purchase electricity from Disco 26 1/2 percent less than
14 the 7.82 cents per kilowatt-hour charged to the Municipal
15 Utilities at the wholesale rate. Since the industrials
16 purchase approximately four times as much electricity as
17 the wholesale customers, an increase of as little as 1
18 percent to the large industrial rate would result in a 6
19 one hundredths of a cent per kilowatt-hour increase to
20 industrials but approximately 29 one hundredths of a cent
21 kilowatt per hour decrease to the wholesale class. With
22 this change the large industrial transmission firm
23 customers would still be able to purchase electricity for
24 approximately 21 percent less than the wholesale while the
25 revenue to cost ratio for

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2 large industrials would still be very significantly less than
3 .95 at the same time moving wholesale much closer to
4 unity.

5 The Municipal Utilities therefore recommend that the rates
6 of the wholesale class be set on a cost related basis,
7 according to the definition of Disco's Board, i.e. 100
8 percent or unity. This adjustment would involve a shift
9 of approximately \$4.5 million in revenue responsibility in
10 the test year. Since the large industrial class are
11 proposed to under-contribute by approximately \$30.5
12 million, one way to achieve the adjustment to the
13 wholesale class would be to make a corresponding
14 adjustment to the large industrial rates. This would
15 represent an increase of approximately one percent to the
16 large industrial customers.

17 At this point I would like to make sure that it is
18 understood that the municipalities are strong supporters
19 of industry in New Brunswick and find that just because of
20 the nature of the cost allocation study, we have in a
21 sense been pitted against them. But we are strong
22 supporters of industry in New Brunswick but would state
23 that subsidization of industry is the responsibility of
24 government and not the ratepayers.

25 If, because of the magnitude of the 2006/2007 overall

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2 increases and the impacts on other customer classes the Board
3 is concerned about implementation of the entire adjustment
4 at this time, we would propose that no less than 60
5 percent of the change be implemented this year, and the
6 remaining 40 percent no later than 2010, the date that has
7 been set by Disco's Board as a target for the residential
8 class to reach 100 percent.

9 I will now address another issue. And that is fair rate
10 of return.

11 Disco through its expert witness Kathleen McShane proposed
12 a deemed capital structure of 42 1/2 percent equity and 57
13 1/2 percent debt. The Municipal Utilities support the
14 concept of a deemed capital structure.

15 In support of a deemed equity of 42 1/2 percent Ms.
16 McShane considered the capital structures of five of
17 Disco's closest peers. The median and mode for these five
18 companies is 37 percent equity. It is noted that

19 Ms. McShane acknowledged that some capital structures
20 examined by her have an equity percentage as low as 35
21 percent. The evidence relied on to support Disco's
22 position on the equity percentage clearly indicates that
23 the equity portion should more appropriately be set at 37
24 to 40 percent.

25 Disco has proposed that, on the deemed equity

2 discussed above, it be allowed to earn a 10 percent return on
3 equity. Again in support of Disco's proposal Ms. McShane
4 relies on precedents from other jurisdictions. The
5 average return on equity for these benchmark utilities is
6 9 percent which would be a more appropriate rate of return
7 for Disco in the opinion of the Municipal Utilities.

8 So we recommend on the issue of fair rate of return first
9 that the Board approve a deemed capital structure,
10 secondly that the equity portion of the capital structure
11 be established somewhere between 37 and 40 percent, and
12 that the Board approve a return on equity of no greater
13 than 9 percent.

14 We have a small comment to make on the debt repayment
15 plan. The amount proposed to be paid to the EFC in the
16 2006/2007 test year I believe is \$51 million. The
17 Municipal Utilities recommend that the Board examine
18 Disco's repayment plan to determine whether or not it is
19 too aggressive in light of the extremely high rate
20 increase proposed at this time.

21 Another issue for the Municipal Utilities are energy
22 conservation initiatives. The Municipal Utilities
23 encourage Disco to develop and implement appropriate,
24 cost-effective energy conservation and demand reduction

2 initiatives. In order to participate fully and ensure a
3 province-wide program, the Municipal Utilities must have
4 the ability to implement the same programs in their
5 service territories. The Municipal Utilities support
6 demand side management incentives, through the rates or
7 otherwise, that would allow Municipal Utilities to offer
8 programs to their own customers to supplement and
9 complement province-wide initiatives in this area. Rate
10 initiatives implemented by Disco to promote energy
11 conservation or demand reduction and targeted toward any
12 specific class of Disco must recognize through the
13 wholesale rate that these classes also exist at the
14 wholesale level and must be allowed to participate.
15 On that issue the Municipal Utilities recommend that
16 wholesale rates should provide an appropriate cost basis,
17 so that the savings resulting from conservation and/or
18 demand side management programs whether initiated by Disco
19 or a municipal utility flow through to incent
20 participation in the programs without resulting in an
21 undue transfer of costs to non-participating customers of
22 the Municipal Utilities or to other New Brunswick
23 customers.
24 And secondly, if the Board is considering directing Disco
25 to implement seasonal and/or time of use rates, that

2 such implementation be applied to all rate classes, rather
3 than on a selective basis. This would provide all classes
4 with appropriate time related price signals, as well as
5 improving the allocation of revenue responsibility among
6 individual customers in accordance with their usage
7 profile. We also recommend that any price differentials
8 on a seasonal or time of day basis be supported by
9 appropriate cost studies.

10 Now to the issues I guess raised by the Board, the first
11 of those being exit fees.

12 During the course of the hearings, the issue of the
13 mechanics of establishing an exit fee was raised. The
14 lack of predictability surrounding the establishment of an
15 exit fee is a barrier to market development. Section 79
16 of the Electricity Act provides that a municipal utility
17 or industrial customer that decreases its consumption of
18 standard service as a result of purchasing electricity
19 from another supplier or by self generation shall pay a
20 fee to be determined. The Act further provides for an
21 application to the Board to determine the quantum of the
22 exit fee but the Act appears to require the decrease in
23 consumption as a condition precedent to making the
24 application to the Board. The difficulty that is
25 presented by the legislation is that it may be necessary

2 for the customer to commit to an unknown exit fee, which if
3 known, might have resulted in a decision not to leave
4 standard service.

5 Some of the parties at the hearing suggested that an
6 application under Section 79.2 can be brought before the
7 Board prior to making the decision to decrease consumption
8 of standard service. Even if this interpretation turned
9 out to be the correct one, it would result in a customer
10 having to openly disclose its plans while negotiations may
11 be going on.

12 Municipalities and I assume large industrial customers are
13 concerned about the confidentiality of their plans and
14 corporate strategies.

15 In order to better provide guidance to the municipal and
16 industrial customers in making a decision whether to seek
17 an alternate source in energy, more predictability is
18 essential. In order to provide this predictability the
19 Municipal Utilities recommend that the Board direct Disco
20 to bring forward an application requesting the Board to
21 conduct a hearing involving two or three test cases to
22 establish a formula which could then be used to evaluate
23 the economic viability of specific individual cases as
24 they arise.

25 The next issue that the Board asked to be addressed

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2 was the regulatory reserve or deferral account.

3 The Board requested the parties to address this issue of
4 the Board's jurisdiction to order Disco to reinstate
5 certain deferral accounts.

6 We believe the Board has jurisdiction over this issue
7 based on Section 101 of the Electricity Act. Section
8 101(1) authorizes the Board to approve changes in charges,
9 rates and tolls. Section 101(4) states that the Board
10 may, when considering an application under this section,
11 take into consideration accounting and financial policies
12 of the distribution corporation.

13 The hydro equalization account was in place between I
14 believe it was 1955 and 1991 when the principle of
15 maintaining such an account was endorsed by the Board.

16 The account ceased to exist sometime in the late 1990's.

17 We are unaware of any application to the Board for
18 approval of this discontinuing.

19 The Municipal Utilities believe that the creation of
20 deferral accounts as approved by the regulator represents
21 a regulatory practice that is in the interests of the
22 utilities and their customers. Existence of a deferral
23 account for extraordinary costs or cost variances enables
24 the regulator to smooth the impact of cost or revenue
25 change over a period of several years or to defer approval

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2 of the cost into the revenue requirement pending further
3 information. As NB Power itself said in the 1991 generic
4 hearing concerning the accounting and financial policies
5 of the NBEPC, and I quote, "NB Power believes that
6 customers in any given time period should receive the
7 benefit of average performance from these high quality
8 generating assets, as a matter of intergenerational
9 equity. The utility further believes that stabilization
10 of costs is essential to avoid the rate volatility which
11 would be required to actually track generation costs
12 period by period."

13 The Municipal Utilities support the concept of regulatory
14 reserve accounts otherwise known as deferral accounts.
15 Payouts from these accounts should be under the authority
16 of the Board.

17 The final area in which the Board asked for comments from
18 parties was with respect to Section 156. And that was not
19 part of my original prepared closing remarks. But I think
20 that I can probably handle that this morning as well.

21 Section 156 states in part -- and the important part of
22 course is the first part. It says "For the purposes of
23 the first hearing before the Board under Division B of
24 Part V, the assets transferred by transfer order or

2 otherwise attributable by virtue of a transfer order" -- and

3 it goes on and says -- and the expenditures arising from

4 those matters are deemed to be prudent and necessary.

5 It is noted that Section 33 of the Interpretation Act

6 mandates that nothing in the Act excludes the application

7 to an Act or regulation of any rules of construction that

8 aren't inconsistent with the Act.

9 To us the key words in section 156 of the Electricity Act

10 are "for the purposes of the first hearing before the

11 Board." It is apparent that the drafters of the

12 legislation intended for the provisions of Section 156 to

13 apply in one circumstance only, i.e. the first hearing.

14 At the conclusion of this hearing, Section 156 will no

15 longer be applicable.

16 I'm going to take a try here at some canons of

17 construction that may be helpful. The expression unius

18 est exclusio alterius rule may apply to this case. And I

19 think that the meaning of that Latin expression is

20 essentially that the expression of one thing is to the

21 exclusion of another. In other words, if a statute

22 specifies one exception to a general rule, other

23 exceptions are excluded. In other words, the section

24 would take its color from the specific words or phrases

25 which either -- or which proceed it.

2 Another related general rule of interpretation is that it
3 should be presumed that all of the words used were
4 intended to have some meaning and that they were not
5 intended to be in conflict. If Section 156 were available
6 to Disco in a subsequent hearing it would render the words
7 in the first line of that section virtually meaningless
8 and it is presumed that the drafters of the legislation
9 would not have intended that result.

10 It is therefore submitted that Section 156 of the
11 Electricity Act is not applicable to any hearings under
12 Division B, part 5 subsequent to this hearing.

13 One last point. And that has to do with the limitation of
14 further increases for 2006/2007. And the concern here is
15 that the Board in its decision stipulate that no further
16 changes to the charges, rates and tolls be allowed for
17 2006/2007 without further application before the Board.

18 We believe this is in accordance with Sections 98 and 99
19 of the Electricity Act. And we only raise it to make sure
20 that there is not -- we have no reason to believe that
21 there is for example a 3 percent increase that is
22 contemplated. But our view, in case that were to be the
23 case, is that it is the cumulative effect of all increases
24 within the year, and therefore if there were further
25 increases it would require a further application.

2 So I have I guess summarized our recommendations. And I
3 don't know that I will go through all of them. I will
4 briefly give you a summary of what we recommend.

5 That Disco maintain a hydro regulatory reserve account in
6 order to equalize the fluctuations in costs caused by
7 variations from average water flow conditions.

8 We recommend the Board rule on which methodology of
9 determining the hydro adjustment is correct.

10 And in the event that the methodology prescribed by the
11 Board results in a significant surplus in the hydro
12 account, then Disco be ordered to apply a portion of that
13 surplus to reduce the 2006/2007 deficit if the Board
14 believes it has jurisdiction to do so.

15 Mr. Morrison in his comments yesterday asked for immediate
16 implementation of a rate increase pending the decision.

17 And it may well be that the excess revenue created by the
18 hydro account may well be something that the Board could
19 consider to use which may allow the same result without
20 impacting immediately or directly on the customers of
21 Disco.

22 On exit fees we ask that the Board direct Disco to bring
23 forward the applications that we referred to in our
24 submission.

25 We ask the Board to ensure that the wholesale rates

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provide an appropriate cost basis so that the savings resulting from conservation and/or demand side management programs be available to us.

We ask that the Board examine Disco's debt repayment plan to determine whether or not it is too aggressive in light of the extremely high rate increase proposed at this time.

As indicated during our submission we believe the capital structure and rate of return on equity, that the methodology is appropriate but that the Board examine the amounts that are sought by Disco. And we believe that they should be lower.

And most importantly, I guess for the wholesale class, we ask that the Board set the rates of the wholesale class on a cost-related basis according to the definition of Disco's Board, that is at 100 percent or unity. And that if the Board feels that it is not feasible to do so in its entirety at this time, that no less than -- make an adjustment which would allow us to get no less than 60 percent closer to unity that we are now. In other words, we are at a revenue to cost ratio of 1.05. And that would take us to about 1.02 with the remaining progress to be made no later than 2010.

I guess at this time I would like to take the opportunity to compliment the applicant and all of the

2 Intervenors, including the applicant and the Intervenor staff
3 and witnesses for their professional and courteous manner
4 in which they have conducted themselves throughout. And
5 again I would like to thank the Chairman and each of the
6 Commissioners for their patience and attention during
7 these lengthy hearings. Thank you.

8 CHAIRMAN: Thank you, Mr. Gorman. The compulsory
9 Commissioner Sollows' question.

10 MR. GORMAN: No thanks.

11 DR. SOLLOWS: Mr. Gorman, you referred to in discussing the
12 justification for revenue cost ratios other than one, you
13 referred to policy expressed in law, which I presume is as
14 distinct from policy expressed in the White Paper, is that
15 correct?

16 MR. GORMAN: I'm not sure that I understand your question.
17 I think you are talking about the revenue to cost ratio of
18 unity that I'm talking about?

19 DR. SOLLOWS: Yes. Should this Board decide -- I think at
20 one point you were instructing us that should we decide to
21 set it at other than a value of one, it should be based on
22 an expression of public policy as expressed in law, is
23 that correct?

24 MR. GORMAN: Well no. I was referring to I guess Disco's
25 Board policy which talked about setting residential rates

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at 100 percent of cost no later than 2010. And I guess I took from that that if that were the Board's policy for residential, and they represent such a large percentage, that in fact the same principle should apply to all customer classes.

DR. SOLLOWS: But much earlier in your argument you -- I know you used the phrase policy expressed in law.

MR. GORMAN: Yes. I think what I was talking about there was subsidization and I think there is -- I would guess we have an approved band width of .95 to 1.05 and anything outside of that not only would be favourable treatment but in fact if it were lower than that would constitute a subsidy, and I suggested that the only justification for that would be a valid policy set out in legislation as opposed to say a policy of Disco. And quite frankly I don't believe there is any Disco policy for it anyway.

DR. SOLLOWS: I guess what it brought my mind to was this issue that we dealt with briefly I think in the CARD hearing of the circumstances where Disco was responsible for serving most of the -- or all of the rural customers in the province, and the Municipal Utilities by their nature do not. And to the issue of equity having the urban customers of Disco bear any burden for serving the rural customers or sharing that burden with the three

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2 Municipal Utilities. Now I guess the question in my mind is
3 is there any evidence on the record that there is such a
4 burden and that there is a higher cost to serving
5 residential utilities -- rural customers?

6 MR. GORMAN: First of all, I don't think that there is any
7 evidence before this Board at this time and I don't
8 believe that there has been any study relating to that.
9 But I think the simpler way of approaching it is to say
10 that in the cost of service study that has been done, the
11 cost allocation study, what we are proposing is that we do
12 know what it costs to serve the Municipal Utilities and we
13 know what 100 percent of that cost is, and currently we
14 are being asked to pay 105 percent. And so I think in
15 that sense -- and it may be a little more simplified, but
16 I think all we are asking for is that the revenue to cost
17 ratio really for all classes, you know, in a perfect world
18 should be at unity, and there isn't any real justification
19 that has been put forward in our view during these lengthy
20 hearings for setting Municipal Utilities at 105 other than
21 contract language, and I think that that -- I don't really
22 want to deal with that argument again.

23 DR. SOLLOWS: Thank you very much.

24 MR. GORMAN: Thank you.

25 CHAIRMAN: Thank you, Mr. Gorman. Mr. Peacock, would you

2 like to move forward when the table becomes vacant.

3 MR. PEACOCK: Thank you, Mr. Chair. And I would like to
4 thank all of you on the Board for your careful and
5 thorough examination of the numerous issues related to
6 this proposed rate increase. I would also like to thank
7 the other intervenors for their patience as we have
8 attempted to ensure that low-income New Brunswickers were
9 fully represented at this rate hearing.

10 I would also like to briefly acknowledge the presence of
11 the Chair of Vibrant Communities Saint John, Mr. Tom
12 Gribbons. I can assure that it hasn't been just me all
13 these months. I do have in fact a Board that I report to.
14 Vibrant Communities Saint John entered into this
15 regulatory hearing with limited goals. We had virtually
16 no knowledge of the intricacies of rate design, we had no
17 legal counsel and we had a researcher who often showed up
18 late. And I do apologize for that. We did know, however,
19 that far too many New Brunswick households live in a state
20 of perpetual energy poverty, meaning that on an annual
21 basis more than ten percent of their household income is
22 spent on heat and light. And that a significant rate
23 increase would jeopardize the health and well-being of too
24 many New Brunswick families.

25 We are pleased to see that in the months since we

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2 first intervened there appears to be a much greater awareness
3 about the real impact that rate increases will have on low
4 income households. With this awareness comes
5 responsibility. And we encourage the Board to remind the
6 applicant of its responsibility to provide affordable and
7 reliable electricity to all New Brunswickers.
8 Given the sheer amount of late payment notices that the
9 applicant sends out monthly, we suspect that Disco is no
10 doubt aware of the harsh reality facing New Brunswick's
11 most marginalized citizens. We also suspect that Disco
12 knows that low income New Brunswickers have limited
13 options whenever a rate hike occurs. Unlike industrial
14 customers, they cannot consider cogeneration. Even the
15 most economic solar panel or other generating device is
16 beyond the means of most low income households. Unlike
17 large residential homeowners they cannot consider other
18 fuel options. The conversion costs to natural gas, to
19 offer one example, could not be borne by households with
20 limited incomes. Even conservation and weatherization,
21 two initiatives welcomed by this intervenor and championed
22 by the newly formed Efficiency New Brunswick, requires
23 significant capital investment, and this is an option that
24 is removed entirely if the New Brunswick household rents,
25 as many low income New Brunswickers do, and the landlord

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2 is unwilling to enter into retrofitting upgrades.

3 Adding to these cost pressures is the simple, unfortunate
4 equation that burdens low income households. Because
5 their incomes are considerably lower than most New
6 Brunswickers, the consumption of electricity takes up a
7 larger percentage of their annual household budget,
8 generally more than ten percent, compared to a New
9 Brunswick norm of roughly four percent. The gap between
10 incomes and utility expense is the most difficult during
11 the winter season, and we are not surprised that Disco
12 appears to disconnect many of its clients in the spring, a
13 few short bills after the onerous winter peak, which
14 cannot be avoided if the residential client cannot sign up
15 to equalized billing.

16 This struggle to pay for winter heating costs occurs in
17 thousands of New Brunswick households, and we expect this
18 struggle to escalate if the rate increase is passed by
19 this Board in its entirety. Just yesterday the CEO of NB
20 Power asked New Brunswickers to start saving for higher
21 bills. Mr. Hay forgets that for thousands of New
22 Brunswickers in some months the money simply isn't there.
23 Because of these issues we are greatly concerned that the
24 proposed rate increase will affect low income households
25 to a greater extent than it will most members

2 of Disco's various rate classes.

3 While it is true that low income households are more
4 likely to be found in the first block of kilowatt hours
5 and hence face less of a rate increase in percentage terms
6 than households that are more often users of the second
7 declining block, they already face significant
8 difficulties under the current way that Disco delivers
9 electricity to New Brunswickers.

10 These difficulties include, first, a very high monthly
11 service charge. While Vibrant Communities recognizes that
12 there are significant costs related to maintaining the
13 provincial grid, we are not convinced that these costs
14 should be passed on to low income households, who by and
15 large live in urban neighbourhoods of relatively high
16 density, and as a result contribute little additional cost
17 to Disco's transmission infrastructure.

18 Second, a very high unit cost per kilowatt hour. While
19 most low income households will no doubt benefit from the
20 elimination of the declining block rate, until that
21 measure completely takes place, low income households face
22 a higher unit cost for using electricity than do most New
23 Brunswickers.

24 Third, a growing number of residential disconnects. In
25 response to our interrogatories, Disco filed evidence

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2 to suggest that the number of residential disconnects for bill
3 arrears have been increasing at a rate that we consider
4 unacceptable. According to the most recent figures, over
5 5,000 New Brunswick households are disconnected annually.

6 This is a number that, according to discussions we have
7 had with colleagues from the Dalhousie Legal Clinic in
8 Halifax, is nearly twice the annual rate of disconnects in
9 Nova Scotia.

10 Fourth, a seemingly arbitrary cost revenue ratio proposed
11 for the municipal utilities. While we understand that
12 1.05 is within the targets set by previous regulatory
13 rulings, we are concerned that this effective premium of
14 .05 will have a negative impact on the roughly 17,000 low
15 income individuals that live within the City of Saint John
16 and are served by Saint John Energy, the largest of the
17 municipal utilities. These low income individuals have
18 just as much difficulty staying on top of escalating
19 utility costs as do low income persons who pay directly to
20 Disco. The challenge for a low income person in Saint
21 John, we believe, is only compounded by the cost revenue
22 ratio of 1.05, and effectively installs a surcharge of
23 five cents for every dollar of electricity consumed by a
24 low income consumer in Saint John.

25 Fifth, a corporation that appears reluctant to

2 actively engage in demand side management measures that would
3 be of benefit to low income households, and one that sees
4 little benefit in participating in the province's goal of
5 achieving significant poverty reduction. This stands in
6 stark contrast to most other utilities in the country who
7 either actively promote DSM incentives or support an
8 endowment that can assist those households that fall into
9 arrears.

10 Sixth, a relative lack of corporate transparency when one
11 considers the internal contracts that are partly driving
12 the rate increase. While my office is buried in binders,
13 suggesting that Disco has been quite generous in their
14 responses to all intervenors, there are still too many
15 unknowns surrounding this decision, including the
16 abundance of energy being supplied by NB Power dams and
17 some of the contracts signed in confidence between the NB
18 Power group and some very large customers.

19 The questions arising out of these unknowns must be
20 addressed if the Public Utilities Board is to remain true
21 to its public mandate. If close to four-fifths of the
22 economic family that is NB Power is outside of the realm
23 of discussion during this rate hearing, we feel it is only
24 reasonable that low income households be exposed to only
25 one-fifth of any proposed rate increase. In other words,

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the rate increase should only be applied to that portion of Disco's financial affairs that has received full scrutiny from all the intervenors. To rule otherwise would mean that the applicant has not been subjected to the full level of scrutiny expected from a monopoly provider of an essential service.

While Vibrant Communities recognizes that the current Electricity Act restricts the level of scrutiny surrounding this rate hearing, we encourage the Board to focus more on the question of fairness for ratepayers than the question of an economic return for Disco, at least for this specific decision.

Now we know that this Board has been at this hearing for far too long to not make a decision on the rates proposed in their totality. And we are aware that the PUB must make decisions that are in the interest of both the utility and the ratepayer. Our opinion, however, is this.

We feel that this time around the ratepayer must be paramount. Very early in this process the public intervenor fretted that for too long Disco has had a get-out-of-jail-free card. With too many issues remaining outside of the Board's scrutiny, we are greatly concerned that the get-out-of-jail-free card may be offered for yet another year.

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2 Now that we have outlined the key difficulties as we see
3 them, we might offer some recommendations to the Board.

4 We have attempted whenever possible to draw from the
5 evidence filed thus far, as well as from precedents found
6 in other regulatory jurisdictions, to give our
7 recommendations some substance.

8 Our recommendations: First, maintain the current monthly
9 service charge. Throughout the hearing Vibrant

10 Communities Saint John has expressed concern that Disco's
11 monthly service charge is higher than that of virtually

12 every other jurisdiction in the country. We must admit
13 that we have not been entirely satisfied with Disco's

14 explanation for this relatively high service charge, and
15 we are alarmed that it may soon be \$19.80 in urban areas,

16 with the possibility of further increases in the years

17 ahead. We feel that Disco should have been more concerned

18 with the differential between service charges in New

19 Brunswick and those found in other parts of Canada. We

20 were intrigued by the expert evidence filed by the Public

21 Intervenor which suggested that the service charge was

22 sufficient in the \$17 range. We also noted that Enbridge

23 Gas has called for the service charge to remain

24 essentially where it is now. We hope that the opinions of

25 these intervenors, combined with our own feeling on this

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2 matter, will convince the Board to think hard about raising
3 this part of the residential rate.

4 This service charge impacts low income households to a
5 much greater degree than most any other element of the
6 rate design. It is effectively the base cost a household
7 must pay in order to access electricity. In our opinion
8 this cost should be kept as low as possible, even if it is
9 well below the cost of electric service. Our rationale
10 for this request is quite transparent. To paraphrase Ms.
11 Christina Payne, who testified during the public comment
12 day, electricity shouldn't be just for the rich. In our
13 opinion, a service charge increase of \$24 annually may put
14 many more households in Ms. Payne's unfortunate position
15 of facing disconnection.

16 We are also aware that Disco feels that dormant accounts,
17 those residential accounts that did not use a single
18 kilowatt hour for some months of the year, are putting
19 cost pressures on the utility. If these accounts are
20 driving the increase in the service charge, we feel that
21 these specific accounts should be expected to pay more.

22 In other words, rather than a general increase on the
23 service charge, we encourage Disco to apply a dormancy fee
24 of \$5 monthly to those accounts that consume no kilowatt
25 hours from the grid. While providing much needed

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revenue to Disco, this measure would also spare low income households who use power year round from paying more simply to access the essential service of electricity.

Second, as long as the declining block rate exists, Disco should be mandated to offer some sort of assistance to those low income households that face the highest unit cost of electricity.

Like other intervenors, Vibrant Communities was pleased to see that the declining block rate will be eliminated entirely at some point within the next five years. Much like Enbridge, however, we would like to see a specific schedule for the flattening of the residential rate.

We would also wish to see a greater awareness on the part of Disco of how the current rate structure, with its high service charge and declining block rate, negatively effects low income households throughout New Brunswick.

As far as we are aware, Disco has never disputed our suggestion that low income renters, living in older, inefficient apartments throughout New Brunswick, are effectively subsidizing the electricity usage of large home owners found in newly constructed divisions built in high income areas like Rothesay or Riverview.

We feel that since the total number of residential

2 disconnects continues to rise under this current rate

3 structure, Disco should take active measures to ensure

4 that low income households are somehow supported in their

5 struggle to pay their high unit cost for electricity

6 usage.

7 In the months ahead we would encourage Disco to actively

8 support the development of an arrears fund for those low

9 income households who are experiencing difficulty in

10 paying their power bill. While we recognize that the PUB

11 is an economic and not social regulator, we would still

12 encourage the Board to mandate the establishment of some

13 sort of endowment, since we feel it would help mitigate

14 rate shock among low income New Brunswickers.

15 Fortunately, there are a number of utilities across Canada

16 that actively support some sort of endowment for low

17 income customers who fall into arrears. These programs

18 can offer worthy examples to consider for both Disco and

19 the Public Utilities Board, and we would encourage you to

20 examine whether or not a similar sort of relief program

21 could be established here in New Brunswick.

22 In Ontario, Share the Warmth appears to receive the

23 support of a number of different utilities, including the

24 local utility in Hamilton and Kingston. Toronto Hydro,

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one of the province's largest utilities, actively supports the Winter Warmth fund of the Toronto United Way. In Nova Scotia, the private sector utility Nova Scotia Power manages to offer financial support for the Good Neighbours endowment managed by the Salvation Army. It is interesting to note that in most of these assistance programs those households that apply for assistance generally apply only once, and not every winter. Vibrant Communities is also aware that in Ontario the provincial government has established an Emergency Energy Fund, providing further relief to those low income households that face mounting bills. In our mind, all of these programs should be carefully considered by Disco in order to help alleviate the energy burden currently being faced by too many low income New Brunswickers.

Third, Disco should be mandated to respond to the objectives outlined in the provincial White Paper on Energy Efficiency, and actively promote programs that bring demand side management into low income households.

Throughout the hearing, Vibrant Communities has attempted to link the rising number of residential disconnects with the fact that many low income New Brunswickers live in residences that are old and inefficient.

2 Because a great many of these low income households rent
3 rather than own, a point made apparent by the New
4 Brunswick Student Association during public comment day,
5 these households are unable to take full advantage of
6 Efficiency New Brunswick programs that are geared towards
7 home owners.

8 These low income households are also less likely to
9 benefit from the energy advisor service provided by Disco,
10 since the program does not seem to focus on those
11 households that have either been disconnected or are in
12 danger of future disconnection. We are also concerned
13 that the limited number of energy advisors that are
14 expected to assist both the residential and general
15 service rate classes is far less than what should be
16 expected under an efficient program of demand side
17 management.

18 Since Vibrant Communities believes that targeted
19 conservation incentives can greatly benefit low income
20 households, we are disappointed by Disco's apparent
21 reluctance to promote these sorts of investments, either
22 through their own office or in cooperation with the newly
23 established Efficiency New Brunswick. We feel that Disco
24 sees the presence of Efficiency NB as an apparent excuse
25 for inaction on demand side management. Their logic seems

2 to be that since Efficiency NB is in charge of conservation,
3 Disco can simply be in the business of distributing
4 electricity.

5 Our examination of conservation measures in other
6 provinces suggests that the either/or scenario being
7 promoted by Disco does not have to be the only way in
8 which a conservation regime can be developed in New
9 Brunswick. While it is true that Efficiency NB appears to
10 be the first Crown corporation dedicated to conservation
11 in all of Canada, it is in effect one arm of the
12 provincial Department of Energy, while the NB Power family
13 is another arm. In both cases of course there is a fair
14 bit of independence.

15 In other provinces the provincial and/or local utility
16 does in fact offer specific demand side management
17 measures, while the provincial government offers a
18 separate set of initiatives, generally but not limited to
19 tax rebates on efficient appliances and furnaces. In
20 other provinces both government agencies and the
21 electrical distributor complemented each other's DSM
22 initiatives, and we certainly hope that Disco soon takes
23 on a much stronger role in support of Efficiency NB.
24 Given our specific interest in conservation measures that
25 can assist low income households, we feel there is

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2 one area in which the PUB can promote more effective DSM
3 through regulation. In cross-examining Disco, Vibrant
4 Communities learned that the utility earns roughly \$2
5 million annually in late payment charges from the
6 residential class. It is our opinion that much of the \$2
7 million in arrears is caused not by negligent customers
8 but instead by far too many Disco clients falling behind
9 in their winter bills because of the fact that they live
10 in older, inefficient homes.

11 Since Disco appears reluctant to address one of the root
12 causes of residential customer arrears, that is, older,
13 inefficient building stock, we encourage the Board to
14 order Disco to be more engaged in the field of
15 conservation. More specifically we would like the PUB to
16 order Disco to use the revenue it earns from residential
17 late payments to establish a specific fund that promotes
18 conservation in low income New Brunswick households.

19 While Disco may be able to manage this fund itself, we
20 feel it should develop such a fund in close cooperation
21 with Efficiency New Brunswick. Such a fund would be of
22 enormous benefit to low income households throughout the
23 province, especially if the municipal utilities also made
24 contributions.

25 We might add that although the proposed efficiency

2 fund for low income New Brunswickers is likely not part of
3 Disco's corporate plan, it does respond to one of the
4 concepts promoted under the province's White Paper on
5 energy efficiency, specifically, that the efficiency
6 agency be funded in part by the utilities and that it
7 become part of the regulatory framework that is the PUB.
8 Of course, if such a fund is established, Efficiency NB
9 would have to report regularly to this Board and this is
10 an action that we would certainly welcome. Finally, we
11 might add that other jurisdictions have already begun to
12 examine how efficiency measures should become part of the
13 regulatory process. So this is another area where New
14 Brunswick may find some good examples to borrow from.
15 We should not over-estimate the impact such a fund could
16 have. While \$2 million is only a small part of Disco's
17 overall annual budget, it would certainly add considerable
18 resources to Efficiency NB. More importantly, it could
19 provide immediate assistance to the thousands of New
20 Brunswickers who sleep in cold and drafty bedrooms each
21 night and are now faced with the prospect of even higher
22 energy bills.

23 Fourth -- and then after that I'm onto the conclusion --
24 Disco should receive much greater regulatory scrutiny
25 regarding residential disconnections. The

2 testimony of Ms. Christina Payne highlighted how a family's
3 entire world can be turned upside down by the act of
4 turning the power off. The unfortunate reality? In this
5 province, at least in comparison to other jurisdictions,
6 the power can be turned off far too easily and far too
7 often.

8 We understand that Disco's customer service policies will
9 be under review at some time in the months ahead, but we
10 feel that the regulator should be kept informed of
11 residential disconnections until such time that these
12 policies are subject to the full scrutiny of the Board.
13 Vibrant Communities would like to see monthly statistics
14 on disconnections filed with the PUB and the Public
15 Intervenor, until such time that Disco is ready to have
16 its customer service policies reviewed. We would also
17 wish to see similar statistics provided by the municipal
18 utilities, if possible. If there are any troubling trends
19 in the monthly disconnection totals, we would encourage
20 the Board to ask some very targeted questions to the
21 province's energy providers.

22 Given that the applicant agrees that electricity is an
23 essential household service, we feel that this filing
24 request could help ensure that the total number of
25 residential disconnects does not continue to escalate.

1
2 Conclusion. Before I turn to our conclusion I should like
3 to offer our thoughts on the questions put forward by the
4 Board yesterday.

5 On the question of exit fees, we really don't have any
6 opinion.

7 On the question of Section 156 of the Electricity Act, we
8 would support any measure that would ensure that future
9 Board hearings were as open and transparent as possible.

10 If revisions to the Electricity Act are needed to ensure
11 that the PUB is fully able to perform its public function,
12 then we would certainly hope that these changes are made
13 very soon.

14 Finally, on the question of a reserve fund made up of any
15 hydro surplus, this is a concept we would generally
16 endorse. Of course, self-interest is at play here. We
17 want you to mandate the establishment of an efficiency
18 fund for low income households maintained by revenue from
19 late-payment charges. As a result we would happily
20 endorse your fund proposal, if you were kind enough to
21 consider ours.

22 Now to our brief conclusion. As the Board is aware our
23 organization exists because we want to reduce poverty in
24 Saint John. Because electricity is such a vital
25 expenditure in low income households throughout New

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2 Brunswick, we felt it to be very important that low income New
3 Brunswickers were represented as the applicant sought this
4 very significant rate increase. We hope that our presence
5 has helped ensure that their legitimate concerns will be
6 addressed.

7 Because I am the principal researcher for Vibrant
8 Communities Saint John, I spend a lot of my days reading
9 different texts and papers that deal with poverty
10 reduction. One that I stumbled upon just the other day is
11 the New York Times Bestseller, The End of Poverty, by
12 Columbia University economist Jeffrey Sachs. The key
13 question in the book was the issue of how governments,
14 businesses and community can reduce poverty in urban slums
15 and rural villages around the world. Not surprisingly,
16 widespread access to affordable electricity was seen as
17 one of the best ways to achieve the goal of poverty
18 reduction.

19 In my mind, the fact that Jeffrey Sachs embraces
20 affordable electricity as a tool for poverty reduction is
21 not that different from the ideas embraced by Sir Adam
22 Beck in the creation of Canada's largest hydro company in
23 Ontario close to 100 years ago. In both examples, there
24 is a progressive belief that electric power should not be
25 enjoyed by the rich only, but instead shared by everyone.

2 I certainly hope that this belief is shared by the applicant,
3 since this belief could be found when John McNair and Hugh
4 John Flemming began constructing the foundations of the
5 modern NB Power family. I am certainly sure that this
6 belief is endorsed by this Board and that you will be as
7 innovative as possible in finding ways to limit this rate
8 hike. For this reason, I am quite confident that you will
9 deliver a ruling that acts in the best interests of
10 Disco's ultimate shareholders, the people of New
11 Brunswick.

12 Thank you and good luck.

13 CHAIRMAN: Thanks, Mr. Peacock. Just a moment, see if my
14 fellow Commissioners have any questions. You are getting
15 the compulsory.

16 DR. SOLLOWS: Thank you, Mr. Peacock. Very interesting.
17 One thing you mentioned was this notion of an endowment.
18 I'm wondering if you could give us a little more
19 information about that.

20 MR. PEACOCK: It's an interesting concept because I -- in my
21 brief examination of the endowments in other jurisdictions
22 I can't for sure be certain whether or not such an
23 endowment was mandated through the regulatory process or
24 whether or not the utility saw it as an act of good
25 corporate citizenship.

2 I believe the case in Nova Scotia -- I think that Nova
3 Scotia Power last year gave over \$200,000 in support of
4 the relief fund that the Salvation Army operates. I think
5 in Ontario there seems to be a closer knit regulatory
6 process. But I went to the Ontario Energy Board website
7 trying to find the smoking gun, so to speak, but I was
8 unable to do that.

9 DR. SOLLOWS: I guess the reason for my question is we have
10 all -- it has been acknowledged in the evidence by Disco
11 and everyone appreciates that there is a an unprecedented
12 surplus that has been generated by the circumstances of
13 excess hydro flows, high market prices in New England and
14 perhaps something related to scheduling basis on
15 generation capacity. And you have heard of course that
16 the Board might well be as Disco interested in
17 establishing a reserve fund to stabilize that.
18 Based on my own appreciation of the historical data, it is
19 unlikely that all of that surplus would be required to
20 establish that generation reserve fund, and I'm sure
21 others have also noted this and proposed that a portion of
22 that money that is not used and put in a generation
23 reserve would be used to reduce the rate increase.
24 As an alternative would -- and specifically as an
25 endowment -- a lump sum of money to go into an account,

2 would that be consistent with the approach, or are you really
3 talking not of endowments but more disbursements out of
4 income on an annual basis?

5 MR. PEACOCK: I think the challenge for the Board would be -
6 - if it was in fact an annual disbursement I think it
7 would be best that a third party in fact manage this. The
8 great luxury that other jurisdictions have is of course
9 that a charity steps forward and says that they would be
10 ready to manage any sort of endowment.

11 DR. SOLLOWS: Because we are looking at tens of millions of
12 dollars in surplus likely over and above would be put into
13 this account.

14 MR. PEACOCK: Absolutely. And I hope that it is an area
15 where the regulator will examine what is going on in the
16 other provinces. One thing I should mention though is
17 that there is often a temptation to expect government to
18 address the needs of low income households whenever there
19 is a rate hike coming forward. There is heating bill
20 supplements, those sorts of things. Our concern with that
21 is that governments ultimately respond to political
22 pressures and if it's not an election year or if they feel
23 it's not a big of an issue, then they won't offer that
24 sort of assistance.

25 Why we are bringing these sorts of proposals to you,

2 the regulator, is because we feel that it may in fact be a
3 better method to ensure that questions of some sort of
4 reserve fund dedicated to low income households, as well
5 as some sort of efficiency strategy specific to low income
6 houses, we feel that that should be really part of the
7 regulatory process. And it seems that in our limited
8 perspective Ontario seems to be moving much more so than
9 other jurisdictions in terms of trying to set rules for
10 that sort of program.

11 DR. SOLLOWS: Thank you very much.

12 CHAIRMAN: Mr. Peacock, I really appreciate your
13 presentation today and I'm looking forward to your
14 participating in the customer service policies hearing
15 which, as I have said, as soon as we have delivered our
16 decision in this we will schedule that. And hopefully in
17 this decision if there are matters that we believe Disco
18 should bring to us at that time we can let them know what
19 they are. And the disconnects of course are the big thing
20 there.

21 I must say I am intrigued by your four-fifths suggestion.

22 I am going to re-read what you had to say about that.

23 MR. PEACOCK: It was a bit of a Hail Mary.

24 CHAIRMAN: I do have one serious question, and that is

2 how -- you know, it's one thing to be able to ascertain who is
3 on social assistance and who is not, but my personal
4 concern is how do you ascertain the working poor, so that
5 subsidy or break can be directed to them. Have you any
6 suggestions on that?

7 MR. PEACOCK: It's a challenge and it's one that other
8 utilities, as they have looked at the issue of how they
9 can help out low income households and neighbourhoods,
10 it's one that needs certain flexibility. One method I
11 think in terms of promoting demand side management in low
12 income households, the vast majority of which rent, is to
13 attach utility incentives to affordable housing agreements
14 and renewal agreements that are managed by the Canadian
15 Mortgage and Housing Corporation. In Saint John, for
16 instance, a lot of the older housing stock that is being
17 rehabilitated is being rehabilitated through RRAP, which
18 is the Residential Rehabilitation Assistance Program, and
19 that is not targeted solely to households that will be on
20 assistance, it's targeted to households that simply find
21 it hard to make it month by month and that are --
22 generally the rents are set I think by a certain level
23 below median incomes for a specific community.
24 What would be really quite interesting I think would be if
25 the utility worked with Efficiency New Brunswick to

2 encourage aggressive investments in rehabilitating the old
3 rental stock that exists throughout the province, because
4 we know that a number of these renters are in fact low
5 income and face real difficulties.

6 CHAIRMAN: Great. Thanks again, Mr. Peacock, and we will
7 break for lunch now and come back at 1:30.

8 (Recess - 12:00 p.m. - 1:30 p.m.)

9 CHAIRMAN: Good afternoon, ladies and gentlemen. Any
10 preliminary matters?

11 MR. MORRISON: No, sir.

12 CHAIRMAN: Mr. Hyslop.

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

14 Mr. Chairman, Commissioners, this is the New Brunswick
15 Energy Policy White Paper. This is the New Brunswick
16 Electricity Act. This is Exhibit A-50 which is the
17 evidence that the applicant has presented to this Board
18 for consideration of an 11.4 percent increase.

19 I'm asking today for the Board to issue a report card on
20 the policy, the legislation and the rate application.

21 We want to first take the opportunity to thank the Board
22 and members for your efforts throughout these hearings.

23 You have performed a substantial public service.

24 The underlying issue that ties the policy, the Act and
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2 the revenue request together is the debt. It's a debt that
3 now stands at \$3.5 billion, and to that you can add \$277
4 million if you include EFC. And I'm going to just take a
5 very short moment to talk about the history of this debt
6 and where it came from and how it got to be here, because
7 I think it's important to go back and ask these questions.

8
9 There were two rate hearings that this Board held between
10 1991 and 1993 and from those hearings we had an applicant
11 that had a positive surplus. We had an applicant or a
12 company at the time that had a little bit of rainy day
13 money in some reserve accounts. And the Board made a
14 couple of important rulings.

15 It said first of all NB Power should have a return on its
16 investment equal to the embedded cost of its debt. The
17 embedded cost of its debt of course being the interest
18 that it paid on its borrowings. And they were also
19 permitted that same return on the surplus they had.

20 And the Board recommended at that time quite sensibly
21 that, yes, you have to have a little bit of money put away
22 and if in addition to covering all that interest you make
23 a little profit and the interest coverage ratio is between
24 one to 1.25, we are not going to complain too much. That
25 was I think a reasonable approach. And so that's the way

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we left it.

Now those hearings I understand were at times acrimonious, difficult, prolonged, perhaps a lot like these. I don't know. I wasn't here. But I do recall reading Mr. Gillis and Mr. McKelvey and Mr. Drummie, some of the finest counsel in this province, battering away at each other for a prolonged time before this Board.

CHAIRMAN: There was no rancor there among those gentlemen, I can tell you that. Just competitive spirit.

MR. HYSLOP. Very good. And with that said, at the end of the day we did come away with something. But for whatever reason in 1994 we put in place something called the three percent rule. And it has been spoken of many times and this certainly is unique. It's not aware of anything anywhere else in the regulatory jurisdiction. And it allowed the utility to take up to a three percent rate increase in any one particular year. And they did that quite often.

I suspect they did it quite often when they probably should have had a little more because they started losing a fair amount of money from their operations. And at the end of the day they lost \$360 million from operations between 1993 and 2004.

I don't know why they didn't come before this Board

2 seeking greater increases, or some type of revision in the
3 interest cost ratio. I have been told -- I haven't
4 confirmed this but I think it's true and I'm going to put
5 it on the record, I have debated it, but -- I understand
6 there weren't rate increases in 1995, 1999 and 2003. I
7 don't know if there is a coincidence between that and the
8 fact those were election years or not. But regardless, NB
9 Power did not develop the revenue streams that it needed
10 and now it is in a serious debt situation.

11 And this became problematic to the point that something
12 had to be done about it and certainly I think what we
13 spent a lot of time covering in the last year is the
14 solution to the debt situation.

15 Now what NB Power did, it sounds perhaps sensible, they
16 went to Bay Street and got some investment bankers to help
17 them out. And from the evidence, by the way, it appears
18 this was perhaps more done by the Department of Energy and
19 the Department of Finance. And they brought these people
20 down. I think Ms. MacFarlane and Mr. Marois are perhaps a
21 little too modest in their involvement, and nothing really
22 spins on that, but they seem to have a pretty good
23 knowledge of it.

24 So whether or not, as Mr. Morrison said, that this is the
25 purpose of the hearing or not, we have completed this

1 examination and I do think that we should have a look at what
2 was done, what it has accomplished and what the problems
3 with it are, and maybe ask if there is another solution.
4 I am going to say it now and I'm going to say it again and
5 I'm probably going to say it several times. It is not --
6 it is in the public interest that the debt situation be
7 resolved. New Brunswickers pay their bills. And if there
8 is a problem with the creditworthiness of this Province,
9 which has not been established on the record, but if there
10 is such a problem then the debt at some point in time must
11 be handled and it should be looked after and it should be
12 managed. I do not take issue that the debt is a problem.
13 Now the solution that we came up with and what was
14 presented, this Bay Street solution, it has got to be one
15 of the most convoluted approaches to resolving a debt that
16 I ever envisioned -- they came in with the idea that, you
17 know, one thing we would like to do here is develop a
18 competitive market, and this may have come before the debt
19 situation, it may not have. And one of the things you
20 need for a competitive market is to put people on a level
21 playing field. And we spent hours during these hearings
22 dealing with issues such as "a managed transition to a
23 competitive market", "the development of capital
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1 - 6127 - Mr. Hyslop -

2 structures commensurate with the risk of an investor-owned
3 utility", "a stand-alone capital structure", and this is
4 my personal favourite, "fair allocation of risk under the
5 purchase power pgreements to the shareholder and
6 ratepayer".

7 Now it is important when we are being asked to suffer an
8 11.4 percent across the board increase that New
9 Brunswickers understand what these concepts are about.
10 They should know what it means and how the 11.4 percent
11 came about.

12 And our submission to this Board in issuing the report
13 card on the policy and the legislation and this rate
14 increase is that it's time to fully re-evaluate the Bay
15 Street investment banker's solution to this problem.

16 And I think the Board has the jurisdiction to do so. It's
17 contained I think both in the suggestions of policy in the
18 White Paper and perhaps expressly in the overriding
19 jurisdiction of the Board to monitor the electricity
20 industry under Section 127. And I think this Board should
21 use the opportunity that it has as a result of these
22 hearings to make a full evaluation and review of the Bay
23 Street proposal.

24 Now I would also say I don't even -- I think it is
25 envisioned that this Board should do so, because when I

2 looked at the White Paper, and I flipped through it again at
3 noon, there was an analysis in there, they reviewed
4 jurisdictions and went to competitive markets where it
5 didn't work so good and a few where it has worked good,
6 and they wanted to go slow in New Brunswick. We didn't
7 want to have some of the disasters that have happened in
8 jurisdictions such as Ontario. So I think it's well not
9 only within the guise of the legislation, but I think if
10 the government wanted some feedback as to where this
11 policy is going, it's quite right to ask this Board to do
12 so.

13 And in suggesting that we abandon the Bay Street solution
14 I will during these remarks perhaps suggest a Main Street
15 New Brunswick proposal to the debt.

16 Now what are our objections with the Bay Street proposal?

17 What problem do I have with it? Well -- sorry, Terry --
18 but as Mr. Morrison stated several times on the news last
19 night, you have to accept it. And it must be accepted.

20 And I don't care how many times the public statements of
21 the utility have been that they really favour the open and
22 transparent review of the cost before the PUB, there is no
23 open and transparent review of the generation costs. The
24 only thing I will say to Mr. Morrison is that regretfully
25 his suggestion that it

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2 largely must be accepted, he is probably right on that, but
3 regardless, that's -- we have all known that for quite
4 some time.

5 Now the Bay Street solution provides an illusion, or is
6 intended to give the facade of regulation. It wants
7 ratepayers, taxpayers, and let's face it, the voters, to
8 believe that there is an open and transparent
9 investigation of NB Power's costs. But it has not. You
10 know, also, if you want to get behind it even further,
11 there are a number of other contracts -- the shared
12 services contracts, they are not subject to review under
13 156. It's our real view that probably less than \$100
14 million of the 1.3 billion was accepted at this process.
15 The underlying belief the Electricity Act and the
16 reorganization of NB Power and the group of companies has
17 been done to facilitate the managed transition to a
18 competitive market. Now if you have competitive rates you
19 don't need regulation. If you don't have a competitive
20 market, presumably you do need regulation. It just seems
21 to me that we are in a no-man's land when we are in this
22 managed transition to a competitive market. We are half
23 way between here and there. And I'm not sure where we are
24 coming from and where we are going, but we are half way
25 between here and there. And, you know, I think somebody

2 has made a presumption that once we hit this managed
3 transition, perhaps the need for the regulator isn't as
4 strong or isn't as required.

5 And I also want to reiterate, I thought my colleague, Mr.
6 Booker, made a very fine point this morning and I think he
7 had the advantage of participating on the Market Design
8 Committee which I didn't, but, you know, the dynamics have
9 changed. In the late '90s the potential for competition
10 may well have been there. The pricing in New England was
11 such that perhaps generators there may want to come to New
12 Brunswick. There was some excess capacity in Quebec. I
13 did file this comparison of electricity prices in the
14 North American market, and last April 1st -- last April
15 1st if you had 2000 kilowatt hours of consumption in
16 Moncton New Brunswick you paid 167.99. If you were in
17 Boston it was \$354.98. If you were a general large power
18 purchaser of power in Moncton New Brunswick, say 30,000
19 kilowatt capacity at 81 percent load factor -- I have
20 learned quite a bit -- anyhow, in Moncton that would have
21 cost you \$940,000 last April 1st, in Boston it would have
22 cost you \$2,440,000.

23 With greatest respect to NB Power and to Genco, who is
24 going to compete with you? You know, ask NB Power if they
25 are afraid of the New England utilities with rates

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2 two-and-a-half times those charged to New Brunswickers? I

3 doubt if we move to a competitive market our rates are
4 going to go down. I expect if we went into a true
5 competitive market they would end up going up.

6 I say all this to say that the dynamics for a competitive
7 market that may have been there in the late '90s aren't
8 there today.

9 Now if this managed transition to a competitive market
10 means there is to be minimal regulation we agree -- we
11 strongly disagree. And we take the point that at the end
12 of the day if we want to have regulation let's have it,
13 let's have this Board in your report card tell the people
14 that are in charge of this stuff that let's have the
15 regulation be real. If they don't want this Board to be
16 the regulator and want the government to be the regulator,
17 that's fine too. But the one thing that is not acceptable
18 is an illusion of regulation. It just doesn't stand.

19 And I agree with the point made by Mr. Lawson and Mr.
20 Booker that without the proper information some serious
21 issues can arise when you start dealing with things like
22 the cost allocation study. It's no secret that my
23 colleagues sitting beside me for these months aren't very
24 happy with the December 21st result. They have been very
25 professional in their comments about it. But they think

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2 they got whacked pretty hard on generation costs and they
3 think that happened because this Board didn't have the
4 information. I agree with them. This Board should have
5 the information to do a fair cost allocation study.
6 Simply put, the restructuring is not what it appears to
7 be. It has nothing to do with competition. What was done
8 was to put a game plan in place to deal with the debt and
9 a fundamental component of this game plan was we really
10 didn't want the Public Utilities Board playing too much
11 with the plan. But we still want the public to believe
12 that there is an open and transparent process. I will
13 leave it perhaps there on that point.
14 What we did was we built an equity position, implied
15 return on equity into the PPAs, especially the upstream
16 ones where the real dollars are, and we disguised the debt
17 repayment plan as the price of purchase power. The
18 purpose of this was to allow Electric Finance Corporation
19 to pay down the \$377 million debt, to accumulate funds
20 where it can invest them into the different corporations
21 to create equity and allow them to stand on a level
22 playing field. The process is pretty complex, is pretty
23 convoluted, it's not understood by ratepayers, taxpayers
24 or voters. There is one thing laudable about it. It's
25 the point I made. It at least is one possible answer to

2 the debt situation. And I will repeat again, I told you I was
3 going to say it more than once, it's in the public
4 interest that the debt get dealt with.

5 The biggest problem at the end of the day with this
6 reorganization and the way it is handled is the critical
7 decisions as how much money will flow to EFC and the
8 government has not been left in your hands. It has been
9 taken away and placed in the hands of EFC, senior
10 officials in the Department of Finance and in the
11 Department of Energy. Ratepayers might need a referee. I
12 don't know.

13 So fair to ask maybe before I close this one point, can
14 you still have a strategy to deal with the debt and still
15 have regulation? Maybe the best way is to cut the
16 regulator out. I don't know. That is one approach. I
17 don't think it is. My submission is yes.

18 And I will give you a few examples that NB Power could
19 have done when it came before this Board. It could have
20 come before this Board and said look, we are in serious
21 debt. And we would ask this Board to go back to its 1993
22 ruling. And instead of saying set the rate so that you
23 create a 1.0 to 1 interest recovery ratio, we want you to
24 set those rates in such a way that it is 1.15 to 1 with a
25 25 point clearance.

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2 That is one way they could have went about it. It would
3 have created surplus funds. This Board could have
4 approved it. You could have heard everybody out and made
5 a decision.

6 Dr. Makholm in his evidence said well, what they do in a
7 lot of jurisdictions when they get debt is you sit down
8 and you decide how much you want to pay off, how fast you
9 want to pay it off and you put it right on the bill, debt
10 recovery charge, .5 cents a kilowatt-hour.

11 Every time New Brunswickers get a bill they know what it
12 is going for. The beauty of that of course is the
13 regulator is in control of seeing that the debt gets
14 repaid. You want opency and transparency, start putting
15 debt recovery charges on people's bills.

16 The other way would have been for NB Power to come before
17 a plan to retire this debt, look New Brunswickers in the
18 eye. I don't know.

19 I made a motion during these hearings. I would have liked
20 to have had somebody here from Bay Street, one of these
21 Bay Street investors, and ask him how true regulation fits
22 into the proposal that they have for the debt.

23 Now this was denied. And that is fair ball. But I would
24 have liked to have asked him why he was afraid to

2 tell New Brunswickers how much of the debt is actually being
3 paid and how it is being looked after.

4 In a summary on this point the issue is the debt. I
5 believe the debt should be dealt with by the regulator.
6 The managed transmission to a competitive market is not
7 likely to occur. And we should not justify the use of the
8 managed transition to a competitive market as a
9 justification for a system of regulation as an allusion.
10 I want to move on. I want to talk about power purchase
11 agreements. And again they are coming out of the policy.

12 And at exhibit A-50 at page 15 of Ms. MacFarlane's
13 evidence, she explained that the investment bankers -- and
14 quote -- these are her words -- "with the intention to put
15 the NB Power group of companies on a level playing field
16 with other energy companies and to assign the risk
17 associated with the power purchase agreements between the
18 shareholders and ratepayers, develop the power purchase
19 agreements."

20 And further Ms. MacFarlane says in her prefiled testimony,
21 "The risk allocation between the shareholder and the
22 ratepayer was based on advice from the government's
23 financial advisers and experts to reflect commercial
24 reality industry practice."

25 So I guess what she is saying is these people have

2 developed the PPAs with the intention of balancing the
3 interests of the shareholder, whose predominant interest
4 is to have the debt repaid -- this debt thing is not going
5 to go away in this speech -- and the ratepayer whose
6 predominant interest is to keep the rates as low as
7 possible while ensuring that they are fairly determined.
8 Now the problem with the PPAs together with Section 156 is
9 that the regulated has become the regulator. I don't
10 think the PPAs are fair just because someone from Toronto
11 decided that they are. In fact, I trust I can be forgiven
12 if I suggest an element of uneasiness with this
13 proposition.

14 And I guess I say that because if you have ever been an
15 average New Brunswicker and overdrawn on your account and
16 the bank manager brings you in, I have never known a
17 banker that is going to make suggestions as to what he is
18 going to do for you. Quite frankly these bankers were
19 here to deal with the debt situation.

20 So I asked Mr. Meehan and Mr. Strunk to help me out. Tell
21 me about these PPAs. Is this what you would have in a
22 situation where you want to become competitive? Is this
23 what you would have in a restructured environment?

24 Now whether or not Mr. Strunk's evidence is relevant to
25 the revenue increase, it certainly is I think very

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relevant in you issuing your report card on the policy and the legislation.

And here is what Mr. Strunk said in his evidence at page 5497. I have got a lot here. I will just pick a couple out.

First concern was really the situation. In New Brunswick we have a distribution company that has captive customers and that distribution is requesting a dollar for dollar pass-through of an affiliate power purchase contract with no regulatory scrutiny of the contract's cost.

This in my experience and the experience of Mr. Meehan is unprecedented. Mr. Meehan has been dealing with power purchase agreements for 25 years. And to have this type of a power purchase agreement not subject to regulatory approval is unprecedented.

The last time we had something unprecedented in this jurisdiction with regard to electricity rates is when we put the 3 percent rule in. I hope this doesn't turn out quite the same way.

And the reason it is dangerous -- this is what Mr. Strunk went on to say -- is that the reason you have the regulation is to assure the purchase utility's customers they are not paying too much as a result of the

2 contractual terms that are overly preferential to the
3 affiliate seller.

4 I asked him well, be more specific. Tell me what is wrong
5 with the contract? The vesting agreement, says
6 Mr. Strunk, is a loose contract that reflects contracts that
7 were entered into prior restructuring. It is not the type
8 of contract you would see in a competitive area. You
9 would have much more definition of the terms. It would be
10 for a much shorter term.

11 Further -- and this is a beauty -- Mr. Strunk says there
12 is considerable discretion in determining a number of
13 year-end adjustments to the price paid by Disco. And if
14 these decisions are not subject to regulatory oversight
15 and potential challenge in an adversarial proceeding,
16 there are insufficient safeguards to ensure that Disco's
17 customers are paying reasonable rates.

18 I sympathize with the applicant. This was not the year to
19 have 43 percent more water over the dam than you would
20 normally get. But this is exactly the point
21 Mr. Strunk is addressing. The water flow issue, which I will
22 talk a little bit more later, is one of these year-end
23 adjustments. And who is in control of it, the regulator
24 or the operating committee?

25 I asked him a little bit more about discretion. And I

2 won't get into a quote. I don't want to read it. You can

3 read his evidence back if you want. But he refers to

4 Schedule 6.2.

5 And he says, if you refer to the last sentence of that

6 Schedule which says the operating committee shall manage,

7 develop and maintain the process for establishing the fuel

8 component of the vesting energy price in accordance with

9 the modeling guideline set out above -- and here is the

10 important part -- as such modeling guidelines may be

11 amended from time to time.

12 That is what the contract says. That is what Schedule 6.2

13 says. We can change the vesting energy price anytime we

14 want because we can amend the modeling guidelines.

15 Anyhow, finally the Chair asked a question to

16 Mr. Makhholm which I put to Mr. Strunk. And that question was

17 do contracts like this exist if you are going to move

18 toward a competitive market?

19 And Mr. Strunk said no, I'm not aware of jurisdictions

20 that have approached restructuring similarly. What we

21 tend to see in restructuring is -- when competition is

22 introduced into the sector we tend to see shorter term

23 contracts. We never see life plant contracts.

24 His evidence wasn't cross examined as a judgment call by

25 my friend. But going forward I think it is very, very

1 material evidence for this Board to consider when you issue
2 your report card. I think you should indicate the
3 concerns that you have with the PPAs, the discretion that
4 is in them. And in fact I will be suggesting that this
5 Board should take authority over these because of the wide
6 discretion. The PPAs have simply permitted the regulated
7 entity to become in many ways the regulator.

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9 And Ms. MacFarlane and I have more than once -- she is a
10 very formidable adversary. She suggested somewhere during
11 the hearings that the way she saw it, once the benchmark
12 prices are set here, future rate increases would only be a
13 review of incremental cost. I guess it is Section 156
14 revisited.

15 Obviously the utility wants to continue to play as much as
16 possible the role of the regulator. I trust the Board
17 senses and feels and understands the uneasiness that I
18 have. For example, when we are talking about the deemed
19 capital structure and return on equity for Genco and
20 Nuclearco, we asked if they had expert reports to
21 establish what these should be. And the answer was no.
22 I asked Mr. Peaco whether or not a review of these debt
23 equity structures and ROE were part of his retainer. And
24 that was not part of it.

25 You know, when you haven't sat down and decided even

2 if you are going to have the structure that Genco and
3 Nuclearco are going to have, and you don't go out and do
4 the analysis, you don't hire the expert to say this is
5 what an appropriate structure would be if this was an
6 investor-owned corporation and this is an appropriate
7 return, you are just pulling the numbers out of the air.
8 And that is what those numbers are. They are pulled out
9 of the air and they are pulled out the air to fit a
10 specific repayment of debt, payment of debt. Funny how we
11 keep coming back to that.

12 I don't know. When you haven't done it how can you tell
13 me it is fair? I don't know. Except when you are the
14 regulated and you become the regulator. You don't have to
15 prove your point. You just build it into the pricing and
16 the PPA agreements.

17 Maybe it is because of a legal training I make this point.

18 But it only becomes fair to the ratepayer if he has a
19 chance to argue the point. And notwithstanding that close
20 to 60 days of testimony occurred, we really haven't even
21 gone down the road of what is fair and reasonable for the
22 debt equity and the ROE.

23 You can sense that I'm uneasy a little bit when two
24 companies, having the objective of paying greater amounts
25 to the shareholder, can adjust the PPAs so that a

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potential \$75 million positive adjustment in favor of Disco
can be transferred to Genco without regulatory review.

I was concerned when I asked Ms. MacFarlane at pages 5693
and 94 when we were talking about this hydro adjustment.
I said "Well, the results weren't consistent with what was
expected -- what you were referring to is the results were
not consistent with the budgeted performance of Disco and
Genco, correct?"

Ms. MacFarlane: "That is correct." "Thank you." Ms.
MacFarlane: "Budgets are set on average. And any
fluctuations from above or below flow to Disco. And it
was clear what was flowing to Disco was inordinate and
therefore damaging to Genco."

I thought I knew something about what the meaning of
incremental cost was when I read it in Article 6 (12).
And Ms. MacFarlane confirmed they were marginal costs,
which I have heard a lot about. But marginal costs aren't
always marginal costs. Now we have in-province
incremental cost and system-wide incremental cost.
My concern isn't whether Disco's explanation of it is
right or wrong at this stage of the game. My concern is a
simple one. And that is every time something fuzzy
happens, for example, when the Genco budget is out of

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step, it is too easy to step in, the Operating Committee to step in and say this isn't right. We must be missing something in the contract. We will have to correct this. Am I wrong to be concerned that the ratepayers in New Brunswick are not likely to get the benefit of those reinterpretations? Quite simply again I offer the proposition to this Board that the regulated should not become the regulator.

Now one of the things that this Board asked us to address, Section 156 -- and although I may speak briefly later, I will make the point now.

First I heard Mr. Gorman's detailed legal analysis. I concur I didn't do a detailed legal analysis. I'm glad he did. But I do think at the end of this hearing, just because of the definition of first hearing, that the Board will be free of Section 156.

And at that point in time this Board should take an active investigative role into the management and operation of these power purchase agreements. The Board should clearly affirm its authority over the PPAs and the cost created through them and how they impact on Disco's rates.

Without limiting this general proposition I believe the detailed evidence in support of the costs and

2 variables that are built into the PPA contracts should be
3 filed with the Board.

4 Further I suggest that the Board should approve any and
5 all interpretations and amendments of the PPAs. This
6 supervisory role I will discuss a little further at the
7 end of my argument in the order that I'm seeking.

8 Fundamentally our position is simple. The PPAs put NB
9 Power back together again. These companies do not exist
10 as separate and independent companies. Rather they are
11 the means by which the government and the shareholder have
12 decided how much of the rate should be put back against
13 the debt. Once they are approved they have chosen to make
14 this calculation without the review of a regulator.
15 Simply put, PPAs, Section 156 did at least for this
16 hearing make the regulated the regulator.

17 I think this Board should take the opportunity in writing
18 its report card on the policy and on the legislation in
19 this revenue requirement to say so.

20 I want to, if I might, move on and talk a little bit about
21 why we are all here. And that is the revenue requirement.

22 And I do apologize for perhaps taking an inordinate
23 amount of time to deal with policy issues that Mr.
24 Morrison quite properly states are interesting and fun to
25 deal with and don't really have much to do with the

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revenue requirement.

Now I'm asking -- I'm going to review four points that I believe the Board should take into account in reducing the revenue requirement from the billion \$304 million.

One, and I expect is a reduction for it, the Coleson Cove issue. The second is a reduction for excessive OM&A. The third is a reduction for disallowance of the hypothetical return on equity. And the fourth is an allocation from something that I will describe as the regulatory reserve account or the hydro waterfall adjustment.

I will deal with Coleson Cove first. Goodman in his text, Process of Ratemaking, at pages 645 and 646 notes related to the quality of management standards are the occasional penalty factors that an agency may take into account. Penalties in this context are reductions to serve for punishment for company offenses or actions contrary to commission order, rule or policies.

Now while -- and I don't want to overblow this, but we do submit that the record as a whole shows many incidents of an intransigent attitude on the part of the utility towards the Public Utilities Board since 1993. And I won't go into all of those and I don't think it's particularly relevant. I'm hoping that the utility will

2 see this Board as a partner when we are through. But I think
3 it is appropriate that we single out Coleson Cove.

4 Now in Exhibit PI-22, which is Coleson Cove -- the NB
5 Power's Coleson Cove pre-filed evidence, the then
6 president of the corporation stated as follows: NB Power
7 has considerable experience with Orimulsion fuel and BITOR
8 the supplier. Reserves in this fuel are vast and is a
9 Venezuela national priority to increase sales to its only
10 market, power generation. We are confident that a
11 refurbished Coleson Cove on Orimulsion fuel will be a
12 reliable source over the long term.

13 And at page 10 of the evidence the then president was
14 asked, does the evidence in your view demonstrate the
15 proposed project as the least cost option? Answer: Yes.

16 The investment project should be recovered within six
17 years. Savings over the life project are estimated at 400
18 million net present value compared to the next best
19 alternative.

20 Now we note that the refurbishment investment was
21 \$850,000,000. And during the course of those hearings NB
22 Power officials indicated that the Orimulsion supply
23 contract could easily be expected to be signed within one
24 or two months of Board approval of the proposed
25 refurbishment. Intervenors at that hearing questioned why

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2 the supply contract could not have been presented at the
3 hearing. But NB Power expressed great confidence in
4 having the contract signed and they didn't want a
5 condition. I was at those hearings and I have regretted
6 over the years not taking the position that the Board's
7 final approval for Coleson Cove not go ahead until they
8 had in their possession a signed contract for the supply
9 of the Orimulsion.

10 Now the Board heard those arguments and it stated a couple
11 of things. The applicant stated it had many years of
12 successful uninterrupted fuel supply from Venezuela, over
13 20 years for heavy fuel oil and approximately seven years
14 for Orimulsion. And then the Board went on to state the
15 following: The Board is satisfied that the applicant has
16 confidence in the ability of BITOR to perform its
17 obligations under the contract. However, Ms. MacFarlane
18 did state NB Power was continuing to review the
19 possibility of third party guarantees. NB Power will
20 conduct a cost benefit evaluation to determine if such
21 guarantees would be reasonable in this case. The Board
22 encourages NB Power to do all that it can to ensure that
23 the contract will included appropriate protection for NB
24 Power in the likely event that BITOR should fail to meet
25 its obligations.

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2 Well I would have to think if you were making a
3 representation to the Board that you expected the contract
4 to be signed in 30 to 60 days, then within that 30 to 60
5 days they should have known there would be a problem with
6 the final signed contract. I'm not aware of anything that
7 would suggest that the Board was made aware that these
8 problems would have occurred within 90 days of its
9 decision. I'm not even aware, and I haven't searched the
10 whole file, but my understanding is that there was never
11 even a report from the utility to the Board at any time
12 indicating difficulty with the contract.

13 Further, and I speak for New Brunswickers on this point,
14 the questions as to why Coleson Cove did not get a signed
15 contract remains shrouded in secrecy. New Brunswickers
16 are on the whole a forgiving and understanding lot of
17 people. We understand people make mistakes, even if the
18 mistake is, as Mr. Hay testified before the Crown
19 Corporations Committee, as much as \$2.2 billion. That
20 might be a little hard to take, it's still a mistake, and
21 we are concerned.

22 You know, Coleson Cove shows the fundamental way a
23 regulator can play a role in the electricity sector. A
24 good relationship with the utility is a win for all. I
25 don't think the days when this Board should be considered

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2 an obstacle to NB Power should continue.

3 Now I tie that into Coleson Cove by saying there is not
4 going to be closure to Coleson Cove until there is an
5 explanation and an apology. Saying I'm sorry goes a long
6 way in these parts and unfortunately to date the utility
7 has, and perhaps this is because of the litigation, had a
8 hard time saying it.

9 I only ask one question. I backed off on Coleson Cove
10 during these hearings. The press has been pretty good to
11 me but they let me go on this one. I only asked one
12 question. And that was whether or not this rate hearing
13 would have been necessary had the Orimulsion contract been
14 signed. And I think the answer from what I have been able
15 to get through Exhibits P-1 and P-22 is that if the
16 contract had been signed we wouldn't be looking at an 11.4
17 percent rate increase today.

18 So where does this leave it and what type of penalty is
19 the Public Intervenor submitting is appropriate? I had a
20 lot of trouble with this one. Clearly the debt is a
21 problem. I don't want to create more debt. And then I
22 started trying to think of a theoretical way of
23 calculating a penalty. Good thing I had Mr. O'Rourke. I
24 was going to ask you to treat it like a whiplash, Mr.
25 Chair, and try to find a number that felt right. But I'm

2 going to give you this scenario. Cost of refurbishment, \$850
3 million. Long term cost of funds, 6.29 percent. 20 year
4 life. Therefore loan repayments 42 million and change a
5 year. Disco's costs as a percentage of the total cost at
6 this revenue requirement, and this is taken from Lori
7 Clark's evidence, 119 million -- 119 million over
8 1,305,000,000, or 16.7 percent. Disco's share of the loan
9 repayment 42 million and change against .167, we think the
10 penalty should be \$7,144,500. And it is a penalty. There
11 is no justification for it, and costs. I think it's just
12 a statement of this Board of perhaps it's dissatisfaction
13 over the way the utility has dealt with the Orimulsion
14 situation.

15 Revenue requirement. Second issue. We will move on to
16 something that is a little more fun. It bothered me that
17 section a little. Anyhow, the return on equity. And this
18 is a simple issue. First of all, we did not lead any
19 evidence as to say whether 42 percent, 57 percent should
20 be 35 percent, 65 percent. We didn't lead any evidence as
21 to whether ten percent should be nine percent. I
22 understand that those hearings are really awful and after
23 all we have gone through I didn't want to spend three or
24 four days on capital structure and appropriate rate of
25 return. The difference we are talking about is easily

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2 calculated. It's 14.4 million. And the issue is a simple

3 one. And that issue is, what is the basis which NB Power
4 distribution customer service company should be permitted
5 to calculate its profit margin.

6 Now again a little bit of history might be helpful. In
7 the rates and policy decision of the Board, May 22nd 1991,
8 the Board stated at page 73, "The Board considers that the
9 ownership of NB Power by the Province of New Brunswick
10 should benefit the people of New Brunswick. And further
11 the Board is of the view that the appropriate capital
12 structure to be used when setting rates for NB Power's
13 actual structure that the company projects will be used in
14 the future test period. The Board is of the view that
15 using a market based test equity would not be appropriate
16 for the purposes of setting rates for NB Power.

17 Now NB Power is now or Disco is now proposing to change
18 those rules, and although in 1993 in the rate decision NB
19 Power did take the position that we believe the utility's
20 cost of debt is appropriate as a rate of return, and that
21 it is important so long as NB Power is a Crown corporation
22 and the government has not established any market rate of
23 return criteria. And at page 8 of the 1993 decision, the
24 Board confirms that the appropriate

2 rate of return on equity component of NB Power's capital
3 structure should be the embedded cost of NB Power's debt.

4 Now this all leads back to the debt question again.
5 Keep coming back to that. You know, the \$350 million loss
6 if the utility followed the Board's instructions we
7 wouldn't be here today with this. And rather than look to
8 the Board for rate increases in excess of the three
9 percent rule they went on. Now I want to get on. The
10 bankers' proposals deal with the debt is as follows, and
11 in that regard in her evidence, Exhibit A-15, Ms.

12 MacFarlane tells us the forecast net income is expected to
13 produce pre-tax interest coverage of 1.73 times and an
14 after tax of 1.48 times. Please note these payments are
15 payments in lieu of taxes.

16 Now I went on and I looked a little bit at -- gee, you
17 know, the government really isn't getting much out of
18 this, but then I went and looked at Exhibit PI-19. And
19 you might recall all the fun we had trying to get an
20 answer of how much all these companies were paying back
21 into NB Power. And for the first three-quarters of
22 2005/2006 we were having a pretty good year, because that
23 tells me that for nine months the total amount of monies
24 that is going to be paid out is \$284 million. And what it
25 doesn't show also is that there is another \$82 million of

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2 profit being made by these corporations which presumably will
3 be paid through as dividends. You know, I look at those
4 numbers and I say, well gee whiz, you know, 284 and 82,
5 that's 366. So I take the interest payments off and they
6 are 195. There is \$171 million going to the government
7 this year.

8 One of the things I learned in small town practice, it's
9 not hard to make any business lose money. And by way of
10 example it's time for a Raymond story. You know, one time
11 I was chatting with my buddy Raymond. I said, Raymond,
12 what kind of year did you have? And every small
13 businessman in New Brunswick will understand what is going
14 to be said here. And I said, Raymond, what kind of year
15 did you have? He says, I don't know, he said. I just
16 declared \$150,000 bonus to me and \$150,000 to my wife and
17 the company hardly made any money this year. You know,
18 the point being made here is the shareholder is taking
19 money out of this thing, but when it comes out in the
20 middle it can affect the bottom line.

21 Now that bottom line is something I thought Mr. Walker
22 from McCain Foods made a good point on when he was here.
23 And the point is -- I think it was pretty good. He said,
24 you know, every company budgets a return on its
25 investment. McCain Foods, every year we sit down and

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2 calculate how much money we want to make for the McCain
3 family. And I don't know what they pull out. I can
4 imagine -- I met Mr. McCain a couple of times, I imagine
5 he likes a good return on his money. But he said -- Mr.
6 Walker said, you know, an awful lot of years we don't get
7 it but we work awful hard. You don't always get your
8 return on equity. These people show up with these PPAs as
9 though it's a slam dunk. I don't know. There is just
10 something on that point that I thought was worthwhile to
11 make. Anyhow, I will leave that.

12 The question of the repayment of the debt can't be left
13 solely within the purchase power agreements themselves.
14 My suggestion is that it be dealt with by the Public
15 Utility Board.

16 Now I have got a whole bunch of stuff here that Dr.
17 Makhholm said. I -- the Board heard from Ms. McShane, it
18 heard the evidence -- the direct evidence, it heard from
19 Mr. Makhholm. The underlying principle of Mr. Makhholm is a
20 simple one. We should base the rates on the true cost of
21 capital. And if you have to do something by the debt then
22 this utility -- bring it in before this Board, explain to
23 the Board what your objectives are, make New Brunswickers
24 aware of those objectives, and have them approved, and
25 yes, you will have the Peter Hyslops or whoever does this

2 job next time belly-aching that they want to pay it off too
3 fast, that's fair. At least at the end of the day
4 everybody has had a kick at it.

5 Now there is also a bit of a problem with the visibility
6 of the concepts between what Bay Street is talking about
7 and what Main Street -- I think I have talked a little bit
8 about that. Bay Street buried the debt repayment in the
9 price of purchased power. Now one of the arguments is
10 that this is all clearly set out and contained in the Act.

11 There are a number of sections referred to yesterday.
12 But, you know, I read through those sections and there is
13 no provision in the Electricity Act that specifically sets
14 out a capital structure apportioned to equity and debt for
15 any of the companies. There is no section of the Act that
16 sets out a provision for the expressed return on equity.
17 There is no section of the Act that says the Minister of
18 Energy or the Lieutenant Governor in Council have
19 authority to set these amounts and that they are binding.

20 I don't know. It's implied -- you know -- I wish
21 somebody had been a little cleaner about it if they wanted
22 to create that result. It's pretty important when you
23 start looking at trying to create somewhere between 70 and
24 \$80 million of cash flow to go against the debt that the
25 legislation be clear and

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2 unequivocal. I will leave that with you. I think it's -- I
3 mean the argument is well stated. I can argue one way or
4 the other on that and go from there.

5 Is the Board desirous of a break or do you want me to keep
6 right on slugging? I would say I have got about another
7 half hour.

8 CHAIRMAN: I hear a general rumble of agreement from my
9 colleagues. So we will take a break.

10 MR. HYSLOP: It's always good to know when it's time for a
11 smoke, Mr. Chair.

12 (Recess)

13 CHAIRMAN: Go ahead, Mr. Hyslop.

14 MR. HYSLOP: Thank you, Mr. Chair. You will be pleased to
15 know my advisors tell me to get on with it and I will be
16 condensing a number of the arguments on the way in.
17 Very briefly on the OM&A adjustment that we are talking
18 about. Mr. Lawson made the point that it's hard to attack
19 this item by item unless you are prepared to spend a fair
20 amount of money to do it, and that's probably true. We
21 haven't really done it. But at the same time there were
22 some answers that I think bothered us during the course of
23 the cross-examination of that panel. For example when we
24 looked at the present value in dealing with fleet costs
25 and whether or not the particular type of

2 management tool for fleet costs was being utilized, and I
3 think part of the answer was, well we don't really use
4 that, or we use something different.

5 Also because this has been reorganized and part of the
6 reorganization, notwithstanding I think strong efforts on
7 our part to develop some information in IRs 113 and 114
8 which were long term trends, it was difficult for us to
9 see anything that would tell us one way or the other what
10 was going on. However, the utility has made a bit of a
11 brag with its balanced score card approach. They claim
12 it's going to result in considerable improvements in
13 efficiency and result in reduction of costs. There is
14 also a little bit of an issue with regard to some of the
15 costs of the executive salaries which was brought out by
16 Commissioner Dumont. For a whole variety of reasons, none
17 of which I can be as specific as I would like, we are
18 recommending that the Board reduce OM&A component of the
19 revenue by five percent or \$5 million. If nothing else
20 this will serve as an incentive to accelerate the
21 efficiency improvements frequently touted during the
22 testimony and -- look, incentive always makes you work
23 harder and hopefully this would work in this way. So we
24 are asking for a \$5 million adjustment there.
25 With regard to the hydro adjustment, everybody has

2 spoke to this. I think a little bit of history. First of all

3 there are adjustments for third party gross margin credits

4 in Article 6.4 and hydro flow adjustment Article 6.12.

5 And the history of these type of adjustments is well known

6 to this Board. In May 22nd 1991, in the financial

7 policies decision, the Board concluded, "The principle of

8 adjusting NB Power's annual operating results so as to

9 equalize the operating performance of the hydro unit is

10 appropriate." The Board made similar improvements at that

11 time with regard to export sales and Point Lepreau

12 performance -- Point Lepreau generation performance.

13 For some reason in the late 1990s these were abandoned. I

14 apologize, I didn't perhaps push hard enough to find out

15 why, but they were done away with. But they were also

16 done away without any approval or consideration by this

17 Board. At least as far as I know, you didn't approve that

18 consequence. So it went away and the question is, should

19 it? And that's the fundamental question behind this whole

20 discussion we have had over the past few days and last

21 week about hydro adjustment. And the real question is, is

22 do New Brunswick ratepayers deserve to have some of the

23 benefit from fortuitous circumstances? And in the long

24 run the rates may end up being the same rates, but it's

25 awful nice to have a few

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2 things in there to help you smooth out the bumps. And I think
3 that's probably what that rate adjustment is all about.

4 So I have already gone into my concerns about what the
5 contract says and how it was changed and I won't repeat or
6 go through that again. But the way that this adjustment
7 was dealt with from a regulatory point of view, I have
8 gone into, and the question is there seems to be a
9 significant amount of money that could be put in place
10 here.

11 So it is our recommendation, and we submit that it is in
12 the public interest, that all year end adjustments under
13 the Genco PPA be accumulated into an account to be known
14 as the regulatory reserve account. The regulatory reserve
15 account will be under the supervision of the Board of
16 Commissioners of the Public Utilities Board. And they can
17 approve an appropriate amortization period for the
18 elimination of the annual surpluses and deficiencies of
19 the regulatory reserve account. If the account reaches
20 certain balances, significant balances, the Board may wish
21 to transfer some of it against the debt. I am not adverse
22 to sharing the good fortune. And if there is a deficiency
23 to the regulatory reserve account, Disco may apply to the
24 Board for approval of a supplemental rate increase for a

2 particular fiscal year to ensure that it doesn't stay in a
3 deficit.

4 It is a tool. It is a way in which this Board can work
5 with the utility to ensure that ratepayers at least can
6 deal with rate costs of electricity moving up and down
7 over a longer haul. How much of the 71 million should be
8 used to cushion the largest rate increase in New Brunswick
9 history, how much should go to EFC, I will cut to the
10 chase. We think you establish the account, you put the
11 \$70 million in and we are recommending that \$25 million of
12 it be applied to the revenue requirement for the fiscal
13 year 2006/2007. It is about 2 percent. We recommend it
14 be applied pro rata across all rate classes. Those are my
15 submissions of the issues of the revenue requirement.

16 I am going to move on to the revised customer class
17 allocation study. First I want to take this opportunity
18 to say that we believe Mr. Larlee did a very good job. I
19 think he did his best to reflect not only the words but
20 the spirit of this Board's decision. I also have been
21 asked by Mr. Knecht to indicate that he particularly
22 enjoyed his communications with Mr. Larlee and this
23 resulted in an expeditious resolution of many fine points
24 that came out in the revised agreement. And as the Public
25 Intervenor, it was a pleasure for me to have worked with

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Mr. Larlee and his assistant Mr. Hunter with regards to the CCAS. Surprisingly little acrimony over the revised one and it shows that this process can work.

Where we have exceptions they are minor. We disagree with the allocation of the CT costs. Disco has proposed they be allocated to customer classes who use winter heat or in the case of wholesales to wholesalers on the basis of winter heat load. In cross-examination it was conceded all customer classes use energy from the CTs and emergency purchases. Mr. Knecht recommended that these CT costs and emergency power purchases be classified and allocated on either peak demand basis or energy basis and further noted an energy base classification allocation scheme would be consistent with the 1992 methodology.

It is not a big ticket item now but I think the Board should properly deal with it because I expect it is going to be a little bit bigger ticket if there has to be a cost allocation review during Point Lepreau.

Transmission costs, we do accept that the Board -- that the Disco changed methodology is correct. It is consistent with the OATT. However, the Board should acknowledge this change reduces the allocation to large I i.e., just the true interruptible customers by 1.7 million. And this is reallocated to other customers. By

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2 reducing the cost to interruptible customers by 1.7 million
3 and moving 2.1 million error, as we will later recommend,
4 the surplus industrial customers are not fully recovering
5 these allocated costs. This has important regard to our
6 recommendation on rate design.

7 The export sale thing, again, do you add it on to the
8 revenue or take it off the debt. We would recommend that
9 it be added on to the revenue. This was used up until the
10 2005 proceedings when Disc o made the change. The revenue
11 credit methodology is consistent with the way other
12 miscellaneous revenue such as pole attachment fees are
13 treated in the revenue cost allocation. The viability of
14 export sales due to changing dynamics in Point Lepreau
15 will have less impact on revenue cost ratios if the export
16 sales credit margin is treated as a revenue item.

17 Also back in 1992 there was some question over the proper
18 way to handle it and the arguments that Mr. Knecht made in
19 1992 that it should be taken off the debt, have less
20 substance today. And I think that relates to the issue
21 that we were wondering what would happen when we added the
22 Belledune debt on.

23 Finally all customer classes receive the same benefit if
24 we add it to the revenue by moving all customer classes
25 closer to unity.

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2 I think those are the major issues with respect to the
3 cost allocation study.

4 On the rate design we recommend that the Board generally
5 adopt Disco's proposed revenue proposal. That is with one
6 exception with regard to the \$2.1 million that Mr. Knecht
7 found. Now Mr. Marois justified putting the \$2.1 million
8 back into the heavy industrial classes because this was
9 the residual group at the end of his five step process.
10 However in cross-examination, Mr. Marois fairly conceded
11 that even after going through the five steps, in the end
12 result that judgment should be applied.

13 Simply the real issue is does it make sense to put the
14 \$2.1 million back into the industrials when it could be
15 applied to the GS I and GS II classes to assist their
16 revenue cost ratios. It makes more sense to do that. I
17 appreciate that it is an issue of judgment. Everybody has
18 spoken to it and I am sure this Board at the end of the
19 day will do its balancing act and make a decision.

20 We agree with Disco's recommendation that the revenue cost
21 ratio for residential class should be set as close as
22 practical to 2. -- to 95 percent. We are recommending
23 that the adders for interruptible and surplus customers
24 should be adjusted so that the overall contribution by
25 those customers above the allocated generation and

2 transmission cost should be \$3 per megawatt-hour.

3 And we do so for the following reasons. One, our
4 recommendation is consistent with the Board's December
5 21st decision. Disco was to have brought a proposal to
6 the Board for adjustment of the adder. It has brought no
7 analysis and explained itself by saying they are concerned
8 such a change may cause some of the surplus customers to
9 switch to firm service.

10 We submit that it is Disco's burden to justify its
11 rejection of the Board's 21st decision. We submit that
12 Disco has offered no concrete evidence in support of its
13 proposition that surplus customers may move to firm
14 service.

15 We are proposing to add about \$1.60 to the price of each
16 megawatt-hour of generation on the basis that surplus
17 customers should make some small contribution to the
18 recovery of fixed capacity cost.

19 Where is the concrete evidence this 1.60 is going to
20 result in customers switching to firm service? And in
21 setting that I have heard some numbers this morning, the
22 first time that they have been given. Anyhow again I will
23 leave that with the Board.

24 The \$3 per megawatt adder we are proposing represents a
25 very modest contribution to fixed costs. The revenue

2 cost ratio of surplus customers will be just under 105. And

3 it still leaves the overall revenue cost ratio for large
4 customers well below the bandwidth.

5 Now where we have some specific thoughts on the issue of
6 interruptible and surplus customers is we suggest that it
7 would be appropriate to require them to provide at least
8 five years notice before converting to firm service if
9 such a switch would result in a material deleterious
10 impact on firm service customers otherwise.

11 We further recommend that Disco modify its contracts such
12 that any large industrial customers that switch to
13 interruptible surplus service be required to remain in
14 this class for five years from the date of the switch.

15 Now in his cross-examination Mr. Marois indicated it is
16 necessary to work with these customers. And
17 accommodations sometimes are made.

18 But when accommodations are made for one class it must be
19 acknowledged this may have an impact on another rate
20 class. Sometimes too easy in business to do favors for
21 customers at the expense of other customers.

22 Disco has the responsibility to be evenhanded in setting
23 and applying rules relating to large industrial choices
24 between surplus and firm service.

25 We recommend that Disco advise the Board of all

2 customer decisions to switch from surplus to firm service and
3 vice versa, and upon receipt of the notice to this effect
4 to note the date when the switch in service may go into
5 effect.

6 Finally, we recommend that this Board advise Disco that it
7 will be on notice that the cost impact of any customer
8 switching to firm service under current threshold
9 requirement with only 12 months notice may be subject to a
10 prudence review in future regulatory hearings.

11 And what we are getting at here is does this 12 month time
12 -- is that prudent from the point of view of the utility
13 and its other rate classes?

14 We recommend that the residential customer class rate as
15 proposed by the applicant be adopted. If the revenue
16 allocated to the customer class is reduced as a result of
17 the Board's revenue requirement or allocation decisions,
18 then half of that reduction should be applied to the
19 residential customer charges and one-half to the energy
20 block charges.

21 We ask that the applicant be required to make a compliance
22 filing that incorporates all the Board rulings with regard
23 to the customer cost allocation study, the revenue
24 allocation approved by the Board and the specific rate
25 design proposals which are approved by the Board.

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The compliance filing should include a proof of revenue analysis at approved rates in the form shown in Disco's response to Disco PI IR-1 at this phase of the hearings. Now we had a little mention of it, and I put it on -- I mentioned this to Mr. Morrison. But it is important. Section 98 of the Electricity Act provides kind of a quirky little wording here. And it bothered me. And it says that the distribution company may change its charges rates and tolls charged by it for services without making an application to the Board for approval of the change if the change does not exceed the amount authorized in Section 99. Now it also says it may, under this section, change the charges, rates and tolls more than once in a year, but in no case shall the total increase under this section during a fiscal year exceed the amount authorized under Section 99. None of these changes seem to tie in with the rate increase that is now being proposed to this Board. And my concern was, a very simple one, is that if this Board approves a 10 percent rate increase in September, and NB Power says gee, we are having a bad year, it would be nice to increase it again, I just am uncomfortable.

2 I'm just saying there is enough uncertainty, when I read
3 Section 98, Section 99 and Section 101 that the utility
4 could put another 3 percent rate increase in during
5 2006/2007, relying on Section 98 and the fact that it does
6 not seem to tie in very well to Section 101.

7 Now in fairness I discussed this with Mr. Morrison. He
8 doesn't share my opinion. And he may well want to put
9 something on the record. And if so fine.

10 But my suggestion is that in view of that possibility, if
11 indeed the Board accepts the argument or my uncertainty in
12 the interpretation, then the Board should automatically
13 reduce the rate increase by a further 3 percent and leave
14 it up to them to apply the Act.

15 I had hoped that would not be necessary. I would hope
16 that perhaps Mr. Morrison might get some clarification
17 from his client and put something on the record and this
18 all goes away.

19 I wanted to very briefly -- I wasn't going to spend a lot
20 of time on EGNB. But darn, Mr. MacDougall is a pretty
21 persuasive lad. So I thought I better say a little bit
22 about Dr. Rosenberg and his position.

23 And as I understand EGNB's position, it is that
24 residential electric heat customers drive up energy costs
25 in the winter months. And if this sounds familiar to you

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2 it is. Because that was the underlying argument that EGNB
3 made in support of their customer class allocation study
4 last November.

5 And I guess -- I don't think any of us really said that
6 they were wrong. But the arguments I made at the time is
7 these increased energy costs in January are because of
8 Coleson Cove and because of the NUGs and because of all
9 these strange deals that perhaps, you know, going with
10 these tried and true cost allocation study, made some
11 sense. And I guess I maybe came out a little bit ahead on
12 that. But anyhow regardless, it seems like Mr. MacDougall
13 made the same argument that he did before.

14 Now I took the time last night to flip through EGNB's
15 evidence and in particular Dr. Rosenberg's report. And
16 really the main thing I have exception with is moving the
17 revenue cost ratio for the residential class up to .98.
18 And last fall on Dr. Rosenberg's prefiled testimony, page
19 56, he was asked the question: "Please summarize your
20 findings and conclusions." Answer: "My findings and
21 conclusions are as follows:"

22 And the second bullet reads "According to indications of a
23 refined and corrected cost of service study" -- I assume
24 that was his -- "the residential class should be brought
25 to a revenue cost ratio of .95."

2 So if we have been good enough to accept his revenue cost
3 ratio last fall, he would have been happy with 95. When
4 we didn't accept it he now wants it to be .98 for the same
5 reasons that he wanted it to be .95, and that is the
6 higher winter energy cost.

7 And this point came out pretty loud and clear when

8 Mr. MacNutt cross examined Dr. Rosenberg. And at the page

9 5199 Mr. MacNutt put the following question: "Thank you.

10 Now you would agree that the Board is responsible to set
11 fair rates for all customers. I would like to know how
12 you could recommend an RC ratio of .9 for last industrial
13 as a just and reasonable rate considering the RC ratio of
14 the other classes?"

15 Answer: "Because it is my considered opinion that the
16 cost of service study considerably understates -- well,
17 for one thing considerably overstates the cost of serving
18 the large industrials, is number one. Number two, I think
19 the Board should think long and hard about an increase of
20 12 percent for the industrial class."

21 But I think the point was made in that rather pointed
22 piece of cross examination that what Dr. Rosenberg was
23 saying, look, the point we were making, that you didn't
24 accept in my cost allocation, I think you should make it
25 today.

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2 I guess in answer to that -- and I want to confirm -- I
3 have a great deal of empathy and sympathy for EGNB. They
4 are trying very hard in difficult times to become an
5 alternate fuel supplier. But at this point in time they
6 have 5,000 customers. And I will just briefly ask some
7 questions.

8 Is it fair to send the non-electric heat customer revenue
9 cost ratio above 1.0 so that a proper price signal can be
10 sent to electric heat customers to switch to gas? Is it
11 an exercise in good judgment to push residential customers
12 to .98 while dropping large industrial to .91 and large
13 firm transmission industrial customers to 88? And is it
14 reasonable to send a price signal when the largest portion
15 of New Brunswick residents who use electric to heat their
16 homes can't take advantage of that price signal by
17 switching to gas?

18 So I just leave that with you. Again I am reluctant. I
19 said it the other day, I will say it again, that
20 Mr. Harrington's point on policy and what can be done with gas
21 are good ones. I just don't think in doing that we should
22 totally skew the true cost of electricity to accomplish
23 it.

24 I want to speak briefly to the NUGs. Now I tried three or
25 four times. And I tried to get the IR that

1 - 6172 - Mr. Hyslop -

2 Mr. Morrison filed with the Board. But I'm not permitted to
3 have it. I just can't escape Mr. Stewart's diligence on
4 this.

5 Having said that, I have tried during these hearings to
6 make the case that there is uneconomic dispatch involved
7 with the NUG contracts. In IR-115, PI IR-115 I asked them
8 to do a series of calculations. And they said it was
9 29,000,000. But they did give probably an explanation
10 that it actually would be much less. And I did not take
11 the time to cross examine.

12 But I think it is clear enough from the record we have
13 been able to conclude that these NUG contracts result in
14 cost of electricity --

15 MR. MORRISON: Mr. Chairman -- and I'm loathe to interrupt,
16 Mr. Hyslop. I just want to ensure that anything he puts
17 on the record is not derived from a confidential IR. If
18 it is then we can certainly go in-camera for him to
19 complete that portion of his argument.

20 And I'm not trying to dissuade him from doing it. I'm
21 just very sensitive to confidential information being
22 placed on the public record.

23 MR. HYSLOP: I'm not going into the information. I was just
24 going to make a general statement. Anyhow the question of
25 the determination to enter into uneconomic contracts we

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2 suggest is a subject matter for approval of the Board.

3 And what we are saying and will be addressing in our order
4 is that the Board should take some interest in this at a
5 future date and determine the extent to which if any
6 pricing to Disco by Genco should incur these costs if
7 there is an economic development purpose behind these
8 contracts.

9 It may well be that it makes perfectly good sense to have
10 this occur. I don't know the explanation. But I think
11 the Board should at some point in time review the fact.

12 Wholesale position, I agree with my colleague

13 Mr. Gorman. I do think there should be no magic in the 1.05.

14 We would agree that the Board should signify its
15 agreement with this point by setting the wholesale revenue
16 to cost ratio at 1.04.

17 Exit fees, I agree with my colleague Mr. Morrison. I
18 really have a hard time interpreting the sections in a way
19 that would say once you want to leave the system, and you
20 get a bad result, you are stuck with it. I don't know.

21 Section 156, I agree with Mr. Gorman. I have got three
22 pages of notes. But I think he said it very well for me.

23 And I will not spend more time on that issue unless the
24 Board would specifically ask.

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2 At this time, Mr. Chair, we have prepared a document,
3 which we would ask to be filed with the Board. And I will
4 bore you for about another three to four minutes to read
5 it into the record.

6 This is a document, "Orders and Rulings Requested by the
7 Public Intervenor". I would ask that copies of it be
8 passed out and then I will read it into the record in
9 concluding my remarks.

10 May I proceed, Mr. Chair?

11 CHAIRMAN: Sorry, yes, you have our total attention.

12 MR. HYSLOP: Yes.

13 CHAIRMAN: Carry on, sir.

14 MR. HYSLOP: I apologize. I can sense I am losing my
15 audience. It's my fault.

16 CHAIRMAN: Well, as I have often said, if I were delivering
17 a speech or an argument, I would not hand anything out
18 until --

19 MR. HYSLOP: Yes.

20 CHAIRMAN: -- I was complete, because people have a tendency
21 to start to read.

22 MR. HYSLOP: That's right.

23 CHAIRMAN: Carry on.

24 MR. HYSLOP: I appreciate -- I will proceed quickly. We are
25 asking for the following Orders and Rulings from the

2 Board. And this is with regard to jurisdiction in the power
3 purchase agreements.

4 1. At the conclusion of the hearing into Disco's revenue
5 requirement that the Board declare its jurisdiction over
6 all contracts to which Disco is a party including without
7 limitation the Genco Vesting Agreement, the Nuclear
8 Generation Agreement and the Coleson Cove Tolling
9 Agreement (collectively the "Power Purchase Agreements" or
10 the "PPAs").

11 Pursuant to its jurisdiction over the PPAs, the Board
12 order Disco as follows:

13 1. That Disco submit all amendments to the PPAs together
14 with a detailed explanation of each amendment and an
15 assessment of the financial impact on Disco to the Board
16 for its approval.

17 That Disco submit any and all decisions, changes, or
18 interpretations of the PPAs agreed to by the Operating
19 Committee or as directed by Electric Finance Corporation
20 together with a detailed explanation of the decision,
21 change or interpretation and an assessment of the
22 financial impact on Disco to the Board for its approval.

23 That Disco be ordered to file with the Board detailed cost
24 data underlying the capacity and energy costs charged
25 under the PPAs. These costs should be disaggregated to a

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2 level consistent with minimum filing requirements.

3 That Disco create and establish an account (the
4 "Regulatory Reserve Account" or "RRA") and debit or credit
5 the account with the balance of the Third Party Gross
6 Margin Adjustments and the Hydro Flow Adjustments
7 determined in each fiscal year.

8 That the amount of the Hydro Flow adjustment for fiscal
9 year 2006 be established in a manner consistent with the
10 fiscal year ending March 31st 2005.

11 That the Board manage the application of the RRA in the
12 public interest including without limitation; amortization
13 of the current balance of the account over the succeeding
14 three years; in the event that the RRA should have a
15 credit balance, directly the establishment of a rate
16 increase to establish the balance of the account; and give
17 such further directions as the Board may determine to be
18 in the public interest.

19 Orders with respect to the Revenue Requirement. We
20 request the following Orders from the Board.

21 That the revenue requirement for Disco for the fiscal year
22 2006/07 be reduced by \$51.54 million on the following
23 basis: the application of the sum of \$25 million from the
24 RRA balance as at March 31st 2006; by application of the
25 sum of \$7,144,500 for and on account of penalty in the

1 administration of the Coleson Cove Orimulsion Contract; by
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3 disallowance of the sum of \$14,400,000 being an excessive
4 return on the capital of Disco; and by reducing the
5 permitted operations, management and administration
6 expenses by the sum of \$5 million.

7 That the reduction of \$32,144,500 in the revenue
8 requirement be reflected in an across-the-board reduction
9 in the proposed rate increases to all customer classes.

10 That the reduction of \$19,900,000 be reflected in an
11 across-the-board reduction in proposed rate increases to
12 those customer classes served at distribution voltage.

13 That in the event that Disco is not prepared to provide
14 written assurances that it will not exercise the option to
15 impose a 3 percent increase on rates under Section 98 of
16 the Electricity Act during fiscal year 2006/07, the Board
17 further reduce the proposed rate increases to each
18 customer class for the arithmetic average of the rate
19 increases by customer class that the utility implemented
20 since January 1, 1994.

21 Customer Class Allocation Study. We request the following
22 rulings.

23 That the Board direct the Applicant to modify the Customer
24 Cost Allocation Study such that the combustion turbine
25 costs are allocated to all customer classes who

2 contribute to the need of these costs on an energy basis.

3 That the Board accept Disco's proposed change in
4 methodology respecting the allocation of transmission
5 costs.

6 That the Board direct Disco to treat the export margin
7 credit as a revenue credit.

8 That the Board adopt Disco's proposed revenue allocation
9 proposal, with the exception of the assignment of \$2.1
10 million interruptible/surplus revenues.

11 The Board direct Disco to apply the \$2.1 million to the GS
12 I and GS II classes.

13 That the adders for interruptible and surplus customers be
14 adjusted so that the overall contribution by those
15 customers above the allocated generation and transmission
16 costs should be at \$3 per MWh.

17 That Disco be directed to modify its contracts with all
18 interruptible/surplus customers to require them to provide
19 notice of at least five years before converting to firm
20 service. Further, that Disco modify its contracts such
21 that any large industrial customers that switch to
22 interruptible/surplus energy be required to remain in this
23 class for five years from the date of the switch.

24 That Disco be put on notice that the cost impact of any
25 customers switching to firm service under the current

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2 contractual requirement of only 12 months notice may be the
3 subject to a prudence review in future regulatory
4 hearings.

5 That the Residential customer class rate design, as
6 proposed by the Applicant be adopted. If the revenue
7 allocated to the Residential class is reduced as a result
8 of the Board's revenue requirement or revenue allocation
9 decisions, approximately one-half of that reduction should
10 be applied to the Residential customer charges and one-
11 half to the energy block charges.

12 That Disco be required to make a filing -- a compliance
13 filing that incorporates all of the Board's rulings with
14 respect to the Customer Cost Allocation Study, the revenue
15 allocation approved by the Board, and the specific rate
16 design proposals approved by the Board. The compliance
17 filing should include the "proof of revenue" analysis at
18 the approved rates in the form shown in Disco's response
19 to Disco PI IR-1 in this phase of the proceedings.

20 Other rulings. That Disco provide a detailed calculation
21 of the power purchase costs under the Genco Vesting PPA on
22 the basis of economic dispatch order.

23 That future pricing of purchase power by Genco to Disco be
24 based on economic dispatch.

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2 Mr. Chairman, I realize that I have been more longwinded
3 than any competent lawyer should be. I do thank the Board
4 for taking the time to hear me out. I covered a lot of
5 territory. And I trust that in going back and
6 deliberating that some of these remarks may be helpful in
7 preparing your report card to the utility.

8 Thank you very much.

9 CHAIRMAN: Thank you, Mr. Hyslop. Frankly, I am quite
10 surprised that you haven't a draft -- a redraft of the
11 Electricity Act to suit various things too.

12 Now, I have a number of questions that come up in my mind
13 from this, but I am going to save them for Friday, as we
14 are all reconvening then. And the intention of the Board
15 is to meet tomorrow and if we want each counsel to address
16 specific items, et cetera, in there -- what do we call it,
17 we are doing on Friday?

18 MR. MORRISON: Rebuttal.

19 CHAIRMAN: Rebuttal. Thank you. The rebuttal on Friday,
20 why then that will give you a little notice on that. But
21 certainly we will be questioning you, Mr. Hyslop, on what
22 you have asked for.

23 The other thing I would like to get on the record right
24 now is that this hearing -- this is day 55. We have had
25 over 6,000 pages of transcript. The exhibits now

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2 number in excess of 250. Some of those exhibits are literally
3 hundreds of pages long. And I read in the press
4 speculating that we will have our decision out in a month.

5 I suggest that to do just those we probably would be more
6 than a month.

7 My best guestimate now is that it will take this Board
8 anywhere from a month and a half to two and a half months
9 to do an appropriate review of the evidence and put our
10 thoughts on paper. So I just wanted to make that clear at
11 the outset.

12 Now, I will see if any of my Commissioners dare have a
13 question at this time? Can you save it for Friday?

14 DR. SOLLOWS: I can save it for Friday.

15 CHAIRMAN: I think that's better. We are saving it for
16 Friday.

17 MR. MACNUTT: Mister --

18 CHAIRMAN: I am just afraid that if I give Mr. Dumont an
19 opportunity to ask a question, you will open up. But go
20 ahead, Mr. Dumont.

21 MR. DUMONT: Mr. Hyslop, you mentioned the -- you require a
22 5 percent cut in OM&A. What did you base your estimate at
23 5 percent? What did you base that on?

24 MR. HYSLOP: My argument on that is based on two things.

25 One, we have just gone through a reorganization and I am

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sure that maybe all of the fine tuning that might want to be done at Disco has not yet occurred.

Second of all look without being -- I am not dealing with specific numbers and specific items. But the example that jumps to mind is that we asked questions regarding a certain tool -- I forget the name of it -- to deal with the management of fleet costs and determine when fleets might be turned over. And I think the answer from the Panel is that we hadn't heard of that specific apparently well-known management tool. But there were just some items that kind of struck me as -- this company isn't quite as tight as it might be yet. They haven't fully implemented their new balance scorecard approach. They are in the process of doing that. And I will be honest at the end of the day, I just said that \$5 million sounds right. I pulled it out of the air and said given what they say they are doing and some of these little loose things, perhaps there is a chance there for them to really sharpen their pencils and have an incentive to go get it and make it happen.

It probably isn't a very satisfactory answer, but that's how I got there, Commissioner Dumont.

MR. DUMONT: Thank you, Mr. Hyslop.

CHAIRMAN: Okay. One last housekeeping matter is that I

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2 hope that Rogers and Disco and the Municipals will be ready to
3 go late morning if in fact we conclude on Friday morning
4 before noon hour?

5 MR. MORRISON: I can't speak for Rogers, but we certainly
6 will be, Mr. Chairman.

7 CHAIRMAN: Okay.

8 MR. GORMAN: Not a problem for us.

9 CHAIRMAN: Okay. Great. All right. Well, we will --

10 MR. MACNUTT: Mr. Chairman, one final matter for the record.

11 CHAIRMAN: My conscience.

12 MR. MACNUTT: It's my understanding, Mr. Hyslop, read into
13 the record a document entitled "Orders and Rulings
14 Requested by the Public Intervenor". And that he intended
15 that to be marked as an exhibit. And I don't believe we
16 marked it.

17 MR. HYSLOP: No, I didn't --

18 CHAIRMAN: I didn't hear the last part of what you said, Mr.
19 MacNutt?

20 MR. MACNUTT: It was my understanding that he intended that
21 document to be marked as an exhibit.

22 CHAIRMAN: No. It's in aid of argument as far as -- I would
23 classify it, it is not exhibit.

24 MR. MACNUTT: Thank you. I just wanted to clarify that.

25 CHAIRMAN: Thank you. So we will adjourn until 10:00 on

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Friday. Good. Thank you.

(Adjourned)

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

Reporter

