

1 New Brunswick Board of Commissioners of Public Utilities

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

4 Customer Service Corporation (DISCO) for changes to its

5 Charges, Rates and Tolls - Revenue Requirement

6

7 Delta Hotel, Saint John, N.B.

8 February 6th 2006

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4 Customer Service Corporation (DISCO) for changes to its
5 Charges, Rates and Tolls - Revenue Requirement
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7 Delta Hotel, Saint John, N.B.
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13 CHAIRMAN: David C. Nicholson, Q.C.

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16 COMMISSIONERS: Jacques A. Dumont
17 Patricia LeBlanc-Bird
18 H. Brian Tingley
19 Diane Ferguson Sonier
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22 David S. Nelson

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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. If I could I
34 will take the appearances for the applicant.

35 MR. MORRISON: Good morning, Mr. Chairman and Commissioners.
36 Terry Morrison and David Hashey for the applicant. With
37 us today is our panel, Rock Marois, Lori Clark and Sharon
38 MacFarlane.

39 Also with us today is Mike Gorman, Vice-president Legal
40 and Brian Duplessis, Vice-president Communications

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and of course Ms. Gilbert.

CHAIRMAN: Thanks, Mr. Morrison. Formal Intervenors.
Canadian Manufacturers and Exporters?

MR. LAWSON: Gary Lawson way at the back here, Mr. Chairman.
Appearing with me today are David Plante, the CME along
with Mark Drazen of the Drazen Consulting Group.

CHAIRMAN: Thanks, Mr. Lawson. Conservation Council?

MR. COON: Good morning, Mr. Chairman. David Coon for the
Conservation Council.

CHAIRMAN: Eastern Wind? Enbridge Gas New Brunswick?

MR. O'NEIL: Thomas O'Neil for --

CHAIRMAN: Could you hold up your hand? Thank you.

MR. O'NEIL: Thomas O'Neil for EGNB, Mr. Chairman. David
MacDougall who will be lead counsel for most of this
hearing is not here today.

But we also want to advise we are only going to
participate in two portions of the hearing, the return on
the equity and capital structure and secondly on the
implications of the revised class cost allocation study
and rate design and proposed rates portions of the
hearing.

CHAIRMAN: Okay. Thank you. And the Irving Group?

MR. BOOKER: Good morning, Mr. Chair. Andrew Booker for the
J.D. Irving companies.

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2 CHAIRMAN: Good morning, Mr. Booker. Jolly Farmer?
3 Mr. Gillis? Rogers? Self-represented individuals? Municipal
4 Utilities?

5 MR. GORMAN: Good morning, Mr. Chairman and Commissioners.
6 Raymond Gorman appearing on behalf of the Municipal
7 Utilities. This morning I have with me Richard Burpee,
8 Eric Marr, Dana Young, Dan Dionne and Michael Couturier.

9 CHAIRMAN: Good. Thanks, Mr. Gorman. Vibrant Communities
10 Saint John? Public Intervenor?

11 MR. HYSLOP: Good morning, Mr. Chairman. Peter Hyslop along
12 with Mr. O'Rourke and Ms. Power.

13 CHAIRMAN: Thanks, Mr. Hyslop. And the Informal Intervenors
14 today, if they are here, when I call out your name, why
15 just raise your hand and we will put you on the record.
16 Agriculture Producers Association of New Brunswick.
17 Atlantic Centre for Energy. That is new. Canadian
18 Council of Grocery Distributors. The City of Miramichi.
19 Charles Collin. Energy Probe. Falconbridge. Flakeboard.
20 Genco. System Operator. Potash Corp. Terry Thompson
21 Consulting. UPM Kymmene Miramichi. And last but not
22 least, Mr. MacNutt, whom do you have with you today?

23 MR. MACNUTT: Thank you, Mr. Chairman. I have with me
24 today, Mr. Chairman, Doug Goss, Senior Adviser, John
25 Lawton, Adviser, John Murphy, Consultant, Andrew Logan,

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Consultant.

CHAIRMAN: Thank you, Mr. MacNutt. A couple of housekeeping items before we turn to the parties. As we all know, those of us who have been in here for the last 38 days, I believe it is or this is day 38, we have an awful lot of binders.

And so I'm asking counsel and the parties that if you have something you wish to refer to that is in the cost allocation study evidence that we have gone through thoroughly and you are going to refer to it in your examination of any witness then please speak with the Secretary so that we can have the appropriate binders brought here to put on our rack behind us.

If it fact it turns out that it is an Interrogatory or two then perhaps you would consider making copies for the panel members and just refer to those copies so we cut down on the paper load.

And as you all are aware, why we are moving from the hotel to the Convention Centre, I believe it is on Tuesday night. So Wednesday we will be there. So if we can keep the paper down so much the better.

I asked Mr. MacNutt to speak with you all to see if -- since you have now looked at the lineup of witnesses again realize for instance that some of the testimony -- and I'm

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thinking particularly Public Intervenor wanted to give, that his presentation may be cut short or shorter than he had originally thought would be the case.

And therefore there might be a time when we could put out a notice for members of the general public, if they simply wanted to address the Board in reference to this particular hearing, they could do so on an informal basis.

Mr. Morrison, have you had an opportunity to consider that or speak with other counsel?

MR. MORRISON: I haven't had an opportunity to speak with other counsel, Mr. Chairman. I guess it really depends. It is kind of hard to tell how this thing is going to move.

At this point I would think -- and I don't know how much notice you have to give to the Informal Intervenors. But certainly I can't see that we would need, at the end of the process -- the March 3rd date would seem to me to be an appropriate date. I can't imagine that the Rogers matter is going to take all of four days. That would be one suggestion.

And I guess until we get one of the issues resolved this morning it is going to be difficult to determine whether we might be able to find a day somewhere in the middle of the proceeding so --

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2 CHAIRMAN: What I'm going to suggest then, and I will
3 revisit this if I could after the lunch break and ask the
4 parties to take a peek at their particular days they have
5 reserved and see if there might be something a little
6 closer.

7 The Board would like to be able to get out not only a
8 press release on it, but also if we are able to do so put
9 something in the press itself by way of an advertisement
10 just to give people the opportunity. Okay.

11 Now this is coming from me as Chair and not so much of the
12 Panel, but last week was the perfect example of why we
13 shouldn't be trying this matter in the public press of the
14 province. I'm not pointing a finger at anyone because
15 this is a topic which is on the minds of just about every
16 New Brunswicker. So it is very, if you pardon the pun,
17 topical.

18 But I would appreciate it, and I know my panel members
19 would as well, that if you have witnesses who are going to
20 testify allow them to testify and then give an interview
21 outside, or the press is allowed to be here when that
22 witness does testify, rather than the matter being
23 prejudged outside of the process itself.

24 And, Mr. Public Intervenor, if you will harken back to
25 when the Board ruled in reference to the full extent of

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156 and its application to these proceedings, I prefaced the Board's ruling with the fact that this may not be what the Board would prefer to see. However, this is the interpretation that we do put upon 156 and we of course are bound by the law of the Province of New Brunswick and it is our responsibility to interpret.

Now you have been quoted in the press, and you very well may have been misquoted, that the Board doesn't want us to see this. It's not a case of want or not want. It's a case of the legislation is there and the interpretation that we put upon it says that we can't allow it in this proceeding.

All right. Having said all of that, anything, Mr. Morrison, that the applicant wishes to bring by way of preliminary matter?

MR. MORRISON: Yes, Mr. Chairman. There are several preliminary matters and I guess we should deal first with I guess the fairly routine matter of having some exhibits marked.

The first exhibit that we would like to have marked would be the information for the public record that arises from the Board order of January 11th. That's the PROMOD information. I believe the Secretary has copies of that.

CHAIRMAN: Yes. She also has warned me that she has a very

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full desk there, Mr. Morrison. So give her a moment to locate it, okay?

MR. MORRISON: I will, Mr. Chairman.

CHAIRMAN: Thank you. My records, Mr. Morrison, indicate that this information designated for the public record dated 24 January 2006 should be exhibit A-75.

MR. MORRISON: I believe there is the pink version of that if you will, the confidential information, Mr. Chairman.

But we will deal with that this afternoon because I think it's still in your vault at the moment. But we can have that marked this afternoon.

CHAIRMAN: Locked room, Mr. Morrison.

MR. MORRISON: Locked room.

CHAIRMAN: Okay.

MR. MORRISON: The next item that should be marked is the affidavit regarding the publication on the notice dated September 30th. That deals with the revenue requirement rate proposal segment. And Madam Secretary has a copy of that as well.

CHAIRMAN: I will just mark that for the record, not an exhibit number on it, Mr. Morrison. By the way I'm saving number A-75(c) for the confidential exhibit you just referred to. Okay.

MR. MORRISON: Mr. Chairman, the Board filed evidence of a

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2 Larry Kennedy which dealt with depreciation. And in his
3 report Mr. Kennedy -- his recommendation was that Disco
4 prepare and file a depreciation study when it -- before it
5 returns the next time for a rate application.

6 Disco agrees with Mr. Kennedy's recommendation and we have
7 undertaken in a letter to the Board on the 1st of February
8 that we would prepare a depreciation study and file it
9 within a year. And we suggested to the Board that perhaps
10 in light of this that it would not be necessary to call
11 Mr. Kennedy.

12 We have had some discussions with Mr. MacNutt on that
13 matter but I don't know whether or not we have had any
14 direction from the Board as to whether or not Mr. Kennedy
15 would be required to be a witness in the hearing.

16 CHAIRMAN: My understanding from Mr. MacNutt -- and Mr.
17 MacNutt is always able to speak for himself -- is that in
18 fact you have agreed with that and, secondly, that he has
19 spoken with counsel -- maybe not all the parties but with
20 counsel -- and they are in agreement that Mr. Kennedy need
21 not be called as a witness. Is that correct, Mr. MacNutt?

22 MR. MACNUTT: I would confirm that, Mr. Chairman, and we
23 have as a result advised Mr. Kennedy that he need not
24 appear as a witness and we do not -- Board staff does not
25 intend to call Mr. Kennedy as a witness.

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CHAIRMAN: Okay. Thank you. Now, Mr. Morrison, just to clear it up, my understanding is that Disco will prepare a report in accordance with the recommendations of Mr. Kennedy which will be filed at the earliest of your return in a rate application or the expiry of one year from this date?

MR. MORRISON: That's correct, Mr. Chairman.

CHAIRMAN: Because we never know when you will be back.

MR. MORRISON: And that's why we undertook to provide it within a year, Mr. Chairman.

CHAIRMAN: Okay. Next exhibit.

MR. MORRISON: The next matter, Mr. Chairman, relates to a letter that I wrote to the Board on Friday. The first part of that letter dealt with the issue with respect to the Public Intervenor's expert reports which I know we will get into shortly. The second paragraph of that letter I indicated that Disco did not agree that the Intervenors could file evidence with respect to the rate proposal on February 17th. I was mistaken and I apologize to the Board and to the Intervenors, particularly Mr. MacDougall and Mr. O'Neill.

In fact counsel did in their meeting agree that evidence would be filed on February 17th. So I was wrong

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and would like to extend my apologies in that regard.

The second part of that second paragraph deals with the IRs received from Enbridge Gas New Brunswick with respect to the cost allocation and rate proposal segment. We have some concerns about those IRs and what the ramifications are in terms of opening up the previous CARD decision. However, we have agreed to have a conference call this afternoon between myself and Mr. Larlee, Mr. MacDougall and his expert to see whether we can get some insight into what those IRs are really all about. So I would rather not address that issue this morning. We may have to revisit it tomorrow.

CHAIRMAN: Fine.

MR. MACNUTT: Mr. Chairman, before Mr. Morrison goes on --

CHAIRMAN: Can't hear you, Mr. MacNutt. Sorry.

MR. MACNUTT: Before Mr. Morrison goes on I overlooked something when we were discussing Mr. Kennedy, the Board's prospective depreciation witness.

I would like to have Mr. Kennedy's report marked as an exhibit if we could.

CHAIRMAN: All right. Sorry. I thought that that had already been done.

MR. MACNUTT: It has been filed with the Board and

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circulated to the parties, Mr. Chairman, but has not --

CHAIRMAN: All right. We will give it an exhibit number, Mr. MacNutt. Thank you.

MR. MACNUTT: Yes. Sorry, Mr. Morrison. And at the same time, Mr. Chairman, there is a package of documents in which Mr. Kennedy responded to IRs on his report which should be --

CHAIRMAN: I'm sorry, Mr. MacNutt. Your voice is dropping at the end. I heard the bit about and in addition to there is interrogatories, and then I lost you.

MR. MACNUTT: In addition, Mr. Chairman, Mr. Kennedy responded to a series of IRs on his report. They are in a package and they should be also marked as an exhibit.

CHAIRMAN: Are they not now in -- they are not. The Secretary tells me not. All right. Let's do that after we have done this, Mr. MacNutt, okay?

MR. MACNUTT: Thank you.

CHAIRMAN: My records indicate this will be PUB-9. My records indicate this will be PUB-10 and they are the responses to -- let me see. They are the responses to interrogatories in reference to the evidence of Larry Edwin Kennedy. And that will be exhibit PUB-10. Okay, Mr. Morrison.

MR. MORRISON: Finally with respect to preliminary matters,

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Mr. Chairman. You will recall that in the Board's ruling of January 11th the Public Intervenor was directed to review the original expert's reports that he filed with the Board and amend those filings in light of the Board's comments and decision of January 11th with respect to Section 156.

The Board also ruled that other parties would have an opportunity to review the amended filings and raise any objections and that this matter would be dealt with when the Board reconvened.

CHAIRMAN: Mr. Morrison, I'm going to interrupt you because this Board is suffering from motion sickness. And with frankness we have not looked at and we are finding it very difficult to start to rule on a whole pile of matters that we haven't had an opportunity to review the evidence, et cetera, and to put it into context, and this is not a court of law as you are well aware.

And what the Board will do is we will allow -- this is the second draft of the Public Intervenor's witnesses' testimony. We will mark them as exhibits. We note all of the objections that you have taken in your letter of February 2nd. If and when the Public Intervenor calls the witness, if he or she starts to testify in any of those areas, by all means object. We will look at what it is at

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that time in particular. We will ask the Public Intervenor to review your objections and if in fact this interferes with your ability in examination-in-chief to see how thorough the witnesses that you are calling should have their examination-in-chief amended so as to rebut something that is in the reports that is in contention, you will have the opportunity to recall those witnesses if we ultimately rule -- we overturn your objection and allow that evidence in.

Otherwise I think the Board -- we have had an opportunity as a result of your letter of February 2nd to review those matters and we feel that, as I think I said when we started this, this is day 38. It's time to get on with the meat of the matter. And that's not to interfere with your right to object if Mr. Hyslop's witnesses start getting into a contentious area. And again for you to recall witnesses to rebut if we overrule you. Go ahead, Mr. Morrison.

MR. MORRISON: Mr. Chairman, I appreciate your comments very much and I think we all have motion sickness. The only comment I would make, Mr. Chairman, is -- and I think every lawyer in the room would agree with me at least, that that preparing cross-examination of a witness, and particularly an expert witness, is a very time consuming

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and difficult task and it's very difficult to do that when one does not know what portions of the evidence one has to prepare cross-examination on.

But having said that I appreciate what the Board is saying and we will work around it. Thank you.

CHAIRMAN: Well, Mr. Morrison, we have made that ruling on that basis. If in fact you look through and have an opportunity to speak with Mr. Hyslop and that you find one, maybe two, contentious areas that are quite a broad spectrum of preparation for cross, then you can appeal our ruling of today and have us rule on those in advance of those witnesses being called.

But otherwise there is a whole pile of them in here that really we could spend all morning and half the afternoon looking at them. And the Panel would rather not do that, sir. Okay.

MR. MORRISON: Thank you, Mr. Chairman.

CHAIRMAN: Thank you. Anything else?

MR. MORRISON: No, Mr. Chairman. I would call our Panel.

CHAIRMAN: Go ahead. Mr. Hyslop?

MR. HYSLOP: Mr. Chair, as a preliminary matter I have three items that I would like to have entered into the record, and also I have made filings with the Board that I would like to withdraw which resulted from the January 11th

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decision. Would it now be an appropriate time to get those houseclaning matters --

CHAIRMAN: Yes, I think it would, Mr. Hyslop.

MR. HYSLOP: Okay. First, Mr Chair, on November 29th I filed a document which has been referred to as the Meehan Report. It was marked I believe for identification as PI-13. That document will not be offered as an exhibit in this hearing and I would intend that it be withdrawn from being filed with the Board.

CHAIRMAN: That was PI -- marked for identification PI?

MR. HYSLOP: 13 I believe, Mr. Chair.

CHAIRMAN: Okay. That has been replaced I presume by an expunged version as we term it?

MR. HYSLOP: New and improved, yes.

CHAIRMAN: New and improved. Okay.

MR. HYSLOP: The second document, on December 29th we filed with the Board a binder which contained two further reports, one by Dr. Makhholm and one by Mr. Kurt Strunk. That document has not been marked for identification and I will not be moving that it be made part of the record in this hearing.

CHAIRMAN: Good. Thank you.

MR. HYSLOP: What I do have and what I would ask the Board to receive into evidence and mark as exhibits are three

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documents, I guess in no particular order. The first is a report dated January 30th entitled Report of Eugene Meehan and Kurt Strunk which I filed with the Board on the 29th or 30th of January and parties received electronically. The second document is a document dated --

CHAIRMAN: All right. Can we deal with that document, Mr. Hyslop, now --

MR. HYSLOP: Sure.

CHAIRMAN: -- and then we will go on to the next one? We have marked for identification PI-13 which is now being withdrawn, was the Meehan report. I'm going to skip that number, just so we won't be confused, and go -- this next one we will go to PI-14.

The next is rebuttal evidence of Jeff T. Makholm, January 23rd 2006. PI-15. Anything else, Mr. Hyslop?

MR. HYSLOP: One additional document. It is -- after the reports which I have now withdrawn were all filed, Mr. Chair, I did receive from EGNB and from Disco a series of interrogatories which related to the withdrawn evidence. But many of the interrogatories deal -- would still be found in the evidence that is filed. And most of them in particular would have dealt with a great deal of Mr. Makholm's testimony.

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I think in view of the earlier decision you made, if there is a particular objection -- and after all it was EGNB and Disco that asked these -- later on to the use of them then the Board can deal with it. But I would move that those interrogatories and the responses which was filed with a binder with the Board be made part of the record as well.

CHAIRMAN: Mr. Morrison, any comment on that?

MR. MORRISON: No. I have no objection, Mr. Chairman. I believe we will deal with it in the manner that you mentioned.

I would like to put on the record, for the record of course, that the filing of these exhibits is subject to the objections that I set out in my letter of February 2nd, and we will deal with it.

CHAIRMAN: Any other parties?

MR. O'NEIL: Mr. Chairman, I should also note that Mr. MacDougall filed a letter on February 2nd objecting to these reports. And that we are continuing with that objection. But I appreciate you have already ruled on it with respect to Mr. Morrison's motion.

CHAIRMAN: Again the ruling that we did in reference -- particularly to Disco's letter is applicable to any other that cover the same subject matters. You don't have to

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worry about that.

Okay. Then we will give this -- it will be PI-16 which is the Interrogatory responses on behalf of the Public Intervenor which are responses of -- excuse me. The table of contents says they are Interrogatory Responses of Jeff Makholm to Disco IR's, appendix 1, appendix 2, Interrogatory Responses of Jeff D. Makholm, Kurt Strunk and Eugene Meehan to EGNB IR's together with an appendix 1. And that is PI 16.

Anything else, Mr. Hyslop?

MR. HYSLOP: That is all I have. Thank you, Mr. Chair.

CHAIRMAN: Okay. Any of the other parties have any preliminary matters? Mr. Lawson?

MR. LAWSON: Yes, Mr. Chairman. Just a matter of note for the record. I have checked with counsel and I believe all have confirmed that they are in agreement.

CHAIRMAN: I'm sorry. I'm having trouble hearing you, sir.

MR. LAWSON: I'm sorry.

CHAIRMAN: Yes.

MR. LAWSON: I have spoken with I believe all counsel. And I believe they are in agreement. I just wanted clarification, which probably comes as no surprise to you, Mr. Chairman, that CME would like to ensure that the evidence that was given and the report given by Mr. Myers

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on behalf of CME in the first half is now applicable and can be used for the purposes of this part of the hearing.

CHAIRMAN: Mr. Lawson, as you heard me say, if there is anything you wanted to refer to that was in the CARD hearing then that is an integral part of this hearing. Because if it weren't, then we would not be bound by 156 in reference to the rate request that Disco was making. It is all part of the one hearing.

We just want to have a heads-up on if there is something that you, on behalf of your client, wish to refer to or have the hearing refer to in this portion of the hearing, let us know so that we can get that particular piece of evidence here behind us, so it will be there, readily there.

You can speak with the Board Secretary to find out what we have available now and whether or not she can get her hands on the other.

MR. LAWSON: Thank you, Mr. Chairman. That is as I expected. But I just wanted to make sure for clarification purposes. Thank you.

CHAIRMAN: Thank you, Mr. Lawson. Any other matters? Okay. Go ahead, Mr. Morrison. Call your panel.

MR. MORRISON: Thank you, Mr. Chairman. I would like to call Rock Marois, Vice-president of Disco, Sharon

1 - 3339 - Mr. Marois, Ms. MacFarlane, Ms. Clark - Direct -
2 MacFarlane, Chief Financial Officer of Disco and Lori Clark,
3 Business Director for Disco.

4 SHARON MACFARLANE, ROCK MAROIS, LORI CLARK - sworn:

5 DIRECT EXAMINATION BY MR. MORRISON:

6 MR. MORRISON: Thank you, Mr. Chairman. I would ask the
7 Board and the Intervenors and the witnesses to turn up
8 exhibit A-50, evidence Revenue Requirement 17 October
9 2005.

10 Q.1 - Mr. Marois, you have been sworn. The evidence that
11 appears under your name in exhibit A-50, was that evidence
12 prepared by you or under your direction?

13 MR. MAROIS: Yes.

14 Q.2 - And do you adopt that evidence as your own?

15 MR. MAROIS: Yes.

16 Q.3 - Ms. Clark, the evidence that appears under your name in
17 exhibit A-50, was that prepared by you or under your
18 direction?

19 MS. CLARK: Yes.

20 Q.4 - And you adopt that evidence as your own?

21 MS. CLARK: Yes.

22 Q.5 - similarly, Ms. MacFarlane, the evidence that appears in
23 exhibit A-50 under your name, was that prepared by you or
24 under your direction?

25 MS. MACFARLANE: Yes.

1 - 3340 - Mr. Marois, Ms. MacFarlane, Ms. Clark - Direct -

2 Q.6 - And you adopt that evidence as your own for purposes of
3 this hearing?

4 MS. MACFARLANE: Yes.

5 MR. MORRISON: Thank you. Mr. Chairman, I would ask
6 Mr. Marois -- he has a brief opening statement, and I assure
7 you it is very brief -- to put this segment of the hearing
8 in context, if that is agreeable to the Board?

9 CHAIRMAN: WELL, There is always a first time for brevity.
10 And we appreciate it. Does that mean that we are not
11 going to hear from Ms. MacFarlane or Ms. Clark?

12 MR. MORRISON: I'm sure you will hear from them in cross
13 examination, Mr. Chairman.

14 CHAIRMAN: By the way what is the plural of Ms.?

15 MR. MORRISON: Mses. Get your tongue around that one.

16 CHAIRMAN: I doubt it. Okay. Go ahead, Mr. Marois.

17 MR. MAROIS: Thank you. As part of my brief introduction
18 I will be making reference to one exhibit. So it is A-50,
19 the direct evidence of Ms. Lori Clark on page 2, table 1.
20 The essence of this segment of Disco's rate application
21 can be found in Exhibit A-50, direct evidence of Ms. Lori
22 Clark, page 2, table 1. This table compares the 2006,
23 2007 Revenue Requirement with the expected 2005, 2006
24 Revenue Requirement.
25 Row 11, column 1 of this table shows that Disco is

1 - 3341 - Mr. Marois, Ms. MacFarlane, Ms. Clark - Direct -
2 expecting a revenue shortfall of 125.5 million in fiscal 2006,
3 2007. Each component of the 2006, 2007 Revenue
4 Requirement is explained in more detail in the direct
5 evidence of Ms. Clark.

6 The comparison of the 2006, 2007 figures with those of
7 2005, 2006 reveal that there are really two key drivers of
8 the 125.5 million in revenue shortfall.

9 First on line 1, column 3 there is 120.2 million increase
10 in purchased power. This variance represents 96 percent
11 of the revenue shortfall.

12 Then on lines 7 and 8, if you combine those two lines,
13 column 3 there is a \$15 million increase in that income
14 and special payments in lieu of income taxes. The reason
15 I combined those two numbers is they are directly related.

16 This variance represents 12 percent of the revenue
17 shortfall. If you look at table 1 the largest other
18 variance is 1.7 million in amortization which represents
19 only 1 percent of revenue shortfall.

20 I will now talk briefly to each of the two key drivers.

21 First purchased power. The variance in purchased power
22 from 2005, '06 to 2006, '07 of \$120.2 million can be
23 summarized in three major categories.

24 The first category, fuel alone variance of \$84.5 million.

25 That means no variance for volume, purely the

1 - 3342 - Mr. Marois, Ms. MacFarlane, Ms. Clark - Direct -
2 price of fuel.

3 And for this I will refer you to two sections of the
4 evidence. I will not go there. But just for reference,
5 first the LaCapra Report, Phase 3, section 5.1.1 which was
6 filed under Exhibit A-49. And then Disco's response to UM
7 IR-22 of November 14, 2005 which was filed under Exhibit
8 A-54.

9 Disco is not the only utility facing the relentless rise
10 in fuel costs. Fuel costs are driven by world markets.

11 All utilities using fossil fuel are in the same boat.

12 These cost increases are real and will be effective April
13 1st of this year.

14 Another key component of the \$120.2 million variance in
15 purchased power is an increase of 13.4 million in the cost
16 of providing interruptible service. This increase is also
17 primarily driven by an increase in fuel costs.

18 However, this increase does not contribute to the \$125.5
19 million revenue shortfall because a corresponding increase
20 is reflected in their forecasted revenue of 1 billion
21 182.5. So you see that on line 10, column 1.

22 And the reason for that is because the cost of
23 interruptible service is simply a pass-through to these
24 customers. So in other words, the cost has gone up in
25 line 1. And has been reflected as an additional revenue

1 - 3343 - Mr. Marois, Ms. MacFarlane, Ms. Clark - Direct
2 in line 10. So it's a wash.

3 But in terms of explaining the variance of 120.2 million
4 in increased purchased power, it's a real driver. And
5 again it has been driven by increased fuel costs.

6 The third and remaining key component of the increase in
7 purchased power is an increase in the PPA capacity
8 payments to Genco of \$12.1 million.

9 This results from the shaping of the PPAs that allow
10 generating companies to recover over the term of the
11 contracts their cost, including a return, while meeting
12 the objective of a deliberate and controlled approach to
13 restructuring.

14 These three components represent 92 percent of the \$120.2
15 million variance in purchased power.

16 MR. SOLLOWS: Excuse me, Mr. Marois. Did you say an
17 increase in the peaking component? I understood --

18 MR. MAROIS: No, the capacity.

19 MR. SOLLOWS: The capacity. So it is based on base load
20 capacity in the PPAs?

21 MR. MAROIS: Yes.

22 MR. SOLLOWS: An increase in the price that they pay for
23 that?

24 MR. MAROIS: Exactly. That's built into the PPA, yes. I
25 will then now turn to the net income and special payments

1 - 3344 - Mr. Marois, Ms. MacFarlane, Ms. Clark - Direct -
2 in lieu of taxes. Net income is addressed in the direct
3 evidence of Ms. MacFarlane that can be found in Exhibit A-
4 50, section 3, tab 4, pages 10 to 12. I will not be
5 turning to this.

6 The overriding objective of restructuring was to reduce
7 the financial risk to taxpayers. The net income and
8 special payments in lieu of income taxes are consistent
9 with the governing policy objective of making Disco
10 operate on a more commercial and financially sustainable
11 basis.

12 The new model expects Disco too to do four things 1) earn
13 a positive return, 2) pay cash dividends. And that's
14 built into the legislation, into the Electricity Act. 3)
15 make payments in lieu of taxes. Again that's also built
16 into the Electricity Act. And 4) become able to borrow
17 without government guarantee.

18 By expecting Disco to earn a return which would allow it
19 to pay dividends, make payment in lieu of taxes and become
20 able to borrow without government guarantee, the
21 policymakers clearly wanted this Board to determine a
22 reasonable return for Disco on a stand-alone basis.

23 Net income is scheduled to be dealt with in the ROE net
24 income phase which is also scheduled for week 2. And I
25 guess I forgot to mention that the power purchase is

1 - 3345 - Mr. Marois, Ms. MacFarlane, Ms. Clark - Direct -
2 also scheduled to be dealt with in phase 2.

3 This concludes my opening statement.

4 MR. MORRISON: The witnesses are now available for cross
5 examination, Mr. Chairman.

6 CHAIRMAN: Mr. Marois, I had an exciting weekend. I
7 revisited LaCapra 1, 2, 3 better known as A-5, A-9 and A-
8 49.

9 One thing sort of leapt out at me. And that is for the
10 test period that we are looking at, the capacity factor
11 for Lepreau has dropped dramatically. When does Lepreau
12 go off line?

13 MR. MAROIS: April 1, 2008.

14 CHAIRMAN: Okay. So correct me if I'm wrong but it went
15 down from either 80 percent or 82 percent in the year we
16 are presently in. In the test period it went down to
17 somewhere in the mid to low 70's.

18 MR. MAROIS: Yes. And that's being driven by a longer
19 outage period. Because they have to do more work because
20 of the aging equipment.

21 MS. MACFARLANE: In the 2005, 2006 outage, Mr. Chairman.

22 CHAIRMAN: I can hear you, Ms. MacFarlane. But can you all
23 hear the witness? No, they can't. You are going to have
24 to pull the mike in. Great.

25 MS. MACFARLANE: In the 2005, 2006 outage.

1 - 3346 - Mr. Marois, Ms. MacFarlane, Ms. Clark - Direct -

2 CHAIRMAN: Still can't hear. The technician is on the spot.

3 Just a moment. Okay. You have got a minute to collect

4 your thoughts, Ms. MacFarlane.

5 MS. MACFARLANE: I just wanted to add to what Mr. Marois has

6 said. In the 2005/2006 budget, which is the information

7 before the Board, Lepreau had been scheduled for a 27 day

8 outage. During the outage they were doing inspections of

9 feeder tubes and found significant problems on the

10 cracking front. This was emergent information in a

11 relatively new area that led to that outage actually being

12 extended to I believe 43 days. It's that additional

13 inspection and allowance for further removal of fuel

14 feeder tubes that is built into this coming year's outage.

15 CHAIRMAN: Good. Thank you. Too bad that you didn't know

16 it was going to be such a wet fall. Anyway, we will take

17 our mid morning break before we start cross.

18 (Recess)

19 CHAIRMAN: Mr. Lawson, perhaps you could have a preemptive

20 strike and get that mic over closer.

21 MR. LAWSON: Good idea, Mr. Chairman. Now that I am at it I

22 will leave it if I could. With that, Mr. Chairman, I

23 would distribute around a copy of -- during the break I

24 tried to make a copy of -- I'm sure an inadequate number

25 of copies of those documents to which I'm going to refer,

1 - 3347 - Mr. Marois, Ms. MacFarlane, Ms. Clark - Direct -
2 as you requested, so it will be easier than flipping through
3 all of the various binders that you have. So I have some
4 for the Board and some for the participants, but I'm not
5 sure when I will run out.

6 CHAIRMAN: Okay. Well start with the Board.

7 MR. LAWSON: That was my plan.

8 MR. MACNUTT: Mr. Chairman, while those documents are being
9 handed out, I would just note that Mr. Peacock --

10 CHAIRMAN: The voice of my conscience is fading, Mr.

11 MacNutt. I'm sorry. Today we are having a hard time
12 here.

13 MR. MACNUTT: Mr. Chairman, while those documents are being
14 handed out I would just note for the record that Mr.
15 Peacock of Vibrant Communities Saint John has arrived.

16 CHAIRMAN: Good. Thanks, Mr. MacNutt.

17 MR. LAWSON: Mr. Chairman, I do have some extra sets as
18 well. Not very many but a few, in case other people are
19 looking for them. And it will just be for ease of
20 reference. And the Panel has been provided with one set.
21 Would you -- perhaps like to provide them another.

22 CROSS EXAMINATION BY MR. LAWSON:

23 Q.7 - Thank you, Mr. Chairman. Now the first issue I would
24 like to address is the segment that has been identified as
25 policy, more specifically the question with respect to the

1
2 current structure or the structure -- the reorganized
3 structure of Disco and its related companies.

4 Firstly, perhaps, Mr. Marois, would you agree that the
5 current NB Power organizational structure as well as the
6 policy behind it was established to establish an
7 environment in which competition for wholesale and large
8 industry customers can occur effectively as observed by
9 the Board in its decision of December 21st of 2005?

10 MR. MAROIS: Yes, I would agree with that. Our evidence
11 talks about creating a level playing field to that effect.

12 Q.8 - And would you also agree that at the moment there are no
13 signs that New Brunswick is about to become a competitive
14 market place for energy?

15 MR. MAROIS: I would not agree with that. I mean it's clear
16 when you read the Energy Policy that the province had
17 recognized that it would take time to develop a market
18 place. They even mention a lot of time. But a lot has
19 been done over the past year or so. And so right now I
20 believe we have a framework which includes a lot of
21 things. The framework includes, first of all, legislation
22 that allows its customers to leave. There is an open
23 access tariff. There is a system operator. There are
24 market rules. There is a market advisory committee. So
25 the framework is there and I guess the only thing needed

2 is for customers to be able to take advantage of it.

3 Q.9 - Would you agree though in order for customers to be able
4 to take advantage of it it requires somebody other than
5 Genco and its related companies to supply power into the
6 New Brunswick market place?

7 MR. MAROIS: Well by definition if you talk about a
8 competitive market place there are more than one provider,
9 and in the case of industry they are able to self-
10 generate. That's an example of a different type of
11 generation.

12 Q.10 - But there are currently in sight, at least I presume --
13 perhaps you can tell us otherwise if it's the case -- but
14 currently in sight there are no significant players who
15 are looking to come in and compete against Genco and
16 similar kinds of large scale energy suppliers in New
17 Brunswick in order to fit within the framework that has
18 been developed.

19 MR. MAROIS: I don't agree with that. I'm aware that some
20 of the large industries are looking at projects. So in my
21 mind, that's exactly consistent with the legislation.

22 Q.11 - Have any of those projects in fact proceeded?

23 MR. MAROIS: No, not to my knowledge.

24 Q.12 - And the Board also observed on December 21st -- its
25 December 21st decision -- that the current situation does

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not promote the development of a competitive electricity market in New Brunswick, on page 21 of their decision.

Would you agree that that's generally true?

MR. MAROIS: Could you repeat the question, please?

Q.13 - They said that the current situation in New Brunswick, and they addressed specifically the issue of an inability -- or a lack of capacity, I believe it was -- to get power transmitted into New Brunswick, but the current situation does not promote the development of a competitive electricity market in New Brunswick?

MR. MAROIS: I have to say that I don't totally agree with that, no.

Q.14 - And on what basis do you disagree with the Board's conclusion?

MR. MAROIS: Well for what I mentioned earlier. I mean the framework is clearly there and so in my mind maybe one of the reasons why we are not seeing projects go ahead is simply a matter of conjecture. I mean I'm certain that if customers are able to find a lower priced alternative, again they will be able to benefit from it because the framework is clearly there.

Q.15 - The framework to which you are referring is in fact the sort of what I will call the structural framework to allow for competition set up by virtue of the reorganization, is

1
2 that correct?

3 MR. MAROIS: Yes.

4 Q.16 - But you would agree that the Board's observation there
5 has been no increase in interconnections with adjacent
6 markets. So it's not physically possible for any
7 significant supply of electricity from the New England
8 market to enter New Brunswick in competition with in-
9 province generators, you would agree with that?

10 MR. MAROIS: That is why there is a current project of
11 building a second tie-line, and the objective is to have
12 that tie-line in effect some time in 2007.

13 Q.17 - Okay. But at the moment at least you would agree that
14 there isn't any physical capacity to do any significant
15 generation into New Brunswick and have significant
16 competition for Disco -- sorry -- for Disco, and moreso
17 Genco.

18 MR. MAROIS: Importing power is one form of creating
19 competition, but there is also an ability to create
20 additional generation in province.

21 Q.18 - So you believe there is a competitive power supply
22 market in New Brunswick right now?

23 MR. MAROIS: I believe there is a framework that allows for
24 a competitive market in New Brunswick.

25 Q.19 - I didn't ask if there is a framework. I'm asking do

2 you believe whether there is in fact a competitive power
3 market right now?

4 MR. MAROIS: Well how do you define a competitive market?

5 Q.20 - A market place where somebody can go out and on a large
6 scale buy power from somebody other than you and your
7 related companies?

8 MR. MAROIS: It definitely exists. The framework that the
9 province adopted in New Brunswick is a bilateral market.
10 So the structure provided for somebody that wanted to
11 leave the distribution company to negotiate one-on-one
12 with a supplier or, two, self generate. That possibility
13 is clearly there. And like I mentioned earlier, I am
14 aware for some customers looking for example bio-mass
15 projects. So these projects can materialize.

16 Q.21 - But they haven't?

17 MR. MAROIS: No. Because restructuring took place a year
18 ago. I will quote you the quote that was mentioned rom
19 energy policy. Just look at the White Paper on page 15,
20 section 3.1.2., the last sentence reads, a significant
21 amount of time is needed to achieve the conditions
22 required to realize a fully competitive market.

23 Q.22 - So would you agree that significant amount of time has
24 not yet expired and there isn't a competitive market here
25 realistically in New Brunswick right now?

1 - 3353 - Cross by Mr. Lawson -

2 MR. MAROIS: I believe a lot has been done and I believe the
3 framework is there. Customers can take advantage of it
4 any day.

5 Q.23 - Do you agree there is a structural framework for it?

6 MR. MAROIS: The framework -- the market exists. Customers
7 can take advantage of the market.

8 Q.24 - You would agree that the intent when this framework was
9 set up, the structure was set up, was to have other
10 utilities and independent power producers supplying into
11 the system operator. In other words, you would have
12 several power suppliers in New Brunswick. That was the
13 intention.

14 MR. MAROIS: Well the intent was to allow certain customers
15 just to generate power from sources other than NB Power.
16 So by definition it could be importing power, it could be
17 self generation. So --

18 Q.25 - So you would have other utilities and independent power
19 producers supplying power under the system operators.
20 That was the general intention?

21 MR. MAROIS: Yes.

22 Q.26 - Okay. And was it originally intended that the system
23 operator was to have several customers, Disco but also as
24 separate customers Municipal Power, utility power or
25 buyers to large industry and other customers as well.

2 MR. MAROIS: Well anybody that moves electricity on the
3 transmission system would become a customer of the
4 transmission company does -- would need a license to
5 operate under the market rules.

6 Q.27 - But originally the system operator itself was going to
7 have not just Disco as a customer but it was going to have
8 large industry as a customer, it was going to have a
9 separate customer from Disco, the municipalities as well?

10 MR. MAROIS: I'm not sure what you are referring to. Maybe
11 you could show me the document you are referring to.

12 Q.28 - I have a diagram but unfortunately it isn't in
13 evidence. Do you not -- you don't agree with that, that
14 that was the original intention?

15 MR. MAROIS: I guess my point is I'm not certain exactly
16 what it is you are alluding to. What I am aware of is the
17 current market rules and current market structure.

18 Q.29 - Were you -- I presume then perhaps you weren't involved
19 in setting up this new structure as a result of it being
20 relatively new, is that correct?

21 MR. MAROIS: I was not directly involved. We were
22 represented on the market design committee.

23 Q.30 - Ms. MacFarlane, were you involved in the organization
24 of the structure here?

25 MS. MACFARLANE: Yes, I was.

2 Q.31 - And would you agree that there had been an intention
3 that the system operator would have not just Disco as a
4 customer but they would have separate customers such as
5 large industry as a separate customer rather than a Disco
6 customer as well as municipalities?

7 MS. MACFARLANE: That's the long-term intent, yes.

8 Q.32 - That's not the case right now, is that right?

9 MS. MACFARLANE: It's not the case right now and I believe
10 it is exacerbated, frankly. There are other suppliers on
11 the system and there are no doubt buyers in the system who
12 would prefer to be operating as you are indicating, but
13 it's compounded by the fact that the rate structure does
14 not put us on a competitive playing field and those other
15 players cannot compete with the prices that come through
16 Genco to Disco.

17 Q.33 - But right now the only -- the structure is such that
18 any customer, large industrial or otherwise, is currently
19 served by Disco, and Disco is the only "customer" of the
20 system operator?

21 MS. MACFARLANE: I'm not sure that being a customer is the
22 correct terminology. We are a market participant with the
23 system operator. We are a customer of Transmission and a
24 customer of the generating companies in the province.

25 Q.34 - And you are a market participant you say of the system

1

2 operator?

3 MS. MACFARLANE: Yes.

4 Q.35 - Are there other market participants of the system

5 operator as you could describe it?

6 MS. MACFARLANE: Not at this time.

7 Q.36 - So right now I believe I'm correct in saying that Disco

8 -- the system operator has one market participant, Disco,

9 and basically has one -- Disco has one supplier?

10 MS. MACFARLANE: Remember that this is evolutionary. And

11 there are other registered market participants. I don't

12 have a list with me here. But certainly that information

13 is available as to who are the market participants that

14 the SO operates with.

15 But I think your questions are pointing to the fact that

16 it's in a developmental stage. It's in a managed

17 transition stage at this time.

18 Q.37 - So right now is it not true that essentially there is

19 no significant competition in the current marketplace in

20 New Brunswick for electrical generation?

21 MS. MACFARLANE: There certainly could be.

22 Q.38 - No. But there is not currently?

23 MS. MACFARLANE: Well, Hydro Quebec is an obvious supplier

24 into large industrial municipal customers. Nova Scotia

25 Power would I'm sure love to be providing electricity to

2 large industrials in New Brunswick.

3 Q.39 - But neither of them are?

4 MS. MACFARLANE: Neither of them are. And as I said, it is
5 compounded -- you can't develop a market overnight. You
6 must first get the incumbent utility to commercial rates
7 so that they are operating on a level playing field before
8 the competition will come into the province in any great
9 amount.

10 Q.40 - Have there been any exit fees established as yet for
11 customers who might wish to leave the system, your system
12 and move to a supplier such as Quebec Hydro or another
13 supplier?

14 MS. MACFARLANE: An exit fee has not been established. But
15 the framework is there for it to be established with
16 relative expediency when one is required.

17 Q.41 - But right now nobody knows what the cost of that would
18 be. There is no formula somebody can plug in some numbers
19 and know what the cost would be.

20 There is a mechanism to allow asking for it, is that
21 right?

22 MS. MACFARLANE: That's right.

23 Q.42 - Now NB -- and I'm going to call it NB Power being the
24 global company, even though it has a longer name. Overall
25 there have been attempts and efforts made by NB Power to

2 reduce its costs in its cost structure, is that right?

3 MS. MACFARLANE: That's correct.

4 Q.43 - And those programs have been both NB Power and Disco
5 and other of its companies if you will, is that right?

6 MS. MACFARLANE: That's correct.

7 Q.44 - And the purpose of that has been of course to improve
8 efficiency?

9 MS. MACFARLANE: To improve efficiency and to reduce costs.

10 Q.45 - And I assume that these companies, each of these
11 companies, can, should and would have carried out those
12 initiatives whether there was new structure in place or
13 not?

14 MS. MACFARLANE: The new structure forced a focus on those
15 initiatives. Under the old structure, shall we say, and I
16 think our look back at productivity in particular, has
17 shown us that the efforts of NB Power were primarily to
18 ensure safe reliable delivery of electricity and were less
19 focused on -- they were more focused on reliability and
20 less focused perhaps on efficiency.

21 With the new Act and the very clear mandate that we must
22 get to commercial operating margins, there has been a much
23 stronger emphasis on balancing reliability and safety
24 against ensuring that we take whatever costs we can out of
25 the system. And we have been relatively successful.

2 In our first year we were able to, across the enterprise,
3 take out over \$40 million. And in this current year, the
4 test year, there is a further \$10 million slated to be
5 taken out of the organization. A big part of that was in
6 Disco.

7 And if I might ask Mr. Marois to talk about the impact
8 that that has had in Disco.

9 MR. MAROIS: Yes. Because there were two phases of business
10 -- and the first phase resulted in either cost savings
11 and/or increase in revenues of 13.4 million. And that was
12 for fiscal 05/06. And the second phase is budgeted for
13 06/07 for an additional 3.9 million.

14 Q.46 - So a significant chunk of the savings you say was in
15 fact in Disco, correct? You would agree that any savings
16 that could be achieved in Genco or Nuclearco or Colesonco
17 would indirectly have been passed on presumably down to
18 Disco as a substantial customer of theirs?

19 MS. MACFARLANE: That's correct. And I believe there was an
20 IR that outlined the portion of Genco and other Nuclearco
21 savings that got passed through to Disco through the PPAs.

22 Q.47 - It would seem to me looking at it that the percentage
23 of the savings for Disco, relative to the size of Disco
24 compared to the others is disproportionately large.
25 And my first reaction was was there enough savings

2 accomplished within the Genco side or the companies who were
3 supplying power to Disco.

4 Have you as Disco had an opportunity to look at that, as a
5 big customer, to see whether or not there is more capacity
6 or could have been more savings achieved through Genco?

7 MR. MAROIS: The business excellence initiative was a very
8 challenging initiative over a very short period of time.
9 First of all there was a significant reduction in staff
10 across all companies, which resulted in close to 300
11 people leaving the company.

12 And I have personally seen the initiatives of each
13 company. And I believe they are very aggressive and
14 reflect the effort put -- some effort was put into the
15 effort by all companies, with the exception of Nuclearco.
16 Because Nuclearco is embarking on a refurbishment project.

17 And they will, as part of this refurbishment project,
18 implement any changes they need to make, so that once they
19 come back on line they reflect efficiency gains.

20 Q.48 - But just on the efficiency question, I presume you
21 would agree that it would have been wise of NB Power, even
22 without the current restructuring, to have done a close
23 scrutiny of its costs and to have achieved the kinds of
24 savings that it has, just because operationally that is

2 the right thing to do when running any business, is that
3 right?

4 MS. MACFARLANE: That's correct.

5 Q.49 - So this structure wasn't necessary in order to be able
6 to accomplish this \$40 million across the board savings
7 that you have accomplished, is that right?

8 MS. MACFARLANE: The structure wasn't necessary. But the
9 new Act certainly provided a much more focused initiative
10 than might have been the case in the past.

11 The fact that the companies are separate, that they each
12 have their own role to play in the broader to contribute
13 toward the group objectives, the fact that we have
14 measurement in place now by company, it allows a focus on
15 efficiency that perhaps wasn't there before.

16 Q.50 - But a shareholder didn't have to create all these new
17 companies in order to do this. The shareholder could have
18 just told you, folks, it is time to clean up your act,
19 save \$40 million in operations across the board, isn't
20 that right?

21 MS. MACFARLANE: NB Power has had cost reduction programs
22 going on for some significant period of time. There have
23 been -- as an example, when you say did the other
24 companies take their share, well, some of the other
25 companies, when they were in the form of business units,

2 had programs in place prior to this where they took costs out
3 of their system.

4 There was perhaps less of that in distribution before.

5 And they therefore took a larger and what you call
6 disproportionate share of the burden in this latest round
7 of cuts.

8 I don't want to leave you with the impression that there
9 wasn't a cost control mentality in the old NB Power.

10 There was. Point of fact is we are in a new era. And we
11 are thinking differently because of the new structure.

12 And that in itself has an impact on us working very hard
13 to get our rates to a commercial level so as to become
14 financially viable, and in line with that to reduce our
15 costs, so that the burden -- the burden of inefficient
16 cost is not pass on to ratepayers. And we have been
17 successful in doing it. And we will continue to do it.

18 Q.51 - But again I don't want to waste time on this point.

19 But isn't it very clear that you did not need to have this
20 structure put in place to drive that initiative?

21 That if your shareholder said to you, you are going to cut
22 costs, no new structure, you are just going to cut costs
23 significantly, presumably the same cost savings could have
24 been achieved?

25 MS. MACFARLANE: It was easier to do, the new structure. It

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was easier to do because we had the management information systems to do it and the financial reporting that went with it, that came out of the restructured environment.

So it was easier to do. Could it have been done without the restructuring? Yes. But it was easier to do.

Q.52 - And just in regards to this new structure, I assume that by virtue of having created -- I believe it was five new companies, is that right -- there must have been some extra tasks that have been assigned to each of these respective companies to allow the interaction between them, for example was it the operating committee that Disco has for example?

Those were tasks that would not have existed in Disco before -- obviously Disco didn't exist -- is that right?

There must be other duties that people have within each of the companies in order to be able to work with the other companies, correct?

MS. MACFARLANE: That's correct.

Q.53 - And those extra duties presumably -- what are some of them for example, accounting duties? There must be some accounting duties within each of the companies that are what I will describe as duplicated now.

Because you have to have a system in place for each of the five different companies instead of one system, is

2 that right?

3 MS. MACFARLANE: We do have one system. It's shared by all
4 of the companies. But we do produce individual financial
5 reports for each of the companies which we weren't doing
6 before.

7 And is there a cost to it? Yes. Is there a benefit to
8 it? Yes. Because we have the financial information we
9 need to drive the appropriate behaviors.

10 Q.54 - You have to have it because you have this five-company
11 structure. You have to have the ability to generate your
12 own financial statements?

13 MS. MACFARLANE: Yes. And you have to have it to manage by.
14 You also have to have it to get to credit rating agencies
15 which is part of the ultimate plan that the Province holds
16 for the group of companies.

17 Q.55 - But again that is because you have five different
18 companies. There has to be some extra costs within the
19 system from the previous corporate structure because of
20 this five-company structure if you will, the additional
21 five companies, would you agree?

22 MS. MACFARLANE: I would agree, yes. I think there are some
23 things that aren't being done anymore. We have not added
24 a lot of staff. We have been able to reorganize our
25 processes and reallocate staff in order to be able to

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2 manage the new compliance functions, reporting functions, that
3 you are referring to.

4 Q.56 - And those extra costs, we are not just talking about
5 Disco. We have similar ones presumably up through Genco
6 and other related companies?

7 MS. MACFARLANE: That's correct. We have put in place both
8 a shared services organization and a corporate group to
9 minimize duplication.

10 Q.57 - Right.

11 MS. MACFARLANE: In the accounting and treasury functions,
12 as an example, we have those held in the holding company
13 providing services because they tend to be very
14 specialized services and there is no justification for
15 duplicating those across the organization. Similarly with
16 things like accounting policy research and tax, those
17 functions rest in Holdco and are provided as services and
18 in the shared service organization, that is where the bulk
19 of the IT specialists, the -- any of the document
20 management services, et cetera, fleet services, all of
21 those that can be done most economically in a central
22 location are managed that way so as to avoid the
23 duplication you are referring to.

24 Q.58 - But as you say, there has to be within each of the
25 companies, some capacity to be able to feed them into the

1
2 common system?

3 MS. MACFARLANE: That's correct.

4 Q.59 - Which didn't exist as a cost before?

5 MS. MACFARLANE: Well, sir, it was an evolving situation.

6 In 1997, the then President, Jim Hankinson, moved the
7 corporation from one large group, shall we say, to
8 business units. The business units were cost centres and
9 that allowed a greater focus in their own areas on their
10 own costs. When you are part of a \$3 million budget, your
11 little initiative may not seem all that important when
12 that gets broken across four business units, and your
13 initiative is 250,000 on a budget of 500,000 it really
14 takes on a different mentality in the management group
15 taking care of it. So there was already an aggregation of
16 costs and people taking care of costs at that level for
17 business units.

18 It evolved because of restructuring from business units to
19 investment centres with full financial statements, but
20 certainly we did have some financial people in the
21 business units managing costs and budgets.

22 Q.60 - Tell me now, what steps has Disco taken -- I'm not
23 talking about NB Power generally, but Disco taken to
24 create the competitive market that was anticipated by the
25 current structure?

2 MR. MAROIS: Well really what we have done is we have
3 adapted to the new rules. You mentioned earlier, I mean,
4 by having separate companies having to deal with the
5 system operator having to work with new market rules, we
6 have had people really focusing on this so that we are an
7 active participant on a market advisory committee.
8 We have had to learn how to operate within the SO market
9 rules. So really we have been very active in implementing
10 and playing by the new rules.

11 Q.61 - But I presume you would agree that it is not in Disco's
12 best interest in the end, because nobody likes
13 competition, to be out there beating the bushes to try to
14 get more competition for yourselves. Is that correct?

15 MR. MAROIS: Our role is not to drum up competition.

16 Q.62 - Right.

17 MR. MAROIS: Our role is to play by the rules and if it is
18 to the benefit of our customers, I am fine with that.

19 Q.63 - So you are not -- and I am not suggesting it is within
20 your mandate -- you are not taking any steps to sort of
21 get a more competitive market place in New Brunswick for
22 energy?

23 MR. MAROIS: It is not our role.

24 Q.64 - No. That's right. Now what then, in light of the --
25 that the system has at least been put in place to

2 accomplish a more competitive environment, what steps --
3 planning steps is Disco taking to recognize what is
4 anticipated to become a reality of a competitive market
5 place besides the cost cutting which was mentioned
6 already?

7 MR. MAROIS: I guess the first thing is just being here is
8 part of this. I mean, we firmly believe that a key
9 component of restructuring is the establishment of a level
10 playing field. And in my mind, the Board here holds the
11 key to how fast this market will develop because if we are
12 successful in getting market-based rates for distribution,
13 this will set the stage to creating this level playing
14 field over and above the benefit of improving our
15 financial situation.

16 Q.65 - By being in existence, you mean, you are just existing
17 and therefore you are -- you are within the structure,
18 therefore that is what we have to do?

19 MR. MAROIS: Absolutely not. We are not in existence. We
20 are being quite proactive and if you look at our evidence,
21 we are promoting rates that are consistent with policy.
22 So I really take offence to what you are alluding to.

23 Q.66 - The policy is a competitive market place and there is
24 no -- the Board has observed that there is no --
25 effectively no competitive market place as it exists

2 currently.

3 This must -- but there is one, you say, coming down the
4 tubes, as you would expect. So what planning is Disco
5 doing, aside from cost cutting, to recognize and to manage
6 its business in a way that competition might indeed be
7 here?

8 MR. MAROIS: First of all, I don't think that we are cost
9 cutting to help foster a competitive market place. The
10 reason for the cost cutting measures, as Ms. MacFarlane
11 said, is to help us move towards commercial margins and do
12 it while minimizing the impact on rates. So it is not
13 because we want to set ourselves up to be more
14 competitive. That is not the case at all.

15 Q.67 - You are not cutting costs for the benefit of your
16 customers then. Is that what you are telling us?

17 MR. MAROIS: No. That is not what I am telling you. We are
18 cutting costs for the benefit of our customers, but in
19 your question you seemed to imply that we were cutting
20 costs as part of this new market structure would allow
21 some of our customers to seek alternative suppliers.

22 Q.68 - Would you agree that in a competitive market place, you
23 are going to have to keep your cost structure as low as
24 possible in order to compete with competitive suppliers?

25 MR. MAROIS: We don't see ourself as a competitor. We see

2 ourselves as what the Act provides and we are the standard
3 service provider and we want to do that in the most
4 efficient manner. That is our role, is providing service
5 to all the customers that do not have an alternate
6 supplier.

7 Q.69 - But you want to do that -- I presume you want to do it
8 in a lowest cost structure as you can?

9 MR. MAROIS: Definitely.

10 Q.70 - Okay. So you are cutting costs to give your customer
11 the benefit of lower costs?

12 MR. MAROIS: Yes.

13 Q.71 - So what else are you doing besides cutting costs to
14 deal with the future issue of competition -- the issue of
15 future competition?

16 MR. MAROIS: Well like I started to say earlier, first of
17 all, we have had to learn to play in the new rules. So we
18 have done that. We have had to gear up ourselves to be
19 able to be -- to become active on a market advisory
20 committee. It is a very complex structure now in terms of
21 the system operator so we have to get familiar with that.

22 So we have done that.

23 As part of this rate proceeding, we are -- again we are
24 seeking rates that reflect commercial margins again
25 consistent with the policy. Once this rate case is over,

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we will turn our attention to the exit fee situation. And that is something that we intend on doing relatively shortly.

So these are examples of things we have done or we are doing as part of the new market share. We are playing by the rules.

Q.72 - Anything else? Is there anything else you are doing besides playing by the rules? Anything else as a specific strategy of Disco besides playing by the rules, how to deal with the impending competition, as I believe I think you describe it?

MR. MAROIS: For example we have just issued a request for expression of interest for wind generation for up to 400 megawatts. So this is something very concrete that will - and all that electricity will be generated by third parties. So that's something very concrete.

We have ongoing discussions with our customers and we are always willing to provide them with information and expertise to assist them in identifying lower cost options for them. We have ongoing discussions with the province.

They are working on a co-generation policy which is viewed as something that will be positive to help foster the market place.

So those are other examples of concrete things that

2 are going on.

3 Q.73 - Now 80 percent, or approximately 80 percent of the
4 costs of Disco, are in -- by power supplied by Genco,
5 Nuclearco and does that also included Coleson Cove Co's
6 power supply? Is that right? Sorry, the nodding of the
7 head is a yes, I assume.

8 And you would agree -- and I know it's the structure which
9 you are governed, but you would agree that essentially
10 Disco has little control, some might say virtually no
11 control, over the cost structure for 80 percent of its
12 costs, is that essentially right?

13 MR. MAROIS: Well the control is limited in the sense that a
14 lot of these costs are hard wired in the Power Purchase
15 Agreements and another significant portion are driven by
16 world markets. Other than that we are playing an active
17 role to ensure that the Power Purchase Agreements are
18 being respected but --

19 Q.74 - I know we will deal with this later, but you mentioned
20 the world markets. I presume you are speaking about fuel
21 costs?

22 MR. MAROIS: Yes, I am.

23 Q.75 - Does Disco play any role in the hedging, buying of
24 power, fuel and so on, by Geneco in the world markets?

25 MS. MACFARLANE: Yes, it does, in the sense that we have a

2 very controlled hedging program that is managed through a
3 hedging committee. I chair the committee and there is a
4 Disco representative on the committee.

5 Q.76 - So there is one representative. We will deal with that
6 I guess in one of the subsequent Panels. And I presume
7 Disco would agree that it's in Disco's best interest that
8 its business customers, particularly I refer to the
9 business customers, remain competitive in their business
10 to ensure that they continue to be customers of Disco, is
11 that a fair statement?

12 MR. MAROIS: Yes.

13 Q.77 - I would like to move on to the OM&A side of questions,
14 and we have dealt with some of these already. I presume
15 you would agree that as in all businesses you will
16 continue to manage your business in a way to reduce your
17 costs as much as you can to continue to meet the mandate
18 that you have?

19 MR. MAROIS: That's the objective of many businesses, yes.

20 Q.78 - Including Disco?

21 MR. MAROIS: Yes.

22 Q.79 - And I presume that for example this is an ongoing
23 initiative that there will probably be some initiatives
24 that will be within the 2006/2007 fiscal period that will
25 arise that may not yet be reflected in the financial --

2 the statements that have been proposed or filed?

3 MR. MAROIS: Yes, we are promoting the development of a
4 continuous improving culture, so --

5 Q.80 - And so you are saving -- your costs may in fact -- for
6 service may in fact in 2006/2007 be less than what is
7 submitted as a result of those initiatives, is that right?

8 MR. MAROIS: Yes, although our budget already reflects a
9 significant stretch. For example one of the significant
10 initiatives we have for 06/07 -- or we had for 05/06,
11 really was a reduction in overtime hours. And we have not
12 been successful yet in implementing this. And we have
13 built into our budget a \$800,000 saving just for that. So
14 hopefully we will be successful in doing it during the
15 year. But that's an example of something we have already
16 built in our budget but that is not done yet.

17 Q.81 - But there will be somewhere you haven't yet identified
18 but you will implement in 2006/2007 that will save you
19 some money in that year and subsequent years I presume?

20 MR. MAROIS: Hopefully, yes.

21 Q.82 - Now there is reference in the -- and I'm going to refer
22 you just for ease to one of the exhibits that I -- or one
23 of the documents I handed out to everybody. This is PUB
24 Interrogatory of Disco IR-241, reply of November 28th
25 2005. I just reference that.

2 But in there -- and it also refers to another one but I'm
3 just going to talk specifically of it. I'm not going to
4 look for specifics with respect to the Interrogatory, but
5 you have -- there has been sort of a reference to -- I
6 don't know what COPE stands for, but C-O-P-E which is
7 something from the Canadian Electrical Association, some
8 sort of a benchmarking standard, is that correct?

9 Corporate Performance and Productivity Evaluation I guess
10 is what COPE stands for?

11 MR. MAROIS: Exactly.

12 Q.83 - So that's a benchmarking that Disco and other of the NB
13 Power companies have been using, is that correct?

14 MR. MAROIS: Yes.

15 Q.84 - And while I recognize as explained in 241 -- the reply
16 in 241, there may be inconsistencies how each utility
17 submits the data for their companies and purposes, and
18 recognize that this -- your numbers do not reflect the
19 savings that you have accomplished by virtue of cut-backs
20 in staff and so on, but isn't it true that the full-time
21 equivalent for 100 kilometres of distribution circuit for
22 Disco was before that staff reduction about three times
23 higher than the composite for the utilities under the CAE
24 information?

25 MR. MAROIS: Well the calculations do indicate that there

2 were 285 percent higher, but in response to the PUB-241 we
3 elaborate on the issues that would compare with these
4 types of measures.

5 Q.85 - That's right. But when one looks at a 285 percent
6 difference and looking at the explanation that has been
7 given in the IR response, it seems to me as a layman that
8 it would seem unlikely that that large a difference would
9 be explained by that which is explained in the IR and that
10 there must be still a significantly higher cost that Disco
11 has for 100 kilometres of distribution circuit compared to
12 other utilities across the country, the average utilities
13 across the country?

14 MR. MAROIS: The issue I guess is we don't know, and I will
15 give you an example. One of the issues with this measure
16 is what do you include in your kilometres of distribution
17 lines? We only include primary lines. So -- and we have
18 got about 20,000 kilometres of primary lines. We have
19 about 15,000 kilometres of secondary lines. So by
20 including the secondary lines we would basically double or
21 almost double the amount of lines we have.
22 And we know for a fact that some utilities do include the
23 secondary lines. So that has been an ongoing challenge of
24 using benchmarking and the CEA is actively trying to come
25 up with measures that are more comparable.

2 But it's kind of a Catch 22 because it's so difficult to do
3 benchmarking on a comparative basis, some utilities now
4 are reluctant in sharing their information.

5 So at a time where there is a desire to come up with some
6 kind of standard measures it might be difficult to have
7 all utilities come to the table to share their
8 information.

9 We typically -- we do a lot of benchmarking but we use it
10 for internal management. We use it to determine if we are
11 in the ballpark or not. And we also use it to determine
12 if we are going in the right direction or not. And I
13 believe that's where the real value is.

14 And I mean, in fairness to you you did mention in your
15 opening remarks that these numbers here do not factor in
16 our cost savings. I mean, Disco reduced its labour by 20
17 percent, 150 people. So that will have a significant
18 impact on measures such as these. And especially if we
19 were to include our secondary lines, well all of a sudden
20 you are talking about a totally different situation.

21 Q.86 - However, you did mention that you used these
22 benchmarking to see if you are in the ballpark, if you
23 will. You would agree that for a layman at least it's
24 hard to believe somebody can be in the ballpark even with
25 explanations such as this when you are three times higher

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2 than everybody else -- or than the composite information?

3 Just as a layman you would agree that that's got to be a
4 gut reaction that one would expect.

5 MR. MAROIS: I will just repeat that there are serious
6 concerns with such measures. For example the
7 determination of full time equivalence is something that
8 is really an issue. But that being said, I am extremely
9 confident that the reductions we made last year, and
10 that's barely a year ago, by reducing our staff by 20
11 percent we are really going in the right direction and we
12 are committed to becoming as effective as we can.

13 So I mean, we have undertaken what we needed to do. We
14 are leveraging our investment in information technology.
15 Based on my own experience we have got very, very good
16 systems in place and now we are leveraging them. We are
17 ensuring that they are more and more integrated. So we
18 are definitely going down the right path.

19 Q.87 - You are going down the right path but you would agree
20 you still have a distance to go down that path?

21 MR. MAROIS: I'm not ready to say that based on these
22 measures because again they are not comparable.

23 Q.88 - I'm not asking you to do it. You still have a distance
24 to go down that path you would agree regardless of the
25 COPE information?

2 MR. MAROIS: Oh, for sure.

3 Q.89 - Okay. Now has Disco undertaken any what is identified
4 as sort of formal process improvement systems such as 6
5 Sigma or JIT Systems or similar kinds of systems?

6 CHAIRMAN: Mr. Lawson, I will interrupt that just for a
7 moment because you were on the topic of benchmarking.

8 MR. LAWSON: Yes.

9 CHAIRMAN: This Board has been in the forefront of the
10 regulators in this country to push benchmarking, so much
11 so that Commissioner Sollows is heading up a group --
12 subcommittee of Canput to ensure that that will be done
13 and working with the CEA, and part of the response of this
14 Interrogatory is I believe as a result of that.

15 And Mr. Marois brings up the problem that some of the
16 utilities have a bit of reluctance to make certain that
17 you are measuring apples to apples and oranges to oranges,
18 and therefore perhaps not wish to change and file so they
19 can be compared.

20 The answer to that, Mr. Marios, is in my humble opinion is
21 that each and every regulator in the country orders their
22 utility to file that information with the regulator and
23 the regulator then shares that. So that that can overcome
24 that. But as in most things it is very complex and
25 difficult to make certain they are apples to

2 apples.

3 Anyway, sorry to interrupt your question but I wanted to
4 put that out for your client's information as well, Mr.
5 Lawson. Go ahead and repose the question.

6 MR. LAWSON: That's a good point, Mr. Chairman. I was just
7 wondering if Disco has undertaken any formal process
8 improvement systems, such as 6 Sigma or JIT System,
9 something of a similar nature?

10 MS. CLARK: Disco has implemented the balance score card in
11 a previous year and we are working on refining the
12 measures in the balance score card.

13 6 Sigma, the other productivity improvements we would be
14 looking at at a later point in time but we haven't
15 implemented any of those to date.

16 Q.90 - No. Any plan to do so?

17 MS. CLARK: Our focus on -- in 04/05, 05/06, 06/07 was
18 identifying cost reduction opportunities and 05/06 will be
19 working to get those reductions and sustain those
20 reductions. And we are not using any of those methods at
21 this time.

22 Q.91 - I would like to refer you to the single sheet that I
23 handed out as well, the Disco CME -- reply to CME IR
24 number 3, dated November 14th 2005. And I should point
25 out that the underlining is mine so I apologize. It was

2 the only copy I had, in case anybody is wondering what the
3 underlining is about.

4 In it -- it appears from looking at that that the cost
5 reductions from the staff reduction program for 05/06 was
6 \$8.5 million, is that correct, 8.2 of which was for labour
7 and benefits?

8 By the way I'm just looking in (b) there below the chart
9 where I believe it indicates that based on the information
10 in table 1?

11 MS. CLARK: Yes. That's correct.

12 Q.92 - Okay. And I presume that that savings is sort of a
13 full year's savings. It was accomplished as a result of
14 staff reductions in the previous fiscal year, is that
15 right?

16 MS. CLARK: Yes. That's correct.

17 Q.93 - And am I correct in understanding that 140 employees
18 took the early retirement program that was offered at the
19 time it was offered, which is 2004, 2005 I understand?

20 MS. CLARK: There were actually 150 employees that took the
21 program. 140 people left the organization at March 31st
22 2005.

23 Q.94 - Right. Okay. So those 140 employees saved basically
24 \$8.2 million in labour and benefits, is that right? Would
25 that be a logical conclusion?

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MS. CLARK: In 05/06 we had the budget prepared in advance of the early retirement program actually being completed. And that \$8.5 million represents 120 people leaving the organization.

Q.95 - So your savings -- I don't have a calculator with me. I presume one of the financial people up there perhaps might.

Then I did a calculation of the \$8.2 million savings for 140 people and concluded that the average savings was \$58,600 per person in the 05/06 period. You say that 8.2 in fact should have been for 120 people?

MS. CLARK: That's correct.

Q.96 - Okay. And what does that cost work out to per person, if anybody has a calculator?

MS. CLARK: It's not quite that simple. Because there are some -- that's what the impact is on OM&A. And there is also -- when you take a person, there could also be some impact on our capital budget as a result of 120 people leaving.

Q.97 - Okay. I'm just looking at the labour and benefits component of it, which is what I understood the 8.2 was?

MS. CLARK: That works out to about 68,000.

Q.98 - Now am I correct that the -- well, the numbers that you prepared for 06/07, do they reflect the full savings?

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2 Because you say the budget was for 120 million. And these
3 figures in table 1 I guess reflect the 120 -- not million
4 -- 120 people. The budget at 06/07 I assume reflect the
5 full 140 people or 150?

6 MS. CLARK: The 06/07 budget would have the impact of the
7 full 150 people.

8 Q.99 - Okay. Because the last of the group will leave before
9 06/07 starts, is that right, the last 10?

10 MS. CLARK: There were 10 extra people who will be leaving
11 during the 05/06 fiscal year.

12 Q.100 - Right. Now when I look at -- and it is the last of
13 the three documents I handed out --

14 MS. CLARK: I need to correct that statement, sorry. It is
15 in 06/07 that those employees, those extra 10 people will
16 be leaving, not 05/06.

17 Q.101 - 06 07?

18 MS. CLARK: Mmmm.

19 Q.102 - September 30th '06 is when they finish?

20 MS. CLARK: Yes.

21 Q.103 - That is 06/07, okay. So some part of the year will
22 reflect those 10 people presumably? And some part will
23 also reflect the cost of those people leaving, is that
24 correct?

25 MS. CLARK: The early retirement costs were recorded in the

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fiscal year 04/05. What you will find in 05/06 and 06/07 is the cost of their regular salaries during that period.

But the retirement costs for those employees were booked at the time when the retirement --

Q.104 - Okay. So the cost --

MS. CLARK: -- was initiated.

Q.105 - So the cost of those 10 people was not carried forward and absorbed -- planned to be absorbed within the year in which they actually retire?

MS. CLARK: That's right.

Q.106 - So if I take a look at the third document which is the PUB IR 35, the answer of which was supplied on July 14th of 2005 -- and I apologize for a) the fact that it is faxed, and b) somebody else wrote some notes on it, which I guess comfort is I can't read them and probably you folks can't either. So I don't know what they say. But I don't think they will influence the filing -- or the using of it for this purpose.

But when I look at table 1, I see the labour and benefits cost for 2005/2006 estimated were \$49.6 million in the fourth column of table 1, is that correct?

MS. CLARK: That's correct.

Q.107 - Now the number of employees -- if I flip the page the number of employees in the similar year, 2005/2006 were

2 estimated at 658 employees for that year?

3 MS. CLARK: Could you repeat that?

4 Q.108 - If I look on tab 2 of that same Interrogatory
5 response --

6 MS. CLARK: Right.

7 Q.109 - -- it has identified the number -- total number of
8 employees. And if I look under the column 2005/2006 I
9 believe it says 658?

10 MS. CLARK: Yes. That's correct.

11 Q.110 - Okay. Now if I divide that 658 by \$49.6 million I
12 come up with an average cost of \$73,300 approximately per
13 employee for labour and benefits. Is that -- you won't --

14 MS. CLARK: Subject to check.

15 Q.111 - -- dispute that? I don't have a calculator here. But
16 I think that was right, roughly in that neighborhood.
17 Again so the average cost in 2005/2006 of your employees
18 for labour and benefits was 73,300. But yet your savings
19 it appears, now that you have corrected me with the budget
20 number, it is about \$68,000. So there is \$5,000 less cost
21 which I -- or less savings per average employee.

22 Perhaps you can explain that more particularly? I guess I
23 would assume that the people who took your retirement
24 packages would have been the more senior employees on the
25 basis that early retirement usually comes

1 - 3386 - Cross by Mr. Lawson -

2 for those who are a little older.

3 And therefore I would have thought the average cost would
4 have been higher. You would have saved more money than
5 the average employee cost. Any explanation for that?

6 MS. CLARK: It's not as simple just doing the math. There
7 are a number of things that are offsetting certain costs
8 in the year over year comparison. If you just take the
9 regular labour and benefits for example between the fiscal
10 year 04/05 and 05/06 we have the business excellence
11 impacts which are taking \$8.2 million in regular labour
12 and an additional \$800,000 in overtime out, but we have
13 got transfers out of certain groups, supply chain or
14 administration group, some of the HR functions that went
15 into our holding company, as well as, transfer out of some
16 other departments that were formerly part of Disco. And
17 then as a result of having 658 employees in the business
18 you still have your regular merits, union increases, that
19 type of thing that have to be absorbed.

20 So it isn't just as simple as taking a number of employees
21 and dividing it by the amount of regular labour. So costs
22 would have been down by the amount of the staff reduction
23 program but there are offsetting costs.

24 Q.112 - Offsetting costs. Where are the offsetting costs?

25 You mean the savings are offset by some additional

2 expenses?

3 MS. CLARK: There are additional savings as a result of
4 transferring certain groups that had existed in the
5 distribution company prior to restructuring, and as a
6 result in 05/06 also got transferred out into the holding
7 company and in the corporate service groups of the NB
8 Power group.

9 Q.113 - So are those numbers then not reflected in the 658?

10 MS. CLARK: No. Those are direct employees working in the
11 distribution company.

12 Q.114 - So they are direct employees. You pay other people
13 besides those 658 people?

14 MS. CLARK: No. The 835 in 04/05 are direct employees, as
15 are the 658.

16 Q.115 - Right.

17 MS. CLARK: But the labour and benefits number reflects are
18 those the direct labour for those employees, but in the
19 05/06 costs you would also see some transfer out of supply
20 chain, administration, HR, corporate planning, regulatory
21 costs, to the holding company. There are additional costs
22 in that fiscal year and they amount to about \$2 million as
23 a result of union increases.

24 Q.116 - So there is some union cost increase, understand that.

25 There are some other costs in that 49.6?

1 - 3388 - Cross by Mr. Lawson -

2 MS. CLARK: No. The rest are reductions.

3 Q.117 - Okay. So then I guess back to the basic question

4 because I'm just a little confused still. The \$68,000 per

5 person in savings and labour and benefits, you would agree

6 that appears to be about correct?

7 MS. CLARK: Yes.

8 Q.118 - For the 140 people I guess. The cost -- is there any

9 way you can give me an estimate of the cost of the average

10 employee in labour and benefits then during the fiscal

11 period 05/06?

12 MS. CLARK: It would be about \$68,000.

13 Q.119 - So in fact it was the same as the cost savings in the

14 previous year on a per employee basis?

15 MS. CLARK: That's correct.

16 Q.120 - Then again that's an average employee. Am I correct

17 in assuming that the employees who took these packages

18 would have been the more senior employees?

19 MR. MAROIS: I guess technically you are correct, but that's

20 where it's difficult doing these comparisons, because in

21 your overall average salaries for example you have got me

22 as a VP and I'm not in the list of those who left. So by

23 definition that would tend to drive down for example the

24 average salaries of those who left compared to the average

25 salaries of -- or the overall salaries.

1 - 3389 - Cross by Mr. Lawson -

2 So that's why it's difficult to compare apples with
3 apples. But if you look at for example the answer to PUB
4 IR-235 on November 28th, in terms of percentage the same
5 amount -- the same percentage of management left the
6 company as non-management, by about 20 percent of the
7 people left. But it's not the exact same mix. You don't
8 have the same mix that left, the mix that are left.

9 Q.121 - Let's look at the cost of that package. It was \$15
10 million I believe in 2004/2005, correct?

11 MS. CLARK: Yes, that's correct.

12 Q.122 - And now just -- was that for the 120 people that had
13 been budgeted or was that for the 140 people who actually
14 took it?

15 MS. CLARK: It's for the 150 people.

16 Q.123 - I thought you said the other ten were -- sorry. You
17 did say that was booked for everybody. I apologize. So
18 are you able to do some quick math? Well 150, so it was
19 \$100,000 a person on average? Yes?

20 MS. CLARK: Correct.

21 Q.124 - You agree that's a pretty handsome retirement package?

22 MR. MAROIS: That's not a fair question. When we put
23 together a retirement package we looked at different
24 things, but one was payback. Payback was about a year-
25 and-a-half. So it was an excellent business decision to

2 do this and it was in line with our HR philosophy of treating
3 people with dignity.

4 Q.125 - And did you compare it to what packages were being
5 offered out there in the "private sector"?

6 MR. MAROIS: We benchmark our HR policies all the time. So
7 what we propose is consistent with what we see elsewhere.

8 One thing that is very important here is the cost of this
9 early retirement was not borne by customers. It was not
10 built into any rate increase and it was really a cost that
11 was incurred late in 2004 and 2005. So it's not affecting
12 the rate increase here in any way.

13 Q.126 - It was a cost of the shareholders of New Brunswick,
14 the shareholders being the Province of New Brunswick
15 absorbed that cost, would that be a fair statement?

16 MR. MAROIS: Yes. And the shareholders of New Brunswick
17 were concurred with the program.

18 Q.127 - They were consulted?

19 MR. MAROIS: Well as part of our governance program a
20 decision like this has to go to the proper governing
21 channels.

22 Q.128 - Then do you know whether or not the -- what was
23 offered to the employees was in fact consistent with or
24 the same as any early retirement programs offered by the
25 Province of New Brunswick?

2 MR. MAROIS: No, I do not.

3 Q.129 - Would you agree though, just a general observation --

4 MR. MORRISON: Mr. Chairman, I believe Ms. MacFarlane wants
5 to add to that response.

6 Q.130 - I'm sorry. I didn't see that.

7 MS. MACFARLANE: I just wanted to supplement Mr. Marois'
8 statement. It was consistent with the most recent
9 programs offered by the Province of New Brunswick.

10 Q.131 - But I presume that at least where I sit -- I would
11 like to know where you folks sit on it -- that from where
12 I sit a \$100,000 retirement package is a very handsome
13 package. Would you folks concur? Average employees.

14 MR. MAROIS: The package was developed to achieve a certain
15 objective of the amount of people to leave, and as Ms.
16 Clark indicated the original objective was to have 120
17 people leave distribution and customer service and it was
18 felt that the type of package we put together was required
19 to get this amount of people to leave. And at the end of
20 the day it was a bit more effective and we were able to
21 get 150 people out of the company.

22 Q.132 - So 20 percent. 30 people or more out of 120 people is
23 25 percent, is that right? 30 out of 120. 25 percent
24 more people than you planned bought into it because
25 presumably they thought it was a handsome package?

2 MR. MAROIS: If you look at the NB Power group of company
3 overall the amount of people that left were almost dead on
4 target. So the numbers varied by company somewhat, but
5 the overall target was achieved.

6 Q.133 - 25 percent more than you had planned took the package?

7 MR. MAROIS: You should see this as good news because I can
8 tell you managing with 150 less people is quite a
9 challenge, but we are up to the challenge and the
10 customers distribution will benefit from this forever.

11 Q.134 - I don't want to be misinterpreted. I'm not suggesting
12 you shouldn't have let the people -- given them a package
13 and let them go. Don't misread me. It's a question of
14 the costs.

15 CHAIRMAN: Mr. Lawson, all this talk of retirement, it's
16 time for us to retire for lunch. We will return at 1:15,

17 (Recess - 12:00 p.m. - 1:15 p.m.)

18 CHAIRMAN: Any preliminary matters? Mr. Morrison, anything
19 on possible dates when we can have a general public
20 participation day?

21 MR. MORRISON: I really didn't have a discussion with any of
22 the Intervenors after the lunch hour, Mr. Chairman.

23 Perhaps we can -- I certainly haven't canvassed the room.

24 Quite frankly I forgot about it over the lunch hour but I
25 will try to get to it this afternoon.

1 - 3393 - Cross by Mr. Lawson -

2 CHAIRMAN: All right. If you could it would be appreciated
3 because we would like to get something in the press with a
4 notice out on it. Anything else? Today was the day for
5 some interrogatories and I broke all the rules and spoke
6 with Ms. MacFarlane as we passed in the corridor about
7 when we could expect the nine month actual and three
8 months projected for the current fiscal.

9 MR. MORRISON: That's correct, Mr Chairman. I believe that
10 came as an IR from the Board. It's my understanding that
11 the IRs are due on Thursday at noon. We were going to
12 file all the IR responses as a package but if you are
13 looking for the actuals we will see if we can expedite
14 that.

15 CHAIRMAN: Well no. I was just curious about it. I mean
16 these witnesses -- I don't know. You lawyers have all got
17 this complex schedule of when everybody addresses what and
18 we would hate to miss anything here.

19 MR. MORRISON: I'm sure you won't miss anything, Mr.
20 Chairman. I will see if that can be filed tomorrow, in
21 advance of the IRs.

22 CHAIRMAN: I think that would be helpful actually, Mr.
23 Morrison, if it is ready to do so. Okay. Any of the
24 other parties have any --

25 MR. MORRISON: I don't know whether -- and I haven't spoken

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to the Secretary about the DCI binder, whether it gets marked now, Mr. Chairman, or tomorrow morning. I don't think it makes much difference. We were talking I think the confidentiality -- the pink version of what was filed this morning and as A-75. Okay. We may as well get that marked now, Mr. Chairman.

CHAIRMAN: Yes. May as well. Okay. The pink binder which is designated confidential information dated January 20th, 2006, is marked A-75(c) for confidential. Anything else? Mr. Coon?

MR. COON: Yes, Mr. Chairman. In terms of maximizing the utility of the public participation session you are contemplating, is there any sense that some kind of background information will be made available to people who want to participate in that ahead of time.

CHAIRMAN: Do you want to prepare something, Mr. Coon?

MR. COON: Well for a small fee.

CHAIRMAN: I don't mean to be trite about that but I don't know how anybody could boil down the 76 volumes into something that members of the public would want to read. I mean, frankly Board staff is available to any of these Informal Intervenors to talk about things in advance. It's a -- it would be a tough order, sir.

MR. COON: Perhaps it's something Board staff could give a

2 little further thought to in terms of a two-pager overview of
3 what this is all about, you know. It's not the evidence
4 but just if someone wants to come and address this from
5 the public, there needs to be it seems to me some kind of
6 framework under which they can --

7 CHAIRMAN: I forgot there is someone here who has a title
8 called the Public Intervenor, and quite often in past that
9 has been a function and role that he and his folks has
10 played, is to assist those members of the general public
11 who wanted to address specific items and they funnelled
12 their questions through him. I'm sure that he has offered
13 that to anybody that has called him. Mr. Hyslop, do you
14 want to add anything to that?

15 MR. HYSLOP: I think that's a fair comment, Mr. Chair. I
16 have had probably ten calls from members of the public
17 with specific comments and most times related to areas
18 that haven't come up yet, such as disconnect or
19 overbilling or interest charges. And I have made notes of
20 them and will be asking questions.
21 Perhaps -- I think at one time we decided anyone that was
22 going to make a statement to the Board would provide a
23 brief written outline of it ahead of time to the Board and
24 perhaps to myself and perhaps something along that line in
25 your notice -- public notice might be helpful. Although I

2 do have a lot on my plate as you might appreciate, if people
3 contact me I will get back to them and help them with that
4 part of it. I think that's fair.

5 CHAIRMAN: Okay. Thanks to Mr. Coon's comment, we will put
6 your name and address and telephone number in our
7 supplemental notice. But thanks for bringing that to our
8 attention, Mr. Coon, and my being able to pass it off on
9 Mr. Hyslop. Anything else. If not, Mr. Lawson, go ahead,
10 sir.

11 Q.135 - Thank you, Mr. Chairman. I would like to direct the
12 Panel to A-50, I believe it is, the evidence that was
13 filed in this matter dated October 17th 2005. And most
14 specifically -- more specifically the evidence of Lori
15 Clark. And it's Panel B, part 3, and page 10 of part 3 in
16 particular, table 3(d). Have you found it, Ms. Clark?
17 Thank you.

18 Now these amounts in here indicate that \$13.4 million will
19 be paid for taxes other than in lieu of income taxes, is
20 that right?

21 MS. CLARK: Yes, that's correct.

22 Q.136 - Okay. And as I go through this, we have \$9.7 million
23 for utility tax. Is that I understand required to be paid
24 under the Assessment Act?

25 MS. CLARK: That's correct.

2 Q.137 - Have you any idea where in the Assessment Act, what
3 section or anything, that payment is required under?

4 MS. CLARK: I see it under Chapter A-14(b)(i), any wire,
5 cable, pipe, pole, tower, installation, equipment or thing
6 or structures other than buildings forming part of a
7 television broadcasting transmission or rebroadcasting or
8 retransmission system including the cable television
9 system, telephone, electric light, telegraph or
10 telecommunication system, or any electric power
11 distribution system including New Brunswick Power
12 Corporation.

13 Q.138 - So that's a section of the Act or is under the
14 Regulation?

15 MS. CLARK: It's a section of the Act.

16 Q.139 - And what was the section again? I'm sorry.

17 MS. CLARK: What I have here is it's under the Assessment
18 Act, Chapter A-14, (1)(b)(i).

19 Q.140 - Okay. And that amount is paid I presume to the
20 Province of New Brunswick?

21 MS. CLARK: That's correct.

22 Q.141 - And that's \$9.7 million. Then the next item is a
23 property tax which I assume is a property tax like most of
24 us pay, \$1.4 million. That amount paid I presume to the
25 province, is that right, and then some of it may be

1 - 3398 - Cross by Mr. Lawson -

2 distributed to the municipalities?

3 MS. CLARK: That's correct.

4 Q.142 - Just based on sort of general knowledge, is about half
5 of it usually paid to the Province and the rest of it do
6 you know passed on to applicable municipalities?

7 MS. CLARK: I don't have that information with me.

8 Q.143 - In light of --

9 CHAIRMAN: It would be more than that, wouldn't it? There
10 is no residential tax credit for power corps.

11 Q.144 - Right. So the Province gets to keep it. So it would
12 more than that. The right-of-way tax, to whom is that
13 paid?

14 MS. CLARK: That's paid to the Minister of Finance, the
15 Province of New Brunswick as well.

16 Q.145 - And I presume the same is the case for the special
17 payment in lieu of provincial large corporation tax?

18 MS. CLARK: That payment is made to EFC.

19 Q.146 - Okay. That's the --

20 MS. CLARK: Electric Finance Corporation.

21 Q.147 - -- Electric Finance Corporation. Okay. And the
22 shareholders of EFC, I think as you call it is the
23 Province of New Brunswick.

24 MS. MACFARLANE: Yes, it is. But the reason it's an
25 important distinction is because Section 36 of the

2 Electric Power Act mandates that all moneys paid by any NB
3 Power company to Electric Finance must be used for the
4 purposes stated in the Act which are to reduce NB Power
5 debt. It does not go into general revenue as do these
6 other taxes.

7 Q.148 - So if I look at the \$19.4 million that's under the
8 taxes excluding payment in lieu of taxes segment, the vast
9 majority of that goes to the Province of New Brunswick, is
10 that correct, Ms. Clark?

11 MS. CLARK: That's correct.

12 Q.149 - And you don't know of anything at least that would
13 prevent the province from foregoing these payments at any
14 time?

15 MS. CLARK: We are required to pay those as a result of the
16 legislation.

17 Q.150 - Right. But the legislation is drafted by the Province
18 of New Brunswick?

19 MS. CLARK: That's correct.

20 Q.151 - And you don't know of anything that would prevent them
21 from changing that to forego the payments at any given
22 time? You don't know of anything at least anyway?

23 MS. CLARK: That's correct.

24 Q.152 - On the issue of -- that's it with reference to that
25 part of your evidence. There is also an item identified

2 in the OM&A for interest paid by Disco. Approximately how
3 much is the debt to which that interest relates?

4 MS. MACFARLANE: Could you point me to the reference you are
5 using?

6 Q.153 - I don't have it unfortunately.

7 MS. MACFARLANE: Okay.

8 Q.154 - There is debt I know --

9 MS. MACFARLANE: Yes.

10 Q.155 - -- and there is an interest component.

11 MS. MACFARLANE: There is. My point of confusion is that I
12 believe you said it was included in OM&A --

13 Q.156 - Yes.

14 MS. MACFARLANE: -- and there is no interest expense in
15 OM&A, as far as I know. But evidence under Lori Clark's
16 section tab 4 does speak to interest on the debt.

17 Q.157 - Okay. So the amount is how much with respect to the
18 debt?

19 MS. MACFARLANE: Total forecasted interest expense, it's on
20 page 1 under section 4 -- table 4(a), 39.4 million.

21 Q.158 - And that's to service what amount of debt?

22 MS. MACFARLANE: It is to service long-term debt totalling
23 530-some million. It's also servicing short-term debt.

24 Q.159 - And to whom are those payments being made currently?

25 MS. MACFARLANE: They are made to Electric Finance

2 Corporation.

3 Q.160 - And is there any fee being paid currently with respect
4 to any guarantee of debt or budgeted amounts for any
5 guarantee of debt?

6 MS. MACFARLANE: Yes, there is.

7 Q.161 - How much is that and to whom is it paid?

8 MS. MACFARLANE: In the evidence in binder A-50 under Lori
9 Clark's evidence, tab 4, page 4. Table 4(c) explains the
10 debt portfolio management fee and the amount for 06/07 is
11 3.7 million.

12 Q.162 - And paid to whom?

13 MS. MACFARLANE: That is paid to Electric Finance
14 Corporation.

15 Q.163 - And was that amount an amount that was negotiated
16 between Disco and EFC?

17 MS. MACFARLANE: No. That was an amount that was dictated
18 by Order-In-Council under Section 37.4 of the Electricity
19 Act. The number approximately 65 basis points was seen as
20 something that would represent the credit spread
21 differential between the Province's borrowing rate and the
22 borrowing rate that Disco would get were it in a position
23 to go to the market, a corporate debt rate.

24 Q.164 - So EFC, does it in fact guarantee debt of Disco?

25 MS. MACFARLANE: EFC is an agent of the Crown so in effect

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the Province -- EFC commits the Province by being agent of the Crown so the Province is guaranteeing the debt.

Q.165 - Okay. And aside from sort of lending its credit worthiness, it doesn't actually do anything to earn that \$3.7 million?

MS. MACFARLANE: I would not underestimate the impact of lending its credit worthiness.

Q.166 - No. That wasn't the question.

MS. MACFARLANE: Okay.

Q.167 - Aside from that, it doesn't do anything. Correct?

MS. MACFARLANE: Aside from that --

Q.168 - There are no management component or anything else.

It basically gives its credit worthiness -- lends its credit worthiness and charges a fee of \$3.7 million?

MS. MACFARLANE: EFC and the Province are the fiscal agent of NB Power and they do work in the capital markets on our behalf and it's a significant amount of work dealing with the various syndicates, dealing with the credit rating agencies. It's a significant amount of work. But nonetheless this particular fee is for -- to represent proxy of a credit spread as part of the -- getting NB Power's rates to commercial margins.

Q.169 - It is not paying for that service that you mentioned about going out into the market place on your behalf and

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getting financing and so on? That is presumably built into some interest component?

MS. MACFARLANE: That is part. There is a separate fee for that.

Q.170 - That's right. So the 3.7 is for the lending of the credit worthiness?

MS. MACFARLANE: That's right.

Q.171 - And again, that goes to the agent of the Crown or the Province of New Brunswick, as you say?

MS. MACFARLANE: That's right.

Q.172 - And again, legislation aside, you know of nothing that would prevent the Province from -- through legislative change or otherwise, foregoing that payment?

MS. MACFARLANE: It would only be through legislative change.

Q.173 - Right. But it could. There is nothing you know of that would prevent it from doing that?

MS. MACFARLANE: That's right.

Q.174 - And then with respect to payment -- special payment in lieu of taxes. This goes to EFC.

MS. MACFARLANE: Could I just expand on that answer -- I'm sorry -- when you say there is nothing that would prevent it doing it. Remember that there is a portfolio of debt that upon restructuring left NB Power and is now sitting

2 on the books of EFC and requires servicing, requires debt
3 servicing.

4 And it is these streams of money from NB Power group into
5 EFC that services that debt. If those streams were not
6 there, it would be a burden on health care, education,
7 some other service that the Province of New Brunswick
8 would not be able to pay.

9 So yes, you are saying would they be able to change the
10 legislation. Well they would but they would also have to
11 find a way to cut other services in other budgets to
12 afford it.

13 Q.175 - As it has to do in balancing any interests and their
14 expenditure side?

15 MS. MACFARLANE: That's right. One of the primary reasons
16 given by the Premiere and the Minister of Energy for this
17 restructuring was to appropriately balance the risk
18 between ratepayers and tax payers.

19 Q.176 - Yes, I understand that. So moving to the special
20 payment in lieu of taxes.

21 MS. MACFARLANE: Yes.

22 Q.177 - The Province of New Brunswick again, EFC is an agent
23 of the Crown, or effectively is the Crown. Would that be
24 a fair statement?

25 MS. MACFARLANE: They are an agent of the Crown. They are a

2 Crown corporation in their own right.

3 Q.178 - Right. And am I correct in understanding -- or how
4 much is in fact budgeted for in 2006/2007 for this special
5 payment in lieu of taxes?

6 MS. MACFARLANE: If I could direct you to page -- it is
7 behind tab 4 in Lori Clark's evidence, page 9. And this
8 is table 4(f) which outlines the forecast of special
9 payments in lieu of income tax and the federal portion of
10 the large corporate tax.

11 And if you look down what I believe is intended to be
12 column 2, line 11 shows the special payments in lieu of
13 income tax before the federal large corporate tax, 8.2
14 million. Carrying down that column to line 20, you see
15 the special payments in lieu of the federal large
16 corporate tax of .6 million. So that is 8.8 million.
17 And you will recall in questioning Ms. Clark that there is
18 also a provincial portion of large corporate tax of 1.7
19 million. So that comes to 10.5 million payments in lieu
20 of taxes.

21 CHAIRMAN: If I could just interrupt a sec'. Ms.
22 MacFarlane, you keep referring to that as Ms. Clark's
23 evidence. But on our binder it shows as yours.

24 MS. MACFARLANE: Yes.

25 CHAIRMAN: Sorry I brought it up.

2 MS. MACFARLANE: So it is under her evidence and there are
3 five tabs. Most of them are hers, one is mine. Mine is
4 tab 4.

5 Oh, Ms. Clark points out that under that white tab that
6 says evidence of Ms. Clark, part 1, page 3, outlines what
7 is behind each of the tabs.

8 CHAIRMAN: Thank you. Go ahead, Mr. Lawson.

9 Q.179 - So \$10.5 million then is being paid to the Crown
10 basically in lieu of taxes, income taxes or large
11 corporate taxes? Is that right?

12 MS. MACFARLANE: 10.5 million is being paid to Electric
13 Finance Corporation and again Section 33 of the Act says
14 it is only to be used for the purposes of paying down NB
15 Power's legacy debt.

16 Q.180 - Right. Okay. And that -- again, that amount I
17 believe in 2005 and 06 was 4 and 1/2 million dollars
18 roughly of the equivalent amount?

19 MS. MACFARLANE: The amount in 05/06 budget was 5.7 million.
20 Would you like me to take you to the references that --

21 Q.181 - No, that's fine.

22 MS. MACFARLANE: Okay. Thank you.

23 Q.182 - So from 05/06 to 06/07 there is going to be an extra
24 \$5 million paid by Disco to the Province of New Brunswick.
25 Leave aside where they decide to put the payments, that

1 is - 3407 - Cross by Mr. Lawson -

2 what's going to be the incremental tax?

3 MS. MACFARLANE: And that is because the corporation is
4 proposing a larger net income, a net income that in fact
5 would equate to a real return on equity.

6 Q.183 - And we will chat about that later. Luckily not this
7 afternoon.

8 So essentially the Province is being paid 10 and 1/2
9 million dollars in payments in lieu of taxes under the
10 06/07 budget as proposed to the Board?

11 MS. MACFARLANE: That is correct and they are using it to
12 service the debt that used to be --

13 Q.184 - Right. No, I under --

14 MS. MACFARLANE: -- in NB Power's books.

15 Q.185 - Yes, I understand that part. And again, aside from a
16 legislative change, you know of nothing that would prevent
17 the Province from foregoing those payments?

18 MS. MACFARLANE: Again --

19 Q.186 - Do you know of anything that prevents them from doing
20 it? Leave aside whether they would do it for policy
21 reasons or why they are doing this in the first place.

22 You don't know of anything that prevents them from doing
23 it? Aside from the legislative --

24 MS. MACFARLANE: A one seat majority, maybe.

25 Q.187 - Sorry?

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2 MS. MACFARLANE: The -- I don't believe that they could
3 certainly change the Act but as I say, they would then
4 have to find some other source of funds for paying that.
5 It would come out of health care, it would come out of
6 education or in fact if they are choosing to unroll that
7 part of the Act, they may well unroll the whole Act and
8 move that \$377 million worth of debt back to NB Power and
9 back to payments that would be included in our revenue
10 requirement.

11 Q.188 - And it is also true then if you should budget for a
12 breakeven or no profit operation, then a substantial
13 portion of that 10 and 1/2 million dollars would not be
14 required to be paid. Is that right?

15 MS. MACFARLANE: That is correct.

16 Q.189 - I'm just going to ask, Ms. MacFarlane, if you can
17 redirect me to it, unfortunately, because I don't know
18 what tab it is under. The way that this book is divided,
19 it doesn't have a tab.
20 But it is table 4(e), Forecast Earnings Before Special
21 Payments In Lieu Of Income Tax. It is page 8 under one of
22 the tabs.

23 MS. MACFARLANE: It is under the white tab, direct evidence
24 of Lori Clark, part 1. And it is under the gold tab 4,
25 page 8.

2 Q.190 - And it is on page 8, 4(e) then?

3 MS. MACFARLANE: Yes.

4 Q.191 - And again just referring to line 9, the interest
5 expense component which you referred to, \$39.4 million --

6 MS. MACFARLANE: That's correct.

7 Q.192 - -- is that interest cost based on the assumption that
8 57.5 percent of Disco's assets are financed by debt? Or
9 is it based on 100 percent debt for this purpose?

10 MS. MACFARLANE: That line is based on 100 percent debt.

11 Q.193 - And then an incremental amount is added later for a
12 rate of return component, assuming that some of it is in
13 fact equity?

14 MS. MACFARLANE: That's right. There is an adder to reflect
15 that.

16 Q.194 - So the 39.4 would in fact be reflective of what it
17 really is, which is 100 percent debt?

18 MS. MACFARLANE: That's correct.

19 Q.195 - So the adder is as if it was equity?

20 MS. MACFARLANE: Right.

21 Q.196 - Just so I'm clear, Ms. MacFarlane, the incremental
22 that is added is -- how did you calculate the incremental
23 component to go for the equity reflection, if you will?

24 MS. MACFARLANE: Okay. If I could draw your attention to PI
25 IR-58. It is in binder A-54.

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MR. LAWSON: All right. I will let everybody look. I don't have all those fancy binders. I'm sorry.

CHAIRMAN: You didn't come equipped for this hearing?

MR. LAWSON: I only had one boxful of evidence. And I wasn't able to get the other wheelbarrows full here.

MS. MACFARLANE: So it is A-54. And it is PI IR-58, November 14th.

Q.197 - I think I actually have that one down the back. But I won't bother getting it. So how does that number calculate?

What I'm looking for more specifically is the interest differential -- the differential or the add-on, I believe you call it. Is that identified in this answer which Mr. Morrison very kindly provided to me?

MS. MACFARLANE: Okay. Does everyone have it? This is the calculation that was done to support the adder, as you call it. And you can see at the bottom of the page on line 19 we have the total capital of the company, 605,000,000.

CHAIRMAN: Excuse me.

MS. MACFARLANE: Second page.

CHAIRMAN: IR-58?

MS. MACFARLANE: IR-58. CI IR.

CHAIRMAN: Thank you.

2 MS. MACFARLANE: On line 19 the total capital of the
3 company, 605,000,000. And then we used the capital
4 structure as proposed by the Province's financial
5 advisers, 42 1/2 percent equity, 57 1/2 percent debt to
6 determine what a proposed debt equity would be. Then you
7 move up to the top of the page.

8 Line 1 we started with Earnings Before Special Payments In
9 Lieu Of Income Taxes off of the table that you just had us
10 looking at, table 4 (e), 23.2 million. And we reduced the
11 interest on the equity portion.

12 So we took off 6.9 percent on 255,000,000 which is the
13 equity portion as determined at the bottom of the page.

14 That gives you a revised earnings before special payments.
15 And then we calculated what the special payments would be
16 on that amount to come up with a net earnings, which would
17 be a commercial level net earnings. And it shows that
18 that would give you a return of 10 percent on your deemed
19 equity.

20 Then we reconciled it back by taking that net earnings on
21 line 8, 25.9 million. We didn't actually pay that special
22 taxes. So we added that special taxes back. We did pay
23 the interest.

24 So we deducted again the interest and we deducted the
25 actual taxes we paid and came up with net earnings of 14.4

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2 million. So it's effectively picking up the adder on -- the
3 adder of the 10 percent equity on the additional
4 255,000,000.

5 Q.198 - And the result is -- is it a fair assessment generally
6 to describe it that the difference is -- I have forgotten
7 what the debt service cost is, something -- somewhere a
8 little over 6 percent, is that correct, for the cost of
9 the debt service?

10 MS. MACFARLANE: The debt is 6.9 percent.

11 Q.199 - 6.9?

12 MS. MACFARLANE: It is on line 2. Yes.

13 Q.200 - Okay. Versus the adder being the difference between
14 6.9 and 10 percent. Is that generally correct?

15 MS. MACFARLANE: That's right. So it's the adder on the
16 equity portion. So it gives you 10 percent on the equity
17 portion and leaves 6.9 percent on the debt portion.

18 Q.201 - I just wanted this for background. I know this is a
19 subject for another panel.

20 MS. MACFARLANE: Mmmm.

21 Q.202 - But thank you for that.

22 MR. LAWSON: Those are all the questions I have. Thank you,
23 panelists.

24 CHAIRMAN: Mr. Coon, do you have any questions of this
25 panel?

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MR. COON: Yes. Thank you, Mr. Chairman. Good afternoon, Commissioners and members of the Panel. I do have a few questions I would like to pose.

CROSS EXAMINATION BY MR. COON:

Q.203 - And one is sort of I guess a general question to begin with. And that is -- maybe this is for you, Mr. Marois. Given the current purchase power agreements, when does Disco start looking for additional suppliers or alternative suppliers for power besides the wind generators you are now looking at?

MR. MAROIS: Well, this will probably change. But the current forecast is we don't need new capacity before year 2014/2015.

Q.204 - Just to refresh my memory, the current power purchase agreement with Genco expires when?

MR. MAROIS: So there is no specific end date in the contract. The contract will end once there are really no -- either we reduce our nominations to zero or there are no -- the Generation assets are no longer in operation.

Q.205 - Sorry. Could you repeat the first part of that answer? Either when?

MR. MAROIS: Well, it's easier we reduce our nomination or the assets are no longer in operation, or a combination of

2 both.

3 Q.206 - I'm still not catching you. When you reduce your
4 what?

5 MR. MAROIS: Nominations.

6 Q.207 - Nominations?

7 MR. MAROIS: The nomination is the amount of capacity we
8 have reserved as part of the power purchase agreements.

9 Q.208 - And can you address those nominations at anytime?

10 MR. MAROIS: There are for some very specific contract
11 provisions. For example if we have a customer that leaves
12 the system then that gives us opportunity to reduce the
13 nomination.

14 If you wish I can refer you -- we have answered a question
15 on this which details the actual contract provisions.

16 Q.209 - Yes. That is okay. Thank you. As well, what about
17 the power purchase agreement with Nuclearco? Does it have
18 to be renegotiated for the refurbished Lepreau once it is
19 up and running again or before it is up and running?

20 MR. MAROIS: So the question was specific on the term of the
21 PPA?

22 Q.210 - Yes.

23 MR. MAROIS: The PPA itself contemplated the refurbishment
24 of the plant. So it will extend to the targeted end of

2 the plant.

3 Q.211 - So target end of the refurbished --

4 MR. MAROIS: Yes.

5 Q.212 - -- plant?

6 MR. MAROIS: Refurbished plant, yes.

7 Q.213 - So essentially the power purchase agreement you have

8 with Nuclearco will stay as it is till then?

9 MR. MAROIS: I'm not saying -- the PPA as it stands

10 contemplates a refurbishment. If the PPA changes it would

11 be for reasons other than the need to change it because of

12 the plant refurbishing.

13 Q.214 - Okay. So this power purchase agreement then will

14 remain in place until the anticipated end of the plant

15 which is what, 20' something?

16 MR. MAROIS: 2034.

17 Q.215 - 2034. Okay. Thank you. Now to get to some of your

18 most recent evidence, as I understand it the rate for the

19 first block of electricity in the residential class is

20 going to be increased by 10.2 percent. That is the first

21 block of electricity below 1400 kilowatt-hours, is that

22 correct?

23 MR. MORRISON: Mr. Chairman, if I may interject? And I

24 don't want to -- and perhaps Mr. Coon is going to get to a

25 Revenue Requirement aspect of this. But there is a whole

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phase of this hearing that is going to deal with the rate proposal and rate design. We haven't even answered the IRs on that evidence yet.

And I think if he has got questions that are specifically directed to the rate proposal and rate design it should be dealt with in that part of the hearing.

CHAIRMAN: I don't blame Mr. Coon for having some difficulty in differentiating when the questions are going to be asked. But, Mr. Coon, can you reserve that or save that for a reconstituted battle at a later date? When would you put that, Mr. Morrison?

MR. MORRISON: Well, it is in the schedule, Mr. Chairman.

CHAIRMAN: Are we returning or --

MR. MORRISON: No. It is the rate proposal, CCS --

CHAIRMAN: Way down on the 21st and 22nd of February?

MR. MORRISON: That is right. And it -- of course the people that were intimately familiar with the rate design and rate proposal, notably Mr. Larlee, who is a person isn't on this panel but will be on that panel. And he is certainly the most qualified to answer questions.

CHAIRMAN: But Mr. Marois will be there too.

MR. MORRISON: Mr. Marois will be there. But if you are looking for someone with detailed information on cost allocation issues, I would suggest to you, with all due

2 respect to Mr. Marois, that he is not the appropriate witness.

3 MR. COON: That is fine, Mr. Chairman. And perhaps we could

4 -- the schedule is a bit of a mystery. So maybe

5 afterwards I can get Mr. Morrison to --

6 CHAIRMAN: Mr. Coon, have you been given a copy of this? It

7 is marked "Confidential" but it isn't confidential. And

8 it is headed "Witness Panels 2006/07, Revenue Requirement

9 Hearing"?

10 MR. COON: I don't believe I have seen that.

11 CHAIRMAN: No. Okay. Counsel I know saw it. But you are

12 not represented by counsel. Mr. MacNutt is going to share

13 one with you.

14 MR. MORRISON: It was sent to all parties, Mr. Chairman.

15 CHAIRMAN: Was it? Okay.

16 MR. COON: Thank you. All right. But still, you know, it

17 is all right. I can ask these questions later. But this

18 does come from Mr. Marois' evidence given in the binder

19 submitted January the 24th of this year. But that is

20 okay. I can hold off till the appropriate time.

21 CHAIRMAN: Well, if you want to go ahead and try then if he

22 can't answer it then -- or chooses to have Mr. Larlee do

23 so, why it will go off at that time. Go ahead, Mr. Coon.

24 Q.216 - Well, it does get -- okay. Let me try this. All

25 I'm

2 trying to get at here is that in your evidence, Mr. Marois,
3 you indicate that under the new structure, with changes to
4 the declining block rate, there actually will be a
5 differential increase in essentially the cost for
6 residential customers below 1400 kilowatt-hours and those
7 who use more than 1400 kilowatt-hours, correct?

8 MR. MAROIS: Correct.

9 Q.217 - And in your evidence you said that would amount to
10 10.2 percent for residential customers in the first block
11 or those consuming less than 1400 kilowatt-hours and 19.8
12 percent for blocks after 1400 kilowatt-hours, correct?

13 MR. MAROIS: Sounds correct. I don't even have those
14 binders here. But it sounds correct.

15 Q.218 - Thank you. And -- well, okay. About 179,000 of the
16 residential customers were identified in your evidence, or
17 at least in the appendix to your evidence, as residential
18 heat customers.

19 Does that sound approximately correct? Got 301,000
20 residential customers, around 179,000 would be electric
21 heat customers?

22 MR. MAROIS: Yes. We have approximately 60 percent of our
23 customers use electricity for heating. So it does sound
24 correct, yes.

25 Q.219 - Okay. Thank you. Now in the past NB Power has

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2 provided incentives to residential customers for changing
3 their heating systems, for providing low interest loans,
4 other such incentives to help them on the demand side of
5 the equation. Are you generally familiar with those kinds
6 of investments that have been made by the utility in the
7 past?

8 MR. MAROIS: We have done numerous programs over the years,
9 yes.

10 Q.220 - And that would include some that I have mentioned
11 here, isn't that the case, incentives to help people
12 convert to electric heating, low interest loan programs
13 and the like?

14 MR. MAROIS: Personally I don't -- I'm not familiar with any
15 specific programs for switching off electricity. Maybe
16 many years ago.

17 Q.221 - No, switching onto electricity I think were the
18 programs that existed. Off oil programs at the time?

19 MR. MAROIS: Oh, yes.

20 Q.222 - Yes. And are you aware in a general sense that other
21 utilities continue to offer similar incentive programs to
22 their customers as part of their customer service?

23 MR. MAROIS: Yes. But I guess here in New Brunswick the
24 Province decided to have a different structure where it
25 created the Energy Efficiency Agency which will allow the

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specific mandate for those programs.

Q.223 - Thank you for that. So in reviewing your OM&A budget I didn't see any allocation for partnering with the Energy Efficiency Agency to invest in any of these sorts of programs to encourage efficiency or help convert away from electric heat?

MR. MAROIS: As we mentioned previously in another segment of this hearing, we do have budgeted for energy advisers and account managers. But we didn't budget for any specific line item to help finance programs to be provided by the Energy Efficiency Agency.

And one of the reasons is the Energy Efficiency Agency, as you know, has just been created. And we are not yet aware of their programs. And our role in helping the agency roll out these programs is yet to be defined.

Q.224 - So to be clear here then, you are saying you received -- there is a government directive to Disco not to invest in your own energy efficiency demand side management programs?

MR. MAROIS: I did not say that.

Q.225 - Okay. So therefore there is not a government directive that is keeping you from making those kinds of investments?

MR. MAROIS: No.

2 Q.226 - Now in my previous cross during the CARD phase of
3 these hearings, you described the importance of energy
4 efficiency and reducing customer reliance on electric heat
5 as part of the rationale for the changes to the rate
6 design. Do you recall that?

7 MR. MAROIS: What I recall was discussing the importance of
8 sending the right price signal.

9 Q.227 - To achieve those objectives?

10 MR. MAROIS: Well, to really encourage the efficient use of
11 energy.

12 Q.228 - Right. So in fact if you can -- well -- so my
13 question I guess remains then why in that with those
14 objectives in mind, would you not also provide, in your
15 OM&A budget, a budget line for direct incentives to assist
16 your customers to help reduce their demand for power, and
17 obviously as a result offset their costs of the power rate
18 increases?

19 MR. MAROIS: Well, again I guess we believe that the most
20 powerful thing we can do is send the right price signal.
21 And a separate agency has been created to deal
22 specifically with energy efficiency and conservation
23 matters.

24 Q.229 - So as a distribution and customer service company you
25 don't see part of your role in customer service to help

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your customers minimize the costs of their electricity expenditures?

MR. MAROIS: That's not what I said. We do a lot to help our customers reduce their consumption. We have energy advisers, we have account managers who provide customers with ongoing information. We have information on our website. Your question was specific do we have budgeted for programs? And my answer was no.

Q.230 - But this assistance you describe doesn't extend to providing direct financial assistance either as incentives or some kind of a loan program?

MR. MAROIS: One thing I forgot to mention is we have just recently created in December, for lack of a better term -- presently we call it a Senior Adviser position on Green Energy.

And one of the roles of that position will be to interface with the Energy Efficiency Agency. And we are in the process of filling this position as we speak.

Q.231 - And is that -- where would that position be reflected in your OM&A budget? It is not in the -- is it in the customer service section?

MR. MAROIS: Yes. It is a position that will be reporting directly to me. We didn't add a new position. We were able to use the existing -- how is it -- to fund this

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2 position with the budget we had already in place.

3 Q.232 - If you had put some money into your OM&A budget to
4 provide direct incentives to your customers to reduce
5 their power consumption through energy efficiency or fuel-
6 switching, would this not have less of an impact on rates
7 than simply continuing to buy whatever electricity is
8 required by your customer from expensive oil and other
9 sources of generating capacity?

10 MR. MAROIS: I guess I will have to repeat my answer, that
11 again the government has made the policy decision that
12 it's someone else that is going to take the lead on those
13 initiatives and that's the Energy Efficiency Agency.

14 Q.233 - It seems to me that if you can purchase megawatt hours
15 -- let's call them megawatt hours -- in terms of energy
16 efficiency electricity, that you no longer would have to
17 supply to a customer, if you can purchase megawatt hours
18 for a price less than what you are paying for expensive
19 oil fired electricity, would that not have less of an
20 impact on the rate increases that you are currently
21 seeking?

22 MR. MAROIS: I guess I'm not commenting on the benefits of
23 megawatts. The situation you have just described could be
24 quite favourable. I'm just talking about the way of
25 getting there and again the Province has decided to do

2 this through the route of an energy efficiency agency. And I
3 repeat that from a utility point of view I firmly believe
4 that one of the most powerful things we can do is send the
5 right price signal. If we are selling electricity cheaper
6 than at cost including the financing costs, that's doing
7 the wrong thing, and that's where we hold the key or part
8 of the key to a successful energy efficiency program.

9 Q.234 - But would you not agree, Mr. Marois, that there are
10 considerable financial barriers, particularly for
11 residential customers, to make major investments in either
12 converting heating systems or significantly reducing their
13 demand through improving their building.

14 MR. MAROIS: Yes. And that is why the government has
15 created the Energy Efficiency Agency.

16 Q.235 - But just to confirm, in your OM&A budget you have
17 provided for other than the one new -- the one employee
18 whose job will be dedicated to I guess meeting with the
19 new agency, you have no budget set aside in your operating
20 cost to support investments made by that new agency in any
21 kind of partnership you might enter into.

22 MR. MAROIS: I just want to maybe comment on your question.

23 The position we have just created is a lot more than a
24 position that is going to simply meet with the Energy

1 - 3425 - Cross by Mr. Coon -

2 Efficiency Agency. It's a director level position reporting
3 directly to me and that position will be responsible for
4 setting policy and strategy. So it's going to be a very
5 key position for NB Power or for Disco.

6 The issue here is the Energy Efficiency Agency is a new --
7 is just newly created and it's going to take a while to
8 determine exactly where we fit in. So we have to be
9 careful that we don't trip over each other. So definitely
10 we will work hand in hand with the new agency.

11 Q.236 - In doing so and recognizing that it's new, are you
12 saying you could anticipate in future years an OM&A budget
13 includes a line for funds that would be transferred to the
14 agency in partnership with them to achieve mutual
15 objectives?

16 MR. MAROIS: I'm not excluding it. We will have to see how
17 things roll out.

18 Q.237 - Thank you for that. Let me move on to just a question
19 around industrial rates. In your evidence in the binder
20 submitted on January 24th, the question is asked what sort
21 of impact will the proposed rate increases for large
22 industrials have on the load forecast. And I believe the
23 answer was, well we don't have enough information to know.
24 My question is have you -- as you pointed out earlier,
25 industrial customers have the opportunity to go to an

2 alternative supplier, Hydro Quebec, Nova Scotia Power,
3 whomever, or a merchant plant if -- I understand the
4 Irvings are thinking of building one in conjunction with
5 their LNG plant, or self-generate, have you looked at how
6 the kinds of rates that are available out there on the
7 market to large industrials stack up against what you will
8 be charging if these rates go through as proposed.

9 MR. MORRISON: Mr. Chairman, I believe what Mr. Coon is
10 getting at is the whole question of price elasticity. And
11 I know that that is definitely something that is in Mr.
12 Larlee's bailiwick. I don't think these panel members
13 will be able to talk about any analysis done on price
14 elasticity as a result of the industrial rate, but
15 certainly they will be here during that phase of the
16 hearing -- and specifically Mr. Larlee will be here to
17 address those types of questions.

18 CHAIRMAN: Yes. Mr. Coon, I think you are going to have to
19 return on February 21, 22.

20 MR. COON: I am happy to do that, Mr. Chairman. I was just
21 working off of that evidence and it was in Mr. Marois'
22 evidence where he addressed that issue of the impact on
23 the load forecast, but certainly I will re-ask at that
24 date.

25 CHAIRMAN: Thank you.

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MR. COON: In that case that ends my questions for this Panel. Thank you.

CHAIRMAN: Thank you, Mr. Coon. We will take our break.
(Recess)

CHAIRMAN: Mr. Gorman, how many minutes of questioning do you have?

MR. GORMAN: I don't know if I dare estimate because for sure I will under-estimate. What I can tell you is that I won't be done by 3:00 o'clock which is the normal time for the Panel to rise. Would you like me to just go to 3:00 and then do the balance --

CHAIRMAN: Go to 3:00, ten after, something like that, whatever is convenient and fits in your cross scheme.

MR. GORMAN: Sure. My sense from talking to other parties is that there is going to be certainly lots of time to complete the questioning of this Panel this week in any event.

CHAIRMAN: Okay. Let's break now. Go ahead, Mr. Gorman.

MR. GORMAN: I think half the room emptied on that.

CROSS EXAMINATION BY MR. GORMAN:

Q.238 - Good afternoon, Mr. Marois and Ms. Clark and Ms. MacFarlane. First of all I would like to just ask each of you about your role with NB Power. If I could start with you Mr. Marois. In looking at your evidence -- you don't

2 need to turn it up -- you indicate you are the Vice- President
3 of New Brunswick Power Distribution and Customer Service
4 Corporation, commonly known as Disco. What other NB Power
5 companies do you hold an office with?

6 MR. MAROIS: None.

7 Q.239 - And at one time you held an office, did you, with
8 Holdco?

9 MR. MAROIS: Yes. That's when I came into -- when I joined
10 NB Power I worked for Holdco.

11 Q.240 - Thank you. Ms. Clark, you are the Business Director
12 of Disco?

13 MS. CLARK: Yes, that's correct.

14 Q.241 - And what is a business director, just so we get a
15 sense of what it is your job entails?

16 MS. CLARK: I am responsible for the business planning, the
17 budgeting, the financial and management reporting and
18 internal audit, internal controls.

19 Q.242 - And do you hold offices with any other NB Power
20 companies?

21 MS. CLARK: No, I don't.

22 Q.243 - Thank you. And, Ms. MacFarlane, can you tell me what
23 office you hold with Disco? And I understand you do hold
24 offices with other companies?

25 MS. MACFARLANE: Yes, that's correct. I am Vice-President

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2 Finance and Chief Financial Officer for all of the NB Power

3 companies save NB Coal, and for NB Coal I am a member of

4 the Board of Directors.

5 Q.244 - So you would have involvement with each and every one

6 of the entities -- each one of the companies including NB

7 Coal?

8 MS. MACFARLANE: From a policy and governance perspective,

9 yes.

10 Q.245 - Thank you. Now I just want to I guess first of all

11 follow up on a couple of questions that were asked by

12 other Intervenors here this afternoon. And I'm going to

13 start with Mr. Coon from the Conservation Council. And

14 I'm not sure that I understood the response with respect

15 to his initial line of questioning on the PPAs. And his

16 question effectively was, as I understood it, when do the

17 PPAs terminate, and the response if I understood it

18 correctly, at least the initial response, seemed to be or

19 to imply that they would go on out into infinity. Did I

20 understand that correctly?

21 MS. MACFARLANE: Infinity is a long time. The vesting

22 agreement which is the agreement between Genco and Disco,

23 the term is until all of Genco's heritage assets are

24 retired or the contracted capacity, that's the nomination

25 made by Disco to Genco, is reduced to zero by Disco.

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2 That's the term of the vesting agreement. It gives Disco both
3 the rights and the obligation to the heritage assets for
4 their life. The Coleson agreement is for the life of the
5 plant and the Lepreau agreement was structured either to
6 end in April 1, '08, if the plant was not refurbished, or
7 if it was refurbished to the end of the plant life which
8 is 2034, and it is being refurbished.

9 Q.246 - You speak of the refurbishment of Lepreau. What about
10 the other plants? Would these agreements continue on as
11 long as refurbishments continue and that those plants
12 operate.

13 MS. MACFARLANE: There is a clause in the vesting agreement
14 that deals specifically with refurbishments. It's clause
15 -- or Article 7, and it outlines the conditions by which
16 Disco can choose to participate in the refurbishment, and
17 if it chooses to then the contract would continue for that
18 asset. There is pricing built into the contract to deal
19 with it. If it chooses not to, if Disco chooses not to,
20 then Genco can go ahead with the refurbishment for
21 merchant purposes, but it doesn't have to.

22 Q.247 - So there is no fixed termination date. It's -- the
23 contract is terminated based on a series of events as
24 outlined in the contracts.

2 MS. MACFARLANE: That's correct.

3 Q.248 - And if Disco reduces the amount of energy that it
4 requires from Genco what happens to the excess energy?
5 What does Genco do with that?

6 MS. MACFARLANE: Genco then uses it as a merchant generator.
7 At the same time as they would reduce their base capacity
8 they also lose the slice of peaking capacity that goes
9 with that and they also lose the third party gross margin
10 credit that would be attributable to that, and then Genco
11 is free to merchant that energy as it chooses.

12 Q.249 - And in terms of merchanting that energy would that
13 apply both in-province and out of province?

14 MS. MACFARLANE: Yes.

15 Q.250 - Thank you. The second area of questioning this
16 afternoon from Mr. Coon dealt with energy efficiency
17 policies and I know that we were jumping around a little
18 bit in terms of topics, but there was some comments with
19 respect to energy efficiency, and I understood Mr. Marois'
20 response on behalf of the Panel to be effectively that you
21 have to send the right pricing signals, that that is
22 effectively the energy efficiency policy that you are
23 advocating.

24 MR. MAROIS: I don't know if I would call it policy, but I
25 think it's a very powerful tool that is at our disposal,

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2 and I believe it's critical to ensure the success of energy
3 efficiency.

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Q.251 - And when you talk about sending the right price
5 signals, in the current market or environment do you mean
6 effectively higher rates for everybody?

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MR. MAROIS: What I mean is recovering the true cost of
8 electricity.

9

Q.252 - And you would agree in your proposals nobody gets a
10 rate decrease?

11

MR. MAROIS: Which proposal are you talking about?

12

Q.253 - The rate proposal. I appreciate that we are going to
13 be talking specifically about the rates in a couple of
14 weeks, but the proposal has been filed and you are talking
15 about sending the right price signal. Nobody will pay
16 less if your proposal is accepted than they pay now?

17

MR. MAROIS: No. Because our proposal -- with our proposal
18 every rate moves closer towards recovering the proper
19 costs.

20

Q.254 - What are the right price signals to create a
21 competitive market place?

22

MR. MAROIS: Well from NB Power's point of view, from
23 Disco's point of view, it's recovering our true costs. So
24 what I mean by that is -- and then again this is a policy
25 decision. The policy decision has been made to create a

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2 level playing field and to create a level playing field our
3 rates should be high enough to recover not only our costs,
4 but the costs should include a return component. And
5 taxes. Taxes have been built into the legislation.
6 Provision for dividend have been built into the
7 legislation. So it's all consistent. The way I look at
8 it it's two sides of the same coin, is if you are able to
9 create a level playing field what you have to do as part -
10 - and policy, you have to have rates that recover return,
11 you have to provide for dividends, you have to provide for
12 payment in lieu of taxes, and you have to -- the utility
13 needs to move towards being able to borrow on its own. If
14 you do that you are also reducing the financial risk to
15 the taxpayer which is the overriding objective of the
16 province.

17 Q.255 - Okay. We were speaking of price signals and I guess
18 in the introduction to your answer you talked about the
19 price has to be high enough to recover a number of items.
20 And again I would take it then from your response that
21 what you are saying that in order to create a competitive
22 marketplace rates have to go up. In other words there
23 cannot be a competitive marketplace with the rates the way
24 they are. Is that what you are saying? Is that your
25 evidence?

2 MR. MAROIS: Practically, yes, but I guess what I am saying
3 is again the rates have to recover the costs. So the only
4 reason they have to go up is because they are not
5 recovering fully the costs.

6 Q.256 - Can you tell me how high the rates would need to go in
7 order to create a competitive marketplace?

8 MR. MAROIS: Well the rate we are proposing in this rate
9 application recovers what we believe our costs including
10 our commercial return.

11 Q.257 - I understand that. But will that create a competitive
12 marketplace?

13 MR. MAROIS: Well our price alone is just one of the
14 variables. You have to look at the price of the
15 alternative suppliers. And like Ms. MacFarlane mentioned
16 this morning, our rate proposal in this application will
17 incorporate a commercial return for Disco. But the
18 generating companies do not yet reflect a commercial
19 return. And that's going to be done over time as part of
20 the managed transition. Once the generating companies
21 recover all their costs including a reasonable return,
22 then that's factored into our rates, then we will be
23 sending the proper price signals and we will have the
24 level playing field that the province has adopted in
25 policy.

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2 Q.258 - Are you suggesting then that generation is not
3 recovering its costs?

4 MS. MACFARLANE: Generation is not recovering its costs. I
5 believe that information came out in the CARD hearing.
6 The PPA, the vesting agreement, is shaped over time to
7 allow Genco to recover its costs over a period of the
8 first four or five years, such that rates can be smooth
9 along with getting it to that point in time. It's very
10 obvious when you look at the capacity payment schedule in
11 the vesting agreement that the capacity payments are going
12 up. They went up 12 million this year, they will go up
13 again next year. And Genco will not receive its full
14 return for another three fiscal years. Nuclear was not
15 intended to receive its full return until post
16 refurbishment. And again you see a price increase in the
17 Lepreau megawatt hour charge post refurbishment built into
18 the contract.

19 Q.259 - What percentage increase then does Generation need to
20 recover its costs?

21 MS. MACFARLANE: That is not part of the '06/'07 revenue
22 requirement because the only costs that are relevant to
23 the revenue requirement are what Genco has passed on to
24 Disco in this year. Part of the manage transition the
25 PPAs were structured to phase in full cost recovery for

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the generators.

Q.260 - Perhaps I can move on to a different topic. And I am going to now go back to some of the responses to Mr. Lawson's cross on behalf of CME.

And the subject of exit fees was raised and I understand the answer to be -- the response to be that there is no exit fee at this time. Can you tell me though when the exit fee is set, who sets that fee? Who is responsible for that task?

MR. MAROIS: The exit fee would need to be approved by PUB under Section 79 of the Electricity Act.

Q.261 - So if it has to be approved by the PUB, then who -- would it be Disco that would establish it or is it a function of the province? Whose task is it, I guess would be my question?

MR. MAROIS: Section 79(2) of the Act says the standard service supplier, which is us, or a municipal distribution utility or industrial customer may apply to the Board to determine the fee payable under Section 1. So it's either us or the customers that can leave the system that can apply.

Q.262 - So I take it from your response then that you are saying that you wouldn't establish a fee that the Board on application would establish a fee -- not approve a fee,

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but actually establish it?

MR. MAROIS: Well, I have responded to your question. You are asking if it was us or the Province who would bring it in. The Act provides that three parties can bring it in. The normal course would probably be like when we do for a normal rate application. If it says to bring it in, we would make a proposal for it to be approved by the Board.

Q.263 - If an entity decided that they wanted to stop taking the service from Disco, how would they know in advance in order to plan as to whether or not it was an appropriate decision? How would they know in advance with respect to exit fee? Do you have a proposal or is it your intention -- Disco's intention to propose a formula for establishing an exit fee?

MR. MAROIS: I believe I mentioned this morning that this is something that we want to address. But in truthfulness with everything that's been going on with the past year, it's not something that we were able to address.

Q.264 - You indicated I guess in earlier testimony this morning as well, perhaps that the exit fee is something that would be established. At least that was my understanding of the evidence that it would be established sooner rather than later. Can you estimate as to when this exit fee will be brought before the Board or what

2 your intentions are at the present time in terms of timing?

3 MR. MAROIS: I am not able at this stage to commit to a
4 specific timing.

5 Q.265 - Can you commit to something in a general sense, a
6 range of time?

7 MR. MAROIS: I don't have a specific time in mind.

8 Q.266 - Can you tell me if it would be within three years or
9 am I asking you something that you cannot answer?

10 MR. MAROIS: I cannot answer simply because I don't have a
11 date to provide it to you.

12 Q.267 - Is it a priority?

13 MR. MAROIS: Along with many other priorities.

14 Q.268 - Would you agree that it might be an essential part of
15 creating a competitive marketplace?

16 MR. MAROIS: It's something that we want to address
17 proactively, but it's not something that we believe at
18 this current stage is impeding the development of the
19 market.

20 MR. GORMAN: Mr. Chairman, those are all the questions I
21 have on that topic. And since it's after 3:00, if you
22 wish I can stop questioning at this stage and pick up
23 tomorrow morning?

24 CHAIRMAN: No, that will be fine. We will break until 9:15

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2 tomorrow then. Oh, before we go, sorry, have counsel had an
3 opportunity to talk about an Informal Public Day for the
4 Intervenor Day?

5 The Public Intervenor and Mr. Hashey were caucusing
6 outside at one point.

7 MR. HASHEY: It's somewhat difficult to set a firm date.

8 Now I would suggest that during the last week of the
9 scheduled hearing, being February 28th and March 1, that
10 there might be a day in that week that would be
11 appropriate. I am afraid that's the best we could come up
12 with. We looked at the 20th and it's -- until we see how
13 this is moving, it might be better to --

14 CHAIRMAN: My problem is Mr. Hashey, and I think I have
15 expressed this to you before, if I do set something then I
16 want to have it sufficiently in the future so that the
17 Board can get a supplemental notice out so members of the
18 general public can start to bug Mr. Hyslop.

19 MR. HASHEY: Well the sooner they bug him the better -- it
20 gets him off our backs so that will be good.

21 CHAIRMAN: You are in favour too. Well then I see we have
22 the 28th of February is available. And it's not on
23 counsel's schedule.

24 MR. HASHEY: See that week was scheduled on the schedule for
25 the month -- for the Rogers issue. Now I can't imagine

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that Rogers issue could take more than two days.

CHAIRMAN: Oh, I couldn't imagine what took three did. But that's okay.

MR. HASHEY: Threw me off as well that one.

CHAIRMAN: Well, I suggest what we do is that we set it down for the 28th then and that will give three days after that to deal with hopefully the Rogers conclusion. Does that sound fair?

MR. HASHEY: It does at this point.

CHAIRMAN: Yes. Would you attempt to have someone contact Rogers tomorrow or later on today if you are able to and just say that the Board is tentatively suggesting that. Do they have any problem with that?

MR. HASHEY: I don't think they will. I have a call coming in from them in any event this afternoon. But on that point would they still be available? I mean we don't know if anybody from the public is really going to show up. And I hate to waste the day. Would it not be better if --

CHAIRMAN: You are free to go do something else. Mr. Morrison will be here. Now there is no way, Mr. Hashey, until we get down to if nobody gives any indication and then with great frankness I think this Panel will be here in case somebody drops in off the street. I want to make it known that anybody who in the general population wants

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to come and vent to us that they can do so.

So as we get close to it, we will find out if there are folks who have some very legitimate well thought out complaints and we would be able to tell you that in advance. But otherwise the Intervenors do not have to attend if they don't want to. It's just an opportunity for the Board to hear anybody who does. And we may in fact -- I haven't decided yet -- use a mechanism that we have used with the -- in the public motor bus industry, which is to allow them to phone in by a pre-arranged conference phone call as well, just so that they can without leaving their home town, they can vent to us if they want to.

MR. HASHEY: Just to clarify, Mr. Chairman, then the Board will be sending out this notice?

CHAIRMAN: Yes. We will send a notice. And we will also issue a press release. And frankly if the press continues to cover this proceeding as it has, that's probably every bit as effective or even more effective than putting a notice in the paper.

See you tomorrow morning at 9:15 a.m.

(Adjourned)

Certified to be a true

transcript of this hearing, as recorded by me, to the best of my ability.

Reporter