

1 New Brunswick Energy and Utilities Board

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IN THE MATTER OF an application by New Brunswick Power  
Distribution and Customer Service Corporation (DISCO) for approval  
of changes in its Charges, Rates and Tolls (Includes Interim Rate  
Proposal)

Delta Hotel, Saint John, N.B., on December 17th 2007.

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New Brunswick Energy and Utilities Board

IN THE MATTER OF an application by New Brunswick Power  
Distribution and Customer Service Corporation (DISCO) for  
approval of changes in its Charges, Rates and Tolls (Includes  
Interim Rate Proposal)

Delta Hotel, Saint John, N.B., on December 17th 2007.

BEFORE: Raymond Gorman, Esq., Q.C. - Chairman  
Cyril Johnston, Esq. - Vice Chairman  
Mr. Roger McKenzie - Member  
Mr. Don Barnett - Member  
Ms. Connie Morrison - Member  
Mr. Yvon Normandeau - Member

N.B. Energy and Utilities  
Board Counsel - Ms. Ellen Desmond

Board Staff - Mr. Doug Goss  
- Mr. John Lawton  
- Mr. David Keenan  
- Mr. Dave Young  
- Mr. Andrew Logan

Secretary to the Board - Ms. Lorraine Légère  
Assistant Secretary - Ms. Juliette Savoie

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CHAIRMAN: Well, good morning, every one. Seem to have a  
little confusion getting going here this morning, but at  
least I think we can start by taking appearances and maybe  
deal with some preliminary matters. So for the Applicant?

MR. KEYES: Edward Keyes and Terry Morrison, and joining us  
at counsel table is Lori Clark.

CHAIRMAN: Thank you, Mr. Keyes. CME?

MR. LAWSON: Good morning, Mr. Chair, Members of the Board.

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Gary Lawson, CME.

CHAIRMAN: Thank you, Mr. Lawson. Conservation Council of  
New Brunswick? Not present. Enbridge Gas New Brunswick?  
Not here. Irving Oil Limited? Not here. J.D. Irving  
Pulp & Paper Group?

MR. WOLFE: Good morning, Mr. Chairman. Wayne Wolfe.

CHAIRMAN: N.B. Forest Products Association? Not here. Dr.  
Sollows? Utilities Municipal?

MR. ZED: Good morning, Mr. Chairman, Members of the Board.  
Peter Zed, and I am joined by Dana Young and Daryl  
Shonoman.

CHAIRMAN: Thank you, Mr. Zed. Vibrant Communities Saint  
John? Public Intervenor?

MR. THERIAULT: Good morning, Mr. Chair. Daniel Theriault  
and I am joined this morning Robert O'Rourke and Jayme  
O'Donnell.

CHAIRMAN: New Brunswick Energy and Utilities Board?

MS. DESMOND: Ellen Desmond, Mr. Chair, and here from Board  
Staff is Doug Goss, John Lawton, Dave Young, Dave Keenan  
and Board consultant, Andrew Logan.

CHAIRMAN: Thank you, Ms. Desmond. Mr. Keyes, I guess the  
Board has been provided with a response to the questions  
referring to exhibit A-43 and I thought that perhaps we  
should mark that as an exhibit.

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MR. KEYES: That's fine, Mr. Chairman.

CHAIRMAN: And the last Applicant exhibit that I see here is A-52. So we will mark that as A-53. And I guess we will just entitle that Response to Board Questions on exhibit A-43.

Any other preliminary matters?

MR. KEYES: None with the Applicant.

CHAIRMAN: I see that Ms. MacFarlane is back now. And I believe that there were a few questions from Board counsel that would appropriately be on the public record. So I will ask Ms. Desmond to start with those.

CROSS EXAMINATION BY MS. DESMOND:

Q.139 - I just had a few questions to begin with that are not confidential, so perhaps we could deal with those first. And our first question is when was the Belledune work completed?

MS. MACFARLANE: I believe it was the outage this spring.

Q.140 - And are they burning 25 percent pet coke now at Belledune?

MS. MACFARLANE: Subject to check I believe that they are, but we certainly can follow-up on that for you.

Q.141 - If you would that would be helpful if you could confirm that. And as an add on to that question is it fair to assume that the savings then as a result of the

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2 Belledune work are now reflected in the energy price for this  
3 test year?

4 A. I am quite certain that in the PROMOD inputs they  
5 reflected the fact that they would be doing the water wall  
6 repairs early in the year and that that percentage of pet  
7 coke would be being burned.

8 Q.142 - And as a result then, are the savings then reflected  
9 for this test year?

10 MS. MACFARLANE: Yes, they would be.

11 Q.143 - Could the costs have been recovered by Genco under the  
12 PPA as it was originally written without any amendments?

13 MS. MACFARLANE: I don't think the PPA contemplated a  
14 situation like this, which is why the amendment was made.

15 Q.144 - So is your answer to that question no, that they could  
16 not have been made without amending the agreement?

17 MS. MACFARLANE: The PPA was silent as it went to issues  
18 like this. So it could have been done through a side  
19 contract. It's my understanding it could have been done  
20 through a side contract between the two companies, because  
21 Genco is under no obligation to proceed with this repair  
22 work at this time and could easily have continued with the  
23 lower percentage of petroleum coke, chose to work with  
24 DISCO to do the repair work, so as to get the fuel savings  
25 through to DISCO. It could have been done in agreement

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2 outside of the PPA, but the decision coming from our legal  
3 counsel was that it was best to put the amendment right  
4 into the PPA. That's my understanding.

5 Q.145 - In your view and I guess from DISCO's perspective was  
6 it prudent to enter into this amendment?

7 MS. MACFARLANE: Yes, it was. And as you can see in the  
8 attachment to the Operating Committee minutes where the  
9 business case was reviewed by the Operating Committee.  
10 The payback on this for DISCO was very short. It was less  
11 than a year in fact. And is very much in DISCO's interest  
12 and customer's interests to proceed to this work. In the  
13 absence of the amendment or a side contract, Genco would  
14 not have proceeded with the work and DISCO would have  
15 incurred higher fuel costs.

16 MS. DESMOND: Those are all of our questions with respect to  
17 the public information, Mr. Chair.

18 CHAIRMAN: Thank you, Ms. Desmond. I guess as everybody  
19 knows, today's session was supposed to deal with evidence  
20 of Mr. Strunk. I understand that he will not be in town  
21 until later in the day and will be available tomorrow, is  
22 that correct, Mr. Theriault?

23 MR. THERIAULT: Both Mr. Strunk and Dr. Booth should be  
24 available tomorrow, assuming the airline gods are with us.

25 CHAIRMAN: All right. Before we go to an in-camera session

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2 is there anything else that needs to be dealt with on the  
3 public record? I am thinking of Mr. Wolfe, who will be  
4 excluded from the in-camera session, so is there anything  
5 else that we need to deal with?

6 MR. MORRISON: Just one thing, Mr. Chairman. I spoke to a  
7 number of the intervenors this morning, particularly, Mr.  
8 Lawson, about the -- what I will call the CARD argument.  
9 And we believe that rather than do a separate CARD  
10 argument and have everybody do a round and rebuttal and  
11 then proceed to final argument, that I would address my  
12 CARD argument as part of my final argument and the others  
13 would deal with it in the same fashion, so that we could  
14 do it all at one time, but obviously that is up to the  
15 Board.

16 CHAIRMAN: Well, no, that seems appropriate. Is everybody  
17 in the room in agreement with that process? If anybody  
18 isn't, speak now? That's how we will proceed then.  
19 So do any of the parties have anything else to be dealt  
20 with in the public session?

21 MS. DESMOND: Mr. Chair, would it be appropriate for the  
22 Board to address which party will make their final  
23 argument first, in what order and how that will be dealt  
24 with on Wednesday and Thursday?

25 CHAIRMAN: I could probably address that tomorrow. If I



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think out loud here and that probably always gets you in trouble. It seems to me that we would start with the Applicant and then we would hear from all of the intervenors in the same order that we have heard from them throughout up to but not including Board counsel. Of course, Board counsel does not participate in argument. And then each of the parties then starting with the Public Intervenor would do rebuttal of the other intervenors' evidence and straight back to the Applicant, who essentially would close out the proceedings. That I believe is how it has been done in the past. If anybody thinks that that process isn't the correct one, you can speak about it now or tomorrow morning.

Anything further then for the public session?

MR. LAWSON: Mr. Chairman?

CHAIRMAN: Mr. Lawson?

MR. LAWSON: Just I didn't know when the Board was intending to address the issue of the availability of the transcript from the confidential sessions last week as to what might be made public and otherwise, would you not intend to deal with that until after this panel is completed?

CHAIRMAN: That might be appropriate that we wait and see whether or not there are portions of the transcript from last week and again from this morning -- and what I would

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2 suggest is that maybe that any of the parties that are  
3 interested in making some of that public, that perhaps you  
4 might get together and see if you can agree on what part  
5 might become public. If no agreement can be reached,  
6 certainly the Board will deal with argument on that issue.

7 MR. LAWSON: Thank you.

8 CHAIRMAN: Anything further? Then I guess we will move to  
9 an in-camera session. And I guess anybody who has not  
10 signed a confidentiality agreement or doesn't fall within  
11 the class of individuals that we identified on Thursday  
12 should now leave the room and we will close the door.

13 (In-camera session)

14 CHAIRMAN: I think that concludes this panel's  
15 participation. So I would like to thank Ms. MacFarlane  
16 and Mr. Dobson for their evidence in this proceeding. Mr.  
17 Keyes or Mr. Morrison, does that represent all of the  
18 evidence to be presented by the Applicant in this case?

19 MR. KEYES: Yes, it does, Mr. Chairman.

20 CHAIRMAN: Thank you. So I believe we have two more  
21 witnesses yet to testify. And that would be Mr. Strunk  
22 and Dr. Booth. And I understand, Mr. Theriault, that both  
23 of them are scheduled for tomorrow?

24 MR. THERIAULT: That is correct.

25 CHAIRMAN: Any glitches that you are aware of? Or does it

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appear that the weather is going to cooperate?

MR. THERIAULT: Well, Mr. Strunk is in Boston and is expected to arrive with some delays today, but will be here today.

And Dr. Booth's flight was cancelled because Halifax has been closed up. So he is trying to reconnect to get here as well for tomorrow.

CHAIRMAN: And which witness would you be presenting first, in the event they are both here?

MR. THERIAULT: If they were both here I would present Dr. Booth first. But if he is not here I will present Mr. Strunk first.

CHAIRMAN: Thank you. So it would be our anticipation then that we will conclude the evidence tomorrow. And we will move to argument on Wednesday morning. And I guess we have already had a discussion as to how we would expect the order of argument to take place.

The only other order of business I think to be dealt with tomorrow morning is the issue of how much of the evidence that was heard in-camera might become part of the public record.

So perhaps the parties can meet and discuss that matter. And if you don't have sort of a common position on that, then the Board will deal with that tomorrow as

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well.

MR. KEYES: That is fine, Mr. Chairman.

CHAIRMAN: All right. So we will adjourn until 9:30  
tomorrow morning.

(Adjourned)

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

Reporter