

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 13th 2007.

Henneberry Reporting Service

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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 13th 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: Good morning, everyone. I will take the
appearances now, starting with the Applicant.

MR. KEYES: Good morning, Mr.Chairman, Members of the Board.
Edward Keyes and Terry Morrison on behalf of the
Applicant. And together with me at counsel table is Lori
Clark and Darren Murphy.

CHAIRMAN: Thank you, Mr. Keyes. CME?

MR. LAWSON: Good morning, Mr. Chair. Gary Lawson for CME.

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2 CHAIRMAN: Thank you, Mr. Lawson. Conservation Council of
3 New Brunswick? Nobody here. Enbridge Gas New Brunswick?
4 Nobody here. Irving Oil Limited? Not here this morning.
5 JD Irving Pulp & Paper Group?

6 MR. WOLFE: Good morning, Mr. Chair. Wayne Wolfe.

7 CHAIRMAN: Thank you, Mr. Wolfe. NB Forest Products
8 Association? No one here. Dr. Sollows? Not here this
9 morning. Maybe we should have these early morning
10 sessions more often. Utilities Municipal?

11 MR. ZED: Good morning, Mr. Chair, Members of the Board.
12 Peter Zed and I am joined by Dana Young, Paula Zarnett and
13 Marta Kelly.

14 CHAIRMAN: Thank you, Mr. Zed. Vibrant Communities Saint
15 John? Mr. Peacock not here yet. Public Intervenor?

16 MR. THERIAULT: Good morning, Mr. Chairman. Daniel
17 Theriault and I am joined this morning by Robert O'Rourke.

18 CHAIRMAN: Thank you, Mr. Theriault. NB Energy and
19 Utilities Board?

20 MS. DESMOND: Ellen Desmond, Mr. Chair. And here from Board
21 staff is Doug Goss, John Lawton, Dave Keenan and Board
22 Consultant, Andrew Logan.

23 CHAIRMAN: Thank you, Ms. Desmond. Any preliminary matters
24 this morning, Mr. Keyes?

25 MR. MORRISON: Yes, Mr. Chairman. Yesterday there were

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several undertakings relating to the pleadings, the claim and
so on.

CHAIRMAN: Yes.

MR. MORRISON: I have been working with legal counsel,
including outside counsel, in formulating the responses to
those. And they should be -- I am working on them
presently. And I would propose putting those responses on
the record during the in-camera portion of this
proceeding, just because of the nature of the responses
that I will be giving.

CHAIRMAN: All right. So the responses then, you are going
to claim I guess that section 34 would apply to these
responses?

MR. MORRISON: Yes, they would, Mr. Chairman. And with your
permission I would ask to be excused so that I can
complete that work.

CHAIRMAN: Certainly. Any other preliminary matters, Mr.
Keyes?

MR. KEYES: None.

CHAIRMAN: And any other parties have any preliminary
matters? All right. I guess when we left off yesterday
we were just starting in with questions from the Board and
Mr. Johnston, you have some questions.
Excuse me, I am just wondering before we start whether

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2 or not you know the status of an undertaking which was given
3 to the Board with respect to exhibit A-43?

4 MR. KEYES: That was the matter with respect to the boiler
5 water wall, I believe?

6 CHAIRMAN: Yes.

7 MR. KEYES: I am advised that we are hoping to have that by
8 the end of today or tomorrow at the latest, the responses
9 to those undertakings.

10 CHAIRMAN: Thank you.

11 BY THE VICE CHAIRMAN:

12 Q.104 - Good morning. Mr. Dobson, according to my notes, you
13 are a Manager of Financial Planning with Holdco. Is that
14 correct?

15 MR. DOBSON: That is correct.

16 Q.105 - Now are you an accountant?

17 MR. DOBSON: Yes, I am a chartered accountant.

18 Q.106 - So you have a Chartered Accounting designation?

19 MR. DOBSON: Yes.

20 Q.107 - Now the questions I am going to ask this morning to
21 the panel relate to the decision making process that led
22 to the handling of the proceeds of the PDVSA settlement.
23 Some of these questions were put before very briefly in
24 the motion setting up the deferral account. But I would
25 like to go into it in a little bit more detail.

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2 My first question is did the staff at the NB Power group
3 have much advance notice that this settlement was going to
4 be achieved? Can you comment on that?

5 MS. MACFARLANE: I don't think Mr. Dobson can comment on it.

6 Q.108 - No, I'm sorry, Ms. MacFarlane. My initial questions
7 were just to Mr. Dobson but now for anybody.

8 MS. MACFARLANE: Yes. It was approximately the end of June.

9 This file was a very sensitive one, as you can
10 appreciate, and was very closely managed between the legal
11 department, the President and the Vice President of
12 Generation, who I believe testified here as to the nature
13 of the confidentiality claim around the settlement.
14 My group was notified approximately the end of June that
15 there could potentially be a settlement and it could take
16 the form of both cash and an in kind payment. And I was
17 asked to provide advice as to whether there were any
18 issues or concerns that should be reflected in the
19 settlement itself that would arise out of any special
20 accounting treatment.

21 Q.109 - Now at that time were you advised that there was a
22 likelihood that the settlement would be partially in cash
23 and partially in kind?

24 MS. MACFARLANE: I was advised that that was the direction
25 that they were heading in. I was also advised that, as

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2 had been the case throughout the negotiations, there was a
3 likelihood that that could happen. But there was also a
4 high likelihood that it couldn't happen. And I was asked
5 not to involve my staff. It was only days later that I
6 involved Ms. Clark and Mr. Dobson. And in fact, sought
7 high level advice from our auditors in their capacity as
8 our advisors on accounting treatment for complex matters.

9 Q.110 - Now you have just mention two names, Ms. Clark and Mr.
10 Dobson, and yourself. Were the three of you the people
11 who were chiefly involved in deciding how to deal with the
12 proceeds of the settlement from an accounting point of
13 view?

14 MS. MACFARLANE: From an accounting point of view, yes.

15 Q.111 - Now it seems to me that the key decisions that were
16 made with the proceeds of the settlement were to pay a
17 portion to Holdco. This is the 46 or 47 million that we
18 have been discussing. And then the remainder would
19 benefit DISCO through a paydown of debt at Coleson Cove
20 and flowing through the PPAs, having the benefit to DISCO
21 in that manner.

22 Are those what you see as being the two main decisions
23 that were made with respect to the proceeds?

24 MS. MACFARLANE: That is correct.

25 Q.112 - Can you offer any insight as to who was involved in

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2 making those decisions?

3 MS. MACFARLANE: The decision was ultimately made at our
4 Board. Obviously management had discussions about that
5 prior to the Board meeting and those discussions would
6 have been between myself, the President, Mr. Bishop and
7 Mr. Gorman, both of whom were involved in the negotiations
8 and understood the tenor of those negotiations.

9 Q.113 - In terms of specific amounts that were going to flow
10 to Holdco with respect to the costs of the fuel delivery
11 system and the amount that was going to flow to DISCO in
12 the method we have just discussed, that was a decision of
13 the Board to divide those amounts up in that way?

14 MS. MACFARLANE: Yes, it was.

15 Q.114 - And did the Board receive advice from management to
16 proceed in that manner?

17 MS. MACFARLANE: The Board would have received information
18 from management indicating that of the total expenditures,
19 part of it had been written off and was therefore part of
20 the deficit of NB Power that was absorbed by the Province.
21 The Board would have received that information as part of
22 the information about the settlement and what treatment
23 they might accord to it.

24 And I did just want to clarify that at the time these
25 discussions were taking place between myself, the

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2 President and my two colleagues, we had not valued the
3 settlement. We -- because it was being received in fuel.

4 So we had a rough idea of what it was but the
5 determination of the number 287 million was something that
6 came after the fact. We were using estimates at that
7 time. The only number that was determined was the first
8 call on the settlement being reparation of the write-off,
9 the 47 million.

10 Q.115 - Now you make reference to the first call on the
11 settlement. When that decision was made, was there an
12 analysis done of the refurbishment costs at Coleson Cove
13 as they related to the Orimulsion project?

14 MS. MACFARLANE: I believe, if I may, the answer is no and I
15 believe that part of what Mr. Morrison will be bringing
16 forward this morning is information from working with our
17 legal counsel as to that very issue.

18 Q.116 - I want to be precise here though that when the
19 decision was that Holdco would have first call on the
20 proceeds in an amount equivalent to the write-off relating
21 to the fuel delivery system, at the time that decision was
22 made there had been not -- there was no analysis done of
23 the Orimulsion refurbishment costs at Coleson Cove. Is
24 that right?

25 MS. MACFARLANE: There had been no attribution of the total

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cost -- out of the total cost of the project of how much of it was specific to Orimulsion and how much of it was related to life extension and other items. And again, I believe Mr. Morrison will be saying this morning that that would have happened in due course had the tort action proceeded and would have been a matter of debate before the courts.

Q.117 - But it wasn't felt necessary internally to make that analysis prior to providing Holdco with first call on the funds?

MS. MACFARLANE: No, it wasn't felt necessary. As I say, the -- there is clearly and continues to be clearly value from the capital project at Coleson Cove. As the accounting staff, we were required at the time to undertake an analysis dictated by the Generally Accepted Accounting Principles called a determination of net realizable value. It is a determination that says will you be able to recover these costs over time once you have spent them and circumstances have changed.

And through that deter -- we were required to do it in order to have a clean audited opinion. And I think the auditors make reference to that in their report.

As a consequence of doing that, we determined that yes, there was value in the plant and we were able to

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recover its costs despite the lack of fuel switching.

Some of you might recall in the original Coleson hearing, the payback on that project on account of fuel switching was very, very short. It was a 6 year payback. It was a very very positive investment.

But without the fuel switching, the plant still was able to recovered over time. So we knew there was benefit there to ratepayers even in the absence of a settlement. So we did not believe it was necessary other than if the tort action had proceeded, to make any specific allocation.

And again, our thinking was the 47 million was very clear, that that amount had been taken as a write-off was not charged to ratepayers and the thinking was that that portion of the settlement attributed to ratepayers, it would be a windfall to ratepayers and a continuing burden on the shareholder, ie, taxpayers and the whole premise of the restructuring was to avoid that.

Q.118 - If I understand the material from Deloitte & Touche that I have reviewed, correctly, it will be necessary to determine with reasonable precision what portion of the Coleson Cove refurbishment project related to Orimulsion and what related to other factors. Is that right?

MS. MACFARLANE: That's not my understanding.

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2 Q.119 - That's not your understanding?

3 MS. MACFARLANE: No, it's not.

4 Q.120 - When you were deciding how to proceed with these

5 funds, and the decision was made to proceed with setting

6 up of a deferral account, were there other options

7 considered?

8 MS. MACFARLANE: No, I don't believe there were other

9 options considered. We believe from the time that there

10 was strong understanding that we would not receive -- and

11 again, Mr. Chair, I'm not sure when I'm bordering into

12 confidential information -- but when we began to believe

13 that we would not see delivery of the fuel end of the

14 contract and that instead we would be seeking damages, the

15 settlement -- through settlement or ultimately proceeding

16 with court action, we believed at that time that the

17 reparation of the damages was clearly to recover

18 expenditures that had been spent so that that obviously

19 meant a longterm solution.

20 There was different options under the deferral account.

21 We did consider not levellizing as an example, but we

22 always looked at this being dealt with as a reduction of

23 the capital costs and flowing through to ratepayers in

24 that way because that is how the charges to ratepayers

25 flow is through the capital costs over time.

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It was a matching principle.

CHAIRMAN: Ms. MacFarlane, you indicated in part of your answer there that you thought you might be bordering on confidential information. I will remind you, of course, that we are going to have an in-camera session later this morning. And if you feel that in fact you are going to venture into confidential information, then please feel free to advise us and then the answers can be deferred until the in-camera session.

MS. MACFARLANE: I do think that I would be more comfortable and I can assure you counsel would be more comfortable if we pursued these matters in-camera.

CHAIRMAN: But I think the difficulty is that if some of the questions that Mr. Johnston and other Members of the Board put to you are matters which legitimately should be on the public record, then everybody who I guess is entitled to hear them -- you know, the difficulty we have is that some people may be entitled to hear them may want to hear the answers, in fact then would not get them because we save it all for the confidential session. So it's only matters that absolutely would fall within the protection of section 34 and that would be confidential.

All I'm indicating to you is if you say you are bordering on it -- obviously you were comfortable giving

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2 that answer but if you feel that you go beyond bordering on it
3 and into the confidential area, then certainly you should
4 so advise us.

5 MS. MACFARLANE: I will try -- my challenge, and I was
6 reminded of this by our counsel last night, of course, is
7 that I'm not a lawyer. And I have difficulty making that
8 judgment.

9 CHAIRMAN: Well your lawyer looks like he has got his hand
10 very close to the microphone button.

11 MR. KEYES: We are okay at this stage, Mr. Chairman.

12 Q.121 - Ms. MacFarlane, when the decision was made to proceed,
13 as was done with giving Holdco first call on the funds and
14 then the remainder dealt with in the way that has been so
15 often discussed, did your group analyze the wording of the
16 PPAs at that time?

17 MS. MACFARLANE: Yes.

18 Q.122 - And did you have any concerns with the wording of the
19 PPAs and whether you would be able to proceed as you were
20 intending?

21 MS. MACFARLANE: Yes, we did, which is why we took forward
22 to the Board the resolution and I believe -- the proposed
23 resolution. I believe their motion is in the filed
24 material, that the PPAs would have to be changed in order
25 to reflect their decision.

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2 Q.123 - So the decision to make the amendments to the PPAs was
3 made at or about the same time as the overall decision in
4 terms of dealing with the proceeds of the settlement?

5 MS. MACFARLANE: That is correct. The Board was making --
6 made their decision based on their view of fairness and
7 the contracts were altered to reflect that as opposed to
8 the other way around.

9 VICE CHAIRMAN: Thank you. Those are all the questions I
10 have.

11 CHAIRMAN: Thank you, Mr. Johnston. Mr. Barnett?

12 BY MR. BARNETT:

13 Q.124 - Good morning, panel. You made a statement yesterday,
14 Ms. MacFarlane, in regards to -- and I don't want to talk
15 about the timing in terms of the decisions and what Holdco
16 knew or what you knew as a member of the Holdco board or
17 executive. You made the statement that you -- I believe
18 very strong view that at the time, October the 1st, that
19 the PPAs were signed, you still had a strong view that in
20 fact you would receive supply of Orimulsion under the
21 contract -- the deemed contract, I guess, there. So am I
22 correct or am I mischaracterizing what you said?

23 MS. MACFARLANE: You are not mischaracterizing it. I have
24 to caution though that I was on the periphery of this
25 issue. So that is my understanding of the situation. I

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2 was not directly involved in the negotiations or the claim or
3 the discussions with PDVSA. But I was aware of the
4 general sentiment of the team.

5 Q.125 - But presumably the executive would have had regular
6 briefings by the President and his key adviser in regards
7 to that?

8 MS. MACFARLANE: No, he did not. As I say, it was a very
9 closely held file, very sensitive one. And the executive
10 did not receive regular briefings except in a very general
11 terms and except where specific advice was required by
12 particular members of the executive outside of the
13 negotiating team.

14 Q.126 - So something as fundamental as supply to a three-
15 quarter of a billion refurb project really was held very
16 closely by the parties I think you mentioned yesterday?

17 MS. MACFARLANE: You -- certainly the parties that I
18 mentioned yesterday who were with the corporation up until
19 I believe the end of March 2004, that was held very
20 closely, very closely between those two individuals and
21 the then Vice President of Generation.
22 Those people left the corporation shortly after -- right
23 around the time of March 31st and David Hay joined the
24 corporation and undertook to take on this file and bring
25 it to resolution. But because of the sensitivity of

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2 it, as say the negotiations were very -- held quite tightly
3 between the President, the Vice President Generation,
4 legal counsel and our Vice President Legal. The rest of
5 the executive got general briefings as was required.
6 As an example, for representations related to the audit,
7 obviously I had to be briefed on certain issues as to
8 whether there were any disclosures required in our
9 financial statements. But other than that, it was a very
10 sensitive issue.

11 Q.127 - So I guess what I am understanding, you had no -- no
12 awareness that in early September that in fact word was
13 coming out of Caracas that Orimulsion may not be being
14 provided to -- not just to NB Power, to other parties as
15 well?

16 MS. MACFARLANE: We were aware of that because it was in the
17 general press and we did have general discussions about
18 it, yes.

19 Q.128 - And yet that still -- you still stand by your
20 statement you had a strong view that in fact the contract
21 would still be honored?

22 MS. MACFARLANE: Again, I wasn't involved so I could be
23 wrong. That was my feeling. I understand there were
24 issued still on the table with China and that production

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2 may proceed or sale of the operation may proceed with Chinese
3 counterparties which meant that there still would be
4 production. That later proved not to be true but we were
5 aware of those general discussions and yes, were hopeful
6 that we would be able to -- that would be the most
7 positive outcome, is to actually get fuel and delivery
8 under that contract.

9 Q.129 - Just to move along a little bit. Just a couple of
10 clarifications. I guess one in particular. Yesterday you
11 referred to a -- I believe a clause in the fuel supply
12 agreement. I just want to clarify, is that the same fuel
13 supply clause that is cited in the Deloitte Touche letter?

14 I guess it is exhibit A-38, I believe, there?

15 I could turn you to -- if you want to go to that. The
16 second page it talks about a sellers guarantee. I just
17 want to clarify. Is that the clause that you in fact were
18 referring to in your testimony yesterday?

19 MS. MACFARLANE: Yes, it is, clause 20.6.1.

20 Q.130 - Thank you. And just before I move to another area,
21 just if you can go to the table that was presented
22 yesterday, and this is just a very minor point, I think
23 there is an alignment issue. Because it bothered me when
24 I first looked at it.

25 This is identification number 10. Can you just look

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2 at the numbers across the top. I think they are out of
3 alignment on Table 3 I believe in here. Otherwise you are
4 taking this out to 18 years. And I know that isn't your
5 intention. That is not what the Board decision was.
6 So it is just a matter just for clarification that in fact
7 it is -- the numbers are out of line I think on Table 3.
8 Maybe you could comment on that? On my Table 3 anyway.

9 MS. MACFARLANE: Yes. You are referring to the column
10 references? Yes.

11 Q.131 - So it still is 17 years and not 18 years --

12 MS. MACFARLANE: That is right.

13 Q.132 - -- as seems to be reflected in that table there?

14 MS. MACFARLANE: Okay. Thank you.

15 Q.133 - Now you indicated yesterday that -- and I think you
16 referenced Mr. Todd's report, I believe, in indicating
17 that -- and I see at his report on page 3 he is talking
18 about roughly 500,000,000 higher than what you really felt
19 you have to do to meet minimum environmental questions --
20 standards rather in that regard?

21 MS. MACFARLANE: Yes. He says that on line 5.

22 Q.134 - And that is incremental to using low sulphur heavy
23 fuel oil, is that my understanding?

24 MS. MACFARLANE: This is information that came from the

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original -- this is cases that were filed before the Board.

So to that end the numbers are out of date. Obviously fuel prices have changed dramatically.

But yes, this was the differential against the alternative of using 1 percent sulphur oil and avoiding exports.

Q.135 - Yes. Are you aware that a number of options were presented to the former Board in regards to the project to refurb Coleson Cove for Orimulsion fuel supply?

MS. MACFARLANE: Yes. I did not pull the materials out. So I don't recall them all. But I do recall that this was the primary alternative, was the one that he refers to.

Q.136 - Yes. But if I were to suggest to you, and take it subject to check, that the use of low-sulphur oil was not the sort of option that was competing really with Orimulsion at Coleson Cove?

MS. MACFARLANE: I don't recall that that is the case. I believe in earlier cross Dr. Sollows raised that there was a table presented in the materials that suggested another alternative would have been the preferred case.

But I think I understand Mr. Todd's position that by looking at what the nature of the table was and the information that it brought forward.

Again I would have to look at the materials in order

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to be able to -- and the testimony of Mr. Todd to be able to set that straight.

But my understanding was that the primary alternative was to deal with the NOX issues and deal with the sulphur issues by burning 1 percent. However that is subject to check.

Q.137 - Yes. There were other options of meeting the environmental emissions I would suggest without having to use low sulphur oil, which would have had lower capital cost as well, if you will take that subject to check.

That is what I understand of the Coleson Cove options.

MS. MACFARLANE: Yes. I think the table, if I recall that Mr. Sollows was looking at, did not take into consideration -- the table outlined performance and cost of various capacity factors.

And the interpretation Dr. Sollows was putting on it would have had I believe natural gas as the primary alternative.

But when you took into consideration capacity factors, I believe that it brought back the alternative, the least cost alternative as the oil option.

Q.138 - Yes. I certainly don't want to test your engineering knowledge, Ms. MacFarlane, in regards to that. But that is my understanding, that there were other options. And

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which were second or third, I'm not going to quarrel with what you are saying in regards to that. But there were other options. And they were of a lower capital cost. But over a lifetime, 25 years, they may have been more costly.

MR. BARNETT: Those are my questions, Mr. Chairman.

CHAIRMAN: Thank you, Mr. Barnett. Mr. McKenzie, any questions?

MR. MCKENZIE: No questions.

CHAIRMAN: Mr. Normandeau? Ms. Morrison? That is all of the questions from the Board. I will move to redirect, Mr. Keyes.

MR. KEYES: I have nothing for redirect, Mr. Chairman.

CHAIRMAN: All right. Well, I guess there are questions for this panel to be dealt with on an in-camera session. In that regard I guess the only persons that would be entitled to remain --

MR. KEYES: I'm sorry. Mr. Chairman, what I might suggest, subject to your agreement obviously, is if we step this panel down and bring the Deloitte & Touche panel up. Because there may be some confidential questions for them as well. And then we could deal with the whole confidentiality at the end of Deloitte & Touche.

CHAIRMAN: Well, that makes sense. Let's take about a

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five-minute break just to allow you to change panels.

MR. KEYES: Thank you.

(Short Recess)

CHAIRMAN: Mr. Keyes, are you ready?

MR. KEYES: Yes, we are, Mr. Chairman. Thank you.

I would call Andrew Cook and Jonathan Calabrese to the stand.

CHAIRMAN: I would ask Board Counsel to come forward and swear the witnesses.

ANDREW COOK and JONATHAN CALABRESE, sworn:

CHAIRMAN: So for the record, the witnesses have been duly sworn.

MR. KEYES: Thank you, Mr. Chairman.

DIRECT EXAMINATION BY MR. KEYES:

Q.1 - Members of the panel, I wonder if you could give us your name and each of your occupations?

MR. COOK: My name is Andrew Cook. I'm a Chartered Accountant with the firm of Deloitte & Touche.

Q.2 - Mr. Calabrese?

MR. CALABRESE: My name is John Calabrese. I'm a Chartered Accountant with Deloitte & Touche.

MR. KEYES: Mr. Chairman, I just wanted to get marked copies of each of their résumés. And I will forward those to you.

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2 CHAIRMAN: I'm going to assume that you are offering these
3 documents as exhibits?

4 MR. KEYES: Yes, I am.

5 CHAIRMAN: Anybody have any objection to marking these
6 c.v.'s as exhibits? I don't -- I'm not hearing any
7 objections. So exhibit A-51 will be Mr. Cook's c.v. I
8 believe that is what it is. And exhibit A-52 will be the
9 document relating to Mr. Calabrese

10 MR. KEYES: Thank you, Mr. Chairman.

11 Q.3 - I would ask each of you to give us a brief overview of
12 your education and professional experience, starting with
13 Mr. Cook?

14 MR. COOK: I'm a Chartered Accountant. I did not have a
15 university education. I went directly into the C.A.
16 program from high school.

17 I have just over 40 years experience in the public
18 accounting industry. And I have practiced in England as
19 well as in Saint John and Fredericton, New Brunswick and
20 Toronto, Ontario.

21 Q.4 - Mr. Calabrese?

22 MR. CALABRESE: I have a Bachelor of Business Administration
23 from the University of New Brunswick and a Chartered
24 Accountant designation.

25 I have been a Chartered Accountant for over 13 years.

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2 I regularly work in matters of audit and accounting.

3 Q.5 - Now the exhibits that have been marked -- your two

4 reports have been marked as exhibit A-38, as part of

5 exhibit A-38, and exhibit A-37(C) which is the redacted

6 information that was provided by the Applicant.

7 Were these reports prepared by both of you or under your

8 direction?

9 MR. COOK: The reports were both prepared under my

10 direction.

11 Q.6 - And can each of you describe what your roles, respective

12 roles were in the development of those reports?

13 MR. COOK: We met with the client to determine what the

14 client's requirements were. I discussed the requirements

15 with my colleague Mr. Calabrese.

16 Mr. Calabrese completed the majority of the work relative

17 to the specified procedures. And I -- he did that under

18 my direction. And I corroborated with

19 Mr. Calabrese in the drafting and writing of the reports.

20 Q.7 - And Mr. Cook, I understand that you from your résumé

21 have been qualified as an expert before the predecessor to

22 this Board as well as before a number of the courts in the

23 province and Federal Court of Canada, is that correct?

24 MR. COOK: That is correct.

25 MR. KEYES: Mr. Chairman, at this time I would ask the Board

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2 to declare Mr. Cook and Mr. Calabrese as experts in matters
3 related to accounting and auditing, subject to any
4 questions or objections.

5 CHAIRMAN: Do any of the intervenors have any questions for
6 either of these witnesses with respect to the request to
7 have them qualified as expert witnesses? Any objections
8 from any of the parties?

9 All right. Then they will be qualified as expert
10 witnesses in the matters -- in field matters relating to
11 accounting and auditing.

12 MR. KEYES: Thank you, Mr. Chairman.

13 Q.8 - Before I turn you over for cross examination, gentlemen,
14 I would ask if you could describe for the Board what you
15 were asked to do in this matter?

16 MR. COOK: We were asked to undertake two assignments. One
17 assignment was to report on the appropriate application of
18 accounting principles relative to the Orimulsion
19 settlement transaction.

20 And the second assignment was to perform specified
21 procedures relating to the calculations and the valuation
22 numbers and report on findings relative to those specified
23 procedures.

24 Q.9 - And the results of those reports are contained as part
25 of exhibits A-38 and A-37 (c)?

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MR. COOK: That is correct.

MR. KEYES: Those are the questions I have for the witnesses, Mr. Chairman.

CHAIRMAN: Thank you, Mr. Keyes. Mr. Lawson, any cross examination?

MR. LAWSON: No, Mr. Chairman.

CHAIRMAN: Thank you. Mr. Wolfe, any cross examination?

MR. WOLFE: No. No, Mr. Chairman.

CHAIRMAN: Mr. Zed, any cross examination?

MR. ZED: We do not have any cross examination.

CHAIRMAN: Mr. Theriault?

CROSS EXAMINATION BY MR. THERIAULT:

MR. THERIAULT: Good morning, Mr. Chairman, Board members.
Good morning, panel.

Q.10 - Panel, who was your principal contact in the NB Power group of companies for this assignment?

MR. COOK: Our principal contact was Sharon MacFarlane.

Q.11 - And do you know which entity the NB Power group of companies your principal contact is associated with?

MR. COOK: I believe she is associated primarily with the New Brunswick Holding Company but also with the other subsidiary companies.

Q.12 - And does your firm act as auditors for the NB Power group of companies?

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2 MR. COOK: Yes, we do.

3 Q.13 - And how long has your firm acted in this capacity?

4 MR. COOK: I believe approximately 85 years.

5 Q.14 - Do you perform any independent audits on the individual
6 entities that make up the NB Power group of companies?

7 MR. COOK: We have not performed audits on the individual
8 entities that make up the group of companies for the past
9 fiscal year. We did perform audits for the fiscal year
10 prior to that.

11 Q.15 - Now I would like to find out a little information about
12 your understanding of the settlement agreement and the
13 accounting implications of it.

14 Panel, would the accounting treatment change if the 218.1
15 million in projected in kind benefits were speculative?

16 MR. COOK: I'm sorry. I don't understand what you mean by
17 speculative.

18 Q.16 - Uncertain. So again would the accounting treatment
19 change if the 218.1 million in projected in kind benefits
20 were uncertain?

21 MR. COOK: Are you saying uncertain to be received?

22 Q.17 - Yes.

23 MR. COOK: No, we don't believe the accounting principles
24 have changed.

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2 Q.18 - Do the accounting rules require that there be a strong
3 likelihood of realizing the benefits in order to set up
4 the asset on the balance sheet?

5 MR. COOK: Accounting rules would generally require I guess
6 that there be a strong likelihood of receiving the
7 amounts.

8 Q.19 - Now what assurances has the auditing firm obtained to
9 confirm that the benefits that are being set up in the
10 deferral account are indeed benefits and are not
11 speculative or uncertain?

12 MR. COOK: We have reviewed the contract relating to the
13 settlement, the agreement.

14 Q.20 - And that is all?

15 MR. COOK: Yes.

16 Q.21 - Have you reviewed the prior fuel supply agreement for
17 Dalhousie?

18 A. Yes, we have.

19 Q.22 - Do you know if BITOR was delivering heavy fuel oil as a
20 substitute for Orimulsion under the prior fuel supply
21 agreement for Dalhousie?

22 MR. COOK: Sorry. Can you repeat that?

23 Q.23 - Sure. Do you know if BITOR was delivering heavy fuel
24 oil as a substitute for Orimulsion under the prior fuel
25 supply agreement for Dalhousie?

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2 MR. COOK: Yes, we do.

3 Q.24 - Should any benefit associated with the prior Dalhousie
4 fuel supply agreement be excluded from the calculation of
5 the benefit attributable to the PDVSA settlement?

6 MR. COOK: It has so been excluded.

7 Q.25 - And why?

8 MR. COOK: Because the amount relating to the prior
9 Dalhousie agreement was the fulfilment of the prior
10 contract under the former Dalhousie FSA.

11 MR. KEYES: Mr. Chairman, we are just getting close to
12 confidential information with respect to those fuel supply
13 agreements. They were all filed in confidence. So I just
14 caution the panel, to be clear.

15 MR. THERIAULT: And that is why I'm checking my questions
16 and taking my time here to make sure I don't --

17 CHAIRMAN: I'm going to just caution you to be careful.

18 Because we are going to go into an in-camera session later
19 this morning. So if there is some issue. I think maybe
20 you can ask the question.

21 But perhaps if the panel has any issue or any question of
22 whether they believe it may be confidential, at least
23 maybe you could express that before you give your answer
24 and then we could rule on it.

25 MR. THERIAULT: Maybe, Mr. Chairman, at this point I will

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cease my questioning until such time as we go into in-camera hearings.

CHAIRMAN: My only difficulty, and I think I mentioned it earlier this morning, is that if the questions, you know, should more properly be asked in an open session, then obviously that is the appropriate time to ask them.

We don't want to get into a situation where we have excluded some people who would be entitled to hear the questions and answers that in fact are not confidential.

MR. THERIAULT: Well, I guess the only thing, Mr. Chairman, I'm not raising any figures, but I am getting into some questions. And having been disclosing information once, I'm a little gun-shy. I don't want to obviously do it again.

Now I guess the situation is is if something at the end of the day, if after we are done with the in-camera, if the Board feels that it can go back into the public record, I guess, you know, it could be dealt with that way.

CHAIRMAN: If you feel that there is some danger at this point in time of disclosing confidential information, then I think maybe perhaps then the prudent thing would be to wait until we go in-camera.

MR. THERIAULT: Thank you.

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CHAIRMAN: Ms. Desmond?

CROSS EXAMINATION BY MS. DESMOND:

CHAIRMAN: The Board is just having a little difficulty finding the redacted version of their report. What exhibit number is that? I see A-37(C) is the unredacted version, but --

MR. KEYES: A-38.

CHAIRMAN: A-38 was the redacted?

MR. KEYES: Yes. That has the redacted version attached to the back of that.

CHAIRMAN: Just give us a moment. I guess the confusion that the Board has is that I guess we are aware of some letters that came from Deloitte & Touche. They don't appear to be in the copy of the exhibits that we are looking at.

A-38 we are looking at doesn't seem to have that report.

Is that what should be in A-38?

MR. KEYES: I have no idea what letters -- there is two letters. Both are dated November 15th. One says "Orimulsion Settlement -- Accounting."

CHAIRMAN: Yes.

MR. KEYES: And the other says "Orimulsion Settlement -- Specified Procedures on Settlement Valuation and the Deferral Account." Those are the two reports.

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CHAIRMAN: Yes. And those were A-37 and A-38?

MR. KEYES: Yes, part of those exhibits, yes.

CHAIRMAN: Yes. That is the difficulty, is that in the copy of the exhibits that we are looking at right now it just appears that we don't have them.

We are aware of the fact that that is part of the exhibit.

We just don't appear to have them. Just give us a moment.

VICE CHAIRMAN: Mr. Keyes, just to be clear, we have the confidential versions unredacted. But it is my recollection that there were redacted versions that were filed as well.

And that is what we can't seem to locate. Because the panel wants to have the unredacted version for this portion of the questioning -- the redacted version, excuse me.

MR. KEYES: I can get copies of the redacted version made.

Mr. Chairman, it appears that our A-38 has those two reports redacted attached to it. But your A-38 doesn't.

And I'm not sure what version the Board has. But we have always been operating on the assumption that the copy that you had had the redacted A-38 reports there.

MRS. LEGERE: I have nothing with those letters.

MR. KEYES: So what we can do is get copies of those

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2 redacted reports. They were intended to be attached to the
3 exhibit A-38. For some reason our copies have them but
4 yours don't.

5 VICE CHAIRMAN: If you would, I think that would --

6 MR. KEYES: We will do that right now.

7 VICE CHAIRMAN: Thank you.

8 MS. DESMOND: Mr. Chair, could I suggest a short recess,
9 because I think it's going to take a few minutes, the
10 reports are quite lengthy, and in addition to that we want
11 to verify that our questions now are not part of the
12 confidential information before we proceed.

13 CHAIRMAN: Certainly. We will take I guess however long it
14 takes to sort this out. So we will adjourn for a few
15 moments.

16 (Recess - 10:15 - 10:30 a.m.)

17 CHAIRMAN: Okay. It appears that the Board now has the
18 other part of exhibit A-38. So, Ms. Desmond, if you are
19 ready you can proceed.

20 MS. DESMOND: Could we just wait for Mr. Logan? I think he
21 is --

22 CHAIRMAN: He is right behind you.

23 MS. DESMOND: Okay. Good.

24 MR. KEYES: I think we have the redacted attachments we have
25 delivered to you, Mr. Chairman.

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2 CHAIRMAN: I think these were the redacted attachments,
3 that's correct. Thank you.

4 Q.26 - Our first question is just a very simple housekeeping
5 item. If you could turn to page 2 of your accounting
6 report. In the middle of the indented paragraph there is
7 a reference to 225 US dollars. Is it correct to assume
8 that that's \$225,000,000?

9 MR. CALABRESE: Yes, I believe it is.

10 Q.27 - On that same page, a little further down in the
11 paragraph, there is reference to -- I think it's the third
12 paragraph from the bottom, the second line -- the company
13 concluded that the construction in progress on the fuel
14 delivery system and certain Orimulsion specific
15 expenditures. Could you expand on what those Orimulsion
16 specific expenditures are or were that you are referencing
17 there.

18 MR. CALABRESE: Through discussions with management these
19 were expenditures that were made at the Coleson Cove plant
20 that were specific to the handling of Orimulsion fuel.

21 Q.28 - Are you able to provide the Board with a breakdown of
22 those expenditures?

23 MR. CALABRESE: We do not have a breakdown of those
24 expenditures.

25 Q.29 - Were you the auditors at the time that that

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2 determination was made?

3 MR. CALABRESE: Yes, we are the auditors, we were the
4 auditors at the time. We could obtain a breakdown. We do
5 not have a breakdown with us at this time.

6 Q.30 - Could you undertake to provide the Board with the
7 breakdown?

8 MR. CALABRESE: Yes.

9 Q.31 - Our next question is on page 7 of the accounting
10 report.

11 MR. KEYES: Just on that last undertaking, I am advised by
12 my client that we don't think they have a breakdown
13 because we don't have a breakdown. So maybe there is some
14 -- we are not clear on that issue but we don't think there
15 is going to be an answer to that. So our undertaking
16 would be to check, but --

17 CHAIRMAN: I understand the witness' response was that they
18 didn't have it, they believed they could get it from their
19 client. And you are telling me that the client is saying
20 they don't know whether or not that information is
21 available.

22 MR. KEYES: It's certainly not available today. It will
23 take a few days to try to get that information.

24 CHAIRMAN: Would that be in the nature of the type of
25 breakdown that was part of an earlier undertaking? Is

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2 that --

3 MR. KEYES: I don't believe so.

4 MS. DESMOND: That's part of why we have asked the question.

5 We are not clear exactly what is meant by certain
6 Orimulsion specific expenditures, and we are simply
7 seeking further detail around that reference.

8 MR. KEYES: We will do our best to get that information.

9 CHAIRMAN: Thank you.

10 Q.32 - Sorry. The next question was on page 7 of the
11 accounting report. And the first paragraph at page 7, and
12 this is not unlike a question I believe Mr. Johnston might
13 have asked earlier this morning, but it appears that there
14 is some constraint on applying the \$287,000,000 settlement
15 against the capital cost of Coleson Cove and making sure
16 that that settlement does not exceed direct and
17 incremental costs associated with equipping the station to
18 accommodate and utilize Orimulsion fuel. Is that correct?

19 MR. COOK: That's correct.

20 Q.33 - And as auditors did you check to ensure that there was
21 a match between that capital cost and the settlement?

22 MR. COOK: We checked to ensure that the amount of the
23 carrying value of the Orimulsion related assets and the
24 corporation's books exceeded the amount of the settlement.

25 Q.34 - And I believe as a result of yesterday's proceeding we

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2 are waiting for further details around the expenditures, but
3 in the event that 287,000,000 is greater than the actual
4 cost, what would happen to the difference?

5 MR. COOK: I believe if the amount was greater than the
6 actual costs incurred, the amount would be treated as a
7 windfall for accounting purposes. In other words, a gain
8 to the income statement.

9 Q.35 - And that would be a gain for Genco, am I correct?

10 MR. COOK: I'm not sure that I know the answer to the
11 question. I think the agreement was with Holdco. I think
12 it would be determined by the board of directors of Holdco
13 as to which of the subsidiary companies the gain would
14 belong in.

15 MS. DESMOND: Those are all of our questions, Mr. Chair.
16 Thank you.

17 CHAIRMAN: Thank you, Ms. Desmond. Any questions from the
18 Board? No questions from the Board. Any redirect?

19 MR. KEYES: No, Mr. Chairman.

20 CHAIRMAN: All right. Then this is probably an ideal time
21 to go into our in-camera session. I'm not sure whether we
22 want to stand this panel aside and bring the other panel
23 up. It doesn't really matter in which order we do it.
24 There doesn't seem to be enough chairs to bring all four
25 panellists up at one time.

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MR. KEYES: We should probably stand them down, finish with the first one in case there is anything that comes up from the questions to the panel.

CHAIRMAN: Well then, Mr. Cook and Mr. Calabrese, we will just stand you aside for the time being. We will get the original panel of Ms. MacFarlane and Mr. Dobson to resume their positions, and then we had better ensure that anybody who should not be in the room is not -- does not remain in the room.

MR. KEYES: Mr. Chairman, it might be an appropriate time too, before this panel starts with questions, for Mr. Morrison to answer the undertakings.

CHAIRMAN: Certainly.

MR. KEYES: My understanding, Mr. Chairman, just for the record, the translation services as well as TelAv should not be here either.

CHAIRMAN: Well we are probably going to have a little discussion about that. But before Mr. Morrison answers the undertakings, I understood that perhaps the answer to those was confidential. So I think before we get into the response to that I did want to deal with who should be here and who should not be here. My understanding is that only persons who have signed the confidentiality agreement may remain and there are I guess obviously some

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2 exceptions. Mr. Wolfe, who had signed some of the

3 confidentiality agreements, was not to take part in this

4 session, and I see that Mr. Wolfe has left the room. The

5 members of the Board and Board staff are entitled to stay

6 for the in-camera session, and that does leave us with the

7 issue of the court reporter, the translators and our sound

8 technician. It's I guess very difficult for us to proceed

9 without those individuals.

10 MR. KEYES: We have no objection to them remaining now.

11 CHAIRMAN: So you have no objection to any of the people

12 that I have mentioned, that being the court reporter, the

13 translators and our sound technician --

14 MR. KEYES: Absolutely.

15 CHAIRMAN: -- as well as Board and Board staff.

16 MS. DESMOND: Mr. Chair, with respect to the auditors, are

17 they appropriate individuals to be in the room? I'm not

18 sure that they signed the undertaking, or if they need to.

19 I'm just raising that as a question.

20 MR. MORRISON: Well they are the auditors of DISCO/NB Power

21 and any confidential information is obviously confidential

22 information to the NB Power group. So I don't see a

23 problem with it.

24 CHAIRMAN: Well I guess NB Power is claiming the protection

25 of the confidentiality provision, so if they don't have

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any objection -- I think the other aspect of it is that they are certainly going to have to be here for at least part of it since they are witnesses. So unless somebody has any reason to bring forward at this point in time as to why they shouldn't stay, then I think that we would rule that they would be able to remain. All right. So you are satisfied, Mr. Keyes, that everybody who should have left the room has left the room?

MR. KEYES: Yes, I am.

CHAIRMAN: Okay. And I will direct the court reporter then that I guess from this point forward any -- the transcript would be a separate transcript, that it will be produced on pink paper, denoting that it's confidential, that it will not be transmitted to anybody in electronic format, and that in fact it won't be transmitted to anybody other than those who request a copy of it.

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

Reporter