New Brunswick Board of Commissioners of Public Utilities

In the Matter of a Hearing to review Section 2.1 of the Open Access Transmission Tariff (OATT) approved by the Board on June 19, 2003 and to Review the Board's "Open Season" direction contained in its March 13, 2003 Decision with respect to the said Tariff

Delta Hotel, Saint John, N.B.
February 3rd 2004, 9:30 a.m.

CHAIRMAN: David C. Nicholson, Q.C.

COMMISSIONERS: J. Cowan-McGuigan
Ken F. Sollows
Robert Richardson Leon C. Bremner

BOARD COUNSEL: Peter MacNutt, Q.C.

BOARD SECRETARY: Lorraine Légère

.... CHAIRMAN: Good morning, ladies and gentlemen. Any preliminary matters before we continue with the cross of this panel?

MR. MORRISON: Yes, Mr. Chairman. Mr. Zed and I have come to an agreement with respect to Mr. Hoecker's presentation. So that has been finalized.

CHAIRMAN: Good. Thank you. Mr. MacDougall, would you mind moving up?

MR. MACDOUGALL: Not at all, Mr. Chairman.

CHAIRMAN: I want to see the whites of your eyes when you ask the questions, I guess.

MR. MACDOUGALL: Well, now I might change my mind, but --

CROSS EXAMINATION BY MR. MACDOUGALL:

Q.86 - Good morning, Mr. Chair, panel members. Good morning, Mr. Marshall, Mr. Bishop. I have just got a few questions this morning. And I think they are all questions that Mr. Bishop will probably be the right person to answer.

To start with if you can turn to NB Power's response to WPS IR-16. And that is in exhibit A-6 at page 145.

And gentlemen, in that question in response to part (a), and in the first sentence of the response to part (b), "NB Power confirms that the mechanism by which NB Power Transmission releases reserve transmission capacity only allows for daily release and nonfirm transactions."

Is that correct?

MR. BISHOP: Yes. That's correct.

Q.87 - Then you go on however to say in the remaining sentence of part (b) "However the customer can negotiate directly with the reservation holder to purchase the unused transmission for longer periods of time." Correct?

MR. BISHOP: That is correct.

Q.88 - So my question is, is NB Power Generation willing to negotiate with parties for the release of firm transmission on a long-term basis?

MR. BISHOP: The answer to that is yes. In fact, an example of that that I might put out is the negotiation that occurred with the Bayside Power Corporation when Bayside built the facility here at the Courtenay Bay station.

There was an agreement reached for 260 megawatts of transmission capacity that allowed summer delivery over NB Power firm transmission.

Q.89 - Thank you very much. So parties wishing to compete in New Brunswick or to access MEPCO are not precluded from long-term transmission access to the MEPCO tie?

MR. BISHOP: That is correct.

Q.90 - And any new generators wishing to compete in the New Brunswick market would be allowed to contest for new generation capacity required by NB Power Disco, correct?

MR. BISHOP: Would you repeat the question please? I'm sorry.

Q.91 - And new generators or new parties wishing to compete in the New Brunswick marketplace in the future would be allowed to contest for new generation capacity that would be required by NB Power Disco in the future?

MR. MARSHALL: Yes. That's correct. The Electricity Act requires that NB Power Disco, for any new resources that it requires for standard offer service in the future have to go to the marketplace with a request for proposal for new supplies. And any generators are open to compete for that.

Q.92 - So new generators, parties who want to compete in the new marketplace after April 1 will be able to compete to provide service to Disco.

And they would also be able to negotiate with Genco for long-term firm access if there was a portion of their capacity that they wanted to sell into MEPCO?

MR. BISHOP: That is correct. Yes.

MR. MACDOUGALL: Thank you very much, gentlemen. That is all my questions, Mr. Chair.

CHAIRMAN: Thank you, Mr. MacDougall.

Mr. MacNutt, can we bother Board counsel and staff to move up to that front table?

MR. MACNUTT: Yes, Mr. Chairman.

CHAIRMAN: Thank you.

<u>CROSS EXAMINATION BY MR. MACNUTT</u>:

MR. MACNUTT: Good morning, Mr. Chairman. On Monday, yesterday, I distributed and provided to all the participants and provided the witnesses with a copy of a document which has also been provided to the Secretary for marking.

And I would ask a few questions of this witness and then move to have it marked as an exhibit, Mr. Chairman.

Q.93 - I'm referring to the document I gave you yesterday headed "Export Sales MEPCO Line."

Now by referring to that document you have had an opportunity to compare it with NB Power's response in NB Power (PUB) Supplemental IR-1, have you not?

MR. BISHOP: I have those documents.

Q.94 - Thank you. And you would agree with me that the math is correct in that proposed exhibit?

MR. BISHOP: I agree, yes.

Q.95 - And you would agree that the only real difference between that document you are looking at and supplemental IR-1 is that the rows have been reordered.

The columns for 2002 and 2003 do not appear. And the last row, "Net Income Loss" is not present. But otherwise the data is exactly the same?

MR. BISHOP: Yes. I agree with that.

MR. MACNUTT: Move to introduce the document as identified by the witness as an exhibit, Mr. Chairman.

CHAIRMAN: Does anybody have any objection to the Board receiving this as an exhibit?

My records indicate that this will be PUB-5.

MR. MACNUTT: That is my understanding, Mr. Chairman.

CHAIRMAN: Go ahead, Mr. MacNutt.

MR. MACNUTT: Thank you.

Q.96 - Now NB Power has held transmission capacity reservations on the MEPCO line for some time and does so today, correct?

MR. BISHOP: It holds firm transmission reservations and has for some time, that is correct.

Q.97 - Am I correct in my assumption that NB Power sells part of its transmission capacity on the MEPCO line from time to time?

MR. BISHOP: That is correct.

Q.98 - Please describe in detail how these sales occur and how NB Power is compensated?

MR. BISHOP: Let me start with the Bayside one which is the longer-term sale. In that case the Bayside Power Corporation is provided 260 megawatts of firm transmission service for the seven summer months beginning April 1, ending October 31 each year for the long term of the contract.

And on that basis, for those seven summer months, Bayside pays New Brunswick Power Generation the tariff cost of that line. So that the net result of -- the net cost of NB Power Generation for those seven summer months for that transmission is zero.

At other times, when NB Power is able to -- when it is not -- projects not to use that transmission, it will negotiate with third parties to allow them as well to use the transmission.

That's typically a negotiated rate. And to the extent that NB Power Generation can recover its full cost then it will recover its full cost for those periods of time.

Barring that, if in fact it has been unsuccessful in negotiating, then the NB Power Transco Company, after 11:00 o'clock each morning, has the right to resell that transmission capacity to any party who comes in wanting that on an nonfirm basis for the next day.

And that again is not a function of New Brunswick Generation. It continues to pay the transmission tariff to Transco. Transco in turn receives whatever it can negotiate for that transmission capacity for the next day's or next hour's deliveries.

Q.99 - Now turning to the 188 megawatts in question, if you were to sell some of that capacity, reservation capacity, where would the revenue from such sale be reflected in PUB exhibit 5?

MR. BISHOP: It would be reflected as a credit against the $5.1 million that is halfway down the page.

Q.100 - Under the heading what?

MR. BISHOP: Under the heading "Transmission Charges".

Q.101 - It would go to reduce it or increase it?

MR. BISHOP: It would reduce it.

Q.102 - So in view of the fact that PUB exhibit 5 is based on Supplemental IR-1, it would suggest that you are not planning on reselling any portion of the 188 megawatts in the three fiscal years shown on the table?

MR. BISHOP: That's not correct. What this table has done and what the table in IR-1 had asked is what in fact are the various revenues and charges associated with the 188 megawatts of transmission.

So to clarify, if in fact all or a portion of that was sold, then in fact NB Power Generation, if it could sell it for the full price, would in fact be relieved of the $5.1 million or any portion thereof transmission charges.

I think just to add to that, that as you look down through this column, I think it's evident that there is value in paying the $5.1 million of transmission charges based on the margin that NB Power projects it can receive on the sales through the use of that transmission.

And I think the point I want to make here, so that we are all clear about the fact that the margin that I'm talking about is actually the first item of margin on this sheet, which respectively for years 2004 through 2006 is 9.1 million, 17.6 and 6.3 -- or 16.3, I stand corrected.

And the reason I want to differentiate that is that the following amortization charges and the interest charges are fixed charges on generation facilities that NB Power pays regardless of whether those facilities run or don't run, export or don't export or whatever. Quite frankly, they are fixed charges for the assets that NB Power has constructed.

Moreover the fixed O & M charges that are noted, while there may be some variance in those, if these plants weren't to run, our experience, and even projecting what-ifs, suggest that those numbers won't be lowered very much.

So quite frankly, if you take 2005, 2006, the sums of $6.3 million, which is a fixed O & M, the amortization of 6.2 and the interest charges of 5.5 will all be paid or be a cost to NB Power, and to the extent that those are included in the vesting contract, will flow through to the Disco company.

The benefits that we receive from the margins of 17.6 actually is a contribution to help pay, if you will, the mortgage payments on those assets that are here and are now fixed.

So when NB Power looks at the economics of any export, it looks at the economics of the price or revenue it will receive less the incremental cost, which is a fuel cost, and perhaps an incremental O & M cost of actually making those. The margin, as I point out, goes towards helping pay the fixed cost.

MR. MARSHALL: Which, just to make it clear, reduces the price in the vesting contract to the Distribution corporation? Without the $17.6 million the vesting contract price would have to be higher to the Distribution corporation.

Q.103 - Now in response to your comments, would you please explain in detail why O & M would not be lower if no sales by NB Power on the MEPCO line in those years?

MR. BISHOP: I think I didn't say that it would --

Q.104 - Just let me go on and complete the question. And in particular you would agree with me in general terms that the more plant and machinery is used in a given year the greater the O & M on that machinery in a year, is it not?

MR. BISHOP: I'm sorry. Would you repeat, please, the comment?

Q.105 - In the context of the situation that should there be no sales by NB Power on the MEPCO line in the years in question shown on the table, you would agree with me that in general terms, the more that plant and machinery is used in a given year, the greater the O & M on the machinery in that year?

MR. BISHOP: I think over an extended period I would agree.

I'm not so sure that O & M in any given year is less. And I think the point to make that clear is that in the case of -- take again the year 2005, 2006, the numbers that I might be talking about if I use the Coleson Cove plant as an example, and it will do most of this export, so it's one terrawatt hour of operation out of a total five terrawatt hours of production.

And I think it's important to understand that this machinery if -- whether it runs or doesn't run does require maintenance in order to make this machinery reliable for those peak periods of the year when these must be here to serve New Brunswick load.

And I don't argue and in fact will agree that while there may be some order of declining O & M costs, these O & M costs that we have here are essentially fixed. There are salaries and wages, taxes and other fixed costs associated with the machinery and associated with the assets.

Q.106 - But would not you agree that if there was a reduction in the use of that machinery in a given year, for example the plant machinery was not used to make export sales, the O & M would be reduced?

MR. BISHOP: It could be reduced. Certainly --

Q.107 - Could you give us an estimate of -- you know, a ballpark figure of what that would be, dealing with the 188 megawatts in question.

MR. BISHOP: In response to your question, I want to point out that in the fuel cost numbers, just to clarify, incremental limestone for scrubber operation and other chemicals and those costs in fact are included in that number.

In the fixed O & M costs I agree that if in fact there was a reduction in -- a long-term reduction in the operation of this generation, that there would be some -- could be some lessening O & M costs. I can assure you that the number is nowhere proportional -- nowhere near proportional to the decrease in output. In other words, it certainly is not one terrawatt hour divided by five terrawatt hours times the fixed O & M.

Q.108 - But for the assistance of the Board, could you put a more precise figure on it? I realize it's still an estimate and you are doing it off the cuff on the stand, but would you help the Board understand the order of magnitude by putting some numbers to that?

MR. BISHOP: This number will certainly be arguable but I would suggest it's difficult to find a half-a-million dollars reduction.

Q.109 - Now somewhere along the same line, you would agree with me that it's quite possible that certain assets would last longer if not used in generating power for sale over the MEPCO line?

MR. BISHOP: I don't necessarily agree with that -- with that statement. There is no evidence to suggest that that might be so. In fact the contrary might even be true. As you do more starts and stops or as you do load variations on large thermal generating sets and combustion turbines that in fact you may in fact shorten the life of those assets.

Q.110 - So what you are suggesting to me is that if a machine is designed and its capacity design is to run at 100 a year and you only use it 50 percent of the year, then it wouldn't last longer at 50 percent?

MR. BISHOP: Perhaps if it were -- perhaps if it were 50 percent, but that's not the numbers we are talking about here. And I would qualify to say that it's only under the same operating conditions that that might hold true. Again I emphasize that when you move these machines around, each start and stop is certainly equivalent to a good many operating hours. It's the thermal fatigue and stress on these machines that really cause the life -- the life to be given up.

Q.111 - In other words, the assets are rated for hours of use, are they not?

MR. BISHOP: Typically they will be rated for hours of continual use, yes.

Q.112 - Yes.

MR. BISHOP: And I stress continual use.

Q.113 - So would it not logically suggest that if the machinery when exporting -- generating for domestic use and exporting the 188 megawatts, were being used close to the rated capacity based on hours of use, that you would cease using them for the export of the 188 megawatts, that their life would be increased and accordingly the amortization would change?

MR. BISHOP: No. That's not correct. And again I point out that -- let's assume that I operate at -- operate this machine a hundred hours at full load. It's very likely that one start and one stop on that machine could from an OEM -- an OEM will tell you, be equivalent to -- maybe it's not a hundred hours but some other number -- but each stop, each start, each cycle on these machines takes life out of these machines. And the OEMs will rate each one of these variances in terms of equivalent full load operating hours.

So it may very well be that to start and stop these machines because you are not selling, rather than sell the surplus and leave the machine loaded, can in fact shorten its life.

MR. MARSHALL: And maybe just to help explain, we could use an analogy. If you drive an automobile and if you drive the automobile just around town and you accelerate and decelerate and stop and start and all you do is drive the automobile around town, you never take it on the highway, does it last longer or shorter than if you do it as steady highway driving to get more capability out of the automobile?

That's the analogy here with these generators. A generator can run and cycle at lower loads or it can run and operate at a more steady, higher production. And the thousand giggawatt hours we are talking about, this terrawatt hour, is incremental production at the higher end of the unit while it's still running. So it's very efficient production and it doesn't deteriorate the life of the unit.

Q.114 - Now dealing with Point Lepreau --

CHAIRMAN: Mr. MacNutt, just a moment. Commissioner Sollows has a question. We may as well continue on with the line now rather than move on to something else.

MR. SOLLOWS: Just further to what you were saying, I understand your point. So do you -- is there somewhere in the evidence the kind of detail that would be -- would indicate how the loads would be shared if you lost this transmission capacity, how many extra stops and starts you would have on the units from your simulation modelling?

Is that kind of data available from your system simulation modelling that would allow us to say that, yes, you are going to have ten or 15 percent more stops and starts or other such things, or are we going to see one unit capable of being shut down for six months?

MR. BISHOP: No. That's more -- first off to answer your question directly, when we do sensitivities to look at what if cases, yes, we really do -- the model really does indicate which units get committed and how it -- how it -- whether it runs or whether it doesn't run, whether it runs at half load, whether it runs at full load, or so on. So that -- those pieces of information can be dug out of the production modelling run should we do those sensitivities.

The second part is it's necessary really to go to OEM. They are the best source of information of what equivalent start/stops are, what equivalent cycling is.

MR. SOLLOWS: I guess the question is is there a report that they would have available that could be entered just to document things?

MR. BISHOP: I don't -- let's see what we --

MR. SOLLOWS: The general point that you are making I think is understood. It's just that in this particular case the question is will it really result in more -- higher or the same O & M or will there be a reduction. And I guess we can only get the answer to that of the details.

MR. BISHOP: Right. This is an age-old question. This looks at which generators are up, which are not. There isn't available a slick report. We could put it together in OEM reports to get the production modelling run but it will take some work to do that.

MR. SOLLOWS: Thank you.

MR. BISHOP: You are welcome.

Q.115 - Is Point Lepreau used for export sales?

MR. BISHOP: No, typically it is not.

Q.116 - But if it was in fact used, it's my understanding that Point Lepreau is -- has a capacity based -- lifetime capacity based on the number of hours used, is that not correct?

MR. BISHOP: That is correct.

Q.117 - So to the extent that export sales ceased, Point Lepreau would not be used for those sales and its life would be extended by so many hours as it otherwise would have been used?

MR. BISHOP: Just to follow-up on my earlier response, Point

Lepreau is used exclusively -- there may be an exception I'm sure, but almost exclusively for use in inprovince load. So that plant, when it is up and operating, runs at full load. We just do not vary it other than for fuelling times. And the plant is exclusively used to serve inprovince load.

I think just to -- again to clarify, the way that we dispatch the NB Power system is that we dispatch from the cheapest generating source that we have in the system, that's the first one you load up, the next cheapest, and so on up to the point where all of New Brunswick Power's load is served inprovince. And quite frankly that suggests that you load hydro to its capability, depending on how much water is coming down the river, then Point Lepreau, then the coal fired units, the Orimulsion units and finally the oil fired units.

So the inprovince load is 99.9 percent of the time higher than the sum of the hydro plus Point Lepreau and then most of the time higher than even the coal and Orimulsion plants.

Q.118 - In context of the answer you have just given, can you explain why the proposed new export tie line to Maine is to be connected between Point Lepreau and Maine?

MR. MARSHALL: The reason for that is that that is the most efficient corridor to build the transmission line into the U.S. With all of the location -- the physical location of generation at Coleson Cove and Point Lepreau and Bayside in the Saint John area, in order for power to flow out of New Brunswick it has to flow up to Keswick and then across the existing route and down.

By building the line from Point Lepreau directly down to Bangor, power will then flow directly from here and losses inside New Brunswick will be less and the value of that reduction in losses then would accrue to all users of the transmission system. So it's an efficiency issue that that is the most efficient point to connect on the system to export.

Q.119 - Thank you. Now coming back to exhibit PUB-5 which is this one page document, would you explain how the amounts that have been charged to export sales on the MEPCO line for fixed O & M, amortization, interest charges and taxes were calculated?

MR. BISHOP: One by one if I may. The fixed O & M, the amortization and the interest charges were the charges -- let's do the amortization and interest charges.

The amortization is -- the amortization is the straight line amortization on the net book value of the generating stations which the model suggests would make this particular export. So that we take a weighted average of the net book value of the particular units. And I think in this case the units were the generation at Coleson Cove, at Belledune and at Dalhousie. There are some other ones and hence the adjustment factor.

Same thing with the interest charges. The interest charges were on the outstanding debt associated with these stations or calculated and attributed to these stations.

And the same thing with the fixed O & M charges.

Q.120 - Now please explain in detail why O & M would not be lower --

MR. BISHOP: May I just -- I think I didn't complete the question in turn. I think if I have missed it or if I haven't I want to explain too the taxes.

The taxes -- the tax calculation is actually calculated on the basis of NB Power's Genco on this sale achieving its net rate of return, so that the taxes in fact recognize the amount of return it must have and are calculated at 35 percent of income on net sales required to meet the net rate of return.

Q.121 - Thank you. Now if all export sales on the MEPCO line by NB Power were totally eliminated, what would be the savings in staff costs?

MR. BISHOP: I'm afraid I don't know that number without having more study.

Q.122 - Yes. Could you give us an undertaking to provide that, please? Thank you.

MR. MARSHALL: Just to clarify. I think that requires a significant amount of analysis and study. I think the undertaking within the time period we have we can give some estimate of what that would be, but it would likely not be a real definitive number.

Q.123 - Yes. An estimate would be fine. Now just to be clear arising out of some of the response you have given us in the last few moments, is it NB Power's position that the benefits available from export sales are the numbers shown in the line "margin" on PUB exhibit 5? That is -- that would be the first of the three lines noted as margin, the one reading 9.1 for '04, '05, 17.6 for '05, '06 and 16.3 for '06, '07.

MR. BISHOP: That is correct, but I will qualify that by saying that those are numbers that are derived from a production model that suggests that we do not generate and do not export on the top 108 guage megawatt section of the MEPCO tie.

And as we discussed yesterday there are some level of mitigation techniques and we in our evidence elsewhere have indicated that those numbers are reduced somewhat by the mitigation techniques that we have suggested, and as Emera has suggested that there are other mitigation techniques that Emera has suggested as well.

CHAIRMAN: Mr. Bishop, would you do me a large favour and say that a different way so that I can appreciate everything you said.

MR. BISHOP: Okay. Let me try that again, please. Thank you.

The numbers in this margin column are in fact benefits that NB Power would lose if it simply had cut off 188 megawatts of export capability at the MEPCO tie if it became a 500 megawatt tie rather than a 600 megawatt tie.

Having additional surplus energy on the system because now we -- in this example we would be transmission limited, not generation surplus limited -- we would inevitably look for other ways to market that energy, again with the expectation that there is a benefit. And we would market it into what I shall call secondary markets.

The mitigation technique or the marketing technique that we use in the model is a technique that we have used in the past that works from time to time, and that is to be able to sell that energy into the Hydro Quebec market. And Hydro Quebec typically has paid somewhat near the New

England off peak prices. Obviously they want to make a gain on the sale, so they will pay off peak prices even on on peak times, and then they will turn around and sell that energy through other -- through their other interconnections on peak, so they make a mark-up on the energy.

So from this $17,000,000 number that -- in 2005, 2006, there is some opportunity for NB Power to capture back some of that benefit, not all of it but some of it, in the event that you can sell the energy at a lower price but into another economic market.

The mitigated number in this case for example might be $14,000,000. That would be the net impact given our experience with the Hydro Quebec sales.

Does that help?

CHAIRMAN: Yes.

MR. BISHOP: Thank you.

Q.124 - In light of the explanation you have just given the Chairman and in response to the question that I asked, would you undertake to take exhibit 5 and recast it on a mitigated basis?

MR. BISHOP: I'm sorry. On what basis?

Q.125 - On a mitigated basis.

MR. BISHOP: Okay.

Q.126 - And you will give us that undertaking?

MR. BISHOP: Yes, we will do that.

MR. ZED: Mr. Chairman, just a question before we go on, I just wonder if we could clarify what method of mitigation they are using, so we have an opportunity to examine the validity of their assumptions and the numbers and that kind -- I mean, if they are using the Quebec mitigation strategy or the Nova Scotia mitigation strategy. Just what that strategy is so we can look at it with some degree of precision, please.

MR. MACNUTT: I'm prepared to adopt Mr. Zed's question and have the witness answer it.

CHAIRMAN: In effect then you want an asterisk on the bottom of the chart saying how it -- what was used by way of mitigation?

MR. ZED: Yes, sir.

CHAIRMAN: That sounds fair.

MR. BISHOP: I can explain now that the only model that we have with any precision that I can give you something of definacy is the mitigation technique that we have run through our production modelling run. So we have the numbers available back in the shop. And it will in fact be the mitigation technique that says that when this energy is surplus, when there is not -- when there is not

188 megawatts of transmission available to transmit it at numbers that are close to $54 price, $54 per megawatt hour.

To the extent that the marginal cost of New Brunswick's system is less than Hydro Quebec's off peak price, we will move that amount of energy into the Hydro Quebec market. So it will be the Hydro Quebec mitigation technique.

CHAIRMAN: So then it's not necessarily, if I remember correctly, the Maritime market which was mentioned I believe when Mr. Zed examined you?

MR. BISHOP: That -- I think we used the term "Canadian market".

CHAIRMAN: Oh, did you?

MR. BISHOP: Yes.

CHAIRMAN: Okay. But in this case it will just be Quebec.

MR. BISHOP: It will be Quebec. And that's based on some experience we have had and we are quite confident that that experience is real, even in the future.

Q.127 - Thank you, Mr. Chairman. Now you commented on the vesting contract involving Disco and Genco. I would just like to clarify and go over a few things. Is it correct that the vesting contract as referred to in exhibit 8 at page 16 -- A-8, page 16, if you go to bullet 3.

Yesterday's slide presentation A-8?

CHAIRMAN: What page was that in A-8, Mr. MacNutt?

Q.128 - Page 16, bullet 3 -- bullets 1 and 3. And just for the record, I will read them.

"Vesting contract rate is set based on 'today's' forecast of future export benefits."

That is bullet 1.

And bullet 3 is "Increased vesting contract rate must be recovered by NB Power Disco through rate increases."

Now in respect to those mention of vesting contract in the quotations I just gave you, is it correct that the vesting contract as presently contemplated would provide benefits to Disco from export sales based on the transmission reservations that currently exist?

MR. BISHOP: That is correct.

Q.129 - Does this mean that the contract would provide a fixed level of benefits to Disco from export sales?

MR. BISHOP: It provides a level of benefits from export sales that is fixed year by year. But it is calculated by using our projection using the production modeling that we have now.

For example, if I could use your PUB-5 example?

Q.130 - Please do.

MR. BISHOP: Let's use the margin numbers that we have just referred to in year 2004, 2005. This is for a different

-- I realize these numbers are a different purpose. But let's say the 188 megawatts in question is what we project to export.

Then in fact today 9.1 -- in 2004, 2005 $9.1 million would be the export benefit to Disco. In 2005, 2006 would be 17.6. In 2006, 2007 it is 16.3. So they are built into the Disco rate or built into the calculation of the Disco rate.

If in fact the exports, when you actually get to those periods, vary from those, that is immaterial. These are the benefits that would flow through to the Disco contract.

If Genco is fortunate enough to make more money or have a greater net margin than its margin projected, that will stay with Genco. If Genco makes less than that, the loss stays with Genco. The export benefits that are projected are the ones that buy us the Disco rate today.

MR. MACNUTT: Thank you.

MR. SOLLOWS: If I may, just so that I'm completely clear on this. When you say the risk is really then on these export sales, the way this vesting contract is set up, the risk is being borne by Genco once this is agreed.

And by Genco we mean the shareholders, i.e. the taxpayers of the province of New Brunswick rather than the ratepayers of the province?

MR. BISHOP: That is exactly correct, sir, yes.

MR. SOLLOWS: So behind that is sort of an implied decision or assumption that the risk should be borne by the taxpayers rather than the ratepayers.

My concern here is that those are very distinct groups in that only about 30, 35 percent of your load is residential customers. And a lot of your rates are paid by a very small number of very large customers. And so this decision to distribute the risk the way it has been distributed, I mean, has some implications.

Would you care to discuss those or is it appropriate to discuss those in this --

MR. BISHOP: I'm -- could you be more explicit on implications?

MR. SOLLOWS: Well, I guess I'm wondering why and how the decision is made that all of the risks associated with export contracts should be borne by the taxpayers rather than the ratepayers?

CHAIRMAN: As usual I have a more simplistic question than even that. I wonder if we could take a 15-minute break. And when we come back, Mr. Bishop and Mr. Marshall, if you are able, explain to us what you know about the vesting contract.

Because we know very little. And this is -- I mean, it makes good sense that you would do an annual estimate of your export sales, and this vesting contract would be adjusted to reflect that.

But I guess the impression that I personally had was that there would be a lot that would be decided prior to the 1st of April that would be there for the duration of the vesting contract.

So I think the Board would -- and certainly this panel would appreciate you giving us an explanation of whatever it is you are able to share with us, so we have a greater appreciation. And then as an end result you can hit Commissioner Sollows' question, okay. We will take a 15-minute break.

MR. MACNUTT: Mr. Chairman, I just wonder. Very much along the same line of questioning, we have one final question on that area.

CHAIRMAN: Certainly. Go ahead, Mr. MacNutt.

MR. MACNUTT: If we could ask it and they can't answer immediately they could think about it over noon hour.

CHAIRMAN: Go right ahead.

MR. MACNUTT: The question is if the current situation was to change and the amount of reservations held by Genco and the MEPCO line was to be reduced, what would happen to the amount of benefits that Disco would receive from export sales?

MR. BISHOP: Those benefits would be decreased by the amount that the net effect or net benefits to -- or from the export sales are decreased.

MR. MACNUTT: Thank you.

CHAIRMAN: We will come back in 15 minutes.

(Recess)

CHAIRMAN: Any preliminary matters before the panel answers the question we have put before the break? Are you ready, Mr. Bishop?

MR. BISHOP: Yes, I am, yes. In fact, if I may, I might have Mr. Marshall just give an overview. And I will fill in some of the detailed areas.

MR. MARSHALL: First of all, I want to say that the vesting contract is based on the recommendations of the Market Design Committee to the government under which the heritage assets, being all the existing assets in the system, should be under contract to the Distribution company.

And that includes in it the contracts that NB Power holds today with the Bayside Project, all of the smaller contracts for non-utility generators in the province, including the Fraser's contract and such, and St. George and including the new Irving Oil Cogent Project which is coming on this year is included in the vesting contract, as assets that the value and the benefit of those are to go to inprovince customers through the Distribution corporation to provide for standard offer service.

Now they have the right to utilize all of the capacity from those assets. But they -- there is a limitation on the energy that they can take. Because the value of the system has been that surplus energy at inprovince load has been exported, they can utilize up to 61 percent capacity factor of the energy-producing units.

Now that's in line with market design recommendation that there was an issue of 61 percent load factor against heritage, a past historic operation of the system.

That basically gives enough energy for Disco to meet all of its inprovince requirements on a go-forward basis for the next few years, until they start to run out of resources. So basically -- and it also allows Genco then to have the surplus energy above that to take into the marketplace.

So there is a dividing line then between the rights that Disco has to energy and the rights that Genco has to energy. And it's a clear dividing line at 61 percent capacity factor of the energy-producing assets.

Now based on that, their detail modeling done through PROMOD and through all of the financial forecast models that have done a forecast out over the next six or seven years, I think out to 2010 in detail to include -- show the load forecast and then the dispatch of this generation to meet inprovince load, plus the projected export sales.

And inherent in the export sales is the assumption that the reservations under question in this hearing remain with the generation company. So that inherent in that are the reservations and the utilization of the MEPCO tie to the capability of the 700 megawatts. The second tie line is not included yet in that modeling.

Based on that, the value that Genco make on the export sales, the margins that they generate from their projection of the export markets as they see it today, the value of that helps them meet a target rate of return, so that they can make payments in lieu of taxes and they can make dividend payments to the government based on a capital structure that the government will set.

They meet that requirement. And all of the excess money that they make in profits out of export sales go to Disco to reduce Disco's price. And that's the price that's in the vesting contract.

If as a result of this hearing Genco does not get or maintain its reservations, there is a rider in the contract that says the price to Disco will then be readjusted and increased to offset the lost value of the export sales through the transmission reservations. And the price in the contract to Disco will increase. That basically sums up the contract.

CHAIRMAN: Can I just ask for clarification on one part of what you said, Mr. Marshall? If there is a profit from export, that goes to Genco. And I just wanted to be clear.

If for instance Genco did not in the sale of its power pursuant to the contract clear sufficient net profit to pay the dividend or the rate of return of Genco, then does the profit from export sales stay with Genco until those bars have been met before it is passed on to Disco?

MR. MARSHALL: No. The forecast is based on Genco achieving its rate of return. If there is a deviation in fact as we move out in time in the export market that Genco does not achieve exactly what was forecast, that risk stays with Genco. It does not affect the price in the contract to Disco.

MR. BISHOP: Just to pick up on some of the issues that Bill had said, I'm not sure that I heard Bill say that the second tie is not included in the model yet. It is not included in the model, nor is it intended to be included in the model for modeling purposes and price-setting purposes.

I just wanted to emphasize that with the 61 percent capacity factor number in the vesting contract the rationale, as Bill has pointed out, is that is a historical number of usage to serve inprovince load in New Brunswick.

And so of course it means that the other risk that Genco has in the future is that if in fact Genco is not able to operate its units at the projected availabilities, then in fact because of its obligation to serve New Brunswick Disco first, then in fact it has the risk of actually not making the export benefits that it has. And that risk stays totally with Genco.

On the other hand, as I point out, if we are advantageous in Genco to have prices on the export market increase, if we are able to run generation better than what we have projected or for whatever other reason, then in fact that additional benefit will stay with Genco.

MR. MARSHALL: I just add again, the overriding philosophy is similar to what Market Design Committee recommended, that the contract is designed to protect inprovince customers to give them the value that exists in all of the assets that have been built in this system for them that they have taken on, that they continue to maintain the opportunity to access that value through the standard offer service of Disco on out into the future.

CHAIRMAN: Thank you, gentlemen. Go ahead, Mr. MacNutt.

MR. MACNUTT: Thank you, Mr. Chairman.

Q.131 - Now in what generation, which generation units does NB Power use or plan to use Orimulsion fuel?

MR. BISHOP: It already uses Orimulsion fuel in the Dalhousie generation station. It has a 310-megawatt capacity.

And it is presently under way in a capital project of refurbishing the Coleson Cove plant, roughly a thousand megawatts to use Orimulsion fuel beginning this year.

Q.132 - Now you would confirm my understanding that the only supplier in the world for Orimulsion is BITOR in Venezuela?

MR. BISHOP: That is correct. It's BITOR.

Q.133 - BITOR? Okay. With respect to the Dalhousie plant, what is the current situation with the purchase supply contract between NB Power and BITOR?

MR. BISHOP: That supply contract is presently in place. And it is a supply contract that lasts through I believe, subject to check, through the year 2010.

Q.134 - Now with respect to Coleson Cove, what is the current situation with respect to the purchase supply contract between NB Power and BITOR?

MR. BISHOP: There is not a supply contract signed. There is however a memorandum of understanding that sets out the terms and conditions including prices.

Quantity has a variance -- or a bandwidth of quantity. But quantities are set out with a bandwidth in the MOU, memorandum of understanding.

Q.135 - Yes. Now yesterday I provided your counsel and yourself with an Internet news item dated October 3, 2003 which indicated that the Venezuelan government was going to require BITOR to increase the price by 50 percent, that is of the price for Orimulsion.

What has happened with respect to the NB Power, BITOR, Orimulsion supply contracts and prices since October 3, 2003?

MR. BISHOP: With the existing operative contract at Dalhousie there has been no effect. The contract continues on as indicated.

And in the case of the Coleson Cove contract, since that article -- first off the contract is unaffected. The memorandum of understanding is unaffected. We have had no conversations.

And there has been a delegation that has come to New Brunswick since that article was written that has met with us. And there have been no conversations at all or indications of any price increase nor any volume changes.

MR. SOLLOWS: May I? So I guess the concern that I have, when I did my sort of background reading on Orimulsion and what has been going on in the Orinco belt with the development of synthetic crude --

MR. BISHOP: Yes.

MR. SOLLOWS: -- and the shift in focus to some extent in the Venezuelan government, I read that as a price risk. And what you have so far is no indication of any risk on the upside for price on Orimulsion?

MR. BISHOP: Quite frankly, anything that we have been -- that we have seen, we have seen it through the press. That delegation that arrived here -- and admittedly, as you are aware, the country -- the PDVSA has quite a new slate of officers.

MR. SOLLOWS: Yes.

MR. BISHOP: And that country, as you know, is in the state of disarray that it is. But even through all of that, the five-person delegation that represented both PDVSA, the parent company and BITOR, were represented there. And their objective of course was to see the facilities that

New Brunswick Power is presently operating in and is constructing, and understanding that we are a real market.

MR. SOLLOWS: Yes.

MR. BISHOP: The questions and discussions just did not center on any price increase or volume deviation at all.

MR. SOLLOWS: If there was a 50 percent price increase in the fuel, it wouldn't -- certainly wouldn't wipe out your business model. It would presumably just reduce your exports to some extent?

MR. BISHOP: The numbers that are quoted in here, the 50 percent increase is quite frankly, as noted in that article, is not a 50 percent increase on New Brunswick Power's price anyway.

MR. SOLLOWS: Okay.

MR. BISHOP: And I understand that we have not given that to the Board because of the confidentiality arrangement we have with BITOR. We have looked at those numbers. And quite frankly, there is no volume change at all, given the numbers there.

We believe that, given the numbers they have quoted, it has not affected the volume. We can continue through our model to show that we can be competitive in the markets to the levels --

MR. SOLLOWS: Even with the higher fuel price?

MR. BISHOP: Even with the higher fuel price. I can't tell you that there might not be a million dollars or so reduction in price. And it all depends on where the price goes.

But certainly the numbers that they have submitted there are not concerning numbers at all.

MR. SOLLOWS: Because I know, you know, one of the other things that I found in my search was an article on fuel developments where they gave a fuel component in U.S. dollars per megawatt-hour for an Orimulsion plant, around $18 per megawatt-hour.

Is that more or less in line with what you would be expecting to spend on fuel?

MR. BISHOP: That's a U.S. quote there.

MR. SOLLOWS: That is $18 U.S. per megawatt-hour?

MR. BISHOP: That's quite in line.

MR. SOLLOWS: That is quite in line?

MR. BISHOP: Yes.

MR. SOLLOWS: So even if you saw, you know, a 50 percent increase, you would only be looking at 29 or so --

MR. BISHOP: That's correct.

MR. SOLLOWS: -- 27?

MR. BISHOP: Yes.

MR. SOLLOWS: Okay. Thanks very much.

MR. BISHOP: Thank you.

Q.136 - Going on to -- coming back as a matter of fact to NB Power (PUB) Supplemental IR-1 which is the table. Do you have that?

MR. BISHOP: Yes, I do.

Q.137 - Now looking at supplemental IR-1 it would appear or seem that the price appears to be declining and the fuel costs increasing, would you agree, across the year as shown? General trends we are talking here.

MR. BISHOP: You are suggesting that the -- just to clarify, is it that you are suggesting that the export price is declining and the fuel costs -- NB Power's fuel costs projected is increasing?

Q.138 - Correct.

MR. MARSHALL: But just look at that line, I don't know that you can automatically assume that from that table, because the fuel cost line is in millions of dollars and is influenced significantly by the volume of energy in the table, and the volume of energy in the table is increasing. So the fuel costs should be increasing. But that doesn't mean that the fuel price is necessarily increasing.

I think to answer the question you have to divide the two numbers to get a clear answer of what you are trying to get to.

Q.139 - Well assuming that when you crunch those numbers that you do get the trend lines as I suggest were shown to be, in other words, the price appears to declining and fuel costs increasing, would you devise the point at which those two factors would converge to make it impractical for NB Power to export energy on the MEPCO line?

MR. BISHOP: Given our knowledge of the futures in fuel prices they do not converge.

Q.140 - Now assume for whatever reason NB Power ceases selling energy on the MEPCO line, what impact would there be on NB Power's generation capacity following cessation of such sales?

MR. BISHOP: If I understand your question correct, it won't have any impact on New Brunswick Power's capacity, and quite frankly understand that -- it's necessary to understand that it is necessary to retain that capacity to meet the inprovince load.

Q.141 - Would elimination of export sales on the MEPCO line improve the cost situation in New Brunswick over the long term?

MR. BISHOP: Again I missed the first part of your question. Would you repeat, please?

Q.142 - Well if export sales were eliminated on the MEPCO line, they ceased to exist, would the cost situation improve with respect to NB Power's costs in domestic sales reduce? You are no longer exporting, right?

MR. BISHOP: Again the total costs will decrease because we would not use the fuel and variable items in the generation of that export. However, as we have shown here that the benefits far exceed the costs -- far outweigh the costs for a net positive effect to NB Power.

MR. MARSHALL: Let me just add to that, the cost of utilizing the system to meet inprovince load would not change.

Q.143 - Thank you. However would you not agree that if export sales were cancelled that it would reduce the need for capacity?

MR. BISHOP: No, I do not agree at all. That is not the case. We would have been a dark, cold province on January 15th this year without the capacity that we have.

Q.144 - Well okay. You would continue to need the capacity you have now, but if there were no export sales would it reduce the need for added capacity?

MR. MARSHALL: No. The export sales do not influence the need for capacity to serve load in New Brunswick. When the existing capacity is insufficient to supply the load in New Brunswick, the distribution corporation has to go to an RFP to get contract for new capacity. And that is completely independent of the export market from what distribution will want to do through their RFP.

Now any party who wants to respond to that RFP, being the generation company or Emera or Hydro Quebec or any party in the market place, WPS, any party in the market place may choose to look at what the exports do in terms of influencing the bid price that they put to Disco in responses for the capacity but it will not influence the capacity.

Q.145 - Thank you. Now I want you -- you should have NB Power (PUB supplemental IR-1) in front of you from the immediately proceeding questions, just keep it in front of you, and I am also going to refer you to the evidence of Mr. Bishop at exhibit A-2, page 5, line 11, which is about four lines. And I'm going to quote it, so perhaps it's not necessary to turn it up.

I will repeat the reference. The evidence of Mr. Bishop, exhibit A-2, page 5, commencing at line 11. A2, page 5, line 11. It's under the tab for Mr. Bishop's evidence. And at that point Mr. Bishop stated, fiscal 2002/03 sales were adversely impacted by low hydro levels, curtailment of Orimulsion supplies and below average nuclear unit performance and are not representative of ongoing opportunities.

Now referring to PUB supplemental IR-1 please explain in detail why the 2003/04 sales are 166 gigawatts GWH gigawatt hours less than the sales in 2002/03?

MR. BISHOP: April 1 of -- perhaps was March 1 of 2003, the New England market introduced a new market philosophy, a new pricing system, which is called locational marginal pricing. And effectively it means that unlike the future market that had one price throughout all of the sections of the market itself in New England extending all the way from southern Connecticut up of course to the Maine/New Brunswick border, each nodal area or each area -- a significant number of areas in that market have different prices. And those prices of course are dependent on the location of generation, the price of the generation at the location and the ability for generation to flow over transmission to various nodes. And subsequently the prices in each area is different.

The large amount of generation that has been built in Northern Maine -- or in Maine north of the Maine/New Hampshire interface, has resulted in a much lower nodal price at the -- that New Brunswick is able to access. And that subsequently has made the price uneconomic for oil to operate into in this past year.

Now these numbers in large part are derived from actual numbers, they are only projections for the latter part of the year, and it is a very small portion that is used in that top 188 megawatts. In other words, we did not have very much in the way of exports because of this pricing differential in that top 188 megawatts. Very seldom did we tie load at above 500 megawatts.

I can refer you again to the slide that I presented yesterday on page -- excuse me for a moment, please -- if I could turn you again please to exhibit A-8 which is the slide exhibits, to page 14 of that exhibit. I noted -- I noted yesterday that the 2003, 2004 line is not unlike the 2002, 2003 line, that is indicating that in 2002, 2003 indicated that for the full year we had to tie load it greater than 500 megawatts less than 25 percent of the time. I think quite frankly had I presented you with the 2003, 2004 line it would have actually been squeezed further to the left. So that the price decline in the New England market accessible by New Brunswick Power has really caused us to export much less this year and particularly much less at the upper levels of this tie capacity.

And the point that I had made yesterday and want to continue to clarify, expand on, is that even though the price is decreased at this MEPCO bus, or the New Brunswick/Maine bus, that by virtue of the fact that the incremental cost of Coleson Cove will decline significantly from where it is today on oil, will allow us to be competitive for very much of the time during that period.

Q.146 - My question really related to why are the sales in 2003/04 166 gigawatt hours less than sales in 02/03. And you gave a general answer in your evidence that they are impacted by low hydro levels, curtailment of Orimulsion supplies and below average nuclear unit price performance. Can you elaborate on that response including why you feel -- would you just elaborate for the benefit of the Board's understanding the dramatic difference in sales between those two years?

MR. BISHOP: The explanation that I have given for 2002/2003 is in fact an explanation that relates to the fact that we did not have a surplus of generation, a surplus of economic generation, because of a low hydro year, because Point Lepreau performed less than what we wanted and because we had an interruption of Orimulsion supply causing us to have higher priced energy. So that dropped sales from orders of magnitude of a thousand gigawatt hours down to 216.

In 2003/2004 sales drop even more, not because of those conditions but because of two things. Number one, New England, as did all of the northeast area, experienced a cooler than normal summer, so that the air conditioning load and higher prices in New England in general weren't there, and then secondly because of the locational marginal pricing implementation, that depressed the price that we New Brunswick Genco was able to access even moreso. So there was a doubling effect here.

Q.147 - Thank you. Now you would agree that Point Lepreau's performance up to this point in time has perhaps not been up to expectations over the last several years?

MR. BISHOP: That is correct.

Q.148 - Now do you expect Point Lepreau's performance to improve or at least not worsen over the next few years even though it is approaching its end of life in 2008?

MR. BISHOP: We expect the capability of that unit to actually decline until it is taken out of service in 2008/2009 for refurbishment, and that area of decline is modelled into the production models that presents the numbers that we provide to you here today.

Q.149 - Thank you. Now referring to PUB supplemental IR-1, sales on the MEPCO line are projected to be 700 gigawatt hours in 04/05, 1019 gigawatt hours in 05/06 and 1,040 gigawatt hours in 06 and 07, is that correct?

A. That is correct.

Q.150 - Would NB Power sell that volume of energy into the U.S. market in those years if Orimulsion is not available at Coleson Cove and oil had to be used instead?

MR. BISHOP: Just to clarify the numbers that we are presenting is for the top 188 megawatts alone and the response further to your question is that if Orimulsion is not available, no, we would expect the volumes to be less than what you see here. In fact we presented some numbers in a previous IR -- in response to an IR.

Q.151 - Now still with PUB supplemental IR-1 does it remain NB Power's position that NB Power will be able to sell into the U.S. market at the quantities projected for the future years shown at the prices shown for those years?

MR. BISHOP: That's correct. That's our evidence.

Q.152 - What event in the U.S. market could cause NB Power to lose sales of energy to the U.S.?

MR. BISHOP: I'm not sure we have long enough for me to explain all I might think about, but markedly if there was a significant decrease in natural gas prices of course that could be a market collapse. I suppose as we experienced in the '80s a collapse of -- or at least a downturn in the U.S. economy. I doubt that there is going to be much additional generation built in the United States. I think there is fire sales on a good deal of it there now.

So it seems quite unlikely in our estimation that there are many real forces that will drive prices lower at the wholesale level.

Q.153 - What event in New Brunswick excluding loss of reservations on the MEPCO line would cause NB Power to lose sales of energy in the U.S. -- to the U.S., excuse me?

MR. BISHOP: Well yes, Mr. Marshall reminds me that always the most significant risk that NB Power has is the loss of the Point Lepreau generating station, or certainly a decline in the availability of its output, loss of any other thermal unit probably not so significant because typically those units are able to be brought back on line save a dramatic event.

Q.154 - Why would Point Lepreau -- loss to Point Lepreau influence that? I believe you answered it in a previous question, but just in the context of the discussion now would you explain -- please explain why loss to Point Lepreau would impact?

MR. BISHOP: Point Lepreau has itself a vesting or a PPA vesting contract with the Disco group. One of the conditions of the vesting contract between the Genco generation company and the Disco company is that Genco provides a back-stop of energy to Point Lepreau. So Disco has a first call on the energy from generation should Point Lepreau go out of service. And that energy being provided to Disco certainly indicates that there is not the availabilities of surplus left to Genco for export.

Q.155 - What assurances can you give the Board that NB Power will have 700 gigawatt hours of energy available to sell in the U.S. in 2004/05?

MR. BISHOP: The assurances are as good as the projections and the business plan of our corporation. That certainly given the assumptions that are in our model and now in our budget on using plant availabilities, fuel availabilities, operating capabilities, the operating capability of Point Lepreau, and the projected export prices, this is the magnitude and level of exports that we project.

MR. MACNUTT: No further questions, Mr. Chairman.

CHAIRMAN: Thank you, Mr. MacNutt.

BY MR. SOLLOWS:

Q.156 - Mr. Bishop, I think in response to a question by Mr. MacNutt, I refer you to NB PUB supplemental IR-1, page 64 of A-7. And I think the issue dealt with the trend in prices for megawatt hour and fuel costs. And I think, Mr.

Marshall, you suggested that we should divide the numbers

and look at the trends in that way.

MR. BISHOP: That is correct.

Q.157 - I have done that very quickly, and it's subject to check, but I get an increased rate of 1.7 percent for your fuel costs and 1.1 percent for your revenue. So your fuel costs are increasing more -- faster than your revenue. And so my question would be then when does the growth in fuel costs eliminate your generation or is that so far -- or your sales -- is that so far out that it's not relevant?

MR. MARSHALL: It's so far out it's not relevant. I mean the U.S. market prices are driven essentially by the natural gas markets. So based on the long-term projection of natural gas and the bundled fuel price on the margin influenced significantly by Orimulsion --

Q.158 - They are far enough part --

MR. MARSHALL: -- there is a significant difference behind them, they may merge slightly together but they are going to stay apart for a long, long time, longer than the assets will last.

Q.159 - Okay.

MR. BISHOP: One thing I might point out is that there is a little bit of a bow in the natural gas prices through here, so it has a tendency if we had taken this out another couple of years, the financial markets will even -- will even suggest that natural gas prices are increasing. So quite frankly it becomes divergent if we had extended it on out here somewhat.

Q.160 - Right.

MR. BISHOP: We are so convinced and know at this time that the New England market prices and natural gas prices correlate almost 100 percent, that it has given us an additional check to check for future brokerage prices, for future market prices in New England. So we -- in our modelling assumptions we try to correlate all those with a good deal of meaning.

Q.161 - When I was going through the original evidence I looked -- and I know part of the assumptions that you made where you made an update to the load forecasts that we looked at in detail almost two years ago now, I guess.

MR. BISHOP: Yes.

Q.162 - And there were slight changes, and when I looked at it there were changes -- slight reductions about half way out and then a step increase in energy, about -- let's see where it would be -- probably mid-way -- towards the end of summer maybe in 2004.

I'm wondering what that -- no, I'm sorry. It's August, September, October 2005 -- step change in the energy and the power. I'm wondering what -- by about 100 megawatts. I'm wondering what that might come from.

MR. MARSHALL: The load forecast that was utilized through all of the previous hearings on Coleson Cove, Point Lepreau, all of that, had in it an aggressive position I should say on natural gas, and natural gas prices remaining lower, laterals to the north and so a higher penetration of gas. That hasn't occurred.

The laterals are not being constructed, so the new forecast readjusts and increases load to account for very decreased penetration of natural gas into electric fuel switching.

The bump that you refer to is answered in the fact that also in that previous forecast we had 150 megawats of industrial cogeneration that was going to be self-generation or exit to market, and it was taken as a load reduction of 150 megawatts. And in the current forecast what is included is the actual forecast load, the 150 megawatts is not forecast to occur in the market as load now exiting the system are going away. Essentially the only cogeneration that is occurring in the system is the 90 megawatt Irving Oil project.

Rather than doing as a load exit it is actually as a supply contract and it's now on the contract side in the heritage contract. So the load forecast then forecasts the end use load in the province without that 150 megawatt bump.

Q.163 - Okay. So the load forecast would follow this line of a little under, you know, maybe ten megawatts lower, but this bump is due to a change in the way you handle industrial cogeneration mainly?

MR. MARSHALL: Basically, yes. I don't have the advantage of being able to look at the lines you are referring to.

Q.164 - Yes. I'm sorry.

MR. MARSHALL: Yes. Essentially it's the 150 megawatt cogen project that was in the old forecast as a load reduction at that point in time. And it's put back in to the load forecast in the current forecast.

Q.165 - So there is no step change in the load at --

MR. MARSHALL: There is no step change in the load and in the past forecast there wasn't a step change in the load either other than it was a step change -- a step reduction in the load to be supplied by NB Power corporation in the last forecast. The actual end use load, there is not a step change in the end use load in the previous forecast but there was a step change in the amount of load that was assumed to be supplied by NB Power.

Q.166 - Could I get you to take a look at this one then?

MR. MARSHALL: And just to add on here, this is in gigawatt hours and it shows the -- it's about a 100 gigawatt hour change which is effectively an industrial load at 150 megawatts. So it's --

Q.167 - What you are looking at there, I took the DBRS reports that list your inprovince load and charted them -- the history, and then I charted the projection that we have in this set of evidence. And it seems that there is like again an offset high in the load forecast versus the history of the load. And I'm just -- I sort of associated that with this step jump and I'm just wondering what the explanation could be?

MR. MARSHALL: Which is which now?

Q.168 - If you see the line marked there, the historic load forecast. You have got historic loads and a line fitted through them. There is a legend.

MR. MARSHALL: There is a blue line on it going across here that's a straight line.

Q.169 - And the legend at the bottom says the blue line is?

MR. MARSHALL: Domestic millions of kilowatt hours --

Q.170 - Yes.

MR. MARSHALL: -- and then a linear model it says.

Q.171 - Yes. The blue line is the linear model through that history. And then when I look at the forecast is a light blue line I think that's out in the future years. It's sort of parallel to it but above it.

MR. MARSHALL: Right.

Q.172 - So I'm wondering again where -- it would seem that the load forecast seems to have this bump in it, because historically that's your actual reported data at least as far as DBRS goes. So I'm just wondering how we offset that upwards in that way? Maybe we can let you look at it and come back?

MR. MARSHALL: Yes, because I -- we would have to talk to the load forecast people specifically as to whether --

Q.173 - And I would appreciate just some explanation as to how that could arise. I would understand it from the point of view of a change in assumptions in how you handle cogeneration but it shouldn't be reflected in that graph.

MR. MARSHALL: But the -- other than I might add -- I will confirm with the load forecast people, but the -- historically what has gone on in the last few years we had -- up until last year we had relatively mild winters, and so there was very little peak load and lesser than forecast type loads that actually occurred.

Q.174 - Yes.

MR. MARSHALL: So if you have actuals here it tends to maybe pull that down a little bit.

Q.175 - It might be.

MR. MARSHALL: And if you readjust slightly the forecast out here isn't that far away from the blue line when we are talking at -- I think that may account for it but I will check with the forecast people.

Q.176 - That would be great. Thank you. Now I think I had a few more questions arising from what we heard earlier. Yes. I guess I would refer you again to -- it's exhibit A-8, page 14, you were just commenting on it. And I first would like to say that I very much appreciate the sort of graphical presentation. It's your load duration curve for the MEPCO tie line.

MR. BISHOP: Yes, I have it.

Q.177 - What would make this a lot more useful to me however is if you had -- right now your forecast is four years out basically?

MR. BISHOP: That is correct.

Q.178 - What would be very helpful to me would be to see what your forecast in '98, '99 was for '02, '03, and that would help give me some sense of confidence or of the band of error or possible error around your forecast for '07, '08. What I'm interested in getting at is we know this isn't going to be exactly as it turns out, what is the confidence interval. So if we have got some historic data that could help -- it doesn't necessarily need to be the graph -- if you just gave us the load factors or something like that that would give us an indication of variation between forecasts and actuals.

MR. BISHOP: We will undertake to do that, sir, yes.

Q.179 - Thank you.

MR. MARSHALL: Back in '98 and going forward we are on a system that is oil fired on the margin. New England is in a situation where they have oil fired on the margin and gas coming in. And so it's going to be highly driven by what the forecast of natural gas was in 1998 looking forward to 2002. The reality is that forecast has not occurred at all. So the real deviation will not necessarily be the forecast. It's the difference between gas prices and oil prices which will drive that, whereas the current forecast -- I think there is a much higher degree of confidence in the current forecast looking out where it's Orimulsion relative to natural gas. That the difference between the prices is so great you don't get -- a little deviation in one price to another will not change the magnitudes, whereas in '98 going forward you were looking at prices that were like this, where a slight change from one to the other can eliminate the volumes significantly.

So I would just say there is a lot more volatility from '98 looking forward than there is from today under our current situation.

Q.180 - That I can understand the argument.

MR. BISHOP: We will provide an explanation with that.

Q.181 - Thank you. I think, Mr. Marshall, yesterday you had indicated -- and I certainly understand it to be the case -- that the system, the inprovince system was badly strained to import 100 megawatts south to north in order to meet inprovince loads in January during the system peak. Did I get that right?

MR. MARSHALL: That's correct. Actually I think on the -- well there were a number of peaks through a two week period in January. I think at one point through one peak we were actually able to bring back about 200 megawatts and a lot of that was interruptible but we were actually able to bring 200 megawatts at some point in time. And at other times 100 magawatts. So it was in that range.

Q.182 - Now I recall a newspaper article in late January that indicated that you had settled the contract for the import of the electricity at a fairly high price, at a price that would substantially exceed what you would get as revenue on it from the interruptible customers?

MR. MARSHALL: I will let Mr. Bishop answer that one.

Q.183 - Not a problem. I guess my -- and I understand, you know, this happens. You fix it and you carry on. But I guess that if these are the kinds of prices you are seeing in these situations how does more capacity help? If we are having to rely on south to north -- if we want to build an extra link for south to north capacity and we are buying it at prices that exceed the price that we sell at, I'm not sure that there is an awful lot of -- there is not an obvious benefit there to it?

MR. BISHOP: I first want to indicate that the -- always in our system are we making a decision of whether we run water which is a limited resource, and this isn't our by our decision, or we run combustion turbines which is a high price source, or we buy from the New England market. So those are all three decisions that you are trying to make on a day ahead or even within a day.

And the days that we bought that energy there was an indication that it was the most economic thing to do. As it turned out for four or five hours in that day we purchased energy that it turned out that the after the fact clearing market price was higher than what our combustion turbine cost was. All of which says that whether we buy or whether we actually run some of the higher priced generation to meet the peak, there will almost be times in what I will refer to as that needle peak in the year of those peak hours where New Brunswick Power will run generation whose incremental cost is higher than the average revenue that we receive from our customers.

And that's just to say that those peaking units are low capital costs so then the mortgage rates are down, and because you only operate them at low capacity factor, albeit you do operate for those hours at -- certainly not at a profit. Overall it is still the most economic way of meeting that load.

Q.184 - I understand that. I guess what I'm getting at is can you give us an indication as to -- I mean, you say you make the choice between combustion turbine and water or purchase --

MR. BISHOP: Yes.

Q.185 - -- but where in the equation is the decision to interrupt the interruptible power that is being sold at a deep discount?

MR. BISHOP: That again is if in fact there are not -- if there are not resources available, and we recognize that we had -- if in fact there is an expended period of time that we feel that it is uneconomic over an extended period to do that, then in fact -- and we cannot obtain resources, then in fact you interrupt the interruptible customers.

Q.186 - So the extra money that you end up having to pay -- if you choose not to interrupt and you pay extra to meet that peak, do you socialize the cost, the extra cost across all customers or you charge them back to the interruptible customers that you were kind enough not to interrupt?

MR. BISHOP: I should just go back. Our contracts with the interruptible customer says that when New Brunswick Power does not have enough resources to meet its load plus reserve, then in fact the interruptible customers can be interrupted.

So there actually is a contract limit at which we have to demonstrate that we have run out of reserve. Our decision on that particular day was to buy rather than generate, because we thought quite frankly it was the most economic decision. But the point of fact was we still had adequate capacity -- we turned off the combustion turbines -- to meet our inprovince loads. So quite frankly we would not have been in the situation where contractually were able to interrupt those loads.

Q.187 - So then we are in a situation where the interruptible rates -- and probably the Chairman will yank my chain if I get too far off topic here -- the interruptible rates which are designed not to collect revenue and cover the capital costs and the interest and those things which are discounted below the cost of the actual cost, the total marginal cost, long run marginal cost, those are to some extent being subsidized by the rest of the customers, this kind of operational procedure.

MR. BISHOP: Well --

Q.188 - Is there any plan afoot to review these contracts to make sure that they really represent an equitable distribution of the benefits?

MR. BISHOP: I want to just emphasize again however -- if I may just back up one step. Again the interruptible customers can be interrupted when New Brunswick Power does not have the capacity to meet those reserves -- or to meet that load. So there is really two options. You can either take them off the interruptible rate, forgetting about the contractual relationship, and build additional generation which costs capital dollars which are fixed year around. Or in fact you can actually avoid that and provide this interruptible energy which is a discounted rate. I mean, that's an economic decision that NB Power makes from time to time.

The very fact that you have to run some higher priced generation from time to time rather than cut those still means that it's in the economic best interest of all customers to have done that, because again it's avoidance of the capital that is necessary for the generation required in addition to meet that load.

So that hourly cost I agree gets subsidized, but overall the year round mortgage payment if you will that the customers will otherwise would have had to pay for that additional capacity to meet that load is avoided.

MR. MARSHALL: I want to take issue with the subsidization. I don't think it's subsidized. And I want to leave the impression on the Board that this industrial interruptible rates are subsidized by other customers because I don't think that's the case.

The point that you are at, Mr. Bishop said he makes a decision whether he is going to run combustion turbines, change the dispatch on the hydro or buy out of markets. The price normally to the interruptible customers when the system is operating it's the cost of the energy to supply the interruptible customers is passed on to those customers.

So basically if he is running combustion turbines they are paying combustion turbine prices for the energy. They are not paying an average price that when the combustion turbines are higher it's subsidized to them. They are paying the full cost of combustion turbines all the time. I want to make that clear. So the issue is if Mr. Bishop makes a decision that we are going to buy out of the market place rather than run the turbines because he thought that was going to be a lower price, but then after the fact he pays a little higher, he carries the risk of that. And as you go forward in the market place Genco will carry that level of risk on that slight adjustment in terms of where it is, but basically the price that is offered to the industrial customers on that day would have been a very high price. It wouldn't have been $40, it would have been more like 80 or 90 or $100 that they were paying for that energy.

So they are paying their share of what that energy costs. And it's not subsidized by other customers.

Q.189 - So the price is not tied to the average cost, it's tied to the marginal daily cost?

MR. BISHOP: That is exactly right. It is marginal hourly cost. It's just an average of the marginal hourly, yes.

Q.190 - Thank you. I guess this question is to Mr. Bishop. And I think it was in response to a question by I think Mr. Zed.

The issue arises -- I think you commented that even if we did open the line up to a competitive bidding process and you had a second bidder, it really wouldn't contribute an awful lot to opening the market for New Brunswick in terms of a competitive market.

Do I have that right?

MR. BISHOP: That is correct. That's my opinion.

Q.191 - If that is the case, and we have only -- I take also from this that you are concerned that Hydro Quebec might buy it. Given their resources and the nature of their system, they might be in a position to acquire it all.

Again how does the second tieline help? I mean, we are only talking 500 megawatts or so. Why wouldn't a bidder just buy that? And we would have two -- we would have again only two people controlling the lines and no contribution to market.

MR. MARSHALL: First of all we are talking about two different things here. The New Brunswick market is open for competition on April the 1st for any competitive suppliers to access load inside New Brunswick.

The reservations to go from New Brunswick into New England do not influence access to the New Brunswick market. The New Brunswick market is open for competition from anybody to compete into that market.

Q.192 - Could I just -- but I thought you indicated that one of the conditions for the West Coast Energy contract was that they have access to that line in order to be able to operate their plant and sell the energy into that market.

So I'm not sure how clear that is, that the market will be wide open, when the only instance we have so far is someone wanting access to those lines so they can export. Otherwise they might not have built the plant.

MR. MARSHALL: When it comes down to building a new power plant, having access to the export market can influence the decision on the economics of the power plant.

So the type of power plant that would be built to respond to Disco's RFP in the future or for a large industrial or municipal customer to choose to contract with can be influenced by access to the U.S. market.

Q.193 - And the costs?

MR. MARSHALL: And in terms of the costs. And I stated that earlier. So there is some influence there. But having the reservations held by one or two or three people today does not influence access or competition into the New Brunswick marketplace for all the load customers that are open to choose in the New Brunswick marketplae today.

Now the connection of the second tie is that the second tie provides value in a number of ways. The benefit to the marketplace in New Brunswick is the 400-megawatts firm south to north that will bring more competitors into the marketplace and allow customers in the marketplace for load supply in New Brunswick to have access to a number of different parties that they can choose to buy from.

That's the value of the second tie to improving the competitiveness of a market in New Brunswick.

Q.194 - Okay. I see. Last question I think -- oh, maybe not -- is again for Mr. Bishop or you, Mr. Marshall. You have made it clear that the uncertainty in the forecast for the export sales is borne by Genco as opposed to Disco, is that right?

MR. BISHOP: That is correct. Yes. That's the future uncertainty --

Q.195 - Right.

MR. BISHOP: -- yes, away from our plan.

Q.196 - Yes. How is the uncertainty in the domestic load forecast? Who bears responsibility for that under the vesting contract? If I understand your comments about the vesting contract earlier, that would be Disco?

MR. BISHOP: Well, it might be just a tad more complicated than that. Disco bears that risk as they bear risk for fuel changes for inprovince load.

But by virtue of the fact that their load -- that if Disco misses its load forecast and the load forecast is actually greater, recognize that that pulls resources from Genco that otherwise would be available for export.

So to that extent Genco will take that additional risk of not having that supply available.

MR. MARSHALL: But if the load forecast is lower, the actual load is lower than forecast, Disco take that risk in that they will have less revenue. But they will still have to pay the fixed costs in the vesting contract to Genco's fixed costs, even if the forecast is lower. That's their risk.

Q.197 - Based on your load factor?

MR. BISHOP: That's correct.

Q.198 - I understand.

MR. SOLLOWS: That is fine. Thank you very much. It has been very helpful.

BY MR. RICHARDSON:

Q.199 - I would like to focus just for a minute on the export markets for electricity. And I guess I have some concerns, as I have listened to you, as to the difficulties that you face in that export market.

It is not a sure thing. But what I'm getting is fragmented information rather than a concise report on that U.S. market in particular.

What ongoing procedures do you have at NB Power to assess that U.S. market, not only from a volume standpoint but from a price standpoint?

MR. BISHOP: Quite frankly your question is very timely. We have -- we have just hired a consultant to actually help us with development of an export strategy, looking at things like obviously price uncertainty, price risk and volume risk, as you point out.

But we use two mechanisms for price risk. We actually use broker information that's available. And quite frankly I would be the first to suggest that with markets becoming more illiquid than liquid than we have seen in the past, they probably are becoming a little less reliable.

So we are putting -- we are actually looking more closely at the gas market to assure that the numbers that we have for future export prices correlate well with natural gas prices.

We are confident, through many studies and our knowledge of the market that natural gas prices is really going to drive and will continue to drive the spot market prices in New England.

So that gives us at least a level of confidence that somebody out there is willing to put their dollars down on the futures market for natural gas.

And volumes of course are dependent on that price. Because the way that we project the actual volumes into the market is that we model our cost of producing that electricity, the surplus above New Brunswick load against the price out there, so that the volume actually comes out of that particular model.

So there is -- your observation is very correct, that it's the price market that is one of the most uncertain portions.

Now one of the ways -- there are are couple of mechanisms that New Brunswick has not used to date with the new locational marginal pricing. That pricing has given us added risk of trying to sell down into the higher-priced markets because of transmission losses and congestion.

There is a financial tool called Financial Transmission Right that actually is a hedge. It's a financial hedge for the congestion component. We are considering that. And that's part of the developing strategy here of how to use those kinds of hedges in order to be able to access the markets and actually lock in one month or two month's sales in that New England market. And the jury is still out quite frankly. I don't pretend for a moment to suggest that we have the mechanisms in place. But we surely are understanding the necessity of working on those. And we are doing that.

Q.200 - It would have been very helpful, certainly to me anyway, if I could have had a presentation from you regarding your focus on that market, concise and to the point, not a 10 to 12-page document, a very concise overview. Because I do have some concerns, as you indicated.

At what selling price into that U.S. market will you say look, it is no longer viable for NB Power, and we will just call off the whole show?

MR. BISHOP: The way that we have been selling into the market is that we bid into the market. There are two markets that are available. There is a day-ahead market that New Brunswick Power can bid quantities in. And we will typically bid 100 or 200-megawatt blocks.

So we will bid at or near the incremental production cost of the generation, acknowledging that there is transmission loss costs and other things, so that we can -- what our bid will amount to is a cost that will at least make us break -- or have us break even. There is probably a dollar or two of assurance money in there.

The market in New England then takes all of the bids, stacks the bids up in setting the day-ahead market, so that at 5:00 o'clock -- and they model a system, the way they do the day-ahead market. So they bring the generation in.

So that at 5:00 or 6:00 o'clock in the evening, New Brunswick Power actually knows if it has been a successful bid in any or all of the hours in that particular market. So that as long as we bid at prices that are above the incremental cost of the generation that we have, we are always assured that it is a positive gain.

There is hours that probably a dollar, $2, $3 that we actually work into that market. But again it is still positive revenue for the corporation.

The hazard of course in bidding even hours or days ahead is or course if in fact there is -- a generator gets interrupted, you would have to look at other sources, possibly higher-priced sources to serve that load. We have subsequently, by bidding into an hourly or day-ahead market, limit our risk to an hour or day ahead.

Q.201 - Do you have a level that you will not bid on if you feel that the market is indicating a downward trend?

MR. BISHOP: Certainly. If we see the markets are low we just simply do not do arrangements into the market for the following day or days, absolutely.

I mean, markets in the $40 or less numbers, we look at very discriminately whether or not we will even bid in there.

Actually there is no harm in bidding in as long as you bid above your cost. It just simply means that you don't get dispatched.

Q.202 - So you do have a number then that you say hey, this is our cost and that is it?

MR. BISHOP: Oh, yes. Every hour, every day for every megawatt we have a cost that says, that's it, yes.

Q.203 - You mentioned that in your business plan. It would have been helpful also if we could have been shared with this forecast that you have on the export markets, if that portion of your plan had been made available to us also, Mr. Bishop.

It is very difficult to deal with a whole lot of fragmentation, when you can get concise reports --

MR. BISHOP: I appreciate.

Q.204 - -- to view.

Now let's turn to -- something NB Power has indicated yesterday was the 1998 process for the transmission reservations. And it was indicated that you went through a very open and nondiscriminatory process.

Would you refresh me please as to how that process took place in 1998?

MR. BISHOP: I can make an attempt at that. I suspect that Panel C can probably -- with the Transmission group, can probably more accurately do that. I will attempt if you would like me to do that?

Q.205 - Please do.

MR. BISHOP: I was involved with the marketing group in '98. So I was on the bidding side of the equation. When the market opened or when the transmission was opened, New Brunswick Power and subsequently the Genco group had 470 megawatts of contracts for the sale of electricity on the New England tie.

So 470 megawatts of firm transmission reservations were in fact grandfathered to the New Brunswick Power customer service and marketing group at that point in time.

Subsequent to that NB Power actually -- or New Brunswick Generation actually recognized that because it had contracts in place with Hydro Quebec, there was an actual need to acquire additional generation or additional transmission capacity, firm transmission capacity.

So the marketing group placed a bid and asked for 200 megawatts of transmission capacity. The transmission administrator in the Transco group informed us that there was not that amount of capacity available, that there was only I think 169 megawatts, and that would be made available to us and the further capacity would be available or could be available when the existing transmission holder's contract was done.

There was -- I'm not aware that there were any other bids that came in for that 200 megawatts of transmission.

Now all of that information was in fact posted on the OASIS, the very fact that there was 200 megawatts out there and that it was open to bid.

MR. MARSHALL: Just on the process, Mr. Bishop talked about how he responded to it. But the process -- when the tariff went into service on January 1st, all the transmission was available on a nonfirm basis from January 1st for 60 days.

So there was a 60-day "Open season". And the 169 megawatts available initially that was there in that "Open Season" was open for anybody to bid. Now the way the "Open Season" works is anybody could bid at anytime in those 60 days.

And it's deemed that they are all bid at the same point in time. And at the end of the 60 days you then looked at the bids and which one would return the greatest net present value to the transmission company was the winning bid.

So it was a question of volume and duration that would turn revenue at the tariff to the transmission company. So that was the means of how they would break ties in terms of the bids.

And Mr. Scott, Brian Scott who is on the next panel was actually the transmission administrator and in charge of running the OASIS. He set the OASIS up at the control centre and was involved in putting all that in place.

The bids for transmission had to go through the OASIS system. So that the Generation marketing group was completely separate from the Transmission group, and were treated in the same manner as anybody else. They had to communicate through the OASIS to make their reservations or to make their bids, just the same as anybody else did.

So these two business units were in one company. But they were at arms length from each other, operating independently of each other.

Q.206 - You don't consider it was a conflict of interest?

MR. MARSHALL: No. The issue at the time is that the process -- and again Mr. Scott can attest to it. The process at the time was exactly the same as the process in FERC Order 888 that went through all the tariffs in the U.S., about the 60-day "Open Season", how parties had to bid through.

And was consistent with FERC Order 888 where in the U.S. business units of the same company would have to do the same thing to acquire the transmission through this Open Access same time information system.

And the confidentiality of information held by the Transmission group, the Generation people did not have any inside information about bidding or anything. They had to operate the same as anybody else.

Q.207 - I find it -- and I hear what you are saying, Mr. Marshall. I find it somewhat difficult to encourage other people to bid when people are bidding to your own company.

And while you can talk about Chinese walls and all these wonderful things, it is not conducive -- it is not a conducive environment to get everybody on side.

MR. RICHARDSON: Anyway, thank you very, very much.

BY MR. BREMNER:

Q.208 - Mr. Bishop, can I ask you a question? I thought I heard you say a few minutes ago that you have no signed contract with the Orimulsion. Did I hear that correct?

MR. BISHOP: That's correct. There is a memorandum of understanding that is signed that paves the way towards a final contract that sets out precise volumes.

There is actually an optionality still available to NB Power on volumes that comes from the memorandum of understanding, as we were continuing to look at modeling it to determine what the fuel amounts were for Coleson Cove to meet inprovince load and export values.

So there is a memorandum of understanding which is a legally binding agreement. That is the opinion of counsel we have sought. And we believe that it is also the opinion of PDVSA's counsel from recent conversations we have had. But there is not a contract which finalizes the precise details of the arrangement, the details being quantities.

Q.209 - Is that not a dangerous pattern to set up, with the dollars that are being involved with their restoration and their modellings going on in Coleson Cove? Will that not affect all of NB Power's activities? With the volatility of where we are getting it from is what you are talking about.

MR. BISHOP: I understand. It is the same issue that comes up I think each time that we deal with Orimulsion and Venezuela. And I think the answer always has to be the same, that yes, there is an area of concern. There is a risk, there is no question.

The continued expenditure in Coleson Cove occurs certainly with a reasonable degree of confidence that we will receive the fuel. And we will receive it at some price that isn't terribly different, if different at all, from what is set out in the memorandum of understanding. I don't know how much more assurance I can have than that.

Certainly our conversations with the officials, even the latest delegation, gives us confidence that we are going to have the fuel available.

Q.210 - And at the same price as Dalhousie is getting it?

MR. BISHOP: No. Because that's not the contract price for this particular plant. But at the price that we believed that it was available from when the MOU was signed, yes.

MR. BREMNER: Thank you very much. Thank you, Mr. Chairman.

BY THE CHAIRMAN:

Q.211 - Just a couple of quick ones. Mr. MacNutt referred you to exhibit A-2 which is your testimony, Mr. Bishop, at page 5. And he read from line 11 through to 15 I believe.

What use is made in the rest of your calculations

of that average annual gross margin of 68.3 million?

MR. BISHOP: I'm sorry. What use is made?

Q.212 - Yes, what use of it? Is it used in your calculations further on or not? In other words does that figure underpin any of the exhibits that have been filed in this hearing?

MR. BISHOP: Actually the figure is derived from the numbers that are set out in other tables in the evidence. It is quite frankly an average of those numbers that you see above here.

Q.213 - Having become steeped in the tradition of automobile insurance rates and virtually living with actuaries all fall, if an actuary came up with this kind of thing, aberration or whatever in reference to bad results or very good results in the year, they would not discount that year totally. They might vary its weights, et cetera, et cetera. But it did happen. And therefore it could happen again?

MR. BISHOP: I acknowledge that is correct, yes.

Q.214 - Okay. Mr. Marshall, again I will go back to the vesting contract. Because the more I learn, the greater the questions are that arise.

My understanding of the vesting contract now is if Disco were -- and this is not relevant to this hearing really. But I'm curious. If Disco were to decide that it wanted to go to time of use rates, they really couldn't do so unless Genco were prepared to have in the vesting contract a time of use price for Disco, is that not correct?

MR. MARSHALL: The vesting contract today will not have time of use pricing information in it, other than that the fuel costs, the actual fuel costs of supplying Disco, they will do a budget.

Each year they will do a forecast run of what the costs are. And then from that Disco can hedge against the forward prices of fuel. And they will carry what that cost is on fuel.

So on the energy costs, Disco know what the energy costs are. So they are going to pay the high energy costs of gas in the wintertime. And they are going to pay the low costs of hydro and nuclear or whatever in the springtime, whenever that -- so that price Disco is going to pay. And they are going to pay based on that forecast.

Disco also has going forward, they know that they are short of capacity in 2007. They have to go to an RFP to get 120 megawatts currently that they are forecast to be short. So there is a clear incentive that Disco is going to have to go to the marketplace to contract for additional capacity in the marketplace.

So to the extent that they can avoid and reduce that capacity by time of use rates or alternating that and optimize the fuel costs out of Genco's resources on a budget basis going forward, there is some incentive and opportunity for Disco to utilize that to do from time of use prices.

Q.215 - I was simplistic again. And to me, unless your supplier were prepared to pass on a time of use discount to you, why would you have your customers charged less? For instance we all know that one of the mechanisms used to shave the peak is time of use pricing.

And presumably with Lepreau operating properly, et cetera, why it is a less expensive kilowatt-hour that is produced at 11:00 o'clock at night than the one which is produced at 6:00 in the evening or 8:00 in the morning. So that you try and shift the load from my dishwasher and clothes, et cetera. And you move it off that peak.

But what I'm trying to grapple with here is how, if Disco decided to do that and said look, we can shave this peak of 120 megawatts that you just mentioned that we might need, and put off the construction of that generation for another two, three or four years, if we educate New Brunswickers to run their dishwashers after 11:00 at night. They really don't have -- they don't have the same tools as if you were an integrated utility.

MR. MARSHALL: Actually I think the vesting contract prices the existing resources with a capacity piece and an energy piece that's a pass on through in terms of the actual costs of energy.

And the extra value really comes out of the export market. And the forward value of the export market is being fixed in the contract.

Now if Disco have a program that they can do for -- and I know right now they are doing studies on fuel-switching and different options as to what they may possibly look at.

Part of the value out of running a fuel-switching program to Disco is that they avoid this capacity requirement into the future. So they gain that capacity value they wouldn't have to buy out of the marketplace.

But they also -- they also may shift energy use. And so they may reduce just their fuel costs on energy. But at the same time they also free up energy that Genco would have to go to the marketplace. And because their share of the export market is fixed in the contract, Genco will be making extra money out of what they may do.

So it opens up the need, as you go forward, that Disco and Genco may in actual fact have to negotiate a little bit to say well, we are going to run this, you are going to get some savings, we want some of those savings passed back through to us. And that's an open marketplace that allows that to happen on the margin as we go forward.

CHAIRMAN: I will reread the transcript and digest that completely.

MR. BISHOP: Mr. Chairman, if I may -- if I might be helpful. In looking at time of use rates, with Orimulsion at Coleson Cove and Dalhousie, coal at Belledune and then nuclear, quite frankly at the load level above the hydro plus nuclear level, the load curve is flat. The pricing curve is flat.

And because NB Power tends to be shaved with the hydraulic energy that's available to it. So there is very little differential in Genco's costs looking ahead with the generation mix that we now have.

Quite different from today where there is a large step increase from the Orimulsion price to the next dispatched oil price. So we really don't see an advantageous or anything advantageous as far as existing generation is concerned.

Now if in fact there is an incentive that Disco has to reduce its peak, so that it doesn't have to go out to buy new generation sources as early as it otherwise would, then that is an undertaking that Disco should have on its own behalf.

Q.216 - All right. I'm aware of NB Power's position in reference to shaving the peak. However it is a changing universe. And I was just curious as to what that vesting contract would do to that ability and the incentive to do it, that is all, Mr. Marshall.

MR. MARSHALL: Yes. Well, the vesting contract is going to focus Disco on managing the load against the resources that it has for inprovince requirements. And it's going to free up what the surplus energy is for Genco to go and do what they can do.

As an integrated utility, all of those were combined together for -- there was risk in the export market. But the risk also came back to what effect it had on inprovince rates. Because it was all combined together in an integrated operation.

The policy of the government is very clear in the White Paper to set up a market to allow an opportunity in the market for wholesale and industrial customers.

And the restructuring in the Electricity Act sets these up as separate corporations with separate rates of return and separate capital structures in order to get the right tests in the financing markets. So it's setting them up to operate in an independent mode in the marketplace. That's the policy of the government.

If the absolute opportunity by an integrated utility to maybe optimize all of these values is lost, there still is the opportunity for Disco to negotiate. And if they can create value in the marketplace by doing things with their load, then they should be able to go and find some counter parties to contract with in the marketplace to get their share of that value. That's the nature of the world we are moving to.

Q.217 - Does not the Electricity Act also call for time of use rates?

MR. MARSHALL: I think the White Paper directed for time of use rates. I'm not sure that the Electricity Act --

Q.218 - I'm not sure either anymore frankly. One last --

MR. MARSHALL: Just one comment. Actually we do have -- just so we don't ignore it -- the interruptible energy that Mr. Sollows asked about is essentially a time of use pricing.

There is a different price nighttime and daytime. There is a different price in the transmission tariff that was passed by the Board on the demand billing from night to day as well.

So there are pricing incentives in the tariff and in the interruptible rates that reflect time of use value. And through the vesting contract, that particular block of interruptible energy is going to continue in that similar manner.

So that type of pricing arrangement will continue. Disco will have to look at whether they want to -- how they want to adjust that going forward or whether they want to introduce additional opportunities for time of use rates. That's the decision that they are looking at.

Q.219 - One last question. And it is probably too general. But how -- if for whatever reason you cease to sell into the export market, how would that change the way you would approach planning your system?

MR. BISHOP: I think certainly that's a question that I think Genco has to look at most seriously now. Maybe it is in fact Disco through the vesting contract. If it is the result of transmission -- a loss of transmission reservations, as Mr. Marshall has pointed out, there is a mechanism to pass that risk through or loss of benefits through to the Disco company.

I think it's important to note that the amount of resources that generation has to supply the load now will in fact, given our present forecast, be -- have no surpluses to meet inprovince load or it will not be able to meet inprovince beyond 2007 and 2008.

So that the existing resources will remain unchanged. There will need to be capacity there. How we operate them may be a little different, as Board staff has been after. How that translates into the future of anybody having reservations -- will generation in New Brunswick come here only to meet peak system loads?

So in other words will it be low capital, generally high cost types of generation? Or will it in fact be more base or intermediate type generation to meet that load, recognizing the ability to be able to export on the transmission system? There is many, many factors that I think enter into that whole equation.

From Genco's point of view of further planning its system, it's going to make that on a sheer business decision, not necessarily on a business of being obligated to serve New Brunswick load. The resources it has is now the only obligation that it does have to meet New Brunswick load. It has no obligation.

In fact even removed from the legislation was the notion in the White Paper that New Brunswick Power Generation would be obligated to bid. So it's a very different world we are approaching.

Q.220 - That did not -- that obligation to bid did not reach the legislation.

MR. BISHOP: No. You are quite correct.

CHAIRMAN: Thank you, gentlemen. Mr. Hashey or Mr. Morrison, any redirect?

MR. ZED: Sir, before we go to redirect I wonder if I might ask, with the Board's indulgence, to clarify a few matters?

That was what I did request at the outset of the hearing, that I didn't mind going first, but I would be afforded an opportunity. And you did afford us an opportunity.

CHAIRMAN: Go ahead for the clarification questions.

RECROSS EXAMINATION BY MR. ZED:

Q.221 - One of the issues I'm -- maybe I just didn't hear the answer. But is this vesting contract signed? Is it completed?

MR. BISHOP: No. It is not signed.

Q.222 - And who has to sign it in order for it to be completed? Once the terms have been agreed to, who will sign off on it before it is in fact a contract?

MR. BISHOP: I believe it's the Minister of Energy.

Q.223 - And is there a summary of any of the terms that have been agreed to that is available?

MR. BISHOP: Quite frankly, that's still a confidential document, confidential to the Ministry.

Q.224 - So any of the testimony you have given today about the contents of that, while it may be truthful testimony, none of that has been agreed to in final form?

MR. BISHOP: None has been signed. Although it is coming down to close to the end of March, we don't anticipate significant differences in terms.

Q.225 - Well, that well may be your opinion. The Minister may have a different one, sir, I suggest.

MR. BISHOP: I agree.

Q.226 - Now we talked about a rider. The rider to me, as a lawyer, that would indicate that a contract had been signed, and this was an addendum to that contract.

So in what context are you using the term "rider"?

CHAIRMAN: I'm sorry, Mr. Zed. In what context are you asking that question? Rider to what?

MR. ZED: Well, that is what I'm asking, sir. Mr. Marshall used the term, there was a rider. And I take it he is talking just about a clause in the contract or --

MR. MARSHALL: Essentially, yes. That is my ignorance of the law there.

Q.227 - And what exactly is this rider directed to dealing with? That is what I misunderstood.

MR. MARSHALL: There is a clause in the contract that if -- inherent in the forecast that the pricing the contract is based on the full reservations of the MEPCO tie held by Genco and the export value that they get out of that. If they lose those reservations, there is a clause in the contract that if the reservations are lost subsequent to signing of the contract and going forward as a result of this hearing, there will be an adjustment made to the price, and that the lost opportunity will be passed on and the price to Disco will be increased to offset that opportunity.

Q.228 - Is the wording of that available, that particular clause, is that available for review now?

MR. BISHOP: No, again that is a confidential clause.

Q.229 - It is the basis of the current discussion that you would hold at the end of this hearing all of the reservation capacity that you currently hold?

MR. BISHOP: I'm not sure I understand the question.

Q.230 - Well presumably you have dealt with the issue of exports. What number is now plugged into the contract?

MR. BISHOP: Oh, for reservations?

Q.231 - Yes.

MR. BISHOP: For firm transmission reservations are 600 -- 670 megawatts.

Q.232 - So you have negotiated this contract in the face of this hearing based on the Board's earlier decision that there would be a free and open option. You have notwithstanding that gone forward and negotiated in your words a contract assuming that the Board's decision would be overturned?

MR. BISHOP: No. I think we have just simply put a provision in the contract that accounts for regulatory uncertainty or whatever other types of events other than technical events that may occur.

Q.233 - Who made the decision with respect to the price adjustment mechanism and who would bear the cost of that difference?

MR. BISHOP: Again that's a confidential issue. It's a -- I would point out a more accurate response certainly is that Disco would bear the cost.

MR. MARSHALL: Again all of these contracts are being negotiated and all the terms and conditions relating to the relationships between Disco and Genco and Disco and not just Transco but the system operator who was to be the operator of the system, administer the tariff. All of the agreements are to be through the system operator. That entity isn't set up yet. So there are a number of these contracts that are all being written and done and lined up along with the detail market roles which have yet to be published. And so all of this work is ongoing. It's all as advice to the Minister of Energy relative to the implementation of the Electricity Act and is all subject to confidentiality until the Minister of Energy or Order-in-Council from cabinet pass and set up the system operator and the things are in place, we are here telling you what the information is relative to what we think this hearing is that -- what that information is. But your point is well taken that until the Minister finally approves and it's a done deal, this is where it is. And the detail clauses we are not at liberty to release until the Minister says so.

Q.234 - Sir, you seem to have had -- at least allow that you have had discussions with the Minister involving a change in the numbers should this Board make a decision upholding their original agreement. What I am wondering is have there been any discussions with the Minister that would really involve the Minister suggesting they would take action to overturn the effect of the Board's order if the Board upholds its original decision? What I'm asking, sir, is are we wasting our time?

MR. MARSHALL: I can't speculate what exactly is in the Minister's mind. We have had discussions with people in the Department of Energy. They are well aware of all of the contracts and all of the negotiations and all of the work going forward to set up the market place. As to whether or not the government would take action to overturn it, I have no knowledge of their specific position on that.

Q.235 - But it has been discussed?

MR. MARSHALL: I think it has been discussed in the extent that are there -- what are the options or possibilities to go forward. I believe it was discussed last summer to that point. Now where the government sits on that at this point in time I don't know.

Q.236 - Thank you, sir. Just a couple of minor questions on clarification. Now I understood the issue of competition is good, everybody sort of bought into on the NB Power side, but I understood Mr. Marshall to make a distinction and, Mr. Marshall, I understood your testimony to be it doesn't matter -- the MEPCO tie really doesn't matter, the capacity whether it's available or not available to third parties for purposes of people shipping into the province. Is that what you said?

MR. MARSHALL: That's correct.

Q.237 - But you would agree, sir, that it is very material for generation which wishes to ship out of the province?

MR. MARSHALL: Yes.

Q.238 - And contrary to Mr. Bishop's testimony I think you would agree that if that capacity were held by more than one party then a merchant generator might be more interested in locating here than if it were held by one party alone in terms of it would be -- well Mr. Bishop is shaking his head. But let me put the question another way. If you were buying capacity in a secondary market and there was one party from whom you had to purchase that secondary capacity, wouldn't that not be a very good -- would that not be a very good situation? Wouldn't you have a better situation if for example there were three or four options?

MR. MARSHALL: You are now mixing apples and oranges. A secondary market and new generation are not the same thing.

Q.239 - What I'm talking about --

CHAIRMAN: Mr. Zed, I think we are frankly getting close to argument here. So I think that should be enough, sir. Mr. Hashey?

MR. HASHEY: No, I don't have any further questions, Mr. Chairman.

CHAIRMAN: All right. We will adjourn until quarter to 2:00 then. And this Panel will therefore be excused. And thank you, gentlemen.

(Recess - 12:30 p.m. - 1:45 p.m.)

CHAIRMAN: Any preliminary matters before we start with this Panel?

MR. MORRISON: Yes, Mr. Chairman.

CHAIRMAN: Go ahead, Mr. Morrison.

MR. MORRISON: It's response to -- it's an undertaking that was given in response to a question by Dr. Sollows and the response to Dr. Sollows load forecast projection question concerning the difference between history and forecast. The history is sales at the meter. That does not include system losses while the forecast includes system losses. The apparent difference between the two is system losses which were about a thousand gigawatt hours per year.

<u>MESSRS. SCOTT and HOECKER sworn</u>:

MR. HASHEY: Thank you, Mr. Chairman. I would ask the two witnesses if they -- they have been sworn -- whether they accept the evidence that they have filed in this matter as true and as their evidence?

MR. HOECKER: I do.

MR. SCOTT: I do.

MR. HASHEY: Thank you, gentlemen. Then with the indulgence of the Chairman and the Board I would ask that Mr. Hoecker come forward and give a short presentation. I was going to say this -- I think I just overheard you thinking the same thing -- maybe this presentation should be marked as an exhibit now. I believe it has been distributed to everyone.

CHAIRMAN: My records indicate that this will be <u>A-9</u>. Go ahead, sir.

MR. HOECKER: Mr. Chairman, Commissioners, Madam Secretary, it's a pleasure to be here today. My name is Jim Hoecker. With me on the panel is Brian Scott who is the Director of NB Power Transmission.

I am a former chair of the FERC in Washington and now practice law in that city. And I am very pleased to be here today to present to you. Having been on both sides of this bench I can assure you, you are having a lot more fun than I am.

The presentation I am making today reflects in many respects my experience as a regulator and my understanding of what the FERC has done in this area. Now I recognize full well that this is an independent panel, that this is not the U.S., and that frankly you are not obliged to do what FERC has done and I understand that fully.

Having said that, however, I will say that the commission struggled with many of the issues you are struggling with over the past several years, including this whole issue of getting to an open access market and how you preserve or don't preserve contracts that existed before that kind of policy initiative started.

And I'm going to talk today about my testimony and what I think it means from a FERC perspective to have abrogated the NB Power generation capacity reservations under 2.1.

Just in summary I would like to go over what the focus is. The company has asked the Board to preserve some agreements that were entered into in the 1990's because the transmission reservations at issue are legitimate agreements, agreements that were entered into that the company regarded as binding, that no one in my view has shown to be unlawful or to be otherwise improper.

These agreements reflect the company's strategic planning. They are an allocation of business risk, decisions to do certain things and not to do other things. The company would like those preserved.

The company is here asking for regulatory certainty. That is, not to set a precedent that would result in anyone, especially NB Power, not being sure that it can rely on agreements it has entered into to be undone through the regulatory process.

The company is here to suggest, I suppose that's the best word, that you follow FERC precedent in this area since the tariff that you have approved for the Crown corporation is a FERC complaint open access transmission tariff.

The company points to precedent elsewhere in Canada that suggests that this is a kind of majority approach I am suggesting and frankly the company is also asking for you to recognize that it was voluntarily pushing the agenda toward competitive markets before this Board did, even before the government was.

In addition, I would suggest based on my experience with the commission that this panel, if it is labouring under the misapprehension that it has a dilemma on its hands that it has to pick between continuity of contracts or competitive markets, that that's really a false choice. That you can have your cake and eat it too, and that's what the -- that's what the FERC did and it's working out quite well under Order 888, our open access initiative.

To be fair to NB Power is something I have already stated. I think that as a former regulator having a pro-competitive agenda and wanting to -- wanting to move the industry toward open and competitive markets, I would have been absolutely delighted to have a utility like NB Power take the bit in its mouth as it has without our direction.

The principal issues that we are dealing with -- I would suggest to you again from a FERC perspective the principal issues are really two. Were there business agreements entered into in 1998 between these two business units of the corporation? Were they binding and should they be preserved? That's one question, pure and simple.

And a second question is, what factors argue against abrogation of these obligations?

You will be considering factors that argue for and against. Frankly I think that it's very clear that the factors argue strongly in favour of preserving these obligations.

Now there are other issues as well and they are issues that we saw a little bit this morning. They are issues related to some of the equities involved and some of the things that happened at the beginning of these agreements. I haven't listed those as principal issues because frankly I'm not sure they, at least in my view as a formal regulator, that they matter a great deal. One is did the parties have a fair opportunity to bid in this open season in 1998 and based on what happened then, whatever it happened to be -- and Mr. Scott's testimony speaks eloquently to what the company did -- based on what happened then is there reason now to go back and invalidate something that the company has relied on that it has been bound by, and that hasn't been shown to be in any way inappropriate? Secondly, who will bear the consequences if in fact 2.1 is sustained by this honourable Board?

I think that those are important questions and they add I'm sure weight to your considerations. But I think you really only have to decide two things and this is, I repeat, from a FERC perspective. At the time you approved an open access contract -- an open access tariff, excuse me -- were there agreements in place that were real agreements, that deserve to be preserved, and is there any reason to abrogate those agreements? And I will try to refocus on those particular points.

The Order-in-Council talks a lot about the public interest as I understand it. I know as a former regulator there is no pat definition of what that means. But I do think that looking at all the factors that constitute your responsibilities, the responsibilities of a Crown corporation, I think it's important to think about what the possible various definitions of the public interest might be and whether or not 2.1 as currently adopted meets that definition.

I suggest strongly that the arguments -- public interest arguments weigh strongly in favour of changing your minds.

And I will simply summarize it this way. If the public interest is wrapped up in recognizing and ratifying legitimate arms-length business agreements in ensuring there is stability in the business community, that people who make business decisions and who allocate resources and risks according to their best judgment at the time, if the public interest is to ensure that those agreements are honoured going forward, then I think the public interest argues for grandfathering these agreements.

If the public interest argues or supports or is involved in predictability in regulatory decisions -- and here I ask you to look into the future as well as into the past -- then regulatory certainty is important. Contracts and honouring contracts is important. And I think the argument for the public interest here is to preserve these agreements. One thing -- and I can tell you from my own personal experience having watched the electric utility industry in the United States go through some very tough times over the last two or three years.

So there is an enormous amount of stress on this business. It's economically vulnerable. Operationally, if you think back to the black-out that we experienced back in August, there are a lot of operational difficulties plus we are going through this enormous transition from one business model to another.

I would say that this is an industry that deserves the benefit of the doubt at this particular point. Certainly it deserves for regulators to utilize the most widely accepted practices. And I think if that's the public interest then certainly preserving the contracts is the right thing to do.

If the protect interest is protecting parties from undue burdens as a result of regulatory actions, particularly ratepayers which I know is your main concern and was mine certainly when I was at FERC, then I would say that the public interest argues for preserving these contracts.

And although I am being repetitive here I guess, the public interest argues for encouraging companies that you regulate to do the right thing. And the right thing in this instance is to push for competition.

I know you all recognize that NB Power has been the local champion of competition, well before the government decided that this was the right objective for society as a whole.

I said I wouldn't tell you what to do, but let me suggest from a FERC perspective should you think that this is the appropriate model to follow, that it is my view that the FERC would in fact support, endorse, enforce these contracts, would grandfather them as we say, so that existing transmission reservations are preserved going forward.

The Order 888 is absolutely rife with the concern that the transition to competition not result in a lot of economic dislocation. That parties who came before us argued very strongly, please as you push for competition and a new business model don't do something that is going to result in me being in a more high risk position, be more vulnerable to not having sufficient capacity or not having sufficient energy to run my business or to run my utility. And the commission was very sensitive to this. We frankly think that -- or I think that the Order and the re-hearing Order, Order 2000 which came in 1999 promoting regional transmission organizations, all the way up until the current commission at FERC consistently advocates supporting these existing contracts.

Now as I will point out there are some limited exceptions that I don't think apply in this case. There is to be perfectly blunt about it, no requirement in Order 888 that only transmission agreements that are supported by third party energy contracts are eligible to be grandfathered or preserved.

I think that, you know, you can find a lot of this and that and these documents are 700, 800 pages long, give the FERC credit for being verbose, but -- so you can quote a lot of things out of context. But there is really nothing in there that says -- that suggests on point that this is a requirement if you are going to preserve a contract. Because there are a lot of transmission only agreements, agreements for only transmission, not bundled requirements service necessarily that were grandfathered as a result of Order 888.

The commission decided that there were however some instances where case by case modification of agreements -- of existing agreements, that is, agreements that existed before the open access was adopted and implemented, that should be eligible to be modified somehow or another, or even completely redone, if they are shown to be unjust and unreasonable, which is the statutory -- the lowest statutory standard, that is, that they don't conform with cost based rates, their terms are not -- are discriminatory or they have undue preferences or the higher standard of contrary to public interest, the commission said, yes, you can modify those contracts. And we can talk more about that if you wish.

But the fact is the commission was talking about modifying them, not eliminating the existing capacity reservations in almost all those instances.

The commission went on to say that they are -- when it was implementing RTO's, regional transmission organizations, that you have got to be able to modify contracts between -- bilateral contracts between independent parties to make sure that they conform with the requirements that are set up by the RTO's. These could be requirements for scheduling and dispatching, so forth, and -- but again existing capacity reservations were not affected, just some of the terms of the contracts, they were modified.

The same was true for economy -- what they called non-economy co-ordination agreements. And they are -- the price term was the subject of the likely modification, but we are not dealing with any of those issues here I don't think.

I would say that the FERC has never in grandfathering agreements which it frankly did generically in Order number 888 and it's progeny, it has never lurked behind an agreement to see how it was entered into at a time when that agreement either wasn't regulated by the FERC or before open access.

We had lots of agreements, that was one reason, but it was also the fact that we were really honouring expectations of parties that had entered into transactions and that were relying on transmission capacity to get their energy.

And so the commission going forward created a very transparent market, a very competitive market, and so forth, but it kind of drew the line at undoing what was already there.

In the absence of other regulatory guidance, and I know that at the time of this 1998 "Open Season", which I urge you not to overly focus on really, you didn't have jurisdiction over the tariff. I don't consider that fatal. Frankly I look at the conduct of the company.

As I understand it, and hopefully as you also understand it, NB Power did a rational prudent thing that I think was perfectly consistent with FERC practice. It is very true that the applicant, the company was not FERC compliant in 1998.

It didn't adopt a code of conduct until November of 1999. It just got its Open Access Tariff approved by you this year -- last year. There were a number of things that happened. And the process was somewhat extended.

But they were under no obligation to do anything except hang onto that capacity themselves in 1998. What did they do? They had an "Open Season". And they invited parties to compete with them. I think that is something that FERC would have found very good.

So in conclusion let me just say that you are doing what I think is the lord's work in promoting competitive markets. You are overseeing a transition from one business model to another in an industry that is absolutely vital to the province.

And I would just urge you not to throw out the transactional baby with the bath water in this instance. Because you really don't have to do that. These agreements -- these agreements are important to the company. They are important to the Province.

But I'm not here to testify about that. I'm here to tell you that FERC would have looked at them and said well, these are agreements that have been relied on. These represent something that is in existence. And we would grandfather these transmission reservations into the future.

And we would be particularly delighted as the FERC to make sure that companies like NB Power, who support the agenda of the FERC, or in this case the Province, and are moving towards competition, are moving towards unbundling, are moving towards a more dynamic marketplace. We would want to reward them, not penalize them.

I think that the company, that the Crown Corporation, if it is eligible, these two business units, to contract with each other for capacity this year, as it seems everyone agrees, then I see no reason why they weren't eligible to do the same thing in 1998. Thank you.

MR. HASHEY: Mr. Chairman, I would have five or six questions arising from the evidence of Emera that I would like to pose to this witness if I might.

I will make reference to the evidence when I ask these questions. And in a number of cases I can point out the exact page and IR et cetera and give people time to look at that.

CHAIRMAN: Yes. Go ahead, Mr. Hashey.

MR. HASHEY: Thank you, Mr. Chairman.

<u>DIRECT EXAMINATION BY MR. HASHEY</u>:

Q.1 - The first question, Mr. Hoecker, you have read the full Emera evidence I assume and the other evidence in this matter of Mr. Scott as well on the process conducted in the 1998 Market Opening Transmission.

In your review of Emera's evidence could you locate anyplace where Emera

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son" process was unfair or not compliant with FERC rules?

MR. HOECKER: I don't recall seeing any arguments that were made in this record so far that the potential bidders were treated unfairly.

I saw no arguments that the notice period was too short, that the period for bidding for the capacity was not long enough, that information was not posted on OASIS that should have been posted there for people to be able to form appropriate kinds of -- make decisions about whether they wanted to bid.

I have read Mr. Scott's evidence. And it seems to me that even though NB Power was not fully regulated, it had not adopted a code of conduct, I don't find anything in this record that suggests to me that the process itself was faulty. As a matter of fact it seems to me to be entirely FERC compliant or at least largely FERC compliant.

I -- to answer your question therefore, Mr. Hashey, I would say that nothing has been presented that casts a doubt about this in my mind.

Q.2 - Thank you, sir. Second question --

MR. ZED: Mr. Chairman, might I just -- the question was asked. And there is an issue about whether this line of examination is proper.

Now that very question that Mr. Hashey just took Mr. Hoecker through was really a restatement of his own evidence. And he says in his evidence that the process was fair, okay. So now he is saying again the process is fair.

And I'm just wondering if we are going to, by these questions, in effect have an examination in chief of his own witness, and just give him -- I allowed lots of latitude.

Mr. Hoecker went way outside the parameters of the presentation. He editorialized. He gave his opinion. And I sat here silently. And I guess -- I'm wondering if we have seven or eight questions, are we just going to get another rehash.

So perhaps if Mr. Hashey -- we asked him to provide us in advance, if that were possible, with a list of the questions so we wouldn't get into this kind of issue before the Board. And I'm just wondering now how we can deal with that in an expeditious manner.

MR. HASHEY: I completely disagree. This has been one continual hassle with the Emera people over presentation exactly. We have always gone on an openness basis.

All I'm trying to do is to ask four, five, six questions, probably five, that directs and gets an answer related to specific evidence that has been presented subsequent.

And in two occasions I told my friend this morning that I would be referencing Mr. Trabandt's page 12, IR-3 and IR-4. So he is not being completely fair with me nor the Board in that regard.

I didn't have exact questions written out. I wanted to hear what was said. As a result of what was said here, I have struck one of my questions.

But I merely want to get a response on the record so that I -- it can't be said that I accepted the evidence of Mr. Trabandt or if I accepted Emera's evidence in a couple of instances. I want it very clear that we don't accept that. And I would like to get that on the record in that way.

MR. ZED: Mr. Chairman, with respect to that issue of Emera's evidence, the Emera panel will be on. He can cross examine them and ask them where it is that they make those allegations.

CHAIRMAN: Mr. Zed, Mr. Hashey just indicated he has got four, maybe five more questions. The Board can put up with a certain amount of repetition.

MR. ZED: Thank you, sir.

CHAIRMAN: I think we will just let him go. Thank you. Go ahead, Mr. Hashey.

MR. HASHEY: Thank you, Mr. Chairman.

Q.3 - I have referenced you to the evidence of expert Mr. Trabandt. Trabandt, I'm sorry. If I have pronounced his name wrong, that is my fault.

Page 12 at lines 20 to 23 where it is suggested by this witness --

CHAIRMAN: Hold on, Mr. Hashey.

MR. HASHEY: I'm sorry.

CHAIRMAN: We have to keep up with you. That is in --

MR. HASHEY: EEI-1. Page 12.

CHAIRMAN: Now we are on the right page, Mr. Hashey. Go ahead.

MR. HASHEY: Thank you, Mr. Chairman.

Q.4 - This evidence indicates -- and I think there is a quote there -- there is a doubt as to whether Genco's transmission capacity reservation, or rights I think as Mr. Trabandt puts it, constitute a real contract or a business practice.

As a regulator would you have had those doubts, you as the former chair of FERC, speaking from a FERC perspective?

MR. HOECKER: Let me answer that question this way,

Mr. Hashey. I think that there is a doubt about whether a company can sue itself to enforce a contract. I don't think there is anything surprising about that.

But I think when you are in an environment such as this where regulators have different standards, I think there is something I would suggest very strongly about the differences.

First of all, I believe that if I were operating under FERC policies and practices, that these would be regarded as binding agreements. And there are several reasons for that.

First of all, as this industry, and the natural gas industry for that matter, change and evolve, the idea that business units do business with one another and supply each other with services is certainly not uncommon.

Second of all, the Commission as far back as 1987, in anticipation of potential difficulties that could arise in this area, promulgated codes of conduct, standards of conduct that say expressly, originally in part 37 of the Commission's rules, then again in Order 889 which we adopted with the Open Access Tariff in 1996, and again just recently in something called Order 2004 where it combined the gas and electric codes of conduct, that transmission employees, employees of a transmission division, are expected to be separate and to operate at arms length from employees of other parts of the company, particularly those who market or who sell energy.

And the Commission in doing that was enforcing a very strict division among these business units, among these business lines if you will, to ensure that there was no discrimination and so forth.

I heard testimony this morning and Mr. Scott's written testimony that that is exactly what NB Power practiced even before it had its code of conduct in 1999 which codified its experience.

Furthermore nobody that I'm aware of in this case has suggested that this agreement is somehow void because there was fraud or mutual mistake, a fact of law or any of those common law kinds of situations.

So I apologize for the long answer. But I would say that the FERC would regard this as perfectly appropriate. They would regard this agreement as binding. And as a matter of fact they are obligated by federal law in the States to ensure that there is no undue preference.

So they would have no choice but to make sure that this agreement was treated as if it were a contract between two different corporations.

Q.5 - Thank you, sir. Just a couple more questions. The next one -- and I have read throughout the Emera evidence the word "environment", and whatever environment means, and that will be an argument issue.

But Emera has testified that the environment was unfair and discriminatory in 1998 and they couldn't participate in the "Open Season".

In your opinion would that be something that FERC would find as a basis for abrogating the intercompany agreements?

MR. HOECKER: I have read that language. And I confess to be a little confused by it. But unless someone can demonstrate that a practice or a contract is unjust, unfair, contrary to the public interest, I think there is a question as to whether that forms the basis for undoing any legitimate business agreement.

I think that the -- every company, every business person looks at a situation and makes a judgment about whether or not signing a particular contract, entering into a particular process is risky or not, whether it's going to have benefits or costs, whether the costs outweigh the benefits, and then make the decision, I'm going to go ahead or I'm not going to go ahead.

Business people make those judgments all the time. And if they perceive risk that is -- you know, that's part of any business transaction. They have to assess what that is. And they have to see whether they can manage it or not.

If they decide not to play, if they decide not to enter into that transaction, it doesn't necessarily mean that the people who do are entering into illegitimate contracts or participating in an unfair practice.

So I don't know what this environment thing is. But I do think that you need more than that to undo an agreement that parties have relied on for a period of time.

Q.6 - Thank you, sir. And finally I would refer the Board to -- and the Intervenors and yourself to the Emera IR number 3, the response -- their response to the NB Power inquiry. This is contained in EEI-1. And it is at the fourth page under the tab "NB Power, Emera Responses."

CHAIRMAN: Excuse me, Mr. Hashey. What was the number of the interog' again?

MR. HASHEY: It is IR-3, Mr Chair. It's page 4.

CHAIRMAN: Go ahead, Mr. Hashey.

MR. HASHEY: Thank you, Mr. Chairman.

Q.7 - In that area, sir, I would like you to comment on that answer. It seems that there is an indication from Mr. Trabandt that the situation varies because the tariff was not regulated here in relation to this contract abrogation policies. Could you comment on that?

MR. HOECKER: Well let me parse this a little bit if you will. My friend, Mr. Trabandt says that I don't believe the absence of a -- that I am not aware of any cases where FERC has abrogated an existing transmission agreement. Neither am I. I agree with him on that.

However, the rest of this answer, now that I look at it seems a bit of a non sequitur. If the argument is that the absence of regulation or a regulatory decision on a particular agreement makes that agreement unlawful or somehow inappropriate, I would -- I would respectfully disagree. And let me talk about FERC precedent a little bit.

When the FERC adapted Order 888 and began moving its jurisdictional utilities that own transmission towards an open access environment, it also began regulating some transmission and transmission arrangements that it hadn't done before. That included the transmission of some municipal utilities, some power marketing agencies. And FERC regulates under a Supreme Court decision all transmission in the U.S. But it never looked at any of these contracts or any of these transactions.

When 888 came along, it in fact began applying open access principles to all transmission, including some that it hadn't ever reviewed before. I think that's analogous to this situation. And the question is what did FERC do? Did it -- did it abrogate or reject the transmission reservations that had been entered into when that transmission was either regulated by someone else or not regulated at all? And the answer to that, ladies and gentlemen, is no. The answer is no.

As I said earlier, the Commission was concerned not to cause economic dislocation, not to deprive people the benefit of their bargain, not to upset transmission arrangements that had been in place and on which people had come to rely. And I think that -- I think that the Commission -- the Commission would not be concerned that the transaction that we are talking about wasn't subject to PUB oversight.

Now that doesn't mean that someone couldn't come in and said that under the common law, which also applied at the time these agreements were entered into, that they violated the law of contracts and therefore should be voided, or that subsequently when you did have jurisdiction that those agreements didn't meet the applicable standards. I am unaware that either of those things has been done. And so I think this is a red herring frankly.

MR. HASHEY: Thank you, sir. Thank you, Mr. Chairman and the Board for you indulgence. That's all the questions I have.

CHAIRMAN: Thank you, Mr. Hashey. Mr. Zed?

MR. ZED: Sir, if I might just take one moment?

CHAIRMAN: Take whatever is necessary.

MR. ZED: Sir, I would like to have Mr. Scott look at a letter. And I wonder if I might just give it to him and circulate copies before we mark it?

CHAIRMAN: Would you repeat the last bit of that, Mr. Zed? I lost you.

MR. ZED: I was just going to -- sorry, sir, I was just going to give Mr. Scott a copy and circulate it before it's marked.

CHAIRMAN: Okay.

CROSS EXAMINATION BY MR. ZED:

Q.8 - Mr. Scott, are you familiar with that letter?

MR. SCOTT: Yes, I am.

MR. ZED: I would like to have it marked. It's a letter from Hydro-Quebec to Mr. Wayne Snowdon, Director of Energy Control Centre, New Brunswick Power Corporation dated February 21st -- 4th, sorry, 1998.

MR. HASHEY: Any objection, Mr. Hashey?

MR. HASHEY: I assume -- no, as long as the witness has had a chance to read it. You know, we hadn't seen it before. But I am sure that the witness would be familiar with it.

CHAIRMAN: Take your time, Mr. Scott. Read through it.

MR. HASHEY: Mr. Chairman, if I could comment just on this while they are looking at this. Sorry, if you are reading. I believe that this was an issue that came up in the last hearing. And there was a written response to this letter. I think in fairness if we had been given -- had some indication that they wanted to use it, that we would have found that response. We don't have it right here. And similarly I think that the -- if my learned friends have that written response, that it would be only fair that they table that as well?

CHAIRMAN: Do you have it, Mr. Zed?

MR. ZED: I believe we do have a copy with us. I know I have a copy. But I didn't personally have a copy with me here. But we have one.

CHAIRMAN: Yes, all right. That certainly seems to be a reasonable request on Mr. Hashey's part.

MR. ZED: Fine, sir.

CHAIRMAN: So we will ask that you do file it after we are concluded with this document.

MR. HASHEY: I think in all fairness he should be given the opportunity to read the written response as well.

MR. ZED: We don't take issue with that, Mr. Chairman. I mean --

CHAIRMAN: No. And I didn't mean that. I just wanted we deal with this and go on and deal with that written response by way of marking it. That's all, Mr. Hashey.

MR. ZED: I wonder if it might be appropriate for us to get copies -- take a break, get copies and put them to the witness at the same time to save a little bit of -- --

CHAIRMAN: You read my mind. We will come at five to 3:00.

(Recess)

CHAIRMAN: And everybody has a copy of the second letter that we are talking about here. Okay. All right. The letter to Mr. Snowdon dated the 24th of February 1998 will be EE-3. And the letter to Mr. Abiad will be -- and that's dated -- oh, it's gone metric on me -- it's the 27th of February 1998 and that will be EE-4. Go ahead, Mr. Zed.

MR. ZED: Thank you, sir.

Q.9 - Mr. Scott, with respect to the 24th of February 1998 letter, first of all, would it be fair to say that that was four days or thereabouts before the end of the 1998 open season?

MR. SCOTT: Yes, I believe that's true, yes.

Q.10 - Thank you. And if you would turn to the second page, there are four enumerated issues that Hydro-Quebec raises. And I will just read the headers. Number 1, "A Tariff That is Cost-Based and Non-Discriminatory." Number 2, "A Regulatory Environment to Protect the Customer." Number 3, "The Functional Separation Between The Transmission And The Marketing Arm of NB Power." And number 4, "Reciprocity and Comparability of Service."

Would you agree, sir, that those were four issues that Hydro-Quebec raised with NB Power as being the reasons why they were not interested in bidding?

MR. SCOTT: I would say -- I would agree in part that those certainly were part of the reasons that they did not bid. I would direct you back to the first page though and the final paragraph says that they were looking for service, but they indicated that a solution had been found that did not involve filing a request for transmission service. And then they went on to say that in spite of meeting their requirements through this other method that they had concerns related to the tariff.

Q.11 - Thank you for that, sir. But I would ask you to turn to the last page of the letter and the first full paragraph on the page beginning with, and I will read it. "These concerns of ours and the lack of reciprocity prevents us, Energy Services, from contracting transmission on your system at this time and from participating in the overall process that you have introduced with your service agreement for transmission." Now that's a pretty positive statement, sir. I would suggest to you that that does indicate that those four reasons were in fact material?

MR. SCOTT: That certainly indicates that that was some of the primary reasons, yes.

Q.12 - Thank you. Now this letter, which you may recall was the same letter that was put to I believe Mr. Snowdon, the first time around at our hearing last year?

MR. SCOTT: Yes.

Q.13 - Now there is a request in that letter as well to postpone the process. Did you in fact accede to that request?

MR. SCOTT: We did not postpone the open season.

Q.14 - Thank you. Would you now turn to your own evidence, sir, which is in A-2, evidence of Bri an Sco tt, pag e 1.

MR. SCOTT: I have that.

Q.15 - And would you please turn to -- or sorry, look at line 25 and following. Perhaps if you could just read down through and including line 29. I am going to ask you some questions, sir.

MR. SCOTT: I have read it.

Q.16 - Can you -- it says you created separate business units prior to the implementation of the tariff in 1998, is that correct?

MR. SCOTT: That's correct.

Q.17 - And when were those business units created?

MR. SCOTT: I am not exactly certain of the date. I think it was in the 1996, '97 time frame.

Q.18 - And were they separate corporate entities?

MR. SCOTT: As it is stated here, they were separate business units.

Q.19 - So they were not separate corporate entities?

MR. SCOTT: No, they were not.

Q.20 - And, sir, when was your code of conduct in place?

MR. SCOTT: Our formal code of conduct was in place in -- went into effect in January of 2000. However, we were abiding by the -- by an informal code of conduct. We took the tariff as something that we felt that we needed to respect the principles behind the tariff and that was to offer open and non-discriminatory access to all customers. And on that basis we implemented a number of things. Some of which are discussed here on this page.

That we create a separate business units. We publish the tariff for out and through service. We gave service under that tariff. We ensured that information between the business units was either published first on the OASIS with regard to the transmission system and a number of things like that. So although the code of conduct formally went into place in January of 2000, we were respecting the tariff.

Q.21 - Do you have a copy of that code?

MR. SCOTT: Of the code of conduct?

Q.22 - Yes. Was it reduced to writing? The informal code that you adopted before the year 2000?

MR. SCOTT: What we were operating under was the terms and conditions of the tariff, which was to offer open and non-discriminatory access on a comparable basis.

Q.23 - So the answer is no, you do not have a copy -- you did not have a document evidencing that informal code?

MR. SCOTT: No.

Q.24 - Could you please turn to A-7, NBEE Supplemental IR-23. And I would like you to -- the answer that I am going to refer you to is on page --

CHAIRMAN: Slow down, Mr. Zed. Sorry. We are getting the right page. What was the IR?

MR. ZED: It was IR -- Supplemental IR-23.

CHAIRMAN: That's in volume 1 -- or exhibit what?

MR. ZED: That is exhibit A-7.

MR. SOLLOWS: Page 32.

Q.25 - Page 32 is the question. And I am looking in particular at questions (b) and (c), the answers to which -- (c) in particular -- is on page 49.

MR. SCOTT: I have that.

Q.26 - Now the answer is on January 1998, the transmission and generation business units were functionally unbundled. Sharing of transmission facilities with the generation business units ceased at that time, except that energy control centre, i.e., transmission business unit personnel continued to do short-term marketing.

When the code of conduct was fully put in place January 1, 2000, all marketing functions ceased at the energy control centre.

So I would take it from that that in fact it was not functionally unbundled until at the very least January 1st 2000?

MR. SCOTT: No, I would disagree with that. There was a significant number of steps that were put in place at the beginning of January 1998 that represented a functional unbundling in accordance with what FERC would have stated as their functional unbundling requirements.

The only exception to that was at the energy control centre where the day to day dispatch decisions were being made and any surplus energy that was available on an hourly basis was continued to be handled by some of the staff at the energy control centre.

However, even in those cases we did separate the authorization of transmission to approve transmission requirements. We separated that and had it done be a separate group. And any long-term firm reservations and even shorter term beyond a few days.

And typically what they were doing was day ahead and within the day, but on a weekend there would also be some requirements to look through the weekend period. But anything beyond that period of time was handled under a strict type of code of conduct.

And so in the case of what we are talking about here, certainly in terms of long-term firm reservations of a month or longer or in this case a yearly long-term firm transmission reservations, that was dealt with strictly through an unbundling and functional separation between the two business units.

Q.27 - Sir, then what you are saying is that transmission people were doing a marketing function?

MR. SCOTT: I thought it was -- I'm not sure I understand your question because I thought I just answered it.

Q.28 - Okay. Well I am reading -- you are qualifying the extent to which they did it but the answer talks about sharing of transmission facilities with the generation business unit ceased at that time, except that energy control centre, then in brackets (transmission business unit personnel) continued to do short-term marketing.

I take it the answer to my question is yes, they did?

MR. SCOTT: They were doing short term marketing, that is they were dealing with surplus energy on an hourly basis a day ahead or within the day.

Q.29 - In your view, that is okay?

MR. SCOTT: In my view, we did what was possible to implement a transmission tariff in January of 1998 and we subsequently proceeded to even change that so that we could fully implement -- the issue here in terms of what was being done by the control centre staff was something that would take some time to put in place. Because it -- the information that is required to do this type of marketing is available only on a real time basis and you would perhaps need to put in place 24 hour marketing floor, something of that nature, then -- or have other systems in place provide the information. It was not physically possible to do that.

Q.30 - Sir, and that's fine. And I am not -- you are telling us the problems why you couldn't do it. But the fact of the matter is it was not done. And I would ask you to look at EE-4 please? Page 2 of that letter, which is your response to HydroQuebec. And if you look at page 2, two-thirds of the way down the page. I will read it. It says -- and it's your letter, NB Power's letter. It says, "NB Power, at this time, has not implemented specific procedures to protect the confidentiality of information given by customers to its Transmission arm. While it has functionally separated the marketing and transmission organizations, NB Power has not developed a code of conduct to provide confidentiality of information."

And to be fair, I will finish. "We have, however, taken steps to ensure that all customers are treated fairly and equitably under the tariff."

Now, sir, the date of that letter is the 27th of February 1998. Do you have any reason to believe that that statement was not true?

MR. SCOTT: No, I do not.

Q.31 - Thank you.

MR. SCOTT: I might -- I would like to add to that though if I may?

Q.32 - The question -- sir, I am satisfied with the answer. If he wants to clarify his answer --

CHAIRMAN: Well, let's save Mr. Hashey from having to do redirect. Go ahead, Mr. Scott.

MR. SCOTT: Again, I think the response in terms of the specific procedures were more in the lines of the formal code of conduct. We did have informal procedures in place.

Q.33 - Sir, if you could turn to page 8 of your evidence, line 4 and the following few lines, talking about the additional 300 megawatts of capacity between New Brunswick and New England?

MR. SCOTT: Yes.

Q.34 - I take it that is a recognition of the necessity of having more access to the New England market?

MR. SCOTT: That is really a statement of the fact related to the second tie line project.

Q.35 - And, sir, if you read pages -- sorry, line 7, "Interested parties will have an opportunity to procure capacity at that time." Is there anything to preclude the applicant from procuring capacity at that time as well?

MR. SCOTT: No. Our intent is to have an open season for this capacity.

Q.36 - Would you mind turning to EEI-1, which is Emera's evidence, page 21. Would you mind, sir, looking at the quote at the bottom of the page beginning at line 22, which is a quote from the NB Power application to the National Energy Board. I believe that is the second tie application.

MR. SCOTT: Yes, I see that.

Q.37 - And do you agree with that quote, sir?

MR. SCOTT: Yes.

Q.38 - Thank you. Now, sir, I am going to read the last line.

"With no significant load growth identified within the Maritimes and northern Maine, the success of these projects will be tied to an ability to sell electricity to New England."

You agree that that statement refers to the viability of cogenerations or independent power producers undertaking generation projects in this province?

MR. SCOTT: I am not sure that all the assumptions are still correct but generally speaking I would say that I agree with that statement.

Q.39 - Thank you. If I might shift gears here for a moment, sir. Mr. Hoecker, now, sir, you were a Commissioner, if that is the proper term, on FERC for a period of time?

MR. HOECKER: I was a Commissioner and I was the Chairman.

Q.40 - And when Orders 888 and 889 were issued, were you Commissioner?

MR. HOECKER: I was a Commissioner, yes.

Q.41 - And I am not quite sure of how FERC works, but did you actually sit in panel on those orders and were you part of that process?

MR. HOECKER: Yes. It was a rule-making process of many months.

Q.42 - And you were part of the actual panel that sat in that rule-making process?

MR. HOECKER: I voted on it, yes.

Q.43 - You would have signed the order -- I mean, signed off on the orders at any rate?

MR. HOECKER: Yes.

Q.44 - Now, sir, if I understand your testimony, you would agree that the Board's original order issued in March of last year would still qualify it as a FERC compliant tariff?

MR. HOECKER: I think it's -- except for aspects of 2.1, I think that's right.

Q.45 - Except for aspects of 2.1. Well, sir, could I ask you to turn to A-7, NBE Supplemental IR-30, page 57.

MR. HOECKER: On page 57, is that right?

Q.46 - Yes, sir.

MR. HOECKER: Okay, yes.

Q.47 - If you would just take a minute to read the reference and question and your answer. My suggestion, sir, is that that was an unqualified answer. The question may have been asked in the negative fashion but it is the same question.

MR. HOECKER: The question is is the tariff FERC compliant and the answer -- the answer implies that it is FERC compliant.

Q.48 - Well it is not -- is your answer then today, it would be FERC compliant? The existing order of the Board, is it or is it not FERC compliant?

MR. HOECKER: If you compare the terms of FERC's pro forma tariff in all its material aspects to the open access transmission tariff approved by this Board, then I think that it is compliant with the pro forma. What is in 2.1 is in addition to what is in the FERC pro forma and it differs from FERC policy, as I have said.

Q.49 - Sir, would you please once again, the question was, does Mr. Hoecker believe that New Brunswick cannot have a FERC compliant tariff if the agreements referenced are not grandfathered.

I mean, clearly that issue was raised in the question and your clear answer was no.

MR. HOECKER: I am talking about the tariff. I am not talking about the grandfathering of agreements when I answer this question. Certainly you can have a FERC compliant tariff.

Q.50 - And the Board's order -- part of the Board's order, which abrogated certain contracts in the view of the applicant --

MR. HOECKER: They put it into the tariff, I agree with that. And that is not FERC compliant.

Q.51 - That is not FERC compliant?

MR. HOECKER: That is not a tariff provision at the FERC. You have a FERC compliant tariff or a tariff that complies with the FERC tariff, but the provision in the first paragraph 2.1 is not in a FERC tariff. You find these policies enunciated throughout Order 888, 889, Order 2000 and 2.1, the first paragraph of 2.1 is not a tariff provision at FERC.

But to the extent they compare one on one, this Board did a fine job.

Q.52 - Sir, did you read this question and answer it?

MR. HOECKER: Yes.

Q.53 - This is your answer?

MR. HOECKER: This is my answer.

Q.54 - Are you now qualifying that answer?

MR. HOECKER: I don't think so.

Q.55 - Sir, I would ask you to turn over two pages in the same exhibit, to IR-32.

MR. HOECKER: I am sorry, Mr. Zed. Can you give me that again?

Q.56 - Page 59, same exhibit, IR-32, Supplemental IR-32?

MR. HOECKER: Yes.

Q.57 - Now I am interested in your response. Your response acknowledges that FERC has very wide-ranging powers if it determines there had been anti-competitive conduct that violated one of its orders or the Federal Power Act. Is that correct?

MR. HOECKER: Yes. With a specific reference to anti-competitive behaviour.

Q.58 - Fine. So qualified. Now are you aware if FERC has a complaint process so if somebody takes issue, a party takes issue with a practice, they can complain to FERC?

MR. HOECKER: It does.

Q.59 - And they can sometimes complain of anti-competitive behaviour?

MR. HOECKER: And they do.

Q.60 - And sir, are you aware, as I assume you are, that FERC has in fact used its powers in such situations to either abrogate or modify specific contracts?

MR. HOECKER: I can't think of an instance right now but I wouldn't be at all surprised.

Q.61 - Sir, you were Chairman of the Board when Order 2000 was issued?

MR. HOECKER: I was.

Q.62 - Let me read you a passage. "While we have attempted to rely" -- this is from page 66. "While we have attempted to rely on functional unbundling to address our concerns about undue discrimination, there are indications that it is difficult for transmission providers to implement and difficult for the market and the Commission to monitor and police. In cases in which the Commission has issued formal orders, we have found serious concerns with functional separation and improper information sharing with respect to at least four public utilities."

And then there is a footnote. And that footnote refers to the Wisconsin Public Power Inc. System v. Wisconsin Public Service Corporation, Washington Water Power Co., Utah Associated Municipal Power Systems. Does any of that ring a bell? Does that sort of jog your memory, that FERC may have actually done what I said in certain circumstances?

MR. HOECKER: That is fine. I --

Q.63 - So that is fine, you agree?

MR. HOECKER: What you are reading sounds -- it does ring a bell.

Q.64 - So then you don't take issue with my statement that FERC has in fact used its power to do, modify or abrogate existing contracts through the complaint process?

MR. HOECKER: Through the complaints investigations where sufficient showings were made, yes, I think that is exactly right.

Q.65 - So FERC clearly has that power in certain circumstances?

MR. HOECKER: Yes.

Q.66 - Thank you. Do you know any reason why this Board wouldn't have a similar power, sir?

MR. HOECKER: I am not familiar with the powers of this Board but --

Q.67 - Do you know any --

MR. HOECKER: -- I think -- I think that is pretty typical regulatory responsibility.

Q.68 - Thank you. Now sir, I would like to talk to you a little bit about functional unbundling. Is it fair to say that there are a number of elements to functional unbundling? I mean, functional unbundling means something.

Let me just go through some criteria or some elements and you tell me whether or not they are part of the process of functional unbundling.

Is one of the elements that a public utility must take transmission services, including ancillary services, for all of its new wholesale sales and purchases of energy under the same tariff of general applicability as do others?

MR. HOECKER: I agree.

Q.69 - And do you agree, sir, that another of those items required is that a public utility must state separate rates for wholesale generation, transmission and ancillary services?

MR. HOECKER: Very good.

Q.70 - So you agree with that?

MR. HOECKER: I agree.

Q.71 - And sir, would you also agree that a component of this functional unbundling is that a public utility must rely on the same electronic information network that its transmission customers rely on to obtain information about its transmission system when buying or selling power?

MR. HOECKER: Well what you have described is exactly the way FERC spelled out the essential elements of functional unbundling, yes.

Q.72 - And sir, I am going to read you something further from FERC. I am going to read you something from page 58 of Order 888. And you tell me, please sir, whether you agree with it or disagree with it.

"However, we recognize that additional safeguards are necessary to protect against market power abuses." And this is after listing these three components. "Functional unbundling will work only if a strong code of conduct, including a requirement to separate employees involved in transmission functions from those involved in wholesale power market functions is in place."

Does that sound familiar, sir?

MR. HOECKER: I -- I am not sure about the specific language of that saying the contacts, but that certainly sounds -- that certainly sounds consistent with my recollection.

Q.73 - Sir, I have a copy of Order 888 here if you would like to refresh your memory.

MR. HOECKER: Well we may need it. Keep it handy.

Q.74 - Do you want to see it right now, sir?

MR. HOECKER: No, I am fine. You have my answer to that question.

Q.75 - So you agree with that statement?

MR. HOECKER: I said it is consistent with my recollection.

Q.76 - Sir, I am going to show you a copy of it. And maybe you could read it just to make sure there is no issue here about your recollection?

MR. HOECKER: All right.

MR. HASHEY: Is this the full order that we are looking at here? Or is this just a select few pages? I would like to know what we have got?

MR. HOECKER: This isn't the full order.

Q.77 - I will deliver the full order, sir.

MR. HASHEY: Why are we playing games?

CHAIRMAN: Mr. Zed, the normal procedure of this Board is that prior to exhibiting something to a witness, you let counsel opposite have the opportunity to review it. I hope you will do that in the future.

Q.78 - Sir, I apologize. But I read a direct quote from the order and I didn't expect the witness to do anything other than to say that that's what the order says. He was part of the panel. And I did not anticipate anything other than a direct answer that, yes, that is what -- what it said.

MR. HASHEY: In all fairness, I think the answer was very responsive in relation to somebody that didn't have a document in front of him. And I don't think he denied that that's what the document says. He said it seemed to be accurate in his memory. I think that's a little unfair.

CHAIRMAN: That certainly with me -- but I go back to what I said, Mr. Zed --

MR. ZED: Yes, and I --

CHAIRMAN: -- if you could share that with counsel opposite before you give it to the witness?

MR. ZED: I will, sir.

CHAIRMAN: Thank you.

MR. HOECKER: Do you want to re-ask the question?

Q.79 - Sir, I simply read you an excerpt beginning with the words on page 58. "However, we recognize that additional safeguards are necessary." And I read, "To protect against market power abuses."

MR. HOECKER: Okay. I agree. I agree that's what the order says.

Q.80 - So the words I read you --

MR. HOECKER: And I agree with it.

Q.81 - Thank you. Sir, are you now aware through your involvement in this hearing that NB Power did not have a code of conduct in place until at least the year 2000?

MR. HOECKER: I am aware through the testimony of others, yes, that that appears to be the case, yes.

Q.82 - So, sir, then I guess it follows that the 1998 tariff could not have been FERC compliant?

MR. HOECKER: I don't recall anybody alleging it was FERC compliant. But I think that's -- if we are talking about the tariff -- again, if we are talking about a tariff, that's one thing. If we are talking about all these other subjects, that's something else again. But I take your meaning that the company was not fully compliant as a whole with the requirements of Order 888 and 889 until sometime following the open season. And I think that is true.

Q.83 - Thank you. Because it was not functionally unbundled so to speak?

MR. HOECKER: Well, I -- again, I am not that familiar with the through and out tariff to say whether -- whether services being taken in the same way by the company that was being taken by others. But I certainly agree consistent with the statement that we just read in Order 888 that there was no code of conduct in 1998. That didn't come till the following year. That there -- but that there was some functional separation of business units and something equivalent to a code of conduct.

In other words, I think we are in kind of a gray area here given that the timing of restructuring of NB Power is somewhat different than was the case at FERC where we issued an order that restructured everything at one time.

Q.84 - But the simple question is according to the FERC definition of unbundling -- functional unbundling, they were not -- the applicant was not compliant in 1998, isn't that true?

MR. HOECKER: I would say that that's at least partly true. I don't think it's entirely true.

MR. ZED: That's all, sir.

CHAIRMAN: Those are all your questions. Thank you. Does the agent for the Attorney General have any questions?

MR. ANDERSON: No, thank you, Mr. Chairman.

CHAIRMAN: Thank you. And I don't know if Mr. McCarthy is here today or not, but any representative of J.D. Irving, Limited, do they have any questions?

MR. MCCARTHY: We have no questions, Mr. Chairman. Thank you.

CHAIRMAN: Thank you. Mr. Gorman?

MR. GORMAN: Thank you, Mr. Chairman.

<u>CROSS EXAMINATION BY MR. GORMAN</u>:

Q.85 - Mr. Scott, I would like to refer you exhibit A-7. That's at page 49.

MR GORMAN: Is everybody at that page?

Q.86 - This deals with the standard or code of conduct to which you -- a number of questions were just put. In the response, the second paragraph under number (c) says, "When the code of conduct was fully put in place in January 1st 2000, all marketing functions ceased at the Energy Control Centre." I am wondering about the word "fully". Does that imply that something was in place prior to that -- to the January 1st 2000?

MR. SCOTT: Yes, it does. As I stated previously, there was no formal code of conduct prior to January 1st 2000. However, Transmission and Generation business personnel were operating as if there was a code of conduct in place for all those areas, except for the short-term, day ahead- type marketing functions. And that included some of the things that were just talked about in terms of the posting of information on the OASIS, doing all transactions, requests for service via the OASIS. The information -- the only information that was provided was posted on the OASIS first. Those types of things.

Q.87 - Mr. Hoecker I think used the expression something equivalent to the code of conduct. Was any of this in writing?

I think Mr. Zed asked you about whether or not any of this code was in a written form, that you were -- this equivalency to the code that you were following, was there any written documents with respect to that?

MR. HOECKER: Are you asking me?

Q.88 - No. I'm asking Mr. Scott if this was referring to your comments when you said, used the expression that perhaps something equivalent to the code of conduct may have been in place?

MR. SCOTT: I'm not aware that there were.

Q.89 - In your view is the code of conduct a prerequisite to the provision of open transmission access on a non-discriminatory basis?

MR. SCOTT: No. I don't believe that it's necessary to have a code of conduct in place in order to provide open non-discriminatory access. I guess it's my belief that the code of conduct ensures that everyone abides by the rules. That does not mean that even with the rules in place there aren't those would try to bend the rules. And it also doesn't mean that if there -- if the code of conduct is not formally in place and signed by everybody, that they are not abiding by the intent of an open access transmission system, and attempting to provide that service on an open and non-discriminatory basis.

In fact we were very careful to ensure that anytime we received a request for service that we dealt with it according to the rules of FERC.

And our sort of unwritten policy was that if it wasn't the type of thing that we could offer to everyone, then we wouldn't offer it to New Brunswick Power as well. So there were a number of decisions that were made along those lines.

Q.90 - Thank you. Mr. Hoecker, I would refer you to exhibit A-2 in your evidence at page 5. Everybody has that. Then I would refer you specifically --

MR. HOECKER: Thank you.

Q.91 - You have that?

MR. HOECKER: I have it. Thank you. I'm sorry.

Q.92 - I refer you specifically to lines 11 through 14 which -- if I have you just read those four lines so you can put this in context. At the end of it you refer to public interest. Could you explain what you mean by public interest in that statement?

MR. HOECKER: Certainly. Well public interest means two things in this respect. It's the general criterion or responsibility of regulators to look after the public interest. However, defined which usually means the interest of consumers at least as far as the FERC looks at it and the stability and sustainability of the industry.

In this particular sense, it also means the standard of review that is used in a case called the -- a series of cases called the Sierra Mobile case. And so it has a double meaning.

Q.93 - Thank you. Continuing on in lines 16 through 19 of your evidence on page 5, it states the enforcement of parties express expectation ensures a reasonable allocation of risk and regularity in the course of business dealings and creates a stable climate conducive to investment.

Could you explain what you mean by that and perhaps what the possible consequences of not doing so might be?

MR. HOECKER: An agreement represents a company's valuation of what the risks are of doing a particular kind of business. And if entering into a particular line of business, building a facility or offering a service, whatever it might be, whether it's regulated industry or not, anything that seeks to increase that risk, anything that in a more regulated environment puts business transactions potentially in jeopardy, will be viewed by investors with some degree of trepidation.

I think that it's very important that we recognize that stability, regulatory certainty is an important factor when investors look at regulated businesses and try to decide whether they are going to build a new plant, whether they are going to build -- whether they are going to invest in any particular way in a utility or a province or whatever.

With heightened risk comes heightened expense. And that can reflect itself in things like an increased cost of capital.

As a matter of fact, I was looking at the company's response to the Board's Interrogatories at IR-9, the number just stuck in my head, but I think you will find there an indication that anything that jeopardizes a credit rating has a direct translation into additional risk and therefore into additional capital cost. For example, an increase -- a decrease rather in a credit rating that increases the interest cost, one percent on a billion dollars of debt is going to cost the company $10 million a year more. And that's something that I think worries not just utility executives but any business person.

In other words, there is a premium paid by investors or a premium is given to stability certainty in business arrangements and anything that jeopardizes that, anything that makes it seem as if any contract or business arrangement is fair game for a regulator or could be jeopardized because of a change of regulatory regime, which is something we were very concerned about at FERC has real economic implications. That is why -- I guess that is the principal reason why the commission over and over again emphasized that it was going to preserve existing transmission capacity arrangements.

Q.94 - Thank you. I would refer you to page 6 of your evidence at lines 28 and 29 where you state the commission worked very hard to achieve a balanced approach between progressive change and certainty and continuity in business and between new ideas and practices and reliable service.

Why would a regulatory board be concerned about regulatory certainty and the utility's ability to continue to be in business or to continue with its contracts?

MR. HOECKER: Well it kind of goes back to Lord Coke and the dawn of regulation. I mean, there are certain businesses that are affected with a public interest and those are the businesses that you oversee and the Board in order to ensure reliable, economical service to ratepayers needs to have a healthy industry. And it pretty much is as simple as that. That's why regulators are concerned with what happens in business as much as their own policy.

MR. GORMAN: Thank you. Mr. Chairman, I have no more questions for this panel.

CHAIRMAN: Thank you, Mr. Gorman. Mr. MacDougall, do you want to come forward or are you satisfied to ask questions from there?

MR. MACDOUGALL: Since I have no questions, Mr. Chair, I am satisfied to remain where I am.

CHAIRMAN: Thank you, sir.

MR. MACDOUGALL: Thank you.

CHAIRMAN: Board counsel?

MR. MACNUTT: We have no questions for this panel, Mr. Chairman.

CHAIRMAN: Thank you.

MR. SOLLOWS: I just have perhaps one or two questions and they are very general. As I have read and listened to the evidence it seems to me that a time we are talking about in 1998 NB Power had an indication from a potential bidder and participant in the market that they were very much reluctant to participate in the market but nonetheless went on and carried on the auction process and didn't stop. What was the -- was there some overriding reason that led to that determination to carry on, or why did NB Power not pull back and hold off on the offering -- or the auction process until after they had the code of conduct in place?

MR. SCOTT: I'm not sure I can adequately answer that question. I don't know all of the policy decisions behind it. Certainly in terms of responding to the concerns that were raised by Hydro Quebec, we did respond to those and we responded to those fairly quickly and tried to address the ones that it was possible to address.

If you look at all of the concerns that were raised by Hydro Quebec there were certain things like a wholesale market that required legislative changes, and if we chose not to -- if we chose to postpone to meet all of those requirements then it would have been postponed indefinitely, certainly until the time we filed our tariff, and I would add that we don't have wholesale access yet until restructuring goes ahead in April of this year.

Why the decision was specifically made to go ahead relative to that point in time I'm not exactly certain. But we reviewed those concerns, we addressed them to the extent possible, and felt that given that that it was the appropriate thing to do.

MR. SOLLOWS: Thank you.

MS. COWAN-MCGUIGAN: Good afternoon, Mr. Hoecker. On page 5 of your responses you did say line 5, FERC endeavoured however not to accept legitimate existing business arrangement. Are you telling us today that grandfather clauses do exist with FERC and this is not a precedent that we are creating today -- or that we could create, excuse me?

MR. HOECKER: I strongly agree that hundreds and hundreds of contracts, capacity reservations, have been grandfathered by FERC. As a matter of fact that's the rule, not the exception. It's -- it was the rule -- when we began open access we said at the time you get this new tariff in place, just like yours last June, and then we look at the contracts and going forward, they get grandfathered, or if they terminate by their own terms there is a right of first refusal that you can roll those over. So yes, we made a conscious decision in the interest of minimizing the risk of our pro-competitive initiative to give everybody who was using the grid the benefit of their bargain.

MS. COWAN-MCGUIGAN: Thank you.

CHAIRMAN: I have one question. In your experience with FERC have you run into or are you aware of a situation like that which faced this Board last year in that the utility at the time of the open season as it then was was -- its transmission tariff was not regulated by any regulator? And secondly that it was a single legal entity and therefore the contracts that we referred to were between the business units and not a separate and corporate legal entity?

MR. HOECKER: I think that's an excellent question. I would qualify my answer -- I would answer you in two ways. I would say first off the origins of these agreements is not the issue I don't think. But secondly, if at the time last year when you implemented your open access tariff and you were looking at a previously unregulated entity as far as the tariff is concerned, I think the closest analogy in the States would be something like the Bonneville Power Administration, which is a federally chartered power administration with generating units, marketing units. It is -- in fact in our Pacific northwest it's the backbone transmission system. And it was not regulated by the FERC and in most people's opinion there was not much oversight coming from the Department of Energy either.

Now I think that BPA in fairness stepped up to the plate when we said that we were going to do open access. And after evaluating the risk to them and after some half measures -- as a matter of fact BC right across the border was going through the same kind of experimentation. They ultimately filed a FERC-compliant open access tariff and transmission on that system is now subject to open access. And subject to FERC regulation to an extent that it was not previously.

Now we are going on to the next stage of wondering about RTO's and whether BPA can be part of that, but I think that's a fair analogy. Municipal systems are regulated -- there aren't too many municipals in the United States that own substantial transmission. The Los Angeles Department of Light -- of Water and Power, Jacksonville, Florida, the Sacramento Municipal Utility District, are some that own substantial transmission and really didn't care much to be FERC regulated quite frankly and/or subject to open access. But we applied the -- and they are regulated generally by the city council.

Now it's a different kind of regulation as you might suspect. The fact is that we don't want to regulate those utilities in the same way we regulate, invest our own utilities top to bottom, but we began to incorporate them into the open access environment. And so that is a situation where at least from a FERC perspective transmission has gone from a not FERC regulated or regulated by someone else or not regulated much at all to part of the open access system. And that has proven to be quite successful.

But again in that transition we did not decide that we would force these utilities to start -- and their customers to start over from scratch, you know. Their transmission reservations that existed at that time that we adopted open access were grandfathered and those arrangements continue to this day according to their own terms.

CHAIRMAN: That includes the Bonneville Power Authority then?

MR. HOECKER: I think that's the closest analogy I have.

CHAIRMAN: Thank you, sir. The Board has no further questions. Mr. Hashey, any redirect?

MR. HASHEY: Could we have about five minutes to decide whether there is any redirect? I haven't had a chance to speak to my people.

CHAIRMAN: We will take a five minute recess.

MR. HASHEY: I might even have a better suggestion, that we could have a discussion and if there isn't any redirect we could just notify you, and if we ask for some we could ask you to come back and we will do it quickly. Would that make sense, so we don't have to drag you back here and say none?

CHAIRMAN: Well I know that Mr. Zed has indicated to Board counsel that he would prefer not to put his panel on this afternoon but start tomorrow morning. And certainly the Board agrees with that. So, Mr. Hashey, subject to you letting us know that you do have some redirect, why we will adjourn until tomorrow morning at 9:30. Please let us know.

MR. HASHEY: Thank you, Mr. Chairman.

CHAIRMAN: Thank you for your testimony, gentlemen, just in case he doesn't have any redirect.

(Recess)

(Adjourned)

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