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New Brunswick Board of Commissioners of Public Utilities

In the Matter of an application by NB Power dated January 8, 2002 in connection with a proposal for Refurbishment of its facility at Point Lepreau.

Delta Hotel, Saint John, N.B.  
June 19th 2002, 9:30 a.m.

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CHAIRMAN: David C. Nicholson, Q.C.

COMMISSIONERS: Ken F. Sollows  
Jacques Dumont  
H. Brian Tingley

BOARD COUNSEL: Peter MacNutt, Q.C.

BOARD SECRETARY: Lorraine Légère

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CHAIRMAN: Any preliminary matters, ladies and gentlemen?

MR. HASHEY: None from our end, Mr. Chairman.

CHAIRMAN: There is no one else, so JD Irving.

MR. WOLFE: Thank you, Mr. Chairman. JDI takes part in these hearings, since we depend on power in the production of our forest products. In fact, we are the largest industrial consumer of power in New Brunswick. Across the province, we consume 250 megawatts of power.

Now for several years, the North American forest products industry has been under extreme global

competitive pressure. We do a lot of benchmarking and we

compare our costs throughout Canada and the United States in all of our businesses. And when we benchmark our newsprint business, electricity represents the single largest item in the cost of manufacturing. And when we compare to Canada, the New Brunswick newsprint industry, and indeed, Nova Scotia, as you have read in the paper recently, is uncompetitive for power pricing in the business. And we can't afford to get worse.

Of the two newsprint mills in New Brunswick, we operate one of them. So we are extremely concerned over any impacts on electricity prices and reliability.

Now when I say that, this is a time of uncertainty in the New Brunswick power market. There are discussions about deregulation. There is a final report from the market design committee. The government had an announcement on NB Power a couple of weeks ago. And now we have these two upgrades to consider as well.

In our mind, all these items add further risk to the NB Power market and how they control their costs.

Now from the hearing, next to the hydro, Point Lepreau is the lowest variable cost power in New Brunswick. Today it provides diversity in New Brunswick Power's generation.

Hydro is a lower variable cost, but it's very seasonal. Nuclear produces essentially zero emission energy.

Nuclear power is extremely important in keeping NB Power's variable cost competitive, in our mind.

According to Mr. Marshall's testimony, the current average variable cost would increase by almost 20 percent if Lepreau was not rebuilt.

For example, right now today Lepreau has been down for almost 60 days. The newsprint industry in New Brunswick for those 60 days have paid an additional \$60,000 a day for power. So we are -- it's almost \$2 million a month. And that's for the two mills, not just our mill.

On this upgrade, in our mind, New Brunswick generation project, not just NB Power, have had a poor history for cost and time overruns with the original Point Lepreau, the Belledune. Bayside Power was very late.

Now contrary to NB Power's testimony, we think that this project has a considerable high risk in uncertainty in both the cost and the time areas.

Now yesterday Mr. Miller talked about micromanaging the contracts. So at the risk of doing that I am going to do some more comments on the contracts.

First of all, the escalation of 17 percent that was written into the retube contract for a large portion of the firm price seems rather excessive. It is certainly disappointing to us that a fixed contract price or an EPC

contract was not even sought from AECL.

Secondly, the liquidated damages payable to AECL if the project is late do not even come close to covering NB Power's cost of purchasing replacement power.

And third, after start-up, the bonus payable to AECL seems to far outweigh any risk taken on by them. On the time side, the Point Lepreau rebuild is currently scheduled to start up in October 2007. And that is approaching another winter peak period. Now generally in New Brunswick, the winter peaks cannot be covered without purchasing outside power. Mr. Coon said yesterday -- talked about the availability of power in New Brunswick and it is not true that there is always power available in the wintertime in New Brunswick. We run a newsprint mill that has interruptible power. And in most winters, we will be interrupted once or twice because power is not available. So with Point Lepreau down for the winter, it becomes very crucial to us.

So it's crucial that the shutdown does not extend into a second winter for both construction costs and replacement power costs.

Now the submitted evidence shows that Lepreau does not have a good history of meeting scheduled maintenance timelines.

Having said all that, our position is assuming that the capital cost is correct, and we strongly believe that the Point Lepreau rebuild is needed for future low cost power. Point Lepreau Nuclear Plant generates very low variable cost power, and we need the power in the province. It is critical to maintain any degree of competitiveness for industry and the province in general, we believe, and especially for the newsprint industry in New Brunswick.

Having said that we are in favor of the rebuild, we have some concerns over the cost and timeline, as I said earlier. And we have a few suggestions that may reduce the risk.

Number one, currently the project appears to be under the complete internal control of Point Lepreau on things like scope, cost control and project management. We think that the Board should ask NB Power to employ some outside assistance for project management, to be sure that they are heading down the right path as we go through the construction.

As well, consideration should be given to use outside assistance from other nuclear operators, perhaps Ontario or Quebec, to aid in the shutdown planning and execution.

I am sure the Lepreau people are very capable, and I am



sure that AECL has some excellent designers, but there are probably others out there who have had lots of experience in the nuclear industry that could help make this project happen on time and on cost.

Secondly, we would ask that the Board have NB Power report to it on a regular basis throughout the project term, with respect to the costs spent to date, as well as changes in the expected timelines and the expected costs.

And third, we ask the Board to require NB Power to purchase replacement power insurance for the winter of 07/08 in order to protect potential project overruns on the timeline.

And fourth, a little more difficult, perhaps. We think that NB Power should re-open the contract with AECL to get some more favorable terms for NB Power.

Mr. Chairman, that ends my testimony and thank you for the opportunity.

CHAIRMAN: Thank you very much. Mr. LeBlanc is not here.

Mr. Hyslop?

MR. HYSLOP: Thank you, Mr. Chairman and Commissioners.

First I would like to take this opportunity to thank the applicant and in particular Mr. Hashey for their cooperation throughout these hearings. There were a number of procedural items and a number of items relating

to the providing of material. It could have dragged on and been hard nosed, and throughout they were very cooperative. And I would like to take this opportunity to thank my colleague, for I think a very practical and positive approach to making this process work. I would also like to thank the other intervenors similarly for their cooperation and assistance. As the solicitor for the Province of New Brunswick, I think from time to time we are directed to give assistance to parties who don't have counsel. And over the last year I would say that many of them have certainly -- their understanding of the process and the way that they present evidence is greatly improved. I think this process is working very well.

This is an application to the Public Utilities Board under Section 40.1 (1) of the Public Utilities Act to acquire and it's for the Board's recommendations as to the proposed capital expenditure.

The proposed expenditure we are dealing with is approximately an \$850 million expenditure which will be spent on a quote "refurbishment" for an extended life of the Point Lepreau generation facility.

I think first of all it's important to put this application in some perspective. We are a small province.

The total debt of the Province of New Brunswick is

approximately \$10 billion. Of this amount, 3 billion or 30 percent is directly related to the debt of New Brunswick Hydro. The population of New Brunswick is about 750,000 and the debt of the province per person is \$13,000 per person. And of that each person in New Brunswick is responsible for \$4,000 of debt approximately for NB Power.

The total generation capacity of New Brunswick Power is slightly in excess of 4,000 megawatts. Point Lepreau represents 600 megawatts or 15 percent of this capacity. And as a base load facility the electricity it produces represents 30 percent of the electricity sales.

There can be no mistaking the important place that the Point Lepreau facility has played in our daily lives and in the power generation systems of New Brunswick.

As I understand NB Power's application to refurbish Point Lepreau for \$850 million, they believe it should be recommended because 1) they have entered into a quote, "risk sharing partnership type of arrangement with the industry leader" and 2) on the basis of the economics, the net present value of calculations, it is the most economic -- or the best economic choice.

The Province of New Brunswick, after consideration of the evidence, feels that there are questions that could be asked about both of these statements. Dealing first with

the issue of the net present value advantage. One must reflect and question whether the \$234 million is solid. And I say this, Mr. Chairman, because we believe that if some type of a number can be attached to the risk, most, if not all of this \$234 million advantage, might be eliminated.

First it's based on over \$6.5 billion of expenditures that will occur over 25 years. Mr. Marshall quite fairly concedes that these are based on hundreds of assumptions that have been made. They are reasonable assumptions. They are the best assumptions, but there are hundreds of them. And we feel that in the end the margin of 234 is really quite slight.

I tried to get Mr. Marshall to go so far as to say it was a wash and he would not go that far. But at the same time, he did concede that the economic case for this project was not anywhere near as strong or as compelling as it was in the Coleson Cove matter.

If we examine the NPV sensitivities at page 31 of the integrated resources plan, which is found as appendix B-1 in exhibit A-1, they really show how fine a line it is. A combination of a high interest rate at 9.33 percent and a 25 percent capital cost overrun, which is approximately \$200 million, completely wipes out the net present value

advantage of the nuclear refurbishment over the gas alternative.

The stress case, which is found at CCNB-95, which is in exhibit A-5, shows that in fact if all the assumptions went wrong in this case or went to the favour of gas, there would be a \$300 million advantage for natural gas over the refurbishment of Point Lepreau. Even the strongest stress cases in Coleson Cove did not have this resolve.

So while Mr. Marshall would not agree that the economic advantage of number 1 to number 2 was a wash, we submit that it is in fact a very marginal case. And the extent that it's marginal can be summed up in Mr. Marshall's cross-examination where that we found it quite significant that the additional revenues from one three percent rate increase spread out over 20 years would cover the difference in NPV between refurbishment and gas.

The issue in effect becomes one of assessing up-front capital costs versus the down the road price of natural gas.

Now the net present value advantage becomes much more doubtful once you start to identify the risks, and we tried in our cross-examination at least to try to put some numbers on evaluating this risk.

It's interesting that both Mr. White and Dr. Kugler were clear that the "price" of a contract -- I would put price in quotation marks, I guess -- was the means by which the partners allocated risk between them. And the result of this has many implications. Most importantly it is presumably if you increase the contract price, AECL would -- might be prepared to absorb greater risk. So if the price goes up, that's one of putting valuation on it.

I attempted to ask both Mr. White and Dr. Kugler how much NB Power would have to pay to eliminate the risk. I asked Dr. Kugler how much more AECL would charge if they accepted all their risks. I think it's significant and I appreciate that from a practical point of view to identify a specific number is most difficult. But we do feel it's significant that no clear response was provided.

However, if body language and demeanour mean anything, we suggest that the answers are obvious. The risks are far greater than the \$35 million contingency and may well exceed the 234 net present value advantage.

Well what are these risks? And I will not go into great detail because I believe many of them have been covered by my colleague, Mr. Coon, Mr. Gillis and Mr. Craik. But first and foremost, this is the first time a CANDU-6 nuclear reactor has been torn down and rebuilt.

It is the first time all 380 Calandria tubes have been removed and replaced. It is the first time that a great deal of equipment, much of which is still in its design stage, will be used.

It is difficult for me to imagine that some part of Murphy's Law isn't going to occur during the execution of this refurbishment. I do specifically want to draw note to Dr. Kugler's June 13th evidence. And in that evidence at page 1574 he conceded that the scope of this project was the first time a project of this scope had been taken on. There is some suggestion that there is repeat work. I don't think it has been repeat work to tear the nuclear reactor down.

AECL in its evidence has clearly established its ability as a designer and as an engineer of new CANDU reactors. In recent years -- and I say in recent years because it's really only the foreign plants in the late 80s and 90s it has built some nuclear reactors. However, it still bothers me and the real concern here is that it has never dismantled one reactor anywhere. This is the first one.

Now going on further. AECL's expertise again is in the reactors. We are somewhat uncertain as to their expertise in terms of refurbishment of the balance of

plant. There are many companies out there with greater expertise and background in this area. And I believe that Dr. Craik in his arguments covered this point very well and we would reiterate and confirm that we are in support of the arguments that he has made.

Now the reason this becomes important is when you start dealing with exhibit A-23. And that's the 24 refurbishment risks. And refurbishment risks, some of these of course deal with the reactor, but many of them do not. NB Power has said that if every one of these goes wrong, and according to Mr. Gillis we have to go with the potential of every one of these going wrong, then there would be \$623 million of additional construction costs.

There is some of these risks that NB Power says have been eliminated. We keep hearing, for example, staffing retention in the event of a delay and according to the documents this was a very large number which would add considerably to the \$623 million.

More significant to us and to the Province of New Brunswick is that by our review of exhibit A-23, there are at least five items that exceed the \$35 million contingency. There are at least two items that are \$100 million. If one of these were to occur, then the contingency would have little or no meaning.



Now it's not just the fact we might run into some extra costs in this refurbishment. It's the fact that we are going to run into time delays. And there has been no estimation of what type of time delays would recur if we have to get into environmental qualification of all PVC cables. But in this case, time becomes very important. The risk is the cost of the additional replacement power, which is clearly established by the evidence to be 500,000, \$750,000 a day or \$15 million a month. There is also additional interest during construction if this process is delayed. And we have ballparked it in the area of an additional \$4 million.

A 12 month overrun would run the bill up over 4200 million just for the cost of delay, not taking into account any additional construction problems. You know, the current Pickering refurbishment -- and I agree that AECL has a minor role to play in that -- is one year over its projected schedule and that does not include a pressure tube or a Calandria tube replacement. Quite simply, the concept of time is money will take on a whole new meaning if this project goes overtime.

Now NB Power's answer to these risks is well, they are high costs -- I guess the word is high impact, but low probability. And I would like to suggest that the

assumptions one makes often dictates the result and I think this statement might be fairly made in relation to the probabilities that are attached to these risks.

Tab 1 of exhibit confidential or C-1, lists the name of the risk assessment participants. There are 15 of them. All but two are NB Power employees. The other two are from AECL. And from the answer that Dr. Kugler gave to the involvement of these people in dealing with AECL's evaluation of the risk, I would suggest AECL was minimally involved in this risk assessment.

So the people that assess the risk were the 13 NB Power employees. Now the problem that arises here is that the assessors are the risk -- are the same people who are the proponents of the project. I can't help but thinking that they may have and do have some bias to their assessment. And when we get saying is this a less than one percent risk, or is it a two to five percent risk, or is it a five to 10 percent risk, how they make that calculation becomes difficult.

I'm not suggesting anything unprofessional and I wouldn't even go there, but my point is these people want this project to go ahead and surely that subconscious thing in the back of their mind is going to evaluate how they assess the risk.

When you want a certain result, Mr. Chairman, it's hard to stay objective.

Secondly, and I won't go as far as my colleague, Mr. Gillis, I have great respect for the fact that many of the people who assess this risk are hands-on engineers who are very good at what they do, which is running a nuclear power plant.

As I understand it, they are not generally the design type engineer who might normally be expected to bring a different perspective to the assessment of risk.

The Ernst & Young risk assessment report was carried out to document contingency. And while I can't comment on the methodology that was used, the impact of the report is highly questionable because it does not secure input from independent sources as to the nature of and extent of these risks.

The Province of New Brunswick submits that the \$35 million contingency allowance does not adequately represent an appropriate margin for the construction risks associated with the refurbishment.

I'm quite sure, and I don't want to make light in any way, but I'm sure AECL would not enter into a turnkey contract for an additional \$35 million.

The other major set of risks that come about are the

regulatory risks. And I won't spend a lot of time with this. It has been well-covered, especially by my colleague Mr. Coon.

But as I understand the way this risk is going to be worked out, NB Power management is depending on its working relationships with Canadian Nuclear Safety Commission staff in order to maintain timely renewals of its licence in 2002 and 2005.

They expect that there will be refurbishment after the 2005 renewal. And therefore the refurbishment will occur during the scheduled maintenance period. I have a hard time accepting this as a scheduled maintenance project. This is substantial.

And I think some uncertainty comes with this. And on the uncertainty that comes with it ties in directly to the fact we are tearing down a nuclear reactor for the first time.

It is just not the engineers and the people at NB Power and AECL that are going to go in there and see what else needs to be fixed or repaired, Mr. Chairman. It is going to be the Canadian Nuclear Safety Commission.

And the best working relationships in the world are not going to undermine the need for safety in the nuclear power industry. And I think we can expect that there is a

real risk of delays that may come about because of this.

The complexities in meeting the requirements for the nuclear reactor I believe are much more substantial than that presented as being dependent on working relationships. They involve time. And time delays have the significant and serious consequences that we referred to earlier.

Finally, and from the Province's point of view, perhaps most important is this aspect of financial risk. And I begin by referring to one of the Board's earlier decision which was the decision of January 28th 2002 in relation to the Coleson Cove project. I'm reading from page 12.

Ms. MacFarlane made the following statement and subquote, "Now it is the case I believe we need to reestablish our balance sheet. And as we go into the future operating with zero equity and with interest coverages where they are today, it is not sustainable in the longterm and does not meet the requirements, as you so clearly pointed out. And that will be part of the consideration when we look at putting together a rate plan for the long term." And a subquote. And the Board commented "It is clear the financial position of NB Power is not healthy and the Board agrees with Ms. MacFarlane's

conclusions expressed in this paragraph."

At this hearing, Mr. Chairman, we learned that the debt-equity ratio of NB Power is now 104 percent. The capital expenditure associated with Point Lepreau and Coleson Cove will add another \$700 million to the debt, if everything goes exactly as planned.

Now during the hearing it was learned that the refurbishment price was, at one time, from the Hagler Bailly report, \$550 million including replacement fuel. Then it became \$890 million -- or \$690 million. And now it is \$850 million.

I put the issue to Ms. MacFarlane that is there anybody at NB Power saying look, we can't afford this, it does damage to our financial sheet, does it make sense from a financial point of view? And her response was that so long as the project made economic sense, the financial aspects were secondary.

Surely somebody at New Brunswick Power has to be the protector of the balance sheet. Surely somebody has to be asking can the balance sheet absorb these additional capital expenditures?

Mr. Chairman, the need to reestablish the balance sheet at NB Power involves more than putting together a rate plan for the longterm. It must involve a review of

capital expenditures and asking the simple question, can we afford this?

To some extent the alternatives involve trading off the high capital expenditures of refurbishment against the longterm operating costs of the supply of gas. The Province of New Brunswick regrets that the financial aspects of this refurbishment has not been weighed more heavily by NB Power.

Now to go further with this, and looking at the issue of the elimination or dealing with the risks, the retube agreement, the refurbishment agreement and the performance agreements cannot be said to be documents which represent a risk-sharing partnership.

Normally in contract law a party who does not meet his contract can be expected the damages that are reasonably foreseeable. In this case if the refurbishment and retube contracts are not completed due to the fault of AECL, then damages of \$200 million for replacement power could result.

The exposure has been effectively limited to \$15 million under the retube and refurbishment agreements. Further the contracts contain language which does not result in any liability to AECL if there is a change in scope or an act of the fault of the owner.

The fact that these may be considered boilerplate contractual terms does not preclude negotiations to adjust the risks differently.

AECL is going to learn whether in fact it can retube and refurbish a CANDU reactor. It is going to take its engineering and design work into the real world. It is going to learn if it can make a dollar doing this type of work for the price listed.

And quite remarkably, if once the reactor is torn down, things aren't quite what they are expected to be, then much of the problem is NB Power's.

In my cross-examination of Dr. Kugler, it is clear that AECL's market for CANDU-6 reactors has run its course due to the economics of gas and the fact generators do not want to absorb the substantial upfront capital costs of the new CANDU-6 reactor.

The next generation reactors are not likely to go to market until after 2006. The refurbishment of CANDU reactors is, according to Dr. Kugler, crucial to AECL's strategic direction.

The Province of New Brunswick would submit that it is much more than that. It is a destiny issue for AECL. The ability to show itself capable of completing refurbishment of CANDU-6 reactors is the full extent of AECL's



commercial business over the next six to 10 years.

NB Power is being asked to be the first. One question is whether Wolsong or Argentina or Romania or Hydro Quebec would have been the first.

NB Power has contributed much to the financing of the technology that will be used, to the extent of \$40 million. Much of this technology, if it works, will be used in further refurbishment projects.

The sharing of contractual risks should reflect the fact that New Brunswick Power has agreed to go first. And simply put, it does not.

As an example, and this is just an example, there was discussion over the fact that NB Power might pay a bonus to AECL based on the availability of power at Point Lepreau as opposed to just on the capacity factor.

Presumably this is justified as being reasonable on the basis we should pay so long as the power is available, whether we use it or not.

However I think it is reasonably justifiable in negotiations, reasonably fair to say if someone comes along with power that is cheaper, then the proponent of the nuclear energy, i.e. AECL, should absorb that risk.

One of the reasons we are buying it from you today is we believe it is cheaper. And if it is not cheaper later,

why should we pay you a bonus? I don't know. It is just negotiation.

Mr. Chairman, often it is the most obvious that is never stated. And in this regard perhaps we should all be thankful to Mr. Craik in his line of questioning to Dr. Kugler at pages 1675 and 1676 of the contract.

In this line of questioning, Mr. Craik asked about whether contracts could be renegotiated. And the question he asked is "Whether they could do it tomorrow?" And Dr. Kugler answered "It could be." The "they" is AECL. The "it" is negotiate changes to the terms of the contract.

Mr. Gillis, Mr. Craik and other intervenors have suggested they are not opposed to nuclear power generation. And in fact they support a refurbished Point Lepreau. They cannot however support proceeding on the basis of the risk-sharing contained in the contractual documents under consideration. The Province of New Brunswick supports this position.

On reflection it is our review that after Hagler Bailly, NB Power became married to the refurbishment with AECL. And to some extent their corporate direction has been to this end.

We find it significant that there has been no third party assessment of the risk and that there was almost a

summary dismissal of a NUCO type option, as evidenced by the fact Mr. Marshall did not evaluate this option in his screening and cost curves.

And finally, and most importantly, and this is the most bothersome one to the Province of New Brunswick, nobody is objecting to the possible financial consequences and balance sheet impact.

In closing, Mr. Chairman, I will go back to my preliminary remarks. We are a small province. And NB Power is a small utility. Its power generation system has a capacity of slightly more than 4,000 megawatts. It has \$3 billion in debt -- or NB Power has \$3 billion in debt which is 30 percent of the debt of the Province of New Brunswick.

Now if NB Power was a nuclear -- was a power generator with 25,000 megawatts of capacity and a 75 percent debt-equity ratio, it would undertake this refurbishment project without doubt or question. Even the worst downside risk can be absorbed by the economies of scale if you were this big.

NB Power and the Province of New Brunswick does not have the luxury of the economies of scale to absorb the downside risks of these contracts.

The citizens of New Brunswick will recall the ghosts

of Lepreau 1. They will recall the 300 percent cost overrun and the three-year delay in completion of construction.

I'm not sure who said it. But people who do not learn their mistakes from their histories are bound to repeat them. And one thing we cannot have is a repeat of Lepreau 1.

At the same time, the Province of New Brunswick is mindful that Point Lepreau remains a real and substantial asset that has a key role to play in the province's electric power generation.

The Province of New Brunswick submits that the contractual context of which this refurbishment proposal presents a high level of risk which is unacceptable. We submit that the risk if valued would more than eliminate the \$234 million NPV advantage that Point Lepreau has over gas.

However if the risk can be successfully mitigated, there may well be an economic advantage in favor of refurbishment.

The Province of New Brunswick therefore asks the Public Utilities Board to recommend to New Brunswick Power that it not proceed with Point Lepreau refurbishment as presently contracted with AECL and that NB Power seek ways

to mitigate its risk either by renegotiation of the contracts with Atomic Energy of Canada or by involving commercial private sector joint ventures.

Those are my remarks on argument. I can't resist the opportunity to respond to a couple of comments yesterday from my colleague Mr. Hashey. And these will be very brief.

Both Mr. Hashey and Mr. Miller used the word with the Board or made the suggestion to this Board that you should not become involved in the micromanagement of NB Power. I'm not quite sure of the full context of that.

But the suggestion that I think my colleague was making is that you have got to really leave it up to them to cut their contract, make their deal with AECL and get on with life.

I don't think you are micromanaging a bit if you evaluate this proposal in the context of those contracts.

Those contracts are the very essence of what the risks are and what value you place on these risks.

Quite frankly, if this Board is not happy with those contracts and you share the views of the Province of New Brunswick and other intervenors, I would urge the Board to take that position. In other words, we don't necessarily eliminate refurbishment but we say we can't do the

refurbishment in this contractual setting.

Second issue, and since it has been noted that the Province of New Brunswick made a lot of noise about the CO2 at Coleson Cove, I do recall I think NB Power's position at Coleson Cove is that the CO2 is something that we will deal with in other ways. But it is really not part of an economic regulator's decision.

Quite fairly though, we do agree and concur with our colleague's note that there is no question nuclear does provide some solution to the CO2 problem. I'm just not sure how much that fact -- how it was to be weighed.

I do also take some exception to Mr. Miller's statement that this is not a repeat process, or that it is a repeat process. And I did make reference to Dr. Kugler's evidence at page 1574 on June 13th, wherein he agrees with us that the scope of this teardown is something new and that it has not been done before. And I don't -- maybe I'm splitting hairs a little bit there. But I think the Board has our point on that.

So those are the three points I did have in rebuttal, the comments made by my colleagues earlier.

The Province of New Brunswick thanks the Board for its consideration of our remarks. And we appreciate the time and energy. It has been tough as an intervenor for three

to four weeks of hearings. And I'm sure it has been tough for the members of this Board.

And it is really quite remarkable the level of interest that you continue to show throughout and your attention to the arguments being made.

Thank you very much, Mr. Chairman.

CHAIRMAN: I'm glad you brought up the micromanaging. I have that as one of the subject matters that I wanted the parties to cover when we go around the room later on today.

No question that the law is clear in reference to our normal rate regulation, et cetera, that we cannot micromanage. We can't substitute our management decisions for those of the utility.

But if we look at the section that the legislature in its wisdom passed and under which we are hearing this matter, to me it sets this recommendation process aside from the normal thing that an economic regulator would do.

But I would like to have the wisdom of all the parties addressed to that later on.

Thank you, Mr. Hyslop. Saint John Energy?

MR. YOUNG: Mr. Chairman, Commissioners, I am pleased to have the vice-president of Saint John Energy with me, Mr. Anthony Furness.

Thank you for the opportunity to participate as a full intervenor in this process. I would like to read Saint John Energy's position on the refurbishment of Point Lepreau into the minutes of the hearing.

Saint John Energy's position and presentation on behalf of its customers focuses on the continued need for secure, reliable and cost effective energy supply for the present and foreseeable future.

We also want to promote economic opportunities in the greater Saint John area with the understanding that social and environmental sustainability are not niceties but are necessities.

Saint John Energy, from a municipal utility point of view, with 36,000 customers believes that there is a need for Point Lepreau's quantity of energy and a flexibility the energy will bring to the grid, especially during emergency response situations.

We can not ask our customers to accept the possibility of brownout situations due to lack of supply as is common in some areas of the United States. Nor can we ask them to dig deeper into their pockets for replacement supply.

Point Lepreau is NB Power's primary base load generator with fuelling costs a fraction of that of thermal power plants. The nuclear unit runs at full



output whenever it is available. Reliability of supply and transmission are of great concern, as both are beyond Saint John Energy's current control, yet greatly impact our customers.

Customers have voiced concerns, complaints about past outages beyond our control due to loss of supply. Yet all utilities in New Brunswick continue to have an obligation to serve the customers' electrical needs.

The Province's White paper on energy policy has no way relieved any utility of this responsibility. Point Lepreau or replacement power capacity is required to provide a reliable supply of electricity for New Brunswick. Along with adequate supply, the transmission system need adequate capacity and physical protection of energy facilities, along with delivery of systems that cannot be easily disrupted.

Transmission system reliability is often as important as supply reliability with the added caveat that the further the end user is from generation source, the higher the risk of transmission related outages.

We all remember the ice storm in January, 1998. The longer the transmission system between you and the generating source, the higher the risk of loss of supply under the circumstances.

We and our customers support the use of green generation methods to meet demand and to address the issue of ozone depleting greenhouse gases. We need an energy supplier that has a solid history of being both reliable and cost effective producer of clean energy.

The CO2 emissions avoided by the 635 megawatt nuclear unit compared to thermal generation by coal, oil or even natural gas are significant as evident in the direct evidence of Rod White, evidence 1 of 1, table 1 page two.

In the future we expect to see clean power supplied from the renewable sources, such as wind and solar energy to satisfy our customers. The more sources of energy available to Saint John Energy, the better for our customers.

Current demand side management programs have a positive effect on customers' wallets and the environment.

The demand for electricity in New Brunswick could be reduced further or held relatively constant, but to do so would mean heavily subsidizing demand side management programs with large monetary systems that would probably be -- would probably affect rates. NB Power's demand side management program appears to be effective and pro-active as it stands currently.

We understand that the art of forecasting has a level

of uncertainty associated with it, as it is an attempt to predict the future. We understand the circumstances making NB Power's January, 2002, peak demand load forecast being eight percent higher than the actual.

Saint John Energy's actual measured January peak demand was 7.62 percent less than the actual measured January peak demand in January of 2001, the previous year.

Mainly due to warmer temperatures and to a lesser extent to economic factors affecting commercial establishments in our region. Along the same time line, energy consumption for Saint John Energy was down 5.81 percent.

Point Lepreau is a benefit to Saint John Energy as a municipal utility. The closer the supply is to the end user, the less risk of transmission related failure seen by our customers as a loss of supply. The more available sources of supply in the greater Saint John area means more flexibility available to our electricity supplier which relates to better rates and reliability that we can make available to our customers.

Currently Saint John Energy has a contract with NB Power to supply its electricity needs. As we enter a deregulated, or as we understand re-regulated electricity market, we need the flexibility of adequate local electrical supply for our customers.

Point Lepreau's economic spin-offs benefit Saint John, as stated in NB Power's evidence. In New Brunswick, Point Lepreau accounts for 95 million directly through wages and purchasing and 150 million indirectly through other spin-offs.

The refurbishment project will create 450 person years of employment for the construction trades that are ready for the work. Point Lepreau employs approximately 700 highly skilled high tech workers with a majority of them having come through the colleges and universities in New Brunswick.

In conclusion, Saint John Energy and its customers want their electricity supplier to develop sustainable clean energy strategies for the province's growing energy appetite. Saint John Energy believes Point Lepreau fits the strategy and has an important role to play on NB Power's system as long as the stated reliability forecast occurs and the stated of project costs can be financed without affecting rates.

Saint John Energy is very conscious of the effects on rates into the future as our current energy contract is based on cost of service. Shortterm and longterm cost of replacement power and its impact on our wholesale rate would be detrimental if Point Lepreau Generating Station

does not meet expectations.

There is a need and will continue to be a need for electricity generated by Point Lepreau and its replacement facilities in the future based on a longterm forecast presented by NB Power.

This is the end of my summation, Mr. Chairman.

CHAIRMAN: We will take a three quarter of an hour recess and come back at a quarter after 11:00. And I have already mentioned at the conclusion of Mr. Hyslop's presentation that I would like the parties, if they would, to address the micromanagement question in reference to our legislation.

The second thing is that I think the panel would be interested in hearing Mr. Gillis and NB Power and AECL, and any other parties that want to, to revisit their positions in reference to the principal, agency relationship of the Federal Government and AECL. And then Mr. Gillis' point of view that -- as I heard it, that the federal government could back away from that responsibility by changing legislation.

When we come back ,if after our deliberations we have more items we would like you to cover, then we will let you know at that time.

I would propose that we simply go through the

intervenors and they can give their presentations in reference to these particular matters. And then Mr. Hashey on behalf of NB Power would do its rebuttal.

Mr. MacNutt, is that -- I have covered the water front, okay. All right. We will be back at a quarter after 11:00.

MR. HASHEY: Just to clarify. We are not coming back this afternoon. We are going to clear this right up this morning?

CHAIRMAN: Well that depends upon how long you speak before lunch, Mr. Hashey.

(Recess)

CHAIRMAN: I think there is one additional subject that the panel would like the intervenors to address. And that is some of you have indicated that you believe that part of the recommendation of the Board would be that certain insurance should be purchased for substitute power and things of that nature. And we are just interested from the intervenor's point of view what you would consider to be an appropriate amount to pay for that.

Well we will go through the line up again to address those three different things that we chatted about.

Mr. Miller? His suitcase and stuff is still here, so

MR. HASHEY: I think his feelings have been hurt.

CHAIRMAN: What did I say? Okay. And the Canadian Unitarians for Social Justice and Mr. Dalzell? And neither of them are here. The City of Saint John is not here. Mr. Coon?

MR. COON: Thank you, Mr. Chairman. I guess on the question of micromanagement, if I understand what you are referring to, is making -- whether the Board can make conditional recommendations or recommendations with conditions. Is that a reasonable characterization of the question?

CHAIRMAN: Well just to explain, Mr. Coon. In our normal rate regulation, et cetera, kind of jurisdiction we can't micromanage the company or the utility. In other words that's for the Board of management to do. The only thing that -- the way we control, you know, bad management decisions, is that if a project is not used and useful in the utilities line of business, like a generating plant or something like that, why then, regulators can simply take it out of the rate base and not allow the utility any return on that, et cetera. But on the whole of the management of the company is to run the company. And we don't comment on things other than just in the sense that I have explained to you.

Whereas in this one, it's almost as if the legislature is saying -- and it's not a yes or no -- they are saying make your recommendation as to whether it's yes or whatever. So that's -- I'm just wondering if any of the parties have an opinion on that. Because to me it's a question. I think that section gives us greater jurisdiction than it -- than our normal regulatory role, that's all.

MR. COON: Well I guess the Board will have to decide that.

That seems to be a legal question and there is provisions in part 2 around what the Board is authorized to do and what it's not authorized to do.

But just to pursue my thinking on this to the extent that we have done it, if this refers to making recommendations that contain conditions, we would feel that the legislation does not support that because -- both in fact and in spirit, because if you can imagine if recommendations were made with conditions, there would be nothing binding the applicant to return with a revised proposal, so there would be no ability for the Board or the public through the public process that the Board offers, to scrutinize whether or not those conditions have been adequately met.

It would be left up to government and NB Power to just



explain publically through their people whether or not they thought they met the conditions that the Board set down. So unless the applicant was required to come back so that those -- their changes to their application were scrutinized once again by the Board and the public, then we couldn't see how the Board could make conditional recommendations.

NB Power comes forward with an application in this process, if there is justification for changes to parts of the application, then there is justifications for revising the proposal and bringing it back before the Board. So I guess that leaves, in our view, the Board to either accept or reject the application as it's written. It's a package. And if overall on balance it's in -- a bad deal for New Brunswick taxpayers or a good deal for New Brunswick taxpayers, then the Board has to rule that way.

So I guess that's our view on it, that making the kind of conditional recommendation in a sense would betray the spirit of this whole process in that meeting those conditions would never be subject to public scrutiny or Board review unless that was a part of the recommendation as well, I guess.

The -- and this is important of course because as we have seen in exhibit A-28, NB Power is telling us that the

levelized cost of power from Point Lepreau from 1983 to 2006 is expected to be 10.97 cents per kilowatt hour and surely we don't want to get into that mess again. So we think you have to accept or reject the application as it's put.

CHAIRMAN: Thank you, Mr. Coon. Any comments in reference to the -- well of course it's basically a legal question as to the agency relationship and guarantees. I mentioned that Mr. Gillis had talked about that and how we wanted the parties if you wanted to to approach that again.

MR. COON: Yes. Mr. Chairman, we don't have adequate expertise to offer any kind of view on that question, I'm sure, so I wouldn't dare. And on the question of insurance, again, we haven't looked at the economics of this proposal in the context of what insurance coverage would be adequate to offset the -- what we described as significant areas of unknown risk at this point.

CHAIRMAN: Thank you, Mr. Coon. Mr. Miller is back in the room, we will call on him now.

MR. MILLER: Thank you, Mr. Chairman, and I apologize for not being on time. I was researching some of the law on this matter, and I would like to deal first with the regulatory function issue. And point out that as a general principle of public utilities regulation, the role

of public utility boards are to conduct a regulatory review of various matters and determine whether things are just and reasonable. That's the typical language that you see in PUB decisions.

And as, Mr. Chairman, you accurately pointed out, that's a general principle for rate setting. And I guess the question is, is there anything unique in section 40.1 of the Public Utilities Act that should change the general principle of general supervision for just and reasonableness and give the Board a broader scope and more direct involvement in the day to day management functions that would typically be assumed by the utility?

And in this case I'm saying utility but of course NB Power Corporation is not a public utility within the meaning of the Public Utilities Act but some of the principles do apply to it.

I would suggest that section 40.1 cannot be considered merely in isolation. One has to consider not only the Public Utilities Act but the general legislative scheme of the province which involves NB Power. And NB Power exists by virtue of the Electric Power Act, and I would like to first just refer to that legislation. Section 3 of that establishes NB Power as a body corporate. And section 3 (1.3) gives the Lieutenant Governor in Council the

authority to establish the Board of Directors of NB Power.

And they have done that. And the Board of Directors of NB Power have been involved in this process throughout as is evident from the documents on file including exhibit A-6, which includes the Board of Director's minutes.

Section 22 of the Electric Power Act sets out the powers of NB Power and one of those powers is to construct, maintain and operate generating stations. So the legislature has given the authority and the responsibility of constructing, maintaining and operating generating stations to NB Power, and the province through its authority under section 3 appoints the Board of Directors of NB Power. This process has proceeded to this point on that basis.

Now section 8 of the Electric Power Act says, The corporation shall not enter into any contract with Her Majesty in Right of Canada or in the Right of any Province of Canada or with any foreign state or country except with the approval of the Lieutenant Governor in Council.

And it's our understanding that the contracts in this case although the implementation of them hasn't been approved, the contracting strategy and the approach of the contracts has been subject to approval by the Lieutenant Governor in Council. And there is an Order in Council

dealing with that, and my colleague, Mr. Hayes, is going to be locating that.

So the process has come to that point in accordance with the legislative regime and then we get into the Public Utilities function and the question of whether the usual standard of general supervision for just and reasonableness is supplanted by section 40 (1).

I just point out that section 5, as the Board no doubt well knows, deals with the general powers of the Board and it suggests that the Board has power for general supervision.

Section 36 of the Public Utilities Act I think is very noteworthy for the purposes of this question because it provides some assistance in determining the appropriate interpretation of section 40.1.

Section 36 says, Nothing in this Act shall be construed so as to authorize the Board to regulate the affairs of New Brunswick Power Corporation to recommend or approve its borrowing, its maintenance or reconstruction of existing facilities or its contracts for the sale to or the purchase from interconnected electrical utilities outside the province.

That's a broad statement. The language is "nothing in this Act shall be construed." And we would suggest that

section 40 has to be considered -- sorry, 40.1 has to be considered in the context of that general statement of what the authority of the Board is.

Section 40.1 says New Brunswick Power Corporation shall make an application to the Board for the Board's recommendations as to a proposed expenditure before making the expenditure if the estimated expenditure exceeds a total of \$75 million. And it goes on to say in relation to a proposed upgrading program for a generating facility or proposed maintenance program.

Now our submission is that when considered as part of the statutory scheme not only of the Electric Power Act but of the Electric Power Act in combination with the Public Utilities Act, the intent of the legislature in enacting section 40.1 was not to duplicate the functions that the legislature has seen fit to give to the Board of NB Power.

And as I pointed out, the province appoints the Board of NB Power, so for the most part -- I realize the province participates in this public process but the province certainly has a considerable amount of input in the process up to the point of Board approval of the contracts.

So for those reasons, Mr. Chairman, we would suggest

that the general regulatory authority of general supervision for just and reasonableness is the appropriate standard according to the legislative scheme. And unless there are any questions, I would like to move on to the other question about the obligations of the crown and a crown agent.

CHAIRMAN: Just, Mr. MacNutt, correct me if I'm wrong here but my understanding is the amendments to the Public Utilities Act which were proclaimed last Friday, section 36 has been amended, has it not?

MR. MACNUTT: Yes. There is an act to amend the Public Utilities Act which received proclamation to come into effect on June 14th. Section 8 of the amending act repeals section 36 and replaces it with a new section which it reads exactly as it is there, but with the following words inserted at the opening of the section which says, subject to sections 40.1. There is a typo on that. It should be section 40.1. So the section 36 must be read as being subject to what is stated in section 40.1.

CHAIRMAN: With that amendment in mind, it doesn't change your argument though, Mr. Miller?

MR. MILLER: It does, Mr. Chairman. I have to confess that I wasn't aware that that had been proclaimed. And with

the proclamation of that section it does -- it does clearly change the submission I had made regarding the appropriate interpretation of section 36, because it is not the section that I was referring to.

So obviously section 40.1 does have a -- in light of that amendment a broader -- gives the Board a broader range than section 36 would imply. You have clearly as it says, you know, you have some ability to regulate the affairs. So the question then becomes in the legislative scheme to what extent does this Board substitute its judgment for the authority given to the Board of New Brunswick Power under the Electric Power Act. And I would suggest that it is a power to make recommendations to that Board.

But the expertise of this Board is, you know, by virtue of its establishment as a Public Utilities Board is in matters of public utility regulation, not matters of a nuclear power plant construction design contracting principles. And for those reasons, notwithstanding the amendment to section 36, I would suggest that the function although broader than my initial submissions would have suggested in light of that amendment, does not involve a, you know, one-for-one substitution of this Board's judgment for the Board of the New Brunswick Power's



judgment on specific matters of contract.

As we have said in our main submission, our main closing submission, the issue is consideration of the contracts in their totality.

This Board doesn't have before it the things that Mr. Hyslop had speculated upon. What would the price be if the risks had of fallen out in the negotiation process in a different way. So it is very difficult I would suggest for this Board to look at the contracts and say, for example, we would like you to have a six month longer warranty period, or we would like the escalation cost to be 12 percent rather than 17 percent without involving, you know, a total change in the balance that is achieved when contracts are negotiated.

CHAIRMAN: Thank you for that, Mr. Miller. Do you want to go on to the other matters?

MR. MILLER: Yes. The next issue is the obligations of the Crown. And in our main submission we pointed out and established the authority by which AECL is indeed a Crown agent for all purposes. And I understood the question to be in light of Mr. Gillis' comments about what might happen in the future and he referred to various other things that the federal government has gotten out of such as coast guard and other things I believe he mentioned.

It might have been ports rather than the coast guard. But I think we have to deal with this issue on the basis of legal principles. And the legal principle first is what do the contracts say.

The contracts each have a provision that say the agreement shall not be assigned by the contractor, that is AECL, without the prior written authorization of the owner, that is New Brunswick Power. So at the very basic level AECL and Her Majesty the Queen are the parties to the contract. And our initial submissions establishes that they are one in the same. An agent contracting for the Crown contracts on behalf of the Crown.

So the Crown isn't bound to now. Today the Crown is a party to those contracts. Crown is not able to assign those contracts to a third party without the consent of NB Power. And if in some speculative future reorganization of AECL, or the manner in which atomic energy is handled by the federal government there involves a proposal to divest, NB Power will have a say in what happens.

NB Power will have to consent to any assignment of the agreement. And in giving that consent they could make it a condition that the federal Crown is not relieved of its obligations that it now has. I mean, it is very important to understand that the contracts now bind the federal

government. And any change in the future of the status of AECL doesn't take away from that principle that Her Majesty the Queen is in effect a party to these contracts.

So the next -- and I will just read from Professor Hogg text on liability of the Crown where he says at page 219, "There are two requirements for the validity of a contract purporting to be made by a government representing the Crown. First, the contract must be within the power of the particular government. And secondly, the contract must have been made by a servant or agent acting within the scope of his or her authority."

We have the opinions of the federal government that these contracts meet that requirement and are binding on Her Majesty the Queen. And as we said that is the correct statement of the law.

So I guess the question then becomes can the government unilaterally take steps to step away from its contract? And that is a complicated question and one that is difficult to get a succinct answer on. But I can read a couple of passages from Paul Lorden's text on Crown law. This is the 1991 edition where he says, "In general the common law rules of contract govern Crown contracts. As the Supreme Court of Canada decided in the Bank of Montreal case" -- and this is the Bank of Montreal versus

Quebec 1979, 1 Supreme Court Reports, 565. This is the quote from the Supreme Court case, "The rights and prerogatives of the Crown cannot be invoked to limit or alter the terms of the contract, which comprises not only what is expressly provided in it, but also everything that normally results from it according to the usage or the law." And that is the end of the quote.

The Supreme Court of Canada has made it pretty clear that when the Crown contracts they can't use their authority as the Crown to get out of those contracts.

Now we know from reading the newspapers that they have tried from time to time, the Pearson Airport case, which unfortunately I don't have the details of as an example, but they weren't very successful. They ended up having to pay a substantial -- substantial sum of money to the contracting parties in that case where they tried to use the authority of the Crown to get out of a contract that was made.

So we would suggest that once a contract is made by the Crown future changes to the status of AECL, which are admitted -- admittedly speculative at this stage will not in any way relieve the Crown of those obligations, unless NB Power were to consent to that in the future. And that is my submission on that point.

CHAIRMAN: Mr. Craik, do you have any remarks?

MR. CRAIK: Thank you, Mr. Chairman. Not being a lawyer, of course, I find a lot of this very puzzling. But one of the questions I would like to put to the Public Utilities Board and --

CHAIRMAN: You are reversing the role.

MR. CRAIK: Mmmm?

CHAIRMAN: You are reversing the role.

MR. CRAIK: Yes. Why not.

CHAIRMAN: Go ahead.

MR. CRAIK: Is in respect to the Performance Agreement.

Here we have a situation where NB Power is not employing subcontractors to do specific work, which is what they have been doing for years and is obviously covered by the Act.

What is happening here is they are entering into a partnership in effect for the sale of electricity. And I would ask the question from the various lawyers present whether that is not in contravention to the Act under which New Brunswick Power is constituted. Because the Plant Performance Agreement in effect has AECL benefiting from a sale of electricity in New Brunswick as a partner.

Now as I have indicated, at first I thought that read as a fairly encouraging thing to do showing partnership

and participation. But I have questioned the legality of it.

Then when you start getting into the details of this rather seductive Plant Performance Agreement --

CHAIRMAN: Mr. Craik, this is rather particular in the way we are doing this that if there is some questions, the Board ask the intervenors to address, not to investigate new argument or re-confirm what you had an opportunity to say in your original. So I will ask you if -- do you have any remarks you wish to make in reference to the three matters that we have put out for intervenor comment?

MR. CRAIK: Again, could you remind me of those?

CHAIRMAN: Well the first one was, and Mr. Miller has covered it very thoroughly, and that is about the Board's normal role as an economic regulator is not to micromanage the utility. And then looking at our section 40, does that change things? In other words, what is your interpretation of the Board's authority and responsibility pursuant to that section.

The other one had to do with Mr. Miller just discussed at length what AECL and NB Power have talked about the agency, in principal, agency relationship as between the Crown and AECL. And Mr. Gillis has taken another point of view. And we ask people to look at that again.

Thirdly, some of the intervenors had mentioned the fact that they thought that insurance should be affected or greater guarantees or warranties. And we just asked those that had suggested that if they could give us an indication of what they thought would be a fair or reasonable price to pay for those guarantees or additional warranties. Those three items.

MR. CRAIK: Well, on the question of warranties, as I have indicated earlier, the schedule both covered by the refurbishment works to quite extensive and specific retubing. One should ask the question -- I don't know the answer -- whether the guarantees on the schedule could be increased, or whether AECL would be willing to do this?

CHAIRMAN: I guess the Board's point of view is that the evidence that we have heard to a greater or a lesser degree has indicated that, you know -- well as I would say about any kind of insurance, you can always get insurance if you are prepared to pay the premium. People will insure a risk.

And we are just saying if you had proposed that a greater warranty, guarantee or whatever, were to be required, then how much do you think the premium should be to get that? What do you think is a reasonable amount?

MR. CRAIK: Well yes. Frankly, on those particular items of

the schedule I don't think that NB Power should pay any price for those extended warranties. Thank you.

CHAIRMAN: Mr. Gillis?

MR. GILLIS: May I speak from here?

CHAIRMAN: Sure.

MR. GILLIS: The three issues that you wish to address are, as I have noted them, a micromanagement, second liability principal agent, and thirdly the level of insurance.

With respect to the issue of micromanagement, as it has put to me before I came in here, if I equate it to a legal situation, a court -- perhaps a court of appeal will not delve into the deliberations of an administrative tribunal or a municipality except with respect to jurisdiction.

And when they look at jurisdiction and a jurisdictional error, they will look at the contracts or whatever the case might be, at least to answer the question of jurisdiction. And once you have done that they will move on and not rule upon the merits or the lack of merits of the contract.

And in that vein, and in particular in view of what NB Power has asked you, in the application from NB Power itself it has asked whether or not the project should be undertaken. Those were their exact words.



And as Mr. Miller pointed out, it is a question of reasonableness. And reasonableness, the opposite to that would be the unreasonableness, is something this Board can rule upon. And the unreasonableness is one of the key documents that you are asked to look at. And it is a separate document, the Plant Performance Agreement.

Now the broad brush, is that sufficient, is the question the Board might ask. And you can go that far and make your decision whether it is reasonable or unreasonable. And that's the extent of it.

This Board can't get down to the nuts and bolts of it and say well, perhaps it should have been a dollar per kilowatt hour or \$1.50 per kilowatt hour instead of 50 cents. That is the micromanagement level.

But on the larger global approach to looking at these contracts generally and the sufficiency of the guarantees, it is quite within the mandate of this Board, particularly in view of the legislation and particularly in view -- that is what you are being asked about.

If they say well, you can't look at the contracts, then I'm saying what have we been doing here? Because quite clearly the whole application relates solely to contracts, three in number at the present time.

And we haven't or at least I haven't taken apart

individual paragraphs saying that some articles should be changed. My approach was on a much higher level, dealing with the sufficiency of the guarantees and the warranties and the lack thereof.

This brings me to the second point that you have asked with respect to the principal agent relationship and the federal government backing away from responsibilities by changing legislation.

I will deal with the second first. And I have got to relate it to what few things I know because I'm from Saint John. I look out and I look at the harbour. The harbour was controlled by the Government of Canada pursuant to the British North America Act.

And it was controlled initially by the National Harbours Board up until the late 70s. At that time, the federal government in its wisdom said, we will come up with the Canada Port Corporation. And they changed the National Harbours Board to the Canada Port Corporation. And then under the provisions of that legislation they offloaded that responsibility to the local port authority. Now that is what I'm concerned with respect to AECL.

Another example, still coming from Saint John, I look out at the rail yards or the lack of rail yards. Again under the Act, the British North America Act which brought

Canada together, railways were the responsibility of the federal government. They were regulated by the federal government.

Up until approximately the early 1990's there was the National Transportation Act, which had some teeth in it with respect to compelling railways to provide rail service. And you could precipitate hearings before the National Transportation Agency with respect to the abandonment of rail lines.

Since the 1990's, and I think it is probably Doug Young who probably precipitated it, you have now the Canada Transportation Act, quite different, very easy for a railway to discontinue a rail line in this country. Again another example of how government in its wisdom offloads its liabilities.

Now dealing here with AECL, we have a letter marked AECL 4. And it refers to section 11 (1) of the Atomic Energy Control Act. Well, I don't know if the Atomic Energy Control Act does exist. This letter is dated the 26th of May, 2002.

If you go on to the regulations or you go on to the federal statutes, I think there is an Act called the Nuclear Energy Act, A-16.

CHAIRMAN: We have already covered that, Mr. Gillis. And

you are absolutely right. That is an improper quoting of a statute.

MR. GILLIS: Right. And doesn't --

CHAIRMAN: I would be interested -- and I don't want to cut you off or anything -- but I would be interested in you dealing with what Mr. Miller has brought up about the contractual relationship between the Crown, AECL and NB Power, what your comments might be on that?

MR. GILLIS: I was getting to that, Mr. Chairman. The Crown or AECL says it's the principal agent and therefore the Federal Crown is bound by the acts of AECL.

AECL is a corporation. A corporation has shares. All of those shares, except for the qualifying shares, are owned by Her Majesty.

What they should look at is corporate law. And corporate law basically is what is the liability of a shareholder for the acts of the corporation?

And when you look at corporate law, the shareholder is not liable for the acts of the corporation. The contract that they have entered into here and purport to enter into here is a contract between AECL and NB Power.

If you wanted to bind the crown, so there is no doubt whatsoever -- and Mr. Miller has raised some question and said it is a difficult area -- well, it is a great area

for lawyers because we can make a fortune in legal fees.

You simply add an extra line, Her Majesty The Queen in the Right of Canada as Represented by the Minister of whatever. And the crown signs that agreement as well. It is not difficult to do. The omission to do that is telling. So if one looks at corporate law there is no liability of Her Majesty The Queen in the Right of Canada for those acts of AECL period.

The only saving factor, and as you -- and I think Mr. Miller has pointed out -- I gather this fellow, the general counsel for the Department of Justice, up until the 13th of June of this year, obviously only looked at one Act. And his opinion is worth exactly that, nothing.

If you take a look at the Nuclear Energy Act, the provisions being section 11.2, which is the only one that might impose some liability upon Her Majesty, because ownership of shares does not, according to any corporate law that I know and most other lawyers in this room know, is 11.2 says, A company is for its purposes an agent of Her Majesty in the Right of Canada.

Now "for its purposes". Then you have to go back to the purpose of the legislation and see whether or not AECL entering into a Plant Performance Agreement for 25 years falls within that purpose.

And I can tell you as a lawyer, I could argue both sides of this case to the Supreme Court of Canada. It will take me about 10 years. And I will make a lot of money. And there will be a bunch of other lawyers on the other side all arguing it as well.

When it is something that so simply can be addressed by a simple one paragraph guarantee from Her Majesty, a simple signature from some Minister of Her Majesty. And none of that was even requested by NB Power.

The final example I give with respect to the liability of Her Majesty -- then they talk of this principal agent relationship, how great it might be. If that did exist, why in the commercial world do the lenders require the borrowings to be guaranteed by the Province of New Brunswick of NB Power?

The banks know enough to say that well, look, if we don't have a guarantee from Her Majesty and we go under some principal agency relationship, we are going to be tied up with lawyers for a decade trying to figure this out. We want a simple, expedient way to address the responsibility. And that is simply achieved by her guarantee from Her Majesty if they are really behind it.

This brings me to the third area that I believe you asked for input on with respect to the level of insurance

or the level of the guarantee.

I'm -- well, I'm disappointed with the evidence that came out in this hearing. As you will recollect yesterday, at page 5 of the material that I provided, the question -- Mr. White says -- my question was, Now did that not cause you fellows some concern that look, our general contractor is going to enter into this hard money contract with us, won't even agree to cover us for the cost of replacement power if they screw up?

Mr. White: As we said originally in our opening presentation, that you won't get those kinds of coverages unless you pay a significant premium for them.

Then my next question is the question that you want an answer for, Mr. Chairman. That is what I want to find out. What is the premium to compare apples to apples, in other words a gas plant maybe to the refurbishment?

Mr. White: I don't know, sir.

Well, if these intelligent, informed, educated individuals that so ably negotiated these contracts, that I believe are a disaster, these individuals don't know, I guess you got to default back to somebody like me, a country lawyer.

And as a country lawyer I would simply look at it and say, what is the risk? The risk, they have quantified,

four years for a replacement plant, according to Mr. White, replacement power \$2 million a year in today's dollars. That is \$800 million.

Plus we have the debt of 800 million of a nuclear plant that doesn't work, worst case scenario \$1.6 billion.

That probably won't happen. But that is the risk. What would Lloyd's charge me for that, \$200 million, \$300 million? It would be a significant premium.

50 percent performance bond. I would at least get consequential damage. I would look for the replacement power.

If you want my opinion, I would be satisfied look, if AECL on their Retube and Refurbishment Agreement said, if it doesn't work we give you all your money back. And with respect to replacement power, we agree to pay 50 percent of the cost of replacement power for a maximum of \$400 million. That's the level I believe that you need.

And my closing comment on this, if you put that to AECL, AECL would take the deal. They need this contract moreso than NB Power does. If AECL doesn't have this contract they have nothing to sell for seven or eight years. We are the guinea pig.

And I would think if you pushed AECL, maybe the government of Canada even would contribute half the cost



of refurbishment and the retubing of Point Lepreau, since we will be the selling item for the rest of the world for all of these plants that AECL has built.

It is just a matter of negotiating from a position of strength rather than weakness, which is the way I think NB Power has approached it.

That would be all I would have, Mr. Chairman.

CHAIRMAN: Thank you, Mr. Gillis. JD Irving?

MR. WOLFE: We do a lot of projects in JDI. We never approach \$850 million projects but we do some fairly large ones.

And the most important thing to us is to be -- start up on time and have a good startup. If it is on budget, even better. But we try to be very close to our budget.

The thing we try to do is to pick the right people or the right contractor to do what they are best capable of doing that way we think we can get the best job.

As far as startup and liquidated damages, we will work very hard to try to cover our costs if our contractors are late.

As far as NB Power, if Lepreau goes down through the winter, we need that 600 megawatts for most of December, certainly all of January and most of February. We need it every day of the week.

And this past winter when Lepreau was down, it was on a breakdown basis and all that power came from outside. And those people that sold it to NB Power, they stick it to us, because they know there is no place else to get the power.

So at the very least I think we should go out and see if we can buy insurance that would cover half of the extra power cost. When we talk \$500,000 a day I believe that is just the difference between making it ourselves at Coleson Cove or making it at Lepreau. If we have to go out and buy it it is even of much larger number.

If Mr. White is correct and they are going to be on time, they will be able to convince the insurer that it is going to be on time. The costs shouldn't be that great then. But at the same time we need something to help us through that next winter.

On the other point, the obligation of the crown, we don't have any expertise in that area, so I can't comment.

CHAIRMAN: Thank you. The Province, Mr. Hyslop?

MR. HYSLOP: Thank you. On the issue of micromanagement I would only confirm the comments I made in my argument in chief. I would only add one thought with regard to the issue of interpretation of section 40.1 (1.1).

That section reads in part, The New Brunswick Power

Corporation shall make an application to the Board for the Board's recommendations. And I would note that recommendations is plural.

Although I think the issue of micromanagement has some validity, as Mr. Miller indicated, I do think it goes -- the word recommendations does give you a little wider discretion than just simply yes/no and yes, you should do it or no, you shouldn't.

I think the thoughts the Board might have in a very general sense as to some way that NB Power might want to proceed, if you were to say no to their application I think that can legitimately be part of the Board's response at the end of the day.

With regard to the issue of crown liability, I must confess that we have not made a thorough -- a legal examination of the issue. And I tend to concur with the comments of my colleague Mr. Gillis.

I point out, however, to Mr. Gillis I'm the country lawyer. I practiced law in Hartland for 17 years. And many years ago I had a transaction and a document came up.

And the issue was well, if it doesn't add anything what is the problem of supplying it?

If Her Majesty The Queen in Right of Canada is liable, according to Mr. Miller, what would be their problem in

supplying it? If it is just a comfort blanket and nothing more -- and maybe that is all it is, if Mr. Miller is right -- it is just an additional comfort blanket, what is the cost of adding it? As Mr. Gillis says, it is a very simple document.

So I make that point. And also I make the point if we are going to go ask them for a guarantee, I keep going back to the point that I made in my argument in chief and Mr. Gillis made, the future of the nuclear industry in Canada hinges a lot on whether this refurbishment goes ahead or not.

And I kind of think the federal government might have some interest in that. And although it may not be part, but if we are going to go ask them for a guarantee, maybe we want to ask them if they want to be one of the players in this. Just throw that out to my colleagues at NB Power.

On the last issue, relating to what would be a reasonable amount to pay to have additional warranties, well, from an analysis point of view of the NPV, the project would still make sense if we had all the risks covered for up to \$234 million. I will leave that thought with you.

Obviously if you are going to pay more to get greater

guarantees -- I mean, some of the purchase price is clearly couched in the performance agreement. You know, let's get rid of the bonuses, let's get the numbers up and let's -- when we ask somebody how much for your horse, how much to build this plant, let's get the price up so that we know that we are covered.

And if it makes economic sense at that point in time then they should be back in here making their further application or amended application for consideration.

CHAIRMAN: Saint John Energy?

MR. YOUNG: The Public Utility Board sees that it has the jurisdiction to make a recommendation with conditions, they should do as they see fit.

As to insurance, we do like the idea, as with JDI, of having insurance in place for replacement power, as it is a great concern and a great cost.

As to the obligation of the crown for AECL, I'm not a lawyer, have no expertise in that area and have no comment in that area.

CHAIRMAN: Thank you. Mr. Hashey?

MR. HASHEY: Thank you, Mr. Chairman. The first point in relation to the government of Canada, I concur with Mr. Miller's opinion that the agency relationship does set it up so that the government of Canada is a principal. And

if they are a principal I don't think the shareholder argument of Mr. Gillis really is relevant.

The situation on guarantees, obviously if you are a principal and it is your debt, you don't guarantee your own debt. On the issue of whether the government of Canada can legislate out, I guess the crown can do anything they like.

But I think, as Mr. Miller has pointed out, and we have not had a chance to research as he has, that there is some restriction on that with respect to existing contracts.

And then we are dealing with a contract that would be -- we are getting a contract that is a signed obligation of the crown right at this point. And I just can't see how they can opt out of it.

I think Mr. Hyslop should be a little careful in his comments on this one. Simply, you know, somebody can turn this on the province and say all of NB Power's contracts you got to sign them. That doesn't happen. This is a -- there is a legislative authority in NB Power to contract.

And it would be into a similar reverse role there possibly.

Really those would be my comments. I concur with Mr. Miller's comments on that issue.

Oh, one other on that, sorry. The point Mr. Gillis made concerning the opinion, yes, I don't -- let's try this one. I would suggest that the other issue on the opinion, I wouldn't completely rely on the opinion. I mean, obviously it's sloppy. There is no question about that. But I would think that this opinion has been filed and appropriately is intended to be an opinion that I would be -- feel that we could rely on.

But frankly I don't think we are going to be relying on the opinion. We would be relying on the principal law that's set out in the opinion. And if the law is right, then the opinion is irrelevant. It doesn't matter. And that's the way I would approach that one. That's issue one. The micromanagement issue.

The second one, I agree that section 41 gives the Board a broad scope. However, I see a danger in micromanagement, particularly in this case. The evidence is that there were two years or so of contract negotiation and development of all of the features that had to be dealt with here. There are filed evidence and interrogatories and five days of cross-examination on all issues including this minor issue. And I think the key point, and the one that bothers me here, is that it's easy for an intervenor to sit and say this is the way it is or

should be. But the only evidence that the Board has on the contract strategy and available options is that which is in the evidence. And the unfortunate part is that -- or fortunate maybe for us -- is that there are no opposite opinions. There is no contra opinions suggesting that a better contract could be obtained.

Now Mr. White has testified in detail as to how this works. And that in fairness, you don't get -- and I think I am getting into argument, and this will be maybe a bit of rebuttal -- but this we will be raising as to the issue of being able to obtain some of the damages that have been suggested. I think there is a problem in that. I think there is a danger in trying to micromanage, when you have a situation there have been two parties negotiating a contract in good faith and this is what they have reached as a conclusion. To try to change terms is a problem I think. Another problem arises in that, is I don't know really how you go back and renegotiate contracts when one has been agreed to. It's difficult. And what it does, I think it could very severely affect the corporation's ability to negotiate contracts with others in similar situations, if it's a matter of having somebody that they can go back to.

In other words, I could come back to you and say, gee,



you know, I can't get any better deal out of these guys. I'm going to come back here and say to you, I should have a better guarantee. Sure, it would be great. I mean, we would love to have a better guarantee. That would be wonderful. But if I come back to you and say that, where is that going to leave people in good faith bargaining on contracts? I think that would be a real, real problem down the road in reaching such negotiations.

On the other point, the final point, is the issue of how much it would cost. I can't help you there. All I can is that Mr. White has indicated that replacement power is an issue that is looked at. They have had insurance on it in the past. It's an issue that they are looking at. As to the insurability of that, I would think that the timing of that may be a bit of a problem. To try to get an insurance policy in place for an event that may be three years down the road. Probably you don't start that process that early, because there can be changes, and I think it might be very difficult to get any sort of a binding contract or any sort of an insurance coverage issue. But as far as how many dollars, I simply don't have any comment whatsoever. That's it. Thank you.

CHAIRMAN: Thank you, Mr. Hashey. I have just spoken to my fellow Commissioners, and I think if the applicant or any

of the intervenors wish to file the written submission in reference to the principal agency guarantee, that whole question, that will give you lawyers an opportunity to spend some time, and have them into the Board by the 12th of July. Would that appear to be reasonable? Okay.

Well on behalf of the Board and staff, I want to say thank you to the applicant and your staff for your co-operation and the amount of information you have put in front of us. Oh, time out.

MR. HASHEY: Don't forget rebuttal.

CHAIRMAN: I thought when you said I'm getting into rebuttal here that --

MR. HASHEY: No, no, I am sorry, I meant that I was getting into an area that we would be presenting in rebuttal. I apologize.

CHAIRMAN: Well you have right to rebut, Mr. Hashey. Go ahead. Do you want to use that mike or you want to go back over there?

MR. HASHEY: Actually, Mr. Morrison will speak to that. And he will -- maybe I will just change places with him.

MR. MORRISON: Mr. Chairman, there are some points that arose out of the submissions that were made yesterday and this morning.

I guess first dealing with Mr. Coon's submission

yesterday, there are some points that I would like to make in rebuttal. Essentially, Mr. Coon, has gone into a fair amount of detail regarding the quantity of the capacity and the energy that are required and the economics of its supply. As was raised in cross-examination and in some of our comments in redirect, Mr. Coon, has taken statements from the evidence which are admittedly individually correct. I am talking mostly about the quantification of costs. But he has combined them together in a manner which I suggest is illogical. And as a result of that he is making certain assertions.

First I would like to comment basically on his logic.

He considers capacity in his argument, but he ignores the issue of energy. He proposes a new approach for DSM, for DSM evaluation, but he ignores the fact that the Board's consultant has basically said that NB Power's approach to DSM is compliant with the industry standard or the methodology used in the industry.

He -- in his argument yesterday, he quoted a US consultant that's basically said that CO2 credits are speculative. And perhaps in the United States where the Kyoto Accord is pretty much off the table may be true. But I believe the evidence of Mr. Marshall was that the lowest cost federal government option in Canada has CO2

costs at about \$10 a tonne.

When he compares the power costs -- the alternatives, he ignores the impact of dispatch with respect to the rest of the NB Power system. And I believe in his comments yesterday, he said that he proposes that 4.8 terrawatts of Point Lepreau production can be replaced by 2.6 terrawatts of gas plant production. But in that analysis, he doesn't take into account the costs of the differential energy between those two alternatives.

So those are essentially all the comments I have with respect to Mr. Coon's submission.

I would like to go on briefly and talk about something that Mr. Hyslop raised this morning. And that is the ghost of Lepreau. And that's the spectre of Lepreau 1. And Mr. Hyslop's suggestion was that -- and to paraphrase him, if you don't know your history, you are bound to repeat the mistakes of the past.

Well I would submit that NB Power in its evidence has thoroughly looked at the mistakes that were made in the original Lepreau project and in doing so has developed a methodology to approach this project that addresses some of the shortcomings that arose during the initial Lepreau project. No question mistakes were made when Lepreau was built. But in this case, which I don't think was the case

in the initial construction, a detailed conditional assessment has been performed of the plant. They have done a great deal of work which was described by Panel A in defining the scope of the project. There is a single contract for project management, engineering and procurement, which was not the case in the original construction.

Importantly, this is a firm price scope contract or contracts. Probably most important is that the detailed engineering is being done in advance of the outage. All of that design work will be done before the outage begins.

There is detailed outage planning. And there is an ongoing program with the CNSC to deal with the scope and the details of the project.

Now much has been said about the AECL contracts, but the -- and I will get into that in a little bit more detail later. But when you look at the arrangements between NB Power and AECL, essentially AECL has skin in the game, to use a vernacular. It has a vested interest in the longterm good performance of the plant. And there has been external oversight of the planning and there will be external oversight of the work as it continues.

The real issue here and the one that has been addressed by all of the intervenors is the question of

risk. Of course, there is risk in connection with this project. The question is whether the risk has been managed and assessed properly.

The intervenors in their final arguments I suggest have raised three areas of risk essentially. There is project risk, which is schedule and delay and that type of thing. There is the financial risk, what the impact will be on the balance sheet of NB Power. And then there is the risks, which -- the risk sharing arrangement with AECL, which I will call the contract issue.

Dealing first with the project risk, and I think Mr. Hyslop suggested this morning that one of the concerns he had, or one of the disappointments he had is that there was no independent evaluation of the risks. I would suggest to you that that is not the conclusion to draw from the evidence.

Project oversight was provided by independent third parties. Peer party -- sorry, peer reviews at every step.

And this was discussed by Panel A in their evidence. And it was the risk assessment dealt with equipment condition, safety and licencing framework, the cost estimates, schedules and plans and the project management methods.

Now the evidence also shows that there were several groups that were involved in this review. And I think it

was Mr. White, although I am not certain, it may have been Mr. Eagles, there was an advisory committee to the president. There was a safety and licencing review committee. There was a condition assessment review committee and a risk assessment review.

The peer reviews were comprised of industry experts in finance, engineering and regulatory affairs. And they were not employees of either AECL or NB Power. They all supported the business case recommendations and the contract details for refurbishment and retubing. And there was a lot of -- been a lot of talk about the Ernst & Young study. And I believe, Mr. Hyslop, also made the comment that it wasn't an independent review.

If you read that report, in fact Ernst & Young retained its own US consultant, who is named in the report to review the risk assessment summary, which he did and essentially endorsed.

So with respect to project risk, it's our submission that NB Power has done a great deal of work in dealing with and managing the project risks. Of course, there is risks. There is risks in this project. There will be risks in any alternative project. The question is have the risks been reasonably assessed and plans put in place to mitigate their effects. And it is our submission that

a thorough job has been done in that regard.

The second area of risk which was addressed, and it's one that was again raised by Mr. Hyslop, dealt with the financial risk. And I think he put the question this morning, can the balance sheet sustain these expenditures?

Can we afford to do Lepreau refurbishment?

Now it's my submission that his argument is fundamentally flawed and really doesn't ring true. The energy from Lepreau must be replaced. I think everybody has agreed with that. The Board has certainly agreed. And I think my recollection is that all of the intervenors have said that the energy from Lepreau is needed and it has to be replaced. If you don't do Lepreau, you have to do something. Any alternative is going to have a cost. So to say that we can't afford Lepreau, can we afford a gas plant? Can we afford some other alternative? Any alternative to replacing the Lepreau energy is going to have a financial impact. Now Ms. MacFarlane in her evidence, I suggest, clearly demonstrated that the balance sheet would be better off with Lepreau refurbishment than the gas alternative.

I think Mr. Hyslop posed the question, can we afford to do this? And I would say, can we afford not to do this.



Now the last area of risk that I would like to talk about, and it's the risk that comes up -- Mr. Gillis has alluded to it, Mr. Hyslop has alluded to it, Mr. Craik and others, is the contract risk. And essentially the contract risk to distil this down to its nub, deals with replacement energy costs. If Lepreau is late and delayed, who is going to pay for the replacement energy costs?

Now Mr. Hyslop and Mr. Gillis are basically saying that this contract should have been negotiated to that AECL provides an indemnity for this replacement energy. Essentially what they are saying is that the contract should have basically what's called a consequential damages clause.

Now I am suggesting that in order to accept that argument I am going to suggest the Board pick out some rose-colored glasses and put them on. In the real world, as Mr. White has testified to, you just can't get consequential damages clauses in these types of contracts. The only evidence on this point is Mr. White's where he says that very thing. In the real world no one -- on one covers those kinds of costs.

Now Mr. Gillis and Mr. Hyslop are pretty experienced and resourceful lawyers. They could have obtained contracts which contained these consequential damages

clauses and cross-examined the witnesses on them or put them into evidence. They didn't. And I suggest they didn't because they couldn't find any.

Mr. Hashey alluded to this earlier, when you are dealing with opening up these contracts again to review. Now I watched the Stanley Cup Finals in the hotel room up there. And watching the game, I don't know how many times, I would see Yzerman going down the ice. And I would say oh, he should have made that shot. He should have dodged that defenceman. He could have put it in the net.

Well, that is great when I'm sitting back in my hotel room. It is easy to be an armchair quarterback. I'm not on the ice. Neither is Mr. Gillis and Mr. Hyslop in the negotiations.

I suggest that if a better contract -- or if they can demonstrate, and there is no evidence on the point, that consequential damages clauses are routinely or commonly found in construction contracts. Generally in construction contracts of this type, they would have brought that evidence forward before the Board.

Mr. Hyslop referred this morning to Murphy's law, anything that can go wrong will go wrong. And I suggest that they are really assessing the risks of this project

using Murphy's law. And that is not how you assess business risks.

In the real world you assess risks reasonably. If you are going to assess risks on the basis of Murphy's law, no business would ever make an investment decision. Nothing would ever get done.

In conclusion, Mr. Chairman and the Board, I believe the evidence establishes that refurbishment is the economic choice.

As Mr. Hashey mentioned earlier, I believe it is imprudent and probably impossible to really go back and reopen these contracts with AECL and start basically adjusting one clause without a holistic approach. Because there is give and take in a contract negotiation.

There may have been -- and I don't know. I wasn't part of the negotiating team. But as most negotiations, you may give up on some aspect to gain in another aspect of the contract. But to go in and try to refine one aspect of a contract I suggest is just not reasonable or practical.

In submission, in summary and in conclusion NB Power, as we did in Coleson Cove, always welcomes recommendations from the Board. And of course we welcome any comments that you may have in connection with this project as well.

I would like to thank the Chairman and the Board, Board staff, all the solicitors and Intervenors for their co-operation throughout the hearing. Thank you.

CHAIRMAN: Thank you, Mr. Morrison.

Well, I will just go on. And I only got to thank NB Power before I was cut off. So I will thank the Intervenors as well. Your questioning has been very pointed and appropriate and has provided the Board with a wealth of information. And we appreciate that.

I will just remind you that we have put out the tentative schedule in reference to the Transmission Tariff hearing. And if anybody has any comments on the dates on that then you probably should let Board staff know that.

Mr. Hyslop?

MR. HYSLOP: Yes. Speaking with Mr. Barnett last night with regard to the tentative schedule, he requested that I request that the Board might send this tentative schedule to potential parties who may want to be part of this process as soon as possible to review it. He just asked that I do that.

CHAIRMAN: My suggestion is that Mr. Barnett send the tentative schedule to anybody that he anticipates might be a party. Okay. Thank you.

And yesterday some of the media said that they

anticipated a quick decision. I want to tell you that this is an extremely complex and lengthy hearing process with a great deal of information.

And the Board doesn't anticipate a "quick decision" in reference to this. Because we want to give it appropriate consideration when we do deliver our decision.

Again thank you all. And we will reserve decision.

(Adjourned)

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

Reporter