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New Brunswick Board of Commissioners of Public Utilities

In the Matter of an application by New Brunswick Power Corporation dated January 8, 2002 in connection with a proposal for refurbishment of its generating facility at Point Lepreau.

Delta Hotel, Saint John, N.B.  
April 23rd 2002

11:00 a.m.

Henneberry Reporting Service

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CHAIRMAN: David C. Nicholson, Q.C.

COMMISSIONERS: Robert Richardson  
Ken F. Sollows  
H. Brian Tingley

BOARD COUNSEL Peter MacNutt, Q.C.

BOARD SECRETARY: Lorraine Légère

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CHAIRMAN: While the T.V. cameras do their thing, most of you are aware that in order to allow the translators to hear what we are saying out here, you have push the button on your microphone. And that also allows the gentleman back in the corner to identify who it is that is speaking, et cetera.

The first order of business this morning is to get appearances.

MR. HASHEY: Thank you, Mr. Chairman. For NB Power, David Hashey, Terry Morrison. And with counsel is Ken Little,

Navan Bhutani and Brent Lockhart.

CHAIRMAN: Thank you, Mr. Hashey.

Is Atomic Energy of Canada Limited represented?

MR. MILLER: Mr. Chairman, Bernie Miller here on behalf of Atomic Energy of Canada. Joining me in a moment will be Matthew Hayes, an associate in our office.

CHAIRMAN: It is not necessary for you to stand. Maybe you could raise your hand so that the technician can tell which mike has to be on or be on.

Anyone here from the Canadian Unitarians for Social Justice? City of Saint John? Conservation Council of New Brunswick?

MR. COON: Good morning, Mr. Chairman. David Coon from the Conservation Council and my colleague David Thompson.

CHAIRMAN: Thank you, Mr. Coon.

CHAIRMAN: Neil Craik?

MR. CRAIK: Representing myself.

CHAIRMAN: Energy Probe? Rodney J. Gillis?

MR. GILLIS: Mr. Chairman, John Gillis representing Rodney Gillis.

CHAIRMAN: Thank you, Mr. Gillis.

IBEW Local 31? J. D. Irving, Limited? Mr. Daniel LeBlanc? Province of New Brunswick as represented by the Department of Natural Resources and Energy?

MR. HYSLOP: Yes, Mr. Chairman. Peter Hyslop appearing for the Province of New Brunswick.

CHAIRMAN: You are all alone.

MR. HYSLOP: I have a telephone with me with instructions, Mr. Chairman.

CHAIRMAN: Saint John Citizens Coalition for Clean Air? And Saint John Energy?

Okay. I will ask if there are any of the informal intervenors here. Although you will be not be taking part in the proceeding. Because that is not part of the deal.

But Canadian Manufacturers & Exporters?

MR. PLANT: Dave Plant representing Canadian Manufacturers & Exporters.

CHAIRMAN: Okay. Canadian Nuclear Workers Council? IBEW District 1? Hydro Quebec? And the Union of New Brunswick Indians?

And representing the Board and staff?

MR. MACNUTT: Peter MacNutt representing the Board and staff, Mr. Chairman.

CHAIRMAN: Okay. Now Mr. Hashey, I believe that there has been meetings that have occurred prior to us coming into the hearing room. And perhaps -- I had Board counsel suggest that perhaps you could put on the record if there have been any agreements reached.

And my suggestion, subject to what the intervenors and the applicant have to say, is that we have a number of possible motions dealing with both the load forecast hearing material and the Point Lepreau Refurbishment material.

So my suggestion is that we proceed first and deal with the Load Forecast materials. And then after that has been concluded that we pass on to the Point Lepreau Refurbishment.

Mr. Hashey?

MR. HASHEY: Yes. Thank you, Mr. Chairman. That is acceptable and agreeable to us. Mr. Morrison will be addressing the Load Forecast issue. I will go on to the Point Lepreau when my turn comes.

I believe Mr. Morrison has a couple of affidavits that probably should be filed with the Board. And then he can indicate what the other intervenors who have requested answers to questions in documentation, so we can get that on the record.

And obviously we submit that to the Board. And the Board of course makes the final decision as to what they may wish.

CHAIRMAN: Okay. Just before you take over the mike, Mr. Morrison, why just for the edification of the press,

and I don't know that anyone is doing this, but there is -- we do allow tape-recording of the system or in the room, but not to be used for on-air broadcasts.

Normally we have a handout that we have at the back of the room. We don't have any today. So in other words you can take proceedings but only to check your own notes, et cetera.

Okay. That having been said.

MR. MORRISON: Thank you, Mr. Chairman. First with respect to this motions day, I have two affidavits -- three affidavits actually, affidavit of David Reid, affidavit of William Marshall and the affidavit of Blair Kennedy which deals with some of the issues raised by intervenors with respect to this motion and confidentiality, objections raised by NB Power.

I would propose to file these with the Board at this time. I will be making reference perhaps to some of this material in the course of argument as the morning progresses.

CHAIRMAN: Have you shared that with the intervenors?

MR. MORRISON: Copies are available for the intervenors.

And we have them here. And they have been provided to intervenors this morning in formal discussion.

They are now available for all and anyone, even those

who weren't involved in the discussions this morning,  
Mr. Chairman.

CHAIRMAN: Yes. My understanding, which may be correct and  
may not, is that they were attached prehearing brief, is  
that correct?

MR. MORRISON: Unsigned versions of the affidavits in the  
brief were e-mailed to all of the parties, all of the  
intervenors yesterday afternoon.

Unfortunately I couldn't e-mail executed copies. But  
the executed copies are the same as those that we e-mailed  
yesterday. And they are available.

CHAIRMAN: Any problem from any of the intervenors in these  
being introduced in evidence now?

Okay. Go ahead, Mr. Morrison. Now if Mr. Morrison  
doesn't mind, we will let the photographer go ahead  
because he is late. But it is okay. Normally we won't  
allow the cameras in when there are witnesses or a panel  
or anything else like that. But I'm sure Mr. Morrison  
won't mind if you go ahead and do your job.

MR. MORRISON: Thank you, Mr. Chairman. In addition, Mr.  
Chairman, NB Power as a result of the objections of the  
intervenors to our objections with respect to  
confidentiality, NB Power has provided further  
information. It is contained in two binders. There are



several boxes of them up behind the Board.

Those too should be entered into evidence. They both relate to -- sorry, one relates to the Load Forecast Hearing aspect and the other relates to the Lepreau. Perhaps we will deal with the Lepreau one separately.

CHAIRMAN: I would suggest that. And is it your intention to put in the affidavits first?

MR. MORRISON: Yes, it would be my intention to put the affidavits in.

CHAIRMAN: You have three in reference to the Load Forecast Hearing, is that correct?

MR. MORRISON: Well, there are two affidavits that are in reference to the Load Forecast, which are the affidavits of Mr. Kennedy and Mr. Marshall. The third affidavit is the affidavit of Mr. Reid, which deals specifically with the Point Lepreau sale contracts issue.

Perhaps we will -- I will be guided by the Board. We can have the Mr. Reid affidavit marked separately, if you prefer.

CHAIRMAN: It sounds to me as if that would be appropriate.

MR. MORRISON: That makes more sense, Mr. Chairman, yes.

CHAIRMAN: All right. Could I have Mr. Kennedy and Mr.

Marshall's affidavits? Mr. Kennedy's affidavit will be A-3. Mr. Marshall's affidavit will be A-4. Then the volume

of -- how did this volume get created or why did it get created, Mr. Morrison?

MR. MORRISON: As a result of dealing with the objections of the intervenors to NB Power's refusal to disclose certain information on the basis of confidentiality and the other issues that were raised, NB Power went through the documents and the interrogatories in question and was able to provide additional information, sometimes in redacted form. And that was put together in this binder which we would propose to provide in evidence. It was discussed with the intervenors this morning and it is acceptable to the intervenors and I will be outlining in a few moments which of the disputed interrogatories have been satisfied as a result of this binder.

CHAIRMAN: Okay. Good. Could we then have a binder and we will mark it?

MR. MORRISON: And the binder is the big one that is entitled "Load Forecast Additional NBP Responses to NBP, CCNB 12, 16, 18, 34 and 43 and NBP Gillis 1."

MR. MACNUTT: Mr. Chairman, I wonder for the benefit of those who are --

CHAIRMAN: Is that Mr. MacNutt I hear?

MR. MACNUTT: Yes. Mr. Chairman, I wonder if you could have Mr. Morrison repeat that for us who are slow at recording

that information?

CHAIRMAN: Either that or Morrison, you are going to go through this in detail, are you not?

MR. MORRISON: I am, Mr. Chairman. But I will repeat the --

CHAIRMAN: Okay.

MR. MORRISON: We will have those distributed at this time as well, Mr. Chairman, to all who are interested.

Again, the name of the volume is "Load Forecast Additional NBP Responses to NBP, CCNB 12, 16, 18, 34 and 43 and NBP Gillis 1."

CHAIRMAN: And that is A-5.

MR. MORRISON: As well, Mr. Chairman, the binder A-5 will be sent to those intervenors who aren't present this morning.

CHAIRMAN: Good. Thank you, Mr. Morrison.

MR. MORRISON: Mr. Chairman, as a result of the notices at the direction of this Board, the Board had indicated that any intervenors that had issues with respect to any claim for privilege or confidentiality which NB Power raised in its responses to interrogatories was to advise the Board by April 18th regarding the necessity of this Motion's Day, that was done. And a number of interrogatories became an issue.

We met -- there was an informal meeting this morning and there had been several meetings actually over the

course of the past week or so culminating in a meeting this morning. And we have been able to resolve most of the disputed interrogatories. And at your pleasure, Mr. Chairman, I would read into the record those interrogatories which are the subject of this Motion's Day today which have been resolved. Would that be helpful?

CHAIRMAN: Please do.

MR. MORRISON: With respect to the Load Forecast, CCNB 12(b), CCNB 16, Gillis 1, Gillis 43, CCNB 34, CCNB 6, Gillis 2, 3 and 10, Gillis 11, the unresolved interrogatories relating to the Load Forecast evidence are CCNB 12(a) and CCNB 18, both of which relate to the issue of production of actual computer models, which I will be addressing shortly.

CHAIRMAN: So all the others have been satisfied?

MR. MORRISON: All of the others have been resolved, Mr. Chairman.

CHAIRMAN: If any of the parties dispute that, this is your opportunity to bring it to our attention, otherwise we would simply deal with the arguments in reference to CCNB 12(a) and 18, as I understand it.

I don't want to interrupt your presentation, Mr. Morrison, but explain to me -- I remember in the previous hearing dealing with -- I thought with proprietary

interest in programs, et cetera that NB Power had no difficulty in having any of the intervenors attend on their premises and be given a demonstration of how the computer program ran and et cetera.

Now is this applicable to theses two interrogatories.?

MR. MORRISON: If you could give me a moment, Mr. Chair --

CHAIRMAN: Absolutely.

MR. MORRISON: -- I will consult.

What was done, as I understand it, Mr. Chairman, and indeed what has been done in this case, is all of the inputs and outputs of the model have been provided. But NB Power has not given access to any intervenors to the actual computer models themselves.

CHAIRMAN: Well I am a layman when it comes to these matters. I don't know what access to a computer model is.

I will go back to my layman's understanding of what occurred before, that if Mr. Coon and company wanted to go to NB Power previously, as I understood it, they would be shown the actual -- be able to sit down at the computer and have the program demonstrated to them, would know basically what functions it performs, et cetera, but not given a copy of that program. That was my understanding at that time.

MR. MORRISON: It is not our understanding that that

occurred, Mr. Chairman.

CHAIRMAN: Oh, all right. I misunderstood then. And that is not possible in this particular matter?

MR. MORRISON: It is our position that there is a proprietary intellectual property interest in those models and it is something that NB Power objects to having in the public domain.

CHAIRMAN: All right. Go ahead, Mr. Morrison.

MR. MORRISON: As I mentioned earlier, what CCNB 12(a) and 18(a) refer to, in both of those interrogatories, the Conservation Council has requested that the actual electronic versions of the models be provided. Now what NB Power has provided, it has provided all of the input data and all of the output data with only customer specific information blacked out. And none of the intervenors have a problem with that, the customer information being redacted.

It is our position and it is our submission that the provision of all of that data enables the intervenors to verify the reasonableness of NB Power's evidence. The provision of the actual computer models adds nothing to the record. All it does is it puts those computer models in the public domain.

Now these computer models are vital planning tools for

NB Power. They were developed at considerable effort and expenditure of resources. They would be useful to third parties and it is NB Power's position that it objects to putting those actual computer models, the models themselves, in electronic format, in the public domain.

All of the information that is necessary to test NB Power's evidence can be obtained from the inputs and outputs from those models, all of which has been provided.

CHAIRMAN: Mr. Morrison, this might be a little bit unfair, but can you give me, the layman, an example of the kind of use that you might -- or your client might be apprehensive being made of those programs.

MR. MORRISON: You will have to permit me to consult, Mr. Chairman.

As I understand it, Mr. Chairman, third parties, such as consultants and competitors to NB Power, such as gas distributors and so on, can use the model to run their own forecasts. And by having access to the model, they would have access to information which was developed by NB Power at considerable expense, regarding the square footage of buildings and so on. And that is viewed as a competitive disadvantage to NB Power.

CHAIRMAN: Thank you, Mr. Morrison. Mr. Coon?

MR. COON: Thank you, Mr. Chairman.

First, to clarify things I think we should look at CCNB interrogatory 12(b), sorry 12(a), where it says "please provide detail on the specifications of the model". We did not ask for electronic versions, what we asked for were the specs. And then we listed specific specifications that we felt were important to have entered into the record, the type of econometric model, explanatory variables, hypotheses used, like the relationships among the variables used and the estimates of the parameters used. The point is that these econometric models are the foundation for NB Power's Load Forecast. In the case of CCNB 12(a), this is regarding the industrial forecasting, that is 40 percent of the load.

What we have been presented with is a sense a black box. Here is the input, here is the output. But what we need are the details of that model to be able to properly evaluate the Load Forecast evidence. Without it we simply are dealing with a claim by NB Power in terms of what their Load Forecast is.

There are many types of econometric models which we won't go into here. But there are many different types of varying qualities. So to begin with we asked for in terms of the specs, what type of econometric model was being



used. Is it a basic linear regression model, if so is it using single equations, simultaneous equations, what.

We need to know which variables are used to explain the industrial requirements. We need to know what relationship they have used between the variables. That is the so-called correlation coefficient, among variables.

In other words, how much variation is actually explained in this model in each case. They have had for this purpose in this model to use it, to run it to project growth in goods producing sectors in New Brunswick and they would have had to acquire that information from somewhere and it would be important to know where that has come from in order to evaluate.

So we have this black box. As I said, some models are better than others. Even the best of models will explain only a portion of variation in forecasting, various determinations have to be made when they run the model in terms of decisions while running it around specifications and whatnot. So without being able to evaluate the adequacy of the model with respect to the specifications we mentioned, the type of model, the explanatory variables, the hypotheses used, such as the relationships assumed among the variables and the estimates of the parameters, we just have nothing with which to evaluate

the adequacy of their Load Forecast. So in the absence of those details, those specs, model specs, we basically cannot adequately evaluate the Load Forecast in the industrial case or the commercial case, which was the subject of the second interrogatory 18(a) and we therefore are just dealing with a claim by NB Power about what their Load Forecast is. And that is our view on this and why we feel it is important to have these specs entered into evidence.

CHAIRMAN: Thank you, Mr. Coon. ANt other intervenors want to say anything at this point before I go back to Mr. Morrison to ask him if he would like to deal with what Mr. Coon has brought up.

Mr. Morrison?

MR. MORRISON: Mr. Chairman, it is my understanding that all of the information that was raised by Mr. Coon a moment ago is found in the information that has been provided by NB Power. The correlations, the coefficients and the relationships of the variables are found in both the inputs and the outputs or can be gleaned from the inputs and the outputs. So all that NB Power objects to producing is the electronic version of that model. All of the information which Mr. Coon has raised I understand is obtainable from the data which NB Power has provided,

which includes the data provided this morning in A-5.

CHAIRMAN: Well, Mr. Coon, you would not have had an opportunity to go through A-5 in detail this morning, would you, or any of your people?

MR. COON: No as of yet, Mr. Chairman. And I note that the response to 12(a) was that they could not provide that information. And while some of it may be gleaned, I don't think it is our job to be gleaning things when we specifically requested specific information regarding the specifications to the models -- of the model, including the type of model used.

So if all of this has been answered in what was presented this morning, that obviously is new. But I guess we would like the Board to rule on this specific request.

CHAIRMAN: Well if I understand what has just gone on in front of us, there is just the one area that would remain in dispute and that would be that you don't want to have to glean something, you want to have it presented to you in concise, written form.

MR. COON: Mr. Chairman, more to the point, I think, is we are not in a position at this point to evaluate whether all of this has been provided in various parts of the responses to other interrogatories. And so, you know,

counsel for NB Power is arguing that, yes, well it is all there now, we have no means at this point to evaluate whether that is the case or not.

We have requested specific information and if that is there now, well I guess we will see, in the information that was tabled this morning. But clearly all of this information we requested was not provided prior to this morning. Although perhaps portions of it could be gleaned from responses to other interrogatories.

CHAIRMAN: Mr. Morrison, with the help of Mr. Bhutani, would you bring things down to a pretty concise level here? What I heard you say, I the layman, is that everything that Mr. Coon had enumerated with the exception of one category of something or other was there. And the other one could be gleaned. is that correct?

MR. BHUTANI: Mr. Chairman, we have printed everything that is on the model and the spreadsheet, complete printout of the model has been provided in this appendix. The only thing that we have not provided is redacted industrial customer data, relationship between variables, every input, every output have been completely printed out. And it is done by sector. So Mr. Coon could look at the residential sector alone, commercial sector and industrial sector.

What you get with electronic version is the relationships how they developed or the effort that goes into producing the model. What is in here allows you to verify everything that is in the model.

CHAIRMAN: Okay. Any further comments, Mr. Coon?

MR. COON: It is not the question of verifying what is in the model. The question is to be able to evaluate the adequacy of this model that is being used. So that is the bottom line. And that is what we have asked for the model specs. And we would like to see the model specifications. And I am not convinced that they are there. I would like to hear, for example, whether the type of econometric model that is being used is being presented in any of this evidence.

I find it is very difficult because we are talking about material we haven't seen yet because it was just tabled this morning, i assume.

CHAIRMAN: I understand. As the Chairman of this Board, I find it very difficult too because I have the applicant saying what you asked for is all there. And you saying I haven't had time to look at it yet. And I appreciate both points of view and I wouldn't know if it were all there or not. Seriously, personally I would not.

So I think what we better do is take this and let's

see if over the next few hours you have an opportunity to sit down and look at it. And perhaps Mr. Bhutani can assist you in that review of what has been given and we can revisit this particular two interrogatories before the close of the day. Does that meet with everybody's approval?

MR. MORRISON: Sounds like a reasonable position, Mr. Chairman.

MR. COON: Thank you, Mr. Chairman.

CHAIRMAN: So we will put those aside. And of course those are the Load Forecast refusals and subject to our revisiting those two, they are looked after. So Mr. Morrison, you now have, in reference to the Refurbishment Hearing, you have a single affidavit of Mr. Reid, I believe.

MR. MORRISON: That is correct, Mr. Chairman.

CHAIRMAN: And another volume.

MR. MORRISON: That is correct.

CHAIRMAN: Okay. We will deal with those then.

MR. MORRISON: Mr. Chairman, there is also a further binder which I think Mr. Hashey will address that deals with the AECL contract. And I don't know whether you want me to deal with that at this point or whether he will --

CHAIRMAN: Let's get the affidavit in.

MR. MORRISON: Thank you.

CHAIRMAN: And then I will try and cope. I have got two separate exhibit lists here I'm trying to cope with. And I'm not doing very well.

Okay. Mr. Reid's affidavit will be A-3 in the Point Lepreau hearing.

CHAIRMAN: And the volume is the less the fat or skinnier one back here?

MR. MORRISON: It is the skinnier one, Mr. Chairman, to use a term of art.

CHAIRMAN: And again, Mr. Morrison, while Board Secretary is getting it, this is documentation which has been produced as a result of the meetings and shared with the parties today?

MR. MORRISON: That is correct, Mr. Chairman. What the second volume is is a redacted version, or an edited version if you will, of the retubing agreement between NB Power and AECL.

CHAIRMAN: Well, that will be A-4.

Now is there another issue that Mr. Hashey is going to address?

MR. HASHEY: Those are the exhibits that relate to this this morning. There will be affidavits from AECL that you may wish to receive at this time that relate to this.

There is an affidavit of Mr. Ambeault that Mr. Miller is providing. And that I believe is the only other document that I have seen that specifically relates to this aspect of the hearing, namely the AECL contract issue.

CHAIRMAN: All right. Then would counsel for AECL -- have you delivered copies of that affidavit to the other intervenors?

MR. MILLER: Yes, Mr. Chairman.

CHAIRMAN: And does the Board Secretary have a copy or two of that that I can mark AECL, an affidavit? Who is the affidavit deponent?

MR. MILLER: The deponent is Bruce Ambeault.

CHAIRMAN: That will be AECL-1. And that is the affidavit of Bruce Ambeault.

CHAIRMAN: All right. Is it Mr. Hashey or Mr. Morrison that is going to put on the record what has been agreed to, et cetera?

MR. HASHEY: I will speak to that --

CHAIRMAN: Good, Mr. Hashey.

MR. HASHEY: -- Mr. Chairman.

CHAIRMAN: Go ahead, sir.

MR. HASHEY: My understanding is that there has been very little agreed to in this matter. I can address what I



believe the issues are here.

Although I do believe that, maybe with the exception of Mr. Coon, no one is seeking the technical parts of the agreements.

It is good to see that all four people are still seated. Not a problem.

So the agreement that has been retracted, if you look at that agreement you can see -- and I believe the issues that will be addressed primarily are the issues of the retraction of information concerning the warranties and guarantees, the general conditions.

You can see that what has gone before you is a retracted contract which indicates that there are portions of the text that are confidential.

For instance if you would turn to page 20' --

CHAIRMAN: A-4, Point Lepreau?

MR. HASHEY: A-4. Thank you. And pages 27, 28. That gives you an example. Thank you, Mr. Chairman. What has happened here, as you can see, the affidavit of Mr. Reid deals with what has happened here.

We should point out that what has happened is that considerable information I believe have been provided in the evidence and in the memorandums of agreement which have been supplied here, the MOA's.

These documents do give an indication of the performance scenarios. The refurbishment agreement is virtually complete. And I believe that that would be delivered prior to the hearing.

But what we will be arguing about are the portions of that agreement which would be comparable to this agreement, namely the warranty guarantee areas and the fact that we believe that they should be kept confidential.

The reason for NB Power to be suggesting that confidentiality should be adhered to with respect to specific terms that are beneficial I would say to NB Power is I think fairly simple. And I know the law.

We presented a brief to you this morning. And it is a balance of the issues, whether it is more important here or whether it is more important to be maintaining it from the issue of confidentiality.

AECL has insisted that these terms be kept confidential. Mr. Miller will deal with that in far more detail than I will. From NB Power's perspective, the concern that we must express and emphasize is the concern that for us to obtain the best business arrangements, that we need to be able to keep certain things confidential.

I know it is difficult in the public domain scenario.

But if the public is to be the ultimate beneficiary of the best available arrangements, that if a person negotiating with NB Power knows that what they are going to give NB Power by way of a deal is beneficial to NB Power, and they wish to negotiate better deals for themselves with others, they just simply will not be giving NB Power the best possible arrangement.

They won't be able to because it will seriously affect them in their other negotiations. And the ultimate loser in that one would be NB Power who would not be getting the best available deal that might be available to them. Really that has simplified our position here. And from NB Power's standpoint that is the issue of concern.

I think from the -- and we have pointed out that there are confidentiality agreements that had to be entered into to get these terms. I think the majority of it has been provided.

I think we are just down to evaluating really a couple of issues. Although I think in fairness I don't want to restrict anybody. Those I know are the major issues that we have raised with Mr. Gillis, also with Mr. Coon.

And a solution for the problem is being proposed by Mr. Miller. And if it is the appropriate time I would really turn this over to him, Mr. Chairman.

CHAIRMAN: Yes. Go ahead, Mr. Miller.

MR. MILLER: Thank you, Mr. Chairman. This application does raise a serious issue for AECL and for the reasons expressed by Mr. Hashey, an issue for NB Power as well.

We have taken the opportunity with the Board's direction to try to resolve this issue. And we have met with the intervenors and Board counsel to try to understand their interests and make sure that we could come up with a process that meets their objectives but also protects the interests of AECL and NB Power.

And I will come to that in my presentation. But we will be proposing a compromise position that we think should satisfy the objectives of the Public Utilities Act.

I thought it would be first worthwhile to give you a little bit of background on AECL is, what their corporate status is and what their business activities are. They are a corporation.

They were initially incorporated in 1952 and continued under the Canada Business Corporations Act. Their shareholder is the Government of Canada. And they are a Schedule 3 Crown Corporation under the Financial Administration Act.

That puts them in the same category as other entities like VIA Rail, Business Development Bank of Canada, Marine

Atlantic and other similar enterprises that are Crown Corporations.

Their business is they are the developer of the Candu nuclear reactor. And as part of that business they market goods and services related to Candu reactors throughout the world and throughout Canada.

And as a commercial enterprise it operates in the same commercial way that other businesses do. It generates sales through contracts with domestic and international customers.

The annual reports of AECL for the last five years have been filed at the request of one of the intervenors.

And they are included in volume 2 of NB Power's response to interrogatories. The annual reports do provide a great deal of detail on the projects and markets of AECL.

The context in which our submission is made is that competition in the nuclear services industry is very intense. We have filed the affidavit of Mr. Ambeault. And he is the Chief Commercial Officer of AECL.

And he has in his affidavit given some explanation of the type of issues that can arise if disclosure of specific commercial terms negotiated with NB Power and negotiated with both parties, assuming they were -- their negotiations were in confidence, if those terms were

disclosed publicly, it could be damaging to AECL.

But the direct issue, just to be very blunt about it, is that another customer, not a party to these proceedings, or maybe even a party to these proceedings, but another customer obtains a copy of the final unredacted version of the agreement and sits down with AECL and says okay, that is our starting point. That is the deal you gave NB Power. Now how can you improve your deal for us?

Disregarding completely the fact that these agreements, and the retubing agreement in particular, was the subject matter of negotiation. And the final version was the result is all contracts are of give and take between parties. So the affidavit of Mr. Ambeault gives that explanation.

The other important context, issue to consider here is what has been filed to date? And our submission, a very great deal has been filed.

In the direct evidence filed by NB Power they included a project execution plan as exhibit A-4 in their direct evidence. And that gives considerable detail about what their contract strategy was, what the commercial arrangements intended to be accomplished were and indeed what was accomplished.

So beyond the direct evidence that has been filed -- and as I say, there is significant evidence, particularly from Mr. White, V-P Nuclear and Mr. Eagles, the Project Director on what the contract arrangements are.

In response to the first set of interrogatories NB Power did put further information before the Board. PUB-8 was a request by the Board for copies of the agreements.

NB Power produced two memoranda of agreements which set out the essential business terms of the retubing arrangement and also the plans for the additional contracts that will exist here, being the Plant Refurbishment Agreement, the Candu Operating Support Services Agreement and the Plant Performance Agreement.

To be clear about what we are talking about, there is only one -- one of those four agreements that are referred to that is in a final form now. And that is the retubing agreement. And a redacted version of that has just been placed with the Board.

So in addition to the direct evidence and the response to interrogatories, I would also point out that NB Power has filed the board of directors' minutes from 1998 to December 18th 2001. And all of the minutes in which these contracts were being discussed are there for the intervenors to see.

The redacted version of the retubing agreement which has just been put before you, and Mr. Hashey illustrated the way in which confidential information was dealt with, has resulted in approximately 33 paragraphs of the agreement not being produced as part of the public record.

Now what has not been filed? What has been filed publicly are those 33 paragraphs of the retubing agreement. An appendix to the retubing agreement deals strictly with technical information and technical detail on how to do the job and drafts of the agreements.

The draft agreements again would be the Plant Refurbishment Agreement which is still in draft form but is close to completion.

The Candu Operating and Support Services Agreement is not very far advanced as a draft, as is the Plant Performance Agreement. Those terms, the business terms, are in the memorandum of agreement.

But there are no final agreements to file with the Board. And it has been our position and it remains our position that early stages of drafts have no probative value to the Board.

We have said with respect to the Refurbishment Agreement that if, as is expected, it is completed before hearings commence on May 27th, the process I'm going to



suggest would be the same process that we would suggest the Board receive the Plant Refurbishment Agreement within.

So to break up the portions of the retubing agreement that have not been filed, (1) is the technical information; (2) are specific commercial terms negotiated in confidence between the parties and sensitive, sensitive to NB Power for the reasons Mr. Hashey expressed and sensitive to AECL because of its commercial interest, not in dealing with the intervenors before this Board but in dealing with the larger world, its other customers and competitors.

Mr. Reid's affidavit confirms that the expectation of the parties, the intent of the parties was to deal with their negotiations in confidence. And they did enter into two confidentiality agreements.

We I would submit shouldn't get too sidetracked on the minutia of the confidentiality agreement. I think the essential issue here is was it the intention of the parties that this material be confidential? And if it is by its nature confidential what should be done with it?

And as a result of our various discussions we certainly accept that it is important for the intervenors to see the unredacted versions of the agreements.

They want to no doubt test the evidence that has been filed, make sure that the contracts actually say what NB Power said they say. That is reasonable.

They want to be able to speak intelligently about the agreements and not speculate about what the warranty clauses say. And that is reasonable as well.

And what we ask the Board to consider is the manner of providing that information to the intervenors but protecting this information, which is by its nature confidential, from broader publication, from disclosure to potential competitors and potential future customers of AECL.

How do we do that? It is, as many things that come before the Board, it is a balancing of interests. There has been as I said substantial public disclosure.

Section 7.1 of the Public Utilities Act gives us some direction on how to deal with this issue in my submission.

Section 7.1 says "Where information concerning the cost of the public utility or other information that is by its nature confidential is obtained from a public utility by the Board in the course of any investigation under this Act or is made the subject of inquiry by any party to any proceeding held pursuant to the provisions of this Act."

And I would suggest that by the intervenors asking for

the agreements they have made it subject to inquiry. Section 7.1 says "Such information shall not be published or revealed in such a manner as to be available for the use of any person unless in the opinion of the Board such publication or revelation is necessary in the public interest."

So our submission is public disclosure is not in the public interest for the reasons Mr. Hashey mentioned. It is detrimental to the interest of NB Power in their future contract negotiations.

And it is not in the interest of AECL's commercial interest and not in the interest of parties to the two agreements who have negotiated these agreements in confidence.

But as I said, the intervenors in these proceedings have a genuine interest and reasonable grounds for testing the evidence.

I would suggest section 7.1 opens the door to a protective order, an order that will allow the objectives of the Public Utilities Act to be met, allow Mr. Craik, Mr. Gillis, Mr. Coon, all the intervenors to have the opportunity to review the agreements and check out their theories and see if they have reasonable questions to raise at NB Power or not.

And we have filed with our prehearing brief a suggested form of order, a draft order which if I may I would just like to take a few moments and run through what we had in mind.

The draft order recites section 7-1 of the Public Utilities Act and then goes through to provide for a process that would meet in our submission the objectives of the Act but also provide the protections that AECL and NB Power seek in this hearing.

First, the redacted version would be filed as it has been filed. Anything that hasn't been included in the redacted version other than the technical information would be considered to be confidential information. So the paragraphs that don't turn up in the public record would by definition be considered to be confidential information.

And that confidential information would be placed -- the full unredacted version of the agreement would be placed in NB Power's offices and any intervenor who wanted access to that information would have access to this room in NB Power's offices. As a condition precedent to accessing the information they would be required to confirm that they will maintain the confidentiality of the information. In other words, they won't use it for

purposes other than these proceedings.

As I said, any formal intervenor who requests the information would be in our submission under this order entitled to have access to it.

At this stage we have identified the specific people who have requested the information. Mr. Crick should be added to that list and Mr. Hyslop mentioned to me this morning that his client, Mr. Barnett, would also have an interest in having access and I have no objection to that.

Provided the confidentiality undertaking were signed these parties would then have access and no right to photocopy, no right to take a dictaphone and transcribe the sections, but the right to take handwritten notes and prepare themselves for their cross-examinations.

The next step in the process would be when in the hearings they wish to refer to the confidential information our submission is that the Board should and has the jurisdiction to go in-camera for that portion of the hearings. In other words, to continue to protect the information from public disclosure or public revelation as Section 7.1 contemplates, the sessions dealing with cross-examination on the confidentiality information would be in-camera.

Parties would be directed when making oral submissions

or written submissions not to reproduce the whole text of sections but refer to section numbers of the agreements.

So simply put, that in our -- that compromise position would in our submission meet the objectives of the Act, meet the requirements of Section 7.1 and protect the information from public disclosure, which would be inconsistent with Section 7.1.

I should again mention our position on the draft agreements. At this stage we would not consider the draft agreements that haven't been concluded to have any probative value. The refurbishment agreement if it's completed before May 27th as is expected, would be dealt with in the same manner.

I just want to close off by speaking very briefly about what other jurisdictions have done and what this Board has done in the past.

The recent Coleson Cove decision the issue came up about confidential information and a process was put together, a flexible process, that met the objectives of the Act but also protected the confidential information, was pursued. The Ontario Energy Board has rules of procedure for dealing with confidential information and their rules are not inconsistent with the framework that we have suggested here. And the same goes for the

National Energy Board. And we have included with our brief a form of order issued by the Nova Scotia Utility and Review Board very recently, March 12, 2002, in an ongoing application by Nova Scotia Power Incorporated for a rate increase where they sought to protect confidential supply contracts for their coal, and the Board in balancing the interests fashioned an order very similar to the order that we have suggested here. And I will confess to some degree of plagiarism.

The Nova Scotia order was succinct and workable from my read of it and that formed the basis for the suggested compromise position that we have come to the Board with today.

So the issue I want to come back to is in-camera sessions, because I sense that that might give the Board some pause for thought.

Our submission on in-camera sessions is that this Board has jurisdiction for that. Section 7.1 as I said opens the door but beyond that there is case law, and it is referred to in our brief, the Millward versus Canada case referred to in paragraph 27 of our brief, it says, if the statute is silent on whether hearings will be public then the Board has jurisdiction to set its own procedure.

And on that basis for this very limited purpose of

cross-examination on the performance guarantees and warranty clauses, we would suggest the Board should consider in-camera hearings for those sections.

So subject to any questions anyone on the panel may have those are my submissions on behalf of AECL.

MR. CHAIRMAN: Thank you, Mr. Miller. We will come back -- probably come back to you after, but any of the intervenors wish to comment on either NB Power or AECL's presentations?

And I might as well start at the beginning and the first is Conservation Council of Nw Brunswick, Mr. Coon?

MR. COON: Thank you, Mr. Chairman. I find it ironic that here I sit representing a public interest group before a public utilities Board in a public forum concerning a contract between two publicly owned institutions that they want to keep private.

Mr. Miller, however, acknowledges that intervenors have reasonable grounds to the information in question -- to the text in question, that it be part of the record here in fact but in a kind of protected not public way.

He made reference to the Board of Director's minutes being released and certainly that was the case. And in those minutes they as part of the record identified this proposal to refurbish Lepreau is identified as high risk.



And in fact the economic case presented in the evidence really sits on the foundation of two legs. One deals with the reconstruction, how much that will cost, how long it will cost. Because of the high cost of replacement power any day over the expected time would change the economics of the situation. And then the operating life. How long it will last, how reliable it will operate, what kind of capacity factor. These two matters are critical to NB Power's case. So what they have done or are attempting to do to mitigate these risks is to have some of the risks shared with AECL through negotiating these contracts and agreements.

And we are dealing with four. We are dealing with the retubing agreement which is currently a contract. We are dealing with the refurbishment agreement which is not yet a contract but Mr. Miller indicates likely will be by the end of -- by the time we get to the hearing process. And then the CANDU operation support services agreement and plant performance agreement both of which deal with the issues of sharing risks around operating life, reliability capacity factors presumably after -- if this goes ahead and a refurbish at Lepreau is up and running. He says these have not progressed very far.

Our view is that this is a public process. The

interest of AECL and NB Power are surely the interests of the public, otherwise they wouldn't be owned by the public, by you and me, and that the text of these contracts and agreements should be part of the record here in these hearings.

Now we have no interest in the technical appendix. Our view is that that contains the kind of information that falls within the confidentiality agreements in terms of unique designs of tools and various matters such as that.

So we are not arguing that the appendix to the retubing contract that deals with technical design issues be an issue here.

However, we are arguing that the retubing contract and the refurbishment contract be part of the record and we are arguing that the two agreements that are not contracts should be part of the record. If they are not, that is, if the plant performance agreement and the CANDU operation support services agreement are not part of the record upon which we can view and cross-examine and utilize in argument, then we would contend that references to the CANDU operation support services agreement and the plant performance agreement be struck from the record, be struck from the evidence that NB Power has filed, and that any

analyses that were done, any economic analyses that were done, based on details contained in those agreements at this point be redone without them, or struck, if that's not possible. Because without those agreements before us it's impossible to evaluate the evidence referring to them or analyses based on contents of those agreements in this process.

It strikes me a little odd that what we are dealing with here really is this. AECL is, as was described, is the company that sells CANDU reactors. It sold CANDU reactors to Quebec, New Brunswick, Ontario and a number of countries overseas. What they are saying is we are giving a particular deal to NB Power, to New Brunswick, because the CANDU reactor at Point Lepreau wore out before it was supposed to and we don't want to give the same deal to other public utilities in Canada, or the other guys, we don't want them to find out about it.

Ford Canada deals with its customers better than that.

You know, if your '89 to '93 Ford Taurus' head gaskets were faulty, didn't last as long as they were supposed to, they will fix them for you at no cost. And you know what, I get the same deal as buddy in Quebec or buddy in Ontario gets for their Ford Taurus to have the head gasket replaced.

MR. CHAIRMAN: I wish you would pick another example, being a Ford Taurus driver myself.

MR. COON: Personal experience I am drawing on here, Mr. Chairman. I'm sorry. It's what leaps into mind having picked up the same car this morning from the garage.

So we contend that in fact they should be part of the record and in the case of the contracts and in the case of the agreements, if they are not part of the record then they cannot be used in evidence or be used to base any analysis submitted in evidence.

Thank you.

MR. CHAIRMAN: Thank you, Mr. Coon. Mr. Craik?

MR. CRAIK: Thank you, Mr. Chairman. Before coming here I read this draft motion, if that's what it is, preliminary motion, and as far as the method outlined of visiting NB Power's offices and taking notes of various documents, I personally don't have a problem with that.

There are a couple of points. Where does the plant performance agreement sit in all this? It's said or implied that that has been revealed but if you look at it very carefully you find that there is a possibility of a number of modifications to that agreement. Specifically the memorandum of agreement between AECL and NB Power of 21st of December, 2000, states in paragraph B on page 2

that if significant refurbishment is deferred, for example steam generator replacement, the eventual outage to be completed shall not be considered as a reduction in availability for the purposes of the plant agreement.

So this is in effect saying that all these things if they are not done during the refurbishment will be excluded if there is a problem with that. And you could go down through as I have done in my second interrogatory, which you gentlemen probably haven't had the opportunity of reading, there are a number of items that you could say, well supposing this doesn't get done? The specific case of the plant computers. It's said that because of various reasons they will not be changed until 2007. It's implied that this will be done during a months outage at that time. But supposing it takes six months. Is that six months going to be included in the calculation of the capacity factor and are AECL going to share in the penalty of that?

So there is this relationship between the plant performance agreement and the refurbishment agreements.

So I will pause at that point and ask what happened to the plant performance agreement, fine print?

MR. CHAIRMAN: Mr. Miller or Mr. Hashey, would you attempt to respond to that.

MR. HASHEY: The plant performance agreement, a tremendous amount of detail on that is provided. There is one little issue that is being raised here possibly but as you will note in the interrogatories, which is PUB 8, the memorandum of agreement on the plant performance agreement was provided which gives I think significant and quite adequate detail for us to be here making this application. I mean, if there are other questions on fine print and things of that nature and issues that want to be raised, I would suggest they are probably hearing issues that might be raised. We are talking about plant performance that is down the road considerably. I mean, obviously it's three years down the road before this could ever come into effect anyway. We have to get over these initial hurdles, Mr. Chairman.

MR. CHAIRMAN: Right. What I understood from Mr. Craik's question was that the -- he wanted to know whether or not the plant performance agreement was going to be included in the documentation which was -- could be reviewed if the Board were to accept the procedure that AECL is proposing. Am I correct in that?

MR. CRAIK: Yes, that's right. This draft motion does not mention the plant performance agreement. And I'm simply suggesting that because of this close relationship between

these two agreements that that should be included in the documentation that can be reviewed in NB Power's offices.

I mean, if you look at the plant performance agreement and the argument there is -- information has been given, well frankly it hasn't. The Board outline has been given.

It doesn't state whether the terms are escalated, in other words, whether the dollars that are mentioned in Mr. Rod White's evidence is escalated. That's very significant, because the plant will tend to perform better in the early years and worse in the later years.

MR. CHAIRMAN: Could I interrupt? If my hearing was correct -- and I turn to Mr. Miller -- has that agreement simply fallen through the cracks or was it the intention that it would not be -- nothing further would be given to the intervenors or the Board except that which has been put into evidence now?

MR. MILLER: In principle I start off by saying I understand Mr. Craik's issue and if the agreement were available our submission -- our position would be it should be treated in the same manner subject to the same protective order. The details of negotiation of the plant performance agreement, I'm afraid I don't have final information on other than as Mr. Hashey said, the memorandum of agreement went into great detail on the commercial terms, and my

understanding is that once the parties pin down all the commercial terms, they had other priorities and they didn't deal with the plant performance agreement as a priority item because its effective date is quite some distant. But, you know, the order that we have presented suggests that if any draft agreements are available before May 27th, they will be treated in the same manner. Mr. Craik raises an issue that he would want a test and I think we would have to go back to our clients and try to find out how far along that plant performance agreement is and is it something that's reasonably achievable before the 27th of May. And if it were our position would b it would be included in the same manner.

MR. CHAIRMAN: Thank you, Mr. Miller. Does that respond to that concern that you have, Mr. Craik?

MR. CRAIK: Well not completely. It's one of timeliness. The comment was made that it's an agreement which starts some years down the road. I'm simply saying it starts with refurbishment and you go back to the statement made in the agreement between AECL and NB Power of the 21st of December, 2000, which is almost two years ago, which links these two things together. And if some of these refurbishments are not done and they undermine the performance of the plant later on, then NB Power and the



citizens of New Brunswick will be short changed.

So I'm very concerned that -- about the statement, oh, this is the agreement which will apply in 2007 or '8 when the plant goes in. It does not. It's linked with the current agreement.

MR. CHAIRMAN: All right. I think the Board has got the gist of your argument, Mr. Craik. Any other concerns?

MR. CRAIK: Just a comment. The competition with AECL is very intense. I would simply say that the only people who are offering CANDU retubing are AECL. So we are not talking about selling a new power station. We are talking about refurbishing existing power stations.

And following on from that I would ask what other customers are going to start -- CANDU customers like Hydro Quebec and (inaudible) are going to start re-tubing. And I submit they will not start it until the retubing of Lepreau is completed, by which time the schedule which is the question on the issue will have been demonstrated, and only at that point in time will these second negotiations take place.

So although I'm prepared to accept the confidentiality agreements I don't accept the arguments of AECL.

MR. CHAIRMAN: Thank you, Mr. Craik. Mr. Gillis.

MR. GILLIS: Yes, Mr. Chairman. My purpose here today is

simple. My client is interested in determining if NB Power is making a bad deal. At the end of the day it's the ratepayers and the citizens of New Brunswick who pay for any bad deals made by NB Power. It's in that light that full disclosure should be made of these agreements, in particular the warranty clauses, the cost consequence clauses, penalty clauses, in order for a full evaluation and a full cross-examination and final representation to the Board to be made.

As has been pointed out, Section 7.1 of the Public Utilities Act does state how the Board should handle confidential information. And it quite clearly ends with the statement, unless in the opinion of the Board such publication revelation is necessary in the public interest, the public interest being the ratepayers of New Brunswick in this case.

Now the case law cited in the brief submitted by NB Power and AECL further set out that information which serves a useful purpose should not be caught by confidentiality arguments made by specific parties.

Now AECL and NB Power go on to state that the contracts -- the specific clauses of the contracts would be of little probative value. This acknowledges that yes, there is some probative value to them but it's -- it may

be that the specific clauses and the contracts which have not been completed and may not be signed by the hearing date, those may be of little but some probative value, but in the end the final outcome of those contracts and clauses, the probative value to in the end to the ratepayers is immense. This is because the cost of paying for a half a million to \$800 million refurbishment is one thing but paying another half million or 800 million in 13 months to refurbish a plant yet again or to decommission it is quite another.

Now the reason I say 13 months is because all we have -- all that has been disclosed in the summary of the warranty clauses in particular is that the warranty is not less than 12 months. That is a peculiar wording in the very least.

Now the difference to the ratepayers of New Brunswick between a 12 month warranty and a ten year let's say warranty is enormous.

Now all we are interested in here in particular with the clauses that have been excluded are boiler plate clauses. They do not contain any technical information. I couldn't see how a warranty for schedule and liquidated damages could include any technical or intellectual property. I would surmise that they were drafted by a

lawyer and I would surmise that they were in majority taken from a legal form book.

Now any technical information that is contained in the schedule A to the agreement that has been provided, I believe it's A-4, as well as any technical information in the later agreements yet to be signed, would not only be protected by any confidentiality but also could be protected by various forms of intellectual property protection, be them copyright or patent.

Our submission here today is that the Public Utilities Board should order that AECL, which is as disclosed by Mr. Miller, the sole shareholder thereof is the Government of Canada, and NB Power, which is essentially a company owned by the citizens of New Brunswick, the Public Utilities Board should order that both of those companies come out from behind closed doors and disclose to the public what exactly the agreement is.

Now the proposed order by AECL suggests that the public be excluded from these proceedings. Now the ratepayers of New Brunswick would best be served by having the relevant portions of these contracts discussed, and have NB Power cross-examined on them in an open forum.

Now NB Power has provided a summarized Coles Notes version of the contracts between NB Power and AECL. If

the summarization is correct what is the problem with disclosing the full wording of them? The -- objecting to the release of the full wording does raise the question, is the summarization correct?

Now with respect to the suggested order, if the Public Utilities Board deems that that is an appropriate method I would -- and that certain portions of the proceedings and portions of the record will not be disclosed to the public, I would anticipate that any future -- and it may be in 13 months after the completion of the refurbishment -- and if a further refurbishment is required and NB Power is back before the Board on a similar application, I would anticipate a lot more formal intervenors, particularly every ratepayer in the Province of New Brunswick who wants to be party to the proceedings.

CHAIRMAN: Province of New Brunswick, Mr. Hyslop?

MR. HYSLOP: Thank you, Mr. Chairman. I think there are two issues that seem to be developing, the arguments and issues before the Board. And one is the question of what is the deal and the second one is should the deal be disclosed and if so, how. The Province of New Brunswick has some concern that we don't know the deal. And in particular the fact that there is four contracts that make up the terms of the allocation of risk between AECL and

the Province of New Brunswick. We are told only one contract is complete and we are told that prior to the commencement of these hearings the Refurbishment contract should be complete and that is obviously a critical contract. The other two contracts, the COSS contract and the plant performance contracts at this stage quite interestingly we are told that the memoranda and the outlines that have been provided in the evidence tell us just about all we want to know. But then we are told the draft contracts aren't very probative because a lot of things can change. I sense some inconsistency there.

Hard to imagine a deal that is going to be more important to how we heat our homes and what we pay for it and what the Province of New Brunswick in terms of risk to the coffers --

(Technical problems)

MR. HYSLOP: The point I think I am making on the first point, the first issue is what is the deal. And with respect to what is the deal, the deal isn't on the table.

And I would at least raise the issue for the Board's consideration, is the cart not before the horse. We are being asked to evaluate and make recommendations on a very, very large contract. All that seems to be set up is a price. We don't know what all the details are. And I

share many of the concerns of the other intervenors that if this is to proceed that whether in the form suggested by Mr. Miller or in the form suggested by Mr. Gillis, by full public disclosure or some type of an in-camera disclosure, it is hard to proceed very far unless we have the full outline of the deal.

I leave that with the Board with a suggestion that at least the Refurbishment contract must be provided and that latest drafts of other contracts should be provided and if any party has an objection of proceedings until those contracts are finalized, they can make a further motion for adjournment of this process.

The second issue that I spoke of is whether or not the matter should be publicly disclosed or disclosed in a more limited forum. And those arguments have been well canvassed by the parties and I don't believe there is a lot that we can add to the arguments made by my colleagues Mr. Gillis, Mr. Miller, Mr. Craik and Mr. Coon. Having said that, we do emphasize the very important public issue, which is before the Board. We are very cognizant of it and that may weigh in some part in the Board's mind.

There is a couple of loose follow-up points to assist the Board. We are not concerned with the disclosure of the so-called technical information on how to do the



actual refurbishment. We are concerned most principally with the same issues that Mr. Gillis and Mr. Craik are, which are the warranties, the guarantees, the allocation of that risk.

Second, if the Board does consider at the end of its deliberations an order somewhere in the nature of the form that has been drafted by Mr. Miller and presented, we would ask, and I don't believe Mr. Miller has objection, that myself and Mr. Barnett be given the access to the documents if it is in-camera, I would note that Rodney Gillis is both a party and a solicitor and Mr. Coon is a party and Mr. Craik is a party. I am only a solicitor. I think our representative of my party might wish to be able to review them directly. Those are the positions of the Province of New Brunswick, Mr. Chairman.

CHAIRMAN: Thank you, Mr. Hyslop.

Just before we break for lunch, I have asked my fellow Commissioners. They have no questions at this time. I would like counsel and the parties to think about a couple of things.

First of all, Mr. Miller mentioned that we had come up with a method of keeping confidential information confidential in reference to the Coleson Cove application. We did that. But there was only one fact that wanted to

be kept confidential and that was the price pursuant to the contract with BITOR. And we were able to get our financial advisor take a confidentiality agreement and check it to the satisfaction I think of the Board and certainly of the intervenors to that hearing and I presume to the general public.

This is a very, very different thing. There are any number of items. Personally, I have no interest whatsoever in the technical information contained in those contracts. I speak only for myself in that regard. But the one thing I would like you to think about when we break for lunch is that this Board in reference to the applicant, NB Power is not like most other boards in this country, nor in the US. We do not have a general supervisory power over NB Power. The only time that we have any jurisdiction in reference to our crown corporation is when it, pursuant to the legislation, has to apply to us to have a certain rate approved.

Now in the early '90s there was argument that in looking at rates we had no jurisdiction to look at costs, ie, whether or not they were reasonable, et cetera. The Board did, however, give a decision and say we can't decide whether or not rates are reasonable unless we rule as to whether or not the costs that drive them are

reasonable. All right. But that is a very restricted way that we look at the reasonableness of the expenditures at NB Power.

However, the legislature has enacted the section that this proceeding is under. And we are very specifically on any project over \$75 million that involves refurbishment, it is to come before this Board. And it is to proceed under Section 22, which in the way I look at it, it looks at as an open public hearing process.

So we certainly have the jurisdiction to decide that the information should not remain confidential but should go into the public forum. The AECL has provided a case in their brief they have provided to us. There is also the case in reference to the -- I forget the name of it -- dealing with the CANDU reactor that was constructed in China, the Sierra Club decision, where the Court -- the Federal Court of Appeal upheld that decision, said that the information required in reference to that hearing should be made public.

So just to put people on notice certainly from my perspective, the legislative scheme in place is such that it is the only time in my opinion that if NB Power embarks upon anything in the construction field, or renovation or anything else that it is required to come before this

Board and this Board make a recommendation as to what it does.

So it is now quarter to 1:00 and I think before we call on Mr. Hashey and Mr. Miller to rebut what the intervenors have said, and I will give them an opportunity to comment on what I have just said as well, we probably should break for lunch and come back at 2:00. And Mr. Coon, we will try and give you some time after we do that to speak with Mr. Bhutani. Or do you have another suggestion.

MR. COON: Mr. Chairman, I just didn't want CCNB 80 to get lost.

CHAIRMAN: Oh no.

MR. COON: Just make sure it is still on your list.

CHAIRMAN: There is 80 and I wonder about PNB 61(b), you know, so those two won't be lost. There might be some others as well. Good, we will recess until 2:00.

(Recess - 12:45 p.m. - 2:00 p.m.)

MR. CHAIRMAN: Good afternoon, ladies and gentlemen.

Anything preliminary before I ask for the Intervenor's if they have any comments on the comments that I made just before we rose, and then we go to Mr. Hashey and Mr. Miller?

MR. HYSLOP: Mr. Chairman, you raised a point with regard to

the interrogatory PNB 61(b) prior to lunch. I did not get further instructions on that from my client, so we are at this time maintaining our request and not have it treated in confidence.

I had the opportunity to speak briefly with Mr. Hashey and I believe they are seeking further instructions from some of their people at NB Power is what I understand. I don't know. It's something perhaps fairly small that we may deal with at a later time.

MR. CHAIRMAN: Okay. Mr. Hyslop, I'm sorry, I should have -  
- and I guess it was just clear to me because I didn't mention it, but my approach was that we would go through the question of the AECL contracts and then we would revisit. I believe, Mr. Coon, you had one more request for information that we would have to cover and as well the Province of New Brunswick 61(b). So we will come back to that.

MR. HYSLOP: Thank you, Mr. Chairman.

MR. CHAIRMAN: All right. Mr. Miller or Mr. Hashey, who wants to go first?

MR. GILLIS: Mr. Chairman, if I may --

MR. CHAIRMAN: Mr. Gillis.

MR. GILLIS: -- if it pleases the Board, my client would be willing to submit a post hearing brief with respect to --

MR. CHAIRMAN: Who is your client, your father?

MR. GILLIS: Yes. Mr. Rodney Gillis.

MR. CHAIRMAN: Have you got -- no, I won't say that. Go ahead. You know what I was going to say. Go ahead.

MR. GILLIS: We would be willing to prepare a brief for the Board dealing specifically with the matters raised by yourself with respect to the in-camera hearing and the ability of the Board to do the same -- if it would please the Board if we could be of assistance in that manner.

MR. CHAIRMAN: Well thank you, Mr. Gillis. You know, if we are talking about the load forecast, that hearing starts on Monday.

MR. GILLIS: Yes, I understand that.

MR. CHAIRMAN: We really can't get anywhere on that. So -- well the Board will consider what you just said.

Both Mr. Hashey and Mr. Miller have filed pre-filed briefs with the Board but the Board is familiar with the case law that -- certainly that I have seen in Mr. Miller's brief which came yesterday afternoon. Mr. Hashey's didn't get there in time for me to pick it up last night, but that's all right. So we have copies of that now. But anyway, the Board will consider your offer, Mr. Gillis. Thank you.

MR. HASHEY: Thank you, Mr. Chairman. In response I think

firstly we should deal with the importance of the hearing.

As you know, the timing of this is crucial. I don't think there should be any adjournments, there was hints of that today, and I would suggest that there is one possible suggestion or addition and hopefully that we could add. I can't argue, and I will leave that to Mr. Miller to deal with the issues on the contract that are still considered to be confidential, and the warranty guarantee thing primarily. We are not talking about very much of a contract. We are talking about that part of it and of course you folks will have to decide on the seriousness of that and how essential it may be and how it can be handled. There is no attempt to keep anything, and I mean, anything, from this Board. We know that that's an obligation of ourselves to give you full disclosure and that's what we intend to do.

So to add to that we have spent our noon time reviewing the scenario of the existing contracts and we are quite confident that the contracts will be completed hopefully or at least in a draft form that it would be -- everything would be there for everybody to review. And I refer to the refurbishment agreement that's down to a couple of little points that have to be resolved. The other one is the plant performance agreement that some of

my friends have raised as being an essential agreement to see, we have made the point that the business terms are there, somebody said, prove it, show us. I would hope and suggest that we would use our best efforts to have both completed or if not absolutely completed to have it agreed subject to things that could be disclosed and have those filed a week in advance with the Board and the Intervenors. We will still have to deal with the other issue.

I think -- and I don't think anybody has raised any significant issue about the importance or the necessity or even the relevance of the CANDU operation support services agreement. Really that's an agreement that hasn't even gone to the table yet. It's a matter -- and I don't think it impacts at all on the financial matters that you are looking at here. It's an agreement, as I understand it, that will deal with the people there to review what is going on and what AECL may do and the presence they may have, this type of thing, at the plant, but not anything essential to the economic terms that we are talking about.

And I guess if need be we could question people at the hearing just to establish that.

But that would be hopefully a sensible solution and every effort is being made to see that is accomplished. I



know that's what my friends were referencing that they would like to have happen and I think we can satisfy them on all those essential terms, particularly in the plant performance agreement which we really truly believe is really disclosed through this MOA, but it can be confirmed.

And otherwise I would leave the issue of the sections of the agreement that are more -- I guess they are very important to my friend to have protected or find a scheme that we can have them disclose without having them published for everyone's consumption. And only Mr. Miller can speak to that and I would pass on that, but I would be pleased to answer any questions that any of the Board members or yourself, Mr. Chairman, might have.

MR. CHAIRMAN: Thank you, Mr. Hashey. I will ask Mr. Miller to wrap up and then I will hash with my Board members.

Thank you.

MR. MILLER: Thank you, Mr. Chairman. I will first deal with the finding of common ground hopefully. From what I heard of the Intervenors and the Board I believe there was common ground that the technical information is not something that would be relevant to file, and I will just leave that for the Board's consideration.

But come back to the specific issue that the Board

raised before lunch, and that is that this is a unique statutory regime, and I will certainly acknowledge that Section 40.1 of the Public Utilities Act is unique. It creates a unique mandate for this honourable Board.

But I would also go a little bit further and submit that the issue of protection of confidentiality and confidential information is not unique. The Public Utilities Act, Section 7.1, deals with it. And it doesn't exclude inquiries precipitated by Section 40.1.

Section 7.1 is the same language as the Railway Act and there is cases referred to in our brief that deals with situations where applying Section 7.1 it was determined protective orders were appropriate.

You have mentioned, Mr. Chairman, the Orimulsion contract in the Coleson Cove hearing, and I also acknowledge that the circumstances there were very different, and the mechanism for dealing with that specific area of confidential information was dealt with in a different way. But what we are asking the Board to do is exercise its jurisdiction that it's given to fashion a new flexible way of dealing with the protection of confidential information.

I think I again have to emphasize the degree of disclosure that has taken place to date is broad, and with

Mr. Hashey's comment about the drafts, which I support, there will be agreements available. And there will be agreements available for each and every Intervenor to read in full unredacted.

If it wasn't clear from my earlier submissions, I also want to make it clear that the Board itself of course would have access to these agreements, and we don't see any reason why the Board would be restricted in any way from exercising its powers and issuing the decision, and it wouldn't be subject to any confidentiality provisions that we are asking be imposed in the order. That would apply only to the Intervenors.

The absence of rules of procedure for this Board is -- it's a double-edged sword. It does give the Board a broad degree of flexibility on how it can do justice in particular instances. And in our submission the Board is faced with the task of giving Section 7.1 some reasonable meaning here. Section 7.1 deals with information that is by its nature confidential, and in our submission the evidence supports that the very narrow and specific aspects of the agreement that have not been disclosed is by its nature confidential.

The question then becomes, how do we prevent the public publication of that document?

The solution that we have proposed and suggested the Board fashion, does not in our submission in any way impede the proceedings of this Board. All Intervenors would be able to have access to the agreements. They would be able to cross-examine fully on the agreements.

Now the Board's view of what is a reasonable protection may very well be different from our view. And I did want to address a couple of specific points that come out of the comments of the Intervenors.

Mr. Crick raised the issue of the MOA and with respect to the plant performance agreement his desire to compare it with the final version of a plant performance agreement. Mr. Hashey's point addresses that and we would support filing -- the parties using their best efforts to finalize that agreement, in any event filing the latest draft of that before this hearing commence, so Mr. Crick would -- his concern could be addressed.

Mr. Crick also I believe commented on that in concept he didn't have a major problem with the order as drafted.

Mr. Coon was clear that he wants the agreements to be public. But with great respect the threshold here is the Board has to determine that the publication of the agreements is in the public interest.

And the evidence disclosed potential damages to NB

Power and potential damages to AECL, and in our submission no compelling reason to publish the specific text of the 33 confidential paragraphs. So long as each Intervenor has access to those portions of the agreement and understands what the agreement says and can compare that with the evidence, I'm not sure what public interest is served by the public dissemination outside of the bounds of this process of the specific confidential information in the agreement.

The Board may well have concerns about the second aspect of our order and that deals with the proposal that there be in-camera proceedings. As I said in my main submission, I believe the Board has jurisdiction to do that, but the Board doesn't have to exercise that jurisdiction, and certainly if the Board thinks that reasonable protections can be granted without in-camera hearings, then we would have no objection to having the Board fashion an order that doesn't have that element, that the agreements themselves remain controlled and confidential within the terms of the order. But the in-camera aspect of the order is something that, you know, if the Board felt uncomfortable with granting that then that's certainly something we could accept.

The final point I just want to make is that when

Section 7.1 is analyzed I think the question that this Board has to ask itself, is there a compelling reason to have the specific text of the retubing agreement and the other agreements circulating in the public domain? That's the question. Circulating in the public domain. And that's the aspect of it that causes the damage to NB Power and AECL. In our submission the Board has authority and may fashion a protective order of some reasonable sort, not necessarily the one that AECL has put before the Board, but a protective order of some reasonable sort that protects, 1) the technical information, and 2) the commercially sensitive information, but at the same time in no way impedes the objectives of this Board and this process.

Those are my submissions. Thank you.

MR. CHAIRMAN: Than you, Mr. Miller. All right. The Board will reserve its decision in reference to that. Now we will pass on to the next one, I guess, is CCNB 80.

MR. MORRISON: Yes, Mr. Chairman. CCNB 80 is similar in nature to CCNB 12 and 18 that we dealt with Mr. Coon this morning in that it deals with the -- with a computer model. In this case it's the DCN screening analysis or the screening analysis model.

I think it's important to point out first that in

response to a previous interrogatory, I believe it was CCNB 79 for the Conservation Council, NB Power provided a spreadsheet printout of all of the assumptions and calculations which were used in arriving at the total life cycle costs.

And it's my understanding in much the same way as we mentioned this morning in connection with the other computer models, that -- that all of the information which Mr. Coon seeks with respect to the variables and coefficients can be derived from that information.

Now, in fairness, Mr. Coon and I and Mr. Bhutani got together over the lunch break. We were able to resolve the previous two computer models. And, I believe, and I don't want to put words in Mr. Coon's mouth, but I believe that he is satisfied that the information he seeks is in the documentation that was provided.

Now, in fairness, he hasn't had the opportunity to do likewise with the information we provided with respect to CCNB 80. I'm certainly hopeful that once he has an opportunity to review that, he will come to a similar conclusion insofar as that all of the information that he seeks is contained in that documentation.

CHAIRMAN: So, Mr. Morrison, I obviously chose the wrong interrogatory to deal first with, i.e. I should have gone

back to PNB 61(b) and given Mr. Coon his opportunity to set down. And, Mr. Coon, you have heard what Mr. Morrison has had to say as to the -- the two that we discussed this morning. Are you satisfied with what is there?

MR. COON: With respect to this morning, yes, Mr. Chairman, with the assistance of NB Power staff to clarify a couple of points the specifications for those econometric models that we were requesting are contained in what was provided this morning in the -- whatever the binder number was. Anyways, in that binder that was provided this morning but it didn't address CCNB 80.

CHAIRMAN: All right. But I -- would it be okay if I were to suggest that we postpone discussion on this. Pass on to PNB 61(b). Look at that one. And then take a break so that you are able to sit down with Mr. Bhutani, the NB Power people and take a look at the information? And that if what you require is there, then we would settle it this afternoon?

MR. COON: Mr. Chairman, I'm just not -- wasn't quite sure.

Maybe Mr. Morrison could clarify this, what information relevant to CCNB 80 in this case we would look at. He referred to the spreadsheet supplied as part of the response to CCNB 79 which we have reviewed from before. There was nothing new to our knowledge in this morning's



information that's relevant to CCNB 80.

CHAIRMAN: Okay. Mr. Morrison, what do you say to that?

MR. MORRISON: If you could give me a moment, Mr. Chairman?

CHAIRMAN: Speak to Mr. Bhutani.

MR. MORRISON: Mr. Chairman, I think we may be able to resolve this if we had a few minutes with Mr. Coon or it is going to be difficult for Mr. Bhutani and I to explain it to the Board through this process. I think it would be much more productive if we had 15 or 20 minutes with Mr. Coon and we might be able to resolve the issue.

CHAIRMAN: All right. What we will do is we will just postpone that, Mr. Coon, until after we have had a break. And we will pass on now -- my notes indicate that the only one left outstanding, with the exception of course of the AECL things that we have to rule on, would be PNB 61(b). Is that correct?

MR. MORRISON: That's my understanding, Mr. Chairman.

CHAIRMAN: Okay. Just let me get a -- try and get a copy that.

MR. MORRISON: Mr. Chairman, with respect to PNB 61(b), we have been trying to trade telephone calls with personnel at Point Lepreau who are more knowledgeable about this than anyone at this table is. We do have a partial answer but it needs a little bit of clarification. And I don't mean

to delay the thing, but I think if we had a few minutes we might be able to satisfy everybody before the afternoon is out.

CHAIRMAN: What part of the answer do you have?

MR. MORRISON: Well, the part of the answer that we have is that the cost -- the incremental costs that are referred to are contained in the AECL contracts. Now, it has been treated as confidential, but it's the specific breakdowns of price components in the contracts. What we are trying to determine is whether -- is whether we can release that particular cost without revealing the bigger cost -- without revealing the breakdown of costs item by item. And I think if we had a few minutes we might be able to resolve that issue.

CHAIRMAN: I certainly will go along with anything that may smooth the way for the Board's decisions. And Mr. Hyslop, do you have any problem with us taking a break while those two things happen? That is Mr. Coon has an opportunity to sit down with Mr. Morrison and/or Mr. Bhutani, and they also get in touch with the Lepreau people?

MR. HYSLOP: Mr. Chairman, I was advised a process like that would take place. And give it all the time he needs if they are going to supply the answers sounds fair to me. Thank you.

CHAIRMAN: All right. We will take a recess. And, Mr.

Hashey, will you let us know when you are through with the conversation with Mr. Coon and you have got the information?

MR. HASHEY: Yes, Mr. Chairman.

CHAIRMAN: Thank you. Mr. Morrison or Mr. Hashey, do you have something you want to share with the Board?

MR. MORRISON: Mr. Chairman, I will go first with respect to CCNB 80 which is the Conservation Council. Mr. Bhutani and I met with Mr. Thompson and Mr. Coon at the break. I'm not sure we have come to an agreement.

But I think I can state unequivocally at this point at least that provision of the Excel or the CD-ROM version of that model will provide no further information with respect to the power cost figures that appear in table 3-5 to Mr. Marshall's evidence.

Now I don't know whether we have been able to satisfy Mr. Coon of our position in that regard. But our information is that there is no -- nothing further we can offer, including the CD-ROM which will add to the information which is already in Mr. Coon's hands.

CHAIRMAN: Go ahead, Mr. Coon.

MR. COON: Yes, Mr. Chairman. I guess our concern around this is that it refers to the comparison of the

alternatives done on a cents per kilowatt hour basis as was requested by the Board in its decision regarding the generic hearings, and that what we are trying to get at here is exactly that, what has gone into developing these comparative power cost figures for the proposed project and the alternatives that were assessed on a cents per kilowatt hour basis.

And to us, what has been presented so far still has left a fair amount of fog around how those numbers have been arrived at.

And that is in fact why we submitted the CCNB 80, to try and ensure that we had as much transparency as was available on the development of those comparative power cost figures.

Because they are in our view the main economic evaluation in the evidence with respect to the alternatives and the projected or proposed project.

CHAIRMAN: Mr. Coon, give us just a minute. And I will ask the Board Secretary to bring us a copy of that page 19, table 3-5 of Mr. Marshall's evidence. And that is in the Point Lepreau Refurbishment. And what volume is that?

MR. COON: It was just the direct evidence for Point Lepreau.

CHAIRMAN: Direct evidence on Point Lepreau Refurbishment?

MR. COON: Yes.

CHAIRMAN: Great. Thank you.

Now Mr. Coon, Commissioner Sollows is giving the layman a hand here. And I have in front of me table 3-5 from the direct evidence of Mr. Marshall. And let's look at the top of it.

And it says the option is Point Lepreau Refurbishment.

And the capacity is 635 megawatts comparison capacity factor. In percentage that is 80 percent. And then you get the fixed -- you get the levelized life cycle annual cost. And you get the levelized life cycle annual cost including end effects.

And what you want to do, as I appreciate it, is that you want to know what mathematical calculations and inputs took you from the starting point across to the end results?

MR. COON: And that is correct, Mr. Chairman. We want to have clarity on how those fixed and variable power cost estimates were made, developed, as they are comparative and central to the question at hand.

CHAIRMAN: All right. Mr. Morrison, assistance from anybody you want?

MR. MORRISON: There is no question. I think the underlying assessment of those costs is a completely different

question.

And I think Mr. Coon said that, you know, it is a little foggy when you look at number 80, the response is foggy, still a little foggy. And perhaps that is true.

But the CD-ROM is not going to clear the fog. The only thing that is going to clear the fog is he can ask those questions on cross examination and he will get presumably the answers.

But it is a different question from that which was posed and to which we have objected. The CD-ROM will not give the information that Mr. Coon seeks.

Questions of Mr. Marshall may very well elicit the responses that he has -- we can only answer the questions that have been asked. And we have answered them.

The question that he is raising today is a different question, which presumably he would be able to ask on cross examination and get the response that is appropriate.

CHAIRMAN: Do you know the right question to ask now,

Mr. Coon? Do you have any supplemental interrogatory?

MR. COON: I guess I wasn't posing a new question

particularly. It was just an explanation as to why we asked CCNB 80. We felt that was what was going to get the clarity and transparency in the calculation of these power

cost figures.

If in fact that is not the case perhaps we asked the wrong question. But perhaps we didn't. I don't know. And it is true. Clearly we can pose numerous questions on cross examination of the witness for whose evidence this is and hopefully get those answers.

But it would save -- we assumed that this would save time if we got them ahead of time. And then we wouldn't have to ask all these nitty-gritty questions to get at the details on how those power cost figures were developed.

So we are -- I mean, we are -- you know, if NB Power claims that the CD-ROM is not going to provide any further clarity or transparency to this, I guess we have no reason to doubt their word on this one. And we could spend a considerable amount of time through cross examination to try and clarify this and clear the fog.

So I guess I leave it up to the Board as to whether you wish to rule on this particular question in the event that this might provide greater clarity or tell us to get our answers through cross examination.

CHAIRMAN: I had hoped you wouldn't leave it all up to me.

From what I hear you saying however is that if the CD-ROM won't add clarify to this table over and above what you have got, you don't want the CD-ROM. So that is the end

of that.

My question of NB Power however is you have no objection to your witness or witnesses explaining in detail how you got and what calculations you went through to arrive at conclusions that are on table 3-5?

MR. MORRISON: That is correct, Mr. Chairman. And we are not going to be evasive.

CHAIRMAN: No.

MR. MORRISON: Obviously we don't have a crystal ball. We can only answer the questions that have been asked --

CHAIRMAN: Yes.

MR. MORRISON: -- with what we have. And the CD-ROM doesn't answer the question.

CHAIRMAN: And just a follow-up to what Mr. Coon said, the layman looking at it, I figure that would be a lot of text to try and come up with that, perhaps not.

But my suggestion is that is there is anything that you can do by way of having Mr. Marshall or whomever address that explanation prior to the time of the hearing, so that the intervenors and Board staff, et cetera can look at it, then that saves the time of the hearing. And that is what interrogatories are all about.

MR. MORRISON: Very reasonable approach. Anything to cut down on the length of the hearing, Mr. Chairman, we are



all for it.

CHAIRMAN: All right. Well, then the Board certainly hopes that that is in fact what you will do.

The other matter that was going to be handled during the break was the call to Point Lepreau, PNB 61 (b)?

MR. HASHEY: Mr. Chairman, in the continuing interest of NB Power to be full and open in disclosure whenever possible, with that caveat, we have an answer that we would read onto the record if that is agreeable.

CHAIRMAN: Go ahead, Mr. Hashey.

MR. HASHEY: The answer to 61 (b) PNB is the cost of dealing with the incremental waste arising from the Refurbishment Project is approximately \$15 million in 2001 dollars.

The cost of transporting and permanent disposal of the incremental wastes are included in the decommissioning and used fuel management estimates and are not broken out separately.

I certainly think that is as complete an answer as we could ever give.

CHAIRMAN: Yes. Mr. Hyslop?

MR. HYSLOP: Thank you, Mr. Hashey. Satisfactory.

CHAIRMAN: Well, from my notes which are quite jumbled, what we really have left in front of us deals with the request for confidentiality in reference to the AECL contracts.

And the Board will retire and come back at no earlier than 4:00 o'clock to see if we are able to arrive at a decision or then come back and let you know that we are not and we will have to reserve our decision over.

However time is of the essence. So we will adjourn till -- or sorry, we will recess until 4:00 o'clock.

(Recess - 3:20 p.m. - 4:00 p.m.)

CHAIRMAN: The Board has taken some time to consider the one motion that remains before us dealing with the AECL and NB Power various contracts. And even though I am reading it, it's the decision of this Board.

And I would like in the beginning to quote from the decision in the Appeal Division, Federal Court of Canada in Atomic Energy of Canada Limited v Sierra Club of Canada and The Minister of Finance of Canada. Unfortunately, I don't have a citation. It's dated the 15th of May 2000 under case number A-699-99. And I am quoting from the decision of the majority, Evans, J.A. at paragraph 86.

In my opinion, the Motions Judge was correct to conclude that it was not always appropriate to grant a confidentiality order, when the party seeking it could establish a reasonable belief that it would be harmed by the disclosure of confidential documents. It was necessary also to assess the public interest in the

openness of the judicial process in the case. A factor to which more weight should be given in some cases than in others. While all litigation is important to the parties, and there is a public interest in ensuring the fair and appropriate adjudication of all litigation that comes before the courts, some cases raise issues that transcend the immediate interests of the parties and the general public interest in the due administration of justice and have a much wider public interest significance.

Thus there will be cases in which it is clear that almost no other interest will outweigh the need for the members of the public to be assured that if they wish to know what material is before the court when it made its decision, they or others on their behalf such as the news media could inspect it. The integrity of the judicial process and the legitimacy of the exercise of judicial power require nothing less. That's the end of that quote.

Having reviewed the regulatory regime as set forth in the Public Utilities Act of the Province of New Brunswick and also considering the importance to the people of this province, the recommendations that this Board must make to the Board of NB Power, we believe it to be in the public interest that the Board and the intervenors and the public be given access to the agreements between AECL and NB

Power.

The Board grants the intervenors' motion and directs that -- and orders that NB Power provide the intervenors who requested the NB Power, AECL, Point Lepreau refurbishment contract documents, notwithstanding that NB Power and AECL request that those documents be declared confidential and not be disclosed and that they be put on the public record subject to the following conditions: all of the parties have agreed that they have no interest in technical detail. Therefore, this may be redacted and replaced with a simple explanation of what has been redacted. All contracts except the CANDU operators' agreement be executed and filed with the Board and the intervenors prior to the commencement of the Point Lepreau Refurbishment Hearing or the Board would entertain a motion not to conclude that hearing before the missing contract or contracts were filed with the Board and the intervenors. And so we so rule.

So we will now adjourn until I guess it's Monday morning at what time, Madam Secretary, on Monday?

MS. LEGERE: 10:00 a.m.

CHAIRMAN: 10:00 a.m. I want to thank the translators, who had a very unenviable task today, i.e, no audience, and as well, the applicant and all of the parties. And we will

adjourn until Monday morning.

(Adjourned)

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

Reporter