

1 New Brunswick Board of Commissioners of Public Utilities

2

3 In the Matter of an application by the NBP Distribution &

4 Customer Service Corporation (DISCO) for changes to its

5 Charges, Rates and Tolls - Revenue Requirement

6

7 Delta Hotel, Saint John, N.B.

8 December 1st 2005

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- CHAIRMAN: David C. Nicholson, Q.C.
- VICE-CHAIRMAN: David S. Nelson
- COMMISSIONERS: Jacques A. Dumont
Patricia LeBlanc-Bird
H. Brian Tingley
- BOARD COUNSEL: Peter MacNutt, Q.C.
- BOARD STAFF: Doug Goss
John Lawton
- BOARD SECRETARY: Lorraine Légère

30 CHAIRMAN: Good morning, ladies and gentlemen. First off
31 this is Motions Day. First of all I will ask for
32 appearances. And for the applicant Disco?

33 MR. HASHEY: Yes, Mr. Chairman. With me is Mr. Morrison,
34 Mr. Marois, Ms. Clark and Ms. Gilbert.

35 CHAIRMAN: Thank you, Mr. Hashey. Now it is my
36 understanding that we just have a few of the Intervenors
37 present today. So I won't go through all of the list.

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2 But if I have left anybody out who actually is here, please go
3 on the record. I will ask is the Irving Group of
4 companies represented today? Okay. Mr. Gillis?

5 MR. GILLIS: Number 4.

6 CHAIRMAN: 4. Okay. And the self-represented individuals.
7 Municipal Utilities?

8 MR. GORMAN: Number 6. Raymond Gorman appearing on behalf
9 of the Municipal Utilities which represent Saint John
10 Energy, Edmundston Energy and Perth-Andover Electric Light
11 Commission. Today I have with me Richard Burpee, Eric
12 Marr and Dana Young.

13 CHAIRMAN: Thanks, Mr. Gorman. And the Public Intervenor?
14 10.

15 MR. HYSLOP: 10. Peter Hyslop, Mr. O'Rourke, Mr. Barnett,
16 Ms. Young and Ms. Power.

17 CHAIRMAN: Good. Thank you. Mr. Gillis, I don't know if
18 you -- number 7?

19 MR. STEWART: Thank you, Mr. Chairman. It's Christopher
20 Stewart for Bayside Power LP and Grandview Cogeneration
21 Corporation.

22 CHAIRMAN: Good. Thanks, Mr. Stewart. Mr. Gillis and as
23 well, Mr. Stewart, at the conclusion of the last hearing
24 when we scheduled this Motions Day, why we did as we have
25 done previously, had the concurrence of all the

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Intervenors and the applicant that the entire panel need not sit on a day like today, so that they won't be prejudice and can sit on the actual hearing of the evidence itself.

I presume that you will agree with that as well.

MR. GILLIS: I have no objection to that.

CHAIRMAN: Okay. And Mr. Stewart?

MR. STEWART: No objection.

CHAIRMAN: Okay. Thank you. Now, Mr. MacNutt, who do you have with you today? Number 5.

MR. MACNUTT: Yes, Mr. Chairman. I have with me today Doug Goss, Senior Adviser and John Lawton, Adviser.

CHAIRMAN: Okay. Thank you. Have I missed anybody? Okay. Mr. Hashey? Number 1.

MR. HASHEY: Thank you, Mr. Chairman. We have a few preliminary matters that I would like to deal with, you know, like exhibits that we should mark further. I think this would be the appropriate time to deal with that, would you agree?

CHAIRMAN: Does the Secretary agree?

MRS. LEGERE: Yes.

CHAIRMAN: Okay. It is all right. The first item, there were three undertakings that were delivered at the load forecast portion of the hearing. And we would like to

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table those answers to those undertakings with you as the first item.

CHAIRMAN: Okay. My next exhibit number is A-59.

Undertaking number 1 requested on the 21st of November. Mr. Sollows again is listed on that as being an Intervenor.

MR. HASHEY: Well if you could scratch that off. Obviously it indicates Commissioner PUB.

CHAIRMAN: Yes.

MR. HASHEY: I apologize for that. Obviously he is not an Intervenor but it was a question that was asked by him.

CHAIRMAN: Yes. He is the questioner I guess.

MR. HASHEY: Yes. That's better put.

CHAIRMAN: Okay. A-60 is undertaking number 2 of the 21st of November, and again it was a question posed by Commissioner Sollows.

A-61 is undertaking number 3 of the 21st of November, and again it was a question posed by Commissioner Sollows.

MR. HASHEY: Number 1 again, thank you, Mr. Chairman. The next exhibit that I believe we should be marking are the responses to the supplemental interrogatories which have been answered and have been appropriately delivered to all parties.

CHAIRMAN: Has that got a date on it, Mr. Hashey?

2 MR. HASHEY: It does, Mr. Chairman. The date is November
3 28th 2005. And there is only one volume in this instance.

4 CHAIRMAN: All right. That will be A-62.

5 MR. HASHEY: The next item which we would be asked to be
6 marked is the document which is entitled Evidence Rogers
7 Pole Attachment Rates. Now I can explain to the Board or
8 Mr. Chairman that we have a volume here which contains the
9 evidence of Mr. O'Hara and has a number of exhibits
10 attached to it. We have the evidence in both French and
11 English. There is a second volume I believe of the French
12 evidence of Mr. O'Hara.

13 And as the supplemental part of that I would be asking for
14 a separate marking as well of an expert report which has
15 been prepared by Dr. Mitchell and Dr. Yatchew.

16 So I think the first one is the English version of the
17 evidence Rogers Pole Attachment Rates, which is an exhibit
18 of ourselves. I should say that was dated November 30th
19 2005, of course, which is the date when this was to be
20 delivered, and it was.

21 CHAIRMAN: Okay. That's Disco's evidence re pole attachment
22 rates?

23 MR. HASHEY: That's correct.

24 CHAIRMAN: That's A-63. Now the French version of that
25 evidence will as well be A-63.

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MR. HASHEY: Fine.

CHAIRMAN: Why don't we call the English version evidence as A-63 -- no, let's just have them both A-63. That's fine.

MR. HASHEY: Sure.

CHAIRMAN: You have an expert's report as well?

MR. HASHEY: Yes. We have an expert's report which is entitled Fair Cost Allocation and Rates for Rogers Cable Communications Use of New Brunswick Power Support Structures. And it was a report prepared for Disco and it was prepared by Doctors Bridger and Mitchell and Adonis Yatchew.

CHAIRMAN: Let's just call it the Mitchell and Yatchew Report. A-64.

MR. HASHEY: Carry on?

CHAIRMAN: Yes, please.

MR. HASHEY: Thank you, Mr. Chairman. The next document that I have is getting into the issue of confidentiality. I should before maybe even marking that say that I have had extensive discussions with the Intervenors who had asked for questions and this of course involves my friend Mr. Stewart at the back. I have also spoken to the counsel for Frasers and can tell you what is going what is going on there. As part of the agenda I would like at some point to be

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2 able to deal with the other IRs and explain where we have

3 reached agreement that they are not in issue here today,

4 et cetera. There are only a few issues, but --

5 CHAIRMAN: Mr. Hashey, can I suggest that you refer to one

6 of your letters whereby you list the interrogatories that

7 you are either refusing to answer or claiming

8 confidentiality on and we will go through and tick that

9 off. I forget the date, but -- for instance I have in

10 front of me the letter to the Board's Secretary dated the

11 21st of November, but that doesn't cover everything, or

12 does it?

13 I will let you find what you consider to be a listing that

14 you can go through with us and tell us about them.

15 MR. HASHEY: I do have a listing that deals with the non-

16 disclosure items and I have a separate listing that deals

17 with the issues involving confidentiality. In the

18 confidentiality document there show to be one of the

19 municipal utilities and five of the Public Intervenor.

20 Now there is one additional one to that that has arisen

21 from the last set of IRs only.

22 CHAIRMAN: Mr. Hashey, Mr. MacNutt wants to get something in

23 here.

24 MR. HASHEY: That's fine.

25 MR. MACNUTT: No, just simply Mr. Hashey has referred to two

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different letters. Could he give us the date of those and --
just so that we can find the letters?

CHAIRMAN: I hate to say this, Mr. MacNutt, but we are
having trouble hearing you up here.

MR. MACNUTT: I just wonder if Mr. Hashey could identify the
two letters he has been referring to by date so that we
can turn them up and follow him during his exposition on
the matter?

CHAIRMAN: Better still if you can refer to one letter and
then we can go through that. Now take your time and -- is
there one letter?

MR. HASHEY: I will have to inquire. I don't know.

CHAIRMAN: Yes. Just take a minute.

MR. HASHEY: Mr. Chairman, if it would help, we have a
binder that we could hand out to everyone that has in the
front of it the table of contents which I believe is the
same as the letter that we have referenced.

CHAIRMAN: All right. The letter that I remember having
seen, Mr. Hashey, is dated the 15th of November from NB
Power to the Board Secretary --

MR. HASHEY: Right.

CHAIRMAN: -- signed by Ms. Gilbert. That was the one I had
remembered and was referring to.

But if you think that by going to the binder and

2 looking at it, that is fine.

3 MR. HASHEY: I would be happy to do that, if that would --
4 then you can follow not only the agenda.

5 At the start -- at the beginning of the binder, it does
6 identify the requests regarding the confidentiality. And
7 then I can indicate which ones are still in issue. Some
8 of these discussions --

9 CHAIRMAN: All right. Does that have an exhibit number?

10 MR. HASHEY: No, it doesn't. Is it going to muddy the water
11 if we give it an exhibit number?

12 MR. HASHEY: No, I don't believe so.

13 CHAIRMAN: Okay. All right. This is a binder that is
14 headed "Summary of Objections to November 14, 2005
15 Interrogatories, Confidential Matters Only." And it is
16 dated November 21. And that will be A-65. All right.
17 Mr. Hashey, you say inside the binder there is an index?
18 Or is that the letter you are talking about?

19 MR. HASHEY: I believe this is the index. I could check it.
20 The index is the same as what is stated in the letter.
21 But as I say, I think there is one additional one of
22 November 28th which is -- we will have to hand that out
23 separately. Because that is one that has just arisen.

24 CHAIRMAN: Okay. Look, I will give you a couple of minutes
25 here. Go back to that letter of the 15th which has -- the

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second page of that has probably 40 or so of the IRs of the Public Intervenor are listed on that.

MR. HASHEY: That is not the confidentiality one, I don't believe, Mr. Chairman.

CHAIRMAN: All right. What I was trying to do was to get us so that we could identify which ones are clustered under which group, i.e. confidential, non-answers, you know.

MR. HASHEY: I can do that simply. But for this --

CHAIRMAN: I will let you go. You do it exactly the way you want to.

MR. HASHEY: Right now we are only dealing with the confidentiality ones, which are the subject of a separate binder and subject to one additional.

CHAIRMAN: Okay.

MR. HASHEY: And there are only I believe seven. And some have been disposed of. As we go through the index on confidentiality I can indicate which ones are still in issue.

And maybe you would like to mark for your use the binder which has the unredacted copy, so that you can -- for the Board's purposes, as we have done before, can follow what has -- what we are asking for when the argument is going on on these issues. There won't be very much. It is not -- this is not that extensive.

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CHAIRMAN: All right. Now that has yet to be filed?

MR. HASHEY: That has yet to be filed. I mean, it is available. And it is available to be marked as an exhibit for the Board only.

CHAIRMAN: Okay. So --

MR. HASHEY: Yes.

CHAIRMAN: -- that -- refresh my memory how were we doing that before? That would be -- presumably that is the same as A-65 which I just marked except that it is unredacted.

MR. HASHEY: Correct, Mr. Chairman.

CHAIRMAN: Mr. MacNutt?

MR. MACNUTT: Yes. My understanding, if my memory serves me correctly, Mr. Chairman, it is my understanding you simply added the word "confidential" after the exhibit number to indicate that it was a colored unredacted version filed with the Board in confidence.

CHAIRMAN: Thank you, Mr. MacNutt. That is what I recall as well. Does the Secretary have those? So the unredacted on colored pages --

MR. HASHEY: And we have used the old pink again, Mr. Chairman, I think on those.

CHAIRMAN: Okay. Here we go. Mr. Young, could you open a door back there. It is an open public hearing. Thank you. Go ahead, Mr. Hashey.

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2 MR. HASHEY: Thank you, Mr. Chairman. As I indicated, there
3 is one request regarding confidentiality dated today --

4 CHAIRMAN: Mr. MacNutt is looking bewildered back there. I
5 don't know what is happening.

6 MR. MACNUTT: I don't believe the manner in which you in
7 fact have actually marked the document is on the record,
8 Mr. Chairman.

9 CHAIRMAN: Mr. MacNutt is my conscience. I have marked it
10 on pink paper, Mr. MacNutt, A-65 Confidential.

11 MR. MACNUTT: Thank you.

12 CHAIRMAN: Thank you.

13 MR. HASHEY: Thank you, Mr. Chairman. As I indicated there
14 is one additional one that will have to be delivered to
15 you both in a redacted and unredacted fashion that has
16 arisen from the last set of Supplemental IRs, only one.
17 And that should be probably marked separately or included
18 in your book, whichever you wish. It is not in the index.
19 But there is one additional one only.

20 CHAIRMAN: All right. That is the one that Madam Secretary
21 brought over here and I rejected. Okay. Let's call it A-
22 66. And could you bring that over now.

23 MRS. LEGERE: Both redacted and unredacted?

24 CHAIRMAN: Both, yes, both. That is the PUB IR 218?

25 MR. HASHEY: Correct, Mr. Chairman.

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CHAIRMAN: Okay. So there is -- A-66 is that IR. And then there is A-66 Confidential. And that is unredacted on pink paper.

MR. HASHEY: Okay, Mr. Chairman?

CHAIRMAN: Yes.

MR. HASHEY: Okay. If you and the Commissioners could refer to the index in A-65, I can give you an indication of what the status is. There are two of these requests for confidentiality that have been withdrawn that can be confirmed by my friends that are here. The first is the number 1, which is the Municipalities, which is IR-31.

CHAIRMAN: Now when you say withdrawn, you mean --

MR. HASHEY: Well I mean, the request for confidentiality is withdrawn.

CHAIRMAN: And therefore --

MR. HASHEY: In fairness what has happened is the information that they were looking for has been sufficiently answered in the supplemental IRs. So there is no request for confidentiality anymore on that one.

CHAIRMAN: So in other words we simply strike --

MR. HASHEY: Strike it.

CHAIRMAN: -- UM IR-31?

MR. HASHEY: Correct.

CHAIRMAN: All right.

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2 MR. HASHEY: And there is one other in the same boat which

3 is the PI IR-96. And my friend Mr. Hyslop has indicated

4 that he has that information and that was disclosed

5 elsewhere as well. That's just who Mr. Rees worked for.

6 Now that will leave us as I believe with five. The --

7 there are some that I can address which would be -- and I

8 could do it right now with your permission. IR-75 --

9 CHAIRMAN: Yes. Might as well.

10 MR. HASHEY: Now the request there is that this is an issue

11 which we are concerned with commercial sensitivity in

12 relation to future negotiations. We prefer not to

13 disclose those names publicly as to who we are negotiating

14 with or who -- I guess it would probably be Genco is

15 negotiating with, but we would request that those names be

16 held in confidence.

17 CHAIRMAN: I suppose now I should call on Mr. Hyslop to --

18 or do you want to carry on through the rest of them and

19 then we go to Mr. Hyslop and see what he has to say?

20 MR. HASHEY: Yes, that might probably be a good idea to give

21 the Board an overview of where we are going on these --

22 CHAIRMAN: Yes.

23 MR. HASHEY: -- then we can revert. I would be happy to do

24 that.

25 CHAIRMAN: All right.

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MR. HASHEY: The next one -- and there are two that would

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involve issues concerning the NUG contracts. Mr. Stewart

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is here to speak to those. The first one is IR-91 and

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then the larger one is IR-115. And that contains

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information that arises from the well known documents

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referred as the NUG contracts.

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CHAIRMAN: Go ahead, Mr. Hashey.

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MR. HASHEY: On those of course we are requesting

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confidentiality and I think Mr. Stewart may want to go

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further.

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CHAIRMAN: Yes. I just want to get an idea where we are

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going on all of these. What is left here.

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MR. HASHEY: That leaves only two. The next one is IR-92.

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And this issues -- the issue here is with the request for

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the names of the market participants who provided forward

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price quotations.

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Now I can say this -- I don't know that anybody is here to

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speak to that except Mr. Hyslop, but I have personally had

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a call, at least one, from market participants who are

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very concerned with their highly competitive information,

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even their names being released publicly. This is a high

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bid area, a very sensitive area, and an area of great

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concern to us. I don't think it adds one thing to this

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hearing to give those names out.

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2 We have talked about and we have given you information on
3 the quotations, there will be cross examination, there has
4 been many interrogatories in relation to the hedging and
5 possibly there will be some evidence to argue about the
6 proper methods.

7 But to lose these major participants in this business
8 because of the possibility of their information being
9 released could be very, very harmful to the organization
10 that -- it would be Genco in this case, but it would be
11 passed on to us if we don't lose the benefit of those
12 contracts. So that's really the issue in relation to
13 those -- in to that one IR.

14 That would leave only one additional which is the one that
15 we have just spoken of which was 218. And again this is a
16 matter of no problem with giving this information to the
17 PUB as requested in confidence. The concern there is
18 simply that the information is very commercially sensitive
19 to further negotiations. This deals with the precipitator
20 and the negotiations that are -- will be entered into in
21 relation to a further precipitator, to give public
22 information on what the earlier tender would be -- or
23 sorry, not the tender but the contract price. It could be
24 harmful in the future negotiations and that's simply the
25 point there. But to give that information to the Board in

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confidence is obviously not a problem. And that really completes them.

CHAIRMAN: Okay. Mr. Stewart do you want to put some comments on the record in reference to IR-91 and 115, and any others for that matter.

MR. STEWART: Yes, Mr. Chairman. Should I come forward?

CHAIRMAN: You can come up to mike number 2.

MR. STEWART: And I give the Board my personal undertaking not to use the words Ford Taurus again at any point during my presentation.

CHAIRMAN: What happens is that the Public Intervenor immediately gets into Scottish poets. So we would appreciate that.

MR. STEWART: Well with a last name like Stewart that's not all bad, Mr. Chairman. Yesterday as I was jotting my notes down for my presentation, I realized that I was going to have something in common with Gilles Doucette today and that is both of us are going to quote Yogi Berra this week. Only mine is slightly different, and my quote is, that it's deja vu all over again.

The information requested in both of these IRs, and particularly in Public Intervenor IR-115, is and cuts directly to the nature of the so-called NUG contracts. And if I could refer you to the last tab of the binder

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that has just been marked exhibit A-65, about halfway down the page, the sub II of IR-115 says, please calculate in dollars per megawatt hour the amount to which Genco is required -- which Genco is required to pay under each NUG contract.

And then 3, 4, 5 and 6 are just basically doing arithmetic in comparisons with those numbers.

Now with respect, Mr. Chairman, our client's positions have been consistent throughout on this issue. We take the position that the contracts entered into with respect to the power purchase agreements were done in good faith, they contain commercially sensitive information, they contain confidentiality provisions and they do not consent to the disclosure of that information by Genco or candidly anyone else.

I understand why Mr. Hyslop is asking for the information that he has already requested once. He is capable counsel and if you can't get in through the front door well you often try to get in through the back door.

With respect my -- the Board didn't have jurisdiction to require disclosure of this information before and in my submission it does not have jurisdiction to acquire it today.

I refer the Board to its decision -- previous decision

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on this issue, July 27, 2005. And I know you may or may not have that at your fingertips, but I'm just going to touch on a couple of points the Board found.

The next to last paragraph on page 7 of that decision the Board is dealing with the "requested NUG information".

The Board arranged for each of the parties to the described contracts to be given notice that the court may order the contracts filed.

And of course the reason for requesting the contracts was to find out the financial information within the contracts.

The thrust of their submissions was that the Board did not have jurisdiction to order the production of the contracts and that the information in them is not relevant to the present application. They also declined to provide those contracts voluntarily.

And I'm not going to repeat my submission, only to say that they have not changed between then and today.

On page 8 of your ruling last at the very bottom of the page the Board held, the NUG information has presented the Board with a difficult -- a particularly difficult problem. The NUG information is to be found in the files of the NB Power group of companies and generally relates to contracts with third parties.

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2 And then, Mr. Chairman, you refer to your own earlier
3 decision of June 9 and said, the Act is clear that the
4 Board has no jurisdiction over the generation company.
5 And in the paragraph following that you said that the
6 generation companies were not subject to the rate based
7 regulatory oversight of this Board. And of course I think
8 to the extent that was ever an issue it's clearly not an
9 issue today.

10 And you found as a fact in fact the power purchase
11 agreements were -- that is, the NUG power purchase
12 agreements, were assigned to Genco. It places the
13 contracts beyond the reach of this Board in matters
14 relating to rate making.

15 And finally on the top of page 9 the Board found -- the
16 Board has determined that it does not have jurisdiction to
17 order NUG information to be filed with the Board and
18 therefore will make no order in respect of it. And that's
19 it, Mr. Chairman.

20 CHAIRMAN: Yes. And so, Mr. Stewart, your clients are
21 objecting to them even being scrutinized under our
22 confidentiality hearing format that we set up?

23 MR. STEWART: Yes, Mr. Chairman. In the same way we did
24 last summer, we do again today.

25 CHAIRMAN: Thank you, Mr. Stewart.

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2 MR. HASHEY: Mr. Chairman, could I just add one thing that I
3 forgot to add. I had a phone call yesterday from Mr.
4 Thibodeau who represents Fraser Companies, and he wanted
5 just to follow and indicated that I -- and I told him that
6 I would indicate that whatever Mr. Stewart would be saying
7 here would pass on to Frasers.

8 I don't know that it -- you know, again on the Fraser ones
9 we have no problem with putting it up in confidence the
10 bit of information there.

11 CHAIRMAN: I think it would have been appropriate if Mr.
12 Thibodeau had called Board counsel too.

13 MR. HASHEY: I appreciate that. It was late in the day when
14 I -- and the reason that the problem arose is that we did
15 --

16 CHAIRMAN: You indicated you would come down off the ladder
17 I take it --

18 MR. HASHEY: Yes, I fell.

19 CHAIRMAN: -- when you were stringing your lights.

20 MR. HASHEY: I knew you would find a way to fit that in.
21 Anyway, the --

22 CHAIRMAN: We are concerned about discounts here you know.

23 MR. HASHEY: Yes. You can pay for the rake that I fell on
24 when I came down off the ladder. It broke.

25 Anyway, Mr. Thibodeau would have better advised --

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- 2639 -

2 unfortunately what has happened at Frasers, the person that
3 was notified up until now was notified some time ago or a
4 letter went, but there have been massive changes in
5 personnel with the Fraser companies, I'm sure others would
6 know. And unfortunately this gentleman has now been
7 assigned to somewhere in Maine and it was only late in the
8 day that this really came forward.

9 CHAIRMAN: Okay. Well that's on the record, Mr. Hashey.

10 Thank you. All right. Mr. Hyslop, do you want to come
11 forward, sir, or do you want to speak from there?

12 MR. HYSLOP: Thank you, Mr. Chair. My notes are different
13 from Mr. Hashey's a little bit, actually in his favor. We
14 had a meeting the other night and we referred to -- went
15 through these confidential IRs.

16 And I think we agreed that we would take 75-2 in
17 confidence and agreed to it. We don't need that on the
18 public record. I will deal with 91 when I deal with 115.

19 Mr. Hashey is correct on IR 92. Somewhere else in the
20 evidence we found the answer to our question. And it is
21 not that material. Or that was 96. 96, I'm sorry, not
22 92. I apologize, 96.

23 Now 92. 92 we accept it being filed in confidence. But I
24 understood from Mr. Hashey that he did not even want to
25 provide that information in confidence due to the

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2 sensitive nature of the material.

3 And then perhaps Mr. Hashey should clarify that. We would
4 accept that information in confidence. But I understood
5 that that wasn't the position of the applicant.

6 MR. HASHEY: I think we could file --

7 CHAIRMAN: That is mike number 1.

8 MR. HASHEY: I'm sorry. I tend to agree with Mr. Hyslop
9 that if they have any relevance at all that they could be
10 filed in confidence, the names, but strictly in
11 confidence.

12 CHAIRMAN: Well, certainly.

13 MR. HYSLOP: That is fine.

14 CHAIRMAN: That is off the table too then.

15 MR. HYSLOP: My understanding was that these people didn't
16 want their names even in the confidential record. But if
17 that has changed that is fine.

18 I do point out we do regard 92 as material. It goes to
19 who does Disco use in terms of being able to buy its fuels
20 and, you know, are they credible companies, who were they
21 using. But that is the issue. And I think it is
22 important.

23 CHAIRMAN: It is not Disco. It is Genco.

24 MR. HASHEY: Genco.

25 MR. HYSLOP: Genco, yes, as Disco's agent or whatever it is.

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CHAIRMAN: Whatever that relationship may be.

MR. HYSLOP: Yes. The other two on the NUGs, yes, I don't want to disagree with my friend. And maybe I was trying to do by the back door what I couldn't get in the front. But what we were talking about was the actual contracts. And I did ask that all the information through numbers 1 through 5 could be filed in confidence. And number 6 would be the summation amount.

And the amount -- what I'm looking for here is how much extra is paid to these five NUGS, or three NUGS I listed.

What is the total sum that is paid to them in excess of what electricity could have been dispatched for under Genco's own system.

Now 1 to 5 is the calculation of the amount in number 6. Number 6 is a blended amount.

CHAIRMAN: Sorry. Which of the two are you referring to?

MR. HYSLOP: 115.

CHAIRMAN: 115. Sorry. Go ahead.

MR. HYSLOP: I apologize.

CHAIRMAN: No. That is me.

MR. HYSLOP: Yes. Yes, I start off in Question 1. And I say, Please confirm the annual hours NB Power is required to purchase energy under the NUG contracts that are in effect for 2005, '06, '07. And the number of hours is

2 less than the full year, 87-60. Please identify the period
3 and year for which the hours actually apply.

4 And there are IR responses. We know there are certain
5 times that they have to purchase from different people
6 under these NUG contracts.

7 Then I asked, you know, what is the total dollars per
8 megawatt hours which Genco was paying to each of the --
9 under each NUG contract? And then I say, Please indicate
10 the marginal costs from Genco for each hour that each of
11 the NUG contracts is in effect. Calculate the difference,
12 multiply it by the number of hours.

13 And that should -- at some point in time, when you
14 subtract it or the total amount they pay, that should show
15 you a number where, you know, in our view there has been
16 an overpayment or we are paying more for electricity in
17 this province than we have to. And then in 6 I say total
18 it all up.

19 The reason for 1 to 5 was to ask us to be able to verify
20 number 6. I would be more than pleased only to receive
21 the number in number 6 on the public record.

22 And I want to point out a couple of things. If those
23 calculations are done, it is blended between three NUG
24 contracts. I can't go back and figure out how much they
25 are paying Bayside. I can't go back and see how much they

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are paying the Fraser people up in Edmundston.

I'm getting an aggregated number in number 6. It's all totaled up. And it is just a lump sum number of the total amount of money that is being paid under all the NUG contracts over what they could do it for out of their own system. I believe 1 to 5 can be filed in confidence.

But look, I'm actually quite surprised at the position my friend Mr. Stewart is making. And I don't know what this number -- in. But let's say that they paid the NUGS 20 million more than they could have under their own contract, you know.

The principals of his companies would benefit if I was to argue that that is an unreasonable payment and shouldn't be able to be factored into the revenue requirement. But obviously if they want their confidence more than they would want to save \$20 million, that is up to them.

And I don't know the numbers. It might be \$20. And if it is \$20 it doesn't matter. But I would like to know what it is in 6. That number would not -- the calculation in number 6, there is no way in the world I can desegregate back and figure out which NUG contracts apply, what the pricing is under the NUG contracts. They can do the calculation, give me the number. And because it is

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blended from three different NUG contracts, I have no idea of knowing the price.

So in summary on the answer, I would settle for what you have got in number 6. I would really like to have the numbers in confidence. But if this Board accepts from Mr. Stewart a statement which is really, I don't want to provide the actual numbers under number 2, then at the end of the day I can still get my number 6.

So that is where I'm coming from on the 115. And I have got to think it's at least could be a material number that would be the subject of argument at the end of the day.

With respect to number 91, again our issue is I would ask that the information be filed in confidence. It is a judgment call as to how particularly material is. But there is 9 million here that somebody seems to be benefiting from. But again in view of my comments on 115, I'm not going to push 91 quite as hard. But that total number on 115 is what I'm really looking for.

So those are our submissions on the confidentiality IRs, Mr. Chairman.

CHAIRMAN: Thank you, Mr. Hyslop.

MR. HASHEY: Could I just have a minute, Mr. Chairman --

CHAIRMAN: Yes.

2 MR. HASHEY: -- on this? You know, I would like to respond
3 to that. But there was one little bit of information I
4 would like to just get from my advisers.

5 CHAIRMAN: Yes.

6 MR. HASHEY: Mr. Chairman, can I then speak to this?

7 CHAIRMAN: All right. I was going to go the normal way,
8 but --

9 MR. HASHEY: Oh, no. That is fine.

10 CHAIRMAN: Because I was going to have you put A-66, the
11 confidential on the floor now too and deal with that. And
12 we will give Board Counsel the opportunity to explain to
13 us why that should be made -- that information should be
14 forthcoming.

15 And then I will go back to you. And I will also give Mr.
16 Stewart an opportunity to respond to what Mr. Hyslop has
17 said.

18 So if you wouldn't mind let's go on to A-66 which of
19 course is the PUB staff Interrogatory number 218. Mr.
20 Hashey, I wasn't clear, I want you to address A-66,
21 confidential.

22 MR. HASHEY: Oh, I'm sorry. I thought we were waiting for
23 Mr. MacNutt. The issue there is the one that I pointed
24 out earlier. This is the one that is -- it contains
25 sensitive information. We are happy to put it on the

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2 record in confidence. It's just for negotiation purposes for
3 the future contract. There is just a little portion of D
4 that has been redacted. Everything else has been
5 answered.

6 And it is just the question of the proposal received and
7 subsequently awarded for unit 3 precipitator upgrade,
8 because there is other negotiation potential here that
9 could be influenced if that price was publicly known,
10 that's all.

11 CHAIRMAN: Okay. Mr. MacNutt?

12 MR. MACNUTT: Yes. Exhibit A-66 refers to the response to
13 PUB IR-218. The Board staff's position is they are quite
14 happy to receive the information in confidence.

15 CHAIRMAN: Okay. So that's off the table too. Good. All
16 right. Now let's -- do the Municipal Utilities or Mr.
17 Gillis have anything they want to add to anything we just
18 heard? Mr. Gillis is shaking his head no. And number 6?

19 MR. GORMAN: Yes, Mr. Chairman. I guess our confidential IR
20 issue has been resolved. So the remaining IRs come from
21 other Intervenors. The last time we were here I guess we
22 took no position, but having said that we would simply
23 make the statement that the more information the Board has
24 the better position it would be in to arrive at the best
25 possible decision for the ratepayers of New Brunswick.

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And other than that we make no comments.

CHAIRMAN: Good. Thanks, Mr. Gorman. Mr. Hashey, go ahead.

MR. HASHEY: Thank you, Mr Chairman. I will try to be very brief on this.

The answer on my friend's request on the NUGS for marginal cost information, again it looks like all we are trying to do here is to go back and challenge somebody's decision that they would enter into natural gas contracts at a time that it seemed attractive to my friends and others. And those contracts were entered into and they are binding contracts and they are commercially sensitive and they do have issues that relate to confidentiality.

But the question really also comes down to what is he going to do with these answers? The only thing he can possibly do is try to create a situation to say, you shouldn't have those contracts. You could deal with them otherwise. But it makes no sense. It's meaningless.

But I would like you to read our answer. We have answered 6, and we would say if we give that information it is completely meaningless. And I will read the answer. The removal of the NUG purchases from the model would increase the yearly average marginal cost. During winter months there would be many hours that would require operation of combustion turbines. During peak conditions

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there would be insufficient capacity to supply firm load and emergency purchases would be required.

So if you try to balance all this information we just -- it comes out to mean nothing other than to say that you shouldn't have natural gas or these other contracts which are there and we are living with them and we are living with the obligations and how they flow through the income as coming through the Board and the Board will have that.

But to do that challenge I would find quite objectionable and of no use to this Board.

That would really conclude my comment on that.

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

MR. STEWART: Thank you, Mr. Chairman. Mr. Hyslop did a good job of explaining why it was that he wanted the information but he didn't make any submission with respect to why the Board would have somehow acquired jurisdiction in the interim to order its disclosure, and I think I know why and that's because that situation has not changed. Whether the numbers -- he said he would be content with a blended number but those numbers are required -- or that number is generated as a result of information which as the Board put it from contracts which are beyond the reach of this Board in matters related to ratemaking. And as Mr. Hashey points out, the fact is that those

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2 contracts are beyond the reach of this Board and if the
3 purpose for them being asked for is to challenge the
4 propriety of those contracts, then that means that the
5 information is not only beyond the reach of the Board but
6 not relevant to the Board's determination and the
7 ratemaking for these proceedings.

8 I understand the Board may have some frustrations in that
9 regard. I'm sure that -- like we all have frustrations in
10 terms of sometimes how this regulatory frame work has been
11 established, but it is what it is. And blended or no the
12 information -- the consent of the release of the
13 information is not provided. And the Board is with
14 respect not authority to require its disclosure.

15 CHAIRMAN: Thank you, Mr. Stewart. The Board will -- Mr.
16 Hyslop, you have your hand up?

17 MR. HYSLOP: Yes, I do. I didn't realize I was going to get
18 further rebuttal, but just in regard to Mr. Stewart's two
19 last points. First of all, the pricing that Genco pays
20 under those NUGS becomes part of the pricing that is
21 billed down to Disco and the amount of money that is paid
22 out to NUGS becomes very much -- because it is billed down
23 to Disco -- very much part of Disco's revenue requirement.

24 I think that revenue requirement part of it is very much
25 within the propriety of this Board. That's it.

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CHAIRMAN: What do you have to say for Mr. Hashey's point that they are contracts that have been entered into and they are binding and whether or not the then NB Power Corporation struck a good deal or a bad deal. What relevance does that have to where we are today?

MR. HYSLOP: Well the issue there very simply is at some point in time I hear Mr. Hashey saying, yes, we are paying out more under these NUG contracts than it would be that - - than it would be if we didn't have them, and that in fact -- you know, if we dispatched under our own system. And at that point in time he may argue that even though that's happening we entered into reasonable contracts four or five years ago where -- I guess they were all renewed in 2004 but when we entered into these contracts maybe gas looked like a good deal and now that it's a bad deal it's reasonable to live with that. He can make that argument. That's something the evidence will bear out maybe during the course of the hearing. I may take a different view of that. My point is, you know, there is no sense even making those arguments at the end of the day if we don't have a good idea what the number is. And right now all I'm saying is the number is relevant. I think it goes to the revenue requirement. It should be put in play and once

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2 it's put in play if they want to argue that yes, we are paying
3 too much but at the time we made the deal it was a good
4 deal and the Board has to live with it, that's fine and
5 dandy by me.

6 So my view is Mr. Hashey's argument may or may not be well
7 met, but I don't think it's the right time to be arguing
8 that point, Mr. Chairman.

9 CHAIRMAN: Thank you. All right we will take recess.

10 (Recess - 10:50 a.m. - 11:05 a.m.)

11 CHAIRMAN: Just before I deliver the Board's ruling, I want
12 to thank counsel for having had their meetings and getting
13 all of the goodly number of the questions off the table.
14 Our understanding that it's only Public Intervenor IR-91
15 and 115 that still remain on the table of those that were
16 listed in A-65 and A-66.

17 Mr. Hyslop from what we heard would like to have all
18 questions in those two IRs answered, but as indicated he
19 would be satisfied if the answer to question number 6 in
20 IR number 115 is provided. Except for question 6 of 115
21 we will not order Disco to answer these questions as they
22 are contract specific.

23 However, we will order -- based upon our understanding of
24 the fact that Disco does have the information and it is
25 aggregated so that no costs are specific to any NUG

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contract, we will order that Disco put on the public record
the answer to IR-115, question number 6.

Now, Mr. Hashey, we -- let me see. Which other batch do
you want to proceed with?

MR. HASHEY: Mr. Chairman, can I just -- on the
confidentiality issue, could we do that in the same
fashion that we have done the last set rather than
following the policy for putting -- and doing things, now
that we have gone this far, that we just ask people to
sign a confidentiality agreement, those that want them,
and deposit it, and then we will deliver the confidential
answers?

MR. HASHEY: Would you run that by again? I once had a
professor that would say that.

MR. HASHEY: Exactly. In the procedures that we have
followed in the past portions of this hearing in relation
to matters that are confidential --

CHAIRMAN: I see. In other words --

MR. HASHEY: -- we have asked people to sign a
confidentiality agreement and then we would supply the
information to those that would have signed it.

CHAIRMAN: Yes. Any comments from any of the parties? It
seemed to work before.

MR. HASHEY: It worked very well.

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2 CHAIRMAN: Yes. So if that's acceptable to everybody then,
3 yes, Mr. Hashey, that's the way that we should proceed.

4 MR. HASHEY: Thank you. Mr. Chairman, the next issue that
5 we have here is the issue of the -- we put these matters
6 that are still outstanding in categories. And what we
7 have done is that we have met and virtually all but one of
8 the ones of the municipalities have been withdrawn or
9 agreed -- in fact in two instances we have agreed to
10 supply answers. So we will circulate those answers to
11 everyone to those -- to the two IRs. So that really --

12 CHAIRMAN: Again, Mr. Hashey, it would be helpful for us if
13 you were --

14 MR. HASHEY: To have the book?

15 CHAIRMAN: To either have a book or to refer to
16 correspondence that has come from your client, so that we
17 can follow along and -- as we did with the index in A-65.

18 MR. HASHEY: Yes. I think we should supply the book. The
19 book will reflect the index -- the book will have an index
20 just like we did in the last, and we could follow along on
21 that.

22 CHAIRMAN: Good.

23 MR. HASHEY: Possibly if that would be agreeable then I
24 would ask --

25 CHAIRMAN: Yes. It did seem to work very well, so please

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2 do.

3 MR. HASHEY: Okay.

4 CHAIRMAN: Okay. So there is no pink paper involved in this
5 one at all, is there, Mr. Hashey?

6 MR. HASHEY: No pink paper. These are -- the ones that you
7 are seeing here have issues but there is one that we have
8 -- that I would like to deal with up front that we have
9 had some discussion on, and I can identify where those
10 are.

11 CHAIRMAN: All right. Let me just get this marked and it
12 will be A-67.

13 MR. HASHEY: Thank you, Mr. Chair. As you can see, we have
14 put these in categories. There may be a little bit of
15 overlap and I can refer to that. The first one is the
16 issue of the public policy if we like, or section 156.
17 Now my understanding that's the one that Mr. Hyslop and
18 Mr. Gillis will be dealing with. In other words, the ones
19 that Mr. Gillis has referenced in his letter fall within
20 that batch.

21 There then are -- if you go further you will see there are
22 really two other batches, one which is the ones that we
23 are arguing that the request for information is not
24 relevant or it's really almost -- it's asking too much.
25 It's just a little too difficult to request for no real

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2 reason or value.

3 And then the ones at the end, the last category, which is
4 probably the easiest one of the bunch, it will take the
5 less time, is the ones not available.

6 Now if I could -- and I would like to reference that we
7 will be answering the -- under the not relevant one -- we
8 have talked to my friend, Mr. Gorman and we have agreed
9 that we will provide answers on IRs that were listed there
10 as UM IR number 6 and 8.

11 CHAIRMAN: So they are off the table then?

12 MR. HASHEY: For today they are off the table. I mean,
13 obviously I have told Mr. Gorman if he is not happy with
14 our answer that we can discuss it further with him, but I
15 think he will be.

16 CHAIRMAN: Okay. Thank you.

17 MR. HASHEY: Now there are another group that fall under two
18 headings that I have had discussions with my friend Mr.
19 Hyslop about, and this is the one that I would speak to
20 but suggest at this point we not engage in the argument,
21 which are the ones that fall under the first of all the
22 public policy.

23 They are listed as number 22 and 119. And under not
24 relevant number 22. And I could tell you with the
25 approval of the Board what we intend to do on those.

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2 These are the internal management reports that we have

3 difficulty -- that go to government that we have

4 difficulty releasing for that reason, plus the reason --

5 CHAIRMAN: Sorry, Mr. Hashey. The second one that was not

6 relevant, you said 22. The listing I'm looking at doesn't

7 have it.

8 MR. HASHEY: No. The 22 one falls under the -- it falls

9 under the not relevant issue. No, I'm sorry. Public

10 Policy. Public policy is 22 and 119 and 16 is under Not

11 Relevant.

12 CHAIRMAN: Okay.

13 MR. HASHEY: And what we would like to do is postpone that

14 one. The discussion with Mr. Hyslop is that he could look

15 at a couple of them, we would still reserve the right to

16 argue but if there is -- if there still is an issue that

17 it would be a confidentiality issue and they would be

18 delivered in confidence, but we would have to come

19 obviously back to the Board for a ruling on that.

20 And these are the internal management reports that we

21 think is -- would be wrong, that we would be getting into

22 management problems if we can't do our internal management

23 in a very critical and self-critical basis.

24 But -- and I also say the point I made to Mr. Hyslop is

25 really from my review of those there is nothing

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2 whatsoever in there that hasn't already been disclosed that
3 has any relevance to the rate matters.

4 So we will just not deal with those today if that's
5 agreeable.

6 CHAIRMAN: That's certainly agreeable with the Board. Mr.
7 Hyslop?

8 MR. HYSLOP: Yes. Mr. Hashey indicated to me at our meeting
9 the general nature of what these reports consist of, and
10 said he would allow me to review them, and if I agreed
11 with what he told me we would abandon the IR.

12 If we didn't abandon the IR it's my understanding they
13 were going to claim some type of ministerial confidence
14 and not provide them. But now I understand they will go
15 into confidence.

16 But I think that's a fair request Mr. Hashey made of me
17 and I will go through that process with him and if we
18 agree to agree it will be dealt with, and if we agree to
19 disagree I'm afraid we will be back.

20 CHAIRMAN: Good. Thank you. Those are management reports
21 rather than accounting reports I take it?

22 MR. HASHEY: Mr. Chairman, I may have screwed up here. I
23 apologize. There have been so many indexes here. I think
24 that we are dealing with IR-16 which is under the first
25 heading which is the -- under the Public Policy issue as

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well, dated July 14th.

CHAIRMAN: July?

MR. HASHEY: 14th. You see the one right at the -- the first one on that list?

CHAIRMAN: Yes. Well that's 104.

MR. HASHEY: No. Under Public Policy. I know there are so many of them it's difficult to keep them straight, but it's under July 14 under Public Policy.

CHAIRMAN: I see. All right. There are two IR-16s then.

MR. HASHEY: Right.

CHAIRMAN: One is July and the other November.

MR. HASHEY: That's right. And I'm not talking about the November one. That's the one.

CHAIRMAN: So you are talking about the July one?

MR. HASHEY: Yes.

CHAIRMAN: And, Mr. Hyslop, you confirm that? While he is checking, Mr. MacNutt had a question.

MR. MACNUTT: Yes, Mr. Chairman. I assume that we are going to go from the top of the first of the three page index pages and go through each of these items. And it would be -- I would request that for the purpose of continuity of the record that notwithstanding our discussion with respect to several of the IRs at this stage that when we are going through the IRs in sequence that they again be

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referred to and the manner of their disposition.

CHAIRMAN: I didn't catch the last bit of what you said.

MR. MACNUTT: That we refer to the ones being discussed now
and their manner of disposition.

CHAIRMAN: I don't see any problem with that. So the July
14 Disco IR-16 is postponed as well. Mr. Hashey?

MR. HASHEY: Yes.

CHAIRMAN: Yes. And the one under -- from November 14th is
still on the table?

MR. HASHEY: Correct.

CHAIRMAN: Okay.

MR. HASHEY: Mr. Chairman, my turn again?

CHAIRMAN: Your turn again, sir.

MR. HASHEY: Okay. Thank you. Now the question is how you
want to deal with these IRs. They are under different
headings. There is, as you had indicated, the non-
available is a pretty easy one to run through. That is
short.

Most of them are -- the ones that we had originally had
are gone, either being answered or being withdrawn. But
there are still a few of them in that bucket. Then the
next longest one would be of course the not relevant ones
which will take some time.

And then there is the first issue that Mr. Gillis and

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2 Mr. Hyslop are of course interested in, which is the public
3 policy ones, the 156 issue.

4 CHAIRMAN: Frankly my preference is to do the most difficult
5 first.

6 MR. HASHEY: Okay. Then I will turn over to Mr. Morrison.

7 MR. ANDERSON: Mr. Chairman --

8 CHAIRMAN: We have this unidentified individual just rose in
9 the back of the hearing room, better known to the Board as
10 Mr. Anderson from Department of Justice. Do you want to
11 get a mike?

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

13 CHAIRMAN: Come on up to number 2 up here. This I thought
14 was a watching brief, sir.

15 MR. ANDERSON: Thank you, Mr. Chairman. William Anderson
16 appearing on behalf of Bernard Lord. I'm here to request
17 that the Board hear representations from me on behalf of
18 my client as a result of the letter that was sent to the
19 Board by Mr. Gillis, a copy of which we have received,
20 which among other things requests that the Board issue
21 process compelling attendance of Mr. Lord as a witness.
22 I presume that this will be the subject of the -- or part
23 of the subject of the matters arising out of the
24 Interrogatory dealing with the public policy questions.
25 So I'm only at this point asking the Board to permit

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2 me to make representations, after I assume Mr. Gillis will
3 address his request, permit me to make some
4 representations on that issue.

5 CHAIRMAN: Well, I can only speak for myself, Mr. Anderson.

6 But if we reach that point in the proceedings, why the
7 Board will certainly consider your request and deal with
8 it at that time, sir.

9 MR. ANDERSON: Thank you very much.

10 CHAIRMAN: Mr. Hashey?

11 MR. MORRISON: I guess it is me now, Mr. Chairman.

12 CHAIRMAN: I'm sorry, Mr. Morrison.

13 MR. MORRISON: I always said that Mr. Hashey knows when to
14 delegate.

15 I guess I was going to deal with these, what are listed
16 under the heading Public Policy. Rather than deal with
17 them individually, they really fall into three main
18 categories, Mr. Chairman. And I would like to deal with
19 it at that level if I could. And then if you want to go
20 back and look at the individual IRs we can do that.

21 I think it is important to note at the outset that we want
22 the record to be clear that so far we have had about 1,700
23 IRs. And we are down to a handful that are in dispute.

24 But if you look at what are referred to as these

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public policy IRs, they fall into three distinct buckets. I

guess the first bucket is information on the general policy behind restructuring. And they relate largely to whether there really is a competitive market or a move to a competitive market in New Brunswick.

The second bucket if you will is requesting detailed information on the process behind the development and creation of the PPAs.

And the third series of questions is really questions asking why certain provisions of the PPAs are what they are, the why question.

And if I understand where the Public Intervenor is coming from in trying to get at this information, it is my submission that what the Public Intervenor is really trying to do, Mr. Chairman, is to pretend that restructuring hasn't occurred. And he wants to pretend that the Electricity Act hasn't been proclaimed. And he wants to pretend that Disco, Genco and Transco are still an integrated utility.

I'm assuming that Mr. Hyslop will argue, as he has before, that the PPAs -- and in these questions he is asking that the PPAs basically be disregarded in setting Disco's costs, for two reasons, that there is no competitive market in New Brunswick and that in effect NB

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Power is still an integrated utility.

Now dealing with the public policy issue, the public policy of moving to a competitive market is set out in the government White Paper. And it permeates the Electricity Act. Indeed the Electricity Act, proclamation of the Electricity Act flowed from that policy.

Do we have a competitive market at the moment? Are we there yet? No. But this is a gradual process. The restructuring of NB Power was the first step in that process. And the PPAs, as we indicated earlier, are an integral part of that process.

Then you had the establishment of the Market Design Committee, Market Design rules, recently Section 80 of the Electricity Act which allows for Disco to out for an RFP has been proclaimed. So we are moving to a competitive market. And as I said before, the PPAs are integral to that process.

Quite frankly, Mr. Chairman, it is our submission that this issue has already been dealt with. You will recall that there was a hearing before this Board on June 8th to determine the effect of section 156 in this proceeding. And that hearing was scheduled early in the process, so that we and all the other Intervenors would know where they stood in connection with answering -- asking and

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answering questions with respect to the PPAs.

And the Board heard all the arguments about restructuring and whether NB Power was an integrated utility and whether there was a competitive market. All of these -- I checked the transcript -- all of those arguments were made by Mr. Hyslop on June 8th. And the Board issued a decision. And that decision, which was issued on June 9th, the Board states, and I'm quoting, "The Board has reached the conclusion that the total costs represented by the PPAs must be accepted as a necessary component of Disco's overall revenue requirement. Reviewing the various cost components would therefore not be required simply for the purposes of establishing the total amount of costs that Disco was entitled to recover from its ratepayers." My submission, Mr. Chairman, that your ruling, this Board's ruling was quite clear that for purposes of establishing the revenue requirement, the Board must rely on the PPAs.

Now the decision in fairness did go on to say that the Board could look at costs underlying the PPAs in setting specific rates for the services which Disco provides. And you will recall that during the CARD hearing Disco provided what I would suggest are reams and reams of cost

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information which underlie the PPAs.

These binders here are the specific cost information that was provided which underlined the PPAs. There are three review reports by La Capra & Associates. And although it is not here, there are also cost allocation studies filed with the Board. It was based entirely on Genco cost data.

Now we are at the point where we have spent eight months at this process. I daresay it has probably cost millions of dollars. And I'm suggesting what Mr. Hyslop and Mr. Gillis, because he relies on Mr. Hyslop's -- relies on some of the answers, the IRs that Mr. Hyslop submitted -- what they are attempting to do or what they want you to do is roll back the clock and revisit the issue that has already been decided by this Board.

Remember we are now entering the phase of the hearing that is the revenue requirement phase. The Board has ruled that the costs represented by the PPAs is what must be looked at in determining the revenue requirement.

Why the PPAs are what they are and how they came to be is not probative nor is it very useful. It is my submission that that matter has been decided. It has been settled.

So for all of those reasons, Disco repeats the

2 objections that we made to these IRs. And we believe that it
3 is no longer of any probative value to answer these
4 questions.

5 If you look at what I understand from Mr. Gillis' letter,
6 and what I understand Mr. Hyslop is saying, is they want
7 to look behind the PPAs to determine whether the PPA
8 prices are reasonable.

9 I'm suggesting, Mr. Chairman, that that is specifically
10 what section 156 prohibits and what this Board has ruled
11 it should not do. That is the policy decision of the
12 legislature. Section 156 is a policy decision of the
13 legislature.

14 CHAIRMAN: I'm going to interrupt you just for a second,
15 might as well put it on the table right now, is that what
16 we did say, and you have quoted it accurately, is
17 reviewing the various cost components would therefore not
18 be required simply for the purposes of establishing the
19 total amount of costs. Now that is what we said.

20 MR. MORRISON: I understand that.

21 CHAIRMAN: And I'm going to throw something else on the
22 table. We are the regulator under the Electricity Act of
23 the Province.

24 We probably, with the exception of maybe yourselves and
25 some of the other people in this room, have a greater

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appreciation and working knowledge of that legislation, the White Paper. And we have a responsibility to monitor the competitiveness of this marketplace that we are talking about.

Having said all of that, do you believe that the legislature, in bringing in 156, wanted to tie our hands to the extent that if we were to see something that was going on or not going on, that we should not be allowed to comment on that and give a suggestion to the Market Design Committee folks or to the legislature and government or to yourselves that in our opinion would allow this marketplace to operate more effectively?

MR. MORRISON: Not at all, Mr. Chairman. But I think you have to put it in the context of these specific questions.

We have answered for the most part the what questions, the dollars and cents questions.

If you look at the questions in issue, it is questions about who was involved in drafting the PPAs? Why is this clause the way it is as opposed to some other clause?

They aren't what I would call meat and potatoes questions.

They aren't questions that are asking for specific cost information.

And in connection with the rate case, what we are looking at here is a one-year rate case. And we are now

2 entering the revenue requirement part of this hearing. And
3 for purposes of establishing the revenue requirement, I
4 have said before, and I don't want to reiterate all the
5 arguments that I made when we dealt with section 156
6 months ago.

7 CHAIRMAN: Oh, go ahead.

8 MR. MORRISON: No, I'm not. I'm sure you don't want to hear
9 it. But the fact is whether you like the PPAs or don't
10 like the PPAs, really my answer to that is so what.

11 Section 156 says the PPAs are what they are. That is what
12 is going to drive Disco's revenue requirement.

13 The questions that I'm dealing with -- Mr. Hashey will
14 deal with some of the others that do seek specific cost
15 information.

16 But the questions that largely fall under this public
17 policy bucket aren't questions that go to cost
18 information. They are questions like why is Nuclearco an
19 agent of the Crown? What probative value could that
20 possibly have to establishing the revenue requirement? I
21 can answer the question. Because the legislature said so.
22 So I think you have to look at these questions in light of
23 a rate case, in light of the revenue requirement and look
24 at the questions and say what possible probative value do
25 they have in establishing Disco's revenue

2 requirement? They are why questions. They are in some cases
3 how questions. But they aren't cost questions.

4 Now I would like to deal specifically with respect to Mr.
5 Gillis' request for an inquiry into the reasonableness of
6 the PPA prices. Again -- and I harken back again to
7 section 156 -- whether the PPA prices are reasonable or
8 unreasonable is really immaterial because the legislature
9 said so.

10 I'm also concerned about the timing of this request.

11 Again we are into this process quite a ways on. And we
12 had the section 156 debate early on, so that we wouldn't
13 get into this situation as the hearing progressed.

14 Mr. Gillis had every opportunity to become an Intervenor
15 at any point in this proceeding. And he chose not to.

16 You will recall that we had Intervenor information
17 workshops on the PPAs. Mr. Gillis didn't attend those.

18 I just believe, and it is my submission, Mr. Chairman,
19 that it is just incredibly unfair, at this late stage in
20 the process, that Mr. Gillis is essentially asking this
21 Board to revisit the section 156 issue, which we dealt
22 with months ago. And in effect I would suggest that Mr.
23 Hyslop is asking the same thing.

24 When we -- I can't recall exactly when it was. I

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believe it was back in May, May 17th I believe, we had a discussion. You will recall that the Official Opposition wanted to become an Intervenor.

And the Board basically stated, as I read the transcript is that look, policy debates belong somewhere else, not in this boardroom. And I would reiterate that comment.

In short -- and I'm going to conclude now. The issues which Mr. Hyslop and Mr. Gillis wish to pursue have been decided.

I know you are not bound by res judicata. But if this were a court they would be res judicata. They are far too late in the process. And this is just not the right place to deal with them.

I know Mr. Hashey is going to deal a little bit and perhaps in greater detail with the Mr. Meehan report which -- it is not an exhibit yet? Okay.

Those are my submissions, Mr. Chairman. Again it is not a question of Disco trying to hide anything or cover up anything or not disclose anything. We have been very forthcoming. And we will continue to be forthcoming.

It is just that the questions that fall into these three buckets, they are not probative. They don't add any value in determining the revenue requirement for Disco.

2 And those are my submissions. Thank you.

3 CHAIRMAN: Thank you. We are going to -- I see it is 12:00
4 o'clock. And I will go back to my old schedule if I
5 might. And we will recess now for lunch and come back at
6 quarter after 1:00.

7 (Recess - 12:00 p.m. - 1:15 p.m.)

8 CHAIRMAN: Good afternoon. I see Ms. Gilbert isn't here --
9 or isn't in the room right now. Mr. Hashey, what the
10 Board would like to do is similar to what we did before
11 and that is give you back confidential exhibit A-65, and
12 then you can edit it, because there are in there now
13 unredacted that are going to go on the public record is my
14 understanding.

15 In other words in here there are answers to IRs that are
16 going to be given in -- sorry -- are on the public record
17 or have been withdrawn, et cetera, we would just like to
18 have this volume as soon as possible. Follow what I mean?

19 No, I guess you don't.

20 MR. HASHEY: We have done two things this morning. We have
21 indicated there are some were withdrawn --

22 CHAIRMAN: Yes.

23 MR. HASHEY: -- and we have indicated that there are some
24 that have moved into the confidential area and there is
25 one that is part 6 of the one of Mr. Hyslop's that you

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have ordered us to answer on the public record as I understand.

CHAIRMAN: That's correct.

MR. HASHEY: Now you will -- any ones that go into confidence they will go by way of answers to the parties and filed with the Board in accordance with the confidentiality policy and the letter that we will be receiving.

CHAIRMAN: Yes. Well for instance you might as well take the ones that are struck out of here. For instance the municipalities IR-31 has been struck.

MR. HASHEY: Yes.

CHAIRMAN: And so has PI IR-96, that has been struck.

MR. HASHEY: Right.

CHAIRMAN: In other words it's less confusing to us --

MR. HASHEY: Okay. I hear you now.

CHAIRMAN: Okay. We would just like to give them back to you, you can do that editing and --

MR. HASHEY: Give them back to you.

CHAIRMAN: -- give them back to us after that. And then we will put on the record what remains in this exhibit.

MR. HASHEY: Great.

CHAIRMAN: And in my volume A-66 is in there too. So --

MR. HASHEY: Yes. A-66 is in the volume.

2 CHAIRMAN: Yes. Anyway, you can deal with that if you will.

3 Great. Over lunch time I have had an opportunity to just
4 chat with my Commissioners a little bit about Mr.

5 Morrison's input prior to the lunch break. And I just
6 want to make sure that we are being fair to Mr. Morrison
7 and Disco.

8 Our oral decision on the procedural matters involving 156
9 of the Electricity Act of June 9th 2005, is here on two
10 pages plus two paragraphs. And I just want to put on the
11 record the last two paragraphs, which are really
12 sentences, of that decision and give you the opportunity,
13 Mr. Morrison, to comment further if you want to. And it
14 starts off, Finally the Board notes there is nothing in
15 section 156 which makes any information confidential or
16 prevents the Board from requesting information from Disco
17 on the matters covered by section 156. The Board will
18 therefore require Disco to provide answers to information
19 requests on costs that underlie the PPAs and any other
20 documents that the Board considers relevant for the
21 purpose of setting just and reasonable rates.

22 So if you want to have anything more to say on that, Mr.
23 Morrison, please do.

24 MR. MORRISON: No. Mr. Chairman, I completely understand
25 the Board's decision. Reading that decision as a whole

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2 however when you look at setting just and reasonable rates in
3 terms of the revenue requirement the Board ruled that it
4 has to accept the PPA costs, if you will, in establishing
5 Disco's revenue requirement.

6 We are moving into the revenue requirement phase of the
7 hearing. Yes, according to the ruling you can ask for any
8 other documents, information, et cetera. The point that
9 I'm trying to make is that if there is cost information
10 underlying the PPAs that is requested in these what I'm
11 calling policy type questions, that's fair game. But the
12 types of questions don't go to the numbers, if you will.
13 They go to what I would consider peripheral issues
14 surrounding how the PPAs came into being, or why they came
15 into being. It has nothing to do with the question of
16 costs, therefore has nothing to do with the determination
17 of the revenue requirement.

18 That's the point I'm trying to make. I agree that there
19 is nothing in section 156 that says the Board can't look
20 at something, and not to reiterate the argument that I
21 made back in the spring, but what is the point --

22 CHAIRMAN: Go ahead if you want to.

23 MR. MORRISON: -- what is the point of looking at something
24 if you can't do anything with it?

25 CHAIRMAN: Because we can then comment on the process that

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2 has gone through to establish it, albeit it will not affect
3 anything this time but my appreciation of how the PPAs are
4 dealt with is that each year the parties sit down and
5 establish the inputs that go into the formulas that are in
6 there.

7 So, you know, if the Board sees something that does not
8 appear to be a just and reasonable way of setting rates,
9 then I think it's incumbent upon us as the Public
10 Utilities Board that regulates Disco and Transco and the
11 SO, that we point out to those folks that in fact do
12 control the inputs and the form of them, because they are
13 all amendable today by the two parties who are part of the
14 NB Power group of companies.

15 MR. MORRISON: With all due respect, Mr Chairman, there is
16 nothing in any of the questions that I have identified
17 that goes to the question of the PROMOD inputs, goes to
18 the question of how if you want to look at the formulas
19 that are used to establish the variable prices if you
20 will. It's all in the PPAs. These questions don't
21 address those issues.

22 CHAIRMAN: Okay. Good, Mr. Morrison. Now that leads me to
23 the next thing which is I think it would be far more
24 helpful to the Board now if you and/or Mr. Hashey turned
25 to each individual interrogatory that's under -- let's

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2 start with the Public Policy ones. There are three of them

3 that are postponed until you have had an opportunity to

4 talk with Mr. Hyslop, but I think we would like to see

5 what is in there and have a detailed argument from you on

6 it before we go to Mr. Hyslop and then presumably Mr.

7 Gillis.

8 Now if anybody disagrees with that approach why -- and has

9 a good reason, let me know, but I think that would be

10 easier from our perspective to be able to follow it that

11 way.

12 MR. MORRISON: Fine, sir. The first one that will be dealt

13 with will be Disco PI IR-2. And the question that is

14 being posed is set out the requirements for the

15 development of a competitive market by documentation to

16 the financial --

17 CHAIRMAN: I'm sorry. I can't find that in the binder.

18 MR. MORRISON: It is right behind IR 16, Mr. Chairman.

19 There is no tab.

20 CHAIRMAN: This doesn't have a tab.

21 MR. MORRISON: Some of them don't have tabs because of the

22 way this --

23 CHAIRMAN: Pardon me. All right. Just point that out to us

24 so we won't be totally lost.

25 MR. MORRISON: Certainly, sir. The question basically is

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asking questions about establishment of the competitive market
and what steps have to be taken to get there.

It is our position that -- I mean, Disco is in no position
to provide a definitive answer on what happened, how you
establish a competitive market. I would assume that that
would be in the purview of the Market Design Committee.
Disco could speculate as to what would be required to
establish a competitive market. There has been some
evidence on the record as to -- I think Mr. Hyslop cross
examined on some footnotes in a document about steps that
are required for a competitive market. He did that during
the CARD hearing. But I don't think there is much that
Disco can add to that debate.

CHAIRMAN: Okay. But that argument is not basically what
your response said, Mr. Morrison.

MR. MORRISON: Exactly.

CHAIRMAN: No. I'm sorry. It is not what your response
said. Your response said that it is a matter of public
policy.

MR. MORRISON: And it is. It is set out in the White Paper.

CHAIRMAN: That there be a competitive marketplace.

MR. MORRISON: That is correct.

CHAIRMAN: Okay. But the actual question is the

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2 requirements for the development. You are saying look, we
3 could speculate because we weren't part of it. But that
4 is what it would be, pure speculation.

5 MR. MORRISON: Exactly.

6 CHAIRMAN: But that is not saying it is a public policy
7 thing. That is saying we don't know what requirements
8 were in the mind of the framers of the White Paper, et
9 cetera when they described competitive marketplace.

10 MR. MORRISON: Perhaps I'm not articulating myself very
11 well, Mr. Chairman. But I guess what I'm saying is the
12 establishment of the competitive market, that is not
13 something which is in the purview of Disco in terms of how
14 do you establish a competitive market.

15 I'm not saying that Disco isn't a part of that. It
16 undoubtedly would be. But Disco has no particular
17 expertise in determining what steps you have to go through
18 to establish a competitive market.

19 And the White Paper says that we will move to a
20 competitive market in a gradual fashion. I don't think it
21 details the steps that it has to go through to do that.

22 And I don't know what more Disco can add to that question.

23 CHAIRMAN: Well, it is just -- the reason I brought that up
24 is for my own reading. That is a little different than
25 the response that is there, you know.

2 And certainly -- again this is my opinion -- but public
3 policy is made up of -- it could be any number of things
4 in different circumstances.

5 And one of them certainly is a White Paper. That denotes
6 government policy. And the ultimate indicator of
7 government policy is the legislation that's passed by the
8 legislature.

9 MR. MORRISON: Okay.

10 CHAIRMAN: But I would expect that that first part of that
11 question could be answered in 3,500 different ways.

12 Because there might be 3,500 different ways that can reach
13 a truly competitive market in the electricity generation
14 business.

15 MR. MORRISON: But I guess the point I'm trying to make,
16 Mr. Chairman, is that Disco has no particular expertise in
17 that. It is a public policy type -- how fast New
18 Brunswick moves to a competitive market is certainly
19 outside the control of Disco.

20 CHAIRMAN: Mr. Hyslop, what do you have to say to that?

21 MR. HYSLOP: I don't know if I can deal with each one
22 specifically or not. But I will lay it right on the line
23 where I'm coming from with these series of questions on
24 the public policy. And then you will get a flavor.
25 The public policy expressed in the White Paper, and I

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2 think in the statements and the evidence of Mrs. MacFarlane,
3 are that they wanted to create a competitive market,
4 develop one and create a level playing field for
5 generation.

6 We are of the view that we are testing those statements.

7 We are going to test if that is what they really intended
8 to do or not what they really intended to do.

9 CHAIRMAN: I'm sorry. Who do you mean when you say "they"?

10 MR. HYSLOP: Well, I would think whether that is at the
11 end of the day the intention of the legislation or not.

12 We think a lot of this reorganization was to deal with the
13 financial problems of NB Power and to create methods by
14 which the debt could be repaid.

15 And I don't have a problem with anybody ever paying their
16 debts. That is very admirable. I think everybody tries
17 to do it. But at the end of the day how fast the debts
18 are being repaid is a question that is going to go to the
19 revenue requirement.

20 And I think some of the documents I'm asking for and some
21 of the questions I have, I'm not so sure how hard we are
22 really pursuing this competitive market, how hard we are
23 really pursuing this level playing field. I think we are
24 pursuing how fast NB Finance Company will gets its

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debt repaid. And that may well affect the amount of money that is going up to them.

Where I'm coming from there is the way that it is being done is in the profitability of Genco and Nuclearco in the rates that are being charged down to Disco. And those rates, when we get into the main argument on it and I get my evidence on the record, Mr. Chair, we think there is all kinds of room to manoeuvre in those rates. And at the end of the day this Board may well wish to consider that, and at that point in time adjust the rates that are being charged to customers.

I think this Board has a right to intervene and take jurisdiction if a large part or some part of the amounts of money that Disco's revenue requirements made up goes to the repayment of debt.

I'm cutting through an awful lot of stuff that is very specific in saying this. But I'm not completely sold that the policy as stated by Mrs. MacFarlane is maybe every bit of the policy and the intention of what is going on here. So that is where I'm coming from. Specifically, to look at the particular IR 2, you know, what I'm asking for in Question 2 there and in Question 1 is, you know, I want to know at some point in time when this competitive market is going to be developed. I'm asking what has to be done

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2 to do it. I'm asking that the documentations that set out the
3 process for it be put in place.

4 And at the end of the day this evidence is relevant to the
5 question of whether there is ever going to be a
6 competitive market set in New Brunswick. That is my
7 position on IR 2 and why it is relevant.

8 CHAIRMAN: Mr. Gillis, what do you have to say?

9 MR. GILLIS: Microphone 4?

10 CHAIRMAN: 4.

11 MR. GILLIS: Mr. Chairman, my concern is on a much higher
12 level. Since Ms. MacFarlane has decided to respond to
13 this Interrogatory, bringing up public policy and saying
14 to the Board or throwing down the gauntlet that the PPAs
15 are not challengeable in this proceeding, those statements
16 to me are wrong.

17 It is not what the public policy is. And if it is what
18 the public policy is now, there has been a change. And
19 that is why I have given my request to have one witness
20 testify. He will be a short witness. And he will quite
21 clearly say the public policy is either that as set out in
22 the White Paper. And if I could --

23 CHAIRMAN: Well, Mr. Gillis, I don't want to interrupt. But
24 normally it is up to the court or board with jurisdiction
25 to review what is public policy and testing it against the

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2 law that is out there.

3 MR. GILLIS: Sure. Based upon evidence that is led before
4 it either by way of affidavit or otherwise. I propose to
5 call viva voce testimony.

6 I would ask for a summons to call Bernard Lord as a
7 witness. It is as simple as that. Under the Inquiries
8 Act you have the power to give me that summons.

9 CHAIRMAN: I'm aware of what our powers are. But then we
10 also are required by the common law to make an
11 investigation as to whether or not that is appropriate to
12 do.

13 And that is what I'm attempting to do now, is to find out
14 whether or not what is being asked here is to talk about
15 public policy or if it is in fact something else
16 altogether. That is what I'm trying to find out.

17 MR. GILLIS: I must be missing you then, Mr. Chairman. I'm
18 dealing here with what the public policy is as I
19 understood it.

20 CHAIRMAN: Well, what is that made up of? I guess that is
21 the question.

22 MR. GILLIS: The public policy, as you appreciate, depends
23 upon the unique circumstances from time to time and
24 whatever regulatory --

25 CHAIRMAN: Does it not include, Mr. Gillis, the White Paper

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except where the Electricity Act, which is a more obvious expression of the policymaker's intent, contradicts it?

So that for instance I don't think that in the Electricity Act -- I stand to be corrected -- but I don't think in the Electricity Act it says that co-gen facilities are to be encouraged. But certainly it says that in the White Paper.

So from where I sit, the encouragement of co-gen facilities is part of public policy that the government has decided. And it hasn't been modified by the legislation. But there are some things in that White Paper that have.

MR. GILLIS: And really it is one of interpretation with respect to the section that you have dealt with previously when you dealt with a hearing back in June. And that wasn't a ruling on that particular section with respect to a ruling that you had applied stare decisis to. It was an obiter comment having been made.

So you have yet to rule upon it. And when it comes to an interpretation of that section of the Electricity Act, for aids to interpretation you look at the public policy. When you look at the public policy as set forth by the government in the White Paper, you look for the interpretation of the public policy as set forth in the

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2 Market Design Committee final report. And all of that is
3 totally inconsistent with the public policy that Sharon
4 MacFarlane seems to set forth in this response to the
5 Interrogatory.

6 So it is all aids with respect to interpretation of the
7 Electricity Act. Because that is not written in such a
8 way that it is so clear that there is only one
9 interpretation.

10 CHAIRMAN: Well, I have not gone back and seen what
11 Ms. MacFarlane said at page 1, lines 28 and 29, that appear to
12 be contrary to the public policy as is enumerated in the
13 Electricity Act or the White Paper.
14 Can you enlighten me a bit on that?

15 MR. GILLIS: I don't have that portion of the testimony in
16 front of me. I have the response. And the response is
17 where they throw down the gauntlet saying that -- bringing
18 up public policy.

19 CHAIRMAN: You just said to us that it is in direct
20 contravention of what is in the White Paper or in the
21 Electricity Act. I just --

22 MR. GILLIS: All right. If I could look in the White Paper
23 under the policy goals, one of them was to provide New
24 Brunswick consumers with energy at the lowest possible
25 cost.

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And if I go to the fifth policy goal, it was in bold, to ensure an effective and transparent regulatory scheme. Now Mr. Morrison is the one that used the words "hiding" and "coverup" this morning just before the lunch break in trying to suggest you can't go behind the PPAs and you have got to take it at face value that the utility knows what is best for everybody.

CHAIRMAN: Well, the Board's June 9 ruling certainly didn't say that, Mr. Gillis.

MR. GILLIS: No, I didn't think it did. It seemed the last part of your June 9 ruling, you basically said we can get into all of this.

And I would like to go back and revisit the first part of the ruling because I don't think the Board meant to say that you couldn't get into them at all.

And that is why I want to get into all of them. It is really the question of transparency which is the public policy here, and the transparency that doesn't seem to exist the way the utility is proceeding.

If I conclude with the White Paper on the introduction, the final sentence in the first section, Involving the appropriate regulatory agency ensures transparency in the process.

Now surely the government that comes up with the Act

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2 as a result of this White Paper didn't intend to say well, we
3 are going to put something in the Act that basically says
4 you accept everything that the utility puts forth through
5 Genco. And you can't look at it. And you are nothing but
6 a rubber stamp to approve whatever those rates may be.
7 And that is just contrary to the public policy. That is
8 why I -- if there is a change in the public policy from
9 what it was in the White Paper to what I see in this
10 response to the Interrogatory, I just want to call one
11 little witness.

12 CHAIRMAN: Mr. Morrison?

13 MR. MORRISON: I will only make two comments, Mr. Chairman.
14 First on the question of transparency, 1,700 IRs and we
15 are down to a handful. Cross examination, extensive cross
16 examination during CARD, answered virtually every question
17 there was with respect to Genco costs.
18 Transparency is not an issue in this case. As far as a
19 change in policy, there is no change in policy. Perhaps
20 the IR response could have been a little clearer.
21 What we are trying to say here is -- I have no quarrel
22 with the White Paper or Mr. Gillis' comments with respect
23 to what the government policy is. What we are saying is
24 Disco doesn't dictate how a competitive market comes

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about. It doesn't have control over how a competitive market comes about.

What can we add to -- I can answer the question perhaps on Disco's behalf. We don't know. Perhaps that is the answer we should have put in the Interrogatory response. But there is no change in policy. The policy of moving to a competitive marketplace is set out in the White Paper, given some flesh in the Electricity Act, given more flesh to the Market Design Committee.

But to ask Disco to set out the steps to establish a competitive market, we can't do it. Or we could offer an opinion. But our opinion would be as good as anybody else's opinion.

CHAIRMAN: Okay. Thank you. We are going to take a break.

(Recess)

CHAIRMAN: Just before the break we had an opportunity to talk to the two Intervenors and Disco in reference to one interrogatory. As soon as we went into the room I happened to flip up a second one which is there under Public Policy which is the PI IR-5. It didn't happen to have the question in my volume, so we went and got the original questions on it.

And frankly the first question states, please set out

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2 the role you played in the development of the power purchase
3 agreement, the shared services agreements, corporate
4 services agreements and/or any other inter-company
5 contractual documentation.

6 Have you got that, Mr. Morrison?

7 MR. MORRISON: I'm looking for it as we speak, because the
8 question wasn't in my binder either.

9 CHAIRMAN: Okay.

10 MR. MORRISON: I have it now before me, yes.

11 CHAIRMAN: Okay. The response is the same for all questions
12 1 through 5, but let's just read it in the context of
13 question number 1. Deliberations of the government of the
14 Province of New Brunswick in creating the Electricity Act
15 and relevant documents developed to achieve goals are not
16 possessed by Disco and are not relevant to Disco's 2006,
17 2007 revenue requirement application. The public policy
18 decisions in the documents including the PPAs are not
19 challengeable in the proceedings.

20 We looked at it. The answer to question number 1 was that
21 you didn't have a role in the development of the power
22 purchase agreements, the shared service agreements, the
23 corporate services agreements and/or inter-company
24 contractual documentation.

25 MR. MORRISON: I don't think that's the answer, Mr.

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2 Chairman.

3 CHAIRMAN: Well that's not what you put on the page. Were
4 you there?

5 MR. MORRISON: I can't -- I don't know. I don't know the
6 answer to that.

7 CHAIRMAN: No, you can't answer the question, but I'm saying
8 was Disco there? I mean, I read it and I say, Disco
9 probably wasn't there. Or may have been there for some of
10 them but not all of them.

11 MR. MORRISON: I think it would be misleading to say that
12 Disco did not have some -- or NB Power at that time didn't
13 have some role in the development of the PPAs. I'm sure
14 they did.

15 CHAIRMAN: Okay. The Board is -- what it is going to do is
16 it is going to direct Disco to go back on all the
17 questions that you have categorized under public policy
18 and look at them and be specific in your responses. And
19 if you are looking to say this is a public policy matter,
20 then you quote from the public policy matter and develop
21 the argument for us and for the Intervenors as to exactly
22 what portion of public policy you say was decided and
23 therefore you can't answer the question or you are unable
24 to or whatever. And we will give you time to do that.

25 MR. MORRISON: No, I understand that, Mr. Chairman. In fact

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2 I have had some discussion with the Intervenors during the
3 break, rather than take the time of the Board and go
4 through each of these one by one, that we would submit
5 some type of written position with respect to each of
6 these. And I don't want -- I'm not --

7 CHAIRMAN: We are very acutely aware that you have answered
8 1,700 Interrogatories and we understand the pressure that
9 puts on Disco's staff and everything else. But I think
10 that we can cut to the quick on a lot of this if you now
11 take the time to go back and go through them again and
12 simply try to the best of your ability to answer the
13 questions and not use this "public policy" one sentence
14 response, but rather to deal with each element and each
15 question, and then that will narrow things down so that we
16 will all appreciate exactly where you are coming from.
17 If you weren't there and you don't know who was there then
18 just say so.

19 MR. MORRISON: Fair enough.

20 CHAIRMAN: If you don't have the documents you say, we do
21 not have those documents.

22 MR. MORRISON: That's fair enough, Mr. Chairman.

23 CHAIRMAN: Now that just deals, sir, with the public policy
24 ones. Our intention now is to go over to those ones that
25 you have under the next two headings which -- just a

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2 second, I will get back to my index -- are either not
3 available or are not relevant.

4 And it has been pointed out by staff that under the not
5 available all but one of them says it's not relevant. So
6 I'm not -- I don't want to be overly critical but
7 let's --

8 MR. HASHEY: I think there is a double feature to that --

9 CHAIRMAN: Is there? Okay. Fine.

10 MR. HASHEY: -- you know, as far as that goes, but it's
11 principally that they are not available. Maybe we should
12 go right to those. They are the -- reverse your order.

13 CHAIRMAN: Well I'm prepared to take on an easy thing now,
14 Mr. Hashey.

15 MR. HASHEY: You are always reversing yourself, sir.

16 CHAIRMAN: Not on 156, Mr. Hashey.

17 MR. HASHEY: Shoot. Lost that one.

18 CHAIRMAN: Okay. Well then let's go to those which are not
19 available and there are five PI interrogatories and one
20 from the Municipals.

21 MR. HASHEY: Yes.

22 CHAIRMAN: And that Municipals is still on the table.

23 MR. HASHEY: I believe it is. Has that gone? That's gone.

24 CHAIRMAN: Is that gone?

25 MR. HASHEY: It's gone, yes.

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CHAIRMAN: Okay. Any of the PIs? Mr. Gorman, that's gone?

MR. GORMAN: That's correct.

CHAIRMAN: Okay. Now under the Public Intervenors, those
are still all on the table?

MR. HASHEY: Yes, I believe so. There may be one -- it may
be down to four. I believe that IR-72, which is the last
one in your -- should be -- not quite the last one, it's
close but it's IR-72 which is the PI.

Well I guess that has been withdrawn by the -- a similar
one was withdrawn by the PUB but maybe that's still here,
and I think it is still here. Sorry.

CHAIRMAN: Okay. Shall we go through them then?

MR. HASHEY: You want to hit them individual?

CHAIRMAN: Individual if we could, Mr. Hashey. Thank you.

MR. HASHEY: Thank you, Mr. Chairman. With respect, the IR
number 8 -- hold it now. Yes. The first one I think that
we tackle is IR number 8 --

CHAIRMAN: Yes.

MR. HASHEY: -- which is the one that asked for information
for -- please provide for the last five fiscal years any
internal financial statements for each of the business
units. Not available.

CHAIRMAN: Just before I turn to Mr. Hyslop, did -- it was
in business units. Was there any kind of accounting that

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was kept segregated on the basis of business units?

MR. HASHEY: Make an inquiry?

CHAIRMAN: Yes. Please.

MR. HASHEY: There were pieces of financial statements, no balance sheets, no cash flow statements. I mean, there would have to be segments that would make up NB Power obviously, you know, that would come through, but to say that you could divide it in a way that would be relevant today I think would just -- that's where the relevance comes in probably, but it wouldn't be there.

All the information that we have for this -- for Disco has been provided.

CHAIRMAN: Mr. Hyslop?

MR. HYSLOP: Thank you, Mr. Chair. My memory isn't good on this but there is a couple of points. I recall somewhere at some time there was a discussion of the business units being developed three or four years before this organization is coming about.

Now they mentioned balance sheet. I really don't care too much about a balance sheet. Nice if they had it, but -- I expect they probably didn't have a balance sheet. Cash flow probably not too much of a problem.

But what I'm looking for with these business unit statements for the business units for the last four or

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five years or whatever they have them is some idea of the history of the different costs. What are the OM&A costs? What are these different expenses that they incurred? And that is clearly relevant when I start looking at the 2006 to 2007 to have a history of -- or at least the best history we can get of what some of these expenses might be. That's why we ask the question.

MR. HASHEY: I believe the record has all of that on it for Disco truly. Maybe we could leave it and my friend could review the IRs and we could take time to try to point out to him where that is.

CHAIRMAN: All right. Mr. Hyslop, I would suggest that we do that. For instance I personally -- and I'm not necessarily speaking for my fellow Commissioners -- but trending year over year financial results is always a tool that a regulator has used to see what has changed year over year, et cetera. So I understand where you are coming from. And I would suggest that you take Mr. Hashey up on his suggestion that you take a look at what it is that they may have available on a business unit basis and/or is in the responses to other Interogs., and then you can put this back on the table if you think there is something that they don't wish to give you at the time we reconvene to look at the public policy ones.

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MR. HYSLOP: Sure, Mr. Chairman, and that's quite reasonable. If Disco has provided the information that I have looked for or can show me what they have available, that's great, and if I have overlooked something that they filed, I apologize to Disco. I don't recall seeing it, but I haven't read everything either that they filed. So --

MR. HASHEY: No apologies necessary. I would suggest that when Mr. Hyslop comes to talk about the reports that we have talked about that we can have a further discussion with him on this too.

CHAIRMAN: All right. Good. Let's go to the next one then.

MR. HASHEY: Well the next one is IR-30, again PI, and again this is asking that -- on the RFP, please provide a copy, and there wasn't any. There was none issued at this time. The matter is currently under review and would be of no relevance to '06, '07 revenue requirements. I think we have really answered the question.

CHAIRMAN: Mr. Hyslop?

MR. HASHEY: That's 3 and 4 and 5. I'm sorry, Mr. Hyslop. 5 is merely -- any long term plans, it just isn't there for this time period.

CHAIRMAN: With frankness, Mr. Hyslop, 5 is probably a relevant question that one can put in the adjourned over

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2 10 year load forecast proceeding that will go on after the
3 rate hearing. That's just my suggestion, that that's more
4 relevant to that.

5 MR. HASHEY: Good suggestion.

6 MR. HYSLOP: That's fine.

7 CHAIRMAN: Okay. And what do you say to Mr. Hashey's
8 responses to parts 1 through 4 of that? In other words
9 has Disco answered it then?

10 MR. HYSLOP: Yes. I was satisfied with the answer -- 1 to 4
11 have been answered. I thought it was only number 5 that
12 was in dispute, Mr. Chair.

13 CHAIRMAN: Okay. Great. Next one.

14 MR. HASHEY: The next one is IR-31. Just take a second to
15 look at that. It's just number 4 which is the forecast of
16 ROI for the next five years. Not available. It just
17 hasn't been done. The budgets beyond this period in my
18 understanding, and my information, are not done, are not
19 approved, are not available.

20 CHAIRMAN: Is there anything out for two years that you are
21 aware of, Mr. Hashey?

22 MR. HASHEY: Nothing at this point that has gone to the
23 Board for any confirmation or any approval at all. That's
24 coming, but it hasn't happened.

25 CHAIRMAN: Mr. Hyslop, any comments on that?

2 MR. HYSLOP: I would have certainly argued, Mr. Chair, it
3 was relevant, but Mr. Hashey is receiving his information
4 from people who obviously know. If they say they don't
5 have it and they haven't produced it, while I am a little
6 surprised I must -- I have to accept Mr. Hashey's
7 statement. I note that they are saying it's not relevant
8 and not available. I do find that surprising, but who am
9 I to argue.

10 CHAIRMAN: I am informed by Commissioner Nelson who has more
11 business experience than I that one might anticipate you
12 go out two years but five is extreme.

13 MR. HYSLOP: Sure. Look it, that's -- although I -- and I
14 don't know how many years they do ROI, but I hear that
15 Honda one time had 30 years out, so it depends.

16 CHAIRMAN: Okay. Well then we will go on to the next one,
17 Mr. Hyslop.

18 MR. HASHEY: 69, which is the -- again goes to 2 and 3. I
19 understand that there would be just oodles of assumptions
20 that would have to go into any type of information there.
21 That it's just not possible to do it is what I have been
22 told. Now if I'm wrong on that someone can correct me,
23 but that's certainly the information that we have today.

24 CHAIRMAN: All right. What do you have to say, Mr. Hyslop,
25 in reference to part 2 of that question? I mean, really

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they have answered it by the first sentence and the second sentence is extraneous as far as I'm concerned because if they don't have it they can't perform the requested calculations, period.

MR. HYSLOP: Well I don't quite understand the answer they do not have this information. They would know at any given time what they were selling and serving electricity to in-province surplus interruptible customers. So that part of the equation is there. Perhaps the answer is to be found -- I'm talking about opportunity sales. Would they have been in a position to sell electricity on the export market at the same time they were selling to in-province surplus interruptible customers? I guess the question is do they know if they could have had sales? I guess they always could have if they wanted to play in the market. They would have to go and look back at what the export sale price would have been into New England at that time.

I don't know if those numbers are available, but from I learned about export sales and surplus sales during the CARD hearing I would have thought those numbers might well have been available or a calculation could have been made.

Their evidence is they do not have the information. I don't know. I leave it at that.

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MR. HASHEY: It would depend on an awful lot of things, as I understand it. You know, there would be so many things that would come into there that would be hypothetical. You know, you would have to look at the hour of the day, the export sale thing. And you have got to always come back to the issue here. Then in this there is the obligation that Disco has to serve customers, the in-province customers. And then we would then be speculating as to out of province, margins, exports, imports, purchases. It just isn't there.

CHAIRMAN: What about question 3?

MR. HASHEY: I think that's the same thing. That is the obligation. I mean, it goes to the same thing, the projected lost revenue. Is it really meaningful in any way because it isn't worked in because we worked into the -- into it the load forecasts for '06, '07 and the requirement to serve the in-province customers. And --

CHAIRMAN: I will go to Mr. Hyslop in a minute, Mr. Hashey, but it's my understanding that in October of this year for the purposes of the PPAs the -- there was a projection made of sales of interruptible power and there would have to be projections of export power. So to me the two sets of data would have to be available as of October for the fiscal period that we are looking at as a test year. So

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that calculation should be able to be done. Although it's a hypothetical it could be answered.

MR. HASHEY: But this is ongoing? This is for '06, '07?

CHAIRMAN: Yes.

MR. HASHEY: Maybe I have missed your point. Sorry.

CHAIRMAN: Maybe I have missed yours. In other words the question refers to the test year, '06, '07.

MR. HASHEY: Yes, Mr. Chairman.

CHAIRMAN: And in order to establish the PPAs that will be applicable in that test year it's my understanding that in October the rejections were made as to the estimate of what your export sales were going to be in that test year, so that you could bring it into Genco's threshold of where they start paying Disco for increased, et cetera, et cetera, and also how much power was going to be consumed in that year. Am I off base, Mr. Hyslop?

MR. HYSLOP: Well, they have done a calculation for export sales and IT sales. I guess they could try to figure out how much more could we sell on the export market at a higher price than we are selling interruptible. They have got some of the information. I don't know.

I think the fact is -- I do think that the fact that it is hypothetical, that doesn't mean it shouldn't be answered.

Hypothetical questions could be answered.

2 CHAIRMAN: No. I -- there are hypotheticals and there are
3 hypotheticals.

4 MR. HYSLOP: Agreed.

5 MR. HASHEY: Mr. Chairman, I think the answer to that is
6 that the customers would have to go firm if they don't go
7 interruptible. So I think that answers it. You know,
8 really it is something you can't do. Because there are so
9 many assumptions in there.

10 I mean, this customer, its calculated projected loss
11 revenue before going to export sales served interruptible.

12 Well, I mean, if they don't -- if they are not
13 interruptible they have got to be served by firm.

14 MR. HYSLOP: If they go firm that limits the amount that is
15 sold outside. And that is fine. Firm transmission has to
16 be sold with the agreement on the tariffs to the
17 customers.

18 If somebody is taking firm transmission and wants to take
19 30 percent of their load through interruptible, you know,
20 how much money is Disco giving up because it decides to
21 serve that interruptible load when it could have served a
22 load in New England at a better price? That is the
23 question. I want to know how much they are giving up by
24 doing it.

25 And then the local customers in theory -- although I

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2 know there is a policy to serve in-province first -- but those
3 provincial industrial customers, they know they have to
4 compete in a competitive market. Shudder the thought I
5 guess.

6 But if they are going to compete in a competitive market
7 with New England, maybe they will think about how much
8 they want to take for firm transmission.

9 CHAIRMAN: The next IR?

10 MR. HASHEY: The next one is number 72 I believe which again
11 is the Public Intervenor. A lot of information is
12 provided there. It is just part 2. So I think we have
13 answered that one.

14 MR. HYSLOP: Part 2.

15 CHAIRMAN: Mike 10.

16 MR. HASHEY: No. I mean, part 2 says that the updated
17 decommissioning study is the property of Nuclearco and is
18 not available for distribution by Disco. But we have
19 given a lot of information in the first part.

20 CHAIRMAN: Do you have a confidentiality agreement with
21 Nuclearco concerning that contract?

22 MR. HASHEY: I don't know the answer to that. I'm sorry.

23 CHAIRMAN: I don't blame you, Mr. Hashey.

24 MR. HASHEY: I doubt it. There probably isn't. But I don't
25 know. I would have to take that under advisement. I

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2 think I would have to --

3 CHAIRMAN: Okay. I --

4 MR. HASHEY: Nor do we have a study frankly.

5 CHAIRMAN: And you don't have possession of it?

6 MR. HASHEY: No.

7 CHAIRMAN: You are saying that Nuclearco does not want to

8 share it with you or with the Public Intervenor?

9 MR. HASHEY: Yes. Basically that is right.

10 MR. HYSLOP: No further comment on that one.

11 CHAIRMAN: Okay.

12 MR. HASHEY: As you know, in the nuclear area, there is a

13 lot of things that go into it that are cautiously guarded.

14 We would have to look awfully -- if we ever did access it

15 we would have to look awfully hard at it.

16 Because I remember from our Nuclear hearing, you know,

17 there is an awful lot of safety issues and various things

18 that come into this type of thing that I think.

19 Unless there is real value. And I don't see real value

20 here in that insofar as this revenue requirement is.

21 CHAIRMAN: Well, again I will ask the Public Intervenor,

22 Mr. Hashey, to convey to Disco their reason for wishing for

23 the decommissioning study. And then if there are parts of

24 that that you are able to -- or information that you are

25 able to obtain, that the PI wishes to have, then

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2 to go ahead and do it.

3 I remember Mr. Goss and I looking at the then in force one
4 back in the early '90s, and by merely changing 1 percent
5 of the projected interest earned on the accounts, why all
6 of a sudden the then NB Power Corporation wouldn't lose
7 money in that particular year, or something to that
8 effect.

9 So there may be some things there that are of interest.

10 And I suggest that the Public Intervenor speak with
11 yourself and with your officials on that one.

12 MR. HASHEY: Thank you. I think that -- I hope I'm right in
13 saying that that completes the -- maybe it doesn't. No.
14 There are a couple that come out of November that are in
15 my book, and I don't know if they are in your book, which
16 are -- that are IR 69 and IR -- PI IR 69 and PI --

17 CHAIRMAN: 72.

18 MR. HASHEY: -- 72.

19 CHAIRMAN: But all these have been November?

20 MR. HASHEY: Yes. I think we dealt with --

21 CHAIRMAN: 69 we have dealt with.

22 MR. HASHEY: Yes. I think we are okay on those.

23 CHAIRMAN: All right.

24 MR. HASHEY: Yes.

25 CHAIRMAN: So we are back now to the --

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2 MR. HASHEY: The relevance ones?

3 CHAIRMAN: Not relevant ones.

4 MR. HASHEY: Right on.

5 CHAIRMAN: We are going to take a 10-minute recess and come
6 back and do the not relevance.

7 MR. HASHEY: Thank you.

8 (Recess - 2:40 p.m. - 2:50 p.m.)

9 CHAIRMAN: While we were out, we checked on a room for us to
10 reconvene to look at the -- what are classified as public
11 policy ones. The 20th of December raise any conflicts,
12 except with Santa Claus?

13 MR. HYSLOP: Tuesday -- was that a Tuesday, Mr. Chairman?

14 CHAIRMAN: That's a Tuesday.

15 MR. HYSLOP: Fine.

16 CHAIRMAN: All right. Then when we do rise today -- our
17 intention is to try and get through the not relevant
18 package today and if things remain on the table, we will
19 deliver our rulings on them when we reconvene. So that we
20 won't have to come back tomorrow. The Public Intervenor
21 has a thing tomorrow afternoon in Moncton, et cetera.

22 MR. HYSLOP: That's correct, Mr. Chair. If I might
23 interject, there has been -- and maybe I missed --
24 completely missed what was going to take place today. But
25 one of the big issues that's tied into a lot of these IR's

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and what our position is that at the end of the day, there is no public policy relating to the purchase power agreements and, therefore, the pricing in the purchase power agreements, as it relates to Disco's revenue requirement is relevant, it's material and reviewable by this Board. One of the things we did and promised we would do when we were here on the 17th is indicate we would be filing a report that deals with some of that issue, which I did file. It's not on the record yet. And that there would be perhaps extensive argument. And I guess my question is when are we specifically planning to deal with that issue?

CHAIRMAN: Well when you bring it up.

MR. HYSLOP: Okay. Well, I --

CHAIRMAN: You just brought it up.

MR. HYSLOP: -- I have just brought it up.

CHAIRMAN: And I want to ask you right now, is there agreement that that be introduced as an exhibit?

MR. HYSLOP: I --

MR. HASHEY: No.

MR. HYSLOP: No. I think the short answer is no from Mr.

Hashey. The report is the one I referred to. I think it covers exactly the points that I indicated on the record to the Board on the 17th it would cover. I would tender

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2 it as an exhibit, then have argument on whether it can be
3 admitted. But it's certainly going to go -- I have a
4 fairly extensive argument on why this Board should look at
5 the PPA pricing and consider it as part of its review in
6 this hearing and as part of the reasonable revenue
7 requirement of Disco and that report is a vital part of
8 the argument. So one, I would like to get it on the
9 record. And two, if Mr. Hashey is objecting, as he
10 indicated to me this morning he would be, I would like to
11 get a ruling on whether that report is going to form part
12 of the record.

13 CHAIRMAN: Can you succinctly state why you don't want on
14 that record, Mr. Hashey?

15 MR. HASHEY: Yes, I can, Mr. Chairman.

16 CHAIRMAN: Go ahead, sir.

17 MR. HASHEY: Number one, this was received yesterday. The
18 opportunity to really -- to really review it and to cross
19 examine or even check things is not there. But I have
20 specific objections to some sections. You know, part of
21 it relates -- and as I see a good part of that attempts to
22 reconstruct the utility, you know, as to what should have
23 been happening. I don't think that is really relevant
24 here. Now, maybe that should be put over to the 20th and
25 looked at from that angle.

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There is an issue that relates to pricing. Yes, probably this report should be filed -- that part of the report at least on the 16th of December when the evidence of the parties has to come in. And this is evidence. I recognize that. And there is arguments on relevance on the evidence. It would seem to me that to mark it for identification today might be sensible, then to have further argument on the 20th on the issues that may arise out of them, but these are the ones I am pointing out to you. And then the major issue is La Capra, and that's coming up in our little issue here shortly, is on the La Capra Report there is an attempt to say that this audit -- and it truly was a type of audit that was done, was not appropriate. In fairness that audit was done in conjunction with the Board and had terms of that that was settled with the Board. And to try to go behind that is -- well, I have a problem with it. I mean those documents have been in the possession of everyone for a long time. And now to face the fact that we don't think that's correct, I raise an issue with that. But those really are my overriding objections.

CHAIRMAN: All right. Did I hear you say no opportunity to cross examine?

MR. HASHEY: Yes. I mean to even ask IR's or question on

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certain things that may be in that report. Typically this would be filed as evidence.

CHAIRMAN: Yes.

MR. HASHEY: That's what it is.

CHAIRMAN: Yes.

MR. HASHEY: And, you know, fine. File it as evidence. And then we can argue about it either on the 30th, if you want any preliminary or at the time of the hearing as to whether -- when we would have a chance to cross examine and after we had a chance to issue IR's if our people decide that those IR's are appropriate.

We have not had any attempt, any opportunity to test that or check it at all.

CHAIRMAN: What do you have to say to that, Mr. Hyslop? In other words, let's not deal with it today or tomorrow. Let's put it off and deal with it like I say on the 20th or thereabouts after all the parties have had an opportunity to review it and say what they want on the record.

MR. HYSLOP: I don't have an objection if Mr. Hashey needs more time to determine his position to an adjournment. The one thing I do want to make clear to the Board, this is not evidence on the Revenue Requirement. It's evidence on the consideration of what questions are to be answered

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2 in a general sense and a Board's ruling as to the extent that
3 we are able to test the reasonableness of the pricing in
4 the PPA's to Disco.

5 This report was asked for -- and I think as I indicated on
6 the 17th to deal with a couple of issues. And one of the
7 issues is the position of the applicant is that the
8 pricing is essentially cost-based. We asked Mr. Meehan to
9 comment on that. We asked Mr. Meehan some question about
10 PROMOD. How it works? How much sensitivity there is to
11 PROMOD? Can these inputs have a significant impact on
12 what the pricing might be from Genco to Disco? We asked
13 him to comment on that. We asked him about the analysis
14 that was completed by La Capra and whether or not what
15 type of comfort level that should give us in terms of
16 whether or not what Disco is saying that the pricing is
17 cost-based is indeed legitimate?

18 Those are the type of issues we have asked this expert to
19 answer for us. He indicates that he has dealt with --

20 CHAIRMAN: All right.

21 MR. HYSLOP: -- and I am not going into the evidence.

22 CHAIRMAN: Yes. No.

23 MR. HYSLOP: Okay.

24 CHAIRMAN: Mr. Hyslop, the question that I attempted to put
25 to you was is it appropriate --

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MR. HYSLOP: Yes.

CHAIRMAN: -- that we adjourn the responses to the question of that report until say the 20th? And by the look of things, maybe we should also say we will reserve the 21st?

MR. HYSLOP: I have no objection to the argument, as long as it -- my point is I want to argue on the motion, on the issue as to whether this Board can rule as a result of the arguments that the PPA pricing is on the table, because if it's on the table we are going to get further evidence to test the reasonableness.

CHAIRMAN: I think the answer to my question is yes?

MR. HYSLOP: Yes.

CHAIRMAN: Thank you.

MR. HYSLOP: That's the short answer to it. And I do apologize for not getting right to the point, Mr. Chairman.

CHAIRMAN: All right. Mr. Gillis?

MR. GILLIS: I had made a -- 4 -- I had made a request for a summons for a witness to deal with the same subject matter that Mr. Hyslop has referred to. And if you are putting it over to the 20th, is it the Board's intention to deal with my request for the summons for Bernard Lord on the 20th or the 21st or have his testimony on the 20th or 21st?

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CHAIRMAN: Well, I think we have been rather clear, Mr. Gillis that we are asking Disco to go back and to review all those and to put in responses and not just to give a blanket, this is public policy decision, but let's be precise in responses. And at that time, we will look at what those responses are. And I would suggest to you that after we do that and look at it, that's when we will hear your request to have the Board put out a subpoena.

MR. GILLIS: All right. Because I am wondering if that be so, then you would be looking at a further date for the taking of testimony because you need the evidence would be my argument if the response stays much as it is now. You need that evidence as a foundation for the argument with respect to the PPA's and I am wondering --

CHAIRMAN: Well I -- look I am going to cross that bridge when I come to it.

MR. GILLIS: I am just wondering, we don't anticipate taking Mr. Lord's testimony on the 20th and 21st?

CHAIRMAN: I don't think you should anticipate having Mr. Lord's testimony on the 20th.

MR. GILLIS: But shortly after Christmas perhaps. May I be excused?

CHAIRMAN: So just to follow-up on what I said is our people on the 21st -- I think it's only sensible --

2 MR. HASHEY: That's fine.

3 CHAIRMAN: -- this room is available that we say now we will
4 block off the 20th and 21st.

5 MR. HASHEY: Let's do it. That's fine.

6 CHAIRMAN: Yes. Okay. If we could we will get to --

7 MR. HASHEY: Move right onto these.

8 MR. MACNUTT: Mr. Chairman, you set the time -- the date
9 Tuesday, December 20th, what time of the day?

10 CHAIRMAN: I haven't done that.

11 MR. MACNUTT: Yes. Okay. And secondly, you have discussed
12 with Mr. Hyslop his report prepared by Mr. Meehan. Is it
13 Mr. Hyslop's intention to have Mr. Meehan available on the
14 20, 21st for cross examination?

15 CHAIRMAN: Well, I think again that -- I don't think it is
16 appropriate for us to deal with that now. We are going to
17 deal with all those things in just a follow-up to what
18 Mr. Gillis said.

19 If it turns out that we have to have, as a result of the
20 rulings that are made on the 20th and the 21st, another
21 witness, be it Mr. Meehan or some other person, then we
22 will set a date to hear that testimony at an appropriate
23 time.

24 MR. HASHEY: Thank you, Mr. Chairman. It is only question
25 arising out of that is I -- the report has been delivered.

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2 Can we consider that? And my friend said it wasn't part of
3 revenue. But darn it, it is. It goes directly to the
4 revenue requirements in many respects, particularly with
5 respect to the costs of fuel and things that are being
6 dealt with there, that probably a relevant part of it, to
7 the hearing.

8 Is that -- can we consider that that will be evidence? I
9 guess my friend has until the 16th to tell us that. That
10 is when the Intervenors have to file their evidence. And
11 I would assume that we could just let that go till that
12 day.

13 CHAIRMAN: Mr. Hyslop? I don't know why -- even though
14 let's say the Intervenors have to file their evidence on
15 the 16th, that we don't say all right, this is an
16 exception to the rule, and we will deal with that on the
17 20th, 21st.

18 MR. HASHEY: Okay. That is fine. Move on?

19 CHAIRMAN: Good. Okay. Move on to not relevant matters.

20 MR. HASHEY: It seems to me that has been the major topic
21 here.

22 CHAIRMAN: Yes.

23 MR. HASHEY: We start off the package with the first one
24 which is -- this may be one of the lengthier ones. It is
25 IR 104. And you will hear me say, when we get to 112, a

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lot of what I have said it relates to both of them.

As far as the start on 104 goes -- and this is looking for historical information back to 1990, 1991, as are the other, 112 and 113, which are going to make up the majority of the issues to be argued, don't be distressed by the length of maybe the argument on this one. Because there are going to be a few that are very much shorter. Most of them are very, very short in fact.

This is asking for historical and not comparable information. The background, and we got to keep in mind here, is that Disco became a separate entity on October 1, '04. And of course the PPA sets costs.

And I would like to make a number of points in relation to this. And that is that the time frame requested is prior to restructuring, as I have indicated, of October 1, 2004 before Disco became a separate company. So it is really not comparable. And it is really not relevant.

The information requested -- my second point is that the information requested concerning NB Power Consolidated and NB Coal is completely irrelevant to the current hearing. They are not part of Disco.

Thirdly, much of the information requested is available in the annual reports which have been filed and

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have been put in in response to IRs. As you know, they have gone right back to the time period requested, subject to their value.

The next issue is the accounting -- there have been accounting policy changes throughout the years. And they are not calculated all the way back to '93, '94 for comparative purposes. It makes any comparisons year to year difficult, virtually impossible. It would be a huge amount of work, people tracking for times that would go beyond hearing time I would suggest here by quite some distance.

The information-tracking has changed over the years from the original minimum filing requirement and is not available in the same format as that already filed. For example there used to be an effort to track OM&A by division not category. Now it is category-tracked. And a further point is some of the information prior to 1996, '97 fiscal year is not available in the system. Now there has been a number of system changes.

And the next point is the presentation changes throughout the years really make comparisons over such a long period of time extremely difficult. And I think for the value that could be gained as against the -- well, the question of whether it even could -- we say it can't be

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2 done.

3 But the parts that could be done would be a reconstruction
4 effort that would be a monster. Recognizing -- I know
5 there is a feeling that 1992 and '93 things were
6 suggested. We are getting to that in 112.

7 But the issue here is that we do have a new integrated --
8 or nonintegrated utility any longer. And what was
9 happening back there on the government decisions and post
10 '94 are things that we live with. The decisions made
11 maybe weren't good decisions. But they made them.
12 Now we are trying to get back on track and do things right
13 and do a report appropriately in accordance with obviously
14 the legislation, the Electricity Act and the other things
15 that govern us, plus your Act, Mr. Chairman. Those would
16 be my points on that one.

17 CHAIRMAN: Mr. Hashey, what if that request were shortened
18 to five years? Is it as monumental a task to provide some
19 or all of that information on a five-year basis?

20 I'm coming to you, Mr. Hyslop. Just a minute.

21 MR. HYSLOP: Good advice, Mr. Chair.

22 MR. HASHEY: I think the same problem exists, that it would
23 be so different that it wouldn't really have any relevance
24 or bearing on what Disco is looking at now.

25 CHAIRMAN: Okay. My appreciation is that the costs of the

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old integrated utility all end up with Disco and have to be raised -- the revenues have to be raised by Disco to pay for them, with the exception of some Transco revenues that are derived by external power companies using their lines.

So that again going back to that old regulatory tool of looking at costs year over year, those costs would have some relevance to looking at what Disco is projecting for the next fiscal period.

Now I just toss that out for your comment.

MR. HASHEY: Yes. As pointed out of course under the PPAs, not all of the costs do flow through to Disco. There are some costs that do stay in Genco and Nuclearco, as was indicated by the PPAs actually.

I wish it was that simple. To try to do a comparison, I don't know what we would have. We just couldn't do anything that was comparable.

We tried to track back a little bit with -- and we are prepared to provide you with possibly some budget information that was done on some of the markups from 2002 as best we can. I would be happy to try that. We have looked back into that. And I think that is possible. But to try to do this, I don't think we can do it, just because of the changes. They are so immense.

2 CHAIRMAN: Mr. Hyslop?

3 MR. HYSLOP: First, Mr. Chair, I have move to enter a
4 document or a book of documents onto the record to deal
5 with these ominous ones, if I may?

6 CHAIRMAN: Come on, professor. Help that poor man.

7 MR. HASHEY: I know what this book is. And I have got a
8 problem with it. I have seen it today or just at
9 noontime. What it is is the correspondence and the
10 discussions that took place.

11 My friend of course as one of his advisers was here in
12 '92, '93 and is trying to reflect his history into this
13 matter, namely Mr. O'Rourke. And we know that these
14 things have been -- you know, were designated. And there
15 was an attempt made for a reporting mechanism. I'm not
16 denying that.

17 And all this book is the letters back and forth saying
18 what was intended that would be done. And then of course
19 there was the cutoff period by another government. And
20 the legislation changed. And away we went.

21 And further there is a document slipped in the end of this
22 which is document number 5 which is a letter from a lady
23 to Mr. Hyslop saying she doesn't want to pay -- you know,
24 she can't afford an increase.

25 Well, what that has got to do with anything we are

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2 doing here today is well beyond me. That is an Informal
3 Intervenor. Her letter can be entered with you during the
4 hearing. I have no problem with that at all. But on this
5 issue why is that there? So I don't see any value in this
6 book whatsoever.

7 I mean, we know that there wasn't a follow-up on the
8 requirements that were supposed to be done. As best we
9 can, none of us were here on this side of the table.
10 Apologize. We know there was a change in legislation. We
11 know that there was a change in direction from the
12 shareholder. And that is the way it worked.

13 CHAIRMAN: You are singling me out for age here and
14 Mr. O'Rourke as well. Mr. Hyslop, what do you say about that
15 one letter that is in there?

16 MR. HYSLOP: Well, had I made my argument today on the PPAs,
17 where lawyers pound evidence they pound the law and they
18 pound the table. That letter was part of my pounding the
19 table portion of my speech, Mr. Chair.

20 At this stage -- although I may wish to have it as part of
21 the record at a later date. And I'm certainly not
22 offering the letter for the -- as evidence to the truth of
23 the contents of the letter and all parts.

24 But this lady wrote on April 23rd 2005 to the Board. She
25 wanted to have some involvement. She is not able to

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2 be here, could never be here. She couldn't get here. But it
3 does go -- I mean, it is kind of a little credo I have
4 been going by. She is one of my clients. I'm doing the
5 best I can for her. But is it relevant to the issue on
6 these two? No, it is not. So I concede at this stage of
7 the game the tab 5 evidence can be disregarded.
8 With respect to 1 to 4, Mr. Chair, the information, the
9 information -- and this isn't marked as an exhibit yet --
10 but the information we requested in IRs 113 and 114 were
11 modeled on the information that was requested and made
12 part of the minimum filing requirements in 1993 and
13 ongoing working documents between NB Power and this Board
14 in 1993 until about June of that year. And then the
15 history of what happened. There is some minutes of
16 meetings that took place where a cooperative approach was
17 taken. And then sometime in 1994 that didn't happen.
18 My friend Mr. Hashey is sitting here today saying the
19 historical information that everybody agreed, including NB
20 Power as it then was, would be relevant to a future rate
21 increase, that they can't get it or now it is not
22 relevant.
23 But back then, after they got through the 1993 hearings,
24 NB Power was part of a process to make this all very much
25 simpler and easier. And then the documents I

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2 put in this report are gleaned from the Board files. It
3 reflected a process that was undertaken. And for some
4 reason NB Power decided that no, they didn't want them.
5 Now they are sitting here saying we can't have the
6 information.

7 And I'm sitting here saying, you know, if you had sat down
8 in 1994 and did what you said you were going to do with
9 the Board and the type of ongoing filings you wouldn't
10 have, I wouldn't even have to ask for this stuff by an
11 Interrogatory. It would be part of the ongoing public
12 record and public filings with this Board.

13 Those documents are just documents that illustrate that
14 particular issue. I would like to have it marked as an
15 exhibit. I'm not going to go into very many of the
16 documents. There is a couple of points I'm going to put
17 into.

18 But my point is is that to some extent the applicant --
19 and I have some sympathy for what they might have to go
20 through, because I know most of the people with the
21 applicant today aren't the people that were there in 1994,
22 but they are kind of the author of their own misfortune.

23 CHAIRMAN: Mr. Hashey, anything further?

24 MR. HASHEY: Yes. Maybe Mr. O'Rourke anticipated the
25 separate companies at that time. Nobody did. It is an

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entirely new picture. It is different than it was back here.

This information, much of it can't be dug up in the same fashion.

In fairness, if you look at the record, we have given a great deal of background, as much -- and if there is any more that we can do reasonably we will. There was no hesitation to try to give some sort of a history.

But things are so different. We didn't have the PPAs. We didn't have these things placed upon us at that time and that are there today. It was an integrated utility. And the reporting all related to an integrated utility, which is a far different picture unfortunately than what we have at this moment. And you have these payments in lieu of -- all these things that are different now, compared to what existed back then.

It is a whole new world. I mean, history is good. And it is useful at times. And I respect that. And I hope that you will be -- you know, we are giving you the information from '03, '04, '05, '06, trying to give some semblance of what has happened under this, so that it can be judged and weighed and cast in whatever way you would see fit.

CHAIRMAN: I appreciate what you are saying, Mr. Hashey.

But let me put it this way. What harm is done if that is

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2 made an exhibit? I mean, if we come --

3 MR. HASHEY: Oh, no. As an exhibit, go ahead. I don't
4 care.

5 CHAIRMAN: All right. Let's put it in as an exhibit then.
6 We will expunge tab number 5.

7 MR. HASHEY: That is coming up at the end of the hearings.

8 CHAIRMAN: Mr. Hyslop, my records indicate this should be
9 PI-12.

10 MR. HYSLOP: Thank you, Mr. Chair.

11 CHAIRMAN: PI-12 will be known as Yogi Berra's exhibit.

12 Deja vu all over again. Okay. Now help me out, Mr.
13 Hyslop. You wanted that in in order to make your argument
14 with Mr. Hashey about IR-104?

15 MR. HYSLOP: Well in my case it would be 113 and 114. I
16 think Mr. Hashey was addressing 104, 113 and 114
17 collectively.

18 CHAIRMAN: Okay.

19 MR. HASHEY: It's 112 and 113.

20 MR. HYSLOP: 112, 113, I'm sorry. Yes.

21 CHAIRMAN: 112, 113.

22 MR. HASHEY: Yes. But we have additional arguments on 113
23 and a little bit more on 112. They are comparable, but
24 they are not the same. Maybe we should deal with those
25 together, because they do -- they are the requests for

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2 vast amounts of information, those three. The rest are
3 simple. The rest will go in 10 minutes.

4 CHAIRMAN: Look, we are going to break and come back
5 tomorrow morning. It's pretty obvious that we are not
6 going to be through here until 5:00 or 6:00, or whatever
7 it may be.

8 MR. HASHEY: I would say 4:30.

9 CHAIRMAN: Well Mr. MacNutt has a presentation to make too.
10 So --

11 MR. HASHEY: I quite agree with you then.

12 CHAIRMAN: I apologize, Mr. MacNutt. That was really unfair
13 on my part and Mr. Hashey's. So we will rise and come
14 back tomorrow morning at quarter after 9:00.

15 (Adjourned)

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Certified to be a true transcript

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of the proceedings of this hearing
18 as recorded by me, to the best of
19 my ability.

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Reporter