

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 20th 2005

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Henneberry Reporting Service

29

30

INDEX

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59

A-68 - Responses to Interrogatories, Rogers pole attachment
rates dated December 16, 2005, volume 1 of 1
- page 2758

1
2 New Brunswick Board of Commissioners of Public Utilities
3
4 In the Matter of an application by the NBP Distribution &
5 Customer Service Corporation (DISCO) for changes to its
6 Charges, Rates and Tolls - Revenue Requirement
7
8 Delta Hotel, Saint John, N.B.
9 December 20th 2005

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

- 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

.....

31 CHAIRMAN: Good morning, ladies and gentlemen. I want to
32 thank Messrs. MacNutt and Goss for having shortened up our
33 day considerably by getting everybody together before we
34 came in.

35 For the record, who is appearing today for the Applicant
36 Disco?

37 MR. MORRISON: Good morning, Mr. Chairman, Commissioners,
38 Terry Morrison and David Hashey for the Applicant. And
39 with us today is Rock Marois, Lori Clark, Mike Gorman and
40 Brian Duplessis. And of course Ms. Gilbert.

2 CHAIRMAN: Good. Thanks, Mr. Morrison. Canadian
3 Manufacturers and Exporters? Not represented.
4 Conservation Council? Not represented. Eastern Wind?
5 Not represented. Enbridge Gas New Brunswick? My
6 recollection is when Mr. MacDougall concluded his
7 summation, he indicated they would not be taking part in
8 this part of the hearing. So we will scratch them from
9 the record henceforth.
10 And the Irving Group of companies? Not represented today.
11 The Jolly Farmer? Mr. Gillis? Rogers Cable? Self-
12 represented individuals? Municipal Utilities?

13 MR. GORMAN: Good morning, Mr. Chairman and Commissioners.
14 Raymond Gorman appearing on behalf of the Municipal
15 Utilities. And I have Dana Young with me this morning.

16 CHAIRMAN: Thanks, Mr. Gorman. Vibrant Communities?

17 MR. PEACOCK: Good morning, Mr. Chair. Kurt Peacock here in
18 the corner. Glad to be back.

19 CHAIRMAN: Thanks, Mr. Peacock. Public Intervenor?

20 MR. HYSLOP: Thank you, Mr. Chairman. Peter Hyslop, Mr.
21 Barnett, Mr. O'Rourke, and Ms. Power with me this morning.

22 CHAIRMAN: Thanks, Mr. Hyslop. And the Premier's barrister
23 and solicitor is here as well?

24 MR. ANDERSON: William Anderson appearing on behalf of the
25 Premier, Mr. Chairman.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CHAIRMAN: Thanks, Mr. Anderson. Just for the sake of the record, I will go through the Informal Intervenors. And if there are any represented here today, raise your hand and we will put you on the record.

Agriculture Producer Association of New Brunswick?
Atlantic Centre for Energy? Canadian Council of Grocery Distributors? City of Miramichi? Charles Collin? Energy Probe Research Foundation? Falconbridge Limited?
Flakeboard? Genco? NBSO? Potash Corporation of Saskatchewan? Terrence Thompson Consulting? UPM-Kymmene?

Now I know you are all eagerly awaiting the Board's decision in reference to the --

MR. MACNUTT: Mr. Chair --

CHAIRMAN: Yes, Mr. MacNutt, he is here. Who is with you today, sir? I just thanked you and Mr. Goss up front. I mean --

MR. MACNUTT: I'm sorry, but we should really include Mr. Lawton I have with me today, Doug Goss, Senior Advisor and John Lawton, Advisor.

CHAIRMAN: Absolutely. Thank you, Mr. MacNutt.

As I was just about to say before my conscience butted in, you are looking forward to the CARD decision. If we rise and leave here by 2:30 this afternoon, the Board will deliver its CARD decision tomorrow afternoon at 2:00

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

o'clock. That is certainly a doable thing, I think.

Now there has been a good deal of administrative matters pursued this morning and Mr. Morrison, are you prepared to put on the record what it is that has been agreed to, et cetera?

MR. MORRISON: Well I don't know where to start, Mr.

Chairman. I guess there is a -- there are only -- I will start with the interrogatory responses and I believe Mr. Goss and Mr. MacNutt chaired a meeting this morning. There are only four -- sorry, five IRs that are in issue, and they are not really in issue, Mr. Chairman. They are all Public Intervenor IRs and they are number 8, 69, 112 and 113. And the responses to those will be filed this Friday, December 23rd.

The other outstanding IR is PI IR-114. And that relates to the Intervenor's request to have access to the PROMOD inputs in order to have his consultant do some analysis of those inputs. As has been argued before this Board previously, Disco objects to having that information produced. You have heard arguments, of course, from solicitor for the Irving Group. There has been a proposal that the PI's consultant be given access to those inputs on a strictly confidential basis. And I believe that a draft order in that regard has been submitted to the Board

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

for its consideration.

So before we can proceed to have access to that information put before Mr. Hyslop's consultant, we would require that the Board address the confidentiality order that was I believe dealt with through Mr. MacNutt's office late last week.

CHAIRMAN: All right. Just before we get to that though, let's carry on with the IRs in a -- there are two or three Municipal IRs that were in the listings that we had compiled from the last hearing. And I am looking here at IR-8 from Municipals, IR-3 and IR-6. And I just wonder on that, Mr. Gorman, have those all been settled to your satisfaction?

MR. GORMAN: They have been responded to to our satisfaction.

CHAIRMAN: Great. Thank you, sir. Okay. The information that is confidential, according to Disco, is that in a form that you could file with the Board? And the reason I say that is that then you could do so and pursuant to the particular section, and I forget right off the top of my head which one that is, you could bring that into play by filing it -- section 133 -- and file it with us requesting confidentiality. And of course that is automatically extended by the Statute. And from that we issue an order

1

2 that in accordance with our normal confidentiality system,
3 that should, I would expect, more than cover off your
4 concerns and the clauses in your various agreements, Mr.
5 Morrison.

6 That is certainly Mr. MacNutt and I have talked about that
7 and I think that might be a way to really cover it off.

8 MR. MORRISON: And we have no problem with that at all, Mr.
9 Chairman, but at this point we still don't know exactly
10 what Mr. Hyslop and his consultant want to look at. So
11 when we have that determined, we would follow that very
12 procedure that you indicated. We just haven't the
13 specific information, the specific inputs haven't been
14 identified yet. And I am expecting that that will be done
15 in the next day or so.

16 CHAIRMAN: All right. Well let me put it this way. Mr.
17 Hyslop, would that be satisfactory for your purposes?

18 MR. HYSLOP: Yes, Mr. Chair. We are certainly in agreement
19 that the confidentiality order should issue and whether it
20 is before or after the documentation is filed with the
21 Board, I leave to the discretion of the Board.

22 We are working with the Applicant to coordinate the
23 experts doing their thing because they are the ones that
24 have to do the analysis. So what they are specifically we

25

1

- 2750 -

2 will look at will depend a lot on the conversations that take
3 place between the technical people as this process goes
4 forward.

5 CHAIRMAN: Well I am available throughout the Christmas
6 holidays so I think that is were we will leave it. None
7 of the parties are objecting to proceeding in that
8 fashion. And frankly from both Mr. MacNutt's point of
9 view and my own, that would cover off any difficulty you
10 might have with these third party contracts with
11 confidentiality because once it is filed with us, that
12 section of the Act kicks in and our confidentiality
13 procedure rolls from that. And that certainly would be
14 within the purview of what is in, as I understand it, in
15 those third party contracts.

16 So we will just wait and I would suggest that you meet
17 with Mr. MacNutt in view of these comments and just revise
18 your order and we will go from there.

19 All of the interrogatories have now been dealt with. And
20 my understanding is that Friday the PI interrogatories 8,
21 69, 112 and 113 will be answered?

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

23 CHAIRMAN: Okay. Perhaps just -- and it is really a
24 housekeeping matter -- the responses that we sent out on
25 December 15th, which would have been the formal --

1

2 formally known as the Public Policy Responses, those were
3 filed with the Board on December 15th.

4 And I believe we are just going to file some instructions
5 for inserting those in the appropriate tabs in the
6 previous IR response binder. There is no need for them to
7 be marked as a separate exhibit and so on. And I believe
8 that procedure has been dealt with with the Board
9 Secretary.

10 CHAIRMAN: Okay. That is great. Thank you.

11 Now I just want to read into the transcript. In the
12 transcript from our last hearing day at page 2687 -- my
13 apologies. I should have marked it.

14 Mr. MacNutt, maybe you can help me out. I'm looking here
15 as to my exchange with Mr. Gillis. And the citation that
16 you have quoted for me is at page 2682, line 11. And I
17 have in front of me December 2nd. And 2682 is not in
18 here. It must have been the day before.

19 Would the Secretary have December 1?

20 MR. MACNUTT: I think, Mr. Chair, it may be in December 2,
21 page 2712.

22 CHAIRMAN: Well, that is the 2nd that you quote. But anyway
23 I will go to that, at page 2712. Yes. That is in
24 December the 1st, not December the 2nd.

25 At line 19 Mr. Gillis says "I made a request for a

1

- 2752 -

2 summons for witness to deal with the same subject matter that
3 Mr. Hyslop has referred to. And if you are putting it
4 over to the 20th is it the Board's intention to deal with
5 my request for the summons for Bernard Lord on the 20th or
6 the 21st or have his testimony on the 20th or the 21st?"
7 Chairman: "Well, I think we have been rather clear, Mr.
8 Gillis, that we are asking Disco to go back and review all
9 those and to put in responses and not just give a blanket,
10 this is a public policy decision. But let's be precise in
11 responses. And at that time we will look at what those
12 responses are. And I would suggest to you that after we
13 do that and look at them, that is when we will hear your
14 request to have the Board put a subpoena."

15 Mr. Gillis: "All right. Because I'm wondering if that be
16 so then you would be looking for a further date for the
17 taking of testimony because you need the evidence, would
18 be my argument, if the response stays much as it is now.
19 You need that evidence as a foundation for the argument
20 with respect to the PPAs. And I'm wondering."

21 And I say -- Chairman says: "Well, I -- look, I'm going
22 to cross that bridge when I come to it. I'm just
23 wondering. We don't anticipate taking Mr. Lord's
24 testimony on the 20th and 21st."

1
2 Chairman: "I don't think you should anticipate having Mr.
3 Lord's testimony on the 20th." And he goes on from there.
4 It is rather clear from that excerpt from the transcript
5 that Mr. Gillis understood that on the 20th, as soon as we
6 were through with these responses, why we would deal with
7 his motion. And Mr. Gillis is not present. And he is not
8 represented today.

9 Anything to say, Mr. Anderson?

10 MR. ANDERSON: Well, I think clearly under the circumstances
11 one could not -- one can only conclude that the request is
12 no longer present before the Board. The actions
13 contemplated by the Board, the direction to Mr. Morrison
14 to reconfigure or to answer the questions in a form more
15 appropriate, that request or direction to the Board has
16 been met.

17 And Mr. Gillis -- in the excerpt you just read,
18 Mr. Gillis has said assuming that the answers are not -- or
19 are in substantially the same form, we will come back -
20 - he would come back and make the request.

21 I can only conclude that Mr. Gillis has seen the answers
22 posed by Disco to the interrogatories. And Mr. Gillis has
23 concluded there is no further issue to be raised
24 necessitating the presence of the Premier. If I'm

1
2 wrong in that, the ultimate issue still remains.

3 Mr. Gillis is not here despite the clear direction by the
4 Board, by the Chairman, suggesting this matter would be
5 dealt with. And in the circumstances I can only conclude
6 that Mr. Gillis is no longer making the request. In the
7 circumstances obviously no summons or subpoena ought to be
8 issued by this Board to the Chairman or to the Premier.

9 I can't anticipate what Mr. Gillis may do in the future.
10 But the bottom line is that there is no request before the
11 Board. If indeed the Board wishes to proceed to hear
12 argument on the substance of that request, I'm prepared to
13 make argument. And I will leave that for --

14 CHAIRMAN: Frankly I have discussed it with my fellow
15 Commissioners. And if one who proposes a motion is not
16 here to propose it, then the Board can do nothing except
17 treat it as having been withdrawn. And that in effect is
18 what this Board has concluded. So Mr. Gillis' motion is
19 dismissed.

20 Now exhibit A-65 Confidential. At the end of the last
21 proceeding, why we asked Disco to pick it up and remove
22 from it any interrogatory responses which were no longer
23 claiming confidentiality.

24 And we just wonder if you have done that and you want
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

to refile that document with -- if it has anything left in it.

MR. MORRISON: The document has been refiled, Mr. Chairman,
in accordance with the Board's direction.

CHAIRMAN: Good. Thank you. Now we have dealt with the PI-
114. Do Mr. Hyslop or Mr. Morrison have anything further
you want to put on the record now dealing with anything,
be it PI-13 marked for ident? I'm at your mercy here.

MR. HYSLOP: On PI-113 marked for identification, Mr. Chair,
I wrote the Board on the 16th and indicated that that
document would be made part of the record on the revenue
requirement hearing. It does not -- obviously in view of
the resolutions that have been made, whether it forms part
of the record with regard to the issues outstanding with
respect to the IRs that we weren't satisfied with the
answers to, it would be pretty moot. And we will withdraw
it from that part of the hearing.

CHAIRMAN: I guess where I'm going here is that when we last
met and talked about that, why it was a question of
whether or not it would form part of your evidence or by
way of filing it with your evidence or if it were to be
marked as an exhibit and form part of the record in that
fashion.

And frankly, I will ask the question. Are you

2 intending to put Mr. Meehan up as a witness?

3 MR. HYSLOP: At this stage yes, Mr. Chairman.

4 CHAIRMAN: That is -- I'm aggressively neutral, if I have
5 ever heard it.

6 MR. HYSLOP: Well, the reason it is unimpressively neutral,
7 Mr. Chairman, is we are in anticipation of further reports
8 that we will receive by the 29th of December. They flow
9 from Mr. Meehan's report. I have not -- I have a draft of
10 part of the further report.

11 If it might please the Board, I would be prepared to just
12 hold PI-13 marked for identification as marked for
13 identification. It may be that that report is superfluous
14 and at that point in time would not form part of the
15 record. It depends a little bit these further ones.

16 CHAIRMAN: Yes. That is fine. In other words the folks
17 that you have retained and will be filing evidence on may
18 replace that report. And therefore no longer would it be
19 necessary for Mr. Meehan's report to go in. And I can
20 appreciate that. That is clear now.

21 Mr. Morrison, you have your finger on the button.

22 MR. MORRISON: The only -- and I'm happy with that
23 direction, Mr. Chairman.

24 The only comment I would make is that we would like to
25 know, for purposes of preparation of cross examination, as

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

soon as possible, whether Mr. Meehan's report is going to form part of the PI's evidence, in which case of course Mr. Meehan will have to be present here for cross examination.

But we have some preparation to do as well. So if he can make that determination as quickly as possible, we would certainly appreciate it.

MR. HYSLOP: We will certainly let the applicant and the Board and the other parties know whether we want that part of the record when we file the further report.

CHAIRMAN: Good. Thank you, gentlemen. Now I guess we are down to timetable.

MR. MORRISON: There is one other housekeeping matter, Mr. Chairman, before we get into scheduling. The responses to Interrogatories on the Rogers pole attachment rates, the binder dated December 16th 2005, volume 1 of 1, that should be marked as an exhibit.

CHAIRMAN: And whose exhibit should that be?

MR. MORRISON: I suppose that should be our exhibit, since it is our responses to interrogatories. And as I understand it, it would probably become exhibit A-68 by our records. But I could be mistaken on that.

CHAIRMAN: That certainly coincides with ours as well. So that will be -- I repeat it is a good thing New Brunswick

1
2 is a paper-producing province.

3 That will be A-68 which are the Responses to
4 Interrogatories, Rogers pole attachment rates dated
5 December 16, 2005, volume 1 of 1.

6 All right. Any other matters before we go to scheduling?

7 Mr. Hyslop?

8 MR. HYSLOP: Yes, Mr. Chair. This probably ties into
9 schedule. But there is another report. This flows
10 through our discussion on IR-114, the PROMOD one.
11 At this stage we are not in a position to advise the Board
12 exactly when that report would be expected to be filed.
13 And the reasons for this involves a certain amount of
14 coordination between my experts and people at Disco, the
15 technical people that administer the PROMOD program.
16 I have spoken to him. And we think if everything -- there
17 is a smooth flow of information, it would be filed by
18 January 6th. But again, no communication even starts to
19 flow until we have the necessary material filed and the
20 confidentiality order attached to it.

21 CHAIRMAN: I don't understand where that leaves us.

22 MR. HYSLOP: I'm not sure --

23 CHAIRMAN: Are you saying that the schedule that Mr. Goss
24 has given to me, that I presume the parties have agreed
25 to, may still be in jeopardy?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. HYSLOP: I haven't agreed to any schedule, Mr. Chairman.

I'm sorry. But I had discussions with my colleague Mr. Morrison during the break. And I did make an offer. But I'm not going to go into what the particulars of that are.

CHAIRMAN: Well, look, here is what Mr. Goss handed me as being a possible schedule. Oh, I might add that the Board made arrangements to make reservations for hotel space for the last week of February and the first week of March too, just in case things fall apart.

Disco files additional information on the 23rd of December. IRs on additional information delivered on the 4th of January. Responses by Disco on the 9th of January. Motions Day if necessary January 10. Additional information by Disco on January 12. The CARD decision of course tomorrow.

Disco files revised study in specific rates with rationale on the 16th of January. My understanding is that there has been an offer for a technical session on January the 20th. I will just come back to that.

IRs on revised study in specific rates on the 26th of January. Responses by Disco February 2. Public Intervenor evidence, part 1, December 30. IRs on the PI's evidence, part 1, January the 9th. Responses by the PI,

2 part 1, January 16. Public Intervenor evidence, part 2,
3 January 6. IRs on PI evidence, part 2, January 9.

4 Responses by the PI to part 2 interrogatories on the 16th
5 of January.

6 And the hearing, the cross of Disco on the revenue
7 requirement portion on the 16th to the 19th. That is the
8 first week we have got set aside now. And then a hearing
9 on the cross of Disco on specific rates on the 6th to the
10 9th of February.

11 Now that is all tentative. Does that sound -- frankly, I
12 thought you had seen this and heard it.

13 MR. HYSLOP: I have not seen that schedule, Mr. Chair.

14 MR. MORRISON: Mr. Chairman, if I may, I thought that was
15 the discussion we had this morning, with the only -- I
16 don't know whether we came to an agreement.

17 But that is certainly within a day or two, whether the 9th
18 or the 10th, was what we discussed this morning. And
19 certainly Disco is satisfied with that schedule.

20 I do note Mr. Hyslop's concern about the PROMOD issue.

21 But we are prepared to work diligently to see that that is
22 dealt with expeditiously. So frankly I think the schedule
23 that you proposed is workable and doable.

24 CHAIRMAN: I'm going to take a break. I will leave that up
25 here. Mr. Hyslop, you can borrow it if you want to, have

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

a conversation.

And don't tell me you are going south, Mr. Gorman.

MR. GORMAN: Mr. Chairman, if I could just make one minor comment. I don't think it will throw any of this off. The IRs on the Intervenor evidence, I think January 9th was the date that you read. However the original date would have been this Friday.

And I'm concerned about the Rogers evidence. Because they filed some evidence back in September. But they are to file additional evidence next week.

And it would be our intention or request I guess that all of our IRs be done at one time to Rogers, and that the date of the 9th of January be the date that we use.

CHAIRMAN: Well, okay. That is noted, Mr. Gorman. I will leave you folks to it. Mr. MacNutt?

MR. MACNUTT: This may go to timetable. It may have been left not clear that the Board is prepared to issue the confidentiality order in respect of the PROMOD input only when Mr. Hyslop has identified what inputs he wants and Disco is in a position to supply them and files them with the Board in confidence. It is my understanding at that point in time the Board will issue a confidentiality order. And then Disco can release the information to Mr. Hyslop and his experts go off and do his examination, is

1

2 that not correct?

3 CHAIRMAN: That is correct, Mr. MacNutt. We will take a
4 break. Let us know when you want us back. We will be on
5 our couches out there.

6 (Recess)

7 CHAIRMAN: Mr. Morrison?

8 MR. MORRISON: Yes, Mr. Chairman. We were discussing
9 earlier about the PROMOD input issue and the procedure
10 under section 133. That does create some difficulties.
11 And we would ask that the Board issue an order directing
12 Disco to file that information with the Board under
13 section 133, because of the contractual -- and as you
14 know, our position is that this information should not be
15 disclosed.

16 But in the event that it is disclosed even in confidence
17 to the Board, there are some contractual issues that could
18 make life very difficult for our client and some of the
19 other NB Power group of companies.

20 I guess the long and short of it, Mr. Chairman, is that we
21 have to take the position that we will not file the PROMOD
22 inputs with the Board unless directed to so.

23 CHAIRMAN: Mr. Morrison, the Board orders Disco to file with
24 us seeking the protection of section 133, all of the
25 inputs into the PROMOD model that have been used in

1

- 2763 -

2 preparation for this hearing.

3 MR. MORRISON: Fine, Mr. Chairman. We will comply with the
4 Board's order.r.

5 CHAIRMAN: That's good to hear, sir. Now any other matters?
6 Mr. Hyslop?

7 MR. HYSLOP: Yes. Thank you, Mr. Chair. We looked at the
8 draft time tables that the Board had reviewed with the
9 parties prior to the break and we have two dates that we
10 would ask the Board's consideration of reviewing.
11 The first is the date of the technical session. I am
12 without my backbone, Mr. O'Rourke, on the 20th. And I
13 think we did discuss possibly trying to hold that on the
14 18th or some other day that week. And then the other
15 point was is that we were going to ask that the Board
16 consider starting the hearings not on January 16th, but on
17 January 23rd. And in that regard I would like to make a
18 couple of quick points.

19 CHAIRMAN: If I could interrupt you. Let's deal with the
20 first thing first, Mr. Hyslop.

21 MR. HYSLOP: Okay.

22 CHAIRMAN: The technical session that Disco has offered to
23 put on is not part of the formal record. The use that
24 will be made of that is as -- the ones that I have been
25 familiar with, previous ones -- are simply to be able to

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

explain to the various participants in the process, not including the panel, how Disco has come up with the information that it's filing, et cetera, in an effort to speed up the hearing.

As a result of that, there is no formal documentation that's filed with the Board at all. The Applicant has to prove its case to the Panel's satisfaction. And you folks all have your opportunity to question it in the open hearing. So whenever that's scheduled, that's not part of the Board's formal scheduling at all. That's entirely up to Disco and the Intervenors. Mr. Gorman?

MR. GORMAN: Well with respect to that technical session, I appreciate that it's not part of the Board record, but really what the parties are talking about is trying to use one of the dates between the 16th and 19th, which are scheduled for hearing. In other words, have the Board adjourn for half of one of those days in order to allow it to occur. One of the problems with the 20th is it's a Friday, which the Board has not scheduled, and at least I have scheduled some court hearings on Fridays in January and February. And others I think may have other problems with doing it on Friday.

So the Board's input on the technical session is that the Board would be asked to adjourn early on one of the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

dates in order to allow it to go ahead.

CHAIRMAN: Perhaps we should move right along to the second part of the Public Intervenor's request then. That would certainly solve the problem you speak of.

MR. HYSLOP: I will work with the Applicant on the date of the technical session separately. The other point in the schedule is we are going to ask that the hearings commence not on January 16th, but on the 23rd.

The first reason is that in many ways the schedule has fallen behind, and I am not going to get into whose fault that is. I think it's just part of the very compressed schedule that we have put ourselves into with regard to IRs, et cetera. But the fact is that (mike turned off) receiving a big load of it on this Friday.

Second of all, when I look at the schedule as proposed between the week of January 9th and 16th, we are dealing with preparation of IRs, I understand with respect to whatever the Applicant files with regard to a specific rate proposal. Also between the 9th and 16th, we are preparing responses to IRs with respect to two sets of evidence that we are filing with regard to this case. And I would assume between the 9th and 16th, I would also have to spend a fair amount of time in preparation of cross examination and the orderly conduct of my case during the

1

2 hearings themselves.

3

All of which is to say that I am not comfortable that I can be properly prepared with that many deadlines between the week of the 19th and the 16th, to say that I would be in a position to properly serve this Board in the conduct of my case if we were to start on the 16th.

8

And I am requesting because of the apparent volume of work that would have to be completed in that rather tight time period that the Board consider the commencement of the hearings on January 23rd.

10

11

12

CHAIRMAN: Mr. Gorman, do you have any objection to that request?

13

14

MR. GORMAN: Well, we appreciate that -- I guess this schedule has been set for quite sometime. We would like to see it, you know, get underway if at all possible on the original schedule. I appreciate what Mr. Hyslop has had to say. However, our preference would be to see what can be done on that week. It may well be that, you know, a lot of progress won't be made. But our preference would be to start, if at all possible, on the 16th.

15

16

17

18

19

20

21

22

CHAIRMAN: Mr. Morrison?

23

MR. MORRISON: Mr. Chairman, as I think the Board is well aware, Disco's primary concern has been stated several times in the course of these proceedings since last year,

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

is that we -- Disco needs to recover its revenue requirement effective April 1st. And while I appreciate that the Board has to consider the interests of Mr. Hyslop and his client, it also has an obligation to the utility to allow it to recover its revenue requirement.

We have been at this for quite sometime. What drove the schedule initially in the scheduling of all of the processes was that we would be in a position to have a rate increase or a new rate schedule effective April 1st, which is the beginning of the fiscal year. We are -- and this is of paramount concern to my client. I am just very, very worried that if we start deviating from this schedule, which has been set for quite some time, that that April 1st date will be put into peril. And so having that as my prime objective and my prime concern, I cannot agree to deviating from the schedule start date of January 16th.

CHAIRMAN: The kicker here is Cabinet's ability to review the matter for a month. What section is that?

MR. MORRISON: I believe it's section 103. Sorry, Mr. Chairman. It might be section 104 and 105.

MR. HYSLOP: Sections 104 and 105, I believe, Mr. Chair.

CHAIRMAN: Right. What happens if the Lieutenant-Governor-in-Council says we have no intention of changing the order

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

that has been filed with us? That then abridges the time set forth in 105?

MR. MORRISON: Believe me, we have looked at this several times, Mr. Chairman.

CHAIRMAN: I'm sure you have.

MR. MORRISON: It is our interpretation of section 103 that it is a mandatory -- in other words, you cannot set a change in rates and tolls that is less than 30 days from the date that the decision is filed with the Clerk of the Privy Council. So that is our interpretation of the section at least.

MR. MACNUTT: You have to go to section 106, Mr. Chairman. That is where if nothing happens within 30 days that -- if the Executive Council doesn't do anything within the 30-day period then the Board's decision becomes final.

MR. MORRISON: Mr. Hyslop did mention a novel approach yesterday. And quite frankly I haven't got my head around it. But that is whether the Lieutenant-Governor-in-Council actually modifies the decision of the Board by stating the date upon which the charges, rates and tolls will become effective. That would be a modification to the Board's order. But again I haven't thought that one through.

CHAIRMAN: We will be back in, in a minute.

2 MR. HYSLOP: Mr. Chairman, just on this question --

3 CHAIRMAN: Please sit down, Mr. Hyslop.

4 MR. HYSLOP: Thank you.

5 CHAIRMAN: You have got us all going here.

6 MR. HYSLOP: And this is further to Mr. Morrison and my
7 conversation yesterday and the point he raised. But I
8 look at section 105, subsection (2) it says where the
9 Lieutenant-Governor-in-Council modifies or reverses an
10 order --

11 CHAIRMAN: I know you were born --

12 MR. HYSLOP: Yes.

13 CHAIRMAN: -- close to the border, Mr. Hyslop.

14 MR. HYSLOP: Yes.

15 CHAIRMAN: But it is not Lieutenant. It is Lieutenant.

16 MR. HYSLOP: I'm sorry. Where the Cabinet changes or
17 modifies or reverses an order, the Lieutenant-Governor-in-
18 Council shall where applicable set the time, the change
19 when the charges, rates and tolls is to take effect, and
20 direct the distribution company to file a new schedule of
21 the rate, charges and tolls to indicate the changes or
22 changes to the existing schedules.

23 So I think regardless of -- if they do nothing, it may
24 come into effect 30 days later. But I think it is
25 patently obviously, the closer I look at 105(2) that the

1

2 Lieutenant-Governor could say they are in effect tomorrow --

3 the Lieutenant-Governor.

4 CHAIRMAN: Okay. We will withdraw for a minute.

5 MR. HYSLOP: Thank you.

6 (Recess - 11:55 a.m. - 12:00 p.m.)

7 CHAIRMAN: We just took a minute as you know. We are going
8 to allow Mr. Hyslop's request to come into force so that
9 the hearing will not commence until the 23rd of January,
10 give that extra week.

11 We are very cognizant of Disco's concerns, et cetera to
12 get it in by the 1st of -- rate increase as of the 1st of
13 April. The Board's greater concern is that we hear the
14 evidence and we get the proper information in front of us.

15 This schedule is tight. It is very tight.

16 I mean, you look at it from the Board's point of view. If
17 we were to conclude this hearing in the four weeks that we
18 originally scheduled, we would rise on the 16th, which
19 would give the Board nine working days to reduce all of
20 this material into a decision in writing that would have
21 to be delivered in nine working days. I mean, we got to
22 be practical here, you know.

23 The other thing is that you have not been in front of us
24 for 13 years. And I know none of you are the author of
25 that at all. But we do have a public duty and

2 responsibility that we have -- and we will discharge. And we
3 have to do a -- set just and reasonable rates.

4 And that is not a questionable formula. We have to assess
5 what it is that you all put in front of us. And we
6 appreciate the magnitude of work that is being done. So
7 we do have your concerns at heart. But we do have that
8 overriding responsibility that we are going to meet.

9 Frankly from our perspective, although we postponed the
10 start by a full week, that is four days of hearings, I'm
11 almost prepared to bet that if you are given that extra
12 time you are going to be chopping a couple of days off the
13 hearing time that ultimately will result anyway, simply
14 because all the parties, and the Board for that matter,
15 will be better organized.

16 So when we adjourn today it will be to reconvene the
17 hearing on that 23rd of January. Now --

18 MR. MORRISON: Mr. Chairman, if I might --

19 CHAIRMAN: Yes.

20 MR. MORRISON: -- on that point. And I understand the
21 Chairman's comments with respect to discharging public
22 interest obligations.

23 Back some time ago, I believe it was June 24th, when we
24 were in the Delta in Saint John, there was some indication
25 that there may be some mechanisms available to

2 the Board that may permit implementation of a rate effective
3 April 1st.

4 And although it wasn't flushed out in any great detail, I
5 would ask the Board to give consideration to that.

6 CHAIRMAN: Fleshed out not flushed out.

7 MR. MORRISON: Did I say flushed out?

8 CHAIRMAN: You said flushed out.

9 MR. MORRISON: Freudian slip, Mr. Chairman. I would ask the
10 Board to give consideration to what mechanisms may be
11 available to the Board to allow implementation of a rate
12 effective April 1st in the event that our hearing schedule
13 may be somewhat delayed.

14 CHAIRMAN: We will look at it. For instance the problem
15 here is that it says -- 104 says the Board shall, in
16 relation to an order or a decision respecting rates,
17 charges and tolls to be charged by the Distribution
18 Corporation, file a copy of its order or decision with the
19 Clerk of the Executive Council within 14 days after the
20 making of the order or decision.

21 What happens to the situation which the courts and
22 administrative tribunals have used, whereby they give a
23 decision and they file the written reasons later?

24 Now does that section -- we haven't done the research

2 on it. But does that section mean that it would be the
3 written reasons that trigger that section or not? Because
4 that is one way that certainly time could be abridged, if
5 you were to give a decision but file your written reasons
6 later, which would allow us to do the kind of explanation
7 of why we are finding these things.

8 Common sense would say that you got to have those written
9 reasons. Otherwise Cabinet wouldn't have the foggiest
10 idea why you were setting certain rates in a certain
11 fashion. So I don't know. We will certainly be looking
12 at that sort of thing.

13 MR. MORRISON: I guess the other issue, Mr. Chairman, and
14 perhaps you will get to it as we proceed, but we also have
15 to deal with the Roger's issue.

16 And I believe Mr. Hashey indicated this morning that a
17 fair amount of time has been spent in getting the experts'
18 schedules coordinated for that 14th, 15th and 16th -- so
19 perhaps we can deal with that later -- of February.

20 CHAIRMAN: Just one thing has crossed my mind vis-a-vis
21 Rogers. What about the week that we have just done away
22 with, the week of the 16th of January?

23 MR. MORRISON: I understand from Ms. Milton that they can't
24 do anything any earlier than the 14th of February as I
25 understand it. But perhaps we can take a few minutes and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

try to reach Ms. Milton at some point today and try to confirm that.

CHAIRMAN: The other thing is, is there any way that we can perhaps split that off to be dealt with later? I don't know. Let me go back now if I might to the draft timetable.

Have the parties taken a look at that, and in the light of the Board's ruling that you not start until the 23rd of January, are there any suggested changes? Are you prepared to go with what I read into the record? What is the story? Mr. Gorman?

MR. GORMAN: Mr. Chairman, just this issue again with respect to the Rogers evidence. I think that should have been part of the draft timetable that you were given initially which would have had the IRs on all Rogers evidence on January 9th, with responses by Rogers on January 16th. That doesn't appear on the draft timetable.

But that was discussed by all of the parties here this morning.

CHAIRMAN: How about Rogers themselves?

MR. GORMAN: Rogers, of course, aren't here this morning.

But --

CHAIRMAN: So I it's --

MR. GORMAN: But they would have had the 9th for

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Interrogatories on additional evidence in any event. So that is one of the dates that had been previously established on the schedule. I believe that January 9th was all parties' IRs to Rogers is already on the schedule.

The part which was unclear was whether or not their evidence is kind of split between what they filed in September and what they presumably are going to be filing between Christmas and New Year's. And really all I was trying to do was to tie that into one date.

So it would just be one set of IRs by the way. This doesn't expand the IR process. Frankly it does just the opposite. I think it makes it a lot neater and easier for all.

CHAIRMAN: Okay. Mr. Morrison?

MR. MORRISON: Mr. Chairman, with respect to the Rogers issue and whether it can be decoupled from this revenue requirement, certainly if it could, we would have no objection to moving the Rogers piece off. The only problem is that some of this Rogers revenue forms part of our revenue requirement, albeit a small piece. But it does form part of the revenue requirement and therefore would be reflected in rates depending on which way the Board decides on the Rogers issue. So that is where our concern is. We would not like to

1

2 be in a position where you can't issue a rate decision because
3 you haven't decided -- albeit a small piece but a piece of
4 the revenue requirement which relates to the Rogers issue,
5 so --

6 CHAIRMAN: It is a Catch-22. Well, Mr. MacNutt, what should
7 I do now?

8 MR. MACNUTT: It has been suggested to me that lunch might
9 be appropriate. And during lunch a further review of the
10 prospective timetable could be made in light of the
11 comments we have just had.

12 CHAIRMAN: You can always count on Mr. MacNutt for practical
13 answers. All right. What we will do is we will break for
14 lunch. And can we come back about quarter after 1:00?
15 Would that be enough time?

16 And Mr. MacNutt will be sitting at a separate table and
17 welcomes you all to sit down and go through the schedule
18 instead of eating.

19 (Recess - 12:05 p.m. - 1:15 p.m.)

20 CHAIRMAN: With the amount that my Commissioners ate at that
21 buffet, we better be out of here in 10 minutes, because
22 they will all be asleep.

23 So have we gotten the schedule arranged?

24 MR. MORRISON: I believe Mr. Goss is going to come in with
25 that retyped version, but I haven't seen him yet.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. MACNUTT: Yes. Mr. Goss said he was going back to the office and was having it retyped and would be back with it in final form. Mr. Goss has not yet arrived.

CHAIRMAN: I can read his writing. I don't know why he did that. We will just stay here and wait for him.

MR. MACNUTT: The man of the hour has arrived. Mr. Goss has the revised --

CHAIRMAN: All right. Let me read in the dates here and if there is any problems with it why speak up.

Disco files response to PI's interrogatory numbers 8, 69, 112 and 113 on December 23. IRs on Disco responses to PI - 8, 69, 112 and 113, January 4. Responses by Disco to IRs on PI - 8, 69, 112 and 113 on the 9th of January. A Motions Day, if necessary, on the 10th. Disco files additional information, if necessary, as a result of that Motions Day on the 12th of January. The CARD decision tomorrow afternoon at 2:00. That's the 21st of December.

Disco files revised study and specific rates with rationale on the 16th of January. IRs delivered on revised study and specific rates on January 26th. And Disco responds on February 2nd. The Public Intervenor Evidence - Part 1 is on the 30th of December. Public Intervenor Evidence - Part 2 on January 6th. All IRs on all evidence of PI, Board and Rogers on January 9th.

1

- 2778 -

2 Responses to IRs on Intervenor evidence on the 16th of

3 January. And the hearing commences on the 23rd.

4 Anything we have left out or -- that's good. All right.

5 We will leave the matter concerning the PROMOD inputs to

6 be dealt with between now and the New Year. And we will

7 adjourn now until --

8 MR. MORRISON: Mr. Chairman, there is just -- I guess I

9 don't know whether Mr. Hashey has had a chance to speak to

10 Mr. MacNutt about this directly. But we do have some

11 inquiries into Ms. Milton and to the various experts and

12 there is a possibility that the Rogers hearing may be able

13 to proceed on the week of January 23rd -- sorry, January

14 16th, but that won't be able to be confirmed probably

15 until tomorrow.

16 CHAIRMAN: Yes. Mr. Hashey passed that along to the Board

17 that the message is out that there are no negative

18 responses, but --

19 MR. MORRISON: And we will meet with the other Intervenors

20 with respect to scheduling a technical conference --

21 CHAIRMAN: Sure.

22 MR. MORRISON: -- which is, of course, outside the purview

23 of the Board.

24 CHAIRMAN: Yes. Great. All right. Well, we will stand

25 adjourned then until the 23rd of January at 9:15, subject

1

2 to the possibility of a Motions Day on the 10th of January and

3 subject to something being arranged in reference to the

4 week of the 16th concerning Rogers. Thank you very much.

5 Have a good Christmas.

6 MR. GORMAN: Mr. Chairman, could I just ask one question.

7 You said you added two weeks, were they the weeks of the -

8 - sorry, the weeks of the 20th and 27th of February. Is

9 that the two weeks that we are talking about? Just that

10 that's not on the schedule. And this morning you had said

11 something about adding a couple of extra weeks to the --

12 CHAIRMAN: I did. Just a minute. Now here we are. It was

13 on here. We are looking at the week of the 27th and the

14 week of the 6th of March. We simply are attempting to

15 arrange reservations so that in case it has to go that

16 long, it goes that long. I am not suggesting that we are

17 gunning for that or anything else.

18 MR. GORMAN: No, I understand that. So does that mean the

19 week of the 20th of February is an open week?

20 CHAIRMAN: That's correct.

21 MR. GORMAN: Is there any chance that the week of the 6th --

22 CHAIRMAN: No.

23 MR. GORMAN: Ever hear of the March Break?

24 CHAIRMAN: In my youth I did. No, I am sorry, but frankly

25 what we want -- this is a part-time Board. And to have --

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

to ask them to be sitting three or four weeks straight is just not practical. The second thing is that if the other folks that we regulate would ever leave us alone, then we would be able to write some decision portions in those breaks, and that's the way we have been looking at it.

MR. GORMAN: Fair enough.

CHAIRMAN: Sorry about March Break. Just be brief in what you bring before us and we will get out by then.

MR. MORRISON: Mr. Chairman, just one question -- a point of clarification actually. The CARD decision, which is going to be rendered tomorrow afternoon, will that be in this room or will it be in the Board offices or --

CHAIRMAN: I think Madam Secretary it's here, right?

MS. LEGERE: The room is available.

CHAIRMAN: Yes. It will be here tomorrow afternoon at 2:00.

MR. MORRISON: Thank you.

CHAIRMAN: Thanks. And we will have a written decision. I have no intention of reading the entire thing. So we will leave out the description of the Pre-Hearing Conference from -- will be left out. I will just give the meat of the decision and then we will hand it out and proceed from there. Great. Thank you.

(Adjourned)

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