New Brunswick Board of Commissioners of Public Utilities

In the Matter of an application by the NBP Distribution & Customer Service Corporation (DISCO) for changes to its Charges, Rates and Tolls - Revenue Requirement

Delta Hotel, Saint John, N.B.
March 15th 2006

INDEX

<u>Undertakings</u>

INDEX

New Brunswick Board of Commissioners of Public Utilities

In the Matter of an application by the NBP Distribution & Customer Service Corporation (DISCO) for changes to its Charges, Rates and Tolls - Revenue Requirement

Delta Hotel, Saint John, N.B.
March 15th 2006

CHAIRMAN: David C. Nicholson, Q.C.

COMMISSIONERS: Jacques A. Dumont
Patricia LeBlanc-Bird
H. Brian Tingley
Diana Ferguson Sonier
Ken F. Sollows
Randy Bell
David S. Nelson

BOARD COUNSEL: Peter MacNutt, Q.C.

BOARD STAFF: Doug Goss
John Lawton

BOARD SECRETARY: Lorraine Légère

....

CHAIRMAN: Good morning, ladies and gentlemen. Could I have appearances please for the Applicant?

MR. MORRISON: Good morning, Mr. Chairman, Commissioners. Terry Morrison for the Applicant and with me at counsel table is Lori Clark and Michael Gorman.

CHAIRMAN: Thank you, Mr. Morrison. Canadian Manufacturers and Exporters?

MR. LAWSON: Good morning, Mr. Chairman, Commissioners. Gary Lawson appearing with Ron Nicholson and David Plante.

CHAIRMAN: Thanks, Mr. Lawson. Mr. Coon is not here. Enbridge Gas New Brunswick?

MR. MACDOUGALL: Mr. Chair, David MacDougall for Enbridge Gas New Brunswick. And I will probably be joined later this afternoon by Mr. Andrew Harrington and Ms. Shelly Black.

CHAIRMAN: Good. Thanks, Mr. MacDougall. Irving Group of Companies, Mr. Booker?

MR. BOOKER: Good morning, Mr. Chair. Andrew Booker for J.D. Irving.

CHAIRMAN: Good morning. Mr. Gillis is elsewhere arguing about destruction of houses and things, as I understand it. Rogers is not here. Municipal Utilities?

MR. GORMAN: Good morning, Mr. Chairman. Raymond Gorman appearing for the Municipal Utilities. Today I have Eric Marr and Dana Young with me.

CHAIRMAN: Thanks, Mr. Gorman. Vibrant Communities? No. Public Intervenor?

MR. HYSLOP: Good morning, Mr. Chair. Mr. O'Rourke, Ms. Power and Mr. Knecht are with me today, sir.

CHAIRMAN: Thanks, Mr. Hyslop. Mr. MacNutt, whom do you have with you today?

MR. MACNUTT: I have with me today, Mr. Chairman, Doug Goss, Senior Advisor, John Lawton, Advisor, John Murphy, Andrew Logan and James Easson, consultants.

CHAIRMAN: Thanks, Mr. MacNutt. Mr. MacNutt indicated to me that counsel had been talking about next week and summation, et cetera, that sort of thing and there was some difficulty with getting sufficiently ready to have a written brief ready if counsel wanted to do that as well as oral argument. And what I would like counsel to do is at the time of the next break to think about this, is that rather than us proceeding next week, we proceed in the following week. That is this room is available on the 5th and 6th of April. And that would let everybody have sufficient time to get things pulled together in the way that they want to. Anyway, if counsel would please just talk about that during the next break, I would appreciate it.

Any other preliminary matters?

MR. MORRISON: Yes, Mr. Chairman, some undertaking responses.

CHAIRMAN: All right.

MR. MORRISON: And the first one, Mr. Chairman, is undertaking number 2 from February 21st 2006. This one was originally sent out electronically last week. Upon further review, we have added further explanation to the response.

CHAIRMAN: Okay.

MR. MORRISON: And I would suggest that this one be marked rather than the one that was sent out electronically last week.

CHAIRMAN: All right. We will certainly mark this one and if anybody has any problems in reference to not marking the other, why let us know. Otherwise we won't mark it. So this will be A-151.

MR. MORRISON: And the next one, Mr. Chairman, is undertaking number 2 from February 22nd and it is a series of organizational charts and it was requested.

CHAIRMAN: This is A-152.

MR. MORRISON: The next one, Mr. Chairman, is undertaking number 8 from February 22nd. Again, this one is also an update of one that was sent out electronically last week.

CHAIRMAN: A-153.

MR. MORRISON: And finally, Mr. Chairman, undertaking number 9 from February 22nd 2006.

CHAIRMAN: And that is A-154.

MR. MORRISON: Thank you, Mr. Chairman, that is all for now. We will undoubtedly have more responses to file after lunch.

CHAIRMAN: Good. Thanks, Mr. Morrison. On a cheery note, this is day 52 and it is also the Ides of March. Any other preliminary matters? Mr. Hyslop?

MR. HYSLOP: Yes, Mr. Chair. With respect to exhibit A-151, which is different than the e-mail version that was sent last week, I was wondering -- I don't necessarily want to put another document on the record, but can Mr. Morrison outline the extent of changes between the two and if it is just the addition of extra material, identify what that might be.

MR. MORRISON: Yes, Mr. Chairman. If you look at the top of page 2, where it starts with the paragraph, the methodology was changed. In the old response there was a term, I think the term was top of in-province and it was felt that that wasn't a very accurate term. So it was more clearly specified. And if you go down, okay, the last sentence in the third last paragraph, which begins with please note. That is a new sentence. That is a new sentence where it says for fiscal 2005/06, this would result on lower export margins. And the next paragraph which says as part of this ongoing process is a new paragraph.

I'm sorry, Mr. Chairman, when I said that only the last sentence of that third last paragraph, please note.

That whole paragraph in with please note is a new paragraph.

MR. HYSLOP: Mr. Chair, I am aware that this was a subject of some comment last week outside of these hearings. I would ask that -- whether it might be possible after we have fully reviewed these to have a witness who would have been part of that panel appear for additional cross examination with respect to the responses given in A-151 and A-153.

CHAIRMAN: Mr. Hyslop, can you hold that request until after the next break so we have had an opportunity to read what is there.

MR. HYSLOP: Sure.

CHAIRMAN: Any other matters? Mr. MacNutt?

MESSRS. MAROIS and LARLEE:

CROSS EXAMINATION BY MR. MACNUTT:

MR. MACNUTT: Thank you, Mr. Chairman. Good morning, Mr. Chairman, Commissioners and Mr. Marois and Mr. Larlee. I have got a series of groups of questions and they are all going to deal or use in some way exhibit A-76. That is the 2006/2007 class cost allocation study, proposed rates and rate proposal January 24th 2006. So A-76. And you could keep that out for the whole of my cross, my questions.

Q.689 - Now my first line of questions is going to deal with questions in respect of a document that Board staff has prepared. It is entitled "Load and Coincidence Factors for Disco". This is a one page document which was provided to Mr. Morrison on February 23 and I assume has been provided to the witnesses. And we will be asking some questions on it. I will just confirm with Mr. Marois and Mr. Larlee, you had an opportunity to review the document I just mentioned?

MR. LARLEE: Yes, yes, I have.

MR. MACNUTT: Thank you. I would like to move to have the document introduced as an exhibit, Mr. Chairman. And then I will be asking questions on it. I believe it will become PUB exhibit PUB-15.

CHAIRMAN: Any objections? Okay, this will be PUB-15. What will I call this, Mr. MacNutt?

MR. MACNUTT: It would be a summary sheet entitled "Load and Coincidence Factors for Disco" prepared by PUB staff.

CHAIRMAN: Okay. Go ahead, sir.

MR. MACNUTT: Thank you.

Q.690 - Now, witnesses, my questions are in respect of exhibit PUB-15 and how they relate to schedules 1.1, 1.2 and 1.3 in exhibit A-76. And they relate to coincident and non-coincident peak demand. Now for the purpose of the record, I would just like to confirm that the information from the schedules 1.1, 1.2 and 1.3 have been accurately reproduced in exhibit PUB-15 as follows, and I am going to read through where slight changes have been made in schedules 1.1, 1.2 when being summarized in PUB-15 as follows:

Column 1 of PUB-15 has been taken from column 1 of schedule 1.1 with two changes. The electronic -- first of all, the electronic version of schedule 1.1 can be expanded by clicking on appropriate parts of it. In this case, line 1 showing residential sales of 5,008,000 has been expanded to show a breakdown of that figure in PUB-15. The breakdown is shown on exhibit PUB-15 on the three unnumbered lines following line 1 and are labelled respectively residential electric heat sales, residential water heat sales and residential all other sales. Those three lines total 5,008,000 and have not been included a second time in the total at the bottom of the page. Do you agree?

MR. LARLEE: I think I follow what you said. Yes, I agree.

Q.691 - There is no tricks in this. This is just --

CHAIRMAN: Mr. MacNutt, it is a trick to follow you.

MR. MACNUTT: It is a bit complicated. But it will all come clear in the end. The second point is ballast load from column 3, secondary losses at line 11 has been -- from schedule 1.1 has been added to column 1, line 3, line 11 of PUB-15 bringing the total at that location to 92,368. The 16,368 ballast load added to column 1, line 11 finds its way to line 17 where the total for column 1 is increased from 14,878,000 in schedule 1.1 to 14,894,368 in column 1 on exhibit PUB-15. Do you agree with that?

MR. LARLEE: I can't seem to find those numbers you just quoted in the -- on your table. Perhaps you could repeat the number?

Q.692 - Okay. Looking at schedule 1.1 and taking the ballast load.

MR. LARLEE: If we look at 1.1 on line 18 you will see -- you have to move over about a quarter of the way across the page. You will see "Ballast Losses" at 15,694.

Q.693 - I'm sorry. I should have used the term "secondary loss" of 16,368. Yes. If you go to schedule 1.1, column 3, if you go down to 11, "Streetlights and Unmetered", 16,368. And if you take that number and move it over. And you are looking at PUB-15, column 1. And you go to line 11.

That brings -- in other words we are summarizing what is in column 1 on schedule 1.1 and bringing in one item from a different column in schedule 1.1 and consolidating it into column 1 in PUB-15.

And it is added at 11 -- column 1, line 11 to bring it to 92,368 which then brings the total of column 1 in PUB-15 to 14,894,368 when compared to schedule 1.1 where the total for column 1 is 14,878,000.

Do you follow me now?

MR. LARLEE: Yes, I do. I follow you. I just have a couple of comments with that, just in case the Board is not familiar with when we talk about ballast.

In a streetlight obviously there is the light as part of it. There is also a ballast which is basically a sophisticated transformer that allows the light to operate.

When we talk about ballast load -- the PUB has referred to it as ballast load. In our cost allocation study we refer to it as ballast losses. These are actually losses incurred to provide the service to the customer.

So in the cost allocation study we treat them as losses.

And that's why we are having a slight difference in numbers. The PUB staff has treated it as part of the load.

In the cost allocation study we have treated it as losses.

And the way we have treated it is consistent with the way we have treated it in the past, going all the way back to pre 1992.

The second point I would like to make is that the PUB staff has also included the secondary losses in this number, the secondary losses being the energy losses and demand losses for the piece of wire between the primary system and the actual light.

So I guess I would take issue with the term "load" that they have used in the line just below line 11 when it says "includes ballast load" to me it is really a loss includes ballast losses.

Q.694 - Yes. Thank you for that explanation. But we will proceed with PUB-15 as it is presently constituted for the line of questions with that explanation in mind.

Now you have just confirmed for me that other than the changes we have just identified, that column 1 in exhibit PUB-15 is the same as column 1 in schedule 1.1?

MR. LARLEE: Yes.

Q.695 - Thank you. Now we are now going to deal with column 2 of PUB-15. And I would like you to confirm that column 2 of exhibit PUB-15 is the same as column 1 in schedule 1.2, but with line 1 expanded in the same manner as we just discussed. That is the three subheadings.

And with the secondary losses in the amount of 3,642 in column 3, line 11 moved to column 1, thus increasing the total for column 2 in exhibit PUB-15 from 2,962,000 to 2,965,642.

MR. LARLEE: Yes. With the same comments that I just made applying here as well.

Q.696 - Thank you. And there is the last one. You were to confirm as well that column 3 of exhibit PUB-15 is the same as column 1 in schedule 1.3 but with line 1 expanded in the same manner we just described, and with the secondary distribution losses in the amount of 4,264 in column 4 moved to column 1 in PUB-1, thus increasing the total for column 3 in exhibit PUB-15 from 3,322,422 to 3,326,686.

Would you agree with that?

MR. LARLEE: Yes. And again with the similar comments.

Q.697 - Thank you. Now column 4 on exhibit PUB-15 shows the load factor based on the non-coincident peak.

Would you agree that the calculations there are accurate?

MR. LARLEE: Yes. As far as I can tell, the calculations are accurate. Just one further clarification is that it's the class non-coincident peak.

So in other words we would be looking at not the sum of the individual customers but the actual class itself, its peak. And it would be non-coincident with any other peaks, either system peak or any other class.

Q.698 - Now I want you to look at column 5 in exhibit PUB-15. And it shows the coincidence factor. In this case the coincidence factor is the ratio of the coincident peak to the non-coincident peak.

Do you agree with the accuracy of the figures shown in PUB-15?

MR. LARLEE: The calculations appear correct, yes.

Q.699 - Thank you. Now referring to exhibit PUB-15, in going to column 5 and the unnumbered line following line 1 which is labeled "Residential Water Heater Sales" where the coincidence factor is shown as 100 percent, do you have that?

MR. LARLEE: Yes, I do.

Q.700 - Please explain how it could be that water heaters would have a coincidence factor of 100 percent?

MR. LARLEE: Well, I think the important thing to remember with water heaters is essentially it is a storage device. It stores hot water. But in doing so it's literally storing energy.

So what we tend to accept is that hot water heater load is quite flat. And although we don't have any direct load research analysis, it tends to be accepted in the industry that the load factor on hot water heater load would be quite high.

So we tend to make the assumption that the load is essentially flat at somewhere on average around 600 to 700 watts. So therefore based on that assumption the coincidence factor would be 100 percent.

Q.701 - Thank you. Now is your calculation, as you have just described, done on a one-hour basis or a 15-minute basis?

MR. LARLEE: I'm not exactly sure what calculation you are referring to.

Q.702 - The assumptions you made as you just described?

MR. LARLEE: Well, I just spoke of the load as being about 600 to 700 watts. That's an instantaneous value.

Q.703 - Now referring again to exhibit PUB-15 and going to column 5 and the unnumbered line following line 1 labeled "Residential All Other Sales" where the coincidence factor is shown as 111.6 percent, do you have that?

MR. LARLEE: Yes, I do.

Q.704 - Please explain how you can have a coincidence factor of 111.6 percent for this item?

MR. LARLEE: You can't. What has happened here is that when this -- when these numbers are developed -- and they are obviously not displayed on the schedule for a reason.

It's background information used in some of the calculations throughout the cost allocation study and not all.

The numbers that you see for "Residential All Other Sales", the third unnumbered line, is the residual. So in other words we made some assumptions for electric heat sales. We made some assumptions for water heat sales. And whatever is left over has to be everything else.

What has happened is, as you may recall in some of the previous evidence, that for the overall residential sales we used a coincidence factor of 94 percent. That 94 percent is backed up by load research data. And that data is all on the record through the IR process.

Unfortunately that particular piece of information didn't make its way into the residential electric heat sales estimate. And what happened there is we ended up using the old estimate that we were using back pre the 05/06 cost allocation study which is 86 percent capacity factor. And you can see that in your column 5, the second line down, 85.9.

So what happens is when the "Residential All Other Sales" gets calculated as a residual, a number comes out that doesn't really make a lot of sense.

So in my way of thinking, this is another advantage to this whole process where we have got another opportunity to refine our estimates.

I did a sensitivity analysis to see how this would impact my results using a more reasonable estimate of coincidence factor for the residential electric heat sales. And as I'm sure you are aware, this has no impact on any of the classes.

We are looking within the residential class now. And the impact would be zero on the revenue to cost ratio for the electric heat segment and would tend to lower the revenue to cost ratio for the non-electric heat from 1.01, as it is in the evidence now, to 1.00. So I admit that it looks like it's quite a large difference in the number. And it looks like quite a large error.

In actual fact when it flows to the cost allocation study, the cost allocation study isn't really that significant to it, significantly affected. And the reason being is that these background numbers are only used in some of the calculations and not in all of the calculations in the study.

Q.705 - Thank you. Now again referring to exhibit PUB-15 and going to column 5 in line 11 which is labeled "Streetlights and Unmetered" where the coincidence factor is shown as 97.3 percent, do you have that?

MR. LARLEE: Yes, I do.

Q.706 - Now what time of day does this Disco system peak?

MR. LARLEE: Usually it would peak either hour ending 8:00 a.m. or hour ending 9:00 a.m. We have peaked in the past in the evening during very severe cold weather hour ending -- I think it was hour ending 6:00 p.m. So those would be typical overall system peaks.

Q.707 - Thank you. Now please explain how it can be considered reasonable to have a coincidence factor of 97.3 percent for streetlights and unmetered?

MR. LARLEE: Well, the reason why it's 97.3 and not 100 is because you included the ballast losses in your calculations.

So really our assumption is that it's the coincidence factor is 100, which basically we are saying the lights are on. The lights are going to be on when we peak.

Q.708 - The problem we have of course is streetlights and unmetered usually during daylight hours from say 8:00 or 9:00 o'clock in the morning till mid afternoon, they are not on?

MR. LARLEE: Well, I think, without being intimately knowledgeable of the data, that we are likely to peak towards the end of January through to the early part of February.

And I think you will find that even though there may

be light in the sky, that the streetlights are usually on at that time. Certainly hour ending 8:00 o'clock you would see the lights on.
Q.709 - 8:00 p.m.?
MR. LARLEE: 8:00 a.m.
Q.710 - 8:00 a.m. And again with exhibit PUB-15, I would like you to go to column 5. And this deals with percentage coincidence factor.
And what I want you to do is look at lines 4 and 5 where GS I, primary distribution and secondary distribution are both shown as 87.7 percent, and look at lines 6 and 7 where GS II primary distribution and secondary distribution are both shown as 88.9 percent.
Do you have those figures?
MR. LARLEE: Yes, I do.
Q.711 - Now the coincidence factor between GS I and GS II is so small that it is almost identical. One might expect a larger difference.
Would you please comment on the fact that the difference is so small?
MR. LARLEE: I guess the commentary I would have is that the coincidence factors that are there are derived figures. And the input that those derived figures come from are load factors.

And in the CARD hearing we did look at and discuss through the IR process the load factors for the General Service classes. And those load factors haven't changed either since the CARD hearing in the 05/06 cost allocation study we reviewed or in several years of cost allocation studies previous to that.

I don't think it's unreasonable for the coincidence factors to be relatively close. Our information is that the class, the general service class, does tend to peak a few hours later than the overall total system, which makes sense given that it has a high commercial content and that businesses tend to open a little bit later than a residential load would come on line.

So to my way of thinking those coincidence factors do look reasonable.

Q.712 - Now that's it for exhibit PUB-15 and I'm now going to deal with a series of questions on -- deals with essentially intra-class equity.

Again we are going to be using exhibit A-76 and at this time I would like you to turn to appendix I, schedule 4.6, which was revised February 7th 2006. And we are also going to look at appendix II which is the Rates, Schedules and Policies Manual, sometimes referred to as the RSP.

Now the initial questions are directed to the service charges for urban customers and rural customers.

Now with respect to appendix I, schedule 4.6, which is at page 19, in column 8, the customer service costs for line 3 residential electric heat and line 4 residential, all other customers, are both shown as $23.04 a month, is that not correct?

MR. LARLEE: The column heading is "Customer Costs", but yes, that's correct.

Q.713 - Yes. Column 8, "Customer Costs". Now I want you to look at appendix II, and the page noted in the upper right corner as RSP N-1. Now the first category at the top of page RSP N-1 is "Residential/Urban" and it shows a service charge of $19.80 per billing, is that correct?

MR. LARLEE: Yes.

Q.714 - And the second two categories are "Residential/Rural" and "Residential/Seasonal" where the service charge is shown as $21.70 for both categories, is that correct?

MR. LARLEE: Yes, that's correct.

Q.715 - Now is there anywhere in the evidence in this hearing where cost analysis has been provided to show why it is appropriate to have a split between urban and rural customers?

MR. LARLEE: No. Those rates are a result of applying the same rate increase to both urban and rural service charges.

Q.716 - Have any cost studies been carried out to determine if it is appropriate to have a split between urban and rural?

MR. LARLEE: Not to my knowledge, although conceptually we tend to feel that it is reasonable just by our understanding of the system that when you get into an urban environment you are serving several customers off single transformers. Sometimes a single piece of secondary will serve several customers. Customers are closer together, so you have fewer poles, fewer lines. You don't require the voltage support infrastructure that you have out in rural areas. So that it seems as though it makes sense that there is a difference, but really the underlying reason for the difference that we see in these service charges is because historically it's built into the rate and has been for many, many years.

Q.717 - Is there -- in the evidence filed in this hearing is there an explanation of the circumstances under which a customer will pay a rural service charge rather than an urban service charge?

MR. LARLEE: Yes, there is, and it's on RSP N-1, the page we are looking at right now. I can take you to it. It is the very first paragraph in N-1 explains where this residential/urban charge is in effect, towns and villages with populations over 2000. And the residential/rural are all other customers.

Q.718 - Now is it fair to say that a person living within a municipality such as a village, town or city should be paying an urban service charge?

MR. LARLEE: If they meet that criteria in RSP N-1, yes, they should be.

Q.719 - Now what procedures does Disco have in place to ensure on an ongoing basis that urban and rural customers are billed for the service charge appropriate to their being in a rural area or an urban area?

MR. LARLEE: I'm not aware of any ongoing reporting or ongoing review that is automatically built into the system. There may well be one. I am aware in the past that when municipalities have changed their status, for instance the amalgamation of Newcastle and Chatham into the City of Miramichi, that a significant review took place at that time for not only those customers but the entire province to review the entire situation.

Q.720 - Now I'm going to bring a little bit of personal information into this. I live in -- and it's perhaps giving evidence, but the question that follows is not dependent but I will give you my personal circumstances -- I live in the Riverview subdivision of the City of

Fredericton just off the Kimball Road in an area of land that has been within -- well within the city -- Fredericton city limits for well over 40 years. Now the subdivision I live in, the development only started about 20 years ago. Now arising out of this hearing I had occasion to review my own billing from NB Power and note that my rate category is listed as residential/rural and my service charge is $19.44 a month. I just provide that information by way of background.

Now is it possible that other urban customers of Disco are being billed at the residential/rural rate?

MR. LARLEE: It is possible. But it appears that if the situation you are describing in your case is correct, then you are being billed that particular charge in error and that you should be billed at the urban rate.

Q.721 - And for other persons who find themselves in that circumstance, what would be the procedure for them to follow?

MR. LARLEE: Well they would contact NB Power through the 1-800 number and have an agent review their account and make the appropriate corrections.

Q.722 - Now still again with exhibit A-76. And this time we are going to deal with residential rate design. And I want to you to turn to appendix 2 which is "Rate Schedule and Policy Manual" at pages N-1 and N-2, which I believe we have already open.

Now there are many ways in which residential rates could be structured in order to recover the revenue requirement for the residential class so as to meet some target revenue/cost ratio, is that correct?

MR. LARLEE: Yes. There is almost an infinite number of ways.

Q.723 - Thank you. Now what I want to deal with is ask you to tell us what the scope of the options considered by Disco in regard to attaining what it considers to be necessary increases to its residential class revenue, and ask if you would not agree that the components that might be considered would include (1) the amount of the service charge; (2) the size of the first block, if there are more than -- if there is a two block rate; and (3) the price of the first block and the second block if there is a two block rate.

MR. LARLEE: Well, I think you have described exactly the considerations that we took into play when we made the adjustments to the residential rate.

On top of that, obviously we had the Board's ruling on how and how quickly to reduce the gap between the first block energy rate and the end block energy rate. So those

factors are what we took into account.
Q.724 - Now assume the Board's December 21, 2005 CARD ruling had not directed Disco to phase out the two block rate design in three steps.
Would you please comment on how Disco's proposed rate design might differ from that which has now been proposed?
MR. LARLEE: I guess I have difficulty answering that hypothetical.
Q.725 - It is a hypothetical, I agree.
MR. LARLEE: Obviously under that situation, without the Board's ruling, the circumstances would have been completely different. So it would have been conceivably a different rate design.
Q.726 - Now dealing now with the Board's actual ruling, that the distinction between the two existing blocks is to be eliminated over a period not to exceed five years, would you please explain why Disco has in exhibit A-76 responded by increasing the first block size from 1300 kilowatt-hours to 1400 kilowatt-hours?
MR. LARLEE: Well, first off it's consistent with the previous proposed rates that we proposed for 05/06. So it was consistent with that rate design which everyone was familiar with.
Second the Board didn't rule specifically on that

particular aspect of the rate. And three I felt that it still provided some benefits. And that benefit is the following.

When you increase the block size you do increase the revenue, all other things being equal. And then you can use that increased revenue to limit an increase to another component of the rate.

So in this case really what's happening is in the other component rate that's being limited from increasing is the end block rate, which tends to (1) accelerate, closing the gap and (2) limits the impact on very large customers.

Now in this first round leading to elimination of the two block rate, did Disco consider either holding the first block size or in fact reducing it?

MR. LARLEE: No.

Q.727 - We are now going to look at -- still in exhibit A-76 we are going to look at the general service rate design. And it will be appendix 2 exhibit A-76, pages N-3 to N-6.

Now as with the residential rate design there are many ways in which general service rates could be structured in order to recover the revenue from this class so as to meet some target revenue/cost ratio, is that correct?

MR. LARLEE: Yes.

Q.728 - Now what I would like to ask you is if, when Disco was considering the various options, that the scope considered in regards to deciding how it should collect what it considers to be necessary increases to its revenue for the general service classes, would have included the following components, (1) the amount of the service charge; (2) size of the first block; (3) the price of the first block; (4) the price of the second block and (5) the size and nature of the demand charge?

MR. LARLEE: I guess at an outlying level -- at an outlying level, yes, those are what's considered. There are certain features built into this rate that I also considered that impacted how we looked at those different components.

Q.729 - Would you elaborate on the other considerations?

MR. LARLEE: Well, I guess the first one is the relationship between the general service I and the general service II rates and the difference in the demand charge between the two rates.

We have, and it's as a result of a Board ruling, we have been increasing the demand charge on the general service II rate, which is the all-electric rate, since 1992. And with this rate proposal we are continuing to do that.

In this particular rate proposal we are closing the gap between the two demand charges by one-third. So that was one component that I looked at.

The second component of this rate is that only customers that are greater than 20 kilowatts have a demand meter. That's a key component of this rate. Because a large portion of the customers in this rate don't have demand meters. There is about 24,000 customers on the rate. 11,000 of them approximately don't have demand meters. So really they are metered and look like, from an infrastructure point of view, wires and poles and so forth, not from a load point of view, but from an infrastructure point of view, look very much like residential customers. They require the same amount of equipment and so forth.

So this rate has this feature built into it that there is no charge under 20 kilowatts, therefore the customer doesn't require a demand meter which saves everyone money, saves the utility money, saves the customer money, because demand meters are much more expensive than regular meters. Customers greater than 20 kilowatts do have a demand meter. And all kilowatts above 20 kilowatts there is a demand charge.

But the rate has a declining block structure. And there has been a lot of discussion about declining block structure. The declining block structure in this rate has a very specific purpose. It's not at all like the declining block structure for the residential rate. The first block rate is intended not only to recover the energy cost, but also the demand cost for the first 20 kilowatts. So in other words, customers without a demand meter are more likely to have more of their energy consumed in the first block and are at the first block rate. So that there is a balance that has to be maintained between the demand charge and the difference between the first block rate and the energy block rate. I'm sorry. It's a long way to get there. But part of changing these rates was to make sure that balance stays intact, that the first block energy rate -- the difference between the first block energy rate and the end block rate stays in balance with the actual level of the demand charge. So that was the other thing that we looked at. And the third item is that historically we have maintained the service charge for the general service rate at the same level as the residential urban rate. So that was the other consideration.

Q.730 - Thank you. Now you would confirm for me that Disco followed the Board's December 21, 2005 CARD ruling and actually reduced the number of blocks in the general service II rate class from three blocks to two blocks?

MR. LARLEE: Yes. That's correct. And if you look at the numbers you can see that it was relatively easy to do, that the differences between the rates weren't that great. And we were well on our way on that path anyway.

Q.731 - Thank you. Now you were present when Dr. Rosenberg provided his testimony in this matter within the last week?

MR. LARLEE: Yes, I was.

Q.732 - Thank you. And during his testimony he commented on Disco's proposed rate design for general service. What comments do you have in respect of Dr. Rosenberg's proposed rate structure for general service?

MR. LARLEE: Well, the only comment I have is that I don't believe Dr. Rosenberg picked up on the balance that I have just described to the Board, that there is a balance that has to be maintained between the first block and end block rate that should match the demand charge. Because he was -- if my memory serves me correct, he was recommending energy charges that lined up with residential. So the balance really is within the general service class. And it is related to the fact that customers with less than 20 kilowatt demand don't have a demand charge.

Q.733 - Thank you.

MR. MACDOUGALL: Mr. Chair, if I could just -- on the latter point of comments, I don't think the question was put by either Disco's counsel or Mr. MacNutt to Dr. Rosenberg. So I believe it is a little unfair for this witness, on a question from another counsel, to be indicating what they think Dr. Rosenberg may have had in his mind when neither party asked Dr. Rosenberg about this issue.

I just would like to put that on the record. Because he did a very sophisticated analysis and was open for cross examination by all parties. And he was not cross examined on this point. I think it is very unfair --

CHAIRMAN: Mr. MacDougall, I appreciate what you are saying. Might I suggest that you contact him. And if he wants to put an undertaking on the record of his explanation then the Board will certainly receive it.

MR. MACDOUGALL: I will attempt to do that, Mr. Chair. I do know he is out of the country for the next couple of weeks. But I will try to do that.

CHAIRMAN: Okay. Thank you.

Q.734 - Now, Mr. Larlee, I would like you to turn to exhibit

A-76, your evidence, appendix I, schedule 4.6, and I would like you to go to column 8, lines 5 and 6.

MR. LARLEE: Yes, I have that.

Q.735 - Now why does Disco propose the same customer service charge for general service customers as for residential, even though table 4.6 shows a cost of approximately $37 for general service compared to approximately $23 for residential?

MR. LARLEE: Well there is two reasons. One is consistency with past rates. Historically we have kept them the same. I can't speak for previous rate designers. However, a rationale would be, as I just explained, that a large number of general service customers look exactly like residential customers when it comes to the infrastructure required to supply them, that they require relatively small transformers, that -- well essentially a 200 amp entrance which is the norm now in New Brunswick. So that for a large portion of these customers a service charge in the order of something similar to residential is quite appropriate.

Q.736 - Thank you. Now why would it not be fair to have at least a $25 per month service charge for general service customers?

MR. LARLEE: Well I think it's fair based on my previous explanation, and the other aspect of it is as well that larger customers are paying a demand charge. And for many of them a demand charge is essentially a fixed charge, that they are going to see the same demand every month and as a result the same demand charge. So that there is that added aspect to it.

Q.737 - Thank you. Now we are going to deal with the small industrial rate design, and this is exhibit A-76, and appendix II, that's the RSP manual, pages N-7 to N-8. And we are also going to look at the evidence of Mr. Marois in exhibit A-76 and that's table 1 on page 2. And it's perhaps not necessary to turn up the evidence of Mr. Marois except to confirm what I am going to ask you. Now Mr. Marois' evidence in exhibit A-76, page 2, table 1, at column 2, line 4, Disco is proposing an across the board rate increase of 11 percent for small industrial, is that not correct?

MR. LARLEE: Yes, it is.

Q.738 - Now again we want to look at the options or considerations carried out by Disco in regard to deciding how much it should collect, what it considers to be the necessary increases to its revenue for the small industrial class. And I would ask if you would not agree that the rate components that were considered might include, one, the amount of the service charge, two, the size of the first block, three, the price of the first block, four, the price of the second block and, five, the size and nature of the demand charge?

MR. LARLEE: In this particular rate structure there is no service charge. So a service charge wasn't considered when we looked at increasing the rate for this proposal. We did increase the demand charge and the energy charge and, as you suggested, we increased them all by the same amount. I didn't consider changing the block size structure because there is really no reason to. This rate is well accepted by customers and there is no driving need to change the block size structure.

Q.739 - Why did you not include a service charge for this class?

MR. LARLEE: Well primarily because it has never had a service charge in the past. So essentially to be consistent -- to provide a consistent rate through time which is one of the tenets of rate design, we didn't see any need to introduce that change.

Secondly, for larger customers it's quite common not to have a service charge, and the reason being is because the service charge tends to make up a relatively small portion of their bill and it becomes -- really becomes a

nuisance to the customer and they would tend to prefer that those charges be grouped in or be covered through other types of charges.
Q.740 - Now I listed off a number of considerations that you confirmed that Disco took into account. Were there any other considerations in arriving at the rate for the small industrial?
MR. LARLEE: No, I don't believe so. As I said, in the past several rate increases we haven't made any structural adjustments to this rate. We have just increased all the components of the rate by the same amount. So we again did the same approach here.
Q.741 - Thank you. Now we have just identified a number of components and you would agree that how each of these components is changed will affect the price signal to the customers?
MR. LARLEE: Yes, I agree with that, but because each of the components were increased by the same amount there would be no change in the price signal as a result of a structural change to the rate. The change in the price signal would just be the overall amount of the rate.
Q.742 - Now what process or analysis did Disco carry out to test which components it should change for the present application?

MR. LARLEE: There is no formal analysis. Again conceptually this rate makes good sense. Now -- and perhaps I should explain one of the features of this rate. It appears as though -- when you look at the rate, $5.88 per kilowatt, it appears to have a very low demand charge, but in actual fact it doesn't. Because the size of the first block is dependent upon demand. So in actual fact there is a demand component built into the size of the first block. So the easiest way to think of this rate is if you take the difference between the first block and end block, six cents almost, 6.02 cents. That 6.02 cents is the demand charge. It is 100 percent demand charge if the customer exceeds 100 kilowatt hours per kilowatt. 100 kilowatt hours per kilowatt is approximately 14 percent load factor. So if every customer who exceeds 14 percent load factor, which would be the majority of the customers in this class, is actually paying a demand charge that is equal to $5.88 plus the difference between those blocks, and I don't have the numbers written down here, but it's in the order of -- it equates to something in the order of $10 a kilowatt. So the reason for this structure, and the structure has been around for a long time, is so that customers that are -- that have a very, very low load factor don't pay unreasonably high cents per kilowatt hour rates overall at very low load factors. It tends to temper what happens on a cents per kilowatt hour basis overall for customers with very, very low load factors, which is why it's one of the rates that is preferred by rate designers. The down side of the rate, as I'm sure you can figure out, is that it's very difficult to explain to customers. But --

CHAIRMAN: And Boards. We will take our break now if you are through, Mr. Larlee. Thank you.

(Recess)

CHAIRMAN: I had asked counsel to talk about summation and speak to one another during the break. I will just go around the room. Mr. Morrison, I know what your approach will be, sir.

MR. MORRISON: I would like to do it next week as originally planned, Mr. Chairman.

CHAIRMAN: What is your intention? Are you automatically going to put in a written brief or what?

MR. MORRISON: The practice in the past was that we delivered an oral argument and I provided my written notes of that argument to the Board, if the Board wanted to review it at a further time. But I'm happy to deliver an oral argument, Mr. Chairman.

CHAIRMAN: I think if I understand Mr. Hyslop's concern as conveyed to me by Mr. MacNutt, was that he would be unable to do that at that time. He wouldn't have time to do it. And then he would be in a situation where he would be filing it later and we all know what that could cause. So perhaps if counsel would consider this, that you give your oral presentations. If during the summation and the rebuttals there are points which let's say involve a point of law or something of that nature, or there is a particular piece of evidence that the Board wants counsel to check into further, et cetera, or the law, then we will call for you to file written briefs in reference to that particular subject matter, and we will set up a time table so you each will have an opportunity to review one another's briefs and then send in a supplemental if you want to. How does that sound?

MR. MORRISON: That sounds to make perfect sense to me, Mr. Chairman.

CHAIRMAN: Anybody find difficulty with that?

MR. GORMAN: Mr. Chairman, that works fine for us. But I just wanted to clarify for next week. As I understand it, submissions would be on Monday and Tuesday and if that wasn't sufficient then it would be on Friday, is that still correct?

CHAIRMAN: I think we are going to do the Monday, Tuesday, if we need both of those days, and then we will take that break and come back, because the Board likes to hear what everybody has had to say, and then we sort of caucus and come back and say, look, in your rebuttal would you please cover the following things which were of interest to the panel that you cover for us. So we would do Friday.

MR. GORMAN: Okay. The other question that I have relates to the final argument on Rogers. I'm not sure that that has been established and I'm not going to be here the first week in April, so I'm trying to nail that down, if I can.

CHAIRMAN: Mr. Morrison, help me out, because my understanding is that people had talked about doing it at our premises on the 24th.

MR. MORRISON: That was my understanding, Mr. Chairman, and I have got confirmation from Ms. Milton that she is available and I have sort of an 80 percent on Mr. Ruby, and I'm hoping I will have that nailed down in the next hour, so -- for the 24th. But they could do that obviously anywhere.

CHAIRMAN: Okay. Well then let's say after lunch you should know for sure.

MR. MORRISON: Yes, sir.

CHAIRMAN: All right. We will leave that until then.

Now --

MR. MACDOUGALL: Mr. Chair, on that I am a little confused, because you just responded to Mr. Gorman and said that we would come back to do our reply on the Friday, and the Friday is the 24th. So are we still doing the reply for this hearing on the Friday, or are we doing Rogers on Friday?

CHAIRMAN: Well we are doing the reply for this hearing, and the few counsel who are involved indicated through Mr. MacNutt to me anyway that they didn't think that once you got to the reply time that it was going to take a full day.

MR. MACDOUGALL: That's fine, Mr. Chair.

CHAIRMAN: You know, and that Rogers would go after. Is that fair, Mr. Morrison?

MR. MORRISON: Having not been intimately involved in the Rogers hearing I'm hoping that they will be able to have very expeditious final arguments.

CHAIRMAN: Well there is only -- we have heard a lot about poles and --

MR. MORRISON: More than you ever wanted to know, I'm sure.

CHAIRMAN: And ever need to know.

MR. MORRISON: Well most people ever wanted to know about poles.

CHAIRMAN: Well I won't start drawing similes any further than that.

MR. MORRISON: I will certainly --

CHAIRMAN: I think we can do it all right.

MR. MORRISON: I will certainly communicate your sentiments to the solicitors involved.

CHAIRMAN: Yes. And if we do it on the Friday then presumably we can do it in this room which -- there will only be what, three parties I guess that will be involved, or four. Mr. Public Intervenor, you weren't there the last time, were you?

MR. HYSLOP: I haven't been following the pole attachment process.

CHAIRMAN: Well you should sit in for the summation then.

MR. HYSLOP: I was warned I should be showing up, so I will probably sit in for that but I doubt I will have any comment on the positions of the parties to that aspect of it, Mr. Chair.

CHAIRMAN: Well it will be good if we can go ahead in this room, because then we do have some space restrictions in our premises. Okay. Having said that, then, Mr. Hyslop, you had put a motion -- or you started to and I asked you to hold it until now, and it dealt with some of the exhibits that have been marked I believe, A-152, 153, 154 and 151. So go ahead, sir.

MR. HYSLOP: I'm prepared to cross on them right -- oh, you want to hear my argument on --

CHAIRMAN: No. I'm sorry. What I wanted to know -- I think you asked that Disco put up a witness.

MR. HYSLOP: That's correct. My -- we have had undertakings given this morning, they are now marked as exhibits A-151, A-153, and there was also A-146 which was marked earlier, and these exhibits deal with changes to the interpretation of the purchase power agreement which have resulted in a 37-and-a-half million dollar swing in the potential adjustment relating to the hydro adjustment under Article 6.11 of the Genco PPA. That is a very significant amount of money and I don't know of any -- it doesn't appear there has been an amendment to the contract. It appears that this has been an in-house interpretation between Disco and Genco. I don't completely understand how this adjustment was made. I don't know how the adjustment is made within the context of the PPA contract itself. And if that money belongs to Disco as opposed to Genco why that could have some ramifications at the end of the day on the arguments that I may be making before the Board on the revenue requirement.

So I would move, Mr. Chair, to have the opportunity to cross examine an appropriate witness, to be determined of course by the Applicant, on the responses that they have given, A-151, A-153, A-146 as it relates to the hydro adjustment.

CHAIRMAN: Mr. Morrison, any comment?

MR. MORRISON: Obviously, Mr. Chairman, I am objecting to it. If you look at the questions you will recall that these came about under cross examination of the panel. There was extensive cross examination of Ms. MacFarlane on this issue. And I think the undertaking that seems to be the most contentious is A-151, and we were asked to provide what the number -- what the difference is. And we provided that number and an explanation as to how that was arrived at. I don't think the witness can offer anything more than that.

Now Mr. Hyslop's comments that this somehow has anything to do with the 2006/2007 revenue requirement, well it doesn't. It doesn't impact rates. And the question as to whether if there was some type of surplus that could be dealt with by Disco in some fashion, well the panel was available on that and could have been cross examined on that issue, whether there was going to be a surplus or not or what could be done with it.

So I guess I am opposing the motion to have the witness recalled because I don't think they can add anything further to what has been responded to in the undertaking.

CHAIRMAN: Any other party got any comments?

MR. LAWSON: Yes, Mr. Chairman. Just I think the Public Intervenor's position is reasonable. If they don't have anything more to add as a witness then the witness won't take very long.

CHAIRMAN: Don't take umbrage with this, Mr. Marois, but do you feel capable of informing yourself to be subjected to some cross on these responses?

MR. MAROIS: I can try. Sure. It is going to depend on the questions, but --

CHAIRMAN: Well the panel spoke -- or we read these through when we were out on our break, and technically it doesn't have to do with next years' revenue requirement. It may impact next years' revenue requirement but I think the panel has interest in understanding -- and if you remember I indicated to Ms. MacFarlane when she was on the stand that this would not be necessary if the rainy day accounts that were collapsed in the late '90s were still in place. So we will give counsel the opportunity to ask some questions of this panel in reference to these, and if it's unable to respond to it, why then we will ask Disco to get somebody who is able to.

MR. MORRISON: Fair enough, Mr. Chairman. I'm assuming we are going to continue with this panel and finish this panel and we will deal with that issue, so that Mr. Marois will have some time to familiarize himself with the issue?

CHAIRMAN: Yes. That should do, yes.

MR. MORRISON: Thank you.

MR. HYSLOP: Mr. Chair, I'm not adverse if the panel or Mr. -- the Applicant wanted to put some other witness, Ms. MacFarlane or Ms. Clark, who were involved with that line of questioning -- recalling them if they are available. I see Ms. Clark is here. But that's completely to the discretion of the Applicant and whoever they want to put up is fine with me.

CHAIRMAN: Yes. I agree. It may well be that Mr. Marois will be able to familiarize himself sufficiently to respond to the questions and we won't have to bring somebody else down. Okay. Any other preliminary matters? It's just about time for our noon break. Go ahead, Mr. MacNutt.

MR. MACNUTT: Thank you, Mr. Chairman.

Q.743 - I'm going to pick up exactly where I left off with respect to small industrial rate design. And you provided us with a lead-in to the following question. With a

demand billed rate, changes in the demand charge as compared to energy charges will affect customers differently based on their load factor, is that not correct?
MR. LARLEE: Yes, that's correct.
Q.744 - Now would you not agree that within the small industrial class the cents per kilowatt hours might vary as much as 100 percent from the smallest customers in the class to the largest customers in the class? And I will give you the second question on the same point. Would you not agree that the smaller customers will be paying twice as much per kilowatt hour as the largest customers?
MR. LARLEE: I can't agree with what you said because you are using the term largest and smallest. If you were to say high load factor customer versus low load factor customer, then I could agree with that. I don't -- it's not a function of size. It's really we are talking about a function of load factor that's going to impact the overall cents per kilowatt hour that the customer is going to pay. And when I say overall cents per kilowatt hour I mean the blended charge of the demand charge and the energy charge.
Q.745 - But doesn't the rate vary with the annual kilowatt hours per customer? You used the phrase load factor, and

I'm trying to get to how load as opposed to load factor impacts the customer's low load versus high load.

MR. LARLEE: Well obviously a larger customer will have a larger bill. The more they consume the higher their bill will be. But it's a two part rate. There is a demand charge and there is an energy charge, and within that energy charge it's split again to provide the block structure. So any customer on an average basis will be paying a blend of those two charges. If a customer has a very high demand but consumes very little energy, then they will have a relatively high cents per kilowatt hour charge. That's because they have a low load factor. But it's because they are getting a larger component of their bill is the demand charge, regardless of their size. If they have a very low load factor relative to their energy consumption, then they will have a lower cents per kilowatt hour overall. And when I talk about load factor that's what I'm talking about. It's really the relationship between their monthly peak demand and the energy that they consume.

Q.746 - Now have you ever studied the relationship between annual usage and average cents per kilowatt hours?

MR. LARLEE: No. Again because the average cents per kilowatt hour is really a function of load factor. Now if you get into -- when you get into large customers in this class you are going to be talking about specific types of operations, saw mills comes to mind, fish processing plants, so on and so forth. They would have -- most would have relatively high load factors. It's all dependant on whether they are 24 hour a day operations or they might be 24 hours a day five days a week or they may be eight hours a day five days a week, and that really sort of determines their load factor. But in the larger types of customers they are going to be running at least eight hours a day, whereas when you get into the very small types of accounts, they could be pumping stations, and if they are back-up or if they are emergency pumping stations they would be used quite infrequently and may only be used to test, for test mode. And in that case you are going to see quite a high demand, very little energy consumed. So that's a very low load factor and they are going to have -- going to pay a very high cents per kilowatt hour rate for the ability essentially to test their pumps.

And those customers would likely be relatively smaller than say a fish plant or saw mill.

Q.747 - Now how can the Board be comfortable that an across the board rate increase for this class is fair as opposed to some more sophisticated analysis to determine the best way to apply the increase so as to best arrive at rates that provide the greatest measure of intra-class equity?

MR. LARLEE: Well like I said earlier, when you look at how this rate appears to a customer with -- that consumes more than 100 kilowatt hours per kilowatt a month, in other words, has a load factor of above 14 percent, you get a demand charge in the order of $10 and an energy charge in the order of 5.34 cents. So I think that those numbers are sort of well within the realm of reasonableness for this class. That's the -- I guess to me that's sort of the measure that we would use to make sure that the rate is structured properly.

MR. MACNUTT: I have no further questions for this witness panel, Mr. Chairman.

CHAIRMAN: Thank you, Mr. MacNutt. Do you want to stay where you are until the break or do you want to move back to your normal perch?

MR. MACNUTT: This is fine, Mr. Chairman.

CHAIRMAN: Move at the break. The panel may have some questions.

<u>BY THE BOARD</u>:

MS. LEBLANC-BIRD: Mr. Larlee, you indicated in relation to small industrial customers that there has been no change in the block size, that you don't intend to have a change in the block size in this hearing, and that further the change in the structure of the rate gives a price signal. Is that your evidence? Is that your opinion?

MR. LARLEE: Yes. Really there is two things you can do with a rate to change the price signal. You can simply raise it. Obviously that sends a certain price signal. But similarly to what is being proposed for the residential rate, you can change the structure of the rate so that you are sending a price signal to a certain sub-group of that class.

In the case of the residential rate we are trying to reflect the cost caused by electric heat customers. So that really requires that we at the very least flatten the declining block structure. So that in and of itself will send a price signal to a certain group of customers within the class. So that's what I was referring to when I said we didn't perceive a need to change the block structure of the small industrial rate.

MS. LEBLANC-BIRD: What price signal would follow from increasing the block one from 1300 hours to 1400 hours? What would be the price signal that would be meant to be sent by that move?

MR. LARLEE: Well I think that the driver for increasing that block size wasn't so much to send a different price signal, but was intended to provide a certain amount of muting to the impact of flattening the rate on larger customers. So in the case of the residential rate the primary action that's sending a new price signal is reducing the gap between the first block energy rate and the end block energy rate by one-third. I mean that's really what is sending the price signal. And increasing the block size -- and it's slight but it does help reduce the impact on the largest customers.

MS. LEBLANC-BIRD: Thank you.

CHAIRMAN: The Vice-chair and I were just chatting, because my intention was to give Mr. Marois some time to get up to speed before counsel would be able to put some questions on the interrogatories, and of course we will save our questions until after they have had the opportunity to do that.

But the second thing is there are still some outstanding information requests that really are applicable to this panel, and, Vice-chair, would you like to indicate the one that you have been -- or two that you have been thinking of?

MR. NELSON: One was the undertaking that -- for the P&L until the end of February.

MR. MORRISON: Sorry. That will be ready at lunch time.

MR. NELSON: And I was going to question on the hydro flow adjustments which is 263 -- IR Exhibit A-80 263 is what I was going --

CHAIRMAN: Commissioner Sollows in his inimitable fashion has just indicated to me that he has enough questions about subject matter other than the undertakings and responses here to take us through to lunch. So, Commissioner Sollows, go ahead, sir.

DR. SOLLOWS: Thank you, Mr. Chair. Good morning. My first question is -- I think I will deal with some of the exhibits, and I am going to hold one question back. The question I have relating to hydro I will wait until we have heard from the final witness. But I'm referring to exhibit A-154. It was a response to an interrogatory given today. And when I read the last paragraph which is one sentence, I'm wondering if there is a word missing or something in that, when I read the cost of Disco to the incremental energy would be based on the vesting energy price up to the energy entitlement of 12,000 gigawatt -- I assume hours -- entitlement would be based on market prices. I'm having a little bit of a difficult time parsing that sentence.

MR. MAROIS: I will just grab a copy. Yes. We will have to rescind that. There is another final version. I just realized there is at least a sentence missing.

DR. SOLLOWS: Oh, okay.

MR. MAROIS: So we will rescind that.

CHAIRMAN: Can you just -- can you give us the appropriate sentence?

MR. MAROIS: Well, I don't remember by heart. But I remember there is a sentence missing.

CHAIRMAN: That looks like an after-lunch deal too.

DR. SOLLOWS: I still think I can get us to lunch. Mr. Marois -- or no, I think I will deal with these questions that came up from Board cross.

Now Mr. Larlee, you indicated that for the General Service rate that below 20 kilowatts they don't have demand meters.

How do you determine that their demand is less than 20 kilowatts if you don't have a demand meter?

MR. LARLEE: That's a good question. We use a cutoff of 5000 kilowatt-hours a month. So the rate is structured so that the customers below 20 kilowatts don't have a demand meter.

But the demand meter gets installed if a customer consistently exceeds 5000 kilowatt-hours a month. I believe it's over three months or three consecutive months that there is a report that their account pops up. And then a demand meter would be installed.

DR. SOLLOWS: And that 5000 kilowatt-hours per month, if it was just 20 kilowatts, what would that load factor be?

MR. LARLEE: It's quite a low load factor. 35' I think.

DR. SOLLOWS: Thank you. Now you also indicated in your response to one of Mr. MacNutt's questions that many general service customers have the same demand every month, fairly constant and flat demands.

That would tend to indicate that their annual load factor and their monthly load factor would be fairly close to one another, would you agree?

MR. LARLEE: Yes. Yes, it would. And I think the point I was trying to make there is that rather than being consistent every month, it is known to them.

In other words, throughout the year they are going to have sort of similar demands. It ends up being very similar to a fixed charge.

DR. SOLLOWS: Okay. Thank you. And just finally on the cross regarding small industrial rates. And I will deal with some other aspects of this later in my prepared questions.

We heard earlier that one of the reasons that certainly large industrial customers are heavily impacted and below the cost of service is that they tend to be heavily hit by allocations related to energy, heavily influenced by energy price.

And I guess my concern would be in that rate design and even in small industrial rate design that we have struck the appropriate price signal between demand and energy.

Do you have anything that you can -- guidance you can give us as to how you would look at that?

MR. LARLEE: Well, I think if we were going to look at the small industrial rates specifically we could probably extract a sufficient amount of information out of the cost allocation study that would sort of help us and guide us in adjusting the balance between demand and energy charges of that rate.

And given that we have seen dramatic increases in fuel prices over the last couple of years, and if they are sustained, then that may well be in order.

DR. SOLLOWS: Okay. Thank you. I would like to now go to my prepared questions.

And Mr. Marois, table 2 of your evidence you have the revenue cost ratios. And I don't think you need to look it up for this. And this is more general.

You have already answered a number of questions about your target revenue cost ratios and clearly stated that your and NB Power's interpretation of the 95 to 105 percent range. So I don't want to revisit that at all.

But I would like you to consider a hypothetical question. If the Board had unambiguously stated that the 95 percent to 105 percent range pertained to acceptable outcomes or what might be called realized revenue cost ratios and that class revenue cost ratios should always be moved towards 100 percent on a prospective basis, what would you have done differently in your rate proposal?

MR. MAROIS: I think I'm going to ask you to repeat your question. I'm not sure I grasp the --

DR. SOLLOWS: If the Board had clearly stated that the 95 percent to 105 percent range related to outcomes and not the prospective or projected outcome, but the actual or realized outcome and further said that class ratios should always be moved towards one or 100 percent on a prospective basis, like in a future test year basis, what would you have done differently in the rate proposal?

MR. MAROIS: I'm not that familiar with how other utilities deal with the prospective versus actual outcome issue. I believe Dr. Rosenberg, that he mentioned that sometimes that's dealt with by imputing a certain or a different shaded rate of returns to different rate classes who represent different risks to the forecast of the different rate classes.

In Quebec the Regie tried to do a similar thing. But I'm not sure of the status of it. But it's something that was quite difficult to do.

So I guess my layman's answer to that would be even though it is potentially a real concern, finding a solution I think is probably quite difficult. And that's one of the reasons why you do have a band eh.

I mean, the band, be it anything, but the band 95 to 105 in my mind is to take into account that this is not a perfect science. Cost allocation study is not perfect. The numbers you use are not perfect. They are forecast. There is so much judgment made throughout the process. So that's why unity is sometimes a bit of a fallacy. Because even if you achieve unity, it's a unity of what, I mean? Because there is lots of judgment involved. There is lots of uncertainty that's involved.

So that's why I believe in ranges of reasonableness. So in my mind the range already captures the concern about prospectiveness versus actual outcomes to a certain degree.

If the Board would have ordered us to move to unity, it's hard to determine exactly what would have been the impact.

But the challenge -- like right now, I mean, we believe our rate proposal is reasonable, because it does help us get closer to the range. We would have had to look at the outcome of our rate proposal to see if it brought us really closer to unity. And maybe we would have been satisfied with the same rate proposal. Maybe we would have had to go further in reducing cross-subsidization. Because I mean, your benchmark is now different. Rather than trying to get it in a range you are trying to get the unity. So maybe we would have had to put more emphasis on trying to reduce cross-subsidization and less emphasis on the customer impact.

DR. SOLLOWS: Thank you. Now we have also looked at your Board's policy instructions. They directed you to move to a revenue cost ratio of 100 percent or unity for residential customers by 2010 on the basis of a cost allocation study, and I'm going from memory here, that I think showed that the residential customers were at a ratio of 82, is that correct?

That is the old cost allocation study. And I went entirely from memory. If it is different than that just please tell me.

MR. MAROIS: My recollection is that was at the time we had a proposed rate increase as well. And that brought the residential rates close to 90 percent revenue to cost ratio. So that was kind of a starting point --

DR. SOLLOWS: Under the July 7th rates under the old cost allocation what was the ratio?

MR. MAROIS: I don't know if --

DR. SOLLOWS: I recall seeing -- the number I have in my memory is 82 percent. And I could well be wrong. But I'm assuming it was a little lower than the .84 that we have now, is that --

MR. MAROIS: I don't necessarily have the starting point. But the number we had filed last year using the 05/06 numbers, and with the proposed rate increase we had at the time, the revenue to cost ratio for residential was close to .91. It was .908.

And that could be found in schedule 6.1 of the evidence of Mr. Larlee dated April 18th '05. So that was the old CARD --

DR. SOLLOWS: Okay. That is fine. So it was anyway somewhere outside the range below 1?

MR. MAROIS: Yes, it was.

DR. SOLLOWS: And under the revised one what is the revenue to cost ratio at current rates now?

MR. MAROIS: .84.

DR. SOLLOWS: Okay. So they were -- based on the information that your Board had available, which seems to be somewhere around .9, they had told you in September of 2005 to take five years to get to a ratio of 1.

And I would look at that and say well, you know, you would move it 4 or 5 points a year and that would leave you a margin to get there. But in this case you seem to have chosen to move it by 11 out of 16 points in just one year. I'm wondering how this is consistent with this approach to gradualism, that really your Board seemed to appreciate when it gave you five years to adjust the ratio to 1?

MR. MAROIS: Well, again, I think it comes back to how I explain our table 2. I mean, I really, truly see this as two steps.

And again if you go to table 2, line 1, when we move the residential from column 1 to column 2 from a revenue cost ratio of .84 to .94, in my mind that's not addressing cross-subsidization. That's simply increasing the rates to help us recover our costs.

So it is an across the board increase. So you are not trying to address cross-subsidization. I'm just saying you need to increase the rates. Otherwise you only recover 90 percent of your cost.

Then the second decision, the consensus -- the decision you have to make in terms of addressing cross-subsidization is between column 2 and column 3. And really, as you can see there, it is very gradual. Because by applying an average increase you are already at 94. And then we are saying well, let's just increase it a little bit more to bring it to 95. At least it's within the range, the target range. So in my mind that's really the judgment call we made.

DR. SOLLOWS: But doesn't gradualism -- doesn't the concept of gradualism really have at its center the customer? And the customer was never exposed to the rates based on the column 2. They were exposed to rates based on column 1. And you are proposing to expose them to rates based on column 3, aren't they?

MR. MAROIS: My understanding of gradualism -- and maybe there is a different interpretation. But my interpretation is how much is a specific rate increase versus the average rate increase? Because the average rate increase is really something that's required to recover your cost.

Gradualism is okay, how much are you moving away from your average? And that's why other people throughout this proceeding have mentioned a rate increase. I think Dr. Rosenberg mentioned that a rate increase that is within 1.5 times the average increase could be considered gradual.

So that's why our rate proposal for residential, because it's only 1.4 percent higher than the average, averages 11.2. But at the time it was 11.6. Residential was only 13. So we are confident it's very gradual. But it's very close to average.

DR. SOLLOWS: Thank you. I now want to move topics to the large industrial rate and how someone qualifies for it.

So I would reference appendix 2, page RSP-9.

And I see that it says that a customer qualifies for this if they use electricity chiefly for manufacturing or processing of goods or for the extraction of raw materials and have a minimum contracted demand of 750 kilowatts.

So I'm interpreting that is that they must have -- any customers that are on that rate would have a 750-kilowatt demand or greater. Is that more or less correct?

MR. LARLEE: Yes. That's correct. And the key word here is "contracted". So all customers in this rate have a contract.

DR. SOLLOWS: Okay. So when this was set up why was a demand of 750 kilowatts selected as opposed to 1000 or 500 or 250 or whatever?

MR. LARLEE: 750 kilowatts has been around -- it precedes me by many, many years. And really the only evidence I have of why it was chosen is tribal knowledge passed down to me by my predecessors.

DR. SOLLOWS: Fair enough. That is far more than I have.

MR. LARLEE: And at the time it was felt that that was really the cutoff point between distribution and transmission.

Distribution, as you can appreciate, years ago distribution systems were quite weak. So the cutoff point today would be much larger and is much larger. But at the time that would have been sort of a size that made sense to go from one system to the other.

DR. SOLLOWS: So would it make any sense to review the magnitude so that it is more consistent with the current capabilities of the distribution versus transmission system?

MR. LARLEE: The way this rate is structured now, there is actually a band of size 750 to 3000 where a customer has the choice. They can choose a small industrial rate and not sign a contract and stay on the distribution system. Or they can choose the large industrial rate if they are within 750 to 3000 kilowatts, and meet the requirements of the large industrial rate and again stay on the distribution system.

So we really have sort of made some adjustments. Now customers up to 3000 can have some choice. So they can choose to sign a contract. They can choose to invest in making their facilities what we call primary meters, in other words, the metering is not at the level of voltage they use but rather at the next level up on the distribution system. And then they can be charged at the large industrial rate. So there is some flexibility in there.

We have looked at and considered sort of restructuring the large industrial rates strictly along distribution transmission lines. In other words, if you are a distribution customer you get one rate. If you are a transmission customer you get another rate, no exceptions. And of course it all comes down to customer impacts. We now have oh, approximately 30 or 35 customers that are on the large industrial rate but on the distribution system. So any changes we would make in the rates would impact those customers quite significantly.

So I think we are at a point now where we have got a compromise. But it is a compromise. And ideally the simple solution would be strictly along transmission, distribution lines. But there are customer impact issues.

DR. SOLLOWS: Thank you. Now I, as you might guess, spent some time going through the large volume of billing records that you filed earlier last year.

And when I did I found 12 of the large industrial customers, and those were marked either large industrial in the SAP database or LID or LIT in the spreadsheet database, that had billing demands below 750 kilowatts for months ranging in number from 2 to 26 months for one customer.

Are these customers billed at the small industrial rate when their demand falls below the 750?

MR. LARLEE: No. What happens is that if you look at RSPN-9 --

DR. SOLLOWS: Yes.

MR. LARLEE: -- they would be billed according to the demand of those five conditions. So as you move down through the conditions, they would be billed at 90 percent of their contracted demand.

DR. SOLLOWS: But wouldn't that -- shouldn't that have been -- okay. So their contracted demand would have been -- I guess what I'm getting at, the numbers showed as billed demand as opposed to actual demand, was under 750. So the billing demand was under 750.

Is that what I understand should be the case? But it should be no more than -- no less than 90 percent of 750? Is that --

MR. LARLEE: That's correct. That should be what they are charged, is 90 percent of 7' -- of their minimum contracted demand or the contract demand. And the minimum contracted demand is 750.

DR. SOLLOWS: And I did find quite a number that were less than 90 percent of 750 as well. I don't have the exact numbers here. But just reviewed that last night.

So I guess it comes down to the same issue that Mr. MacNutt raised with respect to urban versus rural in your billing records.

What procedures are in place to ensure that the rules that are outlined here in the rate schedule are actually applied in billing?

MR. LARLEE: Well, there is quite a rigorous process. And Ms. Clark can probably speak to it better than I could. But there is quite a rigorous process that reviews all of the bills going to large industrial customers.

So if there are cases where the billing demand -- and when I say billing demand I mean after the 90 percent has been applied -- is below, then I'm sure there is good reasons for that.

DR. SOLLOWS: Could I get you to undertake to investigate? And maybe it would be something that would be a matter for a future hearing. So that we have got a more clear record on how these kind of anomalies arise and are dealt with.
MR. LARLEE: We can undertake to look through the database and see if we can find any of those cases.
DR. SOLLOWS: Thank you. I found one large industrial customer in the database with 60 consecutive months of zero demand for power and energy. Now they don't pay a service charge. And they have been sent bills for five years of zero, I would take it.
When do they cease to be a customer? Or alternately how do you recover the customer costs?
MR. LARLEE: Well, the way the billing systems work, the SAP system works anyway -- I'm not terribly familiar with it -- but once a contract is established it literally stays on that system even after the customer has gone.
DR. SOLLOWS: Okay.
MR. LARLEE: I know I moved houses in 2002. And when I go on the system I'm -- my account in my old house is still there. It's inactive. The connect date and the disconnect dates are all there. But the account is still there in an inactive state.
So I would assume what you are seeing is you are

seeing an account but it's inactive.

DR. SOLLOWS: So it really isn't a billing record that I was looking at. It was a terminated account that just has zeroes filled in but no bills were sent?

MR. LARLEE: That would be my assessment.

DR. SOLLOWS: Okay. I have got you. Thank you. Now this one I'm going to leave until later.

Now I want to talk briefly about residential load factors, Mr. Larlee. Earlier today Mr. MacNutt introduced an exhibit. And I think it was PUB-15, I'm pretty sure.

MR. MACNUTT: Yes. It was PUB-15.

DR. SOLLOWS: Now the big question is can I find it?

Now I'm looking at this on the column labeled "Load Factor". And I see it indicates a value for residential electric heat sales, a load factor of 25.2 percent. Is that --

MR. LARLEE: Yes. That's what it indicates, yes.

DR. SOLLOWS: And that is basically the -- based on the non-coincident peak?

MR. LARLEE: That's based on the non-coincident peak. And as I talked about earlier it's also based on a coincidence factor that were I to do it again it would be different.

DR. SOLLOWS: Okay. That is fine.

MR. LARLEE: Because it's the coincidence factor that we used in previous cost allocation studies.

DR. SOLLOWS: Okay. And that might be -- we might be just following up on that for absolute clarity here.

What I would like you to do now is -- I have made some photocopies of the evidence PUB IR-101(4), page 16 which is in the evidence that was given back in July. And I assume you don't have your binders here. We don't. So I had staff photocopy them.

And I will just have the Secretary, if you could -- all copies are here. If you could just distribute them.

Thank you.

Can I ask you to read the note at the bottom of the table into the record?

MR. LARLEE: Yes. The note says "Space heating is assumed to have an annual load factor of 35 percent."

DR. SOLLOWS: I guess -- and I think you are anticipating my question. Why the difference between 35 percent here for a load factor and 25.2 percent in the cost allocation study?

MR. LARLEE: Well, again it comes down basically to their estimates. Were I to use a different coincidence factor in that underlying data, that would tend to raise the load factor.

Depending on what coincidence factor used, it probably would raise it in the order of 30 percent. So it's still not at the 35.

The other -- I'm just trying to recall the load forecast details. But the other factor may be the use of coincident versus non-coincident. But again it comes down to them both being estimates.

Q DR. SOLLOWS: So just in a qualitative sense, if the load factor of 35 percent was used in your cost allocation study, what would be the results?

I don't need a precise number. Just which directions would things go?

MR. LARLEE: Well, it's a little difficult for me to tell. Because the load factor isn't an input. The coincidence factor is. So it's -- I would have to back into it.

DR. SOLLOWS: Would it be a big effort to do that and give some -- not precise results but some sense qualitatively as an undertaking?

MR. LARLEE: I can do that.

DR. SOLLOWS: Okay. Thank you.

So now I want to go back again to PUB-15. And note that again on line 1 for load factors, the overall load factor for residential customers is shown to be 37.6 percent. And the coincidence factor is 93.9 percent, right?

MR. LARLEE: That's correct. Yes.

DR. SOLLOWS: And so if I divide the two I get 40 percent roughly?

MR. LARLEE: So that you are --

DR. SOLLOWS: 37.6 divided by .939?

MR. LARLEE: So you are getting your coincidence peak load factor.

DR. SOLLOWS: Yes.

MR. LARLEE: Right.

DR. SOLLOWS: So -- and that is about 40 percent.

So now I want you to look at again IR-101(4), page -- I think it is -- get the right one here. I think it is page 25, yes, at page 25 of PUB IR-101 subsection (4).

Now this is a table of data labeled "Elasticity Real Rate Increase Demand Reduction Effect" again prepared for the purposes of the load forecast?

What does yours say?

MR. LARLEE: It is page 25 of that IR. "Residential Adjustments Elasticity Real Rate Increase Demand Reduction Effect."

DR. SOLLOWS: Okay. Somehow the panel got the wrong one. But that is okay. We won't worry about it. You have got the one that I intended you to have.

CHAIRMAN: Have you got copies of that hidden in your file there?

DR. SOLLOWS: I don't think so. It may just be a photocopying issue. But I think I gave out the right pile.

Could you read the note at the bottom of the table into the record?

MR. LARLEE: "An annual coincidence factor assumed to be 45 percent distribution non-coincident load factor divided by 95 percent coincidence factor."

DR. SOLLOWS: Okay. And again can you -- and maybe you will have to undertake to do this -- explain the discrepancy between the two numbers and indicate the net effect that a 45 percent annual load factor for residential customers would have on the cost allocation study?

MR. LARLEE: Again the difference between the numbers is related to the fact that they are both estimates. But I can undertake to look at the impact.

DR. SOLLOWS: Thank you. Now finally on this line I want to return again to PUB-15. And I'm looking at the column 5, the "Coincidence Factor for Electric Heat Customers and Residential Non-electric Heat Customers", 2 and 3, lines 2 and 3.

Those have exactly the same coincidence factor. But I have heard it said again and again that space heating customers drive the peak. And if that was the case I wold expect them to have -- these two groups to have different coincidence factors.

So I'm just wondering if you can help me understand why they should have the same coincidence factor?

MR. LARLEE: Well, I think what you are seeing there is that the best estimate we have of coincidence factor is from four load research results. And the best load research results are from the total class.

So essentially we have just made the assumption that, lacking better information, we set the coincidence factors the same -- or we will have the same coincidence factors for both segments.

It's not -- I don't believe it's unreasonable. Because electric heat is based on people's lifestyles. It's usually during the morning, usually during the week when people are getting up and going to work, the same time they are using their other electric appliances, turning lights on, turning on the coffee pot and so forth that non-electric heat customers use. So I don't see it as being unreasonable that they would be close or the same.

DR. SOLLOWS: But the load research that you have doesn't discriminate one way or the other or provides no guidance?

MR. LARLEE: We do have some poststratified information, some information based on a subset of the load research sample. But we didn't -- we didn't do this particular analysis on that particular subsample.

Again because in this case we were just looking at providing some additional segmentation information to the class and really weren't doing a lot of in-depth analysis to refine these numbers, but just trying to give some directional information.

DR. SOLLOWS: So you do have from your load research numbers for the coincidence factor that you could put in here for the two different groups?

MR. LARLEE: We do have data for electric heat and non-electric heat from a subgroup. But I would be hesitant to use that here. Because the better data is from the total class.

DR. SOLLOWS: Okay. Can you undertake to provide what the coincidence factors are for -- or maybe they are already in the record now -- but what the coincidence factors are for those two groups as measured?

MR. LARLEE: I can provide the coincidence factors from the poststratified data for electric head and non-electric heat customers.

DR. SOLLOWS: If it is not already in the record. If it is in the record just point to it.

MR. LARLEE: I don't believe it is. The data that derives may be, but --

DR. SOLLOWS: Okay. If you could. And the coincidence factors, you know, basically that bit of information that is given here.

MR. LARLEE: Okay.

DR. SOLLOWS: Thank you.

CHAIRMAN: We will take our lunch break and come back at quarter after 1:00.

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

CHAIRMAN: Good afternoon, ladies and gentlemen. Any preliminary matters?

MR. MORRISON: Yes, Mr. Chairman. A couple of things. First in talking to some of the counsel for the intervenors at lunch time and there was some talk -- and I don't know which day it was, but many, many days ago, about providing some comments to the Board on our respective views on the exit fee provisions, Section 79. Mr. Hyslop and I at least have spoken and we just thought it might be best if we just included it in our final argument rather than take up time during the course of these proceedings.

CHAIRMAN: I think that's a good suggestion. I have been waiting for Mr. Hyslop to say something on a couple of things. And I won't tell him what they are. But that sounds good.

MR. MORRISON: Well actually I was quite disconcerted about it because it's probably the only thing that Mr. Hyslop and I have agreed on in many, many, many weeks.

MR. HYSLOP: We are both worrying we are giving away the farm now, Mr. Chair.

MR. MORRISON: Mr. Chairman, there is two undertaking responses. One is -- you will recall this morning -- it was A-154, and Commissioner Sollows asked Mr. Marois about the response, and there were some words missing in the response. And we have corrected that. It was just a typing problem. So I am going to resubmit that one. I suggest it would either keep the same exhibit number or --

CHAIRMAN: Yes. I think that's probably a good thing to do, just remark the new one as A-154.

MR. MORRISON: That's right. And sorry for the Secretary. It's undertaking number 9 from February 22nd.

CHAIRMAN: Great.

MR. MORRISON: And the next one, Mr. Chairman, is undertaking number 1 from March 13th and that's the undertaking that Deputy Chair Nelson was inquiring about this morning, which is the actual results to the end of

February 2006.

CHAIRMAN: That's A-155.

MR. MORRISON: That's all for now, Mr. Chairman. Thank you.

CHAIRMAN: Okay. Any other preliminary matters? My suggestion --

MR. MACNUTT: Mr. Chairman, sorry. I do have one. For purposes of the record it's my understanding and I have at hand, and I believe it has been distributed to the Commissioners, a response to an undertaking given by Rogers, and the transcript reference is Tuesday, February 28th 2006, page 4810. And I would like to have it marked as an exhibit in the absence of Rogers here. It would become exhibit RCC-7.

CHAIRMAN: You have done everything but mark it yourself, Mr. MacNutt.

MR. MACNUTT: I'm sorry, Mr. Chairman. I should leave something for you to do.

CHAIRMAN: Great. Thank you. That will be RCC-7.

MR. MACNUTT: There are not copies for distribution in the room because it wasn't delivered electronically and what we are doing is putting it on the record.

CHAIRMAN: Any other matters? Then my suggestion to counsel is that if Mr. Marois is up to speed on those interrogatories that they get to ask questions about that right now and then we will come back to the panels questioning of this panel.

MR. MORRISON: In that case, Mr. Chairman, I am going to ask Ms. MacFarlane to join the panel, because I think she is -- she was originally cross examined on the issue and she is probably in the best position to respond to questions.

CHAIRMAN: Okay.

MR. MORRISON: Ms. MacFarlane.

<u>MS. MACFARLANE joins panel</u>

MR. MORRISON: Mr. Chairman, perhaps while the panel is getting settled, you will recall that Mr. Hyslop raised an issue some time ago about having some statements from the transmission -- some evidence from the transmission hearing and a statement from Mr. Hey from the Public Accounts Committee --

CHAIRMAN: That's the second thing that I was keeping quiet about.

MR. MORRISON: In any event, Mr. Hyslop -- I don't know, there must be something wrong with me -- but we have come to an agreement and he will be referring -- I think he will have them entered tomorrow and then he will be referring to them in his final arguments.

CHAIRMAN: Okay. Thank you, Mr. Morrison. Go ahead, Mr. Hyslop.

CROSS EXAMINATION BY MR. HYSLOP:

MR. HYSLOP: Thank you, Mr. Chair, and thank you, Mr. Morrison.

CHAIRMAN: By the way, witness, you are still under your oath of some time ago. Okay.

MR. HYSLOP: Thank you, Mr. Chair, for the unusual opportunity to re-cross, but I did think that these answers to undertakings had some significance and did wish to explore them further, and I thank Ms. MacFarlane who has been discharged for agreeing to be present to assist us here this afternoon.

As I understand what is at issue, we are dealing with the purchase power agreement, the Genco purchase power agreement, and in particular clause 6:12 hydro flow, am I correct from where we start from?

MS. MACFARLANE: That's correct.

Q.748 - Right. And as I understand it, and I think this has been covered, there is an assumed hydro production figure in any given year of 2,654 gigawatt hours, correct?

MS. MACFARLANE: That's correct. That represents the long-term average.

Q.749 - Well I don't know what it represents because that has never been thoroughly reviewed, but I am accepting that for purposes of this. And you break that down -- and I don't know exactly how you do it, whether it's divided by 12 or you adjust it based on historical evidence, but you do create a monthly assumed hydro figure, correct?

MS. MACFARLANE: That's right. And those are based on the monthly long-term averages.

Q.750 - Right. Now what happens is that if hydro production is more than or less than the monthly number there is an adjustment to the price of purchase power under the Genco vesting agreement, correct?

MS. MACFARLANE: That's correct.

Q.751 - Right. And if it's more hydro goes over the dam then there is a credit back to Disco for an amount that is equal to the incremental costs incurred by Genco are avoided by Genco for the monthly assumed hydro production for that month, correct?

MS. MACFARLANE: That's correct.

Q.752 - Right. And just because maybe I am a little more familiar with it, but the incremental costs would essentially be the marginal costs for a particular hour per megawatt hour for Genco at a particular time, correct?

MS. MACFARLANE: That's correct.

Q.753 - Right. So marginal costs and incremental costs are conceptually at least the same thing, correct?

MS. MACFARLANE: Yes.

Q.754 - Right. And the question is from what I understand where the confusion has come about is in the meaning of the word incremental cost as applies to Section 6.12 of the vesting agreement, correct?
MS. MACFARLANE: That's correct.
Q.755 - Right. Okay. So I guess we understand at least where we are starting from. Now if I could have you refer to exhibit A-153, which was an answer to an undertaking which was filed I believe this morning.
MS. MACFARLANE: Just to clarify, Mr. Hyslop. That's undertaking number 2 from February 21st 2006?
Q.756 - I have got undertaking number 8 from 22nd February, 2006.
MS. MACFARLANE: Okay. Yes, I have it.
Q.757 - Okay. That was marked as exhibit A-153 for your reference. And the undertaking number 2 from February 21st was marked as exhibit A-151.
MS. MACFARLANE: Yes.
Q.758 - Okay. Now A-153 talks about the adjustment that was made apparently for the first four months to the hydro adjustment, correct?
MS. MACFARLANE: That's correct.
Q.759 - Right. And you used the words correct methodology and incorrect methodology. I'm going to use the words

contractual methodology and revised methodology. But under the contract -- and this contract came into effect on October 1st 2004?

MS. MACFARLANE: That's correct.

Q.760 - And from 2004 to your year end March 31st 2005, you used a certain methodology, correct?

MS. MACFARLANE: That's correct.

Q.761 - And that would be the methodology that is referred to in column 3, correct?

MS. MACFARLANE: Yes.

Q.762 - Right. And you continued to use that methodology at least for the first four months of fiscal year 2005, correct?

MS. MACFARLANE: Yes.

Q.763 - Right. And I assume that it was about that point in time somebody looked at the amount of this adjustment, which would have been $12.1 million, and started to question it, would that be correct?

MS. MACFARLANE: It was less looking at the amount of the adjustment alone than at looking at the impact on bottom lines and budgets for the two companies. You would appreciate that between October of 2004 and the end of the first quarter in 2005/06, we had one hydro season.

Q.764 - Yes.

MS. MACFARLANE: So it wasn't -- the only time these variances show up to any great degree is in the spring freshet. And having gone through the spring freshet and seeing the first quarter results for the fiscal year 05/06 it became obvious that in the year of good hydro Genco, with all of its controllable costs on budget, was losing money. That is a nonsensical situation.

Q.765 - Okay.

MS. MACFARLANE: And we therefore said, what is happening here, and went back and looked at the nature of the adjustment.

Q.766 - Okay. Well I assume that this contract between Genco, Disco and Holdco, the vesting contract was established for the specific purposes of establishing the contractual relationships between the companies, correct?

MS. MACFARLANE: The contract was set to establish the relationship, yes.

Q.767 - Okay. And it is a legally binding document on both parties, correct?

MS. MACFARLANE: Yes.

Q.768 - Right. So it's enforceable in a court of law by Disco against Genco or Genco against Disco?

MS. MACFARLANE: Yes.

Q.769 - That's right. So we go back and I look at the wording

in clause 6.12, and it says, Genco shall pay Disco for each megawatt hour that such energy -- net energy production is greater than the monthly assumed hydro production an amount equal to the incremental costs avoided by Genco as a result of such higher net energy production for that month. That's the contractual term that applies, correct?
MS. MACFARLANE: Yes.
Q.770 - Right. No where in this contract does it refer specifically or is there a defined term called incremental cost, correct?
MS. MACFARLANE: And that was the challenge.
Q.771 - Well that may have been the challenge. It may not have been specifically defined, but for the first six months that this contract was in effect, in the first four months, for ten months you understood what it meant, is that correct?
MS. MACFARLANE: We applied a certain methodology in a period where the impact of applying the methodology one way or the other was not significant.
Q.772 - Well you must have assumed that that methodology was correct for ten months or you wouldn't have used it, is that correct, Ms. MacFarlane?
MS. MACFARLANE: That's a fair statement. At the same time

this is a new contract --
Q.773 - Thank you.
MR. MORRISON: Please allow the witness to complete the answer.
MS. MACFARLANE: This is a new contract. The application of the contract is new. There is a learning curve. And in looking at the results of applying it with the judgment that went into the early application, it was clear that it was not operating as intended. It's clear as well --
Q.774 - And when you --
MS. MACFARLANE: -- if I could just say that as you have pointed out, clause 6.1.2 which speaks to the hydro adjustment, is in the section on setting the vesting energy price. The vesting energy price is set on in-province load. Therefore it is a reasonable conclusion that any adjustments to that price would be determined on in-province load and that is the conclusion that the operating committee came to after looking at the results and seeing that they were not consistent with what would be expected.
Q.775 - Well -- and when the results weren't consistent with what was expected, what you are referring to is the results were not consistent with the budgeted performance of Disco and Genco, correct?

MS. MACFARLANE: That's correct.

Q.776 - Thank you.

MS. MACFARLANE: The budgets are set on average and any fluctuations from average above or below flow to Disco. And it was clear that what was flowing to Disco was inordinate and therefore damaging to Genco.

Q.777 - So in other words the final interpretation of this contract is the extent to which, if any, the contract reflects the budgeted results of Genco and Disco, correct?

MS. MACFARLANE: Not the budgeted results. I'm sorry. I should have been clearer. The budgets are set on long term average. The budgets are set on long term average. It is the variations that then have to be compared to how that budgeted price was set.

And the budgeted price is set on in-province load and the supply cost for in-province load. And that's why the adjustment is now set on looking at in-province load and the supply costs around it.

Q.778 - But -- so somehow you started to notice this and who first raised the issue that the way you had been using this methodology for the first ten months wasn't correct? Who first raised the issue?

MS. MACFARLANE: I'm afraid I can't tell you that. I know how it first came to my attention but I don't know who

first raised it.
Q.779 - Was it Genco that noticed this or Disco?
MS. MACFARLANE: It first came to my attention through Genco.
Q.780 - It came through Genco. Okay. So it would be some financial person at Genco I assume that noted something didn't seem quite right here?
MS. MACFARLANE: Yes, it was.
Q.781 - So it came to your attention?
MS. MACFARLANE: That's correct.
Q.782 - Why would it be brought to your attention?
MS. MACFARLANE: Because it showed up in the reporting of monthly financial results.
Q.783 - Okay. And you are responsible for those?
MS. MACFARLANE: Yes.
Q.784 - Right. And you would be responsible for indicating or reflecting any changes in the monthly results and why they occurred, correct?
MS. MACFARLANE: My group is accountable for the process of that monthly reporting and reporting on any variances.
Q.785 - So obviously it was determined that something wasn't quite right because the Genco budget -- everything else was running smooth but this adjustment was a little bit out of whack. So it was referred to the negotiating

committee, is that correct?

MS. MACFARLANE: To the operating committee, yes.

Q.786 - The operating committee. Okay. And did -- to your knowledge -- and I appreciate you are an officer of all the companies -- but before agreeing to this this was a -- we have already agreed that this was a binding contract on Disco. Did Disco obtain a legal opinion independent of NB Power or of Genco as to the meaning and purpose of incremental costs in Article 6-12?

MS. MACFARLANE: No, they did not. They relied -- the operating committee did the work themselves.

MR. MAROIS: No. And I don't see that as a legal matter at all. It's an implementation of the contract.

Q.787 - Well, you know, Mr. Marois, I did work in the private sector for five years and if someone was about ready to lift $38 million out of my pocket I would get a legal opinion. But you run your business your way and I will live with my experiences.

MR. MAROIS: The manner --

Q.788 - Regardless --

MR. MAROIS: Let me answer. The manner in which we calculated this is not a legal matter. It's an operational matter. And I satisfied myself that the new method is the adequate method.

Q.789 - Okay. So it's an operational decision. So every time there is an issue in these contracts it doesn't become a question of the interpretation of the contract, it becomes a matter of the operations and the budgetary performance how it relates to Genco and Disco, would that be correct?

MR. MAROIS: No, that's not correct. There could be matters that are of legal nature. This one in particular was not a legal nature. And I believe the way Ms. MacFarlane explained it is through variance analysis that's often how you pick up anomalies or issues. And this is exactly what happened. You start analyzing variances, you start digging deeper and deeper to find out that maybe the way you are doing is not the appropriate way. And I believe I mentioned previously when questioned on this matter is we are still in transition. These contracts are relatively new. You will have issues that come up. But as we go through time once these issues are set aside, then management of the contracts will be more straightforward.

Q.790 - Okay. Look it, I'm not disagreeing with that. My problem would be it obviously looks to me that there is going to be a considerable phase-in period where you get some of the bugs out of the contracts and make sure you have a full understanding of them, would that be correct?

MR. MAROIS: That's fair.

Q.791 - Great. And could I suggest that as part of the Board's regulatory requirement that any interpretations or adjustments that are made in the management of these contracts are properly in issue that should be filed together with economic impact with the Public Utilities Board, would you agree with that, Mr. Marois?

MR. MAROIS: Not necessarily. I mean, if the Board wants some form of reporting it will have to be looked at, but some of the matters here are really operational in nature and I mean, unless the Board wants to start doing some micro management at certain areas, I mean, that's one thing. But I mean, this is something that would remain to be defined. And just -- I'm thinking again about -- your comment about this being a cost to Disco or a reduction of the benefit to Disco. This adjustment can work both ways. And when you look at the statistics, I mean, this year we have an extraordinary year in terms of hydro level. But you just have to go back a couple of years, and let me tell you, the hydro level works the other way and the adjustment to Disco would have been a lot greater.

And I'm really wondering, Mr. Hyslop, if we were sitting here with the adjustment going the other way, what would be your point of view?

So that would be opportunistic. I'm not trying to be opportunistic. I believe I'm doing things right under the right principles. And that's what is guiding my decision here.

Q.792 - What is guiding my judgment is the contracts that you entered into and the definition of incremental costs.

It would seem to me if you were applying it a certain way for 10 months and then somebody is off budget, and you adjusted it, and the money ends up flowing from the Distribution company to the Genco company, Mr. Marois, it would just simply seem to me that for the amount of money involved, we should have a further in-depth analysis and an understanding completely of how it works.

Now I do have a question. And I apologize for the --

MR. MAROIS: And we do. Let me comment --

Q.793 - -- editorial.

MR. MORRISON: I'm going to object here, Mr. Chairman.

CHAIRMAN: All right.

MR. MORRISON: This is very argumentative.

CHAIRMAN: Well, of course --

MR. MORRISON: Mr. Hyslop is not a witness.

CHAIRMAN: Mr. Morrison, I agree with you. But Mr. Marois did start to go back at Mr. Hyslop. So I suggest, gentlemen, that you stop and get onto a new line of question -- or continue your question. But make it a question and make it an answer.

MR. HYSLOP: Thank you very much. I apologize, Mr. Chair.

Q.794 - Now I was just wondering. There is a change here according to A-153 of 12.1 million. And according to exhibit A-151, until the end of December it would have been 46.3 million less 8.8. So I had it at 37.5 million. And my concern is that as the Vice-president of Disco, if you had $38.5 million in extra revenue, would I not be correct -- or what authority would you have to have that $38 million in potential revenue diverted back to Genco as opposed to having some or all of it applied in the future toward minimizing the rate increase to Disco's customers?

MR. MAROIS: Well, first of all, me personally, I would have no power to that. Because I mean, at the end of the day it's the Board of Directors that has to decide what it wants to do with revenue requirement.

But let me tell you, from a principles point of view, using money in a given year to offset a rate increase in a subsequent year flies in the face of every regulatory principle.

Just imagine if we were sitting here with a shortfall in hydro and we were trying to get that added to next year's revenue requirement. What would be your position?

Q.795 - Well, my position might well be that -- and I don't want to argue so I won't argue. But you are aware that at one point in time this Board authorized the maintenance of a hydro stabilization account, is that correct, Mr. Marois?

MR. MAROIS: Yes. And we may very well come back with a request to institute it. But we don't have a position yet.

Q.796 - You don't have a position yet. Maybe perhaps the difficulty you and I have over rationalizing this might be a good onus to have a review of that.

It might be a good opportunity to review the need for a water stabilization account, the fact that you and I don't seem to be on the same page what is to be done here?

MR. MAROIS: Well, the issue you have raised is not -- it's the first time you raised the fact of having a variance account.

I mean, we have raised it ourselves as part of this proceeding. And we believe that this is part of something we will have to instigate at one point in time when we go to markets.

Because we will need to have more predictability in our financial results. It's just we don't have a position on it as we speak today.

MS. MACFARLANE: And, Mr. Hyslop, I might just add that in not having a position on it, this is not something that affects ratepayers. Ratepayers pay on long-term average. The year to year fluctuations, which used to at one time be handled by the balance sheet account for NB Power, now fall to the bottom line. They are either profits or losses that accrue to the bottom line. They go to the shareholder. It is the shareholder that is that risk on those year to year fluctuations, not the ratepayer.

The ratepayer pays on average. But on average, over the long term, hydro flows are average. There will be pluses one year. There will be minuses another year. But on average they are average.

And right now it's the shareholder that is buffeting the ratepayer from those year to year fluctuations that would otherwise lead to changes in rates that would not be helpful to customers.

We may, as Mr. Marois has said, reinstitute deferral accounts. Because if we do approach debt capital markets they will not tolerate those bottom line fluctuations. But right now they flow to the shareholder. They do not affect ratepayers.

Q.797 - Now the $37.5 million, if that holds to the last quarter -- and it may or may not. I appreciate that the spring is an interesting time of year. But if that number held that number then would be paid through by Genco to the shareholder, correct?

MS. MACFARLANE: The number would be reflected as net income in Genco. And that would be consolidated with the Province's net income.

In terms of who actually takes and uses the cash, that's a decision that would be made between the shareholder and the Board of Directors under the dividend policy.

Q.798 - Okay. This is really -- and maybe I'm straying a little. But, you know, one of the primary roles of regulation is to regulate between the interests of a shareholder and the interests of the ratepayers.

What you just said makes me think that NB Power through this reorganization and through these purchase power agreements has really decided that that final regulation is something that should be refereed by you in terms of what the shareholder gets. Would you agree with that statement, Ms. MacFarlane?

MS. MACFARLANE: Absolutely not. The Act is very clear that Disco and Transco are regulated companies. The Generation companies are not. And there are contractual arrangements between them in terms of sharing risks and sharing benefits.

Q.799 - Sure. And what has happened here is that, although you talk about sharing risk, the end result is that the benefit or loss of a fortuitous circumstance under your sharing of risk is something that Disco doesn't have control over because it is Genco's -- I will use waterfall. And as a result of that the Board has really lost the opportunity to provide any sense of regulation over that circumstance?

MS. MACFARLANE: I didn't indicate that at all. The contract very clearly indicates that the risks and benefits of above average or below average hydro flow through to Disco the company.

Disco the company has a choice as to how it flows that through to customers. It could I suppose flow it through. It cannot be predicted. And rates are to be built on forecast. If you can find someone who can predict hydro flows for us, tell us and we will hire them.

But it flows through to customers on the long-term average. And the pluses and minuses, the buffeting of customers from those extraordinary increases and decreases in rates, takes places by making sure that the budgets and the rates are set on long-term average. And the differences year to year flow through to the bottom line.

Q.800 - Now as part of your response in IR-151 you indicate as part of Disco's ongoing process to review its purchased power costs, Disco intends to obtain a third party expert to review pricing and adjustment methodologies that have been adopted by the Operating Committee. Is this in specific reference to what has occurred with regard to the hydro adjustment, Ms. MacFarlane?

MS. MACFARLANE: As you know, the Operating Committee undertakes due diligence in respect of these contracts. This year the Operating Committee undertook three specific studies. It asked Ernst & Young to audit the application of the billing under the PPA. It asked LaCapra to audit the setting of the vesting price under the PPA. And it also asked Mercer's to undertake a study of the prudence of the fuel procurement policies and practices undertaken by Genco.

In future it will continue -- the Disco members of the Operating Committee will continue to challenge whether or not Genco is operating as its agent in its best interest. And this is an area that may well be reviewed by a third party expert.

In this undertaking we have indicated that Disco does intend on this issue to have an independent review. But there will be over time any number of issues that Disco, in undertaking its due diligence through the Operating

Committee, will have third party opinions as to how that contract is being administered.

Q.801 - What I'm asking, is there a third party review going to be made of the hydro adjustment as a result of this incident?

MS. MACFARLANE: We have not made one to date.

Q.802 - Thank you.

MS. MACFARLANE: We intend to make one in the future.

Q.803 - And when you say in the future, within the current fiscal year?

MS. MACFARLANE: Within the current fiscal year.

Q.804 - Okay. And will that report be filed with the regulator?

MS. MACFARLANE: I'm sorry. In 06/07.

Q.805 - Yes. That is what I understood you meant by -- would those reports be filed on an ongoing basis with this Board?

MS. MACFARLANE: That is a matter that obviously, as Mr. Marois has indicated, reporting to the Board is a matter to be reviewed and discussed.

Q.806 - Reviewed and discussed or argued in front of the Board at this hearing, what the reportings are going to be?

MS. MACFARLANE: Yes.

Q.807 - It would be fair to say you and I might have a

difference of opinion on that too?
MS. MACFARLANE: I'm not sure. I don't know your views.
Q.808 - Okay. I will leave it at that. Just one more quick question. I understand this issue is resolved at a meeting of the Operating Committee that was held on September 22nd 2005. I'm referring to the Operating Committee minutes that are filed under Appendix 6 in exhibit A-55?
MS. MACFARLANE: This matter was discussed by the operating committee a number of times. Subject to check, I believe that the minutes you referred to are where the final decision was made.
Q.809 - Right. And could you tell me or refer me to specific minutes of this Operating Committee where this was first raised?
MS. MACFARLANE: I don't have that information in front of me.
Q.810 - Could you undertake to provide it if there are references to it in any earlier minutes?
MS. MACFARLANE: Yes.
MR. HYSLOP: Thank you. Because I think I have them all and I don't recall seeing it, but I could have been mistaken.
That's all my questions, Mr. Chair. Thank you very much.
CHAIRMAN: Thank you, Mr. Hyslop. Any other counsel have

any questions concerning this particular matter? Mr. Morrison, is there anything on this particular matter?

MR. MORRISON: No, Mr. Chairman.

CHAIRMAN: Okay. Well we will go back to Board -- the Panel's questioning then. The vice-chair I believe had a couple of questions.

BY THE BOARD:

MR. NELSON: Mr. Marois, I guess I am just going to carry on the cross I did on you, what, on February 22nd. But at that time you said you have made the right decision. At that point when you looked at the hydro adjustment did you at all think about a variance or a hydro adjustment, just following up on what the Public Intervenor said? But Ms. MacFarlane talked about the highs and the lows and about evening out, and under the present circumstances with the high cost of fossil fuel did you not look at that hydro flow adjustment fund as a possible way of evening out the high cost of fossil fuel for upcoming rates?

MR. MAROIS: Well there is different elements there. First of all the concept of using a deferral account or a variance account has been discussed for a long time. First of all we had one in the past as you know. I personally brought it to the Board of Directors in the fall of -- when I joined the company in the fall of '04, and at the time the Board decided not to proceed with such variance accounts.

So personally like I say I was a proponent of using variance accounts but the Board didn't approve them.

Even if we had variance accounts it does not mean that any positive variance like we have this year would benefit customers in a subsequent year. I mean, you could set up the account in a different way, but really what could happen is you could use let's say the 30 million that you have this year positive for hydro, you put it in a rainy day account like the Chair mentioned, to offset the years where you have a negative variance on the hydro amount.

So even if you have a variance account it could be set up in numerous ways, but the big difference between today -- the way we do it today without a variance account, today the risk directly flows to the shareholder. So if you have a good year the shareholder has a good year, if you have a bad year the shareholder has a bad year.

If you have got a variance account really you move the risk from the shareholder and you move it to the customer. So the customer in certain years may have a good year and in another year may have a really bad year. So there is no magic there. And the stats shows that really there are so many good years, there are some really bad years.

So I don't know if I'm answering your question, but definitely we have considered it. It's not ruled out. But the actual mechanism how it would work would have to be worked out.

Because another method we are looking at is what is called creating a reserve. So really what you do is you take an amount like this year, you put it in that reserve, and then you can -- in a bad year you take from that reserve and a good year you put back in the reserve. So the customer never really sees that money unless you really want to clear the reserve at one point in time. It's kind of a bank account you add to or you take from.

MR. NELSON: Well I guess maybe the point that I was making in all this, the evening out of, how can I say, the peaks and valleys. And, you know, Ms. MacFarlane was very, very pointed about that, and over the long term and all. And as I have to agree, hydro is up and down and the last three years have been fairly decent years for hydro. And I guess this is the question I have. Did the board of directors at all know about the change in methodology for the hydro flow adjustment fund? Was that taken before the board of directors of NB Power?

MS. MACFARLANE: It would have been reported to them in the sense that they receive quarterly financial reports, and at the time that the adjustment was made they would have -- that would have been part of the variance. They would have seen in the first quarter report that we would have had to change that methodology and the preliminary numbers reported in the first quarter were subject to adjustment once this was resolved.

I think it was resolved after that first quarter report was issued. So there was more or less a notice of change coming.

MR. MAROIS: If I could just add -- I mean, at the end of the day I believe it's a management decision to do such a decision. But I mean, when the decision was made in the middle of last year nobody had any clue as to the magnitude of the hydro adjustment. I mean, the decision was made on principle, but -- I mean, last year was such an abnormal hydro, even in February we had significant hydro which you typically we don't have. I mean, it's dead of winter.

MR. NELSON: You mean this February?

MR. MAROIS: This February.

MR. NELSON: Yes. And January both.

MR. MAROIS: So that's what I'm saying is now we understand the magnitude of the hydro adjustment. Nobody had a clue what it could mean six months ago. But that's why it's so important to me to base a decision like this on principle, not on expected results.

MR. NELSON: I noticed on A-146, exhibit A-146 -- here you have copies of the minutes of the Operating Committee --

MS. MACFARLANE: Yes.

MR. NELSON: -- minutes of August 30th 2005?

MS. MACFARLANE: Yes.

MR. NELSON: And I see they are not signed or -- on the bottom?

MS. MACFARLANE: That's only because we submit it in electronic copy and the signature wasn't on the electronic copy. It's on the paper copy in the office.

MR. NELSON: It's on the paper copy in the office?

MS. MACFARLANE: Yes.

MR. NELSON: Did you file that?

MR. MORRISON: I believe, Deputy Chairman, we were asked at some point in this proceeding whether the electronic versions and the signed versions were the same, and I think we went on record as saying that they are. No one has asked us to file the signed ones. We certainly can. We did check to make sure that they were consistent.

MR. NELSON: They were consistent?

MR. MORRISON: Yes.

MR. NELSON: Okay. That's fine. Thank you.

MS. MACFARLANE: If it would help, I can just speak to Mr. Marois' discussion about the extraordinary nature of the flows this year. I have in front of me ten years of annual variances from average and they -- just looking at them, 97/98 it was 11 percent below, the next year two percent above, the next year 14 percent above, the next year 11 percent below.

In 2001/2002 it was 28 percent below average. And we believed that was an extraordinary year. In 05/06 year to date it is 43 percent above the long term average. In the month of February hydro flows were double the long term average for February over the last 33 years. This has been an extraordinary year.

And as Mr. Marois pointed out, this is not a year to base any changes in methodology on financial results. You need to look at the underlying principles, the underlying intent of the contract, the fact that that adjustment is made to the vesting price, so you have to go back and look at what methodology was used in setting the vesting price, which is on top of in-province load. It is those principles that fed the methodology.

What pointed out to us that there may be an issue is the volumes. But the methodology was changed based on an analysis of the principles in the contract.

MR. NELSON: Just carrying that one step further then. So we have up till December 30th the difference between one methodology and the new methodology -- the old methodology and the new methodology? I'm using that terminology. So we have up to December 30th?

MS. MACFARLANE: The undertaking was up until December 30th, yes.

MR. NELSON: Can we have that up until the end of February?

MR. MORRISON: I think it can be done, yes.

MR. NELSON: Could I have that for next week, please?

MR. MORRISON: Sure.

DR. SOLLOWS: Thank you. Ms. MacFarlane, you indicated again that there is monthly variation and long term manual variation and I think the evidence is clear that the intent of the contract was to have the amount of energy reflect the long term average, is that right?

MS. MACFARLANE: That's correct.

DR. SOLLOWS: Is there evidence on the record that details the month-by-month expected long term hydro generation and the nature of its variation?

MS. MACFARLANE: Because the revenue requirement hearing is based on forecasted cost and the forecasted costs are based on average, it would not have been filed as part of the revenue requirement. Mr. Larlee doesn't believe it was filed as part of the CCAS undertaking either. So it is likely not on record.

DR. SOLLOWS: Can it be put on the record?

MS. MACFARLANE: Yes. Could you repeat again what it is that you are looking at?

DR. SOLLOWS: The month-by-month expectation that you use in preparing your budget. And in particular this might be something a little bit more than you are using for budgeting purposes, I would like to see an analysis or some explanation of the nature of its variation, because what you have said seems to be -- it puts -- quite frankly put some alarms bells off in my own mind. You have suggested that you have seen unprecedented high flows. And that someone that's used to looking at a long time series of data may indicate a change in the data and that we may be moving, as we all know some climate models are suggesting, to a time where we will have higher than historically average rainfalls in our part of eastern North America. And, therefore, the expectation should be higher and that should be reflected in the vesting agreement.

So what I am looking for the numbers that you are using, the history that you have that over the period you say it's the long term -- is it 25 years or 35 years? Stats Canada data goes back to January 1st 1977 and I have looked at that. But if you have something going back further that would be helpful.

I just want to make sure that, as you have indicated, if you want to base this on the long term average, we have to make sure there is real trend in the data.

MS. MACFARLANE: Yes, that has been an issue that's been discussed obviously at NB Power, as it goes to -- weather affects both on our load and on hydro flows. And, of course, the whole topic of CO2 and global warming is very topical for the energy industry.

The conclusion that seems to be out there now is that it is too early to predict any change, but we can certainly provide the data for you.

DR. SOLLOWS: Thank you.

MR. NELSON: Mr. Marois, just looking here on exhibit 155, which was replaced before, and I am looking at your actuals, P&Ls for -- till February 28th. And before the payment in lieu of taxes, you have a bottom line of positive $53 million?

MR. MAROIS: Yes, at the end of February. Yes.

MR. NELSON: At the end of the February. And I was just putting the 37.5 against it and that's 90 million -- $90.5 million in the sense if they hadn't made the change in the methodology for the year?

MR. MAROIS: That's possible. Like we said it was an extraordinary year.

MR. NELSON: I beg your pardon?

MR. MAROIS: It was an extraordinary year.

MR. NELSON: Yes, extraordinary.

MS. MACFARLANE: But in fairness, Mr. Nelson, as we have explained in A-153 and 154, one cannot look at one side of the adjustment only. If the benefit of hydro is taken out of the dispatch curve in -- at the top of system dispatch as opposed to the top of in-province, which is where the vesting price sets, then it also -- that hydro benefit also had to be taken out of the exports as well. And it leaves the higher cost energy in export, which means the export margin would reduce. Both sides of the equation would flow through to hydro. And that's why the -- we were very careful in the response to undertaking number 2, A-151. We were very careful to explain that there is two sides to this. You can't have it both ways. If you are going to force us to use the incorrect methodology on the hydro adjustment, then we will have to use the incorrect methodology as well on the export credit.

MR. NELSON: I guess -- I guess Ms. MacFarlane, I was looking at the -- from the basis of the original contract. And as I say in changing it in mid-stream, you know, this is where I have a difficulty with. I looked at the basis of the original contract, and you know, it was not done -- I mean there was a contract in place between Genco and Disco. And for the length of that contract, whether it's renewed every year or every other year, whatever, that's when the time it should have been discussed at that point in time.

MS. MACFARLANE: The contract didn't change. And the set vesting price did not change. And annually that vesting price is set. This does not affect the setting of the vesting price. This is only an adjustment that arises because hydro flows during the year are different than average. And it is as those are occurring, in particular this year, as those were occurring that it became obvious that the definition used for incremental cost was the wrong definition and that adjustment to the methodology was made.

Another type of adjustment could have been to say that if we are going to use the top of system dispatch in giving the hydro credit, then let's adjust the third party gross margin credit to reflect the same methodology. The

two have to be the same.
DR. SOLLOWS: But that --
MS. MACFARLANE: Yes.
DR. SOLLOWS: -- caused me just a little bit of confusion.
MS. MACFARLANE: All right.
DR. SOLLOWS: And I noted it, you said the export credit. I thought the export credit was a fixed amount in the vesting agreement and couldn't be changed?
MS. MACFARLANE: There is a fixed amount in the vesting contract.
DR. SOLLOWS: So that wouldn't be changed?
MS. MACFARLANE: But remember that there is a sharing.
DR. SOLLOWS: Okay. So you are talking about deviations outside the band --
MS. MACFARLANE: Yes, that's right.
DR. SOLLOWS: -- but not the fixed amount in the --
MS. MACFARLANE: That's correct. So if there are extraordinarily good exports, those get shared with Disco, as do any shortfalls in the budget. And both of those come off the system dispatch and the cost of the energy supporting them. You would have to make sure of the methodology and those two are aligned and they weren't at the first of the year. We realized it, we corrected it.
MR. NELSON: Do you have a figure in your mind what the

correction would have been?

MS. MACFARLANE: No, I don't. Because --

MR. NELSON: There is that band of 20 percent, isn't there?

MS. MACFARLANE: Yes, there is.

MR. NELSON: So therefore -- but the export credit is a fixed amount with the exception of that 20 percent over and above?

MS. MACFARLANE: The export credit that goes through in the vesting price is a set amount.

MR. NELSON: Yes.

MS. MACFARLANE: There is a 20 percent band. But above that there is a 50 percent sharing of either the benefit on the one side or the cost on the other side.

MR. NELSON: But it's a 50 percent sharing?

MS. MACFARLANE: That's right.

MR. NELSON: So it would have been less than that amount in the sense that it would -- it wouldn't have been that much difference in the -- in -- how can I say -- Disco's benefit wouldn't be as high?

MR. MAROIS: There is not a one-to-one relationship with the hydro adjustment, but it could be significant.

MR. NELSON: So it still would have been short the $46 million as of the end of December? It wouldn't be as much as the 46.5 million?

MR. MAROIS: Not as much, but it would have been a significant offset to it.

CHAIRMAN: We are going to take our break now. I want to thank you for either coming down or just making yourself available for this cross. And just before we break I will indicate -- we have talked about the old rainy day accounts.

And I was there when -- and I believe Commissioner Sollows was on the other side of the table at that time. But we approved of them. And frankly, when the old NB Power did away with them, it was my personal opinion, but I didn't ask Board counsel, that NB Power was in contravention of a Board order. Because we had approved of those accounts. And they should not have collapsed them.

However, what I'm going to put to counsel and ask in the summation is does this Board have jurisdiction now to order Disco in the current fiscal period to reintroduce, using exactly the same terms and method of dealing with it, the old rainy day account? So I will ask --

MS. MACFARLANE: Can I just ask for clarification? When you say the current fiscal period, which fiscal period are you referring to?

CHAIRMAN: The one we are in right now.

MS. MACFARLANE: 05/06?

CHAIRMAN: The one where we have got the -- in other words, this would be an excellent year of the current fiscal period to start the rainy day account. Because you have got lots of money to fund it. Anyway we will have a good go-around on that, I'm sure. Thank you.

(Recess)

(Off the record)

MR. MORRISON: My apologies, Mr. Chairman. And your voice was loud and clear on the speaker. Thank you.

CHAIRMAN: Okay. No preliminaries?

MR. MORRISON: No, sir.

CHAIRMAN: Do you want to put on the record about Rogers?

MR. MORRISON: Yes, Mr. Chairman. It now seems clear that we have confirmation that both Mr. Ruby and Ms. Milton will be available on March 24th to make final submissions.

CHAIRMAN: Good. Thank you. And I would ask -- let me see. I would ask counsel after today's session to just talk with one another.

But I don't think that there is any question that we will complete the evidence tomorrow. And therefore I will also ask Mr. Young whether or not there were two or three more participants from the general public who had indicated a desire to appear.

And I understand that he is contacting Mr. Peacock whose folks they were to see if they would just as soon put in something in writing to us or if we should reserve half or three-quarters of an hour on Monday morning to hear them before we start in summation.

So you can check on that. And Mr. Young has come back into the room. So he has heard me. So that is great.

Okay. Go ahead, Counselor.

DR. SOLLOWS: I don't know whether that is an insult or a promotion.

CHAIRMAN: Well, that was wishful thinking.

DR. SOLLOWS: I guess I would like to, before I go on again to my prepared questions, I want you to look at exhibit A-154, Mr. Marois.

And this is the one that you had recognized needed a correction?

MR. MAROIS: Yes.

DR. SOLLOWS: And it now indicates that Disco has energy up to 12,000 gigawatt-hours under the vesting agreement. And beyond that it goes into the market.

Is that what I understand.

MR. MAROIS: Not necessarily go into the market. But if the energy is provided by Genco, on energy provided over the 12,000 gigawatt-hours, it would be priced at market.

DR. SOLLOWS: But you have a guaranteed supply of that energy above 12,000?

MR. MAROIS: Yes.

DR. SOLLOWS: Okay. So how high -- how much energy do you have -- what is the total amount of energy that you have rights to under the vesting agreement?

MR. MAROIS: There is really in my understanding no limit because it's either going to be generated by Genco but priced at market or purchased by Genco on our behalf.

DR. SOLLOWS: Okay. So really there is no upper limit?

MR. MAROIS: No.

DR. SOLLOWS: And what market price are we talking about?

MR. MAROIS: Subject to check I believe it's Keswick node --

DR. SOLLOWS: Keswick node ISO New England?

MR. MAROIS: Yes.

DR. SOLLOWS: Okay. And so when we talk about surplus energy, where is this surplus coming from from Disco's perspective as opposed to Genco's perspective? I'm still having a difficult time understanding why customers who want to buy surplus energy don't simply buY that straight from Genco and leave Disco out of it.

Disco isn't making any money off the sale. Why is Disco in the middle of the transaction? Can you clear that up for me?

MR. MAROIS: My understanding is the current set up is really as a result of the recommendations of the Market Design Committee which was really to kind of continue the past practices of having Disco do the billing and having the customers -- being customers of Disco. But my understanding is once the five year moratorium is over where -- right now there is a moratorium based on the fact that a customer cannot just leave Disco to go be supplied by Genco. But once that five years is over the set up you just mentioned I believe could happen where a customer could leave Disco and then go to Genco.

DR. SOLLOWS: Thank you. Now I would like to move on to my prepared questions. And I want to refer you to an annual report and I have since been told that it may not be here in paper copy, but it was in A-57, Appendix 12, which is the fiscal year end 2003 annual report.

So assuming that -- I wonder do you have a paper copy of it that you can look at, or if you don't -- fiscal year end 2003. Okay. That's what I thought.

When I made this up I was in my office and I have a copy of all the paper ones and I thought I found it on my electronic version and I didn't. So I guess I will just restructure this and ask you to take this subject to check. That will be easiest for everyone.

MR. MAROIS: Okay.

MR. MORRISON: Excuse me, Commissioner Sollows. What annual report was that? We may have a paper version inside.

DR. SOLLOWS: Fiscal year end 2003.

MR. MORRISON: Okay. Thank you.

DR. SOLLOWS: I'm sorry.

MR. MORRISON: We are checking.

DR. SOLLOWS: No. I'm sorry. It wasn't until just before -- just after lunch that we realized that it was filed electronically. If it's easier I could move on to another question, give you a little more time.

MR. MORRISON: It might take Ms. Gilbert a few minutes, yes.

DR. SOLLOWS: Oh, but the next question is -- no, we don't want to start down that road. We had better wait.

MR. MAROIS: It's that bad?

DR. SOLLOWS: It's a long one is all. We will get started on it, but --

MR. MAROIS: I believe I have it.

DR. SOLLOWS: Okay. Could I ask you to look at page 52, and actually it may be -- either of you could answer it, but, Mr. Larlee, you might be more comfortable answering this one.

Page 52 is the statement of in-province generation. And when I looked at that -- I just want you to confirm that I'm correct when I conclude that combustion turbines contributed about 24 gigawatt hours to the Province's electricity supply during that fiscal year, is that -- am I interpreting the table right, the in-province contribution of CTs?

MR. LARLEE: Yes. Even though -- yes. The table says millions of gigawatt hours, that's gigawatt hours, is correct, yes.

DR. SOLLOWS: Thank you. So I have reviewed the other annual reports since 1993 and discovered that that 24 gigawatt hours in fiscal year end 2003 was the most energy contributed by CTs in any given -- in any of the years. And subject to check, I'm wondering if you would agree with me for the purposes of the line of questioning I'm following that since 1993 CTs provided as little as .2 gigawatt hours in 1997, and had a mean annual contribution of 8.6 gigawatt hours, and a median annual contribution of about four gigawatt hours?

And I understand you can't tell from looking at that, but just subject to check, basically I took all the numbers from the annual reports and ran the stats. Does that sound reasonable?

MR. LARLEE: Yes, it does sound reasonable. If you remember the line of questioning yesterday when we were talking about the cost of combustion turbines in the cost allocation study, I pointed out that it does tend to be very small.

DR. SOLLOWS: All right. So I'm wondering do we have exhibit A-53 on the record here? Do you have that available?

Again I have got the only piece of information from it, it was provided as undertaking number 3. So it's a single piece of paper relating to the seasonal stored hydro capacity. It was filed after the close of the evidentiary portion of the hearing -- the CARD hearing in November.

MR. MACNUTT: Yes. It was marked as an exhibit on November the 10th.

CHAIRMAN: Sorry. Can't hear you, Mr. MacNutt.

MR. MACNUTT: It was marked as an exhibit on November 10th and it is described as being response to undertaking number 3 of October 6th 2005 with additional information requested on October 26th re an amendment of the seasonal storage fraction. We have a copy here.

MR. LARLEE: I have it now.

DR. SOLLOWS: So this document appears to indicate that there is about 79 gigawatt hours of stored hydro capacity available for lease -- release from five reservoirs during the December through March period. Is that correct?

MR. LARLEE: Yes, that is what that undertaking is saying and that estimate was done in the 90s.

DR. SOLLOWS: Sure. So in the worst year since 1993, from the point of view of combustion turbine use, seasonal storage hydro contributed about 3.3 times more energy than the CTs to meet the winter peek is the conclusion that I would draw. Is that correct?

MR. LARLEE: I am not sure you can draw that conclusion directly just because of the complexities of operating the system. For instance, CTs aren't used solely for the purposes of meeting the winter peek. They are also used for operational reasons when units are down and they are required for reserve and so forth.

DR. SOLLOWS: Okay. That's fair. Yes. But nonetheless, there is about three -- more than three times the seasonal storage than you actually generated using CTs?

MR. LARLEE: That is what these numbers indicate.

DR. SOLLOWS: And when I compared the means, it is on an average or a mean basis, I would expect based on that historical record that hydro would provide nine times the energy of CTs. Is that just comparing the means to that 79, is that about right?

MR. LARLEE: If I recall the mean that you quoted earlier, that is about right.

DR. SOLLOWS: Was 8.6, yes. And the median was 4 gigawatt hours, so on that basis I am looking at a 50 percent chance that seasonal hydro would provide 19.8 or more times the energy of CTs in the test year, that -- the interpretation of the median?

MR. LARLEE: That sounds right as well.

DR. SOLLOWS: Now the question that I have is the 79 gigawatt hours of energy from the seasonal hydro storage allocated to any particular class or group of classes?

MR. LARLEE: No, it's not.

DR. SOLLOWS: Okay. I guess then the question is to be consistent with the way you propose to allocate combustion turbine and emergency purchase costs to residential, general service and wholesale customers, shouldn't you allocate seasonal hydro storage in the same way?

MR. LARLEE: Well I guess the big difference here is that the -- is the cost, the fuel cost obviously the driving force for allocating the CTs was the fact that the cost of running CTs is higher than any other type of technology to supply electricity. And that if electric heat load was to continue to grow and our peak was to continue to grow, then one could surmise that the amount of CTs used to meet that peak would increase out in time. So that was the rationale to allocate that cost differently. As far as looking at what part of the hydro is used to meet winter peak, fuel costs of hydro is nil so there was no -- there really is nothing to allocate.

DR. SOLLOWS: I guess I understand that the fuel cost is nil and I guess that is my point in that it would seem that we are looking at combustion turbines and emergency purchases instead of being a system security purchase as being a cost that can be allocated to customers that typically have their -- most of their energy used during the winter months but we don't seem even-handed about it by allocating the energy that is really only available to the winter months to those customers as well. Any comment or any way we can deal with this?

MR. LARLEE: I am not sure I am following your point about allocating the energy. The hydro cost is part of the vesting price Disco pays to Genco. So it gets averaged and is spread evenly across all the classes.

DR. SOLLOWS: But not the case of combustion turbine energy? That is my point.

MR. LARLEE: That's right. Combustion turbine energy is priced separately and accordingly I allocated it based on what I thought the cost causation was.

DR. SOLLOWS: But I guess you could equally have allocated

it the same way you are for seasonal hydro storage which is
across all classes?

MR. LARLEE: That is the way all other technologies are allocated based essentially an average cost basis. Yes, certainly could.

DR. SOLLOWS: Okay. On the Friday before March break in our informal intervenor day we heard from one large industrial customer that indicated they were operating on a seasonal basis, shut-down in the summer and in operation throughout the winter. This being Bathurst Mining and Smelting.
To be fair and equitable under your proposed allocation of CT and emergency purchase costs shouldn't that customer also share in the costs that you want to allocate to residential general service and wholesale customers?

MR. LARLEE: Really I guess what you are getting into there is more of I think a seasonal rate issue than anything else in that a seasonal rate might better capture the cost causation of that type of customer that is operating only in winter.

DR. SOLLOWS: Okay.

MR. LARLEE: Again the premise for allocating the CTs using electric heat was simply that they are driving the absolute extreme portion of the peak.

DR. SOLLOWS: Okay. I guess now I do want to move on to a really quite a long series of questioning, Chairman, and it might be best to break for the day. Because I have got 20 questions on this topic.

CHAIRMAN: If you promise me to cut that back to 10 tomorrow.

DR. SOLLOWS: No promises, Mr. Chair, but I will speak really quickly.

CHAIRMAN: Okay. I have one and then I will let Commissioner Sollows go again tomorrow morning. I am glad, Mr. Marois, that you explained gradualism to me again. Because I for some unknown reason had thought considering it as avoiding rate shock. But from my understanding of what you have told us, it is not that at all.

In other words, if you looked at your revenue requirement for next year and you found it required a 20 percent increase on average across the classes and you only charge residential 21, then that's practicing gradualism because it is less than was it 1.4 or something or other?

MR. MAROIS: That is my definition, yes. Because I mean, at the end of the day, if in your example if the rates go up by 20 percent, you have to assume that it is a legitimate increase. I mean, once it has gone through the scrutiny of the Board and if the Board says yes you can increase it by 20 percent, then I mean the argument about rate shock, that really doesn't apply because the utility need to get that increase, otherwise it will be in financial difficulty. Then compared to that average increase, then I believe that's where you factor in gradualism is how much farther away from that 20 percent can you move.

CHAIRMAN: Okay. So gradualism is only applicable after treatment for rate shock occurs?

MR. MAROIS: Well it depends on how you define rate shock.

CHAIRMAN: I'm not going into that. You can't define it, I don't think. All right, we will break now and reconvene at quarter after nine, tomorrow morning.

(Adjourned)

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

Reporter