

1 New Brunswick Energy and Utilities Board

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5 IN THE MATTER OF an application dated May 1st 2008 by

6 New Brunswick System Operator (NBSO) for approval of changes

7 to the Open Access Transmission Tariff

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9 Delta Hotel, Saint John, N.B.

10 June 11, 2008

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13 CHAIRMAN: Raymond Gorman, Q.C.

14 VICE-CHAIRMAN Cyril Johnston

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16 MEMBERS: Yvon Normandeau

17 Donald Barnett

18 Roger McKenzie

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20 BOARD COUNSEL: Ellen Desmond

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22 BOARD STAFF: John Lawton

23 Doug Goss

24 David Young

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26 BOARD SECRETARY: Lorraine Légère

27 ASSISTANT SECRETARY: Juliette Savoie

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30 CHAIRMAN: Good morning, everyone. This is a hearing of a
31 motion by the New Brunswick System Operator for an interim
32 order pursuant to Section 40 of the Energy and Utilities
33 Board Act requesting approval of changes to the schedule 1
34 rates to be effective from the date of the interim order
35 until further order of the Board.

36 The panel for this motion is made up of Yvon Normandeau,
37 Don Barnett, Roger McKenzie, Cyril Johnston, the Vice-
38 Chair and myself.

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Prior to taking appearances I will note that the Board received a request for formal intervenor status, Northern Maine Independent System Administrator. And we will grant formal intervenor status to that party.
At this time I will take the appearances starting with the New Brunswick System Operator.

MR. KENNY: Robert Kenny is counsel for the Applicant along with Mr. Kevin Roherty.

CHAIRMAN: Thank you, Mr. Kenny. Bayside Power?

MR. HOYT: Len Hoyt appearing for Bayside Power.

CHAIRMAN: Where are you at, Mr. Hoyt? It seems to be everyone is sitting on the right here today.
Integrays Energy Services Inc.?

MR. MACDOUGALL: Good morning, Mr. Chair. David MacDougall for Integrays Energy Services. And I'm joined today by Mr. Ed Howard.

While I'm at the podium also I have been asked to make an appearance on both behalf of the Northern Maine Independent System Administrator and on behalf of Oxbow-Sherman.

CHAIRMAN: Thank you, Mr. MacDougall. New Brunswick Power Distribution and Customer Service Corporation?

MR. KENNEDY: Yes, Mr. Chair. It is Blair Kennedy from New Brunswick Power Distribution and Customer Service Company.

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CHAIRMAN: Thank you, Mr. Kennedy. NB Power Generation Corporation?

MR. TRENHOLM: Arden Trenholm on behalf of Genco.

CHAIRMAN: Thank you, Mr. Trenholm. And Northern Maine Independent System Administrator, that is you,

Mr. MacDougall.

Nova Scotia Power System Operator? And

Mr. MacDougall, you are also appearing on behalf of Oxbow Sherman?

MR. MACDOUGALL: That is correct.

CHAIRMAN: Public Intervenor?

MR. THÉRIAULT: Good morning, Mr. Chairman. Daniel Thériault. Appearing with me is Robert O'Rourke.

CHAIRMAN: Thank you, Mr. Thériault. NB Energy and Utilities Board?

MS. DESMOND: Ellen Desmond, Mr. Chair. And from Board Staff Douglas Goss, John Lawton and Dave Young.

CHAIRMAN: Thank you, Ms. Desmond. Are there any preliminary matters prior to the hearing of today's motion?

Mr. Kenny, I will turn it over to you then.

MR. KENNY: Thank you, Mr. Chair. And good morning. Just to give you a summary as to what is proposed, I would like to refer you to exhibit A, the evidence binder of NB

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System Operators. It is A-1, sorry. Tab 3.

CHAIRMAN: We do have to get this done electronically I think sooner than later.

MR. KENNY: Tab 3, what I intend to -- I intend to offer Mr. William Marshall who has sworn the affidavit that is attached to outline the request for the interim order, the basis for it and to then refer to the oral decision -- excuse me, the decision of June the 1st, 2007 as it relates to the various tests.

I also have cautioned Mr. Marshall that the questions of myself will be within the confines of the actual affidavit and that he would probably have questions from the Board and the various parties that might be outside of the actual affidavit and the actual request here that will be answered at the full hearing. So I have cautioned Mr. Marshall about that.

So with that I would like to offer Mr. Marshall please.

CHAIRMAN: Thank you. Mr. Marshall, I would ask you to come forward and take the witness chair. And I will ask Ms. Desmond to come forward and swear you.

WILLIAM MARSHALL, having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KENNY:

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2 Q.1 - Mr. Marshall, you have exhibit A-1 with you?

3 A. Yes, I do.

4 Q.2 - Would you turn to the affidavit please which is under
5 tab 3?

6 A. Yes. I have it.

7 Q.3 - Now just prior to your affidavit there is a request for
8 an interim order. Do you have that?

9 A. Yes.

10 Q.4 - That is basically what the Applicant is asking for, is
11 that correct?

12 A. That is correct.

13 Q.5 - Now go to paragraph 1. You are the Mr. Marshall that
14 has completed this affidavit for this hearing?

15 A. Yes.

16 Q.6 - Have there been any changes that you would like to draw
17 to our attention this morning to the exhibits attached to
18 the affidavit?

19 A. Yes. I would refer you to exhibit A to the affidavit
20 which is the schedule comparing various scenarios of
21 financial operations for 2008, '9. I would draw your
22 attention to line 23, the expense line under Capacity Base
23 Ancillary Services.

24 In the first column, the no rate adjustment case, the
25 number 1767 should be replaced with 1810. Similarly for

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the second column, December 1st adjustment and the third column, the July 1st increment, the 1767 gets replaced with 1810 in each of those columns.

And because our overall assumptions having going forward is we would rebate any surplus. And we are trying to achieve no cross-subsidization between rates, adjusting the expense also impacts the rebate column, the rebate line on line 24.

So the rebate line across, reading across, replace the 2565 under the no rate adjustment column with 2522. You replace the 2373 under the December 1st adjustment column with 2330.

Similarly the July 1st increment schedule 1 only column, you replace 2373 with 2330. Those are the only changes.

Q.7 - Mr. Marshall, those changes, what effect do they have on the actual request here this morning, if any?

A. They have no effect on our request for an interim rate increase on schedule 1. As you can see in this schedule, the subtotal line under Capacity Base Ancillary Services is zero.

So the adjustment on that rebate -- it simply affects the amount of the rebate that would occur out in time. It does not affect schedule 1.

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Q.8 - So there is no change in the subtotal, is what you are saying basically?

A. Correct.

Q.9 - Okay. If I take you back to affidavit -- just take you through that. Page 2 outlines the background as to why you are here and what the request is of the NB System Operators, is that correct?

A. Yes.

Q.10 - 3 and 4 are basically the exhibits, is that correct? 3 is the summary of the schedule 1, Ancillary Services, is that --

A. The item -- or paragraph 3 basically explains what schedule 1, Ancillary Service is, that it is the scheduling, control and dispatch of transmission services. And it is a mandatory service required for delivery of power into, out of or through the transmission system. And it is a mandatory service that can only be provided by the System Operator.

And it is intended that that revenue covers the New Brunswick System Operator costs net of miscellaneous revenues. So it effectively is the revenue requirement -- covers the revenue requirement as we see it for rates for that particular service of scheduling, control and dispatch.

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And our overall application here in the tariff, the full tariff evidence is submitted, our intent is to align all of the ancillary service rates so that there is no cross-subsidization between rates.

So here today we are interested to get schedule 1 in line for July 1st rather than having to wait for a full hearing process.

Q.11 - Paragraph 4 outlines exhibit A attached to your affidavit. And these are the forecasted revenues for the period of April 1st 2008 to March 31st 2009, is that correct?

A. Yes. That is correct.

Q.12 - Yes. Now would you explain the message in paragraph 5 please to the Board?

A. I think paragraph 5 explains what the projected operational situation would be with the System Operator under three different scenarios. And I think it is best to actually look at exhibit A. It is written in text in paragraph 5.

But by looking at exhibit A you can see -- and I draw your attention down to lines 26 to 36. The System Operator operations, essentially we get revenue from schedule 1. We have some miscellaneous revenue from doing system

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impact studies, additional services that we provide to Maritime Electric, Northern Maine, Nova Scotia Power. And we have some flow-through revenue which is revenue that comes in and then goes back out again. And then we have our expenses. And when you take the total revenues and the total expenses you can see that in column 1, if we no have no rate adjustment at all for this fiscal year, from April 1st through to March 31st, we would have a deficit of \$1.3 million on SO operations. If we have a rate increase effective December 1st as we are applying -- so if the Board saw that we go through a full hearing to December 1st, that we would implement the rate at that time. And you can see that the revenue line on schedule 28 increases. All the other lines stay the same. But by collecting more revenue sooner the deficit in line 36 decreases to \$649,000. And if you go to the third column, our request here today for an interim increase effective July 1st, if it is granted, the revenue line on 28 would increase to 7919. And we would end up with a deficit under operations of about \$57,000. And that is what is explained essentially in the text in paragraph 5.

Q.13 - Now take you to paragraphs 8, 9 and 10and 11

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basically.

What message are you conveying in those paragraphs, Mr. Marshall?

A. Well, essentially they outline the three reasons why we are requesting the interim rate increase at this time. And we are not able to come for a specific application prior to this in order to have time for a full hearing by April 1st this year.

Paragraph 8 addresses the issue of the international power line. That is a second 345 KV transmission interconnection between New Brunswick and Maine. It was under construction last year and scheduled for in-service in December of 2007.

We ran an open season on that. So prior to the open season we did not know how much transmission service would actually be requested.

Following the open season we knew how much was requested in terms of usage on the system. But until the line was physically operational and in place, we would not have any guarantee of being able to collect those revenues.

So that did not occur until into December, that that came into place. So that was an issue of we couldn't come with an accurate projection of revenues and usage on the

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system until after that point.

Paragraph 9, the second point is that last fall we became aware that there were consideration by the Department of Energy for amendments to the Electricity Act. And such amendments could have an implication on the nature and process related to an application that we would make relevant to the tariff.

Those changes actually were made. There was a change made to section 111(3). Those changes were made and only came into place under a revised Act in the end of January.

The issue at hand was that prior to the change there was some ambiguity as to whether or not any transmitter would be required to be party to a hearing for a change in ancillary services.

And if they were there was an issue of cost and timing from our point of view in terms of their ability to get ready for a hearing in terms of delaying it and increasing the cost and the time involved in order to deal with that.

So we felt it more prudent to wait for those changes and then could proceed in a more definitive manner.

And paragraph 10 essentially looks at the third point in terms of being able to do a definitive application prior to this fiscal year. Over the last two years there have been a number of ongoing changes related to costs and

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expenses and amounts of ancillary services in the system.

A number of those changes relate to implementation of the hourly settlement halfway through 2006, '7, the ruling of the Board, of the previous Board, the Public Utilities Board, for a limit on self-supply of 90 percent of obligations which affected 2006, '7 and 2007, '8 and then implementation of reserve sharing agreements with the Northeast Power Coordinating Council, that without the second tie line in place was a question of whether or not we would have that service available.

So it affected obligations. It affected revenues. And as a result of all of that it was not feasible that we could design rates for ancillary services without a solid base year of data.

We had -- there were changes through each of these years that essentially had a mixed amount of information. We didn't have a solid base line of which to design rates for ancillary services in order to eliminate the cross-subsidization between rates.

We now have a proposal to do that, develop that proposal.

And we are in the process -- that is the Strawman that was presented to the Board and to the Technical Conference last month relating to handling of the surplus from 2007, '8.

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We are in the process of discussions with all of the parties in coming to a settlement arrangement in order to get that implemented.

And that is -- another part of the reason for a delay is that because of the intervention of some parties and concern to how the surplus would be distributed, and that that decision was before the Board. And we didn't have a clear position as to where that would go. And a decision on that surplus would affect the methodology by which we do the calculations on rates. We felt it prudent to wait until that was resolved.

So again we waited. And assuming that we would definitely have that resolved back in the spring, it has taken a little longer than we anticipated. And so we basically delayed and then said we can't wait any longer, we have to file. So we filed our application May 1st.

Q.14 - And paragraph 12, Mr. Marshall, is just your summary of the request that you are asking the Board and relates to the request of the interim order and the proposed changes which is outlined just prior to your affidavit in the exhibit A-1, is that correct?

A. Yes.

MR. KENNY: Okay. I have no further questions of Mr. Marshall, Mr. Chair.

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CHAIRMAN: Thank you, Mr. Kenny. First of the formal intervenors then is Bayside Power. Mr. Hoyt? Yes, please come forward.

CROSS EXAMINATION BY MR. HOYT:

Q.15 - Good morning, Mr. Marshall.

MR. MARSHALL: Good morning.

Q.16 - So you will confirm then, that the SO is requesting an interim order approving increases to the Schedule 1 rates here this morning.

A. That's correct.

Q.17 - That's correct. And will you confirm that the SO plans to compensate for any over-collection of revenues if the Board in its final decision finds that the interim Schedule 1 rate were too high?

A. That's correct.

Q.18 - And how does the SO propose to rebate such over collection of revenues?

A. We would -- assuming after the full hearing which is the hearing scheduled for the last week of October, if we had a Board decision in November and implemented the rates December 1st as projected, at the end of December those rates would end up getting billed out to customers for usage in December, and we would provide the adjustment in the rate for all usage back to July in the bills for

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December. It would essentially be issued to customers in the first five days of January payable by the 20th of January.

Q.19 - And would the SO be proposing to pay interest on the over-collection of revenues?

A. Yes.

Q.20 - And would you have a rate that you would propose?

A. I don't have a rate right off. We have an account at the bank and get a daily rate. Whatever interest would accrue on that that's what would be used.

Q.21 - Thank you. Mr. Marshall, would you please explain why the proposed rate increase for schedule 1 should become effective July 1st, but that the proposed rate decrease for Schedule 2 should not become effective at the same time?

A. The -- it's a question of the magnitude of the differences. We -- Schedule 2 rate adjustment is quite minor and small in comparison to Schedule 1. So the issue at hand for our operations is Schedule 1 at this point in time.

Q.22 - But you are in your overall application proposing a decrease in the Schedule 2 rates?

A. In the overall application, that's correct, along with changes to all of the capacity basis ancillary services.

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2 Q.23 - And is there any reason why the true-up mechanism that
3 you just confirmed would be used for the Schedule 1 rates
4 could not be used for Schedule 2 if in fact the Board
5 were to make an interim order around Schedule 2 rates
6 today as well?

7 A. I guess if the Board made an order on Schedule 2 rates
8 effectively at that time, we could use the same mechanism
9 to do the adjustment.

10 MR. HOYT: Thank you, Mr. Marshall. Those are my questions.

11 CHAIRMAN: Thank you, Mr. Hoyt. Mr. MacDougall?

12 MR. MACDOUGALL: No questions, Mr. Chair, and I can advise I
13 don't have any questions for any of the three parties.

14 CHAIRMAN: Thank you. Mr. Kennedy?

15 MR. KENNEDY: No questions, Mr. Chair.

16 CHAIRMAN: Thank you, Mr. Kennedy. Mr. Trenholm?

17 MR. TRENHOLM: No questions.

18 CHAIRMAN: Thank you. I think that is -- sorry. Public
19 Intervenor, Mr. Thériault? Please come forward.

20 CROSS EXAMINATION BY MR. THÉRIAULT:

21 Q.24 - Good morning, Mr. Marshall.

22 A. Good morning.

23 Q.25 - Just so I am clear, would you -- from the questions
24 your counsel asked you and his statements to the Board
25 previously, would you confirm that the interim rate

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application consists of your affidavit and exhibits A and B that are attached to it?

A. Yes, plus page 1 under tab 3, the specific request for interim order.

Q.26 - Yes. And who at the NBSO is responsible for the preparation of the interim rate application?

A. I guess I am.

Q.27 - And who at the NBSO is responsible for forecasting Schedule 1 revenues and expenses?

A. Well ultimately I am.

Q.28 - And when does the process of forecasting Schedule 1 revenues and expenses begin for a future fiscal period?

A. It usually begins in the October/November period, looking forward to do a budget for the following year.

Q.29 - And what kind of forecasting process is used at NBSO to project revenues? Is it judgmental?

A. You project revenues -- I guess there are two components to revenues you have to understand. There is usage on the system and there are rates at which the usage is charged. The rates are in the purview of the Board and are the rates that are applicable for those services. So for us to project revenues we basically are projecting usage. So it's the transmission system usage multiplied by the rates applicable to that usage.

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So our forecast is to look forward at what are the loads going to be on the system, what are the long-term and short-term point-to-point transmission reservations, and we basically have -- we know what the long-term firm reservations are because they are contracted long-term, and we have utilized the average of the previous three years of actual operation in order to forecast the short-term. For net -- you have to look at the other pieces. For network service we get a forecast from the network customers in terms of their loads and look at that and then put out -- we would use a projection of the load forecast for the next year for the revenues from network services.

Q.30 - Thank you. Now you state in your affidavit that the NBSO could not file in a timely manner partly because of possible changes to the Electricity Act that were made in 2007. And I'm wondering is there any evidence in the interim application as to who this information came from?

A. I'm not aware that there is anything in the evidence to say where that information came from, no.

Q.31 - Okay. And surely the NBSO does not cease planning because of speculation about possible changes to government legislation?

A. No. However, we were asked for our comments on what

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changes we thought should be made in the legislation considering that they were looking at a number of issues to address. So based on that conversation with the Energy and Utilities Board we were well aware that there were going to be some changes to the legislation.

Q.32 - Based on the conversation with the Energy and Utilities Board?

A. Oh, excuse me. Correction, please. Based on our conversation with Power and Energy, we were all aware that they were planning to bring forward changes to the Electricity Act.

Q.33 - But the changes to the Electricity Act that you refer to of January 2008 in fact had no bearing on your ability to file this rate case?

A. We had concerns about the efficiency of the process in order to deal with changes to ancillary services.

Q.34 - But the actual changes that came through had no -- my question is that they had no bearing on your ability to file this rate case, the change that you referenced to Mr. Kenny earlier I think, Section 111(3)?

A. No. That change clarified that particular section relative to the need for a transmitter to appear in the hearing on revenue requirements for transmission.

Q.35 - Which has no --

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2 A. Which doesn't have any specific bearing on our application
3 for changes to ancillary services other than the fact that
4 it well could draw out the whole process to be much longer
5 and much more expensive and not in the interest of
6 customers.

7 Q.36 - But regardless you were going to -- your plan was to
8 proceed ahead and file this case?

9 A. Yes.

10 Q.37 - So I guess, you know, I want to be clear that nothing
11 in the legislation as it exists had any bearing on your
12 ability to file the rate case?

13 A. It didn't have any effect on our ability to file an
14 application for ancillary services.

15 Q.38 - Thank you. Now in your affidavit you indicated that
16 the new transmission line, the International Power Line,
17 began generating revenue in December of 2007. You further
18 state in your affidavit that it was not possible to
19 estimate revenues from this line before the open season
20 resulted in reservations. Now did you agree with me that
21 it is the responsibility of the NBSO to forecast revenues?

22 A. Yes.

23 Q.39 - And are you therefore in a position of claiming that
24 NBSO could not forecast revenues from reservations before
25 reservations actually took place?

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A. In this case, yes, there was a forecast. There was a forecast of usage on the line based on some commitment contracts behind the process. So there was a minimum amount of usage that was expected that could be used. Until such time though as the open season was completed we did not know how much there would be of long-term reservations.

Q.40 - But would it not be possible for the NBSO to estimate industry take up of the reservations on the IPL before the fact?

A. Well it would be possible for us to make an estimate and a guess as to how much may get used.

Q.41 - But you deal with market participants on a regular basis.

A. Yes, we deal with market participants and we had discussions with a lot of parties through the open season as to what they may or may not do. Again I go back to your earlier question. In preparing our forecast of usage there are the three components, the forecast of loads in the province, including Perth-Andover and NB DISCO loads, the long-term reservations of transmission, which again are long-term and then known, and then the short-term reservations.

So we would have been taking the existing long-term

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reservations and then making a guess as to the results of the open season. But given that we were going to have an open season it was only prudent to wait until the end of the open season to make a forecast.

Q.42 - But you are not claiming that no information was forthcoming from market participants about possible reservations?

A. If you are asking me if we had discussions with market participants about what they specifically were going to bid in the open season and they confided that in us, the answer is no. Okay. Market participants hold their cards pretty tight to the chest when it comes to deciding what they are going to do in the marketplace.

Q.43 - So are you telling me that the NBSO does no forecasting of any Schedule 1 revenue sources?

A. I just said, Schedule 1 revenue is tied to network load, long-term point-to-point reservations and short-term point-to-point reservations, and we use the average of history for the short-term point-to-point and we use known long-term reservations for long-term.

Q.44 - Mr. Marshall, on page 2 of your affidavit, page 3 of the actual tab number, you assert that, and I quote, "cost of increase largely due to increase in labour costs. Labour costs comprise over 65 percent of NBSO's expenses

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2 And increased costs have resulted principally from cost of
3 living type escalations and the addition of staff
4 necessary for the NBSO to fulfil its roles and
5 responsibilities." Have I accurately depicted that?

6 A. Yes.

7 Q.45 - Now is there any evidence in the interim application to
8 indicate what portion of the increases in labour costs are
9 attributable to cost of living type escalations?

10 A. No.

11 Q.46 - And is there any evidence in the interim application to
12 indicate what portion of the increases in labour costs are
13 attributable to addition of staff necessary for the NBSO
14 to fulfil its roles and responsibilities?

15 A. No.

16 Q.47 - Is there any evidence in the interim application to
17 support an argument that the NBSO staffing levels are
18 appropriate?

19 A. No.

20 Q.48 - Is there any evidence in the interim application to
21 support an argument that the NBSO compensation levels are
22 appropriate?

23 A. No.

24 Q.49 - Now I would like to move on into your affidavit if I
25 could with respect to the area dealing with consulting. I

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2 guess it would be under exhibit B. Is it true looking at

3 exhibit B consulting fees have gone from \$272,000 in

4 '05/'06 to 522,000 proposed for '08/'09?

5 A. That's correct.

6 Q.50 - And subject to check would you agree this is a 92

7 percent increase in the three years?

8 A. Subject to check.

9 Q.51 - Is there any evidence in the interim application to

10 support an argument that this increase is just and

11 reasonable?

12 A. No.

13 Q.52 - And would you agree that these fees are the type that

14 can be foreseen by the NBSO in forecasting expenses?

15 MR. KENNY: Mr. Chair, with due respect to my learned

16 friend, as I indicated earlier we are within the confines

17 of an interim request. These will be dealt with at a full

18 hearing. And that's what I cautioned Mr. Marshall about

19 earlier, and I put him available to answer any questions,

20 but I do expect my learned friend's questions will be

21 answered at a full hearing.

22 CHAIRMAN: Mr. Thériault?

23 MR. THÉRIAULT: Mr. Chairman, I am simply asking questions

24 with respect to items that are listed in exhibit B and

25 that certainly deal with and this whether it's there or

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not the witness can answer that. I'm not asking him to explain it.

CHAIRMAN: Yes. One of the points that I think I would like to make is that in the affidavit, and perhaps I have misunderstood the affidavit or misunderstood Mr. Marshall's response to some of your questions, but paragraph 2 of Mr. Marshall's affidavit starts out by saying, I have read the application of the NBSO for changes to the open access transmission tariff including changes in its charges, rates and tolls, et cetera. It goes on to say the evidence in his belief demonstrates -- and one of the things he says -- the need for an interim increase. And I think one of the questions that you put to this witness was, you know, was all of your evidence with respect to this matter confined to what is in your affidavit. And it strikes me that it essentially has incorporated all of that other evidence by reference. And I may be wrong and this may be the wrong time to sort of jump in, but it just strikes me that a number of questions that you have asked, Mr. Thériault, are essentially where do I find it specifically within your affidavit or within that tab.

MR. THÉRIAULT: I ask the question, Mr. Chairman, and the witness answers it, and I think the information is clear

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and that's why I think when I started my examination I wanted to clarify what we were talking about. So I just wanted to be clear on that.

CHAIRMAN: And I guess the second point here is that I guess as you are aware you I guess were involved in the DISCO matter where the Board did render a decision with respect to an interim rate increase that there are certain tests, and that the intention of an application for interim rate increase is obviously not to sort of drill down too deeply with respect to the information because if we did that it would effectively replace the full hearing. And so with that in mind I'm going to ask you to repeat the question that Mr. Kenny objected to because, you know, it seems to me perhaps we have gotten into some of those types of questions so far and you may not -- you know -- there may not be a great number of other questions in that regard, and in the context as I believe the affidavit in a sense seems to incorporate by reference the whole application with respect even to the interim, that may be of some assistance to Mr. Marshall in responding to your question.

MR. THÉRIAULT: And that's fine, Mr. Chairman. I simply ask the question and I look for the response from the witness. The question -- I think the last one I asked is that he would agree that these fees are the type that can be

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foreseen by the NBSO in forecasting expenses. Now that question, Mr. Chairman, just so I may, goes to the timeliness of the application. It doesn't go to the details.

A. Would you repeat the question, please.

Q.53 - Sure. We were talking about consulting fees and I said you would agree that -- or I asked you would agree that these fees are the type that could be foreseen by the NBSO when forecasting expenses?

A. Somewhat.

Q.54 - Fair ball. Now I would like to look at contingency. Is this a new cost item for Schedule 1 expenses?

A. As you can see in the whole table of Schedule 1 cost of service there is no contingency line in any of the other columns up to that point in time. So it is -- would be a new point to be considered in order to calculate the rates.

Now I clarify that the whole point of this Schedule 1 cost of service and provision of the affidavit essentially is to give the background information to get to the bottom line overall requirement of 9,133,000. And that was so that we could actually do a forecast of those expenses against revenues to determine an estimate of how much shortfall there would be. The 300,000 is a

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2 contingency line in determining what the rate is. It does not
3 result in a \$300,000 surplus.

4 Q.55 - And was this item one of several possible risk
5 mitigation measures discussed at a technical conference?

6 A. It is one methodology of risk mitigation.

7 Q.56 - And did market participants propose alternatives to the
8 NBSO's basket of risk mitigation measures?

9 A. Yes. I think market participants proposed some more
10 details under other points. I mean if we are getting into
11 the application and doing the full hearing here today we
12 can go forward. We have applied different risk mitigation
13 issues including a retained surplus account of a different
14 amount, plus a different means of truing up variations,
15 you know, after the fact monthly or others, and a lot of
16 those have been discussed. I don't see how risk
17 mitigation has any bearing on the application at hand. It
18 is really for an implementation of an interim order on
19 Schedule 1 rates.

20 Q.57 - Well, you know, I will ask the questions, Mr. Marshall,
21 and to that end I think I just have one more which bears
22 on part of your answer. Is the contingency proposed in
23 this application an addition to the surplus of 300,000
24 that the Board allows NBSO to retain?

25 A. In addition?

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Q.58 - Yes. Is it a separate item or are we talking the same item.

A. Oh, no. It's a number to get a rate that would apply. The surplus, how much is retained, is a completely separate item.

MR. THÉRIAULT: That was my question. Thank you. That's all the questions I have, Mr. Chairman.

CHAIRMAN: Thank you, Mr. Thériault. Ms. Desmond?

MS. DESMOND: Mr. Chair, could we have a short recess just to review the questions. I think we could substantially reduce the cross-examination that I originally intended.

CHAIRMAN: We will take a ten minute adjournment.

(Recess - 10:30 -10:40 a.m.)

CHAIRMAN: Ms. Desmond, I understand you have some questions.

MS. DESMOND: Yes. Thank you, Mr. Chair.

CROSS EXAMINATION BY MS. DESMOND:

Q.59 - Mr. Marshall, in your affidavit and in particular paragraphs 8, 9 and 10 you identify what I believe to be are reasons why the application should not have been filed sooner.

But recognizing that schedule 1 relates specifically to NBSO services, is there any specific reason why an application for section 1 only -- sorry, Schedule 1 only

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-- could not have been filed earlier than it was, so that an interim rate application could have been avoided?

A. We were experiencing surpluses in CBAS services. So there was no projected total deficit of the operation of the corporation. So we did not see the absolute need at that time.

But looking forward we have the long-term goal. We wanted to align rates and services. And so it was clear, looking ahead at 2008, '09 there were enough changes that we had decided on an application to do adjustments.

Q.60 - You have identified CBAS services. But with Schedule 1 specifically, looking just at Schedule 1, was there any reason why a Schedule 1 application could not have been filed sooner?

A. I guess it was -- we had been in a -- how do I say -- I guess an evolving mode as the System Operator, that exactly growing to take on a long-term mandate has been something that has been happening over the last three and a half years. And to get to that point, you know, took some time.

We were dealing with that. I guess we could have applied specifically on Schedule 1 at some point. And then once we got to the end with all of the others, then applied for a re-adjustment along with all of the other

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2 rates for a full tariff review.

3 But we chose not to do that again because we had surplus
4 from CBAS services. So we did not have a net deficit or
5 an impending deficit.

6 Q.61 - Just referencing I believe it is attachment A or
7 exhibit A to your affidavit?

8 A. Yes.

9 Q.62 - And I understand from this document that if the
10 Schedule 1 rates are increased on July 1st then your
11 expected loss for the year would be 57,000, is that
12 correct?

13 A. Yes, on SO operations.

14 Q.63 - And if the increase does not take effect until December
15 1st then the expected loss on the SO operations would be
16 629,000, is that correct?

17 A. 649'.

18 Q.64 - '49, yes. Now can you explain then why the loss for
19 three months is forecast to be only 57,000 yet the loss
20 with an increase in December would only be 649,000? Why
21 that differential?

22 A. The differential is \$592,000 difference between the two,
23 which essentially is \$592,000 of increased revenue on
24 Schedule 1 from July 1st to December 1st.

25 Q.65 - So if the rates are not in effect for just a period of

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three months there would be a loss of 57,000. So essentially then if we protract that over an annual basis it may be possible then that the rates you are proposing are too high.

Essentially with 57,000 and we do that on a monthly basis, it is a 19,000 per month loss. If we take your 19,000 over a year, clearly you are not going to be short your \$1.3 million?

A. It's not linear. You can't take three months in the springtime and compare it to six months in the summer and the fall. Schedule 1 revenues come by usage on the system. And transmission usage on the system is constant for long-term firm reservations. So it is the same month over month.

But for network service it is based on the monthly load. And we are all aware that the monthly electricity load is a whole lot less in the summer than it is in the winter.

So we collect a whole lot less money in the summer.

But our expenses, being people and rent and equipment and materials is essentially flat month over month. So in a normal projection we expect to lose money in the summertime. And then you make it up in the wintertime if you are on a flat basis.

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2 Q.66 - If the interim increase is not granted what if anything
3 would the NBSO do with the anticipated loss? How would
4 you handle that?

5 A. Maybe they wouldn't replace me. What can you do? I guess
6 you cut resources. We have very few controllable costs.
7 So you look at that budget. And you slice. And I guess I
8 would be number one on the list.

9 Q.67 - Did you have anything further to add to that, Mr.
10 Marshall? I mean, essentially you have got a budget. And
11 you are going to have a deficit if the interim increase is
12 not granted.

13 I mean, how in past years have you handled that? And what
14 would you do this year if that deficit exists?

15 A. Well, I guess if it's not granted we would continue to
16 advocate that we do not have a specific obligation to
17 balance every service.
18 Our interpretation in the Electricity Act is pretty clear,
19 that we provide ancillary services. We procure and sell
20 them. We provide -- it doesn't say specifically each
21 service is balanced. We provide ancillary services.
22 So without an interim increase we would continue to
23 utilize surplus on CBAS sales to offset the loss until
24 such time as we got to our order by the Board for a new
25 set of rates that would meet the requirements.

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Q.68 - Recognizing that you are projecting a loss of 57,000 what is the plan to cover that loss for the next fiscal year?

A. That would -- in the actual projection there is a slight surplus in Schedule 2 which goes against that. So the total loss would be 15.

But any loss that would occur in this year would be funded out of the \$300,000 of retained earnings. That's the plan.

Q.69 - So just to be clear, it is your plan at this stage to use the surplus in Schedule 2 to offset the SO operations for the next fiscal year?

A. Well, our plan is to use the retained earnings account to offset the revenues. I guess it's -- without having a decision out of the Board at the end of a full hearing and review exactly how we handle adjustment on Schedule 2 is not known yet

MS. DESMOND: Those are all the questions. Thank you.

CHAIRMAN: Thank you, Ms. Desmond. Mr. Kenny, any redirect?

REDIRECT EXAMINATION BY MR. KENNY:

Q.70 - Just one, Mr. Chairman, on the last point asked by Board Counsel. It's the hypothetical about the delay if the application was granted and the July 1st implementation date was not ordered or approved, is there

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2 any authority or power within NB System Operator to recover
3 rates retroactively? Is there a shortfall?

4 A. It is our understanding in the Electricity Act that you
5 set rates on a prospective basis as they occur. And we
6 don't have the ability to go back and recollect.

7 MR. KENNY: That is all.

8 CHAIRMAN: Thank you. Any questions from the panel?

9 Mr. Barnett?

10 BY MR. BARNETT:

11 Q.71 - Goodday, Mr. Marshall. Just one question following up
12 on Board Counsel.

13 Do I understand that if this interim rate is not granted
14 that you would use the other schedules to balance the
15 budget?

16 Would there still be a deficit at the end of the year if
17 you use Schedules 2 through 6 to balance the budget?

18 Would there still be a deficit in the fiscal year in
19 question?

20 A. No, there wouldn't be. If you look at exhibit A and you
21 go down to line 24 on exhibit A, you can see the line
22 there is rebate on Capacity Based Ancillary Services.
23 There was sufficient money in the projected rebate to
24 offset any loss.

25 Q.72 - Is this the first time that the System Operator on

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financial matters has been before this Board or the former Board in regards to -- or since the initial application I believe for approval of the OATT in March of 2004, I think it was?

A. Okay. The original OATT was approved in 2003, went into effect the end of September 2003. When we were created in October of 2004 we came with an application in January 2004 -- or 2005 for an adjustment between Schedules 1 and 7 to realign a couple of rates.

The overall effect on customers was zero. It was a net zero adjustment.

The former Board, the Public Utilities Board ruled on that. And that change went into effect May 1st 2005. And that only affected Schedules 1 and 7. There have been no applications or changes since.

Q.73 - So had the System Operator decided that it would operate in a manner which was operated in the former two years, or the fiscal year in question, the test year here, then there would be no need for this interim rate application?

A. That is correct.

MR. BARNETT: Thank you. That is my question, Mr. Chairman.

CHAIRMAN: Thank you. Mr. McKenzie, anything?

MR. MCKENZIE: No questions.

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CHAIRMAN: Mr. Normandeau?

MR. NORMANDEAU: No.

CHAIRMAN: Mr. Johnston?

MR. JOHNSTON: I have no questions.

CHAIRMAN: Thank you for your evidence and I guess your comment about maybe they won't replace you. I guess on behalf on the Board I would offer my congratulations on your impending retirement after a long and distinguished career in the electricity sector.

Thank you for your testimony this morning, Mr. Marshall.

WITNESS: Thank you for the kind comments, Mr. Chairman.

CHAIRMAN: Mr. Kenny, are you ready for argument?

MR. KENNY: Yes. And Mr. Marshall may step down here. And I am ready.

CHAIRMAN: Anytime you are ready.

MR. KENNY: Mr. Chair and Board Members, first of all, I would like to point out that there has been no evidence filed by the participants as to objecting to this application. And the market participants themselves have not brought forward any objections to the application. The Public Intervenor has perhaps inferred that the application should have been brought sooner. But that is always a concern. But it is a duty for an Applicant to

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bring forward the best possible information to a hearing. And that has been explained.

And it also has a duty to expedite the process if possible, and in particular a public sector type of corporation. So that has been dealt with by Mr. Marshall in his affidavit 8, 9 and 10.

We are dealing with the fiscal year 2008 and 2009. Had to see just exactly what was going to happen when the figures were in from the previous fiscal year. So I submit there has been no delay, certainly no prejudice to anyone as far as bringing forth the application.

Again it is a situation that yes, you can say well, the amendments to the Electricity Act, you might have known what was coming, et cetera. But that is a procedural matter. But there is a duty in a procedural matter too for an Applicant to attempt to streamline it due to costs, et cetera.

So again before I go into my argument and submission, there is no ability for this type of corporation to seek rates retroactively. It can't happen. The way that the system is designed, the way that they service the industry, the authority is not there.

So I draw the Board's attention to the law that is outlined in the decision of this Board approximately a

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year ago in the matter of DISCO. And there was a similar operation -- or similar application I should say.

And at that time the Board at page 231 canvassed a law in the Bell Canada decision of Supreme Court of Canada where it pointed out this type of application, we are not into a full hearing, but an interim application.

The Applicant must at a minimum demonstrate that there would be a significant delay between the time of the application and the time of the final decision, following a full public review of the application. Such a delay would cause deleterious effects on the Applicant. Those are the tests. And the criteria is prima facie case.

I submit, Mr. Chair and Board Members, that the Applicant has made and met all of those particular tests. The application speaks for itself. It is all in the evidence that Mr. Marshall gave here this morning. And the exhibit A is attached to his affidavit. There is a difference of \$50,000 as opposed to \$649,000 which is \$592 if my math is correct. And that is very significant.

Again Mr. Marshall pointed out you just can't take the linear type of approach to answer to Board Counsel. It depends on the demand over the various periods of time. There is no means of recovery, if this is delayed beyond the July 1st request. The test of the effect on the

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Applicant will be within that category.

So I submit, based on the fact that the application was made when the best available information came to the knowledge of the Applicant, that is when the process started.

And I submit that all of the tests have been made within all of the decisions of the Board as to when an application should be made as far as delay, et cetera.

The reasons are there. They are very good reasons. Yes, the change in Electricity Act is procedural. But it is significantly procedural in this instance.

So I submit all of the tests have been made within that decision. No retroactivity to pursue the situation. We have a mechanism for rebate. A lot or some of these questions will be answered at a full hearing.

And I would ask that the relief in the application be granted within the schedule that appears at the page 1 prior to Mr. Marshall's affidavit in the filed evidence, exhibit A-1.

Thank you, Mr. Chair.

CHAIRMAN: Thank you, Mr. Kenny. Any questions for Mr.

Kenny from the panel? Mr. Normandeau? Mr. Johnston? Mr. Barnett. Mr. McKenzie? Thank you.

Mr. Hoyt?

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MR. HOYT: Thank you, Mr. Chairman. I will be brief. There are two points that I would like to make. I would like to ask the Board to confirm that if the Board in its final decision finds that the Schedule 1 interim rates are too high, that the SO will be ordered to provide compensation to customers for any over collection of revenues, and provide direction as to how that over collection should be handled, including the interest rate to be paid. And I would suggest that something on the order of prime plus two percent would be appropriate.

Secondly, the SO's application indicates that the Schedule 2 revenues exceed expenses and that they are in fact applying for a decrease in Schedule 2 rates. We would ask that the decrease for Schedule 2 rates be put into effect July 1st as well. Mr. Marshall did not offer any reason not to do so, only suggesting that the Schedule 2 rate adjustment is quite minor. You know, that's certainly not a reason not to do it.

And if a true-up is necessary as a result of the full hearing, then, as Mr. Marshall confirmed, the same mechanism to be used for the Schedule 1 rate could in fact be used for the Schedule 2 rates.

And that is my submission.

CHAIRMAN: Thank you, Mr. Hoyt. I do have a couple of

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questions for you. First of all, with respect to implementing a change with respect to Schedule 2. Of course we don't have a motion before us with respect to that matter, and in fairness to all of the intervenors and the Applicant, this is something that I guess has arisen out of today's hearing, but in the event that we don't grant that is it your intention to bring a motion to that effect?

MR. HOYT: It's something I would have to take up with my client depending on the Board's decision on this particular application.

CHAIRMAN: Secondly, my question is with respect to the rate of interest that you mention which I believe was prime plus two percent. What is that based on? Where did that -- where did you derive the amount of interest that you suggest would be appropriate.

MR. HOYT: I don't have a scientific answer but I would refer -- I think Mr. Marshall referred to the fact that the interest that the SO was earning on its account and I assume that if the SO is like the all the rest of us they are not earning a lot of interest on their accounts, whereas the particular customers who would have to be paying this money would in fact be -- would have financing costs and we see that. So there is no particular magic to

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it. It would just seem to be a reasonable rate.

CHAIRMAN: Thank you, Mr. Hoyt. Any questions from other members of the panel? Mr. Barnett?

MR. BARNETT: Yes, Mr. Chairman. Mr. Hoyt, just one question of clarification I guess. Are you saying the way of Schedule 1 and Schedule 2 are approved on an interim basis, there would be an over -- and the final decision of the Board was such that the numbers did not shake out exactly as proposed by the applicant there would be an under collection on Schedule 2 and an over collection on Schedule 1 hypothetically, it would be the net that would go back to the -- with the interest rates you are talking about -- that would go back to the market participant? Is that what -- the way you see it working?

A. Right. It would depend on the full hearing and a chance to canvass all of the numbers that are before the Board and determine what is appropriate and the appropriate netting that would have to be done.

MR. BARNETT: Thank you.

CHAIRMAN: Thank you, Mr. Hoyt. Mr. MacDougall?

MR. MACDOUGALL: Thank you, Mr. Chair, panel members. Just a couple of comments. On behalf of each of Integrys, the Northern Maine Independent System Administrator, and

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Oxbow-Sherman, all three parties are supportive of the interim application made by the NBSO subject however to there being a proper rebate process similar to what occurred in the DISCO hearing and similar to what was mentioned by Mr. Hoyt on behalf of Bayside.

A second item that I would like to just point out on behalf of both Integrys and the Northern Maine Independent System Administrator is that with respect to certain questions posed by Ms. Desmond and followed up by Board Member Barnett, Mr. Marshall did indicate that if the interim rate application did not go into effect and there was a net deficit at the end of the year in Schedule 1, the NBSO would look either to the retained earnings amount or depending on the size of the deficit to be offset by the over collection in the CBAS or the capacity-based ancillary services. I would like to point out to the Board, as it is probably fully aware, that the issue of the cross subsidization between Schedule 1 and the CBAS schedules has been a matter of some contention and numerous Board proceedings, including ongoing proceedings, and a large part of this application by the NBSO, and we believe supported by all, if not close to all, of the market participants, is that the cross-subsidization between classes will end if the NBSO's application in the

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fullness of time goes forward. And that is a very crucial aspect of go forward changes in the New Brunswick market place.

So leaving the situation where there is a potential for the CBAS customers to continue to cross-subsidize other classes of customers who use different services is something that we believe should be stopped as soon as possible. There is another ongoing proceeding on the Strawman where parties are attempting to settle their differences there and bring something to the Board, but in the interim by ordering this interim decision that would ensure that that situation which is one of some contention would not continue to occur. So that is another reason that we fully support the interim application.

CHAIRMAN: Thank you, Mr. MacDougall. Any questions from the panel? Thank you. Mr. Kennedy?

MR. KENNEDY: Yes, Mr. Chair. This is to confirm that NB Power Distribution and Customer Service does support the interim rate application. Again to emphasize on the basis that if there is determined that it is not justified that the proper rebate process and procedures are put in place. And secondly would confirm and to confer with Mr. MacDougall that there is a process ongoing and that we would definitely support a situation where other rates

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that are charged for various services not be used to cross-subsidize Schedule 1.

CHAIRMAN: Thank you, Mr. Kennedy. Mr. Trenholm?

MR. TRENHOLM: Mr. Chair, the New Brunswick Power Generation Corporation supports the NBSO in their application for an interim rate increase.

CHAIRMAN: Thank you, Mr. Trenholm. Mr. Thériault?

MR. THÉRIAULT: Thank you, Mr. Chairman. Before I start I have prepared a table that I would like to hand out at this time to the Board and the parties with respect to that I intend to use as part of my argument. It is based on Schedule 1. It is not additional evidence. It is just an aid of argument.

CHAIRMAN: Thank you.

MR. KENNY: Mr. Chair, I want to make sure that as my learned friend indicates this is not an exhibit.

CHAIRMAN: No, it is not being marked as an exhibit. I am assuming it is just an aid to your summation?

MR. THÉRIAULT: That's correct. Yes. If you are ready, Mr. Chairman, would you like me to proceed?

CHAIRMAN: As soon as everybody has a copy.

MR. THÉRIAULT: Okay.

CHAIRMAN: I think they are just about distributed there now. All right. Proceed.

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MR. THÉRIAULT: Thank you. Mr. Chairman, this is an application by the New Brunswick System Operator for approval of an interim rate increase for Schedule 1 services. There are two services under Schedule 1 that are subject to increases under this application. These are, first of all, Point-to-Point Service, for which there is a 15.4 percent increase, and secondly, Network Service, which is subject to a 31.7 percent increase.

NBSO has offered three arguments in support of their request for interim rate relief for Schedule 1 services. These arguments include:

Firstly, a claim by NBSO that Schedule 1 services currently have a revenue shortfall. Its projections are that the revenue shortfall will total \$1.3 million for the test year '08/09 unless they receive the increase by July 1, 2008.

The Board -- secondly, the Board cannot hear a full rate case and render a decision in a timely manner so as to reduce or eliminate the losses on Schedule 1 services.

And thirdly, NBSO cannot recover from market participants any deficits.

Now I submit that the issues before the Board are twofold.

First, whether the NBSO has made a case for the extraordinary remedy of interim rate approval, and

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2 secondly, whether NBSO's claim that it was unable to file
3 a complete rate case in time to accommodate the Board's
4 hearing process is a credible claim.

5 In its decision of June 1st 2007, in the matter of the
6 application by DISCO for interim rate relief, the Board
7 determined that it had the authority to issue an order for
8 interim rate relief under Section 40 of the Energy and
9 Utilities Board Act. This Section, and its subsections,
10 reads as follows:

11 "Subsection (1) the Board may, with respect to any matter
12 before it, make an interim order where it consider it
13 advisable to do so, and may impose such terms and
14 conditions as it considers appropriate.

15 Subsection (2) states the Board may provide directions in
16 the event that the interim order is different from the
17 final order.

18 Subsection (3) states Section 104 of the Electricity Act
19 does not apply to an interim order made by the Board with
20 respect to charges, rates or tolls."

21 After a review of this section, and having solicited
22 comments from the parties to the proceeding, the Board
23 concluded that:

24 "...Section 40 would provide it with the authority to
25 grant an interim order and to require whatever adjustments

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that might be necessary should the final decision differ from the interim order with respect to the amount of the revenue requirement."

In this decision, the Board has asserted its authority to consider, approve in full or in part, or disallow the entirety of an interim rate application.

While Section 40 gives the Board the authority to consider an interim rate application, it is silent on the criteria, or tests, that the Board should use to decide whether or not to approve interim rates.

Nevertheless, the Board has confronted the issue of tests for interim rate relief in the past in a Public Utilities Board decision on a NB Power application dated January 10, 1991 the Board applied three tests.

First, that the projected results, reflecting all costs and revenues, demonstrate a prima facie need for a rate change.

Secondly, that there is not sufficient tie to permit the normal full public review.

And thirdly, that the circumstances which result in the need for a rate change are beyond the control of the Applicant and, as well, could not have been reasonably anticipated by the Applicant.

In a decision on an EGNB application dated January

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31st 2005, the PUB confirmed the tests for "special circumstances" stated in the January 10th 1991 decision, and further made reference to the Bell case before the Supreme Court of Canada. This case referred to "relieving the Applicant from the deleterious effects caused by the length of the proceedings". The Court stated that the purpose of providing "temporary relieve against the deleterious effects of the duration of the proceedings are essential characteristics of an interim rate order".

In an Energy and Utilities Board decision on the DISCO application, dated June 1st 2007, which I referred to earlier, the Board ruled that: (1) that there will be a significant delay between the time of the application and the time of the final decision following a full public review of the application, and secondly, such a delay will cause deleterious effects on the Applicant.

In summary then, I would submit that it is not sufficient for an Applicant for an interim rate relief to simply plead need. Rather, the Applicant must demonstrate (1) that there is not sufficient time to permit normal full public review, (2) it will suffer significant deleterious effects if it does not receive the interim approval, and (3) that the circumstances that give rise to the request for a rate change are beyond the control of

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the Applicant, and as well, these circumstances could not have been reasonably anticipated by the Applicant.

The burden of proof in these matters rests with the NBSO and if the Board should determine that these tests have not been met, or have been met only in part, then I would submit the Board must disallow all or part of the interim rate application.

The Applicant's request for an interim order is contained within an affidavit of sworn by William Marshall, President and CEO of the NBSO. There are three essential elements to this affidavit.

First, there is paragraph 6 of the affidavit in which Mr. Marshall states:

"Costs have increased...largely due to increases in labour costs. Labour costs comprise over 65 percent of NBSO's expenses and increased costs have resulted principally from "cost of living" type escalations and the addition of staff necessary for the NBSO to fulfil its roles and responsibilities."

Second, at paragraphs 8, 9 and 10 of his affidavit, these three items are offered up as an explanation for the inability of the NBSO to file an application with the EUB in tie to permit the Board to conduct a full hearing of such application and implement a change in rates by April

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1st 2008.

Third, there is exhibit B on page 7 of the affidavit. This exhibit provides the Schedule 1 Cost-of-Service that represents the full revenue requirement that NBSO is proposing for their rate case.

As Public Intervenor, I take issue with two aspects of the NBSO's interim rate application. First, I question the arguments offered up by the Applicant to explain why it was not practical to file an application with the Board in time to conduct a full hearing and implement a change in Schedule 1 rates by April 1, 2008. Secondly, I have concerns about the rate of increase in certain Schedule 1 costs -- increases that go well beyond any explanation attributable to the cost of living.

The Applicant, via the affidavit of Mr. Marshall, offers up three arguments to support the Applicant's inability to file in a timely fashion. These arguments are as follows:

1. The availability of an additional 600 MW of long-term firm transmission capacity created uncertainty in revenue projections for Schedule 1 service. Until an Open Season allowed for reservations and revenue began flowing, it was not possible to predict the impact on NBSO's revenue stream of the new International Power Line.

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2 Now I have two comments to make. First, I submit, it is
3 the NBSO's responsibility to forecast revenues, and the
4 fact that the IPL, represents a new revenue stream does
5 not relieve the System Operator of its responsibility to
6 budget accordingly.

7 Secondly, the Open Season took place in July and August of
8 2007. The IPL became operational in December of 2007 and
9 330 MW of reservation began generating revenue at that
10 point. This fully four months before the application for
11 interim rate relief was filed with this Board.

12 The second argument offered up to support the Applicant's
13 claim that it was unable to file in a timely fashion is a
14 somewhat vague reference to the possibility of amendments
15 to the Electricity Act to be made in the latter months of
16 2007. The Applicant provides no evidence that the
17 government was contemplating any actual changes to the
18 Act, and that these possible changes would have any impact
19 on the NBSO, or that these possible changes would have an
20 impact on either Schedule 1 revenues or expenses.

21 The third argument refers to reductions in NBSO's expenses
22 for Capacity-Based Ancillary Services in '06/07 and
23 '07/08, and the uncertainty that such reductions created
24 in the ability of NBSO to forecast its expenses.

25 Therefore, NBSO was not able to align rates and as forced

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to cross-subsidize services.

I would submit there is a serious question here as to whether NBSO has the authority to cross-subsidize rates to the possible detriment to market participants. This is something I would submit that the Board needs to address. But in any event, NBSO is responsible, like any regulated utility, to properly forecast and manage both its expenses and its revenues.

With respect to the Applicant's arguments as to its inability to file in a timely fashion, I would summarize my comments as follows: The Applicant has not made a defensible argument for the delay in a timely filing of a complete rate case for Schedule 1 services. In effect, NBSO has placed a burden on the Board to hear an interim rate application when there was ample time to file a complete rate case in time for the Board to render a decision.

Mr. Chairman, I submit the Board must examine the magnitude of the overall Schedule 1 revenue requirement increase, as well as the level of increases to individual cost categories such as salaries, consulting and other costs.

When assessing the increases to individual cost categories, I would submit three considerations must come

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to bear:

1. Is there sufficient evidence on the record to support the increase in costs as just and reasonable?
2. Are the cost increases under the control of the NBSO?
3. Could the NBSO have reasonably anticipated these costs in advance in order to have properly planned a rate case without a need for interim rate relief?

In order to assist in evaluating the increases in costs by cost category, I have prepared the schedule, which I have handed out, and this shows the amount of each cost category for '05/06 and proposed for '08/09, together with the percentage change between the two fiscal periods. I have also provided in this table, some discussion on the issues arising from the percentage change in each cost category, as well as some commentary and argument with respect to the degree to which the tests for interim rate relief have been met for each change.

I would like to focus my argument on three cost items: labour and benefits, consulting and contingency.

Under the proposed Schedule 1 cost of service, labour and benefits constitute 62 percent of total costs. These costs are proposed to increase by 28 percent from '05/06 to the test year period of '08/09. The explanation

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offered up for these rate increases refers to "cost of living type escalations and the addition of staff necessary for the NBSO to fulfil its roles and responsibilities."

It is clear that on its own, cost of living cannot explain the level of increase proposed for this cost category, particularly since most of the increase takes place over the '07/08 and '08/09 fiscal periods. It is equally obvious that the majority of this increase must come from additional hirings made over these same two years. And yet, there is nothing on the record to support either employment levels or the compensation levels currently in place at the NBSO. Without such evidence, the NBSO cannot demonstrate that the increases to this cost category are just and reasonable.

It should be clear to the Board that NBSO has control over these costs, since it has control over staffing decisions.

Further, the NBSO could have anticipated these cost increases well enough in advance to avoid the need for an application for interim rate relief. NBSO cannot claim that 62 percent of its costs, as yet undefended before this Board, were not known in time to properly plan a rate case.

Consulting costs have increased from \$272,000 in

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'05/06 to a proposed \$522,000 in '08/09, an increase of 92 percent. AS with labour and benefits, most of this increase is taking place over the '07/08, '08/09 fiscal periods.

Some of these consulting costs may indeed be mandatory. Others are undoubtedly discretionary. The problem that we have is we don't know how much of the proposed \$522,000 fits into each category. There is no evidence on the record to support either the level or percentage increase in this cost category.

NBSO has control over some portion of these costs, and for this portion, it could have anticipated both the amount and the rate of increase in the amount for this cost category.

NBSO has control over some portion of these costs, and for this portion, it could have anticipated both the amount and the rate of increase in the amount for this cost category. NBSO should not be in a position of arguing that it could not forecast this increase in time to properly plan a rate case.

Now I would like to move on to the contingency account, which I had a little discussion with Mr. Marshall on this morning. Of all the cost items in the proposed '08/09 budget, I would submit that this is the least

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defensible. Without any evidence of the need for a risk mitigation strategy, without any evidence of other strategies proposed by the NBSO during a technical conference, without any evidence of other methodologies proposed by Market Participants at the technical conference -- literally, without I would submit any evidence at all -- this \$300,000 contingency is slipped into an interim rate application. It cannot stand on its own without evidence of need and evidence on amount. This item requires a review that can only be achieved in a rate case, not an interim rate application.

Mr. Chairman, Board Members, I ask the Board to reduce the revenue requirement associated with NBSO's Schedule 1 by the following amounts:

1. Labour and benefits: \$485,000. This amount is the increase from unaudited '07/08 to proposed '08/09. The Board needs to examine both employment and compensation levels at NBSO and needs to freeze expenditures for this cost category until such an examination can take place until a complete rate case.

Secondly, consulting: \$130,000. This amount is the increase from unaudited '07/08 to proposed '08/09. The Board is entitled to know how NBSO manages its consulting contracts and why such an escalation of this cost category

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is proposed for the test year.

Thirdly, the contingency: \$300,000. This is the total amount for this cost category of '08/09. This item did not exist before the test year and there is nothing on the record to support either its existence or any amounts associated with it. The Board must canvass this item carefully and this requires a thorough examination of the issues surrounding this item during a rate case.

To summarize, I ask the Board to remove a total of \$915,000 from the revenue requirement associated with Schedule 1 services. This reduction represents approximately 10 percent of the budget proposed by NBSO for the provision of these services for the test year.

Now, Mr. Chairman, I would just like to make one final comment. And that is to point out that this is the second interim rate application to come before the Energy and Utilities Board. I would submit interim rate applications are a difficult proposition. They do bring to mind the old Irish saying, "Marry in haste, repent at leisure".

There are consequences of accepting and approving an interim rate application based on a claim that Board rate case procedures do not permit a timely decision. IF the Board accepts such an argument, it is quite probable that the Applicants will in the future, delay both the planning

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and filing of proper rate case in order to provide justification for an interim rate application.

The use of an interim rate application I submit should be restricted to unexpected emergencies and the Applicant should be expected to demonstrate both the nature of this emergency and why interim rate relief is the only remedy. For the Board to approach an interim rate applications any other way I would submit is to inadvertently reward Applicants for a lack of planning and foresight.

Applicants control both the timing and the scope of their applications. Applicants also understand the nature of the regulatory process. I would submit that they should be required to put this understanding to good use.

Thank you, Mr. Chairman. I do have copies of my prepared remarks to distribute to all the parties and to the Board here at this time.

CHAIRMAN: Thank you, Mr. Thériault. I have a couple of questions for you with respect to your presentation. You make the point that there is no authority to cross-subsidize. And I believe, Mr. MacDougall, made a similar point. And I think the point was made by the Applicant that this is not-for-profit organization. And one would assume that also means a not-for-loss organization. In the event that it turns out with the benefit of a

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full hearing that these matters were justified, how does the -
- if there is no cross-subsidization, how does any loss
that might occur get looked after? And I say that in the
sense that this is different perhaps from other
organizations that might apply for interim relief in the
sense that it -- because it is not for profit, how would
you suggest any difference that might result? Of course,
at this time you couldn't pre-judge that it will, but that
might result, how would that be looked after?

MR. THÉRIAULT: Well, first of all, Mr. Chairman, I don't
think I said cross -- I said cross -- anyway --

CHAIRMAN: We understand.

MR. THÉRIAULT: What I said was that it should be looked at.
I didn't say -- I don't think I said it couldn't occur. I
said it had to be addressed. It is an issue that has to
be addressed by the Board, hopefully at this upcoming
hearing. But with respect, not to beg the question, with
respect, if I understand what the Chairman is asking if
this interim rate approval is -- how would they make up
the shortfall?

CHAIRMAN: That's precisely what I am asking.

MR. THÉRIAULT: Well I guess what they would have to do is
go back there in charge of their operating costs, they
would have to go back and look at the -- for instance, the

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consulting contracts to see what consulting contracts were absolutely necessary, which weren't. They would have to look at salary level, staff additions. These are costs -- the whole point that I am trying to make is that these costs that I have concerns with are costs that they have known about and should have known about for quite some time in planning the process. So there should have been no need for an interim rate application. It should have been able to be present and in place by April 1.

CHAIRMAN: Well I guess in that vein, I note from the aid to your argument that you passed out that you don't take issue with some of the costs that are proposed saying effectively they are not within the control of the NBSO. And it is really those ones that are within their control and knowledge that you would suggest should be at this point in time disregarded. Do you oppose an interim order with respect to those matters for which you say that they -- I guess was not under their control?

MR. THÉRIAULT: No, if it's not under their control obviously -- and I think that's what I said towards the end of my closing remarks were that, you know, an interim rate relief should be for that. Something that is an unexpected emergency. Something that is not within your control.

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CHAIRMAN: I just want to make sure I am clear. So you are not opposing the interim relief, you are opposing the amount of the interim relief? Am I -- I just want to make sure I have this right?

MR. THÉRIAULT: Yes, that's correct.

CHAIRMAN: Thank you. Any questions? Mr. Normandeau? Mr. Johnston? Thank you very much.

MR. THÉRIAULT: Thank you.

MR. KENNY: If I may, Mr. Chair, just on rebuttal?

CHAIRMAN: Yes.

MR. KENNY: The point of interest was brought up. Well, as the Board has pointed out, this is a not-for-profit organization.

Certainly interest would be payable on what the corporation earns. They have no mechanism, prime plus 2.

Certainly what we would earn, if there was prime plus 2 consideration, then that is passed onto customers obviously.

In respect to the Public Intervenor's submission, I think we should thank the Public Intervenor for giving us a preview of the full hearing items that might be brought up, but nothing more. This is an interim motion. Those are full hearing items that will be canvassed and the mechanism that is -- that can be made is the rebate

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system. So that is -- I would like to point that out. And the decision that the Board has followed is a 2007 decision, not a 1991 decision.

CHAIRMAN: Mr. Kenny, you have raised in rebuttal here the issue of interest. And precisely what are you proposing by way of interest? I know that Mr. Marshall, you know, in evidence talked about it, but I don't know if we had any thing precise?

MR. KENNY: I guess I can only say whatever the corporation earns on their accounts.

MR. MARSHALL: Yes. The actual interest earned on the money we would be -- would rebate. And the amount varies by month. We have a formula is tied to prime with our bank account. So to forecast what it is, it is not possible either. But it would be rebated in terms of actual interest on the surplus.

CHAIRMAN: Does that conclude your remarks then, Mr. Kenny?

MR. KENNY: That's correct.

CHAIRMAN: Ms. Desmond, anything further that we need to do prior to adjourning this morning?

MS. DESMOND: Nothing further. Thank you, Mr. Chair.

CHAIRMAN: We will adjourn. And we will render a written decision hopefully in a timely fashion. Thank you

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

Reporter