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New Brunswick Board of Commissioners of Public Utilities

In the Matter of an application by NB Power dated January 8, 2002 in connection with a proposal for its Load Forecast and refurbishment of its generating facility at Point Lepreau.

PUB Offices, Saint John, N.B.
May 2nd 2002, 10:00 a.m.

Henneberry Reporting Service

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May 2nd 2002, 10:00 a.m.

CHAIRMAN: David C. Nicholson, Q.C.

COMMISSIONERS: Robert Richardson
Ken F. Sollows
Jacques Dumont

BOARD COUNSEL Peter MacNutt, Q.C.

BOARD SECRETARY: Lorraine Légère

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CHAIRMAN: Now we are dealing with the Point Lepreau Refurbishment Hearing and transcript. And I have a brief statement we have I am going to make here.

Based on the Load Forecast Hearing just concluded, the Board considers that a review of DSM options will be an important aspect of the Point Lepreau Refurbishment Hearing. The Board, therefore, has directed its staff to retain an independent expert to analyze the evidence that has been filed with respect to DSM.

Depending on the outcome of this analysis, the expert may be asked to present his or her opinion concerning the

viability of DSM initiatives in New Brunswick. Should this be the case, such evidence will not be available in accordance with the existing schedule.

My understanding is intervenor evidence has to be filed by Tuesday of next week. But that would be impossible to meet that kind of deadline.

NB Power and parties to the hearing, however, will be given the opportunity to review this evidence and submit interrogatories. The parties will also be given the opportunity to cross-examine the expert at the hearing. This is, of course, all subject to if the expert is of the opinion that he or she should give evidence at the time of the hearing itself. So it is not certain that this will come to pass, the expert will be retained by Board staff.

To permit all of these events to happen if necessary, it may be necessary to have an adjournment during the hearing and reconvene at a later date.

I want to remphasis that. We have no intention of interrupting the present schedule of the hearing. But if it turns out that half-way or three-quarters of the way through the hearing the logical place to hear from an expert witness, if same is the case, then we would be prepared to adjourn it over to give NB Power sufficient time to prepare in reference to that expert's testimony.

So that's an ongoing matter.

Now we are here today in reference to a Motions Day. And, Mr. Hashey, do you want to address the Board concerning that?

MR. HASHEY: Thank you, Mr. Chairman, Members of the Board, I'm pleased to tell you that we have resolved the issue but there still are things that have to be done.

We had discussions yesterday with Mr. Coon, and he confirmed last evening that the redacted contracts which we have supplied him are sufficient for his purposes.

The resolution is that we shall provide copies of five agreements which have been redacted almost exclusively to only redact the sale of the price information which, of course, is the information that people were concerned with, which is of commercial interest to be protecting.

There are --

CHAIRMAN: Sorry to interrupt, Mr. Hashey, five agreements?

MR. HASHEY: There are five agreements. I can list them for you, if you like.

CHAIRMAN: For the sake of the record, we will probably put them in as exhibits later, so that's okay. I'm just wondering if those were all of the agreements involved in the subject matter that --

MR. HASHEY: They are.

CHAIRMAN: -- of the interrogatories.

MR. HASHEY: Yes.

CHAIRMAN: Okay. Sorry, carry on.

MR. HASHEY: So as a result of that we have redacted agreements. We have taken out the price information. We have taken the technical specifications that nobody really wanted in any event. They weren't asking for that. They have been removed.

So those have been delivered and reviewed by Mr. Coon, who confirmed last night that that was satisfactory for his purposes.

We also have -- of course this is contingent on the appointment of an auditor to review the price information similar to what happened in the Orimulson scenario. And to check with the staff as to where it has been used and show that it has been used accurately.

It is not a major part of it, as I indicated the other day, the field contracts -- obviously are significant, but they are not a major part of the situation as it would be with respect to the fuel contract on the Orimulsion contract.

In any event, we would be pleased to cooperate with the independent auditor and provided him unredacted copies of the contract for his review on the basis, of course, we

would have a similar confidentiality agreement to the one that we had before. He could then file a report with the Board if it suits the Board. And we would carry on on the same basis as we did on the last. That would seem to me to be a logical solution and Mr. Coon agrees with that solution.

CHAIRMAN: Any discussion with Mr. Coon and I believe Mr. Hyslop was involved as well. With them as to timing of this, Mr. Hashey, or do they leave it up to the Board's auditor as to when he will be able to get in?

MR. HASHEY: We had no discussion on timing. We are ready whenever he wishes to get in there.

CHAIRMAN: Okay. That's the complete agreement then --

MR. HASHEY: Yes.

CHAIRMAN: -- between the two parties and the applicant.

All right. What I am going to do is simply find out the appearances here today. And anybody who has been involved in this negotiation, when they give their appearance would they indicate if they do concur with what Mr. Hashey has outlined as being the agreement?

Atomic Energy of Canada is not here. Unitarians for Social Justice?

MS. FLATT: Yes, that's fine.

CHAIRMAN: And that is Sharon Flatt --

MS. FLATT: Yes.

CHAIRMAN: -- appearing for them. City of Saint John? Not present. I guess the trip was too far. Conservation Council of New Brunswick?

MR. THOMPSON: Yes, what Mr. Hashey outlined is correct.

CHAIRMAN: And that is Mr. Thompson. Mr. Craik is not here. Energy Probe is not here. Mr. Rod Gillis, is he represented here today? J.D. Irving, Limited?

MR. PLANT: We are fine.

CHAIRMAN: Mr. LeBlanc is not here. The Province of New Brunswick as represented by DNRE.

MR. HYSLOP: Peter Hyslop appearing for the Province of New Brunswick, Mr. Chairman. And the arrangements set out by Mr. Hashey are satisfactory with the Province.

CHAIRMAN: Thank you, Mr. Hyslop. Saint John Citizens Coalition for Clean Air?

MR. DALZELL: Gordon Dalzell for the appearance. And we have no objections to the proposal that is before you now.

CHAIRMAN: Thank you, Mr. Dalzell. Saint John Energy?

MR. YOUNG: David Young for Saint John Energy.

CHAIRMAN: That's Mr. Young for Saint John Energy. You are here as an interested observer because you didn't require those contracts?

MR. YOUNG: That's right.

CHAIRMAN: Mr. Hashey, do you have any draft of the contracts -- not contracts, Board orders that you prepared in anticipation that the Board would go along with what the parties agreed to?

MR. HASHEY: I would never anticipate what the Board might do, Mr. Chairman. The answer to that on a serious note, and I apologize for that, is Mr. MacNutt has spoken to me this morning, he does have drafts. He was working on that part. I do have with me the confidentiality agreement, we had made some changes in from the other day.

CHAIRMAN: All right. The Board is going to take a brief recess because there are quite a number of exhibits that the secretary wants me to make certain that I mark today. And then we will have the agreements to be marked as well.

MR. HASHEY: Actually I have 12 copies of those with me for the Board, as requested, I believe. And we have supplied copies to the parties who expressed interest. I have given one to Mr. MacNutt and one to Mr. Hyslop. I will have one here for Mr. Thompson. Mr. Coon has a copy. But we will have to circulate the others. Everybody will get their copy very soon, obviously. But we just couldn't accomplish this. We got the contract straightened out yesterday afternoon. Mr. Coon came by and called last

night about 9:00 o'clock to say everything was okay.

CHAIRMAN: We will be about five minutes and come back in and mark the exhibits.

(Recess)

CHAIRMAN: All right. The Board has heard from the applicant and as well from those intervenors who were concerned in reference to the interrogatories not being responded to in reference to certain agreements. And as a result we have retired and we do have an Order that we will make now concerning that.

And the Board notes that the agreements which are the subject of the CCNB request do not form part of the NB Power AECL agreements with respect to what the Board issued an Order on April 23, 2002.

The Board has reviewed the information and request, CCNB 54 and CCNB supplemental 11 and NB Power's response to them.

The Board has heard counsel and representative of the parties as to the agreement that has been reached. And we therefore Order as follows: The Board directs that NB Power shall provide all copies of current contracts for the supply of Uranium concentrates and refining, the fabrication of fuel bundles, related services and heavy water, referred to as the documents hereafter, to the Board and intervenors not later than May 9, 2002, which is

next Thursday according to our calendar. Subject to the following conditions.

A) the documents shall be redacted to exclude all technical information, but marking the areas redacted with a simple statement of what type of technical information was redacted.

B) the documents shall be redacted to exclude all pricing information, but marking where the pricing information has been redacted with a simple note indicating the deletion of pricing information.

C) to assist the Board and the intervenors, the Board will appoint a person with accounting qualification and knowledge of economic regulator. The reviewer 1) to review the pricing information in the unredacted documents. 2) to review the evidence submitted by NB Power to date in the Point Lepreau Refurbishment Project and 3) to file a report with the Board as soon as possible in which the reviewer will attest to the Board and the intervenors as to the accuracy of the pricing inputs and outputs in the various models and analyses carried out by NB Power in its evidence submitted to the project.

All of which will be in accordance with the following conditions. A) the Board and the intervenors will be permitted to file additional interrogatories with respect

to the redacted copies of the documents and the report of the reviewer. B) the reviewer will be subject to examination on his report at the hearing but not with respect to redacted information. C) the reviewer shall enter into a confidentiality agreement with NB Power and D) the reviewer shall be provided access to any and all information and data including electronic data and NB Power personnel he deems necessary or required to complete his report.

And that's the end of that Order. And as we have anticipated, the reviewer being appointed by the Board will be Mr. James Easson, CA, who was of course the "auditor", that's what we called him the last time, but he prefers not to be called an auditor, so he is the reviewer in reference to this matter.

Mr. Hashey, having heard the Board's Order, is there anything that is not in accordance with what was agreed upon between the parties?

MR. HASHEY: The only thing, Mr. Chairman, is I'm not certain that the agreements that we are supplying you necessarily indicates the type of technical information. What we -- what I have done when we redacted these yesterday where there was pricing I left a section blank but I left the section in that said pricing and I put the

page numbers to show that there would be four pages or five pages that were deleted.

On the technical information some mention may be made of it, but I'm not certain that the books I have here today indicates the type of technical information. That's the one thing that this would not -- some would be there but not all. It wouldn't be complete.

CHAIRMAN: I wonder, Mr. Hashey, if we could suggest that maybe what happens is the applicant simply take a look at those and when -- you have indicated you are going to be sending them out to all parties?

MR. HASHEY: Yes.

CHAIRMAN: Perhaps you could just then give an additional sheet that would go out to all parties and just refer to the redacted elements that deal with technical information and supply what the Order contemplates at that time. And I think that will certainly --

MR. HASHEY: That would be -- thank you, that would be good.

CHAIRMAN: Yes. The Board certainly agrees with that. That will be in our Order. No problem.

Now if you want to -- if parties want to write these things down, because people like to come to the actual hearing themselves with the exhibit numbers on their binders and that sort of thing. I will go slowly here or

you can get them -- a list of them from the secretary after we adjourn here today.

But the binder of NB Power responses to interrogatories volume 1 of 7 is A-5. A-6 is the binder of NB Power response to the interrogatory attachment Number 2, CCNB, volume 2 of 7.

A-7 is again responses to interrogatories attachment Number 3, Gillis, volume 3 of 7. A-8 is binder of NBP responses to interrogatories attachment 4, Gillis, volume 4 of 7.

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A-11 is responses to interrogatories attachment 7, Panel E, volume 7 of 7.

Of course A-12 we marked on I believe it was Tuesday.

And that was the affidavit of Darrell Bishop. A-13 will be a binder of NB Power responses to supplemental interrogatories dated April 29, 2002, volume 1 of 2.

And A-14 will be binder of NB Power responses to supplemental interrogatories dated April 29, 2002, volume 2 of 2.

All right. Mr. Hashey, do you have a set of redacted documents and we will put them in as exhibits now?

MR. HASHEY: Yes, I do, Mr. Chairman.

CHAIRMAN: A-15. Mr. Hashey has given me a binder which is entitled Motion by Conservation Council of New Brunswick CCNB Point Lepreau Refurbishment, May 2, 2002, volume 1 of 1. And that is exhibit A-15.

That appears to me to be all the business we have to do today. Any -- oh, Mr. MacNutt.

MR. MACNUTT: Just one final point, Mr. Chairman. Mr. Hashey and the Board have just agreed that there will be a sheet to be sent to all the intervenors with the binder of the redacted contracts which would explain the missing information in simple form. Would that form a part of exhibit A-15 or be separately introduced?

CHAIRMAN: I would suggest we separately introduce that, Mr. Hashey, at the time of -- the next time we reconvene. Any other matters? Yes, Mr. Thompson.

MR. THOMPSON: Yes. I was just wondering when the written decision of the Board might be available?

CHAIRMAN: You will be able to get that after we adjourn today.

MR. THOMPSON: Thank you.

CHAIRMAN: Just to let you know the change that has occurred is that we have -- that NB Power has agreed to pick up the tab for the transcribing services, and we have gone

through that before. Mr. Coon is aware of it. But that means that there is no longer a copyright in reference to the transcripts, so we don't have to worry about whether or not we hand out the sheet with the decision that we have read. When we read it before we -- once we read it we had to allow the shorthand reporter service to make their dollar by selling you a copy of the transcript. So that is no longer applicable, so we can give you copies as the Board leaves here right now.

MR. THOMPSON: We graciously thank everyone.

CHAIRMAN: Okay. Yes, Mr. Dalzell?

MR. DALZELL: Yes, Mr. Chairman. The first day we were given a disk of the proceedings on day one. Would that be made available for day two to us today?

CHAIRMAN: Day two may be difficult. Do you know anything about where that stands now? There is a good deal of French language in that and that makes it kind of difficult, so I can't tell you when that will be, but I know that you will get a disk once it is available. And Mr. MacNutt is reaching for his microphone.

MR. MACNUTT: The April 30th transcript has been e-mailed to all intervenors. So it is available as an attachment to an e-mail sent out by NB Power.

CHAIRMAN: Good. Thanks, Mr. MacNutt. Any other matters?

Then I guess we adjourn until the 27th of May. Thank you.

MR. MACNUTT: Just -- will the transcript of today's proceedings, being as we have covered two hearings, be available in the same manner or will -- how will the transcript of today's proceedings be --

CHAIRMAN: Don't ask me, Mr. MacNutt. No, they are two separate transcripts. And I presume that they will be two separate documents. And there is a nod. The answer is yes, that's the way it's being completed. 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