

New Brunswick Board of Commissioners of Public Utilities
IN THE MATTER OF a hearing concerning the requirement for a
License pursuant to Section 86 of the Electricity Act Re:
Perth-Andover Electric Light Commission

July 19th 2005

BOARD: David C. Nicholson, Esq., Q.C. - Chairman
Randy Bell - Commissioner
Ken F. Sollows - Commissioner
David S. Nelson - Commissioner
Patricia LeBlanc-Bird - Commissioner

BOARD COUNSEL - Peter MacNutt, Esq., Q.C.

BOARD STAFF - M. Douglas Goss - Senior Advisor

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CHAIRMAN: This is in a matter of a hearing concerning a
requirement for a license pursuant to Section 86 of
Electricity Act Re: Perth-Andover Electric Light
Commission.

Could I have appearances for Perth-Andover?

MR. DIONNE: Dan Dionne.

CHAIRMAN: Thank you, Mr. Dionne. And for Board Staff?

MR. MACNUTT: Peter MacNutt for Board Staff. And I have
with me Doug Goss, Senior Advisor.

CHAIRMAN: Thank you, Mr. MacNutt. As I described prior to the hearing starting and would like to do on the record. This is always a difficult role for the Board to play, Mr. Dionne, in that the Act charges us with an interpretation of the legislation when it becomes the law of the province. And then pursuant to that we are ordered to -- by it, we are required to issue licenses to all, in this case, participants, in the electricity market.

And therefore we have to make a preliminary ruling that the Act provides this procedure if in fact a participant or a party that we have requested get licensed objects to that.

And that's the hearing today.

And I think probably the best way to proceed, the Board has left all the matter up to Mr. MacNutt and Board Staff to deal with. So we have not been involved really in the day-to-day preparation of anything. And I think it's probably the best way is to call on Mr. MacNutt to set the stage for us. Mr. MacNutt?

MR. MACNUTT: Thank you, Mr. Chairman. As just noted, I am appearing before you today on behalf of the staff of the Board, who have been assigned responsibility to administer that portion of the Act known as Part V, Regulation Electricity, Division A Licenses of the Electricity Act.

The issue before you today is fairly narrow. Did the

Village of Perth-Andover acting through its Perth-Andover

Electric Light Commission conduct an activity contrary to Section 86 of the Electricity Act on April 1 because it conducted that activity while not holding a license authorizing that activity issued pursuant to Section 89 of the Electricity Act.

Now I have arranged for Board Staff to include in your binders the relevant portions of the legislation we will be dealing with here today and of Regulation (2004-2) made under the Electricity Act. That should appear right at the front of your binders.

Now through discussions with Mr. Dionne, the Village and the Board Staff have reached agreement on the facts in this situation. Therefore, we will not be calling witnesses. We will be relying on the facts in the Agreed Statement of Facts. Copies of that agreement are in your binder.

I will file with the Board an originally signed copy of the Agreed Statement of Facts, which has as Appendix 4, the original of the Notice that was served on the Village of Perth-Andover, pursuant to Section 87, which has endorsed on the back of it, the original of the Sheriff's certificate of service. It shows that the Sheriff served the Village on May 5, 2005. So I will file that with the

Board now.

CHAIRMAN: Thank you, Mr. MacNutt. So in this package it's the Agreed Statement of Facts?

MR. MACNUTT: Correct.

CHAIRMAN: Executed by Mr. Goss and Mr. Dionne. As well, Appendix 1 is what, sir?

MR. MACNUTT: Appendix 4.

CHAIRMAN: Sorry. But this has an Appendix 1 attached to it?

MR. MACNUTT: Yes. The appendices are described in -- on page 3 of the agreement.

CHAIRMAN: Got you. And Appendix 4 is the Notice?

MR. MACNUTT: Correct.

CHAIRMAN: That you have just referred to?

MR. MACNUTT: Correct.

CHAIRMAN: That will be Exhibit B-1. Go ahead, Mr. MacNutt?

MR. MACNUTT: Now subsection 87(3) of the Electricity Act requires the Notice that we have just referred to as Appendix 4 in exhibit B-1, to advise the person to whom it is given that the party receiving it may request a hearing before the Board proceeds to issue the Order described in the Notice.

The Village of Perth-Andover in the letter to the Board dated May 17th 2005, which is not included in your

materials, requested the Board conduct a hearing. That's in the Agreed Statement of Facts.

That's what brings us before you today. Section 87(3) of the Act also requires the Notice to set out the reasons why the Board intends to issue the Order as described in it. And I submit to you that the Notice meets the requirements of this subsection as referenced through exhibit -- appendix 4 will show.

Should the Board at the end of the day find that the Village of Perth-Andover has contravened Section 86 of the Electricity Act, the Board's authority is to proceed to issue an Order pursuant to section 87(1) of the Electricity Act.

The Board is -- as far as I am able to determine is more or less confined to issuing orders pursuant to 87(1). And issuing such orders, the Board can exercise its discretionary authority to attach conditions to any orders or decisions of the Board.

So in the present situation, the Notice given pursuant to Section 87, in fact describes the orders that the Board intends to give should it find that Perth-Andover has contravened the Act.

In the submission I will show why the Board should issue an Order pursuant to subsection 87(1) of the

Electricity Act directed to the Village of Perth-Andover. In detail, my submission will show that the Village through its Commission for the distribution of electricity known as the Perth-Andover Electric Light Commission on April 1, 2005 caused to be provided electricity into, through and out of the SO Controlled Grid, that is the System Operator Controlled Grid, to itself while not on a standard service contract for the provision of such service with NB Power Distribution and Customer Service Corporation, which I will refer to as Disco from here on in, while not holding a license issued pursuant to Section 89 of the Electricity Act, contrary to the provisions of Section 86 of the Electricity Act.

At this stage, I would like to provide a little background.

Prior to coming in to force of the Electricity Act on October 1, 2004, the Board's role in the regulation of electricity in New Brunswick was spelled out in the Public Utilities Act. The Public Utilities Act did not contain any provisions dealing with the license of participants in the electricity sector.

The Province of New Brunswick in the late 1990's initiated a review of the provision of electricity in the province. Several studies and reports were produced during the period. I am not going to refer the Board to

those documents or produce the documents or introduce them today, as I do not think they are necessary for the purposes of this hearing.

The various studies and reports culminated in the enactment of the Electricity Act on April 11th 2003. The Electricity Act did not immediately come into force, as it was made subject to proclamation.

During the period between the enactment of the Electricity Act on April 11th 2003 and the date of proclamation of the Electricity Act on October 1, 2004, the Board examined its role under the Act. In particular, the Board examined the obligations and duties imposed on it by Part V, Regulation of Electricity Division A License as commencing in Section 86, which provisions are in the front of your binder today.

The Board noted Section 152 of the Act. Section 152 provides under the heading, Transitional Provisions, that a person who would normally require a license to conduct an activity pursuant to Section 86 may conduct that activity without a license for a period of six months following the coming into force of the Act. That period ended on March 31, 2005.

In summary then of what actually happened, the Act was enacted on April 11th 2003. The Act was proclaimed to

come into force on October 1, 2004. And a person could conduct a Section 86 activity without a license until March 31, 2005. And effective April 1, 2005, a person had to hold a license issued pursuant to Section 89 to conduct a Section 86 activity.

Following the enactment of the Electricity Act, the Board in conjunction with what was then known as the New Brunswick Power Corporation conducted the following information sessions to which those persons the Board anticipated might be affected by the licensing provisions were invited. Those conference dates were February 25, 2004, April 28th 2004 and October 20th 2004. Representatives of the Village of Perth-Andover attended several of these information sessions.

During the information sessions participants were provided with the Board's interpretation of who it thought should obtain a license pursuant to an activity -- to conduct an activity pursuant to Section 86 of the Electricity Act. The Board's interpretation was circulated to participants in a letter November 8, 2004. That is -- the letter appears as Appendix 1 to the agreement.

This interpretation was also posted on the Board's website. I will read the Board's determination as found

in the middle of page 2 of the letter. It is only five lines long.

The Board has determined that a person who provides or conveys or causes to be provided or conveyed electricity or ancillary services into, through or out of the SO Controlled Grid to any load facility directly connected to the SO Controlled Grid will require a license from the Board to be issued pursuant to Part V, Division A of the Act.

There was some disagreement with the Board's interpretation of who should be licensed. The Minister of Energy, the Minister responsible for the Electricity Act initiated procedures, which resulted in the amendment of Regulation (2004-2) made under the Electricity Act by the enactment of a new Section 3.1. That regulation as amended appears in the front of your binder immediately behind the legislation.

The Minister announced the amendment in a press release. That press release is included as Appendix 2 to the agreement, the Agreed Statement of Facts.

Section 3.1 of Regulation (2004-2) provides for the exemption from the requirement to obtain a license of certain classes of persons described in it. Section 3.1 will be referred to as the Exemption Regulation for ease

of reference. I will read it omitting the reference to industrial customer, reading the portions relevant to the Village of Perth-Andover, 3.1.

A Municipal Distribution Utility is exempt from paragraph 86(c) of the Act, but only for so long as (d) all electricity service purchased by the Municipal Distribution Utility is standard service.

As you will note by reference to the Agreed Statement of Facts, Board Staff and the Village of Perth-Andover discussed and corresponded with respect to the Board's interpretation that the Village of Perth-Andover's required a license. The Board advised the Village that in the Board's interpretation, Section 3.1 of the Exemption Regulation that the Village did not qualify pursuant to the regulation. The Board's letter to the Village is Appendix 3 to your Agreed Statement of Facts.

I will now address some specific detail of why in my submission the Village of Perth-Andover required a license effective April 1 to conduct the activity -- an activity pursuant to Section 86 of the Electricity Act, and did conduct an activity described on that date without a license contrary to Section 86.

The Village of Perth-Andover is a village by virtue of the operation of Section 3 of the Municipalities Act.

Section 4 of that Act authorizes the village to enter into contracts. And the Village is a corporate entity pursuant to and by virtue of the Municipalities Act.

Section 189 of the Municipalities Act, authorized the Village of Perth-Andover to continue to operate its Electric Light Commission for the provision of electricity to the inhabitants of the Village. The Village and the Commission are one in the same, but the Commission functions as an operating division of the Village.

The statement of facts shows that on April 1, 2005, the Village of Perth-Andover owned and operated an electricity distribution system in the name of the Perth Andover Electric Light Commission. The Commission purchased electricity and distributed it through its distribution system to all retail customers, such as homeowners, businesses and industrial enterprises in the Village.

The electricity was purchased by and delivered to the Village of Perth-Andover pursuant to a contract with WPS Generation Canada Inc., referred to hereafter as WPS. The electricity was not purchased by the Village of Perth-Andover pursuant to a standard service contract with the New Brunswick Distribution Customer Service Corporation, (Disco). The WPS Transmission System forms a part of the

Transmission System's administered as a part of the SO

Controlled Grid, that is administered by the New Brunswick System Operator in accordance with the Open Access Transmission Tariff.

CHAIRMAN: Mr. MacNutt, excuse me, sorry to interrupt you.

In the absence of the Board Secretary, who is ill today, I will ask Mr. Young to come up here. I have got a note. Maybe he could help us out. David? Thank you.

MR. MACNUTT: The electricity produced by the WPS Generating Facility's at Tinker is conveyed into the SO Controlled Grid. The Village of Perth-Andover pays WPS a bundled rate for transmission services and electricity in accordance with the Open Access Transmission Tariff.

The WPS Transmission System is directly connected to the Commission's distribution system through a substation at the Commission's property. The end result is that the electricity supplied to the Village of Perth-Andover's Electric Light Commission's distribution system through a direct connection with the SO Controlled Grid.

The Village of Perth-Andover by virtue of its contract with WPS was on April 1, 2005 causing electricity (1) to be put into the SO Controlled Grid, (2) to be conveyed by the SO Controlled Grid, (3) to be provided through and out of the SO Controlled Grid to the Commission's municipal

distribution system.

The activities just described are activities described in Section 86(c) of the Electricity Act. As identified in the statement of facts, the Village of Perth-Andover did not on April 1, 2005 hold a license issued by the Board pursuant to Section 89 of the Electricity Act, authorizing it to conduct a Section 86 activity as just described or any Section 86 activity.

The question then is to determine if the Village of Perth-Andover falls within the exemption created by Section 3.1 of the Exemption Regulation to which I have previously referred.

In Section 1 of the Electricity Act, the term, "municipal distribution utility" is defined to include in paragraph (c) "the Perth-Andover Electric Light Commission."

Section 3.1 of the Exemption Regulation states that a municipal distribution utility is exempt from paragraph 86(c) for so long as all electricity service purchased by the municipal distribution utility is standard service. The term, standard service, is defined in Section 1 of the Electricity Act. For ease of reference I will read it. "Standard service" means the electricity service provided by the standard service supplier to a distribution

electric utility or industrial customer directly connected to the SO Controlled Grid at the charges, rates, tolls and tariffs authorized under Part V. The term in turn -- the term, "standard service supplier" is defined in Section 1 of the Electricity Act to mean, "the person designated under Section 76."

When one looks at Section 76, you will find that the person designated under Section 76 of the Electricity Act is the Disco, the distribution company. The distribution company is defined in Section 1 to be, as we have identified earlier, New Brunswick Power -- Distribution Customer Service Corporation.

In summary then, a person conducting a Section 86 activity is exempt from the need to obtain a license. If that person is a municipal distribution utility taking its electricity from Disco pursuant to a standard service contract. However, the Commission is not taking its electricity from Disco pursuant to standard service, but from WPS pursuant to a contract between the Commission and WPS as previously explained. The result is that the Commission does not fall within the exemption as provided in paragraph 3.1(b) of the Exemption Regulation, and therefore was not exempt from the requirement that it hold a license to conduct Section 86 activities on April 1,

2005.

It should be noted in passing that the Village of Perth

Andover is not a market participant, as that term is defined in the Electricity Act. It can be suggested that it was not intended that persons who did not participate in the competitive electricity market in New Brunswick should have to obtain a license, which may be found by reference to the various studies and reports previously referred to in the Market Rules.

However, it is submitted that the Board's consideration of this matter cannot be guided by or governed by what is expressed in those studies and reports or from comments from the Minister of Energy. But only by the plain every day meaning of the Electricity Act. The Electricity Act is what the Legislature took from the various studies and reports and put into law.

One of the significant points that must be kept in mind when interpreting Section 86 is that the prohibition contained in it is directed not to market participants, but to "persons."

The Village of Perth-Andover as a corporation, as previously mentioned, is a person. The interpretation at Section 38 reads as follows. 38, in every enactment and regulation "person" or "party" includes the corporation,

partnership or society and the heirs, executors,

administrators or other legal representatives of a person.

A conclusion to be drawn from my submission, Mr. Chairman, is that -- and the Panel -- is that the Commission committed an offence on April 1, 2005 by conducting an activity described in Section 86 of the Electricity Act, while not holding a license issued by the Board pursuant to Section 89 of the Electricity Act, authorizing such activity. The Commission does not qualify for the exemption provided in the Exemption Regulation.

Consequently, I would submit, Mr. Chairman and the Board Members, the Board should issue the Order as described in the Board's Notice to the Village of Perth-Andover described on April 26th 2005.

In reaching a decision should the Board determine that it's appropriate that the Orders issue, it might be appropriate for the Board to exercise their discretion granted by the -- to the Board pursuant to Section 124 of the Act to issue a Conditional Order allowing time for compliance and dealing with other matters of a like nature when rendering the decision.

And that concludes my submission, Mr. Chairman.

CHAIRMAN: Thank you, Mr. MacNutt. So my appreciation of

your remarks is that the Board has but one jurisdiction here today, and that is, either it finds that Perth-Andover is caught in the definition of the various sections you quoted or it is not?

MR. MACNUTT: Correct, Mr. Chairman.

CHAIRMAN: Thank you. Mr. Dionne?

MR. DIONNE: Oh, that's great. I have got a brief presentation I will do. Yes. First, I would like to thank for the opportunity today to be here. I wish I didn't have to be, but unfortunately --

CHAIRMAN: It's cooler here anyway.

MR. DIONNE: That's right. I feel certainly outgunned sitting across from Mr. MacNutt and Mr. Goss today with their years of experience and everything. But I took some arguing lessons from my wife last night, so I feel that we are pretty much on a level playing field now.

So I have got a brief presentation. And in summary, I have got a couple of options to propose to the Board.

I guess some background, as everyone knows we are the smallest electric utility in the province. We have 1,000 metered customers in our utility. We have been purchasing power from the Tinker Dam facility for 100 years this year.

We have been active in the deregulation process, along

with the City of Saint John and the City of Edmundston. We have always been concerned with upward cost effects of the new market design right along. And as Doug would attest to, when we were on the Market Design Committee, that came up on numerous occasions.

We feel there are several issues that need to be looked at here is the provincial legislation requirement for the licensing and if a customer leaves NB Power for standard services from another license market participant. And part of our case is -- that our argument is that standard services we basically have the exact same standard services that Edmundston and Saint John buy from NB Disco, except we buy it from WPS. They send us a bill every month, the same as Edmundston and Saint John. They don't have to worry about scheduling ancillary services or anything like that.

So our relationship with WPS is the exact same relationship that Edmundston and Saint John have with NB Disco. And from our community's perspective, it's a ridiculous position the province has taken when attempting to open a market. How do you say that -- for example, it's almost saying that if you buy Fords you don't need a license and if you continue to buy from NB Power, you don't need a license. But we have the exact same

relationship, and we apparently bought a Chev or a Hyundai or whatever the model being, so we feel that it wouldn't -- trying to foster a market, that standard service is standard services regardless of who is it acquired from. And it clearly favours NB Power in the status quo.

And the Minister has stated that the matter will require further investigation when it becomes an issue for parties leaving the standard service.

Well, I guess unfortunately for us we are the first one. And it is an issue. The principle of it is that we are receiving the standard services. We don't feel we should have to be licensed when other utilities in the exact same position do not. And of course, the licensing fee having an upward cost on our rates. And I mention we are the first customer affected.

Really it's a new market. It's truly status quo for us, even with the SO Controlled Grid now. The System Operator has subcontracted the Northern Maine Independent System Operator to continue to manage a transmission system connecting Tinker Dam to Perth-Andover. So really us being part of the System Operator Controlled Grid, yes, we are, but really we are still being regulated or managed by the Northern Main System Operator. So really nothing has changed for us with this switch.

And like I say, I mention, we receive the exact same standard services that Saint John and Edmundston receive, although it's not from NB Disco directly.

And in fairness, we would like be treated on the same playing field as the other municipal utilities. I think that's all we ask. And standard service from a licensed market participant, WPS hold a license, the exact same as NB Disco. And we basically have two options. We would like to remove the requirement for the standard service participants to require a license whereas the provider is the licensed entity in the market. We feel that that request is legitimate in that we are not doing anything different. We are just having someone else on our behalf buy power for us and make all the arrangements. Therefore why would we as a participant need to be licensed? That's back to the whole argument should every residential customer in the province require a license if they are just buying power from a licensed entity?

And of course, as a minimum, realizing that the Board's hands are somewhat tied with the legislation, that the minimum be that to remove the license fee for standard service participants or for nonprofit entity, municipal utility such as ourselves.

The Board could still require a license, but waive the

fee. And it's my understanding that in section 89(2) that states the Board may provide for different classes of license and may in respect of an application for the issue and to amend or remove of a license charge a reasonable fee for an applicant, which fee may be varied -- which fee may vary for different classes of licenses.

So I guess at the minimum we would like to request that the license fee be waived and that the municipality submit the license. But obviously our first -- our first wish is to have the license requirement revoked completely.

This has been a bit of a frustrating process for the utility in that we feel like we have been sort of caught after the fact, after the legislation was prepared and we didn't have a great response from the Department of Energy. They basically told us if it becomes an issue they will look at it then. But unfortunately for us, we are the only one that it is an issue with right now. And then they keep referring back to the PUB has the -- PUB's prerogative to interpret the requirement as it sees fit is the quote out of a letter from Mr. Fitch to myself.

So I guess we feel we have been sort of caught in the middle here for whatever reason. And the provincial government seem to be unwilling to mend the Act for the

third time after it had already been done with only our --
only our request. Unfortunately for our community, we
felt, you know, that this was sort of another kick in the
shorts to a community that has had several government
offices close in the community and this was just one more
-- one more thing.

And Council felt that, you know, that we should take a stand
here. And Dan why don't you go down and talk to the PUB
and argue our case on the license issue.

So I guess that's what brought me to here. And I would like
to thank your for the opportunity today. And if you have
any questions. And of course, at the conclusion, we look
forward to your favourable reply of course.

CHAIRMAN: Thanks, Mr. Dionne.

MR. SOLLOWS: Mr. MacNutt, I would like to you take us
through Section 87 of -- 87(1), in particularly the first
thing where it says, the Board may order a person. Am I
interpreting this correctly to -- if I assume that we may
or may not order a person to do something after we have
had our hearing and that we may choose to do simply
nothing, because for whatever reasons we find as a matter
of fact here?

MR. MACNUTT: On the face of it is -- it is discretionary as

opposed to mandatory. In researching the Act, I was not able to find -- I wasn't able to find another provision whereby the Board could -- having -- the Board could apply a different standard or a different sanction if the Board finds that the offence against section 86 has occurred.

I finally came to the conclusion that the Board having -- when the Board finds a person has offended Section 86 that the only remedy that the Board can apply to the situation is to issue one of the Orders described in subsection 87(1).

If you go on through -- from section -- conditions of license, amendment of license through to the end of section 96, those are provisions that deal with a situation where the offence is committed by a person who has been licensed.

The situation we have here today and which confines you to subsection 87(1) is the situation where a person has done something pursuant to 86 when not holding a license.

Now you could find that the person has committed an offence pursuant to Section 86. I don't know that you could suspend -- simply do nothing, because they are offending the Act and -- but if you do do something, I think you are confined to do something pursuant to

subsection 87(1), paragraphs (a), (b) and (c), which is to not -- to direct them not to engage, alternatively (b) to cease operating, alternatively (c) to disconnect the apparatus.

I think the Board can exercise its jurisdiction given to it in division (d) of the Act, commencing at Section 116.

MR. SOLLOWS: Is that here?

MR. MACNUTT: No. You have to go to your large binder for that I believe, Commissioner Sollows.

CHAIRMAN: What is the section again, Mr. MacNutt?

MR. MACNUTT: Well, it's commencing at -- the Board's standard powers commencing at section 116. And I refer you to section 124. We are dealing with here with an inquiry. And I think the Board would have authority to make a conditional order. And the conditions could address time for the compliance, the fees to be -- possibly the fees to be paid. So there is that flexibility.

MR. SOLLOWS: So we could --

MR. MACNUTT: I have difficulty in suggesting that the Board could do nothing.

MR. SOLLOWS: But we could --

MR. MACNUTT: I think the Board has an obligation as a

regulator pursuant to the Act to ensure that an offence having been committed that it not continue or alternatively that the activity be licensed as opposed to doing nothing.

MR. SOLLOWS: But we have to seek an equitable outcome nonetheless?

MR. MACNUTT: I am sorry. I didn't hear you?

MR. SOLLOWS: We should be seeking an equitable outcome as well?

MR. MACNUTT: Yes.

MR. SOLLOWS: Thank you.

MR. NELSON: Mr. Dionne, you mentioned that you have met the Minister about changing the regulations. What was the outcome of that? You said that they weren't --

MR. DIONNE: I guess the response in correspondence we had the Minister is that basically we are the first one out. We were saying that look, that how can you charge a license to people that don't purchase from NB Power? Isn't that unfair? It's not promoting an open market. And the Minister's response basically was that basically if it becomes an issue with market participants, then they will review it. But of course, there are no market participants right now other than ourselves. And I guess until more people complain, then they would consider

reviewing it. But unfortunately for us, we are the first one -- first one out of the gate.

MR. NELSON: So you weren't included into the regulation change that happened what, earlier --

MR. DIONNE: We found with a lot of the regulation changes when they have been written sort of -- our little unique utility, and this is especially true with the Transmission Tariff, that we are sort of an after thought in a lot of things. It's like, oh, yes, gees, Perth-Andover they are up there, and we are unique situation, where we weren't on the grid, we weren't buying from NB Power. So we seem to be an after thought in a lot of this legislation. And we believe that's the case.

And perhaps the only offence here -- perhaps the only offence here is poorly written legislation perhaps.

MR. NELSON: What is your total revenue for the year on your 1,000 meters?

MR. DIONNE: 1,000 meters? I think our total sales now are somewhere around \$2 million annually.

MR. NELSON: Thank you.

CHAIRMAN: The Board will retire and see if we can arrive at a decision. And we will let you know if we can't. We will be back in shortly. Thank you.

(Recess - 10:45 to 11:10 a.m.)

CHAIRMAN: Thank you for waiting. With great frankness the Panel found this to be a difficult decision to in fact make. And, Mr. Dionne, we really can't argue with any of the arguments that you so ably put forward. Seriously, we can't.

And we do agree with you that the Regulation (2004-2) is at the basis of what both you and we consider to be an inequitable situation. That is, the Commissioners of Perth-Andover receive -- and the Village of Perth-Andover receive basically the same service off the SO Grid as both the municipal utility here in the City of Saint John and in Fredericton. But because of the drafting of that section, you are caught and they are not. And that is inequitable.

But fortunately it is in our opinion -- as Mr. MacNutt presented to us, our job is to interpret the legislation as it is presently drafted. It fits the situation.

So our initial interpretation has not changed as a result of today. But the -- we feel that we have to require that the Commissioners of the Village of Perth-Andover must get a license. However, as Mr. MacNutt pointed out, we do have some discretion under Section 124 of the Electricity Act. And therefore, we will extend the time for the Village to get that until the 15th of

November of 2005.

And, Mr. MacNutt, we will ask you to assist the Board in drafting the Order which will allow that. And we certainly feel that we will provide you, sir, with a copy of our decision. And that a simple amendment to 2004-2 will relieve this inequity and that certainly is something that you can take to government who handle the legislation and the regulations.

And in closing, again thank you for your participation.

Sorry, we are having to render the decision that we have.

MR. DIONNE: Okay. Will the fee remain the same or will --

CHAIRMAN: Unfortunately -- and this is something I haven't discussed in too great detail with my Commissioners -- but there is a Supreme Court of Canada decision that says that in setting a fee one has to set it on the basis of cost. And we are afraid as a Board that if we tried to move that fee around, other market participants or licensees would start to complain and we get into a mugs game with is that a fee or is it a tax, because we are changing it around.

So hopefully, Mr. Dionne, armed with the Board's decision, you will be able to persuade those people in Fredericton that you do have a good equitable case, which the Board really does support, and you will have success

in removing the inequity. 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