

New Brunswick Board of Commissioners of Public Utilities

Pre-Hearing Conference

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

Delta Hotel, Saint John, N.B.  
June 9th 2005, 10:00 a.m.

Henneberry Reporting Service

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CHAIRMAN: David C. Nicholson, Q.C.

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BOARD COUNSEL: Peter MacNutt, Q.C.

BOARD STAFF: Doug Goss  
John Murphy  
John Lawton

BOARD SECRETARY: Lorraine Légère

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CHAIRMAN: This is a first for me. I'm doing a CBC  
Sports thing. I would like to get on the record the  
appearances before the Board reads its decision. So just  
give me a second here.

Appearing today for the applicant?

MR. HASHEY: Yes, Mr. Chairman. David Hashey, Terry  
Morrison, the group identified yesterday. Thank you.

CHAIRMAN: Good. Thank you. Canadian Manufacturers and Exporters, New Brunswick Division?

VOICE: Mr. Chairman, David Plante is here. He is --

CHAIRMAN: I see him coming right now. So Mr. Plante is here representing the Canadian Manufacturers and Exporters.

Conservation Council of New Brunswick? Mr. Coon is not here. Eastern Wind Power Inc.?

MR. MACPHAIL: Peter MacPhail on behalf of Eastern Wind Power, Mr. Chairman.

CHAIRMAN: Thank you, Mr. MacPhail. Enbridge Gas New Brunswick Inc.?

MR. MACDOUGALL: David MacDougall, Mr. Chair, joined by Shelley Black.

CHAIRMAN: Thank you, Mr. MacDougall. Energy Probe Research Foundation? The Irving group of companies?

MR. STORRING: Mr. Chairman, Thomas Storrington.

CHAIRMAN: Thank you. Jolly Farmer Products? Not represented. New Brunswick System Operator? Mr. Roherty or Mr. Marshall are not here. Rogers Cable?

MS. VAILLANCOURT: Christiane Vaillancourt representing Rogers Cable, Mr. Chairman.

CHAIRMAN: Thank you. Self-represented individuals we have it on the roster for now. Is Mr. Denis here?

MR. DENIS: Yes, Mr. Chairman, accompanied by Jan Rowinski.

CHAIRMAN: Thank you. And Municipal?

MR. GORMAN: Raymond Gorman for the Municipal Utilities.

And I have the same group of individuals with me today that were here yesterday.

CHAIRMAN: Thanks, Mr. Gorman. Vibrant Community Saint John?

MR. PEACOCK: Good morning, Mr. Chair. Kurt Peacock here.

CHAIRMAN: Fine. Thank you, Mr. Peacock. Appearing for the Board?

MR. MACNUTT: Peter MacNutt on behalf of the Board. And I have with me today John Murphy, Consultant, John Lawton, Adviser and Doug Goss, Senior Adviser.

CHAIRMAN: Thanks, Mr. MacNutt. The Board will now turn to the matter of section 156 of the Electricity Act.

Normally the Board, during the public hearing process would review the expenditures made by the utility in providing electricity to its customers and determine if the expenditures were prudently incurred.

However, the Board had noted that section 156 of the Act may limit its ability to do so in this particular hearing.

That is the reason the Board requested submissions from the Applicant and the Intervenors yesterday.

The Electricity Act provides for the restructuring of New Brunswick Power into a holding company and several subsidiary companies of which Disco is one. The Act also requires the new distribution company to apply to the Board for approval of the rates it wishes to charge its customers if the increase in rates exceeds 3 percent in a year. Section 156 appears in the portion of the Act referred to as "transition".

Section 156 of the Act reads as follows: And I quote.

"For the purposes of the first hearing before the Board under Division B of Part V and for the first hearing before the Board under Division C of Part V, the assets transferred by transfer order or otherwise attributable by virtue of a transfer order, or assets otherwise acquired by the Distribution Corporation, the Transmission Corporation or the SO on or before the commencement of this section, shall be deemed to have been prudently acquired and useful for the operation of a distribution or transmission system or the provision of services of the SO, and any expenditures arising from distribution contracts, standard service contracts, power purchase contracts, transmission service contracts or ancillary services contracts entered into on or before the commencement of this section are deemed to be necessary

for the provision of the service." End quote.

Turning to Disco's submission on section 156, Disco's submission was that section 156 requires that the costs that flow from the power purchase contracts (referred to as the PPAs must be considered to be necessary by the Board. Disco further submitted that the total costs included in the PPAs must be accepted as a prudent or necessary component of the revenue requirement. Further, it would not be necessary nor relevant to examine the underlying components because the total cost cannot be changed for the purpose of establishing the revenue requirement.

Other parties submitted that it should be up to the Board to determine what is or is not relevant. It was stated that it would be appropriate to examine in detail the underlying costs since the PPAs represent approximately 75 percent of Disco's total costs.

The Board has reached the conclusion that the total costs represented by the PPAs must be accepted as a necessary component of Disco's overall revenue requirement.

Reviewing the various cost components would therefore not be required simply for the purposes of establishing the total amount of costs that Disco is entitled to recover from its ratepayers.

However, the Board must also set specific rates for the various services provided by Disco. The Board believes that it is in the public interest to set specific rates that are fair and equitable.

A traditional test for determining whether or not rates are "Fair and Equitable" between customer classes is the use of the revenue to cost ratio. The Disco Rate Application includes generation costs reflected in the PPAs. Section 156 requires the Board to accept those costs as part of Disco's revenue requirement. While the PPAs establish the total amount required to be paid by Disco, the Board must ensure fairness in the allocation of all costs between customer classes. Fair cost allocation will provide the proper economic price signals.

If the price signals upon which customer's rates are based do not reflect the true economic costs of power on a go-forward basis, inefficiencies will exist. Such inefficiencies will lead to uneconomic electricity usage patterns and customer rates will not reflect cost-causation. This is contrary to the objective of establishing "Fair and Equitable" rates. If such inefficiencies exist within the price structure of the PPAs, customer rates will not reflect the proper price signals.

Disco's evidence relies heavily on the Revenue to Cost Ratios for the various customer classes to support its proposed rate changes. The Board's own preliminary review of NB Power's annual reports suggests that the revenue to cost ratios may be different from those contained in the Disco evidence. This does not mean that the information in Disco's evidence is incorrect, however, this Board believes that the evidence must be tested in the most thorough fashion to ensure that we set fair and equitable rates.

The Board's regulatory jurisdiction is set forth clearly in the Electricity Act. It has broad regulatory jurisdiction over the Transmission Company, the System Operator and Disco. Section 136 of the Act gives broad powers to the Board to require any of those entities to file with it any documentation or information in their possession. The Act is also clear that the Board has no jurisdiction over the generation companies. We do believe strongly that if the NB Power group of companies has information that will assist this Board in establishing fair and equitable rates for the customers of Disco, then that information should be made available to this hearing process. It can be treated in a confidential fashion, if necessary but should be provided to allow us to set fair

and equitable rates. This in no way should be interpreted that the Board has regulatory jurisdiction over generation.

Finally, the Board notes that there is nothing in section 156 which makes any information confidential or prevents the Board from requesting information from Disco on the matters covered by section 156.

The Board will therefore require Disco to provide answers to information requests on costs that underlie the PPAs and any other documents that the Board considers relevant for the purpose of setting just and reasonable rates.

And we will take a 15-minute recess.

(Recess - 11:00 a.m. - 11:15 a.m.)

CHAIRMAN: Let me begin by apologizing to the Public Intervener whom I failed to recognize when taking appearances.

Go ahead, sir.

MR. HYSLOP: Thank you, Mr. Chair. It is the same group of people I have had all along except Mr. Barnett is missing today.

CHAIRMAN: We will not comment on that.

I checked with Mr. MacNutt. And we agree that basically what we have left to do today is just to

reaffirm what it is that will happen on Motions Day and set a date for Motions Day.

And I'm sure to the pleasure of the applicant, Saint John is terribly busy between now and the end of June. But the Delta in Fredericton is open on the 24th of June, 27, 28 and 29.

So I think that the applicant would -- and I'm sure all the parties would like us to have our Motions Day as quickly as we can after a reasonable time given to put out the Interrogatories. Yes, Mr. Hashey?

MR. HASHEY: And actually personally I would prefer the Monday.

CHAIRMAN: The 27th?

MR. HASHEY: Yes. 24, 27. Just a weekend in between them.

CHAIRMAN: Yes. Anybody else any conflicts or anything on those dates? Mr. Gorman?

MR. GORMAN: Mr. Chairman, the 27th and 28th are very difficult days for me. My preference would be the 29th.

CHAIRMAN: Here we go.

MR. HASHEY: I would go back. I would go back to the 24th rather than do that.

CHAIRMAN: How about you, Mr. Gorman? Would you go back to the 24th?

MR. GORMAN: Well, it is the United Way Charity Golf

Tournament. But I suppose we could give that up.

CHAIRMAN: Your great talents are needed elsewhere, sir.

MR. GORMAN: You have seen me golf.

CHAIRMAN: Okay. So the 24th appears to be all right with the parties? Now let me just check on something here.

All right. Now we have one member of this panel that is not available on that date. And the old adage is he who hears the evidence makes the decision.

However I think in the circumstances this is a preliminary matter, et cetera. And if all of the parties were to be agreeable that the Board go ahead with a reduced panel on that particular day and that our Commissioner or Commissioners who can't make it be allowed to -- everybody agree that they can continue to sit on a major hearing and take part in the decision, why I think I would appreciate that very much.

So I will go around the room and ask everybody if they are agreeable to that. Unfortunately there are a couple of Intervenors who are not here. But silence is acquiescence.

So the applicant, Mr. Hashey?

MR. HASHEY: We would have no objection to that. We would not raise any issue or try to upset your final decision on that basis.

CHAIRMAN: Great. Thank you, sir. Mr. Plante?

MR. PLANTE: Mr. Chairman, a concern that we raised yesterday with regard to the schedule and the uncertainty, and if I may the aggressiveness of what had been filed as far as the schedule goes, we still do not have clarity in that regard.

Does this mean that the schedule that has been proposed still stands?

CHAIRMAN: No, it does not. But it also doesn't mean that some of it might not be met. That is something that we will discuss on this Motions Day.

I guess the Board's approach is to try and get a sense of the information which is going to be available. And if some that we consider to be, after hearing all the parties, still consider necessary and make a ruling. Then we know the rules of the game.

And for instance, in fairness to the applicant, if they don't have something prepared today then they are going to be able to say well, all right, the Board has ruled that we should file that.

But it is going to take us X number of days or weeks to do it. So all of that sort of feeds into the scheduling. So that is why we have proposed, from the first time we mentioned this Motions Day, that we wait

until the end of the Motions Day to set down the scheduling  
for the rest of the hearing.

MR. PLANTE: Okay.

CHAIRMAN: So that is still an open question, Mr. Plante.

MR. PLANTE: I appreciate that. And on that basis I think  
we need more clarity on the process. So if that is what  
is required to get more clarity then we would support  
that.

CHAIRMAN: Okay. And Mr. Coon is not here. And  
Mr. MacPhail? Okay. I didn't -- he is not here as well.

Enbridge Gas New Brunswick?

MR. MACDOUGALL: No objection, Mr. Chair.

CHAIRMAN: Thank you, sir. Energy Probe is not here. The  
Irving Group of Companies?

MR. STORRING: Mr. Chair, we have no objection.

CHAIRMAN: Thank you. And the Jolly Farmer is not here  
today. Mr. Roherty is not here on behalf of the NBSO.

Rogers Cable?

MS. VAILLANCOURT: We have no objections, Mr. Chairman.

CHAIRMAN: Thank you. Mr. Denis?

MR. DENIS: No objections, Mr. Chair.

CHAIRMAN: Thank you. And the Municipal Utilities?

MR. GORMAN: Municipal Utilities have no objection,  
Mr. Chairman.

CHAIRMAN: Thank you. Mr. Peacock?

MR. PEACOCK: No objections, Mr. Chair.

CHAIRMAN: Thank you. And Mr. Hyslop?

MR. HYSLOP: No objections, Mr. Chairman.

CHAIRMAN: Okay. And we will go ahead with Motions Day on the 24th at the Delta Fredericton. And now we are sitting on the 9th.

Mr. Hashey, how long would you suggest that your client be given to review the Interrogatories to be able to make a decision to say that is okay, we will answer that or no, there are certain parts we don't wish to?

MR. HASHEY: Probably three or four days before. But, you know, if we could have them to review on the Monday of that week, you know, early on the Monday or late on the Friday, I think it would help us.

CHAIRMAN: Well, okay. And certainly Board staff's intention is that if we have got some ready to go right now, we will give them to you right now. We are not going to wait for the deadline.

We will let you have as much time as we possibly can. But certainly there are probably many Intervenors who hadn't started that process as we have. So we should give them time.

Well, then if we were to say noon hour, Friday the

17th is the date that any Interrogatories that are going to be reviewed and discussed on the 24th will be made available to the applicant and the other Intervenors.

MR. HASHEY: Mr. Chairman, would you be looking for a response from us prior to the Motions Day, I mean to give people heads-up? It seems to me that we should try to do if we can --

CHAIRMAN: Yes.

MR. HASHEY: -- and work towards getting that out maybe the day or two before. And we will do the best we can on it, I will assure you.

CHAIRMAN: Okay. That is great.

MR. HASHEY: We do have -- as you know, we have heads-up from three of the Intervenors and one in particular that we have been dealing with, namely the Public Intervenor, on stuff that we were going to talk about. So you know, all of that sort of thing, if people can do it, as you say.

And I hope that we are not going to get into the Interrogatory process with every little question about everything. Is this principally relating to the cost of service in those areas? Or are we looking at the income matters which aren't completely finalized. Is there any direction you can give us on that?

CHAIRMAN: Mr. Hashey, with frankness I'm going to leave it up to the parties. I mean, on Motions Day if you say yes, we will answer this, but we would like to put this off until such-and-such a time because of the nature of what is asked for in it, then I certainly think that is a good discussion point.

MR. HASHEY: That seems fine. The other thing I think for the purpose of the Intervenors, there is still going to be a process presumably on it. So that nobody should feel by not asking a question they are going to be cut off from doing it and try to make it that thorough.

CHAIRMAN: That is absolutely right.

MR. HASHEY: Thank you. Yes.

CHAIRMAN: We will on Motions Day then set up the Interrogatory process for the Cost Allocation Rate Design portion of the proceeding.

And if the Board rules then we will also try and do the same thing for the load forecast portion and let's say accounting and financial, et cetera.

And then the main hearing we will again have a discussion with you, Mr. Hashey at that time, or Mr.

Morrison and say okay, fine, you are going to have the evidence, the amended evidence filed with the parties by no later than 1st of October or whatever, okay. So we

will do that.

Mr. MacNutt, would you approach the bench. We can't read your printing. Thank you, Mr. MacNutt. Just so everybody is clear, we are not going to set a date today that the applicant has to answer if they are going to answer those interrogatories that are going to be delivered by the 17th.

We will deal with that on Motions Day and that's when Mr. Hashey will indicate that depending on the nature of the questions that should be done in such and such a time.

Our purpose to have that Motions Day is simply to say this is what it appears the parties believe is required by way of additional evidence, et cetera, and to get the reaction from the applicant to it.

Now any other matters, Mr. Hashey, that should be discussed today before we break?

MR. HASHEY: Probably wouldn't be a bad idea -- is it at 10:00 a.m.?

CHAIRMAN: Yes.

MR. HASHEY: That would be the time?

CHAIRMAN: Yes, 10:00 will be the time. Anything else?

MR. MACNUTT: Mr Chairman, one little point of clarification. At what point in time is Disco to advise the participants and the Board as to what questions it

will not answer that will be dealt with at Motions Day?

CHAIRMAN: My understanding, Mr. MacNutt, from what Mr.

Hashey said, and he can confirm that, is that they will try and get a list of questions out to all participants -- sorry -- that they are going to object to providing the answers to a couple of days prior to the 24th, and they will do their best to get it out as soon as they can.

MR. HASHEY: We are looking at June 22nd

CHAIRMAN: Yes. Okay. Mr. Hyslop, did you have something, sir?

MR. HYSLOP: Yes. Two points. One related to the interrogatories and my understanding of what is taking place is that this is I guess a fleshing out of the request for information and the general types of evidence we are looking to have as part of the record. Is that the thinking of the Board with regard to this first round of interrogatories?

CHAIRMAN: I think that's a pretty fair assessment, Mr. Hyslop, yes.

MR. HYSLOP: Thank you. The second point is the first point I wanted to raise yesterday and never got around to it. And I want to know on the record I guess exactly what the position of the applicant is with regard to the amended application and particularly in relation to the fuel

surcharge.

The original application in paragraph 3 said, included in the first phase of the application Distribution Corporation is respectfully requesting the Board approve a variable fuel surcharge. And then it went on to the general one in paragraph 4, approval of the revenue requirements cost allocation, rate alignment proposals and the rate charges and tolls filed by the applicant.

The amended application does not have a paragraph similar to paragraph 3 and when I first read it I took the view or I thought it was indicative that the fuel surcharge component was being abandoned. Then some of the things I read in the press and some of the statements that have been made outside of the hearings led me to believe that the fuel surcharge may still be on the table.

And I'm wondering if the applicant might comment, and the reason I'm asking they might comment is that it may affect some of the questioning and some of the type of evidence we would like to have filed.

MR. MORRISON: Yes, Mr. Chairman. I did have a discussion with Mr. Hyslop on that issue yesterday afternoon.

At this point because of the process that is in place to gather this information together for 06/07, we haven't made any determination whether there is going to be a fuel

surcharge or something akin to that. It was placed in the application, as you know, the original application, because of the timing issues and those are no longer relevant at this point in time.

So a final determination has not been made as to what the specifics of the rate increase for 06/07 will be. And of course on Motions Day we will be getting direction from the Board of course on when that evidence is going to be filed and then there will be a whole process. No Intervenor will be deprived of the opportunity to test it or question it or submit IRs on it. I guess at this point the short answer is we just don't know.

CHAIRMAN: Mr. Hyslop?

MR. HYSLOP: Thank you, Mr. Chairman. Well we spent a good part I think of May 9th arguing issues of jurisdiction in relation to the fuel surcharge. We filed briefs which dealt with the issue of fuel surcharge. I don't in any way want to leave the impression that those issues which have been raised by the Public Intervenor and by other Intervenors to this process are being abandoned. We would like to make sure it's clear on the record that when the distribution company makes a determination as to whether or not it wants to include a fuel surcharge on the record we are still of the view that there may be

an issue with regard to jurisdiction on that point. And I want it stated that that's not being abandoned at this time.

CHAIRMAN: It's certainly clear on the record now, Mr.

Hyslop. Okay. Thank you. Any other matters from any of the Intervenors. If not --

MR. MACNUTT: Mr. Chairman --

CHAIRMAN: Sorry. Mr. MacNutt?

MR. MACNUTT: One point of clarification, we have identified Motions Day to be June 24th at the Delta in Fredericton. What time on that day?

CHAIRMAN: I identified that. 10:00 a.m. Mr. Hashey asked.

MR. MACNUTT: Thank you.

CHAIRMAN: Okay. And I want to thank the translators again and the shorthand reporter and Board staff. We will rise and reconvene in the Delta in Fredericton at 10:00 a.m. on the 24th of June. 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