

1 New Brunswick Energy and Utilities Board

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5 IN THE MATTER OF an application by New Brunswick Power  
6 Distribution and Customer Service Corporation (DISCO) for  
7 approval of changes in its Charges, Rates and Tolls (Includes  
8 Interim Rate Proposal)

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10 Delta Hotel, Saint John, N.B.

11 May 31, 2007

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12 CHAIRMAN: Raymond Gorman, Q.C.

13 VICE-CHAIRMAN Cyril Johnston

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15 MEMBERS: Yvon Normandeau

16 Constance Morrison

17 Robert Radford

18 Edward McLean

19 Roger McKenzie

20

21 BOARD COUNSEL: Ellen Desmond

22

23 BOARD STAFF: John Lawton

24 Doug Goss

25 David Young

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27 BOARD SECRETARY: Lorraine Légère

28 ASSISTANT SECRETARY: Juliette Savoie

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30 .....

31 CHAIRMAN: Good morning, everyone. Today the Board will

32 commence the hearing of a motion by New Brunswick Power

33 Distribution and Customer Service Corporation requesting

34 that EUB make an Interim Order pursuant to Section 40 of

35 the Energy and Utilities Board approving a 9.6 percent

36 increase to all electricity rate categories except water

37 and heater rental rates and connection fees for the

38 increase, requested at 3 percent to be effective from the

1  
2 date of such Interim Order until a further order of the Board.

3 At this time I will take the appearances for the  
4 Applicant please?

5 MR. MORRISON: Good morning, Mr. Chair, Commissioners.

6 Terry Morrison and my co-counsel Ed Keyes on behalf of the  
7 Applicant. With me at counsel table today is Michael  
8 Gorman, Darren Murphy and Sharon MacFarlane.

9 CHAIRMAN: Thank you, Mr. Morrison. Is there anybody here  
10 this morning from the Agricultural Alliance of New  
11 Brunswick? Canadian Manufacturers & Exporters, NB  
12 Division?

13 MR. LAWSON: Good morning, Mr. Chairman. Gary Lawson. I'm  
14 expected to be joined shortly by David Plante.

15 CHAIRMAN: Thank you, Mr. Lawson. Enbridge Gas New  
16 Brunswick?

17 MR. HOYT: Len Hoyt for Enbridge Gas New Brunswick. Joined  
18 by Dave Charleson, the General Manager of Enbridge Gas New  
19 Brunswick.

20 CHAIRMAN: Thank you, Mr. Hoyt. FCS Canada Inc.?

21 MR. BAIRD: Chuck Baird and Ron Beaulieu joined by Jennifer  
22 Little and Ross Gilliland.

23 CHAIRMAN: Thank you, Mr. Baird. Irving Oil Limited? J. D.  
24 Irving Pulp and Paper Group?

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MR. WOLFE: Wayne Wolfe, Mr. Chair.

CHAIRMAN: Thank you, Mr. Wolfe. NB Forest Products Association? NBSO? Utilities Municipal?

MR. ZED: Thank you, Mr. Chair. Peter Zed as counsel to Utilities Municipal. And I'm joined today by Dana Young, Eric Marr, Daryl Shonaman, Marta Kelly, Charles Martin and Mike Couturier.

CHAIRMAN: Thank you, Mr. Zed. Vibrant Communities Saint John?

MR. PEACOCK: Good morning, Mr. Chair. Kurt Peacock here. I'm joined by Dr. Ken Sollows.

CHAIRMAN: Thank you, Mr. Peacock. Public Intervenor?

MR. THÉRIAULT: Good morning, Mr. Chair. Daniel Thériault. I'm here with Robert O'Rourke and Jamie O'Donnell.

CHAIRMAN: Thank you, Mr. Thériault. The New Brunswick Energy and Utilities Board?

MS. DESMOND: Good morning, Mr. Chair. Ellen Desmond as Board Counsel. And with me from Board Staff is Doug Goss, John Lawton and David Young.

CHAIRMAN: Thank you. Yesterday Mr. Lawson indicated that there would be some benefit to adjourn until today, so that we could use the afternoon in order to conduct further research on the Section 40 issue.

Mr. Lawson, do you have any additional comments now

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that you have had a further opportunity to research this issue?

MR. LAWSON: Mr. Chairman, I will be very brief. I would only add to the Board basically that my research has not caused me to reach a conclusion of whether or not these are indeed procedural changes. So I really can't shed much light on that issue. It will obviously be for the Board to decide. To me it was not apparent that they are procedural.

Specifically (3) of I guess what is now the new legislation, I would submit, though not relevant to this Board, would indeed be very substantive given the impact of it, making the decision of this Board essentially a final decision on the Interim Order application.

CHAIRMAN: Thank you, Mr. Lawson. Since the Board did grant the adjournment yesterday in order to allow for further research, I'm going to canvass the other parties just to see whether or not anybody else came up with anything additional that they would like to share with the Board at this time.

So Mr. Hoyt, anything further?

MR. HOYT: No, Mr. Chair. But I do have copies of the two cases that I mentioned yesterday. I sent them out to the parties by e-mail last night.

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And the Board Secretary informed me this morning that she had made copies for the Board. So I do have some hard copies here if anyone would like them on a break.

CHAIRMAN: Thank you. Mr. Baird?

MR. BAIRD: Nothing further, Mr. Chairman.

CHAIRMAN: Thank you. Mr. Wolfe?

MR. WOLFE: Nothing further.

CHAIRMAN: Mr. Arsenault?

MS. ARSENAULT: Nothing further, Mr. Chairman.

CHAIRMAN: Mr. Zed?

MR. ZED: No, sir.

CHAIRMAN: Mr. Peacock?

MR. PEACOCK: Nothing, Mr. Chair.

CHAIRMAN: Mr. Thériault?

MR. THÉRIAULT: Nothing, Mr. Chair.

CHAIRMAN: And Ms. Desmond?

MS. DESMOND: Nothing further. Thank you.

CHAIRMAN: Thank you. Are there any preliminary matters to be dealt with before we proceed to the hearing of this motion?

MR. MORRISON: Not that I'm aware of, Mr. Chair.

CHAIRMAN: And does anybody else have anything procedural that needs to be dealt with at this point in time?

Okay. Before I invite Mr. Morrison then to proceed on

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behalf of the Applicant, I do want to ask the parties, when they are making their presentation, to please come to the table at the front of the room. It is difficult sometimes for the Board to pick out just exactly where you are when you are making your presentations.

So I guess, Mr. Morrison, you are already at a front table. So that is fine. But for the intervenors we would ask you to come to the front.

All right. Mr. Morrison, you can proceed at this time.

MR. MORRISON: Thank you, Mr. Chair and Commissioners. As you are aware DISCO is requesting as part of the application before you, that the Board issue an Interim Order pursuant to Section 40 of the Energy and Utilities Board Act, as the Chairman noted, for approving a 9.6 percent increase to all electricity rate categories except water heater rental and connection fees, and that this order, when made by the Board, stay in effect until such further order of the Board.

DISCO's decision to apply for an interim rate increase was taken after careful consideration of both its current financial position and where it would be following the hearing into this matter if it did not seek an interim rate increase.

DISCO realizes what the impact of such an interim increase will have on its customers. However the reality is that DISCO must stop the significant losses it is suffering at the current rates if it is to remain viable.

For every day that the current rates remain in effect, DISCO is losing revenue of approximately \$300,000. To allow these significant losses to continue without an interim increase in its rates would seriously affect the ability of DISCO to make the interest payments on its outstanding debt which it is submitted could negatively affect the credit rating of DISCO and that of the Province of New Brunswick.

Now some intervenors undoubtedly argue that DISCO should have applied for a rate increase earlier. As the evidence indicates, the unique circumstances that DISCO faced leading up to the current application made that impossible.

The Energy and Utilities Board Act was assented to on June 22nd 2006. You will recall that it contained a provision prohibiting the PUB from commencing any hearings with respect to an application by DISCO for a change in its charges, rates and tolls.

On June 13th 2006 the then PUB advised DISCO that it would conduct a generic hearing on its load forecast

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methodology and on October 5th, also advised that it would conduct a generic hearing on DISCO customer service policies.

These hearings were held in late November and early December. And they were part of DISCO's previous rate application. And decisions were rendered in those hearings the end of January of this year.

Both of these hearings had the potential to impact DISCO's revenue requirement for this fiscal year 2007/2008.

The Energy and Utilities Board Act was proclaimed into law on February 1st 2007. And of course this Board was appointed pursuant to that Act. DISCO filed its application to the Board as soon as practicable thereafter.

As the Board is aware, and as the evidence discloses, DISCO is contractually bound to make payments prescribed in the Power Purchase Agreements. It is these contractual payment obligations which make up the largest part of DISCO's Revenue Requirement for 07/08.

As the costs under the PPAs continue to rise, primarily because of fuel costs, DISCO needs to be able to raise its rates to account for these increases.

Now before addressing the evidence that DISCO has

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filed with the Board in support of its request for the Interim Order, I want to first address the authority of the Energy and Utilities Board to issue an Interim order in the context of this application and to explain the rationale behind our position that the Board has full authority to grant such an Interim Order.

In doing so I will attempt to respond to some of the anticipated arguments that may be raised by those opposed to DISCO's request for an interim rate increase.

Dealing first with the authority of the Board, in the past much of the debate in the interim rate hearings has centered on the authority of the Board to issue an order granting an interim rate increase.

As we are all well aware, Bill 53, which is the amendment that we discussed yesterday, was passed in the Legislature a couple of weeks ago and received I'm told Royal Assent late yesterday afternoon.

Of relevance to the present application before the Board are the changes that have been made to Section 40 of the Energy and Utilities Board Act dealing with interim orders. When I talk about those changes I'm talking about Bill 53, the amendment.

Section 40, the previous Section 40, has been replaced with subsection 40 (1) (2) and (3). Of relevance today is

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Section 40 (1) and 40 (2). And they read as follows. "The Board may, with respect to any matter before it, make an interim order where it considers it advisable to do so, and may impose such terms and conditions as it considers appropriate."

Section 40 (2). "The Board may provide direction in the event that the interim order is different from the final order."

These legislative changes, in our submission, remove any doubt or confusion that may have previously existed surrounding the Board's authority to issue an interim order. The Act is now clear, giving the Board the authority to issue an interim order in unambiguous and plain language.

Notwithstanding that the former Section 40 of the Act is now gone and it has been repealed, it is important to note that the wording that was contained in that section has been judiciously considered by various courts in Canada. Those decisions provide guidance to utility boards when dealing with applications for interim rate increases as the courts have addressed the rationale and criteria to be relied upon when considering and granting an order for an interim rate increase.

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2 The former Section 40 provided -- and I will just refer to  
3 it -- "The Board may, instead of making an order final in  
4 the first instance, make an interim order and reserve  
5 further direction", and that is the key phrase, "either  
6 for an adjourned hearing of the matter or for further  
7 application."

8 That wording of the old Section 40, as I will call it, was  
9 identical to that found in Section 60 of the National  
10 Transportation Act, which is now Section 28(2), and of the  
11 Canadian -- and Section 52 (2) of the Alberta Public  
12 Utilities Act. And that is 60 (2).

13 The reason I refer to those is because those sections  
14 which are identical to the previous Section 40 have been  
15 considered by various courts. I'm going to refer to a few  
16 decisions, Mr. Chair.

17 In Re Coseka Resources Ltd. and Saratoga Processing Co.  
18 Ltd. -- and that is a case out of the Alberta Court of  
19 Appeal in 1981, the Court of Appeal was asked to interpret  
20 Section 52, and again identical to our previous Section  
21 40.

22 Mr. Justice Laycraft stated the following at page 717 of  
23 that decision. "In my view, to say that an interim order  
24 may not be replaced by a final order is to attribute  
25 virtually no additional power to the Board from Section 52  
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2 beyond those already contained in either the Gas Utilities Act  
3 or the Public Utilities Act, to make final orders. The  
4 Board is by other provisions of the statute empowered by  
5 order to fix rates either on an application or on its own  
6 motion. An interim order would be the same and have the  
7 same effect as a final order, unless the 'further  
8 direction' which the statute contemplates includes the  
9 power to change the interim order. On that construction  
10 of the section, the interim order would be a final order  
11 in all but name. The Board would need no further  
12 legislative authority to issue a final order, since it may  
13 fix rates under Section 27 on its own motion."  
14 This is the important point. "The provision for an  
15 interim order was intended to permit rates to be fixed  
16 subject to correction to be made when the hearing is  
17 subsequently completed."  
18 Now the landmark case dealing with interim orders is the  
19 Bell Canada versus CRTC case out of the Supreme Court of  
20 Canada. And that is a 1989 decision. In that case the  
21 Supreme Court of Canada was required to decide whether an  
22 interim rate could be modified after a full hearing on the  
23 merits, after a full hearing on the merits was completed.  
24 The Supreme Court interpreted Section 2 of the  
25 Transportation Act, again the same as our previous Section  
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40. And it stated "Traditionally, such interim rate orders dealing in an interlocutory manner with issues which remain to be decided in a final decision are granted for the purpose of relieving the applicant from the deleterious effects caused by the length of the proceedings. Such decisions are made in an expeditious manner on the basis of evidence which would often be insufficient for the purposes of the final decision. The fact that an order does not make any decision on the merits of an issue to be settled in a final decision, and the fact that its purpose is to provide temporary relief against the deleterious effects of the duration of the proceedings are the essential characteristics of an interim rate order."

And the court went on to say at paragraph 10 of the decision, "It is therefore obvious that the appellant only allowed interim rates to be charged after January 1st 1985 on the assumption that it would review the rates in a hearing to be held in order to deal with an application for a general rate increase. Every interim decision, which led to Decision 86-17 which was the decision in question, confirmed the appellant's intention to review the interim rates at the final hearing. Finally, interim rates were ordered for the purpose of preventing any

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serious deterioration in the respondent's financial situation while waiting for a final decision on the merits. Of necessity these interim rates were determined on the basis of incomplete evidence presented by the respondent. It cannot be said that the purpose of the interim rate increase order by the appellant was to serve as a temporary final decision."

The law as enunciated by the Supreme Court of Canada is clear, that the very nature and purpose of an interim rate is to provide relief pending a full hearing on the merits.

The Supreme Court adopted the reasoning of the Court of Appeal in Coseka, which Ie referred to earlier, confirming that interim decisions are distinguishable from final decisions in that they are made subject to "further direction".

While the words "further direction" don't appear in the amended legislation that is before you today, it is now clearer, I would submit, with the new legislation, that this Board is given specific authority to grant an interim rate. And then it can deal with the merits in a full hearing on the merits.

So it is my submission, Mr. Chair, that this Board clearly has the authority to grant the interim rate. And further the Supreme Court of Canada decisions indicate

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that it is to be based on evidence that would not be perhaps as full and complete as would be introduced at the hearing on the merits, and that the purpose of an interim rate is to relieve the applicant from financial consequences of that delay.

So once you are satisfied that you have the authority to grant an order for an interim rate, which again I submit is abundantly clear, the question to be answered is what evidence is required to establish that the circumstances are such that an interim rate can be granted?

It is our submission that a prima facie case or prima facie evidence alone is sufficient to permit the Board to grant the Interim Order requested.

Now I have reviewed a number of law dictionaries, Black's Law Dictionary and so on, and if you look at and distil all the definitions of prima facie I have come up with my own distillation of the various interpretations of what prima facie means.

My distillation of prima facie is, a prima facie case is one which is sufficient on its face to establish a set of facts constituting the applicant's claim, until disproved or rebutted by other evidence. In other words, a set of facts which, if presumed to be true, establish

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the applicant's claim.

Now the very purpose of an interim rate application is to enable DISCO to obtain relief on an expeditious basis in order to avoid the adverse financial consequences which will result from the delay occasioned by completing the full case on the merits. Of necessity the evidence required for an interim rate is less than that required for the final determination.

DISCO is only required to file evidence to establish a prima facie case. And there is ample authority for this position. Again I refer to the Bell case and Mr. Justice Gonthier's comments at page 46. And I have already recited this passage, so I'm going to focus on a portion of that passage.

He is talking about the evidence and he says, "Such decisions are made in an expeditious manner on the basis of evidence which would often be insufficient for the purposes of the final decision."

And again at paragraph 10 the court said, "Of necessity these interim rates were determined on the basis of incomplete evidence presented by the respondent." This is the Supreme Court of Canada.

I would also direct the Board to a decision from the CRTC and it's decision 95-7, and it's Maritime Tel & Tel,

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an application for an interim rate increase, and Tariff Notice 501 is the heading of the case. There the Commissioner heard an application for an interim rate increase. He decided it on the basis of prima facie evidence alone. It is stated, "First the Commission finds that there will be a significant delay before any final decision on MT&T's utility rates can be taken. In addition, the Commission considers that on a prima facie basis MT&T's utility segment ROE for 1995 will be inadequate in the absence of interim rate increases."

Finally, Mr. Chairman and Commissioners, I would refer the Board to a previous -- to a decision of the previous Board, the PUB, and that was a January 10th, 1991, decision of the Board. It was a request by New Brunswick Power for an interim rate increase.

And the Board stated at page 6 of its decision, "The Board is of the opinion that it is necessary for the applicant to provide at a minimum a prima facie case of need for any request for interim rate relief."

So it is our submission today, Mr. Chairman, Commissioners, that the need for an interim rate increase has clearly been established by the evidence submitted to the Board by DISCO on a prima facie basis.

I'm certain that some intervenors may raise the issue

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of what I would call special circumstances. In some previous applications for interim rate the question has been raised whether special circumstances are required before the Board will grant an interim rate.

It is our position that notwithstanding a couple of previous decisions by the PUB that no special circumstances are required to be shown in order for an interim rate increase to be approved. Now this is further supported by the simple fact that the new amendments to Section 40, which as we know have only been passed into law yesterday, contain no reference to the requirement that special circumstances be established before an interim rate increase is granted.

Now in the 1991 NB Power decision that I referred to the PUB was required to consider, and for the first time I might add, an application by NB Power for the approval of an interim rate. The legislation governing interim rates at that time was Section 41 of the Public Utilities Act. And it provided, notwithstanding any other provision of this Act, where the Board is of the opinion that special circumstances exist the Board may make an interim order approving a change in charges, rates and tolls, et cetera.

In that case the first application under the then interim rate provisions, and because of the requirement

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for special circumstances, the Board had to determine what constituted special circumstances. After reviewing legislation and precedents from various other jurisdictions the Board concluded at page 10, "New Brunswick is rather unique with respect to the legislation regarding interim rate increases and with respect to the definition of special circumstances."

The Board commented at page 6 that when determining special circumstances it must "look to the facts associated with the particular request before it".

In other words, that each case must be reviewed on its own merits. The Board then went on at page 10 of its decision to say, "In this instance and to provide guidance for possible future interim requests the Board is of the opinion that generally for the facts to constitute special circumstances within the meaning of Section 41(2) of the Act", and that's the previous Public Utilities Act, "the following should exist: (1) that the projected results reflecting all costs and revenues demonstrate a prima facie need for a rate change, (2) that there is not sufficient time to permit the normal full public review, and (3) 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

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the applicant.

It is my submission that the key features of the Board's 1991 decision are as follows: each case must be looked at individually, the case is limited to determining special circumstances under the special circumstances requirements of Section 41(2) of the Public Utilities Act, and (3) it is for guidance for future interim requests under that section and under that section only.

As you are aware, DISCO's application before the Board today is being taken and brought under the amended section of the Energy and Utilities Board Act which clearly does not contain the special circumstances requirements. In our submissions, the Board's 1991 decision has absolutely no precedent value with respect to the present application under the revised Section 40.

As I'm sure you are aware, in November of 2004 Enbridge Gas New Brunswick applied for an interim rate increase pursuant to Section 77 of the Gas Distribution Act. That section, which has since been repealed, was very similar to the Section 40 that was just repealed -- the Section 40 under the Energy and Utilities Board Act.

Despite the fact that Section 77 did not contain any provision for special circumstances, the Board, the PUB in that case, concluded that the granting of an interim rate

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should only be done in exceptional or special circumstances.

At page 5 of its decision the PUB stated, "The Board considers that in normal circumstances general rate increases should only be granted following full public review. Therefore the granting of rate increases on an interim basis should only be done in exceptional or special circumstances."

The Board went on to conclude that since Enbridge did not meet the criteria for special circumstances, and that's stated in its 1991 NB Power decision, or the criteria referenced in the Bell case, the request for interim relief was denied.

It is our very respectful submission that the PUB's decision in Enbridge is fundamentally flawed, and it is fundamentally flawed in my submission for three reasons. First, the Board was wrong to impute or read into Section 77 of the Gas Distribution Act the requirement for special circumstances. Secondly, the Board used criteria for special circumstances from the 1991 NB Power interim rate decision when those criteria were developed specifically for and to be used as a guide in relation to cases under Section 41 of the former Act. And third, the Board confused its special circumstances with the criteria

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set out by the Supreme Court of Canada in the Bell case.

Dealing with the first point. It is our submission that the Board incorrectly read into Section 70 the requirement that special circumstances must exist before an interim rate will be approved. Section 77 of the Gas Distribution Act did not require special circumstances. However, Section 76 of that Act did. And it said that special circumstances are required if the applicant is seeking interim rates on an ex parte basis. Enbridge Gas in that case was not bringing an ex parte application. And of course nor were we.

The Supreme Court of Canada on a number of occasions has stated the appropriate approach to statutory interpretation. In Atco Gas and Pipelines Inc. versus Alberta Energy Utilities Board, which is a 2006 Supreme Court of Canada decision, it is stated, "Today there is only one principle or approach, namely the words of an Act are to be read in their entire context in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of parliament."

In applying this rationale to the Enbridge Gas application, the Board was presented with two sections of the same act dealing with the Board's power to grant

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interim rates.

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In the case of an ex parte application for interim rates, Section 76, the Act required special circumstances to be present. The Act is silent -- I should say was silent -- as to special circumstances when the application was not ex parte, Section 77.

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Clearly, in our submission, if the legislature had intended that special circumstances need be present for an application under Section 77, it would have inserted those words into the section. In its plain grammatical sense the Act reveals a clear intention, in our submission, that special circumstances must be present in one case and not the other.

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It is clear that the legislation intended that special circumstances apply in only one situation, where an ex parte order was sought. To hold otherwise, in our submission, is to render the words special circumstances in Section 76 to be meaningless, and that of course could never be the intention of the legislature.

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And again I reiterate that the section that you are required or called upon to interpret is Section 40 of the Energy and Utilities Board Act which makes absolutely no reference to special circumstances.

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The second reason the Enbridge decision is flawed, in

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our submission, is that the Board granted its decision or its conclusion that special circumstances must be present on the basis that the rate could only be changed after a full hearing, and the granting of rate increases on an interim basis should only be done in exceptional circumstances. The logic is sound up to that point. However, in our submission, the Board made a quantum leap in logic to conclude that the unusual or exceptional circumstances necessarily means the special circumstances it set out in its 1991 NB Power decision. As mentioned above, those criteria were developed as guidance for any applications under Section 41 of the Public Utilities Act. And that section specifically provided for special circumstances. And it is therefore much different from either Section 77 of the Gas Distribution Act, which was the section in question in Enbridge's decision, and of course Section 40 which is before you today. The third reason why we believe that the Enbridge Gas decision is flawed is that the Board refused to grant interim relief because Enbridge did not meet the criteria developed by the Board for use in reference to Section 41 of the Public Utilities Act, or the criteria referenced in the Bell case.

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2 In the Bell case, in that decision the Board ruled -- I'm  
3 sorry. In the Bell case it is important to note that when  
4 the Board ruled in the 1990 -- sorry -- Enbridge Gas  
5 decision -- when it ruled that special circumstances were  
6 required it relied on only one legal authority, and that's  
7 the Bell case.

8 I will quote the passage that the Board relied upon in the  
9 Enbridge Gas case and the passage from Bell. It's at  
10 paragraph 46 of the Bell case and it can be found at page  
11 6 of the PUB's Enbridge Gas decision.

12 And the quote is -- and this is the only authority which  
13 the PUB relied upon -- "Traditionally such interim rate  
14 orders dealing in an interrogatory manner with issues  
15 which remain to be decided in the final decision are  
16 granted for the purpose of relieving the applicant from  
17 the deleterious effects caused by the length of the  
18 proceedings. Such decisions are made in an expeditious  
19 manner on the basis of evidence which would often be  
20 insufficient for the purposes of the final decision. The  
21 fact that an order does not make any decision on the  
22 merits of an issue to be settled in the final decision and  
23 the fact that its purpose is to provide temporary relief  
24 against the deleterious effects of the duration of the  
25 proceedings are essential characteristics of an interim  
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rate order."

In our submission the only criteria the applicant must satisfy for the granting of an interim rate is that which was set out in the Supreme Court of Canada in the Bell case. The applicant must demonstrate that it will suffer serious financial difficulties due to delays in the normal hearing process.

So it is our submission that this Board does not have to embark upon an investigation whether special circumstances exist or not. Notwithstanding that submission, even if the Board was to determine that they are required -- or that there is a requirement for special circumstances, it is our submission that there is no question but that special circumstances exist in this case.

DISCO has filed prima facie evidence with the Board in support of its application. The evidence clearly shows that it will suffer deleterious financial effects as a result of the length of these proceedings, and accordingly that the requested interim rate increase of 9.6 percent is reasonable and required under the circumstances. And I cannot overemphasize this fact. DISCO is suffering severe financial losses for every day that the current rates remain in effect. DISCO filed the application for a rate

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increase as soon as practicable and included with its request  
a request for interim relief.

I would like to deal briefly, Mr. Chairman, Commissioners,  
with the evidence that has been filed. DISCO's forecasted  
revenue requirement for 07/08 is 1,373.9 million dollars.

The forecasted revenue at current rates is 1,261.6  
million dollars. Leaving a revenue shortfall of 112.3  
million dollars.

The evidence filed, specifically exhibit A to the  
affidavit of Sharon MacFarlane, illustrates the components  
of the 07/08 forecasted revenue requirement, and revenue  
shortfall with comparative figures for 06/07 and 05/06.

It is our submission that DISCO requires an average 9.6  
percent increase over its current rates in order to  
recover the revenue shortfall and avoid further  
deleterious financial harm.

There are two major drivers at play necessitating DISCO's  
request for an interim rate increase, the first being the  
increases in the purchased power costs combined with,  
second, the impact of current rates that do not recover  
costs.

With respect to the increase in purchase power costs  
approximately 80 percent of DISCO's revenue requirement  
for 07/08 is for purchased power to the customer's load

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requirements. DISCO contracts its supply through obligatory power purchase agreements with NB Power, Generation Corporation, Genco, Colesonco and Nuclearco. These power purchase agreements pay the generators for energy related costs driven by fuel, and capacity related costs which are largely fixed in nature. Underlying fuel costs represents almost 50 percent of the purchase power expense.

Mr. Chairman, the fact is that DISCO's purchased power costs are higher in 07/08 driven primarily by pricing increases in the world's commodity markets for heavy fuel oil and natural gas. These highly volatile markets are subject to international global forces beyond DISCO's control. DISCO is impacted by the same global market conditions that are driving the dramatic increases in gasoline prices that customers have incurred over the past several years.

In 2007/08 DISCO is also subject to an increase in purchased power costs due to scheduled increase in capacity related expenses under its purchase power agreement with Genco. Overall there is a 13 percent increase in DISCO's purchased power expense over 2006/07.

On the issue of the impact of current rates that do not recover costs, as you know DISCO applied to the PUB in

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2005 for an increase in its rates to cover -- to recover its 2006/07 revenue requirement. The PUB issued a decision on July 19th 2006, which was substantially modified by Order-in-Council pursuant to Section 105 of the Electricity Act. The end result being the decision and then the modification of that regulatory process was the establishment of rates which did not recover DISCO's costs. These costs are still included in the 2007/08 revenue requirement. The costs haven't gone away. If the rates established for 06/07 had recovered the revenue requirement, DISCO's rates would now be higher, and the difference between the 07/08 revenue requirement and the revenue generated from current rates would be smaller. The drivers of the required rate increase being the rise in purchased power costs and the impact on DISCO's rate base resulting from the modification of last year's rate decision, are beyond the control of DISCO. As the evidence filed indicates, without rate relief DISCO is left in the untenable financial position in having rates that do not recover its costs. DISCO will suffer continuing losses, thereby severely limiting its ability to respond or to accommodate unforeseen developments. DISCO will not have sufficient income to make the

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interest payments on its outstanding date, which it, is submitted, could negatively affect the credit rating of DISCO and the Province of New Brunswick.

It is our submission that the applicant has filed prima facie evidence that supports its request as required by the Bell case. No matter which way you look at it, for every day that the current rates remain in effect, DISCO continues to lose revenue of approximately \$300,000, resulting in its suffering serious, deleterious financial effects. This fact alone should satisfy the Board that special circumstances exist to justify the interim rate increase requested.

The Board has an obligation to the utility to ensure its financial viability. The Supreme Court of Canada set out the regulators obligation in establishing just and reasonable rates, and again I'm going to refer to the seminal Bell Canada case.

At page 1744 the Court stated "Such provisions, meaning just and reasonable rate provisions, require the administrative tribunal to balance the interests of the customers with the necessity of ensuring that the regulated entity is allowed to make sufficient revenues to finance the costs of the services it sells to the public." During the last rate hearing then Chairman David

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Nicholson of the PUB succinctly captured this dual obligation in statements that you can find at page 5173 of the transcript.

He stated, "A Board such as ours has a dual responsibility. And the law is very clear on that, and it has developed over the last 100 years, is that on one hand we have to set just and reasonable rates for the consumer and on the other hand we are required to look at the economics of the utility itself and set those rates at an overall level that will return sufficient income to the utility so that it will be able to operate as a healthy enterprise, and when necessary, go out into the public markets and raise more money to provide the services for which it has the monopoly franchise. So we have that dual role."

It is our submission that in light of the ongoing losses that DISCO is incurring to fulfil this duty and obligation this Board must grant the interim rate request.

In conclusion, Mr. Chairman, in support of its application DISCO has submitted evidence establishing the need for changes to its charges, rates and tolls, and the requested rate -- interim rate increase. Additional evidence, including a cost allocation study for 07/08, rate design and rate schedules and expert evidence as we

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see fit, will be filed with the Board at a later date as indicated -- or as directed by the Board.

Those are our submissions in support of DISCO's request for an order granting it a 9.6 percent interim rate increase to all electricity rate categories except water heater rentals and connector fees where the increase will be 3 percent.

The only other item I wish to deal with, Mr. Chairman, and we can deal with it now or later at your discretion, I am advised -- was advised yesterday by Mr. Peacock that he intends to offer to the Board a report prepared by Dr. Ken Sollows entitled "Assessment of the June 19th, 2006, Public Utilities Board Residential Rate as an Alternative to NB Power Distribution's Proposed Interim Rate."

I reviewed the report last night and I believe it is not appropriate for submission to the Board in this hearing, and I can give you those reasons now or we can deal with it if in fact Mr. Peacock intends to offer it to the Board.

CHAIRMAN: I think perhaps it would be appropriate to deal with that at such time as Mr. Peacock requests to have that entered as an exhibit.

MR. MORRISON: Those are my submissions, Mr. Chairman.  
Thank you.

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CHAIRMAN: Thank you, Mr. Morrison. Any questions from the panel? Any questions? Thank you, Mr. Morrison. Mr. Lawson, do you want to come forward?

MR. LAWSON: Thank you, Mr. Chairman, Members of the Board.

I guess I would start out with the concept that the legislature might have passed new legislation as recently as yesterday, or the previous Section 40 with the concept that this Board when considering an interim rate application need only look at basically what is given to you by NB Power and by DISCO and say, well it looks like they need it, therefore we give it.

I think the concept is ridiculous, to be honest with you.

Obviously the legislature and reason dictate that you as a Board must give serious consideration to what is appropriate to consider when deciding to grant this kind of an interim rate increase.

And just to help a little bit, now I admit that the legislation -- and I am going to refer to only three cases. The legislation is a little bit different in each.

But I think the concepts that these cases have addressed will help you as the Board determine what are the kinds of things you should consider when deciding whether this application should indeed be granted.

I use it to sort of bring my conclusion forward a

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little bit, rate shock is obviously a standard that has to be considered by this Board in the final decision. To suggest that as an interim case you don't have to give any consideration to rate shock, to me is ludicrous. The decision that you are in fact rendering, ironically, in the interim rate increase, unlike the final decision, which by virtue of legislation continues to be subject to cabinet review and decision, the interim rate increase, because of the changes that went into place yesterday, no longer are subject to any review by cabinet. As a result, the decision that you make tomorrow or whenever you might choose to make a decision on this matter, is in fact a final decision in place until whatever time these hearings are concluded and you make a final decision on this rate increase. So your final decision is subject to cabinet review, but this interim decision is not and I would say that puts a heavier onus on you as a Board in deciding what is appropriate for a rate increase -- interim rate increase in this case. I am going to refer -- and I do have copies, but rather than distracting you with all of the copies now, I am just going to refer to a few cases and I will provide copies to all parties afterwards, including the Board.

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2 But one of the cases is a decision, Alberta Energy and  
3 Utilities Board. It is a fairly recent case. It is  
4 Westridge Utilities Inc., 2005/2006 interim rate  
5 application. It was decided on August 1st of 2006 by that  
6 Board.

7 And in that case the Board basically -- the decision  
8 itself is not very comprehensive and not very helpful, in  
9 fact, in giving any details of these. But it refers to a  
10 case that that same Board heard called Atco Gas, 2005/2007  
11 interim rate decision. And it quotes from there the  
12 criteria that it -- that that Board decided would be  
13 appropriate to consider for an interim rate increase. It  
14 broke it down into two parts. The quantum and needs  
15 factors, which have a few parts to it and then a second  
16 part, the general public interest factors.

17 So they looked and said look, we have the authority to  
18 grant an interim rate increase but we have to give some  
19 consideration to factors around the granting of this.

20 So the first part, the quantum and needs factor has a few  
21 parts. The first is the identified revenue deficiency  
22 should be probable and material. And even I, a reasonable  
23 man as I am, am prepared to say that it is \$112,000,000  
24 shortfall, that is material, at least by my standards.

25 As to whether or not it is probable I guess goes to  
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the issue of whether or not there is probably a prima facie case before you. That is just one of the factors that has to be decided.

All or some portion of any contentious items may be excluded from the amount collected. So it goes to the issue of contentious issues. And I think it is fair to say, without having heard any further evidence, but knowing that we have two days of hearings in late June to address it, that there are indeed very contentious issues that this Board will have to consider with respect to the evidence that has been filed.

So 80 percent of the costs it is being submitted have not been and are not at the moment, until a ruling is made by this Board on the issue, subject to scrutiny. But we submit that those costs are the vast majority of the costs and are indeed very contentious and should therefore be not considered by this Board as a result of being contentious.

And then the next point is, the increase required to preserve the financial integrity of the applicant or to avoid financial hardship of the applicant. And I will refer to another case that provides a little more detail on that kind of a test. But basically is it required to preserve the financial integrity or avoid financial

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hardship.

And lastly in those factors, can the applicant continue safe utility operations without the interim adjustment.

Then on the general public interest factors, I will raise just two of them. Interim rates should promote rate stability and ease rate shock. I submit that rate shock indeed, as Alberta has recognized, has to be a factor.

And it may be appropriate to apply the interim rider on an across-the-board basis. I submit that one we do have in this case. So any rate increase should be put on an across-the-board basis.

The next case I am going to refer the Board to -- both of the next two are in fact American Utility Board decisions.

This one is by the Washington Utilities and Transport Commission versus Verizon Northwest Inc. It is a decision of October 15th 2004. Again, a request for a rate increase on an interim basis.

Interestingly, in that case the indication is that there were hearings held, rather extensive kinds of hearings with respect to the interim rate increase.

But in that case there are several things that I think would be useful for the Board to consider, much like the issues that are addressed by the Alberta Board. These are

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ones that are not legislatively dictated, but standards that essentially were set by the utility itself -- by the regulator itself as to things to consider.

Interestingly, it says -- the framing of the issues under this section -- has the company established that the commission should take the unusual, extraordinary step of granting interim rate relief at the expense of ratepayers until concluding a general rate increase.

They say later in that paragraph, "the question is more easily framed, however, than it is answered." And that is the challenge that you folks have here today, is you have to decide. This is an extraordinary relief request because without -- we had 50 days of hearings last time, as I recall it, and we didn't even review the 80 percent of the hearings. And yet what we are having today is a hearing that might last a day and a half of argument to supplant that process. So it has to be looked at carefully.

Next question is what are the proper factors for interim rate relief. In this case it says the Board -- the Commission has broad powers to award interim relief, legislative provision, when it deems it justified. That is not much of a different standard, I suspect, that should be considered by this Board. Is it justified.

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2 So then they go on and say well what does it take for  
3 justification in this case. In that case it said public  
4 counsel pointed out in another decision of this particular  
5 Board, that the overwhelming weight of cases concluded --  
6 by the Commission concluded an interim rate increase is an  
7 extraordinary remedy and should be granted only where an  
8 actual emergency exists or where necessary to prevent  
9 gross hardship or inequity.

10 I submit the gross standard that they have put here should  
11 be applied to the Alberta test that they have set out. In  
12 other words, it goes back to the issue of it being an  
13 extraordinary relief issue.

14 Another factor is has there been an adequate hearing. The  
15 Commission should exercise its authority to grant interim  
16 rate relief only after an opportunity for an adequate  
17 hearing. The Board has to decide whether or not any  
18 further hearing is required or appropriate to find the  
19 evidence that it needs to make its decision on this  
20 application.

21 Need, hardship or unfairness. Again, because the remedy  
22 is extraordinary, we should determine whether the facts of  
23 record connote extraordinary need.

24 And another one, Verizon cites another case in this, where  
25 for the calculation of a required interest coverage

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ratio, which is an issue in this case. But in that docket, the pipeline company was facing a true emergency. It had lenders other than its owners -- again relevant here -- its owners were making credible assertions of reluctance to provide additional capital and the Commission made a determination of the minimum rates necessary to provide a level of safety for the company's finances.

Well I submit -- and in the next case I will cite the same thing -- it is different circumstances when you have owners -- a parent company, if you will -- that might be able to, quote unquote "carry the day" on the interim basis.

And lastly again -- sorry, I should have been citing the pages from which this comes. This comes from page 277 of this case. To constitute and again, I mentioned the word "gross" -- gross hardship for application and consideration of interim rate increase requests, the appropriate definition is the one suggested by Mr. King, slightly paraphrased, gross hardship occurs when a condition results in a current or realistic threat of an event such as a drop in the price of a stock, obviously not applicable in this case, or in the downgrading of bonds harms the owners.

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2 Now on that question, the only evidence -- you have to  
3 make your decision on the evidence -- the only evidence  
4 that we have before us and you have before you as a Board,  
5 with respect to sort of the consequences, the dire  
6 consequences that could arise as a result of this, is that  
7 it could affect the rating.

8 And I'm going to refer you to the evidence of Sharon  
9 MacFarlane, both in the -- her affidavit itself, in  
10 paragraph number 6 it says -- she refers to potentially  
11 negatively affecting the credit rating of Distribution  
12 Company and the Province of New Brunswick -- not probably  
13 or would, it could affect it. And she also immediately  
14 above that says "Thereby severely limiting its ability to  
15 respond to or accommodate unforeseen developments."

16 Not what I would say comprehensive evidence. I don't even  
17 know what they mean by that, let alone have any evidence  
18 to support it.

19 And the only other place that there is reference to it is  
20 in the Executive Summary, which basically the same thing  
21 is said in that case, in her Executive Summary. On page 2  
22 at the bottom of the page she refers to almost exactly the  
23 same wording as she has in her affidavit with respect to  
24 the issue.

25 So I submit that there is not before you evidence of  
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sort of dire financial consequences of this. What will happen of course is that the interest payments to what is essentially the owner will not be able to be made. Electric Finance Company is a company of the Province. And so can the Province in fact carry this -- that for a time, I would submit, it is not going to result in dire financial consequences for NB Power if it in fact is not able to meet its payments.

In that light, just the last case, from a Commission we probably all aspire to be members of in presenting before us, the Hawaii Public Utilities Commission -- although I guess they have water rate utility regulation maybe as a result of their climate.

But in that case there was again a test that was in that case probable entitlement and financial need. And in that case -- and that was by virtue of legislation. That is the test that was applied under legislative arrangement.

And they were there looking -- there is a distinction in their case, although it is not drawn here, between an interim rate increase and a temporary rate increase. And they were looking for a temporary rate increase.

But in that case they said, in citing another case -- this is at 624, 625, that same Commission adopted the

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following standard in determining financial need. For a temporary rate increase to be allowed, there must be more than the showing of revenue deficiency, revenue losses or inability to earn the authorized rate of return. The relief of a temporary increase is available on an emergency basis to meet a sudden and urgent financial need. There must be a showing of irreparable harm resulting to the utility from a distinctive and sudden deficiency in revenue which is not subject to recovery. It then goes on in the case, a very short decision, and essentially finds that the parent company, which is the Dole Company, I'm assuming the pineapple folks, have the financial resources to carry the company and have indeed been carrying the company. I might add it appears the company started in 1988. This application was considering the losses up to 1994. And the company had had losses every year it appears from 1988 to 1994. And the utility held that before -- they would not grant an interim rate increase before the general rate increase application being heard, because the parent company Dole was able to and had displayed an ability to carry it, and there was no evidence that it would do otherwise. And there is no evidence in this case similarly.

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2 On the question then of -- you know, if you decide that  
3 some rate increase is appropriate for interim relief, the  
4 next question has to be is notwithstanding the test of my  
5 argument that there shouldn't be any, there should be  
6 some, the next question you have to decide is what is an  
7 appropriate amount?

8 And in determining that it is submitted you have to give  
9 consideration again to this issue of the contentious  
10 issues of evidence and what is contentious. And secondly  
11 is your rate shock.

12 What is contentious, I have already addressed. 80 percent  
13 of their costs I submit are indeed -- at least 80 percent  
14 are contentious and will be subject to great scrutiny when  
15 hopefully given an opportunity to do so by this Board.

16 But rate shock, you can't make this decision in isolation.

17 As cited by Mr. Morrison basically, this Board has  
18 recognized -- or Public Utilities Board recognized it is  
19 striking a balance between the interests. But you can't  
20 lose sight of the customer interest as well.

21 And in that case, rate shock is a very significant issue.

22 There has been -- with this interim rate request that is  
23 being made, there would be almost a 25 percent rate  
24 increase in electrical costs over slightly over a  
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two-year period.

To say that that wouldn't be rate shock for most people obviously would be wrong. For those who are my clients, those who are members of the CME, particularly the large industrial, that has a very profound effect on their business.

Now we haven't got evidence before us with respect to the consequences. But I'm going to just identify a few things that did come out and are a part of the public record under the Public Utilities Board with respect to the issue of electricity costs, energy costs and business and rate shock as a consequence.

We do not want to in any fashion downgrade the fact that this same rate shock will have a very serious impact on all the other customers, including residential customers.

And we are sensitive to that as well. But we are going to address the issue of rate shock as it relates to business, and particularly larger industrial business.

According to the evidence that has been filed, 45 percent of the in-province power that DISCO supplies is consumed by industrial customers. And that is in the evidence here today under Section 9 of the evidence been filed.

So 45 percent of it. Most large industrial customers

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are manufacturers. We don't need to look far. In fact yesterday's paper, and I would say probably most of the days papers in the last several weeks, have been addressing the consequences that -- or what is happening in the manufacturing sector.

We are not here to profess that electric utility rates is the only thing that is causing some very difficult times for the manufacturing sector in New Brunswick. But it is indeed a contributing factor.

As somebody said, 93 cent dollars we don't have any control over. It has an impact on our business, my clients' businesses, which has an impact on NB Power, which has an impact on many other people.

There are 40,000 people in 2003 who worked in the manufacturing sector here in New Brunswick. I understand that that number is not as high anymore, although I don't have the statistics and I don't have -- they aren't filed with the Board in any event.

But 45 percent, according to the evidence that was filed in the last hearing, 45 percent of the industrial energy costs are electricity. Obviously some part of them are oil and other factors, but 45 percent. So a substantial cost of energy for industrial customers is electricity.

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2 There can be no denial. We have seen what is happening in  
3 the sawmill industry, that the combination of energy costs  
4 with high Canadian dollar is having an impact on  
5 businesses in New Brunswick. And we would submit that you  
6 have to consider that.

7 When you look at the contentious components, substantial  
8 component of the evidence that is contentious, and combine  
9 that with the economic impact that this is going to have,  
10 it would be, we submit, should cause the Board to conclude  
11 that little or no increase should be in fact granted, on  
12 an interim basis, until a full hearing has been held.

13 In conclusion I guess I would say this. If I came to  
14 somebody and said, in the last two years I have received  
15 about a 14 percent rate increase in what I'm supplying to  
16 you. I need another 10 percent increase. I want to do  
17 that before any hearing is held or any real chance to sort  
18 of examine me on why I need a 10 percent increase is  
19 given.

20 And by the way, 80 percent of my costs -- I know you  
21 really are concerned about whether or not they are valid  
22 costs. But that is too bad. You are going to have to  
23 assume that that is the case. And if I don't pay it, I'm  
24 not going to be able to pay the interest to my owners on  
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my debt. And it could affect my credit rating, maybe not, but it could affect my credit rating.

If I came to you and said look, that justifies you giving me, based on what we have before us, that evidence, a 10 percent or nearly 10 percent increase, to have a net impact of almost 25 percent over two and a half years. People would tell me I'm crazy. I would tell me I'm crazy.

That is what NB Power or DISCO is asking you to do today.

And we submit that the Board should be denying this rate increase. Or if it believes that a rate increase is appropriate on an interim basis, it should be a very small number. Thank you. If there are no other questions -- no questions.

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

Mr. Lawson, I just have one issue. And I guess it came out of -- it may be clarified by your last comment. But looking at Section 40 of the Energy and Utilities Board Act and your comments about rate shock and how difficult this 9.6 percent would be for the people that you represent, do you believe that the legislation, Section 40 specifically, gives the Board the authority to grant something different than what was requested?

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In other words, does the Board have to take an all or nothing approach, or in your view is it open to the Board to grant an interim rate increase different than that applied for?

MR. LAWSON: Mr. Chairman, I haven't got Section 40 in front of me. But I do believe that the authority would exist to do -- it is not an all or nothing. The opportunity is available under legislation to grant interim rate increase, whether it be the amount requested or otherwise. I would certainly not condone anything greater.

CHAIRMAN: Thank you. Apparently the Vice-Chair may also have a question.

MR. JOHNSTON: Mr. Lawson, I would just like your comments, if any, on the point that was raised by the Applicant that because of changes in legislation from the PUB to the EUB they were unable to file their general rate application any earlier, and what impact that should have on our decision.

MR. LAWSON: Thank you, Mr. Vice-Chairman. When the statement was made that it was in fact done as soon as practicable I questioned that. I know that there is a great deal of work involved in putting in these applications, but it should not have come as any surprise to the utility that they were going to need some further

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money this year.

They know what their fuel costs are going to be I believe from previous evidence 18 months out. As a result that application could have been made, in my submission, as early as February 2nd for consideration for this test year.

So what impact does that have? It denies them for a couple of months. If they were able to get by losing \$300,000 a day in revenue they think they should be entitled to for two-and-a-half months I believe it was before the filing took place, then perhaps that should further support the idea that they could wait until a final decision is made.

MR. JOHNSTON: Thank you.

CHAIRMAN: Thank you, Mr. Lawson. The Board will take a 15 minute break and we will reconvene I guess at 11 a.m.

Thank you.

(Recess - 10:45 a.m - 11:00 a.m.)

CHAIRMAN: Mr. Hoyt, are you ready to proceed?

MR. HOYT: Yes, I am, Mr. Chair. New Brunswick Power Distribution and Customer Service Corporation is applying to New Brunswick Energy and Utilities Board for, among other things, an order approving an interim rate increase of 9.6 percent. Enbridge Gas New Brunswick makes this

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submission in support of the Board's authority to grant such an interim rate increase generally and in this matter.

First I would like to look at the authority to issue the interim order. Bill 53, An Act to Amend the Energy and Utilities Board Act has now received Royal Assent, and as has been discussed, it amends among other things Section 40 of the Energy and Utilities Board Act. I won't set out the cites. They were referred to by Mr. Morrison earlier this morning.

For today's proceeding though I am going to discuss both the former and the new Section 40 of the EUB Act for two reasons. First, the Supreme Court of Canada case, which I will refer to in a moment, was decided on language very similar to that found in the old Section 40. And secondly, we would anticipate that some intervenors may suggest that the relevant legislation is the legislation in force at the time that the application was made. That of course is a proposition with which I disagree for reasons discussed yesterday.

In fact I would go back to a comment Mr. Morrison made yesterday where he indicated that it doesn't matter which version of Section 40 the Board makes its decision under.

Under both the old and the new Section 40 the Board is

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explicitly given a broad discretion to make interim orders with respect to charges, rates and tolls. And in the Bell Canada case that again Mr. Morrison cited, and I understand that he has copies available if in fact the Board would like those, the Supreme Court of Canada reviewed the nature and characteristics of interim orders. Bell Canada had requested and obtained an interim rate increase following an application for a general increase in telephone rates. And in Bell Canada the provision of the National Transportation Act allowing the CRTC to issue an interim order was in fact Section 60(2), a provision similar to the former Section 40 of the EUB Act. The Supreme Court of Canada noted in Bell Canada that an interim order is made in an expeditious manner on the basis of incomplete evidence and may be granted without hearing the merits of the case. The court stated -- and I would like to quote from two paragraphs, one which Mr. Morrison referred to, I think the two of them together are important. In paragraph 45 they said, "If interim rate increases are awarded on the basis of the same criteria as those applied in the final decision, the interim decision would serve as a preliminary decision on the merits as far as the rate increase is concerned. This however is not the

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2 purpose of interim rate orders. Traditionally such interim  
3 rate orders dealing in an interlocutory manner with the  
4 issues which remain to be decided in a final decision are  
5 granted for the purpose of removing that applicant from  
6 the deleterious effects caused by the length of the  
7 proceedings. Such decisions are made in an expeditious  
8 manner on the basis of evidence which would often be  
9 insufficient for the purposes of the final decision. The  
10 fact that an order does not make any decision on the  
11 merits of an issue to be settled in a final decision and  
12 the fact that its purpose is to provide temporary relief  
13 against the deleterious effects of the duration of the  
14 proceedings are essential characteristics of an interim  
15 rate order."

16 The new Section 40 of the EUB Act makes the Board's  
17 ability to grant interim rate orders even clearer.

18 Subsection 40(3) refers specifically to "an interim order  
19 made by the Board with respect to charges, rates and  
20 tolls." EGNB submits that there is clear authority for  
21 the Board to grant interim rate increase orders in the  
22 express wording of both the former and the newly amended  
23 EUB Act itself and as described by the Supreme Court of  
24 Canada in the Bell Canada case.

25 Next I would like to discuss the criteria for interim  
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rate orders. The criteria for obtaining an interim rate order under legislation similar to the former Section 40 of the EUB Act were discussed in paragraph 46 of Bell Canada, which I just quoted. Namely the interim order be required to alleviate the deleterious effects on the applicant caused by a lengthy rate application process.

It was also noted that, "Such decisions are made in an expeditious manner on the basis of evidence which would often be insufficient for the purposes of the final decision."

And EGNB would submit under the amendments to the EUB Act the province has determined that an applicant for interim rates in New Brunswick now does not even have to meet the Bell Canada test. The new Subsection 40(1) authorizes the Board to "make an interim order where it considers it advisable to do so."

The words where it considers it advisable to do so I would suggest is a very flexible standard providing the Board broad general discretion.

It is important to note that in denying an application by EGNB for interim rates in January of 2005, the decision that Mr. Morrison referred to earlier, the former Public Utilities Board referred to criteria which it had developed in the January 1991 decision pursuant to a

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provision of the Public Utilities Act authorizing interim rate orders that at that time actually contained the words "where the Board is of the opinion that special circumstances exist."

This rationale is no longer applicable as there is no requirement in the EUB Act, either former or amended, requiring special circumstances to obtain an interim rate order.

Next I would like to make the comment on the Board has power to rebate any over-collection of revenue. There are mechanisms available to the Board to address any differences between the interim rates and final rates after a thorough examination of the evidence in the rate proceeding. The law is clear that the power to order a rebate is inherent in the Board's power to issue an interim order and it's part of the broad and flexible powers granted to the Board to ensure that rates are just and reasonable.

The Supreme Court of Canada in the Bell Canada case -- and remember it was dealing with a provision very similar to the former Section 40 of the EUB Act -- held that the power to revisit the period during which interim rates are in force and to make a remedial order compelling a customer rebate is implied in the power to make interim

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orders within a regulatory scheme granting broad procedural powers.

While any order, final or interim, may be reviewed by the tribunal where the legislation provides, interim orders may because of their nature be reviewed in a retrospective manner. Authority for that proposition can be found at paragraphs 38, 43, 50 and 51 of the Bell Canada case.

In addition, under the amendments to the EUB Act the Board is expressly granted the power in Subsection 40(2) to provide directions in the event that the interim order is different from the final order.

NB Power is seeking a rate increase that is reflective of its need to recover the actual costs of purchasing electric power and distributing it to New Brunswick electricity consumers. If the interim rate increase is not granted, the situation will continue in which consumers are unable to make informed decisions with respect to energy use.

Allowing NB Power to more fully recover its costs sooner rather than later sends the right price signals.

Continually sending wrong price signals does not help the market and causes consumers to delay proper energy choices. A revenue shortfall on the scale suggested by NB

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Power, if not corrected by interim rate increase, could ultimately result in the necessity for an even greater correction being required in the future, causing increased rate shock.

It is EGNB's position that the Board is authorized to grant NB Power's request for interim rates under either the former or the new Section 40 of the EUB Act. NB Power has established to the extent required in an interim proceeding that the order should be granted. And it's important always to remember that the Board is authorized to revisit any interim rate increase order, if necessary, to correct any consequences resulting from a discrepancy between the interim order and the final order.

Those are our submissions, Mr. Chair.

CHAIRMAN: Thank you, Mr. Hoyt. Any questions from the Panel. Mr. Johnston?

MR. JOHNSTON: Mr. Hoyt, I would just like to follow-up on your last comment about the Board having the ability to revisit the interim rate increase. Are you by that comment contemplating revisiting it prior to the final decision, in other words, for example, before evidence is filed? Is that what you are suggesting?

MR. JOHNSTON: No, Mr. Vice Chair. What I am suggesting is that as part of the final decision if adjustments are

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required because of the decision that the Board ultimately made, the power exists and is specifically provided for in Subsection 40(2) to make those adjustments.

MR. JOHNSTON: So again, we are talking about making adjustments following the final decision, not modifying the interim order at some time during the hearing process?

MR. HOYT: That's correct.

MR. JOHNSTON: Thank you.

CHAIRMAN: Thank you, Mr. Hoyt.

MR. HOYT: Thank you.

CHAIRMAN: Mr. Baird?

MR. BAIRD: Thank you, Mr. Chairman, Board. As I indicated last week, we would be very brief --

CHAIRMAN: Perhaps we will give Mr. Hoyt an opportunity I guess to vacate the seat at the front and ask you to come forward.

MR. BAIRD: Yes, sir.

CHAIRMAN: Perhaps before we hear your comments, Mr. Baird, Mr. Radford apparently had some questions for the Applicant on the submission, and though he didn't I guess indicate that he had those questions, perhaps we will get you to deal with those now, Mr. Morrison.

MR. MORRISON: Certainly, Mr. Chair.

MR. RADFORD: Mr. Morrison, purely on a case of

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clarification, under the legislation as I understand it there is -- you could go to 3 percent without coming before the Board, is that correct?

MR. MORRISON: That's correct.

MR. RADFORD: When was the last time you applied for 3 percent?

MR. MORRISON: 05/06.

MR. RADFORD: And when was the last time that you applied any increase?

MR. MORRISON: When we brought an -- DISCO brought an application before the Public Utilities Board. That decision was rendered in June of last year and I believe the rate increase became effective on July 1st.

MR. RADFORD: And that was an eight percent increase?

MR. MORRISON: I think on average, yes.

MR. RADFORD: I heard the figure thrown out of 24 percent. Can you comment on that at all?

MR. MORRISON: No, I can't.

MR. RADFORD: Thank you very much.

CHAIRMAN: Thank you, Mr. Morrison. Okay, Mr. Baird, would you proceed?

MR. BAIRD: Thank you, Mr. Chairman, Members of the Board. We fully support the position of the CME on the issue of the interim rate increase. We would also ask that the

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Board consider the table 6 of Stats Can., numbers 62-001-X1B, March '07, which is the year to date year-over-year increase in fuel, which is 3.5 percent.

Secondly, we agree with the Applicant that there is insufficient evidence available for a full transparent and comprehensive review at this time.

That is our comment. Thank you.

CHAIRMAN: Thank you, Mr. Baird. I will see if there are any questions from the Panel. Thank you. Mr. Wolfe.

MR. WOLFE: Thank you, Mr. Chair and Board. Thank you for the opportunity to talk to you about this interim rate increase today.

First, I don't think I need to remind the Board that this increase, if granted, will result in rate shocks that is going to directly negatively affect the homeowners next winter for sure. And industries like I represent are very high energy dependent and along with all of our related jobs we will be hit very hard every day of the year as soon as this goes in place.

Over the last two years all of us have already sustained an increase of more than 14 percent. To an earlier question, in March of '05 there was a 3 percent increase, in July of '05 there was another 3 percent increase and in July of '06 there was another 8 percent

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increase. So now with this 10 percent it approaches 25 percent over a little more than two years.

I find it very unfair to throw this at us without any apparent concern as to the impact on the province, its businesses and all the jobs associated with those businesses today. I have been in the forest products business for a long time and I can assure you that these large rate increases have had a very large negative impact on the competitiveness of the business in this province.

The forest product business has never been as tough financially as it is today. Granted that all the problems are not due to power increases, but it's just one more factor that is going to help push companies over the edge. So now NB Power wants another big increase, just like the last set of hearings. The big difference now is that there are two years of deregulated history behind us, and we can make comparisons between NB Power projections and those actual results of those last two years. I would like to talk a little bit about that now.

About six weeks ago when David Hay made his press release for this request he stated that 4 1/2 percent of the total was due to the shortfall in revenue for the year ended March 31st, '07, and the other 5.1 percent increase was mostly due to projected higher fuel costs.

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2 First of all, the statement that last year had a 4 1/2  
3 percent shortfall. The evidence in booklet A-2 shows that  
4 indeed DISCO does project a shortfall or a loss of  
5 \$20,000,000 for the year ending March 31st, '07. Now  
6 since March 31st I have talked to a lot of people, both NB  
7 Power and in the government.

8 I have very good reason to believe that overall NB Power  
9 earned about \$10,000,000 profit for the year ended March  
10 31st, '07. So in other words, DISCO is projected to lose  
11 \$20,000,000, but all of the other companies that make up  
12 NB Power, they had a profit of \$30,000,000 last year.

13 So when I look back in their annual report that is out for  
14 the year before, DISCO revenue needs for that year were  
15 about 70 percent of the total revenues for all of NB  
16 Power. So that tells me that somehow DISCO lost  
17 \$10,000,000 while collecting 70 percent of the revenue,  
18 and on the other 30 percent of the revenues the  
19 corporation made a profit of \$30,000,000. Quite a feat.  
20 So not really knowing how their finances worked, I would  
21 guess that most of that \$30,000,000 profit came about  
22 because DISCO has overcharged through their PPAs from  
23 Genco.

24 So overall NB Power paid all the interest on their debt,  
25 paid for all their fuel, paid all their employees,

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2 paid all the other costs of making power, and they still made  
3 a profit. And I even understand that during the past year  
4 they made a payment of \$30,000,000 to the government in  
5 lieu of income taxes on top of this profit.

6 Now I realize that we are here to talk about last year's  
7 DISCO shortfall and the regulated rates that produced that  
8 shortfall, but reality is that most of us in this room,  
9 all the government users, as far as I can see, virtually  
10 all the population of New Brunswick, all we see in the end  
11 is the financial report from NB Power. We never see  
12 whether DISCO made or lost money. It's never in their  
13 annual reports either. Even David Hay's press release  
14 does not talk about DISCO, he talks about NB Power and  
15 whether they made money or lost money.

16 So I guess my argument is you can come up with all the  
17 reasons in the world why DISCO needs more money, but the  
18 reality is that the PPAs charged out to DISCO from Genco  
19 are not based on true costs, but on projected costs which  
20 are not the whole story.

21 I can think of no reason why any increase needs to be  
22 granted to cover a shortfall from last year when it's  
23 quite obvious that they did make money overall.

24 Mr. Morrison talked about the price of fuel. Our company  
25 buys a lot of fuel. For the first two months of

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this year -- fiscal year for NB Power I can tell you the fuel costs have not changed a lot since last year. For Mr. Morrison to say they are related to gasoline, there is no relationship between gasoline prices and the price of bunker fuel or the price of natural gas.

And so if DISCO is indeed losing \$300,000 a day, if you multiply that out by 365 days, that's even larger than what they are projecting in their evidence as their loss for this fiscal year.

Outside of fuel costs, another factor brought up by Mr. Morrison is the inability to pay the interest costs which will perhaps affect the credit rating of the corporation.

When I look at the evidence, DISCO interest payments are about 20 percent of the total paid by NB Power as a whole.

And I doubt that such a small percentage of interest payments could affect the overall credit rating of the corporation.

On the second part of the request for rate increase, the 5.1 percent increase, it is based mostly on future fuel costs, and again according to the press release. Maybe the price of fuel is going to go up, maybe it won't.

Rather than guess, it seems to me that the more proper way would be to have a surcharge based on the actual price of fuel. I know the previous Board turned down this request,

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but times have changed. Maybe that's a much better alternative.

If fuel skyrockets and the rates follow, at least DISCO won't be back here next year looking for another 10 percent. If fuel prices fall, we are all going to benefit. Of course that means the PPAs are priced accordingly as well. If the surcharge is not in the cards then at the very most there should be a small increase allowed for an increased fuel cost, because after two years of deregulation it's pretty obvious that the PPAs from Genco to DISCO have been costed very conservatively each year, because it appears that Genco earns a large profit by selling power to DISCO. And there is no reason to believe that their estimates are any better this year on their -- because as I understand the PPAs are just increased by cost of living each year.

Now the new Minister of Energy has said on more than one occasion that NB Power must pay its own way. I have never heard him say that DISCO must pay its own way. I have heard him say NB Power. It seems to me that when NB Power makes money like they have in the last couple of years, then they are paying their own way. But if we are only going to consider DISCO costs for the PPAs that are priced to send a big return to Genco, then we are doing

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the population and all the businesses here in New Brunswick a big service.

Thank you.

CHAIRMAN: Thank you, Mr. Wolfe. Any questions from the Panel? Mr. Wolfe, I do have one question. I understand from your submission that you are suggesting that first of all the interim increase that has been requested not be granted, but then I took that perhaps you were suggesting -- I think the words you used were small increase for the higher fuel costs, and I don't believe you suggested what that small increase should be.

Do you have any suggestion as to what the level of that increase should be?

MR. WOLFE: So far this year the fuel costs are about the same as last year, when you buy bunker C and buy natural gas. Perhaps in the range of 3 to 4 percent would be more suitable. There certainly is no reason in my mind to have any increase for last year's shortfall since I don't believe there was one.

CHAIRMAN: Thank you.

MR. ARSENAULT: Thank you, Mr. Chairman, Members of the Board. On behalf of the New Brunswick Forest Products Association I want to thank you for this opportunity to make this presentation.

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Rate shock equals job loss. It's as simple as that. And a 9.6 percent interim rate increase, whether it's interim or not, is rate shock for us, especially when you consider this in light of the three preceding rate increases in the last few years. So we are looking at 3 percent, plus 3 percent, plus another 8 percent last year for our industry, 6.9 average, but for our industry specifically it's 8 percent. And an additional 9.6 percent would be the largest of those increases that we have seen and would obviously have the most devastating impact.

We represent about 80 forestry companies, 17,000 workers, direct workers in the forestry sector but another 23 -- it totals about 23 to 25,000 workers indirectly. And these rate increases have devastating impacts. We are subject to a lot of other factors that are impacting our industry, but the energy increased rates have also impacted quite substantially as well and have had a significant impact.

The 9.6 percent increase for our members means directly 25 additional million dollars needs to be found, and this is at a time when our industry is in dire straits and is struggling to get through because of a variety of factors.

Our five largest companies, which are the pulp

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and paper companies, are among the largest consumers in the province, and some of our companies could be facing a \$5,000,000 annual increase in their electricity bill alone.

So just to give you an idea of what this means, our industry is very interdependent and with that means our sawmills are dependent on our pulp and paper mills to purchase the wood chips that they produce, and without the sawmills purchasing those wood chips -- the pulp and paper mills purchasing the wood chips -- the saw mills can't operate. So when you take into account that our pulp and paper mills total cost of electricity amounts to about 25 percent of their total cost, you can imagine what the impact would have if they were unable to meet the new increases that are there.

In essence our pulp and paper mills are anchors in our industry and without them the rest of the saw mills and our other companies are sort set adrift without an ability to make the -- bring in the dollars that are necessary to remain operational. And that could have a devastating effect for regions, entire areas. I mean just imagine without being an alarmist, I think it's fair to say you could imagine what type of an impact would happen if Fraser paper in Edmundston and regions -- Bowater in

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Dalhousie or UPM in the Miramichi was to go down. Each one of those mills has three to 600 employees, direct employees on site, and thousands of employees that are dependent on it in the region. So without that if they were unable to handle this sudden rate shock you are putting in jeopardy entire regions of the province. And I'm serious when saying that and I don't believe I'm being alarmist. All you have to do is look at what happened to Nackawic. When that mill went down the whole region was affected, right up to Saint John harbour. It has a devastating impact on the province. The government has seen that and has at times had to step in. And all of this, you know, is a potential if we continue to be non-competitive and we continue to increase the rates, and we are not able to compete with the other jurisdictions around us that we have to deal with every day. So we are strongly urging the EUB to carefully consider the devastating impact that this rate shock will have on homeowners and the New Brunswick Forestry and Manufacturing sector. There is never a good time for a rate increase. We know that. But this could not have come at a worse time. The US economic slow downs and market prices have put

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much of New Brunswick's manufacturing base under extreme financial pressures. The forestry sector is particularly hit by these pressures. We export about 80 percent of our product to the US and because of the decline in the US the demand for our lumber has decreased by 25 percent. All of that combined with the over-capacity of wood that is coming in from all over into the US has caused our lumber prices to drop by 33 percent. The reason I'm telling you this is we sell commodities and we can't pass the power increase -- the cost of the power increase on to our customers. We have to remain competitive. So although we can't change the currency we can change the markets. There are things that we can do. We can be as efficient as we can and we can control our costs. And these forces -- sorry -- the EUB has the ability to help us control these costs at this time. So we ask that you do so in the interest of citizens and jobs and we believe this is critical and your most responsibility. We know that you have other responsibilities and the legalese will tell whether you can or can't have the authority to increase or by what percentage, and I don't want to get into that, but I think that you have an incredible responsibility towards the industry and the citizens that it employs to make sure

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that the impact of this decision isn't so great that it will cripple us.

And just so that you know, you know, APEC, the Atlantic Province Economic Council, had last year told us that we lost 2000 jobs in the forestry sector. And right now half of my mills are operating at full capacity, many of which have chosen to do temporary shut-downs in order to try to control inventory and to try to control costs.

Those companies that are in shut-downs will have a much more difficult time re-opening if there is additional costs put on them, even before they have to open the door.

So this is another decision that will weigh on their decision on whether or not they are going to be able to re-open.

And you know what is most alarming about that is this should be our busy season. Our mills should be operating at full tilt, full capacity, multiple shifts, and that's just not the case at the moment. So what we need to be is competitive and energy is one of the primary things that make us competitive, or will allow us to compete in the global market place. And additional costs raised on the interim or on a regular basis are going to impact our ability to remain competitive.

There are too many questions we think that are out

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there right now that aren't answered. As the CME was saying we believe there are many issues that are going to be contested and we would love the opportunity and will take the opportunity to make presentations on those issues as the regular request for -- go on in the future if you so deem so.

But those questions are too much we believe for you to make the decision in the interim. So some questions that we think need to be asked is NB Power made a profit in 2005 and with what we are hearing from other areas and I understand it's speculation as to what next year will bring, but if you listen to the minister and the legislature and some of the individuals speaking on the issue we believe that NB Power may make another profit this year.

And that just doesn't make sense, that if this is the case how can we jeopardize all of our industry when those questions haven't been asked yet.

There is the issue of transparency as, you know, whether or not New Brunswickers are paying a fair and reasonable cost for the electricity they consume. And the other question there is if we are going to allow fuel -- increases due to fuel prices pressures, when those fuel prices decrease in the future will we make an amendment or

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allow for those prices to decrease as well? And we haven't seen that in the past.

Ultimately will the full impact of the rate hike on the provincial economy and the citizens be considered, or will this only be a decision based solely on the financial health of NB Power.

NB Power can't fix a problem that has taken decades to create, in one year, and that's really what we feel is happening. We understand the mandate that they have been given. We understand that they have to operate as a business. We understand the long-term necessity for that and the short-term necessity for that.

But we do believe that coming in and sort of trying to solve all these problems in one year with such a drastic increase is basically shifting one problem from one area into another area. And that really doesn't bode well for us and makes us incredibly uncomfortable.

What is needed is long-term planning, gradual and reasonable increases over time, understanding what the true costs are with regards to what we are paying, and making sure that there is nothing drastic that happens that would jeopardize the current situation that we are in.

And I guess every manufacturing company is sort of in

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the same area or the same boat as we are, but the forestry sector is under particular strain that a lot of other industries aren't seeing, and we are the ones teetering on the edge. And we ask that today in your decisions and your deliberations that you consider this very seriously as to the final consequences and what could happen to -- and how this will impact our industry.

Thank you, Mr. Chairman.

CHAIRMAN: Thank you, Mr. Arsenault. Any questions from the Panel. Thank you very much. Mr. Zed?

MR. ZED: Thank you, Mr. Chairman. Our comments will be brief. Very simply we accept the Applicant's position that they are entitled to an interim rate increase. And we pretty much agree with the submission made on the Applicant's behalf. And to the extent Mr. Hoyt covered some of the same ground, we take no issue. Our issue is really as to the amount of the interim rate that you might set and when it should start. And let me say that we don't intend to make your job easy. I'm not going to give you a number. But I would ask you to consider when exercising your discretion some issues that are of relevance to us.

Firstly, we would agree that not enough evidence has been filed to justify a 9.6 interim rate increase. We

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also agree with the principle that without an interim rate increase the issue of rate shock is only going to be amplified. So that is part of the reason we are supporting it.

So if we say 9.6 percent is rate shock, what is the right number? Previous government pulled back the previous increase and said 8 percent was the right number. We leave that to you for consideration.

We also leave to you for consideration perhaps the Board could look at the fuel cost increases, information which you have before you.

The issues that really give us concern are that the amount of the interim rate increase should be low enough to ensure that a rebate process not be required.

Now if we assume 9.6 is the maximum that can be justified, then we ask you to set the interim rate low enough so that we are not in a position to have to rebate, make a rebate to customers.

And there are two reasons for this. One is it is costly and difficult for us to administer. But just as importantly, it is very unfair to ask customers, in particular low income customers, to finance a rate increase that is ultimately not justified.

The other issue that gives us some concern is the

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timing. Because we are a wholesale customer we need time to get approval. So if this Board were to award an interim rate increase, then our suggestion would be that we commence that one month plus the next month plus one after the decision is rendered.

In other words, were this Board to render a decision sometime in the month of June that that increase be effective August 1st. And that would give us time to deal with it at the Board level and implement whatever rate increase is awarded and get that out to the customers. Otherwise if we don't have an opportunity to do that, then of course we are subsidizing the rate increase for whatever period that we are not able to pass it on to customers.

So really we don't have any further sort of representations to make with respect to this matter. We understand it will be a difficult decision. But we would leave it to your discretion, unless there are any questions.

CHAIRMAN: Thank you, Mr. Zed. Any questions from the panel? Yes, Mr. Johnston?

MR. JOHNSTON: Mr. Zed, a number of the other intervenors have also made reference to the fuel cost issue. And you have as well.

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Do I understand your position to be that the Applicant's own evidence as to fuel cost does not support the size of the increase?

MR. ZED: Well, I think it is -- what I would say is this. Their obligation I think is to -- I mean, we can parse words -- but essentially make a prima facie case to justify an interim increase. And I don't take issue with the fact that they have made a prima facie case. But a prima facie case is only that. There is the generation cost issue that we have yet to deal with. There is significant amounts that have been stated that I'm sure will be the subject of vigorous cross examination and extensive IRs. What I'm saying is that that is a cost that you may want to look at and make some allowance. It is not an easy job. But we don't know what the -- and I don't mean this critically. But we don't know what the real figures are that we will end up with. They may well be real. They may well be accurate. And they may well be relevant. And that is the question, is whether or not they are relevant.

So what I'm saying is there are some transfer payments that really are not hard costs. So you may want to look at that. You may want to discount the internal NB Power

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transfers.

I mean, it is not an easy job. Because you are being asked to approve an increase in the amount of 9.6 percent without the benefit of having the evidence tested.

So our concern really is that there be -- you know, we can support an interim increase, because undoubtedly there will be justification for some increase.

And to the extent that that is awarded now, it will reduce rate shock and smooth out the flow of the cost for consumers over time. Those costs are not going to go away. And that is why we say you either pay now or pay later. But what those real costs ultimately will be decided to be is anyone's guess.

CHAIRMAN: Mr. Zed, I have a question with respect to your submission that any increase should come in effect. I think the expression you used was next month plus one. And your example I believe was that if an increase was approved in June it would come in effect in August. Are you really talking about a full two-month period of time? And perhaps maybe you could give me some more justification for that.

MR. ZED: I would think really it depends when in the month it happens obviously. But really a full month would probably be sufficient.

2 Just the danger is if this Board comes in on the 29th of  
3 June, we wouldn't want to see an award of an interim cost  
4 beginning July 1st.

5 So if we had a full 30 days, I think that would give us  
6 sufficient time to implement the increase.

7 CHAIRMAN: Thank you. I guess there is nothing further.

8 Mr. Peacock?

9 MR. PEACOCK: Thank you, Mr. Chair. Vibrant Communities

10 Saint John is opposed to the interim rate increase of 9.6  
11 percent as proposed by the Applicant.

12 While we recognize the apparent need for the utility to  
13 meet its revenue requirements, we feel that Mr. Wolfe's  
14 argument has certainly challenged the merits, at least  
15 some of the Applicant's figures concerning revenue needs.

16 We are also concerned that the Applicant's proposed rate  
17 increase does very little to amend the existing inequities  
18 present in its own rate design.

19 We are also of the opinion, Mr. Chair, that the June 19th  
20 2006 PUB decision, largely overturned by the previous  
21 government, still holds a great deal of merit today.

22 Because of this, we are broadly recommending that the EUB  
23 use last year's regulatory decision as the basis for any  
24 potential interim rate and reject the utility's request  
25 for an across the board increase.

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2 We will now offer some insight as to why we would like the  
3 EUB to move back to the future, in a manner of speaking,  
4 and highlight why we feel that the PUB's last major ruling  
5 is the better option, even on an interim basis, than the  
6 Applicant's request.

7 In support of this position, Vibrant Communities will  
8 speak in turn on the monthly service charge, the declining  
9 block rate and the Applicant's revenue requirement.

10 The previous Board decision indicated serious issues with  
11 the cost basis of DISCO's proposed monthly service charge  
12 and hence made no increase in that charge, leaving it at  
13 17.74 per month for urban customers and 19.44 for rural  
14 customers.

15 The Lieutenant Governor In Council subsequently set aside  
16 that decision and increased the service charge by 8  
17 percent as part of their overall decision to increase  
18 rates across the board.

19 Of course it should be no surprise to the Applicant that  
20 we were very much opposed to the Order-in-Council increase  
21 to the monthly service charge. And we are similarly  
22 opposed to the proposed interim increase of 9.6 percent,  
23 as it applies to the monthly service charge.

24 In filing its interim rate increase we saw little in the  
25 form of new evidence or argument from DISCO in favor  
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of a higher monthly service charge, or any effective response to the issues raised by the PUB in its decision not to increase this rate.

While we recognize that the Applicant has a responsibility to recover costs, one of the benefits of the regulatory process is that divergent arguments can be put forward over how best to recover these costs. This is certainly true when it comes to the monthly service charge.

While the utility sees this as an appropriate vehicle to raise revenue, we see it as an effective toll on the right for New Brunswickers to belong to the electric grid. And we are especially concerned with the growing gulf between DISCO and other Canadian utilities over the pricing of this toll.

Vibrant Communities Saint John has been examining monthly service charges across the country. And while we recognize that other utilities are often subject to a vastly different regulatory environment, we are of the opinion that the EUB would benefit from considering just how divergent the DISCO service charge is from the Canadian norm.

To further this argument, we have prepared a simple graph describing the monthly service charge for urban

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customers. And if it pleases the Board, we would like to enter this graph as an exhibit.

Of course the information related to these charges is in the public domain. And for the benefit of other intervenors we have included the Internet links that state a monthly service charge.

CHAIRMAN: Mr. Morrison, is this the issue that you spoke of earlier this morning?

MR. MORRISON: No, it isn't, Mr. Chair. I have no objection if Mr. Peacock wants to refer to information that is in the public domain.

CHAIRMAN: Okay. And he has requested that it be marked as an exhibit. You have no objection?

MR. MORRISON: None.

CHAIRMAN: Do any of the intervenors have any objection? Perhaps you could distribute the document.

MR. PEACOCK: As the Board might imagine --

CHAIRMAN: Just one moment there, Mr. Peacock. The document that is still being distributed, entitled "2007 Monthly Service Tolls", a two-page document, will be marked as exhibit VCSJ-1.

Proceed then, Mr. Peacock.

MR. PEACOCK: Thank you, Mr. Chair. As the Board might imagine, given our mandate to support New Brunswickers who

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seek to get out of poverty, we feel that maintaining affordable access to the electric grid is a critical responsibility of both the Applicant and the regulator. We estimate that if the interim rate is passed across the Board, then service charges will increase by about \$2 more a month. And this \$2 -- this is \$2 that many low income households will simply have difficulty paying. \$2 extra a month may not sound like a lot to those in this room. But for those 100,000 New Brunswickers on low incomes, who need electricity to better their daily lives, this increase in the monthly toll proposed by the Applicant is simply unacceptable. Because of this, Vibrant Communities respectfully suggests that if the EUB decides to apply an interim rate, the most appropriate first step for the regulator is to rely on the judgment of the June 2006 regulatory ruling and set the residential service charges at 17.74 per month for urban customers and 19.44 for rural customers. While this proposal diverges from the Applicant's 9.6 percent across the board increase, we note with some interest that the Applicant has already allowed for some variance from 9.6 percent in the form of a much more limited proposed increase on water heater rentals. We feel that if water heater rentals can see a limited

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adjustment under an interim rate, then certainly the monthly service charge can see a slightly larger adjustment.

Finally we might also add that any further upward adjustment to these service charges can be made by the regulator after it hears evidence on the matter during the rate hearings this fall.

Of course the Applicant can rest assured that we will oppose any upward revision on the toll then, just as we oppose them now.

Now given that we want to limit the Applicant's ability to raise revenue through the residential service charge, the question remains how exactly do we propose they meet the revenue requirements on an interim basis?

This brings us to the second part of our argument against an across the board increase. And this section of our argument calls for revenue to be raised by reintroducing the aggressive schedule of reducing the declining block rate on an interim basis, as originally set out in last June's decision.

That decision effectively put the greatest percentage increase on those residential customers that were the biggest users of the second block rate, the customers who were receiving an effective rate subsidy.

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2 I need not highlight today the environmental or  
3 socioeconomic impacts of continuing this subsidy, since I  
4 believe that most of the intervenors will remember our  
5 argument last year.

6 Needless to say, for as long as this declining block  
7 exists, we feel that far too many low income New  
8 Brunswickers living in small apartments are unfairly  
9 subsidizing the heating of large homes.

10 Unfortunately, in ignoring large portions of last year's  
11 PUB decision, the previous government effectively expanded  
12 the dollar amount for cross-subsidy, a decision which more  
13 than one intervenor has no doubt expressed regret over.

14 Now with its across the board interim proposal, DISCO  
15 appears ready to expand the residential cost subsidy even  
16 further, an idea we find alarming.

17 What to do then? In these circumstances Vibrant  
18 Communities argues that the most appropriate course of  
19 action in setting the interim rate is for the EUB to rely  
20 on the judgment of its predecessor in respect to the size  
21 of the first energy block and set it at 1000 kilowatt-  
22 hours per month.

23 We would also suggest that the Board order a significant  
24 amount of the Applicant's revenue requirement

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to be found in reducing the subsidy inherent in the second declining block.

This measure will assist the Applicant in making its five-year deadline in removing the declining block and will help you raise existing residential inequities in a way that the Applicant's current proposal does not.

Finally, Mr. Chair, I might add some comments as to the nuts and bolts of a possible alternative interim rate, based in large part of the important work that was conducted in last year's regulatory process.

At this point I would like to acknowledge the assistance of Dr. Ken Sollows, who has helped Vibrant Communities prepare some revised revenue data that helps meet the Applicant's revenue needs while at the same time recognizing the merit of all the regulatory heavy lifting that was done just last year.

The June 19th decision sets the energy rates for the first runout blocks of energy such that prices be such that the approved revenue requirement could be earned over the 12 months of the test year, progress be made towards eliminating the declining block rate and the subsidy or surcharge to customers shall be as small as possible subject to the concern for rate shock. I should mention, Mr. Chair, that that text was on page 57 of last year's

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rate decision.

Vibrant Communities considers that these items I just mentioned remain reasonable over all objectives for the regulator, but notes that this Board does not yet have the same volume of binders, as it considers the merit of DISCO's revenue requirements and interim rate proposal. In the absence of these binders the regulator can certainly choose to allow the interim rate across the board. But we would much rather see the EUB resist this option.

The previous regulator set energy rates that resulted in customers of different sizes experiencing different rate increases, with the largest customers experiencing the largest percentage increases and the smallest customers getting the smallest percentage increases. In our mind that simple principle is perhaps the best guide to this year's interim rate design.

As a result, Vibrant Communities asks the EUB to set the interim rate energy prices using the same methodology that the previous regulator used in its June 19th decision. Specifically we believe that the Board should estimate the number of service charges expected in fiscal year ending 2008, estimate the energy sales in the first and

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runout blocks based on the energy fractions presented in table G-2 of last year's decision with slight adjustment for weather, and complete the proof of revenue to estimate DISCO's anticipated revenue from the residential class, using the June 19th decision's energy rates of 9.2 cents per kilowatt-hour for the first energy block and 8.6 cents per kilowatt-hour for the runout block.

Finally, compare the resulting revenue estimate to that requested by DISCO and consider if it represents an appropriate interim increase.

If the Board concludes that revenue over and above that expected from the June 19th rate should be earned by DISCO on an interim basis, Vibrant Communities respectfully suggests that such revenue be gained by adjusting the first and runout block energy prices by differing amounts. Making adjustments in this manner will ensure that the rate set by the Board reduces the amount of subsidization that large residential customers receive at the expense of small customers.

To facilitate the Board's consideration in the matter, Vibrant Communities has revised and extended large portions of appendix G from last year's decision. These revisions were prepared by Dr. Ken Sollows. And I believe

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the Applicant has some comments on the report that was authored by Dr. Sollows.

CHAIRMAN: Before we hear from the Applicant, is it your intention then to offer those calculations by way of an exhibit or as part of your submission or --

MR. PEACOCK: Yes. I should of course mention that. If the Applicant would be kind enough to allow, we would certainly enter it as an exhibit.

CHAIRMAN: Thank you. Mr. Morrison?

MR. MORRISON: Well, I do have a problem with it, Mr. Chair.

And I empathize with what Mr. Peacock is talking about here.

But in essence what he is asking the Board to do -- and I have read Dr. Sollows' report -- it is a rate design issue. He is asking the Board to launch on a rate design issue in an interim rate hearing.

I don't -- first of all, I have never heard of a -- all the research I have done leading up to it -- where a Board in an interim situation embarked on a rate design. That is the first point.

Secondly, I don't know how you can do a rate design without extensive evidence on cost allocation. Those things will all be dealt with when we get into a full hearing. So evidentiarily it is a problem.

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2 Specifically with Dr. Sollows' report, essentially what it  
3 is, it is taking evidence, billing data essentially filed  
4 in the last rate case, making some assumptions on a go-  
5 forward basis on that data, asking that the Board  
6 essentially use last year's rate decision to set the  
7 interim rate, which de facto ends up with a penalty for  
8 the money, the revenue that wasn't earned last year in  
9 rates, as I read Dr. Sollows' report.

10 Aside from the fact that this interim rate or the rates  
11 that we might eventually get from this Board will never  
12 recover the revenue that we didn't get as a result of the  
13 Order-in-Council last year -- that money is gone and will  
14 never be recovered.

15 And I know it is difficult for people to understand. But  
16 we are not trying to get back the money we didn't get last  
17 year. That would be retroactivity. And it can't be done.  
18 But you are being asked to look at evidence that isn't  
19 before you. This is evidence that was filed in a previous  
20 hearing on a different matter, a different issue and a  
21 different Board.

22 All of these issues -- and I understand where Mr. Peacock  
23 is coming from. And I think he makes a valid point. But  
24 this is an issue that should be dealt with

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when you have all of the evidence in front of you.

I don't think this Board -- well, it is my submission, and I think the Board is quite well aware, that it can't rely on evidence that was filed in another matter. It is extraneous evidence. And there is a prohibition against it. It goes against the rules of natural justice.

Last year this issue came up. And I referred the Board to the case of City Furniture Limited versus the Yukon Corp.

And basically it said it is improper to make reference to a previous hearing on a different issue and reply upon evidence in the earlier hearing as the basis for a decision.

And that is what Mr. Peacock is essentially asking you to do. Because all of that evidence, the billing data was filed in another case. That is not to say that as we move forward through this process that similar evidence will be before you in the full hearing. It is during a full hearing that you will have to address rate design issues, not on an application for an interim rate.

MR. JOHNSTON: Mr. Morrison, do you see a problem with us referring to matters that were included in previous decisions, whether as appendices or otherwise, if they were part of the decision?

MR. MORRISON: Not the decision itself nor the appendices.

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That is not the issue. But as I understand Dr. Sollows' report, he has taken billing data that was filed as evidence, which won't be in the decision itself, has done some analysis of that billing data and is putting forward a rate design proposal, if you will, that deals with not putting an increase on the service charge. And it is only for the residential class, I might add, and doesn't apply to the other classes.

So as I read the report, quite frankly, Deputy Chairman, it is evidence. Because it is an analysis done using raw data that has been filed as evidence in a previous hearing. It is essentially an expert's report.

MR. JOHNSTON: We haven't had the benefit of it yet. But Mr. Peacock mentioned that it was -- I think he used the expression, an extension of table G or something to that.

MR. MORRISON: It is certainly an extension of table G. I would agree with that.

CHAIRMAN: Perhaps just before we speak with other intervenors, Mr. Peacock, maybe you could address that issue as to how this analysis was done. Is it based on raw data that was filed as evidence last time? Or is it based on the decision that was filed together with any appendices that were part of that decision?

MR. PEACOCK: Thank you, Mr. Chair. I should highlight that

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the report as authored by Dr. Sollows is in large part focused on Appendix G of last year's June decision, and uses the methodology as outline in Appendix G.

Where there is what I think the Applicant would assume as new evidence, what the author has done is essentially extrapolated the data forward with a relatively minor weather adjustment.

In terms of other forms of new analysis, the author did I believe input a few charts that were in response to the Order-in-Council decision to set the block rate at 1300 kilowatt-hours as opposed to 1000 kilowatt-hours. Of course that decision was made after the June ruling.

So I guess you could quite frankly argue that that is a new part of -- or essentially new evidence. But we feel that comparison needed to be made to put last year's decision in its proper context.

If you allow me, Mr. Chairman, I would also offer a few thoughts as to the relative soundness of offering this report as an exhibit sight unseen, in the sense that you of course have little detail.

Two items I think should be considered. One is the Applicant in their own opening testimony highlighted that the standard of evidence required in an interim hearing is not nearly as severe -- now I should of course remind the

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Chair that I have no legal training. So I'm winging some of this.

But the idea that because the standard of evidence isn't as severe as an interim rate, I feel that in the name of fairness, if the Applicant is to put forward a set of numbers as their case for an interim rate, what we are simply doing is proposing an alternative set of numbers based in large part on last year's decision.

And finally, Mr. Chair, I would suggest that the Board may want to look at Section 35 of the EUB Act which deals with the admissibility of evidence.

And I may quote from the section if I may. "The Board may receive in evidence any statement, document, record, information or thing that in the opinion of the Board is relevant to the matter before it, whether or not the statement, document, record, information or thing is given or produced under oath or would be admissible as evidence in a court of law."

That is all I have to offer, Mr. Chair.

CHAIRMAN: Thank you, Mr. Peacock. Just one point of clarification. You did indicate that the document was based in large part on Appendix G.

But do I understand that some of the information or in the input data is based on data that is not evidence in

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this proceeding at this point in time?

MR. PEACOCK: In terms of clarification, Mr. Chair, I would

suggest that there is some new evidence in the report.

But that new evidence is attached directly to the question of the 1300 kilowatt-hour block size that was set after the last Board ruling.

I'm also of the understanding essentially because that the interim rate comes out of last year's Order-in-Council -- the reason why we wanted to put in information concerning the block size is that the Applicant's current interim rate essentially is under the 1300 kilowatt-hour size.

So that evidence is there. I'm sure the Applicant does consider it as new evidence. But our argument is that it is really to extend some of the regulatory work that was done last year, which we think has some important precedent in relation to this year's decisions.

CHAIRMAN: I think what we are going to do before we canvass the room to get other views on the admissibility of this document, I think we are going to mark it for identification.

Perhaps you could give some copies to the Board Secretary.

And we will mark it VCSJ-2. I guess for the time being we are going to call it ID-1.

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Mr. Peacock, I understand that this document was given to the Applicant yesterday. Did the other intervenors have the benefit of having had the document in advance as well?

MR. PEACOCK: As of mid morning this morning. I had given a copy to the Public Intervenor yesterday afternoon. And the remaining intervenors received a copy this morning.

CHAIRMAN: Okay. I'm going to hear from the other intervenors with respect to their views on the admissibility of this document.

So we will start with Mr. Lawson.

MR. LAWSON: Thank you, Mr. Chairman. I guess with respect to the admissibility of the document we don't have any comment.

But we would certainly agree with Mr. Morrison, it is very difficult to try to do anything than across the board on interim rate increase without any further consideration -

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CHAIRMAN: Thank you.

MR. LAWSON: -- of evidence.

CHAIRMAN: Mr. Hoyt?

MR. HOYT: Today we haven't had a chance to review it in any detail. It does seem late in this process to be introducing what sounds like it amounts to new evidence,

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2 particularly given the opportunity that the Chair afforded  
3 intervenors yesterday to either cross-examine or change  
4 the nature of this process somewhat. And there wasn't any  
5 take-up on that.

6 But those comments, I mean, in no way take away from the  
7 very able comments that Mr. Peacock has made in his  
8 submission, particularly around the declining block.

9 CHAIRMAN: Thank you. Mr. Baird?

10 MR. BAIRD: We have no comment at this time, Mr. Chairman.

11 CHAIRMAN: Mr. Wolfe?

12 MR. WOLFE: I have no comment on the admissibility of this.

13 CHAIRMAN: Thank you. Mr. Arsenault?

14 MS. ARSENAULT: No issue with the admissibility of it.

15 CHAIRMAN: Mr. Zed?

16 MR. ZED: While we appreciate the sentiments expressed by  
17 Mr. Peacock, really we came to this proceeding based on  
18 the understanding that it was an application for across  
19 the board, an across the board interim rate increase.  
20 And anything other than an across the board increase, as a  
21 wholesale customer, gives us great difficulty. So I will  
22 leave the Board with those comments.

23 CHAIRMAN: Thank you. Mr. Thériault?

24 MR. THÉRIAULT: Thank you, Mr. Chairman. As Mr. Peacock so  
25 readily pointed out Section 35 of the Act, I would submit

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the admissibility -- the document should be allowed and that the Board can put what weight that it desires on it after it reviews the document.

Mr. Peacock it appears is simply bringing in alternate form of argument to the Board. And I would suggest that the document should be submitted.

CHAIRMAN: Thank you. Ms. Desmond, any comments from the Board Counsel?

MS. DESMOND: No comments at this time. Thank you.

CHAIRMAN: Thank you. I think this would be an appropriate time for the Board to take the noon recess. We will consider that document during that recess and rule on it when we come back.

It is now 25 after 12:00. So we will reconvene at 1:30.

(Recess - 12:25 p.m. - 1:30 p.m.)

CHAIRMAN: Good afternoon. The Board has had an opportunity to consider whether or not the document marked ID-1 should be admitted as an exhibit for this motion dealing with the request for an interim rate increase.

ID-1 is entitled, An Interim Residential Rate. And the first line of ID-1 indicates that it is examining the revenue that can be expected from residential customers of NB Power Distribution Corporation for fiscal year ending

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March 2008 under various rate designs.

In opposition to having that document marked as an exhibit, the Applicant referred to the case of City Furniture Limited v. Yukon Liquor Corp., which was a case I believe of the Supreme Court of Yukon. I have an excerpt from that case which states, that is improper to make reference to a previous hearing on a different issue and rely upon evidence in the earlier hearing that's based us for a decision. It violates the principle the party must be able to hear the case against it and be afforded an opportunity to respond and challenge the evidence.

I understood in my questioning of Mr. Peacock that the document itself does include some evidence that was extrapolated from various sources, perhaps including the previous hearing and was included in that document.

I would make reference to the Supreme Court of Canada case of R. v. Schwartz. The citation, which is 1988, 2 S.C.R. at 443. In that case, Dickson stated, before any document can be admitted into evidence there are two obstacles it must pass. First it must be authenticated in some way by the party who wishes to rely on it. This authentication requires testimony by some witness. The document cannot just simply be placed on the bench in front of the judge.

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2       Second, if the document is to be admitted as evidence of  
3 the truth of the statements it contains, it must be shown  
4 to fall within one of the exceptions to the hearsay rule.  
5 The process that the EUB has followed with respect to  
6 admissibility of evidence on a motion is to have the  
7 testimony, if you will, is by way of affidavit. And there  
8 are certain provisions for filing evidence of this nature  
9 in that form.

10 This document was not provided to the Board in that  
11 manner.

12 Section 35 of the Energy and Utilities Board Act says the  
13 Board may receive in evidence any statement, document,  
14 record, information or thing that in the opinion of the  
15 Board is relevant to the matter before it whether or not  
16 the statement, document, record, information or thing is  
17 given or produced under oath or would be admissible as  
18 evidence in a court of law.

19 So Section 35 of the Energy and Utilities Board Act, in my  
20 view, does give discretion to the Board to accept  
21 documents that might not otherwise normally be admissible.  
22 The concern that the Board has with respect to this  
23 document at this point in time is that it raises rate  
24 design issues, which many of the parties may not have come  
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here today ready to address.

All of the parties, I guess have been aware of the fact that today's hearing would take place. I think since the - I am going to guess at the date, I believe it was the 18th of April that the application for a rate increase was filed, which indicated that the Applicant would be seeking an interim increase.

There was a pre-hearing conference with respect to a procedure. And in addition at yesterday's commencement of this hearing or what was supposed to be the commencement of this hearing, all the parties were given further opportunity to indicate whether or not they would be seeking to cross examine or produce any evidence.

The first the Board has heard of this document was today.

And it would appear that although perhaps the Applicant may have been aware of it late yesterday, I believe that Mr. Peacock indicated the other intervenors would not have become aware of the existence of that document until sometime mid-morning today.

So for those reasons, the Board does not consider this to be an appropriate circumstance where the discretion under Section 35 of the EUB Act should be used in order to admit this as an exhibit for documents that might otherwise not be admissible. As a result, the Board will

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not accept that document as an exhibit in this proceeding.

Having said that by this proceeding, I mean this application for an interim rate increase. The document may well be very relevant to the rate hearing, which will follow in several months time. And there certainly is absolutely nothing to preclude that document being put forward in the normal course and offered as an exhibit at a later time.

Mr. Peacock is there anything further?

MR. PEACOCK: I will just conclude my remarks, Mr. Chair, it that's all right.

CHAIRMAN: Thank you.

MR. PEACOCK: I should say, Mr. Chair, at one point last year I did throw a Hail Mary to the previous regulator. I can suggest that I will probably limit myself to one or two any given year. So thank you for considering the matter.

Even if the regulator has decided to that is it unable to accept our evidence, we hope that the Board will take our arguments regarding essentially what is our back to the future proposal under serious consideration, for we feel that it offers the utility increased revenue, while at the same time correcting some of the serious inequities found within the way the utility charged its customers.

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2 I understand, Mr. Chair, the Applicant's desire to save a  
3 lot of these sorts of arguments for a later date. And  
4 simply apply an increase across the board for the next few  
5 months. Quite frankly we think that this is the wrong  
6 method for a utility to get its revenue. That is why we  
7 have offered last year's ruling and the relative fairness  
8 it extended to small consumers as a starting point for  
9 this year's interim rate.

10 Hopefully we can build upon this regulatory framework.

11 For even if we have a new Board and a few new intervenors,

12 I must say, Mr. Chair that a lot of the issues  
13 surrounding this application sound vaguely familiar. I  
14 hope that this familiarity will help produce a fair  
15 decision and one that largely rejects an across the board  
16 interim increase in favour of a rate schedule that is more  
17 in tune to the collective will of intervenors.

18 I say that given what we already know about the way DISCO  
19 earns its revenue, let's start fixing the rates now and  
20 not four or five months from now.

21 If such changes cannot be made to the utility's proposal,  
22 then we would suggest that the regulator reject this  
23 application for an interim increase in its entirety.

24 While the utility claims it is hurting financially, there  
25 are simply too many other New Brunswickers, including many

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of the residents our organization represents, who are already in danger of defaulting on their bills. And a worsening financial situation should be the concern of this regulator just as much as the apparent woes of NB Power's distribution arm.

In the name of fairness, New Brunswickers must be protected from rate shock. And the monthly toll on their right to use electricity should not be increased without full regulatory scrutiny. At this rate hearing that scrutiny has by in large not taken place. Until it has, then the utility's apparent revenue needs will just have to be superseded by the right of New Brunswickers to affordably access their electric grid. The ratepayers of New Brunswick deserve no less. Thank you, Mr. Chair.

CHAIRMAN: Thank you, Mr. Peacock. Are there any questions from the Board?

MR. JOHNSTON: Mr. Peacock, I just have one question and it relates to the issue of monthly tolls. Do you have any figures -- we will later put this same questions to the Applicant -- that would relate to the amount of income that is generated from these monthly tolls or what the impact would be of your proposal that the increase not apply to monthly tolls?

MR. PEACOCK: Certainly in other jurisdictions, I just had

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the base monthly amount. I don't know how much revenue that earns. But I believe our own research indicates that the monthly -- an increase in the monthly toll would bring a relatively small amount of revenue the Applicant. Maybe 2 or \$3 million. In terms of a 1.4 billion budget, we consider that rather small.

I have been advised that again according to some of the numbers that we undertook the last few days that if the interim proposal is applied to the monthly service charge then that would enhance the applicant's revenue by about \$10 million over the June 19th Board decision. Over last year's Board decision I should say, which was at that time I believe 17.74 for an urban customer.

MR. JOHNSTON: But the increase would be less in comparison with the LGIC, the Order-in-Council?

MR. PEACOCK: For the Order-in-Council decision -- so if we are to use as a starting point the Order-in-Council decision then the interim proposal under our estimates would bring an extra \$7 million in revenue through the added monthly service charge. If you go back to the June decision it is a \$10 million revenue, extra revenue.

MR. JOHNSTON: Would you like to address this point at this time, Mr. Morrison? Or do you want me to come back to you later in the day?

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2 MR. MORRISON: I can deal with it now, Vice-Chair. The \$7  
3 million seems to be approximately correct.

4 MR. JOHNSTON: Thank you.

5 CHAIRMAN: Thank you, Mr. Peacock. Mr. Thériault?

6 MR. THÉRIAULT: Good afternoon, Mr. Chairman and  
7 Commissioners.

8 Before, Mr. Chairman, I begin, there is a table that I  
9 would like to hand out as part of my submission so that  
10 the Board and the parties could follow along. It is  
11 simply a summary. It is not any new evidence. I don't  
12 intend to introduce it as an exhibit. It is simply a  
13 summary of the tables that the applicant has submitted in  
14 their evidence.

15 CHAIRMAN: Mr. Morrison, have you seen this table?

16 MR. MORRISON: I have not.

17 CHAIRMAN: Do you want to show it to Mr. Morrison, first of  
18 all, just to be sure it is not contentious? In fact maybe  
19 you might want to distribute this to all of the  
20 intervenors as well, so that if anybody has any issue with  
21 respect to us referring to it, we will know at this point.

22 MR. MORRISON: Mr. Chairman, I think I'm going to have to  
23 ask for some time to look at this document.

24 CHAIRMAN: As I understand it, Mr. Thériault, this  
25 information -- the representation with respect to it was  
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that the information -- all of the information came out of the applicant's filed evidence?

MR. THÉRIAULT: That is correct, Mr. Chairman. There is no new numbers there outside of the argument, which is table D, which is the proposal we are going to make at the end as part of our argument.

CHAIRMAN: Perhaps we will take just a very brief break in order to -- perhaps Mr. Thériault can show you where it has come from and --

MR. MORRISON: I think we know where it come from. It actually is table D that requires us to do a little bit of analysis, Mr. Chair.

CHAIRMAN: How much time would you need to do that analysis?

MR. MORRISON: 15, 20 minutes.

CHAIRMAN: We will take a 15-minute -- or perhaps somebody could let us know when you have completed that analysis.

MR. THÉRIAULT: Mr. Chairman, again this is simply a graphic to assist the Board and the other parties as part of our argument. We intend to stick to the argument. And it allows the Board a graphic presentation of our argument. It is no document -- like I say, we don't wish to have it submitted as evidence, whatnot. It is simply our argument.

CHAIRMAN: Mr. Morrison, what do you say to that? If, for

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example, we had called for written submissions and this information, you know, was part of a written submission, it wouldn't be an exhibit. It would be before us.

MR. MORRISON: I guess in that case, Mr. Chairman, I'm going to have to ask for a little bit of time after Mr. Thériault is finished before I start my rebuttal.

CHAIRMAN: Perhaps that might be the way to proceed. Mr. Thériault, proceed.

MR. THÉRIAULT: Thank you, Mr. Chairman. Mr. Morrison this morning as well as the applicant in their evidence under the Executive Summary have stated that -- claimed that DISCO -- or DISCO is claiming that there are two drivers for the interim rate application. These are increases in purchase power costs and the impact of current rates that do not cover costs.

The second of these drivers, rates that do not cover costs, is a non sequitur. It is the equivalent of saying that if rates do not cover costs, then raising rates will cover costs.

It is important to note that this argument is neither proof of a need nor evidence that the Board can use to make an award. Accordingly, there is by the single argument we would submit before the Board today, increases in purchased power costs.

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2 It is incumbent upon DISCO to demonstrate that forecast  
3 increases in these costs justify a request for a 9.6  
4 percent interim rate increase.

5 Mr. Chairman, we would suggest that past cases in other  
6 jurisdictions reveal four issues with interim proceedings  
7 and awards. These issues are equally applicable to the  
8 application currently before this Board.

9 First the Board cannot permit the hearing process to  
10 become a mini rate case. It must look mainly to the  
11 application and the limited amount of information provided  
12 by DISCO. But doing so raises fairness and due process  
13 problems.

14 In practice an abbreviated hearing such as the one we have  
15 here today is held and the application is considered by  
16 cursory responses from the parties.

17 Because the process does not offer up an opportunity to  
18 examine the behaviour of all other costs and revenues as  
19 possible offsets, an abbreviated hearing offers the  
20 applicant an opportunity to present a single issue as the  
21 factor motivating the interim request.

22 Indeed we would submit that is what is happening in the  
23 present application before this Board, namely an  
24 application based solely on purported changes to fuel  
25 costs.

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2 As a result this Board should conclude that an interim  
3 rate increase should be awarded to DISCO only in the most  
4 narrow of circumstances and only if there is sufficient  
5 evidence to support it.

6 The second problem occurs if and when a refund is  
7 necessary. Often where a refund is necessary, the refund  
8 provision fails to adequately protect ratepayers  
9 interests. Refunds are to be made only to present  
10 customers. Some customers who move during the period  
11 between the interim increase and the final order may not  
12 receive a refund. Moreover the interest attached to the  
13 refund may not adequately recompense customers.

14 Third, the interim award may become a floor for the  
15 ultimate revenue requirement application.

16 In other words, Mr. Chairman, the percentage increase in  
17 rates associated with the interim rate application becomes  
18 the minimum when the utility files its full rate case.

19 The danger in awarding a 9.6 percent increase in sales of  
20 power to all customer classes is that this increase will  
21 not be subject to the same level of scrutiny as any  
22 increments to this increase, simply because the Board has  
23 already made an interim order.

24 Further this application for a 9.6 percent increase  
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almost certainly guarantees that a full rate application will be for more than 9.6 percent.

Fourth, because only cursory examinations of an application for interim rate relief is permitted, the Board must see as its objective the preservation of the status quo amongst customer classes and on rate design issues pending the full case.

This means that the across the board increases should not be allowed since such increases distort the relationship between the customer classes.

For these reasons, Mr. Chairman, we would submit the Board must be very circumspect in approving interim rate adjustments. The Board should be reluctant to grant interim increases short of a compelling showing that failure to grant such an increase would result in serious financial harm to DISCO.

In order to meet the standard for interim rate relief, I would submit that a utility must be facing an emergency or near emergency situation.

I would submit that a utility must show that first it needs the funds immediately. Secondly the needs cannot be postponed. And thirdly that no other alternatives exist to meet the need but rate relief.

These standards and modest variations of them have

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been used in a number of North American jurisdictions. In the U.S., California, Washington, New Hampshire, Michigan, Utah and Idaho, among others, have all articulated criteria for interim rate applications that focus on irreparable harm to the utility.

The Idaho Public Utilities Commission, in a decision on an application from Idaho Power, stated that -- and I will quote -- "Interim rate relief is an extraordinary remedy to be granted only in an emergency or where there is danger that the utility will not be able to render adequate services if relief is withheld."

Now in Canada, Boards and Commissions such as the Alberta Energy and Utilities Board and the Canadian Radio Television and Telecommunications Commission have also faced requests for interim rate relief and have responded in much the same way as their U.S. counterparts.

With CRTC, in a decision on Bell Canada interim rate application, had this to say -- and again I will quote -- "The Commission considers that as a rule general rate increases should only be granted following the full public process contemplated by part 3 of its telecommunication rules of procedure. In the absence of such a process, general rate increases should not in the Commission's view, be granted, even on an interim basis, except where

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special circumstances can be demonstrated. Such circumstances would include lengthy delays in dealing with an application that could result in serious deterioration in the financial condition of an applicant absent a general rate increase."

For this particular interim rate application it is necessary for DISCO to demonstrate to the satisfaction of this Board that an emergency exists, that relief cannot be postponed, and that there is no other remedy except interim relief.

For the Board, it must be satisfied that these conditions do indeed exist. And it has to base this determination on the very limited information that the Applicant has seen fit to produce.

Mr. Chairman, DISCO's evidence for the interim application is based primarily on an increase in projected power purchased costs, and yet the only documentation on the record that is detailed enough to examine is the fuel component price.

Consider what DISCO has filed. For Genco we have the following information summarized in Table A which I have submitted to the Board for review. In that table there are several points to be made about Table A.

First there is a significant difference between the

1  
2 purchased power expenses projected for 2007/2008 in Table 1-A  
3 of the Applicant's evidence, and the breakdown of the fuel  
4 component for 2007/2008 in Table 1-B of the same evidence.

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6 This difference is attributable to non-fuel related costs  
7 in the PPA vesting agreement between Genco and DISCO.

8 This difference is illustrated I would submit in Table B  
9 which we have handed out. What Table B demonstrates is  
10 that of the \$864,000,000 in Genco's forecast purchased  
11 power expense of DISCO for 2007/2008 \$356,000,000 include  
12 costs related to capacity payments, contribution to fixed  
13 costs and the like.

14 And, Mr. Chairman, this was determined simply by  
15 subtracting the 508.1 million, which is the fuel component  
16 of vesting energy table as you will see in Table B, from  
17 Genco's purchased power expense. And, Mr. Chairman, I  
18 would submit that none of these fuel costs have ever been  
19 subject to examination by this Board -- sorry -- I would  
20 submit that none of these non-fuel costs have ever been  
21 subject to examination by this Board or its predecessor,  
22 the Board of Commissioners of Public Utilities.

23 There is nothing on the record before this Board that  
24 supports either the level of these non-fuel costs or  
25 variances from this level.

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2 Secondly, Genco sets and implements the fuel purchase  
3 strategy alluded to on page 7, section 1, of the evidence  
4 submitted by the Applicant. Genco's witnesses have never  
5 been subject to cross-examination as to the reasonableness  
6 of this strategy or the costs resulting from the  
7 implementation of it.

8 All we know is that the strategy is extremely conservative  
9 and results in predictable costs which makes it convenient  
10 for those doing budgeting for the utility, but not  
11 necessarily for DISCO's ratepayers.

12 Thirdly, the natural gas component -- sorry -- the natural  
13 gas costs are related to contracts with non-utility  
14 generators, more commonly known as NUGS. These contracts  
15 call for the non-economic dispatch of these generators.  
16 The cost for natural gas projected in Table 1-D of the  
17 Applicant's evidence does not consider the extra burden on  
18 DISCO's ratepayers for this non-economic dispatch.

19 Fourth, there is a difference between the breakdown of the  
20 fuel component for 2006/2007 and the fuel component in the  
21 vesting energy charge for the same period. That is, it is  
22 a difference between 462.9 million and 447 million. This  
23 difference is accounted for by the fact that 462.9 million  
24 is 12 months of budget and the 447 million is 11

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2 months of actual and one month of budget.

3 The error in the difference between the forecast and the  
4 actual is approximately 3.5 percent. The Board needs to  
5 consider this error when evaluating DISCO's interim rate  
6 application and in particular how much credibility to give  
7 to DISCO's forecast of 508.1 million dollars in fuel  
8 component costs.

9 Mr. Chairman, Table C provides information on the  
10 breakdown of Nuclearco's purchased power costs. The Board  
11 will undoubtedly notice upon review that there is  
12 considerable less detail and no breakdown of Nuclearco's  
13 purchased power expense. This is because all the power  
14 costs from Nuclearco, both energy and capacity, are  
15 categorized as energy. In other words, there is no  
16 breakdown of non-fuel costs and no way of verifying that  
17 the variants given in Table C is based on fuel increases -  
18 - fuel price increases.

19 Accordingly the Public Intervenor believes that the only  
20 support for the interim rate application, inadequate as it  
21 may be, is on the fuel cost increases. At best DISCO is  
22 entitled to seek interim relief in the amount of 50.92  
23 million dollars as indicated in Table D which we submitted  
24 to the Board.

25 With revenues at current rates established to be 1.165

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billion the utility should only be permitted an interim rate increase of 50.92 divided by that 1,165.10, or 4.37 percent.

Now, Mr. Chairman, we would submit the increase should be awarded with three conditions attached. First, the increase will be applied through a uniform percentage increase in the usage elements of the utilities rate schedules.

Secondly, the increase will be applicable only if the utility foregoes any charges, rates and tolls applicable under Section 99 of the Electricity Act.

And thirdly, any variance in the fuel component from Genco which is less than 61.1 million dollars be refunded to ratepayers in the form of a decrease in the usage charge otherwise applicable in the first billing period following a decision in the full rate case.

Finally, Mr. Chairman, we would expect that the utility will be required to file with the Board new rates consistent with the Board's decision, and that these new rates will be accompanied by proof of revenue.

Mr. Chairman, that's all my comments. I do have my presentation in hard copy and I would like to submit that to the parties and to the Board, if I may.

CHAIRMAN: Yes. That would be appreciated. Anybody on the

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Board here have any questions? Mr. Johnston?

MR. JOHNSTON: Mr. Thériault, it's a good thing we are going to have your comments in hard copy. They are going to take a bit of time to digest. But I do want to come to one point that you raised where I was trying to follow along and you lost me a little bit. And it relates to the -- I believe an estimation error you were making reference to with respect to Genco's fuel component.

And if you could simply review that issue again, because you in your remarks cautioned the Board with respect to the estimates that have been put forward and made reference to I think an estimation error that was in the Applicant's evidence, and I would just like it if you could draw our specific attention to that.

MR. THÉRIAULT: Yes, Mr. Chairman -- or Mr. Vice-Chairman.

The reference if you will go back it refers to Table A because we were commenting on the concerns with Table A, and the 447,000,000 is comprised in the 2006/2007 Genco fuel component in the vesting energy charge.

And then all I was saying in the 462.9 million is the total of the -- Genco's breakdown of the fuel component, the heavy fuel, the natural gas. The point I was trying to make is that there was some budgeted and there were some actuals and that there was a huge discrepancy -- a

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2 3.5 percent discrepancy in those tables.

3 MR. JOHNSTON: Can you explain that again where the 3.5  
4 percent discrepancy comes from, please?

5 MR. THÉRIAULT: Yes, Mr. Vice-Chair. It's the difference  
6 between the Genco fuel component vesting charges,  
7 447,000,000, and the breakdown of fuel component.

8 MR. JOHNSTON: 462.9?

9 MR. THÉRIAULT: Yes. And then divided by the 447.

10 MR. JOHNSTON: Thank you.

11 MR. THÉRIAULT: Thank you.

12 CHAIRMAN: Thank you, Mr. Thériault. Mr. Morrison, do you  
13 require a break before rebuttal?

14 MR. MORRISON: Most certainly, Mr. Chair. Thank you.

15 CHAIRMAN: How long would you think would be required?

16 MR. MORRISON: Give me a half hour.

17 CHAIRMAN: All right. We will reconvene at 2:45. Thank  
18 you.

19 (Recess)

20 CHAIRMAN: Mr. Morrison, you have some rebuttal?

21 MR. MORRISON: Yes, Mr. Chair. Rebuttal always reminds me  
22 of writing a final exam with 15 minutes to study. But I  
23 will deal with Mr. Thériault first, otherwise, I won't be  
24 able to decipher my own handwriting.

25 I guess first, Mr. Thériault indicated that -- he said

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-- he talked about the rates, the difference between what we recovered in rates coming out the regulatory process last year. And he said that the rates do not cover costs, and he said that's irrelevant. Well, his comments on that, with all due respect, Mr. Chairman, we believe really is a non sequitur.

Those costs we all tested last year before the PUB and determined to be valid beyond the fact that they didn't get implemented is another story. But they were tested. I will go on. Mr. Thériault spoke about the tests that should be applied for an interim rate case. And he referred to a number of U.S. jurisdictions. Notably only one Canadian case and that's the Bell Canada case.

And despite the Bell Canada case, he has said that you have to find that there is an emergency situation before you can implement an interim rate.

And again, both Mr. Hoyt, and myself, and others, have referred you to the Bell Canada case. And the only criteria in the Bell Canada case is that the delay in the proceedings will result in deleterious financial consequences for the Applicant. That is the only test.

He did say also that our prima facie case to the evidence that we filed is not detailed enough. What I would say to that is the costs -- all of the costs that

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Disco is obligated to pay through the PPAs are found in that evidence. And found in that evidence in quite a bit of detail, Mr. Chairman.

In essence if you look at the entirety of Mr. Thériault's argument in that, you know, you should only rely on fuel costs, that the non-fuel costs haven't been explained, really in essence what he is arguing today is the very matter that we are going to be arguing in a couple of weeks, which is the underlying generation costs.

Again, he also referred to the non-economic dispatch with respect to the gas plant. Again, that goes to the underlying generation costs, which I am sure we will have a very full and complete debate about in a couple of weeks.

Again dealing with his submission that only the fuel costs should be considered in this interim rate, and again that there was not enough evidence, and that the non-fuel costs have not been subject to examination, first of all, let's remember that my submission from this morning that the evidence that is required for an interim rate application is a prima facie case. So by its very nature it is not tested in the normal sense of cross-examination and that type of thing. All of the costs are set out in our evidence in our prima facie case.

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2 He also said that the non-fuel costs were not subject to  
3 examination by your predecessor, the PUB. That's not  
4 entirely correct. Those costs were all examined in the  
5 sense that as those costs flowed through the various PPAs  
6 they were subject to examination during the last rate  
7 case.

8 He also talked about a forecasting error. And with the  
9 greatest respect, it is not an error. It is a forecast.  
10 Forecasts by their very nature are inaccurate. It is the  
11 difference between the forecast and 11 months of actuals.

12 It is not an error, It is just a normal deviation between  
13 a forecast and an actual.

14 And if you look at the variables that are involved in  
15 forecasting fuel, you have got weather, you have hydro.  
16 It's certainly within the realm of reasonableness, that  
17 forecast.

18 Also remember that budgeting is based on long-term  
19 historical averages. So to suggest that there is an error  
20 between the budget and 11 months of actuals and that  
21 somehow taints the reliability of all of Disco's  
22 forecasts, I would submit is just not correct.

23 Again, the budgeting is based on long-term historical  
24 averages.

25 He also was critical of the detail with respect to the  
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Nuclearco costs. Those costs are exactly as they are stipulated in the Nuclearco PPA. That is what Disco is obligated to pay. And that is what's in the evidence. Again getting back to his point that the interim rate should only be based on fuel costs -- yes, fuel costs represent approximately 50 percent of the total purchased power cost. But there is another 50 percent out there. They are real costs. They are not made up costs. They are not fictional costs. They are real costs. They are capacity payment charges and the other charges that flow through the PPAs. And those are all detailed in the evidence.

Again, this whole argument, I would submit, is really the argument we are going to be having in a couple of weeks which is do you look at the underlying generation costs? Mr. Thériault raised some concern, and he is very adamant about this, that somehow this interim rate, whatever you set, is going to become the floor, in other words, we will come back and you give us 9.6 percent now and when we come back in the fall we are going to be looking for 11.6 percent. I can assure you that the revenue requirement that's put forward in this interim rate case will be exactly the same revenue requirement

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that you will be asked to examine in the full hearing of the evidence.

Finally, with respect to Mr. Thériault, I just turn to page -- I guess it's page 5 of the submission and there are several conditions that he asks the Board to impose. The first condition is the increase will be applied through a uniform percentage increase and the usage elements of the utility's rate schedules.

I will have the same comments about that condition as I had with respect to Mr. Peacock's proposal. That is a rate design matter. And it's not appropriate for an interim rate hearing.

The other condition that I want to comment on is the third condition which essentially is that he wants the fuel to be based on actuals, not on budget. That flies in the face of ratemaking. Ratemaking is always perspective. It's based on budgets, not on actuals. And that's set out not only in the common law but in the Act itself.

Now I would like to turn to other intervenors and I will be as brief as I possibly can.

First I would like to respond to some of the remarks of Mr. Lawson. He started his submission by saying the concept of granting a rate without having a full hearing is ridiculous and ludicrous.

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2 All I can say to that, Mr. Chairman, is the Supreme Court  
3 of Canada disagrees with him, as was mentioned earlier  
4 with respect to the Bell case.

5 Mr. Lawson also raised the question of rate shock. And  
6 that was raised by I believe Mr. Wolfe, Mr. Thériault and  
7 perhaps some others as well, that 9.6 percent interim rate  
8 constitutes rate shock.

9 Now rate shock is a very difficult thing to define. And  
10 it is very circumstantial and I would suggest very  
11 subjective.

12 I guess the only thing I can say about that is when the  
13 PUB approved rates in its June 19th 2006 decision, it  
14 approved a rate of 9.6 percent.

15 Mr. Lawson also had some concerns that an interim rate  
16 decision under the new legislation will not be reviewable  
17 by Cabinet as was the case under Section 105 of the  
18 Electricity Act.

19 But you have to also consider that we now have Section 40  
20 (2) which means that the Board can make adjustments. It  
21 can order a rebate, for example. You can do whatever you  
22 pretty much want in terms of the final decision in terms  
23 of adjusting the interim rate decision.

24 Mr. Lawson also addressed the question of what is the  
25 standard that has to be met. And he used words like

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extraordinary need, actual emergency and gross hardship. And again he was referring for the most part from cases out of Washington and Hawaii. I believe he did speak to one Canadian jurisdiction.

I don't know what the standard is in these U.S. cases or in these U.S. jurisdictions. And I don't know -- I haven't read the cases he referred to. But again the test that has been set down by the Supreme Court of Canada is that is the one that was set down in the Bell Canada case. He also had some concern or he raises the question about interest payments, you know, DISCO is owned by the Province of New Brunswick and if we don't make interest payments then no big deal.

Well, that is not entirely correct. Every one of those interest payments is backed -- or those debt obligations is backed up by a mirror debt obligation to a real private lender.

So if DISCO doesn't recover revenue, can't pay its interest costs, and they are real interest costs to real lenders, then it is put in the position of having to borrow money or to attempt to borrow money to pay interest charges.

I think everybody knows what kind of a reaction that would have if you go to a lender and say, can I borrow

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some money to pay interest on my debt? It is a very, very serious situation.

Mr. Lawson also said that 80 percent of the costs are contentious, and because 80 percent of the costs are contentious you should ignore that 80 percent of the costs.

With respect I disagree. 80 percent of the costs aren't contentious. There is going to be a motion with respect to the underlying generation costs in a couple of weeks. But those are real costs. The fact that they are in the PPA's and there is contractual obligations, they are real costs. The fact that we are going to have a discussion as to how those costs may or may not be scrutinized is another issue entirely.

I would like to turn now to some of the comments or the comments of Mr. Wolfe. He said that DISCO's interest expense is small, but the capacity payments and revenue requirement collects interest payment for the generators. Sorry. The interest that is collected by DISCO, that is collected, raises only a small component. But what DISCO collects also includes in its revenue requirement -- it collects interest payments for the generators who have huge capital costs, as you know.

So not being able to make these interest payments has

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a serious effect, I would submit, on the Province's credit rating. Because behind these capacity payments are real interest costs.

Those capacity payments, all that hardware, all that bricks and mortar in generators, they have real capital and interest costs that have to be paid. It happens that they are paid through the process of the capacity payments through the PPA's.

Mr. Wolfe made much of GENCO's profit. Quite frankly, as I'm sure most of you have read or are aware, GENCO's profit is almost all to do with hydro flows. Hydro flows, water through the turbines at the dam is not predictable.

It goes up. It goes down. Very variable.

The budget is based on long-term 30-year historical hydro flows averages. I suggest that Mr. Wolfe would have a perhaps different view if water flows were significantly below average and DISCO was coming back asking for a rate increase to recover those hydro flow deficiencies.

I have only a few comments with respect to Mr. Zed's submission. I do note that Mr. Zed agreed that the applicant has made out a prima facie case for the interim rate. His main issue is that he wants to defer the implementation of the interim rate.

We did some calculations. And I think it is important

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2 for the Board to note that if implementation of the rate is  
3 deferred to July 1st it would result in \$7.4 million lost  
4 revenue to DISCO. If it's deferred to August 1st lost  
5 revenue would be \$14.8 million. And I would just simply  
6 ask the Board to weigh this against the administrative  
7 inconvenience to the municipalities.

8 Finally, Mr. Chairman -- and I don't think I have to say  
9 much more about this -- Mr. Peacock's submission basically  
10 is this Board embark on a rate design process. I don't  
11 think that is appropriate for an interim rate hearing.  
12 And I think I have made most of my comments in that regard  
13 this morning.

14 And those are all my comments, Mr. Chair and Board  
15 members. Thank you.

16 CHAIRMAN: Thank you, Mr. Morrison. I guess in your  
17 argument and other parties as well, in the course of their  
18 arguments, referred to a jurisprudence. And I don't know  
19 that we received copies of that jurisprudence. Do you  
20 have copies available?

21 MR. MORRISON: I have copies of the Bell case certainly. I  
22 believe that has been given to the Board Secretary.

23 SECRETARY: I have it in the folder.

24 CHAIRMAN: Apparently the Board Secretary has put it in the  
25 folder. Any cases that people have referred to that they

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have present that hasn't been given to us, perhaps they could just give it to Board Staff. It would be helpful to us.

MR. MORRISON: The Coseka case we don't have copies with us. But I can certainly have them e-mailed to the Board.

CHAIRMAN: Sure. A single copy would be fine. Or e-mail copy, electronic copy would be fine.

And I would ask other parties who referred to any jurisprudence, if they have copies of the cases, or at least a copy, that would be very helpful.

I guess at this time I would like to commend the parties and their counsel for the professional manner in which they have put forth their respective views at today's hearing.

The Board is going to commence deliberations this afternoon. And we are going to continue those deliberations perhaps this evening and tomorrow morning. And as soon as we have come to a decision we will convey it to the parties.

I think in the interests of expediency we will probably expect -- the parties to expect that we will probably issue an oral decision rather than a written decision.

I note that this room is booked for tomorrow. So if a

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decision is ready tomorrow morning we would actually render a decision here tomorrow afternoon. I'm not suggesting to the parties that they should expect that result. But I simply put them on notice that that is a possibility. So I think on a tentative basis if we could say that we would render a decision, if we are able to do it tomorrow, at 3:00 o'clock tomorrow afternoon in this room.

In the event that it becomes very obvious that we have so much material that we are not really able to be in a position to render a decision tomorrow, the parties will be advised by e-mail from Board Staff probably no later than noon that nothing will occur with respect to a decision tomorrow, and that a decision will issue at a later time, again obviously as soon as possible.

So I guess this matter is now adjourned.

(Adjourned)

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

Reporter