New Brunswick Board of Commissioners of Public Utilities

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

Delta Hotel, Saint John, N.B.
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<u>INDEX</u>

<u>Undertakings</u>

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CHAIRMAN: Good morning, panel, ladies and gentlemen. That doesn't mean that you are not ladies and gentlemen too. I was wondering how I could do that without splitting you like that.

Any preliminary matters? Mr. Morrison?

MR. MORRISON: A few, Mr. Chairman. And just to advise the Board that Mr. Hashey had a prior commitment in the Court of Appeal. So he will not be here today.

CHAIRMAN: That is a good choice.

MR. MORRISON: A couple of things. First, Mr. Chairman, you had asked me to take a look at that NB Power POPIA policy with respect disclosing the names. I took a look at it yesterday afternoon.

I came to the conclusion that no one is going to get into any trouble if they disclose the names of the operating committee members too with this hearing. So I do have them.

And perhaps the easiest thing is I can just -- we have it typed out. I can just provide them to the Secretary rather than read them in the record.

CHAIRMAN: That is fine. The legal rumour mill has it that at some point in time the number of government departments and including the Power Corp. looked at it and said if it is not available under the Freedom of Information Act then it is not available anywhere else. That is where that comes from I guess.

But certainly for the purposes of this hearing that doesn't apply. I'm sorry. I should have taken appearances first. And I will go back and do that, Mr. Morrison. We'll get to number 2, okay.

MR. MORRISON: Okay. Terry Morrison. I'm here alone today, Mr. Chairman. With me at counsel table is Lori Clark.

CHAIRMAN: Thank you. Canadian Manufacturers and Exporters?

MR. LAWSON: Gary Lawson appearing for CME.

CHAIRMAN: Thanks, Mr. Lawson. Conservation Council not represented today. Enbridge Gas New Brunswick? Irving Group of companies? Mr. Gillis isn't here. Rogers isn't here. None of the self-represented individuals are here. Municipal Utilities?

MR. GORMAN: Good morning, Mr. Chairman. Raymond Gorman appearing for the Municipal Utilities. This morning I have Michael Couturier from Edmundston Energy and Eric Marr and Dana Young from Saint John Energy.

CHAIRMAN: Why is Mr. Couturier sitting separate and apart? I have wondered about that.

MR. GORMAN: It is a good question.

CHAIRMAN: Okay.

MR. GORMAN: I guess he doesn't want to sit up against the wall.

CHAIRMAN: Vibrant Communities not here. And the Public Intervenor?

MR. HYSLOP: Thank you, Mr. Chair. Peter Hyslop, Robert O'Rourke and Carol Power.

CHAIRMAN: Thanks, Mr. Hyslop. How is the voice this morning?

MR. HYSLOP: Much improved, Mr. Chair.

CHAIRMAN: Good. Informal Intervenors, I don't see any in the room. But if there are and they want to go on the record, speak up now. And Mr. MacNutt, whom do you have with you today?

MR. MACNUTT: I have with me today, Mr. Chairman, Doug Goss, Senior Adviser, John Lawton, Adviser, Jim Easson, Andrew Logan and John Murphy, Consultants and Advisers.

CHAIRMAN: Thank you, Mr. MacNutt. Okay. Mr. Morrison, back to preliminary matters?

MR. MORRISON: Yes, Mr. Chairman. There are some undertaking responses. The first is undertaking number 1 from February 15th. Kathy McShane, dealing with jurisdictions where deemed capital structure was implemented.

CHAIRMAN: My records indicate that will be exhibit A-113.

MR. MORRISON: The next one, Mr. Chairman, is undertaking number 2 from February 15th, again directed to Kathleen McShane, dealing with the utilities where a deemed capital structure was not permitted.

CHAIRMAN: That will be A-114.

MR. MORRISON: The next one, Mr. Chairman, is undertaking number 3 from February 14th, again directed to Ms. McShane. And it was dealing with the context about regulations considered quote "weak".

CHAIRMAN: That will be A-115.

MR. MORRISON: And that is it for now, Mr. Chairman.

CHAIRMAN: Good. Thank you, Mr. Morrison. Any other preliminary matters? Go ahead when you are ready, Mr. Hyslop.

CROSS EXAMINATION BY MR. HYSLOP:

Q.657 - Yes. I appreciate Ms. McShane isn't here but I'm sure the panel may have the knowledge to deal with a question arising out one of the undertakings which was just filed which I believe was the undertaking relating to the list of jurisdictions where specifically provide for a rate of return on deemed capital structure.

One of the answers was the New Brunswick Board of Commissioners Public Utilities, the NB Power transmission tariff. If my memory serves me correctly about that, the New Brunswick Power Transmission Corporation in fact has capitalized by the removing of debt from the record and replacing with equity to the approximate amount of $140,000,000, is that correct, Ms. MacFarlane?

MS. MACFARLANE: At the time that the transmission tariff was set, Transco did not have equity. It was a business unit of NB Power which at the time was 100 percent plus debt. Since that time NB Power Transco has been capitalized but the debt equity structure is different in

the company than it is for purposes of the tariff. For purposes of the tariff there is still a deemed capital structure.
Q.658 - And also I understand that during the hearing itself -- and I don't have the decisions with me, I didn't bring that set of materials -- but my understanding was it was clearly represented during the hearing that this equity for debt swap would take place with respect to Transco?
MS. MACFARLANE: No, I don't agree with that.
Q.659 - Okay.
MS. MACFARLANE: At the time that the application was made we were not aware that restructuring was to take place, and so the hearing was conducted in the absence of that. During the hearing the Minister made his announcement in May 2002 and because it was only an announcement I believe the record would show that the Board chose to treat it as simply that, an announcement about something that might happen in the future.
Q.660 - Well I will bring the decision in and then we can discuss it further. Anyhow, we will go on with what we are here for.
I want to talk about Article 4.3 and 4.4 of the Genco vesting agreement, which is exhibit A-4. And that is at page 40. And this flows out of a line of questioning the

other day relating to the orimulsion litigation, the legal costs from it and what happens to any of the recovery either by judgment or settlement. And first of all this is under a section called Fuel Procurement.

CHAIRMAN: Can you give us that citation again, Mr. Hyslop?

MR. HYSLOP: Yes. Exhibit A-4, the tab Vesting Agreement Genco/Disco/Holdco, and page 40. And this deals under the section Fuel Procurement, that's correct?

MS. MACFARLANE: That's correct.

Q.661 - Right. And I read Sections 4.3.3 and Sections 4.3.4, and I was having a little difficulty following them. Section 4.3.3 says subject to Section 4.3.4 it says Disco shall reimburse Genco -- and I will get into the portion -- but essentially it says it will reimburse Genco for anything that Genco has to pay or the cost and expenses incurred by Genco as a result of the orimulsion issues in the law suit, is that -- my understanding correct?

MS. MACFARLANE: That's correct.

Q.662 - Right. And then it says in 4.3.3 -- and this phrase shows up twice and it has caused a bit of a problem for me. It deals with something called the proportion of the legal expense or the recovery equal to the proportion of the net energy from the unit generators to Coleson Cove used to supply in-province supply requirements at the relevant time.

MS. MACFARLANE: Yes.

Q.663 - Now my understanding was during the Coleson Cove hearings that the Coleson Cove generator would have a capacity factor of approximately 80 percent. Am I approximately correct there?

MS. MACFARLANE: I'm sorry, I don't recall.

Q.664 - Okay. But now I understand Coleson Cove's capacity factor for in-house -- or in-province service would be in the area of 20 to 25 percent? Mr. Kennedy, perhaps that would be more your bailiwick?

MR. KENNEDY: Yes, that seems reasonable.

Q.665 - Okay. So my question is does that mean that Disco is on the hook for 25 percent of the expenses and receives 25 percent of the recovery? Is that how I would interpret clause 4.3.3?

MS. MACFARLANE: That's how you would interpret it, yes.

Q.666 - Yes. Now here is the problem. When I go to Section 4.3.4 it says notwithstanding Section 4.3.3 Disco shall be responsible for and reimburse Genco for all the costs and expenses and Genco shall pay Disco all damages it receives. So that would seem to imply for me that Disco is now on the hook for all the legal expenses incurred but it would get the benefit of all the recovery, or am I misinterpreting something in 4.3.4?

MS. MACFARLANE: I think the reason for 4.3.4 is because if you recall Disco has the right to and has in fact paid for all of the capacity off of Coleson Cove. So because it has paid for all of the capacity, which includes the capital costs, any recovery of capital costs would accrue back to Disco.

Q.667 - Okay. So does that mean we ignore 4.3.3?

MS. MACFARLANE: I would have to read it more carefully but I am guessing that 4.3.3 is related to any costs that might be incurred specific to energy, and where it's specific to energy it would only be for the in-province supply off of Coleson.

Q.668 - So let's say for a lack of -- and certainly these numbers are clearly hypothetical, they are not based on any special knowledge I have of the litigation because I certainly don't have any, but --

MR. MORRISON: Mr. Chairman, I would like to object at this point in time.

MR. HYSLOP: You don't even know the question, Mr. Morrison.

MR. MORRISON: Pose your question, Mr. Hyslop.

Q.669 - Thank you. Now let's assume you get a $500,000,000 settlement out of the --

MR. MORRISON: Then I am going to object, Mr. Chairman. I think it is very --

MR. HYSLOP: I still haven't asked the question, Mr. Morrison.

MR. MORRISON: He is putting a hypothetical that relates to damages. There is an ongoing litigation on this matter. The members of this panel are subject to a court order in the United States for depositions. Pursuing this line of questioning is not relevant to the 2006/2007 revenue requirement. The potential for prejudice to Disco and its ratepayers in the legal proceedings is very real. If Mr. Hyslop and the Board wants to pursue this further I would request that we move in-camera.

CHAIRMAN: Do you want to move in-camera?

MR. HYSLOP: Sure.

CHAIRMAN: Okay. Can we reserve that until you have finished all the rest of your cross?

MR. HYSLOP: Yes.

Q.670 - I would like to move on and look at clause 6.11 of the same agreement which is found at page 51. And in this regard also we are dealing with the shortfall. And we get into a question of something called the first threshold price?

MR. KENNEDY: Yes.

Q.671 - Yes. And the first threshold price isn't actually found in this contract. But you can find it if you look at the nuclear power -- power purchase agreement schedule. I think it is 1.122?

MR. KENNEDY: Yes. It's the first threshold price. It's identified in the Nuclearco PPA.

Q.672 - Right. And if the Point Lepreau production falls below this budgeted operated capacity -- or falls below its budgeted operating capacity factor, then Genco I understand supplies the energy to make up the difference?

MR. KENNEDY: That's correct.

Q.673 - Right. And the price that Genco does this is the vested energy price under this contract, under the Genco PPA, plus the amount of the first threshold price less the vested energy price, correct?

MR. KENNEDY: No. That's not correct.

Q.674 - Then perhaps you might correct me on my understanding?

MR. KENNEDY: Genco supplies the energy that is below the 80 percent capacity factor when it falls below the 4240 gigawatt-hours.

Q.675 - Yes.

MR. KENNEDY: That's before refurbishment. And 4500 gigawatt-hours after refurbishment. It is paid basically the first threshold price. But the energy it supplies is from the vesting energy contract.

So in reality it's a difference, they are compensated the difference between the first threshold price in Point Lepreau minus the price of the vesting energy -- vesting energy price. And that is the shortfall.

Because in reality the actual capacity factor from Point Lepreau, if it is below 80 percent or the 4240, Genco will be supplying that energy.

Q.676 - Yes.

MR. KENNEDY: And they will be basically compensated the first threshold price, that's all.

Q.677 - Well, I guess my point is is that if the first threshold price is higher than the vesting energy price, that difference gets added onto the amount that Disco has to pay?

MR. KENNEDY: The difference between the first threshold price and the Nuclear contract and the Genco PPA is what gets added onto the contract.

But we are basically indifferent. Because we would have had to have provided that energy from Point Lepreau. We basically do not pay the first threshold price for that energy to Point Lepreau.

Q.678 - But you pay it to Genco?

MR. KENNEDY: That's correct.

Q.679 - Right. And if the vesting energy price is higher than the first threshold price, there is a bit of a premium that is paid there, correct?

Or I have got the two backwards. You pay Genco the first threshold price for whatever amount of power they supply to make up the deficiency at Point Lepreau?

MR. KENNEDY: That's correct.

Q.680 - Okay. So if the first threshold price under the Nuclear PPA is higher than the vesting energy price when there is a shortfall from Point Lepreau, an extra amount of money has to be paid to Genco over and above the vested energy price?

MR. KENNEDY: Yes. But we basically save the price that we would pay Nuclearco.

Q.681 - Yes. I appreciate that. And right now, according to your exhibit A-96, I think it is .2 million for the budgeted year?

MR. KENNEDY: That's correct.

Q.682 - Right. Okay. Now my question is -- and where I'm trying to get here is what happens -- and by the way, Mr. Peaco, just while I have got you here, I'm sure as part of your review here you did examine this contract and determine exactly what the first threshold price was under the Nuclear power -- purchase power agreement, correct?

MR. PEACO: Yes.

Q.683 - Yes. But you didn't do any independent investigation as to how that price came to be established by the investment bankers, did you?
MR. PEACO: The price in the Nuclearco PPA?
Q.684 - Yes.
MR. PEACO: No.
Q.685 - Thank you. In any event, so I understand that Point Lepreau is going to be refurbished?
MR. KENNEDY: Yes. That is correct. Point Lepreau is going to be refurbished.
Q.686 - Right. And after this refurbishment, can we or do we anticipate that there may be adjustments to this first threshold price?
MR. KENNEDY: Yes. The first threshold price is identified in the Nuclearco PPA. And the as-built cost estimate now has been determined. And there will be an adjustment required based on that figure for the first threshold price.
Q.687 - Do you have at this stage an idea exactly what that first threshold price might be after refurbishment given the current budget for the refurbishment project?
MR. KENNEDY: The first threshold price as it stands right now based on $954,000,000 as the estimate is $67.60 per megawatt hour with respect to Point Lepreau. That price

will have to be adjusted in light of the most recent as built cost estimate that is final.
Q.688 - I think it's about 1. --
MR. KENNEDY: 1.022.
Q.689 - Something like that, yes. Okay. I mean I'm not going to hold you to an exact number. So I guess my point is that after refurbishment we can reasonably expect that this first threshold price is going to go up?
MR. KENNEDY: Yes. But after refurbishment the performance is -- the performance of the Point Lepreau generating station is anticipated to improve significantly with respect to any deratings or forced outages, and that's indicative of why we are doing the refurbishment. And then after refurbishment the threshold price -- the first threshold will be evaluated at 4,500, but the -- it's anticipated that as a result of this refurbishment that the availability and the capacity factor off of Point Lepreau will be significantly more than it is right now.
Q.690 - Well then I would understand that based on what is in the agreement under 6.11 you are anticipating an increase in gigawatt hours of 260 gigawatt hours, is that --
MR. KENNEDY: That's correct. And it could be even more than that.
Q.691 - It could be more than that. So what you are telling

me is anything related to the Point Lepreau refurbishment, including the first threshold price and perhaps even the capacity factor, is something that all might get reviewed down the road?

MR. KENNEDY: No. The contract states where the threshold is set after refurbishment. It's 4,500 gigawatt hours.

Q.692 - Sure. Mr. Peaco, in part of your technical audit and review I take it that you didn't do any independent evaluation or assessment of the improved capacity factor, the 4,500 gigawatt hours?

MR. PEACO: That's correct.

Q.693 - Thank you. Now my concern -- and again this is not intending to be in any way critical of Mr. Peaco's work because I think he was quite fair, but when I look at his first technical report at page 11 -- and that's exhibit A-5 -- and at the -- under the heading Unit Availability near the bottom of the page Mr. Peaco noted, the Point Lepreau capacity factor, while not implausible, is somewhat high relative to average -- to an average of recent historical data, that would be correct, Mr. Peaco?

MR. PEACO: That's correct.

Q.694 - And at page 15 of your report it's stated that -- and again with regard -- this is at the second paragraph on the top, it says, if the plant's actual availability turns

out lower, Disco's total cost of power will increase. Is that correct, Mr. Peaco?
MR. PEACO: You are reading at the bottom of the first full paragraph?
Q.695 - That first full paragraph at the top of the page, yes.
MR. PEACO: Where it's referring to the 1.4 million?
Q.696 - Yes.
MR. PEACO: Yes.
Q.697 - Okay. Now I guess my question is does Disco have concerns at all because if the capacity factor for Point Lepreau was set too high, you would agree that Disco would be at some risk of paying additional amounts for the energy that it would buy from Genco to replace it, would that be correct, Mr. Peaco?
MR. PEACO: Mr. Hyslop, if I could explain the analysis we are doing here first and then maybe we can go into other aspects of your question.
The calculation we are doing here in this Phase I audit was looking at the extent to which the assumption of 83 percent capacity factor and the 05/06 budget year might alter the overall total budget. And the 1.4 million we estimated was basically the difference between assuming an 83 percent capacity factor and an 80 percent capacity factor, as we just went through capacity factors less than

80 percent Genco basically holds Disco harmless on those costs. So this was an estimate of the magnitude of the difference between an 80 and 83 percent in terms of what kind of variance it could introduce in the budget.

Q.698 - Okay. Well I think my question perhaps was a little more general than that, and what I'm trying to find out is if somehow the capacity factor at Point Lepreau was set high, and you use the word implausible, might not be implausible, but if it was high, then there is a risk to Disco because of the extra money it would have to pay Genco to replace that energy. Is that -- would I be correct there?

MR. KENNEDY: It depends on the vesting energy price at the time.

Q.699 - Yes. I appreciate -- and that can go up as well. I appreciate your point, Mr. Kennedy.

MR. KENNEDY: It also can go down.

Q.700 - Yes. And that would even increase the risk the other way, would it not?

MR. KENNEDY: Depends whether you are into the second tier or the third tier price.

Q.701 - Well I guess my point is it seems to me that looking at this if I was Disco and in view of Mr. Peaco's comments, that this seemed high, he didn't use the word unreasonably high, that you would want to ensure that the capacity factor that you are going to agree to in the Nuclear PPA be set very reasonably. Would that not be a fair observation, Mr. Kennedy?

Q.702 - Would it help if I rephrased the question?

MR. KENNEDY: Yes.

Q.703 - Okay. I guess the question is what is the risk to Disco if the Point Lepreau capacity factor is over-estimated?

MR. KENNEDY: If the Point Lepreau capacity factor is over-estimated we only pay for the energy that Point Lepreau delivers. So we basically will say that tier 1 price or any mixture of the second tier or the third tier, and Genco is compensated for anything that's below either 80 percent the difference between the Point Lepreau price and the vesting energy price. But in reality we do not pay Nuclearco for any energy that they do not deliver.

Q.704 - I appreciate that. But you pay Genco -- you pay Genco an increased amount up to the amount of the vested energy when you have a contract with Genco where they could supply it at a lower price, correct?

MR. KENNEDY: Yes.

Q.705 - Yes. Now what -- I guess my next --

MR. MAROIS: Well possibly because like I mentioned earlier vesting price could be higher but --

Q.706 - Sure.

MR. MAROIS: -- I think the philosophy here is that if Nuclearco's generation is below the threshold, really Genco is there to backstop it at the price we would pay Nuclearco. So at the end of the day we don't pay more. We just pay the same amount we would pay Nuclearco we would pay to Genco. So it's a pretty good deal.

Q.707 - Okay. So I guess my question -- the ultimate question here is, you know, what steps will Disco take to ensure itself that the capacity factor at Point Lepreau is fair and reasonable?

MR. MAROIS: Well I think that just the way the PPA is structured Nuclearco has an immense incentive to ensure that the plant is running as much as it can because it's being paid on a variable rate. So the less it produces the less money it generates. The more it produces the more money it generates. So that's -- ultimately that's the ultimate incentive to ensure that Nuclearco is producing as much as it can.

Q.708 - But again we are talking capacity factor, and I appreciate your point, Mr. Marois, that Nuclearco would have some incentive to keep pushing or to do the best it can. But what does Disco do to protect its interests?

MR. MAROIS: Well capacity factor in the case of Nuclearco is pretty simple. It's the amount of operating in days that it operates. So really again if they don't operate they don't get any revenue. So it's like you say, they have some incentive, I think they have a huge incentive to produce.
Q.709 - I would like to move on to another topic, and I'm looking at Article 6.2.5 on page 46. And this talks about the fuel component to the vesting energy price and it talks about the PROMOD. And the second sentence reads, inputs to PROMOD or such other acceptable software shall include Disco's load forecast for the fiscal year, the forward prices for fuel used by unit generators including if applicable various lists of fuels, fixed prices under the heritage PPA or alternate arrangements, forward foreign exchange rates, pre-set forced outage rates, historical hydro generation, guaranteed heat rate curves and any other relevant parameters. Can you tell me how many other relevant parameters would be involved? Mr. Peaco, maybe you would be in the best position to answer that.
MR. PEACO: I don't have a fixed number.
Q.710 - Would it be in the hundreds?
MR. PEACO: You are referring to the PROMOD data set we

discussed yesterday?

Q.711 - Yes.

MR. PEACO: Yes. The data are --

Q.712 - Okay.

MR. PEACO: -- but I think this is referring to something slightly different than that. The parameters would be --

Q.713 - And when you did your review -- and I don't want to go all through pages 11 and 12 again -- but very quickly I think you indicated to me in those that the load forecast data and models used to prepare the forecast were unavailable when you did your review, Mr. Peaco?

MR. PEACO: In the Phase I report?

Q.714 - Yes.

MR. PEACO: Yes.

Q.715 - And the forward pricing for fuels, they were wired in numbers I guess, is that correct?

MR. PEACO: I'm sorry. The question again?

Q.716 - They were wired -- the forward prices for fuels, those would have been, according to Mr. Kennedy, numbers that would have been wired into the PROMOD?

MR. PEACO: Those were numbers that were results from the hedging contracts.

Q.717 - Yes.

MR. PEACO: So that they would have been pre-determined by the hedging contracts and the forward price quotes on the day that they set the vesting price.

Q.718 - Right. And the same would apply with the forward foreign exchange rates?

MR. PEACO: Yes.

Q.719 - Right. And with regard to the pre-set forced outage rates, your report didn't make any specific comment. But yesterday I asked some questions on that. Would there be a reasonableness range around pre-set forced outage rates, Mr. Peaco?

MR. PEACO: Yes.

Q.720 - All right. Can you give me some idea? Would that be as much as say plus or minus five percent?

MR. PEACO: That could be, sure.

Q.721 - Right. And historical hydro generation, we looked at that, but according to your Phase I report you were not able to review the historical data, but you understood it was based on historical data which you found reasonable?

MR. PEACO: Yes. What was based on historical data was the allocation to the months.

Q.722 - Yes.

MR. PEACO: Yes.

Q.723 - Okay. That would mean the annual one you didn't review the -- it wasn't based on historical data?

MR. PEACO: Well the annual number is fixed in the contract.
Q.724 - Yes. Okay. But you didn't determine whether or not that number was based on historical data?
MR. PEACO: That was specified in the contract.
Q.725 - Okay.
MR. PEACO: So I didn't review that.
Q.726 - Thank you.
MR. PEACO: Anything that's specified in the contract we did not sort of go behind that to see how those were derived.
Q.727 - Okay. Thank you. Now you also -- guaranteed heat rates mentioned on page 11 of your report, you were advised by Genco that these heat rates were based on historical data, but this data wasn't available to you, correct?
MR. PEACO: In the Phase I?
Q.728 - Yes.
MR. PEACO: Yes.
Q.729 - Thank you. PI-15, which is Mr. Strunk's report, page 4, and I'm just reading one sentence but I will read the sentence to you. Mr. Strunk and Mr. Meehan comment, "The evidence we have reviewed, in particular the technical audits performed by La Capra, do not contain detailed evidence of Genco's costs that one would expect to see in a proceeding of this nature." Would you agree with that

comment, Mr. Peaco?

MR. MORRISON: Mr. Chairman -- can you give me the reference to that again, Mr. Hyslop?

MR. HYSLOP: Yes. It's on page 4, paragraph 2.

MR. MORRISON: Mr. Chairman, this is one of the provisions of the Strunk report to which Disco objects, and I'm objecting to the question.

MR. HYSLOP: Well my understanding is we had a hearing on that, Mr. Morrison, and it was ruled that the evidence was now on the record.

CHAIRMAN: Yes, overruled. Go ahead, Mr. Hyslop. Put the question again.

Q.730 - Thank you. The sentence I'm reading to you and I would ask you to comment on, it said -- Mr. Meehan and Mr. Strunk in the report said, "The evidence we have reviewed, in particular the technical audits performed by La Capra Associates, does not contain detailed evidence of Genco's costs I would expect to see in a proceeding of this nature." Do you agree with that comment, Mr. Peaco?

MR. PEACO: The scope of my effort was to review the PPAs as structured.

Q.731 - Yes.

MR. PEACO: And to look at Genco's and Disco's computation of the budget resulting from that. The reference to

Genco's costs I believe go to some of the terms and conditions of those contracts, if I understand the passage here correctly.

Q.732 - Yes.

MR. MAROIS: And we did rebut -- this is part of the rebuttal we made of the report, that it's premised on the fact that the PPA are cost based contracts, which they are not.

Q.733 - Yes. I was asking for Mr. Peaco's professional opinion on that section.

MR. MAROIS: The context is quite important.

Q.734 - Yes. I appreciate that the context is quite important, but I'm also asking whether he would agree with the comments of Mr. Strunk and Mr. Meehan.

MR. PEACO: Again I guess I put -- if this passage is intended to refer to Genco's costs behind the terms and conditions of the PPA, clearly I did not review that and it was not something that was within my scope to review because we were looking simply at what -- given the PPA, what is a reasonable estimate of the budget for that year.

Q.735 - Right. And at page 14 of the same exhibit -- and I do want to get this on the record, Mr. Peaco --

MR. PEACO: I'm sorry. The citation again?

Q.736 - Page 14 of the same report. And I want to get this on the record. So at this point I'm looking at footnote 17.

And to read it into the record, our experts or Mr. Meehan and Mr. Strunk state "To be clear this report is not criticizing the work of La Capra Associates or their qualifications. The criticism is that the scope of review commissioned by Disco is limited and is not consistent with that which would be performed in the context of a regulatory proceeding by an adversary party." Do you see that, Mr. Peaco?

MR. PEACO: Yes.

Q.737 - Right. And would you agree with that comment?

MR. PEACO: There are several things in here. What specifically would you like me to comment on? My qualifications or --

Q.738 - Well, I'm sure you will agree with that part of it. They are not at all critical of your qualifications. But they are criticizing that the scope of your report appears to be limited for a regulatory proceeding.
It is the second sentence I would like to have you comment whether you would agree or disagree?

MR. PEACO: Yes. I guess the context would be clearly our work was done to review those calculations. And I guess the question would be what is the purpose of the regulatory proceeding?

The premise of the whole report here is that there is a cost of service investigation proceeding. And so this footnote right in that context sort of begs the question of what proceeding they were talking about.

But in the context of a fuel cost proceeding implementing an existing PPA, clearly there would be scrutiny of the analysis. Information of the type I provided would be helpful to that. But adversary parties would clearly look at that information as well.

Q.739 - Thank you.

MR. MAROIS: And just to clarify again for the record, the scope of the work done by Mr. Peaco was reviewed and approved by the Board. So there are terms of reference. We did not do this in isolation.

Q.740 - Well, I will accept your comment. I won't say anything more.

Page 13 of the same exhibit, Mr. Peaco, and under the portion starting 5, the first paragraph, third line from the bottom says "The scope of their review" -- their review being the review by La Capra -- "was limited to the assessment of reasonableness, which is not a strict standard."

Would you agree with that comment, Mr. Peaco?

MR. PEACO: The aspect meaning reasonableness not being a strict standard?

Q.741 - Yes.

MR. PEACO: Strict standard in the sense that just and reasonable is a conventional standard in ratemaking.

Q.742 - Yes.

MR. PEACO: Are you intending it is something different than that?

Q.743 - Well, I just want you to comment right on the sentence "The scope of their review was limited to an assessment of reasonableness, which is not a strict standard."

Do you agree or disagree with that statement?

MR. PEACO: I guess I would agree it's not a strict standard.

Q.744 - Thank you.

MR. MAROIS: It's important though that the concept of reasonableness is used regularly in regulatory proceedings, very regularly.

Q.745 - One of the issues at this hearing that I guess we have agreed to disagree on is the type of return on equity that Disco is entitled to.

And you would agree with me that we are disagreeing anyhow, Ms. MacFarlane?

MS. MACFARLANE: I think we are disagreeing, yes.

Q.746 - Yes. And I think your position is that Disco is entitled to a return on its investment based on some type of established debt capital structure that doesn't exist in actuality and a return on investment of, I forget the rate, 10 percent on the equity portion, correct?

MS. MACFARLANE: Conceptually that's correct, yes.

Q.747 - Right. And I'm taking that old dye-in-the-wool view that you are entitled to the cost of your embedded debt. So it doesn't seem we are on the same page on that at this stage of the hearing anyhow. You would agree with that?

MS. MACFARLANE: I would agree.

Q.748 - Great. Now my question is -- let's assume without prejudgment or any indication or anything. But let's just assume at the end of this hearing the Board agrees with me and says Disco is entitled to a return on its investment based on the interest on its embedded debt.

My question is what impact would that have for Disco in terms of the pricing under the purchase power agreements with Nuclear and Genco?

MS. MACFARLANE: I don't believe it would have any impact. Because the contracts have terms and conditions which state the prices to be paid in certain areas and state the method for determining the prices to be paid in respect of other issues.

So I don't believe a decision such as the one you have indicated would have any impact on those contracts. And that's particularly in light of the Board's ruling on the interpretation of Section 156 which says that those PPAs are to be included in the revenue requirement.

Q.749 - Would you not consider at least a question on behalf of Genco or Nuclearco where they would come before the Board to establish and confirm that point in a regulatory setting? Would you feel that would be necessary?

MR. MORRISON: Mr. Chairman, from a legal point of view neither Genco or Nuclearco are regulated entities.

MR. HYSLOP: I will withdraw the question then. Just take a moment to check through my notes, Mr. Chair.

Mr. Chair, subject only to the line of questioning that would be in-camera, that concludes the questioning of this panel. I thank the panel for their cooperation and assistance.

CHAIRMAN: Okay, Mr. Hyslop and Mr. Morrison, I have been sitting up here and had an opportunity to think a little further about Mr. Morrison's objection and the reason for going in-camera.

So I would like us to explore it a little further right now before the Board retires. Because I would like to talk with my fellow Commissioners about the ruling.

But Mr. Hyslop -- and Mr. Morrison, you can object to my phrasing the question of Mr. Hyslop. But what I'm saying is I think I know where you were going, which was simply to take a situation where if there were a recovery in a lawsuit or having to pay out in a lawsuit and how the provisions of the PPA would affect that.

MR. HYSLOP: That is it exactly. And there is a follow-up area of questioning. I would rather not go too far in detail.

CHAIRMAN: Okay.

MR. HYSLOP: But how would the ratepayers benefit? I guess a general statement.

CHAIRMAN: Mr. Morrison, I don't want you to interpret that the Board doesn't have a great deal of respect for all that you have said.

But I'm sitting here and I'm saying I know there is -- or at least I'm informed that there is litigation going on in another jurisdiction. And we don't want to comment on anything that is going to prejudice Genco's case or the customers of NB Disco in that proceeding.

But I fail to see personally how the hypothetical which just gives us a greater appreciation or understanding of the provisions of this agreement, which is public knowledge, could infringe upon that.

Now do you want to think about it?

MR. MORRISON: No. I have thought about it, Mr. Chairman. And quite frankly, I have no problem with the notion of the Board understanding how damages and legal costs flow between parties pursuant to the agreement.

My main concern, and the reason I objected so quickly, is that if Mr. Hyslop wants to put a hypothetical number to the Board or to the panel, I would want it to be a truly hypothetical number and not something that may have been gleaned from other sources, through the Crown Corporation Committee or through calculations that he may have done.

And the reason for that, Mr. Chairman -- if the purpose is to understand the mechanics of the PPA, not a problem.

But we are very, very sensitive to any discussion with respect to actual damages relating to the Coleson Cove fuel procurement arrangements because of the ongoing litigation.

So if Mr. Hyslop can undertake, if you will, to put --

CHAIRMAN: How about $100.

MR. MORRISON: -- to pick a purely hypothetical figure, I have no problem with the line of questioning.

CHAIRMAN: Use $100, Mr. Hyslop.

MR. HYSLOP: I hope we do better than that. But in any event --

CHAIRMAN: Now keep it hypothetical.

MR. HYSLOP: -- I understand the point.

CHAIRMAN: Okay.

Q.750 - Okay. I think where I was with the line of questioning was along the lines, looking at articles 4. -- by the way, another little point on that. I noted at 4.3.2 of that same -- same section of the Genco PPA, it indicates that actually it's Holdco that's fighting this litigation and Genco has the obligation to reimburse Holdco for the legal fees, is that correct?

MS. MACFARLANE: That's correct.

Q.751 - Right. But NB Power Holdco agrees to pay Genco any of the penalties or damages that it's able to win under this little problem we have got in Venezuela, correct?

MS. MACFARLANE: That's correct.

Q.752 - Okay. And so I guess with regard to this, then we have got Holdco agreeing with Genco and Genco agreeing with Disco relating to this litigation?

MS. MACFARLANE: That's correct.

Q.753 - Right. Now my question is if I was -- were lucky enough to get a judgment for $100 here at the end of the day and my question is under 4.3.3 and in particular dealing with this concept of the proportion which is equal to the proportion of the net energy from the unit generators at Coleson Cove used to supply in-province supply requirements at the relevant time, and if that was 25 percent, would that mean $25 would get paid by Genco down to Disco?

MS. MACFARLANE: The claims are complex and they include a number of factors. So if in your hypothetical situation the award were against energy related costs, your calculation is correct.

Q.754 - Okay. And if it's a capital related cost, then it would be 4.3.4 that would apply?

MS. MACFARLANE: That's correct.

Q.755 - Okay. So we get 25 percent of the generation. Now why wouldn't it be 80 percent when it was intended originally that -- it's from my recollection that that was the intended capacity factor after refurbishment assuming the Orimulsion fuel.

MS. MACFARLANE: I have not reviewed that material for some time, so I can't answer the question. I can tell you that the Section 4.3.3 would be applied based on the amount of net energy used to supply in-province supply requirements at the relevant time. So a calculation would be done and it would take into consideration the --

Q.756 - Would that be on the specific day you receive the cheque or would it be based on a specific year or current month or --

MS. MACFARLANE: As I said, Mr. Hyslop, the claims are complex. One would have to understand how the award is made in order to determine how to apply the relevant section.

Q.757 - Well, you know, I have done a lot of litigation up in Carleton County, not for numbers like this, but a lot of times you get down in this litigation and what happens is they will say, look, we will give you a global settlement of $100. They don't break it down into its different components.

MR. MORRISON: Mr. Chairman --

Q.758 - How would you handle it if it was a global settlement and you couldn't identify from the award whether it was generation or capital?

MR. MORRISON: Mr. Chairman, I'm going to object to that question. No witness on this panel is capable of answering a question that deals with awards of damages and what heads of damages those awards are given under. The hypothetical whether or not there is a global settlement, I have no idea what the solicitors involved in the litigation would do with respect to an offer with respect to a global settlement.

CHAIRMAN: Mr. Hyslop, go on to another line of questioning.

MR. HYSLOP: I think the point is made, Mr. Chair. I will leave that one.

Q.759 - Now you have got your $25 and I guess my question is if -- what happens to it at the Disco level. And a couple of options came to mind. One is I guess the government could demand a -- not government, EFC could ask for a dividend to be declared or paid under Section 37 and gobble it right up.

Would that be the intention or -- it would seem to me more appropriate that since the ratepayers are paying the cost of the extra fuel because of this, that somehow that get credited back into the vested energy price. Is any thought given what happens to Disco's money? There is nothing in the contract about it, is there?

MS. MACFARLANE: There is in respect of the capital contribution, and that amount would be credited against the capital cost of Coleson, the amortization would be reduced, therefore the charge from Coleson to Disco and Disco to Genco would be reduced and the vesting energy or the capacity payment back from Genco to Disco would be reduced accordingly.

Q.760 - What about the energy side?

MS. MACFARLANE: I haven't spent time on that to know, Mr.

Hyslop.

Q.761 - Well I will allow you time to prepare an answer to that. I read it. I had a hard time figuring out exactly what would happen to the money and whether the rate payers would see the benefit of it. But you can help me if you can find something in that regard, Ms. MacFarlane, it would be appreciated.

MS. MACFARLANE: Thank you.*

MR. HYSLOP: Mr. Chair, I have got one more possible line of questioning and I would like to take a couple of minutes to discuss it with Mr. O'Rourke whether I want to go down that line or not. I may not want to. And I know it's about 20 after ten, would it be an appropriate time to have our adjournment?

CHAIRMAN: I thought you had said you had finished except for the one --

MR. HYSLOP: Well this is also related -- it's an orimulsion line of questioning, Mr. Chair. So I want to discuss it with Mr. O'Rourke whether I want to go down the road or not.

CHAIRMAN: Okay. All right. We will do that. We will take our break now.

MR. HYSLOP: Thank you.

(Recess)

CHAIRMAN: Well did Mr. O'Rourke show good common sense?

MR. HYSLOP: Yes, he did, Mr. Chair. He synthesized two hours of cross examination down to one last question.

CHAIRMAN: It will probably expand into one hour, but let's go.

MR. HYSLOP: No, it shouldn't be more than one question. And that question is, panel, and perhaps probably directed to Mr. Kennedy, has the vested energy price been adjusted for the change in fuel type at Coleson Cove, or are you using heavy oil to determine the vested energy price there now?

MR. KENNEDY: Yes, we are using heavy oil as the -- to set the fuel component pricing for Coleson Cove.

MR. HYSLOP: Thank you very much. That is it, Mr. Chair.

CHAIRMAN: Thank you, Mr. Hyslop.

MR. HYSLOP: I do thank the panel for your co-operation.

CHAIRMAN: Mr. MacNutt, would you like to move down front with your support.

<u>CROSS EXAMINATION BY MR. MACNUTT</u>:

Q.762 - Good morning, Mr. Chairman and Commissioners and witness panel. The first question is with respect to exhibit A-4 which is the power purchase agreement volume generally. And it has to do with the Stone Smurfit plant generator, Nigadoo Dam generator as well as the Hargrove

Hydro generator near Bristol.

In reviewing the agreements in exhibit A-4 it was noted -- I noted that none of them addressed the purchase of electricity by Disco from the Stone Smurfit mill in Bathurst or the Hargrove Hydro generator on the tributary of the Upper Saint John. First of all what electricity generating facilities are owned or controlled by Stone Smurfit at Bathurst?

MR. KENNEDY: Could you please direct me to where you are looking at that -- what page or what document?

Q.763 - That's the very thing. I could not find any reference to them in exhibit A-4 which are the power purchase agreements.

And my question is first of all what are the generating facilities owned or controlled by Stone Smurfit at Bathurst and then I'm going to go on and ask you in what manner -- in what way is the relationship between Disco and those generators established and where is it found?

MR. KENNEDY: Yes. The relationship between the -- in particular the Smurfit Stone and others with -- Disco supplies power to those facilities. They are integrated into the process. They are self-generators that are used in the manufacturing at these facilities, and normally we basically supply interruptible energy to these self-generators when they do not generate or they are below their output capacity.

So the arrangement is through the power purchase supply agreements between NB Power distribution and the particular entity. That's where the arrangement is. It's in those power supply agreements that we deal with the self-generators.

From time to time they have surplus energy that comes back onto the system and that -- those contracts provide a means and describe how we purchase that, this very small amount of energy, but from time to time that comes back onto the system.

Q.764 - First of all with -- I think you called it Smurfit Stone or Stone Smurfit -- what generation facilities do they have and what are their capacities?

MR. KENNEDY: That particular facility has a hydro dam that's associated with it. It's approximately 15 megawatts. And it also has a back pressure turbine that uses recovery steam from the boiler and it's a back pressure turbine arrangement. The normal use of those generators is to supply load -- supply the load in the plant. That's the first duty of those generators to supply the in situ load.

Q.765 - Thank you. And I also -- my understanding is that there is a small hydro generator at Hargrove, or owned by Mr. Hargrove, on a tributary of the Upper Saint John?
MR. KENNEDY: Yes, that's correct.
Q.766 - What is that facility, who is it owned by and --
MR. KENNEDY: It's owned by B.J. Hargrove.
Q.767 - And what is its capacity?
MR. KENNEDY: It's a small -- it's 500 kilowatts.
Q.768 - Okay. Now you mentioned that those facilities are dealt with in the vesting agreement I assume in exhibit A-4. Can you tell us where they are dealt with in A-4?
MR. KENNEDY: No, they are not dealt with in the vesting agreement.
Q.769 - Okay. Would you tell us where they are by reference to existing documents and evidence?
MR. KENNEDY: They are referenced in the power supply agreements that Disco has with these entities.
Q.770 - Okay. And how does that come through to you, that is, Disco? The energy supplied by those facilities are dealt with in a contract between Genco and those facilities. Where does the energy so supplied show up in the vesting agreement between Disco and Genco?
MR. KENNEDY: Again, it's not in the vesting agreement but basically the energy that we supply as a standard service

supplier serves these facilities with products, either firm supply -- in particular there is a firm portion that we supply through our standard service supply, and on top of that the customer generates a certain amount of generation and the firm supply coupled with the self-generation that they have there serves their load, and that is the supply arrangement.

And generally that's the way that it occurs. But there are some times when the load is down that there is some hours that there is a surplus energy that comes back onto the system, because their load -- their generation is such that our supply plus their generation is in excess of their load and it comes back onto the system. And that's dealt with in the power supply agreements with those facilities.

Q.771 - Thank you. I'm now going on to a different matter and again --

CHAIRMAN: Excuse me, Mr. MacNutt, can I interrupt. Stone Smurfit is the mill in Bathurst, right?

MR. KENNEDY: Yes, that's correct.

CHAIRMAN: And that's closed.

MR. KENNEDY: It is closed right now, yes. It has -- it's down and basically they are supplying us energy off of that -- off of the hydro dam at this particular time because they basically still have a parasitic load there but the load is small enough that we have this energy coming back onto the system.

CHAIRMAN: Okay. And what facility is served on the Tobique Dam?

MR. KENNEDY: The Tobique or are you talking Hargrove?

CHAIRMAN: Hargrove. Sorry.

MR. KENNEDY: Hargrove is a contract that is basically exists between Disco where we purchase directly from Hargrove. It's a dedicated supply off a small run river.

CHAIRMAN: There is no facility there that is using that power?

MR. KENNEDY: No. That's right.

CHAIRMAN: No. All right. Thank you, sir. Mr. MacNutt, go ahead.

DR. SOLLOWS: Well if I may then, just if we are going to clarify this, no where in evidence do we find the estimate of energy production from these facilities during the test year, is that what we are to understand?

MR. KENNEDY: No. That is -- this energy -- estimate of this energy is in other power purchase agreements, other power purchase line on A --

DR. SOLLOWS: So you are referring to A-96, line 18 --

MR. KENNEDY: Yes. That's correct. A-96, line 18. And that shows up in the table 1(a).

DR. SOLLOWS: I guess -- and that is projected to be quite a bit larger between 05/06 and 06/07. Are we expecting these facilities to provide a lot more energy to Disco in the test year than they did this current year?

MR. KENNEDY: No. That's predominantly due to the renewable energy, wind and renewable resources that we are forecasting in 06/07.

DR. SOLLOWS: That is surprising to me in that my understanding from all of the preliminary matters that went on last summer, I was given the impression that we didn't have to worry about the wind contracts for the test year because it would not be available in the test year. And now it is in the test year?

MR. KENNEDY: It is budgeted in the test year 06/07.

DR. SOLLOWS: And it will be available?

MR. KENNEDY: Some of the contracts are currently under review with respect to the capability to be in place in time for those --

DR. SOLLOWS: Has construction started on any of these?

MR. KENNEDY: Construction has started on some, yes, on one particular project?

DR. SOLLOWS: Where?

MR. KENNEDY: On Grand Manan.

DR. SOLLOWS: Okay. And you have an in-service date that is consistent with this kind of inclusion, this amount of money in the test year?
MR. KENNEDY: Yes. We have a contract in place that is predicting that this facility would be online in the fall of '06.
DR. SOLLOWS: And is that in evidence?
MR. KENNEDY: I believe that the identification of the project has been in evidence in some IRs with respect to the capacity of that wind farm, yes.
DR. SOLLOWS: And is the contract in evidence?
MR. KENNEDY: Yes, it is.
DR. SOLLOWS: Okay. Where?
MR. MAROIS: I think it would have been filed with the PPA binder.
MR. MORRISON: I believe, Mr. Chairman, that contract was the subject of some confidentiality issues back earlier this year when Eastern Wind was here and made some representation to the Board.
Unfortunately I wasn't here at the date of that hearing. But that is my understanding.
DR. SOLLOWS: That is where -- I think it was at that time that I was given the understanding that it really didn't matter because there was not an issue for the test year

because it was not -- there were no expenses in the test year. And so now we are finding that there are.

MR. MORRISON: Was that prior to the test year changing?

DR. SOLLOWS: Maybe there was a test year change. I don't know.

MR. MORRISON: Because you will recall that the test year changed from 05/06 to 06/07.

DR. SOLLOWS: Yes. I thought it was in -- anyway I thought it was in the new test year.

MR. MORRISON: So if the Eastern Wind Power PPA is in evidence, I suspect it is probably confidential. But I wasn't here for that particular hearing, so --

MR. MACNUTT: Yes. It is our understanding, Mr. Chairman, that the Eastern Wind Power PPA has been filed with the Board in confidence.

DR. SOLLOWS: Okay. Thank you.

MR. MACNUTT: And that if any questions arose with respect to it we were to give notice to Eastern Wind Power and that would be addressed.

DR. SOLLOWS: We will look at that later. But thank you.

CHAIRMAN: Again we apologize, Mr. MacNutt. Go ahead, sir.

MR. MACNUTT: Thank you, Mr. Chairman.

Q.772 - Still with exhibit A-4, the vesting agreement, I would ask you to go to page 32, Section 3.1. And this has to do with net energy. That is page 32, Section 3.1. And I want you to go to subsection 3.1.1 at line 7. And I will read it.

It is stated that "Disco hereby appoints Genco and Genco hereby agrees to act as Disco's service provider for the purposes of determining the day-ahead schedules of the in-province supply requirements and providing that information to the SO until such time as Disco notifies Genco that such services are no longer required by Disco, subject to Disco providing to Genco from time to time all information necessary for Genco to perform those services."

Does Disco give its day-ahead load forecast to Genco as a part of this arrangement?

MR. KENNEDY: Genco gets its day-ahead -- performs day-ahead load forecasts on behalf of Disco. It gets its information from the Energy Control Centre, the NBSO with respect to the forecast and formulates the dispatch of the units to serve the load that is predicted that day with respect to the forecast.

Q.773 - So notwithstanding the section, Disco simply accepts what Genco does in that particular area, that is the day-ahead load forecast?

MR. KENNEDY: Yes. Genco has been designated by Disco to

perform the scheduling, do the day-ahead scheduling.
Q.774 - Has Disco ever examined the accuracy of that scheduling?
MR. KENNEDY: Yes, we have, from a point of view of when we have analysis done with respect to the billings that come in with respect to the bills that come in from the NBSO and look at with respect to the accuracy of the forecast load versus what the actual turned out to be. And we monitor that on a monthly basis.
Q.775 - Thank you. Now I want to -- still with exhibit A-4, I want you to go to pages 32 and 33, Section 3.1 which deals with net energy. And in particular I want you to go to subparagraph 3.1.2.
Now in subparagraph 3.1.2 it is stated that Genco shall sell and deliver on a priority basis at the applicable points of delivery a portion of the net energy up to a maximum amount which is defined in that subparagraph to be the "energy entitlement". The energy entitlement is stated to be "equal to the product of (1) the weighted average nominated capacity for each fiscal year, (2) 0.565, and (3) 8,760 hours."
Now I would like you to explain first of all what does the figure 0.565 represent?
MR. KENNEDY: Yes. If I may, I would like to refer to an IR

with respect to this subject. It is Disco PUB IR-83, July the 14th, 2005.

MR. MAROIS: A-56.

MR. KENNEDY: A-56, exhibit A-56.

Q.776 - Thank you. Now just still looking at this situation, I would also like to look at the term "excess entitlement".

What does Disco pay Genco for energy that falls into the category of "excess entitlement"?

MR. KENNEDY: Genco excess entitlement is the excess entitlement if required if it exceeds the energy entitlement. The energy entitlement under this agreement is 12,000 gigawatt-hours that basically is available to Disco to serve in-province load and interruptible load. If the requirement is such that to serve the load above the in-province load, this 12,000 when combined with the output of Point Lepreau, the output of Point Lepreau and of the prescribed other energy contracts that Disco has, namely some renewable or in the model, this energy would be excess energy in excess of the 12,000 gigawatt-hours. And if that's required to serve in-province load, if our load is such that when you combine requirements, the in-province load, and if it exceeds the 12,000, then we basically pay market prices for it.

But the 12,000 from Genco as well -- along with the energy that's supplied off of Point Lepreau, provides sufficient energy to serve the in-province load plus the interruptible load, in-province firm load.

And that's predicted in the development that is shown with respect to in the IR-83, July the 14th 2005.

Q.777 - Thank you. Now just coming back to 0.565, that number, I asked you what it represented. And you referred me to exhibit Disco PUB IR-83. I believe you identify in the response in that IR that the 0.565 is a ratio.

Would you just for the record, while we are discussing it here now, describe how that ratio is arrived at. It is a ratio of what to what?

MR. KENNEDY: It basically simulates a capacity factor that was identified by the Market Design Committee with respect to the vesting contract price where you have 16,200 gigawatt-hours less the energy supplied from Point Lepreau.

Excluding the amount available from Point Lepreau at an 80 percent capacity factor, which is 4200 gigawatt-hours, leaves one with 12,000 gigawatt-hours.

And when you take the nominated capacity, the nominated capacity, which is 2425 megawatts, multiply that number by 8760, then you come up with a numerator. So it's 12,000 gigawatt-hours divided by 2425.1 megawatts times 8760 hours.

That gives you a fraction of .565 to determine the amount of energy that is classified as energy entitlement that is as per the contract, the vesting Genco PPA contract.

So we are entitled to 12,000 gigawatt-hours based on the nominated capacity of 2425.1 megawatts and applying the .65. The .65 is developed by backing into a vesting price or the actual historical number that was provided by the Market Design Committee, 16,200 gigawatt-hours.

Q.778 - Now I'm going to go on with that in a second. Just as a -- you identified a formula. And you used the figure of 8760 hours. What does that represent?

MR. KENNEDY: That represents the hours in a year.

Q.779 - Thank you. Now you have identified the source of the .565 and what it represents. Now what happens in the circumstances -- can it be larger in a given year, greater than .565?

MR. KENNEDY: Sorry. That is as per the contract. That is how the energy entitlement is determined.

Q.780 - That is a contract number, .565. And it is locked into these agreements. Now could the plants in fact have an availability greater than 565?

MR. KENNEDY: Yes. From an individual plant point of view with availability. But this is from a -- this is basically a nominated capacity based on a pool of assets, of base load assets that total their nominated capacity to 2425.1 megawatts as a heritage asset as a pool.

Q.781 - But in a given year that pool could actually produce -- have a higher capacity rate than .565?

MR. KENNEDY: Yes. Those assets can produce much more than 12,000 gigawatt-hours. This basically is a mechanism to determine the amount of gigawatt-hours that Disco is entitled to under the Genco PPA that it has at the vesting energy price. Anything in addition to those 12,000 gigawatt-hours is priced differently.

Q.782 - In other words, it is priced to market?

MR. KENNEDY: That's correct.

Q.783 - Okay. And now is it true that the difference between say a capacity factor of .650, for discussion purposes, and the .565 would not be available to Disco customers even though it is likely to be the lowest cost source of electricity for in-province loads -- needs, excuse me?

MR. KENNEDY: All of that energy is recallable and can be used by the Disco customers to serve in-province load. We have first call on all the energy from those heritage assets.

Q.784 - But that would be at market price, not at the contract price?

MR. KENNEDY: That's correct, if it exceeds the 12,000 gigawatt-hours.

Q.785 - Now still with exhibit A-4, the vesting agreement, I would like to go to Section 6.2.6. And it is at page 46. And this may also be addressed in PUB IR-84. But I don't think there is any need to turn it up.

Now Section 6.2.6 provides that the contribution to fixed costs will be $7 for the fiscal year ending March 31, 2005. The response to PUB IR-84 stated that $7 figure is $7 per megawatt-hour.

Section 6.2.6 goes on to say that for each fiscal year after March 31, 2005, and I quote, "The contribution to fixed costs will be equal to the product of (1) the contribution to fixed costs for the immediately preceding fiscal year and (2) the product of (a), the CPI adjustment for the immediately preceding calendar year and (b)1, for each calendar year up to and including the calendar year ending December 31, 2008, and one-third for each calendar year thereafter."

Is that a correct statement from 6.2.6?

MR. KENNEDY: That's correct.

Q.786 - Thank you. Why is the full CPI applicable in the first three years and only one-third of the full CPI is applicable in the years following?

MR. KENNEDY: I'm not sure. Basically the schedule 1.1.3, CPI adjustment is how the CPI factor is determined, CPI adjustment, the calculations to determine the CPI. And it's prescribed in the Genco PPA.

Q.787 - Are you able to tell us why the full CPI is applicable in the first three years and only one-third of full CPI is applicable in the subsequent years?

MS. MACFARLANE: I don't know other than it was set by the designers of the PPA. But I can speculate that these are contribution to fixed costs. In fact they are OM&A. And as the costs increase to a certain level, I'm speculating that multiplying by one-third of CPI provided the appropriate coverage for the costs based on the restructuring model that was put together by the bankers.

Q.788 - Is applying the full CIP reasonable?

MS. MACFARLANE: These are OM&A costs. They are costs that vary with generation, chemicals and various supplies. And they are costs that would escalate typically with economic adjustment.

So applying a full CPI in the first three or four years is no doubt tracking the cost. It's thereafter that there must be some consideration of efficiencies that were taken into consideration by the designers.

Q.789 - Thank you. Now why is there a contribution to fixed costs when there is a separate capacity charge?

MS. MACFARLANE: These are -- fixed is a relative term. The capacity charge is getting at one might, from an accounting perspective, typically call fixed charges related to capital, the amortization and the cost of capital.

This particular contribution is getting at the operating costs that tend to be fixed in nature but again to some degree vary with production. So this is a contribution towards the OM&A cost.

I should just correct that to say that some portion, some portion, some base portion of the OM&A is included in the capacity charge. But this would tend to be that portion of OM&A that varies with production.

Q.790 - Thank you. Now still with the exhibit A-4, the vesting agreement. And we are going to deal with article 6, that is the price, beginning on page 45.

And subsection 6.2.3 on page 46 provides that the vesting energy price will comprise two components, (1) the fuel component and (2) the contribution to fixed costs each fiscal year.

Subsection 6.2.4 on page 46 establishes that the fuel component and vesting energy price for fiscal year shall be established each year by the Operating Committee on the first business day in October of each preceding fiscal year. The Operating Committee is to establish that price pursuant to Section 6.2 and schedule 6.2.

Section 6.2.5 on page 46 states that the fuel component shall be established each year based on forecasted operating costs using PROMOD. It goes on to detail what shall be included in PROMOD inputs.

Finally it says that the fuel component each fiscal year shall be established by the Operating Committee in accordance with schedule 6.2.

Now just for ease of reference because we are going there, schedule 6.2 is found 10 pages in from the back of the end of the vesting agreement which is the last document in the book.

And it is entitled "Calculation of Fuel Component of Vesting Energy Price." Is that correct?

MR. KENNEDY: Yes. That's correct.

Q.791 - Now there are two parts to the schedule. The first governs October 1, 2004 to March 31, 2005. And the second after March 31, 2005, is that correct?

MR. KENNEDY: That's correct.

Q.792 - Now at the bottom of the second and last page of schedule 6.2, the following paragraph appears. And I will quote for ease of reference.
"The Operating Committee shall manage, develop and maintain the process for establishing the fuel component of the vesting energy price in accordance with the modeling guideline set out above. And such modeling guidelines may be amended from time to time."
Is that correct?
MR. KENNEDY: That's correct.
Q.793 - Have the guidelines been amended?
MR. KENNEDY: No.
Q.794 - Now with respect to the obligation to "manage, develop and maintain the process", please describe the process, what participation Disco has had in the process and events which have occurred since October 1, 2004 with respect to same?
MR. KENNEDY: Genco -- or Disco starts with the -- it all starts with the load forecast. We provide the load forecast with respect to our requirements for in-province load and our requirements to supply interruptible and surplus energy. That is provided by Disco to Genco. Genco in turn take that information and enter it into -- there is two components of the load forecast.

There is energy requirements on a month-by-month basis -- energy requirements on a month-by-month basis and also a predicted demand or the peak capacity required to serve the in-province load.

These elements of that piece is factored in and put into the PROMOD run which is a production modeling tool that resides in Genco. It has existed within NB Power for a number of years. And the components have been developed. And historically it has been operated as a production modeling tool used by NB Power. And now it continues to be used as setting the fuel component for the vesting energy price.

We basically at the time assist in the development by reviewing. And Genco goes ahead with respect to determining what the forward fuel prices are as well as it develops and puts in with respect to the hedges that are in place at the time. And it goes and basically does a dispatch based on this schedule 6.2 identifying the units that are available on an economical basis to serve the in-province load. And it also goes and solves with respect to export credits or opportunity with respect to the export benefits.

At the same time this is run. And it's then reviewed by the Operating Committee with respect to the outputs.

And in this particular case, in preparation of this hearing, we have had La Capra Associates do a review of the PROMOD run to develop the vesting energy price for the years -- a number of years from 04/05, 05/06 to 06/07. And generally it's approved by a consensus in the Operating Committee from a review of reasonableness to determine again what the average fuel component price would be to serve in-province load.

And basically that fuel component is used on an average generation to serve the in-province load on an hour-by-hour basis to determine the fuel component by identifying the volumes of generation required to serve the in-province load.

Q.795 - Now still with Schedule 6.2, and I'm looking at part 2, Section 2, is there an interest component in the purchase price of electricity purchased under the heritage PPAs?

MS. MACFARLANE: Is there an interest component in the fuel part, is that your question?

Q.796 - Well is there an interest component in the purchase price of electricity purchased under the heritage PPAs?

MS. MACFARLANE: The total purchase power amount, the Genco total does include a capacity payment and the interest included would be part of the capacity charge. There is -- if part of your question related to whether or not there were interest or inventory carrying costs on the fuel that Genco purchases for this, or particularly on the fuel that Genco purchases on Disco's behalf for Coleson Cove, the answer is no. Genco absorbs all those inventory carrying costs.

Q.797 - Thank you. Now I would like to take you to exhibit A-55 and I believe we have been there before. This is A-55, Appendix 6, Minutes of the Vesting Operating Committee, the meeting for -- meeting number 10 on September 22, 2005. Now --

MR. MAROIS: Just a second.

Q.798 - I will just run through that again if you like. Exhibit A-55, Appendix 6, and what it is is a bundle of documents which are vesting operating committee minutes of meeting. And I would like you to go to meeting number 10 in particular and the date of the meeting was September 22, 2005.

Mr. Gorman went over the same set of minutes with you but he focused on paragraph 4 on page 2. I'm looking at paragraph 2 on page 1 of that set of minutes.

And in paragraph 2 I note that the committee approved the top of in-province firm load as the point in the dispatch order to calculate incremental or voided cost for the purposes of calculating the hydro adjustment and clarifying Article 6.12 of the agreement, is that correct?

MR. KENNEDY: That's correct.

Q.799 - Now what was the previous method for determining the incremental or voided cost?

MR. KENNEDY: The previous method was to use the top of -- top dispatch with the last unit that was dispatched from the Genco heritage assets, including exports, all of the units.

Q.800 - Now would you give us the details of the new method for determining the incremental or voided cost?

MR. KENNEDY: Basically you use the same method that we use for determining the fuel component or the vesting energy price, except we reflect that we are taking a different point in the dispatch just above in-province firm load to settle the hydro adjustment with respect to the long-term average on a month-by-month basis.

Q.801 - Now why was there a change in the method?

MR. KENNEDY: It was felt that this better reflected the methodology of the intent with respect to the long-term hydro where we basically looked at 2654 being the long-term average, divided by 12 or appropriately prorated on a month by moth basis.

It better reflected what would happen if there is an increase in hydro flow which would basically increase hydro would result in a -- if there was -- when the modelling was done if there was an increase in the hydro flow, basically it would result in a lower vesting energy price as the fuel component would be less.

If there was low hydro there would be an increase in the vesting energy price and that was -- would reflect just at the proper signal would be developed at the in-province firm load as the -- where the marginal costs would be settled as a difference one way or the other whether the hydro was above normal or below normal, because it can go in either direction. It was just used as a point of settling the hydro.

Q.802 - Thank you. Now from the minutes I note that the new method was made retroactive to April 1, 2005, and resulted in an adjustment in the form or a refund from Disco to Genco of 7.8 million for April to July 2005, is that correct?

MR. KENNEDY: That is correct.

Q.803 - Now what impact will the adjustment have on Disco's fiscal year ending March 31, 2006?

MR. KENNEDY: We haven't quantified that at this particular time.

Q.804 - Can you tell us what it is as of the end of January of

'06?

MR. MAROIS: I think what happened is the adjustment that was made as outlined in the minutes, once that adjustment was made we moved ahead with one methodology. So we didn't keep the two methodologies operating side by side to determine what would be the impact. So the impact is what is shown there and then we just changed methodologies.

MR. MORRISON: I believe it might be helpful, Mr. Chairman -- I think there is some information on that based on the Q3 forecast which appears in Exhibit A-80 and it's response to PUB IR-261. The hydro adjustment is noted there.

Q.805 - What we would like to know is what that calculation would be using the old method rather than the new method?

MS. MACFARLANE: Just if I could help clarify, Mr. MacNutt, one of the issues arising with using top of in-province load plus exports as the settling point was that effectively Disco was getting double credit for exports. It was getting the benefit of hydro in exports. It was getting part of its credit through the third party gross margin adjustment. And then it was getting it again through the hydro adjustment. And that was seen as inequitable.

So we went back to a methodology where we picked the point where the vesting price was set. And we calculate the hydro adjustment at that point. If there is any benefit from higher hydro in the export markets that comes back to Disco through the third party gross margin credit.

And as I say, it was very obvious that there was a double counting. So we changed the methodology to eliminate that inappropriate double counting to Disco's benefit.

Q.806 - Now it was my understanding from Mr. Morrison's comment that the new method is -- the number produced by the new method is reflected in exhibit A-80 which is in response to PUB IR-261.

What we would like to know is the difference between that calculation using the old method and using the new method, if somebody could undertake to give us that number?

MS. MACFARLANE: We will undertake to do that. But I would just point out that again the number is not a fair assessment.

Because if it is calculated -- if the price to Disco is calculated one way under the vesting energy and then the hydro adjustment is calculated on a different basis, i.e. inclusive of exports at the top of the dispatch curve

inclusive of exports, then Disco is getting a double credit for the hydro impact on exports.
They get it once through the -- done that way, they would get it once through the hydro credit and they would get it again through the third party gross margin benefit. We will provide the number. But it is not an appropriate number, which is why we changed the methodology.
Q.807 - You are going to provide us the number and obviously an explanation and a qualifier in the response?
MS. MACFARLANE: Yes, we will.
Q.808 - Thank you. Now we went over this several times yesterday I think on financial hedges. But we have got a few questions on it.
Now on exhibit A-4 in the vesting agreement, schedule 6.2 which we were just dealing with -- and there is also -- I will refer you to exhibit A-55, appendix 7.
That is New Brunswick Power Corporate Policy, Corporate Risk Management Committee dated April 1, 2004. And it is probably not necessary to look it up. But I just give you the reference in case you do.
Section 7 of schedule 6.2 provides "All financial hedges entered into prior to the date of this agreement will be included in the calculation of the vesting energy price."
Is that correct?

MS. MACFARLANE: That's correct.

Q.809 - Now does Disco have a reporting mechanism in place that evaluates the effectiveness of the hedging program? And if so, please describe how it works, to whom the report is circulated and what action is taken?

MS. MACFARLANE: Disco reports quarterly, as do any of the companies who have hedges in place. They report quarterly to the Audit Committee of their Board of Directors. They are reporting on their compliance with the policy.

And again, the policy's objectives are to ensure predictability, and from that perspective effectiveness is judged as it goes to predictability. And compliance with the policy is what is reported on.

Q.810 - Now if I understood you correctly yesterday, you said that you -- Disco currently uses a consulting firm, and that you had a report from an expert advising NB Power or Disco as to an appropriate hedging plan.

Do you have a -- is there such a report?

MS. MACFARLANE: I would have to check. The policy was developed over a period of time. And it was developed through a committee using that consultant. I do not recall whether we had a specific report or not.

The report I was referring to yesterday was an evaluation, an audit that had been done of whether or not

the policy was being applied and whether or not it continued to be effective.
Q.811 - Could you provide us with a copy of that report?
MS. MACFARLANE: Yes, we can.
Q.812 - Thank you. Now I'm going to go into some broader questions concerning the PPAs. And this has to do with the exhibit A-4 in general.
Mr. Marois, I'm going to ask you some general questions about the PPAs. And Ms. MacFarlane may want to participate in the responses.
First of all, is it an objective of Disco to be profitable?
MR. MAROIS: I didn't hear the question. I'm sorry.
Q.813 - Is it an objective of Disco to be profitable?
MR. MAROIS: Yes.
Q.814 - Is it an objective of Genco to be profitable?
MR. MAROIS: Yes.
Q.815 - Is it an objective of Disco to minimize its costs?
MR. MAROIS: Yes.
Q.816 - If Disco could lower its costs for purchased power, this would reduce the revenues to Genco and the other generators, is that not correct?
MR. MAROIS: Not necessarily.
Q.817 - Could you give us circumstances when it wouldn't?

MR. MAROIS: Well, a good example is -- for example I mentioned the coal blending in Belledune. So that reduces Disco's cost. But it also reduces Genco's cost. So there is no financial impact on Genco.
Q.818 - If Disco could lower its cost for purchased power, this would reduce the revenues to Genco and other generators? I may be asking the same question again. I just wanted to make sure I didn't --
MR. MAROIS: Well, I guess maybe I don't understand the question. You say if Disco could reduce its purchasing --
Q.819 - I will read it again. If Disco could lower its cost for purchased power this would reduce the revenues to Genco and the other generators, is that not correct?
MR. MAROIS: Well, I guess it depends how we would reduce our purchasing. If you are implying that if we pay less to Genco it's going to reduce our costs, I guess the answer is yes. But I mean, we have got contracts that we have to follow. And that's our objective.
Q.820 - Now did the Operating Committee meet in the fall of 2005 to determine the fuel component of the vesting energy price pursuant to schedule 6.2?
MR. MAROIS: Sorry. What was the question again?
Q.821 - Did the Operating Committee meet in the fall of 2005 to determine the fuel component of the vesting energy

price pursuant to schedule 6.2?

MR. MAROIS: Yes.

Q.822 - Now at the meetings of the Operating Committee in the fall of 2005 were any cost items subject to negotiations with respect to setting the cost to Disco associated with the PPAs?

MS. MACFARLANE: I think I can answer that, Mr. MacNutt. I indicated both in my evidence and in the rebuttal that the PPAs are very prescriptive. There are some costs that are prescribed. And most other costs, the method of determining them is prescribed.

So it is not a matter of negotiation. It is based on verifiable facts as inputs into that method of determining the prescribed price.

Q.823 - So you are saying that nothing is open to negotiation? It is merely -- the committee merely meets to verify facts?

MS. MACFARLANE: There is -- there are a number of inputs. And many of the inputs are subject to challenge. But assuming that the challenge withholds appropriate scrutiny then no, it is not a matter of negotiation.

Let me give you an example. One of the inputs is the maintenance schedule. And the maintenance schedule has a number of factors that go into its preparation. It's prepared by Genco. But the factors that go into it include system requirements obviously from a reliability perspective.

They require looking at particular major components such as turbines, generators and boilers and what schedule of maintenance they have. And that's influenced by outside parties like the original equipment manufacturers and the insurers.

There is an outage work order backlog that gets examined. And schedules are based on that. There are also delivery issues with respect to spare parts and so on. So setting the maintenance schedule is something that is complex and is done with a great deal of rigor.

Disco does look at that schedule and challenges it to ensure that in fact the outages are needed, that the timing is appropriate and is in the best interests of ensuring both reliability and supply to the customer.

So if you would -- if you are prepared to call that challenge a negotiation then yes, it's subject to negotiation. But by and large it's subject to challenge and then reaching consensus on what these inputs are.

Most of the inputs are based on third party verifiable facts like the forward contracts for fuel or the forward contracts for foreign exchange or in fact they are prescribed in the contract, like the preset heat rates, et cetera.

Q.824 - Thank you. Now Mr. Peaco referred to a "range of reasonableness" for many inputs. Did Disco review inputs to make sure that the inputs were best for it at that time?

MR. KENNEDY: Yes.

Q.825 - How did you do it?

MR. KENNEDY: By meeting with Genco personnel, reviewing what the indices with respect to fuel oil and were at the time with respect to the forwards, with respect to the natural gas forwards, verified that what went in with respect to the fact that what was being modelled in the PROMOD did in fact have the unit heat rates that were prescribed. There was a complete book that was presented to us by Genco that we reviewed with respect to the inputs. The various factors that are employed with respect to fuel costs, checked the volumes with respect to the generation that was used and developed for the in-province load requirements. And as well as we were provided the actual anticipated export generation as well as costs to serve export loads.

We review the statement of generation, compare it to the actual energy that comes off the units with respect to where they are allocated, whether they are allocated in-province, out of province. Check with respect to the inputs to assure that there is a reasonableness comparing it to say '04 -- one year to the next, and based on what we know with respect to the unit outages also and how that factors into having units available for export or units available to serve in-province load.

Q.826 - Thank you. Just a slight side issue. I believe I heard last week during the testimony that heat rates have not been verified since the Coleson Cove unit has been rebuilt. Is that correct and, if so, why?

MR. KENNEDY: Yes, that's correct. Basically the heat rate at Point Lepreau -- or sorry, at Coleson Cove -- the previous heat rate or the historic heat rate that was used and adjusted with respect to the -- to take into account that the additional -- there was additional station service load added there, but there has been difficulty since it started up but now it's under control. There has been issues with respect to getting the operation of the units fine-tuned to bring them to the optimum level, and it's -- that was the reason why a heat rate test was not performed after the start up after the refurbishment. The Genco and operation people -- personnel at Coleson Cove have been working and now have the units in a state where we could perform a heat rate test on those units to verify the actual heat rate. But the adjustments was made on historical previous and again doing calculations by the Genco performance engineer to adjust that heat rate by I think it was about .6 percent, .6 to .7 percent increase due to the station service load of the scrubber that was added there.

Q.827 - Now when will this adjustment be made in the -- and have effect in the 2006/2007 test year?

MR. KENNEDY: The 2006/2007 test year has this adjustment made with respect -- to depict the heat rate for Coleson Cove. It's already --

Q.828 - The anticipated refurbished Coleson Cove or the Coleson Cove heat rate as it existed prior to refurbishment?

MR. KENNEDY: It's the heat rate existed prior to refurbishment based on historical value adjusted and made allowance for the station service load that was -- occurred with the installation of the scrubber at Point Lepreau. And that is what is depicted in the 06/07 test year with respect to the heat rate.

Q.829 - Thank you. Now you described at length the considerations that go into review of the inputs. What expertise did Disco have on staff or available to it to examine the key cost components related to the PPA input for 2006/2007 that you just described?

MR. MAROIS: Well I will let Mr. Kennedy answer the question. Mr. Kennedy chairs our -- represents -- is key representative of Disco on the operating committee. So I guess he doesn't like brag but I will let him talk about his experience to be able to provide judgment on the different information provided by Genco.

MR. KENNEDY: As stated by Mr. Marois, I have experience -- 15 years experience in the generation and production of power plants. I was the area generation manager for the Dalhousie generation station. And what we have -- we have basically formed a team that has myself as the operating committee member, as well as the Disco business director that forms part of the operating committee. And we have appointed a manager of power purchase agreements that works exclusively with respect to managing the power purchase agreements, along with business analysts that works in this area. And exclusive these two individuals are assigned on behalf of Disco to monitor and to basically deal with all issues with respect to the power purchase agreements whether it be Coleson Cove, Genco PPA or the Nuclearco PPA.

And generally my experience comes from actually being on the other side of the fence with respect to setting the -- and developing outages and also my experience with respect to determining the plant operational issues with respect to developing any issues that follow with respect to determining the vesting fuel component portion.

And basically we would also deal with all issues that relate to anything surrounding the dealings with the NBSO as a standard service supplier.

Q.830 - Now the people that you have just described I assume were all -- including yourself -- all employees of the former NB Power, is that correct?

MR. KENNEDY: Yes. We are all employees of the former NB Power. And I also should mention that the manager of the power purchase agreements that is employed by Disco has also had experience with respect to PROMOD in an earlier life when he was working for the generation company.

Q.831 - Thank you. Now do you employ or use any outside expertise by way of consultants to assist you in your review of the inputs?

MR. KENNEDY: As mentioned in this particular case for setting the test year for 06/07 we have employed La Capra Associates and Mr. Dan Peaco to review the PROMOD. In addition Ernst & Young has done an audit that I believe we are going to file with this Board with respect to the administration arrangements around the billings with respect to the PPAs. This is the type of outside as well as we will continue with internal audits and outside audits with respect to the administration of the power purchase agreements.

MR. MAROIS: And I guess the other thing is just very recently we retained another firm, Mercer, to do a review of Genco's fuel procurement practices. So that's --

Q.832 - Has that report been completed or when do you expect it to be completed?

MR. MAROIS: Yes, it's completed just last week I believe. So we could provide that if you wish.

Q.833 - Yes, would you please?

MR. MAROIS: Yes.

Q.834 - Thank you. Now Article 19.5 on page 114 of the vesting agreement provides authority -- and I will read it. It has to do with auditing and --

MR. MAROIS: Could you please repeat the reference?

Q.835 - Yes. Article 19.5 on page 114 of the vesting agreement -- and I am just going to paraphrase from it. That provides authority to Disco to audit Genco to confirm and verify among other matters, "net energy, unit generator load, and common service load and the accuracy of a bill or any charge or computation or calculation made

and otherwise confirm and verify compliance by Genco with the terms of this agreement." Is that correct?
MR. KENNEDY: That is correct.
Q.836 - Has Disco ever availed itself of this right to audit Genco as provided in Article 19.5?
MR. KENNEDY: I believe that's what we have done with respect to when we employed La Capra Associates as well as the Ernst & Young report to look at the various issues with respect to the Genco PPA.
Q.837 - Thank you. Now what steps does Disco plan to take in 2006/2007 to ensure that its costs under the PPAs are minimized?
MR. MAROIS: I guess I can answer it at a high level. This is something naturally in transition. So we want to pursue what has been in the past -- over the past year or so. But really what we are trying to do is formalize the relationship and become more -- I guess pro-active in terms of documentation, setting up review sessions ahead of time. For example, what we want to institute is a review of the different fuel procurement proposals before they are finalized. So it's trying to become more pro-active in managing the relationship.
Q.838 - Thank you.
MR. MACNUTT: Now, Mr. Chairman, I have got a sequence of

questions that's fairly lengthy and they sort of relate to one another and it's getting on to just before noon. Do you wish me to have a go or --

CHAIRMAN: Yes, Mr. MacNutt. We will break now and come back at quarter after 1:00.

MR. MACNUTT: Thank you, Mr. Chairman.

MR. MORRISON: Mr. Chairman, just for a clarification, I believe Mr. Kennedy was referring to a PUB IR-83, and I think he misidentified it as exhibit A-55. It's really exhibit A-12.

(Recess - 12:00 p.m. - 1:15 p.m.)

CHAIRMAN: Any preliminary matters?

MR. MORRISON: I have two undertaking responses, Mr. Chairman. The first is undertaking number 1 from February 16th. It's from Commissioner Sollows and it's the Stats. Can. issue.

CHAIRMAN: The records indicate that will be A-116.

MR. MORRISON: The next one, Mr. Chairman, doesn't appear on the transcript as a formal undertaking, so we have labelled it a request for information, but it is a question from Commissioner Sollows and it's a reference about the -- whether the evidence reflects the change in the OATT effective May 1st, '05.

CHAIRMAN: My records indicate this will be A-117.

MR. MORRISON: That's all I have, but I believe Mr. Hyslop has something, Mr. Chairman.

CHAIRMAN: The chair recognizes that Mr. MacDougall is back with us representing Enbridge Gas New Brunswick.

MR. MACDOUGALL: Thank you, Mr. Chair.

CHAIRMAN: Mr. Hyslop?

MR. HYSLOP: Yes. Thank you, Mr. Chair. You might recall we had -- I think it was exhibit PI-19 which dealt with the payments -- various payments from the different companies to the EFC for the test year. I asked the applicant if they would provide a similar document for 2005/2006 based on the nine month actual and last quarter forecast. And they have provided that and I would move it be entered into the record as a Public Intervenor exhibit. And I gave copies to the Secretary.

CHAIRMAN: Okay. Thank you. My records indicate this should be PI-19. Anything else preliminary? All right. Mr. MacNutt, continue with your cross when you are ready.

Q.839 - Thank you, Mr. Chairman. Good afternoon, Mr. Chairman, Commissioners and witness Panel. Let's deal with exhibit A-4, the vesting agreement portion. To whom do the Disco representatives on the operating committee report?

MR. MAROIS: To myself.

Q.840 - And to whom do you report?

MR. MAROIS: The CEO, David Hey.

Q.841 - David Hey, the chief executive officer of Disco?

MR. MAROIS: Yes.

Q.842 - To whom do the Genco representatives on the operating committee report, if you can tell us?

MR. KENNEDY: They report to the vice president of Genco, Darrell Bishop.

Q.843 - And to whom does he report?

MR. KENNEDY: He reports to David Hey, the CEO --

Q.844 - The CEO of Genco?

MR. KENNEDY: Genco.

Q.845 - Thank you. Now you would agree therefore ultimately the Disco and Genco members of the operating committee are responsible to and take instructions from Mr. Hey, that would be correct, would it not?

MR. MAROIS: Ultimately. But on a day to day operation the Disco operating committee members would take direction from me.

Q.846 - Yes. But if Mr. Hey were to suggest a course of action it would come down through to them and whether or not they performed would go back through the system to Mr. Hey, is that not correct?

MR. MAROIS: Well, I mean, I don't know what you mean by course of action. I mean, the members -- the role of the members of the operating committees are quite clear. I mean, they are there to ensure the proper implementation of the power purchase agreements. That's their instructions.

Q.847 - Okay. Under what possible circumstances would you see a disagreement arising between the Disco representatives and the Genco representatives on the operating committee?

MR. MAROIS: I don't have any specific examples but again I mean, when there is a decision to make or a discussion around issues it could conceivably be imagined if a consensus are not reached then that would be the cause of a disagreement.

Q.848 - Now Article 19.6 which is page 116 -- it is perhaps not necessary to turn it up -- of the vesting agreement, provides for an informal dispute resolution procedure, is that not correct?

MR. MAROIS: Yes, it is correct.

Q.849 - And Article 19.7 on page 117 provides for a resolution of all disputes which do not get resolved pursuant to Article 19.6, that is, the informal dispute resolution procedure, to be resolved by binding arbitration, is that not correct?

MR. MAROIS: That is correct.

Q.850 - Are there any disputes which you can envisage ever going through the process provided for in Article 19.6 or Article 19.7 in light of the fact that Mr. Hey is the chief executive officer of all three parties to the vesting agreement, that is, Holdco, Disco and Genco?

MR. MAROIS: That's quite a question. I mean, again my reply will be based on a contract. If there is a dispute that we can't resolve we will follow the terms of the contracts.

Q.851 - And yet Mr. Hey is quite capable of resolving all the disputes because all three parties to the vesting contract ultimately report to him, is that not correct?

MR. MAROIS: Well if disputes gets resolved without having to implement the terms of the contract then I guess there won't be a dispute under the term of the contracts.

Q.852 - So what we are really -- we can draw the conclusion therefore that there is really no negotiating in the operating committee or between Disco and Genco with respect to the costs and the operating committee simply manages the operation of the vesting agreement, is that correct?

MR. MAROIS: Well I believe that's correct. Like Ms. MacFarlane mentioned previously is what I see our role is to -- I'm trying to find the word she used which was the right word -- to attest or to challenge the assumptions that are incorporated in two different calculations. I mean, that's -- so assuming that we get satisfaction to our challenges then there shouldn't be any dispute.

Q.853 - And we have been talking in terms of the vesting agreement. The answers you have just given would have application as well to the towing agreement and Nuclearco PPA with appropriate changes in personnel?

MR. MAROIS: Yes, they -- yes.

Q.854 - Now we are going to deal with amendments to the PPAs. Still with exhibit A-4. And for the purposes of the following questions I'm going to deal specifically with the vesting agreement and I will assume that the answers will apply equally as well to the towing agreements and the Nuclearco PPA unless you advise me otherwise.

Perhaps if we do get technical from a legal point of view, I would ask you to undertake to answer after seeking advice of counsel or if counsel could answer directly in a manner that binds Disco.

First of all, New Brunswick Electric Finance Corporation was authorized to be created by Section 33 of the Electricity Act pursuant to the Business Corporations Act, and all the shares of that corporation are held by

Her Majesty in right of the Province, is that correct?

MS. MACFARLANE: That's correct.

Q.855 - Now I'm going to read to you a portion of Article 1.11 of the vesting agreement, and that's at page 25. And Article 1.11 is Amendment, and I quote, "Except as expressly provided in this agreement no amendment of this agreement shall be binding unless executed in writing by each of the parties, notwithstanding the foregoing and Sections 19.6 and 19.7, for so long as Genco, NB Power, Holdco and Disco remain directly or indirectly wholly owned by the Province and/or any wholly owned affiliates of the Province, any party may submit in writing any concerns or issues relating to the terms of this agreement to the Board of Directors of Electric Finance Corporation (the "Board") for its consideration, provided that such party provides a copy of any such submission to the other parties at the same time it is provided to the Board. Provided that the other parties are permitted to deliver a reply submission to the Board and that all parties are given a reasonable opportunity in the circumstances to provide the Board with additional written or oral submissions with respect to the concerns or issues raised, the parties acknowledge that the Board may in its sole discretion amend the terms of this agreement to protect the financial integrity of the parties, to prevent undue hardship for consumers or to facilitate a third party investment in or transfer of all or part of the Genco facilities." And then it goes on about amending -- it should be that the agreement is amended.

And my question is that Article 1.11 provides that no amendment to the vesting agreement is binding unless agreed to in writing by all three parties, and that is Holdco, Genco and Disco, is that correct?

MS. MACFARLANE: That's correct.

Q.856 - Now Article 1.1 provides that no amendment to the vesting agreement may be made unless the proposed amendment is first submitted to the Board of Directors of the Electric Finance Corporation, is that correct?

MS. MACFARLANE: That's correct.

Q.857 - The other parties to the vesting agreement must have an opportunity to comment on the proposed amendment by submitting their comments to the Board of Directors of the Electric Finance Corporation, is that correct?

MS. MACFARLANE: That's correct.

Q.858 - Again, Article 1.11 of the vesting agreement provides that the Board of Directors of the Electric Finance Corporation "may in its sole discretion amend the terms of" the vesting agreement, is that correct?

MS. MACFARLANE: That's correct.

MR. MORRISON: I would add to that, however, Mr. Chairman, that my reading of that section would indicate that it has to do so for the purposes as set out in that section.

MR. MACNUTT: In the sense of?

MR. MORRISON: To prevent the hardship for consumers, protect the financial integrity of the parties, et cetera. Those are the parameters upon which EFC will undertake an amendment.

MR. MACNUTT: So that leaves you with the situation unless the proposed amendment falls within that criteria I have just read, the parties to the vesting agreement cannot amend it even if they wanted to by negotiating an agreement?

MR. MORRISON: What I am saying is there are parameters set out in Article 1.11. I haven't gone through the agreement to provide an opinion of whether those are the only conditions upon which it can undertake an amendment. But there are parameters set out in that article.

MR. MACNUTT: You would accept that in normal commercial relations any two parties to an agreement can by mutual agreement agree to amend it? That's the base point, the starting point for an amendment to an agreement, is it not?

MR. MORRISON: If that's directed to me then yes, I would agree with that.

MR. MACNUTT: Yes. And in this particular case the parties have included in their agreement a provision that allows for amendment of the agreement but only in a particular manner, therefore all other methods are excluded, would you not agree to that?

MR. MORRISON: I agree with that. I'm just looking as we speak whether that's subject to the conditions that as long as the affiliates are wholly owned subsidiaries of the Province, but I haven't read the article in detail.

MR. MACNUTT: Yes. I'm referring only to the current circumstances where --

MR. MORRISON: Then yes, I would concur with you.

Q.859 - Now to the Panel, it is only upon the Board of Directors of the Electric Finance Corporation approving the proposed amendment that the parties may then execute the appropriate documents necessary to amend the vesting agreement in the manner they wish to do so, is that not correct?

MS. MACFARLANE: That's correct.

Q.860 - Thank you. Now for 2006/2007 did Disco examine all the parameters related to the cost prescribed by the PPAs to ensure that the costs to be incurred by Disco were reasonable? And I give you an example.

For example, Section 6.12 of the vesting agreement, which was exhibit A-4, states that the annual hydro production is 2,654 gigawatt hours. Did Disco review the historical data to assure itself that this number is reasonable?

MR. MAROIS: Well, that number is set in the contract. So we didn't need to verify if it was reasonable or not. It's in the contract.

MS. MACFARLANE: That being said, Mr. MacNutt, members of the Operating Committee who have a history with NB Power would have an understanding of the reasonableness of that number.

And as CFO of Disco I certainly have looked t the history and at the formulation of that number. And it is representative of the long-term average.

Notwithstanding Mr. Marois' comments, he is correct. It is baked into the contract. But yes, it is something that we understand the history behind.

Q.861 - Now you have described the composition of the Operating Committee and the people participating from Disco's side. And if the Disco representative on the Operating Committee had identified one or two items they didn't consider to be reasonable, would Disco have proposed a change or an amendment to the vesting agreement? Or have they done so?

MR. MAROIS: There has been no proposal to review or change the agreements at this stage.

Q.862 - Now if over -- if in due course you find -- the Operating Committee were to find a provision as unreasonable, would Disco take steps to propose an amendment to the operating agreement to rectify that?

MR. MAROIS: I guess yes. But it would depend on the nature of the issue at hand. I mean, if it's something that is perceived to cause grief to Disco then we would probably raise it as a concern.

Q.863 - Thank you. And if that change were proposed, it would have to be submitted to the Board of Directors of the Electric Finance Corporation for approval, is that correct?

MR. MAROIS: Well, as per the sections you have just went through, yes.

Q.864 - Thank you. And we understand, and I can assume -- I can take it that the Board of Directors of the Electric Finance Corporation are appointed by its sole shareholder, the Province, is that correct?

MS. MACFARLANE: Yes. That's correct.

Q.865 - Thank you. Now we are going to look at -- still with the vesting agreement. And I want you to go to article 6. And this deals with price and in particular third party purchase benefit adjustment. And that will be on page 47 in Section -- or article 6.5. And I will quote from that briefly.

Article 6.5 reads as follows. "In circumstances where Genco is elected to purchase imports of energy as opposed to generating energy by operating one or more of the unit generators forming part of the Genco facilities and the quality of such imports of energy exceeds the quantity of Genco sales to third parties other than Disco, then for each megawatt-hour of such excess Genco shall pay Disco 50 percent of the amount, if any, by which the vesting energy price exceeds the price for such import purchases of energy."

And we are having trouble interpreting exactly what the section is intended to cover. So my question is what events is Section 6.5 attempting to address?

And you might, if you can do so, answer in terms of using examples in real world terms.

MR. KENNEDY: What this clause determines drives the behavior where if Genco can find a generation source that is cheaper than its own sources, we basically -- Disco shares in that benefit of that being cheaper than the vesting energy price on a 50 percent basis.

Q.866 - Now would you please describe how Section 6.5 could be considered to be fair to Disco customers?

MR. MAROIS: Well, I think like Mr. Kennedy just mentioned, Disco's customers would be allowed to share in 50 percent of any reduced generation cost. So that provides a benefit to the customers.

Q.867 - Thank you. Still with exhibit A-4 -- and I'm still with article 6. And I want you to go to the price, section -- article 6.8, Interruptible Energy Price. And I will quote from it.

"Notwithstanding Section 6.2 but subject to Section 6.9, Disco shall pay Genco monthly for each megawatt-hour of net energy scheduled with the SO to be purchased and received hereunder by Disco in order to supply interruptible customers a price ("interruptible energy price") which shall be calculated in accordance with the RSP manual. To that end the Operating Committee shall manage, develop and maintain procedures and guidelines for calculating the interruptible energy price in accordance with the RSP manual."

What is the RSP manual? And what provisions of it would dictate how the charge described in Section 6.8 would be determined?

MR. KENNEDY: The RSP is referred to as our rates, schedules and policy that basically is filed and on record here with the Board, the RSP as referred to.

And in it it describes that Disco as a standard service supplier will supply customers with interruptible energy when they basically cannot supply their own generation.

And that is basically priced incrementally just above in-province firm load and any firm exports, if there are any.

Q.868 - Now has the Operating Committee established an interruptible energy price? And if it has, can you direct us to where in the evidence filed in this hearing it is found?

MR. KENNEDY: The interruptible energy price is developed on a day-ahead basis by running a HYTOP which is a production modeling model that exists in Genco. And that basically sets a price for those customers that receive interruptible and surplus pricing.

That's done on a day-ahead basis. Quotes are issued to the various customers on a day-ahead basis with an on-peak and an off-peak. So it's done a day ahead. And it's dispatched just above in-province firm load.

And that's done daily, as I mentioned. It's a dynamic thing. It depends on what the load is. And it depends on the dispatch of the units that are available to serve the in-province load.

MR. MAROIS: If you look at exhibit A-96, line 6. So that's the result of the calculation on a projected basis. The line is entitled Interruptible and Surplus Energy Sales. So it's not a price per se. It's really an hourly cost estimate for these customers that on a projected basis is estimated to be 56 million 600 for fiscal 06/07 to which we will add an amount to recover Disco's fixed costs.

Q.869 - Thank you. Now would Section 6.8 preclude Disco from retaining any generation capacity charge that might be paid by interruptible customers such as the $3 per megawatt-hour as suggested by the Public Intervenor during the CARD portion of the hearing?

MR. MAROIS: If I understand the question, the power purchase agreement would not prevent us from collecting and keeping such an amount.

Q.870 - Thank you. Now I just want to -- a short side question if you like with respect to the Millbank generators. In exhibit A-4 and Article 2 with respect to capacity at page 27, Article 2.1 deals with initial nominated capacity. And in particular I refer you to Article 2.1.1. Subsection 2.1.1 establishes the peaking capacity at 1258.4 megawatts.

At line 4 the following statement is made. And I quote.

"Notwithstanding the foregoing or any other provision in this agreement, parties acknowledge that the Millbank firm contract permits Hydro Quebec to call in 200 megawatts of the peaking capacity and the energy generated therefrom."

Is that correct?

MR. KENNEDY: That's correct.

Q.871 - Could you please provide a short history of the ownership changes in the Millbank generators over the last 10 or so years?

MR. KENNEDY: There is four units at Millbank.

Q.872 - That is right now?

MR. KENNEDY: That is correct. Two of those units, units 3 and 4 are basically Genco's assets. And they form part of the peaking capacity in here along with another two units which are units 1 and 2 at Millbank. And they basically are under contract with Hydro Quebec.

Q.873 - Now who owns them?

MR. KENNEDY: NB Power owns the units that are -- those units 1 and 2. But Hydro Quebec has call on those units, first of all.

Q.874 - Now when you say NB Power --

MR. KENNEDY: I'm sorry.

Q.875 - Genco?

MR. KENNEDY: Genco.

Q.876 - Okay. So all four are owned by Genco, two of which are under contract to Hydro Quebec?

MR. KENNEDY: That is correct. And that has an expiry date. When that expires those units come back to Genco for the use of Disco with respect to peaking capacity.

Q.877 - Thank you. Now have they always been owned by NB Power and since October 1, 2004 Genco? Or did at sometime NB Power, prior to October 1, 2004 ever sell those units?

MS. MACFARLANE: Two of the units -- I'm sorry, I can't remember the fiscal year. I would have to check. But two of the units were sold at one point in time. Is that your question?

Q.878 - Yes.

MS. MACFARLANE: Yes. Two of the units were sold at one point in time and then repurchased. They were sold at a time when the load forecast indicated that capacity would -- the capacity requirements for NB Power would decrease. That was in anticipation of certain large industrial customers moving off of the NB Power system. So there was an anticipated reduced requirement in capacity. And so two of those units were sold. And at the time, three of the four were under contract to Hydro

Quebec.

So NB Power arranged to replace the commitment for one of those units with a commitment out of the St. Rose unit which is a similar configuration.

Subsequent to that, as the load forecast was adjusted and as the party that purchased them coincidentally, went into bankruptcy, it was opportune for NB Power to buy those units back. And it did so. These transactions were before October 1st 2004.

Q.879 - Thank you. Now with respect to the two units under -- subject to an arrangement with Hydro Quebec, when Hydro Quebec exercises its right to draw the 200 megawatts, who does it pay for that energy?

MR. KENNEDY: It pays Genco. And that goes towards export benefits.

Q.880 - And what other payments are made by whom, to whom in respect to the Millbank generators?

MR. KENNEDY: We basically pay no demand or any capacity charge with respect to the Millbank units.

Q.881 - Now when you say "we" are you talking with your Disco hat?

MR. KENNEDY: Yes. I'm speaking with respect to Disco.

Q.882 - And does Hydro Quebec pay a standby fee or a charge?

MS. MACFARLANE: Hydro Quebec pays a standby fee to Genco.

And that forms part of the third party gross margin. So it is part of the contractual third party gross margin benefit to Disco.

Q.883 - Now in those payments made by Hydro Quebec is there any element of capital payment?

MS. MACFARLANE: It is entirely capital payment, the standby charge is.

Q.884 - Thank you. Now I have got a few questions about the Coleson Cove precipitators. And that is the upgrade on unit number 3.

In the response to PUB IR-175 it states that the reasons for the precipitator upgrade are to produce marketable gypsum and to avoid landfill cost.

And my question is does Genco operate a landfill site at the Coleson Cove site?

MR. KENNEDY: Not with respect to laying down gypsum for the full amount that is produced there.

Q.885 - Then where is the gypsum waste disposed of?

MR. KENNEDY: Currently it is being provided to a wallboard manufacturer in the local area.

Q.886 - Could you tell us who and in what area that waste is deposited?

MS. MACFARLANE: Could we undertake to look at the contract that we have with that supplier to see if it's subject to

confidentiality terms, and if it's not we will certainly provide that information?
Q.887 - Yes. And if it is not subject to confidentiality you will provide the information?
MS. MACFARLANE: Yes.
Q.888 - Now NB Power issued an RFP -- now in its response to PUB IR-218, that is the unredacted version, Disco used an alternative landfill site as opposed to Coleson Cove in its cost benefit analysis of the precipitator upgrade. Are you able to tell us on the record where that is and why it was used in the analysis?
MR. MAROIS: So that is 218 of which month, which date?
Q.889 - Yes. It would be exhibit A-62.
MR. MAROIS: Thank you.
Q.890 - The confidential version would be in A-62(c). But I only -- we just need the unredacted. It is only in the confidential. But we don't need the costing information. We just want to know if you can tell us where the site is and why they used that site?
MR. KENNEDY: There basically is no site large enough. And the Saint John area wasn't part of the overall project. They evaluated it on a basis of looking at -- taking it to Belledune from a costing point of view and what the alternative would be with respect to full landfill.

The estimate was done on that on a business case basis, trucking as well as what the cost just to maintain the land, get the land and provide access for the laying down of gypsum versus sending it to wallboard for production to make wallboard, wallboard quality gypsum.

CHAIRMAN: Ms. MacFarlane, I would suggest in reference to the contract that you are going to be looking at to see if it has confidentiality provisions in it is to -- with the firm that you are presently giving the gypsum.

If you find that it does have confidentiality then file it with us on pink paper?

MS. MACFARLANE: Yes.

Q.891 - Thank you. Now has NB Power considered issuing an RFP for landfill services in the St. John County or Charlotte County areas that could serve the Coleson Cove --

MS. MACFARLANE: If I recall the business case was quite demonstratably in favor of the capital enhancement to avoid having to undertake landfill.

So given that -- and when I say it was quite favorable, I mean it was so favorable that one would not look at an RFP for landfill sites in the area.

Q.892 - Thank you. Now -- so my understanding is that Disco is already paying for waste disposal. Why would it become involved in cost-sharing for precipitator upgrading at

Coleson Cove that produces marketable gypsum and not share in the revenue as well as any cost reduction for avoided landfill costs?

MR. KENNEDY: The sale of gypsum -- the short answer is the sale of gypsum is already factored into the tolling agreement price.

Q.893 - Could you point us to where it is identified as an identifiable line item?

MR. KENNEDY: There is no line item per se in the -- built into the vesting -- sorry -- the Coleson Cove agreement.

Q.894 - Thank you.

CHAIRMAN: Could you expand a bit on that answer? You have got us totally bamboozled up here. How is it factored in?

MS. MACFARLANE: I can answer that. The capacity payment for Coleson Cove has three pieces to it, the fixed costs, the amortization of the plant, the financing of the plant and the OM&A of the plant. And when the pricing model was determined so as to set the capacity payment for Coleson, and that's in Schedule 1.1.17, an estimate was made of the OM&A and an estimate was made as well of miscellaneous revenue that would be received from sale of marketable gypsum.

The difficulty of course was that that estimate was on the basis of an understanding that the equipment at the plant would produce marketable gypsum and post-refurbishment it was discovered that it would not produce marketable gypsum, which is why the precipitator upgrades have been required.

So the revenue was already there. The cost of the equipment to produce it is being put in place now and that cost is being passed onto to Disco.

CHAIRMAN: Go ahead, Mr. MacNutt.

Q.895 - Thank you. Now I'm going to ask you to turn to exhibit A-62 which is the response to Disco PUB IR-218, redacted. And we are also going to look at exhibit A-55 which is Appendix 6 to the Coleson Cove Operating Committee meetings -- excuse me -- exhibit A-55, Appendix 6 which is the Coleson Cove Operating Committee meeting minutes for September 22.

CHAIRMAN: So we want A-62 and A-65?

MR. MACNUTT: No. Excuse me, Mr. Chairman. A-62 and A-55.

CHAIRMAN: A-55. Okay. Let us get both of those out, Mr. MacNutt, and then one by one give us the references within those exhibits.

MR. MACNUTT: I will do that.

CHAIRMAN: Okay. In A-62?

MR. MORRISON: Yes. The response to Disco PUB IR-218.

CHAIRMAN: All right. And A-55?

MR. MACNUTT: Yes. That's Appendix 6, Coleson Cove operating committee meeting minutes from September 22. And it's found immediately following the first green separation page.

CHAIRMAN: Thank you. So that's meeting number 10, isn't it?

MR. MACNUTT: No. It would be meeting number 9, Mr. Chairman.

CHAIRMAN: Okay. That's great. Thank you.

Q.896 - Now at page 2 of the minutes the revised price estimate for the precipitator upgrade for unit number 3 at Coleson Cove is shown as $17,561,915. And that amount includes $465,975 for work not included in the contractor's quote, is that correct?

MR. KENNEDY: Yes.

Q.897 - Now was the upgrade work a design-build contract or was the work designed by Genco or NB Power staff before Genco or a third party design firm?

MR. KENNEDY: It was through a request for proposals with respect to the upgrade of the precipitator at Coleson Cove. It was an independent contractor that took on the responsibility of upgrading and the performance of the precipitator that's in question. The design was done by the supplier or the manufacturer of the precipitator.

Q.898 - So it was a design-build project?

MR. KENNEDY: Yes.

Q.899 - Thank you. Now has there been any additional revision to the price estimate for the upgrade work on the precipitator for unit number 3?

MR. KENNEDY: At this time the project has just been completed. I haven't been advised of any price change with respect to this estimate at this time.

Q.900 - Now what is the amount of the common overhead charges noted in the minutes associated with the upgrade work and how was that amount calculated?

MR. KENNEDY: The price excludes common overhead charges.

Q.901 - Okay. However, there are charges to cover administration of the contract?

MR. KENNEDY: The amount of $17,561,915 is presented as the firm estimate for the unit 3 precipitator upgrade and is to be administered as per the section that prescribes that that's the fixed price, and if there is any changes to that then Section 2.7.4 of the towing agreement deals with it.

Q.902 - So any of the contract administrative costs would be included in the 17,000,000-rounded?

MR. KENNEDY: That is correct.

Q.903 - Thank you. Now what is the total forecasted final cost including the common overhead costs for that upgrade work and how does that compare to the budget for the project?

MR. KENNEDY: Yes. That is a fixed price and Ms. MacFarlane informs me that the prices come in and it's a bit under the estimate. So we would share in that on a 50/50 basis below the fixed price.

Q.904 - Has either Genco or Disco been notified of any contract claims -- contractor's claims issued pursuant to the contract?

MR. KENNEDY: I haven't been notified of any to date as it stands right now.

Q.905 - Thank you. We are now going to look at A-62 which is Disco's response to PUB IR-218. It may not be necessary to open it because I am going to quote from it -- or refer you to the specific portions of it I am going to ask questions on. Part B of the response to 218 would appear to indicate that no precipitator upgrade work for unit number 2 has begun or has been approved by Disco. However item 2 of the minutes appears to indicate that the amount of $2,754,462 is for work on both units 2 and 3. If that is the case, what is the cost breakdown between the units and when did Disco commit to cost sharing the upgrade work for unit 2?

MR. KENNEDY: I will take an action to provide the breakdown of the costs. It's broken out.

Q.906 - You are going to undertake to provide us with that?

MR. KENNEDY: Yes.

Q.907 - Thank you. Has the work on unit 3 been completed and, if so, has the performance of the precipitator been tested and has the marketable gypsum been evaluated?

MR. KENNEDY: The evaluation is currently ongoing, it's not finalized yet, with respect to the unit 3.

Q.908 - Would you please undertake to file a copy of the evaluation report with the Board when completed?

MR. KENNEDY: Yes.

Q.909 - Thank you.

CHAIRMAN: Mr. MacNutt, we are going to take a break. Is this a good spot to do it?

MR. MACNUTT: Just one last question on the precipitator and then would be a good time.

CHAIRMAN: All right. And then I will have a follow-up and then we will take a break. Go ahead.

Q.910 - When the refurbishment of Coleson Cove was completed did the emissions meet the standards that were targeted by NB Power as it identified in its evidence submitted to the Board on the refurbishment?

MR. KENNEDY: Yes, I believe so, subject to check.

MR. MACNUTT: Yes. That's the end of the question on the precipitator.

CHAIRMAN: Okay. Just idle curiosity. In the original design and refurbishment of Coleson Cove were the precipitators as designed then to produce marketable gypsum?

MS. MACFARLANE: The precipitators were reviewed by the OEM at the time and --

CHAIRMAN: Sorry. OEM?

MS. MACFARLANE: Original Equipment Manufacturer, a term of ours. And it was determined at that time that they would not require upgrade. There was provision in the construction contract that led to a claim against that firm after the fact and it subsequently has been settled in that there was an oversight that in retrospect was easily able to be seen.

CHAIRMAN: Okay. Would you say that another way?

MS. MACFARLANE: They missed it.

CHAIRMAN: That I really appreciate.

MS. MACFARLANE: Yes. We claimed and they settled.

CHAIRMAN: Okay. Thank you.

MS. MACFARLANE: And the settlement went against the capital costs.

CHAIRMAN: Right. We will take our break.

(Recess)

CHAIRMAN: Go ahead, Mr. MacNutt.

MR. MACNUTT: Thank you, Mr. Chairman. I would like you to turn to exhibit A-62, response to Disco PUB IR-221(B). Yes, that's B as in boxer.

Q.911 - In the response to PUB IR-221(B), it is stated that the 9.7 million payment for contracted energy has been budgeted to cover Coleson Cove's variable cost, other than fuel and to provide a nominal incentive to operate the plant, is that not correct?

MR. KENNEDY: Yes.

Q.912 - Now what is the amount of the nominal incentive paid to operate the plant that is included in the $9.7 million?

MR. KENNEDY: It's $2.36 per megawatt hour.

Q.913 - In other words, it's not per annum?

MR. KENNEDY: Pardon me?

Q.914 - It's megawatt -- per megawatt hour not per annum, is that correct?

MR. KENNEDY: Per megawatt hour.

Q.915 - Thank you. Now, I am going on to the last question I have this afternoon. And I would like you to go to the first La Capra Report, which is exhibit A-5. I just thought I would save this until the end of the day so Mr. Peaco could have something to do at the end of the day.

And exhibit A-5 is the technical audit purchase power budget April 2005/March 2006 of New Brunswick Power Distribution Customer Service Corporation. And I would like you to go to page 13 under the heading 4.4, "Reasonableness of Resultant Power Cost". Do you have that?

MR. PEACO: Yes, I do.

Q.916 - Thank you. In line one you state that, "La Capra Associates found that no material issues with the estimated power cost of $907.9 million." Do you agree?

MR. PEACO: Yes.

Q.917 - Now, Mr. Peaco, could you please tell us what dollar value you would consider to represent a material issue in relation to the $907.9 million dollar figure?

MR. PEACO: I didn't affix a dollar value to that in preparing this analysis. Our review went through the information that was used and to the extent it was verifiable, but with data we verified down to the extent it was reviewed for us as reasonableness within our professional judgment. The numbers as used were deemed to be reasonable and the result was deemed to be reasonable on that basis. I did not determine a range within which that number would be deemed unreasonable.

Q.918 - What would you normally use as a range or a percentage of reasonableness? What would -- what -- would it be plus or minus 10 percent of the figure used or 15 or what?

MR. PEACO: With respect to the budget outcome or with respect to particular inputs? What is your question referring to?

Q.919 - The outcomes?

MR. PEACO: I don't have a fixed number in mind. But you would think -- you know, you would be looking for -- you know, a budget estimate of this type. It would depend upon the degree of fixity in the number. And there are many elements of this that are fixed. But I haven't derived a specific number.

Q.920 - But what I was looking for -- what would you consider to be a range? In other words, when you were looking at doing your audit and reviewing the data, this was a number that was provided to you, were you looking for a specific sum or would you accept a number that was plus or minus 10 percent greater than that number, that's what I was looking for? What would your range of tolerance be for you to say that it was a reasonable number?

MR. PEACO: I think I wasn't looking -- I wasn't applying such a criteria to the review that we did. I was asked to look at the inputs used and the outputs for reasonableness and consistency with the PPAs. And given that all of the -- all of the information that we looked at in terms of inputs and outputs were consistent and reasonable with respect to the PPAs, we deemed that the budget number was a reasonable value. But we weren't looking to see -- sort of define a confidence interval around that number that would be acceptable.

Q.921 - On what do you rely in your statement in 4.2 that you found no material issues with the estimated contract power cost and you found no competition, no issues, no unusual assumptions and no unreasonable PROMOD results, would you just elaborate on that, please?

MR. PEACO: Sure. We were looking for things that would cause a material change in the number, meaning that it would be a noticeable difference from this. I then applied a specific percentage to that. But we didn't find anything that looked like it would warrant a change that would be -- you know, representing material difference in this number from what was estimated by the company.

Q.922 - What in your mind would have represented a material difference?

MR. PEACO: Well let me give you an example. We had -- I think you recall earlier today we talked about the portion of this Phase I audit where we talked about the Point Lepreau capacity factor estimate and had put an estimate that the assumption there, a worst case would have been a $1.4 million variance in the budget. You know, things didn't rise to a level greater than a million dollars, would be something we would have looked at as something we would consider beginning to rise to a level of being important to the total here in terms of individual elements.

Q.923 - Thank you. Now, I would like you to go to page 15 of exhibit A-5, which is the first La Capra report. And I would like you to go to Section 5.4, which is entitled "Coleson Cove Heat Rate". And in that you indicate that you were unable to compare the heat rate used for Coleson Cove because no historical data was available, is that not correct?

MR. PEACO: Yes. The notation there is basically is the historical data was based upon the pre-retrofit era. There is nothing that would have been historical about information to look at.

Q.924 - Your report was prepared in May of 2005?

MR. PEACO: Yes.

Q.925 - Now, Mr. Kennedy, before the lunch break you indicated that in the last few months a more precise heat rate has been developed for Coleson Cove, is that correct?

MR. KENNEDY: What I am referring to there is with respect to the heat rate that Mr. Peaco was looking at was based on historical heat rate for Coleson Cove that was on the records with respect to existing within Genco's records was adjusted to take into the effect of adding the scrubber with respect to an increased station service load. So that is the heat rate that Mr. Peaco was looking at with respect to -- when he evaluated the PROMOD.

Q.926 - Now can you tell us if the recent experience in examining that heat rate supports the heat rate used in the 2005/2006 fiscal year budget?

MR. KENNEDY: As I mentioned, we have not performed a full heat rate test on Coleson Cove after the refurbishment. But we plan to do that in the upcoming year with respect to the output and to verify the heat rate of the -- to confirm the heat rate on Coleson Cove.

Q.927 - Now, Mr. Peaco, the revenue requirement of Disco can be found in exhibit A-50 on the table 1 of Ms. Clark's evidence. Do you have that? That's exhibit A-50. And that will be tab 3, page 2 of Lori Clark's evidence.

MR. PEACO: I have that.

Q.928 - Thank you. And now if we go to column 1, line 1, we find the total forecast power purchase cost of Disco for fiscal year 2007 is one billion and twenty-eight -- excuse me, I will say it again -- 1.028 billion. Is that correct?

MR. PEACO: Yes.

Q.929 - Now, Mr. Peaco, is it your professional opinion based upon the three reviews you have carried out that this Board can accept this figure as reasonable?

MR. PEACO: Yes. I am glad you have asked for that clarification, because the number before the Board obviously is primarily reviewed -- or the fuel component is primarily reviewed in our third audit, the Phase III audit. A lot of the questions we have had pertain to Phase I. Based upon our review of the -- particularly of the fuel variance in this analysis, it is our judgment that consistent with the PPAs as drafted, the budget estimate for the -- particularly the fuel component, which we reviewed in Phase III, is a reasonable estimate of the fuel expense that would be incurred by Genco on behalf of Disco in that budget year.

MR. MACNUTT: No further questions, Mr. Chairman.

CHAIRMAN: Thank you, Mr. MacNutt. Well, the Commissioners have a few questions, but believe me I know of which I speak. If we have the opportunity to review our notes over the evening, why it will save a lot of time. So I am going to adjourn until tomorrow morning at 9:15.

MR. MORRISON: Excuse me, Mr. Chairman?

CHAIRMAN: Yes.

MR. MORRISON: I know that we have varied the practice from time to time. I do have some brief redirect, but do you wish me to save that until after the Commissioners' questions?

CHAIRMAN: Yes, that makes more sense. You may find some of the Commissioners' questions terribly offensive. I don't know.

MR. MORRISON: Thank you, Mr. Chairman.

CHAIRMAN: See you tomorrow morning.

(Adjourned)

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