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.
March 14th 2006

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Undertakings

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Delta Hotel, Saint John, N.B.
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CHAIRMAN: David C. Nicholson, Q.C.

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BOARD COUNSEL: Peter MacNutt, Q.C.

BOARD STAFF: Doug Goss
John Lawton

BOARD SECRETARY: Lorraine Légère

....

CHAIRMAN: Good morning, ladies and gentlemen. Any preliminary matters?

MR. MORRISON: Yes, Mr. Chairman. I do have some undertaking responses to be filed.

CHAIRMAN: Okay.

MR. MORRISON: The first is undertaking number 4 from February 21st 2006. And this was filed electronically on March 6th. So it is just a question of getting it marked, Mr. Chairman.

CHAIRMAN: That is exhibit A-145.

MR. MORRISON: The next one is undertaking number 7 from February 22nd. Again this was filed electronically last week, March 6th.

CHAIRMAN: That is A-146.

MR. MORRISON: The next, Mr. Chairman, is undertaking number 16 from February 22nd. This is filed with the Board in confidence. And a redacted version was sent to all parties, Mr. Chairman. So there is two versions. There is the white and the pink.

CHAIRMAN: So the white is A-147. And the pink is A-147(C). Mr. Morrison, shouldn't you have your request regarding confidentiality sheet in pink too?

MR. MORRISON: I don't know, Mr. Chairman.

CHAIRMAN: Actually if you would do that in the future I would appreciate it. Because you know, it hides completely the pink page with the white page.

MR. MORRISON: I understand.

CHAIRMAN: But anyway, so --

MR. MORRISON: The next one, Mr. Chairman, is undertaking number 17 from February 22nd. Again this is filed electronically, redacted form.

And there will be -- and filed in confidence with the

Board. So there is a white and a pink version.

CHAIRMAN: And again the white will be A-148. And the pink will be A-148(C).

MR. HYSLOP: Mr. Chair, I'm just glancing. And I appreciate that it is in confidence until we go a procedure. But my point here is it says the numbers, the breakouts of expense presented in the Annual Report is as follows. These are numbers in the Annual Report.

Might I be so bold as to ask NB Power why they would be claiming confidence for those numbers?

CHAIRMAN: That is perfectly acceptable, Mr. Hyslop. But shall we wait until I have got all this handled. And then I -- Mr. MacNutt, my conscience has been sleeping. Because he didn't remind me to take appearances, which I will do. And then we will come back to that.

MR. MORRISON: The last one is a new one, Mr. Chairman, at least the last one for now. It is undertaking number 1 for February 20th.

CHAIRMAN: Just a sec'. Madam Secretary, I don't seem to have A-148(C) which is the confidential one. And that is undertaking number 17 of February 22nd.

Any more, Mr. Morrison?

MR. MORRISON: The last one, Mr. Chairman, is undertaking number 1 from February 20th.

CHAIRMAN: And that is A-149.
Now could I have appearances for the record for the Applicant?

MR. MORRISON: Good morning, Mr. Chairman. Terry Morrison. And with me at counsel table is Lori Clark, Sharon MacFarlane and Rock Marois.

CHAIRMAN: Thank you, Mr. Morrison. Canadian Manufacturers and Exporters?

MR. LAWSON: Good morning, Mr. Chairman and Commissioners. Gary Lawson appearing with David Plante. And I have Ron Nicholson with me, Consultant.

CHAIRMAN: Thanks, Mr. Lawson. Enbridge Gas New Brunswick?

MR. MACDOUGALL: Good morning, Mr. Chair and Commissioners. David MacDougall for Enbridge Gas New Brunswick.

CHAIRMAN: Good morning, Mr. MacDougall. Irving Group of companies? Mr. Booker?

MR. BOOKER: Good morning, Mr. Chair and Board members. Andrew Booker for the J.D. Irving companies.

CHAIRMAN: Good morning. And Municipal Utilities?

MR. GORMAN: Good morning, Mr. Chairman and Board members. Raymond Gorman appearing on behalf of the Municipal Utilities. I have with me today Eric Marr and Dana Young.

CHAIRMAN: Thanks, Mr. Gorman. Vibrant Communities? Public Intervenor?

MR. HYSLOP: Good morning, Mr. Chair. Peter Hyslop with Mr. O'Rourke and Ms. Power. And also with us today is Mr. Kurt Strunk who will be appearing as a witness.

CHAIRMAN: Thank you, Mr. Hyslop. Mr. MacNutt, who is with you today?

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

CHAIRMAN: Thank you. Now Mr. Hyslop, which of the two confidential exhibits were you referring to? It is either 147(C) or 148(C).

MR. HYSLOP: Yes. I referred to 148. And I was just -- the breakdown of the fuel and purchased power presented in the 2004/2005 Annual Report is as follows.

And in the claimed redaction of numbers, which appear to be numbers that appear in the Annual Report. It is in the Annual Report. I fail to see the argument for confidence.

MR. MORRISON: The total is in the Annual Report. But the breakdown isn't, Mr. Chairman. It is the breakdown of the in-province fuel and the out of province fuel which was the confidential piece. The total fuel and purchase power cost is in the Annual Report. But the breakdown isn't.

But in any event, I mean, Mr. Chairman, obviously

Mr. Hyslop is entitled to see the pink version. Of course he signed a confidentiality agreement. So it is not an issue in terms of access to the information.

MR. HYSLOP: I understand I can have it in confidence. It is just the way it read.

CHAIRMAN: No. I can understand that. Okay. Thank you. Any other preliminary matters?

MR. GORMAN: Yes, Mr. Chairman. Just an issue arising out of the transcript from yesterday at page 5474 on line 12. 9.92 should read 92.

CHAIRMAN: Yes. That is either pretty low or pretty high cost of service number.

MR. GORMAN: I think.

CHAIRMAN: Good. Thanks, Mr. Gorman. Anything else? And Mr. Hyslop, do you have -- we are being jacks-in- the-box, aren't we? I can't keep track of --

MR. HYSLOP: It is just like one of those games at the circus.

CHAIRMAN: That is right.

MR. HYSLOP: The head pops up and you hit it I guess, Mr. Chair.

CHAIRMAN: Anyway would you call your witness to the stand, Mr. Hyslop?

MR. HYSLOP: Thank you very much, Mr. Chair. Mr. Strunk --

we call Mr. Strunk to appear as a witness before this Board.

KURT STRUNK, sworn:

DIRECT EXAMINATION BY MR. HYSLOP:

MR. HYSLOP: For the information of the Commissioners, we may occasionally be making reference to exhibit PI-14 which is Mr. Strunk's report. And there may be the odd reference to the purchase power agreements which is exhibit A-4.

CHAIRMAN: Thank you. Go ahead sir.

MR. HYSLOP: Thank you.

Q.1 - State your name please?

A. Kurt Strunk.

Q.2 - Right. And where do you live, Mr. Strunk?

A. I live in New York.

Q.3 - Okay. And I refer you to exhibit PI-14 which is a report that was co-authored by yourself and a Mr. Eugene Meehan.

Could you briefly outline to the Board how you and Mr. Meehan worked to produce this particular report?

A. Sure. Mr. Meehan and I both reviewed all of the evidence. And we collaborated on the analysis required to produce the report and on the drafting.

Q.4 - Thank you. And in respect to yourself and your background -- and I know your résumé is attached to the report -- but could you briefly outline to the Board some of your background with respect to post-restructuring purchase power agreements and how they may evolve in the development of a competitive market?

A. I have been looking at power purchase agreements since about 1996. And I have been involved in looking at the programs for power purchase agreements as markets transition to competitive markets.

I have seen how the contracts have developed in the U.S. And I have worked in Ireland on a solicitation for a new power plant that included a power purchase agreement that was designed to specifically reflect the fact that Ireland was moving towards a competitive market, been involved looking with the Minister of Energy in Mexico as they have moved -- when they were considering moving to a competitive market and looking at how their independent power and contracting strategy would have to change in the context of a competitive market.

I have reviewed a lot of contracts in the U.S. for benchmarking studies that look at affiliate agreements. And in that context I worked with Mr. Meehan on a number of contracts -- of assignments where we reviewed at least a hundred contracts.

MR. HYSLOP: Thank you. Mr. Chair, I have discussed this I believe briefly with other counsel. And in view of Mr. Strunk's résumé and a short statement of his background, we would move to have Mr. Strunk admitted as an expert in the field of utility economics with specialization in the examination, review and comment on power purchase agreements.

CHAIRMAN: Any objections? The Board will recognize the witness.

Q.5 - Mr. Strunk, I would refer you to your report. And since you are here and Mr. Meehan isn't, I'm going to refer to it as the Strunk Report, which is exhibit PI-14.
And are there any changes or corrections you wish to make to that report?

A. Yes. There is one correction. On page 9, the first paragraph -- it is not a full paragraph -- on lines 7 and 8, the text used to read "In addition since the vesting agreement capacity prices escalate with the CPI index", that should read "since the vesting agreement contribution to fixed costs escalates with the CPI index." So it is replacing "capacity prices" with "contribution to fixed costs."

Q.6 - Thank you. Now would you adopt the Strunk Report as corrected as your evidence for purposes of your testimony at this hearing?

A. I do.

Q.7 - Okay. And just briefly before we start, Mr. Strunk, what is your understanding of the existence of a competitive electricity market in New Brunswick at this time?

A. I understand there was a Board decision in that matter dated December 21st 2005. And that Board decision determined that a competitive market does not exist in New Brunswick today.

Q.8 - Thank you very much. And just maybe I'm stating the obvious. But in the absence of competitive market what is the basis upon which electricity rates are traditionally set?

A. Traditionally, in the absence of a competitive market, rates are set based on costs.

Q.9 - Now Mr. Strunk, I asked you and Mr. Meehan if you would be good enough to review the Genco vesting agreement and the Applicant's evidence in support of the vesting agreement which I think is found in exhibit A-50 principally.

Can you outline to this Board what concerns you and Mr. Meehan had with regard to the power purchase agreements?

A. Sure. Our first concern was really with the situation. In New Brunswick we have a distribution company that has captive customers, and that distribution company is requesting a dollar for dollar pass through of the costs of an affiliate power purchase contract with no regulatory scrutiny of the contracts' costs. This in my experience and the experience of Mr. Meehan is unprecedented. In our experience affiliate contracts are normally subject to extensive scrutiny by regulators. This is to assure that the purchasing utility's customers are not paying too much as a result of contractual terms that are overly preferential to an affiliate seller.

The concerns that we had about that general situation are even greater when we consider the specifics of the vesting agreement which is the contract -- the affiliate contract in question. The terms of the vesting agreement are unlike the terms of commercial contracts that we observe in today's markets. The vesting agreement is a loose contract that reflects contracts that were entered into prior to restructuring. It leaves important pricing decisions to be agreed upon by buyer and seller through an operating committee. There is considerable judgment and discretion in using PROMOD, a very detailed model, to determine the fuel components of the vesting energy price.

There is considerable discretion in judgment in determining a number of end of year adjustments to the price paid by Disco. And if these decisions are not subject to regulatory oversight and potential challenge in an adversarial proceeding, there are insufficient safeguards to assure that Disco's customers are paying reasonable rates.

We also had a concern related to the adequacy of the evidence put forth by Disco. In support of the PPA costs Disco offered the technical audits of LaCapra Associates. These audits -- the scope of these audits was basically a reasonableness review and a reasonableness review in our opinion is not a high enough standard of review in the context of an affiliate contract where numerous payment factors are subject to discretion and judgment.

Finally Disco has put forth evidence that the PPA prices were designed to cover Genco's forecast costs over the long-term with incentive provisions. With respect to that my opinion is that the record is lacking in evidence regarding Genco's forecast costs.

Q.10 - Mr. Strunk, one of the phrases you used in your testimony was that the Genco vesting agreement is a loose contract. And I would ask if you might elaborate on what a loose contract is in the sense of a purchase power agreement and if possible might give the Board a couple of examples of what you mean?

A. Sure. Well I mentioned that there is considerable discretion. In my report we refer to on page 11 all of the -- a number of the end of year adjustments related to sales out of the province, CT use, differences in hydro flow. And those are the type of -- those are the aspects of the contract I'm referring to when I use the term loose.

In addition we tend not to see -- in post restructuring contracts we tend to see a lot more certainty with respect to the prices that the buyer would pay in the contract. The seller might for example guarantee a level of availability over the term of the contract or guarantee a certain heat rate or a heat rate curve. We don't see that in the vesting agreement. We see for example with respect to availability we see that availability shall be declared by Genco to Disco in good faith and as it may change from time to time. I'm referring to Section 3.1. So we don't see the sort of level of certainty that you would see in contracts that are executed -- that we have observed executed in restructured markets.

Q.11 - There has been a lot of discussion during the course of these hearings about the setting of the fuel costs and the vesting energy price in Article 6.2 of the contract. Can you put that into the context of being either a loose or type of contract provision you might find after a restructuring, Mr. Strunk?

A. Right. Well I think you are referring to Schedule 6.2 which is Schedule 6.2 of the vesting agreement, and that has been included in our report. And that also highlights how the specific prices paid by Disco are not really known in advance and that they are loose and subject to modelling judgment. I would refer you to the last sentence in that schedule which says, the operating committee shall manage, develop and maintain the process for establishing the fuel component of the vesting energy price in accordance with the modelling guidelines set out above as such modelling guidelines may be amended from time to time. So that leaves considerable flexibility for the buyer and the seller to amend the guidelines and to change the way the system is modelled. And that has a direct impact on how -- on the prices that Disco would pay.

Q.12 - And what concerns would you have with regard to that type of a structure that you just mentioned in Schedule 6.2 in terms of regulation and shall we say protection of

ratepayers?
A. Right. I think that goes back to what I said earlier in that in the context of a contract where there is so much discretion you would tend to see those elements be subject to regulation, and subject to review in adversarial hearings.
Q.13 - Now we have had a -- Section 156 kind of shut us down from examination of costs at this hearing, but my question would be, Mr. Strunk, what recommendations would you make to this Board at a second rate hearing or at a subsequent review in relation to the examination of the PPA pricing?
A. At a subsequent review I would expect to see that the prices -- I would expect to see Disco come forth or Genco come forth with evidence as to the costs and how the costs flowed through to -- or forecast costs flowed through to the prices in the vesting agreement, and that would be subject to hearing. In the interim I think it would be reasonable to request that there be some sort of reporting function, either to the Board or to the Board staff, whereby key decisions that affect the prices paid by captive customers were at least subject to review by Board staff and potentially by the Board.
Q.14 - And that second point, is that something that would occur after this hearing but before another hearing was

ever commenced?

A. Yes.

Q.15 - And can you just maybe fill that in just a little bit for us exactly what you would envision taking place in that interim period then, Mr. Strunk?

A. Well I recognize that some of the operating committee meeting notes have been produced as part of IRs in this proceeding. Any -- I envision a reporting function where those meeting notes were sent to the Commission.

MR. MORRISON: Excuse me, Mr. Chairman. This seems to me to be new evidence. Could you please indicate in your report where you made those types of recommendation?

MR. HYSLOP: Well I won't go any further with it, Mr. Morrison. I'm just trying to fill out in his recommendations as to what would happen down the road.

Q.16 - Now one of the issues that has come up during the course of these hearings which I would ask you to address, Disco has suggested that the rates established at this hearing form a benchmark and the rates to be set at a future hearing would be based on its incremental costs. Would you please comment if you would briefly on Disco's position and what your recommendation would be to the Board?

MR. MORRISON: Again, Mr Chairman, could you direct me where that is found in Mr. Strunk's evidence?

MR. HYSLOP: It's not in Mr. Strunk's evidence, Mr. Chair, but it certainly was an issue that was raised during the course of the hearings subsequent to the filing of Mr. Strunk's evidence, and it was a position taken by Ms. MacFarlane, and I'm asking him to rebut or comment on her statement.

CHAIRMAN: Mr. Morrison?

MR. MORRISON: Well, Mr. Chairman, there is a process here. When an expert witness files a report obviously we rely on that written report in order to prepare cross examination. If the witness comes into the hearing room and starts giving new evidence we are caught by surprise, quite frankly.

CHAIRMAN: Well if I am following what the Public Intervenor is saying is that he is asking the witness to simply comment on something that occurred subsequent to the Strunk report being filed and today, and I fail to see that that's improper in that it's in the form of rebuttal.

MR. MORRISON: Perhaps Mr. Hyslop could rephrase the question so I can satisfy myself that it is indeed a rebuttal.

CHAIRMAN: See what you can do about that, Mr. Hyslop?

Q.17 - During the course of these hearings Ms. MacFarlane suggested that -- and I think what it was was we agreed to disagree by saying it would be Section 156, Part II, and her suggestion was that after the rates were established at this hearing were established they would be a benchmark and future rate hearings would be based on incremental costs from this hearing. And I'm asking if you would comment if you would on Ms. MacFarlane's position?

MR. MORRISON: Mr. Chairman, that really goes to the question of argument, in my opinion.

CHAIRMAN: Mr. Hyslop, I have to agree with Mr. Morrison. Would you tackle another line, Mr. Hyslop, please.

Q.18 - At page 4162 of the record Ms. MacFarlane takes issue with your assertion that the operating committee has considerable discretion over the PPA features and makes particular reference to the third party gross margin credit. Could you please comment on this?

A. Sure. Ms. MacFarlane says that the operating committee does not have discretion over the third party gross margin credit because that credit is fixed by the contract. It is true that that credit is fixed by the contract through March 31st 2009, but beyond March 31st 2009, that credit is subject to determination by buyer and seller and to the discretion of the operating committee.

Q.19 - Thank you. Page 4163 of the record Ms. MacFarlane refers to three factual errors in your report relating to energy price and application of hedges, the escalation of capacity price and delivered fuel costs. Now do you have any response with respect to her points in this regard, Mr. Strunk?

A. Yes. She was correct with respect to the escalation of capacity price and I have corrected that in my report.

With respect to the application of hedges, she says that the hedges are indeed applied and while they may be applied for the current period, my point was broader and my point really relates to a specific clause in that Schedule 6.2 which -- the clause states that all financial hedges entered into prior to the date of this agreement will be included in the calculation of the vesting energy price. And the key to me was that it states that those -- only those hedges that were entered into prior to the date of this agreement would be included, so that over time as those hedges expired, new hedges would not be included. That was my interpretation of that clause in Schedule 6.2. So I do not agree with Ms. MacFarlane in that regard.

Q.20 - Thank you. Now the Chair finally put the question yesterday to your colleague, Mr. Makholm, and I think you were my PPA expert, so I will put the question that the Chair put to Mr Makholm and -- as follows, and that is, are you aware of any jurisdiction where there has been a stated public policy to work towards a competitive marketplace in the generation of electricity that uses a form of purchase power agreement similar to the Genco vesting agreements that are now being considered and used for that purpose in New Brunswick?

A. No, I'm not aware of jurisdictions that have approached restructuring similarly. What we tend to see in restructuring as competition is introduced into the sector we tend to see shorter term contracts. We don't see life of plant contracts. We also -- there are a number of jurisdictions where the incumbent has had a dominant generation position, for example, in France and in Texas, where that dominant incumbent would put out some of its capacity up for bid and which cold be used by marketers to supply customers.

MR. HYSLOP: That concludes the questioning of our witness, Mr. Chair, and he is available for cross examination.

CHAIRMAN: Thank you, Mr. Hyslop. Mr. Lawson?

MR. LAWSON: We have no questions of this witness, Mr. Chairman.

CHAIRMAN: Thank you. Mr. MacDougall?

MR. MACDOUGALL: No questions, Mr. Chair.

CHAIRMAN: And the Irving Group.

MR. BOOKER: Thank you. We have no questions for this witness.

CHAIRMAN: Thank you. Mr. Gorman?

MR. GORMAN: No cross examination for this witness, Mr. Chairman.

CHAIRMAN: Mr. Morrison?

MR. MORRISON: Thank you, Mr. Chairman. As the Board is aware, we filed objections and they are on the record with respect to Mr. Strunk's report, and in light of those objections we have no questions either.

CHAIRMAN: Good. Thanks, Mr. Morrison. Mr. MacNutt?

MR. MACNUTT: Board staff does not have any questions for this witness, Mr. Chairman.

BY THE BOARD:

DR. SOLLOWS: Mr. Strunk, you have commented on what you have seen in the post-restructuring power purchase agreements in other jurisdictions. One thing that I noticed in reviewing the PPAs is -- and it seems to my mind it creates a bit of an issue and I would like you to comment upon it. The -- as I interpret the PPAs and the evidence that we have heard, Disco pays -- through the PPAs pays Genco enough to cover all of their fixed costs, but has the rights to only a portion of the energy that can be generated through those fixed costs from those fixed assets. That to my mind leaves Genco in a position to dominate and perhaps restrict the growth of the market, and I'm wondering if I'm correct in thinking that or if there is something that I am missing.

A. That is certainly a concern and it's definitely something we have seen elsewhere where you have basically the costs are being borne by captive customers and that frees the generation company to make sales at prices that don't cover its full costs.

DR. SOLLOWS: So am I right in thinking that that would be an impediment to the growth of a competitive market for wholesale electricity?

A. Yes, that would be my conclusion as well.

DR. SOLLOWS: Thank you.

CHAIRMAN: The Public Intervenor took my only question, Mr. Strunk. So -- and there is no redirect for those two or three questions I'm sure.

MR. HYSLOP: There is no redirect. I thought Mr. Morrison might have objected to me, so you would have got to ask it but he didn't, so --

CHAIRMAN: All right. Good. Thank you, Mr. Strunk. You are excused and we would take our mid morning break now. Who is up next?

MR. MACNUTT: It's my understanding, Mr. Chairman, that the

Disco Panel comprised of Mr. Marois and Mr. Larlee will resume the stand.

CHAIRMAN: They are back again. Okay.

(Recess)

CHAIRMAN: Welcome back, panel, for the third time, is it? You are still under the oath from the first time.

Mr. Gorman?

MR. GORMAN: Thank you again, Mr. Chairman.

MESSRS. MAROIS and LARLEE:

CROSS EXAMINATION BY MR. GORMAN:

Q.389 - Good morning, Mr. Marois and Mr. Larlee.

I guess this is a rate hearing. And we have been here for several months. And nobody has gone to any rate schedules. So I thought maybe I would shake things up and actually go to a rate schedule.

Could you turn up in exhibit A-76 in the refiled CCAS, appendix 2, RSP N-17.

Sure. It is exhibit A-76. And it is at appendix 2. And then it is -- in appendix 2 it is known as RSP N-17. Does everybody have that?

Q.390 - So I understand that the actual rates being proposed by Disco are contained in appendix 2, is that correct?

MR. LARLEE: The rates proposed are the ones underlined. And the current rates are the rates that are struck out.

Q.391 - Okay. So my questions are going to pertain to the wholesale rate. And first of all I'm going to assume that Section O does not apply to the wholesale class. That is sort of miscellaneous charges and things of that nature. Would I be fair in assuming that?

MR. LARLEE: Yes, I think you would be.

Q.392 - Okay. So looking at A-76, appendix 2, RSP-17 -- and you have indicated that the rate schedule there and guidelines apply to the wholesale class.

And you say it is the underlined amounts?

MR. LARLEE: Yes. The underlined amounts are the proposed rates.

Q.393 - Okay. Now I'm going to refer you to the highlighted terms in bold on the right-hand side of rate schedule N-17. I see the word "wholesale". And beside it is listed Saint John Energy and the Electrical Department of the City of Edmundston.

Do you agree that those are the only two customers currently in this class?

MR. LARLEE: Yes.

Q.394 - An do you agree that the class is limited by the Electricity Act to Saint John, Edmundston and Perth-Andover?

MR. LARLEE: My familiarity with the Electricity Act isn't so great that I can say that Perth-Andover is actually included. I would have to read it again.

But certainly it is limited -- the Electricity Act does limit who can be served by Disco under the wholesale rate.

Q.395 - Okay. Well, without bothering to turn up the Act, I'm going to refer you to Section 69(1), 69(2) and 69(3). And subject to check would you accept that it is limited to Saint John, Edmundston and Perth-Andover?

MR. LARLEE: Yes.

Q.396 - Okay. Now the second word that appears in the right-hand side of the page is in quotes there "long-term contract." And then it reads "The rate is subject to the wholesale customer signing a contract with NB Power for a period up to at least March 31, 2006."

Do you agree that both Edmundston and Saint John Energy have fulfilled that requirement?

MR. LARLEE: Yes, they have.

Q.397 - Okay. The schedule then deals with the rate. And I'm going to return to that in a moment.

The next subject listed on the right-hand side of the page is "short-term contract" which states "The wholesale customer agrees to enter into a contract with NB Power for a period of not less than one year."

Do you see that?

MR. LARLEE: Yes, I do.

Q.398 - And do you agree that Disco does not have any wholesale customers on short-term contract?

MR. LARLEE: That's correct.

Q.399 - And do you agree that you have never had any wholesale customers on short-term contracts, or at least on the short-term contract rate?

MR. LARLEE: No, I don't agree with that. Saint John Energy and the City of Edmundston did not sign long-term contracts at the same point in time. So there was a point in time when both rates were actually in effect. Then subsequently Edmundston, the City of Edmundston did sign a long-term contract. So now both utilities are on the long-term contract rate.

Q.400 - My understanding was that in fact the long-term rate -- and the significance of long-term and short-term contract, would you agree, is what rate you pay? Would you agree?

MR. LARLEE: I would agree that that is one component of it. Obviously there is two different contracts. So there is different requirements under the contract. So I would say that there would be other significant components as well.

Q.401 - So what you are telling me is that at one time

Edmundston was on a short-term contract?

MR. LARLEE: At one time both utilities were on short-term -- under short-term contracts. Then I believe it was in 1996 the utilities, first with The City of Saint John signed a long-term contract and then subsequently the City of Edmundston.

Q.402 - Two contracts have been entered into evidence at this hearing, one for Edmundston and one for Saint John. They are both long-term contracts?

MR. LARLEE: That's correct. Just for further information for the Board, there is an IR on this topic. It's UM IR-7 filed February 9th 2006. And that would be in exhibit A-80, I believe.

MR. GORMAN: If you could wait just a moment I would like to have a look at that IR.

CHAIRMAN: While Mr. Gorman is doing that, the note under the energy charge rate, there is a note there. That no longer has any force or effect, does it?

MR. LARLEE: No. That adjustment that that note refers to has come and gone.

CHAIRMAN: Yes. So why not, since we are amending, take it out? I believe in housekeeping with legislation too. In other words, if it is superfluous then strike it.

MR. LARLEE: I would agree with you, yes.

CHAIRMAN: Go ahead, Mr. Gorman.

Q.403 - Mr. Larlee, I guess I don't have any information that would lead me to believe that a short-term contract was in effect, and I accept your evidence, but do you have anything in writing or could you undertake to provide to me anything in writing that you would have to demonstrate that the short-term contract was actually in effect at some point in time for one or both of the municipal utilities?

MR. LARLEE: I can undertake to look in our files and see what we can find. At the very least we would have copies of the pages from the RSP manual dating back to that time.

Q.404 - And in addition to that if there is any correspondence indicating that it was in effect, would you provide that as well?

MR. LARLEE: We will certainly look through our files to see what we can find.

Q.405 - Do you agree that you have no reason to believe that either of your wholesale customers will become short-term contract customers?

MR. LARLEE: We have no information either way.

Q.406 - Okay. Well this case is dealing with the test year and since they already meet the long-term qualifications then during the test year they certainly will continue to be long-term contract customers?

MR. LARLEE: Yes.

Q.407 - Do you agree that the exit fees contemplated by Section 79 of the Electricity Act would essentially eliminate any need to cover off the possible cost of loss of load from a wholesale customer?

MR. MAROIS: Can you please rephrase the question?

Q.408 - Well let me perhaps preface it by saying that there are two rates, a long-term contract rate and a short-term contract rate. And I think that one of the reasons for a short-term contract rate may be that you may not be able to plan for loss of load and therefore you're charging a higher rate, but now that -- and this contract was put together prior to the proclamation of the now existing Electricity Act. So do you agree that the exit fees as are contemplated in Section 79 of the Electricity Act, which did not exist when most of the contract language was put together, would now eliminate any need to cover off the possible cost of a loss of load from a wholesale customer because there is a process by which you can recover a fee?

MR. MAROIS: If I understand your question, I guess I tend to agree with you that for the purpose provided for in the Act for the exit fee if any customers were to leave the system for a competitive supplier, then there is already provision in the Act to compensate Disco for any resulting costs.

Q.409 - Would you then agree that there is really no need at this time for a short-term contract rate?

MR. MAROIS: I think it's fair to say we could get by with one rate.

Q.410 - And I guess along the same lines, do you agree that all of the information that you filed with this application relating to the wholesale class is in connection with the rate that is requested as a long-term contract rate?

MR. LARLEE: I guess the only exception being the IR that I noted earlier, yes, I agree with you.

Q.411 - Would you then I guess agree that the short-term contract rate then should be deleted from RSPN-17?

MR. MAROIS: It could be, yes.

Q.412 - And perhaps to shorten down my final argument, that might be an issue that you may take up with your counsel at some point in time and advise me as to whether or not you are prepared to delete it, because I guess if you are then that will be one item in my final argument that I won't have to deal with.

MR. MAROIS: I will do that.

Q.413 - Thank you. Now if I could go to the rate itself. The increase is 10.6 percent for this class, is that correct?

MR. LARLEE: Yes, it is.

Q.414 - So dealing now with just long-term contract and the demand charge increases from $11.12 per kilowatt per month to $12.30 per kilowatt per month, i.e., 10.6 percent?

MR. LARLEE: Correct.

Q.415 - And similarly the energy charge increases by 10.6 percent from 4.84 cents per kilowatt hour to 5.35 cents per kilowatt hour in the month?

MR. LARLEE: That's correct as well.

Q.416 - How would I compare that rate to another class, such as large industrial? There is no uniform comparison such as X dollars or cents per kilowatt hour. In a sense they are blended rates. How could I have an absolute comparison if you will of the average rate per kilowatt hour? Is that possible with the information that you filed?

MR. LARLEE: My feeling there would be that the comparison that we have really is the cost allocation study. The cost allocation study looks at the cost, the revenue for each class, and while looking at the cost takes into account the class load factor. So I think really that's the purpose of the cost allocation study.

Q.417 - Well I guess to use an expression that was used yesterday, apples to apples, how could I compare the -- say one rate that would compare two classes so that we know in terms of revenue to cost ratio we can certainly make the comparison, but in terms of -- for example, does large industrial pay more or less for their electricity? We don't have one rate. We have a demand charge and we have an energy charge. And I guess it's obvious for example, that industrial -- since both of those charges are less that theirs is less, but we don't really know how much less unless we have some way in which we could look at in a uniform fashion. Do you understand what I'm getting at? Is there a method or from the information that you have, can I do an apples to apples comparison to say for example, large industrial pays when you consider the demand and energy charge together, for example, five cents a kilowatt hour and that wholesale pays $5.50 a kilowatt hour as an example? Those by the way are not numbers, they are just for illustration purposes. Is there an apples to apples comparison that is possible? In other words, really what I'm talking about is an all-in rate.

MR. LARLEE: If you just want to look at the revenue side you certainly can from the information provided in the cost allocation study derive an average cents per kilowatt hour for the large industrial class and the wholesale class. But because you are just looking at revenue you are not taking into account the costs, the different costs to service those two different classes.

So to get back to your apples to apples analogy, wholesale and large industrial classes are not apples and apples. They are indeed apples and oranges. They are two different types of customers. So the costs are going to be different.

Q.418 - I appreciate that the costs are different and I appreciate some of the difficulties that that may present, but at the same time if one is to look at rates on a comparative level it strikes me that it would be helpful to be able to look at it on an average cost per kilowatt hour throughout the year for the two classes. Can you undertake to provide me with that information with respect to those two classes?

MR. LARLEE: Yes, I can.

Q.419 - I guess my next question had to do with the note and I believe the Chairman's question already deals with that, that the note is outdated.

I am going to then move on to another area, and I'm going to ask you some questions relating to the CARD ruling. And specifically I'm going to refer you to page 38 of the CARD ruling. I don't think that has an exhibit number but obviously it is a document relevant to these proceedings. Do you have that in front of you?

On page 38 the Board said, "The Board considers it appropriate that specific decisions on adjustments to the revenue to cost ratios for individual customer classes be deferred until the revenue requirement review, at which time the current and proposed ratios using the methodology approved in this ruling will be available."

Do you agree that we now have the current and proposed ratios?

MR. MAROIS: Yes, we do.

Q.420 - And those would appear, Mr. Marois, on page 4 of your evidence, Table 2, and they would be column 1 and column 3, would that be correct?

MR. MAROIS: Yes. Table 2, yes.

Q.421 - And would you agree that those are -- column 1 would be the current and column 3 is the proposed?

MR. MAROIS: Yes.

Q.422 - Now the Board stated further in the Card ruling at page 38, "We are of the opinion that a long-term target range of .95 to 1.05 for the revenue to cost ratio for each class is reasonable." Do you see that?

MR. MAROIS: Yes.

Q.423 - Do you agree that Disco did not achieve that target for all classes?

MR. MAROIS: Well what you just quoted is a long-term target range. So from a long-term perspective I guess it's premature to say we haven't met it. And as part of the 06/07 rate proposal not all rates are within the target range.

Q.424 - Okay. And which rates are under the target range of .95 to 1.05?

MR. MAROIS: Only the large industrial rate.

Q.425 - Now looking at Exhibit A-76 which is your direct evidence, Mr. Marois, again page 4, Table 2, column 1, and I would direct you to the wholesale line. Would the rates to be charged to the wholesale class have to be increased by any amount at all to achieve the targets set out by the PUB at page 38 of the ruling?

MR. MAROIS: Not to achieve -- in column 1, row 10, the revenue cost ratio at existing rates for wholesale customers is at 95. So it's within the target range. Unfortunately under that column Disco is only recovering 90 percent of its costs. So rates do have to go up just to recover costs.

Q.426 - I appreciate that. Would you agree that you are only recovering 90 percent of your costs though because there are a great number of rates that are below unity?

MR. MAROIS: Well we are not recovering our costs because overall rates are set too low to recover the costs. I said yesterday you have to review column 1 as including two things. It includes under recovery of costs because the overall revenue cost ratios are only .90, and it also reflects cross-subsidization because not all revenue cost ratios are within the target range. So it includes both things. So that's why yesterday I stressed the importance of if you want to compare apples to apples the first thing you need to do with column 1 is eliminate the under recovery. You have to recover all your costs. So that's why comparing column 2 and column 3 is most appropriate. For example, if you go to line 1, residential, existing rates under column 1, line 1, it shows that the revenue cost ratio is 84. Under column 3 it shows that it's 95. I don't think it would be fair to say that we have improved cross-subsidization of residential rate to the point of increasing it from .84 to .95. Really we did two things. Is we increased the rates first and foremost to recover our costs and then we did some fine tuning to bring it within the target range.

Q.427 - Thank you, Mr. Marois. The question I had however --

and I'm going to go back to it -- would you agree that the rates -- at the current rates, wholesale is at .95 and in order to fit the long-term range set out in the CARD ruling it would not have been absolutely necessary to increase the wholesale rate at all to fit within the 95 to 105 target range.

MR. MAROIS: For the sole purpose of fitting in the target range I agree with you.

Q.428 - Thank you. Now looking at the same table do you agree at the present rates that large industrial has a revenue to cost ratio of 84?

MR. MAROIS: Sorry. Could you please repeat that?

Q.429 - Sure. Looking at the same table do you agree that large industrial would have at the present rates a revenue to cost ratio of .84 at the July 7th rates, do you agree?

MR. MAROIS: Yes.

Q.430 - Now looking at column 3 do you agree that wholesale has moved from the low end of the range which is .95 to the extreme high end of the range which is 1.05?

MR. MAROIS: Yes. And which is less than it would have been if we would have applied an average increase of 11.6 percent.

Q.431 - Okay. But you do agree that it went from the low end of the range through unity to the top end of the range?

MR. MAROIS: Yes.
Q.432 - And do you agree that the movement for the wholesale class involves a change of 10, that is, the difference between 95 and 105?
MR. MAROIS: Yes.
Q.433 - Now let's examine large industrial, line 11. Do you agree that large industrial starts out below the target range at .84 and remains outside the target range at .92 at the proposed rates?
MR. MAROIS: Yes.
Q.434 - And do you agree that the large industrial is the class that started out well below the target revenue to cost ratio and yet the change in revenue to cost ratio allocated to large industrial involves a movement of only eight points, that is, from 84 to 92?
MR. MAROIS: The revenue to cost ratio has increased from .84 to .92, based on our proposed rates.
Q.435 - And do you agree that if I subtract one number from the other the difference is eight.
MR. MAROIS: Yes.
Q.436 - So do you agree then that the target set by the PUB in the CARD ruling -- I appreciate it was a long-term target, but do you agree that the target is not achieved for large industrial?

MR. MAROIS: Again I cannot agree with you because the quote you are making from the decision is a long-term objective, and here we have a short-term rate proposal, and like I mentioned yesterday we believe that our rate proposal is reasonable because it moves all rate classes toward the target range.

Q.437 - Let me try that a different way. Do you agree that you have not yet achieved that goal?

MR. MAROIS: I would agree with that.

Q.438 - Thank you. And that is despite the fact that the large industrial class is only being moved eight points versus the ten points for the wholesale class?

MR. MAROIS: Well if I am looking at points the way you do it could be misleading. I mean, the industrial rate is still getting an above average increase and is moving in the right direction.

Q.439 - Well to be fair and equitable would you agree that the change should not have been reversed perhaps. Maybe wholesale had moved eight points perhaps to a revenue to cost ratio of 1.03, and the large industrial moved ten points which would have given them a revenue to cost ratio of .94, a lot closer to the goal set by the Public Utilities Board?

MR. MAROIS: Well first of all, when you are within the range you are within the range. So at 1.05 wholesale customers are still within the range, but you yourself raised at the beginning of this questioning the fact that the wholesale customers have long-term contracts and I'm certain you know that in at least one of those contracts it's clear that the target range is 1.05. So just from that contractual arrangement the wholesale customer should not be surprised that they are at anything else but 1.05.

Q.440 - Well I thought that that issue was conceded by your counsel during final summation on the CARD ruling, but perhaps not and perhaps it will be something that will be revisited, but I understood that your counsel had conceded that in fact this is a function of the Public Utilities Board to set the revenue to cost ratio.

MR. MAROIS: I'm not arguing that. What I am saying is that the perception of the customer should be that there should not be surprise because they signed the contract saying that they would be at 1.05. So at least from a perception or an expectation they should not be surprised.

Q.441 - Not to revisit that issue, do you recall that the contract language for each of the two municipal utilities that we are talking about was different?

MR. MAROIS: I remember that. But one contract says that it would be at 1.05. And unfortunately we only have one rate class. We don't have two.

Q.442 - Well, then why wouldn't you pick the language in the other contract?

MR. MAROIS: Because the language in the other contract provides that it could be at 1.05.

Q.443 - Well, I think this may be an area obviously that should be covered in argument. I guess I'm not going to question you about the legal interpretation of those contracts with respect to the revenue to cost ratio, particularly in light of comments made by your counsel in closing summation on the CARD hearing.

But again to go back to my question, to be fair and equitable, if one class is outside the range and one is within the range, wouldn't you expect the larger movement to be for the class that is outside the range?

MR. MAROIS: Well, I think I will reiterate what I said yesterday, why we believe that our rate proposal is reasonable. And you cannot look at one specific rate to determine if your rate proposal is reasonable. As the distributor we have the responsibility to look at all rates.

And that's why our overriding principle was striking a balance. And what we wanted to do is strike a balance between decreasing cross-subsidization but at the same time take into account customer impact. And we needed to do that.

And we believe that our rate proposal is reasonable for three reasons that I mentioned yesterday. First we did reduce cross-subsidization for all rate classes. All rate classes are moving in the right direction. Second is three out of the five major rate classes are within the target range of 95 to 105. And three, no single class rate increase exceeds 1.4 percent of the average increase.

So when you factor all this together we believe that the overall rate proposal is very reasonable and fair.

Q.444 - Just to go back to your answer, you I guess talked about wanting to come up with a result where no rate class would go more than, what was it, 1.4 percent of the average increase?

MR. MAROIS: Well, I didn't say we designed rates to have no rates that increased more than 1 percent. I said the results -- our rate proposal has no single rate increase going more than 1.4 percent.

So as a result, that taking into account with the other two things I mentioned provides a reassurance that we have a reasonable rate proposal.

Q.445 - Okay. Let me put this to you then. The rate increase currently proposed for large industrial, even though they are well below the approved range of 95 to 105, is not the highest percentage rate increase, is it?

MR. MAROIS: I agree.

Q.446 - That being the case, would it not make sense for the large industrial, since they do sit below the approved range, to at least have them equal to the highest rate increase and to benefit other classes from the increased revenue from the industrial class?

MR. MAROIS: Well, like I mentioned yesterday, I mean, I think how we approached it could be summarized in two steps. As a result of the CARD ruling we were in a position to bring three of the five major rates within the 95 to 105 target range.

So that really left two major rate classes outside, the general service and the large industry. We decided to solve general service based on the previously proposed range of increase.

So really what we did is we solved industry. And industry came out to be at 12.1 which we propose is reasonable in the context.

Q.447 - Would it be possible then to have given large industry a slightly larger increase than you did, still kept them no higher than the highest rate increase and shown some benefit to some other class at the same time, in other words, achieved more of what your goals are by having implemented a slightly larger increase to the large industrial?

MR. MAROIS: Well, you can fine-tune the rates till you are blue in the face. I mean, what we submitted is a proposal which we believe overall is reasonable.

If somebody wants to fine-tune it that is fine. But we stick with the fact that we believe it is reasonable.

Q.448 - Well, I guess in my example that I gave a few questions ago of reversing the spread if you will from 84 to 92, as I said, 8 points, and wholesale moved 10 points from 95 to 105. And then I talked about what if you gave the same spread to both, what result would you get?

And I guess I have to take into account the fact that large industrial uses a much higher volume of electricity. And therefore changing large industrial by 1 percent would have a large impact on some of the smaller users, would that be correct?

MR. MAROIS: I lost you.

Q.449 - I'm not surprised. I had suggested in an earlier question that to be fair and equitable that the change should have been reversed, that is that wholesale maybe should have moved 8 points from 95 to 103 and large industrial should have moved 10 points from .84 to 94.

But what I'm saying is it is not an equal exchange in the sense if you put the large industrial up for example by 1 or 2 more percent in a revenue to cost ratio, that will generate a lot more income because they consume a lot more energy?

MR. MAROIS: I don't think I will answer your question because I'm not sure I understand it. But I guess if I was to make a recommendation to this Board is if the Board decided to apply a larger increase to large industry, I would not offset wholesale customers who are within the target range. I would offset a class which is outside the target range. And that's general service.

I mean -- so those have to be the priority. So I think here the arbitrage that should take place, if arbitrage is to take place, is between the two classes that are being cross-subsidized.

So really what we have here is anybody that's within the target range is not subsidizing anybody. It's not being cross-subsidized. The only two classes that are cross-subsidizing each other here is general service is cross-subsidizing large industry.

So if larger increases apply to industry, the logical place to apply it would be general service, to reduce their cross-subsidization. So I think these are the two

that we are talking about.
Q.450 - Well, Mr. Marois, maybe one last question on this topic.
Do you agree that the feature which distinguishes these two classes that I have been talking about, that is wholesale and large industrial from the other classes is that they are both Transmission customers?
MR. MAROIS: Large industrial does contain some Distribution customers.
Q.451 - But by and large that is a distinguishing feature, would you not agree?
MR. MAROIS: Well, I mean, I'm more prone to say that one thing that the large industrial rates and wholesale rates have in common is the fact that they are both Transmission customers.
But in terms of distribution features, large industrial customers for example do have some significant distinguishing features such as a very high load factor.
So it depends on how you define distinguishing feature.
Q.452 - Okay. Well, fair enough. But do you agree then that in the formation that you filed with the Board that you have shown that as a distinguishing feature?
And I think if I go to the appendixes which are attached to the CCAS, I see that the Transmission

customers are shown in a separate category and those are the two that are listed, would that be correct?

MR. LARLEE: In the cost allocation study, the large industrial class is broken out into distribution and transmission.

Q.453 - And what we are discussing here is the transmission industrials?

MR. LARLEE: What you are looking at on table 2 of Mr. Marois' evidence is the entire large -- the revenue to cost ratio for the entire large industrial class, which includes both Distribution and Transmission customers.

Q.454 - So is there a breakout? Can I break that down? You say that is a number that includes both.
Is it broken out somewhere where I could see what the revenue to cost ratio is then for the Transmission large industrials? Is that different than the .92?

MR. LARLEE: Yes. The breakout is in an IR. Give me two minutes and I will find it.

Q.455 - Thank you.

MR. LARLEE: It's in PI IR-9 filed February 9th. And that would be exhibit A-80.

Q.456 - Thank you. I would just turn that up.

MR. LARLEE: PI IR-9 in A-8.

MR. MORRISON: Mr. Chairman, could I take this opportunity to ask Mr. Larlee to either speak up or move the mike a little closer.

MR. LARLEE: Is that a little better?

Q.457 - Okay. Looking at A-80, Disco PI IR-9, then the distinction I think that you were making is between the three large industrial classes, large industrial class, large industrial firm and large industrial interruptible surplus.

Is that the distinction which you were making in your evidence?

MR. LARLEE: So the large industrial class can be broken up as is shown here as firm and interruptible surplus or non-firm products. Line 2 on that table can be further broken into transmission and distribution.

So I misspoke earlier. I thought that this table also did that. But it doesn't. So there is a further subdivision you could make for large industrial firm into distribution, transmission.

Q.458 - Can you undertake to do that and provide us with the results?

MR. LARLEE: Yes, I can.

Q.459 - Okay. I'm going to move on to another topic. Mr. Marois, I want to take you back to cross examination by Mr. MacDougall on February 23rd.

This cross examination can be found -- and you don't need to turn up the transcript I don't think, because I'm going to read it to you. But for reference purposes, if you feel that you do need to look at it, it is at page 4684 of the transcript at Question 133.

And Mr. MacDougall put to you the following. The question was "However, I know Mr. Larlee explained or mentioned this morning that there is only one residential class. And we have no issue with the fact that currently there is one residential class. However you have continued for informational purposes, as Mr. Larlee stated, to break the residential class into electric heat and non-electric heat customers, again to point information out to the Board and to the other parties, correct?" And the answer, Mr. Marois: "Correct".

So Mr. Marois, using that analogy, could you not consider that the large industrial class and the wholesale class are the transmission class being served by Disco?

MR. MAROIS: Sorry. I didn't get the question.

\Q.460 - Well, using the same analogy that you used with the residential class, could you use a similar analogy and consider that the large industrial transmission class and the wholesale class together collectively are in fact the transmission class being served by Disco?

MR. MAROIS: The short answer is no. They are completely different classes. I mean, the only thing they have in common is they are transmission.

Well, some of them are transmission customers. But I mean, it would be like combining a residence with a plant. So I mean, you can't combine those two rate classes.

Q.461 - Okay. Well then, let me ask you how these classes differ from other rate classes. You do agree that they are both transmission customers and the other rate classes are not?

MR. MAROIS: As we said, in part. Because you do have some large industrial customers that are.

Q.462 - Subject to the part of the large industrials that are not, would you agree with that statement?

MR. MAROIS: Which statement?

Q.463 - That they are both transmission customers?

MR. MAROIS: Other than for certain customers that are distribution customers in the large industrial, yes.

Q.464 - Yes. Okay. So again using that analogy and the evidence given by Disco on moving the electric and non-electric subclasses of the residential class closer together, should not a goal for Disco be to move these two transmission customers, those classes closer together rather than further apart?

MR. MAROIS: No.

Q.465 - And why not?

MR. MAROIS: They are two totally distinct classes.

Q.466 - Well, Mr. Marois --

MR. MAROIS: Like Mr. Larlee mentioned earlier, when you look at the revenue to cost ratios, that's what takes into account the revenue generated from a rate class and the cost generated from a rate class.

And when you compare the two you got an indication of how much of the costs are being covered by that rate class. That's how you ensure that there is a fairness between the rates and the costs generated by that rate class.

And the Board has determined that as long as that revenue to cost ratio is within the 95 to 105 target, it is an indication of fairness. You don't have to combine rate classes, especially if they are rate classes that have nothing to do together, to try to add another dimension to the analysis.

Q.467 - And I don't think I was suggesting that you combine the rate classes. I simply was pointing out the similarity between the two and suggesting to you that it might make more sense to move them closer together rather than further apart. That was really the proposition I put to you.

MR. MAROIS: If there are any similarities there is only one in the fact that they are transmission customers.

Q.468 - Okay. And I think you have disagreed with my proposition that they should move closer together?

MR. MAROIS: All rates ultimately are moving closer together. Because the objective is to bring them within the range.

And I mean, the Board has determined that if they are within the range it's reasonable. It doesn't say that we have to move them closer within the range. We are not there yet. Our objective right now is to try to get customers within the range.

Q.469 - Comparing only those two classes though, would you agree that those two classes have moved further apart from each other?

MR. MAROIS: I guess I would have to disagree with you because again going back to page 4 of my evidence, if you look at table 2, and if you compare the two columns that again are comparable, which are column 2 and column 3, if you look at line 9, column 2, the industrial revenue to cost ratio is .91, and we have moved it to .92, which is getting closer to the target range. And the line below, line 10, the wholesale revenue to cost ratio is 1.06 and

we are proposing to bring it to 1.05 again, bringing them closer together rather than further apart.
Q.470 - And would I be correct in saying that the columns that you are comparing are the ones I think yesterday that column 2 we agreed to call the assumed column, that's the one that's not an actual rate or a proposed rate but one that was used for illustrative purposes?
MR. MAROIS: That's the column I explained is required if you want to compare apples with apples when you are looking at the amount of cross-subsidization you are removing or adding to rate classes as part of your rate proposal.
Q.471 - Would you agree if you compared columns 1 and 3 that the two classes have moved further apart?
MR. MAROIS: Yes, which is comparing apples and oranges.
Q.472 - And in fact if I go back to the original CCAS which was filed I believe back in the fall, the revenue to cost ratio proposed for large industrial at that time was .95 and for wholesale was 1.05. So compared to what was filed at that time they have also moved further apart, have they not?
MR. MAROIS: Which is no surprise because the impact of the CARD ruling is to allocate significantly more cost to an industry which drives the revenue to cost ratio down.

Q.473 - Mr. Marois, I'm going to refer you to another matter which came up in cross examination, page 4685 of the transcript from February 23rd. Mr. MacDougall put the following to you. The question was, "Thank you. Would it be fair to say that in that case that residential users of less electricity are in your proposal continuing to subsidize residential users of more electricity intra-class, within the class. Mr. Marois: Yes." Mr. Marois, you agreed that non-electric heated customers were in fact subsidizing electric heated customers. Would you agree that was your evidence?

MR. MAROIS: So you are rephrasing what --

Q.474 - Well I'm asking --

MR. MAROIS: Our evidence is there is one residential rate class and that's it. Because we are providing additional information we are able to see that within that rate class the electric heat customers are, based on our rate proposal, have a revenue cost ratio of .93, while the non-electric heat customers have a revenue cost ratio of 01. So that's intra-class cross-subsidization, if you want to call it like that, but really what we are targeting is at the rate class level. You could do the same exercise for almost any rate class because there is no one rate class that is totally homogenous. All customers are different within a rate class. The only way you could have totally homogenous rate classes is if you had a rate class for each customer. So 360,000 rate classes, which is impossible.

Q.475 - Mr. Marois, perhaps you may want to turn up the transcript, because I think you have disagreed with how I have summarized your evidence. I think it might be useful if you could read the question and your response and then I will put my question to you again.

MR. MORRISON: Can I have the reference again, please?

MR. GORMAN: Sure. It was in February 23rd transcript, page 4685, and it was Question 140.

MR. MAROIS: So you are looking specifically at Question 140?

Q.476 - I'm looking at Question 140 and perhaps I would ask you if you could read the question and your response into the record?

MR. MAROIS: Well the question is, "Thank you. Would it be fair to say in that case that residential users of less electricity are in your proposal continuing to subsidize residential users of more electricity intra-class, within the class?" And my response was yes. And I believe this is consistent with what I just said.

Q.477 - Okay. After I read that into the record, the question

I put to you was do you agree that in that statement in response to Question 140 you agreed that non-electric heated customers were subsidizing electric heat customers.

MR. MAROIS: I guess the problem I have with that is the way the question was posed to me by Mr. MacDougall was to clarify what the numbers said, but our evidence here and what we are proposing is one residential rate class with one revenue to cost ratio.

Q.478 - I understand that.

MR. MAROIS: So if you are asking me that if within that residential rate class some customers contribute more than others, definitely that's the case. So I agree with that.

Q.479 - Sure. And in fact in my question I didn't use the word class, I used the word customers. So you would agree then that electric heated customers are in fact subsidizing -- sorry -- non-electric heated customers are subsidizing electric heated customers.

MR. MAROIS: That's what the evidence shows.

Q.480 - Okay. Now using that analogy would you also agree that wholesale customers could be considered to be subsidizing large industrial customers?

MR. MAROIS: I don't agree with that at all.

Q.481 - Why not?

MR. MAROIS: Because wholesale customers are within the target band. If you are within the target band of 95 to 105 you cannot be cross-subsidizing anybody else. You can only cross-subsidize another rate if you are outside of that target band. Like I said earlier, the rate -- and if you look at the table 2, if you look at the large customer groupings, it's really lines 4 and 5, column 3, which are the general service rates. General Service I is at 1.23 and General Service II is at 1.17. Both these rate classes are above the 1.05 ceiling. Both of these rates are cross-subsidizing the large industrial rate on line 9, which is at .92. The wholesale customers at 1.05 are not cross-subsidizing anybody when you take into account that 95 to 105 range.

Q.482 - Well just as a follow up, maybe I should rephrase that. Would you agree that large industrial is being subsidized to the extent that they would be paying -- what would be recovered from them in the rates would be somewhere in the order of about $30 million less than the cost of producing the energy for them? Is that a fair statement?

MR. MAROIS: We have to verify the numbers. I don't know offhand.

Q.483 - Okay.

MR. LARLEE: Just so I understand your question, you are

asking what the revenue impact would be to get the large industrial class to .95 revenue to cost ratio?
Q.484 - No. What the impact of my question would be is what would it take to get the large industrial class to unity, to 1?
MR. LARLEE: To 1?
Q.485 - Yes. And the numbers that I came up with by the way came out of schedule 6.1 attached to your study, when I estimated it at 30.5 million.
MR. LARLEE: Yes. That sounds about right, yes.
Q.486 - And looking at the same schedule on column 10, would you agree that the amount of -- amount that wholesale is paying above cost is approximately 4.59 million?
MR. LARLEE: Could you give me that schedule reference again please?
Q.487 - Sure. Schedule 6.1. And I'm looking at row 10. And I guess you have to do the math between columns 1 and columns 5.
MR. LARLEE: About 4.5 million, is that what you are saying?
Q.488 - That is what I came up with.
MR. LARLEE: Yes.
Q.489 - Okay. Now going back to February 23rd, at the commencement of the proceedings that day, direct evidence was entered concerning a reduction amounting to

approximately 2.1 million. And that actually was at page 4628 of the transcript. I don't think it is necessary to turn that up.

But Disco decided to apply the entire credit to the large industrial class despite the fact that the industrial class still has a revenue to cost ratio of .92 which is well outside the approved range of ratios set out in the December 2005 CARD ruling and despite the fact that that, according to the evidence you have just given, equates to approximately $30.5 million.

Given that background why was this benefit not socialized amongst all of the rate classes rather than given entirely to the large industrial class?

MR. MAROIS: Well, I guess to start off with a comment on your question, you mentioned the 30,000,000. The 30,000,000 is not to bring industry to the 95 to 105 target range. It's to bring it to unity which is a difference.

Q.490 - I understand that.

MR. MAROIS: And like we indicated on that day, the reason for applying this additional $2 million in revenue to industry is totally consistent and in line with how we set the rates to start off with.

Because the way we set the rates to start off with in our rate proposal is we applied the residual to large industry. And we were very clear with that. So now the residual is smaller. So then it's a relatively smaller increase to industry.

In other words, if we would have known this right from the start we would have come up with the exact same rate proposal that you have in front of you right now.

Q.491 - Well, I think the rate proposal that you came up with was to, if I recall correctly, apply the same percentage to large industrial as to the residential class, I think, is that correct?

MR. MAROIS: Not at all. Let me bring you back to my evidence on page 3, Question 6.

Q.492 - Just one moment please. Sorry. What page in your evidence?

MR. MAROIS: Page 3.

Q.493 - Yes.

MR. MAROIS: Question 6, line 17.

Q.494 - Yes.

MR. MAROIS: Number 5. So yesterday when I explained how we proceeded, I basically said we were able to solve -- easily solve three out of the five major rate classes by putting them within the 95 to 105 range.

Then we solved the general service class. And finally on line 5 -- or line 17.5 we applied the residual rate increase to the large industry.

Q.495 - Yes.

MR. MAROIS: It's just a coincidence that it came out to -- at the time it was 12.9 percent which was similar to the residential rate increase.

Q.496 - Did you attempt to work out a table in socializing, if you will, that rate, so giving a proportionate benefit to all rate classes? Have you done that exercise?

MR. MAROIS: No. Because it would have been inconsistent with how we came up with our rate proposal.

Q.497 - Could I ask you to do that, to show us what it would come out to, what the change would be?

MR. MAROIS: We could. But spreading $2.1 million over the entire rate classes would have a pretty minimus effect.

Q.498 - I'm tempted to say we will take it.

MR. MAROIS: This is not a windfall eh. I mean, this is -- we found something in the calculations. Then we just resubmitted numbers that are consistent with how we came up with them in the first place. So I mean --

Q.499 - I appreciate it is not a windfall. I agree with you that it is really just a reduction in the revenue requirement.

MR. MAROIS: It's not a reduction in the revenue requirement. The revenue requirement did not change. It's simply an increase in interruptible revenues.

Q.500 - I am going to move on. Mr. Larlee, you were present at the hearing when Dr. Rosenberg testified on March 2nd?

MR. LARLEE: Yes, I was here.

Q.501 - I may even have the date wrong. I think these days all -- one seems to be blending into the next. Do you recall Dr. Sollows putting the proposition to Dr. Rosenberg that the 2006/2007 rates for which Disco was seeking approval are based on a test year, therefore both revenue and cost are uncertain, that is, that they are estimates?

MR. LARLEE: Yes, I believe I recall that discussion.

Q.502 - Do you therefore agree that it might not be preferable to set revenue to cost ratios -- that it might not be preferable actually to set them closer to unity than to the extremities, or I will refer to them maybe as the goal posts, of the approved 95 to 105 range because a small change could have the effect of pushing a rate class outside of the 95 to 105 range?

MR. MAROIS: Yes. My answer to that was it would be that currently the range is the range. We have one range to work with which is 95 to 105. We put forward the best estimate we can and to try to add another layer of complexity to the analysis, I mean at this stage I think we have more urgent things to address.

Q.503 - Well if you have more urgent things to address at this time, at some point in time do you think that that would be a proper goal to get away from the goal posts, if you will, of that range?

MR. MAROIS: Well I think our number one objective should be to try to bring all major customer classes within the range, and then once that's done -- I mean the Board for example has the purview of narrowing the range if it believes it's more appropriate, but currently as it stands I mean the range was set quite a few years ago and has been reiterated. So I think we should work with what we have for now. And again we still have two major rate classes that are not within the range. So I think if we can get that done over time that will be something good has been accomplished.

Q.504 - I don't disagree that getting all of the rate classes within the range would be an admirable thing to have occur. Really the focus of my question would be effectively by setting something arbitrarily at the far end, does that in some way create any bias for that rate class in the sense that, you know, as I said a small change might move it outside the class -- outside the range?

MR. MAROIS: Not under the current rules.

MR. GORMAN: Just one moment, Mr. Chairman, while I look up another reference.

Q.505 - I would like to refer you to exhibit A-57, appendix 7 at page 49.

CHAIRMAN: In appendix 7 it is page what?

MR. GORMAN: Page 49.

CHAIRMAN: Thank you.

Q.506 - Does the panel have that exhibit?

MR. MAROIS: Yes, we do.

Q.507 - Mr. Marois, this is out of the -- I take it the policy manual. I'm looking at the bottom. It says NB Power Corporate Governance Manual. Do you see that?

MR. MAROIS: Yes.

Q.508 - Does that apply to all companies, since it says NB Power as opposed to Disco? I'm just wondering does this apply to all of the NB Power companies?

MR. MAROIS: Well these are the ENDS policies for the entire group of companies, but some of them apply more specifically to certain companies. Like this one in particular the rates would apply to Disco.

Q.509 - And I see the date September 2005. So would it be fair to say that this policy wasn't in place when this rate application was filed?

MR. MAROIS: It was not in place?

Q.510 - This rate case was filed back in the spring of last year, and I see the date on this is September 2005. I'm just wondering was this in place -- was this policy in place at the time that this hearing began, or was it enacted in September of 2005?

MR. MAROIS: It was adopted by the Board in September.

Q.511 - So during the course of -- once -- after this rate hearing had commenced?

MR. MAROIS: Yes.

Q.512 - And I note that in the beginning of the policy it says, continue to provide rates that are just and reasonable for customers. And then -- that's sort of the preamble, and then it says, accordingly 1, establish a rate structure that is cost related and eliminate cross-subsidization of residential customers by achieving a residential cost recovery of 100 percent by 2010. So is it your goal -- Disco's goal -- to have a revenue to cost ratio of unity for residential customers by 2010?

MR. MAROIS: I think I mentioned a couple of weeks ago when I was cross examined on this that we have to see this as work in progress. These are the first ENDS policies that have been approved by the Board, and to be honest, even though they were approved in September work was done on them more earlier in 2005. And some of these -- especially the accordingly's will have to change significantly as a result for example of the Board ruling in December because of the transfer of cost. So I guess my best characterization of that is they are work in progress and they are not cast in stone and it's going to take a little while to get them to the level that I believe they are in final state.

Q.513 - Sure. And I appreciate your evidence that in fact by 2010 is a goal and you may not achieve it by that date. Is that what you are saying in your evidence? But does the goal remain, that's really my question?

MR. MAROIS: Well for example as a result of the December ruling and as a result of the rate proposal we have in front of the Board right now, the residential rate is within the target range. So this has a significant impact on this, at least the accordingly part of this ENDS policy, because it's really now the objective is to bring the industrial within the target range. So that's why I say even though these are longer term objectives and I believe the top part may change less over time, but the specifics will have to evolve. So I cannot speak for the Board, but my belief is that these will evolve and may evolve significantly over time.

Q.514 - Okay. Well I am going to stick with this for a moment because it talks about -- this is the current policy, is it not? I mean I appreciate your comment you can't speak for the Board, but as far as you are concerned this is the policy that exists today?

MR. MAROIS: Yes, it is.

Q.515 - And I appreciate your comments about things have changed and you may not achieve these ENDS within the timeframe set forward. So for a moment let's get by the fact that certain things are supposed to happen by 2010. Do you agree that the policy is to establish a rate structure that eliminates cross-subsidization of residential customers, and it goes on to say by achieving a residential cost recovery of 100 percent.

MR. MAROIS: That's what it says.

Q.516 - And would you agree with me that that sounds an awful lot like a revenue to cost ratio of one is the end objective from a policy point of view?

MR. MAROIS: That's what is written there, yes.

Q.517 - And can you tell me whether or not that policy would apply to other customers of Disco, because the policy seems to only deal with residential customers. Does it apply in your view to all customers?

MR. MAROIS: Well that's why I say these will have to evolve. I mean right now this is already outdated and the concern at that time when this was prepared, based on the information the Board had, the class that was significantly under-contributing was residential. So that was why the focus was on residential. Today we have a different reality which will have to be reflected in the next round of updates to these ENDS policies.

Q.518 - All right. Well this is the existing policy and my question is whether or not it might apply to other rate classes. Do you know the answer to that?

MR. MAROIS: Yes. I guess Mr. Larlee reminded me of an important point. The policy is the paragraph on the top. The accordingly is more like a means or an example of how to get to the means. But the policy is the four lines at the top of that page.

Q.519 - Where do I find that -- is there something in this policy manual that would lead me to that conclusion, or is that your view of it?

MR. MAROIS: Well that's what I'm telling you it is.

Q.520 - Is there anything in writing that you can point me to that would confirm that fact?

A. No.

Q.521 - Mr. Marois, if I could ask you to turn to page 51 of the same exhibit, two pages further ahead. That deals with your policy for environmentally sustainable energy?

MR. MAROIS: Yes.

Q.522 - And I am wondering whether or not on a policy level you would be committed to a rate structure that would allow municipal utilities to engage in their own environmentally friendly initiatives, if you would? In other words, to initiate the same or similar initiatives and would -- if in fact this ended up being something that was not all that cost friendly, if you will, that you would be prepared to deal with that in the revenue to cost ratio so as to allow any of these initiatives effectively to be passed on to the municipalities?

MR. MAROIS: I don't understand your question. This policy deals with the fact that the company is committed to meeting their renewable portfolio standards and revenue requirements.

Q.523 - Well let me take you to number 2 under the heading, Accordingly. It says the NB Power group of companies will support the provinces demand side management initiatives. And those demand side management initiatives may be difficult for the municipalities to pursue the same initiatives because of the cost factor. I guess my question is that would your policy of pursuing these

demand side management initiatives extend to the municipalities?
In other words, would there be a flow through of those benefits so that the municipalities could also come up with and use similar initiatives?
MR. MAROIS: Are you asking if Disco should help fund the municipalities for their demand side management initiatives?
Q.524 - Effectively a program such as the time of use and things of that nature, which we talked about, would it be possible for those to sort of flow through to the municipalities so that they don't end up with some cost penalty from attempting to imitate, if you will, the same demand side management initiatives?
MR. MAROIS: Well, I mean I think if there is mutual benefits of working together to try to have consistency in how we are dealing with these -- such initiatives, I believe that there is no problem with that at all, to the contrary. But I can't commit as to what it would look like. But I mean working together just makes sense.
Q.525 - Thank you.
CHAIRMAN: Mr. Gorman, I think this is a good spot for us to break for lunch and come back at quarter after 1:00.
MR. GORMAN: Thank you.

(Recess - 12:00 p.m. - 1:15 p.m.)
CHAIRMAN: Any preliminary matters?
MR. MORRISON: No, Mr. Chairman, there aren't.
CHAIRMAN: All right. Mr. Gorman, follow that.
MR. GORMAN: Well, Mr. Chairman, I will follow that by saying -- first commenting that the other Intervenors have more or less challenged me to get Mr. Marois to answer a question with yes or no. So here goes.
Q.526 - Mr. Marois, can you now confirm that Disco will be refiling RSPN-17 to eliminate all references to short-term contract?
MR. MAROIS: Yes.
MR. GORMAN: Those are all my questions.
CHAIRMAN: Well, you see how when you answer the question directly --
MR. MAROIS: I have learned. I have learned. About time.
CHAIRMAN: -- what happens. Okay. Who is next? It will be Mr. Hyslop.
CROSS EXAMINATION BY MR. HYSLOP:
Q MR. HYSLOP: Good afternoon, Mr. Chair and Commissioners, Mr. Marois. It is good to have you back, Mr. Larlee.
Q.527 - Mr. Marois, if I might take you to A-76 just for a moment, and particular to your evidence at page 2 which is table 1.

And I have been -- you know, at one of the points you have been making throughout your testimony is that you are quite pleased to be able to announce that three of the five major rate categories are within the .95 to 1.05 spread, is that correct?
MR. MAROIS: Yes. We believe that is a positive outcome of our rate proposal, yes.
Q.528 - Okay. I'm one of these guys that always looks at numbers with a grain of salt. So if you might bear with me then, looking at table 1, the biggest class is the residential class. And as I understand it, with the rate increases, they will have $515 million of revenue from the residential class, correct?
MR. MAROIS: That's the proposal, yes.
Q.529 - Yes. And as I understand your proposal you have them at .95 for a revenue-cost ratio --
MR. MAROIS: Correct.
Q.530 - -- right? And I look down a little further and I see the large industrial. And they are $296.1 million, correct?
MR. MAROIS: For firm service, yes.
Q.531 - Yes. And with that firm service for the large industrials as a whole I understand the revenue cost ratio is .92. Although it would be lower for just the firm

service, correct?
MR. MAROIS: Yes. It's .92, yes.
Q.532 - Yes. And I look again and I see the third biggest customer is the General Service II class which is $122 million, correct?
MR. MAROIS: Correct.
Q.533 - Yes. And I understand their proposed revenue cost ratio is 1.17, correct?
MR. MAROIS: Yes. Correct.
Q.534 - Yes. And that would be outside of the .95 to 1.05 range, correct?
MR. MAROIS: Yes, it is.
Q.535 - Right. And you would agree with me that the large industrial revenue cost ratio is outside the .95 to 1.05, correct?
MR. MAROIS: Yes, it is.
Q.536 - And if I go to the next class, the biggest class, the fourth-biggest class is General Service I with $111.7 million, correct?
MR. MAROIS: Correct.
Q.537 - Right. And that is a revenue cost ratio I understand you are proposing of 1.23 --
MR. MAROIS: Yes.
Q.538 - -- correct?

MR. MAROIS: Correct.

Q.539 - So if I take the four biggest classes you have, would I be correct in saying only one of those four classes is in the .95 to 1.05 boundary, Mr. Marois?

MR. MAROIS: Well, I agree with you, with the analysis you just did in terms of the largest class from a revenue point of view.

Q.540 - Yes.

MR. MAROIS: In my -- I guess in my evidence and how I presented it yesterday, when I talk about the five major classes, I had grouped together General Service I and General Service II.

Q.541 - Yes. And then taken the next two down. I understand how you did it. I'm just trying to make the point that depending on how you categorize certain things, you can change the results.

I won't use the word spin. But you can make the results show different things obviously when you are dealing with numbers?

MR. MAROIS: Well, we are not trying to be misleading in any way. When we talk about major classes we are talking about major customer classes.

So you got residential, General Service, small industrial, large industrial and wholesale. Those are your five major customer classes.

Q.542 - And there is two classes within general. So I'm not going to -- I think the point is made.
And anyhow I -- that was just a point that came out because I have heard it so often.
Anyhow, I want to pass on if I could and refer again to A-76, the customer class allocation study, schedule 5.1.
And in particular I want to look at column 5.
And Mr. Larlee you might be in a better position to help with some of this. And I will also be referring to exhibit A-80, Disco PI IR-5.
And just starting with column 5 on the cost allocation study. That's something called peaking energy cost, Mr. Larlee?

MR. LARLEE: Yes. The title of column 5 is Peaking Energy Costs.

Q.543 - Right. And I'm just trying to find out exactly what these costs are. These are costs that are incurred by Genco?

CHAIRMAN: Mr. Hyslop, we are having trouble finding what you are referring to. It's in -- well we have got the right volume, A-67, I guess it is.

MR. HYSLOP: Schedule 5.1, Mr. Chair.

CHAIRMAN: 5.1.

MR. HYSLOP: I apologize.
CHAIRMAN: And that's in which Appendix?
MR. HYSLOP: Appendix 1.
CHAIRMAN: Okay. We are there now. Thank you.
MR. HYSLOP: Okay. I apologize, Mr. Chair, for not giving you adequate time.
Q.544 - Now these are peaking energy costs, Mr. Larlee, just to go back through it quickly?
MR. LARLEE: Yes. The title of the column is Peaking Energy Costs.
Q.545 - Right. And these are costs incurred by Genco I assume?
MR. LARLEE: Well they are costs that are incurred by Disco.
Q.546 - By Disco and paid to Genco?
MR. LARLEE: And paid to Genco for combustion turbine and purchases.
Q.547 - And they would also include emergency purchases?
MR. LARLEE: Yes, that's correct.
Q.548 - Right. And the total of those is $980,000 and they are shown on line 12 under column 5, correct -- or line 15, I'm sorry?
MR. LARLEE: Line 15, yes.
Q.549 - Yes. Okay. Now is the method that you propose for allocating these costs consisting with the methodology

approved by the Board in 1992?
MR. LARLEE: There was no such allocation in the 1992 methodology.
Q.550 - Okay. Thank you. And at what point in time was it decided that we would take this $980,000 and break it out as part of Schedule 5.1? When did this change in methodology occur?
MR. LARLEE: Well we introduced this particular methodology in the cost allocation study that we would have filed in the spring of 2005. I believe it was the spring 2005. Regardless, it was the cost allocation study for the 05/06 test year --
Q.551 - Right.
MR. LARLEE: -- which the Board then subsequently ruled on in their December 21st ruling. And because they didn't specifically address this issue then we took it to assume that they approved this particular approach and we again used it in this particular cost allocation study for 06/07.
Q.552 - Sure. And you are answering my question because my next question was there wasn't a specific reference in the December 21st cost allocation decision dealing with the peaking energy costs as I recall?
MR. LARLEE: During the CARD proceeding there were several

IRs on this topic. So it was well discussed and well debated I think.

Q.553 - Yes.

MR. LARLEE: And I can list those IRs for you.

Q.554 - Well no. They are the IRs I think you referred to in PI IR-5 and that's the one I asked pulled just so we would know what they are.

MR. LARLEE: Right.

Q.555 - Right. And I'm not denying it wasn't debated, but you agree -- I think in your evidence you indicated that you made an assumption that you at the end of the day would be able to classify and allocate the peaking energy costs as you have here, you assumed that from the December 21st, 2005, ruling and perhaps the way it was treated during the hearings, correct?

MR. LARLEE: Yes, that's correct. The assumption was based on the fact that it was a topic that was well covered during the CARD hearing and based on the fact that the ruling specifically lays out that if a topic hasn't been specifically addressed then it is to be assumed to have been approved -- approved methodology.

Q.556 - Well look, I may debate that point with you but I just -- I'm not going to argue with you, but the point is I just wanted to clarify that. Now if Disco has to turn the

CTs on or emergency supplies, it wouldn't automatically interrupt residential customers that are non-electric heat, would they?

MR. LARLEE: No.

Q.557 - No. And to avoid turning CTs or emergency -- buying emergency supplies it wouldn't interrupt any firm transmission customers, would it?

MR. LARLEE: No, it would not.

Q.558 - No. And if a non-electric heat firm customer were to reduce its demand during the hours you get this energy, would your need for it decline, need for the CTs and emergency supplies decline?

MR. LARLEE: If I understand your question to be if the electric heat load were to go down or were to be lower, would the need for this energy be reduced, and the answer is yes.

Q.559 - Yes. Well, actually it was the converse of what I asked. What I was really asking is if a non-electric heat firm customer were to reduce its demand you would also be able to avoid using CTs or buying emergency supplies, correct?

MR. LARLEE: That's true, yes.

Q.560 - And if these customers are using the energy when you are using -- if these customers are using energy when you are buying the peaking load shouldn't they all contribute to paying for it?

MR. LARLEE: All of the customers are contributing -- are contributing to pay for all of the energy.

Q.561 - Thank you.

MR. LARLEE: What we have done is we have just peeled off this particular component because it is only required during the hours of the most extreme peak.

Q.562 - But that's not I don't think the way you have fully allocated in column 5, am I correct? You seem to have singled out the residential and the GS II classes for that?

MR. LARLEE: Well what I have done is I have only allocated it to the electric heat customers, because it is in those hours of extreme peak or the peakiest hours. It is electric heat that is driving that requirement.

Q.563 - But you have agreed with my earlier line of questions that everybody is using electricity at that point in time and if a non-electric heat customer were to reduce its load, then you wouldn't need the peaking or the emergency energy, you did agree with me with that, Mr. Larlee, correct?

MR. LARLEE: I guess regardless of who the customer -- who the customer would be, any increment or decrement at that

point of time is at the -- essentially the marginal cost which is what this is reflecting.
Q.564 - Okay. I won't go any further, but the -- I think the point there is made. Now going on a little further, and this will sound a little bit like deja vu all over again, and again looking at Schedule 5.1, and I'm looking at the bottom part of the page. There is a Genco third party credit of $69,400,000. I think it's line 28.
MR. LARLEE: Yes, I see that.
Q.565 - And my understanding in the way you have applied this in the cost allocation study you have treated this credit as an offset to cost when making the revenue cost ratio calculations, correct?
MR. LARLEE: Yes. That's correct.
Q.566 - Now last fall I know we went through this same line of questioning, but I think we agreed last fall that this cost offset approach was not consistent with the Board's April 1992 decision, is that correct?
MR. LARLEE: I don't recall that particular aspect of this credit ever being discussed in the CARD proceeding. The only time that the aspect of it offsetting revenue versus cost was brought up was in Mr. Knecht's evidence. I believe that was the first time in these proceedings. I may be mistaken but that's -

Q.567 - Well look, what I will do then is I am going to refer back to the April 15th 1992, decision, and page 28, and I will state the sentence. It is in paragraph 2.
The Board considers it more appropriate to show the costs as they are and to account for any net export revenues by way of a credit to the revenue of the existing in-province customer classes showing clearly the amount and how it was calculated. Now that was the 1992 decision, Mr. Larlee, subject to check if you wish?
MR. LARLEE: Yes, I believe that that's what the '92 decision has said.
Q.568 - Okay. So just so I am clear on this then, when did Disco change the methodology from that approved in 1992 --
MR. LARLEE: Is that the end of your question.
Q.569 - Okay. I will ask it again, because I was going to ask more but I broke it up. When did Disco change the methodology approved from that in 1992?
MR. LARLEE: Well we introduced this particular methodology again as part of the evidence filed for the CARD proceeding and again this particular topic was well covered in IRs and in direct testimony I believe.
Q.570 - Right.
MR. LARLEE: And as well the Board addressed export credits specifically in its decision.

Q.571 - Yes, I realize they did, but they did that more along the lines of whether it would all be applied as a credit to capacity costs, and I suggest there was no specific discussion as to whether it would be a credit to revenue or a reduction of costs, am I correct, Mr. Larlee?

MR. LARLEE: The Board's decision is quite clear. I just turned it up here on page 26. The Board states "We will accept the classification of export sales credits as proposed by Disco for the purposes of this hearing." We proposed it to be a reduction in costs from Genco and that is what we filed again in this update of the cost allocation study that we are looking at today.

Q.572 - Sure. Well again, I read the same sentence and I am not going to argue over the meaning. I took a different meaning than you did so it would be fair to say the Board could direct any adjustment if they felt that they wanted to reaffirm the 1992 decision if they wanted to, Mr. Larlee?

MR. LARLEE: My understanding is the Board isn't bound by past decisions and they can rule as they see fit.

Q.573 - Sure. And again, just to be clear on the record, this isn't a bid money item, but the -- if the decision was to allow the export sale credit to be a credit on the revenue side as opposed to a deduction on the cost side, the tendency would be to move the revenue cost ratio of all classes closer to unity for a starting point. Would that assumption be correct, Mr. Larlee? You would be increasing the numerator and decreasing the denominator, therefore moving you closer?

MR. LARLEE: Yes, I believe that is correct.

Q.574 - I think I got numerator an denominator correct. Okay. Now just to move on to another topic and I am going back to your evidence, Mr. Marois, found in A-76. And again I want to get into the criteria that you used to set the rates for the different classes and I think that starts at page 3. And as a preliminary point, during last fall's rate proposal, I think you raised concern about the potential loss of loads from large industrial customers. Now I didn't see anything in your evidence on page 3 that would lead me to believe that this was a specific criteria you used in terms of this rate proposal that you filed with the Board. Am I correct on that, sir?

MR. MAROIS: Well the criteria we used are really more on page 2 of my evidence, question 5, which are the principles. The only thing page 3 does, it is more the mechanic. Where we address potential concerns about the impact of the increase on industrial rates is on page 9 of my evidence on question 18. And it is more question that we posed because we don't know the answer. And the question we posed is will the proposed increase to large industrial rate have an impact on load forecasts? And we do have a concern but we cannot quantify it at this stage.

Q.575 - Okay. Fair enough. So again to go back, it doesn't seem to be -- although it was a concern, it wasn't one of the major criteria you used in developing your rate proposal?

MR. MAROIS: Well it is implied in the third principle we used on page 2, which is the principle of gradualism. It is implied in there.

Q.576 - Fair enough. Now I want to take you through your six steps on page 3, if I could, Mr. Marois. Now I understand the first one. And what you did was you decided to set the residential rate at .95 revenue to cost ratio. ANd that is the first criteria you used or first piece of mechanics you used to set the rates in this proposal. Correct?

MR. MAROIS: Correct.

Q.577 - Right. Now the second one I had a little bit of problem with and I went and looked at A-50. And in particular under Section 1, tab attachment 1.

And just to be clear for the record, the attachment 1 -- or exhibit A-50 was the revenue requirement and an outline of the rate proposal that would have been assumed if the cost allocation study that NB Power had before this Board last fall had been approved, is that correct?

MR. MAROIS: That was a preliminary range of increase, potential increases to the various classes based on the evidence filed at the time.

Q.578 - Right. And also I understand it was based on an expectation that certain results would flow from the cost allocation hearings which were going on in October and November, is that correct?

MR. MAROIS: That's correct.

Q.579 - Right. And as I understand it then, if the cost allocation proposals of Disco had been accepted fully, you would have anticipated a rate increase of 6 to 8 percent for General Service standard and 7.5 to 9.5 percent for General Service all electric.

That was your thinking at the time. And I think we all agree that that was at best the thoughts you had, is that correct?

MR. MAROIS: That's correct.

Q.580 - Right. Now I guess my question is, when I look at number 2 on page 3 of your current evidence in A-76, what was the thought process that went into using a criteria that was based in large part on the anticipated results from a cost allocation study that wasn't at the end of the day accepted by this Board?

MR. MAROIS: Well, I'm not certain I agree with the word criteria. These are the steps. And I think yesterday if you recall I explained that -- I know the way I laid it out in my evidence. It's five steps.

But I believe if you explain it in two steps it may be somewhat easier to grasp what we did. Really the first step we did is we looked at the rates we believe we could bring within the .95 to 1.05 range. So that is the first thing we really did.

And based on the CARD ruling, the impact of the CARD ruling, we determined that we could justify bringing three of the large major rates within the .95 to 1.05. So really that encompasses step 1, step 3 and step 4 that you see on page 3. So we said, let's try to bring those three rates within a .95 to 1.05 range.

So really what you were left with at the end of the day was two major rate classes, the General Service rate class which was above the 1.05 and large industry which was below. The issue we had then is which one do you solve? And I'm going to answer your question this way. Really at the end of the day the CARD ruling had relatively small impact on General Service rates. Because the crunch of the CARD ruling really transferred costs principally from residential to industrial. It left General Service relatively unchanged. So that's why we felt that the initially targeted range were still applicable.

And also what it did is since the previous range were below the average increase, it did help to reduce the cross-subsidizations of the General Service rate. So that was the logic. And then that allowed us to solve the remaining rate which was large industrial rates to which we only applied the residual.

Q.581 - Sure. Well, I want to go on to the first sentence here. And that is number 2. It says "The General Service rates were such that they did not exceed the preliminary range of percentage rate increases as found in exhibit A-50, section 1, tab attachment 1."

And would I be correct that if you had decided at the end of the day that you would only have a zero percent rate increase for GS I and GS II, that that type of increase would not have exceeded the preliminary range of percentage rate increases found in exhibit A-50, section 1, tab attachment 1?

MR. MAROIS: I'm going to have to ask you to repeat that.

Q.582 - Well, I'm just saying -- you know, you said that one of these mechanics you were going to use is you were not going to put rates in for General Service that did not exceed the preliminary range of rate increases as set out in exhibit A-50.
And I'm suggesting to you that if you had given a zero percent rate increase to General Services, would that not have had the effect of not exceeding those preliminary range of percentage rate increases?
MR. MAROIS: No. If you look at --
Q.583 - You mean zero would have exceeded 6 to 8 or 7.5 --
MR. MAROIS: Try not to exceed.
Q.584 - Pardon me? You could have assigned a zero percent increase and fell within the mechanics of number 2?
MR. MAROIS: We could have.
Q.585 - Yes.
MR. MAROIS: We could have. But I mean, this is meant to be from a maximum, not from the minimum point of view.
Q.586 - Okay. So in other words you weren't going to have a maximum rate increase for GS I and GS II outside of those ranges but --
MR. MAROIS: We didn't want an increase that was above what we had identified as a parameter rate of increase in --
Q.587 - Sure. Well, zero percent wouldn't have been above

that range either, would it?

MR. MAROIS: No. But I mean, again I think we have to view the wording from a maximum perspective.

Q.588 - Okay. I will go on. Number 3 and number 4 I kind of understand. I think you have explained that well. And it seems pretty straightforward.

And then you say the residual rate increase was applied to the large industrial rate. That is correct, Mr. Marois?

MR. MAROIS: Yes, it is.

Q.589 - Okay. But that really wasn't the final step in the process, was it?

MR. MAROIS: I'm not sure what you are getting at.

Q.590 - Okay. Well, let's say with the residual amount of the rate increase that applied to large industrial rate resulted in a 25 percent rate increase for the large industrial.

Would you have changed your methodology and mechanics? Or would you have just said look, that is tough, 25 percent for the large industrials?

MR. MAROIS: No. We would have questioned the results based on the principles. Again I think I mentioned that yesterday. We shared with the Board and with the Intervenors how we did it. But how we did it is secondary.

What is important is the result. And the results try to achieve the objectives or the principles that we set out on page 2 of my testimony.

And again I reiterate that we believe that the rate proposal is reasonable because -- the three reasons again -- it reduces cross-subsidization. Three out of the five major rate classes are within the target range of .95 to 1.05.

And thirdly the largest increase, which is the residential rate increase, is 1.4 percent more than the average increase. So we believe that these three factors together indicate that we have a reasonable proposal.

Q.591 - Well, again just to go on, and again applying these principles -- and these principles, if I might, they involve the exercise of judgment, would you agree with that, Mr. Marois?

MR. MAROIS: Always.

Q.592 - Yes. Okay. And that is the point I'm making. Notwithstanding these mechanics, at some point in time you applied your judgment in formulating what this rate proposal would look like, correct?

MR. MAROIS: Yes, definitely.

Q.593 - Right. And these mechanics really I suggest are maybe even secondary to that application of good business judgment on your part?

MR. MAROIS: Well, like I said, the steps are secondary. What is important is the end result and is the end result reasonable or not?

Q.594 - So at the end of the day there is no real magic to the fact the large industrial rate class became the residual. You could have started from the point of view of making the large industrial class at .95 and leaving the residential class to be the residual class at the end if you had wanted to, correct?

MR. MAROIS: Well, there is probably an infinite way you can look at the situation.

Q.595 - Thank you. That is I think a fair answer. Now my question is, in deciding what this rate proposal will look like, Mr. Marois, I assume you were involved in that process?

MR. MAROIS: Yes, I was.

Q.596 - And I assume that other officials at Disco such as Mr. Larlee was involved in the process?

MR. MAROIS: Yes.

Q.597 - And Ms. MacFarlane?

MR. MAROIS: Yes.

Q.598 - And Mr. Hay I expect?

MR. MAROIS: Yes.

Q.599 - And would there be officials from the other corporations involved with this process as well?

MR. MAROIS: Not in making the final determination, no.

Q.600 - Right. Would you have received instructions from Electric Finance Corporation in this process deciding what the rate proposal would look like?

MR. MAROIS: No.

Q.601 - Would you have had consultations with any of your customers in deciding what this rate proposal would have looked like?

MR. MAROIS: No.

Q.602 - Now the reason I ask all these questions about applications of judgment is $2.1 million of extra revenue that was found in the surplus.

And as I understood your answers, you felt that this should go back to the residential class, because at the end of the day that was where the residual rate increase was applied. And when we found the extra money, that meant we didn't need quite as much for the large industrial rate. Is that the tenor of your evidence, Mr. Marois?

MR. MAROIS: Yes. I believe you mentioned residential customers in your question. But yes -

Q.603 - Large industrial?

MR. MAROIS: -- large industrial, yes.

Q.604 - We are all slipping. I'm sorry. But when you tell me a few minutes ago that notwithstanding these mechanics it really was an application of judgment, wouldn't it have seemed to me you ignore the mechanics? And you might well have looked at this from a matter of judgment and say well, this is what the rate increase for the large industrial class is, and this extra $2.1 million may well have been better given to the GS I and GS II classes? I'm just saying that seems to be, if this was a matter of judgment, couldn't that as equally well have been applied, Mr. Marois?

MR. MAROIS: It could have if the objective was really to reduce cross-subsidization of that class. Because as I mentioned this morning, I believe where there is a true arbitrage going here is between the two classes that are one -- one being cross-subsidized and the other one cross-subsidizing, and that's General Service and large industrial.

CHAIRMAN: Mr. Hyslop, do you think it would be a good time to take a 10 minute break?

MR. HYSLOP: Sure. I have got one fairly lengthy line of questioning and a few little things at the end. So I expect after break I will probably use up the rest of the afternoon, Mr. Chair.

(Recess)

CHAIRMAN: Go ahead, Mr. Hyslop.

MR. MORRISON: Perhaps before Mr. Hyslop starts, Mr. Chairman, there is one additional undertaking response that we might as well get marked. Hopefully we will have more in the morning. The next one is undertaking number 2 from February 16th.

CHAIRMAN: And that is A-150. Go ahead by all means, sir.

Q.605 - Thank you, Mr. Chair. I want to move on and talk about large industrial interruptible surplus customers and rates. Now subject to check, Mr. Larlee, on December 21st 2005, the Board in its CARD decision stated, the Board considers it appropriate that the interruptible rate customers should pay for some of the fixed generation costs. The specific amount of the contribution will be determined during the review of Disco's revenue requirement.

Now I may have missed it, but my understanding -- or I guess the fairest way to put the question -- how much are you proposing the interruptible surplus customers pay towards fixed generation costs?

MR. LARLEE: There is an IR, it's PI IR-11 from February

9th, which is again A-80, which goes through the calculation exactly what the cost and the revenue is for interruptible surplus revenue -- interruptible surplus load rather. And as a result of the revision we made to the interruptible revenue then that IR really should be corrected. But once that correction is made it would show that there is a positive contribution of $1.4 million as a result of interruptible surplus revenue.

Q.606 - Okay. But my question is a little more specific than just the totals. The Board's instructions were -- or the Board considered it appropriate that the interruptible rate customer should pay for some of the fixed generation costs. And maybe a little bit of background. As I recall the original CARD proceedings, one of the points that was made was interruptible surplus customers essentially pay the marginal costs for the next megawatt hours plus a $3 or a $9 adder, is that correct, Mr. Larlee?

MR. LARLEE: Yes. Currently there is a $3 off peak adder or mark-up to the Genco cost, and a $9 on peak.

Q.607 - Right. And one of the things I think I was complaining about was that that meant that a large amount of power, I think was close to 30 percent of the power consumed by the large industrials, they were purchasing it without any contribution to the fixed generation costs. And I recall that that was the tenor of my argument. And I think that's at the end of the day and the Board can certainly tell me if I have misread it.

But the Board was making a clear suggestion that some of the fixed generation costs should be paid by surplus interruptible large industrial customers. And it's obvious to me you have not made any specific proposal to address that point in your rate proposal, correct?

MR. LARLEE: Well Mr. Marois did make a specific recommendation on page 12 of his evidence. Perhaps we can go there.

Q.608 - Go ahead.

MR. MAROIS: Because before we go there, you are correct that the Board ruled that it will establish a specific amount of contribution, but they didn't ask us to make a proposal. So that was I guess the first comment I would like to make.

But just coming back to IR-11, the PI IR-11, it's important to note that there is a contribution. There is a contribution of 1.4 million once you have factored in the correction that was made a couple of weeks ago, which equates to about -- which equates to about $1.45 per megawatt hour.

So that's already built into the existing rates. And I guess my recommendation in my evidence was since there is really no evidence on the record substantiating an amount different than that, it's to deal with this at the subsequent stage, especially since the Board already ordered us to do some certain analysis on the surplus interruptible rate.

Q.609 - I understand that you are to do some analysis down the road with regard to limiting surplus energy to 15 percent of firm industry, and that analysis is coming. So you looked it over and according to you then, Mr. Larlee, you saw a contribution of $1.45 per megawatt hour to the fixed generation cost, and on that basis it was not anticipated there would be any further proposal or addition to the add-ons to take into account a greater contribution to the fixed generation costs, is that correct?

MR. MAROIS: At this stage.

Q.610 - At this stage. Okay. Now as I understand it particularly in the case of surplus energy that was added to the tariff in the late 1990's, Mr. Larlee?

MR. LARLEE: Yes. I believe that's correct.

Q.611 - And then --

MR. LARLEE: It is certainly on the record exactly -- the entire history of large industrial rates is on the record.

And we can dig out that IR and get the --

Q.612 - Sure. I don't need to get -- late '90s and then I think in fact it was timed at the time that the Irving mill here in Saint John moved from a chemical production to a more mechanical and electricity-driven type of production. Would that be essentially correct?

MR. LARLEE: I wasn't directly involved with the development of the rate. But I believe the impetus for the rate was the fact that we had surplus energy --

Q.613 - Yes.

MR. LARLEE: -- largely as a result of the Belledune generating station.

Q.614 - Okay. Now the large industrial customers that use surplus energy, would they have any consultations with you regarding the proposal or the question of a proposal for an increase to the add-ons to the surplus energy rates prior to this proposal to this Board?

MR. MAROIS: You talk for the future or the evidence that we have on the record right now?

Q.615 - For the record you have of -- this proposal you now have before the Board?

MR. MAROIS: No. This is our view.

Q.616 - This is your view. Okay. Now --

MR. MAROIS: One thing we mention is -- and one thing we have had discussion with the large industrial customers on is as a result of the Lepreau refurbishment and because of the outage, there is a risk that that audit will have a significant impact on how we price surplus energy.

And we need to take a good look, a close look at that to make certain that the pricing doesn't get out of whack during refurbishment.

So we are planning to have consultation or discussion with the large customers to see if there is any potential solution. And any potential solution would have to be brought to this Board for approval.

Q.617 - Well, that is good. Now I guess one of the risks is during the Point Lepreau outage that a number of the customers that take surplus energy will want to move to firm. Is that the risk that you are concerned about, Mr. Marois?

MR. MAROIS: Well, I guess that would be ultimately the consequence. If the interruptible price gets out of whack or out of line with the firm rate, that will potentially be what will happen.

Q.618 - Yes. And if there was a load move of your large industrial customers to firm, this would create capacity problems, correct?

MR. MAROIS: Yes. And especially during the outage where we already have --

Q.619 - And this no doubt I take it would result in potentially an increase in the use of emergency purchases and the use of CT units, Mr. Larlee?

MR. LARLEE: Not necessarily, no. Genco could gain access to less expensive energy during that time. And it is not necessarily going to come from CT or emergency purchases which are the most costly sources.

Q.620 - Sure. Now that would be sourcing other supplies of energy if necessary during that period?

MR. LARLEE: Correct.

Q.621 - Right. Probably from either the New England or Quebec market?

MR. LARLEE: I don't know. I really can't comment.

Q.622 - Okay. So one of the possible solutions would be you would have to turn the CT units on?

MR. LARLEE: That would be possible certainly for a part of the requirement.

Q.623 - Right. So you would be turning -- there is a possibility of emergency purchases and turning the CT units on, because large industrial firms switch to firm supply from surplus supply, correct? That is a possibility?

MR. LARLEE: Well, anytime that you start to get close to your maximum resources, you are much more likely to have to use your most expensive generation. So without the option to interrupt, you are more likely to use CTs.

Q.624 - Right. Now I guess one of the things that leads me back to -- and we looked at this at the very first of the cross examination -- is schedule 5.1 in your cost allocation study. Schedule 5.1.

MR. LARLEE: Yes, I have that.

Q.625 - Yes. And again I go to column 5. And it appears to me that even though during this period where heavy industrial, large industrial customers switch back to firm supply and require an increase in peaking energy costs, you are proposing that these be allocated to the residential electric-heated and the General Service electric-heated classes, is that correct?

MR. LARLEE: Well, the cost allocation study that you have before you is for what we are projecting or forecasting for 06/07. So we have a certain amount of interruptible load. And we have Genco's supply resources available to us --

Q.626 - Sure.

MR. LARLEE: -- as forecast. And our load is as forecast.

Q.627 - Okay. So in 06/07 that would be the case. Looking down the road a few years, if there was a big move to firm energy, we would expect a large amount of the peaking energy costs perhaps be allocated to firm industrial, is that correct?

MR. LARLEE: I'm not -- under the methodology that I'm using here, under this methodology, it's allocated to those classes that have electric heat.

But I think it is important to note that -- my understanding that is even as we get quite close to our resources, as the load sort of meets the resources, that the amount of CT running time and the cost, the associated cost is still quite small.

We are not talking in the order of 100 times this figure or even 10 times this figure. We are talking in the order of a few times this figure. So it's not as dramatic an increase as one might expect. That's right. Because as Mr. Marois points out is that really the CTs are only used for the very sharp peaks and because they are sharp peaks there is not a lot of energy, not a lot of area under the curve so to speak.

Q.628 - Well, we will have to wait to 2008/2009 to know for sure perhaps. Do you agree with that?

MR. LARLEE: Well I mean once we have our budgets and projections for that year then we will have a better idea. I'm just giving you -- trying to give you a sense of how that number might change.

Q.629 - Just to go on, you took me out of my order a little, so I will come back to where I was coming. We don't have a specific new proposal then to deal with fixed generation costs, based on your thoughts and the Board's decision, but interruptible -- just to review -- interruptible customers are those that own their own generation capacity but purchase power through Disco because it's less expensive than running their own generators, is my understanding correct, Mr. Larlee?

MR. LARLEE: I think in the vast number of situations it's always less expensive for them to generate their own energy because it's linked to the process. They have to produce the steam to dry the paper and the steam -- the waste steam -- and I'm sure that's not the proper term but -- is then used to generate electricity. If for some reason their generator is not available and they have maintenance problems, as all complex pieces of machinery do, then they would purchase from us. So it really is a non-firm back-up or standby product.

Q.630 - Sure. And again the distinction is subtle, but interruptible customers at least have their own generation where the traditional surplus customers don't have that type -- no self-generation, correct?

MR. LARLEE: Yes, that's correct.

Q.631 - RIght. I wasn't trying to -- it's a simple point I wanted to make there. Now the question then arises who decides when these customers would be interrupted from the utility's perspective. Do these customers can self-interrupt themselves or is this something that Disco decides?

MR. LARLEE: My understanding is that the system operator decides.

Q.632 - Okay. And when you say the operator you are referring to?

MR. LARLEE: The NBSO.

Q.633 - Okay. And the costs that are allocated to the surplus customers, there is some transmission and also I believe under the CCS they attract a little bit of the general and Holdco overhead costs, but is that the type of cost that they might attract over and above the straight fuel costs, Mr. Larlee?

MR. LARLEE: In the cost allocation study there is really only two costs that are allocated to that particular load. But we have to remember that these customers also take large industrial firm products so that the customers will be allocated other costs. But if we are just talking about the interruptible surplus load itself, it's only allocated, one, to generation costs and two, the transmission tariff costs.

Q.634 - And surplus interruptible customers get assigned some of the transmission costs, correct?

MR. LARLEE: That's right. The interruptible customers because they have self-generation are directly assigned to self-generation charges under the tariff, and then the surplus customers are assigned a prorated share.

Q.635 - So in addition to these two costs then we have the adders of $3 and $9 that you spoke about earlier, correct?

MR. LARLEE: No, not in addition to the costs. Now you are talking about revenue, the flip side of the coin. So on the revenue side it's the costs that are passed on to us by Genco, which includes all the losses and their incremental generation costs, and then we add on the adders as I described earlier, with the on-peak adder and an off-peak adder, and that's the price the customer is quoted in advance and then pays.

Q.636 - And these adders were first put in place even before the late '90s. They have been the same for a good number of years, Mr. Larlee?

MR. LARLEE: I believe the adders are put in place around the same time as we put in the surplus energy product.

Q.637 - So some time before 2000 then?

MR. LARLEE: Yes. Exactly.
Q.638 - Right. And have they changed at all over the years since they were first put in before 2000?
MR. LARLEE: Well prior to there being an on-peak and off-peak adder there was an adder that was flat, that didn't change on-peak and off-peak.
Q.639 - Have they changed since the late 1990s?
MR. LARLEE: And then we put in the on-peak and off-peak at the time of the surplus. I just wanted to clarify that. And they haven't changed since then.
Q.640 - They haven't changed since then. So have you from time to time evaluated these adders and looked at the costs that they are capturing, made a full analysis of that?
MR. LARLEE: No, we have not.
Q.641 - No. Okay. So you haven't really looked at the specific transmission costs, the overhead costs, that may be contributing part of -- is intended to be covered by these adders?
MR. LARLEE: Can you repeat the question?
Q.642 - Well the transmission, various overhead costs, you haven't evaluated the extent to which they are being recaptured by these adders?
MR. LARLEE: Yes, we have, in that we -- once the

transmission tariff was in place we looked to see if the adder was recovering that cost or close to recovering that cost, and they were. And now I believe that the revenue to cost ratio for that particular -- those particular sales is in the order of 1.02. So we are very close to one and I think that's probably reasonable, given the cost to allocation methodology that we have.

Q.643 - Now just to go on, if we have the surplus -- when I looked at the evidence again and I'm looking I think at Mr. Marois' Schedule 2 on page 4 of his evidence.

MR. MORRISON: Mr. Chairman, just for clarification.

MR. HYSLOP: Exhibit A-76.

MR. MORRISON: No, I understand that but on many of the questions today have been referring to tables 1 and tables 2 in the filed evidence. And as you know, those two tables have been updated by exhibit A-121. It is the only point I want to make. There may be some confusion. Mr. MacNutt brought it up to me at the lunch hour.

Q.644 - Okay. Well I don't think my numbers change with regards to the questions I am asking. But in the large industrial on table 2, we have a revenue cost ratio of .92, Mr. Larlee?

MR. LARLEE: Under column 3?

Q.645 - Column 3, yes.

MR. LARLEE: Yes.

Q.646 - That's the one that counts. And that .92 would reflect large industrial both surplus and firm, correct?

MR. LARLEE: Yes. It includes firm and interruptible surplus or the non-firm products.

Q.647 - Yes. And you have just told me that the surplus interruptible revenue cost ratio, if separated out, would be a little over 1.0, correct?

MR. LARLEE: Yes, that is correct.

Q.648 - Right. So it would stand to reason for me that the firm large industrial revenue cost ratio to have the weighted average at .92, the firm large industrial average would have to be less than .92, correct?

MR. LARLEE: Yes, that is correct and I believe I referred to the IR that gives that split, that breakout earlier when talking with Mr. Gorman.

Q.649 - That's right. And I believe you are going to present us with some final numbers as to how that firm large industrial revenue cost ratio would look once it is broke out. Correct?

MR. LARLEE: Well actually that IR did break it out in terms of firm and non-firm. Mr. Gorman was looking for distribution transmission which it doesn't do and that's what I undertook to do. But if you like we can look at the IR now.

Q.650 - Just give it to me and I can check it.

MR. LARLEE: Okay. I have to find it again. Just one second.

Q.651 - Okay. You can provide it --

MR. LARLEE: I'm sorry it took so long but it becomes a challenge to find them.

Q.652 - Yes.

MR. LARLEE: And as it turns out I didn't find the right one. Okay, so we will -- I will have to get that to you.

Q.653 - Just confirm it to me.

MR. LARLEE: Yes.

Q.654 - And the main point is it being that the firm large industrial would be less than .92 and you are going to break that out again between firm large industrial transmission and firm large industrial on the distribution system. Correct?

MR. LARLEE: Yes, that was the undertaking for Mr. Gorman.

Q.655 - Thank you. Now I just want to go on to one last point on this -- on this -- there are numbers relating to costs and the PPAs are tied into CPI. Is that correct, Mr. Marois?

MR. MAROIS: Yes.

Q.656 - Yes. And has there ever been a CPI adjustment to the interruptible surplus adder? I believe the answer to that would be no?

MR. MAROIS: No.

Q.657 - Now just moving on. Switching. Customers, customers that are firm and want to go to surplus or vice versa. Now we have already discussed some of the concerns you have with Point Lepreau. And would you agree that in a tight supply market, firm transmission customers would -- firm transmission would be considered a good thing for a heavy industrial customer. Would that be a fair statement?

MR. MAROIS: I'm not certain I understand your question.

Q.658 - Well if I was a large industrial customer, and I knew there was going to be a lack of supply because Point Lepreau was down, switching to firm would be something I'm sure they would carefully consider.

MR. MAROIS: I'm certain they would. At the end of the day, my bet is it would come down to economics.

Q.659 - Yes.

MR. MAROIS: Which one is the best option.

Q.660 - Right. And for these customers to switch from surplus to firm what type of notice do they have to give you, Mr. Marois?

MR. MAROIS: My understanding is it is 12 months notice.

Q.661 - Right. Now is that something that you would insist on or is that something that would be worked out with the customer?

MR. MAROIS: You are asking me to speculate. I mean, at this stage the notice provision is twelve months so unless something happens that would be the notice.

Q.662 - Okay. So there would be no question of you insisting on your contractual rights? It is not an option for you to insist on the twelve months? You could back away from that, if you wanted?

MR. MAROIS: I can't comment on that at this stage.

Q.663 - OKay. Fair enough. You have not received any notices from any of your surplus customers in anticipation of the Point Lepreau refurbishment at this stage?

MR. MAROIS: No. What we have received requests on the anticipated impact and that is what we are working on right now. And I assume it is going to be based on that analysis that they are going to start looking at options.

Q.664 - Right. Now if some of these customers switch from surplus to firm, how long do they have to stay to the firm part of the contract with you, Mr. Marois?

MR. MAROIS: It would be the same 12 month notice because the 12 month notice is to change the firm contract load.

Q.665 - Okay. So if -- unless they got into firm they would have to stay with you at least 12 months or give you at least 12 months notice before they switch back to surplus?

MR. MAROIS: Based on the contract provisions, yes.

Q.666 - Yes, okay. Now I guess my concern is that you have had some of these customers who for a good number of years been taking advantage of surplus service receiving discounted rates and hardly ever being interrupted and now when they switch over to firm, they can just simply do so, get past the Point Lepreau refurbishment period and then go back to the -- possibly again the cheaper surplus rates. What is Disco going to do to protect itself in the long run if they take on this additional firm -- these additional firm commitments?

MR. MAROIS: Well maybe a couple of points. I think we shouldn't lose track of the fact that the fact that we have these interruptible customers benefits all customers. At the end of the day, if we didn't have these customers we may have had to put additional facilities in place or buy additional power. So that is a benefit to all. Further and secondly is there are contract provisions to avoid customers from going back and forth. And also if the firm capacity is not available, then we don't need to accommodate these customers. I mean that is part of the contracted provisions as well. So these are the safe guards that are in place.

Q.667 - And the safeguards that you have are the one year notice provisions to switch in to firm or switch out of firm? Correct?

MR. MAROIS: Yes.

Q.668 - Yes. And you know, I am just putting out a hypothetical here. But you know, why wouldn't you take the position if you want to switch into firm we want you to switch in for a minimum period of five years?

MR. MAROIS: Well that is not something I have given much thought but I mean, it is something that could be conceivable.

Q.669 - Okay. And how would you -- what type of decision making process would go into NB Power developing a bargaining position along that line, Mr. Marois? Who wold decide it and who would you talk to about it?

MR. MORRISON: Mr. Chairman, it just -- the only point I want to make is this has nothing to do with 06/07 revenue requirements. Because Point Lepreau refurbishment is 07/08, I believe and what happens after that 08/09 and what happens after that has nothing to do with what is before the Board.

MR. HYSLOP: My questions are about contracts as they exist today that allow parties to switch into and out of firm to surplus and surplus to firm.

CHAIRMAN: Go ahead, Mr. Hyslop.

MR. HYSLOP: Thank you very much, Mr. Chair.

Q.670 - With that thought in mind, I guess what would happen if a large customer came and said, look, it is crucial to our operations that we are able to switch in 30 days from a surplus to a firm or once at some point in time we wanted to switch back. Are accommodations made in those type of cases, Mr. Marois, to customers notwithstanding the contract?

MR. MAROIS: Well it's something that's to my knowledge has never happened. And so I am not certain exactly how we would deal with it. I mean we would have to look at the circumstances of the day and look at the contractual provisions, look at the benefits to Disco and the other customers of having them stay on interruptible versus going firm. So there would have to be I presume a series of analyses done to understand the situation.

So it's hard to answer a question like that just on a purely theoretical point of view.

Q.671 - Okay. So it is possible then in a certain economic background or a customer in a certain type of situation that the strict performance of the contract might not be insisted upon by NB Power?

MR. MAROIS: I haven't said that.

Q.672 - I didn't suggest you did. I was asking --

MR. MAROIS: In the normal course of business, it's to stick with the contractual provisions. But I mean contracts have been reopened, renegotiated in the past, especially if there is mutual benefits then -- I mean but -- I mean the normal or the base case is the contract rules.

Q.673 - Just bear with me if you might a moment longer, Mr. Chair. I refer you if I might to Disco PI IR-11, which is found in exhibit A-80. Do you have that, Mr. Marois?

MR. MAROIS: Yes.

Q.674 - Yes. Okay. And I am looking at part C of that IR.

MR. MAROIS: Yes.

MR. HYSLOP: I am waiting for Commissioner Dumont, who is still looking for the IR.

MR. DUMONT: I am fine.

MR. HYSLOP: You are fine. Thank you.

Q.675 - I am looking at C. And C says, "Please identify all restrictions that are currently placed on surplus interruptible customers that would prevent them from switching to firm service during Point Lepreau refurbishment regardless of the magnitude of the margin earned from the adders?" And in the second paragraph, the first paragraph -- second paragraph of the answer on page

2 of the IR, "As described in exhibit A-76 --" and there is a reference, it says, " -- Disco is concerned about the impact of Point Lepreau refurbishment on interruptible surplus pricing and has initiated a review." Do you see that, Mr. Marois?

MR. MAROIS: Yes, I do.

Q.676 - And I guess some of my questions are what was the nature of the review that is being undertaken?

MR. MAROIS: Unfortunately, two of the people involved in the review are sitting at this table.

Q.677 - Well that's why I left it just for you, Mr. Marois.

MR. MAROIS: No, but joking aside, I mean this is something I initiated last fall. But unfortunately because of this rate proceeding, Mr. Larlee has to be intimately involved, I have got to be involved and Mr. Kennedy also has to be involved. So as soon as this proceeding is over, this is something we are going to turn our attention to. And really what we want to do is understand -- initially understand where we can anticipate the interruptible and surplus pricing to go during refurbishment. And also there is -- we will have to a similar analysis for firm pricing and then look at different alternatives, talk to the large industrial customers to get their input to come up with a proposal. And if the proposal involves changing rates, we will have to come to this Board.

Q.678 - So is this something that's being thought through of in terms of rate adjustment for surplus interruptible, as well as, firm for large industrial users, Mr. Marois?

MR. MAROIS: I can't anticipate the outcome. But typically what we want to understand is the potential impacts of refurbishment on rates. And especially the reason why there is a specific concern with interruptible rate is interruptible and surplus pricing is real time pricing. And it's every hour based on the units that are running at that time.

Well during the refurbishment, Lepreau will not be there. So there is going to be bang an immediate impact on interruptible surplus pricing. So that's why the need to address this is more urgent.

There is also going to be a potential impact on firm pricing, but the impact is somewhat delayed compared to -- or not as direct I should say compared to the -- and I believe Ms. MacFarlane has addressed this at one point in time during this proceeding that the -- when there was discussion around the fact that there was consideration about modifying the Lepreau PPA. What it was regarding exactly that is try to modify the Lepreau PPA to take into account costs that will be incurred during the outage to

come up with a proposal to come to this Board to deal with these costs from a longer term perspective.
In other words, amortized over time the short term impacts of the outage.

Q.679 - And will part of that proposal and review be a reconsideration of the amount of the adders that would be added to the surplus interruptible rates?

MR. MAROIS: Well if the Board accepts our recommendation to deal with this at the same time we are dealing with the other analysis, yes, it would.

Q.680 - When do you anticipate this review to be complete, Mr. Marois?

MR. MAROIS: Well, I am hoping in the coming months.

Q.681 - Three months?

MR. MAROIS: I don't know.

Q.682 - You are not very far along with it by the sounds of things. It's more conceptual at this stage?

MR. MAROIS: Conceptual, but we are on track.

Q.683 - The concept is on track. Okay. It's late. Now my major concern in this line of questioning and maybe I haven't expressed it, is that I have got concerns about customers being able to easily move back between firm and surplus. And whether or not even the contracts may or may not be enforced. How would you respond to my concerns in that regard, Mr. Marois?

MR. LARLEE: I think it's important to note that the way the industrial contracts are structured is that any customer, regardless of whether they take interruptible or surplus load or not is subject to this requirement, in that they have to give 12 months notice for any change in their firm contract amount.

So this is not just a requirement of interruptible surplus customers, it's a requirement of all -- of all large industrial customers that have a contract with us.

Q.684 - And I just want to go back a little bit. This surplus energy part of the tariff that was brought in the late 1990's, to my knowledge that was never subject to a regulatory hearing. It was just introduced and made part of the tariff, am I correct on that, Mr. Larlee?

MR. LARLEE: Yes, I believe you are correct.

Q.685 - Right. And as I understand it at present you are undergoing a fairly significant review of the impact of surplus and firm energy especially during the refurbishment hearings of which you have just described to me as at least in the conceptual stages, Mr. Marois?

MR. LARLEE: Yes.

Q.686 - Yes. So I guess where I am going with this is that this whole area of surplus and firm, do you envision this being something that the regulator should play some role in in order to assure other rate classes are adequately protected?

MR. LARLEE: I think it's clear in Mr. Marois' evidence that what we are recommending is that we include -- we include in the studies that the Board has asked us to do as a result of the ruling, we include in that a broader review of interruptible and surplus products.

Q.687 - Right. And by the sounds of your answer, you would anticipate all of this coming before the Board for final approval on how surplus and firm energy would interact in the future then. Am I reading your answer correctly there, Mr. Larlee?

MR. LARLEE: Yes.

Q.688 - Thank you very much.

MR. HYSLOP: Mr. Chairman, I have got 15 seconds after 3:00 and I apologize for going over. I thank both Mr. Larlee and Mr. Marois. I anticipate it's the last time I will see you at this hearing and I do appreciate your co-operation throughout.

CHAIRMAN: Good. Thanks, Mr. Hyslop. We will adjourn until tomorrow morning at 9:15.

(Adjourned)

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

Reporter