New Brunswick Energy and Utilities Board

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

Trade and Convention Centre, Saint John, N.B., on November 29th 2007.

Henneberry Reporting Service

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Undertakings

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BEFORE: Raymond Gorman, Esq., Q.C. - Chairman
Cyril Johnston, Esq. - Vice Chairman
Mr. Roger McKenzie - Member
Mr. Don Barnett - Member
Ms. Connie Morrison - Member
Mr. Yvon Normandeau - Member

N.B. Energy and Utilities
Board Counsel - Ms. Ellen Desmond

Board Staff - Mr. Doug Goss
- Mr. John Lawton
- Mr. David Keenan
- Mr. Dave Young
- Mr. Andrew Logan

Secretary to the Board - Ms. Lorraine Légère
Assistant Secretary - Ms. Juliette Savoie

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CHAIRMAN: Good morning, everyone. I will take the appearances at this time.

MR. MORRISON: Thank you, Mr. Chairman, Members of the Board. Terry Morrison and Ed Keyes on behalf of the Applicant. With me at counsel table today is Lori Clark, Mike Gorman and Darren Murphy.

CHAIRMAN: Thank you, Mr. Morrison. CME?

MR. WOLFE: Mr. Chairman, Gary Lawson will not be here today or tomorrow but I believe Dave Plante is here. He is out of the room right at the moment.

CHAIRMAN: Thank you. Conservation Council of New Brunswick Inc.?

MR. KIDD: Good morning, Mr. Chairman. Scott Kidd for the Conservation Council.

CHAIRMAN: Thank you, Mr. Kidd. I don't believe Enbridge is here today. Is Irving Oil here today? JD Irving Pulp & Paper Group?

MR. WOLFE: Mr. Chairman, Wayne Wolfe.

CHAIRMAN: Thank you, Mr. Wolfe. NB Forest Products Association? Dr. Sollows, I understand he is not here today either. Utilities Municipal?

MR. ZED: Good morning, Mr. Chair, Board members. Peter Zed representing Utilities Municipal. And I am joined by Dana Young and Eric Marr.

CHAIRMAN: Thank you, Mr. Zed. Vibrant Communities Saint John? Mr. Peacock here? No. Public Intervenor?

MR. THERIAULT: Good morning, Mr. Chair. Daniel Theriault. I am joined this morning by Robert O'Rourke and Jayme O'Donnell will be joining us shortly.

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

MS. DESMOND: Ellen Desmond, Mr. Chair. And with me is John Lawton, Dave Young, Dave Keenan and Board Consultant, Andrew Logan.

CHAIRMAN: Okay, Ms. Desmond. And preliminary matters before we continue with cross examination of this panel?

MR. MORRISON: Mr. Chairman, I believe there are two outstanding undertakings. We are working on them. We hope to have one completed by mid-morning and the other hopefully if not by the end of the morning, after the lunch break.

CHAIRMAN: Thank you, Mr. Morrison.

MR. THERIAULT: Mr. Chairman, I received a copy -- I think all parties as well as the Chair received a copy from Mr. Morrison dated yesterday. I don't know if now would be the time to deal with that.

CHAIRMAN: Is that with respect to this letter yesterday dealing with whether or not Mr. Logan should review the information. I guess my intention was to deal with that this afternoon, perhaps after this panel is concluded. And the other thing that I did want to do this afternoon, but Mr. Lawson isn't here, was perhaps set a date for his motion. So perhaps we can deal with that tomorrow. Anyway, do you want to come forward then, Mr.

Theriault?

<u>MS. MACFARLANE, MR. KENNEDY, MR. GOOD</u>, continued:

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

Q.298 - Good morning, Mr. Chair, panel members. Good morning, panel. Perhaps we could start out today -- I know you have identified your positions and whatnot the other day, but just so that I am clear.

Ms. MacFarlane, I know that you had testified I believe on the first day that you are the CFO and Vice President Finance for all companies under the NB Power group of companies?

MS. MACFARLANE: That's correct.

Q.299 - And so you are specifically not a representative of DISCO?

MS. MACFARLANE: For purposes of this hearing I am testifying as a representative of DISCO.

Q.300 - Okay. Now Mr. Good, you represent Genco?

MR. GOOD: That's correct.

Q.301 - Okay. And can you repeat -- I'm sorry -- because I didn't catch your title the other day.

MR. GOOD: I am the Finance Director.

Q.302 - Okay. And Mr. Kennedy, that leaves you. And I believe you stated you are a representative of DISCO?

MR. KENNEDY: Yes, that's correct.

Q.303 - And your exact title?

MR. KENNEDY: Yes. My exact title is Director of Energy Supply and Contract Management.

Q.304 - Now, Mr. Good, do you hold any position at all with DISCO?

MR. GOOD: No, I do not.

Q.305 - Okay. And Mr. Kennedy, do you hold any position at all with Genco or any of the other companies?

MR. KENNEDY: No, I do not.

Q.306 - At this time, panel, I want to introduce some aids for cross examination. I have provided them, Mr. Chairman, to the other parties and at this time I would like to submit them to the Board. And I will go through them once the Board has an opportunity to receive a copy.

CHAIRMAN: Thank you, Mr. Theriault.

Q.307 - Now, panel, the first item -- and you do have a copy, do you, panel?

MS. MACFARLANE: Yes, I do.

Q.308 - And the first item has two parts to it. One is a small portion of the affidavit of you, Ms. MacFarlane. And the second is the citation of the Board's decision of July 14th 2007.

The second item is entitled "Witness panels, NB Power Distribution Customer Service Corporation". And the third item is a spreadsheet that is entitled "NB Power's combined statement of operations."

The spreadsheet was developed by taking information from the annual report from NB Power from 1992/93 fiscal year to 2006/07.

Now Ms. MacFarlane, can you confirm that you made in your affidavit the statement attributed to you, at the first page of that document?

MS. MACFARLANE: Subject to check I will agree with thAT.

Q.309 - Okay. And are you prepared, subject to check, that I correctly cited the statement of the Board in its July 16th 2007 decision?

MS. MACFARLANE: Yes.

Q.310 - And panel, are you prepared to accept that I have submitted an accurate copy of the schedule of witness panels as distributed by the Applicant?

MR. MORRISON: I believe it was revised earlier this week with respect to week 2, the deferral account. And as you know, Mr. Chairman, or perhaps you don't know, that the schedule is prepared in conjunction with all the parties as the result of a conference call. And it is a best estimate of where we might be.

But we did circulate a revised one that had had the -- as a result of the Board comments on Monday that the deferral account would be moved up to the week of December 10th. And we fixed, I believe at the request of Mr. MacDougall, that rate design would be firmly on December 10th and there may be -- well depending on how things go -- December 6th may be an off day.

MR. THERIAULT: Mr. Chairman, and again I understand what my friend is saying, and that is not the purpose here. I understand there was one. I guess maybe I could clarify my question. Do you agree that the second item dealing week 1, two days, November 27th and 29th was an accurate depiction of the document that was submitted by DISCO?

MR. MORRISON: Again, it was prepared by me but it was as a result of input from all parties, yes.

Q.311 - Now the third item, Ms. MacFarlane or panel, is a spreadsheet that is entitled "NB Power's combined statement of operations". Now, panel, are you prepared to accept, subject to check, that the information in the spreadsheet entitled "NB Power's combined statement of operations" is correct?

MS. MACFARLANE: Mr. Theriault, as you know, I just received this and I have taken a few minutes while we have been preparing to look at some of the numbers, and I do notice that in the statement of expenditures for the year 1998/99, the $450,000,000 write-off of part of the capital cost of Lepreau is missing. And I notice in 2003/2004, the $44,000,000 write-off of the fuel handling system is missing.

Those are in our financial statements. They are not on this report.

I have quickly checked numbers back as far as 98/99 in the short period of time I have had and except for some rounding issues, most of the rest of the numbers seem to be accurately portrayed. But those are two pretty significant missing numbers, those two write-offs. And as I say, I haven't checked that there may be other one time write-offs missing since that category is not even noted under the expenditure column.

Q.312 - So would you agree that subject to your qualifications that you made here this morning, and subject to further check, that it is an accurate depiction?

MS. MACFARLANE: Yes.

Q.313 - Thank you. No, Mr. Chairman, at this time I don't know if the proper procedure would be to mark these for identification so they could be a reference to them

CHAIRMAN: Is it your intention to eventually have this marked as an exhibit?

MR. THERIAULT: No, it's not.

MS. MACFARLANE: If I may, Mr. Chair, one other difference I noted. Starting in 03/04, in the expenditure column, you will notice when you look at it, that there are no numbers under purchased power. The total under fuel is actually a representation of both fuel and purchased power, which is fine. It is just mislabeled. But again, the total is correct.

Q.314 - That is fine. These are questions that I intend to get into so if you will just wait for the questions. And then afterwards on rebuttal if your solicitor feels there should be further follow-up, I'm sure he can do it.

CHAIRMAN: Mr. Theriault, we are going to mark this document -- I don't think anything else has been marked for identification up to this point in time so I am going to mark documents for identification without reference to party. And this will become number 1 for identification.

Q.315 - Thank you, Mr. Chair. Now, panel, I have a very simple proposition to bring forward here today. The proposition is that we can quantify in dollars the difference between the PPA costs and the underlying generation costs for the test year. And I am going to ask you -- or I am going to want your help to assist me with this.

Now Ms. MacFarlane, as Chief FInancial Officer of each entity, would you be familiar with the costs and revenues associated with each of the companies in the NB Power group of companies?

MS. MACFARLANE: From the period that those companies existed, yes.

Q.316 - Okay. Now if you could help me out here. Let's refer to the spreadsheet entitled "NB Power combined statement of operations". And I have a series of questions on this spreadsheet.

First of all, in the expenditure section and I am referring to the line entitled "Purchased Power", what is this?

MS. MACFARLANE: Purchased power would be exactly that, energy and in some instances capacity that is not produced by the NB Power system per se but is purchased under contract from other parties.

Q.317 - Okay. And why is it no longer a separate line item in your annual reports?

MS. MACFARLANE: I am not sure why -- where you have taken this information from, whether it's exactly from income statements, whether it's from the five year summary in the back, but I would suggest that in the MD&As which accompany the financial statements, the breakout is probably there. If you give me a moment, I will check.

Q.318 - Sure. And just so you are aware, Ms. MacFarlane, it comes from an annual statement referred to by NB Power as Combined Statement of Operations.

MS. MACFARLANE: The income statement is over time because there is changes in disclosure driven by CICA guidelines, it's getting a little crowded, and so we chose to combine those two lines on the income statement itself, but the break-out is provided in the accompanying management discussion and analysis.

If I were to pick a year, 2005/2006 as an example, in the management discussion and analysis on page 26 there is a discussion of what makes up the content of fuel and purchased power and why the number has changed year over year.

And you will see that it takes the number 512,000,000, that's in the 05/06 column and it breaks it down by nature of the fuel purchased hydro, thermal -- or hydro, nuclear and thermal, and then there is a line there that discloses purchases of 150,000,000.

So it's really a matter of just tidying up the income statement but still making sure the information was disclosed.

Q.319 - Thank you. Now I want to refer you to the second line entitled "Fuel", and again for the record what is this item?

MS. MACFARLANE: This would be purchases of fuels used in our own generating stations.

Q.320 - And again in 2003/04 purchased power disappears from your annual report, so can we assume the 467,000,000 identified as fuel in that year actually consists both of fuel and purchased power?

MS. MACFARLANE: Yes, it does, and the breakdown of the 467,000,000 would have been for hydro zero obviously, for nuclear 10,000,000, for thermal 364,000,000, and purchases were 93,000,000, and again that is disclosed in the management discussion and analysis.

Q.321 - And that would be with respect to the statement of operations for 2004/05, 05/06 and 06/07?

A. That's correct.

Q.322 - Now what would be the figure for 2007/08? I think we can refer to exhibit A-16. I will give you a second here. On exhibit A-16 under Genco Introduction at page 2 is where I will refer you to see if that can assist you. Now the figure for 2007/2008, that would be the fuel and purchase power costs for the test year for Genco and Nuclearco?

MS. MACFARLANE: This would be for Genco. Nuclearco would be further in the binder under a blue tab called Nuclearco. If you were to go to section 1 --

Q.323 - Yes.

MS. MACFARLANE: -- you will see that nuclear fuel is a further 16.4 million.

Q.324 - Okay. And are the purchased power costs included in these figures?

MS. MACFARLANE: Yes.

Q.325 - Now we can say that the total of 705.2 million covers lines 1 and 2 under the expenditures in the spreadsheet?

MS. MACFARLANE: Are you referring to the hand-out that you gave this morning --

Q.326 - Yes, I am.

MS. MACFARLANE: -- under expenditures?

Q.327 - Yes, I am.

MS. MACFARLANE: Yes, it would. And that's for the forecast for the test year.

Q.328 - Thank you. And that this total of 705.2 million is one component in the determination of generation costs, would you agree with that?

MS. MACFARLANE: Yes.

Q.329 - Now let's refer to the OM&A expenditures. And again it would be -- I would ask you to keep your binder A-16 out. You would agree that from 1992 until -- or until -- sorry. You would agree that from 1992/93 until 2003/04 these OM&A expenditures are those of the integrated NB

Power?

MS. MACFARLANE: Subject to check, yes.

Q.330 - Okay. And from 2004/05 to the present these OM&A expenditures represent the sum of the OM&A for the various operating entities?

MS. MACFARLANE: Yes.

Q.331 - Now what would the OM&A be for Genco and Nuclearco for the test year?

MS. MACFARLANE: Okay. In the exhibit that you took us to earlier, table A under Genco, would say that OM&A is 124.2 million, and table A under the Nuclearco filing the OM&A is 140.8 million. So that looks like 165 --

Q.332 - 265.

MS. MACFARLANE: -- 265 approximately, yes.

Q.333 - So then we can say that the total of 265,000,000 is a second component in the determination of generation costs?

MS. MACFARLANE: Yes. I did want to point out though that these two combined are not the equivalent of what is here, because what is here also would include DISCO's and Transco's --

Q.334 - But I have accurately asked the proper question, so --

MS. MACFARLANE: Yes.

Q.335 - Let's move on to amortization. You would agree that from 1992/93 until 2003/04 these amortization expenditures are those of the integrated NB Power?

MS. MACFARLANE: Yes.

Q.336 - And from 2004/05 to the present these amortization expenditures represent the sum of the OM&A -- sorry -- these amortization expenditures represent the sum of the amortization for the various operating companies?

MS. MACFARLANE: Yes.

Q.337 - Now what would be the amortization costs for Genco and Nuclearco for the test year?

MS. MACFARLANE: In the exhibit to which you referred us earlier, table A, amortization for Genco is forecast at 93,000,000 and amortization for Nuclearco is 64,000,000.

Q.338 - So that's actually 92.9 million and you rounded it up to 93?

MS. MACFARLANE: Yes.

Q.339 - Okay. So that we can say that the total of 156.9 million is the third component in the determination of generation costs?

MS. MACFARLANE: Yes.

Q.340 - Now, Ms. MacFarlane, let's move on to the finance charges. You would agree that from 1992/92 until 2003/04 these finance charges are those of the integrated NB Power?

MS. MACFARLANE: There does seem to be a discrepancy in one of the years, and I have not had time to review it. But 98/99 my records say that the finance charges was 375,000,000 and your exhibit says 346.

And it could have been -- I'm looking at the five year summary and it could be that it was retroactively adjusted. But subject to that, yes, I would agree with your statement.

Q.341 - Okay. And if it is different, you will advise us?

MS. MACFARLANE: Yes.

Q.342 - And from 2004/05 to the present, these finance charges represent the sum of the finance charges for the various operating entities?

MS. MACFARLANE: Yes, they do. And if I could just go back to my earlier comment --

Q.343 - Yes.

MS. MACFARLANE: -- those numbers were restated in -- I am not sure of the year but somewhere in the early 2000's a new CICA guideline came out on foreign exchange gains and losses and we had to make retractive restatement of our financial statements for any deferred foreign exchange gains and losses.

So that those few years the numbers would differ from what was in the published report of that year. They would have been restated later. But thus said, can you repeat your question?

Q.344 - Sure. From 2004/05 to the present, these finance charges represent the sum of the finance charges for the various operating entities?

MS. MACFARLANE: Yes.

Q.345 - And now what would be the finance charges for Genco and Nuclearco for the test year?

MS. MACFARLANE: In the exhibit to which you referred us finance charges for Genco on table A are 115.6 million, and on the parallel table A for Nuclearco they are 6.2 million.

Q.346 - So that we can say that the total of 121.8 million is the fourth component in the determination of generation costs?

MS. MACFARLANE: Yes.

Q.347 - Now let's move on to taxes excluding special payments in lieu of income taxes. You would agree that from 1992/93 until 2002/03, these taxes were not charged to the integrated NB Power or at least not identified in your annual report?

MS. MACFARLANE: They were included up until that time in OM&A and the reason they were broken out was the advice we received from the rating agencies where they specifically asked that they be broken out as a separate line.

Some utilities pay taxes for water, as an example. We pay utility taxes that other organizations don't pay. So the rating agencies ask that in order to enable them to do their analysis comparatively across various utilities that we break that line out. So in prior years it was up in OM&A.

Q.348 - Okay. And from 2003/04 to the present these taxes have been charged to the various operating entities?

MS. MACFARLANE: Yes.

Q.349 - Now what would be the taxes for Genco and Nuclearco for the test year?

MS. MACFARLANE: For Genco 17.5 million, and for Nuclearco 7.8 million.

Q.350 - So we can say that the total of 25.3 million is the fifth component in the determination of generation costs?

MS. MACFARLANE: Yes.

Q.351 - Okay. So let's stop for a second here, Ms. MacFarlane, and there may be other generation costs that we haven't discussed yet, but let's just take a total for now. According to my calculations, the total generation costs to date are $1,039,000,000 for Genco and 237.2 million for Nuclearco, for a grand total of one-billion-276.2 million. Now obviously subject to check would you agree with my math?

MS. MACFARLANE: Well perhaps I could ask you to turn the evidence to the table directly after the one that you have been drawing me to --

Q.352 - No. I'm just asking you a question. Would you agree with my math?

MS. MACFARLANE: Well I'm sorry. I don't --

Q.353 - You don't agree?

MS. MACFARLANE: It's not that I don't agree. It's that I don't have a calculator with me.

Q.354 - Okay. That's why I say subject to check.

MS. MACFARLANE: Yes. But, Mr. Theriault, what I wanted to point out is we have done the reconciliation that you are doing in the evidence for ease of the Board and the intervenors in understanding what are the underlying generation costs.

Q.355 - Ms. MacFarlane, that's fine, and I appreciate that. But this is my cross examination, I am directing it in a certain way and I would ask you to answer the question. If Mr. Morrison wants to clarify something afterwards, he certainly has the right of rebuttal.

MR. MORRISON: Mr. Chairman, this isn't a criminal proceeding and I think the witness -- the Board's purpose should be to get the best information it can. Ms. MacFarlane believes she can answer the question more fully by reference to a table that is in the evidence.

CHAIRMAN: And that's fair enough and I'm certainly not going to cut her off of a full and complete answer. But one of the questions that was put to her is a fairly simple question, does she or doesn't she agree with the math. And if in fact that's something that you don't have a calculator and you need to verify when you have a moment, I don't see that as a difficult question. However, she certainly has the right to give a full and complete answer.

Q.356 - So again the question is, subject to check, would you agree with my math?

MS. MACFARLANE: Subject to check. And I believe your math was related to the categories of costs that you have reviewed to date.

Q.357 - That's correct.

MS. MACFARLANE: Yes.

Q.358 - Now, Ms. MacFarlane, let's look at the revenue side of Genco and Nuclearco as identified in the document that I have submitted. Again according to exhibit A-16, it appears that Genco has a revenue for the test year of one billion, 85.9 million -- sorry -- a forecast of revenue for one billion, 85.9 million, and Nuclearco has a forecast of revenue for the test year of 240,000,000?

MS. MACFARLANE: That's correct.

Q.359 - And --

CHAIRMAN: Mr. Theriault, I want to make sure I am on the right table. What table are you at?

MR. THERIAULT: That would be, Mr. Chair, I was just about to say that, that would be at page 1 of section 7 of exhibit A-16, and then of the revised evidence of exhibit A-2 of September 14th 2007.

CHAIRMAN: So section 7, page 1, table 7-A.

MR. THERIAULT: Of August 20th, yes. So that is, Mr. Chairman, section 7, page 1, for Genco, I believe, and I'm just going to get you the reference for it. And Nuclearco is under the Nuclearco section, 7, page 1.

CHAIRMAN: There seems to be just a little discrepancy in the versions of exhibits that we have. That document is A-16(1), is that correct? Is that a revision that you are referring to?

MR. THERIAULT: I believe this is the original document that was filed on August 20th, 2007, volume 1 of 1.

CHAIRMAN: And that's at page 1 and you are talking about table 7(A).

MR. THERIAULT: Table 7(A).

MS. MACFARLANE: With respect, Mr. Theriault, that document was revised after we filed the evidence on the impact of the PDVSA settlement, and the number that you have quoted for Genco, 1085.9, is from the revised version.

MR. THERIAULT: And I'm talking before the revision, before the PDVSA settlement.

MS. MACFARLANE: That number then was 1099.4 million.

Q.360 - And for Nuclearco, the forecast revenue for the test year was?

MS. MACFARLANE: 240,000,000.

Q.361 - Okay. And just give me a second to do my math.

CHAIRMAN: Excuse me. I'm going to have to ask you where the Nuclearco evidence is coming from as well? I think the confusion here is that on September 14th there was some revised evidence filed with respect to this and it appears that you are quoting from the revised evidence, and at least one panel member I think doesn't have the revised version in front of him, so --

MR. THERIAULT: And the reason why I think, as Ms. MacFarlane explained, the revised was after the deferral account.

MS. MACFARLANE: Yes.

MR. THERIAULT: And I'm asking the question before the deferral account came into --

MS. MACFARLANE: Mr. Theriault, the other numbers that you have given me for things like interest expense and amortization and decommissioning have all been the revised information after the adjustment for the impact of the PDVSA settlement.

Q.362 - So, Ms. MacFarlane, if my math is correct it would be the revenue projections for Genco and Nuclearco for the test year subject to the qualification you gave and subject to check on the math, would be 1 billion, 339 million.4?

MS. MACFARLANE: Can you repeat that number, please?

Q.363 - Sure. 1 billion, 339.4 million.

MS. MACFARLANE: Okay. And that is the number before the revised evidence, that was the original evidence, yes, I agree with that number, but as I say, it is inconsistent with the math that we have done on the other numbers.

Q.364 - Understood. So, Ms. MacFarlane, if I took -- if I took the revised numbers and took the total forecast of generation costs of Genco and Nuclearco to the total and subtract the total forecast of revenue for both these entities, it would give me the number I'm looking at?

MS. MACFARLANE: I'm sorry. What number are you looking at?

Q.365 - If I did that calculation, that would give me the profit?

MS. MACFARLANE: I'm sorry. I'm really having trouble hearing.

Q.366 - I'm sorry. I said if I did that calculation that would give me the profit. If I used the revised numbers and took the total forecast of generation costs of Genco and Nuclearco and subtracted the total forecast of revenue from both of these entities, I would then get --

MS. MACFARLANE: What you would get for both the entities would be as displayed on table A in both those sections would be the earnings before special payments in lieu of income taxes.

Q.367 - Right. Yes. Thank you.

MS. MACFARLANE: And just to finish my answer, as I say, we understood that that reconciliation of underlying costs to the PPA costs would be relevant to the Board and those are in both the two sections that we have, exhibit A-16 and the revised evidence. Those are represented in table B where we have laid out what are the revenues to Genco, what are the -- and therefore the charges to DISCO, and what are the underlying costs. That's in table B which is page -- two pages after table A in the evidence we just looked at, and there is an equivalent table B for Nuclearco.

Q.368 - Okay. Thank you, Ms. MacFarlane. Now, Ms. MacFarlane, since you are familiar with revenue and costs for each of the entities involved in the PPAs you will be able to tell the Board what makes up the PPA costs, and let's start with each of the agreements.

First -- and I'm referring, Mr. Chairman, to exhibit A-3.

And Ms. MacFarlane, I would like to refer you to the tolling agreement between DISCO, Colesonco and Holdco.

MS. MACFARLANE: Yes, I have it.

Q.369 - Thank you. Now what are the actual and forecast PPA charges to DISCO under this agreement for the test year?

MS. MACFARLANE: Under the Colesonco tolling agreement -- recognize that a tolling agreement by its nature is a fixed cost contract. The Colesonco entity is not responsible for the cost of fuel. DISCO must provide the cost of fuel.

So the only charges are the charges for owning and operating the plant. So they are transferred to DISCO or they are charged to DISCO in the form of a capacity payment. And there is also a small variable payment to represent variable costs that change with volume.

Q.370 - And what are they?

MS. MACFARLANE: Those costs are transferred -- by virtue of an off-take agreement with Genco, they are transferred into Genco. And that is to allow Genco to dispatch the entire fleet based on lease cost appropriately. And they would be included in the Genco power purchased expense for

DISCO.

So if we go to exhibit A-2. Exhibit A-2 is the evidence for NB Power, DISCO's revenue requirement. So section 1 --

CHAIRMAN: Ms. MacFarlane, where in that document are you referring to?

MS. MACFARLANE: I'm in section 1, purchased power expense from Genco. I'm on page 4 of section 1. And you can see the line capacity payment of 292.2 million. That is a blended capacity payment for all of the units that are dispatched by -- for the heritage assets basically. And that would include the costs for Coleson.

And those are, as I say, transferred under the tolling agreement to Genco, combined with the Genco capacity payment and then charged to DISCO.

And if you could refer to the vesting agreement, there is a schedule in the back that shows the total capacity payment and the amount that is attributable to Coleson and the amount that is attributable to the rest of the fleet.

Q.371 - What is that? That is what I'm after.

MS. MACFARLANE: Would you like me to take you to the page? Or would you just like me to give you the number?

Q.372 - Just the number is fine.

MS. MACFARLANE: Okay. In the vesting agreement on schedule

1.1.17 it is the schedule of capacity payments. And at the very top it says the Coleson Cove price is $6,000,708.33 per megawatt. That is per month. Multiply that by 12 and it is somewhere in the vicinity of 80,000,000.

And that number on the following page there is a blending of that price with the other heritage asset prices to give a combined amount. And that combined amount multiplied by 12 is your 292.2 million.

Q.373 - Is there -- and I'm dealing specifically with the Colesonco charges. Is there a rate of return built into these charges?

MS. MACFARLANE: There is a theoretical rate of return built into the charges, yes.

Q.374 - And what is that rate of return?

MS. MACFARLANE: The theoretical rate of return, if I remember correctly, so this is subject to check, it was based on 65 percent debt, 35 percent equity, capital structure. And the return was I believe 10 1/2 or 11 percent.

The reason I say theoretical is that the PPA's, as we have discussed before, were based on a model looking out into the future for what cost estimates would be over the long term, over the whole 25 years of the PPA.

And those models were then -- they added a return. The financial advisers added a return and backed into what the annual capacity payments would have to be in order to enable that return to be achieved.

Obviously there is an underlying assumption there that those cost estimates were accurate. And as it turns out the costs have been higher than what was in the model. So the Colesonco capacity payment is not recovering that return at this time.

Q.375 - Okay. Thank you.

Now getting back, you had said that the theoretical rate of return is 10 1/2 or 11 percent, that you would have to check that. Would you provide that answer to us specifically if you don't have it at your fingertips now?

MS. MACFARLANE: Yes. It was in last year's evidence. So it should be easy to get.

Q.376 - Thank you. And how was that calculated?

MS. MACFARLANE: That was provided by the Province's financial advisers. And it was done on the basis of their assessment of the risk of the operation and what the markets held for an entity like Coleson Cove at the time.

Q.377 - Is it a weighted cost of capital?

MS. MACFARLANE: No. The number that I quoted was the return on equity. And as I say, the capital structure that they defined for Colesonco I believe was 65 percent debt, 35 percent equity.

Q.378 - Now what is the projected amount of the rate of return for the test year?

MR. THERIAULT: It sounds like a train, Mr. Chairman.

MS. MACFARLANE: The evidence you had referred us to earlier, A-16, the underlying Genco cost, for Genco in table A -- and this is the combined entity of Genco and Colesonco. Remember Colesonco is a subsidiary of Genco and its results are consolidated with it.

So in A-16 the section entitled "Genco, Table A" which is on page 2, the combined net earnings forecasted for Coleson and Genco is 14.1 million.

This table does not disclose the underlying Coleson number. But in fact Coleson for the test year is losing money. There is a net loss forecasted for Coleson in the test year.

Q.379 - Could you repeat the page again for me? I'm sorry.

MS. MACFARLANE: Okay. Yes. It is the same -- the information that we were looking at earlier. It is in the additional evidence which I believe is A-16. It is under the tab called "Genco". And then the next tab is "Genco Introduction".

Q.380 - Yes.

MS. MACFARLANE: Page 2 is the forecasted net earnings. And you will see that for the consolidated entity, Genco and Coleson, line 9, the net earnings are 14.1 million.

As I say, if you were to unconsolidate Genco and Colesonco, since actually forecasted to lose money, you know, and Genco is forecasted to make money, the combined -- the combination of the two is 14.1 million.

And that is included in the underlying costs, the underlying generation costs as a cost that would be passed to DISCO, not on a line by line basis, but in the PPA model the intent would be that that net earnings would be recovered.

You can see on table B, which is two pages back -- and this is where we have done this reconciliation -- we have looked on the left-hand side at what are all the charges that flow under the PPA, the vesting PPA and the Coleson tolling agreement, what are all the charges that flow to DISCO.

And you can see on that table on the left-hand side, line 1 is the capacity payment. Then we have the vesting energy charge, et cetera. Going down to line 5, which is the subtotal related to the fixed costs of the Coleson and Genco operation.

The next lines are the revenue related to the variable costs of the operation, coming up with a total of 851.1. So that is -- those are all the charges under the PPA.

The actual underlying costs are on the right-hand side of the page. And again we have broken it out by fixed costs and variable costs.

And you can see under the fixed costs we have the net earnings of 14.1 million included as one of the underlying costs that would be considered as a charge in the capacity payment. It is not a direct number transferred through. But it is part of the conceptual makeup of the capacity payment.

MR. THERIAULT: Mr. Chairman, if I could just have one moment.

CHAIRMAN: Certainly. Ms. MacFarlane, just with respect to those numbers that you were referring to, that is table B on page 4, I believe. Is the revised evidence in that because I don't seem to be looking at the numbers that you are reading.

MS. MACFARLANE: Okay. I'm looking at table B in Appendix A-16(1), if these are the revised numbers.

CHAIRMAN: That was after "Genco Introduction".

MS. MACFARLANE: Yes. So we have Genco -- we have the "Genco Introduction". And in that section it would be page 4. And at the bottom it would be labeled "Revised

Additional Evidence, Other Costs."

CHAIRMAN: So it is September revision.

MS. MACFARLANE: Yes.

CHAIRMAN: All right. I'm looking at the August evidence.

MS. MACFARLANE: It is A-16(1).

CHAIRMAN: Just bear with me for a moment.

MS. MACFARLANE: Yes.

MS. MACFARLANE: Would it be helpful, Mr. Chair, for me to go through the numbers again?

CHAIRMAN: Mr. Theriault, have you found what you were looking for?

MR. THERIAULT: Yes, I did.

CHAIRMAN: I think the Board now has the revised version. So perhaps it might be helpful to restate that.

MS. MACFARLANE: This table is a reconciliation of the charges under the PPA or the revenue under the PPA that flows from DISCO to Genco. And that information is on the left-hand side of the table. So you can see it says "Genco PPA Revenue."

What is on the right-hand side of the table are the underlying costs and other revenues. So the Genco PPA revenue, you can see it listed. We made an attempt to break out those charges that are fixed in nature, capacity at the top of the table on the left-hand side, capacity payment, the vesting energy charge contribution to fixed costs, any capacity payment adjustments, the ancillary service credit.

So there is a subtotal there of the revenue-related fixed costs under the PPAs. And then the rest of the lines are all the revenue that is variable in nature under the PPAs, being the fuel component of the vesting energy charge, et cetera. And that says that the total revenue under the PPAs is 851.1 million for Genco.

On the left-hand side we have said here are all the underlying costs for Genco as supported in the Genco filed evidence offset by other revenues and including net earnings.

So all of the costs that Mr. Theriault was referring to earlier, amortization and decommissioning, interest expense, OM&A, taxes other than payments in lieu of taxes, transmission expense, you can see that we have added net earnings in as a cost to be recovered under the PPAs.

We have offset miscellaneous revenue, because that helps reduce the Genco cost, to come up with a subtotal of what are basically fixed costs for Genco net of revenues.

And then we have put in Genco's variable costs, fuel and purchased power, transmission, offset by export revenue, because some of that fuel and purchased power is supporting export sales, to come up with the net variable cost. So we show that the total costs for Genco, including its net income, is 851.1 million.

So you can see here are the underlying costs and here is how in general they flow through to the PPA. It is not a line by line flow-through. It was never intended to be. But you can see that the underlying costs do match what has gone to Genco as revenue under the PPA from DISCO. And there is a similar reconciliation for Nuclearco under the Nuclearco tab.

Q.381 - Now Ms. MacFarlane, getting back to the 14.1 million, what happens if Genco earns more than 14.1 million? Who keeps that? Which entity?

MS. MACFARLANE: Genco keeps that. 14.1 million as indicated in Genco evidence is about 1.17 times interest coverage.

As I mentioned earlier, the PPAs had an ROE-designed -- a return on equity designed in them. And Genco is not -- Genco nor Colesonco is achieving that.

Q.382 - But my question was --

MS. MACFARLANE: Yes.

Q.383 - -- what happens and who -- if Genco earns more than $14.1 million, which entity keeps that?

MS. MACFARLANE: Genco keeps that.

Q.384 - Thank you. Now getting back to the rate of return, specifically for Colesonco, who approved the rate of return?

MS. MACFARLANE: The rate of return was set by the Province's financial advisers. And so the oversight committee of Ministers would have signed off on that. And I have just been handed the correct numbers. For Colesonco the debt is 65 percent. The equity percentage was to be 35 percent. And as you know, that equity infusion didn't happen. And the return on equity was designed to be 11 percent.

Q.385 - Thank you. Now was the rate of return subject to a review by a regulatory board?

MS. MACFARLANE: No, it was not.

Q.386 - Okay. What happens, Ms. MacFarlane, to the return, assuming that it is earned in a given year?

MS. MACFARLANE: The return --

Q.387 - Is any of it retained?

MS. MACFARLANE: Under the -- the return represents net income. And it is rolled up with the Province's net income. It consolidates with the Province's net income. It is available for withdrawal from the corporation by dividends at the discretion of the Minister.

And I might mention that the Electricity Act, when the

Minister does withdraw any monies from the corporation, whether it be dividends, payments in lieu of taxes or any other special withdrawals, those are by legislation required to be used to pay down any debt that Electric Finance has assumed from the corporation.

Q.388 - So you are saying that the Minister retains it?

MS. MACFARLANE: Profits from an accounting perspective would be maintained in retained earnings. But they can then -- profits can be withdrawn via dividends. If they are withdrawn they are by virtue of the Act to be used by the Minister to pay down any debt that the Province has taken over from NB Power. Right now that number is about 400,000,000. And that happened at October 1st 2004.

Q.389 - Is there any balance in the retained earnings?

MS. MACFARLANE: For which company?

Q.390 - Colesonco?

MS. MACFARLANE: Colesonco would have virtually no retained earnings at this point. Because the company has been losing money virtually since it started. As I say, the costs that were designed into the model that set the PPA capacity agreement were underestimated. And the corporation has not been recovering a profit.

Q.391 - Does that mean it has some or none virtually?

MS. MACFARLANE: Genco or Colesonco would have some retained earnings. It would be a small number.

Q.392 - What is that amount?

MS. MACFARLANE: I don't have that number with me. I do have the combined number for Genco and Colesonco.

Q.393 - But I'm curious. I want to -- I would like to have that broken down. So if you could undertake to provide that to me?

MS. MACFARLANE: Yes, I can. It is an easy number to get.

Q.394 - Thank you. And now while we are talking about Genco, what about Genco?

MS. MACFARLANE: Again I don't have the unconsolidated number for Genco. But in the test year there was an undertaking, DISCO CME IR-39, that asked for a balance sheet that disclosed the forecasted retained earnings for the combined entity. And at March 31st 2008 it is forecast to be 68,000,000.

Q.395 - And could you provide to me the breakdown? Well, I guess I could do the math. If you give me Colesonco I can do the math. But if you could provide it for Genco as well?

MS. MACFARLANE: Yes. We will do it as part of the same undertaking.

Q.396 - Thank you very much.

Now under the agreement that we are referring to, the tolling agreement, are there any other noncost elements in this agreement?

MS. MACFARLANE: No, there are not.

Q.397 - Okay. Thank you.

Now Ms. MacFarlane, next let's take the power purchase agreement between DISCO and Nuclearco, which again is found in exhibit A-3 I believe.

CHAIRMAN: Where are we in A-3?

MR. THERIAULT: It would be -- well, I'm just referring to, sorry, the power purchase agreement between DISCO and Nuclearco, which I believe is the second agreement in the binder, Mr. Chairman. My version is not tabbed.

CHAIRMAN: I have found it there.

Q.398 - Now again, Ms. MacFarlane, what are the actual and forecast PPA charges to DISCO under this agreement for the test year?

MS. MACFARLANE: Exhibit A-2 which is the DISCO filed evidence -- I'm in section 1, okay, section 1, page 16.

Q.399 - If you could just bear with me.

MS. MACFARLANE: Yes.

Q.400 - Okay.

MS. MACFARLANE: Okay. So it is A-2, section 1. And it is page 16. So if you look at the table you will see that the charges under the Nuclearco for DISCO for 07/08, that would be the total line 4 in Table 1H, is 228.4 million. And the description of that is on line 19, Nuclearco PPA, and there is a schedule in it, has prescribed energy prices including a provision for an annual CPI adjustment in the energy price for 07/08 is $53.37 a megawatt-hour. There is also a clause in the contract that ensures that costs for decommissioning used fuel management are passed on to the ratepayer and any adjustments in those are passed on through a special clause. The amount for this year is 6.5 million.

And two, because DISCO is in effect paying for the full use of Nuclearco save the amount that goes to NECL. They get back to revenue that Nuclearco gets on ancillary services.

Q.401 - So the answer to my question can be found at page 16?

MS. MACFARLANE: That is right.

Q.402 - Okay. Now is there a rate of return built into these charges?

MS. MACFARLANE: My recollection of the design of the PPA is that there was only a recovery of the cost of debt in the PPA up until the time that the refurbishment was completed.

And post the refurbishment being completed, the PPA is designed to have a debt equity structure, a deemed debt equity structure and have a return built into it.

But in the current year, before the refurbishment and the PPA in this period of time, the rate is only designed to collect the cost of debt.

Q.403 - Which is what?

MS. MACFARLANE: In the current year, and that is in the additional evidence filed in August, the underlying costs for Genco and Nuclearco, in the current year the interest expense is 6.2 million.

Q.404 - And what is the rate?

MS. MACFARLANE: The calculation -- the weighted average cost calculation is not done in the evidence. When I look at it, it is roughly in the -- I'm going to say 6 percent range.

There is a table in the evidence, again exhibit A-16, the Nuclearco cost, section 6, table 6(B) that shows the cost for each debt instrument that is outstanding.

And there is no weighted average calculation done here.

But I'm going to guess it is in the vicinity of 6 percent. Add onto that the debt management fee. So it is somewhere around 6 1/2 percent.

Q.405 - Could you undertake to provide us with an exact figure?

MR. MORRISON: Yes. We can do that.

Q.406 - Now Ms. MacFarlane, you talked abut post refurbishment. What would be the expected rate of return post refurbishment?

MR. MORRISON: I can't see how that has any bearing on the revenue requirement in this hearing, Mr. Chairman. The refurbishment is not in the test year. It is beyond the test year. It has no impact in the revenue requirement in this hearing.

CHAIRMAN: Mr. Theriault, how would that have any effect on the revenue requirement for the test year?

MR. THERIAULT: None. But the witness brought it up. So I thought I would try.

CHAIRMAN: Perhaps we should move on.

Q.407 - Now with respect to the power purchase agreement between DISCO and Nuclearco, what was the process to determine what the rate of return would have been?

MS. MACFARLANE: Again the rate of return was set by the Province's financial advisers at the time of restructuring. And that rate of return would have been approved by the committee of Ministers that oversaw the process.

Q.408 - And was it subject to a review by a regulatory board?

MS. MACFARLANE: No, it was not.

Q.409 - Finally, Ms. MacFarlane, let's take a look between Genco, DISCO and Holdco.
MR. THERIAULT: And Mr. Chairman, that is in the same exhibit. I believe it is one tab further or one section further in exhibit A-3.
Q.410 - Now Ms. MacFarlane, with respect to the vesting agreement between Genco, DISCO and Holdco, what are the actual and forecast PPA charges to DISCO under this agreement for the test year?
MS. MACFARLANE: That amount is in the DISCO revenue requirement evidence. So that is binder A-2. I guess A-2(1) because it was revised.
It is under tab 1, Purchased Power -- section 1, Purchased Power. And it is on page 3, table 1(A), "Purchased Power Expense."
Q.411 - Okay.
MS. MACFARLANE: The total amount, line 1 for Genco, is 851.1 million.
Q.412 - Now Ms. MacFarlane, is there a rate of return built into these charges?
MS. MACFARLANE: We would have seen on the exhibit that we spoke of that reconciles -- the costs charged from Genco to DISCO under the PPA to Genco's underlying costs, we would have seen that there was a net income for Genco in

the underlying costs of 14.1 million.

That is a combined Genco/Colesonco number. And I believe you have asked us to get the breakout, which we will do.

Q.413 - But is there a rate of return built into these charges? Like for Nuclearco I believe you said there wasn't, but --

MS. MACFARLANE: Conceptually in the PPA there was a rate of return built in.

Q.414 - And how much was that?

MS. MACFARLANE: The design by the financial advisers for the Genco vesting agreement was a debt equity ratio of 55/45. And on the equity a return of 11 percent.

Again you can imagine that a $14,000,000 net earnings on DISCO's total capital of over 2,000,000,000 is not achieving that level of return.

Q.415 - Now the rate of return, how is it calculated?

MS. MACFARLANE: How was the rate of return --

Q.416 - Calculated?

MS. MACFARLANE: The actual calculation?

Q.417 - Yes.

MS. MACFARLANE: The actual of 14 -- net income or net earnings of --

Q.418 - I'm sorry. I'm referring to the percentage?

MS. MACFARLANE: The percentage?
Q.419 - How was the percentage calculated? I believe you said 11 percent.
MS. MACFARLANE: Well, that was the design. And the 11 percent design was set by the financial advisers. And I assume they looked at what the market -- that they looked at the risk of the company and what the market dictated for a company with that debt equity structure.
Q.420 - Is the 11 percent a weighted average cost?
MS. MACFARLANE: No. The 11 percent was a return on equity in the PPA.
Q.421 - Okay.
MS. MACFARLANE: Now again that presumed that the Province would do a debt equity swap and that there would be a 45 percent equity in the company.
As Mr. Hay indicated the first day of testimony, the Province never proceed with that. So from that perspective an ROE is not relevant because the company doesn't have any shareholders equity in it infused by the shareholder.
Q.422 - Now with respect to the rate of return that we are speaking about, who approved that rate of return?
MS. MACFARLANE: In the design of the Genco vesting agreement?

Q.423 - Yes.

MS. MACFARLANE: Yes. As I say, it would have been set by the Province's financial advisers and approved by the committee of Ministers overseeing the restructuring.

Q.424 - And again was the rate subject to review by a regulatory board?

MS. MACFARLANE: No, it was not.

Q.425 - Now Ms. MacFarlane, what happens to the return, assuming that it is earned in a given year? Is it retained?

MS. MACFARLANE: From an accounting perspective the earnings are retained as one of the components of shareholders equity.

If the shareholder chooses under the shareholders agreement they can draw a dividend off that retained earnings. And they then must use that under the Electricity Act to pay down any debt that they have assumed on behalf of NB Power.

Q.426 - What is the balance associated with this retention?

MS. MACFARLANE: In DISCO CME -- I'm sorry. I don't have the reference number. But the same IR that I referred to earlier, we were asked for the forecasted Genco retained earnings at March 31st 2008. It is forecasted at 68,000,000.

Again that is consolidated DISCO, both DISCO -- or pardon me, consolidated Genco, both Genco and Colesonco. And you have asked for the breakdown between the two companies. And we will provide that.

Q.427 - Thank you very much.

MR. THERIAULT: Mr. Chairman, I am going to be venturing into a different line and my associate has been preparing some documentation so it might be an appropriate time to take a break, if we could.

CHAIRMAN: All right. It is quarter to 11:00 so we will return at 5 after 11:00.

(Recess - 10:45 a.m. - 11:05 a.m.)

CHAIRMAN: Mr. Theriault, I had a request from the panel with respect to documents that are being referred to. There seems to be some difficulty sometimes in knowing just exactly what document the panel is going to. If you could perhaps take your time and repeat whatever reference it is so that we can make sure that we are on the same page.

MR. THERIAULT: I thought, Mr. Chairman, you were going to say you had a request from the panel if I could liven things up a bit, but --

MR. GOOD: Well perhaps that too.

MR. MORRISON: I don't think that's particularly necessary, Mr. Chairman.

Q.428 - Ms. MacFarlane, I just want to go back, I just have a couple of questions. I had asked you with respect to the tolling agreement between DISCO, Colesonco and Holdco about non-cost elements aside from the rate of return, and I believe your answer was there were none. And I want to ask the same question with respect to the power purchase agreement between DISCO and Nuclearco. We had a discussion on the rate of return. Are there any other non-cost elements that I should be aware of?

MS. MACFARLANE: No.

Q.429 - And the same with respect to the vesting agreement between Genco, DISCO and Holdco, are there any other non-cost elements that I should be aware of?

MS. MACFARLANE: No.

Q.430 - Thank you. Now, panel, I would like to ask some questions with respect to hydro generation, and I had a brief chat with Mr. Keyes yesterday as to whether this was the appropriate panel, but I thought I would ask that if this panel is the proper panel with respect to hydro generation and its treatment under the PPAs, specifically hydro forecasting?

MS. MACFARLANE: This is the correct panel.

Q.431 - Okay. Second I would like to know there are no amendments to the PPAs dealing with hydro generation coming through, are there?

MR. KENNEDY: Yes, there is.

Q.432 - Okay. And when will that be forthcoming?

MR. GOOD: They were actually introduced into evidence as amendment number 2 to the vesting agreement last week.

Q.433 - Okay.

MS. MACFARLANE: That amendment simply gave clarity in the PPA to practices that had been already undertaken and reviewed by the predecessor Board to this Board last year and found acceptable.

Q.434 - My questions here, unless I specify otherwise, are going to relate to before the amendment because we have another panel that will be dealing with those amendments I believe some time next week. So again, unless I specify otherwise my questions will relate to that. I would like to review the history of hydro generation and its treatment by the utility.

First of all, does the Panel agree that there was for a period of time in the 1990s a deferral account to handle fluctuations in hydro generation from average hydro generation?

MS. MACFARLANE: Yes, there was.

Q.435 - And that was something like measuring the variability from average and adding or subtracting that variability from a deferral account balance? Would that be a general --

MS. MACFARLANE: As I understand it, that's correct.

Q.436 - And does the panel agree that from approximately the middle of the 1990s to the date of the creation of the PPAs, the deferral account was eliminated?

MS. MACFARLANE: That's correct.

Q.437 - Okay. And at the time of the elimination or before, did NB Power seek the approval of the Regulator before eliminating the deferral account for hydro generation?

MS. MACFARLANE: This item was canvassed thoroughly last year before the predecessor Board, and at that time it was stated that no, the corporation did not seek an opinion of the Regulator.

Q.438 - Okay. Ms. MacFarlane, keep in mind I wasn't here last time, so -- now aside from the amendments and before the amendments were filed, I believe with the Board on November 20th, would the panel agree that the treatment for hydro generation was contained in section 6.12 of the vesting agreement which is exhibit A-3?

MR. GOOD: Section 6.12?

Q.439 - Yes.

MR. GOOD: That's correct.

Q.440 - Now let's find out how the vesting agreement handles hydro generation. First, what is assumed hydro production according to the vesting agreement?

MR. KENNEDY: With respect to the vesting agreement there is -- assumed hydro production is a fixed number at 26 54 gigawatt hours annually that has been based on historical data.

Q.441 - Okay. So the figure then you say was based on historical figures?

MR. KENNEDY: That's correct.

Q.442 - And how was that done?

MR. KENNEDY: That was done through modelling over time through the hydro and the river flows in the Saint John River, hydrological flows and putting units to simulate on -- on the system, to give us a long term average based on the hydro flows in the river.

Q.443 - I guess what I'm wondering is could you tell us how you calculated the 26 54?

MR. KENNEDY: It's based -- over a number of years it was calculated based on flow as I stated in Saint John. I believe there has been information filed again at the last hearing with respect to that data and that information.

Q.444 - But again could you explain -- again I know there was data maybe filed at the last hearing, but we have a new

Board, I'm a new party here, so I'm wondering how.

MR. KENNEDY: I believe subject to check that it's based on at least 40 years data of past history done through engineers flow and simulation, and modelling, and the information has been documented and submitted through undertakings during the last hearing, to indicate that this basically is the average hydro flow, and taken into consideration for that period of time. And again subject to check it was reviewed I think -- I could check -- but during the year, and that information was dated and it still remains and was brought to the Board of Directors of NB Power and still remains at 26 54, and that's what is used for setting the vesting energy price or the revenue requirement.

Q.445 - Now is it an arithmetic average of generation over the years?

MR. KENNEDY: If I may, perhaps if we went to IR-132 --

MR. MORRISON: Mr. Kennedy, could I get you to identify --

MR. KENNEDY: It's exhibit A-29, and it's -- exhibit A-29 and it's --

Q.446 - If you could just bear with us for a second.

MR. KENNEDY: It's a DISCO IR. The IR was submitted by the Energy Utility Board and it's IR-132, October 17th, 2007.

Q.447 - And what is that telling us?

MR. KENNEDY: As you can see in the first paragraph, it started back as far back as 1954, and again a review was done in 1993, resulting in an estimated annual long-term average forecast of 2654.4 gigawatt hours.

Q.448 - Okay. So it is an arithmetic average of generation?

MR. KENNEDY: Of simulated hydro flows that basically is converted into energy.

Q.449 - Now has DISCO as a signatory to this agreement provided the Board with proof of the actual calculation?

MR. KENNEDY: I believe last year, subject to check, under an undertaking, that we filed the data that was used to calculate these numbers. And I would -- you know -- I would check to see that -- to present that information to the Board. I have gone -- I know it exists because I have seen it, so --

Q.450 - So the undertaking is to provide that information to the Board?

MR. KENNEDY: That's correct.

Q.451 - Keep in mind what was done at the last hearing technically is not before this hearing, so --

MR. KENNEDY: Yes. I will undertake to provide that information.

Q.452 - Thank you. Now I would like to find out according to the vesting agreement that we are looking at in this particular section what happens when actual hydro generation differs from assumed hydro generation, and I just want -- I would ask you to connect your answers to section 6.12 and just to that section of the vesting agreement. First of all, sir, if actual hydro generation exceeds assumed annual generation by ten percent, how is the benefit calculated and allocated?

MR. KENNEDY: Over time there has been a number of meetings and reviews of the methodology to determine this hydro adjustment. And it has been reviewed a number of times in a number of the meetings in the course -- that are on record here, but the intent is basically to compare the actual hydro generation in one month to the assumed hydro generation in that month, and calculate whether there has been an excess of hydro generation. And if there has been an excess of actual hydro generation above the average hydro generation, then that amount of megawatt hours is -- a cost is developed for it based on a point in the dispatch. And that revenue, when there is an excess is -- in the form of an adjustment is reimbursed to DISCO. And the reverse side of that is --

Q.453 - Excuse me. Can I stop you there? Would all of it be reimbursed to DISCO?

A. Provided -- all of it would be reimbursed if it can be obtained in the part that is required to serve in-province load for that piece, and --

Q.454 - If not in-province load, where would it go?

MR. KENNEDY: If not in-province load some of the hydro adjustment finds its way out into the interruptible piece that is dispatched, and in so doing if it would be out in that block of energy that is supplied to serve the interruptible load and it would form part of the costing mechanism to determine the price of the interruptible in that hour or in that time frame.

Q.455 - Is there any opportunity for Genco to share in that benefit?

MR. KENNEDY: When the -- starting from the beginning, when the average -- when the actual hydro flow is below the assumed hydro flow, that same mechanism where the measuring takes place basically is at the point of the dispatch to serve in-province -- the firm in-province load, and if it's below average Genco is compensated and the same methodology basically, taking a block of this hydro and determining the cost of it, the incremental cost of the block, and basically giving Genco a credit. The reason being is --

Q.456 - And how much would that credit be?

MR. KENNEDY: These credits vary. It depends on the hydro flow and it depends on the conditions of the system. It is trued up and it's determined on a month by month basis.

Q.457 - Is there a percentage?

MR. KENNEDY: No. I would just like to point out also for clarity that for the purpose of setting the revenue requirement for 07/08 the average number of 26 54 is the number that is used of average hydro for the setting of the revenue requirement. These adjustments are basically within the year.

Q.458 - Thank you. Now I would like to talk about forecast errors, and I'm going to suggest some concepts to you. Do you agree that forecast error is actual minus forecast for the same time period?

MR. KENNEDY: Actual, yes.

Q.459 - And would you agree that a positive error occurs when an actual result exceeds a forecast result for the same time period?

MR. KENNEDY: Would you repeat the question?

Q.460 - Sure. Do you agree that a positive error occurs when an actual result exceeds a forecast result for the same time period?

MR. KENNEDY: When an actual result is in excess of a forecast?

Q.461 - Yes. Would that result in a positive error?

MR. KENNEDY: It results in a difference.

Q.462 - Okay. And -- but again going back to the first question. If you agree that a forecast error is actual minus forecast for the same time period, which you agreed, so then the difference you are referring to would be considered a positive error?

MR. KENNEDY: A positive error, yes. If you are referring to the hydro flow adjustment?

Q.463 - Yes. No. What I'm asking is -- I'm simply asking there is a concept and I'm asking if you agree that a positive error occurs when an actual result exceeds a forecast result for the same time period?

MR. GOOD: I think it depends on what you are talking about. If you are talking about something like OM&A where an actual exceeds your budget, then that would be a negative variance. If it was where hydro, which is a benefit or a good thing, if that exceeded your budget then that would be a positive variance. So I think it depends on what you are talking about.

Q.464 - So again I just want to be clear. So the panel agrees that forecast error is actual minus forecast for the same time period?

MR. GOOD: Agreed.

Q.465 - And again would you agree that a positive error occurs when an actual result exceeds a forecast result for the same time period?

MR. KENNEDY: Yes.

Q.466 - Simply the actual greater than the forecast?

MR. KENNEDY: Yes.

Q.467 - And would you agree that a negative error occurs when a forecast is greater than an actual result for the same time period? I can repeat that again if you want me to.

MR. KENNEDY: Would you, please?

Q.468 - Yes. Sure. Would you agree that a negative error occurs when a forecast is greater than an actual result for the same time period?

MR. KENNEDY: Yes.

Q.469 - Now would you agree that the rolling sum of forecast errors is a running total of errors to a given point? In other words you are just adding up the errors. I can repeat that again, if you like?

MR. KENNEDY: Yes.

Q.470 - Yes, you would like me to repeat it or yes, you --

MR. KENNEDY: Yes, I would like you to repeat it.

Q.471 - Sure. Do you agree that the rolling sum of forecast error is a running total of errors to a given point?

MR. KENNEDY: Yes.

Q.472 - Now would you agree that the mean absolute deviation is the average absolute error to a given point? And again I can repeat that if you would like.

MR. KENNEDY: Yes.

Q.473 - You would like me to repeat it?

MR. KENNEDY: No. That's yes.

Q.474 - You agree with it?

MR. KENNEDY: Yes.

Q.475 - Okay. And would you agree that the tracking signal is the rolling sum of forecast errors to a point divided by the mean absolute deviation to a point?

MR. KENNEDY: Yes.

Q.476 - Do you agree that the tracking signal can only be consistently positive if under forecasting is taking place? And I can repeat that if you would like.

MR. KENNEDY: No.

Q.477 - No, you wouldn't like me to repeat it or no --

MR. KENNEDY: No, I don't agree.

Q.478 - Okay. And why don't you agree?

MR. KENNEDY: I'm not sure where the line of questioning is going.

Q.479 - Okay. Let me repeat the question then. Do you agree that -- do you agree that the tracking signal can only be -- so if you are doing a tracking signal it can only be

consistently positive if under forecasting is taking place?
This is simply a concept I'm asking you. I mean I will get to where I am going eventually.

MR. KENNEDY: Yes.

Q.480 - Do you agree that the tracking signal can only be consistently negative if over-forecasting is taking place? And I can repeat that.

MR. KENNEDY: Yes. Conceptually.

MR. THERIAULT: Okay. Now -- and panel, I have a couple of documents here that at this time, Mr. Chairman, I would like to introduce as an aid in cross examination. What it is is it's two documents, forecast of monthly generation and actual monthly generation, which comes from PI IR-9 which I believe is exhibit 27, and I have -- I will ask Ms. O'Donnell, wherever she is, to perhaps hand those copies out, as well as a document which is looking at forecast errors based on the numbers that were provided in PI IR-9.

CHAIRMAN: Could you just repeat the references as to where that information came from?

MR. THERIAULT: Yes. It's PI IR-9 which is found I believe in exhibit A-27. Now what it is it was a disk that was provided in electronic format. It wasn't in hard copy.

So that's why I have gone to photocopied copies for everybody.

CHAIRMAN: Mr. Theriault, I assume that you want these marked for identification.

MR. THERIAULT: Yes, sir.

CHAIRMAN: And I'm not sure what order that you would like them marked in. The first document I have is table 2. Would that be the first you intend to use?

MR. THERIAULT: Yes.

CHAIRMAN: Okay. Table 2, Actual Monthly Generation, that will be number 2 for identification. The next document I have is Hydro Generation Forecast Errors Tracking Signal. That will be number 3 for identification. And Table 1, Forecast of Monthly Generation, will be number 4 for identification.

Q.481 - Now, panel, subject to check would you agree that the tables that are filed as exhibits number -- for identification as number 2 and 3 -- sorry -- 2 and 4 are, subject to check, IR -- is the information provided in IR number 9, PI IR number 9?

MR. MORRISON: Perhaps I will just assist. I'm not sure if the panel got the right ID numbers on those documents. As I understand it, Appendix 2, which is table 2, is ID number 2, marked for identification number 2. The graph which is a tracking signal is marked for identification number 3. And table number 1 is marked for identification number 4.

Q.482 - Thank you, Mr. Morrison. So my question was documents marked ID numbers 2 and 4, subject to check, are an accurate depiction to the answers for IR number 9 -- PI IR number 9, which was done in a disk format?

MR. KENNEDY: Subject to check they predict the IR-9 with respect to forecasted.

Q.483 - Thank you. Now with respect to document number -- that's marked ID number 3. First of all, I would just like to give you some background to this. In IR number 9 I asked you for forecast and actual hydro generation by facility. The total actual hydro generation for all hydro facilities and total forecast hydro generation for all facilities were also provided for the period January 1993 to July 2007.

So what I would like to do is take a look and compare your actuals with forecasts for each time period and see the results. So if I may, sir, first again would you agree, subject to check and referring to ID document marked as identification number 3 -- would you agree subject to check that this is a graph of monthly tracking signals from the time period January 1993 to July 2007?

MR. MORRISON: Mr. Chairman, I know that this is new information in terms of the tracking signal and I don't know whether the witnesses will need time to look at that or not.

I don't know much about tracking signals myself, but I'm assuming this is something that the Public Intervenor had prepared either by a statistician or a consultant, but I don't know that -- these witnesses certainly haven't seen this document before.

MR. THERIAULT: Mr. Chairman, if I may, I know from speaking to my friend Mr. Morrison, he had talked abut requesting a particularly for certain reasons an extended length of time over lunch, and if we would like to break for lunch now so that they could look at it, I have no problem.

CHAIRMAN: Perhaps we could hear from the panel as to whether or not they feel they need some time to have a look at it.

MR. KENNEDY: Yes, I would like to review it.

MR. MORRISON: I wonder if -- I know we still have some time before lunch, if -- and I appreciate Mr. Theriault's suggestion, but I don't know if you can go on to another series of questions and come back or not. I will leave that to him of course.

CHAIRMAN: Mr. Theriault, is it possible to leave this and move on to something else, or is this sort of built on -- what you have from here is built on the questions you might have on 3 for identification?

MR. THERIAULT: Yes. I specifically ordered everything in a specific order and I would hate to take it out of context. Not that I am going to say that anything dramatic is going to come at the end of the day, so I don't want the Chairman saying, Theriault, what were you doing, but --

MR. MORRISON: No, I appreciate that, Mr. Chairman. We all prepare cross in a certain fashion and I don't want to disrupt that. I know I had requested a longer lunch period because one of our witnesses has a meeting that starts at 12 and we will probably go beyond 1:00 o'clock by 20 minutes or so. If I could have a moment to speak to Mr. Gorman, maybe -- just give me 30 seconds --

CHAIRMAN: Sure.

MR. THERIAULT: Mr. Chairman, I only have -- I may add -- I only have roughly six questions with respect to this document, so --

MR. MORRISON: I think that works. That would allow Ms. MacFarlane to get over to her meeting now and then we may be able to come back a little earlier than 1:30. So --

CHAIRMAN: Perhaps Ms. MacFarlane could assist us here. What time can you be back? I guess that's -- you are the one -- we need the break for you to have a meeting I understand, so --

MS. MACFARLANE: Yes. 1:15.

CHAIRMAN: Okay. Let's give a little latitude here and perhaps say we will break now and come back at say 1:20, and if you are a little bit late we will be a little bit late starting, but we will try for 1:20.

MR. MORRISON: Thank you, Mr. Chairman. Thank you, Mr. Theriault.

(Recess - 11:45 p.m. - 1:20 p.m.)

CHAIRMAN: Good afternoon, everyone. During the break I understand that the panel was going to review the documents which were marked 2, 3 and 4 for identification. Has there been an opportunity to do a review?

MR. GOOD: Yes, there has.

MR. MORRISON: Sorry, Mr. Chairman. The panel has reviewed the documents.

CHAIRMAN: Mr. Theriault, proceed.

Q.484 - Thank you, Mr. Chair. Panel, first do you agree that subject to check --

MR. MORRISON: Sorry, Mr. Chairman and Mr. Theriault. I can deal with this later, but there were two undertakings this morning and perhaps we can do it after you are finished your line of questioning, but Ms. MacFarlane does have the answers to the two undertakings that Mr. Theriault asked for this morning, so --

CHAIRMAN: Mr. Theriault, would you prefer to have those answers now? They may assist you in your cross-examination.

MR. THERIAULT: No. I can deal with them after.

CHAIRMAN: Certainly.

Q.485 - So again, panel, do you agree subject to check that this is -- that the document marked as ID 3 is a graph of monthly tracking signals from the period of January 1993 to July of 2007?

MR. GOOD: We agree.

Q.486 - And do you agree that for the first 102 months, or from January 1993 to September 2001, the tracking signal was generally positive indicating a tendency to under-forecast?

MR. GOOD: One of the things that I'm having difficulty with is we really don't know or understand the analysis that has gone into the preparation of this graph or the underlying calculations, the details, what it means. So from that perspective I'm not sure that I can --

Q.487 - Okay. Well let's go back to that. You understand that ID 2 and 4, that's the numbers that we were provided with by DISCO?

MR. GOOD: Yes. I'm not disagreeing with the data points that you were provided. I'm just saying that I'm not sure that we fully understand the calculations or the details that have gone into the preparation of the graph.

Q.488 - And what don't you understand?

MR. GOOD: Well as I say, I just don't understand how you took the data points and translated that necessarily into this graph.

Q.489 - Are you -- again, I asked the question this morning if this was the proper panel to deal with hydro flow in the forecasting. So are you familiar with tracking signal?

MR. GOOD: I'm sorry. Can you repeat that?

Q.490 - Are you familiar with tracking signal?

MR. GOOD: Not personally, no.

Q.491 - No. Is anyone on the panel familiar with that?

MR. GOOD: You may want to go ahead and just pose your questions and perhaps at a general level or at a high level we might be able to answer your questions.

Q.492 - No, but my question was is there anyone else on the panel that's familiar with that?

MR. KENNEDY: Not I with tracking an expert in analyzing data.

Q.493 - Okay. But you did agree with the concepts that I put forward this morning?

MR. KENNEDY: Yes.
Q.494 - Okay. So you would agree that on ID 3 the period -- subject to check -- that the period from January 1993 through to the end is made up of specific periods -- 169 periods in time?
MR. GOOD: Correct.
Q.495 - And you would agree that the column going up under tracking signal is -- bear with me -- is in gigawatt hours?
MR. GOOD: I'm sorry. But the column?
Q.496 - Sorry about that. So you would agree with me that the 1 to 169 is the periods in time as set out by the ID 2 and 4?
MR. GOOD: Subject to check I believe the numbers to be correct.
Q.497 - That's correct. I did ask that.
MR. GOOD: Recognize that table on ID number 2 starts in April of '93 and your graph appears to start January of '93.
Q.498 - But I believe my question was from January of '93.
MR. GOOD: Right.
MR. THERIAULT: If I could just have a moment, Mr. Chair.
CHAIRMAN: Certainly.
MR. THERIAULT: Mr. Chairman, I had provided at the break to

my friend, and perhaps I will provide it at this time, it's the terms that were agreed to this morning, it's a written out version of the terms, and I would ask Ms. O'Donnell at this time to provide it to the Board and the rest of the parties. I have provided it to DISCO and their representatives. It's simply a definition of what we discussed this morning with respect to concepts.

CHAIRMAN: You are referring to the responses you got to your first series of questions this morning?

MR. THERIAULT: That's correct.

MR. MORRISON: Perhaps, Mr. Chairman, if I -- once everybody has had a chance to look at this, I think if there is a problem -- I had an opportunity to discuss this with Mr. Larlee who does know a little bit about tracking errors or tracking signals. Where I think the difficulty arises for us is number 4 which is the rolling sum of forecast errors equals running total of the errors. I think we don't agree that that is fact the appropriate definition. That's where we are having some of the difficulty.

MR. THERIAULT: Perhaps, Mr. Chairman, and again it was a question I put to the panel before I embarked on this line of questioning this morning if they were the proper panel to deal with that, but if my friend says Mr. Larlee, I would have no problem putting these questions to Mr.

Larlee when he takes the panel.

MR. MORRISON: This is the appropriate panel to deal with what I would call all of the things that come out of the PPAs which includes the hydro flow adjustment, but they are not statisticians, if you will. If there is a statistical question -- I had better check with Mr. Larlee.

He is comfortable answering those types of questions on forecasts generally, perhaps not specifically to hydro flow, but he understands tracking signals and forecast errors and these issues.

MR. THERIAULT: So perhaps what I could suggest, Mr. Chairman, is I will move on to another line of questioning and save this for when Mr. Larlee takes the panel, and then that way --

MR. MORRISON: That would be fine. Perhaps even in the interim we might have a discussion about some of these things so that when Mr. Larlee comes up we will better prepared to deal with it.

MR. THERIAULT: Perfect.

CHAIRMAN: I'm just a little concerned, there may be a little cross over here, however, between Mr. Larlee's field of expertise and then the topic this panel is supposed to talk on, because you are saying he is somebody that understands the concepts generally. When it comes to questions with respect to hydro perhaps this is the panel that is more appropriate to answer this. I'm not sure if this is going to be difficult. I assume that most of this panel is going to be available probably throughout the hearing, in any event.

MR. MORRISON: That's correct. So if there is an issue -- this panel, particularly Mr. Good and Mr. Kennedy, deal with the PPAs, and obviously the hydro flow adjustment is a contractual matter in the PPA.

The other thing that we can do, and I'm almost loathe to do this, but to avoid any confusion or duplication perhaps Mr. Larlee could join this panel now to deal with questions on the statistical aspects of it.

But I will leave that to Mr. Theriault, quite frankly, Mr. Chairman. I want to make sure that he gets the opportunity to ask the right questions to the right people, that's all.

MR. THERIAULT: I certainly would have no problem with that.

CHAIRMAN: Well I am going to go back to your comment, you would be loathe to do that. Obviously it's not the way you want to proceed. I don't have any difficulty having these questions deferred to a later time provided there isn't any issue about again the availability of the panel members, but if everybody is in agreement -- the difficulty I guess with Mr. Larlee joining the panel is other intervenors have had an opportunity to question this Panel and he wasn't part of it at that time.

So I think in the interests of fairness to all parties and all intervenors I don't think it would be appropriate. I think it would be better perhaps to put these questions off on the understanding that all the members of this Panel could be available in the event that it turns out that Mr. Larlee only has a piece of the answer.

MR. MORRISON: That's fair. Whatever is fair to all the parties we are happy to do.

CHAIRMAN: All right. We will proceed in that fashion then.

MR. THERIAULT: So, Mr. Chairman, if I understand I will move on to my other line of questioning.

CHAIRMAN: That's correct. And you can put these questions to Mr. Larlee when he is on a future panel, and the remaining members of the panel, if he needs their assistance at that time they can join him.

MR. THERIAULT: That sounds good.

MS. MACFARLANE: Mr. Theriault, as Mr. Good pointed out, we generally agree that there is tracking error, that the 26 54 is a very long term average because of the degree of volatility in the hydro flows. And if you have, as Mr.

Good said, general questions about above and below hydro, how it's treated, how it differs from the method prior to 1994 when there was a variance account, we can certainly answer any of those questions.

Mr. Larlee is not familiar with the hydro system, he is not necessarily familiar with how that part of the PPA works. He will only be answering your statistical questions and looking at the actual calculations of the data as you have presented it to us. I will just leave that with you.

MR. THERIAULT: Thank you. But as I understand the Chairman's ruling, Mr. Larlee at a future date will be present and someone else will be present to deal with that, so --

CHAIRMAN: That's correct. Now you have provided us with another document and I think this discussion started out about some disagreement with respect to one of the items in the new document which has in fact not been marked. That's the one entitled "Some Concepts About Forecast Error". So I am going to mark that document as -- I believe the next number is number 5 for identification. Take the discussion back to item number 5.

Mr. Morrison, I think you started this discussion with respect to I think it was item 4. And then we seemed to get into another topic. So now --

MR. MORRISON: I believe it is really item number 4 where the rubber hits the road with respect to Mr. Larlee, Mr. Chairman.

And I think perhaps over the course of the next day or two we might be able to sit down with the Public Intervenor and get a better understanding of what this means and maybe come to some agreement as to how we proceed.

CHAIRMAN: That sounds like a reasonable process.

MR. THERIAULT: Mr. Chairman, if I just could have 30 seconds. Thank you, Mr. Chairman.

Q.499 - Is it fair to say, panel, that the position of DISCO is that the PPAs are what they are and should be followed?

MS. MACFARLANE: I think we heard a significant amount about the PPAs from Mr. Hay on the opening day. The PPAs were put in place to achieve the objectives of the government of the day under restructuring.

And I believe Mr. Hay said to take one revenue stream and allocate it amongst what were to be ultimately independent companies. The independent company piece, the equity swap that was required to make those companies independent, did not proceed.

But nonetheless we have the structure. We have the

PPAs. They do have a certain set of principles behind them.
And we do take the approach that those are the rules we are to live with.
Any amendments that we have made to the PPAs, we have not in any way violated the objectives, the intent, the underlying structure.

Q.500 - Ms. MacFarlane, again I don't mean to cut you off. But please don't try to anticipate where I'm going.

MS. MACFARLANE: Okay.

Q.501 - I'm simply asking, you know, are the PPAs what they are. And I believe in your affidavit, which is contained in exhibit A-2, that is the impression I was left with.
So the question was simply the PPAs are what they are and should be followed is the general thrust of DISCO?

MS. MACFARLANE: That is correct.

Q.502 - Now I'm going to again refer the panel and the Board to exhibit A-2.
Ms. MacFarlane, I'm going to refer you to your affidavit which is contained in the tab stated "Affidavit". And specifically I'm referring to paragraph 13 at page 3.
Now Ms. MacFarlane, is it true that the contractual payments referenced in paragraph 13 make up the largest part of DISCO's revenue requirement for this test year?

MS. MACFARLANE: Yes, it is.

Q.503 - Okay. And is it true that you have maintained that the PPAs were imposed on DISCO in 2004 by government?

MS. MACFARLANE: Yes.

Q.504 - And does DISCO consider following the terms of the PPAs to be prudent?

MS. MACFARLANE: Given the objectives that the PPAs were based on, yes.

Q.505 - And does DISCO intend to follow the terms of the PPAs?

MS. MACFARLANE: DISCO intends to follow the principles of the PPAs. If an unanticipated situation arises and the PPA has to be amended because it is not contemplated, then we will do that.

But we will continue. Until such time as the government direction changes or the legislation changes, we will continue to follow the PPAs.

Q.506 - So I'm assuming then -- you say the principles. I use the word -- the terminology terms of the PPAs.

MS. MACFARLANE: I used the word principles intentionally. There are situations where, as with any contract, some of the clauses are perhaps not as clear as they might be. And you will note some of the amendments that we filed were for clarification. But we have intentionally not violated the principles behind the PPAs or the objectives that they were intended to achieve as we understand them.

So there may be an oddity within a term. But as it goes to respecting the principles, we certainly intend to do that.

Q.507 - So does that mean you don't follow the terms of the PPAs, just the principles of the PPAs?

MS. MACFARLANE: No. It means we follow the terms of the PPA's. Where there are clearly either typographical or other errors or things that need clarification, those are things that we turn to the Operating Committee. The Operating Committee makes a determination about what the meaning is intended to be.

And if it is clearly not obvious to the reader without amendment, then we have sought amendments. And we have done that in three instances. And those have been filed with the Board.

Q.508 - Okay. And does DISCO intend to insist that other parties follow the terms of the PPAs?

MS. MACFARLANE: In the manner that I spoke of, yes.

Q.509 - And I think you touched on this. But I will ask it just so I'm clear.

It is the responsibility of the Operating Committee to ensure the accuracy and reasonableness of the cost to

DISCO under the PPAs?

MS. MACFARLANE: That is correct.

Q.510 - Now let's take a look at clause 4.3.4, the vesting agreement which is contained in exhibit A-3.

CHAIRMAN: What is the clause number again?

MR. THERIAULT: 4.3.4. I think I might have said 3, but --

CHAIRMAN: Thank you.

MR. THERIAULT: -- it is 4.3.4. It is located at page 42 of the agreement.

CHAIRMAN: Thank you.

Q.511 - Now Ms. MacFarlane, I'm just going to read the following phrase coming from that.

"DISCO shall be responsible for and reimburse Genco for all of the costs or expenses incurred by Genco including any such costs or expenses that may be owed by Genco to NB Power Holdco pursuant to section 4.3.2 in conjunction with the enforcement of the claim that the Orimulsion fuel supply agreement was entered into."

And I would like to stop there. And I have a question. Would you agree that this phrase means that DISCO must pay to Genco, and through Genco to Holdco, all costs associated with the lawsuit against PDVSA?

MS. MACFARLANE: Yes, I would.

Q.512 - And did DISCO pay these costs and expenses?

MS. MACFARLANE: Yes, they did.

Q.513 - Okay. Now let's take a look at the second part of this section. It states that "Genco shall pay DISCO all damages it receives including from NB Power Holdco pursuant to section 4.3.2 in connection therewith." Now would you agree that the relevant portion of this section, the latter section, means that Genco must pay to DISCO any damages it receives as a result of the settlement?

MS. MACFARLANE: This is one of the sections where I made reference to something that was not anticipated at the time that the PPAs were struck, being the form of the Orimulsion settlement and where the specific words do not align with the principles behind the PPAs.

Q.514 - Okay. Now --

MS. MACFARLANE: The PPAs were struck -- if I may, the PPAs were struck to properly and appropriately allocate risk and benefits between taxpayers and ratepayers. And if we were to apply the direct words here, there would have been a windfall to DISCO for the amount of the writeoff of the fuel delivery system connected with the Orimulsion project. That was not anticipated when this was developed. It was not anticipated that the taxpayer would be left with the stranded cost and the ratepayer would benefit and get a windfall for something they never paid for.

So in this case we amended the PPA.

Q.515 - Okay. But I'm not talking about the amendment. That will be dealt with later in the hearing.

I'm going to -- I would ask you to look at the last portion of section 4.3.4. And you read that. And you tell me what it means.

MS. MACFARLANE: What it means is -- well, the words are "Genco shall pay DISCO all damages it receives in connection with the claim against Orimulsion." That is what the words say.

Q.516 - Thank you. That is all I wanted to know.

MS. MACFARLANE: The words did not reflect the principles behind the PPA.

Q.517 - We will get into that at a later point. But you would agree the words say what they say?

MS. MACFARLANE: That is correct.

Q.518 - And you would further agree that this section makes no reference to streaming of the damages through Genco before distributing them to DISCO?

MS. MACFARLANE: This wording did not contemplate the nature of the settlement.

Q.519 - So you would agree with me then? I'm asking about the wording of this section, that is all.

MS. MACFARLANE: I'm suggesting that the wording of the section does not speak to how the damages will flow to DISCO.

Q.520 - But it makes -- my question was it makes no reference to streaming damages through Genco before distributing them to DISCO, does it?

MS. MACFARLANE: It makes no reference to streaming them anyway.

Q.521 - Okay.

MS. MACFARLANE: It is mute on that point or silent on that point.

Q.522 - Thank you. And you would further agree that this section makes no reference to taking a fixed asset previously written off and amortizing a portion of the damages against this asset writeoff?

Again, I'm referring to the specific section. We will have a discussion at a later point.

MS. MACFARLANE: This specific section does not make that reference.

Q.523 - Thank you. I'm going to refer you to section 7.1.2 of the same agreement, the vesting agreement which, Mr. Chairman and panel members, is contained at page 54.

Now panel, could you just take as much time as you need to read section 7.1.2. And then the question is I want you to tell me what this section means.

MR. GOOD: This section is referring to whether or if Genco is required to undertake a refurbishment at any of its stations.

And specifically when you look at the definition of a refurbishment, it means something that is required to be done to the station in order to allow it go get to its estimated service life -- end of service life.

Q.524 - Now I see in that section it refers to a major refurbishment threshold. How is that defined?

MR. GOOD: The major refurbishment threshold, there is a calculation set out, if you look through the definitions, which essentially says you take a certain dollar value per megawatt.

I think it started at $100,000 initially. And it escalates by CPI every year. You would multiply that number by the designated DNC of the unit.

So that indicates at Dalhousie it might be 300 megawatts. In the case of Belledune it is 458. And then you multiply that again by a life service factor, I will call it, which essentially is the remaining life of that station divided by 25.

So that would be a formula that would say to you here is the threshold under which the parties would either agree that Genco has to bear the cost or you would look at sharing the cost.

Q.525 - Does it differ by asset class?

MR. GOOD: No. As I say, it would be on a station by station basis. And the calculation would have to be done every year. And it would be based on the DNC of the particular station and the remaining service life of that station at that point in time.

MR. MORRISON: Mr. Good, you are using an acronym there, DNC. Perhaps you could explain what this is?

MR. GOOD: Demonstrated net maximum capability.

Q.526 - I won't even try to repeat that. Who sets this threshold?

MR. GOOD: As I say, the agreement specifies how that calculation is to be done. And so at the time a refurbishment is required, you would go through the calculation.

And the components of that calculation are dependent on a number of things, which station it is at and the estimated service life at that time.

Q.527 - Is that a Genco calculation? Or is it a DISCO or a combination of both or --

MR. GOOD: As I say, it is contained in the vesting agreement.

Q.528 - And I'm asking you to tell me what it is. I just want to know who sets it. Is it DISCO that sets that? Is it Genco?

MR. GOOD: Are you heading towards the Belledune water wall as an example?

Q.529 - I'm asking a question on the agreement. It doesn't matter which way I'm heading.

MR. GOOD: Well, the reason I say that is I can give you an example of what the calculation might be.

Q.530 - But my question is is there any particular entity that sets the threshold? It is a pretty straightforward question.

MR. GOOD: No. It is not set by either entity. It is calculated based on a formula contained in the vesting agreement.

Q.531 - Okay. Thank you.

What process does DISCO follow to confirm that a threshold is reasonable?

MR. KENNEDY: The threshold is that we review -- if there was a refurbishment to be carried out, we would review the project and what the scope was.

In addition we would assure ourselves that we were getting a fair price for what was going to be carried out.

And at that time we would perform an evaluation to determine if it was appropriate to proceed with the refurbishment.

Q.532 - Have there been any changes to the calculations that determine threshold?

MR. GOOD: No, there have not.

Q.533 - And perhaps, panel, you can help me with this. What recourse does DISCO have if it disagrees with the original threshold that has been set or with any changes that might have been made to a threshold?

MR. KENNEDY: If I may, I believe -- I don't know whether anyone referred you to page 16. But that is where it describes in the vesting PPA. And it is basically hardwired in the contract. It is on page 16.

Q.534 - So is it the position then of DISCO that they can't do anything about that?

MR. KENNEDY: Not with respect to the threshold, no.

Q.535 - So then I would assume from that answer this is a clause that can't be changed?

MR. KENNEDY: We feel it meets the intent and it is prudent that it describes a value that would put a threshold on when a major refurbishment was required.

Q.536 - Okay. Now let's move to section 6.2.4 of this same agreement, if we could. And I'm going to ask you to review that particular section. It is at page 46 of the vesting agreement.

And again the same question. I'm going to ask you to tell me what this section means.

MR. KENNEDY: Yes. It basically describes how the fuel component of the vesting energy price is to be established by the Operating Committee.

Q.537 - So it deals with the establishment of the vesting energy price by the -- the fuel component of the vesting energy price by the Operating Committee?

MR. KENNEDY: Yes. And it refers to schedule 6.2.

Q.538 - Okay. Now what are the benefits associated with the third party gross margin?

MR. KENNEDY: The benefits with respect to the third party gross margin are prescribed in the PPA.

Q.539 - Okay. And where are they prescribed?

MR. KENNEDY: They are described -- it's in 6.3 and it moves back to the -- back of the contract.

Q.540 - So you are telling me that --

MR. KENNEDY: It's the schedule at the back of the vesting PPA, schedule 6.3, describes what the third party gross margin credit that would be provided to DISCO from Genco, and for the fiscal year ending March 2008, which is the test year for this revenue requirement hearing, it is

$69,600,000. It's line D on the third party gross margin credit.

Q.541 - Thank you. Could you explain how the upper and lower thresholds -- threshold values are calculated?

MR. KENNEDY: The upper end threshold values were prescribed in the PPA with respect to setting the appropriate guidelines at the time they developed -- the PPAs were developed, and they are plus or minus 20 percent. And they are provided for the purposes of providing Genco an incentive to perform the export sales in an expeditious manner.

Q.542 - Who set those thresholds?

MR. KENNEDY: They were established by the drafters and the developers of the PPAs.

Q.543 - Now if there were a dispute between Genco and DISCO about calculations, how would this dispute be dealt with?

MR. KENNEDY: With respect to being inside/outside the bands?

Q.544 - Calculation of the benefits.

MR. KENNEDY: We would resolve it through the Operating Committee. We would be basically assessing and analyzing what the export benefits are.

Q.545 - Thank you. Can I, panel, assume that if the annual benefits do not go outside the upper or lower thresholds that DISCO keeps 100 percent of the benefits of the third party gross margin? I can repeat that if you like.

MR. KENNEDY: The way it works is that DISCO gets $69.6 million if it's within the band. If it's within the band -- the 20 percent band we get the fixed 69.6 credit.

Q.546 - So again can I assume that if the annual benefits do not go outside the upper or lower thresholds that DISCO keeps 100 percent of the benefits of the third party gross margin?

MR. KENNEDY: If it's within the band. I'm not sure on the question. Would you repeat that question again?

Q.547 - Sure. Can I assume that if the annual benefits do not go outside the upper or lower thresholds, that DISCO keeps 100 percent of the benefits of the third party gross margin?

MR. KENNEDY: DISCO can only keep -- if it's inside the band it keeps $69.6 million.

Q.548 - Does that mean that the remainder would go to Genco?

MR. KENNEDY: Yes.

Q.549 - Thank you.

MS. MACFARLANE: Well, Mr. Theriault, in the case of 2007/2008 the deficit goes to Genco. The Genco outage shows that the projected export sales for this year are only 63,000,000. So Genco takes the deficit in this test year and DISCO gets -- Genco takes the deficit and DISCO gets the prescribed amount.

Q.550 - Thank you. Now is it true that the vesting agreement does not anticipate updates following October 1st?

MR. KENNEDY: For the purpose of setting the vesting energy price, yes.

Q.551 - Thank you. Now, panel, I'm going to refer you to A-16, I believe. Just bear with me, Mr. Chairman. I lost my tab here. Is it DISCO's position that it will never look at alternative generating resources that are cheaper than the vesting agreement because doing so would have Genco with an above market cost and EFC would never permit this? And perhaps I could ask you, I am referencing page 2 of the section entitled "PPAs" in exhibit A-16, line 11 to 22.

MR. CHAIRMAN: Repeat that reference please?

MR. THERIAULT: Yes, it's exhibit A-16. The section tabbed PPAs towards the end. And it's line 11 to 22 on page 2.

MR. CHAIRMAN: Thank you.

Q.552 - Would you like me to repeat the question?

MS. MACFARLANE: No, I -- well you may repeat it for the room, yes.

Q.553 - Well if you don't need it, that's fine.

MS. MACFARLANE: The PPAs were put in place as transitional instruments as the most critical tool in restructuring. There was an objective to be achieved. Part of the structure was that existing assets, heritage assets which were constructed for the use of future generations of ratepayers would be made available to them. Future generations of ratepayers would have all the rights to those assets, but they would also be required to pay for those assets. That was the understanding in crafting, restructuring and then crafting the vesting agreement. And as stated in line 17 to 22, and also part of the testimony of Ed Kee in the earlier proceeding, that is very common.

DISCO is not in a position to speak for what decisions the Board of Electric Finance would make. And the shareholders' agreement -- the vesting agreement, the clause that says that disputes can be taken to EFC do outline the types of considerations that Electric Finance would make in coming to its decision. But it is our belief that based on the original objectives, Electric Finance would not likely strand the taxpayer with costs that were initially incurred for the benefit of ratepayers. So from that perspective as it reads, we maintain that while that the amendment provision exist, Genco would have no reason to relieve DISCO of its obligations if it left stranded investment with Genco, which would ultimately be left with taxpayers and similar Electric Finance in considering any request that DISCO be relieved of its obligations would have to weigh the benefits of the taxpayer and the ratepayer.

Q.554 - So you are saying that DISCO will look at alternative generations resources?

MS. MACFARLANE: At the time, at this time, Genco other than through the renewable portfolio is under contract with Genco and believes it has an obligation to honour that contract with Genco to pay for those heritage assets. And it will be -- without direction from the shareholder, it will not be looking for alternative sources of generation --

Q.555 - That's fine. Thank you.

MS. MACFARLANE: -- unless the shareholder would like stranded debt to be left with the taxpayer.

Q.556 - Well, the shareholder could ask for anything?

MS. MACFARLANE: The shareholder could ask for anything, that's right.

Q.557 - Do you agree that having a diversity of suppliers would reduce DISCO's exposure to the performance of a single entity?

MS. MACFARLANE; Very much so. And that has been the NB

Power philosophy for some number of years. The fact I think it's published annually is the statement in our annual report that we believe we have North America's most diverse generating system.

Q.558 - But I am specifically asking about a diversity of suppliers. So do you agree that having a diversity of suppliers that DISCO -- would reduce DISCO's exposure to the performance of a single entity? In other words, Genco?

MS. MACFARLANE: It's a difficult question to answer given that they are sister companies, but I don't believe DISCO has any reason to be concerned about Genco's performance and recognizing that underlying Genco's performance is the most diverse generating supply in North America. So DISCO inherently has the benefit of that through the vesting agreement.

Q.559 - Is DISCO not dependent then on Genco's performance?

MS. MACFARLANE: DISCO gets all of the benefits of Genco's performance and it has the obligation to pay for the heritage assets that were invested in on behalf of ratepayers prior to restructuring.

Q.560 - So you would agree that DISCO is dependent on Genco's performance?

MS. MACFARLANE: Yes.

Q.561 - Now do you agree that having a diversity of suppliers would reduce exposure to the whims of Electric Finance?

MS. MACFARLANE: I won't answer that question because it implies that Electric Finance has whims.

Q.562 - Okay. I was searching for a better word, but I will refer you to the page 2 of the document we were just looking at. And what I am getting at here is it says similarly, Electric Finance considering any requests for amendment would weigh any benefit to the ratepayer against the risk to the taxpayer of stranded investment and financial harm. So what I am saying is would a diversity of suppliers deal with that problem?

MS. MACFARLANE: One would only need a diversity of suppliers if this issue of the obligation for the ratepayer to either pay for those investments or for the taxpayer to assume the burden of those investments was dealt with, because right now there is no requirement for other suppliers, the load is being met fully through the vesting contract and through the Nuclearco PPA.

So as I say, I don't think that it is the question is valid.

Q.563 - Do you agree that having a diversity of suppliers would increase competition and drive prices down over time?

MS. MACFARLANE: No, I don't necessarily agree with that either. And I think as Mr. Hay stated on the first day, the experience has been the opposite in those jurisdictions that have gone to open competition. Prices have actually gone up.

Q.564 - Now I am going to ask a series of questions with respect to exhibits A-2, A-3, A-4. And you don't need to have them in front of you unless you wish, because they are generalized questions and you seem fairly familiar with, but if you want to pull them out by all means. But would you confirm the following about your April 19th 2007 filing that DISCO did not file any detailed evidence regarding the PROMOD runs?

MS. MACFARLANE: The details of the PROMOD runs was filed with the Genco evidence which was in August.

Q.565 - And could you point me to that?

MS. MACFARLANE: It is in exhibit A-16, Appendix 1.

Q.566 - Thank you. Now in its April 19th 2007 filing did DISCO file any detailed evidence regarding fuel hedging contracts? In April -- in April 19th 2007 filing did DISCO file?

MS. MACFARLANE: Those contracts were filed either in response to interrogatories or as part of the additional evidence filed in August, the detail around those contracts.

Q.567 - But it wasn't in the April 19th filing?

MS. MACFARLANE: No, it was not.

Q.568 - And with respect to the October 9th filing, which is exhibit A-27, DISCO did not file any rationale for and reasonableness of its overall hedging strategy?

MS. MACFARLANE: I believe the rationale for and the reasonableness of the hedging strategy was filed with the original evidence in exhibit A-2 in April. I can point you to that if you would like?

Q.569 - Sure.

MS. MACFARLANE: In exhibit A-2, section 1.

Q.570 - Bear with me for a second. Yes.

MS. MACFARLANE: This is the section describing the evidence on purchase power, and specifically on page 6 is a table showing a calculation of the fuel component of the vesting energy price. There is a description about how that is calculated through PROMOD on the previous page and describes the inputs to PROMOD which do include the forward purchase contracts, and on page 7, lines 4 though 23 -- pardon me -- 4 through 18 -- describe NB Power's hedging policy and why it engages in that hedging policy. There were also a number of IRs on it and further information was provided at that time.

Q.571 - In its October 9th filing DISCO did not file evidence to demonstrate that each trade was executed at a price reflective of the market.

MS. MACFARLANE: Well with respect, Mr. Theriault, the trades are executed in the market. So they must be reflective of the market, unless I misunderstand your question.

Q.572 - No. That was my question. Thank you. And in the October 9th filing, DISCO did not file evidence to demonstrate that the contract form used is reasonable.

MS. MACFARLANE: The contract form when they were filed are standard in the industry. There are two forms. There are what are referred to as ISDAs and those are -- I'm trying to think what the acronym means, but it is a standard contract form in the financial markets, and there is another standard form that is used for energy swaps. And again they are standardized contracts. They are prudent by nature of the fact that they are defined by the financial markets themselves. They are standard form. Would you like me to get you the reference?

Q.573 - No, that's fine. I know where it is.

MS. MACFARLANE: Okay.

Q.574 - In the October 9th filing DISCO did not file evidence to demonstrate that the delivery points chosen are reasonable?

MS. MACFARLANE: The delivery points chosen for?

Q.575 - For delivery.

MS. MACFARLANE: Are you referring to the financial instruments or for the fuel contracts?

Q.576 - Fuel contracts.

MR. GOOD: Well the fuel deliveries would all be to the plants.

Q.577 - So that would be your answer then to the question?

MR. GOOD: That's correct.

Q.578 - And in the October 9th filing DISCO did not file a guide explaining the PROMOD runs and the reasoning behind the assumptions?

MS. MACFARLANE: I believe that there was a large amount of detail filed in exhibit A-16 as to the inputs in the PROMOD run, the sources thereof, and we also have expert testimony on that through our expert witness who will be available after this panel.

Q.579 - Okay. Thank you.

MR. THERIAULT: Mr. Chairman, I'm going to be referring to exhibit A-30, if I can find it. And, Ms. MacFarlane, I'm referring to CMI IR-56 part C, and if you just want to take a second to read that and then the response to that.

MS. MACFARLANE: Yes, I have read it.

Q.580 - Okay. Thank you. Am I correct in assuming that this IR response states that the amount of the hedge losses that would flow through to customers in the fuel component of the vesting agreement was 48.9 million?

MS. MACFARLANE: No, that is not correct. What the answer says is that what is flowed through to customers is the price that was fixed in the forward contract that was placed on DISCO's behalf, that is the amount that flows through to customers.

The way that the PROMOD determines that is it enters two factors, and I can ask you to turn to page -- exhibit A-16, which is the PROMOD inputs, exhibit A-16, appendix 1. I am behind tab 15.

MR. MORRISON: Can you give the page number, Ms. MacFarlane, please?

MS. MACFARLANE: It is page 68 and 69 of 95 in exhibit A-16, appendix 1.

CHAIRMAN: I'm going to ask you -- A-16, where do we go from there?

MS. MACFARLANE: Appendix 1.

CHAIRMAN: All right. We are there.

MS. MACFARLANE: Page 68.

CHAIRMAN: Thank you.

Q.581 - Page 68, you say?

MS. MACFARLANE: Yes.

MR. MORRISON: I just caution the witness that on page 69 there is some confidential information that is included there.

MS. MACFARLANE: Thank you. As it outlines in the CME IR-56 that we were just looking at, answer number C, it is incorrect to look at gains or losses in isolation of the spot price. What is relevant to the ratepayer is what Genco pays for the fuel and Genco passes that cost on to DISCO and then it gets passed on to the ratepayer.

The amount that Genco pays is the amount of the fixed price contract. If you were to look at page 68 of the PROMOD input in front of you, you would see that the third column is the hedge price US dollar per barrel averaged over the months in the year. The total average for the year is $52.76 US per barrel. Those are fixed price contracts. That is what Genco will pay, that is what Genco charges DISCO and that is what is included in the revenue requirement to be included in rates.

The gain or loss is simply a calculation at a point in time depending upon the fair value of the hedge and the fair value of the settlement. You take the fair value of the -- pardon me -- the fair value of the spot price and the fair value of the settlement, and you take those two and add them together and it doesn't matter what happens to the spot price.

If the spot price goes up or down, the gain or loss goes up or down, and the two always come back to what Genco pays, which is the fixed price in the contract. That is stated in answer number C, that it is incorrect to look at gains or losses alone, they would not exist alone.

Therefore though we have put a mathematical calculation in to the answer, that came to 48.9 million, that is not a charge to ratepayers. The charge to ratepayers is $52.76 per barrel which is the fixed contract price.

Q.582 - Thank you.

MS. MACFARLANE: The CME IR-56 happens to be, Mr. Theriault, my favourite IR. It is, because it gives the opportunity on page 2 to demonstrate what -- this is a relatively complex field.

It gave the opportunity on page 2, table 1, to show how these prices move, but at the end of the day the expected cost of fuel is always the fixed price contract. This table shows in column 1 what a market price would be, what the spot price would be and what the hedge price would be, and what the calculated gain or loss would be at that point in time, shows it at a second date, and again at a third date.

And in all cases the spot prices are different and consequently the gains and losses are different, but added together they always come back to the fixed price of the contract. That is what Genco pays and that is what DISCO is charged.

Q.583 - Now can you point me in the vesting agreement, which is exhibit A-3, where in the vesting agreement does it call for the flow through of financial hedges to DISCO and ultimately to DISCO's customers?

MS. MACFARLANE: In the vesting contract, which is in A-3 --

Q.584 - Yes.

MS. MACFARLANE: -- on -- it's at the back of the schedule, schedule 6.2, it's where the calculation of the fuel component of the energy charge is defined.

Q.585 - Thank you. Ms. MacFarlane, has there --

MS. MACFARLANE: I just will mention that that is one of the clauses that I mentioned to you earlier that we believed that the wording in the contract was in error, unintentional error, and we felt an amendment to it.

Q.586 - It wasn't a term, it was a principle or something, that whole discussion.

MS. MACFARLANE: That was one the discussions, yes.

Q.587 - Okay. Can you tell us if there has ever been an adjusted fuel case that was implemented after October 1st?

MR. KENNEDY: Yes.

Q.588 - Thank you. Did such an adjustment result in higher costs for DISCO?

MR. KENNEDY: Yes.

Q.589 - In the fiscal year 2007/08 will the inclusion of the hedge in gains and losses result in higher costs for DISCO?

MS. MACFARLANE: The settlement gains and losses and the spot price together are combined to equal the fixed contract price. That is what is included in the calculation of fuel charges to DISCO.

So I am saying it is an improperly constructed sentence, because one can't put spot prices in without putting in the settlement gains because the relevant price is what Genco will pay, and that's the fixed contract.

Q.590 - Did the change in the treatment of the hydro adjustment that we discussed earlier result in higher costs for DISCO?

MR. KENNEDY: The hydro adjustment does not factor in when you are setting the requirement for the vesting energy price and determining the revenue requirement for the test year. The prescribed 26 54 average hydro generation is the fixed input into the PROMOD analysis.

Q.591 - Okay. Is it not true that the Belledune refurbishment cost has already been paid by DISCO?

MR. GOOD: I don't agree with that, no.

Q.592 - And why would that be?

MR. GOOD: This was a capital expenditure that was required in order to continue burning cheaper fuel at the station which was to DISCO's benefit, and the cost for that was just incurred this year. It was an additional expense above and beyond what had ever been contemplated when the PPAs were constructed.

Q.593 - So is it being amortized?

MR. GOOD: Yes, it is.

Q.594 - And over how long would it be amortized?

MR. GOOD: The remaining life of the Belledune generating station --

Q.595 - Which is?

MR. GOOD: -- which I think is approximately 21 years.

Q.596 - Now under section 80 of the Electricity Act has DISCO ever issued a request for proposals for the supply of electricity?

MR. KENNEDY: Not under section 80, but with respect to meet the renewable portfolio standard requirements of section 142 of the Electricity Act and also to meet the regulation under that section with respect to call for renewable resources.

Q.597 - But the question was under section 80 has --

MR. KENNEDY: Not section 80.

MR. THERIAULT: And aside from the fact that Ms. MacFarlane likes Mr. Lawson's IRs better than mine, I have no further questions.

MR. MORRISON: And vote on all of them, you know.

MR. THERIAULT: And at this time subject to obviously Mr. Larlee and others later.

CHAIRMAN: I wonder if everybody has a favourite IR. I guess, Ms. Desmond, you would be next. Do you want to start at this time or do you want to have a bit of a break?

MS. DESMOND: Perhaps I could suggest a short recess before we begin.

CHAIRMAN: Okay. We will break for 15 minutes until quarter to 3:00.

(Recess - 2:30 p.m. - 2:45 p.m.)

CHAIRMAN: Ms. Desmond, are you ready to proceed?

MS. DESMOND: Yes.

MR. MORRISON: Mr. Chairman, perhaps just before we proceed, there are two undertaking responses that Ms. MacFarlane gave in response to questions from Mr. Theriault this morning and we have those responses ready. With your permission, I would have Ms. MacFarlane read them into the record.

CHAIRMAN: Proceed.

MS. MACFARLANE: Thank you. IR-3 from Mr. Theriault was asking for a breakdown of the consolidated retained earnings of Genco by Genco proper and its subsidiaries. We had indicated that in an IR that the forecasted retained earnings at March 31st 2008 for Genco is 68.3 million. The breakdown is Genco unconsolidated 80.6 million. NB Coal, which is the subsidiary of Genco has a deficit projected of 10.9 million. Coleson Cove has a deficit projected of 1.2 million. And the total of the three comes to the 68.3 million.

Undertaking number 4 from Mr. Theriault was to provide the weighted average cost of debt for Nuclearco for the test year. That calculation has been done. And it is 6.9 -- 6.296 percent.

CHAIRMAN: Thank you.

<u>CROSS EXAMINATION BY MS. DESMOND</u>:

Q.598 - I wanted to start our cross by asking just some questions for the purpose of clarity as it relates to the PROMOD runs that are done by DISCO. And I understand that the PROMOD runs occur monthly and quarterly, is that accurate?

MR. KENNEDY: The PROMOD run is run once for setting the vesting energy price. Then again it is run for other reasons with respect to budgeting purposes throughout the year. But the PROMOD run that has been filed here is the one that it is used to set the vesting energy price and lock it in once it is reviewed and analyzed. It basically locks in the fuel component that Genco charges DISCO for the year. And the year in question here in '07-'08.

Q.599 - But are the runs conducted monthly? Is that accurate? I understood that from the Operating Committee minute meetings -- meeting minutes? Sorry.

MR. KENNEDY: Are you speaking of the PROMOD itself or a monthly adjustments, for example, hydro adjustments? Again the PROMOD also is run from an overall corporation point of view to determine what the budget is with respect to the -- for generation on a quarterly basis. But once again, I want to emphasize once that PROMOD is run that's in here, that really fixes the vesting energy price that DISCO pays throughout the year.

MS. MACFARLANE: I might just add, Ms. Desmond, you would have seen in the minutes of the Financial Hedging Committee that there is also PROMOD run done to determine fuel quantities and exposures on a quarterly basis so that hedges can be placed. And to the extent that there have been operating changes inbetween quarters, monthly PROMODs are done to ensure that the exposures are properly defined.

Q.600 - Has the impact of the PDVSA settlement been considered by the Operating Committee at its monthly meetings?

MR. KENNEDY: No, not -- it's nothing with respect to the meetings, but there are members that are aware of the PDVSA settlement.

Q.601 - I wanted to clarify a little bit about the mechanistic approach to hedging that we spoke about yesterday. And could you just maybe just elaborate around what that entails and how that actually works?

MS. MACFARLANE: When we say a mechanistic approach, we spent considerable effort back in the early part of the century working with consultants to determine what approach best worked for our system and for utilities generally and what would be acceptable from a regulatory point of view. And it was after looking through the literature and with his advice, it was clear that taking a price view in hedging puts -- can put a utility at significant risk. When we say mechanistic what we mean by that is regardless of what is happening in the market our policy says when we have an exposure defined, we hedge the exposure. So once a month we determine what the exposures are for the 18th month out and we also look at the interim period to see if there are any changes in exposures that have arisen because of changes in outage plans or other operating conditions. And we exercise, once determining -- once having determined those exposures, we execute hedges to ensure that we are always in a position that meets our hedging policy.

So there is no -- what I mean by that there is no judgment to it from a price perspective and there is no judgment to is from a timing perspective. It is done every month. It is done by the same people. It is done on the same basis in a mechanistic way.

Q.602 - And one of things I guess we were not clear about is whether or not the Operating Committee or the Operations Committee considers all fuel purchases at its meeting? So does that include every type of fuel?

MS. MACFARLANE: Can I just clarify, are you speaking of the Operating Committee of the Hedging Committee or the Operating Committee under the PPAs?

Q.603 - The first. Of the Hedging Committee?

MS. MACFARLANE: The policy does not call for us to hedge where we do not have commitments. So, for example in our export margins, as the budgets are prepared and the forecasts are prepared, PROMOD will define, shall we say based on market conditions and based on available supply where export opportunities are possible and we will make a forecast of that. But those sales are not known and the markets are very volatile, so we do not hedge until on the export market an actual sale is made. And in transacting that sale, we -- over approximately a two-hour period, we are asked for a bid price, we go out and get a hedge and that is the price, plus a profit that we then bid into the market. So you will in the hedging reports given to the Board that there are in-province exposures and out-of-province exposures. Those out-of-province exposures are only those where in fact we have a sale contract in place.

So I believe your question was do we hedge all fuels? And the first part of the answer is we do not hedge fuel required for exports unless we have a contract.

The second is we do not use financial hedges in markets where we can get fixed price contracts and that would include coal and uranium. The suppliers are willing to give fixed price contracts, so we don't need the financial contracts in those cases.

By the way, financial markets also don't exist in those cases.

Q.604 - Could you clarify for the record, what is the situation with respect to petcoke, are they hedged?

MS. MACFARLANE: Petroleum coke is another fuel type that we go out to tender through an RFP and we are able to get a fixed price supply from a supplier.

Q.605 - I know you spoke a little bit about --

MS. MACFARLANE: Ms. Desmond, I have to correct my answer. I am sorry I was wrong. We do not h edge petcoke, because there is no market in which to obtain -- there is no market where we can obtain a financial hedge. But it is also the case that the suppliers of petcoke will not give us a fixed price contract. So that is a variable price contract.

Q.606 - Earlier in your testimony you spoke about how as you got closer to the vesting date that the hedges would be trued up to a hundred percent. And I am wondering how does that impact on purchases in the months immediately preceding the setting of the vesting price? For example, are they larger immediately preceding the setting of the vesting price?

MS. MACFARLANE: Yes, the hedge is put on in the month immediately preceding the vesting price being set, would include the normal exposures for the eighteenth month out, but they would also include an increase of being hedged at 80 percent of exposures for the whole 18-month period up to a hundred percent. So, yes, the hedge contracts put on in that last month are larger.

Q.607 - So is there a potential danger then that these larger than average variances could be -- they might wane or tend to be impacted by market conditions that are unique to those particular months?

MS. MACFARLANE: There is that possibility, and we certainly discussed a practice in that regard. The reason for only hedging 80 percent through the year is because there are relatively -- there can be relatively significant changes in operating conditions as we go forward and we do not want to find ourselves over-hedged.

So we estimate the exposure, we hedge at 80 percent, and in all likelihood -- there is a good likelihood the exposure might come down and increase our hedge percentage naturally. But you are right that it does leave us exposed in that last month to any aberrant market conditions.

For 80 percent of it we do the smoothing but there is a risk for the last month that there may be an aberrant market condition.

Q.608 - Could you explain briefly the conditions under which the fuel and foreign exchange forward contracts are settled? For example, when are they settled, at what stage are they settled, when they are expired or a month ahead or how does that process work?

MS. MACFARLANE: I don't actually do the mechanics myself but I will explain at a high level, that the contracts are transacted at no cost, entered into at no cost on a particular day for a forward date. When the forward date comes there is a financial settlement that involves some exchange of cash.

If we were to use an example of heavy fuel oil, we would enter into a contract on let's say January 2nd for what we expect to be a delivery in December. January 2nd there is no cash outlay. The delivery arrives in December with an invoice. One payment would be made for the invoice price to the supplier of the fuel, and that is the spot price. And then the financial counterparty who has given us the fixed price contract, there would either be a payment to that party or a payment from that party to bring whatever we pay to the supplier back to the amount of the fixed price contract entered into through the hedge.

Q.609 - So does Genco ever take physical delivery of the fuel purchased through those contracts, am I correct in assuming that they do not?

MS. MACFARLANE: For heavy fuel oil Genco does take physical delivery of the fuel, and as I say receives an invoice with that and pays it. There is a further settlement of the financial contract to bring that payment to whatever the price is in that financial contract.

Natural gas -- NB Power does not actually have a gas -- a physical gas exposure that -- we have a contract with non-generation utilities, two of them, who burn gas. They take physical delivery, they purchase the fuel, but they fuel us based on a market index, and that is where our exposure comes from.

So we only have the one payment stream on natural gas and that is to the -- well we have two. One is to the NUG based on the contract price, and the other is to the financial counterparty to bring that to the fixed price that we have entered into through the hedge.

Q.610 - Is there a physical separation then between whom you actually buy the fuel from and with whom you enter into the hedged contract?

MS. MACFARLANE: Yes, there is, and I will turn the question of suppliers of the actual fuel over to Mr. Good. The financial counterparties are market entities and the largest ones and it's indicated in the evidence.

MR. MORRISON: I believe there is some sensitivity around who the financial counterparties are. There is a fairly small market -- number of market participants, and I think they compete pretty strongly with respect to these financial hedge contracts.

I'm not sure whether -- I think we answered an IR on that but I think it may have been in confidence, and there were three or four parties named.

MS. MACFARLANE: And the counterparties are also in the confidential PROMOD input evidence as well. They are large financial institutions, trading institutions, et cetera. They are not suppliers of fuel. So I will turn over to Mr. Good the question about the suppliers of fuel.

MR. GOOD: Well I think the answer is the same, unfortunately. That information is redacted, confidential.

Q.611 - That is fine. We are not looking for their names, we just wanted to be clear that there was a physical separation between who actually delivered the fuel and with whom you were entering into the hedging contracts with.

MS. MACFARLANE: Yes, there is.

Q.612 - And are there ever times when fuel is purchased on a spot market without offsetting fuel or foreign indexed forward contracts? Could you provide a typical example of this type of transaction, if that is the case.

MR. GOOD: I'm sorry. Could you just repeat your question again?

Q.613 - Are there ever times when fuel is purchased on the spot market without offsetting fuel -- or foreign exchange forward contracts?

MR. GOOD: Yes. If Genco is doing export sales, non firm export sales, we purchase the fuel required for that on the spot market. And also if there are changes in in-province load that would require us to buy additional fuel.

Q.614 - Is it correct that when Genco enters into the unhedged transactions that the profit or loss lies with Genco and not with DISCO?

MR. GOOD: That's correct.

Q.615 - I have a few questions now with respect to some of the capacity payment adjustments. You might want to take out binder A-2. In binder A-2 if you could turn to section 1, please. And in particular page 10 of that section.

MR. GOOD: Yes, I have it.

Q.616 - My first question is one of clarity in terms of I'm wondering if the Belledune generating station -- I understand it operated on an 85 15 coal petcoke mix for 13 months through May of '06 to May of '07, is that correct?

MR. KENNEDY: The Belledune generating station -- ever since it has come online it's been trying to maximize the amount of petcoke that it can burn in relationship to the coal that it burns, because it results in significant fuel savings.

But since they have maximized it prior to last year where they were burning 25 percent -- up to 25 percent petcoke, but eventually they were entered into -- got into situations where there was a sign the water walls were deteriorating, and it's prominent throughout the industry that the burning of the petcoke causes issues with respect to water wall thinning.

So the objective was that DISCO wanted to ensure that the maximum amount of petcoke that was possible could be burnt at the station and in so doing it basically entered into an arrangement where Genco went ahead and installed a significant amount of welded overlay to protect the water wall and thus enable the continued burn, and up the burn from -- up to 25 percent petcoke at the Belledune generating station. And that is reflected in the vesting energy price for the test year of 07/08.

And as a result of that there was an investment carried out by Genco that is -- was treated in a manner that the contract provides for, and this was basically being paid for over a period of time, but generally the saving was such that it would save anywheres from five to

$7,000,000 a year.

So within a year the project would pay for itself in the ability to continue to burn this fuel at Belledune. In light of this, you know, the Operating Committee it was felt that, you know, if there was no incentive -- that Genco really had no incentive to up the percentage and basically operate their boiler in a condition that would cause deterioration. So this was carried out and that's reflected in this capacity payment adjustment that's in table 1(G).

Q.617 - But is it correct that that 85 15 percent mix was used for that 13 month period?

MR. GOOD: The problem with the water wall was identified during the spring outage in 2006, and at that time we did reduce the proportion of petcoke that we were burning because we could not afford to have further damage done to the inside of the boiler. So you are correct.

Last year we reduced the percentage from approximately 25 percent down to 15. That resulted in additional fuel costs for the year which resided with Genco. We weren't able to pass those additional fuel costs on to DISCO.

Q.618 - But could the generating station have continued to operate with that reduced percentage without repairs to the water wall?

MR. GOOD: Yes, we could have. However, the differential would have been in the order of $5,000,000 a year at a minimum. And so we thought it was important to undertake the upgrade of the boiler to continue to achieve those savings for the benefit of DISCO.

Q.619 - Does the burning of petcoke impact on the quality of marketable gypsum?

MR. KENNEDY: No. No. The station has been operating and it's producing marketable gypsum at the 25 percent level.

Q.620 - So there has been no impact at all then on the quality of gypsum that comes from the burning of that --

MR. KENNEDY: To the best of my knowledge from my days in plant operations I know of no detrimental effect of that level of 25 percent coke.

Q.621 - Now if I could just refer you then to table 1(G) which is on page 11 of that section that we have pulled out. If I understand that table correctly, it appears that the capacity payment has been increased by 800,000 in the test year to reflect the water wall upgrade and the corresponding return of the plant to the 75/25 mix, is that correct?

MR. GOOD: That's correct.

Q.622 - Could you detail the scope of the work that is identified and it's -- with respect to that $800,000 charge?

MR. GOOD: What was done was actually to go inside the boiler and apply a steel -- a stainless steel weld overlay to approximately 11,000 square feet. That covered the entire inside of the boiler that is anywhere near where there are flames. So it is a permanent fix for this problem.

The $800,000 charge is a reflection of the capital expenditure on that project that is now going to be amortized over the remaining life of the station.

Q.623 - Now if I could just refer you now to amendment number 2 to the vesting agreement.

CHAIRMAN: What is the exhibit number, Ms. Desmond? Is that the amendment that was just filed recently?

MS. DESMOND: That's right.

MR. GOOD: Yes, I have it.

MS. DESMOND: I don't believe the Board members have it. I will just wait a minute.

CHAIRMAN: Sorry, the exhibit number is that A-36?

MS. DESMOND: I am sorry, Mr. Chair, mine doesn't have an exhibit number on it. I just -- I am not sure what it was marked. I am not sure if the Board Secretary could clarify that?

MR. MORRISON: Exhibit A-36.

CHAIRMAN: Thank you. Mr. Morrison has clarified it is A-36.

Q.624 - Perhaps you could turn to section 10.3 of that amendment?

MR. GOOD: Yes, I have it.

Q.625 - And if I read this section correctly, I understand that the monthly payment is to be adjusted to take into account the environmental costs associated with the Belledune boiler upgrade, is that correct?

MR. GOOD: That's correct. We used the term, environmental costs, in this amendment simply because when the Operating Committee was faced with this issue of how do we calculate this charge, we relied on an existing clause in the vesting agreement that dealt with environmental issues. And there was a schedule provided for in there that would calculate the adjustment to the capacity factor. So it's not really an environmental cost in the sense that this is an environmental requirement under legislation or anything. It was a term that was used here simply to make this amendment fit with a provision that was already in the agreement.

Q.626 - And that's interesting, if you could then turn to exhibit A-3, and I think you are referring to section 7.2.1.2 of the vesting agreement?

MR. GOOD: I am sorry, what was your exact reference again, which clause?

Q.627 - I believe when you referred to making it fit within the existing provision of the vesting agreement, am I correct in assuming you are referring to section 7.2.1.2?

MR. GOOD: That's correct.

Q.628 - And I am wondering if you would agree that that section essentially says that additional capital expenditures and/or additional operations and maintenance costs incurred in order to generate and deliver net energy from the unit generators and then forming part of Genco's facilities as a result of a charge or proposed -- sorry, as a result of a change or proposed change in environmental law --

MR. GOOD: Right.

Q.629 - - is that essentially how you would read that provision?

MR. GOOD: That's how I read that provision. As I say though, we simply used the term, environmental costs, in the amendment, simply to tie this back to the schedule in the PPA, which the Operating Committee relied on to calculate what the change in the capacity payment would be. But the upgrade of the water wall itself is not an environmental issue or an environmental project.

Q.630 - So you don't see that upgrade as an environmental charge?

MR. GOOD: No. No. It was an upgrade that was required in order to enable the station to continue burning the high proportion of petcoke and enjoy the fuel savings as a result of that. And to in fact allow DISCO to receive the benefit of those savings.

Q.631 - Were there any other options available for recovery of the upgrade under the vesting agreement other than the approach that was taken in this instance?

MR. GOOD: No, there were not. The vesting agreement calls for changes as a result of environmental costs under this section. And then there is also the section that talks about refurbishment.

In this case, the upgrade of the water wall is not a refurbishment. A refurbishment is something that needs to be done to enable the station to get to its estimated end of service life. As we talked about a minute ago, the station could continue to operate, but on a reduced blend of petcoke. So this would not be formed or this would not be treated as a refurbishment. So there was really no provision in the PPA that led the committees or the Operating Committee to deal with it. But yet the benefit of the savings was so significant, the parties agreed that we needed to go ahead and do this upgrade to the water wall.

Q.632 - What was the original expected life of the Belledune boiler water wall?

MR. GOOD: In the vesting agreement, schedule 1.1.67 at the back, the estimated shutdown date for the station is October 31st 2028.

Q.633 - Would a refurbishment of the boiler normally occur during the life of a generating station is it burned only coal?

MR. GOOD: No,I don't believe so.

Q.634 - Would it be fair then to suggest that the cost for relining the boiler that took place be shared between DISCO and Genco to reflect sort of the use and the burning of petcoke to Genco's assets?

MR. GOOD: In this case virtually all of the savings from burning petcoke flow back through DISCO, first in in-province load through the setting of the vesting energy price through serving interruptible customers, and lastly through the export gross margin credit, which as you know is applied to DISCO's power purchase costs.

Q.635 - I believe Mr. Hay earlier this week indicated that some of the damage to the boiler was from activities other than the burning of petcoke. And I do have a piece from the Transcript if you would like to have a look at that before we --

MR. GOOD: No. I remember Mr. Hay saying that on Monday. But it is the case that we believe that it actually is a result of burning the petcoke.

The problem really arises when you burn high sulphur fuel or what we call hard to burn fuel. And that is the case with petcoke. The coal was really not a -- was really not a factor here. It is the petcoke.

Q.636 - You disagree with Mr. Hay's comments of Monday?

MR. GOOD: I do, yes.

Q.637 - How is the Board to determine which is the correct response?

MR. KENNEDY: I don't mean to disagree with anybody. But this is a phenomenon that exists throughout the industry. There is a significant -- you know, there is a certain portion of petcoke that is being burned in the United States and here. And to maximize the burn is to everyone's -- that is their goal.

But because of the nature of the petcoke, it does have a high sulphur content. And when burned in this type of boiler at Belledune, it goes trough an atmosphere, particularly up there with the latest -- the environmental controls with respect to NOX, that it gets into a reducing situation in the chamber where -- in the combustion chamber.

And such when the higher percentage of this higher sulphur fuel is put in -- because predominantly there is a certain amount of coal -- the predominant coal at Belledune is a fairly low sulphur coal being burned up there.

But it creates this atmosphere of water wall degradation.

And it basically happens over time. And it happens with the concentration. So there is sort of working groups that Genco worked on.

And I have reviewed the literature with respect to this phenomenon. And one of the fixes is basically to go in there and lace that water wall. And then, you know, basically you can come back and increase the amount of petcoke that you can burn in the coal-fired boiler.

So it is a question of 15 percent or 25 percent. But the savings of burning petcoke is significant. And again it relates to producing and resulting in lower cost generation.

Q.638 - What are the annual fuel cost savings brought on by the upgrade?

MR. KENNEDY: This upgrade would allow -- basically it saves annually in the neighbourhood, a minimum of 5,000,000.

But it could be as high as $7,000,000 million annually.

Yes. There is also, there is a business case in the minutes of the Operating Committee that describes this.

Q.639 - Do you have the specific reference for that?

MR. MORRISON: The only reason we are conferring here is Ms. MacFarlane's version is on pink paper. And my recollection is that the business case for the boiler water wall was not confidential. But we are having some discussion about that.

CHAIRMAN: We better resolve that before we get the answer then.

MR. MORRISON: I think it was just the names of some of the suppliers that were confidential. But I don't think the business case per se is confidential.

So I think the panel can answer the financial questions or whatever questions Ms. Desmond puts, as long as it doesn't get into specifics of supplier information.

MS. MACFARLANE: Sadly, the panel doesn't know the binder number. It was with the Operating Committee minutes of September 22nd 2006. And we will just wait for the reference number.

MS. DESMOND: As long as we have a reference to the minutes we will be able to find it.

MR. KENNEDY: Meeting number 17, September 22nd 2006.

MS. DESMOND: Thank you.

Q.640 - With respect to the burning of petcoke at Coleson Cove, has DISCO engaged a consultant to inspect the condition of the existing water wall in the affected boiler?

MR. KENNEDY: No. Basically we know that they are -- DISCO is aware and have been in meetings with Genco officials, that they are proceeding with a demonstration project at the Coleson Cove generating station.

As we speak there is equipment being installed to perform this test burn. I believe it is about the next -- possibility that it will start in the next calendar year. And that is one of the objectives of this demonstration burn, is to determine just indeed what is the amount of petcoke that can be burned in the Coleson Cove units and to assess any operational effects that it would have on the boiler, from a boiler performance point of view.

MR. GOOD: And if I can just add to that, of course we have learned from our experience at Belledune. So of course as part of planning this petcoke demonstration project at Coleson Cove, we have taken that into account.

And so equipment is being specifically installed to make sure that this same problem does not occur at Coleson

Cove. And we are confident that it will not, reasonably confident.

TQ.641 - The fire wall that we are talking about, has it ever been upgraded? Or is it the original fire wall?

MR. KENNEDY: Are you speaking about the --

Q.642 - Sorry. I meant to say the water wall.

MR. KENNEDY: It is in the fire box chamber. No, not that I'm aware of. You are talking now about -- I shouldn't answer the question until I find out what plant you are talking about. Coleson Cove, is that correct?

Q.643 - Coleson Cove, yes.

MR. KENNEDY: Not to any major aspect that I know of.

Q.644 - So it is the original then that we are talking about?

MR. KENNEDY: It is the original water wall.

MS. DESMOND: If I could just have a minute, Mr. Chair.

CHAIRMAN: Certainly.

Q.645 - I just want to go back for a minute to the Belledune generation station and the 9.1 million cost that has been incurred now and has been deemed to be -- or the language I guess attached to that is an environmental cost.

Can you explain essentially how that figure was arrived at and how that is a reasonable amount to spend for that upgrade?

MR. KENNEDY: The -- yes. I guess I have reviewed it with

Genco. But basically there was a competition. There was bids with respect to -- from a number of companies to go in and repair that water wall.

MR. GOOD: Yes. Just to expand on what Mr. Kennedy has said, we are subject to the Public Purchasing Act. So of course, a job like that was put out to tender. And we received bids and obviously went with the most competitive supplier.

MR. KENNEDY: If I might just add also, I have read documentation with respect to the problem, the issue, and reviewed Genco's engineers' report that came about as a visit to the States where they visited stations that actually had this particular problem, and from a learning point of view picked up a lot of knowledge, they did, to assure themselves that their proper job was done at the Belledune generating station.

MR. MORRISON: Just for everyone's clarification, we did find that the business case for the water wall is in exhibit A-21, Appendix 2. And it is meeting number 17, September 22nd 2006.

CHAIRMAN: Thank you, Mr. Morrison.

Q.646 - I appreciate the work would have gone to tender. But were you satisfied with the scope of the work that was identified in the tender call?

MR. GOOD: Yes. As Mr. Kennedy said, some of our engineering personnel went to other stations. They worked with engineering consulting firms to study the problem and to come up with the best solution to fix it.

So yes, there was considerable work that went into defining the scope of the work for this project.

Q.647 - Did DISCO employ its own consultant in reviewing the bids?

MR. KENNEDY: No. Basically we didn't employ a consultant to review the bids. I looked at the bids and that was it.

Q.648 - Would it be fair then to suggest that you relied on Genco in terms of its expertise in determining the appropriateness of the bids that were made?

MR. KENNEDY: Yes. I relied on Genco's engineering staff as well as the information that they had sought throughout trade journals as well as visits that they had to other major generating stations to assure themselves that they were doing the proper repair to the boiler in Belledune.

Q.649 - Now we have talked about the 9.1 million cost. And I'm wondering if you would agree that if we look again at that section 7.1.2 and the definition of environmental cost, from a strict interpretation of that provision, that Genco would be required to complete that refurbishment on its own cost and expense, if we interpret that section strictly?

MR. GOOD: As I said, Genco would not have undertaken this work nor was it obligated to do so under the vesting agreement. Because the station could have operated until 2028 and just would have burned a different blend of fuels at the station. But because there was a significant benefit to actually increasing the blend of petcoke, we thought we needed to go ahead.

Once again the term environmental cost was just used in the amendment solely to tie it into the schedule at the back of the PPA, schedule 7.2, I believe it is, which sets out a method of calculating an adjustment to the capacity factor. That was the only reason that the term environmental cost was used in the amendment.

MS. MACFARLANE: Ms. Desmond, the amendment was undertaken by Torys to achieve the objective as Mr. Good laid out. So we are quite confident that the references -- I think you are making the reference to the fact that it needs to be required by legislation.

Q.650 - Well, I would suggest -- and perhaps you might comment on whether or not that is one interpretation that the Board might take of that provision?

MS. MACFARLANE: As I say, it is our understanding from Torys that the intent and the wording -- the chief intent was simply to provide for a calculation that was predefined. It was not to put any restriction on it. It was simply to allow for consistency in how amortization and fixed costs got passed on to DISCO.

MR. MORRISON: I think as well, Mr. Chairman, it is setting a legal interpretation. If you look at the definition "environmental costs" that is in amendment number 2, it is not intended to be the same definition of environmental costs that is found in the environmental costs adjustment provision.

It is simply, as I understand it from my brief conversation with the lawyer at Torys, it was a definitional approach only.

CHAIRMAN: And I assume we are not going to have any lawyer from Torys here on one of your panels.

MR. MORRISON: I can assure you that we are not.

CHAIRMAN: I'm sure we will hear lots about this in argument then.

Q.651 - I have a few questions now on PROMOD. And again some of these questions are just to help clarify some of the issues that have been raised by previous intervenors.

And my first question is were there any other forecasting -- does PROMOD do any other forecasting besides fuel and foreign exchange?

MR. KENNEDY: Could you explain what your question -- explain the question?

Q.652 - Perhaps I will rephrase it. Could you clarify exactly what kinds of forecast PROMOD produces?

MR. KENNEDY: PROMOD produces, from an input point of view, all the inputs go in. Basically it produces the dispatch of the various units that are available to Genco to operate and serve DISCO's load based on inputs from DISCO from a point of view of the load, DISCO's load, also to take into consideration the capacity of the various units and the ancillary service requirements.

And basically it is a tool, a production modeling simulation tool that basically sets forth how a system would operate in a minimal cost manner to supply DISCO's load throughout the year, to serve the in-province firm load as well as to determine pricing for interruptible surplus products, as well as it also determines the amount of export sales that could occur, from a point of view of looking at the various markets around us and surrounding markets and taking into consideration the generation costs of the units.

It basically goes through the whole exercise and provides the cost, an overall cost for the amount of energy that would be required to say serve the in-province load, which is in particular just to use to determine the fuel component of the vesting energy price.

And so you come up with a total dollar value and then the amount of -- and divide it by the amount of the energy.

And you will have the fuel component of the vesting energy price as well as it will predict what the export benefits, if they export.

It will basically model based on inputs to determine what the export benefit would be, the actual export benefit, which of course could be different than the prescribed export benefit. So it is a complete modeling tool.

Q.653 - And the reason I ask that is because I think we have talked a lot about the foreign exchange and the fuel forecast. But I wasn't clear if there were other types of forecast that came from that modeling tool.

And one question we did have is whether PROMOD has been used to forecast any pet coke requirements for the Coleson Cove generation station in the test year?

MR. GOOD: No, it has not.

Q.654 - I wanted to bring your attention to a response that was filed to an IR by the Public Intervenor.

And I believe in the response that was provided there was an indication that Coleson Cove did not meet its 85 percent availability for June, July and August. Is that correct?

MR. GOOD: Can you direct me to the interrogatory?

Q.655 - I believe it is PI IR-39. And it is in binder A-23.

CHAIRMAN: Ms. Desmond, what was that IR number again?

MS. DESMOND: PI IR-39. And it is at Appendix 3 of that binder at page 12.

MR. GOOD: Yes. I have it.

Q.656 - And my question was whether Coleson Cove failed to meets its 85 percent availability for June, July and August. Is that correct?

MR. GOOD: I can't remember whether it made its availability targets or not. But one of the things I have taken into account is whether or not there is a planned outage or other work that has to be undertaken during a period of time.

If DISCO gives its consent to such an outage or such work being undertaken, then they are essentially waiving that requirement. So we don't have to hit the availability target if DISCO consents to having a unit offline.

Q.657 - And why would DISCO consent to that? And what value would it receive for giving its consent?

MR. GOOD: In this case here it appears it was related to upgrading the precipitator on unit number 1. And so the reason that upgrade was required was Coleson Cove was not producing marketable gypsum.

And so the issue was identified. And a precipitator upgrade was required.

Q.658 - Perhaps Mr. Kennedy could --

MR. KENNEDY: If I might add, with respect to the Coleson Cove, you are talking about the Coleson Cove agreement performance with respect to capacity. Generally what -- really what happens when they set the vesting and energy price that is put forth in this document that we submitted here, those units from a capacity and energy point of view are turned over to Genco to use and dispatch as their resources.

A lot of those performance criteria that are in the Coleson Cove tolling agreement are to take into account that Coleson Cove could be in the ownership of a third party, where there would be incentives required to ensure that they perform.

But generally what happens here in this situation is at this time the unit was not required to be operating. And basically once we set the vesting energy price in that year it is fixed. So the operation, whether the unit is operating or not, the risk resides with the operator or Genco.

And also, as Mr. Good has said, we approve any outages on the units. And typically the operation is such that probably at least one or perhaps two units at Coleson can be down, depending on how the export sales are in the summertime with respect to those units. So it really had no effect on DISCO's costs.

MR. GOOD: And if I can just clarify something that I said or correct something that I said -- I didn't read the paragraph carefully enough. It was referring to unit 1 precipitator upgrade, which in fact was later determined that it wasn't required.

So when I said the outage was actually happening for a precipitator upgrade, that is true. But it was subsequently canceled, that upgrade.

Q.659 - The next reference I would like to bring your attention to is in binder A-16.

And in particular my first reference is to tab 6 or section 6. And that is section 6 under Nuclearco. And if you could turn to page 2 of that particular tab. And I'm looking at table 6B.

MR. GOOD: Yes. I have got it.

Q.660 - Okay. And if I can bring your attention to line 3 of that particular table, issue number N5 is stated as having a coupon rate of 10 percent. Compared to the other debt issued coupon rates in that particular table, this rate appears to be out of line.

Can you confirm that this rate is correct?

MR. GOOD: This rate is correct. But what you need to keep in mind is that it was put into Nuclearco at the time of restructuring.

And essentially what happened at that date was NB Power's entire debt portfolio had to be allocated amongst the different companies. And in order to do that all of the existing debt, as you can imagine, had different terms on it, different expiry dates.

And so the Province and their financial advisers and what not looked at how they would take NB Power's existing debt portfolio, allocate it to all the different op'co's. And this one just ended up here. But there would be issues of varying rates in the other op'co's as well.

MS. DESMOND: Mr. Chair, I believe that is all of our questions with the exception of a couple of questions for which we would require a confidentiality hearing.

And I spoke to Mr. Morrison about this particular issue. And he did indicate that perhaps we could address our questions to the PDVSA settlement panel. And I believe that there is consent with respect to that.

MR. MORRISON: I understand the questions that Ms. Desmond wants to ask probably are going to be directed to Ms. MacFarlane who is on the PDVSA settlement panel. And rather than have it here in-camera and that, on the record it seems to make sense to me to have it dealt with at that time, unless there is objection from some other party.

CHAIRMAN: I will hear from the other parties. Does anybody have any difficulty with that suggestion? Apparently not. And it makes good sense to the Board quite frankly. So that is how we will deal with that then. When the PDVSA panel is up then, Ms. Desmond, you can put those questions to Ms. MacFarlane at that time. We seem to have gone by the time of which we had indicated that we were going to end for each day. And how I would suggest that we may proceed is for the Board to ask its questions tomorrow morning. As well, Mr. Morrison, you could do redirect. However I want to make sure that the panel is available. Because it certainly is not available on the draft schedule. So if in fact they aren't going to be available we can continue.

MR. MORRISON: No. The panel will be available tomorrow, Mr. Chairman. I don't know whether I will have any redirect. But I would like to take the opportunity this evening to look at my notes.

I would anticipate that we would be able to put Mr. Sustman on sometime tomorrow morning. Is that your expectation as well?

CHAIRMAN: Yes. I wouldn't expect that the Board would have a lot of questions. I just -- I think that perhaps given the late hour, we would just like to do that in the morning.

The other item that came up this morning which I deferred to the end of the day was your letter with respect to affording Mr. Logan an opportunity to meet with Deloitte & Touche, I believe it was, with respect to the deferral account.

And again we will defer that matter off till tomorrow. There is no -- I don't think there is any urgency to deal with that at this point in time.

So we will recess until 9:30 tomorrow morning.

MS. DESMOND: Mr. Chair, sorry, if I could, I don't know if you wanted to canvass the intervenors with respect to whether or not they have required an in-camera hearing tomorrow for this particular panel.

CHAIRMAN: Well, I will start with you.

MS. DESMOND: No. I don't think so. Given we are able to ask those questions to the other panel.

CHAIRMAN: I'm not sure who is left. Does anybody of the intervenors that are still here require an in-camera hearing tomorrow?

It doesn't appear that anybody does. Anything further?

MS. DESMOND: No, thank you.

CHAIRMAN: Thank you.

(Adjourned)

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of the proceedings of this
hearing, as recorded by me,
to the best of my ability.

Reporter